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## Weak Legs: Misbehavior Before the Enemy

STATUTES MAKE FOR APPALLINGLY TEDIOUS reading unless primitively short and to the point as, for example, this provision in the early Kentish laws of Æthelberht (c. 600): “He who smashes a chin bone [of another] shall pay 20 shillings” or this one from King Ælfred (c. 890): “If anyone utters a public slander, and it is proved against him, he shall make no lighter amends than the carving out of his tongue.”<sup>1</sup> Yet on very rare occasion a modern statute can rivet our attention and when it does it seems to do so by mimicking some of the look and feel of legislation enacted in less lawyer-ridden times. Consider the statute presently set forth in the United States Code as part of the Uniform Code of Military Justice:

### MISBEHAVIOR BEFORE THE ENEMY

Any member of the armed forces who before or in the presence of the enemy—

- (1) runs away;
  - (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;
  - (3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
  - (4) casts away his arms or ammunition;
  - (5) is guilty of cowardly conduct;
  - (6) quits his place of duty to plunder or pillage;
  - (7) causes false alarms in any command, unit, or place under control of the armed forces;
  - (8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy;
  - (9) does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces . . . when engaged in battle;
- shall be punished by death or such other punishment as a court-martial may direct.<sup>2</sup>

Making cowardice a capital offense strikes us as a kind of barbaric survival from a rougher age, a time, that is, when few doubted that courage ranked higher than pity or prudence in the scale of virtues. And if many of us today believe that capital punishment cannot be justified even for the sadistic torturer, what a shock to discover that, as an official matter at least, Congress reserves it for the person who cannot kill at all. Not to worry: although the state has the power and right to execute those who misbehave before the enemy we are too unsure of ourselves, or

maybe even too charitable, to enforce the statute maximally. We have done so but once since 1865 when Private Eddie Slovik was executed by firing squad “pour encourager les autres” in the bleak Hürtigen Forest of 1945.<sup>3</sup> Still, even if only by inertia, we have preserved the option.

Quite independent of the grimness of its sanctions, the statute prompts our attention because of its strangely absurdist quality. Most of its provisions seem merely to restate each other. What, for instance, is running away (1) that isn’t also cowardly conduct (5). And aren’t paragraphs 2 and 8, the one covering the shamefulness of cowardice on defense, the other governing slacking off on offense, really special cases of cowardly conduct punished in 5? Paragraph 7 goes so far as to make jitteriness a capital offense to the extent one’s nerves lead one to overinterpret causes for alarm, while paragraph 3, in contrast, authorizes putting the sleeping sentry before the firing squad apparently because he is not jittery enough even to stay awake.

There is also the statute’s strange relation with fear. All law must pay homage to fear, for if the law does not succeed in nurturing the passions that will make it self-enforcing, such as a sense of duty or a special reverence for the law as law, it must have recourse to fear, the passion that underwrites all coercive law—fear of punishment or the fear of the shame of being execrated as a law breaker. But this statute places fear at its substantive core, for it is fear-impelled action that it mostly seeks to regulate.

Only paragraph 6—the stricture against looting—cares nothing about fear, not even the fear that you and your raping and pillaging comrades inspire in the enemies’ civilian population as you quit your proper place to plunder. Like the other provisions, the antilooting provision is devoted to maintaining the delicate balance of forces that keep armies behaving as armies rather than as crowds. At times that balance is as susceptible to being undone by routing the enemy as by being routed by him. Success can be as disordering as failure.<sup>4</sup> The initial success of the German offensive on the western front in March 1918 was stopped, say some, as much by the German soldiers stumbling upon stores of wine and cognac as by Allied resistance. But the weight of these strictures shows that loss of discipline and order bred by greed, cruelty, lust, and other manifestations of exultant riot is of significantly less concern than the loss of discipline bred by fear, slackness, and failure of nerve. Narrow self-interest in the exuberantly acquisitive style of the looter is just not as worrisome to an army as narrow self-interest in the life-preserving style of the coward. Fearfulness, not lust or gluttony, count as a soldier’s first sin.

There lurk in this strange statute various attempts at a theory of the moral and legal economy of courage, cowardice, duty, and fear in the context of the demands a polity, in this case the American polity, makes upon its combat soldiers. The exposition that follows, structured mostly as a gloss on the various provisions of the statute, seeks to reveal the features of that economy.

## Running Away

Isn't running away, punished in paragraph 1, running like hell for the rear, precisely how we visualize the purest cowardice (punished in paragraph 5), just as casting away arms (punished in paragraph 4) so you could run away faster was how Plato and Aristotle envisioned it?<sup>5</sup> In fact, the very vividness of the image of running away has led some defendants to prefer being charged with the vaguer and more abstract cowardice under paragraph 5, considering it less prejudicial than an accusation of running away.<sup>6</sup> But statutory provisions that to the normal eye look duplicative will inspire interpreters to invent differentiating glosses, just as language itself, though needing all kinds of structural and particular redundancies, never quite allows a perfect synonym. So paragraph 5—cowardice—was read to require a showing of fear as a necessary element of the offense.<sup>7</sup> Cowardice had to be motivated by fear or it was not cowardice, but running away, it was decided, did not need to be so motivated. This strikes normal people, nonlawyers, that is, as somewhat perverse. Why else would anyone flee battle, run away, if not in panic or terror or out of simpler fears of death and mayhem?

The military judges struggled to give running away a meaning that would distinguish it from cowardice. They wanted to avoid defining running away so expansively as to undo the mercy implicit in differently defined and lesser offenses such as "absent without leave," those acts of desertion that did not take place in the presence of the enemy.<sup>8</sup> One military court became the final word on the subject with this desperate attempt:

This term [*runs away*] must connote some form of fleeing from an ensuing or impending battle. . . . it appears that to limit the phrase to flight from fear or cowardice is too restricted. It would appear to be more in keeping with the offense, if an intent to avoid combat, with its attending hazards and dangers is considered as an essential part of running away.<sup>9</sup>

"An intent to avoid combat" seems to be a catchall for whatever motives other than fear might prompt a soldier to run away. What precisely might these motives be? One could, I suppose, run away out of treachery, or out of the most calculating thin-lipped prudence,<sup>10</sup> or out of love, as the humane Abner Small supposes, in the case of the deserters he was asked to round up on home leave back in Maine in 1863: "My sympathies, I admit, were often moved for deserters whose love of family was apparently stronger than their love of country. They weren't running away; they were merely going home."<sup>11</sup>

But the narrative suggested by each one of these motives seems incomplete without complementing them with fear of death. The most psychologically plausible motive for running away that dispenses with such fear is fleeing in disgust, sick at being stuck in a situation where so much is asked of you and so little given you in return; not fear, but the feeling of being ripped off, revolted by unfairness and

injustice. But such a person does not run away; the image is wrong, even the notion of fleeing misrepresents the insolence, even the fearlessness, with which he walks, sullenly saunters, but manifestly does not *run* away, while muttering, “fuck this.”

But the court doesn’t offer us a picture of sullen withdrawal. Still desperate, the judges turn to William Winthrop’s *Military Law and Precedents* where he too evinces bafflement, and in good legal form provides authority for his bafflement by citing an older writer who was discussing something not precisely on point:

RUNNING AWAY. This is merely a form of misbehavior before the enemy, and the words “runs away” might well be omitted from the Article as surplusage. Barker, an old writer cited by Samuel, says of this offense:—“But here it is to be noted that of fleeing there be two sorts; the one proceeding of a sudden and unlooked for terror, which is least blameable; the other is voluntary, and, as it were, a determinate intention to give place unto the enemy—a fault exceeding foule and not excusable.”<sup>12</sup>

The court citing Winthrop citing E. Samuel (early nineteenth century) citing Robert Barker (late sixteenth century) distinguishes two types of fleeing, the first “proceeding of a sudden and unlooked for terror” and the second of “a determinate intention.”<sup>13</sup> Barker considers this first kind of flight the “least blameable,” reminding us that, in normal life, we sometimes are willing to excuse one who commits his offense in a panic. We may even be tempted to say that panic-stricken conduct is involuntary, something for which we cannot hold the actor accountable. To be sure, suddenness hardly precludes volition (when I flee in panic I am still voluntarily quitting the field), but Barker is right to notice that our ordinary ideas about culpability distinguish between the offender who coldly calculates, the picture of self-interested prudence itself, and the one who offends while in the grip of terror or some other strong passion.<sup>14</sup> The distinction Barker is making is also likely to capture the difference in culpability of the first man to flee from those who follow infected by his contagion. But the statute does nothing to incorporate Barker’s distinction; the statute catches in its lethal sweep the cold calculator and the panicked wreck, whether under paragraph 1 or 5.

Panic, one suspects, is treated more leniently by Barker because it is impractical to do otherwise, not just as a concession to ideas of *mens rea* or culpability. Panic usually involves large numbers in headlong flight and however harmful its consequences it hardly makes sense to hand over the entire army to the firing squad. Let them make amends by regrouping and fighting better another day. Barker’s distinction between “exceeding foule” flight of “determinate intention” and less blameworthy panicked flight follows immediately upon his discussion of Roman decimation, the practice of killing by lot one in ten of a failed legion. This association suggests that decimation might be suitable in the case of generalized panic-propelled fleeing, but that fully individualized punishment, rated at 1.0 probability rather than at the 0.1 discounted group rate, should be meted out to the voluntary calculator of his own immediate best interests.

A prosecution brought under paragraph 5, cowardly conduct, must show, as

noted, that the conduct was motivated by fear. This is one of the few areas in the law where the decision maker is asked actually to find that the person was motivated by a particular passion, not just to find that the person was in the sway of some generalized powerful passion. How do we prove that fear was the motive? Do certain bodily clues betray him? Was he pale, did he tremble, sweat, shed tears, urinate or defecate in his pants? Even if so, such bodily indicators are ambiguous. Heat too makes us sweat, while joy, grief, and the cold may make us shed tears. The most lethal saga hero of ancient Iceland grew pale in anger, not in fear. Michel de Montaigne observes that both “extreme cowardice and extreme bravery disturb the stomach and are laxative.” Even the nickname “The Trembler,” he notes, given as an honorific to King Garcia V of Navarre, “serves as a reminder that boldness can make your limbs shake just as much as fear.”<sup>15</sup> Dysentery can cause us to befool ourselves. And the fear of getting caught with one’s pants down often leads the soldier, at least in the trenches of World War I, to become desperately constipated.<sup>16</sup> Fear does have a distinctive facial expression but the expression can be suppressed when one is scared and faked when one isn’t.

This is not earth-shattering news. State of mind always ends up being inferred either by legal convention or by the social knowledge necessary to make sense of whatever act or omission whose motivation we seek. If one is in a battle and trembles *and* runs away, or cries while curled up in a fetal position and hence cannot advance, then we judge that behavior to be a consequence of fear, and so confident are we of our judgment that we would not believe anyone who behaved in such manner and said he was not fearful.

In peace the law of duress assumes that fear is excusing; in the military fear is incriminating.<sup>17</sup> In the civilian world one who succumbs to fear may plead duress to avoid criminal liability, but in battle the soldier may not succumb to fear unless a substantial number of his fellows give in at the same time. If he is the only one (or one of few) who gives way we judge him to be of insufficient firmness and thus culpable. In cases of common-law duress the defendant is measured against a norm whose constraint on actual behavior is hypothesized by figuring what the “reasonable man” would do under like circumstances, but in battle the norm is situated concretely: we know whether most held firm, or whether most didn’t. If most didn’t they are all off the hook, for we do not, in the Roman style, cast lots and decimate the battalion.<sup>18</sup>

### **Gentle Offense vs. Craven Defense**

Fear has been read in as an element only in the specific charge of cowardice in paragraph 5. But it is also the psychological and social *éminence grise* in other provisions. Paragraph 2 deals with the shameful abandonment or surrender of men, a position, or material; paragraph 8 deals with the willful failure to do one’s

utmost to encounter the enemy. Paragraph 8 can be seen as the failure to give cause to the enemy to violate their version of paragraph 2; that is, the most desired outcome of your aggressive moves is to cause the enemy to abandon shamefully what it is their duty to defend. The “shamefully” explicitly makes this a moral issue, as well as a legal one. Paragraph 2 involves the kind of mettle needed to defend properly, paragraph 8 the kind needed to offend or attack. And although we understand failures under each provision to involve cowardice, it is not clear that these cowardices carry the same moral weight or are understood in quite the same way.

Courage on defense seems to demand a different mix of virtues and talents than does courage on offense, and it may be that cowardice also varies with the different styles of courage demanded. We can, I think, imagine someone who is perfectly courageous when attacked, who will not flee, who will even die before abandoning the fight, who at the same time does not have the ability to initiate violence, who, if not quite a mass of quivering jelly, may tend to find too many reasons, with all the trappings of an admirable prudence, why it would not be in anyone’s best interests to go over the top: a slacker. A person constituted like this would not strike us as a psychological impossibility. In fact Ulysses S. Grant complained that such was exactly the problem with one of his generals—G. K. Warren: Warren was able to see “every danger at a glance,” too many dangers apparently and he delayed moving until he had made exacting preparations for each of them with the result that he never got to his appointed place in time to coordinate with others. But still “there was no officer more capable, nor one more prompt in acting, than Warren *when the enemy forced him to it*” (emphasis supplied).<sup>19</sup> Nor is the obverse unimaginable: someone brave in the attack, but cowardly in defense. Some have suggested that this describes Mike Tyson’s moral failure in his fights with Evander Holyfield, who, when his ominous aggressiveness failed to cow the opponent, either folded sullenly or folded violently but in such a way that announced he was quitting the field. Aristotle may have had such a type in mind in his rather implausible portrait of the rash man, who turns cowardly the moment he experiences any real resistance.<sup>20</sup>

Consider a special kind of failure on offense described by Abner Small, a Union officer, recalling the battle at Fredericksburg, in which Federal troops were massacred as they charged repeatedly over open ground against Confederate guns and soldiers safely placed behind stone fences, a kind of Union anticipation of Pickett’s charge or of the horror of 1 July 1916 on the Somme:

I wondered then, and I wonder now equally, at the mystery of bravery. It seemed to me, as I saw men facing death at Fredericksburg, that they were heroes or cowards in spite of themselves. In the charge I saw one soldier falter repeatedly, bowing as if before a hurricane. He would gather himself together, gain his place in the ranks, and again drop behind. Once or twice he fell to his knees, and at last he sank to the ground, still gripping his musket and bowing his head. I lifted him to his feet and said, “Coward!” It was cruel, it was wicked;

but I failed to notice his almost agonized effort to command himself. I repeated the bitter word, "Coward!" His pale, distorted face flamed. He flung at me, "You lie!" Yet he didn't move; he couldn't; his legs would not obey him. I left him there in the mud. Soon after the battle he came to me with tears in his eyes and said, "Adjutant, pardon me, I couldn't go on; but I'm not a coward." Pardon him! I asked his forgiveness.<sup>21</sup>

This passage is remarkable not just for the substantial literary talent it reveals but also for the penitent self-understanding of its author, an officer, who has the moral courage to beg forgiveness of one of his men who cannot bear the disgrace of one interpretation of his failure to advance. This is also an account of weak legs, one of many that could be culled from war memoirs and courts martial, with all the particular moral ambiguity that such cases reveal. The soldier's spirit, it seems, was willing, but his flesh was weak. His body just would not respond to the dedication of his will to do the right thing, to go forward. That is one view of the matter: the soldier's view it seems. There are other ways of looking at it.

Weak legs are a near unfathomable mystery. It is the mind-body problem in spades, not as an intellectual exercise, but sadly offering this soldier his most dignity-preserving defense. Without a convincing account of mind and body, emotion and body, conscious and unconscious, we do not know how to apportion blame between body and will. Though this soldier's fear may be generated unconsciously by brain processes that are old enough evolutionarily to be available even to reptiles, he also has self-consciousness, and we cannot read his weak legs without paying heed to his own view of what happened to himself. His own bewilderment, anguish, and frustration with his will's inability to effect his conscious good desire to acquit himself well is not quite the same as the classic case of weakness of will, in which the will is without means to overcome conscious *bad* desires. All his conscious desires are proper.

Here the will is undone by we know not what. Unconscious desires to flee? Or something more primitive than desire, pure automatic freeze reflex? Or does he will his weak legs but deceive himself into thinking he has willed otherwise? Are weak legs a peculiarly male form of hysteria? Surely some instances resemble classic cases of hysteria, as when the legs give way when ordered to attack, but remain hysterically paralyzed as part of more generalized shell-shock, combat stress, or just plain cracking up.<sup>22</sup> Might he know he fears and intends to indicate that he does not ratify his fear, that he means to move on in spite of it and is desperately ashamed that an undesired desire for safety is causing his body to defeat his desired desire to move forward? To his mind he is not a coward, even though he couldn't go on. Most cowards' legs remain quite serviceable for running away, but this man's legs do not let him flee either. Cowards flee, not him; he just can't go forward: "I'm not a coward," he says with vehement conviction.

Whom or what to blame, whom or what to understand, excuse, pardon, or convict? Major Small's own theory varies with the exigencies of the setting, and no



doubt ours would too. In the heat of battle Small is not generously disposed toward the shaken soldier. In battle Small's interests are such that he must hold the soldier strictly liable for the poor performance of his legs, whatever the source of their weakness. He has just grounds for suspicion, for weak legs are so easy to fake. Small's man proves the sincerity of his excuse, however, but only once the battle is over and Small has time and quiet to ponder the mysteries of courage and cowardice is he willing to accept the excuse. The soldier not only now sheds tears of frustration, contrition, and shame, but he had also rebuffed his officer's accusation as a man of honor would: he gave Small the lie, the traditional manly challenge to a duel upon an accusation of cowardice. The poor man means well in the aftermath and Small's lack of certainty as to the psychological and physiological components of weak legs incline him toward lenience and thus toward believing the soldier meant well on the field of battle too. The statute punishing "willful failure to engage" the enemy follows Small in giving some credence to a weak-legs defense, for weak legs are not understood to occur willfully. If there was a mutiny it was of the legs, not of the will. He will be spared the firing squad. Though he can't help his weak legs he may still be in the martial world a coward, but in the more nuanced judgment of one civil war soldier "a good coward," one who tried hard to stick it out, though in the end he ran away every time.<sup>23</sup>

Weak legs figure in soldiers' accounts as an insistent motif, seeming to stand as the emblem for the many kinds of fracturing that battle works on the unity of sense and sensibility, but mostly it stands for the split between mind and body. The body just goes its own way and the soldier looks on in dismay. This is the body that befouls the soldier's pants during shelling or in the midst of a charge; this is the body that sheds tears, sweats, faints, and even instinctively feints. This also may be the same perverse body that thwarts male desire, as well as male will, as when a man "can't get it up," a case of a weak leg if ever there was one. The same body figures in diverse and often ambivalent ways in how we talk about courage and cowardice: courage is heart, cowardice losing heart; courage is nerve, cowardice nerves; it takes guts to go forward, but the same guts cramp in agony or explode in diarrhea. And when courage is playing on disgust's home turf rather than on fear's it takes "stomach," not guts, to overcome the horror.

Like guts, legs play both sides of the fence; they are as likely to do their duty against a desire to fold as they are to fold against a desire to stay the course. Thus men march asleep, stand at their posts though asleep on their feet; the soldier would prefer to fall out of line, but his legs keep going with a will of their own. One of Tim O'Brien's characters in *Going After Cacciato* can consciously resolve to fall down, yet have his legs refuse to obey—"the decision did not reach his legs."<sup>24</sup> Then there are the cases, often medal-winning cases, of those who fight on despite failed and very weak legs, who manage to continue when their legs have been mangled by mines or even severed by shells. Winner of a posthumous Medal of Honor, Private Herbert Christian, in action in Italy in 1944, had his right leg severed above the

knee by cannon fire, but continued to “advance on his left knee and the bloody stump of his right thigh, firing his sub-machinegun,” killing three of the enemy and thereby rescuing twelve of his comrades. He continued forward for another twenty yards to within ten yards of the enemy position where he killed “a machine pistol man” before he finally succumbed.<sup>25</sup>

Irony is at the core of weak legs in all its manifestations; the body makes a joke out of our disembodied aspirations, and those aspirations repay the favor by making the body into a bit of joke itself. From the conventional case in which legs give out against the will of their owner, to the unconventional case in which they don't give out even when they are no longer there, Irony smirks from above or from wherever Irony has its mythic home. Weak legs are the governing explanatory force in incidents in which they have been metamorphosed almost beyond recognition. Robert Graves's dark eye gives us this account:

So [Captain] Samson charged with “C” and the remainder of “B” Company. . . . When his platoon had gone about twenty yards, he signalled them to lie down and open covering fire. The din was tremendous. He saw the platoon on his left flopping down too, so he whistled the advance again. Nobody seemed to hear. He jumped up from his shell-hole, waved and signalled “Forward!”

Nobody stirred.

He shouted: “You bloody cowards, are you leaving me to go on alone?”

His platoon-sergeant, groaning with a broken shoulder gasped: “Not cowards, Sir. Willing enough. But they're all fucking dead.” The Pope's Nose machine-gun, traversing, had caught them as they rose to the whistle.<sup>26</sup>

This case is almost perfectly congruent with Small's confrontation with his weak-legged soldier. The commanding officer finds his men unable to go forward; they, through a spokesman this time for obvious reasons, testify that they are not cowards; indeed they are as willing as can be (“Not cowards, Sir. Willing enough”), but being dead, their legs are simply unable to carry out their noble posthumous wishes. Weak legs, by hook or crook, come to explain the failure of most all failed charges. Death, in this bitterly comic tale, is merely a special and conclusive case of weak legs.

Not just legs suffer from weakness; fingers get infected too. According to a well-known and very influential claim made by military historian General S. L. A. Marshall in 1946, only fifteen percent, and in any event no more than twenty-five percent, of American World War II infantrymen ever fired their guns in battle, even once.<sup>27</sup> Marshall's numbers may not be plausible and they have been strongly and convincingly disputed, but for our purposes it is sufficient simply to note the phenomenon as a form of weak legs, however extensive it may have been.<sup>28</sup> These same men did not run, but they could not or would not fire, even, he claimed, when they were being overrun in banzai charges. They were “not malingerers . . . They were there to be killed if the enemy fire searched and found them.”<sup>29</sup>

Marshall offers two main explanations; one is the standard case of weak legs:

“The failure of the average soldier to fire . . . is the result of a paralysis which comes of varying fears.”<sup>30</sup> The other qualifies as weak legs too, but a very nonstandard case. In this explanation the idea is that people actually fear killing more than being killed. Your legs give out because you fear dying; your finger gives out because you fear killing. What do you expect, asks Marshall, after socializing our citizens in nonaggressiveness and in the value of human life: “[His upbringing] stays his trigger finger even though he is hardly conscious that it is a restraint upon him. . . . At the vital point, he becomes a conscientious objector, unknowing.”<sup>31</sup> A colleague of mine who fought as a second lieutenant at T-Bone Hill in Korea offers another explanation, which Marshall dismisses: The soldier who doesn’t fire at the enemy, he says, holds the magical belief that his kindness will be reciprocated.<sup>32</sup>

This same colleague raised another matter relevant to our theme. Weak legs may be the only way of raising the white flag on offense. When I asked him about his fears going up the hill he answered impatiently: “What the hell was I supposed to do? Raise a white flag on an assault? A cook or some rear-echelon guy can raise a white flag. But how do you raise a white flag in a charge?” Weak legs move in to fill the void raised by the comic incomprehensibility of surrendering as you go forward in an attack.

Cowardice on defense seems more craven than cowardice on offense. Our image is of begging not to be killed, turning tail and running, or simply despairing and not just not fighting, as on offense, but not fighting *back*. Failure under paragraph 2 or 8 is cowardly, and hence shameful, but only one offender, the miscreant defender, is branded shameful. Why the difference? There are several possible reasons. One involves the different stakes between losing as a defender and not measuring up as an aggressor. In the paradigm case we understand that the failure to defend means losing all; whereas the weakness on offense means you go home with your tail between your legs. But there is a home to return to. We are all expected to defend what is ours, our property and our loved ones. Consider too the almost ridiculous obviousness of this statement: the moral demand to defend to the utmost is greater than the moral demand to attack or aggress to the utmost. Even in aggressive honor-based cultures that is true. However fearful you are, you must defend, but no one expects everyone to volunteer to be the forlorn hope, the first through the breach in the wall. And as a psychological matter, we tend to find losses of what is already ours much more grievous than failures to acquire an equivalent amount of what is not ours.

The defender doesn’t have the same kinds of choices the aggressor has or as many, for the latter is the moving party. It is aggressors who get to choose the timing and locate the battle on the defender’s turf. The defender has no choice but to resist, even though he has some choices about how to carry this out: sometimes he must fight pitched battles, but other options are available. The Russians, for instance, have let the vastness of their land defeat invaders until it was safe to assume an

offensive posture; others have worn their attackers down with pesky gnatlike resistance, as Fabius did to Hannibal. But we should also note that Fabius had to muster great reserves of moral courage to persevere in the face of being thought cowardly by his countrymen for not engaging more aggressively.<sup>33</sup> Gnatlike resistance, though effective in the end, may in certain warrior cultures not look manly enough to preempt accusations of poltroonery. The prudent warrior must always endure suspect glances and innuendoes about his fearfulness and lack of nerve. The statute may capture some little bit of that mistrust of the good faith of justifications for retreat and surrender, holding the defender of hearth and home to a higher moral standard than the weak-legged attacker. The paradigm we see embedded in the statute—of invading aggressor versus the defenders of the homeland—grants the attacker other options; it even allows him to plead weak legs from time to time, but the defender’s legs must stand firm. And maybe too we seem to feel that we have more right to ask legs to stand still than to move forward, by which ruse we simply restate the differing moral stakes in not defending as opposed to not offending.

### Throwing Away One’s Weapons

The proscription against casting aside one’s arms has a long tradition. It is a triumph of the grim literalism that often characterizes law that this provision, paragraph 4, wouldn’t be understood to be implicit in paragraphs 2 (shameful abandonment of a position), 5 (cowardice), and especially 1 (running away). Running away, except as perversely understood by the military courts, and casting away one’s weapons, as I noted earlier, are both meant to capture the quintessence of martial cowardice: headlong panicked, *sauve-qui-peut* flight:

Well, what if some barbaric Thracian glories  
in the perfect shield I left under a bush?  
I was sorry to leave it—but I saved my skin.  
Does it matter? O hell, I’ll buy a better one.<sup>34</sup>

The comic energy of Archilochus’s little song is parasitical on the power of the norms he so gleefully confesses to violating. The wit of such self-mockery, at such brazen shamelessness, is only possible because the norm against running away and debarrassing oneself of one’s burdensome shield demands some kind of psychic homage even when not adhered to.<sup>35</sup> But there is another kind of heroic inversion that takes place here. To be this cheerfully a coward in a warrior culture may itself mimic courage: such unapologetic shamelessness requires a certain kind of fearlessness, as Aristotle recognized.<sup>36</sup> This is the fearlessness that informs what we might vulgarly call the “I-don’t-give-a-shit-what-they-think” attitude in matters touching upon reputation, an attitude as unfathomable to most of us as is the berserk courage of the kind that we associate with Alexander the Great. In keeping with his perversely inverted courage Archilochus refuses even to allege fear as the reason for

casting away his shield. It is all a matter of rational choice. His weapons, as he observes, are completely replaceable, something he is quite pleased to believe is not the case with himself. And although Archilochus knows he will have to fight again (that is one of the risks that running away does not completely resolve unless he is capitally punished for it), there is not the least hint he will do better next time.

Archilochus's wit also reveals that virtue funds a powerful comedic impulse dedicated to deflating virtue's own pretentiousness and goody-two-shoes piety. Archilochus's comedy celebrates a life-affirming world of very unrigorous virtue, what somber professors of virtue might even call vice. Life-affirming affability, as unrigorous a virtue as we might find, is not a trait we think of as likely to describe the hero as it does the amiable hedonist, who means well and even does well as long as life or limb are not at stake, who prefers to keep fear safely relegated to worries about whether the sauce is sufficiently piquant to satisfy his guest's palate. Yet unlike the other cardinal and theological virtues, courage thrives in certain restricted comedic veins. It is not just the butt of the comedic; in some cultural settings the heroic style means to be funny with the nasty in-your-face mordancy of gallows humor. Here the mockery is not directed against the virtue of courage at all, but against all arguments that would undermine it, such as life itself.

With Archilochus compare the keen comedic eye of this confederate soldier running away to beat hell at Sharpsburg:

Oh, how I ran! Or tried to run through the high corn, for my heavy belt and cartridge box and musket kept me back to half my speed. I was afraid of being struck in the back, and I frequently turned half around in running, so as to avoid if possible so disgraceful a wound. It never entered my head to throw away gun or cartridge box; but, encumbered as I was, I endeavored to keep pace with my captain, who with his long legs and unencumbered would in a little while have far outstripped me but that he frequently turned towards the enemy, and, running backwards, managed not to come out ahead in this our anything but creditable race.<sup>37</sup>

John Dooley, our soldier, runs his anything but creditable race desperately aware of the comedy of trying to maintain the appearance of honor in headlong retreat: don't get shot in the back if you can help it and don't throw away your arms, although you realize that they have less than zero value to you now, pure dead weight. Dooley is a wit after a fashion. He is not unaware of a kind of double competition with his captain, one to see who can get away the fastest and the other to see who can get away the slowest. He envies his captain's benefits of rank: no pack, they are in a wagon somewhere, and no rifle. By this time the weapons of officers are becoming symbolic indicia of rank, like the pistols, whistles, and walking stick of the British officers who led their men into no-man's-land in the Great War. The ambivalence in the account and in the action itself gives the comedy multiple layers.

The heroic ideal of standing your ground at all costs turns out to give way before fear and not an altogether irrational fear, though, as with Archilochus, the fear is

not mentioned directly but supplied by the comic action, giving it its motivating force. Both John Dooley and his captain are still giving respect to the norms they are not quite living up to by adhering to some of their forms: John will not throw away his gun or ammunition—although by denying the thought ever entered his head he is merely saying that he resisted a temptation that had indeed entered his head—and both he and his captain engage in the farce of trying to prevent the ignominy of being shot in the back by running backwards every now and then.

It is the comic voice with its almost self-delighting self-mockery that indicates this is not culpable cowardice. The comedy is probably the surest sign that Dooley and Archilochus are not alone in flight. The whole army is in a rout. This is a pure case of running away to live to fight another day as long, that is, as they do not throw their weapons away. Dooley's attempts to maintain the forms of honor indicate quite well that he means to be back. Even Archilochus means to return with his new shield, but by throwing his old one away he commits an offense that Dooley may have wanted to commit, but his implicit contest with his captain to see who could minimize their mutual dishonor kept him honest. Archilochus, however, does more than just disarm himself, he arms the opposition.

From the military's point of view, casting aside arms is a very serious matter. It renders the soldier useless; it arms the opposition, and in societies in which the work and material that is congealed into the weapon represents the most valuable objects in the culture, throwing away weapons was culpable waste, even sacrilege. But non-military moralists take a kindlier view: Thomas Aquinas was willing to find the soldier who cast away his shield less sinful than the licentious man, because "grave fear and sorrow especially in dangers of death, stun the human mind, but not so pleasure which is the motive of intemperance."<sup>38</sup> But Thomas might also be underestimating the deliberative capacity of the weapon dropper. Dooley deliberately refrained from casting his aside; others might deliberately do so, for they might reason that an unarmed man might look like a noncombatant and thus fade by degrees into a general population, a plausible motive before uniforms made a general appearance in the late seventeenth century.

### **False Alarms**

Paragraph 7 punishes capitally the person who causes false alarms, and it must be seen as the companion of paragraph 3, which punishes the person who "through disobedience [or] neglect . . . endangers the safety of command, unit, [or] place." One provision sets limits on jitteriness, the hyperalertness and excessive imagination that, if not quite inventing danger, overrates its imminence; the other seeks to limit the lack of jitteriness, the lack of imagination or insensibility that lets the sentry fall asleep on his watch. Falling asleep on the watch is a strict liability

offense. It does not matter that you didn't mean to. And the same is the case for causing false alarms. There are no requirements in the provision that one cause them knowingly or intentionally and no cases have held that such requirements are to be implied.<sup>39</sup> It is not only the prankster that set off the fire alarms in junior high that the law can put before the firing squad, but the nervous wreck, the poor high-strung, anxious soul, who suffers from being too alert to the prospect of danger and has not managed to develop the cool or the expertise that distinguishes between the general danger of being in the presence of the enemy from the particular imminent danger that requires immediate and total mobilization of one's resources. This poor soul does not feel the difference between the state of daily alertness to the possibility of alarm on the one hand and being alarmed on the other, between normal vigilance and the sense that something indeed is up. For we suspect that this is an imaginative soul and much too sensitive. Risk to him is not a probabilistic assessment, but certain danger. His lot is constant insomnia and nausea.

This type of false alarmist, however, may also be the very man who is asleep at his post. Given that for him there is no distinguishing between the various levels of danger or its imminence, sleep, never easy to achieve under the best of circumstances, might just as well come at one anxiety-ridden time as another.<sup>40</sup> But we usually think of the sleeping sentry as utterly opposed to the false alarmist, as a study in insensibility, an anxietyless person for whom sleep has always been easy. And it is for this reason alone that he is simultaneously an object of the nervous insomniac's envy and his contempt.

The sleeping sentry and false alarmist contrast in other ways. As a purely Darwinian matter the species needs an alarm system that engenders some false positives or it wouldn't be sensitive enough. A system that gave no false positives would have left us all in the viscera of our predators or slaves of our more sensitive enemies. But an alarm system too responsive would, as Erving Goffman noted, have us spending all our time in dither and not in grazing, digesting, sleeping, playing, or whatever we need to do to survive.<sup>41</sup> This is why we divide the labor; the sentry is to be vigilant so that the rest can sleep. We want our sentry to be experienced and cool, but not insensitive or dull. We need him alert, or if not alert, alertable by all those signs that, if we lived in a movie, would be accompanied by ominous music.

The false alarmist and sleeping sentry impose costs in different ways. The false alarmist runs up the bill each time he occasions a false alarm. To the obvious costs of wasted energy spent mobilizing, the physiological costs of misused adrenaline, missummoned fear, and loss of sleep should be added the disclosure of one's positions to the enemy by the mobilization or merely by the panicked firing into the threatening night. But the greatest cost is that false alarms lead to mistrusting the next true alarm. And although we may recoup some of these costs by the disbelief of future *false* alarms, that would be a penny-wise and pound-foolish accounting, for the alarm would not be disbelieved because false, but disbelieved because of the

belief that all alarms are more likely to be false than true. Such a belief leaves one effectively without a functioning alarm system. The jittery false alarmist, after all, does not *mean* to be false, and in other settings his sensitivity may be a most valuable asset. True, its value suffers serious diminution if he is not right most of the time. And if he were right most of the time we would consider him a man of experience and discernment, not a jittery pathetic wreck whom we can imagine putting up before the firing squad.

If the false alarmist imposes serious costs each time he blows it, that is not the case with the sleeping sentry. His sleep imposes harm if the attack occurs on his watch, otherwise his sleep, though negligent or even reckless, yields no great harm. But not quite. If others suspect he is asleep or know he is asleep, then they must increase their vigilance to compensate. Their anxiety levels rise and they begin to expend energy in dither that could have better been spent relaxing. The sentry functions in the way catastrophe insurance functions. Most days go by without our having gained much for carrying such insurance except the ease of mind having it confers. The sentry provides such insurance. He is meant to allow others to rest secure in the belief that his eyes and ears are just as serviceable at the moment as theirs would be.

To the extent that insensibility produces fearlessness it may be very useful in the midst of combat either on attack or in defense. But in the myriad of soldiers' memoirs I have been plowing through fear is not the only psychically and morally destructive emotion that threatens soldierliness. Fear dominates in battle or in immediate anticipation of it; but soldiers do more than fight. They also stand and wait. Boredom defeats almost as many soldiers as fear. If fear defeats our false alarmist, boredom defeats our sleeping sentry, so bored he cannot generate the imagination to fear the consequences of his boredom.

### **Omnipotent Fear**

No one doubts that soldiers are afraid.<sup>42</sup> There have been, through time, different views as to whether it was acceptable for them to admit openly that they were, but fear was clearly always a gloomy and tormenting omnipresence. Those few who qualify as genuine berserks aside, the dominant passion in battle, the one each party expects its comrades and its opponents to be intimately involved with, is fear. We might see all heroic literature as a desperate attempt to keep it at bay. One pays homage to it by working hard to deny it in oneself and to insult one's opponent with it. Agamemnon has images of Terror and Panic painted on the sides of his shield.<sup>43</sup> Before the battle of Gaugamala Alexander sacrificed to Fear. Beowulf drinks and boasts the night before seeking out Grendel to raise the moral stakes of failure. Even Achilles, if not quite fearful, doesn't dare fight without armor as some



of the Norse berserks would do. And Alexander again, who was surely a berserk in combat and feared no one in the host arrayed opposite him, nor the whole host for that matter, was still rather paranoid at times about suspected plots against his life from within his own ranks. (There is an interesting idea to pursue here: the different issues raised for the demands on our courage by our fear of enemies as opposed to our fear of friends. And this would hardly be solved by the fiat of declaring that our friends are those whom we do not fear.)

Commanders have always assumed the fearfulness of their soldiers. The subtlest observer of all, Thucydides, noticed the tendency of battle lines to extend by degrees to the right so that each army slowly flanked its opponent's left as it too moved to its right: "This is because fear makes every man want to do his best to find protection for his unarmed side in the shield of the man next to him on the right, thinking that the more closely shields are locked together, the safer he will be."<sup>44</sup> Exhortation speeches try to counter fear and reluctance with other passions: revenge, perhaps, anger, confidence, bloodlust, and often, in extremis, desperation. But no commander trusted to mere words. The Persians whipped their men to battle; many a general used his cavalry to deter his fleeing troops more than to engage the enemy. One military theoretician, Raimondo Montecuccoli, a general on the Imperial side in the Thirty Years War, spent the bulk of his treatise on how to delay just long enough the natural cowardice of one's own troops to give sufficient time for the natural cowardice of the troops on the other side to assert itself. He lists some of the devices one may use to keep one's men on the field: let the enemy cut off lines of retreat (!), forbid the inhabitants of nearby friendly cities from admitting any of the troops, dig trenches behind your troops, burn bridges and ships, delegate certain men to shoot retreating soldiers.<sup>45</sup> When arraying the troops and forming their lines, Montecuccoli advises embedding the cowards in the middle of the ranks behind the valorous ones, whom they can follow at less risk to themselves, and hemmed in by the ranks behind them.<sup>46</sup>

One can also combat fear by instilling confidence, he notes. Nor does it matter that that confidence is ultimately indistinguishable from those crude self-deceptions that actually on occasion do succeed in bootstrapping us into performing better than we have any right to expect. "One may conceal or change the name of the enemy general if he happens to have a great reputation." Confidence can also be acquired by stimulating contempt for the enemy by

presenting naked prisoners to the soldier. Once they have viewed the captives' fragile, flabby, filthy, diseased, and infirm legs, as well as their hardly valiant arms, then men will have no reason to be afraid, for they will have had the chance to see the kind of people with whom they must fight—namely, pusillanimous, humble, and tearful individuals.

While cowards like me and a good portion of my readers may find in this display additional reason to desert or flee rather than fight to the death, Montecuccoli thinks otherwise:

Indeed, the troops may come to fear the state of bondage themselves once they have perceived the wretched fate of such afflicted, shackled, castigated, and emaciated persons, and they may conclude that it will be better to fall in battle rather than, dragging on their lives unhappily, necessarily experience such contumely and calamity.<sup>47</sup>

Our statute authorizes the killing of cowards, slackers, craven defenders, and jittery false alarmists and supposes to dissuade these behaviors by taking from them exactly what they sought to save: their lives. The statute testifies to the power of fear as a motivator: make them fear the court martial as much as they fear the enemy. This is probably not the wisest strategy since it gives the soldier no reason, once the crunch is on, to prefer one outcome to the other; and it loses all its force should he fear the enemy more. Moreover, it is not uncommon that the coward in battle faces the firing squad with dignity and courage. Such was the case with Eddie Slovik, who spent his last moments trying to alleviate the anxiety of those who had to execute him. The fear that motivates cowardice may be not only the fear of death but the inability to suffer Death's malicious teasing. Certain death, whether by suicide or firing squad, may be a kind of relief, a good-bye to all that.

The statute also hints of another motivating fear; it is the fear of being disgraced as a coward, the fear of shame. This is hardly a startling revelation. It is a commonplace, the theme of honor itself, which demands that fear of losing esteem and esteemability is worse than death. In this light the law can be seen not only as the scourge of those too shameless to be properly motivated by their sense of shame but also as a bit player in backing the norms that support the sense of shame. The law then, though mostly negative in its means of motivating, also has a positive role to play in securing the behavior it desires.

To conclude, reconsider the statute. One may wonder at the impossible standard it sets. The soldier is to do his duty, but the duty demanded seems almost to be beyond the call of duty. It is as if the law asks that soldiers not only not be cowards, but that they be courageous as a matter of routine. But then consider briefly paragraph 9, the one provision we have left unnoticed until now. It governs, among other things, the obligation to rescue. In contrast to the heroic demands of the other provisions not to run, not to fail willfully to advance, not to abandon shamefully a position, we move to the world of prudence: not to "afford all *practicable* relief." Of course, it doesn't make sense to throw good bodies after bad unless it is rational to do so. Presumably one must balance the likelihood of saving the endangered person against the risk incurred to save him plus some value assigned to the overall morale of fighting men who will fight harder for a polity that cares to rescue them. Still it was hardly irrational for the men charged with saving Private Ryan to question why eight of them should be risked to save someone whose only special claim to rescue was that he was the last survivor of four brothers.<sup>48</sup> Yet even practicable and rational rescue hardly dispenses with the need for courage on the part of the rescuers.

It is precisely in the domain of rescue that twentieth-century battle has made its particular addition to the styles of the heroic. It is in the Great War that stretcher bearers get Victoria Crosses and in Vietnam that medics get their Medals of Honor. In the Civil War the same medal was more likely to be awarded for rescuing the regiment's colors. By setting our heroic stories in narratives of rescue are we arguing for a kinder styled heroic: selfless, fearless, and life-saving rather than life-destroying?<sup>49</sup> Or is it that we see the medic, the stretcher bearer, as needing no special physical attributes, that they are everyman or indeed everywoman, that they hold for all of us the possibility of grand action, even if we do not have the body of Ajax or the spirit of Alexander or the ability to kill other human beings, even when it is in our best interests to do so?<sup>50</sup>

But for most of us I would guess that what is most salient in this statute is not its substantive commitments so much as its formal attributes. For surely the statute's most remarkable feature is its redundancy, which in a statute that seeks to punish capitally becomes a redundancy of both literal and figurative overkill. Yes, the statute excuses weak legs as long as the mind did not willfully collude with the body to produce them and puts no extraordinary demands on the rescuer, but it otherwise is quite clear about reserving the firing squad for cowardice motivated by fear, and, if that lets too many off the hook of culpability, it specifically includes the jittery alarmist, the person who turns tail for whatever motivation other than fear, the slack attacker, the person who casts away his weapons, the quivering craven defender, and the exuberant looter.

The statute received its present form in 1950 when it was cobbled together from the Articles of War and the Articles for the Governance of the Navy into a Uniform Code of Military Justice. Most of the clauses were already extant in the British Articles of War of 1769, which in turn were enacted virtually verbatim as the rebellious colonies' articles of war of 1776. In them are found the strictures against looting, shameful abandonment of a position, casting away arms, and causing false alarms but not the clauses against cowardice and failure to engage, that is, the weak-legs provision. Those have their origin in the navy articles.<sup>51</sup> Weak legs turn out to be a certain kind of sea legs. Not that the army couldn't always get the weak-legged advancer under various general orders, but the navy was concerned less with the legs of its sailors, at least until they might have to board an enemy ship, than with the will of a captain to make his ship advance.<sup>52</sup> The sailors could be standing on the deck with legs quivering and still be advancing because the sailor was being borne by a higher will, willy-nilly. The provision that I have been dealing with as a weak-leg provision is historically not about legs at all, but about a naval captain's weakness of will.

One final observation about cobbling, statutory revision, and uniform laws in this world of uniforms: it was the modern reform, the modern consolidation of the articles providing a uniform law for all the armed services that produced the archaic, casuistic, ad hoc absurdist look of the present statute, not the remnants of

pre-eighteenth-century diction still lingering about in shameful abandonments and the casting away of arms. It was the 1950 consolidators, that is the modernizers, that made this statute look more like a law of Æthelberht or Ælfred than a law of the most advanced industrial power of the 1950 world.

## Notes

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1. Æthelberht cap. 50; Ælfred cap. 32. The provisions are most conveniently accessible in F. L. Attenborough, ed., *The Laws of the Earliest English Kings* (Cambridge, 1922), 11, 77. I have altered the diction of Attenborough's translation.
2. 10 USCS @ 899 (1997) Art. 99.
3. See William Bradford Huie, *The Execution of Private Slovik* (New York, 1954).
4. On crowds and armies see John Keegan's discussion in *The Face of Battle* (New York, 1976), 174–76.
5. See Aristotle's *Ethics* 5.2, 5.9; Aristotle *Rhetoric* 2.6; Plato *Laws* xii.944e. See also Polybius on capital offenses in the Roman army, *Histories* 6.37–38, in *Polybius: The Rise of the Roman Empire*, trans. Ian Scott-Kilvert (Harmondsworth, Eng., 1979).
6. See *United States v. Gross* 17 (1968) USCMA 610; 38 CMR 408.
7. *United States v. Smith* (1953) 3 USCMA 25, 11 CMR 25; *United States v. Brown* (1953) 3 USCMA 98, 11 CMR 98; *United States v. McCormick* (1953) 3 USCMA 361, 12 CMR 117.
8. See 10 USCS §885 (desertion); 10 USCS §886 (AWOL).
9. *United States v. Sperland* (1952) 5 CMR 89.
10. Running away is not always prudent. You are a much easier target to the enemy when you show your back because he need not worry about you firing back. And when whole armies turn and run that is when they are butchered by the pursuing victors. Military strategists have often tried to impress their troops with the superior rationality of facing the enemy and fighting rather than fleeing in panic; see Keegan's discussion of Ardant du Picq in *Face of Battle*, 70. Of course, any game theoretician would note that it is still rational to be the first to flee, that is, to flee when all your comrades are still firing at the enemy, thereby covering your back.
11. Abner Small, *The Road to Richmond: The Civil War Memoirs of Major Abner R. Small*, ed. Harold Adams Small (Berkeley, 1939), 112.
12. William Winthrop, *Military Law and Precedents*, 2d ed. (Washington, D.C., 1920), 624, cited in *United States v. Sperland*, at 92. Winthrop is discussing the provisions as they appear in the army's Articles of War, which provisions were later codified in the statute being glossed in the *Sperland* case and in this essay.
13. See E. Samuel, *An Historical Account of the British Army and of the Law Military* (London, 1816), 599–601; Robert Barker, *Honor Military and Civil*, 1.16 (London, 1602).

14. See too Thomas Hobbes *Leviathan* 2.21 (London, 1914), regarding “men of feminine courage”: “When Armies fight, there is on one side, or both, a running away; yet when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonorably.”
15. Michel de Montaigne *Essays* I.54, trans. M. A. Screech, *Michel de Montaigne: The Complete Essays* (Harmondsworth, Eng., 1991), 349.
16. At stake is the misery of constipation vs. the plague of diarrhea. Modesty produces the former, fear the latter, but that is not always the case either, since bearing down under fire and artillery shelling can produce the former; see Humphrey Cobb, *Paths of Glory* (1935; reprint, Athens, Ga., 1987), 4: it is not diarrhea but constipation, contrary to popular opinion, that is the disease of the front. The Germans have the latrines zeroed in and so you hold it; see also Modris Eksteins, *Rites of Spring: The Great War and the Birth of the Modern Age* (New York, 1989), 226, on the excremental leitmotif in World War I memoirs.
17. The American Model Penal Code (§ 2.09, cmt. 2) is concerned to make sure the actor’s “cowardice” doesn’t excuse him, but not by going so far as to demand that “heroism be the standard of legality.”
18. In the French army, however, as late as the Great War, a man selected by lot from each company of a badly failed regiment could be executed; see Alistair Horne, *The Price of Glory: Verdun 1916* (Harmondsworth, Eng., 1964), 64. Such an occasion forms the substance of Cobb’s novel.
19. *Personal Memoirs of U. S. Grant* (1885–86) (New York, 1990), 543, 580, 701–2. A refined ability to discern risk and difficulty may be in some respects necessary to a field general, but such a capacity also tends to prompt despair or indecisiveness in all but specially endowed sensibilities. But we can also see G. K. Warren’s reluctance on offense as no smirch on his general courage at all. Warren is a general. That means his offensive designs do not expose him to any greater bodily risk than defense does. His reluctance on offense is about risking his men. He is cautious on offense because he doesn’t want to see his men die; he is quick and prompt on defense because he doesn’t want to see his men die. Grant’s gift as a general, and gifted he was, was not having Warren’s scruples on this precise matter.
20. Aristotle *Nicomachean Ethics* 3.7. For a fuller exposition, see William Ian Miller, *The Mystery of Courage* (forthcoming).
21. Small, *Road to Richmond*, 70–77.
22. See Joanna Bourke, *Dismembering the Male: Men’s Bodies, Britain, and The Great War* (Chicago, 1996), 109–13.
23. See the memoir of Robert J. Burdette, *The Drums of the 47th* (Indianapolis, 1914), 101–8. Bad cowards, according to Burdette, find ways of falling out well before the battle starts.
24. Tim O’Brien, *Going After Cacciato* (1978; reprint, New York, 1989), 150.
25. Committee on Veterans’ Affairs, U. S. Senate, *Medal of Honor Recipients* (Washington, D.C., 1979), 517–18.
26. Robert Graves, *Good-bye to All That* (1929), 2d ed. (New York, 1957), 155–56.
27. S. L. A. Marshall, *Men Against Fire: The Problem of Battle Command in Future War* (1947; reprint, New York, 1966), 50–63.
28. See the devastating attack on Marshall’s implausible numbers by Frederic Smoler, “The Secret of the Soldiers Who Didn’t Shoot,” *American Heritage* 40, no. 2 (1989): 37–45.

29. Marshall, *Men Against Fire*, 59.
30. *Ibid.*, 71.     31. *Ibid.*, 78–79.
32. *Ibid.*, 71; personal communication from Yale Kamisar; see also Michael Walzer, *Just and Unjust Wars* 2d ed. (New York, 1992), 38–43, for a discussion of the reluctance of soldiers to shoot at enemy soldiers who appear vulnerably human, as when they are defecating, eating, looking silly, or just smelling the flowers.
33. See Polybius *Histories* 3.89.
34. Archilochus, “On His Shield,” trans. Lazaros T. Volikas (available online at <http://cac.psu.edu/~ltv100/Classics/Poetry/archilochus.html>).
35. Tossing away the shield, *rhipsaspia*, was especially grievous in the phalanx style of fighting Archilochus was engaging in. Those accused of *rhipsaspia* “were assumed to have been among the first to have abandoned their friends in an effort to save their own lives during a general collapse of the phalanx; that is, they had endangered the men who kept their arms and were not able, or had no desire, to make good such an ignoble escape”; quoted from Victor Davis Hanson, *The Western Way of War: Infantry Battle in Classical Greece* (New York, 1990), 63. Plutarch notes that, unlike helmet and breastplate, a man carried his shield “for the sake of whole line” because an unbroken shield wall was “virtually impregnable”; John Lazenby, “The Killing Zone,” in Hoplites *The Classical Greek Battle Experience*, ed. V. D. Hanson (London, 1991), 95.
36. Aristotle *Nicomachean Ethics* 3.6.
37. John Dooley, *Confederate Soldier: His War Journal*, ed. Joseph T. Durkin (Washington, D.C., 1945), 46–47.
38. Aquinas *Summa Theologiae* 2a2æ. Q. 142. Art. 3. Is Aquinas right? Is it harder to stand and fight than to resist pleasurable indulgence? Don’t we speak loosely of the “courage” it requires to refrain from proffered pleasure? In any event commanders and their men knew that the pleasures of alcoholic indulgence often served to stun the human mind in a way that worked to curb fear.
39. *The Manual for Courts-Martial*, 1984 IV.23. Art. 99, makes it an element of the offense that “the alarm was caused without any reasonable or sufficient justification or excuse.” Winthrop, *Military Law and Precedents*, 619, is explicit that knowledge of its falsity or the specific intention to occasion a false alarm need not be shown.
40. It is not rare to find reports of troops falling asleep under intense bombardment, not in nonchalance or even in exhaustion, but as a kind of ostrichlike escape from intense horror; see the examples cited in Richard Holmes, *Acts of War: The Behavior of Men in Battle* (New York, 1985), 267.
41. Erving Goffman, *Relations in Public* (New York, 1971), 239.
42. To claim someone is fearless or acts fearlessly is often meant only to register awe on the part of the speaker; no descriptive claim is being made about the actor’s inner state. The heroic action is understood to have been accomplished “as if” the actor was without fear. For a fuller treatment of the motives of courage see Miller, *Mystery of Courage*.
43. *Iliad* 11.35.
44. Thucydides *The Peloponnesian War* 5.71, in *History of the Peloponnesian War*, trans. Rex Warner (Harmondsworth, Eng., 1954).
45. Raimondo Montecuccoli, *Sulle battaglie*, ed. and trans. Thomas M. Barker, in Thomas M. Barker, *The Military Intellectual and Battle: Raimondo Montecuccoli and the Thirty Years War* (Albany, 1975), 82.

46. Ibid., 92.
47. Ibid., 133–34.
48. Steven Spielberg, *Saving Private Ryan* (DreamWorks Pictures and Paramount Pictures, 1998), film.
49. Rescue narratives only begin to become common when medical care rises to a level at which the wounded and disabled are likely to survive if saved.
50. Horne, *Price of Glory*, 181–83, writes that the most deserving of the title of hero at Verdun were those who occupied the humble categories of runners, members of ration parties, and stretcher bearers. Runners had to go it alone; their courage was solitary; stretcher bearers couldn't dive for cover amidst the exploding shells. Stretcher bearers were generally recruited among the company's musicians, or from its complement of the miserably unmartial.
51. An Act for the Better Government of the Navy, 1800. Sec. 1, Arts. 4–6, microfilm.
52. On the orders used to prosecute weak-legged soldiers, see Winthrop, *Military Law and Precedents*, 623 n. 26.