

# LEADERSHIP INSIGHT

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## Mission Command and Command Responsibility

### It is time to talk ethics

*By Maj J R O'Neill AGC (RMP)*

As leaders we are encouraged to execute Mission Command, delegating authority and decision making to subordinates at all levels. This promotes freedom and speed of action against a clearly defined intent. It is an ideal that we should all aspire to, promoting mutual trust throughout the Chain of Command. But what about when events go catastrophically wrong and British Forces are accused of war crimes? Who or what is to blame? Is it the soldier, the commander, the situation, their training, or a combination of all these factors? In these circumstances, frictions arise between Mission Command and legal obligations under Command Responsibility. Rule 153 of Customary International Humanitarian Law<sup>1</sup> states that commanders (at all levels) are responsible for the actions of their subordinates if they knew, or should have known, that unlawful acts were being committed by their personnel, and failed to act. This presents a challenge: leaders must delegate their authority and degrees of control, whilst holding legal

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<sup>1</sup> Rule 153. Command Responsibility for Failure to Prevent, Repress or Report War Crimes, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule153](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule153)

responsibility for its subsequent interpretation and enactment. The challenge is highlighted by the following historical examples.

In 1946, General Tomoyuki Yamashita of the Imperial Japanese Army was executed following a trial by a United States military commission for failing to prevent his personnel from committing atrocities against civilians and prisoners of war during the Manila Massacre (1945). Yamashita accepted that atrocities occurred, but he claimed that the circumstances of the campaign were such that he would not have been able to control his personnel, even had he known such acts had taken place. He stated that, had he known, he would have harshly punished the perpetrators. Yamashita was not charged for approving, ordering, or even knowing of the killings. He was found guilty as he “failed to provide effective control of his troops as required by the circumstances” (Hart, 1972). His conviction was one of the first to be based on the concept of Command Responsibility, resulting in a legal precedent known as the ‘Yamashita Standard’. It highlights the need to balance the trust required to delegate authority under Mission Command, against the necessity to assure Command Responsibility by retaining appropriate oversight and controls.

In 1971, Captain Ernest Lou Medina of the US Army was court martialled for allowing the murder of civilians by his personnel in Son My Village and My Lai in Vietnam. Medina contended that the murders were individual actions and were not subject to his orders or control. Whilst found not guilty, the incident effectively ended his career and had a significant and adverse impact on US public opinion and support for the war effort. The Medina case demonstrates how unethical action at the tactical level can result in a negative strategic impact. The resultant ‘Medina standard’ builds upon the Yamashita ruling, with the US stating that a commander who knows of human rights violations or war crimes is criminally liable if they do not act to stop or prevent their occurrence.

There is no denying that these atrocities did occur, both of which are well documented. Both Officers denied knowledge of their subordinates’ acts and neither was suspected of ordering the killings. At what point then did the balance shift from effective utility of Mission Command (trusting the subordinates to carry out the commander’s intent) to a failing of Command Responsibility so severe that it resulted in their trial and, in Yamashita’s case, execution? It is also worth considering the disparity in their verdicts. A General who was far-removed from his personnel was found to have gravely failed in his responsibilities. Yet, a Captain on the ground was deemed not culpable. Do we see failings in adversaries, but a ‘wilful blindness’ (Heffernan, 2011) to wrongdoing amidst our own ranks? To this end, we must look to our own history.

The 2003 unlawful killing of Baha Mousa in Basra resulted in Corporal Donald Payne becoming the first British serviceman to be convicted of a war crime. It also considered the culpability of the Commanding Officer, Lieutenant Colonel George Mendonça. The 2011 public inquiry<sup>2</sup> accepted that Mendonça was unaware of the violence perpetuated by his personnel, but that he “correctly, accepted command responsibility for these events”. However, it concluded that he was responsible, “through his officers and

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<sup>2</sup> The Baha Mousa Public Inquiry report, available at: <https://www.gov.uk/government/publications/the-baha-mousa-public-inquiry-report>

NCOs, to be astute to the possibility of events occurring and to devise ways of discovering them”. The inquiry concluded that conduct and knowledge of abuse was not restricted to “one or two rogue individuals” and a loss of discipline and lack of moral courage to report abuse was evident. This infers a lack of appropriate controls, and questions the ethical culture of a Unit working under an extremely high operational tempo.

What can a leader do to meet their Command Responsibility whilst enabling Mission Command? It is all too convenient to distance ourselves from the conduct of subordinates when their actions cross the line, even when they do so to meet our intent. Isolating individuals as ‘the bad apple’ within the organisation, or blaming their training deficiencies can be far more palatable than accepting that an unethical culture exists on our watch. Annual behaviours training is a mandated component for all Commanding Officer led activity, with tailored resources available as part of a ‘Virtual Bookshelf’. This training is however invariably classroom-based and can even be completed individually online. This approach negates the value of holding meaningful conversations on how to make decisions in ambiguity. It does not actively challenge an individual’s ethical priorities and decisions under arduous field conditions. A more immersive learning and training environment would better reflect the realities of the challenges and stressors faced by personnel in Basra.

When discussing the abuses at Abu Ghraib, Philip Zimbardo suggests that ‘bad barrels’ cause unethical acts as opposed to ‘bad apples’. Speaking of barrels rather than isolated apples suggests that an organisation’s culture and the climate it operates within (the barrel) will significantly impact on the actions of individuals (the apples). This is irrespective of the innate ‘goodness’ of the individual apples. Leaders must therefore objectively assess the culture of their teams to establish to what degree they can delegate decision-making without compromising the integrity of their Command Responsibility. The leaders’ assessment must be reviewed periodically and effective mechanisms to discover breaches and abuses must be put in place at an early stage. At a recent CAL Conference, Brigadier Faithful-Davies, Commander 102 Logistic Brigade, stated, “If you trust your people, you empower them”.<sup>3</sup> It is hard to dispute this statement, but it is rare that we as leaders are encouraged to apply restraint. We should be prepared to impose restrictions where trust is limited or where the conditions require closer oversight. Yet, within an empowerment culture, it would take a brave leader to recognise these ethical concerns and to restrict Mission Command, as this could have perceived career implications due to being labelled ‘risk averse’. Technical training could help prevent procedural offences. Yet, as a Royal Marines Police Sergeant asserted to me in respect of Marine A unlawfully killing an injured detainee in September 2011, “It wasn’t a lack of Captured Persons training which led him to pull the trigger, it was a lack of ethical decision-making.”

It is time to move our behaviours and ethical training beyond classroom and computer-based learning. We must challenge personnel in a ‘safe to fail’ space to explore how their ethics influence their decisions and actions. The balance between Mission Command and Command Responsibility is not set in stone and

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<sup>3</sup> CAL Virtual Conference, *Leading through Crisis: Lessons from Sport, Business and the Military*, 4 November 2020.

a lot depends on the context and operational environment in which the situation develops. There is a continuous need to re-assess this balance and to find means to ensure leadership, oversight and ethical responsibility. Leaders must hold difficult conversations and integrate practical scenarios into exercises beyond initial training. Identifying and mitigating ethical risks will enhance the trust leaders can hold in their personnel upon deployment. Promoting moral courage, reasonable challenge and, when required, intelligent disobedience will underpin the moral component of fighting power and assure operational legitimacy. It is not the most attractive area to train; it is highly subjective and its efficacy is difficult to measure. As General Jim Mattis (United States Marine Corps) said, “operations occur at the speed of trust” and investment in this area will generate return. Doing so will create an equilibrium between Mission Command and Command Responsibility, founded on delivery of a clear intent, the promotion of an ethical command culture, and an acceptance that ethical failings are preferable in training, rather than on operations. We must ensure that we capitalise on the lessons of history, to prevent their reoccurrence. The time to talk ethics is now.

### **Discussion Questions (additional resources to inform discussion are listed below)**

1. How would you engage and seek to change someone’s ethical beliefs which are not in line with the British Army’s values and standards? Consider:
  - a. Where do people gain their ethical beliefs, biases and heuristics?
  - b. What approach would you take to challenge someone’s strongly held beliefs?
2. Do you consider unethical mission success preferable to ethical mission failure?
3. Can Mission Command exist in the absence of Command Responsibility?
4. What measures do you believe a Commander can take in training to assure they have met their legal obligations under Command Responsibility?

### **Resources**

*Yamashita Newsreel*, Robert H Jackson Centre, available at: <https://youtu.be/5fFQS44QGmA>  
*Captain Medina holds a Press Conference about the My Lai Massacre*, AP Archive, available at: <https://youtu.be/ZcUNksXRVMk>  
*The My Lai Massacre*, History, available at: <https://youtu.be/OnvTyMptOt8>  
Hart, Franklin A., “Yamashita, Nuremburg and Vietnam: Command Responsibility Reappraised”, *Naval War College Review*, Vol 25(1), (September-October 1972), pp. 19-36.  
Jones, Howard, *My Lai: Vietnam, 1968, and the Descent into Darkness* (Oxford: OUP, 2017).  
Heffernan, Margaret, *Wilful Blindness: Why We Ignore the Obvious at our Peril* (London: Simon & Schuster, 2012).  
*The sound of things not being said*, Margaret Heffernan, TED Archive (2017), available at: <https://youtu.be/lqmAl6xf2zY>  
*A Very British Killing: The Death of Baha Mousa*, A. T. Williams (ASIN: B0097AX9C0)  
*Baha Mousa: A ‘grave and shameful’ verdict on the British Army 08.09.11*, Forces TV, available at: <https://youtu.be/OXn3LsAcow0>  
Zimbardo, Philip, *The Lucifer Effect: How Good People Turn Evil* (NY: Random House, First Edition, 2008)  
*The psychology of evil | Philip Zimbardo*, TED (2008), available at: <https://youtu.be/OsFEV35tWsg>  
Mastroianni, George R., and Reed, George, “Apples, Barrels, and Abu Ghraib”, *Social Focus*, Vol. 39(4), pp. 239-250.