

**The Role of the Lawful Order in Military Leadership:
Necessary but Insufficient.....or Insufficient but Necessary?**

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**And We do hereby Command them to Obey you
as their Superior Officer....**

From the Commissioning Scroll
Appointing an Officer into
Her Majesty's Canadian Armed Forces

Signed By the Governor General
and the Minister of National Defence

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The Role of the Lawful Order in Military Leadership:

Necessary but Insufficient.....or Insufficient but Necessary?

“Military society is, of course, highly structured. Even such revolutionary armies as the French, Russian and Chinese have found the use of ranks and such military tokens of respect and subordination as saluting to be vital. The gap between officer and enlisted man is far wider than that between, let us say, plant manager and worker, for the foreman can hardly order the latter to risk his life or threaten him with court-martial.”

Eliot A. Cohen

Citizens and Soldiers: The Dilemmas of Military Service¹

It would not be over-stating to say that the role of the lawful order in military leadership is one of those “unquestionables”. Taken for granted – operating, for the most part, in the background of everyday military life - an unseen but nonetheless palpable presence.

But what part does the lawful order play in terms of leadership in the Canadian Forces? How can the concept of the lawful order be understood within the definition of leadership which is espoused for the Canadian Forces of the 21st Century? If the ideal of leadership is one in which subordinates willingly comply with their superior’s directives, then where does the lawful order “fit”? Is it still needed? Or have we, as a society, as a people, as an armed force, evolved to the point where the *weight of the law* is no longer needed to maintain an effective fighting force? Alternatively, does it work in a detrimental fashion such that individuals who are not capable of developing into effective leaders (or choose not to expend the effort required to do so) may rely on it to the detriment of the effectiveness of the Canadian Forces?

Answering the above questions cannot be easy. And there are confounds. First, is it true that leadership is about fostering willing compliance in one’s followers? Or, could it be that this is a faulty premise? While it may be a mighty *ideal* for which to strive, is it a fact that this *is what leadership is*? The second confound is even more fundamental to the issue at hand. Do military officers lead? Or, in fact, do military officers do something else, of which leadership might be a *part of*?

The aim of this paper is to address the issue of whether – given the accepted definition of leadership connoting willing compliance - the notion of compulsion embedded in the concept of the lawful order should be viewed as a component of military leadership or a separate construct. However, it is a fact that one may arrive at the wrong conclusion if the premises one is using are faulty. And so this paper does not begin with an ipso facto understanding either that military officers lead or that leadership does not involve compulsion. Rather, it aims to explore the

¹ Eliot A. Cohen, (1985), *Citizens and Soldiers: The Dilemmas of Military Service*, pg 147. Cornell University Press.

concept of the lawful order and tries to understand what influence it has on the ability of a military force – an entity whose purpose is to wage violence - to function effectively.²

Outline

In order to understand why something *is*, it is useful to understand how it came to *be*. Thus the paper begins by examining the antecedents of the military lawful order. How did the concept of the lawful order evolve? Where, or what, are its beginnings?

Proceeding from this historical perspective, the paper moves to the role of the lawful order in more modern times and examines the role it plays by looking at the lawful order from several different perspectives. How have Canadians applied the lawful order? How have Canadian courts interpreted the concept? How have Canadians perceived the requirement to have the lawful order? Is the lawful order needed to ensure obedience?

Given that the focus of the paper is on the role of the lawful order from a leadership perspective some may question the need to exert effort on the historical antecedents of Canada's military. Taking the lawful order in isolation – or perhaps more accurately stated – taking the concept of military leadership in isolation, may well lead one to ask the question. However, as will be seen, this paper takes the view that in a military setting, operating under the understanding that one's actions are subject to the weight of the law is infinitely more complex than simply deciding whether or not one will obey.

More explicitly, it is postulated that the knowledge that one is operating under a system wherein either one's own or one's superior's orders are lawful is perceived in two distinct and separate ways. First, whether one is in a leader or a follower position one understands on a "sub" conscious level that what one does – one's actions – are sanctioned by the law of the society one serves.

Second, one is aware that either one can compel, or is compelled, to carry out that which is directed because the directives carry the force of law. Thus one perception has to do with the psychological perception of the moral sanction of one's actions and the other with obedience and compliance *even if one might not agree*.

In addition, there are at least two other considerations which it is theorized are important when understanding the influence of the law-ful-ness of military orders. One is that the rule of law may be needed because a modern western army (indeed, any?) needs rules *to control the application of violence*. The second is that there must be a rigid system of law in place such that the army does not overthrow the government which it serves.

Because this paper is concerned mainly with the personal/leadership/micro aspect of the lawfulness of military orders, these last two areas will not be examined. However, given that one

² It must be mentioned that Karol Wenek was instrumental in helping to formulate these thoughts. His ideas and concepts on the overlapping constructs of command, leadership, and management brought coherency to the issue.

of the areas of exploration of this paper is whether or not the lawful order should be perceived as separate from or part of, leadership in a military setting, they cannot be ignored as it is maintained that they do exert an influence.

The Emergence of the Professional Army and the Soldier Class

People sleep peaceably in their beds at night only because rough men stand ready to do violence on their behalf.

George Orwell

A Historical Perspective

What is war? Why do humans wage it? Almost three thousand years ago Sun Tzu wrote:

“The Art of War is of vital importance to the state. It is a matter of life and death, a road either to safety or to ruin. Hence under no circumstances can it be neglected.”

*Sun Tzu
The Art of War³*

Why humans wage war is a subject which has been studied for centuries. Arguably, perhaps, it is anthropology which offers the most coherent account of this aspect of human behaviour. (Although, it must be said, anthropologists disagree even among themselves as to the underlying reasons for the waging of war.) From land to women to protein sources to population control – from the psychological to the ecological - there are many theories that strive to explain the existence of warfare in human societies.^{4 5}

What does seem clear, however, is that the establishment of settlements is an important factor in the *type* of war that is waged:

Although both hunter-gatherers and village farmers engage in warfare, there is reason to believe that warfare was less frequent in the Paleolithic than the Neolithic and that village farmers are more likely to attempt to rout each other.’⁶

The above makes intuitive sense - the effort and time required to establish a settlement makes it worth defending to a greater degree. More importantly, if peoples are not willing to uproot to new areas in order to find sustenance, the possibility of conflict with neighboring settlements increases as resources are depleted. However, although most pre-state societies have evolved stylized forms of warfare which limit the amount of damage caused, and do not usually fight

³ Sun Tzu, *The Art of War* (6th Century BC). Published by Amereon House, New York.

⁴ Marvin Harris, *Culture, People, Nature*, (1980). Harper and Rowe.

⁵ Janet Siskind (1973) *To Hunt in the Morning*, Oxford University Press, New York.

⁶ *Ibid*, pg 223.

each other to the point of annihilation, this is not always the case.⁷ As Harris states: “Warfare may sometimes escalate in an uncontrolled fashion even among pre-state peoples....”⁸

In more modern times, Clausewitz explained war as: “...simply the continuation of political intercourse, with the addition of other means.”⁹ However, one must agree with Keegan¹⁰ that this cannot be wholly right. That Clausewitz saw the world, and more importantly, saw war, only through his own experiences as a Prussian regimental officer in 18th century Europe seems evident. Indeed, an examination of various peoples and societies, at differing levels of development, seems to lead inevitably to the conclusion that war, in fact, is the perpetuation of a culture by its own means.¹¹

But no matter what war “is” as a society moves from pre-state to state, one begins to see the emergence of the “professional” soldier – or a war-faring class. Generally speaking, the above happens as a result of the society’s need to protect itself from marauders and, also, to wage warfare against others. Initially, all men of the society are warriors in the sense that they have a responsibility to wage warfare on an “as required” basis in addition to their usual role in the group. Then, for various reasons, and depending upon the level of evolution of the society, a group of men may emerge to whom warfare is not “in addition to” their other duties but becomes their sole societal role.

⁷ See, for example, Keegan (note 10), and his examination of the people who populated Easter Island.

⁸ *Ibid*, pg 224.

⁹ Carl Von Clausewitz, *On War*, (1976). Alfred A. Knopf. Princeton University Press. Re-translated based on the first edition of *Von Kriege* published in 1832. Readers should note that it is important which translation and edition one uses as there are subtle but critical variations. For instance, the vernacular of this famous line of Clausewitz’s - and one I have often personally heard used by Canadian military officers – is: “War is the continuation of policy by other means.” Historian John Keegan (see note 10) asserts that even this rendition is not precise and that the accurate translation is: “War is the continuation of political intercourse with the intermixing of other means.”

¹⁰ John Keegan, (1993). *A History of Warfare*. Alfred A.Knopf. Random House, New York.

¹¹ *Ibid*, pg 46.

Canada's Military Antecedents

Wolfe's defeat of Montcalm on the Plains of Abraham resulted in a British military heritage for Canada and so it is to the Anglo history of warfare that this paper turns. Further, it is at that point when a military obligation *to the state* began to take hold that this paper begins. This starting point is considered appropriate given that the focus of this paper is on the lawful order – the obligation of the soldier (citizen) to wield violence against his fellow humans under the orders of *an-other* because the other is invested *with the power of the state*.

The early militia, or Fyrd, can be traced to A.D. 690 and it is likely that "the obligation of Englishmen to serve in the Fyrd or people's army is older than our oldest records."¹² It is in any event clear that the Saxons had evolved a military and political system in which every free man was obligated *by law* to possess the weapons of an infantryman and to serve in the Fyrd. Under these laws, "every land holder was obligated to keep armour and weapons according to his rank and possessions; these he might neither sell, lend nor pledge, nor even alienate from his heirs."¹³ In historical parlance, the above is generally known as "military feudalism". It should be noted that some problems were involved in the administration of this system, not the least of which was the fact that military service was sometimes owed not to the sovereign but rather to the person who had granted the land. Thus, given that military duty ran with the land, there was sometimes dispute between various subordinate landholders dependent upon the fealties of successive title givers.

In any event, a solution to this problem - and a major historical occurrence - was the ruling in 1086 by William the Conqueror that every landholder must swear allegiance directly to him. Following directly from his victory at the at the Battle of Hastings, he asserted personal ownership of all England and sovereignty over all people - all power emanated from the King - and all persons held their property and privileges at his sufferance.

Thus we can see that the *duty to fight* became a quid pro quo agreement – *sanctioned by law* - between the sovereign (aka the state) and the person who owned the land. Of course, this made good sense as the person who owned the land had good reason to take up arms – to protect his land - and so supporting his sovereign was in his best interests. The combination of this duty of landholders together with the Fyrd duty of all free men was an important milestone in Anglo Saxon society but it was, however, eventually tempered at common law to a few limitations. (First, men were prohibited from appearing before Parliament or the royal courts with force and arms. Second, the Statute of Northampton prohibited Englishmen from using their arms "in affray of the peace,

¹² J. Bagley & P. Rowly (1965) *A Documentary History of England 1066-1540*, pg 152.

¹³ Ibid.

nor to go or ride armed by day or night in fairs, markets, nor in the presence of the justices or other ministers."^{14 15)}

In 1181, William's great grandson King Henry II issued the Assize of Arms thereby formalizing the military duties of subjects. Article Four reads as follows and is useful for its clear delineation of the early roots of the *lawfulness* of military service and military orders.¹⁶

*"Moreover, let each and every one of them swear that before the feast of St. Hilary he will possess these arms and will bear allegiance to the lord king, Henry, namely the son of the Empress Maud, and that he will bear these arms in his service according to his order and in allegiance to the lord king and his realm."*¹⁷

By the 1500's, however, the requirement for regular citizens to serve their sovereign had diminished and the bulk of England's fighting was performed by professional soldiers or those "pressed" into service by local officials. However, this scenario changed again in the late 1500's with the threat from Spanish forces and:

*"...the increasing complexity of Sixteenth- and Seventeenth-Century warfare, which emphasized coordination of infantry units armed with long spears ("pikes"), muskets or field artillery, and cavalry, made improved organization essential. The Spanish Armada scare of 1588, moreover, illustrated the threat of invasion by a large, well-organized force. The reign of Elizabeth I saw an increased organization of the armed citizen army, complete with mandatory annual drills and target practice. In her reign, the term "militia" first came into use, to designate the entire body of armed citizenry; this was in distinction from the "train bands" or "trained bands," which were a small part of the entire militia chosen for special training with government-supplied arms."*¹⁸

¹⁴ Ibid.

¹⁵ Interestingly, although the statute on its face is a prohibition on carrying arms in most public places, the royal courts construed the ban consistent with the common law acceptance of widespread private armament. Thus, the ban was actually applied only to the wearing of arms "accompanied with such circumstances as are apt to terrify the people," and did not apply to the nobility.

¹⁶ Indeed, the Assize of Arms marked the beginning of the militia system and also had as its purpose the strengthening and maintenance of the King's authority. However, not all sovereigns were blessed with great measures of the leadership required to hold a kingdom together and the abuse of King John resulted in the Norman barons forcing him to sign the Magna Carta in 1215. Regarded as the foundation of Anglo freedoms, the Charter was the first attempt, and an admirable one, to put into legal terms the foundation of constitutional government. Several centuries were to pass before an English sovereign would again proclaim the doctrine of unrestricted royal power.

¹⁷ The Assize of Arms, (1181), in *2 English Historical Documents 416* (D. Douglas & G. Greenaway ed. 1953). Taken from Roy G. Weatherup, (1975) *Standing Armies And Armed Citizens: An Historical Analysis of The Second Amendment*, Hastings Constitutional Law Quarterly. Originally published as *2 Hastings Const. L.Q.* 961-1001 (1975).

¹⁸ David T. Hardy (1986). *Armed Citizens, Citizen Armies: Toward A Jurisprudence Of The Second Amendment*. 1986 Harvard Journal of Law & Public Policy. Originally published as *9 Harv. J. L. & Public Policy* 559-638.

Thus by the end of the Tudor period individual English citizens were well armed and again operating under a general obligation – sanctioned by both formal law and tradition - to serve the sovereign.

By 1639 however, the tide had again changed. As stated by Hardy: “The Tudor and Stuart monarchs had increased the power of the monarchy until many accepted that a king ruled by divine right, subject (at most) to a few traditional rights of his subjects.”¹⁹ Fifty years of upheaval followed, including the Cromwellian period, and by the end of it, as succinctly stated by historian J.R. Tanner: "The soldier is no longer an injured citizen; he is a danger to the state."²⁰ The culmination of this period was the ousting by Parliament of James II and the English Declaration of Rights.

The English Bill of Rights was a way to solve the centuries old dilemma of the relationship between the sovereign and armed force. The sovereign could have an army, but only with the express consent of Parliament. The sovereign could not, however, dismantle and disarm the militia. Most importantly, there was no individual right to bear arms. Only the political process and the fundamental laws of the land could protect the rights of subjects.²¹

¹⁹ Ibid

²⁰ J.R. Tanner, (1928). *English Constitutional Conflicts of the Seventeenth Century*, pg 225.

²¹ Ibid, Hardy.

The Development of an Armed Force in the “New World” - Canada

Moving to Canada and her own military history - by 1666 there were 3,215 citizens in New France but the English controlled ten colonies on the Atlantic coast to the south, and they greatly exceeded New France in population and self-sufficiency. The two mother countries fought each other off and on over the next century with, not surprisingly, these animosities spilling over to their colonies.

In terms of the borders of Canada - they changed frequently due not only to matters in the Canadas but also because, as succinctly put by Morton; “... the outcome of a European war switching the ownership of North American real estate.”²² It was not until 1759 that Wolfe brought the matter effectively to a close with his defeat of Montcalm on the Plains of Abraham.²³ Subsequently, the Quebec Act, passed in 1774, and the Constitutional Act, passed in 1791 - using a combination of ingenuity and imagination - went far to weld the English and French together.

From the perspective of Canadian military history, it is important to note three North American stakeholders - the British, the French and the Americans - and that it was the animosities and scuffling of these three groups which effectively shaped both Canada and Canada’s military heritage. The French and the British were constantly sending over King’s (or Queen’s - as the case was) soldiers and these troops would fight alongside the “colonials” to defend whatever target or territory was deemed desirable to defend at the time.

The late 1700s and early 1800s began to see the formation of colonial (Canadian) regiments. These men enlisted and wore the uniform of British regulars but were obliged to serve only in North America. In addition, the British began to award commissions to French Canadians in an effort to cement their loyalty to the British Empire. Canadian regiments, funded by British taxpayers, waxed and waned throughout the first half of the 19th century and indeed, one of the contentious issues between Britain and her largest Dominion was just exactly how much of the defense of Canada should be shouldered by Britain and how much by Canada herself. However, by 1840, 426 battalions of militia, comprising a total of 235,000 men, existed in Canada.

Following the American civil war, serious talk began in Canada of the desirability of uniting Canada from “sea to shining sea” and this sentiment was increased in 1866 by the American Fenian raids. Canadian militiamen and British regular soldiers put down the raids (with the help of the American government) but the result was a rekindling of national spirit similar to that which had occurred during the war of 1812. From a military perspective, the raids were invaluable for providing the Canadian militia with “...a stiff but relatively cheap lesson in the value of discipline.”²⁴

²² Desmond Morton (1985). *A Military History of Canada*. Hurtig Publishers, Edmonton, Alberta, Canada

²³ Morton, *ibid*, cites the official demise of New France as September 9, 1760 (pg 39).

²⁴ *Ibid*, pg. 89.

1867 saw Canada become a country and November 11th, 1871 saw the last British regular depart Canada's shores:

*"At last, or too early, Canadians must defend themselves."*²⁵

Militarily - Canada On Her Own

Canada continued to develop its militia and Morton reports that between 1875 and 1896 approximately 20,000 men attended summer militia camps.²⁶ There is little question that the militia were instrumental in keeping civil unrest in control and they were a significant force in maintaining the social order of a young country trying to find its feet.

However, the first genuine military incident that Canada's troops experienced was that of the North-West Rebellion in 1885 when Canadian troops put an end to Riel's insurgence. The general consensus of historians is that despite the lack of fiscal support - and the fact that Canada's militia was raw and inexperienced - they conducted themselves admirably. In fact, service discipline was a vital and present factor and Madsen writes: "Throughout the conflict, the militia remained a disciplined military force instead of an armed mob."²⁷

Indeed, as Madsen notes, there was a concerted effort on the part of both British and French officers to *ensure* Canada's military forces were professional: "Discipline rested on the knowledge, dissemination and application of military law"....."British and Canadian legislation, along with accompanying regulations, provided the basis for a code of service discipline."²⁸ and, in turn, military law promoted: "...predictable behaviour during active operations."²⁹

Military Discipline: The Underpinnings of the Lawfulness of Orders in Canada's Military

Just as British common law formed the foundation of Canada's modern system of law, so too does the Code of Service Discipline have as its foundation the tradition, customs and practice of British armies. Madsen describes in some detail the origins of military law, dating back to the Crusades and Middle Ages courts of chivalry. Perhaps the most important fact to be noted is the existence of a formal system of discipline and a body whose responsibility it was to ensure that discipline was maintained. By 1521, for instance, responsibility for all military discipline was vested in the Earl Marshall.³⁰

²⁵ *Ibid*, pg 93.

²⁶ *Ibid*, pg 95.

²⁷ Chris Madsen (1998). *Military Law, the Canadian Militia, and The North-West Rebellion of 1885*. Journal of Military and Strategic Studies, Spring 1998. www.stratnet.ucalgary.ca/journal.

²⁸ *Ibid*, pg 1.

²⁹ *Ibid*, pg 1.

³⁰ Hence the term "court martial" is derived from "the court of the marshal".

The Mutiny Act, passed in 1689 in response to revolting British units at Ipswich was the first formal statutory military code to regulate, with other Articles of War subsequently passed by royal prerogative, the application of military law. After 1802, the Mutiny Act and Articles of War were also applied to British and militia troops in both Upper and Lower Canada.

From a psychological perspective it is interesting to note the renaissance of human behaviour as it concerns the role of corporal punishment in keeping soldiers in line. It was the clear contention of 17th century military experts that corporal punishment (often severe) was required to maintain discipline in military forces. In fact, the whole issue began to receive such an outcry of public attention that in 1868, severe reforms were undertaken. Restrictions imposed by the British government regarding the use of flogging necessitated a sanctioned sentence from a court martial and flogging could only be applied to offences which occurred on active duty and which involved mutiny or insubordination accompanied by personal violence. There is no word on whether similar restrictions were imposed on the use of “branding” - another popular punishment device - one can only hope this was the case.³¹ However, the end result was that: “...the political decision left military authorities without a familiar means of enforcing military discipline.”³²

Through 1868 and 1869 a royal commission heard testimony from military members and members of the legal profession regarding the use of corporal punishment and the effects of alternative forms of punishment such as fines, imprisonment and discharge. There was clear concern, given the rise in the numbers of incarcerated soldiers after the discontinuation of flogging, that this restriction was having a negative effect on discipline. The royal commission therefore made several recommendations, some of them sufficiently extensive that it was determined that the Mutiny Act and the Articles of War were no longer sufficient to meet the needs of the military. It was proposed to create new legislation, incorporating the best features of both these documents and the new reforms. In 1879 the Army Discipline and Regulation Act was approved. In 1881, its successor, the Army Act, received parliamentary approval and, more importantly, was thereafter subject to yearly approval by parliament.

Not all critics were satisfied, of course, but it appeared to be a solid foundation upon which a military justice system could be based. From a military perspective, perhaps the most troublesome issue was the tendency of civilian authorities to want to encroach on what military officers clearly believed should be left to them. As stated by Major General Sir Garnet Wolseley – the British adjutant general:

³¹ Ibid, pg 3.

³² Ibid, pg 4.

“Those who know how difficult it is to maintain discipline in an army – especially in an army constituted as ours is upon almost purely civilian principles with a parliament always on the watch to check and find fault with the conduct of those in military authority – know also how essential it is that the soldier should learn to look to his officer alone for justice.”^{33,34}

As these debates continued in Britain, however, it cannot be said that this same level of activity was prevalent in Canada. For one thing, the Canadian militia was completely voluntary and so severe punishment was not especially efficacious. The soldier simply left or did not re-enlist. Thus, as stated by Madsen, even before corporal punishment was completely done away with in 1881: “...the Canadian militia generally relied upon persuasion rather than intimidation in enforcing military discipline among its ranks.”³⁵

The 1867 British North America Act gave Canada responsibility for defence and maintenance of its peacetime military forces. In 1868, the Militia Act further elucidated the responsibilities of Canada and its citizens as regards defence but the Act did not replace British military law in terms of how Canadian military forces were disciplined. Rather, it was a supplementation and the disciplinary provisions were extremely close to those of Britain so that the two would be able to serve together in as seamless a manner as possible.

The teaching of the Code of Service Discipline was much as it is today. As Canada developed into its nationhood, so too did the Militia become more professional and organized. Schools were opened for the teaching of tactics and other military courses and the Royal Military College of Canada was inaugurated in 1876. Texts and publications on military law, various legislation and formative manuals dealing with the administration of discipline and the roles and duties of Canada’s defence force were published and so soldiers and recruits were indoctrinated into the “military way” by reading and lectures. Thus Madsen writes that Major General Middleton, upon assuming command of the Canadian Militia in July 1884: “.... inherited the fledglings of a disciplined force of citizen soldiers.”³⁶

Madsen writes somewhat extensively about the conduct of Canadian soldiers during the North-West rebellion of 1885 and the consensus from various sources is that Canadian soldiers generally distinguished themselves in terms of conduct and discipline. In Madsen’s words: “...a sense of cause, patriotism and a stake in their community provided soldiers with the strongest motivations for behaving themselves”³⁷ and he quotes Lieutenant-Colonel George Denison:

³³ Ibid, pg 4.

³⁴ Interestingly, however, and in parallel with our own times – it should be noted that not all soldiers shared Wolseley’s faith in their superior officer. Defendants coming before courts martial frequently hired civilian counsel to represent them. In turn, this circumstance required that military officers possessed an enhanced degree of knowledge of the military justice system.

³⁵ Madsen, pg 5.

³⁶ Ibid, pg 9.

³⁷ Ibid, pg 9.

*“(Canadian troops) behaved splendidly, keen to obey every order, always willing, and preserving perfect discipline. Not the stolid discipline, the result of years of routine, but the discipline of zeal and enthusiasm, based upon the common desire of us all to do the very best we could for our country, and for the credit of the corps.”*³⁸

³⁸ In Chris Madsen (1998). *Military Law, the Canadian Militia, and The North-West Rebellion of 1885*. pg 9. Journal of Military and Strategic Studies, Spring 1998. www.stratnet.ucalgary.ca/journal.

The Modern Canadian Military and the Lawful Order

Thus far we have examined the *foundations* of the lawfulness of military command – the antecedents of the “right” of a superior to force a subordinate – under threat of punishment - to obey. Fundamentally, it is apparent that it is the power of the state which invests this right. From King Alfred to parliamentary democracy, it is to the office of the state that one owes allegiance - through one’s superior – and that one must obey. From medieval times, when there was an *explicit obligation* to fight for the state/sovereign to more modern history where this obligation “appears” (“appears” because in fact the obligation to take up arms to defend the state, or at the state’s behest, is still very much a part of our culture but in an *implicit* form in a liberal, democratic society) to be one that is undertaken only voluntarily, our culture is steeped in, and well familiar with, the tradition of *lawful obedience* to the state for the purpose of wielding violence.

Thus from Shakespeare.....:

“In peace nothing so becomes a man as modest stillness and humility; but when the blast of war blows in our ears, then imitate the action of the tiger; stiffen the sinews, summon up the blood, disguise fair nature with hard favour'd rage....”

Henry V

.....to our own John Ralston Saul.....:

“The vast majority of citizens, as well as most of their civil servants and cabinet ministers do not believe that their own armies are relevant to their lives or to the life of their society. Their neither feel responsible for the armies their taxes support nor do they hate them. Most people are simply indifferent. But no civilization can afford to turn its back on the mechanisms of violence. . . . The refusal to address the question of force because we do not wish to use it merely leaves us naked before those who may wish to use it against us.”

*Voltaire's Bastards:
The Dictatorship of Reason in the West*³⁹

.....one can discern a clear understanding that it may well be necessary for the ordinary citizen to take up arms and wield violence, *under the authority of the state*, against other humans in certain circumstances.⁴⁰

Further, from Treaties of Arms to Army Acts to Canada’s own state sanctioned Code of Service Discipline one must obey the state not only in the *doing* of the business of wielding violence but also in the “*how*” of the doing. Thus one must not only heed the call to arms but once having arrived, must heed the professionals in how those arms are wielded. And, both the call to arms and one’s behaviour while serving are liable to state sanctioned punishment if one does not obey.

³⁹ John Ralston Saul, *Voltaire's Bastards: The Dictatorship of Reason in the West* (1993) Vintage Books.

⁴⁰ Of course, this implicit obligation to take up arms for the state can easily move to the explicit - as it has done in both the US and Canada.

Thus this concept of the law-ful-ness of military orders – the state sanctioned law-ful-ness of leadership and military command is well-embedded in our culture. Indeed, it is accepted and sanctioned by our highest courts.

L'Heureux-Dubé, speaking in *R v. Genereux*, stated that:

*“The wording of s. 11(f) illustrates that the Charter contemplates a separate system of military justice. So, when measuring the General Court Martial against the requirements of the Charter, certain considerations must be kept in mind. Among those considerations are that the Armed Forces depend upon the strictest discipline in order to function effectively and that alleged instances of non-adherence to rules of the military need to be tried within the chain of command.”*⁴¹

US Justices hold similar views. As recently as June 2001, in the decision of Michael G. New, Specialist, U.S. Army, in the United States Court of Appeals for the Armed Forces, the presiding judge stated that:

*“To persevere and prevail amidst the danger, death, destruction, and chaos of armed combat, military personnel must develop the disciplined habit of prompt obedience to the directives of their superiors.”*⁴²

The Conundrum: The Lawful Order Meets a New Definition of Leadership

But does this need to maintain the law-ful-ness of orders not present a bit of a problem for modern definitions of military leadership? It seems clear that the state at *all* levels – the executive, the judiciary and the legislative - has deemed it necessary to put the weight of the law behind the directives and orders of one’s military superiors. But if leadership is about willing compliance, as the Canadian Forces Army Leadership Manual (A-PD-131-002) states and if that were all that *military* leadership was.... would we need the following articles from the code of service discipline?

Section 33. (1) The regular force, all units and other elements thereof and all officers and non-commissioned members thereof are at all times liable to perform any lawful duty;

Section 83. Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. R.S., c. N-4, s. 73;

⁴¹ *R. v. Génereux*, (1991). Present: Lamer C.J., La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Stevenson and Iacobucci JJ. On Appeal From The Court Martial Appeal Court Of Canada.

⁴² *United States, Appellee v. Michael G. New, Specialist, U.S. Army, Appellant*, No. 99-0640 Crim. App. No. 9600263, United States Court of Appeals for the Armed Forces.

Section 84. Every person who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use or offers violence against, a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. R.S., c. N-4, s. 74; and.

Section 85. Every person who uses threatening or insulting language to, or behaves with contempt toward, a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment. R.S., c. N-4, s. 75.

Or, in fact, would having the above *impede* the development of military members who can effectively get the job done because, if leadership is about willing compliance, does the above not cloud the issue? Fundamentally, we must ask ourselves if the issue is really so clear. What is it that military persons - these men and women charged with the wielding of violence to further an aim at the behest of the state – do?

Leadership, Command or Management – Which is it?

“The terms leadership and command are often used interchangeably, which does disservice to the understanding of each concept. Command is a functional process and, therefore, unemotional, calculating and analytical. Leadership on the other hand, is a lot like love, because it deals with personal relationships, and these must be lived to be developed. Command is not an art or personal style, but a military science and process - a synergistic and cerebral application of equipment, tactics, weapons and men to achieve a defined military aim. Leadership, on the other hand, could be expressed as visibility and contact.

A platoon commander is 95% leadership and 5% commander; he should really be called a platoon leader. A company commander is still highly visible and in direct man-contact, but he also has command tasks such as organizing fire support, cooperating with tanks, controlling logistics, reporting to higher headquarters, etc. Let's say he is 50% leader and 50% commander. A battalion commander has restricted opportunity for direct leadership of men, but he is certainly a visible authority. Let's say he is 20% leader and 80% commander. Above this level, leadership is less than 5%.”

Major-General N.G. Wilson-Smith, PPCLI (paraphrased)⁴³

This problem of trying to separate leadership from command is a thorny one. More importantly, it may simply not be useful to try and do so in a military context. What does a military person do who is charged with using resources – both human and material – to accomplish a specific task? Does he lead? Does he manage? Does he command? Does it matter?

In the end, is not the accomplishment of the mission – in a manner *acceptable to that society which that military serves* and in such a way that minimal resources, both human and material are expended (an issue of utility not compassion) – the most important criterion?

The answer can only be yes and yet it *does matter* if one espouses an ideal of something (willing compliance as military leadership) and then states that *that* ideal is what one must strive to meet in order to be perceived as effective/competent *if these are faulty premises*. From a syllogistic perspective, it would mean the following:

- Premise A: Competent military leadership refers to the willing compliance of subordinates.
- Premise B: X is a military leader.
- Conclusion: X must lead by fostering willing compliance in his subordinates to be perceived as competent.

⁴³ Found on the website of the Queen's York Rangers (1st American Regiment) – a militia unit based in Toronto, Ontario. www.qyrang.org.

If either premise is wrong, of course, then the conclusion is wrong. So, in fact, it *does matter* if we get it wrong because how we think about something determines how we act towards it. In this case, how we think about what a military person does to accomplish a mission guides how we train, assess and promote our military members. It steers the *doing* of the wielding of violence. And this is one area we probably want to get right.....

Wenek has put together a comprehensive charting detailing the findings of various researchers and theorists and notes the clear over-lapping of the constructs of command, management and leadership.⁴⁴ His point is valid - theorists have often interchanged the roles, tasks and *titles* of managers and leaders. Leaving, for the moment, the question of whether or not “lawful ordering” may be classed as a leadership behaviour, let us explore these concepts further.

While there can be no denying the semantic connotations between the terms “leader” and “manager” - in practice is there a difference? The consternation some evidence in their desire to be perceived as leaders rather than managers seems less than fruitful. In fact, one cannot help wondering if the term “leader” has been imbued with such an air of mystic and divine “rightness” that our nomenclature has become a hindrance rather than a help in our ability to objectively examine the issue.

It *may*, however, be helpful to think of *leadership behaviours* and *management behaviours* as being more exclusive. Thus, leadership behaviours detail the uniquely human interactions that take place - the influencing behaviours one engages in to manipulate/coerce a group/another to accomplish a certain goal. Similarly, it may be helpful to think of management behaviours as the coordination of activities to accomplish the goal. In the words of Pigeau and McCann: “Managers manage resources. Leaders lead people.”⁴⁵ Perhaps. But people are resources too and these concepts are less than useful if we infer that because one is a manager that it *excludes one from being a leader* or vice versa. Being one does not *necessarily* denote NOT being the other. Thus, an individual may well be more or less of one or the other depending upon the position they occupy at a given time and *sometimes* they might be exclusively one.

Interestingly, in a military context, Pigeau & McCann place the constructs of management and leadership within the construct of *command*. And it is this construct of command which directly concerns us here because Pigeau and McCann contend that it is command which differentiates the military from the civilian. Defined as: “...the realization of human potential from which military power and effectiveness is derived” command is “...behaviour that any military person - regardless of rank – can demonstrate as long as 1) he or she is being creative, and 2) this creativity is in the service of the mission.”⁴⁶

Pigeau and McCann posit three factors that comprise command – Competency, Authority and Responsibility (CAR) and with these build a solid structure for conceptualizing what it is that

⁴⁴ K.W. Wenek (2002) *Command, Management and Leadership Chart*. Unpublished. Available from the author.

⁴⁵ R. Pigeau & C. McCann (2001) *What is a Commander?* in B. Horn and S. Harris’s *Generalship and the Art of the Admiral: Perspectives on Canadian Senior Military leadership*, Vanwell Publishing Limited, St. Catherine’s Ontario.

⁴⁶ Ibid.

military personnel “do” to effect the mission. But Pigeau and McCann also go one step further in asserting that while any military person can command – a *command-er* is not simply a person but also a position “...with known duties and functions that exists within a larger military and national bureaucracy.”⁴⁷ More precisely, they define a commander as: “...a position/person combination lying on the balanced command envelope with special powers to 1) enforce discipline and 2) put military members in harm’s way.”⁴⁸ In their view, if any of these three components are missing - the position/person combination, a balanced command envelope (a three-dimensional concept revolving around CAR) or special powers, then one cannot be designated as a “commander”.

Pulling all of the above together, Pigeau and McCann’s structure is a solid and conceptually coherent basis from which to identify and differentiate what military members “do”. More importantly, from the perspective of this paper, it brings coherency to the notion of the lawful order and where it might “fit” in the concept of leadership as willing compliance. Because, fundamentally, one can see that the lawful order simply does *not* fit into a notion of leadership defined as willing compliance. Thus, asking whether or not the notion of compulsion should be viewed as a separate construct or a component of leadership is not useful if *leadership* (normatively defined) is not what military members do.

We could, however, turn the issue around. We could stipulate from the beginning that it is *not* leadership that a military member engages in precisely *because* they always operate with the law-ful-ness of orders underpinning what they do (ergo it cannot be willing compliance). If instead we concur with Pigeau and McCann that military members *command* then we begin to bring some coherency to the issue. If we agree that command is different than leadership because of the right to: 1) enforce discipline; and, 2) to place another in harm’s way - powers directly linked to the concept of the lawful order - then the conundrum becomes not one of trying to force a square construct into a round conceptual hole but rather one of determining how we *should* conceptualize the military member’s behaviour in the accomplishment of the mission.

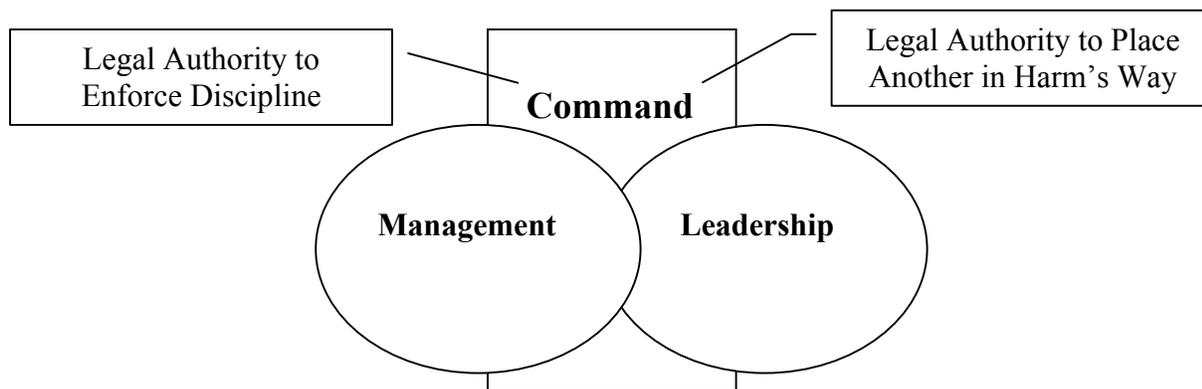
Pictorially, then, the three constructs would resemble Figure 1 below.

⁴⁷ Ibid.

⁴⁸ Ibid.

Figure 1

**The Constructs of Management and Leadership
As Components of Command**



This concept of command rather than leadership to describe the “what” and “how” of an effective military member charged with the wielding of violence should not be construed to entail that one does not employ effective *leadership* in the accomplishment of the mission. That is, to command effectively, one must *lead* – effective leading being, again, normatively defined as influencing behaviours which promote willing compliance. It is not enough to consistently use the legal authority invested in one’s rank to lawfully order one’s subordinates to perform. Time and circumstances permitting, communication should occur such that full commitment and compliance on the part of the followers occurs. Certainly, differentiating between the two basic arenas of operation – “home” and in-theatre, one might expect *leadership* to be the order of the day at home.

However, in certain circumstances, it may not be possible for adequate communication to occur to establish commitment. For instance, if the known commanders in an operational situation are killed, one must assume command immediately and expect unquestioning obedience and compliance. Is this leadership? Is this the fostering of willing compliance? In this situation, could one have both commitment *and* willing compliance despite the fact that no consultation is taking place and one is being ordered about in a fast and furious manner?

The answer to the above is yes. Thus it is not the case that willing compliance is exclusive to leadership normatively defined. Rather it is that the lawful order *is* mutually exclusive to command. Indeed, the military expends a great deal of energy ensuring that commitment and compliance occur in command situations – a critical component of the ability of a commander to carry out a mission with maximum effectiveness. Does this mean that the military person in command is not leading? Or does it mean that a military person *always leads within the context of command*?

Obedience, Compliance and the Military

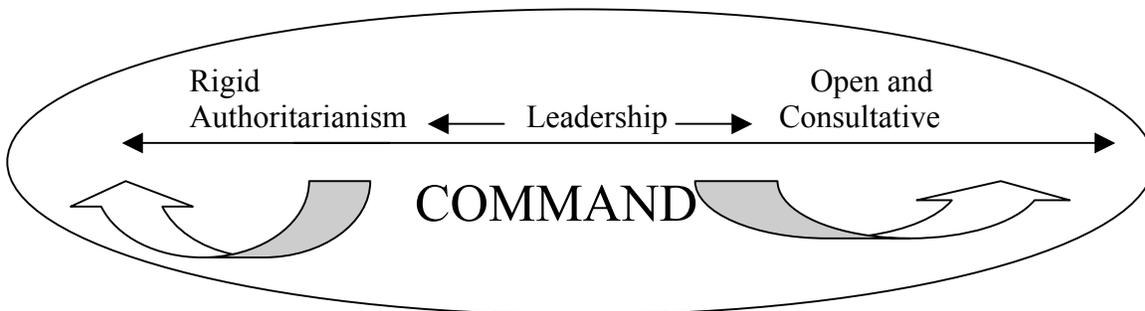
“Patriotism, religion, the belief that you are defending your home and family, are powerful reasons for men to fight, but mercenary troops with none of those motives to sustain them have often fought to the death too. The most important single factor that makes it possible for civilized men to fight the wars of civilization is that all armies everywhere have always exploited and manipulated the ingrained warrior ethic that is the heritage of every young human male.”

Gwynne Dyer
*War*⁴⁹⁵⁰

It would not be effective if those commanding had to rely solely on the lawful order to get things done. Strict authoritarianism breeds recalcitrance. Obedience but not commitment. No commitment equals substandard execution - in the business of wielding violence, an unacceptable conclusion. Hence those commanding must also lead. But in the military they lead, always, within the context of command.

Figure 2

The Continuum of Leadership Operating Within the Context of Command



Simply put, the normative definition of leadership is not adequate for the *individual* military member. That is, leadership in the military may well be: “The art of influencing human behavior

⁴⁹ Gwynne Dyer. (1985). *War*. Stoddart Publishing Co. Limited, Toronto. pg 14.

⁵⁰ Dyer offers both comprehensive and comprehensible reasons for the obedience and compliance of men and women in today’s military. But this section must be prefaced by the caution that the assumptions and conclusions reached here can only be applied to western armies or, perhaps more clearly put, armies of men and women who are raised in a culture very similar to Canada’s - who are citizens of a country that occupies a similar place in world affairs such as Canada does. In other words, the findings here are only generalizable to people much like...us. For there can be little question that the indoctrination of a military member must be specific to the culture and society she or he serves.

to accomplish a mission in the manner desired by the leader.”⁵¹ but in the military context, this “influencing of human behaviour” begins well before one ever arrives at the unit of (or, stated another way, under the command of) a particular military leader. And it is postulated that this training, combined with the learning of the traditions and history of the military that a new military member undergoes, allows the military leader to operate along the continuum of leadership behaviours ranging from the most authoritarian to the most consultative without – *necessarily* – the concomitant loss in obedience and *willing* compliance that their civilian counterpart might if s/he engaged in the identical behaviour.⁵²

In effect, the military leader does not operate under the same constraints that their civilian counterpart might because of the great care and effort that the military takes towards making a military person *receptive to leadership within the context of command*. What efforts? Indeed, it is well worth examining some of these mechanisms.

The Making of a Compliant Soldier

“The inspections also help to set up the pattern in the recruits of unquestioning submission to military authority: standing stock-still, staring straight ahead, while somebody else examines you closely for faults is about as extreme a ritual act of submission as you can make with your clothes on.”⁵³

Dyer’s observations on building obedience through the ritual of basic training, the idealized notion of belonging to the “brotherhood” or group and other various strategies such as ritualized mass drill movements are sound. Not surprisingly, this opinion of the benefits of conformity inducing behaviour is echoed time and again as a significant contributing factor to the efficacy of an armed force.

“It has been over a century since mass formations of men were of any use of the battlefield, but every army in the world still drills its troops, especially during basic training, because marching in formation, with every man moving his body in the same way at the same moment, is a direct physical way of learning two things a soldier must believe: that orders have to be obeyed automatically and instantly, and that you are no longer an individual, but part of a group.”⁵⁴

⁵¹ Canadian Forces Army Leadership Manual A-PD-131-002.

⁵² Although, it is doubtful if even a military leader could maintain operating at the far left of the continuum indefinitely in today’s military. Rather, the training of military members instead grants a leader “initial operating credit” in terms of a strict authoritarian style.

⁵³ Ibid, pg 113.

⁵⁴ Ibid, pg 114.

Sun Tzu stated much the same 2500 years ago:

*“If, in training soldiers, commands are habitually enforced, the army will be well-disciplined; if not, its discipline will be bad.”*⁵⁵

Wellington, too, echoed these sentiments. The efficacy of the professional army, and the tangible effects of training were shown to pay off time and again:

*“Wellington coped with French tactics by shrewd use of the ground, hiding his troops behind hillcrests until after the opening artillery duels. Above all, he used to advantage the extraordinary steadiness of British troops, a steadiness acquired through years of drill.”*⁵⁶

Further, Wellington coped with French skirmishers by deploying: “...superbly trained riflemen and light infantry, who had been trained by one of Britain’s most remarkable nineteenth century soldiers, Sir John Moore.” Moore, in turn, did not advocate obedience through fear. Rather, he emphasized training and discipline:

“The material (men) he was given was no better than the rest of the British Army: of the thirteen regiments asked to supply forty or more men, at least six carefully selected the misfits and troublemakers (to send to Moore). Moore took these men and introduced a new type of training, which required of the officers “real knowledge, good temper and kind treatment of the men”. He drastically reduced corporal punishment and verbal abuse, emphasizing instead tactical exercises and physical training and stressing throughout the importance of individual initiative.”^{57, 58}

Thus it must be acknowledged that military members are conditioned from the day they enlist to experience and follow *leadership within the context of command*. Do they respond with commitment and willing compliance? Despite that fact that it may not be leadership within the normative definition of that espoused for civilian groups....they do.

“I have already expressed doubt on the value in battle of the power of coercion possessed by an officer. It is useful but its usefulness, in relation to battle in modern conditions,

⁵⁵ Sun Tzu, *The Art of War* (6th Century BC). Published by Amereon House, New York. Pg 49.

⁵⁶ Eliot A. Cohen, (1985), *Citizens and Soldiers: The Dilemmas of Military Service*, Cornell University Press, pg 54.

⁵⁷ Ibid, pg 54.

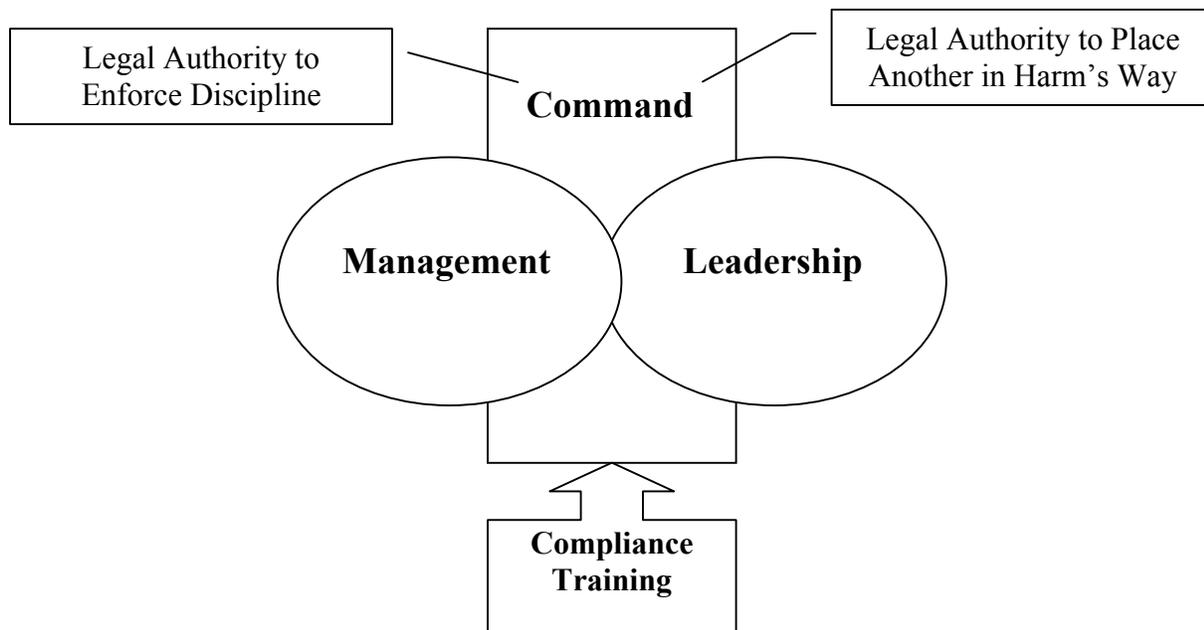
⁵⁸ Interestingly, if “real knowledge” can be translated into competence; “good temper” into integrity and ethical and fair behaviour and “kind treatment of the men” into respect for one’s subordinates.... then it appears that what is required to be a competent military leader has changed little in almost 200 years. Indeed, Moore’s battle-proven philosophy of leadership is virtually identical to what is espoused by the CF of today.

rests entirely, in my opinion, on its prior contribution to the creation of a habit – “Do what the officer says”. Habit is useful when under stress and mimesis is a great tool in the formation of habit. The repetition of drill movements, sometimes mocked a little by the ill-informed, is a considerable habit-former. In the last resort, perhaps, Orpheus may be a more powerful leader than the drill sergeant, but hosts of men have been carried further under stress than they would otherwise have been able to go by habits formed under the drill sergeant and in no other way.”⁵⁹

Thus, to return to Figure 1, let us add in this concept of “Compliance Training” as there can be little question it is a significant influence on the command concept.

Figure 3

**The Constructs of Management and Leadership
As Components of Command
And Noting the Influence of Military Training**



Further, it is postulated that there are other salient factors which contribute to this willingness to obey in a committed fashion despite the fact that the command (military) leadership being exercised *may* be different from that traditionally espoused in a civilian organization.

Types of Authority

⁵⁹ General Sir John Hackett, *The Profession of Arms* (1983) Sidgwick and Jackson, Great Britain, pg 225.

It would be difficult to speak to the issue of the lawful order and the concept of leadership without examining the notion of authority. And, there can be little question that the “authority on authority” is Weber. Weber’s concept of legitimate authority, and one which is generally accepted, is that there are essentially three different types of legitimate authority: rational, traditional and charismatic. Rational authority is that which is based on impersonal rules – it is the rule of law. Traditional authority is that which exists because the individual occupies a leadership position, it has always been thus, and no-one thinks to question the position. Charismatic authority is that which connotes a leader who is so revered and well-liked that individuals follow him or her without question – it is authority bestowed to someone with actual, alleged or assumed extraordinary qualities. Today, it is often referred to as “personal authority”.

But Weber’s contribution to understanding authority and obedience goes beyond the above generally recognized literature. Especially in terms of the issue at hand - in terms of a military force and the concept of the furtherance of the obedience and discipline required for it to be effective - it is essential that one understand the concept of “bureaucracy” as defined by Weber. For Weber, a bureaucracy is that most efficient of systems which exists when there is an elaborate system of hierarchical labour and when rules are applied impartially and impersonally by professionals who perform the work of the bureaucracy on a full-time basis and who receive no personal gain for performing the work. No other operating paradigm can equal the bureaucracy in terms of efficiency, and rival organizations with the same goal or aim must and will emulate bureaucracies - and thus become bureaucracies themselves - in order to remain competitive.⁶⁰

The most important attribute in a bureaucracy is, of course, rule-following, and a bureaucracy exists within a rational-legal framework of authority. In addition, it is critical that the means of administration of a bureaucracy are not owned by the individuals but rather by the bureaucracy itself. Thus one can see the difference between modern armies and ancient armies (and thus perhaps one of the causations of the need for less stringent forms of discipline). In modern armies:

“...the soldier does not own his weapons, whereas in ancient armies he did. For example, in ancient Rome when the army was called together the 'classes' were expected to come equipped to a certain standard at their own expense - 'classification' was a form of taxation. Soldiers were expected to bring money to buy food from the locals (when they did not take what they wanted by force); they got no pay or provisions.”⁶¹

⁶⁰ It should be noted that the author does not attach value to the notion of the bureaucracy other than that of its efficiency. The concept is mentioned here in its most abbreviated form and is considerably more complex. It is acknowledged that Weber himself was ambivalent about the possible outcomes of the science of management. As stated by Robert Howard in *Brave New Workplace* (1986, Penguin Books) “The advocates of scientific management took Weber’s analytical concept of “instrumental rationality” and turned it into an ideological principle. They transformed the idea of “management” with its logic of efficiency and control, much closer to its conventional meaning today – a universal value.”

⁶¹ From the lecture, *Max Weber: On Bureaucracy*, Macquarie University, 1996, POL264 Modern Political Theory by R.J. Kilcullen. www.humanities.mq.edu.au/Ockham/y64109

In terms of what is more efficient Weber clearly thought that a bureaucratic approach where rational authority - the 'rule of law' – was the guiding force was by far superior. For only when individuals can be assured that authority has been arrived at by a set of impersonal rules fairly and impartially applied – where there is “a moral attitude of respect for the law as such, or because the law has been arrived at in a way that is regarded as legitimate.”⁶² Leaders and rulers within these systems are therefore obeyed because rulers are recognized and obeyed if they can show a warrant in the law. As stated by Kilcullen, even in the bureaucracy of a private firm:

*“...subordinates want to be assured that orders are properly authorized. Bureaucracy is the most efficient way of implementing the rule of law: the legal rules are recorded, studied, and applied in a carefully considered and reliable way to individual cases.”*⁶³

Kilcullen also deconstructs Weber’s reasoning that the rule of law is rational in a way that makes an intuitive sense:

*“...any given legal norm may be established... on grounds of expediency or rational values or both, with a claim to obedience. 'Expediency' is, in Weber's thinking, one of the two main forms of rationality, and 'rational values' is the other. So he is saying that law may be rational in either or both of those ways, and (therefore?) claim obedience.”*⁶⁴

Thus, “insofar as the law is rational, obedience is rational, and the rule of law is rational.”⁶⁵

The above explanation goes far to explaining why such rigid corporal discipline was required in the armies of ancient times – when there was no rational set of laws to which one could seek recourse if an injustice was perceived. Further, a citizen soldiery – cobbled together at the behest of a noble – to fight without a firmly defined structure and without pre-determined and understood “rules”.... what else could be expected? Even the legal system at the time was at times working under law made “in accordance with the Chancellor’s foot.”⁶⁶ In this case, only threat of severe punishment – fear – will ensure compliance. Individuals will, however, obey a set of rules when the law is *rational* (administered and sustained by an impartial bureaucracy) because such *obedience* is rational.⁶⁷ Thus, it is postulated that there is little question that the

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ A saying from the Middle Ages denoting the lack of rationality surrounding legal decisions. What was decided was dependent upon the length of the Chancellor’s foot rather than any precedent or logic.

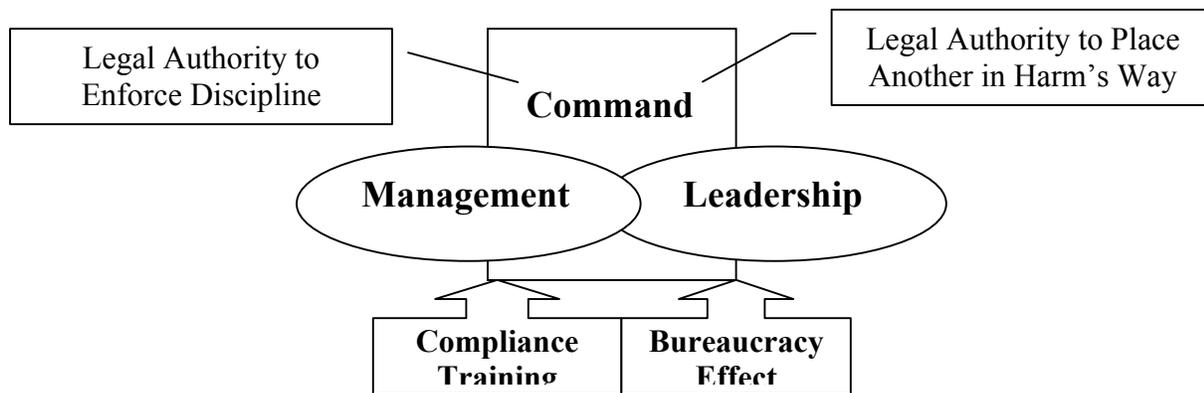
⁶⁷ Indeed, even when the law is not *quite* rational – that is when it is at best semi-autonomous from logic – the very lynchpin of rationality – individuals will abide by the rules if they perceive that the persons in authority are applying the law *within the framework in which it exists*. That is, that they are working within the rules which are laid down. Indeed, this criteria of working within the existing framework is so critical to the maintenance of the system that in order for there to be a logic of justice, justice must sometimes be dispensed in an *illogical* manner. Waddams, in describing why judges must maintain the fiction, states the following: “*Why does the judge simply not say what he*

“military as bureaucracy” factor is important in delineating leadership in the context of command. In effect, in helping to explain the “why” behind follower behaviour.

Further, although it is not the focus of this paper, this fact helps explain why it is critically important that a military officer (indeed, any military leader) act only in the most ethical and just manner possible. They must be perceived to have no personal interest in the outcome of events in order for followers to believe in their rational authority.⁶⁸

Figure 4

**The Constructs of Management and Leadership
As Components of Command
And Noting the Influence of Military Training and the Military Bureaucracy**



However, one further note must be added. We have seen that willing compliance requires a system wherein the administrators do not gain personally, and where the tools are supplied by the organization and whereby the system of rules is applied in an impartial and non-arbitrary manner. Is this enough? It is not. Because what is rational and “right” changes with time and so there must be a system within the bureaucracy which furthers/allows change in accordance with

*means? The answer is that if the judge had said: The law about trespassers is absurd and I will not apply it”, the defendant would have promptly and successfully appealed...Judges cannot divorce themselves from the framework in which they operate...Indeed it is a legal fiction that enables the common law to retain its flexibility and to develop its doctrines to meet changing social needs.”⁶⁷From S.M. Waddams (1997) *The Study of Law*, pg 85.*

⁶⁸ As an aside, while the notion of the “charismatic leader” is often espoused as ideal...can charismatic leaders survive in an institutionalized, bureaucratized setting which it seems clear is needed to maintain a military at peak efficiency? As stated by Poloma: “...for modern institutions are prone to favor efficiency and pragmatism rather than charisma's illusive spirit. Charisma and institutionalization thus appear to be at odds, with charisma quick to take on routine forms that stem its free flow.” M.M. Poloma (1989) *The Assemblies of God at the Crossroads: Charisma and Institutional Dilemmas*. The University of Tennessee Press. Knoxville. Pg. 232. As cited in M.M. Poloma (1997) *Charisma and Institutions: A Sociological Account of the 'Toronto Blessing'*. www.evanwigg.com/revival/manifest/soc97. Margaret M. Poloma, Sociology Department, The University of Akron, Akron, OH 44325-1905 USA. (R1MMP@vm1.cc.uakron.edu)

the changing morality (rightness) of the times. Because, fundamentally, what is rational – and therefore “right” – and therefore what one would follow/comply with, changes with time – as a society, an institution changes – so too do accepted behaviours. What is moral can only be political.

And if the institution – the bureaucracy – the military – does not keep pace, then individuals will not obey. It is no longer rational to do so and therefore *must not be right*. Systems of law, societies - all operate the same. Revolutions, revolts, and mutinies – do not suddenly happen. They begin slowly – a malcontent – expressions of dis-satisfaction - an attempt to change the system from within – these are the precursors. When these methods fail – in effect, when the institution has shown itself incapable of changing to satisfy what is perceived as the new “right” then disobedience results. In a larger societal context, we call it civil disobedience. In a micro/dyadic context it is insubordination. Ensuring compliance among its members is a heavy task for any institution. For in order to do so, it must maintain currency with the society it serves. And yet, given the task and mission of this particular bureaucracy...it would not be appropriate if a measured approach to change were not adopted. And thus the balance is a tenuous one – the military must keep up with the norms of the society it serves and yet ensure it does not do so capriciously.

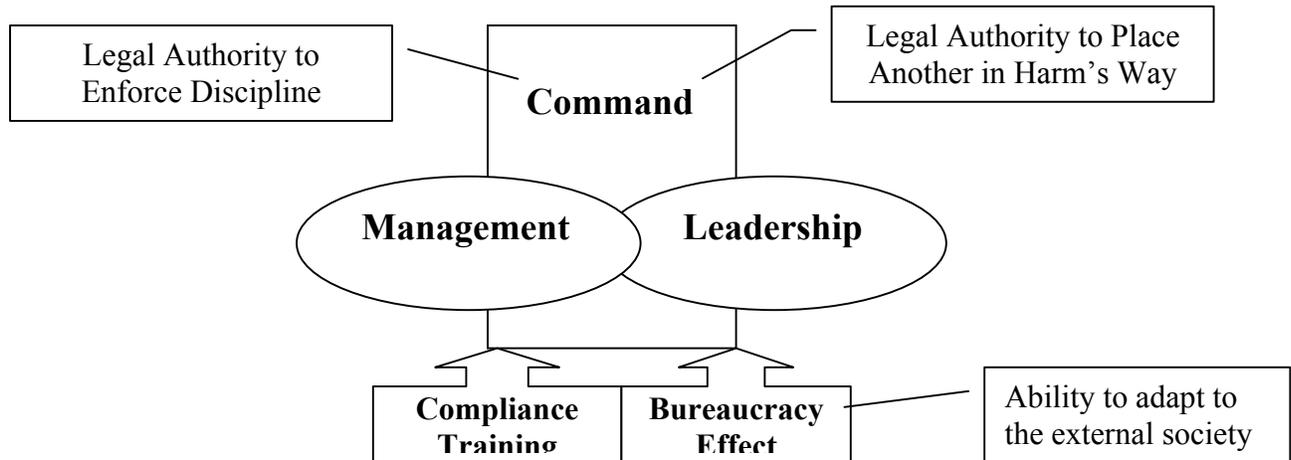
Cohen presents a colorful example of this willingness to obey when it is rational but *not* when it is less so:

*“The effects of wartime can vanish as swiftly as they appeared in the first place. A good example of this is the demobilization problem faced by the victorious Western powers in 1919 and 1946. Whereas only a few months earlier soldiers had accepted orders that would doom tens of thousands of them to injury or death, suddenly the British and American armies found their soldiers close to mutiny because of delays of a few weeks of demobilization.”*⁶⁹

⁶⁹ Cohen, pg 37

Figure 5

**The Constructs of Management and Leadership
As Components of Command
And Noting the Influence of Military Training and the Military Bureaucracy**



Summary: Pulling it Together

There may be a tendency to reduce the fundamental question on this issue of the role of the lawful order to “Is coercion/compulsion leadership?” However, as discussed at the beginning of this paper, the more pertinent and fundamental question may well be “In a military setting, is it leadership or is it command?” And the answer to this question can only be, of course, it is command. Passed down through a rich and textured history of warfare – the authority to wield violence in the name of the governing body of the society – is one that is commanded. It is the royal prerogative. “We” command you. “We” do not ask you. “We” do not request. Indeed,

“The deliberate choice of inflicting death in a struggle is the right only of ruling authorities and their subordinates.”⁷⁰

In a civilian context, a direct order from a superior may be addressed with the “fight or flight” response. The subordinate may simply defy the superior and not do it or can quit. In the military however, the subordinate can do neither. The Code of Service Discipline details the punishments for disobedience and section 23.(1) is clear on the flight response:

23. (1) The enrolment of a person binds the person to serve in the Canadian Forces until the person is, in accordance with regulations, lawfully released.⁷¹

Stemming from the above, the next question may be “Is it always command?” And the answer must be yes. Whether in garrison or in theatre, no matter where on the consultative/authoritarian continuum the military superior chooses to operate, it is always command because the NDA and the Code of Service Discipline are always present. Given that the order is a lawful one, the subordinate can neither defy nor leave. Thus, in the military, from a strict “task accomplishment” perspective the lawfulness of orders is intrinsically interwoven with the more normative “civilian” definition of leadership as the “artful influence” of others. There is an inherent understanding of the need to have commitment and ownership of tasks and the leadership training of CF members is explicit on this subject. However, there is also the recognition and realization that circumstances may not always permit this to happen and from the perspective of both the subordinate and the superior, there is also an inherent understanding of this fact. An understanding that unquestioning compliance - compulsion - may at times be necessary. Thus to the fundamental question addressed at the beginning of the paper – is this notion of compulsion separate from military leadership or a component of - it can only be that it is a component of, indeed....intrinsically so.

⁷⁰ Anscombe, Elizabeth, (1979). War, Morality and the Military Profession, edited by Malham M. Wakin. Westview Press. Originally printed in From Nuclear Weapons: A Catholic Response (1961) edited by Water Stein, pp 45-62. Merlin Press.

⁷¹ National Defence Act.

Some Additional Considerations

Further, while the main focus of this paper was to examine the notion of the lawful order within a normative, “modern” definition of leadership, many of the readings led to the suggestion that this notion of the law-ful-ness of orders plays a much more complex role than one merely of compulsion. Thus while it is acknowledged that the following is somewhat outside the thrust of this paper, it became apparent that it would be remiss to not mention these complexities. In essence, does the lawfulness of military command serve other functions besides that of aiding “getting the job done”? Are there other, perhaps more ephemeral, but nonetheless salient aspects to the law-ful-ness of military orders?

The Role of the Lawfulness of Orders in the Sanctioning of the Wielding of Violence: Maintaining the Moral Compass

The military requires one not just to comply but also to take a life, to kill another human. And if one has been indoctrinated all one’s life that killing is wrong – how does one obey an order to take a life? Perhaps even to take a life from a hiding place – such as snipers do – and not even give the other a fair chance?

“There was a door which meant here was another room and the sniper was in that - and I just broke that down. I was just absolutely gripped by the fear that this man would expect me and would shoot me. But as it turned out he was in a sniper harness and he couldn’t turn around fast enough. He was entangled in the harness so I shot him with a .45 and I felt remorse and shame. I can remember whispering foolishly, “I’m sorry” and then just throwing up...I threw up all over myself. It was a betrayal of what I’d been taught since a child.”

*William Manchester
In Gwynne Dyer, War⁷²*

In fact, training may ensure compliance and obedience overall, but it can be difficult to shift the moral compass in such a drastic fashion:

“Every man had been trained to kill and knew it was his duty to kill, and so long as he was in the presence of other soldiers who could see his actions, he went ahead and did it. But the great majority of riflemen, each unobserved by the others in his individual foxhole, had chosen not to kill, even though it increased the likelihood of his own death.”⁷³

⁷² Gwynne Dyer. (1985). *War*. Stoddart Publishing Co. Limited, Toronto. pg 101.

⁷³ Ibid, pg 118. Commenting on the findings of Col S.L.A. Marshall whose field research indicated that in the US Army from 1943-45, an average of 15% of men fired their weapons in battle. In the most aggressive companies, this figure rose to 25%. Men did not flee or run away, but they did not kill either.

This aspect of conformity when others are watching is not strange to behaviourists. Indeed, conformity and compliance with group norms is firmly documented, perhaps most famously, in the experiments of Asch which showed that one will even act irrationally when it is clearly the case that other group members have got it wrong. In fact, Asch showed that 75% of respondents conformed to the group at least once during his experiments even when it required them to make a clearly erroneous and irrational judgement.⁷⁴

Similarly, conformity is enhanced if unanimity is achieved. In fact, even one dissenter can cause serious problems in a group and aid others to not conform if the desired conforming behaviour is *clearly in conflict with previously accepted norms or teachings*. Given this knowledge, and putting it together with the previous discussion on the necessity of military training in enforcing compliance, it is especially critical, when military instructors are training recruits to conform and obey to behaviour which may be markedly different from previous “knowns” that the indoctrination process work well.

Further, Milgram’s experiments⁷⁵ with the willingness of individuals to inflict pain on others under the direction of an authority figure bode well for military training. There was no aspect of *lawfulness* to any of the scenarios in Milgram’s famous experiments and yet 62% of subjects turned their back on years of upbringing detailing the unacceptability of inflicting pain on others. Why? Because an authority figure said so. The need to obey legitimate authority is strong in humans. Endowing a legitimate authority figure with the *force of law* in addition to the authority they already possess renders the compulsion to obey infinitely more powerful. History is replete with examples of just how powerful this compulsion is.

Milgram varied certain variables in his experiments – one of which was the physical presence of the authority figure - and in these experiments, wherein the subject was told to administer the shocks by phone, the number of fully obedient subjects dropped to less than 25%. Further, some subjects administered shocks of lower intensity but did not tell the experimenter they were doing so. Aronson explains this phenomenon as:

“...a touching attempt by some individuals to be responsive to the demands of legitimate authority while, at the same time, minimizing the pain they inflict on others.”⁷⁶

Can we see a parallel to this kind of behaviour in warfare? In fact, this behavior is *exactly the same* as that of many soldiers in warfare as cited above by Col Marshall (see Footnote 74). Dyer goes so far to state that, by the end of the second world war, the “...fundamental disinclination to kill had become the dominating factor even when a unit was directly engaged in heavy combat”⁷⁷.

Thus, while the importance of training – the “learning” to instantly comply - to “obey” - is paramount and of critical importance, it is also postulated that it is critical that one understand

⁷⁴ Eliot Aronson (1985), *The Social Animal*. Pg 18.

⁷⁵ *Ibid*, pg 36.

⁷⁶ *Ibid*, pg 42.

⁷⁷ Gwynne Dyer. (1985). *War*. Stoddart Publishing Co. Limited, Toronto. pg 119.

that one's actions are sanctioned by the society which one serves. That what one does is law-ful. Because, in fact, we are asking men and women to perform acts which are fundamentally dissonant with their natural inclination both as humans and as members of a society. Dyer says it well: "The essence of the soldier's trade is self sacrifice – on behalf of one's fellow soldiers, in practice, but in a more distant sense also on behalf of the community one serves."^{78,79} It is therefore postulated that military personnel *must* operate with the force of the law (the sanctioning of the governing society) behind them.

Thus beyond the issue of furthering compliance, it is postulated that the lawfulness of orders is required to maintain the very essence of who we are. A military member must perceive that the deeds s/he does are sanctioned by their society, that they are not breaking the law, that they are acting in accordance with the wishes of the society they serve.

As a military officer, when the order is given to an individual to wield violence on *another*...it must be patently clear that the officer has the sanction of one's society. It can only be that the weight of the law must be brought to bear if we are to make a conscious decision to either perform ourselves, or to ask another to perform, an act which we have been taught is one of the most egregious wrongs one can commit. Given this circumstance, it is simply too much to ask that one do it because one's commanding officer directed so. Indeed, it is worth repeating Anscombe:

*"The deliberate choice of inflicting death in a struggle is the right only of ruling authorities and their subordinates."*⁸⁰

And, there is only one way to ensure that one's actions are truly sanctioned – that one *is* a subordinate of the ruling authority.....one must be given the force of law.

⁷⁸ Ibid, pg 128.

⁷⁹ Thus the vital importance that military members be above reproach from a moral and ethical perspective. When one is responsible for *directing others* to apply violence against other human beings must understand, at the most visceral level, that one is directing a fellow human to disobey the most foundational laws of his society – to break sacred and sanctified laws of human conduct – to take the life of another human being.

⁸⁰ Anscombe, Elizabeth, (1979). War, Morality and the Military Profession, edited by Malham M. Wakin. Westview Press. Originally printed in From Nuclear Weapons: A Catholic Response (1961) edited by Water Stein, pp 45-62. Merlin Press.

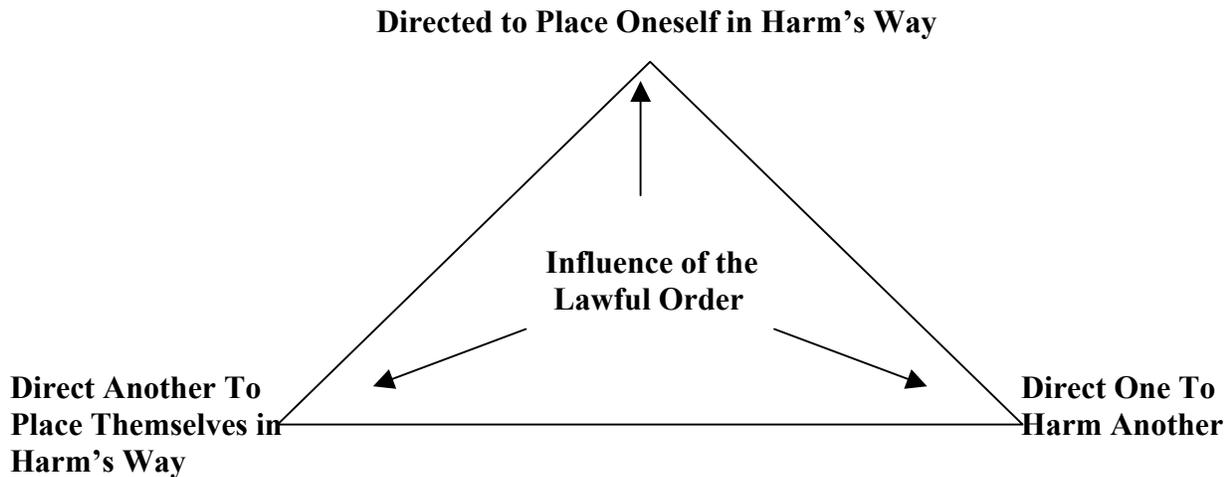
Conclusion

The aim of this paper has been to examine the role of the lawful order in the context of leadership normatively defined. A military member may compel another to follow and the purpose of this paper was to explore whether this notion of compulsion should be viewed as a component of leadership or a separate construct.

As has been shown, however, from the perspective of this author, the lawful order is a multi-faceted and infinitely more complex phenomenon than merely a tool to ensure compliance and this complexity contributes considerably to understanding how a military member operates – behaves and thinks - in a liberal society such as ours. First, the lawful order plays an influence in terms of the ultimate liability – one may be directed to place *themselves* in harm's way such that one's life is lost. But one may also be directed to place *another* in harm's way. Third, one may be directed to *take* a life.

Figure 6

The Complexity of the Lawful Order: As Theorized Cognitive and Behavioural Influence



As a direct result of the above, it is the contention of this paper that the lawful order - representing as it does the fact that what a military member does is sanctioned by one's society - is a vital and contributing force to the effectiveness and ability of the military to operate in our culture. Indeed, the influence of the lawfulness of orders may exert an *incalculable* influence.

On the issue of the lawful order's role as regards *leadership* – this paper takes the view that perhaps the wrong question was asked; that perhaps military members *do not lead* as individuals in a non-military setting do; that for military members the notion of command is more

appropriate; that the individuals charged with the controlled application of violence are performing such an exceptionally different task from any other in society that the normative notion of leadership - of manipulating others by non-coercive means to do a task willingly - just simply will not...do.

Further, rather than trodding submissively behind the “participative or bust” leadership train, the military ought perhaps to stop and ask some questions. For instance, where did this notion that “coercion is *always* bad” come from? Given the myriad influences that the law-ful order plays in a military force – some of this influence at a visceral moral level – one must stringently examine attempts to denude it. Without making a value judgement of a theory that espouses a strictly participative theory of leadership – could it be that such a method of efficient operating could even really exist? Or is Howard right when he states that the participative leadership:

“...approach to management becomes an elaborate manipulation. Let people feel in control without actually giving up your own power. Provide them with a pretense of participation in decisions that are in fact beyond their influence and control. Elicit the energy and engagement of close personal relationships, but make sure those relationships always remain contingent on usefulness and performance.”⁸¹

One might ask which is *really* the more ethical and *least* coercive – an explicit directive or a scenario in which one is manipulated and given a false sense of control? Howard’s contention is that recent popular literature espousing “enchanted” corporations are simply outlining different methodologies for blatantly manipulating the unsuspecting employee into performing at maximum efficiency. Perhaps. But notwithstanding the merit of Howard’s claim, the institution of the military - charged with the task of enforcing society’s aims through the controlled application of violence – thus an institution *unlike any other* - must always be cautious about extrapolating civilian leadership or organizational philosophies to itself.

⁸¹ R. Howard, *Brave New Workplace* (1986), Viking Penguin, pg 128.