

Are There Rules of War?

“War is an act of force . . . which theoretically can have no limits.”

— Karl von Clausewitz

“When you resorted to force . . . you didn’t know where you were going . . . If you got deeper and deeper, there was just no limit except . . . the limitations of force itself

— General Dwight D. Eisenhower

“This is a guerilla war, not a debutante’s ball. There are no rules here.”

— Breaker Morant

What Rules?

“A commander may not put his prisoners to death because their presence retards his movements or diminishes his power of resistance by necessitating a large guard, or by reason of their consuming supplies, or because it appears certain that they will regain their liberty through the impending success of their force. It is likewise unlawful for a commander to kill his prisoners on grounds of self---preservation, even in the case of airborne or commando operations, although the circumstances of the operation may make necessary rigorous supervision of and restraint upon the movement of prisoners of war.”

— U. S. Department of the Army Field Manual, *The Law of Land Warfare*, July 1956.

“The battalion CO got on the field telephone to my company and said ‘Don’t touch the civilians . . . don’t fire until you are fired at and don’t touch the civilians. Look, you’ve been warned. Their blood be on your heads.’ In just those words. The boys in the company kept talking about it afterwards. . . They kept repeating the words: ‘Their blood be on your heads.’”

– *The Seventh Day: Israeli Soldiers Talk About the Six Day War*

International Law

What Law?

Where is it?

Where Does International Law Come From?

- 1. From International Customs and Practices*
- 2. From Micro----Legal Systems:
Staring at Airports and Cueing*
- 3. From Domestic Law (the "domestic analogy")*
- 4. From International Rules and Regulations:
Conventions, Protocols, Treaties, Agreements,
Covenants, Pacts, Charters and Directives and
Decisions of International bodies such as the UN and
NATO as well as the International Criminal (ICC) and
Judicial Courts (IJC)*
- 5. From understandings as they result from the usages
established between civilized nations, the laws of
humanity and the requirements of public conscience.*

What Rules?

Are There Rules of War?

**And If There Are Rules,
Where Do They Come From?**

What Are They Based On?

The Morality Precedes the Politics

The Moral Reality of War

“Naked Soldiers”

*“Soldiers, simply by not fighting,
regain their right to life . . . ” – Michael Walzer*

**Some of the Rules of Warfare recognized
in the Department of the Army Field Manual
PM 27----IO, ""The Law of Land Warfare""
(Department of the Army, July 1956)
pp. 17, 18, 21, 35.**

""It is especially forbidden . . . to declare that no quarter
will be given. . . ."" p. 17

""It is especially forbidden. . . to kill or wound an enemy
who, having laid down his arms, or having no longer means
of defense, has surrendered at discretion. . . ."" p. 18

""It is especially forbidden . . . to employ arms, projectiles,
or material calculated to cause unnecessary suffering . . ."" p. 18

""The pillage of a town or place, even when
taken by assault, is prohibited . . ."" p. 21

""A commander may not put his prisoners to death
because their presence retards his movements or diminishes
his power of resistance by necessitating a large guard,
or by reason of their consuming supplies, or because it
appears certain that they will regain their liberty through
the impending success of their forces."" p. 35.

""It is likewise unlawful for a commander to kill his prisoners
on grounds of self----preservation, even in the case of airborne
or commando operations, although the circumstances of
the operation may make necessary rigorous supervision of
and restraint upon the movement of prisoners of war."" p. 35.

*NOTE: The Manual specifically states that the rules of war may
not be disregarded on grounds of ""military necessity"" (p. 4),
since considerations of military necessity were fully taken
into account in framing the rules. (All page numbers in the
text refer to this publication of the Army Manual.)*

The Model of Self----Defense

What is Self-Defense?

Bernhard Goetz and the Criminal Law

A few days before Christmas, 1984, a slightly built man named Bernhard Goetz entered a subway car in New York City. He sat down next to four black youths. They are a somewhat boisterous lot and the 15 or 20 other passengers have moved to the other end of the subway car. One of the four, Troy Canty, asked Goetz how he was doing. Then Canty and perhaps one of the others asked Goetz for five dollars. Goetz took out a .38 caliber Smith and Wesson revolver and fired four shots at each of the four youths. Then he walked over to one of them who was seated in the two---seater next to the conductor's cab and said "You seem to be all right; here's another" or "You seem to be doing all right; here's another," and fired a fifth shot into his body. Darrell Cabey was turned away from Goetz and the bullet entered his left back---side, severing his spinal cord.

A passenger pulled the emergency cord. The train screeched to a halt and many of the passengers fled onto the tracks. A conductor approached Goetz and asked him if he was a cop. When it became apparent that he was not, the conductor asked him for his gun. Goetz refused to hand it over, walked quietly to the front of the car and out the door. He jumped to the tracks below and disappeared into the dark of the subway tunnel. Three of the young kids lay bleeding on the floor of the train and Darrel Cabey sat wounded and paralyzed in the end seat.

About a week later Goetz walked into a police station in Concord, New Hampshire and gave himself up. He was turned over to New York authorities on January 3rd, 1985. His eventual trial raises a number of difficult issues: but first and foremost were his actions justified?

Did he act in self-defense?