

**Volume 7 / Number 2 / 2010**

---

# **GLOBAL WAR STUDIES**

---

**The Journal for the Study of Warfare  
and Weapons, 1919-1945**

The following article is from *Global War Studies* vol. 7, no. 2, 2010.

Copyright © 2010 Pacific War Study Group

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means (including photocopying) without prior written permission of the editor.

# Air Power, Ethics, and Civilian Immunity during the First World War and its Aftermath

JOEL HAYWARD

## ABSTRACT

Little has been published on the ethical and legal basis of air attacks on non-combatants during the First World War. Existing works have focused mainly on the injustice of the German Zeppelin and Gotha raids on British towns. They present British air campaigns on German towns and the formation of the Royal Air Force as a reasoned self-defensive response. This article breaks new ground as it attempts to paint a richer picture by explaining the influence of retributive passions – vengeance – on British thinking about how best to respond to the villainy of German air raids. By using unpublished primary sources to uncover the moral and legal rationale used by British decision-makers, it shows that they (as their German counterparts had) exploited ambiguities or "loopholes" in the ethical and legal prohibitions on the bombardment of non-combatants and explained away their own air attacks on civilian towns and villages as legitimate acts of reprisal. It ends by demonstrating that, far from feeling grave concerns about the inhumanity of targeting civilians and their environs, the most influential air power thinkers after the war were relatively uninterested in moral concepts of proportionality and discrimination. They saw air power's ability to punish the strong and culpable by attacking the weak and vulnerable as a way of making wars shorter and therefore less expensive.

## KEYWORDS

Airpower; First World War; Zeppelin; Gotha; Royal Air Force (RAF); civilian immunity; ethics; morality; international law; legal; law; bombing; attacks; raids; Trenchard, Air Marshal Sir Hugh; Douhet, Giulio; Mitchell, General William "Billy"

## Introduction

The Second World War serves as a grim and grotesque centerpiece among the seemingly endless wars that blighted humanity throughout history's bloodiest century: the twentieth. With excesses often attributed to and equally often excused by its claimed nature as a "total war," the Second World War remains unparalleled in the catalog of human violence. Two especially dreadful air power events within that war remind us that the warring nations either found it difficult to protect civilian populations or easy to brutalize them. Those two unglamorous events are the area bombing of civilians by the key protagonists (and done "best" by western air forces) and the atomic bombing of two Japanese civilian population centers. The devastation caused to German and Japanese civilians by air power has also been contentious ever since it occurred and controversy surrounding it has increased, not decreased.

Today's so-called "wars of choice" are very different from that great existential clash of 1939 to 1945. Superficially, aside from accidents and aberrations such as Mai Lai and Abu Ghraib, today's wars seem far more humane, clean and "precise." Discrimination, like proportionality, is held aloft by western warriors as a crucial paradigmatic quality (although not yet by all non-western nations). During NATO's 1999 air war against Yugoslavia, for instance, the Alliance waged its ostensibly humanitarian war with a highly commendable, almost obsessive desire to ensure the totally accurate placement of ordnance so as to minimize civilian deaths. The death toll of 500 Serbians during the seventy-eight days of bombing represented tremendous success at minimizing what we now euphemistically call "collateral damage."<sup>1</sup> Yet even this level of inflicted mortality, and the infrastructural and environmental harm that accompanied it, caused widespread public dissatisfaction in several NATO nations.<sup>2</sup>

Likewise, in Afghanistan, Iraq, and Lebanon more recently, air strikes that have inadvertently caused civilian deaths on a relatively small scale have resulted in such significant political consequences – flowing from the moral assumptions and expectations of our own civilian populations – that there is no longer anything to be gained, but much to be lost, by causing harm to non-combatants. While speaking to a group of senior NATO commanders after a 2009 air strike on an Afghan compound, Lieutenant General Stanley McChrystal highlighted this realization. He remarked:

---

1. According to the *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, NATO's campaign killed 495 civilians and wounded a further 820 (§ V (53)).

2. See my own articles, "Air Power and the Environment: The Ecological Implications of Modern Air Warfare." *Air Power Review*, vol. 12, no. 3 (Autumn 2009), pp. 15-41, and "NATO's War in the Balkans: A Preliminary Analysis," *New Zealand Army Journal*, no. 21 (July 1999), pp. 1-17.

Gentlemen, we need to understand the implications of what we are doing. Air power contains the seeds of our own destruction. A [Taliban] guy with a long-barrel rifle runs into a compound, and we drop a 500-pound bomb on it? Civilian casualties are not just some reality with the Washington press. They are a reality for the Afghan people. If we use airpower irresponsibly, we can lose this fight.<sup>3</sup>

McChrystal was drawing attention to the balance that must always be struck between the two seemingly contradictory imperatives that make warfighting both effective and just: the need to do legitimate military things that bring definite military advantage as well as the need to minimize harm to those people who are not morally appropriate recipients of violence. Especially since the early modern period, philosophers of war have evolved a position, now firmly codified in international humanitarian law, which makes sense of the balancing function between military and humanitarian requirements. We now know that judicious and sometimes difficult-to-achieve balance as proportionality.

This article explores these ideas using a different example from a different period; with a broad focus of the first three decades of the twentieth century. It steps back in time to the genesis of modern air power during the Great War of 1914 to 1918. Regarding this conflict, our imaginations tend to conjure up images of flimsy fighter aircraft dog-fighting above trenches or of Zeppelins dropping bombs on increasingly frantic English civilians. This article is interested primarily in the latter, and especially in the moral milieu in which the first air campaigns against cities and towns far away from war's usual habitat, the battlefield, occurred between 1914 and 1918. To create context for its central questions, the article briefly sketches the development of western moral thinking on the innocence of civilians. It then lays out the foundations of international law as it existed in 1914 to demonstrate that when a consensus on a moral position emerges, its champions push for its passage into law. The article then explains the motives, events, and consequences of the first aerial campaigns against cities, towns, and villages. It aims to address the ethics of those campaigns, not the effects (covered adequately by other scholars). It concludes with some observations on the lessons taken away from the conflict by those individuals who had the strongest influence on what occurred in subsequent decades.

Throughout the *longue durée* of recorded history, the concepts of proportionality and discrimination evolved apace with other humanitarian

---

3. Dexter Filkins, "Stanley McChrystal's Long War," *The New York Times*, 14 October 2009.

concepts, with their most rapid periods of development occurring in the Middle Ages and then especially in the wake of the Enlightenment. Throughout the Middle Ages, wanton military violence against non-military members of society continued to occur. Yet a consensus slowly emerged that some people and things – women and children and the dwellings, lands, produce, and animals of the peasantry – were to be protected from military violence because they were essentially harmless. The Latin word used to signify the distinction of those people from the potentially harm-causing members of society (today's "combatants") was *innocens*. This comes from the adjective *nocens*, which means harmful or injurious. Thus, those who were to be considered morally inappropriate "innocent" targets of attack gained that status because they were themselves not harming or not capable of harming.<sup>4</sup> Illustrating this emerging logic, Francisco Suárez, an influential sixteenth-century Spanish Jesuit theologian, advocated limitations on his nation's violence during its war against the Ottoman Empire by arguing that "no-one may be deprived of his life save for reason of his own guilt. ... As Christians, you must apply the same principles to the inoffensive farmers and to all the peaceful civil population because they are presumed innocent unless the contrary is proved."<sup>5</sup>

In 1625, the Dutch jurist Hugo Grotius developed these ideas further and laid the foundation of our modern understanding in his seminal work, *De Iure Belli ac Pacis* (The Rights of War and Peace). With this masterful work, Grotius became the first person to codify the notion of rights-based constraints in war into an international law of nations. He argued in *De Iure Belli*, Book II, Chapter I, § iv that it was permissible for troops to kill innocents if they inadvertently impeded the troops' self-preservation and if the deaths were not their intention.<sup>6</sup> Yet he also stressed in Book III, Chapter XI, § viii that every precaution must be taken not to involve the innocent during the punishment of the guilty, "except for some extraordinary reasons" (such as self-protection) and that, if the death of the innocent seemed likely, troops should even refrain from attacking the guilty at that particular place and time.<sup>7</sup>

It would be wrong to suggest that these ideas, and the increasingly important Just War framework that surrounded them, were adhered to rigidly by all belligerents at all times during the European dynastic wars of the seventeenth and eighteenth centuries. Yet the belligerents – relat-

---

4. Hugo Slim, *Killing Civilians: Method, Madness and Morality in War* (London: Hurst, 2007), p. 13.

5. Quoted in Larry May, "Killing Naked Soldiers: Distinguishing between Combatants and Noncombatants," *Ethics and International Affairs*, vol. 19, no. 3 (Fall 2005), p. 41.

6. Hugo Grotius, *The Rights of War and Peace*, Edited and with an Introduction by Richard Tuck (Indianapolis: Liberty Fund, 2005), Book II, p. 398.

7. *Ibid.*, Book III, p. 1439.

ively small, well disciplined armies commanded by aristocrats – generally understood that their quarrels were with each other and they therefore restrained their violence against those who wanted or played no part in the fighting. With the advent of industrialization, the greatly enlarged conscript armies of the Revolutionary, Napoleonic, and followings eras, and the re-emergence of ideological and national hatreds in warfare, the boundaries between combatants and non-combatants became increasingly blurred. The need of marching armies for vast quantities of food, supplies, and fodder, exacerbated by the deliberate minimization of baggage trains in order to maximize their speed of movement, routinely resulted in the widespread devastation of rural areas through requisition, foraging, and often outright theft as well as the maltreatment of the citizenry (and especially the peasantry) through occasional atrocities, random violence, and routine indifference.

The competing sides in the American Civil War of 1861 to 1865 possessed equally powerful passions, complicated and moderated only occasionally by the fact that, ultimately, they were brethren. It was not a clean and gentlemanly affair; it was a brutal and callous war involving carnage and pain for non-combatants, some of whom (in General William Tecumseh Sherman's Savannah Campaign of 1864, for instance)<sup>8</sup> suffered direct victimization, deliberate industrial and infrastructural wreckage, and even the burning or bombing of their homes. For them, war was hell, as Sherman himself proclaimed in a famous speech in April 1880.<sup>9</sup>

Yet, the American Civil War also produced the first written recital of the customary laws of war – the so-called Lieber Code of 1863<sup>10</sup> – which encapsulated the most widely accepted laws and customs of war and served as the precursor to the Hague Conventions of 1899 and 1907. At Abraham Lincoln's request, Dr. Francis Lieber, a jurist and political philosopher at Columbia University, drafted instructions intended to guide Union forces in their war against the South. Lieber's starting position was unequivocal:

Men who take up arms against one another in public war do not

---

8. Mark Grimsley's *The Hard Hand of War: Union Military Policy towards Southern Civilians 1861-1865* (Cambridge: Cambridge University Press, 2008. First published in 1995), represents an alternative school of thought that the destruction of southern property was not based on murderous intent, but was a calculated, measured attempt to demoralize the Confederate population by striking at chosen areas in order to obtain their capitulation.

9. From *Ohio State Journal*, 12 August 1880, in Lloyd Lewis, *Sherman: Fighting Prophet* (First ed. 1932. Lincoln: University of Nebraska Press, 1993 ed.), p. 637.

10. Formally titled "Instructions for the Government of Armies of the United States in the Field, 24 April 1863." The full text is available on the website of the International Committee of the Red Cross: <<http://www.icrc.org/IHL.NSF/FULL/110?OpenDocument>>.

cease on this account to be moral beings, responsible to one another and to God. ... The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.<sup>11</sup>

Wanton violence, unnecessary destruction, pillage, arson, murder, and rape of unarmed citizens were "crimes" deserving of severe punishment. Yet Lieber also articulated a hard-headed realism that tilted the balance slightly away from non-combatant protection towards "military necessity." This concept of necessity never permitted cruelty or perfidy, but it did permit incidental deaths and hardship among the unarmed population if those things were unintended, unavoidable, but militarily necessary.<sup>12</sup> Even the starvation or forced displacement of unarmed civilians and the confiscation or destruction of their property was permitted if it directly caused the enemy's speedier defeat.

The Lieber Code formed the basis of an international convention on the laws of war presented to the Brussels Conference in 1874 and it then stimulated the adoption of the Hague Convention on the Laws and Customs of War on Land in 1899,<sup>13</sup> which was revised in 1907 as Hague Convention IV.<sup>14</sup> Parties to the 1899 Convention even took the remarkable step of prohibiting, "for a term of five years, the launching of projectiles and explosives from balloons, or *by other new methods of a similar nature*."<sup>15</sup> In 1907 this prohibition against aerial bombardment gained formal extension until such time as a third Hague Convention could be convened (it never was before the Great War commenced).<sup>16</sup>

For the purposes of this essay, the two most important statements in Convention IV are Articles 22 and 25. The former explains that "the right of belligerents to adopt means of injuring the enemy is not unlimited." Article 25's statement of constraint explicitly prohibits "attack or bombardment, *by whatever means*, of towns, villages, dwellings, or

---

11. *Ibid.*, Articles 15 and 22.

12. *Ibid.*, Articles 15 and 16.

13. Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899. Available at: <<http://www.icrc.org/IHL.NSF/FULL/150?OpenDocument>>.

14. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Available at: <<http://www.icrc.org/IHL.NSF/FULL/195?OpenDocument>>.

15. Declaration (IV,1), to Prohibit, for the Term of Five Years, the Launching of Projectiles and Explosives from Balloons, and Other Methods of Similar Nature. The Hague, 29 July 1899. Emphasis added. Available at: <<http://www.icrc.org/IHL.NSF/FULL/160?OpenDocument>>.

16. Declaration (XIV) Prohibiting the Discharge of Projectiles and Explosives from Balloons. The Hague, 18 October 1907. Available at: <<http://www.icrc.org/IHL.NSF/FULL/245?OpenDocument>>.

buildings which are undefended" and a prohibition on the destruction or seizure of property except when it is "imperatively demanded by the necessities of war."<sup>17</sup> The authors inserted the phrase "by whatever means" specifically to include air attacks (which were already prohibited),<sup>18</sup> against which, at that time, no defense could be mounted. Less helpfully, as noted by some legal commentators, the authors of Convention IV did not specify what constituted an "undefended" town or village;<sup>19</sup> an ambiguity that later caused significant problems of interpretation and a "loop-hole" during wartime. The authors of Hague Convention IV clearly anticipated that the so-called Martens Clause in the preamble would infuse the wording with the right spirit to adopt and maintain during conflict. According to the Martens Clause:

[The Convention] has been inspired by the desire to diminish the evils of war, as far as military requirements permit ... [and as such] ... the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

Despite what would later emerge as the weakness of its ambiguity, which allowed both its spirit and letter to be treated in a cavalier fashion, Convention IV encapsulated not only the best aspects of the Lieber Code, but also of the St. Petersburg Declaration of 1868. All the leading European states and empires had signed that important declaration (including Great Britain, France, Italy, the Austro-Hungarian and Ottoman Empires, and the German states). Affirming that "the progress of civilization should have the effect of alleviating as much as possible the calamities of war," the declaration emphatically upheld the concepts of discrimination and proportionality by stating that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy."<sup>20</sup>

The excitement about powered heavier-than-air flight in general and

---

17. *Ibid.*, §II Chapter I, Articles 25 and 22(g). Emphasis added.

18. War Office, *Manual of Military Law* (London: HMSO, 1914), p. 252; Professor T.E. Holland, letter, *The Times*, 27 April 1914; National Archives, Kew, Richmond, Surrey [Hereafter NA] CAB/24/44 Air Raids on Open Towns. Memorandum prepared in the Historical Section of the Committee of Imperial Defence in Accordance with War Cabinet 358, Minute 9 (12 March 1918). See also the discussion on Convention IV in J.M. Spaight, *Aircraft in War* (London: Macmillan, 1914), pp. 12-16, 30.

19. Cf. James W. Garner, "Some Questions of International Law in the European War," *American Journal of International Law*, vol. 9 (1915), p. 96.

20. Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868. Available at: <<http://www.icrc.org/ihl.nsf/FULL/130?OpenDocument>>.

the potential for aerial warfare in particular that characterized the decade following the Wright Brothers' first flight in 1903 also gave rise to grave concerns about the harm that might befall innocent civilians. At its meeting in Madrid in April 1911, the Institute of International Law debated air power's potential impact on war and reached an uneasy agreement that its benefit in scouting, reconnaissance, and dog-fighting should not be ignored or prohibited.<sup>21</sup> Military air power should not be banned *in toto* unless it could be shown that aircraft in war were inevitably "unnecessarily cruel." Yet air power's likelihood of causing harm to innocent civilians should be minimized through the issuance of a prohibition. The Institute therefore passed the following resolution:

*La guerre aérienne est permise, mais à la condition de ne pas présenter pour les personnes ou les propriétés de la population pacifique de plus grands dangers que la guerre terrestre ou maritime.* (Aerial warfare is permitted, but only on the condition that it does not present for the persons or property of the peaceful population greater dangers than land or sea warfare.)<sup>22</sup>

Despite its prestige and influence, the Institute was a non-governmental body whose resolution would have needed official ratification from most key governments for it to become part of international law. It nonetheless embodied, as a British jurist wrote in *Flight* magazine in 1918, "an enlightened principle of morality for the guidance of belligerents."<sup>23</sup>

During the final decade of peace before the guns of August roared in 1914, several prominent jurists advanced new concepts about the sovereignty of airspace and issued draft codes governing the jurisdiction, laws, rights, responsibilities, and activities of civil and military aviators during both peace and war that they hoped would eventually form the basis of new international laws.<sup>24</sup> The most influential of these codes was that written by eminent French lawyer Paul Auguste Joseph Fauchille, whose very thorough and intricate code covered almost every imaginable scenario and held firm to the prohibition contained within Hague Convention IV.<sup>25</sup> Article 6 of Fauchille's code explicitly banned

---

21. Blewett Lee, "Sovereignty of the Air," *American Journal of International Law*, vol. 7 (1913), p. 479.

22. *Ibid.*; José Luis Fernández Flores, *Conferencia sobre derecho de la guerra aérea* (Madrid: Centro de Estudios de Derecho Internacional Humanitaria, 1911). Non-Spanish readers can find a complete English translation as Appendix V in Spaight, *Aircraft in War*, p. 145.

23. Dr. Harold D. Hazeltine, "The Recent and Future Growth of Aerial Law," *Flight*, 28 March 1918, p. 352.

24. Cf. Denys P. Myers, "The Freedom of the Air," *Green Bag*, vol. 24 (1912), pp. 430-35; Amos S. Hershey, "The International Law of Aerial Space," *American Journal of International Law*, vol. 6 (1912), pp. 381-88.

25. Published in Vol. 23 of the *Annuaire de l'Institut de Droit International* (Paris: S.

attacks on civilians and their property: "The bombardment by aircraft of towns, villages, habitations or buildings which are not defended is forbidden."<sup>26</sup>

Unfortunately, repeating the ambiguity left in Hague Convention IV because he doubtless assumed, like the Convention's drafters, that common assumptions and the spirit of the prohibition would result in compliance, Fauchille never defined what actually constituted an undefended town. Would only a town in which there were no fortifications, no garrison, and no defensive resistance by the population qualify as "undefended"? What about a port town with no walls and no garrison, but warships and their stores? What about a town which, although not defended, had troops marching through it or supplies stored in it or transported through it? What about capital cities which housed the government ministries that coordinated and directed national (and therefore presumably local) resistance? In any event, war commenced in 1914 before these prescriptive issues could be clarified and any code could be embraced by governments and codified in international law. Even the politicians and strategists in those states which had military aviation capabilities had not devoted as much attention to moral and legal issues as philosophers and lawyers had. Technical considerations, as opposed to moral questioning, seemed to preoccupy their thoughts on the potential of air power.<sup>27</sup>

The common picture of the Great War of 1914 to 1918 as a clash between physically muddy but morally clean combatant forces is not altogether inaccurate. In terms of explicit deliberate military violence by combatants against non-combatants, the war generally accorded with the St. Petersburg Declaration and the Hague and Geneva Conventions. The worst exceptions are notable. The German brutalization of Belgian civilians in 1914 was sufficiently bad that Allied propagandists had their work cut out for them. Both sides in Europe tried to weaken enemy resistance through maritime blockades, which caused such significant food shortages that the civilian populations of each had to resort to severe rationing. The Germans intensified their blockade with an illegal campaign of unrestricted submarine warfare. The Germans also later used the blockade as justification for launching what they called permissible retaliatory Zeppelin airship raids on British shipping, ports, and coastal towns.<sup>28</sup> Both sides also rained bombs down on each other's towns and

---

Karger, 1911).

26. Cf. V. Le Moyne's masterful 1913 unpublished Ph.D. dissertation: "Le Droit Futur de la Guerre Aérienne" (Université de Nancy – Faculté de Droit), p. 141.

27. Lee Kennett, *The First Air War, 1914-1918* (New York: Free Press, 1991), pp. 1-22.

28. James F. Willis, *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War* (London: Greenwood, 1982), p. 16; Matthew Lippman, "Aerial Attacks and the Humanitarian Law of War," *California Western International Law Journal*, vol. 33, no. 1 (Fall 2002), p. 9.

cities from aircraft (after apparent "successes" for the Germans with the Zeppelins), with very few people paying much attention to the fact that bombing cities and towns from the air ignored the Madrid resolution and, far more seriously, violated the spirit and almost certainly the letter of the Hague Convention IV in precisely the same way that shelling them with artillery did.

The villainy of the Zeppelin raids of 1915 onwards and the Gotha bomber raids of 1917 and 1918 resulted as much from the rudimentary and ineffective nature of early navigation and aiming as it did from any murderous intent.<sup>29</sup> Yet to watching ethicists and lawyers this did not absolve the pilots and crews of culpability. In 1915 James Garner, a leading American international lawyer, analyzed the issue at length. He argued that, even if Zeppelins were dropping bombs on towns and villages supposedly containing military objects in accordance with the Hague Conventions, it does not follow that they were acting "in conformity with the rules of humane and civilized warfare." What the letter of the Conventions may permit, he observed, "the spirit may forbid."<sup>30</sup> He explained that, while newspaper accusations of savagery and deliberate murder were unnecessary, it was "quite within the bounds of truth" to conclude that, because German aviators were dropping bombs that for practical reasons they could not possibly place accurately upon morally reasonable targets, but were dropping bombs regardless and thereby causing the deaths of innocent civilians, their actions were "contrary to the generally accepted notions of civilized warfare."<sup>31</sup>

The Zeppelin and Gotha raids did not cause British political and public demands for restraint and superior moral behavior. Instead, the raids created a paroxysm of popular hatred<sup>32</sup> and, as one influential civil servant had predicted before the war,<sup>33</sup> caused widespread British demands for retribution in kind (politely described in official contemporary documents as "reprisals"<sup>34</sup>). The same thing happened in France, where the public clamored for vengeance on Germany for the death of civilians and

---

29. A thorough, primary source-based and objective analysis of initial German air power motives and aspirations is decades overdue, but a useful starting point can be found in Barry D. Powers, *Strategy without Slide-Rule: British Air Strategy 1914-1939* (London: Croom Helm, 1976).

30. Garner, "Some Questions . . .," p. 100.

31. *Ibid.*, p. 101.

32. Willis, *Prologue*, op cit., p. 28.

33. Spaight, *Aircraft in War*, p. 24.

34. Cf. NA CAB/24/44 Air Raids on Open Towns. Memorandum prepared in the Historical Section of the Committee of Imperial Defence in Accordance with War Cabinet 358, Minute 9 (12 March 1918); CAB/23/3 Minutes of a Meeting of the War Cabinet held at 10 Downing Street, S.W., on Monday, July 9, 1917, at 11.30 a.m.; and CAB/23/4 Minutes of a Meeting of the War Cabinet held at 10 Downing Street, S.W., on Wednesday, September 5, 1917, at 11.15 a.m.

the destruction of homes caused by German airships and aircraft.<sup>35</sup>

The creation of the Royal Air Force in April 1918 flowed of course directly from the British Government's need to show its increasingly angry people that it could protect them, as well as from an emerging highly speculative argument, typified by General Smuts in his famous report of August 1917, "that the day may not be far off when aerial operations with their devastation of enemy lands and destruction of industrial and populous centres on a vast scale may become the principal operations of war."<sup>36</sup> The creation of the RAF also undoubtedly flowed from a public desire – with a fervor whipped up by what the War Cabinet described as the media's "strong agitation" and creation of "something like a panic" – for retributive power to punish Germany for attacks on British civilian centers.<sup>37</sup> Newspapers throughout 1917 carried numerous editorials and letters demanding vengeance. Some even published "reprisal maps" indicating which German civilian population centers should be struck. *Flight* magazine pointed out how recent German air raids added "another chapter of infamy" to the "already heavy amount of the brutalised Hun" and then reported what it called the public's "insistent demand for reprisals." Echoing public sentiment, *Flight* expressed its own hope "that we shall at long last really begin to hit the enemy where it will hurt him most."<sup>38</sup> Similarly, the Town Clerk in Cardiff wrote to the War Office to inform it that his Council had passed a resolution wanting an assurance that punitive reprisals against German towns "would leave little doubt that German civilians shall suffer to as great an extent as the civilians of England have suffered."<sup>39</sup>

Public expectations of vengeance and punishment put the British Government, like the French, into an awkward legal and moral position. Although the 1899 and 1907 Hague Conventions contained no direct references to reprisals, probably out of concern that doing so would be seen as condoning their use,<sup>40</sup> Article 50 of Hague Convention IV of 1907 had

---

35. Kennett, *The First Air War*, p. 55.

36. NA CAB/24/22 War Cabinet. Committee on Air Organisation and Home Defence against Air-Raids, Second Report, 17 August 1917.

37. NA CAB/23/13: War Cabinet 242 A: Minutes of a Meeting of the War Cabinet held at 10 Downing Street, S.W. on Monday, October 1st, 1917 at 11.30 p.m.; Tami Davis Biddle, *Rhetoric and Reality in Air Warfare: The Evolution of British and American Ideas about Strategic Bombing, 1914-1945* (Princeton: Princeton University Press, 2002), pp. 30-31.

38. *Flight*, 27 December 1917, p. 1359.

39. NA CAB/24/20 War Cabinet. Air Raid Reprisals. Letter from the Town Clerk, Cardiff, to the Chief of the Imperial General Staff. City Hall, Cardiff, 12 July 1917.

40. Frits Kalshoven, *Belligerent Reprisals* (Leiden: A.W. Sijthoff, 1971), p. 67; Andrew D. Mitchell, "Does One Illegality Merit Another? The Law of Belligerent Reprisals in International Law," *Military Law Review*, vol. 170 (December 2001), p. 161. Shane Darcy, "The Evolution of the Law of Belligerent Reprisals," *Military Law Review*, vol. 175

prohibited any punitive measures based on non-specific and unproven collective responsibility. No harm, the Article stated, "shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." In other words, it would be wrong and illegal to punish one group of people for something that another group had done unless it could be reasonably demonstrated that the first group had directly contributed to the original grievance. Just being German citizens at a time when German airships and aircraft were committing unjust acts did not remove their right, as innocent non-combatants, to immunity from harm.

Article 50 did not, however, prohibit legitimate reprisals for illegal acts, which even the Lieber Code of 1863 had considered permissible under certain carefully managed circumstances.<sup>41</sup> According to the Code, reprisals were often the only means available to protect a force "against the repetition of barbarous outrage."<sup>42</sup> They should never be resorted to as "mere revenge," but only "cautiously and unavoidable" as a means of "protective retribution." The influential 1880 *Manuel des lois de la guerre sur terre*, or *Oxford Manual*, laid out the limits of reprisals, stipulating that they must stay proportionate to (that is, "never exceed") the original grievances and "must conform in all cases to the laws of humanity and morality."<sup>43</sup> By the First World War, to qualify as morally and legally permissible, such a reprisal was not to be undertaken as a spontaneous lashing-out following an outrage, but as a carefully conducted act in accordance with "the principle that you 'punish' the State or the armies because it and they are responsible for the acts of the individual delinquents whom you have been unable to reach and over whom they possess authority."<sup>44</sup> A reprisal was not intended "to punish an offence but to prevent its repetition."<sup>45</sup>

According to the 1914 edition of the *British Manual of Military Law*, reprisals should only be conducted in response to the types of illegal acts that were becoming uncommon anyway because of "the advance of civilization and the high state of discipline" within modern armed forces.<sup>46</sup> Reprisals were to be undertaken in only the most extraordinary circum-

---

(March 2003), p. 197.

41. Henry Wager Halleck, "Retaliation in War," *American Journal of International Law*, vol. 6 (1912), p. 108.

42. Articles 27 and 28, cited above in footnote 10.

43. The Laws of War on Land. Oxford, 9 September 1880. Available at: <<http://www.icrc.org/IHL.nsf/FULL/140?OpenDocument>>.

44. NA CAB/24/72, Interim Reports of the Committee of Enquiry into Breaches of the Laws of War, with Appendices. Presented to the Right Honourable the Attorney General, 16th January 1919, (p. 49). For the "rules" as they evolved, and as they stood in 1914, see Kalshoven's fabulous, *Belligerent Reprisals*.

45. First source in footnote 41.

46. *Manual of Military Law*, op cit., p. 304.

stances because "in most cases they inflict suffering upon innocent individuals."<sup>47</sup> They could occur to deter the repeat of an act of illegality, but certainly not as "a means of punishment, or of arbitrary vengeance."<sup>48</sup> They were permissible only so long as "every effort" had first been made to identify and punish the state authorities or the armed force who carried out the original violation, occurred as a "last recourse" after formal notice of the planned reprisal had been given, remained proportionate to (and "must not exceed") the original violation, and aimed only at persuading the original violator henceforth to comply with legally accepted behavior.<sup>49</sup> Interestingly, the *Manual of Military Law* encouraged any decision-maker considering the undertaking of such an "extreme" measure as a reprisal first to reflect on whether "a steady adherence to the laws of war" might work better than a reprisal at persuading the wrong-doers to desist from their misbehavior.

A clear example of an attempt to employ this logic occurred in 1916. The German Navy threatened to put to death Captain James Blaikie, skipper of the steamship *Caledonia*, which had rammed a U-boat in the Mediterranean.<sup>50</sup> On 13 December, the British War Cabinet accepted the Admiralty's recommendation that, should the Germans execute the captain, the Foreign Secretary and the First Sea Lord should explain in writing to the German Government (through the U.S. Ambassador) that the execution would be considered "cold-blooded murder and a crime against humanity" from which immediate reprisals would follow. Any reprisal would probably take the form of an air raid on an open (that is, an undefended and civilian) town, although this was not decided and certainly not communicated to Germany. The German Foreign Office duly issued an assurance that Captain Blaikie would not be executed, but would remain a prisoner of war.<sup>51</sup> The only unusual aspect of this case was the recommendation of bombardment from the air of an open town, which threatened to punish the innocent for the crimes of the guilty.

Air attacks as reprisals for German maritime, land, and air offenses overseas occurred regularly. Perhaps because of the same problem of not being able to punish the guilty individuals and groups in specific cases of injustice, the reprisals generally resulted in the punishment of the innocent instead. For example, in 1917 the War Cabinet concluded that "the only practicable form of reprisals" for German naval attacks on hospital ships, "and the one that had proved most effective in the past," was

---

47. *Ibid.*, p. 304.

48. *Ibid.*

49. First source in footnote 41; *Manual of Military Law*, pp. 304-06.

50. NA CAB/23/1 Minutes of a Meeting of the War Cabinet held at 10 Downing Street on Wednesday, December 13, 1916, at 6 p.m.

51. "Captain Blaikie Not to die: Germans decide Attempt to Ram U-Boat was Justified," *The New York Times*, 16 December 1920.

the bombardment of an open German town by the Royal Naval Air Service.<sup>52</sup> The War Cabinet expressed regret that, although it felt "most reluctant to embark upon a policy which might involve the killing of women and children," there was "no other alternative." Lest anyone think that only the British found themselves in this awkward situation, it is worth noting that French air attacks on innocent inhabitants of open German towns also often occurred as reprisals. In June 1916, for instance, French aviators bombed Karlsruhe and Mannheim in retaliation for German attacks on Bar-le-Duc and Luneville, even though, as even British observers pointed out, both those French towns housed military objects and thus constituted legitimate targets.<sup>53</sup>

Some calls for punitive retribution for German Zeppelin and then Gotha attacks on British towns contained unusual moral reasoning, but much imagination. Sir Alfred Mond of His Majesty's Office of Works even proposed that aircraft should attempt to burn down the Black Forest with incendiaries, which would be a "reprisal of real military value" and at the same time would destroy a valuable German asset and "create a very great impression in Germany, as well as satisfying public opinion here."<sup>54</sup> The RAF did indeed attack the Black Forest with incendiaries and tins of petrol in August 1918, causing seven "very large" localized fires. The "immense conflagration"<sup>55</sup> was discussed at the highest levels, with General Smuts informing the Prime Minister and the War Cabinet that the fires were reportedly visible from forty miles away.<sup>56</sup> There was apparently no discussion of the morality of bombing an aspect of nature which, whilst it may have provided timber used in the war effort, was clearly a non-martial, non-industrial, but typically "innocent" feature of the German countryside that supported agrarian existence.<sup>57</sup>

---

52. NA CAB/23/40 Minutes of a Meeting of the Imperial War Cabinet held in London at 10 Downing Street, S.W., on Thursday, April 12, 1917, at 11.30 a.m.

53. NA CAB/24/44 Air Raids on Open Towns. Memorandum prepared in the Historical Section of the Committee of Imperial Defence in Accordance with War Cabinet 358, Minute 9 (12 March 1918).

54. NA CAB/24/18 War Cabinet. Air Reprisals. Suggestion to Fire the Black Forest. 22 June 1917. Memorandum by Sir A. Mond.

55. NA CAB/24/62 Air Ministry. Report No. 5. For the Fortnight ending 24th August 1918.

56. NA CAB/24/63 Major General H. Trenchard 1st September 1918. Operations of Independent Force, Royal Air Force. Report during August 1918. Cf. NA CAB/23/42 Minutes of a Meeting of the War Cabinet and Imperial War Cabinet held at 10 Downing Street, S.W., on Tuesday, August 20, 1918, at 11.30 a.m.; CAB/23/7 Minutes of a Meeting of the War Cabinet held at 10 Downing Street, S.W., on Wednesday, September 4, 1918, at 12 noon.

57. This is morally very different, for example, to earlier RFC plans to burn down German forests right behind the front and in which the Germans had supposedly stored weapons and supplies. Cf. AIR 1/2151/209/3/251 Proposal to burn forest of Houthulst, June 1915.

Even Field Marshal Sir Douglas Haig, Commander-in-Chief British Armies in France, supported retributive air attacks on civilian populations. He hated the diversion of any effort away from the battlefield and questioned the "advisability, from the point of view of morality and public opinion" of attempting the type of devastating independent air campaigns that Smuts foresaw and seemed to advocate. Yet Haig supported the idea of retributive air attacks against German cities and towns because they would "punish" Germany for its own raids on British civilian areas and hopefully discourage any further such attacks.<sup>58</sup> Haig did urge caution, advising the Chief of the Imperial General Staff that, if spiralling tit-for-tat independent air campaigns occurred, "we must be prepared morally and materially to outdo the enemy."<sup>59</sup>

In 1918, the new RAF gained an "Independent Force" of bombers (appropriately named, given that it would operate independently of war's traditional home, the battlefield<sup>60</sup>) with which to "satisfy public opinion" by making German civilians pay for their aviators' wicked attacks on innocent British people. Under Air Marshal Sir Hugh Trenchard's command, the Independent Force, which was later expanded and retitled the Inter-Allied Independent Air Force, had three German objects to attack: "her industry; her commerce; her population."<sup>61</sup> In reality, the Force carried out relatively few of these kinds of raids, focusing instead on supporting Allied ground forces during the German 1918 spring offensives and the Allied counteroffensives in the late summer and fall. Yet the Force did also strike industrial infrastructure in towns and cities that had been targeted during "reprisals" in previous years as well as some new ones, including Frankfurt, Mannheim, and Cologne, bombed when weather permitted during the war's remaining months.<sup>62</sup> The raids were ostensibly undertaken to destroy factories and logistical infrastructure,<sup>63</sup> but were in reality undertaken additionally with the political aim of conveying vengeance and to "undermine [German] civilian morale" so as to "destroy the war spirit" of the German population.<sup>64</sup> The Air Ministry ac-

---

58. NA CAB/24/26 Haig to the Chief of the Imperial General Staff, 15 September 1919.

59. *Ibid.*

60. NA CAB/24/68 Air Ministry, Establishment of the Inter-Allied Independent Air Force, 26 October 1918.

61. *Ibid.*

62. NA CAB/24/63 Major General H. Trenchard 1st September 1918. Operations of Independent Force, Royal Air Force. Report during August 1918; NA CAB/24/69 Major General H. Trenchard 1st October 1918. Operations of Independent Force, Royal Air Force. Report during September 1918.

63. NA CAB/24/70 Major General H. Trenchard 15th November 1918. Work of the [Inter-Allied] Independent Force, Royal Air Force. Report for Period 1st to 11th November 1918; CAB/24/69 Major General H. Trenchard 1st November 1918. Operations of [Inter-Allied] Independent Force, Royal Air Force. Report during October 1918.

64. NA CAB/24/68 Air Ministry, Establishment of the Inter-Allied Independent Air

knowledgeed that the British people would feel "deep resentment" if their government did not attack German cities and towns in this fashion.<sup>65</sup> General Smuts had made the same point in an October 1917 speech, claiming that the British people had developed a bitter anger; "a temper with which any Government will have to reckon seriously in settling its future air policy."<sup>66</sup> This does not mean, of course, that the airmen involved were unconcerned by civilian deaths. We have no evidence that they deliberately wanted to inflict death on the harmless or took pleasure when this occurred.

Ignoring the fact that reprisals were supposed to be rare and exceptional occurrences, and were never to become the regular strategy or pattern, throughout 1918 the British Government publicized its increasingly routine independent raids as reprisals for German attacks, having decided in January that, "in future the War Office, or other Department concerned, should arrange that official communiqués in regard to [our] air-raids of this nature should mention that they were undertaken as a measure of reprisal."<sup>67</sup> As it happened, those independent raids – which the British government acknowledged at the time "cannot [by] itself be decisive"<sup>68</sup> – were no more discriminate or accurate than the German attacks and similarly killed civilians and created bitterness resulting in counter-reprisal reprisals.

That is, a moral slide down a spiral of increasingly serious, damaging, and deadly tit-for-tat air attacks occurred. The Germans themselves apparently conducted additional reprisal raids to punish the British for raids that were themselves reprisals for earlier German raids.<sup>69</sup> In this way, the war ended with both sides carrying out campaigns of reprisals and counter-reprisals as their ordinary behavior despite the fact that close adherence to the customary international law of belligerent reprisal disallowed anyone subjected to legitimate reprisals to respond by taking counter-reprisals. These would be unlawful because they were in response to activities which, although *prima facie* unlawful, were deemed legitimate because of their sole purpose of persuading the original violator again to comply with legally accepted behavior.<sup>70</sup> The cycle or spiral

---

Force, 26 October 1918.

65. Ibid.

66. "Gen Smuts on Air Fighting," *The Times*, 5 October 1917, pp. 9, 10.

67. NA CAB/23/5 Minutes of a Meeting of the War Cabinet held at 10 Downing Street, S.W., on Tuesday, January 15, 1918, at 1130 a.m.

68. NA CAB/24/68 Air Ministry, Establishment of the Inter-Allied Independent Air Force, 26 October 1918.

69. Cf. NA CAB/23/2 Minutes of a Meeting of the War Cabinet, held at 10 Downing Street, S.W., on Wednesday, May 30, 1917, at 11.30 a.m.; CAB/24/15 War Cabinet. The Recent Air Raid and British Counter Bombing Raids, 4th June, 1917.

70. Darcy, "The Evolution of the Law ...," p. 191.

of reciprocal reprisals were additionally undertaken against persons not directly engaged as combatants, which violated the "laws of humanity and morality" mentioned in the *Oxford Manual* and the Martens Clause in Hague Convention IV;<sup>71</sup> in other words, the spirit of the law. Of course, war is almost always a time of irrationality and unusual passions and attributing blame to The Other seems inevitable. Whether any particular attack was regarded as "illegal" or "immoral," or reasonable or retaliatory, depended entirely upon whether the claimant was the bomber or the "bombee."<sup>72</sup>

In April 1918, at about the same time as the RAF's creation, the General Staff presented the War Office a thorough legal opinion on the practice of aerial bombardment.<sup>73</sup> It wrestled with technicalities and, apparently placing the letter of the law ahead of its spirit, maintained that the authors and signers of the Hague Conventions of 1899 and 1907 had only vague thoughts on the full potential of modern aerial warfare and could not have anticipated air power ever involving more than "projectiles being dropped from dirigible balloons." The legal opinion added that, whilst it was true "that the bombardment of undefended towns from the air [was] forbidden," the prohibition was not "imposed with a full realization of modern conditions." Perhaps recognizing that extant laws are still enforceable laws despite any flaws, the General Staff opinion added this strange piece of argumentation:

[The 1907 explicit Hague prohibition on aerial bombing] was drafted with the object of renewing the 1899 Declaration; but it was only signed by 27 out of the 44 Powers represented, and was ratified by none of the four Central Powers, nor indeed by any of the present belligerents except Great Britain, the United States, Portugal and Belgium. It contains, moreover, an express provision that it shall cease to be binding when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power. Accordingly it has no binding force in the present war.<sup>74</sup>

Again, this position contained a technical truth. Yet it made nothing of the fact that, when it signed this agreement in 1907, the British Government had committed itself to a moral position as well as a legal position. Rationalizing why it had abandoned its legal obligation is one thing; explaining why it had abandoned its earlier moral position is quite

---

71. *Ibid.*, p. 196.

72. W. Hays Parks, "Air War and the Law of War," *Air Force Law Review*, vol. 32 (1990), p. 21.

73. NA CAB/24/48 The Legal Aspects of Bombardment from the Air. General Staff, War Office, 12th April, 1918.

74. *Ibid.*

another. What was it about air power's vastly increased ability to reach and harm civilians and civilian environs between 1907 and, say, 1915, that might have made the British Government think this could be, even in some circumstances, a morally acceptable thing to do? Confining it-self only to legality, and ignoring morality, the General Staff legal opinion offered no reflections on this most serious of issues.

Similarly, in 1918 the Committee for Imperial Defence unconvincingly and at least partially illogically tried to explain British air attacks on German towns by maintaining that Hague Convention IX of 1907 – the Convention concerning Bombardment by Naval Forces in Time of War<sup>75</sup> – was more relevant and thus applicable to the air environment than Convention IV.<sup>76</sup> The Committee argued in a memorandum for the War Cabinet that the only logical rule that could flow from Convention IV was "obviously too narrow to be accepted under modern conditions" and the definition of what constituted an "undefended" town was so wide that it would render attempts at compliance "nugatory." Convention IX, on the other hand, was supposedly much more applicable because "the conditions of aerial warfare, owing especially to the range and mobility of aircraft, are much more closely analogous to the conditions of the sea than to those of the land." According to Convention IX, it was permissible to try to destroy such things as naval or military depots, stores and matériel, even in undefended towns, so long as advance warnings and response times were given. If unusual urgency made the issuance of the warning and the wait for response impossible, no attack was permissible.<sup>77</sup>

The interpretation that air power should be utilized in accordance with the Naval Convention rather than the Land Warfare Convention had first been put forward in speeches, articles, and then a book in 1914, before the war kicked off, by civil servant Dr. James Molony Spaight, who later rose to high office in the British Air Ministry and wrote prolifically on air strategy.<sup>78</sup> Spaight's pre-war logic was that, because warships were permitted, after giving warnings of their intent and a "reasonable time of waiting," to fire upon naval and military stores and ammunition depots within enemy ports, regardless of unintended deaths among the civilians who had been forewarned but had chosen to remain, aircraft should also

---

75. Convention (IX) concerning Bombardment by Naval Forces in Time of War. The Hague, 18 October 1907. Available at: <<http://www.icrc.org/IHL.NSF/FULL/220?OpenDocument>>.

76. NA CAB/24/44 Air Raids on Open Towns. Memorandum prepared in the Historical Section of the Committee of Imperial Defence in Accordance with War Cabinet 358, Minute 9 (12 March 1918). See also CAB/24/48 The Legal Aspects of Bombardment from the Air. General Staff, War Office, 12th April, 1918.

77. Convention IX, Articles 1 and 2.

78. Spaight, *Aircraft in War*, pp. 16-18, 118.

be allowed the same operational liberty in any future wars. Like warships, aircraft had no easy means of inserting personnel into the ports to destroy the *matériel* indiscriminately in the way that a land force could. Spaight brushed away the indispensable but inconvenient legal requirement to provide pre-attack warnings and reasonable response times by pointing out that the limited fuel capacity of aircraft would seriously reduce their loiter time and thus the pilots' ability to give adequate warnings to civilians in enemy cities and towns.<sup>79</sup>

Noting in 1918 that this "wider latitude" for naval bombardment had been accepted and practiced by all navies during the war, the Committee of Imperial Defence also ignored the issue of pre-attack warnings – despite vastly improved loiter capabilities – and accepted the tortured but convenient logic that naval practices should indeed be applied to the air domain, with all incidental civilian deaths caused by British aviators justified by this policy and practice. In fact, by accepting the view that the characteristics of aircraft made them like ships, the Committee should have seen that the logical outworking of their rationale could only have said something about where to attack, not who to attack.

In any event, this was largely a moot point. The Committee concluded that German aviators were to blame for any and all wrongdoing, even that reportedly done or about to be done by British aviators.<sup>80</sup> The Germans' "persistent and reckless indulgences" in the practice of bombing civilian population centers – including villages where "the agricultural nature of the country[side] was apparent" – forced the British, reluctantly and "under protest," to act according to the German view of what was legitimate and for them thus to bomb German objects "in or near centres of population." Thus, the Committee argued in essence that, because the enemy had done something very wrong, it was therefore compelled, permissible, and no longer wrong for them also to do it (and now to do so as regular practice instead of as one-off deterrent reprisals).

This "they made us do it" logic was held by several key decision-makers, notably General Smuts himself. At an October 1917 meeting hosted by the Association of Chambers of Commerce, Smuts publicly condemned the immorality of the Germans who were, in "impotent rage, striking more and more at us through our non-combatants, our women and our children. Aerial warfare against the defenceless is now the new weapon."<sup>81</sup> Smuts maintained that German aviators were conducting "a campaign of ruthless, pitiless terrorism against undefen-

---

79. *Ibid.*, p. 18.

80. NA CAB/24/44 Air Raids on Open Towns. Memorandum prepared in the Historical Section of the Committee of Imperial Defence in Accordance with War Cabinet 358, Minute 9 (12 March 1918).

81. "Gen Smuts on Air Fighting," *op. cit.*, p. 10.

ded towns and populous centres which have no direct military value." He predicted that the German campaign would not only fail to break British morale, but would prove to be "a terrible boomerang against the enemy." Explaining that British aircraft would be increasingly attacking German centers, Smuts stated that Britain was "most reluctantly forced to apply to him [the enemy] the bombing policy which he has applied to us. ... [Thus,] the blame must rest on an enemy who recognizes no laws, human or Divine."<sup>82</sup> Smuts insisted that Britain, now "forced" to bomb, would do its best to target only military objects and not civilians directly, but he did not explain how Britain's equally (that is, highly) inaccurate bombers could avoid inflicting widespread violence upon civilians given that military and industrial centers were located in or next to civilian concentrations. He merely expressed his "deepest regret" that, although he saw all these developments as "utterly bad and immoral," only Germany could be judged as wicked because it had bombed civilians first and (although he never addressed the issue of whether German bombers were equally inaccurate) had apparently done so with the very type of evil motives that the British lacked.<sup>83</sup> Smuts' logic is perfectly understandable, given the tremendous passions of the period ("a very bitter temper is growing up in this country," he said) and the rightfulness of Britain's hope for victory over a cruel and often unjust enemy, but ultimately it is inadequate. Smuts' logic fails to satisfy the criteria for justice in the same way that the rape of the wife of a rapist would fail it.

The Committee of Imperial Defence went further than Smuts in its 1918 report by simply denying that British aircraft had ever knowingly attacked undefended towns or towns lacking military objectives of importance according to the meaning of the Naval Convention (they had in fact done both). "The Germans on the other hand did so persistently during the whole period of their Zeppelin raids," the Committee insisted, contradicting their own concession that it was impossible to rebut entirely the German contention that even London was a defended town containing military objects and was thus a legitimate target.<sup>84</sup>

One year later, in 1919, the Air Sub-Committee of the Attorney-General's Committee of Enquiry into Breaches of the Laws of War reported that it was of the view "that a *prima facie* case exists against enemy airmen of indiscriminate bombardment by them of undefended towns and places in Great Britain, without any military objective."<sup>85</sup> The Sub-Com-

---

82. Ibid.

83. Ibid.

84. NA CAB/24/44 Air Raids on Open Towns. Memorandum prepared in the Historical Section of the Committee of Imperial Defence in Accordance with War Cabinet 358, Minute 9 (12 March 1918).

85. NA CAB 24/85 First and Second Interim Reports from the Committee of Enquiry into Breaches of the Laws of War, with Appendices, Presented to the Right Honourable

mittee even recommended that Britain should

take at the earliest possible moment the necessary steps to secure the arrest or preventive detention and surrender of the persons named or designated ... with a view to proceedings being taken against them for breaches of the laws and customs of war and of the laws of humanity.<sup>86</sup>

However, aware of what they had themselves done to German cities and towns, the Royal Air Force representatives on the Sub-Committee took a very different position, noting: "It should be remembered also that to bring German airmen within the scope of war criminality for bombing London would *ipso facto* place in the same category many of our own pilots and observers."

In 1920, with a general cooling of temper towards Germany, the Sub-Committee ceased to press the issue, and, while still seeing culpability in a few individual airmen in cases pertaining to specific raids, it no longer saw merit in arguing for the guilt of the German High Command.<sup>87</sup> Perhaps one of the reasons why nothing ever came of the Sub-Committee's initial desire to see German airmen prosecuted for war crimes was that Trenchard himself (with the full support of the Air Council) pointed out to the War Cabinet that, if any German aviators were indicted for war crimes on the basis of trying to set fire to London with incendiaries, he was prepared to testify before the tribunal that his Independent Air Force had also deliberately tried to cause these types of conflagrations in German cities with the use of incendiaries.<sup>88</sup> Trenchard was not, of course, excusing the deaths of civilians, but merely pointing out that foreseen but unwanted civilian deaths as part of missions that supported strategic imperatives, based on the ideas of the time, happened on both sides.

It is ironic that, although they were soldiers or former soldiers, some prominent airmen during the first years after the Great War overlooked the significant integrated contribution made by aircraft to joint battle (at sea and on land), ignored the fantastic potential in this area, and focused their attention on the independent missions which had been morally and strategically unusual and relatively unimportant militarily. The First World War had not demonstrated that, contrary to five thousand years of

---

Sir Frederick E. Smith, Bart., K.C., M.P., His Majesty's Attorney-General, 13th January, 1919.

86. *Ibid.*

87. NA CAB/24/111 Third Interim Report from the Committee of Enquiry into Breaches of the Laws of War, with Appendices, Presented to the Right Honourable Sir Gordon Hew Art, K.C., M.P., His Majesty's Attorney-General, 26th February, 1920.

88. NA CAB/24/89 War Cabinet. Breaches of the Laws of War by the Enemy. Observations of the Air Council upon the Recommendations of the Attorney-General's Committee. Air Ministry. 26 September 1919.

thinking, strategic decision would occur away from battlefields and battles. French Prime Minister Georges Clemenceau had reminded the British Government in September 1918 that, as the British Government had itself formally acknowledged, independent bombing could not be decisive by itself and that nations "must therefore seek the decision where it is to be found, and this decision is only to be determined by battle."<sup>89</sup> Moreover, nothing had shown that, even in the age of industrialization, whole national populations were so culpable of criminality that they had forfeited their rights to be considered morally inappropriate targets. There was also very little evidence that air power could (and no new moral reasoning that it should) severely damage either industrial production or the national will to resist. Yet these ideas, and especially those about production and national will, seemed strangely compelling to some thinkers.

Theorists and practitioners who nowadays look at this period tend to focus their attention on three air power advocates and call them such things as "the classical theorists" or even "prophets of air power."<sup>90</sup> These three were Giulio Douhet, an Italian; Hugh Trenchard, a Briton; and William Mitchell, an American. They also ascribe to them influential "theories," which implies that the "prophets" expressed logical and self-consistent models of action based on empirical observation; certainly something stronger than speculation or conjecture. Closer examination reveals that this was not entirely the case.

With his 1921 book, *The Command of the Air*, Douhet came closest of the three to expressing a comprehensive framework for understanding and optimally applying air power during warfare. Douhet's views may indeed have originated in part from his revulsion at the carnage of the First World War, but they were nonetheless regressive in terms of ethics in general and civilian immunity in particular. He believed that the Great War was paradigmatic, not aberrational, and that future wars would be as "total."<sup>91</sup> Consequently, with industrial states mobilizing their entire populations during future wars (the character of which he described as "national totality"<sup>92</sup>), those populations were collectively responsible for the continuance of state resistance. The civilians' vulnerability to air attack logically made them far easier and, in his view, more directly strategic, targets than battle-hardened soldiers in defensive positions.<sup>93</sup> Air-

---

89. NA CAB/24/68 Air Ministry, Establishment of the Inter-Allied Independent Air Force, 26 October 1918.

90. David R. Mets, *The Air Campaign: John Warden and the Classical Airpower Theorists* (Air University, AL: Air University Press, 1999).

91. Giulio Douhet, *The Command of the Air*, trans. Dino Ferrari (Washington, DC: Office of Air Force History, 1983), p. 26.

92. *Ibid.*, pp. 5, 6.

93. *Ibid.*, pp. 22, 23, 188.

craft should strike civilian populations and destroy them and their civil organization, key transport infrastructure, and production means so that survivors as well as observers in other centers would, in terror and anger, create ungovernable civil circumstances or even pressure governments to surrender.<sup>94</sup>

Ignoring the traditional concept of innocence that had generally protected civilians, yet exaggeratingly echoing one conclusion contained within the Lieber Code, Douhet insisted that winning wars quickly by killing or terrorizing concentrations of weak and vulnerable civilians, who were anyway collectively culpable of state resistance because of their labor, was more efficient than allowing armies to slaughter each other in protracted industrialized competitions.<sup>95</sup> Recognizing that he was advocating "inhuman" and "atrocious" violence against non-combatants (including their poison gassing), he showed a total disregard for the Hague Conventions and other treaties.<sup>96</sup> Forces must use "all means without hesitation, whether on not they are forbidden by treaties," he wrote.<sup>97</sup> Compared to the tragedy of squandered opportunities, treaties were "but scraps of paper" and "international demagogic hypocrisies."<sup>98</sup>

Published initially only in Italian, Douhet's views were not easily accessible or widely known, let alone generally palatable, to most of his contemporaries in other army air corps and emerging air forces until the 1930s. In Britain, Trenchard adopted similar ideas about the bombing of non-combatants, albeit for his own reasons and with a different rationale. He increasingly argued in speeches, memoranda, and reports the need for air forces (the RAF anyway) to remain independent of the armies and navies to which military aircraft had earlier belonged, and free of their land and sea battles to which he had earlier insisted they were ideally suited to contributing.<sup>99</sup>

Trenchard began passionately to advocate various novel roles independent of battles primarily because he could not contemplate the loss of the RAF's newly acquired independence. He despaired at the rapid shrinking of squadron numbers (the RAF halved in 1919<sup>100</sup>) and he felt he needed to counter some mooted high-level suggestions to save money and reduce duplication by re-absorbing air assets into armies and navies. Not all the independent air roles he identified and championed were con-

---

94. *Ibid.*, p. 58.

95. *Ibid.*, pp. 61, 188, 189, 196.

96. *Ibid.*, pp. 180-85.

97. *Ibid.*, p. 189.

98. *Ibid.*, pp. 181, 189.

99. Biddle, *Rhetoric and Reality in Air Warfare*, p. 33. Robert Blake, ed., *The Private Papers of Douglas Haig 1914-1919* (London: Eyre and Spottiswoode, 1952), p. 252.

100. Memorandum by the Chief of the Air Staff, Capacity of the Royal Air Force to assist the Civil Power in Industrial Disturbances, 14 January 1920 (NA CAB/24/96).

ceptually consistent, proven during war, or morally conventional. Among his unorthodox recommendations were the punishment of misbehaving indigenous communities in some parts of the Empire (even with poison gas if they remained recalcitrant) and the suppression of workers during industrial disturbances in certain parts of the Empire and even in Britain.<sup>101</sup> His belief that air units could patrol and police some parts of the Empire more easily and cheaply than army units<sup>102</sup> – an idea that again placed aircraft into conventional army roles, this time by what he called "substitution" – actually worked rather well on some occasions and did save money and effort. Yet this type of operation, and Trenchard's increasingly vocal argument that the RAF might one day have to wage an inevitably-total war against France or another peer-competitor, and fight it by dealing what he called "a paralysing blow at some vital nerve centre,"<sup>103</sup> also shows that he no longer believed that civilians, particularly those in or forming a "nerve centre," were innocents and therefore morally inappropriate targets.

In 1928 he "emphatically" denied ever advocating "indiscriminate" attacks, and argued that production and morale targeting would produce fewer casualties than "when military formations are hurled against the enemies' strongest points protected by barbed wire and covered by mass artillery and machine guns." This is certainly an understandable position given the horrors he had seen between 1914 and 1918. Yet he saw no hesitation in conducting air campaigns which would use "fear" to "terrorise munitions workers (men and women) into absenting themselves from work."<sup>104</sup> The incompleteness of Trenchard's logic is obvious. Unless one sees no moral difference between combatants and non-combatants – and the fact that Trenchard claimed to dislike indiscrimination would only have meaning if in fact he recognized a moral difference – how can one see overall casualty numbers as the important issue? How in the 1920s, or the foreseeable future for that matter, could aircraft bomb accurately enough to avoid indiscrimination? More importantly, how could aircraft inflict sufficient fear to terrorize civilians without actually killing them in such sufficient numbers that survivors and others would experience acute enough anxiety about their own survival that they would flee before attacks?

---

101. Stephen Budiansky, *Air Power: The Men, Machines, and Ideas that Revolutionized War, from Kitty Hawk to Iraq* (London and New York: Penguin, 2005), p. 146.

102. Cf. Trenchard's note of 18 February 1921, attached to the Report by Lieutenant-General Sir A. Haldane, K.C.B., General Officer Commanding-in-Chief, Mesopotamian Expeditionary Force (NA CAB/24/120).

103. NA CAB/24/71 Memorandum of the Chief of the Air Staff on Air Power Requirements of the Empire. Air Ministry. 9th December 1918.

104. AIR 9/8 Memorandum by the Chief of the Air Staff for the Chiefs of Staff Subcommittee on The War Object of an Air Force, 2nd May 1928.

Trenchard's views were consistent in many ways with Douhet's and those of William "Billy" Mitchell, who had commanded American air combat units during the Great War and became a public advocate of air power's efficacy in the first years of peace. Like Trenchard (with whom he "hit it off"<sup>105</sup> and maintained regular contact), Mitchell had earlier believed that aircraft should be used to best effect on an integrated battle-field but later, as Trenchard did, he revised his position to argue that aircraft could and should perform independent roles that would by themselves prove strategically decisive. Mitchell claimed that aircraft could protect American coasts from enemy warships at a fraction of the cost of maintaining huge and dreadfully expensive fleets, and that air attacks with high explosives and poison gas could cause chaos and evacuations and even break enemy morale by destroying industrial, public service, and agricultural targets.<sup>106</sup> Mitchell was less explicit about the inevitability of civilian deaths than Douhet and Trenchard (who was himself not as emphatic and openly immoral about this as the Italian), and Mitchell seemed naïvely to hope that "the mere threat" of destruction from the air would make civilians – "in any town or hamlet" – evacuate their homes and cease their productive work.<sup>107</sup> Yet he agreed with the others that, in future wars inevitably involving total state mobilization, civilians would be subject to collective responsibility and could save themselves from harm only by refusing to uphold the state and its war effort by denying the state their labor. Interesting, in his 1924 book, *Winged Defense*, Mitchell eulogistically predicted what he called "the amelioration and bettering of conditions in war because it [independent air power] will bring quick and lasting results."<sup>108</sup> Yet he then qualified these improvements not in moral terms, but in financial terms.<sup>109</sup> The nearest he came to expressing a moral position on the targeting of civilians was to write that attacks on civilian things, but "not so much the people themselves," will result "in a diminished loss of life and treasure and will thus be a distinct benefit to civilisation."<sup>110</sup>

During the interwar years, the views of these "prophets" and their supporters came to dominate thinking on air power, even though aviators in many small and large wars (none of these wars being the "total" affairs

---

105. Roger G. Miller, *Billy Mitchell: Evangelist of Air Power* (Stockton, NJ: OTTN, 2008), p. 45. Isaac Don Levine, *Flying Crusader: The Story of General William Mitchell, Pioneer of Air Power* (London: Peter Davies, 1943), p. 72.

106. William Mitchell, *Winged Defense: The Development and Possibilities of Modern Air Power – Economic and Military* (New York and London: Putnam's, 1924), pp. 5, 126, 127.

107. *Ibid.*, pp. 132, 5, 6.

108. *Ibid.*, p. 14.

109. *Ibid.*

110. *Ibid.*, p. 16.

predicted by the prophets) continued to provide close air support and interdiction on and around traditional battlefields. Even airmen in the United States, which intervened in several Central and South American conflicts and used air power most often during them for reconnaissance and as flying artillery, favored the theoretical but unproven potential of independent missions against purportedly strategic objects over these sorts of activities. Wanting separation from the Army, the Army Air Corps sought separate roles and articulated a belief that its increasingly fine bombers, with impressive speed, range, survivability, and load-carrying capability, should be used against enemy nodes far away from, and ideally instead of, battle. Very few of the air power theorists and practitioners ever engaged directly with the issue of whether the innocent civilians who lived at those nodes, or formed them, were morally appropriate targets of attack. That does not mean, on the other hand, that they ever wanted civilian deaths or took pleasure when they occurred. Archives contain no records of any such desired cruelty.

It would be wrong to leave this analysis without highlighting the fact that, while air power theorists after the Great War seemed sure that total war had become the norm and felt relatively uninterested in the concept of civilian immunity, public disquiet was sufficiently powerful to generate attempts to minimize the harm that might be brought to bear on non-combatants in future wars. The Washington Disarmament Conference of 1922 adopted a resolution to appoint a Commission of Jurists and its Military and Naval Advisors to prepare rules relating to air power. With members from six nations, including the United Kingdom, France, and the United States, a Sub-Committee of the Commission met at the Hague from December 1922 to February 1923 and drafted a thorough and potentially far-reaching set of rules to govern the utility of air power.<sup>111</sup>

The Commission's final draft rules did not deny air power a potent role in any future wars. On the contrary, they allowed bombardment practically without restriction in combat theatres and they did not say that bombs must fall exclusively on military forces and objects, only that they must be directed exclusively at them.<sup>112</sup> On the other hand, they expressly prohibited air attacks for the purpose of "terrorizing the civil population or destroying or damaging private property not of military character, or of injuring non-combatants."<sup>113</sup> The rules stipulated that air attacks would only be legal "when directed at a military objective, that is

---

111. W. Hays Parks, "Air War . . . ," pp. 27-28.

112. Elbridge Colby, "Aerial Law and War Targets," *American Journal of International Law*, vol. 19 (1925), p. 714.

113. Article 22 of Rules Concerning the Control of Wireless Telegraphy in Time of War and Air Warfare. Drafted by a Commission of Jurists at the Hague, December 1922 - February 1923. Available at: <<http://www.icrc.org/IHL.nsf/FULL/275?OpenDocument>>.

to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent."<sup>114</sup> The rules clarified something apparently ambiguous during the Great War: what constituted military objects. The new Hague rules identified these as "military forces, military works, military establishments or depots, manufacturing plants constituting important and well-known centres for the production of arms, ammunition or characterized military supplies, lines of communication or of transport which are used for military purposes."<sup>115</sup> In addition, the Committee added this explicit protection of civilian immunity:

Any bombardment of cities, towns, villages, habitations and buildings which are not situated in the immediate vicinity of the operations of the land forces, is forbidden. Should the objectives specified in Paragraph 2 be so situated that they could not be bombed but that an indiscriminating bombardment of the civil population would result therefrom [*sic.*], the aircraft must abstain from bombing.<sup>116</sup>

The Commission's draft rules did permit air attacks on military forces in the immediate vicinity of cities, towns, villages, habitations, and buildings, but only "provided there is a reasonable presumption that the military concentration is important enough to justify the bombardment, taking into account the danger to which the civil population will thus be exposed."<sup>117</sup>

Unfortunately, given what we now know about the Second World War, these ethically sophisticated rules never got off the ground. W. Hays Parks points out that, as they were never adopted by any nation, let alone passed into international law, the Hague rules "were an immediate and total failure."<sup>118</sup> This failure did not stem from their variance with the *Zeitgeist*. They were ideally in keeping with the spirit of the time. Their non-acceptance stemmed from the fact that the authors were out of step with realist political and military leaders and pundits who – with great excitement about air power's real and forecast technological advances as well as with thrilling new ideas on strategy (particularly the vast potential efficacy of independent bombing) – were unwilling to put the powerful genie back into the bottle.<sup>119</sup> Typifying this realist ap-

---

114. *Ibid.*, Article 24.1.

115. *Ibid.*, Article 24.2.

116. *Ibid.*, Article 24.3.

117. *Ibid.*, Article 24.4.

118. W. Hays Parks, "Air War ...," p. 31.

119. *Ibid.*, pp. 30-36; Paul Whitcomb Williams, "Legitimate Targets in Aerial Bombardment," *American Journal of International Law*, vol. 23 (1929), pp. 570-81; Richard D. Rosen, "Targeting Enemy Forces in the War on Terror: Preserving Civilian Immunity," *Vanderbilt Journal of Transnational Law*, vol. 42, no. 3 (May 2009), pp. 707-09.

proach, in 1924 James Molony Spaight wrote a book championing independent air power in which he predicted with tragic accuracy: "The bombing of civilian objectives will be a primary operation of war, carried out in an organised manner and with forces which will make the raids of 1914-1918 appear by comparison spasmodic and feeble. ... The attacks on towns will *be* the war."<sup>120</sup> With wars of national totality supposedly the inevitable nature of future conflict, the genie's omnipotence would one day be needed. Later efforts throughout the 1920s and 1930s to enshrine in law the moral abhorrence of bombing non-combatants proved equally ill-fated. It was not until the horrors of area, terror, and atomic bombing during the Second World War revealed how remarkably difficult it was to keep the genie proportionate and discriminate that the international community moved, with the passing of the Geneva Conventions of 1949 and their Additional Protocols of 1977, to make the genie behave.

### **Conclusion**

Getting belligerents during war to adhere to standards of moral behavior is difficult at the best of times, but, as this article has attempted to demonstrate, it becomes highly problematic during conflicts in which very new methods of inflicting harm appear but are not constrainable by a moral consensus of any strength, much less by binding and enforceable international laws. The advent of air power above the trenches raised few new moral questions. It involved combatants fighting combatants in the third dimension, but in essentially the traditional manner. On the other hand, air power's appearance above the homes and workplaces of non-combatants raised important and powerful questions which, in the heat of reciprocal blame and anger, were not adequately addressed. The perceived nature of the First World War had much to do with it. With entire national communities allegedly contributing to war and thus breaking down the traditional demarcation between combatants and non-combatants, and with this type of "total war" supposedly being typical of all that would follow, the great moral questions relating to the new air weapon were easy to brush aside for a time. Perhaps because of their belief that the morale, support, and labor of their own citizens underpinned their national continuance of war-making, the leadership on both sides were consumed by the desire for victory (and the grave fear of defeat) and considered it necessary to do whatever its own population insisted it wanted – even inflicting vengeance – and to hurt the opposing population's confidence and productivity. Of course, we have no evidence of any murderous intent among politicians or airmen and, in any event, air

---

120. James Molony Spaight, *Air Power and War Rights* (London: Longmans, 1924), p. 12. Italics added for emphasis.

power was by no means the worst cause of harm to civilians during the Great War. Armies sometimes fired guns into each other's towns, including Paris, and the naval blockades of both sides caused far more deaths, deprivation, and suffering than air attacks. Yet independent air power undoubtedly came to cause great harm and moral regression during later wars. It is therefore regretful that the two decades of relative peace after the Great War – a pause before cities and towns broke and burned again under aerial bombardment – did not lead to greater reflection and progress in moral and strategic thinking.

JOEL HAYWARD is Dean of the Royal Air Force College. He is also Head of Air Power Studies at King's College London, a Director of the Royal Air Force Centre for Air Power Studies (RAF CAPS), and the lead academic for King's new MA, Air Power in the Modern World, the UK's only specialist degree program in air power studies. Dr. Hayward is the author of numerous scholarly articles and books, including *Stopped at Stalingrad: The Luftwaffe and Hitler's Defeat in the East, 1942-1943* (Lawrence: University Press of Kansas, 1998); *For God and Glory: Lord Nelson and His Way of War* (Annapolis: Naval Institute Press, 2003); and *An Ecological History of War: The Environmental Consequences of Warfare from Antiquity to the Present* (Cambridge: Cambridge University Press, forthcoming 2012).

