Order Out of Anarchy: The International Law of War

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War is often assumed to be the paradigm of anarchy, the Hobbesian state of nature in practice. War, in that view, is merely the predictable violent breakdown of law and order that follows from the lack of a world government.

However, that view ignores an interesting and important aspect of the "anarchic" international order. A complex system of norms, including both cultural and legal institutions, exists and functions to constrain warfare. In fact, the idea that the conduct of armed conflict is governed by rules appears to have been found in almost all societies, without geographical limitation (Roberts and Guelff 1982: 2).[1] These rules do not work perfectly. But they clearly restrain the behavior of nations at war, at the margin.

The use of violence to transfer resources from one party to another—the central feature of war—is an externality. Because warfare destroys resources in the process of transferring them, it is also a negative-sum game. Historically, the purpose of the constraints on war was not to eliminate the basic externality resulting from the coercive transfer itself but, more modestly, to make the sum of the game less negative. The resources destroyed during war can be thought of as the transactions costs of war. The cultural and other constraints on war, including what we now call the laws of war, then, reduce the

Cato Journal, Vol. 15, No. 1 (Spring/Summer 1995).

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[1]Such has been the case since ancient times. For example, during the Egyptian and Sumerian wars of the second millennium B.C., the combatants observed formal rules limiting acceptable behavior during warfare (Friedman 1972: 4). The Greeks and Romans observed a multitude of limitations on combat, and during the Middle Ages, "a law of arms was developed in Europe to govern discipline within armies as well as to regulate the conduct of hostilities" (Roberts and Guelff 1982: 3). Those early rules and limitations reflected the same basic principles found in modern laws of war.

transactions costs. If the constraints worked perfectly, war would become a zero-sum game.

The value of the resources destroyed in war (the transactions costs of the conflict) are a result of externalities caused by decisions made by individuals. Like all externalities, the decisions involve a divergence between private and social costs and benefits borne by the decision-maker. The various formal and informal constraints on the practice of warfare function as a kind of constitution that reduces the various externalities. World society stands to benefit from any mechanisms, formal or informal, voluntary or enforced, that mitigate (if not actually eliminate) the transactions costs associated with violent quarrels between nations.

The "international constitution" reflects the expression of a spontaneous order on the international scene, a product of human action but not of human design, comparable in many ways to the U.S. Constitution, at least in its basic functioning. Our intention here is to explore this international constitution.

The International Laws of War

The international scene is characterized by anarchy, in the literal sense: there is no "world government" capable of exerting its will via coercion on competing nation-states. However, the "anarchic" community of nations is not lawless. There is, in fact, an elaborate and well-developed body of international law that functions, in theory, to constrain the misbehavior of actual and potential combatants.

F.A. Hayek (1973) argues that the common law is a kind of "spontaneous order," a body of rules that have evolved over time without being designed by governmental authorities. For example, Bruce Benson (1989) shows that modern commercial law has largely grown out of efforts undertaken by the merchant community to resolve recurring disputes. It has not been provided by governmental fiat. The laws of war constitute a variation on this theme: they are rules that have evolved to resolve practical problems confronting the relevant actors (who happen to be national governments) relating to military conflict, and that have not been legislated by an overarching, central authority.

The laws of war have two basic sources: customs and treaties or conventions. Customary law comes down to us from ancient practices and from case-by-case development, much like English and American common law. Treaties and conventional laws are the result of international agreements, conferences, and conventions. Before the mid-1800s, bilateral treaties represented the only source of law aside from customary law. Conventional law, which did not develop until the

second half of the 19th century, is the outgrowth of international conferences such as those at The Hague (Netherlands) and in Geneva (Switzerland). Many of the early conferences took up the task of codifying customary law. As a result, much of the early customary law is also part of the conventional codes.

The principal aim of the laws of war is to specify the rights and obligations of belligerents and the rights of neutrals and noncombatants. Traditionally, civilian noncombatants were not legitimate targets of force. They, along with those in the newly noncombatant ranks (including prisoners of war), were to be treated humanely. Neutrals had the right to trade during time of war, including the right to trade with a belligerent, subject to certain restrictions. The legal right of neutrals to engage in trade with the enemy has led to a host of disputes in international law and has been the subject of many revisions.

The laws of war place constraints on the actions of a belligerent in that the type and severity of force a belligerent can use to harm an enemy is not unlimited. The constraints are based on the basic principles of military necessity and humanity.

The principles of necessity and humanity require the use of force to be limited so that military goals are achieved with the least possible destruction and expenditure of human and other resources (Allison 1968: 16–17). One of the reasons the laws of war are observed is that it is generally in the self-interest of decisionmakers to achieve military objectives at the lowest possible cost.

In the modern world, most law is provided by government. In the case of international law, while the body of rules is a result of interactions among governments, the law per se is not governmentally provided. International law, then, is a nongovernmentally provided public good.

Several factors induce states and their armed forces to comply with international law, short of coercive mechanisms of enforcement; it is not always necessary to hire police to ensure civil order. The factors include the desire to be perceived as acting in accord with internationally perceived norms; the hope that the enemy will comply with the norms as well; the loss of friends and allies that may result from war crimes, as well as the consideration of neutrals becoming enemies. Those considerations can be termed "soft" factors, in that they are inherently difficult to objectify, however significant they might be in certain cases. Similar considerations play a role in motivating civil behavior among individuals in society, as social theorists since David Hume and Adam Smith have noted.

All those factors depend on the incentive of nations to maintain the value of their reputational capital by acting in accordance with

standards of international civility. Nations, in other words, will tend to do a better job of behaving themselves when their long-run international interests are affected significantly by their reputations as honorable and reliable partners, in the eyes of the world. As Adam Smith ([1763] 1896: 253–54) noted in the slightly different context of the choice by individuals in society to behave honorably and reliably, "A dealer is afraid of losing his character, and is scrupulous in observing every engagement." Maintaining smooth relations with actual and potential trading partners is a valuable investment in its own right. Both individuals and nations have an incentive to obey the law for fear that their respective businesses will suffer.

Commerce encourages a kind of "self-policing" of moral behavior, but all modern societies also provide themselves with actual police as a kind of supplement to the incentive effects at the individual level rewarding civil behavior. Similarly, international relations are not rendered entirely honorable and civil by the functioning of economic incentives for good behavior.

At the individual level we need to factor in the deterrent effect of formal law enforcement mechanisms: that is, the police. But the international environment in which different nations interact is characterized by anarchy, in the sense that there is no overarching, supreme world government to act as law enforcer. There was and is, of course, no central authority or court that can be used to bring malefactors to justice. The World Court, which might fill this role, relies on the voluntary submission of parties to its rulings and even on the voluntary submission of parties to appear before the Court.

Fortunately for civilized society, informal enforcement mechanisms exist that strongly discourage opportunistic behavior on the part of particular national governments. The international constitution is defended, and deviations from the requirements of international law are sanctioned, by the informal mechanisms. Along the way, a (mostly) smoothly functioning, efficient international order of competing nation-states emerges despite the absence of an international monopoly of coercion. One result is that the world economy functions effectively even under conditions of international anarchy.

Constraints on the Behavior of Nations at War

The primary reason order emerges from anarchy in this case is that the laws of war are partly self-enforcing—that is, they work because it is in the interest of the belligerents to obey the rules of conduct. Two sources of self-enforcement concern reprisals and annexation.

Reprisals

When nations go to war, an important constraint on their behavior is the likelihood that the enemy will retaliate for unlawful behavior. This threat of reprisal helps to deter the use of weapons and tactics in violation of international law.

Reprisal is important in both a formal and a tacit form. Formally, the international law of war provides legitimate grounds for applying force by one state against another state in proportionate retaliation for a defined violation (see De Lupis 1987: 74–75). But beyond the limits of formal law, the threat of retaliation functions as a restraint against misbehavior.

The process by which the threat of reciprocal reprisal works is sometimes termed "tit for tat" (see Axelrod 1984). Threatened retaliation tends to be roughly proportional to the initiating act of misbehavior. Robert Axelrod argues that tit for tat constitutes a robust and efficient strategy in bilateral games and that the strategy dominates in the long run because it works so well. The restraint on misbehavior functions tacitly, independent of formal enforcement mechanisms.

Annexation

Throughout history, although wars have been fought for a variety of reasons, a primary motivation behind warfare has been the potential gains associated with the conquest of foreign territory as well as the appropriation of other wealth in the enemy country. Military victory has often resulted in the surrender by defeated nations of portions of their sovereign territory. As recently as World War I, the victorious Allied powers received billions of dollars in payment from the defeated Central powers. Although this transfer was termed "war reparations," rather than "tribute," and theoretically represented compensation for war-related damage imposed by German actions, the transfer was similar in principle to those that had been demanded by victors in war for thousands of years.[2]

To the extent that wars are fought by states seeking to maximize their net revenues, governments are encouraged to minimize the costs of war to the economies of those nations involved. The value of potential conquests is reduced by damage produced during wartime. Thus, states have an economic incentive to minimize the extent to which their military efforts produce collateral damage on their enemies.

[2]The post-World War I German reparations scheme was, of course, complex, and included features designed to impede the ability of German exports to compete effectively with domestic producers in Allied nations (see Trachtenberg 1980: 3). But that simply means that the recipient governments took some reparations payments in forms other than cash.

The potential for possible appropriation through conquest of foreign-owned resources has two different effects. First, would-be conquerors have an incentive to preserve the economic value of annexed territories and people. This factor tends to reduce the extent of collateral damage caused by foreign invasion, other things held equal; conquered territory would become friendly territory, and conquered people were future citizens and taxpayers of the conqueror.

Of course, restraint sometimes interferes with military efficiency. Preserving the value of annexable enemy property may interfere with the goal of defeating that enemy's war effort. For example, the aerial bombardment of enemy munitions factories might significantly reduce the enemy's ability to resist conquest, despite the fact that such a bombing campaign would tend to reduce the value of that enemy's resource base available for conquest. Therefore, damage to the civilian economy of the enemy tends to be minimized by a prospective conqueror, although collateral damage still occurs.

Thus, informal enforcement mechanisms (in the form of economic incentives for good behavior) play an important role in maintaining international order. Those incentives tend to minimize, other things held equal, the destructiveness (and economic wastefulness) associated with violent conflict between states.

The underlying structure of international law that reflects the requirements for an efficient international order is itself determined in a process of competitive cooperation, in which various participating international players formally agree about which rules to follow, in what way. The requirements are themselves influenced by the course of technological change. Obviously, generally accepted rules of international law restricting the practice of area bombing would have been irrelevant before the invention of the airplane. Throughout history, the evolution of the international constitution has been affected repeatedly by these changing technological constraints.

Technology and War

Technological change has had a profound influence on the waging of war. The invention of the composite bow, the chariot, and gunpowder all significantly altered the nature of warfare. Starting in the 16th century, widespread use of guns in religious and political wars led to high casualty rates not seen in medieval wars.[3]

[3]The destructiveness of the Thirty Years War, during which as much as one-third of the German civilian population was killed, is widely considered the starting point of the modern study of those laws (Roberts and Guelff 1982: 2; Friedman 1972: 14).

Significantly, many new technologies that had an impact on war were not specifically designed for military purposes and many, such as paper and the clock, seem far removed from the battlefield. Those particular innovations improved the coordination of troop movements over vastly larger areas than was possible before their introduction.

The technological advances and the imperatives of total war blurred the traditional distinction between combatant and noncombatant and placed great stress on the established rules of war. If the international laws of war are to persist as meaningful constraints, they must be adapted when confronted with changes in technology or other external forces that would render them inefficient. Further, the laws of war cannot stop the introduction of new militarily efficient weapons, but rather must be modified to insure the use of new weapons is consistent with the goals of international law. Both world wars saw the introduction of weapons that placed extreme stress on existing rules (e.g., strategic airpower). In response, new rules often were adopted that maintained the objectives of the law to as great an extent as possible given the new circumstances.

Thus, the inherited doctrines may be adapted to the needs of legal control in an era of rapidly changing technology—much like Anglo-American common law.

The Case of Naval Warfare

A primary objective of war at sea is the disruption and destruction of the enemy's commerce and the protection of one's own. Historically, disruption of an enemy's trade was accomplished by blockading its ports and by capturing, or if capture was infeasible, destroying its commerce on the high seas. The technological advances of the Industrial Revolution had a profound effect on the way those activities would in the future be undertaken.

Under international law a commerce raider—whether a commissioned naval vessel or a commissioned privateer—was required to "visit and search" before a prize could be taken or sunk.[4] Only if the ship was an enemy ship, or its cargo contraband intended for the enemy, and only if its crew and passengers left in a position of safety, could the ship or cargo be taken or the ship sunk.

Traditionally the laws of war stipulated that a blockade of enemy ports must be a close-in blockade conducted by ships slowly cruising

[4]The Declaration of Paris of 1856 abolished the taking of prizes at sea by privateers and, aside from an aborted attempt by the South in the Civil War, effectively marked the end of this practice. Visit and search required that a vessel be boarded and its papers and cargo inspected and its crew and passengers removed to a place of safety (which did not include abandoning them in lifeboats on the high seas). See Anderson and Gifford (1991).

off the enemy port. Further, before the 19th century international law limited enforcement to certain goods (contraband) that were directly used in the waging of war, such as arms, gunpowder, and naval stores. Neutrals were allowed to trade noncontraband goods with belligerents. The use of the submarine as a commerce raider made visit and search impractical, and submarines, mines, and airplanes rendered impractical the close-in blockade.

Although the submarine eventually became the primary commerce raider, commerce raiding was not its intended military use at the outset. Originally, submarines and surface torpedo boats were envisioned as simple adjuncts to surface fleets. Second, it was recognized that use of the submarine was incompatible with the requirement of visit and search. In this case technology and practicality led to a change in the formal rules of war.

With the outbreak of World War I Britain set up a long-distance blockade between Scotland and Norway, in violation of the traditional requirement that blockades be close in. The traditional close-in blockade was of course made impossible by submarines, contact mines, and other new technologies. Britain also extended the contraband list to virtually everything, thus engaging in an illegal "starvation blockade." The relative ineffectiveness of the submarine against military targets led Germany to use the submarine in its most effective occupation: that of a commerce raider.[5] Justifying their action as a legal reprisal against the allegedly illegal British blockade, the Germans began an unrestricted submarine warfare campaign against British merchant ships in February 1915.

Although the Germans evidently intended that only enemy ships be subject to this unrestricted warfare, difficulties in identifying enemy ships and the British purchase of neutral flags for their merchant ships led the Germans to sink neutral shipping in an operational area of war in the waters surrounding Great Britain and Ireland.

The British declared operational areas during both wars in the North Sea between Scotland and Norway to isolate German warships and interdict German shipping. Those operational areas were, in essence, long-distance blockades, substitutes for impractical close-in blockades. The Germans extended their operational areas during World War II to the Atlantic and Mediterranean, and announced that they would sink enemy shipping without warning.[6]

[5]German submarines sank the British armored cruisers *Cressy*, *Hougo*, and *Aboukir* in September 1914 and the battleship *Formidable* in January 1915, actions that occurred in waters close to British ports in the North Sea and the English Channel, where the concentration of British war ships was high (Keegan 1988: 253). On the high seas the submarine's slow speed rendered it of limited effectiveness against naval vessels.

[6]The United States proclaimed a similar operational area in the Pacific during World II.

Because of the vulnerability of submarines to even light arms, the traditional visit and search of a merchant vessel was extremely risky for a submarine, and made even more so by the British practice of arming their merchant ships. Under the traditional laws of war only legitimate combatants, that is, commissioned naval vessels and privateers, could be armed. That rule helped assure the safety of noncombatants on merchant ships because belligerents were less likely to use force when they could remove seamen and passengers to places of safety without fear that they would be attacked by the merchant vessel. The arming of merchant vessels was itself illegal and could be used by Germany to justify sinking without warning as a legal reprisal.

Germany discontinued the campaign of unlimited warfare against merchant ships on May 4, 1916, not because it could not be justified under international law, but rather to avoid provoking the United States into entering the war (Mallison 1988: 64).[7]

Between the wars several attempts were made to limit or prohibit the use of submarines in war.[8] During the Washington Conference of 1921 and 1922 the British failed in an attempt to achieve a total abolition of the use of the submarine in war. A naval conference in Geneva (1927) also failed to restrict the use of the submarine in warfare. By the beginning of World War II, however, all major nations had agreed that the traditional rules regarding visit and search applied to submarines[9] (see Friedman 1972; Mallison 1968; and Roberts and Guelff 1982).

[7]On February 1, 1917, Germany resumed unrestricted use of submarines against belligerents and neutrals alike in a war zone around Britain, France, and Italy and in the eastern Mediterranean. Germany justified this action as a legitimate reprisal against alleged British violations of international law, which included arming of merchant ships and instructing them to open fire on German submarines, using Q-ships, and maintaining a long-distance hunger blockade. Q-ships were vessels that "appeared to be innocent merchantmen but were actually heavily armed warships. . . [whose] function was to lure German submarines to the surface and to destruction. . .when the submarine attempted to carry out the time-honored procedures of visit and search" (Mallison 1988: 5).

[8]An attempt was made before World War I to prohibit the use of the submarine in naval warfare. The 1899 Hague Conventions (Hague IV, 2 and 3) failed in their attempt to reach a general arms limitation agreement, though they did limit the use of projectiles whose purpose is to disperse asphyxiating gases, the launching of projectiles from balloons, and the use of expanding bullets (see Friedman 1972: 247–50).

[9]Part IV of the Treaty of London (1930) affirmed that submarines must "conform to the rules of International Law to which surface vessels are subject," that is, they must engage in visit and search and merchant vessels could not be sunk without warning if they were unescorted, but they could be sunk without warning if they were escorted. The Proces-Verbal of London 1936 was an attempt to expand the number of states accepting the limitations of the 1930 Treaty, and by the outset of World War II 50 nations had agreed to abide by the limitations, including all the major participants in that war.

Technological Change and Transactions Costs

Another economic factor affecting the misbehavior of combatants in war relates to the transactions costs associated with combat. For example, atomic weapons permitted a vast increase in the effectiveness of strategic bombers during war, at a cost of high potential collateral damage to the civilian economy. Nuclear war would increase the cost of the military transaction, while simultaneously improving the technical efficiency of war fighting on both sides.

Clearly, the relationship between the growth in military technology and the level of associated transactions costs in war is not simple or unidirectional. Advances in the ability of nations to militarily vanquish opponents are not necessarily indicative of a lower relative price for minimizing collateral damage. The World War II strategic bombing campaign and commerce raiding by submarines in both wars seem clear examples of a positive relationship (in the short run) between the risk to enemy noncombatants and the advance of technology. The atomic bomb would obviously constitute another example.

However, as a rule advances in military technology have tended to reduce this price over the long run and consequently lower the destructiveness of war to civilians. Witness the effect of the radical improvements in bombing accuracy between World War II and the 1991 Iraq War on civilian casualties in the two cases (see Dunnigan and Bay 1992). With the advent of the submarine and change in the nature of war since the Industrial Revolution, the law of war relating to merchant shipping adapted to the new technology, changing from a rule requiring visit and search to one allowing the sinking without warning of merchant vessels.

The laws of war do not restrict the introduction of more efficient weapons. When a technical change occurs (like the invention of the submarine) that renders the existing rules untenable, those rules tend to change in response. Following two world wars during which visit and search proved unworkable, the rule was abandoned as part of the international laws of war. Under the new rules merchant seamen and merchant ships were given combatant status, which meant that they could offer armed resistance to enemy warships, but which also potentially subjected them to attack without warning.

Under the new rules merchant ships were subject to attack without warning and duties to survivors were greatly diminished, submarines were not required to ensure the safety of the crew and passengers of vessels that they sank.[10]

[10]As a result of the tight confines of submarines there was no room for survivors of torpedoed enemy merchant ships (Mallison 1968: 11).

The new rules maintained the vital prohibition against killing survivors. Both German and Japanese officers were convicted at war crimes trials in Nuremberg and Tokyo, respectively, of deliberate actions resulting in the death of survivors of submarine attacks (see Piccigallo 1979; Woetzel 1960). Further, neutral shipping engaged in trade outside of operational areas with other neutrals was still protected from sinking without warning. New technology also made the traditional close-in blockade untenable, and the maintenance of operational zones on the high seas was accepted under international law as a rational adjustment to the new circumstances.

International Law and the Technology of Strategic Bombing

The reputation of a nation's government as a responsible international actor can conflict with that same nation's reputation as a formidable opponent. Acquiring a reputation for ruthlessness in war may benefit a government by deterring potential future opponents from challenging that regime on the battlefield.

Further, international law tends to lag behind the growth of military technology. The invention of the modern submarine represented one such episode. Another example is the Allied strategic bombing campaign during World War II.

The 100 largest German cities were heavily damaged during the Allied strategic bombing campaign, which resulted in the deaths of approximately 570,000 German civilians. All but the smallest Japanese cities were subject to massive incendiary bombardment, and those raids killed between 500,000 and 900,000 Japanese, counting those who perished at Hiroshima and Nagasaki (Ellis 1990: 526–27). There has been considerable controversy since the end of World War II over the morality of that deliberate policy, as well as debate about the military usefulness of area bombing of civilian targets. The legality of the strategy, however, is fairly clear: strategic bombing of enemy cities and their civilian inhabitants did not constitute a violation of the international laws of war. Not until Protocol I of 1977 was area bombing technically prohibited. The Protocol prohibits indiscriminate attacks, and area bombing is one of the principal forms of indiscriminate attack (*De Lupis* 1987: 240–41).

Basically, there was no body of law regarding the conduct of strategic bombing before or during World War II.[11] The nearest equivalent to

[11]A draft proposal for rules was circulated in 1923, but did not receive approval from the signatories of the Hague Convention and therefore never achieved legal status.

rules applicable to the strategic bombing question was Section IX of the Hague Convention of 1907, which defined the rules applicable to naval bombardment. Those rules permitted the legal bombardment of workshops or plants useful to the enemy war effort, allowed the bombardment of defended locations, and even permitted the bombardment of undefended locations if the local authorities did not agree to remove all facilities of military usefulness.

Simply stated, German and Japanese cities—and their inhabitants—were legal and legitimate targets under existing international law because they contained production facilities of use to the enemy war effort (e.g., munitions, but also steel foundries, pharmaceutical industries, and the huge variety of other "nonmilitary" facilities useful in modern war), and also because the enemy governments defended those locations. Allied bombers confronted not only enemy fighters defending strategic targets, but also ground-based antiaircraft fire ("flak"). Although Axis defensive measures became increasingly weakened, Allied bombers continued to take losses to enemy fire until the end of the war (see Ellis 1990: 196–200).

Since World War II, the international law of war has gradually evolved a set of detailed rules dealing with the problem of aerial bombardment of cities. As written, the restrictions forbid the area bombardment of enemy cities as practiced during that World War II. However, the new rules date only from 1978 and have yet to be tested in court.[12]

Even in the absence of legal restraints on the wartime use of a given form of military technology, other factors may influence the willingness of a belligerent to impose collateral damage on the economies and civilians of enemy and neutral nations. A rational government will calculate the costs and benefits associated with particular military strategies, and select the combination of friendly losses and enemy civilian damage that maximizes the net return from the enterprise of war. Nonlegal, economic constraints affect the willingness of warring nations to impose damage on the lives and property of noncombatants.

Conclusion

War is usually represented as the paradigmatic case of anarchy: a chaos of conflict, butchery unrestrained by law. But for all the waste

[12]One rationalization for the use of area bombing during World War II involved the technical limitations of available bombing equipment. Existing bombs, bombers, and bombsights were extremely inaccurate, making precise attacks on particular targets of military importance (e.g., a munitions factory) practically impossible. Modern "smart" bombs and precision-guided ordnance have eliminated the basis for that justification of area bombing. Of course, the use of such precision-bombing techniques is beyond the military capabilities

and cruelty caused by war, in the modern world war is not unrestrained by law. An elaborate international law of war has developed, which together with various economic constraints functions to limit the destruction war causes. The structure of international law has emerged as a byproduct of the competitive interactions between different national states, each pursuing its own distinct goals.

National governments are not monolithic entities, and public policy in general is the result of competing pressures in the political marketplace. But international relations are, indeed, a world of anarchy. There is no world government to impose rules on competing nation-states. Yet rules exist, and the conduct of warfare generally follows recognized limits. That simple fact offers powerful evidence that a body of law can emerge even though a government is not available to impose it.

We do not claim that the law of war is perfect, or that the waste and destructiveness of war has been abolished by the acceptance of international convention. The international community is a kind of market, and in the real world, markets are not perfect. As we have noted, the law of war has often lagged behind the reality of new technologies; yet the law does change to accommodate those new realities. Also, it is difficult to distinguish between the effects of economic incentives and those resulting from international agreements as constraints on military action. In the end, however, the law of war not only exists but limits the destructiveness of war.

Despite the regime of anarchy at the international level, the actors in the international community are national governments, and a relevant imperfection in the effectiveness of waste-minimizing international agreements may result from the influence of bureaucratic imperialism. The bureaucracies devised by governments to implement policy tend to develop their own independent economic interests that conflict with the policy goals of the political decisionmakers. The relation between those in political power and their bureaucratic employees may break down, particularly during wartime. For example, the bureaucracies of armies may sometimes benefit from longer (and more destructive) wars than would maximize the interests of the nations they serve.

In the end, like other instances of spontaneous order, the law of war is not capable of producing perfect peace and harmony. Yet, it makes a vital contribution to the prosperity of civilization.

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of the forces of many countries, as the recent history of the conflicts in Bosnia and Chechnya suggests.

References

Anderson, G.M., and Gifford, A. Jr. (1991) "Privateering and the Private Production of Naval Power." *Cato Journal* 11 (Spring/Summer): 99–122.

Axelrod, R. (1984) *The Evolution of Cooperation*. New York: Basic Books.

Benson, B.L. (1989) "The Spontaneous Evolution of Commercial Law." *Southern Economic Journal* 55 (September): 644–61.

De Lupis, I.D. (1987) *The Law of War*. Cambridge: Cambridge University Press.

Dunnigan, J.F., and Bay, A. (1992) *From Shield to Storm*. New York: W. Morrow.

Ellis, J. (1990) *Brute Force: Allied Strategy and Tactics in the Second World War*. New York: Viking.

Emerson, W.R. (1962) *Operation Pointblank: A Tale of Bombers and Fighters*. Colorado Springs: U.S. Air Force Academy.

Friedman, L., ed. (1972) *The Law of War: A Documentary History, Vol. I*. New York: Random House.

Hayek, F.A. (1973) *Law, Legislation and Liberty, Vol. I*. Chicago: University of Chicago Press.

Keegan, J. (1988) *The Price of Admiralty*. New York: Penguin.

Levie, H.S. (1978) *Prisoners of War in International Armed Conflict*. Newport, R.I.: Naval War College Press.

Mallison, W.T. Jr. (1968) *Studies in the Law of Naval Warfare: Submarines in General and Limited Wars*. Washington, D.C.: U.S. Government Printing Office.

Piccigallo, P.R. (1979) *The Japanese on Trial: Allied War Crimes Operations in the East, 1945–1951*. Austin: University of Texas.

Redlich, F. (1956) *De Praeda Militari: Looting and Booty 1500–1815*. Wiesbaden: Franz Steiner Verlag GMBH.

Roberts, A., and Guelff, R., eds. (1982) *Documents On the Laws of War*. Oxford: Clarendon Press.

Smith, A. ([1763] 1896) *Lectures on Justice, Police, Revenue and Arms*. Oxford: Clarendon Press.

Trachtenberg, M. (1980) *Reparation in World Politics: France and European Diplomacy, 1916–1923*. New York: Columbia University Press.

Woetzel, R.K. (1960) *The Nuremberg Trials in International Law*. New York: Praeger.