



The Commission and the Oath

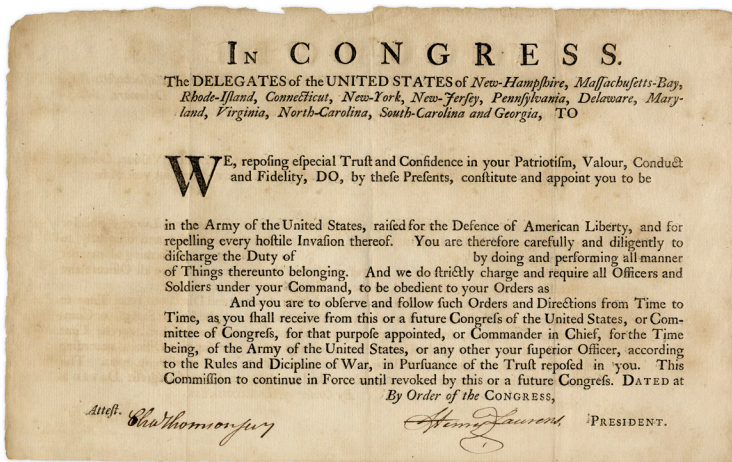
You become an officer in the Armed Forces of the United States by accepting a commission and swearing the oath of support for the Constitution required by Article VI of “all executive and judicial Officers [the President excepted], both of the United States and of the several states.”¹ The commission and the oath constitute an individual moral commitment and common ethical instruction. They legitimize the officer’s trade and provide the basis of the shared ethic of commissioned leadership that binds the American military into an effective and loyal fighting force. They are the foundation of the trust safely placed in the Armed Forces by the American people. The commission and oath unite all Armed Forces officers in a common undertaking of service to the Nation.

The Commission

Though the paths taken to the tender of a Federal military commission are various, the form of the document is common among the Armed Forces, save for the fact that each reflects appointment in a particular branch of the Armed Forces (Army, Marine Corps, Navy, Air Force, or Coast Guard). The commission is granted under the President’s powers in Article II, Section 2, of the Constitution. It is a notice of appointment, a grant of executive authority, and an admonition for obedience. It is bestowed, the commission says, because of the “special trust and confidence” reposed by the President “in the patriotism, valor, fidelity and abilities” of the appointee. The officer is enjoined to “carefully and diligently discharge the duties” of his or her office. Subordinates are charged to render the obedience due an officer of his or her station. The officer is admonished to “observe and follow such

orders and directions . . . as may be given by” the President or the President’s successors, “or other Superior Officers *acting in accordance with the laws of the United States of America* [emphasis added].”² No grant of professional discretion exempts any Armed Forces officer from the obligation to act within the confines of the law.

The form of the commission document remains much like that granted by the Continental Congress to officers of the Continental Army during the American Revolution.³ The wording of the current commission replaces the 1777 *conduct* with *abilities*.⁴ By way of comparison, Article I of the 1775 “Rules for the Regulation of the Navy of the United States Colonies of North America” reads: “The Commanders of all ships and vessels belonging to the thirteen United Colonies are strictly required to show themselves a good example of honor and virtue to their officers and men.”⁵



The Armed Forces of the United States depend for their success, indeed for their existence, on a web of trust beginning with that between them and the American people and their government. The President expects the officer to live up to the expectations expressed in the commission. The people depend upon the Armed Forces for their security in a dangerous world. They provide their sons and daughters as Soldiers, Marines, Sailors, Airmen, and Coastguardsmen, in trust that their lives will be risked reluctantly and expended parsimoniously only as required for important tasks. They expect the leaders and members

of their Armed Forces to be both effective and accountable before the law and public opinion. The people pay their taxes in order to ensure the safety of the Nation. Notably, providing for “the common defense” precedes promoting “the general welfare” as a founding purpose in the preamble of the Constitution.

In return for their investment, the American people expect reliable, effective, honorable, and efficient performance. They demand military leaders who demonstrate high standards of character and competence and who conduct themselves in a manner that reflects basic principles of integrity, justice, and fairness toward all subordinates.⁶ When these expectations are disappointed, the people and their government withhold the trust, resources, and discretionary latitude the Services enjoy in more normal times. Equally important, when a lack of public trust becomes evident, the morale of Servicemembers suffers. Military men and women question the value of their sacrifices, the worth of their cause, and trust in their leaders. Discipline becomes problematic.⁷

In 1950, S.L.A. Marshall began the first edition of *The Armed Forces Officer* with a chapter titled “The Meaning of Your Commission.” His opening sentences read as follows:

*Upon being commissioned in the Armed Services of the United States, a man incurs a lasting obligation to cherish and protect his country and to develop within himself that capacity and reserve strength which will enable him to serve its arms and the welfare of his fellow Americans with increasing wisdom, diligence, and patriotic conviction. This is the meaning of his commission.*⁸

Lingering over the implications of the four virtues to which the President attests, Marshall gave pride of place to *fidelity*, discounting patriotism, which he had largely defined in his opening sentence because, he said, it could be assumed. *Valor* he set aside because it remained unknown until it was tested. *Abilities* depended on individual nature. “Fidelity,” he asserted, “is the derivative of personal decision . . . the jewel within reach of every man who has the will to possess it.”⁹

Patriotism, the zealous devotion to one’s own country, is a suspect virtue today, more credible when recognized by others than when

self-proclaimed. Samuel Johnson's assertion that patriotism represents the last refuge of the scoundrel seems too often justified in the conduct of the professionally patriotic. If experience teaches the unwisdom of Marshall's too easy presumption of patriotism by the officer, its recognition by others—the public and those with whom one has influence—should remain an important aspiration of every Armed Forces officer. Evident and motivating love of country is the beginning of authority's legitimacy.

Valor represents the virtue, or quality of mind, that enables a person to face danger with boldness or firmness. It is an essential if not sufficient requirement of any who would aspire to lead those intended to go into harm's way. Marshall may have been correct that valor remains unknown until tested. If so, officers would do well to examine themselves to the extent practicable and, by repeated experience and reflection, gain confidence in their own measure.

On the other hand, contrary to Marshall's view, abilities, or the "power or skill to do something," are subject to training and improvement. Abilities can be enhanced. Abilities become capabilities or capacities through practice and application. Demonstrated abilities, not least a certain athleticism for what is a physically demanding calling, may be the basis for initial commissioning, but the officer remains under obligation to extend his or her inherent abilities to their maximum potential. Perhaps the ability of intellectual growth is the most important, which returns us to Marshall's foremost virtue, fidelity.

Of the four commissioning virtues, Marshall preferred fidelity because he saw that it was a matter of individual choice or will. The *Oxford English Dictionary* defines fidelity as "the quality of being faithful; faithfulness, loyalty, *unswerving allegiance* to a person, party, bond, etc. [emphasis added]." Fidelity is the foundation of the various strands of trust that mark the relationships of the Armed Forces officer. It means the officer will stand fast in the face of hardship and danger. Fidelity, faithfulness to the Constitution, binds the officer to the Nation and the people the officer serves. Fidelity to the Service, and to those in superior command, ensures discipline and reliability. Fidelity to the men and women entrusted to the officer's care is the basis of *esprit* and collective performance. At its most basic level, it is acceptance of the primacy of duty in all things.

The Oath

Acceptance of the commission is conditional upon execution of the constitutional oath. The commissioning oath is an individual commitment, made freely, publicly, and without mental reservation, to support and defend the compact that forms the United States “against all enemies foreign and domestic; to bear true faith and allegiance to the same,” and, echoing the commission, to “well and faithfully discharge the duties of the office on which I am about to enter.”¹⁰ The current form of the officer’s oath is found in Title 5, “Government Organization and Employees,” of the U.S. Code; the enlisted member’s oath of enlistment is in Title 10, “Armed Forces.” The form of the oath has changed over time, most notably during the Civil War and its aftermath, as the Congress of the United States sought to protect itself, in the first place, from a repeat of officers and officials “going South,” and also to keep former Confederate officials out of government.¹¹

Marshall had less to say about the oath of office than the commission, though he observed in his discussion of *esprit* that

*the interesting and important thing that happens to a man when he enters military service is that, the moment he takes the oath, loyalty to the arms he bears ranks first on the list, above all other loyalties. . . . In his life, service to country is no longer a beautiful abstraction; it is the sternly concrete and unremitting obligation of service to the regiment, the group or the ship’s company. . . . In this radical reorientation of the individual life and the arbitrary imposition of a commanding loyalty is to be found the key to the esprit of any military organization.*¹²

There are stark differences between the undertaking of the civil servant who subscribes to the constitutional oath and the military officer who does the same to activate a military commission. Notably, while both the commission and oath involve, on the one hand, the admonition for careful and diligent discharge of duties and, on the other, a commitment “to well and faithfully discharge the duties of the office,” both are silent as to what those duties might encompass beyond the shared purpose of protecting and defending the Constitution. But

it is precisely the nature of the task that makes Armed Forces officers unique among executive officers of the government.

The military oath is implicitly a commitment to what a British general, Sir John Hackett, called “the ordered application of force under an unlimited liability.”¹³ The military man or woman may be called upon at any time to perform duties under conditions not only of great discomfort, but also of threat of serious injury, loss of limb, or death. Officers’ particular duty, or at least that which defines their corps, is the leadership and direction of men and women in the disciplined use of lethal force (or the threat thereof), in the pursuit of purposes sanctioned by the state and legal under the Constitution and in international law. The Supreme Court of the United States has observed: “An army is not a deliberative body. It is an executive arm. Its law is that of obedience. No question can be left open as to the right of command in the officer, or the duty of obedience in the soldier.”¹⁴

The “Otherness” of Officers

Not only in the United States, but also within the armed forces of other established nation-states, the officer corps generally exists as a body apart from the enlisted force. Commissioned officers are intentionally different. General Hackett observed that, to underscore the officer’s right to command:

*there is in armies a tendency to set up an officer group with an otherness as a step towards or if necessary even in some degree a replacement of, the betterness you require. The officer is set apart, clothed differently and given distinguishing marks. His greater responsibilities are rewarded with greater privileges. There is some insistence on a show of respect. He is removed from that intimate contact with the men under his command which can throw such a strain upon the relationship of subordination.*¹⁵

In the United States, Armed Forces officers are set apart as a group within the wider profession of arms: in uniform, insignia, formal respect required, authority assigned, responsibility, and limitations on appropriate interaction with other members. The commission

document, the unique form of appointment, is one of these distinguishing features and has already been addressed. The salute is a required greeting of senior officers, rendered by subordinates, enlisted and commissioned alike; likewise, the use of certain forms of address, such as *Sir* or *Ma'am*, is an obligatory sign of respect. An officer's authority is underwritten by the Uniform Code of Military Justice in the severity of punishment for offenses committed against commissioned officers in execution of their office.¹⁶ Indicative of differences in responsibility, there are offenses in the Uniform Code of Military Justice that only an officer can commit; most notably, these are Article 88, "Contempt for officials," and Article 133, "Conduct unbecoming an officer and a gentleman" (one of the few remaining couplings of the terms "officer" and "gentleman").

Among the U.S. Armed Forces, the Marine Corps is the most eloquent in defining the "otherness of officers." In the *Marine Corps Manual*, the core document of the Marine Corps, paragraph 1100, "Leadership," includes the following:

The special trust and confidence, which is expressly reposed in officers by their commission, is the distinguishing privilege of the officer corps. It is the policy of the Marine Corps that this privilege be tangible and real; it is the corresponding obligation of the officer corps that it be wholly deserved.

(1) As an accompanying condition commanders will impress upon all subordinate officers the fact that the presumption of integrity, good manners, sound judgment, and discretion, which is the basis for the special trust and confidence reposed in each officer, is jeopardized by the slightest transgression on the part of any member of the officer corps. Any offense, however minor, will be dealt with promptly, and with sufficient severity to impress on the officer at fault, and on the officer corps. Dedication to the basic elements of special trust and confidence is a Marine officer's obligation to the officer corps as a whole, and transcends the bonds of personal friendship.

(2) As a further and continuing action, commanders are requested to bring to the attention of higher authority, referencing this paragraph, any situation, policy, directive, or procedure

*which contravenes the spirit of this paragraph, and which is not susceptible to local correction.*¹⁷

Whereas General Hackett looked to institutional “otherness” to act in place of a “betterness” that justified command, the American Brigadier General S.L.A. Marshall saw the origin of the officer’s prestige as derived from the “exceptional and unremitting responsibility,” which is his or her lot, and he saw that the importance of this esteem and trust was one of the reasons the Services placed emphasis on personal honor. “They know,” Marshall wrote, “that the future of our arms and the well-being of our people depend upon a constant renewing and strengthening of public faith in the virtue of the [officer] corps.”¹⁸ Marshall observed as well that “while he continues to serve honorably, it [the Nation] will sustain him and *will clothe him with its dignity* [emphasis added].”¹⁹ In short, the Nation will bestow on the officer the authority to command his or her fellow citizens.

The Army tends to follow Marshall, adding to responsibility the attribute of specialized knowledge, and writes the following in its leadership reference manual:

2-6. Officers are essential to the Army’s organization to command units, establish policy, and manage resources while balancing risks and caring for their people and families. . . .

*2-7. Serving as an officer differs from other forms of Army leadership by the quality and breadth of expert knowledge required, in the measure of responsibility attached, and in the magnitude of the consequences of inaction or ineffectiveness. . . . While officers depend on the counsel, technical skill, maturity, and experience of subordinates to translate their orders into action, the ultimate responsibility for mission success or failure resides with the officer in charge.*²⁰

All the Services have explicit policies on improper relationships, or *fraternization*, between ranks, intended to maintain good order and discipline by forbidding certain transactions and relationships between the different classes of membership.

Society’s respect for the professional officer is conditioned on reliable, effective, honorable, and efficient performance of duty. As

General William T. Sherman warned officers attending the new School of Application for Infantry and Cavalry at Fort Leavenworth in October 1882:

No other profession holds out to the worthy so certain a reward for intelligence and fidelity, no people on earth so generously and willingly accord to the soldier the most exalted praise for heroic conduct in action, or for long and faithful service, as do the people of the United States; nor does any other people so overwhelmingly cast away those who fail at the critical moment, or who betray their trusts.²¹

The military ethic is a warrior ethic and the military ethos is a warrior ethos, a point made clear by the Soldier's Creed, the Marine Hymn, the Sailor's Creed, and the Airman's Creed. This seems unlikely to change, even in the era of cyber-conflict and unmanned attack aircraft. In 2003, American journalist William Pfaff wrote in his essay "The Honorable Absurdity of the Soldier's Role" that the soldier's lot "is inherently and voluntarily a tragic role, an undertaking to offer one's life, and to assume the right to take the lives of others. . . . The intelligent soldier recognizes that the two undertakings are connected. His warrant to kill is integrally related to his willingness to die."²² When one is not *willing* to go into harm's way, he or she is not a soldier but a technician of death, or just a technician. A defining moral quality is absent. The military ethic is based on a commitment to disciplined service under conditions of unlimited liability, whether or not one has a military occupational specialty that involves combat.²³

The year following Pfaff's essay, in an important and eloquent public strategy document, the Secretary of the Army and the Army Chief of Staff reflected that this right to take the lives of others involves a burden of discrimination—that "Only the true warrior ethos can moderate war's inevitable brutality."²⁴ Later that year, Lieutenant General James Mattis, USMC, perhaps the most admired warrior-general of the day, told an audience of Naval Academy Midshipmen: "The first thing, my fine young men and women, you must make certain that your troops know where you are coming from and what you stand for and, more importantly, what you will not tolerate."²⁵ Mattis went on to

recount a story brought to him by a non-U.S. war correspondent who witnessed the actions of a young Marine rifleman in Mamadia, Iraq. The correspondent, skeptical of the Marine Corps admonition of “No better friend, no worse enemy,” had observed the young Marine protecting nearby Iraqi civilians caught in the danger zone while simultaneously fighting off terrorists. “Now think,” Mattis concluded, “what that says about a 19-year-old who could discriminate.”²⁶

What the American people expect from their Armed Forces, and trust that they will receive, is reliable, effective, honorable, and efficient service, whenever, wherever, and in whatever form the government of the day decides is necessary. The guarantee of that service is internalization in every officer of the expectations embodied in the commission and the oath: patriotism, valor, fidelity, and abilities; dedication to the protection of the letter of and the values embodied in the Constitution; and a willingness to offer, if required, what President Lincoln called “the last full measure of devotion” in its defense. In the first Raymond Spruance Lecture at the Naval War College, Herman Wouk, author of *The Caine Mutiny* and *The Winds of War*, and a World War II Navy officer himself, told an audience emerging from the disheartening experience of Vietnam, that in a society riven by social and political turmoil, their job was “Not to solve the great ongoing problems of social stress, nor to despair at the immensity and complexity of these problems outside our country and inside, but to stand and to serve. To improvise, to make do with what we have; to serve in still another kind of revolutionary warfare . . . and with this service, to give freedom one more chance for one more generation.”²⁷

Notes

¹ The President’s unique oath is found in the final paragraph of Article II, Section 1, of the Constitution.

² Commission document.

³ Continental Congress, 1777, Printed Commission Form. George Washington Papers at the Library of Congress, 1741-1799: Series 4, General Correspondence, 1697-1799, April 30, 1777, to January 24, 1778, image 676, available at <<http://memory.loc.gov/ammem/gwhtml/gwhome.html>>.

⁴ Washington’s 1753 commission in the Virginia Regiment shows *ability*, *conduct*, and *fidelity* as the relevant virtues. *The Writings of George Washington: Being His Correspondence, Addresses, Messages, and Other Papers Official and Private, Selected and Published from the General Manuscripts; with A Life of the Author, Notes*

and Illustrations, Jared Sparks, ed., 12 volumes, vol. II (Boston: American Stationer's Company, 1838), available at <<http://babel.hathitrust.org/cgi/imgsrv/download/pdf?id=uc1.c2741841;orient=0;size=100;seq=461;num=429;attachment=0>>.

⁵ Quoted in Department of the Navy, Chief of Naval Operations [Admiral Gary Roughead], Memorandum for All Prospective Commanding Officers, Subject: The Charge of Command (June 9, 2011). Emphasis in original. Available at <www.public.navy.mil/bupers-npc/officer/Detailing/Documents/CNO%20Charge%20of%20Command%20Letter%20-%20Signed.pdf>.

⁶ U.S. Code, Title 10, "Armed Forces," Sections 5947, 3583, and 85831, "Requirement for Exemplary Conduct," as quoted in Cornell University Law School, Legal Information Institute, available at <www.law.cornell.edu/uscode/text/10>.

⁷ Richard Swain, *The Obligations of Military Professionalism: Service Unsullied by Partisanship* (Washington, DC: Institute for National Security Ethics and Leadership, December 2010), 7, available at <www.mca-marines.org/files/obligations%20of%20military%20professionalism.pdf>.

⁸ *The Armed Forces Officer* (Washington, DC: U.S. Government Printing Office, 1950), 1. Marshall abandoned these words in his final edition of the book in 1975. Times were hard in the wake of the war in Vietnam, and Marshall was evidently distressed. He wrote in his introductory remarks:

Love of country is still the only possible refuge for intelligent American men and women in service; it is their sword and shield and the emblem of their advance. Everything that enters into the making of truly superior military officers would qualify them to live more generously and rewardingly in any other company. That, essentially, is what this manual has to say. Hardly a new and radically different treatment of the subject, it is at least as old as the American Dream.

"Introduction," *The Armed Forces Officer* (Washington, DC: Armed Forces Information Service, 1975), iii.

⁹ *The Armed Forces Officer* (1950), 3.

¹⁰ U.S. Code, Title 5, "Government Organization and Employees," Part III, "Employees," Subpart B, "Employment and Retention," Chapter 33, "Examination, Selection and Placement," Subchapter II. Oath of office, Section 3331, "Oath of Office," as quoted in Cornell University Law School, Legal Information Institute, available at <<https://www.law.cornell.edu/uscode/text/5/3331>>.

¹¹ There are two exemplary studies of the oath of office by commissioned officers: Kenneth Keskel, "The Oath of Office: A Historical Guide to Moral Leadership," *Air and Space Power Journal* (Winter 2002), available at <www.airpower.maxwell.af.mil/airchronicles/apj/apj02/win02/keskel.html>; and Thomas H. Reese, "An Officer's Oath," *Military Law Review* (July 1964), 1-41, available at <www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/276073~1.pdf>.

¹² *The Armed Forces Officer* (1950), 158.

¹³ Sir John Winthrop Hackett, *The Profession of Arms* (New York: Macmillan, 1983), 202.

¹⁴ In re Grimley, 137 U.S. 147, 153 (1890), cited as precedent by Chief Justice William Rehnquist in Parker, Warden, et al. v. Levy, 417 U.S. 733 (1974), available at <<https://supreme.justia.com/cases/federal/us/417/733/case.html>>.

¹⁵ Hackett, *The Profession of Arms*, 220. The quotation is from an essay titled “Leadership,” which was not part of the original lectures.

¹⁶ See *Manual for Courts Martial*, Article 90, “Assaulting or willfully disobeying superior commissioned officer,” and compare it to Article 91, “Insubordinate conduct toward warrant officer, noncommissioned officer or petty officer,” available at <www.apd.army.mil/pdffiles/mcm.pdf>.

¹⁷ U.S. Department of the Navy, *Marine Corps Manual with Changes 1–3*, 1980; Change 1, 1982; Change 2, 1984; Change 3, 1996, Paragraph 1100, 1–21, 1–22, available at <www.marines.mil/Portals/59/Publications/MARINE%20CORPS%20MANUAL%20W%20CH%201-3.pdf>.

¹⁸ *The Armed Forces Officer* (1950), 2.

¹⁹ *Ibid.*

²⁰ Army Doctrine Reference Publication 6-22, *Army Leadership* (Washington, DC: Headquarters Department of the Army, August 2012), 2-1, available at <http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/adrp6_22_new.pdf>.

²¹ William T. Sherman, “Address to the Officers and Soldiers Composing the School of Application at Fort Leavenworth, Kansas, October 25, 1882,” 8, available at the digital collection of the Archives, Combined Arms Research Library, U.S. Army Command and General Staff College, Fort Leavenworth, Kansas, <<http://cgsc.contentdm.oclc.org/cdm/ref/collection/p4013coll4/id/352>>.

²² William Pfaff, “The Honorable Absurdity of the Soldier’s Role,” *International Herald Tribune On Line*, March 25, 2003, 8. Available at <[www.iht.com/ihsearch.php?id=90840&owner=\(IHT\)&date=20030326163223](http://www.iht.com/ihsearch.php?id=90840&owner=(IHT)&date=20030326163223)>. Reprinted without title, dated March 20, in William Pfaff, *Fear, Anger and Failure: A Chronicle of the Bush Administration’s War Against Terror from the Attacks of September 11, 2001 to Defeat in Baghdad* (New York: Algora Publishing, 2004), 169–171. (Punctuation varies in minor instances between versions.)

²³ There is a paradox here, for the whole purpose of tactics at the small unit level and the massive investment in sophisticated hardware at the national level is intended to drive the risk of losses as close to zero as possible. The argument is that at some point this creates a new understanding of the military professional and changes fundamentally the ethical climate in which he or she lives.

²⁴ Les Brownlee and Peter Schoomaker, “Serving a Nation at War: A Campaign Quality Army with Joint and Expeditionary Capabilities,” *Parameters* (Summer 2004), 12–13, available at <<http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/04summer/schoomak.pdf>>. The same point was argued by Michael Ignatieff, *The Warrior’s Honor: Ethnic War and the Modern Conscience* (New York: Henry Holt, Owl Books, 1998).

²⁵ James N. Mattis, “Ethical Challenges in Contemporary Conflict: The Afghanistan and Iraq Cases,” The 2004 William C. Stitt Ethics Lecture sponsored by the Center for the Study of Professional Military Ethics, U.S. Naval Academy, Annapolis, MD, November 2004, 10.

²⁶ Ibid., 11–12.

²⁷ Herman Wouk, Spruance Lecture, “The Naval Officer in an Age of Revolution,” *The Naval War College Review* 25, no. 4 (March–April 1973), 10–11, available at <www.usnwc.edu/Publications/Naval-War-College-Review/ArchivedIssues/1970s/1973-March-April.aspx>.