

VALORIZING DISOBEDIENCE WITHIN THE RANKS: LAW AND RESISTANCE IN AMERICAN MILITARY FILMS[♦]

BY AMAR KHODAY*

“Guys if you think I’m lying, drop the bomb. If you think I’m crazy, drop the bomb. *But don’t drop the bomb just because you’re following orders.*”¹

– Colonel Sam Daniels in *Outbreak*

“The obedience of a soldier is not the obedience of an automaton. A soldier is a reasoning agent. He does not respond, and is not expected to respond, like a piece of machinery.”²

– *The Einsatzgruppen Case*

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¹ *OUTBREAK* (Warner Bros. 1995) (emphasis added).

² “*The Einsatzgruppen Case*”, in 4 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS 1, 470 (United States v. Otto Ohlendorf). During jury instructions in the trial of First Lieutenant William Calley for crimes committed during the My Lai massacre in Vietnam, the court included the following: “the obedience of a soldier is not the obedience of an automaton. A soldier is a reasoning agent, obliged to respond, not as a machine, but as a person.” See *United States v. Calley*, 22 C.M.A. 534 at 541 (1973).

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INTRODUCTION

There is a ubiquitous quality to law. Human societies are governed by a plethora of norms ranging from various formal state-generated laws³ to a multitude of informal rules and customs.⁴ Law’s ubiquity is further evidenced through legal narratives embedded within popular culture. Indeed, law, and concerns about justice more broadly, reside in countless stories transmitted by way of, amongst other things, films, television programs, documentaries, literature, and music.⁵ There is a strong and enduring connection between law and popular culture. Desmond Manderson posits that for as long as there has been law, and for as long as there been popular culture, there has been a relationship between them.⁶ Given the overwhelming presence of visual mediums in many societies today, law-connected themes certainly permeate visual storytelling throughout various cultures. As Austin Sarat confirms, “mass-mediated images of law saturate our culture.”⁷ Furthermore, Sarat and Charles Ogletree, Jr. together assert that such “[m]ass-mediated images are as powerful, pervasive, and important as are other early twenty-first century social forces—including globalization, neocolonialism, and human rights—in shaping and transforming [political and] legal life.”⁸ Producers and mediums of popular culture play a significant role in transmitting ideas and information about law

³ Those norms that are the traditional focus of legal scholarship and law school curricula (represented through constitutional law, statutes, regulations, and the common law).

⁴ The teachings of legal pluralism recognize that, within a particular social field, two or more legal systems or normative orders co-exist. Legal pluralism rejects the notion of legal monism—the traditional idea that the state is the sole generator of legal norms. See Sally Engle Merry, *Legal Pluralism*, 22 *LAW & SOC’Y REV.* 869 (1988); Martha-Marie Kleinhans & Roderick A. Macdonald, *What is a Critical Legal Pluralism?*, 12 *CAN. J.L. & SOC’Y.* 25 (1997); DONN SHORT, “DON’T BE SO GAY!” QUEERS, BULLYING AND MAKING SCHOOLS SAFE 167–226 (2013).

⁵ As Lawrence M. Friedman articulates: “[L]aw’ inhabits popular culture to an amazing extent. Think, for example, how much television time in the United States (and elsewhere) is devoted to crime shows, lawyer shows, and the like; what would be left of prime-time television, if we banned any mention of lawyers, judges, juries, police, trials, fingerprints, hair samples, forensic medicine, and prisons? Dull evenings, perhaps, devoted to sit-coms and documentaries.” Lawrence M. Friedman, *The Fun-House Mirror: Law and Popular Culture*, *J. OXFORD CTR. SOCIO-LEGAL STUD.* 5, 6 (2017).

⁶ Desmond Manderson, *Trust Us Justice: 24, Popular Culture, and the Law*, in *IMAGINING LEGALITY: WHERE LAW MEETS POPULAR CULTURE* 21 (Austin Sarat ed., 2011).

⁷ Austin Sarat, *What Popular Culture Does For, and To, Law: An Introduction*, in *IMAGINING LEGALITY: WHERE LAW MEETS POPULAR CULTURE* 8 (Austin Sarat ed., 2011).

⁸ Charles J. Ogletree, Jr. & Austin Sarat, *Imaging Punishment: An Introduction*, in *PUNISHMENT IN POPULAR CULTURE* 4 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2015).

and justice.⁹ The visual stories that consumers of popular culture digest do more than entertain and titillate. They may educate, inspire, and, in some cases, mobilize people to act.¹⁰ Yet, one should not overly romanticize the educational value of popular culture, for it bears the capacity to disseminate a false or distorted sense of reality.¹¹ Notwithstanding this ability to misrepresent the law, there are nevertheless redeeming qualities to popular culture as a jurisprudential source. Films and other mediums of popular culture may serve as important instruments to make (more) visible any number of critical legal issues and phenomena that have legal implications.¹² Perhaps just as importantly, these legal narratives project and supply viewers with alternative ideas and visions about the law. Indeed, Manderson asserts

⁹ There is some debate about the extent to which popular culture can and does shape public attitudes more generally. Some scholarship strongly suggests that popular culture has some influence on people's attitudes and perspectives. Yet, there is some debate about the longevity and extent of such influence. The number of sources of information that people may be exposed to (film, television, news media, etc.) can make it challenging to assess how one particular source can have a more significant influence over others. However, if certain themes are consistently projected across different sources, this may possibly influence on a long-term basis. *See generally* MICHAEL ASIMOW & SHANNON MADER, *LAW AND POPULAR CULTURE: A COURSE BOOK* (2d ed. 2013); CARL BOGGS & TOM POLLARD, *THE HOLLYWOOD WAR MACHINE: U.S. MILITARISM AND POPULAR CULTURE* 11–12 (2007); SKIP DINE YOUNG, *PSYCHOLOGY AT THE MOVIES* (2012); Stephen Dine Young, *Movies As equipment for living: A development analysis of the importance of film in everyday life*, 17 *CRITICAL STUD. IN MEDIA COMM.* 447 (2000); Diana C. Mutz & Lilach Nir, *Not Necessarily the News: Does Fictional Television Influence Real-World Policy Preferences?*, 13 *MASS COMM. & SOC'Y* 196 (2010); Tom van Laer, Ko De Ruyter, Luca M. Visconti & Martin Wetzels, *The Extended Transportation-Imagery Model: A Meta-Analysis of the Antecedents and Consequences of Consumers' Narrative Transportation*, 40 *J. CONSUMER RES.* 797 (2014); Markus Appel & Tobias Richter, *Persuasive Effects of Fictional Narratives Increase Over Time*, 10 *MEDIA PSYCHOL.* 113 (2007); Melanie C. Green & John K. Donahue, *Persistence of Belief Change in the Face of Deception: The Effect of Factual Stories Revealed to Be False*, 14 *MEDIA PSYCHOL.* 312 (2011); Susan E. Morgan, Lauren Movius & Michael J. Cody, *The Power of Narratives: The Effect of Entertainment Television Organ Donation Storylines on the Attitudes, Knowledge, and Behaviors of Donors and Nondonors*, 59 *J. COMM.* 135 (2009); Michael D. Slater, Donna Rouner & Marilee Long, *Television Dramas and Support for Controversial Public Policies: Effects and Mechanisms*, 56 *J. COMM.* 235 (2006).

¹⁰ Steve Greenfield & Guy Osborn, *Law, legal education and popular culture*, in *READINGS IN LAW AND POPULAR CULTURE* 1, 4 (Steve Greenfield & Guy Osborn eds., 2006).

¹¹ Asimow & Mader state: "Pop culture producers always distort reality, including the operation of the legal system, for dramatic, commercial, or ideological purposes." ASIMOW & MADER, *supra* note 9 at 8. They further posit that: "[P]eople are learning from a highly unreliable source, because the media of pop culture consist of fictitious stories made up to entertain them. Pop culture products are often wildly out of sync with reality." *Id.* Friedman similarly observes: "[S]tudies show that the general public does not get much 'education' about the legal system, either from popular culture or from other sources. People do not know much about the law and much of what they think they know is just plain wrong." Friedman, *supra* note 5 at 7. *See also* the impact of shows such as *24* may have on expectations of viewers in the fighting of terrorism. *See, e.g.,* Manderson, *supra* note 6 at 37. For an example of how films may distort the nature of administrative proceedings, *see* Amar Khoday, *Sullying the Process: Sully and the Construction of the National Transportation Safety Board*, *JURIS CULTURE* (June 27, 2017), http://www.jurisculture.net/2017/06/sullying-process-sully-and-construction_22.html.

¹² John B. Thompson, *The New Visibility*, 22 *THEORY CULTURE & SOC'Y* 31 (2005); Andrew John Goldsmith, *Policing's New Visibility*, 50 *BRITISH J. CRIMINOLOGY* 914 (2010).

that popular culture has the ability to echo and express alternative visions of legality and accordingly contribute to legal change.¹³ Yet, in articulating this notion that popular culture may project an alternative vision of legal normativity, Manderson further argues that popular culture, in so doing, operates “not as the representation of formal law but as a site of resistance to it.”¹⁴ If one accepts that law not only resides in the formal rules promulgated by the state, films may also project an alternative view of legal normativity vis-à-vis customary practices and elucidate other unofficial rules that govern society.¹⁵ As such, popular culture may also serve as a site of resistance to such non-state legal orders and those who exercise power in those contexts.¹⁶ Therefore, audio-visual cultural productions like films, which project alternative visions of law, may be constructed as exemplars of a popular visual jurisprudence of resistance. This Article will focus on one facet of such jurisprudence.

Producers of popular culture convey plenteous stories about law that are worthy of study. However, much of what may be labeled or associated as being a “law film” (or “law television series”) contains narratives that tend to cluster around certain persistent themes and settings—the practice of law, courtroom trials or other legal proceedings, matters concerning criminal justice, practices and conduct of law enforcement officials, alternative dispute resolution mechanisms,¹⁷ and/or professional responsibility matters focusing on the behavior of judges, lawyers, and clients. This is not surprising, for they make for compelling dramatic stories replete with conflict and adversarial tension. They are intimately tied to the (professional practice) life of the law and certainly the public’s perception of what that might be. Yet, stories about law extend beyond these narrow confines.

Though less conspicuous, law and concepts of justice strongly

¹³ Manderson, *supra* note 6 at 24.

¹⁴ *Id.*

¹⁵ See WENDY A. ADAMS, POPULAR CULTURE AND LEGAL PLURALISM: NARRATIVE AS LAW (Routledge 2017) (Wendy Adams goes so far as to argue that products of popular culture actually constitute law.).

¹⁶ Drawing from the teachings of legal pluralism, as discussed, norms exist within a variety of social spaces, such as family households, religious or other communities, and corporate bodies. While the norms of the state may govern a range of conduct in such spaces, other non-state norms also regulate or impact human conduct. For example, while state norms may not prohibit certain behavior, non-state norms within a particular social space or community may effectively do so. Furthermore, the punishment for resisting or otherwise violating such norms may be severe (if not illegal under state norms). See, e.g., New Zealand Refugee Status Appeal Authority, Refugee Appeal No. 76044 (Sept. 11, 2008), http://www.refworld.org/cases,NZL_RSAA,48d8a5832.html.

¹⁷ For an insightful feminist examination of how alternative dispute resolution may occur in films, see Jennifer L. Schulz, *The Cook, the Mediator, the Feminist, and the Hero*, 21 CAN. J. WOMEN & L. 177 (2009).

intertwine with stories about the actions (and/or inactions) of everyday legal subjects. This is so even where formal legal proceedings or other aspects associated with law practice play a minor or even no role in the story. Human conduct, and particularly the harmful or illegal variety, also furnish any number of fascinating stories about law given that such conduct will likely have legal consequences or, at the very least, implicate serious legal concerns.¹⁸ While courtroom and litigation-based dramas may rivet audiences, just as compelling are legal narratives that demonstrate how individuals can, and do, challenge the harmful and illegal actions of others through resistance. This resistance notably is based on a particular vision or interpretation of law. In this Article, I tackle one particular genre of film that highlights resistance as justified normative conduct—military films. By referring to “military films” in this Article, I do not mean films exclusively created by the United States (U.S.) government or its military institutions. Rather my focus is on fictional and mainstream commercial films produced primarily by private American corporations¹⁹ that largely concern U.S. military affairs, within or outside the context of armed conflict and set temporally in recent decades.²⁰

Amongst the many genres of film, those concerning the military are replete with actions that intersect with the law, particularly where they speak about unlawful orders or war crimes, in addition to acts of resistance that challenge these injustices. Such military films may not always culminate in some courtroom trial, or, when they do, such proceedings may be a far less significant feature of the overall story. Still, even in films that shift away from privileging courtroom or litigation-centric storytelling, law is nevertheless a key player. Their stories inherently implicate the various norms that govern military conduct under both domestic and international law. Where soldiers

¹⁸ In many ways, these conduct-based law films are useful tools for legal education. Law professors can use these narratives to pose questions to their students about any legal issues that may arise, the application of relevant legal rules, and what the proper legal outcomes ought to be.

¹⁹ This is not to suggest that the U.S. military has not funded private commercial films or provided support in exchange for certain benefits. See Ryan Pumroy, *Recruiting Soldiers of Steel: The Cross-promotion of Man of Steel and the National Guard*, 48 J. POPULAR CULTURE 762 (2015); Robin Andersen & Tanner Mirrlees, *Introduction: Media, Technology, and the Culture of Militarism: Watching, Playing and Resisting the War Society*, 26 DEMOCRATIC COMMUNIQUÉ 1 (2014).

²⁰ Tales of resistance within a military context, however, may also relate to stories set in a science fiction genre or stories about legends or historical figures from the terrestrial realm. See, e.g., TROY (Warner Bros. 2004); STAR TREK II: THE WRATH OF KHAN (Paramount Pictures 1982); STAR TREK III: THE SEARCH FOR SPOCK (Paramount Pictures 1984); STAR TREK IV: THE VOYAGE HOME (Paramount Pictures 1986); STAR TREK (Paramount Pictures 2009); STAR WARS EPISODE III: REVENGE OF THE SITH (Lucasfilm 2005); STAR WARS (Lucasfilm 1977); STAR WARS EPISODE V: THE EMPIRE STRIKES BACK (Lucasfilm 1980); STAR WARS EPISODE VI: RETURN OF THE JEDI (Lucasfilm 1983); STAR WARS: THE FORCE AWAKENS (Lucasfilm 2015); ROGUE ONE: A STAR WARS STORY (Lucasfilm 2016).

engage in resistance to illegal orders by superiors or criminal behavior by fellow soldiers (with the tacit approval or malignant neglect of superiors), stories that depict such defiance implicate the law. Law is implicated in at least three ways. First, acts of resistance may very well give rise to formal legal proceedings and punishment under a particular system of military justice. Second, the criminality or injustice being opposed by military resisters implicates the law, even if to draw attention to its breach and the need to have someone oppose the criminality in question. Last, the acts of resistance being displayed in certain films project alternative ideas about how law should operate in a particular context.

As I have defined it elsewhere, resistance may be understood as constituting individual and/or collective acts that challenge the dominant or hegemonic²¹ power and authority of another individual, group, and/or entity—regardless of whether such authority is rooted in or affiliated with state power.²² In the context of resistance within the military, resistance can assume many forms including, but not limited to, the direct confrontation with superiors and/or fellow soldiers through the use of force or threats of force,²³ refusal to obey orders and other forms of insubordination,²⁴ blowing the whistle on illegal actions perpetrated by other personnel,²⁵ draft-evasion,²⁶ and/or desertion.²⁷

²¹ Hegemonic power may be understood as the maintenance of dominant power exercised “not through the use of force but through having . . . [the] worldview [of the dominant power] accepted as natural by those over whom domination is exercised.” B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT’L COMM. L. REV. 3, 15 (2006).

²² Amar Khoday, *Protecting Those Who Go beyond the Law: Contemplating Refugee Status for Individuals who Challenge Oppression through Resistance*, 25 GEO. IMMIGR. L.J. 571, 575–76 (2011) [Khoday 2011]; Amar Khoday, *Resisting Criminal Organizations: Reconceptualizing the “Political” in International Refugee Law*, 61 MCGILL L.J. 461 (2016).

²³ See, e.g., New Zealand Refugee Status Appeal Authority, Refugee Appeal No. 2248/94 (Dec. 7, 1995), http://www.refworld.org/cases/NZL_RSAA,3ae6b6561c.html; Richard Goldstein, *Hugh Thompson, 62, Who Saved Civilians at My Lai, Dies*, N.Y. TIMES (Jan. 7, 2006), <http://www.nytimes.com/2006/01/07/us/hugh-thompson-62-who-saved-civilians-at-my-lai-dies.html>; *Interview—Larry Colburn: Why My Lai, Hugh Thompson Matter*, VIETNAM MAGAZINE (July 2, 2011), <http://www.historynet.com/interview-larry-colburn-why-my-lai-hugh-thompson-matter.htm>.

²⁴ See, e.g., New Zealand Refugee Status Appeal Authority, *supra* note 23; Zolfagharkhani v. Canada (Minister of Emp’t & Immigration), [1993] 3 F.C.R. 540 (Can. C.A.); Commission des Recours des Réfugiés [C.R.R.] [Refugee Appeals Board] 5 July 2007, No. 597325, I.; Mohamed v. Canada (Minister of Emp’t & Immigration), 1994 CarswellNat 1848 (Can. C.A.) (WL); Tagaga v. INS, 228 F.3d 1030, 1034 (9th Cir. 2000).

²⁵ See, e.g., Prosecutor v. Erdemović, No. ICTY-96-22-A, Judgment, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, (Oct. 7, 1997), <http://www.icty.org/x/cases/erdemovic/acjug/en/erd-aj971007e.pdf>.

²⁶ See Clay v. United States, 403 U.S. 698 (1971); Gary Thatcher, *South Africa’s conscientious objectors: A LONG FIGHT BY A NATION’S PACIFISTS*, CHRISTIAN SCI. MONITOR (Sept. 4, 1980), <https://www.csmonitor.com/1980/0904/090469.html>.

²⁷ See Al-Maisri v. Canada (Minister of Emp’t & Immigration), 1995 CarswellNat 133 (Can. C.A. 1995) (WL); JOSHUA KEY & LAWRENCE HILL, *THE DESERTER’S TALE: THE STORY OF AN*

Military resistance may be seen as legitimate when it is waged to combat or challenge criminal or illegal acts under either domestic or international law.

In this Article, I argue that, through an examination of various commercial and mainstream American law films concerning the military, there is a discrete and apparent (though by no means universal) theme that emerges. This theme is that resistance to military power constitutes legitimate activity when such power is exercised unlawfully or in an unjust manner against non-combatants or other soldiers. The manner in which such resistances are depicted suggests that they should not only be viewed as justified, but encouraged as a moral duty or imperative. Moreover, such acts of resistance, while manifestations of disobedient conduct on one hand, are supportive of and affirm the importance of other competing norms on the other.²⁸ Accordingly, although it may be an act of disobedience on one hand to refuse to follow a direct order, this same act may serve to validate or affirm other relevant norms (e.g. international law), which would be violated if an order were to be obeyed.²⁹ Films that endorse disobedience may foster an ethic of justified resistance to unlawful military orders and/or conduct, which, in turn, may serve as tools to prevent or challenge ongoing crimes of obedience.³⁰ Drawing from Herbert Kelman and V. Lee Hamilton, crimes of obedience are illegal and immoral acts committed in compliance with orders or directives from authority.³¹ Indeed, in the real world, there is no shortage of incidents where individual soldiers have committed crimes under international law by following orders (crimes of obedience) rather than refusing to comply with or directly challenging such commands.

The promotion of justified disobedience connects to a deep tension, or, in the words of Martha Minow, a central dilemma that arises within the military life and combat—the duty to follow orders and obey

ORDINARY SOLDIER WHO WALKED AWAY FROM THE WAR IN IRAQ (2007).

²⁸ See Nathaniel Berman, *Legitimacy through Defiance: From Goa to Iraq*, 23 WIS. INT'L L.J. 93 (2006).

²⁹ For example, a soldier who disobeys an order to murder civilians affirms international norms that protect such non-combatants. International norms mandate parties to an international armed conflict to “distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 48, June 8, 1977, 1125 U.N.T.S. 3 (Murdering civilians who do not take part in hostilities may constitute a Grave Breach of the Geneva Conventions of 1949.); see also Rome Statute of the International Criminal Court art. 8(2)(a)(i), July 17, 1998, 2187 U.N.T.S. 90. (here, such civilian murders are part of a widespread or systematic attack directed against any civilian population, soldiers who refuse to obey orders affirm norms prohibiting crimes against humanity.); *Id.* at art. 7(1)(a).

³⁰ See generally HERBERT C. KELMAN & V. LEE HAMILTON, CRIMES OF OBEDIENCE: TOWARD A SOCIAL PSYCHOLOGY OF AUTHORITY AND RESPONSIBILITY (1989).

³¹ *Id.* at 307.

the command structure on one hand, and questioning authority, thinking for oneself, and disobeying orders on the other.³² Among other points, Minow contends that for “soldiers to develop the capacity to perceive and resist illegal directions when they are fundamentally expected to obey orders and military discipline, the resources of law, morality, psychology, and education are needed.”³³ Minow observes that, in order for instructions (regarding resistance to unlawful orders) to be meaningful and effective, they must go beyond a perfunctory one-hour lecture. She argues that:

Soldiers need to drill through experiential learning so that they have reflexes to reject abusive action just as they have reflexes to shoulder a weapon. Some of this can come from immersion in hard case studies. Teaching case studies provides an encounter with vivid factual descriptions, helps alert people to issues, and helps cultivate the ability to recognize problems in practice.³⁴

In examining how to foster resistance to the commission of crimes and atrocities, Mark Osiel has similarly argued for the importance of enhancing law’s *ex ante* influence on soldiers’ behavior in the field rather than through *post-facto* prosecution.³⁵ However, Osiel asserts that compliance with the law may best be obtained by emphasizing the importance of general standards that build upon martial virtues (including courage as a quintessential martial virtue³⁶) that are internal to the calling of soldiers.³⁷ Osiel suggests that military professionals should take a primary role in defining martial honor and what it entails.³⁸ He posits that one of the ways to instill a sense of proper conduct is to inculcate and immerse officers in training in the ongoing collective narrative of their corps—the narrative identity is thus forged not by the rules of international armed conflict, but through stories of the great deeds of honorable soldiers.³⁹ In Osiel’s view, martial honor should not be viewed as a single identifiable virtue, but as a

³² Martha Minow, *Living up to Rules: Holding Soldiers Responsible for Abusive Conduct and the Dilemma of the Superior Orders Defence*, 52 MCGILL L.J. 1, 5–6 (2007).

³³ *Id.* at 6.

³⁴ *Id.* at 43. Based on interviews with Israelis and their experiences in the military, basic training is too late a time to teach soldiers how to prevent atrocities. Rather, instructions must start as early as childhood. *Id.* at 44.

³⁵ MARK J. OSIEL, *OBEDIENCE, OBEDIENCE, OBEDIENCE: ATROCITY, MILITARY DISCIPLINE & THE LAW OF WAR* 327 (Taylor & Francis Group, 2009).

³⁶ *Id.* at 247.

³⁷ *Id.* at 285. It is worth noting that Osiel is not suggesting that defined rules are unimportant. However, in the context of a very fast and fluid situation, most officers or soldiers will or may not have the wherewithal or knowledge to resort to specific rules or for that matter possess the skills to interpret them. Resorting to broader standards and virtues may prove more accessible.

³⁸ *Id.*

³⁹ *Id.* at 21–23.

constellation of independent and nonspecific virtues.⁴⁰ He posits that martial honor may help a soldier to identify the proper course of action where bright-line rules do not provide necessary guidance.⁴¹

Related to any of the resources identified by Minow or with respect to inculcating martial honor and generalized standards posited by Osiel, popular culture media, such as films, provide potentially (though certainly not exclusively) important tools to contemplate and perceive *ex ante* when it is appropriate to resist illegal orders or to question authority in accordance with principles of military honor and virtues such as courage. It is useful to remember that it can be a serious challenge to determine whether an order is unlawful or not (outside of instances where it is manifestly unlawful). Legal analysis for lawyers is not one that always takes place at the snap of a finger. It often requires sufficient thought and deliberation. Soldiers not equipped with sufficient legal training, but who are expected to come to snap legal judgments in moments of acute stress and immense flux, may need to rely on sources other than positive law. Military resistance films may illustrate ways and means in which to engage in disobedience in particular contexts and the reasons why they should be employed. Just as films may be useful as supplemental teaching instruments in law schools to understand concepts in a more accessible fashion, films may also teach and foster debate about when disobedience is appropriate, and morally and legally commanded.

The Article is divided into eight sections and examines a variety of films concerning the U.S. military. In the first section, I examine the role that films play in shaping legal normativity as part of a larger normative universe. Drawing from the work of law and film scholar Orit Kamir in particular, I argue that the law films discussed in this Article train viewers to judge resistance to unlawful military actions or forms of military oppression in a positive light, and more importantly, to view them as valid and necessary responses. The second section traces the evolution of military films and the degree to which themes of obedience and disobedience have transformed. The third section addresses military films that emphasize and positively project the importance of resistance which reflect certain trends in the case law concerning soldiers seeking refugee status after committing desertion.

⁴⁰ *Id.* at 18.

⁴¹ *Id.* at 37. Connected to these points more generally, the U.S. army has issued a document providing guidance about the key attributes that are essential to leadership. Army Doctrine Publication No. 6-22, *Army Leadership*, HEADQUARTERS, DEP'T OF THE ARMY (Aug. 1, 2012) <https://web.archive.org/web/20170329065917/http://usacac.army.mil/cac2/Repository/Materials/fm6-22.pdf>. For example: "An ideal Army leader has strong intellect, physical presence, professional competence, high moral character and serves as a role model." *See id.* at viii. The U.S. army articulates seven key values: loyalty, duty, respect, selfless service, honor, integrity, and personal courage. *Id.* at 2-2.

As such, the valorization of disobedience parallels certain realities witnessed in refugee jurisprudence, as well as expectations founded in international humanitarian law. In the fourth section, I examine the intersections of individual agency and disobedience. Specifically, I argue that such acts of disobedience are manifestations of individual agency in challenging illegal commands. Furthermore such resistive conduct can be construed as the outward expressions of an alternative vision of legal normativity. The fifth section analyzes how resistance is particularly legitimized in films where the basis for defiance is to save innocent lives. In the sixth section, I argue that a second dominant theme of such films is the justification of resistance to uncover and expose evidence of criminal wrongdoing. Drawing from the previous sections, the seventh section posits that these films portray resisters as true military leaders imbued with leadership skills and courage. In the eighth and final section, I examine how the resistance films discussed in the Article focuses on male-oriented resistance, while minimizing or leaving out the role of female resisters.

Through this Article and its constituent parts, I hope to demonstrate the existence of a cognizable theme of resistance in some U.S. military films, the potential relevance of the theme of resistance to the everyday world, and also the deficiencies of such films (at least with respect to gender representation and their limitations in over-emphasizing male agency).⁴² The military films I examine in this Article include: *Casualties of War*⁴³; *Courage Under Fire*⁴⁴; *Crimson Tide*⁴⁵; *A Few Good Men*⁴⁶; *The General's Daughter*⁴⁷; *Green Zone*⁴⁸; *Outbreak*⁴⁹; *Platoon*⁵⁰; and *Tears of the Sun*.⁵¹ I turn to these films because central aspects of their stories emphasize what I view as significant and/or identifiable narratives or themes of resistance. These stories, in turn, may influence or at least spark conversations about the sometimes legitimate and justified role of resistance in military life. Most, though not all of these films, have received, to varying degrees, a fair amount of exposure, at least in the time periods contemporaneous to

⁴² The theme of resistance is not limited to films about the military. It is also present in other contexts. See, e.g., Richard Brody, *What to Stream This Weekend: Five Films About the American Heritage of Resistance*, THE NEW YORKER (June 30, 2017) <http://www.newyorker.com/culture/richard-brody/what-to-stream-this-weekend-five-films-about-the-american-heritage-of-resistance>.

⁴³ CASUALTIES OF WAR (Columbia Pictures 1989).

⁴⁴ COURAGE UNDER FIRE (Twentieth Century Fox 1996).

⁴⁵ CRIMSON TIDE (Hollywood Pictures 1995).

⁴⁶ A FEW GOOD MEN (Columbia Pictures 1992).

⁴⁷ THE GENERAL'S DAUGHTER (Paramount Pictures 1999).

⁴⁸ GREEN ZONE (Universal Pictures 2010).

⁴⁹ OUTBREAK, *supra* note 2.

⁵⁰ PLATOON (Hemdale Film Corp. 1986).

⁵¹ TEARS OF THE SUN (Revolution Studios 2003).

when they were released and perhaps even today, though to a more modest and limited extent. In addition, one easily recognizes that, at least on a subjective level, these films do not operate at the same plateau in terms of story quality or degrees of complexity. In addition, many films have received different levels of acclaim or a lack thereof. My objective, explicit or otherwise, is not to equate them as being on par with one another in terms of filmmaking and/or storytelling quality. Even a film that does not demonstrate high artistic standards or one that receives critical acclaim may nevertheless warrant attention because of its accessibility for less discerning audiences. Ultimately, my focus here is on the subject matter, as it concerns resistance in military contexts, and not on the different perceptions of quality (or lack thereof) with respect to the films themselves.

I. FILMS, POPULAR CULTURE AND THE NORMATIVE UNIVERSE

There is an important nexus between law and mediums of popular culture such as film. One reason may simply be that films and their narratives constitute part of our normative universe. In his seminal article, Robert Cover posited that people inhabit a *nomos*, or normative universe, wherein they maintain a sense of what is right and wrong as well as what is lawful and unlawful.⁵² He observed that this *nomos* is comprised of current legal realities on one hand and visions of alternative (legal) futures on the other.⁵³ Cover argued that no legal institution or prescription could be separated from the larger narratives that situate them and give them meaning.⁵⁴ Such narratives, as located in various cultures, may inform law and legal discourse while the law simultaneously shapes culture.⁵⁵ Over the course of many centuries, such narratives may be situated in religious texts and classical literary works, as well as numerous oral and folk traditions. While narratives in these oral and literary traditions remain relevant for many reasons, including their normative value, popular culture in numerous societies is substantially expressed through visual means and less classical traditions. Accordingly, where might narratives of “meaning-making” be situated in today’s highly audio-visual world?⁵⁶

Producers of popular culture have, of course, generated plentiful legal narratives through films, television shows, plays, music, comic books and other media. Many of the stories conveyed through such

⁵² Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 4 (1983).

⁵³ *Id.* at 9.

⁵⁴ *Id.* at 4.

⁵⁵ See Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579 (1989).

⁵⁶ It is worth noting that films and television series are also prominent mediums for storytelling in various parts of the world outside of North America.

media have proven to be insightful and riveting. However, these narratives do more than just entertain. Films and other popular culture productions are important vehicles for the transmission of cultural norms and general understandings,⁵⁷ as well as about law and legal systems (and the various problems that may reside therein).⁵⁸ Works of popular culture thus possess a normative value too.⁵⁹ Building from Cover's observations, Richard Sherwin contends that films form part of this normative universe of "meaning-making". He posits that films supply "at least some of the narratives and the storytelling styles that situate our being in a normative world."⁶⁰ They also offer in Sherwin's words, "normative visions that may point us toward some possible future."⁶¹ Sarat and Ogletree assert that moving images "always project alternative realities that are made different by their invention and by the editing and framing on which the moving image depends."⁶² Viewers may interpret situations they confront in their lives in a manner consistent with a culture's dominant narratives and those narratives that they are familiar with. Audiences may be receptive to products of popular culture because they reflect dominant ideologies of a particular society, including gender roles, shared stereotypes and economic systems, such as capitalism.⁶³ Visual narratives can be particularly impactful from a normative perspective. As Kimberlianne Podlas posits, stories are imbued with great power.⁶⁴ Podlas further states that, because films can reach a widespread audience and offer alternative and more accessible visions of legal normativity⁶⁵ to the public at large,⁶⁶ scholars

⁵⁷ James J. Dowd, *Understanding Social Mobility Through the Movies*, CINEMATIC SOCIOLOGY 60 (Jean-Anne Sutherland & Kathryn Feltey, 2d ed., 2013).

⁵⁸ See, e.g., Kent Roach, *Reforming and Resisting Criminal Law: Criminal Justice and the Tragically Hip*, 40 MAN. L.J. 1 (2017).

⁵⁹ As Ogletree, Jr. & Sarat state: "While we know relatively little about *how* images of law and politics on television and in film are consumed by their viewers or about the impact of viewing those images on popular expectations and attitudes regarding law, we do know that popular culture has 'invaded' law and reshaped some of its most fundamental processes." Ogletree, Jr. & Sarat, *supra* note 8, at 4.

⁶⁰ Richard Sherwin, *Nomos and Cinema*, 48 UCLA L. REV. 1519, 1526 (2001). Sara Steinert Borella argues that in a broader sense: "Narrative provides us with paradigms and examples, with structures and clear points of identification that help us make sense of our own selves and the world around us." Sara Steinert Borella, *Giù le mani dalla mia storia: Narrating Regional Identity Politics in Ticino*, in INTERSECTIONS OF LAW AND CULTURE 102 (Priska Gisler, Sara Steinert Borella & Carolina Wiedmar eds., 2012). Similarly, Asimow & Mader articulate that "we 'construct' our view of reality by working with information that is derived in part from works of popular culture." Asimow & Mader, *supra* note 9, at 65.

⁶¹ Sherwin, *supra* note 60, at 1526.

⁶² Ogletree, Jr. & Sarat, *supra* note 8, at 5.

⁶³ Asimow & Mader, *supra* note 9, at 7.

⁶⁴ Kimberlianne Podlas, *Guilty on All Accounts: Law & Order's Impact on Public Perception of Law and Order*, 18 SETON HALL J. SPORTS & ENT. L. 1, 7 (2008).

⁶⁵ This is notwithstanding the beneficial presence of many online legal databases such as *Findlaw*, *Justia*, *Oyez*, and the *Legal Information Institute* (and its counterparts in various countries around the world).

would be remiss to ignore these visual jurisprudential texts and their potential impact and influence.⁶⁷ They are sources that need to be examined and scrutinized.

It is also worth noting that audiences are not just passive viewers who may be impacted by films. They have agency. Viewers can self-consciously draw lessons from films to apply and take affirmative steps in their lives.⁶⁸ In this vein, they may provide what Skip Dine Young refers to as “equipment for living”.⁶⁹ In addition, it should not be forgotten that, in considering the impact of films and other popular culture media, stories are likely to be received in different ways. Drawing from Steiger, Asimow and Mader observe:

How a person is likely to interpret a text, and make a rational or emotional connection of that text to his or her own life, depends critically on such factors as the person’s class, race, gender, or political views, the other texts that the person has previously consumed, the viewer’s expectations and mood, and the time and place that the interpretation occurs.⁷⁰

Accordingly, while some viewers may accept or be more accepting of a film’s messages, others might resist the intended message of a film’s producers or adopt a different interpretation.⁷¹

As part of the process of meaning-making, films may perform several functions. For instance, Orit Kamir articulates that films train and mold viewers and audiences in judgment, while examining and reinforcing legal norms, logic and structures.⁷² She asserts that, by leading viewers through cinematic judgments constituting notions of justice, equality, honor and gender, films have the potential to mold public actions and reactions.⁷³ Kamir further posits that, like judicial decisions, films engage in judgment with respect to particular matters

⁶⁶ WILLIAM P. MACNEIL, *LEX POPULI: THE JURISPRUDENCE OF POPULAR CULTURE* 1–2 (2007).

⁶⁷ For instance, Victoria Salzmann observes that, particularly with respect to children watching excessive violence on television (although presumably movies also serve as a source of such violence) may come to believe that violence is an acceptable way to deal with conflict. Victoria Salzmann, *Honey, You’re No June Cleaver: The Power of “Dropping Pop” To Persuade*, 62 *ME. L. REV.* 241, 244 (2010). Perhaps more than violent films, the interactive nature of modern videogames and the violence they contain likely has a much greater impact on children and adolescents. See DAVE GROSSMAN, *ASSASSINATION GENERATION: VIDEO GAMES, AGGRESSION, AND THE PSYCHOLOGY OF KILLING* (2016).

⁶⁸ SKIP DINE YOUNG, *PSYCHOLOGY AT THE MOVIES* 154 (2012).

⁶⁹ *Id.* at 153–70. As Young elaborates: “When we say that a movie had an impact on us, we are treating the film as the active agent. Sometimes however, we self-consciously use a film for our own purposes. We apply the film to our lives, and it serves a particular function. In this scenario, we are the agents and movies are the tool.” *Id.* at 154.

⁷⁰ Asimow & Mader, *supra* note 9, at 11.

⁷¹ *Id.* at 15–16.

⁷² Orit Kamir, *Why ‘Law-and-Film’ and What Does it Actually Mean? A Perspective*, 19 *CONTINUUM: J. OF MEDIA & CULTURAL STUD.* 255, 268 (2005).

⁷³ *Id.*

and issues. She observes that a “law-film can be read as passing cinematic judgement when, in addition to portraying an on-screen fictional legal system, it offers alternative cinematic constructions of subjects and societies,⁷⁴ of justice and judgment.”⁷⁵ Furthermore, “a law-film may constitute a community and value system that criticizes or undercuts those supported by its fictional legal system.”⁷⁶ Films may also play a key role in the construction of individuals and groups in contemporary societies.⁷⁷ For instance, soldiers who engage in disobedience to unlawful orders may be constructed as noble characters deserving of our sympathy.

As I shall demonstrate further below, numerous military law-films help to mold viewers in judgment about the virtue of disobedience in military power structures with context-specific circumstances. Rather than extolling the virtues of disobedience in all cases (which would be entirely reckless), resistance through disobedience and the questioning of illegal orders are fostered as having a normative value in specific instances. It is fostered particularly in cases where lives are either lost or in danger of being lost when military actors of various ranks fail to resist. Military law-films also place importance on the value of “truth-seeking” and “truth-revealing” conduct when there are attempts to obscure and hide military misconduct. Those who engage in or are sympathetic to challenging authority are constructed in largely positive frames, embodying certain values, while those championing obedience are portrayed and judged as simplistic, simple-minded, malevolent and misguided. Connecting back to Osiel’s points discussed earlier on the importance of training soldiers in judgments rooted in martial virtues, military films may provide an important source in the intellectual and imaginative diet of those serving or who may one day decide to serve in the armed services. Films may do so by encouraging certain forms of judgments about the value of disobedience and the need to protect certain classes of people from illegal or improper exercises of military power.

II. OBEDIENCE AND DISOBEDIENCE IN MILITARY FILMS

Before examining specific themes and instances of disobedience as depicted in various military films noted in the introduction of this Article (many of which were produced in the 1990s), it may be helpful

⁷⁴ *Id.* at 269; see Michael Green, *American Sniper Perpetuates Hollywood’s Typical Arab Stereotypes*, THE CONVERSATION (Feb. 4, 2015), <https://theconversation.com/american-sniper-perpetuates-hollywoods-typical-arab-stereotypes-36856>.

⁷⁵ Kamir, *supra* note 72, at 269.

⁷⁶ *Id.*

⁷⁷ *Id.* at 272; see also MICHAEL PAUL ROGIN, RONALD REAGAN THE MOVIE: AND OTHER EPISODES IN POLITICAL DEMONOLOGY (1987).

to situate these military resistance narratives within the broader development of films concerning war and military justice over the past century. When motion pictures increasingly emerged as an attractive form of storytelling in the twentieth century, many looked to narratives rooted in the law and, particularly, courtroom dramas for entertainment.⁷⁸ This extended to themes concerning military justice. Films portraying military justice might be characterized as a unique sub-genre, which, as Greenfield *et al.* observe, focuses heavily on national security matters and military discipline within very specific and distinctive cultures.⁷⁹ They identify that the “general narrative approach that recurs is the contrast between the inflexibility and higher purpose of the state . . . and the challenge of justice in the form of the soldier/sailor/airman.”⁸⁰

The projection of a positive role for military personnel to engage in resistance has been a recurring theme within various films over several decades. However, this was not the case at all times. Visual representations of military life have not always stressed the value of resistance and the challenge of authority over dominant concepts such as obedience. Indeed, much of the allure associated with military life has traditionally been, and continues to be, the sense of discipline, duty, bravery and loyalty that it signifies for its members and would-be entrants.⁸¹ Military life and the value systems that embody it can be considerably attractive for those who subscribe to them fervently and who enlist as a consequence.⁸² Mediums of popular culture can promote such values. For instance, during World War One, British newspapers and magazines featured photos depicting military life in an affirmative manner highlighting masculinity, honor, patriotism and courage as a method of attracting new recruits to fight the Kaiser’s powerful army.⁸³ Films such as *Hearts of the World* and *Shoulder Arms*, which were created near the end of the war, were supportive of the war effort against Germany while constructing Germans in a particular negative light.⁸⁴ Though the 1920s and 1930s featured numerous films with anti-

⁷⁸ See STEVE GREENFIELD, GUY OSBORN & PETER ROBSON, *FILM AND THE LAW* (2d ed., 2010).

⁷⁹ *Id.* at 80.

⁸⁰ *Id.* at 82.

⁸¹ Though it should not be sidestepped that for many, much of this allure is also tied to the desire to engage in combat and the ability to kill a real or perceived enemy.

⁸² This is also captured in film. In *A Few Good Men*, two marines assert that their attraction to life in the Marine Corps stems from living their life by a certain code—“Unit, corps, God, country.” See *A FEW GOOD MEN*, *supra* note 46.

⁸³ See Jayne Tynan, *The Lure of Discipline: Military Aesthetics and the Making of the First World War Civilian Soldier*, 2 *PHOTOGRAPHY & CULTURE* 135 (2010).

⁸⁴ ROBERT EBERWEIN, *THE HOLLYWOOD WAR FILM* 18 (2010). With respect to *Hearts of the World*, D.W. Griffiths created the film at the behest of the British government to spur American involvement into the war. *Id.* By the time the film was released, the United States joined the war effort along with Britain and France. *Id.*

war themes following the losses of World War One, there was a resurgence of pro-war films regarding The Great War in the latter half of the 1930s in anticipation of war with Nazi Germany.⁸⁵ Such themes were similarly reinforced in films produced during World War Two to highlight the importance of the war effort.⁸⁶ In a study canvassing films about military justice spanning several decades from the 1940s to the 1980s, Rothman *et al.* observe that, between the mid-1940s and the 1960s, military films tended to portray a more positive image of obedience and the military.⁸⁷ They assert:

Positive military characters of the first two decades evince a strong moral commitment to military life. They exercise or obey authority that is considered legitimate, even when it disrupts their personal lives or goes against personal wishes. Those who act selfishly instead of adapting to the institution, whether they are authorities or subordinates, usually end badly.⁸⁸

These earlier years of military films thus marked a valorization of obedience. Those who obeyed, despite their misgivings, were viewed as self-sacrificing and noble figures, for they checked their personal feelings to advance the interests of the larger good. This was consistent with the consensus building strategies of the time in light of the perceived dangers of communism.⁸⁹

In the subsequent years and coinciding with the rise of the civil rights and women's liberation movements, as well as the growing dissent concerning U.S. involvement and atrocities in Vietnam, a new model emerged where authority was to be questioned more readily and authority figures were portrayed in a more critical light. Rothman *et al.*

⁸⁵ *Id.* at 19.

⁸⁶ Stephen Vaughn, *Ronald Reagan, Warner Bros., and Military Preparedness, 1937–1945*, 3 *FILMHISTORIA* 165 (1993). War films also represented the Germans and Japanese to highlight their purported treachery and worthiness to be killed. See Thomas B. Christie & Andrew M. Clark, *Framing Two Enemies in Mass Media: A Content Analysis of U.S. Government Influence in American Film during World War II*, 25 *AM. JOURNALISM* 55 (2008); J. David Slocum, *Cinema and the Civilizing Process: Rethinking Violence in the World War II Combat Film*, 44 *CINEMA J.* 35 (2005).

⁸⁷ This has certain parallels in the area of United States historiography. During the 1950s to mid-1960s, there was a consensus focusing on what made the United States strong. By the mid-to-late 1960s, the consensus gave way to critiques on the basis of race, gender and class. PETER NOVICK, *THAT NOBLE DREAM: THE 'OBJECTIVITY QUESTION' AND THE AMERICAN HISTORICAL PROFESSION* (1998).

⁸⁸ Stanley Rothman, David J. Rothman & Stephen P. Powers, *Hollywood Views the Military*, 28 *SOCIETY* 79, 80 (1990). In many ways, military life involves a commitment that has placed soldiers in various countries in a valued if not exalted place. During British rule in India, colonial officials constructed the notion of 'martial races' signifying those populations suited for military life and those that were incapable of living up to the demands of imperial standards. Of course, many of those deemed to fall within the label of 'martial race' tended to help the British retain control. Those who opposed were demonized and labeled as passive and effeminate. See THOMAS R. METCALF, *IDEOLOGIES OF THE RAJ* 125–28 (1995).

⁸⁹ See Novick, *supra* note 87.

observe that conflicts between individuals and military authority have been “resolved by the Hollywood elite in favor of the individual.”⁹⁰ They further posit that, “[those] in authority are suspect and do not shape the course of events the story takes. Hollywood soldiers write their own orders and solve moral problems of war by themselves.”⁹¹ For Rothman *et al.*, the individual initiative of the resistant soldier willing to defy the chain of command is unduly valorized at the expense of discipline and respect for authority.⁹² They conclude that, while during the Reagan presidential years (1981–89), there was a perception of a resurgence of patriotism in American films (i.e. *Rambo: First Blood Part II*; the *Missing in Action* trilogy),⁹³ such films stood alongside other films critical of the military establishment and atrocities committed during armed conflicts, such as *Born on the Fourth of July*, *Platoon* and others.⁹⁴ Carl Boggs and Tom Pollard similarly note the co-existence of military films that are both supportive and critical of the military and its leadership. However, they take a different view of the prevailing themes. Unlike Rothman *et al.*, Boggs and Pollard generally conclude that the overwhelming themes of military films throughout the years are generally more supportive of a pro-military stance. To the extent that there have been films critical of war and U.S. military policy, Boggs and Pollard posit that such films were seriously compromised by the incorporation of traditional combat-genre themes or countered by the appearance of works, often quite popular in their own right, that ran against the antiwar motifs.⁹⁵ While it is certainly true that more films could and should exhibit explicitly anti-war themes, it is also important for war films to illustrate the importance of challenging oppressive power, even if the central theme is not to challenge the validity of war in general.

⁹⁰ Rothman *et al.*, *supra* note 88, at 84.

⁹¹ *Id.*

⁹² Lieutenant Colonel and psychologist, Dave Grossman, has articulated that one of the important things that a drill sergeant in boot camp imparts is obedience. Grossman argues that violence and killing in earlier films were depicted as being authorized by law. In later films, including films about police and law enforcement, Hollywood productions have highlighted vigilantes as heroes with their inherent quest for vengeance and violence. See DAVE GROSSMAN, ON KILLING: THE PSYCHOLOGICAL COST OF LEARNING TO KILL IN WAR AND SOCIETY 319–20 (1995).

⁹³ However, even in these films, characters such as Rambo similarly disobey orders of questionable authority figures. It should be noted that the *Rambo* films, along with the *Missing in Action* series, represent a conservative resistance to “liberal” cultural values, which purportedly led to America’s defeat in Vietnam and the proliferation of crime. This was also reflected in other vigilante films, such as Clint Eastwood’s 1971 film *Dirty Harry* and Charles Bronson’s 1974–1994 *Death Wish* films. See Lary May, *Redeeming the Lost War: Backlash Films and the Rise of the Punitive State*, PUNISHMENT IN POPULAR CULTURE (Charles J. Ogletree, Jr. & Austin Sarat eds., 2015).

⁹⁴ Rothman *et al.*, *supra* note 88. Nevertheless there were films during this period such as the 1986 Tom Cruise film *Top Gun* that stressed the importance of being a team player and playing by the rules (or at least the more significant ones).

⁹⁵ BOGGS & POLLARD, *supra* note 9, at 89–90.

Over the past two decades, and probably more so since Al-Qaida's deadly criminal attacks on September 11, 2001, there has arguably been a heightened emphasis on more positive images of the military that stress loyalty and service to the country. This is probably reflective of closer ties between the U.S. government and Hollywood film producers in the years following the attacks of September 11.⁹⁶ In connection with these closer ties, Andersen and Mirrlees posit that:

In the decade following 9/11, U.S. media corporations rolled out many "militainment" products that mixed militaristic messages and imagery with entertainment formats. TV network news departments jumped onboard the war effort by helping the Bush Administration sell the bombing of Afghanistan and the invasion of Iraq.⁹⁷

As one particular instantiation of this, Robin Andersen examines the production of the film *Act of Valor*.⁹⁸ Andersen observes that in *Act of Valor*, Navy Seals are constructed as an elite (and certainly masculine) warrior caste emphasizing bonds of loyalty to each other while defending the nation against a hyper-threatening world.⁹⁹ In many ways, the message behind *Act of Valor* was supposed to counter the earlier films critical of war about the Vietnam era and militarism itself.¹⁰⁰ However, such hyper-patriotic fare did not monopolize the film landscape, as other works concerning the Iraq war and occupation provided more critical narratives.¹⁰¹

The increased representation of hyper-patriotic military films (or other similar productions concerning government agencies such as the CIA), even while countered by more critical films, nevertheless obscures the value of justified resistance and validity of challenging of

⁹⁶ In addition to a possibly more patriotic stance, there is, of course, a rather compelling economic motive to diminish dissent in military films. As Carl Boggs and Tom Pollard assert: "Given the huge budgets needed to make high-profile mainstream films, the odds against projects with distinctly antiwar themes, or with narratives that focus on Pentagon misconduct, strategic blunders, misuse of funds, or botched war planning—not to mention possible atrocities or war crimes committed by U.S. forces—have risen dramatically." BOGGS & POLLARD, *supra* note 9, at 5. While this is true to some extent, there have been films that have been critical of U.S. military conduct, many of which were released around the time that Boggs' and Pollard's book was published or thereafter. This includes a film such as *Green Zone*, discussed below. However, this being said, the general theme of their book seems to be that with the exception of certain and several key movies, the overall thrust of American military films appears to be in support of military adventures.

⁹⁷ Andersen & Mirrlees, *supra* note 20, at 3. However, the ties between the U.S. government and the entertainment industry certainly pre-existed the events of September 11, 2001. See Deepa Kumar & Arun Kundnani, *Imagining National Security: The CIA, Hollywood, and the War on Terror*, 26 DEMOCRATIC COMMUNIQUÉ 72, 73–75 (2014).

⁹⁸ Robin Andersen, *Act of Valor: Celebrating and Denying the Brutalities of an Endless and Global U.S. War*, 26 DEMOCRATIC COMMUNIQUÉ 22 (2014).

⁹⁹ *Id.* at 25.

¹⁰⁰ *Id.* at 24. Such rebranding efforts are not limited to the military, but also extend to the Central Intelligence Agency and its operations. See Kumar & Kundnani, *supra* note 97.

¹⁰¹ ROBERT EBERWEIN, *THE HOLLYWOOD WAR FILM* 134–135 (2012).

government authority. Also, the emphasis on the value of warfare may have the effect, as Thomas Ærvold Bjerre contends, of portraying U.S. soldiers as war junkies.¹⁰² It should not be surprising then that the majority of the resistance-themed films discussed below were produced in the pre-9/11 era and/or post-Cold War period. Given the fall of the Soviet Union as a significant world power, much of the 1990s may have seemed to be a “safer” cultural environment for filmmakers to explore themes of resistance and the challenge of authority in the military context. There were fewer obvious enemy states of significance that the U.S. government were facing down, against which U.S. forces would be deployed.¹⁰³ However, it is also worth noting that, even in an era where a state is engaged in an armed conflict or several (as has been the case since 9/11), being openly critical of the less flattering aspects of their country’s military and political record is no less an act of patriotism—for they speak out and call attention to wrongs (including criminal acts and abuses of power) that have been committed or continue to be committed. One of the stronger messages that military resistance films can project is that, while war may be horrific and often cruel, combatants and their superiors do not hold *carte blanche* to do as they please in the midst of the chaos. It furthermore advances the position that soldiers (and other operatives) can play an agentive role as moral and legal actors by defying unlawful orders and criminal acts by fellow state actors. One might go so far as to say that depicting resistance by soldiers and/or officers is not signaling an anti-war or anti-military stance at all. Those who engage in resistance may not object to the necessity of war in all circumstances, but perhaps to a particular war that is unlawful (in that it is not waged in justifiable self-defense or otherwise in compliance with the Charter of the United Nations (U.N.)) or particularly unlawful means and methods being employed. Drawing attention to and/or criticizing such conduct is a necessary and useful check on the destructive power that the military wields (even when ultimately directed by civilian leadership). I might add that disobedience within the military is not limited to films and television programs. In the next section, I speak about how military resistance films parallel real life acts of disobedience, signifying that such films are not mere flights of fancy but are inspired by, or even parallel to, real world issues and events.

¹⁰² See Thomas Ærvold Bjerre, *Authenticity and War Junkies: Making the Iraq War Real in Films and TV Series*, 4 J. WAR AND CULTURE STUDIES 223 (2011).

¹⁰³ However, this does not mean the 1990s were a time of peace. There was increased terrorist activity by domestic militias and some activity by foreign-born terrorists. While many attacks by domestic terrorists took place on U.S. soil, others were perpetrated by foreign-born terrorists in the U.S. as well as on foreign soil.

III. FILM PARALLELING LAW

While scholars such as Rothman *et al.* appear to lament the valorizing of disobedience in military films, in real world conflict situations, there are circumstances where soldiers are indeed expected to disobey orders. In other circumstances, their resistance is de facto legitimized even if not specifically authorized. This applies even in situations where their own lives may be imperiled by doing so. Drawing once again from Orit Kamir, one may argue here that films valorizing resistance are not mere fantasy or a manifestation of a particular political view. Rather, it mirrors, to some extent, law or actual legal phenomena.¹⁰⁴ Indeed, public international law recognizes the importance of resistance amongst officers and soldiers to unlawful orders in two ways. First, it does not offer those who have been ordered to commit serious international crimes such as genocide or crimes against humanity an excuse for obeying orders to commit such crimes. Second, it extends qualified protection to those who do resist by refusing to obey and/or desert if they choose to do so. I discuss examples of each.

First, international law has traditionally denied those who commit international crimes an excuse based on a theory of a superior orders defense. The superior orders defense was rejected by the International Military Tribunal (IMT) at Nürnberg. The fourth principle drawing from the judgment of the IMT was that, “[t]he fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.”¹⁰⁵ Under current international law as articulated in the *Rome Statute*, superior orders may however serve as a legitimate defense if the soldier was under a legal obligation to obey orders of the government or a superior officer, had no knowledge that the act was unlawful and the act itself was not manifestly illegal.¹⁰⁶ For greater clarity, the *Rome Statute* indicates that genocide and crimes against humanity are manifestly unlawful crimes, but does not include war crimes *per se*.¹⁰⁷

Even where a soldier is clearly aware of the manifestly unlawful

¹⁰⁴ Kamir, *supra* note 72.

¹⁰⁵ *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, U.N. Doc. A/1316 (1950), http://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf.

¹⁰⁶ Rome Statute of the International Criminal Court art.33, July 17, 1998, 2187 U.N.T.S. 90. There are, of course, challenges to determining whether something is manifestly illegal and whether compliance with acts that are merely illegal should go unpunished. Osiel contends that liability should extend to both manifestly illegal and illegal crimes. He does however allow that there should be a defense of reasonable error, particularly in grey areas between legal and illegal acts. See Osiel, *supra* note 35, at 291; *but see c.f.* Minow, *supra* note 29.

¹⁰⁷ Rome Statute of the International Criminal Court art.33, July 17, 1998, 2187 U.N.T.S. 90.

nature of the actions they are ordered to commit and verbally register their objection, their compliance may be secured through explicit threats of violence and death. Under such circumstances, the defense will not necessarily be availing. During the armed conflict that transpired in the former Yugoslavia in the early 1990s, soldiers of Republika Srpska were expected to carry out a number of illegal killings of non-combatants as part of a campaign of ethnic cleansing. One of these individuals was Drazen Erdemovic, who was ordered to participate in the mass murder of Bosnian Muslim men at a collective farm. When he expressed reluctance, his superiors advised him that if he did not fire his weapon at the proposed victims, he would soon join the intended victims. He complied. After being prosecuted before the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), he launched an appeal where he argued, amongst other points, that he was compelled to fire his weapon lest he be killed himself.¹⁰⁸ The ICTY's Appeals Chamber held that duress did not serve as a complete defense to a soldier charged with war crimes and/or crimes against humanity in connection with the killing of innocent human beings.¹⁰⁹ In their joint separate opinion, Judges McDonald and Vohrah furthermore posited that soldiers, given the nature of their job, were naturally expected to sacrifice their own lives, if necessary, in order to actively prevent a wrong or for refusing to carry out unlawful orders.¹¹⁰

Second, international law encourages resistance by way of protections afforded under refugee law. Decisions by national refugee tribunals, as well as those by courts reviewing asylum adjudications, have demonstrated that numerous soldiers have indeed been willing to defy superior orders by questioning or disobeying illegal orders followed by their desertion to avoid punishment for doing something justifiable.¹¹¹ Such defiance however, leads to the threat of persecution, through the form of state prosecutions for desertion, draft evasion, and/or refusal to carry out such unlawful orders. Whether through the grant of asylum or the recognition that certain acts of disobedience as a matter of law manifest a political opinion, numerous decisions demonstrate the willingness of judicial and quasi-judicial actors to

¹⁰⁸ Prosecutor v. Erdemovic, Case No. IT-96-22-A, Judgment, ¶ 4 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 7, 1997), available at <http://www.icty.org/x/cases/erdemovic/acjug/en/erd-aj971007e.pdf>.

¹⁰⁹ *Id.*, ¶ 19; *but cf.* Rome Statute of the International Criminal Court, art. 31(1)(d), July 17, 1998, 2187 U.N.T.S. 90.

¹¹⁰ Prosecutor v. Erdemovic, Case No. IT-96-22-A, Joint Separate Opinion of Judge McDonald and Judge Vohrah, ¶ 84 (4 Int'l Crim. Trib. For the Former Yugoslavia Oct. 7, 1997), available at <http://www.icty.org/x/cases/erdemovic/acjug/en/erd-asojmcd971007e.pdf>.

¹¹¹ See *Tagaga v I.N.S.*, 228 F.3d 1030 (9th Cir. 2000); *Barraza Rivera v. I.N.S.*, 913 F.2d 1443 (9th Cir. 1990); *Marvine Howe, South African Draft Evader Is Granted Asylum in U.S.*, N.Y. TIMES (April 7, 1990), <http://www.nytimes.com/1990/04/07/nyregion/south-african-draft-evader-is-granted-asylum-in-us.html>; see also Khoday 2011, *supra* note 22.

legitimize the validity of military resisters defying orders that call for actions that are contrary to the basic rules of human conduct.¹¹² They have included refusal to: participate in the South African Defense Forces in order to enforce Apartheid;¹¹³ be complicit in the use of chemical weapons in contravention of international humanitarian law;¹¹⁴ participate in an unlawful armed conflict in violation of the *jus ad bellum*;¹¹⁵ and/or participate in violations of norms relating to the *jus in bello*.¹¹⁶ It stands to reason that the willingness to challenge military authority in real life should reasonably and legitimately translate to depictions on the silver screen. Depicting disobedience in the military is not merely some sensationalist fantasy of Hollywood producers and writers or a product of their wishful thinking, but may indeed reflect conduct that has and is transpiring in a number of real world legal cases. Perhaps just as importantly, they serve as a source of inspiration and a normative model to follow.¹¹⁷

Refocusing on United States military law, legal norms speak to obligations of subordinates to follow certain orders. Under the *Uniform Code of Military Justice*, soldiers are expected to follow only the lawful commands of superior officers.¹¹⁸ By implication, this would suggest that they are at least under no obligation to follow unlawful orders and, indeed, there may be a duty to disobey. The failure to disobey may give rise to prosecution. However, U.S. military law follows the principle that merely obeying an unlawful order will not give rise to criminal liability except where orders were manifestly unlawful.¹¹⁹ The line between what is manifestly unlawful and unlawful *simpliciter* can be confusing and uncertain. As Osiel articulates, liability should extend to both manifestly unlawful and simply unlawful crimes, but also leave open a reasonable error defense in connection with respect to obeying

¹¹² United Nations High Comm'r for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, ¶ 171 (1992) [UNHCR Handbook].

¹¹³ Howe, *supra* note 111.

¹¹⁴ See, e.g., Zolfagharkhani v. Canada, 1993 CarswellNat 89 (Can. C.A.) (WL).

¹¹⁵ See, e.g., Al-Maisri v. Canada (Minister of Emp't and Immigration), 1995 CarswellNat 133 (Can. C.A.) (WL).

¹¹⁶ See, e.g., Commission des Recours des Refugies [C.R.R.] [Refugee Appeal's Board] July 5, 2007, No. 597325, I.; Mohamed v. Canada (Minister of Emp't & Immigration), 1994 CarswellNat 1848 (Can. C.A.) (WL); Tagaga v. I.N.S., 228 F.3d 1030, 1034 (9th Cir. 2000).

¹¹⁷ Yair Auron, *The Forty Days of Musa Dagh: Its Impact on Jewish Youth in Palestine and Europe*, in REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE (Richard G. Hovannisian ed., 1998). Auron writes about how a written work describing resistance to the Armenian genocide during World War One by the Ottoman Empire served as an inspiration to Jewish resistance in Eastern Europe during the 1940s.

¹¹⁸ 10 U.S.C. § 892 (2012), art. 92.

¹¹⁹ Minow, *supra* note 33, at 21; Osiel, *supra* note 35, at 5, 56–58, 280–96. This is similar to the Canadian context. See, e.g., R. v. Liwyj, 2010 C.M.A.C. 6, 415 N.R. 143; C.E. Thomas, *R. v. Liwyj: Can a Soldier be Punished for Disobeying an Unlawful Command?*, 88 C.R. (6th) 352 (2012).

unlawful orders.¹²⁰

In varying degrees, military actors from the highest ranked officer to the lowest ranking soldier in the field can hold tremendous power over the lives of others. The potential for abuse absent sufficient safeguards and oversight is manifest. Much of the oversight, assuming there is any to really speak of in a given system, is reactive. However, who polices illegality or questionable conduct while a potential danger or calamity is unfolding? It is often a military actor who is expected to intervene or resist where necessary.¹²¹ Circumstances will not always permit outside intervention to mobilize in a timely fashion (and this is assuming such assistance is even available), particularly where there is an urgency to save lives. Resistance in such cases may be viewed as legitimate as well as necessary. Several films represent resistance as desirable to achieve the objective of saving lives. The following sections tackle this theme.

IV. DISOBEDIENCE, INDIVIDUAL AGENCY AND LEGAL SUBJECTIVITY

The films discussed in this Article demonstrate a valorization of resistance by soldiers in connection with two central themes—the preservation of life and ensuring that military crimes are brought to light and addressed. Such resistance contains a normative element. When military actors choose whether to obey orders or not, this involves, on some level, a judgment about the legality of the order they are disobeying or military conduct they are opposing.¹²² Military resistance films not only project the capacity of individuals to act courageously, but also their ability as legal subjects to justify their defiance through

¹²⁰ Thomas takes a similar approach, arguing that the higher standard of manifest unlawfulness should not be required for a conviction if the order was merely unlawful and the soldier followed it. See Thomas, *supra* note 119.

¹²¹ For an example of the capacity of lower ranking soldiers to halt an impending atrocity, see Refugee Appeal No. 2248/94 Re ZH (N.Z. Refugee Status App. Auth. 1995), available at http://www.nzrefugeeappeals.govt.nz/PDFs/Ref_19951207_2248.pdf.

¹²² In some cases, though the act is technically illegal, the soldier's act may be viewed as having broader legitimacy. For example, Captain Robert Semrau of the Canadian Armed Forces had terminated the life of a mortally wounded Afghan combatant to spare the latter from further agony. In a military court-martial, he was charged with second-degree murder, attempted murder, negligent performance of duty, and disgraceful conduct. The court-martial comprised of four CAF members acquitted Semrau of all charges save for the latter charge of disgraceful conduct and discharged him from the CAF. Despite his conduct technically meeting the elements of murder, the panel arguably engaged in an act of "judicial nullification". Michael Friscolanti, *Capt. Robert Semrau dismissed from the Forces: Canadian soldier avoids jail time for shooting a wounded insurgent in Afghanistan*, MACLEAN'S (Oct. 5, 2010), available at <http://www.macleans.ca/news/canada/capt-robert-semrau-dismissed-from-the-forces/>; Richard J. Brennan & Bruce Campion-Smith, *Capt. Robert Semrau Found Not Guilty of Murder*, THE TORONTO STAR (July 19, 2010), https://www.thestar.com/news/canada/2010/07/19/capt_robert_semrau_found_not_guilty_of_murder.html. I am grateful to Jonathan Avey for bringing this case to my attention.

compelling interpretations of applicable norms. Drawing from the late Roderick Macdonald, such non-conforming behavior of individual subjects can be viewed as an expression of an alternative vision of legal normativity and not solely as just an act of civil disobedience (or, more generally, other forms of resistance).¹²³ This echoes Frédéric Mégret's astute observation that resistance is "often inspired by an alternative vision of what law is or should be" and is thus not an a-legal activity.¹²⁴ Soldiers are not solely objects upon which orders are imposed. Rather, they are legal subjects imbued with the capacity to critically examine orders in relation to their duties and obligations with respect to the rights of others. In these films, as in critical legal pluralist literature, human thought and agency are given significant value.¹²⁵

How might one define individual human agency? Amartya Sen identifies it as an individual's capacity to act and bring about change and emphasizes the role of that individual as a member of the public and as a participant in economic, social and political actions.¹²⁶ Sen observes that "[u]nderstanding the agency role is thus central to recognizing people as responsible persons: not only are we well or ill, but also we act or refuse to act, and can choose to act one way rather than another. And thus we—women *and* men—must take responsibility for doing things or not doing them."¹²⁷ Furthermore, as I have argued elsewhere, agency also includes the capacity and role of the individual to act as a participant in "legal actions."¹²⁸ This may involve individuals participating in actions that are in furtherance of (or in accordance with) law or principles espoused within a legal system and in opposition of illegality or criminality (however social tolerated or accepted they might be).¹²⁹ Alternatively, they may challenge such norms and principles (or perhaps just the manner in which they have been interpreted and enforced) through resistance and where such defiance constitutes an unlawful act.¹³⁰

¹²³ See Roderick A. Macdonald, *Metaphors of Multiplicity: Civil Society, Regimes and Legal Pluralism*, 15 ARIZ. J. INT'L & COMP L. 69, 79 (1998).

¹²⁴ Frédéric Mégret, *Not "Lambs to the Slaughter": A Program for Resistance to Genocidal Law*, in CONFRONTING GENOCIDE 15 (René Provost & Payam Akhavan, eds., 2011). Mégret further asserts that in the context of resisting genocide or genocidal activity, "there is a sense in which genocide resistance and prevention is a norm inspired activity, either because it targets laws directly or, more generally, because it posits itself as a challenge and alternative to that law." *Id.*

¹²⁵ Martha-Marie Kleinhans & Roderick A. Macdonald, *What is a Critical Legal Pluralism?* 12 CAN. J.L. & SOC'Y. 25 (1997).

¹²⁶ AMARTYA SEN, DEVELOPMENT AS FREEDOM 19 (1999).

¹²⁷ *Id.* at 190.

¹²⁸ See Khoday 2011, *supra* note 22, at 580.

¹²⁹ See *Klinko v Can. (Minister of Citizenship & Immigration)*, [2000] 3 F.C. 327 (Can. C.A.).

¹³⁰ Sen's description seems to only imply adult men and women as agents rather than including those who are below the age of majority. To a degree, I believe that we also need to consider children as agents who are capable of acting as participants in economic, social, and political (as well as legal) actions. For an example of children acting as agents, although not necessarily in a

The importance of exercising one's agency to resist manifestly unlawful crimes (e.g. genocide, crimes against humanity or serious war crimes) is easier to illustrate and justify (though no less important to depict). However, the value of individuals exercising their agency to challenge orders may also arise in more ambiguous circumstances where the orders might even be technically legitimate and lawful but following them may lead to catastrophic consequences. There may be a vital and heightened need to exercise agency to challenge orders where the ramifications of the decision are compelling. This is illustrated in the 1995 nuclear war thriller *Crimson Tide*.

Crimson Tide is set in the mid-1990s following the fall of the Soviet Union and establishment of democratically elected governments in the former Soviet republics. In the film, the Russian government is faced with the potential of a governmental overthrow by rebel elements within the civilian and military leadership who are antagonistic to the United States. Soldiers supportive of the rebel efforts take control of a nuclear launch facility and threaten an attack on the United States. In response to this threat, the crew of an American military submarine, the U.S.S. Alabama is ordered to launch their nuclear missiles at Russia in a pre-emptive attack to dissuade Russian rebel soldiers from launching an attack on the United States. The coded message ordering the Alabama to launch was verified as authentic and thus valid. Before the Alabama could launch its missiles, it receives the beginnings of a second coded message, which gets disrupted amidst an attack by a Russian submarine loyal to the rebel movement. Although the message is related to the launch of the Alabama's nuclear weapons, the submarine's captain, Frank Ramsey (played by Gene Hackman), ignores the fragmented message as meaningless since it cannot be authenticated. As such, for him, the first and only authenticated message still governed. Ramsey declares his intention to proceed with the launching of the nuclear missiles as per his orders in hand. The Alabama's executive officer and second in command of the vessel, Ron Hunter (played by Denzel Washington), questions Ramsey's decision to carry out the original orders, arguing that the Alabama needed to rise to a shallower depth so as to obtain the full message. Hunter hypothesizes that the first order to launch may have been aborted or the targeting package may have changed. For Hunter, the possible existence of a significant alteration to their initial orders, coupled with the inevitable consequences that would arise if a United States submarine fired its missiles unnecessarily, would lead to an inevitable nuclear holocaust. After reprimanding Hunter in

positive sense, see Alice MacDonald, 'New Wars: Forgotten Warriors': *Why Have Girl Fighters Been Excluded From Western Representations of Conflict in Sierra Leone?*, 33 AFR. DEV. 135 (2008); see also MARK A. DRUMBL, REIMAGINING CHILD SOLDIERS IN INTERNATIONAL LAW AND POLICY (2012).

front of the crew, Ramsey announces a targeting package for the launch over the intercom. According to protocol, as set out in the film, the executive officer (Hunter) is required to repeat the Captain's order as a confirmation. Hunter refuses and Ramsey threatens to relieve Hunter from duty and replace him with an officer who will, effectively, rubber-stamp his orders. Hunter informs Ramsey that he cannot simply replace him and if Ramsey persists, Hunter will have Ramsey relieved of duty under the authority granted him by Navy regulations. Ramsey orders the Chief of the Boat (COB) (played by George Dzundza) to arrest and detain Hunter on the charge of mutiny. Hunter responds by issuing a counter-order directing the COB to escort Ramsey to his quarters, thus relieving Ramsey of his command. The COB, who has served with Ramsey for many years, and is reluctant to follow Hunter's order, nevertheless does so, as he believes that the rules require that Hunter voluntarily confirm the command to launch. Therefore, Ramsey cannot simply dismiss Hunter and replace him with another officer who will simply rubber stamp his orders.¹³¹

What transpires is a conflict of interpretations concerning the applicable rules governing this situation. Ramsey articulates a more narrow interpretation, namely, that properly authenticated orders in-hand mandate a launch of nuclear missiles in the absence of a clear, authentic, and unambiguous subsequent order modifying or rescinding them. Hunter's analysis stresses a more flexible and cautious view in light of the larger ramifications of an ultimately erroneous launch. For him, the evidence of a possible subsequent message altering or canceling the initial order warranted a delay pending confirmation and if necessary disobedience. Under less dire circumstances (i.e. ones that do not involve the danger of a nuclear holocaust), Ramsey's approach would arguably be more acceptable. Given the gravity, prudence arguably justified a much more cautious interpretation. One might argue that, fixed with knowledge that there was a possible follow-up message that may have affected the first command to launch, Ramsey's decision to pursue the launch nevertheless was reckless. Ramsey was aware of the risk that the second message would alter the first message but decided to pursue his course of action despite the risk. Furthermore, for Hunter, no order is valid if it is wrong or potentially wrong (in relation to a subsequent valid order). As the film unfolds, Hunter's commitment

¹³¹ Ramsey manages to escape with the assistance of officers loyal to him, acquires firearms and reassumes authority over the Alabama. Clearly, in so doing, he engaged in an act of resistance against the dominant authority held by Hunter. It stands to reason whether his act was justified. His stance was predicated on the belief that launching nuclear missiles was for the necessary defense of the United States and, importantly, in accordance with properly authenticated orders. Technically, his position was correct and his resistance justifiable. Yet, following through with his goals would have led to catastrophic results. This demonstrates the challenges of determining what is justifiable resistance in certain circumstances and what is not.

to acquire the subsequent message is vindicated, as the order to launch was in fact countermanded by the second message directing the Alabama to cancel the launch of its nuclear missiles. Although the work of military actors is often associated with death and destruction, particularly in films, Hunter's resistive actions avert a nuclear holocaust and enforce perhaps the most primordial of human rights, the right to life of countless millions.¹³²

In *Crimson Tide*, Hunter's resistive actions are based on a legitimate, flexible and nuanced approach to legal and/or rule interpretation. The validity of his actions and interpretation of the relevant norms are striking when considering the gravity of the consequences and, accordingly, the need to be utterly cautious about implementing an order which later turned out to be no longer valid. The failure to resist Ramsey's single-minded pursuit to follow the original orders would have led to immense death and destruction within the story. To return to Mégret's point noted earlier, Hunter's resistance to following Ramsey's commands to authenticate the nuclear launch and to retake control of the submarine were rooted in an alternative vision of what law is or should be in the case at hand. His defiance was grounded in the idea that, in order for a command to be valid, it had to be correct, and since there were ambiguities concerning its continued validity, a cautious approach needed to be employed. The film projects the idea that orders should not just be strictly followed where surrounding circumstances and the possible consequences of launching nuclear weapons mandate or at least militate toward an alternative path.¹³³ This said, in less extreme circumstances (i.e. not involving a nuclear strike), Hunter's actions and those who supported him might not be as justifiable and indeed might be questionable as Ramsey's order certainly would not have been unlawful (if taken further to properly authenticated orders).

As noted earlier, select military films exhibit and valorize acts of disobedience. Such acts are explicitly or implicitly justified when waged in order to save lives or to expose criminal conduct. The following two sections explore these justifications in greater detail.

¹³² Though a fictional story, *Crimson Tide* shares certain parallels with events during the Cuban Missile Crisis in 1962. See Svetlana V. Savranskaya, *New Sources on the Role of Soviet Submarines in the Cuban Missile Crisis*, 28 J. STRATEGIC STUDIES 233 (2005).

¹³³ CRIMSON TIDE, *supra* note 45. At the close of the film, viewers are informed of the following: "AS OF JANUARY 1996, PRIMARY AUTHORITY AND ABILITY TO FIRE NUCLEAR MISSILES WILL NO LONGER REST WITH U.S. SUBMARINE COMMANDERS. . . . PRINCIPAL CONTROL WILL RESIDE WITH THE PRESIDENT OF THE UNITED STATES." *Id.* Judgment and control are thus taken out of the hands of local commanders.

V. RESISTANCE AND THE SAVING OF LIVES

Building from Kamir's work discussed earlier,¹³⁴ some U.S. military films train viewers to judge resistance to superior orders as something positive and essential. These acts of resistance are portrayed as warranted exceptions to the general rule of obedience and respect for authority to which soldiers are expected to adhere. Underlying the importance of justified disobedience to superior orders is the ability to question orders and the rationales underlying them. One of the most important justifications for disobedience is where soldiers do so to save the lives of civilians—a class of person explicitly protected under international law—as well as other protected persons.¹³⁵ This is even more important where the lives in question are innocent ones or otherwise without legal or moral fault. This is illustrated in the film *Outbreak*, where a small town in California is plagued with a deadly and seemingly incurable virus originally spread from an illegally imported monkey. The virus was a mutated strain based on one originally engineered by U.S. military doctors in the 1960s. While the government held the cure for the original virus, it did not possess the serum for the mutated strain, which is a more contagious airborne virus. Given the danger of the virus spreading beyond the boundaries of the town, the president of the United States authorizes a military operation whereby a fuel-air bomb is to be dropped on the town, effectively killing its residents and eliminating the virus.

Throughout the film, the protagonist, Lieutenant-Colonel Sam Daniels (played by Dustin Hoffman), engages in various acts of disobedience in his efforts to investigate the nature and origins of the virus and develop a cure for it.¹³⁶ Even after Daniels locates the host animal, which carries both strains of the virus and may hold the key to creating a serum, he and his subordinate (Major Salt, portrayed by Cuba Gooding Jr.) must evade capture and the threat of death by his superior, Major General Donald McClintock (played by Donald Sutherland), for resisting arrest and confinement.¹³⁷ At this stage, McClintock is aware that Daniels has located the host animal and a serum could be manufactured, thus avoiding the need to destroy the town and its inhabitants. Their arrest and confinement would prevent the development and administration of this serum. Although Daniels and Salt evade arrest and capture, and begin the process of creating the serum, Daniels learns that the President's order to destroy the town remains in effect. Furthermore, McClintock, who is eager to destroy

¹³⁴ See *supra* Part I, III.

¹³⁵ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

¹³⁶ *OUTBREAK*, *supra* note 1.

¹³⁷ *Id.*

evidence of a disease he helped to create decades earlier, orders the bombers to drop the bomb on the town anyway.

Outbreak not only encourages the idea that soldiers should break ranks with superiors, but also promotes the idea that they should question and disobey orders where necessary. In a last ditch attempt to save the town, Daniels and Salt fly in a helicopter to intercept the bomber. Daniels communicates with the bomber pilots advising them that they need to abort their bomb run as a cure has been produced to deal with the virus, which may stop its spread. Daniels advises them that the President's decision has not been made with full awareness of all the material facts and, as such, the President would not authorize such a decision to kill so many lives. By the end of the sequence, an exasperated Daniels implores the pilots, "Guys if you think I'm lying, drop the bomb. If you think I'm crazy, drop the bomb. *But don't drop the bomb just because you're following orders.*"¹³⁸ The key message is that if the pilots do not doubt Daniels' credibility or mental capacity and reasonably believe the plausibility of what Daniels is relaying, they should not just simply follow orders that are based on outdated or faulty data. Hearing only silence from the pilots, Daniels and Salt take steps to stop the bomber by keeping the helicopter in the bomber's flight path, risking collision. The bomber veers out of the way in the last few seconds, avoiding a collision. The pilots appear to proceed on their bombing run. However, having listened to Daniels and perhaps witnessing the lengths to which he was committed to stop the bombing, the pilots release their payload over the ocean. Daniels' unsolicited counseling and disobedience has its desired effect. Perhaps more importantly for those expected to obey orders, of which the natural and foreseeable consequences include the mass killing of innocent civilians, *Outbreak* sends the message that it is valid to disobey orders where there are reasonable doubts raised about the validity of the original order and the information upon which it is based. Indeed, once the pilots are fixed with some knowledge that there are some doubts regarding the validity of the orders, to continue with the bombing before pursuing further inquiries might be considered an act of willful blindness or deliberate ignorance. Committing to an action of such great significance (the destruction of so many civilian lives) must be assessed not just based solely on the fact that orders (in and of themselves) were given, but also through critical thought, questioning, and re-evaluation where there is reason to question orders. This harkens back to a theme discussed earlier—that soldiers are not merely automatons or objects upon which orders are imposed. Rather, they are legal subjects and agents, who have the capacity to think and act. It also stresses the

¹³⁸ *Id.* (emphasis added).

importance of promoting martial virtues, such as courage and intelligence in the face of clear orders that are being persuasively undermined by the existence of new information. They cannot or should not just act in deliberate ignorance.

Outbreak projects the notion that disobedience to orders that would culminate in the murder of innocent American lives by U.S. military actors is legitimate. However, does this extolling of disobedience extend to protecting foreign lives from the hands of U.S. officers and/or soldiers? Given the demonization and othering that occurs with respect to foreigners, particularly during armed conflicts, it is easy to imagine the ease in which crimes and other violent behavior can occur. Consequently, resistance by soldiers against their own armed forces in the midst of an armed conflict may become rather important when it is waged in support of rescuing protected persons and non-combatants. In the heat of battle, officers and soldiers may engage in unlawful conduct against civilians, especially those they merely suspect of collaborating with their enemy. When a conflict stretches out and becomes protracted, as during the Vietnam War, attacks against unarmed persons or civilians may escalate. It calls upon U.S. soldiers to police themselves. For example, in *Platoon*, U.S. soldiers enter a Vietnamese village.¹³⁹ After being verbally berated by a farmer, Staff Sergeant Barnes (played by Tom Berenger) kills her, while the other members of the platoon, including Barnes' superior Lieutenant Wolfe (played by Mark Moses), stand by and watch. Barnes then threatens to shoot the deceased's daughter (a young child) if her widower does not admit to being a member of the Viet Cong acting in collaboration with the North Vietnamese Army, which the U.S. military is trying to defeat. Another officer, Sergeant Elias (played by Willem Dafoe), then enters the scene and confronts Barnes (his superior) over the killing and physically assaults him. After several punches are thrown, the Lieutenant and other soldiers separate Barnes and Elias. Based on a superior's command, the Lieutenant orders the village to be burned to the ground. Not letting this go, Elias then verbally confronts the Lieutenant for failing to stop Barnes, asserting: "Lieutenant, why the fuck didn't you do something?" As the soldiers leave, they gather the villagers and torch the village. The film's main protagonist, Chris Taylor (played by Charlie Sheen), encounters his fellow soldiers sexually assaulting one of the village girls and stops it from continuing.¹⁴⁰ What is illustrated in these moments is the agency soldiers should exhibit when confronting criminal activity by superiors or fellow soldiers. Elias' resistance takes the form of stopping a further,

¹³⁹ *PLATOON*, *supra* note 50.

¹⁴⁰ *Id.*

and likely, killing, but also of openly challenging Barnes as a superior officer. He indeed sets an example for the other soldiers who were unprepared to do anything to stop Barnes, including Taylor who was clearly and visibly disturbed by Barnes' actions. Perhaps prompted by Elias' example, Taylor then saves the Vietnamese girl who is being raped by his peers.

The two previous films illustrate examples of resistance employed to prevent the taking of innocent lives by U.S. soldiers. Yet, more controversially, should U.S. military actors engage in hostilities to resist the criminal conduct of foreign military actors on foreign soil where the civilian targets of the impugned behavior are also not American? Should U.S. soldiers remain bystanders even in instances where they are fixed with knowledge that foreign military actors are likely or certain to engage in criminal behavior, particularly murder and rape? While the refusal to act in such cases is not always criminal, there is a strong moral component to not acting. In *Tears of the Sun*, a U.S. Navy SEAL team led by Lieutenant A.K. Waters (played by Bruce Willis) is sent to Nigeria, which, in the film, is undergoing a civil war wherein acts of genocide are transpiring.¹⁴¹ The SEAL team is sent to retrieve several Westerners before the rebels attack the village in which they are living and slaughter its inhabitants. As one of the Westerners, an American doctor, Dr. Lena Kendricks (played by Monica Bellucci) agrees to be extracted from the country, she does so on the condition that the team take a number of the villagers, as she fears they will be massacred if left behind.¹⁴² Waters ostensibly agrees to take the villagers with them with the object of persuading Dr. Kendricks to leave. When the SEAL team reaches the rendezvous point with the evacuation helicopters, they enter the helicopter with Dr. Kendricks, but refuse entry to the villagers who are left behind to face a perilous and predictable fate. After the helicopters fly over the village from which they extracted Dr. Kendricks, Waters observes that the rebels have already massacred the residents who remained behind. He makes the unilateral decision to return to where they left the villagers who previously accompanied them to the rendezvous point. Upon locating the villagers, Waters places as many as possible in the helicopters. The SEAL team then escorts the remaining villagers and Dr. Kendricks on foot to the Nigeria-Cameroon border to seek refuge. Most importantly, this new plan is undertaken in direct contravention of explicit orders by Waters' superiors. In so doing, Waters loses many of his team to rebels hunting them and sustains serious injuries himself, but he is nevertheless able to

¹⁴¹ TEARS OF THE SUN, *supra* note 51. As is typical, Africa serves as a convenient locus to project a humanitarian crisis requiring Western saviors to intervene. See Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001).

¹⁴² TEARS OF THE SUN, *supra* note 51.

bring the villagers to safety.¹⁴³

The film's apparent thesis is encapsulated in a famous quote attributed to Edmund Burke: "The only thing necessary for the triumph of evil is for good men to do nothing."¹⁴⁴ This quote appears as a parting textual message to the viewers just before the credits begin to appear.¹⁴⁵ The film indoctrinates viewers to judge obedience to orders that command soldiers not to intervene in the imminent or likely killing of innocents as being secondary to the moral role of soldiers being "good men" (or women) overcoming evil. Here, both the Nigerian rebels, as well as senior military and civilian authorities in the U.S. government (caring only for their own), perpetrate the evil in question. The Nigerian rebels directly effectuate the violence through murder and rape, while the U.S. authorities do it by refusing to save the lives of civilians, knowing that such crimes are transpiring. Disobedience to orders that permit violence against innocent civilians becomes a moral imperative in the film. The role of the military in this construction is one where it is not only appropriate to defend one's own nation and its people from harm (as in *Outbreak*), but also to save others in foreign states who are in imminent peril.¹⁴⁶

The notion of intervening militarily in another state's sovereign territory to halt a genocide or crimes against humanity, is by no means an uncontroversial idea. While states are permitted to use force to defend themselves, they are not automatically permitted to come to the defense of vulnerable populations in other countries.¹⁴⁷ There is no innate international defense of others. There have been vigorous debates surrounding the concept of humanitarian intervention and the so-called responsibility to protect. The use of force to stop serious international crimes is indeed possible under international law, provided the proposed intervention falls within the framework of the United Nations Security Council authorization for peace enforcement under Chapter VII of the

¹⁴³ To a certain extent, the depiction of U.S. soldiers intervening to save innocent lives despite orders to the contrary is in contrast with Western peace-keeping soldiers who were ordered to not intervene in Rwanda. Chris McGreal, *What's the point of peacekeepers when they don't keep the peace?*, GUARDIAN (Sept. 17, 2015), <http://www.theguardian.com/world/2015/sep/17/un-united-nations-peacekeepers-rwanda-bosnia>.

¹⁴⁴ See, e.g., President John F. Kennedy, Address Before the Canadian Parliament in Ottawa (May 17, 1961) in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: JOHN F. KENNEDY: CONTAINING THE PUBLIC MESSAGES, SPEECHES, AND STATEMENTS OF THE PRESIDENT: JANUARY 20 TO DECEMBER 31, 1961, 382-387 (1962) (in which President Kennedy attributes the quote to Burke).

¹⁴⁵ TEARS OF THE SUN, *supra* note 51.

¹⁴⁶ See Amar Khoday, *Prime-Time Saviors: The West Wing and the Cultivation of a Unilateral American Responsibility to Protect*, 19 S. CAL. INTERDISC. L.J. 1 (2009).

¹⁴⁷ An exception to this is where treaty alliances consider an attack on one allied state to be an attack on all the other states in the alliance. This is exemplified through the North Atlantic Treaty creating the North Atlantic Treaty Organization. North Atlantic Treaty art.5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 397.

U.N. Charter.¹⁴⁸ Achieving this, of course, is no simple task for a variety of political reasons and the influence of any permanent member of the Security Council exercising its veto power. The result is that some argue that it may be necessary to act in defiance of international law and intervene without such permission, as NATO did in Kosovo in 1999.¹⁴⁹ Others, such as Frédéric Mégret, have argued that there are reasons to be skeptical of resorting to humanitarian intervention—e.g., the help may come too late, or when it does arrive, it may produce its own series of calamitous results.¹⁵⁰ Also, by providing an expectation that outsiders will come and save them, populations potentially targeted for international crimes may not take sufficient measures to defend themselves and resist.¹⁵¹ Furthermore, the trope of humanitarian intervention may be used as a pretext to improperly intervene in the sovereign affairs of another state and/or to give effect to other improper motives. Thus, to the extent that *Tears of the Sun* valorizes defiance of orders (and international law) for the purposes of saving lives in need of dire assistance, one must be careful about promoting such interventions.¹⁵² Yet, factually, *Tears of the Sun* is a film that depicts a situation where soldiers who are present while international crimes are taking place must decide if they should be bystanders and allow civilians to be murdered.¹⁵³ During the Rwandan Genocide in 1994, foreign troops stationed in the country under U.N. auspices were not authorized to engage in combat with those committing international crimes.¹⁵⁴ People were being killed while U.N. peacekeeping forces followed orders and did not intervene.¹⁵⁵ The message from *Tears of the Sun* is, therefore, that where U.S. military forces are present when atrocities are being committed and these forces are capable of assisting and saving foreign lives, they should do so, even if it contravenes direct orders as well as international legal norms.¹⁵⁶

¹⁴⁸ U.N. Charter, ch. VII.

¹⁴⁹ See generally ANTONIO CASSESE, INTERNATIONAL LAW 298-299 (2001); JOHN H. CURRIE, CRAIG FORCESE & VALERIE OOSTERVELD, INTERNATIONAL LAW: DOCTRINE, PRACTICE, AND THEORY 847-849 (2007).

¹⁵⁰ Frédéric Mégret, *Beyond the 'Salvation' Paradigm: Responsibility To Protect (Others) vs the Power of Protecting Oneself*, 40 SECURITY DIALOGUE 575 (2009).

¹⁵¹ *Id.*

¹⁵² See, e.g., Craig Forcese, *Illegal but legitimate? The consequences of U.S. action in Syria*, GLOBE & MAIL (Apr. 6, 2017), <https://www.theglobeandmail.com/opinion/us-strikes-syria-illegal-but-legitimate/article34625910/> (“After all, in this period of increased instability, acts done by today’s great power—even with the best of intentions—may be mimicked by other aspirants, driven by less palatable objectives.”); Craig Forcese, *Use of Force against Syria: The law is an ass so what to do about Pandora’s Box?* NAT’L SECURITY LAW: CAN. PRACTICE IN COMP. PERSP. (Apr. 7, 2017, 9:53 AM), <http://craigforcese.squarespace.com/national-security-law-blog/2017/4/7/use-of-force-against-syria-the-law-is-an-ass-so-what-to-do-a.html>.

¹⁵³ TEARS OF THE SUN, *supra* note 51.

¹⁵⁴ See McGreal, *supra* note 143.

¹⁵⁵ *Id.*

¹⁵⁶ TEARS OF THE SUN, *supra* note 51.

Victims of unlawful violence include not only civilians, but, in some cases, other fellow military personnel. Engaging in resistance by coming to the aid of fellow soldiers whose lives are imperiled has been explored in several films. For instance, there are circumstances where lower-ranking soldiers may be subjected to hazing or other forms of violence.¹⁵⁷ In *A Few Good Men*, two marines, Lance Corporal Harold Dawson and Private First Class Loudon Downey, are ordered to assault another marine, Willie Santiago, as a disciplinary measure.¹⁵⁸ Santiago is deemed to be weaker and less proficient than his peers and the disciplinary action is intended to rectify his substandard performance. Santiago is also targeted for punishment because he sought a transfer from his post at the marine base in Guantanamo Bay by superseding the chain of command and making this request directly to politicians. In exchange for the transfer, Santiago signaled his willingness to give information about an allegedly unlawful shooting committed by Dawson with respect to a Cuban soldier. By performing an informal but violent disciplinary measure, Santiago was to be deterred from ever engaging in such conduct again. The intended plan was for Dawson and Downey to enter Santiago's room while he was sleeping, forcibly tie him up, place a rag in his mouth, and then shave his head. However, because Santiago suffered from a pre-existing medical condition, the assault results in his unintended death.¹⁵⁹ At the end of their trial, Dawson and Downey are acquitted of murder and conspiracy, but are found guilty of conduct unbecoming of a U.S. marine and are dishonorably discharged from the Marine Corps. In reacting to this, Downey is incredulous. He exclaims, "I don't understand. Colonel Jessep said he ordered the Code Red! What did we do wrong? We did nothing wrong!"¹⁶⁰ Dawson, the more senior-ranked of the two defendants, who had maintained throughout the film the correctness of his actions, replies, "Yeah we did. We were supposed to fight for people

¹⁵⁷ Hazing may be engaged to enforce and to train (fellow) soldiers of the proper codes of conduct ascribed to by the military as a whole or amongst the particular division to which they belong. It may also be used to build a certain *esprit de corps* among soldiers. Such violence does not necessarily stay internal, but may very well be directed outwards. An example of this would include the violence committed by Canadian soldiers in Somalia. See Sherene Razack, *From the "Clean Snows of Petawawa": The Violence of Canadian Peacekeepers in Somalia*, 15 CULTURAL ANTHROPOLOGY 127, 145–46 (2000). However, Razack argues more broadly that the abuse and violence meted out against Somalis was not just a product of a hyper-masculinized sub-culture but part of a larger racial framing that saw Somalis and Somalia as emblematic of the "uncivilized" "other." *Id.* at 134. Razack's article connects the violence meted out against Somalis as part of a larger context of violence where violence and worse genocide has been inflicted on internal "others," specifically indigenous communities.

¹⁵⁸ A FEW GOOD MEN, *supra* note 46.

¹⁵⁹ The law recognizes that an underlying assault, which leads to an unintended and accidental death, qualifies as a homicide—particularly manslaughter. A decision by the Supreme Court of Canada provides an interesting illustration of this. See *Smithers v. R.*, [1978] 1 S.C.R. 506 (Can.).

¹⁶⁰ A FEW GOOD MEN, *supra* note 46.

who couldn't fight for themselves. We were supposed to fight for Willie."¹⁶¹ As Dawson leaves the courtroom, his legal counsel, Lieutenant Daniel Kaffee (played by Tom Cruise) advises him: "Harold . . . you don't need a patch on your arm to have honor."¹⁶² A striking message that comes from this is that honor can be demonstrated through disobedient conduct to unlawful orders and not merely from forms and symbols that one acquires from following them.

A Few Good Men illustrates the failure to resist manifestly illegal orders and the expectation that military personnel indeed should. This is a realization that Dawson, as the more senior ranking of the two accused, arrives at by the end of the film. The tension between following and disobeying orders is stressed at several points in the film between Kaffee and his supporting counsel Lieutenant Sam Weinberg (played by Kevin Pollak).¹⁶³ In various scenes, Weinberg visibly expresses difficulty with being part of the defense team (which he is directed to do by his superior). In one scene, Weinberg likens Dawson and Downey's reliance on following orders to be as indefensible as Lieutenant Calley following orders at the My Lai massacre during U.S. military operations in Vietnam or the Nazis following orders to commit genocide and war crimes.¹⁶⁴ As the film progresses, Weinberg seeks to get Kaffee to agree to his removal from the case. Kaffee senses the reason and the following exchange ensues:

Kaffee: They were following orders, Sam.

Weinberg: An illegal order.

Kaffee: Do you think Dawson and Downey knew it was an illegal order?

Weinberg: It doesn't matter what they knew. Any decent person would have refused—

Kaffee: They're not permitted to question orders.

Weinberg: Then what's the secret? Huh? What are the magic words? I give orders every day, nobody follows—

Kaffee: We have softball games and marching bands. They [Dawson and Downey] work at a place [Guantanamo Bay, Cuba] where you have to wear camouflage or you might get shot!¹⁶⁵

Kaffee stresses the context in which orders are made. Unlike the

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

more relaxed environment where Kaffee and Weinberg work, orders in the context of Guantanamo Bay are taken far more seriously given the proximity to a hostile Cuban army. Notwithstanding this context, the sense of guilt and shame from representing Dawson and Downey wears on Weinberg. After a trying day in court, Weinberg becomes visibly frustrated. Kaffee's co-counsel, Lieutenant Commander Joanne Galloway (played by Demi Moore), who fervently seeks to defend Dawson and Downey, asks Weinberg why he hates their clients so much.¹⁶⁶ He explodes and exclaims: "They beat up on a weakling. That's all they did. The rest of this [the trial] is just smoke-filled coffeehouse crap. They tortured and tormented a weaker kid! They didn't like him, so they killed him. And why? Because he couldn't run very fast!"¹⁶⁷ Weinberg's anger and revulsion is partly based on Dawson and Downey's refusal to see what they did as wrong (though Dawson realizes this at the end of the film). Also, Weinberg views such behavior as simply a way to bully other weaker individuals—it is an abuse of power.

While a strong message from *A Few Good Men* is that soldiers should resist or disobey superior orders to perpetrate criminal assaults against one of their own fellow soldiers, other stories may illustrate how soldiers may need to resist acts of omission by other fellow soldiers to protect one of their own from capture or various forms of harm. In *Courage Under Fire*, Captain Karen Walden (portrayed by Meg Ryan) commands a Medevac chopper and its crew during the first Gulf War in 1991.¹⁶⁸ The Medevac chopper attempts to rescue the crew of a downed Black Hawk helicopter who are being targeted by Iraqi military forces. During the rescue attempt, Walden's Medevac chopper is struck by weapons fire and sustains significant damage, forcing an emergency landing. In addition, Walden's co-pilot, Rady, sustains serious injuries rendering him significantly wounded and unconscious. Once grounded, the Medevac crew repels Iraqi forces closing in on them with small arms fire. During the night, a tense discussion ensues about whether to stay in place until the morning and await a rescue or to move to another location. The crew understands that Iraqi forces will move decisively in the morning and, with the crew's limited supply of ammunition, they are bound to be overrun, captured, or killed. Knowing that Rady cannot be moved, Walden orders her all-male crew to remain to await rescue the following morning or die trying. Other crew members, however, urge that they should move lest they, including Rady, die in the morning. The articulated presumption is that Rady will not survive anyway. Thus, it is justifiable for him to die alone rather than all of

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *COURAGE UNDER FIRE*, *supra* note 44.

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them perishing. Monfriez (played by Lou Diamond Phillips) tries to push the majority vote to leave and evade capture even if it means leaving an unconscious and seriously injured Rady to die or fend for himself.¹⁶⁹ The other crew members include a medic, Ilario (played by Matt Damon), and the crew's chief, Altameyer (played by Seth Gilliam).¹⁷⁰ In the following dialogue, Walden stresses the necessity to collectively stand by and protect Rady while asserting her authority as the commanding officer.¹⁷¹

Monfriez: Come on, it's a majority.

Walden: Well, that would be great if this was a democracy, but it isn't. We stay with Rady. I wouldn't risk your life. I won't risk his.

Altameyer: Okay. So, maybe if we surrender, the Iraqis would doctor him up.

Walden: No surrender.

(The crew hears footsteps in the distance heightening the tension.)

Monfriez: I hear something moving. I say we make for the chopper now.

Walden: And I say I heard enough of that shit.

Monfriez: You don't have to go with us Captain. We don't even need your permission.

Walden: I am in command here!

Monfriez: Well maybe not anymore.

Walden: Give me the SAW¹⁷², Monfriez. I can't stop you from running, but you're not taking our firepower with you.

Monfriez: [Aims his weapon at Walden] You're not taking my weapon.

Walden: [Aims her handgun at Monfriez] Yes, I am.

Ilario: Hey, I can make a white flag, all right?

Monfriez: There's no way you're taking my weapon, cunt.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² "SAW" stands for Squad Automatic Weapon. It is a type of machine gun. *See generally* M249 Squad Automatic Weapon, MILITARY.COM, <https://www.military.com/equipment/m249-squad-automatic-weapon>.

Walden: Section 28-J, Code of Military Justice. Mutiny—an offense punishable by death.

Altameyer: Jesus, Monfriez.

Monfriez: Shut up! She's trying to get us killed! Ilario! Who're you with? [Ilario appears paralyzed with indecision]. Come on Ilario. Shithead. Do you want to die?

Ilario: Please, Captain.¹⁷³

An Iraqi soldier appears near Monfriez and Walden fires her weapon, killing the Iraqi. At first, Monfriez fires in Walden's direction and then turns to fire at the Iraqi soldiers in the distance who subsequently retreat. The crew comes to realize that Monfriez has shot Walden in the abdomen. While writhing in pain, Walden then refocuses and draws her weapon at Monfriez, not forgetting the previous exchange.

Walden: Give me your weapon.

Monfriez: Well, Christ, Captain! I thought you were firing at me! [At first he hesitates and then throws his weapon in Walden's direction.]

Ilario: [Moving towards her] You're wounded Ma'am, let me see.

Walden: [Points her gun at Ilario] You're with them.

Ilario: You gotta let me see it.

Monfriez: Oh, Jesus Christ! Let him look at it!

Walden: I gave birth to a nine-pound baby, asshole! I think I can handle it!

Ilario: Cap, we got to get you out of here.

Walden: [Resolutely] We stay with Rady.¹⁷⁴

The following morning, Iraqi forces descend upon Walden's crew. As the crew fires back, U.S. rescue helicopters emerge and fire upon the Iraqi soldiers, enabling the Medevac crew to escape to another Medevac chopper awaiting them. Walden grabs Altameyer and insists that he carry a still unconscious Rady to the chopper. Before returning Monfriez's weapon, she tells him that he will be accountable for his attempted mutiny. She then commands Monfriez and Ilario to flee while she provides cover fire with an M-16 rifle. Monfriez leaves but Ilario pleads for Walden to come. She orders him to go and bring back more

¹⁷³ COURAGE UNDER FIRE, *supra* note 44.

¹⁷⁴ *Id.*

weapons and a stretcher. Ilario flees to the chopper. As the chopper commander enquires about Walden, Monfriez yells out that she is dead. Ilario is stunned but remains silent, knowing that it is a lie and what the implications of this are. The commander takes off and gives the signal that U.S. planes can drop Napalm on the remaining Iraqis on the ground. The result is that Walden, too, perishes in a blaze of fire. Though one normally associates “going out in a blaze of glory” in more positive terms, this is not the case here, as Walden does not intend to go out this way. She is murdered to prevent her from reporting Monfriez’s attempted mutiny.

With respect to the importance of resistance to save lives, the film makes clear that, as a result of Walden’s efforts, Rady survives and recovers, though not without physical and emotional scars. Without Walden’s resistance to her crew’s strong desire and Monfriez’s insistence to leave Rady behind, this would have certainly not transpired. Unlike instances where resistance must be waged against superior orders, here the resistance is directed at subordinates. Though Walden was technically the commanding officer, it is also evident that her formal legal power as captain was undermined significantly by virtue of being the sole person willing to protect Rady and being outgunned. Overlapping this is the unmistakable undermining of her authority as a female captain, particularly by Monfriez in his use of the word “cunt” to denigrate her and diminish her authority. Notwithstanding being outnumbered and seriously wounded, Walden’s insistence on protecting Rady saves his life, ultimately, at the cost of her own. The others are shown to be cowards looking to protect themselves. Following Walden’s orders, Altameyer carries Rady to safety while Walden is killed because of Monfriez’s treachery and false statement to the other pilot and Ilario’s silence.

Perhaps one of the key messages that may be extracted from this film is that saving the life or lives of fellow soldiers is of significant importance. Unlike Dawson and Downey in *A Few Good Men* who are ordered to conduct an overtly harmful act against Santiago, here, Monfriez, Ilario, and Altameyer are prepared to let harm be inflicted on Rady through acts of omission—leaving him to die of his wounds without obtaining medical attention or to be captured, tortured, and/or killed by Iraqi military forces. Though somewhat different in context, there are parallels to the Vietnam extraction films of the 1980s in which unsanctioned attempts are engaged to save American soldiers still being held captive in Southeast Asia as prisoners of war since the time of the Vietnam War.¹⁷⁵ The idea stressed in such movies is that no soldiers should be left to be tortured and denied their liberty. Rather than a

¹⁷⁵ See, e.g., *MISSING IN ACTION* (Cannon Group 1984).

hulking Sylvester Stallone (as Rambo)¹⁷⁶ or a martial arts expert like Chuck Norris (portraying the Braddock character in the *Missing in Action* films),¹⁷⁷ we have a tough-talking and tough-acting female soldier subjected to misogynistic attitudes while protecting an individual under her command. It is she who displays the martial virtue of courage while the others (all male characters) want to sacrifice one of their own.

These military resistance films, amongst others, indoctrinate viewers toward recognizing the value of disobeying orders in order to save lives that are worthy of protection. Thus, a visual jurisprudence of resistance through disobedience within the military context develops. Such resistance is not only valorized, but it is portrayed as a moral duty given the power military actors hold. The films discussed are illustrations that such power is to be waged to save American lives, foreign lives, as well as those within the American military who are being victimized. These lives are to be saved both on American soil and in foreign states. As suggested earlier, resistance that is waged in order to save innocent lives probably earns the greatest degree of legitimacy. Where it is perhaps most controversial is where the saving of lives transpires as part of a military intervention that is not permitted under governing international norms and interferes with traditional notions of state sovereignty. However, when serious crimes and injustices are perpetrated, there is also an importance in seeking to expose them and render some form of justice. The following section addresses how military films have treated this.

VI. EXPOSING CRIMINALITY AND COVER-UPS

A second broad theme in U.S military films is the value placed on resistance committed in order to reveal information about certain criminal actions that have been perpetrated by military actors and/or higher officials or to expose any cover-ups about matters worthy of public disclosure.¹⁷⁸ The issue is important. Given the power that military actors exercise, there is a need to hold them accountable for their criminal acts. The failure to do so may be seen as legitimizing or condoning such criminality and may lead to further abuses of power. As such, military films create a jurisprudence of resistance not only to promote the notion of rescuing lives but also to highlight the importance

¹⁷⁶ See, e.g., *FIRST BLOOD* (Carolco Pictures 1982); *RAMBO: FIRST BLOOD PART II* (Carolco Pictures 1985).

¹⁷⁷ See, e.g., *MISSING IN ACTION* (MGM 1984).

¹⁷⁸ As James Hathaway observes, even in cases of soldiers who have deserted and are seeking asylum, but who have witnessed or even been seriously implicated in atrocities, there may be a justification in granting asylum, as the information they bring carries information about human rights abuses of which there may be little knowledge. JAMES HATHAWAY, *THE LAW OF REFUGEE STATUS* 219 (1991).

of exposing criminal acts that have been committed and promote accountability. Soldiers and officers are depicted as having the ability to conceal crimes and misdeeds by fellow soldiers, particularly where superior officers are willing to look the other way in the interests of expediency and to prevent any negative impact on the overall war effort or overall reputation of the military. However, any attempts to expose such misconduct may come with (serious) risks to those seeking to expose the wrongful acts. There may be adverse consequences to their careers and in some, more serious, cases, retaliatory attempts on their lives for bringing this information to light. Indeed, there have been real world ramifications for blowing the whistle on misconduct.¹⁷⁹

Some of the crimes and injustices that transpire entail sexual assault and crimes of domination against women by male soldiers. Such crimes may take place while soldiers are deployed to the field and impact civilians or other protected persons directly. Set during the Vietnam War, *Casualties of War* tells the story of a low ranking soldier, Private First Class Eriksson (played by Michael J. Fox).¹⁸⁰ Eriksson is with his squad when his commanding officer, Tony Meserve (played by Sean Penn), orders the kidnapping of a female Vietnamese villager, Oanh.¹⁸¹ When it becomes clear that the members of the squad are to each take turns raping her, Eriksson refuses to do so. He even attempts to help her escape but is unsuccessful. Ultimately, the members of the squad murder Oanh at Meserve's direction. Once the squad returns to their barracks from the field, Eriksson speaks to Meserve's immediate commanding officer, seeking to bring attention to the crime. The superior officer orders Eriksson to keep silent, and Eriksson is even offered a transfer in exchange for agreeing not to push the issue. The other members of his squad become aware of Eriksson's attempts to blow the whistle on their conduct and seek to murder him. Disillusioned and inebriated, Eriksson reveals what happened to a chaplain who then forwards the information to appropriate authorities. An investigation takes place leading to the discovery of Oanh's bullet-riddled and lifeless body. Her killers (and rapists) are subsequently court-martialed and found guilty. Eriksson's refusal to be silenced is shown as being causally connected to the conviction of the perpetrators of the rape and murder. It is because of his actions that his fellow squad mates are convicted for their conduct, and some justice is served.¹⁸² While the

¹⁷⁹ KEY & HILL, *supra* note 27.

¹⁸⁰ CASUALTIES OF WAR, *supra* note 43.

¹⁸¹ *Id.*

¹⁸² Though, at the time that Eriksson reveals the information to the chaplain, he is far from enthusiastic. Indeed, given the obstacles he faces (including an attempt made on his life), he tells his story while inebriated and dispirited. There is almost resignation to the fact that nothing will be done. Nevertheless, his decision to keep speaking about the crimes still constitutes an act of resistance to the silence his superiors and squad mates seek to impose on him. *Id.*

prosecution and courtroom scenes, though largely brief and near the end of the film, are what bring the law into the movie in a more typical way, Eriksson's efforts to bring attention to the crimes and his resistance to others seeking to keep them concealed are crucial and highlighted in the film. Without him and his persistence (even though his last revelation was in an inebriated and despairing state), the ability to prosecute would not have arisen.¹⁸³

Criminal acts and acts of violence are not only directed at female civilians, but also against fellow female soldiers or subordinates by male military service members.¹⁸⁴ Sexual violence in the U.S. military has been denounced as widespread and in need of redress for years.¹⁸⁵ The issue of sexual violence committed by soldiers and the failure to punish by superiors is not limited to crimes in the field. There is also a larger pattern of misogyny and sexual violence perpetrated against fellow female soldiers within one's own ranks and in the United States.¹⁸⁶ In *The General's Daughter*, the immediate thrust of the film is

¹⁸³ Eriksson is particularly distinguishable relative to many of the other male resisters discussed in this Article. Many of the characters are higher ranking and endowed with greater authority and power. Eriksson is but a mere private, which makes him far more vulnerable. Heightening his vulnerability, Eriksson is shorter in height relative to other resisters and those whom he is opposing. See discussion *infra* Section VII.

¹⁸⁴ Women are, of course, capable engaging in sexual and other forms of violence on other women (and men) alone or in concert with men, either within the military or outside of it. In the military context, it is worth noting the involvement of female soldiers in the abuses of male prisoners at Abu Ghraib prison. Barbara Ehrenreich, *Feminism's Assumptions Upended*, 24 SOUTH CENTRAL 170 (2007); Sheila Jeffreys, *Double Jeopardy: Women, the US Military and the War in Iraq*, 30 WOMEN'S STUDIES INTERNATIONAL FORUM 16 (2007).

¹⁸⁵ *Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors*, HUM. RTS. WATCH (May 16, 2016), <https://www.hrw.org/report/2016/05/19/booted/lack-recourse-wrongfully-discharged-us-military-rape-survivors>; *Embattled: Retaliation against Sexual Assault Survivors in the US Military*, HUM. RTS. WATCH (May 18, 2015), <https://www.hrw.org/report/2015/05/18/embattled/retaliation-against-sexual-assault-survivors-us-military>; *Sexual Violence and the Military*, N.Y. TIMES (Mar. 9, 2012), <http://www.nytimes.com/2012/03/09/opinion/sexual-violence-and-the-military.html>; Elizabeth L. Hillman, *Front and Center: Sexual Violence in U.S. Military Law*, 37 POL. & SOC'Y 101 (2009). The problem of sexual assault and harassment in the military is not limited to the United States; this has also been a problem in Canada and other jurisdictions. For examples of sources documenting and reporting problems of sexual assault and harassment in Canada, see Marie Deschamps, *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, NAT'L DEFENCE & THE CANADIAN ARMED FORCES (Mar. 27, 2015), <http://www.forces.gc.ca/en/caf-community-support-services/external-review-sexual-mh-2015/summary.page>; *Operation Honour dubbed 'Hop On Her' by soldiers mocking military's plan to crack down on sexual misconduct*, NAT'L POST (Oct. 26, 2015), <http://nationalpost.com/news/canada/operation-honour-dubbed-hop-on-her-by-soldiers-mocking-militarys-plan-to-crack-down-on-sexual-misconduct/wcm/57c790e3-5eba-4abd-9d3e-03ac2abe0fb8>. Furthermore, sexual harassment is not limited to the military but is also present in other institutions such as law enforcement agencies. See Colin Perkel, *Landmark deal in RCMP sexual-harassment class action wins court approval*, CBC NEWS (May 31, 2017), <http://www.cbc.ca/news/canada/british-columbia/rcmp-sexual-harassment-class-action-1.4140138>.

¹⁸⁶ As an example of the misogyny represented in military films, see the dialogue above from *Courage Under Fire* between Walden and Monfriez. *COURAGE UNDER FIRE*, *supra* note 44.

the criminal investigation into the murder of Captain Elizabeth Campbell.¹⁸⁷ However, the underlying story concerns Campbell's gang rape as a cadet by other male cadets during a night-time training exercise at the United States Military Academy at West Point. Following the rape, Campbell's father, Joe Campbell, already a senior military officer, is told by his superior that if news of the rape leaks, it would undermine female recruitment and integration efforts within the military. Furthermore, it would tarnish the hallowed reputation of West Point and the military.¹⁸⁸ In exchange for persuading his daughter to remain silent and not report the rape, Joe Campbell also benefits professionally with a promotion. By the end of the film, the Criminal Investigation Division investigator, Paul Brenner (played by John Travolta), confronts General Campbell about his part in silencing Elizabeth and dissuading her from reporting the crime.¹⁸⁹ He indicates that, as part of his official report regarding the murder (committed by another officer), the circumstances surrounding the rape and the General's involvement in burying it would be detailed. The consequence of this disclosure is that the general, who is about to retire and expected to join a presidential ticket as the vice-presidential running mate, is about to have his record tarnished and future plans destabilized. It is, of course, a relatively small punishment in contrast to the larger harm perpetrated against his daughter.

Other considerable problems within many institutions include the bullying and hazing rituals that are perpetrated against those who do not conform to certain norms and codes of conduct. Such violence may not only be tolerated, but indeed encouraged. However, as with other crimes, when an investigation occurs, officials may seek to suppress knowledge of such behavior. Information must be teased out through modes of discovery. In *A Few Good Men*, discussed above,¹⁹⁰ informal disciplinary measures called "Code Reds" are perpetrated on marines who do not live up to the expectations of their fellow soldiers and superiors.¹⁹¹ Though formally illegal, the base's commanding officer, Colonel Nathan Jessep (played by Jack Nicholson), not only tolerates Code Reds, but indeed orders one himself to be performed on a marine named Willie Santiago.¹⁹² Santiago dies during this Code Red due to a pre-existing medical condition. The two marines ordered to perform the Code Red, Lance Corporal Dawson and Private Downey, are charged

¹⁸⁷ THE GENERAL'S DAUGHTER, *supra* note 47.

¹⁸⁸ Though "honor crimes" are normally associated with the killing of female family members for some alleged conduct that besmirches the honor of the family, the clan or broader community, here the cover up serves to protect the honor of the military and West Point as an institution.

¹⁸⁹ THE GENERAL'S DAUGHTER, *supra* note 47.

¹⁹⁰ See discussion *supra* pp. 133–35.

¹⁹¹ A FEW GOOD MEN, *supra* note 46.

¹⁹² *Id.*

with first-degree murder¹⁹³ while Jessep orders a cover-up of the conspiracy to perform the Code Red and causes Dawson and Downey to take the fall.

Dawson and Downey's lead counsel, Kaffee (played by Tom Cruise) suspects that Jessep ordered the Code Red despite the fact that Jessep declares he intended for Santiago to be transferred off the base and returned to the United States. Knowing that accusing a high-ranking officer such as Jessep of ordering the Code Red without evidence would lead to disciplinary actions against himself, Kaffee nonetheless interrogates Jessep on the stand and accuses him of ordering the unlawful disciplinary action. Taunting Jessep, Kaffee manages to secure a confession from Jessep that he ordered the Code Red. Jessep is consequently read his rights and escorted out of the court and detained. By accusing Jessep in open court and pursuing the line of questioning, knowing the consequences, Kaffee was defying particular norms as constructed in the film.¹⁹⁴ Yet because of his efforts, the violent and punitive nature of Code Reds and their dangerous repercussions are brought out in open court. Kaffee is vindicated for his resistance to protocol and his clients manage to escape conviction on murder charges, but, as noted earlier, are ultimately dishonorably discharged from the Marine Corps for failing to resist the orders to administer the Code Red. As with other acts of resistance, there is a sacrifice that individuals (here soldiers) are expected to make to uncover criminality. Within the context of the story, Kaffee is presented as having risked his career but is ultimately successful, while Dawson and Downey, though acquitted of the more serious charges, are dishonorably discharged for failing to resist.¹⁹⁵

Violence perpetrated against fellow soldiers does not always occur intentionally. During armed conflicts, deaths or injuries may be caused

¹⁹³ The prosecutor advances the theory that Dawson and Downey poisoned the rag that they shoved in his mouth with the intent to cause death.

¹⁹⁴ As Asimow and Mader posit, in the real world, Kaffee as a Judge Advocate General (JAG) officer, sits outside the chain of command and, consequently, would not be subject to discipline simply because he challenges the word of a superior officer or accuses a superior officer of misconduct. However, they note that Marine and Naval JAGs form part of a small club, and it would not pay for JAG defense counsel, from a career standpoint, to be so aggressive with and disrespectful to superior officers. In one sense, the film's depiction is technically inaccurate because Kaffee's resistance is not in defiance of formal rules, but his pursuit of Jessep does infringe other implied norms and expectations. While we learn that Kaffee is likely to transition out of the JAG Corps to civilian practice, as the film ensues and by the end, it is not entirely clear that this departure is as likely. Having filled in the shoes of being a "real" advocate rather than one biding his time plea-bargaining on behalf of his clients, there is certainly the possibility that the character might choose to stay. Despite the technical inaccuracies noted above, as Asimow and Mader suggest elsewhere in their work, films should be authentic in the macro or "big picture" sense, even if the film is not so accurate in the micro details and technicalities of the law. Here, I postulate that the "big picture" is about the importance of challenge authority when that authority has committed a crime. See ASIMOW & MADER, *supra* note 9, at 17, 205.

¹⁹⁵ See *id.*

as a result of so-called “friendly-fire” incidents. There may not be any culpability with respect to the acts themselves, yet there may be attempts to suppress knowledge of such incidents from reaching the general public or families of those who have perished. There may be any number of plausible reasons for this. Key amongst them is that, when a soldier perishes, one tries to frame the loss as one where the deceased has died fighting the enemy in defense of the country or its interests. The death has meaning. There is deemed to be a certain degree of honor in having perished fighting the enemy. By contrast, to have perished by the accidental hands of one of your own soldiers strikes the public and family of the deceased as a needless death. However, one might argue that families have a right to know how their loved one passed, and the failure to disclose this is wrongful. Films have explored this responsibility to disclose. In *Courage Under Fire*, Colonel Nat Serling (played by Denzel Washington) is a tank battalion commander who gives the order to fire on enemy tanks during a battle in the first Gulf War.¹⁹⁶ Immediately after firing one of their rounds, Serling and his crew learn that they fired upon and destroyed one of their own tanks that had been interspersed with Iraqi tanks. The loss for Serling is particularly acute as a friend of his, Boylar, is killed in the friendly-fire incident. Boylar’s family is never officially told that he perished as a result of a friendly-fire incident (though they receive information informally from other sources that this was the case). Throughout the film, Serling tries to push the army to reveal the truth about the incident but is otherwise ordered to keep silent and is effectively told that the army has no real interest in revealing the true story. While at first reluctant, Serling speaks to a (fictional) *Washington Post* reporter, Dan Gartner (played by Scott Glenn), who is digging into the story of Boylar’s death. In exchange for Gartner’s assistance on another matter, Serling advises Gartner that an audio tape exists surrounding communications at the time of the friendly-fire incident which would indicate what transpired. Because the true story becomes exposed publicly, Serling can now speak to Boylar’s family about what really transpired, provide some proper closure, and unburden himself.¹⁹⁷

Exposing criminal misconduct during an armed conflict as well as in other circumstances is, of course, important. But what is also crucial is the way in which the reasons to go to war may be falsified to generate

¹⁹⁶ COURAGE UNDER FIRE, *supra* note 44.

¹⁹⁷ A similar theme is explored in Oliver Stone’s 1989 film *Born on the Fourth of July*. The film’s main character, Ron Kovic (played by Tom Cruise) accidentally kills a fellow soldier during battle in the Vietnam War. When he approaches his commanding officer to admit what he has done, the officer tries to dissuade him from pursuing this line of thought. Ultimately, Kovic’s commander berates him for wanting to admit to killing the fallen soldier and dismisses Kovic. Years later, Kovic visits the family to admit what he did. BORN ON THE FOURTH OF JULY (Universal Pictures 1989).

an armed conflict. Thus, a significant tactic in challenging the initiation and validity of an unlawful war is to uncover and disseminate evidence of misconduct through the manufacture of reasons or evidence. Armed conflict is an inherently destructive and expensive enterprise that inevitably results in casualties, both civilian and military. There is also an immense toll borne by those physically and emotionally scarred through their involvement in an armed conflict. There are certain limitations on a state's legal right to engage in armed conflict as set out in the United Nations Charter.¹⁹⁸ Knowingly initiating war or engaging in military actions on the basis of specious or manufactured evidence is to engage in a form of injustice,¹⁹⁹ as is trying to cover up such information. This was the central issue in *Green Zone*, set during the initial year of the U.S.-led invasion of Iraq in 2003.²⁰⁰ Matt Damon plays Roy Miller, a fictitious U.S. Army chief warrant officer who leads his unit to search for weapons of mass destruction (WMDs) throughout Baghdad.²⁰¹ After reaching several suspected sites in Baghdad and not discovering any WMDs, Miller begins to openly raise the issue to superiors during briefings that the intelligence regarding WMDs and their purported locations has, so far, been wrong. No WMDs have been found.²⁰² After he is rebuffed and told to stand down and follow orders, Miller takes the initiative to nevertheless uncover the source of the U.S. government's information regarding Saddam Hussein's alleged stockpile of WMDs. Through investigative work, he discovers that a high-level Iraqi military officer named Mohamad Al Rawi met with U.S. military intelligence specialist Clark Poundstone (played by Greg Kinnear).²⁰³ As the film progresses, Al Rawi meets with Poundstone and advises him that there are no weapons of mass destruction in Iraq. Poundstone misinforms the U.S. government that his source, "Magellan," gave locations in Iraq where WMDs are stored. Poundstone then feeds this information to a *Wall Street Journal* reporter who neglects to properly verify it. By the end of the film, Miller receives confirmation from Al Rawi about this meeting with Poundstone and the nature of the conversation, but before he can bring Al Rawi in, the latter is killed. Before the close of the film, Miller sends a copy of his report about these false claims made regarding WMDs to a series of journalists. He also physically and verbally confronts Poundstone about the latter's role in spreading lies about WMD in Iraq. Poundstone

¹⁹⁸ U.N. CHARTER art. 2, ¶4, arts. 39–51.

¹⁹⁹ Such a war would not be in conformity with the *jus ad bellum* and might well be characterized as a war of aggression.

²⁰⁰ GREEN ZONE, *supra* note 48.

²⁰¹ *Id.*

²⁰² This mirrors the real-life experiences of U.S. military personnel in Iraq. *See, e.g.*, KEY & HILL, *supra* note 27.

²⁰³ GREEN ZONE, *supra* note 48.

replies: “Come on, none of this matters any more, WMD. This doesn’t matter.”²⁰⁴ Miller responds aggressively: “What the fuck do you mean it doesn’t matter? Of course it fucking matters. The reasons we go to war always matters. It’s all that fucking matters. It fucking matters.”²⁰⁵ Following this confrontation, Miller releases the information he has uncovered to journalists, thus disclosing information about how the purported reason to go to war was manufactured.

The films discussed above foster a jurisprudence surrounding the duty to speak out and address injustices that may arise in military contexts. The films encourage the notion that criminal acts and abuses of power that transpire within these contexts must be addressed and deterred, where possible, through legal action. In order to do so, those who serve within such milieu must draw attention to these actions, even where it may be difficult and pose a danger to their own lives. However, it is not simply about revealing information within one’s possession. These films also indicate the need to investigate and probe for the evidence. All of these scenarios require, returning to Amartya Sen’s point,²⁰⁶ the willingness of individuals to exercise their human agency to engage in such actions. Yet, the military films examined in this Article do not just valorize the acts of resistance and the causes they seek to fulfill. The acts of resistance and their objectives are intrinsically connected to the human agents that perpetrate them—specifically their characters. The next section explores the construction of resistive characters, and, in addition, those they oppose.

VII. RESISTERS AS EMBODIMENTS OF INTELLIGENCE, LEADERSHIP & MORALITY

Depictions of resistance in military films are not solely about the acts of resistance themselves and/or their portrayal as normatively and morally justifiable conduct. These films also construct the resisters themselves as embodying certain virtues or qualities worth emulating as they engage in their resistance. To a certain extent, it might be said that the legitimacy of an act of resistance may strongly rely upon or be impacted by the overall character of the resister engaging in the act. Audiences may be cultivated to view these characters and, by extension, the conduct associated with them in positive terms.²⁰⁷ Through these

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See *supra* note 125 and accompanying text.

²⁰⁷ Asimow and Mader suggest that, based on various studies, viewers may gain a positive impression of a class of people (e.g., lawyers) through depictions in a particular show or, in other cases, develop a sense of expectations about the role(s) of a particular actor in the judicial system (e.g., a judge). ASIMOW & MADER, *supra* note 9, at 65–67.

films, military resisters are themselves expositors of positive legal agency. It is through them, as instruments or conduits, and the virtues or qualities they embody that resistance gains credibility and is seen as positive. They become or are portrayed as being worthy of value. Military resisters are constructed as independent and intelligent thinkers, as opposed to those who are merely or passively following orders that need to be questioned. Also, those who engage in or lead the resistance are depicted as embodying positive moral characteristics such as courage. As characters (and the qualities or virtues they embody), they have a normative value. They project a standard against which to measure the character and conduct of others who fail to live up to their example or challenge them. To illustrate this, I once again draw upon the example of Ron Hunter, the lead character in the film *Crimson Tide*, played by Denzel Washington.²⁰⁸

In *Crimson Tide*, Hunter, as the chief resister and protagonist, establishes a standard against which others' characters and conduct are to be evaluated. One of Hunter's roles is to serve as a critical thinker in an establishment where it is well understood and perceived that one does not step out of line, undermine the hierarchical chain of command, or question orders. The film challenges this orthodoxy, affirming that it is possible and advisable to ask questions such as "why?" in the face of a significant or consequential order, which may then prompt responses that serve as the basis for disobeying a questionable order. In an earlier scene in the film, Ramsey, Hunter, and other officers are assembled and drinking in the officer's mess. A dialogue²⁰⁹ ensues, touching upon the role of soldiers and officers to ask questions and be introspective in the face of military orders, even if they result in the use of weapons of mass destruction.

Ramsey: You think it was a mistake, Mr. Hunter?

Hunter: Sir?

Ramsey: Using the bomb on Hiroshima and Nagasaki.

Hunter: If I thought that sir, I wouldn't be here.

Ramsey: (*Laughs*) Interesting way you put that.

Hunter: How'd I put it, sir?

Ramsey: Very carefully (*Laughter*). You do qualify your remarks. If somebody asked me if we should've bombed Japan, a simple 'Yes. By all means, sir. Drop that fucker, twice.' (*Laughter*). I don't mean to suggest that you're indecisive, Mr. Hunter. Not at all. Just, uh . . .

²⁰⁸ CRIMSON TIDE, *supra* note 45.

²⁰⁹ *Id.*

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complicated. Of course that's the way the navy wants you. Me, they wanted simple.

Hunter: You certainly fooled them, sir.

Ramsey: (*Laughter*). Be careful there Mr. Hunter. It's all I got to rely on—being a simpleminded son of a bitch. Rickover²¹⁰ gave me my command, a checklist, a target, and a button to push. All I had to know is how to push it. They'd tell me when. They seem to want you to know why.

Hunter: I would hope they would want us all to know why, sir.

Ramsey: At the Naval War College, it was metallurgy and nuclear reactors, not 19th century philosophy. 'War is a continuation of politics by other means.' Von Clausewitz.

Hunter: I think that what he was actually trying to say was a little more . . .

Ramsey: Complicated? (*Laughter*).

Hunter: Yes, the purpose of war is to serve a political end, but the true nature of war is to serve itself.

Ramsey: Ha! I'm very impressed. In other words, the sailor most likely to win the war is the one most willing to part company with the politicians and ignore everything except for the destruction of the enemy. You'd agree with that.

Hunter: I'd agree that that's what Clausewitz was trying to say.

Ramsey: But you wouldn't agree with it?

Hunter: No sir, I do not. I just think that in the nuclear world, the true enemy can't be destroyed.

Ramsey: (*Clinks the glass with a spoon*). Attention on deck. Von Clausewitz will now tell us exactly who the real enemy is. Von?

Hunter: In my humble opinion, in the nuclear world, the true enemy is war itself.²¹¹

An act of resistance that is associated with a morally questionable and self-interested character may impugn, in the eyes of the viewers, the very legitimacy of the resistance that the character advances. Guilt by association develops between a resister's conduct and his or her character. Where the resistance is tied to a character presented as

²¹⁰ John W. Finney, *Rickover, Father of Nuclear Navy, Dies at 86*, N.Y. TIMES (July 9, 1986), <http://www.nytimes.com/1986/07/09/obituaries/rickover-father-of-nuclear-navy-dies-at-86.html?pagewanted=all>.

²¹¹ CRIMSON TIDE, *supra* note 45.

morally unimpeachable and/or of high character, their resistance bears the imprint of their moral value. In *Crimson Tide*, Hunter is not only a thinker—he is an individual daring to challenge Ramsey, who has acquired the loyalty of his men. Hunter acquires the position after Ramsey's original executive officer was struck with appendicitis. As the new person on board, this renders him vulnerable to the crew refusing to follow him when he challenges Ramsey's authority. His decision to relieve Ramsey of command is met with a great deal of unpopularity amongst the officers on the ship. Yet several ranking officers and crew members continue to follow Hunter, even after Ramsey briefly reasserts control of the ship and offers several officers and department heads the opportunity to side with him over Hunter. The reasons are not difficult to see. Hunter is not merely a questioning voice in a culture that is seen to discourage it (at least openly). He is constructed as a leader who is both an intelligent thinker and physically fit. Throughout the film, he is demonstratively sensitive to the needs of the men on the Alabama. Given the tension building amongst the crew with respect to their mission, Hunter advocates to Ramsey that the men could use some encouragement, rather than a "kick in the ass," as Ramsey suggests.

Hunter does not merely represent a "softer" if not reconstructed notion of what should constitute a military leader today, but also one imbued with the traditional physical qualities of the soldier *qua* warrior. In an early segment in the film, Hunter is shown running through the submarine and, later, shadow boxing in the gym. Thus, taken together with other scenes from the film, Hunter is depicted as a physically fit thinker. By contrast, Ramsey, the old warrior and stickler, is seen walking his dog, allowing it to urinate at will. However, Hunter is also depicted as a hands-on officer who will put himself in harm's way to save the Alabama. While Hunter is vigorously jogging through the submarine, a fire breaks out in the ship's galley, posing a threat to the vessel. He runs to the galley and takes charge in putting out the fire. In a later scene, he demonstrates his value as a warrior to other crew members, first by evading substantial enemy fire from an enemy Russian submarine and, ultimately, by destroying it. In doing so, Hunter proves that he is not merely an officer with an analytical mind, but also one with the capacity to be aggressive and make tough decisions. He is able to fight off the Russian submarine and destroy it, thus preserving the lives of the crew and safety of the submarine.

Hunter also demonstrates a capacity to make difficult leadership decisions that affect the lives of service personnel. Despite destroying the enemy Russian submarine, one torpedo manages to strike the Alabama causing flooding in a discrete area of the submarine (Bilge Bay) holding several personnel. The consequence is that the submarine rapidly descends. If the Alabama descends too deep, it would surpass

crush depth and be destroyed. In order to slow the descent, the hatch to the Bilge Bay had to be sealed lest the whole submarine be compromised by flooding. Closing the hatch, however, would seal the fate of the personnel in the Bilge Bay. Hunter loudly and unequivocally orders the lieutenant attending at the Bilge Bay to seal the hatch. The lieutenant reluctantly complies sealing the fate of his subordinates. These moments are critical to establish Hunter's credentials as being more than a theoretician and individual schooled in political and military philosophy. He is capable of taking lives of enemy combatants and sacrificing portions of his crew to save the greater numbers of those under his command. In so doing, Hunter demonstrates that he is capable of engaging in difficult tasks, and his judgment to resist must be seen in the overall context of his character and conduct.

One of the primary messages that one can read from this is the idea that a soldier and officer can be both a symbol of intelligence and caution, while also embodying the sense of adventure and daring that traditionally personifies military life. In short, Hunter is constructed as a more ideal modern-day soldier, physically and intellectually superior, endowed with demonstrative courage while asking the right questions, and challenging simple-minded thinking. Thus, the insistence to delay the launch of nuclear missiles to confirm the authenticity of the subsequent message does not emerge from a cowardly or vacillating mindset, but a considered and formidable space that will not bend given the stakes involved. It comes from a place where the essence of being a true warrior in this age is a brave *and* thinking one. It is one where the warrior must recognize that the true mark of a soldier is to know when not to fight or fire his weapon (in this case, nuclear warheads). It is also signified when the soldier must confront and challenge his superiors and to stand firm.

While characters in other films discussed in this Article also share (to varying degrees) Hunter's physicality, combined with a sense of courage, intelligence, and/or morality (e.g., Waters in *Tears of the Sun*,²¹² Elias in *Platoon*,²¹³ Brenner in *The General's Daughter*,²¹⁴ or Miller in *Green Zone*),²¹⁵ this is not always the case. Eriksson in *Casualties of War*,²¹⁶ Daniels in *Outbreak*,²¹⁷ and Walden in *Courage Under Fire*²¹⁸ are resisters who are presented as falling outside the mold of the more physically dominant male characters listed above. Physically, these three characters (and the actors who play them) are

²¹² TEARS OF THE SUN, *supra* note 51.

²¹³ PLATOON, *supra* note 50.

²¹⁴ THE GENERAL'S DAUGHTER, *supra* note 47.

²¹⁵ GREEN ZONE, *supra* note 48.

²¹⁶ CASUALTIES OF WAR, *supra* note 43.

²¹⁷ OUTBREAK, *supra* note 1.

²¹⁸ COURAGE UNDER FIRE, *supra* note 44.

smaller in size in comparison to others they are challenging and/or by which they are outnumbered. This makes their resistance all the more noteworthy. Eriksson (played by Michael J. Fox) is a soldier who is relatively shorter in build in comparison to the majority of the other soldiers in his squadron, including his physically domineering commanding officer, Meserve (played by Sean Penn).²¹⁹ Eriksson's smaller size is also compounded by the number of men in his squadron who are arrayed against him. Visually, this makes his attempts at resistance particularly striking. Though different in rank to Eriksson (a private first class), Daniels (a colonel played by Dustin Hoffman) also possesses a smaller frame compared to the taller superior officers (played by Morgan Freeman and Donald Sutherland) in *Outbreak*. Daniels' position as a doctor in the U.S. military also sets him outside the status of most of the other characters—he is not a typical warrior or fighter.²²⁰ Daniels' lack of a domineering physicality (which is, in turn, somewhat tied to Dustin Hoffman's lack of association as an action film actor) is compensated for by his resistive strain in pursuing the origins of and cure for the virus, but also in his willingness to face down the much larger and gargantuan bomber in his small helicopter to save the town. Lastly, Walden (played by Meg Ryan) is a captain and a pilot (and, in terms of status, falls somewhere in rank between Eriksson and Daniels), is physically outnumbered by those under her command, not to mention physically out-powered and openly disrespected for being a woman by Monfriez (played by Lou Diamond Phillips).²²¹ These disadvantages make Eriksson's, Walden's, and Daniels' resistance all the more striking and worthy of admiration to audiences. It makes them each more David-like relative to the Goliath-esque characters waged against them. Walden, Eriksson, and Daniels far less resemble the more physically domineering resister counterparts in other films.

What makes such resister-soldiers stand out in the various positive ways throughout these films, in addition to drawing affirmative attention to the value of their resistance, are the negative character traits possessed by their antagonists. *Crimson Tide* provides a good illustration of this.²²² In contrast to Hunter, Ramsey and those who support his efforts to launch the missiles are not associated with necessarily positive attributes. If anything, Ramsey, by his own self-

²¹⁹ CASUALTIES OF WAR, *supra* note 43

²²⁰ In some ways, Daniel Kaffee in *A Few Good Men* (played by Tom Cruise) bears a similarity with Daniels. Kaffee is not really a soldier, but a professional (i.e. a military lawyer) and an officer. This is accentuated by the manner in which he is treated by Colonel Jessep (played by Jack Nicholson) as not really being a soldier but someone who is merely a lawyer in uniform. Of course, Tom Cruise is also associated in other work, before and after *A Few Good Men*, as bearing a reputation as a dramatic and action film actor.

²²¹ COURAGE UNDER FIRE, *supra* note 44.

²²² CRIMSON TIDE, *supra* note 45.

description, is the embodiment of a “simple-minded son of a bitch.”²²³ He views his duty as simply needing to know how to push the launch button while Central Command tells him when. He is unconditionally obedient. The result of this professed simple and single-mindedness would have been a nuclear holocaust. Ramsey’s view of whipping the crew into mental shape is to act as a stern father figure testing his crew at vulnerable moments.²²⁴ For example, just as a galley fire is extinguished, Ramsey orders a launch drill under the theory that a moment of crisis is the best time to test the crew. Hunter, having just worked to put out the fire and sensing that the crisis may not have been fully resolved, questions the need to conduct the drill.

Other officers who take Ramsey’s side and attempt to reacquire control of the ship are also seen in a less than stellar light. In particular, they assume the traditional characteristics attributed to military servicemen, drawing from a toxic mélange of misogyny, sexually aggressive speak, and brutishness toward subordinates. One character, Lieutenant Bobby Docherty (played by the late James Gandolfini) is shown to be quick to assert his authority vis-à-vis younger and subordinate servicemen through bullying behavior. Like his simple-minded captain, Docherty sees no problems dropping nuclear missiles on enemies. He is also quick to reduce women to mere objects to be viewed for the male gaze. Another officer likens warfare to a crude sexual encounter.²²⁵

Amongst the principal male antagonists in other films discussed in this Article, there is a strong odor of sexual violence and misogyny that further serves to impugn their characters and, by association, the objectives they seek to advance. At its most extreme is the character of Meserve (played by Sean Penn) from *Casualties of War* who leads his men to kidnap, rape, and ultimately murder a female Vietnamese villager named Oanh, as revenge for the death of one of his soldiers at the outset of the film.²²⁶ Her dehumanization is strongly linked and intersected with her vilified ethnicity. In *A Few Good Men*, Colonel Jessep (portrayed by Jack Nicholson), the main antagonist in the film, diminishes and sexualizes the role of female officers to serving the sexual desires of their subordinates.²²⁷ He observes, “if you haven’t gotten a blowjob from a superior officer, well, you’re just letting the

²²³ *Id.*

²²⁴ This is similar to Colonel Jessep in *A Few Good Men* who sees no issues with using and promoting hazing tactics as means to “train” soldiers and bring them up to standard. See *A FEW GOOD MEN*, *supra* note 46.

²²⁵ *CRIMSON TIDE*, *supra* note 45. Lieutenant Zimmer (played by Matt Craven), one of the officers supporting Ramsey, argues with respect to the rebel leader threatening nuclear war, “you don’t put a condom on unless you’re gonna fuck.” War is likened to a sophomoric sexual jaunt.

²²⁶ *CASUALTIES OF WAR*, *supra* note 43.

²²⁷ *A FEW GOOD MEN*, *supra* note 46.

best in life pass you by.”²²⁸ Lastly, Monfriez in *Courage Under Fire* is openly hostile toward Captain Walden and often explicitly diminishes her status and authority as an officer and soldier by referring to her in sexually derogatory terms.²²⁹ Such sexist comments and attitudes within military cultures are nothing new, either in film or in reality, but they are specifically deployed for the purposes of impugning the characters associated with the oppressive conduct that resisters challenge.²³⁰

Military resister films project a largely positive character image of those who resist oppression and illegal conduct. Viewers are more readily able to associate particular forms of resistance with characters who are sympathetic, noble, and prime viewers to perceive their causes more sympathetically. By contrast, those who oppose the protagonists are constructed as largely villainous as well as sexist and not necessarily as intelligent as their resistant counterparts. With respect to the vast majority of the leading protagonists and antagonists, most could be characterized as white and male. All of the antagonists are male and, for the most part, older and Caucasian. With respect to protagonists, they are, with the exception of Captain Walden, all men. Two of the male protagonists are African-American, Hunter and Serling—both are portrayed by Denzel Washington. What this provides is a rather gender-dominated tableau which renders female resistance largely invisible. In the following section, I speak to the issue of gendering resistance narratives.

VIII. GENDERING THE RESISTANCE NARRATIVES

Amongst the various films examined above, there is a distinct absence of female resisters in lead or significant roles. The construction of military resisters is overwhelmingly gendered and specifically masculine.²³¹ While there are some female supporting characters that demonstrate a level of strength, they are fundamentally just that—supporting or secondary characters to male protagonists. For instance, in *A Few Good Men*, one of the main characters is Lieutenant Commander Galloway (played by Demi Moore).²³² Galloway is certainly a strong

²²⁸ *Id.* It should be noted, of course, that in various parts of the film, the male lawyers undermine Lt. Commander Joanne Galloway (played by Demi Moore), including the other members of the legal defense team who are technically her subordinates. Galloway is a member of the defense team representing two marines charged with murder.

²²⁹ *COURAGE UNDER FIRE*, *supra* note 44.

²³⁰ *See, e.g., THE GENERAL'S DAUGHTER*, *supra* note 47. The film *The General's Daughter* captures some of the degrading attitudes, acts and comments directed at women in the military.

²³¹ I, of course, note that, among the many films discussed in this Article, at the time they were produced (or when they were set), there may have been limited roles for women in combat positions. However, the films discussed are not purely about war and combat specifically. There are instances where female lead roles could have been written—for example, when relating to female lawyers, military medical doctors, warrant officers, etc.

²³² *A FEW GOOD MEN*, *supra* note 46.

personality who outranks the other members of the defense team (Kaffee and Weinberg) and persists in pushing Kaffee to pursue Dawson and Downey's defense to trial rather than secure a negotiated plea agreement. She also prods Kaffee to pursue other strategic moves that are ultimately critical, such as summoning Colonel Jessep to the witness stand to elicit a confession surrounding his role in the order to give Santiago a Code Red. During the defense team's investigation and interviews at Guantanamo Bay, Galloway also demonstrates the courage to confront Jessep regarding the use of Code Reds despite directions from Jessep's superiors that such conduct is unlawful. Galloway is, of course, verbally dressed down and humiliated in a sexist fashion by Jessep when she persists. She is not only subjected to mistreatment from superiors but also by subordinates. Throughout the film, Kaffee, and at times, Weinberg, speak to Galloway in a disrespectful manner, despite the fact that she is their superior. In terms of how she is generally depicted, due to her relative lack of trial experience (though Kaffee lacks this as well), Galloway is shown to make certain significant errors. Kaffee's treatment of her is often guided by the fact that he must grudgingly tolerate her presence because of her insistence that she be a part of the case,²³³ and that she is his superior officer who also works for internal affairs.

A similar model can be seen in *The General's Daughter*, where Sarah Sunhill (played by Madeline Stowe) acts as a co-investigator in the murder of Captain Elizabeth Campbell.²³⁴ Sunhill, like the lead character, Paul Brenner, is an investigator in the Criminal Investigation Division that addresses crimes occurring on military property. Like Galloway and her relationship with Kaffee, Sunhill has a somewhat combative relationship with Brenner and serves as an investigative muse for the lead character to show off his investigative and verbal prowess (though in Sunhill's case this was based on a past romantic relationship with Brenner). During the film, those seeking to impede her and Brenner's investigation subject Sunhill to violence and threaten her with further violence if she and Brenner do not relent and walk away. Realizing the identity of one of her attackers is an officer (who serves as General Campbell's adjutant), Brenner seizes him and interrogates him using violence and coercion outside the space of a formal interrogation room. The interrogation serves as both an investigative tool as well as a means for Brenner to exact vengeance on the officer. Though Sunhill participates in the questioning and pours scalding hot coffee on the officer, it is abundantly clear who is in charge—Brenner. Near the end of the film, she is unknowingly used as a lure by Campbell's murderer,

²³³ She secures herself a significant role by having Downey designate her as his counsel.

²³⁴ *THE GENERAL'S DAUGHTER*, *supra* note 47.

Colonel Bill Kent (played by Timothy Hutton) to draw in Brenner. Kent is aware of Brenner's progress and that he is close to figuring out Kent's role. Kent's goal is to kill himself using explosives and take Brenner and Sunhill out with him in a blaze of glory. Brenner is ultimately able to secure his and Sunhill's safety while Kent perishes. Through these scenes, Sunhill's victimhood provides Brenner the ability to assume the role as avenging angel and savior, not to mention the chief investigator. Sunhill does have one very significant independent success as an investigator in the film. She is able to determine the identities of those who raped Elizabeth Campbell as a cadet at West Point. Through some creative trickery, she is able to obtain information from one of the cadets present during the rape. Sunhill's facility in obtaining the evidence is later used by Brenner to point out to General Campbell that through some barely minimal effort, the identities of those who raped his daughter could be ascertained rather easily.²³⁵

There are other agentive female characters in the military films discussed in this Article; however, they are ultimately killed and victimized. As noted above, in *The General's Daughter* the film speaks about the investigation of Captain Elizabeth Campbell's murder. Due to the gang rape she suffered at West Point, Campbell sustained serious psychological trauma compounded by her father's involvement in covering up the crime. As revealed throughout the film, Elizabeth Campbell was involved in psychological warfare training. However, as an act of resistance toward her father, she became sexually involved with numerous officers under her father's command, and he was aware of it. When confronted by her father who issued an ultimatum that she either seek help or resign her commission, she responds with a vivid display. Through the assistance of her superior, Colonel Moore (played by James Woods), she situates herself nude and spread-eagled in a training area with her hands and feet fastened by rope in a fashion similar to when she was gang raped at West Point. The point was to confront her father with what happened to her and for him to acknowledge the rape and the viciousness as to how it happened. After facing Captain Campbell, her father walks away, leaving her there. Colonel Kent soon after appears on the scene as part of his patrol. As he asks her what has happened, Campbell tells him to go away as her father might return and she needs to speak with him alone. When Kent does not listen, Campbell berates him and professes how little Kent means to her. Kent, who is married but had an affair and is in love with Campbell, feels spurned. Emotionally injured, he strangles Campbell to death. Thus, at one level, Elizabeth Campbell is an assertive and

²³⁵ In the film, General Campbell is advised after the rape that the assailants would not likely be found. Sunhill's ingenuity in securing the identities demonstrated that General Campbell's belief was mistaken.

educated individual who engages in acts of resistance against her father, a superior officer, who suppressed a serious crime committed against her. However, she is also a tragically wounded individual due to the rape and her subsequent actions, which ultimately lead to her murder and render her a victim. Her character is arguably redeemed insofar as Brenner uncovers what she was subjected to and General Campbell's conduct in suppressing the crime's evidence. Brenner's investigation (assisted by Sunhill) leads to Elizabeth Campbell's rehabilitation, but it primarily comes as a result of his efforts.

In a not so dissimilar fashion, in *Courage Under Fire*, Captain Karen Walden plays a significantly defiant role in resisting attempts by her crew to abandon her injured co-pilot Rady.²³⁶ However, her resistance is only discovered from Serling's persistent investigation to uncover what happened when faced with contradictory and/or incomplete information from the other crew members. Walden was posthumously nominated for a Medal of Honor for saving a Black Hawk crew that was enduring significant enemy fire; she had ordered her crew to fire on the Iraqi soldiers and launch a fuel bomb on an Iraqi tank. Through Walden's crew's efforts and, by virtue of her orders, the Black Hawk crew was able to survive. However, as a result of Serling's investigation, we learn that the medal is further earned because of her efforts to save Rady. Unlike many of the male resisters in the other films examined, Walden perishes. In the end, it is only through the efforts of the leading male character of the film that Walden's story of resistance comes to light.

Such limited representations of the role of women as agents in military films are reminiscent of the portrayals of women lawyers in many American films writ large. Christine Corcos and Carole Shapiro have each highlighted in various writings the ways in which female lawyers are typically portrayed as being less competent, having deeper flaws relative to their male counterparts, and/or being ultimately secondary to and act in support of the leading male characters upon whom greater credit is bestowed.²³⁷ Much the same could be said for the female characters in these military resistance films—to the extent that they even have any role.

Given the greater role that women are playing in the U.S. military, including in active combat roles, it has become less tenable (if it ever was) to have female characters play secondary roles to male leads, whether as military lawyers, military police investigators, or

²³⁶ COURAGE UNDER FIRE, *supra* note 44.

²³⁷ See, e.g., Christine Corcos, "We Don't WANT Advantages": *The Woman Lawyer and Her Quest for Power in Popular Culture*, 53 SYRACUSE L. REV. 1225 (2003); Carole Shapiro, *Women Lawyers in Celluloid: Why Hollywood Skirts the Truth*, 25 U. TOL. L. REV. 955 (1995); Carole Shapiro, *Women Lawyers in Celluloid, Rewrapped*, 23 VT. L. REV. 303 (1998).

combatants. Female soldiers may be increasingly required to challenge authority in ways similarly faced by male counterparts depicted in the films discussed. But because many female personnel are still subjected to sexual harassment and violence by fellow male servicemen and superiors, there is also relevance to having narratives that involve resistance to such criminality and sexism depicted. However, there should be some caution about overemphasizing the resistance of female military personnel in connection with sexual assault and harassment. To do so would direct too much attention to their victimization and/or resistance in this specific context to the exclusion or minimization of their capacity for resistance in other respects faced by male counterparts.

CONCLUSION

In several U.S. military films, there has been a persistent and noticeable theme whereby resistance to superior orders is valorized. There have been two substantial themes connected to this valorization of resistance. First, resistance in the films examined in this Article is presented as normatively justifiable behavior when it is undertaken with the purpose of saving the lives of civilians, both foreign and domestic, as well as in connection with the object of rescuing other fellow U.S. soldiers. A second significant theme is that such military films have positively presented the value of engaging in resistance when it is animated toward disclosure of criminal or otherwise oppressive military conduct as well as cover-ups of matters that should be disclosed to the proper authorities, other parties, and/or the public. Through their acts, resisting soldiers are presented as legal agents capable of taking actions that demonstrate an alternative conception of legal normativity contrary to that which they are expected to uphold. Lastly, such military law films have constructed resisters as embodiments of intelligence, morality, and courage. These mediums of popular culture have the ability to prime viewers toward judging the characters' acts of resistance more favorably and worthy of emulation under the right circumstances. Furthermore, such films can be used as educational tools as other forms of popular culture have in other professional contexts. As identified, however, one of the main shortcomings of these films is the absence of strong female characters as resisters and the main protagonists. With the increased presence of female personnel in the U.S. military in both combat and non-combat positions, there is a place if not a need for films to reflect this with female characters assuming leading roles as resisters.