

War without limits: How sharp war theory is a historical anomaly

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Abstract

The “othering” of international humanitarian law has a demonstrated past resulting from the exclusion of so-called “Enemies of the Faith” from the laws of chivalry. It is no surprise, then, that the idea of “sharp war” should seem so natural to some commentators given its historical application “by the discretion of the commander and such rules of justice and humanity as recommend themselves in the particular circumstances of the case”. The application of humanitarian principles, in other words, was the measure of the commander’s charity rather than the result of legal compulsion.

The viability of sharp war appears to have increased in attractiveness as conventional State-on-State warfare has seemingly decreased in frequency;

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however, the question of sharp war has never been approached through a legal historical lens. Utilizing the research found in The Laws of Yesterday's Wars, a multi-author series edited by the present author, this paper seeks to fill this gap by scoping over a range of geographically and temporally disconnected case studies and the customary law developed to mitigate warfare. Ultimately, the paper highlights that "soft war" has naturally evolved in all cultures and that arguments for sharp war are a historical anomaly.

Keywords: comparative history, total warfare, sharp war, history of international law, Eurocentricity.

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Introduction

The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.

Francis Lieber, 1863¹

We are fighting human animals, and we act accordingly.

Israeli Defence Minister Yoav Gallant, 2023²

This issue of the *Review* asks for military perspectives on international law. In reflecting on the topic, one aspect omitted within the literature around international humanitarian law (IHL) and its application is not of the *role* of military lawyers, but *who* military lawyers are. The cultural, religious and philosophical background of those who advise, interpret and write on IHL is core to the question of perspectives. To address this omission, the present paper addresses the "original sin" of IHL – its "othering" – and seeks to show how arguments favouring "sharp war" are without historical justification outside of Europe.

While Western notions of war (which are embodied within the term "international") have developed over time, a particularly archaic notion has survived in some corners of practice: advocacy for sharp war. Francis Lieber's passing assurance cited at the beginning of this paper captures the underlying justification. Lieber wrote of wars fought by "civilized nations" against "barbarism and injustice", with the civilized West imposing order and beliefs on infidel and pagan nations in order to ensure freedom and moral progress.³ He

1 Francis Lieber, *Instructions for the Government of Armies of the United States in the Field*, General Order No. 100, 24 April 1863 (Lieber Code), Art. 29.

2 Sanjana Karanth, "Israeli Defense Minister Announces Siege on Gaza to Fight 'Human Animals'", *HuffPost*, 9 October 2023, available at: www.huffpost.com/entry/israel-defense-minister-human-animals-gaza-palestine_n_6524220ae4b09f4b8d412e0a (all internet references were accessed in July 2024).

3 Leonard Rubenstein, "Israel's Rewriting of the Law of War", *Just Security*, 21 December 2023, available at: www.justsecurity.org/90789/israels-rewriting-of-the-law-of-war/; Helen M. Kinsella, *The Image before the*

was not alone. Admiral Williams Rebolledo, commander-in-chief of the Chilean Navy, justified his bombardment campaign of unfortified Peruvian towns by stating that

[t]he people of Peru, and perhaps even a portion of our own, have forgotten in the current contest that a war is all the more humanitarian when it is crueller, and that [it is] only by making the belligerents feel all the rigours of war ... that we will promptly reach peace.⁴

Israel's defence minister continued this tradition recently, and in other currently active operations there is a move towards sharp war. Denial of quarter, a particularly brutal concept that goes to the heart of sharp war, has emerged again in the ongoing Russia–Ukraine war, notwithstanding its clear prohibition under IHL. On 2 March 2022, Ukrainian Special Forces announced that they would no longer capture Russian artillerymen but would kill them in response for their “brutal shelling of civilians and cities”.⁵ Such an articulation represents a dangerous return to sharp war tactics.

There is a clear risk that current conflicts are forgetting the lessons of the past, and that those who explicitly or implicitly argue for sharp war do so to an audience that is not educated as to the historical fallacy that wars do not have laws. The concept of sharp war is also an important reminder for military practitioners to question their own cultural perspectives and cultural background when advising commanders. This paper, in keeping with the theme of this issue of the *Review*, seeks to highlight that reverting to history can help to keep war “soft” by demonstrating that all cultures have sought to regulate and mitigate the destruction that war can bring. The paper first looks at the concept of sharp war, exploring its historical background within the historical framework of the laws of war, in order to question its legitimacy in contemporary rhetoric and offer a lens through which non-compliance with IHL can be measured. The paper then offers an alternate perspective through which to address the increasingly humanitarian nature of the laws around warfare, by distilling the basic principle of war. The paper ultimately suggests that modern military perspectives on the laws of war need to take into account the history of the legal frameworks that aim to mitigate the horrors of war, in order to ensure that sharp war rhetoric and practice are stamped out.

Weapon: A Critical History of the Distinction between Combatant and Civilian, Cornell University Press, Ithaca, NY, 2011, p. 52.

- 4 Juan Williams Rebolledo, *Operaciones de la Escuadra Chilena Mientras Estuvo a las Órdenes del Contra-Almirante Williams Rebolledo*, Imprenta del Progreso, Santiago, 1882, p. 30, as translated and quoted in Alonso Gurmendi Dunkelberg, “It’s a Trap! Re-Thinking Samuel Moyn’s *Humane* beyond the North Atlantic”, *Journal of International Humanitarian Legal Studies*, Vol. 12, 2021.
- 5 Facebook post, reported in “Ukrainian Special Forces Warn They Will Not Spare Russian Troops”, *News.com.au*, 3 March 2022, available at: www.youtube.com/watch?v=5cqlJp3lW_w&ab_channel=news.com.au.

Sharp war

In order to demonstrate the historical inconsistency of sharp war arguments with the wider trend of the laws of war, it is important to first define what sharp war is and to place it within its historical context. This paper suggests that sharp war has two implicit limbs. The first is that rules which apply to oneself should not, as a matter of law or ethics, apply to “the other”. The second is that there should be no rules whatsoever in warfare. The former school of thought Mégret calls the “original sin” of IHL, while the latter is ascribed to Lieber. It is important to examine both limbs, so as to better understand and conceptualize sharp war. Accordingly, this section first places sharp war within its European origins and framework, before progressing through the chronology of sharp war to its high watermark under Lieber and the Jacksonian traditions. It concludes that sharp war is a particularly European (and later Anglo-American) notion and must be engaged with as a fringe concept rather than a central tenet of IHL’s history.

The original sin

The first limb of sharp war is what Mégret has explained as the notion of “othering”.⁶ Mégret notes that this turns primarily on cultural differences regarding the nature of warfare, perceived by colonial commentators as indicative of fundamental differences in the character of non-Western ethnicities.⁷ Mégret refers to the belief that non-Western groups “waged war as complete tribes” in order to “gain an advantage ... and effect ruses ... and massacres”.⁸ Yet such a perspective does not occur in isolation. The “original sin” actually finds its origins – fittingly, given the name – within scripture.

With the rise of monotheistic religion, the idea of divine right (and absolute freedom from sin against “the other”) emerged.⁹ It is here that the original sin evolved in the laws of war, and it is thus here that discussions of sharp war must begin. Reflecting on biblical history, the rabbis distinguished between *milḥemet ḥova* (obligatory war) and *milḥemet reshut* (optional war):

Rava said: All agree that Joshua’s war of conquest was *ḥova* (obligatory) and the expansionist wars of David were *reshut* (optional). But they differ with regard to [the status of] a pre-emptive war intended to prevent idolaters from attacking them.¹⁰

6 Frédéric Mégret, “From ‘Savages’ to ‘Unlawful Combatants’: A Postcolonial Look at International Humanitarian Law’s ‘Other’”, in Anne Orford (ed), *International Law and Its Others*, Cambridge University Press, Cambridge, 2006, p. 265. See also Pablo Kalmanovitz, *The Laws of War in International Thought*, Oxford University Press, Oxford, 2020.

7 F. Mégret, above note 6, pp. 267, 289; Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories*, Princeton University Press, Princeton, NJ, 1994, pp. 10, 19.

8 F. Mégret, above note 6, p. 291, citing John Fuller, *The Reformation of War*, Hutchinson, New York, 1923. See also Elbridge Colby, “How to Fight Savage Tribes”, *American Journal of International Law*, Vol. 21, No. 2, 1927, p. 279.

9 Rory Cox, *Origins of the Just War*, Princeton University Press, Princeton, NJ, 2023.

10 Babylonian Talmud, Sotah 44b.

The “expansionist wars of David” are seen as more questionable, notwithstanding Psalm 18:48, “He has subdued nations beneath my feet”.¹¹ Elsewhere, the Talmud insists that the king would need to seek authorization from the Great Court of seventy-one justices, as well as divine approval through the oracle of the High Priest, before engaging in such a war. As these institutions have not existed for 2,000 years, the definition of “competent authority” virtually rules out the possibility of non-defensive war; there is no Jewish equivalent to the process by which some seventeenth-century English Puritans declared wars to be “commanded by God” simply because they were deemed by the leadership to be in conformity with God’s will.

The Talmudic distinction between *kibbush yaḥid* (individual conquest) and *kibbush rabim* (public conquest) may indicate the need for popular support in addition to the other requirements.¹² War against the Canaanites is based on the *herem*, or holy ban; it is a war of extermination that knows no bounds. Justification – a sort of *jus ad bellum* – is offered, on the grounds that these nations might teach Israel “abominations” and lead them to sin.¹³ No restraints are indicated.

Homer recognized the dividing line between humans and animals throughout the *Iliad*. Humans, unlike animals, can be both savage and compassionate. Achilles, in his *aristia*, comments to Hektor:

I will have no talk of pacts with you, ...
As between men and lions there are none,
no concord between wolves and sheep, but all
hold one another hateful through and through
so there can be no courtesy between us ...¹⁴

This scene, of Achilles transformed into an animal, is laden with Homer’s implied view of what it means to be human: to be willing to parley, to consider self-restraint, to respect others as possible friends.¹⁵ Achilles is not a hero in the story. He is a lesson in Fate, and in the excesses of war. Indeed, the *Iliad* starts with a forewarning of the purpose of the tale:

Rage – Goddess, sing the rage of Peleus’ son Achilles,
murderous, doomed, that cost the Achaeans countless losses,
hurling down to the House of Death so many sturdy souls,
great fighters’ souls, but made their bodies carrion,
feasts for the dogs and birds ...¹⁶

11 That the rabbinic tradition is not entirely anti-imperialist is demonstrated by a Midrash such as Targum Sheni, on Esther (probably eighth century), which wildly exaggerates the extent of the dominions of Solomon and Ahab.

12 Inbar 94 refers only to the later comments of Rashi (Gittin 8b and Avoda Zara 20b) and Maimonides (Terumot 1:2) for the consensus requirement.

13 Compare Deuteronomy 9:5. The novelist Dan Jacobson explored the Bible’s ambivalence about the conquest in *The Story of the Stories: The Chosen People and Its God*, Harper & Row, New York, 1982.

14 Homer, *The Iliad*, trans. Robert Fagles, Penguin, London, 1990, para. 22.308.

15 Jonathan Shay, *Achilles in Vietnam*, Simon & Schuster, New York, 1995, p. 83.

16 *The Iliad*, above note 14, para. 1.1.

Homer is warning us of what can occur when the laws of war – which, as David Feeney has noted, were well recorded for the Hellenes¹⁷ – are broken, and talks to us of the importance of abiding by these regulations, lest we end up doomed.

This latter concept – of humanizing the foe – is critical in IHL, and in the historic laws of war to a certain point. Yet there is a clear dividing point where the foe has transitioned from being an equal to being lesser, and it is this degradation of the enemy that modern IHL has sought to codify and reintroduce into the discussion.

The story of David and Goliath highlights the use of degrading language to dehumanize and vilify the enemy. Goliath, vested in the contemporary symbols of wealth and prestige – mail armour, shield bearer, sword and spear – is met with David, a shepherd armed with a sling. Often the story ends there, but a literary analysis of the language demonstrates the layers of meaning that this choice of weapons represents to Goliath.

And David said to Saul, Let no man's heart fail because of him [Goliath]; thy servant will go and fight with this Philistine.

And Saul said to David, Thou art not able to go against this Philistine to fight with him: for thou art but a youth ...

[David answered,] Thy servant slew both the lion and the bear; and this uncircumcised Philistine shall be as one of them, seeing he hath defied the armies of the living God.

David said moreover, The LORD that delivered me out of the paw of the lion, and out of the paw of the bear, he will deliver me out of the hand of this Philistine.¹⁸

David, who did not need armour to fight animals, dismisses the weapons in lieu of a sling and stave. He approaches Goliath:

And when the Philistine looked about, and saw David, he disdained him ...

And the Philistine said unto David, Am I a dog, that thou comest to me with staves?¹⁹

Goliath immediately grasps that David defines and intends to treat him as subhuman – an animal, to be fought without honour. This Abrahamic origin story – shared by those of the Christian, Jewish and Islamic faiths – is perhaps more influential than it is often given credit for. As Jonathan Shay, classicist and combat trauma psychologist, notes:

Twentieth-century nationalism has taken over the biblical tendency to measure loyalty by how vehemently one dehumanizes the enemy. When American soldiers and their commanders in Vietnam debased the enemy, they echoed very ancient proofs of their faith in God and of their own religious merit. ...

17 David Feeney, "Carthaginian Laws of War", in Samuel White (ed.), *The Laws of Yesterday's Wars*, Vol. 2: *From Ancient India to East Africa*, Brill Nijhoff, Leiden, 2023.

18 1 Samuel 17:32–37.

19 1 Samuel 17:42–43.

The Judeo-Christian (and Islamic) world view has triumphed ... [such] that dishonouring the enemy now seems natural, virtuous, patriotic, pious.²⁰

Shay is, with respect, not utterly correct in this statement. Islam has always tried to mitigate the cruelty of wars even against those who are *Dar Al-Hab*. The Prophet Muhammad instructed: "Observe good treatment towards the prisoners."²¹ Islamic law guarantees that prisoners of war shall be treated humanely and with respect – fed and watered, clothed if necessary, and protected from the heat and the cold and from cruel treatment. Their families, which include parents, grandparents and children, would remain with them, so as to protect family unity. The concept of humane treatment was even extended towards *al-kalb al-'aqūr* (a rabid dog).²²

There is some resonance here with the Roman notion of *bellum justum*, though the rabbinic classification is into obligatory/optional rather than just/unjust.²³ A defensive war is obligatory (just), while a pre-emptive war *might* be.²⁴ Roman warfare was known for the marked absence of restrictions on the categories of persons who were considered legitimate targets of war, so much so that *bellum romanum* has become a synonym for total war. Implied within *bellum justum*, although not often discussed, is its applicability to civilized sovereign States, which necessarily requires a degree of externality. In order to be able to conduct just war, through the *fetiales*, a sedentary population with established borders was necessary. Those who did not fit into this concept of a regular, legally defined enemy (the *hostis justus*) were incompatible with the concept of just war. Accordingly, bandits, pirates and rebels (who were primarily internal threats) were not "regular" or "traditional" enemies, and the *jus in bello* could not apply to them.²⁵

Such a perspective flowed through into feudal warfare, within the melting pot of Germanic individualism and Roman legalism.²⁶ Central to medieval public warfare were tactics designed to compel the other party to accept the validity of one's own claim. Such means and methods included forced contributions, arson, plunder, injuries against certain individuals, destruction of property, ransom, and use of lethal force. As noted by Girat, Duke of Burgundy (an independent sovereign, therefore capable of public war), discussing the use of burning and plundering around him:

20 J. Shay, above note 15, p. 115.

21 Muhammad ibn Jarir al-Ṭabarī, *Tārīkh al-Ṭabarī: Tārīkh al-Umam wa al-Mulūk*, Vol. 2, Dār al-Kutub al-'Ilmiyyah, Beirut, 2001, p. 39.

22 Muḥammad ibn Aḥmad al-Sarakhsī, *Kitāb al-Mabsūt*, Dār al-Ma'rifah, Beirut, Vol. 9, pp. 135, 196; Vol. 10, pp. 129, 131; Vol. 16, p. 145; Vol. 26, p. 145.

23 See R. Cox, above note 9, for this more generally. For the intersection between just war and sharp war, see Jeff McMahan, "Killing in War: A Reply to Walzer", *Philosophia*, Vol. 34, No. 1, 2006, p. 49.

24 R. Cox, above note 9, pp. 449–451.

25 See, for example, Wouter G. Werner, "From Justus Hostis to Rogue State: The Concept of the Enemy in International Legal Thinking", *International Journal for the Semiotics of Law*, Vol. 17, No. 2, 2004, pp. 155, 158, 167.

26 On the development of feudal law, see Samuel White, *Keeping the Peace of the Realm*, LexisNexis, Sydney, 2021.

If my neighbour starts a quarrel with me,
 With fire burns my lands to cinders;
 And I, his, on all sides;
 If he steals my castles or keeps,
 Then so it goes until we come to terms,
 Or he puts me or I put him in prison.²⁷

Procession through hostile territory – for the purposes of *chevauchée*, or violent raiding – demonstrated the justice and moral superiority of one's claim, and further undermined the position of an impotent noble unable to defend what they claimed was theirs. Here, Helen Kinsella's *The Image before the Weapon* is particularly important. Kinsella would suggest that the process of having codes of honour can actually lead to types of inhumane war. As she states,

the honor of chivalry – that is, the honor of the knight – provided a conditional patronage not so subtly disguised as a physical threat for only those deemed to be within the knight's sphere of responsibility. The relationship between protection and obedience, or among protection, utility, and subservience, was fundamental. And the absence of this proprietary protection is starkly observed in the conduct of Crusades.²⁸

In other words, having notions of honour is no guarantee of “soft” war. In this regard, it helps to understand why, although some tactics evolved that sought to introduce sharp war (such as the *chevauchée*), there were rules that regulated it, such as the right of captives to ransom rather than execution.²⁹ These rules were of course conditional to those within the scope of chivalry, and Christianity, but they brought with them some level of violence mitigation against “the self”. As Judeo-Christian rules expanded throughout the medieval period, they begin to crystallize into a very definitive set of norms on class and religion. For inter-European warfare, there were particular restrictions on methods, means and weapon systems, and as trade connections increased within Europe, a shared sense of humanity arose. The original sin, however, continued across the Atlantic in the new era of natural law.

Clashes of civilizations

Whilst the “othering” of IHL is not unique to Judeo-Christian cultures, these cultures have shaped the international legal frameworks as they currently exist.³⁰ This is doubly important when noting that the development of international law (post the colonization of the New World) was catalysed by clashes of civilizations.

27 Quoted in Richard W. Kaeuper, *Chivalry and Violence in Medieval Europe*, Oxford University Press, Oxford, 1999, p. 177.

28 H. M. Kinsella, above note 3, p. 37.

29 Michael Bryant, *A World History of War Crimes: From Antiquity to the Present*, Bloomsbury, London, 2016, p. 58.

30 F. Mégret, above note 6, p. 289.

The notion of sharp war (critical to European understandings of differing standards of care for “others”) became even sharper outside of Europe.

Accordingly, the second implied limb of sharp war is that there should be no rules. Throughout the Spanish Conquest, the *Requerimiento* posed an ultimatum to the indigenous population – either submit to the superiority of Christianity and the Spanish empire or be warred upon “in all ways and manners that we can”.³¹ The ultimatum was an act of mercy, a concept linked to charity, a commanding sentiment of divine law.³² It allowed the indigenous people, who were perceived to be barbaric and mere “children of reason”, to accept their subordinate status and receive tutelage from Spaniards in order to “civilize” and, in return, receive immunities and privileges.³³

As Fazal and Greene have articulated, reciprocity of rules (including the laws of war) is often based upon common understandings. Their findings are that notwithstanding non-European State ascension to humanitarian law treaties, insincerity can still avail (given the example of human rights law).³⁴ They posit that these insecurities are most likely found in differing regional blocs.³⁵ What are these blocs? A possible starting point on this topic is Samuel Huntington, who posited that there were eight civilization codes through which modern geopolitics could be measured. Huntington’s model has of course been widely criticized by the international relations community, and may not be the sole lens through which soft war/sharp war should be assessed. Some readers may think that the standard of civilization test, outlined below in more detail, is a better lens through which to analyze the historical basis behind sharp war theory. The following is therefore offered as but one possible model.

Huntington identified seven major civilizations differentiated by religion, history, culture, tradition and/or language: Western, Confucian, Japanese, Islamic, Hindu, Slavic-Orthodox and Latin American, with the tentative existence of an eighth African civilizational bloc.³⁶ As clashing societal views are less mutable than divergent ideologies, the replacement of the Iron Curtain of ideology with the Velvet Curtain of culture has resulted in more prolonged and violent conflicts, which have only been exacerbated by globalization, immigration and racism.³⁷ Contrastingly, Huntington held that conflicts between States within the same civilization are likely to be less intense and less likely to escalate into major or even global wars than conflicts between civilizations.³⁸

31 H. M. Kinsella, above note 3, p. 58. See, further, Ian Hunter, “Global Justice and Regional Metaphysics: On the Critical History of the Law of Nature and Nations”, in Shaunnaugh Dorsett and Ian Hunter (eds), *Law and Politics in British Colonial Thought*, Palgrave Studies in Cultural and Intellectual History, Palgrave Macmillan, London, 2010.

32 H. M. Kinsella, above note 3, pp. 54, 59.

33 *Ibid.*, p. 63.

34 Tanisha M. Fazal and Brooke C. Greene, “A Particular Difference: European Identity and Civilian Targeting”, *British Journal of Political Science*, Vol. 45, No. 4, 2015, p. 829.

35 *Ibid.*, p. 830.

36 Samuel P. Huntington, “The Clash of Civilizations?”, *Foreign Affairs*, Vol. 72, No. 3, 1993, pp. 22, 25.

37 *Ibid.*, pp. 25–27, 31–32.

38 *Ibid.*, pp. 38–39, 48.

Huntington's "West versus the Rest" mentality is not reflective of current events, with increasing economic, military, strategic and diplomatic competition and an emerging multipolar power distribution.³⁹ We are bearing witness to the largest military build-up since the Second World War, with China developing its own economic and military power in an effort to modernize, not Westernize.⁴⁰ Although the "West versus the Rest" mentality may no longer hold true, double standards in treatment amongst civilization blocs, whereby nations apply one standard of warfare to kin-countries and different standards to others, continue to underpin the thinking of many military practitioners. The rareness of full restraint in conflicts against barbarians and outsiders (implied by the structure of Grotius' *The Laws of War and Peace*⁴¹) is evident when considering low compliance with international law in European versus non-European dyads.⁴² What are these "European" nations? Fazal and Greene, through in-depth statistical analysis, show that

the states that should be considered "European" for the purposes of this article are those that (1) participated in the initial codification of the law of war in the late nineteenth century and (2) were generally perceived by European states as members of the European community at the time of codification. Because the identity argument depends on recognition by the deciding state of a target state's in-group or out-group status, European states' perceptions of the target state as European or not is the deciding factor when there is a discrepancy between the two criteria delineated above. Our definition excludes the Eastern European countries and Turkey, and includes Russia as well as the United States, Australia, Canada and New Zealand.⁴³

They further note that a stronger correlation of sharp war/soft war rhetoric is found in the original signatories of the second 1899 Hague Convention. These signatories "generated even stronger results on our key independent variable than our preferred coding of Europeans, suggesting that a historical relationship with *jus in bello* may indeed be a key component of identity in predicting civilian targeting".⁴⁴

The substantive effect of this variable rivals or exceeds that of other key control variables. The authors show that when a European State fights a non-European State, the probability of civilian targeting increases by over 250%. Accordingly, whilst Huntington's view is fallible, a perspective confirmed by his disproven belief that intra-Slavic conflict between Russia and Ukraine would be unlikely, there is clear evidence that the sharp war philosophy is seen at its clearest in "the other".⁴⁵ What is missing in Fazal and Greene's discussion, but is

39 *Ibid.*, pp. 39–40, 47; Australian Department of Defence, *Defence Strategic Review 2023*, April 2023, pp. 17, 28 (2.4).

40 S. P. Huntington, above note 36, pp. 36, 41.

41 H. M. Kinsella, above note 3, p. 70.

42 *Ibid.*, p. 70; T. M. Fazal and B. C. Greene, above note 34, p. 832.

43 T. M. Fazal and B. C. Greene, above note 34, p. 841.

44 *Ibid.*, p. 841.

45 S.P. Huntington, above note 36, p. 38.

of particular importance, is the development of this “European” ideal within the United States, where sharp war reached its zenith.⁴⁶

The Jacksonian tradition

These two limbs of sharp war, importantly, have become merged in the arguments of modern sharp war advocates, who assert that those who abide by the rules should not have to do so in the face of “the other” being unable to (due to perceived inferiority or inability to reciprocate) or unwilling to. This mirrors a particular approach to modern international relations known as the Jacksonian tradition – named after the seventh president of the United States, Andrew Jackson – which emphasizes self-reliance, honour and courage.

The Jacksonian tradition is grounded in the cultures of the Scotch-Irish, who emigrated to Appalachia in the United States from Ulster in the Scots-English borderlands, escaping decades of constant, bitter warfare and consequent weak institutions and insecurity.⁴⁷ The Scotch-Irish became the numerically dominant ethnic group in the region, representing 25–35% of the population, and contributed their “old country” traditions to the Appalachian pioneer culture.⁴⁸ Although religious persecution was not the cause of emigration, the zeal of the Scottish Covenanters, forged in the bloody battles of the 1670s, cultivated a siege mentality and an uncompromising spirit, along with a desire for equal religious and political rights, a “stay out of my way” concept of freedom (with contempt for authority) and a “pariah capitalist” outlook as outsiders on the fringes of society, reflective of the ideals of equality, individualism and financial *esprit*.⁴⁹

David Hackett Fischer, professor of history at Brandeis University, described the Scotch-Irish as a “hardy and warlike people” who were ignorant, clannish and swift to anger.⁵⁰ His critics condemned this as “hillbilly” stereotyping, with Fischer, as a member of the culturally dominant group, proclaiming his values and ideals as superior and casting broad generalizations with too few sources; however, his tone is mainly non-judgemental.⁵¹ To support their argument, critics noted that medieval violence was often covert, and done *to* the Scotch-Irish rather than *by* them.⁵² Cunningham also remarked that the Scotch-Irish were supplanted as a “buffer” between the Quakers and the “savages”, which is why, despite originating from the same geographical region,

46 On this, see Rory Cox, “Asymmetric Warfare and Military Conduct in the Middle Ages”, *Journal of Medieval History*, Vol. 38, No. 1, 2012.

47 Gordon McKinney *et al.*, “Culture Wars: David Hackett Fischer’s *Albion’s Seed*”, *Appalachian Journal*, Vol. 19, No. 2, 1992, pp. 161, 180, 191.

48 H. Tyler Blethen, “The Transmission of Scottish Culture to the Southern Back Country”, *Journal of the Appalachian Studies Association*, Vol. 6, No. 1, 1994, p. 61.

49 *Ibid.*, pp. 60–61; Kenneth W. Keller, “The Origins of Ulster Scots Emigration to America: A Survey of Recent Research”, *American Presbyterians*, Vol. 70, No. 2, 1992, pp. 71, 75, 77–79; Rodger Cunningham, “Review: Scotch-Irish and Others” *Appalachian Journal*, Vol. 18, No. 1, 1990, pp. 84, 86–88.

50 G McKinney *et al.*, above note 47, p. 177.

51 *Ibid.*

52 *Ibid.*, p. 174.

Quakers are portrayed as peaceful, orderly and kind, in stark contrast to the Scotch-Irish, who were described as “the continent’s most ferocious, implacable and effective Indian fighters”.⁵³ Many sources that Fischer cites are outsiders, including English elites. Ulster was a frontier society with high mobility, inherited from the Lowland Scots, who lived in dispersed farms and farmtowns.⁵⁴ The English elites possessed a class-based fear of dispersed, mobile people, associating “scattered and sequestered habitations” with the absence of social discipline and with irregular and lawless habits, favouring a nuclear village with tightly structured institutions of social control.⁵⁵

The Jacksonian honour code states that honourable enemies fight clean, whereas dishonourable enemies fight dirty. In this respect, it captures the essence of the first limb of sharp war. For dishonourable enemies, all rules are off – a principle reflected in Jacksonians’ abandonment of restraints against indigenous Americans, who were known to attack civilians and torture prisoners of war. In the American Civil War, whilst indigenous Americans were subject to routine massacres, the British and colonialists treated one another kindly due to a shared culture and history.⁵⁶ Writing in 1927, Captain Elbridge Colby of the US Army recognized that “savage tribes” could not be subject to total war:

It is good to be decent. It is good to use proper discretion. It is good to observe the decencies of international law. But it is a fact that against uncivilized people who do not know international law and do not observe it, and would take advantage of one who did, there must be something else. The “something else” should not be a relaxation of all bounds of restraint. But it should be [a] clear understanding that this is a different kind of war, this which is waged by native tribes, than that which might be waged between advanced nations of western culture. Ferocity and ruthlessness are not essential; but it is essential to recognize the different character of the people.⁵⁷

From the Jacksonian honour code emerged a particular approach to fighting warfare, captured in the Lieber Code: that war should be fought with all available force whilst taking a broad view on permissible targets and pursuing unconditional surrender, rather than a mere ceasefire, as the only sure sign of victory.⁵⁸ The Jacksonian tradition supports warfighting in the total war sense – it supports the perspective of Prime Minister Benjamin Netanyahu vowing that Israel will pursue “total victory” and that “no one will stop [Israel], not The Hague, not the Axis of Evil and not anyone else”.⁵⁹ Indeed, Chomsky argues that

53 *Ibid.*, p. 175.

54 H. Tyler Blethen, above note 48, pp. 63–64.

55 *Ibid.*, p. 65.

56 T. M. Fazal and B.C. Greene, above note 34, p. 829.

57 E. Colby, above note 8, pp. 279, 287.

58 Walter Russell Mead, “The Jacksonian Tradition and American Foreign Policy”, *The National Interest*, No. 58, 1999, pp. 23–24.

59 Josh Lederman, “Israel-Hamas War Live Updates: 100 Days of War Prompts Global Outcry; Netanyahu Vows to Keep Fighting”, *NBC News*, 15 January 2024, available at: www.nbcnews.com/news/world/live-blog/israel-hamas-war-live-updates-rcna133848.

US support for Israeli tactics is due to Israel's embodiment of the Jacksonian tradition.⁶⁰

Specific invocations of the “standard of civilization” slowly disappeared during the inter-war period and in the aftermath of the Second World War. This was due, in no small part, to the fact that Germany *had* met the standard of civilization, notwithstanding its horrific conduct during the 1940s.⁶¹ Similarly, blatant distinctions between “civilized” and “barbarian” or “savage” peoples have also since disappeared. But as Fidler observes, “the rejection of the ‘standard of civilisation’ as a driving force of international law has been more apparent than real”.⁶² O’Hagan also notes a resurgence in the language of the “standard of civilization” as part of a “creeping return to the tenets of empirical or conditional sovereignty of imperial international society, where sovereign autonomy was dependent on conformity with standards and practices defined by powerful external actors and international institutions”.⁶³ Rather than conditional sovereignty as such, the remainder of this paper will demonstrate how conditionality as it relates to protections provided by the modern laws of war was originally defined by the State and realized through the language of the “standard of civilization”, and how, after a Cold War hiatus, such notions have returned in an historically informed symbiosis of law, war, civilization and the State to again undermine the universal aspirations of the modern laws of war.

Preliminary conclusion

Such a perspective, particularly for those militaries aligned with the United States, has consequences in both the implementation and the enforcement of the laws of war. The personal experiences of the present author and wider discussions with active military officers have highlighted this particular Jacksonian approach to warfare in some major Anglo-American societies. In a benign form, this sharp war approach can promote a culture of elitism and exceptionalism within “special units” that emphasizes self-reliance, honour and courage. At its worst, it promotes rule-breaking (such as self-reliance by a motto of “Who dares wins”), a culture-specific lens of honour, and (moral) courage to “get the job done” in the face of the law.⁶⁴ An “us versus them” mentality leads to extremism and an

60 Noam Chomsky, *Chronicles of Dissent*, Black, New York, 2013, p. 171.

61 Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law*, Cambridge University Press, Cambridge, 2021, p. 84.

62 David Fidler, “A Kinder, Gentler System of Capitulations? International Law, Structural Adjustment Policies, and the Standard of Liberal, Globalised Civilisation”, *Texas International Law Review*, Vol. 35, No. 1, 2000, pp. 388–389.

63 Jacinta O’Hagan, “The Role of Civilisation in the Globalisation of International Society”, in Tim Dunne and Christian Reus-Smit (eds), *The Globalisation of International Society*, Oxford University Press, Oxford, 2017, pp. 199–200.

64 Nick McKenzie and Chris Masters, “Special forces Chief Acknowledges War Crimes, Blames ‘Poor Moral Leadership’”, *The Age*, 28 June 2020, available at: www.theage.com.au/national/special-forces-chief-acknowledges-war-crimes-blames-poor-moral-leadership-20200628-p556z6.html; Australian Department of Defence, *Afghanistan Inquiry Reform Plan*, 30 July 2021, p. 4; Karen Elphick, *Reports, Allegations and Inquiries into Serious Misconduct by Australian Troops in Afghanistan 2005–2013*, Australian Parliament

inability to communicate, which results not only in belligerents striving to “wipe each other off the map” – precisely what the Israeli Defence Minister has vowed to do – but also in the erosion of the middle ground required for civilizations to identify elements of commonality and learn to coexist.⁶⁵

The sharp war argument is clearest when viewed through a lens of differing regional blocs, looking at “the other”. To this end, Lieber’s remarks were those of someone with a Teutonic perspective in Anglo-America; Bush’s were those of an Anglo-American against Islam; and Israel’s, in the current conflict, are those of a Jewish State fighting against Islam. Yet there are exceptions to this, such as the intra-Slavic conflict in Ukraine or the intra-Latin American conflict between Chile and Peru. This suggests a wider argument – the second limb of sharp war – that there should be no rules whatsoever. The difficulty with the concept of sharp war is, ultimately, that it does not make historical sense.

The pure substance: Soft war

The foregoing has sought to highlight how the concept of sharp war must be viewed through its specific (and particular) cultural framework – one that was forged by Judeo-Christian religion, refined on the battlefields of Europe, sharpened as it accompanied colonizers, and honed in a unique melting pot of Jacksonian traditions. It is important to note, however, that this was a particularly European concept which modern IHL has outgrown, but which remains in pockets of culture.

It is worth stressing that the concept of sharp war is an outlier, but one which is artificially inflated due to the influence of the United States within the practice and study of IHL. Yet IHL is not “owned” by any one culture or country. Some have argued that “the law of war was born of intra-European brutality and designed to regulate it”,⁶⁶ but this is wrong. There is folly in subscribing to the “straight line history of eternal progression”,⁶⁷ in which a Great White Man (Grotius, Vitoria, Augustine) discovered international law and it was developed progressively into the modern era. For many parts of *European* law, this is without a doubt correct – one need only consider the history of the laws of war in Rome,⁶⁸ in medieval Europe⁶⁹ and during the Renaissance,⁷⁰ and

House Research Paper, 9 November 2020, available at: www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Chronologies/AllegationsAfghanistan.

65 S. P. Huntington, above note 36, p. 49; “Israel’s New War Cabinet Vows to Wipe Hamas Off the Earth”, *Reuters*, 12 October 2023, available at: www.reuters.com/world/middle-east/netanyahu-gantz-agree-form-emergency-israel-government-statement-2023-10-11/.

66 T. M. Fazal and B. C. Greene, above note 34, p. 849.

67 A Gurmendi Dunkelberg, above note 4, p. 350.

68 Samuel White, “Roman Laws of War”, in S. White (ed.), above note 17.

69 Samuel White, “The Late Middle Ages in Northern Europe”, in Samuel White (ed.), *The Laws of Yesterday’s Wars*, Vol. 1: *From Indigenous Australians to the American Civil War*, Brill Nijhoff, Leiden, 2022.

70 Kyle Walker, “The Renaissance”, in S. White (ed.), above note 69.

in turn how they shaped the framework of the American Civil War.⁷¹ This is not the universal experience, however; there is a deep history of the development and growth of international law (including IHL) outside of Europe. By remaining focused on the Great White Man of international law, we ignore the wider patterns and lessons of international law. The risk of focusing solely on Europe in addressing the history of the laws of war was noted in 1795 by Robert Ward, when he wrote:

We expected too much when we contended for the *universality* of the duties laid down by the Codes of the Laws of Nations. ... [H]owever desirable such universality might be ... what is commonly called the Law of Nations ... is not the Law of *all* Nations but only of particular classes of them; and thus there may be a *different* Law of Nations for *different* parts of the globe.⁷²

It is clear that various cultures across space and time have developed, independently, their own mitigations on the violence of warfare. It is these shared elements of commonality that military practitioners should rely upon and seek to advise through. What are these principles? Jean Pictet suggested that

humanitarian principles are common to all human communities wherever they may be. When different customs, ethics and philosophies are gathered for comparison, and when they are melted down, their particularities eliminated and only what is general extracted, one is left with a pure substance which is the heritage of all mankind.⁷³

The author of the present paper, having canvassed thirty-six different, culturally unique laws of war in the *Laws of Yesterday's Wars* series, calls this pure substance “soft war” as it highlights, contrary to sharp war, the fact that every culture has sought to mitigate and control the violence and destruction of warfare. Across nearly every culture, the fundamental and foundational custom of keeping one’s word is apparent. It is the “pure substance” that Pictet was hinting at – the heritage of all mankind. Among First Nations Australians, breaking rules resulted in payback within the concepts of legitimacy and justice, or *junkarti* (“straight” in Lardil); *dalgi giban* (“to make even” in Wiradyuri); *makaratta* (“coming together after a struggle” in Yolngu); *buku runginyirr* (“to make even” in Yolngu); *yorrp-ba* (“to fall out and rejoin” in Wagiman); and *warmmala* (“to seek balance” in Pitjantjatjara). Payback provided an exact, tit-for-tat reciprocity for past actions,⁷⁴ ensuring equity and helping to curb the violence and brutality of warfare. Underpinning the concept of legitimacy and justice was the

71 Christopher Bailey, “Code of Necessity – Lawfare during the United States Civil War”, in S. White (ed.), above note 69, p. 187.

72 Robert Plumer Ward, *Enquiry into the Foundation and History of the Law of Nations in Europe*, Vol. 1, London, 1795, pp. xiii–xiv, 169.

73 Jean Pictet, “Humanitarian Ideas Shared by Different Schools of Thought and Cultural Traditions”, in Jean Pictet (ed.), *International Dimensions of Humanitarian Law*, Henry Dunant Institute, Geneva, and Martinus Nijhoff, Dordrecht, 1988, pp. 3–4.

74 Ray Kerkhove and Samuel White, “Indigenous Australian Laws of War”, in S. White (ed.), above note 69.

fundamental acceptance that law existed – *rengiti*, as the Yolngu called it, recognized that all people of different clans fell under a common constitution, based upon common ancestry and a common system of law. All are born into this: “Even babies crawl with law” (*Rom-gal’-ga’maranhamirri*).

Within New Zealand, the Treaty of Waitangi provided a clear legal framework for humane treatment. The repeated breaches of the Treaty during the Maori Wars were recognized at the time, and in subsequent formal apologies from the Crown as being “unwarranted” and “unjust”.⁷⁵ Maintaining honour upon capture was so fundamental to Mexica warriors that upon their release by Spanish conquistadors, the *maltin* (captured foes) “indignantly rejected the offer of release and demanded to be sacrificed”.⁷⁶ For those Scandinavian raiders known to history as Vikings, trickery and deception added to, rather than subtracted from, honour,⁷⁷ yet honour – in the Scandinavian sense – was still core to warfare. The poem *Hávamál*, containing Odin’s wisdom, demonstrates this:

Cattle die, | and kinsmen die,
And so one dies one’s self;
But a noble name | will never die,
If good renown one gets.

Cattle die, | and kinsmen die,
And so one dies one’s self;
One thing now | that never dies,
The fame of a dead man’s deeds.⁷⁸

Good renown was fundamental to warfare in the *Mahābhārata*, and as Dr Zuzana Spicova notes, “[a] just war, *dharmayuddha*, is more about the means of warfare than about the causes of a battle. The most important underlying rule of ancient Indian warfare is the idea of fairness.”⁷⁹ So too did Carthaginian and Hellenic custom elevate honour in warfare: *timē* is one manifestation of this fundamental custom.⁸⁰ The idea signals a need to retain a certain reputation – for effectiveness, ruthlessness and vengefulness, but above all for trustworthiness.⁸¹ *Timē* is the idea of credibility; it is the act of generating a reputation, through a strong record, for being credible. For the Romans, it is the concept of *fides publica*, the breach of which was the grievous crime that Julius Caesar was to be recalled and punished for.⁸² Qur’anic revelations ensure that conduct in war is not unlimited; it must be fought with credibility and to protect *al-mustaḍ’afīn*.⁸³ Divine

75 Ngai Tāmanuhiri Claims Settlement Act, 2012, para. 7(2)(g).

76 Bernal Díaz del Castillo, *The True History of the Conquest of New Spain*, Penguin, New York, 2009, p. 15.

77 Andrew Butler, “Viking Laws of War”, in S. White (ed.), above note 69.

78 *Hávamál*, Verses 77–78, in Henry Adams Bellows, *The Poetic Edda: Translated from the Icelandic with an Introduction and Notes by Henry Adams Bellows*, American-Scandinavian Foundation, New York, 1923, p. 44.

79 Zuzana Spicova, “Ancient Indian Laws of War”, in S. White (ed.), above note 17.

80 D. Feeny, above note 17.

81 *Ibid.*

82 S. White, above note 68, pp. 110, 117.

83 Qur’ān 4:75–76.

approval, and operating within a framework of rules, is fundamental to those of the Book. Professor Wayne Lee highlights that the blood revenge system (similar to that of First Nations Australians), endemic within the North American continent, actually curbed violence. This was done through structural (such as the divide between peace and war chiefs) as well as spiritual means.⁸⁴ Remaining spiritually pure acted as a check against sexual excesses.⁸⁵ *Bushido* – the all-encompassing code of conduct for a specific class of warriors in Japan – sought to induce compliance with the great principle across all areas of life.⁸⁶ Wider research into African customs of warfare has focused on the principle of *ubuntu* – a polylinguistic term that can be roughly translated as “the belief in a universal bond of sharing that connects all humanity” – underlying African traditions.⁸⁷ This can be seen in the ground-breaking qualitative study by Ayat, Valfredo and Ater for the *Laws of Yesterday's Wars* series, on customary laws of war in South Sudan.⁸⁸

Another qualitative study for the series focused on the Highlands of Papua New Guinea. Some local proverbs governing conflict that were gathered during the study highlighted the underlying humanity that the laws of war sought to achieve: “You live long if you plan the death of a pig, but not if you plan the death of a man.”⁸⁹ Humans are recognized for the thing that makes them special – their humanity. This is in stark contrast to the Abrahamic concept of dehumanizing one's foe outlined above. So too did Genghis Khan's *anda* (blood brother) Jamugha compare his own breach of faith to that of an animal:

What good would I be as your ally?
I'd only invade your thoughts,
Like a louse on your collar,
Like a thorn under your shirt
I went wrong when I strove to be a better man than my anda,
It is I [who has] reached the end of his days.⁹⁰

In the ancient Malabar region of India, honour underpinned the *ankam*, a process by which conflict was regulated by legitimizing a once-every-twelve-year cycle of warfare by champions.⁹¹ In the Malaysian context, Dr Angeline Lewis has expertly outlined the concept of *adat* (Malay for honour), the importance of which cannot be understated. *Adat* was (and still is) an all-encompassing value

84 Wayne E. Lee, “Eastern Native American Laws of War”, in S. White (ed.), above note 17.

85 *Ibid.*, p. 166.

86 Anna Kretowicz, “Japanese Laws of War”, in S. White (ed.), above note 17.

87 Kenneth Mutuma and Eve Massingham, “East African Laws of War”, in S. White (ed.), above note 17, p. 214.

88 Marco Chol Ayat, Ruben S. P. Valfredo and Justin Monyping Ater, “South Sudanese Laws of War”, in Samuel White (ed.), *The Laws of Yesterday's Wars*, Vol. 3: *From the Highlands of Papua New Guinea to the Island of Malta*, Brill Nijhoff, Leiden, 2024, p. 165.

89 Emily Defina, “Papua New Guinea Laws of War”, in S. White (ed.), above note 88, p. 12.

90 *The Secret History of the Mongols*, trans. Paul Kahn, Cheng & Tsui, Boston, MA, 2005, quoted in Samuel White, “Mongol Laws of War”, in S. White (ed.), above note 88, p. 48.

91 Sanoj Rajan and Sheena Sivadasan, “Ancient Malabar Laws of War”, in S. White (ed.), above note 88, p. 118.

system adapted from Islam, but consistent with Malay custom; *adat* could be gained or lost through personal action (and could indeed be litigated for its loss), and warfare and one's conduct in it were directly linked to *adat*.⁹² The Malay idiom "*Biar mati anak, jangan mati adat*" ("Better your children die than your *adat*") shows the extent to which *adat* is important to Malay people, and the surest way to lose *adat* was to break the laws of war. To this end, Rule 144 of the International Committee of the Red Cross (ICRC) Customary Law Study seems clearly based in custom:

States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law.

So too does Article 1 common to the four Geneva Conventions crystallize a rule of customary law. Modern IHL demonstrates a constant, consistent desire to regulate warfare in increasingly humane ways, and there has been a fusion of the laws of Geneva (to protect the wounded) and the laws of The Hague (to regulate warfare). History shows, both through individual case studies and clashes of cultures, that rules will always be created to regulate warfare. Fundamental to this is the idea of *pacta sunt servanda*: agreements must be kept. Yet as Stanley Baldwin captured, these conventions will often break down when faced with the test of warfare:

If a man has a potential weapon and has his back to the wall and is going to be killed, he will use that weapon whatever it is and whatever undertaking he has given about it. Experience has shown us that the stern test of war will break down all conventions.⁹³

This philosophical underpinning is core to the idea of sharp war. Yet what *The Laws of Yesterday's Wars* has highlighted is that the existence of rules seeking to regulate warfare is a resilient concept. It is going too far to claim, as some have, that

[t]he foundations of international humanitarian law, or at least their equivalents, are thus found in the major cultural systems on our planet: the right to life, the right to physical integrity, the prohibition on slavery, and the right to fair legal treatment.⁹⁴

For example, it is hard to argue that Mongol culture – one of the largest empires in history – somehow guaranteed the right to life, physical integrity, freedom of body and fair legal treatment. To the contrary, it was characterized by pillaging, summary executions, denial of quarter, sexual violence, hostage-taking and environmental destruction. Yet it did not exist in a legal desert, as underpinning all Mongol conduct was a fundamental custom: the great principle (*yeke*).⁹⁵ *Yeke* shaped the

92 Angeline Lewis, "Iban Laws of War", in S. White (ed.), above note 88.

93 Stanley Baldwin, House of Commons, *Debates*, 10 November 1932, cols 631–638.

94 Marco Sassòli, Antoine Bouvier and Anne Quintin, *How Does Law Protect in War?*, 3rd ed., Vol. 1, ICRC, Geneva, 2011, p. 6.

95 S. White, above note 90, p. 36.

cultures that emerged from Mongol contact, including the Turks⁹⁶ and the Cossacks.⁹⁷ Whilst these steppe cultures may be perceived by popular fiction to be lawless, they were quite the opposite and fall alongside the numerous forms of frameworks developed by cultures across time and geography, highlighting how sharp war is a unique, cultural oddity in the general history of IHL.

Conclusion

Ensuring respect for IHL – which common Article 1 commands, and the ICRC obligates – does not make the legal frameworks around it exempt from critical judgment. Universality does not mean unanimity. Yet as this paper has demonstrated, it is important as military practitioners to ask ourselves where, within our individual frameworks, our perspectives are founded. There remains a general push within IHL to mitigate and control the violence and destruction of warfare. Within this push, however, remain archaic pockets – and none more so than the concept of sharp war. This paper has sought to show how this approach to warfare – which has been advocated recently in the conflicts in Ukraine and Israel – is an anomaly in the wider history and trend of IHL.

It is particularly important to highlight this. The ICRC's *Roots of Restraint in War* study found that the law can play a crucial standard-setting role, but “that encouraging individuals to internalise the values the law represents through socialization is a more durable way of promoting restraint”.⁹⁸ A continuous cycle of violations of the law appears less likely if the legal norms of IHL are central to an individual's identity and honour. Against this background, identifying the historical and contemporary reference points for values equivalent to IHL can increase the influence of arguments for restraint.⁹⁹

Ultimately, this paper has shown that when arguments for sharp war resurface in modern discussions around IHL, they need to be assessed against the backdrop of their European heritage and colonial codification. Classical realists (a categorization which those in the sharp war camp fall under) often like to quote Carl von Clausewitz in his claim that

war is thus an act of force to compel our enemies to do our will. ... Attached to force are certain self-imposed, imperceptible limitations hardly worth mentioning known as international law and custom, but they scarcely weaken it.¹⁰⁰

Yet such quotations are either deliberately misleading or highlight an inability to read to the end of the page. Clausewitz almost immediately contradicts this claim in contrasting the wars of different States:

96 Shadeen Ali, “Ottoman Laws of War”, in S. White (ed.), above note 88.

97 Tatiana Tariova-Yakovleva, “Cossack Laws of War”, in S. White (ed.), above note 88.

98 Fiona Terry and Brian McQuinn, *The Roots of Restraint in War*, ICRC, Geneva, 2018, p. 65.

99 *Ibid.*

100 Carl von Clausewitz, *On War*, trans. Michael Howard and Peter Paret, Everyman's Library, New York, 1976, p. 83.

If wars between civilized nations are far less cruel and destructive than war between savages, the reason lies in the social conditions of the states themselves and in their relationship to one another. These are the forces that give rise to war; the same forces circumscribe and moderate it.¹⁰¹

It is these social conditions that this paper has focused on, and which are illuminated to be found in all cultures so far surveyed in the *Laws of Yesterday's Wars* series. Chivalric codes of war, the historic antecedents of the modern laws of war, applied to a narrow category of individuals. This “othering” developed and was refined throughout colonization, but even in its basic form, chivalry promoted the basic tenets of honour, fidelity and brotherhood. Indeed, these concepts are still featured in military training manuals and recognized as fundamental principles of IHL by the United States, Canada and the United Kingdom.¹⁰² These manuals and cultural frameworks shape the perspectives of many practitioners of IHL, and in particular shape the literature around IHL. It is well said that principles of chivalry act as a restraint on war, with belligerents acting in accordance with recognized courtesies. It has been the point of this paper to highlight that these courtesies have always existed outside of Europe too.

This paper has described how sharp war (and its advocates) evolved into its modern, Jacksonian approach. It has done so to highlight that military officers should seek to question their perspectives, and in turn the perspectives of those with whom they work. By utilizing a historical perspective, this paper has sought to emphasize that military officers should not only stay within the constructs of the law (which they are required to) but will also gain legitimacy by being bound by soft war rules. History shows that soft war, not sharp war, is the pure substance of IHL.

¹⁰¹ *Ibid.*, p. 83.

¹⁰² H. M. Kinsella, above note 3, p. 42; Richard Saloman, “2023 DoD Manual Revision – What’s Chivalry Got to Do with It?”, *Articles of War*, 20 September 2023, available at: <https://lieber.westpoint.edu/whats-chivalry-got-to-do-with-it/>.