The Laws of War

Constraints on Warfare in the Western World

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The Age of Chivalry

To those who lived during them, of course, the Middle Ages, as such, did not exist. If they lived in the middle of anything, most medieval people saw themselves as living between the Incarnation of God in Jesus and the end of time when He would come again; their own age was thus a continuation of the era that began in the reign of Caesar Augustus with his decree that all the world should be taxed. The Age of Chivalry, however, some men of the time—mostly knights, the *chevaliers*, from whose name we derive the English word "chivalry"—would have recognized as an appropriate label for the years between roughly 1100 and 1500. Even the Age of Chivalry, however, began in Rome. In the *chansons de geste* and vernacular histories of the thirteenth and fourteenth centuries, Hector, Alexander, Scipio, and Julius Caesar appear as the quintessential exemplars of ideal knighthood, while the late fourth or mid-fifth century Roman military writer Vegetius remained far and away the most important single authority on the strategy and tactics of battle, his book *On Military Matters* (*De re militari*) passing in translation as *The Book of Chivalry* from the thirteenth century on.[1] The Middle Ages, then, began with Rome; and so must we if we are to study the laws of war as these developed during the Age of Chivalry.

In Roman eyes, "every war needed justification. The best reason for going to war was defence of the frontiers, and, almost as good, pacification of barbarians living beyond the frontiers. Outside these reasons one risked an unjust war, and emperors had to be careful." But within these limits, the conduct of war was essentially unrestrained. Prisoners could be enslaved or massacred; plunder was general; and no distinction was recognized between combatants and noncombatants. Classical Latin, indeed, lacked even a word for a civilian. The merciless savagery of Roman war in this sense carried on into the invasion period of the fifth and sixth centuries. When the Ostrogoths under Theodoric captured Italy from the Huns in the late fifth century,

they annihilated the Huns so completely that all trace of the Hunnish presence in Italy disappeared.[2]

In practice Roman war was not always so savage. But such was the understanding of Roman war with which medieval theorists of war worked, and they erected *bellum Romanum* in this sense into a category of warfare which permitted the indiscriminate slaughter or enslavement of entire populations without distinctions between combatant and noncombatant status. This was a style of warfare appropriate only against a non-Roman enemy, and in the Middle Ages this came to mean that Christians ought only employ it against pagans, like the Muslims in the Holy Land or, in the sixteenth century, the aboriginal peoples of the New World. By identifying *Romanitas* (literally, "Romanness") with adherence to Roman Christianity, however, the early Middle Ages added to this tradition of bellum Romanum a wholly un-Roman celebration of war by God's people for God's own purposes, chief amongst which were to protect and extend the Christian faith of Rome. As Professor Wallace-Hadrill has remarked, "One may sense in this a driving-force, perhaps also an absence of brakes, that could make Christian warfare something more formidable than its pagan imperial counterpart."[3] And so, I would suggest, it did.

Augustine had insisted, and most churchmen agreed, that the ultimate end of war was peace; but it was war, not peace, that early medieval churchmen celebrated. And so long as it was fought for pious ends, such warfare knew no effective limits. The wars of conquest which Charlemagne waged against the pagan Saxons during the eighth century thus qualified perfectly as a Roman war. After thirty years of plunder, massacre, enslavement, and mass deportations the Saxons finally saw the reasonableness of Christianity and agreed to accept baptism at the hands of the Franks, "and so to become one people with them," as the chronicler Einhard remarked[4]—a Christian people and hence a Roman people, who in the next century would in turn wage Roman war against their own pagan neighbors to the east, the Slavs.

In the midst of all this, early medieval penitentials continued to insist that killing, even in war, was murder nonetheless. But this was a perfectionist ethic which few took seriously before the ninth century.[5] Even then, when the church did begin to make concerted attempts to restrain violence, its efforts were prompted not by any opposition to war per se, but by the fact that warfare had now become civil and internal and was therefore misdirected. Most ninth- and tenth-century ecclesiastical writers on war were actually trying to increase the bellicosity of contemporary kings and their people, while redirecting it away from Christian neighbors and toward the pagan invaders—the Vikings, the Hungarians, and the Muslims.[6] Carl Erdmann has made it fashionable to see in the militarization of the church during these centuries the origins of the crusade as a Christian holy war.[7] With all respect to a very great scholar, I think the view mistaken. Warfare had been integrated into the Christian mission long before. What was new in the tenth and eleventh centuries was that the church could no

longer appeal with any effect to secular authorities in its efforts to restrain and direct Christian warfare away from Christian targets. The First Crusade was in this respect a counsel of despair.

Ecclesiastical efforts to restrain intra-Christian violence during the tenth and eleventh centuries did bear some fruit, however, and it is with them that we begin to see the outlines of the laws of war as these would emerge in the Age of Chivalry. Carolingian church councils issued a number of decrees which demanded that noble miscreants give up their belt of knighthood, their *cingulum militare*, as part of the punishment for their crimes. We see in these measures our first evidence that the bearing of arms was seen as a noble dignity connected with a code of conduct, the violation of which might cost a man his status as a warrior. We also see a more concerted effort to impose penances on warriors who fought against other Christians, in 1066 even in a campaign that was sanctioned by the papacy itself. And in the Peace and Truce of God movements of the tenth and eleventh centuries we see the first systematic attempts to define and protect the status of noncombatants, and to prohibit violence altogether on the holiest days of the Christian year.[8] It is easy to mock these efforts. In practice the noncombatant immunity guaranteed by the Peace of God to all clergy, women, children, the aged, agricultural workers, and the poor was no more effective than the Truce of God's declarations that Christians could only attack other Christians between Monday morning and Thursday evening except during Advent and Lent, when they could not attack them at all. But I would insist nonetheless that by defining for the first time a reasonably consistent set of noncombatant immunities, and by clearly reiterating the principle that the conduct of war between Christians ought to be fundamentally different from the conduct of war between Christians and non-Christians, the Peace and Truce of God movements made a very significant contribution to the formulation of the laws of war in western Europe.

These efforts corresponded with important social, economic, and military changes in European society. "The intensification of warfare," especially during the eleventh century, "went hand in hand with dramatic developments in the methods, techniques and equipment for fighting on horseback."[9] The development of the massed cavalry charge with couched lance between 1050 and 1100 increased both the demand for and the costs of maintaining large numbers of trained knights. Settlement patterns changed more gradually, but by the end of the eleventh century heavily armored knights were exercising direct lordship over nucleated peasant villages across much of Europe. Manorial structures had also hardened, with consequent reductions in status for many free peasants. All these changes contributed to the emergence of a social order which drew an increasingly sharp division between the armed *nobilis*, noble by virtue of his horses and arms, and the *inerme vulgus*, the unarmed, vulgar herd of common humanity.[10]

With respect to the laws of war, two consequences followed from these develop-

ments. First, long-established but only dimly perceptible codes of noble conduct on the battlefield began to be applied to the knights as well. A greater number of fighters were now covered by these standards of honorable conduct. In 1066, for example, William the Conqueror expelled from his *militia* a knight who struck at the dead Harold's body on the battlefield with his sword.[11] Whether this meant that the Conqueror expelled him from his household troop or stripped him instead of his very knighthood we cannot now determine. In either event, knighthood had clearly emerged by 1100 as an indissoluble amalgam of military profession and social rank that prescribed specific standards of behavior to its adherents in peace and war. The laws of war would develop in the Age of Chivalry as a codification of these noble, knightly customs on the battlefield.

Second, however, the sharp division which this knightly elite now drew between itself as an order of *bellatores* and the rest of society made up of *oratores* or *laboratores* meant that the laws of war themselves applied only to other nobles. In theory, peasants and townsmen ought not to fight at all; it was the job of knights to protect (and exploit) these noncombatant *pauperes*.[12] If such common men did fight, however—and in practice they did, regularly—then no mercy was owed them on the battlefield or off. In the ordinary circumstances of battle a knight ought not kill another knight if it was possible instead to capture him for ransom. Armed peasants and townsmen, however, could be massacred at will.

This was not the church's view, of course, but the laws of war in the Age of Chivalry were an almost entirely secular creation.[13] Theology prior to the sixteenth century concentrated almost exclusively on the right to declare war, the *jus ad bellum*, insisting that war could only be fought if declared by a competent authority, fought for a just cause, with proper intent and a proportionality between provocation and response, and toward the end of reestablishing peace. The question with which theologians and canon lawyers dealt was whether a Christian could, without sin, participate in a given war at all. Theology was much less concerned with what a soldier was permitted to do in prosecuting a war once it was sanctioned as a just and legitimate conflict. The church did show some minor concern with particular weaponry. Several efforts were made in the twelfth century, for example, to ban bows of all sort, especially crossbows. But these efforts were entirely ignored by practicing soldiers and even by the papacy itself, which hired hundreds of crossbowmen for its wars against the emperor Frederick II. By the fourteenth century, when gunpowder was introduced into European warfare, the church had abandoned altogether the effort to discriminate between weaponry, not to revive it until the twentieth century and the advent of the nuclear age.[14]

To the laws governing the actual conduct of war—what theorists call *jus in bello*—theology therefore contributed little beyond the elementary notions of noncombatancy enunciated by the Peace of God. Even these were progressively whittled

down by the canon lawyers. As an enforceable body of defined military custom, the laws of war as we are discussing them emerged instead out of the interplay of knightly custom with Roman law as this was studied and applied in court from the twelfth century on. By the fourteenth century this combination of knightly practice and legal theory had given rise to a formal system of military law, *jus militare*, the law of the *milites*, the Latin word for knights. The enforceability of this law, at least in the context of the Hundred Years War, needs to be stressed.[15] Charges brought under the laws of arms were assigned to special military or royal courts—the Court of Chivalry in England, the Parlement of Paris in France—where lawyers refined and clarified its precepts in formal pleadings. Knights and, of course, heralds remained the experts in the laws of arms. Their testimony was sought both in defining the law and in applying it to specific cases, a reflection of the status of *jus militare* as a body of international knightly custom. From the fourteenth century on several attempts were made to record these customs in writing, the most famous being Honoré Bouvet's *Tree of Battles*.[16] Like all medieval lawbooks these were partial and tendentious with a bias toward kings. The real history of the laws of war in the Age of Chivalry is buried in the hundreds of court cases brought under it and in the scores of chroniclers' accounts of the conduct of actual war, and it is from these sources that Maurice Keen has reconstructed them.[17] I should not wish to hold Dr. Keen responsible for the views which follow, but I must acknowledge the extent of my indebtedness to his research.

The laws of war in the later Middle Ages were constructed on two fundamental propositions. First, that "soldiering in the age of chivalry was regarded as a Christian profession, not a public service. Though he took up arms in a public quarrel, a soldier still fought as an individual, and rights were acquired by and against him personally, and not against the side for which he fought." Every knight supplied his own equipment, at his own risk, although horses lost in action were sometimes replaced by his lord. But a knight supported his own squires, grooms, and other servants, and if captured, arranged his own release and paid his own ransom. Although nominally in receipt of wages from his king or captain, these wages did not begin to meet his expenses in war. Rather, he fought because his honor as a knight obliged him to fight, because his lord required his service, and because the profits of successful war might, with luck, make it worth his while to do so. He fought, however, on his own. He did not fight as a salaried servant of the public interest.[18]

The second proposition, which follows from the first, was that the laws of war were essentially contractual. Late medieval armies, especially in England, were most commonly recruited by indentures, written contracts sealed first between a prince and his captains, and then between a captain and his soldiers. These contracts set rates of pay, length of service, and other conditions of employment. But the analogy between the laws of war and the laws of contract went far beyond the mechanics of recruitment. War was conceived in law as a kind of joint-stock operation; by serving in the

war a soldier acquired a legally enforceable right to a share of its profits, gained chiefly through plunder and ransom. The majority of the cases decided under the law of arms turned on the proper division of booty between a soldier, his captain, and the prince under whom they served and for whom they ostensibly fought.

I say ostensibly because in the extraordinary confusion which characterized the Hundred Years War, it was sometimes extremely difficult to tell who the prince was in whose name the various free companies, local lords, and wandering gangs of outright extortionists were in fact fighting. That they fought in the name of some prince mattered: without princely sanction their war was not a public one, and so by the law of arms they acquired no legally enforceable title to the ransoms and booty they captured.[19] A common man could not simply declare war off his own bat, help himself to his neighbor's cattle herd, and declare them his by the laws of war. In theory, at least, only a sovereign lord could act in this manner.

Sometimes, of course, such niceties mattered to no one. The mercenary companies who held the papal court to ransom at Avignon in the 1360s sought no public authority for their actions and lost nothing by its absence. But the principle that legal title could only be established in a public war mattered enough that in 1365, a period of truce between the kings of England and France, we find one freelancing English captain, John Verney, "levying open war as the official lieutenant of a lunatic who believed himself to be the rightful king of France," so as to continue fighting with at least a patina of legality about it. As Keen remarks, "Few, no doubt, and least of all the victims of his depredations, were much impressed by John Verney's claim, but it is significant that he should have troubled to make it at all."[20]

Public authority mattered; to this extent the law of arms did indeed build on the learned traditions of the just war, which required that war be declared only by a competent authority. In the Middle Ages, however, who was a competent authority to declare war? Was it only the pope, or perhaps the Roman emperor? Was it only kings, as kings themselves liked to suggest? What then about the duke of Burgundy, who held his lands from a king and an emperor, but who was in practice a sovereign lord independent of both? And what too about all the other feudal lords of western Europe, whose right to resort to violence to settle their quarrels was an ancient privilege attaching to their noble rank? No fully coherent answers were worked out to these questions during the Age of Chivalry, but in practice the late Middle Ages witnessed a growing de facto monopoly of war-making power being gathered into the hands of kings and of a few great lords, all of whom could plausibly claim effective sovereignty within their lands. Public authority mattered, and by 1500 sovereignty itself was a far better defined notion than it had been in 1300. But the Age of Chivalry could never recognize in practice any absolute polarity between public and private warfare. The realities of power were simply too complex.

Instead, the laws of war distinguished between four basic types of war.[21] The

first, *guerre mortelle*, also known as Roman war, was "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." Prisoners could be massacred, and no distinctions between combatants and noncombatants applied. The most common examples of guerre mortelle were the wars against the Muslims in Spain and the Holy Land. Between Christians guerre mortelle was rare. Only in exceptional circumstances would knights agree to fight other knights under such conditions. It was too dangerous for all involved and not very profitable either, since ransoms were disallowed. But it did happen: the French at Crécy and Poitiers were under orders to give no quarter, as were Joan of Arc's forces at Orléans. But essentially, guerre mortelle assigned to war between Christians the nature of a crusade against infidels. It was common enough among Christians, however, for its sign to be universally known: the display of a red banner or flag by a force meant that it would give no quarter, take no prisoners, and accept no ransom.[22]

Interestingly, this form of war was more common in civil conflicts, where it merges with a private legal condition known as "mortal enmity." Two individuals in a state of mortal enmity were permitted in law to kill each other on sight, if they could; and in theory, at least, no feud was to follow from the resulting murder so long as the relationship between the two had been publicly declared by visible signs well beforehand.[23]

Similar principles operated with respect to guerre mortelle when it was fought between a man and his lord. It was presumably on this basis that the French army at Crécy flew its bloodred banners against the English: Edward III of England was the vassal of King Philip VI of France for Gascony, and yet he had declared himself the rightful king of France, rupturing the bonds of fidelity which bound him to his lord. The most dramatic example I know of guerre mortelle in a civil conflict, however, is the conduct of the battles of Lewes and Evesham in 1264 and 1265, respectively, fought between the forces of King Henry III of England and his brother-in-law, Simon de Montfort, earl of Leicester.[24] Open conflict between the two men had erupted in 1258, when de Montfort participated in a political reform movement that reduced the king to a figurehead in his own kingdom. By 1264 their relationship had degenerated into open warfare. De Montfort began a harrying campaign against the king's supporters; a truce broke down, the dispute was submitted to the arbitration of the king of France, but de Montfort then refused to accept the king of France's verdict, and the harrying resumed again. Finally, on May 12, 1264, the two sides found themselves drawn up against each other near Lewes. Negotiators passed between them for several days; de Montfort's forces were badly outnumbered and he sought such terms as he could get from the king. But Henry refused all terms and at this point formally broke the bonds of homage and fealty which bound him and de Montfort. This formal defiance (*diffidatio*) established a state of open and total war between a lord and his

man. De Montfort responded by dressing his army in crusader crosses—a significant gesture in many respects,[25] but significant in our context because it symbolized his army's recognition that it could expect no quarter from the royalists, as a state of guerre mortelle now existed between them. This fact was emphasized on the morning of May 14, when the king's forces advanced onto the battlefield, "preceded by the banner of the red dragon which portended general death to their enemies."[26]

Remarkably, de Montfort's forces triumphed. They were not fighting under conditions of mortal war and so took many prisoners for ransom. To the king and his eldest son, Edward, however, de Montfort immediately renewed his oaths of homage and fealty. Their enmity was thus ended, and de Montfort began to rule England with the king as his puppet. Edward, however, escaped from de Montfort's custody in the spring of 1265 and gathered an army. A second battle followed at Evesham between Edward's forces on the one side, de Montfort and the captive king on the other. As they had at Lewes, Edward's forces fought under the conventions of guerre mortelle, but this time they were victorious. De Montfort was killed and his body hideously mutilated. Many of his supporters also were killed on the battlefield, and the king, now freed from captivity, declared the lands of all survivors to be forfeit. He eventually relented and permitted the Montfortians to ransom their lands from the royalists to whom Henry had initially granted them.[27] The consequences of the battle of Evesham were thus, in the end, somewhat less than they might have been. Under the laws of war, however, there is no doubt that the king's initial intentions were just under the conventions of guerre mortelle. Politically, however, they were inadvisable because they would have made a lasting peace impossible.

Such savagery made a mockery of the international brotherhood of knighthood; and insofar as guerre mortelle could admit of no lasting resolution short of the unconditional elimination of one force or the other, it was also a deeply unsatisfactory way for an individual soldier to pursue the business of war. Far more palatable to all concerned was the *bellum hostile*, the open, public war fought between two Christian sovereigns. Such war was declared by the display of the prince's regular banner (not his red one) before his forces, which committed him on his honor to do battle. "From this moment on, the laws of war were in force," and "the common law . . . suspended." Spoil and plunder were the order of the day, and soldiers had an absolute right to share in all booty taken. To preserve discipline and guarantee a fair distribution, the booty was usually gathered centrally and then distributed after the battle to each soldier in accordance with his rank and merit. The precise customs governing the division of spoil varied from country to country, but everywhere this distribution created a legally recognized, heritable, and assignable right of property in the captured objects.[28] Military historians have long admired the close coordination between English naval forces patrolling along the coast of northern France and the English land armies pillaging the interior of the country. The admiration is not misplaced; but

it is worth remarking that this fleet not only provided food and supplies to the army. It also acted as a kind of floating safe-deposit box for the troops, who could be sure that their loot would get back to their families in England even if they did not survive the campaign.[29] In terms of keeping up the morale of his troops, this may not have been quite as important to Edward III as maintaining a steady supply of beer. But it must have run a close second; and it points quite clearly to the central importance of plunder in the conduct of bellum hostile.

Theorists of the law of arms continued to insist on the immunity of noncombatants from pillage. In keeping with the theological traditions established by the Peace of God, agricultural workers, women, children, the elderly, and the clergy were all supposed to be protected from looting. In practice, however, neither soldiers nor the lawyers and judges who adjudicated the resulting disputes over plunder paid the slightest attention to such immunities. In enemy territory a soldier could plunder a peasant or a merchant just as freely as he could an enemy soldier on the claim that all such men gave aid and countenance to the opposing army. In the circumstances of the Hundred Years War this was not an entirely specious argument. The war did indeed turn to a large degree on the capacity of each side to mobilize the financial and military support of its populace in the war effort. Moreover, the effectiveness of the French military effort was unquestionably reduced by the enormous destruction wrought by the armies that pillaged its territory for the better part of a century.[30]

Not all the pillagers were invaders, however. Medieval soldiers were badly paid when they were paid at all; for most, the booty they acquired and the protection money they extorted were the most reliable means of support they had while on campaign. As such, medieval soldiers frequently extorted protection money from friendly territory as well as hostile. This was doubly grievous for the peasantry of the area. Not only were they forced to pay protection money to one army, but these payments then laid them open to pillage by the other side on the grounds that such payments rendered aid and countenance to the opposition. The laws of war in the Age of Chivalry knew something about the immunity of noncombatants, though what they knew they usually ignored. But they knew virtually nothing of the concept of neutrality.[31]

With rare exceptions combatants in a bellum hostile sought to avoid the uncertain verdict of a pitched battle. God was a just judge, and where battle could not be avoided He would render a just verdict. But it was best not to tempt Him or rush Him to a hasty decision. For both sides it was usually better to wait. For an invader it was more profitable to lay waste the countryside, while for a defender it was usually safer to stand out of the way and wait until one's opponent had tired himself out or fallen victim to disease, and so went home.

There were circumstances, however, where different calculations might apply. In a civil war the countryside both armies were laying waste was, after all, their own,

and in England particularly this fact forced both sides toward a rapid resolution of the conflict. As Philippe de Commynes remarked with some astonishment, "If a conflict breaks out in England one or other of the rivals is master in ten days or less. . . . [I]t is a custom in England that the victors in battle kill nobody, especially none of the ordinary soldiers, because everyone wants to please them. . . . Even King Edward [IV] told me that, in all the battles he had won, as soon as he could sense victory, he rode round ordering the saving of the common soldiers."[32]

In France, however, English armies sought to avoid pitched battles where they could. It was generally the French forces that provoked the major battles which occurred. At Crécy, Edward III's devastation of the countryside, carried out in pursuit of his claim to be the rightful king of France, had by 1346 brought the legitimacy of Philip VI's own kingship into serious question, compelling Philip to give battle, with disastrous results. At Crécy as later at Poitiers and Agincourt, the overwhelming numerical advantage enjoyed by the French host over the English forces also encouraged the French to force a battle. In all three cases, however, the strategy backfired and a crushing defeat resulted. No French king would try it again until Francis I met the emperor Charles V at the battle of Pavia in 1525, where, once again, the French army was destroyed and their king captured. Pitched battles were dramatic, but drama was a poor substitute for policy.

The laws of war governing pitched battles were quite detailed, but they applied only to knights and squires, in the later Middle Ages the only two groups capable of bearing heraldic insignia. Foot soldiers, archers, miners, engineers, gunners, urban militiamen, peasant levies, and local volunteers were almost always also present on a battlefield, but none of these gave any quarter or were given any by the knights. At Crécy, the French knights literally rode down their own crossbowmen in their charge against the English line. At Lewes, the battle was lost in part because Prince Edward allowed his section of the royal army to chase and massacre the London militiamen for hours after they fled the field in revenge for the Londoners' having hurled manure on Edward's mother some months before. Common men like the Londoners could not hold prisoners for ransom under the laws of war, and they were not wealthy enough to be made prisoners themselves by the knights. Since they could draw no profit from them, nonnoble soldiers therefore had few compunctions about killing their prisoners, as they did at Agincourt and at Aljubarrota. Such conduct was expected of them and was rarely if ever criticized. Some forces, like the Swiss pikemen and the Flemish militias, became notorious for their refusal to take prisoners even when they fought under captains who could legally do so.[33]

Knights, however, were not supposed to kill other knights in a bellum hostile unless it was absolutely necessary. Instead, they took their noble opponents prisoner and held them for ransom. No chivalric reproach attached to being captured: captivity was, rather, an honorable relationship which established immediate bonds of obligatory service by a captive toward his master.[34] This was part of the reason why great noblemen, and especially princes, were so careful to surrender to an opponent of equal or superior rank if at all possible. The Black Prince, that paragon of chivalric courtesy, acknowledged such expectations by seating his captive, King John II of France, in a place of honor above himself at the banquet he gave for his noble prisoners on the evening after the battle of Poitiers.[35]

Captivity was also, however, a form of contract, established orally on the battlefield at the moment a victor accepted his opponent's gauntlet or badge, but quickly recorded in writing when the battle was over. In the language of the law, the captor's actionable interest in the contract was acquired by the service he performed in saving his captive's life; the prisoner's body, in turn, became the pledge for his ransom. "On this principle, the captor could do anything to a prisoner which might in reason seem necessary to obtain due payment [of the ransom]. He could keep him under lock and key, or even in irons, but he could not threaten him with death, or demand that he do anything contrary to law or his honour." Nor could he knock out his teeth with a hammer, as a subsequent court ruling established. A prisoner dishonorably treated could defy his captor if he escaped. If recaptured, he would then belong to his new master and not to his previous one. Similarly, a prisoner who agreed to an excessive ransom under threat of death, or who was kept in degrading or dangerous captivity, like the knight who counted "eighteen serpents and other reptiles" in his prison cell, could contest the validity of his agreement in the court of his master's lord, provided that he survived the mistreatment.[36] It is a mark of the extent to which the international laws of chivalry were acknowledged by the medieval nobility that a mistreated prisoner could expect to get such a case heard at all.

A prisoner *en parole* gave his word that, if released, he would pay his ransom—this is, indeed, the origin of our English word *parole*—and it was on his word alone, and the sealed contract of ransom he left behind, that he was released. Until his ransom was paid, a paroled prisoner remained a noncombatant with the same immunities as other noncombatants. He also remained bound to return to his captor if summoned, his personal obligations to his captor's service overriding all other allegiances, including those to his king or captain. If a paroled prisoner defaulted on his obligations or failed to pay his promised ransom, his captor had two alternatives. He could bring suit in the appropriate court of chivalry, usually that of his captive's lord, as he would for any other breach of contract; or he could formally dishonor the defaulter's arms by suspending them publicly from his horse's tail, for example, or hanging them upside down at a tournament or court. "Such an insult was deadly," and could be used also to punish other breaches of knightly faith, such as the sacking of churches, flight from battle, rape, arson, or the breaking of a solemn pledge.[37] Until the reproach was removed, a knight publicly dishonored in this way was banned from association in any knightly endeavor. In the international world of late medieval

chivalry, news of such reproaches traveled quickly. Not every defaulter was thus brought to justice, but of what legal system can it be said that it was invariably effective?

Such were the rules of war pertaining to bellum hostile between knights. Rarely, however, did the fortunes of war turn decisively on the outcome of a pitched battle. The English won all four of the pitched, decisive battles of the Hundred Years' War, at Crécy, Poitiers, Nájera, and Agincourt. But they lost the war, which turned instead on the outcome of hundreds of individual sieges. The laws of war governed sieges, too, but they were completely different from those which applied to open battle.[38] A siege began when a herald went forward to demand that a town or castle admit the besieging lord. If the town agreed, this constituted a surrender, and the lives and property of the townspeople would be protected. If the town refused to surrender, however, this was regarded by the besieging lord as treason, and from the moment the besieger's guns were fired, the lives and property of all the town's inhabitants were therefore forfeit. "Women could be raped, and men killed out of hand. All the goods of the inhabitants were regarded as forfeit. If any lives were spared, this was only through the clemency of the victorious captain; and spoliation was systematic." Strictly speaking, the resulting siege was not an act of war but the enforcement of a judicial sentence against traitors who had disobeyed their prince's lawful command. In strict law, therefore, the town and all its goods belonged to the king, who granted them to his troops.

These laws of siege presented the captain of a besieged garrison with a terrible dilemma. If he resisted, he was sentencing the entire population of the town to death; but if he surrendered without resisting, the lord from whom he held the town would treat this too as treason, and the lives and property of the townspeople would be similarly forfeit to him. Careful captains of garrisons therefore often made written contracts with their lords specifying exactly how long they were obliged to hold out under siege. With the besieging force a captain could then seek to negotiate a conditional surrender: if relief from his lord had not arrived by the time specified in his contract, the garrison commander would surrender the town, and the lives and property of the townspeople would be protected. Heroic captains held out anyway, but the risks they ran were enormous. When Edward III finally captured Calais in 1347, he spared the lives of the townspeople who survived the siege, but he expelled the entire population of the town. Henry V did the same at Harfleur.

Siege warfare was thus something of a special case, and I have therefore categorized it as a third form of warfare, neither guerre mortelle nor bellum hostile. There was also a fourth form of war, *guerre couverte*, "covert war," the private war between two feudal lords who held their lands from the same sovereign.[39] By the law of arms one could kill one's enemies in such a war, but plunder, ransom, and burning were all, in theory, prohibited. Nor could one fly one's banner, a sign restricted to public war. Only a battle cry established allegiance in a guerre couverte, and no legal rights could be established to any captured property. The attraction of attaching one's private disputes to a public cause was therefore enormous. So long as war lasted between the kings of England and France, all a local lord had to do to turn his private war into a public one was to substitute the king of England's battle cry for his own. The king himself would in all likelihood know nothing at all about his new allies. They received no wages or other formal recognition from him; they wore no uniform and adopted no distinctive livery beyond their own. In no sense did they fight for England. But they did fight for the king of England, and that was enough to give their private war the public character which rendered ransom, arson, and plunder legitimate.

It is no wonder that in such a world the suppression of private warfare should have been difficult and that atrocities should have been common. The law of arms was an international law, but not in the sense that it regulated the conduct of warring nations. Rather, it was designed to protect the rights of the individual soldiers who joined the fighting wherever they might choose to fight. But "the principle . . . that any sort of hostile act requires sovereign authority" to sanction it slowly gained ground during the fifteenth century, and by the sixteenth century it had triumphed across most of Europe.[40] To share in plunder a soldier now had to have his name enrolled on the official muster lists of an army; and as the costs of war rose ever higher, only kings and a few other great lords could afford to maintain such a force. The growing military irrelevance of heavily armored cavalry also contributed to the declining importance of *jus militare* in its medieval sense. The knights did not disappear, however, anymore than did the nobility. Instead, they became officers in the new national armies of the late fifteenth century, and what had been a chivalric code of military conduct was thereby transformed into a code of conduct for officers toward other officers—which in some sense, of course, it had always been. In this regard the laws of war in the Age of Chivalry are the direct ancestors of the Geneva Conventions on the treatment of prisoners, not least in the distinctions drawn at Geneva between the treatment of captive officers versus enlisted men. We may count this as one of their successes. Their failures are also instructive: their complete ineffectiveness in protecting noncombatants, in limiting weaponry, and in protecting the common soldier from indiscriminate slaughter. On the failures of the laws of war in the Age of Chivalry, however, we should not be too harsh. For in the very areas in which chivalry failed to limit war, all succeeding systems of international law have also failed to limit effectively the conduct of war by soldiers and nations. I am prepared to believe in the prospect of a better system than the one described here. But I have not yet seen it in practice.

the Five Thousand," *Harvard Studies in Classical Philology* 93 (1990): 243–80. Importance of the navy to democracy: Ober, *Mass and Elite*, 83–84.

20. Athenian empire: Russel Meiggs, *The Athenian Empire* (Oxford: Oxford University Press, 1972).

21. The focus of hoplite warfare on decisive battle is the central thesis of Hanson, *War*.

22. Thucydides 1.140–44, 2.60–65.

23. Pericles' strategy: Josiah Ober, "Thucydides, Pericles, and the Strategy of Defense," in *The Craft of the Ancient Historian: Essays in Honor of Chester G. Starr*, ed. John W. Eadie and Josiah Ober (Lanham, Md.: University Press of America, 1985), 171–88.

24. Raids into Peloponnese: H. D. Westlake, "Seaborne Raids in Periclean Strategy," *Classical Quarterly* 39 (1945): 75–84. The Megara strategy: T. E. Wick, "Megara, Athens, and the West in the Archidamian War: A Study in Thucydides," *Historia* 28 (1979): 1–14.

25. First year of the war and its events: Thucydides 2.1–33, with Donald Kagan, *The Archidamian War* (Ithaca, N.Y.: Cornell University Press, 1974), 43–69.

26. Spartan innovations in the Decelean War: Thucydides 1.19–28, 8.5–44; Xenophon, *Hellenica* 1.1.1–1.6.38, 2.1.1–2.2.23; Plutarch, *Lysander*. Cf. Donald Kagan, *The Fall of the Athenian Empire* (Ithaca, N.Y.: Cornell University Press, 1987).

27. New warfare of the fourth century: Ober, *Fortress*, 37–50.

28. Athenian stability: Ober, *Mass and Elite*, 17–20.

29. Athenian work on the city walls: Richard E. Wycherley, *The Stones of Athens* (Princeton: Princeton University Press, 1978), 7–25. Theban stockade: Mark Munn, "Agesilaos' Boiotian Campaigns and the Theban Stockade of 378–377 B.C.," *Classical Antiquity* 6 (1987): 106–38. Border defenses: Ober, *Fortress*, passim.

30. Development of siege artillery and its effect on military architecture: E. W. Marsden, *Greek and Roman Artillery*, 2 vols. (Oxford: Clarendon, 1969, 1971); Yvon Garlan, *Recherches de poliorcétique grecque*, Bibliothèque des écoles françaises d'Athènes et de Rome 223 (Paris: Boccard, 1974); Josiah Ober, "Early Artillery Towers: Messenia, Boeotia, Attica, Megarid," *American Journal of Archaeology* 91 (1987): 569–604.

31. Ober, *Fortress*, 220.

3. The Age of Chivalry

1. Maurice H. Keen, *Chivalry* (New Haven: Yale University Press, 1984), 5, 81, 107–13; Philippe Contamine, *War in the Middle Ages*, trans. Michael Jones (Oxford: Basil Blackwell, 1984), 210–12. On the dating of Vegetius, see Walter Goffart, "The Date and Purpose of Vegetius' *De re militari*," *Traditio* 33 (1977): 65–100.

2. The quotation is from John Michael Wallace-Hadrill, "War and Peace in the Early Middle Ages," *Transactions of the Royal Historical Society*, 5th ser., 25 (1975), 1, reprinted in his collected *Essays in Early Medieval History* (Oxford: Basil Blackwell, 1975), 19–38, at 19. On Roman laws of war, see Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), 7–8, and Maurice H. Keen, *The Laws of War in the Late Middle Ages* (London: Routledge & Kegan Paul, 1965), 104, 137. For the Ostrogoths and the Huns, see John Michael Wallace-Hadrill, *The Barbarian West*, 3d ed. (London: Hutchinson University Library, 1967), 33.

3. On *bellum Romanum*, see Keen, *Laws of War*, 104; Contamine, *War*, 283–84; Russell, *Just War*, 129; against non-Christians, James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250–1550* (Philadelphia: University of Pennsylvania Press, 1979). The quotation is from Wallace-Hadrill, "War and Peace," 20.

4. "Christianae fidei atque religionis sacramenta susciperent et Francis adunati unus cum eis populus efficerentur." My translation, from *Éginhard: Vie de Charlemagne*, ed. Louis Halphen, Les classiques de l'histoire de France au moyen âge (Paris: Les Belles Lettres, 1947), 26.

5. Contamine, *War*, 266–68; Russell, *Just War*, 31–32.

6. Wallace-Hadrill, "War and Peace," 30–35.

7. Carl Erdmann, *The Origin of the Idea of Crusade*, trans. Marshall W. Baldwin and Walter Goffart (Princeton: Princeton University Press, 1977; orig. ed., 1935). Compare Keen, *Chivalry*, 44–63, esp. 45–50; Jonathan Riley-Smith, *The First Crusade and the Idea of Crusading* (London: Athlone Press, 1986); and the critique of Erdmann by John Gilchrist, "The Papacy and War against the 'Saracens'," *International History Review* 10 (1988): 174–97.

8. On early codes of knightly conduct, see Karl Leyser, "Early Medieval Canon Law and the Beginnings of Knighthood," in *Institutionen, Kultur und Gesellschaft im Mittelalter: Festschrift für Josef Fleckenstein zu seinem 65. Geburtstag*, ed. Lutz Fenske, Werner Rösener, and Thomas Zotz (Sigmaringen: Jan Thorbecke Verlag, 1984), 549–66; and Janet Nelson, "Ninth-Century Knighthood: The Evidence of Nithard," *Studies in Medieval History Presented to R. Allen Brown*, ed. Christopher Harper-Bill, Christopher J. Holdsworth, and Janet Nelson (Woodbridge, Suff.: Boydell & Brewer, 1989), 255–66. E. J. Cowdrey, "The Peace and the Truce of God in the Eleventh Century," *Past and Present* 46 (1970), 47–67, is the best short account of its subject. Georges Duby, *The Three Orders: Feudal Society Imagined*, trans. Arthur Goldhammer (Chicago: University of Chicago Press, 1980) has much of interest on these matters, as does the stimulating collection of essays by Thomas Head and Richard Landes, eds., *The Peace of God: Social Violence and Religious Response around the Year 1000* (Ithaca, N.Y.: Cornell University Press, 1992).

9. Leyser, "Canon Law and Knighthood," 564–65.

10. Leyser, "Canon Law and Knighthood," 564–65. As Leyser points out (ibid., 566), the distinction between the armed noble and the unarmed commoner was not new in the eleventh century. But it was increasingly sharply drawn from about 1100 on: see Keen, *Chivalry*, 23–30; Contamine, *War*, 31.

11. Leyser, "Canon Law and Knighthood," 562.

12. Keen, *Laws of War*, 19. It is worth noting that *pauper* in medieval Latin meant "powerless," not "poverty-stricken." In practice, of course, there was considerable overlap between the two conditions.

13. Keen, *Laws of War*, passim; Keen, *Chivalry*, 18–43.

14. On *jus ad bellum* versus *jus in bello*, see James T. Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200–1740* (Princeton: Princeton University Press, 1975), 3–80; and Russell, *Just War*, passim. On crossbows, see Contamine, *War*, 71–72, 274; and on contemporary reactions to gunnery, Contamine, *War*, 274; and Malcolm Vale, "New Techniques and Old Ideals: The Impact of Artillery on War and Chivalry at the End of the Hundred Years War," in *War, Literature, and Politics in the*

Late Middle Ages, ed. Christopher T. Allmand (New York: Barnes and Noble Books, 1976), 57–72.

15. In addition to Keen, *Laws of War*, passim, see Maurice H. Keen, "The Jurisdiction and Origins of the Constable's Court," in *War and Government in the Middle Ages: Essays in Honour of J. O. Prestwich*, ed. John Gillingham and James C. Holt (Woodbridge, Suff.: Boydell & Brewer, 1984), 159–69. The willingness of both French and English courts to hear cases brought even against their own supporters for breaches of military law probably reflects the fact that both kings claimed to be the legal king of France. Such cases helped to reinforce the legitimacy of both sides' claims to rule over all of France. In Germany the mechanisms for enforcing the law of arms were much less developed. Military custom in Spain, however, was highly regularized, even between Christian and Muslim combatants. See, for example, José Enrique López de Coca Castañer, "Institutions on the Castilian-Granadan Frontier, 1369–1482," in *Medieval Frontier Societies*, ed. Robert Bartlett and Angus MacKay (Oxford: Clarendon Press, 1989), 127–50.

16. N. A. R. Wright, "The Tree of Battles of Honoré Bouvet and the Laws of War," in *War, Literature, and Politics*, 12–31.

17. Unless otherwise noted, the information that follows is derived from Keen, *Laws of War*, passim.

18. The quotation is from Keen, *Laws of War*, 24. The reluctance of some of the greatest nobles of late thirteenth-century England to accept the king's wages in war had disappeared by the mid-fourteenth century. For discussion, see Michael Prestwich, *War, Politics and Finance under Edward I* (London: Faber and Faber, 1972), 67–91.

19. Keen, *Laws of War*, 63–81.

20. Keen, *Laws of War*, 85.

21. Contamine, following Hostiensis and John of Legnano, distinguishes seven different types of conflict, four licit and three illicit: *War*, 283–84; see also Russell, *Just War*, 129–30. I follow Keen, *Laws of War*, 104–18, in offering four, but in place of truce, which Keen regards as a type of war, I have substituted the laws of siege, which seem to me sufficiently distinct to warrant separate treatment. All such schemas are, of course, arbitrary.

22. The quotation is from Keen, *Laws of War*, 104. On *guerre mortelle* at Crécy, Poitiers, and Orléans, see Keen, *Laws of War*, 105; and Malcolm Vale, *War and Chivalry: Warfare and Aristocratic Culture in England, France and Burgundy at the End of the Middle Ages* (London: Duckworth, 1981), 157. On the red banner as its sign, see Keen, *Laws of War*, 104–6, and the discussion of the battles of Lewes and Evesham below.

23. Robert Bartlett, "'Mortal Enmities': The Legal Aspect of Hostility in the Middle Ages." I am grateful to Professor Bartlett for permission to cite his unpublished paper.

24. The best account of these battles is now David A. Carpenter, *The Battles of Lewes and Evesham, 1264/65*, British Battlefield Series (Keele: Mercia Publications, 1987). Full references to the sources can be traced there.

25. For discussion, see Robert C. Stacey, "Crusades, Crusaders, and the Baronial *Gravamina* of 1263–1264," in *Thirteenth Century England, III*, ed. Peter R. Coss and Simon D. Lloyd (Woodbridge, Suff.: Boydell and Brewer, 1991), 137–50.

26. Carpenter's translation, *Battles of Lewes and Evesham*, 27, of a passage in an unpublished chronicle from Battle Abbey.

27. Clive H. Knowles, "The Resettlement of England after the Barons' War, 1264–1267," *Transactions of the Royal Historical Society*, 5th ser., 32 (1982), 25–41.

28. Keen, *Laws of War*, 137–55; the quotation is on 106. For Spanish customs on the distribution of booty, see James F. Powers, *A Society Organized for War: The Iberian Municipal Militias in the Central Middle Ages, 1000–1284* (Berkeley: University of California Press, 1988).

29. Jean Froissart, *Chronicles*, trans. and ed. Geoffrey Brereton (London and New York: Penguin Books, 1978), 71–77, saw clearly the importance of the English fleet as a repository for plunder.

30. Christopher T. Allmand, "The War and the Non-Combatant," in *The Hundred Years War*, ed. Kenneth A. Fowler (London: Macmillan, 1971), 163–83; Keen, *Laws of War*, 189–97.

31. Keen, *Laws of War*, 137–38, 251–53; on neutrality, 208–9.

32. Quoted in John Gillingham, *The Wars of the Roses: Peace and Conflict in Fifteenth-Century England* (London: Weidenfeld and Nicolson, 1981), 1, 255, whose argument I am following.

33. Contamine, *War*, 256–57; Vale, *War and Chivalry*, 156–61.

34. Keen, *Laws of War*, 88.

35. Froissart, *Chronicles*, 143–44.

36. Keen, *Laws of War*, 156–85. The quotations are on 157–58 and 180.

37. Quotation from Keen, *Laws of War*, 173; see also Contamine, *War*, 289–90.

38. My treatment of sieges follows Keen, *Laws of War*, 119–33; the quotation is on 121–22. The rules of siege warfare appear to have been already well established by the mid-twelfth century: see, for example, the *Gesta Stephani*, ed. Kenneth R. Potter, rev. Ralph H. C. Davis, Oxford Medieval Texts (Oxford: Oxford University Press, 1976), 30, 34–42, 84, 128–36, 180–84, 186. The emphasis on treason, however, appears to have been a later development.

39. I am following Keen, *Laws of War*, 108–18. The term itself betrays the royalist bias of the theorists. From the point of view of the feudal lords who waged it or of the peasantry who suffered from it, there was nothing covert about such a war.

40. Keen, *Laws of War*, 237. On the triumph of this principle, see also Keen, *Chivalry*, 235, 239–43; and Vale, *War and Chivalry*, 147–74.

4. Early Modern Europe

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1. Martin van Creveld, "The Gulf Crisis and the Rules of War," *Military History Quarterly*, vol. 3, no. 4 (Summer 1991): 23–27.

2. See the suggestive article of John A. Lynn, "How War Fed War: The Tax of Violence and Contributions during the *Grand Siècle*," *Journal of Modern History* 65 (1993): 286–310; and Fritz Redlich, *De praeda militaris: Looting and Booty, 1500–1815*.