

KEYNOTE: THE MODERN LAWS OF WAR

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I. THANK YOU

Thank you to the students and leadership of Southwestern Law School, as well as to an organization I hugely admire, the International Committee of the Red Cross, for inviting me to be here with you today in beautiful Los Angeles.

The relationship between law and war should be an important topic for Americans, since we are a nation that has long been a leader in their development.¹ We are also a nation that has been continuously engaged in armed conflict for the last fifteen years—fifteen years of struggling to find the best ways to achieve our strategic and operational goals while being faithful to the laws we've helped develop, even when—indeed usually when—confronting enemies who regularly violate the laws of war, seek to exploit our commitment to law for tactical and strategic gain, and who turn our digressions into strategic wins.²

These last fifteen years have taken something from all of us who served. Some were wounded and gave enormously, and some . . . some gave everything . . . their last full measure . . . and these last two categories we

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1. See generally U.S. MILITARY OPERATIONS: LAW, POLICY AND PRACTICE 43 (Geoffrey S. Corn, Rachel VanLandingham, & Shane Reeves eds., 2015) (describing the 1863 U.S. Lieber Code as “the first attempt to compile existing laws and customs of war into one document, and to superimpose them on an army engaged in an armed conflict”).

2. See Andrew Tilghman, *After 15 Years of War, America's Military Has About Had it With Nation Building*, *Military Times* (Sep. 22, 2016), <http://www.militarytimes.com/articles/after-15-years-of-war-americas-military-has-about-had-it-with-nation-building> (noting the lengthy period of time this nation has been engaged in armed conflict).

cherish and we thank all our veterans . . . and their families for their service, and for their sacrifices. During this period, by my rough estimate I spent about sixty-two months deployed . . . and thirty-three months in combat. This has been a very long war. Many have served much longer in combat in the two theaters of this long fight.

But I'd like to note that now, as our national elections draw near, a conversation about the laws of war is even more vital than usual because the next Commander in Chief we choose can either strengthen or gravely damage them. And those we elect to Congress can also work for their preservation, or not. So as an electorate, we owe it to ourselves, the American people . . .

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from first-hand experience—let me correct the misconception: the law of war *does not make us weak, or render us less effective in bringing our enemies to submission*. Indeed the law of war makes us stronger as a nation and as a people.

It is naive to believe that our country would help develop or agree to rules that place our nation and our strategic goals in peril; I can assure you

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sentiment that is known in the laws of war as part of “responsible command.”¹⁸ The laws of war provide our military members with a rational framework to subjectively justify the infliction of human suffering; infliction without such a justification would otherwise work to destroy individual soldier’s souls. A responsible commander ensures that everything his or her unit does is within the limits of this law, because by staying within its bounds, military members can reconcile their morality . . . and I might add, spirituality . . . with the destructive acts they are ordered to commit.

In other words, the law works to limit the violence to what is necessary to accomplish our nation’s objectives, and this law is what distinguishes our soldiers from murderers and marauders. By staying within the law’s bounds, military members are shielded from criminal prosecution for their destructive acts, and simultaneously keep their moral compasses on true north.

The laws of war reduce the inherent suffering caused by war, contribute strategically to mission accomplishment, help preserve our military members’ moral integrity, and finally they assure the world that the United States stands for something in this moment of gravest inhumanity . . . war. When we ask a drone pilot to fire Hellfire missiles at ISIS targets in our nation’s name, we owe it to that pilot to ensure she is well trained not only in weapons delivery tactics, but in the laws of war. I have personally participated in the process that released that weapon. Critically, I always felt that I, as one of her commanders and national leaders, owed her the assurance that the targets are chosen pursuant to and compliant with the laws of war; to do otherwise would not only risk strategic failure, but would serve to abandon our commitment to ensuring our warriors return to civilian life with their humanity intact.

III. THANK YOU

Thank you again for having me here today, and I again commend you for taking these issues seriously.

18. See DOD Law of War Manual, *supra* note 9, at 18.4, 18.23.3 (“The law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates. One of the requirements for armed forces to receive the privileges of combatant status is that they operate under a responsible command”).