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## The Laws of War: Constraints on Warfare in the Western World

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*Military Innovation in the Interwar Period* offers detailed insights into how to proceed with today's revolution in military affairs. Those who find themselves today in the same position as Moffett, Towers, Liddell Hart, and Dowding did seventy years ago will want to study this book very closely.

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Howard, Michael, George J. Andreopoulos, and Mark R. Shulman, eds. *The Laws of War: Constraints on Warfare in the Western World*. New Haven, Conn.: Yale Univ. Press, 1995. 303pp. \$30

The law of war is all too often understood from a positivist perspective, one that is rule-oriented, textually based, and the product of supposedly systematic and orderly transformation. In this approach, ascertaining what norm to apply in a given situation requires only resort to the law-of-war manuals of the various services. When the law changes, the manuals are merely updated.

If it were only that simple. In fact, law is contextual. It evolves and is understood on the basis of the multifaceted context (social, ideological, religious, historical, practical, etc.) in which it is applied. Thus neither the valence of particular "rules" nor the understanding of them is a constant. This is true regardless of whether the source of a "rule" is a treaty, custom, or a general principle of law.

Unfortunately, this abstract understanding of law is almost exclusively the province of legal theorists. For the war-fighter or operational judge advocate, it is far easier to pick up the rule book than

to consider the genesis and development of the law. Yet in the same way that knowledge of the evolution and application of strategy through time makes for a better strategist (hence war colleges), grasping how and why constraints on warfare have shifted will necessarily contribute to reasoned, legal, and moral use of force. *The Laws of War: Constraints on Warfare in the Western World* is a superb product that clearly fosters such understanding.

Edited by three eminently qualified scholars, this book is a collection of essays that trace the development of constraints on warfare, formal and informal, across both time (from classical Greece to the age of national liberation movements) and medium (maritime, land, and air warfare). The list of contributors is impressive indeed. Particularly familiar to war college readers are John Hattendorf, the Naval War College's Ernest J. King Professor of Maritime History; Adam Roberts, Oxford's Montague Burton Professor of International Relations and long a friend of the Naval War College's law department; and Harold Selesky, who directs the military history degree program at Air University. The fact that most of the contributors are historians

considering prescriptive norms (vice lawyers addressing law proper) is a unique benefit, for they tend to de-emphasize the legalistic process by which law develops and emphasize its dependence on cultural and technological influences. In other words, cause-and-effect, rather than process, is the focus of the studies. This approach, presented here in a well organized, wonderfully written work, fills a lacuna for those (academics and operators alike) who think about such matters.

Editor Michael Howard's introductory chapter on constraints sets the stage for the individual studies. It is here that he distinguishes between the *jus ad bellum*, norms governing when force may be resorted to, and *jus in bello*, those addressing how it may be used. The essays concentrate on the latter. Introducing a theme that pervades most of the case studies, Howard notes that the content of the applicable norms often depends on who is to be protected by them. Thus during the Middle Ages the nascent protections that did exist applied only during *bellum hostile*, conflict within Christendom; beyond that confine, *bellum Romanum*, or unbounded conflict, was the rule. The same sorts of distinction were evident in classical antiquity (i.e., Hellenes versus non-Hellenes), through the colonial period in America (settlers or natives), up to the present (distinctions based on national liberation movements). The essays clearly establish that the inclusivity of constraints on warfare is determined by the way "we" and "they" are defined by the group resorting to force.

This point is reemphasized in the excellent concluding chapter by Howard's coeditors, George Andreopoulos

and Mark Shulman. They also highlight a second distinction evident in numerous essays, that between combatants and noncombatants. Over time, the idea slowly emerged that only warriors were the proper object of violence, albeit within certain bounds, such as the code of chivalry. Noncombatants generally enjoyed (at least theoretically) immunity from conflict, a right that carried with it the duty of nonparticipation; when that duty was breached, the immunity was rescinded. Andreopoulos and Shulman perceptively note that "one of the many darker ironies of the 20th century" is that as codification formalized the principle of distinction (e.g., in the Hague and Geneva conventions), the increasing prevalence of revolutions, civil wars, and insurgencies frustrated its implementation. Algeria's struggle for independence from France aptly demonstrates how such conflicts tend to involve forces that are not easily identifiable as organized military units; indeed, insurgents may use this fact tactically, to conduct surreptitious operations, and strategically, to force their opponents into excesses likely to turn domestic and international opinion against them.

A third theme emerging is that constraints are likely to be most resilient among stable societies with professional militaries and in the absence of significant technological change. For example, in Greece, until the fifth century B.C., wars had been quick, decisive events, usually decided by a single battle. However, as Athens became more economically powerful, it was able to wage war over extended periods. At the same time, the composition of the

military spread beyond the hoplite class, as Athenian naval strategy against the Peloponnesians demanded oarsmen for its triremes. Both trends ran contrary to a set of "rules" designed for short encounters fought by soldier-farmers who needed to return to work their crops. By contrast, the increasing professionalization of the military during the Thirty Years' and Napoleonic wars, which replaced the prior religious and revolutionary fervor, operated to strengthen restraints on conduct. More striking perhaps is the extent to which the scope of warfare grew and constraints receded as it became necessary to call upon the industrial strength of entire nations to wage war. Of course, this tendency reached its apogee during the nuclear brinkmanship of the Cold War. Throughout, changes in technology drove constraints in particular directions. At times the result was a strengthening of the prescriptive regimes, as was the case with gas following the tragic experiences with that "weapon" during the First World War. In other cases, emergence of new technology actually weakened the pre-existing regime, at least until the ramifications of the emergent technology were fully grasped. This was certainly so with the advent of submarines, aircraft, and nuclear weapons.

Ultimately, there is little to criticize in *The Laws of War*. Such grounds for criticism as do exist have mostly to do with the editors' choice of case studies. John Keegan, for instance, has lamented the failure to address the silence of the laws of Rome on the subject. Others have pointed to the exclusion of Korea, Vietnam, and the Falklands (Malvinas).

Most troubling for this reviewer is that the Gulf war is dealt with only meagerly, and then merely to surface such issues such as targeting, Security Council use of force authorizations, and the postwar collision between sovereignty concerns, humanitarian law, and human rights in such operations as PROVIDE COMFORT. Notwithstanding, the case studies selected are representative and clearly provide ample and fertile ground in which to consider forces that underlie the development and erosion of constraints in warfare.

Simply put, this book is a "must read" for warfighters, judge advocates, and scholars working in the field of military history, strategy and policy, or international law. It provides a much-needed historical backdrop for our sometimes sterile consideration of the laws and practices of war. In that sense, it is an immensely valuable contribution to our understanding of warfare.

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Rogers, A.P.V. *Law on the Battlefield*.  
New York: St. Martin's Press,  
1996. 130pp. \$35

According to Article 82 of Protocol I of 1977, which amends and extends the humanitarian law of the 1949 Geneva Conventions, legal advisers are to be attached to military commands. However, the Protocol makes no mention of what their qualifications should be. Therefore, any work that helps to define the type of specialised knowledge required is welcome. Major General Rogers is Director of Army Legal