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# CHAPTER 1 [Draft—not for distribution]

## NO SUGAR COATING: COMBAT TRAUMA AND CRIMINAL CONDUCT

by

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### I. Combat Service and Criminal Lifestyle

I'll put this as bluntly as I can because it is terribly important that the legal practitioner understand this point: combat service in a long, close fight on land, *per se,* smoothes the way into criminal careers after return to civilian life. War itself does this, because the skills, instincts and other valid adaptations essential to survive combat have few civilian equivalents *that are not illegal*. To illustrate this point, let's consider a selection of the strengths, skills and capacities

[1] DISCLOSURE: The author has no formal forensic training and a single *de minimus* experience as an expert witness. He has had many uncompensated conversations with civilian and military defense lawyers (JAGs), and is currently under contract for future services by the Capital Habeas Unit in a Federal Defenders Office.

acquired during prolonged ground combat[2]:

- Control of fear;
- Cunning, the arts of deception, stealth, camouflage, misdirection, and concealment;
- The arts of the "mind-fuck;"
- Control of violent members of their own group;
- The capacity to respond skillfully and *instantly* with violent, lethal force;
- Vigilance, constant mobilization of the mind and body for danger;
- Regarding fixed rules as possible threats to their own and their comrades' survival;
- Regarding the enemy's fixed rules as possible advantages to be gained ;
- Suppression of compassion, horror, guilt, tenderness, grief, and disgust;
- The capacity to lie fluently and convincingly;
- Physical strength, quickness, endurance, and stealth;
- Skill at locating and grabbing needed supplies, whether officially provided or not, "pilfering;"
- Skill in the use of a variety of lethal weapons, including improvised weapons;
- Skill and fortitude in adapting to harsh physical, cultural, and mental conditions;
- Patient, intelligent observation of a target's physical dispositions and habits.

My clinical experience has born this out, as illustrated by the stories of Vietnam veterans I have treated, retold in *Achilles in Vietnam* and *Odysseus in America*.

At least a score veteran have pointed out—with bitterness or black humor—Block 23b of the standard basic military discharge document, the DD-214. The label on this block is "Civilian Equivalent Employment." It contains a Department of Labor job classification code number and the title of that classification. When the entry in Block 23a, "Military Occupation Specialty" is 11B (or the Marine equivalent 0311) Infantryman, the Block 23b is filled in . . . what?. . . "Firearms Proof Technician."

Why bitterness? How many such civilian jobs have *ever* existed in America? The tiny handful could readily be filled by the equally tiny number of former Armorers, not to speak of the shallow belief that the infantryman's most important capacity is shooting a gun in a test range.

One veteran bitterly described being interviewed by HR at the phone company. The interviewer cheerily asked what his military occupational specialty had been, apparently hoping or expecting something directly useful to her company, like a wireman or electronics

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[2] Take care with assumptions that a Navy or Air Force veteran cannot have had such combat experiences. Examples: Forward Air Controllers, riverine forces.

maintenance technician. When the veteran said, "Machine Gunner," she said, "We have all of those that we need," and tittered at her own wit. Without another word, the veteran rose and walked out of the building, never to return.

What black humor? That Block 23b should read either "Criminal" or "Convict."[3]

All phases of our nation's criminal justice system—police, local jails, courts, prisons, parole, and the legislative and executive authorities responsible for them—have been offered the opportunity during and after every war to learn about the relation of combat service to crime, and have largely declined to learn. The Department of Veterans Affairs has a shameful history of turning its back on incarcerated veterans, but I shall stick to my narrower subject of criminal defense and spare the reader my rants on these themes.

According to the massive, Congressionally-mandated *National Vietnam Veterans Readjustment Study*, 11.6 percent of Vietnam-theater veterans who met criteria for post traumatic stress disorder (PTSD) in the mid-1980's, when the interviews were conducted, told the interviewer that they had been convicted of a felony.[4]

Even the U.S. Army's FM 6-22.5 *Combat and Operational Stress Control Manual for Leaders and Soldiers,* 18 March 2009 recognizes the causal relationship between combat stress and "misconduct stress behaviors," such as violent criminal acts or drug and alcohol abuse. [5]

> "Misconduct stress behavior is a form of COSR [combat and operational stress reaction] and most likely to occur in poorly trained, undisciplined units. *Even so, highly trained, highly cohesive units, and individuals under extreme combat and operational stress may also engage in misconduct.*[p.1-4]… *Excellent combat Soldiers that have exhibited bravery and acts of heroism may also commit misconduct stress behaviors* [p. 1-6].[6]

One veteran I treated, Wiry (pseudonym), explained to me what he was truly seeking in

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[3] This latter jibe is a dark commentary on the conditions on a prison tier as a "warzone," where survival depends upon the skill and readiness to respond instantly with lethal violence. See Gilligan, James, *Violence: Our Deadly Epidemic and Its Causes* (1996). Also see my *Odysseus in America,* Chapter 3.

[4] Richard Kulka, Ed., *National Vietnam Veterans Readjustment Study*: *Tables of Findings and Technical Appendices*. VII-21-1 (New York, Brunner/Mazel, 1996).

[5] Headquarters, Department of the Army, Field Manual 6-22.5 *Combat and Operational Stress Control Manual for Leaders and Soldiers,* 18 March 2009. This was an update of the groundbreaking FM 22-51, *Leaders Manual for Combat Stress Control*. 29 September 1994 See particularly ch. 4 "Combat Misconduct Stress Behaviors."

[6] *Ibid.* page 1-6.

his criminal carreer of ingeniously stealing locked safes from locked buildings[7] and expertly opening them with the explosives—skills he gained in the service—"It's not the money, it's the *action*." His skills, his cunning, his craft – all become valuable in "action" the way that they never are in civilian life.

This observation that combat veterans may be readily enlisted into criminal gangs after war and to make criminal careers. is not new:

> Just as some thieves are not bad soldiers, some soldiers turn out to be pretty good robbers, so nearly are these two ways of life related.
>
> Sir Thomas More, *Utopia,* published in 1516[8]

> But will warriors lay down, together with the iron in which they are covered, their spirit nourished…by familiarity with danger? Will they don, together with civilian dress, that veneration for the laws and respect for protective forms…? To them the unarmed class appears vulgar and ignoble, laws are superfluous subtleties, the forms of social life just so many insupportable delays.
>
> Benjamin Constant, Swiss, 1767-1830[9]

What was a necessary survival skill or a soldier's task in war is a transgression in civil society. This has always been true in the narrow sense that after return home, killing once again becomes homicide, foraging becomes theft, and incendiarism, arson.

Words do matter; they are the furniture of our thought. No end of mischief has been created for veterans by the now-you-see-it-now-you-don't history of what to call the damage that going to war can do to your mind and spirit. When most civilians—journalists, Congressmen, the public, non-medical military people—use the term "PTSD" today they mean it in this broad sense: an umbrella term for all the bad mental and social and spiritual outcomes of having gone to war.

"He was never the same."

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[7] By pulling them directly through the back or side walls of small, old commercial buildings, by means of a tow truck winch & cable.

[8] Translated from Latin by RM Adams, New York: WW Norton, 1975, page 13

[9] Benjamin Constant, *Political Writings*, trans. and ed. Biancamaria Fontana, Cambridge, UK: Cambridge University Press, 1988. p. 61. Thanks to Professor Eugene Garver for this quotation.

"It turned him mean."

"Turned him to ice."

"It was like walking on eggs with him."

Unfortunately for military personnel and for veterans, the official definition of PTSD by the American Psychiatric Association is extremely narrow and excludes a great deal that wrecks lives, families, sometimes workplaces, and maybe even nations (e.g., the Weimar Republic).

Let's look at two pathways through which combat experiences have lead directly or indirectly to entanglement with the criminal justice system:

- Post-traumatic stress disorder ("PTSD")
- Moral injury

The former is recognized by American psychiatry, the latter is not. In my observation, *both* are recognized by many line leaders and trainers in the US Army and Marine Corps. Military medicine and military mental health, possibly because of proximity to processes of separation from the service and the documentation of medical disabilities, requiring a disability retirement, much more resemble civilian psychiatry in their narrow theories and perceptions, compared to military line leaders and trainers who wear the same uniform.

## "PTSD"

As a shorthand throughout the rest of this chapter I shall use "PTSD, " quotation marks and all, for direct psychological injury from combat *and its complications*, without burdening the reader with my full quarrel with the US academic-medical establishment over nosology.[10]

What is combat "PTSD"? It is the *persistence* into civilian life of the *valid* adaptations to the *real* situation of other human beings trying to kill you, and doing a damned good job of it.

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[10] See my testimony at the National Academies of Science, Institute of Medicine panel charged with examining the scientific merit and clinical utility of the diagnosis, PTSD. For reasons related to the culture of military institutions, I have agitated for the term be changed from "disorder, " which comes from the semantic range of illness, disease, etc. to a word in the range of "injury" or "wound." Canadian Forces and the US Marine Corps have now adopted the term "Stress Injury" as doctrinal. See http://www.iom.edu/~/media/Files/Activity%20Files/MentalHealth/PTSDDiagnosis/PresentationPTSDShay.ashx

The “official” descriptive criteria need not be reproduced here. They are one click away on the internet. What I want you to see is that the three “symptom clusters” defining the diagnosis make perfect sense to survive a battle, and that when they persist theyt can make a hash of domestic life, or the civilian workplace.

- The “re-experiencing” or “intrusive” cluster of symptoms, such as repetitive nightmares, intrusive thoughts and images, flashbacks of combat are evolutionarily ancient forms of remembering what mortal danger looks like, so as not to be taken by surprise.
- The “avoidant” or numbing cluster of symptoms represents adaptive shutting down of all emotional outlays that do not directly support survival in a fight.
- The “increased arousal” cluster of symptoms represents the mobilization of the mind and body for instant response to mortal danger.

These adaptations serve a Soldier or Marine in a fight; they serve the veteran badly if they persist upon return to civilian life. The American Psychiatric Association descriptive criteria for PTSD are not a bad summary of this specific form of damage done by war. As I shall argue below, the problem with them is the horse-blinders that they wear.

How would any of these lead *directly* to something you can be arrested for?

- One of my patients described wheeling on someone who came up behind him as he walked on the street, and clubbing him to the ground in one motion—and then running away. He was never arrested for this and has no idea who this person was or how badly he might have injured him.
- Another patient was in the VA clinic as one condition of parole from a life sentence for killing his wife, while he was in the grip of a combat nightmare, asleep.
- [The following is hypothetical, but I would be astonished if it has not actually happened in the vicinity of US military installations]: A valid strategy in Iraq to avoid or survive being blown up by a roadside explosive is to drive as fast as possible down the *center* of the road. If the service member or veteran slipped into a confusion of the here-and-now in the US with the there-and-then in Iraq and killed or injured someone with his auto (and survived himself), criminal charges might well result.

My observation has been that the great majority of persisting combat adaptations are simply, in turn, adapted to themselves. This comes at a cost to the veteran, but often not a catastrophic cost.

They can be seen as focal disabilities, which with simple "workplace accommodations," are amenable to "workarounds." An example is a Marine infantry veteran who worked for the gas company and had the good fortune to have a direct supervisor who was also an infantry veteran. My patient could not tolerate the normal morning muster of the gas company service men in the truck yard to receive the day's work orders. This muster, a clump of men in the open yard, read to him as "bunching up." He could tell you rationally that there were no enemy snipers or mortarmen who would fire on this "lucrative target," but the infantryman's non-negotiable terror of "bunching up" would have cost him his job, if his boss had insisted upon his participation in the muster. The "workplace adaptation" was to place my patient's work orders in an agreed place in the yard, where he could come in early, pick them up, have his breakfast, and go about his day's work.

Unfortunately, *indirect* harmful consequences—complications in medicalese--of "PTSD" are frequent and cumulatively more destructive than the *direct* impact of symptoms. As with any injury, severity matters, of course, because direct, primary PTSD from combat can be so severe that it disables the veteran completely. This is relatively rare, in my opinion. Usually it is the cascading complications that destroy his capacity for a flourishing life.

Here is an important example: Both the intrusive symptoms and the arousal symptoms are prodigious destroyers of *sleep.* The physiological evidence here is unmistakable: sleep is fuel for the frontal lobes of the brain, where ethical self-restraint and emotional self-restraint are actuated. With sufficient sleep loss—out of gas in the frontal lobes—the most mature and pro-social person can become a moral moron, a violent criminal.[11]

The baneful impact of sleep loss occurs even if there is no alcohol or any other "substance" involved. Now we add alcohol into the mix.

Combat veterans do not willingly lose sleep. Most of the psychologically injured veterans I have known have been desperate for adequate, restorative, reliable, peaceful sleep. Which sedative-hypnotic medicine is widely and cheaply available, with few hoops to jump through and no legal risks to get it?

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[11] Further, some of the veteran violence that has been committed during flashbacks or the perceptual distortions that may precede flashbacks, or be the premonitory aura of the flashback, may also be, the result of chronic and extreme disruption of sleep. My belief is—the research data do not exist one way or the other, to my knowledge—that a well-slept combat veteran will *never* have a flashback, except under physiologically driven circumstances, such as emergence from anesthesia or febrile delirium.

Alcohol.

The trouble with this is that Satan himself[12] must have crafted the pharmacology of alcohol as a sedative-hypnotic drug: it is metabolized way to fast to permit a single dose to provide adequate sleep, and the speed with which "acute tolerance," and thus a mini-withdrawal syndrome develops. These pharmacologic features mean that the liquor-sedated veteran awakens not only too soon, but more wired than when he went to sleep. The logic that led the veteran to use alcohol to get to sleep, leads him irresistibly to use more alcohol to get *back* to sleep, placing him on the icy stairway to alcohol dependence and abuse.

Sleep loss is a direct effect of combat "PTSD" and alcohol use is a "complication" of the primary injury in the same way that hemorrhage and infection are complications of a Soldier or Marine having his arm taken off by a shell fragment. The traumatic amputation is the primary injury (not in itself fatal); hemorrhage (rapidly fatal if not controlled) and infection (usually slower to kill than blood loss, but usually lethal) are complications of the primary injury. I know that I do not have to explain to readers of this chapter how often alcohol abuse contributes to involvement in crimes of all sorts, and contributes mightily to intergenerational promotion of crime through domestic violence and child neglect.

There are other potentially disastrous forms of persistence of valid survival adaptations that result in crime—for example, danger-seeking behavior ("move to the sound of the guns")—but this chapter cannot hope to be a comprehensive manual on the subject. The general point is my intention.

Despair and suicide are sometimes complications of "PTSD," especially where alcohol abuse is present, but moral injury (see below) is a more potent driver of these.

MORAL INJURY

Apparently, I coined this term, as simple as it is. I have been working on the concept a long time. It is vividly portrayed, but not named with that term in *Achilles in Vietnam* (1994). The term is used explicitly in *Odysseus in America* (2002) and explained the way I do today.

Moral injury is present when three things are present:

- Betrayal of what's right

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[12] This is a literary flight on my part. I have no personal religious scruples about alcohol *per se.*

- By someone who holds legitimate authority
- In a high stakes situation

Others[13] have taken a liking to this term and used it in a related, significant, valid—but different—way:

- Betrayal of what's right
- By the **self** holding the moral values ("what's right")
- In a high stakes situation

This second use of the term moral injury points to a painful and horrible feature of war itself that appears to me irremovable, short of ending the human practice of war. It is the soul wound inflicted by doing something that violates one's own ethics, ideals, or attachments. Here is a horrific example, told to me at a Marine Corps Combat and Operational Stress Control conference in San Diego as an incident that happened at Fallujah

> A Marine scout-sniper team was supporting a Marine infantry unit, which had taken several casualties from a well-hidden and effective enemy sniper. The Marine sniper eventually found and identified the enemy sniper in his scope and could see that he had a baby strapped to his front in a sling we would call a Snuggly. The Marine believed that the enemy was using this baby as a "human shield."[14] However, the point is not the enemy sniper's thinking, but the Marine's. The Marine sniper's understanding of the then-current Rules of Engagement, and of the Law of Land Warfare was that shooting the enemy sniper was permissible, even if the baby could be foreseen to die unintentionally in the process. His understanding of his job description and his duty to the Marines he was supporting was to make the shot. Which he did, and he saw the round land, and will live with that memory the rest of his life.

The sad fact is that, like physical injuries, moral injuries like this, which is of the kind described by Maguen Nash, et al. will ALWAYS strike here and there

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[13] Litz BT, Stein N, Delaney E, Lebowitz L, Nash WP, Silva C & Maguen S. (2009) Moral injury and moral repair in war veteran: a preliminary model and intervention strategy. *Clinical Psychology Review;* doi: 10:1016/j.cpr.2009.07.003

[14] Other interpretations are possible, e.g., martyr thinking—"I want my son to join me in Paradise"; or "if I am dead, there will be nobody to protect and look after him—if I die, he will die badly, better that…" (cf in Homer. Hector/Astyanax, Odysseus/Telemachus).

in war. There is no absolute way to prevent them short of ending the human practice of war. I discussed this in Achilles in Vietnam under the heading "moral luck," a term used with discomfort, but used, by ethical philosophers, such as Bernard Williams and Martha Nussbaum.

My game for decades has been *prevention* of psychological and moral injury in military service. That accounts for the prominent place that I give in my definition to leadership malpractice. This is something we can *do* something about! Leaders' average level of ethical performance in any given kind of situation, including the stress of leading troops in combat is extremely sensitive to the existing environment of policy, practice, and culture.[15] Improvements in policy (especially personnel policy), practice, and culture can significantly improve the future ethical performance of military leaders, reducing the frequency and severity of moral injury. My grinding this axe accounts my focus on leadership malpractice. The two uses of the term "moral injury" are overlapping and one can lead to the other resulting in a double-whammy for the veteran, compounded by the "PTSD" arising from the combat itself, which may be a consequence of the moral injury.

The outcome for the veteran in *either* kind of moral injury is a heightened despair, likelihood of suicide, domestic violence and most important: the destruction of the capacity for trust, which may be the single most important "criminogenic" feature of moral injury of either flavor.

What happens when the capacity for trust is destroyed?

As I wrote in the recent, *Daedalus: Journal of the American Academy of Arts & Sciences* monograph issue devoted to the modern US military*:*

> When the capacity for trust is destroyed, its place is filled by the active expectancy of harm, exploitation, or humiliation. We do not learn one iota more about the human being before us by hanging the psycho-jargon word paranoid on this expectancy.
>
> There are three common strategies for dealing with a situation in which harm, exploitation, and humiliation are foreseen: strike first, get

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[15] Examples and further explanation can be found in Shay, J., "The Invisible Gap: Ethical Standing for Commander Self-Care." *Parameters: U.S. Army War College Quarterly,* 28:93-105, Summer 1998. http://www.carlisle.army.mil/usawc/parameters/98summer/shay.htm

away to complete isolation from others, develop effective deception and concealment. All three of these strategies are formidable destroyers of a flourishing human life. They are also barriers to service members or veterans ever obtaining or keeping meaningful mental health care. In the modern medical setting, this means trusting a clinician on the basis of his or her credentials and institutional position. The credentials and institutional position of the original military perpetrator of moral injury were often impeccable, so the situation of being asked to trust someone purely on that basis ("Hello, I'm Dr. Shay. I'm a Staff Psychiatrist here . . .") is likely to be a traumatic trigger, a new danger. And if the strike first, run away, or deceive strategies are not enough of an obstacle to obtaining and keeping care, the clinician often takes offense at not being automatically trusted, and chases the veteran away or retaliates.

Many of the veterans I worked with had histories of having done great harms to others, some with heavy criminal careers since Vietnam, often carrying prior diagnoses such as "sociopath," "borderline personality disorder," or "character disorder." The general consensus of American mental health has been that no bad experience in adulthood can turn someone with good character into someone with bad character. This is a broadly and deeply held philosophic position, which has a brilliant pedigree going back to Plato, through the Stoics, to Kant, and to Freud. Plato said that if you make it out of childhood with good breeding (we would say "good genes") and good upbringing, then your good character, your virtuous behavior will form as hard, unbreakable, and immovable as rock. American psychiatry has consistently rejected attempts to diagnostically recognize deformities of personality or character arising from bad experience. The American Psychiatric Association (APA) has rejected two attempts to get such phenomena recognized in the nosology: "Persistent Personality Change after Catastrophic Experience" and "Disorders of Extreme Stress, Not Otherwise Categorized." The former is part of the World Health Organization nosology; the latter, under the less opaque label "complex PTSD," is very widely accepted by clinicians who work with morally injured populations, such as survivors of incest or political torture, despite its lack of official blessing. "Post-Traumatic Embitterment Disorder," a phenomenon defined and proposed as a diagnostic construct by Professor Michael Linden and his colleagues at the Charité in Berlin, has not (yet) been exposed to the Platonic filter of the APA.[16]

American psychiatry has been notably reluctant to acknowledge that severe trauma can change the personality, despite the compelling evidence to this effect produced by the DSM-IV

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[16] Shay, J. "Casualties" IN: *The Modern American Military.* Ed. by Kennedy, DM. *Daedalus* 140: 179-187 (2011) PERMISSION PROBABLY NEEDED HERE

Field Trials. By contrast, the World Health Organization's 1992 diagnostic manual ICD - 10, acknowledges the entity called "Enduring Personality Change after Catastrophic Experience," which the American Psychiatric Association's diagnostic system refuses to admit. Even the United States Army has documented that "combat stress" can alter personality, leading to misconduct from the criminal to the self-destructive.[17] The following table, "Combat Stress Behaviors,"[18] is taken from Army Field Manual FM 4-02.51 *"Combat and Operational Stress Control"* 6 July 2006*:*

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[17] Headquarters, Department of the Army, Field Manual No. 4-02.52 6 July 2006, *Combat and Operational Stress Control*, 6 July 2006 page 1-6. [THIS IS A PUBLIC UNCLASSIFIED US GOVT DOCUMENT, AUTHORIZED FOR UNLIMITED DISTRIBUTION. NO PERMISSION REQUIRED.]Acknowledgement of "Misconduct Stress Behaviors" has had an unstable history, disappearing for a time from Army doctrinal materials but now returned to official "consciousness." The table reproduced here appeared in slightly different form in FM 22-51 as Table 2-2 "Combat Stress Behaviors," p. 2-12 (Sep. 29, 1994). Both the table and the concept of Misconduct Stress Reactions, which originally had a (still worth reading) chapter devoted to it, was re-promulgated in FM 4-02.51, with cosmetic changes and with two telling changes: "POST-TRAUMATIC STRESS DISORDER": the heading was changed to "Long-Term Stress Reactions" and the list was augmented by addition of "Depression" and "Problems in trusting in intimate as well as social relationships." (Inside baseball comment: this inclusion flaunts the APA nosology. Hooray!) This doctrinal manual is intended for the medical corps, rather than being in the leadership doctrinal series, a serious step backwards, in my view, although FM 6-22.5 *Combat and Operational Stress Control Manual for Leaders and Soldiers,* 18 March 2009 retains much of the candor of the original, in briefer form.

[18] Ibid.

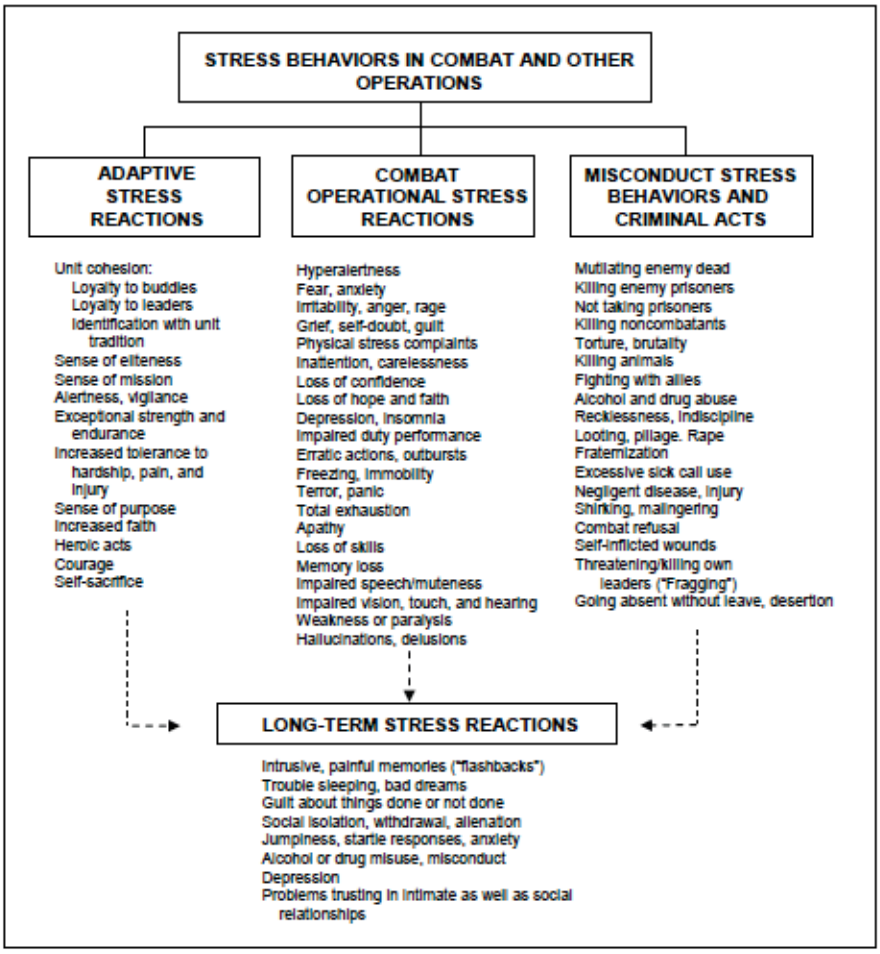


**Figure 1-3. Stress behaviors in combat and other operations**

While this table might suggest that longlasting psychological and moral injury are caused only by the combat stress behaviors and not by the combat stress itself, the overall causal chain that the Army acknowledges is clear: combat stress can lead to "misconduct stress behaviors and criminal criminal acts." The most recent Army doctrinal statement retains the candor of the original 1994 *Leader's Manual for Combat Stress Control*:

> "Misconduct stress behavior is a form of COSR and most likely to occur in poorly trained, undisciplined units. *Even so, highly trained, highly cohesive units, and individuals under extreme combat and operational stress may also engage in misconduct*. [p.1-4]… *Excellent combat Soldiers that have exhibited bravery and acts of heroism may also commit misconduct stress behaviors* [p. 1-6].[19]

Official American psychiatry institutionalizes Plato's dubious proposition: if bad experience leads someone who was good to do terrible things, it must be because he was secretly flawed from the beginning. He deserves no respect for any previously honorable conduct -- all possibility of respect or consideration has been obliterated by his criminal act.

You may wonder if I am attempting to exculpate criminals who also happen to be combat veterans of their crimes. Not so. I just want to see these men and women receive effective treatment for their psychological injuries, first, *because the overwhelming majority will be released from prison within the next five years and are likely to commit further violence if untreated,* and second, because they have been injured in the course of their military service—no claim of a pre-existing character flaw should be entertained unless it was noted in the record of the veteran's induction examination, and is "presumed sound" by reason of his enrollment—and third, for general humanitarian reasons, because these men "live in a world of pain". I have worked with such men. I know this to be the truth. They suffer pain from their war wounds as surely as a veteran with a piece of shrapnel buried in his spine might be tormented by constant pain. Are we really willing to say that we wash our hands of responsibility for wounds a soldier received in his country's battles -- physical or mental -- when he goes to prison? That is exactly what we have done in the past and what we largely continue to do now.

**Moral Injury and Criminal Behavior:**

Betrayal of "what's right" [however locally defined], by someone holding legitimate authority, in a high stakes situation is coded by the brain as physical attack, mobilizing the body for danger and for flight, preemption or counterattack. I have used the term "moral injury" for

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[19] FM 6-22.5 *Combat and Operational Stress Control Manual for Leaders and Soldiers,* 18 March 2009

this whole constellation, and this locution seems to be gaining some currency. You will not be surprised that the whole human critter—brain, mind, society, culture—are caught up in this concept of "moral injury." When things are good, rather than bad, the same things are in play: good-enough fulfillment of "what's right" by legitimate power-holders is an essential input to the mind to maintain the stability character, *thumos,* the adult mind's pattern-maintenance subsystem, which collectively contains ideals, ambitions, and attachments.[20] Severe psychological injury causes changes to brain function and even brain anatomy. Memory function, emotional regulation, motivation, sleep, perception are all altered.

The diagnosis PTSD does not capture this. As I have said, PTSD does a pretty good job of describing a syndrome of persisting adaptations to other human beings trying to kill you. PTSD is rarely what wrecks veterans lives or crushes them to suicide; moral injury, however, does both. What can be more damaging to one's ability to function as a law-abiding citizen than an inability to trust the legitimacy of authority? But for those suffering moral injury, it was a figure of legitimate authority that betrayed what was right, undermining some of their most basic human needs. Take that in: moral injury can be the soul wound inflicted by doing something that violates one's own ethics, ideals, or attachments, based upon a legitimate authority.

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[20] Forty-five years ago I called it the narcissistic system. ["Action Theory and Ego Psychology: A Model of the Personality" Harvard College Senior Honors Thesis in Social Relations (#839), 1963] If anyone is curious, my four-function model of the personality fell out as follows: [L] Narcissistic system (for which I now like the Homeric word *thumos*—because the word narcissism has been killed off as a neutral term for a universal phenomenon, although subject to pathological inflations and deflations); [I] System of ego identifications; [G] Object system; [A] Preconscious (cognitive, expressive, and linguistic) facilities. Currently, along with Francis Fukuyama and others, I am trying to put the juicy Homeric *thumos* back into circulation as a more neutral and non-pathologized word for the same body of phenomena and functions as "narcissism." Shay, J., Munroe, J. "Group and Milieu Therapy for Veterans with Complex Posttraumatic Stress Disorder," in *Posttraumatic Stress Disorder: A Comprehensive Text,* Edited by Saigh, Philip A. and Bremner, J. Douglas. Boston: Allyn & Bacon imprint of Simon & Schuster, 1999. Pp. 391-413. See also Shay, J. *Odysseus in America: Combat Trauma and the Trials of Homecoming* New York: Scribner, 2002, pp 149-163.

More important for the legal practitioner handling the case of a morally injured veteran is what we do now, after the combat decisions have been made and regrets solidified. Is guilt never pathological? Never in need of therapy? Never in need of understanding and forgiveness?

To this point, I speak as a psychiatrist whose only patients have been combat veterans who have sought help from the VA. If the guilt leads them to feel deserving of execution, and to arrange or try to carry out that execution, we will intervene to stop it, with involuntary hospitalization if necessary. If guilt leads to self-destructive patterns of self-neglect, drug and alcohol abuse, danger-seeking (in the hope of "getting lucky"—i.e., dying), we will offer education, treatment, and the opportunity to heal with and for other veterans. If guilt results in the sense that one's taint is contagious, that other people will be harmed simply by getting to know the veteran and his narrative, we offer the same treatment mix. If guilt leads to an all-too-common pattern of family life that oscillates between aggressively messing up anything good that happens and being a passive door-mat to other family members, we offer those treatments plus family or couples therapy.

But what if the guilt results in private anguish alone? What I have described in the previous paragraph might be called medical/psychological therapies. They often help, but they are not, and should not be the only therapies of moral pain available. Religious and cultural therapies are not only possible, but may well be superior to what mental health professionals conventionally offer. In the medieval Church, everyone who shed blood in war had to do penance. If you committed atrocities, you had to do more penance, but even if you wore a white hat and were a perfect model of both jus ad bellum and jus in bello, you had to do penance.[21] Most warrior societies, as well as many not dominated by warfare, have historically had communal rites of

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[21] Bernard J. Verkamp, *The Moral Treatment of Returning Warriors in Early Medieval and Modern Times*. Scranton: Scranton University Press, 1993.

purification of the returning fighter after battle, for example, the purifications in Numbers 31:19ff.

I have proposed elsewhere that the performances of the Athenian tragic theater—which was a theater of combat veterans, by combat veterans, and for combat veterans—offered cultural therapy, including purification.[22] Aristotle famously said that tragedy provides *katharsis*. Scholars tell us that three meanings of *katharsis* circulated in Aristotle's time and would have been known to him: 1) religious purification of a ritual taint and expiation of a religious sin; 2) medicinal purgation of something unhealthy, poisonous, or impure; 3) mental clarification, removing obstacles to understanding, the psychological equivalent of producing clear water from muddy water.[23] The ancient Athenians had a distinctive therapy of purification, healing, and reintegration of returning Soldiers that was undertaken as a whole political community. Sacred theater was one of its primary means of reintegrating the returning veteran into the social sphere as Citizen.

One of my patients, whose father was torpedoed in the WWII Merchant Marine, greeted him with a $50 bill on his return from Vietnam with the words, "Here. Get drunk. Get laid. And I want you at the Union Hall on Monday morning." That is not purification after battle.

Over the years I have said to my patients, who are almost entirely Roman Catholic because of the demography of the local veteran population, "If the Church's ideas on sin, penitence, forgiveness of sin, and redemption are about anything, they're about the real stuff. What the Church offers is about cruelty, violence, murder, not just the kiddy sins you confessed in parochial school." The clinical team has encouraged many of the veterans we work with to avail

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[22] Jonathan Shay, "The Birth of Tragedy—Out of the Needs of Democracy" *DIDASKALIA: ANCIENT THEATER TODAY* [An on-line journal] Vol. 2 No. 2-April 1995 http://didaskalia.berkeley.edu/issues/vol2no2/Shay.html

[23] For the history of explanations given for Aristotle's use of this word see Leon Golden, *Aristotle on Tragic and Comic Mimesis*, American Philological Association, American Classical Studies, Number 29, 1992, pp 5-39; Stephen G. Salkever, 'Tragedy and the education of the *Demos*,' in J. Peter Euben, ed, *Greek Tragedy and Political Theory.* Berkeley: University of California Press, 1986, pp. 292f; and Martha Nussbaum, *op. Cit.* pp. 388-91.

themselves of the Sacrament of Penance. When a veteran did not already know a priest he trusted to hear his confession, we have suggested priests who understand enough about combat to neither deny that he has anything to feel guilty about nor recoil in revulsion and send him away without the sacrament. We also recommend service to others and the doing (not simply passive consumption) of the arts as ways of living with guilt.

Conclusion:

When actions based on this guilt bring a morally injured veteran in front of an attorney or the court, both the catharsis of Athenian tragic theater and the recommendations of the church and our clinical team provide a critical lesson: if the veteran is *ever* going to peacefully coexist with the rest of us, he must get the community's help, understanding, and acceptance of his moral burden. Criminal behavior brings the veteran to the last stop before our community rejects and punishes him, which may be the proper response. But there is another role the legal system can play: purification, healing, and reintegration through strictly demanding penance and providing society's forgiveness of the sins of war, if not the crime.

Such unhealed PTSD can devastate life and incapacitate its victims from participation in the domestic, economic, and political life of the nation. The painful paradox is that fighting for one's country can render one unfit to be its citizen. This is a gruesome, but truthful portrait of severe war wounds in the mind, incurred in actual battle for our country. The men who incurred these wounds have an absolute moral claim on the rest of us to account for and provide treatment for these wounds. This is not a partisan issue. Neither Democrat nor Republican can claim ownership, nor honorably wash their hands of it. This is not a reflection of anyone's judgment of whether the Vietnam, Iraq or Afghanistan Wars were noble causes or a horrible mistakes—the men and women who fought them and were injured in them have the same moral claim regardless of the *jus ad bellum*, the justice *of* the war, over which they had no control. This is not a Liberal versus Conservative issue. There are those who openly or silently deny that it is our duty to provide treatment to these men or do not feel this duty weigh on them very heavily. They should consider this: to provide mental health and other benefits to psychologically injured veterans is the **smart** thing to do in their own self-interest.

A bit of reflection should make it clear, however, that we as a society have some ethical, philosophic, medical/scientific, and probably religious[24] heavy lifting to do. The criminal justice system is being asked to provide purification after battle to the segment of the veteran population most in need of purification. In my humble opinion, combat trauma should never be *exculpatory* in a violent crime against another person; however, the *sentencing* should have the capacity to mobilize resources that lead to the healing of war wounds, not their dehiscence on a prison tier.[25]

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[24] See http://nostoi.hampshire.edu/RitualsDownload.pdf

[25] Surgeon's word for an already closed or healed would being ripped open.

Please do not read this as my belief that only credentialed mental health professionals can promote recovery from combat trauma. The above-cited chapter by Shay & Munroe in the Saigh & Bremner *Posttraumatic Stress Disorder: A Comprehensive Text* makes clear that credentialed professionals have no place in center stage; we can be very good stage-hands, but mainly recovery happens in the community of other veterans.

Even less is the above a call for a court-ordered jobs program for credentialed mental health professionals.

The whole matter of how to select, train, credential, and supervise *veterans* as mental health personnel is desperately in need of study.

Equally in need of study is how to select, train, credential, and supervise *mental health professionals* for work with psychologically and morally injured veterans. The usual response of all branches and agencies of government is: "You are a licensed MD, psychologist, social worker, … that's all we need to know! Here are the veterans, go to work."

Wrong!