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The Moral Structure of War

The functional utility of the principle of
discrimination

Submitted in Fulfillment of the Doctor of Philosophy Degree in International Peace
Studies

November 2012


By

Dylan Lee Lehrke

Declaration

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Summary

This dissertation sets out to conduct a utilitarian analysis of the moral-legal principles of warfare and more specifically to uncover the *functional utility of the moral principle of distinction*. The dissertation is structured around the conducting of a moral genealogy. Thus, chapter one examines the conditions of life in which the moral rules of war arose. This means looking at the nature of death, violence, civilization, and war. One feature emerges as being at the core of all of these conditions – mimesis.

Chapter two then explores the contending discourses of morality in warfare, which converge around the question of who can kill whom. Thus, discrimination is at the core of a large majority of moral-legal rules of warfare. Chapter three uncovers the essential feature of the idea of discrimination and the immunity that is an essential part of this practice. Immunity, we find, is not based on guilt and/or innocence but on mimetic roles and reflects efforts to control those roles, and thus control mimetic violence.

Chapter four examines the mechanism of power that is part of the practice of discrimination. This allows us to see that the Clausewitzian *Social Trinity is the structural medium and outcome of the practice of discrimination*. Thus, the Social Trinity can be viewed as a system by which mimetic violence is controlled, something largely accomplished by a division of power. This division is the basis of discrimination. Importantly, the division designates an ‘immune’ class as non-reciprocal and thus disempowers them, although they retain power in other forms.

Chapter five looks first at how the human self-preservation instinct and reluctance to kill manifest themselves in war. It then unpacks more fully how the structure of discrimination counters these tendencies and thus enables limited ingroup killing and dying. The focus here is on soldiers acting as surrogate victims and victimizers so that all do not have access to violence. In order to maintain this fence around violence, the individual soldier’s self-interest must be subsumed and the form of violence agreed upon by all.

Chapter six looks beyond the ingroup to explore how discrimination limits outgroup killing and dying. It focuses on the dynamics of escalation, which can obscure the objectives of war. The most important of these dynamics is the process by which soldiers target indiscriminate surrogates, leading to an expansion of the violence and often the strengthening of the adversary group. Following from this, the chapter concludes by examining how one’s own actions enable one’s enemies.

The final chapter looks back at the ways in which the Social Trinity and the moral-legal principle of discrimination aim to counter the dynamics that were previously described. Thus, they aim to limit escalation, control violent emotion, keep adversaries focused on the proper (military) objects, and avoid indiscriminate surrogates. These dynamics mean that moderation towards Others, and discrimination in particular, is essential for long-run success.

This dissertation thus concludes that *prohibitions in war, including those that comprise discrimination, help to control mimetic violence and make war a usable group instrument. Discrimination is thus a condition for existence without which society could not survive.*

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Introduction and Methodology

A Complex Task

In the book *Fiasco: The American Military Adventure in Iraq*, by Thomas E. Ricks, there is an account where a Major General leaves his office and sees a group of Marines watching the news. On the television are the first broadcast images of prisoner abuse at Abu Ghraib – pictures of smiling U.S. soldiers perched over piles of naked inmates and another of a hooded man standing on a box with electrical cables attached to his hands.¹ When the General asks what is going on, a 19-year-old Lance Corporal replies bluntly, “Some a**holes just lost the war for us.”² What this low-ranking Marine was expressing was his belief that the actions at Abu Ghraib would adversely impact U.S. objectives. The implication is that morality plays an important role in winning a war or at least winning the asymmetric type of war being fought in Iraq at the time. The Corporal’s opinion was serendipitously seconded only days later with the release of a new U.S. military doctrine on foreign internal defense, which pointed out that “the moral high ground may be just as important as the tactical high ground” in some operations.³

The level of attention given to moral requirements in so-called asymmetric wars (much of it in the context of the Global War on Terror and the wars in Iraq and Afghanistan) implies that such operations need morality to a greater extent than conventional wars. Indeed, this is explicitly stated by some commentators. King’s College’s David Whetham, for example, observes, “Operating within the rule of law is essential during any military campaign, but arguably, during a counterinsurgency (COIN) campaign, it is even *more essential*...”⁴ This emphasis is often directly tied to the strategy of winning hearts and minds,⁵ which is a regularly cited path to victory in asymmetric operations.⁶

¹ Although Ricks does not make clear which cable news show the Marines were watching, *60 Minutes II* broke the story on April 28, 2004 and used the images of naked prisoners piled on one another and that of the so-called “hooded man.” The archived report, including video, is available at Rebecca Leung, “Abuse Of Iraqi POWs By GIs Probed” *60 Minutes II* (11 February 2009). Accessed 21 July 2001, available at <http://www.cbsnews.com/stories/2004/04/27/60II/main614063.shtml>.

² Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq* (London: Allen Lane, 2006), 290.

³ United States Joint Chiefs of Staff, *JP 3-07.01 Joint Tactics, Techniques, and Procedures for Foreign Internal Defense (FID)* (Washington DC: Joint Chiefs of Staff, 2004), V-30, available at http://www.fas.org/irp/doddir/dod/jp3_07_1.pdf.

⁴ David Whetham, “Killing Within the Rules,” *Small Wars & Insurgencies* 18, no. 4 (December 2007): 721; See also Michael N. Schmitt, “The Vanishing Law of War: Reflections on Law and War in the 21st Century,” *Frontiers of Conflict* 31, no. 1 (Spring 2009). In his concluding thoughts, Schmitt writes that the solution to combating modern asymmetric war is “not in lowering conduct to the level of their lawless opponent, but rather in heightening it, beyond even what the law of war requires.”

Yet not everyone agrees that the moral-legal rules of war are more essential in modern wars. In fact, some argue the opposite, that the laws of war (LOW) are ill-suited for modern operations, in particular those meant to combat terrorism and insurgencies. Most infamously, the 2002 Alberto Gonzales memo, which paved the way for the U.S. to use ‘enhanced interrogation techniques,’ referred to the Geneva Conventions as “quaint” and “obsolete.”⁷ Oxford’s Hugo Slim notes that many believe a policy of atrocity “is particularly effective in so-called asymmetric conflicts.”⁸

It is an easy matter to find comments that cast doubts on the price of immorality and benefits of morality. Even the costs of the Abu Ghraib abuses, something often cited as being without a doubt detrimental to U.S. interests, are questioned by some. According to a recent *Congressional Quarterly* article, “Defense Department data and independent experts confirm there is no clear link between the Abu Ghraib scandal and violence in Iraq... When violence and troop deaths rose significantly in later months, it was due to a variety of factors, not just Abu Ghraib...”⁹ The article quotes the Brookings Institution’s Peter W. Singer, who believes the Abu Ghraib abuses did facilitate insurgents’ recruiting, but admits it is almost impossible to prove, saying “It’s too complex.”¹⁰

However, accepting the complexity of the task does not absolve us of continuing to try to find an adequate answer to any question or explanation of any dynamic. We must

One of the earliest expositions on COIN too stresses that “Since antagonizing the population will not help, it is imperative that hardships for it and rash actions on the part of the forces be kept to a minimum.” Lt. Col. David Galula, *Counterinsurgency Warfare: Theory and Practice*, Forward by John A. Nagl, PSI Classics of the Counterinsurgency Era (Westport, CT: Praeger Security International, 2006 (originally published in 1964)), 76.

⁵ Whetham for example cites this.

⁶ William B. Caldwell, IV, and Steven M. Leonard, “Field Manual 3-07, Stability Operations: Upshifting the Engine of Change,” *Military Review* 88 (July/August 2008): 6. They write that “The allegiance, trust, and confidence of populations will be the final arbiters of success.”

⁷ Alberto Gonzales, “Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict With Al Qaeda and the Taliban,” (25 Jan 2002), available in Karen J. Greenberg and Joshua L. Drate, eds., *The Torture Papers: The Road To Abu Ghraib* (Cambridge: Cambridge University Press, 2005), 119.

The UK too concluded the Conventions were failing because “they lack clarity and are out of date.” House of Commons Foreign Affairs Committee, “A Visit to Guantanamo,” Second Report of the Session 2006-07 (21 Jan 2007), 3. Accessed 3 November 2011 available at

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmfa/44/44.pdf>.

⁸ Hugo Slim, “Why Protect Civilians? Innocence, immunity and enmity in war,” *International Affairs* 79, no. 3 (2003): 497.

⁹ John M. Donnelly, “No Proof Detainee Photos Led to Military Deaths” *Congressional Quarterly Today Online News* (16 June 2009), available at

<http://www.cqpolitics.com/wmspage.cfm?docID=news-000003143986>

¹⁰ Ibid.

endeavor to answer this question, and do so in a way that does justice to the complexity of the issue without getting lost within this complexity. How can this be accomplished? The solution is social theory. While true that we may never know the exact result of an action, by using social theory, we can get at least a firm grasp on the consequences. For example, while it is hard to assess the precise effect of events such as those that took place at Abu Ghraib and Haditha, it is easier to conclude that from a theoretical perspective, humiliation is a powerful recruitment tool. That this is the case has been well discussed by authors such as Jessica Stern.¹¹ They are not trying to be positivist but instead aim to show how social theory helps us understand a particular course of events. We can thus move forward knowing that developing a broad sociological theory can provide insight into the dynamics of morality and immorality in war.

With this in mind, broadly stated, the foundational question discussed in this dissertation is: “What is the utility of morality in warfare?” which of course naturally includes asking “What is the disutility of immorality in warfare?” This dual-natured question is required because morality enables action while also proscribing other actions. That said, in order to consider the question most pragmatically, we must ask: What is the (dis)utility of (im)morality? This takes into consideration the possibility that immorality may have utility and morality disutility.

Two Opposing Views

Observations on the value of morality and detriments of immorality extend beyond specific cases, such as Abu Ghraib, and are often posited as broadly applicable principles. According to philosopher R.B. Brandt, writing in 1972, news of atrocities and ill-treatment of civilians in any war may stiffen resistance and invite retaliation. Indeed, these seem the most common observations on the results of immorality. Brandt thus concludes that mistreating civilians “constitutes a military liability.”¹² The exact costs reach an apocalyptic level according to some. Martin Van Creveld, arguably the most eminent military thinker since Carl Von Clausewitz, warns that, “Collectively, a society that goes against its own traditional rules on a large scale and during a long period will end up losing its capacity to wage war and may even disintegrate.”¹³ Unfortunately, it was not the

¹¹ See Chapter II of Jessica Stern, *Terror in the Name of God* (New York: Harper Collins, 2003).

¹² R. B. Brandt, “Utilitarianism and the Rules of War,” *Philosophy and Public Affairs* 1, no. 2 (Winter, 1972): 155.

¹³ Martin Van Creveld, “The Persian Gulf Crisis of 1990-91 and the Future of Morally Constrained War,” *Parameters* (1992): 39.

purpose of either Brandt or Van Creveld to expound on these matters and build a theory showing why immorality is so costly.

In addition to those who believe immorality in war is a military liability, there are others who focus on the value of the laws of war regardless of military utility. Telford Taylor, U.S. Chief Counsel at the Nuremberg Trials, has written that, “Violated or ignored as they often are, enough of the rules are observed enough of the time so that mankind is very much better off with them than without them... If it were not regarded as wrong to bomb military hospitals, they would be bombed all of the time instead of some of the time.”¹⁴ It cannot be assumed from this statement that Taylor believes the laws have military utility, but his language (referring to mankind being better off) indicates that he does believe they have a higher level of utility, for societies and the world as a whole.¹⁵

However, Taylor’s comment on the bombing of hospitals is interesting in that it implies there is a reason they would be targeted if it were not regarded as wrong. He does not say what these reasons might be but the comment could be construed as an admission, or a worry at the least, that such atrocities could have some utility or fulfill some need (even if perhaps only a psychological one). Such worries are not unusual. According to Harvard’s Ivan Arreguín Toft, even among advocates of moral action in war, there is often a “suspicion that... barbarism is a *generally* effective way to reduce the costs of achieving political objectives.”¹⁶

This leads us to a view opposite of that presented just above, a view that instead holds that morality has no utility in war. Historian Geoffrey Best splits these ‘pessimists’ into two groups. The first view is “that it [humanitarian law] does no harm but no particular good, thus is useless.”¹⁷ In other words, this view sees morality as having no practical utility. Much of this critique is proffered by those who support international law but are pessimistic about its humanitarian effects. Since the stated goals of the LOW are to ease

¹⁴ Malham Wakin, ed. *War, Morality, and the Military Profession* (Boulder, CO: Westview Press, 1986), 429.

¹⁵ This can be concluded from the statement that “mankind is very much better off.”

¹⁶ Ivan Arreguín-Toft. “Self-Inflicted Wounds: Evaluating the Costs of Barbarism as a Coercive Strategy in War” *Paper presented at the annual meeting of the International Studies Association, Hilton Hawaiian Village, Honolulu, Hawaii* (March 2005), 3.

¹⁷ Geoffrey Best, *Humanity in Warfare: The modern History of the International Law of Armed Conflicts* (Methuen: London, 1980), 10, 11.

the evils of war,¹⁸ if they fail to do so (itself a contentious assertion), the laws (and morality underpinning them) are useless. There is no consideration that laws and morality may have other functions not pertaining to the perceived moral good of easing pain.

The second criticism that Best points out comes from those who believe humanitarian law “does harm [to the activity of war] and so should be abolished as a nuisance.”¹⁹ Professor David Forsythe observes that, “It has been privately argued by some government officials that the ICRC [International Committee of the Red Cross] has such an extensive view of humanitarian law in armed conflict that the ICRC and ‘its law’ are getting in the way of the process of war.”²⁰ The belief that the moral codes and laws of war are a “nuisance” is partially predicated on the idea that war requires immorality and that, in fact, immoral activities have utility in helping achieve war objectives. According to international law expert Simon Chesterman, “The brutal truth is that the laws of war are often violated simply because they achieve a particular objective.”²¹

Those who hold this view are not necessarily immoral, but consider the ends of war to be ‘good’ and more important than the means of war, which by their nature are violent and even evil. Thus, anything which hinders the violent means simultaneously hinders the ‘good’ end and so should be dispensed with. As Arreguín Toft states, “embedded within the logic of barbarism is [what some consider] a higher morality.”²² This philosophy of asceticism or *politique du pire* makes a Shakespearian argument that one “*must be cruel, only to be kind: Thus bad begins and worse remains behind.*”²³ The purpose of war (whatever it is) then trumps the purpose of law and morality.

Attempts to Examine the (Dis)Utility of (Im)Morality

While the above observations indicate the perceived significance of morality and counter with the compelling nature of immorality in warfare, very little comprehensive analysis has been conducted on the issue of utility. Prominent Just War theorist Michael Walzer points out that, “the [moral] restrictions put on armies trying to win wars have never been

¹⁸ “Laws and Customs of War on Land (Hague IV),” (1907) Available from http://avalon.law.yale.edu/20th_century/hague04.asp

¹⁹ Best, *Humanity in Warfare*, 10, 11.

²⁰ Karma Nabulsi, *Traditions of War: Occupation, Resistance, and the Law* (Oxford University Press: Oxford, 1999), 170.

²¹ Chesterman, 2004, 37.

²² Arreguín-Toft, “Self-Inflicted Wounds,” 16.

²³ William Shakespeare, *Hamlet*, Act 3; Scene 4.

expounded in utilitarian fashion.”²⁴ This statement, written in 1977, remains generally true today. There has naturally been some academic effort exploring the dynamics of civilian-targeting strategies and atrocity. However, as Alexander Downes and Kathryn McNabb Cochran point out, “Despite a fruitful literature that has arisen in the last decade to explain the causes of civilian targeting, the effectiveness of civilian victimization for achieving belligerents’ war objectives remains an open question...”²⁵ They of course, endeavor to explore the matter, albeit with results they themselves admit are mixed.

Some statistical analysis, such as that by Arreguin-Toft, indicates that the weak benefit more than the strong from using what are considered immoral and illegal approaches to war.²⁶ Still, Arreguin-Toft concludes that “*the range of circumstances in which barbarism benefits its perpetrators is extremely narrow*,”²⁷ being limited primarily to when it can be pushed to extremes, and it is often counterproductive.²⁸ Downes and Cochran’s statistical analysis concludes that “states that inflict civilian victimization on their opponents are significantly more likely to win the wars they fight.”²⁹ Yet they admit their findings are unsatisfactory, observing that “A preliminary examination of the cases, however, suggests that the effect of civilian victimization on war outcomes is more ambiguous.”³⁰ Their case studies indicate that civilian victimization appears to ‘work’ for a group primarily when their opponent is already losing militarily or “facing dire military circumstances.”³¹ Statistical examinations thus appear to have fallen short or, at the very least, are in need of support from alternative research in order to be fully understood.

²⁴ Michael Walzer, *Just and Unjust wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000), 38. He also appears to doubt this could even be done.

²⁵ Alexander B. Downes and Kathryn McNabb Cochran, “Targeting Civilians to Win? Assessing the Military Effectiveness of Civilian Victimization in Interstate War” in *Rethinking Violence: States and Non-State Actors in Conflict* eds. Erica Chenoweth and Adria Lawrence (Cambridge: MIT Press, 2010), 1.

²⁶ Arreguin-Toft, “The [F]utility of Barbarism,” 13.

²⁷ Ivan Arreguin-Toft, *How the Weak Win Wars: A Theory of Asymmetric Conflict*. (Cambridge: Cambridge University Press, 2005), 20

²⁸ Ivan Arreguin-Toft, “The [F]utility of Barbarism: Assessing the Impact of the Systematic Harm of Non-Combatants in War,” Paper Presented at the Annual Convention of the American Political Science Association, Philadelphia, Pennsylvania (August 2003), 35.

²⁹ Downes and Cochran, “Targeting Civilians to Win?” 25-26.

³⁰ Downes and Cochran, “Targeting Civilians to Win?” 26. They do admit that their work “represents a first cut at answering some of the difficult questions surrounding the effectiveness of civilian victimization in war.” 56.

³¹ *Ibid.*

In a similar vein, there have been a number of studies that have attempted to develop a sort of “insurgent math.” These range from the simple:³²

$$\text{Backlash Coefficient (B.C.)} = \frac{\text{New Enemies Created}}{\text{Old Enemies Eliminated}}$$

And they extend to the complex³³:

$$SIGACT_{dt} = \alpha + \sum_{n=0}^4 \beta_t(\text{CivCas}_{dt-n}^{ISAF}) + \sum_{n=0}^4 \gamma_t(\text{CivCas}_{dt-n}^{INS}) + \delta_d + \mu_t + \varepsilon_{dt}$$

The main problem with the statistical studies is that they don’t reveal the process by which morality or immorality is translated into failure or success. What is needed is to develop a theory which can start to explain the functions of morality in war and thus reveal the way in which morality and immorality help or hinder the achievement of war objectives. With a proper theory, the questions raised by prior studies can be better answered and the conclusions of these studies better explained.

In contrast to these statistical examinations, other studies of this issue are simply too general. This includes Caleb Carr’s *The Lessons of Terror*, which argues that “The nation or faction that resorts to warfare against civilians most quickly, most often, and most viciously is the nation or faction most likely to see its interests frustrated and, in many cases, its existence terminated.”³⁴ Carr offers a compelling thesis but fails in the same way as the statistical studies – not using any analytical lens or offering a theory that displays the process. Indeed this is the general problem across the literature.

Military Consideration of Morality

It is important to note that military thinkers have not entirely ignored morality as being a possibly important aspect of war. Military theorist J.F.C. Fuller for example believed there were three spheres of war – physical, mental, and moral.³⁵ This image was adapted and expounded upon by military strategist John Boyd. The physical aspects are those that

³² Guy Burgess, Heidi Burgess and Michelle Maiese. “Revenge and the Backlash Effect.” *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Research Consortium, University of Colorado, Boulder. Posted: July 2004 <<http://www.beyondintractability.org/essay/backlash/>>.

³³ Luke N. Condra, Joseph H. Felter, Radha K. Iyengar, and Jacob N. Shapiro “The Effect of Civilian Casualties in Afghanistan and Iraq,” *NBER Working Paper* No. 16152 (July 2010) p.14. This is supposed to estimating a short-run relationship between civilian casualties and violence.

³⁴ Caleb Carr, *The Lessons of Terror: A History of Warfare against Civilians* (New York: Random House, 2002), p. 12.

³⁵ J.F.C. Fuller, *The Foundations of the Science of War* (London: Hutchinson & Co., Ltd., 1926), 58.

people typically equate with war – smart bombs, armored vehicles, and the Third Infantry Division rolling into Baghdad. The mental aspect is largely about deciding how to employ the physical assets faster than the enemy can make their choices regarding response. It also includes aspects of psychological operations that aim to shape opinion, although these types of activities also fall into the moral realm. The moral aspect comprises the codes of conduct that “constrain, as well as sustain and focus, our emotional/intellectual responses.”³⁶ British Military Doctrine has followed Fuller and Boyd’s example and includes physical, conceptual, and moral components. The UK’s Army Doctrine Publication Volume 5 ‘Soldiering: The Military Covenant’ states “consistent and sustainable national strategy, and true and enduring success on operations depend on moral strength – in war on moral dominance over an enemy – not just to overcome the adversary, but to establish the conditions for lasting peace.”³⁷ Yet, despite being identified as important, the doctrine does not go much further.

Even Clausewitz, shortly after denigrating the utility of morality, hints at some utility, claiming that, “if we find civilized nations do not put their prisoners to death, do not devastate towns and countries, this is because their intelligence exercises greater influence on their mode of carrying on war, and has taught them more effectual means of applying force than these rude acts of mere instinct.”³⁸ Our purpose is to try and figure out why these less “rude” acts are more “effectual,” if they actually are, as Clausewitz claims.

The Faults of Positivism

International relations scholarship has been recently dominated by positivism, quantitative tools, and the search for causation.³⁹ Even when looking specifically at issues of morality and immorality, we find a strong tendency to use statistical analysis to find causation and

³⁶ Boyd, *Strategic Game*, 35.

³⁷ Ministry of Defence, *Soldiering – The Military Covenant, Army Doctrine Publication, Volume 5* (London: Ministry of Defence, 2000), 1-3.

³⁸ Clausewitz, *On War*, 7.

³⁹ Steve Smith “Positivism and Beyond” in *International Theory: Positivism and Beyond* edited by Steve Smith, Ken Booth, and Marysia Zalewski (Cambridge University Press: Cambridge, 1996), 11-44; See also Stanley Hoffman, “An American Social Science: International Relations,” *Daedalus* 106 (summer 1977), 41-60;

Steve Smith, “Paradigm Dominance in International Relations: The Development of International Relations as a Social Science,” *Millennium* 16 (Summer 1989), 189-206;

Daniel Maliniak, Amy Oakes, Susan Peterson, and Michael J. Tierney, “International Relations in the US Academy,” *International Studies Quarterly* 55, no. 2 (June 2011): 454-6.

<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2478.2011.00653.x/pdf> (Maliniak, et. al. find that almost 90 percent of articles published in major international relations journals in 2006 were positivist in epistemology. Also “more articles published in the top journals currently employ quantitative tools than any other methodological approach.” pp.437.)

predictive formulas. This tendency is not helped by the fact that, as U.S. political pundit Steve Clemons points out, “the Pentagon is most easily convinced by solid empirical data.”⁴⁰ This positivist desire is not new. Military thinkers from across the globe have often sought to find a science of war. Dietrich von Bülow’s 1809 tome “The Spirit of the Modern System of War” attempted to use Newtonian mechanics to show how military force is subject to the law of gravity and further derived military principles from geometric rationales.⁴¹ Fuller in the inter-war years also sought a science of military operations, hoping to “do for war what Copernicus did for astronomy, Newton for physics, and Darwin for natural history.”⁴²

This attempt to examine social phenomena in this manner has yielding some excellent research and insights but also has major limitations. Sociologist Andrew Sayer notes that “social science has been singularly unsuccessful in discovering law-like regularities.”⁴³ Thus, it is little surprise that this failing is equally true in the field of war studies and, as one commentator concludes, “After centuries of thought, Man has failed to observe any strict relation between cause and effect on the battlefield.”⁴⁴ These penchants for the positive seem particular odd in light of the fact that Clausewitz himself made clear that for war “Positive theory is impossible: With materials of this kind we can only say to ourselves that it is a sheer impossibility to construct for the art of war a theory which, like a scaffolding, shall ensue to the chief actor an external support on all sides.”⁴⁵ Thus, he concludes that war “belongs not to the province of Arts and Sciences, but to the province of social life.”⁴⁶ Similarly, morality exists in the realm of social activity. This further buoys the choice to approach the question of utility through a sociological lens.

A More Constructivist Approach

The social nature of war provides an indication of the ways to examine the activity of war, through a sociological lens. But more than this, it helps us to realize even early in the examination that morality will be an essential element of war. Since war belongs in the

⁴⁰ Steven Clemons, “US Bases Abroad Trigger Suicide Terrorism: Are There Other Options?” *The Huffington Post* (5 October 2010) http://www.huffingtonpost.com/steve-clemons/us-bases-abroad-trigger-s_b_750774.html

⁴¹ Azar Gat, *A History of Military Thought: From the Enlightenment to the Cold War* (Oxford: Oxford University Press, 2001), 84-94.

⁴² J.F.C. Fuller, *The Foundations of the Science of War* (London: Hutchinson & Co., 1926), 18.

⁴³ Andrew Sayer, *Method in Social Science: A Realist Approach* 2nd ed (London: Routledge, 1992), 2.

⁴⁴ Jim Storr, “Neither Art Nor Science – Towards A Discipline Of Warfare” *RUSI Journal* (April 2001): 41.

⁴⁵ Clausewitz, *On War*, 91.

⁴⁶ *Ibid.*, 102

realm of the social, we immediately get the sense that emotions and relationships will be vital. Morality then is vital because of how it shapes emotions and guides relationships.

Our approach can also be characterized as constructivist. This is counter to an ahistorical and objectivist approach. This is not to deny objective reality in full. Of course the bullet exists regardless of how we perceive the world but what is important is the meaning attributed to the bullet and our reaction. An essential tenet of constructivism that is important to bear in mind throughout this examination is “that the identities and interests of purposive actors are constructed by these shared ideas rather than given by nature.”⁴⁷ Thus, there are no actors who are naturally immune. Instead, immunity is constructed. Also, civilization has constructed what is right. This is not meant to be purely relativist for indeed we find that there are a limited number of viable moralities and that certain moralities have a distinct advantage over others. Thus, one cannot assert any morality or, more accurately, if one chooses certain moralities, one is not likely to live long.

Locating this Dissertation in IR Theory

This examination must be rooted in a philosophical framework that does *not* assume that morality and war are mutually exclusive. Even if, in the end, the analysis indicates that indeed the functions of morality run counter to the functions of war (or of a particular war), the interrogation of this question cannot begin with this assumption. To do so would negate the validity of the very question being posed. Instead, one must be open to the possibility that morality is actually an essential part of war, or that, as ethicist Stanley Hauerwas has suggested, “*War is a moral practice.*”⁴⁸ What he meant by this was not that war was ‘good’ or ‘admirable’ but that war is morally complex, that it is an arena of moral activity, that it may satisfy moral needs, and it is thus subject to moral deliberation. This dissertation assumes this to be true and indeed we find that Hauerwas’s statement is a key to understanding the role of morality in war.

Given the need to give equal weight to war and morality, the discussion within this dissertation falls closest to the philosophical framework of Just War Theory (JWT), which maintains that one can talk about war in moral terms. This is something many scholars

⁴⁷ Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 1.

⁴⁸ Stanley Hauerwas, “Sacrificing the Sacrifices of War” in *Religion and the Politics of Peace and Conflict* edited by Linda Hogan and Dylan Lee Lehrke (Eugene, Oregon: Pickwick Publications, 2009), 83.

(within international relations, peace studies, and political science) disagree with because (1) JWT argues that war can be justified, something that sets it apart from pacifism, and (2) it also insists that war is always subject to moral considerations, something counter to realism.⁴⁹ The philosophical assumptions of pacifism and realism do not lend themselves to a utilitarian assessment of morality in war. Thus, it is little surprise given realism's dominance within international relations (and to some extent within military science) that scholars within that field have generally avoided any utilitarian inquiries. As Ward Thomas points out "Mainstream theories of international relations have a difficult time accounting for ethical norms because their underlying theoretical assumptions do not accommodate them."⁵⁰

Given the assumptions of realism, of an anarchic environment in which self help is the sole recourse to gain power and survival is a zero-sum competition, morality would appear to be foolish. Thus, from the Melian Dialogue to the Bush Doctrine, morality has been given short shrift because it takes into accounts the interests of others and restrains force.

Bernard Brodie, best known as a nuclear strategist, wrote in 1973 that "the morality or immorality of acts of war is not a popular subject among the military and their civilian associates, nor for that matter among writers on strategy. It makes the military uneasy and defensive, ready to dismiss the troubling issue whenever it arises, either by asserting its irrelevancy or by falling back on some convenient sophistry."⁵¹

Like realists, pacifists too do not generally conduct utilitarian assessments of moral rules of war. This is due to the basic pacifist assumption that killing and war are always wrong. Thus, the utility of immorality is irrelevant, as immoral actions are always wrong, and the utility of morality is equally immaterial, as moral actions do not spring from, nor should they be motivated by, consideration of utility.

Thus, as Arreguín-Toft points out, "neither camp has devoted resources to measuring the impact of barbarism on the costs of achieving stated objectives because both sides consider the answer to the question of barbarism's utility to be *axiomatic*."⁵² Of course many pacifist and realist scholars do discuss the relationship between morality and war, but they

⁴⁹ Walzer has made this observation.

⁵⁰ Ward Thomas, *The Ethics of Destruction: Norms and Force in International Relations* (Ithaca: Cornell University Press, 2001), 3.

⁵¹ Bernard Brodie, *War and Politics* (London: Cassell, 1973), 45-46.

⁵² Arreguín-Toft. "Self-Inflicted Wounds," 3.

most often enter into the discussion adhering to assumptions that would skew any utilitarian assessment – giving pre-ordained higher value to either war or morality and assuming either that war is bad for morality (pacifists) or morality is bad for war (realists) simply because the one alters the preferred form of the other.

Unsurprisingly, scholars within the neoliberal school are more comfortable with the JWT assumptions, as they commonly accept that morality can be a valuable part of power politics, albeit in the form of soft power. However, too often norms are seen as sources of power simply because they are norms.⁵³ We must ask: why did they become norms? Why did they emerge in the first place if they didn't have value without being widely accepted? Surely we were not simply being forward thinking, following the future norm in hopes that one day it would be widely accepted but until then we would suffer. They must have had utility prior. Thus, it is no surprise that Arthur Danto muses that “It would be interesting to question why there is this convention at all, how we make distinctions between killers and warmakers, and why warmakers should be entitled to special treatment if mere killers are not.”⁵⁴ This is the question we are picking up.

The common ground between realists (martialists as well) and pacifists is an agreement that war and morality/law, do not go together. The pacifist will quote Immanuel Kant, who wrote, “How is it possible to lay down laws to govern a situation which is inherently independent of all laws?”⁵⁵ Meanwhile, the realists may cite Sir John Fisher, First Lord of the British Admiralty, who commented in 1907, just after the Hague Conference, that “To humanize war is like trying to humanize hell.”⁵⁶ Or they may simply quote a cliché, claiming “all is fair.”

However, history seems to refute this point – all is not fair and this fact has tangible consequences. Morality and war have co-existed throughout history, each shaping the other, and this fact apparently irks many who long to have one over the other. This is where JWT stands out as more useful as an epistemological stance. Most just war theorists maintain that war can be a rule-governed activity, or, put differently, an activity that is constrained by morality. According to Walzer, “war is still, somehow, a rule-governed

⁵³ Ward Thomas discusses this.

⁵⁴ Wakin, *War, Morality, and the Military Profession*, 478, 479.

⁵⁵ Jean Pictet, *Development and Principles of International Humanitarian Law* (Dordrecht and Geneva: Martinus Nijhoff Publishers and Henry Dunant Institute, 1985), 80.

⁵⁶ *Ibid.*

activity, a world of permissions and prohibitions – a moral world, therefore, in the midst of hell.”⁵⁷

Just War Theory's Failings

While this dissertation is located in Just War thinking, JWT too has not tackled the issue of the utility of morality. JWT has traditionally focused on providing the tools for determining what *should be* or *is* moral or legal in war and how this should be applied. Thus, it develops principles based on morality, which are then applied to war. In a manner, it still treats morality and war as separate spheres that must be synthesized. Walzer, for example, believes proportionality in war is all about *balancing* ends and means, military necessity and moral obligation,⁵⁸ as if these were often contradictory. The possibility that military necessity and moral obligation might be mutually arising and supporting is not given proper consideration. In short, many JWT proponents seem to believe ethics are important simply because they are ‘good’ and we *should* obey them. They may argue over the content of those ethics, but rarely over the value.

Thus, JWT scholars (and those within international relations in general) have *a priori* assumptions just as do realists and pacifist. This has limited their ability to conduct a utilitarian analysis of the moral codes of war. Many theorists have adopted a framework that is largely pacifist and gives preeminent value to peace or to human rights. Walzer, for example, argues that “considerations of utility play into the scenario on many points, but they cannot account for it as a whole. Their part is *subsidiary* to that of rights; it is constrained by right”⁵⁹ Despite Walzer’s above cited claim to “balance” military and moral needs, this respect for life would bias any utilitarian analysis of the moral guidelines of war in favor of those which save the most from harm and keep costs low.

While Walzer does not support utilitarianism, his supreme emergency rule is, according to Bellamy, “essentially utilitarian.”⁶⁰ The very idea of the supreme emergency implies there is utility in abandoning restrictions at some point and that an unrestricted war, a total war without inhibitions, has advantages. Walzer, by allowing for this exception, is essentially

⁵⁷ Walzer, *Just and Unjust Wars*, 36.

Coates writes that JWT assumes war is a “rule-governed, institutional activity, and not a condition of utter lawlessness in which all legal and moral constraints cease to apply.” (*The Ethics of War*, 114)

⁵⁸ Walzer, *Just and Unjust Wars*, 129.

⁵⁹ Walzer, *Just and Unjust Wars*, Preface to the 2nd ed.

⁶⁰ Alex Bellamy, “Supreme emergencies and the protection of non-combatants in war,” *International Affairs* 80, no. 5 (2004): 838.

implying that moral rules make wars harder to win, although he would of course maintain there are other, moral, reasons to adhere to the rules. He justifies this exception by emphasizing the moral bad of the elimination of a community, thus trying to avoid utility. But of course this moral good, survival of a community, is synonymous with utility for that community. Regardless of whether Walzer 'gave in' to utility considerations, it is clear that the supreme emergency exception is justified morally and not pragmatically, and no actual analysis is done to explore how violation of the rules would aid in the survival of the community, or even if it is possible once such an emergency is reached.

A further reason that JWT, despite its focus on morality, fails to conduct utilitarian analyses is that it does not generally link ends and means. This is because there is a concern that doing so would implicitly condone the use of any means as long as one believed the war was just and that the means would contribute to the ends. Since both sides would likely see their cause as just, both would then feel justified in using any, even immoral, means to achieve these ends. Thus, most JWT ethicists argue that regardless of ends, all sides must use the same means – what are commonly seen as moral or legal means.

Utilitarianism's Failings

Surprisingly, those philosophers who could be grouped within the utilitarian school also seem to avoid actual utilitarian analysis. Most utilitarian scholars are engaging in normative ethics, which aims to determine if a moral code is justified and how we ought to act. For utilitarians, a moral code is justified if it maximizes utility and we ought to act on those principles which will achieve this end. Much of the discussion about utilitarian thinking has been based on its appropriate or inappropriate nature as a moral framework. The debate has been a distraction and virtually eliminated exploration of what utility maxims of morality may actually have.

This defensive stance is understandable given that utilitarianism is often attacked as an inadequate moral method. This is because, for many, any consideration of the ends of an action negates the morality of an act. Morality does not look to the ends. Hannah Ardent notes that "Goodness can exist only where it is not perceived, not even by its author;

whoever sees himself performing a good work is no longer good...”⁶¹ Thus, many utilitarians spend their efforts trying to justify utilitarianism as an ethical approach and prove that the theory itself ought to be used. This means very little real utilitarian analysis is done. By setting aside the ethical questions of how we ought to make a moral judgment, it is possible to move forward.

In summation, there has been much discussion on what *should*, *ought*, or *is* moral in warfare. Even utilitarian philosophers focus on this debate, taking the side that what is useful is good. This dissertation approaches the matter from a different angle – it aims to determine if what is considered good is useful. We thus agree with Amartya Sen, who notes, “Consequentialist reasoning may be fruitfully used even when consequentialism as such is not accepted. To ignore consequences is to leave an ethics story half told.”⁶² In a manner, we are being realist because we are taking the moral code that we have today (not one we *should* or *ought* to have) and assessing its utility. So this study asks only if certain moral codes have a use in war or not. We do not ask whether this then justifies the action or the opposite action.

While one may argue against consequentialism as a moral philosophy, that is not the task here. This dissertation sets out to undertake a utilitarian examination without then concluding that just because something is useful, it is then moral. Thus, we can’t simply bash utility as inappropriate for making moral judgments. The moral judgments have already been made. We have our morals and our laws, provided by history. We must now answer, are the moral principles behind these laws useful.

The Challenges of a Utilitarian Approach

There are a number of serious methodological challenges to any analysis of the moral guidelines of war. For example, it is difficult to collect data on the activities of war, both because of secrecy and also due to the ‘fog of war.’ Clausewitz himself lamented that determining cause and effect in war was often blocked because “the facts are seldom fully

⁶¹ Arendt, *The Human Condition* (Chicago, IL: University of Chicago Press, 1958), 74; Also Reinhold Niebuhr, *Moral Man and Immoral Society: A Study in Ethics and Politics* (New York, NY: Charles Scribner & Sons, 1932), 358. “From the internal perspective the most moral act is one which is actuated by disinterested motives... from the viewpoint of the author of an action, unselfishness must remain the criterion of the highest morality.”

⁶² Amartya Kumar Sen, *On Ethics and Economics* (Malden, MA: Blackwell Publishing, 1987), 75.

known and the underlying motives even less so.”⁶³ Even where accounts of events are available, the personal biases of the participants can hardly be trusted. As military historian John Keegan states, there is a “danger” in “reconstructing events solely or largely on the evidence of those whose reputations may gain or lose by the account they give...”⁶⁴ In addition, “people are not always aware why they do the things they do.”⁶⁵ There are also additional challenges that are particular to utilitarian analysis.

Problem of Perception

What is meant by the term “utility” is heavily debated. Classic utilitarianism, formulated by Jeremy Bentham, posits that utility means maximizing pleasure and minimizing pain.⁶⁶ This was slightly refined by John Stuart Mill who argued “actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness.”⁶⁷ Yet this simply leads to further questions: What is pain and pleasure? What is the use of pleasure and happiness? What is the good of good? In addition, how is one person’s pain or pleasure judged against another’s or against that of a group? Numbers alone do not suffice as the minority and the individual would always be on the side of wrong and this approach, as we shall see, is entirely unstable.

Preference utilitarianism,⁶⁸ which argues that the consequences to be promoted are those which satisfy the preferences of the most agents, runs into a similar problem – how to weigh competing preferences. In addition, preferences need not be rational (for example due to limited information) and so may not actually be useful or may even be detrimental to the agent. Thus, again we run into the problem of perceptions.

Problem of Ends

⁶³ Clausewitz, *On War*, Chapter 5

⁶⁴ John Keegan, *The Face of Battle*. Second Pimlico Edition (London: Pimlico, Random House, 1976), 33.

⁶⁵ Tom Pyszczynski, Jeff Greenberg, Sheldon Solomon “Proximal and Distal Defense: A New Perspective on Unconscious Motivation,” *Current Directions in Psychological Science* 9, no. 5 (2000): 156.

Robert J. MacCoun, “What is Known About Unit Cohesion and Military Performance,” in *RAND, Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment* (Santa Monica, CA: National Defense Research Institute, MR-323-OSD, 1993), 649. Citing John A. Bargh and Melissa J. Ferguson, “Beyond Behaviorism: On the Automaticity of Higher Mental Processes,” *Psychological Bulletin* 126 (2000) 925-45; and Timothy D. Wilson, *Strangers to Ourselves: Discovering the Adaptive Unconscious* (Cambridge, MA: Harvard University Press, 2002).

⁶⁶ John Stewart Mill and Jeremy Bentham, *Utilitarianism and Other Essays*, edited by Alan Ryan (London: Penguin, 1987).

⁶⁷ *Ibid.*, 57.

⁶⁸ R.M. Hare and Peter Singer are both proponents of preference utilitarianism.

Another obstacle to conducting a utilitarian analysis is the nature of action. As Hannah Arendt observes, “The reason why we are never able to foretell with certainty the outcome and end of any action is simply that action has no end”⁶⁹ and thus “the process of a single deed can quite literally endure throughout time until mankind itself has come to an end.”⁷⁰ To the extent that they exist, ends, once achieved, are reinterpreted to become the means to further ends or the means to reinforce its own cause. So where do we stop judging the consequences of an action? If we include all the result of an event we fall prey to the Three Mile Island Effect,⁷¹ which leads one to conclude that the nuclear disaster was overall a positive good because it led to increased nuclear regulation. Can we attribute all good that comes out of something, even if an act was evil and not intended to bring about that good? The result of such thinking would be to credit Hitler with the current peace in Europe, since history may be necessary in all its parts. From a methodological perspective, this complicates any utilitarian analysis, as any end that we may choose is not actually an outcome but merely the impetus to and means for further actions.

Problem of Connecting Means to Ends and Weighing Ends

As tautological as it may seem, one of the primary obstacles in conducting a utilitarian analysis of the moral and legal rules of war is its immense difficulty. Even simply connecting means to ends, arguably the most basic utilitarian task, is so difficult as to render any attempt inevitably open to attack. It is not likely in highly complex systems that any cause will be sufficient. Instead, causation is likely from many factors and a given end state can be reached by many different means.⁷² Similarly, calculating whether an action will bring about more harm than good is certainly an immense task, especially in the context of war. Michael Gross, a senior lecturer at the University of Haifa, concludes that “If not impossible, it remains very difficult to make this calculation and even less likely that the calculation will lend any weight to the utility of intentionally killing noncombatants.”⁷³ A report by the prosecutor’s office of the International Criminal

⁶⁹ Arendt, *The Human Condition*, 233

⁷⁰ Ibid.

⁷¹ Daniel Dennett, “The Moral First Aid Manual,” The Tanner Lectures on Human Values, presented at the University of Michigan, November 7 and 8, 1986, and available at <http://www.tannerlectures.utah.edu/lectures/documents/dennett88.pdf>.

⁷² This is called the problem of equifinality.

⁷³ Michael Gross, “Killing civilians intentionally: double effect, reprisal, and necessity in the Middle East,” *Political Science Quarterly* (December 22, 2005), 574, 575; also notes C. Curran, *Themes in Fundamental Moral Theology* (Notre Dame, IN: University of Notre Dame Press, 1977) cited in Coates, *The Ethics of War*, 261;

See also “Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia” <http://www.icty.org/sid/10052> paragraph 50;

Tribunal for the former Yugoslavia similarly admitted that “It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to non-combatants – it is unlikely that [even] military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases.”⁷⁴

Denigrating Utility

Moral philosopher Igor Primoratz denigrates utilitarianism as an ethical guide, but bases this view on the fact that it fails to protect civilians in all circumstances (which apparently he sees as the end goal), allowing their targeting when it is useful. Thus, the reason utilitarianism is bad is because, in theory, it fails to consistently endorse the end which Primoratz prefers. However, an actual exploration of the utility of targeting civilians versus the utility of discrimination is not done.⁷⁵

Walzer too notes disparagingly that “With regard to the rules of war, utilitarianism lacks creative power... it simply confirms our customs or conventions, whatever they are, or it suggests that they be overridden; but it does not provide us with customs and conventions.”⁷⁶ However, he fails to recognize that the creative power is history. The moral-legal rules of warfare have developed over thousands of years and have been shaped by the environment of war and violence. As we shall see, only those rules that facilitate, or at least do not hinder, survival will persist as practices.

Methodology

An Amoral Approach

The moral rules examined within this dissertation will be treated in an amoral manner. In order to tread between pacifism and realism, and engage in JWT in a manner that enables a utilitarian assessment of moral guidelines on war, neither war or morality is considered inherently good or evil. They simply are social facts. Social facts must be treated as

Sorabji too notes that “For a consequentialist, there is nothing wrong with the tactics of asymmetry (by this meaning not distinguishing oneself from civilians and not distinguishing between the enemy and their civilians). The question is simply, do they work? But this author argues that this is poor guide to ethics because of the extreme difficulty in answering this question in a meaningful way.” Richard Sorabji and David Rodin, *The Ethics of War: Shared Problems in Different Traditions* (Hants: Ashgate Publishing Limited, 2006), 157.

⁷⁴ “Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia” <http://www.icty.org/sid/10052> paragraph 50.

⁷⁵ Igor Primoratz, “Civilian Immunity in War: Its Grounds, Scope, and Weight,” In *Civilian Immunity in War* Igor Primoratz, Ed. (Oxford: Oxford University Press, 2007), 21.

⁷⁶ Walzer, *Just and Unjust*, 133.

'things' ... "like objects in nature, their properties cannot be immediately known by direct intuition, and they are not plastic to the individual human will."⁷⁷ Sociologist Anthony Giddens points out that this means one must have an "emotionally neutral attitude towards" what one is investigating.⁷⁸ This suits the amoral examination attempted here. They will be treated in the same manner a military historian might treat the tactics of Gustavus Adolphus, asking not if they were 'good' but how they worked so that he and his empire could achieve their objectives. Or, stated otherwise, they will be analyzed in the same way a General might look at the terrain of the battlefield – looking at it as a valuable tool or an obstacle or both.

This pragmatic ethos is essential for the type of analysis being conducted here. The purpose of this dissertation is *not* to determine what is moral in war in the deontological sense of what a country, a military, or an individual ought to do in order to be 'good.' Unlike philosophical utilitarians such as Mill and Bentham, there is no claim that if something is useful it also is, or should be considered, moral. This dissertation also does not imply that any moral principle that happens to be useful is automatically a principle that is universalizable and/or reversible.⁷⁹

Given this amorality, we must begin with a definition of morality that is in a sense amoral and unbiased. Defined descriptively, in the most basic sense, morality is simply a society's code of conduct.⁸⁰ When considered broadly as a code of conduct, it is easier to grasp the general functions of morality. We can then look specifically at how this manifests itself in the context of war and also examine how more specific precepts of morality, such as discrimination.

Our examination thus will not be restricted to the codified LAW. International law can, after all, be defined as "rules and principles of general application dealing with the conduct of States and of international organizations and with their relations inter se, as well as

⁷⁷ Anthony Giddens, *Capitalism and Modern Social Theory: An analysis of the writings of Marx, Durkheim and Max Weber* (Cambridge: Cambridge University Press, 1971), 89.

⁷⁸ *Ibid.*, 90.

⁷⁹ Immanuel Kant designated these two traits as being essential for a maxim to be moral.

⁸⁰ Bernard Gert, "The Definition of Morality," *The Stanford Encyclopedia of Philosophy* (Summer 2011 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/sum2011/entries/morality-definition/>; see also Émile Durkheim, *Moral Education: A Study in the Theory and Application of the Sociology of Education* (New York: Free Press, 1961), 23.

some of their relations with persons, natural or juridical.”⁸¹ Thus, we need not focus merely on the written laws but are justified in examining the “principles” that are at the core of these laws. Locating the core principle, which as we shall see is discrimination, and then finding the essential feature of this principle, which we shall discover is the control of mimetic violence, will be two of our early tasks.

Taking the above into account, the term ‘moral’ and ‘good,’ as far as this work is concerned, possesses little meaning outside that given to it by a society. Moral guidelines are simply part of the structure in which the agency of war occurs. In this sense, what is moral in war for one people is what its society claims is moral, regardless of whether they point to natural law, cultural norms, or a divine being as the source of the codes. It goes without saying that this morality is not uniform, timeless, unchanging, or agreed upon but this does not diminish its force for those who believe in it. As the Thomas Dictum astutely indicates, if a people define something as real, it is real in its consequences.⁸² Thus, if people define a moral rule or law of warfare as ‘good’, the adherence to or violation of that guideline will have tangible impacts on a war, if only because it will have tangible psychological impacts on the people involved in the war. So while the research itself must maintain an ethos of moral nihilism, this in no way belittles the value of moral codes for those who believe in them. In fact, it is exactly their perceived value which may translate into tangible consequences when they are transgressed on the battlefield.

A Sociological Version of Utility

In order to bypass the many problems with standard utilitarianism, we are instead going to look at the functional utility of the morality of warfare. As explained by Émile Durkheim, the function of a social fact is the “correspondence” between it and “the general needs of the social organism.”⁸³ A. R. Radcliffe-Brown clarified this definition of function by replacing the word “needs” with “necessary conditions of existence.”⁸⁴ In other words: what conditions are required for a social organism to exist? Throughout this dissertation, we will use the word “need” and it should be understood in this sociological manner. A need thus should not be construed in any positivist way but should instead be understood

⁸¹ *The Law of War Deskbook* (2010), 1.

⁸² Donald W. Ball, “‘The Definition of Situation’: Some Theoretical and Methodological Consequences of Taking W. I. Thomas Seriously,” *Journal for the Theory of Social Behavior* 2, no. 1 (1972): 61-82.

⁸³ Émile Durkheim, *The Rules of the Sociological Method*, translated by W.D. Halls. (New York: The Free Press, 1982 [1895]), 123.

⁸⁴ A. R. Radcliffe-Brown, “On the Concept of Function in Social Science” *American Anthropologist* New Series, 37, no. 3 (Jul.-Sep., 1935): 394.

as a requirement in light of what is necessary for a social entity to exist. If this need is not filled, the social organism must adapt, possibly to an extent that it become a different type of social organism entirely.

The final social fact that we are looking at is the moral principle of war that is discrimination. Thus, we must ask how the practice of discrimination relates to the necessary conditions of existence for the social organism that is society (that is the synthesis of the individual and the group). *In this sense we are exploring what we will call the “functional utility” of the moral principle of distinction.* Stated differently, what part does discrimination play in the formation and survival of groups. Given the near universal nature of discrimination, it seems possible that this function may too be universal, as all group life needs certain things in order to exist. However, the variety of discrimination norms means that it also is likely to fulfill specific functions for specific groups.

Moral Genealogy

While our end goal is a functional explanation of the moral codes of war, a causal examination can provide the foundation for this end goal and therefore is a necessary step. As Giddens observes, “It is appropriate methodological procedure, moreover, to establish causes prior to the attempt to specify functions. This is because causes which bring about a phenomenon into being can, under certain circumstances, allow us to derive some insight into its possible functions.”⁸⁵ Indeed, we find that this approach is very useful, fully bringing into light the function of the moral rules at which we are looking. We are not, however, looking for an actual cause or some historical summary of the moral rules of war. Instead, we are looking for the social cause and social origins. In order to locate this origin, we will conduct a moral genealogy of the moral codes of warfare. This moral genealogy forms the structure of the bulk of this dissertation.

In order to conduct a genealogical analysis of a practice one must: 1) Identify the conditions and circumstances in which the practice arose; 2) Identify the contending discourses of the practice; 3) Identify the feature(s) essential to the practice; and 4) Identify the strategies and mechanisms to exercise power – “to create, transform or destroy

⁸⁵ Giddens, *Capitalism and Modern Social Theory*, 91.

networks of relations that sustain a discourse and political space it orders.”⁸⁶ This, according to Richard Price, reveals “what kind of politics is promoted by a moral system.”⁸⁷

A Note on Sources

It is important to highlight right away that the work here is intended to be a conceptual and theoretical contribution to knowledge. A genealogical approach is not, as its name might suggest, a search for a clear family tree of events that lead to a particular outcome. Thus, historical illustrations that are used are intended to illustrate the dynamics underlying the theory. They are not intended to be part of an positivist case since, as already noted, such positivism is highly suspect at best in social dynamics as complex as war. In summary then, the sources upon which we build the argument are not the historical illustrations but the social dynamics laid out in theory.

A second item of note is that the military doctrine cited throughout the dissertation is predominately from the United States and the United Kingdom. The military practices that are described in these doctrines, however, are applicable beyond the specific national context. At the core of military doctrine are principles that can be applied regardless of context. This is intentional in part because a country can never be certain of the context in which it will fight a war but also simply because war has an enduring nature. Thus, just as the observations of war theorists such as Clausewitz can be applied broadly, so can much national doctrine as long as one does not go down to the level of tactics, techniques, and procedures (TTPs).

Foundational Theory and the Concept of Mimesis

Although this dissertation does not argue that war is a ritual, religion, sacrifice, or even pure violence, it undoubtedly contains all of these. For this reason, the theories of René Girard have proven particularly useful in our analysis. Girard has built a social theory around the idea that humans are driven by mimetic desire. Humans, he claims, are governed by mimesis, which is a near instinctual and unconscious tendency to imitate others, often without consideration of reasons or consequences.

⁸⁶ Lawrence H. Keeley, *War Before Civilization* (New York: Oxford University Press, 1997), 96, 97 and summarized by Richard Price, “A Genealogy of the Chemical Weapons Taboo.” *International Organization* 49, no. 1 (1995): 89.

⁸⁷ Price, “A Genealogy,” 88.

The importance of such mimesis has been attested to within many fields that attempt to explain human action, from evolution to psychology to game theory.⁸⁸ There is even increasing evidence that such mimesis is encoded in our genes.⁸⁹

Where Girard's ideas really prove useful is when he turns his attention to violence, which is so mimetic that it can quickly threaten the existence of society. Thus, as Girard details, mankind has developed systems by which to constructively channel mimetic impulses. While Girard does not turn his attention to the moral rules of war, his theories prove extremely useful in illuminating their functions.

Importance of this Work

Generally speaking, in conducting a war "It is not permissible to do 'any mischief which does not tend materially to the end [of victory].'"⁹⁰ This is enshrined in many international laws, but it is a difficult thing to measure. How does one figure out what materially contributes to victory if utilitarian calculus is avoided? If the law of war requires only "that belligerents refrain from employing any kind or degree of violence which is not actually necessary for military purposes,"⁹¹ then it logically follows that one must know if killing civilians, burning churches, and other atrocities are necessary to carry out war. How can we appeal to military necessity if we have no idea the actual impact of our actions? This examination offers a first cut at building a comprehensive theory of the functional utility of moral restrictions of war and of discrimination in particular.

⁸⁸ From Freud to Mirror Neurons to Axelrod's famous work on Cooperation.

⁸⁹ See literature on Mirror Neurons in particular.

⁹⁰ Henry Sidgwick.

⁹¹ *The Law of War Deskbook* (2010), 6.

Chapter I - The Conditions and Circumstances in Which the Moral Principles of War Arose

Introduction

In order to assess the moral principles of warfare, we need to understand “the conditions and circumstances in which they grew.”⁹² This was philosopher Friedrich Nietzsche’s first step in his *On the Genealogy of Morals*. The reason such an understanding is required is that, as Giddens rightly observes, “moral codes are grounded in the social conditions of existence.”⁹³ When we speak of the “conditions of existence,”⁹⁴ what we actually mean is “conditions *for* existence.”⁹⁵ This concept was originally used by evolutionary biologists to talk about biological traits required for survival but has translated nicely into the field of sociology to examine social practices. Thus, from a sociological perspective, the conditions for existence are the practices required for the social organism (the synthesis of the individual and group) to survive. Given Radcliffe-Brown’s definition of Durkheimian “function,”⁹⁶ it is clear that the conditions for existence are synonymous with function. To take this logic full circle, moral codes then are grounded in the practices necessary for a society to exist and endure – they are grounded in their function.

The conditions for existence are not the same as Charles Darwin’s oft-used turn of phrase “conditions of life.”⁹⁷ However, the concepts are related in that the conditions of life – the environment to which an individual and/or social organism must be adapted – will shape the conditions for existence. To say this is to say merely that the environment determines what is needed to survive in that setting. These are the conditions which Nietzsche was speaking of, those in which moral principles “grew.”⁹⁸ Moral practices must reflect these environmental conditions, both those that are natural and those socially constructed, if they

⁹² Friedrich Nietzsche, *On the Genealogy of Morals/Ecce Homo*, trans. by Walter Kaufman and RJ Hollingdale (New York, NY: Vintage Books, 1989), Preface.

⁹³ Anthony Giddens, *Durkheim* (Fontana: Collins, 1978), 21, citing Durkheim, *The Division of Labour*.

⁹⁴ The term comes from 19th-century naturalist Georges Cuvier, who used it to explain evolution.

⁹⁵ John Reiss translates Cuvier’s phrase in this way, something that seems justified given the definition. See John O. Reiss, *Not by Design: Retiring Darwin’s Watchmaker* (Berkeley: University of California Press, 2009).

⁹⁶ Function then is defined as “necessary conditions of existence” for a social organism. See earlier discussion in the Methodology section of the Introduction.

⁹⁷ Charles Darwin, *On the Origin of the Species* (London: John Murray, Albemarle Street, 1859). This turn of phrase is used throughout the book.

⁹⁸ Nietzsche, *On the Genealogy*, Preface.

are to serve a function. At the very least, they cannot work against survival, for they would quickly cease to be practiced as the moral adherents died off.

In order to discover how the moral codes of war relate to the requirements for a social organism to exist (the function), we must first look at the environment in which they arose. This chapter sets out to accomplish this task. This means first examining the role that the ever-present possibility of death has on individual action. Second, the nature of violence and its tendency to beget mimesis is explored. This is followed by an examination of the nature of civilization, which also relies on mimesis, albeit controlled. Finally, the cause and nature of war is looked at, primarily using Clausewitz's Remarkable Trinity of chance, emotion, and policy. Broadly conceived, these are the natural and social conditions in which the moral principles of war emerged and evolved. The moral rules thus directly reflect the nature of these conditions, which have mimesis at their core.

Death as the Foundation for Human Activity

While this dissertation cannot get bogged down in thanatology, it is for a number of reasons vital that we begin with a brief exploration of death. Anthropologist Ernest Becker argues that the "idea of death... is the mainspring of human activity—activity designed largely to avoid the fatality of death, to overcome it by denying in some way that it is the final destiny for man."⁹⁹ According to Becker, the vast majority of human practices and structures¹⁰⁰ are defense mechanisms against the nagging knowledge of our mortality. The primary practice-structures with which this dissertation is concerned are, of course, war and morality.

Death (both in the intrinsic form of dying and the extrinsic form of making another die) is at the center of war. As military historian Victor Davis Hanson writes, any discussion of war "becomes absurd when the wages of death are ignored..."¹⁰¹ Taking into account Becker's thesis, however, means we must also understand how war denies death and

⁹⁹ Ernest Becker, *The Denial of Death* (New York, NY: The Free Press, 1973), ix.

¹⁰⁰ Becker does not use these terms, but speaks of the "immortality projects" or "hero-systems" provided by civilizations, topics that we will examine further into this dissertation.

¹⁰¹ Victor Davis Hanson, *Carnage and Culture: Landmark Battles in the Rise to Western Power* (New York: Anchor Books, 2001), 8.

protects mankind from death. Indeed, war is so steeped in death that it must transcend it or man would never undertake the activity.¹⁰²

Death and morality are also intricately linked. In many morality tales, including of course the classic Genesis story, death is a punishment for sin.¹⁰³ Thus, it follows that the solution to death is adherence to some sort of moral code of conduct.¹⁰⁴ Philosopher Maxine Sheets-Johnstone rightly observes that “the roots of human morality are submerged in the human awareness of death.”¹⁰⁵ They are, in short, guidelines on how to avoid death. This reaffirms the observation in the introduction of this section that morality is a condition for existence. This is important but of course does not go far enough for our purposes for it fails to understand morality in the context of war, something that seems to be predominately a condition for death. Understanding the function of morality in war requires we first take a deeper look at death and the ‘natural,’ or in other words required, response to this condition.

The Fear of Death

Death, as William James observes, is “the worm at the core” of human existence.¹⁰⁶ It looms in front of us unseen and all the more imposing because of that invisibility. The inevitability our personal death, combined with the fact that we “know not the hour,”¹⁰⁷ gives it omnipresence in our lives. It is always there, shaping our decisions and our actions. According to psychoanalyst Gregory Zilboorg “no one is free of the fear of death” and, although we may take it for granted, death “is always present in our mental functioning.”¹⁰⁸

¹⁰² We do not return fully to this discussion until the final part of the dissertation although the thread of this concept (of war as being a project to avoid death) of course runs through this entire work.

¹⁰³ In Genesis 2:17, God commands “you must not eat from the tree of the knowledge of good and evil, for when you eat of it you will surely die.” This is stressed again in Romans 5:12, which reads “Therefore, just as sin entered the world through one man, and death through sin, and in this way death came to all men, because all sinned.”

¹⁰⁴ See Proverbs 11:19 (“The truly righteous man attains life, but he who pursues evil goes to his death.”), Matthew 25:46 (“Then they will go away to eternal punishment, but the righteous to eternal life.”), and Ezekiel 8:14 (“The soul who sins is the one who will die.”). The Quran 5:35 (“O you who have believed, fear Allah and seek the means [of nearness] to Him and strive in His cause that you may succeed.”). Buddhism also teaches that those who follow the path will achieve a transcendence of death (amata). Even Science today espouses this message that if you live a clean life, you will live longer.

¹⁰⁵ Maxine Sheets-Johnstone, *The Roots of Morality* (University Park, PA: The Pennsylvania State University Press, 2008), 55. This theme, however, runs through much of her book. She is, of course, taking her cue from Hobbes here, but we will explore Hobbes’ observations later in the context of morality and group life.

¹⁰⁶ William James, *The Varieties of Religious Experience: A Study in Human Nature* (Rockville, MD: Arc Manor, 2008), 109.

¹⁰⁷ Mathew 24:42.

¹⁰⁸ Gregory Zilboorg, “Fear of Death,” *The Psychoanalytic Quarterly* 12 (1943): 465, 467;

This antipathy for death is rooted in evolution, which endows organisms with biological systems that place a premium on survival. Since “natural selection acts by life and death,”¹⁰⁹ it makes logical sense that humans would develop a variety of mechanisms which would protect life and avoid death – a self-preservation instinct.¹¹⁰ These would extend beyond the biological mechanisms that prompt actions such as recoiling from pain, to include mental and emotional traits that also keep death at bay. This includes anxiety¹¹¹ and fear of death.¹¹² This emotional aspect then serves the same purpose as the pain we receive from a sting or bite – it prompts action to enhance survival chances.¹¹³

This ‘will to live’ can transcend all other impulses. It has been observed that despite the adversity and unpleasantness that may accompany life, we are generally reluctant to shuffle off this mortal coil.¹¹⁴ It is not only psychoanalysts and evolutionary theorists who note this, but social scientists and philosophers. Saint Augustine, for example, wrote that “nature shrinks from annihilation...”¹¹⁵ This is important because, as we shall see, the fear of death can run counter to military necessity.

The Death Drive Illusion

It must be noted that there is a school of thought that claims humans do not fear death but actually seek it out. Sigmund Freud infamously wrote that the “goal of all life is death”¹¹⁶ and that humans strive to “return to the peace of the inorganic world.”¹¹⁷ The so-called

See also J.A. Thorson and F.C. Powell, “Elements of death anxiety and meanings of death,” *Journal of Clinical Psychology*, 44 (1988); and Tom Pyszczynski, Jeff Greenberg, and Sheldon Solomon, “Why Do We Need What We Need? A Terror Management Perspective on the Roots of Human Social Motivation,” *Psychological Inquiry* 8, no.1 (1997): 2.

¹⁰⁹ Darwin, *On the Origins*.

¹¹⁰ Pyszczynski, Greenberg, and Solomon, “Why Do We Need,” 5. “The assumption of a self-preservation instinct follows directly from evolutionary and sociobiological theory and is shared with a broad range of previous theorists (e.g., Darwin, Dawkins, Freud, Rank, Wilson, Zilboorg).”

¹¹¹ Randolph M. Nesse and George C. Williams, “Evolution and the Origins of Disease,” *Health and Healing In Comparative Perspective* (2005): 167.

¹¹² Ernest Becker, “The Terror of Death,” in *Death, Mourning, and Burial: A Cross-cultural Reader*, by Antonius C. G. M. Robben (Malden, MA: Blackwell Books, 2004), 26.

¹¹³ More recent scholarship has affirmed this observation, with one journal article stating that, “The fear of death itself ultimately serves the instinct for self-preservation.” Pyszczynski, Greenberg, and Solomon, “Why Do We Need,” 5.

¹¹⁴ Hamlet, rephrased from “shuffled off this mortal coil”

¹¹⁵ Augustine, *The City of God*, trans. by Marcus Dodds, Book XI, Chapter 27.

¹¹⁶ A.J. Levin, “The Fiction of the Death Instinct,” *Psychiatric Quarterly* 25, no. 1-4 (1951), quoting Sigmund Freud, *Beyond the Pleasure Principle* (New York, NY: W.W. Norton & Co., 1961), 47.

¹¹⁷ Levin, “The Fiction,” quoting Freud, *Beyond the Pleasure*, 81.

'death drive' has been widely criticized¹¹⁸ but counts some well-respected psychoanalysts among its proponents, including K.R. Eissler¹¹⁹ and Melanie Klein,¹²⁰ thus it cannot be dismissed out of hand. Indeed, by considering and countering the death drive, we can begin to explore the primary human response to death.

Girard's theories are well equipped to accept the observations of the death drive theory while also not endorsing its final conclusions. Freud based his theory of the death drive on his analysis of repetitive compulsions, in particular those that occur after trauma.

According to Girard, Freud "is not perceptive enough to discern the principle that could provide a unified and satisfactory explanation for all the phenomena."¹²¹ The principle that makes this pattern of repetition intelligible is mimetic desire. While the "compulsion to repeat" can appear to be directed towards death, this morbid end is not the goal; the repetition itself is the goal. Mimesis then can drive individuals towards death, an important fact to keep in mind as we move forward. It, not the death drive as Eissler claims, can also explain why human aggression dramatically exceeds what is necessary for self-preservation¹²² to the extent that it endangers that preservation. This too is vital to remember, as it plays a pivotal role in our later discussion of escalation.

The most important take away for now is that apparent drives for death are actually an illusion of mimetic desire. This naturally leads one to ask why mimesis is the objective. What is the function of this mimesis? Why is it so important? According to psychoanalyst Otto Fenichel repetition serves the "purpose of achieving a belated mastery."¹²³ The feeling of repetition then is psychologically comforting. The reason this is the case is because mimesis is essential to all mastery, to the process of learning and bringing something under control, but it is also a primary method of achieving security.

Death and the First 'Right'

The threat of death extinguishing our existence leads some to conclude that self-preservation is a natural right. While the term "right" implies a deontological moral claim,

¹¹⁸ See J.W. Hamilton, "Some Comments about Freud's Conceptualization of the Death Instinct," *The International Review of Psycho-Analysis* 3 (1976).

¹¹⁹ K.R. Eissler, "Death Drive, Ambivalence, and Narcissism," *Psychoanalytic Study of the Child* 26 (1971).

¹²⁰ See Lyndsey Stonebridge and John Phillips, eds., *Reading Melanie Klein* (London: Routledge, 2005), 29-30.

¹²¹ Rene Girard, *Things Hidden Since the Foundation of the World* (London: Continuum, 2003), 412.

¹²² Eissler, "Death Drive."

¹²³ Otto Fenichel, *The Psychoanalytic Theory of Neurosis* (London: Routledge, 1999 [1946]), 542.

natural rights can be amorally considered as traits essential for survival because they are “binding by nature.”¹²⁴ To go against these most basic of these ‘rights’ then would result in death. Thus, they have clearly functional value. Viewed in this manner, natural rights (or natural needs as they could be called) are conditions for existence. The importance of self-preservation as a natural right/need is something even Jean-Jacques Rousseau and Thomas Hobbes could agree upon. Rousseau writes that an individual’s “first law is to provide for his *own* preservation”¹²⁵ and Hobbes that the right of nature is the “Liberty each man hath, to use his *own* power, as he will himselfe [sic], for the preservation of his own Nature; that is to say, of his own Life...”¹²⁶ Self-preservation is thus a natural individual right because it is a necessary for survival. This activity becomes particularly important when faced with violence.

It is important to note that the law of preservation does not automatically endorse violence. Indeed, Hobbes himself places violence secondary. The first law is to seek out peace, this being the best means of survival, and only where this cannot be obtained are we then allowed “to defend our selves.”¹²⁷ Thus, the use of violence is a right when reactionary, for it is then when it is the best means of survival. This means it is mimetic violence that is the law of nature and the individual condition of existence. This is why John Locke concludes, it is “by the fundamental law of Nature... one may destroy a man who makes war upon him...”¹²⁸

In theory, of course, an individual might decide that self-preservation requires killing every stranger encountered. After all, one cannot be certain of the other’s intent. However, by using violence at every encounter, an individual runs the risk of exhausting themselves in all or nothing battles. This will, simply due to statistical odds, eventually leave one with nothing. Thus, violent mimesis has emerged as the most common individual human survival strategy and as the first right of nature.

¹²⁴ Mark Murphy, “The Natural Law Tradition in Ethics,” in *The Stanford Encyclopedia of Philosophy* (Winter 2011 ed.), edited by Edward N. Zalta, available at <http://plato.stanford.edu/archives/win2011/entries/natural-law-ethics/>.

¹²⁵ Jean-Jacques Rousseau, *The Social Contract* (New York: Cosimo, 2008), 14.

¹²⁶ Thomas Hobbes, *Leviathan* (London: Continuum International Publishing Group, 2005), 104.

¹²⁷ *Ibid*, 105.

¹²⁸ John Locke, *Two Treatise of Civil Government* (London: C. Baldwin, 1824), 139.

According to sociologist Andrew Schmookler, when faced with violence, the possible futures one can choose are destruction, absorption and transformation,¹²⁹ withdrawal,¹³⁰ and most important from his (and our) perspective – imitation.¹³¹ In this context, imitation means violent self-defense to counter the adversary's violence. Thus, violent mimesis is a survival strategy in the face of death. Indeed, it is argued by evolutionary biologists to be a very effective strategy. Retaliation, which can be considered synonymous with violent mimesis,¹³² is an “evolutionarily stable strategy.”¹³³ As Richard Dawkins observes, “In a population of (individual) retaliators,¹³⁴ no other strategy would invade, since there is no other strategy that does better than retaliator itself.”¹³⁵

Viewed in this manner, the merger of function and morality is already becoming evident, as what is natural has been transmuted into what is reasonable. Cicero wrote that “reason has taught this lesson to learned men, and necessity to barbarians, and custom to all nations, and nature itself to the beasts, that they are at all times to *repel all violence* by whatever means they can from their persons, from their liberties, and from their lives...”¹³⁶ No matter what the foundation (reason, necessity, custom, or nature), the meeting of violence with violence arises as an effective course of action for survival. Thus, the right to, and need for, self-defense can be alternatively conceived in Girardian terms as a right and need to mimic violence. As a reminder, this need is a sociological need, not a positivist need. The need for self-defense and the need to mimic do not make these responses absolutely inevitable. They are only necessary in order that an individual or group exist as they currently do. Adaptation is also a possibility if a different response is chosen.

¹²⁹ This too is a sort of mimesis.

¹³⁰ This, however, has limits due to geographic and demographic trends. This, as we shall see, has is particularly important now, with an increasing populated and urban world.

¹³¹ Andrew Bard Schmookler, *The Parable of the Tribes: The Problem of Power in Social Evolution* (Boston: Houghton Mifflin, 1984).

¹³² Retaliation can be broadly defined as “to return like for like.” <http://www.merriam-webster.com/dictionary/retaliate>

¹³³ Richard Dawkins, *The Selfish Gene*, New Edition (Oxford: Oxford University Press, 1989), 69. An evolutionarily stable strategy (ESS) is a strategy which, if most members of a population adopt it, cannot be bettered by an alternative strategy. The ESS concept was developed by Maynard Smith.

¹³⁴ We are not yet talking about the group retaliating as a whole for one of its members or any individual retaliating for another individual.

¹³⁵ Dawkins, *The Selfish Gene*, 74; Reciprocal altruism (a term coined by Robert Trivers) too is an ESS (Ibid., 185).

¹³⁶ Marcus Tullius Cicero, *The Orations of Marcus Tullius Cicero*, trans. C.D. Yonge (London: G. Bell and Sons, 1913-21), accessed at <http://oll.libertyfund.org/title/587/87420> on 2012-07-25, vol. 3. Chapter: *THE SPEECH OF M. T. CICERO IN DEFENCE OF TITUS ANNIUS MILO*.

An individual's need to defend themselves from the violence directed at them is also generally seen as extending to any who use the strategy of killing. In other words, the violence need not target oneself directly. An individual can kill any killer because life with them is not possible. Locke asserts that "every man in the state of Nature has a power to kill a murderer," citing Genesis 9:6 which dictates that "Whoso sheddeth man's blood, by man shall his blood be shed." Locke points to the first murder as already making this law evident, as Cain was convinced that "Every one that findeth me shall slay me." Cain was obviously well aware of the demands of mimesis.¹³⁷ It is this individual need and strategy of survival, which we now describe as a natural right and which has evolved to become a justice reaction, that gives violence its nature.

The Nature of Violence (not the Nature of Man)

The nature of violence will be unpacked throughout this dissertation as it is an essential part of both war and law. However, it is important to highlight its essential features immediately as they are vital to understanding also the nature of civilization and war. Girardian theory points to two features of violence that are important to consider.

First, violence motivates a desire to engage in a reciprocal violent act. Girard demonstrates that "the *mimetic* attributes of violence are extraordinary – sometimes direct and positive, at other times indirect and negative... The very weapons used to combat violence are turned against their users. Violence is like a raging fire that feeds on the very objects intended to smother its flames."¹³⁸ This is not surprising given the importance of mimesis. As noted above, responding or defending oneself is a natural strategy for survival. Violence is particularly demanding in its imitative requirements due to its immediate physical result and accompanying fear of death. Thus, an immediate, arguably instinctual, response is required. In contrast, failure to mimic activities other than violence may lead to social sanctioning but this has a longer term impact that can be amended over time. However, it must be kept in mind that this too impacts survival chances. Thus, again, one can conclude that mimesis is arguably the most basic survival strategy. Yet we can also begin to see how it can lead to death since once violence starts, the mimetic compulsions can result in uncontrollable escalation (this will be discussed in full later).

¹³⁷ Locke, *Two Treatise*, 136.

¹³⁸ Rene Girard, *Violence and the Sacred*, trans. by Patrick Gregory (Baltimore, MD: Johns Hopkins University Press, 1979), 31. Italics in original.

While this would not be a problem in the theoretical state of nature, it is a major threat to groups when all individuals begin to mimic the violence around them.

The second feature of violence noted by Girard is its ability to “move from one object to another.”¹³⁹ The violence directed at the original object can shift to surrogate objects, but also entirely disregard objects and become an end in and of itself. The surrogate process is driven by a desire for reciprocity that cannot be achieved vis-à-vis the party responsible for the ‘initial’ activity. As a result, in the words of Girard, left “unappeased, violence seeks and always finds a surrogate victim. The creature that excited fury is abruptly replaced by another, chosen only because it is vulnerable and close at hand.”¹⁴⁰ This dynamic can be seen in all manifestations of violence – sacrifice, riots, domestic violence, animal abuse, and war.

As will be explored, this infectious nature of violence and its ability to shift its attention to objects that have nothing to do with the original motivation is a danger to any community. However, the mimetic and transferrable nature of violence is also essential to civilization. The dual nature necessitates careful control and thus all groups have mechanisms that attempt to domesticate violence.

Fear of Mimesis Leads to Not Killing

The fear of death and nature of violence contribute to a general individual human aversion to killing.¹⁴¹ From an evolutionary perspective this makes sense, given that “hereditary patterns against intraspecific killing”¹⁴² would be favorable to the survival of the species. While much of the individual aversion to killing can be attributed to society, and will be discussed later in this chapter, it is worth discussing one aspect now – how mimesis contributes to the individual aversion to kill.

S.L.A. Marshall’s foundational and oft-cited study of soldier firing patterns in WWI attributed the failure to engage the enemy to a fear of killing. Given the nature of the WWI truces, one can assume that the failure to engage, the lack of firing or firing too high, may

¹³⁹ Ibid., 19.

¹⁴⁰ Ibid., 2.

¹⁴¹ For a detailed examination, see Lt. Col. David Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (New York, NY: Back Bay Books, 1995).

¹⁴² Quincy Wright, *A Study of War* (Chicago: The University of Chicago Press, 1965), 2nd ed., with “A Commentary on War since 1942,” 92.

have been partially driven by a reciprocity expectation. There was a general sense in these truces that attempting to kill automatically opened oneself up to being killed. Richard Holmes notes that “The aggression of a group member endangered his comrades, for aggression produced retaliation.”¹⁴³ To kill another thus is to seal one’s own fate and the fate of those nearest you. This self-deterrence effect can influence the actions of individuals, both in war and in civilization.¹⁴⁴ The fear of killing then is driven in part by the fear of dying. This would seem to support Hobbes assertion that “The Passions that encline men to Peace, are Feare of Death.”¹⁴⁵ Yet, as we shall see, this balance of terror is precarious, for once the first act of violence occurs or we think it has, mimesis will make escalation much more likely.

The Illusion of Human Violence

Of course there are those who maintain that humans (or men in particular) are innately violent and thus killing is a simple task. This view was heavily debated in particular after the publication of Konrad Lorenze’s *On Aggression* in 1966. Lorenze argued that the ‘aggressive instinct’ in humans was beneficial as it helped the species grow stronger through natural selection and enabled the formation of a social structure by clarifying hierarchical relations.¹⁴⁶ Sigmund Freud argued similarly, although he didn’t view the aggression as positively, writing that, “In all that follows I adopt the standpoint, therefore, that the inclination to aggression is an original, self-subsisting instinctual disposition in man...”¹⁴⁷ These individuals raise a valid point – after all, if killing is so difficult for the average person, why is it so endemic?

The accusations that man is an easy killer or that society is violent can be easily understood if one considers the mimetic nature of violence. We may be reluctant to kill, but what happens once the taboo is broken is another matter entirely. In *An Intimate History of Killing*, Joanna Bourke acknowledged that recruits expressed an inherent resistance to killing and that this had to be overcome by training. However, once civilians

¹⁴³ Richard Holmes, *Acts of War: The Behavior of Men in Battle* (New York, NY: The Free Press, 1985), 319.

¹⁴⁴ J. Atsu Amegashie, Marco Runkel, “The Paradox of Revenge in Conflicts,” *Journal of Conflict Resolution* 56, no. 2 (2012).

¹⁴⁵ Hobbes, *The Leviathan*, 104.

¹⁴⁶ Konrad Lorenze, *On Aggression* (New York: Harcourt, 1963).

¹⁴⁷ Sigmund Freud, *Civilization and its Discontents*, edited and translated by James Strachey (New York, NY: W.W. Norton & Company, Inc., 1961), 69

had been turned into effective soldiers many found that killing was associated with “intense feelings of pleasure.”¹⁴⁸

English psychiatrist Anthony Storr, in his 1968 tome *Human Aggression*, notes that it is “more difficult to quell an impulse toward violence than to rouse it.”¹⁴⁹ That this is true in combat has been pointed out by multiple narrators of war.¹⁵⁰ Thus, once killing in war begins (or killing in society for that matter), it is not easy to restrain and is difficult to bring to an end. The reason for this is not necessarily because humankind is naturally violent but again because it is naturally mimetic.

The Illusion of the Aggressive Group

This leads us to another group of scholars who would disagree with the sub-thesis of this section. There are scholars who believe that regardless of individual tendencies, which may be altruistic or not, societies have few problems killing both their own members and those from other groups. All groups are less moral in this view. Even those who do not see man as an individual as particularly aggressive, often claim that once in a group, aggressive tendencies arise that lead to war. Reinhold Niebuhr’s *Moral Man and Immoral Society* maintains that man’s “natural impulses prompt him not only to the perpetuation of life beyond himself but to some achievement of harmony with other life”¹⁵¹ and it is society that is to blame for the perversion of this natural inclination.¹⁵²

However, although it claims a monopoly on legitimate violence, society is in fact reluctant to condone killing. A society, in order to cohere, must limit killing and in particular killing of an individual nature. It is part of the foundational ‘contract’ for protection that individuals expect when joining a group. Thus, killing cannot be a part of daily life, or at least it cannot be allowed to occur inside the group. This ingroup morality was arguably the first place that the prohibition on killing arose. Of course manifestations of violence against the outgroup are much more common, yet even this sort of violence is usually controlled and not engaged in lightly. This will come across over the length of this

¹⁴⁸ Joanna Bourke, *An Intimate History of Killing* (London: Granta, 1999), 13.

¹⁴⁹ Girard, *Violence*, 2.

¹⁵⁰ In the context of war, Holmes points out, “It is more difficult to train soldiers in the exercise of deliberate restraint than it is to imbue them with combative zeal.” Holmes, *Acts of War*, 367.

¹⁵¹ Niebuhr, *Moral Man and Immoral Society*, 26.

¹⁵² Discussed extensively by Kenneth Waltz, *Man, the State and War: A Theoretical Analysis* (New York, NY: Columbia University Press, 1954).

dissertation. To fully understand how the group is both nonviolent and prone to violence we must examine the nature of social life in more detail. Again, the key is mimesis.

The Nature of Civilization

Van Creveld notes that an inquiry into the origins of the rules of war “would, in fact, be tantamount to a study of civilization itself.”¹⁵³ This is a daunting task but in order to understand war, we must understand to some extent the social structure of civilization.¹⁵⁴ This is because civilization is at the heart of the context in which war is waged and our conception of order, which is rooted in civilization, shapes our responses to disorder, that threat which causes war. However, civilization is not simply the context of war. As Jabri states, “War emerges from the institutional and discursive pillars of society and recursively feeds back to reformulate, reconstitute and reproduce its constitutive elements.”¹⁵⁵ Thus, civilization (both in general and specific civilizations) is part of the same structure as war. Civilization and war, in this sense, are symbiotic.

Following from this, the moral and legal guideposts of war too emerge from the institutions and discourses surrounding society and war, and then recreate the structure of society and war. Thus, the moral principles of war and war itself (and indeed social order) share a common structure. A full exploration of this will be conducted during the last step of this moral genealogy. In the interim, we must continue to excavate the foundation of civilization as a means of understanding how war comes from, yet threatens civilization, and how morality manages this tension.

This blending of war-civilization runs counter to those who claim war is the opposite of civilization.¹⁵⁶ Indeed, the two have been accused of being “utterly incompatible.”¹⁵⁷ The Hague regulations aim to measure the necessities of war against the requirements of

¹⁵³ Martin Van Creveld, *Technology and War: From 2000 B.C. to the Present* (New York, NY: The Free Press, 1989, 1981), 286.

¹⁵⁴ Thomas J. Scheff and Suzanne M. Retzinger point this out in regard to specific conflict and specific civilizations in *Emotions and Violence: Shame and Rage in Destructive Conflicts* (Lincoln, NE: iUniverse Inc., 1991), 167. We are simply approaching the structure more broadly.

¹⁵⁵ Vivienne Jabri, *Discourses on Violence: Conflict Analysis Reconsidered* (Manchester: Manchester University Press, 1996), 30.

¹⁵⁶ Ralph M. Eaton, “The Social Unrest of the Soldier,” *International Journal of Ethics* 31, no. 3 (1921); Ursula LeGuin, *The Left Hand of Darkness* (Berkeley, CA: Ace Books, 1969); Elaine Scarry, *The Body in Pain* (Oxford: Oxford University Press, 1985), 61, states “In both war and torture, there is a destruction of ‘civilization’ in its most elemental form.”

¹⁵⁷ Vera Brittain: “modern war and modern civilization are utterly incompatible, and that one or the other must go.” In A.C. Grayling, *Among the Dead Cities: The History and Moral Legacy of the WWII Bombing of Civilians in Germany and Japan* (New York, NY: Walker & Co., 2004), 200.

civilization¹⁵⁸ and the St. Petersburg Declaration of 1868 states that “the progress of civilization should have the effect of alleviating, as far as possible, the calamities of war.”¹⁵⁹ Both imply that war and civilization conflict. In reality, we find that morality is doing something else – it is binding civilization and war together so tightly that separation would lead to the death of both. This rests upon the idea that removing war from civilization means a return to raw violence, which would then destroy civilization. Thus, morality creates a form of violence compatible with, even essential for, civilization.

Given this controversy over the relationship between war and civilization, we must begin at the beginning, by looking at civilization itself. We can transcend the impossibility of studying all civilization by looking not at historical but social origins. To begin then, we need to get a grasp on the nature and needs of civilization, examining what is required for civilization to exist in the first place.

Social Man

It is doubtful that man was ever an individual in the sense of being physically separate from and independent of others of his kind. While Hobbes *may* have been correct in describing life in the so-called ‘state of nature’ as “poore, nasty, brutish, and short,” to claim it was also “solitary” is surely inaccurate.¹⁶⁰ Pre-historic peoples did not have sea turtles’ lives, fated to swim alone all of their years save for brief conjugal trysts that allow for the perpetuation of the species. Hermits and independent souls certainly existed, but it is highly unlikely this was ever the norm.

In reality, man always had a group, beginning with the family (the first group for all individuals and arguably the first on the path to civilization¹⁶¹), growing to a village and then a city,¹⁶² and expanding and contracting in size ever since. Norbert Elias calls these

¹⁵⁸ Fritz Kalshoven, “Arms, Armaments and International Law,” *Recueil des Cours* 191 (1985).

¹⁵⁹ St. Petersburg Declaration: International Committee of the Red Cross. *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868*. Available from <http://www.icrc.org/ihl.nsf/FULL/130?OpenDocument>.

¹⁶⁰ Hobbes, *Leviathan*, 102.

¹⁶¹ Malinowski observes that the family is the building block of society and from there we evolved to larger groups. It is “the starting point of all human organization.” See Christopher Dawson, “The Patricarchal Family in History,” in *The Dynamics of World History*, by Christopher Dawson (New York, NY: Sheed and Ward, 1933), chapter available at <http://www.catholiceducation.org/articles/marriage/mf0060.html>.

¹⁶² This is the conception of growth pictured by Aristotle in *Politics: A Treatise on Government*, trans. by William Ellis (London: JM Dent & Sons, 1919). It is not necessarily accepted but used for illustrative purposes for the moment. Freud used this family to society evolution as well (Freud, *Civilization and its Discontents* 69).

groups “survival units.”¹⁶³ So rather than being solitary, it is apparent that “man is by nature a social and political animal.”¹⁶⁴ Thus, war too must be social because it would otherwise put group life at risk. This sociality, as we shall see, complicates the use of violence tremendously. This is because acts of violence resonate and amplify through the social sphere. Thus, any physical act of violence has a kill radius that transcends time and space. This, as we shall see, makes morality essential.

Given that man is social, it follows naturally that life could not have been entirely “brutish,”¹⁶⁵ since living in a group requires, if not necessarily law, then at least some method to manage the relationships between people. Without such a method, group living would be impossible. Humans are “fitted for the life of the *polis*.”¹⁶⁶ Life in the *polis*, or even in a village or family hut for that matter, is relational. Following this same logic, given that war is social, it too is relational. Any activity on the scale of war requires commitments between men. Without such relationships, war too would be impossible.

These relations in civilization and war are complicated because different survival units can exist at the same time and be embedded in one another, and one can be a member of multiple survival units simultaneously. This means that while one may belong to the survival unit, or moral circle,¹⁶⁷ of “Rome” or “Germany,” one also belongs to the survival unit of family and village. In the context of war, one belongs to the survival unit of the 1st platoon and to the survival unit of the United States. Most important, at the center of all survival units is the individual.

The Individual

Elias rejects that idea that an individual can be self-reliant, insisting that all people are dependent upon others. Thus, he did not consider an individual to be a survival unit.

Humans are born into survival units; they are not units in themselves. However, it is clear

¹⁶³ Norbert Elias, *The Civilizing Process* (Oxford: Blackwell, 2000), 481.

¹⁶⁴ R.W. Dyson, *St Thomas Aquinas Political Writings* (Cambridge: Cambridge University Press, 2002), xxv. Given the Greek conception of politics as including all life within the *polis*, to say “social and political” is more accurate than the more common translation of solely “political.” A further articulation of this is: “Man’s natural instinct moves him to live in civil society” (*Immortale Dei*, 1885, http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_01111885_immortale-dei_en.html).

¹⁶⁵ Hobbes uses the term “brute” to indicate un-reasoning and without law.

¹⁶⁶ Richard Mulgan, “Aristotle and the Value of Political Participation,” *Political Theory* 18, no. 2 (1990), 196.

¹⁶⁷ Peter Singer’s term, used broadly here to refer to the group we identify with. I prefer this term to survival unit.

that an individual can biologically live without the group and thus could be thought of as such a unit. Such a life might be unpleasant and dangerous, but not impossible. In theory, such an individual would possess what could be termed a self-regarding morality. As they are the only survival unit, it is only themselves they must consider. Egoism would dominate such a world.

However, as we edge out of the theoretical and into the real world, it is clear such selfishness could not work. The egoist morality could give primacy to its own preservation, but it still must guide actions in relation to an environment. Thus, a moral code would be based upon regarding those objects essential for one's survival with due consideration, thus ensuring that *The Giving Tree*¹⁶⁸ does not become a withered stump and cease to provide fruit. And so man, even as an isolated individual, would discover an other-object-regarding morality. The more objects introduced to the environment, the more complicated the relationships. This brings us to the social world in which man really lives. The introduction of other people creates an even more intricate relational system. When these people become an essential part of survival, which they almost inevitably will be, the interests of these others must also be considered. Here morality emerges. According to Durkheim "everything which forces man to take account of other men is moral, everything which forces him to regulate his conduct through something other than the striving of his ego..."¹⁶⁹ Survival itself thus forces morality, for achieving only self-interest through self-help has too many weaknesses.

The Failing of Self-Help

The importance of self-preservation has directly contributed to the emphasis given by some to self-help as the only certain way to secure life. According to most realist conceptions, the goal of man in a 'state of nature' is to "Survive, survive on own terms, or improve our capacity for independent action."¹⁷⁰ The fact that this quote is pulled from a U.S. Defense briefing demonstrates the extent to which this thinking has become part of military organizations. This is a dominant paradigm with the military and leads to the natural conclusion that this feature is translatable to the social organism of the armed forces. In addition, realist international relations scholars have turned the principle of self-

¹⁶⁸ Shel Silverstein, *The Giving Tree* (Evil Eye Music, 1964).

¹⁶⁹ Émile Durkheim, *On Morality and Society: Selected Writings*, edited by Robert N. Bellah (Chicago: The University of Chicago Press, 1973 [1893]), 336.

¹⁷⁰ John R. Boyd, "Patterns of Conflict," power point presentation, *Defense and the National Interest*, January 2007, available at www.dnipogo.org/boyd/patterns.ppt, 10.

help into the rule of the anarchic international order. Of course self-preservation for an 'organism' (whether a man or a military or the state of Kuwait) is a natural end goal. However, self-help is not necessarily the sole or even most efficient means to this end.

In light of the mimetic nature of violence, the self-help approach to self-preservation can actually decrease security. Self-help is not generally viewed as positive, and while it arguably arises from anarchy, it simultaneously would contribute to the perpetuation of that Hobbesian state of nature.¹⁷¹ The universal nature of the self-preservation instinct and mimetic strategy for survival (i.e. right to self-defense) leads to a dangerous escalatory dynamic. When this comes together with a self-help strategy, the result is a potential war of all against all. This environment would be one in which fear of death was constant and thus self-help would be an inefficient approach to survival, especially when the first group emerged.

Hobbes notes that regardless of disparities in strength, "the weakest has strength enough to kill the strongest, either by secret machination or by confederacy with others that are in the same danger with himself."¹⁷² Therefore, there is a basic equality among all people and physical prowess does not provide certain security. Even the strong must sleep and rely on guards or some other method to ensure their safety during vulnerable times. Self-help, in short, fails to provide security from death. It is a poor strategy in a group environment, leaving one vulnerable against those capable of collective action. As 19th-century military theorist Ardant Du Picq observed, "No one can stand against an Achilles, but no Achilles can withstand ten enemies who, uniting their efforts, act in concert."¹⁷³ Thus, human vulnerability can prompt not just self-help but group life. As Kenneth Waltz observes, "Individuals, to survive, must combine."¹⁷⁴ This, in turn, requires some sort of relational codes and the abandonment of self-help strategies. Self-help is largely incompatible when a group is comprised of multiple survival units that may have conflicting priorities. Self-help can lead to aggression or flight in an unpredictable manner that runs counter to the group's needs. For this reason, another method is required to secure life. This method

¹⁷¹ Alexander Wendt, "Anarchy is What States Make of It," *International Organization* 46, no. 2 (1992).

¹⁷² Hobbes, *Leviathan*, 99.

¹⁷³ Charles du Picq, *Battle Studies: Ancient and Modern Battle*, trans. by Colonel John M. Greely and Major Robert C. Cotton (New York, NY: The MacMillan Company, 1921), 47.

¹⁷⁴ Waltz, *Man the State*, 162.

must enable collective action. Thus, as Hobbes has already observed, fear of violent death leads to morality.¹⁷⁵ This, it turns out, is the “aptest means” to survival.¹⁷⁶

Live Together, Die Alone: Tensions Between the Individual and the Group

As already indicated, the fear of death can give rise to certain goals in individuals – the most important among them being survival. This goal, sprung from an individual aversion, has had profound consequences for human groups and the standard morality that holds society together. While part of the reason that individuals join together is for protection, there can often arise a tension between an individual’s goals and that of society.

The individual’s relationship with other survival units is the essence of morality. These relations will be with other individuals as well as with other circles – neighbors, the platoon, the city, or the military, depending on the context. At the higher end, the relations are with the nation, allies, and with the world as a whole. Each of these units then has relations with other units both within itself and outside. However, these relationships are not always simpatico.

The realm of human activity is one of constant interaction and tension between the individual and the group. Niebuhr has commented that “Moral life has two focuses – the individual and the social.”¹⁷⁷ It is in the tensions between the differing priorities of individual and group that the most problematic dilemmas arise. This observation was made most famously in Rousseau’s story of the stag hunt.¹⁷⁸ In the story, a group of hunters must work together to kill a stag which would then feed them all. But capturing the stag is not a certainty and during the hunt an individual hunter encounters a hare which he could kill and use to feed himself. However, if he chases the hare, the stag hunt (with its already uncertain result) will certainly fail and the group will suffer.

If an individual abandons the hunt for the stag in order to chase after a rabbit, the group will not only suffer from that one act but the entire existence of the group will be placed in danger. The defection is likely to be mimicked – more individuals will start chasing hares due

¹⁷⁵ Robert D. Kaplan, *Warrior Politics: Why Leadership Demands a Pagan Ethos*, 1st ed. (New York: Random House, 2002), 84. Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis* (Oxford: Clarendon press, 1936), 17, 18.

¹⁷⁶ Hobbes, *Leviathan*, 104.

¹⁷⁷ Niebuhr, *Moral Man*, 257.

¹⁷⁸ Brian Skyrms, “The Stag Hunt,” *Proceedings and Addresses of the American Philosophical Association* 72, no. 2 (2001).

to individual self-interest and a lack of trust in the system which allowed the defection and could not support the individual's needs. Smaller groups may also emerge that individuals feel they can trust more. Thus, social order will break down.

So the fundamental tension between the individual and society is that what is best for one is not always best for the other individuals or the group as a whole. This is problematic because although part of a group, each person is also an individual in a biological and psychological sense. Man is capable, in theory, of autonomous survival and experiences separate from the group, as well as individual death. This is of course true of most animals. Where man differs is that they are psychologically aware of this individual existence. They are also keenly aware of the group's existence, something for which they are partially responsible, but also something that can theoretically go on without them. No specific individual is necessary for the group and this gives the group the power of exclusion. This is important because although the individual has interests that run counter to the group, they also have interest in the group.

Robert Hinde points out that "individuals have fared better as members of groups than by living singly."¹⁷⁹ Society enhances the chances of survival and also provides things an individual cannot find outside the village walls – self extension and eternal life (or as close as a person can come to it). It allows individuals the ability to transcend the limits of their solitary nature but also to revel in their individuality. This led Aristotle to posit that man is only complete when in a group.¹⁸⁰ Thus, individuals form groups because it is in their interests.¹⁸¹

Of particular note, the group allows individuals to transcend their fear of death, not only by enhancing their protective resources but by granting a sort of immortality. According to Becker, an individual can transcend the fear of death through immersion in an "immortality project" or "hero-system" that provides "a feeling of primary value, of cosmic specialness, of ultimate usefulness to creation, of unshakable meaning."¹⁸² In

¹⁷⁹ Robert A. Hinde, "Law and the Sources of Morality" *Philosophical Transactions: Biological Sciences* 359, no. 1451 (2004): 1690, 1691.

¹⁸⁰ Aristotle's observation in *Politics: A Treatise on Government*.

¹⁸¹ Georg Simmel and Everett C. Hughes "The Sociology of Sociability" *The American Journal of Sociology* 55, no. 3 (1949): 254. Writes that "the impulses and interests, which a man experiences in himself and which push him out toward other men, bring about all the forms of association by which a mere sum of separate individuals are made into a 'society.'"

¹⁸² Becker, *The Denial*, 5.

Becker's view, the entire edifice of human civilization is an immortality project which helps human's avoid facing the inevitability of their own deaths. In this sense, it is possible for the individual to overcome the death anxiety by participating in immortality projects that symbolically allow him to see their life and even their death as contributing to something that will never die – their group.

The benefits and detriments of group life thus lead to a tension not just between the individual and the group but within the individual as well. Wilfred Trotter, in *Instincts of the Herd in Peace and War*, posits that man possesses a “herd instinct” (gregariousness) which can conflict with other priorities, such as self-preservation, nutrition, and sex.¹⁸³ This instinct, Trotter points out, is directly responsible for feelings such as guilt and duty. Such feelings are the primary enforcement mechanism for society's norms, giving the sanction of the community (approval or disdain) their compelling force. This can be properly viewed as the foundation of legitimacy, a power that will prove vital later in this dissertation.

Morality Manages Relations

The formation of morality is based upon easing this struggle between the individual and the group.¹⁸⁴ This is the reason that, as Lewis Mumford writes, “What we call morality began in the mores, the life-conserving customs, of the village”¹⁸⁵ – because it was here that the tensions and relationships first had to be managed. Durkheim points out that the function of morality is “to link the individual to one or several social groups...”¹⁸⁶ The exact nature of these links may vary but in order that a group coheres, the links must exist. Morality helps to lay out the network of relationships within a social order. In this manner, morality guides the relationship between individuals in a group and between the individual and the group. This general description of morality as having social life as its primary purpose has a long history. Helvetius, writing in the 18th century, described morality as “the science of the means invented by men to live together in the most happy manner

¹⁸³ William Trotter, *Instincts of the Herd in Peace and War* (New York: MacMillan & Co., 1919).

¹⁸⁴ John Derrett, *Law and Morality* (London: Pilkington Press, 1998). Morality is “the condition of an individual as he interacts with his society.”

¹⁸⁵ Lewis Mumford, *The City in History: Its origins, Its Transformations, and Its Prospects* (New York: Harcourt, Brace & World, 1961), 15.

¹⁸⁶ Emile Durkheim, *Moral Education: A Study in the Theory and Application of the Sociology of Education*, trans. by Everett K. Wilson and Herman Schnurer (Mineola, NY: Dover Publications, 2002 [1961]), 85.

possible.”¹⁸⁷ Durkheim goes on to say that “Morality is the aggregate of the conditions upon which social solidarity depends.”¹⁸⁸

The need for social solidarity means that the group cannot forget the individual. It is for this reason that individualism is emphasized in some social orders, in particular the Western culture beginning in ancient Greece. However, importantly an individual can only be so within society. Aristotle declares that those who are not part of society are either “a beast or a god.”¹⁸⁹ Locke compares those who go against society’s rules, i.e. criminals, to lions and tigers, “one of those wild savage beasts with whom men can have no society nor security.”¹⁹⁰ Individuals are a danger to the society and so society often seeks them out for destruction. Living just outside town has led to many an individual being branded a witch or a monster. The war against the individual in this sense has been one of the longest in human history.

Yet individualism cannot be eradicated. It is necessary that a “society learns to regard its members no longer as things over which it has rights, but as co-operators whom it cannot neglect and towards whom it owes duties.”¹⁹¹ When any group fails to promote the individual and align the group and individual wills, the individual is more likely to defect to seek his own interests. This may not amount to them leaving the group, but their actions are much more likely to conflict with the group.¹⁹² Thus, individual rights start to assume importance. By regarding the units which comprise it, a social circle ties these individuals to the group, which can create greater fighting power. This was why Hanson believed the Greeks fought better than their ancient-world counterparts.¹⁹³ However, the group is the defender of these rights, not the individual themselves.

¹⁸⁷ Waltz, *Man, the State*, 73. From Helvetius, *A Treatise on Man*, Hooper translation, p. 12n. See also, Helveius, *De l’esprit: or, Essays on the mind and its several faculties*, page xxvii. Summary for example notes that morality provides means to make people more happy and empires more durable.

¹⁸⁸ Albion W. Small, “De la Division du Travail Social [Review],” in *Emile Durkheim: critical assessments*, edited by Peter Hamilton, vol. 1 (New York, NY: Routledge, 1990), 5. Quoting Durkheim, *De la Division du Travail Social*, 393.

¹⁸⁹ Aristotle, *Politics: A Treatise on Government*, Book 1, Chapter 2.

¹⁹⁰ Locke, *Two Treatises*, 136.

¹⁹¹ Emile Durkheim, *Division of Labor in Society*, translated by W.D. Halls (London: Macmillan, 1997), 228.

¹⁹² Durkheim noted that this defection included suicide, although that is not our focus (Durkheim, *Moral Education*, 67, 68).

¹⁹³ V.D. Hanson, *The Western Way of War: Infantry Battle in Classical Greece* (Berkeley, CA: University of California Press, 2009).

In addition, individualism provides other benefits to the group. This is because the individual can lead positive social change, and due to the group's mimetic impulses, pull society along with him. This makes a society more adaptable and so more likely to survive. Thus when one breaks away from imitation this prompts imitation by others. No sooner do we head out to be independent than we find a companion and so set off to be "independent together."¹⁹⁴ Many social movements have been possible through this synthesis of individualism and the desire to imitate. A number of scholars have pointed out how individualism has given groups an advantage in advancement.¹⁹⁵ This group-of-individuals philosophy appears to be the thinking of many a modern nation, typified of course by the U.S. mantra *E Pluribus Unum*.

The Mimetic Foundation of Civilization

Freud criticized Trotter's theory of the herd for not taking into account the human tendency to follow leaders.¹⁹⁶ However, the analogy can accommodate this tendency as long as we consider what first enabled the group of individuals to hold together. In a herd, it is the self-regarding nature of each member that propels the survival of the whole. In the case of danger, the most alert flashes his or her tail and takes flight, becoming the leader, while others mimic, following and surviving. However, man progressed beyond this. Humans did not move in large numbers across an unbroken plain putting their appendices to good use before they became vestigial. We realized the Ardentian power of the herd and began acting together. This mimesis, according to Girard, was the key to forming coherent social groups¹⁹⁷ and is the basis for civilization.¹⁹⁸

Man's mimetic tendency has been explored in detail by Girard but has been recognized for much longer. Walter Bagehot wrote in 1872 that "the propensity of man to imitate what is before him is one of the strongest parts of his nature."¹⁹⁹ This imitation, according to Bagehot, allowed the formation of a "cohesive polity based on rigid identities of behavior

¹⁹⁴ Rudolph and Herby in Rudolph the Red-nosed Reindeer.

¹⁹⁵ David Landes, *The Wealth and Poverty of Nations: Why Some are So Rich and Some So Poor* (New York, NY: W.W. Norton & Co., 1998).

¹⁹⁶ Sigmund Freud, *Group Psychology and the Analysis of the Ego*, trans. and ed. by James Strachey (New York, NY: W.W. Norton & Co., 1959 [1922]), Chapter 9.

¹⁹⁷ Girard, *Things Hidden*, 14-15.

¹⁹⁸ Gil Bailie, *Violence Unveiled: Humanity at the Crossroads* (New York, NY: Crossroads Publishing Company, 1996), 187.

¹⁹⁹ Walter Bagehot, *Physics and Politics: or Thoughts on the Application of the Principles of Natural Selection and Inheritance to Political Society* (London: Henry S. King & Co., 1872), available at <http://www.fullbooks.com/Physics-and-Politics1.html>.

– ‘cake of custom,’²⁰⁰ which enhanced a group’s potential to survive. Jean-Gabriel De Tarde’s laws of imitation were an additional early manifestation of mimetic theory. Just before the 20th century began, Tarde had explained crowd formation in terms of reciprocal imitation.²⁰¹ Girard notes that Durkheim, Tarde, and himself all consider “the engine behind the construction of the social” to be “imitation.”²⁰²

Mimesis is not just about acting together, but about living together. To fully understand how mimesis allows civilization, it is useful to think about it as a relationship in which the separate parties exchange places in imitation. There is a constant trading of places, what Girard observes as a dynamic of doubles. This establishes a reciprocal relationship in which each mimics the other in turn, where neither side is solely the mimicker or mimicked. This reciprocity is foundational to our sense of equality, which has been described as “a relational ideal of reciprocity.”²⁰³ It is also the foundation of justice, security, order, and morality.²⁰⁴ Reciprocity has been called “the vital principle of society”²⁰⁵ and the “basis on which the entire social and ethical life of primitive civilizations presumably rests.”²⁰⁶ Georg Simmel too believed all social equilibrium and cohesion rested on reciprocity.^{207, 208} Individuals mimicking one another are able to live together and act together. Imitation enhances prosocial attitudes.²⁰⁹ Mimesis then is the foundation of social activity. However, there is danger which relates back to the nature of violence discussed earlier – mimesis can lead to violence, including between groups, and once initiated, violence itself is extremely mimetic. Thus, the thing that is essential for civilization is also a danger. This brings us to war.

²⁰⁰ Samuel Beer, “Tradition and Nationality: A Classic Revisited” *The American Political Science Review* 68, no. 3 (1974): 1293.

²⁰¹ Roger L. Geiger, “The institutionalization of sociological paradigms: Three examples from early French sociology,” *Journal of the History of the Behavioral Sciences* 11, no. 3 (1975): 241.

²⁰² Rene Girard, *Battling to the End* (East Lansing, MI: University of Michigan Press, 2009), 22.

²⁰³ Andrea Sangiovanni, “Global Justice, Reciprocity, and the State,” *Philosophy & Public Affairs* 35, no. 1 (2007): 19.

²⁰⁴ Hinde, “Law and the Sources,” 1694.

²⁰⁵ Alvin W. Gouldner, “The Norm of Reciprocity: A Preliminary Statement,” *American Sociological Review* 25, no. 2 (1960): 161; L. T. Hobhouse, “Morals in Evolution: A Study in Comparative Ethics” (London: Chapman & Hall, 1951), 12.

²⁰⁶ Gouldner “The Norm,” 161; Richard Thurnwald, *Economics in Primitive Communities* (London: Oxford University Press, 1932), 106.

²⁰⁷ Georg Simmel, *The Sociology of George Simmel*, trans. and ed. by Kurt H. Wolff (Glencoe, IL: Free Press, 1950), 387.

²⁰⁸ The importance of mimesis is still being uncovered today. Evolutionary biologists are now providing increasing evidence that humans are hard-wired for reciprocity, and have described reciprocity as the evolutionary basis for cooperation in society (Martin A. Nowak and Karl Sigmund, “Shrewd Investments,” *Science* 288 (2000)).

²⁰⁹ Cecilia Heyes, “Evolution, development and intentional control of imitation,” *Philosophical Transactions of the Royal Society Biological Sciences* 364 (2009): 2295.

The Nature of War

A question that naturally arose at the beginning of this exploration is: Do we need to know the function(s) of war in order to know the function(s) of morality in war? Considering that one of the primary reasons some oppose moral/legal rules in war is that they ‘get in the way’ of war, it seems essential that we determine if this is the case. In order to know this, one must have a grasp on, at the very least, the general function of War and wars. Even if morality has utility separate from its influence on war, it is vital to know if it obstructs what some see as an otherwise useful process. While one cannot get bogged down here, it is possible to come to some broad conclusions about war, which will then enable an examination of how morality impacts the activity. We can do this again by looking at the social origins and nature of the phenomenon we wish to examine –war in this case. This exploration includes looking at what is broadly accepted as war’s primary function – to pursue politics.

The Difficulty Defining War

It is not a simple matter to develop a definition of war. In his *History of Warfare*, Keegan actually aimed to call “into doubt the belief that there is a simple answer to the question (What is war?) or that war has any one nature.”²¹⁰ Unfortunately, it is difficult to accept such vagueness in any academic endeavor. From an academic standpoint, definition of terms is important in order to provide a solid foundation for an ensuing argument.

The fact that the definition of war is not agreed upon is one of its most enduring qualities. Sheng Hongsheng points out that “In ancient times, each state had its own theories and perceptions of how the nature of war should be defined.”²¹¹ During the Middle Ages, there was also “an ideological conflict over the meaning of war itself.”²¹² The situation in modern times *may* display more uniformity in the definition of war, at least in international legal documents, but, in practice, many states and parties still hold different views on what war is and thus how it can be carried out.

²¹⁰ John Keegan, *A History of Warfare* (New York, NY: Vintage Books, 1993), 386.

²¹¹ Sheng Hongsheng, “The Evolution of Law and War,” *Chinese Journal of International Politics* 1, no. 2 (2006): 267.

²¹² Karma Nabulsi, “Evolving Conceptions of Civilians and Belligerents: One Hundred Years after the Hague Peace Conferences,” in *Civilians in War*, edited by Simon Chesterman, 9-24 (London: Lynne Rienner, 2001), 12.

The amount of disagreement on the definition of war is understandable when we consider the power of defining. According to Brian Linn “Scholars and strategists must recognize that every era involved contesting and often politicized definitions, all designed as much to influence policy as to illuminate the subject.”²¹³ Many definitions are immediately identifiable as bestowing power upon a certain type of war by certain actors. For example, Ingrid Detter argues that “War is thus a sustained struggle by armed forces of a certain intensity between groups of a certain size, consisting of individuals who are armed, who wear distinctive insignia and who are subject to military discipline under responsible command.”²¹⁴ But the faults of this definition are immediately obvious, being state centric. It immediately disqualifies a vast number of groups from waging war, or more generally using violence, effectively and is thus a status quo enforcing mechanism.

Thus, our goal here is not to develop an infallible definition, a task which is a dissertation in itself, but to first come to a baseline understanding of the social origin and nature of war so that it is possible to undertake a discussion of how morality influences the activity.

The Social Origin of War

Best hypothesizes that “The sources of conflict, from familial on upwards, could provide the key to understanding the development of some of conflicts restraints and prohibitions.”²¹⁵ For this reason, our examination of the conditions and circumstances in which moral codes of discrimination arose must include consideration of the causes of violence. Again, we are not searching for the historical and case specific origins of conflict but the social origins.

Rousseau points out that “The first man who, having fenced in a piece of land, said ‘This is mine,’ and found people naïve enough to believe him, that man was the true founder of civil society.” However, he goes on to point out that this first man also founded “crimes, wars, and murders.”²¹⁶ In Biblical myth, this first man was Cain, a tiller of soil and thus one who would fence in land against his pastoralist brother. It is little surprise that such a situation would lead to violence given that both parties desire the same object (land in this

²¹³ Dr. Steven Metz and COL Phillip R. Cuccia, “Defining War for the 21st Century,” 2010 SSI Annual Strategy Conference Report, April 6-8, 2010, Carlisle Barracks, PA, available at <http://www.strategicstudiesinstitute.army.mil/Pubs/display.cfm?pubid=1036>, 6.

²¹⁴ Ingrid Detter, *The Law of War* (Cambridge: Cambridge University Press, 1987), 26.

²¹⁵ Best, *Humanity in Warfare*, 21.

²¹⁶ Jean-Jacques Rousseau, *A Discourse on the Origin of Inequality*, trans. by Donald A. Cress (Indianapolis: Hackett Publishing Company, 1992), 44.

case). This gets to the core of the cause of conflict and war – mimetic desire.²¹⁷ This can manifest itself in many ways – as a struggle for scarce resources such as land, an imitative arms race, or a feeling that the social order is not equitable – but regardless, it is mimesis that is at the center. Although we can only dwell on this issue briefly, this conception of conflict appears compatible with greed and grievance theories of conflict, with realist and Marxist conceptions, and we expect many others.

Wendt notes that “if the other is threatening (or perceived to be), the self is forced to ‘mirror’ such behavior in its conception of the self’s relationship to that other.”²¹⁸ With attitudes now aligned, actions also take on a mimetic quality – each side pursues the same weapons in an arms race and both find themselves wanting the same objects. However, in this mimetic exchange is a reciprocity that has a stabilizing quality. It is only when the reciprocity fails or is feared to be near failing, that the crisis truly begins. Marcel Mauss, in *The Gift*, observes that whenever there is not reciprocity, there is a danger of violence.²¹⁹ He was referring specifically to his research of Polynesian tribes and gifts but we can see this dynamics present in many conflicts.²²⁰ In this case, the reciprocal relationship has failed. There is a “persecuting tendency” when one does not imitate, something that Bagehot attributes to savages but is actually common among all peoples.²²¹ We have a need not only that our actions be reciprocal but also that the enemy’s actions be reciprocal. If they are not, they are an Other and deserving of being killed or even wiped out. If they are reciprocal, or we perceive them to be, they are equals.

Violence then begins due to an effort to (re)establish reciprocity. Thucydides alludes to this need for reciprocal mimesis in explaining the start of the Peloponnesian War, writing that “The growth of the power of Athens, and the alarm which this inspired... made war inevitable.”²²² Thus, the balance was being threatened.

²¹⁷ This idea is at the core of much of Rene Girard’s work.

²¹⁸ Wendt, “Anarchy,” 406, 407.

²¹⁹ Marcel Mauss, *The Gift: The Form and Reason for Exchange in Archaic Societies*, translated by W.D. Halls, forward by Mary Douglas (London: Routledge, 1990). Chapter 1, Section II and III, talks of the reciprocal obligations which if refused is “tantamount to declaring war.”

²²⁰ Aristotle similarly observes how when one is “deprived of a benefit by those who owe them one” it is reasonable to be roused to violence. Aristotle, *Politics*, 7.7.

²²¹ Bagehot, *Physics and Politics*.

²²² Thucydides, *The History of the Peloponnesian War*, trans. Richard Crawley (Letchworth: The Temple Press, 1910), 16.

Conceptions of justice that can give rise to war are also intricately linked with ideas of mimetic reciprocity. The Athenian lawmaker Solon, credited by some with laying the foundations for democracy, wrote that justice is “the retribution of Zeus, which lets none escape. One man makes amends soon, another later; and if the guilty man escapes punishment, his innocent children and his descendants suffer in his stead.”²²³ Following from this then, a lack of reciprocity would be perceived as an injustice and will naturally result in an effort to restore the balance through mimesis. This line of thinking led President Woodrow Wilson to note that “If you leave a rankling sense of injustice anywhere, it will not only produce a running sore presently which will result in trouble and probably war, but it ought to produce war somewhere.”²²⁴ A lack of reciprocity will lead to a war.

The Remarkable Trinity

Clausewitz’s so-called Remarkable Trinity of war has three elements summarized as: “primordial violence, hatred, and enmity,” which are “blind instinct”; “the play of chance and probability” that can be considered as violence’s unpredictability and uncertainty; and war’s “element of subordination, as an instrument of policy, which makes it subject to reason alone,” what can also be considered the requirements of politics.²²⁵ For shorthand, we shall refer to these as emotion (whether violent or passive), uncertainty (versus the attempt at order), and policy (be it rational or not). This trinity represents the essential features of all wars, with which all parties must contend. This is the case regardless of whether we are talking about conventional wars, asymmetric wars, hybrid wars, or nuclear cold wars.²²⁶

Clausewitz claimed that any theory or war that did not take the Remarkable Trinity into consideration would be incomplete. He writes that, “These three tendencies, which appear like so many different law-givers, are deeply rooted in the nature of the subject, and at the same time variable in degree (“in their relationship to one another”²²⁷). A theory which would leave any one of them out of account, or set up any arbitrary relation between them,

²²³ Donald Shriver, *An Ethic for Enemies: Forgiveness in Politics* (Oxford: Oxford University Press, 1998), 13.

²²⁴ Joseph P. Tumulty, *Woodrow Wilson as I Know Him* (Garden City, NY: Doubleday, Page, & Co., 1921), 274.

²²⁵ Carl von Clausewitz, *On War*, trans. Michael Howard and Peter Paret (Princeton: Princeton University Press, 1976/1984), 89, 101 in Knopf’s “Everyman’s Library” edition.

²²⁶ This point is made by Antulio J. Echevarria II, “War And Politics: The Revolution In Military Affairs And The Continued Relevance Of Clausewitz,” *Joint Forces Quarterly* (Winter 1995-96), 76-82.

²²⁷ Secondary translation from Clausewitz, *On War*, 89.

would immediately become involved in such a contradiction with the reality, that it might be regarded as destroyed at once by that alone.”²²⁸ Of course Clausewitz certainly had a vested interest in ensuring his intellectual creation became the standard by which all future theories of war would be judged, so one could possibly dismiss the Remarkable Trinity. However, given the emphasis that has been accorded to Clausewitz in military academia and doctrine,²²⁹ such a dismissal would be unwise. As this dissertation represents an attempt to explore the utility of morality in war, it must take into consideration the dominant paradigms. As such, a choice must be made between accepting the Remarkable Trinity or attacking it prior to adaptation or dismissal. Thus, the theory developed here will follow Clausewitz’s guidance and “keep itself poised in a manner between these three tendencies, as between three points of attraction.”²³⁰ Indeed, this proves to be a very fruitful approach.

War’s Element of Subordination to Rational Policy

It is perhaps common sense, and certainly strategic sense, that a war should be guided by its goals. Clausewitz states bluntly that “no one in his senses ought to” start a war “without first being clear in his mind what he intends to achieve by that war.”²³¹ Military doctrine has followed this philosophy. U.S. military doctrine advises that leaders should “Direct every military operation toward a clearly defined, decisive, and attainable objective.”²³² A pantheon of military leaders advocate similarly, from Napoleon²³³ to Colin Powell.²³⁴ As obvious as this seems, many wars are not so guided and this contributes to failure – for example, Lebanon, according to Powell, and Somalia, according to the National Defense University’s Chris Lamb, were violent quagmires because the

²²⁸ Clausewitz, *On War*, 24.

²²⁹ LTC Richard J. Young “Clausewitz and His Influence on U.S. and Canadian Military Doctrine,” in *The changing face of war: learning from history*, edited by Allan Douglas English, 9-21 (The Royal Military College of Canada, 1998), 17.

²³⁰ Clausewitz, *On War*, 24.

²³¹ *Ibid.*, Book 1, Chapter 1.

²³² Headquarters Department of the Army, *FM 3-0 Operations* (Washington, DC: United States Government, 2008), 4-12

²³³ Napoleon’s Maxim V states that “War must be guided by its objects.” (Napoleon Bonaparte, *Napoleon’s Maxims of War*, trans. by Lieut. General Sir G.C. D’Aguilar and C.B. David McKay of Philadelphia, 1902. Available at <http://www.archive.org/stream/officersmanualna00napo#page/n1/mode/2up>).

²³⁴ This tenet is included in the so-called Powell Doctrine, which was actually an extension of the Weinberger Doctrine. After retirement, Powell articulated his thoughts further in “U.S. Forces: Challenges Ahead” *Foreign Affairs* (Winter 1992/1993), available at <http://www.cfr.org/world/us-forces-challenges-ahead/p7508>. Powell, for example, writes that, “clear and unambiguous objectives must be given to the armed forces. These objectives must be firmly linked with the political objectives. We must not, for example, send military forces into a crisis with an unclear mission they cannot accomplish—such as we did when we sent the U.S. Marines into Lebanon in 1983.”

operations lacked clear objectives.²³⁵ In short, it is absolutely vital that war stay focused on its objects and it is for this reason that violence itself can get in the way of war. JWT also advocates that all wars have a clear goal and so we find strategic and ethical precepts align here.²³⁶

In war, the military should be focused on the achievement of military objectives, while the government's priorities are political objectives. However, there has been very little consideration that the people (the third element of the Social Trinity that we will later explore) also have objectives and that these are different from the military and the political. While the people can, and often do, value the military victory and the achievement of the political aims of the war, the victory is incomplete if societal objectives are not also achieved. Just as a military victory may not result in political victory, a military/political victory doesn't ensure that society will also achieve its war goals. This will be discussed later, after exploring the Social Trinity.

The Political Object is the Object

The political object is original object in the war.²³⁷ It equates to the war's purpose. By political object we mean both the specific policy for which the war is being undertaken and also the political effort which aims to increase the power of the state (both within and without). While we must be careful of semantics when translating from the original German, Clausewitz does appear to separate but link policy and politics. Depending on the translation, he writes that "War is Merely the Continuation of Policy (or Politics) by Other Means." However, he goes on to say, "We see therefore that war is not merely an act of policy but a true political instrument, a continuation of political intercourse, carried on with other means."²³⁸ In addition, since policy is an element within his Remarkable Trinity, it would appear to be part of and not all of politics, which encompasses the whole Trinity. Policy and the political are, however, related and thus should be more fully explored.

²³⁵ Christopher Lamb in communication with author.

²³⁶ See for example John Mark Reynolds, "Libya: No Clear Goal Equals Unjust War," available at <http://www.crosswalk.com/news/libya-no-clear-goal-equals-unjust-war.html>.

²³⁷ Girard, *Battling to the End*, 8; and Clausewitz, *On War*, Book 1, Chapter 1, Section 11. Any assertions otherwise are simply defining politics wrongly, or not at all. Claims that war is primarily determined by culture, for example, ignore the fact that culture and power (thus politics) are intricately linked.

²³⁸ Clausewitz, *On War*, 28.

In trying to answer whether war really is the continuation of politics, Tony Corn points out, “its validity, ultimately, rests on the definition of both War and *Politik*. After 600 pages of *On War*, you do get a sense of Clausewitz’s definition of War – but you still know next to nothing about the ‘concept of the political’ from which he operates.”²³⁹ Just trying to get a grasp on the definition could consume an entire book. According to Edward Villacres and Christopher Bassford, the word, as it is used in German, has two inter-related meanings. “The *policy* aspects he discusses are those connected with the trinity’s element of rational calculation. *Politics*, on the other hand... is a struggle for power between opposing forces.”²⁴⁰

We would be wise to take into consideration both definitions. Assuming a realist position,²⁴¹ we can properly comprehend policy and the political as intertwined within the pursuit of power. According to Max Weber, politics is the “striving to share power or striving to influence the distribution of power.”²⁴² This definition makes it quite clear that war is a means by which one can undertake politics, as war is a method for influencing the distribution of power. War utilizes ways of power in order to achieve further ways of power. Policy too aims to influence the distribution of power. Since policy is driven by interests and we define interests in terms of power,²⁴³ to pursue a policy is then to pursue the associated power that will come with its achievement. Policy, in other words, has a political end because its end is power. Bassford appears to agree with this view, writing that “‘Policy’ may be defined as rational action, undertaken by an individual or group which already has power, in order to use, maintain, and extend that power.”²⁴⁴ Thus, a nation uses power to achieve its policies, but these policies then increase its power, all of which serve a political end.

²³⁹ Tony Corn, “Clausewitz in Wonderland,” *Policy Review* Web special, September 2008, <http://www.hoover.org/publications/policyreview/4268401.html>.

²⁴⁰ Edward Villacres and Christopher Bassford, “Reclaiming the Clausewitzian Trinity,” *Parameters* (August 1995), 14.

²⁴¹ A wise move if we are to address this dissertation in part to the military establishment.

²⁴² Max Weber, *From Max Weber: Essays in Sociology*, trans. and ed. by H.H. Gerth and C.W. Mills. New York, NY: Routledge, 1991 [1946], 78.

²⁴³ Hans Morgenthau and Kenneth Thompson, *Politik Among Nations: The Struggle for Power and Peace*, 6th ed. (New York, NY: Knopf, 1985).

²⁴⁴ Christopher Bassford, “John Keegan and the Grand Tradition of Trashing Clausewitz: A Polemic,” *War and History* 1, no. 3 (1994).

What then is power? According to Hans Morgenthau, a founding father of the realist school of international politics, power is “man’s control of man.”²⁴⁵ War then uses control of man so as to gain further control of man. This definition thus further supports the broad view that Clausewitz believed the object of war was power. Clausewitz wrote that “War therefore is an *act of violence* intended to compel our opponent to fulfil (sic) our will...”²⁴⁶ The contestation of wills clearly indicates that war is about power, because compelling or submitting our opponent to our will is a demonstration of man’s control over man.

The Subordinate Object

The military object, whether a bunker or a beach head, is always subordinate to the political object. However, the two must be linked. The military objects are the means of achieving the political objects²⁴⁷ and Clausewitz makes clear that “the means must always include the object in our conception.”²⁴⁸ Thus, the military object and political must match,²⁴⁹ just as the tactical objectives must suit and support the operational and strategic levels in war. However, as General Rupert Smith points out, “the political objective and the military strategic objective are not the same, and are never the same.”²⁵⁰

The linking of military and political objectives is a complicated task. There are a number of notable occasions where an army was able to achieve its military aims, but this did not translate into the accomplishment of the war’s political goals (Algeria being the most often cited).

Elaine Scarry points out that there are three arenas of damage in war: embodied persons; material culture or self-extension of persons; and immaterial culture, aspects of national consciousness, political belief, and self-definition. According to her, “The object in war is the third; for it is the national self-definitions of the disputing countries that have collided, and the dispute disappears if at least one of them agrees to retract, relinquish, or alter its own form of self-belief, its own form of self-extension.”²⁵¹ The means of achieving this end (the destruction of the third arena) is through the destruction of the first and the second

²⁴⁵ Hans Morgenthau and Kenneth Thompson, *Politics Among Nations: The Struggle for Power and Peace*, 6th ed. (New York, NY: Knopf, 1985).

²⁴⁶ Clausewitz, *On War*, 27.

²⁴⁷ *Ibid.*, Book 1, Chapter 1, Section 35.

²⁴⁸ *Ibid.*, Book 1, Chapter 1, Section 23.

²⁴⁹ Clausewitz, *On War*, in Girard, *Battling to the End*, 9.

²⁵⁰ General Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (New York, NY: Vintage Books, 2005), 215.

²⁵¹ Scarry, *The Body*, 114.

arenas. What is occurring here is transference of violence between objects. This transferability is what enables the destruction of one thing to then be equated with the destruction of another. But the surrogate mechanism at work requires there be a link between the objects.²⁵² If there is not, all the destruction in the world will not contribute to the end. This reality leads Smith to conclude that “the difference between the political objective and the objective that men are actually fighting for and are willingly dying for are potential strategic weaknesses.”²⁵³

As mentioned above, an object that does not receive as much attention is the social object of war. As the military has an object and the government has an object, it makes logical sense that the people too would have an object. Perhaps it is harder to get a grasp on this object in a large and possible heterogeneous population but it certainly exists in many conflicts. Some military scholars have identified this as the cultural object of war. Of note, Keegan places culture at the center of the paradigm, stating even that “war may be, among many other things, the perpetuation of a culture by its own means.”²⁵⁴ We can, however, accept the idea of war having a social object without needing to give it the preeminent place. It is much more likely that just as military victory is not a sufficient part of political victory, and political victory might come without military victory, so the social object may or may not be achieved. Yet, it is also likely that a war would be more effective from a power standpoint if all objectives are aligned and all of them achieved.

The subordinate military goal is of course violent and this complicates the achievement of the original objective. This is because of the nature of violence and also because of the uncertainty inherent in war. We find that both of these need to be controlled in order that the objectives of war are met.

Uncertainty is a Dominant Feature in War

The second predominant tendency of war cited by Clausewitz is “of the play of chance and probability.”²⁵⁵ War, he writes, “is the province of uncertainty: three-fourths of those things upon which action in War must be calculated, are hidden more or less in the clouds of great uncertainty... War is the province of chance. In no sphere of human activity is

²⁵² A full discussion will be laid when the soldier as a surrogate is presented in Chapter 4.

²⁵³ Smith, *The Utility*, 242.

²⁵⁴ Keegan, *A History*, 46.

²⁵⁵ Clausewitz, *On War*, 24.

such a margin to be left for this intruder, because none is so much in constant contact with him on all sides. He increases the uncertainty of every circumstance, and deranges the course of events.”²⁵⁶ As will be expounded upon, during a war, one does not want oneself in disorder. Many military thinkers and practitioners have noted that war is a realm of chaos.²⁵⁷ Things proceed in a particular direction in war. The situation tends from one of low entropy to high entropy, in which fewer resources are available for useful activity. The state of order which preceded the outbreak of hostilities will naturally become a state of disorder and randomness. Thus, chance and uncertainty are dominant features within the context of war. This complicates any purposeful activity that aims to achieve a specific end.

Such uncertainty is not good for military operations. On the level of the individual soldier uncertainty creates anxiety²⁵⁸ and fear, which then prompts a self-preservation instinct. As we have already mentioned and will later expound upon, this can run counter to group goals since prioritizing personal survival can lead to desertion or to an overuse of force that can have negative second-order effects. At a higher level, “uncertainty avoidance” according to Richard M. Cyert and James G. March can also lead organizations to “avoid the requirement that they correctly anticipate events in the distant future by using decision rules emphasizing short-run reaction to short-run feedback rather than anticipation of long-run uncertain events. They solve pressing problems rather than develop long-run strategies.”²⁵⁹ In short, this prompts a focus on tactical levels to the detriment of strategic consideration.

Clausewitz notes that it falls primarily to the military to wrestle with chance.²⁶⁰ Civilians and government deal with chance too but the military must transcend it and still operate to achieve goals. Thus it is that military organizations have given great attention to bringing order and certainty to the chaos of war to the extent that this is possible.²⁶¹ The “key

²⁵⁶ Ibid., 42.

²⁵⁷ Chaos and war are oft used side by side in books (Susan Woodward for example) and in news stories.

²⁵⁸ Geert Hofstede, *Culture's Consequences: comparing values, behaviors, institutions, and organizations across nations*, 2nd ed. (Thousand Oaks, CA: SAGE Publications, 2001), 146.

²⁵⁹ Ibid., 147

²⁶⁰ Clausewitz, *On War*, 24.

²⁶¹ Brian Taylor, “Russia’s Passive Army: Rethinking Military Coups,” *Comparative Political Studies* 34, no. 8 (2001): 928.

organizational goal of uncertainty avoidance” has many facets.²⁶² Chance events can doom a battle or a campaign. Muddy weather contributed to Napoleon’s loss at Waterloo and the drowning of Frederick Barbarossa led to the collapse of his army in the Holy Land. Meteorology and medics can help reduce these chance events but uncertainty remains. Most important from our perspective is that even the behavior of one’s own troops can be uncertain.

According to Max Weber, “The calculability of behavior is of paramount importance in military operations... thus eliminating from official business, love, hatred, and all purely personal, irrational, and emotional elements which escape calculation.”²⁶³ This statement indicates that the uncertainty of behavior can be driven by the violent emotion of war. Thus, the rest of our discussion on uncertainty will take place in discussing that last element of the Remarkable Trinity – how violence manifests itself in the war.

Violent Emotion

In order to understand the nature of war, one must understand the nature of violence, which we have already highlighted, and see how its features manifest themselves within the activity of war. The violent emotion of hatred and animosity that Clausewitz cites as one of the predominant tendencies of war has a number of important features.

General George C. Marshall said that “Once an army is involved in war, there is a beast in every fighting man which begins tugging at its chains, and a good officer must learn early on how to keep the beast under control, both in his men and himself.”²⁶⁴ This idea that soldiers develop into beasts during fighting has a long history. The Irish legends of the hero Cuchulain, whose *ríastrad* (fury) turned him into a monster before combat, and the Norse Berserker warriors, who displayed a similar frenzy and wore bear pelts into battle, speaks to the ancient recognition of what violent emotion can do in battle. While these traits can have positive manifestations, they can also prove detrimental to purposive group activity. This is a point addressed in greater detail in later chapters, although we must touch on the feature of violent emotion immediately.

²⁶² Jack S. Levy, “The Causes of War: A Review of Theories and Evidence,” in *Behavior, Society, and Nuclear War*, vol. 1, edited by Philip Tetlock, Jo L. Husbands, Robert Jervis, Paul C. Stern, and Charles Tilly, 209-233 (New York: Oxford University Press, 1989).

²⁶³ Dearborn Spindler, “The Military-A Systematic Analysis,” *Social Forces* 27, no. 1(1948): 85, 86.

²⁶⁴ Major Douglas A. Pryer, “Controlling the Beast Within: The Key to Success on 21st-Century Battlefields,” *Military Review* (January-February 2011): 2.

Perhaps the most important aspect of violent emotion is tendency to be driven by mimesis. That violence has a mimetic tendency has already been noted and this of course manifests itself in war. Clausewitz notes that "... hostile feeling is kindled by the combat itself; for an act of violence which any one commits upon us by order of his superior, will excite in us a desire to *retaliate* and be *revenged* on him... This is human, or animal if we will; still it is so."²⁶⁵ Violent emotion then is equated with retaliation and revenge, with the desire to respond to an act of violence with an act of violence. Thus, violent emotion is self-perpetuating. It can recursively strengthen itself to the point of being uncontainable. The emotional aspect of the violence is the desire to mimic.

On the surface, it does seem like our desire to retaliate will not manifest itself in action unless we feel we are the equal of the opponent, for if we don't feel this, we would rather choose to flee. However, actual capability does not impact the emotion felt. Even if the path we choose is flight, our desire for revenge remains and our hostile feeling is still kindled. While direct violence does not escalate, an internal desire for violence does (as well as cultural violence, which we shall discuss later), readying itself to motivate direct violence when the opportunity arises.

While it seems plausible and even likely that mimesis is an instinctual trait on an individual level, albeit one that may be encouraged by society, this by no means automatically translates to the level of social organizations. Just because individuals mimic one another, it does not mean that larger organized groups, such as armies and societies, necessarily need to mimic one another. Yet this is exactly what we find. Indeed, there is broad consensus that war is a mimetic activity and every actor, from the individual to the military apparatus to the nation, gets caught up in the imitative cycle. In commenting on Clausewitz, and building a case for his own insights into modern war, Smith wrote that, "...war is an imitative and reciprocal activity. In order to defeat an opponent in a long war one becomes more and more like him, and both sides end up feeding off the other. The form of imitation will reflect the particular society and its aims

²⁶⁵ Clausewitz, *On War*, 88. Emphasis is mine.

in engaging in the specific war, but nevertheless it will copy the basic idea in large measure.”²⁶⁶ This imitation is in the activity of war and the fighting itself.

The Imitation of War

It is not necessary to know the historical origin of warfare in order to apprehend its early diffusion. War is an imitative necessity that offers only two choices to those facing it – imitate or be eliminated.²⁶⁷ The very nature of war ensures that any group which does not mimic the organized violence of its neighbors will have difficulty surviving. Thus, once war was ‘discovered’ by one group, it was by necessity adopted as an activity by others. Of course war likely emerged in multiple locations at once, sprung from the same social mechanisms that contributed to group formation in the first place – self-preservation and self extension among them. But regardless, once warfare was introduced, it would spread as a general activity.

Schmookler’s *The Parable of the Tribes* offers a compelling theory on how the development of human civilization was driven by this imitative proliferation. Schmookler writes that “ceaseless competition, combined with open-ended possibilities for cultural innovation, inevitably drives social evolution in an unchosen direction: ways of life that do not confer sufficient power, regardless of how humane intrinsically, are eliminated, while the ways of power are inexorably spread throughout the system.”²⁶⁸ The spread of war as an activity generally and the means of war more specifically are part of this inevitable selection in favor of peoples who adopt power-based strategies. The problem is that even should one group prefer peace, it cannot be assured of this state of affairs since anyone can impose war upon them. Thus, according to Schmookler’s thesis, social evolution necessitates a group be adept at using violence so that it can survive the inevitable violence that will be inflicted upon it by another group.

²⁶⁶ Smith, *The Utility*, 59, 60. According to military theorist van Creveld, “war represents perhaps the most imitative activity known to man.” Martin van Creveld, *The Transformation of War* (New York: Free Press, 1991), 137, 138.

²⁶⁷ Schmookler states that there are the following options: destruction, absorption and transformation, withdrawal, and imitation. I would argue that absorption and transformation is equally a type of “destruction” and that withdrawal too is a short term strategy that in the long-term leads to elimination unless one can reverse one’s losses.

²⁶⁸ Schmookler, “The Parable,” 89.

Schmookler’s thesis was not revolutionary. Walter Bagehot, writing in 1872, observed that “The cause of this military growth is very plain... Each nation tried constantly to be the stronger, and so made or copied the best weapons; by conscious and unconscious imitation each nation formed a type of character suitable to war and conquest.” Bagehot, *Physics and Politics*.

International relations scholars have also drawn attention to this trend, noting that the competitive nature of the international state system and the position of war as the final arbiter of disputes results in an imitative dynamic. Failure to efficiently imitate in this case can lead to the destruction of the state or the social order.²⁶⁹ The result is a near ubiquity in the institutionalization of war. Kenneth Waltz argues, “The fate of each state depends on its responses to what other states do. The possibility that conflict will be conducted by force leads to competition in the arts and the instruments of force. Competition produces a tendency toward the sameness of the competitors.”²⁷⁰

The spread of war as an activity is not simply the spread of a power-seeking ethos, but also of best practices. The nature of war and the vital importance of group survival ensure that specific forms of warfare and military organization are widely imitated. This tendency is a well established fact in the study of military institutions. Anthropologist George Spindler notes that, “Diffusion of military concepts, rules, regulations, tactics, and organization between contemporary armies through imitation of successful innovations is a well-known phenomenon.”²⁷¹ Paul DiMaggio and Walter Powell observe a number of types of institutional isomorphisms that force an actor to resemble another actor facing the same set of environmental conditions. The first of these they term “coercive,” although it is an in-group phenomenon, resulting from organizational pressure or cultural expectations. This organizational pressure is due to the need to fit within a larger collective, to have the same standards for example. The cultural expectations pertain to the preference of most military organizations to have some level legitimacy.²⁷² This will play a larger role later in this dissertation. The second isomorphic trend is “mimetic,” and is the one which we are concerned with here. This, according to DiMaggio and Powell, is the tendency to copy success.²⁷³ Thus, we can expect that what works in war would persist as part of war.

As the above observations make clear, the art of war has a way of spreading throughout a system of interacting groups. However, as this dissertation will make clear, having

²⁶⁹ Fred Halliday, *Rethinking International Relations*, (London: Palgrave, 1994), 50, Referenced in Mark Osiel, *Obedying Orders: Atrocity, Military Discipline, and the Law of War* (New Brunswick, NJ: Transaction Publishers, 1999).

²⁷⁰ Kenneth N. Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979): 127.

²⁷¹ Spindler, “The Military,” 88; Quincy Wright notes that “...the importance of success in war in the survival of states has tended to spread military discipline and organization by conquest and imitation throughout the civilization.” (Wright, *A Study*, 129).

²⁷² Paul DiMaggio and Walter Powell, “The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields,” *American Sociological Review* 48, no. 147 (1983), 150.

²⁷³ Clausewitz, *On War*.

powerful means of violence is not enough. Rather, in order for a group to survive, it must also be adept at controlling the violence they call forth. The reason for this is because of the tendency for violence to escalate.

War's Tendency to Extremes

The imitative nature of war is particularly manifest within the fighting itself. The escalatory nature of violence in war has been observed and commented on to a great extent. The earliest chroniclers of history allude to this tendency. In describing the civil war in Corcyra, Thucydides wrote that “as usually happens in such situations, people went to every extreme and beyond it.” Thucydides clearly indicates a progressive intensification of violent means, observing that locations where the violence began later experienced “new extravagances of revolutionary zeal, expressed by an elaboration in the methods of seizing power and by unheard-of atrocities in revenge.”²⁷⁴ Indeed, it is rare to find a war that has de-escalated in its level of violence as it progressed. Most often there is escalation and the final act of the war is often the most intense, with de-escalation coming only simultaneous to an armistice or peace treaty.

According to Richard Smoke's recent work on controlling escalation, “...the majority of contemporary discussions adopt the image of escalation that includes some degree of innate upward dynamic.”²⁷⁵ Escalation then is a perpetual dynamic process. Clausewitz claimed that there were three types of reciprocal action in war, all of which had an escalatory influence on the activity of war. First and foremost, “War is an act of violence pushed to its utmost bounds; *as one side dictates the law (to use force unsparingly) to the other*, there arises a sort of reciprocal action, which logically must lead to an extreme.”²⁷⁶ Thus, war tends to extremes in the level of violent force, with the other two areas of escalations being in aims (to make the situation as bad as possible for the enemy) and in the means and will being committed.

Directly related to the escalatory and reciprocal nature of war is the concept of revenge, which returns our focus to the violent emotion of war. Barbara Ehrenreich claims revenge is the “mechanism” that leads to imitation within the activity of war. She goes on to say that “A raid or attack or insult must be matched with an attack of equal or greater

²⁷⁴ Thucydides, *History*, Book III.

²⁷⁵ Richard Smoke, *War: Controlling Escalation* (Cambridge, MA: Harvard University Press, 1978), 23.

²⁷⁶ Clausewitz, *On War*.

destructive force... Revenge has a pedagogical purpose... It teaches the intruder to stay away.”²⁷⁷ There is no doubt that revenge strategies can have a deterrent effect and protect a group. However, when deterrence fails, the impulse for revenge or reciprocity contributes to the violence since the inclination of the intruder (now become the victim) is to return for their own revenge (which was likely the rationale for the initial raid/attack/insult anyhow). What revenge does then is merely ensure the perpetuation of the conflict. According to Girard “Vengeance is the ultimate form of mimetic rivalry... each act of vengeance is the exact imitation of the proceeding one.”²⁷⁸ Girard is right, although his use of the word “exact” is inaccurate, in that perfect symmetry is almost impossible to achieve. In fact, the imitative process is escalatory. In other words, one violent act produces others in an exponential fashion. This tendency to extremes will be a large focus later in this dissertation, as it is a major dynamic of war that leads moral rules to be a condition for war.

Politics and the Tendency to Extremes

Some Clausewitzian scholars have concluded that the Prussian himself believed politics was “counter to total war” and the imperatives of politics is what makes war “limited, controlled, and rational.”²⁷⁹ Bart Schuurman notes that Clausewitz, “posits war’s tendency to extremes as the thesis to which his most famous statement that ‘[w]ar is merely the continuation of policy by other means’ is the antithesis.”^{280, 281} However, politics cannot be the solution to the extremes. Politics is the goal of war, the reason why war must be controlled. It is not the means to achieve the balance. Politics doesn’t control violent emotion and chance. In fact, politics, being on the same spectrum as war, is also prone to extremes and thus can destroy itself. In some cases, political concerns may limit the escalation but more likely they will fall prey to the dynamics of reciprocity seeking, forget their original purpose, and pursue meaningless violence. The so-called “rational policy” of war thus just becomes policy and not rational at all.

²⁷⁷ Barbara Ehrenreich, *Blood Rights: Origins and History of the Passions of War* (London: Virago, 1997), 137, 138.

²⁷⁸ René Girard “A conversation with Professor René Girard about his theory of mimetic desire,” interview by Robert Harrison, *Entitled Opinions* (Saturday, September 17, 2005, 3:00 pm - 4:45 pm) at 25:03, available at <http://french-italian.stanford.edu/opinions/girard.html>.

²⁷⁹ Michael Handel, “Who is Afraid of Carl von Clausewitz? A Guide to the Perplexed,” Naval War College, Readings. 6th ed. Summer 1997.

²⁸⁰ Bart Schuurman, “Clausewitz and the ‘New Wars’ Scholars,” *Parameters*, Spring 2010.

²⁸¹ Also making this comparison: Christopher Bassford, “Clausewitz and His Works,” <http://www.clausewitz.com/readings/Bassford/Cworks/Works.htm>.

As Quincy Wright has observed, “war may be considered a *simultaneous conflict of armed forces, popular feelings, jurial dogmas, and national cultures* so nearly equal as to lead to an extreme intensification of each.”²⁸² In short, direct violence is not the only form of violence prone to extremes. Cultural violence and structural too has this tendency, which means that to expect politics to somehow be immune from this dynamic is to expect too much. To offer up politics as the solution to the extremes of war, as a way to end the violence, and advocate so-called political solutions seems naïve about the ways that violence can be exercised. Politics trend to extremes simply takes place in the realm of structural violence. Galtung notes that “*direct violence reinforces structural and cultural violence*” and this includes political solutions, which “tend to be structural, like drawing geographical borders.”²⁸³ Politics is thus not the solution, as it too easily devolves into extreme politics or simply random policy that has little to do with politics. Thus, politics is part of what must be controlled to carry out war. There must be mechanisms in place to keep the politics rational.

Mimesis is a Dominant Tendency in War

According to Clausewitz, “the concept of war does not originate with the attack, because the ultimate object of attack is not fighting: rather it is possession. The idea of war originates with the defense, which does have fighting as its immediate object.”²⁸⁴ Defence requires reciprocity. The immediate object is to mimic the enemy, to meet him at every front. Thus, in a sense, war originates in a mimetic activity. To not be able to respond is to not be able to actually engage in war. This is from a military perspective, but also from the viewpoint of what is perceived as being moral. Those who don’t respond ‘properly’ are considered to not be engaging in legitimate warfare.

David Buffaloe, in explaining the military advice of Sun Tzu, states that “all warfare is asymmetric because one exploits circumvents or undermines an enemy’s strengths while attacking his weaknesses...”²⁸⁵ The essence of strategy is to attempt to attack in a way that the enemy cannot respond to and simultaneously avoid being attacked in a way in which

²⁸² Wright, *A Study*, 698.

²⁸³ Johan Galtung, “Violence, War, and Their Impact: On Visible and Invisible Effects of Violence,” *Polylog*, Available at <http://them.polylog.org/5/fgj-en.htm>.

²⁸⁴ Clausewitz, *On War*, 377.

²⁸⁵ David L. Buffaloe, “Defining Asymmetric Warfare,” *The Institute of Land Warfare, Land Warfare Papers* 58 (September 2006): 3. Cites Sun Tzu “Now an army may be likened to water, for just as flowing water avoids the heights and hastens to the lowlands, so an army avoids strength and strikes weakness.” Also, “He who knows the art of the direct; (Cheng) and the indirect (Ch’i) approach will be victorious” (Buffaloe uses Sun Tzu, *The Art of War*. (New York, NY: Dell, 1988)).

one cannot respond. For this very reason, groups seek reciprocity and tend to mimic, to avoid having their strength circumvented.

The reciprocal and imitative nature of war allows an entry point for Girard, who has drawn parallels between Clausewitz's observations and his own theory of mimetic violence. According to Girard, "(Clausewitz) says in order to win you have to imitate your enemy constantly (52:38)... he constantly shows you the mimetic nature of war (53:02)... The technical side of war... is a mimetic game (53:28)... He shows us the move toward total war and total mimetic conflict (53:39)."²⁸⁶ Girard made these comments in a radio interview, but has recently followed them up with an entire book that purports to finish Clausewitz.²⁸⁷

Girard points out that mimetic conflict directly relates to Clausewitz's observations on war's "trend to extremes."²⁸⁸ Taking this into consideration, we can re-frame the dynamics of war as not being driven by utmost force but by mimetic impulses. Girard and his protégés have provided ample evidence that individuals are naturally imitative.²⁸⁹ Some of the most prominent military thinkers have similar views, demonstrating how important this mimetic tendency is in war. Fuller, for example, writing many years prior to Girard, observed that "according to his surroundings, so will man himself be, for normal man is but a walking mirror."²⁹⁰ It was the task of military leaders, Fuller claimed, to ensure that the soldier was influenced in the proper direction.

The most immediate source of this influence is the individual soldier's unit. Leo Tolstoy, who served in the Crimean War, has commented that, these "relatively small groups of men, in close physical contact and operationally inter-dependent... share as if by animal magnetism, the same reactions and feelings whether in the form of resolution or faint-heartedness, of renewed dedication to, or blind flight from the demands of their terrible

²⁸⁶ Girard "A conversation."

²⁸⁷ Girard, *Battling*. As *On War* was never finished, Girard aims to finish the book literally but also stressing the dual meaning that he wants to end war.

²⁸⁸ Girard, *Battling*, 5.

²⁸⁹ For a further discussion of the scientific aspects of mimesis and mirror neurons see, for example, Marco Iacoboni, *Mirroring People: The New Science of How We Connect with Others* (New York, NY: Picador, 2008).

²⁹⁰ J.F.C. Fuller, *The Foundations of the Science of War* (London: Hutchinson & Co., Ltd., 1926), 132.

trade.”²⁹¹ This unity is an advantage but is prone to any direction, a dynamic that we will detail later.

Girard’s findings are compelling and provide excellent support for this dissertation but he never considers that since societies have mechanisms for controlling mimesis within the group, that there might be similar mechanisms in war. These are of course the rules of war. Before looking at these however, we need to first confront the perception that mimesis in war, and logically the tendency to extremes, does not need to be controlled.

Reaching a Proper Conception of War

The tendency to extremes contributes to the belief that the belligerents must race to the extremes and that the first to use maximum force is more likely to be the victor.

Clausewitz states that “it follows that he who uses force unsparingly, without reference to the bloodshed involved, must obtain a superiority if his adversary uses less vigour in its application.”²⁹² This leads some to automatically conclude that the more killing and destroying in war, the more likely the objective will be achieved – one must outkill the enemy. Even successful military leaders are prone to this illusion. General George Patton has said that “there is only one unchanging principle in warfare: that is, to inflict the greatest amount of death and destruction upon the enemy in the least time possible.”²⁹³

The idea that victory in war requires unrestrained force logically leads to the conclusion that anything that holds force back is getting in the way of success, or worse, increasing the chances of failure. Restraint is thus oft regarded as anathema to war. When a war is going poorly, it is common for restraints to be blamed. The failure of the United States to achieve military victory in Vietnam has been attributed to the military having its hands tied.²⁹⁴ In announcing the so-called “surge” in 2007, President George Bush commented that “past efforts to secure Baghdad failed for two principal reasons: [t]here were not enough Iraqi and American troops . . . , and there were *too many restrictions on the troops*

²⁹¹ Patrick Mileham, “But Will They Fight and Will They Die?,” *International Affairs* 77, no. 3 (2001); and A. “Changing Patterns of European Security and Defence.” Review of: Germany and European order: enlarging NATO and the EU by A. Hyde-Price, *International Affairs* 77, no. 3 (2001).

²⁹² Clausewitz, *On War*.

²⁹³ David Whetham, “Taking the Gloves Off and the Illusion of Victory: How Not to Conduct a Counter-Insurgency,” in *Warrior’s Dishonour: Barbarity, Morality, and Torture in Warfare* edited by Geoge Kassimeris, 129-140 (Hampshire: Ashgate, 1988), 129.

²⁹⁴ “The Army and Viet Nam: The Stab-in-the-Back Complex.” *Time*, December 12, 1969. Available at <http://www.time.com/time/magazine/article/0,9171,840467,00.html#ixzz1UjlHRdJo>; H.R. McMaster, *Dereliction of Duty: Lyndon Johnson, Robert McNamara, the Joint Chiefs of Staff, and the Lies that Led to Vietnam* (New York, NY: Harper Collins, 1997) argues that the war was lost by politicians.

we did have.”²⁹⁵ Similar comments can be found referring to a broad range of military operations that failed to go as planned. After Israel’s unsatisfactory 2006 war in Lebanon, Professor Galia Golan, observed that “There’s a sense that if the army had been allowed to pulverize Hizballah, we could’ve won.”²⁹⁶ Thus, many military thinkers echo the words of Major von Hartmann, who argued in 1880 in response to efforts to codify a law of war that “Absolute military action in time of war is an indispensable condition of military success.”²⁹⁷ A heavy-handed philosophy has actually found its way into some of the early military codes of conduct. For example, the Lieber Code, often considered an early manifestation of the LOW, asserts that the “The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.”²⁹⁸

This line of thinking often leads to a dismissal of legal and moral rules, as these naturally limit the means of war, with the 1907 Hague Convention directly stating “The right of belligerents to adopt means of injuring the enemy is not unlimited.”²⁹⁹ The Declaration of St. Petersburg restrained military objectives to weakening the enemy forces, leading military leaders such as Prussian Army Chief of Staff Helmuth Von Moltke to respond “It should be allowable... to employ all methods save those which are absolutely objectionable.”³⁰⁰ In more recent times, there have also been concerns expressed that the application of legal rules is “diminishing the operational capability of the armed forces.”³⁰¹ Again, this is not necessarily the case, but there is a perception and concern that this is occurring. Thus, for those facing violence, “the answer is not more law, but less.”³⁰²

²⁹⁵ George W. Bush, “Address to the Nation on the War on Terror in Iraq,” *Weekly Compilation of Presidential Documents* (Jan. 10, 2007). Online via GPO Access. Emphasis added.

²⁹⁶ Tim McGirk, “The End of Invincibility,” *Time*, August 27, 2006. Available at <http://www.time.com/time/magazine/article/0,9171,1376209,00.html#ixzz1Uji45FLW>.

²⁹⁷ Richard Sorabji and David Rodin, *The Ethics of War: Shared Problems in Different Traditions* (Ashgate Publishing Limited, Hants, 2006), 55.

²⁹⁸ Instructions for the Government of Armies of the United States in the Field (Lieber Code): *The Lieber Code*. Prepared by Francis Lieber, April 24, 1863. Available at *The Avalon Project* [website]: http://avalon.law.yale.edu/19th_century/lieber.asp.

²⁹⁹ International Committee of the Red Cross. *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907*. Available at <http://www.icrc.org/ihl.nsf/FULL/195>, Section 2, Chapter 1, Article 22.

³⁰⁰ Von Moltke, “On the Laws of War – The Humane Influence of a Military Despotism” *New York Times*, February 14, 1881. Available at <http://query.nytimes.com/mem/archive-free/pdf?res=F6071FFB3E5F15738DDDAD0994DA405B8184F0D3>. Written on 11 December 1880 to Professor Bluntschli in reference to the Manual of the Laws of War then recently adopted by the Institut de Droit International.

³⁰¹ Maj. WGL Mackinlay, “Perceptions and Misconceptions: How are International UK Law Perceived to Affect Military Commanders and their Subordinates on Operations?” in *Defence Studies: The Journal of the Joint Services Command and Staff College* 7, no.1 (2007). The paper argues “it is not the legislation that is damaging operational effectiveness but the wider political, public and legal context...”

³⁰² Michael N. Schmitt, “The Vanishing Law of War: Reflections on Law and War in the 21st Century,” *Frontiers of Conflict* 3, no.1 (2009).

War must control violence

It is clear that many wars display a large degree of chaos and violence. However, these attributes are not essential to success. Chaos is rarely sought by an actor in a war. A good deal of military philosophy and strategic thinking advocate instead that control of violence be pursued.³⁰³ Order is sought to the greatest possible extent. Even going back to the Stele of Vultures, carved at some time between 2600 and 2350 BC, we see that the soldiers in battle are not a scattered horde but in ordered ranks. The fact that such control is difficult does not mean it is not constantly sought in war.

Even Clausewitz argues that violence in war must be controlled.³⁰⁴ In his praise of Frederick the Great, Clausewitz focused on the leader's control of violence as a vital element in achieving victory.³⁰⁵ According to Andreas Herberg-Rothe, "Uncontrolled violence, for Clausewitz, is dysfunctional in principle and even self-destructive, as he learned in his analysis of Napoleon's defeat at Waterloo."³⁰⁶ The philosophers of ancient Greece too were well aware of the dangers of uncontrolled warfare. Thus they shunned the violence of Ares, which was depicted as "contagious, striking those in battle, but also afflicting the polis itself with pain and, what is more important, with the hostility and contentiousness bred from this sort of war-plague."³⁰⁷ The picture drawn is one of violence overtaking an entire community. Give this danger, according to Helen Durham, the "'mindless slaughter' of Ares is rejected in favour of the careful planning and strategic actions of Athena."³⁰⁸ This framework of violence is one that endorsed restraint and avoided "uncontrolled and aggressive" bloodshed.³⁰⁹

³⁰³ "war--if it was to be a political instrument which ethical-minded men could handle without shame--must control its violence and set itself limits." (Best, "Civilians in," 1984); that "...without controls and limitations war cannot be conducted at all." Michael Howard, "Temperamenta Belli: Can War be Controlled," in *Restraints on War. Studies in the Limitation of Armed Conflict* edited by Michael Howard, George J. Andreopoulos, and Mark Shulman, 1-11 (Oxford: Oxford University Press, 1979), 4;

"The practical utility and moral justification of the military instrument of policy depends upon control of the use of armed coercion to effect its political purpose" William O'Brien, *The Conduct of Just and Limited War* (New York: Praeger Publications, 1981), 258.

³⁰⁴ He says that the violence should "remain subject to the action of a superior intelligence."

³⁰⁵ Clausewitz, *On War*, 144.

³⁰⁶ Andreas Herberg-Rothe, "Clausewitz's Trinity as General Theory of War," Paper presented at the annual meeting of the ISA's 50th Annual Convention "Exploring The Past, Anticipating The Future," New York Marriott Marquis, New York, February 15, 2009, available at http://www.allacademic.com/meta/p312242_index.html, p.211.

³⁰⁷ W. E. Higgins "Double-Dealing Ares in the Oresteia," *Classical Philology* 73, no. 1 (1978): 29.

³⁰⁸ Helen Durham, "International Humanitarian Law and the Gods of War: The Story of Athena versus Ares," *Melbourne Journal of International Law* 8, no. 2 (2007): 257.

³⁰⁹ *Ibid.*, 255.

War offers just such Athenian violence. Calling a violent activity “war” implies that it is different in some way from other forms of violence. According to Hauerwas “the very description ‘war’ seems to propose a different moral evaluation than violence. At the very least ‘war’ denotes purposive human activity which ‘violence’ does not always imply.”³¹⁰ The tensions that can result from such labeling were made apparent when reports emerged that the Northern Ireland Consultative Group on the Past was considering asking the U.K. government to refer to ‘The Troubles’ as a war. At the time of the conflict, the violence was depicted by London as a breakdown of law and order. However, referring to ‘The Troubles’ as a war was perceived by some as a move that would legitimize the activities of the Irish Republican Army and other paramilitary groups. According to victims campaigner Willie Frazer, “If there was a war it justifies the murder of our loved ones... It was not a war, it was a terrorist campaign.”³¹¹

The difference in opinions here is based upon differing perceptions of violence. Those who believe violence can serve a useful purpose speak of it as “force,” which is distinguished from violence due to its purpose, control, and legitimacy.³¹² This is an important point for, as Francart claims, the moral codes and laws of war are “based upon the distinction between force and violence.”³¹³ Thus, this point should be kept in mind throughout this dissertation. We will return to it more explicitly in the very final chapter, prior to the conclusion.

For now, we must simply note that violence and war are not synonyms. While war contains violent acts, it is not pure violence. Thomas Schelling points out that war ceases to be a tool once it disintegrates into pure violence.³¹⁴ Hauerwas claims, “While we might call war violent, its essence it not violence for in a moral sense it is the enemy of violence.”³¹⁵ War is an effort to combat violence, often with the aim of using that violence to achieve specific ends but sometimes simply as a bulwark against greater violence that is seen as a threat to order generally or a social order specifically. The violent acts of war

³¹⁰ Stanley Hauerwas, *The Hauerwas Reader*, edited by John Berkman and Michael Cartwright (Duke University Press, 2001), 5.

³¹¹ “Anger at idea Troubles was a war,” *BBC*, January 8, 2008.

³¹² Howard, “Temperamenta,” 3. States that it is “purposeful, deliberate, and legitimized.”

³¹³ Général Loup Francart and Jean-Jacques Patry, “Mastering Violence: An Option for Operational Military Strategy,” unpublished English language summary of the TTA 900 (photocopy), Paris, December 1998, 54.

³¹⁴ Thomas Schelling, *Arms and Influence* (New Haven: Yale University Press, 1968).

³¹⁵ Hauerwas, *The Hauerwas Reader*, 22, 23.

thus “always involve a *lesser* violence, proffered as a bulwark against a far more virulent violence.”³¹⁶ The question that must be asked then is what is this “more virulent” violence?

Aristotle viewed violence as “imposed upon a victim without this individual directly contributing to this effect or being able to withdraw from it.”³¹⁷ In short, pure violence is when there is no reciprocity. War, as a reciprocal activity, stands in the way of this pure violence by responding with reciprocal violence, thus restoring the mimetic equality essential for stability. Herberg-Rothe explains that “Force and violence are marked by the... asymmetrical relationship between action and suffering. Fighting, in contrast, requires a minimum of symmetry between the combatants...”³¹⁸ What is meant here by “symmetry” is symmetry of action. This gets right to the heart of the difference between bad violence and good violence (what one might call “force”). Good violence is reciprocal and bad violence, in its purest and most anti-social form, lacks all reciprocity.

In the ability to respond, we find security, and in the inability, we find fear. This is why when soldiers cannot respond, their morale is severely lowered... “the bravest soldier will be often disheartened, when he sees himself exposed to blows, which he has not in his power to return.”³¹⁹ Indeed, there needs to be a level of reciprocity in order for military action to avoid degrading into a crime. When a battle seems nonreciprocal and meaningless, it is not uncommon that those present will refer to it as a crime. As just one example, after the Battle of Malvern Hill, in which frontal assaults led to mass slaughter without even an inch of ground being taken, General Daniel H. Hill wrote “It was not war – it was murder.”³²⁰ The difference between war and murder then is a lack of reciprocal action. This thread will run throughout our examination.

Conclusion

In this chapter, we examined the human aversion to death, the nature of violence, the requirements of civilization, and the tendencies of war. As we shall see, these conditions

³¹⁶ Girard, *Violence*, 103.

³¹⁷ Aristotle, *Nicomachean Ethics*, translated by David Ross (New York: Oxford University Press, 1998). From Brigadier General Edwin R. Micewski, “Terror and Terrorism: A History of Ideas and Philosophical-Ethical Reflections,” *Strategic Insights* IV, no. 8 (2005).

³¹⁸ Herberg-Rothe, “Clausewitz’s,” 212.

³¹⁹ Simes, *A Treatise*, 37.

³²⁰ Grady McWhiney and Perry D. Jamieson, *Military Tactics and the Southern Heritage* (Tuscaloosa, AL: The University of Alabama Press, 1982), 4.

combine to make moral rules a necessary condition for existence and a necessary part of effective war fighting. These are the selecting pressures that are “the preconditions of morality.”³²¹ At the core of all of these are mimetic desire and violence. There is an individual need to mimic violence for survival. Mimesis is at the core of the dynamics of violence and civilization. Yet, mimetic violence is also a danger to group life. If we properly conceive of war as an imitative activity, and civilization as requiring controlled mimesis, we can better understand the ills of violence and possible use of morality in war.

³²¹ Neil Levy, *What Makes Us Moral? Crossing the Boundaries of Biology* (Oneworld Publications, 2004), 205.

Chapter II - The Contending Discourse: What are the Moral-Legal Principles of War About?

Introduction

The last chapter left us with a rather dour view of history and humanity given war's interminable spread and tendency to extremes. The implication of the imitative nature of war is a violent world, one that will progressively become more warlike as the most effective methods of force are sought. As Schmookler points out, "ways of power" have determined the direction of civilization.³²² Thus, today we find ourselves in a world capable of Clausewitz's once theoretical Total War.³²³ However, while we agree that warfare has been a common and violent activity throughout human history,³²⁴ it is equally true that war has always been accompanied by rules. If the need to survive truly does set "the preconditions of morality,"³²⁵ then we can conclude that these rules serve some function.

Of course before determining this function, we need to get a better grasp of what we mean by the moral-legal principles of war. It is the purpose of this chapter to identify the contending discourse regarding these principles. In other words, what are we talking about when we talk about rules, laws, or moral principles of war? What are we arguing over? What we find is that discrimination is at the core of the moral-legal codes of war. This is not restricted to the modern definition, which is centered on the civilian identity, but can and must be viewed more broadly. The contending discourse of discrimination thus is best conceived as trying to answer the question: who can kill and be killed in war?

The Ubiquity of 'Laws of Wars'

Best writes that "Ideas about methods of war, although they mean most to us and become best known to us after becoming law, only achieve that status because they have already come to mean something in cultures of the nations compiling law."³²⁶ While law and morality are clearly not the same, there is a relationship between the two, as there is a

³²² Schmookler, *The Parable*.

³²³ An excellent examination of this topic is done by Hew Strachan, "Essay and Reflection: On Total War and Modern War," *The International History Review*, 22:2 (2000).

³²⁴ Stanton A. Coblenz, "Conflict in Nature," *Marching Men* (Unicorn Press, 1927), 3.

³²⁵ Levy, *What Makes Us*, 205.

³²⁶ Best, *Humanity*, 22.

relationship between religion and morality. Law and religion serve to codify moral principles, giving them a structure that is enforceable by an authority. But these moral principles have ancient origins,³²⁷ long preceding the law and major religions we know today. The *Law of War Deskbook*, which is used to train military judge advocates (lawyers), rightly concludes its introduction by stressing that an “understanding of this history is necessary to understand current law of war principles.”³²⁸

It has been well established that almost all groups throughout history have rules that limit armed conflict to some degree.³²⁹ Keegan notes that even ‘primitive’ man had “recourse to all sorts of devices which spare both themselves and their enemies from the worst of what might be inflicted.”³³⁰ The articulated purpose of these rules may have been ritualistic and religious, but they also had practical implications on the battlefield. Thus, while the ancient world was not an idyllic age inhabited by noble savages, neither was it as violent as some contend.³³¹ Rules included exemptions of people from war, conventions that limited the context of war, and ritual that outlined how combat should be conducted. In one tribe, for example, archers removed their arrow’s fletching prior to battle, making aiming difficult. In another, if somebody was killed in combat the person responsible had to leave the battlefield.³³² These primitive rules of armed conflict can “most certainly be seen as historical antecedents to the ancient law of war.”³³³ This is not to imply that war was not bloody and miserable for those who were engaged in it, but only to point out that moral rules of war are nothing unique to ‘modern’ civilization.

The ritual codes of early societies eventually gave way to religious codes such as the Judaic laws of Deuteronomy and the Hindu guidelines of the Mahabharata. In the Western world, a Just War tradition emerged. However, it was not solely derived from Christian

³²⁷ Girard, *Battling*, 23.

³²⁸ *The Law of War Deskbook*, 6.

³²⁹ A. Roberts and R. Guelffeds, *Documents On the Laws of War* (Oxford: Clarendon Press, 1982), 2; Michael Howard, Geroge J. Andreopoulos and Mark R. Shulman, *The Laws of War: Constraints on warfare in the western world* (1994), 1-12; Paul Christopher, *The ethics of war and peace: an introduction to legal and moral issues* (Englewood Cliffs, NJ: Prentice-Hall, 1994); Gregory P. Noone, “The History and Evolution of the Law of War Prior to World War II,” 47 *Naval Law Review* (2000): 182–85.

³³⁰ Keegan, *A History*, 387.

³³¹ Keith F. Otterbein, “A History of Research on Warfare in Anthropology,” *American Anthropologist*, New Series, 101, no. 4 (1999); Keeley, *War Before Civilization*; Steven A. LeBlanc and Katherine E. Register, *Constant Battles: The Myth of the Peaceful, Noble Savage* (New York: St. Martin’s Press, 2003); Turney-High and Harry Holbert, *Primitive War: its Practice and Concepts*, (Columbia, SC: University of South Carolina Press, 1971).

³³² Information on forms of ritual warfare from Walzer, *Just and Unjust wars*, 42; Keegan, *A History*, 98-102.

³³³ Hongsheng, *The Evolution*, 272.

(Catholic) sources but from Roman Code and the *jus gentium*. Elements of JWT, for example, are apparent Roman Philosophy, such as that of Cicero. Still, without a doubt, Christianity was very important in the articulation of JWT as developed by Ambrose, Augustine, and Thomas Aquinas. Significant later scholars such as Suarez, Vattel, and Vitoria slowly shifted the emphasis of the theory away from religion. This shift turned into a sea change when Hugo Grotius codified (in 1625) the emerging JWT, turning it into a legal rather than a theological code.

From this point, much of JWT's advancement occurred in national and international jurisprudence. Thus, as modern war emerged, so too did modern moral guidelines for war's conduct. The Lieber Code, written in the United States during the Civil War, was the first large-scale codification of the previously customary rules of war and brought to prominence the idea that the only acts permitted were those required by military necessity. The St. Petersburg Declaration was the first modern international agreement to limit the *means* employed in land war and introduced the concept that all military efforts should be aimed at enemy armed forces. During the next century, there was a proliferation of such laws. Limits on the means and methods of war were included in the Hague rules early in the century, the Geneva Conventions in the middle, and the Additional Protocols and Weaponry Convention as the century winded down.

It is important to note that regardless of the time period which we examine, there is great debate over whether rules were primarily moral or tactical in nature. Such debates have been particularly intense in examinations of the codes of warfare in Ancient Greece.³³⁴ Of course we need not align with any side at the moment. However, the fact that there is debate is important as it recognizes the often entangled nature of morality and strategy. A more modern manifestation of this interaction is the congruence of Grotius' codification of the laws of war with the shift away from wars of religion, culminating in the Treaty of Westphalia in 1648. Law and strategy thus in the same generation came to agreement that wars should be state affairs. This was a legal but also a strategic choice. The questions asked by this dissertation are in a sense picking up on this idea, asking if the modern guiding principles of war are of a mixed moral and military nature.

³³⁴ Louis Rawlings, *The Ancient Greeks at War* (Manchester, Manchester University Press, 2007), 187-95; Peter Krentz, "Fighting by the Rules: The Invention of the Hoplite Agôn," *Hesperia* 71, no. 1 (2002): 23.

Of course a complete examination of the functional utility of all the moral-religious-legal rules of war is well beyond the scope of a dissertation. Thus, we need to find some common ground among such codes. Broadly speaking, all of the rules of war can be understood as divisions that put certain individuals, groups, places, times, and activities outside the realm of war. There is, of course, a broad range of views regarding who and what is immune, but one is hard pressed to find any peoples who undertook war without some prohibitions and instead considered it as encompassing all of existence.

Discrimination is the Base of Laws

There is some agreement among scholars that the discrimination³³⁵ between combatants and civilians “forms the basis of the entire regulation of war.”³³⁶ That this is the case is supported by the fact that Geneva Common Article 3 (GCA3), which provides protection to those “taking no active part in the hostilities,”³³⁷ is the only article repeated in all four Geneva Conventions and explicitly applicable to internal armed conflicts.³³⁸ In addition, other LOW are often framed using the prohibition on targeting civilians as part of their justification. For example, according to Price, the link between chemical weapons and civilians deaths contributed substantially to their stigma and eventual prohibition.³³⁹ The Ottawa Treaty banning anti-personnel landmines is more explicit in referring to

³³⁵ In general, we will refer to this as discrimination although the term distinction will be used as necessary in quotes, with the understanding that they are synonymous for our purposes.

³³⁶ International Committee of the Red Cross. *Commentary on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977. Available at <http://www.icrc.org/ihl.nsf/COM/470-750059?OpenDocument>. Commentary, Paragraph 1826, <http://www.icrc.org/ihl.nsf/COM/470-750059?OpenDocument>; states “protection” and “distinction” but essentially speaking of discrimination; Nabulsi too points out that, “A key principle underpinning the entire system of the laws of war was the distinction between lawful and unlawful combatant...” (Nabulsi, “Evolving Conceptions,” 16). Gross agrees, writing, “The principle of noncombatant immunity is undoubtedly the linchpin of humanitarian law during armed conflict.” (Michael Gross, “Killing civilians intentionally: double effect, reprisal, and necessity in the Middle East,” *Political Science Quarterly* (December 22, 2005), 555. Another author asserts that “the entire philosophical foundation and legislative purposes upon which the laws of armed conflict are based—lie in the distinction between combatants and non-combatants (like civilians) or those no longer able to engage in warfare (such as prisoners of war, the wounded and the sick)...” (Hongshen, *The Evolution*, 270).

An older source states that “the separation of armies and peaceful inhabitants into two distinct classes is perhaps the greatest triumph of international law”: H.B. Wheaton, *International Law*, London, 1944 (7th English ed. by A.B. Keith), 171.

³³⁷ International Committee of the Red Cross. *Commentary on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977. Available at <http://www.icrc.org/ihl.nsf/COM/470-750059?OpenDocument>. Part 1, Article 3.

³³⁸ Leslie Alan Horvitz and Christopher Catherwood, *Encyclopedia of war crimes and genocide* (New York, NY: Infobase Publishing, 2006), 29.

³³⁹ Richard Price, “A Genealogy of the Chemical Weapons Taboo,” *International Organization* 49, no. 1 (1995): 83, citing the fact that U.S. delegate at 1899 Hague Conference, A.D. White, stated that the prohibition on asphyxiating bombs was facilitated by the perception that they “might be used against towns for the destruction of vast numbers of noncombatants...”

discrimination, noting in its preamble that the agreement is based “on the principle that a distinction must be made between civilians and combatants.”³⁴⁰

Discrimination also encompasses the moral-legal principle of proportionality, as the two concepts are intricately linked due to the power of modern weapons and the nature of the ‘battlefield,’ which has few geographic limits. The LOW clearly recognize this, and the 1977 Additional Protocols define disproportionate attacks as also being indiscriminate.³⁴¹

Given that discrimination is a large part of the basis for regulating war, it is easy to see why the effort has been such a frustrating task, for its foundation is built on shifting sands. The distinction between combatants and civilians has historically been, currently is, and looks to remain, highly ambiguous. Some of the most contentious debates on morality in war swirl around this issue. According to Oxford fellow and former Palestinian Liberation Organization representative Karma Nabulsi, the bulk of legal controversies as the modern laws of war were developing (1874 to 1949) “were driven by the problem of distinguishing between who was a lawful fighter in war and who was not.”³⁴² The Geneva Conventions and other accords have hardly clarified the issue. In a 2008 lecture, Antonio Cassese, one of the most renowned jurists of the last 20 years, listed “the indeterminacy of the status of the rights and the duties of irregular combatants” as one of the major failings and challenges of international law.³⁴³ Thus, the discourse around who is a combatant and who is a civilian remains highly contentious. Legally and ethically it can be difficult to draw a bright line (and of course practically on the battlefield).

The Supposedly Short Life of the Noncombatant Idea

A number of authors claim that the idea of distinction between combatants and noncombatants (typified by the civilian) is one of relatively recent providence. Best maintains the idea of ‘the civilian’ was “invented by the European founders of the

³⁴⁰ International Committee of the Red Cross, *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, 18 September 1997, available at <http://www.icrc.org/ihl.nsf/FULL/580?OpenDocument>.

³⁴¹ Article 51.4 of International Committee of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977,

states that “Indiscriminate attacks” include “those which employ a method or means of combat which cannot be directed at a specific military objective... those which employ a method or means of combat the effects of which cannot be limited...”

³⁴² Sorabji, *The Ethics*, 54.

³⁴³ Antonio Cassese, “Current Challenges to International Humanitarian Law,” Lecture, Geneva, February 27, 2008. Available at http://www.dailymotion.com/video/x7pf15_antonio-cassese-part-i_news.

international law of war in the course of the seventeenth and eighteenth centuries.”³⁴⁴ Political geographer Derek Gregory too points out that the civilian is “an invention of recent date” and places its emergence in the second half of the 18th century.³⁴⁵ Others put the genesis of the idea as early as the 14th century³⁴⁶ and as late as the 19th and 20th centuries, with one author arguing “that the concept of the civilian is a specific way of viewing non-combatants that can be traced to the First World War.”³⁴⁷ Speaking more generally of noncombatants, van Creveld notes that “our modern ideas concerning the difference between combatants and non-combatants only date back to the second half of the seventeenth century.”³⁴⁸ Lester Nurick too claims that “The distinction between combatant and noncombatant is not an ancient one in the history of war...”³⁴⁹ We are left with the impression that throughout the rest of history, combatants and noncombatants were comingled identities. Of course this is true to some extent, but it is true of all times, including the modern era. However, as we shall see shortly, it is similarly true that groups in all eras attempted to divide these identities. There was, for example, no confusion between who was a knight and who a peasant or who a legionnaire and who a *capite censi* or slave. Instead, fighters have always been distinguished from the people.

If the idea of distinction truly emerged so recently, then commentators were laying it to rest soon after its creation. With the first *levee in masse* and the rise of nationalism, the idea of the noncombatant or the civilian who had no role in war began to erode. By WWII, obituaries for the idea of the noncombatant were increasingly common. The *New Republic* argued that there was no longer any non-combatant³⁵⁰ and scholars concluded that the distinction “between military and nonmilitary has become too difficult to be of practical significance.”³⁵¹ Legal scholar Clyde Eagleton, writing in 1941, claimed that distinction had been “destroyed, on the one hand, by submarines and aeroplanes and other new instruments, and on the other hand, by the fact that every man, woman or child, whether in

³⁴⁴ Geoffrey Best, “Civilians in Contemporary Wars: A Problem in Ethics, Law, and Fact,” *Air University Review* (March-April 1984).

³⁴⁵ Derek Gregory, “The death of the civilian?” *Environment and Planning D: Society and Space* 24 (2006), 633.

³⁴⁶ Louise Doswald-Beck, “The Civilian in the Crossfire,” *Journal of Peace Research* 24, no. 3, Special Issue on Humanitarian Law of Armed Conflict (1987): 252.

³⁴⁷ Amanda Alexander, “The Genesis of the Civilian,” *Leiden Journal of International Law* 20, no. 2 (2007).

³⁴⁸ Martin van Creveld, “The Clausewitzian Universe and the Law of War,” *Journal of Contemporary History* 26, no. ¾ (1991): 412.

³⁴⁹ Lester Nurick, “The Distinction Between Combatant and Non-Combatant in the Law of War” in *International Law in the Twentieth Century*, 667-684 (New York, NY: Meredith Co., 1969), 681.

³⁵⁰ Grayling, *The Dead*, 202.

³⁵¹ Nurick, “The Distinction,” 682. Citing Grotius Society, Transactions, Vol XXVI, 1940, 211-233 (esp 223), and Vol XXVII (1942), 235-237.

uniform or not, can be and is used in the belligerent effort.”³⁵² This industrial war led many to conclude that distinction was no longer compatible with victory.³⁵³

In addition to industrial war, others cite democratic politics, revolutionary war, and nuclear weapons as keeping the idea of the civilian from being permanently reified.³⁵⁴ Richard Shelly Hartigan’s history of the civilian opens with the bold observation that “The civilian has been pronounced dead” and placed the time of death as the moment the nuclear bomb fell on Hiroshima. Scholars and practitioners of ‘new’ and ‘asymmetric’ wars have joined this long wake for the noncombatant. In addition, the resurrection of the validity of the civilian identity looks unlikely. As Bruce Hoffman’s 2007 report on conflict in the 21st century concluded, “The potential for types of conflict that blur the distinction between war and peace, and combatants and non-combatants, appear to be on the rise.”³⁵⁵ In such circumstances, the utility of distinction hardly seemed worth examination.

Given the arguments for its recent providence and prompt obituaries, the era of discrimination would appear to be very short, if indeed it can be said to have ever existed. Yet, this perception is inaccurate.

The Long History of the Noncombatant Idea

Not all scholars are pessimistic about the reality of the noncombatant as an identity. A.C. Grayling rightly observes that “The place of civilians in war has been debated in the Western tradition for 2,500 years...”³⁵⁶ The term “civilian” of course was not used but the discussion is clearly part of the same discourse that brought us to the modern laws of war.

The above mentioned temporal limitations on the idea of the civilian and noncombatant discrimination are too restrictive for a proper analysis. This “chronofetishism,” as the University of Sheffield’s John M. Hobson calls it, “obscures the processes of power, identity/social exclusion and norms that gave rise to, and continuously reconstitute, the

³⁵² Clyde Eagleton, “The Form and Function of the Declaration of War,” *The American Journal of International Law* 32, no. 1 (1938).

³⁵³ Refer back to the introduction for further details.

³⁵⁴ These four things are pointed out by Best, “Civilians in,” Slim, *Killing Civilians*, 490, 491; and Richard Shelley Hartigan, *The Forgotten Victim: A History of the Civilian*, (Chicago, IL: Precedent Publishing, 1982), 120.

³⁵⁵ F.G. Hoffman, “4GW as a Model of Future Conflict,” *Small Wars Journal*., Boyd 2007 Conference, 13 July 2007, Warfare Since Boyd Panel Presentation.

³⁵⁶ Grayling, *The Dead*, 289, 290.

present as an immanent order of change.”³⁵⁷ Thus, while there is validity to the idea that the ‘civilian’ is recent creation and a recent identity, it is merely the current and most common interpretation of a long-standing class that can be collectively referred to as the ‘immune.’ Immunity from war is an enduring social fact. It is likely, given that multiple scholars locate the origin of the debate on legal combatants and civilians within recent history, that this was an important moment, but a proper exploration requires exploring the situation prior to this.

The idea that certain peoples should be immune from warfare is widespread across time and geography. Taylor thus concludes that “The seeds of such a principle must be nearly as old as human society.”³⁵⁸ Such a distinction appears, for example, in the practices of Aztec society, in the foundations of Hinduism, in ancient China, in Egyptian and Judaic civilizations, and in the Japanese code of bushido.³⁵⁹ It is also present in Islamic law. A footnote on Surah 2:190 in a recent translation of the *Quran* explains that “strict limits must not be transgressed: women, children, old and infirm men should not be molested...”³⁶⁰ Medieval canon law had similar prohibitions against targeting certain classes and violence against the weak was morally frowned upon.³⁶¹ There are indeed long lists of persons who are considered immune from war. This includes “Ox herds, husbandman, ploughman,”³⁶² merchants and artisans,³⁶³ and messengers.³⁶⁴ Hinduism

³⁵⁷ John M. Hobson “What’s at stake in ‘bringing historical sociology *back* into international relations’? Transcending ‘chronofetishism’ and ‘tempocentrism’ in international relations,” in *Historical Sociology of International Relations* edited by Stephen Hobden and John M. Hobson (Cambridge: Cambridge University Press, 2002): 8.

³⁵⁸ Wakin, *War, Morality, and the Military Profession*, 416.

³⁵⁹ James Turner Johnson, *Morality and Contemporary Warfare* (New Haven: Yale University Press, 1999), 125.

In ancient India is was forbidden to kill, “those who look on without taking part, those afflicted with grief... those who are asleep, thirsty, or fatigued or are walking along the road, or have a task on hand unfinished, or who are proficient in fine art.” From Walzer, *Just and Unjust*, 43. Citing S.V. Viswanatha, *International Law in Ancient India* (Bombay, 1925), 156; Christopher, *The ethics*, 9-10.

³⁶⁰ Daniel Chirot, “Traditional Methods of Avoiding Genocidal Slaughter,” *Online Encyclopedia of Mass Violence* [website]. March 30, 2008. Available at <http://www.massviolence.org/Traditional-Methods-of-Avoiding-Genocidal-Slaughter>. Citing Quran, 1411: H, 79.

³⁶¹ Bellamy, “Supreme Emergencies,” 839.

See Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975); Maurice Keen, *The Laws of War in the Late Middle Ages* (London: Routledge & Kegan Paul, 1965); Richard Barber, *The Knight and Chivalry* (Woodbridge: Boydell, 1974); Richard W. Kaeuper, *Chivalry and Violence in Medieval Europe* (Oxford: Oxford University Press, 1999).

³⁶² Honore Bonet, *The Tree of battles, of Honoré Bonet. An English version with introduction by G. W. Coopland,...* with a hitherto unpublished historical interpolation, edited by G.W. Coopland (Cambridge, MA: Harvard University Press, 1949), 188.

³⁶³ Hugo Grotius, *The Rights of War and Peace, including the Law of Nature and of Nations*, translated from the Original Latin of Grotius, with Notes and Illustrations from Political and Legal Writers, by A.C. Campbell, A.M. with an Introduction by David J. Hill (New York: M. Walter Dunne, 1901). Available from

extends these prohibitions more broadly than most, so that it is forbidden to target “one who sleeps... one who has lost his coat of mail... one who is naked... one who is disarmed... one who looks on without taking part in the fight... one who is fighting with another... one whose weapons are broken... one afflicted... one who has been grievously wounded... one who is in fear, nor one who has turned to flight.”³⁶⁵

As the diversity within the lists of immune makes clear, despite the nearly universal presence of immunity in war, there is not as much agreement on who or what exactly should be considered immune. In discussing immunity, James Turner Johnson points out that “it is not at all clear from the nature of the persistence of this idea either who is to be regarded as a noncombatant or that the protection to be given to noncombatants must be absolute.”³⁶⁶ To this we can add that it is not clear why any particular person should be immune. Even when we look specifically at people who are granted immunity, for example women or civilians, there appears to be a broad range of criteria used to justify this immunity.³⁶⁷ The truth is there is rarely a clear line between the immune and those who can be targeted for death or destruction.

Walzer claims that because the rules of war are created through a complex interaction of culture, religion, power, and other factors, “the details of noncombatant immunity are likely to seem arbitrary as the rules that determine when battles should start and stop or what weapons may be used.”³⁶⁸ However, if examined through the proper lens, we can perceive the common mechanism around which the rules are gathered. The immune do share a common feature and are not selected in some arbitrary manner.

The Primary Moral Question of War

All immunity springs from the same question. According to Girard, prior to any sacrifice there is a “ritual dispute over the choice of the most suitable victim, one that satisfies the piety of the faithful or has been selected by the god. In effect, the real question behind the

http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=553&Itemid=27.
Book 3, Chapter 11.

³⁶⁴ Yvon Garlan, *War in the Ancient World: A Social History* (London: Chatto & Windus, 1975), 58, Keen, *The Laws*, 196.

³⁶⁵ James Alfred Aho, *Religious Mythology and the Art of War: Comparative Religious Symbolisms of Military Violence*. (Greenwood Press, 1981), 65.

³⁶⁶ James Turner Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton: Princeton University Press 1981), 199.

³⁶⁷ Thus, William O'Brien concludes that “Even among those who honestly attempt to understand and abide by the principle of discrimination, however, there is serious disagreement.” O'Brien, *The Conduct*, 340.

³⁶⁸ Walzer, *Just and Unjust*, 43.

preliminaries is, Who will kill whom?”³⁶⁹ This is the same question that must be answered by any society that attempts to use or combat violence, including through war.

Discrimination, regardless of how it is manifest, aims to answer the same questions – “Who will kill whom?” and more broadly “What belongs in war and what belongs out of war?” It is arguably the foundational question of all war going back to its very beginnings and it is also the question that Just War Theory and international law struggle with today. The question of “who will kill who” is a sociological constant necessary for all groups to answer. To fail to answer this question makes group formation and survival a very difficult task.

Evolution of the Moral Rules

Given their persistence, it is very possible moral rules have evolved so as to best ensure that they contribute to effective war fighting. Professor Theo Farrell claims that “They [the norms of conventional warfare and civilian supremacy] did not evolve by trial and error as the intrinsically ‘best’ way for militaries to organize and act.”³⁷⁰ However, William Kautt of the U.S. Army Command & General Staff College, points out that this is exactly how the norms of war developed – “by trial and error, victory and defeat.”³⁷¹ As the last chapter indicated, the conditions of war and conditions of life in general shape the conditions for existence, including the moral codes.

Moral rules of war did not emerge because they were ‘good’ but because they accomplished certain things. This is evident by looking at the antecedents of the LOW – religious codes of war. Karen Armstrong notes that “Abraham and Jacob both put their faith in El because he worked for them: they did not sit down and prove he existed; El was not a philosophical abstraction. In the ancient world, mana was a self evident fact of life and a god proved his worth if he could transmit this effectively.”³⁷² Similar beliefs in a direct link between the will of God and the result on the battlefield guided military actions in Rome, Byzantium,³⁷³ the Middle Ages,³⁷⁴ and persisted into the 20th century.³⁷⁵

³⁶⁹ Girard, *Violence*, 125.

³⁷⁰ Theo Farrell, *The Norms of War: Cultural Belief and Modern Conflict* (London: Lynn Reiner Publishers, 2005), 41.

³⁷¹ William Kautt, “The Norms of War: Cultural Beliefs and Modern Conflict (Review),” *The Journal of Military History* 71, no. 2 (2007): 602.

³⁷² Karen Armstrong, *A History of God: The 4,000 Year Quest of Judaism, Christianity and Islam* (New York, NY: Ballantine Books, 1993), 25.

³⁷³ Michael McCormick, *Eternal Victory: Triumphal rulership in late antiquity, Byzantium, and the early medieval West* (Cambridge: Cambridge University Press, 1986), 246, citing *Maurice’s Strategikon*:

Given this, it would not be unexpected that the moral rules that had to be obeyed in order to please God would slowly trend towards being the rules that also contributed to victory. If these rules had not worked, either a new god would have to be found or the nation would have been destroyed. For example, if one worshipped a God that called for you to kill all except your own kind, you may find it difficult to accomplish the task without being exhausted through constant battle or compromising away what the God has requested. Meanwhile, those whose Gods were more capable of controlling violence would have been more able to survive. However, this is getting ahead of ourselves. The question we must focus on now is: how does immunity help a group survive? To answer this, we need to refer back to the conditions in which the moral rules of war arose and determine what pressures prompt the selection of the immune.

Conclusion

This chapter made clear that along with war's tendency toward increasing levels of force and violence, moral rules too have always accompanied the practice of war. At the heart of these moral-legal rules is the principle of discrimination. The discourse of discrimination aims to determine what belongs in war and what does not and who can kill whom. It appears very possible that these rules emerged for a purpose, driven by the selecting pressure of victory and defeat in war.

According to Walzer "the theoretical problem is not to describe how immunity is gained, but how it is lost." He claims "We are all immune to start with; our right not to be attacked is a feature of normal human relationships."³⁷⁶ From the perspective of moral analysis perhaps Walzer is correct, assuming one begins their analysis with an *a priori* assumption that gives preeminent value to an innate right to life. However, if we instead use an amoral analysis that does not assume immunity is transcendentally natural, then we must look instead at why immunity is gained within a context where logically all are potential targets of violence and why is the right to violence lost in a context where all theoretically have

Handbook of Byzantine Military Strategy, trans. by George T. Dennis (Philadelphia, PA: University of Philadelphia Press, 1984).

³⁷⁴ Bonet, *The Tree of Battles*, 119, 120; James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and secular concepts, 1200-1740* (Princeton, NJ: Princeton University Press, 1975), 109; Keen, *The Laws*, 130.

³⁷⁵ S. R. Steinmetz in 1907, wrote that war was the manner in which God judged nations and "No victory is possible save as the resultant of a totality of virtues, no defeat for which some vice or weakness is not responsible." James, quoting *Philosophie des Kriegeres*

³⁷⁶ Walzer, *Just and Unjust*, 145.

the potential to use violence? Why do we answer the moral question of war in the ways we do? In other words, what is the essential feature at the core of immunity?

Chapter III - The Essential Features of Immunity and the Moral Principle of Discrimination

Introduction

The previous chapter highlighted discrimination as being the core principle within the LOW yet left us with the question of what then was as the core of discrimination. In other words, how do we decide what/who belongs in war and what/who is immune. It is important to recognize that there is a functional basis for the selection and the selection alone does not determine utility. Philosopher Judith Lichtenberg points out that “it is because people believe it is morally wrong to kill noncombatants that it is useful to respect the prohibition.”³⁷⁷ This is based on the logic that the reason we respond to an act is because we believe an act is wrong. This is of course true to an extent. Our attitudes undoubtedly shape our actions. However, we must not accept any suggestion that the utility of morality then is purely convention based. Instead, we must ask why we believe certain acts, including killing noncombatants, are wrong. Is there an underlying reason these rules arose?

According to Frank G. Kirkpatrick, “the more we study moral codes, the more we find that they do not differ in major principles.”³⁷⁸ At the root of the moral codes of war as well, we find the same principles. However, there are many erroneous assumptions that must be dismissed along the way. For example, the idea that immunity is based upon innocence, one of the most enduring conceptions, must be confronted. Earlier we saw how the sociological requirements for civilization necessitated moral rules. This chapter goes further to explore how the sociological requirements shape the rules of war. We find that although the ideas of whom and what is immune from war are not uniform across time and space, immunity fulfills the same functions.³⁷⁹

The Constructed Nature of Immunity

³⁷⁷ Judith Lichtenberg, “The ethics of retaliation,” in *War after September 11* edited by V. V. Gehring, 11-19 (Lanham, MD: Rowman Littlefield Publishers, Inc. 2003), 16.

³⁷⁸ Frank G. Kirkpatrick, *A Moral Ontology for a Theistic Ethic: Gathering the nations in love and justice* (Hants, England: Ashgate Publishing Limited, 2003), 74.

³⁷⁹ Inspired by Anne Warfield Rawls, *Epistemology and Practice: Durkheim's The Elementary Forms of Religious Life* (Cambridge: Cambridge University Press, 2004). (Emile Durkheim, *The Elementary Forms of Religious Life* (Oxford: Oxford University Press, 2001 [1912]), 4).

There is a tendency for discourse to reify immunity by treating it as separate from the practices by which it is produced and maintained.³⁸⁰ Peter Berger and Thomas Luckmann define reification as “the apprehension of the products of human activity *as if* they were something else than human products—such as facts of nature,³⁸¹ results of cosmic laws, or manifestations of divine will.”³⁸² Throughout history, immunity has been attributed to just such sources. Thus, a woman or a clergy member is judged to be immune because some innate biological weakness or some God makes it so. In reality, immunity is a social construction.

It is of course not exceptional to point out that “apparently necessary or neutral truths are in fact socially constituted structures that tend to reflect ‘regimes of power.’”³⁸³ Yet there will naturally be some discomfort in deconstructing what many view as a positive structure such as civilian immunity. To unveil it as constructed could, some may fear, weaken it. Yet this need not necessarily be the case. While immunity may be constructed, it cannot be dismissed since the conditions of life dictate what practices are required for existence. Thus we will find that the divisions and prohibitions of immunity are conditions for existence – they are required in order that a social organism survive.

In order to further explore this function of immunity, we must determine the basis that is used for setting aside an object or person from war. In other words, what is the essential feature of immunity? An essential feature is that feature “without which the thing in question would not be what it is.”³⁸⁴ How does one go about finding this?

When Girard was searching for the function behind sacrifice, he concluded that “...all victims, animal or human, must be treated in the same fashion if we are to apprehend the criteria by which victims are selected and discover a universal principle for their selection.”³⁸⁵ This methodology is equally fruitful in searching for the principles behind immunity. In order to discover the reason that the immune are immune, a common trait must be found. Of course one cannot assume a connection between things simply because

³⁸⁰ This turn of logic is drawn directly from Wendt’s discussion on anarchy, page 410 in particular.

³⁸¹ Note this is not “laws of nature,” which is actually a useful concept through which to examine the concept of immunity. Natural law is that which is required for life, thus demanded by nature. Furthermore, it is demanded by society because that is our natural environment.

³⁸² Wendt, “Anarchy,” 410.

³⁸³ Wendy Farley, *Eros for the Other: Retaining Truth in a Pluralistic World* (University Park, PA: University of Pennsylvania, 1996), 8.

³⁸⁴ Adam Wiegner, *Observation, Hypothesis, Introspection* (New York, NY: Rodopi, 2005), 148.

³⁸⁵ Girard, *Violence*, 11.

they are all immune, but it is an excellent starting point. Considered as amorally as possible, we can say that killing and destroying are the same act exercised on different material. Thus, we must even expand our definition of immune to include all that is excluded from war, even the material items. This will help provide an indication of what function the rules of war are actually fulfilling. So what makes the immune – be it women, civilians, prisoners of war, the dead, oxen, churches, nighttime, fruit trees – immune? If we can discover this, it will help reveal what the construction of immunity is attempting to accomplish. Errors in belief regarding what is at the core of immunity would naturally make a determination of function faulty. Thus, we should first confront the most common rationales for immunity.

The Erroneous Perceived Basis of Immunity

Colm McKeogh, in his book *Innocent Civilians: The Morality of Killing in War*, explores the idea that the development of non-combatant immunity has been driven by the principle that “the innocent must not be punished for the crimes of the guilty.”³⁸⁶ Distinction, according to this line of thinking, divides the innocent from the guilty, prohibiting the targeting of the former and mandating the targeting of the latter. Generally speaking, noncombatants are considered innocent and the combatants viewed as guilty.³⁸⁷ This conception has a long history. Almost every eminent thinker on morality and law and war has advanced similar guidelines, from Augustine’s advice “not to involve the innocent with the nocent in the same punishment”³⁸⁸ to Grotius’s observation that “nature does not sanction retaliation except against those who have done wrong”³⁸⁹ to Thomas Aquinas noting “It is in no way lawful to slay the innocent.”³⁹⁰ More recently, Elizabeth Anscombe and Paul Ramsey have endorsed the view that noncombatants are immune because they are innocent.³⁹¹

The problem with this is that no matter how these concepts are used, guilt and innocence cannot actually be the criteria upon which groups decide who is killed in war and who is not. First of all, the terms “innocent” and “guilty” lack meaning without reference to some

³⁸⁶ This is one possible rationale for civilian immunity explored by Colm McKeogh, *Innocent Civilians: The morality of killing in war* (Hampshire: Palgrave 1988), 17, 18.

³⁸⁷ Hartigan, *The Forgotten*, 95.

³⁸⁸ Johnson, *Ideology, Reason*, 227.

³⁸⁹ Hugo Grotius, *Concerning the Law of War and Peace in Three Books*, trans. Francis W. Kelsey (Oxford: Clarendon Press, 1925), 741

³⁹⁰ Summa II-II, question 64, article 6.

³⁹¹ Elizabeth Anscombe, “War and Murder,” in *War and Morality* ed. Richard Wasserstrom (Belmont, Ca., 1970); Paul Ramsey, *The Last War* (New York, 1968).

other attribute(s). Secondly, the labels simply do not align well enough to who actually has been historically granted immunity.

George Mavrodes believes that many academics incorrectly assume “innocent” and “noncombatant” are synonyms.³⁹² Robert L. Holmes too insists that assuming noncombatancy equates to innocence while combatancy constitutes guilt is not sufficient.³⁹³ Indeed, it is clear that not all who are immune are innocent. Holmes claims that “those *most* responsible for wars (by which he means the government) are usually least involved in the actual killing.”³⁹⁴ In addition to the politicians who declared the war in the first place, many a jingoist civilian could also be considered guilty. Civilians may be anti-war protestors, writing their Congressperson every day, or Halliburton upper management who actively lobbied for the war effort.³⁹⁵ As A.C. Coates points out, “If moral guilt or loss of innocence engenders loss of immunity from attack, then warmongering civilians should be considered a more legitimate target than the reluctant conscript.”³⁹⁶

The democratic system also raises serious questions about innocence as justification for civilian immunity. It is, after all, arguable that voters, tax payers, and full-fledged members of society are partially responsible for a war that a group wages. The U.S. Declaration of Independence refers to the “consent of the governed” and U.S. President Abraham Lincoln in his Gettysburg Address similarly referenced “government of the people, by the people, for the people.”³⁹⁷ When government is from the people, the people have some level of responsibility for its actions. This leads some commentators to conclude that “Citizens of a participatory democracy are not innocent.”³⁹⁸ As international legal scholar Aaron Fellmeth points out, “The assertion that civilians as a class are ‘innocent’ cannot be more than a figure of speech. Nobody could reasonably believe that mere membership in the

³⁹² George I. Mavrodes, “Conventions and the Morality of War,” *Philosophy & Public Affairs* 4, no. 2 (Winter 1975): 121, 123.

³⁹³ Robert L. Holmes, *On War and Morality* (Princeton, NJ: Princeton University Press 1989), 184.

³⁹⁴ *Ibid.*, 185.

³⁹⁵ Similar metaphor is used by Jeff McMahan, “Innocence, Self-Defense and Killing in War,” *Journal of Political Philosophy* 2, no. 3 (1994): 217.

³⁹⁶ Coates, *Ethics of War*, 234.

³⁹⁷ Gettysburg Address.

³⁹⁸ James M. Donovan. “Civilian Immunity and the Rebuttable Presumption of Innocence,” *Journal of Law in Society* 5, no. 2 (2004): 436.

class of civilians constitutes automatic exoneration from moral blame for the state's wartime conduct."³⁹⁹

In addition, *hors de combat*, many of whom will be technically 'guilty' of killing by the time they are taken prisoner, are considered immune. Soldiers don't cease to be guilty (from the perception of their opposition) simply because they are prisoners. These individuals may be tried for war crimes, a clear indication that they are still considered guilty, and can also lose their immunity. As Larry May notes "in the case of the surrendered soldier, who is expected to escape and return to battle, we recognize that soldiers can regain their immunity from being killed, even if only temporarily."⁴⁰⁰ This is a vital recognition that the barrier between immune and non-immune is porous. In contrast, such ease of movement from being guilty to innocent and back to guilty again is not generally feasible.

Another reason we know that discrimination does not divide the guilty from the innocent is that from the perspective of the group to which soldiers belong, their soldiers are not guilty. One's own soldiers are always innocent. The soldiers are not responsible for the war and have received moral immunity for their killing. Indeed, as we shall explore in more detail later, this enabled them to kill the enemy. In addition, many soldiers are not willingly on the front line (having been drafted or being socio-economic conscripts who joined for the college money) and therefore can hardly be conceived as being willingly engaged in the war. Also, even though they may kill, they can be argued to not be morally responsible for that killing. Thus, while we often maintain the enemy soldiers are guilty, guilt is clearly not a universal trait that groups assign to all combatants.

The other reason that immunity cannot be based on innocence is that innocence and guilt have no meaning without a reference point in some action in which an individual is supposed to be or not supposed to be participating. The term "innocent" means different things when we apply the term to different individuals. A guilty soldier from this perspective is one who fails in his duty while an innocent one is one who is doing his duty. This duty is of course killing other soldiers. Thus, if a soldier is killing the proper people

³⁹⁹ Aaron Fellmeth, "Questioning Civilian Immunity," *Texas International Law Journal* 43, no. 3 (2008): 460.

⁴⁰⁰ Larry May, "What' Wrong with Preventive War? The Moral and Legal Basis for the Preventive Use of Force," *Ethics International Affairs* 19, no. 3 (2005): 46.

in the proper way, he is not guilty of any wrongdoing. In contrast, civilians are innocent so long as they do not pick up arms. Criminality then is based upon the division between combatant and noncombatant, which assigns roles to each class. In short, we must have an interpretive scheme so that innocence has meaning.

We do not need to determine whether any particular actor is actually innocent or guilty in order to move forward with our analysis. It remains true that they are deemed immune regardless of innocence or guilt, at least according to most discourses, and so it is quite clear that “the distinction between civilians and combatants is morally arbitrary.”⁴⁰¹ Thus, we know that innocence is not at the root of how a society makes a distinction between immune and not immune.

Another prominent perspective on the reason soldiers can be targeted in war is that they pose a threat and due to the right of self-preservation, one individual can kill another if they are a threat to one’s own life. According to this view, those who are immune then are those who pose no threat.⁴⁰² The basing of immunity on threat allows for the inclusion of civilians and *hors de combat*, who as we noted arguably remain guilty even after they lay down their arms. This gets more to the literal interpretation of the linguistic root of “innocence.” Grayling pursues this line of thinking, explaining that *nocens* is Latin for “engaged in harmful activity” and the prefix *in-* means “not” and so *in-nocens* means “not engaged in harmful activity.” Thus, the innocent are the harmless.⁴⁰³

What makes the threat basis unsatisfactory is that there are many ways in which an individual or a group other than soldiers can pose a threat. Threats can be direct or indirect, immediate or remote. There is a chance that somebody will pose (or be perceived to pose) a threat simply due to who they are, due to their identity, and thus one could justify killing them. Even the International Committee of the Red Cross Commentary on the Fourth Geneva Convention states, “civilians have not in most cases been rendered harmless.”⁴⁰⁴ This is in contrast to those wounded and taken prisoner, who are more likely

⁴⁰¹ Fellmeth, “Questioning Civilian,” 457.

⁴⁰² This “defense view” is held by Elizabeth Anscombe, Thomas Nagel, Jeffrie G. Murphy, and Michael Walzer among others (Primoratz 30). Of course their exact opinions are more nuanced than this, but the broad brush stroke is justified and useful in creating a list of reasons why soldiers can kill and be killed and civilians cannot.

⁴⁰³ Grayling, *Among the Dead*, 215, and Coates, *The Ethics*, 235.

⁴⁰⁴ Oscar Uhler and Henri Coursier, eds., *Commentary on the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1960), 5.

harmless. In addition, a civilian can become a soldier. They are, in a way, a violent resource in reserve, waiting for proper motivation and opportunity to take action. They are a decentralized resource that requires no military budget or maintenance over the years. This makes them the most real long-term threat. Taking the above into consideration, assignment of immunity cannot be based on actual threat.

Another rationale worth noting, one closely related to the idea of threat, is contribution. For some commentators of JWT, “‘innocence’ means lack of any direct contribution to the war effort...”⁴⁰⁵ This line of thinking is valuable for it allows us to follow Girard’s advice and consider all immune the same, including material objects. For example, a church does not contribute to the military effort and therefore should be immune. To grant immunity to civilians based upon function rests on the idea that civilians do not contribute to the war. This is clearly not accurate. Civilians make a contribution to the war effort in a variety of ways, from producing materiel to buying war bonds. In short, “Civilians have military significance.”⁴⁰⁶ Moving back to objects, we find similar problems. Hospitals for example arguably contribute to the war effort and yet it is generally agreed that they are not to be targeted.⁴⁰⁷ Without dwelling too much on this then, we can conclude that contribution therefore also is not the essential feature of immunity.

What is the Basis?

Having found many of the standard explanations for immunity lacking, we need to figure out a way forward – a method and theory which will reveal the essential features. In examining the nature of ritual sacrifice, Girard departs from the conception that an ‘innocent’ victim is killed in place of the ‘guilty.’ Instead, Girard, “does away with this moral distinction” since, as he sees it, “the relationship between the potential victim and the actual victim cannot be defined in terms of innocence or guilt...”⁴⁰⁸ Doing away with these moral labels suits the needs of this examination as well. While we don’t want to push the war as ritual analogy, the same social dynamics are in place. The civilians are not innocent and the soldiers not guilty. We must do away with this moral distinction. Again,

⁴⁰⁵ Johnson, *Ideology, Reason*, 196. Johnson is not endorsing per se but only making the point.

⁴⁰⁶ Alice Hills, “Hearts and Minds or Search and Destroy? Controlling Civilians in Urban Operations.” *Small Wars and Insurgencies* 13, no. 1 (2002): 3.

⁴⁰⁷ The *Convention With Respect To The Laws And Customs Of War On Land* notes that “In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.”

⁴⁰⁸ Girard, *Violence*, 4.

as Girard advises, all immune “must be treated in the same way.”⁴⁰⁹ With this in mind, it is worthwhile to ‘zoom out’ and take a quick and broad look at some of the most fundamental divisions and prohibitions in war.

The Divisions of War

War is a realm of divisions. The divisions make clear what belongs in war and what does not – in other words, what is immune from war. Immunity of course means that something cannot (or should not) be touched by the war. Thus, prohibitions (on targeting people, objects, times, spaces, and tools) follow naturally from the divisions. Together, these divisions and prohibitions answer the essential moral question of war – what belongs in war and what does not?

One of the most common divisions that is established by groups wanting to use violence is that between war and peace. This temporal division means clearly demarcating when a war begins and concludes. The wisdom of dividing war and peace did not begin with modern times. For evidence of the long held wisdom of dividing war from peace, one need look no further than Ecclesiastes, which provides the counsel that “There is a time for everything, and a season for every activity under heaven... a time for war and a time for peace.”⁴¹⁰ Modern international law attempts to the same thing as this Biblical precept. According to Carsten Stahn, “The law recognizes a state of peace and a state of war, but... knows nothing of an intermediate state which is neither one thing nor the other.”⁴¹¹

Just as common as this temporal division between war and peace is the attempt to geographically divide between the world of war and the world of peace. The relative immunity of the U.S. due to its geographic position is important here. The oceans are divisions between the world of peace (the soil of the nation) and the world of war (Europe, Asia, the Middle East, Africa, all of which have been synonymous with war at various times). The Islamic world is similarly divided between the *Dar al Islam*, the abode of peace, and *Dar al Hrab*, the abode of war. Such efforts to keep violence from the community stretch back to antiquity. The *Oresteia*, for example, advises the Greeks to:

⁴⁰⁹ Ibid., 12, although he was referring to victims, not the immune.

⁴¹⁰ Ecclesiastes 3:1, 8.

⁴¹¹ Carsten Stahn, “‘*Jus ad bellum*’, ‘*jus in bello*’ . . . ‘*jus post bellum*’? –Rethinking the Conception of the Law of Armed Force,” *European Journal of International Law* 17, no. 6 (2006): 921-922.

“Let our wars; Rage on abroad, with all their force, to satisfy; Our powerful lust for fame. But as for the bird; that fights at home – my curse on civil war.”⁴¹²

A number of scholars, Stahn among them, observe that the division between war and peace, and between their geographic domains, has fallen apart in recent years.⁴¹³ Indeed, the nature of GWOT seems to be breaking down all the borders that divide violence and civilization. Even the U.S. military’s decision to have all personnel wear the flag on their left shoulder,⁴¹⁴ something that was once restricted to deployed soldiers, is indicative that there is no place that the war does not extend. What we are referring to here is a blurring of the division between home and away that allows violence to pass more freely between the two worlds.⁴¹⁵ However, this is hardly a new trend. Such middle grounds have been an enduring form of armed conflict throughout history. This does not necessarily mean that the gray area between war and peace is sought, although it may be by some, but it certainly indicates that the division is a difficult task.

The reason for the above divisions is that it is sociologically advantageous that war be divided from everyday life. A clear separation of war from peace is important to the proper functioning of society. A perpetual war footing and a large standing army is detrimental to the carrying on of other activities, economic life in particular. The requirement of having a military constantly engaged in major operations or having a large standing force is a major drain on resources (see U.S., or even the UK or the Netherlands for the former and U.S. and USSR for the latter). Total war may make some people rich but it distorts the economy and can cause significant social distress. For this reason, leaders are generally “reluctant to take a decision to open hostilities and mobilize until as late as possible.”⁴¹⁶ Any societies who would make warfare a way of life⁴¹⁷ are trapped

⁴¹² Aeschylus, *The Oresteia: Eumenides*, Lines 867–875.

⁴¹³ NPR’s Guy Raz in “Defining the War on Terror” notes that “the war on terror is, in theory, an endless war – a war that approaches something closer to a way of life.”
<http://www.npr.org/templates/story/story.php?storyId=6416780>.

⁴¹⁴ Lisa Burgess, “Army Uniform Rule Requires Flag For All,” *Stars and Stripes* European Edition (24 Feb 2004) http://www.military.com/NewsContent/0,13319,FL_uniform_022404,00.html.

⁴¹⁵ “Phillip Bobbitt postulated that the threat from terrorism has blurred the traditional division between the foreign (‘the realm of strategy’) and the domestic (‘the realm of law’) which has informed most of the ‘rules of engagement’ that have allowed modern, democratic states to achieve internal peace and stability.” Peter R. Neumann, “Europe’s Jihadist Dilemma,” *Survival* 48, no.2 (2006): 81, citing Phillip Bobbitt, *The Shield of Achilles: War, Peace and the Course of History* (New York: Knopf, 2002), 5-20.

⁴¹⁶ M.L.R. Smith, *Fighting for Ireland? The military strategy of the Irish Republican movement*. (London: Routledge, 1995), 61

⁴¹⁷ And whether they exist is debatable, although some have certainly come close, especially migrating groups that no longer have a land base, such as the Cimbri.

like slave-maker ants by this approach. The spoils of war sustain the group because there are not enough spare people to produce enough goods for the entire group. Thus, war is the provider of all goods and beneficial to society, but only because the group carries on war to the exclusion of all other activities, something they must keep doing to survive.

Following from this, we can infer and explore the idea that discrimination between combatants and noncombatants too is an effort to remove violence from the group and control it to some extent. Here we find the observations of Girard extremely useful. Indeed, he has already identified the essential feature of immunity for us. It simply has to be adapted to the prohibitions of war.

The Purpose of Prohibitions

While different in its manifestations throughout history, all societies who engage in the activity of war also attempt to keep it confined in some manner. Regardless of the manner in which it is done, these lines are absolutely essential.⁴¹⁸ This is because the lines are as protective of society as a Great Wall – preventing violence (both our violence and other's) from invading our social space. These divisions and prohibitions are intended to keep violence from the community and control the violence that is used to protect the group. Without these rules, warns Herberg-Rothe, “every warring community or society would internally disintegrate and break-up. The outward exercise of violence would no longer have any boundaries that could protect the inner community.”⁴¹⁹ What Herberg-Rothe is referring to, albeit not explicitly, is the mimetic nature of violence. This tendency, already identified above, means that whenever violence is used, there is a risk it will spread throughout the entire social world. Thus, divisions and prohibitions are necessary.

Given this, the purpose of the prohibitions is fairly straight forward. The earlier discussion of the conditions and circumstances in which the moral rules of war arose has already indicated what the essential feature of those rules will be. The natures of violence, civilization, and war have this feature at their core – the need for, yet danger of, mimesis. Thus, it naturally follows that, as Girard concludes, “There is no prohibition that cannot be

⁴¹⁸ This phrase was first inspired by Martin van Creveld's more limited observation that “the line itself (between murder and war) is absolutely essential.” Van Creveld, *The Transformation*, 38; Niditch notes in similar language that shedding blood “*must* be duly marked off, separated from mundane experience,” Susan Niditch, *War in the Hebrew Bible: A Study in the Ethics of Violence*, (New York, NY: Oxford University Press, 1993), 87.

⁴¹⁹ Herberg-Rothe, “Clausewitz's Trinity,” 15.

related to mimetic conflict.”⁴²⁰ The insights of Girard are worth extrapolating on here, as this observation is at the heart of our exploration of the functional utility of discrimination. Girard goes on to explain that “Both the principle of prohibition and the forms it takes are not without their practical uses... they serve to prevent people from being caught up in violent mimesis... the prohibitions were dictated by violence itself, by the violent manifestations of a previous crisis, and they are fixed in place as a bulwark against similar outbursts.”⁴²¹

Immunity then prohibits the targeting of persons or objects that would result in or exacerbate a mimetic outburst of violence. What motivates these prohibitions is the fear of violence⁴²² and they aim to check “huge escalations of violence”⁴²³ and “counter the danger of self-destruction.”⁴²⁴ They do this by setting aside an area from mimetic violence, keeping “a sort of sanctuary at the heart of the community.”⁴²⁵

The entire edifice of war is structured around the control of mimesis and some of the most important tools to accomplish this control are moral principles and their legal counterparts. Indeed, we find that the control of mimesis is at the core of much of human morality, ensuring that individuals mimic the ‘good’ actions and that all mimic equally. From superstition to karma to religion to law, our moral systems have retained the same guiding principle at the core – reciprocity (meaning a mutual mimesis, where all agents involved mimic equally). Many social scientists observe that “Reciprocity has functioned as a norm in human relations since ancient times.”⁴²⁶ This is most evident in the near universality of the Golden Rule,⁴²⁷ which is a clear effort to ensure a positive mimetic relationship. Given this, it is little surprise that morality in war too has at its core the control of mimesis and reciprocity.

It is worth taking some time to explore the value of this Girardian lens in analyzing prohibitions in warfare before moving on to examine discrimination more closely.

⁴²⁰ Rene Girard, *Things Hidden Since the Foundation of the World*, translated by Stephen Bann and Michael Metteer (Stanford: Stanford University Press, 1987), 16.

⁴²¹ Girard, *Violence*, 219.

⁴²² *Ibid.*, 221.

⁴²³ Girard, *Battling*, 63.

⁴²⁴ *Ibid.*, 62.

⁴²⁵ Girard, *Violence*, 221.

⁴²⁶ Russell Leng, *Interstate Crisis Behavior 1816-1980: Relism versus Reciprocity* (Cambridge: Cambridge University Press, 1993), 70, 71.

⁴²⁷ Theodore P. Seto, “The Morality of Terrorism,” *Loyola of Los Angeles Law Review* 35:1227 (June 2002), footnote 60; Robert A. Hinde, “Law and the Sources,” 1688.

The First Prohibition

The essential feature of prohibitions is evident in the ‘first’ prohibition on violence – that which made Cain immune from revenge for perpetrating the ‘first murder.’⁴²⁸ When God pronounced to Cain his punishment for killing his brother, Cain beseeched God, declaring “‘My punishment is more than I can bear. Today you are driving me from the land, and I will be hidden from your presence; I will be a restless wanderer on the earth (thus isolated and vulnerable), and *whoever finds me will kill me.*’ But the LORD said to him, ‘Not so; if anyone kills Cain, he will suffer vengeance seven times over.’ Then the LORD put a mark on Cain so that no one who found him would kill him.”⁴²⁹ While one cannot consider this a historically accurate account of a real event, the message within the text shows a deep understanding of the mimetic dynamics of violence. The nature of the mark of Cain has been heavily debated and popular culture seems to consider the mark a curse. However, from the text it is clear that the mark is protective in nature.⁴³⁰ The fact that the original Hebrew for “mark” can be interpreted as “sign,” “omen,” or “warning”⁴³¹ corroborates the idea that the mark of Cain was not physical blemish but a warning that killing him would lead to escalatory violence. To refer back to the words of Girard noted above, the prohibition served “to prevent people from being caught up in violent mimesis.”⁴³² The mimetic violence has positive benefits in that it protects Cain, and this is important because it stresses that mimesis of violence is vital to civilization, but it remains dangerous. Thus the prohibition is intended to keep violent mimesis from beginning.

The story of Cain may not be true,⁴³³ but its lessons are certainly accurate and thus the reason for the story’s endurance. The fact that Cain was a farmer lends further credibility to the idea of the Biblical story as a metaphor for the founding of civilization, given farming’s role in turning mankind from a nomadic to sedentary existence (and thus being the first step in making a city possible). Cain’s reputation as founder of the first city⁴³⁴ too adds plausibility to the idea that revenge for his killing, or the killing of his kin, would be

⁴²⁸ These stories are essential because they provide an indication of a broadly recognized sociological truth.

⁴²⁹ Genesis 4:13-15 NIV.

⁴³⁰ Such an observation is made by Hermann Gunkel, *Genesis*, trans. By Mark. E Biddle (Mercer University Press, 1997): 47-49, top of p.47 in particular.

⁴³¹ *The Brown-Driver-Briggs Hebrew and English Lexicon* (Peabody, MA: Hendrickson Publishers, 1996), 16.

⁴³² Girard, *Violence*, 219.

⁴³³ Although as Gunkel on page 47 points out, it may be a true story of a people.

⁴³⁴ Pointed out by Augustine multiple times (XV.1, p. 479). For discussion see, Rex Martin, “The Two Cities in Augustine’s Political Philosophy,” *Journal of the History of Ideas* 33, no. 2 (1972).

quickly meted out. Outside the family, this was the first large survival unit, established for protection and bound together through moral obligations that would consider an attack on one as an attack on all, and would mimic violence (achieve reciprocity) in the place of those who could not (the dead in this case).

The ‘warning’ of Cain was thus the first case of extended deterrence. Extended deterrence means that while an individual may be physically alone, he is not socially alone. Cain, or any inhabitant of Enoch, would bear the mark (perhaps even literally), as this would provide protection from attack the way a flag might protect a ship from attack in the modern era. As long as the moral obligations to one another were considered credible, attacks on those with the mark would be risky affairs, ensuring war. Thus mimesis and the surrogate mechanism were put to use in such a way that actually allowed for the creation of ever larger groups – cities, nations, and civilizations. In these larger groups, those who were not even related would still willingly serve as surrogates to avenge others (this was vital for Cain as he obviously lacked a brother, which would have been the traditional surrogate for revenge). Yet this embrace of mimetic protection would also be destabilizing for if ever Cain was killed, the escalation of violence may destroy everyone. Thus, what protected also endangered and, circling back to the main point here, this is why Cain was given immunity by God (i.e. society).

Finding the Essential Feature in a Range of Prohibitions

The Girardian lens can be usefully applied to a whole range of prohibitions. It is worthwhile to examine a few of these so as to explore the value of the framework. This review also helps affirm that we are not accepting Girard’s conclusion regarding the purpose of prohibitions without due consideration. We will begin this section by briefly reviewing prohibitions on targeting leaders, the dead, messengers, naked soldiers, and farmers, just to demonstrate the range of applicability of Girard’s observation. We will then examine in more detail the prohibitions on *hors de combat*, women, and certain weapons, since these begin to give us a better idea of how discrimination as a whole operates.

Government Immunity

The Girardian rationale for prohibitions can be applied to the norm against targeting the leadership of a group – that is the norm against assassination. Historically, assassination is

associated with outbreaks of mimetic violence and chaos, whether the murder of King Henry IV of France⁴³⁵ or Archduke Franz Ferdinand.⁴³⁶ While these killings did not solely cause the ensuing violence, they played an inciting and important role. At a non-state actor level, in general, decapitation strategies have the capability to send groups into crises, which may be good from the perspective of their opponents, but is unpredictable at best and often leads to the rise of more hardline leaders who engage in their own assassination strategies targeting moderates and competitors. According to one study, “Decapitation is not ineffective merely against religious, old, or large groups, it is actually counterproductive...”⁴³⁷ This study is pointing to a trend, which we can better understand by taking into account the Girardian theory being developed in this dissertation. Thus, the prohibition on assassination would serve to reduce violent mimesis and check “escalations of violence”⁴³⁸. Of course, like the many prohibition, this proscription on targeting leaders is not always strong and indeed it is often violated. However, that is not the point. Rather, the point is that when a leader is killed, it very often contributes to an expansion of violence. This then is the reason for the prohibition – because it helps control the violence.

Mutilation of the Dead

Moral restrictions on what could be done to the corpse are shared between different groups and different times.⁴³⁹ In ancient Greece, mutilation of the dead was considered “the most unholy” of actions “more suitable for barbarians”; as “it was seen as an *excessive form of revenge which would invite divine punishment.*”⁴⁴⁰ By considering the essential feature of prohibitions and their function regarding mimetic desire, it is clear that the reason the dead were protected was because those who are bonded to the dead individual are morally obligated to seek out revenge. In a sense then, fear of the dead as actors with continued influence in the affairs of the world was justified.⁴⁴¹ The dead cannot respond for themselves but they call for response from others. Thus the prohibition of mutilating a corpse, since doing so would lead to more violence.

⁴³⁵ The assassination was part of the escalating religious tensions that soon resulted in the Thirty Years’ War and some cite it as directly contributing to the war. Myron P. Gutman, “The Origins of the Thirty Years’ War,” in *The Origin and Prevention of Major Wars*, edited by Robert I. Rotberg and Theodore K. Rabb (Cambridge: Cambridge University Press, 1988), 190.

⁴³⁶ This is widely seen as the inciting incident that led to World War I.

⁴³⁷ Jenna Jordan, “When Heads Roll: Assessing the Effectiveness of Leadership Decapitation,” *Security Studies* 18, no. 4 (2009): 755.

⁴³⁸ Girard, *Battling*, 63.

⁴³⁹ Islam also had such a prohibition. Aboul-Enein, Youssef H. and Sherifa Zuhur, *Islamic Rulings on Warfare* (Strategic Studies Institute, U.S. Army War College, 2004), 22.

⁴⁴⁰ Hans van Wees, *Greek Warfare: Myths and Realities* (London: Gerald Duckworth, 2004), 136.

⁴⁴¹ James George Frazer, *The Fear of the Dead in Primitive Religion* (New York: Biblio & Tannen, 1966).

Messengers

Messengers too have been according protection throughout the history of warfare.⁴⁴² This was at least partially due to the fact that they “were too generally useful to be plundered. They carried out endless essential duties in war.”⁴⁴³ Killing these heralds often led to reprisals⁴⁴⁴ but more importantly it contributed to the uncertainty and chaos of war. In such circumstances, mimetic violence is much more likely since such the violence can serve as a hedge against uncertainty.

The Naked (or Otherwise Indisposed) Soldier

If we turn our attention to the previously mentioned Hindu prohibitions, it is also clear that controlling mimesis is at the core. Almost across the board, those considered immune are those incapable of responding – those sleeping, naked, disarmed, fighting with another, wounded, and running away.⁴⁴⁵ To target such individuals is thus not reciprocal. The dangers of this will be gone into in detail further in this dissertation. For now, it is only important to recognize that controlling mimesis is the essential feature of these prohibitions.

The Farmer and the Fruit Tree

Groups have long sought to set agricultural workers and resources aside from the scourge of war. Deuteronomy 20 forbids destruction of fruit trees, a prohibition expanded on by Maimonides in the 12th century.⁴⁴⁶ Islamic principles similarly forbid harming trees and orchards, and extend this also to the enemy’s flock and wells.⁴⁴⁷ This immunity was justified in the ancient world and Middle Ages because “Ox herds, husbandman, ploughman... till the soil for all.”⁴⁴⁸ Resources, whether food or oil, are objects that can give rise to tremendous amounts of mimetic desire. The destruction of these objects then can result in breakdowns in discipline⁴⁴⁹ and give rise to more violence.⁴⁵⁰ Thus again,

⁴⁴² Garlan, *War in the*, 58.

⁴⁴³ Keen, *The Laws of War*, 196.

⁴⁴⁴ Ibid.

⁴⁴⁵ Aho, *Religious Mythology*, 65.

⁴⁴⁶ Sorabji, *The Ethics of*, 14.

⁴⁴⁷ Aboul-Enein, *Islamic Rulings*, 22.

⁴⁴⁸ Bonet, *The Tree of Battles*, 188; Hugo Grotius, *The Rights of War and Peace, including the Law of Nature and of Nations*, translated by A.C. Campbell. New York: M. Walter Dunne, 1901. Available at http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=553&Itemid=27. Book 3, Chapter 11.

⁴⁴⁹ Peter Paret, *The Cognitive Challenge of War: Prussia 1806* (Princeton, NJ: Princeton University Press, 2009), 11,12.

prohibitions on targeting such objects can keep violence from escalating, preventing a mimetic competition over resources.

While it would be fascinating to dwell on these prohibitions, such an effort will have to wait. We need to turn our attention to some of the larger prohibitions so as to set the stage for examining discrimination in full.

Hors de Combat

One scenario in which the detriments of non-discrimination are most clear is a when soldiers who are surrendering or have already surrendered are subsequently killed. Although given the circumstances of battle, it is not uncommon that surrendering soldiers be killed in the confusion, once the surrender has been recognized and in particular once completed, it is widely acknowledged that there are utilitarian reasons the *hors de combat* should not be killed. This is because doing so is generally agreed to cause more violence.

Once a soldier with a white flag has been killed, the ritual behind the white flag becomes useless. With the ritual broken down, the violence will be less controllable and more prone to extremes. Brandt has written, “A rule forbidding wanton murder of prisoners hardly needs discussion. Such murder does not advance the war effort of the captors; indeed, news of its occurrence only *stiffens resistance and invites retaliation*... A strict prohibition of wanton murder of prisoners therefore has the clear support of utilitarian considerations.”⁴⁵¹ Military historians have observed a multitude of instances of this increased will to fight in the wake of surrender executions. Many point to the German massacre at Malmedy in World War II as providing U.S. forces with the additional motivation needed to halt the German advance during the Battle of the Bulge.⁴⁵² Meanwhile, Cook argues that the execution of surrendering troops and ill-treatment of

⁴⁵⁰ Philip G. Dwyer, “‘It Still Makes Me Shudder’ Memories of Massacres and Atrocities during the Revolutionary and Napoleonic Wars,” *War in History* 16, no. 4 (2009): 389.

⁴⁵¹ Richard Brandt, *Morality, Utilitarianism, and Rights* (Cambridge: Cambridge University Press, 1992), 154, 155, emphasis added.

⁴⁵² *Law of War Workshop Deskbook 2005*, International and Operational Law Department, Judge Advocate General’s School, US Army, Charlottesville, VA, available from <http://www.au.af.mil/au/awc/awcgate/law/low-workbook.pdf>, 5.

Hugh M. Cole “Chapter XI. The *1st SS Panzer Division’s* Dash Westward, and *Operation Greif*”. *The Ardennes: Battle of the Bulge* (Washington, D.C., USA: Office of the Chief of Military History, Department of the Army, 1965), 261.

prisoners on the Pacific and Eastern fronts of the Second World War meant that “soldiers were more inclined to fight to the bitter end, to the last bullet and the last man.”⁴⁵³

This tactic traps the opponent into having one course of action, continued fighting. For this reason, Sun Tzu believed an enemy should always be left a path along which they could retreat.⁴⁵⁴ Flavius Vegetius explains the reasoning behind this, writing that “where no hope remain, fear itself will arm an enemy, and despair inspire courage; when men find they must inevitably perish, they willingly resolve to die with their comrades, and, like brave men, with their arms in their hands.”⁴⁵⁵ This military wisdom is echoed in legal thought. Grotius has written that “a lack of moderation and mercy in fighting may make the enemy more difficult to defeat.”⁴⁵⁶ Thus, “one great quality, to recommend the moderation above alluded to, will be found in its preventing the enemy from being driven to those resources, which men never fail, at last, of finding in despair.”^{457, 458}

The soldiers rendered *hors de combat* are no longer capable of the reciprocal activity of fighting. Thus, killing them will do two things. It will first impact the soldiers who carry out such a grossly nonreciprocal action. To ensure these soldiers do not become psychological casualties and that they will be able to be reintegrated back into society would require a major shift in conceptions of moral action. Such immoral action risks sending society into chaos as its version of mimetic equality and reciprocity become contested. Second, it will call for reciprocity by those *hors de combats*' comrades who are still capable of fighting. This may be direct reciprocity, aimed at the enemy soldiers still fighting, or misdirected, aimed at the enemy prisoners. These two themes, escalation of ingroup and outgroup violence will be evident through the rest of this dissertation.

Gender

Women have been designated as immune by a vast number of cultures throughout history.

⁴⁵³ Tim Cook, “The Politics of Surrender: Canadian Soldiers and the Killing of Prisoners in the Great War,” *The Journal of Military History* 70, no. 3 (2006): 641.

⁴⁵⁴ Bellamy, “Supreme Emergencies,” 843.

⁴⁵⁵ Thomas Simes, *A Treatise On The Military Science; Which Comprehends The Grand Operations Of War And General Rules For Conducting An Army In The Field Founded Upon Principles For The Improvement Of The Same, With Occasional Notes To Which Is Added, The Manner Of Attacking and Defending Military Posts* (London: John Millan, 1880), 132.

⁴⁵⁶ McKeogh, *Innocent Civilians*, 117.

⁴⁵⁷ Grotius, *The Rights of War*, CHAPTER XII.: On Moderation in Despoiling An Enemy's Country.

⁴⁵⁸ Gustave Rolin-Jacquemyns, Belgian diplomat and early advocate of international law, too was of the opinion that reprisals encouraged resistance rather than served as a militarily necessary deterrent (Nabulsi, “Evolving Conceptions,” 33.)

The near ubiquity of the prohibition on targeting women in war leads Helen Kinsella to argue that “the very distinction of combatant and civilian is dependent upon, not merely described by, discourses of gender.”⁴⁵⁹ However, it is unlikely that gender is the essential feature of immunity. First of all, women can lose their immunity by violating their gender role. Second, innocence, as we already mentioned, requires a framework for evaluation. Thus, it is the role (whatever that may be and even if this is unwillingly foisted upon them) which is the reason for their immunity. There are a number of reasons that they would be assigned such a lot.

However, before discussing this immunity in light of Girardian theory, it is important to note that, as is the case with other prohibitions, the prohibition on targeting women in war does not imply they are actually well protected from the violence of war. It hardly needs pointing out that women often suffer extreme violence in war. In particular, rape as a weapon of war or a ‘reward’ for soldiers is common throughout history and up to the present. Indeed, the prohibition on meting violence out on women often breaks down and once it does, it expands so as to be widespread. This again is our point – when women are targeted in war, it very often contributes to an expansion of violence (that is, an expansion beyond the obvious one of women being directly targeted). The purpose of the prohibition is to avoid such violent crises and control the violence to the extent possible. The fact that the prohibition often collapses does not impact the potential utility if it were adhered to.

Taking into account Girardian theory, it follows that women have historically been made immune because the mimetic desire of men who consider them objects leads to violence. The prohibition on women being targeted thus made sense. The story of the *Illiad* and the war ‘caused’ by Helen⁴⁶⁰ provides an indication of how the pursuit of such objects were dangerous and frowned upon. The Beautiful Captive rules⁴⁶¹ of ancient Israel also can be viewed as efforts to manage the mimetic desire of male warriors. In modern times, women are still prohibited from serving in front-line combat unit in many militaries. This too can be attribute to male reactions as the Israeli Defense Forces discovered that having women in combat led men to place themselves in excessive danger.⁴⁶² The first Freudian

⁴⁵⁹ Helen Kinsella, “Securing the civilian: sex and gender in the laws of war,” in *Power in Global Governance*, edited by Michael Barnett (Cambridge: Cambridge University Press, 2005): 271.

⁴⁶⁰ Homer, *The Illiad*, Book III, Line 151.

⁴⁶¹ Deuteronomy 21:11-14.

⁴⁶² Lt. Col. Dave. Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (New York, NY: Back Bay Books, 1995).

prohibition against incest, also deals with controlling the male's mimetic desire for women.⁴⁶³ Thus we find that many prohibitions regarding women can be related to controlling mimetic competition that leads to violence. However, we must not consider women as solely objects but also as agents.

In this regards, immunity is a strategy used to exercise power so as to remove agency from women. Innocence is imposed on women, as it is on others, in order to disempower them. The reason that women were immune related to their perceived inability to be independently responsible for their actions and especially their inability to fight.⁴⁶⁴ This was something that the social order dominated by men desired to deny them. To effect this disempowerment, women were made immune, which simultaneously meant they were not allowed to use violence. Thus, what was being constructed was is what it meant to be a woman, i.e. powerless and in need of defense.

Importantly, if the moral and legal divisions of war fail, and that which belongs out of war becomes involved in the war, it loses its immune status. As Grotius writes, "age and sex are equally spared, except where the latter have departed from this privilege by taking arms, or performing the part of men."⁴⁶⁵ They have become mimetic and so can now be targeted. From the standpoint of Girardian theory, the object is in a manner infected by violence. In many cultures this meant the object(s) then had to be destroyed.⁴⁶⁶ When women perform "the part of men," the biological sex of course remains the same but the gender role in these cases has changed. Certain social roles are the only ones allowed to mimetic (or are capable of mimesis) and women have generally not been deemed to be among those. The fact that this was and is shaped by a certain social order is beside the point. What is important is that at the core of this immune role is an attempt to control mimesis.

Weapons

Control of mimesis is also at the core of many of the prohibitions of war. The way in which the laws and mores of war attempt to control reciprocity, and do so in a manner that reinforces the social order, is clear in the prohibitions on weapons. Throughout history, the

⁴⁶³ Mary Condren, "Gender, Religion, and War." In *Religion and the Politics of Peace and Conflict* edited by Dylan Lee Lehrke and Linda Hogan. Eugene, OR: Pickwick Publications, 2009.

⁴⁶⁴ Kinsella, "Securing the civilian," 259.

⁴⁶⁵ Grotius, *The Rights of War*, Book 3, Chapter 11.

⁴⁶⁶ Girard, *Violence*, 219.

rationale for banning many weapons was because the implements were seen as non-reciprocal. There is a tendency to frown on any weapon that makes the soldier too safe or leaves the opponent unable to respond. Van Creveld notes as much, writing that “In Western civilization until about 1500 A.D., the most important reason why some weapons were considered unfair was because they enabled their users to kill from a distance and from behind cover. The victim being unable to retaliate, such weapons obscured the vital distinction between war and plain murder.”⁴⁶⁷ Van Creveld hits directly on the key feature between good kill and bad killing – mimetic reciprocity. From the perspective of moral discourse, such weapons turn the enemy into victims who call for revenge and also turn one’s own soldiers into murderers.

Every time a weapon is introduced that has an extended range or attacked from an angle that rules out a response, civilizations struggle to deal with the resulting violence and disruptions to order. Thus, submarines during WWI were deprecated and there were successive attempts to apply rules to their use, for example requiring they surface and announce themselves before attacking. Bombing too was seen as non-reciprocal thus the debate over the “defended town” criteria.

A commonly cited armament prohibition of the Middle Ages was the banning of the crossbow. The weapon was widely disliked by the church, with Pope Innocent II in 1139 outlawing it for time.⁴⁶⁸ Peter the Chanter, an influential 12th century commentator, claimed that crossbowmen were not worthy of salvation because they killed innocent victims.⁴⁶⁹ One must wonder how he reached this conclusion, for while the crossbow was used more in sieges than in field battles,⁴⁷⁰ there is little evidence it was primarily used against those who even at the time would be called the innocent – women and children and men of the cloth. Why would the individuals who were killed with a crossbow be granted the designation of innocent? We can understand this better by taking into consideration the essential feature of prohibitions pointed to by Girardian theory. Understood in this manner, the only difference between those being killed with a sword or another type of weapon versus a crossbow is that the latter allowed the target to be killed from a much greater distance than normal for the day. This kept the killer out of reach of a

⁴⁶⁷ Van Creveld, *Technology and War*, 71.

⁴⁶⁸ First in full and then only against Christians.

⁴⁶⁹ Russell, *The Just War*, 243.

⁴⁷⁰ Philippe Contamine, *War in the Middle Ages* (Oxford: Blackwell Publishers, 1984), 72.

counterattack. Indeed, the bolt of the crossbow could also penetrate walls, making even those under cover vulnerable. Clearly then, the crossbow was a nonreciprocal weapon.

The bow and arrow was frowned upon in ancient Greece for similar reasons. Euripides called a bow a “coward’s weapon” and insisted “Archery is no test of manly bravery; no! he is a man who keeps his post in the ranks and steadily faces the swift wound the spear may plough.”⁴⁷¹ But of course the ranks of the phalanx were vulnerable to such missiles, tightly packed together as they were. In the Battle of Lechaeum such missiles, javelins in this case, can be argued to have turned the tide of the battle. However, in most cases the limited range of the primitive bow and hand thrown javelin would do little damage before the phalanx would force the lightly armed troops to flight. Thus, Hanson concludes, the weapon more likely served to incite the anger of the men in the phalanx but nothing more.⁴⁷² That said, this anger, rooted in the fact that the men could not respond to the missiles, would often lead to intense violence if the phalanx caught the bowmen.

Prohibitions and Power

It was already mentioned that the immunity of women was, and still is to at least some extent, part of a power structure that aims to deprive them of agency. This is true of many prohibitions on weapons as well. Many weapons were seen as evil in part because it was a threat to the social order. Such threats to a certain order were naturally against the interests of those in positions of power. Of course these prohibitions are shaped by the social orders of the day. Plutarch notes that “Lycurgus forbade the Spartans from using the bow to make them brave... Since missile weapons enabled the weak to wound and kill the strong, they did not constitute a proper test of manhood.”⁴⁷³ The primary concern here was a leveling of the battlefield that was disruptive of the status quo. Similar charges would be levied against firearms two thousand years later. Most famously in Japan but across Europe to some extent, firearms were frowned upon at first for they enabled the lower social classes to strike down the higher.

Massification of any weapon is a danger to a power balance. No longer is access to a weapon dependent on resources available to only a few and years of training. It is unstable

⁴⁷¹ Euripides. *Heracles*. Translated by E.P. Coleridge. Available at <http://classics.mit.edu/Euripides/heracles.html>.

⁴⁷² Hanson, *The Western Way*, 30.

⁴⁷³ van Creveld “The Clausewitzian Universe,” 415, 416.

because reciprocity is now available to all through their own means. For the same reason, poison has been morally frowned upon. As Margaret Hallissy writes, “The dueller is open, honest, and strong; the poisoner, fraudulent, scheming, and weak. A man with a gun or a sword is a threat, but he declares himself to be so, and his intended victim can arm himself...”⁴⁷⁴ This clearly links to mimetic reciprocity and is an effort to control forms of violence that are destabilizing, those which will lead to a profusion of violent responses. Yet, it of course also protects those with the gun or sword. This observation should be kept in mind as we explore discrimination as a whole, as it too is supporting a power structure.

Conclusion

For the purpose of this dissertation, it is not necessary to comprehensively explore the minutia of the arguments regarding immunity in war. Furthermore, we need not reach a conclusion regarding such matters as whether a civilian ceases to be so once they go to work in an ammunition factory or whether insurgents who lack uniforms are soldiers. We need only understand the essential feature of all prohibitions – that they aim to control mimetic violence. This does not mean they aim to eliminate it entirely. Indeed, we shall find that such a solution would be unstable. However, given the tendencies of violence, control is imperative to make it compatible with group life. We can now move forward to examine how discrimination and civilian immunity create a power structure that aims to control the mimetic tendencies of violence.

⁴⁷⁴ Margaret Hallissy, *Venomous Woman: Fear of the Female in Literature* (New York: Greenwood Press, 1987), 6. Hallissy is talking about gender but remains true regardless.

Chapter IV - Identifying the Mechanism to Exercise Power

Introduction

The final step in conducting a moral genealogy is to identify the mechanisms to exercise power, to control man, and more specifically “to create, transform, or destroy networks of relations that sustain a discourse and the political space it orders.”⁴⁷⁵ What we mean by “mechanism” is a “constellation of entities [actors] and activities.”⁴⁷⁶

Because we are examining practices, we are simultaneously examining structures. This is because structure has a dual nature, meaning that it is “both the medium and the outcome of the practices which constitute social systems.”⁴⁷⁷ The structure is erected by (indeed made of) human action but at the same time this structure shapes (makes possible) those actions. Stated inversely, a structure (comprised of rules and resources⁴⁷⁸) is drawn upon in order to undertake an activity and at the same time the activity creates and reinforces the structure (rules and resources).

Since social systems are “patterns of relations”⁴⁷⁹ or, stated otherwise, “relations of interdependence,”⁴⁸⁰ it is clear that the practices and structure that constitute the system can be conceived of as a relationship of power. Thus, this section is looking at how the practice of discrimination creates a relationship and structure of power. It furthermore will begin to examine how this practice-structure relates to mimetic violence.

The Union of War and Morality

Taking the connected nature of structure and practice into account, we can conclude that when ethicist Stanley Hauerwas says, “*War is a moral practice*,”⁴⁸¹ he is also saying that

⁴⁷⁵ Keeley, *War Before Civilization*, 96, 97, and summarized by Price, “A Genealogy,” 89.

⁴⁷⁶ Peter Hedström, “Dissecting the Social,” in *Theories of Social Order: A Reader* edited by Michael Hechter and Christine Horne (Stanford: Stanford University Press, 2009), 14.

⁴⁷⁷ Anthony Giddens, *A Contemporary Critique of Historical Materialism* (London: Macmillan, 1981), 27.

⁴⁷⁸ Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (Berkeley: University of California Press, 1984), 377.

⁴⁷⁹ Ira J. Cohen, “Theories of Action and Praxis,” in *The Blackwell Companion to Social Theory* edited by Bryan S. Turner, 2nd ed (Oxford: Blackwell Publishing, 2000), 94.

⁴⁸⁰ Anthony Giddens and Fred Dallmayr, *Profiles and Critiques in Social Theory* (Berkeley, CA: University of California Press, 1982), 35.

⁴⁸¹ Hauerwas, “Sacrificing the Sacrifices of War,” 83.

war is a moral structure. War then is the result of moral rules and at the same time makes these rules possible. This is a perplexing idea but Hedley Bull has also considered this line of thinking, writing that war “is unimaginable apart from the rules by which human beings recognize what behavior is appropriate to it and define their attitudes towards it...”⁴⁸² Indeed, the meaning of the terms “war” and “soldiers” and “civilians” seem rooted in moral distinctions. When soldiers and civilians vanish, it seems war does as well, becoming instead raw violence.

Considered thus, morality is not external to war but part of war itself. This runs counter to much traditional thinking which accepts that the practices interact but does not consider them part of the same structure. Clausewitz explicitly writes that, “...war is subjected to conditions, is controlled and modified. But these things do not belong to war itself; they are only given conditions; and to introduce into the philosophy of war itself a principle of moderation would be an absurdity.”⁴⁸³ Morality then, according to this line of thinking, cannot alter the basic nature of war. Ethicists too generally insist that morality is something outside war. But if the idea of war and the moral codes of war arose together as part of the same structure, the idea that we can set aside or break the rules and still fight a war is erroneous, as is the idea that we can set aside war and still adhere to our moral codes. Our task then is to locate and examine the unified war-morality structure.

War Organizes Society

Historian Michael Howard notes that “the requirement for social control imposed by the necessities of war has normally been a major element, if not *the* major element, in the development of state structures.”⁴⁸⁴ Indeed, one can say this of any group structure, even pre- or non-state. This is not to say that society thus is simply a reflection of military requirements. However, the need for a group to be able to survive a military encounter certainly channels organization in a direction that is efficient for using violence. Thus, the needs of war will influence the organization of society and this will in turn influence the abilities in battle. The organization of most social structures is predicated on divisions (only a fully homogenous group where all have same role and identity would not require this). Thus, organization is also determined by the prohibitions relating to these divisions,

⁴⁸² Hedley Bull, “Review: Recapturing the Just War for Political Theory,” *World Politics* 31, no. 4 (1979): 595, 596.

⁴⁸³ Clausewitz, *On War*, 6.

⁴⁸⁴ Howard, “Temperamenta,” 1.

prohibitions that outline who can and cannot undertake certain acts (and thus outline roles). Following from this logic and our previous discussions regarding the essential features of morality in war, we can expect that the prohibitions which organize society facilitate the social control required to manage the mimetic tendencies of violence, and that this is needed to carry out war. Of course the prohibition we are most interested in is discrimination. This practice in fact is vital in organizing a group for war.

Discrimination Structures Society

The principle of discrimination, which we previously highlighted as being at the core of the LOW, is most often thought of as something that one maintains in reference to other groups. Thus, to adhere to this standard means to see the enemy as consisting of both combatants and non-combatants and act accordingly. This out-group discrimination has received the bulk of attention in academia, ethics, and jurisprudence. It is of course very important but before turning our attention to it, it is important to recognize the inverse variant, in-group discrimination, as it looms large when considering functional utility. In-group discrimination means making a clear division between one's own combatants and non-combatants. This is more often discussed in the context of what the opponent does not do, as part of an ethical argument which serves to justify one's own actions and vilify the other side.

However, in-group discrimination warrants more attention. This is in part due to the prevalence of insurgents and contractors in modern war, sort of middle identities in the contending discourse of discrimination.⁴⁸⁵ More important however than these failings of in-group discrimination is the success of the practice. The rise of official group armies is such a common feature of the modern world that we take it for granted, yet it is a vital civilizational feature. In-group discrimination gives rise to a structure – a network of relationships that orders society – that proves vital to enabling and limiting violence. The rules of discrimination serve to protect a group “from internal dissolution and external destruction.”⁴⁸⁶ This is a vital point to keep in mind – discrimination is not just about the violence a group aims towards others but about the violence within the group itself.

⁴⁸⁵ This is not to say these are new features of war. Military forces have often been supported by civilians and insurgent organization is also of course nothing novel.

⁴⁸⁶ Wright, *A Study*, 89.

To see how in-group discrimination structures society, we need to return to the work of Clausewitz. In addition to the Remarkable Trinity,⁴⁸⁷ Clausewitz alluded to the fact that war had a second trinity, this one not of tendencies but of social actors (or classes).⁴⁸⁸ This Social Trinity⁴⁸⁹ of government, army, and people (GAP) is often misrepresented as Clausewitz's primary trinity. It was actually Colonel Harry Summers who brought this second trinity to prominence.⁴⁹⁰ While this dissertation agrees with those who emphasize the Remarkable Trinity as the more important paradigm,⁴⁹¹ it is clear the Social Trinity is in itself a useful analytical lens through which to examine war and morality.

Indeed, it is accurate to say *the Social Trinity is the practice of discrimination articulated in the strategic language of war*. Both the Social Trinity and the practice of discrimination divide the collective group into classes⁴⁹² and together with the Remarkable Trinity they outline the roles and relationships between the GAP on all sides of a war. In essence, *the Social Trinity is the structural medium and outcome of the practice of discrimination*.⁴⁹³ It is simultaneously the cause and result of discrimination. Through the act of discriminating, the Social Trinity is created or reinforced. It can exist only through the practice. Simultaneously however, the structure of the Social Trinity makes possible the practice of discrimination, for one cannot discriminate without the divisions and roles outlined by the rules that comprise the structure. With this in mind, the continued relevance of the concept of the Social Trinity is of vital importance to the exploration here.

Given that the Social Trinity is a structure, it is thus a consolidated function⁴⁹⁴ – a securing of a condition required for a social organism to exist (a condition of existence to counter the conditions of life). The question is: what is this function? Since divisions and prohibitions are at the core of discrimination and the Social Trinity we know that mimetic violence too must be at the core. However, we cannot dash forward too quickly to look at

⁴⁸⁷ See previous section on The Nature of War.

⁴⁸⁸ Clausewitz, *On War*, Book 1, Chapter 1, Section 28.

⁴⁸⁹ My term.

⁴⁹⁰ For this reason it is referred to as the "Summersian Trinity" by Christopher Bassford and Edward J. Villacres, "Reclaiming the Clausewitzian Trinity," *Parameters* (Autumn 1995): 10.

Harry G. Summers, *On Strategy: A Critical Analysis of the Vietnam War* (New York: Presidio Press, 1995).

⁴⁹¹ Bassford and Villacres for example.

⁴⁹² In the case of the modern nation-state this is three classes, although more are possible depending on the social order.

⁴⁹³ This logic is drawn from a phrase on the duality of structure that defines it as "both the medium and the outcome of the practices which constitute social systems." Giddens, *The Constitution*, 27.

⁴⁹⁴ Durkheim, 1888, 45.

this. First we must cover the flanks of our argument and defend for a moment the Social Trinity as a concept.

Questioning the Social Trinity

Defense expert Alan Dupont is just one of many who believe we are in a “world in which there may be no clear-cut distinction between soldiers and civilians and between organised violence, terror, crime and war.”⁴⁹⁵ Thus, the Social and Remarkable Trinities, he indicates, are breaking down. The relevance of the Social Trinity in particular has been questioned,⁴⁹⁶ especially in regards to groups other than the nation-state, both those of earlier ages and modern non-state actors. Van Creveld for example has proposed that the Social Trinity is no longer applicable to modern war and should be “thrown overboard.”⁴⁹⁷

However, Clausewitz’s observations on the Social Trinity are not limited to the statist conception of war. Clausewitz may have focused on the state as the primary actor but this by no means makes his paradigm inapplicable to other groups. To apply the Social Trinity to non-state groups, Herberg-Rothe simply replaces “Clausewitz’s ‘state’ with the concept of ‘community.’”⁴⁹⁸ Meanwhile, John Stone of King’s College proposed a non-state Social Trinity that is comprised of leaders, fighters, and supporters.⁴⁹⁹ These actors, as we shall see, are easily recognizable as fulfilling the same functions as the GAP of the original Social Trinity. There is no doubt that although the Social Trinity can be applicable to all groups, there is variation and that there may be less division among some groups. However, as we shall see, lines must be drawn.

⁴⁹⁵ Alan Dupont, “Transformation or Stagnation? Rethinking Australia’s Defence,” (May 2003) <http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=34044>, 20.

⁴⁹⁶ Detractors include Martin van Creveld, *On Future War* (London: Brassey’s, 1991), esp. 57-58; Mary Kaldor, “Elaborating the ‘New War’ Thesis,” in *Rethinking the Nature of War* edited by Isabelle Duyvesteyn and Jan Angstrom (New York: Frank Cass, 2005) esp. 221; Also John Keegan, Philip Wilkinson, and Azar Gat.

For a summary see Christopher Bassford, “John Keegan and the Grand Tradition of Trashing Clausewitz,” *War and History* 1, no. 3 (1994).

⁴⁹⁷ van Creveld, *On Future War*.

⁴⁹⁸ Andreas Herberg-Rothe, “Clausewitz’s Trinity as General Theory of War,” paper presented at the annual meeting of the ISA’s 50th Annual Convention *Exploring The Past, Anticipating The Future*, New York Marriott Marquis, New York City, USA, February 15, 2009. Available at http://www.allacademic.com/meta/p312242_index.html, 14.

⁴⁹⁹ John Stone, “Clausewitz’s Trinity and Contemporary Conflict,” *Civil Wars* 9, no. 3 (2007): 284. Cites Edward J. Villacres and Christopher Bassford. This notes that “In any conflict organized enough to be called war, there will be some kind of leadership organization, some group of fighters, some kind of population base—if not people, army, and government *per se*, then people, army, and government analogs.”

The trinitarian separation of society also precedes the state. Georges Dumezil has demonstrated that the social organization of Indo-European peoples shows a three-class society comprised of priests, warriors, and commoners.⁵⁰⁰ Warriors held a privileged place in society but “they were never foremost in society. Always there remained something disquieting about their violence, which – while highly productive and quite necessary so long as it was directed against external enemies – threatened the stability and well-being of I-E (Indo-European) society whenever it was asserted within that society itself.”⁵⁰¹ Thus, the warriors were never in a place of authority. Instead, leadership in these groups was granted to a king who was removed from the warrior class and assumed a new identity that was integrated with all three classes. Bruce Lincoln observes that “It thus became the king’s official responsibility to act on behalf of the society as a unified totality...”⁵⁰² Roles clearly similar to those within the modern GAP are clearly identifiable here and we can even see how they respond to the same needs – keeping at bay the danger of violence.

It is important to recognize that Clausewitz’s Social Trinity was created and like any manmade edifice, its reality must be constantly stressed. The state, arguably, has best institutionalized this structure but it is still tenuous. It is clear that Clausewitz was observing what the Social Trinity was in ideal theory and not necessarily the way it was in reality. In *Real War*, the classes of the Social Trinity are not often distinct or pure – there are contractors, reservists, insurgents, and many other gray categories. The Social Trinity then is better considered as the social order that Clausewitz advocates should be aimed for so that war can be effectively waged. Why this is the case is something that this dissertation will make clear.

The Danger of Divisions

While the division of reciprocity is a stabilizing factor in that it controls mimesis by limiting the number of actors who can use direct violence, as Bagehot points out “No division of power is then endurable without danger.”⁵⁰³ The separate parts must not come into conflict. According to Peter Feaver, the primary dilemma in civil-military relations,

⁵⁰⁰ Although he does not rule out a fourth class of servants (slaves) or artisans.

⁵⁰¹ Bruce Lincoln, *Death, War, and Sacrifice: Studies in Ideology and Practice* (University of Chicago Press, 1991), 4, Citing Georges Dumezil, *The Destiny of the Warrior*, translated by Alf Hiltebeitel (Chicago, IL: University of Chicago Press, 1970).

⁵⁰² Lincoln, *Death, War, 4*, 5. Of course Lincoln points out that this was not always the case, that the warrior class enjoyed certain advantages and the priests often merely helped provide legitimacy rather than asserted it in a balanced manner.

⁵⁰³ Bagehot, *Physics and Politics*.

one which any society with a civil-military division must face, is how “to reconcile a military strong enough to do anything the civilians ask them to with a military subordinate enough to do only what civilians authorize them to do (or what the government asks and the people support).”⁵⁰⁴ The group needs the military to be able to protect the group and not itself be a danger to the group. In particular, the military must not destroy the social order either unintentionally or purposefully. An intentional destruction, for example, would be a *coup d'état* and the establishment of military rule. Violence in these cases is so mimetic that the military does not stop using it at any particular boundaries. There is no barrier to violence in this case. If it can be used abroad, it stands to reason that it can be used at home. There is no differentiation. An unintentional destruction would involve the military waging a war in a manner counter to political and social requirements, for example giving self or institutional class interests priority over group interests. Feaver calls this dilemma the civil-military problematique, and describes it as a paradox since “because we fear others we create an institution of violence to protect us, but then we fear the very institution we created for protection.”⁵⁰⁵ Such fear is justified as the protectors are steeped in violence, which must be kept out of the group to make social life possible.

Groups solve this problematique in different ways but the essence of the solution must lay in the relationships between the actors within the Social Trinity. No division is safe for a group unless there is a solid relationship between the actors. The primary danger lay in the parties (the government, the army, and the people) having conflicting interests. Indeed, those assigned the task of wielding violence will inevitably have interests, such as self-preservation, that could run counter to the group's needs, such as that those fighters stay on the front lines. Thus, the group (government and people) must maintain some level of control over those who use force.⁵⁰⁶ This is a complicated task given the nature of violence and the pressing interests and emotions soldiers will face when the bullets start to chip away at the wall behind which they are crouched.

It is also important to note that there is also a problematique within the civil world. This is a problematique between the government and the people. When the people designate a leader (or a leader emerges) they must ensure it is powerful enough to protect the people but not so powerful as to be able to disregard the needs of the people. Democracy solves

⁵⁰⁴ Feaver, “The Civil-Military,” 149.

⁵⁰⁵ Ibid., 150.

⁵⁰⁶ Mitchell 2004, 5

this Civil-Leadership Problematique to some extent, although all people will retain some level of control over the leadership even if it is simply through dissent and the threat of revolution. A similar legitimacy-based power, as we shall see, solves this military problematique.

A stable social order of course will ensure that there is a mutual interest in maintaining the order. Thus, more than a relationship, what is required is an interdependence that ensures a limited and controlled use of violence that allows for group life. This prevents defection by any class since each class relies upon the other for something important. Thus, relationships are essentially powers which balance in order that the society may use violence and not be overcome by that violence.

Thus, the division of power must also be a balance of power, with each actor depending on the others to some extent. According to Norbert Elias, “The network of interdependencies among human beings is what binds them together.”⁵⁰⁷ This creates an organic solidarity that can actually be stronger than bonds created by similarity.⁵⁰⁸ It results in not just a bond of commitment but a dependence that makes defection costly to all parties. Because these dependencies control the actions of other actors, they are powers.

The Social Trinity is a Power Structure

Given that the Social Trinity is the structure for which discrimination is the matching practice, the rules (including the laws of war) which uphold discrimination are similarly buttressing the power structure of the Social Trinity. Already then discrimination is looming large in importance, for weakness in the Social Trinity is weakness in war. However, to understand this fully we must look closer at the power structure of this trinity. Bourdieu has articulated this relationship between law and the social order, writing that “Law does no more than symbolically consecrate – by recording it in a form which renders it both eternal and universal – the structure of the power relation between groups and classes which is produced and guaranteed practically by the functioning of these mechanisms.”⁵⁰⁹ Examining the Social Trinity as a structure of power relation is our next step.

⁵⁰⁷ Norbert Elias, *The Civilizing Process* (Oxford: Blackwell, 2000), 481-482.

⁵⁰⁸ Durkheim, *Division of Labor*, 131.

⁵⁰⁹ Pierre Bourdieu, “Structures, Habitus, and Power: Basis for a Theory of Symbolic Power,” in *Culture/Power/History: A Reader in Contemporary Social History* edited by Nicholas B. Dirks, Geoff Eley and Sherry Ortner, 155-199 (Princeton, NJ: Princeton University Press, 1994), 182.

The Social Trinity is the most common power structure that organizes societies for war. While other orders are certainly possible, an order based on the classes of leaders, soldiers, and people is most common for all groups, whether state or non-state. The difference in social orders of various nation-states is primarily in the relationships between the different circles (or classes) of the social order and the group's relationship with the individual. Differing relationships mean differing moralities. A democracy will manage the relationships in one way and a dictatorship in another, a Christian culture in one way and an Arabic one in another, and so on. These relationships are best understood as structures of power.

According to Foucault, "The term 'power' designates relationships between partners..."⁵¹⁰ The division of the Social Trinity creates a power relationship between one actor (the government or leaders) and another (the military or fighters) and between both these actors and a third (the people or supporters). Each of these classes has access to a variant of power, a way to modify the actions of the other classes and individual actors⁵¹¹ or control others.⁵¹² Or stated even better, it is a way in which actions "structure the field of other possible actions."⁵¹³ The resulting balance of power greatly impacts the solidity of society and its capabilities in war.

The Social Trinity as a Balance of Power

The Social Trinity is a division of reciprocity which protects the group from violence and makes violence a usable tool by granting the reciprocal authority to one actor (be it king, government, army council, religious leader, etc.), the carrying out and coordination of the reciprocal action to another (this is the arm of reciprocity, thus the term army) (this is the military, executioner, militia, cell, etc.), and the appraisal and sanctioning of reciprocity to yet another (the people, supporters, etc. who hold the other classes accountable for the authorship and activity of violence). Thus, meaning, coordination, and legitimation are divided among the classes of the Social Trinity. This helps control mimetic violence, thus enabling limited killing and helping ensure the survival of the group.

⁵¹⁰ Michel Foucault, "The Subject and Power," *Critical Inquiry* 8, no. 4 (1982): 425.

⁵¹¹ This is how Foucault further defines power – "a way in which certain actions modify others." Foucault, "The Subject," 426.

⁵¹² This of course refers to our earlier definition of the term "power."

⁵¹³ Foucault, "The Subject," 429.

Meanwhile, of great importance, the individual is removed from the reciprocal equation (except in that they are part of a group) as they have given up their right to war to the group. This does not mean that they have no power. Indeed, it is the very ability of the individual to draw the whole group into violence that necessitates their removal from the reciprocity process. This is why the individual can be seen as both a God and a beast.⁵¹⁴ This shall be expounded upon later. For now, we must only note that the individual has power only as part of a group, as coordination and legitimation are group activities.

The nature of the Social Trinity division as a balance of power has been observed by Paul Cornish, who writes that “what Clausewitz advocates in the trinity is, in effect, a sophisticated system of checks and balances... The trinity separates the relevant functions or powers, and the proper use of armed force then becomes a matter of balanced, mutually constitutive co-operation...”⁵¹⁵ Cornish doesn’t detail what the powers are or why such a balance is required, simply saying it prevents war from becoming an end in itself, something assumed to be negative. Thus, the theory being built here offers more insight by considering the prohibitions within the Social Trinity from the perspective of mitigating mimetic violence. Considering in this way, the division of reciprocity serves as a balance of power in one respect, keeping any one class or individual from plunging the group into the abyss of unmitigated mimetic violence, but also is a division of labor in that it makes a group more able to effectively use violence because its mimetic nature is more controlled.

Aligning the Social and Remarkable Trinities

Clausewitz aligns each class of the Social Trinity with a tendency of the Remarkable Trinity. This is not intended to imply that the tendencies are the exclusive remit of one particular social group, but only that each tendency primarily “concerns” a specific class. The population is linked with the emotion, violent emotion according to Clausewitz, although it is clear these can actually run hot or cold. The military is primarily concerned with chance and uncertainty. Lastly, the government is concerned with the subordination of war to policy or to the requirements of politics.⁵¹⁶

⁵¹⁴ Aristotle, *Politics*, Book 1, Chapter 2.

⁵¹⁵ Paul Cornish, “Clausewitz and the Ethics of Armed Force: Five Propositions,” *Journal of Military Ethics* 2, no. 3 (2003): 219.

⁵¹⁶ Clausewitz, *On War*, Book 1, Chapter 1, Section 28 (page 30 in Howard and Paret).

Of course even a cursory consideration of this alignment reveals it to be a broad generalization. Since the Social Trinity is created and unstable, we cannot expect that the tendencies of the Remarkable Trinity will stay within the confines of each social class. Bassford and Villacres note that “it is clear that each of the three categories that constitute the actual trinity affects all of these human actors to some quite variable extent.”⁵¹⁷ Most importantly, the military forces caught in the violence and uncertainty of war certainly wrestles with emotions this engenders, as must the government to a lesser extent. Both the military and government are, after all, built of individuals who are subject to their own feelings and are also, in many modern social orders, drawn directly from the population and thus partially subject to mass sentiments.

That said, there is a reason to give weight to Clausewitz’s alignment. This is not because it is necessarily reality but because war seeks to make it reality. In particular, most social orders seek to separate the emotions of violence and the power over policy from the instrument of direct force, the army. Direct violence is the task assigned to the military but they are not to be the author or judge of that violence. Furthermore, in general, policy is assigned to the government and emotional aspects (positive or negative judgment) to the people. We should note that here we needed to extrapolate somewhat from Clausewitz, as he does not detail how violent emotion concerns primarily the people. Given the rising nationalism during his time, he very likely saw that the violent emotion of the people was something that had to be controlled above all. Indeed, we find this to be partially the case. However, by focusing only on the emotional aspect of this tendency, we can better see that this is a power for legitimacy swings on positive and negative emotions. In this way, we can see the divisions of the Social Trinity as a complete balance of power that offers some chance of controlling the negative tendencies of the Remarkable Trinity.

Just as the Social Trinity can be indistinct, the tendencies of the Remarkable Trinity too can blur – emotion and chance engulf all participants and purpose becomes contested by all. It is this that has led commentators such as Mary Kaldor to conclude the “old wars were political and fought over noble causes of grievances, with a broad popular support and controlled violence (while) The new wars, largely civil wars, were more based on private looting without popular support.”⁵¹⁸ But of course the conception of old wars is

⁵¹⁷ Bassford and Villacres, “Reclaiming,” 130.

⁵¹⁸ Mary Kaldor, *New Wars*, as summarized by Benedikt Korf, “Functions of Violence Revisited: Greed, Pride and Grievance in Sri Lanka’s Civil War,” *Progress in Development Studies* 6 (April 2006).

idealized and these so-called new wars, those that are “funded by crime, not taxes,”⁵¹⁹ have been present throughout human history.⁵²⁰ Still, despite the faulted conclusion, Kaldor identifies perfectly what divides a Social-Remarkable Trinitarian war from violence – ‘noble’ (rational) purpose, popular support, and controlled violence. These are the pillars of any social practice – meaning, legitimacy, and coordination. It is these that the Social Trinity offers to war and this helps to manage the Remarkable Trinity.

We will find that the blurring of the Remarkable Trinity is particularly problematic when the actors of the Social Trinity are not distinct or fail in their roles. Thus, the reason why Clausewitz claimed certain tendencies were primarily the concern of certain classes is because war was best waged in this manner, with the role of each class focused on their respective areas – governments are generally in charge of the purpose of violence (directing policy), the military tasked with the actual coordination of violence (necessitating countering uncertainty and disorder, called “management of violence”⁵²¹ by Huntington), and the people retain the ability to grant legitimacy to violence (the emotional aspect). Thus, while it may be advisable for soldiers and government leaders to leave their emotions out of war, this is a challenge and while it similarly is advisable that policy be determined by the government, this too can be difficult to ensure. Give the delicate nature of the Social Trinity, the control of the Remarkable Trinity too is precarious. This has tremendous consequences for the management of violence.

Social Trinity Roles Must be Maintained

Summers claimed that a proper unity of effort between the GAP was essential for military operations.⁵²² What we mean by ‘unity of effort’ in this context is that all classes are working to achieve the same goal, not that all are engaging in the same action or task. This will emerge as an important distinction but for the moment what is most important is what a lack of unity means for a military operation. Summers’ observations on unity of effort drove his conclusions on why the United States lost the Vietnam War, which he attributed to the failure of the American people to support the war and of the U.S. government to

⁵¹⁹ Mary Kaldor, “Mary Kaldor on War,” interview by Anna Blundy. *The Browser: Writing Worth Reading* [n.d.]. Available at <http://thebrowser.com/interviews/mary-kaldor-on-war?page=3>.

⁵²⁰ Stathis Kalyvas argues that the distinction between old and new civil wars is not warranted. Stathis Kalyvas, “‘New’ And ‘Old’ Civil Wars: A Valid Distinction?” *World Politics* 54, no. 1 (2001); Hoffman, “4GW,” 20, writes that there is “Very little in what is described as fundamentally different in the 4GW literature is all that inconsistent with a Clausewitzian understanding of war as a contest of human wills.”

⁵²¹ Samuel P. Huntington, *The Soldier and the State: The Theory of Politics of Civil-Military Relations* (Cambridge, MA: Harvard University Press, 1981), 11-15.

⁵²² Summers, *On Strategy*.

articulate the war's objectives (or its meaning).⁵²³ In other words, there was a failure of legitimation and signification in regards to the war effort. This left domination as the sole source of asserting power and this could not achieve lasting ends.

Like Summers, Major General Charles J. Dunlap, Jr., former U.S. Air Force Deputy Judge Advocate General, too maintains that balancing the Social Trinity is essential to successfully waging war. This balance, he believes, is best achieved through the following of moral codes. In 2009, Dunlap wrote that "in modern democracies especially, maintaining the balance (of the Social Trinity) that 'political intercourse' requires depends largely upon adherence to law in fact and, importantly, perception."⁵²⁴ Dunlap does not explain how or why obeying the LOW maintains this balance, nor does he really go into detail on what this balance is and why it is so essential. The theory developed here can fill in these gaps.

The reason the law maintains the balance is because the LOW, with discrimination at its core, and the Social Trinity are part of the same structure. The Social Trinity is essentially the social order that is the inevitable result of the social practice of discrimination. Thus, it naturally follows that maintaining the balance of the social order requires obeying the law of discrimination at least from an inward facing perspective. Indeed, what we find is that when this division of labor (the Social Trinity) collapses, when discrimination ends, military effectiveness suffers.

As a recent article in a special ethics issue of the *Military Review* noted, the military, "maintains a trust relationship with and reciprocally is granted legitimacy and sufficient autonomy by the client it serves..."⁵²⁵ If this trust is violated, that autonomy and legitimacy can be set back, usually with negative consequences for fighting ability. In particular, this usually means that the government will begin to micro-manage operations.

The collapse of the roles within the Social Trinity can also lead to the military setting the political meaning of the war. This can, as it did in the case of Japan in the 1930s and 40s,

⁵²³ These points are argued in Part I and Part II of Summers' book respectively. While we use the term "meaning," Summers talked in terms of objectives.

⁵²⁴ Charles Dunlap, "Lawfare: A Decisive Element of 21st Century Conflicts?" *Joint Force Quarterly* 53, 3rd Quarter (2009): 35.

⁵²⁵ Major Chris Case, Major Bob Underwood, and Colonel Sean T. Hannah, "Owning Our Army Ethic," *Military Review* (The Army Ethic 2010): 6.

easily lead to a “program of conquest and expansion.”⁵²⁶ A whole range of countries in the lead up to WWI were similarly driven by military rather than political leaders.⁵²⁷

Recent anti-war sentiment has obscured the general fact that during many wars the populations have been eager supporters of military endeavors. Involvement of the mass of people, however, has been acknowledged as possibly detrimental to limiting war to political purposes. Even in the run up to war, the involvement of popular sentiment can lead to politics no longer leading the decision to go to war. Leaders are overtaken by the pressure of the masses encouraging mimetic violence and can do little to “quell the fury of aroused passions.”⁵²⁸ Liddell Hart noted in 1914 that “the vast effort of a general mobilization disturbs all society from top to bottom, producing such nervous excitement that potentially hostile governments can no longer negotiate.”⁵²⁹ It was for this reason that mobilization was to be avoided, as it made war almost inevitable. It broke down the division between the realm and peace and war that has long been essential for the proper functioning of societies.

An Unbalanced Social Trinity

Mattox writes that “the degree of synergy they [the Social Trinity] can obtain in the war-making enterprise inevitably will be either enhanced or degraded, depending upon the care they take vis-à-vis just war considerations.”⁵³⁰ This is because when a country manages war with the Social Trinity, the war must adhere to the group morality for anything counter to this can lead to disagreements over the violence. This is a dangerous state of affairs. Mattox is not alone in linking social order and morality. Colonel John Boyd, one of the most preeminent modern philosophers on war, has observed that “If the moral order on

⁵²⁶ Noboru Yamaguchi and David Welch, “Soldiers, Civilians, and Scholars: Making Sense of the Relationship Between Civil-Military Relations and Foreign Policy,” *Asian Perspectives* 29, no. 1(2005); also Jack Snyder, *Myths of Empire* (Ithaca, NY: Cornell University Press, 1991).

⁵²⁷ Yamaguchi and Welch, “Soldiers, Civilians, and Scholars,” 218, citing Steven E. Miller, Sean M. Lynn-Jones, and Stephen Van Evera, eds., *Military Strategy and the Origins of the First World War* (Princeton, NJ: Princeton University Press, 1991).

⁵²⁸ Samir Khalaf, “From a geography of fear to a culture of tolerance: Reflections on protracted strife and the restoration of civility in Lebanon,” in *Conflict Resolution in the Arab World* edited by Paul Salem (Beirut: American University of Beirut, 1997), 362-363

⁵²⁹ Hoffman Nickerson, *The Armed Horde 1793-1939: A Study in the Rise, Survival and Decline of the Mass Army* (New York: G.P. Putnam’s Sons, 1941), 344

⁵³⁰ *Ibid.*, 16.

which rests a fabric of social and power relation is compromised, then the fabric (of social order) it upholds goes with it.”⁵³¹ This was the state of affairs in the French-Algerian war.

The manner in which the war was fought in Algeria was incapable of being legitimized within France due to the values within the domestic order. This meant that in order to continue to wage the war, the sanctions available to the democratic masses (their power) had to be curtailed. If it had not been, the government would have been forced to compromise or be bunted from office. Thus, as Merom describes, “Signs of ‘Algerization’ spread in France; the state made greater efforts to curb freedom of speech; proper judicial procedures and individual rights were violated with greater frequency; and police brutality increased.”⁵³² In essence, the power structure of the Social Trinity began to shift, to become unbalanced. Still General Aussaresses wanted to go further, admitting in later years that he believed the army had to operate inside France in order to eliminate the FLN support in the country.⁵³³ While this self-invasion turned out to be a bridge too far, it nearly came to pass. Events came to a climax on 13 May 1958 when the army in Algiers seized power. A few days later the troops seized Corsica and began making preparation for an assault on Paris. The crisis was resolved when Charles de Gaulle resumed power. A new constitution extending the powers of the President was drafted and the Fourth Republic came to an end.^{534, 535}

The Soldier as Surrogate Victim

In order to fully understand the power structure of the Social Trinity, we need to take a closer look at the roles within the trinity, beginning with the military. The divisions that attempt to keep violence from the community, to assign it a particular sphere, almost

⁵³¹ John Boyd, “Strategic Game of ? and ?” Power point presentation, June 2006. *Defence and the National Interest*. Available at <http://www.evenmere.org/~bts/Random-Collected-Documents/Boyd/The%20Strategic%20Game.pdf>.

Citing Alexander Atkinson, *Social Order and The Theory of Strategy* (New York, NY: Routledge & Kegan Paul, 1982).

⁵³² Gil Merom, “The Social Origins of the French Capitulation in Algeria,” *Armed Forces & Society* 30, no. 4 (2004): 617.

⁵³³ General Paul Aussaresses, *The Battle of the Casbah: Terrorism and Counter-Terrorism in Algeria 1955-1957*. (Enigma Books: New York, 2002), 147, 152, speaking in reference to the French nationals who were money holders and suitcase carriers for the FLN and also about the support provide by Suzanne Massu, General Jacques Massu’s wife, for FLN women, who were routinely handed over to the justice system rather than the army.

⁵³⁴ François Mitterrand declared the constitution was “a permanent coup d’état.” John Thornhill, “France’s president spins his plates,” *Financial Times*, July 29, 2007.

⁵³⁵ The new U.S. Counterinsurgency Manual includes a small text box entitled “Lose Moral Legitimacy, Lose the War,” although it highlights only how the “failure to comply with moral and legal restrictions” made them vulnerable to propaganda in Algeria, France, and globally, a fairly weak argument for utility.

always involve the creation of a certain class who are assigned the role of fighting. As already mentioned, violence has an ability to shift from the target which aroused the violent emotion to an entirely different, and even unrelated, target. Girard points out that this surrogate will be “chosen only because it is vulnerable and close at hand.”⁵³⁶

However, the operation of the surrogate mechanism is not dependent on randomness. Surrogates can also be purposely placed in the way of other potential victims or original objectives. These intentional surrogates throughout history have predominately been sacrifices and soldiers.

Although the modern justice system, and indeed many ancient ones, do not use surrogate victims to deflect violence, preferring to hold individuals responsible for their own actions, surrogate victims are common in war. We both target them (the enemy soldiers) and place them in front of us as human shields, albeit armed shields, to die in our place (our soldiers). A social order which assigns the task of fighting to a distinct group and the authority to order fighting to another, as the state does, relies on the surrogate mechanism in order to function.

The ability for violence to be redirected onto another target when the original object which aroused the violence is not at hand helps ensure that the opponent’s desire for reciprocity is, as Clausewitz observes, not directed against “the superior power at whose command the act (of war) was done”⁵³⁷ but at the individuals in the field. Thus, the group arguably most responsible for the violence is able to avoid being targeted by utilizing the nature of violence to shift to surrogate targets. In a similar vein, the people too, who we already know can have some responsibility for war and make contributions to the war effort, too are protected.

Walzer alludes to but fails to recognize the surrogate mechanism in explaining the role allotted to the soldier, writing that “‘Soldiers are made to be killed,’ as Napoleon once said... But even if we take our standpoint in hell, we can still say that no one else is made to be killed. This distinction is the basis of the rules of war.”⁵³⁸ This distinction is not only the basis of the rules but the basis of how war operates. The surrogate victims (soldiers) are “made to be killed” so that the two other groups within the Social Trinity – the

⁵³⁶ Girard, *Violence*, 2.

⁵³⁷ Clausewitz, *One War*, 88.

⁵³⁸ Walzer, *Just and Unjust*, 136.

people and the government – can avoid such a fate and the group as a whole can increase its chances of survival.

The Soldier as Surrogate Victimizer

Galtung too has highlighted how violence can seek a surrogate victim, and importantly also observes that violence can motivate a surrogate victimizer.⁵³⁹ The use of surrogate victimizers is widespread and generally deemed legitimate. The judicial system, for example, instead of redirecting revenge to a secondary object/victim, redirects the revenge to a secondary victimizer, one who is legitimized by the bulk of society and who will thus not generally be targeted by individuals seeking to perpetuate the violence. This is, of course, the state, and the judicial system of cops, judges, and prisons in particular.

We take it for granted that a person who is wronged is not required to, and indeed is not supposed to, achieve reciprocity themselves. Instead, agents of society are supposed to achieve reciprocity and thus achieve justice (which replaces revenge). This may seem common sense, but such a social practice is very complex, requiring stable social connectivity. The practice of taking revenge for a family member is perhaps more understandable and is common throughout history, and evident in tribal codes of honor even today. However, the extension of this reciprocity commitment to include strangers was a major advance in civilization. In war, the soldiers kill for the people so the people do not have to kill directly and this is protective. This way violence can still be used by the group (something that might be necessary if attacked) but at the same time it cannot be used by everyone within the group, something which we know from the mimetic nature of violence would destabilize society. The class of fighters defend and achieve reciprocity for the individuals in the group so that individual self-defense and revenge is not required. The division of power thus is a stabilizing factor in that it controls mimesis by limiting the number of actors who can use direct violence.

While in reality this system can break down, as we shall see, the creation of a surrogate fighting class is optimal for satisfying social requirements to control violence. A society without an army is of course feasible, but in eliminating this, one is in effect passing the right to use violence back to each individual. This would make social life impossible.

⁵³⁹ Galtung does not use these terms but speaks of the processes as “Traumatization done to somebody else” and “Traumatization done by somebody else.” See <http://them.polylog.org/5/fgj-en.htm>; Girard too indicates this role in regards to the justice system but it is far from his focus.

Thus, as Keegan points out, “A world without armies – disciplined, obedient, and law-abiding armies – would be uninhabitable. Armies of that quality are an instrument and also a mark of civilization.”⁵⁴⁰

Surrogates Must be Representative

It is interesting to note that targeting the enemy forces is merely another diversion from the true object of war. The enemy armed forces, according to Clausewitz, “takes the place of the final object.”⁵⁴¹ The matter of making sure the military object, disarming or killing the soldiers, contributes and leads to the ‘final’ political object is difficult. It can only be accomplished if the soldiers are actually suitable surrogates.

Girard explains the vital requirement for the surrogate mechanism to work: “All victims... bear a certain resemblance to the object they replace; otherwise the violent impulse would remain unsatisfied.”⁵⁴² This is why across many cultures, good soldiers are those who are model citizens clearly vested in the social order.⁵⁴³ Similarly, the transformation of civilians into soldiers on a mass scale that was necessitated by WWI required also a ‘cleaning up’ of the military so that the morals aligned more with those of the population.⁵⁴⁴

Girard goes on to say we “must never lose sight entirely, however, of the original object, or cease to be aware of the act of transference from that object to the surrogate victim; without that awareness no substitution can take place and the sacrifice loses all efficacy.”⁵⁴⁵ This means that the soldiers must be recognized as dying “in the place of” the social order, something that is constantly stressed through a conflict. Today this means dying for the nation, while in the past it might have meant dying for the king or for a god. Again, this means that the surrogates must be representative of their social orders.

Because soldiers are representative they are beholden to certain requirements. As recent U.S Army core value training: “we are representative... As such, it is critical that our

⁵⁴⁰ Keegan, *A History*, 384.

⁵⁴¹ Clausewitz, *On War*, 6.

⁵⁴² Girard, *Violence*, 12.

⁵⁴³ Judaism: must have dedicated house, consummated marriage, harvested crop from vineyard, and not be fearful. Islam: adult male with parents permission and be financially independent. Aho, *Religious Mythology*, 155;

Greece: Good soldier was a landed proprietor and head of a family. Garlan, *War in the Ancient*, 90.

⁵⁴⁴ Robert Sandels “The doughboy: the formation of a military folk,” *American Studies* 24, no. 1 (1983), 72.

⁵⁴⁵ Girard, *Violence*, 5.

conduct reflect the values of our nation.”⁵⁴⁶ If soldiers do not reflect the values of the nation, the people will not accept that the soldiers killed and died in their place. To have somebody kill and die for you is to say he acted as I would and I will act as he did. This is why we can't have monsters as our models, for soon we all would be similarly composed. In contrast, to not say this means they didn't die for you so their death has no meaning and this isolates the soldiers because it means the group will not back them up if required.

Thus, like any sacrifice, in order to be accepted, the soldier must satisfy “the piety of the faithful” or be “selected by the god.”⁵⁴⁷ Of course we don't think of the selection of soldiers in this manner as the modern context is quite different. The god that does the selecting is the “*mortal god*”⁵⁴⁸ that is the nation. The faithful are the citizens and the piety is the cultural ethic of the national order. So by “accepted” we mean accepted by the group as having been undertaken in their place and being good, i.e. prompting unity and avoiding discord on the use of violence.

If the military is not representative, then their sacrifice does no good, as they don't serve as a replacement for the actual target, the nation as a whole. It would be like cutting through machines or monkeys and expecting the opponent to give up when all their machines or monkeys were eliminated. This is unlikely. They would keep fighting since the victory would not be seen as legitimate. Of course the same would be true if one defeated an army that was not legitimate. The people may not mourn their loss but they will have no reason to take the army's defeat as their defeat and thus consent to rule is unlikely to be granted the new illegitimate power.

The Authority

In addition to giving up their right to use violence to a military class, individuals must give up their rights to a collective authority (the king or government) that is allowed to make decisions. This is of course the classic social contract which creates the Leviathan, an entity with much more power than the individual. We will not take sides as to how this ‘contract’ comes about but accept that it is a sociological requirement in the context of other groups who will have such a directive force. When individuals unite into a group,

⁵⁴⁶ Core Values Training, Second Discussion Question Talking Points. Army Training Support Center, *Core Warrior Values Training*. Power point presentation: U.S. Army [n.d.] Available at http://www.atsc.army.mil/crc/core_warrior_values_training.pdf.

⁵⁴⁷ Girard, *Violence*, 125.

⁵⁴⁸ Hobbes, *Leviathan*.

they must designate (or be designated) a leader. If they do not, the direction of violence can be too easily contested during a mimetic crisis.

In a mob, the direction is unpredictable. This will not do for an army. Purposive action cannot be implemented without control and this requires first a commander to organize, direct and coordinate the activities of the forces.⁵⁴⁹ The military must be able to respond to direction and thus there must be somebody assigned to point towards the objective. This has been a long-standing imperative of military organization. Spencer notes that there is considerable evidence that “centralized control is the primary trait acquired by every body of fighting men, be it horde of savages, band of brigands, or mass of soldiers.”⁵⁵⁰

Without meaning it is very difficult for any group to mobilize its members. Concerted action, after all, absolutely requires an objective be articulated. Cicero, depicting the war between Pompey and Caesar “as involved in so much obscurity of motives and causes, that many were perplexed in deciding which side to embrace.”⁵⁵¹ Such a situation means that all possible support is not being drawn upon. Thus, the question of what a war is being fought for is of vital importance to answer. It is the leadership’s responsibility to provide this meaning to violence, and thus help bring together the army and the people, with all its individuals, into a coherent whole capable of unity of effort. In other words, the leadership (regardless of its exact form) defines the “final object which each community shall have in view”⁵⁵² and this includes the object of violence. Of course they also have authority over the army but only the authority to tell the military the purpose of the violence, not how to undertake (coordinate) that violence. While the armed forces are tasked with using violence to carry out reciprocal action, as U.S. Army FM 1 notes, they “do not wage war in their own name or under their own authority.”⁵⁵³ This is common across cultures and history, although modern social orders stress this even more so. The authority to wage war instead originates from the government or leaders, which in most groups has the right to declare war. This avoids the pitfalls that occur when one is the author of one’s own actions, namely self-interest.

⁵⁴⁹ Jim Storr, “Neither Art Nor Science – Towards A Discipline Of Warfare,” *RUSI Journal* (April 2001): 40, (citing Army Doctrine Publication Command, paragraph 0106).

⁵⁵⁰ Herbert Spencer, *The Principles of Sociology, vol. I.* (New York, NY: D. Appleton & Co., 1921), 557; Wright, *A Study*, 71.

⁵⁵¹ Grotius, *The Rights of War*, Book 3, Chapter 11.

⁵⁵² Aristotle, Part 4, Chapter 1. This, he says, is the purpose of the government.

⁵⁵³ Headquarters Department of the Army, *FM-1 The Army*. (Washington, DC: United States Government, 2005), 1-53.

The primary reason that a reciprocal authority is required is that a group cannot survive if all individuals are their own authority. Girard notes that “As long as there exists no sovereign and independent body capable of taking the place of the injured party and taking upon itself the responsibility for revenge, the danger of interminable escalation remains.”⁵⁵⁴ Simply put, if all were allowed to authorize their own or others use of violence, “the sword will never be sheathed.”⁵⁵⁵

This is why, as Robert A. Hinde notes, “authority for retribution, originally belonging to the wronged individual or his kin or the community, became transferred to the King.”⁵⁵⁶ This provides a much more stable response to violence. “Revenge of blood,” those next of kin who were obligated to avenge the death of their relative, no longer had this duty. Instead, the king possessed the power to intervene and prevent a further profusion of blood, to basically control the violence of reciprocity.⁵⁵⁷ The king was the agent with reciprocal authority above all others.

In more recent times, one of the early focuses of international law was the effort to solidify the principle of legitimate authority, which was a major destabilizing factor during early days of JWT. The major issue was who has the right to declare war or, in other words, who has the authority to authorize violent reciprocity. Stability was aided by giving moral/legal sanction only to the state. Seto points out “Law solves the problem of evolutionarily stable mutual defections by removing the punitive role to a neutral third party—the state. Punishment by a third party is much less likely to be misconstrued as unprovoked defection. To the extent law is perceived as biased, of course, it will be less effective at solving this problem.”⁵⁵⁸ This can lead to defection.

It is worth noting that the maintenance of authority depends on fulfilling the required reciprocal role. Leaders cannot allow the deaths of their people pass without response. There is a sort of “debt of vengeance”⁵⁵⁹ that must be met or individuals will defect from

⁵⁵⁴ Girard, *Violence*, 17.

⁵⁵⁵ Emmerich Vattel, *The Law of Nations: Or, principals of the law of nature applied to the conduct of nation and sovereign* (London: G.G. and J. Robinson, 1797), available at http://www.constitution.org/vattel/vattel_03.htm.

⁵⁵⁶ Hinde, “Law and the Sources,” 1692.

⁵⁵⁷ 2 Samuel 14.

⁵⁵⁸ Seto, “The Morality,” 1258.

⁵⁵⁹ Dorothy Sayers, *The Song of Roland* (London: Penguin, 1954), 202, stanza 290

the group. Thus, governments often find themselves in a position where they must prove they are taking sufficient action, even if these are provocative.⁵⁶⁰ We will discuss this need for reciprocity again further in this dissertation.

On a final note, while soldiers must be representative, democracy now demands the same apply to governments. Leaders too must be representative as they are surrogates of a sort as well, making decisions in the place of the people and military. While this is particularly true in modern democratic nation states, it has always been the case to a degree. The different today is that people have some influence over their surrogate through ballot boxes. However, the government or, more broadly considered, the leaders have always represented the people for good or ill.

The Disempowered Immune

Some conclude from the principle of discrimination that the protection of noncombatants is “the primary purpose of the law of war.”⁵⁶¹ However, it is clear that the division also (and perhaps primarily) serves to protect combatants. In fact, a number of scholars indicate that the laws of war were first “driven by the problem of how to legitimate particular claims of combatants”⁵⁶² and then further developed to protect the soldier’s rights.⁵⁶³ The attention given to noncombatants focused on what rights were not theirs – in particular the right to fight. In Ancient Greece and during the Middle Ages as well, combat was only to be between equals⁵⁶⁴ and “the fact that he was fighting in a battle was a tacit admission that a soldier had equal standing with all others so engaged.”⁵⁶⁵ Thus, to exclude one from combat was a hierarchy enforcing practice and a form of disempowerment.

Of course this disempowerment has been widely accepted by the immune, including civilians today. Any social order, regardless of its actual inequalities, can be widely

⁵⁶⁰ Andrew Kydd and Barbara Walter, “The Strategies of Terrorism,” *International Security* 31, no. 1 (Summer 2006): 71.

⁵⁶¹ Richard Rosen, “Targeting enemy forces in the war on terror: preserving civilian immunity,” *Vanderbilt Journal of Transnational Law* 42, no. 3 (2009), 685.

⁵⁶² Nabulsi, *Traditions of War*, 12.

⁵⁶³ Keen, *The Laws of War*, 245; Rivkin.

⁵⁶⁴ Johnson, *The Law of War*, 263; Josiah Ober “The Rules of War in Classical Greece” in *The Athenian revolution: essays on ancient Greek democracy and political theory* (Princeton, NJ: Princeton University Press, 1996), 60; Joseph Bryant, *Moral Codes and Social Structure in Ancient Greece: A Sociology of Greek Ethics from Homer to the Epicureans and Stoics* (Albany, NY: State University of New York Press, 1996), 91; and Garland, *War in the Ancient*, 124.

⁵⁶⁵ Keen, *The Laws of War*, 255.

accepted.⁵⁶⁶ According to Bruce Lincoln “discourse of all forms... may be strategically employed to mystify the inevitable inequities of any social order and to win the consent of those over whom power is exercised, thereby obviating the need for the direct coercive use of force and transforming simple power into ‘legitimate’ authority.”⁵⁶⁷ His observation echoes Arendt’s explanation of power, although it goes on to note that legitimate power can be constructed for almost exploitative reasons. Yet, it can also be construed as something that is an absolute requirement for effective military action. The people must accept the government as the authority and the military/police as the sole wielders of force. The inequality of reciprocal privilege must achieve consent so that coercive resources need not be spent facing inward⁵⁶⁸ and can instead face outward. Thus, as Keeley observes, if discourse is accepted as legitimate, it is advantageous because it “can produce the desired behaviors with low enforcement costs.”⁵⁶⁹ This desired behavior in this case is passivity.

The division of reciprocity in a sense “presumes people to be inherently passive.”^{570 571} Of course this is exactly what civilians are supposed to be according to the concept of discrimination. As Nabulsi notes, when a civilian was referred to as “innocent,” it “was meant to read ‘passive.’”⁵⁷² The discourse of civilian identity and immunity is an exercise to produce harmlessness and innocence, but more importantly to produce an actor who does not mimic violence directly. The civilian, the non-combatant, the immune are defined by one common characteristic – they are the non-reciprocal. Civilians, as with many immune before them, are thus being denied agency in war. The discrimination practice of the Social Trinity order is removing power from the people, as they are deprived of their potential to use their individual strength or collective potential power for direct violence. This is, in a sense, violence against them since when one is disallowed the ability to be reciprocal, as slaves and women have been for much of history, one is vulnerable and beholden to others for much of the requirements of life.

⁵⁶⁶ “For example, Hindu “untouchables” had dramatic motives for rebellion at the bottom of the Indian caste system, but often did not because their values and their environments were synchronized.” Major Mark J. Broekhuizen “Controlling the Human High Ground: Identifying Cultural Opportunities for Insurgency,” *Military Review* 90, no. 6 (2010): 23. Citing Chalmers A. Johnson, *Revolutionary Change* (Stanford: Stanford University Press, 1982), 66.

⁵⁶⁷ Lincoln, *Discourse*, 4, 5.

⁵⁶⁸ As they did in the Warsaw Pact and Iraq to some extent.

⁵⁶⁹ Keeley, *War Before Civilization*, 92.

⁵⁷⁰ Ornit Shani, *Communalism, Caste and Hindu Nationalism, Introduction* (Cambridge: Cambridge University Press, 2007), 7.

⁵⁷¹ Similar observations made by Nabulsi, “Evolving Concepts,” 46, Hills, “Hearts and Minds,” 14, and Helen Kinsella, “Gendering Grotius: sex and sex difference in the laws of war,” *Political Theory* 34, no. 2 (2006): 185.

⁵⁷² Nabulsi, *Traditions of War*, 169.

However, while this disempowerment is certainly in some cases intended to support a status quo domestic power structure, this is not purely some large nefarious plot by mustache-twisting leaders. In fact, their non-reciprocal lot protects them to a degree, more than any other thing could, even if imperfectly. More importantly from the perspective of group survival, the division enables the controlled use of violence through a balance of powers. In addition, power never flows in simply one direction. "... all forms of dependence offer some resources whereby those who are subordinate can influence the activities of their superiors."⁵⁷³ Thus, the people do retain a variant of power, a way to control the actions of the other parties of the Social Trinity. This power is exercised through sanctions, which will legitimize or delegitimize the actions of the other classes. The form of sanction will depend on the society and can range from elections, to welcome-home parades, to mass protests, to revolutions. This legitimizing power makes the Social Trinity more stable and more effective at waging war.

Bending Reciprocity Based on Social Order

It is important to note that conceptions of reciprocity are skewed by the social order and power structures. For example, objectively, the law of reciprocity that maintains a stable society requires equals be treated equally. This logic allows one to also assert that those who are not equal should be treated according to the extent of this inequality. Such hierarchical systems are common throughout history and they function because the uneven weighing of individuals means uneven treatment is still perceived as reciprocal and balanced based on worth.

These reciprocity orders are consistently enshrined in moral and legal codes. Reciprocity itself is thus bent so as to support the status quo of societal divisions and relationships. This is evident even in the earliest of laws. The Code of Hammurabi, for example, adjusted the "eye for an eye" principle so as to give preference to certain social classes (freemen over slaves).⁵⁷⁴ Thus, justice did not deliver pure (objective) reciprocity but a version which supported the social order. Hammurabi's code did just this. George E. Vincent observes in that "Babylonian society was pyramidal. The king was the apex, and the broad base rested upon a foundation of slaves. Social control was mediated from class

⁵⁷³ Giddens, *The Constitution*, 16.

⁵⁷⁴ Hammurabi, *The Code of Hammurabi*, edited by Robert Francis Harper and available at http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1276&layout=html.

to class. Caste and status are embedded in the code. In precise tariffs human values are set forth. This system served the political and economic needs of the time. It did its work of subordinating groups and transmitting a unifying authority.”⁵⁷⁵ Because of the differing values of certain classes, it would be perceived as reciprocal, as long as this hierarchal ordering was accepted through consent or coercion (although the latter has its limits, as we shall see).

The Code of Hammurabi is not unique in its unbalanced codification of reciprocity. Equality has for much of history been considered barbaric, while divine ordering, castes, and royalty were the “core of civilization.”⁵⁷⁶ Under these circumstance, subjugation was logical and atrocity much more compatible with the social order. Indeed, both would be deemed reciprocal by the perpetrator and therefore they would not feel the same discomfort committing acts that would today be very difficult for individuals to either engage in or sanction. Norbert Elias observes that in many cultures in many times the social structure pushed its members towards killing and torture.⁵⁷⁷ We may frown upon the activity now but the purpose was ‘good’ in that it supported a social order that was hierarchical in nature. This would be true both within the group and in regards to other groups. Laws of war are similarly bent in regard to reciprocity. “In some societies violence against people seen as outsiders is a way of life.”⁵⁷⁸ Again this was because outsiders were not seen as equal or even as human, and thus the perception of reciprocity was maintained. This is the key point – it is not the rule that changes but the description of the world.

Social order during the rise of European colonial empires was based upon a hierarchy in which the West and the ‘barbarian’ were not equal. The colonizers treated each according to their measure -- it was simply that they weighed different races differently. Thus, for the colonizers, an action could appear reciprocal even though by modern standards and from the views of the indigenous people it would be grossly nonreciprocal. However, it is not sustainable in the long run because it did not regard the others, who rarely ever

⁵⁷⁵ George E. Vincent, “The Laws of Hammurabi,” *American Journal of Sociology* 9, no. 6 (1904): 753.

⁵⁷⁶ Lindner 15.

⁵⁷⁷ Norbert Elias, *The Civilizing Process* (Oxford: Blackwell, 2000), 163.

⁵⁷⁸ Ervin Staub, “The Origins of Aggression and the Creation of Positive Relations among Groups,” in *Psychology and Social Responsibility*, edited by Sylvia Staub and Paula Green (New York: New York University Press, 1992), 24.

inhabited this reality of their inferior status. This conception of the enemy will prove vital in examining the need to limit violence in war.

Conclusion

The Social Trinity-Discrimination structure thus keeps violence from the core of society and minimizes reciprocal escalation. It controls mimesis. By creating the divisions of the Social Trinity and then forbidding the targeting of two sides of this 'triangle,' violence is minimized, escalation is kept under at least a modicum of control and the political object kept in site. In addition, as we shall see, without the Social Trinity, the management of the Remarkable Trinity (policy, uncertainty, and emotion) would be very difficult. Violence would be driven by emotions and purposes that lacked social meaning.

Clausewitz's synthesis of war and politics made it clear that war "did not destroy the political order..."⁵⁷⁹ but was an extension of that order. We can now equally assert that war does not destroy the moral order but is an extension of that order. While Clausewitz claimed the conditions such as morality do not belong to war itself, it is clear the control and moderation of discrimination is what creates the Social Trinity, which does belong to war itself. Thus, discrimination is an essential part of war. We can now turn our attention to how discrimination as an ingroup and outgroup practice shape the killing and dying of war.

⁵⁷⁹ Bryan Hehir, "The Uses of Force in the Post-Cold War World," in *At The End of the American Century: U.S. Foreign Policy After the Cold War*, edited by Robert L. Hutchings (Washington D.C.: Woodrow Wilson Center Press and the Johns Hopkins University Press, 1998), 114. The quoted wording here however, which I prefer, is from a version available at <http://www.clausewitz.com/readings/Hehir.htm>.

Chapter V - Enabling Limited Killing and Dying

Introduction

The moral rules enable and limit killing but we can get a better grasp on this by instead understanding these moral rules as *enabling limited killing*, as opposed to allowing the dynamics of violence to propel a group towards unlimited violence. The first part of this picture is presented in this chapter, which explores a number of ways in which discrimination enables a form of killing that is controlled and compatible with social life.

The chapter begins by discussing the dynamics of the two activities central to the practice of war – killing and dying, and to be more specific *controlled* killing and dying. The chapter then observes how the aversion to killing and dying persist in war, something which can run counter to the operational requirements of battle. Following this, the chapter outlines the way in which the taboo against killing can be overcome through the diffusion of responsibility across the Social Trinity. The Social Trinity also functions to remove the individual from war, vital, as individual violence can be a danger to group life. Essential to this, the group (through its fighting class) must defend individual victims and attack only victimizers. Thus, reciprocity forms the foundation for directing group violence. This section concludes by observing how the very existence of the soldier surrogate helps ensure the safety of group life from violent mimesis.

The chapter then highlights how the division of the Social Trinity requires that soldiers are bonded to the larger group through some method so they do not give priority to self-interest. This connection allows the group to control its soldiers, driving them even to death, through legitimation of their actions. The final section of this chapter explores how agreement on violence is absolutely necessary for it to be a social activity. This is facilitated by the moral demarcations provided by discrimination, which coordinate the group's violence.

The Violent Acts at the Core of War

In order to understand the function of discrimination in warfare, one needs to understand how this practice influences the primary activities of war. Warfare is dominated by two

activities – killing and dying.⁵⁸⁰ These are the basic means of warfare. While some might hold out hope that one day conflict can be largely or entirely bloodless, at the present time and throughout history, death has been an essential part of war. According to Van Creveld, “In any war, the readiness to suffer and die, as well as to kill, represents *the single most important factor*. Take it away, and even the most numerous, best organized, best trained, best equipped army in the world will turn out to be a brittle instrument.”⁵⁸¹ Thus, this examination must take into account the impact that moral-legal guidelines of discrimination have on killing and dying.

It is important to note right away that there is a tension between the need for soldiers to be able to kill in order to carry out the practice of war and the need for this same killing to be controlled. This tension is an important feature throughout this chapter and the next. As already noted, once violence begins, it has mimetic tendencies which push it towards extremes. Thus, like the Sorcerer’s Apprentice, those who call forth violence often find the intended tool has turned against them. Given this dynamic, the social practices of violence must not simply enable killing but also keep it restrained. Violence is thus available for use when required but it is limited so as to not destroy social life. This control of violence, as we shall see, is in large part made possible by the rules of warfare, and indeed the very structure of war, which both enable and limit the violence. As Giddens makes clear, “Structure (comprised of rules) is not to be equated to constraint but is always both constraining and enabling.”⁵⁸²

This dual enabling-limiting nature has been a well-noted and enduring feature of the rules of violence throughout the history of human civilization. The “elaborate ritualization of primitive warfare,”⁵⁸³ the doctrine of the early Christian church,⁵⁸⁴ and the precepts of

⁵⁸⁰ We need to set aside for a moment the question of whether this must be the case. For now, it matters more that this has been the dominant means of war through all history with few exceptions (prisoner taking may have been just as vital an activity for some while ritual warfare, which can be more compared to modern military exercises than operations of war, would have other activities at their core).

⁵⁸¹ van Creveld, *The Transformation*, 160.

⁵⁸² Giddens, *The Constitution*, 25. Bhaskar’s Transformation Model of Social Activity too notes that “the activity of an agent is always enabled and constrained by prior conditions set by that structure.” Touko Piiparinen, “Beyond the Mystery of the Rwanda ‘Black Box’: Political Will and Early Warning,” *International Peacekeeping* 13, no. 3 (2006): 345.

⁵⁸³ Doyne Dawson and James Dawson, *The Orgins of Western Warfare* (Boulder, CO: Westview Press, 1998), 40: “...both promotes (enables) war and limits it.”

⁵⁸⁴ Johnson, *Ideology, Reason*, 31. “concerned with limiting the ravages of war as well as with compelling (enabling) godly folk into battle against wrongdoers.”

JWT⁵⁸⁵ promote, compel, and justify violence while also keeping it restrained. Law too, as Thomas Aquinas observes, “is a rule and measure of acts, whereby man is *induced* to act or is *restrained* from acting.”⁵⁸⁶ Even seemingly uncompromising law-substitutes such as blood revenge are always embedded within a controlling framework that demands action, but also limits the scope of that action.⁵⁸⁷ The demand is necessary because the human aversions to killing and dying are naturally present in war. The limits are necessary because of the nature of violence once any aversions to it are overcome.

The Human Aversion to Killing Continues in War

As discussed earlier, the vast majority of individuals display a reluctance to kill. This is of course most manifest within a society but it is evident as well in war when one is being asked to kill an individual from another society group. Lt. Col. David Grossman’s 1995 book *On Killing: The Psychological Cost of Learning to Kill in War and Society* is one of the most in-depth recent explorations of the reluctance to kill. Grossman cites multiple sources that indicate the casualty rates in historic battles were much lower than the actual killing potential of the military units involved.⁵⁸⁸ He concludes that “The weak link between the killing potential and the killing capability of these units was the soldier.”⁵⁸⁹ Grossman’s work follows in the footsteps of S.L.A. Marshall’s foundational and oft-cited study of soldier firing patterns in World War II, which noted that “75 percent of troops, regardless of whether they are well-trained and seasoned or not, will not fire or not persist in firing against the enemy.”⁵⁹⁰

⁵⁸⁵ Ian Aatack, *The Ethics of Peace and War* (Edinburgh: Edinburgh University Press, 2005), 61: “both to limit or constrain the use of armed force and to justify (enable) its use.”

James Turner Johnson notes that the modern ideology of ‘humanity’ (manifesting in such things as Peacekeeping and the Responsibility to Protect) is simply a recent attempt to articulate principles that will limit war but, like prior ideologies, it can also mobilize the masses for war. Johnson, *Ideology, Reason*, 266.

⁵⁸⁶ Thomas Aquinas, *Summa Theologica*, Question 90.

⁵⁸⁷ This point is made in part by Peter Waldmann, “Revenge Without Rules: On the Renaissance of an Archaic Motif of Violence,” *Studies in Conflict & Terrorism* 24 (2001): 436, 437, who cites Christopher Boehm, *Blood Revenge: The Anthropology of Feuding in Montenegro and other Tribal Societies* (Kansas: Lawrence University Press of Kansas, 1984).

⁵⁸⁸ Grossman, *On Killing*, 16; Citing a 1986 study by the British Defense Operational Analysis Establishment using laser weapons to study more than 100 19th and 20th century battles. Also Grossman 10; Prussians proved that there could be effective killing with muskets but during actual battle this was often not the case. At a range of 30 yards one could have 60 percent hits in theory but in reality the units only hit one to two men per minute; And Grossman 22, 23: After Gettysburg, 27,574 muskets were recovered, 90 percent of which were loaded, 12,000 were loaded more than twice, 6,000 had from 3-10 rounds loaded. This was the case in the wake of many battles, at a time when a loaded weapon was a rare commodity and indeed, weapons should only have been loaded 5 percent of the time.

⁵⁸⁹ *Ibid.*, 11.

⁵⁹⁰ S.L.A. Marshall, *Men Against Fire: The Problem of Battle Command* (Norman, OK: University of Oklahoma Press, 2000 [1947]), 50.

Marshall observed and Grossman reiterates that “fear of killing, rather than fear of being killed, was the most common cause of battle failure in the individual...”⁵⁹¹ This aversion has persisted in modern operations, with one U.S. Army officer in the Gulf War noting that, “Although we had rounds flying by our heads, we failed to engage the enemy... I’m not so sure that I would have the courage to fire a round if I knew that it was going to result in the death of another human being.”⁵⁹² The reluctance to kill is further displayed by the revulsion many experience after killing and the psychological damage that is caused to those who must spill the blood of others. Steve Bentley notes that “Post-traumatic stress disorder has been documented, in some form, for as long as man has recorded his reactions to combat.”⁵⁹³

It is difficult to discern from accounts of war what the actual reason for a soldier’s reluctance to kill may be. Marshall states, “Though it is improbable that he may ever analyze his own feelings so searchingly as to know what is stopping his own hand, his hand is nonetheless stopped.”⁵⁹⁴ However, Marshall concludes that the reason for this reluctance to kill was society itself: “He (the soldier) is what his home, his religion, his schooling, and the moral code and ideals of his society have made him. The Army cannot unmake him. It must reckon with the fact that he comes from a civilization in which aggression, connected with the taking of life, is prohibited and unacceptable.”⁵⁹⁵ Soldiers when they enter battle cannot easily discard the society from which they come. As society shaped them, they will continue to hold the values of that society, at least in part, within a war. These may, of course, degrade over time, but entry into war does not instantly make one a killer. Spindler also notes that soldiers “carry with them the pattern of responses derived from experience in their society. Therefore the structure of the military and the patterns of human association within it inevitably reflect the social patterns and structure of that larger society.”⁵⁹⁶ In this sense, killing is not an easy task. It is, in short, civilization that stills his hand. The reason it does so is that the stability of society and civilization

⁵⁹¹ Ibid., 78.

⁵⁹² CPT Pete. Kilner, “Military Leaders’ Obligation to Justify Killing in War,” paper presented to The Joint Services Conference on Professional Ethics Washington, DC, January 27-28, 2000 and available at <http://isme.tamu.edu/JSCOPE00/Kilner00.html>. From personnel interview by this author.

⁵⁹³ Steve Bentley, “A Short History of PTSD: From Thermopylae to Hue, Soldiers Have Always Had a Disturbing Reaction to War,” *The VVA Veteran* (1991). Available at http://www.vva.org/archive/TheVeteran/2005_03/feature_HistoryPTSD.htm.

⁵⁹⁴ Marshall, *Men Against*, 79.

⁵⁹⁵ Ibid., 78; Holmes too points out that “...there is a wide measure of agreement among psychiatrists that a significant proportion of the soldier’s behaviour in battle is accounted for by the events which occurred long before he joined the army.” Holmes, *Acts of War*, 58.

⁵⁹⁶ Spindler, “The Military,” 83.

depends on a moral code that prohibits killing. Thus, there is a taboo against such life-ending acts of violence.

Self-preservation is Compelling in War

A number of scholars have noted that “war has a tendency towards a state of nature, and the end of restraint and order.”⁵⁹⁷ To use this term is not to endorse the Hobbsian conception of early humanity, but serves as a descriptor. In essence, this means that war tends to erase law⁵⁹⁸ and in this situation there is nothing to restrain force and protect oneself except greater force. Those within war must confront this environment, which can prompt the intense return of self-preservation as a primary instinct. This is of a particular concern in regards to soldiers. Du Picq wrote in his *Battle Studies* at the end of the 19th century that “Man in battle... is a being in whom the instinct of self-preservation dominates, at certain moments, all other sentiments.”⁵⁹⁹ It was a feeling du Picq knew well, having seen extensive service in the Crimea (where he was taken prisoner), Algeria, and Syria.⁶⁰⁰ Du Picq’s work was unique in its day for the attention it paid to the psychological aspects of the soldier in war, giving particular emphasis to how men in battle could overcome their fear of death.

In war, self-defense is a tactical level event. A nation does not literally act in self-defense, it relies on soldiers (surrogates) for its protection. Soldiers, however, do often act in self-defense. From the perspective of group defense, this can be useful since as long as a soldier stands between the invading army and the populous, that soldier’s self-defense is also group defense.

That said, there is some confusion among lawyers and moral philosophers about the place of self-defense in justifying killing in war. Hare and Joynt, for example, point out “Danger to the mission and safety of the unit are two reasons that the rules of war might be suspending. International lawyers seem to agree that safety is a better justification.”⁶⁰¹

Many Just War Theorists base their arguments on the belief that one can only kill in self-

⁵⁹⁷ J.E. Hare and Carey Joynt, *Ethics and International Affairs* (New York, NY: MacMillan, 1982), 56.

⁵⁹⁸ This has long been recognized, with one of the earliest expressions being Cicero’s maxim *inter arma silent leges* -- “during war law is silent.”

⁵⁹⁹ du Picq, *Battle Studies*, Appendix 1, Section 9.

⁶⁰⁰ Azar Gat, *A history of military thought: from the Enlightenment to the Cold War* (Oxford, Oxford University Press, 2001), 296.

⁶⁰¹ Hare and Joynt, *Ethics*, 73.

defense.⁶⁰² However, if we prioritize self-defense in this manner, it can result in soldiers not taking the risks necessary to carry out military operations.

Soldiers are not always interposed between the invaders and the homeland, especially in modern operations where there is no defined front line. In this, and other complex situations, self-defense can run counter to group defense. It can also conflict with offensive operations. It may seem insensitive, but from the perspective of the requirements of war, preservation of soldiers' lives is not of supreme importance. While it of course makes logical sense to allow self-defense, both from a morale perspective and also because keeping one's soldiers alive enables operations, it is important to recognize that personal self-defense cannot be the reason for force, it cannot be the objective of force, and it cannot be the top priority of a military. Indeed, in the effort to save soldiers' lives, one might damage something of more import, the mission of the operation. War thus cannot be effective and force is not credible if there is a reluctance to die.

In War, the Fear of Death Prompts Certain Actions

A soldier in war, if driven by self-preservation, will not necessarily engage in violence to keep themselves alive. Of course the goal of self-preservation can lead soldiers to fight, but fighting is not the sole or often the best means of staying alive. Only if one is trapped and the enemy is taking no prisoners is the goal of self-preservation synonymous with fighting. The history of men in war indicates that there are a wide variety of options that the individual soldier has often exercised in order to avoid the killing and dying of battle. Rarely are these actions useful to the group effort as a whole.

Flight

It has been noted that "Perhaps the most basic human response to death is flight from it."⁶⁰³ Soldiers too of course feel this compulsion and the tendency for fear to spread quickly throughout the ranks through a mimetic impulse gives it the ability to destroy an army. Any movement backwards can prompt an entire unit and then the units to their flanks, indeed all who observe the action, to also fall back. The reason for this is because it causes individuals to suddenly feel that they are not all acting in concert, that mimesis has broken

⁶⁰² Fullinwider 94, 95.

⁶⁰³ Calvin Conzelus Moore and John B. Williamson, "The Universal Fear of Death and Cultural Response" in *Handbook of Death and Dying*, Vol. 1, edited by Clifton D. Bryan, (Thousand Oaks, CA: Sage Books, 2003), 4. Nesse and Williams, "Evolution," also support this view.

down. Thus the individuals mimic the new action and follow retreating troops back even though they know not their purpose or destination. In short, individuals often follow an action even when it doesn't make sense. Du Picq observes that "The contagion of fear changes the direction of the human wave; it bends back upon itself and breaks to escape danger."⁶⁰⁴

Non-use of Force

Self-preservation and the fear of killing can result in a variety of other 'combat avoidance' tactics that naturally run counter to military efficiency. The "live-and-let-live" system of truces that developed during World War I is an indication of what can happen when soldiers place their own survival above the aims of the war.⁶⁰⁵ We may look upon these truces romantically but from the perspective of military efficiency such abstention from fighting is not ideal. This is perhaps more evident using an illustration from Vietnam, when units sent out on search and destroy missions would often alter their planned routes so as to be less likely to encounter enemy units. Kenneth J. Campbell explains that "Combat avoidance was often absent any conscious political content and reflected more narrowly the soldier's instinct for survival in an increasingly ineffective and unpopular war."⁶⁰⁶

Misdirection of Force

Fear of killing can also result in misdirection of force, usually aiming high or low in order to avoid direct responsibility for other's deaths. However, more concerning, fear and self-preservation instincts can also lead to blue on blue incidents and inaccurate fire. Geoffrey Regan concludes in his study on friendly fire that "it is men who make mistakes, through the stress that war imposes, and that stress is fundamentally linked with fear on their part; fear of death and mutilation, and fear of failure and humiliation. When men are afraid, they will always shoot first rather than identify a target, or drop bombs too early rather than risk flak."⁶⁰⁷ This high level of fear can also lead to directing fire at civilians, both accidentally and intentionally. The fact that fear leads to a misuse of force provides a strategic tool for insurgent forces since by causing anxiety in government soldiers, they

⁶⁰⁴ du Picq, *Battle Studies*.

⁶⁰⁵ See Tony Ashworth, *Trench Warfare 1914-1918: The Live and Let Live System* (London: Macmillan, 1980); also Tim Cook, "The Politics of Surrender: Canadian Soldiers and the Killing of Prisoners in the Great War," *The Journal of Military History* 70, no. 3 (2006), 642.

⁶⁰⁶ Kenneth J. Campbell, "Once Burned, Twice Cautious: Explaining the Weinberger-Powell Doctrine," *Armed Forces & Society Spring* 24, no. 3 (1998): 359.

⁶⁰⁷ Geoffrey Regan, *Blue on Blue: A History of Friendly Fire* (New York: Avon Books, 1995), 240.

can create “an atrocity-producing situation.”⁶⁰⁸ This further highlights the need to control fear, or subsume this fear beneath other more pressing obligations. This is our primary area of interest and thus will be explored in more depth later.

Overuse of Force

Once the fighting has begun and the killing taboo crossed, the self-preservation instinct can also cause soldiers to use far too much force. U.S. military doctrine admits that, “Typically, more force reduces risk in the short term.”⁶⁰⁹ This overuse of force is most concerning because it can cause collateral damage which, as we will explore later, can have a negative impact on the environment in which the soldiers operate. In Afghanistan, an onsite review conducted by the *New York Times* revealed that more than 400 civilians had been killed in eleven locations where there had been air strikes. These mistakes were attributed to mistaken local intelligence and “reluctance by the United States to commit itself to a much riskier ground attack.”⁶¹⁰ General McChrystal’s 2009 assessment of the situation in Afghanistan noted that the legitimacy of the NATO-led International Security Assistance Force (ISAF) had been “severely damaged... in the eyes of the Afghan people” because of “an over-reliance on firepower and force protection” and to remedy this would require “accepting some risk in the short term.”⁶¹¹

Getting Men to Kill and Die

The vital importance and persistent difficulty of getting soldiers to kill and die has resulted in it being the focus of many military organizations. Patrick Mileham’s exposition on the formation of an EU fighting force asserted that the most essential question in establishing any new armed force is “Will They Fight and Will They Die?”⁶¹² Answering this question in the negative makes military operations difficult, a fact that UN missions in Bosnia⁶¹³

⁶⁰⁸ Daniel Ellsberg, Interview, “Counterinsurgency Tactics Led to Haditha, My Lai,” *New Perspectives Quarterly* 23 (2006).

⁶⁰⁹ FM 3-24 7-22

⁶¹⁰ Matthew King, “The Legality of the United States War on Terror,” *ILSA Journal of International and Comparative Law* 9:457 (2003), 478, 479.

⁶¹¹ “U.S. troops battle both Taliban and their own rules.” Washington Post, November 19, 2009.

<http://www.washingtontimes.com/news/2009/nov/16/us-troops-battle-taliban-afghan-rules/?page=2>.

⁶¹² Patrick Mileham, “But Will They Fight and Will They Die?” *International Affairs* 77, no. 3 (2001).

⁶¹³ UN military commanders, for example, “were preoccupied with the protection of their troops” and thus generally against air operations which later ended up making an immense contribution to ending the war. Derek Chollet, *The Road to the Dayton Accords: A Study of American Statecraft* (London: Macmillan, 2007), 32, quoting Albright. Srebrenica too indicates this risk aversion and the UN hostage crisis of course greatly increased the tendency.

and Rwanda⁶¹⁴ have painfully proven. In these locations, the unwillingness to run risks made it impossible to transition from peacekeeping to more robust action. Risk aversion in NATO's operation in Kosovo⁶¹⁵ also limited the effectiveness of force in obtaining the desired ends (which were at least professed to be humanitarian in this case). Getting soldiers to kill and die is equally a concern in conventional war-fighting operations where there is constantly a risk of surrender or flight, especially if the fighter is not sufficiently bound to those he is assigned to defend.

The predominant focus of military practitioners has been on the act of killing. How do we get men to kill? How should they kill? It is of course understandable that soldiers would not be instructed on how to die. Such a morbid training module would certainly lead to a rash of absenteeism. We might prepare them to die (whether through life insurance or promise of eternal life) but motivating them to die is a much more hidden process, clothed in the language of sacrifice, honor, and, most important for this dissertation, morality – a code of relations that regards others and restrains the self.

Of course the relationship between killing and dying is too close to be easily severed. First of all, war is a two-sided activity and when one is killing, there is always another on the opposite side of the trench (or wall or field) that is dying. Killing and dying, thus, should be considered together, for when one person is killing, another is dying. The fact that if one is killing, it is the enemy that is dying only increases the need to study the two together, as only in this matter can war be considered as it should, as a reciprocal activity, as an activity which involves two responsive actors.

Second, the entry into battle for a soldier involves a 'willingness' (coerced or consensual) to both kill and die. From a moral perspective, Walzer maintains that "You can't kill

⁶¹⁴ According to Romeo Dallaire, *Shake Hands with the Devil*, 497, the "no-risk approach" was what prevented the world from reacting properly to the Rwanda genocide. Melvern, *People Betrayed*, 130, agrees that UNAMIR "began with an evaluation of risk and if there was risk, the objective was forgotten." When risk was accepted by the skeleton crew of a UN force left to Dallaire after the start of the genocide, the UNAMIR forces were successful at turning back Hutu forces. See Dallaire, *Shake Hands*, 269, for an example.

⁶¹⁵ According to Nicholas Wheeler a positive humanitarian outcome in the Kosovo operation was compromised by the refusal to accept greater risk to soldiers' lives. See Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 308. See also Nicholas J. Wheeler, "Legitimizing Humanitarian Intervention: Principles and Procedures," *Melbourne Journal of International Law* 21 (2001) 2(2). See also Hartle, 2003, 146. This included bombing from high elevations, increasing the chance of collateral damage.

unless you are prepared to die.”⁶¹⁶ However, there is also utilitarian value in having soldiers willing to do both. It is not enough to get a soldier simply to be willing to do one or the other. For example, soldiers willing to kill, but not die, will often take actions that are against the group interests. They will not necessarily take risks that put the group before their own self-preservation.

If individuals within a group display this risk aversion, it is only because the society has not developed techniques to more efficiently enable killing and dying. If they face groups with systems more capable of getting soldiers to enter into a pitched battle, they have a dilemma – they may wear them down but in the interim, the massed army can continue their march. In addition, if the enemy is able to close on the risk averse, the ensuing defeat would be a near inevitability.

Tensions within the Soldier

The individual soldier is keenly aware of the tension between self-preservation and duty. Holmes, also a long-serving British Army Reservist, notes that in a soldier’s first battle “...his apprehension focuses upon the conflict between an instinctive prompting to seek safety and a desire not to deviate from the standards expected of him by his leaders and comrades.”⁶¹⁷ These are, of course, also the standards expected by the nation to which he is supposed to return.

Thus, a good soldier must be able to put aside their self-interest and, if needed, their self-preservation. In order to be willing to die, soldiers need not be suicidal. They must simply be willing to go against their immediate, apparent self-interest. The U.S. army values highlight “Selfless Service” with recent training explicitly stating that the soldier should “Put the welfare of the Nation, the Army, and your subordinates before your own.”⁶¹⁸ The U.S. Army’s FM 1-04 on *Legal Support to the Operational Army* does note that there is an “inherent Right of Self-Defense” but also states that “unit commanders may limit individual self-defense by members of their unit.”⁶¹⁹ The US counterinsurgency manual notes that the principle of proportionality may require that soldiers “Assume additional risk

⁶¹⁶ Michael Walzer, *Arguing about War* (New Haven, CT: Yale University Press, 2004), 101.

⁶¹⁷ Holmes, *Acts of War*, 141.

⁶¹⁸ United States Army. “The Army Values.” *www.Army.mil: The Official Homepage of the U.S. Army* [website]. Available at <http://www.army.mil/values/>. Accessed September 30, 2012.

⁶¹⁹ Headquarters Department of the Army, *FM 1-04 Legal Support to the Operational Army* (Washington, DC: United States Government, 2013), 7-2.

to minimize potential harm”⁶²⁰ and further asserts that “risk taking is an essential part of the Warrior Ethos.”⁶²¹ This is not only necessary to carry out military operations but also aligns with Durkheim’s definition of morality as requiring one “be devoted to something other than himself.”⁶²²

Overcoming the Killing Taboo to Enable Killing

Given the reluctance of individuals and societies to partake in and condone killing, yet the need to kill at the very least for group protection, societies must develop methods that enable individuals to kill for the group and allow the group to condone these killings. The University of Sussex’s Martin Shaw observes that “It takes organization and ideas for warriors to overcome pervasive taboos against killing... to inflict force in a way that achieves intended results and to overcome powerful instincts of self-preservation and fear.”⁶²³ The precise forms of organization and exact content of ideas of course has varied over time. However, it is a sociological requirement that some mechanism be available if a group hopes to use violence even if only in self-defense. Yet the group must also enable killing in a way that doesn’t counteract the positive social benefits of the killing taboo (simply put, the ability to live within a group). Thus, these mechanisms must not only enable killing, but must do so in a way that keeps the killing controlled and keeps it focused on a particular objective. As this makes clear, the enabling and the limiting of killing must be intricately linked.

In light of the importance of killing and of defeating an enemy, it is little surprise that militaries have paid considerable attention to ensuring their soldiers are able to kill. Many

⁶²⁰ Headquarters Department of the Army, *FM 3-24 Counterinsurgency* (Washington, DC: United States Government, 2006), 7-30.

⁶²¹ FM 3-24 7-21; The UK’s Military Covenant also firmly states that “Soldiers differ from civilian employees because success in military operations, when the price of failure may be death, requires the subordination of the rights of the individual to the needs of the task and the team...” Paragraph 14, Chapter 2, Military context, operational effectiveness and the tri-Service approach, Armed Forces Committee First Report, 25 April 2006, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmarmed/828/82804.htm>). From http://www.army.mod.uk/servingsoldier/usefulinfo/valuesgeneral/adp5milcov/ss_hrpers_values_adp5_0_w.html. The Military Covenant (Army Doctrine Publication Volume 5: Soldiering) sets out the doctrinal mutual obligations between the nation, the Army and each individual soldier. This text is taken from the section relating to 'Law'.

⁶²² Durkheim, *Moral Education*, 79.

⁶²³ Martin Shaw, *War and Genocide: Organized Killing in Modern Society* (Cambridge: Polity Press, 2003), 21; Quincy Wright states similarly that “...people who engage in war necessarily both risk their lives and seek to kill other men. Thus, devices are necessary to create conditions in which this unnatural behavior will seem to be natural.” Wright, *A Study*. 93.; Hugo Slim too notes, “Our normal inhibitions have to be overcome. Moral and emotional lines within which we usually live have to be crossed. We have to feel permitted and enabled to do things we would not usually do.” Slim, *Killing Civilians*, 215.

of these efforts have focused on operant conditioning so soldiers will follow orders quickly and be able to conduct tasks despite the chaos and stress inherent in a combat environment.⁶²⁴ Additionally, provision of certain weapons helps to enable killing.⁶²⁵ However, while technology may impact how we go about killing, the ‘trigger puller’ remains in the loop, at the beginning of the process of utilizing a weapon at the very least. Recent weapons have even made it a priority to keep the man in the loop throughout the entire process of employing a weapon, eschewing what were once fire-and-forget systems.⁶²⁶ Overall, some technology will make killing harder and some easier and this will impact how hard it is to enable the overcoming of taboos. However, unless man is entirely removed, the need to morally overcome the aversion to killing will remain.

There are many other devices that can also be used to create the desired behavior – to enable killing and dying. One can use drugs or child soldiers, distance or drones, or dehumanization. Each has benefits and pitfalls but our focus is not on these. We are concerned with how moral rules of discrimination can serve a similar enabling function and has the added benefit of limiting that same violence.

Killers Must be Cleared of Guilt

In order for killing to be psychologically possible and socially beneficial, the killers must be cleared of any perceived guilt.⁶²⁷ Both the soldiers (the direct killers) and the nation as a whole (the indirect killers) must hold this belief in their mutual moral immunity. Only this will enable the killing to be carried out by group members and ensure it is accepted by the society. It is the ethical and legal guidelines of war, and the structure of discrimination in particular, that ensures soldiers and society are not ‘guilty’ of any wrong doing. The soldiers are ‘innocent,’ and this innocence is essential for the acceptance of their sacrifice (both of life and of everyday morality).

Without this acceptance, this legitimacy, those required to kill would be reluctant to do so as this would open them up to society’s disapproval. This would leave these individuals isolated and thus vulnerable to reciprocity without the protection of the group. In the Western world, the most evident historical example of this dynamic is excommunication.

⁶²⁴ This is the purpose of drill.

⁶²⁵ Weapons with high rates of mass fire, or those that kill from a distance.

⁶²⁶ For example the Brimstone Missile modifications.

⁶²⁷ Girard, *The Scapegoat*, 69.

A more recent example comes from the Libya, where “Tribal leaders in Benghazi and Darna announced... that members of their tribes who are militiamen will no longer have their protection in the face of anti-militia protests. That means the tribe will not avenge them if they are killed.”⁶²⁸ The groups, in these cases, are in essence saying they will not mimic the individual and not grant them immortality. The individual is thus placed outside the group, becoming the new Cain, doomed to wander the earth in constant danger of being slain by all who meet him. But this time God (society) offers no protection.

On a group level, failure to clear the individual and group of the guilt of killing would risk tearing a society apart. The indirect process by which civilian violence, that is cultural violence, is turned into direct violence helps the mob to claim innocence. Thus, it clears the guilt of the killer nation, as is required. The masses need to believe they did nothing wrong because otherwise they must hold somebody responsible. This will require a new scapegoat but before one is chosen, it is likely there will be another crisis as the individual or subgroup that will be blamed is selected.

Obtaining Group Absolution

Slim, in his 2007 book on killing civilians, lists the ingredients that he believes are required for an individual to kill. Among these he includes “Some group and individual mechanisms of denial which serve either to deny that one’s actions were really killing or, by deeming it to be necessary killing, to deny that it was bad.”⁶²⁹ This point, Slim states, is “perhaps the most important factor which enables us to become killers...”⁶³⁰ In other words, what Slim is saying, or what he should be saying, is that what enables an individual to become a killer is that they are not a murderer,⁶³¹ and what enables one to kill enemy soldiers is that this is not bad but good. Most groups have long accepted that killing the soldiers of another group in war is not murder,⁶³² so this enabling may not seem so miraculous a transformation. However, even killing soldiers is not a simple task and, as

⁶²⁸ Maggie Michael, “Benghazi Anti-Militia Protest: Libyans March Against Armed Groups After U.S. Embassy

Attack,” *Huffington Post*, September 21, 2012, http://www.huffingtonpost.com/2012/09/21/benghazi-anti-militia-protest_n_1903846.html.

⁶²⁹ Slim, *Killing Civilians*, 217; Grossman too cites “group absolution” as an enabling factor. Grossman, *On Killing*, Chapter 2 is dedicated to this issue.

⁶³⁰ *Ibid.*, 217.

⁶³¹ In addition of course, they are not individuals any longer but that is a different point to which we shall come.

⁶³² Augustine, *The City of God*, Chapter 21, p. 28; Paragraph 21, Chapter 2, Military context, operational effectiveness and the tri-Service approach, Armed Forces Committee First Report, 25 April 2006, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmarmed/828/82804.htm>

we have seen,⁶³³ our rationalization of why they are legitimate targets can collapse under scrutiny. Thus, one's own soldiers still require assurances that killing other soldiers is not wrong.

An individual who is a part of a group cannot rely on any individual mechanism to deny their actions are killing but instead requires a group mechanism. Society must accept and applaud the killing, for the health of the individuals and for the health of society. From a soldiers view, this is because they desire immortality⁶³⁴ and positive sanctions, which are available only through legitimacy.⁶³⁵ From society's view, violence must be of an accepted sort so that it does not cause further violence.

In order to enable normal individuals to kill, they must be convinced that the killing is moral – in this context, it must be accepted by his group as an other-regarding activity. There must be codes established that make killing palatable, that turn it from murder into an act of nobility. All societies work to establish such codes as they must be able to draw a line between good and bad killing. This is essential since not all killing can be considered bad, as it may be required for defense, but of course not all killing can be considered good (especially intra-group but even inter-group killing), as it can plunge the group into asocial violence.

Girard notes that “Any phenomenon linked to impure violence is capable of being inverted and rendered beneficent; but this can take place only within the immutable and rigorous framework of ritual practice.”⁶³⁶ Following this logic, killing can be ‘good’ as long as it occurs within a framework. This framework is discrimination and the corresponding Social Trinity structure. The balance of power within the Social Trinity works to disengage normal morality by “reconstruing the conduct” and “obscuring personal responsibility.”⁶³⁷ Killing is thus controlled in a social manner.

⁶³³ Refer to section on reluctance to kill in war.

⁶³⁴ Referring of course to that version offered through the immortality project of the group and the hero system.

⁶³⁵ For example, the “custom of the ancient Greeks, which rendered it unlawful and impious to use the same bath, or to partake of the same festivities and sacred rites with a person who had killed another in time of peace, did not extend to any one who had killed a public enemy in war.” Grotius, *The Rights*, Book 3, Chapter 4, Section 5, 644.

⁶³⁶ Girard, *Violence*, 58.

⁶³⁷ These are two methods point out as helping to bypass ethics by A. Bandura, C. Barbaranelli, G.V. Caprara, and C. Pastorelli, “Mechanisms of moral disengagement in the exercise of moral agency,” *Journal of Personality and Social Psychology* 71 (1996).

The Transformation/Legitimation of Violence

To understand how violence turns from 'bad' to 'good,' it is useful to consider violence as having multiple dimensions. Violence, according to peace theorist Johan Galtung, has cultural, structural, and direct manifestations. Together these comprise the *violence triangle* or the *violence strata*. Using the strata image, Galtung notes that "At the bottom is the steady flow through time of cultural violence, a substratum from which the other two can derive their nutrients."⁶³⁸ According to Galtung, cultural violence is "the symbolic sphere of our existence... that can be used to justify or legitimize direct or structural violence."⁶³⁹ We can thus align cultural violence with the legitimation. This means that the 'action end' of cultural violence emanates largely from the people of the Social Trinity. Continuing on with this Clausewitzian logic, this means cultural violence is closely related with the emotions of violence, including the passionate desire for reciprocity. Indeed, Galtung notes that "hatred and the addiction to revenge for the trauma suffered among the losers" is one of the "most important" invisible aspects of cultural violence.⁶⁴⁰ Thus, cultural violence is often driven by mimetic desire. In other words, a reciprocity perception is vital to legitimation.

There is, Galtung argues, generally a "causal flow" from cultural, through structural, and to direct violence.⁶⁴¹ Thus, cultural violence is a resource that can be converted into direct violence. Indeed, it serves a vital enabling function. Cultural violence is a useful concept for considering the manner in which something that is normally considered morally bad, or unlawful, can be transformed into something good and lawful. Galtung notes that "One way cultural violence works is by changing the moral color of an act from red/wrong to green/right or at least to yellow/acceptable; an example being 'murder on behalf of the country as right, on behalf of oneself wrong.'"⁶⁴² Such a transmutation is essential for violence to be usable without negative impacts on the individuals and society using it.

The reason this transformation must take place is because from an objective, value-neutral, and biological standpoint there is a universal uniformity in the acts of killing and dying. No matter how one kills or how one dies, no matter who kills or who dies, the act is, in its

⁶³⁸ John Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Society* (London: Sage Publications, 1996), 294, 295.

⁶³⁹ Galtung, *Peace*, 291.

⁶⁴⁰ Johan Galtung, "Violence, War, and Their Impact On Visible and Invisible Effects of Violence,"

<http://them.polylog.org/5/fgj-en.htm>

⁶⁴¹ Galtung, *Peace*, 295.

⁶⁴² *Ibid.*, 292.

interior, the same. If we remove the socially created labels and the details of the oft stigma-laden tools or methods, each act of killing can be described simply as one human ending the life of another. This means there is no physical difference between killing a soldier and killing a civilian. As Girard points out, “evil and the violent measures taken to combat evil are essentially the same.”⁶⁴³ This of course makes sense given the mimetic nature of violence. Yet distinguishing between these acts is vital. The killing and dying must be transformed so that it does not appear counter to the social order, which generally must prohibit killing and mitigate death in order to maintain social stability.

Since the physical acts of the belligerents are indistinguishable and the act of killing is physically the same whether it occurs in our home or in another land, and no matter who does the deed, the difference must come from another sphere. The differentiation in the actions then is in the social sphere. It is for this reason that the labels on people matter and the weapons matter. Who kills, how one kills, and who is killed are of tremendous importance since these details shape the social meanings of an act and it is this that determines the effect of the activity and the affect of those who experience or witness the activity.

The question then is, why these labels? Why were they constructed in the way they were? Why does social meaning take the shape that it does? To take Galtung’s example of public versus private killing, why is the former good and the latter bad and does this have any bearing on utility (or is it just useful because it is considered good and for no other reason)? Viewing the prohibition on private violence through a Girardian lens allows us to understand that its purpose is directly linked to controlling the dangers of mimetic violence.

Soldiers are not Responsible Agents

In a sense, soldiers are disempowered for they lack the authority to judge their own actions or to author those actions in the first place. Instead, they rely on others to do this for them. As Christopher Coker observes, “...the Western Warrior is not a master of his own fate; his own destiny is determined by others who sanction his acts.”⁶⁴⁴ It is this sanctioning by the group (the people) that makes an act ‘good,’ the exact meaning of which we will get to

⁶⁴³ Girard, *Violence*, 37.

⁶⁴⁴ Christopher Coker, *The Warrior Ethos: Military Culture and the War on Terror* (Oxon: Routledge, 2007), 7.

soon. It is important that legitimacy be assessed by a party not carrying out the action in order to “avoid the abuses caused when each person is a ‘judge in his own case.’”⁶⁴⁵ Samuel Huntington, in *The Soldier and the State*, notes that violence must be socially approved since if soldiers used it for their own purposes, it would risk the social fabric.⁶⁴⁶ This is because, “As Hobbes taught, if private reason is authoritative—if each is left to judge for herself what is right—we are left with a chaos of conflicting claims.”⁶⁴⁷ If each individual were to judge their own actions, the assessment would in most cases give excessive weight to that person’s perceptions and needs, to their self-interest. This would often run counter to the group needs.

The soldiers’ responsibility is further obscured by assigning the authority over violence to the government. It is the leaders who author the act of violence. Many philosophers and ethicists maintain that only those “who are the true authors of their own acts... can be praised or blamed for what they do.”⁶⁴⁸ Augustine thus concludes “...the soldier is innocent because his position makes obedience a duty”⁶⁴⁹ and cite the wars of Moses and the words of John the Baptist as evidence. Soldiers are well aware of this moral absolution. Displacing responsibility for ones actions onto leaders is a very common method of moral disengagement.⁶⁵⁰ As Glenn Gray relates in his autobiography, *The Warriors*, “When I raised my right hand and took that oath, I freed myself of the consequences for what I do. I’ll do what they tell me and nobody can blame me.”⁶⁵¹ Shakespeare in *Henry V* expressed a similar sentiment through the voice of an English soldier who declared in regard to killing that, “We know enough if we know we are the king’s men. Our obedience to the king wipes the crime of it out of us.”⁶⁵² So although some may see loss of moral agency as an ill of war,⁶⁵³ it is apparent that it is a required ill, one that makes killing possible. By making another class – the leadership – the author of

⁶⁴⁵ M.J. Cresswell, “Legitimizing Force: A Lockean Account,” *Armed Force & Society* 30, no. 4 (2004): 640.

⁶⁴⁶ Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Harvard: Harvard University Press, 1981), 14.

⁶⁴⁷ W.W., “Targeted killing: The ethics and realpolitik of assassination,” *The Economist*, May 4, 2011, available at http://www.economist.com/blogs/democracyinamerica/2011/05/targeted_killing.

⁶⁴⁸ Robert Kaplan, *Warrior Politics Why Leadership Demands a Pagan Ethos* (New York, NY: Vintage Books, 2003), 74, (Isaiah Berlin, paraphrasing Kant).

⁶⁴⁹ Augustine, *Contra Faustum*, Book XXII, Chapter 75, although the matter is also discussed in Chapter 74.

⁶⁵⁰ Hinrichs et al., “Moral Disengagement.”

⁶⁵¹ Holmes, *Acts of War*, 33.

⁶⁵² William Shakespeare, *The Life of King Henry V*, Act 4, Scene 1.

⁶⁵³ For example, Jonathan Dymond, “War: It’s Causes, Consequences, Lawfulness, Etc.,” in *Essays on the Principles of Morality, and on the Private and Political Rights and Obligations of Mankind* (New York, NY: Collins, Brothers & Co., 1844), 22.

the soldier's killing, a group is easing any guilt that the soldier may feel. Thus again, we find that the division of reciprocity enables killing.

Enabling limiting killing is also made possible by the very creation of a military group, which replaces individual action with group action. One of the primary reasons that soldiers must engage in a mimetic group activity is that it leads to de-individuation that is morally absolving. There is an inverse relationship between the size of the crowd and the moral independence of the individual members.⁶⁵⁴ The soldiers' actions in many ways reflect the actions of any mass or mob. Caught up in the collective activity, "They know not what they do." This absolves them of responsibility from a moral perspective, easing their minds. An individual's immersion in a group contributes to anonymity and a diffusion of responsibility as "behavior may be perceived by both the actor and the onlooker as a product of the whole collective rather than of individual persons."⁶⁵⁵ This is a contributing factor to enabling those within a group to take actions which they would not as an individual. This enables killing and is good in that it keeps individuals from killing (focusing on the group as the agent). Thus, soldiers, once removed from their killing groups and returned to society, are less prone to continue killing.⁶⁵⁶ It is understandable then that military training aims to "promote group cooperation and discourage individuality."⁶⁵⁷ Individuality is actively discouraged,⁶⁵⁸ except in that it contributes to the group. Only through such actions, especially in death, can a soldier once again become an individual, and Achilles or an Audie Murphy. Thus, when a man becomes an individual in war, he will be a beast or a god.

The Social Trinity thus serves to diffuse the responsibility for killing by removing authorship, assessment, and individual autonomy from each soldier. This frees them morally to an extent that killing is possible. It further ensures the killing is not destructive to the group because it disallows and mitigates individual violence. The ills of such violence form the foundation of our distinction between 'good' violence and 'bad.'

⁶⁵⁴ Bailie, *Violence Unveiled*, 51.

⁶⁵⁵ Edward Diener, "Deindividuation: Causes and Consequences," *Social Behavior and Personality* 5, no. 1 (1977): 143-156.

⁶⁵⁶ Grossman, *On Killing*, 151.

⁶⁵⁷ Pearl Katz, "Emotional Metaphors, Socialization, and Roles of Drill Sergeants," *Ethos* 18, no. 4 (1990): 460.

⁶⁵⁸ Michael C. Volkin, *The Ultimate Interactive Basic Training Workbook* (New York: Savas Beatie, 2007), 170.

Violence Must be Social

According to Durkheim, “moral force,” is a feeling of unity that gives rise to the idea of the sacred and around this, morality is built.⁶⁵⁹ Morality thus governs the actions that give rise to unity and those which threaten it, endorsing the former and prohibiting the latter. Along these same lines, Girard notes that “The rite (moral practice) selects a certain form of violence as ‘good,’ as necessary to the unity of the community, and sets up in opposition to it another sort of violence that is deemed ‘bad,’ because it is affiliated to violent reciprocity.”⁶⁶⁰ The difference between good and bad violence then is the difference between social and antisocial violence.

From this perspective, there is little difference between a crime against God and a crime against humanity. Both are antisocial, counter to the group, and thus the reason they are forbidden. The primary reason that they are antisocial is because they can prompt crises of mimetic violence.

Other authors agree that sociality is at the core of morality. For example, according to Watson, “By behaving ethically, one comports oneself with a standard that is both intrinsically good and that, from a utilitarian point of view, leads to harmony of the soul and the society—which is, according to Plato, the human soul writ large.”⁶⁶¹ Sun Tzu put moral influence as the most important in his five factors of war. What he meant by moral influence was “that which causes harmony of the people with their leader.”⁶⁶² Harmony with society is vital if a soldier’s actions are to be accepted and the soldier embraced upon his return to society. Unethical action will lead to division within a society and this makes it more likely a war will not be successful.

The key here is agreement on the violence. Bailie, drawing deeply from the Girardian well, points out that “Primitive religion grants one form of violence a moral monopoly, endowing it with enough power and prestige to preempt other forms of violence and restore order.”⁶⁶³ A moral monopoly, in the context of Bailie’s discussion, means that the

⁶⁵⁹ Rawls, *Epistemology*, 29.

⁶⁶⁰ Girard, *Violence*, 115.

⁶⁶¹ Bradley C. S. Watson, “The Western Ethical Tradition and the Morality of the Warrior,” *Armed Forces & Society: An Interdisciplinary Journal* 26, no. 1 (1999): 56.

⁶⁶² Greg Wilcox, “Fourth Generation Warfare and the Moral Imperative,” *Defence and the National Interest* [blog]. October 2, 2003, available at http://www.dnipogo.org/fcs/pdf/4gw_and_the_moral_imperative.pdf, 12; the other factors are weather, terrain, command, doctrine.

⁶⁶³ Bailie, *Violence Unveiled*, 6.

violence is the sole good violence. Thus, when the violence is used, none will rise up to protest its use. In a modern context, this moral monopoly belongs to the nation-state. The state has endeavored to maintain its moral monopoly through the legal de-legitimation of violence by other groups. Importantly, this legitimate group violence is an “alternative to greater and more catastrophic violence.”⁶⁶⁴ It avoids the cycle of violence that is the result of mimetic desire. As such, it must eliminate the individual’s access to and need for violence.

Cannot Kill for Yourself

A range of philosophers from pacifist William James to Helmuth von Moltke, chief of staff of the Prussian army through three wars, have argued that warfare is “the great preserver”⁶⁶⁵ of ideals and virtues. While James used this logic only to search for an alternative method of maintaining the so-called “martial virtues,” Moltke and other nineteenth-century war theorists saw war as useful for creating these positive traits and viewed peace as a danger, a type of sloth.⁶⁶⁶ Von Moltke famously wrote that, “Perpetual peace is a dream, and it is not even a beautiful dream: war forms part of the universal order constituted by God. In war are displayed the most noble virtues which would otherwise slumber and become extinct: courage and abnegation, fidelity to duty, and the spirit of sacrifice which will hazard life itself...”⁶⁶⁷ James too listed the “surrender of private interest” as one of the virtues of war, and one that “must still remain the rock upon which states are built...”⁶⁶⁸ The logic here is that war creates the other-regarding activity of self-sacrifice. Whether war is the source of this and other virtues is beyond the scope of this dissertation. However, it is not necessary to know if war creates the spirit of sacrifice in order to know that war requires this. Thus, groups that engage in war must be able to draw upon a willingness of individuals to sacrifice. Indeed, without this virtue, war would cease to be a social activity and become a more violent *Warre*, for if none were willing to kill and die for others, violence would be a much more egoist enterprise.

⁶⁶⁴ Ibid.

⁶⁶⁵ William James, *The Moral Equivalent of War*, published in 1906, *Constitution Society* [website], available at <http://www.constitution.org/wj/meow.htm>.

⁶⁶⁶ Bagehot is another who argues that “War both needs and generates certain virtues.” Bagehot, *Physics and Politics*.

⁶⁶⁷ Von Moltke, “On the Laws of War – The Humane Influence of a Military Despotism” *New York Times*, 14 February 1881, <http://query.nytimes.com/mem/archive-free/pdf?res=F6071FFB3E5F15738DDDAD0994DA405B8184F0D3>; Written on 11 December 1880 to Professor Bluntschli in reference to the Manual of the Laws of War then recently adopted by the Institut de Droit International.

⁶⁶⁸ James, *The Moral Equivalent*.

In the introduction, we quoted Durkheim, who wrote that “If man is to be moral, he must be devoted to something other than himself.”⁶⁶⁹ This is true of all who use violence – they must be using it for another. In other words, violence cannot be used for self-interest. When the Christian church began to allow its adherents to serve as soldiers, it developed a philosophy that allowed force to be used only for the sake of others and not for oneself.⁶⁷⁰ This was supported through reference to Moses’s defense of the Hebrew slave being beaten by an Egyptian⁶⁷¹ and Psalm 82:4, which states “Rescue the weak and needy; Deliver them out of the hand of the wicked.” Augustine notes “As to killing others to defend one’s own life I do not approve of this, unless one happens to be a soldier or a public functionary acting not for himself, but in defense of others or of the city in which he resides”⁶⁷² and further observes that “soldiers did not thus avenge themselves, but defend the public safety.”⁶⁷³ In short, private violence is deprecated and only public and other defense allowed.

Military ethics too stresses that soldiers should “Put the welfare of the Nation, the Army, and your subordinates before your own.”⁶⁷⁴ Soldiers are only recognized for actions for others and for the group. The narratives of death in modern wars emphasize that soldiers risk their lives for others who are not capable of reciprocity. So we praise the soldier who “took a bullet to the head rather than risk the life of a young Afghan girl”⁶⁷⁵ or “deliberately missed an enemy scout, after realizing it was a boy of about seven.”⁶⁷⁶

Thus, to enable a soldier to kill, there must be others that he is killing for (in place of), something other than himself that he is defending. Logically then one must have innocents, those who are not killers and not guilty and thus need defense. It is, after all, only justified to kill in order to protect another. Here we see how the very existence of the noncombatant can enable war – without them, there would be no need for any war of

⁶⁶⁹ Durkheim, *Moral Education*, 79.

⁶⁷⁰ Childress, “Moral Discourse,” 12, 13, citing Ambrose and Augustine.

⁶⁷¹ Ambrose, *On the Duties of the Clergy*, Chapter XXXVI. Citing Exodus 2:11.

⁶⁷² Augustine, Letter 47.

⁶⁷³ Augustine, *Contra Faustum*, Book XXII, Chapter 74.

⁶⁷⁴ United States Army, “The Army Values”; See also Hartle, *Moral Issues*, 36-54; Watson. “The Western Ethical,” 57.

⁶⁷⁵ Fred Attewill, “Rifleman took bullet in head to save girl’s life,” *The Metro* [London], December 19, 2010. For another example see, Laura Shaughnessy, “Rhode Island Guardsman died saving Afghan girl,” *CNN*, March 28, 2012, available at http://www.cnn.com/2012/03/28/us/rhode-island-guard-death/index.html?hpt=hp_c3.

⁶⁷⁶ Aidan Radnedge, “Sniper to sell MC won for bravery in firefight,” *The Metro* [London], June 28, 2011, available at <http://e-edition.metro.co.uk/2011/06/28/13.html>.

defense since each could simply defend themselves. The innocence of civilians becomes part of our rational reasoning. Because they are innocent (or simply because they are immune, no matter the reason) we can use them as justification for our violence. However, it is not the affronted themselves who are justified in using violence. That sort of individual violence is too dangerous for a group and also doesn't serve the standing power structure of the states. The rules of war emphasize other defense because individual self-defense has too many shortcomings when it comes to achieving specific group ends.

The Dangers of Mimesis to the Group

While mimesis is, as already noted, required for group life and group action, it is not universally beneficent. At the edge of a group, where other groups are encountered, there are dangers that require mimesis be held back. One danger is of course war.⁶⁷⁷ This would be caused by an individual taking revenge on somebody from another group and thus drawing both groups into conflict. While strictly speaking the act may be reciprocal, it cannot be condoned as good, i.e. social, because it will possibly lead to a crisis of mimetic violence.

Personal or familial revenge could serve a valuable protective function deterring violence⁶⁷⁸ and serve as a mechanism for stability.⁶⁷⁹ However, once this deterrence fails, the mimetic nature of violence can engulf whole peoples. According to Girard, "the multiplication of reprisals instantaneously puts the very existence of a society in jeopardy, and that is why it is universally proscribed."⁶⁸⁰ Thus, reciprocity cannot be a private activity since it threatens to draw larger groups into conflict with one another based upon the actions of one individual. As Vattel notes, "It would be too dangerous to allow every citizen the liberty of doing himself justice against foreigners; as, in that case, there would not be a single member of the state who might not involve it in war. And how could peace be preserved between nations, if it were in the power of every private individual to disturb it?"⁶⁸¹

⁶⁷⁷ Another danger at the group boundaries is that those near the edge will start mimicking the other group and simultaneously becoming less bonded with the core of its own group, but this is not our focus.

⁶⁷⁸ Thompson 109 and Evans-Pritchard 1940 (from Hinde)

⁶⁷⁹ Waldmann 438; Vidmar 3, citing e.g. DuBois, 1961; Furer-Haimendorf, 1967; Hoebel, 1954

⁶⁸⁰ Girard, *Violence*, 15.

⁶⁸¹ Vattel, *The Law Of Nations*, Book III, Of War, Chap. I. Thus, as LeBlanc points out, "Recognizing that wars are far too dangerous to allow a few hotheads to initiate them, most societies exert strong controls over intergroup aggression." LeBlanc, 16.

One example of this dynamic is John Brown's raid on Harper's Ferry, which prompted fear in the South and led to informal militias being established, militarizing the U.S. Civil War two years prior to its start.⁶⁸² Another example is the 1837 *Carolina* affair and the subsequent attack on the *Sir Robert Peel*, which led U.S. President Martin Van Buren to send the army to the border area to prevent any further private U.S. incursions into Canada, clearly concerned the events could lead to war with Britain.⁶⁸³ One could also include terrorist attacks, such as those undertaken by Al Qaeda, in this category as they can bring nations into war with one another, even though the initial inciting incidents are carried out by small groups or even lone individuals.

The Removal of the Individual from War

As already pointed out, there are many who maintain that IHL and the LOW have the "ultimate aim of protecting the individual."⁶⁸⁴ This appears to have some basis. Even a cursory glance at these laws indicates that the protection of the individual is a dominant point of reference. As one author writes, international law is "a story of the progressive evolution from the primitivism of 'the herd' to the cleanliness of an untrammelled, dispassionate, rational individualism... it tells a story of progress from community to individual."⁶⁸⁵

Girardian theory allows us to understand that the protection of the individual in war functions also to protect the activity of war and protect the group. Since the violence of the individual is a danger to group life, the individual must be excluded from using violence to as great an extent as possible. War has thus endeavored to remove the individual from involvement through disallowing their use of violence. Thus Rousseau's claim that "War then is a relation, not between man and man, but between State and

⁶⁸² David M. Potter, *The Impending Crisis: 1848-1861* (New York, NY: Harper & Rowe, 1976).

⁶⁸³ Kenneth R. Stevens, "The 'Caroline' Affair: Anglo-American Relations and Domestic Politics, 1837-1842," Ph.D. diss., Indiana University, 1982.; Howard Jones, "The Caroline Affair," *Historian* 38, no. 3 (1976).

⁶⁸⁴ Mary Robinson, "Message," in *Terrorism and International Law: Challenges and Responses*, contributions presented at the "Meeting of independent experts on Terrorism and International Law: Challenges and Responses. Complementary Nature of Human Rights Law, International Humanitarian Law and Refugee Law," available at <http://www.ihl.org/ihl/Documents/Terrorism%20and%20IHL.pdf>, 11. Speaking of human rights law, humanitarian law, and refugee law. See also Meurant 246.

⁶⁸⁵ Tawia Ansah, "A Terrible Purity: International Law, Religion, Morality, Exclusion," *Cornell International Law Journal*, 38, no. 1 (2005): 27.

State”⁶⁸⁶ is part of a discourse that aims to remove individual recourse to violence. Private violence is not allowed.

The Social Trinity in part eliminates the problems of individual and self-interested violence. As Eugene B. Smith observes, states must both “*protect and control* their citizens at home and abroad.”⁶⁸⁷ Essential to this control is responding to violence in the place of the individual. To the extent that the individual is protected by law, it is only through the group. The group is the primary guarantor of the individual’s security and life.

Passing the Mimetic Burden to the Group

One of the primary tasks of any society is the control of the mimetic impulses that exist in individuals. The civilizing process depends upon the control of violence⁶⁸⁸ as does the maintenance of social life. Thus, as Wilfried von Bredow notes “Containing violence is one of the *permanent* challenges for social organizations which organize the collective survival of people.”⁶⁸⁹ Instinctive reactions are generally viewed as being counter to the requirements of civilization, which requires the “progressive rejection of instinctive ends and a scaling down of instinctive reactions.”⁶⁹⁰ Rousseau claims that this instinct is replaced with justice. Thus, these necessarily fulfill the same needs – mimesis or, with its new clothes, reciprocity. According to Rousseau, “the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty.”⁶⁹¹ In light of the above discussion, what he is saying is that mimesis is slavery. The law in contrast, provides freedom because the mimetic needs are carried out by the group.

Schmookler points out that government, hierarchy, state, and patriarchy, among other things, are all structures created to control the free play of power,⁶⁹² or, we might say, to control mimesis. These structures forbid private vengeance and replace it with public retribution that is enacted by a “supreme coercive power which is socially organized and

⁶⁸⁶ Rousseau, *The Social Contract*, Book I, Section 4.

⁶⁸⁷ Eugene B. Smith, “The New Condottieri and US Policy: The Privatization of Conflict and Its Implications” *Parameters* (Winter 2002/2003): 107.

⁶⁸⁸ Fletcher 52, on Elias.

⁶⁸⁹ Wilfried von Bredow, “The Order of Violence,” in Giuseppe Caforio, *Handbook of the sociology of the military* (New York, NY: Plenum Publishers, 2003), 97, emphasis added.

⁶⁹⁰ Correspondence between Freud and Einstein entitled “Why War?” in Otto Nathan and Heinz Norden, *Einstein on Peace* (New York, NY: Simon and Schuster, 1960).

⁶⁹¹ Rousseau, *Social Contract*, Book I, Chapter VIII.

⁶⁹² Schmookler, *The Parable*.

usually vested in a central authority.”⁶⁹³ What is taking place is of course a transfer of rights, what we know as the Social Contract.⁶⁹⁴ Thus, individuals give up their ‘natural’ right of self-preservation and the right to punish transgressors to the group.⁶⁹⁵ This mechanism is clearly evident in public law but it is the same method by which the military assumes the protection of the group. The Social Trinity too “serves to deflect the menace of vengeance, to eliminate private vengeance and allow only public.”⁶⁹⁶

It is important to stress that this transfer obligates the group to respond for the individual. According to Susan Jacoby, there is a need for human beings “to avenge their injuries, to restore a sense of equity when they felt their integrity had been violated.”⁶⁹⁷ In other words, there is a desire for the reciprocity that can come from revenge and its denial comes at a price. Robert Solomon argues that “to seek vengeance for a grievous wrong, to revenge oneself against evil: that seems to lie at the very foundation of our sense of justice, indeed, at the heart of ourselves, our dignity and our sense of right and wrong.”⁶⁹⁸ The mimesis of violence, in other words, is extremely compelling. Given its life or death results, this could very likely be rooted in the requirements of nature (to survive). Regardless of its sources, however, the reality is clear – violence for many people demands imitation. For this reason, a society cannot simply forbid revenge. Any attempt to do so would surely meet with failure and result in private vengeance. The answer then is to utilize the surrogate mechanism in order to channel revenge down a path that not only satisfies the individuals but reinforces the power of the group. The group must achieve reciprocity or the people, private militias for example, can drag society back into violence.

The Threat of the Victim

Girard notes that the pragmatic aspects (the rules) of sacrificial rituals are oriented towards victims, since they pose the most immediate threat of disrupting the planned course of events.⁶⁹⁹ While this dissertation does not argue that war is a ritual, it undoubtedly possesses many ritual aspects and also many victims. In addition, the dynamics of

⁶⁹³ Werner Levi, “On the Causes of War and Peace,” *The Journal of Conflict Resolution* 4, no. 4 (1960): 411.

⁶⁹⁴ Rousseau, *Social Contract*, part 1, chapter 14.

Thomas Hobbes, *The English Works of Thomas Hobbes of Malmesbury; Now First Collected and Edited by Sir William Molesworth, Bart.*, (London: Bohn, 1839-45).

⁶⁹⁵ Rousseau in Cresswell, “Legitimizing Force.”

⁶⁹⁶ Girard, *Violence*, 15. Girard was speaking of the justice system but the role here is very similar.

⁶⁹⁷ Susan Jacoby, *Wild Justice: The Evolution of Revenge* (New York, NY: Harper & Row, 1983).

⁶⁹⁸ R.C. Solomon, *A Passion for Justice: Emotions and the Origins of Social Contract* (Lanham, MD: Rowman & Littlefield, 1995), 40.

⁶⁹⁹ Girard, *Violence*, 21.

violence remain the same whether it is conducted on an altar or in the Alsace. The parallels between war and the sacrificial rites and rules of which Girard speaks become clear when examining modern LOW and principle of discrimination. Just as in ritual sacrifice, the pragmatic aspects of the moral-legal principles of war are oriented towards potential victims and this is because victims can easily disrupt the planned course of events. What we mean by victims is of course the nonreciprocal. Considered this way, the reason victims can disrupt the practice of war is because they can demand reciprocity or seek out their own version of reciprocity through their own actions. Thus, discrimination steps into the breach in an effort to mitigate the escalation of violence that can be caused by victims. First, the victims on one's own side are not allowed to seek reciprocity but surrogates are instead assigned to achieve it in their place. Second, immunity aims to keep victimization of the opponent to a minimum so as to prevent the strengthening of the adversary's will (this will be discussed in the next chapter). This helps keep the violence under control.

We already know from our earlier discussion of the essential features of prohibitions on the immune that these rules relate to mimetic conflict. Freud's discussion of taboos provides a glimpse of what occurs when these prohibitions are ignored. According to the eminent Austrian, any "violated taboo avenged itself. Wherever the taboo was related to ideas of gods and demons an automatic punishment was expected from the power of the godhead."⁷⁰⁰ Thus, we can expect that if discrimination is not adhered to, the immune who have been violated, the victims, will seek revenge. Freud goes on from the above quote to note that, in some cases, "society took over the punishment of the offender, whose action has endangered his companions."⁷⁰¹ This is a method for mitigating the violation of the taboo. In the context of discrimination, this means that a nation holds its individual members responsible for their actions if they violate a taboo so that another group (or the Gods) need not. It also means that a group's military forces and legitimate authority undertake revenge for victims within their group, even if an individual from another group is responsible for the infraction.

Group Must Respond for Individual

War and the moral rules of war aim to exclude the individual from recourse to violence but simultaneously obligate the group to protect the individual. In a sense, the death of any

⁷⁰⁰ Sigmund Freud, *Totem and Taboo*, trans. by A.A. Brill (New York, NY: Moffat, Yard, & Co., 1918), 33.

⁷⁰¹ Ibid.

individual does kill the group in part. It does this not only physically but it also can loosen the confidence of the group members (the individuals) that the group as a whole will protect them. Thus, the protection advantages the group, for it bonds individuals to the group and, most importantly, prevents individuals from using their own violence.

If the individual is not protected, they will mimic violence themselves and society will begin to fall apart as each becomes their own author, agent, and judge. Thus, when a state affirms that “individual liberties constitute an important component of her security stance,”⁷⁰² it is more than mere rhetoric. Security of the state absolutely hinges on the security of the individual. It is little surprise then that “terrorism thrives where there is human-rights abuse, (and) insecurity is increased when human rights are sacrificed.”⁷⁰³ It is in these contexts where the individual becomes their own reciprocal agent because the group fails to provide any sort of reciprocity.

The actions of fishermen in the South China Sea⁷⁰⁴ or settlers on the West Bank have the potential to pull entire groups into a war. This is the danger of individual violence and the reason it is frowned upon. A group cannot go to war based on the actions of an individual, for if they did, the sword may never be sheathed. Yet, neither can the group fully abandon the individual in the face of out-group violence. In a manner, the group is held hostage by individuals. This situation only enhances the importance of official, ‘good’ group violence.

War is in large part an effort to achieve reciprocity, and thus avoid the reciprocity seeking of individuals through violence. Groups and individuals seek to achieve reciprocity because it is this which the social order is based upon. Thus, to fail to achieve reciprocity is to threaten the social order. If the social order does not achieve reciprocity, individuals will seek it out themselves or seek out one who can better achieve it and a violent crisis will begin, potentially much more violent than a trinitarian war. As Werner Jaeger points out in his discussion of Solon’s teachings, a “transgression of justice (which means a lack

⁷⁰² *The Public Committee against Torture in Israel v. The State of Israel*, H CJ 5100/94, Section 64, page 42; *The Public Committee against Torture in Israel v. The Government of Israel - Summary of Judgment*, H CJ 769/02, available at elyon1.court.gov.il/files_eng/02/690/007/a34/02007690.a34.pdf.

⁷⁰³ Foot, “Human Rights,” 119.

⁷⁰⁴ Chinese fishermen, often act on their own in disputed territory, forcing the government to support them rhetorically and at times physically. Rodger Baker and Zhixing Zhang, “The Paradox of China’s Naval Strategy,” *Stratfor Geopolitical Weekly*, July 17, 2012, available at <http://www.stratfor.com/weekly/paradox-chinas-naval-strategy>.

of reciprocity) is a disturbance of the social organism. A state thus punished is afflicted by party feuds and civil war: its citizens gather in bands which think only of violence and injustice...”⁷⁰⁵

The need for reciprocity is a demand for reciprocity. Girard observes that “If left unappeased (if not rectified via justice or public force), violence will accumulate until it overflows its confined and floods the surrounding area.”⁷⁰⁶ Thus we find that if the reciprocal authority (the government) and reciprocal arm (the military) do not fulfill their roles of achieving reciprocity, violence will spread as other agents (individuals, the population as a whole, or subgroups vying for power) attempt take up the task. The importance of achieving reciprocity thus cannot be ignored, for if it is not physically and emotionally manifest, the desire for it will spread though the social world and cultural violence will increase to the point where it cannot be held back. At this point, legitimate and meaningful direct violence will cease to belong solely to the government and their military-police arms.

General Aussaresses relates a story that clearly depicts the importance of action by the authority in order to avoid independent action by civilian groups. He quotes General Jacques Massu’s account of a meeting with a group of important *pied-noirs* (French Algerians). According to Massu, “They told me they intend to replace the police and military forces if these are still incapable of resolving the situation. They intend to begin with a spectacular (setting the Casbah on fire)... According to my estimates about 70,000 people will die. Believe me when I tell you that the men I was speaking with can make this happen. The determination of these pied-noirs compels me to take a very tough attitude.”⁷⁰⁷ While this spectacular event may have never occurred and we cannot be sure of Aussaresses’ account, taking into consideration the existence and activities of *pied-noirs* militias, and the dynamics of violence and need for groups to perceive reciprocity, it is likely that the conflict could have taken just such a deadly turn. Indeed, by the time the French army’s 10th Airborne Division was sent to Algiers in 1957, terrorism and “vigilante attacks by loyalist settlers” had already “brought the violence to a crescendo that paralyzed

⁷⁰⁵ Werner Jaeger, *Paideia: The Ideals of Greek Culture: Volume I: Archaic Greece: The Mind of Athens*, translated by Gilbert Highet (Oxford: Oxford University Press, 1939), 141.

⁷⁰⁶ Girard, *Violence*, 10.

⁷⁰⁷ Aussaresses, *The Battle*, 77.

the city.”⁷⁰⁸ The solution of using ‘official’ violence in order to quell the disorder thus made perfect sense.

To say that the French military was trapped into extreme measures is only partly true however. This likely gave them added impetus to act, as no legitimate government can tolerate such private justice, but the military escalated their violence under a momentum all their own. However, this violence was trying to enforce a social order (paradoxically of democracy and equality and colonialism) that was not in line with the imaginations of many Algerians and indeed many French. In short, the military’s actions would be seen as un-reciprocal by both sides of the population in Algeria. So while Muslim Algerians were understandably upset by French military action, on the other side, the actions of politicians such as De Gaulle who aimed to defuse the situation would lead extremist *pieds-noirs* to rise up in “the week of the barricades.” Thus trapped between incommensurable visions of reciprocity, the violence was bound to fail no matter if it was measured or extreme.

The Need for Justice

The persistent demands of the victims are one of the reasons that justice is so essential. Davida Kellogg notes as much, writing that “It is because the consequences of victims’ acting on this perception (that justice has not been achieved), realistic as it may be, are so terrible that it is vitally important to apprehend and punish those who are most responsible for these war crimes before indiscriminate revenge.”⁷⁰⁹ The reciprocal authority and arm must be able to accomplish this end or individual violence will metastasize. The issue of victims often stands in the way of ending a conflict for just such a reason. The Consultative Group on the Past in Northern Ireland struggled with the issue of victims – “...two areas of particular contention arose repeatedly – how victims are defined and, in particular, the use of definitions which produce a hierarchy of victims that is broadly structured along sectarian lines...”⁷¹⁰ This is important because victims demand reciprocity and until that is achieved there can be no positive peace.

⁷⁰⁸ Lt. Col. James D. Campbell, “French Algeria and British Northern Ireland: Legitimacy and the Rule of Law in Low-Intensity Conflict” *The U.S. Army professional Writing Collection*
http://www.army.mil/professionalWriting/volumes/volume3/june_2005/6_05_1.html.

⁷⁰⁹ Davida Kellogg, “Just War Tradition Vs Public Opinion On American Military Involvement In the Former Yugoslavia,” paper presented at the *International Society for Military Ethics* conference, January 27-18, 2000, Springfield, VA, available at <http://isme.tamu.edu/JSCOPE00/Kellogg00.html>.

⁷¹⁰ Northern Ireland Consultative Group on the Past, “Report of the Consultative Group on the Past,” power point presentation summarizing the results of the report, released June-January 2009. Available at <http://www.irishtimes.com/focus/2009/troubles/index.pdf>, 66. A definition was never reached.

Victim demands also necessitate holding one's own individuals responsible for their actions so that other groups, or individuals from those groups, need not do so. Lt. Col. David Galula advises that in a COIN campaign, soldiers' misdeeds should be punished severely to impress the local population.⁷¹¹ What he means is that this should be done to show the population that reciprocity is being achieved and thus the people do not need to seek it out themselves. This will help avoid feelings of frustration that "No one can punish them (the soldiers)."⁷¹² Of course if such harsh punishment runs counter to your own order, then this would be a difficult issue. In this case, such a punishment would make soldiers question the certainty of their own order and they may then defect. Yet if one is operating in a society that demands harsh punishments and they are not meted out, that society will likely seek out reciprocity itself. This then is the great Catch-22 of fighting while enmeshed in a culture that holds different reciprocity expectations.

U.S. Justice Potter Stewart has written that, "The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society of government by law. When people begin to believe that organized society is unwilling to impose upon criminal offenders the punishment they 'deserve,' then are sown the seeds of anarchy—of self-help, vigilante justice and lynch law."⁷¹³ It is discrimination and the Social Trinity that stands in the way of this. It is also important to keep in mind, although we will cover it more in the next chapter, that the Other is equally motivated by a lack of reciprocity.

Victims Enable Violence

The presence of victims thus enables the mobilization of violence. This is because victims are by definition nonreciprocal. Violence is thus enabled because reciprocity is demanded (by the victim and the social order). It is not the civilian or innocent nature of the target that is most important but the nonreciprocal nature. Thus, it is little surprise that when an attack on a group occurs, it is almost always presented by that group as a non-reciprocal

⁷¹¹ Thomas Ricks, *Fiasco: The American Military Adventure in Iraq* (London: Penguin Press, 2006), 266, citing Birlte, *Counterinsurgency Warfare*.

⁷¹² Lieutenant Colonel James W. Hammond, "Legitimacy and Military Operations," *Military Review* (The Army Ethic 2010), 75.

⁷¹³ J. Stewart, Concurring Opinion, SUPREME COURT OF THE UNITED STATES, 408 U.S. 238, *Furman v. Georgia* No. 69-5003 Argued: January 17, 1972 --- Decided: June 29, 1972
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0408_0238_ZC2.html.

and thus particularly nefarious activity. Pearl Harbor, the USS *Maine*, the USS *Maddox*,⁷¹⁴ the USS *Cole*, and the Pentagon for example, are all military objects and thus could be argued to be legitimate targets. However, the attacks on these objects⁷¹⁵ were all judged (albeit by interested parties) to be nonreciprocal in that the targets were not allowed a chance to defend themselves. Being nonreciprocal, the individuals that died in these attacks are thus victims. Of course attacks on 'our' civilian targets also enable our violence, as this group is permanently nonreciprocal, but the fact that attacks on military targets too mobilize violence indicates that it is not the civilian or innocent nature alone that calls for a response. This further reinforces the conclusion that prohibitions in war, whether discrimination or the various moral codes against surprise attacks,⁷¹⁶ are based upon controlling mimesis.

Violence can only be vented on those we can confidently regard as victimizers.⁷¹⁷ Thus, a group needs victims, something that is greatly facilitated by having a class that cannot or is obligated not to fight back. Bar-Tal notes how it is functional to perceive one's own group as the victim, as it can unite the group.⁷¹⁸ Mack refers to this as the "egoism of victimization."⁷¹⁹ Many Islamic groups also are well aware of the ability "to Become Victims in Order to Gain Victory."⁷²⁰ Just as one example, "Public reaction to the executions in the wake of the 1916 uprising... consolidated the anti-British feelings."⁷²¹ Without these executions, without these victims, the Irish push for independence would likely have been much more tempered (until of course other victims came along). Victimization, because it calls for reciprocity, can mobilize large numbers of people to

⁷¹⁴ President Lyndon Johnson "dramatized Hanoi/Ho Chi Minh as the aggressor and which put the U.S. into a more acceptable defensive posture." Moya Ann Ball, "Revisiting the Gulf of Tonkin Crisis: An Analysis of the Private Communication of President Johnson and his Advisers," *Discourse & Society* 2, no. 3 (1991): 286.

Note that the USS *Maddox* incident was real. A second incident two days later did not actually occur but this is the one which prompted the retaliation (within 30 minutes of the attack this was decided) and the next day Vietnam was bombed.

⁷¹⁵ Even if the *Maine* was not attacked, the explosion was commonly blamed on Spain and so this perception shaped the response.

⁷¹⁶ These are mostly rules requiring declarations of war or, at the very least, an articulation of grievances and demand for reparations from an adversary, thereby ruling out surprise.

⁷¹⁷ Bailie, *Violence Unveiled*, 27.

⁷¹⁸ D. Bar-Tal, "Societal Beliefs in Times of Intractable Conflict: The Israeli Case," *International Journal of Conflict Management* 9 (1998). Section on "Societal beliefs about victimization."

⁷¹⁹ J. Mack, "The Psychodynamics of Victimization Among Groups in Conflicts," in *The Psychodynamics of International Relationships* Vol. 1: Concepts and theories, eds. V.D. Volkan, D.A. Julios, and J.V. Montville (Lexington, Mass: Lexington Books, 1990).

⁷²⁰ George Packer, "Caught in the crossfire: Will moderate Iraqis embrace democracy—or Islamist radicalism?" *The New Yorker*, May 17, 2004. Available at http://www.newyorker.com/archive/2004/05/17/040517fa_fact?currentPage=all.

⁷²¹ M.L.R. Smith, *Fighting for Ireland?* 31.

undertake violence or sanction violence. What must be remembered is that this is as true for the Other as it is for us. This is an issue to which we will return.

Victimizers Enable Violence

Morality has often been used by a group as a dividing practice, a way in which to distinguish the in group from the out group, the self from the other. Those who adhere to one's own moral rules were deemed to be part of civilization, while those who did not adhere to the same codes were automatically considered outsiders. Thus, the immorality of the opponent is always stressed so as to separate them from ourselves, an essential part of enabling their killing. For example, the military ethics refresher course that was provided for soldiers in the wake of Haditha maintained this practice, reminding U.S. troops that "As military professionals, it is important that we take time to reflect on the values that *separate us from our enemies*."⁷²² Yet, of course, the Others engage in similar dividing practices – the Libyan Islamic Fighting Group recently wrote a new 'code' for jihad that insisted "Standing by those (Islamic) ethics is what *distinguishes Muslims' jihad from the wars of other nations*."⁷²³ The purpose of this moral discourse is thus in part to stress to the group that 'our' violence is different than the opponent's violence.

The rules of discrimination are no different. References to respect for non-combatant immunity are often used as a dividing practice to highlight the difference between 'us' and 'them.' While 'we' respect the principle of discrimination, protect the innocent, and women and children, etc., the enemy fails in this regard. Indeed, they are accused of openly targeting these individuals. According to Captain Elbridge Colby's classic *How to Fight Savage Tribes*, among 'savages,' the "lack of discrimination between combatants and non-combatants, (is) in their own as well as in enemy personnel."⁷²⁴ U.S. military doctrine itself refers to unconventional foes as "indiscriminate."⁷²⁵ The Lieber Code, one of the first codifications of the LOW, too engaged in this dividing practice, noting that "barbarous armies" and "uncivilized people" do not protect "the private individual" in war, in contrast to the "modern regular wars of the Europeans, and their descendants in other

⁷²² Army Training Support Center. *Core Warrior Values Training*. Power point presentation: U.S. Army [n.d.] Available at http://www.atsc.army.mil/crc/core_warrior_values_training.pdf, 3.

⁷²³ Paul Cruikshank and Nic Robertson, "New jihad code threatens Al Qaeda," *CNN* [website], November 10, 2009, available at <http://edition.cnn.com/2009/WORLD/africa/11/09/libya.jihadi.code/>.

⁷²⁴ Eldridge Colby, "How to Fight Savage Tribes." *American Journal of International Law* 21, no. 2 (1927): 287.

⁷²⁵ FM 3-24 7-11

portions of the globe.”⁷²⁶ In other words, as it is often presented by parties to a conflict, to be conventional is to be ethical and to be unconventional is to be unethical.

The enemy’s supposed disregard for civilians is what enables our violence. Attacks on civilian targets, on non-combatants, are viewed by many as particularly nefarious acts of violence and thus demanding of a response. As John Yoo puts it, “Al Qaeda violates the very core of the laws of war... Most importantly, they have attacked purely civilian targets with the aim of inflicting massive civilian casualties.”⁷²⁷ President Bush in 2002, reiterating this in a speech remembering the 9/11 attack, saying “More than anything else, this separates us from the enemy we fight. We value every life; our enemies value none — not even the innocent...”⁷²⁸

The enemy is presented as embracing the negative aspects of the Remarkable Trinity as a way of war – driven by violent hatred and ancient enmity and irrational or primitive in their thinking. They are “like children who allowed their passions to rule their behavior”⁷²⁹ and “uniformly actuated by a savage and destructive spirit.”⁷³⁰ According to Megret, “These shortcomings among ‘savages’ — non-distinction, cruelty, imbecility — lead to a final unifying point (common to international law generally), which was that, in addition to the fact that they were of course not parties to the relevant treaties, no reciprocity could realistically be expected from them.”⁷³¹ Thus, an enemy is presented as choosing “not his adversary, but his victim, and is an assassin.”⁷³² The fact that this is used as a dividing practice is important but this does not mean we are making up the negative traits. The importance cannot be denigrated, for the reason we attribute this to the Other is because it helps create a condition where our society will aim to not reflect the trait.

⁷²⁶ Lieber Code, article 24, 25.

⁷²⁷ John C. Yoo and James C. Ho, “International Law and the War on Terrorism,” *Berkeley Center for Law, Business and the Economy* (August 1, 2003), available at <http://www.law.berkeley.edu/files/yoonyucombatants.pdf>, 10.

⁷²⁸ George Bush, Jr. “Bush’s Sept. 11 Address to America.” *ABC News* [website]. September 11, 2002, available at <http://abcnews.go.com/US/story?id=91249&page=1#.UCvj6FZIQkI>.

⁷²⁹ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge, Cambridge University Press, 2004), 76.

⁷³⁰ Edward Gibbon, *History of the Decline and Fall of the Roman Empire* (London: Strahan & Cadell, 1776-1789), available at *Christian Classics Ethereal Library* database:

<http://www.ccel.org/g/gibbon/decline/home.html>.

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⁷³¹ Frederic Megret, “From ‘Savages’ to ‘Unlawful Combatants’: A Postcolonial Look at International Humanitarian Law’s ‘Other,’” in *International Law and Its ‘Others’* edited by Anne Orford, 265-317 (Cambridge: Cambridge University Press, 2006), 285, 286.

⁷³² du Picq, *Battle Studies*.

Justify Violence through Reciprocity

The *ad bellum* principles of JWT and the laws of war have long emphasized reciprocity seeking as the sole just cause for war. According to James Turner Johnson, there have historically been three justifications for war: defense of rights against aggression, recovery of something that has been taken away, and punishment for acts committed.⁷³³ All of these are reactive, or mimetic, in character. They aim to mimic so as to restore balance and the reason they have this objectives is that non-mimetic events are dangerous. Legitimacy, which can mobilize violence, is to some extent based upon the reactive nature of our violence.

Throughout history there have been many cultures in which revenge (conceived as reciprocity) is one of “the most important duties in life”⁷³⁴ and this persists in some cultures even today. The individual who engaged in such practices would be positively sanctioned, “regarded as a brave hero and could be assured of having the applause of the broader community, which not only tolerated the compensation of the blood guilt on one’s own initiative, but rather nearly demanded it of him.”⁷³⁵ In contrast, those who did not carry out revenge when it was demanded would be negatively sanctioned.

Referencing reciprocity and moral justice has long provided a way in which to overcome aversions to killing. In the *Illiad*, for example, a prisoner “endeavoured to soften his captor’s (Menelaus’) heart. And indeed Menelaus was just about to tell his squire to take him off to the Achaean ships, when Agamemnon came running up to remonstrate his brother. ‘My dear Menelaus,’ he said, ‘why are you so chary of taking men’s lives? Did the Trojans treat you as handsomely as that when they stayed in your house? No... The justice of this made Menelaus change his mind.”⁷³⁶

The appeal to reciprocity is a primary mechanism for mobilizing violence because all peoples and groups have a need for reciprocity (the fact that this need can be satisfied in

⁷³³ James Turner Johnson, *Can Modern War Be Just?* (New Haven and London: Yale University Press, 1984), 49.

⁷³⁴ Scott Atran and Robert Axelrod, “Reframing Scared Values,” *Negotiation Journal* (July 2008): 228; Keen notes that during the Middle Ages, this was “not only a right; it was a positive duty,” Keen, *The Laws of War*, 225; “If a Pashtun man is dishonored, he must avenge that dishonor “or he will lose face and social status to the point of becoming an outcast.” Thomas H. Johnson and M. Chris Mason, “No Sign Until the Burst of Fire,” *International Security* 32, no. 4 (2008): 63.

⁷³⁵ Waldmann, “Revenge,” 438.

⁷³⁶ Homer, *The Illiad*, 118.

other ways is of course often ignored by those who reach first for the sword). This is true even of non-state ‘terrorist’ organizations. Osama Bin Laden has justified Al Qaeda’s attacks in such terms, saying that “What happened on 11 September [2001] and 11 March [the Madrid train bombings] is your commodity that was returned to you.... *Reciprocal* treatment is fair and the one who starts injustice bears greater blame.”⁷³⁷ ⁷³⁸ Although we may argue with this conception of reciprocity, it is important that even these self-declared enemies of the West draw on the concepts of reciprocity in order to try to convince people to use violence. It is thus not culturally bound, something we already could have expected given the universality of the Golden Rule. In addition, we begin to get the sense that even those who we may claim need no justification, actually do need justification.

Even Hitler, who is commonly perceived as having waged a war of “naked aggression,”⁷³⁹ mobilized the violence of the Third Reich by appealing to what had been done to Germany, claiming that Versailles was “an act of highway robbery” against the German People.⁷⁴⁰ Indeed, there is little doubt that the Versailles stipulations were overly punitive and therefore were very likely to give rise to a response. The Allies demand that somebody be held responsible for the war and the deaths of millions was not reconcilable with the same feelings on the other side of World War I. As Jay Winter notes, “Revenge

⁷³⁷ “Full text: ‘Bin Laden tape’,” *BBC News*, April 15, 2004. Available at http://news.bbc.co.uk/1/hi/world/middle_east/3628069.stm.

Osama bin Laden’s 2002 *Letter to America* stated similarly that: “Why are we fighting and attacking you? The answer is very simple: because you attacked us and continue to attack us.” It went on to argue, “Allah, the Almighty, legislated the permission and the option to take revenge. Thus, if we are attacked, then we have the right to attack back. Whoever has destroyed our villages and towns, then we have the right to destroy their villages and towns. Whoever has stolen our wealth, then we have the right to destroy their economy. And whoever has killed our civilians, then we have the right to kill theirs. (Translation available at <http://www.guardian.co.uk/world/2002/nov/24/theobserver>).

⁷³⁸ Similarly, Al Qaeda spokesperson Sulayman abu Ghayth has written that: “Those killed in the World Trade Center and the Pentagon were no more than a *fair exchange* for the ones killed in the al-‘Amiriya shelter in Iraq, and are but a tiny part of the exchange for those killed in Palestine, Somalia, Sudan, the Phillipines, Bosnia, Kashmir, Chechnya, and Afghanistan... We have not reached *parity* with them.” Middle East Media Research Institute, www.memri.org, No. 388 in the “Special Dispatch Series.” Ghayth goes on to explain the numbers required for such parity, writing: “We have the right to kill four million Americans, two million of them children, and to exile twice as many and wound and cripple hundreds of thousands. Furthermore, it is our right to fight them with chemical and biological weapons, so as to afflict on them with the fatal maladies that have afflicted the Muslims because of chemical and biological weapons.”

⁷³⁹ Whitney R. Harris, “Aggressive War,” speech, The Robert H. Jackson Center, October 1, 2004. Available at <http://www.roberthjackson.org/the-man/speeches/articles/speeches/speeches-related-to-robert-h-jackson/the-crime-of-waging-aggressive-war/>. Cites that Roosevelt, Hull, Welles, and Stimson had all believed this.

⁷⁴⁰ Adolf Hitler, *Mein Kampf*, translated by Ralph Manheim (Boston, MA: Houghton Mifflin, 1943).

and reconciliation are incompatible. They tried both and got neither.”⁷⁴¹ Thus, Hitler was appealing to many Germans because he claimed to be achieving reciprocity.

The appeal to reciprocity, in short, allows leaders to use violence for their ends and it seems almost too easy. There is always a rationale to resort to violence and it is always justified as a response, even if the ‘initial’ event does not exist,⁷⁴² occurred generations ago, or was an accidently slight.⁷⁴³ There is a tendency for all belligerents to perceive themselves as responding, thus “Each warring party is at once aggressor and aggressee each claiming at the same time to be the sole victim of the other’s aggression.”⁷⁴⁴ In the event that it is apparent which party was the first to use direct violence, it will still be a response to violence done against them in the cultural or structural domains. Thus, Iraq was responding to Kuwait’s economic warfare and Argentina to the British seizure of the islands, albeit 150 years prior. However, the interpretive framework of mimetic reciprocity does not legitimize all these actions. For example, Iraq’s rationale for invading Kuwait in 1990 was accepted by almost nobody, and thus quickly reversed. In addition, the failure of the US to convince other nations that it was responding to actions by Iraq in 2003 limited the amount of cooperation received by Washington and thus negatively impacted the war effort.

The fact that we must justify our violence in this manner tells us something about the power of the appeal to a lack of reciprocity to mobilize a response and about the purpose of our violence – to achieve reciprocity. One of the most essential evaluation metrics for legitimacy is “the identification of who is responsible for the violence” and this

⁷⁴¹ Jay Winter, “Hitler on the Versailles Treaty,” *The Great War and the Shaping of the Twentieth Century*, PBS http://www.pbs.org/greatwar/historian/hist_winter_22_hitler.html

⁷⁴² Frank Tallett, “Barbarism in War: Soldiers and Civilians in the British Isles, c.1641-1652,” in *Warriors Dishonour: Barbarity, Morality, and Torture in Modern Warfare* edited by George Kassimeris, 101-112 (Hampshire: Ashgate Publishing, 2006), notes how British actions in Ireland were justified by reciprocity even if the events being rectified were largely made up.

Something the actions are not invented but simply rumor that proves unfounded. For example, the case of the Koran burning at U.S. detention facilities, which proved not to be true, led to very tangible violence – riots and deaths.

⁷⁴³ As Waldmann notes, “There is always an earlier bloody deed or presumed offense that can be used as the justification for an aggressive act.” Waldmann, “Revenge Without,” 446, 447.

⁷⁴⁴ Trutz von Trotha, “When Defeat is the Most Likely Outcome: The Future of War in the Twenty-first Century” in *War and Terror in Historical and Contemporary Perspective* edited by Michael Geyer. Harry & Helen Gray Humanities Program Series, Volume 14 (American Institute for Contemporary German Studies, The Johns Hopkins University Press, 2003), 89.

Girard makes a similar observation, writing that “the fact that no one ever feels they are the aggressor is because everything is always reciprocal.” Girard, *Battling*, 18.

identification is usually pointing the finger at another.⁷⁴⁵ Indeed, it is accurate to say that there is a sociological need for individuals and groups to believe themselves to be acting reciprocal – to be responding.

How the Surrogate Saves Society

Considering the above outlined danger of individual violence, it is clear that the surrogate mechanism that creates the soldier is vital for group life. While all prohibitions will relate to mimetic violence, Girard highlights the surrogate victim as being the most essential. He goes as far as saying “humanity’s very existence is due primarily to the operation of the surrogate victim...”⁷⁴⁶ This is because the transference of reciprocal obligations to a limited number of individuals is essential for a group, as it limits the potential for mimetic crises to plunge the group into violence.

According to Girard, the surrogate victim “is a substitute for all members of the community, offered up by the members themselves. The sacrifice serves to protect the entire community from its own violence; it prompts the entire community to choose victims outside itself.”⁷⁴⁷ Thus, we can see that the Social Trinity serves not first, and perhaps not even primarily, to mitigate the violence of the Other (something which we can never be certain of accomplishing) but to control our own violence even as we use violence against others.

The surrogate mechanism is responsible for the transformation of bad violence into good.⁷⁴⁸ It is the soldiers’ very existence that makes good and social violence possible. It is not the surrogate victim or victimizer that is actually responsible but *the division itself* that is created by the surrogate mechanism, the separation of violence from the community and the control of that violence. By designating only a small part of the group as being allowed to use violence, the core of the group is protected. Death rates in the modern era are lower than those in the past⁷⁴⁹ because “In prestate societies all men are warriors, and all women are vulnerable. In state societies, by contrast, fewer people are directly exposed

⁷⁴⁵ Amalio Blanco, José Manuel Sabucedo, and Luis De la Corte, “Beliefs Which Legitimize Political Violence Against The Innocent,” *Psicothema* 15, no. 3 (2003): 550.

⁷⁴⁶ Girard, *Violence*, 221.

⁷⁴⁷ *Ibid.*, 8.

⁷⁴⁸ *Ibid.*, 86.

⁷⁴⁹ Richard Wrangham, “Killer Species,” *Daedalus* (Fall 2004); Steven Pinker, *The Stuff of Thought: Language as a Window into Human Nature* (London: Penguin Books, 2007).

to violence because armies fight on behalf of the larger group.”⁷⁵⁰ This representation of early groups may be slightly idealized, but the sociological logic is sound – the fewer people directly exposed to violence (the more we can separate from war) the lower the death rate. Thus, the extent to which a society can accomplish the task of dividing people from war will give in an advantage in war.

While ideally the immune will be protected from dying in war, this of course cannot be ensured. However, even if they cannot be protected from dying, then at least they will be protected from killing. This perhaps is, in the end, the only benefit of which we can be sure. Civilians or others designated as immune may not be able to always be saved from dying but they can at least be saved from killing and this is to the benefit of the group, keeping all from having access to violence and keeping killing morally exceptional (unusual).

In his analysis of the Clausewitzian Remarkable Trinity, Herberg-Rothe notes in near Girardian terms that without the rules of war “every warring community or society would internally disintegrate. The outward exercise of violence would no longer have any boundaries that could protect the inner community.”⁷⁵¹ What he fails to note, forgivably given that his focus is on the Remarkable Trinity and not the conventions of war, is that the Social Trinity is the rule par excellence. As such, the Social Trinity is what keeps societies from internally disintegrating and marks the boundary between outward violence and the inner, peaceful community.

In the words of a delegate who opened the preparatory conferences for Additional Protocol I, “‘the distinction between armed forces and civilians was a basic element of the law of armed conflict *and* an essential principle of civilization,’ without which ‘there would be a return to barbarism.’”⁷⁵² While of course we must recognize that the reference to barbarism is often used as a dividing practice, this statement actually touches on the very function of discrimination.

⁷⁵⁰ Wrangham, “Killer Species,” 30.

⁷⁵¹ Herberg-Rothe, “Clausewitz’s,” 212.

⁷⁵² Kinsella, “Gendering Grotius,” 184, and Mr. Bindschedler, delegate from Switzerland. 1974. “Opening Comments” CDDH/SR 13, 137-8.

Bellamy writes that “it would be difficult – if not impossible – to distinguish meaningfully between war as a social practice and mass murder/brute force if it were considered permissible to kill non-combatants deliberately in some circumstances.”⁷⁵³ Part of the reason that we consider war an acceptable practice is that we do not intentionally kill those who do not deserve to be killed. Thus considered, it is the division created by discrimination that in turn creates war and divides it from violence. Inversely, the essence of violence is that it involves all in a mimetic crisis.

This idea has actually been captured by those who attempt to distinguish, rightly or wrongly, war from other violent activities. According to Shaw, “The focus on civilian enemies demarcates genocide from war and defines its comprehensive immorality and illegality.”⁷⁵⁴ The exclusion of genocide from the category of war thus is predicated on the lack of discrimination – it involves all in violence.

Social Trinity Keeps Violence from the Group

There are clear cases that demonstrate how the Social Trinity, which creates an army distinct from the people and commanded by a government, helps to keep violence contained. The role of the non-state military combatant in the Iraq insurgency, for example, has had troubling implications for the region. Not having been incorporated into a well-formed military organization and lacking proper reintegration leaves the countries they return home to at risk – open to being infected by violence. As early as 2005, Paul Rodgers (citing a *Weekly Defense News* story of young men who had fought in Iraq and were subsequently detained after violent incidents in Saudi Arabia, Kuwait and Qatar) was warning of “the potential regional ramifications of jihadists fresh from Iraq arriving home and ready to implement changes in their home country.”⁷⁵⁵ More recently, Strategic Forecasting, Inc. reiterated its belief that there will be a “boomerang effect” as foreign jihadists return home.⁷⁵⁶ Countries such as Syria, Saudi Arabia, and Yemen are struggling to keep the violence of Iraq out of their own countries. Without having been incorporated into formal military forces, there is no barrier to the mimetic violence.

⁷⁵³ Bellamy, *Just Wars*, 133.

⁷⁵⁴ Shaw, *What is Genocide*, 194.

⁷⁵⁵ Paul Rogers, *A War Too Far: Iraq, Iran and the New American Century* (London: Pluto Press, 2006), 254. Originally in Paul Rogers, “Iraq’s State of Insecurity,” *Open Democracy*, April 20, 2005, available at http://www.opendemocracy.net/conflict/article_2444.jsp.

⁷⁵⁶ Scott Stewart and Fred Burton “Algeria: Taking the Pulse of AQIM” (24 June 2009) *Global Security and Intelligence Report*, STRATFOR, http://www.stratfor.com/weekly/20090624_algeria_taking_pulse_aqim.

This is all a particular danger in the wake of the Arab Spring, for democracy is not the certain result here (if one considers that ideal). In Libya, for example, “the role of former LIFG members and fighters with experience in Iraq, Afghanistan and elsewhere in combating Qadhafi is without doubt.”⁷⁵⁷ Their interests in the post-Qadhafi order are ambivalent at best. It is not simply a matter of ideology but the fact that the returning fighters will lack jobs, social networks, security, and a feeling that they have been rewarded or remembered for their efforts (which of course they would see as good even if the fight ended in a mixed result). The ongoing chaos in Libya is a clear indication that overthrowing the old regime should not be considered as having yet led to a victory for any side. Until a new legitimate reciprocal authority and arm are established, or stated otherwise, until a Social Trinity can be created, the nation will continue to be wracked by violence.

Thus, we see the value of having a tightly controlled class that fights wars. To lack this is to let mimetic violence return to the community. However, even a formal and stable military organization can infect their group with violence. This is why the moral-legal division has accompanying rituals that ensure the solidity of the division. These take place both when a soldier leaves society to go to war and once they return. Richard Gabriel observes that “primitive societies often require soldiers to perform purification rites before allowing them to rejoin their communities...”⁷⁵⁸ These reintegration rituals are needed because soldiers do change from their experiences and the violence which is now part of them must be expunged in order that the community remains safe. Without this barrier, there is a very real risk that the violence of the war will be brought home. This is not simply a problem for unstable societies but Western nations as well, as is evident by the linkage between veterans and extremist groups and even domestic terrorism in the United States.⁷⁵⁹

⁷⁵⁷ Aaron Y. Zelin and Andrew Lebovich, “Assessing Al-Qa`ida’s Presence in the New Libya” *Combating Terrorism Center*, March 22, 2012, available at <http://www.ctc.usma.edu/posts/assessing-al-qaidas-presence-in-the-new-libya>;

David Wood, “Anti-American Extremists Among Libyan Rebels U.S. Has Vowed To Protect,” *Huffington Post*, March 19, 2011, available at http://www.huffingtonpost.com/2011/03/19/extremists-among-libya-rebels_n_837894.html.

⁷⁵⁸ Richard Gabriel, *No More Heroes: Madness and Psychiatry in War* (New York, Hill and Wang, 1987):155, 156; Arthur Hadley, *The Straw Giant: America’s Armed Forces: Triumphs and Failures* (New York, NY: Avon Books, 1987), and Grossman, *On Killing*, also make this point. A major focus of all three was the U.S. failure to reintegrate its soldiers after Vietnam.

⁷⁵⁹ Kathleen Belew, “Theaters of War: Paramilitarism, Mercenaries, and the Racist Right from Vietnam to Oklahoma City.” Ph.D. Dissertation, Yale University, 2011.

While a lack of support from one's own people can be bypassed through the use of nontraditional combatants, such forces often work against group interests. This was arguably the case when Russia used *kontraktniki* in Chechnya⁷⁶⁰ and certainly the case when Israel employed the Haddad militia in Lebanon.⁷⁶¹ There have been similar problems with the private military contractors in Iraq. One recent article noted that "a failure to coordinate among contractors, coalition forces and Iraqi troops, as well as a failure to enforce rules of engagement that bind the military, endangered civilians as well as the contractors themselves. The military was often outright hostile to contractors, for being amateurish, overpaid and, often, triggerhappy."⁷⁶²

It is important to note that while, from a state government's perspective, there may be good (state-sponsored) militias and bad (anti-state) militias, the fact is that they all degrade the rule of law⁷⁶³ and erode the strength of the Social Trinity. They may help oust an unwanted government, as the KLA did in Kosovo and the numerous militias did in Libya, but their nature means that they will infect the 'post-war' world with violence. This is because they blur the line between official and unofficial violence, making it harder to control and making it uncertain who has the authority to order the use of violence. In these cases, it is actually very likely the violence will continue until a clear Social Trinity divide can be established.

While asymmetric strategies undoubtedly have advantages and will see continued use,⁷⁶⁴ those who use the strategy are unlikely to have sustained success. They may be able to drive out foreign soldiers but because they did not draw lines to keep the violence removed from the group, they are unlikely to achieve their other objectives. This is why so many insurgencies end with a further civil war even once the government forces are defeated.

⁷⁶⁰ John B. Dunlop and Rajan Menon, "Chaos in the North Caucasus and Russia's future," *Security* 28, no. 2 (2006): 111.

⁷⁶¹ Kahan Commission Report. "The decision to have the Phalangists enter the camps was taken with the aim of preventing further losses in the war in Lebanon; to accede to the pressure of public opinion in Israel, which was angry that the Phalangists, who were reaping the fruits of the war, were taking no part in it; and to take advantage of the Phalangists' professional service and their skills in identifying terrorists and in discovering arms caches."

⁷⁶² James Glanz and Andrew W. Lehren, "Use of Contractors Added to War's Chaos in Iraq," *The New York Times*, October 23, 2010, available at

http://www.nytimes.com/2010/10/24/world/middleeast/24contractors.html?pagewanted=all&_r=0.

⁷⁶³ Thomas S. Mowle, "Iraq's Militia Problem," *Survival* 48, no. 3 (2006): 55.

⁷⁶⁴ The Defense Science Board wrote in a 1997 report that "the military asymmetry that denies nation states the ability to engage in overt attacks against the United States drives the use of transnational actors." Johnson, *Blowback*, 9.

Social Cohesion Controls Violence

As S.L.A. Marshall observes, “In battle, you may draw a small circle around a soldier, including within it only those persons and objects which he sees or which he believes will influence his immediate fortunes. These primarily will determine whether he rallies or fails, advances or falls back.”⁷⁶⁵ This sort of combat driven myopia means that battle will often be fought without regard to the larger strategic picture. This is particularly true when the soldier or the unit is isolated from the larger whole, which they routinely will be, physically at the least.

It has been observed that if one’s social system, for example the nation, is not able to provide self-esteem, this can result in an individual’s “retreat to a smaller social system.”⁷⁶⁶ Similarly, if meaning and legitimacy are not forthcoming from a larger social system, individuals will seek these out through other groups. For an inner-city youth, this may be a gang but for a soldier on the front line it will be the unit. In these cases, those in combat will naturally give preference to their own interests, as it is these that are most pressing.

Robert MacCoun first outlined an increasingly accepted distinction between two types of cohesion – social and task. Social cohesion is the result of emotional bonds while task cohesion is due only to the commitment to the mission itself. According to MacCoun, task cohesion is what results in success while social cohesion has little impact and could even have a negative effect.⁷⁶⁷ Gabriel and Savage note that, “cohesion between soldiers without the proper norms can work against organizational goals.”⁷⁶⁸ The result can be fragging, groupthink, or combat avoidance.

However, one cannot totally dismiss social cohesion as it is this that links units to a larger organization which provides direction.⁷⁶⁹ Primary group social cohesion within the

⁷⁶⁵ Marshall, *Men Against*, 154.

⁷⁶⁶ Daniel Schäppi, “Cultural Plurality, National Identity and Consensus in Bhutan,” *CIS Working Paper No. 6*, Center for Comparative and International Studies (ETH Zurich and University of Zurich: 2005), 10.

⁷⁶⁷ MacCoun, “What is Known,” 298.

⁷⁶⁸ Richard A. Gabriel and Paul L. Savage, *Crisis in Command: Mismanagement in the Army* (New York: Hill and Wang, 1978) 43. The fragging data is from 1969-72.

⁷⁶⁹ James Griffith, “Further Considerations Concerning the Cohesion-Performance Relation in Military Settings,” *Armed Forces and Society* 34, no. 1 (2007): 141; James Griffith and Mark Vaitkus, “Relating Cohesion to Stress, Strain, Disintegration, and Performance: An Organizing Framework,” *Military Psychology* 11, no. 1 (1999): 30. (From Lehrke, J.)

immediate unit is accompanied by secondary group cohesion. It is this secondary group, Siebold notes, that “provides a general sense of purpose and meaningfulness that is linked to the larger (usually national) society and culture.”⁷⁷⁰ Thus, this “secondary group operates to prevent *ennui* or meaninglessness.”⁷⁷¹ In other words, it provides the purpose for the violence.

Military sociologist Charles Moskos asserts that cohesion will “maintain the soldier in his combat role only when he has an underlying commitment to the worth of the larger social system for which he is fighting.”⁷⁷² In a manner, the motivation must in part come from society, for the small groups that exist within the war itself do not exist prior to the war. Thus, the small group cohesion and the desire to watch out for one’s buddies could not compel one to enter the ranks and march to battle. Only social coercion or commitment of some type, whether by brute force or internalized moral authority, could motivate men as war begins. This requirement for social bonds seems likely considering that the soldier’s role is to defend the larger social system and thus the group beyond the military cannot be entirely disregarded. It must at least be present in the practice and structure of war to ensure that the soldier does not act to the detriment of the larger group.

The commitment to the whole will of course be challenged as other instincts, such as self-preservation, assert themselves, but moral bonds to the larger group will remain in most circumstances. If they did not, war would cease to be a fully social activity. It would instead be a collection of unconnected small unit activities. The impulses of the small group could then lead in any direction, most likely in a direction that looks out solely for the interest of the small group or even the individual. If it were only small group cohesion that enabled men to kill and die in war, they could do so in a way that could be discordant with all other aims of war. Self-interest may come to dominate. At the strategic level it is even more important to always keep in mind the social order. Organizational survival cannot be a priority. The military cannot become an autonomous survival unit. This would result in a total disconnection between the military, the government, and the people.

⁷⁷⁰ Guy L. Siebold, “The Essence of Military Group Cohesion,” *Armed Forces and Society* 33, no. 2 (2007): 290. On how “the institution that mediates between the individual soldier and the army as well as the state” see also Uzi Ben-Shalom, Zeev Lehrer, and Ben Eyal-Ari, “Cohesion During Military Operations: A Field Study on Combat Units in the Al-Aqsa Intifada,” *Armed Forces and Society* 32, no. 1 (2005): 65.

⁷⁷¹ Mikael Salo and Guy L. Siebold. *Cohesion components as predictors of Performance and attitudinal criteria*. Presentation to the International Military Testing Association, October 2005. Available at <http://www.internationalmta.org/Documents/2005/2005102P.pdf>.

⁷⁷² Charles C. Moskos, Jr., *The American Enlisted Man: The Rank and File in Today's Military* (New York: Russell Sage Foundation, 1970), 147.

Thus, an individual or even a unit in war does not have an unlimited right to kill. If they did, control of the violence would quickly cease and the objectives of war would be lost in a melee of individual reciprocal actions. Thus, “freedom from the point of view of each single unit is anarchy in an ungoverned system of those units.”⁷⁷³ In order to mitigate this chaos, the freedom of the individual actors has to be limited. They have to be controlled.

Conflicting interest in war are a major concern, as an individual goals cannot be allowed to trump group goals. This is true for the individual soldier vis-à-vis his or her unit, the units vis-à-vis the military as a whole, and the military vis-à-vis the nation. As Clausewitz states, “what is true at one level may not be at the one higher.” It may be true that an individual soldier would best served by shooting a suspicious figure with a shovel but this would not be best for the army as a whole, which sends patrols through that person’s home town each day. In short, the survival units in war may have different needs. The morality of war will help manage these tensions.

Coercion is not as effective at building and maintaining cohesion as moral commitments. For example, “Iraqi Regular Army soldiers were motivated by coercion... Their behavior was driven by fear of retribution and punishment by Baath Party or Fedayeen Saddam if they were found avoiding combat.”⁷⁷⁴ There were no ties of sentiment between the regime and the bulk of the regular forces. Thus, when they were isolated, and had no reason to fear Saddam’s retribution, their interests in survival compelled not resistance to the coalition forces but surrender.

A moral relationship, in contrast opens up different tactical and strategic opportunities. For example, in the 18th century, there was a perception (based in a reality that was a direct result of the social system) that “Soldiers could not be trusted as individuals, or in detached parties, or out of sight of their officers.”⁷⁷⁵ This dictated many activities. It meant keeping soldiers in tight formations (which were becoming increasingly vulnerable to the ability of

⁷⁷³ Schmookler, “The Parable,” 5.

⁷⁷⁴ Leonard Wong, Col. Thomas A. Kolditz, Lt. Col. Raymond A. Millen and Col. Terrence M. Potter, “Why They Fight: Combat Motivation InThe Iraq War,” *Strategic Studies Institute* (July 2003), The U.S. Army Professional Writing Collection, available at http://www.army.mil/professionalwriting/volumes/volume1/september_2003/9_03_1.html.

⁷⁷⁵ R.R. Palmer, “Frederick the Great, Guibert, Bulow: From Dynastic to National War,” in *Makers of Modern strategy: from Machiavelli to the Nuclear Age* edited by Pater Paret, 91-122 (Oxford: Oxford University Press, 1986), 93.

firearms) and rarely marching at night or near wood lines. However, by bonding these soldiers to the social system, more decentralized operations became possible. The nation-state has made possible the fully volunteer professional army, one bonded to the group in a manner that helps ensure their control.

Legitimacy Controls Soldiers

Walzer notes that "...one of the things most of us want, even in war, is to act or to seem to act morally."⁷⁷⁶ The key here is that even if we do not act morally, we want to be perceived as acting in such a manner. Even if we accept that some soldiers enjoy or come to enjoy killing (which is likely true), it is just as true that most are loath to admit it. In examining narratives of the Napoleonic Wars, Philip G. Dwyer observes that "the act of recalling past campaigns and the horrors that went with them almost never equated to an individual admittance of having taken part in massacres, atrocities or rape... Indeed, there are not too many direct references to killing, even in the course of battle."⁷⁷⁷ Why is this? As Bourke notes, "To describe combat as enjoyable was like admitting to being a bloodthirsty brute..."⁷⁷⁸ It is important to consider why there is a reluctance to present the truth of the matter, as it can provide an indication of why morality is useful. Why do those in war feel they must amend the narrative?

The reason a soldier wants to be perceived of as moral is because he is reliant on society to approve his actions. This approval will be forthcoming only if the soldier's actions are in line with the mores of his group. Thus, for an individual, the utility of acting morally (or appearing to) is receiving moral applause. This moral approval makes it possible to kill and remain part of society, to be accepted back with praise and ticker tape parades. Failure to achieve legitimacy leaves one outside the group and once outside the group, one is subject to retaliation and reciprocity without protection of the larger whole. This approval is vital even if the soldiers are facing death since legitimacy is required to gain immortality should they fall.

⁷⁷⁶ Walzer, *Just and Unjust*, 20.

⁷⁷⁷ Philip G. Dwyer, "It Still Makes Me Shudder' Memories of Massacres and Atrocities during the Revolutionary and Napoleonic Wars," *War in History* 16, no. 4 (2009): 392-393.

⁷⁷⁸ Bourke, *An Intimate History*, Chapter 1, opening page.

According to Steven Pinker, “We influence people by holding them responsible for the effects they cause.”⁷⁷⁹ The power of legitimation and ability to sanction thus provides society a level of control over the soldier. It is an enforcement mechanism to prevent actions that would run counter to the group’s interests. Thus, legitimation at least partially solves Feaver’s problematique.

The power of legitimation to a large extent can keep soldiers in battle. Military historians such as Keegan have noted that a soldier’s actions will in part be determined by their “fear of incurring by cowardly conduct the group’s contempt.”⁷⁸⁰ Military institutions are to some degree set up so as to ensure that soldiers are put in positions that very likely could mean their deaths. Michael Herr, in *Dispatches*, notes that the U.S. Marines are “called by many the finest instrument ever devised for killing young Americans.”⁷⁸¹ However moral rules can play an equally strong role in killing a generation of youth. When confronted with life-threatening situations “many individuals have found such self-sacrifice the only course of action morally open to them.”⁷⁸²

In war, it has always been of primary importance to ensure that a soldier was observed, so that proper recognition could be given (Roman formations for example) but also to prevent duties from being avoided (such as running away). But war is not a panopticon and this oversight is not always possible. Where can one build a tower so as to provide constant observation? Morality is the best commander because it is always present and always observing. If we can instill in soldiers a morality that makes them willing to die and willing to kill under the appropriate guidelines, and quick to hold fire as well when required, then there will be no point on the battlefield where disobedience to that commander is possible.

Thus the relationship between the individual and the group is not guaranteed by coercive force alone, although this may be present. The primary enforcement mechanism, the most ideal as well, is a moral authority, which in this case is synonymous with legitimacy. According to Durkheim, society is a moral authority,⁷⁸³ although it might be more accurate

⁷⁷⁹ Steven Pinker, *The Stuff of Thought: Language as a Window into Human Nature* (London: Penguin Books, 2007), 228.

⁷⁸⁰ John Keegan, *The Face of Battle* (London: Penguin Books, 1976), 53.

⁷⁸¹ MacPherson, *Long Time*, 70.

⁷⁸² Frederick Struckmeyer, “The ‘Just War’ and the Right of Self-Defense,” *Ethics* 82, no. 1 (1971): 277.

⁷⁸³ Durkheim, *Moral Education*, 90.

to say that society strives to be a moral authority. By this we mean that it should be able to prompt individuals to take certain actions without the need for constant observation and coercion. Freud describes this process as a sort of war in which, "Civilization... obtains mastery over the individual's dangerous desire for aggression by weakening and disarming it and by setting up an agency within him to watch over it, like a garrison in a conquered city."⁷⁸⁴ The transition to activities being undertaken due to consent rather than coercion is an important resources-saving advance for society. We can thus conclude that the power of legitimacy within the Social Trinity must be maintained to ensure effective military action.

The ability to positively or negatively sanction soldiers and leaders (the power of legitimacy) controls them to a degree, ensuring that they defend the group. Legitimacy judgments determine whether to punish, rehabilitate, or repatriate fighters after the war.⁷⁸⁵ The good fighter will be evaluated to have taken part in good activities and thus will be allowed back into the group (since they are not infected with bad violence) and they will be immortalized.

Of course this influence is only possible if there are social bonds between the military and the people, as this allows the evaluation and sanction of the people to hold some influence over the individuals and groups within the armed forces. This explains to some degree why an armed group that is distanced or severed from its support base often seems to increase its use of violence. Such an isolated unit can no longer draw upon the people for legitimacy and a government for meaning. Thus, it seeks these out through other ways, focusing on in-group legitimacy and meaning which naturally tends towards self-interest.

It also is worth noting that the ability of people to effectively sanction the government and military varies. Different social orders will open up different avenues for sanctioning and some may endeavor to eliminate the power entirely. However, all peoples will have some level of sanction available to them, be it ballot boxes or rebellion.

Lastly, it is important to recognize that legitimacy is first an in-group concern. However, once one is engaged with the enemy, they are part of, in a sense, a larger community. This is why legitimacy concerns loom so large in modern asymmetric operations.

⁷⁸⁴ Freud, *Civilization and its Discontents*, 70, 71.

⁷⁸⁵ Brough et al., *Rethinking Just War*, 181.

Legitimacy is Vital to Immortality to Enable Dying

For morality to be maintained, the “shadow of the future” must be long.⁷⁸⁶ Thus, in a supreme emergency, one will be less likely to feel that actions should be reciprocated. The problem is that the supreme emergency is a matter of perception. At the tactical level, individuals in war face it often. This means ensuring that people are involved in an immortality project. If they are not, the moment their lives are put at risk, they will consider themselves to be playing the ‘last game’ and defect to try to preserve their own interests.

As Arendt points out, “The whole factual world of human affairs depends for its reality and its continued existence, first, upon the presence of others who have seen and heard and will remember...”⁷⁸⁷ This is why the legitimacy of our actions matter. If our actions are not remembered, then it is “as though they never had been,”⁷⁸⁸ thus the action would have no utility beyond its physical impact, which will almost always be small in the scope of geography and history. This is why force without legitimacy leaves “behind neither monuments nor stories, hardly enough memory to enter into history at all.”⁷⁸⁹ Once the physical force is gone, it lacks all reality.

Soldiers in war too must know that their appearance in war will be recalled, as this helps them face their mortality. Soldiers in Ancient Greece knew that the only way they could transcend death and continue to exist was through the praise of their deeds by the community.⁷⁹⁰ War is an immortality project because it must be, for if it served only as a *momento mori* to all those involved, it would quickly fail as an activity since individuals would flee from in and seek immortality elsewhere.

The fear of death and attempt to transcend this Thanatophobia is a major theme in one of the earliest known pieces of literature – *The Epic of Gilgamesh*. Early in the story, Gilgamesh must encourage his companion Enkidu to forget his fears yet, after Enkidu’s death, Gilgamesh himself comes to fear death. In order to overcome this fear, he seeks

⁷⁸⁶ Robert Axelrod, *The Evolution of Cooperation* (New York, NY: Basic Books, 2006 [1984]), concept of the “shadow of the future” is present throughout.

⁷⁸⁷ Arendt, *The Human Condition*, 95.

⁷⁸⁸ Ibid.

⁷⁸⁹ Ibid., 202.

⁷⁹⁰ Beidelman, 249.

immortality through his actions, including actions for others, declaring that “If I fall, I will establish my name.”⁷⁹¹

The utility of the immortality project is that it eases the anxiety in the individual in war and makes soldiers more willing to die. The soldier is more willing to die because he has confidence that he will not fully die but be recalled by the group. However, whether a dead soldier is granted immortality depends on his actions conforming to the standards of his group. The utility of the moral codes of war then, for an individual, are as an entry point into immortality. So by adhering to codes, fear is diminished. The promise of immortality then is an enforcement mechanism that enables death and these deaths enable the continuation of the group.

Following this logic, cutting off soldiers from this path to redemption can have violent consequences. Without a connection between soldiers and the larger groups from which they come and to which they will return, war is likely to devolve into raw and random violence. The small unit will be the sole source of meaning and legitimacy for their own activities. This doesn't ensure it will become an immoral band of murderers and rapists, but it is possible and it is certainly more likely that its activities will run counter to the interests of the larger group.

Coordination to Enable Killing and Dying

For violence to be social and the individual to be entirely removed from war, it is essential that the violence be agreed upon by the group and coordinated in a unified manner. As Staub observes, “a single deviation from group behavior can greatly diminish conformity.”⁷⁹² Thus, it can splinter a group, making further action more difficult without the elimination of the deviant. Some will mimic the deviant and other may mimic the original model, with the resulting discord making unified action impossible. Thus, a group must ensure their killing is coordinated.

When an individual takes an action in a group context, he or she is comforted by the fact that others will act in concert with them or at the very least support the action. Indeed,

⁷⁹¹ *An Old Babylonian Version of the Gilgamesh Epic*, edited by Morris Jastrow and translated by Albert Clay (New Haven: Yale University Press, 1920), 22.

⁷⁹² Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge: Cambridge University Press, 1989), 87.

such knowledge makes acting more likely in the first place. Knowledge of the reactions of those around us is a prerequisite for many individuals to take that first step. Many actions would not be undertaken at all if the agent was not sure of being followed, joined, or applauded. In contrast, an individual will be dissuaded from acting if he or she does not expect others to join or believes the action will lead to negative sanctions. Individuals know when they will be joined and when they will be shunned by referring to moral codes and commitments.

Soldiers who are fighting together must agree on who to kill and how to act or unity of effort is impossible. Du Picq has famously illustrated the power of such commitments, writing that “Four brave men who do not know each other will not dare to attack a lion. Four less brave, but knowing each other well, sure of their reliability and consequently of mutual aid, will attack resolutely. There is the science of the organization of armies in a nutshell.”⁷⁹³ These moral commitments help ease the tension between the individuals within the group and between the individuals and the group. Such tensions are most evident in illustrations drawn from alliance interactions. Many international missions, such as those in Somalia and Rwanda, face a difficult problem here because the various contingents often don’t agree on how to act. For example, in air operations over the former Yugoslavia, Canadian and U.S. aircraft could not conduct joint missions because the Canadians “could not be relied upon to respond to some threats, such as anti-aircraft fire coming from a school or hospital, in the same way that US pilots would.”⁷⁹⁴ In other words, the units within a group must have ethical interoperability. This does not mean that they are ethical in any deontological sense of the word but simply that their ethics match one another and so cooperation is possible.

The moral-legal codes of war provide a framework for cooperative action.⁷⁹⁵ The principle of discrimination thus regulates “problems of action in their [a group’s] common interest.”⁷⁹⁶ In particular, it ensures that self-interest and self-preservation do not take priority over the needs of the group.

⁷⁹³ du Picq, *Battle Studies*, 110.

⁷⁹⁴ Byers, *War Law*, 123.

⁷⁹⁵ George R. Lucas, “New Rules for New Wars: Military Ethics and ‘Irregular Warfare,’” Dunbar Lecture, Millsaps College (Jackson, MS), February 22, 2010.

⁷⁹⁶ Habermas, *The Theory*, 88. This observation is made regarding norms in general, not specifically the concept of discrimination, although of course it is applicable to this specific norm.

The uncertainty and chance that is such a dominant tendency of war can be mitigated through rules.⁷⁹⁷ According to Hofstede, “rules are the way in which organization reduce the internal uncertainty caused by the unpredictability of their members’ and stakeholders’ behavior... They try to make the behavior of people predictable...”⁷⁹⁸ By limiting the behavior of individuals, limiting anarchy in a sense, we enable the group to act as a whole. This observation aligns well with the sociology of Durkheim, who believed “... the function of morality is, in the first place, to determine conduct, to fix it, to eliminate the element of individual arbitrariness.”⁷⁹⁹ Military doctrine recognizes as much, with U.S. doctrine for example stating that common standards “inspire the trust which provides the unbreakable bond that unifies the force.”⁸⁰⁰ Marvin and Ingle thus rightly observe that “A strong group is one with a widely shared consensus about who may kill and be killed.”⁸⁰¹ Discord in this area is very destructive to any group.

The primary reason that anybody living in proximity needs agreement on killing when it occurs is to avoid a “war of all against all”⁸⁰² that would result from discord. It was for this reason that communities would unite against a scapegoat, because it prevented the community from devolving into internecine violence. When somebody is authorized to kill, this too we must agree upon. If we do not agree, then the killing is not legitimate to many or even the bulk of the people. As a result, the killer is vulnerable to being sanctioned and will endeavor to avoid this, often through continued violence (thus military regimes that become trapped into continuing oppression). By agreeing on who can be killed and who cannot, and how this killing can be done, a group of individuals can be assured that all will act together (not be individuals) and that those not taking direct action will at least support the activity.

Moral Demarcation

⁷⁹⁷ Hofstede, *Cultures Consequences*, 145. Hofstede also includes technology and ritual, which may be true but is outside our focus.

⁷⁹⁸ *Ibid.*, 147.

⁷⁹⁹ Durkheim, *Moral Education*, 27.

⁸⁰⁰ Army Core Value Training. The presentation also observes that “Morality provides the ability to act in accordance with a shared view of what is right” and “In order to succeed, we must have a set of common goals and guiding principles that we all believe in.”

See also the UK’s Army Doctrine Publication Volume 2 Command, April 1995, paragraph 0218, <http://ids.nic.in/UK%20Doctrine/18aa.pdf>, which states And “trust brings its own rewards for commanders and subordinates alike: it is a vital constituent of the maintenance of morale, and so ultimately, of victory.”

⁸⁰¹ Marvin and Ingle, *Blood Sacrifice*, 71.

⁸⁰² Thomas Hobbes, *De Cive: Philosophical Rudiments Concerning Government and Society*. Constitution Society [website]. 1651. Available at Constitution.org [website]: <http://www.constitution.org/th/decive.htm>, preface.

Of course an essential part of agreement on violence is determining who is going to be killed. The rules of war designate who is 'guilty' so that soldiers know who to kill and will not feel guilty themselves. It doesn't in theory matter if the designated target actually is guilty as long as the perception of their guilt is agreed upon by attacking group (leaders, fighters, and supporters). Knowing who can be killed can provide confidence to soldiers who might otherwise be loath to spill blood. According to one British soldier who had served in Iraq, "We were not scared of opening fire, which is the biggest fear a soldier has, because we knew the rules of engagement."⁸⁰³

Discrimination, a pure and simple moral demarcation, thus enables our use of violence. Major Michael Brough, a professor at the U.S. military academy, rightly observes that "...the combatant-noncombatant distinction sets aside the impossible task... of assessing desert to individual actors."⁸⁰⁴ Instead, the moral culpability of each individual is assigned based upon class within the Social Trinity (or any other variety of categories depending on context and historical epoch). The 'guilty' is supposed to be clearly recognizable, in uniform with recognizable insignia. We have no need to assess his soul or his guilt or his intent, things impossible to do without locking him in a room with a priest, lawyer, and psychologist. The moral demarcation and framework of discrimination frees us of this task. It provides the perception of clarity even if the reality of the situation is very different.

According to Wright, "The psychological need for rule of war springs from the natural dislike of man either to be killed or to kill one of his own species."⁸⁰⁵ The implication here is that the rules help ease the psychological burden, the aversion, by making killing and dying acceptable. Other scholars too observe how the codes of war help ease the killer's burden of killing or simply how ethics in general make us feel "safe" in our choices.⁸⁰⁶ By comporting themselves to the codes, a combatant is able to assert their identity as a good person. Thus, it is not only to save noncombatants that these rules are worked out, but to save the combatants themselves. Yet, arguably of more importance, this saving of the

⁸⁰³ Lance Corporal Karl Dobson, "For some of us, the war is never over," *Herald Express*, November 11, 2009, available at <http://www.thisissouthdevon.co.uk/news/war/article-1502682-detail/article.html>.

⁸⁰⁴ Brough, *Rethinking*, 181.

⁸⁰⁵ Wright, *A Study*, 91.

⁸⁰⁶ Caputo, *Against Ethics*, 5.

"Law makes just wars possible by creating a well-defined legal space within which individual soldiers can act without resorting to their own personal moral codes." Richard C. Schragger, "Cooler Heads: The Difference between the President's Lawyers and the Military's," September 20, 2006, available at www.slate.com/id/2150050/?nav/navoa. (from Dunlap 2009)

combatants' 'goodness' is also helping to protect the society to which the soldiers return. The code keeps soldiers from becoming unmitigated killers who would not hesitate to use violence even within the group.

Moral demarcations have enabled soldiers to kill throughout history, although where this line is drawn of course varies. Susan Niditch observes that the Ancient Israeli practice of the Ban served just such an enabling purpose, writing that "Because all has been promised to God, there is no individual decision that need be made about sparing this person or that, no guilt about tactical or surgical strikes that go awry. All people are condemned and the matter is out of one's hands."⁸⁰⁷ A similar strategy was used by Arnold Amalric during the siege of Beziers in 1209 when he commanded his troops to "Kill them all! God will know his own!"⁸⁰⁸ Such views free the killers of any guilt they may otherwise feel as long as the legitimacy of the demarcation is accepted. The next chapter, however, will show the pitfalls of such a broad categorization.

Conclusion

This chapter has illustrated the way in which the division of power created by discrimination and the Social Trinity work to limit access to violence by individuals. This enables group violence, but ensures it is compatible with group life. More specifically, the discrimination-Social Trinity practice-structure enables limited killing.

First, the discrimination structure contributes to violence by enabling its initiation and continuation. It does so in part through the diffusion of responsibility across the Social Trinity and also by providing a clear moral demarcation of who can and cannot kill and be killed. These, and other factors, combine to allow the taboo against killing to be overcome.

Mimetic violence is also limited and controlled through the practice-structure of discrimination and the Social Trinity. Most importantly, it removes the individual from having access to violence. This is vital because individual violence can be a danger to group life.

⁸⁰⁷ Niditch, *War in the Hebrew Bible*, 50, 136, 137.

⁸⁰⁸ Stephen O'Shea, *The perfect heresy: the revolutionary life and death of the medieval Cathars* (London: Profile Books, 2001), 269. Whether Amalric actually said this or not is actually debated, as the first instance quoting him as doing so came 30 years after the event.

This limiting of the recourse to violence circles back to further enable killing, since the group must respond in the place of the individual in order to control violence. Failure to respond for the individual can lead to that individual seeking to achieve reciprocity themselves. This can then draw the entire group into conflict, either amongst its own members or with another group.

This chapter also observed that the division of the Social Trinity means that bonds are required between the separate social classes. In particular, the fighting class must be bonded to the larger group. If they are not, they will likely prioritize self-interest over group interests. Such bonds enable the government to direct the armed forces but also allow the people some level of control over the soldiers through the power of legitimation. Lastly, the chapter discussed how agreement on the violence is necessary because without this, a group will splinter and could cease to be a unified social entity.

We now turn our attention to how the dynamics of violence directed toward the Other can run counter to military necessity. This will help complete the image of why enabling limited violence, indeed ensuring it remains limited, is best for group interests.

Chapter VI - Limiting the Killing and Dying of Others

Introduction

In the last chapter, we explored how ingroup discrimination, which forms the Social Trinity, enables group killing and simultaneously limits individual access to violence. We now turn our attention to outgroup discrimination. In order to understand the value of this form of discrimination, we need to explore in more depth how the dynamics of violence are indiscriminate. This chapter begins by examining how violence escalates within the social sphere. The resultant mimesis can lead to a loss of focus on objectives, which makes the pursuit of policy nearly impossible. The most dangerous escalatory dynamic is the targeting of indiscriminate surrogates, civilians in particular. This can lead to a strengthening of the enemy group. The targeting of indiscriminate surrogates not only unites the enemy but morally entraps the perpetrator, making victory harder to achieve. This chapter will end by turning our attention to asymmetric warfare and then examining how one's actions enable ones enemies.

Resonance through Social Realm

It was observed earlier that war “belongs to the province of social life.”⁸⁰⁹ This fact guided the methodology chosen for this dissertation, which relies upon the analytical tools of sociology. However, the social nature of war goes on to indicate how we can understand the dynamics of war. It is this social nature that gives war its power. The social nature of war, for example, is how a weapon can extend beyond its purely physical impact, which is often limited when compared to the geographic or demographic scope of a conflict. Even weapons of massive force, capable of killing larger amounts of people, rely on emotions and relationships to extend their power. This can have positive benefits, enabling deterrence and protecting a group, but the emotional range of a weapon can also cause collateral damage in the social realm, expanding the violence to an extent beyond the interests of any party to the conflict.

⁸⁰⁹ Clausewitz, *On War*, Chapter 3, Section 3; “War is a social situation,” says Warner Levi, “a complex of relationships developing out of the interplay of a great many factors.” Werner Levi, “On the Causes of War and Peace,” *The Journal of Conflict Resolution* 4, no. 4 (1960): 417; Cites Quincy Wright and Wilhelm Ropke, as well as his own work.

As an isolated act, the killing of civilians or other atrocities have little impact. The only direct physical results, the only externally obvious effects, are the deaths of those targeted. If one was to look at the result, for example, of the events at Haditha on 19 November 2005, one would see only 25 bodies (one U.S. Marine and 24 Iraqi men, women, and children). These deaths are the only direct effects of direct violence. However, there is social world that runs beneath and is intricately connected to the real physical world. The physical military event is situated “in an interactive (social) context, and pertains to an external result that is invariably linked to the weal and woe of other human beings or a community in the narrower or wider sense of the word.”⁸¹⁰ The social world may not be physical but it is very real, “as much a part of the social totality (the structure human beings are confronted with) as material capabilities.”⁸¹¹ To fail to take this world into account is to ignore a battlefield in a sense.

It is by considering war from this social angle, from the perspective of relationships, that the impact of morality in war becomes more discernible.⁸¹² Morality, after all, guides relationships. In such an interactive context, each action undertaken becomes part of the context for the subsequent actions of not just the self but others. In particular, the social nature of war makes major escalations possible, almost inevitable. This, in turn, can have negative consequences for a group that is using violence.

It is important to understand that the social realm is more mimetic than the physical.⁸¹³ Once action enters the social realm, the physical act is repeated again and again in narratives and imaginations. The event, which happened only once in the physical realm, happens an infinite number of times in the social realm. Events are relived many times. There is a repetitive compulsion as people attempt to grasp or come to terms with the event, to somehow gain some control over the event.⁸¹⁴ Modern media coverage has only enhanced this mimetic compulsion, as coverage of any major event (such as 9-11) makes clear. It is this movement and expansion within the social realm that can result in one

⁸¹⁰ Micewski, “Terror and Terrorism.”

⁸¹¹ Mark A. Neufeld, *The Restructuring of International Relations Theory* (Cambridge: Cambridge University Press, 1995), 76.

⁸¹² Bowyer writes that it is because war is a human business “that it falls within the realm of ethics,” although he does not go on to say the human nature of war means ethics has utility. Daren G. Bowyer, “Challenges to the Military Code of Ethics: How New Wars and New Protagonists Challenge the Concept of Warrior Honour,” paper presented at the *International Society for Military Ethics* conference on *Religion and the Military and The Military Codes of Ethics*, January 26-27, 2007, Springfield, VA, available at http://isme.tamu.edu/ISME07/Bowyer07.html#_edn1. http://isme.tamu.edu/ISME07/Bowyer07.html#_edn1.

⁸¹³ This is purely due to capacity. The realm is not hindered by physical limitations.

⁸¹⁴ Fenichel, *The Psychoanalytic*, 542.

action having near immortality. The action can then lead to reactions from many directions. These will be cultural first but, as we know from our earlier examination of enabling violence, eventually will be mobilized into physical reactions.

Relationships in Escalation

The dynamics of how wars escalate are of course complex.⁸¹⁵ However, this examination need not examine all of the variables that contribute to the tendency. The objective here is simply to demonstrate the value of viewing escalation through the framework of mimetic violence. This will then allow us to better see how prohibitions intended to control mimesis are simultaneously managing escalation.

Escalation emanates from two actors – the perpetrator and the victim – both of which are seeking to mimic the other and achieve their perception of reciprocity. First, the victim of a violent action is often motivated to become a perpetrator of violence or increase their level of violence due to a desire for reciprocity (a need to mimic). The more immoral or illegal (i.e. nonreciprocal) an action is judged to be (and most actions will be judged as such to some extent), the more a victim will seek to bring to justice those it holds responsible or victimize another who will be presented as responsible (surrogates). By responding, they cease to be a victim for they are making the violence reciprocal (although they may of course still claim this title for a while). The response alone will be escalatory from a purely physical point of view but it also is likely to be out of scale due to the partiality of pain. The victim's reciprocity-seeking action will also naturally be perceived by the first perpetrator as excessive, again due to partiality of pain, or even as an original and unjustified aggressive act. The response thus creates a new victim (previously the perpetrator) who will then seek out their own reciprocity.

The second actor in the escalation dynamic is of course the perpetrator. The perpetrators of violent actions on all sides (even without continued victimization by their opponent) are

⁸¹⁵ Some noteworthy studies on the issue include: Barry R. Posen, *Inadvertent Escalation: Conventional War and Nuclear Risks* (Ithaca, NY: Cornell University Press, 1991); Richard Smoke, *War: Controlling Escalation* (Cambridge, MA: Harvard University Press, 1978); Jeffery Legro, "Military Culture and Inadvertent Escalation in World War II," *International Security* 18, no. 4 (1994); and the RAND study Morgan, Forest E., Karl P. Mueller, Evan S. Madeiros, Kevin L. Pollpeter and Roger Cliff, *Dangerous Thresholds: Managing Escalation in the 21st Century*, RAND Corporation, 2008. Available from <http://www.rand.org/pubs/monographs/MG614.html>.

As part of my own engagement on this issue, which informed the discussion in this chapter, I attended an expert workshop at Utrecht University on 'Escalation Processes in Irregular Wars.' This is part of the project 'A History of Counterterrorism 1945-2005.' The aim of the project is to investigate escalation and de-escalation processes in irregular war, e.g. terrorism and insurgency.

likely to escalate the level of violence in their ensuing actions due to a process of moral slippage and a loss of focus on the proper object. The belligerents in a conflict (no matter the number) will alternate between or simultaneously fill these two roles. These dynamics will be highlighted throughout this chapter but we must begin by refocusing on mimesis and its ills.

The Laws of Violence Turn Against War

As previously noted, Clausewitz observes that war “is an act of policy.” This precept is widely quoted and arguably his most valuable insight on war. However, much less attention is paid to the conclusion Clausewitz draws from this observation – that this means violence in war must be limited. He writes that “Were it a complete, untrammelled, absolute manifestation of violence, war would of its own independent will usurp the place of policy the moment policy had brought it into being; it would then drive policy out of office and rule by the laws of its own nature.”⁸¹⁶ In other words, the purpose of war and nature of violence are opposed in at least some aspects. Thus, even in the opinion of the most eminent war philosopher, utmost violence, while a dominant tendency of war, does not facilitate victory. Clausewitzian commentators have further stressed this observation. For example, William Darley notes that “The end of the spectrum approaching total war would mean a condition so violent and frantic that it reaches the point of chaos and surpasses the ability of policymakers to control it.”⁸¹⁷

This runs counter to what many people seem to believe and what one might conclude if not taking into account all of Clausewitz’s work. Instead, the “laws” of violence’s own nature – which we have already noted are mimesis and surrogacy – hinder the achievement of war’s objectives. This seemingly contradicts our earlier observation that mimesis and the surrogate mechanism make war possible in the first place, and allows for the limitation of violence. How then do they turn against war? In essence the social dynamics turn against war when they occur outside the framework of discrimination, when the tendencies are allowed to run their own untrammelled course to the extremes. Exploring these dynamics will help us understand how the moral codes of discrimination enable the effective prosecution of war.

⁸¹⁶ Clausewitz, *One War*, Chapter 1, Section 23.

⁸¹⁷ William M. Darley, “Clausewitz’s Theory of War and Information Operations,” *Joint Force Quarterly* 40 (1st Quarter, 2006), 75.

Group Dynamics

There are, as already mentioned, many benefits of fighting as a group. The creation of a group, in the place of individuals, can for example mitigate the problem of individual instincts (self-preservation and fear of killing). However, it raises new problems in its place, for any group is subject to mob dynamics. Fuller notes as much, writing that an army “is still a crowd, though a highly organized one; it is governed by the same laws which govern crowds, and, under the stress of war, it tends to revert to its crowd-form.”⁸¹⁸ From our previous discussion regarding Girardian theory, we know that the primary law that governs the crowd is mimetic desire. Thus, the same dynamic which helped create the crowd continues to operate but in a heightened state. This can be good of course, as a mass that mimics one another acts in concert and therefore has tremendous power. Yet, the dynamic can also turn bad (anti-social) if not properly channeled.

Large masses of people are driven by mimesis to such an extent that the smallest of acquisitive gestures can lead to a sudden change in direction. Fuller goes on to explain this dynamic in terms that Girard would very likely endorse, writing that “As conscious personality evaporates, subconscious personality forces itself uppermost, so that, directly an idea is suggested, by contagion all agree to it, and, through the sense of invincibility, all set to work to carry it out.”⁸¹⁹ The issue then is the nature of the suggestion upon which the army-crowd acts.

This dynamic can result in panic spreading through an army for the slightest of reasons. Even a legitimate act, such as a minor withdrawal, which is witnessed by others but not understood in context, can result in an over-reaction and mass retreat.⁸²⁰ The crowd or mob nature of military masses has been long recognized as a danger to effective fighting. Thucydides relates an account of a Spartan General denigrating his adversary for behaving “As all mobs do” and quickly fleeing when faced with disciplined ranks.⁸²¹ The problem of panic and unauthorized retreats is the reason some armies resort to blocking

⁸¹⁸ Fuller, *The Foundations*, 140.

⁸¹⁹ *Ibid.*, 137.

⁸²⁰ Holmes, *Acts of War*, 225.

⁸²¹ Hanson, *Western Way*, Citing Thucydides 4.126. It doesn't matter if it was true of the enemy tribes. The observation is sound.

detachments to stop soldiers from retreating.⁸²² Meanwhile, even a justified and orderly retreat can quickly turn into a blind dash that cannot be arrested.⁸²³

Retreat, however, is not the only suggestion upon which a highly mimetic military unit will act on without consideration. Suggestions of mistreating or massacring those who are supposed to be immune can also be blindly taken up. Thus, a suggestion that a group of soldiers go rape a 14-year girl (leading to the Mahmudiyah killings) could be acted upon with little thought.⁸²⁴

In contrast, the mimetic contagion can also motivate an army to charge or go “over the top” despite the fact that the no-man’s land which they were entering was often the site of their own slaughter. It is often the case in combat that a few fighters lead the way while most are drawn into the fray only because of these initial ice breakers.⁸²⁵ In this sense, the mimetic impulse is required for war to be possible, to enable advance. Many soldiers simply follow the mimetic impulse of the one who happens to have the courage to move forward.

Thus, the mimetic impulse can be positive or negative. In order to assure it is the former, violence requires a purposive and meaningful direction or it will by nature be driven by the random acquisitive gestures common in mimetic crises. This direction is provided at least in part by moral codes. Morality by controlling mimesis prevents armies from become mobs.⁸²⁶ Before getting into this, however, we need to further explore how mimetic violence manifests itself negatively in military operations. Specifically, how does mimesis drive out policy?

⁸²² The most famous instance of this was of course the Soviet use during World War II. Geoffrey Roberts, *Stalin's Wars: From World War to Cold War, 1939–1953* (New Haven, CT; London: Yale University Press, 2006), 98, 132, 148. However, the simple act of putting experienced and more loyal troops (such as Iraq’s Republican Guard units) behind regular units can also serve to prevent retreat.

⁸²³ The First Battle of Bull Run in the U.S. Civil War is a prime example here.

⁸²⁴ How this suggestion arose is uncertain, even in testimony. Sergeant Paul Cortez simply states that “they” were talking about it and then knew they would do it. It would appear James Barker and Steven Green precipitated the idea and although Cortez was in charge, he went along.

“Transcript Of Testimony Of Paul Cortez From Jury Trial Before Thomas B. Russell United States District Chief Judge.” Case no. 5: 06-CR-19. United States of American vs. Steven D. Green. May 1, 2009, Paducah, KY. Available at <http://www.expose-the-war-profiteers.org/archive/legal/2009-1/20090501.pdf>.

⁸²⁵ Osiel, Mark. *Obeying Orders: Atrocity, Military Discipline, and Law of War* (New Brunswick, NJ: Transaction Publishers, 1999), 217.

⁸²⁶ James H. Toner, “Gallant Atavism: The Military Ethic in an Age of Nihilism,” *Airpower Journal* (Summer 1996): 17, available at

<http://www.airpower.maxwell.af.mil/airchronicles/apj/apj96/sum96/toner1.pdf>. Citing book 4, section 4, of *The City of God*.

The Loss of the Object

The group's uncertain direction that results from mimetic desire can result in the objective of war being entirely forgotten. Both Girard and Clausewitz observe that the dynamics of violence and war have a tendency to obscure the initial objects (the policy) towards which they are focused. This loss of focus is driven by violent emotion, mimesis, and surrogate mechanism. Given that war should be guided by its objects (also previously discussed), this tendency of violence naturally makes it very difficult for war to achieve its original objective or indeed fulfill any purpose.

Clausewitz warns that violent emotions can distract from the purpose of war, writing that "No doubt in some cases these (emotions and passions of the combatants) also might be excited to such a degree as to be with difficulty *restrained and confined to the political* (in this case meaning policy) *road...*"⁸²⁷ Interestingly, however, Clausewitz does not give much attention to how this might occur and be managed. This is due to the fact that he believed such passions would only be aroused if the object of the war was of vital importance (such as national survival) and thus the passions would still be in line with the objectives. In other words, the military, political and social ends would still coincide, being based on a sort of Walzerian 'supreme emergency' and requiring the enemy be met with all means. In contrast, Clausewitz thought it unlikely that a limited or small war could excite combatants' emotions and cause them to lose focus on the objectives.

It is difficult to understand how Clausewitz, who must have known well from his own military experience the feelings that war aroused, made this assumption. He seems, for a moment here, to forget his vivid illustration of how war tends to extremes and how the thousands of duels that make up war (i.e. the tactical activities) have a similar tendency. Taking the trend to extremes into consideration, and also utilizing Girard's theories of how violence operates, it is evident that combatants in all wars are at constant risk of letting their emotions dominate over their rational pursuit of the military objectives that culminate in the policy and political goal being achieved. Thus, even in wars where national survival is not at stake, where the objectives are small, the emotions of the soldiers (often with the desire to mimic at the core) will be difficult to restrain to "the political road."

⁸²⁷ Clausewitz, *On War*, 22, emphasis is mine.

The observation that wars can all too easily lose their original political purpose has been made often. Peter Paret, one of the preeminent Clausewitzian scholars and an excellent military thinker in his own right, warns that “Once combat begins and people die, it may be difficult to remember the instrumentality of war... War exists to implement policy, whether or not that policy is rational. But war also creates conditions and engenders feelings that may weigh on and interfere with its instrumentality.”⁸²⁸ E.H. Carr noted between the two world wars that “War begun for motives of security quickly become wars of aggression and self-seeking. In modern conditions, wars of limited objective have become almost as impossible as wars of limited liability.”⁸²⁹ While it is certainly not true that limited wars are impossible, the dynamic Carr observed is undoubtedly one that is hard to counter. Limited operations seem to have a tendency to expand. This so-called slippery slope resulted in large-scale U.S. involvement in Vietnam and turned a humanitarian mission in Somalia into an entirely different and unwanted operation. The U.S. effort against Al Qaeda displays a similar dynamics of steadily expanding goals.⁸³⁰

Non-state actors such as Al Qaeda are prone to the same shifting of objectives. In “The Protean Enemy,” Stern outlines how Al Qaeda’s objectives moved from defensive jihad against the Soviets in Afghanistan to supporting Muslims in Bosnia, the Philippines, Russia, Spain, and throughout the Middle East to finally aiming at the West.⁸³¹ Abul-Walid, an Al Qaeda military strategist, complained that the “hasty changing of strategic targets,” left the group doing little more than engaging in “random chaos.”^{832 833 834}

For all sides, once these new aims are articulated, no matter their actual utility, they cannot be abandoned. The objectives assume a cognitive and emotional momentum based on the assertions of their import. Thus, aims and objectives begin to pile up, making the

⁸²⁸ Paret, *The Cognitive*, 3, 4; see also Andreas Herberg-Roth who, in analyzing Clausewitz’s theories, observes that there is a “tendency for violence to become independent of any rational purpose in war, especially in direct combat.” Herberg-Rothe, “Clausewitz’s,” 211.

⁸²⁹ E.H. Carr, *The Twenty Years’ Crisis* (Hampshire: Palgrave, 1981), 112, 113.

⁸³⁰ George Friedman, “Afghanistan and the Long War,” *STRATFOR Geopolitical Weekly*, March 20, 2012.

⁸³¹ Jessica Stern, “The Protean Enemy,” *Foreign Affairs* 82, no. 4 (2003).

⁸³² Quoted in Vahid Brown, *Cracks in the Foundation: Leadership Schisms in al-Qa’ida from 1989 to 2006* (West Point, NY: Combating Terrorism Center, 2007), 10.

⁸³³ Max Abrahms, “What Terrorists Really Want: Terrorist Motives and Counterterrorism Strategy,” *International Security* 32, no. 4 (2008): 88.

⁸³⁴ “The IMU (too) has long since strayed from its original mission of overthrowing the Uzbek government and has absorbed members of different nationalities and ethnicities from several other militant groups to the point where it is not really clear what the group’s primary purpose is (regional, global or otherwise).” Tajikistan Security Sweeps and the Possible Return of the IMU, STRATFOR.

end of the war seem ever more distant. This is particularly concerning if objectives are expanding while at the same time strategic options are narrowing.

Imitation Contributes to the Loss of Object

There are a number of reasons that the objectives of war are forgotten. Mimesis is at the core of these in part because, as already discussed, it is at the core of so much violent emotion. Van Creveld notes that “Belligerents who were originally very dissimilar will come to resemble each other first in point of the methods that they use and then, gradually, other respects. As this happens, provided only the struggle lasts long enough, the point will come where the reasons for which they originally went to war are forgotten.”⁸³⁵ Each belligerent’s objective at this point is only to match the other’s actions. Operations can eventually be undertaken only to mimic the enemy. This dynamic, for example, contributed to the French failure in Vietnam, where “Combat operations were undertaken only in response to enemy moves or threats” at the expense of a long term plan.⁸³⁶ Displays of reciprocity also take on tremendous importance, and while this can be emotionally satisfying, these often have little effect on the chances of success.⁸³⁷ They are distractions at best and detriments that contribute to failure at worst.

Hannah Arendt has noted that action can make us the victims of “an automatic necessity bearing all the marks of inexorable laws”⁸³⁸ and more specifically that revenge is such a “natural, automatic reaction” that it “can be expected and even calculated...”⁸³⁹ This automatic necessity is very evident in war, as the process of violence easily spirals out of control and we find our future actions constrained by the past. Such an automacy, of course, makes one very predictable. It is in fact the knee-jerk response of revenge that is a simply matter to anticipate. We are trapped by our need to respond.

We very often feel we need to respond even if it is not necessarily in our interests or militarily advisable.⁸⁴⁰ Sallagar points out that the UK, in WWII, carried out tit-for-tat

⁸³⁵ Van Creveld, *The Transformation*, 195.

⁸³⁶ Phillip Davidson, *Vietnam at War* (New York: Oxford University Press, 1988), 165.

⁸³⁷ This was the case with the “War of the Cities” undertaken between Iran and Iraq as part of their long war. The mimetic firing of missiles at one another contributed not at all to any objectives. Frits Kalshoven, “Belligerent Reprisals Revisited,” *Netherlands Journal of International Law* 21 (2009).

⁸³⁸ Arendt, *Human Condition*, 246.

⁸³⁹ *Ibid.*, 240, 241.

⁸⁴⁰ Arregui-Toft, *How the Weak*, 9, points out that this was the case with the German High Command’s orders to continue to harsh reprisals in Yugoslavia in order to seem to be responding with vigor. This was in spite of the requests by field commanders to bring the reprisals to an end.

actions that were to their disadvantage, for example, attacking Berlin in response to the London bombings, even though they must have known that the inevitable escalation would not help them, at least at the time. They could do little damage to Berlin, while London was in easy striking range of the new German air bases in France.⁸⁴¹ Humiliation can also escalate conflict regardless of the military balance because people are willing to suffer and even die to maintain their self-respect despite rational calculation.⁸⁴² We want to make others feel as we have felt. Lindner points out that during the UN mission in Somalia, Somalis felt humiliated and so responded by inflicting humiliation on UN and US forces.⁸⁴³ This demonstrates how the structural and cultural violence (where much of humiliation lies), can be translated to direct violence (even though they knew they were heavily outgunned).

Another manner in which mimetic tendencies can contribute to the loss of focus on objectives is by contributing to a desire for objects simply because the opponent seems to also desire it. In this, one can observe another pattern noted by Girard, the fact that a cycle of mimetic desire, which often turns to violence, may have nothing to do with rational interests. Girard writes that, "I do not desire the object spontaneously, but because the other next to me desires it, or because I suspect he desires it."⁸⁴⁴ This is often the case in war. To a degree it is rational, for one can never be certain the reason an enemy might want an object and what advantage it might give. But just as often, this chasing after what we believe the enemy wants is unconsidered, unnecessary, and wasteful. While one might be able to rationalize operations such as the one at 'Hamburger Hill' in Vietnam, the fact that the hill was abandoned shortly after being taken leaves one with the impression that the military had lost focus.⁸⁴⁵

What this amounts to is a sort of strategic level dynamic that is similar to the manner in which WWI fell into such bloody attrition. It was a strategy that called for meeting the enemy at the strongest spots of resistance.⁸⁴⁶ Such a strategy failed to achieve a military result on the Somme and similarly falls short on a tactical and global level. This blind

⁸⁴¹ Frederick Sallagar, *The Road to Total War* (Washington DC: RAND, 2007), 143.

⁸⁴² Lebow, *Coercion*, 239.

⁸⁴³ Lindner, 91.

⁸⁴⁴ Girard, *Battling*, 31.

⁸⁴⁵ Samuel Zaffiri, *Hamburger Hill* (Novato, CA: Presidio Press, 1988); Fred Farrar, "Army Defends Long Fight For Hill in South Vietnam," *The Chicago Tribune*, June 9, 1969.

⁸⁴⁶ Boyd, *Patterns of Conflict*, 55; "Reserves thrown in whenever attack held-up—against regions or points of strong resistance."

Result was stagnation and attrition, according to Boyd. Until the infiltration tactics of course.

mimesis amounts to meeting the enemy anywhere they appear, making one prone to feigns and wasting resources. Osama Bin Laden is well aware of this dynamic in war. In a 2004 speech he said that it was “easy for us (AQ) to provoke and bait this administration (Bush, Jr.). All that we have to do is to send two mujahideen to the furthest point east to raise a piece of cloth on which is written al-Qaida, in order to make the generals race there to America to suffer human, economic and political losses without their achieving for it anything of note...”⁸⁴⁷

This process can be driven by the tactical level, which then can prompt the strategic level to follow suit. This dynamic is evident in the history of the WWII bombing campaign, as targeting slowly shifted from military objects to urban centers. Sallagar observes that “These changes crept in as solutions to operational problems rather than as the consequences of considered policy decisions.”⁸⁴⁸ Similar escalations occurred as the British Empire spread around the globe. John Galbraith’s “The Turbulent Frontier as a Factor in British Imperialism” points out that the empire grew primarily because of policies on the ground, rather than those in London.⁸⁴⁹ In other words, mimesis (or mimetic commitments) can often cause an entire nation to follow the actions of a very small number of individuals.

Loss of Objects Leads to Self-Interested Motives

Gray notes that from a soldiers’ perspectives it is “...through military reverses or the fatiguing and often horrible experiences of combat, (that) the original purpose becomes obscured.”⁸⁵⁰ This is an interesting observation in that it indicates that combat itself obscures the reason it was even begun as an activity. Going on from the above quote, Gray notes that once the mission is no longer clear, “the fighter is often sustained solely by the determination not to let down his comrades.”⁸⁵¹ In this case, the moral circle has shrunk and tactical concerns may now come to dominate the use of force. Keeping the group alive becomes more a concern than any orders from above. As anthropologists Schroder and Schmidt note, “The dynamics of violence are likely to create their own motives that in the

⁸⁴⁷ Rogers, “Iraq’s State,” 203.

⁸⁴⁸ Sallagar, *The Road*, 156.

⁸⁴⁹ John Galbraith, “The Turbulent Frontier as a Factor in British Imperialism,” *Comparative Studies in Society and History* 2 (1960).

⁸⁵⁰ Gray, *The Warriors*, 40.

⁸⁵¹ *Ibid.*

minds of those involved easily take precedence over their original motivations and conceptions.”⁸⁵²

Combat aversion, such as was previously mentioned, is one common effect of self-interest taking center stage for soldiers in war. Killing unpopular officers or sergeants (fragging), often for being too aggressive, is another too common result of soldiers placing their own self-interest above the mission.⁸⁵³ In other contexts, those in which an army is not thousands of miles from home, desertion can erode an entire army. Mutiny and quick surrender are additional methods by which fighting is avoided. In all of these cases, the original object of the war is completely disregarded. Often the reason an individual disregards tactical military objects is because the generals have no clear military object or the politicians had not outlined the political object of the war. Regardless, the result is violence without meaning. Without meaning provided by a legitimate authority, be it a state government or religious figure, it is left to the individuals to construct meaning and find a new object.

Outside of self-preservation, which we have already covered in some detail, one of the most common expressions of self-interest on battlefield through history has been the act of looting. The tendency to lose focus on the object of battle is often driven by self-interest. We see this in the battles of the *Illiad* as the death of each soldier leads to temporary pursuit of the new object, the valuable armor of the dead. While the soldiers have reasons to pursue the new objects, they are ignoring the larger strategic order called out to them that there should be “no looting now! No lingering behind to get back to the ships with the biggest share! Let us kill men.”⁸⁵⁴ This call was made to the Greeks by Nestor, who insisted they could strip the corpses after the battle. The Argives were not alone in this tendency to lose focus in the midst of battle. Both sides were so afflicted. Samet notes that “The obsessive concern with the corpse that Hector inspires makes the Trojans lose sight of both tactical and larger strategic aims. Instead of pursuing the panicked Greeks, they start to drag the corpse back into their lines, thereby allowing the enemy to regroup

⁸⁵² Ingo Schroder and Bettina Schmidt, eds. *Anthropology of Violence and Conflict* (London: Routledge, 2001), 20, 21.

⁸⁵³ Campbell; Col. Robert D. Heinl, Jr., “The Collapse of the Armed Forces” *Armed Forces Journal* 108 (7 June 1971).

⁸⁵⁴ Homes, *The Illiad*, 119.

and charge again. Each man who falls becomes the momentary object of a new frenzy...”⁸⁵⁵

This dynamic is quite common in war throughout history. There is certainly a segment of the soldiery that can be motivated by the promise of stores to loot, men to murder, and women to rape. This leads Williams James to sadly note that “Brutus was ‘the noblest Roman of them all,’ but to reanimate his soldiers on the eve of Philippi he similarly promises to give them the cities of Sparta and Thessalonica to ravage, if they win the fight. Such was the gory nurse that trained soldiers to cohesiveness.”⁸⁵⁶ In fact, Brutus chastised his troops for allowing the lust for loot to distract them from the task of killing.⁸⁵⁷ This is because such motivation, guided as it is by self-interest and personal lusts, actually does not increase cohesion and most often makes military objectives harder to achieve. If one’s army is a rabble of individuals or criminals (as armies have often been throughout history), it may make some sense to prod them with such rewards, but a cohesive victory with long-lasting results is not likely. These armies may be successful but only at achieving personal ends.

Violence as an End in Itself

The loss of object, which we have been describing above, can culminate in the objective of violence being nothing more than violence itself. According to Girard, during a violent crisis, “there is no point in attaching desire to any one object, no matter how attractive, for desire is wholly directed toward violence itself.”⁸⁵⁸ At this point, the belligerents are acting simply because they believe something must be done regardless of what that is. The belligerents become solely focused on hurting their enemy without actually considering how this contributes to any end. This closely mirrors the second tendency to extremes highlighted by Clausewitz and the violent mimetic crisis which is the focus on Girard’s work.

This dynamic is evident in many conflicts, regardless of whether they are waged by states or non-state actors. Barbara Crossette (a former chief correspondent for the New York Times in Southeast Asia and South Asia), observes that “Terrorists (or we might say non-

⁸⁵⁵ Samet, 631.

⁸⁵⁶ James, *The Moral Equivalent*.

⁸⁵⁷ Arthur Keaveney, *The army in the Roman revolution* (Oxon: Routledge, 2007), 2, 136.

⁸⁵⁸ Girard, *Violence*, 145.

state actors) without a realistic alternative vision for society are often the most intractable because acts of violence become an end in themselves.”⁸⁵⁹ It is not that the so-called terrorists lacked a vision. In many cases, ‘terror’ campaigns will begin with clearly defined objectives. It is simply that these objects become obscured by the fighting and violence becomes the sole source of power, pushing meaning and legitimacy aside.

Indiscriminate Surrogates

We now come to the most important expression of the loss of object in war, one that has direct bearing on the practice on discrimination. Major David Chiarenza, reflecting on his combat experience in Iraq, describes how a unit under threat and lacking clear objectives “begins to return fire after every IED attack, regardless of whether a triggerman is visible... Detainments without sufficient cause increase as the unit searches the area for intelligence. Raids also increase as undeveloped targets are pursued under the pressure to produce intelligence and results.”⁸⁶⁰ What Chiarenza is describing is the surrogate mechanism that we have already discussed. This manifestation of the surrogate mechanism is of vital importance in understanding the dynamics of war and how the principal of discrimination can contribute to military success.

It is vital to recognize that the designation of the soldier as a surrogate, which helps to control mimetic violence, does not eliminate the surrogate dynamic from social interactions. Just as in sacrifice, the movement to a ‘safer’ victim is precarious. While soldiers may be victims themselves, as sacrifices for the larger group, they are also executioners, the wielders of violence. Thus, like any who experience the painful brunt of violence or try to use violence themselves, they fall prey to its dynamics. As a result, designated surrogates can themselves be replaced with other less discriminately selected surrogates. As already discussed, when one is the target of a violent act, there is desire for reciprocity. However, reciprocity is not always easily achieved. The object which provoked our response may not be within striking distance for a multitude of reasons. Given the convergence of the need for reciprocity (for both emotional and instrumental reasons if one can divide these) and the inability to obtain that goal, the original objects of attention are discarded⁸⁶¹ and violence is directed at another target. This new object, be it

⁸⁵⁹ Barbara Crossette, “When Violence Is an End in Itself” *World Policy Journal* 24 (2007): 58.

⁸⁶⁰ Chiarenza, *Moral Warfare*, 27.

⁸⁶¹ Girard points out that “Violence itself will discard them (its own reasons and purposes) if the initial object remains persistently out of reach and continues to provoke hostility.” Girard, *Violence*, 2.

a person or a corner shop,⁸⁶² will be rationalized by the avenger as responsible at least in part for the ‘initial’ violation or the situation that allowed that ‘first’ violation. This perception, even though skewed, is required so that one can maintain the cognitive dissonance required for security, which depends on reciprocity. It is by this process that violence can propagate through social space, swallowing up previously uninvolved actors into the conflict.

Girard states that “reciprocal action and the escalation to extremes” is directly related to what he calls “undifferentiation,”⁸⁶³ something clearly linked to the surrogate mechanism and conforming process. The dynamics of violence has a tendency to expand the definition of the rival as it results in all distinctions vanishing.⁸⁶⁴ As a result, an enemy group ceases to be seen as divided between combatants and non-combatants. In the context of an asymmetric war, Wolfe and Darley note that “when conflict escalates, decision makers broaden the category of who qualifies as *actively aiding* the militants.”⁸⁶⁵ More importantly, however, the broadening of the category of who qualifies as an enemy leads to escalation. This expansion of the victim group is an important feature of Staub’s “continuum of destruction,”⁸⁶⁶ which he point out can lead towards genocidal strategies. Such targeting of undesignated surrogates expands the enemy group, as there are more individuals in search of reciprocity (directly or through surrogates), and through the conforming process it also expands our perception of the enemy, trapping us into fighting a larger conflict.

Making Enemies

There are clear advantages to killing as a means to convincing the enemy to yield to one’s will. For example, as Freud points out “the enemy cannot renew hostilities, and... his fate deters others from following his example.”⁸⁶⁷ The first point seems obvious, a dead man cannot renew hostilities, but the deterrence is much less likely. Killing is much more likely to call for a response. This leads to the disadvantages to killing, the most important

⁸⁶² This being written during the recent London Riots, this was the surrogate targeting that most quickly came to mind.

⁸⁶³ Girard, *Battling*, 57.

⁸⁶⁴ Bailie, *Violence Unveiled*, 121.

⁸⁶⁵ Rebecca J. Wolfe and John M. Darley, “Protracted Asymmetrical Conflict Erodes Standards for Avoiding Civilian Casualties,” *Peace and Conflict: Journal of Peace Psychology* 11, no. 1 (2005): 57. This dynamic is dramatically evident in many conflicts. Wolfe and Darley use the second *intifada* between the Israelis and Palestinians as an exemplary case.

⁸⁶⁶ Staub, “The Origins of Agression,” 225.

⁸⁶⁷ Freud in Otto and Norden, *Letter to Einstein*.

being the escalatory nature of the act, which calls for revenge and reproduces itself in an often uncontrollable fashion. Death, then, does not necessarily end a war. It drives the war forward. This is particularly true if indiscriminate surrogates rather than proper surrogates are being killed.

It is often asserted that there is a casual link between the number of civilians killed by a counter-insurgent force and insurgent recruitment and violence.⁸⁶⁸ These observations are usually made using anecdotal or experiential evidence, but academic studies are increasingly turning their attention to this matter. The current conflicts in Iraq and Afghanistan has spawned a number of statistical studies that attempt to establish some sort of ‘insurgent math.’ One recent study found “that if the average ISAF-caused incident (which resulted in 2 civilian casualties) was eliminated, then in an average-sized Afghan district there would be 6 fewer insurgent attacks over the next 6 weeks.”⁸⁶⁹ The authors attributed this increase in violence to revenge seeking rather than recruitment or other factors.⁸⁷⁰

However, a desire for reciprocity can also contribute to recruitment. One recruitment method is to “target people whose parents were victims of previous government atrocities. The recruiter pretends to know who on the government side committed the atrocity and offers the opportunity for revenge.”⁸⁷¹ Such methods have a long history... “during the counter-revolution in the Vendée in the late 1790s, the French government proposed to recruit companies of counter-guerrillas composed of men determined ‘to take revenge for the killing of their relatives and the violation of their properties.’”⁸⁷² The reason recruitment for revenge works is because of the surrogate mechanism.

The reason individuals cannot be killed without consequence is because they have bonds with friends, families, communities, and nations that will act as their surrogates. Thus we find that even when one is interacting with an individual, this individual is linked to an entire social community. Conetta has observed this dynamic in action in Iraq where “coalition actions inadvertently engaged entire social networks of armed individuals,

⁸⁶⁸ For example: Nader Nadery and Haseeb Humayoon, “Peace Under Friendly Fire,” *New York Times*, October

4, 2008, available at <http://www.nytimes.com/2008/10/05/opinion/05nadery.html>.

⁸⁶⁹ Condra, “The Effect of Civilian Casualties in Afghanistan and Iraq,” 28.

⁸⁷⁰ *Ibid.*, 29. Because it was prompt and not a long-term impact.

⁸⁷¹ Collier 69, citing Ross, 2002b.

⁸⁷² R. Dupuy, *Les Chouans* (Paris: Hachette, 1997), 148.

including a high percentage with military training.”⁸⁷³ According to Chalmers Johnson, who popularized the term ‘blowback,’ “Because we live in an increasingly interconnected international system, we are all, in a sense, living in a blowback world.”⁸⁷⁴ The key word here is “interconnected.” It is interconnectedness that results in blowback or, as we are talking about it here, expansion of the circle of enemies. This interconnectedness is in many ways the same dynamic that protected Cain. The primary problem for those targeting these individuals then is the inability to perceive or the ignoring of the ‘mark’ (the warning) that these individuals are actually not individuals at all.

This dynamic has led some to conclude that atrocities (ethnic cleansing in particular) most often fail because it prompts intervention by others who have bonds with the victim group.⁸⁷⁵ The case of Rwanda is illustrative here, as well as Tanzania’s ousting of Idi Amin and Vietnams involvement in Cambodia and India in East Pakistan. Apparently invisible links between people can prompt reactions by surrogates in support of a victim. If one is ignorant of how the link is operating, or if they don’t eliminate the link, they will be unprepared for the response.

Michael O’Hanlon, of the Brookings Institution, claims, “It is certainly the consensus view among NATO intelligence that the inadvertent killing of civilians is one of the two or three things, along with corruption and favoritism perhaps, that most help the Taliban in recruiting.”⁸⁷⁶ Similarly, a 2007 UN report on Afghanistan claimed that U.S. air strikes were one of the primary motivations for suicide attackers and “at the end of 2008 a survey of 42 Taliban fighters revealed that 12 had seen family members killed in air strikes, and six joined the insurgency after such attacks.”⁸⁷⁷

⁸⁷³ Carl Conetta, *Vicious Circle: The Dynamics of Occupation and Resistance in Iraq*, Project on Defense Alternatives Research Monograph #10, May 18, 2005, available at <http://www.comw.org/pda/0505rm10exsum.html>.

⁸⁷⁴ Johnson, *Blowback*, 17.

⁸⁷⁵ Downes has made this argument in a number of places.

⁸⁷⁶ Sue Fleming, “Civilian Deaths Complicate Afghan Mission.” *Reuters*, February 22, 2010, available at <http://www.reuters.com/article/2010/02/22/us-afghanistan-civilians-complication-an-idUSTRE61L5H820100222>.

⁸⁷⁷ Jeffrey A. Sluka, “Death From Above: UAVs and Losing Hearts and Minds” *Military Review* (May-June 2011): 72, available at http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20110630_art012.pdf; See also: David Kilcullen and Andrew Exum, “Death from Above, Outrage Down Below,” *The New York Times*, May 17, 2009.

There are certainly examples of individuals being motivated by immoral events to take up arms. As one insurgent noted “They used to show events [on television] in Abu Ghurayb... The oppression, abuse of women, and fornication, so I acted in the heat of the moment and decided... to seek martyrdom in Iraq [*sic*].”⁸⁷⁸ But of course individual incidents hardly provide us with more than anecdotal evidence. Indeed, we cannot be certain of his motivations. Another event or no event at all may have still contributed to this person becoming a foreign jihadist in Iraq. We must rely on sociological requirements, primarily the need for reciprocity.

Non-Direct Escalation

At a group level, there is also some indication of the detriments of the torture at Abu Ghraib. “Polls showed Iraqi support for the occupation plummeting from 63 percent before the scandal to just nine percent after the photos were published.”⁸⁷⁹ What does this support mean however? Does this translate into increased violence and obstacles to U.S. goals? Perhaps not, but it would at the very least delegitimize our violence, which makes it bad, i.e. nonreciprocal, and therefore responses are justified. The zeitgeist alone is enough to enable others to kill. In regards to civilians, there may not be a directly mimetic response but the cultural violence will be mimicked and this will in turn enable the violence of the soldiers to continue since cultural violence is vital in turning bad violence into good violence. In other words, the actions of the individual and the feelings of the group related.

It is useful here to turn back to Galtung’s images of violence, only this time we will focus on the triangle image. This triangle, as Galtung points out, tells a different story no matter how it is oriented.⁸⁸⁰ So the violence in this conception does not just move from cultural to structural and direct but in all directions. Each type of violence can lend energy to the other types of violence. Just as cultural can lead to structural and direct violence, so too can direct and structural violence give rise to and enhance cultural violence. In other words, violence in one realm is mimicked in the others. If we are anti-Semitic, we will pass laws that reflect this and use direct violence that reflects the dislike and is also in the image of the laws. Alternatively, if we engage in direct violence with another, we will find

⁸⁷⁸ Ahmed S. Hashim, *Insurgency and Counter-Insurgency in Iraq* (Ithaca: Cornell University Press, 2006), 144.

⁸⁷⁹ Fareed Zakaria, “Pssst. . . Nobody Loves a Torturer,” *Newsweek*, November 14, 2005, available at www.fareedzakaria.com/ARTICLES/newsweek/111405.html.

⁸⁸⁰ Even Galtung admits this may make it a “better image” than the strata model. Galtung, 295.

our attitudes of them become hardened and may start passing laws against those in our midst who resemble them. Thus, the entire violence structure can tend to extremes and requires some sort of method to keep it restrained.

Escalation of violence in the structural and cultural strata thus needs to be taken into account. Escalation in this sense is “more grievances”⁸⁸¹ and thus a less reciprocal system, and more demands for that sought after reciprocity. For example, counterterrorism measures undertaken to confront violence in Northern Ireland (mostly direct and structural violence) were effective in the short term but eventually contributed to an increase in cultural violence within the Catholic community and soon after a resumption of direct violence by that group’s militant elements.⁸⁸² In short, force by one party merely enhanced the opponent’s ability to leverage cultural violence and thus increase its overall power and its ability to mobilize direct violence.

William Polk observes that “in every instance in which a single combatant or even an innocent bystander is arrested, detained, wounded, or killed, a dozen of his relatives and friends are outraged.”⁸⁸³ This, in turn, leads more people to actively support the insurgency, even joining its ranks in arms. This dynamic has resulted in the oft-repeated strategic mantra of needing to ensure that in fighting an asymmetric war, one’s actions don’t create more terrorists than they destroy. Walzer observes that “Terrorists usually only mobilize a small part of a nation, depending on the counter-attacks of their enemies to mobilize the rest.”⁸⁸⁴

The dynamic through which this mobilization occurs is the loss of object and in particular the resultant targeting of indiscriminate surrogates. For example, more than 27,000 individuals were detained under the authority of the Prevention of Terrorism Act between its introduction in 1974 and 1996. However, less than fifteen percent were charged with

⁸⁸¹ Huw Bennett, Utrecht Conference.

⁸⁸² Laura K. Donohue, *Counter-terrorist Law and Emergency Powers in the United Kingdom, 1922–2000* (Portland, OR: Irish Academic Press, 2001), 322–323. Donohue illustrates the dynamic of effectiveness and says the measures were able to be bypassed due to adjustment by the militant groups. Of course the reality is that the adjustment wasn’t the cause of the renewed violence. The measure itself was the cause.

⁸⁸³ William R. Polk, *Violent Politics: A History of Insurgency, Terrorism and Guerrilla War from the American Revolution to Iraq* (New York: HarperCollins, 2007), 34.

⁸⁸⁴ Walzer, *Just and Unjust*, 180

any crime.⁸⁸⁵ A similar pattern can be observed in the France-Algeria war, where “By one estimate, 40 percent of the adult male Muslim population of Algiers were put through the French interrogation system and either tortured or threatened with torture between 1956 and 1957.”⁸⁸⁶ This significantly expanded the number of individuals who had suffered structural violence. Even if they did not go home immediately and pick up a gun (direct violence), their feeling of suffering for something they didn’t do will increase (cultural violence). They will desire reciprocity in some form and they will help transform what may have been ‘bad’ terrorist violence into ‘good’ freedom fighting.

Col. Douglas A. Macgregor worried about this trend in the ongoing operations in Iraq, noting that “In the end, our soldiers killed, maimed and incarcerated thousands of Arabs, 90 percent of whom were not the enemy. But they are now.”⁸⁸⁷ Polls indicate that more than half of Iraqis have suffered negative encounters with U.S. forces and the stories of these incidents have been heard by almost the entire population.⁸⁸⁸ Danner notes that “Combat Commanders desired that no security detainee be released for fear that any and all detainees could be threats to coalition forces...”⁸⁸⁹ Individuals cannot be released from places such as Gitmo or Abu Ghraib because these places create enemies. Such logic has led to disappearances in other contexts.

Conforming Indiscriminate Surrogates to the Image of the Enemy

The soldiers who target civilians will also alter their perception so that their victims conform to the image of the intended targets – the enemy soldiers. Girard notes that “Once the victims have been obtained, it (violence) strives in various ways to make them conform to its own image of the original victim and simultaneously to increase their quotient of cathartic potential.”⁸⁹⁰ Thus, civilians will be held responsible for the violence, accused of supporting the enemy soldiers, or contributing to the war effort (which of course can be true but is just as likely to be entirely invented). In many cases, civilians will be judged to be militants (be engaging in direct violence) despite any evidence to the contrary. It is

⁸⁸⁵ Laura Donahue, “Temporary Permanence: The Constitutional Entrenchment of Emergency Legislation,” *Stanford Journal of Legal Studies* 2 (1999), available at http://agora.stanford.edu/sjls/issue_two/donahue/donahuetxt.html, 51.

⁸⁸⁶ DiMarco, <http://www.carlisle.army.mil/usawc/Parameters/06summer/dimarco.htm>

⁸⁸⁷ Douglas A. Macgregor, “Dramatic failures require drastic changes,” *St. Louis Post-Dispatch*, December 19, 2004.

⁸⁸⁸ Jeffrey Gettleman, “Anti-U.S. Outrage Unites a Growing Iraqi Resistance,” *New York Times*, April 11, 2004, available at <http://www.commondreams.org/headlines04/0411-01.htm>.

⁸⁸⁹ Mark Danner, “Torture and Truth,” *The New York Review of Books*, June 10, 2004, available at <http://www.nybooks.com/articles/archives/2004/jun/10/torture-and-truth/?pagination=false>, 31.

⁸⁹⁰ Girard, *Violence*, 272.

important to the soldiers that the victim fit the image no matter how much reality must be warped. As long as this presentation of reality can be accepted, the soldiers will not suffer any cognitive dissonance and will feel as if reciprocity is being achieved (and thus achieve catharsis). They will also not feel they are engaging in murder.

The dynamic of making the victim conform to the image of the enemy is evident in the current U.S. operations in Afghanistan. Such practices as counting all dead as enemy combatants were common for the U.S. government during the Vietnam War, but at least one recent report suggests little has change. According to a *New York Times* article, the U.S. military in Afghanistan “counts all military-age males in a strike zone as combatants... unless there is explicit intelligence posthumously proving them innocent.”⁸⁹¹ Thus, the U.S. after action review would determine the attack reciprocal while those who assess the dead differently will see the action as unjustified and non-proportional. This misperception of the evolving environment can of course put a military at a large disadvantage. Before moving on to discuss this further, it is worth taking a deeper look at how this conforming process works.

Moral Slippage

Michael Mann observes that perpetrators of ethnic cleansing are not psychopathic aberrations who are innately violent, but are instead created by conflicts “that involve unexpected escalations and frustrations during which individuals are forced into a series of more particular moral choices.”⁸⁹² The dynamic illustrated by Mann is broadly applicable to many actors within wars. Violent escalation has a way of slowly entrapping actors in war, eventually leading them to commit atrocities they would have been incapable of prior to the conflict. In essence, the first moral choice, like the first tactical choice, determines the range of the next choice.

In war, both individuals and groups are prone to moral slippage, a process wherein standards of conduct are gradually reinterpreted so as to allow increasingly violent acts to undertaken. A 2004 ICRC report observed that “Acts that harm others, without restraining forces, bring about changes in perpetrators, other members of the group, and the whole

⁸⁹¹ Radley Balko, “U.S. Drone Policy: Standing Near Terrorists Makes You A Terrorist,” *The Huffington Post*, May 29, 2012, available from http://www.huffingtonpost.com/2012/05/29/drone-attacks-innocent-civilians_n_1554380.html.

⁸⁹² Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge: Cambridge University Press, 2005), ix.

system that makes further and more harmful acts probable.”⁸⁹³ This process that turns “a good boy” into a “murderer” often occurs without the agent(s) being aware that their moral codes have been so changed.⁸⁹⁴

Psychologist Philip Zimbardo, known for his Stanford prison study, stated in a recent lecture that “all evil starts at 15 volts.”⁸⁹⁵ This was in reference to the oft-cited Milgram study in which participants were asked to give successively more intense shocks to subjects and obliged the authority figure despite moral misgivings.⁸⁹⁶ This study provided scientific evidence that moral barriers could be breached under the direction of an authority figure, just in case the institutionalization of the Holocaust hadn’t made the point. In addition, there is increasing evidence that even without direction those in positions of authority have a tendency to breach moral norms. The slow decent of the participants of the Stanford prison study is a case in point. The ‘guards’ received no instructions on how to manage the ‘prisoners’ but under their own momentum slowly escalated their abuse.⁸⁹⁷

Psycho-sociologist Ervin Staub’s observes that, “Initial acts that cause limited harm result in psychological changes that make further destructive actions possible.”⁸⁹⁸ Even small and seemingly insignificant acts could mark the beginning of this slippage. Staub’s observations were played out in the real world in the “Place of Ravens” – Abu Ghraib. General Fay wrote in his report on Abu Ghraib that general practices, like the extensive use of nudity, “likely contributed” to “an escalating ‘de-humanization’ of the detainees and set the stage for additional and more severe abuses to occur.”⁸⁹⁹

The dynamic of moral slippage is similar both inside and outside prison walls. James R. McDonough articulated this tension in his memoir of the Vietnam War. McDonough, who was a platoon leader, writes “I was making them kill, forcing them to commit the most

⁸⁹³ IRC, *War Behavior*, 10.

⁸⁹⁴ Reference to quote by Mrs. Myrtle Meadlo regarding her son, Paul Meadlo, who participated in the Mai Lai Massacre: From Seymour M. Hersh “Ex-GI Tells of Killing Civilians at Pinkville,” *St. Louis Post Dispatch* November 25, 1969, in *Reporting Vietnam, Part Two: American Journalism 1969-1975* (Library of America, 1998), 13-27, also available at <http://pierretristam.com/Bobst/library/wf-200.htm>.

⁸⁹⁵ Phillip Zimbardo, *Phillip Zimbardo: The Psychology of Violence*, February 2008 [video file], available at http://www.ted.com/talks/philip_zimbardo_on_the_psychology_of_evil.html.

⁸⁹⁶ Stanley Milgram, *Obedience to Authority: An Experimental View*. New York, NY: Harper Perennial, 1974.

⁸⁹⁷ In this case they were mimicking an ideal... Cool Hand Luke, see *The Stanford Prison Experiment* [website], available at <http://www.prisonexp.org/psychology/13>.

⁸⁹⁸ Staub, “The Origins of Aggression,” 17.

⁸⁹⁹ Danner, “Torture and Truth,” 45.

uncivilized of acts, but at the same time I had to keep them civilized... A bottle of soda stolen from an old peasant woman leads gradually but directly to the rape of her daughter if the line is not drawn in the beginning.”⁹⁰⁰ Once one part of our moral code has been broken, no matter how small, the rest of the code is in danger.⁹⁰¹ And while we may not be able to discern if taking a soda will negatively impact the war effort, we can say with more certainty that the rape would. For this reason, moral and legal restrictions pertaining to dignity are just as vital as those prohibiting mass murder. According to one U.S. army interrogator, strict obedience to the rules was the essential since “Even entertaining the idea of doing otherwise was inviting ‘slippage.’”⁹⁰²

Moral slippage is not only something undergone by individuals but entire armies and nations. The slow easing of moral restriction and increasing use of weapons and tactics that at a start of a conflict were disavowed has been a common observation among war historian. Part of this can be attributed to reciprocity and uncertainty, based upon the existence and actions of the other. However, part of this is an entirely internal dynamic that has little relation to the enemy’s activities.

The Stratification Model of Action

Using Giddens’s “stratification model of action”⁹⁰³ we can get some purchase on the manner in which this process is occurring. This model depicts action as being influenced by unacknowledged conditions, including structure, and also shows how unintended consequences feed back into these conditions to influence further action. Between these conditions and consequences, are the agent’s reflexive monitoring, rationalization, and motivation of action.⁹⁰⁴ Thus, according to Giddens, “Every process of action is a production of something new, a fresh act; but at the same time all action exists in continuity with the past, which supplies the means of its initiation.”⁹⁰⁵

⁹⁰⁰ Osiel, *Obeying Orders*, 228, citing James R. McDonough, *Platoon Leader* (New York, NY: Ballantine Books, 1985), 61.

⁹⁰¹ Support provided by Glover, *Humanity: A Moral History of the Twentieth Century* (New Haven, CT: Yale University Press, 2000), 386.

⁹⁰² Chris Mackey and Greg Miller, *The Interrogators: Inside the Secret War Against Al Qaeda* (New York, NY: Little, Brown, & Co., 2004), 285.

⁹⁰³ John B. Thompson, *Studies in the Theory of Ideology* (Berkeley, CA: University of California Press, 1984), 152.

⁹⁰⁴ Giddens and Dallmayr, *Profiles*, 30.

⁹⁰⁵ Anthony Giddens, *Central Problems in Social Theory* (Berkeley: University of California Press, 1979), 70.

The direct violence, the action, being carried out by the agent, is made possible by structural and cultural violence. The violent act will have an intended consequence of course, usually killing somebody or destroying something, but will also have an unintended (although fully foreseeable) impact on the structural and cultural violence that is part of the group's social structure. This is because these realms, as mentioned, mimic the violence in the direct realm. These strata of violence can then be mobilized, used for rationalization and motivation, for an even greater use of direct violence. Thus, even without taking into account the enemy's response, an increase in the level of our own violence is entirely possible.

The idea of moral slippage corresponds to Dean Pruitt and Jeffrey Rubin's structural change model, which "argues that conflict, and the tactics used to pursue it, produce residues in the form of changes in the parties and the communities to which the parties belong. These residues then encourage further contentious behavior, at an equal or still more escalated level, and diminish efforts at conflict resolution."⁹⁰⁶ Thus a group or organization can also undergo moral slippage, although the process is certainly more complex. One of the reasons the moral slippage of an organization is more complex is the unintended consequences of individuals' autonomous actions that become the conditions in which the group must now operate.

Further evidence for an understanding of this process is possible by looking at Wolfe and Darley's exploration of cognitive dissonance as a factor in conflict escalation. They point out that this process causes an expansion of who is considered the enemy, and a contraction of the noncombatant category. This is because, "the military needs to justify cases of civilian casualties that have already occurred...From the military perspective, to think you were responsible for civilian deaths is extremely dissonant with one's self-image. To believe that those killed were militants reduces this dissonance."⁹⁰⁷ Because most people have a self-image as good and discriminating actors, and because feelings of security and the positive judgment of civilization require we act reciprocally, we are led to justify even actions that could pragmatically be seen as discordant with this identity. Once these rationalizations of the past occur, they set the evaluative framework of future action in such a way as to enable further killing. To put this in terms of the stratification model,

⁹⁰⁶ Dean G. Pruitt and Jeffrey Z. Rubin, *Social Conflict: Escalation, Stalemate and Settlement* (New York: Random House, 1986), 92.

⁹⁰⁷ Wolfe and Darley, 57, 58.

the framework can be formalized in a structure, such as a law or become part of an informal cultural such as racism, colonialism or myopia, which then serve to shape rationalization and of the agent.

The importance of evaluation at the highest level was made clear by Justice Jackson who wrote, “A military commander may overstep the bounds of constitutionality and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There is has a generative power of its own and all that it creates will be in its own image.”⁹⁰⁸ Jackson was acknowledging how a killing could be subsequently rationalized and embedded in the structure, which would then go on to shape the actions of other soldiers. The law is, in essence, a guide for what to mimic and thus aims to compel the action which it approves. This dynamic is observable in tracing the Torture Memo to the piling of naked prisoners in Abu Ghraib.

Re-describing the World

Moral slippage and maintenance of cognitive dissonance rely on a re-description of the world so that perpetrators of violent even indiscriminate attacks can continue to view themselves as moral and legitimate and acting with meaning. This alteration of the world will dramatically impact the ability to achieve the objectives of war and re-establish peace. One is forced into certain actions based upon this re-description, chasing new enemies and expanding aims.

Some believe that war reverses the rules of morality.⁹⁰⁹ However, importantly, this new world does not have, as some think, its “own distinct laws and principles.”⁹¹⁰ This is evidenced by the fact that even when a group undertakes what could objectively be considered an ‘immoral’ act (an act that appears to run counter to their moral codes), they will almost certainly maintain their moral framework and deny that their act breaches any laws or mores. The moral rules may seem like a reversal but they are not. The rule is the same – kill the guilty and save the innocent for example. It is simply that the view of the world is inverted.

⁹⁰⁸ Donald P. Kommers, John E. Finn, and Gary J. Jacobsohn, *American constitutional law: essays, cases, and comparative notes*. vol. 2. (Lanham, MD: Rowman & Littlefield Publishing Co., 2010), 216.

⁹⁰⁹ Dymond, “War: It’s Causes,” 18.

⁹¹⁰ Arreguin-Toft, *How the Weak*, 13, 14

Thus, in discourse, we don't often find those who claim civilians should be killed, or hospitals bombed, etc. Grayling notes that in *public* statements by the governments during World War II, "no effort was made to redefine civilians as legitimate military targets in circumstances of total war..."⁹¹¹ Instead, all targets were re-defined as military, even Hiroshima, and thus legitimate. Churchill in speaking before the U.S. Congress for example declared that the allies must leave "the cities and the other military centres of Japan in ashes, for in ashes they must surely lie before peace comes to the world."⁹¹² Note that cities are directly linked with military centers, specifically by use of the word "other."

Peter Haas argues that the Nazis were able to carry out the Holocaust by using the normal moral framework and discourse and simply re-describing the world so as to identify the Jews with evil. Thus, according to Hass, "the Holocaust becomes possible because the basic character of ethical argumentation remained unchanged."⁹¹³ "By excluding victims from the moral universe"⁹¹⁴ or presenting them as the anti-thesis of the moral order, the rules of war and moral dictates of humanity become inapplicable to them. Thus, one can kill them, or worse, and remain a good German or good person in general. In fact, being 'good' can actually require killing.⁹¹⁵

The depersonalization of the enemy is one of the primary ways in which the world is altered so moral codes can be maintained. It is much easier to "grease", "light up", "red mist" or "waste" a "kraut," "jap," "reb," "gook," or "hajji" than to kill a man, to murder to father, and so on. Hauerwas rightly observes that "these attempts to depersonalize the enemy as well as rename the process of killing should be understood as a desperate attempt to preserve the humanity of those that must kill."⁹¹⁶ This preservation of humanity simply comes at the cost of another's humanity. We can now refocus on how conforming the enemy to an image can entrap the belligerents in a struggle from which it is unlikely both will survive.

Collective Belligerency

⁹¹¹ Grayling, *Among the Dead*, 156; Ward Thomas, *The Ethics of Destruction: Norms and Force in International Relations* (Ithaca: Cornell University Press, 2001), 106, makes a similar observation; also Nurick, "The Distinction," 691.

⁹¹² Grayling, *Among the Dead*, 187.

⁹¹³ Peter Haas, *Morality After Auschwitz: The Radical Challenge of the Nazi Ethic* (Philadelphia, PA: Fortress Press, 1988), 7.

⁹¹⁴ Staub, *The Roots*, 33.

⁹¹⁵ Farley, *Eros*, 32 notes this.

⁹¹⁶ Hauerwas, "Sacrificing the Sacrifices of War," 95.

The surrogate mechanism in war operates at many levels. One of the most common in regards to how we perceive the enemy is collective belligerency. The idea of collective guilt and belligerency has often been accepted by warring parties and indeed can serve an enabling function, as it obviates the need to assess between the guilty and innocent, a difficult and morally discouraging task (previously mentioned in regards to enabling killing). But the benefit of enabling brings with it the detriments of a failure to provide any limitations and it enables one's enemies to mobilize violence in response. This fact has been recognized since antiquity.

The idea of collective guilt enables one to target an entire group without regard to any less culpable subgroups that may exist. Since actual innocence is hard to determine, this sets aside the tough task of making a determination of guilt. Instead, it assigns guilt and responsibility to all individuals within a group simply because they are part of the group. The clear moral demarcation makes killing a much easier task than would be case if soldiers tried to assess each case as it arose. Importantly, it maintains the conception that one is not targeting the innocent or nonreciprocal, because the killers perceive none as innocent or nonreciprocal (although this may require some significant denial mechanisms). Thus it does not challenge the basis of normal order (that reciprocity must be achieved).

In fact, collective guilt was one of the early methods through which the moral concerns of society and individuals engaged in killing were assuaged. Augustine, for example, asserted that the entire population of an enemy nation was generally guilty and thus could have violence used against it.⁹¹⁷ The effect in practice was brutal. The reason that towns suffered so during the Middle Ages was that it was considered as a whole and "in effect presented an undifferentiated target to the besiegers."⁹¹⁸ This enabled civilian killing as this too was conceived of as the delivering of reciprocity given that if a siege and sacking was required, it meant that the town (considered collectively) had refused to surrender when called up. In more recent times, the "Defended town" criteria⁹¹⁹ and Free-fire zones in Vietnam similarly take a collective view of the enemy which served to enable killing.

⁹¹⁷ Augustine (Hartigan, 32) (McKeogh, *Innocent Civilians*, 29).

⁹¹⁸ Geoffrey Parker, "Early Modern Europe," in *The Laws of War: Constraints on Warfare in the Western World* eds. Michael Howard, George Andreopoulos, and Mark R. Shulman (Yale: Yale University Press, 1994), 45.

⁹¹⁹ Elbridge Colby, "Aerial Law and War Targets," *The American Journal of International Law* 19, no. 4 (1925).

However, while psychologically appealing if one can be convinced of its truth, the fault of collective belligerency as a concept lay in the fact that one is treating the enemy as a monolith. Treating it in such a way historically strengthens bonds between any subgroups within society, even creating bonds that were previously nonexistent. It can also reinforce bonds between the military, government, and people. When we kill, it must weaken the enemy, something killing does not do if we buy into the concept of collective belligerency. Instead, it strengthens the enemy.

This view also either forces one to entirely defeat a subject population or to compromise what has been presented as justice to oneself and one's own people. The inability to negotiate would inevitably lead to either a collapse in your ethic (as you will be forced to negotiate) or extreme difficulty in stopping a war from starting or from ever ending. Thus, the ethic regarding civilians determines the strategy, which then determines the course that the war will need to take. It is worth exploring all of these dynamics in more detail.

Treating All Enemies the Same Brings Them Together

During the Mytilenean Debate, in which Athenians discussed a plan to massacre the entire population of an enemy city, the matter of the proper course of action swung on 'innocence' of the masses. Innocence of course needs a reference point and in this case it was that the people had engaged in no act that called for response. Diodotus argued that "if you butcher the people of Mitylene, *who had nothing to do with the revolt...* you will play directly into the hands of the higher classes, who when they induce their cities to rise, will immediately have the people on their side, through your having announced in advance the same punishment for those who are guilty and for those who are not."⁹²⁰ This argument recognized the utility of dividing the guilty and innocent, dividing in other words those who had committed acts that demanded reciprocity and those who had not. The two social circles within the Mitylene society were recognized as being distinct and without bonds. To target the people then would be to unite them with the higher classes, which in this case was equivalent with the government. To deliver the "same punishment" to both guilty and innocent would be nonreciprocal, which would prompt a search for reciprocity by the victims. Even if the two groups were not bonded in spirit, they would be united in action (which as we know can eventually lead to a united spirit) and the Athenians (enough

⁹²⁰ Thucydides, *History*, Book IX.

of them anyhow to decide against the massacre) expected this would result in considerably more resistance.⁹²¹

The same dynamic is present in wars throughout history and those being waged today. The grouping of responsible with non-responsible, or those assigned responsible with those not so designated, draws an enemy together. The bombing of civilian populations during World War II for example “intended to terrorize” but instead “aligned the people with those in the field.”^{922 923} In all of these cases, what is essentially occurring is the adversary’s Social Trinity is being further bonded.

Given this, it is little surprise that belligerents cite such indiscriminate practices in order to draw people to their side. For example, on the ten-year anniversary 9-11, a Taliban statement appealed to the innocence of the Afghan people, claiming that “Each year, 9/11 reminds the Afghans of an event in which they had no role whatsoever” yet for which “tens of thousands of miserable and innocent Afghans” had been killed.⁹²⁴ This represents a clear attempt to delegitimize the U.S. presence and it is doing so by pointing out that the innocent are being punished for a crime they did not commit, that a non-reciprocal action is occurring which demands a response. This discourse has powerful resonance because it appeals to the foundation of order for all societies – reciprocity and control of mimesis.

Further evidence of how the idea of collective belligerency can unite an adversary has been provided by studies on indiscriminate violence. While these empirical works do not prove the theory being posited here, the fact that they ‘fit’ the theory can buoy confidence in the theory. If, on the other hand, empirical studies flew in the face of the conceptual work here, we would have to confront at least in part why the disagreement exists.

⁹²¹ Diodotus’ argument prevailed and the assembly voted not to massacre the Mytilenians.

⁹²² Smith, *The Utility*, 137.

⁹²³ John C. Ford, “The Morality of Obliteration Bombing,” in *War in the Twentieth Century: Sources in Theological Ethics*, edited by Richard B. Miller, 138-180 (Louisville, KY: John Knox Press, 1992), 24; Geoffrey Best, *Humanity in Warfare* (London: Methuen, 1980), 242–285; Biddle Tami Davis, “Air Power” in Michael Howard, George J. Andreopoulos, and Mark R. Shulman, eds., *The Laws of War: Constraints on Warfare in the Western World* (New Haven, CT: Yale University Press, 1994), 140–159; Kalshoven, “Belligerent Reprisals.”; George H. Quester, “The Psychological Effects of Bombing Civilian Populations: Wars of the Past” in Betty Glad, ed., *The Psychological Dimensions of War* (Newbury Park, CA: Sage Publications, 1990), 201–235.

⁹²⁴ BBC, “Afghan truck bomb hits US troops in Wardak” (11 September 2011). <http://www.bbc.co.uk/news/world-south-asia-14871666>.

Since indiscriminate violence kills and injures without regard to actions, the violence is naturally non-reciprocal. Thus, is it little surprise that research has amply demonstrated that indiscriminate violence that targets people collectively and thus kills people without having taken into account their prior actions can be ineffective and even counterproductive.⁹²⁵ While there are plenty of instances where a war actually led to schisms within a group, there is ample evidence that it leads to increased solidarity if it affects “the entire group and all its members equally and indiscriminately.”⁹²⁶ The primary reason indiscriminate and misdirected violence fails is because it “reduces, if not eliminates entirely, the collective action problem...”⁹²⁷ This means that it helps to ensure that one will not act alone but in concert with others. It unites the targeted group in search of reciprocity.

Perception of the Enemy Commits us to Certain Actions

A group’s conception of its enemy is vital in shaping how a war must be conducted, influencing both the strategy and tactics that must be used and the difficulty in achieving the end goal. For example, an enemy in total requires total means and total ends. Thus, the enemy must be destroyed in whole, something that is an almost impossible task or heavily wasteful of resources at the least. If it cannot be accomplished, the group will have to compromise that conception of the enemy, which will be difficult to do in light of ideology and domestic politics that had created such a conception.

In peace and in war, we build versions of reality that enable us to kill others and yet maintain our moral codes. It is worth stressing again that we do not change our morality, but instead only alter our perceptions of the world. Thus, in order to kill, we do not repeal the prohibition on killing but instead we ‘make’ the enemy guilty and ourselves innocent. We do not kill civilians but the civilians ‘become’ combatants. We do not act unprovoked but are always responding. In less morally biased terms and in reference to the theory being developed in this dissertation, we present the enemy as nonreciprocal and ourselves as reciprocal.

⁹²⁵ Stathis Kalyvas, *The Logic of Violence in Civil War* (Cambridge, UK: Cambridge University Press, 2006) esp. 105, 146-172.

⁹²⁶ Arthur A. Stein, “Conflict and Cohesion: A Review of the Literature” *The Journal of Conflict Resolution* 20, no. 1 (1976): 165.

⁹²⁷ Lyall, “Does Indiscriminate,” 335, cites a number of authors on this.

Once we ‘create’ these identities and situations, we inhabit the reality of our definitions.⁹²⁸ In other words, our actions are based upon the manner in which we describe the world. Thus we ‘create’ terrorists and illegal combatants so that the image of the enemy is one which allows us to use violence against them and indeed almost assure that we do so. However, when one labels an individual or a group as something illegal (counter to order), such as a terrorist or a murderer, one is morally trapped in what one should do with them. A lack of response cannot be tolerated without the security of one’s own order being cast in doubt. Thus, “...when we describe terrorism as immoral, one of our purposes is almost always to justify (and make possible) our own response.”⁹²⁹

Moral discourse can create a sort of “reverse provocation trap” in the same manner that propaganda does. For example, if we exaggerate the size of the enemy in order to engender fear, this necessitates an appropriately scaled reaction. This is what happened when Marcos declared that the communists (NDF) had 10,000 rifles when they actually had only 300. This arguably served to strengthen the communists due to the resultant disproportionate actions disrupting normal life.⁹³⁰ In a similar vein, to believe in somebody’s guilt (nonreciprocal action) is to be required to do something, because conception of order is based upon these laws. From the government’s perspective, one’s authority depends on one’s response, for without a response, legitimacy will suffer and individuals may seek out their own reciprocity. To negotiate with those declared guilty or allow them to go free would indicate to one’s own population and to other observers an acceptance of what you yourself pointed out as being illegal and unjust. A path dependency is established where “actors are hemmed in by existing institutions and structures”⁹³¹ – hemmed in by the moral discourse that limits courses of action.

In these situations, it is very difficult for a government or military to back down after any action. In Northern Ireland, for example, the “inability to rescind emergency measures once enacted was tied to the moral import assumed in their enactment.”⁹³² Once something was labeled ‘anti-terrorist,’ it could not be repealed because this could be construed as accepting the ideology of the ‘terrorists.’ Elsewhere, by declaring the Taliban

⁹²⁸ This turn of phrase and logic is adapted from Gourevitch.

⁹²⁹ Seto, “The Morality,” 1231.

⁹³⁰ Joma Sison, Utrecht Conference.

⁹³¹ David Wilsford, “Path Dependency, or Why History Makes It Difficult but Not Impossible to Reform Health Care Systems in a Big Way,” *Journal of Public Policy* 14, no. 3 (1994), 251.

⁹³² Laura K. Donohue “Temporary Permanence: the Constitutional Entrenchment of Emergency Legislation,” *1 Stanford Journal of Legal Studies* (1999): 47

as “illegal combatants”, the United States does not need to let them go, but indeed they actually cannot let them go and maintain their definition of the world. To back down would bring some level of disorder to the social group, especially as some within the group have power that is built on these versions of reality. Thus, this type of reversal is not easy in light of the concerns of meaning and legitimacy. From the opposite perspective, if somebody is an ‘infidel,’ one cannot allow them to live without opening oneself up to attack by those who want to maintain a harsher version of reciprocity, one that may resonate more with the populous.

Extremist Ethics Enable but Entrap

If an ethic is built upon supremacy of one’s own beliefs and virtues, the hierarchical dominance of one’s own ethnic group and the importance of its purity, then in order for this ethic to achieve its ends, enshrine its version of order and goodness into the world, it makes sense that mass killing must occur. According to Hugo Slim, “In the logic of such thinking, the extermination of this people or group soon emerges as a ‘solution’ to the political problems which are preventing the supreme realization of the imagined racial, religious, or political purity.”⁹³³ Slim is correct, but seems to undersell the point. He implies the killing is logical only from their view and by placing the word “solution” in scare quotes implies it is not really a solution at all. And although he is correct in his pointing out that the “purity” is “imagined”, he fails to note that all ideas, even those that are admirable, are imagined first.⁹³⁴ It is, in fact, the fact that they are imagined and not yet real, that makes the killing so important. Thus, from a logical perspective, in order for the *imagined* purity of extremists to occur, to be made real, the actual solution, the means, is extermination of other group(s).

While one may fully agree that the ethic of genocide is abhorrent, it is not useful to pejoratively speak of the ethic and the solutions as existing only in the minds of the extremists, and therefore as being aberrant and twisted. Slim’s language is very precise, also saying that ideas were “in Hitler’s mind” or in “the genocidal mind.”⁹³⁵ Slim does not confront the question of whether the killing is rational, but implies it is logical only from the extremist’s views. But it is logical no matter your views. If it is your goal is to be the only person to live in a certain space, then it is logical to kill all the others who live there.

⁹³³ Slim, *Killing Civilians*, 125.

⁹³⁴ Scarry, *The Body*.

⁹³⁵ Slim, *Killing Civilians*, 124, 135.

Indeed, in the end, your actions are for the good of all because those it was not good for are dead. In the context of Girard's observations on violence, one can see that this strategy would work, for it leaves no desire for revenge in its wake, as those who might call for such revenge are dead or eliminated as a group. In short, atrocity has utility. There is simply no denying this. The problem is not utilitarianism which helps determine the best means. The problem is the extant or desired social order that necessitates a certain approach.

One might also conclude that this would eventually result in the ethics of the world following the path towards such extremes, as these ethics could use more force and be less restrained, which, by the logic of many military thinkers, would give them an advantage in war. The fact that extremist ethics do not dominate in the world (even though present and at times strong) is an indicator that extreme means do not have as much utility as pure logic would imply. So, what is preventing this? The reason the extreme ends and extreme means do not come to dominate is that they know no limits.

Atrocities, Grossman points out, can be "powerful acts of group bonding and criminal enabling."⁹³⁶ This bonding is evident in Girard's examination of the mob driven by mimetic violence. The mob that kills an innocent actor, who they claim is guilty, is then bonded in their own guilt and denies its responsibility for the act.⁹³⁷ The most clear cut, and oft cited, historical example of this process is the case of Nazis.⁹³⁸ The Nazi atrocities were analogous to Cortez's burning of his ships – leading them to fight harder but also trapping them in a hostile world of their own making. In short, as Grossman aptly demonstrates "... the Nazi's were entrapped by the very thing that enabled them."⁹³⁹

The Germans had put themselves in a position that they must win unequivocally. The scale of atrocities demanded their adversaries hold them accountable and achieve a 'proportionate' reciprocity. The Allies were in a position in which they could accept nothing less than the destruction of Germany. In short, German actions enabled their enemies. A similar dynamic occurred during the 1994 genocide and war in Rwanda,

⁹³⁶ Grossman, *On Killing*, 211.

⁹³⁷ Girard.

⁹³⁸ Grossman, *On Killing*, Bartov, Gray, *The Warriors*, esp. 56.

⁹³⁹ Grossman, *On Killing*, 215.

where the Hutu actually made the RPF more difficult to defeat since it had them ‘cornered’ and gave them no choice but to fight with all available resources and energy.

Even had the Allies (or Tutsis) been willing to strike an accord, the enemies’ moral ideology would not allow compromise. There was a lack of moral choice under these regimes because they demanded ethics that permitted no kindness, and indeed no survival, against certain ‘others.’ Had they compromised these beliefs, their identity would have to be drastically altered and so they would have destroyed themselves. Yet by not compromising, they had to press the fight until ethnic supremacy was reified and all others killed, enslaved, or subservient. Thus, for either side, nothing short of total victory or total loss was possible and this situation was a result of the non-other-regarding ethic.

Professor Don Ross too uses a Cortez analogy in his examination of game theory. He notes that Henry V’s slaughter of French prisoners at Agincourt, in full site of the French troops, served as motivation for the English. According to Ross, “His own troops observe that the prisoners have been killed, and observe that the enemy has observed this. Therefore, they know what fate will await them at the enemy’s hand if they don’t win... thereby changing their incentives in ways that favoured English prospects for victory.”⁹⁴⁰ In a manner, atrocities are useful for leadership to order if there is a risk their own troops may defect. Once an atrocity is committed, these same soldiers would be less likely to consider surrender because they are aware that the enemy is desirous of revenge. Again, the case of the Nazis provides a clear illustration of this dynamic. The *Wehrmacht* allowed their soldiers to vent their anger at civilians, which “tied them to each other with terror of the enemy’s vengeance in case of defeat.”⁹⁴¹ Because of the reciprocity expectation, the troops will stay together rather than disintegrate in the wake of any atrocity. Indeed, they are likely to continue to engage in atrocities in an attempt to avoid having what came from them returned. In a sense, the moral rule contributes to its continued violation because once it is violated one must try to avoid reciprocity being visited upon oneself and so undertake continued non-reciprocal activities.

Must be Able to End a Conflict Short of Defeat

⁹⁴⁰ Don Ross, “Game Theory,” *The Stanford Encyclopedia of Philosophy* (Fall 2011 Edition), edited by Edward N. Zalta and available at <http://plato.stanford.edu/archives/fall2011/entries/game-theory/>.

⁹⁴¹ Omer Bartov, “The Conduct of War: Soldiers and the Barbarization of Warfare.” *The Journal of Modern History*, vol. 64, Supplement: Resistance Against the Third Reich. (1992): S33; Arreguiun-Toft, *How the Weak*, 12. Notes that German “conduct also meant they would be shown no quarter by their adversaries.”

Unlike the end demanded by myopic and supremacist ethics, most wars aim not at total annihilation of an enemy but at coercion over one particular issue. These types of wars require a different sort of means. As Bruce Russett and Harvey Starr observe, “Brute force overcomes an obstacle simply by destroying it, as the Romans overcame Carthage in the Third Punic War... (but) In most situations where force is used, however, influence is the aim.”⁹⁴² In these cases, one doesn’t need to eliminate the rival to acquire the object, but only convince them to give up their claim on whatever it happens to be. For this reason, JFC Fuller points out that it is a fallacy that “policy is best enforced by destruction.”⁹⁴³ Such destruction, he and others point out, destroys the very objective of peace.⁹⁴⁴ According to Schelling, “Brute force can only accomplish what requires no collaboration”⁹⁴⁵ and this is a very limited number of tasks. Even the retreat of the Iraqi army from Kuwait required “collaboration” of a sort. The only end that brute force could have achieved was total destruction.

The construction of a total enemy in a manner demands a total war that makes the achievement of victory difficult and reconciliation afterwards equally so.⁹⁴⁶ If we are obligated to destroy an enemy in whole, our task will be much harder. Very often this approach will create enemies where none exist, forcing neutral parties to become adversaries and forcing one to target more groups. Also, as Rupert Smith points out, total elimination, “can only ever be a ‘one-shot’ attempt: if it fails, and only some of the people are driven out or otherwise removed, the remainder will form the vengeful nucleus of the enemy.”⁹⁴⁷ Such an all or nothing approach is not optimal for the survival of a group, which must be able to survive all encounters for as long as possible.

In their appeal to Athens not to attack, the Melian’s too referred implicitly to the surrogate mechanism. They argued that Athens should not put all actors in the “same category” and attack those who had nothing to do with the conflict as they would be “making enemies of all existing neutrals.”⁹⁴⁸ The Melian’s argument may have failed to save their nation but

⁹⁴² Bruce Russett and Harvey Starr, *World Politics: The Menu for Choice*, 5th ed. (New York: W.H. Freeman and Company, 1996), 146.

⁹⁴³ Gat, *A history*, 664.

⁹⁴⁴ *Ibid.*, 665 (citing Fuller)

⁹⁴⁵ Schelling, *Arms and Influence*, 8.

⁹⁴⁶ Slim, *Killing Civilians*, 500; Also see Noel Kaplowitz, “Psychopolitical Dimensions of International Relations: The Reciprocal Effects of Conflict Strategies.” *International Studies Quarterly* 28, no. 4 (1984): 401.

⁹⁴⁷ Smith, *The Utility*, 177.

⁹⁴⁸ Book 5, Chapter 96 and 98.

Liebeschuetz points out that while “Melos is destroyed... the very next sentence in the history begins the story of the decline of Athens and the justification of the Melians.”⁹⁴⁹ Thus, the problem with maintaining a “with us or against us philosophy,” of basing one’s strategy not on restraint but on force, is that there is no limit and no possible end except conquering the entire world (an unlikely future) or collapse (which is much more likely).

Sir Alistair Irwin has noted that regard for others is not required for fighting power, as is demonstrated by the cases of the Vikings, Mongols, Italians in Ethiopia, Germans in Russia and Japanese in China.⁹⁵⁰ However, a failure to regard others, but instead see all as enemies, leaves one in a state of perpetual expansion. Okura Kimmochi, president of Japan’s Technological Research Mobilization Office, saw a similar fate for Japan even if they had defeated the United States, saying that in light of Japanese militarism, the country would still face constant “internal and external attacks.”⁹⁵¹

Even on a more limited geographic scale, failure to discriminate between groups due to a militant or ethnically myopic ethos can make victory more difficult. For example, the Sudanese government classified even “relatively neutral rural communities” in South Sudan as culturally aligned with the more militant groups and “and therefore likely to be rebel supporters.”⁹⁵²

What discrimination allows is a separation between war and total war, which would require the elimination of every possible adversary. Moral rules of war provide limits short of necessitating this total destruction. As Frederick H. Russell says about the differences between holy and just wars: “the just war stops short of countenancing the utter destruction of the adversaries...”⁹⁵³ As such, it provides a way to extract oneself from a conflict short of one’s own defeat. Since one is not morally committed to the destruction of the enemy, compromise and a future relationship is possible.

The Illusion of Moral Asymmetry

⁹⁴⁹ W. Liebeschuetz, “The Structure and Function of the Melian Dialogue,” *The Journal of Hellenic Studies* Vol. 88, (1968).

⁹⁵⁰ Daren Bowyer, Chapter 7 of *The Moral Dimension of Asymmetrical Warfare*, 155; This is also noted in British Defence Doctrine. See *Army Doctrine Publication Operations*.

⁹⁵¹ Maddox, *Hiroshima*, 55.

⁹⁵² James (1994), 142.

⁹⁵³ Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), 2.

It is worth turning our attention briefly to the role of morality in so-called asymmetric conflicts. Hugo Slim notes that indiscriminate strategies are often justified by reference to asymmetric necessity since the weak need to bypass the opponent's strengths (i.e. the hard military targets). Slim concludes that "A significant thing about terror is its ability to magnify your power dramatically."⁹⁵⁴ Michael Ignatieff too joins the chorus that believes "violence is the force multiplier of the weak" but restraint is required for the strong.⁹⁵⁵

This belief has led to the idea of moral asymmetry – that non-state actors are not beholden to the same moral standards as states. The term "moral asymmetry" can be traced back at least to 2001⁹⁵⁶ but the idea is not new. Otto von Bismark in the 19th century commented on the concept, although of course he didn't use the term, saying "We live in a wondrous time in which the strong is weak because of his moral scruples and the weak grows strong because of his audacity."⁹⁵⁷ The perception that moral asymmetry is real is pervasive among many military thinkers and politicians.⁹⁵⁸ For example, it is claimed "we are dealing with an enemy who is not interested in moral reciprocity"⁹⁵⁹ and "needs no pretext to attack."⁹⁶⁰ UK Defence Secretary John Reid in February 2006 insisted the troops were "facing an enemy, unconstrained by any legitimacy, any morality, any international convention..."⁹⁶¹ However, this is obviously simply rhetoric. If this were true, it would imply the enemy has no support. This would of course make fighting them easier since they could not draw resources from the local populations.

Recent studies have provided some indication that moral asymmetry has some factual basis. For example, one examination of the dynamics of violence in Afghanistan concluded that the level of "violence changes only when ISAF is responsible for the

⁹⁵⁴ Slim, *Killing Civilians*, 157-158.

⁹⁵⁵ Ignatieff, *New York Times*.

⁹⁵⁶ Davida Kellogg, "On the Importance of Having an Honorable Enemy—Moral Asymmetry in Modern Warfare and the End of the Just War Tradition," Can Nations Handle National and International Crises Ethically?—The 4th Canadian Conference on Ethical Leadership, Royal Military College, Kingston, Ontario, 7-9 November 2001.

⁹⁵⁷ David A Buffaloe, "Defining Asymmetric Warfare," *The Land Warfare Papers* 58 (Arlington, VA: Association of the United States Army, 2006), 8.

⁹⁵⁸ Chiarenza, Ignatieff.

⁹⁵⁹ Michael Ignatieff, "Ethics and the New War," *Canadian Military Journal* 2, no. 4 (2002), available from http://www.journal.dnd.ca/engraph/Vol2/no4/pdf/5-10_e.pdf.

⁹⁶⁰ *American Civil Liberties v. Department of Defense*. 389 F.Supp.2d 547. United States District Court, S.D. New York: September 29, 2005.

⁹⁶¹ "Troops face uneven battlefield." *BBC News*, February 8, 2006, available from http://news.bbc.co.uk/1/hi/uk_politics/4692572.stm.

casualties.”⁹⁶² Yet accepting this as an indication of asymmetry is premature. Given that the Taliban killing is, even if appalling from some views, based at least in part on Sharia law, albeit a strict interpretation, and based on the actions of people they are targeting,⁹⁶³ their killing is less feared as individuals can alter their actions and survive. However, even if an individual is neutral or takes actions in favor of the Americans, they can still be hit by stray missiles or be victims in some other collateral damage event. It is the indiscriminate nature of the attacks that is the reason they do not suppress violence whereas the Taliban’s violence can. In addition, the Taliban killing is congruent with their aimed for order and the U.S. violence contradicts any order due to its randomness and thus lacks meaning.

In addition, given that reciprocity is a condition for existence, there is no circumstance in which such nonreciprocal actions would not prompt a response. Some commentators believe that “Moral asymmetries employed by insurgents armor the insurgent against possible retaliation from the population.”⁹⁶⁴ However, this claim is unfounded. The demand and need for reciprocity and the mimetic nature of violence do not play favorites. The recent resurgence of claims of moral asymmetry ignores the lessons of history. Writing in 1961, P.M. Blackett wrote that, “The introduction of assumption of moral asymmetry into military arguments is full of pitfalls.”⁹⁶⁵ While he was speaking largely of Cold War Strategy to counter the Soviet Union, the observation is as accurate in regard to non-state actors.

As one analysis observes, “a high civilian death count can turn the population against the group, as happened with the umbrella militant organization Islamic State of Iraq in 2007.”⁹⁶⁶ The violence there prompted moral sanctions and the formation of the Awakening. The killing of Sunni tribal Sheikh Abdul-Sattar Abu Risha, leader of the Anbar Awakening Council, led to a “massive outpouring of sympathy for Abu Risha and prompting the tribes in the province to join in vowing to fight al Qaeda in Iraq to the death.” In Pakistan, tribal leaders too are starting to join together to “to prevent cross-

⁹⁶² The Effect of Civilian Casualties in Afghanistan and Iraq, 28

⁹⁶³ For example “Seventeen civilians have been killed by Taliban insurgents in Afghanistan's southern Helmand province, reportedly for attending a party,” *BBC News*, August 27, 2012, available at <http://www.bbc.co.uk/news/world-asia-19388869> .

⁹⁶⁴ Chiarenza, *Moral Warfare*, 14.

⁹⁶⁵ P.M.S. Blackett, “A critique of defence thinking,” *Survival* 3, no. 3 (1961).

⁹⁶⁶ Scott Stewart, “Insurgency and the Protracted War,” *STRATFOR Security Weekly*, June 28, 2012.

border attacks” by the Taliban.⁹⁶⁷ The recent events in Libya in the wake of the assassination of the US ambassador are illustrative of the myth of moral asymmetry. In this case, the population rose up and forced militias to leave Benghazi.⁹⁶⁸

Indeed, the myth of moral asymmetry has even been recognized by non-state actors themselves. The recognition that severe tactics may lead to a loss in support and legitimacy⁹⁶⁹ led to Taliban leader Mullah Mohammad Omar issuing a code of conduct for AQ fighters in the summer of 2009 which, among other things, directed them to protect the civilian population and avoid civilian casualties.⁹⁷⁰

Enabling the Enemy

Although the focus of this dissertation has been to examine the utility of morality, it is important to recognize that immorality too has possible uses. The very existence of a law or a deeply held moral principle empowers those who are willing to violate it. For an opponent to the social order, such transgressions can demonstrate power through immunity from reciprocal action, challenge the meaning and legitimacy of a social order (as it is unable to achieve reciprocity), and create fear due to very breakdown of laws, thus stressing the import of an order that can secure and defend prohibitions.

The power of the transgression of norms is intricately linked to legitimacy, in that it is the sheer illegitimacy of an act from the perspective of the victim and their compatriots that gives the act such resonance. It may cause fear or prompt revenge, but it is the fact that the act is regarded as wrong that gives it such an impact. If there were no taboo, the act would lack such power. Thus, the utility of immorality is mediated by our moral codes.

Paradoxically, the violations can also serve the current social order by creating fear due to very breakdown of laws, making clear to the population the benefits and preference for

⁹⁶⁷ Ashley Lindsey, “Targeting Tribal Leaders: A New Militant Tactic in Sinai,” *STRATFOR Security Weekly*, August 16, 2012, available from <http://www.stratfor.com/weekly/targeting-tribal-leaders-new-militant-tactic-sinai>.

⁹⁶⁸ Maggie Michael, “Benghazi Anti-Militia Protest: Libyans March Against Armed Groups After U.S. Embassy Attack,” *Huffington Post*, September 21, 2012, available at http://www.huffingtonpost.com/2012/09/21/benghazi-anti-militia-protest_n_1903846.html. Further cases of non-combatants taking collective action against insurgents are provided by Lyall, “Does Indiscriminate,” 337.

⁹⁶⁹ Kriesberg, *Constructive Conflicts*, 185.

⁹⁷⁰ Roy Gutman, “We’ve met the enemy in Afghanistan, and he’s changed,” *McClatchy Newspapers*, March 14, 2010, available from: <http://www.mcclatchydc.com/2010/03/14/90083/weve-met-the-enemy-inafghanistan.html>.

status quo. Thus, the violation of a taboo can reinforce the order as well, since nobody will be able to deny how terrible the violation was. In short, violation can boost legitimacy and meaning of an order, and “brings together upright consciences and concentrates them.”⁹⁷¹

It is important to remember that the enemy too is enabled by victims. In violating ‘our’ rules, the ‘other’ is actually contributing to their othering and arguably mobilizing more actors against them. While of course violence has the power to subjugate, as the theory of this dissertation makes clear, it is far more likely that it will contribute to counter-violence.

The knowledge that an enemy’s atrocities can strengthen one’s own group has been long recognized. Sun Tzu relates a story where the leader of a group purposely incites an opponent to undertake immoral actions – cutting off prisoners’ noses and desecrating ancestral tombs – knowing that instead of making his soldiers and people fearful, they would be “enraged at seeing their fellow-countrymen thus mutilated... defend themselves more obstinately than ever... impatient to go out and fight, their fury being increased tenfold.”⁹⁷² While we may insist the enemy needs no excuse to attack us, this is largely rhetoric. All orders need to justify with violent actions through reference to reciprocity, insurgencies arguably even more so. This is why T.E. Lawrence noted that “standing still” in an “irregular war, was the prelude to disaster.”⁹⁷³

It also must be kept in mind that the enemy too will be driven to achieve reciprocity even if they cannot strike hard targets. Thus we find that the surrogate mechanism is particularly common in asymmetric wars. Faisal Shahzad, who attempted to place a bomb in Times Square in 2010, justified his actions by claiming that “When the drones hit, they don’t see children, they don’t see anybody. They kill women, children, they kill everybody... I am part of the answer... I’m avenging the attack.”⁹⁷⁴ The operation of the surrogate mechanism here is vital to enable this type of violence. Shahzad could not attack the drone nor its operator, yet was able to rationalize redirecting his violence. Without this capacity, he would have had no recourse to responding. The surrogate mechanism then is driven by a need but inability to respond. Thus, methods which create such a situation, such as risk-

⁹⁷¹ Durkheim, *Selected Writings*, 127.

⁹⁷² Sun-Tzu, *On the Art of War: The Oldest Military Treatise in the World*, trans. by Lionel Giles, New Edition (Toronto: Global Language Press, 2007), 90.

⁹⁷³ T.E. Lawrence, *The Seven Pillars of Wisdom* (Hertfordshire: Wordworth Editions, 1997 [1935]), 51.

⁹⁷⁴ Jeffrey A. Sluka, “Death From Above: UAVs and Losing Hearts and Minds,” *Military Review* (May-June 2011): 76, available from http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20110630_art012.pdf.

averse warfare using high-tech weapons, are contributing to what is often viewed as terrorism (viewed as such because it is not targeting the actual victimizer directly).

David Sanger, Chief Washington Correspondent for the New York Times, recently articulated a resultant dilemma, asking, “Have the stepped-up attacks in Pakistan — notably the Predator drone strikes — actually made Americans less safe? Have they had the perverse consequence of driving lesser insurgencies to think of targeting Times Square and American airliners, not just Kabul and Islamabad? In short, are they inspiring more attacks on America than they prevent? It is a hard question.”⁹⁷⁵ It may be a hard question, but taking into account the strong operation of the surrogate mechanism and the need for reciprocity, the inability of the insurgents to strike at the drones would then lead to a surrogate target being selected. Whether that target is a local village, a stray dog, or a U.S. skyscraper is harder to determine but there will be a surrogate somewhere, for reciprocity must be achieved. If it is not, the victimized society will erode and alternative groups, authorities, and agents who can achieve reciprocity will be sought.

Creating Victims

War requires reciprocity of action. When this does not exist, the activity will soon be judged not as war but as violence and threatening to civilization. Thus, to continue to attack when there is apparently little reciprocity, is to turn the opponent into not an adversary but a victim. Once this occurs, the opinions of third parties and even of oneself will begin to turn against continued violence upon what is essentially an unresponsive mass. Desert Fox, for example, led to Iraq being seen as a victim, thus the force had no political utility.⁹⁷⁶ When the enemy becomes a victim, this can lead to heavy pressure to end military operations. This was the case, for example, after the U.S. attack on the Iraqi convoys retreating from Kuwait along Highway 8 and 80 (the so-called Highway of Death) during Operation Desert Storm. The scenes of nonreciprocal destruction made the public and as a result the White House “quite uncomfortable”⁹⁷⁷ and led directly to the end of the air campaign.⁹⁷⁸

⁹⁷⁵ David Sanger, “U.S. Pressure Helps Militants Overseas Focus Efforts,” *New York Times*, May 7, 2010, available from http://www.nytimes.com/2010/05/09/weekinreview/09sanger.html?_r=1&ref=todayspaper.

⁹⁷⁶ Smith, *The Utility*, 186.

⁹⁷⁷ Gabriel Palmer-Fernández, “White Flags on the Road to Basra: Surrendering Soldiers in the Persian Gulf War” *Journal of Social Philosophy* 32, no. 2 (2001): 149.

⁹⁷⁸ Seymour Hersh, “Overwhelming Force: What happened in the final days of the Gulf War?” *The New Yorker*, May 22, 2000. In “The Generals’ War,” by Michael R. Gordon and Bernard E. Trainor, Bush explained that he and his advisers were concerned about two aspects of the situation: “If we continued the

This is why we need some level of reciprocity in war, so that our own perceptions as being just are not threatened. The sinking of the *Belgrano* was possibly effective but arguably the reciprocal sinking of the *Sheffield* had more benefits, bring unity to the effort that previously was mediocre. The reciprocal nature of the conflict now eased the worries of those who previously viewed the operation as too one sided. It helped avoid the perception that Argentina was a becoming the victim.

No matter who the victim is, once they are perceived as the victim, they become immune from violence to some extent. One can, of course, continue to target them, but this only increases the strength of their victimization. This makes them an increasing threat to order. This is why, for example, from a political standpoint, “the most effective non-violence is the kind that gets people hurt or killed, that results in violence.”⁹⁷⁹ The reason that nonviolence works is because when we see the lack of reciprocity, we feel uncomfortable. If we see that our adversary is unable to respond even as we rain blows down upon them, our sense of meaning and legitimacy is threatened. We can of course alter our perception to make ourselves believe that we are being reciprocal, but this can be difficult, in particular in the modern media heavy environment. In addition, other actors will not be easily swayed by our arguments if we are engaged in what others believe is a ‘turkey shoot.’ The ensuing isolation can very much complicate a nation’s security.

Conclusion

This chapter has illustrated why it is necessary to be other-regarding even while waging war against the Other. We started by exploring how violence can propagate through a social sphere via relationships between people and groups. It is this social realm that gives war its true power for it allows physical events to extend beyond their temporal and geographic limitations. These social effects are a sort of collateral damage that cannot be ignored without great danger, as they increase cultural violence and this can translate very easily into direct violence. Force directed against an adversary thus can strengthen that adversary.

fighting another day, until the ring was completely closed, would we be accused of a slaughter of Iraqis who were simply trying to escape, not fight? In addition, the coalition was agreed on driving the Iraqis from Kuwait, not on carrying the conflict into Iraq or on destroying Iraqi forces.”

⁹⁷⁹ Ingle and Marvin, *Blood Sacrifice*, 315.

The chapter also illustrated how the nature of violence – its mimetic and surrogate tendencies – can obscure the objectives of war and thus obstruct the achievement of war's policy goals. This was a point that even Clausewitz made, seemingly recognizing that violence, the means of war, must also be restrained. Mimesis itself contributes to the so-called 'fog of war' and the loss of focus on the objects of war. When sight of an objective is lost, actions are instead driven by a blind desire to respond or the violence can shift to surrogate targets. These new objects may be targeted due to self-interest (as is the case when the goal becomes looting) or simply selected because they can be attacked, and thus they can satisfy a belligerent's desire to 'respond', even if it is not objectively a direct response. This leads to the targeting of civilians and other immune peoples.

This chapter then outlined how the targeting of indiscriminate surrogates serves to unite an opponent and also morally entrap a perpetrator. Killing surrogates has a major disadvantage because it produces victims and these victims call for revenge. The group has an obligation to respond and thus the violence is perpetuated.

Moral conceptions and immoral actions can also entrap an individual or group. In short, to perceive the enemy as homogenous demands a total war since every member of the enemy group must then be targeted. This makes victory in war and reconciliation afterwards very difficult. It, in essence, places one in a zero sum game of one's own making, and continued participation in such games is not optimal for long term survival.

We now want to wrap up these observations by looking at how the moral-legal rules of warfare can limit escalation caused by the dynamics already described.

Chapter VII - The Moral-Legal Rules and the Control of the Trinities

Introduction

Because war is a system based upon mimesis, those who engage in war and also aim to maintain a social order must be able to control that mimesis. The rules that can be drawn upon for this control have historically come from religion and law. These are the ways within a society that reciprocity/mimesis is controlled and they serve similar functions in controlling mimesis in war. Here is where we find the true utility of the moral/legal guidelines. These moral principles control mimetic tendencies thus enabling the control of war. The purpose of this chapter is to draw out some of the specific moral-legal references to the control of the dynamics of violence that were highlighted in the last chapter. We will conclude by looking briefly at how the discrimination creates the social order of the state.

Moral-Legal Rules Limit Escalation

Girard believes war's purpose is to control and restrain violence⁹⁸⁰ by holding back the Clauswitzian trend to extremes that is inherent in all violence.⁹⁸¹ At least one writer, Sheng Hongsheng, Professor of International Law at Jiangsu Academy of Social Sciences, directly links the escalatory nature of violence with the moral/legal rules that govern war. Hongsheng writes that, "War is a unique societal phenomenon wherein the belligerent parties involved make every effort to utilize violence without constraint. This type of 'endless expansion of evil' does not, in actuality, help to achieve the aim of war. Consequently, wars have given rise to various rules that limit the extent of violence in warfare and which have, in turn, created the logic upon which law of war emerged."⁹⁸² This observation is well in line with the Girardian idea that mimetic escalation leads to the loss of focus on the original object at which violence was directed. This is one of the rare instances of a legal scholar explicitly considering that the limiting of violence that the laws aim to achieve is directly related to achieving the objectives of war and actually arose out of those needs.

⁹⁸⁰ Girard, *Battling*, 1, 2.

⁹⁸¹ Girard, *Battling*, 41. Girard writes that "it is against that baleful tendency that the institution of war was gradually established in an attempt to control what was less and less controllable."

⁹⁸² Hongsheng, "The Evolution," 271.

Looking at the functions of Rules of Engagement (ROE) can buoy our case regarding the functions of the moral codes of discrimination because “The ROE link the law of war to the battlefield.”⁹⁸³ Thus, it is little surprise that their purpose mirrors that of the LOW. According to one author, this purpose of ROE is in part to make sure “actions do not trigger undesired escalation, *i.e.*, forcing a potential opponent into a ‘self-defense’ response.”⁹⁸⁴ Thus, the ROE pertain directly to ensuring that a mimetic cycle stays under some sort of control.

The way in which the legal-moral rules control escalation is by controlling the mimetic tendencies evident within the Remarkable Trinity.

LOW Controls the Remarkable Trinity

As already observed, rational policy, chance, and violent emotion are the essential features of all wars, with which all parties must contend. This is the case regardless of whether we are talking about conventional wars, so-called asymmetric wars, or hybrid wars. These tendencies of war can be managed and balanced in part through morality and the LOW, and in particular through discrimination. The Final Protocol of the Brussels Conference in 1874, which would form the basis of the Hague Conventions, noted that if war were regulated by laws, it “would involve less suffering, [and] would be less liable to those aggravations produced by *uncertain, unforeseen events*, and the *passions* excited by the struggle.”⁹⁸⁵ The reference to uncertainty and passion is as clear an indication as any legal document will make regarding how law aims to manage the Remarkable Trinity.

Morality and law enable the control of violence so instinctual calls for revenge do not rule actions. This allows violence instead to be directed by policy. Thus, “In an important way, just war theory constitutes the counterbalance to the tendency toward absolutism described (but not necessarily embraced) by Clausewitz and, to that extent, can be seen as

⁹⁸³ Seifert, 841; See also Adam Roberts & Richard Guelff, “Introduction,” in *Documents on the Laws of War*, Adam Roberts & Richard Guelff eds., 2nd ed. (Oxford: Clarendon Press, 1989), 7. They write that ROE are “the closest link which the laws of war [governing the use of force] maintain with the belligerent armed forces in the field.”

⁹⁸⁴ MAJ Derek Grimes, MAJ John Rawcliffe, and CPT Jeannine Smith, eds., *Operational Law Handbook (2006)* (International and Operational Law Department, Charlottesville, VA), 84.

⁹⁸⁵ Final Protocol of Brussels Conference in Dietrich Schindler and Jiří Toman, *The Laws of Armed Conflicts* (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1988), 26.

a moderating influence...”⁹⁸⁶ This does not mean that the government, the authority, wants to eliminate the violent emotions but that it wants to be able to let them loose and contain them at will.

Violent Emotion Doesn't Work

There is a conception among some that war requires violent emotions and indeed they can be a benefit in battle. Hebrew University of Jerusalem Professor Pinchas Noy claims “The soldier involved in battles in the past could not function without being motivated by aggression. He could not put his sword through the body of his enemy without feeling hate for him or without enjoying the actual act of killing.”⁹⁸⁷ Even if true, this utility of violent emotion has certainly been reduced as warfare advanced. Robert L O’Connell argues that the invention of firearms meant that the ideal warrior no longer needed “ferocious aggressiveness” but “passive disdain.”⁹⁸⁸ This ideal was based upon what was needed to make one fight successfully, to allow one to kill.

However, even before guns, “ferocious aggressiveness” would have been ill suited for almost all forms of organized battle. The phalanx certainly did not want somebody to break ranks and charge out to face the enemy in single battle. Indeed, with more careful consideration, one can see that even on the battlefield, these bursts of emotion rarely do any good. Clausewitz points out that this is the case, writing that “Excitable, inflammable feelings are in themselves little suited for practical life, and therefore they are not very fit for War...”⁹⁸⁹

Clausewitz is not alone in his disapproval of violent emotion in war. His beliefs that they are ill suited for combat echo and are echoed by just war philosophers. Augustine wrote that “the real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power.”⁹⁹⁰ The reason the war philosopher and the moral philosopher disapproved of such violent emotions was, of course, different. But the parallel is profound – both Clausewitz and Augustine proffer the same advice in war. There is ample proof that the perception of high threat levels can result in greater support

⁹⁸⁶ Mattox, “The Clausewitzian,” 15.

⁹⁸⁷ Schmookler, *Parable*, 166.

⁹⁸⁸ Ehrenreich, *Of Arms*, 119.

⁹⁸⁹ Clausewitz, *On War*, 50.

⁹⁹⁰ Hartigan, 1966, 198, Citing Augustine, *Contra Faustum*, XXII, 74, trans. in *A Select Library of the Nicene and Post-Nicene Fathers*, ed. by Philip Schaff (Grand Rapids, Mich., 1956).

for violence as emotions supersede rationality.⁹⁹¹ Thus, if war is to be rational, emotions must be minimized.

The Christian injunction to right intent can be seen as an early attempt to control violent emotions. According to Aho, “many of the prohibitions in the Pentateuch and the Qur’an as well... can be accounted for in part by the fear of warrior frenzy in Judaism and Islam.”⁹⁹² Law unsurprisingly also agrees. In *United States v. List* at the Nuremberg trials, the tribunal said military necessity “does not permit the killing of innocent inhabitants for purposes of revenge or the satisfaction of a lust to kill.”⁹⁹³ Grotius cites the “frenzy” of war as leading to the committing of all manner of crimes and cites law as the solution.⁹⁹⁴ Thus we see that the law is attempting to control the violent emotion that Clausewitz himself believed had to be controlled for war to remain political.

Trying to Remove Violent Emotion

Suarez observes that an individual who carries out their own justice/revenge will often be excessive due to their personal emotions.⁹⁹⁵ Taking into consideration what Girardian theory observes about mimetic desire and observations on the partiality of pain, this tendency for excess has strong backing in theory. The excessive response will then demand another response to once again try to balance the scales.

Thus, in many early societies, retaliation for acts by other groups was often “uncoupled from the direct involvement, the intentions and emotions of the actors involved in the incident...”⁹⁹⁶ In order to accomplish this, most groups divided into classes, one of which would achieve reciprocity or wage war on behalf of the others.

Robert Nozick’s list of features that separate retribution from revenge, include the observation that “the agent of retribution need have no special or personal tie to the victim

⁹⁹¹ Carol Gordon and Asher Arian, “Threat and Decision Making,” *Journal of Conflict Resolution*, 45, no. 2 (2001), 211.

⁹⁹² Aho, *Religious Mythology*, 173.

⁹⁹³ Lawrence Rockwood, *Walking Away from Nuremberg: Just War and the Doctrine of Command Responsibility* (Amherst: University of Massachusetts Press, 2007), 84.

⁹⁹⁴ Hugo Grotius, *Prolegomena to the Law of War and Peace*, trans. by Francis Willey Kelsey (Indianapolis: Bobbs-Merrill, 1957), 21.

⁹⁹⁵ Suárez, *The Three Theological Virtues, Faith, Hope, and Charity: On Charity*, Disputation 13, as cited in Oliver O’Donovan and Joan Lockwood O’Donovan, eds. *From Irenaeus to Grotius: A Sourcebook Political Christian Thought* (Grand Rapids, MI: Wm. B. Eerdmans Publishing Co., 1999), 738.

⁹⁹⁶ Christopher Boehm *Blood Revenge: The Anthropology of Feuding in Montenegro and other Tribal Societies* (Kansas: Lawrence University Press of Kansas, 1984), 88.

of the wrong for which he extracts retribution.”⁹⁹⁷ Although Nozick doesn’t use the term, he is referring to the use a surrogate victimizer. This appears to link with Nozick’s next point, which is that retribution removes the emotional aspect. By removing those individuals tied to the victim of the wrong, emotion is removed from the act and revenge is replaced by retribution.

Soldiers are intended to be a class that acts without being biased by emotions. Of course this falls far from reality, but despite this, it remains true that it is tactically and strategically useful if they do not allow hatred and animosity and pure revenge to drive their actions. According to St. Ambrose, (paraphrase by authors) “The difference between the civilian and the virtuous soldier is that the latter does not act for revenge and does not act out of any motive of self-interest.”⁹⁹⁸ Again this is an ideal but it is important that it be striven towards. “Soldiers must be socialized into a role that has rigid parameters for control of individual expressions of aggression and violence.”⁹⁹⁹ Controlling violent emotion was identified early on by the Institute of International Law as a purpose of the LOW. Upon introducing a manual on the laws of war, the institute commented that, “A positive set of rules... serves the interests of belligerents and is far from hindering them, since by preventing the unchaining of passion and savage instincts — which battle always awakens...”¹⁰⁰⁰

The legitimate authority too is not supposed to be swayed by emotions. Sun Tzu wrote “No Ruler should put troops into the field merely to gratify his own spleen; no general should fight a battle simply out of pique.”¹⁰⁰¹

The people may dwell on violent emotions. However, their place as nonreciprocal must be maintained if these are not to adversely impact the war effort. Once the population becomes involved in the violence of war, the conflict is in great danger of escalating. Clausewitz observes that “The political object will be so much the more the standard of aim and effort, and have more influence in itself, the more the masses are indifferent, the

⁹⁹⁷ Robert Nozick, *Philosophical Explanations* (Cambridge, MA: Harvard University Press, 1981), 366-368.

⁹⁹⁸ Alexander Webster and Darrell Cole, *Virtue of War: Reclaiming the Classic Christian Traditions East and West* (Salisbury, MA: Regina Orthodox Press, 2007), 130.

⁹⁹⁹ Katz, “Emotional Metaphors,” 459.

¹⁰⁰⁰ International Committee of the Red Cross. *The Laws of War on Land. Oxford, 9 September 1880.* Available at <http://www.icrc.org/ihl.nsf/FULL/140?OpenDocument>.

¹⁰⁰¹ Sun Tzu, *On the Art of War*, 158.

less that any mutual feeling of hostility prevails in the two States from other causes...”¹⁰⁰² Girard’s own translation of Clausewitz’s observation states more bluntly that “‘The less involved the population’ the more the political object reappears.”¹⁰⁰³ Indeed we find that in cases where there is great animosity between the populations, the operations of war can stray from the instrumental and become largely emotionally driven.

So if war is to remain political and if it is to keep its original objective as its primary focus, the population must be removed from the war to some extent. Clausewitz reveals the reason in his connection between the “Remarkable Trinity” and the “Social Trinity.” Primarily, according to him, it is because the ‘people’ are governed by and concerned more with the “hatred and animosity.” This violent emotion is already in existence when war breaks out in many instances as was the case in WWI and the Franco-Prussian war.

Keeping Focused on Proper Objects

The legal-moral principle of discrimination can also be said to keep the military effort focused on the proper object. This is not the original but the surrogate object which is intended to decide the fate of the original political object. This surrogate object is linked to the original object but is not the same and indeed cannot be the same since the political object is often intangible (freedom) and if it is tangible (land), then one cannot target it as the means would then destroy the ends. This is why surrogate objects, soldiers who are tied to a social order, are so essential to warfare. If they did not exist, war would not be capable of achieving any ends for the tangible object would always be destroyed and the intangible could not be created (as this requires deaths).

Military strategy and the legal/moral codes are in general agreement that the proper military object in war is the enemy’s armed forces. For Clausewitz, the destruction of the opponents military is “the more superior and more effectual means, to which all others must give way.”¹⁰⁰⁴ Almost four decades after *On War* was first published in German, this principle was enshrined in one of the seminal documents of international law – the St. Petersburg Declaration. This treaty declared “the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the

¹⁰⁰² Clausewitz, *On War*, 14.

¹⁰⁰³ Girard, *Battling*, 9.

¹⁰⁰⁴ Clausewitz, *On War*, 36.

enemy.”¹⁰⁰⁵ Again, this alignment of military strategy and international law is a strong indicator that the practice of war and law of war are mutually supporting. If we were to judge by publication date alone, it would appear that Clausewitz led the way, however, it cannot be known with certainty where the principle may have originated. It is quite possible that it was a common principle within the military *zeitgeist* of the 19th century. For example, when General Hooker expressed a desire to advance his army to Virginia’s state capital, which appeared to be open to being taken, Lincoln observed (commanded) that “I think Lee’s army, and not Richmond, is your true objective point.”¹⁰⁰⁶

More recent laws of war have maintained this principle of focusing violence in war against military forces. The ICRC Commentary on Additional Protocol I again concurs, stating that a “military advantage can only consist in ground gained and in annihilating or weakening the enemy armed forces.”¹⁰⁰⁷ Additional Protocol I also extended preexisting prohibitions on reprisals to include “The entire population of civilians not taking direct part in hostilities, irrespective of their location” in addition to many civilian objects. In short, the Protocol further articulated the prohibition on indiscriminate surrogates. Modern Just War Theory too maintains the import of this principle. According to Philosopher Thomas Nagel, “hostility or aggression should be directed at its true object. This means both that it should be directed at the person or persons who provoke it and that it should aim more specifically at what is provocative about them.”¹⁰⁰⁸ Modern military doctrine proffers similar advice. The concept of Economy of Force relates to this as it urges one to not be distracted by secondary efforts. U.S. Army FM 3-0, *Operations*, requires that commanders “allocate minimum essential combat power to secondary efforts . . .”¹⁰⁰⁹

If we were to assume that military principles exist because they have utility in war, the similarity between Just War Theory, the St. Petersburg Declaration and other LOW, and Clausewitz and modern doctrine would certainly imply that in this case, morality and law have military utility. If we further take into account our previous description of the

¹⁰⁰⁵ International Committee of the Red Cross. *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight*. Saint Petersburg, 29 November / 11 December 1868, available from <http://www.icrc.org/ihl.nsf/FULL/130?OpenDocument>.

¹⁰⁰⁶ Bernard Brodie, “Review: In Quest of the Unknown Clausewitz: A Review, Reviewed work(s): Clausewitz and the State, by Peter Paret,” *International Security* 1, no. 3 (1977).

¹⁰⁰⁷ ICRC Commentary, AP I, Art. 57, para. 2218, www.icrc.org/ihl.nsf/COM/470-750073?OpenDocument.

¹⁰⁰⁸ Brandt, *Morality*, 148; See also Bellamy, “Supreme Emergencies,” 830. According to Bellamy, author of *Just Wars: From Cicero to Iraq*, “the strategic principles of war demand that one’s forces be orientated towards the accomplishment of political goals, unified in their approach, and directed against the enemy’s military.”

¹⁰⁰⁹ Headquarters Department of the Army, *FM 3-0, A-2*.

dynamics of indiscriminate surrogates and the loss of object, it becomes even clearer the moral-legal principle of discrimination can contribute to war success.

Avoiding Indiscriminate Substitutions

Moral rules aim to direct violence down a socially acceptable path, a path that will reduce the chance that the violence will continue to give rise to more violence. Girard observes that “The role of sacrifice is to stem this rising tide of indiscriminate substitutions and redirect violence into ‘proper’ channels.”¹⁰¹⁰ In war, the “proper” channel and the “proper” sacrifice, which avoids indiscriminate substitutions, is provided by the Social Trinity and the designation of a military class as target and targeter. When civilians are killed they are essentially indiscriminate substitutions, which can lead to an expansion of mimetic violence and collapse of control.

Western conceptions of justice in particular, but most modern conceptions as well, permit the punishment of only those responsible for an act (a crime). Thus it naturally follows that it has throughout history been illegal to direct violence against random surrogates. In the Middle Ages, reprisals were condemned by the Church largely because they caused the innocent to suffer for guilty.¹⁰¹¹ This has naturally given way to legal codification. The Fourth Geneva Convention states that “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”¹⁰¹²

Military practitioners agree. General Halleck, serving during the time of the U.S. Civil War, spoke in similar terms, saying “As in time of peace we generally punish only the guilty party, so in time of war we generally retaliate only on the individual offender.”¹⁰¹³ Of course what we mean by guilty and offender is up for debate. However, the fact that these principles are attempting to limit reciprocity is clear. More recent tactical doctrine follows this same line of thinking. U.S. COIN doctrine explicitly advises soldiers that “Treating a civilian like an insurgent... is a sure recipe for failure.”¹⁰¹⁴ Thus adhering to the legal and moral principles of discrimination makes logical sense.

¹⁰¹⁰ Girard, *Violence*, 10.

¹⁰¹¹ Keen, *The Laws*, 223, 224.

¹⁰¹² *Geneva Convention*, Article 33, IV.

¹⁰¹³ Henry Wager Halleck, “Retaliation in War,” *The American Journal of International Law* 6, no. 1 (1912): 110.

¹⁰¹⁴ FM 3-24 7-40

Baeriswyl concludes that, "Bearing in mind René Girard's theses, we should be able to see that the principal aim of a document like the European Convention on Human Rights (and the other regional human rights instruments) is to prevent innocent persons from being condemned, which is ensured in particular by statutory provisions that should curb the mimetic outburst of anger and violence that lies in the nature of man and leads society to sentence people even if they are not guilty."¹⁰¹⁵ While Baeriswyl uses the terms innocent and guilty with a bit too much certainty, the point is well made. The LOW and moral principles behind them are trying to control mimesis by assigning the 'guilty' and 'innocent' parties in advance.

Of final note, one of the primary ways the surrogate mechanism is able to operate is through deindividuation, when individuals are "not seen or paid attention to as individuals."¹⁰¹⁶ Morality, and human rights in particular, in focusing on the individual and trying to exclude him/her from war, is an attempt to fight this tendency for deindividuation.

Retribution Versus Revenge

When we attempt to distinguish between 'good' reciprocity and 'bad' revenge, the most common basis for our differentiation turns on misdirection of the violence, in particular the punishment of those who are not responsible for the initial infraction. As Slim notes, revenge "selects yet another group of civilians to die as representatives of the perpetrators..."¹⁰¹⁷ Waldman too rightly points out that "revenge as an institution has never been limited to those who are responsible and guilty..."¹⁰¹⁸ Thus, revenge falls prey to the dynamics of the surrogate mechanism. Reprisals then fall into the category of revenge, as they too are attacks against surrogates. Reprisals are, according to Ingrid Dettner's comprehensive examination of the LOW, "acts of victimization or vengeance by a belligerent directed against a group of civilians, prisoners-of-war or other person *hors de combat*, in response to an attack by persons of unprivileged status or by persons not

¹⁰¹⁵ Raphael Baeriswyl, "Use and Perception of Violence: A Girardian Approach to Asymmetric Warfare." *Anthropoetics* 13, no. 3 (Fall 2007/Winter 2008):24.

¹⁰¹⁶ First described by L. Festinger, A. Pepitone, and Newcomb, T., "Some Consequences of Deindividuation in a Group," *Journal of Abnormal and Social Psychology* 47 (1952): 382.

¹⁰¹⁷ Slim, *Killing Civilians*, 142.

¹⁰¹⁸ Waldmann, "Revenge Without," 446, 447.

immediately connected with the regular forces of the army.”¹⁰¹⁹ Defined in this way, revenge and reprisals are counter to the dictates of reciprocity. Their goal is reciprocity, or at least the feeling of it, but the violence is misdirected and so it is unable to achieve this objective.¹⁰²⁰

Another reason revenge differs from reciprocity is that it is not proportionate but instead out of scale when compared to the action to which it purports to be responding. This is in part because it is targeting surrogate victims but can also be the result of other social dynamics (such as devaluing Others). When one side has suffered losses, it is very common for those within the group to call for a response that inflicts more damage on other side than any level of proportionality would justify. Thus an angry Iraqi civilian who insist that “Every person martyred here today is worth 100 Americans...”¹⁰²¹ sounds a similar refrain as a Former U.S. President Bill Clinton who said of the situation in Somali, “When people kill us they should be killed in greater numbers.”¹⁰²² This is meant to have the same deterrent effect of God’s warning that anyone who killed Cain would have death visited upon them sevenfold. This may work but once violence has already started it provides for no limits and can be destructive to the very ones it was protecting as it launches an escalatory spiral that has both sides chasing after an imaginary bar of reciprocity. This excessive reaction, Girard points out, is “bad reciprocity,”¹⁰²³ as it results in more violence, and it must give way to good reciprocity if the violence is ever to come an end.¹⁰²⁴

To control revenge then, one must control the surrogate outlet that drives so many responses in war. Judith Lichtenberg points out those two features can “tame” revenge. While she does not refer directly to the surrogate mechanism, her observations clearly aim to manage this dynamic. First, according to Lichtenberg, “the punishment must fit the crime” and second “*only* the guilty” may be punished.¹⁰²⁵ This is a solid indication that proportionality and discrimination, moral principles, aim to control the surrogate outlet. The rules of discrimination require that a response be equitable (this will be exact mimesis,

¹⁰¹⁹ Ingrid Detter de Lupis, *The Law of War* (Cambridge: Cambridge University Press, 1987), 255.

¹⁰²⁰ Of course if one defines revenge differently, we are less likely to look so poorly upon it and more likely to support it, but this support will hinge upon the target of the violence being the responsible party.

¹⁰²¹ Anna Badkhen and Thorne Anderson, “Air attack kills 3 in their sleep,” *San Francisco Chronicle* (September 24, 2003).

¹⁰²² President Bill Clinton quoted in George Stephanopolous, *All Too Human* (NY: Little Brown, 1999), 214.

¹⁰²³ Girard, *Battling*, 58.

¹⁰²⁴ *Ibid.*, 45.

¹⁰²⁵ Lichtenberg, “The Ethics,” 14.

an eye for an eye, in some cultures but can also take other forms as long as these are deemed reciprocal by that culture) and aimed in a specific direction (at the guilty or those designated as agents of reciprocity).

Moderation to Keep Future Relationship Open

For much of history, warfare largely occurred between neighbors (for reasons of interests, threats, logistics, etc.). Even today this is more common than wars against a distant enemy. Only in the case of empires did a people face another that was truly a stranger. This for a time was a common form of war as Europe expanded in a colonial race but generally wars occur between those who know one another well. This dynamic is important because it ensures repeated games unless the one side is totally wiped out. The only viable strategies under such circumstances are moderation, which would keep repeated violent engagements to a minimum and lower overall costs so normal economic and cultural activities could be pursued, or constant warfare until the total annihilation of one party. Of these, only the former has any long term viability, as a policy of annihilation requires eventual geographic isolation or constant expansion as long as one has neighbors. In other words, a policy of moderation would allow for groups to live within proximity of one another. Thus Plato advocates that conflicting parties should behave themselves as if they “expect to be reconciled and not always to wage war.”¹⁰²⁶ This required that “They will not, being Greeks, ravage Greek territory nor burn habitations, and they will not admit that in any city all the population are their enemies, men, women and children, but will say that only a few at any time are their foes, [471b] those, namely, who are to blame for the quarrel.”¹⁰²⁷ Thus, the key to keeping open a future relationship is not targeting surrogates but instead discriminating.

According to Fuller, WWI “was based on a gigantic misconception of the true purpose of war, which is to enforce the policy of a nation at the least cost to itself and to the enemy and, consequently, to the world, for so intricately are the resources of civilized states interwoven that to destroy any one country is simultaneously to wound all other nations.”¹⁰²⁸ The key to Fuller’s belief that war should be other regarding (in that it should aim to keep the costs of war low for the enemy) is the interdependent nature of the

¹⁰²⁶ Plato, *Republic*, 470.

¹⁰²⁷ *Ibid.*, 471.

¹⁰²⁸ Fuller, *The Reformation of War* from Azar Gat, *A History of Military Thought: from the Enlightenment to the Cold War* (Oxford: Oxford University Press, 2000), 664.

international system. If an enemy nation suffers too much destruction, one cannot simply salt the earth and head back home. The world is too integrated for such an act.

In order for a group to achieve security, eventually that group must either expand its conception of the survival unit to include others or eliminate all others. These are the choices of society and we can quickly ascertain that only one is viable in a populous world. Other regarding moral systems have the capability to produce victory in more cases than absolutist systems that demand total victory and massive destruction. In a manner, it may appear at first that absolutist systems excel at using violence, but in fact they have an inability to keep violence controlled or end it short of their own defeat. The only alternative for these orders would be to compromise their own ideology, which would be hard to undertake while retaining legitimacy and would essentially destroy one's own order anyhow.

Only an Other-regarding morality is freed of the ethical requirement to destroy all strangers so that their order is secure. Stereotypes and dehumanization impede our ability to live with the current enemy in a future where they are no longer an enemy. Even if one is not so inclined as to allow Other's to retain their sovereignty, the "ability to absorb other peoples" rather than eliminate them is vital to longevity.¹⁰²⁹

Herbert Spencer writes that "from the very beginning, the conquest of one people over another has been, in the main, the conquest of the social man over the anti-social man; or, strictly speaking, of the more adapted over the less adapted."¹⁰³⁰ Spencer alluded to this conquest as clearing of "inferior races" who he saw as anti-social, being in constant conflict, and thus unable to develop.¹⁰³¹ We cannot really adopt his views,¹⁰³² but the theory is sound – those constantly at war will not last, while those who are social and other-regarding will have an advantage over the myopic ethnocentric.

Object of war is peace

¹⁰²⁹ J. F. Lazenby, "Book Review: The Origins of Western Warfare: Militarism and Morality in the Ancient World, Soldiers, Citizens and the Symbols of War: From Classical Greece to Republican Rome." *War in History* 6 (1999). Similar observations made regarding the British Empire by George Friedman, "Britain's Strategy," *STRATFOR Geopolitical Weekly*, May 1, 2012.

¹⁰³⁰ Herbert Spencer, *Social Statics: or, The Conditions essential to Happiness specified, and the First of them Developed* (London: John Chapman, 1851), § 4.

¹⁰³¹ *Ibid.*, § 3

¹⁰³² Which were racist by also likely limited due to actually information unavailable. Very likely thought the tribes may have been anti-social.

However, war, no matter the war, must achieve peace, even if it is not a great peace, not a positive peace, and fraught with structural violence. War's final objective is peace. Such is the belief of those from Augustine, who laid down the principle that the "final object of war is peace,"¹⁰³³ to JFC Fuller, who also observed "the true aim of war is peace not victory."¹⁰³⁴ Even Clausewitz has stated that: "In many cases, particularly those involving great and decisive actions, the analysis must extend to the *ultimate objective*, which is to bring about peace."¹⁰³⁵ The methods used to gain tactical objectives must not jeopardize this.¹⁰³⁶

This final objective limits the means that can be used in war. Kant advises that "no state shall during war, permit such acts of hostility which would make mutual confidence in the subsequent peace impossible."¹⁰³⁷ Indeed, this is enshrined in military codes. U.S. General Orders No. 100 of 1863 state that, "military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult."¹⁰³⁸

However, as Clausewitz noted, "The result in war is never absolute"¹⁰³⁹ and the loser will often see the end state as merely a passing phase which will be rectified over time through politics or another war. In short, the search for reciprocity does not end when the direct violence ceases. If the losing side feels they must continue to keep faith with the dead and keep avenging the death of their victims, a war (violence at least) may never end. Thus, we want our actions to cease reverberating once the initial objectives have been achieved, especially those actions that could continue to cause effects to the point that the ends which were achieved are ruined. This severely complicates any peace effort as the end of war will almost inevitably be non-reciprocal. While one could take this as discouraging, the theory we have outlined here offers rescue. Since reciprocity was the reason for the conflict the victor must avoid retributive agendas and instead help rebuild their former enemy. The difference between the end of WWI and the end of WWII is illustrative of this reality.

¹⁰³³ Augustine, *Epistolae*, CLXXXIX, 6; Keen, *The Laws*, 66.

¹⁰³⁴ Fuller, J.F.C. *The Conduct of War: 1789-1961* (London: Eyre Methuen, 1972 [1961]).

¹⁰³⁵ Clausewitz, *On War*, 158-159 (emphasis in original).

¹⁰³⁶ Indeed, this is enshrined in military codes. U.S. General Orders No. 100 of 1863 state that, "military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult." In Childress, *Moral Responsibility*, 79.

¹⁰³⁷ Kant, *Perpetual Peace*, Sect. 1, Art. 6.

¹⁰³⁸ *Lieber Code*, Article 29.

¹⁰³⁹ Clausewitz, *On War*, Book 1, Chapter 1, Section 9.

In *The Economic Consequences of the Peace* John Maynard Keynes claimed that the treaty of Versailles was a non-reciprocal peace and his policies went on to inform the Marshall Plan, which established peace post WWII, whereas the Morgenthau Plan would have likely bred another conflict, at least if we adhere to what theory would predict.

Indeed we can see that post-war stability depends on either less destruction during the war or a massive infusion of resources from the victors to the losers. If neither is forthcoming, the war is not really over, it is merely running beneath the surface of civilization.

This is why when a war is lost, it often gives way to more violence, not less. Augustine draws a grim picture of the situation when war gives way to a negative peace: "Famous cities were up to auction as if they were country houses; one whole community was butchered by order... And all this took place in the peace which followed war... Peace and War had a competition in cruelty; and Peace won the prize. For the men whom War cut down were bearing arms; Peace slaughtered the defenceless. The law of War was that the smitten should have the chance of smiting in return; the aim of Peace was to make sure not that the survivor should live, but that he should be killed without the chance of offering resistance."¹⁰⁴⁰ The key here is that 'bad' violence is viewed as not reciprocal.

The objective of peace and a renewed relationship clearly argues for limits on wartime conduct. Schmoockler observes that justice, what we know to be reciprocity, by restraining the self-interest and the struggle for power, "protects the future health of human systems."¹⁰⁴¹ Thus, the moral rules that support reciprocity are stabilizing.¹⁰⁴²

Creating the Other's Social Trinity

Charles Tilly famously wrote that "war makes the state, and the state makes war."¹⁰⁴³

Taking into consideration the earlier observation that discrimination is the practice that creates the Trinitarian war structure, and that this is a particularly strong feature in states,¹⁰⁴⁴ we can logically surmise that discrimination too contributes to the creation of the nation-state. Discrimination creates and reinforces the Social Trinity and thus builds an

¹⁰⁴⁰ Augustine, Bk. III, Ch. 28.

¹⁰⁴¹ Schmoockler, *Parable*, 244; Similar observation by Krasner that rules "constrain immediate, short-term power maximization." Krasner, *Power*, 1, 3.

¹⁰⁴² Kahn, *On Escalation*, xiv.

¹⁰⁴³ Charles Tilly, *Coercion, Capital and European States, AD 990-1990* (Oxford: Blackwell, 1990).

¹⁰⁴⁴ Martin Van Creveld, "It will continue to conquer and spread," *Contemporary Security Policy* 26, no. 2 (2005): 230.

archetypal state social order. Thus by discriminating, one is creating the state and by failing to discriminate one is contributing to the state's destruction. Of course the question of what type of state will be created is another matter. However, the recent emphasis on the "will of the people" would naturally create a power structure that includes some level of democracy. In a sense, war is effort not only to reinforce our Social Trinity but to extend this version of order. It is important to take into account that once one is engaged with the enemy, their Social Trinity is in some ways as vital to maintain as one's own. This can be illustrated through looking at briefly at the U.S. invasion of Iraq in 2003.

When war is fought with the aim of achieving an unconditional surrender, this will often be followed by an occupation and re-shaping of the loser's social order. In many cases this means the military and the government will be almost entirely destroyed or disbanded after the cessation of hostilities. However, this creates a dangerous situation of disorder that is rarely if ever in the interests of an occupying power. As George Friedman points out in regards to the 2003 U.S. war in Iraq, "The American invasion destroyed the Iraqi army and government, and the United States was unable to recreate either," a fact which he largely blames for the ensuing chaos and lengthy insurgency.¹⁰⁴⁵ This destruction of Iraq's Social Trinity was not accomplished during the initial invasion but after the occupation began. The Coalition Provisional Authority's declarations dissolving the military (CPA Order 2)¹⁰⁴⁶ and aiming for the de-Baathification of the country (CPA Order 1)¹⁰⁴⁷ disassembled the state structure. This essentially dismantled the Social Trinity, destroyed the state, and thus let loose the violence that is usually contained by this structure. The result was a large number of individuals (most importantly, former soldiers) searching for new groups to which they could belong and which would provide them with security (from revenge for years of oppression but also financial recompense). For some this meant joining the budding insurgency or at least resisting the new order.¹⁰⁴⁸ At the very least, the CPA Orders removed organizations that would have helped maintain stability in the country.

¹⁰⁴⁵ George Friedman, "The U.S. Withdrawal and Limited Options in Iraq," STRATFOR Geopolitical Weekly, August 17, 2010.

¹⁰⁴⁶ *Coalition Provisional Authority Order No. 2, Dissolution of Entities* [Iraq], No. 2, 23 August 2003, available at: <http://www.unhcr.org/refworld/docid/4691f4d62.html> [accessed 3 September 2012].

¹⁰⁴⁷ *Coalition Provisional Authority Order No. 1, De-Ba'athification of Iraqi Society* [Iraq], No. 1, 16 May 2003, available at: <http://www.unhcr.org/refworld/docid/468d097d2.html> [accessed 3 September 2012].

¹⁰⁴⁸ James P. Pfiffner, "US Blunders in Iraq: De-Baathification and Disbanding the Army," *Intelligence and National Security* 25, no. 1 (February 2010); Michael R. Gordon, "Fateful Choice on Iraq Army Bypassed Debate," *The New York Times*, March 17, 2008); Also see Ricks, *Fiasco*.

With reciprocity no longer in the hands of established organizations in Iraq, it was left to individuals and new groups to achieve. This dynamic is evident in the wake of many societal collapses. Thus, the fall of the Caliphate has been argued to justify individually mandated jihads.¹⁰⁴⁹ Similarly, the fall of a nation-state can lead to the chaos of individual violence. Lewis Mumford observes that when the bonds of morality dissolve, “when the intimate visible community ceases to be a watchful, identifiable, deeply concerned group, then the ‘We’ becomes a buzzing swarm of ‘I’s’, and secondary ties and allegiances become too feeble to halt the disintegration of the urban community.”¹⁰⁵⁰ What Mumford is referring to here is the re-emergence of individual violence in the place of group violence. In this case, each individual is the authority, arm, and appraiser of their own actions.

In the post-war context, if a surrendering government retains authority within its country and the destruction did not cause excessive disorder, peace will be more readily enforceable. In contrast, the destruction of the reciprocal authority can lead to an expansion of the violence as it moves from being ordered to disordered. Clausewitz observes as much, writing that “On the beaten side, the loss of all order and control often makes the prolongation of resistance by individual units, by the further punishment they are certain to suffer, more injurious than useful to the whole.”¹⁰⁵¹ In this situation, entire societies can remain mired in conflict as actors struggle to recreate an authority able to finally put an end to the violence.

Given that “sustained peace and order in society results from the moral authority exerted by the communal group over its members,”¹⁰⁵² it is absolutely essential that a functioning Social Trinity or similar reciprocity order be in place in the defeated society when a war ends. Without this, violence will be very difficult to quench. Thus, the enemy must still be able to have order in the wake of its defeat. There needs to be a functioning Social Trinity, or some other social order that can fulfill the same purposes. This dynamic has led some to go so far as to claim one should strengthen the structure of stateless groups even if

¹⁰⁴⁹ Bruce Hoffman, *Al Qaeda, Trends In Terrorism And Future Potentialities: An Assessment*, (Washington DC: RAND, 2003), 5.

¹⁰⁵⁰ Lewis Mumford, *The City in History*, 15.

¹⁰⁵¹ Clausewitz, *On War*, 210.

¹⁰⁵² Earl Conteh-Morgan, “Peacebuilding and Human Security: A Constructivist Perspective,” *International Journal of Peace Studies* 10, no. 1 (Spring/Summer 2005): 79.

one is fighting them.¹⁰⁵³ The COIN strategy of separating the fish and the sea, i.e. separating the insurgents from the population,¹⁰⁵⁴ can be viewed as an attempt to create a Social Trinity in the image of the state. The objective is to create a more strict division between the comingled classes. It also brings violence under a greater level of control.

Giddens points out that “Human social activities, like some self-reproducing items in nature, are recursive. That is to say... in and through their activities agents reproduce the conditions that make these activities possible.”¹⁰⁵⁵ Considered in this way, discrimination then (re)produces a division of society that makes further discrimination possible. Thus, when a group is fighting those who intentionally try to blur the distinction between combatant and immune, the only way to recreate this division is to find ways to maintain discrimination. This does not imply it is an easy task. However, no other practice will produce this division. To fail to discriminate will only further remove the divisions that are required for stable society.

Of course, if one’s goal is disorder, then indiscriminate practices are fine. However, this is not a social practice and thus must eventually give way to more ordered forces if a stable group is to be reestablished and a more comprehensive form of power gained. Insurgents may decide to not draw lines but they will find the violence invading their community, thus it is antisocial and not fulfilling the purpose of protecting the group. It is unlikely they will emerge from the violence as a true victor with violence now legitimized for so many factions. Thus we find that civil war often follows a ‘successful’ war against an invader or occupier. Only by re-drawing the divisions of the Social Trinity is order restored.

¹⁰⁵³ Metz and Cuccia, “Defining War,” 3, 4; idea put forward by Van Creveld.

¹⁰⁵⁴ JP 3-24, p.xv and III-14.

¹⁰⁵⁵ Giddens, *The Constitution*, 2. Reiterated in slightly different word on p. 221.

Conclusion

This dissertation was structured around the conducting of a moral genealogy, which endeavored to uncover the “*functional utility*” of the moral principle of distinction. Through using this Durkheimian conception of utilitarianism and applying Girardian theory to the moral-legal rules of war, the dissertation was able to examine the moral practices of war in an objective manner. This meant not asking whether a practice was ‘good’ or ‘bad’ but how that practice pertains to mimesis.

The first chapter of this dissertation began by examining the conditions of life in which the moral rules of war arose. This meant examining the human condition of mortality and connecting this to the emergence of the first functional ‘moral’ instinct – self-defense against violence or, alternatively conceived, the right to mimic. We then explored how this in part contributes to the nature of violence. There are two predominant tendencies of violence – its mimetic nature and its ability to be redirected onto a surrogate. The next condition in which the moral rules arose is civilization, which also has mimesis at its core. It was here where we first looked at the tension between the individual and the group, a dynamic that plays a major role in how groups structure war.

This tension between the individual and the group in some sense is the reason any social entity needs a structure of rules. It is the structure that helps mediate the actions between individuals and between individuals and the group. Another important take away from the discussion on civilization was that mutual mimesis, which is reciprocity, is essential for the stability of civilization. Thus we could begin to see already that the nonreciprocal actions of war, of which there are many, could run counter to the needs of civilization.

The last condition examined in chapter one was the nature of war, which is governed by Clausewitz’s three tendencies of policy, chance, and violent emotion. We highlighted the fact that because war has at its core violence, war is also a highly mimetic activity and had a tendency to extremes. In the context of this dissertation, conceiving of war properly as primarily an act of mimesis, rather than an act of force, was vital to understanding how moral rules, which are often in the form of constraints, can actually have utility in war.

Thus, it naturally follows that the first chapter concluded by observing that violence is not universally regarded as a good part of war, but instead can be seen as something that must be controlled. In fact, war requires a reciprocity that violence does not have and moral-legal rules help inform us how to achieve this reciprocity even when blinded by the fog of war. This set the scene for our later examination of escalation.

The second step of the moral genealogy, and second chapter of this dissertation, explored the contending discourses of morality in warfare. Throughout history, groups have needed to answer the question: what belongs in war and what does not? An essential part of this is determining who can kill whom. Thus, discrimination is at the core of a large majority of moral-legal rules of warfare. Its persistence implies that there is a reason that such moral choices have to be made, that they served some function in the existence of a social organism.

The moral genealogy then moved on to try to uncover the essential feature of the idea of discrimination and the immunity that emerges as a part of this practice. Immunity, we find, is not based on guilt and innocence but instead on mimetic roles and controlling these roles. The controlling of these roles then brought us naturally to the next question, since control implies a structure of power.

Thus, the next step in the moral genealogy was an examination of the mechanism of power that is part of the practice of discrimination. Essential to this was recognizing that the *Social Trinity is the structural medium and outcome of the practice of discrimination*. Thus, the Social Trinity can be viewed as a method by which mimetic violence is controlled. This is done through a balance of powers that assigns reciprocal authority to one actor (leaders), the carrying out and coordination of reciprocal action to another (the military), and the appraisal and sanctioning of reciprocity to yet another (the people). Through this structure, the tendencies of mimesis are controlled. Importantly, this is done in part by disempowering the bulk of a group, disallowing their use of direct reciprocal violence.

It is important again to stress here at the end that the structure is not determining the action of individuals but instead that an individual's response is filtered through the structure of war and morality. This can shape that action very strongly but other structures may pull

the action in an opposite direction and even more importantly, the individual has agency that can struggle against all the pressures of a structure. Thus, while a structure may call for a certain response, an agent may go their own way. They may, for example choose to 'chase the rabbit' and look after their own interests, or they may choose to be a conscientious objector. The potential structure-agent discord is particularly important in regards to perceptions of reciprocity, as what the structure insists is reciprocal can very easily run counter to an agents feelings and ideas of reciprocity.

The next chapter of the dissertation attempted to unpack more fully how discrimination enables limited ingroup killing and dying. First, with the soldier as the surrogate victim and victimizer, the group is saved from the anarchic violence of the individual. This is vital because individual violence can be a danger to group life, drawing the entire group into conflict, either amongst its own members or with another group. Mimetic violence is thus limited and controlled through the practice-structure of discrimination and the Social Trinity because it limits who is allowed to use violence.

In addition, chapter five outlined how the self-interests of the soldiers are controlled through the power of legitimation. Finally, we explored how agreement on violence is necessary for it to be a social activity. Without such agreement, a group will cease to be united and sub-groups or even individuals will become the authors and agents of violence.

We next turned our attention to limiting outgroup killing and dying. This chapter examined how the dynamics of escalation can lead to a loss of focus on the object of war, something essential to achieving group ends. We highlighted the process by which soldiers target indiscriminate surrogates, leading to an expansion of the violence and often the strengthening of the adversary group. In addition, it was pointed out how moral images of the enemy can entrap a group into pursuing a series of all or nothing wars that is not optimal in the long game of survival. The chapter concluded by partially debunking the illusion of moral asymmetry, stressing that all are beholden to the dictates of reciprocity, and then examined how one's actions enable one's enemies.

The final chapter cast a broad net to examine the ways in which the Social Trinity and the moral-legal principle of discrimination aim to counter the dynamics that were described in the previous chapter in particular. Thus, they aim to limit escalation, control violent

emotion, keep adversaries focused on the proper (military) objects, and avoid indiscriminate surrogates, all of which can be linked to mimetic dynamics. This last chapter also stressed that moderation toward the Other was essential for long-run success, a though we will close with below. Finally, we concluded with a brief discussion of how discrimination contributes to the creation of the nation-state and is essential at some level to achieve stability.

Professor Bill McSweeney once asked of this author, “Why do we burden ourselves with morality?”¹⁰⁵⁶ We can now answer that question. According to Girard, “The aim [of rules] is to achieve a radically new type of violence, truly decisive and self-contained, a form of violence that will put an end once and for all to violence itself.”¹⁰⁵⁷ The moral principle of discrimination, whether codified in religion or law, aims to do just this – to create a type of violence (what we may call war) that is decisive and contained, which will not destroy social life. Without the division created by discrimination, encapsulated in the Social Trinity, all wars would tend towards totality.

This dissertation thus concludes that *prohibitions in war, including those that comprise discrimination, control mimetic violence and make war a usable group instrument and are thus a condition for existence*. We burden ourselves with morality then because they are practices that are necessary for individuals and groups to survive in an environment that is both socially and violently mimetic.

In a sense, by limiting killing, we enable killing for no longer do we fear it will destroy us. However, this does not mean if we didn't limit killing that war and killing would end. We can get a glimpse at what the result would be by examining the nature of nuclear strategy. By not leaving recourse for limiting killing, the result would be a sort of Cold War stability based upon the knowledge of Mutually Assured Destruction (MAD). This is fine until it breaks down. Then all that is left is the promised destruction. Morality and utility come together at the point of MAD, since the reason for its failure as a viable strategy capable of achieving objectives and the reason for its immorality are the same – it destroys everything. Limits thus enable one to use violence without taking excessive risks that the destruction inherent in violence will destroy the original object of the violence or destroy

¹⁰⁵⁶ This turn of phrase as suggested during the upgrade examination for this PhD by Bill McSweeney.

¹⁰⁵⁷ Girard, *Violence*, 27.

ourselves. Thus, in a sense, discrimination serves to “save war and politics for purposeful use by mankind.”¹⁰⁵⁸

The competition of history has actually driven the moral rules in a specific direction since there is a narrow range of sustainable moral frameworks. These frameworks must be other regarding. If they are not, the social ethic will force all others to be eliminated, something that may have once been possible, but not in the modern world due to the number of other actors in the global system. In such a crowded world, there are many more interactions with the Others and this necessitates an other-regarding ethic. As Dawkins points out, the tit-for-tat strategy of reciprocity allows for local clustering, while “always defect” does badly in the presence of others.¹⁰⁵⁹ In a sense then, Malthusian dynamics that were to doom the world are instead making the world more moral because this is the only choice in an integrated and populous environment. Those who are better able to accommodate, incorporate, and come to terms with the other will survive because they need not be in constant conflict. Only an ‘other-regarding’ morality is freed of the ethical requirement to destroy all strangers so that their order can be secure.

Taking into account the individual right to mimic in the face of violence, the mimetic obligations of the group towards the individual, the infectious nature of violence, and the power of the individual, the importance of minimizing victims and following moral dictates of human rights is clear. The victim stands in the way of achieving the aims of war, for as long as they exist, the violence cannot come to an end.

Paradoxically, immunity and human rights are not only protective but also part of a disempowering power structure. This disempowerment is protective to the extent that it limits use of direct violence but it is also routinely employed by states (governments and militaries) to suppress their people or allow other states to undertake such oppression under the dictate of noninterference. Immunity too often calls for passivity of the people, individually and as a group, thus depriving them of their power. This is the reason that an avenue for the exercise of legitimizing power is so essential. Without this, the structural and direct violence of the government-military Hydra would likely eventually lead to

¹⁰⁵⁸ Hauerwas, *The Hauerwas Reader*, 413. Citing Paul Ramsey, *The Just War; Force and Political Responsibility* (Lanham, MD: Rowman & Littlefield: 2002), which made this observation regarding Just War in general.

¹⁰⁵⁹ Dawkins, *The Selfish Gene*, 219.

revolution. At this point, the people will have taken back the power of direct violence and the benefits of disempowerment will become all too clear in the ensuing chaos.

Another thought as we conclude is that the danger of the individual has arguably increased in the modern era. Scientific advances that allow an individual to wield large amounts of force, demographic shifts that are leading to increased urbanization, and increasing interconnectedness through media and communications are increasing the destabilizing potential of the individual. For this reason, the prohibition on targeting the individual is arguably of increasing importance as are efforts to remove the individual from needing to resort to violence. We are no longer faced with only a strategic corporal,¹⁰⁶⁰ but with a strategic victim, one who calls for protection and revenge. Thus, it is likely we will find our moral rules even more important as civilization and war move into the future.

¹⁰⁶⁰ Hills, *Hearts and Minds*, 15.

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