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Obsolete Law of War

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Theorists say that war is growing more and more humane from day to day, and that more and more restrictions are being imposed by international regulation upon the damage done by armed conflict. There are other, more practical men who deny the validity of such an interpretation and point to the mobilized resources of modern combatants and the modern wearing-out processes of war today. There is the new theory of economic pressure. There is also the exhausting policy of attrition and exhaustion of manpower, by which the nations hoped to gain eventual advantage in the last struggle. Far different this from the wars of the eighteenth century when soldiers were professional soldiers and international conflicts were largely confined to the polite maneuvers of professional armies, when it was a social error to leave winter quarters and attack an enemy unready, when opposing commanders were given passes to cross the enemy lines on their way home during the closed season.

Not only in that strategy which is directed from the Home office and the General Staff, is the change apparent, but also in tactics which govern on the field in the face of the enemy. A single example will be illuminating. It will perhaps cause some to consider whether or not there be truth in the words of Buckle, who said: “Things march slowly but the issue is not the less certain, and the time will assuredly come when all vestiges of barbarism will disappear.” It will at any rate serve to illustrate in one detail how the conduct of war has altered in the last century. The instances are all drawn from experiences familiar to the armed forces of the United States.

In 1812, when the American and British forces were facing one another across No Man’s Water, if I may invent the phrase, there ensued an interesting exchange of correspondence between the opposing commanders. General Hull, later to surrender Detroit, wrote on July 6th, to the British commander St. George, saying:

*Captain of Infantry, United States Army.
"Since the arrival of my army at this encampment (five o'clock P. M. yesterday) I have been informed that a number of discharges of artillery and of small arms have been made by some of the militia, from this shore into Sandwich. I regret to have received such information, the proceeding was unauthorized by me..."1

To this St. George replied:

"I am honored with your letter of this days date; I perfectly coincide with you in opinion respecting private property, and any wanton attack upon unoffending individuals, and am happy to find, what I was certain would be the case, that the aggression in question was unauthorized by you..."2

A short time later, on another portion of the frontier, a similar exchange of letters took place, demonstrating the attitude of those times even more explicitly: Van Rensselaer at Lewiston sent the following across the Niagara River to Brock at Fort George on September 20th:

"It was with extreme regret and concern that I yesterday learned through Lieut. Col. Myers, that in a repetition of the practice of firing between sentinels, which I have so peremptorily prohibited, one shot has proved fatal to a man at the lime kilns on the Canada shore...."

"Persons not under immediate command in either army, who, occasionally, approach the river, discharge their pieces, at the sentries, and then escape unobserved in their retreats, while the fire, thus begun, is returned upon an unoffending sentinel. ..."3

And to this General Brock answered, in all courtesy, three days later:

"I never doubted for a moment that the firing from your side of the river, upon individuals, was contrary to your intentions, and in violation of your orders, and I beg leave to repeat, that every effort shall be made on my part to prevent the recurrence of such acts of insubordination on this side..."4

Such was a convention of war in those times, a custom of war, a law of war, since the laws of war are but tangible descriptions of customs and conventions which belligerents seek to maintain. It was a polite fashion of gentlemanly officers, to reprobate scattered shooting at enemy individuals, except on the occasion of actual combats of sufficient dimen-

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3Ibid, pp. 594-595.
4Ibid, pp. 595-596.
sions to be called engagements between forces. It was a con-
tinuation of the eighteenth century conception of open and
closed seasons for fighting. War to those people was to be
a clash of armies, not an accumulation of individual acts of
extermination.

The theory persisted. During the Civil War, between
1861-1865, the picking off of separate sentries was regarded as
"a very barbarous and savage practice,"5 and the Lieber In-
structions which reduced current practice to writing, declared
unequivocally:

"Outposts, sentinels, or pickets are not to be fired upon
except to drive them in, or when a positive order, special or
general, has been issued to that effect."6

"Modern wars are not internecine wars, in which the killing
of the enemy is the object . . . Unnecessary or revengeful
destruction of life is not lawful."7

This was the doctrine, and investigation seems to bear
testimony that it was applied to a great degree. There were
exceptions.8

A surgeon wrote home:

"We had some picket firing during the night, but it is be-
lieved to have proceeded from the nervous excitability of our
own men, rather than any real danger of an attack."9

General Longstreet speaks of a night in September, 1862,
just on the eve of the battle of Antietam, when the troops
were actually moving into position preparatory to the next
day's clash:

"The troops along either line were near enough to hear
voices from the other side, and several spats occurred during

8Russell, W. H., My Diary North and South, 343; 2 Stowell and
Monroe, International Cases, 190. Also condemned by General McClellan,
June 23, 1861, in a proclamation, G. B. McClellan, Report of the Army
of the Potomac, p. 21.

should fire only when the enemy approaches resolutely," in Regulations

7Ibid, art. 68. On the C. & O. Canal, there was a local agreement
to this effect, in 1862, and it was the practice before Petersburg in 1863.
Carter, R. G., Four Brothers in Blue, ch. vii, (pp. 36-7), ch. xviii, (pp.
459-462).

8"'All quiet along the Potomac,' they say,
    Except now and then a stray picked
    Is shot as he walks on his beat to and fro,
    By a riflemen hid in the thicket . . . 

    The Picket Guard, by Ethel Lynn Beers.

9Stevenson, B.F., Letters from the Army, p. 80. (Written from
Powell's Valley, Kentucky, June 12, 1862.)
the night between the pickets, increasing in one instance to
the exchange of many shots.”

In the midst of an active campaign the following incident
occurred, on the night of June 4th, 1864, near Petersburg:

“One of the pickets on the right, hearing a noise in the
bushes, challenged and was answered by a shot. He instantly
fired. . . . Several others fired at the flash, thus revealing
the position of nearly half the posts.”

Another incident is related as follows:

“Our camp was roused this morning at three o’clock, with
the information that the pickets had been driven in and that
the enemy were advancing on us in force. . . . It turned out
that one of the pickets had fired on what he thought a prowling
straggler within our lines.”

It is to be noted that practically all of these occasions were
mentioned as exceptional incidents. The firing of the pickets
was invariably connected with the idea of an advance in force,
with the beginning of an engagement,—all in conformity with
the spirit of the Lieber Instructions,—or else simply attribut-
ed to nervousness and touchiness of sentinels. The very fact
that these isolated instances are mentioned in the war-time
memories of the recorders thereof is fairly good evidence
that they were unusual. Similar firing is spoken of in connec-
tion with the siege of Vicksburg when infantry firing con-
tinued most of the day, as might be expected in siege opera-
tions where one side attempts to hinder the entrenching and
sapping of the other. The whole tactics of a siege implies
such firing. The defender must be picked off when he at-
ttempts to repair the damage done to his ramparts by shell or
mine. The attacker must be discouraged as much as possible
from pushing forward his ditches and trenches, and the best
discouragement is to make him keep his head down and shoot
at every head that appears. It is to be expected that in any-
thing approaching sieges such things will go on. During the
semi-siege conditions in the vicinity of Cold Harbor, this
was the common practice:

“As a rule everything was quiet except the picket firing,
which could not be prevented when the men were so close

10Longstreet, J., From Manassas to Appomatox, 238.
11Anon., A Dark Night on Picket, 5 Overland Monthly, July, 1870,
p. 31.
12Stevenson, B.F., Letters from the Army, 73. (Written from Moss
House, Knox Co., Ky., 1862.)
together. . . . The picket firing ceased only during the occasional truces to bury the dead."14

Nevertheless, although there were occurrences of this sort, in view of the passages from the Lieber Instructions, and in view of the specific character of the few discoverable occasions when picket firing did not go on and the way in which it was emphatically reprobated, it is perhaps safe to say that the former convention, custom, and the law of war in this regard still had validity and strength.

What of the World War?

Ask any soldier who served in France. Find out if they kept their heads down in approach and fire trenches, and discover why. Tommy Atkins may have called the sniper a "Body Snatcher"15 and yet both British and French joined the Germans in selecting and developing good shots whose main occupation was to pick off unwary individuals over in the enemy lines.16 The thing developed into a regular tradition. Enemy snipers grew to have nicknames and to be spoken of as characteristic individuals, though one sincere effort followed another in attempts to shoot that elusive and clever fellow who fired so effectively from behind that distant hummock of clay.17 Sniping "did not exist as an organized thing at the beginning of the war" and there was no provision on the British military "establishment" for individuals to be detailed on such work or for officers to train and direct groups to that purpose.18 Yet the work soon became organized. Special training was given.19 Special equipment was procured, camouflage devices, telescopic sights for long range work, and armor plates with appropriate loop-holes and covers.20 Far from being reprobated, the picking off of enemy individuals was eagerly sought as a means of reducing the hostile manpower and lowering enemy morale, as well

14Dana, C. A., Recollections of the Civil War, 214.
15Empey, A. G., Over the Top, 129.
17Montague, C. E., Disenchantment, 179-180; Hesketh-Pritchard, H. V., Sniping in France, 28; Musgrave, C. C., Under Four Flags for France, 171.
18Hesketh-Pritchard, H. V., Sniping in France, 9, 25.
19Sgt. R. J. McSwiney, in The American Magazine, 1919; and officially in Notes for Infantry Officers on Trench Warfare, compiled by the British General Staff, 48.
as a means of interfering with his observation and construction. The program was developed and carried out on a definite theory, which has been stated as follows by that British officer probably primarily responsible for the British efficiency in this work, a theory accepted by the Allies as a whole:

"Now if each battalion in the line killed by sniping a single German in the day, the numbers would mount up. If anyone cares to do a mathematical sum, and to work out the number of battalions we had in the line, they will be surprised at the figures, and when they multiply those figures by thirty and look at the month's losses, they will find that in a war of attrition the sniper on this count alone justifies his existence and wipes out large numbers of the enemy. But it is not only by the casualties that one can judge the value of sniping. If your trench is dominated by enemy snipers, life in it is really a very bad thing, and morale must inevitably suffer." 21

Such was the practice in the last war, where on one occasion a British battalion lost in a single day eighteen men through the effective sniping of Germans who did not hesitate to fire upon individuals. 22 That is the reason we can speak of the understanding between the officers who wrote so nicely to one another in 1812 and the principles enunciated in the Lieber Instructions on the same point, as now little more than an obsolete law of war.

21Hesketh-Pritchard, H. V., Sniping in France, 2.
22Ibid, p. 2. cf. also the teaching of the new rule to green troops as related by a participant, Smith, J. S., Over There and Back, 49, and the Feb. 5, 1918 instructions to the First Division, A. E. F.: "There are no orders which require us to wait for the enemy to fire on us before we fire on him; do not wait for him to fire first." History of the First Division, p. 48.