

**THE HONOR OF WAR: CORE VALUE OF THE WARRIOR ETHOS AND PRINCIPLE  
OF THE LAW OF WAR**

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## I. INTRODUCTION

*- Honor as a core value and other ethical norms continue to be vital as a medium for the implementation of the law of war - <sup>1</sup>*

In the post-honor culture of Western Liberal societies, honor is an abstract concept that seems to be a remnant of a bygone era. To most civilians, honor exists in modern vernacular generally in a pejorative sense due to media coverage of so-called “honor killings” in tribal societies originating from Africa, the Middle East, and South Asia. Or, as an adjective in the positive, honor is often grossly over-simplified to refer to the virtue of integrity. But, to the professional warrior of West and East, honor is a concept that is the heart of the warrior ethos, which transcends geography. It is the concept that forms the basis for parallel warrior cultures that exist alongside of civilian cultures, even within Western Liberal societies, that value individual over group.

It is the existence of a separate warrior culture within the larger construct of national cultures that is the source of the civil-military divide in society. As will be argued, recognition of honor as not only a fundamental principle of the law of war, but the progenitor principle of the body of law as well, is critical for overall compliance with the law despite many scholars that

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<sup>1</sup> DEPARTMENT OF DEFENSE LAW OF WAR MANUAL, §2.6.1 June 2015 (updated May 2016), [http://www.defense.gov/Portals/1/Documents/DoD\\_Law\\_of\\_War\\_Manual-June\\_2015\\_Updated\\_May\\_2016.pdf](http://www.defense.gov/Portals/1/Documents/DoD_Law_of_War_Manual-June_2015_Updated_May_2016.pdf) [hereinafter *DoD Law of War Manual*].

would question its continued relevance. To question the relevance of honor, especially as it pertains to the law of war, represents not only a failure of inter-cultural communication, but an ineffectual approach to the law as if it exists in a vacuum.

The law must not be viewed, studied, and applied in a vacuum. Far too often lawyers and legal scholars opine on interpretations of the law as if law is fully contained within the codified text of positive law. But law, like other products of human civilization, has numerous influences and purposes that originate from culture that cannot always be reduced to the written language. To opine, teach, or practice the law of war without an understanding of its historical development, military science, and anthropological factors such as philosophy and psychology that influenced the development of warrior culture is to do so without context, or in other words, without a true understanding of the law of war.

When the U.S. Department of Defense (DoD) published the long-awaited Law of War Manual (DoD Law of War Manual) in June 2015, it was met with praise and criticism, but one striking item of criticism—from none other than two retired Judge Advocate General (JAG) Corps officers<sup>2</sup>—regarded the resurrection and invocation by the DoD of *honor* as a fundamental principle to the law of war.<sup>3</sup> One author espoused having a “visceral negative

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<sup>2</sup> Rachel VanLandingham, *The Law of War is Not About “Chivalry”*, JUST SECURITY, (Jul. 20, 2015, 9:13 AM), <https://www.justsecurity.org/24773/laws-war-chivalry/> (author is a retired Air Force JAG as well as a current professor of law); Sean Watts, *The DoD Law of War Manual’s Return to Principles*, JUST SECURITY, (Jun. 30, 2015, 9:12 AM), <https://www.justsecurity.org/24270/dod-law-war-manuals-return-principles> (author is a former active duty Army JAG and current reservist as well as professor of law).

<sup>3</sup> For purposes of this paper the author will use the term “law of war” to refer to the body of law regulating the conduct of hostilities during armed conflict because it is the traditional term that also invokes the cultural norms of warriors sought by the author. The term “international humanitarian law” will not be used as it is too often conflated and confused with the separate and distinct body of international human rights law as well as the fact it is rarely a term used by actual practitioners of the law of war. The term “law of armed conflict” is not used, even though

reaction” “to outdated, chauvinistic, and frankly distasteful concepts,” and even went so far as to compare an invocation of honor as equivalent to the confederate battle flag.<sup>4</sup> The other questioned the practical utility of it considering the extent of the codification of the law of war.<sup>5</sup> These comments are problematic for several reasons: one, they demonstrate a lack of understanding of martial honor caused by the modern Liberal (individualistic)<sup>6</sup> anti-honor culture; two, they assume that honor is a monolithic concept that is incapable of evolution; three, they, somewhat ironically judging by the source, reflect an ignorance of professional warrior cultures; and four, they highlight the excessive reliance on the codification of law in Western societies to control conduct, which reflects a further ignorance of understanding human behavior, especially during war.

In the opinion of this author, honor, like religion (morality) and the law (civil not religious), is one of the three conceptual pillars used throughout human history to regulate human behavior. Honor, like law and religion, has manifested with variation as to the specific codes among different cultures. But, also like the other two pillars, common principles can be identified cross-culturally. As will be discussed later, this is especially true of the martial honor cultures of professional warriors throughout history.

This purpose of this article is not only to counter the criticism of honor—especially martial honor—in general, but also to show that honor is in fact a fundamental principle of the law of war with significant continued relevance, especially as it pertains to compliance. Along

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it provides the proper contextual focus, because it reduces war to a factual legal reduction instead of its complex nature involving interaction between concepts of law, honor, morality, and policy.

<sup>4</sup> VanLandingham, *supra* note 2.

<sup>5</sup> Watts, *supra* note 2.

<sup>6</sup> Liberal here is not used to refer to liberal politics of the left, but to refer to it in the classical sense of the focus on the individual.

with *military necessity* and *humanity*, it provides the foundation for the other law of war principles of *proportionality* and *distinction*, and most of the treaty and customary international law (CIL) that regulates conduct in warfare.<sup>7</sup> While the other principles only act to guide belligerent conduct, honor also “supports the entire system” because it is the honor code of the professional warrior ethos that results in compliance with the rules.<sup>8</sup> Recognition and advocacy of honor as a principle of the law of war pays proper respect to the degree of special trust and confidence bestowed upon professional warriors to act appropriately in the fog of war. It makes the law of war not a dictum from an outsider (e.g. civilian lawyer) without an understanding of war or combat experience, but an integral part of the code of honor for a professional warrior that he or she not only has a duty to obey, but due to a sense of honor, an internal need to obey.

Part II of this article will explore the general concept of honor to help clarify misunderstandings about the nature of honor that have partially resulted in its disfavor in Western Liberal societies. In doing so, the underlying concept and its historical development across cultures will be discussed. Next, honor will be broken down into its constituent parts of outer and internal honor to demonstrate its power over the human psyche. Once the intricacies of the concept of honor are laid out, the three types of honor (horizontal, vertical, and competitive) will be discussed followed by an analysis of honor’s compatibility with modern notions of inherent human dignity. Lastly, it will discuss martial honor that derives from the cultural foundation of warrior codes, which provides the foundational context necessary to appreciate the indisputable historical and continued influence of honor upon the law of war.

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<sup>7</sup> DEPARTMENT OF DEFENSE LAW OF WAR MANUAL, §2.1.

<sup>8</sup> *Id.* at §2.1.2.3.

Part III will look at infusing the concept of honor into what has come to be understood as international law. It will first argue that the general Westphalian international legal system developed as an honor code among nations as opposed to what is typically understood as law, specifically in part because it was, and still is largely today, enforced through shame by peers in the honor group. Second, it will look more specifically at honor's instrumental part in the development of the law of war, and how the honor code of the warrior ethos—martial honor—sought to civilize warfare.

After honor and its part in the development of the law of war is understood, Part III will argue that honor is above and beyond the most effective means of preventative enforcement of the law of war and accountability for violations thereof. In doing so, it will view the law of war as part of the martial honor code and explain why martial honor must be pre-eminent in any discussion of the law of war.

Further, States should emphasize martial honor while training their warriors in the law of war. This type of training will help bridge the cultural divide in civil-military relations because it respects the way warriors think, honors the culture of their profession as the progenitor of the law, and aligns law of war training with methods of other military training; all of which results with the internalization of legal expectations that maximizes compliance.

This is, however, not an argument that the parallel and reactive enforcement through international criminal law should be supplanted by honor, but that it is the first line of defense to support the vitality of the entire body of law. The optimal regulation of belligerent conduct depends upon honor, law, and morality (e.g. religion); each of which can work in symbiotic relationship with the other to fulfill the objective of mitigating suffering in war.

## II. BACKGROUND

### A. Honor

#### 1. General Concepts and Historical Development

First and foremost, honor is a concept of human relations that at its core is a right to respect.<sup>9</sup> It is not simply a virtue, an emotion, or a synonym for honesty. Neither is it constrained to a monolithic set of values frozen in time nor is it necessarily incompatible with the modern notion of inherent dignity of every human being. Honor should not be confused as being identical to chivalry. Chivalry was the honor code of Western feudal knights, but it is not the same as honor generally. As an honor code it certainly is the forebear for modern Western understandings of martial honor, but it does not exist in its entirety anymore. As a result, the use of the term chivalry should be avoided when discussing honor, especially when attempting to argue that there is a common martial honor culture that is not solely rooted in the West.

Although often associated historically with violence, “[h]onor’s not captious, nor disposed [*sic*] to fight, But, seeks to shun what’s wrong, and do what’s right.”<sup>10</sup> Honor is not about revenge, but it does often seek a remedy or reparation for an offense to one’s honor, but no more than that, which is the basis of what is called reflexive honor.<sup>11</sup>

What is common about all honor cultures is that honor is “intimately associated in many ways with those aspects of your identity that derive from membership in social groups.”<sup>12</sup>

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<sup>9</sup> KWAME ANTHONY APPIAH, *HOW MORAL REVOLUTIONS HAPPEN: THE HONOR CODE* 13 (2010) and FRANK HENDERSON STEWART, *HONOR* 21 (1994).

<sup>10</sup> JOSEPH HAMILTON, *THE DUELLING HANDBOOK* 1 (Dover Publications, Inc. 2007) (1829).

<sup>11</sup> *Id.* at 2 and FRANK HENDERSON STEWART, *HONOR* 64 (1994).

<sup>12</sup> *See* APPIAH, *supra* note 9, at 61.

Identity is not only important for identifying the honor group of which one belongs, but also because one can share in the honor or dishonor of those whom he or she shares an identity.<sup>13</sup> Because of this, honor requires individual autonomy to give way to the group if a desired action would bring dishonor to others in the group, which offends many Liberals, but in a warrior organization that is the expected norm.<sup>14</sup> Each honor group contains its own honor code that sets the minimum standards of conduct for those within the group, and any violation of the code results in a loss of honor.<sup>15</sup> That loss of honor requires others within the group to not simply cease respecting the violator, but to treat him with contempt, up to and including expulsion from the group.<sup>16</sup> This may seem harsh to Liberal civil society, but again, in the profession of arms where the slightest mishap may affect life and death, or potentially have strategic level consequences, the military discipline of an honor culture is necessary. Historically, such as the English gentry, honor could demand respect for members of hereditary identity groups or those based on immutable characteristics, but this is generally no longer the case.<sup>17</sup>

Honor groups are composed of those members that adhere to the same honor code. But, a person may be a member of multiple layers of groups that may or may not have distinct codes. As example, one may be a member of the honor group of a specific profession like an attorney at the same time as being a part of the honor group of professional warriors, and a part of the much larger honor group of a Nation or State.<sup>18</sup> The larger the group though, the more attenuated the

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<sup>13</sup> *Id.* at 63.

<sup>14</sup> JAMES BOWMAN, *HONOR: A HISTORY* 38 (1<sup>st</sup> ed. 2006).

<sup>15</sup> *See* APPIAH, *supra* note 9, at 17 and STEWART, *supra* note 11, at 124.

<sup>16</sup> *See* APPIAH, *supra* note 9, at 17.

<sup>17</sup> *Id.* at 185.

<sup>18</sup> For an attorney, Rules of Professional Responsibility are certainly an honor code that while having some overlap with law is ultimately a matter of an honor group regulating itself.



honor code becomes for individuals, but the collective desire to preserve national honor moves states to align behavior with the community of nations.

Honor appeals to the instinctual need of humans for recognition from others in the community.<sup>19</sup> It is through the “face” that we observe the value others place upon us, which is the origin of the phrase “saving face.”<sup>20</sup> Honor has been described as the worth of a person’s character in the eyes of society.<sup>21</sup> These descriptions imply that honor only affects us when others may observe us such that we may engage in conduct in private that if engaged in public would be considered dishonorable without losing our honor, which would emote shame.<sup>22</sup> However, this is a mistake because we can feel shame in private for private conduct.<sup>23</sup> Shame is to honor what guilt is to religion. That it is limited to the public sphere is a mistake because the evolution of honor derived not only from the respect and recognition of our peers, but also our own acknowledgement of our entitlement to such, which is the emotion of pride.<sup>24</sup> Thus, there is an objective prong in the opinion of others as to our value, and a subjective aspect, which is the fear of that opinion.<sup>25</sup> So, while guilt may reflect an emotion produced as a result of violating a moral duty to god, shame reflects an emotion resulting from a violation of a duty to the honor group.

A member of an honor group cares not only about being respected, but also about being worthy of respect.<sup>26</sup> This is what is called our “sense of honor.”<sup>27</sup> It requires us to not only

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<sup>19</sup> See APPIAH, *supra* note 9, at xiii.

<sup>20</sup> *Id.* at xviii.

<sup>21</sup> STEWART, *supra* note 11, at 13.

<sup>22</sup> APPIAH, *supra* note 9, at xviii and STEWART, *supra* note 11, at 13.

<sup>23</sup> *Id.*

<sup>24</sup> STEWART, *supra* note 11, at 13.

<sup>25</sup> *Id.* at 14.

<sup>26</sup> APPIAH, *supra* note 9, at 16.

<sup>27</sup> STEWART, *supra* note 11, at 47-8.

understand the honor code, but to be attached to it.<sup>28</sup> The sense of honor translates to a sense of duty; an inherent need to preserve one's honor. Attachment to the code may require one to possess certain virtues such as courage, self-control, fidelity, and integrity so that it manifests into action.<sup>29</sup> But, as will be discussed later, attachment to the honor code internalizes a need to obey it, which is why, in part, compliance with the law of war is maximized in the fog of war when it is viewed as an integral part of martial honor.

As introduced earlier, it is this author's contention that there are three conceptual pillars that society has utilized throughout human history to control the conduct of humans: honor, religion, and the law. It is best to think of honor in this fashion because it becomes more readily apparent that the blanket aversion of it as a concept of a bygone era of feudalism, or as a tool to subjugate women is misplaced. These three concepts each have a generally understood meaning in isolation, but when viewed through the broader lens of the multiple honor groups, religious sects, and legal systems one can understand that the specifics of each and application thereof vary.

Honor, religion, and the law, while distinct concepts, should not be understood as always mutually exclusive.<sup>30</sup> It is true that often they may command different conduct, which is best exemplified by the dueling culture of the gentry.<sup>31</sup> This practice of honor occurred at the same time that dueling violated both the law, and canon law as well as Christian moral teachings.<sup>32</sup> But also, not all immoral acts in violation of religious teachings are unlawful in a civil society, and the law in many countries such as Germany has been used as a further means to defend against

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<sup>28</sup> APPIAH, *supra* note 9, at 16 and STEWART, *supra* note 11, at 47-8.

<sup>29</sup> STEWART, *supra* note 11, at 47-8.

<sup>30</sup> See APPIAH, *supra* note 9, at 108.

<sup>31</sup> *Id.* at 10.

<sup>32</sup> *Id.*

offenses of honor.<sup>33</sup> What can be said is that an honor code just like a legal code, and to a lesser extent religious canons or sense of morality, can be modified to evolve with human discovery, and to even align with one another.

The continued practice of the duel for generations after it was prohibited by the church and the law demonstrated that honor may be the most powerful means to regulate conduct. It was said that dueling likely persisted in part because the law did not provide sufficient remedy to defend honor.<sup>34</sup> Within an honor culture, regardless of what religious figures may say is morally correct or lawyers say is unlawful, members will routinely act in accordance with honor over religion and the law.<sup>35</sup> For this reason honor cannot be ignored, but must be embraced in a modern construct to better align its practice with law and morality.

Dueling involved a well-defined set of rules that, while often resulting in injury or death, could also result in shaking hands with friendly relations restored if neither opponent hit the other.<sup>36</sup> The practice of the honor code that placed all gentlemen as equals demanded that no insult could be overlooked without losing “face” (honor) and no challenge could be refused without losing the same.<sup>37</sup> This characteristic is called reflexive honor, that is a specific response is required.<sup>38</sup> As example, if “A impugns B’s honor, then B’s honor is ipso facto diminished or destroyed, unless B responds with an appropriate counterattack on A.”<sup>39</sup> Reflexive honor is not necessarily a function of all honor codes, and it can be generally said that an insult from an

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<sup>33</sup> See STEWART, *supra* note 11, at 38 and 79.

<sup>34</sup> APPIAH, *supra* note 9, at 34.

<sup>35</sup> BOWMAN, *supra* note 14, at 35.

<sup>36</sup> JOHN LYDE WILSON, CODE OF HONOR: A CIVIL WAR ERA RULEBOOK FOR DUELS AND DUELING 22 (ReadaClassic.com 2010) (1838) (the author was the Governor of South Carolina at the time he wrote this book advocating for duels to solve some problems).

<sup>37</sup> HAMILTON, *supra* note 10, at 17.

<sup>38</sup> STEWART, *supra* note 11, at 64.

<sup>39</sup> *Id.*

inferior or an outsider (one not a part of the honor group) may not demand the reflexive response because those outside the group cannot impugn the honor of those in it.<sup>40</sup> The gentlemen's willingness to die defending his honor indicated that he possessed one of the characteristics to be considered honorable, which is clearly an extension of martial honor to be discussed later.<sup>41</sup>

Feminist theory was one of the contributors to the formation of an anti-honor culture because honor for women was traditionally understood to be solely related to their chastity if considered to have any honor at all.<sup>42</sup> It was used as a means to subjugate women to the preferences of men. This characteristic of many honor cultures was successful in part due, at least in part, to the fact that women did not have opportunities to "display such virtues as courage in battle" or integrity and service in the public sphere that was so often the source of male honor.<sup>43</sup> There can be no doubt that such aspects of an honor code have no place in modern society. This historical association of female honor solely with chastity should not be a justification to dispense with honor all together. Instead, it is merely cause to see how the honor code must evolve for the modern realities that the legal system and our common understanding of equality between the sexes seeks to provide women with equal opportunity as men, including service in the military and public office.

Can it be doubted that at the time the female honor characteristic of chastity developed that subjugation of women as second-class citizens was not also condoned and supported by the law and religion? Even today many of the world's religions still proclaim women as divinely inferior to men, or subject women to exclusion from the clergy or common worship with men.

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<sup>40</sup> *Id.* at 67.

<sup>41</sup> APPIAH, *supra* note 9, at 25.

<sup>42</sup> See STEWART, *supra* note 11, at 107 and JAMES BOWMAN, HONOR: A HISTORY 106 (2006).

<sup>43</sup> STEWART, *supra* note 11, at 107.

The laws of many States still treat women as a separate class of citizens. Laws were changed in more advanced States and non-fundamentalist religious practitioners began to ignore inequitable religious texts, while some other sects simply evolved. But, the law is still not perfect and many faithful practitioners of religion still believe in divinely dictated gender roles that place women in subjugation from a modern Western perspective. Yet, the law and religion survived while honor was targeted for complete annihilation.

It cannot be stressed enough that the concept of civilization (honor) that has historically demonstrated a potency, often unmatched by law and religion, to influence human conduct to conform with a set of desired norms must not be dispensed with due to the historical ignorance that was common throughout all products of civilization. Anachronistic characteristics of chastity and birthright can be expunged without eliminating honor, law, or religion. Human civilization created it, and as such, may amend it.

It should be noted that honor can be attributed to the end of foot binding practices in China that were designed to ensure the chastity of women, and has been largely responsible for advancements in States dominated by tribal societies to act more forcefully against so-called honor killings.<sup>44</sup> In both of these situations, the larger construct of national honor before the honor group of the community of nations resulted in forcing a local evolution in the understanding of what was honorable, despite resistance of the local honor culture.<sup>45</sup>

The ability of honor to be a force for good outside of martial honor can also be seen through an analysis of the British mission to defeat slavery and the slave trade. Long before slavery and the slave trade were abolished as a matter of law—both domestically and

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<sup>44</sup> See APPIAH, *supra* note 9, at 96.

<sup>45</sup> See *id.* at 97.

internationally—the religious arguments against it were clear.<sup>46</sup> Yet, it continued in practice. The driving force of change was the shame that became associated with the practice. The British not only outlawed slavery domestically and publicly expressed their moral opprobrium to slavery, but they felt a duty based in honor to fight it on the Atlantic.<sup>47</sup> As Frederick Douglas noted: “Slavery exists in the United States because it is reputable, and it is reputable in the United States because it is not disreputable out of the United States as it ought to be.”<sup>48</sup> Reputation is the sum of the perceptions of a person or group’s conduct in relation to an honor code. As the historical examples illustrate, honor has often forced the law to evolve in order to prevent dishonor to the Nation.

Dueling, foot binding, and slavery were all once practices that were a source of honor but over time these practices became a source of dishonor.<sup>49</sup> The affected societies did not abandon honor, they simply redefined their honor codes to adjust to new social conditions.<sup>50</sup> The collective shaming of a nation or smaller honor groups is more powerful than religion or even the law at modifying behavior because all societies not only desire, but have an instinctual need to be recognized and respected by others.<sup>51</sup>

Confucius said: “Guide the people by law, subdue them by punishment; they may shun crime, but will be void of shame. Guide them by example, subdue them by courtesy; they will learn shame, and come to be good.”<sup>52</sup> Confucius meant that if one complies with the law he receives no practical benefit and learns nothing as compliance, in a vacuum, is based in the

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<sup>46</sup> *See id.* at 110.

<sup>47</sup> *See generally id.* at 105-08.

<sup>48</sup> *Id.* at 115.

<sup>49</sup> *See id.* at 160-163.

<sup>50</sup> *Id.*

<sup>51</sup> *See generally id.* at 172.

<sup>52</sup> CONFUCIUS, THE SAYINGS OF CONFUCIUS 5 (Barnes & Noble, Inc. 1994).

deterrent effect of criminal or civil sanction, not purpose or meaning. If one complies with religious doctrine he may receive eternal salvation or other equivalent, but there is no immediate affirmation. If one acts honorably, he will receive immediate respect and recognition from his peers, which is more powerful at influencing present actions because while god may forgive, honor groups do not.

a. Aspects of Honor

There are two aspects of honor, both of which will serve the later point regarding its effectiveness to enforce law: external and internal honor.<sup>53</sup> External honor is the most commonly understood aspect of honor, and the original foundation of it. In the German literature of the middle ages it was usually referred to as reputation, prestige, renown, standing, or worth in the eyes of others.<sup>54</sup> During the Roman Republic and Empire, citizens represented a semi-exclusive honor group. Citizens that conducted themselves properly in public enjoyed *fama* (good reputation); whereas, those who did not were said to have *infamia* (infamy).<sup>55</sup> External honor is the objective component to receive respect from peers and often outsiders as well.

It was likely not until the Renaissance that honor began to also take on an internal sense to it.<sup>56</sup> Internal honor is the subjective component that is reflected in self-respect.<sup>57</sup> In this sense, it is not enough that other members of the group believe you are honorable. In addition, the personal virtues of which became associated with honorable people during the Renaissance instill an internal need to truly be worthy of that respect—the sense of honor. According to anthropologist Frank Henderson Stewart, German literature equated “fidelity, courage, mercy to

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<sup>53</sup> See STEWART, *supra* note 11, at 12.

<sup>54</sup> *Id.* at 34.

<sup>55</sup> *Id.* at 55.

<sup>56</sup> *Id.* at 35.

<sup>57</sup> *Id.* at 12.

the vanquished, generosity, moderation, [and] courtesy” with honor.<sup>58</sup> Note the grouping of virtues associated with honorable warriors and bedrock objectives of the law of war such as mercy (quarter), moderation (military necessity, proportionality, and precautions), and generosity and courtesy (burial, prisoner of war treatment, and occupation law). The development of internal honor was also seen in French and Spanish literature as well.<sup>59</sup>

#### b. Types of Honor

Within honor cultures, there are three types of honor: horizontal (peer); vertical (status within group); and esteem (competitive).<sup>60</sup> Horizontal honor is that honor that a member of an honor group either has or does not have.<sup>61</sup> This is the harshest form of honor because the slightest violation of the honor code results in dishonor, or contempt from peers within the honor group.<sup>62</sup> This is an example of the type of honor that all professional warriors have or do not have, or States have or do not have. For the professional warrior, to flee from the enemy is cowardice, which results in shunning by the group and even legal sanction at court-martial, or to torture a prisoner is the same.

Vertical honor is a higher level of respect given to a member of an honor group for “those who are superior, whether by virtue of their abilities, their rank, their services to the community, ... [or] their office.”<sup>63</sup> Unlike horizontal honor, vertical honor can be awarded in gradation depending on factors such as rank. For example, a general has more respect given to him than a lieutenant. Vertical honor is typically dependent upon further corollary requirements under the

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<sup>58</sup> *Id.* at 35.

<sup>59</sup> *Id.* at 40-46.

<sup>60</sup> See APPIAH, *supra* note 9, at 14 and STEWART, *supra* note 11, at 54-59.

<sup>61</sup> APPIAH, *supra* note 9, at 14 and STEWART, *supra* note 11, at 54-59.

<sup>62</sup> APPIAH, *supra* note 9, at 14 and STEWART, *supra* note 11, at 54-59.

<sup>63</sup> STEWART, *supra* note 11, at 59.



code to protect the entire system. As shown, a military officer receives vertical honor on the basis of the status as officer versus enlisted, but with that comes potential sanction for fraternization or conduct unbecoming an officer and a gentleman; both of which that are also crimes in the military system subject to court-martial. If such is violated by a person receiving vertical honor by status, then others of equal or greater vertical honor are charged to show contempt for the offender. As an example, a U.S. military officer could be subject to a board of inquiry in which his or her superior officers may recommend expulsion from the honor group. In the civilian sector judges are a good example of vertical honor. Vertical honor is shown in the military for officers through enlisted personnel rendering salutes to officers and utilization of honorifics such as Sir or Ma'am.

The third type of honor is esteem honor, which is also bestowed at different levels. Unlike vertical honor, it is exclusively related to the superior merit of the individual.<sup>64</sup> On its face this may seem like an embrace of individualism over group. But, esteem honor is not for the purpose of valuing the individual above the group. Instead, it is designed to inspire others in the group to exceed or greatly exceed the minimum standards of the honor code. Additionally, all members of the honor group benefit from the esteem bestowed upon one of their own, improving the overall morale and welfare of the group.

Whenever an honor group has a function of esteem honor, the member is judged in reference to the group as opposed to society at-large.<sup>65</sup> An example of esteem honor in the military context is the awarding of medals and badges. The highest example of esteem honor in the U.S. military would be awarding of the Medal of Honor. For recipients of the Medal of

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<sup>64</sup> *Id.*

<sup>65</sup> APPIAH, *supra* note 9, at 62.

Honor, all other members traditionally render salute regardless of the recipients rank, e.g. a Captain would render salute to a Corporal that received the Medal of Honor.

A major source of esteem honor in the U.S. Marine Corps, especially due to its maxim that “every Marine is a rifleman” is the awarding of shooting badges for annual marksmanship tests. The system divides Marines between marksman at the lowest to sharpshooter and experts at the top of the scale. These badges serve as a cultural means to be proud, but are also a source of inspiration for those wearing what is teasingly called the “pizza box” marksman badge, due to its resemblance, to gain more esteem by improving their marksmanship.

c. Honor v. Dignity: Compatible or Contradiction?

To deal with one last criticism and challenge to honor in the era of Liberalism and Egalitarianism, we must address how honor can be compatible with the inherent dignity of all human beings regardless of status, merit, abilities, or accomplishment. While it is without doubt that all humans are created equal and deserve equal protection, opportunity, and status under the law, society has never accorded societal respect to all persons equally. And, to argue otherwise is disingenuous. Admittedly, with good reason, old honor groups that were based on heredity absent demonstration of merit are not compatible with modern human rights norms, and such groups should be abolished. Yet, even these still exist in the various monarchs of the world, including European countries. But, recognition of the inherent dignity of each person does not mean that each person is deserving of the same level of respect from other persons in society. Respect is not all or nothing, it is given in gradation.

Unlike honor, dignity is not earned. We are all born with dignity. Dignity must be distinguished from respect associated with honor. Dignity demands that we recognize that all human beings have “capacity for creating lives of significance; that we can suffer, love, create;

that we need food, shelter, and recognition by others” as legal persons.<sup>66</sup> It is the acknowledgement of the general worth of an individual that we give all persons in the interest of understanding that all of us are a part of a common humanity.

Again though, just as noted earlier, the fact that honor in the past was often associated with aristocracy does not mean it should be annihilated. At one time, the law did not recognize the inherent dignity of all persons and in fact endorsed certain atrocities like slavery. But, the law, like honor, evolved. Honor does not depend upon recognition as a person, it depends on the ability to distribute higher levels of respect for status and merit earned within a group, and to members of groups at-large that subject themselves to internal standards of conduct that exceed those expected of civil society under the law or religion, such as professional warriors, clergy, lawyers, and doctors.

Dignity has informed the modification and development of honor codes, but does not negate it. Dignity may affirm the arbitrary and illogical nature of taking a life in a duel as a result of a verbal insult. Further, the rise of dignity in human rights law is not a new concept, but merely a legal validation of a long standing moral principle.

Hierarchical respect pervades Western Liberal society all the while every person has equality under the law. In academia, professors have a series of rank structures and honorifics. In government, we bestow titles such as “the Honorable” or “Your Honor” to recognize a higher status or merit of some people. In court rooms we regularly assess the credibility of witnesses, which is simply a guise for assessing their honorableness through an aspect of their reputation, their character for truthfulness.

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<sup>66</sup> *Id.* at 129.

## 2. Martial Honor

A Marine in battle fears disgracing himself by running. He fears not “losing his life, but losing his honor.” He may not be able to preserve his life, but he can always preserve his honor. That much is within his power ... To fear disgrace but not death, to fear not duty but dereliction from duty—this is courage.<sup>67</sup>

Martial honor is the pinnacle of the general honor culture, and likely the forebear to most subsidiary honor cultures. War has been a feature of human civilization since the beginning and will most certainly remain so for the foreseeable future. As a result, there “will be honor because it is the glue that holds armies together.”<sup>68</sup> As Clausewitz noted, “[a]n army that maintains its cohesion under the most murderous fire; that cannot be shaken by imaginary fears and resists well-founded ones with all its might; ... that is mindful of all these duties and qualities by virtue of the single powerful idea of the honor of its arms” is one with true military spirit.<sup>69</sup>

The primary focal point of martial honor began with encouraging bravery in the face of peril.<sup>70</sup> Honor was necessary to encourage acts that may be morally desirable, but which would be too dangerous and irrational to insist upon a moral or legal duty to do it.<sup>71</sup> As Frederick the Great said, “the one thing that can make men march into the muzzles of the cannon which are trained at them is honor.”<sup>72</sup> Honor is about fostering an attitude that overcomes fear to generate a

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<sup>67</sup> U.S. MARINE CORPS, LEADING MARINES MCWP 6-11, 43 (2002).

<sup>68</sup> BOWMAN, *supra* note 14, at 36.

<sup>69</sup> U.S. MARINE CORPS, LEADING MARINES MCWP 6-11, 53 (2002) (quoting CARL VON CLAUSEWITZ, ON WAR 187-88 (Michael Howard trans., Peter Paret ed. Princeton University Press 1984))

<sup>70</sup> See STEVEN PRESSFIELD, THE WARRIOR ETHOS 12 (2011).

<sup>71</sup> APPIAH, *supra* note 9, at 192. It should also be noted that eventually in some warrior cultures cowardice evolved into not merely an act that brought dishonor, but also an offense under the criminal law.

<sup>72</sup> BOWMAN, *supra* note 14, at 37.

winning mindset, a collective will of the professional warriors that Clausewitz recognized as a decisive influence in battle.<sup>73</sup> This aspect of bravery or cowardice being a decisive influence is also supported by Sun Tzu.<sup>74</sup>

Martial honor was not limited simply to bravery however. Like honor in general, it became associated with virtues such as fidelity, courage, mercy to the vanquished, generosity, moderation, courtesy, and a mutual respect of fellow warrior.<sup>75</sup>

An honor culture, unlike religious morality or civil law, is neither characterized by a personal relationship with a god nor a system that only sanctions the individual violating it. If a warrior violates the honor code, he not only dishonors himself, but his entire unit, and likely his country as well. The warrior not only seeks to maintain his honor, but that of his honor group.<sup>76</sup> Additionally, through the feature of collective shame, an honor culture provides an incentive for all members of the Group to not only condemn violations, but to prevent them as well. Warriors in the same group “have pride in their achievements and their reputation as fighters,” and recognize that these traditions “must be lived up to.”<sup>77</sup>

It is for these reasons that professional warrior classes are now, and always have been shame-based cultures.<sup>78</sup> This is true of the U.S. Marine Corps just as it was for the Japanese under Bushido, the Romans, Alexander the Great’s army, and the Spartans.<sup>79</sup> All manifested the

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<sup>73</sup> MICHAEL J. ASKEN ET AL., WARRIOR MINDSET: MENTAL TOUGHNESS SKILLS FOR A NATION’S PEACEKEEPERS 208 (2010).

<sup>74</sup> See SUN TZU, THE ART OF WAR 114 (Samuel B. Griffith trans. Oxford University Press 1971).

<sup>75</sup> See STEWART, *supra* note 11, at 35 and PRESSFIELD, *supra* note 70, at 18.

<sup>76</sup> See PRESSFIELD, *supra* note 70, at 54.

<sup>77</sup> U.S. MARINE CORPS, LEADING MARINES MCWP 6-11, 49 (2002).

<sup>78</sup> See PRESSFIELD, *supra* note 70, at 22.

<sup>79</sup> *Id.*

common Marine Corps mantra of “death before dishonor.” Across these diverse cultures, the warrior honor culture possessed much of the same attributes.

Generally, defeat was not seen as an option. In Germany during the middle ages, to survive defeat was considered disgraceful.<sup>80</sup> However, in Germany as in much of Western culture by the time of the Renaissance, martial honor evolved to allow for the preservation of honor if surviving defeat as long as it could be said the warrior fought valiantly.<sup>81</sup> In ancient Sparta, Spartans departing for war were told by their loved ones that they were to only come home “with their shield or on their shield.” During a battle of opposing phalanxes in ancient Greece, when one side gave way and turned to flee they would drop their shield, and if you die in battle a hoplite would return home on his shield.<sup>82</sup> An idea such as this was also expressed in old Swiss records that tied “honor and weapon” with “without honor and without weapon.”<sup>83</sup>

Japan, all the way through World War II, maintained a martial honor culture of the more extreme variety that had no tolerance for defeat. To face defeat and survive is the zenith of cowardice, and the only way for a samurai to regain some honor was to commit seppuku<sup>84</sup> because there is “no shame in death.”<sup>85</sup> In Bushido, it was said that a “real man does not think of victory or defeat. He plunges recklessly toward an irrational death.”<sup>86</sup> When faced with “a choice

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<sup>80</sup> STEWART, *supra* note 11, at 34.

<sup>81</sup> *Id.* at 34.

<sup>82</sup> As a narrative aside, this event is where the word trophy originates, which comes from the Greek word for turn. Trophies were monuments marking where the enemy turned to flee the battlefield.

<sup>83</sup> STEWART, *supra* note 11, at 140.

<sup>84</sup> Seppuku is the act of ritual suicide of the samurai class. It is more often known as hari kari in the United States. Although referring to the same act, seppuku is the appropriate term in written language within Japan; whereas, hari kari is more closely associated with oral communication.

<sup>85</sup> YAMAMOTO TSUNETOMO, HAGAKURE: THE BOOK OF THE SAMURAI 17 (William Scott Wilson trans., Kodansha International 1979) (1716).

<sup>86</sup> *Id.* at 30.

between living and dying, as long as there remains nothing behind to blemish one's reputation, it is better to live" but implicit is that preserving one's reputation, honor, is more important than life itself.<sup>87</sup> This is quite similar to the dueling culture of the gentry discussed earlier. To further illustrate the point, Bushido also views any unanswered insult to one's honor as cowardice.<sup>88</sup>

What should be concluded from this is that even in a Western Liberal society that values individual freedom above the common good, and avers to passing judgment upon others outside of legal forums, if a professional military is to successfully defend that society it must be a culture based on martial honor.<sup>89</sup> Where civilians value personal liberty, warriors value "cohesion and obedience." The warrior "serves; he is bound to perform his duty." And, the "sentiment of honor, inspired by a clear conscience will lead the [warrior] to the most faithful fulfillment of his duty."<sup>90</sup> It also illustrates that the sense of honor among professional warriors has been so powerful that it negated the natural instinct to avoid death, and as such, can also be employed to control other belligerent conduct.

### III. ANALYSIS

#### *A. Honor as a Principle of Law*

##### 1. General International Law

Although the primary point of this section is to illustrate the integral part honor plays in the law of war as a fundamental principle, this author argues that the entire international legal system was founded not as a model of the concept of law, but in reality as an honor code among

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<sup>87</sup> *Id.* at 45.

<sup>88</sup> *Id.* at 106.

<sup>89</sup> See PRESSFIELD, *supra* note 70, at 71.

<sup>90</sup> STEWART, *supra* note 11, at 46.

nations. International law is based on the fundamental principle that all sovereigns are equal regardless of individual merit or powers. It is directly akin to a horizontal honor peer group with some elements of esteem honor. To this day, the primary legal mechanism—due to the general inability for the United Nations Security Council to fulfill its fully envisioned legal mandate—to enforce international law is collective shaming of so-called rogue states.

In his discussion of oaths as a reliable practice in *De Jure Belli ac Pacis*, Grotius cited Sophocles in stating that oaths “guard[sic] us against two things, most to be avoided, the reproach of friends, and the wrath of heaven.”<sup>91</sup> Grotius is clearly speaking of the combined forces of honor and religion that ensure compliance with an oath as part of international law. This is unusual in general in Grotius’ work that typically is highly Christian centric, and often refers to religious obligations that can more universally be understood as honor.

Turning to Emer de Vattel in *The Law of Nations*, he wrote an entire chapter devoted to national honor, or as he states, “of the glory of a Nation.”<sup>92</sup> Vattel states:

[t]he glory of a nation is intimately connected with its power, and indeed forms a considerable part of it. It is this brilliant advantage that procures it the esteem of other nations, and renders it respectable to its neighbors [sic]. A nation whose reputation is well established, —especially one whose glory is illustrious,—is courted by all sovereigns; they desire its friendship, and are afraid of offending it.<sup>93</sup>

His words are full of indicia of honor: glory, esteem, respectable, reputation, and afraid of offending. It refers not only to the horizontal honor mentioned as a nation among the community

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<sup>91</sup> HUGO GROTIUS, *ON THE LAW OF WAR AND PEACE* 110 (Archibald Colin Campbell trans., Createspace 2016) (1625).

<sup>92</sup> EMER DE VATTEL, *THE LAW OF NATIONS* 203 (Knud Haakonssen ed., Liberty Fund, Inc. 2008) (1758).

<sup>93</sup> *Id.*



of nations, but also esteem honor “acquired by the virtues of good qualities of the head and the heart, and by great actions which are the fruits of those virtues.”<sup>94</sup>

Vattel makes it clear that it is the duty of a sovereign to acquire glory, which for our purposes should be understood as honor, for his Nation.<sup>95</sup> That through his display of “justice, moderation, and greatness of soul[,] . . . he will thus acquire for himself and his people a name respected by the universe.”<sup>96</sup> What all of this amounts to is a recognition that in a group of equal peers with no superior authority, states are to be judged by the group itself: the fundamental premise behind honor culture. So, international law itself should be regarded as a part of the code of honor among nations. What we have seen since the League of Nations, followed by the United Nations, is an attempt to align a true legal system with the honor code that at least since the Westphalian era regulated the conduct of states, but the honor culture remains.

## 2. Law of War

Martial honor within the law of war was a natural extension of the national honor foundation of general international law discussed above, but it also evolved from warrior codes of cultures, such as those previously discussed.<sup>97</sup> Warrior codes were not simply about killing, but bravery in warfare enables the other virtues that became common to honor culture: fidelity, courage, mercy to the vanquished, generosity, moderation, courtesy, and a mutual respect of fellow warriors.<sup>98</sup> These virtues and qualities resulted in a normative understanding that “mutual respect between opposing forces” demanded a “certain amount of fairness in offense and

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 203-04.

<sup>96</sup> *Id.* at 204.

<sup>97</sup> See DEPARTMENT OF DEFENSE LAW OF WAR MANUAL §2.6.1 (addressing the latter point regarding evolution from warrior codes.)

<sup>98</sup> See STEWART, *supra* note 11, at 35 and PRESSFIELD, *supra* note 70, at 18.

defense.”<sup>99</sup> Martial honor is now fairly consistent among professional warriors, and the mutual respect between them reflects that they make up a common warrior class that has assumed the obligation to act honorably in war.<sup>100</sup> The common fidelity that comes with a common honor culture “forbids resort to means, expedients, or conduct that would constitute a breach of trust with the enemy.”<sup>101</sup>

Eventually, this common martial honor became a source for a legal system to produce the “common law of war” as Vattel, and later, Francis Lieber called it. Although the law of war originated in small measures at first, as Vattel wrote, it was based on the fundamental “maxims”—or what we would today call principles—of “humanity, moderation, and honor [*sic*].”<sup>102</sup> It was understood that in symbiotically applying these principles, our honor would “preserve itself from every stain of cruelty, and the luster [*sic*] of victory will not be tarnished by inhuman and brutal actions.”<sup>103</sup>

Without understanding martial honor, some asserted that if there is a legal right to “take away life, the manner is indifferent.”<sup>104</sup> Vattel found this disturbing to say the least, because such a notion was “exploded by the bare ideas of honor [*sic*].”<sup>105</sup> Over time, martial honor remained the source of inspiration among warrior cultures to “civilize” behavior on the battlefield and reinforce a sense of fair play and commonality.<sup>106</sup> Warrior cultures eventually began to codify the martial honor code into a legal system, which ultimately resulted in the 1864 and 1907

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<sup>99</sup> DEPARTMENT OF DEFENSE LAW OF WAR MANUAL §2.6 and BOWMAN, *supra* note 14, at 171.

<sup>100</sup> See DEPARTMENT OF DEFENSE LAW OF WAR MANUAL §2.6.3.2.

<sup>101</sup> *Id.* at §2.6.2.

<sup>102</sup> VATTEL, *supra* note 92, at 645 and see also *The Prize Cases*, 67 U.S. 635, 667 (1862) (also citing this dictum from Vattel).

<sup>103</sup> *Id.* at 563-64.

<sup>104</sup> *Id.* at 557.

<sup>105</sup> *Id.*

<sup>106</sup> BOWMAN, *supra* note 14, at 102.

Geneva Conventions, St. Petersburg Declaration of 1868, and Hague Conventions of 1899 and 1907; all of which stood for the maxim that the right to wage was not unlimited.<sup>107</sup>

Honor is the principle of the law of war that inspired provisions regarding prohibition of, *inter alia*, superfluous injury, poison weapons, perfidy, misuse of protective emblems and signs, attacking parlementaires, fighting in the enemy's uniform, compelling captured nationals to fight against their own nation, humiliation, and harming the enemy that is *hors de combat*.<sup>108</sup> There were also longstanding obligations dating back to Grotius, which find a foundation in the mutual respect of martial honor culture, regarding burying or interning the dead of the enemy with honor.<sup>109</sup>

Regarding Prisoners of War (POW), the law of war developed around clear notions of a martial honor culture. The Hague Convention on the Law and Customs of War on Land (hereinafter "Hague IV") of 1907 contained several articles with direct reference to martial honor.<sup>110</sup> Article 10 of Hague IV allowed a POW to be authorized parole upon the POW pledging his honor that he would fulfill the conditions of such parole, including to refrain from re-engaging in hostilities. Article 12 sought to show contempt for violations of Article 10 by stipulating that a paroled POW that is recaptured while bearing arms forfeits his status to be treated as a POW; thus, he can be treated like a criminal for the act of dishonor.

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<sup>107</sup> See generally *id.*

<sup>108</sup> See generally DEPARTMENT OF DEFENSE LAW OF WAR MANUAL §2.6.2.2., VATTEL, *supra* note 92, at 559-584, and BOWMAN, *supra* note 14, at 102.

<sup>109</sup> GROTIUS, *supra* note 91, at 151, and Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 17, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter *GC I*].

<sup>110</sup> Hague Convention No. IV Respecting the Laws and Customs of War on Land, arts. 10 and 12, Oct. 18, 1907, 36 Stat. 2227 [hereinafter *Hague IV 1907*].

To go even further regarding POWs, the Geneva Conventions of 1949 created an entire treaty devoted to the exclusive martial honor culture in the Third Convention (hereinafter “GC III”) relating to the treatment of POWs.<sup>111</sup> Most of the provisions of GC III have little to no tangential relationship to the other principles of *military necessity*, *humanity*, *proportionality*, and *distinction* so it further illuminates the fact that honor still remains a fundamental principle of the law of war. The articles of GC III reinforce the horizontal honor among professional warriors as part of the same honor group. As an example, Article 52 prohibits POWs from being assigned labor “which would be looked upon as humiliating for a member of the Detaining Power’s own forces.”<sup>112</sup> Humiliation is synonymous with shame or dishonor and also invokes a sense that the professional warrior class deserves more respect. Article 14 also stipulates that POWs “are entitled in all circumstances to respect for their persons and their honour.”<sup>113</sup>

Additionally, GC III pays homage to the vertical honor and esteem honor associated with the martial honor culture. Numerous articles preserve the distinct level of respect that officers deserve in the martial honor culture as well as gradations of respect depending on rank for all POWs.<sup>114</sup> Officers are not required to salute the Detaining Power’s troops unless they outrank the subject officer. Lastly, as an example of esteem honor that is preserved through GC III, POWs are to receive due promotions when a Detaining Power is notified of such and they may wear military decorations that have been earned.<sup>115</sup>

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<sup>111</sup> See generally Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter *GC III*].

<sup>112</sup> *Id.* at art. 52.

<sup>113</sup> *Id.* at art. 14.

<sup>114</sup> See, e.g. *id.* at arts. 39, 40, 44, 45, and 52.

<sup>115</sup> See *id.* at art. 40.

Article 35 of Hague IV sought to modify the martial honor code of many cultures that a warrior cannot preserve his honor in defeat. In order to help encourage parties to surrender when victory is hopeless, it mandates that any capitulation “must take into account the rules of military honor [*sic*].”<sup>116</sup> These rules mandated that mutual respect will be preserved and that the victor may not use a capitulation as an opportunity to humiliate the vanquished, or to take no quarter or pillage. Capitulation should be conducted in a formal ceremony with all due regard for ranks and status, and the preservation of national honor. Several examples of this come to mind from American history: Lord Cornwallis’s surrender to George Washington at Yorktown; General Robert E. Lee’s to General Grant at Appomattox Courthouse; and the Japanese surrender to General MacArthur aboard the U.S.S. Missouri.

Based on the analysis of the history of the development of the law of war and specific provisions therein, it is manifest that honor remains a fundamental principle of the law of war. The concept of honor, including all types of honor, and closely related themes conspicuously pervade all that is understood to make up the law of war today. Further, it as a principle guides the conduct of professional warriors beyond the rules of war codified in law today.

*B. Honor as an Enforcement Mechanism of the Law of War*

With a full comprehension of the true concept of honor and its involvement with the law of war as a fundamental principle, instead of emoting a visceral reaction, honor should now appear as likely the most effective mechanism for the enforcement of the law of war.

Legal systems alone mostly react to offenses already committed. It is said that the fear of legal punishment acts as a deterrence against other would be offenders. However, deterrence as an incentive only operates against the single individual, and only holds the perpetrator

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<sup>116</sup> *Hague IV* 1907, *supra* note 110, at art. 35.

responsible. In a pure Liberal society, it matters not to a person if her fellow lawyer or Marine commits a crime. But, in an honor system the actions of her peer lawyer or Marine reflect negatively upon her as one of her honor group so she is more likely to “police her own” as is indoctrinated into martial culture. A culture that brings collective shame upon a perpetrator is immediate and impactful unlike a tedious legal system. Unlike a legal system that requires proof beyond reasonable doubt, and for a war crime, purposeful intent, the honor culture condemns not with trial, but sometimes with as little as the perception of wrongdoing. Many acts in war could violate the law of war, but not amount to a war crime that the legal system can sanction; yet, those acts can be dealt with through the honor system, which leads to greater compliance. Society accepts in the legal system that the punishments accompanying criminal violations are not to be lightly applied so if a perpetrator or attempted perpetrator does not belong to an honor culture there may be no accountability at all.

An honor culture may produce results that offend Liberal notions of justice, but it is a system that ultimately protects the collective from shame; resulting in a higher compliance with expected norms. In war, “[t]here is no substitute for honour as a medium of enforcing decency on the battlefield, never has been and never will be.”<sup>117</sup> In peace the law alone may be enough incentive to instill good order and discipline in a military force, but in war there must be more—there must be honor.<sup>118</sup>

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<sup>117</sup> DEPARTMENT OF DEFENSE LAW OF WAR MANUAL FN 108 (citing John Keegan, *If you won't, we won't: Honour and the decencies of battle*, THE TIMES LITERARY SUPPLEMENT, Issue 4834, 11 (Nov. 24, 1995 London, England).

<sup>118</sup> See U.S. MARINE CORPS, LEADING MARINES MCWP 6-11, 48 (2002).

Martial honor must be viewed as interwoven directly into the law of war such that it is not the law alone attempting to provide some modicum of civility to war.<sup>119</sup> A pure legal system requires surveillance, and there are no police officers or judges, and usually no lawyers patrolling the active battlefield.<sup>120</sup> There is only self-restraint and the fellow warriors to guide each other through the fog of war. Its compliance is a reflexive element of being a part of the culture without the requirement of extensive surveillance. Martial honor, grounded in the sense of honor of each warrior effectively enforces the law at zero additional cost because all are a part of the group ready to enforce the law, which in this case is also part of the code of honor.<sup>121</sup>

#### IV. CONCLUDING REMARKS

Honor, when viewed properly as an integral part of the law of war, builds a culture of respect for that law because it becomes part of the warrior code of honor. When the law of war is internalized as a part of the warrior culture it will no longer be seen as some dictum from outsiders that are not a part of the honor group. As noted earlier, honor groups are extremely resistant to accepting beliefs or practices, whether they be legal or religious, from outsiders. The reluctance to accept dictates from outsiders is even greater with professional warriors that have answered a calling in life that regularly puts them in physical danger, and one in which they must make split-second decisions over life and death amidst the fog and chaos of war. For civilian

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<sup>119</sup> The author is well aware that the use of the phrase “civility to war” will likely generate an immediate criticism as somehow demeaning the loss of human life in war and the true horror that it always is, no matter how much societies seek to regulate it. It is not meant to mean it is a game or an action that should be encouraged, it is only meant to convey honor has been a source of progress to mitigate the suffering associated with it.

<sup>120</sup> DEPARTMENT OF DEFENSE LAW OF WAR MANUAL FN 108 (citing John Keegan, *If you won't, we won't: Honour and the decencies of battle*, THE TIMES LITERARY SUPPLEMENT, Issue 4834, 11 (Nov. 24, 1995 London, England) and APPIAH, *supra* note 9, at 192.

<sup>121</sup> APPIAH, *supra* note 9, at 193.

lawyers without a warrior perspective, ignoring the cultural differences when attempting to teach the law jeopardizes the fulfillment of the objectives of the law of war.

By acknowledging the history and removing the impediments caused by the modern anti-honor civilian culture that mischaracterizes honor, the law is obeyed without question because the honor of the individual warrior, his unit, and his Nation depends upon it. A warrior in the field may not recall the codified provisions of the law of war, but what it means to be an honorable warrior is always at the forefront of thought. This is the true realization of the Common Article 1 obligation of all States to “respect and to ensure respect” for the law of war in all circumstances, or in other words *honor it*.<sup>122</sup>

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<sup>122</sup> See, e.g. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 1, Aug. 12, 1949, 75 U.N.T.S. 31.