

# CHIVALRY WITHOUT A HORSE: MILITARY HONOUR AND THE MODERN LAW OF ARMED CONFLICT

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## 1. Introduction

Chivalry conjures up an image of a medieval warrior in shining armour, riding into battle on a noble steed, to rescue a sleeping princess from a three-headed dragon. Dragons aside, this popular image is fairly accurate. Chivalry in the broadest sense comprises the ethos of the knight – the mounted combatant that dominated the battlefields of Europe in the Middle Ages – and covers everything from battlefield conduct to courtly love.<sup>1</sup> This association between the mounted warrior and chivalry goes as deep as etymology – in many languages the very word for “knight” is derived from the word for “horse”: thus, in French, *chevalier* comes from *cheval*, in Italian *cavaliere* from *cavallo* and in Spanish *caballero* from *caballo*. The German *Ritter* (or better yet, *Reitter* in Middle High German) comes from *reiten*, “to ride”. Thus, at first blush, chivalry appears to be a distinctly medieval notion, associated as it is with a specific kind of man-at-arms and a peculiar form of warfare – mounted shock combat. Perhaps then, as Noël Denholm-Young famously quipped, “[i]t is impossible to be chivalrous without a horse.”<sup>2</sup>

But if we strip chivalry of its romantic overtones and literary hyperbole, we find a code of conduct that held currency among the military élite of the era. At the core of this code was an ideal that was certainly not characteristic of the Middle Ages alone: according to Malcolm Vale, “[c]hivalry was often no more, and no less, than the sentiment of honour in its medieval guise”.<sup>3</sup> Thus, to speak of chivalry is to speak of a military code of honour, which already sounds far less archaic. Honour, moreover, has played a key role in

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<sup>1</sup> The classic general account is **Maurice Keen**. 1984. *Chivalry*. New Haven, CT: Yale University Press.

<sup>2</sup> **Noël Denholm-Young**. 1969. *The Tournament in the Thirteenth Century*. – R. W. Hunt, W. A. Pantin and R. W. Southern, eds. *Studies in Medieval History*, Presented to Frederick Maurice Powicke. Oxford: Clarendon, p. 240.

<sup>3</sup> **Malcolm Vale**. 1981. *War and Chivalry: Warfare and Aristocratic Culture in England, France and Burgundy at the End of the Middle Ages*. London: Duckworth, p. 1.

military thinking over millennia,<sup>4</sup> so it does not seem out of place to talk about it with reference to modern warfare.

Moreover, there is a concrete link between chivalry and the contemporary law of armed conflict. Geoffrey Best, among others, has pointed out that “[a] large part of the modern law of war has developed simply as a codification and universalization of the customs and conventions of the vocational/professional soldiery.”<sup>5</sup> The law of war that might be called “modern” came into being in the second half of the 19th century with the adoption of a number of important documents – the Lieber Code in 1861,<sup>6</sup> the Brussels Declaration in 1874,<sup>7</sup> the Oxford Manual in 1880,<sup>8</sup> and the Hague Regulations in 1899 (revised in 1907).<sup>9</sup> While this new-found enthusiasm for the legal regulation of warfare was certainly quite remarkable, the innovation of these documents lay rather in their form than in their substance. Their drafting was to a very significant extent an exercise in reducing to writing – in a distinctly legal language, although not always in a strictly legally binding form – customs already existing, or behaviour aspired to, within the military community. This even holds true with respect to the 1864 Geneva Convention,<sup>10</sup> the brainchild of Henry Dunant, which has been hailed as the cornerstone of the modern law of armed conflict. While the explicit language and the multilateral scope of this document were certainly innovative and as such had monumental significance in the development of the law of armed conflict, it revived an old idea. Namely, it aimed to keep out of harm’s way non-combatants, in this particular instance, those coming to the aid of wounded soldiers on the battlefield. Of course, as with any other codification process, the work done in the 19th century on the laws of war seized the opportunity to clarify existing practices and to introduce new elements. But

<sup>4</sup> See generally **Paul Robinson**. 2006. *Military Honour and the Conduct of War: From Ancient Greece to Iraq*. London: Routledge.

<sup>5</sup> **Geoffrey Best**. 1980. *Humanity in Warfare*. New York: Columbia University Press, p. 60.

<sup>6</sup> General Orders No. 100 – Instructions for the Government of Armies of the United States in the Field (US, 1863).

<sup>7</sup> Project of an International Declaration concerning the Laws and Customs of War, text adopted at Brussels, 27 August 1874, did not enter into force.

<sup>8</sup> **Institute of International Law**. 1880. *The Laws of War on Land*. 9 September.

<sup>9</sup> Regulations concerning the Laws and Customs of War on Land, annexed to the Convention (II) with Respect to the Laws and Customs of War on Land, The Hague, 29 July 1899, in force 4 September 1900, 205 CTS 277; Regulation respecting the Laws and Customs of War on Land, annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land, The Hague, 18 October 1907, in force 26 January 1910, 205 CTS 277.

<sup>10</sup> Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864, in force 22 June 1865, 129 CTS 361.

the basic rules of armed conflict were not invented in the late 19th century as one of their most significant sources was the medieval code of chivalry.<sup>11</sup>

This paper considers the imprint that chivalry has left on the modern law of armed conflict. Limitations of space and a regard for the reader's patience do not allow for a discussion of every nook and cranny of international humanitarian law. Therefore, rather than attempt to systematically cover the entire field, I will try to show by way of a few characteristic examples how the notion of honour (especially in its medieval guise) still influences modern law. I also wish to call into question the popular idea that the entire law of armed conflict reflects a delicate balance between the fundamentally conflicting notions of military necessity and humanity. For example, one leading scholar, Yoram Dinstein, claims that the law of armed conflict "in its entirety is predicated on a subtle equilibrium between two diametrically opposite impulses: military necessity and humanitarian considerations."<sup>12</sup> With due respect, there are two problems with this view. First, military necessity and humanity need not be opposing forces – when considered in the long term, they may actually be mutually supporting. The strategic need to win the "hearts and minds" of the adversary's civilian population often goes hand in hand with limitations of a humanitarian nature. Already Shakespeare's King Henry V knew that "when lenity and cruelty play for a kingdom, the gentler gamester is the soonest winner."<sup>13</sup> Second – and this is what I wish to point out in this paper – the entire gamut of rules that comprise the law of armed conflict cannot be adequately explained with reference to military necessity and humanity alone. The law of armed conflict can only be made sense of if one bears in mind the most rudimentary considerations of military honour.

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<sup>11</sup> **G. I. A. D. Draper**. 1965. The Interaction of Christianity and Chivalry in the Historical Development of the Law of War. – *International Review of the Red Cross*, Vol. 5, No. 46, p. 7; **Best** 1980, p. 60; **Hubert M. Mader**. 2002. "Ritterlichkeit": Eine Basis des humanitären Völkerrechts und ein Weg zu seiner Durchsetzung. – *Truppendienst*, Vol., No. 2, pp. 122–126.

<sup>12</sup> **Yoram Dinstein**. 2004. *The Conduct of Hostilities under the Law of Armed Conflict*. Cambridge: Cambridge University Press, p. 16.

<sup>13</sup> **William Shakespeare**. c. 1599. Henry V, Act 3, Scene VI; cited in **Theodor Meron**. 1992. Shakespeare's Henry the Fifth and the Law of War. – *American Journal of International Law*, Vol. 86, pp. 2–3.

## 2. Prisoners of War

The occasional discussion of honour in the context of the modern law of armed conflict tends to focus on the means and methods of warfare (more on which in due course). Yet arguably the most significant portion of the law that owes an intellectual debt to chivalry is the one dealing with prisoners of war.

This is altogether unsurprising, since the dignified treatment of prisoners was an essential, if not the central, part of the medieval code of military conduct. In battle, knights did not generally attempt to kill each other. Rather, their main goal was the disablement and capture of the noble adversaries. Coming from the upper echelons of society, a knight was presumably wealthy and thus quite literally worth more alive than dead.<sup>14</sup> A knight could be taken prisoner and allowed to purchase his freedom – to ransom himself. To allow a captured knight to raise the necessary money, he was often released upon promise not to raise arms against his captor until having made due payment.<sup>15</sup>

Such a system of “parole” was possible precisely because honour stood at the centre of the warrior’s code. The promise not to take up arms against one’s captor was a knight’s word of honour. And “a knight trusted the word and promise of another knight, even an enemy knight”.<sup>16</sup> The financial gain obtained from paroling and ransoming, as well as the reciprocal insurance against mistreatment that the system provided,<sup>17</sup> chimed together nicely with the more noble ideals of the knightly class. Obviously, the purpose of conflict nowadays is not, or at least ought not to be, the enrichment of individual combatants. Thus, while the basis of prisoner-of-war status has changed somewhat, it has not completely detached itself from its historical origins.

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<sup>14</sup> **Robert C. Stacey.** 1994. *The Age of Chivalry*. – Michael Howard, George J. Andreopoulos and Mark R. Shulman, eds. *The Laws of War: Constraints on Warfare in the Western World*. New Haven, CT: Yale University Press, p. 36.

<sup>15</sup> **Robert P. Ward.** 1795. *An Enquiry into the Foundation and History of the Law of Nations in Europe, from the Time of the Greeks and Romans, to the Age of Grotius*. London: Butterworths, p. 179. But there was also a specific breed of warfare, called *guerre mortelle*, wherein adversaries “fought by the rules which in antiquity had applied in the wars of the Roman people. There was no privilege of ransom; the conquered could be slain or enslaved.” **Maurice Keen.** 1965. *The Laws of War in the Late Middle Ages*. London: Routledge & Kegan Paul, p. 104.

<sup>16</sup> **Draper** 1965, p. 20.

<sup>17</sup> **John Gillingham.** 1999. *An Age of Expansion, c. 1020–1204*. – Maurice Keen, ed. *Medieval Warfare*. Oxford: Oxford University Press, p. 83.

An illuminating episode in military history in this respect was the disagreement in Nazi Germany over the treatment of prisoners of war. On 8 September 1941, Lieutenant General Hermann Reinecke, head of the prisoner of war department of the German High Command, issued the following orders:

The Bolshevik soldier has ... lost all claim to treatment as an honorable opponent, in accordance with the Geneva Convention. ... The order for ruthless and energetic action must be given at the slightest indication of insubordination, especially in the case of Bolshevik fanatics. Insubordination, active or passive resistance, must be broken immediately by force of arms (bayonets, butts, and firearms). ... Anyone carrying out [this] order who does not use his weapons, or does so with insufficient energy, is punishable. ... Prisoners of war attempting escape are to be fired on without previous challenge. No warning shot must ever be fired. ... The use of arms against prisoners of war is as a rule legal.<sup>18</sup>

This call for more enthusiastic use of violence against prisoners of war flew in the face of centuries of settled military practice and drew objections from the braver parts of the German officer corps. Particularly vocal was Admiral Wilhelm Canaris, a naval officer of the old school and the head of the *Abwehr*, the German military intelligence.<sup>19</sup> He directed one of his legal advisers, Helmuth James von Moltke, who himself came from family with a long history of military service, to draw up a memorandum on the international law aspects of the treatment of prisoners of war. This document competently explained that even though the 1929 Geneva Prisoner of War Convention<sup>20</sup> might be technically inapplicable to the Soviet prisoners of war since the USSR was not a party to the treaty, the treatment of captured Soviet soldiers was nonetheless governed by principles of customary international law.<sup>21</sup> In particular, the memo underlined that

<sup>18</sup> Cited in *US et al. v. Göring et al.*, 1 TMWC 171 (International Military Tribunal at Nuremberg, 1946), p. 229.

<sup>19</sup> Canaris, who later suffered death for his role in the attempt to assassinate Hitler, was perhaps one of the most interesting – some might say enigmatic – military personalities of the era. For a biography, see **Michael Mueller**. 2007. *Canaris: The Life and Death of Hitler's Spymaster*. London: Chatham. The incident addressed in this paper is mentioned *ibid.* at 205.

<sup>20</sup> Convention relative to the Treatment of Prisoners of War, Geneva, 27 July 1929, in force 19 June 1931, 343 LNTS 343.

<sup>21</sup> For parallels with the treatment of persons detained in the so-called war on terror, see **Scott Horton**. 2007. *Military Necessity, Torture, and the Criminality of Lawyers*. – Wolfgang Kaleck *et al.*, eds. *International Prosecution of Human Rights Crimes*. Berlin: Springer, pp. 169–183.

war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people ....<sup>22</sup>

These objections were dismissed by Field Marshal Wilhelm Keitel who retorted that they “arise from the military concept of chivalrous warfare. This [war] is the destruction of an ideology.”<sup>23</sup> One cannot but note a perverse contradiction: Reinecke had relied on some perceived lack of honour on the part of the Soviets in order to deny them protection in the first place, whereas Keitel argued that honour no longer played a role in the conduct of hostilities.

Be that as it may, *Graf von Moltke*’s arguments merit attention because they go beyond the specific rules of customary law and provide a glimpse of what underpins them. First, von Moltke mentions “military tradition”, which is clearly a synonym for the tradition of honourable conduct in a military context. Second, he invokes humanity – a regard for “helpless people”. Third, he makes implicit reference to military necessity: if the object of war is, in the language of the St Petersburg Declaration, to “weaken the military forces of the enemy”,<sup>24</sup> then as far as an individual enemy combatant is concerned, that objective is attained through capture and detention. “Further participation in the war” being thereby prevented, it is unnecessary to molest the soldier any further. This three-pronged argument shows rather vividly how the general rationale of prisoner-of-war protection incorporated the “late Enlightenment consensus” of the 18th century about limited warfare as well as the broad sentiments of humanity that came to the fore in the late 19th century,<sup>25</sup> although without entirely shedding the chivalrous overtones.

The notion of parole has also survived beyond the medieval period. The element of ransom has disappeared and the revised conception of parole simply entails an undertaking by the captured combatant, in exchange for his liberty, not to take up arms against the capturing power in the ongoing conflict.<sup>26</sup> Thus, the 1949 Geneva Convention III stipulates that “[p]risoners of

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<sup>22</sup> Cited in *US et al. v. Göring et al.*, p. 232.

<sup>23</sup> Cited *ibid.*

<sup>24</sup> Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, St. Petersburg, 29 November/11 December 1868, 138 CTS 297, Preamble.

<sup>25</sup> **Best** 1980, pp. 31–74 and 128–215.

<sup>26</sup> See generally **Gary D. Brown**. 1997. Prisoner of War Parole: Ancient Concept, Modern Utility. – *Military Law Review*, Vol. 156, pp. 200–223.

war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend".<sup>27</sup>

Though this language may be rather bland and generic, there is little doubt that the provision implicitly invokes military honour. To be released on parole means to be released on one's word of honour. The 1907 Hague Regulations – on some issues a clear predecessor to the 1949 Geneva Conventions – were quite explicit on this point, stating that prisoners of war released on parole were "bound, *on their personal honour*, scrupulously to fulfil, both towards their own Government and the Government by whom they were made prisoners, the engagements they have contracted".<sup>28</sup> While the drafters of the 1949 Geneva Conventions deemed it wise to leave a direct reference to honour out of the text, the authoritative commentary to the Conventions still notes that "[a] person who gives his parole gives a personal undertaking *on his honour* for which he is in the first place responsible to himself."<sup>29</sup>

Another interesting point arises from the consequences of breaking one's word of honour. It is well recognised that parolees who are recaptured while bearing arms against the government to whom they gave their word of honour can be punished. Under the express terms of the Hague Regulations, persons violating their parole would "forfeit their right to be treated as prisoners of war, and can be brought before the courts".<sup>30</sup> But what is more illuminating is how the parolees' own states reacted to violations. The British, for example, used to punish their own officers for violations of parole by stripping them of their commissions.<sup>31</sup> In similar circumstances, the French apparently sent their own service members back to the enemy for reimprisonment.<sup>32</sup> One reason for this austerity may have been that, as the Lieber Code put it, "[t]he pledge of the parole is always an individual, but not a private act."<sup>33</sup> It implicates the state concerned, because, if properly made, the parole becomes

<sup>27</sup> Geneva Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, in force 21 October 1950, 75 UNTS 135, Article 21.

<sup>28</sup> Hague Regulations, Article 10(1) (emphasis added).

<sup>29</sup> **Jean S. Pictet**, ed. 1960. Commentary on the Geneva Conventions of 12 August 1949. Geneva: ICRC, p. 180 (emphasis added).

<sup>30</sup> Hague Regulations, Article 12. The loss of prisoner-of-war status appears to have been a cryptic admission of the possibility of a death sentence. Under the 1949 Geneva Convention III the consequences do not appear to be so grave, though some punishment is certainly possible. See **Pictet** 1960, p. 181.

<sup>31</sup> **Brown** 1997, p. 211.

<sup>32</sup> **Best** 1980, p. 81.

<sup>33</sup> General Orders No. 100, Article 121.

binding on the state that the soldier serves.<sup>34</sup> Paroles are, thus, “sacred obligations, and the national faith is pledged for their fulfillment”,<sup>35</sup> suggesting that violations of parole would be disgraceful to the state (though, for practical purposes, perfectly beneficial). But, perhaps above all else, a violation of parole goes beyond a simple breach of the positive rules of law and amounts to the failure of the combatant as a man (or woman) of honour.

Admittedly, paroling prisoners of war has largely become a theoretical affair. Parole has not been used on a major scale since the American Civil War, though sporadic instances occurred during the World Wars. Nonetheless, commentators have pointed out the continued potential of the institution.<sup>36</sup> Moreover, the decline of the parole system is not necessarily the result of states being against the release of the prisoners they have caught, but rather stems from their opposition to their own soldiers giving parole to the enemy. For example, US military personnel are precluded from being paroled, because their own code of conduct provides that service members “will accept neither parole nor special favors from the enemy”.<sup>37</sup>

The rules of parole aside, there are some other elements of the protection granted to prisoners of war which cannot be easily explained in the framework of balancing humanity against military necessity. One of the more “anachronistic remnants”<sup>38</sup> is the systemic distinction that Geneva Convention III makes between officers and soldiers. Thus, for example, officers must be accommodated separately from enlisted men<sup>39</sup> and “may in no circumstances be compelled to work”.<sup>40</sup> This reflects the elevated social status of the officer and is in some respects reminiscent of the different treatment accorded in medieval warfare to knights and foot soldiers.

More generally, however, the law reflects a basic premise that a captured enemy combatant – be it officer or enlisted man – is an honourable professional and deserves appropriate respect. This becomes obvious in Article 14

<sup>34</sup> **Pictet** 1960, p. 181: “In the first place, the promise given by a prisoner of war is, of course, binding upon him; but, provided this promise was made consistently with the relevant laws and regulations, it is also binding on the Power on which he depends.”

<sup>35</sup> **Herbert C. Fooks**. 1924. *Prisoners of War*. Federalsburg, MD: Stowell, p. 299.

<sup>36</sup> **Brown** 1997.

<sup>37</sup> Code of Conduct for Members of the Armed Forces, Exec. Order No. 10,631, 20 Fed. Reg. 6057, 3 C.F.R. 1954, 58 Comp. 266 (1955), as amended (US, 1955), Article III, 3rd sentence.

<sup>38</sup> **Thomas C. Wingfield**. 2001. *Chivalry in the Use of Force*. – University of Toledo Law Review, Vol. 32, p. 113.

<sup>39</sup> Geneva Convention III, Article 97(3).

<sup>40</sup> Geneva Convention III, Article 49(3).



of Geneva Convention III which states that “[p]risoners of war are entitled in all circumstances to respect for their persons and their honour.” Thus, in response to the World War II era German attempts to elicit Nazi salutes from the prisoners of war, Geneva Convention III makes it explicit that “[p]risoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying *in their own forces*.”<sup>41</sup> Also, “[t]he wearing [by a prisoner of war] of badges of rank and nationality, as well as of decorations, shall be permitted.”<sup>42</sup> Accordingly, General Manuel Noriega, who was arrested by the US forces during the invasion of Panama and later convicted in US courts for drug related-offences, was allowed to wear his uniform during the trial and while residing in a Florida prison.<sup>43</sup> Orange jumpsuits appear incompatible with military honour.

### 3. Means and Methods of Warfare

I now come to the part of the law of armed conflict that is perhaps the easiest to associate with chivalry, namely the limitations placed on the use of particular means and methods of warfare. Here, the Oxford Manual, an influential though non-binding codification of the law of armed conflict completed in 1880 under the auspices of the *Institut de Droit international*,<sup>44</sup> provides a convenient starting point.

Article 4 of the Manual lays down the fundamental principle that the choice of means and methods of warfare is not unlimited and that the belligerents “are to abstain especially from all needless severity, as well as from all perfidious, unjust, or tyrannical acts”. This rather general stipulation is elaborated on by two articles. Article 9 gives flesh to the idea that “needless severity should be avoided” by explicitly proscribing the use of means of warfare calculated to cause superfluous suffering, as well as attacks on surrendered or disabled enemies. Articles 8, which is relevant for the present discussion, deals with the principle that “the struggle must be honourable”. To that end it declares forbidden:

<sup>41</sup> Geneva Convention III, Article 39(2) (emphasis added).

<sup>42</sup> Geneva Convention III, Article 40.

<sup>43</sup> See *US v. Noriega*, 808 FSupp 791 (US District Court, Southern District of Florida, 1992), finding that Noriega was entitled to full benefits under Geneva Convention III.

<sup>44</sup> See note 8 above.

- (a) To make use of poison, in any form whatever;
- (b) To make treacherous attempts upon the life of an enemy; as, for example, by keeping assassins in pay or by feigning to surrender;
- (c) To attack an enemy while concealing the distinctive signs of an armed force;
- (d) To make improper use of the national flag, military insignia or uniform of the enemy, of the flag of truce and of the protective signs prescribed by the Geneva Convention [i.e. the red cross] ....

These prohibitions may be conveniently dealt with under two headings as section (a) addresses a particular means of warfare (essentially, a type of a weapon), whereas sections (b) through (d) deal with methods of combat.

### ***3.1. Prohibited Weapons***

The absolute prohibition of poison features prominently not only in the Oxford Manual but also in other instruments of the same period, including the Lieber Code and the Hague Regulations;<sup>45</sup> at present it constitutes one of the most firmly entrenched customary rules of the law of armed conflict.<sup>46</sup>

The rule can, in many instances, be explained without invoking the notion of honour, to which it is clearly tied to in the Oxford Manual. For example, poisoning the water supply of the enemy would affect both combatants and civilians. In modern parlance, that would amount to an indiscriminate attack and would be prohibited as such.<sup>47</sup> Furthermore, poison, even when used in a sufficiently discriminating manner against combatants, may violate the prohibition against superfluous injury and unnecessary suffering.<sup>48</sup> This would be the case if the particular type of poison used would render the death of the targeted combatant inevitable or would have particularly gruesome effects on him or her. However, these considerations hardly justify an absolute prohibition. One could point to types of poison, or come up with scenarios for using poison, that would not be ruled out by the principle of discrimination or by the principle against superfluous injury.

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<sup>45</sup> See General Orders No. 100, Article 70; Hague Regulations, Article 23(a).

<sup>46</sup> See ICRC. updated 2011. Customary IHL Database. <[www.icrc.org/customary-ihl](http://www.icrc.org/customary-ihl)> (accessed 1 December 2011), Rule 27 and the authorities cited in the commentary; Rome Statute of the International Criminal Court, Rome, 17 July 1998, in force 1 July 2000, 2187 UNTS 90, Article 8(2)(b)(xvii).

<sup>47</sup> See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, Geneva, 8 June 1977, in force 12 July 1978, 1125 UNTS 3, Article 51.

<sup>48</sup> See Additional Protocol I, Article 35(2).

The explanation for the complete ban lies in the fact that the knightly class had found poison despicable for a different reason: knights disdained poison because it could be used to kill an opponent without personal risk.<sup>49</sup> Poisoning was cowardly and therefore dishonourable.<sup>50</sup> Similar logic applied to early projectile weapons. Since “diabolical machines”<sup>51</sup> such as long- and crossbows could be used to kill another man without putting oneself in harm’s way, the archer, if he fell into the hands of the knight, “suffer[ed] death at once because he [was] without honour”.<sup>52</sup>

Interestingly, the special contempt for poisoning was not limited to the battlefield but also surfaced in ordinary criminal law. In mid-16th century England, poisoners were boiled to death. This gruesome means of execution is significant in that poisoning was the only other instance beside high treason and heresy where the death penalty was carried out by means of torture.<sup>53</sup> French criminal law to this day has a separate provision dealing with *empoisonnement*,<sup>54</sup> showing, at least initially, “the detestation which the crime inspires”.<sup>55</sup>

The prohibition of poison in warfare, especially in light of the special treatment of poisoning under the ordinary criminal law, not only reflects a moral outrage, but also shows a degree of pragmatism. The ban of poison, according to Hugo Grotius, “originated with kings, whose lives are better defended by arms than those of other men, but are less safe from poison”.<sup>56</sup> In other words, poison was something by which a lowly commoner could become positively dangerous to a nobleman. That, of course, could not be tolerated.

Rather similarly, the ban of bows by the Second Lateran Council in 1139 can be seen as “man’s first attempt at arms control” and an “effort to enforce

<sup>49</sup> **Draper** 1965, p. 18.

<sup>50</sup> See also **Alberico Gentili**. 1598/1933. *De iure belli libri tres* [Carnegie edn]. Oxford: Clarendon, p. 157; **Larry May**. 2007. *War Crimes and Just War*. Cambridge: Cambridge University Press, p. 124ff.

<sup>51</sup> This is how Anna Comnena, the daughter of the Byzantine emperor Alexius Comnenus, described the crossbow. Cited in **Kelly DeVries**. 1992. *Medieval Military Technology*. Lewiston, NY: Broadview, pp. 40–41.

<sup>52</sup> **Draper** 1965, p. 19.

<sup>53</sup> **Sir James Fitzjames Stephen**. 1883. *A History of the Criminal Law of England*. London: Macmillan, Vol. i, p. 476, and Vol. iii, pp. 44–45.

<sup>54</sup> Code Pénal (Nouveau) [(New) Penal Code] (France, 1992), Article 221–5.

<sup>55</sup> **Stephen** 1883, Vol. iii, p. 95.

<sup>56</sup> **Hugo Grotius**. 1925 [1625]. *De Jure Belli ac Pacis Libri Tres*. Oxford: Clarendon, Vol. iii, p. 652.

weapons symmetry”.<sup>57</sup> Warfare was intended to be carried out by knights and use expensive, “knightly” weapons, it was not meant for peasants wielding cheap bows.

Admittedly, this approach was an ideal view of warfare and quite detached from reality. Even at the height of the era of chivalry, the peasantry participated in wars as foot soldiers and in fairly large numbers.<sup>58</sup> That said, what is quite clear is that the ban on poison and bows had little, if anything, to do with humanitarian sentiments. The only principled objection that was made against them had to do with honourable conduct in warfare, with a healthy dose of expediency helping to solidify the rule.

The vast majority of innovations in warfare, which have progressively made combat more of a long-distance affair, have attracted criticism similar to that which was made against poison and bows:

The history of warfare has been repeatedly punctuated by allegations that certain new weapons are “unlawful”, because in some way “unfair” by the prevailing criteria of honour, fairness and so on, or because nastier in their action than they need be.<sup>59</sup>

As far as modern law is concerned, the crucial difference is that a weapon that is “nastier” than it needs to be is automatically outlawed. The law generally proscribes the use of any instruments of war that are of a nature to cause unnecessary suffering,<sup>60</sup> that is to say, are of a nature to cause “a harm greater than that unavoidable to achieve legitimate military objectives”.<sup>61</sup> Yet, under the contemporary law of armed conflict, the “dishonourable” character of a weapon is insufficient, without more, to impact its legality.

### **3.2. Treachery and Perfidy**

Behind the historic bans of certain weapons on the grounds of their unchivalrous nature lurks a more general prohibition of dishonourable means and methods of warfare. At stake here is the distinction between permissible

<sup>57</sup> **Robert L. O’Connell**. 1989. *Of Arms and Men: A History of War, Weapons, and Aggression*. Oxford: Oxford University Press.

<sup>58</sup> See, e.g., **Stephen Morillo**. 1999. The “Age of Cavalry” Revisited. – Donald J. Kagay and L. J. Andrew Villalon, eds. *The Circle of War in the Middle Ages: Essays on Medieval Military and Naval History*. Woodbridge: Boydell, pp. 45–58.

<sup>59</sup> **Best** 1980, p. 62.

<sup>60</sup> See Hague Regulations, Article 23(e).

<sup>61</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, ICJ Reports (1996) 226, at para. 78.

and impermissible deception in warfare. Many of the ways of surprising or misleading the adversary are legitimate. For example, the use of ambushes, camouflage, decoys, mock operations and misinformation is considered perfectly permissible.<sup>62</sup> Some forms of deception are, however, prohibited as a matter of law. This proscription of treacherous and perfidious acts, which obtained a clear form in the era of knightly warfare, is widely seen as the clearest manifestation of a principle of chivalry in modern law.<sup>63</sup>

Additional Protocol I contains a number of provisions dealing with impermissible deception. Article 38 prohibits the “improper use” of emblems reserved for the identification of the medical services (the Red Cross and equivalent emblems) and the emblem of the United Nations. Article 39 proscribes the use of flags or military emblems, insignia or uniforms of neutral states or other states not parties to the conflict, and also prohibits the use of such identifying devices of the adversary “while engaging in attacks or in order to shield, favour, protect or impede military operations”. In other words, it is prohibited at all times to feign to be part of a (protected) medical service or of an armed force not engaged in the hostilities, and one can feign to be an adversary under very limited circumstances (for example, to facilitate escape from a prisoner-of-war camp).

The most far-reaching provision is, however, Article 37(1) which declares that “it is prohibited to kill, injure or capture an adversary by resort to perfidy”.<sup>64</sup> Perfidy is defined as “[a]cts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence”.<sup>65</sup> The critical part of this definition is the characterisation of the deception as an attempt to invoke a “legal entitlement ... to immunity from attack”.<sup>66</sup> Consequently, “perfidy is the deliberate claim to legal protection for hostile purposes”.<sup>67</sup>

<sup>62</sup> See ICRC updated 2011, Rule 57 and the authorities cited in the commentary.

<sup>63</sup> **Keith E. Puls**, ed. 2005. *Law of War Handbook*. Charlottesville, VA: Judge Advocate General’s Legal Center and School, p. 190; **Stefan Oeter**. 2008. *Methods and Means of Combat*. – Dieter Fleck, ed. *The Handbook of International Humanitarian Law*. 2nd edn. Oxford: Oxford University Press, p. 228; **Wingfield** 2001, p. 113.

<sup>64</sup> Additional Protocol I, Article 37(1),

<sup>65</sup> *Ibid.*

<sup>66</sup> **Dinstein** 2004, p. 201.

<sup>67</sup> **Jean de Preux**. 1987. Article 37 – Prohibition of Perfidy. – Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, eds. *Commentary on the Additional Protocols to the Geneva Conventions*. Geneva: ICRC & Martinus Nijhoff, § 1500.

The list of examples supplied by Additional Protocol I well illustrates the scope of the rule. The following forms of deception – when used to kill, injure or capture – are expressly mentioned as constituting perfidy:

- (a) The feigning of an intent to negotiate under a flag of truce or of a surrender;
- (b) The feigning of an incapacitation by wounds or sickness;
- (c) The feigning of civilian, non-combatant status; and
- (d) The feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.

These four examples refer to the protection offered by the law of armed conflict to (a) *parlementaires* carrying the flag of truce<sup>68</sup> and persons surrendering,<sup>69</sup> (b) persons incapacitated by wounds or sickness,<sup>70</sup> (c) civilians,<sup>71</sup> and (d) UN personnel.<sup>72</sup>

Interestingly, this conception of “perfidy” under Additional Protocol I is narrower than its intellectual ascendant, “treachery”. Article 8(b) of the Oxford Manual, cited earlier, gives two examples of prohibited treachery, namely “keeping assassins in pay” and “feigning to surrender”. A lengthier list can be found in academic writings. For instance, in the 8th edition of *Oppenheim’s International Law*, the editor, Hersch Lauterpacht, regarded the prohibition of treachery as demanding that:

no assassin must be hired, and no assassination of combatants be committed; a price may not be put on the head of an enemy individual; proscription and outlawing are prohibited; no treacherous request for quarter must be made; no treacherous simulation of sickness or wounds is permitted.<sup>73</sup>

These examples clearly cover the modern concept of perfidy – the simulation of wounds, sickness or surrender for hostile ends – but also include assassinations and outlawry. Support for the inclusion of these types of acts within

<sup>68</sup> Hague Regulations, Article 32.

<sup>69</sup> Additional Protocol I, Article 41(1) and (2)(b).

<sup>70</sup> Additional Protocol I, Article 41(1) and (2)(c).

<sup>71</sup> Additional Protocol I, Article 51(2).

<sup>72</sup> Convention on the Safety of United Nations and Associated Personnel, GA Res. 49/59 (9 December 1994), in force 15 January 1999, 2051 UNTS 363, Article 7(1). Members of the armed forces of a State not party to the conflict are protected as civilians.

<sup>73</sup> **Lassa Oppenheim**. 1952. *International Law: A Treatise*. 7th edn. London: Longmans, p. 341 (§ 110).

the prohibition of treachery can also be drawn from other early instruments, for example the Lieber Code, which stipulated that:

The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government an outlaw, who may be slain without trial by any captor, any more than the modern law of peace allows such international outlawry; on the contrary, it abhors such outrage. ...<sup>74</sup>

In contrast, Article 23(b) of the Hague Regulations states rather laconically that “it is especially forbidden ... to kill or wound treacherously individuals belonging to the hostile nation or army”. Yet the provision must be interpreted as covering outlawry and assassination. The consecutive editions of the US Field Manual on the Law of Land Warfare state that Article 23(b) of the Hague Regulations should be “construed as prohibiting assassination, proscription, or outlawry of an enemy, or putting a price upon an enemy’s head, as well as offering a reward for an enemy ‘dead or alive’”.<sup>75</sup> Similarly, but in some more detail, the 1958 UK Military Manual stated in conjunction with the provision of the Hague Regulations that

[a]ssassination, the killing or wounding of a selected individual behind the lines of battle by enemy agents or partisans, and the killing or wounding by treachery individuals belonging to the opposing nation or army, are not lawful acts of war. ... In view of the prohibition of assassination, the proscription or outlawing or the putting of a price on the head of an enemy individual or any offer for an enemy “dead or alive” is forbidden.<sup>76</sup>

In sum, Article 23(b) of the Hague Regulations appears to be broader in scope than Article 37 of Additional Protocol I: perfidy under the latter is shorthand for hostile acts that constitute the abuse of the protective veil of the law of armed conflict, whereas treachery under the former includes perfidy but also covers some other dishonourable ways of harming the enemy.<sup>77</sup>

<sup>74</sup> General Orders No. 100, Article 148.

<sup>75</sup> **US Department of the Army**. 1956. *Law of Land Warfare*. § 31. See also **Michael N. Schmitt**. 1992. State-Sponsored Assassination in International and Domestic Law. – *Yale Journal of International Law*, Vol. 17, p. 630.

<sup>76</sup> **UK War Office**. 1958. *The Law of War on Land – being Part III of the Manual of Military Law*. London: HM Stationery Office, § 115.

<sup>77</sup> Cf. **Schmitt** 1992, p. 617: “Treachery, as construed by early scholars, is ... broader than the concept of perfidy”.

The continued significance of this broader prohibition under the Hague Regulations is illustrated by an interesting passage from the current British Manual of the Law of Armed Conflict:

Examples of treachery includes calling out “Do not fire, we are friends” and then firing at enemy troops who had lowered their guard, especially if coupled with wearing enemy uniforms or civilian clothing; or shamming disablement or death and then using arms.<sup>78</sup>

The wearing of enemy uniforms in such circumstances would certainly be covered by Article 39 of Additional Protocol I on the misuse of uniforms, and the use of civilian clothing or the simulation of disablement or death would amount to perfidy under Article 37. However, yelling “Do no fire, we are friends” does not seem to be caught in the net of Additional Protocol I. The only way of explaining its prohibition under the law of armed conflict would be to invoke the prohibition of treachery.

That black-letter law leaves treachery substantially undefined leads to a situation where the law reflects developments in military customs and doctrine by relying on extra-legal concepts for what is proper and honourable in warfare at a particular point in time. For example, as concerns the prohibition of assassinations, the US and British military manuals published in the 1950s contain a rather narrow reading of the rule. The 1956 edition of the US manual explicitly stated that the prohibition of assassinations, as deriving from the general rule against treachery, “does not ... preclude attacks on individual soldiers or officers of the enemy whether in the zone of hostilities, occupied territory, or elsewhere.”<sup>79</sup> The 1958 British manual similarly mentioned that “[i]t is not forbidden to send a detachment or individual members of the armed forces to kill, by sudden attack, members or a member of the enemy armed forces.”<sup>80</sup> Accordingly it may well be the case that in its modern iteration, the prohibition of assassinations as a form of treachery is limited to the situations where the death of an enemy commander is procured by turning the adversary’s soldiers against him or her.

The prohibition of putting a price on the enemy’s head continues to be valid law. The question is not merely of historical and academic interest. On 17 September 2001, US president George W. Bush publicly declared that

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<sup>78</sup> **UK Ministry of Defence**. 2004. *The Manual of the Law of Armed Conflict*. Oxford: Oxford University Press, p. 59, § 5.9, fn. 35.

<sup>79</sup> **US Department of the Army** 1956, § 31.

<sup>80</sup> **UK War Office** 1958, commentary to article 115.



Osama bin Laden was “wanted, dead or alive.” A member of the CIA’s 2001 Afghanistan Task Force concedes in a law review article that this

strays dangerously close to those prohibited means of killing. Were the statement more than a figure of speech, it would constitute outlawry, rendering any resulting deaths as assassination under international law.<sup>81</sup>

I will defer to the reader as to whether or not this was merely a figure of speech. In any event, it may be worth recalling that the Lieber code, proclaimed by a more glorious American president, added to the prohibition of outlawry the admonition that

[t]he sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.<sup>82</sup>

The prohibition of perfidy, and treachery more broadly, is easy to dismiss as a remnant of a bygone era. But, as Thomas Wingfield argues, in the context of modern “information operations”, where various attempts are made to affect the thinking of the opposing commander, the distinction between ruses of war and perfidy may become “the principal legal question of operational military lawyers”.<sup>83</sup>

Be that as it may, the significance of the condemnation of treachery is fundamental to the law of armed conflict. Geoffrey Best notes with some justification that treacherous conduct “points a dagger at the heart of the entire IHL enterprise”.<sup>84</sup> Treachery is particularly troubling because it “destroys men’s last ties with one another when almost all other ties have already been destroyed by their inability to live at peace together” and

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<sup>81</sup> **Nathan Canestaro**. 2003. *American Law and Policy on Assassinations of Foreign Leaders: The Practicality of Maintaining the Status Quo*. – Boston College International & Comparative Law Review, Vol. 26, p. 30

<sup>82</sup> General Orders No. 100, Article 148. The 25-million-dollar reward offered by the US in 2003 for information leading to the capture of Saddam Hussein or confirming his death raises similar concerns, but probably falls short of outlawry for it does not directly incite violence.

<sup>83</sup> **Wingfield** 2001, p. 113.

<sup>84</sup> **Geoffrey Best**. 1994. *War and Law since 1945*. Oxford: Clarendon, p. 289.

thereby “spits in the face of the law’s rock-bottom assumption of universal kinship”.<sup>85</sup> Greenspan also notes that:

Good faith between belligerents is essential as a rule of conduct in warfare. In civilized warfare, a belligerent is entitled to rely on certain basic rules of behavior in relation to the enemy. . . . Otherwise the restraint of law will inevitably be withdrawn from the conflict, which will then degenerate into excesses and savagery, because in no case would either party be able to place the slightest credence in the word of the other. It is, therefore, an axiom in warfare that no ruse of war may impinge on the good faith which one belligerent owes another, or violate any agreement, expressed or understood, which has been arrived at between them.<sup>86</sup>

Moreover, violations of the rules of the law of armed conflict generally need not be malicious: inhumane behaviour in war is not necessarily aforesought, it can simply be careless or inconsiderate. Treacherous acts are, however, always premeditated and consciously malicious.

There are also very specific practical concerns. Perfidy and treachery create an atmosphere of paranoia, which makes peace negotiations more precarious than they would otherwise be.<sup>87</sup> In terms of an even more immediate impact, perfidy can have a detrimental effect on humanitarian access. As concerns the latter, one only needs to consider an incident that occurred in 2008 in Colombia. A humanitarian NGO offered its assistance to FARC (*Fuerzas Armadas Revolucionarias de Colombia* – Revolutionary Armed Forces of Colombia) in relocating certain civilian hostages so that negotiations concerning their release could start with the government. On the agreed date, two white helicopters arrived. Once the hostages were aboard, the crewmembers, actually from of the Columbian armed forces, overpowered and captured the rebels,<sup>88</sup> and the hostages were released to the great fanfare of the media. But what are the chances of humanitarian NGOs getting access to civilians detained by FARC in the immediate future? In a word, slim.

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<sup>85</sup> **Best** 1994, pp. 292–293. Cf. **de Preux** 1987, § 1500, noting that a resort to perfidy “destroys the faith that the combatants are entitled to have in the rules of armed conflict, shows a lack of the minimum respect which even enemies should have for one another, and damages the dignity of those who bear arms”.

<sup>86</sup> **Morris Greenspan**. 1959. *The Modern Law of Land Warfare*. Berkeley, CA: University of California Press, p. 319.

<sup>87</sup> **de Preux** 1987, § 1485, fn. 2.

<sup>88</sup> For an analysis, see **John C. Dehn**. 2008. Permissible Perfidy? Analysing the Colombian Hostage Rescue, the Capture of Rebel Leaders and the World’s Reaction. – *Journal of International Criminal Justice*, Vol. 6, pp. 627–653.

#### 4. Concluding Remarks

The impact of chivalry on the law of armed conflict seems to be at least threefold. First of all, the law of armed conflict has clearly retained some of the chivalric customs of warfare as discrete rules. Some of the more specific details of the protection of prisoners of war and some of the rules prohibiting particular means and methods of warfare are the best examples. To be sure, in many instances these rules can be reinterpreted so that they are based not so much on the personal honour of a warrior but rather grounded in respect for the humanness of the opposing party. In other words, chivalry as a principle has become subsidiary to considerations of military necessity and humanity.<sup>89</sup> But I think it is an exaggeration to claim that “we have witnessed over the centuries ... the gradual *elimination* of the ideal of chivalry”.<sup>90</sup> While chivalry has certainly taken a back seat, its impact is still noticeable, especially considering the specific prohibitions mentioned earlier.<sup>91</sup>

Second, the most pervasive, but also the most intangible, impact of chivalry on modern law is that it has set its tone, or given it an ideology. At the core of that ideology is the idea of limited warfare and of combat as an essentially rule-governed activity. Jean Pictet, one of the most influential experts on the law of armed conflict of the 21st century and the editor of the authoritative commentary of the 1949 Geneva Conventions, noted that the institution of chivalry “brought with it the recognition that in war as in the game of chess there should be rules and that one does not win by overturning the board”.<sup>92</sup> While a direct comparison between chess and warfare may well be somewhat removed from reality, the underlying presumption that organised violence amounts to warfare only when it conforms to certain prescriptions is a fundamental one.

<sup>89</sup> Cf. **Myres S. McDougal and Florentino P. Feliciano**. 1994. *The International Law of War: Transnational Coercion and World Public Order*. Dordrecht: Martinus Nijhoff, p. 522.

<sup>90</sup> **G. I. A. D. Draper**. 1989. *Humanitarianism in the Modern Law of Armed Conflict*. – Michael A. Meyer, ed. *Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention*. London: British Institute of International and Comparative Law, p. 6 (emphasis added). For a substantially similar observation, see **Julius Stone**. 1959. *Legal Controls of International Conflicts: A Treatise on the Dynamics of Disputes- and War-Law*. 2nd edn. New York, NY: Rinehart, p. 337.

<sup>91</sup> See **Peter Rowe**. 1990. *Review of Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention*, edited by Michael A. Meyer. – *International & Comparative Law Quarterly*, Vol. 39, p. 710; **Canadian Forces – Office of the Judge Advocate General**. 2001. *Law of Armed Conflict at the Operational and Tactical Levels*, § 202(7).

<sup>92</sup> **Jean S. Pictet**. 1985. *Development and Principles of International Humanitarian Law*. Dordrecht: Martinus Nijhoff, p. 15.

Moreover, the idea of chivalry as a facilitator of effective legal rules may even give support to the claim that international law as we know it today owes a debt to chivalry. Johan Huizinga had argued that while the origins of the law of nations

lay in antiquity and in canon law, ... chivalry was the ferment that made possible the development of the laws of war. The notion of a law of nations was preceded and prepared for by the chivalric ideal of a good life of honor and loyalty.<sup>93</sup>

Thirdly, and in some sense most interestingly, the law of armed conflict continues to rely on the notion of honourable conduct in warfare for determining what conduct is lawful and what conduct is unlawful. When it comes to distinguishing lawful ruses of war from unlawful treacherous acts, regard must be had to conceptions of proper military conduct that seem to lie beyond the strict confines of black-letter law.

But the question remains as to whether anything practical can be gained from a clearer recognition of the chivalric origins of the modern law of armed conflict and the interplay between law and honour. I believe the answer to be yes. For one, an appreciation of chivalry is key to understanding that the law of armed conflict did not emerge as a body of rules imposed upon the military from the outside by starry-eyed humanitarians or overzealous politicians. Rather, such rules emerged from within the military profession. These rules did not come about as some sort of an unavoidable nuisance; rather, they were concomitant with the idea of a soldier as an honourable professional. Given that, as Michael Waltzer puts it, “some sense of military honour is still the creed of the professional soldier, the sociological if not the delinquent descendant of the feudal knight”,<sup>94</sup> emphasising the intimate link between honour and rules of warfare may be very important in cultivating a respect for the rules which now have become rules of law. From a pedagogical point of view, I believe Mark Osiel to be quite right in observing that the professional identity of an officer “is imparted not by instruction in international law but by stories about the great deeds of honorable soldiers”.<sup>95</sup>

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<sup>93</sup> **Johan Huizinga.** 1959 [1921]. *The Political and Military Significance of Chivalric Ideas in the Late Middle Ages.* – *Men and Ideas: History, the Middle Ages, the Renaissance.* London: Eyre & Spottiswoode, p. 203.

<sup>94</sup> **Michael Walzer.** 2000. *Just and Unjust Wars: A Moral Argument with Historical Illustrations.* 3rd edn. New York: Basic Books, p. 34.

<sup>95</sup> **Mark J. Osiel.** 2002. *Obedying Orders: Atrocity, Military Discipline and the Law of War.* New Brunswick: Transaction Publishers, p. 21.

To be sure, it is nowadays ideologically more kosher to appeal to humanity as the reason why the law of armed conflict must be respected. But that entails difficulties. It is all too easy to dehumanise the adversary. Just how thin the veneer of humanity really is can be clearly seen from Stanley Milgram's research into the susceptibility of individuals to superior authority<sup>96</sup> and Philip Zimbardo's infamous Stanford prison experiment.<sup>97</sup> Against this background it is quite troubling that many US soldiers were told during the recent war in Iraq that the enemy "is called Satan. He lives in Falluja. And we're going to destroy him." This sort of an attitude is hardly helpful from the perspective of upholding the humanitarian constraints that the law prescribes.<sup>98</sup> What might perhaps help a little is that the notion of honour detaches the propriety of a soldier's behaviour from the qualities (real or apparent) of the adversary. Senator John McCain succinctly captured this point when he argued against the torture of detainees held by the US: "It's not about them, it's about us."<sup>99</sup>

Of course, the notion of honour is not immune from manipulation. Leaders have often sought to appeal to honour when justifying dubious behaviour. The most prominent recent example is perhaps the motto of the Joint Task Force Guantánamo (JTF-GTMO), the US military unit that operates the detention units at Guantánamo Bay, Cuba – "Honor Bound to Defend Freedom". Not only has this phrase been emblazoned on the gates of the various camps, it has been incorporated into the salute. A junior soldier is supposed to salute and say "Honor bound"; the senior must respond by saying "To defend freedom". A lawyer working for the detainees has noted that when he first witnessed this he thought that it was a Monty Python sketch put on for his benefit.<sup>100</sup> Yet it is not difficult to see what purpose this serves: the idea is to instil into the personnel the idea that the dubious practices at

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<sup>96</sup> See **Stanley Milgram**. 1974. *Obedience to Authority: An Experimental View*. New York, NY: Harper & Row.

<sup>97</sup> For an up-to-date discussion, see **Philip Zimbardo**. 2007. *The Lucifer Effect: Understanding How Good People Turn Evil*. New York, NY: Random House.

<sup>98</sup> Yet, a certain amount of dehumanisations of the adversary seems to be unavoidable for soldiers to be able to engage in combat at all. For evidence suggesting that soldiers are reluctant to kill, and for a discussion of the methods used in overcoming this reluctance, see **Dave Grossman**. 2009. *On Killing: The Psychological Cost of Learning to Kill in War and Society*. Rev'd edn. Boston, MA: Little, Brown & Co.

<sup>99</sup> **Jane Mayer**. 2008. *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*. New York, NY: Doubleday, p. 329.

<sup>100</sup> See **Reprieve**. 2006. Honor Bound to Defend Press Freedom. 29 September. <[www.reprieve.org.uk/articles/05\\_10\\_29\\_NUJ\\_alHajj](http://www.reprieve.org.uk/articles/05_10_29_NUJ_alHajj)> (accessed 1 December 2011).

the camps are quite compatible with, and even required by, their honour as soldiers. The notion of honour must therefore be approached with due care.

In the end, one may still ask whether there is any room for chivalry or honour in modern conflicts. Is it not the primary concern of an officer to bring his men out of a battle *alive*?<sup>101</sup> This is not how all see it. At least one young marine officer has noted that

getting my men home alive ... set the bar too low. I had to get them home physically and psychologically intact. They had to know that, whether or not they supported the larger war, they had fought their little piece of it with honour and had retained their humanity.<sup>102</sup>

## Acknowledgements

I am grateful for questions and comments from participants of a conference organised at the Estonian National Defence College and a faculty seminar held at Melbourne Law School where I presented an early version of this paper. I am also indebted to Sarah Finnin, Michelle Lesh and Sasha Radin for comments on a subsequent draft. Of course, the usual disclaimer applies.

## Treaties

Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864, in force 22 June 1865, 129 CTS 361.

Convention on the Safety of United Nations and Associated Personnel, GA Res. 49/59 (9 December 1994), in force 15 January 1999, 2051 UNTS 363.

Convention relative to the Treatment of Prisoners of War, Geneva, 27 July 1929, in force 19 June 1931, 343 LNTS 343.

Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, St. Petersburg, 29 November/11 December 1868, 138 CTS 297.

Geneva Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, in force 21 October 1950, 75 UNTS 135.

Project of an International Declaration concerning the Laws and Customs of War, text adopted at Brussels, 27 August 1874.

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<sup>101</sup> For the argument that a state has a greater duty to prevent harm to its soldiers than to enemy civilians while attacking an enemy-controlled territory, see **Asa Kasher and Amos Yadlin**. 2005. Military Ethics of Fighting Terror: An Israeli Perspective. – *Journal of Military Ethics*, Vol. 4, pp. 3–32. A serious debate (fuelled by Avishai Margalit and Michael Walzer) ensued in the *New York Review of Books*: see 14 May, 11 June, 13 August, 24 September and 8 October 2009 issues. See also **Robinson** 2006, p. 178–179.

<sup>102</sup> **Nathaniel Fick**. 2005. *One Bullet Away: The Making of a Marine Officer*. Boston, MA: Houghton Mifflin, p. 241.

- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, Geneva, 8 June 1977, in force 12 July 1978, 1125 UNTS 3.
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