



Military Self-Interest in Accountability for Core International Crimes

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Accountability in the 19th-Century US Army

Elizabeth L. Hillman*

5.1. Introduction: Military Effectiveness and Legitimacy through Professionalisation

The interest of the 19th-century US military in imposing accountability for war crimes derived in no small part from its desire to avoid excessive civilian interference in military operations. Early in the US Civil War, Union General Henry W. Halleck wrote a letter to George B. McClellan, his commanding general, about the efforts of his officers. Halleck complained that “the want of success on our part is attributable to the politicians rather than to the generals”.¹ Halleck’s frustration with civilian control of the army was far from unusual during the 19th century. As the United States Army became a professionalised force rather than a group of citizen-soldiers summoned to temporary duty, commanding officers grew more concerned with protecting the army from civilian encroachment. Interference could come from above, in the form of meddling politicians, or below, in the ill-prepared citizen-soldiers who were thrust into the ranks during times of war. Holding soldiers accountable for crimes of war was one means of protecting and sustaining the profession of arms. It

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¹ Quoted in Russell F. Weigley, *History of the United States Army*, Indiana University Press, Bloomington, 1984, pp. 244–45.

is no accident that Halleck, a scholar and reformer who became a major proponent of articulating and enforcing the laws of war, expressed such frustration with political oversight of army operations.²

Tracing the historical evolution of the 19th-century US Army reveals the importance of internal military accountability, including for crimes of war, in establishing the legitimacy of the profession of arms in the United States.³ Left unpunished, crimes committed by soldiers threatened to undermine the status and effectiveness of a professional army in a nation wary of a standing army and suspicious of a privileged class of officers. Professionalisation of military institutions occurred later in the United States than in European military institutions. Yet long before war crimes, crimes against humanity, genocide and aggression were acknowledged as core international crimes,⁴ the professionalisation of the army was paving the way for war crimes accountability.

Reform in the first half of the 19th century, including the development of military educational institutions, improved organisational structures. This and rising standards for officers transformed the army into a more professional organisation.⁵ Political, fiscal and operational accountability to civil authorities enhanced the army's effectiveness and reputation.⁶ To protect those gains, it became more important that the army hold soldiers accountable for misconduct. During the Mexican War in 1846–1848, the army was much admired for its success, and military courts played a major role in both operations and occupation. The US Civil War that soon followed brought the brutal military tactics and strategy that had characterised the Indian wars on the frontier to centre stage, leading Francis Lieber to draft a code that became a foundation for the modern laws of

² John Fabian Witt, *Lincoln's Code: The Laws of War in American History*, The Free Press, New York, 2012.

³ Morten Bergsmo, Arne Willy Dahl and Richard Sousa, "Military Self-Interest in Accountability for Core International Crimes", in *FICHL Policy Brief Series*, 2013, no. 14, pp. 2–3 (<https://www.legal-tools.org/doc/396da7/>).

⁴ *Ibid.*, p. 1, fn. 2.

⁵ William B. Skelton, *An American Profession of Arms: The Army Officer Corps, 1784–1861*, University of Kansas Press, Lawrence, 1992; Weigley, 1984, pp. 144–72, see *supra* note 1.

⁶ Louise Barnett, *Ungentlemanly Acts: The Army's Notorious Incest Trial*, Hill and Wang, New York, 2000; Elizabeth L. Hillman, "Gentlemen Under Fire: The U.S. Military and 'Conduct Unbecoming'", in *Law and Inequality: A Journal of Theory and Practice*, vol. 26, no. 1, 2008, pp. 1–57.

war and furthering efforts to hold soldiers accountable for war crimes. The “old army” in the 19th-century United States sought to maintain discipline in its ranks to protect its reputation as well as to win wars.

Because the professionalisation of the 19th-century US Army is largely a story of the professionalisation of its officer corps, it is important to note the dearth of prosecutions of officers as compared to the rank-and-file for any serious crimes, much less crimes of war.⁷ Very few officers faced either court martial or trial before civilian courts except for ‘honour’ trials in which high-ranking officers accused each other of wrongdoing.⁸ The courts martial of officers that did occur exposed the limited extent of accountability that the army was willing to require of its officer corps.⁹ The fact that nearly all officers escaped criminal prosecution is perhaps not surprising if demographic factors such as age, education, training, and access to economic and other resources, each of which distinguished officers from their less privileged enlisted brethren, are considered. Those factors made officers less likely to commit some crimes, and more capable of successfully defending against most charges, than the enlisted force.¹⁰ Nonetheless, such statistics undercut the impression of even-handed justice and created a perception that one of the privileges of high rank was impunity. Officers’ role in the history of accountability in the US military is primarily as enforcers rather than as alleged violators of military laws or codes.

The perception that officers are not held accountable for misconduct in the same way as soldiers persisted long after the army professionalised. Officers have, however, been court-martialled on rare occasions in US military history, including for acts that constitute war crimes under virtually any definition. Most well known are the courts martial of Captain Ernest Medina and Lieutenant William Laws Calley. Both were tried for their parts in the murder and rape of hundreds of civilians during the

⁷ Hillman, 2008, pp. 2–3, see *supra* note 6; Elizabeth Lutes Hillman, *Defending America: Military Culture and the Cold War Court-Martial*, Princeton University Press, Princeton, NJ, 2005, pp. 9–13.

⁸ Hillman, 2008, pp. 25–26, see *supra* note 6.

⁹ *Ibid.*, pp. 1–27.

¹⁰ *Ibid.*, p. 2; Caroline Cox, *A Proper Sense of Honor: Service and Sacrifice in George Washington’s Army*, University of North Carolina Press, Chapel Hill, NC, 2007, pp. 59–60.

1968 My Lai massacre in Vietnam.¹¹ Medina was acquitted and Calley, convicted of 22 murders and likely guilty of many more, served but a few months in military prison and a few years under house arrest.¹² The outcome of those prosecutions left much to be desired, despite the army's deep investment in pursuing justice.¹³ Yet the public reaction to the army's courts martial was fiercely in favour of the accused officers, who they viewed as victims of the army's war.

The judge advocates that prosecuted the My Lai cases deserve a place in the history of international criminal prosecutors dedicated to seeking justice at great personal cost. One of those prosecutors, Captain Aubrey Daniel III, wrote a letter of protest to the *New York Times* after Calley's court martial.¹⁴ Daniel, who went on to a brilliant legal career in Washington DC, wrote to defend the procedural regularity of the military justice system and to express outrage at the public reaction to the verdict, which ran overwhelmingly in favour of clemency for Calley.¹⁵ Daniel also took aim at the post-trial review process, which had so precipitously reduced the sentence to life imprisonment that had been adjudged at Calley's court martial. Perhaps if the army had chosen to prosecute Calley's crimes as violations of the law of war rather than as murders and other statutory crimes, the popular and political responses to the verdict of the military justice system would have been more deferential. By the time of the Vietnam War, professionalisation had matured in the Army Judge Advocate General's corps to the point that army lawyers fought to defend the legitimacy of the military justice system as well as the army itself.

This chapter approaches the topic of US military professionalisation and accountability in three parts. It sets out a framework for understanding the process of professionalisation and then analyses two 19th-century

¹¹ Michal R. Belknap, *The Vietnam War on Trial: The My Lai Massacre and the Court-Martial of Lieutenant Calley*, University Press of Kansas, Lawrence, 2002; and Michael Bilton and Kevin Sim, *Four Hours in My Lai: A War Crime and Its Aftermath*, Viking Penguin, New York, 1992.

¹² Belknap, 2002, pp. 4 and 232, see *supra* note 11.

¹³ William George Eckhardt, "My Lai: An American Tragedy," in *UMKC Law Review*, 2000, vol. 68, pp. 671–704.

¹⁴ Aubrey Daniel, "Letter to President Nixon", in *New York Times*, 3 April 1973, p. 12, col. 1.

¹⁵ *Ibid.*; Eckhardt, 2000, pp. 671–704, see *supra* note 13; and Norman G. Cooper, "My Lai and Military Justice – To What Effect?", in *Military Law Review*, 1973, vol. 59, pp. 93–127.

wars in which accountability for crimes of war was influenced by the army's professional aspirations. Section 5.2. explores the meaning of 'professional', and the process of professionalisation, in theory and practice. The next two parts turn to the army in war to reveal the link between professionalisation and accountability. Section 5.3. explores how the Mexican War, in which the US Army relied on a small core of regulars supplemented by volunteers, heightened the army's concern with holding its soldiers accountable. That concern triggered the development of new military courts to both prosecute war crimes during the war itself and to keep peace during the post-war occupation. Section 5.4. assesses the Union Army in the Civil War, focusing on the development of a legal code to restrain violence amidst a massive and brutal internal conflict and the impact of a professional, but split, officer corps on accountability. The introduction of a new type of military court in the Mexican War and a new code of law in the Civil War expanded the army's means of holding soldiers accountable in the professionalising army of the 19th century, highlighting the role of accountability in ensuring the operational effectiveness and political legitimacy of the US Army.

5.2. History of Professionalisation and the Rise of Military Accountability

The history of professionalisation provides a useful framework for understanding the rise of accountability in the evolution of the US Army. The notion of military service as an occupation changed alongside the shifts in other developing professions such as law and medicine. Professionalisation was appealing to many workers because it reduced competition, established and enforced standards of performance, and promoted public service.¹⁶ Many sociologists have, however, criticised professionalisation as a self-interested attempt to secure and maintain power.¹⁷ Others have analysed the processes of professionalisation, recasting the history of pro-

¹⁶ Gerald L. Geison (ed.), *Professions and Professional Ideologies in America*, University of North Carolina Press, Chapel Hill, NC, 1983.

¹⁷ Paul Starr, *The Social Transformation of American Medicine*, Basic Books, New York, 1982; Norman W. Spaulding, "The Discourse of Law in Time of War: Politics and Professionalism during the Civil War and Reconstruction", in *William and Mary Law Review*, 2005, vol. 46, no. 6, pp. 2024–26; and Burton J. Bledstein, *The Culture of Professionalism: The Middle Class and the Development of Higher Education in America*, W.W. Norton, New York, 1976.

fessional organisation and exploring the political, economic and social impact of the shift from job to profession.¹⁸

Professionalisation in the military occurred around the same time as other professionalisation processes in the US but was made more difficult by both the distrust with which US political culture viewed the army and the uneven moral terrain of war itself. In chronological terms, the processes in the military and other professions began earlier than thought by the scholars who initially studied them. The professionalisation of law, for example, began long before the American Bar Association was founded in 1878, and the army process of professionalisation likewise began not after the Civil War, but well before.¹⁹ Securing status and autonomy in an arena as fraught as war, in which acts that would be criminal in any other context are not only lawful but heroic, was especially important for aspiring US Army professionals. They claimed authority over the activity that imposed costs on society and government that far exceeded that of any other profession.

Studies of professionalisation in the US military began in earnest with Samuel P. Huntington's *The Soldier and the State* and sustained the interest of many historians and social scientists.²⁰ Published in 1957, Huntington's book named expertise, social responsibility and a corporate identity as the tenets of a profession. It also set forth a thesis that laid the foundation for future study of the military profession. Huntington argued that professionalisation in the army was caused by the isolation of its officers from civil society and that the process of professionalisation took place in the late 19th century. Subsequent scholars found signs of professionalisation in the early, not late, 19th century, and realised that officers were not as separate from civil society as Huntington had suggested.²¹

¹⁸ Starr, 1982, pp. 2001–2108, see *supra* note 17.

¹⁹ Spaulding, 2005, pp. 2029–2039, see *supra* note 17; Robert W. Gordon, “The Independence of Lawyers”, in *Boston University Law Review*, 1988, vol. 68, pp. 1–83.

²⁰ Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, Belknap Press, Cambridge, MA, 1957; Skelton, 1992, see *supra* note 5; and Morris Janowitz, *The Professional Soldier: A Social and Political Portrait*, The Free Press, New York, 1960.

²¹ Weigley, 1984, pp. 144–72, see *supra* note 1; Matthew Moten, *The Delafield Commission and the American Military Profession*, Texas A and M University Press, College Station, 2000, pp. 7–11, 13–17; Samuel J. Watson, “The U.S. Army to 1900”, in James C. Bradford (ed.), *A Companion to American Military History*, vol. 1, Wiley-Blackwell, Malden, MA, 2010, pp. 340–46; and Jennifer R. Green, “Networks of Military Educators: Middle-

William B. Skelton's 1992 *magnum opus*, *An American Profession of Arms*, synthesised previous studies into a new consensus.²² It shifted the chronology of military professionalisation to the beginning of the 19th century and emphasised measures of professionalisation such as formal education, specialised knowledge, loyalty to high standards of performance and ethics, and trustworthiness.²³ Skelton found that the US Army had become a stable profession by the start of the Civil War, transformed by the same historical developments – described by historian Matthew Moten as “burgeoning nationalism, economic growth and democratic egalitarianism” – that shaped the rest of the growing United States.²⁴

The military professionalisation that Skelton uncovered began in earnest during the early national period with the founding of national military institutions. Although he had previously resisted a national service academy, in 1802 President Thomas Jefferson signed legislation creating the United States Military Academy at West Point. Jefferson decided to support the Military Academy because the school provided a means of training engineers and scientists for the nation, as well as for war. It also enabled him to alter the political balance of the army through faculty and staff appointments.²⁵

Once begun, however, the process of professionalisation was far from smooth. The War of 1812 showcased the dysfunction of a military hindered by inadequate funding, poor co-ordination and leaders with divided loyalties. That war ended, however, with an improved army and a new generation of leaders, and was followed by an era of reform and restructuring.²⁶ Military training and education matured, the organisational structure of the army changed and officers developed a shared identity.²⁷

The shared identity of army officers was rooted in knowledge of the science and principles of war, exclusive jurisdiction over battle, and edu-

Class Stability and Professionalization in the Late Antebellum South”, in *The Journal of Southern History*, 2007, vol. 73, no. 1, pp. 39–74.

²² Skelton, 1992, see *supra* note 5.

²³ Moten, 2000, pp. 13–15, see *supra* note 21.

²⁴ *Ibid.*, p. 14; Skelton, 1992, pp. 110–119, see *supra* note 5.

²⁵ Allan R. Millett and Peter Maslowski, *For the Common Defense: A Military History of the United States of America*, The Free Press, New York, 1984, p. 104.

²⁶ Skelton, 1994, p. 269, see *supra* note 5.

²⁷ *Ibid.*, p. 196.

cation in military history, strategy and tactics. As Henry W. Halleck, an 1839 graduate of West Point and later general-in-chief of the Union Army during the Civil War (and author of the letter quoted in the introduction above), wrote in a 1846 treatise:

War is not, as some seem to suppose, a mere game of chance. Its principles constitute one of the most intricate of modern sciences. The general who understands the art of rightly applying its rules, and possesses the means of carrying out its precepts, may be morally certain of success.²⁸

War was predictable, precise and explicable to Halleck and other theorists.²⁹ Military professionals could master its nuances, construct fortifications and plans of attack that would ensure victory, and, given sufficient resources, prepare for future conflict. This approach to war was deeply flawed, as both history and historians – particularly Brian McAllister Linn in *The Echo of Battle* – have shown.³⁰ Even so, the idea that success in war was determined by technical, battlefield preparation and execution proved successful in promoting the profession of arms.

The aspect of professionalisation that proved most difficult for the military to fulfil was securing the trust of the public and its leaders. In a 1964 article, the political scientist Harold Wilensky, who had served in the US Air Force during the Second World War,³¹ set out four essential steps to establishing professional authority. To be recognised as professionals, Wilensky explained that those working in an occupation must find “a technical basis” for authority, “assert an exclusive jurisdiction”, “link both skill and jurisdiction to standards of training”, and gain public confidence as “uniquely trustworthy”.³² Those steps enabled workers in a field to define an area of knowledge, articulate “normative commitments

²⁸ Russell F. Weigley, *History of the United States Army*, Indiana University Press, Bloomington, 1984, p. 144, quoting Henry W. Halleck, *Elements of Military Art and Science*, Greenwood Press, Westport, 1971 p. 145, first ed. 1846.

²⁹ Brian McAllister Linn, *The Echo of Battle: The Army's Way of War*, Harvard University Press, Cambridge, MA, 2007, pp. 23–24.

³⁰ *Ibid.*

³¹ UC Berkeley News, “Political Scientist Harold Wilensky Dies at Age 88”, in UC Berkeley News Center, 1 November 2011, available at <http://newscenter.berkeley.edu/2011/11/01/political-scientist-harold-wilensky-dies-at-age-88/>, last accessed on 31 March 2015.

³² Harold L. Wilensky, “The Professionalization of Everyone?”, in *American Journal of Sociology*, 1964, vol. 70, no. 2, p. 138.

to a service ideal”, and occupy a field of expertise, effectively excluding others.³³ The final step in Wilensky’s sociological process was a cornerstone of Skelton’s definition of a profession: that the military be perceived as “uniquely trustworthy”, ethical and loyal.³⁴ This was a more difficult proof for the army as compared to other professional institutions because of the tension that existed between civil and military authorities and the proximity of crime and wartime violence. Suspicion of a standing army, aspirations of political independence, and constitutional requirements for civilian control and limited funding of the army and navy characterised US political culture.³⁵ Those characteristics created tension between civil and military authorities that was heightened in the 19th century by what Skelton termed “the army’s domestic constabulary role”, in which it policed borders, suppressed unrest and asserted federal authority.³⁶ This role placed army officers directly into regional and local conflicts where State and local governments were necessarily involved, exacerbating the potential for confusion and frustration. Earning trust in such situations, regardless of the special expertise and firepower that the military offered civilian authorities, was no easy task.

Demonstrating the accountability of the army, however, helped to overcome the distrust that many civilians had of the army and its leaders. Holding professionals accountable for their obligation to meet high standards of performance and ethics was a key aspect of professionalisation itself. In the army, this meant, at least in part, the ability to remove officers who were failing in their duties. During the War of 1812, officers remained in their billets even if accused of egregious misconduct because of their political connections and an “administrative tradition” that dis-

³³ Paul Starr, “Professionalization and Public Health: Historical Legacies, Continuing Dilemmas”, in *Journal of Public Health Management and Practice*, 2009, vol. 15, no. 6, p. S26.

³⁴ Wilensky, 1964, p. 137, see *supra* note 32; Skelton, 1992, p. 88, see *supra* note 5.

³⁵ Richard H. Kohn, “Civil-Military Relations: Civilian Control of the Military”, in John Whiteclay Chambers (ed.), *The Oxford Companion to American Military History*, Oxford University Press, 2000, pp. 123–24; and Richard H. Kohn, *Eagle and Sword: The Federalists and the Creation of the Military Establishment, 1783–1802*, The Free Press, New York, 1975.

³⁶ William B. Skelton, “The Commanding Generals and the Question of Civil Control in the Antebellum U.S. Army”, in *American Nineteenth Century History*, 2006, vol. 7, no. 2, p. 155.

couraged discharge or demotion.³⁷ Control over the discipline that could be imposed on officers and their troops was a frequent source of conflict between military and civilian leaders during the antebellum period. General officers like Alexander Macomb sought to improve “communication and the general trend toward professional standards” in the officer corps by emphasising discipline and accountability for misconduct.³⁸ Respect for international law and law of war was cultivated by the curriculum at West Point and through the publication of manuals and regulations.³⁹ Holding officers accountable for their control over enlisted soldiers, for their ability to organise and operate effectively and for their responsiveness to national civilian authorities was critical to the growing legitimacy of the profession of arms.⁴⁰

5.3. The Mexican War

After the War of 1812 ended, the professionalisation of the US Army continued despite reductions in funding and opposition from those who were dubious about the value of an elite officer corps.⁴¹ Increasingly led by graduates of West Point, the army proved essential to US territorial expansion and economic growth during the decades before the Civil War.⁴² Soldiers explored, fought, policed and occupied, pushing the US border south and west and keeping the frontier relatively safe for white settlers. The army supervised the “removal” of Indians, helping with voluntary resettlement on occasion but often fighting, sometimes with terrifying brutality. Despite the indifference of the public toward military institutions during the Jacksonian era, the army’s “new professionalism” had earned the loyalty of its officer corps and improved considerably since the debacle of the War of 1812.

³⁷ William B. Skelton, “High Army Leadership in the Era of the War of 1812: The Making and Remaking of the Officer Corps”, in *William and Mary Quarterly*, 1994, vol. 51, no. 2, p. 266.

³⁸ Skelton, 2006, pp. 163–64, see *supra* note 36.

³⁹ Witt, 2012, pp. 84–86, see *supra* note 2.

⁴⁰ Allan Peskin, *Winfield Scott and the Profession of Arms*, Kent State University Press, Kent, OH, 2003.

⁴¹ Millett and Maslowski, 1994, p. 135, see *supra* note 25; and Weigley, 1984, pp. 144–72, see *supra* note 1.

⁴² Millett and Maslowski, 1994, pp. 134–44, see *supra* note 25.

When the US Army entered the Mexican War in 1846, it continued to suffer from organisational shortcomings and a small army of regulars. The war required not only a great increase in the army's size and resources but also innovation in both strategy and law. The army had neither experience nor plans for anything like the foreign invasion and occupation of a large country defended by zealous guerrillas. Military officers, seduced by European military strategists, had underestimated the threats posed by Mexico and Indian resistance. Instead, army strategists had prepared for battle with European-style forces.⁴³ Similarly, they had no plans to address the atrocities and brutal reprisals that became common during the Mexican War.

Because many officers chose *not* to look the other way – as they had often done in past conflicts – when atrocities occurred, the army needed a legal forum to prosecute war crimes. Councils of war were created to fill this jurisdictional gap. After hostilities ended, the US Army's occupation of Mexico City trials led to another novel military court, the military commission, on which the army relied to prosecute crime and keep the peace. A mix of individuals labelled regulars, volunteers, prisoners of war, non-combatants and criminals thus found themselves defined by the legal tools of the profession of arms and subjected to military jurisdiction. Because of the convergence of professionalisation, war crimes and accountability in the Mexican War, this short and relatively uncomplicated conflict became a landmark in the history of military accountability for war crimes.

The Mexican War began in 1846 when diplomatic attempts to resolve a dispute over the southern border of Texas failed, but the deeper cause was the United States' plans for expansion, which led to annexation of Texas in 1845.⁴⁴ The outcome was by no means certain at the start of the war.⁴⁵ The US Army's leadership was marked by petty squabbles, made worse because the army was so small – some 800 officers and fewer

⁴³ Samuel J. Watson, "Knowledge, Interest and the Limits of Military Professionalism: The Discourse on American Coastal Defence, 1815–1860", in *War in History*, 1998, vol. 5, no. 3, pp. 282–84.

⁴⁴ Thomas W. Cutrer, "The Texas War for Independence and War with Mexico", in Bradford, 2010, pp. 78–92, see *supra* note 21; and Millett and Maslowski, 1994, p. 145, see *supra* note 25.

⁴⁵ Wayne Wei-siang Hsieh, *West Pointers and the Civil War: The Old Army in War and Peace*, University of North Carolina Press, Chapel Hill, NC, 2009, pp. 54–74.

than 8,000 enlisted men – that nearly all of the officers knew each other.⁴⁶ Senior commanding officers were mostly political appointees with ambition but little skill, unlike the capable junior officers, most of whom had attended West Point.⁴⁷ To muster enough soldiers for the invasion, the US Congress mobilised volunteer militias from the States, sending units of untrained volunteers to join the regular army forces for tours of short duration.⁴⁸ Volunteers were paid for their service but did not have the training or experience of soldiers in the regular army.

Despite those obstacles to victory the US won, aided by its political and economic stability, technical and logistical expertise, and the legendary campaign of General Winfield Scott, who landed at Vera Cruz and marched to Mexico City along the same route that Hernán Cortéz had taken in the 16th century.⁴⁹ In 1848 Scott rode triumphantly into Mexico City in full dress uniform, dismounted and sat at the desk previously used by the revered Mexican General Antonio López de Santa Anna to begin a US occupation for which he had carefully prepared.⁵⁰

The combination of US Army regulars and volunteer militiamen who fought in Scott's army highlighted the importance of accountability for the professional military. Army officers found it difficult to maintain discipline and prevent unnecessary violence among volunteers, even when mixed in with regular army troops. Volunteers, drawn from a variety of civilian occupations, could be ruthless, described as “unruly freebooters whose unbridled rapacity and undisciplined behavior disgraced the flag under which they fought”.⁵¹ Some officers were volunteers who frustrated their regular officer colleagues by failing to enforce discipline and the laws of war, standing by in the face of atrocities that shocked regular officers.⁵² Regular army officers had a problem: they needed a means of punishing volunteers' violations of the laws of war if they were to maintain

⁴⁶ *Ibid.*, p. 12.

⁴⁷ Weigley, 1984, pp. 175–88, see *supra* note 1.

⁴⁸ Millett and Maslowski, 1994, p. 149, see *supra* note 25; and Peskin, 2003, p. 61, see *supra* note 40.

⁴⁹ Hsieh, 2009, pp. 54–74, see *supra* note 45.

⁵⁰ Timothy D. Johnson, *A Gallant Little Army: The Mexico City Campaign*, University Press of Kansas, Lawrence, 2007; and Peskin, 2003, p. 193, see *supra* note 40.

⁵¹ Peskin, 2003, p. 171, see *supra* note 40.

⁵² *Ibid.*, p. 170; Marcus Cunliffe, *Soldiers and Civilians: The Martial Spirit in America, 1775–1865*, Little, Brown, Boston, 1968, p. 84; and Witt, 2012, p. 119, see *supra* note 2.

control over their troops, operate effectively and protect the legitimacy of the military profession.

Trained as a lawyer and savvy about organisation and strategy both, Scott was as likely as anyone to find a solution to the army's problem. After narrowly failing to win the Whig Party's nomination for President of the United States in 1840, Scott was appointed commanding general of the army in 1841 upon Alexander Macomb's death in that office.⁵³ He promoted accountability and improved efficiency throughout his long army career, writing the army's drill manual for infantry as well as many general regulations.⁵⁴ Scott was more committed to fairness, due process and innovation than virtually any other army reformer, an aspect of his legacy sometimes lost in criticism of his vain and showy "Old Fuss and Feathers" persona.

Military courts during the mid-19th century, notwithstanding the efforts of the reform-minded Scott, were hardly paragons of substantive or procedural justice. Scott knew military justice not only as a commander with authority to order courts martial, but as an officer accused of misconduct. Convicted at court martial for a dubious embezzling charge early in his career, Scott later faced a court of inquiry for his alleged failure to move quickly enough during the Creek War in Georgia and Alabama.⁵⁵ Both prosecutions were initiated by officers resentful of Scott's success, and neither hindered his rise through the army's officer corps. Being tried before a military court troubled few ambitious army officers. Like Scott, they knew that courts composed of fellow officers were more likely to protect than condemn them, regardless of the evidence or charges. In the old army of the antebellum period, military courts at which officers were prosecuted seemed more about spite than discipline.⁵⁶ One army general went so far as to label officers' practice of using courts martial for personal vendettas as equivalent to desertion among the "greatest evils of the army".⁵⁷

⁵³ Peskin, 2003, pp. 115–17, see *supra* note 40.

⁵⁴ Hsieh, p. 64, see *supra* note 45; and Peskin, 2003, pp. 62–68, see *supra* note 40.

⁵⁵ Peskin, 2003, pp. 12–13, 99, see *supra* note 40.

⁵⁶ Cox, 2007, pp. 59–60, see *supra* note 10; Hillman, 2008, pp. 25–26, see *supra* note 6; and John D. Morris, *Sword of the Border: Major General Jacob Jennings Brown, 1775–1828*, Kent State University Press, Kent, OH, 2000, pp. 190–91.

⁵⁷ Morris, 2000, p. 246, see *supra* note 56.

Scott was not reluctant to impose strict discipline on either officers or enlisted men, but he preferred that military courts focus on punishing misconduct rather than resolving grudge matches between officers. Desertion was probably the most common type of major misconduct committed by soldiers during the Mexican War. The desertion rate was high during the two-year conflict: nearly seven per cent of the entire army deserted, some simply switching sides to join hundreds of “Irish and German Catholic immigrants who signed up to fight alongside their fellow Catholics in Mexico”.⁵⁸ Volunteer militiamen deserted at rates no worse than regulars, though some officers nonetheless blamed volunteers for running away from danger and hardship more often.⁵⁹

Scott’s interest in procedural fairness might have reduced the desertion rate if so many officers had not resisted his reforms. Scott wanted a rule of law that constrained officers as well as enlistees, hoping to end officers’ abuse and neglect of soldiers.⁶⁰ Enlistees endured low pay, poor conditions and brutal corporal punishment, all of which contributed to unauthorised absence.⁶¹ Scott worked to end excessive punishments, including flogging, which he finally succeeded in abolishing in 1861.⁶² Scott did not succeed, however, in convincing his officer corps to enforce the same rule of law for enlistees as for officers. When he ordered military courts to try officers for maltreatment of subordinates, the courts acquitted their peers. In one case, the court not only acquitted an officer for striking a soldier with his sword, it proceeded to issue a commendation to the officer – and then disobeyed Scott’s order to reconvene and explain their verdict.⁶³ During his martial rule in Mexico City, Scott insisted on discipline from officers and troops alike.⁶⁴ For this general, if not his subordinates, due process was as essential for soldiers as other necessities of

⁵⁸ Witt, 2012, p. 125, see *supra* note 2.

⁵⁹ Peskin, 2003, p. 170, see *supra* note 40.

⁶⁰ *Ibid.*, p. 121.

⁶¹ Skelton, 1992, pp. 267–273, see *supra* note 5; and Edward M. Coffman, *The Old Army: A Portrait of the American Army in Peacetime, 1784–1898*, Oxford University Press, New York, 1986, pp. 193–94.

⁶² Peskin, 2003, p. 122, see *supra* note 40.

⁶³ *Ibid.*

⁶⁴ *Ibid.*, p. 194.

life like adequate housing and sanitary conditions, which Scott also carefully monitored.⁶⁵

Scott applied similar principles of due process, not the summary discipline or outright neglect to which others resorted, to the grave problem of prosecuting war crimes. Prior to Scott's arrival in Mexico in 1847, General Zachary Taylor's troops had marched from the Rio Grande to Monterey, leaving a trail of destruction in their wake and gaining Taylor, soon to be elected president of the United States, a reputation for wanton brutality.⁶⁶ Some of the volunteer militias, such as the Louisiana contingent, were virtually uncontrollable, committing rape, murder and property crimes with abandon.⁶⁷ The guerrilla tactics employed by Santa Anna's forces, which included slaughter and torture of captives, triggered reprisals that led to even more indiscriminate violence.⁶⁸ Whereas Taylor had decided that US soldiers could not be tried in Mexico for war crimes, Scott disagreed. He reinterpreted the rules and used military commissions to prosecute more than 300 soldiers for crimes such as "assassination and murder, malicious stabbing or maiming and rape, malicious assault, battery, robbery, theft, the wanton desecration of churches, and the destruction of private or public property".⁶⁹

Army officers who rejected Scott's efforts to restrain the abuse of officers may have supported his campaign to control excessive violence among volunteers because of their shared interest in distinguishing regulars from undisciplined volunteers.⁷⁰ Scott himself had not always been so invested in redressing this kind of crime. During the forced removal of the Cherokee from Oklahoma in 1838, for example, Scott was troubled by the Georgia militia's slaughter of the Indians but "closed his eyes to these atrocities" and did not step in.⁷¹ During the Mexican War, however, the war crimes and reprisals of volunteers were of greater concern to Scott and others in the regular army, which was proving its mettle in battle and

⁶⁵ *Ibid.*, p. 123.

⁶⁶ Witt, 2012, p. 119, see *supra* note 2.

⁶⁷ Millet and Maslowski, 1994, p. 149, see *supra* note 25.

⁶⁸ Witt, 2012, p. 121, see *supra* note 2.

⁶⁹ *Ibid.*, p. 123.

⁷⁰ Millet and Maslowski, 1994, p. 149, see *supra* note 25.

⁷¹ Peskin, 2003, p. 107, see *supra* note 40.

occupation alike.⁷² Scott sought to constrain the behaviour of soldiers, even imposing what one eminent historian termed “draconian punishment on soldiers who committed crimes against civilians”, to limit popular resistance and enhance order and control.⁷³ He succeeded in supervising a military occupation that the historian Russell F. Weigley praised as “efficient and honest”, a description that would have pleased the reform-minded general.⁷⁴ He realised that the army’s professional reputation and ability to govern after victory could be undone by indiscipline and crime if perpetrators were not held accountable.

5.4. The Civil War

The predominance of untrained volunteers and conscripts among the three million soldiers who fought for North and South made discipline a grave problem for army officers, much as it had been during the Mexican War but on a far larger scale.⁷⁵ The US Civil War imposed unprecedented stress on the army as a profession. Its scale far exceeded any other US conflict, with some 8,700 battles compressed into four years.⁷⁶ It left 620,000 soldiers dead, more than the total US military deaths in every war through the mid-20th century combined.⁷⁷ Its breadth and intensity exposed every flaw, laid bare every weakness, in US military strategy, organisation and law.

Commanding generals and lesser officers alike were forced to adapt to new weapons, tactics and personnel. Officers who doubted the legitimacy of guerrilla warfare had to rethink their opposition after seeing it practised with such success by the Confederacy.⁷⁸ Those suspicious of the effectiveness of African-American soldiers were surprised by the valiant efforts of the United States Colored Troops in 1863, created after Presi-

⁷² Cutrer, 2010, p. 91, see *supra* note 44; and Peskin, 2003, p. 107, see *supra* note 40.

⁷³ Linn, 2007, p. 75, see *supra* note 29.

⁷⁴ Weigley, 1984, p. 188, see *supra* note 1.

⁷⁵ Drew Gilpin Faust, *The Republic of Suffering: Death and the American Civil War*, Vintage Books, New York, 2009, p. 39.

⁷⁶ Millet and Maslowski, 1994, pp. 162–240, see *supra* note 25; and Brian Holden Reid, “The Civil War, 1861–5”, in Bradford, 2010, pp. 99–118, see *supra* note 21.

⁷⁷ Faust, 2009, p. xi, see *supra* note 75.

⁷⁸ Millet and Maslowski, 1994, p. 179, see *supra* note 25.

dent Lincoln issued the Emancipation Proclamation.⁷⁹ African-American men who had been considered assets of the South at the start of the war instead fought bravely for the Union. Officers could not respond effectively by relying only on past military experience and training.

Despite its effort to professionalise, the regular army's preparation for the Civil War left it flat-footed, ill-prepared to manage the application of frontier-style, irregular warfare to the mass engagements of the battle between North and South. Neither law nor lawyers, nor medicine and doctors, were ready to address the carnage and crimes of the war either. The intensification of the drive toward modern professionals that occurred after the war was in part a response to the failure of expertise and science to control the war's devastation.⁸⁰ The distrust with which many regular officers viewed volunteers and conscripts, a product of the army's emphasis on professionalisation and their experience during the Mexican War, did not serve them well in commanding units forged almost entirely of non-regulars.⁸¹ The army was also hindered by the division in its ranks after the South's secession forced officers to choose a side. A case in point: General Pierre Gustave Toutant Beauregard commanded the Confederate artillery that fired at Fort Sumter to open the war in April 1861. Major Robert Anderson, the commander of Fort Sumter who quickly raised a white flag of surrender to save his troops from being overrun, had been Beauregard's artillery instructor at West Point.⁸² West Pointers served on both sides of the conflict, as did brothers; Colonel Francis Lieber, author of the code detailed below, had three sons who served during the war, two with the Union armies and one with the Confederates.⁸³ Volunteers as well as officers found their pre-war communities torn by differing allegiances. 160,000 men from border States Maryland, Kentucky and Missouri joined the Union Army; 85,000 from the same States volunteered for the Confederacy instead.⁸⁴ Such divided loyalties affected the regular

⁷⁹ Dudley Taylor Cornish, *The Sable Arm: Black Troops in the Union Army, 1861–1865*, Longmans, Green, New York, 1956.

⁸⁰ Spaulding, 2005, p. 2010, see *supra* note 17; and Gerald W. Gawalt (ed.), *The New High Priests: Lawyers in Post-Civil War America*, Greenwood Press, Westport, CT, 1984.

⁸¹ Weigley, 1984, p. 244, see *supra* note 1.

⁸² Millet and Maslowski, 1994, p. 162, see *supra* note 25.

⁸³ Witt, 2012, p. 180, see *supra* note 2.

⁸⁴ Millet and Maslowski, 1994, p. 179, see *supra* note 25.

army's leadership and rank-and-file, exacerbating its strategic and organisational shortcomings.

When Beauregard's artillery shelled Fort Sumter into submission in the spring of 1861, Winfield Scott, 75-years-old and five decades into his army service, was still the commanding general of the army.⁸⁵ Although Scott's well thought-out Anaconda Plan foreshadowed the strategy of exhaustion and attrition with which the North eventually won the war, he was ousted in September 1861 by George B. McClellan, an ambitious 35-year-old who himself was relieved of command in March 1862 after a dismal performance.⁸⁶ McClellan's commitment to a past style of large military operations and distrust of civilian authority made him ineffective, much like many of the other generals from the army's corps of regular officers.

Disorder reigned on Civil War battlefields, the familiar fog of war made worse by commanders' inability to control troops of far greater number, deployed across far larger distances, than in the battles for which their training had prepared them. Guns with greater firepower and range extended the gap between officers and their troops, a problem far more challenging because of the sheer size of the forces that fought.⁸⁷ For example, in the Battle of Antietam (or Sharpsburg) in 1862, which pitted McClellan's 88,000 men against Lee's 50,000-man Army of Northern Virginia and left 24,000 dead, confusion prevented either side from exploiting advantages gained.⁸⁸ Even in mass battles that approximated the European engagements for which professional men-at-arms had trained, the new conditions of warfare eroded officers' command and control over troops.

Preventing excessive violence on a large scale was also more difficult during the Civil War than in the past. Acts of vengeance by individual soldiers multiplied as the war progressed and losses mounted, further limiting officers' ability to restrain their troops.⁸⁹ Retribution against African-American soldiers and civilians thought to be supporting federal troops was common and especially grisly. Mass murder and torture of

⁸⁵ Hsieh, 2009, p. 108, see *supra* note 45.

⁸⁶ Millet and Maslowski, 1994, p. 170, see *supra* note 25.

⁸⁷ Hsieh, 2009, pp. 112–116, see *supra* note 45; and Faust, 2009, p. 39, see *supra* note 75.

⁸⁸ Millet and Maslowski, 1994, p. 196, see *supra* note 25; and Cornish, 1956, see *supra* 79.

⁸⁹ Faust, 2009, p. 35, see *supra* note 75.

captives was all too common by Confederate troops who refused to treat African-American soldiers as prisoners of war, deeming them slaves, not soldiers. Most infamous was the Fort Pillow massacre in which 300 African-American soldiers were killed, most after they had surrendered, by Major General Nathan Bedford Forrest's Confederate cavalry during spring 1864 raids into Union-held West Tennessee and Kentucky.⁹⁰

High strategy as well as individual vengeance also raised the level of wartime violence and destruction. The Union Army's ruthless methods after 1863 earned the descriptive term "hard war".⁹¹ General William Tecumseh Sherman, West Point graduate and unremarkable army officer prior to the war, carved a path of destruction through the South that was virtually unlimited in terms of damage to property.⁹² Sherman's 'March to the Sea' and Philip Sheridan's raids in the Shenandoah Valley to destroy the South's food supply were frontier-style campaigns that targeted the economy and society of the Confederacy rather than its army.⁹³ Confederate hero Stonewall Jackson's vicious rhetoric matched Sherman's "war is hell" exhortations.⁹⁴ Both South and North struggled to manage the strategic and moral consequences of a seemingly unbounded war.

In response to the battlefield and leadership challenges of the war, the Union Army sought to improve accountability by restoring discipline and enhancing its ability to function both during and after battle. The most important accountability measure that the army pursued was the articulation of the principles of lawful warfare in an elaborate code. Historian John Fabian Witt analyses the origins and impact of the code that Colonel Francis Lieber drafted at the army's request, released as General Orders No. 100 in May 1863. Lieber's code was a comprehensive statement of the laws of war that embraced the necessity principle, which permits any destruction or method "indispensable for securing the ends of war".⁹⁵ That principle accepted the perspective of Carl von Clausewitz, a military intel-

⁹⁰ *Ibid.*, pp. 44–46.

⁹¹ Mark Grimsley, *The Hard Hand of War: Union Military Policy Toward Southern Civilians, 1861–1865*, Cambridge University Press, New York, 1995.

⁹² Witt, 2012, p. 277, see *supra* note 2.

⁹³ Grimsley, 1995, see *supra* note 91.

⁹⁴ Charles Royster, *The Destructive War: William Tecumseh Sherman, Stonewall Jackson and the Americans*, Alfred A. Knopf, New York, 1991, p. 329.

⁹⁵ Witt, 2012, pp. 235–37, see *supra* note 2; and Spaulding, 2005, pp. 2061–71, see *supra* note 17.

lectual and “prophet of modern total war”, who had nothing but contempt for efforts to limit the violence of war, but nonetheless went on to detail an elaborate set of exactly such limits.⁹⁶

The principle of necessity threatened to consume the limits set out by other principles by authorising extreme violence, but it articulated a boundary and encouraged soldiers to consider moral limits. President Abraham Lincoln interpreted the line between moral and criminal violence as a line between violence that advanced the war effort and violence undertaken for personal gain or vengeance.⁹⁷ Upholding a higher standard of conduct was essential for Union officers for the same two reasons it had been during the Mexican War: they thought they could both win the war faster with disciplined troops and ensure public confidence in the occupation that would follow if they sought to prevent and prosecute unnecessary violence.⁹⁸

The scale and disorder of the Civil War eroded the control of both regular and non-regular officers, leaving soldiers to make their own decisions about what was permitted, required or ‘necessary’ in wartime situations. For example, Sherman’s strategy of moving troops quickly, without pausing to maintain supply lines, gave lesser officers wide discretion in meeting the imperative that they provide adequate provisions for their troops. This “decentralised foraging” often led to lawlessness.⁹⁹ With so many soldiers empowered to decide which acts of destruction or appropriation were crimes and which were acts of war, inconsistency made discipline very difficult.¹⁰⁰ The Union distributed copies of the Lieber Code, printed on pamphlets, to guide decisions made in the field. Education, like prosecution, served the Union Army’s goal of encouraging disciplined behaviour despite the diffusion of control that characterised Civil War military operations.

The Union’s interest in enforcing the Lieber Code also sparked the creation of a powerful group of professional military lawyers under the leadership of Joseph Holt, appointed Judge Advocate General of the Army in 1862. Many lawyers and judges fought in the war, on both sides,

⁹⁶ Witt, 2012, p. 4, see *supra* note 2.

⁹⁷ *Ibid.*, p. 118.

⁹⁸ Linn, 2007, p. 77, see *supra* note 29.

⁹⁹ Witt, 2012, p. 281, see *supra* note 2.

¹⁰⁰ *Ibid.*, p. 283.

including 22 per cent of generals in the Union Army and 30 per cent in the Confederate Army.¹⁰¹ Holt recruited lawyers “from among the best and brightest of the northern antislavery elite”, building a team that would take nearly 1,000 men to trial for a crime of war.¹⁰² Most of those charged were non-combatants and guerrillas, not Confederate soldiers, and the charges ranged broadly, from forgery to desecrating corpses.¹⁰³ The high volume of war crimes prosecuted was an effort to reinscribe lines of acceptable behaviour that the war had erased.

The orderly manner of the war’s end was superficial vindication for the profession of arms after a long, terrible conflict that pushed the boundaries of modern warfare. Robert E. Lee met Ulysses S. Grant on 9 April 1865, in Appomattox Court House, Virginia, as equals, commanding generals who retained authority and military honour to the end. After Lee surrendered for the Army of Northern Virginia, he and other Confederate soldiers ceased fighting and went home without resistance from Grant’s Union Army, following the path that the laws of war set out for a vanquished army.¹⁰⁴ Both generals, and many other US civilian and military leaders, had tolerated and even encouraged extreme violence during the war, yet chose to treat each other as members of a celebrated profession of arms. The extent to which the US public and civilian leadership did the same was the real measure of the army’s professionalisation.

5.5. Conclusion: An Incomplete Transformation

The professionalisation of the US Army increased its interest in accountability. It elevated principles, encouraged discipline and led to more ways to prevent, identify and prosecute violations of law. In operational terms, the bungling performance of the army during the War of 1812, when the US narrowly escaped defeat, was a far cry from either the field manoeuvres of the Mexican War or the mass mobilisation that the Civil War brought. In legal terms, the use of military commissions and other courts, however procedurally suspect, grew to keep pace with greater interest in due process and the prosecution of misconduct. The depth and breadth of violence that continued to characterise the US way of war led to the Lie-

¹⁰¹ Spaulding, 2005 pp. 2012–13, see *supra* note 17.

¹⁰² Witt, 2012, pp. 264–267, see *supra* note 2.

¹⁰³ *Ibid.*, p. 268.

¹⁰⁴ Hsieh, 2009, pp. 1–2, see *supra* note 45; and Witt, 2012, p. 283, see *supra* note 2.

ber Code and subsequent articulations of the constraints that morality required during war.

Yet the transformation of the army, and of other military organisations, was incomplete at the end of the Civil War. Reconstruction and the armed conflicts that followed posed operational and bureaucratic challenges unresolved by Grant and Lee's ritual of mutual respect at Appomattox in 1865. The limits of accountability as a neutral principle within the military were perhaps most apparent in the race-based discrimination that pervaded military justice and hierarchies well into the 20th century. The US army was "still intellectually adolescent",¹⁰⁵ its officers unable to secure the deference, funding and status they believed the professions of arms deserved.

After the Civil War, tension persisted among officers who tried to balance sometimes competing interests in battlefield success and political legitimacy. In 1882 Emory Upton, hero of the Civil War, influential author, and perhaps the most esteemed officer of the post-war army, shot himself to death in his room at the Presidio army post in San Francisco. Upton, a brave and innovative field commander who led wartime infantry, artillery and cavalry units, served as commandant of West Point from 1870 to 1875. Yet his efforts to remake the US Army into a professionalised force worthy of a great democratic nation had, in his mind, failed. He considered US military policy "a policy of weakness and folly" because of its reliance on the leadership of untrained civilians.¹⁰⁶ Control of the army belonged with military experts, according to Upton. He advocated "thoroughly professional command of a thoroughly professional regular army" to save lives, shorten war and protect national values.¹⁰⁷

During the many years that have passed since Upton's tragic death, military officers have often echoed his lament when the armed forces have disappointed them or the United States. Upton's imperative that military professionals have control reflects what historian Brian McAllister Linn has described as "a deeply cherished belief among America's military personnel that, if left alone, the armed services would reform themselves, and their reforms would be vindicated on the battle-

¹⁰⁵ Moten, 2000, p. 206, see *supra* note 21.

¹⁰⁶ Weigley, 1984, p. 119, see *supra* note 1.

¹⁰⁷ *Ibid.*, p. 124.

field”.¹⁰⁸ Frustrated with wartime failures and unwilling to accept that professionals themselves might be partly to blame, officers have criticised the decisions of presidents, secretaries of defence and other civilian government officials who, in the mind of military professionals, exercised too much control over military operations. For example, military critics accused President Lyndon B. Johnson of losing the Vietnam War because of his obsessive control over targeting decisions during massive aerial bombing campaigns in Southeast Asia. The outcomes of each war, of course, depends on factors that have little to do with the professional training of armed forces, and civilian leaders have likely erred as often as commanding generals in decision-making during armed conflict. Yet military leaders who assail the ignorance and inexperience of civilian government officials – especially those who did not serve in the military and are not students of war and military history – are aiming at an easy target rather than accepting the limited role of State violence in crafting political solutions.

Criticism of volunteer service members likewise appeared frequently since the complaints of regular officers about volunteers and conscripts during the Mexican War and Civil War. When commanders have been ashamed by the misconduct of their troops, they sometimes sought to shift attention away from the professional armed forces and onto the corrupt influence of a degraded civil society. The torture and abuse of detainees by US soldiers in 21st-century US conflicts in Iraq and Afghanistan, for example, have been blamed on part-time soldiers inadequately trained and insufficiently integrated into the active armed forces. So long as the officer corps can distinguish the poor performance and crime of “non-regular” troops from the conduct of career military personnel, it can preserve war and military operations as the sole province of career professionals.

It may be that no matter how thorough the professionalisation of the armed forces becomes, anything short of complete autonomy and authority for commanders will not be enough. Steeped in professional values that consider specialised expertise in war indispensable and career military service a calling above any other, the US officer corps has often wanted to be left alone to prosecute wars in the most efficient and princi-

¹⁰⁸ Linn, 2007, p. 41, see *supra* note 29.

pled manner.¹⁰⁹ Upton's tragic frustration rests at the heart of the military's self-interest in accountability. Law and politics mandate that the US Army be subject to civilian control. Yet in the minds of many army professionals, only a force unmoored from civilian oversight can be trusted to wage war.

¹⁰⁹ Robert L. Goldich, "American Military Culture from Colony to Empire", in *Daedalus, the Journal of the American Academy of Arts and Sciences*, 2011, vol. 140, no. 3, pp. 58–74.

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Military Self-Interest in Accountability for Core International Crimes

Morten Bergsmo and SONG Tianying (editors)

Is it in the enlightened self-interest of armed forces to have perpetrators of core international crimes brought to justice? This anthology adds the 'carrot' perspective of self-interest or incentives to the common rhetoric of 'stick' – legal obligations and political pressures. Twenty authors from around the world discuss why military actors themselves often prefer accountability: Richard Saller, Andrew T. Cayley, William K. Lietzau, William J. Fenrick, Arne Willy Dahl, Richard J. Goldstone, Elizabeth L. Hillman, Bruce Houlder, Agus Widjojo, Marlene Mazel, Adel Maged, Kiki A. Japutra, Christopher Mahony, Christopher Jenks, Franklin D. Rosenblatt, Roberta Arnold, Róisín Burke, Elizabeth Santalla Vargas, Morten Bergsmo and SONG Tianying.

The self-interests presented in this book are multi-dimensional: from internal professionalisation to external legitimacy; from institutional reputation to individual honour; from operational effectiveness to strategic stakes; from historical lessons to contemporary needs; from religious beliefs to aspirations for rule of law; from minimizing civilian interference to preempting international scrutiny. The case is made for long-term self-interest in accountability and increased military 'ownership' in repressing core international crimes. In his foreword, William K. Lietzau observes that of "all the international community's well-intended endeavours to foster accountability and end impunity, none is more important than that addressed in this book".

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