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HOW TO FIGHT SAVAGE TRIBES

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In the April, 1926 number of this Journal, Professor Quincy Wright remarks, apropos of the Damascus bombardment:

Does international law require the application of laws of war to people of a different civilization? The ancient Israelites are said to have denied the usual war restrictions to certain tribes against which they were sworn enemies, the ancient Greeks considered the rules of war recognized among Hellenes inapplicable to barbarians, and medieval Christian civilization took a similar attitude toward war with the infidel. An English writer in 1906 draws attention to "the peculiarly barbarous type of warfare which civilized powers wage against tribes of inferior civilization. When I contemplate," he adds, "such modern heroes as Gordon, and Kitchener, and Roberts, I find them in alliance with slave dealers or Mandarins, or cutting down fruit trees, burning farms, concentrating women and children, protecting military trains with prisoners, bribing other prisoners to fight against their fellow countrymen. These are performances which seem to take us back to the bad old times. What a terrible tale will the recording angel have to note against England and Germany in South Africa, against France in Madagascar and Tonquin, against the United States in the Philippines, against Spain in Cuba, against the Dutch in the East Indies, against the Belgians in the Congo State." Possibly the emphasis, in most accounts of the recent bombardment of Damascus, upon the fact that relatively slight damage was done to Europeans and Americans indicates the existence of this distinction in the moral sense of western communities.

The passage is, it is true, torn from its context. But it at least illustrates—however Professor Wright may deplore the fact—one matter which must be faced.

The distinction is existent. It is based on a difference in methods of waging war and on different doctrines of decency in war. When combatants and non-combatants are practically identical among a people, and savage or semi-savage peoples take advantage of this identity to effect ruses, surprises, and massacres on the "regular" enemies, commanders must attack their problems in entirely different ways from those in which they proceed against Western peoples. When a war is between "regular" troops and what are termed "irregular" troops the mind must approach differently all matters of strategy and tactics, and, necessarily also, matters of rules of war.

This view has been expressed prominently enough not to be overlooked. Said Professor Jesse S. Reeves at Williamstown, Mass., August 2, 1923:
International law is not applicable to uncivilized peoples and could have no influence upon them. It is merely a body of rules and customs that have grown up among nations more or less similar for use among themselves.

Says Colonel J. F. C. Fuller of the British Army:¹

In small wars against uncivilized nations, the form of warfare to be adopted must tone with the shade of culture existing in the land, by which I mean that, against peoples possessing a low civilization, war must be more brutal in type.

Said an argument before the Court of Claims of the United States:²

A savage tribe like the Bannocks are incapable of waging war in the sense of international law. Such barbarous and loosely organized bands are incapable of attaining a status of belligerency. The least discriminating sense apprehends a difference between war against nations and military operations against gangs of pirates, bandits, and marauders.

Says the official British instruction book on the subject:³

It must be emphasized that the rules of International Law apply only to warfare between civilized nations, where both parties understand them and are prepared to carry them out. They do not apply in wars with uncivilized States and tribes, where their place is taken by the discretion of the commander and such rules of justice and humanity as recommend themselves in the particular circumstances of the case.

This is the experience of the red-coated army that has fought perhaps in more corners of the globe with more uncivilized and savage peoples than any other military organization in modern times. International law, as we know it today, is essentially a Christian doctrine. It arose in full power in the era of Christian national states. Grotius and Vattel were thinking of applying Christian doctrines to organized warfare, not far from being analogous to the chivalrous rules handed down from the days of armored knights. The cross-bow, for example, might have been placed under interdict "as a barbarous weapon unfit for Christian warfare" by a council of the Church held under Pope Innocent II in 1139, and yet Richard the Lion Hearted freely and unperturbedly used it against the Saracens on crusade, and his practice was followed by Philip Augustus of France. In his History of the Law of Nations, Ward⁴ instances the difference between Turkish common practice of putting all prisoners in chains and the complaints of the Spanish Ambassadors at Vervins against such treatment of Spaniards. Ward likewise em-

¹ Fuller, The Reformation of War, p. 191.  
² Marks v. U. S., 28 Ct. Cl. 147  
³ Manual of Military Law, 1914, p. 235, par. 7. A similar distinction is implicit in Leiber's Instructions, par. 24, G. O. 100, 1863; Moore, Digest, VII, 173, regarding "barbarous armies."  
phasizes this same difference in conception between laws of war in the early years of the New World. He says: 6

When the New World was opened to the spirit and adventure of the Old, it was reasonable to expect what was found: new laws and customs, as well as a new people and language. But on that very account it was not reasonable to expect that the intercourse between the Spaniards and the Mexicans should be governed by the same customs as the intercourse of Nations in Europe: nor, if the latter sacrificed their prisoners to their gods, could the former fairly complain of it as a breach of the Law of Nations. Yet to the astonishment and horror of every thinking and good mind, this was one of the charges on which the innocent and unfortunate monarch of Peru was put to death by the ruthless Pizarro.

In that particular instance, Atuhalpa was tried by a Spanish court of justice, and punished for what the Europeans regarded as an atrocity, though it was a normal incident to warfare among the Mexican people. If one be angered by the death of friends, it is always possible to pick the most severe law under which to punish the offender. Witness the following little conversation, taken by Ward out of that agreeable chronicler, Matthew of Paris: 6

"In the name of the God you worship," said Saladin, to the prince of Antioch, his prisoner, worn down and emaciated with hunger and with chains, "what would he command you to do with me, if I were in your power, as you are in mine?"

"He would counsel me," returned the fearless prince, "to have you beheaded on the spot; but as you are a Sovereign, like myself, though an infidel; I myself ought to be your executioner."

"Your own mouth has pronounced your doom," said the Saraceen, drawing forth his sword.

Generalities and isolated instances aside, the real crux of the matter of warfare between civilized and uncivilized peoples almost invariably turns out to be a difference in fact as well as a difference in law. In fact, among savages, war includes everyone. There is no distinction between combatants and non-combatants. Whole tribes go on campaign. This is the primitive method of applying armed force. The modern and so-called "civilized" method attempts to make a distinction between combatants and non-combatants. The battle may be waged on the field of conflict. But combatants are entitled to the rights of prisoners of war. Non-combatants are entitled to protection against unnecessary molestation, and the "necessity" of molestation is a subject of intricate provisions and endless controversy. Yet, among nations recognizing and practising international laws of civilized war, the distinction between the two is basic, between those authorized combatants and the unauthorized and unofficial by-standers.

5 Ibid., I, 136. 6 Ibid., II, 137, citing Matt. Paris, II (Rolls ser.), 813.
This distinction has been increasing in emphasis since the eighteenth century, when Vattel remarked: 7

Aujourd'hui, la guerre se fait par les troupes régées; le peuple, les paysans, les bourgeois, ne s'en mêlent point, et, pour l'ordinaire, ils n'ont rien à craindre du fer de l'ennemi.

There is one phrase in this statement, however, which is very important indeed. So important it is, in fact, that it has often been overlooked, as important qualifying details are, to the distortion of the whole statement. The idea is sound, provided the people, the peasants, and the city folk, do not intrude themselves (ne s'en mêlent point) into military matters.

On May 1, 1865, Uruguay, Brazil and Argentine combined to make war "not against the people of Paraguay but against the government" 8 and that in the course of that terrible conflict almost the whole of the nation of Paraguay was obliterated. But look further and you will also find that the whole people acted as a part of the army, and that even women were employed to carry on the operations by serving practically as beasts of burden for the field forces. 9 In other words, the war was not a war in which "the people did not interfere" but one in which practically every person was a combatant. Such a war is what is spoken of as "guerilla warfare" when irregulars, usually not uniformed and usually mingled with the residents, harass and attack and slaughter regular troops. In such a war "where a whole population engages in warfare, the distinction between combatant and non-combatant vanishes." 10 Note also that when Brigadier-General John Coffee and his Tennessee troops conquered the Creek Indians in Mississippi Territory, November 3, 1813, at Tallusshahatchie, "both men and women struggled to the last . . . without asking quarter" and "not one would desert the field, but men, women, and children perished together." 11 When the distinction vanishes in fact, it likewise vanishes in law. When the distinction is not readily apparent to a field commander, that commander is perfectly justifiable in ceasing to observe it, for the safety of his own troops is his paramount consideration.

A somewhat similar circumstance occurred in South Africa. Entering the territory of the South African Republic in 1900, General Buller proclaimed: 12 "Her Majesty does not make war on individuals. . . . The quarrel England has is with the Government, not with the people, of the Transvaal." The struggle dragged on. Resistance broke down, in organized form. Scattered resistance continued. It was being fostered and furthered by the civil

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7 Droit des Gens, Bk. III, Ch. VIII, § 147. See also Rousseau, Contrat Social, Bk. I, Ch. IV, and letter of Talleyrand to the Emperor of 1806, cited in Bray, Occupation Militaire, pp. 177–178.
9 G. Thompson, War in Paraguay, p. 342.
10 Bordwell, Law of War, p. 152.
11 Rowland, Andrew Jackson's Campaign Against the British, p. 159.
population. The citizens turned soldier or farmer as occasion seemed to
demand. Stringent methods were necessary. Formal hostilities had be-
come guerilla forays. So Kitchener started deliberately on a policy of oblit-
erating the sources of the resistance and the points of its support. His
burning and destruction of Boer farms has been instanced numerous times,
and was vigorously so assailed at the time as indecent brutality. Yet those
who understand the task imposed upon the British Army must realize that
such was the only available course, and cannot actually condemn such sup-
pression of such irregular resistance as contrary to international law.

In 1532 Francisetus of Victoria contended it proper at times to extermin-
ate "all who can bear arms" and added that "in a war with Christians this
would not be allowable." 14

Yet, the distinction is not one of Christianity and paganism. It is a
distinction of warfare. Against elusive savage or semisavage people, and
against tribal units which wage war as complete tribes, the method must be,
as the British Colonel Fuller has said, "more brutal." A concrete illustra-
tion of overwhelming, strange, and devastating force, may break down
resistance completely and make for an early peace. Speaking of aerial op-
erations, the United States Army doctrine states:15

The effect of bombing . . . is generally very great upon the morale
of an irregular enemy. The objective of irregular operations . . . may
be the capital of the people, their main source of supply, their prominent
leaders, or, if a fanatical people, the seat of their religion.

And the British doctrine is obviously somewhat the same, for a well-known
Wing Commander is quoted as saying:16

One object must be selected—preferably the most inaccessible village
of the most prominent tribe which it is desired to punish. . . . The
attack with bombs and machine guns must be relentless and unremit-
ting and carried on continuously by day and night, on horses, inhabit-
ants, crops, and cattle.

Nor is this method of waging war merely a matter of doctrine. In Afghan-
istan, in May, 1919, explosives dropped from planes "inflicted heavy losses
on civil population and army" in and about Jalalabad.17 In the same year
in October intensive aérial bombardments were undertaken against the recal-
citrant tribes of Tochi Wazirs and Mahsuds.18 All of this was simply a more
modernized and more effective version of prior British bombardments with
field artillery against native Asian villages, a casual type of incident against
native tribes in the story of British colonial enterprise and mastery.19

16 In J. F. C. Fuller, The Reformation of War, p. 208.
East India, 1919, Col. xxxvii.
19 C. E. Callwell, Stray Recollections, I, 133–134.
However, all of this is somewhat generalized. It has to do with the larger objectives of war, rather than with incidents. In the more concrete detail, we find many incidents in history to support the British theory that when natives go to war, they do not observe the individual decencies of civilized regular soldiers. And here on the American continent we have ample example of what might be expected from conflict with such persons. The long list of Indian wars in which the troopers of the United States have defended and pushed westwards the frontiers of America bear eloquent testimony to the unified tribal action in war, and to the almost universal brutality of the red-skinned fighters. With these, there can be little thought of international law. The fact was brought home very plainly, and discussed in official papers, during the War of 1812, in which England attempted to utilize the aid of redskin to harass and harm the Americans. This unnatural alliance of redskins with redcoat caused the deepest perturbation on the part of the United States. When General Hull entered Canada he announced on July 13, 1812, that he would take strenuous counter-measures. He said:

If the barbarous and savage policy of Great Britain be pursued, and the savages are let loose to murder our citizens and butcher our women and children, this war will be a war of extermination. . . . If the dictates of reason, duty, justice and humanity, cannot prevent the employment of a force, which respects no rights and knows no wrong, it will be prevented by a severe and relentless system of retaliation.

That these were not needless alarms, and empty threats, but rather the sound forebodings of an American who knew the redskin as he was and as he waged war, is attested by the report of a Major P. L. Chambers of the British forces, to Colonel Proctor, in August of the same year, when he entered United States territory to receive a surrender:

In conformity with my Instructions, I assured the Inhabitants of the Effectual Protection of His Majesty's Government. But it is with extreme mortification I feel myself compelled to state, that notwithstanding every effort on my Part, to insure it to them, so strong was the disposition on the Part of the Indians in particular the Wyandotts, to Pillage Ravage and destroy, that I could not succeed, scarcely a House in that Settlement [River au Raisons] having escaped Pillage. Indeed it was one Universal scene of desolation.

It is really beside the point here to go into the controversy as to whether measures of retaliation were justifiable and how far the British violated international law in employing the services of savage tribes in a regular war.

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The real essence of the matter is that devastation and annihilation is the principal method of warfare that savage tribes know. Excessive humanitarian ideas should not prevent harshness against those who use harsh methods, for in being overkind to one's enemies, a commander is simply being unkind to his own people. As James Monroe remarked, when he declared General Harrison acted properly in 1813 in burning Indian huts and homes:

This species of warfare has been invariably pursued by every nation engaged in war with the Indians on the American continent.

The fact simply is that when a tribe on the war-path measures its victories by the number of houses burned and the number of foes, combatant or non-combatant, cut up, you must use a different method of warfare. When Oriental peoples are accustomed to pillaging and being pillaged, accustomed to torturing and flaying alive distinguished prisoners, you are dealing with opponents to whom the laws of war mean nothing, who, as General Hull said of the American Indians, "respect no rights and know no wrong." Against such it is not only perfectly proper, it is even necessary, to take rigorous measures. These are not those "regular troops" of whom Vattel spoke, waging a conflict in which people, peasants and bourgeois, do not mix. Against such, who neither understand nor are ready to apply the rules of international law, as the British Manual says, it is perfectly correct and indeed absolutely essential to trust simply "to the discretion of the commander."

One hundred and thirty-odd years ago, Ward remarked:

Where they professed to observe a Code, so directly the opposite of ours, . . . then, indeed, I could conceive we might act towards them as towards enemies, whose disposition it was, like beasts, to prey upon us; but even then I do not perceive the fairness of considering them as amenable to the laws we chose to pursue or as punishable for breaches of those laws.

In other words, he would object to the formal trial and punishment of a Mexican for a "crime" under Spanish law, which was a perfectly normal and regular procedure under Mexican law. Nor does it do any good to write Latin treatises on the right of the Spaniards to travel and trade in Indian country under theological or legal doctrines, as did Franciscus of Victoria. It would be but Latin to the Indians. In other words, it would not be proper to institute formal recriminations and "reprisals" against enemy forces for alleged misbehavior on the battlefield. Such steps would simply not be understood by the persons at whom they were directed. They might be felt; but they would not be understood.

It appears entirely fallacious to assume that those less humane methods of

waging war which are commonly employed against savage tribes in Asia and in Africa today, as they were in previous ages against "infidel" Saracens and "wild" American Indians, are merely extensions and applications of the doctrine of retaliation or reprisal. The purpose of a reprisal is to inflict a cruel and unnatural punishment for a cruel and unnatural act. It is meant as a specific lesson for a specific misdeed. It is like that airplane bombing of Frieburg which Mr. Holland in 1917 said was justifiable, even though "deliberately intended to result in injury to the property and persons of civilian inhabitants," because it was deliberately and publicly done "with the practical object of inducing the enemy to abstain in the future." 27

The doctrine of reprisal permits a temporary departure from the normal law as a formal mode of war-time punishment.

But if the German used poison gas at Ypres in 1915, could you call the constant use of gas thereafter by the Allies simply a reprisal? No! It was not a temporary departure. It was a different mode of fighting. Even though continued departures from the laws of war are only of such character as those of your foe, you cannot call them "reprisals." You are really fighting another kind of war.

The important thing is to keep one's head, and for the commander to exercise real discretion, as it has been intrusted to him, he could do no better than to follow the advice of Baty, who says: 28

It is not enough to justify one army in resorting to these measures that instances of the enemy's troops having done so on particular occasions, are alleged to have occurred. . . . There are some infringements which can never be met with reprisals in kind. Noblesse oblige, and a self-respecting commander will not follow the example of an antagonist, should that example unfortunately be set, in reducing a civilized army to the rank of a band of massacring savages.

It is well to remind ourselves of the disastrous effects of even slight loosening of the bonds of restraint, as when the Allied troops entered Pekin in 1900 and looted for "souvenirs" without apparent restraint of any effective sort, in spite of partial efforts in some quarters to hold the troops in check. 29 Rules against indiscriminate looting and needless barbarity promote discipline and make for effective and necessary control of one's own forces. It was not because the Chinese were Orientals of another civilization, or because their civilization was really advanced—though different—that American officers gave strict orders against theft, and tried to enforce them to some extent. It was really because of the internal necessity for military discipline and control, as well as an innate sense of decency. 30

27 Holland, Letters upon War and Neutrality, 3rd ed., p. 123. See also Moore, Digest, VII, 207; and Vattel, Liv. III, Sec. 141-142.
29 Prussian Year Book, quoted in N. Y. Tribune, March 25, 1923.
A finer example is found in the attitude of the soldiers of the Mikado entering China in the war between those two nations in the 1890’s. Although the Japanese considered the Chinese a backward and uncivilized people who might not respect the modern conventions and customs of international law, they nevertheless determined to abide by those rules themselves and attached distinguished Japanese publicists and scholars in this branch of learning to each of their armies in the field.  

It is good to be decent. It is good to use proper discretion. It is good to observe the decencies of international law. But it is a fact that against uncivilized people who do not know international law and do not observe it, and would take advantage of one who did, there must be something else. The “something else” should not be a relaxation of all bonds of restraint. But it should be clear understanding that this is a different kind of war, this which is waged by native tribes, than that which might be waged between advanced nations of western culture. Ferocity and ruthlessness are not essential; but it is essential to recognize the different character of the people and their usual lack of discrimination between combatants and non-combatants, in their own as well as in enemy personnel. To a Frenchman, a shell striking Rheims Cathedral—signal station thereon or not, it makes no difference—or a bomb exploding on a railroad train—military men therein or not, it makes no difference—is a lawless act of the enemy which infuriates the temperamental soul and arouses wrath and gives a fine incident for overseas propaganda. To a fanatical savage, a bomb dropped out of the sky on the sacred temple of his omnipotent God is a sign and a symbol that that God has withdrawn his favor. A shell smashing into a putative inaccessible village stronghold is an indication of the relentless energy and superior skill of the well-equipped civilized foe. Instead of merely rousing his wrath, these acts are much more likely to make him raise his hands in surrender. If a few “non-combatants”—if there be any such in native folk of this character—are killed, the loss of life is probably far less than might have been sustained in prolonged operations of a more polite character. The inhuman act thus becomes actually humane, for it shortens the conflict and prevents the shedding of more excessive quantities of blood.

These things should be recalled when “civilized” troops make war on “uncivilized” peoples. There is a difference in effect, as well as a difference in conception of warfare. Of this difference the commander may be well aware. Strictly speaking, and in a fine legal sense, he is not bound to observe the precepts of international law against any nation that is not a cosigner of the conventions covering any particular point in question. Strictly speaking, the gas warfare treaty signed not so long since in Washington has never been ratified by France and is inoperative as a ban on poisonous and toxic gases until all signatories ratify and exchange ratifications. But it is to be noticed that the United States Army within six months put that treaty

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into effect and has limited instruction and training and preparation of its own troops to "defensive chemical warfare" and the use of mere smoke screens and non-toxic gases. The strictly legal point of view is not the only point of view. The discretion and the decency of the commander are also factors. The really controlling element in the handling of a field force is economy. Economy of effort, economy of force, maintained by a well-knit and well-disciplined army directed toward the most direct and proper attainment of the end in view—these are the precepts by which the commander will govern his actions. Bearing these things in mind, he will use against uncivilized peoples, as the British Manual says, "the discretion of the commander and such rules of justice and humanity as recommend themselves in the particular circumstances of the case."