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Defining the Enemy: Intellectuals, Soldiers and their Attitudes

Towards the Rules of Engagement

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Abstract

This dissertation examines the different attitudes of soldiers and intellectuals towards the laws of war and the rules of engagement, with a particular focus on defining the enemy. In the past there has been a focus on the broader theories of the laws of war and how they work on paper. This is why studying the attitudes of soldiers who have firsthand experience of the rules of engagement is useful in understanding the moral issues in war. The general attitudes of intellectuals and soldiers towards the laws of war are first examined, relying on the past historiographical work of Michael Walzer and John Fabian Witt. This is followed by an examination of the moral ambiguities generated by war in a historical context, using specific examples from past conflicts. Soldiers' autobiographies from the War on Terror are a rich source of analysis. They reveal how the rules of engagement imposed by the legislators do not necessarily correspond to the soldiers' perspective on the battlefield which leaves soldiers vulnerable to charges of murder.

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Introduction

On 27 June 2005 SEAL Team 10 was sent into the Afghani wilderness to capture or kill a warlord named Ahmad Shah. During their mission a family of civilian goatherds stumbled upon their position, compromising the mission. Alone in the Hindu Kush, the four members of SEAL Team 10 were faced with a dilemma. According to the Geneva Convention and the United States Military's rules of engagement, these unarmed civilians had a protected status recognised by international law. However, the SEALs were worried that if the goatherds were let go, as the law dictated, they would inform the enemy of the SEALs' location. Team leader Lieutenant Michael Murphy put the issue to a vote and allowed the team to decide. Matthew Axelson voted to execute the goatherds, while Murphy and Marcus Luttrell voted to let them go. The final member of the team, Danny Dietz abstained. So, the SEALs decided to follow the Geneva Convention and allow the men to go free who, as predicted, informed Shah's militia of the SEAL's presence and sent a large armed force after them. Luttrell states in his autobiography that voting to let them go was 'the stupidest mistake of my life.'¹

Soldiers like Luttrell, who come home from the War on Terror and write about their experiences, constantly refer to problems with the rules of engagement. Whether it is the above example of a group of untouchable civilians who jeopardise the mission and the lives of those involved, or whether it is the anxiety caused by the thought of making a mistake and being branded a murderer under the laws of war. The laws of war exist to protect the innocent and to mitigate destruction, however legislators and soldiers have always had difficulty defining the enemy in war time. This dissertation will examine the differing attitudes of intellectuals and soldiers towards the laws of war, with a primary focus on the War on Terror. Then, using the specific issue of defining the enemy, it will be shown that the issues present in the War on Terror are not new but, rather, are common to all modern wars. What is new in the War on

¹ Marcus Luttrell with Patrick Robinson, *Lone Survivor: The Incredible True Story of Navy SEALs Under Siege*, London, Sphere, 2007, p. 204.

Terror is the extent to which soldiers coming home have written about their experiences under the rules of engagement and their attitudes towards those who impose them.

Methodology and Sources

A large amount of material has been written on the laws of war in the past, focusing on the philosophical tracts written throughout the centuries. Beginning with Emir de Vattel's eighteenth century *Law of Nations* there is a tradition in political writings of setting out arguments for the moral laws of war to protect the innocent during war, and to mitigate its destruction. Vattel defines the enemy as 'he with whom a nation is at open war.'² As such, Vattel's laws are state oriented. Many intellectuals agree with the deontological arguments of Vattel when it comes to the laws of war.

As far as philosophers go, the writer whose ideas resemble closest those of the modern soldier is the nineteenth century Prussian General, Carl von Clausewitz. He writes that 'the moral elements are among the most important in war.... Unfortunately they will not yield to academic wisdom. They cannot be classified or counted. They have to be seen or felt.'³ Here Clausewitz is voicing his reservations about the intellectual idea that the moral issues of war can be quantified and distilled into a set of written laws. He further states that 'In formulating any rule concerning physical factors, the theorist must bear in mind the part that the moral factors may play in it; otherwise he may be misled into making categorical statements that will be too timid and restricted, or else too sweeping and dogmatic.'⁴ Furthermore, when explaining the hypocrisy of rationalising laws which contradict morality, he says of the justification that '...one may appeal to genius, which is above all rules; which amounts to admitting that the rules are

² Emir de Vattel, *The Law of Nations*, Translated by Joseph Chitty., London, R. Milken & Son, 1834, pp. 321.

³ Carl von Clausewitz, *On War*, Edited and Translated by Michael Howard and Peter Paret, Princeton, Princeton University Press, 1976, p 184.

⁴ Clausewitz, *On War*, p. 184.

not only made for idiots, but are idiotic in themselves.’⁵ It is for this reason, Clausewitz argues, that history is the best judge of morality in war.⁶ Higher ideals are best left on paper as one can only get a true sense of the reality of war from firsthand experience.

It is for this reason that autobiographies from the War on Terror are such a rich source of study for the laws of war. The higher law theories tend to focus on either state-to-state relations, or on the larger military context. While there are provisions within the previous philosophical works which legislate for the average soldier, their experiences in implementing such laws have been passed over, mainly due to a lack of sources. Soldiers from previous wars have certainly written diaries, letters and memoirs but, with the exception of George Witton’s *Scapegoats of the Empire*, these sources lack any elucidation on their authors’ attitudes towards the laws of war or the rules of engagement. This is where the War on Terror differs, and analysis of its ambiguities can shed some light on the gap.⁷ Many soldiers who have returned from Iraq and Afghanistan have written autobiographies in which they constantly refer to issues with the rules of engagement.

Of course, there is an ethical concern in focusing primarily on autobiographies written by soldiers. Autobiographies are often self-serving as they are written retrospectively, so there is every opportunity for the author to alter events in a way which presents them in the best possible light. Soldiers like Marcus Luttrell and Chris Kyle have every motivation to present their stories in a way that shows them in the best possible light. When dealing with such individualistic sources, the bias of the author must always be considered. For example, there is some contention over Luttrell’s account of Operation: Red Wings. The father of one of Luttrell’s fallen comrades, Daniel Murphy, disagrees with Luttrell’s portrayal

⁵ Clausewitz, *On War*, p. 184.

⁶ Clausewitz, *On War*, p. 185.

⁷ Michael Walzer’s study of the morality of war does look at the United States rules of engagement during the Vietnam War, however examples from the War on Terror better illustrate the issues of defining the enemy. See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York, Basic Books Inc., 1977, pp. 188-99.

of the beliefs and values of his son, Michael.⁸ An example from Chris Kyle's book is when he writes about a violent encounter he allegedly had with a prominent politician who turned out to be Jesse Ventura.⁹ Ventura then won a defamation lawsuit against Kyle's estate.¹⁰ Consideration of these examples of conflicting interpretations of events are relevant to any analysis of self-serving autobiographies like *Lone Survivor* and *American Sniper*, however they do not completely invalidate them as historical sources. When it comes to analysing the events of the battlefield the attitude of the soldier is crucial in understanding the nature of the issues with the rules of engagement. Therefore, the potentially biased accounts found in autobiographies are actually useful as they shine a light on the attitudes of the soldiers who wrote them.

While the focus on the rules of engagement is a new feature from the War on Terror, the issues which arise from trying to define the enemy are not new. Therefore, it is useful to examine some qualitative examples from past wars for the ways in which soldiers have defined their enemy, and the factors which impact on their attitudes. In order to get a sense of the historical attitudes of soldiers towards defining the enemy selected examples from the First World War, the American Civil War, the Philippine-American War and the Second Boer War will be examined.

Historiography

The key text for this historical analysis is Michael Walzer's *Just and Unjust Wars*. Writing in the wake of the Vietnam War, Walzer sets out a moral case for the laws of war using qualitative examples taken

⁸ Michael Winerip, 'Recognizing the Honor of a Son', *The New York Times*, 11 November 2007. Accessed 14 October 2015

<<http://www.nytimes.com/2007/11/11/nyregion/nyregionspecial2/11Rparenting.html?pagewanted=all>>

⁹ Nicholas Schmidle, 'The Ventura Verdict', *The New Yorker*, 30 July 2014. Accessed 14 October 2015

<<http://www.newyorker.com/news/news-desk/ventura-verdict>>

¹⁰ Dan Lamothe, 'Jesse Ventura vs. Chris Kyle: A Case Where no one Won', *The Washington Post*, 30 July 2014. Accessed 14 July 2015 <<https://www.washingtonpost.com/news/checkpoint/wp/2014/07/30/jesse-ventura-vs-chris-kyle-a-case-where-no-one-won/>>

from history. He states of his own methodology that 'we look to the lawyers for general formulas, but to historical cases and actual debates for those particular judgments that both reflect the war convention and constitute its vital force.'¹¹ Walzer summarises and refutes past theories of war, including the realist perspective as articulated by the Melian Dialogue from Thucydides' *History of the Peloponnesian War*, which holds that it is the strong who determine the law.¹² Walzer also uses several bottom-up examples in order to further illustrate what he is trying to say about the ambiguous nature of the rules of engagement. For example, he uses five anecdotes of soldiers who did not take the shot, even though they were justified in doing so under the laws of war, to show the humanity of the soldier and their relation to their fellow man. He writes that:

It is not against the rules of war as we currently understand them to kill soldiers who look funny, who are taking a bath, holding up their pants, revelling in the sun, smoking a cigarette. The refusal of these five men, nevertheless, seems to go to the heart of the war convention. For what does it mean to say that someone has a right to life? To say that is to recognize a fellow creature, who is not threatening me, whose activities have the savor of peace and camaraderie, whose person is as valuable as my own. An enemy has to be described differently, and though the stereotypes through which he is seen are often grotesque, they have a certain truth. He alienates himself from me when he tries to kill me, and from our common humanity. But the alienation is temporary, the humanity imminent. It is restored, as it were, by the prosaic acts that break down stereotypes in each of the five stories. Because he is funny, naked, and so on, my enemy is changed, as Lussu says, into a man. "A man!"¹³

¹¹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York, Basic Books Inc., 1977, p. 45.

¹² Walzer, *Just and Unjust Wars*, pp. 4-9.

¹³ Walzer, *Just and Unjust Wars*, p. 142.

This shows Walzer's recognition of soldiers as moral beings, capable of making moral decisions based on their own interpretations of the situation. The laws of war may justify an act, however, that does not make the act morally justifiable.

Following on from Walzer's work is John Fabian Witt's *Lincoln's Code: The Laws of War in American History*. This is a comprehensive study of the development of the laws of war in American history, from the influence of Vattel on the Founding Fathers, to the development of the Geneva Conventions from the laws which were written during the American Civil War.¹⁴ Witt's work is instrumental in understanding the development of international laws of war and America's contribution to them. His study is broad in that it focuses on the laws themselves and those who drafted them. For example, Francis Lieber is a key figure in his analysis as the author of 'General Orders No. 100'; the first codified set of laws to regulate the destructive forces of war.¹⁵

The works of Walzer and Witt can be built upon by analysing soldiers' attitudes from the War on Terror towards the rules of engagement. Witt's work provides the big picture overview of the development of the international laws of war and Walzer sets out the framework within which to examine the moral questions.

¹⁴ John Fabian Witt, *Lincoln's Code: The Laws of War in American History*, New York; Free Press, 2012, pp. 5-9.

¹⁵ Witt, *Lincoln's Code*, pp. 177-179.

The Attitudes of Intellectuals and Soldiers towards the Laws of War

When it comes to the rules of engagement, there is a divide between the attitudes of intellectuals far removed from combat and the attitudes of soldiers who are on the ground. The legislation which exists to regulate warfare and mitigate its destruction tends to be written by lawyers and philosophers who have never been in the situations for which they are legislating for. It therefore stands to reason that the average soldier for whom they are legislating will resent those rules when they do not correspond to their view of events on the battlefield. This is especially so when they are faced with an enemy who does not follow those laws, creating ambiguous situations in which compliance with the law is difficult.

In looking at this divide between the attitudes of legislators and soldiers it is necessary to understand how the current international laws developed. John Fabian Witt's book, *Lincoln's Code*, is a comprehensive study of the origins of the laws of war in relation to American history. Witt's study focuses on the development of the Lieber Code, which was written for the unique circumstances of the American Civil War. The code was written by Francis Lieber who, in the words of Witt, was not influenced by 'the great philosopher of peace, Immanuel Kant, but the prophet of modern total war, Carl von Clausewitz, whose contempt for the law of war would later become legendary.'¹⁶ Witt argues that the code was not merely a constraint on Union tactics during the Civil War, but it was also a weapon for it authorised any means deemed necessary to 'securing the ends of the war.'¹⁷ Clearly, military necessity was the most important factor in the drafting of the first official laws of war.

Although the international laws of war in the form of the Geneva Conventions were influenced by the Lieber Code, there is little resemblance.¹⁸ According to Witt, the articles of the Lieber Code are a precarious balance between justice and humanitarianism, whereas the modern international laws of

¹⁶ Witt, *Lincoln's Code*, pp. 3-4.

¹⁷ Witt, *Lincoln's Code*, p. 4.

¹⁸ Witt, *Lincoln's Code*, p. 340.

war often focus on humanitarian concerns.¹⁹ For example, the stated purpose of the fourth Geneva Convention, held on 12 August 1949, is to protect civilians in times of war.²⁰ Protection of the innocent is now the primary concern of the laws of war and this has overshadowed military necessity. Witt explains this by pointing out that when the laws are written is the key to analysing the intent of the framers.²¹ The Lieber Code was written in the middle of a war that the Union had yet to win, and so its provisions were focused on legal issues which were preventing victory. The current manifestation of the Geneva Convention, on the other hand, was written in the aftermath of the Second World War in which millions of civilians died. It was written in hindsight to prevent such an occurrence in the future.

However, what has been mentioned previously focuses on the international laws of war in the broader context of war between states, and not relations between individual soldiers in the field. Michael Walzer takes the philosophical approach to this idea of the rules of engagement, with the example of Vietnam in his mind. He argues that there are two types of laws when it comes to war.²² The first kinds of laws are circumstantial rules regarding time and place. For example, the regulation of certain weapons will always be subject to context as technology is always changing.²³ Then there are the universal maxims which never change, such as who has protected status and under what circumstances. These are the laws which determine who the legitimate targets are for soldiers.²⁴ For Walzer these are universal elements and are not subject to change. He states that, while these can act as a hindrance to victory, they cannot be cast aside for if it was possible to do so then the idea of having laws at all would be

¹⁹ Witt, *Lincoln's Code*, p. 8.

²⁰ Preamble to Geneva IV, 12 August 1949. Accessed 30 July 2015. < <https://www.icrc.org/ihl/INTRO/380>>

²¹ Witt, *Lincoln's Code*, p. 5.

²² Walzer, *Just and Unjust War*, p. 41.

²³ Walzer, *Just and Unjust War*, p. 40.

²⁴ Walzer, *Just and Unjust War*, pp. 40-43.

pointless.²⁵ This idea is a departure from military necessity as the driving force behind the laws of war which is present in Lieber and Clausewitz.

The Intellectual Attitude

This can be seen in the arguments of several legally minded intellectuals in their indictments against the United States government. While these works are indictments of state action, the themes of universal principles relating to the laws of war are still clearly evident. For example, Michael Ratner, a human rights lawyer, in his essay 'International Law and War Crimes' argues that the laws he alleges the United States government violated in the First Gulf War '...are fundamental to a civilized world; laws that are designed to protect people, human beings, from the barbarity of war.'²⁶ Ratner further states that

To act outside these laws, to disobey these laws, to flaunt these laws is to become "hostis humani generis," an enemy of all mankind...Today such enemies include those countries and individuals who violate the fundamental laws that protect peace and limit war.²⁷

This shows the lawyer's view on the laws of war as unbreakable in any circumstance, and as upholding morality in times of war. Furthermore, the judge Chris Greenwood argues that 'a fundamental principle of the laws of war has always been that these laws apply equally to both sides in the conflict without distinguishing between the aggressor and the victim.'²⁸ Here, Greenwood is relating the same idea as Walzer, when he states that

If it is always morally possible to fight, it is not always possible to do whatever is required to win. In any struggle, conventional or unconventional, the rules of war may at

²⁵ Walzer, *Just and Unjust War*, p. 195.

²⁶ Michael Ratner, 'International Law and War Crimes', *War Crimes: A Report on United States War Crimes Against Iraq*, edit by Ramsay Clark, Washington D.C., Maisonneuve Press, 1992, p. 39.

²⁷ Ratner, 'International Law and War Crimes', p. 39.

²⁸ Christopher Greenwood, 'War, Terrorism and International Law', *Essays on International Law*, London, Cameron May, 2007, p. 416.

some point become a hindrance to the victory of one side or another. If they could then be set aside, however, they would have no value at all.²⁹

Thus, the intellectual and legal attitude is focused on the idea that the laws of war are universal and unbreakable principles, no matter what the situation.

The Soldier's Attitude

The view of lawyers and intellectuals is not shared by soldiers on the ground. The idea that humanitarian concerns overshadow military necessity is not popular among soldiers. There tends to be a feeling of resentment among the soldiers at the fact that their actions are being judged and legislated for by men who have never been in the situations in which they are writing rules for. This can be seen as far back as the Boer War during 1902 when Lieutenant Harold Morant of the Bushveldt Carbineers was court-martialled for issuing orders to execute several prisoners. According to George Witton's eyewitness account of the trial, Morant responded with the following quip when asked if he had observed the correct paragraph of the King's regulations in issuing his execution order:

As to rules and regulations, we had no Red Book, and knew nothing about them. We were out fighting the Boers, not sitting comfortably behind some barb-wire entanglements; we got them and we shot them under Rule .303.³⁰

The numbers '303' are a reference to the calibre of the British Lee Enfield rifle, which was standard issue at the time. It is clear that Morant resented the fact that his actions were being judged by men who had not been in that situation. Marcus Luttrell, serving more than a century later, but facing the same issues, says something similar in his autobiographical account of the ill-fated Operation: Red Wings. He writes that 'Faced with the murderous cutthroats of the Taliban, we are not fighting under the rules of Geneva

²⁹ Walzer, *Just and Unjust Wars*, p. 195.

³⁰ George Witton, *Scapegoats of the Empire: The True Story of Breaker Morant's Bushveldt Carbineers*, Oxford City Press, 2010, p. 66.

IV Article 4. We are fighting under the rules of Article 223.556mm—that's the calibre of our M4 rifle.³¹

Luttrell also writes:

The truth is, in this kind of terrorist/insurgent warfare, no one can tell who's a civilian and who's not. So what's the point of framing rules that cannot be comprehensively carried out by anyone? Rules that are unworkable, because half the time you find out, it might be too late to save your own life. Making sense of the [rules of engagement] in real-time situations is almost impossible.³²

Although Luttrell is writing in the aftermath of the worst case scenario for adherence to the laws of war, he makes it clear how he feels about them. His comrade, Chris Kyle, wrote the following about his views on the rules of engagement during the war in Iraq:

All those rules about when and under what circumstances an enemy combatant could be killed didn't just make our jobs harder, they put lives in danger. The ROEs got so convoluted...because politicians were interfering in the process. The rules are drawn up by lawyers who are trying to protect admirals and generals from the politicians; they're not written by people who are worried about guys on the ground getting shot.³³

There is a common theme running through these soldiers' accounts. They all view the laws of war as not only an unnecessary hindrance to their job, but as a danger to their lives. It is understandable that men like Morant, Luttrell and Kyle whose lives have been put in jeopardy by their strict adherence to the rules of engagement would have such a negative attitude towards the laws of war and those who draft them. Morant, who was a poet in life, made light of the situation with a verse he wrote the night before he faced the firing squad:

³¹ Luttrell, *Lone Survivor*, p. 168.

³² Luttrell, *Lone Survivor*, p. 167.

³³ Chris Kyle, with Jim Deflice and Scott McEwen, *American Sniper: The Autobiography of the Most Lethal Sniper in US History*, New York, William Morrow, 2012, pp. 299-300.

If you encounter any Boers
You really must not loot 'em
And if you wish to leave these shores
For pity's sake, don't shoot 'em!³⁴

Clearly, there is a divide between the views of intellectuals on the laws of war, and those of soldiers on the ground who have to live by the rules of engagement. In their writings, the soldiers coming home betray a sense of resentment over the fact that their actions are being judged by those whom they view as lacking the firsthand experience to know what soldiers go through on the battlefield. Inevitably, these issues are not new to war. Examples from different wars demonstrate the common themes of moral ambiguity in soldier to soldier relations on the battlefield. Soldiers have always had their own way of defining the enemy and understanding the different factors will help to differentiate between the effects the rules of engagement have during the War on Terror, and what is a normal part of soldier relations.

³⁴ Harold Morant quoted in Witton, *Scapegoats of the Empire*, pp. 119-20.

Historical Examples of Defining the Enemy

Defining the enemy during wartime is a complex issue. Many factors influence how soldiers view the enemy, such as race, culture and their actions. Soldiers in the past have defined the enemy in a variety of different ways, ranging from racial and cultural differences, to the manner in which the enemy fights. If a soldier perceives his enemy as inferior, either racially or culturally, then he is more likely to be able to justify harsher treatment of his enemy. However, if he perceives his enemy as an equal then he is more likely to treat him with a base level of respect. Whether or not a soldier perceives his enemy as an equal, any feelings of camaraderie dissipate if that enemy conducts hostilities in a manner which is deemed dishonourable or distasteful. Several case studies from major wars demonstrate this theme.

Examples from the world wars provide an insight into the way in which soldiers view enemies which they believe are equals. As Walzer points out, in this situation the fact that many of these men are conscripts and not professional soldiers must be taken into account.³⁵ The most notable example of the sentiment that the men fighting are equals comes from Erich Remarque's novel, *All Quiet on the Western Front*. Although the novel is a work of fiction, Remarque himself fought in the war, so the themes presented are taken from his own views. In the scene which demonstrates the theme of defining the enemy as an equal, the novel's main character, Paul Baumer, is trapped in no-man's-land and a French soldier jumps into his hole.³⁶ Baumer, without thinking, stabs the man as soon as he jumps in.³⁷ But, because there is an attack going on, Baumer is forced to stay in the hole and watch the man die. Baumer then laments the fact that he was forced to kill this man, of whom he says 'If we threw away these rifles and this uniform, you could be my brother.'³⁸ Clearly, Remarque believes that the

³⁵ Walzer, *Just and Unjust Wars*, p. 35.

³⁶ Erich Maria Remarque, *All Quiet on the Western Front*, Trans. A.W. Wheen, London, G.P. Putnam's Sons, 1929, pp. 236-37.

³⁷ Remarque, *All Quiet on the Western Front*, p. 237.

³⁸ Remarque, *All Quiet on the Western Front*, p., 244.

French are equals and the only reason they are fighting is the circumstances of the war. And so, a definition of the enemy as an armed man wearing a uniform would most likely suffice for such an attitude. Of course, definitions of the enemy are rarely that simple when it comes to the reality of war.

The ambiguity of the American Civil War also demonstrates the difficulty of defining the enemy when fighting people from the same country. Theodore Upson was a scout from Indiana who served with General William Tecumseh Sherman's army during his march through Georgia.³⁹ Upson's diary gives a unique insight into the views of the average soldier partaking in Sherman's controversial implementation of the doctrines of Total War.⁴⁰ Prior to the march, Upson describes his enemy in terms of mutual respect. For example he states that he hates 'to fight such fine fellows as these.'⁴¹ He even records an instance in which he met with three Confederate soldiers behind the lines and traded with them.⁴² He also writes that:

The soldiers of both sides seemed to have lost any feeling of hatred towards each other, and our boys say it was nothing unusual for men on both sides to come out of their works and trade and talk with each other.⁴³

This demonstrates a level of mutual respect, as they were of the same race and of a similar enough culture to view each other as equals. However, as the campaign in Georgia progressed Upson's feelings towards the enemy gradually ceased to be so amicable. Joseph Wheeler, the Confederate General in command of the cavalry responsible for harrying Sherman's forces, began hanging Sherman's foragers

³⁹ Oscar Osburn Winther, Introduction to *With Sherman to the Sea*, Edit. Oscar Osburn Winther, Bloomington, Indiana University Press, 1958.

⁴⁰ For a detailed rundown of Sherman's campaign see John Keegan, *The American Civil War*, London, Vintage, 2010, pp. 263-273.

⁴¹ Theodore Upson, *With Sherman to the Sea*, Edit. Oscar Osburn Winther, Bloomington, Indiana University Press, 1958, p. 62.

⁴² Upson, *With Sherman to the Sea*, pp. 62-3.

⁴³ Upson, *With Sherman to the Sea*, p. 63.

without mercy and so Sherman began enacting retaliatory measures on the civilian population.⁴⁴ Upson records an instance in which he witnessed several hanging bodies of civilians with signs reading:

This is done in retaliation for the unwarranted attac[k] made upon my foragers
yesterday. Any repetition of this offense will be similarly punished; and in addition, all
buildings upon ten square miles of adjacent territory will be destroyed” Signed WT
Sherman, Commanding.

Upson then describes a shift in the view of the enemy, saying that ‘our boys are getting to have an utter contempt of them.’⁴⁵ Although most Union and Confederate soldiers initially saw each other as equals on the battlefield, their attitude changed when faced with actions they viewed as dishonourable.

Upson also gives evidence that soldiers are not simply unthinking killing machines but, rather, are moral beings capable of doing the right thing. He recounts an incident on 22 December 1864 where his company rode into a small town and an old man rode out in front of them on a mule.⁴⁶ After failing to halt when called, Upson’s Colonel ordered the men to open fire, and the man was killed.⁴⁷ It turned out the man was in his eighties and hard of hearing, and so bore no ill will towards the Union soldiers. Upson states that he later felt bad about it calling it ‘one of the accidents of war.’⁴⁸ This is an example that soldiers are capable of thinking morally and making decisions in the heat of the moment. While this instance turned out badly, the fact that Upson recognises it shows he is, what a New York journalist in 1864 called, a ‘thinking bayonet.’⁴⁹

The fact that the Union was fighting an enemy that was equal, in fact made up of their own countrymen, was a serious legal ambiguity which Lincoln solved with General Orders No. 100. Lincoln’s Chief of Staff,

⁴⁴ Keegan, *The American Civil War*, p. 273.

⁴⁵ Upson, *With Sherman to the Sea*, p. 150.

⁴⁶ Upson, *With Sherman to the Sea*, p. 144.

⁴⁷ Upson, *With Sherman to the Sea*, p. 144.

⁴⁸ Upson, *With Sherman to the Sea*, p. 144.

⁴⁹ “The Army and the Crisis”, 16 October 1864. Accessed 27 August 2015
<<http://www.nytimes.com/1864/10/16/news/army-crisis-few-plain-words-with-rank-file-union-armies.html>>

Henry Halleck, commissioned the Prussian jurist, Francis Lieber, to write a codified set of articles to govern the actions of the Union armies in the field. Although many of the rules set down in the 'Lieber Code' dealt with specific issues relating to the American Civil War, there were also many rules which Lieber attempted to make universally applicable to all wars. Circumstantial articles in the Lieber Code include Article 152 which states clearly that, when a government adopts the rules of war when dealing with a rebel government during a civil war, it in no way recognises that government as a legitimate governing body.⁵⁰ Tacit recognition of the Confederate Government was a major concern for Lincoln as it would undermine his entire case that the Southern States had no right to secede. But the Lieber Code also contains articles which contain universally applicable rules of war. For example, the entire first section deals with the principles of military necessity and retaliation in order to prevent further barbarities from the enemy.

Those principles which were seen as universal in the Lieber Code were distributed to American forces in the Philippines in 1899 when it became apparent that the Army needed some form of rules of engagement.⁵¹ American forces in the Philippines did not view their enemy as equals at all. In fact it was precisely because the inhabitants of the Islands were not seen as equals that American forces were there in the first place. The British poet, Rudyard Kipling, in his hymn to American imperialism, 'The White Man's Burden', describes the people of the Philippines as 'half devil and half child.'⁵² President William McKinley's 'Benevolent Assimilation' speech of 21 December 1898 demonstrates this was also the sentiment of the American people, as he makes it clear that he believes that without American help the people of the Philippines would descend into 'arbitrary rule.'⁵³ Furthermore, Nicholas Roosevelt in his book, *The Philippines: A Treasure and a Problem*, states that the natives 'Like spoiled children they

⁵⁰ 'The Lieber Code', Article 152. In Witt, *Lincoln's Code*.

⁵¹ Witt, *Lincoln's Code*, p. 358.

⁵² Rudyard Kipling, 'The White Man's Burden', quoted in David J. Sibley, *A War of Frontier and Empire: The Philippine-American War 1899-1902*, New York, Hill and Wang, 2007, p. 92.

⁵³ William McKinley, quoted in Stuart Creighton Miller, *"Benevolent Assimilation: The American Conquest of the Philippines 1899-1903*, New Haven, Yale University Press, 1982.

are more indignant about unhumored whims than grateful for a surfeit of good things.’⁵⁴ It was decided that an American presence was needed in order to move the Philippines from Spanish rule to an independent nation in order to protect the people from totalitarianism. But, whether or not the need for an American intervention in the Philippines was necessary is of less importance than how the soldiers viewed their enemy.

John Clifford Brown was a soldier from an upper class background who resigned his commission as a captain in order to serve as an enlisted man on the front.⁵⁵ He died before the Lieber Code was reissued to American forces, however his diary provides insight into the way in which soldiers viewed the enemy guerrillas before their actions were regulated. For example, during the Second San Isidro Campaign in which Brown acted as a scout and cartographer, he does not describe the enemy in flattering terms. When the insurgents failed to destroy a strategically important bridge in the town of Arayat on 12 October, Brown writes that it was with ‘customary stupidity.’⁵⁶ Furthermore, Brown writes on 14 October that the insurgents have no artillery and ‘are looked down on as insignificant opponents.’⁵⁷ The supply issues of the insurgents seems to have confirmed the image of inferiority, as Brown records that many of the 2000 insurgents that were defending the town of Arayat had imitation rifles made of wood. These examples from the Second San Isidro Campaign show that Brown regarded both his enemy and the natives as inferior. Another instance also reinforces this point. On 6 November Brown writes that he captured two insurgents, but let them go as he ‘did not care to be burdened by prisoners.’⁵⁸ While this was an act of mercy, it is evidence that Brown’s view of the enemy was so low that to let two prisoners go without a fuss would not impact on the campaign. Brown’s racial views go even deeper, and are quite typical of his time. For example, he despised black soldiers, who at that time were being integrated,

⁵⁴ Nicholas Roosevelt, *The Philippines: A Treasure and a Problem*, (New York; J.H. Sears & Company, Inc., 1926), p. 4

⁵⁵ Joseph P. McCallus, *Gentleman Soldier: John Clifford Brown and the Philippine-American War*, Texas, A & M University Press, 2004, pp 14-15.

⁵⁶ John Clifford Brown’s Diary, 12 October 1899, in McCallus, *Gentleman Soldier*, p. 113.

⁵⁷ Brown’s Diary, 14 October 1899, in McCallus, *Gentleman Soldier*, p. 114.

⁵⁸ Brown’s Diary, 6 November 1899, in McCallus, *Gentleman Soldier*, p. 127.

albeit in segregated units, into the military.⁵⁹ The example of Brown shows that race was a determinant in a white soldier's definition of the enemy.

Eventually, after Brown was no longer a part of the war, the Lieber Code, now known as 'Old Hundred', was distributed to American forces in the Philippines. The purpose of reissuing the army with a set of universal principles to govern their actions was to prevent atrocities on both sides. However, as Witt writes, 'In the Philippines, the laws of war seemed...to be an influence for their fierce war strategy, not an obstacle to it.'⁶⁰ According to Witt, the American officers interpreted the doctrine held by Lieber, that short wars are the most humane wars, as justifying the practice of taking no prisoners and dealing with resistance with harsh reprisals.⁶¹ Witt also demonstrates that this is not a new issue in the laws of war, using an example as old as Andrew Jackson's invasion of Florida in 1818.⁶² According to Witt, Jackson used the principles of Emir de Vattel's *Law of Nations* to justify his harsh treatment of the Seminole Indians. In order to stop their brutal attacks, Jackson retaliated with fierce reprisals such as burning whole villages and executing prisoners. Even when there is a set of laws believed to be universally applicable to all wars, it does not stop atrocities. It is difficult to pin down a definition of the enemy in universal terms that will protect civilians from the harshness of war.

Further reinforcing the example of enemy actions influencing how soldiers view them is that of the Bushveldt Carbineers during the Boer War. The Boers, who were conducting a guerrilla campaign against British forces in the Northern Transvaal, had no clear command structure and did not follow the rules and customs of war. In order to combat this, Lord Kitchener formed an irregular unit of New Zealanders and Australians called the Bushveldt Carbineers.⁶³ Their purpose was to use irregular methods to deal with an irregular enemy. George Witton, who was tried by court martial with Lieutenants Morant and

⁵⁹ Brown's Diary, 27 August 1899, in McCallus, *Gentleman Soldier*, p. 89.

⁶⁰ Witt, *Lincoln's Code*, p. 358.

⁶¹ Witt, *Lincoln's Code*, p. 358.

⁶² Witt, *Lincoln's Code*, p. 98.

⁶³ R.L. Wallace, *The Australians at the Boer War*, Canberra, John Sands Pty Ltd., 1976, pp. 365-67.

Handcock, records in his book, *Scapegoats of the Empire*, his view of the Boers living on the Veldt. He describes them in unfavourable terms and states 'there must be generations of purging, educating, and civilising before they will be capable of taking part in national life.'⁶⁴ Witton clearly did not view these people as equals, and his view becomes even more negative when it is combined with the way in which they conducted the war. He states that 'When irregulars are sent out to deal with an enemy of this kind, marauders and train wreckers, the officers should be allowed a wide discretion in dealing with them.'⁶⁵ Furthermore, in his defence of the three men, Major Thomas argued that 'Upon such an enemy I maintain our troops are justified in making the severest reprisals, and are entitled to regard them, not as lawful belligerents at all, but as outlaws.'⁶⁶ Here, the ambiguities of war are shown when it comes to defining the enemy. It is not like Remarque's *All Quiet on the Western Front*, where two equals lament the fact they have to fight each other, and do so honourably. Witton and Thomas are talking about men who do not respect each other and do not follow the rules of war. It is difficult to legislate for this kind of enemy in universal terms because there is nothing universal about their actions.

These historical examples of the views of soldiers demonstrate the difficulty of defining the enemy in universal terms. When a document such as the Lieber Code, or the Geneva Convention, or any other set of codified rules to govern the destructive forces of war, is imposed upon a conflict with the certainty that its principles are universal, it creates more ambiguities. The enemy will not always wear uniforms, so this will not suffice as a definition, nor will combatants always carry their arms openly, so targeting everyone with a weapon will not protect troops either. But, the men on the ground do not always respect their enemy on the level of equals, and so it is difficult to just leave the decision to the soldier's discretion in every situation. The laws of war are a complicated issue, made even more complicated when legislators try to put universal principles into the form of positive laws. It would seem that William

⁶⁴ Witton, *Scapegoats of the Empire*, p. 53.

⁶⁵ Witton, *Scapegoats of the Empire*, p. 78.

⁶⁶ Witton, *Scapegoats of the Empire*, p. 93.

Tecumseh Sherman was onto something when he said in 1864: 'War is cruelty and you cannot refine it.'⁶⁷

⁶⁷ Sherman quoted in Marc Wortman, *The Bonfire: The Siege and Burning of Atlanta*, New York, Public Affairs, 2009

Examples from the War on Terror

As shown in the previous section, war has always involved a set of moral ambiguities, and these are the same issues that are present in the War on Terror. But what is new, is that the public is now particularly interested in the soldiers' perspective of the battlefield.⁶⁸ Many autobiographies have been written by soldiers returning home from Iraq and Afghanistan on their experiences. Documentary teams have also interviewed many soldiers in order to get a sense of their experiences. Fortunately, there is an abundance of such material on the War on Terror.

Returning to that moment on the Hindu Kush in 2005, when SEAL Team 10 had to make the call whether or not to execute three unarmed Afghani goatherds. The Geneva Convention is absolutely clear that these men are not defined as enemies and therefore are not legitimate targets. Luttrell states that 'Our rules of engagement in Afghanistan specified that we could not shoot, kill, or injure unarmed civilians. But what about the unarmed civilian who was a spy for the illegal armed forces?'⁶⁹ The capacity for making a moral judgement has therefore been taken away from the soldiers. However, due to the distance from the legislators the consequences of the law are merely another consideration in making the decision, which still ultimately rests with the men on the ground. In the end, the SEALs voted to let the men go. The goatherds then informed the Taliban of the SEALs' position, confirming Luttrell's suspicions that they had ill intentions.

Previously in his book, Luttrell writes about the different ways in which soldiers can identify enemy combatants who are trying to hide amongst the civilian population. There are certain tell-tale signs that only someone with experience can pick up on. For example, Luttrell and his team were looking for a

⁶⁸ The attendance figures for the film adaptation of Chris Kyle's *American Sniper* attest to this. See Phil Hoad, 'American Sniper's Record-Breaking Box Office: Who Saw it and Why', *The Guardian*, 21 January 2015. Accessed 14 October 2015 <<http://www.theguardian.com/film/2015/jan/21/american-sniper-global-box-office-seventh-son-birdman>>

⁶⁹ Luttrell, *Lone Survivor*, p. 165.

Taliban fighter in the midst of an innocent village, and he said 'We wanted the guy who was obviously not a goatherd, as the rest of them were; a young guy who lacked the gnarled look of a mountain farmer.'⁷⁰ It is the kind of knowledge that cannot be legislated for or taught in a classroom, but requires on the ground experience to acquire. Another example that Luttrell mentions is the fact that unarmed Taliban affiliates often disguise themselves as shepherds in order to transport explosives across the Pakistani border because they know it is a violation of the Geneva Convention to attack an unarmed target.⁷¹ A similar example from the War in Iraq found in Chris Kyle's autobiography is that in Fallujah the United States military had to check the hands of civilians for gunpowder residue in order to identify insurgents hiding among the population.⁷² These examples highlight the issues in fighting a modern war against an enemy that does not respect the laws and customs of war.

Soldiers rarely have the amount of time that Luttrell had to deliberate when making moral decisions on the battlefield. Usually a soldier will have to make a split-second decision of whether or not to pull the trigger. In 2003 Chris Kyle, somewhere in the operational area of Nasiriyah, spotted a woman arming a grenade and running towards a column of marines.⁷³ The woman was in civilian dress and looked nothing like what Kyle would consider a target, and yet he was forced to shoot her. As the situation with the insurgency in Iraq developed, it became less clear who was a combatant and who was a civilian.⁷⁴ In fact, the battle of Nasiriyah is a good example of the initial development of the insurgency.

Soldiers like Kyle are not perfect when it comes to defining the enemy, but neither are the rules of engagement. While Kyle and others like him have a certain view of the enemy they feel that they are in the best situation to make the call. For example, Kyle recalls a story in which the insurgents were using unarmed moped riders to scout out American positions in advance of a rocket attack in order to find the

⁷⁰ Luttrell, *Lone Survivor*, p. 164.

⁷¹ Luttrell, *Lone Survivor*, p. 163.

⁷² Kyle, *American Sniper*, p. 138.

⁷³ Kyle, *American Sniper*, pp. 2-4

⁷⁴ Keegan, *The War in Iraq*, London, Hutchinson, 2004, p. 130.

weak spot.⁷⁵ As a soldier on the ground Kyle felt that he was in the best position to analyse the potential threat of a moped rider and requested permission to engage unarmed targets. However, he was denied because under the Geneva Convention unarmed civilians are untouchable. However, like Luttrell's example on the Hindu Kush, it is impossible to know the intentions which makes protecting civilians difficult.

This can also be seen at the level of the average soldier in Iraq. Evan Wright, a reporter from *Rolling Stone* who was embedded with a platoon from First Marine Recon during the initial invasion of Iraq records in his book *Generation Kill* many instances when the rules of engagement became ambiguous and problematic:

The marines have drilled for weeks, studying the Rules of Engagement (ROE). The ROE lay out all the conditions regarding when a marine may or may not fire on Iraqis. The problem is, some Iraqi soldiers will presumably change out of their uniforms and fight in civilian clothes. Others will remain in uniform but surrender. There might be some in uniform surrendering, and others in uniform fighting. On top of this, large segments of the civilian populace are expected to be armed with AKs, so these armed but not hostile civilians will be mixed up with enemy fighters dressed in civilian clothes. Therefore, the usual battlefield rules—shoot guys wearing enemy uniforms; shoot guys with weapons—don't apply. What the ROE boil down to is that if the marines come across a bunch of armed Iraqis, they generally can't shoot them unless the Iraqis shoot at them first.⁷⁶

As Wright observes, the marines are on edge because of the ambiguous nature of the current war on which they are about to embark. They are conflicted by the issues of upholding the law, while at the same time protecting themselves, and winning the war. For example, at the outset of the invasion the officer in charge of the platoon Wright was embedded with, Lieutenant Nate Fick, was explaining the

⁷⁵ Kyle, *American Sniper*, p. 296.

⁷⁶ Wright, *Generation Kill*, pp. 52-53.

rules of engagement to his men. He stated that if a marine feels that his life is being threatened then the use of deadly force is justified, and the facts of the shooting will be analysed, 'not in hindsight, but as they appeared at the time.'⁷⁷ However, later on during the invasion the rules of engagement are changed and become more loosely defined. While informing the marines they have a free hand as it were, Lieutenant Fick reminds them that if they 'cap [sic] an old lady sweeping on her porch, cause you think her broom is a weapon, it's on all of us.'⁷⁸ This shows that even when the rules of engagement are loosely defined, there are many considerations for the actions of soldiers. Another example from Chris Kyle's autobiography also demonstrates this. In Sadr City in 2008, Kyle spotted an insurgent with a rocket-propelled grenade launcher. He took his shot, and waited for another insurgent to come and collect the valuable weapon. However, the one to collect the weapon was a child, and Kyle says 'I had a clear view in my scope, but I didn't fire. I wasn't going to kill a kid, innocent or not.'⁷⁹ Whether it is the moral concern of accidentally killing an innocent person, or the military necessity element of turning the local population against the United States, soldiers feel that they are capable of making moral decisions and resent the idea of being judged by those whom they view as lacking the first hand experience to legislate.

Another example of the difficulty of defining the enemy occurred in the initial days of the invasion, when the men First Marine Recon passed two plain white SUVs marked with red circles. According to Wright, Lieutenant Fick requested permission to detain them in order to find out who they were, because they looked suspicious.⁸⁰ However, his request was denied by the higher command because the rules of engagement, as they stood in the early days of the invasion, stated that only uniformed soldiers could be engaged in any way. So, the white SUVs were allowed to pass. It turned out later on that the

⁷⁷ Wright, *Generation Kill*, pp. 52-53.

⁷⁸ Wright, *Generation Kill*, p. 117.

⁷⁹ Kyle, *American Sniper*, p. 338.

⁸⁰ Wright, *Generation Kill*, pp. 88-9.

men driving the SUVs belonged to Saddam's Fedayeen and were going around executing deserters and committing other atrocities against the civilian population.⁸¹ The military historian, John Keegan, states in his book on the War in Iraq that the numbers of irregular fighters such as the Fedayeen, were difficult to calculate, because of the irregular make up of the organisation.⁸² But the men of First Marine Recon were powerless to even exercise their judgment of what they correctly perceived as a suspicious group of individuals because of the clear black and white nature of the rules of engagement. Similar to both Kyle's story about the moped riders in Ramadi and Luttrell's story about how to identify Taliban insurgents in Afghanistan, this shows that the rules of engagement remove an element of judgement from the soldiers on the ground. These are examples of when soldiers had it right, but those times when they were wrong must also be considered.

This is not to suggest that soldiers are perfect arbiters of morality in every situation, or that if the decision is simply left to the men on the ground then innocents will always be protected. Soldiers make mistakes, and like in any organisation there are incompetent individuals and borderline psychopaths. Another example from Wright's book is a soldier named Lance Corporal James Trombley, who constantly talked about how he wanted to fire his weapon, or was complaining about missing out on the opportunity to shoot in the last engagement.⁸³ On 27 March 2003 the marines were given orders to seize an airfield that was defended by tanks.⁸⁴ The marines were driving along a dirt road towards their objective and they were given the order that their rules of engagement were reduced dramatically: all individuals in the area were declared 'hostile.'⁸⁵ This is what Walzer means when he talks about 'free-fire zones' in relation to the Vietnam war; zones where the rules of engagement are removed almost

⁸¹ Wright, *Generation Kill*, p. 94.

⁸² Keegan, *The War in Iraq*, pp. 129-30.

⁸³ Wright, *Generation Kill*, p. 17.

⁸⁴ Wright, *Generation Kill*, pp. 216-17.

⁸⁵ Wright, *Generation Kill*, p. 218.

entirely, and in which any individual in the area is considered hostile.⁸⁶ In this situation, Trombley spotted a group of individuals in the distance and fired upon them without stopping to confirm whether or not they were actually hostile, claiming he was 'shooting motherfuckers [sic] like it's cool.'⁸⁷ It turned out later on that those he had shot were indeed innocent civilians, one of whom was a small child.⁸⁸ While Trombley's comrades worked hard to save the boy's life, it is clear that Trombley's desire to fire his weapon clouded his judgement.⁸⁹ A notable example from the war in Afghanistan is the Panjwai Massacre in 2012, when United States Army Staff Sergeant Robert Bales walked off his base and murdered sixteen innocent Afghans for no apparent reason.⁹⁰ These examples are clear evidence that not every soldier is perfect. Whether it is misjudgements, or simple psychosis, there are soldiers out there who harm innocents.

Then there are racial and cultural considerations to take into account when assessing the writings of soldiers like Kyle and Luttrell, and the attitudes of the marines as recorded by Wright. As previously shown, the racial element in soldiers' definition of the enemy is nothing new in war. Kyle states in the beginning of his autobiography that he refers to the enemy as 'savages.'⁹¹ However, he makes it clear that he does not mean all Iraqis in general are savages, but rather he means the insurgents who commit violent acts on the civilian population. But, Kyle clearly has his own views on what a combatant should be that do not necessarily line up with the rules of engagement. He said he was surprised at having to shoot a woman in Nasiriyah, as he expected all combatants to be male.⁹² He also mentions an instance in which he was clearing houses in Ramadi in 2006 and he came across a group of white men in fatigues

⁸⁶ Walzer, *Just and Unjust Wars*, p. 190.

⁸⁷ Wright, *Generation Kill*, p. 219.

⁸⁸ Wright, *Generation Kill*, p. 243.

⁸⁹ Wright, *Generation Kill*, p. 231.

⁹⁰ Taimoor Shah, "Days of Horror and Grief: Reporting the Panjwai Massacre", *The New York Times*, 9 November 2012. Accessed 11 October 2015 <http://atwar.blogs.nytimes.com/2012/11/09/days-of-horror-and-grief-reporting-the-panjwai-massacre/?_r=0>

⁹¹ Kyle, *American Sniper*, p. 4.

⁹² Kyle, *American Sniper*, p. 3.

in a building.⁹³ He hesitated for a moment when he saw the colour of their skin, but ultimately decided to shoot them. The men turned out to be Chechen Muslims who had come to Iraq to take part in the guerrilla war against America. Clearly, Kyle had a certain, if not stereotypical, view of what the enemy in that situation should look like and his adherence to that black and white kind of definition nearly got him killed. In yet another instance, Kyle recalls a heated exchange he had with an army investigator who was looking into one of his kills. Kyle claims that the man he shot was carrying an assault rifle, but a crowd formed around the man's body and carried away the weapon before its presence could be confirmed.⁹⁴ The man's wife complained to the army, claiming that he was just carrying his Koran. According to Kyle, he said in response to this allegation 'I don't shoot people carrying Korans. I'd like to, but I don't.'⁹⁵ While this exchange should be viewed in the proper context of the heated exchange, it does reveal an inherent cultural bias.

What is clear from all this is that there is no clear answer. War is ambiguous. Legislators will continue to write laws to regulate the actions of soldiers in the field, and the men on the ground will continue to resent them for it. When identifying and defining the enemy, soldiers like Luttrell and Kyle feel that they are in the best position to judge the intentions of individuals posing as civilians. Analysis of minor, seemingly insignificant events, is the best way for the historian to understand the moral ambiguity of the decisions that soldiers have to make. While Luttrell and Kyle may be writing from a biased perspective, their insights are invaluable to the scholar interested in the rules of engagement and defining the enemy.

⁹³ Kyle, *American Sniper*, p. 163.

⁹⁴ Kyle, *American Sniper*, p. 198.

⁹⁵ Kyle, *American Sniper*, p. 199.

Defining the Enemy and Pulling the Trigger

Soldiers are not perfect, but neither are legislators. The purpose of having laws to regulate warfare is to mitigate the destructive forces of the military, protect innocent lives and to reduce the suffering generated by war as much as possible. With the shift in focus in the international laws of war after World War Two from justice to humanitarianism, universal principles have been applied to the rules of engagement which, in theory, are supposed to protect the lives of innocent civilians. However, soldiers returning from the War on Terror have written about how much they resent the rules of engagement and the fact that their actions are being judged by individuals who have no experience in the field. But, the issues that keep recurring in the War on Terror are just new manifestations of old problems that have always existed in war. With or without laws to guide them, soldiers have always had their own ways of defining the enemy, whether that be through the application of racial or cultural stereotypes (which are in and of themselves problematic), or the actions of the enemy.

In war soldiers are put into situations where they have to make moral judgements. The kinds of rules which work on paper do not necessarily correspond to the developing situation on the ground. When faced with the life or death decision of whether or not to pull the trigger, the last thing on a soldier's mind is Vattel's *Law of Nations*, or even Clausewitz's *On War*. Therefore, the only way to understand their attitudes is to analyse their experiences through seemingly insignificant events that are ignored by the higher theories of law. Through such analysis it becomes clear that the enemy cannot be defined in universal terms. There are factors that just cannot be legislated for because of knowledge that is only attainable through firsthand experience. As such, then, there is a fundamental problem in the assumption that legislation can anticipate and cover all eventualities that take place on the field of battle.

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