The Lieber Code: Limiting the Devastation of War

In the midst of the American Civil War, President Lincoln asked Francis Lieber, a jurist and political philosopher, to draft a new code of war with rules that would regulate the conflict. After its adoption by the U.S. Army in 1863, the “Lieber Code” became the basis for certain international treaties and similar national military codes in other countries.

The fundamental concepts of modern international humanitarian law (IHL) have remained generally unchanged since the Civil War and are still based on the balance between military necessity and human dignity found in the Lieber Code. For example, the protection of civilians and captured combatants remains paramount. The underlying principles of the Lieber Code can assist students in understanding the basic rules of IHL.

This lesson focuses on the rules of behavior that are specifically designed to protect the lives and human dignity of people in armed conflict. It introduces the basic rules of IHL that emerged during the American Civil War. Students examine the reasons for these rules and compare them with rules that they suggest. The lesson also compares these early rules with those of modern IHL.

OBJECTIVES
- To understand some of the reasons why rules are needed in armed conflict
- To learn and understand some of the basic rules of IHL as they emerged during the Civil War

PREPARATION
Consider using various teaching methods such as discussion, brainstorming, role playing, or small groups, and using stories, photos and videos. These are presented in the EHL Methodology Guide which can be found at www.redcross.org/ehl.

TIME
One 45-minute session

"With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation’s wounds; to care for him who shall have borne the battle, and for his widow, and his orphan—to do all which may achieve and cherish a just, and a lasting peace, among ourselves, and with all nations."

FROM PRESIDENT LINCOLN’S 2ND INAUGURAL ADDRESS, SATURDAY, MARCH 4, 1865
The Lesson

OPTIONAL TRANSITION 5 minutes


Possible questions

► What do you recall about the characteristics of humanitarian acts?
► What were some of the obstacles to carrying out humanitarian acts?
► What additional obstacles might make it difficult to carry out humanitarian acts during armed conflict (such as desire for revenge, lack of information, lack of supplies, fear, and intense hatred)?
► What is meant by human dignity?

1. THE EXPERIENCE OF CAPTIVES AND CAPTORS 15 minutes

Tell students that in this lesson they will consider the need for rules in armed conflict and look at examples of such rules.

Possible questions

► What might the captives be thinking? The guards?

Suggest the points below one at a time. Ask each student to discuss his or her thoughts with a partner.

► Imagine that one of the captives is your brother. How would you want him to be treated? Why?
► Imagine that one of the captives killed your friend in battle. How would you want him to be treated? Why?

Reconvene the class and discuss the following questions:

► How should a man or woman taken prisoner during armed conflict be treated?
► Suppose prisoners have important information. Should that affect their treatment?
► In what way(s) is the human dignity of a prisoner at risk? The human dignity of a guard?

STUDENT RESOURCE

Present the painting titled “Prisoners from the Front” showing captives with guards.

NOTE

The terms “captured person,” “captive,” “detainee,” and “prisoner” may be used interchangeably.
2. WHAT RULES SHOULD EXIST TO PROTECT PERSONS DURING ARMED CONFLICT? 15 minutes

Have students examine the prisoners in the various photos, the treatment of the wounded, and the impact on civilians and civilian property.

Ask students to write down rules they think are needed to protect persons during armed conflict and to give their reasons for each rule. Make a list of these proposed rules.

Then, discuss the full list of students’ suggestions. Explore the reasons for your students’ views.

Possible questions:
- How would each of your rules change the experience of war?
- Why might it be difficult to implement them?
- Which of your rules apply to combatants who can no longer fight (for example, captured, wounded, sick, or shipwrecked combatants)?

3. EXAMINE THE BASIC RULES OF THE LIEBER CODE 15 minutes

Which of these rules are similar to the ones you suggested?

Ask students to choose some of the rules and discuss what would happen without them.

EXTENSION ACTIVITY: COMPARE THE LIEBER CODE RULES TO MODERN IHL 10 minutes

Compare the basic rules of the Lieber Code with basic rules of modern IHL. In general, what are the similarities and differences? Use the table “What are the basic rules of international humanitarian law” on page 17 of EHL Module 2 available at www.redcross.org/ehl.

KEY IDEAS:
IHL aims to protect the lives and human dignity of people affected by armed conflict and to limit the suffering caused by war. It is a set of international rules that restricts the means and methods of warfare and protects those who are not fighting (e.g., civilians) or no longer fighting (e.g., wounded or captured fighters).

SOURCES:
Background Document on The Lieber Code

The 1863 Lieber Code is a military order that codifies the laws of war into 157 articles and instructs soldiers on their humanitarian obligations and prohibited and permitted conduct during armed conflict. One of the main reasons for its importance is that it represents the first attempt to gather the customs and usages of the laws of war into one document.

During the American Civil War (1861-1865), Dr. Francis Lieber was commissioned to draft the code, which was approved by a board of Union Army officers. President Lincoln ordered that the Lieber Code be incorporated into the Union Army’s General Orders, and in 1863 it became General Orders No. 100, Instructions for the Government of Armies of the United States, in the Field. James Seddon, the Confederate secretary of war, proclaimed the Lieber Code “confused, unassorted, and undiscriminating” and partly “obsolete,” but the Confederacy later adopted the Lieber Code for the instruction of its soldiers and commanders.

Outside the United States, the Lieber Code significantly influenced similar codes issued in the United Kingdom, France, Prussia, Spain, Russia, Serbia, Argentina, and the Netherlands and became the basis for certain international humanitarian law (IHL) treaties. Almost 150 years later, the Lieber Code is still considered the most important early codification of the customs and practices of war.

Francis Lieber conceived the idea of the code and was the driving force behind its development. He felt strongly that there was a lack of regulation of the conduct of hostilities during the American Civil War. His eldest son, Oscar, had died in June 1862 from wounds suffered at the Battle of Williamsburg while fighting for the Confederate army. His other two sons, Hamilton and Norman, fought in the Union army.

Aside from Dr. Lieber, the other key figure in the creation of the code was Major Gen. Henry Halleck, the head of the Union forces in 1862. Without Halleck’s support, Lieber probably would not have been successful in his endeavor.

After General Orders No. 100 was published, Lieber sent Halleck a letter asking him to issue an order clearly prohibiting the destruction of private property. Lieber was alarmed by certain ongoing acts being committed by Union soldiers and realized the negative impact of these acts. Although his letter was written in 1863, his words remain relevant in the context of modern armed conflict.

“I know by letters from the West and the South, written by men on our side, that the wanton destruction of property by our men is alarming. It does incalculable injury. It demoralizes our troops; it annihilates wealth irrecoverably, and makes a return to a state of peace more and more difficult. Your order, though impressive and even sharp, might be written with reference to the Code, and pointing out the disastrous consequences of reckless devastation, in such a manner as not to furnish our reckless enemy with new arguments for his savagery…”

LETTER FROM FRANCIS LIEBER TO GENERAL HALLECK, NEW YORK, MAY 20, 1863
If Your Students Ask…

The following suggestions can be used to help students think through questions they raise about why those who are fighting should accept and respect rules of war. Consider using them when facilitating a classroom discussion.

1. If either Union or Confederate soldiers felt they were winning the war, why would they obey rules that would limit their behavior?
   - Look at your side’s long-term interest. Do you want to be seen by powers outside the United States as a criminal?
   - What if your side starts losing? Consider the example of the Confederates, who thought they would not lose but did. What will happen when your people need protection?
   - Some reasons for Union soldiers to obey the rules might include respect for human dignity, respect for legal rules (Lieber Code), to improve prospects for peace, to maintain discipline among troops, to win the support of the population in combat zones, and the belief that the Confederates might follow the rules as well.
   - The Confederate soldiers might be inclined to obey the rules for similar reasons. Also, the Confederacy had a desire to earn the support of the population in combat zones and the good opinion of Great Britain.

2. Since so many of these rules were broken during the Civil War (e.g., Andersonville and Elmira prisons, Sherman’s march to the sea), what was the point of having or obeying them?
   - Many of the rules were broken, but many were also respected.
   - Even if imperfectly respected, these rules protected many people.
   - When rules are broken, it is often because combatants have no fear of being punished. That’s why it’s important to ensure that the military and civilians know the rules of war—so that implementation of the rules is monitored and laws are enforced. Note that there was very little training on the rules of armed conflict during the Civil War compared with the training of modern armies.

3. Why would either side waste resources to care for enemy prisoners?
   - If you don’t care for prisoners from the other side, what will that mean for your people when they are held by the enemy?
   - Providing for the basic needs of prisoners is unlikely to affect your own fighting capacity.
   - Does leaving injured men and women to die on the battlefield reflect our values and principles? Is this reflective of our society and how we wish it to develop?

4. Since many violations occurred during the Civil War, who ensured respect for these rules?
   - Commanders, officers and soldiers who understood the value of discipline and setting limits on the conduct of soldiers under their command.
   - The Union tried Captain Henry Wirz, the Confederate commander at Andersonville Prison in Georgia, and convicted him of war crimes for abusing prisoners. He was hanged as a result.
Winslow Homer: Prisoners from the Front

To view in color: http://www.metmuseum.org/toah/works-of-art/22.207#ixzz0wJhwdg1w

Source: The Metropolitan Museum of Art.
LIMITING THE DEVASTATION OF WAR

1A: Wounded soldiers from the battles in the “Wilderness,” Fredericksburg, Virginia, 1864. Library of Congress.

1B: Doctors examining a recently released Union soldier, location unknown, 1861-65. Library of Congress.

1C: Engraving depicting Sherman’s march to the sea, Georgia, Alexander Hay Ritchie, c. 1868. Library of Congress.

1D: Confederate prisoners captured at the battle of Fisher’s Hill, Virginia are sent to the rear under guard of Union troops. 1864. Library of Congress.

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<th>DISTINCTION</th>
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<td>When planning or carrying out an attack, distinction must be made between civilians and combatants and between civilian objects and military objectives.</td>
<td>Civilians and combatants who are hors de combat must be protected and treated humanely.</td>
<td>The only legitimate objective of war is to weaken the enemy’s military forces.</td>
<td>Certain categories of people and objects must receive additional protection.</td>
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1. **Protection of Civilians and their Property** [Art. 22]
   a. An unarmed civilian should not be physically harmed, as much as the exigencies of war will permit
   b. The property and honor of an unarmed civilian should not be damaged, as much as the exigencies of war will permit

2. **Protection of Property** [Art. 35]
   a. Classical works of art, libraries, scientific collections, and hospitals must be protected against all avoidable damage, even when they are located in fortifications (military sites)

3. **Protective Emblems** [Art. 115]
   a. It is customary to designate by certain flags (usually yellow) the hospitals in places which are or may be shelled, so that the besieging enemy may avoid firing on them

1. **Treatment of Civilians** [Art. 23]
   a. Civilians should not be murdered, enslaved, or carried off to distant lands

2. **Treatment of Prisoners** [Art. 56]
   a. A prisoner should not be subject to any punishment for merely being an enemy
   b. Revenge should not be wreaked upon a prisoner by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity

3. **Treatment of Wounded Enemy** [Art. 79]
   a. Every captured wounded enemy shall be medically treated, according to the ability of the medical staff

4. **Treatment of Prisoners** [Art. 80]
   a. It is not permissible to use violence (i.e., torture) against prisoners in order to extort desired information or to punish them for having given false information

1. **Military Necessity Defined** [Art. 14 and 16]
   a. Military necessity refers to the need of those measures which are indispensable for securing the ends of the war, and which are lawful
   b. Military necessity does not permit cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in a fight, nor of torture to extort confessions
   c. Military necessity does not permit the use of poison, nor of wanton devastation
   d. Military necessity permits the use of deception, but does not permit acts of perfidy
   e. In general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult

2. **Objective of War** [Art. 68]
   a. Annihilation of the enemy is not the object of war
   b. Destruction of the enemy in war should be considered a means to a lawful objective which lies beyond the war
   c. Unnecessary or revengeful destruction of life is not lawful

1. **Civilians who accompany the Armed Forces** [Art. 50 and 53]
   a. Civilians who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such
   b. The enemy’s chaplains, officers of the medical staff, apothecaries, hospital nurses and servants are not prisoners of war, unless the commander (of the detaining forces) has reasons to retain them
   c. In this latter case, or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit

2. **Protection for Hospitals** [Art. 116]
   a. Hospitals should be requested to identify themselves (e.g., displaying a yellow flag)
   b. Combatants and belligerents should not attack hospitals, and should respect the protective flag or signals of protection