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War and the United States Military

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Millennia come and millennia go, and the fact of war remains unchanged. People still fight for territory, the land of their fathers, Lebensraum, control of the seas, gold, silver and diamonds, oil, water, pillage and the spoils of war, resources of all kinds, the glorification of leaders, gods of many faiths, politics, ideology, conquest, the establishment, peace and stability of empires, the right to be left alone, and sometimes, so we are told, justice, resistance to aggression, and the preservation of peace. Measured in millennial time, very little about war has changed, and, further, nothing distinguished the passage from 1999 to 2000.

Decades come and decades go, on the other hand, and while certain features of war remain unchanged, others do indeed seem altered. Measured on the scale of years and decades, the means and methods of warfare, reasons for making war, and the calculation of what is to be gained and not gained by fighting, have shifted. Perhaps these shifts are permanent, perhaps they are not, but conflict in the world is not what it was prior to, for example, the fall of the Berlin Wall and the Gulf War. Technology has changed and empires have shifted or disappeared. Weaponry and geopolitics are not quite as they were a few decades ago. The attitudes of the populations of the empire of the West, the industrialized democracies toward war and fighting are not the same as they were a few decades ago; both the reasons that democratic majorities accept for fighting and their tolerance for casualties among their own have shifted. The extrusion of the media directly onto the battlefield has changed the perception of conflict. A strong sense shapes the perception of emergent global elites, the newly formed global bourgeoisie, that because the world is an ever-smaller place, indeed, in their view, one which is interconnected and interdependent, war should be managed, controlled and finally done away with in the way that police manage crime in a domestic society. The emergent global elites believe that world society today is no longer an agglomeration of loosely linked local societies, but instead something approaching a global domestic society.

Likewise, on the scale of years and decades, the American understanding and perception of war, the means and use of military force, have also shifted—although at this point in time it is largely a mass of questions rather

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than answers. What should be the role of the U.S. military in the world? The superpower maintaining the grand peace? The gendarmerie of the empire that polices smaller societies? A force for liberal internationalism's sense of justice? Should the U.S. military see itself as an instrument of international politics operating outside the bounds of law, or should it see the world as a domestic society in which it acts as a policeman, within the constraints and to the ends of law? To what extent should it be deployed for the material interests of the United States and to what extent should it be deployed in furtherance of American values? What should be the composition of the U.S. military forces; should it continue to be an all-volunteer force, and is that a good thing for a democratic society? What should the roles of women and homosexuals be within the military? What obligations do civilian political leaders owe to those American soldiers who fight? Should civilian political leaders treat the purpose of U.S. soldiers as serving the interests of the United States or as a kind of resource of the international community? When atrocities and war crimes are committed, how are those actions to be judged and who shall do the judging?

The articles, essays, and review essays that follow in this special section attempt to undertake some of these vexing, urgent questions about war and the United States military. They do so from a wide variety of viewpoints, methodological as well as political. They are not narrowly focused on law; they concern instead the role of the military within a society founded on the rule of law and the use of the military in a wider world for which the rule of law is a serious issue. As editor of this section, I sought authors who I thought could break out of the usual box in writing about these topics, and I have been pleased with the results.

The writings in this section can be divided broadly into two categories. First, there are articles dealing with the whole world—how the U.S., including by implication the U.S. military, ought to think about international law, the use of force internationally, and the respective roles of interests and ideals in establishing the conditions of the use of force abroad. The lead article in this category is John Bolton’s sharp attack on the idea, so prevalent among international lawyers and scholars, that international law really is “law” in the usual domestic sense. My sense of international law academicians is that they believe that they have said all that has needed to have been said in order to establish the “law”—like nature of international law a long time ago—thereby, not coincidentally, establishing the validity of their profession as specifically international lawyers. Unfortunately, the conclusions were reached almost entirely in a conversation among academics who were already inclined to agree with each other as to what the outcomes of the conversation should be. Bolton argues that the serious problems of applying a misguided and misleading metaphor from domestic law transplanted to the international world do not go away just because international lawyers have agreed among themselves that they should.
Also in this category is Charles Nihan's review essay of two books on the use of U.S. military force abroad: *Immaculate Invasion*, on the U.S. invasion of Haiti, and *Black Hawk Down*, on the U.S. Army Ranger debacle in Somalia that so much shaped perception within the U.S. military about the ability and utility of the U.S. military to "micro"-intervene in a law enforcement capacity among a hostile civilian population. In a different way, Gary Solis' solidly empirical research comparing the harsh sentences for atrocities handed out by military court martials to U.S. soldiers in Vietnam to the sentences to which they were later reduced by civilian courts of appeal, goes to the question of whether a military, such as the U.S. military, is capable of policing its own behavior in the world; it obviously has significance for whether the U.S. ought to participate in the nascent International Criminal Court. Finally, John Ryle's discussion about the nature of "complex humanitarian emergencies," a somewhat euphemistic reference to conflicts—including the slaughters in Rwanda and Burundi, the endemic fighting in the southern Sudan, and so on—reminds us of the kinds of "surface" conditions that the U.S. military, in what some would regard as a glorious and others as a dubious effort to go forth and do good in the world, might face in such places.

The second category of writings goes to the question of the U.S. military in relation to U.S. domestic society and, significantly, how (indeed, "whether") it remains prepared as a military to "fight," while still maintaining the character that U.S. democratic domestic society requires of it. Obviously the nature of that "character" is a hotly contested issue of the culture wars, a topic which these articles address head on. Michael Spak takes on the question of sexual orientation and the military, offering a legal and social dissection of the "don't ask, don't tell" policy that still governs the military regarding homosexual matters. Julie Laskaris, a professor of classics, analyzes the nature of Athenian and Spartan homoerotic relationships through the lens of the "eros" of Achilles, with an eye on the larger question of homoerotic bonding among soldiers generally, including in contemporary armies, as part of the much-vaunted process of "small unit bonding" that is so frequently understood to be the basis of morale within the U.S. military. Moving from the question of gays in the military to questions of gender and the U.S. military, John Corr disputes the idea that the U.S. military has, what some have argued, an inherent culture and mentality of rape. Finally, Mark Hager offers an assessment of the role and limits of liberalism within the U.S. military in a review essay of Stephanie Gutman's widely noticed book on women in the military and military preparedness entitled *The Kinder, Gentler Military*.

The broader question that all these articles dealing with the U.S. military and domestic American society address is the requirement of military preparedness, and on the other hand, the extant desire among liberals especially to use the U.S. military as a place in which authoritarian social experiments can be carried out in matters of race, sex, and sexual orientation that could not be constitutionally carried out in broader American society.
The tendency is especially noticeable among U.S. liberals, but it is not limited to them by any mean. For example, the prohibition on the sale of *Playboy* and *Penthouse* at military PXs was the work not of American feminists, but the American religious right wing, apparently eager for moral purity among America's fighting men and women. What often goes unnoted, however, is that changes in the composition of U.S. military forces that reflect various perceptions about who should fight and in what roles have the potential to alter not only military preparedness, but to change the definition of the kind of war the U.S. military is prepared to fight and the kind of enemy it is willing to take on. If a critic of women in the military, such as Stephanie Gutmann, is right—and Hager's review essay suggests that she is only partly so at best—then one concern might be that it leads to a military which naturally gravitates to push-button and aerial warfare rather than infantry war on the ground, both because, Gutmann argues, the public is not prepared to contemplate women actually in combat in that way and, she argues, women in the military are not really prepared to fight in that way either. Assuming that Gutmann is right, a military that for reasons of political correctness is unwilling to acknowledge this fact, however, is a military that will either have trouble sustaining a serious infantry war or will avoid it by gravitating to other forms of warfare which might or might not be successful as methods of winning wars. The answers that society gives to questions arising out of the culture wars have effects, potentially, even on the technology of warfare that the military seeks as it accommodates to the nature of its personnel, and that, in turn, might have an effect on the kind of fight which the military is prepared to undertake. Whether that war is the one which the United States might be obliged to undertake is, however, another question entirely, and one which will be answered by the politics, economics, and forces of the world outside the United States, not by the diktats of political correctness from within; perhaps the war we are culturally prepared to undertake will be the one we are actually forced to undertake—but perhaps not.

Moreover, the culture wars over the use and function of the military are not limited to U.S. domestic society. The contested question of the role of the U.S. military, as well as the rest of the NATO forces, is whether they exist to fight wars or to undertake other often radically different missions—war-fighting versus armed international social work, in a phrase. Most of the NATO armies have long since settled that question; starting with Canada, they exist as peacekeeping forces, not war-making ones, and even Britain and France are well on their way to world gendarmerie status. This produces a sharp conceptual divide over the perception of the use of force between those states for which war is essentially an altruistic act of peacekeeping. For example, it is simply inconceivable that Britain, France, Canada, Norway, or the Netherlands would have to fight a war in which its national survival or its national territory or even a vital national interest were at stake—and those states for whom fighting and winning a war is both entirely conceivable, as is, perhaps more importantly to the conception of one's
military, the possibility of losing. These latter include Russia, China, Taiwan, the Koreas, India, Pakistan, Israel, the Arab Middle East, and, of course, the United States. The difference, of course, is that the United States as a war-making, as distinguished from peacekeeping, state acts not only for its own interests, but in order that the rest of the Western empire of industrialized democracies can go about their modest gendarmerie duties, cheerfully continuing to reduce their commitments to NATO as a war-making institution so as to leave the U.S. holding the security bag, cheerfully continuing to reduce their defense budget burdens in favor of propping up their welfare states, and then, however, lecturing the U.S. on its various supposed moral failings in declining to sign on to treaties aimed principally at constraining their benefactor's ability to make war.

In effect, these aspects of the international culture wars reflect a deeper concern as to the nature of the international world. War-making versus peacekeeping, winning wars or engaging in armed international social work—the question is ultimately one of whether the world is conceived as a place of competing states and competing state interests as well as competing ideals, or instead a world that is gradually coming together over the fundamental nature of those ideals, so that those who depart from those norms are no longer one's competitors or perhaps even one's enemies, but instead deviants from the international norm. Realists of a certain kind—represented here by Bolton—believe that the latter is dangerously utopian; it is unfair, however, to characterize such realists as simply devoid of ideals; on the contrary, they typically do believe that ideals and interests must engage together, but that unchastened, strident idealism is, paradoxically, much more likely to unleash the dogs of bitter conflict than a constrained realism. Idealists of a certain one-world kind, including most of the international lawyers' community, support the former concept and hope to see an evolution toward one world, in which the use of force is the exercise of a police function over miscreants. If the position of the realists is an ancient one, reaching back to the Melian generals of ancient Greece, the idealist one is equally ancient and, indeed, millenarian. It is, after all, precisely what the writer of the book of Isaiah of the Hebrew bible looked forward to see, a world in which people "shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up sword against nation, neither shall they learn war any more." What goes often unnoticed in that remarkable passage is the condition which the prophet lays down as the condition for this happy state of affairs:

And it shall come to pass in the last days, that the mountain of the Lord's house shall be established in the top of the mountains and shall be exalted above the hills; and all nations shall flow unto it. And many people shall go and say, Come ye, and let us go up to the mountain of the Lord, to the house of the God of Jacob; and he will teach us of his ways,

1 Isaiah 2:4 (King James Version).
and we will walk in his paths: for out of Zion shall go forth the law, and the word of the Lord from Jerusalem. And he shall judge among the nations and rebuke many people.$^2$

The condition for world peace for the prophet Isaiah—whose words are inscribed at the United Nations headquarters in New York—is the millenarian one of a unified world, with one law giver and one law. For the idealist, it is a dream achievable in ordinary time, and is the natural progression of human civilization, albeit with many lapses backwards. For the realist, it is a dream more likely achievable no earlier than when the Lord is come.

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$^2$*Id.*