The Role of Reciprocity in International Humanitarian Law Training: Examples from Historical and Contemporary US Practice

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While scholars assert that reciprocity is a force that influences international humanitarian law, the literature has yet to include a detailed analysis of its role in military training. This presents two limitations. First, a substantial quantity of primary source material pertaining to state practice goes underutilized. Second, the methods by which international humanitarian law are promulgated and disseminated to soldiers during training are overlooked. Thus, a potentially important factor in adherence remains under-examined. This article analyzes historical and contemporary military training material including manuals, pamphlets, circulars, and films. Research results suggest that reciprocity impacts international humanitarian law training in varied, nuanced, and dynamic ways. In particular, an emphasis on reciprocity remains a consistent message in post–Vietnam War training. Furthermore, positive reciprocity in the form of a golden rule rationale is often used to justify adherence and remains prevalent in post-9/11 training material.¹

Introduction

The laws governing war are a subset of public international law that broadly encompasses the legal justification to go to war (jus ad bellum) and the legal limitations during armed conflict (jus in bello). Historically,

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Jus in bello has been further divided into two categories: Hague Law, which is concerned primarily with the conduct of hostilities, including methods and means of warfare, and Geneva Law, which focuses on the protection of armed conflict victims, including civilians and prisoners of war (POW). This article focuses primarily on the latter body of law. Many of the core legal principles of international humanitarian law (IHL) are found in the 1949 Geneva Conventions. Since its ratification in 1955, the United States has been required to disseminate the treaty to military personnel. This article examines IHL dissemination in the form of official military training material from the perspective of reciprocity.

Despite the post-9/11 relevance of IHL to US foreign policy, the role of reciprocity in IHL military training has remained under-examined. The goal of this article is to provide the first systematic examination of reciprocity in post–World War II United States IHL training material. To accomplish this, I have analyzed numerous post–World War II field manuals (FM), army pamphlets (AP), army regulations (AR), training circulars (TC), and training films (TF) (see Appendix for a chronological listing of this material). All material analyzed was either created or approved by the US military for use in training and denotes official policy. As primary sources, training materials have the unique benefit of capturing and illustrating changes in what the military wishes to emphasize to soldiers over time.

**Reciprocity**

Reciprocity is considered a foundational principle that has influenced IHL and international law, in general. For example, Watts (2009) thoroughly traced the development and role of reciprocity in both customary and treaty law relating to IHL. Furthermore, histories of IHL indicate that reciprocity has played both an official and an unofficial role in both adherence and violations of IHL (Best 1997, 420–421). Thus, reciprocity has both positive and negative implications. This is implied in the term’s Latin root, reciprocus, which means “moving backward and forward.” Narotzky and Moreno refer to this as the beneficent and maleficent tension that exists within reciprocity (2002, 282) or, what Simma (1984) identifies as the Janus-faced nature of reciprocity. Addressing the Janus-faced positive/negative impact of reciprocity on IHL, Provost states, “Its positive side inspires moderation and compliance while its negative side limits application and allows for the reverberation of violations” (2002, 236–237).
This article considers positive and negative reciprocity from the specific perspective of IHL training, where the overriding purpose is adherence to the 1949 Geneva Conventions. From this perspective, positive reciprocity broadly implies that adhering to IHL may influence adversaries to do likewise. Closely related to this is the golden rule rationale of “do unto others as you would have them do unto you”—or, more particularly, “treat the enemy as you would like to be treated.” Negative reciprocity, on the other hand, invokes the message that violations of IHL beget further violations. This may involve reminders that the enemy holds US prisoners and that one’s violation will likely result in enemy violations. Alternatives to the reciprocity message include calls for adherence based on military honor, individual moral virtue, and universal humanitarian standards. Furthermore, utilitarian reasoning for adherence also factors into the training material, including the need to gather reliable intelligence as well as the threat of punishment under the Uniform Code of Military Justice (UCMJ) for violations.

There is disagreement in the IHL literature as to whether reciprocity is a strictly legal concept or a more expansive moral and social concept. I assume the latter position and consider reciprocity as conceptually complex, having legal, moral and social connotations. From a training perspective, reciprocity has inherent appeal because it echoes commonly held moral precepts reinforced in childhood. For example, Kohlberg (1981) includes reciprocity as an early stage in childhood moral development, arguing that reciprocity is a necessary stage in the transition out of egocentrism. Furthermore, reciprocity in the form of the golden rule is a common feature found in the three major monotheistic religions (see Wattles 1996). It has also been viewed as a key feature in social development. For example, in his seminal work on cross-cultural anthropology, Malinowski (1922) argued that reciprocity is an instrumental element in both gift exchange and unsociable behavior in the development of all societies, primitive to modern. Anthropologist Douglas Fry contends that reciprocity constitutes “a central feature” and a “foundation stone” of morality and that, across cultures and religions, “reciprocity is a key element of human moral thinking” (2008, 399, 416).

Analysis and Scope

However, a common shortcoming in the scholarly literature regarding IHL is that an overwhelming emphasis is placed on its strict legal analysis. In the context of training, this type of approach ensures that
the content contained in training material conforms to the legal rules found in treaties. However, this type of analysis presents serious limitations. As Reisman and Leitzau argue, “[I]t is not enough to develop a mechanical checklist to verify that certain items are in the manual. How they are translated to the pertinent vernacular and with what nuance and shading are also important” (1991, 5–6). In contrast to most scholarly literature on IHL, the present study does not engage in a strict rule-based analysis but, rather, emphasizes the non-legal messages and the context of the training material. This analysis is organized sequentially according to training material release date with a reference to subsequent revisions when relevant.

The scope of this study begins after the Korean War (June 25, 1950–July 27, 1953). US ratification of the Geneva Conventions in 1955 meant that manuals and training material had to be revised to reflect treaty obligations, which required dissemination. The first significant military manual to emerge following the Korean War was the Department of Defense Pamphlet 8-1 (DOD PAM 8-1), The U.S. Fighting Man’s Code (1955). The manual dealt primarily with the problems that US soldiers faced in Korea while fighting a Communist enemy bent on indoctrinating prisoners and using them for propaganda purposes and emphasized the importance of evading capture and avoiding collaboration. The pamphlet also went to great lengths to demonstrate that misconduct of US POWs in Korea (including accusations of treason) was largely a misconception.

The most important and extensive collection of IHL during this time was FM 27-10, The Law of Land Warfare (1956). Revised in 1976 to reflect US ratification of the 1925 Geneva Protocol, FM 27-10 was, until the recent publication of the Law of War Manual (June 2015, discussed below), the most extensive military publication of IHL material. The stated purpose of FM 27-10 was to provide “authoritative guidance to military personnel on the customary and treaty law applicable to the conduct of warfare” (1956, 3). The content of FM 27-10 was primarily a dissemination of treaty requirements rather than a training regime. For example, over one hundred pages of the 193-page manual are dedicated to disseminating, almost verbatim, the Geneva Convention III’s requirements regarding the treatment of prisoners of war. Furthermore, it is hard to ascertain the target audience of FM 27-10. Composed in a style that utilized technical legal terminology, it is questionable whether this manual was produced with the combat soldier in mind. An extensive review conducted by the Department of Defense in 1972, the Doctrine
The Role of Reciprocity in International Humanitarian Law Training (US POW Study), was highly critical of FM 27-10, referring to its text as “stilted legal jargon . . . [that] provides a handicap for most individuals” (Volume II, Part I, 127). The US POW Study further criticized FM 27-10 for being overly legal: “The text is primarily legal in its approach and not written in layman’s terms. It deals with the obligations and privileges of the PW [prisoner of war] in a manner which is difficult for the combat soldier to comprehend” (Volume II, Part I, 77).

In April 1958 the Department of the Army published Pamphlet 20-151, Lectures of the Geneva Convention of 1949, to assist officers in teaching IHL. Material in this pamphlet is presented in a less complex manner than in FM 27-10, with legal terminology largely omitted. A prominent theme in the condensed, 24-page description of the four Geneva Conventions of 1949 is each soldier’s responsibility to follow the Geneva Conventions. It is interesting to note that reciprocity (positive or negative) is not included as a rationale for adhering to the Conventions as it is in subsequent training material. For example, in the introduction to Geneva Convention III (prisoners of war) the rationale advocating adherence is as follows:

During hostilities, any soldier may become a prisoner of war and every soldier should have prior knowledge of his rights under the Convention; he should also know exactly what rules and regulations he is required to follow during his imprisonment by the enemy. Similarly, when our armed forces capture enemy personnel, we, as soldiers, must know the standards of treatment to which they are entitled if we are to abide by the terms of the Convention and thus uphold the dignity and honor of our country (1958, 2–3, emphasis in original).

Note that the concepts of dignity and honor of nation are offered to promote adherence, rather than calls for positive reciprocity restraint (treat the enemy as you would like to be treated) or warnings against negative reciprocity (mistreatment may lead to abuse of captured US POWs).

While calling for US troop adherence, the possibility that the enemy may refuse to honor the Geneva Conventions of 1949 is clearly acknowledged in the concluding paragraph of the lecture on Geneva Convention III:

The United States is bound by these treaties, and the Convention provisions are therefore law. Accordingly, all military personnel are legally required to conduct themselves in conformity with the rules laid down in the Conventions with respect to the treatment of prisoners of war, visitors, etc. There is, of course, no assurance that
in any war in which the United States may become involved in the future, the enemy will similarly implement the treaty provisions (1958, 16).

The absence of reciprocal consideration conforms with other training material from this period including the Department of Defense (DOD) sponsored film: *The Code: The U.S. Fighting Man’s Code of Conduct* (1959, AFIF 90). This is also consistent with Parks’ assessment that IHL training prior to Vietnam “placed more emphasis on the rights of an American soldier when captured than on his or her obligation toward others” (2002, 984).

*Vietnam 1964–1969*

In 1964, an update to an earlier manual entitled *Enemy Prisoners of War and Civilian Internees* (1952, FM 19-40) was published. Intended for military police, officers, and enlisted men who come into contact with prisoners of war and civilian internees, the 1964 revision contained a more detailed dissemination of the relevant Geneva Conventions than the previous edition and included a more specific list of objectives. It also established a call for positive reciprocity not found in the 1952 edition. Found verbatim in the subsequent 1967 revision, the manual’s stated objectives were as follows: “a) Acquisition of maximum intelligence information within restrictions imposed by the law of land warfare. b) Prevention of escape and liberation, c) By example, promotion of proper treatment of own personnel captured by the enemy. d) Weakening the will of the enemy to resist capture. e) Maximum use of PW’s [prisoners of war] and civilian internees as a source of labor” (1964, 2, emphasis added). As the analysis below confirms, this reciprocity message became standard in subsequent training material and, in some instances, became the primary emphasis.

In July 1964, the US government announced that its military contingent in South Vietnam would increase from 5,000 to more than 21,000. As the US combat involvement expanded in Vietnam, a large number of training materials, including films, were produced to prepare soldiers for, among other things, counterinsurgency warfare. Like many of the training manuals analyzed in this article, early training films often consisted of a straightforward reading of the IHL treaty rules, with the addition of visual aids. Furthermore, the films often contained a political component. For example, in training films produced during the latter part of the Vietnam War, it is not clear whether the films’ purpose was to provide military training or to convince others, including
the International Committee of the Red Cross (ICRC), of the United States’ strict observance to IHL (e.g., Vietnam Training Report 29, 1969, discussed below).

In 1965, the US Army released the training film (TF), *Geneva Conventions and Counterinsurgency* (TF 27 1965). Although the film addressed internal conflicts occurring globally (Laos, South America, Cyprus, and Congo), its primary reference was Vietnam. The film's introduction sought to answer the question, “What is the legal status of prisoners who have been fighting their fellow citizens within the borders of their own country?” (TF 27 1965, Part I, 1:15). The stated response is Common Article 3 of the Geneva Conventions (conflicts not of an international character) and includes a verbatim reading of Article 3, in its entirety, with stock footage from numerous conflicts shown to highlight specific provisions (TF 27 1965, Part I, 3:40–6:40).

Further, it is important to note that reciprocity is implied throughout *Geneva Conventions and Counterinsurgency* (TF 27 1965). For example, in a scene depicting US military advisers training South Vietnamese Army personnel in first aid, the following commentary is included:

> Encourage others to provide adequate first aid and medical care for their prisoners. Not just because you are obligated to do so, but also because it is possible that the insurgents may be influenced to follow the same example (TF 27 1965, Part I, 7:59).

Negative reciprocity—that mistreatment of the enemy may result in the mistreatment of our captive POWs—is not included, arguably, because few US soldiers were held captive during the film's production. A form of negative reciprocity is implied, however, during discussion of IHL violations:

> Any type of mistreatment, real or imagined, gives the insurgent a strong propaganda weapon . . . affording the insurgents another excuse for more and worse atrocities. Brutality brings on more brutality (TF 27 1965, Part II, 0:55).

In addition to this suggestion of reciprocity, emphasis is placed on the humane treatment of insurgents who may surrender and possibly switch allegiance to the government. The film further stresses that insurgents are responsible for following the Geneva Conventions as well and that insurgent atrocities can lead to prosecution and punishment. Not surprisingly, there are strong political overtones in this and other training films. For example, in one scene the enemy is described as one who “respects no rights and obeys no rules” and who advances a “technique of terror and enslavement” (TF 27 1965, Part II).
In September 1967, the US Military Assistance Command Vietnam (MACV) issued *The Enemy in Your Hands*. This three-by-five inch card contained basic Geneva Conventions requirements and was issued to all US troops arriving in Vietnam (Prugh 1975, 75). The card, containing five rules, was also produced in Vietnamese and distributed to the Army of the Republic of Vietnam (ARVN). It instructed troops to handle those captured:

Firmly, promptly, but humanely . . . he must not be tortured killed, mutilated, or degraded, even if he refuses to talk (Rule 1). . . . Mistreatment of any captive is a criminal offense. Every soldier is personally responsible for the enemy in his hands. It is both dishonorable and foolish to mistreat a captive. . . . Not even a beaten enemy will surrender if he knows his captors will torture or kill him. He will resist and make his capture more costly. Fair treatment of captives encourages the enemy to surrender (Rule 3). . . . Treat the sick and wounded captive as best you can. The captive saved may be an intelligence source. In any case he is a human being and must be treated like one. The soldier who ignores the sick and wounded degrades his uniform (Rule 4). . . . All persons in your hands, whether suspects, civilians, or combat captives, must be protected against violence, insults, curiosity, and reprisals of any kind (Rule 5).

The mandate that US soldiers treat enemy captives in accordance with the Geneva Conventions, as depicted in *The Enemy in Your Hands*, was based on a composite rationale of humanity, utility, honor, and the threat of punishment. Significantly, it was not tied to reciprocity (either positive or negative).

In July 1967, the army released an updated version of FM 30-15 (renamed *Intelligence Interrogations*). The chapter entitled “Tactical Interrogation Operations” concludes a discussion on the Geneva Conventions with the following reciprocity message: “Observance of the Geneva Conventions by the interrogator is not only mandatory, but advantageous, because there is a chance that US personnel, when captured, will receive better treatment, and enemy personnel will be more likely to surrender when it becomes known that US treatment of PW is humane and just” (FM 30-15 1967, 35–36). This message is also repeated in the 1969 edition of FM 30-15 (1969, 3–1). In addition to the reciprocity message, a warning is included that the use of physical coercion is illegal, results in inaccurate information, and that humane treatment may render a prisoner more susceptible to interrogation. The 1973 edition of FM 30-15 repeats verbatim the reciprocity message found in the previous editions. However, an additional message, emphasizing that detainees who violate the law or commit an offense will
be “afforded the same judicial rights as those guaranteed US military personnel,” is included (1973, 32).

In 1969, the US Army released the two-part film Vietnam Training Report (VTR), Detainee Operations Vietnam (VTR 29 1969). Part I of the film is concerned with the initial capture and transfer of detainees, while Part II addresses the Republic of Vietnam’s administration of POWs. Filmed in 1968, VTR had a higher production quality than previous training films and contained little stock footage. Though the stated purpose of VTR 29 was the training of the Military Police Corps, the film appears to have been primarily intended to confirm the US’s adherence to the 1949 Geneva Conventions.

The film’s propaganda value was confirmed in a classified memorandum from the State Department to the Department of Defense that requested training material in preparation for the US’s participation in the twenty-first International Committee of the Red Cross (ICRC) Conference (1969) in Istanbul. The memorandum, which contains the subject heading, “State Department Request for Information Concerning Implementation and Dissemination of the Geneva Conventions of 1949,” includes a specific request that Detainee Operations Vietnam be shown at the twenty-first ICRC Conference to “assure that a valid case of USG [United States Government] compliance is presented at Istanbul.”

Part I of the film, “Capture point to point of transfer,” deals primarily with the role of the US soldier in the initial capture and classification of detainees. Throughout, strict adherence to the Geneva Conventions is emphasized, including maintaining detailed records of detainee classification and processing, keeping receipts for personal possessions confiscated, providing adequate medical care and feeding (in accordance with the Geneva Convention requirement that the native eating habits of detainees be honored), and facilitating the prompt evacuation of detainees from the combat area. Particular emphasis is placed on allowing regular ICRC visits to prisoners. According to the commentator, the ICRC “makes regular visits . . . without restriction,” adding the caveat that it does so “in spite of the fact that the enemy does not permit such activity” (VTR 1969, 28:35).

Because Part I of the film is focused on the IHL practices of US soldiers, it is the primary source of reciprocity analysis. Reciprocity is emphasized early in the film and focuses on the critical period of initial capture:

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2. 18 July 1969, National Archives and Records Administration, College Park, MD, RG 389, P2, Lot 511-02, Box 28.
The best reason for treating detainees with humanity is that it is the right thing to do. But there are other, more down to earth reasons for being fair as well as firm: First, decent treatment of detainees imposes a demand on the enemy that US and allied prisoners be treated the same way. Second, good treatment produces better intelligence. Third . . . mistreatment is a criminal act against both military law and international law (VTR 1969, 5:55).

In this example a call for positive reciprocity is presented as the initial consideration followed by more practical reminders concerning intelligence gathering and threats of punishment. The following caveat is included shortly thereafter:

It is said in Vietnam that the clouds have eyes and the wind has ears. The enemy knows how detainees are treated. Any mistreatment is an invitation to the mistreatment of U.S. or allied soldiers in enemy hands (VTR 1969, 7:15).

This clear caution against negative reciprocity serves as a reminder that the ill-treatment of a detainee can result in the mistreatment of a fellow soldier in enemy hands.

As mentioned earlier, Detainee Operations Vietnam emphasizes that the US is following its international obligation under the Geneva Conventions. Part II of the film, “ARVN Operations of PW Camps,” continues this theme, focusing on the Republic of Vietnam’s compliance with the “terms and spirit” of the Geneva Conventions and on regular ICRC visits to prisoner of war camps. Arguably, this latter point is emphasized because of the contentious relationship that existed between the ICRC and the Republic of Vietnam throughout the conflict. Unlike Part I, however, Part II of Detainee Operations Vietnam does not include references to reciprocity.

**Post My Lai**

In November 1969, the My Lai massacre of 16 March 1968 became public knowledge, appearing on the covers of both *Time* and *Newsweek*. The same month, the Peers Inquiry was established to investigate the events that occurred at My Lai as well as the subsequent cover up. The findings are worth examining because they directly led to changes in US IHL training. Published on March 17, 1970, the report of the Peers Inquiry concluded that the Eleventh Infantry Brigade (of which Charlie Company, the perpetrator of My Lai, was part) underwent an “accelerated training program” prior to deployment. According to the inquiry, “little emphasis was placed on the treatment of civilians and refugees or
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The responsibility for reporting war crimes or atrocities” (Peers Inquiry 1970, 4–8). The result was a “deficiency” and “lack of instruction on the Geneva Conventions” (Peers Inquiry 1970, 4–3). In fact, according to the investigation, the instructors themselves conveyed information regarding IHL in a derogatory manner during training:

Herbert Carter was a “tunnel rat” with Charlie Company. Along with many other soldiers, Carter could barely remember any training in the rules of warfare, but he did remember that the instructor treated the lesson in a joking manner, as if the entire idea of rules in war was absurd:

Q: Do you recall getting any instructions on how to handle prisoners of war during this time?
A: We had a little instruction on that.
Q: Do you recall what they told you?
A: They told us that if we get a prisoner to hold them until someone, intelligence, was actually supposed to interrogate them. The instructor sort of laughed about this.
Q: Why did they, or he, laugh about this? Do you know?
A: It was just the way they said it, like you do what you want to do with them actually (Peers Inquiry 1970, vol. 2 bk. 24, 3).


According to Elliot, the My Lai massacre provided the “catalyst for a complete review of Army training in the law of war” (1983, 9). As a result of the investigation into the massacre, in May 1970, Army Regulation (AR) 350-216, Training Update on The Geneva Conventions of 1949 and Hague Convention No. IV of 1907, was issued. The Regulation made it mandatory for soldiers to receive two hours of instruction during basic training, and it required field commanders to “insure that all members of his command receive at least two hours’ formal instruction . . . each calendar year” (AR 350-216 1970, 2). Furthermore, AR 350-216 centralized the preparation of training material on The Judge Advocate General (TJAG).

According to the new regulations, the purpose of training was to deter violence and the inhumane treatment of those in military custody. Four consequences were also listed as a result of IHL violations: the discrediting of the United States’ reputation, possible punishment under the Uniform Code of Military Justice, the alienation of potential intelligence
sources, and a reduced chance of enemy surrender. The final point states that violations increase “the likelihood of reciprocal enemy actions in kind against captured and detained U.S. personnel” (AR 350-216 1970, 2). Thus, the themes of threatened punishment, utilitarian considerations, and reciprocity were emphasized. Interestingly, reciprocity is often offered as the final rationale for IHL adherence, in some cases appearing as an afterthought, while in other cases being advanced as the primary given for observing the protocol.

For example, reciprocity appears as an afterthought in a two-part September 1970 MACV Command Information directive. Under the heading, “The importance of complying with the Geneva Conventions,” a systematic rationale is presented arguing for IHL compliance. The following is cited in its entirety because it demonstrates that reciprocity as a rationale for compliance was clearly a secondary consideration:

First and foremost we must show the world that we observe the humanitarian principles for which our nation stands. Second by observing international law and showing due respect for our treaty obligation we discredit our enemies who have thus far disregarded their international obligations. Third, by affording prisoners of war the best possible treatment we induce more enemy soldiers to defect and surrender. Fourth, we discredit communist propaganda which tells their soldiers they will be shot if they allow themselves to be captured by the Americans. Fifth, prisoners of war are extremely valuable sources of intelligence. A well-treated prisoner is much more likely to cooperate with his captors than one who has been mistreated. We must realize that the manner in which we treat prisoners of war will have, hopefully, a direct influence on the treatment received by our personnel who are in the hands of the enemy” (MACV Command Information No. 14-16 1970, 3, emphasis added).

As this example illustrates, reciprocity rests on a less solid foundation than other rationales.

Golden rule positive reciprocity also became common in the training material of this period. Following My Lai, one of the more innovative training tools developed was the 1971 training film, When the Enemy is My Prisoner (TF 21-4229). The Pentagon summary of the film states that it “[d]ramatizes a patrol operation, showing the right and wrong ways to handle prisoners of war; gives examples of how to handle illegal or unclear orders, and how to report criminal orders and actions.” When the Enemy is My Prisoner is unique among the training material analyzed thus far because it attempts to inject realism into scenarios that involve complex ethical decision making.

Specifically, the film involves a platoon’s reaction to an enemy ambush and focuses on the subsequent treatment of detainees. The
primary interaction in the training film occurs between two characters, PFC La Manna, the protagonist, and Platoon Sergeant Crowley. PFC La Manna objects to the execution of a disarmed, wounded surrendering enemy, refuses to carry out an order given by the Platoon Sergeant to execute civilians, and subsequently is faced with the dilemma of whether to report IHL violations to the Company Commander. In contrast, Platoon Sergeant Crowley is the battle-fatigued, retribution-seeking antagonist who recently has lost a comrade to the enemy.

This film is different from previous training material in several ways. First, the challenge of identifying the enemy—in particular, the different categories of regular versus irregular forces and active supporters versus innocent civilians—is highlighted. Second, the film depicts us soldiers violating IHL by executing wounded prisoners and civilians, including women and children. This portrayal of us soldiers committing war crimes adds shock value and stands in stark contrast to previous training films that emphasized IHL adherence. Although the film places legal weight on the proper handling of detainees, the ethical quandary that a soldier faces when reporting violations of IHL is also highlighted. In addition, the issues of revenge and retaliation are addressed in what is arguably the most graphic part of the training film. In the principle scene depicting the execution of a group of civilians, the narrator states the following while the camera slowly pans over the bodies of dead civilians:

Taking revenge upon unarmed enemy or civilian personnel is a crime under international law. Equally important is the fact that we as Americans must set high standards of humane treatment for our detainees and not lower our values by duplicating an enemy’s criminal behavior (TF 21–4229 1971, 19:51).

The message advanced in the film’s conclusion argues for IHL adherence based on humanity and positive reciprocity. Regarding the former, the penultimate scene in the film summarizes the procedures to be followed in caring for detainees:

Bear in mind that even as captives they are still human beings who retain the basic right to live, to be treated decently, to be safe from torture, mutilation, humiliation and all other degrading or violent acts (TF 21–4229 1971, 27:30).

Golden rule positive reciprocity is particularly evident in the film’s final scene. While showing a US soldier who is caring for a civilian, the narrator delivers these concluding words:
The rules and laws you are required to observe demand that you leave the killing on the battlefield against enemy hostile forces. And once the enemy has fallen into your hands that you follow the basic standards of humanity. You can’t go wrong if you make this your personal motto: Treat others as humanely as you would have them treat you (TF 21-4229 1971, 29:15).

In short, positive reciprocity is the primary message of the film.

Indeed, reciprocity, both positive and negative, can be found throughout training material that was developed in the 1970’s. The 1972 training pamphlet (PAM), *The Law of Land Warfare: A Self-Instruction Text* (PAM 27-200), is an example where several perspectives on reciprocity are emphasized. Prepared by TJAG, PAM 27-200 is an instructional booklet where IHL information is presented in the form of a short statement followed by questions with blank spaces for answers. The following are examples of statements that are reciprocity-related:

The customary law of war and the Geneva Conventions of 1949 establish rules governing treatment of noncombatants, prisoners of war, sick and wounded and other detained civilians. The general principle to keep in mind is to treat all prisoners of war, other detained persons, and civilians humanely. You naturally hope that if you are ever captured that you will be properly treated. If we mistreat prisoners, the enemy may well retaliate against captured US soldiers. Inducement to proper treatment for captured American soldiers is a primary objective to consider when handling enemy prisoners of war and civilians (PAM 27-200 1972, 6).

The above example demonstrates how negative reciprocity (retaliatory threat) and positive reciprocity (proper treatment begets proper treatment) can be combined in a single statement. In the following example, positive reciprocity in the form of the golden rule is included as a reason for the humane treatment of prisoners:

You ask, what does it mean to treat someone humanely? A good rule of thumb is that if you treat such persons as you would like to be treated if you were captured or detained, you will be treating them humanely (PAM 27-200 1972, 7).

The penultimate statement in the self-instructional text specifically refers to reciprocity:

Another reason [for following IHL] is that by adhering to the rules of war we encourage our enemies to provide reciprocal treatment. This is clearly to the advantage of the individual soldier or citizen who may fall into enemy hands (PAM 27-200 1972, 47).

Then, corresponding to the above statement, the following question is posed: “Observance of the law encourages ________ ________ from the
enemy.” The correct answer, which is found in the answer key at the back of the booklet, is “reciprocal treatment” (PAM 27-200 1972, 48–49).

In 1974, the illustrated pamphlet, Your Conduct in Combat Under the Law of War (PM 27-1), was published by the US Army Training and Doctrine Command (TRADOC). Prepared by TJAG, PM 27-1 became a cornerstone for training and was revised and reissued in 1984. Written and illustrated in a simple, concise manner, the target audience of PM 27-1 was clearly the combat soldier, and throughout the pamphlet illustrations of reciprocity abound. For example, Part II, titled “Enemy Captives & Detainees,” draws a connection between reciprocity and humane treatment in a manner similar to PAM 27-200 (1972):

The most important guide to lawful treatment of such persons is: Treat all captured or detained personnel HUMANELY. “Humanely” means: Treat such people as you would like to be treated if captured (PM 27-1 1974, 13, capitalization, italics and boldface in original).

An interesting emphasis is also placed on the agency and responsibility of the soldier towards a captured prisoner:

Once he surrenders to you, he is under your control and his safety is your responsibility until you are relieved of this job. Enemy soldiers who surrender are a source of valuable information. Moreover, other enemy soldiers may surrender if they see how well you treat captives (PM 27-1 1974, 14, emphasis in original).

The concepts of revenge and reciprocity are dealt with in detail under the heading “Treat all captives and detainees humanely”:

We all recognize that full compliance with the Geneva Conventions is not always easy for the combat soldier, especially in the heat and passion of battle. For instance, you might be extremely angry and upset because your unit has taken a lot of casualties from enemy booby traps or hit-and-run tactics. But, you must never engage in reprisals, or acts of revenge against any person, enemy or civilian, whom you capture or detain in combat (PM 27-1 1974, 15, bold in original).

“If you treat such people as you would like to be treated were you captured or detained, then you will be treating them humanely” (PM 27-1 1974, 15, italics and boldface in original).

At the bottom of the page, in larger and bold font, is the basic lesson: “Treat Captives as YOU’D Like to be Treated” (PM 27-1 1974, 15, capitalization in original). Other “lessons” found on the bottom of the pamphlet’s pages include: “Humane treatment gets results,” “Help the wounded and help your conscience,” and “Your family and community expect you to be a civilized soldier” (PM 27-1 1974, 16, 17, 21).
The 1984 revision of PM 27-1 (PM 27-2) contains much of the same wording, emphasis and illustrations of the 1974 edition. While minor changes were made, primarily in formatting, they do not impact the pamphlet’s emphasis on reciprocity and, in some cases, reciprocity is even further emphasized. For example, the 1974 edition states the following under the heading “Civilians must be moved humanely and for proper cause:” “Treat civilian refugees as you would want to be treated under the circumstances” (PM 27-1, 22). The 1984 revision magnifies this message by asking the soldier to consider his or her own family: “Treat civilian refugees as you would want your family to be treated under similar circumstances” (PM 27-2 1984, 22).

The 1976 revision of 19-40, renamed *Enemy Prisoners of War, Civilian Internees and Detained Persons*, also places greater emphasis on the humane treatment of the enemy than did the earlier 1952 and 1964 editions. In addition to summarizing the Four Geneva Conventions, separate sections entitled “General Protection” and “United States Policy” further emphasize humane treatment. Significantly, the latter section, printed in italicized font, includes the threat of prosecution for IHL violations: “The administration of inhumane treatment, even if committed under stress of combat and with deep provocation, is a serious and punishable violation under national law, international law, and the Uniform Code of Military Justice” (1976, 1–6). This message was further emphasized in the “PW Treatment Card” that provided instructions for handling prisoners of war. The card also included the message that mistreatment prolongs enemy resistance and that a soldier who ignores sick or wounded captives “degrades his uniform” (1976, 1–6). In 2001, the revised FM 19-40 (renamed 3-19.40) contains content similar to that found in the 1976 edition. However, the 2001 revision was reorganized and expanded to 235 pages, 100 pages longer than the 1976 edition. As a result, the 2001 edition appears more like a legal desk manual than a concise training document.

The 21-minute training film, *The Law of Armed Conflict* (TS 748), produced by the US Air Force and released in 1978 (narrated by Howard K. Smith, Office of the Judge Advocate General International Law Division) provided a summary of IHL concepts. The following reciprocity message was spoken during a scene depicting American prisoners of war being massacred by their German captors near Malmedy, Belgium (taken directly from the 1965 film *Battle of the Bulge*):

> There are many reasons for nations to comply with the law of armed conflict. One of them is reciprocity. If one country indiscriminately kills the prisoners of war
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it captures or civilians, its opponent may be inclined to retaliate in kind or worse (TS 748, 1978, 18:44).

The film’s conclusion also includes a reciprocity message:

It would be naïve to presume that violations will not occur in the future. Nevertheless adhering carefully to the law of armed conflict serves our own interests, it encourages reciprocal compliance and it highlights to the world any enemy violations. It’s important that you are familiar with the law of armed conflict: our national reputation and your own well-being are at stake” (TS 748, 1978, 20:24).

In addition to reciprocity, adherence messages in the film include military honor, increasing enemy resolve and human rights.

_Post Gulf War_

The latter part of the twentieth century, specifically after the 1990–1991 Gulf War, witnessed the continued use of the reciprocity rationale in IHL training. This is seen in the expanded edition of the Army’s primary interrogation training manual. Released in September 1992, _Intelligence Interrogation_ (FM 34-52) is unique in three ways. First, it provides specific examples of prohibited methods of interrogation that constitute both physical and mental torture. Examples of the former include electric shock, forcing an individual to stand, sit, or kneel in abnormal positions, food deprivation and any form of beating (1992 FM 34-52, 1–8). Examples of mental torture include mock executions, abnormal sleep deprivation and chemically induced psychosis (1992 FM 34-52, 1–8). FM 34-52 is also unique because, immediately following the section on torture and coercion, it includes a list of ten corresponding prosecutable violations of the UCMJ including accessory, attempt, conspiracy, murder, manslaughter, maiming, assault and homicide. By providing examples of prohibited behavior and then immediately following through with the prosecutable offenses, the dual message of adherence and deterrence is reinforced.

A third distinguishing feature of FM 34-52 is the inclusion of expanded reciprocity messages. For example, FM 34-52 includes the following negative reciprocity reasoning prohibiting the use of torture against detainees:

Revelation of use of torture by US personnel will bring discredit upon the US and its armed forces while undermining domestic and international support for the war effort. It also may place US and allied personnel in enemy hands at a greater
risk of abuse by their captors. Conversely, knowing the enemy has abused US and allied PWs does not justify using methods of interrogations specifically prohibited (FM 34-52 1992, 1–8).

Following the listed UCMJ offenses detailed above, the manual then provides the following test in the event that questions arise regarding whether an interrogation technique is legitimate. It is worth citing in full in order to highlight changes that subsequently occurred in the post-9/11 revised edition of *Intelligence Interrogation*:

In attempting to determine if a contemplated approach or technique would be considered unlawful, consider these two tests:

- Given all the surrounding facts and circumstances, would a reasonable person in the place of the person being interrogated believe that his rights, as guaranteed under both international and US law, are being violated or withheld, or will be violated or withheld if he fails to cooperate.
- If your contemplated actions were perpetrated by the enemy against US PWs, you would believe such actions violate international or US law.

If you answer yes to either of these tests, do not engage in the contemplated action (FM 34-52 1992, 1–9).

Both tests contain a certain amount of reciprocity. The first has the interrogator consider whether a hypothetical “reasonable person” would find that the law (both domestic and international) was being violated. This is arguably problematic because if forces the military interrogator to contemplate the vague standard of reasonableness in a hypothetical situation. For example, from the perspective of the interrogator, what seems reasonable in a combat theatre situation where an operational need for intelligence may exist may not be the same as what is reasonable in a classroom training environment. Therefore, the inherent ambiguity in the term “reasonable” presents a serious shortcoming. By contrast, the second test contains a more simplified and straightforward reciprocity message because it requires the interrogator to consider a fellow soldier, something more tangible than a hypothetical reasonableness test.

Training materials produced by the US Marines during this time also contain reciprocity rationales. For example, the 1993 US Marine training film, *Law of War* (TF 11-3635), contains elements of both positive and negative reciprocity relating to the treatment of POWs and the wounded:

By treating prisoners, the sick and the wounded humanely, we increase the chances that our fellow marines who have fallen into enemy hands will be treated in the same manner (TF 11-3635 1993, 04:10).
Wounded enemy soldiers in your control are to receive the same degree of care as friendly sick and wounded. . . . [K]eep in mind that some of our own sick and wounded might be under enemies (sic) care (TF 11-3635 1993, 07:18).

The 1998 Marine Corps Reference Publication (MCRP), *Enemy Prisoners of War and Civilian Internees* (MCRP 4-11.8C), which was prepared specifically for the training of military police, also contains the following positive reciprocity/golden rule rationale:

As a general rule, all individuals in your custody should receive humane treatment. In other words, treat them as well as you would want to be treated if you were captured by an enemy force (MCRP 4-11.8C 1998, 5).

As the examples above show, reciprocity featured prominently in post–Gulf War, pre–9/11, IHL training.

At the close of the Gulf War (1990–1991), President George H. W. Bush declared, “By God, we’ve kicked the Vietnam syndrome once and for all” (Dowd 1991). Though such a clear historical delineation (on social and political levels) is artificial, it demonstrates the dramatically different perceptions regarding IHL compliance following these two conflicts. This view was reinforced by a member of the ICRC, who commented a month after President Bush’s statement (April 1991), “The treatment of Iraqi prisoners of war by US forces was the best compliance with the Geneva Convention by any nation in any conflict in history” (Department of Defense 1992, 577).

**Post 9/11**

If the Gulf War was a high water mark in United States IHL adherence, post–9/11 IHL policy arguably reached its lowest point since My Lai. The following section highlights the continued use of the reciprocity rationale and the updates that were made to training manuals as a result of post–9/11 IHL controversies involving the torture of suspected terrorist detainees. The September 2006 release of FM 2-22.3, *Human Intelligence Collector Operations*, reflects the impact of the Abu Ghraib prison scandal, which came to light in April 2004, and the Detainee Treatment Act of 2005. The manual explicitly prohibits waterboarding, using military working dogs, performing mock executions, and placing hoods or sacks over the heads of detainees (2006, 5–21). After listing forbidden interrogation methods, the section updates the aforementioned 1992 *Intelligence Interrogation* (FM 34-52) test. This section is
worth citing in full because it highlights the continued relevance of reciprocity in post-9/11 IHL training:

While using legitimate interrogation techniques, certain applications of approaches and techniques may approach the line between permissible actions and prohibited actions. It may often be difficult to determine where permissible actions end and prohibited actions begin. In attempting to determine if a contemplated approach or technique should be considered prohibited, and therefore should not be included in an interrogation plan, consider these two tests before submitting the plan for approval:

- If the proposed approach technique were used by the enemy against one of your fellow soldiers, would you believe the soldier had been abused?
- Could your conduct in carrying out the proposed technique violate a law or regulation? Keep in mind that even if you personally would not consider your actions to constitute abuse, the law may be more restrictive.

If you answer yes to either of these tests, the contemplated action should not be conducted (FM 34-52 2006, 5-21–5-22).

The first question entails decision making based on a positive reciprocity/golden rule message, while the second question forces the soldier to contemplate a legal interpretation. Because the first question posed to the interrogator is more intuitive, less contemplation and recall time is required for decision making. The second test, on the other hand, demands a legal assessment of law and regulation, arguably requiring greater reflection on the part of the interrogator. As of December 2016, FM 2-22.3, Human Intelligence Collector Operations, remains the primary military training manual on interrogation.

In 2007, The Judge Advocate General’s Legal Center and School published the Operational Law Handbook. At over 500 pages in length, the intended audience is junior and mid-level Judge Advocates practicing operational law. Though most of the handbook contains legal information specific to the training of military lawyers, there is a condensed, two-page appendix entitled “Troop Information” that provides a simplified rationale for soldiers to comply with the law “even if the enemy does not” (2007, 39). The third reason, after compliance ends the conflict more quickly and enhances public support, is the following reciprocity message: “Compliance encourages reciprocal conduct by enemy soldiers. Mistreatment of EPWs [enemy prisoners of war] by our Soldiers may encourage enemy soldiers to retaliate and treat captured U.S. Soldiers in the same manner” (2007, 39). This message is repeated in its entirety in subsequent annual revisions (including in 2015, the most recent edition available).
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Discussion

This article has analyzed reciprocity through the very specific lens of IHL training, where the emphasis is on adherence. However, as a legal concept, reciprocity is a more complex variable when applied to the laws of war in their entirety (both Hague and Geneva Law). This expansive view of reciprocity is reflected in the June 2015 Department of Defense publication, *Law of War Manual* (updated May 2016). At over 1200 pages in length, the manual is the most extensive government-initiated analysis of the laws of war to date and took over 20 years to compile (Lederman 2015). The third chapter, “Application of the Law of War,” addresses the subject of reciprocity. The legal analysis presented in the *Law of War Manual* succeeds in depicting how the subject of reciprocity is often applied in a varied, sometimes conflicting, manner. For example, in one section, reciprocity is stated as being a requirement found in certain treaties and also a principle in laws of war enforcement that is “reflected in the concept of reprisal” (2015, 89, 90). Immediately following this section, reciprocity is discussed as a factor that may encourage compliance with the laws of war and as a principle reflected in the golden rule, particularly as it relates to the treatment of prisoners of war (2015, 91). Much of the analysis found in this article has focused on the application of reciprocity as a training message to influence soldiers to adhere to IHL. Reciprocity, however, also plays a role in justifying non-adherence, especially in the context of retaliation and reprisals. Therefore, a more complete work on reciprocity would require the inclusion of the tensions that exist between the adherence and non-adherence of reciprocity.

A theme that emerged from this analysis was the noted shift in military training that emerged as a result of public outrage and government inquiries following the My Lai massacre. The analysis of the training material utilized before and after the My Lai investigations reveals three subthemes. First, there was a marked change in training content. Prior to the My Lai inquiries, greater emphasis was placed on rule-based instruction of IHL, with training often focused on the rote study of specific legal requirements. In contrast, post My Lai military training became more creative, with an instructional model that emphasized greater use of scenario-based examples and problem-solving. Second, and closely related, the training target audience became more clearly defined after My Lai. Previously, the target audience had often been unstated. In addition, critics had noted that training material was not
written in “layman terms” and, thus, was difficult for combat soldiers to comprehend. However, after My Lai, training materials were developed specifically for use in the training of combat soldiers. In a 1977 Military Law Review article, Baxter suggested that there should be three levels of manuals: “one for the basic education of soldiers, a middle level manual for officers, and a large legal treatise for lawyers” (1977, 182). Finally, training emphasis became more focused on enforcement and punishment under the UCMJ for violations. Thus, over time, this research suggests an increased willingness on the part of the United States to apply IHL legal requirements to the military. Moreover, the reciprocity message continues to play a key part in training material content.

Contemporary military training shows several variations on the positive reciprocity message. For example, the golden rule rationale of “treat enemies as you would like to be treated” came to prominence in the 1970s and continues post-9/11. Another variation on the positive reciprocity rationale is the message that following IHL influences the enemy to do so as well. This message, which featured prominently in Vietnam-era training, has been less emphasized in post-9/11 training, arguably because conflict against non-state actors, as well as asymmetrical armed conflict, often involves a one-sided application of IHL. Variations on the negative reciprocity rationale—namely, that violations beget violations—is found in post-Vietnam War training and often invokes the implicit threat and reminder that the enemy holds US prisoners and that US violation may result in enemy retaliation. It is questionable whether this message is relevant in the context of post-9/11 conflict involving non-state actors who blatantly violate IHL. Furthermore, with fewer US service members being held as prisoners, the reminder that the enemy holds our prisoners loses relevance.

Even with these considerations, reciprocity has continued to play a role in military training post-9/11. This is confirmed in the three major post-9/11 military training publications addressing IHL issues: Human Intelligence Collector Operations (2006), Operational Law Handbook (2015) and the Law of War Manual (2015). As future IHL training based on this material is developed, positive reciprocity (in the form of the golden rule rationale) will most likely continue to be included. The ongoing relevance of the golden rule is also confirmed in US military doctrine. For example, the 2015 publication of Army Doctrinal Reference Publication 1 (ADRP 1), The Army Profession, includes the golden rule in the section describing the “moral framework for the Army Ethic” (2015, 2–3). The stated purpose of ADRP 1 is to identify the “essential characteristics
that define the Army as a profession.” Under the heading “Oaths, Creeds and Norms of Conduct,” the golden rule is defined as: “One should treat others as one would want to be treated oneself; or, one should not treat others as one would not like to be treated” (2015, B-8). Thus, the continued inclusion of the positive reciprocity golden rule rationale in IHL training is therefore compatible with the larger military ethical ethos.

References


Appendix

Training Material Examined

1945 (June) – FM 30-15 – Examination of Enemy Personnel, Repatriates, Civilians, Documents, and Material
1951 (Sept) – FM 30-15 – Examination of Personnel and Documents 1952 (Nov) – FM 19-40 – Handling Prisoners of War
1955 – DOD PAM – 8-1 – The U.S. Fighting Man’s Code
1958 – Pamphlet No. 20-151 – Lectures of the Geneva Convention
1964 (Dec) – FM 19-40 – Enemy Prisoners of War and Civilian Internees
1965 – TF 27-3616 – Film - Geneva Conventions and Counterinsurgency (15 min)
1967 (July) – FM 30-15 – Intelligence Interrogations
1967 (Sept) – The Enemy in Your Hands – (3” × 5” card of instructions issued to all troops)
1969 (March) – FM 30-15 – Intelligence Interrogation
1971 – TF 21-4229 – Film – When the Enemy is My Prisoner (30 min)
1973 (June) – FM 30-15 – Intelligence Interrogation
1974 – MF 20-5841 – Film – Enemy Prisoners of War in the RVN, Their Captivity, Internment and Release (35 min)
1974 – PM 27-1 – Your Conduct in Combat Under the Law of War
1976 – FM 19-40 – Enemy Prisoners of War, Civilian Internees, and Detailed Persons
1992 – FM 34-52 – Intelligence Interrogation
1993 – TF 11-3635 – Film – Law of War: U.S. Marine Corp (20 min)
2006 – FM 2-22.3 – Human Intelligence Collector Operations
2015 (June) – Law of War Manual, Department of Defense (Updated May 2016)
2015 (June) – Army Doctrinal Reference Publication 1, The Army Profession