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‘The Sword and the Law’: Elizabethan Soldiers’ Perception and Practice of the Laws of Armed Conflict, 1569-1587

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Abstract

This thesis argues that contemporary views of the laws of arms among soldiers, and of the laws of war by legal theorists, influenced particular military campaigns and individual actions in a variety of armed conflicts. Elizabeth I's officer corps were careful to act in wars so that their actions would be seen as honourable by outside observers in the belief that such actions would add to their personal glory. Their individual and corporate perception of the laws of war directly affected military practices. However, the Elizabethan military establishment was engaged in conflicts that did not conform to contemporary views of just war. Catholic popes funded military expeditions against England and its dominion of Ireland, where the leaders were granted commissions to wage holy war not just war. The suppression of armed rebellions in Ireland employed numerous soldiers, and much of the machinery of state was supported by the English military. Holy war and counterinsurgency operations had no parallels in just war theory.

The laws of war provided an important new context for re-evaluating military practices. Although legal discourse was predominantly ordered towards fighting regular wars, with careful reading of contemporary sources, there are important indicators that illuminate contemporary justifications for some of the more brutal military actions associated with the English military establishment, particularly in Ireland.

By re-examining the discourse on the laws of war, the thesis finds that soldiers took seriously the customs of war and through them, it reassesses the motivations and mentalities of commissioned officers. This discourse was then used as a basis by which the conduct of soldiers can be understood and contextualised within English political and ethical structures.

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List of Abbreviations

- Ayala, *DIOBDM* Ayala, Balthazar de, *De iure et officiis bellicis et disciplina militari, libri III*, ed., J. Westlake, tr. J.P. Bates, 2 vols., classics of international law (Washington DC: Carnegie Institute of Washington, 1912)
- Cal. Carew* Lambeth Palace Library, *Calendar of the Carew manuscripts preserved in the archiepiscopal library at Lambeth*, 6 vols. (London: Longman's and Co., 1867-1873)
- CBP* Great Britain, Public Record Office, *Calendar of letters and papers relating to the affairs of the Borders of England and Scotland*, ed., J. Bain, 2 vols. (Edinburgh: H.M. General Register House, 1894-1896)
- Cecil, *EJE* Cecil, William, lord Burghley, *The execution of justice in England for maintenaunce of publique and Christian peace, against certeine stirrers of sedition, and adherents to the traytors and enemies of the realme, without any persecution of them for questions of religion, as is falsely reported and published by the fautors and fosterers of their treasons* (London: Christopher Barker, 1583)
- CIPRE* Ireland, Chancery, *Calendar of the patent and close Rolls of Chancery in Ireland of the reigns of Henry VIII, Edward VI, Mary and Elizabeth* *Calendar of the patent and close rolls of chancery in Ireland, of the reigns of Henry VIII., Edward VI., Mary, and Elizabeth*, ed., J. Morrin, 2 vols. (Dublin: H. M. Stationary Office, 1861-1863)
- CSPD* Great Britain, Public Record Office, *Calendar of state papers, domestic series, of the reigns of Edward VI, Mary, Elizabeth 1547-1580, preserved in the State Paper Department of Her Majesty's Public Record Office*, ed., R. Lemon and et. al., 12 vols. (London: Longman, Brown, Green, Longmans, & Roberts, 1856-1872)
- CSPF* Great Britain, Public Record Office, *Calendar of state papers, foreign series, of the reign of Elizabeth*, ed., J. Stevenson and et. al., 23 vols. (London: Longman, Green, 1863-1950)

- CSPI* Great Britain, Public Record Office, *Calendar of state papers relating to Ireland of the reigns of Henry VIII, Edward VI, Mary, and Elizabeth*, ed. H.C. Hamilton and et. al., 23 vols. (London: Longman & Co., 1860-1912)
- CSPR* Great Britain, Public Record Office, *Calendar of state papers relating to English affairs preserved principally at Rome in the Vatican Archives and Library*, ed., J.M. Rigg, 2 vols. (London: H. M. Stationary Office, 1916-1926)
- CSPS* Great Britain, Public Record Office, *Calendar of letters and state papers relating to English affairs: preserved principally in the Archives of Simancas: Elizabeth, 1558-[1603]*, ed., M.A.S. Hume, 4 vols. (London: Eyre and Spottiswoode for H. M. Stationary Office, 1892-1899)
- CSPV* Great Britain, Public Record Office, *Calendar of state papers and manuscripts relating to English affairs, existing in the archives and collections of Venice and in other libraries of Northern Italy*, ed., R. Brown and et. al., 38 vols. (London: Longman, 1864-1947)
- Devereux, Apologie* Devereux, Robert, earl of Essex, *To Maister Anthony Bacon: an apologie of the earle of Essex against those which falsly and maliciously taxe him to be onely hinderer of the peace and quiet of his country* (London: Richard Braddocke, 1603)
- Gentili, DIBLT* Gentili, Alberico, *De iure belli libri tres*, tr., J.C. Rolfe, 2 vols., classics of international law series (Oxford: Clarendon Press, 1933)
- Four Masters* O'Donovan, John, *Annals of the kingdom of Ireland, by the Four Masters, from the earliest period to the year 1616*, 2nd ed., 7 vols. (Dublin: Hodges, Smith, and Co., 1856)
- HCCI* King, Robert, *A primer of the history of the Catholic Church in Ireland*, 3rd edition, 3 vols., supplementary volume (Dublin: J. M'Glashan, S.B. Oldham, W. Curry and Co., J. Robertson, and George Herbert; William S. Orr and Co., London; The Tract Shop, Corket. al., 1851)

- HMC Ancaster* Great Britain, Royal Commission on Historical Manuscripts, *Report on the manuscripts of the earl of Ancaster preserved at Grimsthorpe* (Dublin: Printed for H. M. Stationary Office by J. Falconer, 1907)
- HMC Salisbury* Great Britain, Royal Commission on Historical Manuscripts, *Calendar of the manuscripts of the Marquis of Salisbury, preserved at Hatfield House, Hertfordshire*, ed., R.A. Roberts and et. al., Historical Manuscripts Commission series 9, 18 vols. (London: H. M. Stationary Office, 1883-1976)
- Irish chronicle* Hooker, John, 'The supplie of this Irish chronicle, continued from the death of king Henrie the eight, 1546, vntill this present yeare 1586, in the 28 yeare of hir maiesties reigne, Sir Iohn Perot residing deputie in Ireland', in *Holinshed's chronicles of England, Scotland, and Ireland*, ed., R. Holinshed, 6 vols. (London: J. Johnson; F.C. and J. Rivington; T. Payne; Wilkie and Robinson; Longman, Hurst, Rees, and Orne; Cadell and Davies; and J. Mawman et al, 1807-1808), volume vi
- Leycester correspondence* Dudley, Robert, earl of Leicester, *Correspondence of Robert Dudley, earl of Leycester, during his government of the Low Countries in the years 1585 and 1586*, ed., J. Bruce, Camden Society publications, vol. 27 (London: Camden Society, 1844)
- Relations politiques* Belgium Commission Royale d'Histoire, *Relations politiques de Pays-Bas et de L'Angleterre, sous le Règne de Philippe II*, ed., Kervyn de Lettenhove, Joseph Marie Bruno Constantin, baron, 11 vols. (Brussels: L'Académie Royal de Belgique, 1882-1900)
- Williams, ALC Williams, Roger, *Actions of the Lowe Countries*, in *The works of Sir Roger Williams*, ed., J.X. Evans (Oxford: Clarendon Press, 1972)
- Williams, BDW Williams, Roger, *A breife discourse of warre*, in *The Works of Sir Roger Williams*, ed., J.X. Evans (Oxford: Clarendon Press, 1972)
- Vitoria, DIDIBR Vitoria, Francisco de, *De Indis et De iure belli relectiones*, ed., E. Nys, classics of international law (Washington D.C.: Carnegie Institution, 1917)

Chapter 1.

Introduction

*Well, this worthie knight knowing that he should haue to doo with a sort of netles, whose nature it is, that being handled gentlie, they will sting; but being hard crushed together, they will doo no harme: even so he began with them. The sword and the law he made to be the foundation of his goueruenment, by the one he persecuted the rebell and disobedient, and by the other he ruled and gouerned in iustice and iudgment.*¹
-John Hooker

The English Protestant state had, under the leadership of Queen Elizabeth I (r. 1558-1603), brought within the monarch's singular purview all aspects of war, peace, and defence of the church. Monarchical authority in this antagonistic and martial sense was embodied in the state's official pageantry, iconography, and material culture. State office holders were responsible for the defence of the citizenry by both divine and secular mandate, and these responsibilities were described in a sermon given by the Protestant divine Stephen Gosson:

As warre must have a just title [i.e. just cause] to make it lawfull, so it must also be undertaken by lawfull authoritie, that is, the authority of the Prince, who as he carries the sword of Justice to punish domesticall disturbers of the common weale [i.e. body politic], in respect whereof he is said Rom. 13. not to beare the sword in vaine: so he defendeth his people from the forraine enemy by the sworde of warre, and is bound so to do Psal. 82.4., He is charged to saue the poore and oppressed, from the hand of the wicked that oppresseth them. The reason of it is this, that as in a common weal it is requisite there should be an authoritie, to punish offences, and to keep the same in order: so in the wide worlde, that all kingdomes and commonweals might be preserued, it is requisit there shuld be a power resting in no one Prince in the worlde as superiour to al other Princes, war steps in the place of iust vindicatiue iudgment, God hath left no other meanes unto Princes to flie unto.'²

¹ *Irish Chronicle*, p. 369.

² Stephen Gosson, *The trumpet of warre A sermon preached at Paules Crosse the seuenth of Maie 1598. By M. Steph. Gosson parson of great Wigborow in Essex.* (London: V. Stimmes for I. Oxenbridge, 1598), f. 31^r.

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Figure 1. Robert Peake the Elder, *The Procession Picture of Queen Elizabeth*, c. 1600-3. The earl of Shrewsbury (left, and enlarged at the right) is shown bearing the sword of state, also known as the sword of justice.

The sword in this discourse symbolises sovereign authority and the force that maintains obedience to the laws, which also had its parallels in practice; the sword was, and remains, the force that compels obedience.

The sword featured in traditional displays of sovereign power;³ a sword-bearer would precede the sovereign, as well as other state officials, during formal processions, and this symbol of authority appears in a number of contemporary portraits of Queen Elizabeth (figures 1. and 2.).⁴

³ Fig. 1. Sir Gilbert Talbot, seventh earl of Shrewsbury (1552-1616), marches before the queen bearing the sword of state: National Portrait Gallery, 'Elizabeth I and her people', BBC <<http://www.bbc.co.uk/programmes/p01jwb5j/p01jwbys>> [accessed on 26 January 2016], The procession portrait of Queen Elizabeth c. 1600-3, attributed to Robert Peake the Elder; the historical analysis is addressed in Roy C. Strong, 'The Queen: *Eliza Triumphans*', *The cult of Elizabeth: Elizabethan portraiture and pageantry* (Berkeley: University of California Press, 1977), pp. 17-55.

Fig. 2. Elizabeth was shown seated in her *Ermine Portrait* (1585) with the sword of state: National Portrait Gallery, 'Elizabeth I and her people', BBC <<http://www.bbc.co.uk/programmes/p01jwb5j/p01jwc96>> [accessed on 26 January 2016], Elizabeth's *Ermine portrait* is attributed to Nicholas Hilliard; the historical analysis is addressed in Strong, *The cult of Elizabeth: Elizabethan portraiture and pageantry*, pp. 147-9.

⁴ The queen prayed that she would never have to use the sword: '[i]mpart thy spirit to them that I may administer justice in thy fear without acceptance of persons. [...] Do this, God of all charity, so that not with the fear of severity or sword, but with royal passion and divine fear I may administer this thy kingdom.' This prayer was part of a group of private prayers originally published in Latin and written by Elizabeth in 1563 following her recovery from small pox. *Precaliones pr'rvatae, Regiae E. R.* (London: T. Purfoot, 1563) c.f. L.S. Marcus, J. Mueller, and M.B. Rose, eds., *Elizabeth I: collected works* (Chicago: University of Chicago Press, 2000), pp. 163, 435 supra note 1 (prayer 3). The sword, despite Elizabeth's appeals to God, nevertheless remained a present and real power that stabilized and preserved her reign; the threat of violence up held and preserved the English state: Malcolm Smuts, 'Organized

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Figure 2. Nicholas Hilliard, Queen Elizabeth's *Ermine Portrait*. Pax and Justitia: the sword of state sits at the left hand of the Queen while she holds an olive branch in her right.

The sword in contemporary pageantry and iconography carried important symbolism for military commanders too; Robert Dudley, earl of Leicester, for example, possessed such a bearing sword, which may have been carried in official ceremonies during his controversial governorship and military command in the Netherlands c. 1585-1587 (figures 3. and 4.).⁵

violence in the Elizabethan monarchical republic', *History* 99 (2014), pp. 418-443; Mark A. Hutchinson, 'The emergence of the state in Ireland and England, c. 1575-1599', *Sixteenth century journal* 45 (2014), pp. 659-682.

⁵ Figure 3. ?Hendrik Goltzius, *Delineatio Pompae triumphalis* (c. 1586), and c.f. Roy C. Strong and J. A. van Dorsten, *Leicester's triumph* (Leiden: Leiden University Press for the Sir Thomas Brown Institute, 1964), pp. 38-49, 40: depicted the triumphal arrival of the earl of Leicester as the governor general of the Netherlands, and showed the place of sword-bearers in his progress, marching just before the standard-bearers.

Figure 4. Leicester's sword of state now lies broken in the Nether Gallery of Penhurst Place: H. A. Dillon, 'Sword of Robert Dudley, earl of Leicester', *Archaeologia* 51 (1888), pp. 512-3; John Starkie Gardiner, *Foreign armour in England in Armour in England from the earliest times to the reign of James the first* (London: Seeley, 1898), pp. fig. 33, 78.

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Figure 3. Sword-bearers marched before the army's standards in Leicester's triumphal march.

In Ireland, where the Elizabethan regime struggled to engross the state's authority, the sword of state had still greater significance and was an unmistakable symbol of the lord deputy's office and authority.⁶ Two of the twelve woodprints in John Derrick's *An Image of Ireland* (1581) show the lord deputy, then Henry Sidney (1529-1586), with the sword of state prominently displayed which lent an unmistakable gravity to his triumphant return to Dublin following recent combat operations against rebels, and his reception of Turlough Luineach O'Neill, chieftain of Ulster (c.1530-1595) (figures 5. and 6.).⁷ Ideas relating to the sword and authority also manifested in Sir John Perrot's military government of Munster, where John Hooker, in his *Irish Chronicle*, stated that '[t]he sword and the law he made the foundation of his gouvernement'.⁸

⁶ The symbolic display of Leicester's sword of state would strengthen Simon Adams's personal suspicion that the closest English analogue to the earl's governorship of the Netherlands was the office of lord deputy of Ireland: see Simon Adams, 'Reviewed work: *Leicester and the Netherlands, 1586-1587* by F. G. Oosterhoff', *The English historical review* 109 (1994), p. 718.

⁷ Mark A. Hutchinson, *Calvinism, reform and the absolutist state in Elizabethan Ireland* (London: Routledge, 2015), pp. 57-9; John Derrick, *The image of Ireland with a discouerie of woodkarne*, ed. J. Small (Edinburgh: Adam and Charles Black, 1883), plate X, plate XII (no page numbers).

⁸ *Irish chronicle*, p. 369.

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Figure 4. Details of Leicester's sword of state: fig. 1 sword hilt; fig. 2 sword pommel; fig. 3 one quillon.

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Figure 5. Lord Deputy Sir Henry Sidney returned triumphant to Dublin Castle and was received by the Lord Mayor and Aldermen. The sword of state here is shown central and displayed in the hands of the lord deputy's sword bearer.

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Figure 6. Turlough Luineach O'Neill and the other Ulster Gaels kneel to Sidney in submission. Note also that the Lord Deputy Sir Henry Sidney seems to be receiving O'Neill as a fellow noble. The sword of state was prominently featured. It rested on a pillow to the right of the Lord Deputy.

The sword could be, in one instance, the magistrate's sword of justice: 'for hee is the minister of God for thy wealth. But if thou do euil, feare, for hee is the minister of, God, reuenger of wrath on him that doeth euill.'⁹ Or in another, it was the sword of war that protects the realm and '[d]eliuer the outcast & poore: saue them from the hand of the ungodly.'¹⁰ It is with '[t]he sword and the law' that this thesis is concerned. Moving beyond the symbolism and ideology of the state's political power to defend and coerce, it seeks to analyse the relationship between the English officer corps' perceptions of the theory of the laws of war and their actual conduct during military campaigns. In so doing, it adopts a comparative approach by exploring the application of the laws of war by Elizabethan forces in two contrasting theatres of war, namely the wars in the Netherlands between 1572 and 1587 and the campaigns in Ireland between 1569 and 1584.

England, since the arrival in 1568 of the duke of Alba with the 25,000 men of the Spanish Army of Flanders, year after year edged ever closer to open war, which was declared in 1585 against the king Philip II.¹¹ However, the declaration of war was not the beginning of offensive military action. English soldiers were serving in various degrees and increasing numbers from 1569 to 1585. Estimates of English soldiers serving in the Netherlands identifies a token strength of 100 (c.1568-9), or fewer troops, until Elizabeth dispatched 2,400 unaffiliated mercenaries into the conflict in 1572.¹² In 1578, troop numbers reached a new height, about 4,500 men, but these began to decline until England formally entered the conflict on the side of the Dutch, which changed the nature of the conflict.¹³ In 1585 England sent 7,500 soldiers and after the arrival of the earl of Leicester muster rolls were raised to 9,000 English soldiers.¹⁴ Ireland, on the

⁹ *The Holy Bible, conteyning the olde testament and the new: authorised and appointed to be read in churches* (London: Christopher Barker, 1588), Romans 13.4.

¹⁰ *The Holy Bible, conteyning the olde testament and the new*, Psalms, 82.4.

¹¹ R. B. Wernham, 'Elizabethan war aims and strategy,' in *Elizabethan government and society: essays presented to Sir John Neale*, eds., S. T. Bindoff, J. Hurstfield, and C. H. Williams (London: University of London Athlone Press, 1961), pp. 340-368, 343.

¹² David J. B. Trim, 'Fighting "Jacobs Wars": the employment of English and Welsh mercenaries in the European wars of religion: France and the Netherlands, 1562-1610' (unpublished doctoral thesis, University of London, 2002), pp. 313-314.

¹³ Trim, 'Fighting "Jacob's Wars"', pp. 321-322, appendix 2, 340.

¹⁴ John S. Nolan, 'The militarization of the Elizabethan state', *The journal of military history* 58 (1994), pp. 391-420, 418; Trim, 'Fighting "Jacob's Wars"', pp. 328-329.

other hand, was the equivalent of a rural backwater. The English army of Ireland from 1569 and into the mid-1590s averaged 1,500-2,000 soldiers; these troops were not mustered in a singular army, but rather were dispersed throughout Ireland in small – policing – garrisons.¹⁵ Only when powerful Anglo-Irish lords rebelled did English muster rolls reach numbers that mirrored those armies in the Dutch conflicts; e.g. during the Desmond rebellion (1579-1584), English military strength rose to 8,892 men, but once the crises had abated troop strength was reduced to its policing levels.¹⁶ The conflicts against Spain, particularly in the Netherlands, and Ireland were two of the greatest military challenges facing the Elizabethan state.

Historiography

The conflicts in the Netherlands and Ireland loomed large in the thoughts of English contemporaries, but each conflict was viewed in very different ways. Those in the Netherlands were of strategic importance, and apart from religious ties with the fellow Protestant Dutch, and English fears of an active Catholic Inquisition just across the Channel, Spain increasingly appeared to the English observer to be preparing an invasion force. Therefore, the Spanish military occupation of the Netherlands posed a serious external threat to England's continued existence, so that by 1585 the belligerents were the sovereign states of England and Spain, and a state of war existed between the two. Conversely, in English political discourse Ireland was seen as a dependant territory, held by conquest in subservience to the kingdom of England. Previous English monarchs had been content to largely leave the government of Ireland to its domestic lords, but Elizabeth had adopted a reformist policy and expanded English state control over Ireland. English intrusion into the direct government of Ireland provoked resistance. Most notable of these were the Desmond rebellions (the Fitzmaurice rebellion, 1569-1573 and the Desmond rebellion, 1579-1584). Each side in the contest adopted increasingly belligerent positions. The conflicts in Ireland, therefore, were matters of domestic law enforcement and not war, and

¹⁵ Mark Charles Fissel, *English warfare, 1511-1642* (New York: Routledge, 2001), p. 224; Paul E.J. Hammer, *Elizabeth's wars* (New York: Palgrave Macmillan, 2003), p. 72.

¹⁶ Fissel, *English warfare*, p. 224; Nolan, 'The militarization of the Elizabethan state', p. 418.

English military actions were one aspect of a difficult policy intended to reform all aspects of Irish society.

To contemporaries, rebellions and wars were very different types of conflicts and were fought accordingly: wars were international conflicts waged between sovereign states whereas rebellions were intra-national and were manifestly unlawful uprisings of subject peoples against their sovereign prince and his government. The laws of war were an international code of conduct, and, but did not, therefore, apply in rebellion. In the suppression of rebellions, it was domestic law – namely the laws of treason – which legitimated a harsher form of conduct. Whereas wars between states were fought to achieve limited political ends, campaigns against rebels could amount in effect to a war of extermination.

In themselves the laws of war, as a subject of historical enquiry, have most often been the preserve of legal historians charting the development of international law, of which these laws were a sub-category, but their analysis has been largely confined to macro scale international diplomatic and political issues.¹⁷ The laws of war have also been studied in relation to just war theory and the history of ideas and as a philosophical subject, but, here, they were viewed as a secondary aspect to the morality and ethics of war in general.¹⁸ Early modern military historians have, until comparatively recently, had little interest in the sixteenth-century perception and practice of the laws of war as an aspect of warfare.

The general lack of interest in the laws of war has arisen, perhaps, in part from a long standing academic concentration on the religious dimension of the wars in the sixteenth-century. The historian and lawyer Thomas Walker wrote at the very end of the nineteenth-century that '[t]he Age of the Reformation was an age of war and of wars of particular atrocity. The very religious fervour,

¹⁷ Douglas M. Johnston, *The historical foundations of the world order: the tower and the arena* (Leiden: Nijhoff, 2008); Wilhelm Grewe, *The epochs of international law*, tr., M. Beyers (Berlin: Walter de Gruyter, 2000); Arthur Nussbaum, *A concise history of the law of nations* (New York: Macmillan, 1947).

¹⁸ James T. Johnson, *Ideology, reason and the limitation of war: religious and secular concepts, 1200-1740* (New Jersey: Princeton University Press, 1975); idem, *The just war tradition and the restraint of war: a moral and historical inquiry* (New Jersey: Princeton University Press, 1984); idem, *Ethics and the use of force: just war in historical perspective* (Surrey: Ashgate, 2011).

which had in medieval days enlisted united Christendom in crusading warfare, worked, when union no longer existed, havoc in international practice.’¹⁹ Perceptions of early modern warfare changed little over the preceding two decades. On the eve of the Second World War, the military historian Charles Oman reflected upon Elizabethan military conduct, and wrote with regret: ‘[o]n the whole, the reign of Elizabeth makes a very depressing chapter in the history of the English art of war. [...] Occasionally one feels acute humiliation when reading of the conduct of English troops – and officers. ...there were other incidents in Ireland and also in the Netherlands of which the memory is distressing.’²⁰ A veteran of the Great War, Falls wrote with more pragmatism and professional distance, and he recognised throughout his discourse that English contemporary observers regarded those conflicts as rebellions and rightly reassessed their wider importance. Writing with more pragmatism and professional distance, Falls recognises throughout that English contemporary observers regarded the conflicts as rebellions and rightly reassessed their wider importance; he and his contemporary historians, however, used the terms ‘rebellion’ and ‘war’ without adequately defining them in relation to sixteenth-century legal concepts.²¹ The first order problem was defining what military actions constituted war.

Implicit in their works was an assumption that all forms of armed conflict were essentially ‘war’, a perception perhaps arising from their modern experience of nation-state warfare in two successive World Wars. Where rebellion was differentiated from war, it was termed ‘civil war’, an uncommon term in the sixteenth-century, and one that modern historians have used to imply that seventeenth-century nobles fought with a regard to the customary rules of war, but this was a change from the noted brutality practiced in Wars of the Roses, which indicates that Elizabeth’s wars against rebels were a continuation of older precedents.²²

¹⁹ Thomas Alfred Walker, *A history of the law of nations: from the earliest times to the peace of Westphalia*, vol. 1, (Cambridge: Cambridge University Press, 1899), p. 188.

²⁰ Charles Oman, *A history of the art of war in the sixteenth century* (London: Methuen & Co., 1937), pp. 388-9.

²¹ Cyril Falls, *Elizabeth’s Irish Wars* (London: Methuen & Co. Ltd., 1950), preface.

²² Laws of war in the English Civil war: Barbara Donagan, ‘Codes of conduct in the English Civil War’, *Past and present* 118 (1994), pp. 65-95; idem, ‘Atrocity, war crime, and treason in the English Civil War’, *The American historical review* 99 (1994), pp. 1137-1166; idem, ‘The web

Much of the ensuing military historiography of Ireland was directed towards analysing the process of English colonisation.²³ The Elizabethan government in 1565 made the cornerstone of their Irish policy 'to bring all of Ireland under English control.'²⁴ English colonial theory developed in Ireland (which became the model for the Americas), was achieved via public-private partnerships and direct action by the state; English policy was deployed initially through privately sponsored enterprises between the government and adventurers from the gentry and the younger sons of the aristocracy, not by the government's soldiers stationed in Ireland.²⁵ The process of colonization, in the face of ever increasingly hostile Irish opposition, became most brutal, and the private enterprises of English elites, like the son of Sir Thomas Smith and Walter Devereux, first earl of Essex, resulted in mass killings and atrocities; this has led some writers to describe the Tudor conquest of Ireland as a genocide.²⁶ However, the atrocities and the government policies that encouraged them were

of honour: soldiers, Christians, and gentlemen in the English Civil War', *The historical journal* 44 (2001), pp. 365-389; idem, 'Soldiers' law', in *War in England, 1642-1649* (Oxford: Oxford University Press, 2008), pp. 134-156. The chivalric practices of the laws of arms during the Wars of the Roses has been understudied, but most historians agree that these rebellions were waged with exceeding ferocity: Anthony Goodman, *The Wars of the Roses: the soldier's experience* (Stroud: Tempus, 2006).

²³ The English colonization of Ireland has an expansive historiography and remains a topic of continued debate; what follows are important interpretations: David B. Quinn, *The Elizabethans and the Irish* (Ithaca: Cornell University Press, 1966); Nicholas P. Canny, 'The ideology of English colonization: from Ireland to America', *The William and Mary quarterly*, third series 30 (1973), pp. 575-598; idem, *The Elizabethan conquest of Ireland: a pattern established, 1565-76* (New York: Barnes and Noble books, 1976).

Neil Murphy's recent article traces Elizabethan colonisation strategies not to Ireland which has been the predominant narrative but to Henry VIII's French colonial schemes: 'Violence, colonization and Henry VIII's conquest of France, 1544-1546', *Past and Present* 233 (2016), pp. 13-51.

²⁴ Canny, 'The ideology of English colonization', p. 576.

²⁵ Canny, 'The ideology of English colonization', p. 576.

²⁶ David Edwards, 'Escalation of violence in sixteenth century Ireland', *Age of atrocity: violence and political conflict in early modern Ireland*, eds., D. Edwards, P. Lenihan, and C. Tait (Dublin: Four Courts Press, 2007), pp. 34-78; idem, 'Tudor Ireland: Anglicization, mass killings, and security', in *The Routledge history of genocide*, eds., C. Carmichael and R. Maguire (New York: Routledge, 2015), pp. 23-37; Ben Kiernan, 'The English conquest of Ireland, 1565-1603', *Blood and soil: a world history of genocide and extermination from Sparta to Darfur* (New Haven: Yale University Press, 2007), pp. 169-212; Charles Carlton, 'This happy breed of men: Elizabethan warfare, 1558-1603', in *This seat of Mars: war and the British Isles* (New Haven: Yale University Press, 2011), pp. 79-102. Irish resistance, the English soldiers' poverty, and their colonial instincts required the English to continually reassess the degree of violence necessary to maintain and extend their control over Ireland: Wayne E. Lee, 'Sir Henry Sidney and the mutiny at Clonmel, 1569', and 'The earls of Essex, 1575 and 1599', in *Barbarians & Brothers: Anglo-American warfare, 1500-1865* (Oxford: Oxford University Press, 2011), pp. 15-35, 36-62.

only broadly analysed, often under the umbrella of martial law.²⁷ The particulars of government restraint and atrocity remained largely unexamined.

As the historical approach known as ‘drum and trumpet’, or campaign history, was superseded by the ‘new military history’, debates surrounding the so-called military revolution shifted studies away from broad and often generalised analysis of armed conflicts towards a greater emphasis on war and society.²⁸ Focusing on organisational developments – means of mobilisation, pay, supply, morale, and most importantly logistics, ‘new military history’ reinvigorated the study of military history, but without contributing much to the study of the practice and perceptions of the laws of war. Debates about the so-called military revolution focused primarily on technological developments and the ‘science’ of war, this led to initial surveys of the laws of war. However, military actions remained largely separated from their human component and, therefore, became somewhat technologically deterministic.

Geoffrey Parker’s *The Army of Flanders and the Spanish Road, 1567-1659: the logistics of Spanish victory and defeat in the Low Countries’ Wars* exemplified the ‘new military history’ approach.²⁹ In Parker’s analysis of the Dutch revolt, also known as the Eighty Years War (1568-1648) and the Dutch war of independence, the laws of war or armed conflict were implicitly a by-product of war’s technological development.³⁰ The ‘Low Countries’ wars’, Parker states, were fought in two phases; the first was c.1578 to 1590 and the second c.1600-

²⁷ David Edwards, ‘Beyond reform: martial law & the Tudor reconquest of Ireland’, *History Ireland* 5 (1997), pp. 16-21; idem, ‘Ideology and experience: Spenser’s view and martial law in Elizabethan Ireland’, in *Political ideology in Ireland, 1541-1641*, ed., H. Morgan (Dublin: Four Courts Press, 1999), pp. 127-57.

²⁸ The new military history was outlined by Peter Paret, ‘The new military history’, *Parameters* 21 (1991), pp. 10-18.

Here is not the place for a comprehensive historiography of the military revolution, but what follows are the principal works on the subject: Clifford J. Rodgers, ed., *The military revolution debate: readings on the military transformation of early modern Europe* (Boulder: Westview Press, 1995); Geoffrey Parker, *The military revolution: military innovation and the rise of the West, 1500-1800*, 1st and 2nd eds. (Cambridge: Cambridge University Press, 1988, 1996).

²⁹ Geoffrey Parker, *The Army of Flanders and the Spanish road, 1567-1659: the logistics of Spanish victory and defeat in the Low Countries’ wars*, 2nd ed. (Cambridge: Cambridge University Press, 1972, 2004).

³⁰ Professor Parker, however, was keenly aware of the English hand in the rise of the Dutch state: ‘Philip II, unlike modern Dutch historians, rated the contribution of English men and money to Holland’s resistance very highly.’ See Geoffrey Parker, *Spain and the Netherlands, 1559-1659: ten studies* (London: Collins, 1979), p. 35.

1648. In the first phase of the war, the soldiers fought primarily ‘guerrilla’ actions that emphasised skirmishing and surprise – poor conditions under which to wage a just war. However, by the second phase of the conflict the fighting ‘gave way to a more “baroque” or “classical” style ... as governments re-asserted their control ... over most other aspects of the war.’³¹ There is something to this analysis, since fighting in Ireland was characterised by ‘guerrilla’ style warfare, or what might be better termed manoeuvre warfare, and in both instances the methods of warfare were at various times horrific.³²

Parker modified his analysis somewhat in his work *The Dutch revolt*, in which the diplomatic and political history of the Dutch conflict was raised above the organisational and technological, and this shift goes farther to craft the general sense of the war’s place in the intellectual and popular cultural milieu.³³ His approach offers insights into the belligerents’ motivations during the conflicts; however, the practices of the laws of war make up little more than a footnote. By contrast, in Parker’s *The military revolution*, a general survey of early modern technological development and military practice, he noted the developing body of research pertaining to certain aspects of the laws of war, although his primary focus was on the regulations pertaining to booty and ransom and their effects on operations.³⁴ While booty and ransom were a sub-category of the laws of war dealing with the aftermath of action, the emphasis in this thesis will be primarily on the ‘rules of engagement’ and how the laws of war altered actual operations.³⁵

³¹ Parker, *The Army of Flanders and the Spanish road, 1567-1659*, pp. 10-12, 14.

³² For a sampling of the research relating to guerrilla warfare in Ireland: G. A. Hayes-McCoy, ‘Strategy and tactics in Irish warfare, 1593-1601’, *Irish historical studies* 2 (1947), pp. 255-279; James Michael Hill, ‘The distinctiveness of Gaelic warfare, 1400-1750’, *European history quarterly* 22 (1992), pp. 323-345; Donal O’Carroll, ‘Change and continuity in weapons and tactics, 1594-1691’, in *Conquest and resistance: war in seventeenth century Ireland*, ed., P. Lenihan, vol. 3, history of warfare series (Leiden: Brill, 2001), pp. 211-256, 224; this approach was challenged by Edwards, ‘Escalation of violence in sixteenth century Ireland’, pp. 34-78; however, recent research challenges the guerrilla warfare thesis in favour of a manoeuvre warfare model: James O’Neill, *The Nine Years War, 1593-1603: O’Neill, Mountjoy and the military revolution* (Dublin: Four Courts Press, 2017), pp. 209-211.

³³ Geoffrey Parker, *The Dutch revolt*, revised ed. (London: Penguin Books, 1977, 1988).

³⁴ Parker, *The military revolution*, 1st ed. pp. 58-9, supra notes 41-45 to pages 58-9.

³⁵ Scholars have analysed the Elizabethan regulation of booty and ransom in relationship to Henry V’s resumption of the Hundred Years War as presented in Shakespeare’s plays: Theodor Meron, *Henry’s wars and Shakespeare’s laws: perspectives on the laws of war in the later middle ages* (Oxford: Oxford University Press, 1993)

In Anglophone ‘new military history’, the overall estimation of the Elizabethan military corps remained essentially negative. Henry J. Webb’s *Elizabethan military science* recognises the classical influence on martial thought and practice while at the same time acknowledging the unique thinking in English interpretations.³⁶ Classical Greek and Roman authored texts on war that argued for essentially five subjects for the aspiring soldier: recruiting and personnel, training, discipline, strategy, and tactics. The subject of discipline, of which the laws of war are fundamentally connected, Webb disregarded with a single stroke. Had the discipline of classical Roman armies been adopted ‘many officers in Elizabeth’s army ... would have been demoted or cashiered, or would have suffered cuts in pay.’³⁷ Organisation, administration, training and strategy were addressed in C.G. Cruickshank’s *Elizabeth’s army*; however, these subjects were divorced from the laws of war.³⁸ Cruickshank was concerned most with the corruptions practiced by captains and the poor state of military doctrine.

Historians specialising in sixteenth-century military history were aware of just war doctrine and developments in the practice of international law of war and its contemporary importance, but they have not closely analysed the relationship between legal theories, their constituent conflicts, and actions taken in campaigns. The medieval historian Maurice H. Keen recognised the importance of the laws of arms in relation to military practice in *The laws of war in the late middle ages*.³⁹ The Elizabethan period was bracketed by the publication of Barbara Donagan’s ‘Codes of conduct in the English Civil War’, while Parker himself produced an excellent general survey of the laws of war practiced in the early modern period.⁴⁰ This reappraisal of the place of the laws

The regulation of booty was directly addressed in F. Redlich, *De praeda militari: looting and booty, 1500-1800* (Weisbaden, 1956: Vierteljahrshrift für Sozial – und Wirtschaftsgeschichte, Beiheft XXXIX), and Philippe Contamine, ‘The growth of state control. Practices of war, 1300-1800: ransom and booty’ in *War and competition between states*, ed. P. Contamine (Oxford: Oxford University Press, 2000), pp. 164-194.

³⁶ Henry J. Webb, *Elizabethan military science: the books and practices* (Madison: University of Wisconsin Press, 1966).

³⁷ Webb, *Elizabethan military science*, p. 46. Theoretical works on the laws of war did not even merit a place in his bibliography unless they were written by military men.

³⁸ Charles G. Cruickshank, *Elizabeth’s army*, 2nd ed. (Oxford: Clarendon Press, 1966).

³⁹ Maurice H. Keen, *The laws of war in the late middle ages* (Aldershot: Gregg Revivals, 1965, 1993).

⁴⁰ Barbara Donagan, ‘Codes of conduct in the English civil war’, *Past and present* 118 (1988), pp. 65-95, and ‘Soldiers’ law’, in *War in England, 1642-1649*, pp. 134-156. Geoffrey Parker, ‘Early modern Europe’, in *The laws of war: constraints on warfare in the Western world*, eds., M.

of war in early modern conflict has not resulted in specific and thorough analyses of the laws of war by the armies of individual states in the sixteenth-century, although more has been written on the nature of chivalric culture more broadly and on the professionalization of the officer corps.⁴¹

One reason for the lack of nationally specific studies of the laws of war may have been the assumption that since armies of the period, as the muster records prove, were assembled from the peoples of many different national identities (a number of Elizabethan soldiers had, for example, served in Philip II's tercios). The practice of the laws of war had a relatively universal, or standardised, interpretation. The rank and file soldier had no voice, and was compelled, by force when necessary, to obey the commands of the officers appointed over them. Officers, particularly the theatre commanders, were political appointees, and they commanded their army fully aware of the political expectations incumbent on their office. They created their own command culture, wherein implicitly, or occasionally explicitly, subaltern officers were directed towards a particular standard interpretation of the laws of war. In the Spanish army, the laws of war meant different things at different times to different commanders.⁴²

Changes in the Spanish Army of Flanders's high command do not necessarily indicate that the Elizabethan officer corps also had their own

Howard, G.J. Andreopoulos, and M.R. Shulman (New Haven: Yale University Press, 1994), pp. 40-58, and expanded and reprinted as 'The etiquette of atrocity: the laws of war in early modern Europe', in *Success is never final: empire, war, and faith in early modern Europe* (New York: Basic Books, 2002), pp. 143-168.

⁴¹ Chivalry as a complimentary subject or component of the laws of war was admirably dealt with in David J.B. Trim, ed., *The chivalric ethos and the development of military professionalism*, vol. 11, history of warfare series (Leiden: Brill, 2003)

Chivalry, as an English cultural phenomenon, has been addressed directly in several studies, but these older works tend to view chivalry as something archaic with little bearing on actual war and its importance linked to its vestigial and literary power: Arthur B. Ferguson, *The Indian summer of English chivalry: studies in the decline and transformation of chivalric idealism* (Durham: Duke University Press, 1960); *The chivalric tradition in renaissance England* (Washington D.C.: Folger Shakespeare Library, 1986); Richard C. McCoy, *The rites of knighthood: the literature and politics of Elizabethan chivalry* (Berkeley: University of California, 1989). Roger B. Manning has identified what he believes to be important correlations between military conduct and chivalric ideas; however, these views will be shown below to be erroneous.

⁴² The laws of war and the different interpretations by successive made by Spanish captain generals of the Army of Flanders was addressed in Fernando Gonzalez de Leon, 'Soldados platicos and caballeros: the social dimensions of ethics in early modern Spanish army', in *Chivalric ethos and the development of military professionalism*, history of warfare series, 11 (Leiden: Brill, 2003), pp. 235-268.

changing interpretations of the laws of war. In Parker's grand theory of a military revolution, he viewed the English as slow to adopt the principles identified with the revolution — 'a new use of firepower, a new type of fortifications, and an increase in army size.'⁴³ However, this analysis has been qualified, and the Elizabethans have been recognized as having their own views the effective waging of warfare that differed from those on the continent.⁴⁴ Such strong notions on military doctrine might suggest that they also had a distinctive attitude to the laws of war. Whereas the mass of continental armies were largely conscripted commoners, a surprising proportion of Elizabeth's 'common soldiers', as Trim has pointed out, were not common men but elites. Elites remained a minority in Elizabeth's army, but many more gentlemen did serve in the ranks than previously was recognised.⁴⁵

Anglo-centric historiography has begun to adjust to these new English historical paradigms — novel approaches to English warfare, expanded knowledge of English army composition, and cultural knowledge of English warfare. By approaching the conflicts in the Netherlands and Ireland from a comparative perspective that focuses on the perception and practice of the laws of war, this thesis will go further to explain contemporary attitudes and actions in these two terrible conflicts. Furthermore, the approach offers new insights into developing areas of research, including the two major areas of debate

⁴³ Parker, *The military revolution*, 1st ed., p. 43.

⁴⁴ The most recent historiography of the Elizabethan military establishment in relation to the military revolution was addressed in David R. Lawrence, 'Reappraising the Elizabethan and early Stuart soldier: recent historiography on the early modern English military culture', *History Compass* 9 (2011), pp. 16-33, 17-20. Additional important research has been carried out by Fissel, *English warfare, 1511-1642*, and David Eltis, 'English military development', in *The military revolution in sixteenth-century Europe* (New York: Barnes and Noble, 1995), pp. 99-135. Dutch tactical developments, made near the end of the sixteenth-century, were partly the result of English contributions; see Olaf van Nimwegen, *The Dutch army and the military revolutions, 155-1688*, tr. A. May, warfare in history series (Woodbridge: Boydell Press, 2010), pp. pp. 87 fn. 4, 106-7 fn. 50; throughout the Eighty Years War and more so once the new doctrine was established, English men flocked to learn the Dutch methods, see. Marco van der Hoven, ed. *Exercise of arms: warfare in the Netherlands, 1568-1648*, history of warfare series, vol. 1 (Leiden: Brill, 1997), pp. ix-x.

Roger B. Manning argues for a uniquely British view of war that was actually in opposition to the technical principles of the military revolution resulting of their views on honour and chivalry; however, the argument in these works are not necessarily correct: Roger B. Manning, *Swordsmen: the martial ethos in the three kingdoms* (Oxford: Oxford University Press, 2003); idem, 'Prince Maurice's school of war: British swordsmen and the Dutch', *War & society* 25 (2006), pp. 1-19; idem, 'Styles of command in seventeenth century English armies', *Journal of military history* 71 (2007), pp. 671-99.

⁴⁵ Trim, 'Fighting "Jacob's Wars"', p. 46.

identified in David Lawrence's survey of recent Elizabethan and Stuart military historiography. The first is the ongoing debate concerned with identifying the 'motivations and mentalities' of the Elizabethan soldiery, and the second is the less contentious subject '[t]he performance of the common soldier'.⁴⁶

David J.B. Trim has argued for the primacy of religion, particularly the rise of a Calvinist internationalism, as the key to understanding the motivations of a majority of the officers, gentlemen volunteers, and their followings during the French and Dutch wars of religion.⁴⁷ Nevertheless, despite the fact that some English officers served in both the continental wars and in operations in Ireland, religion fails to fully explain the motivations and mentalities of captains in the Irish theatre: Rory Rapple has suggested that the pursuit of personal advancement and the acquisition of new lands surpassed religion as the essential motivational factors in Elizabeth's wars upon the Irish rebels.⁴⁸ Mark A. Hutchinson argues for a reassessment of the importance and place of Protestantism in the military government of Ireland, stressing that the failure of the Elizabethan state to reform religious practice in Ireland led officials to use state-sponsored violence.⁴⁹

Several other historians argue that it was the pursuit of personal honour and glory that drove Elizabethan soldiers, and Trim himself acknowledges the significant role that honour played in shaping the soldiers' mentality. War offered the nobility an opportunity to enlarge their reputation through honourable conduct since they were expected to be above the pursuit of monetary rewards: 'the proper "endeavour" of a gentleman is to seek honour; only the vulgar "labour to become rich"'.⁵⁰ For late-sixteenth and early-

⁴⁶ Lawrence, 'Reappraising the Elizabethan and early Stuart soldier', pp. 16-33, 20-24. Lawrence's article is a historiographical survey of works that followed the publication of the influential work by Fissel, *English Warfare, 1511-1642*, which provides an interesting overview of Elizabethan soldiers' motivations and mentalities.

⁴⁷ Trim, 'Fighting "Jacobs Wars"; 'Calvinist internationalism and the English officer corps, 1562-1642', *History Compass* 4 (2006), pp. 1024-48.

⁴⁸ Rory Rapple, *Martial power and Elizabethan political culture: military men in England and Ireland, 1558-1594*, (Cambridge: Cambridge University Press, 2009).

⁴⁹ Mark A. Hutchinson, *Calvinism, reform and the absolutist state in Elizabethan Ireland* (London: Routledge, 2015); 'Reformed Protestantism and the government of Ireland, c. 1565-1580: the lord deputyships of Henry Sidney and Arthur Grey', *The Sidney Journal* 29 (2011), pp. 71-104.

⁵⁰ Trim, 'Fighting "Jacob's Wars"', p. 86; for a broader survey, see also the various works in David J. B. Trim, ed., *The chivalric ethos and the development of military professionalism* (Leiden: Brill, 2003); Roger B. Manning, *Swordsmen: the martial ethos in the three kingdoms*

seventeenth-century English ‘gallants and swordsmen’ serving in continental wars, Roger B. Manning has concluded that their ‘sense of honour was highly individual and personal concept ... [and] had nothing to do with Christian morality’.⁵¹ Elizabethan honour, Manning argues was an impediment to the military professionalism commonly associated with the so-called military revolution because the English gallants and officers adhered to an older anachronistic code of honour and conduct that placed an emphasis upon individual displays of honour such as ‘duelling, challenges to individual combats on the battlefield, and other histrionics’; however, such actions were not necessarily unique to English officers. For example, the Spanish commander, Don Juan del Águila, while ensconced in Kinsale and surrounded by English besiegers, challenged the English commander Charles Blount, earl of Mountjoy, to a duel; Águila’s challenge proposed ‘that the question betweene England and Spaine should be tried by combat betweene them two’.⁵² These displays of honour in military actions were a reassertion ‘that social hierarchies remained more important than military hierarchies in positions of military command’.⁵³ Paul Robinson, however, has argued for a more nuanced role of honour within Elizabethan armies.⁵⁴ ‘The famous warriors of the age’, he remarked, ‘were at the same time highly educated, well versed in military science, and ruthless in the pursuit of their enemies; and yet obsessed with winning martial glory, enthused with passion for single combat and other displays of courage, and merciful and generous to defeated opponents (Irish ones excepted).’⁵⁵ Robinson here implies that honour had little or no place in the Elizabethan conflict in Ireland, but Brendan Kane’s research shows that honour was an essential

(Oxford: Oxford University Press, 2003), p. 56, c.f. William Segar, *Honor, military and civil* (London: Robert Baker, 1602), preface; Samuel P. Harrington, *The soldier and the state: the theory and politics of civil military relations* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1957), p. 20.

⁵¹ Manning, *Swordsmen*, p. 79.

⁵² Fynes Moryson, *An itinerary: containing his ten yeers travel through the twelve dominions of Germany, Bohmerland, Switzerland, Netherland, Denmarke, Poland, Italy, France, England, Scotland & Ireland*, 4 vols. (Glasgow: James MacLehose and Sons, 1908), iii, p. 57.

⁵³ Roger B. Manning, ‘Styles of command in seventeenth-century English armies’, pp. 671-99, 672.

⁵⁴ Paul Robinson, ‘Elizabethan England’, in *Military honour and the conduct of war: from ancient Greece to Iraq* (London: Routledge, 2006), pp. 83-104.

⁵⁵ Robinson, ‘Elizabethan England’, p. 104.

element in Anglo-Irish relations throughout Elizabeth's reign.⁵⁶ For Kane, the Irish conflicts were part of an 'internal "British" struggle in which the proper relationship between members of a nascent inter-realm aristocracy, and between provincial aristocrats and the state, were being worked out.'⁵⁷ Rapple too identifies moments where Elizabethan soldiers and their conceptions of honour in the Irish conflicts led to public displays of mercy to the defeated.⁵⁸ As this thesis will argue, the various motivations and mentalities of Elizabethan combatants were not necessarily mutually exclusive, and were in many cases complimentary.

Religion and honour, in these works, are all studied largely in isolation as different aspects of the wider military culture in England and leaves questions about how these notions were manifested in action largely unanswered. Accordingly, this thesis will focus on the laws of war and customary conduct of the Elizabethan military. These offer an under-explored area of insight into the mentalities of their commanders because these protocols share connections with both religious ideas and military concepts of honour, and they either described or proscribed certain responses in military actions. Geoffrey Parker observed a potential hurdle to such an inquiry by noting that '[e]xplicit discussions of the customs of war by leading practitioners are exceedingly rare.'⁵⁹ Nevertheless, just as Mark Charles Fissel observes that 'a nation's conduct of the art of war can be understood by analysing the actions of groups of men', so this method can also provide a point of comparative analysis for observing the how the laws of war and armed conflict affected military conduct.

The thesis has two principal foci: the perceptions of the Elizabethan officer corps - those men Sir Walter Raleigh called 'men of war' - and their actions while on campaign.⁶⁰ It was the duty of the nobility to bear either the sword of justice or of war; this duty might sometimes be expressed in allegorical

⁵⁶ Brendan Kane, *The politics and culture of honour in Britain and Ireland, 1541-1641* (Cambridge: Cambridge University Press, 2009); aspects of honour are also acknowledged as important in Rapple, *Martial power and Elizabethan political culture*, chapter 6.

⁵⁷ Kane, *The politics and culture of honour in Britain and Ireland*, p. 94.

⁵⁸ Rapple, *Martial power and Elizabethan political culture*, pp. 219-224.

⁵⁹ Parker, 'The etiquette of atrocity', pp. 143-168, 340, *supra* note 37.

⁶⁰ Walter Raleigh, 'A discourse touching a marriage between Prince Henry of England, and a daughter of Savoy', in *The Works of Sir Walter Raleigh*, eds., Oldys and Birch, 8 vols (Oxford: Oxford University Press, 1829), viii, p. 246.

image of the body politic in which ‘the prince and commonwealth ioyned together make a perfect man consisting of head, body and members’.⁶¹ The idea was expanded by the veteran soldier William Blandy to explain war and rebellion. In *The castle, or a picture of policy shewing forth most lively, the force, body and parts of a commonwealth* (1581), he noted that ‘[t]he two limmes that chiefly and aboue other, strengthē[n] the body of *Princely maiestie, is the lusticer and souldiar*. [...] The one executeth the will of his *Soueraigne* upon the offender at home, and in the Citty, theother wreaketh the indignation of the Prince in the field, upon the body of his enemy.’⁶² By contrast, the rank and file soldiers’ freedom of action was regulated by a combination of cultural and sociological tradition that made members of the noble estates natural leaders over the common man, as well as by army ordinances which prohibited the soldier, on pain of death or loss of limb, from committing to any action beyond his immediate task without direct orders from an appropriate officer. The Elizabethan officer corps were responsible for seeing that the laws of war were followed and that those who violated them during military operations should be held to account.

Method

Using as its starting point the contemporary discourse in England relating to the laws of war and the customs that operated in land warfare, this study compares the discourse with the actions of soldiers while on campaign in both the Dutch and Irish theatres. Therefore, this thesis necessarily excludes for its discussion the naval conflict between Elizabeth and Philip. Military operations on the seas encountered some issues that closely paralleled debates on land warfare; such as ‘privateering’ versus ‘piracy’ or ‘mercenary’ and service with an army royal, and the treatment of prisoners. However, the sources and scholarship on the law of land warfare and naval warfare are both large and

⁶¹ Anne McLaren, ‘Political ideas: two conceptions of the state’, in *The Elizabethan world*, eds., S. Doran and N. Jones, the Routledge worlds series (New York: Routledge, 2011), pp. 92-112, 92 c.f. T.E. Hartley, ed., *Proceedings in the Parliaments of Elizabeth I*, 3 vols. (Leicester: Leicester University Press, 1: 1981; 2: 1995; 3: 1995), i, pp. 130-1.

⁶² William Blandy, *The Castle, or picture of policy* (London: John Daye, 1581), p. 15.

distinct, a conflation of the two traditions would only serve to obscure, rather than clarify, the subjects analysed in this thesis.⁶³

The approach was inspired by John A. Lynn's *Battle: a history of combat and culture*, in which Lynn directly challenged the body of historiography relating to technological determinism, as well as the cultural assertion of a distinctly Western way of war. Instead, he focused on a society's cultural perception of war, which he referred to as the 'discourse on war' and its interaction with what he terms the 'reality of war'.⁶⁴ Lynn's analysis uses a model for cultural history that identifies the existence of a 'feedback loop' within a particular society. The feedback loop notes that the 'discourse of war' could alter the 'reality of war' to create 'perfected realities', but equally, so could the 'reality of war' affect the 'discourse on war' and fosters new discourses.⁶⁵ His approach is not without its critics, yet the comparative approach used in *Battle* has much to offer. Restraint, and the absence of it, reside at the discursive nexus of important cultural notions about how Elizabethans viewed the roles of both religion and honour in war and armed conflicts. Lynn implicitly acknowledges the importance of ideas concerning restraint and its absence in the chapters that chronologically bracket the Elizabethan age, and thus highlights the need for in future study of the intervening period. Lynn gives close attention to the discourse of chivalry and its relationship to the practice of war in the middle ages, and considered how the laws of war and honour during the Enlightenment influenced their conduct of war. Lynn's attention upon the role of restraint, or its absence, introduces an interesting framework for understanding how the perceptions of honour and

⁶³ For a short overview of contemporary sources related to both the law of the sea and the laws of land warfare during the reign of Elizabeth I see K.R. Simmonds, 'Some English precursors of Hugo Grotius', *Transactions of the Grotius Society* 43 (1957), pp. 143-57.

⁶⁴ John A. Lynn, *Battle: a history of combat and culture*, revised and updated edition (New York: Basic Books, 2008). The technological determinism here refers to debates concerning the Michael Roberts, 'The military revolution, 1560-1660', in *The military revolution debate*, pp. 13-36; see also the principle monograph on the subject by Parker, *The military revolution*. The English reception of the principles of the military revolution is another topic in its own right and for a synopsis see: Lawrence, 'Reappraising the Elizabethan and early Stuart soldier', pp. 17-20. Lynn's thesis is a rebuttal of the claim of a 'Western way of war' made by Victor Davis Hanson, *The Western way of war: infantry battle in classical Greece* (New York: Alfred A. Knopf, 1989), and John Keegan, *A history of warfare* (New York: Vintage Books, 1993).

⁶⁵ Lynn's approach is described more fully in the appendix to *Battle* and in 'Discourse, reality, and the culture of combat', *The international history review* 27 (2005), pp. 475-480.

religious belief interacted and imposed upon the ‘reality of war’ and armed conflict. This thesis seeks to understand how English soldiers perceived the conflicts through their application or neglect of conventions in the conflicts that they fought in.

With its subject and approaches identified, the thesis takes a comparative approach to the problem. It follows Elizabethan officers on campaign, examines elements of the laws of war and compares them against their actions. The Elizabethan discourse on the laws of war, and relative individual commentaries on armed conflict provide the historian with a broad cultural framework that specifically relate to the practical execution of military operations.⁶⁶ This discourse on the laws of war shared close connections with both religion and honour. I argue that they were a fundamental lens through which English officers understood the conflicts that they fought in, which is shown directly from reports from the field.

Structure

The argument begins at chapter 2 with a comparative analysis of the diverse types of armed conflict that Elizabethan soldiers at times found themselves fighting. It delineates the types of conflict recognised or rejected by the English state into one of three typologies: war as a competitive judicial conflict between sovereign states; holy war or crusade, which in its forms as authorized by the Roman pontiff was a doctrine to which Protestant theology was opposed and whose legitimacy the English refused to acknowledge; and thirdly, rebellion, which was perceived not as war but a matter of domestic law enforcement that used military force to suppress what were in essence criminal actions. Each category of armed conflict had its own place in the Elizabethan mind, which in turn altered how they fought in each type of conflict and implied certain relative standards of conduct.

Following the delineation of conflicts into their various cultural and legal distinctions (war, holy war, and rebellion), chapter 3, the first of two parts, addresses how English perceptions of themselves and their enemies influenced

⁶⁶ Parker, ‘The etiquette of atrocity’, pp. 143-168.

military actions in the Netherlands in the 1570s and early 1580s. It begins with an examination of the unofficial and hence illegal early interventions by Elizabeth against the Spanish subject-state of the Netherlands, and the reception of the successive waves of English ‘volunteer’ companies by varying Spanish governors. Given the potential for Spanish atrocities, this theatre of war provides new insights into the English conceptions of war and the moderating influence that English perceptions of laws of war had on combat.

Chapter 4 continues the study of war between sovereign states by examining the next stages of English intervention, reassessing the military campaigns and command of the earl of Leicester with an emphasis the earl’s use of the laws of war. Elizabeth’s dispatch of the earl of Leicester and an English army to the Netherlands late in 1585 was a turning point in the Anglo-Dutch alliance. The English intervention in the Netherlands was preceded by a formal defensive treaty signed at Nonsuch (1585) which established a state of open war between England and Spain. However, it is important to note that although a state of open war theoretically existed neither Elizabeth I nor Philip II executed full scale military operations against one another. Elizabeth instead issued proclamations with specific and limited goals, which was a shift away from the practices of her predecessors use of heralds.⁶⁷ Whereas the legal status of English soldiers in earlier expeditions was in doubt, Elizabeth’s declaration war made this clear, and the laws of war featured prominently in many of Leicester’s actions. Indeed, it can be argued that, the progression of Dutch rebellions into a regular war in the Netherlands was in part the result of the lawful intervention of the English military forces.

Following the two-part examination of the laws of war in both covert wars and declared wars with Spain. Chapter 5 turns away from ‘foreign’ wars and looks at the Elizabethans’ perceptions of, and practices against, the wide-spread rebellions in Ireland. English military operations in Ireland between 1569 and 1584 witnessed a period of remarkable military violence by both the English

⁶⁷ England and Wales, sovereign (1558-1603: Elizabeth I), *A declaration of the causes moouing the queene of England to giue aid to the defense of the people afflicted and oppressed in the lowe countries* (London: Christopher Barker, 1585); idem, *A declaration of the causes moving the queens maiestie of England, to prepare and send a navy to the seas, for the defence of her realms against the king of Spaines forces* (London: Christopher Barker, 1596); idem, *A declaration of the iust causes moouing the queenes maiestie to send a nauie, and armie to the seas, and towards Spaine* (London: Christopher Barker, 1597).

state and local elites. Like her father Henry VIII, Elizabeth regarded England as an imperial power and claimed dominion over Ireland. Accordingly, when various Irish factions took-up arms against the English state, they were regarded as taking up arms against their monarch and thus effectively committed treason. Elizabeth's government used military force to quell repeated Irish insurrections, but as these did not meet the legal requirements of war, the laws of war were in theory not applicable in such conflicts, thereby legitimizing more extreme forms of conduct. Nevertheless, certain customs associated with war and its laws were in fact observed in certain circumstances by English commanders in operations against the Irish, and these are explored in turn.

The complex dynamic between the English military establishment and their various antagonists, both domestic and foreign, are brought together in the conclusion, which reflects on the ways in which an English military culture used state sanctioned violence in armed conflicts. It argues that the way in which it did so provides important insights into the preconceptions of Elizabethan soldiers regarding their own position within a conflict, and the place of their opponents within their world view.

Sources

In the latter half of the sixteenth-century, England witnessed a marked increase in the production of texts discussing military affairs. Thomas Arnold observed that 'the moment infantry tactics became a problem for educated military men... they naturally went about the problem in the manner of intellectuals; they talked, they corresponded, they wrote and they published.'⁶⁸ Elizabethan soldiers, particularly the officer corps, as well as military minded elites, and government officials concerned with military operations, embraced this intellectual development in military affairs.⁶⁹ The fruits of the English

⁶⁸ David R. Lawrence, "'Caesar to this present day of king James': military books and military culture, 1572-1603", in *The Complete soldier: military books in early Stuart England, 1603-1645*, vol. 53, history of warfare series (Brill: Leiden, 2009), pp. 19-72, 21 c.f. Thomas Arnold, *The renaissance at war* (London: Cassell & Co., 2001), p. 65.

⁶⁹ Lawrence, "'Caesar to this present day of king James'", p. 21.

‘intellectualisation of warfare’ has provided this thesis with a varied body of sources from which to draw upon.⁷⁰

The sources utilised in this thesis include both published and unpublished contemporary sources. This thesis relies heavily upon the law of war theories published by Alberico Gentili and Matthew Sutcliffe, but it also touches upon the lesser known legal opinions espoused by English theologians and government officials. Theory was compared with the record of actual combat operations that were documented in soldiers’ personal accounts, diaries, journals, and official correspondence, as well as with contemporary opinions on the art and science of warfare. The records of the Privy Council, the secretariats of leading officials, diplomatic reports, and broad sheet news reports provide additional information and indirect insights into both English policy and practices connected with the laws of war. All these sources, many of which have been edited into collections, reprints, and monograph publications, were drawn together creating a mosaic of Elizabethan martial practices during this period of intensifying military activity.

Elizabeth’s growing military commitments reinvigorated the domestic study of the laws of war, but as with other military advancements, the English jurists were preceded by those on the continent. The son of a mother from the Low Countries and a Spanish father, Balthazar de Ayala was educated at Leuven University, and on the grounds of his affiliation with the Netherlands, he applied for and received the post of auditor-general of the Spanish Army of Flanders. Ayala’s experiences in this post inspired him to record his views on the laws of war in his *De iure et officiis bellicis et disciplina militari, libri III* (1582), which he dedicated to Alexander Farnese, then prince of Parma and captain-general of the Army of Flanders.⁷¹ This treatise is important in the historiography of the laws of war because as Peter Haggenmacher has argued, Ayala’s discourse broke with late medieval interpretations of just war and introduced a view of the laws of war commensurate with regular warfare, that is conventional warfare, and divorced it from quasi-religious causes.⁷² Regular war was given an English

⁷⁰ Ibid., p. 21.

⁷¹ Ayala, *DIOBDM*, ii, p. i.

⁷² Peter Haggenmacher, ‘Just war and regular war in sixteenth century Spanish doctrine’, *International review of the Red Cross* 32 (1992), pp. 434-445. See also James Scott Brown, *Law, the state, and the international community*, 2 vols. (New York: Columbia University Press, 1939), i, pp. 353, whereat Brown makes a similar observation.

advocate, albeit one with an Italian accent, with the arrival of the Italian religious refugee Alberico Gentili who made his home in England.

Upon his arrival, Gentili quickly built a relationship with the earl of Leicester, then chancellor of the University of Oxford, and earned some preferment at that university. Doubtless owing to his ability, Gentili steadily advanced in position and renown. In the aftermath of the Throckmorton Plot (1584) to assassinate Queen Elizabeth and replace her with Mary, queen of Scots, Gentili and Johannis Hotman, two continental trained international legal jurists then residing in England, were consulted when evidence was discovered that implicated the Spanish ambassador, Bernardo de Mendoza in the plot.⁷³ Some members of the Privy Council were inclined to levy a harsh punishment upon Mendoza; they argued ‘in vaine he putteth himselfe under the safeguard of nations, which violateth the law of nations’.⁷⁴ However, both Gentili and Hotman argued against such an action; they argued that international law shielded ambassadors from criminal prosecution.⁷⁵ The Privy Council was ultimately convinced by Gentili and Hotman’s arguments, and they decided not to seek Mendoza’s criminal prosecution. Instead Mendoza was asked to leave England, which he did.⁷⁶ During the Oxford graduation ceremonies later in 1584, Gentili lectured on the rights and duties of ambassadors to an audience that included both the earl of Leicester and Sir Philip Sidney.

In the intervening years, Gentili developed deeper ties with the earl of Essex, and following the death of Essex’s stepfather in 1589, the earl of

⁷³ Sources relating to the Throckmorton plot: *CSP Spain (1580-1586)*, pp. 513-15; Thomas Birch, ed., *Memiors of the Reign of Queen Elizabeth*, 2 vols. (London: A. Millar, 1755), i, p. 458; Jean Hotman, *The Ambassador*, (London: V S for Iames Shawe, 1603), pp. 113-4; A.L. Rowse, *Raleigh and the Throckmortons* (London: Macmillan, 2006); Stephen Alford, *The watchers: a secret history of the reign of Elizabeth I* (London: Bloomberg, 2012), pp. 138-149; John Cooper, *The queen’s agent: Sir Francis Walsingham and the rise of espionage in Elizabethan England* (New York: Pegasus Books, 2012), pp. 103-105; for a counter perspective putting Walsingham and Burghley at the centre of plots against Elizabeth see: Francis Edwards, *Plots and plotters in the reign of Elizabeth* (Dublin: Four Courts Press, 2002).

⁷⁴ Hotman, *The Ambassador*, p. 114.

⁷⁵ Writing much after the fact, Sutcliffe did not wholly agree with the opinions of Gentili and Hotman: ‘her Maiestie did likewise dismisse Bernardin Mendoza, that was an abettor, if not a contriuer of great treasons wrought against her, it was of special clemencie and favour, rather then for that the lawes of armes require it. “for they warrant none to practice treason, nor rebellion, nor abuse a Prince, nor to do other matters, then belong to the office of Ambassadors.”’ Sutcliffe, *The practice, proceedings, and lawes of armes*, p. 297.

⁷⁶ William Camden, *Annals or, the history of the most renowned and victorious Princess Elizabeth*, 4th ed. (London: M. Flesher, 1688), p. 296.

Leicester, Essex rose in prominence to dominate the martial faction within the Elizabethan regime.⁷⁷ Essex, like Leicester, placed great stock in scholarly acumen and would make critical use of scholars within his secretariat.⁷⁸ These men assisted the earl in developing his policies and ensured that they were rooted in rigorous renaissance learning, which Essex would later use to justify and advance his pro-war and anti-Spanish agenda. Perhaps, when planning foreign campaigns, Essex and Gentili met to discuss the campaign, and its attendant legal and political implications. There is little evidence for this, but such a practice coincides with Essex's public advice and avowed practices: 'in everye new studye, seeke out some expert men to confer withall' because 'I profited more by some expert man in half a day's conference, than by myself in a month's study.'⁷⁹ Certainly Gentili was the preeminent authority on the international law of war and would have been the expert to whom Essex would turn to for legal advice.

The seeds for Gentili's law of war omnibus *De iure belli libri tres* were a series of academic lectures, which he notably presented at the University of Oxford in 1588-1589 which were subsequently published.⁸⁰ Written in the shadow of the Spanish armada, these lectures would have captured the zeitgeist and thus public attention. It seems highly likely, just as following the Throckmorton Plot, that a generation of Oxford students and interested persons, especially those in or considering military or civil service careers, would have attended or sought out the published commentaries. The first of these commentaries focused on *jus ad bellum* and addressed issues related to the just causes of war which

⁷⁷ Gentili's relationship to Essex appears complex and deep. Gentili's son Robert's namesake was owed to the earl, who was also his godfather. Gentili with high praise dedicated his books on military law and history to Essex. In the aftermath of Essex's abortive rebellion, Gentili was investigated because of his connections, but he was found guiltless and was not even arrested. Gezina Hermina Johonna van der Molen, *Alberico Gentili and the development of international law: his life and times* (Amsterdam: Vrije Universiteit te Amsterdam, 1937), pp. 50-54.

⁷⁸ Paul E.J. Hammer, 'The use of scholarship: the secretariat of Robert Devereux, second earl of Essex, c. 1585-1601', *The English Historical Review* 109 (1994), pp. 26-51, 31.

⁷⁹ *Ibid.*, p. 49; see also Paul E.J. Hammer, 'The earl of Essex, Fulke Greville, and the employment of scholars', *Studies in philology* 91 (1994), pp. 167-180.

⁸⁰ Alberico Gentili, *De iure belli commentatio prima* (London, 1588); *De iure belli belli commentatio secunda* (London, 1589); *De iure belli commentationes duae* (London, 1589); *De iure belli commentatio tertia* (London, 1589); *De iure belli comentationes tres* (London, 1589); *De iure belli libri tres* (Hanau, 1598, 1604, 1612). The references in this thesis are to the modern English translation: Alberico Gentili, *De iure belli libri tres*, tr., J. C. Rolfe, 2 vols., classics of international law series (Oxford: Clarendon Press, 1933), ii.

introduced innovations regarding preventative wars and divorced war from quasi-religious causes.⁸¹ Gentili asked his friend John Bennett (1552/3-1627), an Oxford MA and proctor (1585), to prepare questions that would test his theories under cross examination.⁸² The lectures, however, were not wholly the product of isolated academic erudition. In the second series of commentaries, Gentili focused on *jus in bello*, legitimate actions in warfare, which appear to have been a collaborative production between Gentili, the primary author, and Thomas Smith, a future Privy Council secretary but then the earl of Essex's secretary and a leading Latinist. This suggests that they were intended to have a more practical orientation with Smith standing-in as Essex's proxy and providing insights that Essex acquired on campaign which would address the actual conditions of war that officers might encounter.⁸³ The final series of commentaries addressed issues of *post bellum* and presented various approaches and policies used to conclude wars. Gentili's *De iure belli libri tres* would echo through the ages and influenced both future English and continental commentators on the laws of war.⁸⁴

Gentili's influence was recognisable in another key contemporary English source on the laws of war: Matthew Sutcliffe's *The practice, proceedings, and lawes of armes* (1593).⁸⁵ Sutcliffe repeated similar arguments that were first begun by Gentili; for example the necessity and legality of preventative wars. Although Sutcliffe employed the older, more martial, and chivalric term 'laws of arms' rather than the more legal term 'law of war' or '*de jure belli*', his discourse was thoroughly contemporary and unique in its perspective from that by Gentili. Despite Sutcliffe's substantial legal training, his treatise presents the laws of war from a less academic and a more soldierly orientation which reflected the influence of his own military service on his interpretation of the laws of war. At the time of his book's publication, Sutcliffe claimed rather

⁸¹ Simmonds, 'Some English precursors of Hugo Grotius', pp. 143-57, 151.

⁸² Molen, *Alberico Gentili and the development of international law*, pp. 50, 53.

⁸³ Paul E.J. Hammer, *The Polarisation of Elizabethan Politics. The Political Career of Robert Devereux, 2nd earl of Essex, 1585-1597* (Cambridge: Cambridge University Press, 1999), p. 240, *supra* note 222.

⁸⁴ William Fulbeck, *The pandectes of the law of nations* (London: Thomas Wight, 1602), chapter 7, and Hugo Grotius, *De jure belli ac pacis libri tres*, tr., F.W. Kelsey et. al., *classics of international law*, 2 vols. (Oxford: Clarendon Press, 1925), ii, pp. xxiv-v, 22-3.

⁸⁵ Sutcliffe, *The practice, proceedings, and lawes of armes*, sig. C1^r.

significant military service: ‘I have, as neere as I could, described the right course & true discipline of armes... all which I haue wonne not onely by long obseruation, but also by dangerous experience both in France, Italy, Flanders and Portugall.’ It is known for certain that Sutcliffe served Leicester in the Low Countries as adjutant-general (c. 1587-88), and he joined Essex’s expedition to Ireland (1599) in the position of judge marshal of the army.⁸⁶ As adjutant-general and judge marshal, Sutcliffe would have been principally responsible for maintaining discipline in the camps and within the army in general; he would also been the legal expert with whom commanders such as Leicester and Essex conferred when questions related to a specific legal point arose during military operations.

It is worth noting that although both Gentili and Sutcliffe’s works were not published until the later 1580s and 1590s, they nevertheless reflected the major thrust of contemporary English legal opinions on the laws of war; however, this legal aspect of their works needs to be prefaced with an understanding of their underlying political context.⁸⁷ Gentili and Sutcliffe did not produce their treaties out of an unbiased desire to objectively describe the international legal structures of their time. Gentili most clearly was a client of the earl of Essex and therefore would have been influenced by the earl’s politics. Sutcliffe had less clear connections to Essex prior to 1599, but certainly the two were acquainted with one another. Therefore, these works were written to either purposefully to further the pro-war and anti-Spanish politics of the earl of Essex or shared Essex’s views.

⁸⁶ Sutcliffe claimed additional campaign experience: *ibid.*, sig. C1; however, outside documents have only corroborated his experiences in Leicester’s campaign in the Netherlands and Essex’s expedition to Ireland: *CSPF (1587)*, p. 425, and *CSPF (1588)*, i, p. 2; TNA, E 351/238, m. 24d c.f. Paul E.J. Hammer, “‘Base rouges’ and ‘gentlemen of quality’: the earl of Essex’s Irish knights and royal displeasure in 1599”, in *Elizabeth I and Ireland*, eds., B. Kane and V. McGowan-Doyle (Cambridge: Cambridge University Press, 2014), pp. 184-208, 191 fn. 26.

⁸⁷ Historians of international law have relatively recently begun to highlight the influence of politics on the jurisprudence of international law; Randal Lesaffer notes that this trend ‘has been advanced in the Anglo-American world by the Cambridge School of the History of political thought - in particular Richard Tuck’s work - and by Martti Koskenniemi’s *Gentle Civilizer of Nations* (2001)’, and by Tetsuya Toyoda, *Theory and politics of the law of nations*. Randall Lesaffer, ‘General editors preface’, in Tetsuya Toyoda, *Theory and politics of the law of nations: political bias in international law discourse of seven German court councillors in the seventeenth-centuries*, legal history series, vol. 5, studies in the history of international law discourse, vol. 2 (Leiden: Brill, 2011), pp. ix-x, x.

Essex was politically concerned with the continuation and the expansion of the war against Spain which increasingly brought his faction into opposition with the less aggressive policies advanced by Lord Burghley and his faction. When the earl took over the leadership of the war party in Elizabethan politics, he used his position to shape the debate over war and peace with Spain.⁸⁸ Essex's arguments reached a fevered pitch in 1598. Camden recounts a boisterous Privy Council debate where Burghley argued for the 'benefits of peace... knowing the chance of warre to be uncertaine, the charges infinite, the treasure of England exhausted ... and Spaniards treasure Vnexhausted', and at the closing of his argument, he declared 'no good could come to England by this warre'. Essex vociferously challenged this line of pacifist thinking: 'I have already related, maintained stiffely, that no peace could be made with the Spaniards but such as would be dishonourable and treacherous'! Essex's remarks caused Burghley to exclaim that Essex 'breathed nothing but warre, slaughter, and bloud', and punctuating his point with a raised psalter, which he directed at the earl: 'men of bloud shall not live out halfe their dayes.'⁸⁹ From the conflict's earliest years, the Elizabethan regime asserted that its actions were a justifiable defence against Philip and wider Spanish tyranny, and it suppressed arguments that the kingdom acted in defence of rebels.

Essex's politics were most clearly manifested in a semi-private letter which he circulated in 1598: *To Maister Anthony Bacon: an apologie of the earle of Essex against those which falsly and maliciously taxe him to be onely hinderer of the peace and quiet of his country*.⁹⁰ During that same year, Gentili published his final version of his commentaries on the laws of war in Hanau: *De iure belli libri tres* (1598). It furnished Essex's *Apologie* with requisite legal justifications for continuing the war against Spain and was directly quoted by the earl.⁹¹ Furthermore, as Alexandra Gajda observed, 'Gentili's work added

⁸⁸ Alexandra Gajda, 'Debating war and peace in late Elizabethan England', *The historical journal* 52 (2009), pp. 851-878.

⁸⁹ William Camden, *Annals or, the history of the most renowned and victorious Princess Elizabeth*, 3rd ed. (London: Benjamin Fisher, 1635), pp. 492-3.

⁹⁰ Devereux, *Apologie*. For the history of Essex's *Apologie* see Hugh Gazzard, "'Idle papers': an apology of the earl of Essex", in *Essex: the cultural impact of an Elizabethan courtier*, eds. A. Connolly and L. Hopkins (Manchester: Manchester University Press, 2013), pp. 239-266.

⁹¹ Gajda, 'Debating war and peace in late Elizabethan England', p. 868.

substantial intellectual ballast to Essex's argument that the power of Spain must be checked before peace could be restored to Christendom.'⁹²

The Essexian polemic in *De iure belli libri tres* was measured.⁹³ Gentili states his political positions in a number of chapters, but chapter 16 'On defending the subjects of another sovereign' stands out.⁹⁴ In this chapter Gentili highlights the legality and honour connected with the English intervention on behalf of the Dutch. Throughout *De iure belli libri tres*, Gentili clearly saw Philip II's Spain as a threat to the international order because of its expansionist and tyrannical actions. As long as there were advantages in war, '[t]he king [Philip II] himself replied not long ago that he would not cease from warfare'.⁹⁵ Additionally, Gentili was critical of Spanish military conduct, and his position was neatly summarised in his analysis of the rights and obligations '[o]f those that surrender to the enemy'.⁹⁶ Here, he referenced the duke of Alba's absolute policy: 'that those who had been assailed with artillery did not deserve pardon.'⁹⁷ The duke's view, Gentili thought, did not leave enough room for discretion on the part of commanders, which he argued was essential to the correct application of the laws of war.

If Gentili's interpretation of the laws of war was measured, then Sutcliffe's was pure belligerence. There can be no doubt that Sutcliffe fully agreed with Essex's views on Spain. Writing in 1593, Sutcliffe warned against any peace with Spain using the same language employed by Essex in 1598:

the king of Spain hath thought it lawful under colour of treatie of peace, without any defiance to cut our throtes, if he could. It may be, he taketh the Popes excommunication against the Prince and

⁹² Ibid., p. 868.

⁹³ In my reading of the sources, I think that Gentili preserved a high degree of emotional detachment and his conclusions were measured and well founded; however, Gajda asserts that Gentili was passionately hostile to Spain: Gajda, 'Debating war and peace in late Elizabethan England', p. 868.

⁹⁴ Gentili, *DIBLT*, ii, pp. 77-78. Gentili's contribution to the Essexian polemic was also justified in his discussions of offensive and defensive wars which 'impressed the necessity of actions against tyrants whose ambitions threatened Christendom.' Gajda, 'Debating war and peace in late Elizabethan England', p. 868.

⁹⁵ Devereux, *Apologie*, pp. 16-19.

⁹⁶ Gentili, *DIBLT*, ii, pp. 216-230, especially 217-218.

⁹⁷ Ibid., p. 218.

people of this land for a sufficient denuntiation, or warrant to inuade us without other circumstance.⁹⁸

Aware of the arguments in favour of peace, many of which were the same as those spoken by Burghley in 1598. Sutcliffe rejected these as being ‘built on false grounds’.⁹⁹ Sutcliffe argued ‘[w]e can not haue peace the Spaniard hauing begun warres, and threatning the destruction of our state: the question is, whether is better for vs to stay until he come vpon vs, or to begin with him and seeke him in his owne country: I say this is best’.¹⁰⁰

Therefore, and not surprisingly, the theoretical basis upon which Gentili and Sutcliffe based their discourses on the laws of war were skewed in favour of the English. These authors contrasted the English practice of the laws of war, which was noble, with those used by Spain which had been cruel and twisted to serve tyranny. There was an explicit argument and bias in these texts that characterised English actions as ‘restrained, proportionate, legitimised by reason and law, and unthreatening to foreign powers’; whereas, the actions of Spain’s soldiers were construed ambitious and tyrannical. To make matters worse some Italian and Spanish writers held that Spain had been elected to unite Christendom against the infidel and heretic.¹⁰¹ The shortcomings of theoretical treaties can be corrected for somewhat by considering how soldiers in the field viewed the actions of the enemy. For if an enemy can see justice in the actions of his foe then it must have more merit than self-aggrandising appellations; however, in this case, Spanish atrocities could just as easily be read as nothing more than the expected actions from such a tyrannical foe.

If, as Parker notes, ‘explicit discussions of the customs of war by leading military practitioners’ are rare, soldiers’ records of campaigns nevertheless contain their own explicit but subtle discourse on the customs and laws of war.¹⁰² What follows is an argument founded upon extensively upon printed news

⁹⁸ Sutcliffe, *The practice, proceedings, and lawes of armes*, p. 11, see also his dedication to Essex, sig. A2^{r-v}.

⁹⁹ *Ibid.*, p. 97.

¹⁰⁰ *Ibid.*

¹⁰¹ K.W. Swart, ‘The Black Legend during the Eight Years War’, in *Some political mythologies*, eds. J.S. Bromley and E.H. Kossmann, Britain and the Netherlands, vol. 5. (The Hague: Martinus Nijhoff, 1975), pp. 44-45.

¹⁰² Parker, ‘Etiquette of atrocity’, p. 340, *supra* note 37.

reports, journals, diaries, and memoirs from soldiers on campaign.¹⁰³ Many of these were written by eyewitnesses or participants in events, and many of their descriptions of events part of official reports. Each author wrote with his own agenda but the same is generally true for all correspondence which in the early modern period which was ‘commonly drafted and revised in order to fashion a carefully constructed persona’.¹⁰⁴ To provide an additional counterpoint to a wholly English narrative, I have made use of several continental sources which presents events from the Spanish and their allies’ perspective.

In both the Dutch and Irish theatres, certain participants contributed either personally in writing or were interviewed by their contemporaries. Some of these recollections were used to develop historical chronicles. These have been readily used when their precedence can be traced. For example, Stowe’s *Annales or Generall Chronicle of England* (1615) was supplemented with eye-witness reports from Leicester’s campaign. This was achieved through Stowe’s correspondence with Henry Archer, whom Stowe refers to as his ‘good friend and neare kinsman’. Archer was positioned close to Leicester since he served as one of his personal guards which provided him an opportunity to closely observe the earl’s actions.¹⁰⁵ Another such source is John Hooker, whose close connections with the Carew family would supplement his *Irish Chronicle*; a contribution to Holinshed’s *Chronicles of England, Scotland, and Ireland*.

Just as Sutcliffe was both a theologian and a soldier, so too did the laws of war have complex and dynamic sources to drawn from. I have made use of several religious tracts and sermons which illuminate English attitudes towards

¹⁰³ For example, official correspondence was lean during the deployment of English mercenaries to the Dutch wars (1572-1574) but certain soldiers wrote some detailed campaign journals: Walter Morgan, *The expedition in Holland, 1572-1574*, ed., D. Caldecott-Baird (London: Seeley Service and Company, 1976); Roger Williams, *A brief discourse of warre*, and *The Actions of the Lowe Countries*, in *The Works of Sir Roger Williams*, ed., J.X. Evans (Oxford: Clarendon Press, 1972). Where the author was not a direct participant in event, he interviewed the participants: Churchyard’s translation of Emmanuel van Meteren, *A true discourse historical, of the succeeding governors in the Netherlands*, eds., T. Churchyard and R. Robinson (London: Matthew Lownes, 1602), as a historian Churchyard has some short comings but his account of Sir Humphrey Gilbert’s government of Munster 1569-1570 is uncommonly accurate in its details, compare for example T. Churchyard, *A general rehearsal of warres, called Churchyard’s Choice* (London: Edward White, 1579) with Gilbert’s official correspondence in *Campaign Journals of the Elizabethan Irish wars*, ed., D. Edwards (Dublin: Irish Manuscripts Commission, 2014), pp. 12-21.

¹⁰⁴ James Daybell, ed., ‘Introduction’, in *Early Modern Women’s letter-writing, 1450-1700* (Basingstoke: Palgrave, 2001), p. 8, c.f. Trim, ‘Fighting “Jacob’s Wars”’, p. 45.

¹⁰⁵ *Leycester correspondence*, p. 478.

the laws of war in England; for example, Stephen Gosson's *The trumpet of warre* (1598). Gosson approved of Gentili's legal theories on the laws of war, and he present many of the same arguments in a popular sermon, which was given at St Paul's Cross no less.¹⁰⁶ Sermons, unlike university disputations or handbooks on military affairs, were a means of addressing a wider audience and educating them in the salient points of state policy and its legitimacy. St Pauls Cross was a significant venue which several historians have noted was 'a semi-official medium of communication'; one went so far as to describe St Paul's Cross as *the broadcasting house of Elizabethan London*.¹⁰⁷ St Paul's, furthermore, 'had an unrivalled reputation as a venue for "newsworthy" sermons and prestigious preachers; in 1598, Stephen Gosson claimed that comments he made in a Paul's Cross sermon were repeated to him "fortie miles hence"'.¹⁰⁸ Surely some of the soldiers bound for the wars would have sought out such events.

For the study of English military activities on the continent, and principally in the Netherlands, the thesis makes extensive use of collections of the official correspondence related to the wars. The Calendars of State Papers held at The National Archives, Kew, the Historical Manuscripts Commission, and the Camden Society have been invaluable, and these have been augmented by corresponding collections such as *Relations politiques des Pay-Bas*.¹⁰⁹ English campaigns in Ireland too produced an ever-increasing volume of correspondence,

¹⁰⁶ Gosson, *The trumpet of warre*. See also: John R. Hale, 'Incitement to violence? English divines on the theme of war, 1578-1631', in *Renaissance war studies* (London: Hambledon Press, 1983), pp. 487-517; Hale's conclusions are challenged in Ben Lowe, 'Religious wars and the "Common Peace": Anglican anti-war sentiment in Elizabethan England', *Albion* 28 (1996), pp. 415-4325, 416-418 which describes the diverse views of English Protestants and suggest the presence of a stronger anti-war sentiment.

¹⁰⁷ Mary Morrissey, *Politics and the Paul's Cross sermons, 1558-1642* (Oxford: Oxford University Press, 2011), p. 4; H. Gareth Owen, 'Paul's Cross: the broadcasting house of Elizabethan London', *History today* 9 (1961), pp. 836-42.

¹⁰⁸ Morrissey, *Politics and the Paul's Cross sermons, 1558-1642*, p. 25, c.f. from Gosson, *Trumpet of war*, sig. G5^r.

¹⁰⁹ The Julian calendar (old style) was the method of dating used by the English during the reign of Elizabeth I, and it is the assumed method of dating events in English correspondence. In England, there were three means of calculating the first day of the new year, and it is not always clear which one authors used: a regnal year, for example, was a monarch's completed year of rule, and Elizabeth's regnal year began on 17 November. Each new year of the Christian era begins with the feast of the Annunciation on 25 March. The Julian calendar year begins on the 1st of January, and the first day of the new year, in this thesis, was assumed to begin on 1 January. The Gregorian calendar (new style) was adopted in 1582, first among the Catholic states and principalities but it slowly spread across continental Europe. The thesis uses the Julian date which attended most English correspondence, and where it is not applicable it is noted.

which has been accessed as well through the Calendars of State Papers, and the Calendar of the Carew manuscripts preserved at Lambeth palace. Additional details and insights were gained from the works published by the Irish and Historical Manuscripts Commission; their various reports, and Calendar of Irish Patent Rolls were used. Indigenous Irish sources such as the *Annals of the Four Masters*, the *Annals of Loch Ce*, and Philip O'Sullivan Bear's *Catholic history of Ireland* help to afford a necessary corrective to accounts written from a predominantly English perspective.

Definitions

It is necessary here to clarify and define certain aspects of the term 'nobility' employed in this study. In some Anglophone historiography, a convention has developed whereby the term 'noble' is used to signify exclusively those that Thomas Smith described, in his *De Republica Anglorum* (1583), as the *nobilitas major*: those persons holding hereditary title of baron and above. The *nobilitas minor* or the gentry were those persons with the title of knight, esquire, or gentleman.¹¹⁰ English contemporaries, however, were freer with their use of the term 'nobility', and its cognates, which could encompass all those of 'gentle blood', albeit with the knowledge and understanding of its various distinctions.¹¹¹ This thesis uses the term 'noble' in its contemporary context to signify one of gentle birth, and the *nobilitas major* are distinguished where necessary by the term 'aristocracy'.

The term 'state' is taken to refer to the formal governmental structures and offices, whereas 'regime' is used to invoke the combined unofficial machinery of government and the formal state mechanisms, identifies and references direct power and personal relationships in the implementation of state policy. For example, Robert Cecil, earl of Salisbury (1563-1612), replaced his father in the office of Lord Treasurer, one of the state's highest offices, but his position in the regime reached its pinnacle only after the fall of the earl of

¹¹⁰ Thomas Smith, *De republica Anglorum*, ed., L. Alston (Cambridge: Cambridge University Press, 1906), chapters 17-19.

¹¹¹ Trim, 'Fighting "Jacob's Wars"', pp. 47-51: my use of terms differs from Trim's position but his discussion is informative.

Essex, who was executed in 1601, which left his influence on the machinery of government virtually unchallenged.

All these disparate elements - nobility, state, and regime - imposed upon military operations. The law of arms which had developed from the medieval code of chivalry was a pan-European code of military conduct and was universally recognised by the nobility, who in times of war broadly adhered to its principles. Enforcement of standards of conduct according to these laws and customs was maintained through a combination of social pressure and secular courts. The foreign interests of the English state drove forward the legal discourse upon the laws of war. International laws of war, however, were not proscriptive but rather followed the development of conventions; therefore, the discourses were descriptive of prevailing norms of conduct already established. Prevailing norms have been identified as useful methods of law enforcement.¹¹² The thesis therefore uses precise Elizabethan legal definitions for war, since these encapsulate important perceptions and indicators of conduct. War had a specific application and that is in the armed conflict between sovereign states. Where the thesis discusses armed conflicts that were outside the conception of war, and, although they may have many of the characteristics of war, but were not considered as such by contemporaries, I have cited the contemporary terms for such types of actions; these include holy war, crusade, rebellion, riot, brigandage and piracy.

I have imposed the artificial distinction 'armed conflict' upon the discussions below out of necessity. Like the term 'nobility' which could be used to either discuss all those of gentle birth or the aristocracy, but with full knowledge of its distinctions, so was term 'war' employed very generally at times by contemporaries referencing any intense type of armed conflict. However, to use war in this manner would give rise to several confused

¹¹² Jeffrey Rosen, 'The social police: following the law because you'd be too embarrassed not to', *The New Yorker* 20-27 October (1997), pp. 170-81. Europe's early modern nobility with their self-identification with a warrior aristocracy that could be traced back to ancient Greece and Rome. They read the same books, especially Caesar, Livy, and Virgil, and learned many of the same lessons about military history and command, which placed certain universal expectations regarding conduct in military operations. This resulted in a near universal peer pressure to conform to acceptable standards. This process has been observed operating during the English civil war; see Donagan, 'Soldiers' law', p. 134, p. 134. For an overview of social norms and some criticism, see: Robert Weisberg, 'Norms and criminal law, and the norms of criminal law scholarship', *The journal of criminal law and criminology* 93 (2003), pp. 467-592.

preconceptions in the minds of readers and false expectations regarding conduct concerning the various types of conflicts being waged.

Specificity is necessary because in the minds of Elizabethan commanders' war and its laws of war only applied in one mode of conflict; this was in just war. The theory of just wars had within it a continuum of restraints. It is an artefact of modern legal historiography to differentiate between the lawful initiation of war, also known as *jus ad bellum*, and lawful actions in war or *jus in bello*.¹¹³ Just wars were either wholly just or wholly unjust; *jus ad bellum* was not separable in theory from *jus in bello*. Military actions against rebels were free from such distinctions of just conduct imposed by the laws of war, since these conflicts were matters of domestic law enforcement; nevertheless, the customs of war were so much a part of noble identity and military convention that officers in their actions against rebels applied on occasion some of the ritual aspects associated with war.

In this manner '[t]he sword and the law' was a complex dialogue on the nature of authority and the regulation of violence within Elizabethan England and against its armed antagonists. To rightly possess a sword in the execution of one's duty to the state was to be endowed with certain authority derived directly from the crown, but the sword also carried a reminder to those entrusted to bear it. The monarch was the source of their power and authority, and it was the nobility's duty to bear the sword against the prince's enemies and rebels.

¹¹³ Robert Kolb, 'Origin of the twin terms *jus ad bellum*/*jus in bello*', *International Review of the Red Cross* 37 (1997), pp. 553-562.

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*[H]ow shall the voices of suppliants be heard amid the heat of battle?*¹¹⁴
-Alberico Gentili

Gentili here poses the essential question at the heart of the laws of armed conflict. Amidst the violent actions of warfare, the clatter of swords and pikes, the blasts of muskets and cannon, how did the Elizabethans choose to abate violence or unleash it in their wars between states, for religion, or in rebellions? The purpose of this chapter is to contextualise English military conduct within these disparate legal environments.

The Elizabethans recognised as legitimate two different legal spheres wherein military action could be rightly applied; these were international conflicts between states which were generally recognised as war, and a state's use of military force against a domestic insurgency. In post Reformation and Protestant England, a third category, holy war, was – in the form endorsed by the Catholic Church – thoroughly rejected. In each type of military conflict there were specific laws that governed and imposed on the conduct of military operations and helped to shape the attitudes of English commanders and soldiers, as well as the expectations of opposing belligerents.

Just and Regular War

On the evening of 21 June 1596, Robert Devereux, earl of Essex, ordered his drummer to 'sound throughout the town', and advertise to the Spanish defenders of Cadiz's castle 'that all that would yield, should repair to the Town-House' before morning, otherwise 'they should looke for no mercy, but should every one be put to the sword'.¹¹⁵ Essex's ultimatum to the inhabitants of Cadiz

¹¹⁴ Gentili, *DIBLT*, ii, p. 247.

¹¹⁵ William Monson, *Sir William Monson's naval tracts in six books* (London: A. and J. Churchill, 1703), p. 187; see also William Monson, *The naval tracts of Sir William Monson*, ed., M.

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was a striking reminder of the brutal potential of late sixteenth-century warfare. According to what legal principles was Essex's ultimatum made, and how could violence by individuals be restrained, when '[i]t is proper for a warrior when engaged with an enemy to lay aside all pity and clemency and show no mercy'?¹¹⁶ Essex's call for surrender, an action drawn from classical antiquity, was in effect a summons and made in the belief that his cause and war were just, and that the Spanish were his lawful enemies.

'What causes make wars just or unjust,' asked Matthew Sutcliffe, 'and what are the effects of lawful wars'?¹¹⁷ It was thanks to Essex's personal interest in just such questions and in the laws of war that we have a cogent Elizabethan doctrine dealing with such matters. It was probably through his patronage that two important English discourses saw the printer's press: Sutcliffe's *The Practice, Proceedings, and the laws of arms* (1596) and Alberico Gentili's *Commentaries*, which were brought together edited and expanded into *De Iure Belli Libri Tres* (1612), all of which bear dedications to the earl of Essex.¹¹⁸ Essex would thus have been well counselled in legal theory, which unanimously agreed that 'wars are just and lawful, which are made by the sovereign'.¹¹⁹

All other conflicts were not specifically war, which 'is a just and public contest of arms' between sovereign states and sovereign states alone.¹²⁰ This was an idea that Essex strongly believed in, and prompted him to make an allegorical comparison between Elizabeth's war with Spain and the joust: 'you two [king Philip II and Queen Elizabeth I] are like 2 mightie Champions entred into the lists to fight for the two great general quarrels of Christendome, Religion and Libertie.... Hee aspiring to an vniuersall monarchy, your Ma[jesty]

Oppenheim, 2 vols. (London: Naval Records Society, 1902), i, p. 352; Richard Hakluyt, *The principle navigations, voyages, traffiques & discoveries of the English nation*, 2nd ed., 12 vols. (Glasgow: J. Machose and sons, 1903-5), iv, p. 252.

¹¹⁶ Gentili, *DIBLT*, ii, p. 248.

¹¹⁷ Sutcliffe, *The practice, proceedings, and the laws of arms*, p. 1

¹¹⁸ Hammer, *The Polarisation of Elizabethan Politics*, pp. 239-40; Sutcliffe, *The practice, proceedings, and the laws of arms*; Alberico Gentili, *De iure belli commentatio prima* (London, 1588); *De iure belli commentatio secunda* (London, 1589); *De iure belli commentationes duae* (London, 1589); *De iure belli commentatio tertia* (London, 1589); *De iure belli comentationes tres* (London, 1589); *De iure belli libri tres* (Hanau, 1612).

¹¹⁹ Sutcliffe, *The practice, proceedings, and the laws of arms*, p. 2; Gentili, *DIBLT*, ii, p. 15.

¹²⁰ Gentili, *DIBLT*, ii, p. 20.

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releuing all the oppressed'.¹²¹ In Essex's allegory, the joust, like war, was event that was more than just a violent contest played out according to rules accepted by the participants, but it was also a spectacle to be observed by an audience. In the case of England's war against Spain, all of Europe was Essex's audience. Lawful wars were to be publicly announced and moderately prosecuted until justice was satisfied and an assured peace obtained.¹²² The 'effects of lawful wars' were numerous, but most importantly, they sought to limit the destructiveness of war: 'we should not be too cruel and harsh towards an enemy', lest just war become a 'war of extermination'.¹²³

Combatants in just war were equals engaged in a form of judicial duel in which force of arms would decide the justice of one case over another. Yet what manner of law could be binding upon sovereigns', 'since they acknowledge no judge or superior', that might limit the destruction attending war?¹²⁴

Commentators sought a practical tool to manage international relations, and to do this they appealed to the law of nations and natural law. The law of nations 'is that which is in use among all the nations of men', wrote Gentili. This did not 'mean that all nations actually came together at a given time, and thus the law of nations was established', but rather the notion was an appeal to human reason.¹²⁵ 'Reason teaches' all humanity, regardless of their nation.

Such laws are not written, but inborn; we have not learned, received, and read them, but we have wrested, drawn, and forged them out of nature herself. We have not received them through instruction, but have acquired them at birth; we have gained them, not by training but by instinct.¹²⁶

Therefore, human reason, understood as the law of nature and a synonym for the law of nations, was combined with defined practices and customs to provide

¹²¹ Robert Devereux, Earl of Essex, 'Copy of letter from Robert Devereux, Earl of Essex, to Elizabeth I, Queen of England, 1600? [manuscript], ca. 1600?', *Folger Shakespeare Library* <<http://luna.folger.edu/luna/servlet/s/95ejm1>> [Accessed on 14 October 2016], f. 149^r; for additional copies, see TNA SP 12/45/64, c.f. Alexander Gajda, *The earl of Essex and late Elizabethan political culture* (Oxford: Oxford University Press, 2012), p. 78, and British Library Hulton MS (formerly British Library, Loan 23), ff. 149^r-152^r c.f. Hammer, *The Polarisation of Elizabethan Politics*, p. 246.

¹²² Sutcliffe, *The practice, proceedings, and the laws of arms*, p. 12.

¹²³ Gentili, *DIBLT*, ii, pp. 13, 218.

¹²⁴ *Ibid.*, p. 15.

¹²⁵ *Ibid.*, p. 8.

¹²⁶ Sutcliffe, *The practice, proceedings, and the laws of arms*, p. 3; Gentili, *DIBLT*, ii, p. 10.

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soldiers and officers with a comprehensible and easily transmissible body of case law of acceptable actions in war.¹²⁷

The defined practices and customs of war will be dealt with in subsequent chapters. Here the focus is on the use of reason to restrain violence in an activity characterised by death and destruction. The doctrine of just and regular warfare in the sixteenth-century fostered restraint through its appeal to reason by creating an image of the enemy that emphasised his equality with other combatants. An anthropologist of war has noted that: '[m]ost soldiers are able to kill and be killed more easily in warfare if they possess an image of the enemy sufficiently evil to inspire hatred and repugnance.'¹²⁸ However, a consistent thread running throughout Elizabethan discourses was the assertion that a '*hostis* ["enemy"] is a person with whom war is waged and who is the equal of his opponent.'¹²⁹ Belligerents, in this sense, were peers and brothers in arms even if they fought under opposing banners. It is their equality that made the performance of restraint easier, and gave war a competitive, ritualistic, character.

If in fact war ought to moderately prosecuted, how then could Essex make such an apparently merciless declaration, and why is the expedition important to the study of the laws of war? Cadiz came to epitomise Elizabethan ideas about just war justly executed. Sir George Carew, a known murderer and the bane of Irish rebels, was in awe of his commanders' actions: 'I did never in my life see any governors command with more judgment and wisdom, not execute their designs with more valour than they have done in this action'.¹³⁰ Essex's chaplain preached at St Pauls Cathedral on the honour and valour exhibited in bringing

¹²⁷ Coleman Phillipson, 'Albericus Gentilis', in *Great Jurists of the World*, eds., J. Macdonell and E. Mason, the continental legal history series, 11 vols. (Boston: Brown and Company, 1914), i, pp. 109-143, 130.

¹²⁸ J. Glenn Gray, *The warriors: reflections on men in battle* (Lincoln: University of Nebraska Press, 1959, 1970), p. 133.

¹²⁹ Gentili, *DIBLT*, ii, p. 12; Sutcliffe, *Practice, proceedings, and lawes of armes*, pp. 11-12 (implied, furthermore Sutcliffe argued this perception was pan European); Gosson, *Trumpet of war*, ff. 36 (wrong intentions of the soldier), 37 (magnanimity in victory).

¹³⁰ *HMC Salibury*, vi, p. 229.

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about this ‘happy victory’ to ringing applause.¹³¹ It was common for members of the expedition to refer with professional pride to the mercy and clemency shown to the defeated. The Spanish too, it was asserted, from the king to his council and even the wider populace, all recognised and praised Essex, and the English soldiers, for their restraint at Cadiz.¹³²

The study of the laws of war, the appeals to them by suppliants, and their practice by soldiers at Cadiz does not begin with the Essex’s final warning to the castle but with the fury of the initial English attack, which also helps to highlight when and how restraint manifested itself in military operations. The success, or failure, of such operations depends upon immediate and sustained violence against an enemy, a condition that has little room for restraint: ‘[w]hatever you do in the heat of battle admits of excuse, when reason lies prostrate and the hands, as though intoxicated, do not obey the mind’.¹³³ Yet equally, as Gentili notes, ‘when the danger is finally averted, the ardour of mind quieted, and the thoughts restored to peace, then to rage and act without consideration is the sign of a base mind.’¹³⁴ This basic principle of the law of war was one that the English officers and men adhered to in the assault upon Cadiz. Jurists and soldiers referenced unrestrained combat by the term ‘fury’. Gentili made a few direct references to the term ‘fury’, and drawing upon jurisprudence stated: ‘fury, as Baldus called it ... is nothing else than violence.’¹³⁵ An official report stated that Cadiz had been captured with ‘sudden fury’ but that afterwards its surrender was formalised, formally signalling that ‘the fury [was] now passed’.¹³⁶

As the English army swiftly advanced on the town from their beachhead, some one and a half miles distant from Cadiz, Essex sent the master of camp, Sir John Wingfield, to encounter a mixed force of 300 Spanish horse and foot. The Spaniards charged the body of English pike, but the English ‘stoode them

¹³¹ [Lambeth Palace Library] Bacon MSS. 658, fol. 173, c.f. Walter Bouchier Devereux, *Lives and letters of the Devereux, earls of Essex, in the reigns of Elizabeth, James I, and Charles I, 1540-1646*, 2 vols. (London: John Murray, 1853), i, p. 380.

¹³² Birch, *Memoirs of the reign of Queen Elizabeth*, p. 125.

¹³³ Gentili, *DIBLT*, ii, p. 211.

¹³⁴ *Ibid.*, p. 211.

¹³⁵ *Ibid.*, p. 378, see also Gentili’s definition at p. 76: ‘for fury, that is, war, is without moderation.’

¹³⁶ *CSPD (1595-1597)*, p. 272; Hakluyt, *The principal navigations*, iv, p. 253.

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bravely', and Wingfield himself wounded their captain Don Nuno de Villa Vicenza el Vejo.¹³⁷ Some of the Spanish soldiers attempted to recover their fallen

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Figure 7. The battle, or skirmish, at Cadiz (1596). The action was fought between the English and Spanish soldiers just after the English landing outside the town of Cadiz.

captain, but Wingfield captured him and made him his prisoner (figure 7.).¹³⁸

The military commentator and veteran practitioner of the art of war, Robert Barrett pointed out the ugly brutality of combat in war that the average soldier would be most accustomed to:

[W]hen men come to the shock, or push of the Pike, they sarrie [i.e. press] close together, and the first three, five, or seven rankes do beare the chiefe brunt; and entred so farrre, men buckle Pell-Mell, close together, by which time commonlie the one side reculeth [i.e. recoils] ... and a battell [formation] once reculing doth not lightlie hold long, so that ere the Centre of the Battaill be touched one side

¹³⁷ Stephen and Elizabeth Usherwood, *The counter-armada, 1596: the journal of the 'Mary Rose'*, (Annapolis: Naval Institute Press, 1983), p. 143 (from the journal of Sir George Carew, appendix I); Corbett, 'Relation of the voyage to Cadiz, 1596', p. 75.

¹³⁸ Fig. 7. Corbett, 'Relation of the voyage to Cadiz, 1596', pp. 75, 86, reprint of *Baptista Boazio, An Exact map of the town of Cadiz made by the commandment of the lords generals* (London, 1596), between pp. 68-9.

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must fall to disaray; men once disordered, they commonly fall to rout, the rout is pursued with slaughter and ruine.¹³⁹

Restraint was not entirely desirable among the soldiery. Officers wanted the mass of their armies to act with detachment and bloody efficiency. Therefore, it was the practice in Elizabethan armies to have officers direct the taking of prisoners.¹⁴⁰ Soldiers fighting in battle were ordered where and when to preserve life, and it was a mark of their discipline that they held back the killing blow or that fatal shot.

It was also the practice among Elizabethan armies for officers to single out their opposites for single combat, which gave company officers and their guard increased opportunities to take enemy officers prisoner. Once Captain Vicenza was captured the remaining soldiers ‘retrayed in route to the port of the towne pressing to gett in to the same in such haste as they left many of there horses behynd’.¹⁴¹ The English army pursued them at a fast march.

Cadiz was taken in a direct assault – another furious and intense type of combat – which used slightly differed tactics from pitched battles, yet was governed by the same essential rules of restraint. As the army approached the town, Essex ordered Sir Matthew Morgan to take men from Essex’s personal guard and breach the gate, while Edward Wingfield led other soldiers into the town ‘by a rocke at the ende of the wall’.¹⁴² Others mounted the wall, engaging in hand-to-hand combat with the Spanish defenders, and Sir Francis Vere’s company advanced and supported Morgan’s mission to ‘brake open the gate’.¹⁴³ In under half an hour, ‘such was their fury’ that the English ensign few from atop

¹³⁹ Robert Barrett, *The theorique and practike of modern warres* (London: William Ponsonby, 1598), p. 4. The pursuit of a rout was not a massacre but battle’s typical conclusion; regardless of whether or not it was achieved during a pitched battle, skirmish, ambush or assaults in a siege. For an informative discussion of the normal horrors in early modern warfare see: John Childs, ‘The laws of war in seventeenth-century Europe and their application during the Jacobite war in Ireland, 1688-91’, in *Age of atrocity: violence and political conflict in early modern Ireland*, eds., D. Edwards, P. Lenihan, and C. Tait (Dublin: Four Courts Press, 2007), pp. 283-300, 299.

¹⁴⁰ Robert Dudley, earl of Leicester, *Lawes and ordinances militarie* (Leiden: Andries Vershout, 1586), p. 5.

¹⁴¹ Usherwood, *The counter armada*, p. 143.

¹⁴² Paul E.J. Hammer, ‘New light on the Cadiz expedition of 1596’, *Historical research* 70 (1997), pp. 182-202, 195.

¹⁴³ Francis Vere, *The commentaries of Sir Francis Vere* (London: William Dillingham, 1672), p. 39.

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the walls.¹⁴⁴ Once inside Cadiz, the English companies engaged in fierce street-to-street fighting with Spanish troops, while the inhabitants threw stones from their flat-topped roofs, more often wounding rather than killing soldiers.¹⁴⁵

Groups of Spanish pikemen occupying advantageous positions met the English soldiers at push of pike, and they sustained considerable casualties, including John Wingfield, shot in the head by a musketeer firing from the castle.¹⁴⁶

‘[S]ome fewe of them [English soldiers] that entred ran presentlie to the market place with great furie’ (figure 8.),¹⁴⁷ while Vere and his company pursued a

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Figure 8. DD: the point where the English seized the gate and breached Cadiz’s wall. SS: two Spanish cannons set to defend the town gate that fired upon the assault troops. P: the Cathedral of Cadiz. O: Cadiz’s castle. N: the market place.

¹⁴⁴ Vere, *Commentaries*, p. 39; Hakluyt, *The principal navigations*, iv, p. 253.

¹⁴⁵ Corbett, ‘Relation of the voyage to Cadiz, 1596’, p. 75; Hakluyt, *The principal navigations*, iv, p. 225; *CSPD (1595-1597)*, pp. 269-70 (Captain Sir Arthur Savage recounts his sundry wounds from hurled stones).

¹⁴⁶ The term ‘casualty’ can be confused with ‘killed in action’ (KIA); however, ‘casualties’ include both wounded, killed as a result of wounds, and KIAs. The English army sustained few KIAs in the assault of Cadiz.

¹⁴⁷ Hammer, ‘New light on the Cadiz expedition of 1596’, p. 195.

Fig. 8. Corbett, ‘Relation of the voyage to Cadiz, 1596’, pp. 75, 86, reprint of *Baptista Boazio, An Exact map of the town of Cadiz made by the commandment of the Lords Generals* (London, 1596), between pp. 68-9.

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group of retreating Spaniards into the Franciscan abbey and Fort St Philip which were surrounded (figure 9.).¹⁴⁸ Other English troops trapped a group of Spaniards in the king's munitions house, so that Spanish resistance was confined to several fortified positions within the town: 'by this time night began to grow on, and a kind of peace or intermission was obtained'.¹⁴⁹

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Figure 9. R: the Abbey of St Francis. K: Fort St. Philip.

English accounts of the assault on Cadiz stress the 'fury' of their assault, a form of action in which soldiers were prohibited, or at least discouraged from taking prisoners. English officers did not expect nor desired the common soldiery to show mercy to the enemy during the fury of an assault, and they might even be punished for so doing. Officers were expected to conduct themselves with slightly more discipline, and to show more restraint in particular to their fellow officers, but this too was a marginal difference because the objective remained paramount. A few prisoners were taken by Vere. 'I got there three prisoners', recounted Vere, 'worth ten thousand ducats, one of which was a churchman and

¹⁴⁸ Fig. 9. Corbett, 'Relation of the voyage to Cadiz, 1596', pp. 75, 86, reprint of Baptista Boazio, *An Exact map of the town of Cadiz made by the commandment of the Lords Generals* (London, 1596), between pp. 68-9.

¹⁴⁹ Hakluyt, *The principal navigations*, iv, p. 252.

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president of the contraction of the Indies.¹⁵⁰ The other two were ancient knights called Don Pedro de Herera, and Don Gieronymo de Auallos.’¹⁵¹ However, it is not clear when or how these prisoners were taken, if they were captured during the assault then Vere’s actions were rare incidents during a disciplined attack that emphasised speed and violence of action.¹⁵²

Nevertheless, the ‘peace’ spoken of by Hakluyt changed the relationship between the attackers and the defenders: ‘[n]ecessity leads us to slay an enemy who shows fight; just as violence is shown by way of retaliation to one who resists, so the vanquished or the captive is entitled to mercy.’¹⁵³ The idea of mercy to the defeated was an oft repeated idea, and one that prompted Essex, as well as other leaders of the army, to give the Spanish an opportunity to end the violence, and he sent out his drummer to promulgate the grim ultimatum to the castle.

On the evening of the 21 June, Vere negotiated the surrender of the Franciscan Abbey and Fort St. Philip, and the munitions house also surrendered. The next morning, the Spanish displayed a ‘flag of truce’ from the castle’s walls. Spanish suppliants came before General Essex and the Lord Admiral, Charles Howard, 2nd baron Howard of Effingham, and, as Birch would have it, ‘happy were those, who could first kneel down to kiss their feet.’¹⁵⁴ Don Antonio Grion y Zuniga, chief magistrate of Cadiz, negotiated a ransom for the inhabitants of Cadiz and agreed to pay 120,000 ducats and provide fifty hostages as security.¹⁵⁵

¹⁵⁰ Vere noted that one of his prisoners was the ‘president of the contraction of the Indies’. The contraction or rather *La Casa de Contracción* - the House of Trade - acted as a private trading house between the Crown and the Indies (the Americas).

See also: Clarence Henry Haring, ‘The Casa de Contratación’, *Trade and Navigation between Spain and the Indies in the time of the Hapsburgs*, Harvard Economic Studies, vol. 19 (Cambridge: Harvard University Press, 1918), pp. 21-45; Donald J. Mabry, *Colonial Latin America* (Coral Springs: Llumina Press, 2002), pp. 89-92;

¹⁵¹ Vere, *Commentaries*, p. 42.

¹⁵² ‘If in encounters and battels where he shall happen to be, the enemies happe to be ouercome, let him set all his care and diligence in the execution of, the victory with his weapon, and not in the spoile’. Barrett, *The theorike and practike of modern warres*, p. 11.

¹⁵³ Gentili, *DIBLT*, ii, pp. 210-11. Compare the lawyer’s view with that of the veteran captain: ‘in the expugnation of any fort, city or towne. He shall pursue the victorie euen yntill the enemy be wholie yeilded ... wherein he shall deporte himselfe neithercruell nor couetous ... in such cases shall he shew himselfe fauourable and mercifull to the humble vanquished’. Barrett, *The theorike and practike of modern warres...*, p. 11.

¹⁵⁴ Birch, *Memoirs of Queen Elizabeth*, ii, p. 54.

¹⁵⁵ Corbett, ‘Relation of the voyage to Cadiz, 1596’, p.78.

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Having secured their surrender, Essex at once issued a proclamation to his army that ‘the fury now past, all men should surcease from all maner of blood and cruell dealing, and that there should no kind of violence or hard usage be offered to any, either man, woman or child, upon pain of death’.¹⁵⁶ Women were granted an extraordinary privilege ‘to go away with all their apparel and jewels’.¹⁵⁷ The proclamation was strictly enforced: two soldiers ‘attempting to take a woman’s necklace’ were executed.¹⁵⁸ The surrender was finalised by Essex, when he provided the inhabitants of Cadiz with safe conduct out of the warzone.

The English recognised that in combat soldiers were expected to kill the enemy; however, Essex’s restraint was especially praiseworthy because it was uncommon. The army’s practice of restraint at Cadiz was calculated to send a political signal to Cadiz, Spain, and Europe; unlike the ‘cruel’ Spanish, the English carefully attended to notions of civilised restraint. Or as the poet Thomas Newton put it: ‘[l]et us therefore in legal scales,/ all circumstances weigh,/ [w]hy, when, where, how & under whom we dinting [s]word assay.’¹⁵⁹ The Elizabethan perception of just war understood that success depended upon violence, and the laws of war acknowledge the problem of limiting violent conflict through the law of nature based on human reason.

¹⁵⁶ Hakluyt, *The principal navigations*, iv, p. 253.

¹⁵⁷ Birch, *Memoirs of Queen Elizabeth*, ii, p. 47.

¹⁵⁸ *HMC Salisbury*, vi, p. 226.

¹⁵⁹ Thomas Newton’s poem follows lue’s dedication and was an English addition to a French discourse on war. Raimond de Beccarie de Pavie, *Instructions for the warres amply, learnedly, and politiquely, discoursing the method of militarie discipline*, tr., P. lue (London: Thomas Man and Tobie Cooke, 1589), p. A3 (the poem bears the heading: ‘To all Gentlemen souldiers, and others, the Readers of this Booke’); the French original was published anonymously and perhaps Paul lue wrongly attributes the authorship: see Charles Stephenson, *‘Servant to the king for his fortifications’: Paul lue and the practice of fortification* (Yorkshire: D.P. & G. Military Publishers, 2008), p. 41, n. 11.

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Figure 10. Essex's flag ship, *Due Repulse*, bore the cross of St George as its signifier.

Holy War

At Cadiz in 1596, the earl of Essex's army had marched under the banner of St. George. Earlier, before a surprise attack upon the Dutch town of Axel in July of 1586, Sir Philip Sidney extorted his men to bravery by declaring that their cause was 'God's cause', and their enemies were 'men of false religion, enemies of God and his Church' (figure 10.).¹⁶⁰ Or as Dr Trim's research has indicated: '[t]he wars being fought against the Catholic states of Europe were seen by many in Elizabethan England and Wales as being in some sense a holy war.'¹⁶¹ Symbols and words that, taken at their face value, indicated England's wars were as much a holy wars as they were a just wars, which raises the question. How far did the Elizabethan regime's religious policy shape their soldiers' perceptions of holy war and influence the state's military operations?

Many Englishmen, both Protestants and Catholics, saw the conflicts of their age, to a certain extent, as religious wars; however, Protestant Englishmen had notably different conceptions of how holy wars should be executed. Catholic orthodoxy maintained a theory of war that permitted not only limited and secular just wars between states, but also, it sanctioned nominally unrestrained holy wars in defence of the Church. Holy war, in this construction, can be defined as an armed conflict fought for religious ideals which is authorised

¹⁶⁰ Fig. 10. The *Due Repulse* bearing the cross of St George (fig. 10.), and Essex's ensigns bore the same flag throughout the assault on Cadiz (fig. 7 and fig. 8). Corbett, 'Relation of the voyage to Cadiz, 1596', p. 68.

¹⁶¹ Trim, 'Fighting "Jacob's Wars"', p. 35.

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either by divine authority or upon the authority of some religious leader, and when the authorising authority was the pope the holy war became a crusade.¹⁶²

Advocating for the Catholic doctrine of crusade was the English religious exile, and stalwart opponent of the Elizabethan regime, Cardinal William Allen. ‘Ther is no war in the world so iust or honorable,’ wrote Allen, ‘as that which is waged for [the Catholic] Religion’.¹⁶³ This passage indicates that defence of the Catholic religion was the most justifiable cause for war. Unlike a Gentilian just war, which in its execution was a form of judicial arbitration, adjudicated through force of arms, between two equals, and limited by law. Allen’s holy war doctrine acknowledged only one side, those defending the Catholic Church, to be lawful. In this type of conflict, the opposing side, those fighting for heresies or false religion, were wholly illegitimate combatants, and thus, there was no allowance made for the customary protections due to enemies during holy wars. Holy war required the severest prosecution: ‘for that no crime in the world deserueth more sharpe and zealous pursuit of extreme reue[n]ge, (whether it be in superiours or subjects) then reuolting from the Faith to strange religions.’¹⁶⁴ All limitations were thus to be set aside in the belief that only in total victory was the ‘spiritual commonwealth’ preserved.¹⁶⁵

Allen’s doctrine of holy war could legitimately empower either princes or their subjects, at the pope’s command, and thus in the eyes of God, to lawfully take up the crusade and wage wars against the Catholic Church’s enemies, no matter whom they were. The temporal authorities - the magistrate - Allen asserted were the servants of the faith and subordinated to the pope’s spiritual supremacy in religious matters: ‘the te[m]poral power consisteth most safelie & longest, when it hath good correspondence and subordination to the spiritual’.¹⁶⁶ In Allen’s formulation of holy war, the state, or states, aligned with the Catholic Church were, therefore, subject to the jurisdiction of transnational canon law

¹⁶² Frederick H. Russell, *The just war in the middle ages* (Cambridge: Cambridge University Press, 1975), p. 2.

¹⁶³ William Allen, *A trve sincere and modest defence of English Catholiques that svffer for their faith both at home and abroade: against a false, seditious and slanderous libel intituled; the execvtion of iustice in England* (Rouen: Fr. Parson’s press, 1584), p. 103.

¹⁶⁴ *Ibid.*, p. 103.

¹⁶⁵ *Ibid.*, p. 98.

¹⁶⁶ *Ibid.*, p. 123-4.

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and the pope's supreme spiritual authority when they engaged in holy wars. Where states failed to adhere to the church's spiritual governance, the church could liberate subjects from all fealty, oaths, and allegiance and empower subjects to overthrow their heretical princes and magistrates through papally ordained holy war.¹⁶⁷ Aware that it is oxymoronic, in this sense holy war was sanctified and lawful rebellion. Pope Pius V exercised this authority, when he issued the papal bull *Regnans in Excelsis* (1569/70) which deposed Elizabeth and released her subjects from loyalty and obedience to her regime.¹⁶⁸ Allen clearly could not conceive of any circumstances outside the Catholic Church where another church possessed the legitimacy to engage in holy wars.¹⁶⁹ The Protestant English state, however, had formally rejected the authority of the Catholic Church and papal supremacy. As a heretical state, Elizabethan England was the prime target of Allen's doctrine of holy war, which made this doctrine of holy war the tool of the enemy.

The Elizabethan Protestant religious settlement established the monarch of England as the absolute and supreme temporal and spiritual authority within England and its dominions. This declaration had its limits but was elegantly summarised in the articles of the Elizabethan religious settlement; Article 37, 'of Civil Magistrates', which established the state's superior authority, through the institution of the monarchy, over the church and war:

The Queenes Maiestie hath the cheefe power in this Realme of England, and other her dominions, vnto whom the cheefe gouernment of all estates of this Realme, whether they be Ecclesiasticall or Ciuile, in all causes doth apparteyne, and is not, ought to be subiect to any forraigne iursdiction. [...] The Byshop of Rome [i.e. the pope] hath no iurisdiction in this Realme of Englande. [...] It is lawfull for Christian men, at the commaundment of the Magistrate, to were weapons, and serue in the warres.¹⁷⁰

¹⁶⁷ Although Ayala's focus is upon the laws of war in just warfare, he accepted the pope's authority to relieve subjects from their oath of obedience to their sovereign: 'For kings who abuse their position the Pope has various modes of restraint and of compelling them to deal justly, for he is God's regent on earth and has received from Him both swords, the spiritual and the temporal, for the peace and preservation of the Christian commonwealth. [...] Where the interests of the Christian commonwealth require it, the Pope can not only restrain, he can depose [kings]'. Ayala, *DIOBDM*, ii, p. 19.

¹⁶⁸ Allen, *A true sincere and modest defence of English Catholiques*, pp. 113-4.

¹⁶⁹ *Ibid.*, p. 104.

¹⁷⁰ Church of England, *Articles, whereupon it was agreed by the archbishops and bishops of both provinces, and the whole cleargie, in the conuocation holden at London in the yere of our God 1562 according to the computation of the Church of Englande for auoiding of the*

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Therefore, when Sir Thomas Smith penned his discourse on the composition of the English government, and described monarchical power as absolute in matters of 'war and peace', he was describing the monarch's sole discretionary authority to declare war, but he also implied a preference for secular just and regular war.¹⁷¹ The Elizabethans had scant regard for the Catholic Church's holy war doctrine. Not surprising, since from their perspective, this was the warfare of the antichrist.

Writing during the reign of king James VI and I, the Elizabethan soldier Sir Walter Raleigh penned a critical essay attacking the Catholic theory of holy war. He claimed that holy war and the crusade were unnatural and beneath human nature.¹⁷² The pope's 'croisada', Raleigh noted, claimed to be 'free from worldly ambition, just, and honourable', and made 'holy and meritorious' by 'pardon of sins, release from purgatory, and the promise of life to come'; however, in reality, it served only vain papal ambitions: 'to oppress kings by their people, and the people by their king'.¹⁷³ Furthermore, the Catholic practice of crusade - 'that religion ought to be enforced upon men by the sword' - Raleigh concluded was an unchristian doctrine imported from 'Mahomet the false prophet'.¹⁷⁴ A significant number of Elizabethans believed as Raleigh did that the corruption of papacy, and its unlawful assumption of temporal authority, which it had never rightly possessed, was the core cause of the major conflicts of the latter half of the sixteenth-century: the pope granted indulgences to Philip II that released him from his oaths to preserve the liberties of the Dutch, which resulted in a vicious civil war in the Netherlands. In France, the papacy urged its kings to prosecute Protestants with oppressive civil wars, and in England, Pope Pius V had inspired a war 'both upon us and among us'.¹⁷⁵

diuersities of opinions, and for the stablishyng of consent touching true religion (London: Richarde Iugge and Iohn Cawood, 1571), pp. 23-4.

¹⁷¹ Smith, *De republica Anglorum*, p. 58.

¹⁷² Johnson, *Ideology, reason, and the limitation of war*, p. 96, fn. 14; Walter Raleigh, 'A discourse of the original and fundamental cause of natural, necessary, and unnatural war', in *Works of Sir Walter Raleigh*, eds., Oldys and Birch, 8 vols. (Oxford: Oxford University Press, 1829), viii, pp. 253-297, 264, 266.

¹⁷³ Raleigh, 'A discourse of the original and fundamental cause of natural, necessary, and unnatural war', pp. 264, 276.

¹⁷⁴ *Ibid.*, p. 264.

¹⁷⁵ *Ibid.*, pp. 276-7.

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Elizabeth I, as well as many Elizabethans, particularly within the regime's leadership, rejected holy war in the sense of a papal crusade, even if those same men also saw their own wars in some sense as Protestant holy wars. In a letter to a French secretary, Walsingham claimed Queen Elizabeth constrained her religious policies, to include war, by two important principles:

The one, that conscience are not to be forced, but to be won and reduced by the force of truth, with the aid of time and the use of all good means of instruction and persuasion.

The other, that the causes of conscience, when they exceed their bound and grow to be a matter of faction, lose their nature; and that sovereign princes ought distinctly to punish the practice, though coloured with the pretence of conscience and religion.¹⁷⁶

Here, speaking in the name of the queen, Walsingham asserted the regime was unwilling to use the sword to enforce religious conformity except when belief threatened the sovereign state. The courtier Sir Christopher Hatton agreed, and asserted 'that in matters of Religion neither Fire nor Sword was to be used.'¹⁷⁷ A victim of religious persecution himself, and whose theory on the laws of war was supported by Elizabeth's leading men of war, Gentili argued for a secular doctrine of war wherein extra ordinary 'force in connexion with religion is unjust.'¹⁷⁸ He took further pains to stress: 'since the laws of religion do not exist between man to man', unlike human reason, 'therefore no man's rights are violated by difference in religion, nor is it lawful to make war because of religion.'¹⁷⁹ The papal crusade and Catholic holy war was predicated upon ecclesiastical supremacy over the temporal state; however, the Elizabethan church had been subordinated to the state, and 'Anglicans were adamant that war could not be justified without the sanction of a magistrate, even by appealing to scripture.'¹⁸⁰

¹⁷⁶ Francis Bacon, *The works of Francis Bacon*, eds., J. Spedding, R. L. Ellis, and D.D. Heath, 7 vols. (London: Longman, 1879), I, pp. 97-101.

¹⁷⁷ Camden, *Annals*, 4th ed., p. 458.

¹⁷⁸ Gentili, *DIBLT*, ii, p. 38.

¹⁷⁹ *Ibid.*, p. 41.

¹⁸⁰ Richard L. Greaves, *Society and religion in Elizabethan England* (Minneapolis: University of Minnesota, 1981), p. 538. Sermons and homilies were a key method of indoctrination that firmly instilled the concept of temporal supremacy among the English citizenry; for example, see below, p. 33.

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Influential members within the Elizabethan regime accepted that the term ‘war’ had a specific political and legal meaning. War was a temporal matter, and thus lawful wars were limited to armed conflicts between states and had to be fought under the public, not ecclesiastical, authority. This view of public authority was accepted by many devout Englishmen: ‘he which strikes with the sword, whose condition is priuate may feel the stroke of the sword. To take vengeance in a cause of justice, is appertaining properly vnto the publique magistrate, and so much doe those testimonies of holy scripture.’¹⁸¹ If the temporal authority was required to legally wage wars then what did Camden mean when he wrote ‘between Religion and the Common-wealth there can be no separation.’¹⁸²

Elizabeth’s public approach to religion, her middle way - *via media* - created a state-church that emphasised national loyalty through the outward obedience to the institution of the Church of England. The Banner of St George, a red-cross upon a white field, had been appropriated by the English state and crafted into a national symbol, so much so that it could be referred to by foreigners as the ‘English cross of St George’, and armies royal carried it into battle, and it flew from forts and ships.¹⁸³ Sidney might declare that England’s enemies in the Netherlands were also God’s enemies, but these apparent appeals to holy war were made with the caveat that God’s cause was England’s cause, and his soldiers ‘should not ... feare death or perill’ because they served ‘their Prince’ and fought for the ‘honour of their Countrey’.¹⁸⁴ Dr Johnson aptly summarised religion’s role within the early modern English state: ‘religion was a matter of state; with Protestant England set against Catholic Spain, overthrowing the religion meant overthrowing the state itself, and in the end

¹⁸¹ Christopher Sutton, *Disce Vivere. Learning to live* (London: Cuthbert Burby, 1604), p. 236.

¹⁸² Camden, *Annals*, 3rd ed., sig. c3v; Patrick Collinson, ‘The Elizabethan church and the new religion’, in *The reign of Elizabeth I*, ed. C. Haigh (Athens: University of Georgia Press, 1985), pp. 169-194, 174-8.

¹⁸³ Christopher Tyerman, *England and the crusades, 1095-1588* (Chicago: Chicago University Press, 1988), p. 368; *CSPF (1572-1574)*, p. 322; *CSPR (1572-1578)*, p. 103.

¹⁸⁴ John Stow, George Buck, and Edmond Howes, *The annales, or a general chronicle of England, begun first by maister Ihon Stow, and after him continued and augmented with matters forreyne, and domestique, auncient and moderne, vnto the ende of this present yeere 1614* (London: Thomae Adams, 1615), p. 732.

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the two really cannot be separated.’¹⁸⁵ This attitude crystallised in Sir Philip Sidney’s maxim which held that religion and politics must never be separated.¹⁸⁶

Thus, the Anglican theory of holy war took a significant turn away from Allen’s doctrine of papal crusade. The theoretical justifications for Catholic holy war had no legitimacy in Protestant England. The English emphasis on the temporal authority in matters of war necessitated a re-evaluation of the causes and actions in holy war. Invited to preach at St Paul’s Cross in 1598, ‘an open air pulpit in the precincts of St Paul’s Cathedral’ and ‘among the most influential of all public venues in early modern England’, the clergyman Stephen Gosson’s sermon *The trumpet of war* thoroughly rejected Catholic arguments in favour of holy war, which attacked the Spanish justifications for war against England.¹⁸⁷ Gosson contended that holy war, in its lawful manifestation, was simply another lawful cause for just and regular war.

[War] may be iust and necessarie two ways, the one is in defence of the innocent, the other is in reuenge of iniuries. [...] Princes are commanded to set open their gates, that the king of glorie may come in. Therefore if either Turke, or Pope, or Idolatorous Prince force the law of Mohomet or Idolatrie upon their people, when they are desirous to embrace the Gospel, the Gospel may then bee brought in by armes: but if the Turke or Pope, or Idolatorous Prince beguile their people, and their people willingly entertained a false religion, there is no violence offered ... where no violence is offered, defence [i.e. just war] can take no place.’¹⁸⁸

The prince alone retained the authority to declare war; priests did not ‘manage arms’, argued Gosson, but cared for the soldiers’ spiritual health.¹⁸⁹ Gosson presents a theory of holy war that was essentially just war with a religious cause. This was expressed clearly by Gosson by his preservation of traditional *jus in bello* limitations on violence. In battle, only the stratagems (sleights, shifts, wasting, spoiling, undermining, battery, and blows) commonly associated with

¹⁸⁵ Johnson, *Ideology, reason, and the limitation of war*, p. 101.

¹⁸⁶ Fulke Grenville, *Life of Sir Philip Sidney*, ed., N. Smith (Oxford: Clarendon Press, 1907), pp. 35-6.

¹⁸⁷ Torrance Kirby and P.G. Stanwood, eds., *Paul’s Cross and the culture of persuasion in England, 1520-1640* (Leiden: Brill, 2014), pp. XXI (diptych: ‘A sermon preached in the presence of King James I at Paul’s Cross’), 1 (quotes).

Johnson, *Ideology, reason, and the limitation of war*, p. 101-2; Gosson, *The trumpet of warre*, ff. 27^r-30^v.

¹⁸⁸ Gosson, *The trumpet of warre*, f. 29^v.

¹⁸⁹ *Ibid.*, ff. 31^r-31^v, 32^v-33^r.

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regular warfare were lawful; however, once victory was secured, Gosson reminded his audience, 'it is against humanitie to kill more than needs'.¹⁹⁰ Soldiers were prohibited from the punitive slaughter of innocents during battles, sieges, and pillage.¹⁹¹ Through this position - permitting religious causes for just war while preserving customary restraints - Gosson crafted a rhetorical position which severely criticised Spanish military conduct, and lauded previous English military adventures.¹⁹² Several earlier continental military manuals imported and translated for an English audience further influenced and bolstered English conceptions of licit holy war.¹⁹³

Years before England chose to commit its blood and treasure in the defence of the Netherlands, it provided modest, in comparison, military support in the defence of the French Protestant Huguenots.¹⁹⁴ Despite the number of atrocities that befell them, the Huguenots drew moral strength from a belief that their conflicts were indeed Protestant holy wars, but their view of holy war did not sanction unrestrained warfare in a manner commensurate with Catholic religious theories.¹⁹⁵ Out of the French military captains known to the English population and soldiery few were as well respected for their chivalry and martial prowess as François de La Noue (1531-1591).¹⁹⁶ *The politicke and militarie*

¹⁹⁰ Ibid., f. 36^v

¹⁹¹ Ibid., f. 36^v; innocents included women, children, the elderly and infirmed, and those people that were not under arms such as merchants and 'strangers'.

¹⁹² Gosson, *The trumpet of warre*, f. 37^{r-v}: 'cast your eies upon the warres of your enemie, and your owne warres. You shall finde the warres of the enemie [i.e. Spain], in the Indies, in Portingale, in Granado, in low contries, in France, and against us.... That his [Spanish] wars are as uniust as they are uncharitable, appeers by the rough regiment of his warriors, that break all the ancient lawes and priuileges of the countries where they enter, and turn the glorious and golden administration of iustice, into a hard yron gouernment of war, administered by violence of arms.... Looke upon your owne warres another while, you shal find them to be very charitable and iust....'

¹⁹³ J.H.M. Salmon, *The French religious wars in English political thought* (Oxford: Clarendon Press, 1959), c.f. Johnson, *Ideology, reason, and the limitation of war*, p. 106.

¹⁹⁴ David J.B. Trim, 'The "Secret War" of Elizabeth I: England and the Huguenots during the Wars of Religion, 1562-77', *Proceedings of the Huguenot Society of Great Britain and Ireland* 27 (1999), pp. 189-199.

¹⁹⁵ Johnson, *Ideology, reason, and the limitation of war*, p. 106.

¹⁹⁶ David J.B. Trim, 'The Huguenots and the European Wars of Religion, c. 1560-1697', in *The Huguenots: history and memory in transnational context: essays in honour and memory of Walter C. Utt*, ed. D.J.B. Trim, studies in the history of Christian traditions, v. 156 (Leiden: Brill, 2011), pp. 153-192, 166. Matthew Sutcliffe, an important English commentator on the laws of war, praised the practical aspects of La Noue's discourses: see Sutcliffe, *The practice, proceedings, and lawes of armes*, sig. [A5^v] (no siglum, the 6th page of the epistle dedicatory).

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discourses of the lord de La Noue (1587) addressed issues of restraint during the French and Dutch wars of religion; wars that also employed significant numbers of English soldiers, which in turn provided at least one vector for French Protestant ideas about holy war to enter the English political-military consciousness.¹⁹⁷

La Noue, a veteran officer, was unconcerned with arguments justifying wars, rather he asked tough questions regarding appropriate military conduct in religious and civil wars.¹⁹⁸ 'If wee speake of words', justifying the wars, wrote La Noue:

wee heare nothing but Gods honor, the Kings seruice, Catholick religion, the Gospell, our Countrie. All which goodly titles doe binde the ministers of armes to endeuer that their works may concure with their words. But when afterward wee see the most part take a contrary course....¹⁹⁹

Jus in bello, thought La Noue, applied in all conflicts; lawful and restrained conduct was required in regular, civil, and religious wars.²⁰⁰ La Noue questioned these causes of war and their attendant violence:

What violent causes are those that stirre you vp? If Gods glorie, then consider that he taketh no pleasure in sacrifices of mans blood: but detesteth them and loueth mercie and truth. If your Princes seruice, you must thinke ye doe them small seruice in slaying on an other, for soe doe you diminish and plucke away the chiefe senowes of his Realme. If Religion moueth you, it seemeth ye knowe not the nature thereof: for sith it is all charitie, the same should induce you to meekenesse. If your Countrie, behold your fields are almost all desert, your villages burnt, your cities sacked, your riches in straungers hands, and your glorie vtterly lost. **Seek then no more excuses to lengthen your calamities.**²⁰¹

Just actions in wars, argued La Noue, was the best proof of the basic lawfulness of a war: '[w]ho wil beleeeue that your cause is iust, when your behaiours are so

¹⁹⁷ François de La Noue, *The politicke and militarie discourses of the Lord de La Noue whereunto are adioyned certaine obseruations of the same author, of things happened during the three ciuil warres of France*, tr., E. Aggas (London: Thomas Cadman and Edward Aggas by Thomas Orwin, 1587).

¹⁹⁸ *Ibid.*, pp. 221-222.

¹⁹⁹ *Ibid.*, p. 224.

²⁰⁰ Johnson, *Ideology, reason, and the limitation of war*, p. 107.

²⁰¹ Noue, *The politicke and militarie discourses*, p. 224 (emphasis added).

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uniust?’²⁰² La Noue was not the only Protestant to personally feel the sting of religious strife and to craft a theory of just religious war.

The French Protestant theologian François de Saillans advanced similar ideas about war, in his treatise *Discourses of warre and single combat* (1591), which added to the growing body just war theory that acknowledged religious causes. His work shared important similarities with Gosson’s *Trumpet of warre* (1598) and La Noue’s *The politicke and militarie discourses of the lord de La Noue* (1587).²⁰³ Saillan’s translator, John Eliot, was motivated to undertake his work because the *Discourses* addressed ‘many matters vndiscussed by anie that have written of the same subiect’, and he believed Robert Devereux, earl of Essex, and the ‘Martialist[s] of our own countrie’, could learn from it.²⁰⁴ Saillans agreed that just war could have religious causes, but because it was just war, traditional *jus in bello* restraints remained in effect.²⁰⁵ The prince and military leaders, thought Saillans, were responsible for the actions of their armies and soldiers, and it was their duty to see that discipline and faith, sufficiently impressed on the soldiers, protected non-combatants and showed mercy to defeated enemy soldiers; the notion ‘that the lawes cease, & are of no force in warre’, wrote Saillans, ‘is not of God but of the Deuill.’²⁰⁶ Therefore, a cogent body of military treatises advanced a clear Protestant doctrine of holy war, which asserted just wars could be lawfully waged for religious causes, but these wars were truly just wars, and, thus, were limited by traditional ideas regarding *jus in bello*.

Religion motivated both Catholics and Protestants states to fight their wars, but there was a perhaps a third group that influenced English thought. In an interesting paper prepared for the eyes of Lord Burghley, the Puritan gentleman George Carleton divided up the population of England into three

²⁰² Ibid., p. 225.

²⁰³ Johnson, *Ideology, reason, and the limitation of war*, pp. 108-9. François de Saillans wrote his *Discourses* under the pseudonym Bertrand de Loque. Bertrand de Loque, *Discourses of Warre and single combat*, tr., J. Eliot (London: John Wolfe, 1591); this work was dedicated to Robert Devereux, 2nd earl of Essex. For further information about Saillans and a summary of his theory of war: see Beatrice Heuser, *The strategy makers: thoughts on war and society from Machiavelli to Clausewitz* (Santa Barbara: Praeger, 2010), pp. 50-62.

²⁰⁴ Loque, *Discourses of Warre and single combat*, sig. A2^v.

²⁰⁵ Ibid., f. 1-4, 17-21.

²⁰⁶ Ibid., f. 22.

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religious groups: '[t]he papist, the atheist, and the protestant' Notably Carleton observed that the first two - the papist and the atheist - were to be 'favoured because they are many'.²⁰⁷ Atheists would hardly be motivated by religious war arguments. The veteran of the Dutch wars and later the dean of Exeter, Matthew Sutcliffe summed up the general attitude of soldiers, as he knew them, writing 'the name of religion I know, will seem strange to most of our lusty young soldiers, that in swearing and blaspheming place their greatest bravery, and account it a shame for a soldier to be religious.'²⁰⁸ The popular Puritan preacher Lancelot Andrewes acknowledged the general disregard of soldiers for preachers, while preaching to the earl of Essex on the forbearance of sin prior to his expedition to Ireland (1599); he asked his audience 'what good do these churchmen [in war]?'²⁰⁹ Certainly for many soldiers religion played an important role in motivating them to take action, but for others, perhaps a plurality, loyalty to the state, adherence to a martial code of honour, superseded their religious affiliation.²¹⁰ Regardless of their faith or personal code, every soldier had to trust that the men to his left and right would fight for every other man in the formation if they were to have any chance of survival and national loyalty became the tie that bound many soldiers to one another.

The Catholic educated Christopher Blount was the loyal servant of the earl of Essex, and he spent much of his life under arms and fighting for the Elizabethan state.²¹¹ William Blandy lost his BA from Oxford 'for Popery', but remained the close friend of the ardent Calvinist Geoffrey Gates with whom he trailed the pike in the Dutch wars.²¹² To explain this Blandy wrote in his *The*

²⁰⁷ TNA PRO SP 15/21/121 fols. 266^v-268^v c.f. Peter Lake, *Bad queen bess?: libels, secret histories, and the politics of publicity in the reign of Elizabeth I* (Oxford: Oxford University Press, 2016), p. 64.

²⁰⁸ Sutcliffe, *The practice, proceeding and lawes of armes*, pp. 305-6.

²⁰⁹ Lancelot Andrewes, *Ninety-six sermons*, 2 vols. (Oxford: John Henry Parker, 1841), i, p. 327.

²¹⁰ The role of religion as a soldier's motivation to pick-up arms is detailed in Trim, 'Fighting "Jacob's wars"', and there were those that chose loyalty to their religion over the state, of which most infamously is the story of Sir William Stanley: Simon Adams, 'Stanley, York and Elizabeth's Catholics', *History today* 37 (1987), pp. 46-50, or William Garrard's service in Philip II's *tercios*: William Garrard, *The arte of warre*, ed., Robert Hitchcock (London: Roger Warde, 1591), wherein his Catholic faith was announced proudly to an English audience, and without detracting from his loyal service to the king of Spain.

²¹¹ Paul E.J. Hammer, 'Blount, Sir Christopher (1555/6-1601)', *Oxford dictionary of national biography* <<http://www.oxforddnb.com/view/article/2685>> [accessed on 15 December 2015].

²¹² J. Andreas Löwe, 'Blandy, William (fl. 1563-1581)', *Oxford dictionary of national biography* <<http://www.oxforddnb.com/view/article/2685>> [accessed on 15 December 2015]; Blandy,

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castle, or picture of policy (1581) that the best soldiers fought for ‘the glory of Christ, the honour of our Prince, the cause of our country, the defence of our name and honesty ... all other[s] that ... respect not the true sovereign good, they are rather to be accounted men puffed up with vaine desire’.²¹³ ‘The reality of crusading for Englishmen’, particularly in the sense advocated by the Catholic Church, to which we should add church ordained holy war more generally, stated Tyerman, ‘had withered and died amidst the shifting spiritual, social, and political winds of the sixteenth century.’²¹⁴ Other soldiers would assert religion formed a spiritual bond that complemented the temporal bonds that existed between the subject and their sovereign prince: ‘nothing ties man to due obedience & faithful more than the band of religion’, but was this truly the bond religion? Or, however, this seems to be simply the language of the age, and the manifestation of a national ideology as suggested by Johnson.²¹⁵

Although Elizabeth I repeatedly offered aid to foreign Protestants, she did not want to openly embrace the idea of religious war, as the more puritan of her subjects hoped and lobbied for. This was not surprising since prominent members of the regime considered both Roman Catholicism and radical puritanism as equally flawed interpretations of the Gospel. Robert Cecil well expressed these sentiments in a letter to the Archbishop of York in 1604: ‘[I] having held it for certain rule ... that the Papist were carried on the left hand with superstitious blindness, [and] the Puritans ... were transported on the right with unadvised zeal’.²¹⁶ The more radical puritans interpreted holy war in a

The Castle, or picture of policy, p. 13^r. Geoffrey Gates advanced a very similar argument in his *The defence of militarie profession* (London: Henry Middleton, 1579); but what make these two works interesting is less their arguments which became very contemporary in Elizabethan martial discourse, but the religious inclinations of the two men; Gates was a Calvinist and Blandy a quasi-Catholic. The practice of religion is usually kept to theological doctrines, but a holistic study of religion within the Elizabethan military would benefit from future research: for example, the relationships between soldiers like Gates and Blandy, Essex and Blount suggest, and perhaps even Charles Blount, baron of Mountjoy and earl of Devonshire and the Spanish Master of Camp Don Juan del Águila.

²¹³ Blandy, *The Castle, or picture of policy*, p. 13^r.

²¹⁴ Tyerman, *England and the crusades, 1095-1588*, p. 370.

²¹⁵ Henry Knyvett, *The defense of the realm, 1596*, ed. C. Hughes (Oxford: Clarendon Press, 1906), p. 55.

²¹⁶ Edmund Lodge, ed., *Illustrations of British history, biography, and manners, in the reigns of Henry VIII, Edward VI, Mary, Elizabeth, and James I, exhibited in a series of original papers, selected from the manuscripts of the noble families of Howard Talbot and Cecil*, 2nd edition, 3 vols. (London: John Chidley, 1838), iii, p. 126; see also Leo F. Solt, *Church and state in early modern England, 1509-1640* (Oxford: Oxford University Press, 1990), p. 81.

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manner which more closely resembled the Catholic Church's doctrine. This view would have diminished monarchical temporal supremacy, which the queen jealously guarded against any diminishment; see for an example, Elizabeth's rage at Leicester's assumption of the United Provinces' sovereignty.²¹⁷ Elizabeth would not permit the church, any church, to encroach upon the monarchy's supremacy.²¹⁸ She was supported by important church leaders in this. Archbishop Whitgift believed that any loss in royal supremacy in ecclesiastical affairs would result in the concomitant loss of royal supremacy in civil affairs.²¹⁹ The queen obviously agreed and favoured a clear subordination of religion to politics which naturally extended to war.

By rejecting holy war doctrine, adopting a secular view of war, and promoting a national Church, the Elizabethan regime developed an ideological space within the Elizabethan military, which permitted Anglicans, quasi-Catholics, atheists, and puritans to serve the state in its wars so long as they showed outward submission to the Church of England. This position was supported by leading military men such as the earl of Leicester and the earl of Essex. Both commanders permitted, with mixed results, a variety of beliefs in their armies, so long as that did not conflict with the tenets dictated by the Church of England, which suggests that, at least within the Elizabethan military, religion was viewed as less important than patriotism.²²⁰

²¹⁷ Solt, *Church and state in early modern England, 1509-1640*, p. 82: 'The Presbyterian radicals, especially Thomas Cartwright, hoped to from a system of Church courts a national assembly and ultimately an international Calvinist assembly would develop, which, somewhat like the Catholic Church, would transcend national boundaries but acknowledge only Christ as the head of the Church.'

²¹⁸ *Ibid.*, p. 91; this appears the logical extension of Cartwright's assertion: '[j]ust as in the temporal realm it is unlawful for the minister of the Church to make civil laws or to hold political office, so in Christ's spiritual realm it is unlawful for the civil magistrate to proclaim ceremonies and doctrine pertaining to the Church.'

²¹⁹ *Ibid.*, p. 92.

²²⁰ Simon Adams, 'A puritan crusade? The composition of the earl of Leicester's expedition to the Netherlands, 1585-86', in *Leicester and the court: essays on Elizabethan politics* (Manchester: Manchester University Press, 2002), pp. 176-195; *idem*, 'Stanley, York and Elizabeth's Catholics', pp. 46-50; Alexandra Gajda, "'Profane policy"? Religion, toleration, and the politics of succession', in *The earl of Essex and late Elizabethan political culture* (Oxford: Oxford University Press, 2012), pp. 108-140, 108: 'Francis Bacon inevitably provided the most memorable definition of the earl [of Essex] as a cynical politique: "knowing there were no such strong and drawing cordes of popularitie, as religion," Essex pursued "a profance policy to serue his turne (for his owne greatnesse,) of both sorts & factions, both of *Catholicks* and *Puritanes*".'

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The state, claimed Burghley, prosecuted enemies of the state not because of their religious beliefs, but because they were criminals: rebels, traitors, and propagators of sedition.²²¹ Additionally, Burghley drew attention to the laws, which directed these actions; these he pointed out were not ‘new lawes’, but were ‘the auncient temporall lawes of the realme, and namely by the lawes of Parliament made in King Edward the thirds time’.²²² Laws, he claimed that had long been held in force, and arising in an age when ‘Popes were suffered to haue their authoritie Ecclesiastical in this realme as they had in many other countries.’²²³ The Elizabethan regime, ‘her maiestie and all her gouernours and magistrates of Justice’, were duty bound, by oath and divine law, to take action and preserve domestic peace within the realm: ‘for auoiding of the floods of blood, which Ciuill warres are seene to runne and flowe ... by the sword as by lawe’.²²⁴ Burghley’s treatise was crafted as much for a continental audience as it was for English audiences.²²⁵ It rejected claims made by Catholic critics that the regime was persecuting Catholics for their faith, rather the regime was maintaining domestic law and order. Cardinal Allen’s *A trve sincere and modest defence of English Catholiques* (1584) attempted to refute Burghley’s pronouncements in *The Execution of iustice in England* (1583). With Allen arguing for papal sanctioned rebellion and Burghley asserting the state’s right to preserve domestic peace through the rule of law.

The theologian Thomas Bilson penned *The trve difference between Christian subiection and vnchristian rebellion* (1585), a further and final statement on Elizabethan rule of law policy and a direct refutation of Catholic

²²¹ Cecil, *EJE*, sig. [Eiv^r] (no siglum): ‘[t]hese kinds of seditious actions for seruice of the pope and the traitorous and rebels abroade, haue made them traitours: not their books nor their beades, no not their cakes of ware which they call Agnus dei, nor other their reliques, nor yet their opinions for the ceremonies or rites of the Church of Rome: and therefore it is to be certainly co[n]cluded that these did iustly deserue their capital punishme[n]ts as traitors’. See also the case study: Peter Lake and Michael Questier, ‘Puritans, papists, and the “public sphere” in early modern England: the Edmund Campion affair in context’, *Journal of modern history* 72 (2000), pp. 587-627).

²²² Cecil, *EJE*, sig. [Aiv^r] (no siglum).

²²³ *Ibid.*, sig. [Aiv^r] (no siglum).

²²⁴ *Ibid.*, sig. Bi^r.

²²⁵ Lake, *Bad Queen Bess?*, p. 115: French and Italian translations of *The execution of justice in England* were issued in 1584 and 1589 respectively.

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criticisms and spiritual authority to check temporal powers.²²⁶ Bilson countered the theoretical aspects of Allen's critique.²²⁷ He argued that princes, by virtue of scripture and divine law, bear the sword alone which makes them the supreme authority within the realm; this authority was absolute and answerable only to God. The sword, wrote Bilson, was the instrument of public authority that kept the peace and punished its violators. Therefore, the sovereign prince was responsible for declaring wars and preserving domestic peace, and no other person has authority or right to refute the prince's declarations. Those subjects that resist the 'Princely regiment with the sworde' were, as Lord Burghley noted, no more than traitors: criminals, and subject to punishment under the laws of the realm and their monarch.²²⁸ By separating politics from religion, the Elizabethan regime was left, where force of arms was required, to use either the doctrine of just war against its foreign enemies and 'war upon the rebel' if the state was to preserve the rule of law and execute justice in the kingdom.

Englishmen might employ religious rhetoric and symbols indicative of holy war in defence of their wars with the Catholic states of Europe, but it was because many considered their struggles as part of a wider cosmic war between good (Protestantism) and evil (Catholicism).²²⁹ 'These wars are holy', wrote the prominent Puritan John Stubbs in 1586 to Lord Willoughby, while the latter was employed in the Dutch wars.²³⁰ Similarly Lancelot Andrewes preached in a sermon before the queen that 'to go forth to war, against our enemies, any enemies, whether foreign foes or rebellious subjects ... hath ever been counted most just and lawful.' War 'at this time against these enemies', Andrewes preached, 'is a war sanctified' because England's wars were God's wars —

²²⁶ Lake, *Bad Queen Bess?*, pp. 178-206; idem, 'The "political thought" of the "monarchical republic of Elizabeth I", discovered and atomized,' *Journal of British studies* 54 (2015), pp. 257-287.

²²⁷ Lake, *Bad Queen Bess?*, p. 194.

²²⁸ Bilson, *The true difference between Christian subjection and vnchristian rebellion*, pp. 238, 238-240.

²²⁹ Trim, 'Fighting Jacob's wars', pp. 34-5; Peter Lake, 'The significance of the Elizabethan identification of the pope as antichrist', *Journal of ecclesiastical history* 31 (1980), pp. 162-170; Carol Z. Wiener, 'The beleaguered isle. A study of Elizabethan and Jacobean anti-Catholicism', *Past and Present* 51 (1971), pp. 27-62; Malcom R. Thorp, 'Catholic conspiracy in early modern Elizabethan foreign policy', *Sixteenth Century Journal* 15 (1984), pp. 431-448.

²³⁰ Lloyd Berry, ed., *John Stubbs's "Gapping Gulf" with letters and other relevant documents* (Charlottesville: University of Virginia Press, 1968), p. 131.

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'praeliari praelia Domini'; however, the holy aspect of these wars was not their essential divinity, but the product of the divine-like union of state, church, and the faithful.²³¹ At their foundation, the Elizabethan wars were just wars with the state publishing secular causes, as well as, popular religious justifications, but as just wars, these wars were limited by traditional customs of restraint.

England's wars, as just wars, therefore, required the Elizabethan soldier to act with more honour and obedience to the laws of war than the popular perceptions of their enemies would suggest. The pope, often dubbed the antichrist, and his chief demon, the king of Spain, were dubious characters at best. Sutcliffe agreed with Raleigh that much of the ugliness exhibited in the current crop of wars was the result of papal interference: 'the king of Spain has thought it lawful under colour of treaty of peace, without any defiance to cut our throats, if he could. It may be he takes the Pope's excommunication against the Prince and people of this land for a sufficient denunciation'.²³² Philip II, thought Sutcliffe, was motivated by doctrinal elements found in holy war, and his fears increased upon reading the work of Alexander Farnese's adjutant-general, Balthazar de Ayala: '[it is] no marvel,' he warned, 'if they [the Spanish] observe no solemnities in wars against [the English]', because the English were heretics and 'faith and promise is not to be performed unto heretics.'²³³ Sutcliffe's polemic, however, was likely written as a means to the earl of Essex's ends. During the 1590s, Essex perceived Spain as England's greatest threat, and he wanted to create a popular image of Spain as a state poised to strike down Elizabeth and her kingdom. Upon a closer reading of Ayala, his interpretation of holy war appears closer to the perceptions shared by many Elizabethans, while admittedly Ayala's views are obscure, since this was not his focus. He appears to interpret holy war through the doctrine of just war. Popes might choose to declare holy war but such actions should be done in coordination with faithful princes, whose duty it was to plan and execute wars.²³⁴ The Elizabethan regime's claim that all international wars were in fact just wars, and military force against rebels and other dissidents simply the execution of justice in

²³¹ Andrewes, *Ninety-Six Sermons*, i, pp. 324, 325, 335.

²³² Sutcliffe, *The practice, proceedings, and lawes of armes*, p. 11.

²³³ *Ibid.*, p. 11.

²³⁴ Ayala, *DIOBDM*, ii, pp. 16, 20, 21.

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England conflicted with and contradicted key theological elements associated with the Catholic Church's doctrine of holy war.

Despite these conflicting perceptions of law, the Catholic Church employed a spectrum of force to combat English heresy; it could empower the secular lords to take military action themselves; ecclesiastics could lead and direct operations against the regime, and in the most extreme cases, the pope could authorise a crusade. The papacy would use variations of each its attempts to overthrow Elizabeth.²³⁵ In late 1569 the northern earls of Northumberland and Westmorland called their followers to muster under arms and reinstate Catholic practices.²³⁶ Pope Pius V attempted to empower the English nobility to lawfully depose Elizabeth, the 'pretended queen' and heretic, with the publication of the papal bull *Regnans in Excelsis* on 25 February 1570, which excommunicated Elizabeth and freed her subjects from all obligations and allegiance.²³⁷ It is difficult, however, to determine the extent to which the bull itself functionally motivated the northern earls to rebel against the Elizabethan regime, since by the time copies had arrived in England, the rebellion had been effectively suppressed. Nevertheless, its arrival in England served to confirm the belief of Elizabeth's government that the rebellion was due to pope's disruptive influence.²³⁸

It is still harder to gauge the impact of *Regnans in Excelsis* on the contemporaneous rising in Ireland of James Fitzmaurice, although religion was undoubtedly an essential cause for his actions against the Elizabethan regime in Ireland (1569-1573). Like the northern English earls, Fitzmaurice acted precipitously before coordinating his rebellion with the pope or Catholic states. Nevertheless, believing that the best source of foreign aid was to be gained from Spain, he had dispatched the titular archbishop of Cashel, Maurice Fitzgibbon,

²³⁵ Russell, *The just war in the middle ages*, p. 210.

²³⁶ K.J. Kesselring, *The Northern Rebellion: faith, politics, and protest in Elizabethan England* (New York: Palgrave Macmillan, 2010), pp. 58-9.

²³⁷ The date given here is in the new style; *CSPD (1547-1580)*, p. 330; Thomas Barlow, *Brutum Fulmen: or the bull of pope Pius V* (London: S. Roycroft, 1681), pp. 1-6; *HCCI*, pp. 1258-1562.

²³⁸ Wiener, 'The beleaguered isle', p. 31. For the history of *Regnans in Excelsis*, see: John Hungerford Pollen, *The English Catholics in the reign of Elizabeth* (London: Longmans, Green and Co., 1920), pp. 142-159; Arnold Oskar Meyer, *England and the Catholic Church under Elizabeth*, tr., J.R. McKee (London: Routledge and Keegan Paul, 1967), pp. 73-92.

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who met with influential ministers and courtiers but failed to gain support from Philip.²³⁹

The foreign support that the Northern and Fitzmaurice rebellions required never manifested, and both rebellions arose before the excommunication of Queen Elizabeth could fully mature and unify resistance. It further failed to unite continental Catholic opposition to Elizabeth. Indeed, the two most powerful Catholic leaders, Philip II and the Holy Roman Emperor Maximilian II, even endeavoured to have it recalled. At its worst, *Regnans in Excelsis* served to unite most Englishmen, including patriotic Catholics, against a common enemy: the papacy. The papacy and the Catholic Church would remain Elizabethan England's principle antagonist until the armada crisis of 1588, when Philip II and the threat of Spanish tyranny supplanted the papacy as the greatest threat to the realm.²⁴⁰ Pope Pius's call for a church sanctioned overthrow of the Elizabethan regime collapsed in the face of the state's integrated and forceful response.

Pope Pius V died in 1572 and his successor, Pope Gregory XIII, remained focused upon returning England to the Catholic Church. English Catholic clergymen, once exiles, were directed by the papacy to return and preserve Catholicism within England. Their war was not to be waged with arms, but the ideals of a spiritual war. The seminary at Douai sent a hundred missionaries into England from 1574 to 1580.²⁴¹ A more significant mission effort began in 1580 by the Society of Jesus.²⁴² At this time *Regnans in Excelsis* imposed more complications than benefits, and Gregory sought to ameliorate some of its authority by adding an addendum, which he gave to the early Jesuit missionaries Campion and Persons: 'the bull always binds Elizabeth and the heretics, but, while things remain as they are, in no way binds the Catholics, except when

²³⁹ Falls, *Elizabeth's Irish wars*, p. 139 (Fitzmaurice to Archbishop Fitzgibbon) c.f. Archives de Simancas, MSS L.8336, f. 27.

²⁴⁰ Julian Lock, "'How many tercios has the pope?': the Spanish war and the sublimation of Elizabethan anti-popery', *History* 81 (1996), pp. 197-214.

²⁴¹ Meyer, *England and the Catholic Church under Elizabeth*, p. 134.

²⁴² *Ibid.*, p. 130 (before his death Ignatius Loyola had included England within the Jesuit's mission).

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public execution of the said bull shall become possible.’²⁴³ These missionaries fought clandestinely to preserve their religion, and their actions in England provided the papacy with intelligence from inside the enemy’s camp, which assisted in the planning of numerous plots and schemes against Elizabeth’s heretical regime.²⁴⁴ If, however, the cause of Catholic religion was being fought in England with ideas and subterfuge, Pope Gregory countenanced a second attempt to liberate Ireland through force of arms.

Fitzmaurice’s rebellion had ended with his submission to Sir John Perrot in 1573. Although Fitzmaurice submitted, he was never truly reconciled with the Elizabethan regime, and in 1575 Fitzmaurice illegally left Ireland in search for support from continental Catholics that would allow him to liberate Ireland from heretical dominion. Making his way to Rome in 1577, he found unlikely support in the form of the well-connected and mercurial soldier of fortune Sir Thomas Stukeley who introduced the Irish crusader to the papal court. Pope Gregory saw potential in Fitzmaurice and commissioned him to act in ‘in defence of the true religion’. Fitzmaurice’s crusade was reinforced with 600 former brigands that were pressed into papal service.²⁴⁵ Pope Gregory also financed several ships to transport the expedition, and in February 1577, Stukeley and Fitzmaurice set out from Porto Ercole. Before sailing to Ireland, the expedition halted in Lisbon, where delays drew Stukeley, and more than half the pressed men, into king Sebastian’s ill-fated crusade to conquer Morocco. Both men died fighting at the battle of Alcazar in 1578. Hobbled by the loss of Stukeley and the soldiers, Fitzmaurice struggled to resuscitate his floundering expedition, and once again aid came forth from the Church. The Papal nuncio to Spain, Bishop Philip Sega,

²⁴³ *Ibid.*, p. 138 (a copy of the Latin original is printed in the appendix, pp. 486-487), c.f. *CSPD (1547-1580)*, p. 651.

²⁴⁴ Major Catholic plots to assassinate Queen Elizabeth I: Plot (1572); Throckmorton Plot (1584); Babington Plot (1587). Catholic Church sponsored or supported actions against England: The Northern Rebellion (1569); Fitzmaurice Rebellion, also known as the First Desmond Rebellion (1569-1573); Don John and Pope Gregory XIII’s plot to invade England (1574-76); Papal Expedition to Ireland (1579) and the Second Desmond Revolt (1579-1584); the church brokered a joint invasion plan for Philip II and the Grand Duke of Tuscany to invade England in 1580; The Spanish Armada (1588) was partially funded by a crusader tax granted to Philip, and crusading indulgences were granted to the soldiers.

²⁴⁵ *HCCI*, iii, p. 1262-4 (Fitzmaurice’s papal commission, 1577)

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succeeded in persuading Philip to release the English Jesuit Dr Nicholas Sanders as an accredited papal agent, so in 1578 Sanders joined the crusade.²⁴⁶

Dr Sanders passionately preached among the soldiers on the virtues of holy war. Fitzmaurice's expedition took on a sanctified air, and together Dr Sanders and Fitzmaurice made their papal commission and holy cause central to the coming rebellion. The two of them used this rhetoric to compensate for the expedition's deficiencies in manpower through the power of religious ideology.²⁴⁷ Fitzmaurice took the remaining troops and departed Lisbon; the expeditionary force made landfall in Ireland on the Dingle peninsula in July 1579. At once, he dispatched circular letters to prominent Irish elites; wherein, he declared his papal authority to wage 'holy war', called all Catholics to take up arms and expel the heretics, and furthermore, the letter announced special indulgences that granted absolution for sins committed during the war with heretics.²⁴⁸ He hoped that his papal commission would legitimise his cause and the ensuing conflict, but the Elizabethan regime did not recognise either the papal commission nor Irish crusaders as legitimate. The Elizabethans found the idea of elevating Irish rebels to the status of lawful enemies repugnant.

Rebellion

The arrival of Fitzmaurice in Ireland initially caused great fear amongst the members and allies of the Elizabethan regime. Observers could not confuse the pretext for Fitzmaurice's invasion, since when he and the troops disembarked, they were preceded by '[t]wo friars bearing ensigns, and a bishop with a crozier staff and his mitre.'²⁴⁹ 'I care not for soldiers at all', Fitzmaurice was reported to have said, because 'I know the minds of the noblemen in Ireland.'²⁵⁰ Some 2-300 strong, the papal troops began fortifying their position on the Dingle peninsula on 23 July, and the soldiers reportedly had burned,

²⁴⁶ *CSPR (1572-1578)*, p. 532.

²⁴⁷ Hiram Morgan, 'Faith & fatherland in sixteenth-century Ireland', *History Ireland* 3 (1995), pp. 13-20, 15-16.

²⁴⁸ *Cal. Carew (1515-1574)*, pp. 397-400.

²⁴⁹ *CSPR (1574-1585)*, p. 174.

²⁵⁰ *Cal. Carew (1574-1588)*, p. 308.

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sacked, and taken prisoners from the neighbouring communities.²⁵¹ By 3 August reports were delivered to Elizabeth and her Privy Council that Sir John of Desmond, the militant brother of the earl of Desmond, had received a bull from the pope to ‘maintain his rebellion and [an order of] excommunication for all that support the Queen.’²⁵² A messenger from James Eustace, viscount of Baltinglas, met with the earl of Desmond in 1580 to ally with him and declare that ‘he should make good war.’²⁵³ Another army was being assembled under the pope’s banner under the command of John of Desmond. John of Desmond led his papal army on a mission that drew the Englishmen’s attention away from the crusade’s toe-hold on the Dingle peninsula, an expeditionary fort which was known by a variety of names – Castello del Oro, Dún an Óir, Smerwick fort, or simply the Spaniards’ fort.²⁵⁴ Edward White to confided in Walsingham that ‘[t]he fire [of rebellion is] like to be in every corner of the realm.’²⁵⁵

Armed with the papal firebrand and ready to burn the heretics out of Ireland, Fitzmaurice travelled north into Connaught to call the faithful into action. Traveling with a handful of men, Fitzmaurice and his troop were discovered and killed by Irish agents allied with the crown on 20 August. The nature of the conflict, however, for the papal force never fell into question. The earl of Desmond took over the leadership and maintained the church’s holy war.²⁵⁶ Despite the many papal letters authorising holy war, the English refused to see the rising of Irish Catholics as anything other than a mere rebellion. Furthermore, the English leadership never considered the rebels’ fort at Smerwick to be a serious threat. Even one year later, Lord Justice Pelham after viewing the fort said that he ‘found it a vain toy’.²⁵⁷ It remained strategically insignificant until 18 October 1580, after Captain Bingham of the vessel

²⁵¹ *CSPI (1574-1585)*, pp. 173-4

²⁵² *CSPI (1574-1585)*, p. 178.

²⁵³ *Cal. Carew (1574-1588)*, p. 309; *CSPI (1574-1585)*, p. 237: 26 July 1580, Captain Zouche wrote to Walsingham that ‘Baltinglas’s rebellion the more dangerous because he coloureth it with religion.’

²⁵⁴ Thomas Johnson Westropp, ‘Promontory forts and allied structures in Northern county Kerry, part III’, *The journal of the royal society of antiquaries of Ireland* 40 (1910), pp. 179-213, 181, 193.

²⁵⁵ *CSPI (1574-1585)*, p. 179.

²⁵⁶ *HCCI*, iii, p. 1272-5.

²⁵⁷ *Cal. Carew (1575-1588)*, pp. 267-8.

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Swiftsure confirmed the arrival of 3-400 fresh foreign troops, which perhaps came to relieve the garrison. The newly arrived Lord Deputy Grey had received the sword of office on 7 September along with a mandate from the queen ‘to see a good and a short end of’ the rebels in Ireland.²⁵⁸

Queen Elizabeth’s instructions for Grey showed that the queen was well informed. She commanded Grey to differentiate between the Irish loyalists and the rebels. Regarding the loyalists, Elizabeth wanted action taken to counter the public perception that she sought to ‘roote them out [her Irish subjects] with an intention to place there our subjects borne in this realme [of England]’, and to make known, her ‘affection to them’. Those, however, that have ‘intelligence with forraine princes, as lately certayne of them have had, they shall give us just cause to the contrarie’, and for their treasons, they must be punished.²⁵⁹ It was becoming increasingly difficult to ignore the situation on the Dingle peninsula, and in early October 1580, the earl of Ormond skirmished with the papal forces, an engagement which left the constable of Castle Maine dead from a gunshot wound. On 7 November Lord Deputy Grey encamped his forces before the Smerwick fort. From it flew four ensigns with the pope’s banner set in the centre.²⁶⁰ The planting of the pope’s banner directly challenged Elizabeth’s monarchy and an overt act of rebellion.

Tudor political theory and secular laws identified rebellion as the most grievous offense against the body politic, but furthermore, it was damnable offense and sin against God. The Church of England’s official homilies were an essential propaganda tool. These were used to indoctrinate the masses in the basic pillars of Tudor society and firmly instilled the concept of temporal

²⁵⁸ Lord Deputy Greys instructions: TNA SP 12/34/626-7, c.f. Philip de Malpas Grey Egerton, ed., *A commentary of the services and charges of William Grey of Wilton* (London: Camden society, 1847), pp. 74-6; *Cal. Carew (1575-1588)*, p. 277.

²⁵⁹ Egerton, *A commentary of the services and charges of William Grey of Wilton*, p. 74.

²⁶⁰ Hennessy, *Sir Walter Raleigh in Ireland* (London: Kegan Paul, Trench, & Co., 1883), pp. 207-211 (report from Smerwick), 209; TNA, SP 63/78/29, Lord Grey to Queen Elizabeth, 12 Nov. 1580, available, in transcription, online at <<http://www.english.cam.ac.uk/ceres/haphazard/letters/lettersindex.html>> [accessed 16 Apr. 2014], all citations hereafter refer to the digital source, pp. 5-6; other copies can be found in Alfred O’Rahilly, *The Massacre at Smerwick (1580)* (Dublin: Cork University Press, 1938); *CSPI (1574-1585)*, p. lxix.

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supremacy.²⁶¹ The *Homily on Obedience*, the *locus classicus* for Elizabethan attitudes towards rebellion, for example, stated:

[h]ere let us al learne of Saynet Paule the chosen vessel of God, that all persons hauing soules (he excepteth none, nor exempteth none, neyther Priest, Apostle, nor Prophete, sayeth Saynt Chrisostome) do owe of bounden duetye, and euen in conscience, obedience, submission, and subiection to the highe powers, whiche as they be gods liefetenautes, Gods presidents, Gods officers, Gods commissioners, Gods iudges, ordeyned of God himselfe, of whom onely they haue al their power, and al theyr aucthoryte And the same S. Paule threatneth no lesse payne, then euerlausting da[m]nacion, to al disobedient perso[n]s to all resisters agynst this general & common auethoritie, forasmuche as they resist not man but god: not mans deuise and inuention, but gods wisdom[e] gods order, power and aucthorytye.’²⁶²

Therefore, none were above, nor could challenge, the sovereign’s authority, and those that did were damned by divine law. However, in the aftermath of the Northern Rebellion, Elizabeth commissioned additional measures to reinforce royal authority and further instil loyalty among her subjects.²⁶³

Among these measures, the queen commissioned the production of the *Homilie against disobedience and wilful rebellion* (1570), which in 1572 was included in the second book of official sermons and made a regular feature of Elizabethan religious practices.²⁶⁴ Its incorporation into regular church services ensured that many future and serving military men would have been exposed to the essential tenets of the Elizabethan laws of armed combat. The third part of the sermon expounds upon the general categories of war, and it notes ‘warres have always the sinnes and mischeefes of men vpon one side or the other ioyned with them ... but of all warres, ciuil warre is the worst, and farre more

²⁶¹ J.P.D. Cooper, *Propaganda and the Tudor state: political culture in the Westcountry* (Oxford: Oxford University Press, 2003), pp. 221-37; Ronald B. Bond, ed., *Certain sermons or homilies (1547) and a homily against disobedience and wilful rebellion (1570)* (Toronto: University of Toronto Press, 1987), preface, ix-x.

²⁶² Church of England, *Certaine sermons appoynted by the Queens Maiestie, to be declared and read, by all persons, vicars and curates, every Sundaye and holy daye, in theyr Churches: and by her graces aduise perused and ouersene, for the better understanding of the simple people* (London, 1562), sig., Sii^r.

²⁶³ Bond, *Certain sermons or homilies (1547) and a homily against disobedience and wilful rebellion (1570)*, p. 11.

²⁶⁴ *Ibid.*, p. 11.

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abominable yet is rebellion ... being unworthy of the name of any warre'.²⁶⁵

Terrible actions were required to prosecute any military campaigns, and it was regrettable in regular war. Yet, it was more criminal when the source of these 'mischiefs' were your own countrymen. The sermon also sanctioned and conditioned soldiers to take brutal actions in the suppression of rebellion. It taught that rebels should be rewarded with 'shamefull deaths, their heads & carkases set upon poles, or hanged in chaynes, eaten with Kites and Crowes, iudged unworthy the honour of burial'.²⁶⁶ Rebels were subject to physical brutalisation; just as their souls, it was taught, 'the deuyll harreth into hell'.²⁶⁷ The displaying of the papal banner atop the fort at Smerwick was, in the teachings of the homily, an unlawful symbol of war, and it warned '[l]et no good discrete subiect therefore folowe the flagge or banner displayed to rebellion'.²⁶⁸

Doubtless, these homilies helped to frame Lord Deputy Grey's mind while his soldiers besieged the Irish rebels and foreign papists in 1580.²⁶⁹ Over the 8th and the 9th November, the English pioneers advanced their trenches against the fort, skirmishers fought against one another, while English cannons plied the fort with fire. One English volley destroyed a timber building, and the defenders of Castello de Oro raised a white flag to signal their desire for a parley.

By rejecting the Catholic theory of holy war, the Elizabethan state permitted the application of military force in only two legal contexts: internationally in just, or regular, wars and against domestic rebellion, riots,

²⁶⁵ Church of England, *An homilie agaynst disobedience and wyful rebellion* (London: Richard Iugge and John Cawood, 1570), sig. Eiiii^r-Eiiii^v.

²⁶⁶ Ibid., sig. Fi^r-Fi^v.

²⁶⁷ Ibid., sig. Fi^v.

²⁶⁸ Ibid., sig. Gii^v.

²⁶⁹ Grey's invective speech against the pope, as was reported to the queen, shared a polemical edge with *An homilie agaynst disobedience*: in Grey's report to Elizabeth and her council, he noted that the papal force had been sent by a 'detestable shaveling the right Antichrist & general ambitious Tyrant ouer all right principalities, & patrone of the Diabolica fede ... theyr fault therefore farre to be aggrauated by the vileness of their Commaunder'. How could Grey not crush another example of 'the Byshop of Rome by his ministers ... spoyling the Realme and kings of Englande ... and maynteying forraigne enemies against the Realme'. Were not these foreign enemies another example of the popes usurped authority and one more attempt 'to breake downe the barres and hedges of the publique peace in Irelande' and further 'abuse [of] the ignoraunce of the wylde Irish men?'

TNA, SP 63/78/29, Lord Grey to Queen Elizabeth, 12 Nov. 1580, p. 4

Church of England, *An homilie agaynst disobedience and wyful rebellion*, sig. liii^v, liiii^r.

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and large scale civil disturbances. While Elizabethan armies were intended to operate primarily in international conflicts, military forces could also be lawfully deployed in law enforcement operations. In *De Republica Anglorum* (1583), Smith acknowledged the lawful powers of the monarch of England in such cases, and he wrote that martial law was used ‘within the Realme before any open warre in sodden insurrections and rebellions’.²⁷⁰ Contemporaries believed the English state was under attack from both internal agents aligned with the Catholic Church as well as external foreign enemies, and it was necessary to give the state the necessary means to meet out justice to either of these enemies.

The Northern Rebellion (1569) provided the Elizabethan state with the political energy necessary to legislatively redefine treason.²⁷¹ No longer could religious non-conformity be viewed as simply a matter of conscience. Adherence to the old religion became a precursor to treason and rebellion, and the resultant political legal framing in the early to mid-1580s influenced the application of the laws of armed conflict. Catholic Church calls for holy wars of liberation from Elizabethan heresy were transformed into the baseless cries of rebels. The crusading zeal of rebels such as Fitzmaurice, in 1569 and 1579, represented the militarised Catholic faith and religious politics that Burghley’s *Execution of justice in England* sought to disallow.²⁷² The Catholic crusade in England devolved from war into a matter for domestic law enforcement.

English systems of law enforcement had very limited capacity and were unfit to address the type of threat posed by any sizable group of armed men bent on violence. Instead, the state relied upon the quasi-legal system known as martial law and its soldiers to execute justice. Martial law differed from other legal instruments. Smith noted how the applications of martial law differed from regular law. He described it as ‘without processe of lawe or forme of judgment’.²⁷³ The crown defined it through its procedures, and it utilised

²⁷⁰ Smith, *De republica Anglorum*, pp. 59-60

²⁷¹ Bond, *Certain sermons or homilies (1547) and a homily against disobedience and wilful rebellion (1570)*, p. 48.

²⁷² See below chapter 5 for a closer examination of Fitzmaurice’s rebellions and his efforts to begin a holy war.

²⁷³ Smith, *De republica Anglorum*, p. 59.

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information rather than grand or petty juries.²⁷⁴ By the authority of martial law, its agents had the right to ‘put to death, or to other bodilie punishment, whom he shall thinke so to deserve’.²⁷⁵ Martial law, stated Smith, was a monarchical power; however, its application was, most often, in practice devolved to military officers of significant rank and position by issue of specific commissions, or when and wherever the royal banner was displayed before royal army, hence its association with military camps.²⁷⁶

Elizabeth granted commissions of martial law as a supplementary power for the suppression of rebellion. The regime also believed, it was a necessary tool for the enforcement of the centralised state’s policies in colonies and restive areas. This made it particularly applicable in Ireland.²⁷⁷ However, it is important to note the particular differences here in these two applications; firstly, that a commission authorising martial law was not explicitly necessary for military operations against armed rebels, since it was the crown’s armies, the army royal, that was brought against them; secondly, commissions of martial law supplemented, what can only be described as, intensified law enforcement activities prior to combat operations. In direct actions against armed rebels, conventional legal doctrine already advocated total war, or what Gentili described as a war of elimination.²⁷⁸

With rebellion, politically and legally interpreted as a crime, rebels were, therefore, illegal combatants with no more rights under the laws of war than criminals because ‘a subject does not by rebellion free himself from subjection to the law’.²⁷⁹ Rebels were those combatants that had rejected God’s will and their sovereign prince’s authority; however, there were certain non-traditional

²⁷⁴ John M. Collins, *Martial law and English laws, c. 1500 - c. 1700* (Cambridge: Cambridge University Press, 2016), p. 51.

²⁷⁵ Smith, *De republica Anglorum*, p. 59.

²⁷⁶ Smith, *De republica Anglorum*, p. 59. Collins, *Martial law and English laws, c. 1500 - c. 1700*, pp. 51-3. There is, however, an interesting example of Elizabeth I attempting to apply martial law against a would-be assassin, but her desires were opposed by procedural arguments raised by leading Privy Councillors Burghley and Sussex: BL Harley MS 6991, no. 35 (The earl of Sussex to Sir William Cecil, 28 Oct. 1573) c.f. Collins, *Martial law and English laws, c. 1500 - c. 1700*, p. 51.

²⁷⁷ Edwards, ‘Beyond reform’, pp. 16-21.

²⁷⁸ Smith, *De republica Anglorum*, pp. 59-60.

²⁷⁹ Gentili, *DIBLT*, ii, p. 22.

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combatants, for example, that retained the rights of lawful combatants as described in the laws of war. They were those who did not possess obvious sovereign authority, such as those that had ‘proved false to friendship, to a treaty, or even to voluntary dependence, retain the rights of war’.²⁸⁰ Ireland was declared the dominion of the English state, and therefore subject to the sovereignty of the English monarchy because an enemy must have a state, senate, treasury, united population, and ‘some basis for a treaty of peace’.²⁸¹ The term ‘enemy’, Gentili wrote, had a specific legal meaning, just as the term ‘war’ had, and it implied equality of combatant status. It is ‘sometimes extended to those who are not equal’, he noted, ‘namely, to pirates, proscribed persons, and rebels; nevertheless, it cannot confer the rights due to enemies, properly so called, and privileges of regular warfare.’²⁸²

In operations against rebels, commissioners of martial law and captains possessed broad powers. At one end of the spectrum, martial law could be executed with the most extreme violence and brutality that spared none, and at the other rebels might be extended the rights associated with regular warfare. Clearly, explicit commissions of martial law were more often associated with preserving law and order; whereas, the martial law of the army royal was intended to restore order lost to rebellion. The right to summarily judge rebels under martial law, however, became more doubtful if the suspected rebels were not openly bearing the weapons of war or in riotous assemblies. Hence, Lord Deputy Grey had to first answer some fundamental questions concerning the combatant status of these foreign soldiers brought forward under the flag of parley but whose fort flew the papal standard.

The papal delegation met with Grey and first ‘offred to yield vpp the ffortes, So as they might be licensed to dep[ar]te w[ith] Bag and Baggadge’.²⁸³ Grey quickly halted this line of debate from their colonel. Grey had to first know by what right this army had invaded England’s domains. Despite flying the papal

²⁸⁰ Ibid., p. 24.

²⁸¹ Ibid., p. 24.

²⁸² Ibid., p. 25.

²⁸³ Hennessy, *Sir Walter Raleigh in Ireland*, pp. 207-211, 209 (Official Report of Proceedings at Smerwick).

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banner, these foreigners might possess a lawful commission to wage just war, so he demanded these foreigners ‘shew by what commission they had came thither into another Princes domynions to warre, [and] whether [their commission came] from the Pope or the Kinge of Spayne, or any other’ sovereign prince.²⁸⁴ To this, ‘[t]hey said they had not,’ and acknowledged that the army had no commission to wage war against England! One of the Spanish captains present, perhaps foreseeing the danger this portended, purportedly added that ‘Iohn Martines de Ricaldi Gouenour for the King [of Spain] at Bilbo had willed him to levie a band & repair with yt to St Androes & there to bee directed by this their Coronell here’.²⁸⁵ Another of their officers, Camp-master Bartoni then noted ‘that they were all sent by the Pope for the defence of the Catholica fede’ as ‘onely adventurers that had came to seek fortune abroad, and serve in warres amongst the Irishe.’²⁸⁶

This last comment was particularly galling to the devoutly Protestant Lord Deputy, but he was equally affronted by their ignorance of the contemporary laws of war. To one thoroughly inoculated against Catholic theories of holy war, the Lord Deputy could see these foreigners as nothing more than another example of the popes usurping authority. Furthermore, the crude bearing of his opposites announced their pretence.²⁸⁷ These proceedings and this so-called papal army, Grey doubtlessly determined, was a farce, so he angrily denounced them and their stated purpose:

The Irishe them selves, as the Earle and John of Desmonde with the rest, were no lawfull enemyes, but Rebels and traytors; therefore they that came to succor them no better than rogues and

²⁸⁴ TNA, SP 63/78/29, Lord Grey to Queen Elizabeth, 12 Nov. 1580, p. 5; Edmund Spenser, *A View of the Present State of Ireland*, in *The Complete Works of Edmund Spenser*, ed., A.B. Grosart, 10 vols. (Manchester: Hazell, Watson, and Viney, 1882-4), ix, p. 167

²⁸⁵ Ibid.; TNA, SP 63/78/29, p. 5.

²⁸⁶ Ibid.; Spenser, *A View of the Present State of Ireland*, p. 167.

²⁸⁷ The papal captains at Smerwick, and Colonel Giuseppe were of dubious quality and military education. In a letter to the Nuncio in France, 5 April 158: Colonel Giuseppe ‘left here as a commissary and paymaster to [Thomas] Stukeley’. A written reprimand was sent to the colonel, while he was being held in England awaiting ransom, declaring ‘[w]ithout an order from his Holiness you decide to embark on an enterprise disproportioned to your qualities.’ When consideration was being given to his ransom, it was said that ‘he is a man of such condition that if 200 scudi were paid for his ransom (instead of 4,000), it could not be said that little was paid!’ O’Rahilly, *The Massacre at Smerwick (1580)*, p. 10.

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runnagates, specially cominge with no licence, nor commission
from their owne Kinge.²⁸⁸

Accordingly, in answer to the foreign captains' proposed exchange of Castello del Oro for license to repair to Spain with their honour intact, he proclaimed 'that they could not justly pleade either custome of war, or law of Nations, for that they were not any lawfull enemyes. Rather they had but one choice to make: 'render me the fort, & yield theyr selues to my will lyfe or death', or 'returne & I would fall to my business', namely the immediate storming of the fort.²⁸⁹ The papal fort was untenable, so the coronel submitted to the mercy of the Lord Deputy.

Disgusted by the illegitimacy of these foreign fighters and rebels, and obliged to Queen Elizabeth to make a short end of the rebellion, Grey took extreme measures. The next morning during the formal surrender of the fort, he sent in 'certeyn bandes, who straight fell to execution. There were 600 slayne' and 'all the Irishmen and women hanged'.²⁹⁰ For this triumph, Queen Elizabeth personally praised her Lord Deputy:

The mightie hand of the Amightiest power hathe showed manifest
the force of his strength in the weakenes of feeblest sexe and
mynds this yere to make men ashamed ever hereafter to disdaine
vs, in w[hich] Action I joye that you have bin chose the instrument
of his glory....²⁹¹

²⁸⁸ Spenser, *A View of the Present State of Ireland*, p. 167.

²⁸⁹ Ibid.; TNA, SP 63/78/29, p. 5.

²⁹⁰ TNA, SP 63/78/29, pp. 5-6; Hennessy, *Sir Walter Raleigh in Ireland*, pp. 207-211.

For analyses critical of Grey's actions at Smerwick, see: Walker, *A History of the law of Nations*, pp. 262; Brian C. Lockett, *Law and Empire in English Renaissance Literature* (Cambridge: Cambridge University Press, 2006); O'Rahilly, *The Massacre at Smerwick (1580)*; Vincent P Carey, 'Atrocity and history: Grey, Spenser and the slaughter at Smerwick (1580)', in *Age of atrocity: violence and political conflict in early modern Ireland*, eds., D. Edwards, P. Lenihan, and C. Tait (Dublin: Four Courts Press, 2007), pp. 79-94.

For analyses defending his actions see: Mary Hickson, 'Lord Grey of Wilton at Smerwick in 1580', *The antiquary* 25 & 26 (1892), pp. 259-265, 19-20; Geoffrey Butler, and Simon Maccoby, *The Development of International Law*, reprint (New Jersey: Lawbook Exchange, 1928/2003), p. 123; Catherine G. Canino, 'Reconstructing Lord Grey's reputation: a new view of the view', *The sixteenth century journal* 29 (1998), pp. 3-18.

Archaeology of the siege and slaughter of the papal troops: Damian Shiels, 'Dún an Óir 1580: the potential for intact siege archaeology', *Kerry archaeology and historical society journal*, second series, 7 (2007), pp. 59-69; René R Gapert, 'The Teampall Bán human skeletal remains and the importance of forensic anthropology', in *Past Kingdoms: recent archaeological research, survey & excavation in county Kerry*, ed., M. Connolly (Tralee: The heritage council/Kerry county council, 2005), pp. 74-77.

²⁹¹ Hennessy, *Sir Walter Raleigh in Ireland*, pp. 212-214, 212.

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Grey's slaughter of the papal garrison fit within the bounds of sixteenth-century counterinsurgent and law of war doctrine, even if it was an exceedingly harsh response (figure 11.).²⁹²

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Figure 11. An older repurposed woodcut intended to represent Lord Deputy Grey in Parley with Colonel Giuseppe and members of the papal expeditionary force; the background shows artistic rendering of the fighting preceding the surrender.

²⁹² Fig. 11. A.M., *The true report of the prosperous successe which God gave vnto our English souldiers* (London: Edward White, 1581); the image was originally printed in R. Faques, *Hereafter ensue the trewe encounter or batalye lately don betene Englande and Scotlande* (London, 1513?) and was originally created to represent the battle of Flodden (1513).

'Underhand' Warfare between States: the conduct of English volunteers in the Dutch Rebellion

*'These people here [in England] are so zealous in all that touches this question [rebellion in the Netherlands] that I am assured that if they do not openly send forces to the states they will soon find some new means of helping Orange underhand.'*²⁹³

Antonio de Guaras to Gabreil de Zayas, 17 December 1575.

The Eighty Years War (1568-1648), also known as the Dutch War of Independence, was the formative crisis that gave birth to a Dutch state free from the Spanish monarchy - the United Provinces. It was during the conflict's first forty-one years (1568-1609) which concluded with the Twelve Years Truce (1609) that produced the nascent Dutch state and precipitated the rise of the United Provinces. As the conflict progressed, belligerents fighting for the rebellious provinces eventually transcended the initial *ius ad bellum* determinations of the Holy Office and king Philip II of Spain; these belligerents were found to be at first rebels and unlawful combatants, while the conflict progressed over the years, the belligerents became implicitly recognised as lawful combatants. How did the perceptions of the conflict transform from Captain-General of the Army of Flanders, Fernando Álvarez de Toledo's, the duke of Alba, crushing civil and military campaign against despised Dutch rebels into the regular war waged by a future successor to the post, Ambrogio Spinola, marquis of the Balbases (1569-1630), which respected the rights of the Dutch soldiers? The contrast between the two phases of the conflict cannot be clearer than in contemporary representations of the same two captain-generals of the Spanish Army of Flanders (figures 12. and 13.).²⁹⁴

²⁹³ *CSP Spain (1568-1579)*, pp. 514-5. Antonio de Guaras was a Spanish merchant/banker, resident in London, and Spanish agent. Gabriel de Zayas was one of the two Spanish secretaries of state at this time.

²⁹⁴ Fig. 12. I have chosen the Anonymous engraving (1650) over the earlier engraving in Guillaume Baudart, *Les Gverres de Nassav* (Amsterdam: Michel Colin, 1616) for its clarity, and that it retains the motto, attributed to the original statue: '[t]o the duke of Alba ... who extirpated sedition, reduced rebellion, restored religion, secured justice and established peace';

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Figure 12. Anonymous copy after Philip Galle's engraving of Jacques Jonghelinck's sculpture, *Monument to the duke of Alva of 1571*, c. 1650. Engraving, Rijksmuseum Amsterdam, inv. no. RP-P-OB-79.156.

translation Geoffrey Parker, *The Dutch revolt* (London: Penguin Books, 1985), p. 111.

'Monument to the Duke of Alva of 1571' c.f. Daniel R Horst, 'The duke of Alba: the ideal enemy', *Arte Nuevo: revista de Estudios Auros* 1 (2014), pp. 130-154, 144.

Fig. 13. Diego Rodriguez de Silva y Velázquez, 'The Surrender of Breda', *Museo Nacional del Prado: online gallery* <https://www.museodelprado.es/en/the-collection/online-gallery/online-gallery/obra/the-surrender-of-breda-or-the-lances/?no_cache=1> [accessed on 31 March 2015], inv. no. PO1172; for more detailed digital images and the source used in this work, see: Velázquez, 'The surrender of Breda (1634-5)', *Web gallery of art* <http://www.wga.hu/html_m/v/velazque/04/> [accessed on 31 March 2015].

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Figure 13. Diego Rodriguez de Silva y Velázquez, *The Surrender of Breda* (produced 1634-5); held by the Museo Nacional del Prado.

In the *Monument to the duke of Alba*, the 'Iron Duke' stands like a colossus atop the broken and twisted bodies of rebels. By contrast, in Velázquez's *The Surrender of Breda*, painted in 1634-1635, a magnanimous Spinola receives the submission of the States' captain, Justin of Nassau, as a comrade in arms, albeit an enemy. It may be said that the conflict's change in orientation and particularly the difference between Alba and Spinola was not so surprising, since in the final years of the first half of the Eighty Years War Spain and the emergent republic had increasingly regularised their relations with Spain through agreements such as the *cuartel general* (1599) and the cease-fire establishing the Twelve Years' Truce (1609).²⁹⁵ However, this perhaps understates the stark differences between Alba and Spinola's conflicts and the processes which led to the establishment of more regular warfare.

One source contributing to the legitimisation of Dutch belligerents was the enduring presence of foreign mercenary armies and foremost among these

²⁹⁵ The *cuartel general* (1599) is discussed below, pp. 169-170.

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were 'volunteers' from the England. The English soldiers carried, in addition to their arms, important political and diplomatic considerations for Spanish agents in the Netherlands that went beyond their immediate military threat. At varying times, these mercenary armies threatened to overturn the state of rebellion by bringing about a sovereign intervention by Elizabeth, and, thus a third-party claim to a state's right to wage a just war beyond the provinces' contentious rights to wage war in their defence. The Elizabethan state provided in sporadic bursts increasing numbers of mercenaries, and ultimately declared war in 1585, in defence of the States General against Spanish tyranny in the Low Countries.²⁹⁶

'Underhand' Wars and Elizabeth's French intervention

The English could field essentially two types of military formations in foreign conflicts; these were either 'volunteers' or an 'army royal'. The latter was associated with direct state intervention and regular war and marched under a commission from Queen Elizabeth I. The former was something unique. Volunteers, or mercenaries, entered into conflicts without official state sanction. They might even be publicly denounced; however, the state covertly supported and encouraged them. The English regime had utilised volunteers before to intervene in foreign conflicts where open support proved to be politically too risky.²⁹⁷ Elizabeth was rightly cautious regarding a head to head confrontation with Spain which could draw upon resources that vastly outstripped the capacity of the English state; therefore, she preferred indirect policies against Spain and other Catholic antagonists.

Contemporaries lacked the language to adequately define this type of armed conflict, but it can be encompassed utilising modern terminology. David

²⁹⁶ David J.B. Trim, "If a prince use tyrannie towards his people": interventions on behalf of foreign populations in early modern Europe', in *Humanitarian intervention. A history*, eds., B. Simms and D.J.B. Trim (Cambridge: Cambridge University Press, 2011), pp. 29-66.

²⁹⁷ The utility of volunteers was identified early in Elizabeth's reign by then Sir William Cecil, secretary of state, in response to pleas for aid from Scottish Protestants - Lords of the Congregation - rebelling against Mary of Guise. Cecil wanted to support Scottish Protestants but to also provide Elizabeth I with 'plausible deniability'. To this end, English officers were permitted to individually seek employment in the service of Scottish Protestants but without the open consent of the state, which for a time successfully kept England removed from direct combat operations. Hammer, *Elizabeth's wars*, pp. 57-8. Similar strategies were employed in France c.1562 and the Netherlands c.1572; see below, and Hammer, *Elizabeth's Wars*, pp. 63-64 (France), 88-9 (Netherlands).

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J.B. Trim was the first to describe Elizabethan underhanded warfare as 'secret war'. This was warfare in which the state could plausibly deny official involvement and was notably employed during the French wars of religion and again during the Dutch revolt. Both secret interventions by the Elizabethan regime involved the deploying of English volunteers, or free mercenary companies. Volunteer companies and soldiers were consistent with the queen's policies of 'underhand' or secret warfare.²⁹⁸ The queen's policies included covert material support for foreign principalities, states, and non-governmental religious groups. For example during the Dutch revolt: 'the English would aid William of Orange's supporters only "underhanded" by "giving money ... provisions and military munitions"'.²⁹⁹ Underhanded support, however, at times could include supplying co-religionists with foreign fighters; these were often motivated to act because of their shared religion, and these volunteers operated with varying degrees of covert support from their home state, but without any official commissions to wage war. This organisation provided the English state with the necessary 'plausible deniability' and introduced a novel type of warfare: the 'underhand' war.

'Underhand' war allowed the Elizabethan regime to support its allies in the absences of a declared state of war. Gentili permits sovereigns to lawfully declare war in the defence of foreign princes – allies – both religious and political, this he calls 'defence for the sake of honour'.³⁰⁰ Implicit within this just cause of war was tacit support for individuals to take up arms in the defence of their foreign neighbours: 'it is lawful for any one to aid a neighbour against injury'.³⁰¹ Individuals were morally bound, thought Gentili, to render assistance. '[I]n forum of conscience some maintain that a man is bound to the defence of his fellow man. Conscience, however, is the impulse of a good man, or rather of the best man.'³⁰² Afterwards Gentili took the obligations of

²⁹⁸ Trim, 'The "secret war" of Elizabeth I., pp. 189-99.

²⁹⁹ Trim, 'Fighting "Jacobs Wars"', p. 123, and c.f. *Relations politiques*, vi, pp. 535-538.

³⁰⁰ Gentili, *DIBLT*, ii, pp. 67-73.

³⁰¹ *Ibid.*, p. 73.

³⁰² *Ibid.*, pp. 70-71. Elizabeth seems to have accepted that personal conscience might compel men to serve in foreign wars and that this motivation was more honourable than simple profit. In 1576, she wrote a letter to Comendador Requesens, in the Netherlands, asking for mercy in the case of Thomas Copley: 'he is not one of those traitors and rebels who have fled

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individuals and extend the examples to bind sovereigns to the same action. Individual action in the defence of others, in the absence of a declared state of war, was illegal and belligerent status became that of the prince with whom they served, and when that prince was determined to be a rebel then these volunteers were also rebels. Therefore in 'underhand' wars, the volunteers' home state was absolved from responsibility for their actions since 'there is no intent [or ability] to control what is held in secret'.³⁰³

Elizabeth deployed both volunteers and an army royal in the first French war of religion, and the French conduct towards these two military formations was very different. The volunteers were determined by French royalists to be illegal combatants, and beyond the protections afforded to lawful soldiers under the laws of war; these troops were most often summarily executed, and where they were not executed outright, they were sentenced to service as oarsmen in the galleys, which was considered by contemporary soldiers as 'worse than death' and to be 'more feared than execution'.³⁰⁴ The earl of Warwick commanded the army royal, and they were only grudgingly acknowledged as lawful and afforded the rights granted to legitimate soldiers.

In 1562 following the Huguenot capture of Rouen and the royalist siege, Elizabeth secretly dispatched between 4 or 5 volunteer companies, in several small ships, to aid the city's defence.³⁰⁵ These volunteer companies were publicly disavowed by the Elizabethan regime, and their participation in the conflict was attributed to personal motivations; this meant that the volunteers

her realm nor did he leave through any villany or crime, but simply on account of his religion, and for the liberty of his conscience.' *CSPF (1575-1577)*, pp. 232.

³⁰³ Gentili, *DIBLT*, ii, p. 209.

³⁰⁴ John H. Langbein, 'The historical origins of the sanction of imprisonment for serious crime', [reprinted in] *The Journal of legal studies: the University of Chicago Law School* 5 (1976), pp. 35-60, 41; the first quote is from the renowned European lawyer - whose legal writings were published over 30 times - Joost Damhouder, *Practique judicare es causas criminaelles...* (Antwerp, 1564), and a digital copy was available online at <<http://gallica.bnf.fr/ark:/12148/bpt6k53673k/f4.image.r=.langFR>> [accessed on 11 Sept. 2014], ch. 151, p. 208; the second quote is from Paul Frauenstädt, 'Zur Geschichte der Galeerenstrafe in Deutschland', *Zeitschrift für die gesamte Strafrechtswissenschaft* 16 (1896)pp. 518-546, 524 supra note 22, 540-1 and comes from the Holy Roman Emperor, elect, Ferdinand I's patent of 1556 commuting capital offences to service in the galleys, of course if a prisoner was physically unfit for that service he should be executed as before.

³⁰⁵ Frederic J. Baumgartner, *Declaring war in early modern Europe* (New York: Palgrave Macmillan, 2011), pp. 50-51; David J.B. Trim, 'The "foundation-stone of the British army"? The Normandy campaign of 1562', *Journal of the society for army historical research* 77 (1999), pp. 71-84; idem, 'The secret war of Elizabeth I', pp. 189-99.

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were shadow warriors, although secretly the servants of the regime. They were publicly seen as independent actors, freed from any political ties to a sovereign head of state, and thus concealing the participation of the English crown in French domestic affairs.

While taking advantage of a high-tide to pass over the royalist's barricade that obstructed the Seine River and enter Rouen by sea, one ship grounded itself, and its soldiers surrendered to royalist troops. The constable of France, Anne de Montmorency (1493-1567), the chief authority for enforcing military justice within France, heard the case of the surrendered English volunteers and then found them guilty of criminally supporting rebels and sentenced them to summary execution.³⁰⁶ The tree of execution for those poor souls bore the posted advertisement: 'POUR AVOIR VENUS, CONTRE LA VOLUNTE DE LA ROYNE D'ANGLETERRE, AU SERVICE DES HUGUNOTZ' (figure 14.).³⁰⁷ In his report to Cecil, the English ambassador to France, Thomas Smith criticised the affair: '[t]he hanging of the eleven men beside Caudebec shows more rigour than war generally permits to strangers taken prisoners.'³⁰⁸ The French were not impressed by such protestations, and knew that they were a mere facade to conceal the Elizabeth's hand in French internal affairs. It was made clear to Throckmorton, another member of the English embassy, 'that a company of lewd vagabonds of England had come into France ... that eleven had been taken, whom she [Catherine de Medici] caused to be hanged; that the rest will be so served if taken'.³⁰⁹ The Protestant defenders of Rouen 'have dismissed the last herald, saying they mean to give battle to the Catholics, who are determined to try the assault as soon as possible.'³¹⁰ However, Rouen fell to assault on 26

³⁰⁶ Patrick Forbes, *A full view of the public transactions in the reign of Queen Elizabeth*, 2 vols. (London: J. Bettenham, 1741), ii, p. 117

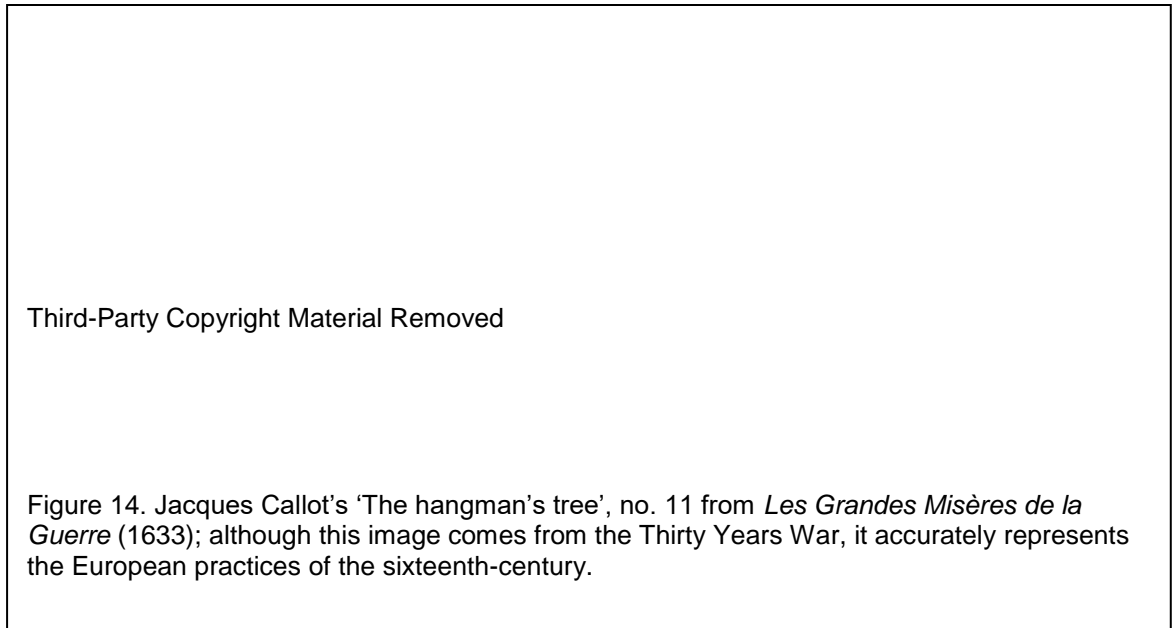
³⁰⁷ Ibid., ii, p. 117: '[for having come] against the will of the queen of England, serving the Huguenots'; note here that the French proclamation makes public the disavowed status of the English companies and affirms their illegitimate, and rebel, status under the laws of war, and thus justifies their summary execution.

Fig. 14. Katie Hornstein, 'Just violence: Jacques Callot's *Grandes Misères de la Guerre*', *Bulletin* 16 (2005), pp. 29-48, 41 (fig. 9), online at <<http://quod.lib.umich.edu/b/bulletinic/x-05102-und-09/1?subview=detail;view=entry>> [accessed on 24 March 2016]. The original is held in The Paul Leroy Grigant Memorial Collection at the University of Michigan, Museum of Art.

³⁰⁸ *CSPF* (1562), p. 375 and Forbes, *A full view of the public transactions in the reign of Queen Elizabeth*, ii, p. 119.

³⁰⁹ Ibid., p. 404.

³¹⁰ *CSPV* (1558-1580), p. 345.



October, 'commands were given that they should all pass the sword', and Smith recorded in his journal that 'of th'English they take the French killeth without mercie.'³¹¹ Therefore volunteers sent into rebellions did so with the knowledge that the traditional customs of war would not be extended to them, and their belligerent status was equal to that of the indigenous rebels (i.e. brigands and pirates).

The army royal (about 6,000 men), however, intervened under a separate set of circumstances than did the volunteers. It had an official sanction under the terms of the Treaty of Hampton Court (1562), which was agreed to by the agents of Louis I de Bourbon, prince of Condé, and Elizabeth, and this permitted the English to lawfully intervene directly on behalf of a prince of France. Despite the duke of Guise's criticisms of the army royal's commander, the earl of Warwick, the men under his command and even himself were extended the protections afforded lawful belligerents engaged in just war.³¹² Thus, when English volunteers enter on behalf of the Dutch rebels, they had no reason to

³¹¹ Forbes, *A full view*, ii, p. 168; *CSPF (1562)*, p. 407; *CSPV (1558-1580)*, p. 346: 'war is now beginning to be made in a cruel fashion, and that those who are taken are hanged, as was done to those English succors who could not enter Rouen quickly enough, and who were all put to death.'

³¹² Trim, 'The "secret war" of Elizabeth I.', pp. 194-195; and idem, 'The "Foundation-Stone of the British Army"?', p. 77: Cecil coordinated with agents serving Louis I de Bourbon, prince of Condé, and fashioned a treaty to defend the Huguenots who were led by Condé, a royal prince in the line of royal succession. The Treaty of Hampton Court was signed on 20 September 1562 and outlined the English commitment; a copy of the treaty is printed in Forbes, *A full view*, ii, pp. 35-6. The expedition is also examined in Wallace T. MacCaffrey, 'The Newhaven expedition, 1562-1563', *Historical journal* 40 (1997), pp. 1-21, 9.

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expect mercy from the soldiers of the Army of Flanders. In the end, however, the Protestant volunteers took a measure of martial pride in their unlawful status, which can be seen in the black ensign of Henry Champernowne, captain of the most celebrated company of English volunteers that served in the French wars of religion, which bore a head with the words issuing from it: 'My death is virtuous'.³¹³

The English volunteers and Elizabeth's 'underhand' war against the Duke of Alba (1572-1573)

From the Spanish perspective, the outbreak of armed rebellion in the Low Countries, was a matter of domestic law enforcement, not very dissimilar to the conclusions reached by the English government regarding Ireland.³¹⁴ Alba had been dispatched to the provinces to bring members of the Protestant motivated, and, therefore, heretical rebellion to justice, and if to achieve his mission, he needed to apply military force, he was certainly authorised to do so. William I – the Silent – prince of Orange (1533-1584), and his allies were rebels; Orange himself had been tried *in absentia* by the 'Council of Troubles', and found guilty of treason. It did not matter to Philip II that Orange held a position of sovereignty in the French principality of Orange. Philip 'thought the fealty sworn for the estates of the [Habsburg] Netherlands overrode any possible claims to sovereignty.'³¹⁵ Moreover, the sovereignty of the small principality of Orange, wherein William was an absentee sovereign, was more a medieval artefact than any substantive internationally recognised status. The princes of Orange claimed to be subject to no king, but the French monarchs routinely confiscated the territory of Orange in times of civil war, only returning it on the re-establishment of peace, which made the principality a *de facto* subject to the sovereign state of France and its monarch.³¹⁶ Therefore, the principality of

³¹³ Ibid., p. 195.

³¹⁴ Christopher Duffy, *Siege warfare: the fortress in the early modern world, 1494-1660* (London: Routledge & Kegan Paul, 1979), p. 141. English ideas concerning rebellion had their Spanish parallels; for example, Luis Valle de la Cerda, *Avisos en materia de estado y Guerra para oprimir rebeliones* (Madrid, 1599), c.f. Parker, 'The etiquette of atrocity', p.339, note 30, which justified the execution of all rebels.

³¹⁵ Professor Geoffrey Parker, personal correspondence, 19 March 2013.

³¹⁶ Ruth Putnam, *William the Silent prince of Orange and the revolt in the Netherlands* (New York: G.P. Putnam's Sons, 1911), pp. 86-87; William of Orange thought very highly of his

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Orange, if it did have something of the quality called sovereignty, was insignificant in an international sense, and any military actions taken by William of Orange were done so as a subject and a rebel against Spain, and the initial Spanish reaction was to re-establish the rule of law by any means.

In 1572, several Dutch towns were captured or had sided with Orange's cause, Alba recognised that not all the towns possessed by the rebels were equally guilty of rebellion, and he devised a system through which he could classify the condition of each into one of six categories, and the appropriate military response for each. Towns in the first four categories were essentially loyal to Spain, and when these were recaptured, they deserved leniency. If, for example, one such town was re-taken by an assault which overthrew the rebels, the town should not be sacked by the royalist soldiers. The two remaining categories were rebel towns; these were towns that had either surrendered to the rebels before a need arose, or refused a royalist garrison in favour of a rebel garrison. These were treasonous actions which contemporaries thought warranted exemplary punishments.³¹⁷

Such exemplary punishments were part of Alba's strategy of 'terror': 'the application of brutal violence against a portion of enemy territory in hope of inducing surrender of the rest.'³¹⁸ Little changed when the conflict was removed from sieges to field operations. There was no ambiguity in field operations, the Dutch were rebels and were under arms against their monarch, and as such were worthy only of execution, and no customary honours needed to be extended to them. Despite a strong European culture of pitched field engagements in war, Alba routinely avoided them. He preferred to insult Orange by rejecting his challenges to bring their armies together in pitched battle, and instead wore the rebels out 'with dilatory manoeuvres, harassing skirmishes, frequent ambushes

sovereign status and considered himself an independent prince: see Orange's remarks to that fact to the elector of Saxony in Herbert H. Rowen, *The prince of Orange: the Stadtholders in the Dutch republic*, Cambridge studies in early modern history (Cambridge: Cambridge University, 1990), p. 10; furthermore in the first revolt, when it came time to bring armies into the field, Orange did so by issuing military commissions in accordance with international norms and the manner appropriate to a sovereign prince: see Parker, *The Dutch revolt*, p. 108.

³¹⁷ Parker, 'The etiquette of atrocity', p. 156.

³¹⁸ Matthew C. Waxman, 'Siegecraft and surrender: the law of war and strategy of cities as targets', *Virginia journal of international law* 39 (1998-1999), pp. 353-423, 365.

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and sneak attacks under the cover of darkness.'³¹⁹ Rebel heralds were routinely executed, a striking reversal of the strict immunity habitually extended to heralds of sovereign states. The customary practice of taking prisoners for ransom, or the policy and procedures regarding the taking, keeping, and exchanging prisoners of war, had no application against rebels. Alba suppressed it further by placing, 'dead or alive', bounties upon the heads of rebel leaders. In regular warfare, these peoples would have brought the most desirable ransoms; therefore, few prisoners were ever taken, and most of these, when they were captured, were done so for the purposes of interrogation, and were executed afterwards.³²⁰

English participation in 1572-1573 was the continuation of an English 'underhand' war in defence of Protestantism, and the Dutch revolt was simply the most recent theatre. How did these English volunteers fit into Alba's law of armed conflict? From 1572-1573, Spanish commanders applied Alba's interpretation of the laws of armed conflict somewhat less strictly against the English volunteers, and surprisingly they were a group given a measure of the traditional respect afforded lawful combatants.

The Elizabethan regime had as one of its operational goals the protection of Flushing, a town that had recently revolted from Spain in a dramatic fashion. In April 1572, they had executed Alba's agent, Hernando Pacheco, his royalist entourage, while also symbolically hanging the duke of Alba's personal escutcheon on the gallows — a grave insult.³²¹ Thomas Morgan's famous English company of 300 pike trailers had arrived to defend the town on 6 June, joining with three French and Walloon companies already present and under the command of Jerome Tseraerts, the Orangist governor of Flushing. Alba, at this time, was engaged in the siege of Mons (June to September 1572), and delegated the problem to the royalist governor of Middleburg, de Beauvoir, and the Spanish Captain Sancho d'Avila.³²²

³¹⁹ Gonzalez de Leon, 'Soldados plasticos and caballeros', pp. 235-268, 241.

³²⁰ Ibid, p. 243.

³²¹ Williams, *ALC*, pp. 99-; It is worth noting that execution by hanging was a grievous insult to a professional soldier and was the manner of execution applied to criminals, and this was confirmed by Pacheco who pleaded with Flushing's citizens to be executed by the sword.

³²² Edward Grimston, *A general historie of the Netherlands* (London: Adam Islip, 1627), p. 354.

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Having prepared positions outside Flushing, the royalists began launching sorties in mid-June to retake it, which was met with like skirmishers from the Orangist army. Morgan persuaded Tseraerts to allow his company to sally out in battle formation. There was a purpose behind Morgan's action; he wanted to meet the royalist army on conventional terms, and not in skirmishes and ambushes. Furthermore, the English captain took physical steps to present his company as legitimate combatants. Williams recorded that '[t]o make the skirmish the more honourable, we sallied with our ensigns.'³²³ The royalist soldiers likewise presented a corps in like battle formation with their ensigns displayed, and the two corps came to push-of-pike (figure 15).³²⁴

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Figure 15. An Anglo-Dutch formation (left) meets at push of pike with a Spanish formation (right) with their ensigns displayed, and casualties, the easiest potential prisoners to take, litter the ground.

Ensigns and standards had notable importance in European military culture. These played a significant role in the visual articulation of the law of

³²³ Williams, *ALC*, p. 103.

³²⁴ Fig. 15. Walter Morgan, *The expedition in Holland*, p. 130-1.

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arms because it could communicate at a distance with whom the formation was allied;³²⁵ for an army to unfurl a standard was another means to declare war, while raising a banner above a town or fortress proclaimed its legitimate ownership. Firstly, banners proclaimed who was making war against whom; 'a banner or a pennon was a man's personal emblem; therefore, when it was displayed, he had committed on his honour to battle.'³²⁶ Secondly, it signalled the legal conditions that the unit intended to conduct battle. In medieval warfare, a red banner or streamer let it be known that no quarter would be given, and a white flag indicated a moment of truce so a parley might be conducted. The defenders of Grave in April 1586 raised a black flag to indicate to their allies that if they were not relieved soon, they would surrender.³²⁷ Standards also symbolised the unit's collective honour, so to lose an ensign was foremost a disgrace upon the unit's commander and his soldiers. Hence Williams promised, while in command of Bergen op Zoom in 1585, to burn his ensigns rather than let them fall into the hands of the enemy. This was intended to protect his honour and rob his attackers from the glory of capturing it.³²⁸

We do not know specifically the types or description of Morgan's ensign; however, it was perhaps his family's own heraldic device since Williams says it was 'Morgans Ancient [standard]', if so, Morgan would have felt a strong personal motivation to see battle given under honourable conditions.³²⁹ It can be inferred from Williams's account that Morgan's company skirmished according to the laws and European customs of war.

Here the English volunteer company made an overt declaration of their intention to practice conventional warfare with its attendant code of conduct.³³⁰

³²⁵ Keen, *The laws of war in the late Middle Ages*, pp. 103-4.

³²⁶ Keen, *The laws of war in the late Middle Ages*, pp. 107-8.

³²⁷ *CSPF (1585-1586)*, p. 621.

³²⁸ *CSPF (1585-1586)*, pp. xvi, 70.

³²⁹ Williams, *ALC*, p. 103-104.

The standards used by volunteer companies differed from companies in English state, and the crown; Morgan likely carried his own heraldic device on his banner, Henry Champenowne's banner was unique to his company of English volunteers, and at Cadiz (1596) the companies fielded St. George's cross, a symbol that in the sixteenth-century was associated with the English state, and another symbol of the state were the arms of Queen Elizabeth which were also carried by sanctioned companies.

³³⁰ The picture of soldiers at push-of-pike in fig. 14 is an example of an Anglo-Dutch company meeting their Spanish opponents and both bearing the standards proudly. Ensigns were an

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The royalists and the English formation came to push of pike — i.e. close quarter's battle — and within the melee certain members struggled to capture the others flag. During one encounter 'the enemy had holde on Captaine Morgan's' standard, but it was rescued by 'George Browne and diuerse other gentlemen'.³³¹ The brave action of Brown and his fellows spoiled the royalist prize and earned them honours by recovering the company's colours. The royalist formation then withdrew and leaving the English formation unbroken, holding the field. With their honour preserved, the English formation received word to also withdraw from the fight, which they did, and as custom dictated both sides took prisoners of war.³³² The skirmish, small and insignificant in the context of the wider revolt, but notable because it had been fought and conducted according to the prevailing customs of war. By contrast, on 11 June the rebel garrison of Flushing had captured some 120 prisoners during a naval raid using fly-boats against a nearby Spanish flotilla under the command of the duke of Medina Celi, Alba's lieutenant governor, and resulted in several summary executions. It seems likely, however, that this action was an impulse in reprisal for the royalists' earlier hanging English victuallers.³³³

July 1572 brought the arrival of Colonel Humphrey Gilbert, an English captain all too knowledgeable of the differences between military operations against rebels and war. In 1569, he had served in Ireland and as the colonel of the army of Munster earned an infamous reputation for his own terror tactics. Nevertheless, Gilbert's ruthless and bloody methods enabled his small force to overcome significantly larger rebel groups and fit within Elizabethan counterinsurgency doctrine.³³⁴ One of his more atrocious tactics involved requiring any Irishman seeking a meeting with him, to pass through a lane marked out with the severed heads of rebels.³³⁵ Apart from his Irish experience,

important signal in warfare. Morgan's *Expedition to the Holland?* Perhaps move this to fn. 219.

³³¹ Williams, *ALC*, pp. 103-104.

³³² Williams, *ALC*, p. 104.

³³³ *CSPF (1572-1574)*, pp. 130 (#419), 150 (#478 & #479); *CSPD addenda (1566-1579)*, p. 416 (#66); *Relations politiques*, vi, pp. 427.

³³⁴ Rory Rapple, 'Gilbert, Sir Humphrey (1537-1583)', *Oxford dictionary of national biography* <<http://www.oxforddnb.com/view/article/10690>> [accessed on 21 January 2015].

Elizabethan counterinsurgency doctrine is discussed below, pp. 171-178.

³³⁵ Churchyard, *A generall rehearsall of warres*, Q3^v.

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Gilbert advocated for a military academy to be established in London to increase English military professionalism in 1570 and indicates that he had a serious interest in military affairs.³³⁶ More than other captains in Elizabeth's 'underhand' war, Gilbert must have been aware of the potential risks that his regiment faced, particularly after Elizabeth's regime had made it openly known to Alba that the English companies then in the Low Countries were there without the sanction of the crown in an apparent attempt to politically distance the English crown from its covert volunteers.³³⁷

Gilbert's initial aim was to link up with Louis of Nassau's force, who were then actively defending Mons against the duke of Alba and the main corps of the Army of Flanders, but it was beyond him to achieve, and he was diverted to the area around Sluis. The campaign there was a blundering affair. The royalist captains in Middleburg and around Sluis indicated their displeasure at the arrival of these English interlopers into this domestic matter of the Spanish crown. Gilbert attempted to capture Sluis, but the governor tricked Gilbert into a drawn-out parley, which he used as a ruse to alert his royalist allies and buy time for their relief. Following four days of prevarications and delays, Gilbert sent his trumpeter to Sluis. The trumpeter was halted outside the gates, and the governor warned him that he would only render the town to the approaching royalist column, and if Gilbert remained he would 'find meanes to hang ... [them] all'. Enraged at this deception, Gilbert swore oaths that he 'would put all to the sword, vnless they would yield', but the gates remained closed. It was only after Tseraerts's pressured him that Gilbert commanded the army to withdraw.³³⁸ Along his march, Gilbert salved his wounded pride by ambushing a royalist supply column, where his soldiers drove off the escort of horse, and 'their footmen & conuoy to be executed by vs: which were for the most part'.³³⁹

It remained an open question as to how the royalist commanders would treat these English adventurers. When Mons surrendered to Alba, for example, it was granted favourable terms; Louis of Nassau's Orangist army - chiefly

³³⁶ Humphrey Gilbert, *Queene Elizabethes Achademy*, ed. F. J. Furnivall, vol. 8, Early English Texts (London: Trübner & Co., 1869).

³³⁷ *Relations politiques*, vi, pp. 483-488.

³³⁸ Williams, *ALC*, p. 110.

³³⁹ *Ibid.*, p. 112.

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Figure 16. Louis [Ludwig] of Nassau's departure from Mons. Note that the Dutch army was escorted by Spanish units.

comprised of Huguenots - was permitted to leave with their arms, ensigns, and drums, and '[t]he Duke most honourably saw the capitulation observed and kept' (figure 16).³⁴⁰ Churchyard's account of the surrender attributes its good terms to an English volunteer, William Morgan. There is perhaps reason to doubt this version of events. Morgan was a low-level officer, the captain of a small ensign of horse; however, Nassau was sick and bed ridden during the period that the defenders of Mons negotiated with Alba, and he was personally unable to attend the parley.³⁴¹ Presumably Nassau selected 'serteyne soldiours of judgement', and his absence had added benefits since Alba personally hated the man, and it would not serve the defenders to antagonise the duke. With many towns in the north openly declaring themselves for Orange, Alba was personally motivated to conclude his siege as soon as possible. This fact also highlights the extent to which commanders in the field could interpret the laws of war to suit the situation. The defenders, on the other hand, were well positioned to drag-out

³⁴⁰ Churchyard, *A lamentable, and pitiful description of the woefull warres of Flanders* (London: Henry Bynneman for Ralph Newberry, 1579), pp. 51-2; Churchyard, *A generall rehearsall of warres*, sig. K3^v.

Fig. 15. Morgan, *The Expedition to Holland, 1572-1574*, pp. 98-99.

³⁴¹ Churchyard was uncommonly accurate in his military accounts so his assertion should not be dismissed out of hand.

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the siege into the fall; therefore, Alba had a significant interest in establishing terms for the rapid surrender of Mons and reason to set aside his usual hard-line policy. Formally Alba justified the terms granted to Nassau in his official correspondence with Phillip; he asserted his need to attend to the rebellion in the north, and that Mons had been defended by foreigners - Huguenots - not Dutch rebels.³⁴² Perhaps William Morgan's foreign quality partly earned those exceptional terms.

The capitulation of Mons also paid service to Alba's interpretation of the laws of armed conflict; it had been captured, and a considerable number of its citizens remained loyal to Spain.³⁴³ Therefore, Alba would not allow it to be sacked; he preferred to use a special court to judge and punish collaborators.³⁴⁴ Alba kept strictly to these interpretations. Hence after taking possession of Mons, Alba marched his armies north, and his forces applied exemplary punishment to openly rebellious towns. On 1 October, Mechelen (Malines) was 'sacked ... to the uttermost' for three full days, 14 November Zutphen was sacked before the terms of its surrender were set, and on 2 December the Spanish razed Naarden and slaughtered its inhabitants *en masse*.³⁴⁵ Certainly Alba had few qualms when it came to issuing orders to his soldiers authorising mass killings.

The English volunteers were something of a wild card, while Alba's 'furie' bore down without restraint on the rebels, Morgan's company and Gilbert's regiment assisted Tseraerts from September to October 1572 in two unsuccessful attempts to take royalist town of Goes, and finally withdrawing at the approach of Mondragon's bold veteran regiment. Their operations nevertheless reveal several instances of note regarding *ius in bello*. A royalist regiment led by the governor of Middleburg had marched to intercept Gilbert's regiment as it marched in route to Goes. Certain numbers of the Spanish royalist troop had 'prepared a great number of haulters', and had orders 'to hang all the prisoners

³⁴² William S. Maltby, *Alba: a biography of Fernando Alvarez de Toledo, third duke of Alba 1507-1582* (Berkeley: University of California Press, 1983), pp. 237-8.

³⁴³ Williams, *ALC*, pp. 85-7.

³⁴⁴ Parker, *The Dutch revolt*, p. 140.

³⁴⁵ Williams, *ALC*, p. 98; Parker, *The Dutch revolt*, pp. 141-142.

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they should take.'³⁴⁶ Fortunately for the English, they discovered the enemy and overthrew them in an assault. '[O]ur men', recalled Williams, 'hung a number of them with their owne haulters.'³⁴⁷ The English did not attempt to justify hanging some of the Spanish soldiers, and the action was little more than a brutal example of reciprocity when the status of combatants was in doubt. During the second attempt on Goes, the English were commanded by Tseraerts to assault the town with scaling ladders. The assault failed, and the Spanish took prisoner those that were left wounded as the assaulting force retreated under fire. Messengers were exchanged between the two camps, and the Spanish captain, Pedro Pacheco, offered to exchange prisoners and agreed upon their ransoms. Gilbert believed that his regiment's recent actions – namely the recent punitive hanging of royalist troops – were changing the rebellion into a war; he wrote to Burghley to say '[t]he Spaniards would be glad to make good wars, for that they [the English] have hanged so many of them, and are like to take more of them.'³⁴⁸

Colonel Gilbert left the Dutch conflict in fall of 1572 and taking with him the bulk of his regiment, but important numbers of English volunteers continued serving the Dutch.³⁴⁹ Two hundred English soldiers, with many perhaps mustering in the company of the Scottish Captain Balfort, and Captain Symons's company of shot that passed through the Spanish lines in January 1573, and all contributed materially to the defence of Haarlem.³⁵⁰ In December 1572, Alba and the Army of Flanders laid siege to the town, and it was a protracted operation that took nearly eight months of combined naval and land operations for the Spanish to complete. The Dutch rebels, incensed by Alba's 'furie' and terror tactics, violated a number of the laws of war; they abused the rights of non-combatants, were perfidious, and tortured and mutilated captives.³⁵¹ Contrary to conventional military practices, women were mustered in a pioneer company and actively participated in combat operations, an act that stood as an

³⁴⁶ Williams, *ALC*, p. 115.

³⁴⁷ Williams, *ALC*, p. 116.

³⁴⁸ *CSPF (1572-1574)*, p. 182.

³⁴⁹ Trim, 'Fighting "Jacob's Wars"', p. 125.

³⁵⁰ *Ibid.*, p. 126.

³⁵¹ Gonzalez de Leon, 'Soldados plasticos and caballeros', p. 244.

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insult to early modern ideas of masculinity and honour. Contemporaries believed women should not participate in military operations, which the soldiers of the Army of Flanders likely saw as an insult because 'there is no great glory in punishing a woman and the victory has no renown'³⁵² When not under arms, women were a protected class and considered non-combatants and arming women for war overturned established sixteenth-century gender roles. Legal doctrines had developed to classify women as 'innocents' because they were considered too weak to fight; however, 'in so far as women play the part of men they are men and not women'.³⁵³ The defenders committed perfidy when they used a false parley as a cover so that fresh reinforcements could be secreted into the town. A parley was a truce, and a pause in all military activity; this prohibited any actions, on either side, that materially improved one's tactical disposition.³⁵⁴ Spanish soldiers and Catholic clergy were tortured in full view of Alba's army.³⁵⁵ The defenders did not render appropriate military honours due to fellow soldiers, instead they insulted them. Some of the Dutch serving in the garrison, had been previously pardoned by Alba at Mons, and were now violating their oaths given there to no longer bear arms against the king of Spain.³⁵⁶

The cycle of atrocities spiralled out of control. Spanish atrocities were met with Dutch atrocities in a chain of terrible reciprocity. The siege of Haarlem was a brutal series of assaults, mines and counter-mines, naval battles, and failed relief attempts. 'The soldiers willingly accepted all the toil', stated Spanish Captain Mendoza, 'as the price of satisfying a personal vendetta, for the war had become so cruel that there was no question of either side taking a man alive.'³⁵⁷

³⁵² Gentili, *DIBLT*, ii, p. 256, and 'Of women and children', pp. 251-60. See also Honoré Bonet, *Tree of battles*, p. 185; Vitoria, *DIDIBR*, pp. 93-4, 182; Ayala, *DIOBDM*, ii, pp. 33, 45.

³⁵³ Gentili, *DIBLT*, ii, p. 253. 'Innocents' in the legal doctrine also included the enfeebled (both those with physical and mental disabilities that prohibited them from military service), children and the elderly. Gentili, *DIBLT*, ii, pp. 251-260, 261-269, Ayala, *DIOBDM*, ii, pp. 33, 44-5.

³⁵⁴ Ayala, *DIOBDM*, ii, pp. 58, 64, 68; Gentili, *DIBLT*, ii, pp. 186, 193.

³⁵⁵ Ayala, *DIOBDM*, ii, p. 199 'A soldier is further favoured in not being subjected to torture'; Gentili, *DIBLT*, ii, pp. 232 (torture might be justified if done in reciprocity), 285 (cruelty should not be practiced in the wars between Christians).

³⁵⁶ Williams, *ALC*, p. 122.

³⁵⁷ Duffy, *Siege warfare*, p. 71, this is Duffy's translation of Bernardino Mendoza, *Comentarios de lo sucedido en las Guerras de los Países-Bajos, 1567-1577* (Madrid, 1592), bk. 9, ch. 11.

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Despite the use of terror tactics on both sides, there were some attempts to bring the laws of war to bear at Haarlem. On one occasion, the walls had been breached by the Spanish battery, and the defenders attempted to attain terms for their surrender. A noble woman was sent to the royalist camp with the defenders' terms. She pleaded with Alba's son, Don Frederick, for an honourable amend 'to suffer them to depart the towne in ther shertes and white robes in ther handes'.³⁵⁸ Don Frederick rejected the offer claiming that 'sithe thaye helde out so longe, nowe let them end lyke men who loke for no mercye.' This brief opportunity for restraint was stillborn, and Alba, it was rumoured, had left standing orders to make no compacts with the rebels: '[a]ll the towns of Holland dothe offer to yeld upon condicions but the Duke will not, but will have all together his owne will grant to nothings'.³⁵⁹ The royalists resumed fighting as Frederick had promised. Prisoners taken by the royalists attempting to relieve Haarlem were executed *ad terrorem*, 'and all hanged before Harlem'. When Spanish soldiers cast the severed head of a Dutch captain into the town, the defenders' returned the heads of seven Spaniards.³⁶⁰

On 9 July 1573 Orange, desperate to relieve Haarlem, ordered the baron of Batenburg, with about 6,000 foot, 600 horse, and a train of wagons bearing the necessities to relieve the town, to break through the royalist's siege-lines.³⁶¹ Both Walter Morgan and Roger Williams criticised the mission on varying tactical and strategic grounds, and Colonel Morgan did not commit his English regiment to it; however, Orange placed some of his English volunteers, along with Scots, Dutch, and Huguenots, into its companies of foot. The royalist force gained intelligence of the mission, and prepared an overwhelming counter-

³⁵⁸ The so-called *amende honorable* (honourable amend) was a public formalized act of contrition and reconciliation designed to restore an injury or honour to a wounded party; it was commonly used in late medieval Burgundy reconciling rebellious citizens with princely authority: Peter Arnade, 'Carthage or Jerusalem? Princely violence and the spatial transformation of the medieval into the early modern city', *Journal of urban history* 39 (2013), pp. 726-48, 733; idem, *Realms of ritual: Burgundian ceremony and civic life in late medieval Ghent* Ithaca: Cornell University Press, 1996), pp. 114-126. Coligny's military ordinances also employed it as a disciplinary tool: Eugène de Caraman Chimay, 'Gaspard de Coligny, admiral de France', *The British quarterly review* 61-2 (1875), pp. 163-182, 168-9. Leicester sent terms of an honourable amend to a besieged Doesburg in 1586, see chapter 4.

³⁵⁹ *Relations politiques*, vi, p. 680.

³⁶⁰ *Relations Politiques*, vi, p. 752; Gonzalez de Leon, 'Soldados plasticos and caballeros', p. 244.

³⁶¹ Following Gilbert's return to England in the winter of 1572, Morgan assumed the regiment's command. Williams, *ALC*, pp. 129-30; Morgan, *The expedition to Holland, 1572-1574*, pp. 133-138; *Relations politiques*, vi, pp. 791-5.

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attack which annihilated the column. Batenburg's defeat crushed the defenders' morale and lost Orange an allied army. Soldiers of the Army of Flanders took one of the prisoners from the column and cut off his ears and nose, and then set him free to carry tidings of doom into Haarlem. The Spanish further confirmed its downfall by throwing several more severed heads over the walls.³⁶² Four days later Haarlem surrendered, but terms of surrender were not established in a single universal agreement made by the captain in overall command. The military captains that defended Haarlem appeared to have each, on their own account, set their own terms of surrender. Spanish accounts state that the town, and its indigenous garrison, surrendered on terms of mercy, and accepting Spanish promises of mercy that 'they might hope for better than they deserved. ...he promised to secure them from plunder, and from all other licentious Military violence.'³⁶³ However, two foreign captains made their own compacts. Balfort, the Scottish captain, wrote Williams, 'escaped [the] Duke d'Alvaes cruelty, [and] promised to kill the Prince of Orange: but being arruied with the Prince he confessed his promise, and serued him faithfully long after.'³⁶⁴ Doubtful though Williams's testimony might be, it was also recoded in Meteren's account, and Balfort was present at the siege and allowed to depart, apparently with his company, and did long continue in Orange's service.³⁶⁵ Alba's fury was vented on the remnants of Haarlem's garrison. Spanish records indicate that 1,735 soldiers were executed.³⁶⁶ This began as an orderly summary process (figure 17.), but the royalist soldiers tired of the endless beheadings, and began drowning the prisoners in the Spaarne River (figure 18.).³⁶⁷ A number of

³⁶² John Lothrop Motley, *The rise of the Dutch republic: a history* (London: Murray, 1903), p. 513.

³⁶³ Guido Bentivoglio, *The complete history of the wars of Flanders*, tr. Henry Carey (London: Humphrey Moseley, 1654), bk. 7, p. 106.

³⁶⁴ Williams, *ALC*, p. 34.

³⁶⁵ James Ferguson, *Papers illustrating the history of the Scots brigade in the service of the United Netherlands, 1572-1782*, vol. 1, Scottish history society, second series vol. 32 (Edinburgh: Constable, 1899), pp. 4-5 (especially footnote 1). Dr Wilson would repeat these accusations in a report to Burghley in *CSPF (1575-1577)*, pp. 479-450.

³⁶⁶ Morgan, *The expedition in Holland*, p. 138.

³⁶⁷ Bentivoglio, *Wars of Flanders*, bk 7, p. 107.

Fig. 17. Walter Morgan, *The expedition in Holland 1572-1574*, pp. 134-5.

Fig. 18. *ibid.*

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prisoners that were taken as a result of the surrender of Haarlem were pressed into Spanish service and used as pioneers at the siege of Alkmaar.³⁶⁸

Alba's terror policy was constrained somewhat, and where it was possible, he extended more liberal combatant status to the small number of English

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Figure 17. Troops from the Army of Flanders summarily execute soldiers from the Haarlem garrison.

mercenaries. Alba's practice conformed to his wider secular vision of Spanish European strategy; he consistently advocated for a position of neutrality regarding England, and despite the emergence of a trade war between the two states (1568-1573). Alba remained opposed to any Spanish intervention on behalf

³⁶⁸ Morgan, *The expedition in Holland, 1572-1574*, pp. 154, 155.

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Figure 18. Soldiers from the Army of Flanders drowned the remaining soldiers of the Haarlem garrison.

of English Catholics.³⁶⁹ His position increasingly came into conflict with Philip's monarchical policy in the 1570s because it conflicted with the later's 'messianic imperialism', which placed the defence of the true Catholic religion, and its adherents, into the king's hands. As Philip once noted, 'it appears to me that, after my special obligation to maintain my own state in our holy faith, I am bound to make every effort to restore and preserve it in England as in former times'.³⁷⁰

Alba consistently warned Philip to avoid taking any actions against Elizabeth's kingdom. He understood that the English secret war in the Netherlands (1572-4) was justifiable because of Philip's entanglement in the failed Ridolfi plot (1571); this was a pro-Catholic plot that planned to invade England with 6,000 Spanish troops from the Army of Flanders, assassinate Elizabeth, and overthrow her protestant regime and establish a Catholic

³⁶⁹ Geoffrey Parker, *The grand strategy of Philip II* (New Haven: Yale University Press, 1998), pp. 152, 157-60, 162.

³⁷⁰ Parker, *The grand strategy of Philip II*, p. 157; Geoffrey Parker, 'The place of Tudor England in the messianic vision of Philip II of Spain', *Transactions of the royal historical society* 12 (2002), pp. 167-221.

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government under Mary queen of Scots.³⁷¹ This suggests that one act of subversion might serve to legitimise another, but this question cannot be definitely answered at this time. However, Alba convinced Philip to reconcile himself with the English queen in 1574, who responded accordingly, so when 50 vessels carrying troops for the Army of Flanders were driven off course by storms, they were given safe harbour and courteous treatment in England, and Elizabeth moderated her military support for Orange.³⁷²

English soldiers, individually and in companies, nevertheless remained serving Orange through the interim period of 1574 to 1578, despite the waning of English state support, both 'underhand' and open, for the Orangist cause. There was never any attempt to disguise the fact that Englishmen and English companies participated the Dutch conflict. However, before 1585 there was no open breach between England and Spain, and any English mercenaries in Dutch service were according to the international laws of war equal to their rebel pay masters. When Antonio de Guarras, Alba's agent to the Elizabethan court, registered a formal complaint, Elizabeth responded in a confident manner: she declared that these English mercenaries were 'traitors and rebels' that had gone 'to those parts secretly', and she would cheerfully hang any English in the service of Orange, just as she had done in France.³⁷³

England's 'underhand' attacks on the *Comendador* (1573-1576) and Don John of Austria (1576-1578)

Philip recalled Alba to Spain in 1573 and replaced the veteran soldier with the administrator Don Louis de Requesens. The replacement would not carry the military title governor general, Requesens's title was *Comendador Mayor de Castilla*, or simply the *Commendador*. He maintained a slightly attenuated version of the Duke Alba's hard-line policy against Dutch rebels, but he also

³⁷¹ Robert Ridolfi was an Italian baker living in England, a secret papal agent, and most likely a double agent serving the regime: Parker, *The grand strategy of Philip II*, pp. 160-4, endnote 38; Francis Edwards, *The marvellous chance: Thomas Howard, fourth duke of Norfolk, and the Ridolfi Plot, 1570-1572* (London: Hart-Davis, 1968).

³⁷² Parker, *The grand strategy of Philip II*, pp. 164, supra note 49, c.f. TNA, PRO SP 12/105/123, Walsingham to Burghley, 6 Oct. 1575.

³⁷³ Trim, 'Fighting "Jacob's Wars"', pp. 126-7, Charles Wilson, *Queen Elizabeth and the revolt in the Netherlands* (London: Macmillan, 1970), p. 30, c.f. *Relations politiques*, vi, p. 758.

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inherited some of Alba's apprehension against exemplary punishment of English mercenaries despite blaming Elizabeth and England for the Spanish failures of 1572-3.³⁷⁴ Suppressing his personal hatred for the Elizabethan regime, and on several key occasions, Requesens chose not to execute English prisoners. Instead Requesens exchanged captured English mercenaries, perhaps to purchase goodwill in England and, therefore, to further larger Spanish strategic and political aims. The laws of war and their interpretation was flexible, and allowed the dominant party notable latitude to interpret the laws of war in their favour. Requesens, therefore, displayed mercy when not bound to do so because it benefited himself and the king.

During the siege of Leiden (1573-1574), Spanish soldiers took 400 English prisoners.³⁷⁵ Requesens's administration in the Low Countries treated these English prisoners very differently from Dutch belligerents. On 25 October 1574 in a letter to his cavalry commander, General Don Alonso de Vargas, Requesens ordered that Dutch captives should be killed and not ransomed.³⁷⁶ By contrast, Requesens, perhaps as part of the Anglo Spanish settlement of 1574, ordered the 'surrender to the Queen of England the 400 Englishmen that were of late captured in Holland'.³⁷⁷ The Elizabethan regime coordinated with Requesens to arrange safe-conduct for the prisoners. In the summer of 1575, additional English volunteers were captured and taken prisoners at The Hague; these unlawful troops were spared at the personal intercession of the future Spanish ambassador to England, Don Bernardino de Mendoza.³⁷⁸ The volunteers were repatriated concurrently with Mendoza arrival in England which resulted in a warm reception. Mendoza was honoured with a seat at her majesty's own table,

³⁷⁴ Matthew C. Waxman, 'Strategic terror: Philip II and sixteenth-century warfare', *War in history* 4 (1997), pp. 339-347; A. W. Lovett, 'The governorship of Don Louis de Requesens, 1573-76. A Spanish view', *European studies review* 11 (1972), pp. 187-99, 189; Parker, *The grand strategy of Philip II*, p. 164.

³⁷⁵ Fissel, *English warfare*, p. 158; R. Fruin, *The siege and relief of Leyden in 1574*, tr. E. Trevelyan (Dordrecht: Springer, 1927), pp. 14-16.

³⁷⁶ Gonzalez de Leon, 'Soldados plasticos and caballeros', p. 246, fn. 46.

³⁷⁷ *CSPR (1572-1578)*, p. 179-8.

³⁷⁸ Requesens acquiesced to Mendoza's request against the advice of his aides in order to purchase English and Elizabeth's goodwill for Mendoza's appointment as Spanish ambassador to England. Gonzalez de Leon, 'Soldados plasticos and caballeros', p. 246, fn. 46.

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and the queen commended Mendoza for the return of her subjects by presenting him with a gold chain valued at over 1,000 crowns.³⁷⁹

The political conditions of the revolt underwent meaningful changes during the intervening years (1574-1578). The mutinous depredations of the Army of Flanders during the Requesens administration thoroughly discredited the Spanish regime.³⁸⁰ Requesens died in office on 5 March 1576, and the Spanish power-vacuum contributed to a new sense of Dutch unity. On 30 October, Orange negotiated an agreement, the Pacification of Ghent, with the Estates to end fighting between rebel and obedient provinces. With a peace established between the various indigenous factions in the Low Countries, the rebels and former royalists united to expel the Spanish army. The crisis required Philip to act quickly, and he appointed the veteran commander Don John of Austria to replace the deceased Requesens as governor of the Low Countries.

Shortly after arriving in the Low Countries, Don John concluded a cease fire with the States on 27 January 1577, whereby, he recognised their demands in the Perpetual Edict, which led to the withdrawal of Spanish troops on 28 April. Don John, like Requesens, believed England was to blame for the troubles in the Netherlands, and he advocated for an invasion: the 'Enterprise of England'.³⁸¹ Intelligence of the 'Enterprise of England' was leaked to Elizabeth, which quickly chilled Anglo Spanish relations. On 24 July, Don John with a policing force retook the citadel at Namur, and decided he would enforce the king's authority by arms. Following his failed attempt to capture Antwerp on 1 August, he recalled the tercios.

Warnings of a Spanish invasion of England necessitated re-forging latent alliances, and on 7 January 1578, working on behalf of Elizabeth, Thomas Leighton completed an alliance between the States General and England.³⁸² The articles of the treaty called for cooperation and the dispatch of 5,000 English foot and 1,000 horse to the Netherlands. However, the defeat of the States'

³⁷⁹ *CSPR (1572-1578)*, pp. 177-78, 179-80, 181.

³⁸⁰ Peter Limm, *The Dutch revolt, 1559-1648*, seminar studies in history (London: Longman, 1989), p. 44.

³⁸¹ Parker, *The grand strategy of Phillip II*, p. 165.

³⁸² *Relations politiques*, x, pp. 219-23.

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army at Gembloux on 31 January 1578 by Don John's tercios caused Elizabeth to hesitate.³⁸³ The States desperately needed English military support, but Elizabeth, with her more conservative counsellors, decided against an open breach with Spain which would have involved dispatching of the earl of Leicester at the head of an army royal to fight on behalf of the States.³⁸⁴ Rather Elizabeth chose to contest Don John's administration through proxies, and she purchased the services of the staunch Calvinist John of Casimir, lord of the Palatinate and military entrepreneur. In the queen's commission to Casimir, she granted him authority to recruit English captains and companies for his expedition.³⁸⁵ Casimir recognised the utility of recruiting in England, so that by June 1578 there were two English regiments in Dutch service; their captains were John Norreys and Henry Cavendish.³⁸⁶

The English regiments faced their first trial by fire on 1 August 1578, east of the town of Mechelen: the battle of Rijmenam. The armies formed up in conventional formations massed under respective ensigns in preparation for a pitched battle. The Spanish tercios were not this time in fighting trim. Plague had ravaged the ranks killing and sickening many men. The English regiments were fresh and closed to push of pike leaving 500 men from the Army of Flanders dead on the field and routing the Spanish. The engagement also gave the English the opportunity to capture '[t]wo or three Italians or Spaniards prisoners'.³⁸⁷ During their retreat, the Army of Flanders poisoned their trail to throw off their pursuers. They dumped plague victims, and those succumbing to their battle wounds, into 'wells and ditches', one observer noted that these were 'full of dead'.³⁸⁸ Biological weapons were generally thought to be unlawful in just wars;

³⁸³ Gonzalez de Leon, 'Soldados plasticos and caballeros', p. 246: Don John at achieving victory at Gembloux may have issued orders to execute all prisoners. 'His troops also slaughtered the garrison of Zichem, as well as most of the inhabitants of Dalen'.

³⁸⁴ Trim, 'Fighting "Jacob's Wars"', p. 140.

³⁸⁵ This perhaps was perhaps because Spanish commanders extended occasionally the customs of the laws of arms and war to German mercenaries; at the siege of Haarlem (1572-3), the 'Germans were recognized as "neutrals, and free to serve any prince they pleased"'. Ferguson, *Papers illustrating*, p. 4.

³⁸⁶ John S. Nolan, *Sir John Norreys and the Elizabethan military world* (Exeter: University of Exeter Press, 1997).

³⁸⁷ *CSPF (1578-1579)*, p. 115.

³⁸⁸ *CSPF (1578-1579)*, p. 118; perhaps the poisoning was a success, since plague broke out amongst the States' army when they put into their winter quarters (Nolan, *Sir John Norreys*, p. 39).

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however, Don John certainly felt justified and employed these weapons against rebels and unlawful combatants.³⁸⁹ Don John successfully led his army to safety. In the wake of the allies' victory, one of the States' captains dispatched 'a trumpet to Aerschot' with their prisoner[s?] to negotiate their ransom.³⁹⁰

Governor Parma's *Reconquista* and the end of terror tactics (1578-1592)

Shortly after the States' victory at Rijmenam, Don John himself fell victim to plague and died. Philip promoted Alexander Farnese, the prince (and future duke) of Parma (1545-1592), to be his replacement. Parma made significant structural changes to the Army of Flanders's command structure during his long tenure (1578-1592). Whereas, Alba preferred officers that had proven themselves victorious in battle, and he often promoted common men of tested military acumen to positions of command. Parma, on the other hand, favoured aristocrats and noble officers. This Spanish administrative change greatly moderated violence in the Dutch revolt, and over the course of Parma's career, military memoirists, historians, and commentators began referring to the revolt as the war in the Low Countries which signified a shift in public perceptions of the conflict.

The States-General had unified for a brief time against Don John's regime; however, after his death, they splintered once again into 'obedient' and 'rebellious' factions. The division fell along religious lines with the Catholic provinces allying themselves with Parma's Spanish administration, and Protestants rallying behind Orange. These dispositions were given a constitutional structure under the Union of Utrecht and the Union of Arras. Early in 1578 representatives from Holland, Zeeland, Utrecht, Friesland, Gelderland, and Ommeladen met to conclude an alliance, the Union of Utrecht, which gave each province the right of self-rule; however, in war the provinces decided to

³⁸⁹ Toxicological and biological warfare had been an accepted method of late medieval warfare; however, Gentili argued strongly against such methods, and the English, considering the prominence of personal conduct in war, saw it as a form of war lacking honour. See below for a more expansive discussion on the laws of war and the legality of toxic and biological weapons in warfare, pp.134-136.

³⁹⁰ *CSPF (1578-1579)*, p. 118.

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act in perpetuity 'as if they were a single province'.³⁹¹ This union had the same effect as a declaration of independence and became the foundation stone for the United Provinces. The Catholic provinces reacted against this alliance to form a union of their own: the Union of Arras. Their alliance included the provinces of Hainaut, Artois (on 6 January 1579), and Walloon Flanders (on 6 April), and by 17 May they were formally reconciled to Spanish rule by the treaty of Arras.³⁹²

These divisions introduced a new element into the fighting in 1578-1579, combatants now were divided into three politically different camps; first were the rebels, the Protestant provinces identified in the Union of Utrecht; second, the Spanish Army of Flanders and the Parma regime; and third, the reconciled provinces - signatories to the Union of Arras. It was the third group that most offended English commanders fighting in Elizabeth's secret war. English Captains saw these new combatants as standing against the cause of Dutch liberty, and the volunteers referred to them as 'malcontents', or 'rebels'. This suggests that there were connections between the belligerent political rhetoric and the practice of the laws of war. A moving speech made by a commander could inspire their soldiers to either greater atrocity or more measured actions.³⁹³

Over the 1570s, English captains learned through hard campaigning to respect the prowess and discipline of the Army of Flanders which was viewed by many Elizabethans as Europe's leading military power. Returning English veterans had witnessed first-hand the nadir of English arms, and it is not surprising that after setting down the pike, a few picked up the pen and critiqued its decline.³⁹⁴ The background for these feelings has its place in the Scottish (1559-1561) and French (1562-1563) military debacles.³⁹⁵ Much of the respect for Spanish arms was gained through combat with them. A few intrepid Elizabethans took up personal service with the Army of Flanders and returned to

³⁹¹ Limm, *The Dutch revolt, 1559-1648*, p. 51.

³⁹² Ibid., p. 52.

³⁹³ There is certainly more room for future analysis on the relationship between rhetoric and the laws of war but this falls outside the scope of this thesis.

³⁹⁴ Gates, *The defence of militarie profession* (1579) and Blandy, *The castle, or picture of policy* (1581).

³⁹⁵ Hammer, *Elizabeth's Wars*, pp. 61 (Scotland), 64 (France).

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teach the Spanish method to their comrades. The most famous of these was Roger Williams, who served in the regiment of Julian Romero for three years (c.1574-1577); it is also worthy to note, within the Army of Flanders, English soldiers were considered excellent soldiers.³⁹⁶ Williams's experiences fuelled England's transition from older tactics and weapons systems towards a modern practice.³⁹⁷ Therefore, the cosmopolitan nature of early modern military service fostered a degree of professionalism between belligerents.

Among Orangist army commanders, particularly the English and French, there was an effort to preserve the law of war. The Orangists held Grobbendonck castle, in the town of Herentals, near Antwerp, under the command of a French captain named Normand. Parma had positioned his army to capture it, and the great Huguenot Captain la Noue was sent to counter his advance. Norreys's regiment, then attached to la Noue moved to counter the siege; however, 'as soon as the cannon was presented', Captain Normand yielded the castle upon terms of composition. The terms allowed the French garrison to depart, but the small corps of Dutch soldiers there were sacrificed to Parma and were either 'hanged or put to the sword.'³⁹⁸ Captain Normand knew that his surrender was dubious with allied troops so near, and deserted 'on account of M. la Noue's indignation at the surrender'. There can be little doubt that if la Noue had captured him, he faced death for treason.³⁹⁹

Over 1578-1579 Parma's adroit political and diplomatic negotiations with the 'obedient' provinces began to produce positive gains; however, he was still working to construct a coherent military strategy. He worked under the negative institutional weight and policies of successive governors. From Alba to Don John previous Spanish commanders had preferred 'terror' to diplomacy, which led

³⁹⁶ Parker, *The Army of Flanders and the Spanish Road, 1567-1659*, pp. 26, A-34: most English soldiers serving in the Army of Flanders during the first half of the Eighty Years War were Catholics or recusants seeking asylum from persecution in England, p. 25.

³⁹⁷ Williams, *A brief discourse of warre* (1590); Garrard, *The arte of warre* (1591); Barret, *The theorique and practice of modern warres* (1598). Not everyone thought the Spanish doctrine was good, and conservatives sought to preserve older English doctrines that favoured the bow; most notable of these was Sir John Smythe's *Certain discourses* (1590), but its influence was limited because the government suppressed it.

³⁹⁸ *CSPF (1578-1579)*, p. 446.

³⁹⁹ *Ibid.*, p. 445; See also below, pp. 158-159: for the trial, conviction, and execution of the governor of Grave, Baron van Hemert, for the unlawfully surrendering to the Spanish which was made on similar terms and conditions.

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Parma to flirt with the failed policies of his predecessors. During the siege of Maastricht in the spring of 1579, he applied an interpretation of the laws of war that Alba would have recognised. To the sixteenth-century 'man of war' there were strong grounds for the use of exemplary punishment regarding the rebel town of Maastricht; they had denied entry to royal troops sent to garrison their town, and the town's leaders had declared themselves for the rebels. Thus, what followed was a siege every bit as terrible as any waged by the 'Iron duke' of Alba. The Dutch combatants were judged rebels and the laws of war accordingly silenced.

Maastricht was besieged by Parma's army, about 20,000 effectives, which was only slightly less than the total population of the town which had an estimated population of 34,000 – men, women, and children. The ranking Orangist official was governor Melchoir von Schwarzenberg; however, military command and the chief architect of the town's defence was Lieutenant Sebastian Tappin.⁴⁰⁰ Maastricht's small number of defenders (about 4,200 total effectives) rapidly took-up an active defence: '[s]ince the coming of the enemy they have had divers light skirmishes, wherein such prisoners as they take on the one side and the other [are] cruelly executed and put to death.'⁴⁰¹ Both parties continued holding true to the old vendetta, and each knew that no mercy would be granted by the other. The divisions further hardened when the citizenry expelled their Catholic priests fearing that they would betray them.⁴⁰² The women of Maastricht, as in Haarlem, were mustered for the common defence, thus, eliminating their customary protections under the laws of war. All law and custom indicated that the entire town's population were combatants; there would be no prisoners, no mercy, only war of elimination.

Parma planted his siege batteries, '20-30 guns', on the 26 May, reported the Elizabethan diplomat William Davison to the secretaries. The Spanish cannon hammered the walls into rubble: 'to-day or to-morrow ... the enemy gives assault'.⁴⁰³ The Army of Flanders tested several breaches; these forays were

⁴⁰⁰ Motley, *The rise of the Dutch republic*, pp. 801-807.

⁴⁰¹ *CSPF (1578-1579)*, p. 456.

⁴⁰² *Ibid.*, p. 466.

⁴⁰³ *Ibid.*, p. 471.

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repulsed by the defenders, and captured royalist soldiers were summarily executed, and their corpses dumped unceremoniously into the river.⁴⁰⁴ Parma sent-out entreaties calling upon the defenders to surrender, but these were rejected. In June soldiers from the Army of Flanders had 'cruelly put to the sword' the garrison of Dalem; therefore, the defenders Maastricht chose to fight rather than face summary execution.⁴⁰⁵ In one curious account, the defenders hung from a remaining section of wall a dead dog with a loaf of bread tied to its neck and cried out: 'when the dog eats the bread they would surrender'!⁴⁰⁶ This obstinate act, as much as anything that the defenders had already done, would have assured the town's utter destruction. After preparing a combined surface and subterranean assault, Parma ordered his soldiers to attack along both avenues of approach at once on 28 June. The royalist's attack overwhelmed the remaining defenders, and they had no choice but to plead mercy and attempt a surrender or face annihilation. An English account of the fall Maastricht survives, and was passed on to Walsingham. It stated that the defenders in the last moments succeeded in surrendering on terms with Parma, but they were betrayed by the Spanish troops, who for their own security, entered their prisons and 'massacred them cruelly for three hours'.⁴⁰⁷

The destruction of Maastricht, legally justifiable under the sixteenth-century customary law against rebels, marked a turning point in the development of Parma's strategy because afterwards he would seek reconciliation wherever possible. Parma was recognised as the most successful Spanish governor of the Netherlands, and the key to his success was a sincere desire to reconcile the rebels with their Spanish overlords.⁴⁰⁸ His military operations immediately reflected this policy shift. For more than a decade, Spanish forces had applied virtually unrestrained military might to crush the rebellion. The transition would require herculean efforts to reverse, the Army of Flanders's formerly free and bloody hand away from a typical sixteenth-century

⁴⁰⁴ Ibid., p. 488.

⁴⁰⁵ Ibid., p. 31.

⁴⁰⁶ Ibid., p. 488.

⁴⁰⁷ *CSPF (1579-1580)*, p. 6.

⁴⁰⁸ Violet Soen, 'Reconquista and reconciliation in the Dutch revolt: the campaign of Governor-general Alexander Farnese (1578-1592)', *Journal of early modern history* 16 (2012), pp. 1-22.

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counterinsurgency strategy into what can best be described as regular war. Parma instituted important administrative changes to the Army of Flanders. Professional career soldiers were replaced by aristocrats who were less inclined to victory at any cost. Furthermore, the old ban prohibiting the ransom of captives was lifted, and soldiers were once again permitted to ransom their prisoners of war, which enhanced the monetary value placed on the lives of rebels. Here was a means for the chronically unpaid Spanish soldiery to earn legitimate profits on campaign.⁴⁰⁹ Storming towns always tended to produce massacres; however, Parma largely averted this by offering liberal terms of surrender and imposed indemnities to pay his troops rather than permitting soldiers to plunder the defeated. These policies imposed increased military restraints on all combatants; therefore, in early 1580 when royalist troops captured St Amand, the citizens were held as prisoners of war, and among those captured and ransomed was the English Colonel Thomas Morgan.⁴¹⁰

Sent to Friesland 6 August 1580, Norreys's regiment fought on the conflict's periphery with 'malcontent' forces led by the count of Rennenburg. These soldiers were not the Italians and Spaniards ubiquitous amongst the tercios, but those Dutch who had rallied to the royalist cause embodied in the Union of Arras. An English veteran of Friesland campaign, Geoffrey Gates, described the English soldier's perception of the 'Malcontent' troops: '[i]t is a people that feareth niether God, not man, cruell, bloody, and beggarly, gathered together of the froth and scomme of many nations: [i]n manner barbarous, in opinion Turquishe, hoping [with a hot] and earnest indeuor to spoyle and spill all Christian bloud.' Gates's fellow campaigner thought that 'sufferaunce towards so cursed and peruerse a generation [was] to be maruailed at.'⁴¹¹ It would be a simple deduction to think that Norreys, the captain that had overseen the massacre of Rathlin Island in Ireland, would be ruthless advocate for the destruction of the 'Malcontents' in the Netherlands. Yet, Dutch nobles

⁴⁰⁹ The practice of ransom by the Spanish army, and the reliable source of income it offered, perhaps helped to reduce mutinies; however, further research needs to be done in this unique aspect of the sinews of war.

⁴¹⁰ *CSPF (1579-1580)*, p. 126; Morgan seems to have either escaped or been ransomed; however, there are no documents illuminating how Morgan returned to England by the 17 December 1580: *Ibid.*, p. 518.

⁴¹¹ Blandy, *The castle, or picture of policy*, p. 22^r.

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took a more liberal view, and the 'malcontents' were judged as lawful mercenaries, or soldiers, in the service of legitimate nobles and potentates, and despite their distaste for these enemies, the law of war remained applicable.⁴¹²

In mid-July Norreys's English regiment, directed by the count of Hohenlohe, approached five ensigns of 'Malcontents' that held two forts at 'Vpslaught'.⁴¹³ Hohenlohe dispatched his drummer to deliver the terms of surrender; he commanded them to 'yield up those fortes, without conditions (sauing their liues) to the use of the Prince of Orange, & the States'. The captains of the 'malcontent' forts considered these unfair terms of surrender, which did not pay due deference to their lawful combatant status. Hohenlohe's drummer returned with the message 'affirming their tenure to be planted in ye right of ye Popes holynes, & the Countie de Lalyne.' Here the 'malcontents' sought to draw attention to those authorities from which they had formal commission and that their military service was lawful. Norreys and Hohenlohe recognised the legitimacy of their commission, and that their terms of surrender had been rejected.

Norreys, in response, ordered his captains to begin besieging the forts; however, before the battery had begun, '[t]he Malcontents perciuing themselues so wrapt and invironed, by such as they feared would haue no compassion, sent forth a Drumme to craue mercye.' In a council, Hohenlohe convinced an angry Norreys to accept their surrender, and to granted favourable terms: the 'malcontents' could depart with 'their liues saued [but] without armes.'⁴¹⁴ The engagement and the subsequent surrender set forth the legal standard that Norreys would be expected to keep during his operations in Friesland.

The chief 'malcontent' in Friesland was the count of Rennenburg, and he had committed his forces to capturing the town of Steenwijk. Rennenburg's army surrounding Steenwijk overmatched Norreys's collection of English and other mercenary troops; the besiegers had between 5-6,000 foot and 1,200 horse; whereas Norreys had fewer than 2,000 effectives. However, Norreys had

⁴¹² Richard Bagwell, *Ireland under the Tudors*, 3 vols. (London: Longmans, Green, and Co., 1885), pp. 301-2; Norreys allowed the soldiers under his command to massacre the garrison of Scots and their families.

⁴¹³ Hohenlohe in English sources is often referred to as 'Hollock'.

⁴¹⁴ Blandy, *The castle, or picture of policy*, p. 23^v.

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been schooled in the manoeuvre warfare of Ireland and had learned how a smaller and more manoeuvrable force could break-up a larger force that relied upon conventional military operations. He used his small corps of soldiers to disrupt Rennenburg's supply-lines, devastated his lands, and stealthily penetrated the siege lines with fresh supplies for the defenders. Thus, Norreys used his deficient numbers to essentially besiege the besiegers and broke the siege in late February 1581. Nevertheless, despite the employment of unconventional tactics, Norreys continued to follow the customs of war; he avoided massacres and made enemy combatants his prisoners of war.⁴¹⁵

On one occasion, champions from both Rennenburg and Norreys's camp participated in the early modern equivalent of a joust of war.⁴¹⁶ The Albanian captain of 'malcontent' horsemen, Thomas of Alba, issued a personal challenge to Norreys, then holding the rank of master of camp, which he declined believing that it was insolent for one of such inferior rank to challenge another of superior rank. However, to disregard completely a personal challenge could be construed as a blight on Norreys and the army's collective honour, so the challenge was accepted by Sir Roger Williams, Norreys's captain of horse. A date for the challenge was set, and military operations suspended for the joust. The two parties met, and their champions made several passes with their lances with both champions landing 'fierce blows', 'yet niether of them being hurt'. Honour had been satisfied, and they concluded the challenge with 'drinks a carouse' and afterwards returned to their respective camps.⁴¹⁷ The joust of war was a type of martial courtesy, an honour extended to lawful belligerents. This suggests that English volunteers such as Norreys and Williams wanted to see their participation

⁴¹⁵ *CSPF (1581-1582)*, p. 2 (diverse soldiers were taken prisoner by Norreys); *ibid.*, p. 44 (John Brown an English soldier was taken prisoner by the 'malcontents').

⁴¹⁶ Suzanne Dalewicz-Kitto and Alex Cantrill, 'Conservation of a jousting reinforcement, belonging to Emperor Maximilian I', *Arms & armour* 10 (2013), pp. 172-182, 173-174; Larry Silver, 'Shining armor: Emperor Maximilian, chivalry, and war', in *Artful armies, beautiful battles: art and warfare in early modern Europe*, ed., P. Cuneo, vol. 9, history of warfare series (Leiden: Brill, 2001), pp. 61-86, 63 (the joust of war had many variations by the sixteenth-century, but at its core, it was a joust with sharp lances rather than the blunted - coronal - tips, designed to shatter the lance on a well-placed hit, used in jousts of peace) However, the joust of war, in addition to being a stylized sixteenth-century tournament event, was also a joust performed during war and between belligerents; see, Clifford J. Rogers, 'An unknown news bulletin from the siege of Tournai in 1340', *War in history* 5 (1998), pp. 358-366, 365; Juliet Barker, *The tournament in England, 1100-1400* (Woodbridge: Boydell Press, 1986), p. 31.

⁴¹⁷ Meteren, *A true discourse historicall*, p. 38

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in the underhanded wars then going on in the Low Countries as both glorious and legitimate.

Further political developments in 1581, perhaps, contributed more to Parma's conciliatory attitude. Orange's sovereignty early in the conflict was voided, and his rebel status reaffirmed by Philip in 1580, when he declared that Orange was a traitor to the Spanish crown. The United Provinces responded to Philip II's declarations against them and their leader by making the duke of Anjou 'prince and lord of the Netherlands' on 23 January. This was followed with the 'Act of Abjuration' on 26 July, which asserted that Philip II had abused his oath to protect their ancient rights and liberties and concluded that 'the king of Spain has by right forfeited his lordship, jurisdiction and inheritance of these provinces'.⁴¹⁸ Here the rebel provinces explicitly declared their independence and by choosing their new prince, the duke of Anjou, they were beginning to flirt with a radical claim to collective sovereignty; one that did not require a prince to embody the collective state as was the recognised practice in England, France and Spain. However, by choosing a French Catholic, and brother to the king, as their titular head, they were establishing ephemeral connections to additional outside sources of sovereignty to legitimise their war. Anjou was in the direct line of succession to the kingdom of France, and openly courted the queen of England; therefore, he had strong personal connections to sovereign power. Although none of these connections to sovereignty were direct, they could only be dismissed with grave consequences, such as an open rupture with either France or England, or perhaps, both.

Hence when Parma laid siege to the town of Oudenarde, and after suffering numerous violations of propriety from the defenders, he nevertheless, at the point of the town's defeat by force of arms, extended once again an opportunity for them to surrender upon merciful terms of surrender. After arriving at Oudenarde and ordering the army to occupy besieging positions, Parma dispatched his trumpeter to present the town with the terms of surrender. Oudenarde's defenders recalling previous Spanish massacres, gave ear to the terms, then shot and killed the trumpeter.⁴¹⁹ Oudenarde appeared ready

⁴¹⁸ Limm, *The Dutch revolt, 1559-1648*, pp. 53-55; and the supporting primary sources.

⁴¹⁹ *CSPF (1582)*, p. 28.

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to fight until the bitter end just as the defenders of Maastricht had. The Spanish siege battery began its assault on 8 June, and twice Parma sent additional summons to the town, and twice they were sent back. Parma's terms were compelling, he was willing to 'grant to them all they would ask in reason'; however, the defenders declared that they would sooner die than surrender.⁴²⁰ Under any of the previous governors, the defenders' obstinacy would have been punished with exemplary terror. Yet on 5 July, Parma again sent forth a parley. Oudenarde at this point had been isolated and there was no relief in sight. Reason compelled the inhabitants to accept their defeat, and Parma's gracious terms of surrender were accepted; these are worth examining in detail. First, the governor and his family were protected from summary execution and were granted a safe-conduct and escort to depart with their goods; second, the soldiers were permitted to leave with their arms, ensigns, and drums and also given a safe-conduct and escort from the town to their ally's lines; third, the citizens were granted a pardon in the king's name; fourth, those who wished to leave were free to do so, and would be granted permission to take their goods with them, and given a year to dispose of their real property; fifth, the town was placed under an indemnity of 30,000 florins to compensate the governor for the siege.⁴²¹ This would form the future model for Parma's siege operations, and was repeated again at Antwerp in 1585, which secured the Brabant for Spain.⁴²²

While Parma was reconquering the south one town at a time and justifying his politic combination of force and diplomacy, the regime in the United Provinces was crumbling into chaos. All their hopes of unity had been placed upon Anjou, but he, a Catholic, could not inspire the type of devotion necessary to lead the army of the United Provinces in a counter-offensive. Anjou himself in January 1583 tried to seize power in the rebel provinces by force - the French Fury - but failed. The four English regiments commissioned by Anjou largely languished unpaid in their garrisons, which wasted the largest number of English soldiers mustered to date for Dutch service; a level of English

⁴²⁰ Ibid., pp. 73-4.

⁴²¹ Ibid., p. 136.

⁴²² Anon., *The true report of the yeelding up of the cittie of Antwerp vnto the Prince of Parma, which was on the seventeenth day of August last past 1585* (Amsterdam: Jacob Watleer, 1585).

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commitment that would not be reached again until 1601. Only Norreys's men continued to perform active military operations in 1582. By the end of June 1583, all of Anjou's energy had been spent, and he withdrew from the conflict; although the United Provinces planned in 1584 to once again entice Anjou with their sovereignty in perpetuity the negotiations died with the duke on 10 June.

The leadership of the United Provinces was further weakened on 10 July 1584 when the father of the rebellion William of Orange was assassinated by a Spanish agent, Balthasar Gérard.⁴²³ The loss of both Anjou (1583) and Orange (d. 1584) made Dutch sovereignty an intriguing question.⁴²⁴ The United Provinces had no internationally recognised grounds for further belligerence, and even Protestants were beginning to earnestly consider reconciliation. Parma might on lawful grounds have restored at this moment an Alba inspired policy of 'terror', but his successful reconquest justified his strategy and overcame any criticisms of his methods. It was with great reluctance that Elizabeth finally committed the English kingdom to an open, if limited, war with Spain by signing of the Anglo-Dutch alliance outlined in the treaty of Nonsuch, 29 August 1585, and declaring war against Philip shortly afterwards. The Dutch will to resist Spain's forces waned: the southern provinces had submitted, Antwerp was under siege (1584-5), and Henry III of France made it clear early in 1585 that France would not intervene. This all but compelled Elizabeth to take unilateral action, which answered the question of sovereignty, and regular war began, all under the umbrella of English intervention.

The Anglo-Dutch alliance and regular war largely complemented Parma's shift in policy regarding the laws of war, and this helped to cement conventional methods of warfare in the Dutch conflict. From Alba to Don John, the Spanish crown and its agents had advocated for a policy of brutal suppression for Dutch rebels through exemplary acts of terror in the misplaced belief that this, rather than compromise and reconciliation, would encourage others to surrender out of

⁴²³ Lisa Jardine, *The awful end of Prince William the Silent: the first assassination of a head of state with a handgun*, making history series (Hammersmith: HaperCollins Publishers, 2005).

⁴²⁴ Simon Adams, 'Elizabeth I and the sovereignty of the Netherlands 1576-1585', *Transactions of the Royal Historical Society*, sixth series 14 (2004), pp. 309-319: Queen Elizabeth had rejected the Dutch offer of sovereignty in 1585 which made Leicester's acceptance of the position of governor-general all the more presumptuous and looked like an assumption of sovereignty by the back door.

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fear. Spanish belligerence and this strategy did more to harden both domestic and international opposition against Spanish dominion. English volunteers committed to fighting a 'underhand' war, on behalf of fellow protestants and against Spanish tyranny, was only effectively countered by Parma's marked shift in strategy; after the destruction of Maastricht in 1579, rebellious towns were actively encouraged to return to obedience through a forward diplomatic policy. The Dutch learned time and again that Parma could be trusted to be merciful in victory, which encouraged them to make more timely surrenders than suffer utter destruction.

Open war and the English intervention (1585/6) would foster increased respect between the belligerents. English commanders routinely issued terms of surrender that factored-in the unique circumstances of each siege. Alba hard-line policy in siege warfare: 'those who have been assailed by artillery did not deserve pardon.'⁴²⁵ The sacks of Zutphen, Naarden, and the siege of Haarlem were foremost examples of this interpretation. Led Gentili, in coordination with the earl of Essex, to highlight the Duke's conduct and then claim that such a position was perhaps too inflexible, and ignores ancient precedents to the contrary.⁴²⁶ Parma applied a necessary corrective to this interpretation, and this policy. Leicester's command followed a similar policy of conventional warfare and transmitted this policy to his successors Willoughby and Maurice of Nassau. The years of 'underhand' war supported by a cohort of committed English volunteers, holding to customs of honour in war, created a shared history and contributed to a regularisation of warfare in the Netherlands (figure 19.).⁴²⁷

⁴²⁵ Gentili, *DIBLT*, ii, p. 219.

⁴²⁶ Ibid., pp. 217-8.

⁴²⁷ Fig. 19: Baudart, *Les Gverres de Nassav*, p. 375; the image was available online: Frans Hogenberg?, 'Aanslag op Bergen op Zoomverijdeld, 1581', *Rijksmuseum* <<https://www.rijksmuseum.nl/en/collection/RP-P-OB-79.865>> [accessed on 28 March 28, 2016].

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Figure 19. English 'volunteers' repulse a Spanish attack upon Bergen op Zoom, 1581. The fighting here is limited to soldiers, and there was a notable absence of non-combatants.

Chapter 4.

War between Sovereign States: English intervention and regular war in the Netherlands

*We should inform of our deliberations the one against whom we have
decided to make war.* ⁴²⁸
—Alberico Gentili

Alberico Gentili defined war as ‘the just contest of public arms’, which was only just when waged between sovereigns. The earl of Essex believed that war’s closest analogy was the joust and each man that entered the lists was the others equal. Both ideas hinge on the principle of equality and justice under the law, which requires a sense of obligation between both sides. Only sovereigns had the authority to make war because there existed no superior, no judge, in such matters, and therefore war excluded private differences which kept hostilities to national interests. War lawfully waged was fought in conformity with international law which sought to exclude irregular hostilities.⁴²⁹ Even in wars of elimination, the formalities ‘were not omitted’.⁴³⁰ Thus, once Elizabeth had committed England to a war against Spain by promising England’s strength in a limited war ‘to ayde the natural people of those countries, onely to defende them and their townes from sacking and desolation, and thereby to procure them safetie’, she was required to declare her intentions to Philip, and this she did by publicly publishing her war aims.⁴³¹

A declaration of war would protect her soldiers from the horrors that had in the past befallen English volunteers, such as those unfortunates slaughtered at Rouen because they had illegally entered France to wage war. When the time came for direct action on behalf of Dutch Protestants, the queen took steps to

⁴²⁸ Gentili, *DIBLT*, ii, p. 131.

⁴²⁹ Phillipson, ‘Albericus Gentilis’, i, pp. 109-143; Gentili, *DIBLT*, ii, p. 12

⁴³⁰ Gentili, *DIBLT*, ii, p. 141.

⁴³¹ England and Wales, sovereign (1558-1603: Elizabeth I), *A Declaration of the Causes Moouing the Queene of England to Giue Aid to the Defense of the People Afflicted and Oppressed in the lowe countries*, p. 20.

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ensure the legitimacy of her soldiers. As a final olive branch before dispatching Leicester's expeditionary army to the Netherlands, the queen sent Sir John Smythe, a veteran soldier and diplomat with first-hand experience in Spain, to Calais in August 1585. Once in France, Smythe was directed to acquire a Spanish passport to officially travel to Parma's headquarters.⁴³² Smythe's mission was to persuade Parma, who in turn it was hoped would convince Philip, to negotiate a settlement with the Dutch that would grant them their 'liberties and freedom of conscience'. If that failed, he was to ask for 'cessation of arms'.⁴³³ Should all peaceable steps fail, Smythe was to 'plainly let him [Parma] understand that we [Elizabeth I and England] are determined to employ such means as God has given us in the assistance of those countries, to such end is contained in the declaration you shall deliver to him.'⁴³⁴ There is reason to believe that Smythe's embassy never in fact left England.

Nevertheless, the queen's declaration of limited war, the document Smythe was charged to deliver to Parma – *A Declaration of the Causes Moouing the Queene of England to Giue Aid to the Defense of the People Afflicted and Oppressed in the lowe countries* – was widely disseminated across Europe and would have been readily available to Spanish agents in France, Italy, and the Netherlands. The declaration publicly condemned Philip and enumerated Spanish crimes perpetrated against the Dutch. England would stand against Spanish

⁴³² Smythe's embassy followed closely after the signing of the Anglo-Dutch alliance proscribed in the treaty of Nonsuch, 10 August 1585, and inspired apprehension in the Provinces; hearing rumors of the embassy, Walsingham's agent serving in the embassy to the Provinces, Davison reported his and the Dutch criticism of the venture. *CSPF (1585-1586)*, pp. 7-8.

⁴³³ John Smythe, *Certain discourses military*, ed., J.R. Hale, Folger documents of Tudor and Stuart civilization (Ithaca: Folger Shakespeare Library by Cornell University Press, 1964), p. xxviii; *CSPF (1584-1585)*, pp. 671-3.

⁴³⁴ England and Wales, sovereign (1558-1603: Elizabeth I), *A declaration of the causes moouing the queene of England to giue aid to the defense of the people afflicted and oppressed in the lowe countries*. J.R. Hale thinks that Smythe's embassy was aborted, and never arrived in the Netherlands to perform its service; his evidence for this conclusion is Smythe's comment: 'I have found by so long experience (ever since Her Majesty called me from beyond the seas) that I have been so little accounted of that (except it were once into Spain) I was never employed in any service of hers, neither at home nor abroad, but only in the mustering and training of the regiment of this shire of Essex in the year 1588.' The above quote comes from British Library, Lansdowne MS 64/45, c.f. Smythe, *Certain discourses military*, p. xxix. Admittedly there is a conspicuous absence concerning Smythe's embassy in the historical record, but his embassy could have made it as far as the Netherlands; Leicester makes several allusions to Smythe, and a document exists that appears to have been authored by Smythe perhaps while in the Netherlands: 'An act of the States General derogating from the authority of his Excellency': *CSPF (1586-7)*, p. 347.

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tyranny: ‘our intention is at this time, and vpon what iust and reasonable groundes we are mooued to giue aide to our next Neighbours the naturall peoples of the lowe Countries’.⁴³⁵ The consensus abroad and in Spain was that even before the *Declaration* was issued, Elizabeth’s actions in support of the rebels amounted to a declaration of war against Spain.⁴³⁶ But as Gentili noted:

because some hostile act is committed by such giving of aid, that does not necessarily constitute war or make necessary a declaration of war; also not another or not a quasi-war. And this it is which the Queen of England, in her published correspondence with the Spanish king, says that she often did when she supplied either money or arms to her neighbours the Belgians against the power of Spain, she at the same time informing that king of her whole action and of reasons for it.⁴³⁷

With respect to international law and custom, the queen of England had taken the appropriate steps in order that her state could claim all lawfulness in entering openly into the Dutch revolt which by way of her actions was manifestly a war by 1585. This chapter provides a survey of English law of war doctrine, and practices, from 1585-1587 during England’s limited war against Spain in the Netherlands.

‘All the acts of war must be just’⁴³⁸

In the great judicial contest that was sixteenth-century war, perhaps the simplest means of tipping the scales in one’s favour was to find and use those weapons that advanced ‘the will of the victor as to the punishment of the vanquished’.⁴³⁹ Yet, a tradition exists in just war theory that seeks to limit the destructiveness of war by prohibiting certain types of weapons that commentators claimed were too lethal. For example, in the twelfth-century, the second Lateran Council sought to ban, in wars between Christians, ‘that

⁴³⁵ England and Wales, sovereign (1558-1603: Elizabeth I), *A declaration of the causes moouing the queene of England to giue aid to the defense of the people afflicted and oppressed in the lowe countries*, p. 2.

⁴³⁶ Parker, *The grand strategy of Philip II*, p. 176.

⁴³⁷ Gentili, *DIBLT*, ii, p. 140.

⁴³⁸ *Ibid.*, p. 13.

⁴³⁹ *Ibid.*, p. 170.

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murderous art of crossbowman and archers'.⁴⁴⁰ This ban failed utterly, and so would future criticisms of projectile weapons, murderous and inglorious weapons of the base born and craven. Gentili showed the flaws in this argument. Stephen of Poland, while besieging an enemy fortified position, employed siege engines that cast incendiary projectiles and set fire to the wooden fortifications of his enemy. From behind their burning palisade, the defenders cried 'that the law of war and arms was violated', but these siege engines, just as archery, Gentili argued had legal precedent in the projectile weapons of antiquity.⁴⁴¹ Gentili used such examples to prove true a maxim of law: 'the laws of war do not vary, although the incidental features of war change.'⁴⁴² Thus, gunpowder weapons - cannons and muskets - were accepted as legitimate tools of warfare, and no amount of spilled ink could undo the necessary utility of firearms.

'The social argument was that gunpowder was a coward's weapon which destroyed the dignity of knighthood by allowing the common soldier to kill a gentleman from afar.'⁴⁴³ Cervantes's *Don Quixote* epitomised these fears in his vitriolic condemnation of gunpowder weapons: '[b]lessed were the times which lacked the dreadful fury of those diabolical engines ... an invention which allows the base and cowardly hand to take the life of a brave knight.'⁴⁴⁴ Gentili inverted Cervantes's argument to justify the legality and valour of gunpowder weapons: [i]t is not the arms which fight, but men. [...] But if valour is from the spirit, these arms of ours will not destroy it, but often will even aid it; since they make the strength of the weaker men equal to those of the stronger.'⁴⁴⁵ His commentary is all the more important, since Gentili wrote his second book on the just conduct in war in conjunction with the earl of Essex's personal secretary, Thomas Smith, which raises serious questions concerning the shape and nature of Elizabethan chivalry as anachronistic and opposed to gunpowder

⁴⁴⁰ Norman P. Tanner S.J., ed., *Decrees of the Ecumenical Councils*, 2 vols. (London: Sheed & Ward, 1990), i, p. 203.

⁴⁴¹ Gentili, *DIBLT*, p. 164.

⁴⁴² *Ibid*, p. 164.

⁴⁴³ John R. Hale, 'War and opinion: war and public opinion in the fifteenth and sixteenth centuries', *Past and Present* 22 (1962), pp. 18-35, 29-30.

⁴⁴⁴ Hale, 'War and opinion', pp. 29-30; Miguel de Cervantes, *Don Quixote*, trans., J. M. Cohen (London: Collectors Library, 2006), p. 364.

⁴⁴⁵ Gentili, *DIBLT*, p. 165.

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weapons.⁴⁴⁶ Doubtlessly Essex was influenced by his step-father, the forward thinking earl of Leicester, who purchased ‘2 cases of pistols and their furniture’ prior to the 1586 expedition and adopted the gunpowder tactics of skirmishing and cuirassiers during the same.⁴⁴⁷ Essex was committed to the modernisation of the English military and adopted the most modern tactical doctrines; such as fielding smaller companies after the Dutch style, and favouring firearms over the bow, as advocated for by the earl’s close friend Roger Williams. Essex’s martial designs were further supported in Gentili’s interpretation of the laws of war which also advanced the earl’s anti-Spanish political agenda.

What weapons, if any, then were prohibited in wars? Jurists understood the nature of war and that on occasion non-combatants – also known as innocents – would be killed in the regular course of military operations: ‘[t]hey accepted that it would be lawful to kill innocent people if their deaths were anticipated but not intended as in the case of a besieged city which contained civilians as well as soldiers’.⁴⁴⁸ With respect to protecting innocents, the weapons that could not be tolerated in just warfare were those that did not discriminate between friend, foe, or innocent and which man possessed no power to resist. Gentili completely forbade the usage of any poison in wars. The term ‘poison’ was an umbrella term that encompassed an entire category of weapons; this included various chemical and biological weapons, weapons that had had both ancient and medieval precedent in wars.

The military use of various chemical and biological toxins was known to sixteenth-century belligerents. Despite being condemned by some late medieval commentators like Christine de Pisan (c. 1365-1429), and in an era preceding the widespread use of firearms and gunpowder artillery, toxins were used occasionally as decisive weapons. Toxic weapon systems had their supporters

⁴⁴⁶ Hammer, *The polarisation of Elizabethan politics*, p. 240; Manning, ‘Styles of command in seventeenth-century English armies’, p. 673, fn. 3.

⁴⁴⁷ Jardine, *The awful end of prince William the Silent*, pp. 88-90 (Leicester’s personal firearms), 82-83 (Leicester’s adoption of manoeuvre gunpowder tactics during the 1586 expedition).

⁴⁴⁸ Tallett, *War and society in early modern Europe, 1495-1715*, pp. 239.

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too, e.g. Baldus de Ubaldis (1327-1400).⁴⁴⁹ Froissart recorded their use by the Duke of Normandy during his siege of Thin-L'Eveque:

The ingens without hyd casts in dead horses & beastes stinking:
whereby they within had great distres then with anye other thyng,
for the ayre was hote as in the myddes somer: the stynke and ayre
was so abominable, that they consyded howe that finally they
coude not longe endure....

To save themselves from these grotesque weapons, the town appealed to its besiegers for a truce and received it. They agreed that if the town was not relieved in fifteen days, it would surrender to the Duke.⁴⁵⁰ At least one English officer, preparing to go to the war in the Netherlands, read about these tactics, since he chose to carry Froissart's *Chronicles* instead of the Bible.⁴⁵¹

In Holinshed's *Chronicle*, there is an account of the Duke of Burgundy, preparing to attack the English troops garrisoned in Calais (1410) with toxic projectiles:

[H]e had gathered together serpents, scorpions, todes, and other
kinds of venomous things which he had closed and shut up in little
barrels, that when the flesh or substance of those noisome
creatures was rotten, and dissolved into filthie matter [...] cast the
said barrels let out of engines into the town.

In other instances, a fleeing army might dump the rotting corpses of animals and men into local water supplies to poison it and deny that resource to their enemies. Believing that this was a grievous crime, Gentili condemned the practice. He claimed that such actions resulted in 'more deaths of blameless people than of the guilty.'⁴⁵² His position can be summarised by a quote from

⁴⁴⁹ Christine de Pizan, *The book of deeds of arms and of chivalry*, tr., Sumner Willard (University Park: Pennsylvania State University Press, 1999), pp. 51, 77 *supra* note 13; for late medieval usage of biological and chemical toxins see: Philippe Contamine, *War in the Middle Ages*, tr., M. Jones (Oxford: Basil Blackwell, 1985), p. 104; A.G. Robertson and L.J. Robertson, 'From asps to allegations: biological warfare in history', *Military Medicine* 160 (1995), pp. 369-373; Mark Wheelis, 'Biological warfare before 1914', in *Biological and toxin weapons: research, development, and use from the Middle Ages to 1914*, eds., Erhard Geissler and John Ellis van Courtland Moon, Stockholm International Peace Research Institute, Chemical and Biological warfare studies no. 18 (London: Oxford University Press, 1999), pp. 8-34; Michael S. Bryant, *A world history of war crimes: from antiquity to the present* (London: Bloomsbury Academic, 2016), p. 95; Gentili, *DIBLT*, p. 158-9 (criticism of Ubaldis's support for poisoning).

⁴⁵⁰ Jean Froissart, *Here begynnith the firste volum of Syr Iohn Froissart* (London, 1563), ca. xlix.

⁴⁵¹ *CSPD (1598-1601)*, p. 209.

⁴⁵² Gentili, *DIBLT*, pp. 156, 158-9.

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Cicero: '[i]t is a great shame and disgrace when one with whom there is contest for glory is overcome, not by valour, but by treachery [i.e. poison].'⁴⁵³

Poisons had a negative and unmanly reputation that became more pronounced in the sixteenth-century. Spain's tercios acquired a negative reputation for using toxic weapons in their Italian campaigns. At the siege of Naples (1495), which Gentili claimed was a most unjust war, the French besieging troops were repeatedly poisoned by the Spanish garrison; their water supply was poisoned, provisions were made with toxic gypsum, and prostitutes, infected with venereal disease were introduced into the French camp.⁴⁵⁴ The Dutch rebels were also known to employ toxic weapons on occasion. In 1566 while Alba marched the massive Spanish army out of Italy and along the Spanish Road to address the growing rebellion in the Low Countries, rebels reputedly prepared their route 'with ointments to spread the plague'. Rumours of the rebels' actions reached Cardinal Granville in France, and he took steps to alert his king and condemned the attack. The rumours appeared plausible since plague broke out shortly afterwards in those areas that the army had travelled through.⁴⁵⁵

During the Dutch revolt and the subsequent war, belligerents appeared to have largely disregarded the use of poisons in combat operations, perhaps because of the hazards were perceived as too great and rewards too small. Armies in the Dutch theatre were often beset by naturally occurring plagues and any temptation to use them was tempered by an awareness that the plagues and toxins could just as easily turn against those deploying them. Honour, next to religion, was an essential quality of the Elizabethan soldier, and as such, their martial honour could not bear using these repugnant weapons. Some Englishmen in the Dutch war, however, suspected that plague or other toxins had been used

⁴⁵³ Ibid, p. 157.

⁴⁵⁴ Ibid, p. 159-160. Gypsum was mentioned in classical texts as a dangerous toxin: '[a]s to wines which have been treated with marble, gypsum, or lime, where is the man, however robust he may be, that has not stood in dread of them'; for the use of gypsum as a toxin see: John Bostock, and H.T. Riley, *The natural history of Pliny*, 6 vols. (London: Henry G. Bohn, 1856), iv, p. 475; David B. Kaufman, 'Poisons and poisoning among the Romans', *Classical Philology* 27 (1932), pp. 156-167. The expulsion of prostitutes is thought to be an important moment in the history of syphilis: Anton Luger, 'The origin of syphilis: clinical and epidemiologic considerations on the Columbian theory', *Sexually transmitted disease* 20 (1993), pp. 110-117, 114-5.

⁴⁵⁵ Parker, *The army of Flanders and the Spanish road, 1567-1657*, p. 56.

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against them. Working as a diplomat in the United Provinces, George Gilpin gave vent to these suspicions in a letter to Walsingham: 'At Sluys, Ostend, and Terneuse, the garrisons are "hardly enough served" of provisions, and the plague grows rife, [and reports have surfaced that they have been] infected "by practice of an old fellow that had the cunning to do it" and who has been taken upon suspicion.'⁴⁵⁶ Other than this small note these weapons were ignored. The lawful weapons of war were those that had the minds of men to purposefully select the target and perform the killing action.

The Laws of War in Sieges

It is difficult to underestimate the importance of fortifications in early modern warfare, and particularly in the campaigns in the Low Countries. Towns and fortifications, and the territory that they controlled, were not only the basic political and economic structures of the state, but were logistical lynch pins, which 'determined not just when campaigns were fought, the pace of operations and what might be achieved, but how wars were conducted.'⁴⁵⁷ Fortifications, towns, but also sconces, forts, and villages, were vital to theatre strategies, which often hinged upon the ability to preserve an army in the field.⁴⁵⁸

Money, supplies, and men flowed into field armies from a series of inter-linked magazines that were positioned in allied towns and forward bases. Reliable logistics directly affected a commander's ability to meet strategic goals, and when supply systems failed, field forces were compelled to cease pursuing the enemy and to extract the needed supplies from the countryside.⁴⁵⁹

⁴⁵⁶ CSPF (1584-5), p. 23.

⁴⁵⁷ Tallett, *War and society in early modern Europe, 1495-1715*, p. 59.

⁴⁵⁸ Russell F. Weigley, *The age of battles: the quest for decisive warfare from Breitenfeld to Waterloo* (Bloomington: Indiana University Press, 1991), p. 28; Tallett, *War and society in early modern Europe, 1495-1715*, pp. 59-68; Martin van Creveld, 'The background of two centuries', in *Supplying war: logistics from Wallenstein to Patton* (Cambridge: Cambridge University Press, 2004), pay particular interest to the subsections: 'Tyranny of plunder' and 'Rise of the magazine system', pp. 5-56; for a thorough review of the Spanish supply system for the army of Flanders see: Parker, *The army of Flanders and the Spanish Road, 1567-1659*; Parkers work corroborates the role of logistics in maintaining state control over an army. A comprehensive study similar to Parker's on the English or Dutch logistical systems still awaits close study.

⁴⁵⁹ Tallett, *War and society in early modern Europe, 1495-1715*, p. 61.

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Logistics therefore ‘acted as a [mechanical] constraint on commanders in the sixteenth century’ and would ‘dominate their actions to the exclusion of almost all other considerations during the next century.’⁴⁶⁰ Thus, operational commanders directed their military power towards the taking and holding of fortifications.

Leicester’s judge advocate general, Matthew Sutcliffe, wrote from experience that ‘[t]ownes are taken diuers wayes: viz. either by siege, or by assault, or surprise, or by all, or two of these joined together’.⁴⁶¹ Legal restraint, he implies featured differently in each method: ‘in euery of which, the proceeding is diuers, as the endes are diuers.’⁴⁶² The purpose of siege-craft ‘is to strait the town, so that either for want of victualles, water, munition, souldiers, hope of succour, health, or other commodity, the same [town may] be driuen to yeeld.’⁴⁶³ Taking a town by surprise required the aggressor to expeditiously enter a fortification and open a gate which then permitted the main body of the force to enter and capture it by violence of action; however, on other occasions, surprise meant that a sufficient number of troops had to covertly enter a town, without raising the alarm, and take it, for example, Maurice of Nassau’s capture of Breda in 1590.⁴⁶⁴ Assaults used brute force ‘to giue us entrance’, and fortified places were captured in a fury of nearly uncontrolled violence, which the English often referred to as ‘storming’.⁴⁶⁵ Before undertaking any open act of hostility – in sieges and assaults – the laws and customs of war demanded that the fortification first receive a ‘summons’, this was a formal opportunity to for the defenders to surrender upon contractual terms. Yet, surprise attacks remained every-bit as lawful means by which a town could be captured: the justice of surprise ‘is not affected by the question whether you gain the victory in open combat or by strategy’.⁴⁶⁶ Therefore,

⁴⁶⁰ Ibid., p. 66.

⁴⁶¹ Sutcliffe’s record of service in the Dutch conflict is contained in the *CSPF (1587)*, p. 425, and *CSPF (1588)*, i, p. 2. Sutcliffe, *The practice, proceedings, and lawes of armes*, p. 215.

⁴⁶² Sutcliffe, *The practice, proceedings, and lawes of armes*, p. 215.

⁴⁶³ Ibid, p. 215.

⁴⁶⁴ John Lathrop Motley, *History of the United Netherlands; from the death of William the silent to the Twelve Years’ Truce - 1609*, in 4 vols. (London: John Murray, 1869), iii, pp. 6-13 for a history of Maurice’s capture of Breda, 1590.

⁴⁶⁵ Sutcliffe, *The practice, proceedings, and lawes of armes*, p. 216.

⁴⁶⁶ Gentili, *DIBLT*, ii, pp. 142-3.

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unless a town fell by surprise or assault, the surrender of a fortified place usually involved some form of contract between the belligerents that was negotiated in parleys.⁴⁶⁷

The Elizabethan state declared its war against Spain in accordance with the Treaty of Nonsuch (1585); however, the intervention's combat operations did not begin until 1586. The earl of Leicester commanded the English army. He, his subalterns, and soldiers, paid attention to the laws of war during sieges. In late May 1586, Leicester advanced his army south towards Nijmegen. Along the march, scouts discovered a 'fort which the enemy held there very well maned and furnished'.⁴⁶⁸ As soon as Leicester's artillery had been emplaced, the fort 'sent a gentleman to me with offer to yield up the fort, so [that] they might depart with their arms only, without ensign or drum; albeit some other demands they made yet I would not yield to any further than this, which was accepted.'⁴⁶⁹ Events like these were played out time and again.

Besieged belligerents unable, or unwilling, to sustain further resistance had only two options in negotiations; commanders could either surrender on negotiated terms, or place their lives in the hands of the victor and surrender to the mercy of the commander. This is clearly demonstrated in Leicester's campaign in the region known as the Betuwe, with Nijmegen as his operational goal. The campaign involved taking of several castles and fortified houses which was achieved by a combination of force, threat of force, and compact.⁴⁷⁰ Lord North described the way Nijmegen's two defensive sconces were taken by Leicester's forces:

My lord [Leicester] was there until the sconce was yielded on Friday, the 20th, the first parley being made with sergeant major [Reade] and me [lord North] in the morning. They desired to speak with my lord [Leicester], and we agreed to send them in a drum and lieutenant and they to send a drum and a gentleman, whom I brought to my lord [Leicester], and he granted them to depart like

⁴⁶⁷ Randall Lesaffer, 'Siege warfare in the early modern age: a study on the customary laws of war', in *The nature of customary law: legal, historical and philosophical perspectives*, eds., A. Perreau-Saussine and J.B. Murphy (Cambridge: Cambridge University Press, 2007), pp. 176-202.

⁴⁶⁸ *CSPF (1585-1586)*, p. 650.

⁴⁶⁹ *Ibid.*, p. 650.

⁴⁷⁰ Betuwe is a name given to the region between the Rhine and Waal Rivers, and the area around Nijmegen; Thomas Digges, *Briefve report of the militarie services done in the Low Countries, by the Erle of Leicester* (London, 1587), sig. B2.

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soldiers, with their weapons and such baggage as they could carry,
“but no drum sounding no ensign displayed.”⁴⁷¹

The second sconce, perhaps harder pressed than the first, “yielded to my lord’s mercy”, who so nobly used the soldiers that these [soldiers] of the sconce confessed it moved them to yield.⁴⁷² To surrender upon the mercy of one’s besieger, however, was a risky proposition. In 1580, the papal expeditionary force holding the fort at Smerwick chose to surrender upon ‘mercy’ to Lord Deputy Grey, and he had ordered all but a handful of the troops put to the sword after determining that they were unlawful combatants.

During operations at Arnhem (1586), the town suffered a light bombardment by canon, about ‘8 or 10 shott’, causing them to rapidly send forth word to the English besiegers urging a parley. Confident of his position, Leicester informed ‘a count’, representing the town during the parley, ‘that I would have no condicion at all yeilded, for that thei did suffer the cannon, but either simply to yield or ells to prosecute the battery.’ Here Leicester was referring to the customary practice that said: ‘if bombards are brought up to weak places, no room seems left for surrender’.⁴⁷³ In the end, Leicester gave the defenders an ultimatum simply yield upon his mercy or face his artillery.⁴⁷⁴ In a letter to Walsingham, Leicester wrote, almost as an aside, ‘I doubt [not that] some must hang, for example.’⁴⁷⁵ We are left with the weighty implications of Leicester’s admission that to yield outright, and unconditionally, upon terms of mercy alone, might well result in some executions; the executions were regarded almost as a mandatory response to the garrison’s act of defiance in the face of the besieger’s cannon.

⁴⁷¹ *CSPF (1585-1586)*, p. 657.

The sergeant Major, Sir William Reade, was an experienced campaigner that Leicester held in high regard; M.M. Norris, ‘Reade, Sir William (d. 1604)’, *Oxford Dictionary of National Biography* <<http://www.oxforddnb.com/view/article/71684?docPos=1>> [accessed on 27 March 2016].

⁴⁷² *CSPF (1585-1586)*, p. 657.

⁴⁷³ Gentili, *DIBLT*, ii, p. 217.

⁴⁷⁴ Gentili remarked that the Duke of Alba ‘thought that those who had been assailed with artillery did not deserve pardon.’ Gentili, *DIBLT*, ii, p. 218. This principle of law was so well known that Shakespeare employed it in his play *Henry V*.

⁴⁷⁵ *Leycester correspondence*, pp. 479-480.

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Threats and terror were integral parts of siege craft, but their aids were deception and misdirection. While outright perfidy in war was condemned, subtleties of every other sort were lauded. William Pelham, Leicester's 'marshal of the host', and William Stanley, the captain of an Irish regiment serving in the Netherlands, stealthily entered Deventer (1586). Once inside they made their way to the burgomaster's meeting place and took the council hostage and offered it an ultimatum: '[n]owe... fetch me the keyes of the gates, and deliver theme me, and that strait, or, before God, youe shall all dy.' The council would have seen little in the way of mercy in Pelham's eyes; a man who was charged in the *Annals of the four Masters* with a bloody campaign that tore through Munster killing 'the blind, the infirm, the feeble, the women, children, [and] idiots'.⁴⁷⁶ They had no choice but to turn over the town, and Stanley was given its charge. 'The marshall hath shewed himself like a man of valour,' wrote Leicester praising Pelham's actions to Walsingham, 'as he is indeed.' Certainly, Leicester felt that Pelham's terroristic demands were exemplary and not violations of international law.

The first true surprise assault on a town in the Netherlands came with Sir Philip Sidney, prince Maurice and lord Willoughby's capture of Axel, a town neighbouring Antwerp (figure 20).⁴⁷⁷ Approaching under the cover of night, a corps of select men swam the town's moat with ladders, secretly scaled the walls, and entered it. They quickly took possession of the gate, and opened it to permit the main body of soldiers to enter.⁴⁷⁸ The town raised the alarm, but the initiative was with the attackers: '[they] slue and put to flight foure bandes of

⁴⁷⁶ *Four Masters*, v, p. 1736 fn. w, c.f. John J. McGurk, 'Pelham, Sir William (d. 1587), lord justice of Ireland', *Oxford Dictionary of National Biography* <<http://oxforddnb.com/view/article/21800>> [accessed on 4 November 2013], p. 2.

⁴⁷⁷ The plan to take Axel by surprise and violence of action is on occasion attributed to Sir Philip Sidney: see Greville, *The life of the renowned Sir Philip Sidney*, p. 135; however, it appears to be the brain-child of the young Prince Maurice of Nassau, and it indicates Maurice's future positive orientation towards the law of war: see *CSPF (1586-1587)*, pp. 75-6 (Leicester's letter to the Queen). Leicester wrote that he had been informed by one of Maurice's agents of a secret plan to capture Axel. Yet, he points out that Sidney had the Prince's confidence, and he was surely included in the planning process. For additional letters discussing strategic implications of capturing Axel: *CSPF (1586-1587)*, pp. 81, 87, 102.

Fig. 20: Baudart, *Les Gverres de Nassav*, p. 89; the image was available online: Simon Frisius and Michiel Colijn, 'Axel veroverd door Maurits en Philip Sidney, 1586', *Rijksmuseum* <<https://www.rijksmuseum.nl/en/search/objects?q=axel%201586&p=1&ps=12&ii=0#/BI-1958-935-186,0>> [accessed on 28 March 28, 2016].

⁴⁷⁸ *Leycester Correspondence*, pp. 337-8.



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Figure 20. An Idealised depiction of Sidney's capture of Axel.

footemen'.⁴⁷⁹ The slaughter, however, was confined to those active defenders: 'there were slaine of souldiers of that towne three hundred, besides the Bourgers that made resistance, which were likewise slaine.'⁴⁸⁰ It appears that Sidney, Maurice, and Willoughby recognised the law of war that stated '[d]eath is inflicted upon those who are armed and resist', and kept their soldiers disciplined in their violence.⁴⁸¹

The available sources are brief, but they stress that violence was limited, and from this we can infer that non-combatants were protected from the worst abuses. Perhaps the cover of night also aided in protecting non-combatants since they were in their residences, and not on the streets or guard houses where the

⁴⁷⁹ Digges, *A brief report of the militarie services done in the Low Countries*, p. B2; the attack was similarly reported by T. Cecil to Burghley, in *CSPF (1586-1587)*, p. 77: '[t]hey came to the town at midnight, and sent on twenty men, who swam the town-ditch, passed the rampart and killed the sentinel and the corps-de-guard that kept the gates, whom they found in their beds; then brake open the gates and let in all our men. [...] Saving four or five, all [the defenders] was put to the sword.'

⁴⁸⁰ Stowe, *Annales*, p. 732; Grimston, *A general historie of the Netherlands*, p. 798.

⁴⁸¹ Gentili, *DIBLT*, ii, p. 251.

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fighting occurred. The town was also not sacked; how did the commanders prevent this? There are at least three factors that helped to prevent the abuse of the citizens and sack of Axel. First, as the troops were fresh from garrison, need and want did not have the necessary time to sour the soldiers' minds against the town, since a sack almost always followed a prolonged siege. The second reason helped to reinforce the first, the soldiers were newly impressed with their martial obligations, and recently swore to uphold Leicester's *Laws and Ordinances Militarie* (1586), which placed stern penalties for the abuse of non-combatants and unauthorised spoil.⁴⁸² Third, the quick pace of military operations limited the soldiers' opportunity for abuse and spoil because as soon as Axel was secured, the army was redirected against the town's outlying forts and moved away from the town in search of enemy forces. These factors limited destruction and kept the traditional non-combatants (women, children, elderly, and infirmed) safer from the soldiers' fury in the heat of battle.

On several occasions, enemy garrisons signalled that they would accept terms when they were presented with the prospect of, or after having already met an English assault. A general frontal assault that in turn captured a town or other fortification in a single action was uncommon. In Leicester's vigorous, if strategically disjointed, first year of Dutch campaigning in 1586, his forces captured several fortifications through assault. Pelham with cornets of horse and Irish infantry set fire to an enemy town, and took its outer-works by storm, and the entire garrison was put to the sword.⁴⁸³ Despite the army's initial successes, which seemed to promise the queen a rapid victory, the reality of the situation was growing grim and unfortunately the successes concealed deeper administrative problems.⁴⁸⁴

Leicester had some difficulty preserving a certain discontent element within his armies. Want of pay, poor conditions, and several months of hard campaigning proved to be a convincing argument for some men that the soldier's life was not for them. Shortly after the successful capture of Axel, Leicester reported to Walsingham on the growing unrest within the army. His report

⁴⁸² Dudley, *Laws and ordinances militarie*, pp. 3 (articles 5 & 6), 8-9 (article 28), 17 (soldiers' oath). This document is examined in further detail below at pp. 145-146.

⁴⁸³ Stowe, *Annals*, pp. 734-5.

⁴⁸⁴ Hammer, *Elizabeth's wars*, p. 125.

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claimed 500 troops had run away over the course of two days with ‘a great manie to the enemye’.⁴⁸⁵ Loyal English soldiers succeeded in recovering more than 200 of these runaways, and Leicester, to further instil discipline among the men, had some hanged as an example to the remainder. The earl, however, was uncertain of the punishments efficacy. He was conscious of his obligation as a leader to care for the needs of his soldiers, and Leicester noted his veterans looked like ‘dead men’.⁴⁸⁶ In his opinion prompt payment of wages would put an end to the soldiers’ grumblings; however, if this was not done soon, he feared a mutiny and perhaps bloodshed.⁴⁸⁷

It is necessary to note here that the organisation of Leicester’s expeditionary army broke with late medieval precedent in several ways and was of a different order from anything previously attempted by the Elizabethan regime.⁴⁸⁸ The army royal of Elizabeth’s father - Henry VIII - was raised through feudal mechanisms: the great nobles assembled an army by drawing upon their tenants and retainers.⁴⁸⁹ These recruitment mechanisms were deemed insufficient during the Elizabethan regime, and with the Militia Act of 1558 military recruitment was shifted away from tenancy obligations towards the militia system.⁴⁹⁰ The expeditionary force raised for service in the Netherlands utilised a variety of recruitment mechanisms which altogether enabled the crown to assemble by 31 May 1586 thirty-nine companies (6,400 men) in the queen’s pay, as well as twenty-one companies (7,500 men) for service in the States’ army.⁴⁹¹ Among the crown’s companies were certain infantry bands raised by Leicester through quasi-feudal relationships whose character and

⁴⁸⁵ Leicester correspondence, pp. 338.

⁴⁸⁶ Ibid., p. 338.

⁴⁸⁷ Ibid., p. 339.

⁴⁸⁸ Adams, ‘A Puritan crusade?’, pp. 176-195, 190; S. L. Adams, ‘The Gentry of North Wales and the Earl of Leicester’s expedition to the Netherlands, 1585-1586’, *Welsh history* 7 (1974), pp. 129-147; Gervase Philips, ‘To cry “Home! Home!”: mutiny, morale, and indiscipline in Tudor armies’, *The journal of military history* 65 (2001), pp. 313-332; Margaret Griffen, ‘Regulating religion and morality in the King’s armies, 1639-46’ (unpublished doctoral thesis, University of Toronto, 1997): Griffen’s thesis has been published by Brill in 2004, but all references are to the doctoral thesis. See also Trim, ‘Fighting “Jacob’s Wars”’, pp. 162-169.

⁴⁸⁹ David J.B. Trim, ‘The context of war and violence in sixteenth-century English society’, *Journal of early modern history* 3 (1999), pp. 233-255, 235.

⁴⁹⁰ Phillips, ‘To cry “Home! Home!”’, p. 315.

⁴⁹¹ Adams, ‘A Puritan crusade?’, p. 181.

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service was different from the remainder of the army.⁴⁹² Most of the army's soldiers, however, took up military service because it was personally advantageous or had service thrust upon them through impressment. A soldier's method of recruitment often encapsulated certain expectations of service.

Soldiers recruited by a personal relationship with great nobles, like Leicester for example, served as a matter of personal honour; whereas, volunteers and impressed men served at the pleasure of the crown. The common soldier was a common man under arms, and this type of military service had yet to develop clear delineations between the rights and expectations of the soldier and the civilian. The individual vagaries of service highlighted significant differences in the expectations between leaders and soldiers. Leicester attempted to counter these expectations by establishing a single standard of conduct within the army and set forth in his published *Lawes and Ordinances Militarie* (1586).⁴⁹³

For the uneducated common man now under arms and the ignorant or deluded officer, Leicester's *Lawes and Ordinances* provided an essential and concise code of conduct for, at the very least the queen's companies, if not the entire expeditionary army and all Englishmen in the service of the States General. Leicester's regulations were the first code of military conduct intended for the governance of an army that were not issued by a ruling monarch, and the *Lawes and Ordinances* contained 62 ordinances: 51 were general regulations for the army and 11 applied specifically to captains.⁴⁹⁴ Every soldier was required to take an oath of service when he was enrolled into the official muster books.⁴⁹⁵

⁴⁹² Phillips, 'To cry "Home! Home!"', p. 327; Adams, 'The Gentry of North Wales and the Earl of Leicester's expedition to the Netherlands, 1585-1586', p. 132. Although much of the army's infantry forces were recruited through conscription mechanisms, Leicester's cavalry was recruited through quasi-feudal relationships: see Hammer, *Elizabeth's wars*, p. 125.

⁴⁹³ Dudley, *Lawes and ordinances militarie*: this document was produced at the Earl's command, and current research indicates that its author was most likely William Clerk, 'a judge martial in the Netherlands' c.1585-6: see Simon Adams, 'The Dudley clientele and the House of Commons, 1559-1586', *Parliamentary History* 8 (1989), pp. 216-239, 239.

⁴⁹⁴ Griffen, 'Regulating religion and morality in the King's armies, 1639-46', p. 43.

⁴⁹⁵ Thomas Digges, *An arithmetically warlike treatise named Stratioticos compendiously teaching the science of numbers as well in fractions as integers, and so much of the rules and æquations algebraicall, and art of numbers cossicall, as are requisite for the profession of a soldier. Together with the moderne militare discipline, offices, lawes and orders in euery well gouerned campe and armie inuolably to be obserued*, ed., L. Digges, 2nd edition (London: Richard Field, 1590), p. 238.

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The oath of service required soldiers to swear obedience to all superior officers and the army's ordinances, which implied an individual commitment automatic obedience.⁴⁹⁶ These regulations functioned like a military sermon, if in form they followed more closely statutory regulations, and instructed all soldiers in the minimum standards of morality, the laws of war, martial discipline, and military administration.⁴⁹⁷ Leicester ordered all captains and leaders of bands to read aloud and publish the *Lawes and Ordinances* every twenty days.⁴⁹⁸ Thus, the regulations functioned as a tool of indoctrination that conditioned the attitudes and expectations of all members of the English army in Netherlands, which in turn helped to establish the level of martial discipline necessary for operational victory.

The successful capture of towns and forts achieved by Leicester and his captains meant that the English army had to defend their new possessions. Defensive warfare in siege, had its own legal conventions, which emphasised the duties of the fortification's commander. Military governors, and captains charged with the defence of forts, were independent with little oversight from higher command; they held broad responsibility for maintaining their men and equipment, stores of provisions, pay (when they had it), and prisoners. A commander's liberal authority came with an equally large responsibility to defend their charge against the enemy. It was considered treason for a commander to surrender his fortification without certain requirements: William Segar, 'Portcullis' the herald in Leicester's St George's Day celebrations, Utrecht, April 1586, later wrote on the subject of military discipline and summarised the expectations placed upon a garrison commander: '[t]he law calleth them Traytors that indeuour to betray their Prince or the libertie of their countrey: they are also called Traytors that hauing a charge, doe yield the same vp vnto the enemie'. He goes on to say that these crimes 'ought to be capitally punished, or at the least [the offender] discharged' from military service.⁴⁹⁹

⁴⁹⁶ Phillips, 'To cry "Home! Home!"', p. 327; see Dudley, *Lawes and ordinances militarie*, sig. Biii^r [f. 11] (article 41): 'Euery Souldier at all times in service shalbe obedient and faithfull, aswell to their Captaines as other inferior Officers, & not to refuse direction of any, under whom they appointed to serue, upon paine of imprisonment, and losse of a moneths wages.'

⁴⁹⁷ Griffen, 'Regulating religion and morality in the King's armies, 1639-46', pp. 43-4.

⁴⁹⁸ Dudley, *Lawes and ordinances militarie*, sig. C^v [f. 37] (article 62).

⁴⁹⁹ Segar, *Honor military, and ciuil contained in foure books*, p. 14.

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Although Segar implies that a garrison commander was obliged to resist until the bitter end, Sutcliffe was critical of such an unrefined view of the laws of war, and he advocated for a rational pragmatism:

They that take on them to defend townes neither well provided nor fenced, howsoever they shew therein courage, yet shewe no iote of wisdom in it; for oft times they cast away themselves, and hurt their Prince, and countrey both in the losse of so many men, & in giuing courage to the enemy. And better it were for them to convey them selues into some place of safety, or to yeelde; then to holde out without reason. In which case the Prince cannot blame them, if they provide for them selues.⁵⁰⁰

A senseless defence of a place deemed poorly fortified or provisioned was thus a foolish waste of men and materials. Loyalty, to one's prince was better displayed by preserving the garrison for future engagements.

Gentili also advocates for a similar degree of pragmatism, but from an ethical perspective. He warns that to disregard an opportunity for lawful surrender, and fight-on with irrational obstinacy transforms war from a judicial process between princes into war of 'extermination'. Through the example of the Saguntines, who were said to have preferred death rather than surrender, Gentili provides evidence that obstinate resistance was contrary to the law of nature — and reason — and thereby extension, to international law.⁵⁰¹ Thus, both parties should act with reason; the conquered were obliged to surrender before they were on the point of being taken, and the conqueror required to accept a lawful surrender.

Senior English commanders agreed with Sutcliffe and Gentili, and they were willing to extend their mercy to an enemy garrison, if it meant adding another fortification to their assets. However, the allied captains that surrendered upon terms to the Spanish had the terms and circumstances of their surrender closely examined. Dutch and English theatre commanders reviewed the conditions of surrender made by the captains under their command to determine if the surrender was legal or illegal. If the circumstances of surrender were thought to have violated the state's trust in the garrison commander, the captain would be court martialled along the lines described by Segar. The

⁵⁰⁰ Sutcliffe, *The practice, proceedings, and the lawes of arms*, p. 242.

⁵⁰¹ Gentili, *DIBLT*, ii, p. 218.

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accused were charged with treason or cowardice in the face of the enemy. A legal surrender absolved the captain of any guilt for his actions, since he had acted in accordance with the laws of war. Thus, a besieged captain had two competing obligations; firstly, to surrender to the enemy before they were overrun, and secondly, to his own command to make a stalwart defence, which placed garrison captains in a precarious position.

During Leicester's campaign, the first captain forced in to this dangerous balancing act was the military governor Baron van Hemert, who held the town of Grave, which was thought to be the key to Gelderland. In November 1585, Parma dispatched count Charles von Mansfelt with 12,000 soldiers to besiege Grave.⁵⁰² Mansfelt's soldiers spent their winter circumvallating Grave, and erecting four strongly garrisoned forts, so 'that no vyttell can com to yt'.⁵⁰³ In December while the Anglo-Dutch alliance was welcoming the earl of Leicester's arrival and reorganising itself under their new commander, Grave stood alone against the Spanish. As the soldiers laboured at their siege works, Mansfeldt wrote to Hemert entreating him, as a fellow natural subject of the king of Spain, to reconcile himself with Philip and to reject the foreign English interlopers:

It is as fitting for a prudent, noble and valorous man (such as I hold you to be), to foresee evident evil, as to maintain himself resolutely in fair safe times. ...the wise man should rather run to the arms of his father, stretched out to receive him, then wait until the end of his toils, he finds a great dog with gaping jaws ready to suck his blood; which is the spectacle you may expect from the strangers you are now proposing to assist; preparing the tragedy of your ruin and their establishment.⁵⁰⁴

The letter sought to couch Grave's surrender in the rhetoric of loyalty to Hemert's true sovereign, and thus, his terms were those of reconciliation instead of the terms of surrender common to war: 'I declare that if the town of Grave will thus return to said obedience, I will continue every man in his charge, soldiers as well as citizens, on condition that they take the proper oaths, as we others have done.'⁵⁰⁵ Hemert's response to Mansfeldt was striking:

⁵⁰² Meteren, *A true discourse historicall*, pp. 80; the English ambassador thought that there was no more than 8 to 9,000 foot and 2,500 horse: *CSPF (1585-6)*, pp. xvii, 157.

⁵⁰³ *Leicester Correspondence*, p. 72.

⁵⁰⁴ *CSP Foreign (1585-6)*, p. 225.

⁵⁰⁵ *Ibid.*, p. 225.

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[I]n this case, it is not for me in particular that application must be made for reconciliation with his Majesty or to restore this town to his obedience, but to those to whom I am bound by oath of fidelity to procure the good guard and preservation of the town. Wherein I am resolved not to fail.⁵⁰⁶

He closed with the impertinent ‘pray you not to disturb me hence forth with such requests’, which placed his life in peril if the Spanish should successfully take the town.⁵⁰⁷

From December 1585 until March 1586, Grave stood alone and surrounded by Spanish forces. As the siege of Grave progressed, Hemert proved true to his word, and resisted the Spanish, but not without problems. A lieutenant in Grave’s garrison secretly conspired with Mansfeldt; the traitors offered to open ‘the gates at a watch’. Hemert appears to have had the confidence of most of his men and uncovered the plot. The twelve principals were summarily executed, in accordance with martial law, and another eight were imprisoned for later trial.⁵⁰⁸ The quick actions of Hemert indicate that the young governor was disciplined and prepared mentally to make a stalwart defence of Grave and fortified the garrison’s morale.

Ill prepared to personally march on Grave, Leicester ordered Norreys along with count Hohenlohe, and a force of 2,000 foot, to relieve and strengthen the town’s defences; they were to bring into the town an additional 300 soldiers and nine months of provisions, which they accomplished to great relief of the States and Leicester’s praise (figures 21 and 22).⁵⁰⁹ With Grave resupplied with victuals and fresh men, Leicester felt the town was strong enough to once again

⁵⁰⁶ Ibid., p. 226.

⁵⁰⁷ Ibid., p. 226.

⁵⁰⁸ *CSPF (1585-6)*, pp. 368, 364, 447.

⁵⁰⁹ Fig. 21. Baudart, *Les Gverres de Nassav*, p. 73; the image was available online: Simon Frisus and Michael Colijn, ‘Beleg van Grave door Parma, 1586’, *Rijksmuseum* <<https://www.rijksmuseum.nl/en/collection/BI-1958-935-180>> [accessed on 28 March 28, 2016].

Fig. 22. Frans Hogenberg, *Beleg van Grave door Parma, 1586*, *Rijksmuseum* <<https://www.rijksmuseum.nl/en/collection/RP-P-OB-78.784-253>> [accessed on 28 March 28, 2016].

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Figure 21. An idealised depiction of Norreys's corps opposing the soldiers of the Army of Flanders, and the English are shown marching under the banner of St. George with quartered Tudor Roses.

fend for itself for a time, and he wrote to Burghley to say 'I fear it not; for they be now well manned and well victualed'.⁵¹⁰

In May Parma came personally to Grave and took charge of the siege. The failure of subterfuge had compelled Parma to take the town by force: '[t]he enemy made a breach into the base town and entered, but were repulsed and lost three or four hundred men ... the Prince [of Parma] lies before Grave with strong power, often battering it.'⁵¹¹ The Spanish position was unassailable, the strength of Parma's army kept Leicester's much smaller force away, and Hemert had no hope of succour. Grave's walls had been breached, and according to Leicester not practicable for an assault, it soon would be. Hemert had made his

⁵¹⁰ *CSPF (1585-6)*, p. 447.

⁵¹¹ *Ibid.*, p. 633.

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Figure 22. English soldiers meet at push of pike a contingent of the Army of Flanders just outside Grave. The English company marches under the banner of the Elizabeth I and the Tudor English state.

stand, and in accordance with the laws of war and recent precedence, both English and Dutch, he should surrender with honour, which he chose to do.

Following the failed Spanish assault upon the breach in Grave's defensive wall, Hemert dispatched his drum to parley with Parma, and the defenders were allowed 'free departure with arms, flags, and goods.'⁵¹² Parma met Hemert as he marched his men across a bridge over the Meuse River, and repeated Mansfeldt's entreaty to reconcile himself with to the king of Spain, but again the plucky young military commander declined. With Grave lost, Hemert travelled to meet his commander, the earl of Leicester, perhaps thinking he would be given a new assignment in the ongoing war against Spain. He soon realised his true danger. Upon arriving at Bomell, he was taken into custody and transported to Utrecht where he was to be tried by court martial for the treasonous (i.e. illegal) surrender of Grave.

⁵¹² *CSPF (1585-1586)*, p. 695.

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Hemert's surrender had enraged Leicester, and in a furious letter to Walsingham he exclaimed that there was '[n]oe cause in the earth for women to have left [Grave]!'⁵¹³ Motley claims that Hemert was induced to surrender by his pro-Spanish mistress, and this rumour might have contributed to the hard-line taken against him. When Hemert arrived at Utrecht, Leicester had proceedings for his court martial expedited, and eminent Dutch and English officers were appointed to the duty; count Hohenlohe, earl of Essex, lord North, count Philip, count Solms, count Newenar, Colonels Norreys, Balfour, and Morgan, Captains Digby and Michel, were among those chosen to hear and judge the case. Several of Hemert's captains were also accused with complicity in the treason, and the party was arraigned on the 9 June.⁵¹⁴ The evidence presented against Hemert included statements from captains and soldiers that attested they were 'most willing and ready to have spent their lives there', and a pair of letters sent from Hemert to Leicester declaring he 'wished his Excellency to do what else he thought convenient and to have no care of Grave, for he was well able to defend it'. The a few attendant officers cast doubt upon Hemert's integrity; it was argued that the conspiracy between Hemert's officers and Mansfeldt to betray Grave had been done with his foreknowledge. Leicester accused Hemert of being a traitor and a coward; he justified this view by citing intelligence concerning the breach, which was said to have been entirely defensible.⁵¹⁵ On the evidence presented, Hemert and his captains were acquitted of treason, but found guilty of cowardice and his surrender deemed a violation of martial discipline. Despite a Dutch and English coalition's concerted efforts to have Hemert cashiered, Leicester pushed through a death sentence for Hemert, Captain Kobouko and Captain du Ban, which was carried out on 17 June 1586.⁵¹⁶

In another more important siege, the Anglo-Dutch alliance proved once again impotent in raising the forces necessary for a relief mission, and the defenders were compelled to surrender their charge or face annihilation. On 12

⁵¹³ *Leyester Correspondence*, p. 288.

⁵¹⁴ *CSPF (1586-1587)*, p. 48: lists captains Kobouko, du Ban, Dennis, and Herthoge as those arraigned with Hemert.

⁵¹⁵ *CSPF (1586-1587)*, p. 4; Digges, *A brief report*, sig. B2, *Leyester Correspondence*, p. 287-288, see also *CSPF (1585-1586)*, pp. 364, 368, 447.

⁵¹⁶ *CSPF (1586-1587)*, pp. 32-3, 48. All evidence from the trial was forwarded to the Queen for review: *ibid.*, 4.

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June 1587, Parma repositioned his forces to threaten the deep-water port of Sluis; an valuable asset for Philip's future designs against England. Leicester now was not in the provinces because Elizabeth had ordered him back London, but the siege of Sluis necessitated his expeditious return.⁵¹⁷ In his opening manoeuvres, Parma had setup two strong forts near Blankenburg, effectively dividing the allied forces and isolating Sluis from relief sent from Ostend. The Anglo-Dutch alliance needed a unified and resolute response; however, the alliance had fractured and was unable to muster appropriate action.

The Anglo-Dutch alliance had thoroughly soured under Leicester's leadership. Many Dutch leaders and a few English captains felt Leicester had abused his authority and was incapable of working in a coalition; incidents such as the execution of Hemert, his disregard of orders to maintain troop numbers at affordable levels and the consequent depredations of unpaid soldiers, and Stanley and York's betrayal, provoked the States General into curtailing his authority. The states of Holland and Zeeland made Prince Maurice their captain-general on 24 January 1587, and the post was made to supersede the military authority of even the governor-general, and following the resolution of 6 February 1587: 'they declared that "whosoever pays their wages", within the provinces of Holland there was nobody, "not even the governor-general", permitted to give orders to troops, this being the preserve of the stadholder of Holland as captain-general of the province.'⁵¹⁸

The Spanish had made some movements towards Ostend, but these were interpreted as feints. The real prize was Sluis. Arnold de Groenvelt had command of Sluis and its garrison of 800 Dutch soldiers. Upon realising that Parma's intended to take Sluis, Groenvelt wrote to Russell (the English military governor of Flushing) for aid; he had reviewed the state of his garrison, and argued that he needed more men to effectively defend the walls, and he had provisions for only eleven days, so he sent forth from the town all the women and children he could; perhaps, the non-combatants were evacuated on fleeing

⁵¹⁷ *CSPF (1586-1588)*, p. 189; appendix, p. 657.

⁵¹⁸ Nimwegen, *The Dutch army and the military revolutions, 1588-1688*, , p. 152, c.f. J. den Tex, *Oldenbarnevelt*, 4 vols. (Haarlem and Groningen, 1960-1972), i, pp. 322-3, 325; Simon van Slingelandt, *Staatkundige geschriften*, 4 vols. (Amsterdam, 1784-1785), iv, p. 114.

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ships.⁵¹⁹ Russell responded by dispatching Roger Williams with several English companies and '60 lasts of corn and some ammunition'.⁵²⁰ The supplies of men and material from Flushing succeeded in entering Sluis both by sea and overland, which brought the garrison to 1,700 (1,150 Dutch and 550 English soldiers); a pittance when compared against Parma's 16,000 troops and siege battery of 40 cannon.⁵²¹

After capturing several Dutch ships, Parma turned them to his own use, and by the 7 June, he blockaded Sluis against relief from the sea.⁵²² Parma focused his attacks against the town's south-west side, which was protected by St Anne's fort. Spanish trenches progressed under the cover of Parma's siege battery. Sluis did not have the cannon and munitions with which to counter-attack the Spanish artillery. The best the garrison could do was to bring their muskets against individual targets labouring in the trenches. On 24 June, the Spanish trenches threatened St Anne's fort, and the cannons were repositioned to bear directly upon the town. Leicester, alerted to Parma's advance, had sailed prematurely with fresh, and yet unequipped, levies from Margate, and arrived at Flushing on 25 June.

Upon his arrival at Flushing, Leicester rapidly stirred the States into action. Leicester's strategy to relieve Sluis was predicated on causing Parma to withdraw. count Hohenlohe was dispatched with a force to raid Bommell in the hope that Parma would lift his siege of Sluis to counter a perceived invasion by the States into the Brabant. Parma's answer was to maintain the siege, but a contingent was detached to counter Hohenlohe's thrust. The States' political reorganisation of the army's command had left Leicester without the authority to command Dutch troops directly. If he was to relieve Sluis, he could only count on the forces directly under his command, and even here the States opposed his efforts.

A determined Spanish attack was made against St Anne's fort on 7 July. The defenders managed to repulse it but with considerable losses on both sides.

⁵¹⁹ *CSPF (1587)*, p. 87.

⁵²⁰ *Ibid.*, p. 88.

⁵²¹ *Ibid.*, pp. xiv, 98, 107, 110.

⁵²² *Ibid.*, p. xv.

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It was determined that St Anne's fort had to be sacrificed to preserve Sluis for a brief time longer, and troops withdrew on 8th. Parma took advantage of the withdrawal and seized the fort. This caused the Spanish to shift their efforts to capturing the Westport. Parma sent terms of surrender to the garrison, but the garrison refused to even parley. The siege battery was repositioned to better support the advance, and on 14th the town face its heaviest cannonading to date, which was followed by a series of frontal assaults. The defenders meet each of these and managed to turn them back.

On 19 July, Leicester had organised his resources and was prepared to muster another design to relieve Sluis. The plan was to land at Ostend and march the army north against Parma's forts at Blankenburg. The English mustered their army at Ostend with Willoughby commanding 4,000 foot, and Russell leading 400 horse. Leicester's army advanced on 24 July, and discovered the Spaniards' position well prepared, and after a slight show of force, it was determined that an attack from this direction could not succeed. In defeat, the English withdrew to Ostend. The army was commanded to re-embark, and Leicester, in conjunction with the Dutch naval captains, decided that the best option was to relieve Sluis from the sea; however, after seeing Parma's naval blockade, the naval captains refused to advance (figure 23.).⁵²³

The defenders were exhausted; their powder stores nearly extinguished, and morale near its breaking point. The weather worsened and the Anglo-Dutch flotilla sailed away in full view of Sluis's defenders. Williams gives an account of the garrison's council of war assembled to reconsider surrendering to Parma:

[S]ixe daies before we gave over the towne, all the Captains and Officers met in councell: hauving seene our dangers, and some perceiuing the heate of our succours, wee assigned our Articles of Composition, swore all to haue them graunted vnto vs or to dye, and to burne the Towne and Castle, so escape that could through the drowned land.⁵²⁴

The minutes from the meeting were sent to Leicester and the States, but these were intercepted by Parma's troops. Knowing the disposition of the garrison,

⁵²³ Fig. 23. Baudart, *Les Gverres de Nassav*, p. 109; the image was available online: Simon Frisus and Frans Hogenberg, 'Beleg van Sluis door Parma, 1587', *Rijksmuseum* <<https://www.rijksmuseum.nl/en/collection/RP-P-OB-80.050>> [accessed on 28 March 28, 2016].

⁵²⁴ Evans, *The works of Sir Roger Williams*, p. 50-1.

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Figure 23. The Army of Flanders besieges Sluis (1587) which is defended by English and Dutch soldiers.

Parma willingly granted the beaten garrison ‘no good conditions’.⁵²⁵ In a letter intercepted by English agents, Parma had written to count Charles de Mansfeld and Charles count of Barlemont acknowledging that the winning Sluis ‘cost him dearer than did Maestricht in respect of the great means and preparations... and hath lost forty-five of his best captains and principal soldiers... [a]nd yet hath between five and six thousand of his common soldiers slain.’⁵²⁶ And despite the Englishmen’s obstinate defence, Parma thought it more useful to deal with them favourably.

In Leicester’s opinion, the surrender of Sluis mirrored Hemert’s betrayal of Grave. Williams, perhaps sensing the defenders’ perilous situation, wrote early to Leicester proclaiming the garrison’s loyalty: ‘You may assure the world

⁵²⁵ *CSPF (1587)*, p. 260.

⁵²⁶ *CSPF (1587)*, p. 235. Parma thought that making good terms with the English would have second and third order political benefits.

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here are no Hamerts, but valiant Captains and valiant soldiers'.⁵²⁷ With Sluis in the hands of the Spanish, and Leicester thoroughly confounded by his own shame at failing to relieve the town, he refused to entertain Williams until he had received a full accounting of the surrender.⁵²⁸ English practice required a garrison commander to first seek permission from their superiors prior to surrendering their charge. After hearing the accounts from the garrison captains, Leicester determined that their actions and surrender were lawful. The hearings minutes as before were forwarded to Elizabeth and her council for further review. Williams also, exhausted from his extended fighting at Sluis, accompanied these and personally presented their case to the queen.⁵²⁹

The laws of war in battles

Sieges had greater bearing on the overall course of the war, but battle was the ideal form of war. 'The preference for frontal assaults and pitched battles on the part of the English was evident in the late Elizabethan wars, and this remained true through the wars of the Three Kingdoms.'⁵³⁰ Gentili stresses on several occasions that regular war consists of pitched struggles (i.e. battle), and in doing so he minimises the utility of other military types of military operations.⁵³¹ In English martial and legal discourse, sieges were often viewed as an indication of mediocre general-ship; battle, however, was the perceived as the more decisive means of waging war.⁵³² The Elizabethans' love of the battle, and its promise of honour and glory, had a long and victorious tradition; pitched battles had broken the power of France and the heroic examples of the Hundred Years War were lauded – Crecy (1346), Poitiers (1356), and Agincourt (1415); in addition, the battle of Flodden (1514) had greatly reduced the military power of Scotland. Battles loomed large in the martial imagination of English soldiers, and

⁵²⁷ Motley, *The history of the United Provinces*, ii, 256, c.f. Williams to Leicester 29 June/ 9 July 1587.

⁵²⁸ *CSPF (1587)*, p. 200.

⁵²⁹ *Ibid.*, p. 218.

⁵³⁰ Roger B. Manning, *An apprenticeship in arms: the origins of the British army, 1585-1702* (Oxford: Oxford University Press, 2006), p. 7.

⁵³¹ Gentili, *DIBLT*, p. 14.

⁵³² Tallett, *War and society in early modern Europe, 1495-1715*, pp. 52-3.

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so it could not easily be discarded. It was only when an enemy could not be brought to battle that cities should be taken to provoke him to fight.⁵³³

War embodied, in the minds of most officers and soldiers, a valorous struggle between men and their arms, and therefore battle should not be confined within the artificial categories of either siege or field engagement. Sieges had special laws relevant to that environment, but the laws of actual combat were universal. The environment, whether in or around a fortification, in the field, or an enemy's camp, did not alter the legalities of bringing weapons to bear against the enemy in battle: '[a]n enemy is justly killed anywhere.'⁵³⁴ The English military elite's passion for battle provoked suspicion in Elizabeth.

The queen had set out limited military objectives in 1585-7 and always sought to restrict military operations to reduce their risks and costs.⁵³⁵ She and her council had devised a two-pronged strategy designed to bring Philip to a point where a negotiated settlement with the Dutch could be reached. The first prong entailed preserving the Dutch. The queen's goal for Leicester's expedition was to fortify the Dutch provinces against further losses; particularly, Elizabeth wanted to preserve Dutch ports, and her cautionary towns, against Spanish occupation because she feared that the Spanish would use these ports to launch future attacks against England.⁵³⁶ The second prong attacked Philip's treasure ships and thus the finances underpinning the Army of Flanders. Sir Francis Drake was chosen to lead a public-private partnership and to attack Spain's colonies in the New World.⁵³⁷ If it had been successful, Drake's fleet would have captured Havana as a forward naval base from which to attack the king of Spain's vital flow of silver. Such a grand strategy required Elizabeth preserve, to the best of her abilities, all her precious resources.

Elizabeth issued clear instructions to Leicester regarding the forthcoming campaign: 'his lordship is directed to bend his course, during his charg there, rather to make a defensive then an offensive war, and not in any sort to hazard

⁵³³ Sutcliffe, *The practice, proceedings, and the lawes of arms*, p. 150.

⁵³⁴ Gentili, *DIBLT*, ii, p. 168.

⁵³⁵ Hammer, *Elizabeth's wars*, pp. 123-4.

⁵³⁶ Wernham, 'Elizabethan war aims and strategy', p. 349.

⁵³⁷ Wernham, 'Elizabethan war aims and strategy', p. 362; Hammer, *Elizabeth's wars*, p. 123.

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a battaile without great advantage.’⁵³⁸ Leicester kept to the spirit of the larger strategy if not the letter of his instructions. From intelligence reports and Parma’s initial attacks, Leicester determined that the Spanish, already in control of Groningen and key points in Overijssel and Gelderland, intended to use the IJssel River crossings at Deventer and Zutphen to ‘turn the Dutch eastern flank, roll up their main southern defence line along the Maas and Waal [Rivers], and reduce them to a position more desperate than that of Holland and Zeeland had been in 1575-1576.’⁵³⁹ Leicester knew the States’ eastern approach was weak, ‘*Guelders and Ouerissell stood on fickle tearmes*’, and his armies were no match for the enemy in the field, Leicester moved to fortify the IJssel and thus preserve the Dutch which had the secondary effect of drawing Parma into a position that Leicester believed he could win and relieve the besieged.⁵⁴⁰ To understand Leicester’s actions better, it is necessary to take seriously his chief advocate’s declaration: ‘a Generall ought neuer giue battaile to his *Enimie*, without great and apparent reason either of *Advantage* or *Necessitie*.... For there is no Enimy sooner ouerthrowne, than he that will accept Battlie whensoever it is offered’.⁵⁴¹

Pitched battles like those fought in the Hundred Years War were a rare thing and none occurred during any of Leicester’s campaigns. What Leicester and the English armies fought in the way of battles were skirmishes; these most often were neither great nor decisive. Skirmishes could include almost any type of combat operation in the field: from raiding an enemy’s supply train, fighting in no-man’s-land (that strip of terrain between two forces involved in a siege), and ambushes against an enemy. The laws of battle had no regard for unique circumstances, instead they were a broad set of guidelines for individual conduct, and this made the regulations equally applicable to both assaults during a siege as well as in field engagements. The most important aspect of

⁵³⁸ *Leycester correspondence*, p. 12; Leicester’s instructions were a repeat of those that Norreys had been issued and which he subsequently ignored to the queen’s displeasure: Hammer, *Elizabeth’s wars*, pp. 123-4.

⁵³⁹ Wernham, ‘Elizabethan war aims and strategy’, p. 350.

⁵⁴⁰ Digges, *Briefe report of the militarie services done in the Low Countries, by the Erle of Leicester*, no sig. B3^r-v; Digges, *Stratiticos*, p. 333.

⁵⁴¹ Digges, *Stratiticos*, p. 322.

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these customs was to differentiate between the ‘hot action’ of immediate battle and a distinctly lower intensity state of a ‘general’ martial readiness.

Gentili understood the impositions on soldiers in the heat of battle, but he also sought to delineate the heat of battle from lower intensity operations of war.⁵⁴² The heat of battle permits all manner of violence because there ‘reason lies prostrate and the hands, as though intoxicated, do not obey the mind’; however grim the necessities of battle may be, it was definitely separate from that period where ‘danger is finally averted, the ardour of mind quieted, and thoughts restored to peace’.⁵⁴³ Once free from an immediate threats to life and limb, the soldier could not rightly slay another in cold blood.⁵⁴⁴ These he argued were the laws and customs of battle handed down from time out of mind.

Thus, a legal and physical space was created that at the same time acknowledged the violent necessities of battle, but also sought to limit the same from senseless slaughter. Gentili tried to identify a point in combat operations, where the fury of battle ended and intoxicated hands sobered, so that mercy might be extended to the defeated.⁵⁴⁵ Therefore, there was a legal point in battle when the law of war asserted itself, and afterwards senseless slaughter was potentially illegal. Mercy in the aftermath of battle was very difficult to achieve, since at many times the end of a battle was signified when one side threw down their weapons and ran away from threat of death; such actions excited the ‘chase instinct’ among the victors, and slaughter often followed of the disarmed retreating mob, which was no crime but the regular exercise of war.⁵⁴⁶ An individual attempting to surrender was entering into a dangerous situation. A soldier faced the greatest risk when attempting to surrender, since custom prohibited a soldier from surrendering while he retained his arms. While

⁵⁴² Ibid., p. 210-1.

⁵⁴³ Ibid., p. 211.

⁵⁴⁴ Ibid., p. 211.

⁵⁴⁵ Parker, ‘The etiquette of atrocity’, p. 155: the space following the fury of battle where prisoners should be taken was acknowledged by various contemporaries, and Parker highlights two exceptional examples: following the storming of Mechelen (Malines) in 1580, a group of Protestant soldiers had invaded a convent, and the nuns there begged them for a swift death, but the soldiers surprised by this replied that the ‘fury was over and they no longer had license’.

⁵⁴⁶ David Grossman, *On killing: the psychological cost of learning to kill in war and society*, revised edition (New York: Back Bay Books, 2009) pp. 127-129.

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under arms he must fight: 'he has gone beyond all crimes and all guilt who has allowed himself to be taken with arms in his hands'.⁵⁴⁷

Lord Willoughby, while serving as the military governor of Bergen-op-Zoom (1586-8) led a raid against a Spanish supply column. He received intelligence of the column's route to Antwerp on 23 May 1586, and assembled a force of 200 horse and 400 foot, and set a course to intercept and ambush the Spaniards' 450 wagons and their escort of 1,000 foot. The ambush was a success, and they put 423 wagons laden with supplies to the torch. The destruction of the wagons meant the escort had failed in their duty, and many of them fled the battle. This was immediately exploited, and 300 soldiers in the service of Spain were slaughtered in their retreat; however, as the fury of the assault diminished 80 prisoners taken.⁵⁴⁸

A similar engagement of this type occurred just beyond Zutphen's Loor-Gate and near the neighbouring village of Warnsveld on the 22 September 1586.⁵⁴⁹ The 'skirmish' of Zutphen remains famous in Anglophone historiography because it claimed the life of the famous poet-cavalier Sir Philip Sidney, and because '[t]here was too many indeed at this skirmish of the better sort'.⁵⁵⁰ In military terms, the battle was a Spanish victory. The Spanish held the fortified town of Zutphen; however, it was poorly provisioned, and in this state, it could not hold out long against the ongoing English siege. Determined to strengthen

⁵⁴⁷ Gentili, *DIBLT*, ii, p. 213.

⁵⁴⁸ *CSPF (1585-1586)*, pp. 678, 687; Digges, *A brief report of the militarie services done in the Low Countries*, sig. B2 +4 (no sig.); Stowe, *Annals*, p. 730.

⁵⁴⁹ The contemporary English historian Edward Grimestone gives this distance; however, the modern village is closer to 2.2 km from Zutphen; Grimestone, *A general historie of the Netherlands*, p. 804.

⁵⁵⁰ *CSPF (1586-1587)*, p. 165; the flower of English chivalry was present at the skirmish: the best list is recorded in George Whetstone, *Sir Philip Sidney, his honorable life, his violent death, and true virtues* (London: T. Cadmanbr, 1587), p. C'.

The English primary accounts of the skirmish at Zutphen are contained in Leicester's correspondence, and these are partially printed in G.F. Beltz, 'Memorials of the last achievements, illness, and death of Sir Philip Sidney', *Archaeologia* 28 (1840), pp. 27-37, *CSPF (1586-1587)*, pp.164-166 (Leicester to Burghley, 24 Sept., particularly the postscript); *Leycester Correspondence*, pp. 415-417 (Leicester to Walsingham, 27 Sept.); Arthur Collins, ed., *Letters and memorials of state, in the reigns of Queen Mary, Queen Elizabeth, King James, King Charles the first, part of King Charles the second, and Oliver's usurpation*, 2 vols. (London: T. Osborne, 1746), i, p. 104-5 (Leicester to Heneage, 23 Sept.); Digges, *A brief report of the militarie services done in the Low Countries*, sigs.. D1-D2; Meteren, *A true discourse historicall*, pp. 87-91; Stowe, *Annals*, p. 736; Grimestone, *A general historie of the Netherlands*, p. 798.

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Zutphen, Parma dispatched a supply convoy with an escort from his camp at Borculo. The convoy was massive, and consisted of at least 100 wagons, laden with enough victuals to feed 4,000 people for three months. The escort matched the convoy in size, and included 600 horse and 2,500 foot, the latter primarily musketeers.⁵⁵¹ Before the convoy left Borculo at midnight on the 22 of September, Parma dispatched a messenger to coordinate with Zutphen's commander Francisco Verdugo; however, the messenger was captured by the English on 21 September, and under questioning surrendered the general details to Leicester.⁵⁵²

Leicester acted quickly upon this intelligence, and ordered Norreys and Stanley to prepare an ambush for the convoy near Warnsveld. The English force consisted of Norreys's detachment of 300 horse, and Stanley's 1,600 Irish infantry. Leicester's intelligence was without a doubt insidious and designed to draw the English into assaulting a numerically superior foe, in the hope that they would be crushed in a Spanish counter-attack.⁵⁵³ An anxious Leicester, along with an entourage of England's leading officers, decided to make a first-hand survey of Norreys's preparations. The Spanish column successfully marched through the night, and took up a defensive position to rest near the village of Warnsveld.⁵⁵⁴ While his men rested in preparation for the final leg of the march

⁵⁵¹ Parma described the escort as 2,500 infantry and 600 cavalry: Motley, *History of the United Netherlands*, ii, p. 44, c.f. Parma to Philip 1 October 1586 (Archives de Simancas) also the Spanish partisan Farnianus Strada, *De bello belgico decades duae*, 2 vols. (Rome, 1682) records the number of wagons at 300, thus putting the convoy's size similar to the one which Willoughby had taken near Antwerp.

Leicester estimated the enemy's strength at 1,200 horse and 3,000 foot; these came from his own large view of the battlefield, as he moved about it, and his interrogation of captured officers, namely Captain Giorgio Cresso, in *CSPF (1586-1587)*, pp.164-166, *Leycester Correspondence*, pp. 415-417, and for the number of wagons see Stowe, *Annals*, p. 736.

⁵⁵² Digges, *A brief report of the militarie services done in the Low Countries*, pp. D1-D2: reports that his 'his Excellencie [Leicester] hauing intelligence that the Prince [of Parma] would the next morning send a convoy of victuals into Zutphen'; Collins, *Letters and memorials of state*, i, p. 104: Leicester wrote to Heneage that he had 'some Intelligence was brought' to him; the claim that it was a captured messenger that informed Leicester, and is found in Motley, *History of the United Netherlands*, ii, p. 44-5, which makes logical sense.

⁵⁵³ Every source gives different number for the English involved; Leicester writing just after the skirmish gives 150 horse and 300 infantry! (*CSPF (1586-1587)*, pp.164-166 and *Leycester Correspondence*, pp. 415-417; however, I am more inclined to trust the numbers given Leicester's muster master Thomas Digges in *A brief report of the militarie services done in the Low Countries*, pp. D1-D2: he gives 300 English horse and 1,600-1,700 foot, but whatever the numbers, the English were severely outnumbered by the Spanish.

⁵⁵⁴ The rally point near the village of Warnsveld was an important stop in the column's march to Zutphen. The infantry especially would have been tired from their estimated 22 km (14 mile) night march from the camp at Borculo, and, so close to the English position (the vanguard was

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into Zutphen, the column's commander Marquis de Vasto received word from a scout that the English might be laying in ambush along their route.

The English foot first discovered the Spanish position. The Irish regiment took up positions around a church on the edge of Warnsveld, and the infantry under George Touchet, baron Audley, advanced at his flank, where they encountered the Spaniards' picket-line. Spanish musketeers and Audley's foot exchanged fire, and Audley reported that 'our men fell into the Ambuscade of Footemen'.⁵⁵⁵ Wings of Spanish musketeers were extended against the English army's infantry, while the pike men remained in place preserving the Spanish defensive line and to protect the convoy. The Spanish musketeers forced Audley to fall back on Stanley's position, where the infantry exchanged musket fire, but the Spanish momentarily established fire superiority. '[N]ot liking the hot vollies of musket shot', Stanley ordered his men to form up into a square, and 'at the push of their pike... put the whole companie [of Spanish musketeers] to retreat'.⁵⁵⁶ After countering the advance of the Spanish musketeers, Stanley recalled his men, and ordered them to fall-back out of musket range. The battle required the coordinated movement of the foot companies, and their discipline prohibited them from taking prisoners during the exchange. Success in infantry battle required the squares of pikemen to advance as a single body of men; any individual breaking ranks risked execution.⁵⁵⁷ Indeed there was little opportunity to take prisoners amidst the hot volleys of musket fire, and any wounded or straggling Spaniards would have been dispatched; the law of battle at this point mandated violence of action.

Nor should we think that the Irish infantry would have been over eager to take the enemy prisoners of war when given the chance. Stanley's foot band were recruited in Ireland from his followers during his service there, and they had acquired a savage reputation during their short service under Leicester. One of Leicester's personal guard, Henry Archer thought the Irish companies in the

located at 'Gibbet Hill' and the main force across the IJssel River - to Zutphen's western flank - but relatively removed from the column's line of march, which came from the East), they needed all the soldiers ready for a fight.

⁵⁵⁵ Collins, *Letters and memorials of state*, i, p. 104.

⁵⁵⁶ Stowe, *Annals*, p. 736.

⁵⁵⁷ Dudley, *Laws and ordinances militarie*, p. 4.

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Netherlands were a hard lot: ‘for none were so ready to burne, nor so ready to kill all that few escaped them.’⁵⁵⁸ Furthermore, Deventer’s magistrates had complained to the English Council of State that Irish troops ‘have committed every excess’, and they were also accused of accosting a burger’s pregnant wife.⁵⁵⁹ This, however, should not be taken as an outright condemnation. Companies were often judged based on the reputation of their captain, and Stanley was a respected captain until his conversion to the Spanish cause in 1587. After Zutphen, however, Leicester praised Stanley’s fortitude and service, and considered him as a captain of rare quality.⁵⁶⁰ The Irish companies far from being criminals ignorant of the laws of war, time and again proved their worth to Leicester, and he valued there service. The English horse advanced in coordination with the withdrawal of the infantry, and they took up positions in front of the infantry’s squares.

Amidst the Spanish convoy, Vasto was not idle, and he commanded his cavalry Captains Giorgio Cresso and count Hannibal de Gonzaga to lead their coronets of horse against the English position.⁵⁶¹ Several exchanges were made between these two cavalry corps. Their charges left 30 enemy killed or overthrown from their mounts, and among those killed in the initial clash was Gonzaga ‘by a deadly wound there slaine.’⁵⁶² Essex broke his lance in unhorsing his first challenger. Norreys, eschewing the lance in favour of the pistol, raised it against an assailant but had his weapon failed to discharge, so he set about bludgeoning his opponent into submission. It soon became clear that the English horsemen had won the cavalry engagement, and those still able members of the Spanish cavalry quickly fell-back on the protection of their infantry musketeers.

The victory, however, was a pyrrhic one. The much beloved Phillip Sidney was grievously wounded; a bullet had shattered his femur. Sidney’s wound struck a powerful blow against Leicester’s will to fight. The English force was far too small to resist the full weight of the Spanish escort and orders were given to

⁵⁵⁸ Stowe, *Annals*, p. 734.

⁵⁵⁹ *CSPF (1586-1587)*, p. 241; William Palmer, ‘Gender, violence, and rebellion in Tudor and early Stuart Ireland’, *The sixteenth century journal* 23 (1992), pp. 699-712, 706-707.

⁵⁶⁰ *Leycester Correspondence*, p. 417.

⁵⁶¹ Stowe, *Annals*, p. 736

⁵⁶² Meteren, *A true discourse historicall*, p. 88.

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collect their wounded, prisoners, and withdraw from the fight. All was accomplished in good order, the English withdrew before the superior Spanish force, which could if it moved in force, thoroughly overmatch Leicester's much smaller troop.

How were prisoners taken then? The key appears to lay in the weapons and tactics used by certain types of military formations. Infantry combat by its very nature had limited opportunities to take enemy soldiers as prisoners of war, and this was illustrated at Zutphen. Where the infantry on both sides employed musketeers, these soldiers moved in loose groups but largely each man fought as an individual. They gave fire when and where they could, but then each man needed to withdraw, seek cover, or receive protection from his fellows while he laboriously reloaded his piece. Musketeers were often unarmoured, and the wounds caused by these weapons were in many cases fatal even with immediate medical treatment as the case of Sidney bears out. The primitive medical care available to the common soldier was far inferior to that which Sidney had received. Pike men with their somewhat less lethal melee weapons (pikes, halberds, swords and daggers) did not fight as individuals but as a group, which magnified their killing potential, and by the same processes inhibited them from taking enemy combatants prisoner.⁵⁶³ In the cavalry operations, however, many English horsemen went into battle with their lances couched, like the earl of Essex, rather than pistols blazing, as Norreys had. Those lancers riding on to the field that day were armoured better than the footman with at a minimum cuirass and helmet. Lancer training conditioned the soldier to delivering the point of the lance to the opponent's chest, which was protected by their armour (i.e. cuirass). Thus, the lance tended to knock an armoured enemy from their horse, dazed and confused, to the ground. Therefore, a lancer's principle weapon system presented more opportunities to incapacitate an enemy, and ultimately take them prisoner, since they were left alive if temporarily incapacitated on the battlefield. There is an excellent example of these conditions producing prisoners at Zutphen.

Numerous Spanish lancers were 'unhorsed' in the exchanges with their English opposites. One case provides insight into the battle and prisoner taking

⁵⁶³ Grossman, *On killing*, pp. 152-3.

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process. When Willoughby's cavaliers rode into the fray that day, coming shortly after Norreys's cornet, which led the first strike, Willoughby and Cresso perhaps lined up with one another. Both would have observed the quality of their clothing and armour, and easily identified each other as equals, but it is just as likely chance made the match. Nevertheless, Willoughby drove his lance into Cresso unhorsing him. Cresso although well armoured was clearly dazed by the blow, and cried out from the ground: 'I yield your prisoner'!⁵⁶⁴ However, in the heat of battle Willoughby did not himself stop fighting to personally take Cresso prisoner, instead Willoughby carried the fight to the enemy. Some of the dismounted Spanish soldiers had banded together and attempted to capture Willoughby. Did some of Willoughby's cornet take Cresso prisoner? After the battle, Leicester and Cresso spoke in the Earl's tent, and Cresso refused to be the 'prisoner of any but to him who unhorsed him'. At seeing Willoughby, still in his armour and returning from the skirmish, enter the tent, Cresso said 'this is the knight that I am prisoner to'.⁵⁶⁵ There may have been a conflict between Leicester's *Ordinances Militarie*, which asserted that Leicester had authority over all prisoners of war, but Willoughby had Cresso 'adjudged to be his'.⁵⁶⁶ The course of Cresso's capture and ransom includes much that is hidden from direct inquiry, but some of this can be discovered.

How were prisoners, particularly those of noble status, taken prisoner? Cresso seems to have submitted himself to the English as a prisoner. The taking of prisoners in battle had long established precedents in both the law and customs of war. Custom held that a prisoner could be taken at any time. In the later Middle Ages, all that was required was a verbal promise. "Simple words suffice", says Bartholomew of Saliceto; a man had only to say "I yield myself your prisoner", and a firm bond was established.⁵⁶⁷ This is very close to Cresso's exclamation, and he acted according to this custom. He very well may have considered himself a prisoner of war at the very point he cried out his submission. "Once a man has given his faith", says Bartholomew of Saliceto, "even if he is rescued by his own side while the battle continues, he is not freed

⁵⁶⁴ Stowe, *Annals*, p. 736.

⁵⁶⁵ *Ibid.*, p. 736.

⁵⁶⁶ *Ibid.*, p. 736.

⁵⁶⁷ Keen, *The laws of war in the later Middle Ages*, p. 164.

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from his captivity or from the faith he has pledged.”⁵⁶⁸ Cresso, believing that his faith was so pledged, was then required to bring himself to the English camp to set the terms of his ransom. Therefore, prisoner status among the nobility might be as much a mental state — believing oneself to be a prisoner — as it was a state of physical confinement. It was not unheard of to grant certain prisoners ‘liberty’ to move about freely within a town whereas others were ‘straightly’ kept confined to a room, prison, or in irons.⁵⁶⁹ Nevertheless, Cresso’s actions were likely anachronistic and his thinking unique to the end of an age. The English more commonly equated the status of prisoner with physical confinement, and if one escaped confinement, either by his own wit or the arms of his comrades, then he was free: ‘[w]ho so is taken in the war, ought by the law of Nations to be reputed a lawful prisoner: yet if hee escape and return home, he recovereth his former estate.’⁵⁷⁰ To be a prisoner required one to be held in confinement. After a prisoner was taken into custody, what was the process of ransom or exchange?

A prisoner in the later Middle Ages provided his own ransom; he offered pledges and sureties so that if he was release on parole, his captor felt assured that his prisoner would return the payment, or resume his confinement. Returning to Cresso’s experience as a prisoner of war, he put into writing his ransome contract which dictated the amount to be paid and described the sureties that Willoughby could count upon from him: ‘[m]y intent in this is to offer your Lordship a thousand crowns of gold, and I trust that my friends will not leave me here, but for myself, I cannot pay a stiver more, if I stay all my life in prison.’⁵⁷¹ Cresso’s ransom shares many similarities with the medieval customs associated with the laws of arms. Gentili does not delve into too much detail regarding personal ransoms. Instead, he said a soldier’s personal ransom contract should be simple:

I add that in the same way in the canon law and in the canonical courts all contracts are in good faith; for there a plainer and more natural justice obtains. Just as with soldiers the law of nations or natural justice is observed without the strictness of the civil code,

⁵⁶⁸ Ibid., p. 167.

⁵⁶⁹ *HMC Ancaster*, pp. 28, 125 (liberty); *CSPF (1586-7)*, p. 216 (in irons).

⁵⁷⁰ Segar, *Honor military and civil contained in four books*, pp. 40, 41.

⁵⁷¹ *HMC Ancaster*, p. 37.

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according to the opinion of all the commentators. In fact, a soldier ought to know arms and not the law, and it is proper that military men should be ignorant of the law. It is a military custom to regard as ridiculous and silly the subtleties of the courts.⁵⁷²

Therefore, a personal ransom contract was between the two parties; the party being ransomed and the party holding the captive, and it was placed outside the regular actions of war, and it did not involve the state. This was useful because the state should be the arbiter in cases of default: ‘soldiers ought to be compelled by their sovereign and by the judge to keep the agreements which they have made with the enemy’⁵⁷³ A personal ransom, however, remained something unique to elites: ‘the richer prisoners are spared with an eye to their ransom’, which could not be extended to the common soldiers, who ‘now die in greater numbers’.⁵⁷⁴

How were those common soldiers dealt with then? The common soldier – the privates, corporals, sergeants, and lower ranked officers – were during the years of Leicester’s expedition ransomed and exchanged by colonels and other regimental level officers, or perhaps even higher ranked officers within the army. The management of prisoners occupied a fair amount of a colonel’s time.⁵⁷⁵ The colonel corresponded with enemy officers of equal, and sometimes higher rank, to negotiate the specifics; who was being ransomed and for what price or how many enemy personnel were to be exchanged. The regiment’s ‘drum’, or ‘trumpeter’, served the colonel as his agents in these negotiations, and travelled back and forth bearing correspondence to conclude agreements. During the campaigns of Leicester formal exchange rates and ransoms for the various ranks had not been set which left to commanders the responsibility of settling the terms on an ad hoc basis.

International norms governing the treatment of prisoners was becoming institutionalised, and even expanded to better reflect the early modern military structure and growing organisation. The ransoming and exchange of prisoners

⁵⁷² Gentili, *DIBLT*, ii, p. 204.

⁵⁷³ *Ibid.*, pp. 184, 183.

⁵⁷⁴ *Ibid.*, p. 332.

⁵⁷⁵ The ransom and exchange of prisoners featured in many of Willoughby’s correspondences: *HMC Ancaster*.

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became a matter governed by international agreements. In 1599 the United Provinces and Spain established a compact for the formal exchange of prisoners called the *cuartel* (or cartel) *general*. It stated that captains should ransom their prisoners of war within 25 days of their capture. Prisoners of the same rank should be exchanged on a one-for-one basis, and in any other case, the prisoners should be ransomed at approximately one month's pay plus the cost of their upkeep while imprisoned.⁵⁷⁶ In 1602, a schedule of Dutch and Spanish exchange rates and including minimum standards for keeping prisoners of war (their 'entertainment') was agreed to and later printed in English.⁵⁷⁷ The agreement of 1602 should be considered a great success because it would be reinstituted in 1622 following renewed hostilities.⁵⁷⁸ Therefore each ransom, or exchange, during Leicester's intervention had to individually negotiated, and each agreement possessed their own particular characteristics and absent was any type of standardisation.

⁵⁷⁶ Parker, 'The etiquette of atrocity', pp. 160-1.

⁵⁷⁷ Henry Hexham, *An appendix of the lawes, articles, & ordinances...* (The Hague: Isaac Burchoom, 1643), pp. 13-17.

⁵⁷⁸ An English translation of the compact is held in Hexham, *Appendix of lawes, articles, & ordinances established for marshall discipline*.

Chapter 5.

‘War upon the rebel’: Elizabethan military conduct in Ireland (1569-1584)

*The rebellion of subiects against their lawful Princes, is also sufficient cause to arme the prince against them, he carieth not the sword for other purpose, but to repressse the wicked and rebellious. ...for although rebels and pyrates, and robbers are not accompted among the number of lawfull enemies ... nor were to be vsed as enemeies in lawfull warres; yet is the force used against them most lawfull.*⁵⁷⁹
—Matthew Sutcliffe

Writing at the height of the Desmond revolt, a despondent Henry Wallop remarked to Francis Walsingham ‘[t]here is no way to daunt these people but by the edge of the sword’.⁵⁸⁰ Irish service was viewed by those professional English soldiers who experienced it and cared to write on the matter as some of the hardest duty. The veteran William Pelham, while locked in a difficult winter campaign, felt bold enough to proclaim to the English Privy Council: ‘if I have any judgment, all the soldiers of Christendom must give place ... to the soldier of Ireland’.⁵⁸¹ Pelham, like a few other officers in Ireland at this time, had some experience in continental wars and more than a passing experience with the laws of war. He participated in negotiating the surrender of Le Havre to the French, and to ensure that the terms of surrender set at the treaty of Troyes (1564) were fulfilled he was held as a hostage.⁵⁸² Over the course of continental warfare, English captains took notable steps to execute their military operations in accordance with acceptable standards of violence and were loath to allow brutal actions to dominate their campaigns. Ireland, however, was no war; it

⁵⁷⁹ Sutcliffe, *The practice, proceedings, and the lawes of arms*, pp. 5-6.

⁵⁸⁰ *CSPI (1574-1585)*, pp. lxxxii, 317; TNA SP 63/85/27.

⁵⁸¹ *Cal. Carew (1575-1588)*, p. 219.

⁵⁸² John J. N. McGurk, ‘Pelham, Sir William (d. 1587)’, *Oxford Dictionary of National Biography* <<http://www.oxforddnb.com/view/article/21800>> [accessed on 4 November 2013].

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was a rebellion and Elizabethan political, legal, and cultural influences incentivised soldiers to commit savage acts against rebels.

Shaping Elizabethan Counterinsurgency Doctrine and the Laws of Armed Conflict

Conscious of the customs and laws of war as the English were in their foreign wars, the Irish wars were something different. The English perspective maintained that the so-called Irish wars were actually unlawful wars of rebellion. The English military's purpose in Ireland was to bring the island and its peoples - Gaelic Irish, Anglo Irish, and New English - under the civilising laws and central government of England. Pelham's commission appointed him to the position of Lord Justice of Ireland; a title that reflected his peace keeping and counterinsurgent mission. He had been sent by the queen 'to protect the peace, laws, customs, and all liege subjects, English and Irish ... [and] to do justice to all persons according to the laws and customs'⁵⁸³. The commission implies there were known domestic legal and customary precedents that directed martial conduct in military peace keeping operations, and that these imposed the requisite restraints, where necessary, upon counterinsurgency operations.

Just as the English campaigns in the Dutch conflict, and particularly Leicester's expedition, became the seeds which grew into the more formal law of war doctrines described by Alberico Gentili and Matthew Sutcliffe, so did the rebellions of 1569-1573 and 1579-1584 result in William Cecil's politico-legal reframing of rebellion, which Catholics in Ireland called holy war. Most Elizabethan's regarded holy war as something akin to rebellion for the sake of conscience, and nothing more than treason. By the 1580s, William Cecil, the baron of Burghley, and central figure in the Elizabethan regime, articulated the state's position against religious rebellion in his *The execution of justice in England, not for religion, but for treason* (1583).

Of which sort of late yeeres, are specially to be noted certaine persons naturally borne subiects in the Realme of England and Ireland, who hauing for some good time professed outwardly their obedience to their Sovereign Lady Queene Elizabeth, haue neuerthelesse afterward bene stirred up and seduced by wicked

⁵⁸³ CPRI, ii, p. 27.

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spirits, first in England sundry yeres past, and secondly and of later time in Ireland, to enter into open rebellion, taking armes and coming into the field against her Maiestie and her Lieutenants, with their forces under banners displayed, inducing by notable vntruthes many simple people to followe & assist them in their traitorous actions.⁵⁸⁴

The Elizabethan state viewed the pope's involvement with English and Irish rebels and the Jesuit's subversive pastoral activities as one conflict:

The Bishop of Rome, as in fauour of their treasons, not to colour their offences as themselues openly pretend to do, for auoyding of common shame of the worlde, but flatly to animate them to continue their former wicked purposes, that is, to take armes against their lawful Queene, to inuade her realme with forreine forces, to pursue al her good sueicts and their natie countries with fire & sworde.⁵⁸⁵

These were all part of an unlawful religious war that unjustly attacked the monarchy and sovereignty of England and it was perceived as being directed by the papacy. Thus, the queen and her magistrates were duty bound to administer justice against these rebels and traitors. Rome had already been the cause of two rebellions and these rebels, Burghley declared, 'haue iustly suffered death not by force or forme of any newe lawes established, either for religion or against the Popes supremacie, as the slanderous libellers would haue it seeme to be, but by the auncient temporall lawes of the realme'.⁵⁸⁶ Subsequent critics asserted that the English state was prosecuting Catholics because of their religion, which would have threatened English Protestant view on martyrs and their martyrologies, but Burghley countered these by declaring 'no one was called to any captiall or bloody question vpon matters of religion, but all inioyed their life as the course of nature woulde: and such of them as yet remayne, may, if they will not be authors or instruments of rebellion or sedition'.⁵⁸⁷

The state, Burghley claimed, acted out of a desire for justice and the maintenance of domestic peace:

it is of all persons to be yeilded in reason, that her Maiestie and all her governors and magistrates of Justice, hauing care to maintaine the peace of the Realme ... by all lawful meanes possible, as well

⁵⁸⁴ Cecil, *EJE*, sig. aii^r.

⁵⁸⁵ *Ibid.*, sig. aiii^r.

⁵⁸⁶ *Ibid.*, sig. aiiii^v (no siglum).

⁵⁸⁷ *Ibid.*, sig. bii^r.

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by the Sword as by Lawe ... to impeache and repell, these so manifest and daungerous colourable practises, and workes of sedition and rebellion.'⁵⁸⁸

It furthermore outlined the processes which the queen and her agents employed in the suppression of rebellion: 'first to subdue with her forces her rebelles and traytours, and nexte by order of her lawes to co[rrect] the ayders & abettors, & lastly to put also to the sword such forces as the pope sent into her dominions'.⁵⁸⁹

The Elizabethans were clear that the rebellions occurring from 1569-1573 and 1579-1584 were nothing more than rebellions, and neither holy wars nor just wars. Burghley's political legal arguments reframed the Catholic church's practice of holy wars as rebellion and divorced the act from the question of religious liberty. Fitzmaurice's conspicuous crusading ethic was precisely the type of militarised Catholicism that Burghley's arguments in *The Execution of Justice in England* (1583) sought to disallow. Fitzmaurice played upon shared Irish Catholicism to unit otherwise hostile Irish and Anglo Irish ethnic groups in common cause against the English crown. This was a tactic pioneered by 'Silken' Thomas Fitzgerald, during the Kildare rebellion (c. 1534-1535), which went on to influenced Hugh O'Neill's later rebellion. The English government adopted the same political and legal position that it had developed during the religious revolts in the 1570s and 1580s.⁵⁹⁰

Following the trail blazed by Fitzmaurice, Tyrone issued a proclamation declaring his intentions; his rising was not a rebellion, but rather it was a just and holy war in defence of the Catholic religion. He announced that his goal was to achieve 'the extirpation of heresie, [and] the plantinge of the Catholike Religion'.⁵⁹¹ Tyrone's audience was the Anglo-Irish nobility, and with the carrot

⁵⁸⁸ Ibid., sig. bi^r.

⁵⁸⁹ Ibid., sig. ei^v; note the portion of text in the square brackets was damaged text in the 1583 version, but could have been 'colorreth', which I corrected using the 1678 version.

⁵⁹⁰ Hiram Morgan, 'Faith and fatherland or queen and country: an unpublished exchange between O'Neill and the state at the height of the Nine Years War', in *Dúiche Néill: journal of the O'Neill country historical society*, 1994, *CELT: corpus of Electronic texts* <<http://www.ucc.ie/celt/Proclamation.pdf>>, pp. 1-49; Morgan, 'Faith & fatherland in sixteenth-century Ireland', pp. 13-20.

⁵⁹¹ The English regime composed two answers to Tyrone's proclamation; these were published in Morgan, 'Faith and fatherland or queen and country'; however, the government chose not to publish either, perhaps out of a fear that it would, by acknowledging the original

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and stick, he entreated them to join with him in this war or face destruction: 'come and ioyne with me against the Enemies of god and our poore country ... [or else], I will use meanes not only to spoyle you of all your goods but according to the utmost of my power shall work what I can to dispossess you of your lands'.⁵⁹² The Elizabethan regime forcefully responded to Tyrone's proclamation in the manner it had adopted during Fitzmaurice's rebellions even drawing on similar sources.⁵⁹³

Thomas Jones, archbishop of Meath, and an integral member of the English administration of Ireland, composed a response to Tyrone's proclamation, which the English government regarded as a libel. Jones had arrived in Ireland in 1574 and began his Irish preaching as a member of Adam Loftus's, archbishop of Dublin, household, and witnessed much of Fitzmaurice and Desmond's rebellions in 1579-1584.⁵⁹⁴ He was well placed and experienced in Irish affairs and although his response to Tyrone's proclamation was never published, it provides insight into the perceptions of the New English and their views on religious rebellion.⁵⁹⁵ Jones's response drew on important sources; such as the homilies, by recounting the Old Testament story of David and king Saul.⁵⁹⁶ Hiram Morgan's research into the ideology of Tyrone's Rebellion has shown that Jones employed elements from the reformist theologian Heinrich Bullinger's *A confutation of the Pope's bull which was published more then two yeres agoe against Elizabeth* (1572).⁵⁹⁷ Jones himself acknowledged additional profits derived from Bilson's, *The true difference betweene Christian subiection and*

proclamation, grant to Tyrone additional legitimacy by recognizing his complaints against English rule.

⁵⁹² Ibid., p. 18.

⁵⁹³ Ibid., pp. 21-22; see also *CSPI (1599-1600)*, pp. 279-280.

⁵⁹⁴ Helen Coburn Walshe, 'Jones, Thomas (c.1550-1619)', *Oxford dictionary of national biography* <<http://www.oxforddnb.com/view/article/15086>> [accessed on 2 May 2017].

⁵⁹⁵ Marsh Library, MS. Z3 1 19 no.7, f. 1-22, c.f. Morgan, 'Faith and fatherland or queen and country', pp. 23-40.

⁵⁹⁶ Morgan, 'Faith and fatherland or queen and country', p. 30 and Ronald B. Bond, ed., *Certain sermons or homilies (1547) and a homily against disobedience and wilful rebellion (1570)*, (Toronto: University of Toronto Press, 1987), pp. 168-170 (Homily on Obedience), 223-225 (Homily against disobedience and wilful rebellion).

⁵⁹⁷ Heinrich Bullinger, *A confutation of the Pope's bull which was published more then two yeres agoe against Elizabeth the most gracious Queene of England, Fraunce, and Ireland, and against the noble realme of England*, tr., A. Golding (London: Iohn Day, 1572); Morgan, 'Faith and fatherland or queen and country', p. 8.

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unchristian rebellion (1585), which was written in coordination with Burghley and can be read as the final word on *The Execution of Justice in England* (1583).⁵⁹⁸ The Irish Privy Council chose to forward Jones's response to the English Privy Council for further consideration and possible publication. Using many of the same sources and arguments, the English Privy Council drafted a second more polemical response, which was reviewed and amended by Robert Cecil and Robert Sackville, but it too was not published.⁵⁹⁹ Both responses drew upon similar sources, and these two tracts collectively highlight the central documents outlining the Elizabethan policy against rebels. Therefore, there was little doubt among many Anglo Irish and all the New English, at this time, that subjects were bound by God to serve and obey their sovereign, and thus, Jones could declare '*Vivitis vos, non exemplis sed legibus* [You live not by examples but by laws]'.⁶⁰⁰

However, how did these policies translate into actions on the ground between combatants, or in Lord Deputy Henry Sidney's words a 'war upon the rebel'?⁶⁰¹ This chapter examines how official policies were put into action against those rebels drawn to serve under the papal banner in the Irish theatre.

Military officer commissions from the English army in Ireland often described the 'war upon the rebel' by the idiomatic phrase for war – 'fire and sword'; this in official documents was essentially the English government authorising the use of military force, and in this instance, it was a royal command to use military force against rebels.⁶⁰² The English army in Ireland used

⁵⁹⁸ *CSPI (1599-1600)*, p. 304: 'I have barrowed some matter and reasons from the Bishop of Winchester [Thomas Bilson], out of his learned book against the Jesuits.' Morgan also notes Jones's use of Bilson; Morgan, 'Faith and fatherland or queen and country', pp. 7-8. Bilson's arguments are used to explain the absolute power of princes; see Morgan, 'Faith and fatherland or queen and country', p. 27.

⁵⁹⁹ *CSPI (1600-1601)*, pp. 127-126, and printed in Morgan, 'Faith and fatherland or queen and country', pp. 41-49.

⁶⁰⁰ Morgan, 'Faith and fatherland or queen and country', pp. 40, fn. 75 (Morgan's translation); similar conclusions were expanded upon in the English Privy Council's response, *ibid.*, p. 48.

⁶⁰¹ *Cal. Carew (1575-1588)*, p. 355 (made in Sidney's memoir of Irish service addressed to Walsingham, 1583).

⁶⁰² Ayala, *DIOBDM*, ii, p. 5, uses 'fire and sword' as a synonym for war (my emphasis): '[a]fter a correct declaration of war all peaceable intercourse was prohibited and the soldiery free to take up arms, collect forces, lead them against the foe, make raids, drive booty, lay districts to waste and ravage them with fire and sword, cutting down crops and burning buildings, and generally act as an enemy does.' Burghley's chief charge against the pope was that he had invaded the Queen's realm 'to pursue all her good Subjects and their Native Countries with

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a combination of conventional military techniques and other more specialised counterinsurgency tactics unique to the pacification of Ireland. Also by authorising military force for use in Ireland, the English government was suspending, to a limited extent, the operation of regular domestic legal apparatus in favour of the summary justice of martial law. How then were restraints, or their lack thereof, more familiar in the laws of war were applied in this complex mission?

In a 'war upon the rebel', what might be called 'normal enemy combatants' rights were organised differently than in regular wars. Enemy combatants were identified as 'rebels', and under English law, they were felons, just as were murderers, rapists, and thieves, but their crimes were more closely related to treason against their sovereign prince. Rebels, then, were persons not worthy of traditional combatant protections; however, limited restraints manifested in small ways. In these wars, it was not as might be expected that all mutual restraint was entirely absent. Such an unlimited war would be lawful, but just as Alba's counterinsurgency campaign against Dutch rebellion (c.1572-4) obeyed certain principles associated with the laws of war, English captains applied certain restraints in predictable and methodological ways. In the same way that restraint featured in English military operations so too did elements of terror.

Few images from Ireland encapsulate the Elizabethan laws of armed conflict in operation or that highlight the twin prongs of limited restraint and terror in English counterinsurgency strategy than the famous woodcuts from Derrick's *Image of Ireland* (1581) (figure 24.). In it, English soldiers triumphally return from counterinsurgency operations. At the head of the column marches a musketeer carrying, by the hair, the severed head of a woman, indicated by its conspicuous lack of a beard.⁶⁰³ Traditionally women were considered non-

Fire and Sword': in Cecil, 'The execution of justice in England', p. 4. For an opposite perspective which interprets 'fire and sword' as a specialized unlimited war against the Irish, see Roger B. Manning, 'Irish Wars', in *An apprenticeship in arms: the origins of the British army, 1585-1702* (Oxford: Oxford University Press, 2006), pp. 3-32, 11, 13.

⁶⁰³ The beheaded woman was perhaps Margaret Byrne, wife of the rebel Rory O'More. Patricia Palmer, "'An headlesse ladie" and "a horse loade of heads": writing the beheading', *Renaissance quarterly* 60 (2007), pp. 25-57, 33 f.n. 47; William Palmer, 'Gender, violence, and rebellion in Tudor and early Stuart Ireland', *The sixteenth century journal* 23 (1992), pp. 699-712.

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combatants and protected from soldiers, but a state of rebellion removed these protections. Nearby, swordsmen display the severed heads of executed rebels with their Gaelic forelocks - 'glibbes' - shorn off on the point of their swords. It was the English practice to ceremonially display the heads of rebels on the point of a sword.⁶⁰⁴ It was an accepted practice across Europe to behead rebels and display their remains as an example to others. Furthermore, the English government paid bounties - 'head money' - for the severed heads of known and targeted rebels.⁶⁰⁵ At the top-centre of the page, a soldier leads a prisoner by a halter, or hangman's noose, tied around his neck. The prisoner is beardless, perhaps he was a juvenile son of some suspect rebel given up as a hostage as an assurance of obedience to the English administration, or perhaps his future was a public execution to the reassurance of the loyal and the terror of the rebel, we cannot yet tell, but both fates were common enough that we can be sure that his life was in peril. Several pikemen led by a halberdier drive a bounty of horses and cattle back to their garrison and another soldier, at the rear of the formation, summarily executes a rebel. Under martial law, commissioners were 'entitled to collet one-third of all the moveable goods and possessions of those he executed.'⁶⁰⁶ The English state reacted with extreme prejudice against Catholic inspired insurgency; against these foes, the Elizabethan soldiers sought victory through terror and violence, which at the same time earned him monetary rewards. Mercy was only permitted under exceptional circumstances, and there were significant financial incentives, by way of head money, extortion, and seizure of goods, that motivated soldiers to set aside mercy in the pursuit of profits.

The Elizabethan state's strategy could be best summarised by Sir Francis Bacon's maxim, from his essay 'Of sedition and troubles': 'Dolendi modus,

⁶⁰⁴ Patricia Palmer, 'At the sign of the head: the currency of beheading in early modern Ireland', in *Cultures of violence: interpersonal violence in historical perspective*, ed., S. Carroll (New York: Palgrave Macmillan, 2007), pp. 129-155, 135.

⁶⁰⁵ David Edwards, 'Atrocities: "some days two heads and some days four"', *History Ireland* 17 (2009), pp. 18-21; Palmer, 'At the sign of the head', p. 135; Palmer, "'An headlesse ladie" and "a horse loade of heads"', pp. 25-57.

⁶⁰⁶ David Edwards, 'Legacy of defeat: the reduction of Gaelic Ireland after Kinsale', in *The battle of Kinsale*, ed., H. Morgan (Bray: Wordwell, 2004), pp. 279-300, 289-290; and 'Beyond reform: martial law & the Tudor reconquest of Ireland', *History Ireland* 5 (1997), pp. 16-21.

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timendi non item [suffering has its limit but fears are endless]'.⁶⁰⁷ A strategy that was developed in response to the Northern Rebellion (1569-1570) in England, but reached a more brutal climax in Ireland. It enabled England to subdue its Irish rebels, prosecute by martial law everyone without exception that aided rebels, and ensured all foreign papal soldiers were put to the sword.

Military Operations in the Field

The Elizabethan army favoured pitched battles and direct operations against enemy units: 'it is not the nature of a good Englishman to regarde to be caged up in a coope, & hedged in with some walles, but rather to meete wyth hys enemye in the plyne fieldes at hand strokes'.⁶⁰⁸ This preference carried-over into operations against rebels. The jurist Alberico Gentili argued pitched battle was the ideal method of waging regular war. Battle being a true 'contest of arms' with straight-forward restraints on violence. In battles, the belligerents were all combatants and either side could take prisoners for future ransom or exchange. In this instance, these were lawful enemies and by extension the servants of the sovereign prince, which endowed them with certain rights under the laws of war. Battles were to be further favoured because it limited the destruction of property and important infrastructure, which was usually protected from destruction; these assets had enduring utility for all belligerents.⁶⁰⁹ However, in English military operations against rebels no quarter was offered or expected. When rebels massed for military operations, it was a manifestation of their treason, and justice required their execution by the sword or the hangman's noose; therefore, it was important to present a lawfully massed army.

⁶⁰⁷ Francis Bacon, 'Essays, Civil and moral', in *The Harvard Classics*, C.W. Eliot (New York: P. F. Collier & Son Co., 1909), iii, p. 40.

⁶⁰⁸ Paul E.J. Hammer, 'War', in *The Oxford handbook of Holinshed's Chronicles*, eds., F. Heal, I.W. Archer, and P. Kewes (Oxford: Oxford University Press, 2013), pp. 443 -458, 456.

⁶⁰⁹ Spanish commanders and Philip II carried on extensive debates about the lawfulness and utility of destroying dikes during the Dutch conflict: Parker, 'The etiquette of atrocity', p 152-153, and Waxman, 'Strategic terror', pp. 340-341.

Gentili discusses the topic in detail in the chapter 23. 'of devastation and fires' in his second book, and concluded that destruction of infrastructure is permissible under military necessity: Gentili, *DIBLT*, ii, pp. 270-277.

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Regular armies signalled their legitimacy through specialist soldiers. Standard bearers indicated under whose authority the unit fought by the display of various banners. Trumpeters and drummers communicated information over distance. They also had special protections that allowed them to travel as couriers and negotiators between antagonist forces. The English army in Ireland made full use of such specialists; however, during the Desmond revolt (1579-1584) so too did some rebel armies. On 3 October 1579 John of Desmond's army unfurled their standard bearing the keys of heaven signalling that they were assembled under the religious authority of the pope, and at the same time their commitment to meet, the lord president of Connaught, Nicholas Malby's army in battle at Monasternagh.⁶¹⁰

What did the rebels communicate by unfurling the crossed keyed papal colours on that day? It was not a display of just war but a symbol of their crusade against the heretical English dominion of Ireland: '[t]herefore now we fight not against the lawful sceptre and honourable throne of England, but against a tyrant'.⁶¹¹ The rebels' war was 'not the warr of man', declared Dr Sanders, the papal nuncio in Ireland, 'but the Warr of God'.⁶¹² Holy wars authorised by the pope could come close to wars of extermination because it sanctioned unlimited violence against the infidel and heretic.⁶¹³ In order to liberate the souls of the Irish crusaders from the burdens of holy war, Pope Gregory XIII provided them with a plenary indulgence, and remission of sins.⁶¹⁴ What follows was an interesting instance where different perceptions of

⁶¹⁰ Matthew J. Byrne, trans., 'Philip O'Sullivan Bear, soldier, poet, and historian. *Compendium of the Catholic history of Ireland* (Lisbon, 1621), *Journal of the Cork historical archaeological society*, second series, 3 (1897), pp. 26-30, 182-188, 50: '[James Fitzmaurice] explained that he had been sent by the Supreme Pontiff to aid the Irish in asserting the rights and liberties of the Catholic Church against the heretics. On this account he carried the keys inscribed on his banners, because they were fighting for him who had the keys of the kingdom of heaven.'

⁶¹¹ *Cal. Carew (1515-1574)*, p. 402 (#268, 'The proclamation of the right honorable Lord James Geraldine [Fitzmaurice] concerning the justice of that which war which he wageth in Ireland for the faith').

⁶¹² *HCCI*, p. 1269 (Letter of N. Sanders to the Irish people, 21 Feb. 1580)

⁶¹³ Russell, *The just war in the Middle Ages*, p. 210.

⁶¹⁴ Pope Gregory XIII issued plenary indulgences and remission of sin first to Fitzmaurice: *HCCI*, p. 1264 (English); original Latin: British Library, Lansdowne MS 96 fol. 53, 'A genuine copy of the bull of Pope Gregory the thirteenth, for indulgences to such as join the Irish rebels against Queen Elizabeth, from 1578), and after the death of Fitzmaurice the leadership of the holy army was given to John of Desmond and he too was issued with the same indulgences: King, *HCCI*, pp. 1273-1275.

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legitimacy and the laws of war that led two different ideologies to the same conclusion: no quarter. By displaying the banner inscribed with the keys of the kingdom of heaven, John of Desmond signalled no quarter would be given to the heretics, and likewise, Malby and the crown's army would never grant mercy to rebels mustering in the field and under arms. John of Desmond was waging a holy war against heresy, and Malby was preserving the England against rebellion. Here two very different legal concepts clashed. Each claimed ironically legitimacy from God and absolute authority to destroy the other.

Consequently, when John of Desmond mustered his 2,000 crusaders on the plain before the Abbey of Neagh, his lines were matched by the Malby's 750 crown troops, and there was no confusion on either side regarding the conditions of battle.⁶¹⁵ The English pike and shot squared off with ranks of gallowglass and kern with Spanish officers holding a ditch that ran across the field.⁶¹⁶ Several times the forces clashed at close quarters; however, English shot on their third assault routed the Irish. In close combat, the crown's troops succeeded in killing 60 crusaders, but once their lines broke and they fell into an undisciplined

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Figure 24. English army forces an Irish rebel army into a retreat.

⁶¹⁵ *CSPI (1574-1585)*, pp. 190 (Malby to Walsingham, 12 Oct. 1579, and Sir William Stanley to Walsingham, 12 Oct. 1579); *Four Masters*, v, p. 1721; *Irish chronicle*, p. 416; Thomas Morsch, 'The battle of Monasternenagh, 1579', *Irish Sword* 23 (2003), pp. 305-314.

⁶¹⁶ Thomas Leland, *History of Ireland*, 3 vols. (Dublin: Brett Smith, 1814), ii, pp. 274-5 (book 4 chapter 2). Gallowglasses were a type of Gaelic heavy infantry that characteristically were armed with long handled axes, and the kern were Gaelic light infantry which increasingly were associated with the skilled use of firearms, the Gaelic answer to pike and shot.

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retreat. The English army pursued and slaughtered another 200 men before halting their pursuit.⁶¹⁷ The English troops were merciless in the exploit of their victory as was the practice of the age, and battle in Ireland can scarce find a better depiction than the woodprints in *The Image of Ireland*, (figures 25. and 26.).⁶¹⁸

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Figure 25. The infantry battle from figure 25 enlarged to show details. The Irish retreat and the English soldiers slaughter the wounded.

No prisoners were taken nor quarter given. The English cannons were after the battle turned against the abbey for unlawfully supporting the rebels and it was destroyed. In Malby's after-action report to Walsingham, he confirmed that all the enemy captains had been slain. The battle was reported as an English victory, Malby regretted his men's failure to secure the pope's standard. The capture of the papal standard would have signified a complete English victory over the rebels. Captured enemy ensigns were highly prized trophies and would be sent to the queen as physical proof of success in military operations; hence, the crusaders spared no effort in keeping their banner out of the heretics' hands. Rebels in Ireland whenever possible avoided pitched battles with the queen's troops because the crown most often won those engagements, and the rebels knew that they could expect no mercy. The practice, however,

⁶¹⁷ Philip O'Sullivan Bear, *Ireland under Elizabeth*, tr. M.J. Byrne (Dublin: Sealy, Bryers, and Walker, 1903), p. 26: 'John [of Desmond] hastened to meet them and when he had halted in the distance a few of his men charged the enemy in a disorderly manner and drove them into the nearest fort. Thence the royal troops again sallying forth, despising the smallness of the Catholic forces, boldly attacked and put them to flight, until John came to their rescue.'

⁶¹⁸ Fig. 25. and fig. 26. Derricke, *The image of Ireland*, plate ix.

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was not unknown to them, and Irish combatants utilised pitched battles occasionally in local feuds.⁶¹⁹ The English army found it difficult to bring rebels into set piece battles, and instances like the battle of Monasternenagh were uncommon events. Irish martial attitudes never idealised the pitched battle in the same way as the English, and their historical failure to secure conventional victories necessitated a shift in tactics. After all, victory was what mattered most in their holy war and not its methods, and there was no need to meet heretics on idealised or so-called honourable grounds. Thus, rebels in Ireland developed high facility in fighting their war with ambushes; a tactic that did not lend itself to restraint. Ambushes were remorseless affairs.

The rebels showed themselves at times as merciless as any of the crown's soldiers when they gained the upper hand. The newly arrived Lord Deputy Arthur Grey was anxious to prosecute his war upon the rebels. August 1580, Lord Deputy Grey led a search and destroy mission into Glenmalur Valley against rebels commanded by the viscount of Baltinglas, Feagh O'Brian. Grey's military experience to date consisted of company level cavalry tactics, and he was ill prepared for the brutal fighting in Ireland. With a cavalryman's bravado, Grey decided to flush the rebels from the valley with his infantry and then to ride them down with his horsemen staged at the entrance to the valley.⁶²⁰ Francis Cosby, general of the queen's kern, knew the terrain and warned Grey against the endeavour; however, the advice was dismissed.⁶²¹ Grey ordered the crown's army into the valley. Many veterans felt that they were marching to their death, but they were compelled forward by the military and social hierarchy of command, and so they did.

Hooker describes the wooded valley as a fastness made by 'nature so strong as might be ... Under foot it is boggy and soft, and full of great stones and slipperie rocks, verie hard and euill to pass through'.⁶²² The English infantry

⁶¹⁹ In private wars between the Irish the rights of prisoners might be respected. At the battle of Affane, the earl of Desmond was taken prisoner by the earl of Ormond: G. Butler, 'The battle of Affane', *Irish Sword* 8 (1967), pp. 33-47.

⁶²⁰ Falls, *Elizabeth's Irish wars*, pp. 136-7; Bagwell, *Ireland Under the Tudors*, iii, p. 61.

⁶²¹ Colm Lennon, 'Cosby, Francis (d. 1580)', *Oxford dictionary of national biography* <<http://www.oxforddnb.com/view/article/6368>> [accessed on 5 November 5, 2015].

⁶²² *Irish Chronicle*, p. 435; Sir William Stanley confirms Hooker's description: Daniel MacCarthy, ed., *The life and letters of Florence MacCarthy Reagh* (London: Longmans, Green, Reader, and Dyer, 1867), p. 252.

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were divided into two battles; a vanguard led by the corpulent Berwick soldier Colonel George Moore and a rear commanded by William Stanley. The earl of Baltinglas had taken a piece of high ground approachable only by ascending a steep slope, and the kern were hidden 'with their peeces amongst the trees'.⁶²³ After a rough march over more than 4 miles and across 'stones, rocks, and bogs, and wood', the vanguard encountered a steep hill 'a long mile in height; it was so steep that we were forced to use our hands, as well to climb, as our feet', and 'we [of the rear guard] must of necessity folloue'.⁶²⁴ As the English soldiers crept up the difficult terrain, the rebel musketeers launched their ambush and 'assailleth them with shot, and in verie short time did kill the most part of the voward'.⁶²⁵ The fury of the fighting prompted Stanley to remark that it was the 'hottest piece of service for the time, that ever I saw in any place.'⁶²⁶

There was no mercy or restraints for the English soldiers trapped in Glenmalure. The fresh English levies garbed in their new red or blue coats made easy targets, and the kern displayed their marksmanship by putting holes into those new coats. Many of the soldiers were so exhausted from their climb that they were easy prey.⁶²⁷ Sir Peter Carew, in one such example, assaulted the hill in full armour with the vanguard, but the weight of his armour exhausted him and he was captured. In full view of the English army, Carew was disarmed, and 'one villaine most butcherlie' used the knight's own sword to execute him.⁶²⁸ A few lucky soldiers survived by making a flying retreat down the valley and along the route, which they had earlier traversed to be saved by Grey's cavalry. Belligerents did not see much value in sparing either wounded or captives taken in battle: 'the place was so very ill that were a man never so slightly hurt he was lost... [s]ome died being so out of breath that they were able to go no further, being not hurt at all'.⁶²⁹ Men unable to keep up during the withdrawal were left

⁶²³ *Irish Chronicle*, p. 435; MacCarthy, *The life and letters of Florence MacCarthy Reagh*, pp. 252-3.

⁶²⁴ *Ibid.*

⁶²⁵ *Irish Chronicle*, p. 435.

⁶²⁶ MacCarthy, *The life and letters of Florence MacCarthy Reagh*, pp. 252-3.

⁶²⁷ *Ibid.*

⁶²⁸ *Irish Chronicle*, p. 435.

⁶²⁹ MacCarthy, *The life and letters of Florence MacCarthy Reagh*, pp. 252-3.

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behind to be slaughtered by the Irish. Field operations consisted of more than battles and ambushes.⁶³⁰

Elizabethan theatre strategy advocated for punitive raids against known or suspect rebel communities in Ireland. The Elizabethan just war theorist Gentili discouraged military operations that targeted crops, buildings, religious places except where these became obstacles to victory. Moreover, in conflicts against the 'cruellest of enemies', sixteenth-century martial honour professed that it was both honourable and lawful, to return like for like, and to subdue the foe 'by subjecting them to their own customs ... by fire and sword'.⁶³¹ A justification was used by Churchyard in defence of Gilbert's Munster campaign (1569): [w]hiche course of gouernemente maie by some bee thought to cruell, in excuse whereof it is to be aunswered. That he did but then beginne that order with them, which thei had in effecte euer tofore used toward the Englishe.'⁶³² In Ireland, the crown and rebels made bloody punitive expeditions against one another.

After the appointment of William Pelham to the office of lord justice of Ireland, he and Thomas Butler, earl of Ormond, made a punitive expedition against Gerald Fitzgerald's, earl of Desmond, castles, lands, and tenants in Munster. The crown's forces assembled at Rathkeale on 10 March 1580, and divided into two armies of more than 500 men each. Marching westward along parallel tracks through Connello and into Kerry, the armies sparred only those lucky few that submitted ahead of the army, everything else was put to the sword or burnt.⁶³³ Pelham reported that his men had 'marched all day without offence of the enemy, wasting and spoiling to the foot of the mountains of Sleulougher.' The Irish fled before the army and attempted to take refuge in the mountains. A detachment was then sent into the mountains after them, and upon their discovery 'the fury of the soldiers' left more than 400 massacred.⁶³⁴ Irish chroniclers record the expedition's terror: '[Pelham] sent forth loose

⁶³⁰ MacCarthy, *The life and letters of Florence MacCarthy Reagh*, pp. 252-3.

⁶³¹ Gentili, *DIBLT*, ii, p. 271.

⁶³² Churchyard, *A generall rehearsall of warres*, sig. Qiv.

⁶³³ *CSPI (1574-1585)*, p. 213.

⁶³⁴ *Cal. Carew (1575-1588)*, p. 236.

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marauding parties ... wheresoever they passed, shewed mercy neither to the strong nor the weak. It was not wonderful that they should kill men fit for action, but they killed blind and feeble men, women, boys, and girls, sick persons, idiots, and old people.'⁶³⁵ The deaths were not without a purpose. Terror brought about the submissions of the Thomas Fitzmaurice, baron of Lixnaw and Kerry, Donough MacCormack, and several other leaders along with their bands. The laws of war, Gentili argued, permitted armies to destroy farms and attack farmers when they aided the enemy: '[t]o aid the enemy with supplies is to be guilty of treason.'⁶³⁶ Attacks on farming and infrastructure were to be limited to only those targets of military necessity in regular wars, but the tactic of devastation was deemed an essential counter insurgency tactic. English commanders used devastations extensively against rebellious communities.⁶³⁷ The basic rule of warfare also held true in counterinsurgency operations: 'the usages of war may always be conformed to the character of the enemy'.⁶³⁸ Thus, an enemy, or rebel, that attacks farms and farmers or farmers that provide material support to the enemy, or rebels, were deemed legitimate targets for English military force.

⁶³⁵ *Four Masters*, v, p. 1731.

⁶³⁶ Gentili, *DIBLT*, ii, p. 267.

⁶³⁷ Vincent Carey, "'What pen can paint or tears atone?': Mountjoy's scorched earth campaign', in *The battle of Kinsale*, ed., H. Morgan (Bray: Wordwell, 2004), pp. 205-216; S.J. Connolly, *Contested island: Ireland 1460-1630* (Oxford: Oxford University Press, 2007), pp. 267-268.

⁶³⁸ Gentili, *DIBLT*, ii, p. 275.

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The Irish had a similar tradition of economic warfare that David Edwards described as 'war by incursion'.⁶³⁹ In Ireland the practice was to use mounted columns or mobile light infantry to capture enemy livestock, destroy stock piles of corn, pillage tenants, and burn villages, all while avoiding pitched engagements (figure 27.). It was not uncommon for belligerents (English and Irish) in these types of attacks to specifically target non-combatants, which in regular warfare was discouraged. More to the point, the English strategy had the veil of legitimacy, since Europeans accepted a monarch's right to make punitive incursions against rebellious peasantry. The Irish practice, on the other hand, from a sixteenth-century legal perspective looked like brigandage: the chief criminal action attributed to rebels. Furthermore, Irish economic raiding was an accepted form of compensation for military service in lieu of cash payments. A practice not too dissimilar to the compensation that martial law provided to Elizabethan soldiers.

Fitzmaurice's rebellion of 1569-1573 began with one such devastation. Rebels under the command of James Fitzmaurice sacked the English colony at

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Figure 26. A group of rebel Irishmen burn a community in Ireland and capture their cattle during devastation operations.

⁶³⁹ David Edwards, 'The escalation of violence in sixteenth-century Ireland', in *Age of atrocity: violence and political conflict in early modern Ireland*, eds., D. Edwards, P. Lenihan, and C. Tait (Dublin: Four Courts Press, 2007), pp. 34-78; John Derrick, *The image of Ireland with a discoverie of woodkarne*, plate ii.

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Kerrycurrihy 'and after spoiling and gathering an infinite number of ... cattle, to the utter undoing of all her majesty's subjects', they captured and sacked St Ledger's Castle of Carrigaline.⁶⁴⁰ With the plantation at Kerrycurrihy destroyed, and its inhabitants killed or scattered into the countryside, Fitzmaurice was left unchecked by the crown and able to lead his army north to the gates of Cork and besiege the crown's principal town in Munster. Fitzmaurice's Butler allies, the brothers of the loyalist Earl of Ormond - Edward, Piers, and Edmund - led a rebel army from Cork to devastate Waterford and Idrone.⁶⁴¹

The Butlers burned the lands along their own expedition's route. Edmund Butler captured an Englishman named Robert Mannering and led him about the country side with a noose tied around his neck and to the terror of witnesses.⁶⁴² The rebels further terrorised the countryside when they captured some English colonists, and stripped them naked - men and women - and then drove them 'tormented' and 'with cruel pains' into the town of Waterford. The terror and devastation culminated with an attack on the Enniscorthy annual Lady Day Fair, where the soldiers of Fitzmaurice and the Butlers slaughtered Anglo-Irish merchants and raped the 'young maidens and wives before their parents and husbands faces'.⁶⁴³ These targets had no strategic purpose other than to highlight the queen's inability to protect her subjects.

Siege warfare against rebels

During the Desmond revolts, many rebels continued to occupy their fortified houses and castles against the crown. English theatre commanders determined that these fortifications were strategically important and could be used to control the lands around them and thus extending the crown's supply lines into rebel held territory. When Fitzmaurice led the Desmond earldom against the English crown in late June 1569, Lord Deputy Sidney organised a

⁶⁴⁰ *CSPI (1509-1573)*, p. 409; *HMC Salisbury*, i, p. 413.

⁶⁴¹ *CSPI (1509-1573)*, pp. 410, 412.

⁶⁴² David Edwards, 'The Butler revolt of 1569', *Irish historical studies* 28 (1993), pp. 228-255, 228, 230-1; *HMC Salisbury*, i, p. 417.

⁶⁴³ *Ibid.*, p. 250, c.f. TNA SP 63/29/70; further reports accused the rebels of burning four children: TNA SP 63/29/5.

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counter attack against Fitzmaurice's ally Edmund Fitzgibbon, the White Knight. In August 1569, Sidney with a small force attacked the White Knight's lands.⁶⁴⁴

Before the Old Castle, Sidney ordered his trumpeter to summon its ward. He then asked the ward to submit to the queen's authority and surrender the castle to him.⁶⁴⁵ The rebel commander denied Sidney's command by stating 'they helde that castle of none but God, James Fitzmaurice, and the White Knight; and unless one of them would come [and order them] they would never render it.'⁶⁴⁶ The ward's response was striking since in his declaration he asserts his lawful commission and under whose authority he held the fortress, but he also rejected the authority of the queen's agent to exercise authority to command him, ostensibly on religious grounds. The dialogue between the besieged and besieger here was nevertheless very conventional.

Officers commanding fortifications and towns as a matter of etiquette were all but required to reject the first call to surrender in regular warfare, and the ward of Old Castle obeyed this convention. There is little doubt that Sidney would have expected as much, and he ordered his troops to actively besiege the castle: 'I went, and encamped verey nere it, and planted such artillery as I had ... to it. ...the next morning the artillery kept up such play at the battlements ... and my small shott at their lopes and windows'. The rebel defenders made a good fight and repelled the first assault made by the English. Believing that the defenders knew well the truth of his intention and ability to take the castle by assault, Sidney again offered them his terms of surrender. He would allow them to yield it and then to safely depart it; however, the ward again declined. The following morning, the English made another assault and succeeded in taking it. Capture of a castle by assault permitted the victor to slaughter, and the Sidney's

⁶⁴⁴ Edmund Curtis, 'Extracts out of herald's books in Trinity College, Dublin, Relating to Ireland in the 16th century', *The journal of the royal society of antiquaries of Ireland*, seventh series, vol. 2 (1932), pp. 28-49, 37-8; Sir Henry Sidney, 'Sir Henry Sidney's memoir of his government of Ireland. 1583', *Ulster journal of archaeology* first series 3 (1855), pp. 33-44, 85-90, 336-57, 349 (reference); 5 (1857), pp. 299-315; 8 (1860), pp. 179-95; another version of the narrative is calendared in *Cal. Carew (1575-1588)*, pp. 334-360; Ciaran Brady, ed., *A viceroy's vindication? Sir Henry Sidney's memoir of service in Ireland, 1556-1578* (Cork: Cork University Press, 2002), 349

⁶⁴⁵ Sidney, 'Sir Henry Sidney's memoir of his government of Ireland. 1583', pp. 349

⁶⁴⁶ *Ibid.*, p. 349.

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troops 'left nothing alyve in it'.⁶⁴⁷ Vignettes like this were acted out with regularity in the Irish theatre.

On 28 March 1580, during the second Desmond revolt (1579-1584), Lord Justice Pelham ordered cannons emplaced to batter the Earl of Desmond's Carrigafoyle Castle. There was a rather significant garrison holding it for the earl of Desmond; the garrison was commanded by Captain Julian, an Italian, 16 Spanish soldiers, and 50 others, including an Englishman. The crown forces, once they were joined by the earl of Ormond would have been near to 1,000 men, and given their recent devastation of Connello through to Kerry and up to the mouth of the Shannon River, the crown's captains were not in a compromising mood. Ormond's lands in Tralee were burnt and ravaged by the rebels.⁶⁴⁸ Nevertheless, Pelham still dispatched a messenger to present his terms of surrender to Captain Julian. The defenders in familiar style rejected his first call for their surrender, but ended any chance for mercy, when they 'railed against her Majesty, and declared that they kept the castle for the King of Spain.' These insults galvanised the English officers' will to fight, and 'every man had a desire to salute the Spaniards.' After two days of battering the castle's walls were breached and ready for assault. No second offer to surrender would be sent, and Captain Humphrey Mackworth led the assault.

Several Irishmen and the Englishman tried to escape by swimming the Shannon to freedom, but they were shot dead in the water. Ten of the Spaniards made a desperate charge against the English assault team, but they too were cut down. The assault had as much secured the castle's ground floor, when Captain Julian with a guard of six Spanish soldiers signalled their surrender and were taken into custody with several women. Pelham immediately ordered their execution saving Julian who was to be examined (i.e. tortured) for intelligence, but afterwards he too was executed by hanging.⁶⁴⁹ Further down the Shannon River there were another pair of Desmond castles (Askeaton and Ballilloghan) that Pelham brought under his control.

⁶⁴⁷ Sidney, 'Sir Henry Sidney's memoir of his government of Ireland. 1583', p. 349.

⁶⁴⁸ *Cal. Carew (1575-1588)*, p. 237.

⁶⁴⁹ *Ibid.*, p. 241.

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News of the Lord Justice's cannons and the bloody end of Carrigafoyle's rebel garrison caused the garrisons at Askeaton and Ballilloghan to rethink their tactical disposition. The rebels decided that it would be more useful to raze their fortress and take to the field, so they attempted to burn or blow-up the castles at Askeaton and Ballilloghan. Pelham interpreted the abandonment and attempted destruction of the castles as a victory, which he in turn used to justify his methods: in a letter to the queen, he proclaimed that the rebels had run away 'fearing the example of the execution of Carrigafoyle'.⁶⁵⁰ These were, however, not necessarily English victories but grasping attempts to insult the English army since the Irish waited to destroy the forts in full view of the Pelham's army. The act displayed the rebels' continuing resolution to continue fighting for at least another day but upon better ground of their choosing rather than in a defensive action that favoured the crown. Pelham's perhaps excessive use of force unintentionally prolonged the conflict by causing the rebels to cease defending fortifications in favour of 'woods and mountains, which, as they were proper places for outlaws and thieves' and these became 'their natural fortifications and castles'.⁶⁵¹

Humphrey Gilbert in Munster 1569 waged the most notorious campaign against Irish rebels, and '[w]ith only 500 troops in the field Gilbert subdued a force perhaps eight times larger in six weeks.'⁶⁵² His success was purchased through the strategic use of terror causing him to be labelled by one modern historian as an 'Elizabethan terrorist'.⁶⁵³ Placed in its English historical context, it was a triumph that earned him a knighthood, and Hooker sang his praises: '[Gilbert] in short time broke the hearts, and appalled the courages of all the rebels in Munster ... for all yéeld vnto him'.⁶⁵⁴ Nevertheless, the analysis of Gilbert's campaign tends toward one side focusing on his terrible methods and

⁶⁵⁰ *Cal. Carew (1575-1588)*, p. 241.

⁶⁵¹ Sir John Davies, *A discoverie of the state of Ireland: with the true causes why that kingdom was never entirely subdued* (London: John Jaggard, 1613), p. 160.

⁶⁵² Rory Rapple, 'Gilbert, Sir Humphrey (1537-1582)', *Oxford dictionary of national biography* <<http://www.oxforddnb.com/view/article/10690>> [accessed on 21 January 2015], p. 2.

⁶⁵³ Robert A William Jr., *The American Indian in Western legal thought: the discourse of conquest* (Oxford: Oxford University Press, 1990), p. 151.

⁶⁵⁴ *Irish Chronicle*, p. 366.

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ignores his limited restraints but both Gilbert's use of terror and restraint require an elaboration of the circumstances that gave rise to them.

Elizabeth would not permit the pardon of English rebels in the field during the Northern Rebellion (1569), but Gilbert offered both rebels in the field and within fortifications a chance to submit and receive the Queen's pardon.⁶⁵⁵ John Ward, Gilbert's junior officer, described the colonel's methods of besieging rebel strongholds:

[I]f any castle do not yield unto him upon the first summoning, he will not afterward harken to no parley, but win it perforce, how many of his soldiers soever it cost him, and put man, woman and child to the sword, so that I think they are so well acquainted with his conditions as that I think they will not defend the castle against him.⁶⁵⁶

It was a grievous insult to refuse such mercy extended in the name of the prince 'as it ought to bee taken when it is offered and not to be had when it is asked.'⁶⁵⁷ Therefore, Gilbert believed his actions were lawful in exacting terrible retribution for such insults. The wholesale slaughter of all life within a stronghold was not prohibited among the laws of just warfare, and Gilbert's commission supported his actions which directed him 'to execute any soldier, or any other, within the limits of his commission, excepting all lords and captains of countries'.⁶⁵⁸ It furthermore urged him to bring the maximum amount of military force against the common people, but it limited his freedom of action against elites the full force of his power.

Gilbert's purpose was to compel through terror the submission of rebel leaders. Upon entering the unconquered territory of a rebel lord, he would devastate the lands, waste and consume all useable resources of corn and livestock, and slaughter the lord's tenants. Non-combatants serving Irish lords in rebellion were identified as legitimate counterinsurgent targets.⁶⁵⁹ English

⁶⁵⁵ Kesselring, *The Northern Rebellion of 1569*, pp. 118-9; Churchyard, *A generall rehearsall of warres*, sig. Qii: 'before he attempted any thyng, he proffered her highnesse mercie to the Rebelles, were thei within holdes, or in Campe: sendyng to them messengers, with offer of pardon bothe for bodie, gooddes, and landes, if thei would presentely yeelde'.

⁶⁵⁶ Edwards, *Campaign journals of the Elizabethan Irish wars*, p. 16; TNA SP 63/29/68, John Ward to Cecil, 18 October 1569.

⁶⁵⁷ Churchyard, *A generall rehearsall of wares*, sig. Qii.

⁶⁵⁸ *CIPRE*, i, p. 535-537 (Gilbert's commission), 535.

⁶⁵⁹ *Ibid.*, i, p. 535.

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doctrine was uncompromising in its methods which were designed with perverse incentives to compel rebel lords and their captains to submit, and 'verie many yeelded without blowes, bloodshed, or losse, either of their partes or his.'⁶⁶⁰

Without a doubt Gilbert's methods were brutal, but his goal was to bring about a rapid end to the rebellion not genocide.⁶⁶¹ It was Gilbert's belief, learned over the better part of four years of military service in Ireland 'that no conquered nation will ever yield willingly their obedience for love but rather for fear.'⁶⁶² Fear and terror were essential parts of the English regime's strategy against all rebels, and there was a desire amongst the highest leaders to see it performed in Ireland. During the suppression of English rebels in the Northern Rebellion, Cecil, not yet baron of Burghley, ordered that those hanged for rebellion were to be left 'hanging for terror' of others, and 'the bodies were not to be removed, but to remain till they fell to pieces where they hanged.'⁶⁶³ Queen Elizabeth herself desired mass executions of English rebels, and when her commanders failed to perform as expected, she reprimanded them.⁶⁶⁴ Through terror and mercy, Gilbert rapidly pacified Munster; his campaign succeeded in securing the surrender of more than 25 castles, and at the conclusion of his campaign, he returned to the lord deputy bringing with him sundry personages of good account, namely McCarthy Mor, the earl of Clanrcare, second most powerful chieftain after the earl of Desmond.⁶⁶⁵ Terror was used as a strategic weapon, and the means to an end; however, it was one side of the crown's strategy which was to extend a measure of mercy to the rebels. Were the rebels ever able to come to terms with English besiegers as part of the course of military operations?

⁶⁶⁰ Churchyard, *A generall rehearsall of warres*, sig. Qii.

⁶⁶¹ Gilbert's methods and the man had their critics and supporters. Perrot criticized him to Fitzwilliam: Rory Rapple, *Martial power and Elizabethan political culture*, p. 200, fn., 1, c.f. TNA SP 63/34/4. Gilbert's half-brother Sir Walter Raleigh advocated for a return to the Gilbert's methods in 1581: *CSPD (1675-1676), addenda (1574-1674)*, p. 7.

⁶⁶² *CSPD (1509-1573)*, p. 424.

⁶⁶³ *CSPD, addenda (1566-1579)*, p. 172; Froude, *History of England from the fall of Wolsey to the defeat of the Spanish armada*, ix, pp. 178-9.

⁶⁶⁴ *CSPD, addenda (1566-1579)*, p. 188 (Elizabeth to Sussex).

⁶⁶⁵ *CSPD (1509-1573)*, p. 421; *Cal. Carew (1575-1588)*, p. 348; Edwards, *Campaign journals of the Elizabethan Irish wars*, p. 15; *Irish chronicle*, p. 366; Churchyard, *A generall rehearsall of warres*, sig. Qiii.

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Whenever English captains targeted a castle, or other such fortification, there was little the rebels could do to resist them and keep them from eventually capturing it. Lord Deputy Sidney was not above accepting composition with rebels when it suited him. Edmund Butler, while in a rebellious alliance with James Fitzmaurice (c.1569), garrisoned a castle in Tipperary. The garrison in a pre-emptive strike meant to deprive the English army comfortable billeting, burnt the village outside the castle gates. These overt anti-government actions were a challenge to Sidney's authority. Sidney's first action was to organise his forces and besiege the castle. Seeing the crown troops preparing to assault, the rebel's captain signalled that they were willing to surrender upon terms, and a composition was soon made between the rebels and crown. The castle was then surrendered and an allied captain appointed to keep it. The rebel defenders, we are left to conclude, by the use of the term 'composition', were permitted to depart with at least their lives if not also their weapons and baggage.⁶⁶⁶

The lord president of Munster and Gilbert's successor, John Perrot struggled to take Castle Maine from the rebels' grip. Perrot first attempted it over the summer of 1571, but the siege had to be abandoned after the supply of powder was exhausted.⁶⁶⁷ Not to be long detoured, he returned in the summer of 1572 determined to capture Castle Maine. The castle would be his by conquest or composition. The president was determined to see justice served and had gallows erected and prominently depicted on his siege map (figure 28).⁶⁶⁸ Castle Maine was skilfully defended, and Perrot could not overcome them by force of arms. It was his siege that eventually compelled the rebels to seek terms. A starving rebel captain signalled Perrot, and the two of them set the terms of composition.⁶⁶⁹ Irish annals confirm the crown's composition with the rebels: '[t]his whole army continued besieging the castle for the space of three

⁶⁶⁶ *Irish Chronicle*, p. 365.

⁶⁶⁷ James Carmody, 'Story of Castle Magne', *Kerry Archaeological Magazine* 1-2 (1908, 1909), pp. 17-35 (part 1); 49-79 (part 2), 26 (part 1); *CSPI (1509-1573)*, p. 453.

⁶⁶⁸ Megan Proper, "'Wild Irishmen': Cartographic evidence from the siege of Castle Maine, 1572', *History Ireland* 23 (2015), pp. 14-16, 15, c.f. TNA Irish Maps, vol. 1, no. 11; *CSPI (1509-1573)*, p. 492.

⁶⁶⁹ Carmody, 'Story of Castle Magne', p. 29 (part 1).

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Figure 27. The siege map from Perrot's second and successful siege of Castle Maine. The gallows were erected prominently in the Lord President's camp, within full view of the castle and its rebel garrison.

months, and finally took it through want of provisions, not at all for want of defence'.⁶⁷⁰ Perhaps Perrot's willingness to set terms was additionally motivated by a political need to draw his Irish allies closer, which indicates English commanders retained the ability to adjust the crown's policy against rebels when the need arose.

Perrot disliked fighting irregular warfare. The President's strategy in Munster endeavoured to bring the rebels into a pitched battle, but Fitzmaurice used all his guile to avoid a direct confrontation with the crown.⁶⁷¹ If Perrot could have had his way, he would have settled the matter between the crown and Fitzmaurice by a duel. Frustrated by his inability to bring about a battle with the rebels, Perrot challenged Fitzmaurice to a duel in November of 1571. Ever the fox, Fitzmaurice toyed with Perrot by issuing ever changing demands. By first requesting to duel him in the Irish, rather than the English, style, and then, Fitzmaurice demanded a set piece judicial combat and went so far as to

⁶⁷⁰ *Four Masters*, v, p. 1663.

⁶⁷¹ James Perrot, *The history of that most eminent statesman Sir John Perrot*, ed., R. Rawlinson (London, 1728), p. 72.

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outline the forces that each would bring to the challenge. Ormond saw only the potential for duplicity, and in an alarmed letter to Lord Justice William Fitzwilliam, he exclaimed that Perrot's challenge had brought him to his wit's end.⁶⁷² Nothing came from the challenge but proof of Fitzmaurice's deviousness, which asks, how did the rebels conduct themselves when holding towns?

Early in 1570, Fitzmaurice captured Kilmallock, an important staging point for the English crown, and before the rebellion politically aligned with the Desmond earldom; however, with the rising of Fitzmaurice's rebellion (1569-1573), Kilmallock attempted to navigate a path between the two sides. Fitzmaurice's rebels surprised the inhabitants in a pre-dawn assault, and was likely supported by confederates in the town.⁶⁷³ The assault began with the rebels overcoming the town's walls, but rather than running amok and slaughtering the inhabitants' pell-mell, Fitzmaurice kept tight control over his men limiting the blood-shed. He had the mayor and a few key officials executed in the market square.⁶⁷⁴ After the executions, the rebels thoroughly sacked Kilmallock capturing a great deal of booty that secured for the time the service of Fitzmaurice's mercenaries.⁶⁷⁵ Kilmallock needed to be kept out of the hands of the English, and the rebels drove the citizens out, its walls were broken, and the buildings put to the torch.⁶⁷⁶

The hanged officials were left hanging as a warning to future collaborators, and Sir John Perrot, recently sworn-in as lord president of Munster, arrived to take possession of Kilmallock's burnt and spoiled remains. He issued a proclamation commanding its citizens to return to their homes. Despite the English officials' charges of treason, the inhabitants were granted royal pardon. Perrot thought more needed to be done to reassert the crown's influence over the town and asked the queen for £200 for their relief.⁶⁷⁷ The rebels had not left the area entirely, and after a rebel raid that spoiled homes

⁶⁷² CSPI (1509-1573), pp. 460, 466; Perrot, *The history of that most eminent statesman Sir John Perrot*, pp. 61-63; Bagwell, *Ireland under the Tudors*, ii, pp. 209-10.

⁶⁷³ CSPI (1509-1573), p. 439; Mainchín Seoighe, *The story of Kilmallock*, 2nd edition (Cork: Kilmallock Historical Society, 2012), p. 62.

⁶⁷⁴ Perrot, *The history of that most eminent statesman Sir John Perrot*, p. 50.

⁶⁷⁵ *Four Masters*, v, p. 1653.

⁶⁷⁶ *Ibid.*

⁶⁷⁷ Bagwell, *Ireland under the Tudors*, ii, p. 184.

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near the town, Perrot acted to make a symbolic demonstration of royal authority. He met the rebels with a cavalry troop near a bog. The order was given for the men to make a head-long charge against rebels on foot with their horsemen's staves as pikes. The troop killed fifty rebels in the bog, and Perrot brought their heads, presumably on the point of a sword, back to Kilmallock where their heads were displayed in the same market square that Fitzmaurice had left the executed officials.⁶⁷⁸ Fitzmaurice's crusade often singled out royalists and Englishmen for exemplary punishment.

Nevertheless, the arch-traitor had a code which he followed in sieges, and nor was he wholly ignorant of the laws of war. Following Fitzmaurice's death, Churchyard remembered him recalling that he 'was thought wise, valiaunt, strong, learned, experimented in Marshall affairs'.⁶⁷⁹ Kilmallock had been threatened before, in July 1569 Fitzmaurice threatened the Kilmallock with destruction if they did not meet his terms, which required the mayor to swear an oath permitting only Catholic services and to provide him and his men with victuals when they required it, which they accepted.⁶⁸⁰ Fitzmaurice captured and sacked Carricklyne castle, and the small garrison holding Tracton Abbey-Castle was either put to the sword during the assault or executed shortly after it was taken.⁶⁸¹

Fitzmaurice failed to capture Cork in June 1569, but during the attempt, he offered terms to the mayor that won him no credibility from English military officers nor did he appear as an unstained just combatant. Richard Grenville, the Sheriff of Cork, and Warham St Leger had left their wives in Ireland to advocate in England for an increased English intervention; however, the rebels' devastation of the plantation of Kerrycurrihy sent Lady Ursula running for sanctuary behind Cork's walls. With a powerful force of 2,000 men, Fitzmaurice set his troops into siege positions outside of the city, and demanded that the mayor surrender Lady St Leger and Grenville's wife, along 'with the rest of the

⁶⁷⁸ Perrot, *The history of that most eminent statesman Sir John Perrot*, p. 52.

⁶⁷⁹ Thomas Churchyard, *The moste true reporte of Iames Fitz Morrice death ...* (London: Edward White, [1579]), p 11 (no pagination).

⁶⁸⁰ *CSPI (1509-1573)*, p. 412; Froude, *History of England from the fall of Wolsey to the defeat of the Spanish Armada*, x, pp. 496-7.

⁶⁸¹ *CSPI (1509-1573)*, p. 409.

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English', and the town's prisoners.⁶⁸² Foremost among Fitzmaurice's demands was the expulsion of all heretics and the restoration of Catholic religious practices.⁶⁸³

Yet, not every rebel was so consumed with the doctrine of crusade and holy war. The earl of Desmond did not profess so devout an adherence to the crusader ethic that marked Fitzmaurice's leadership; instead he appeared more focused upon the survival of his house.⁶⁸⁴ Desmond held a long-standing grievance with the earl of Ormond over the lucrative royal wine monopoly imported through Youghal. Perhaps this drew Desmond's ire so that when he planned the course of his rebellion, he targeted Youghal where he personally defaced the queen's arms.⁶⁸⁵ Under a feigned royal allegiance, he approached with his army and encamped near the town in November 1579.⁶⁸⁶ In secret Desmond's agents found confederates inside Youghal, and his men scaled the walls in a surprise attack that captured the town. The rebels' victory culminated in a desperate sacking, and Youghal's walls were broken at key points and many houses were torched (figure 29.).⁶⁸⁷

Ormond viewed the sacking of Youghal as a personal affront, and took a interest reasserting the crown's authority there. During his journey to Youghal, Ormond took into custody the mayor, Patrick Coppinger, and after an official inquiry, Ormond found Coppinger culpable for the loss. The evidence against him stated that previously he had given assurance to the crown that he, with only the town's guard, could hold the town 'against all men' and subsequently

⁶⁸² *CSPI (1509-1573)*, p. 409.

⁶⁸³ Fitzmaurice's letter to the Mayor of Cork, dated 12 July 1569, and printed in Froude, *History of England*, x, pp. 498-9, supra note 3: 'therefore this shall be to require you in the way of charity that ye ought to have towards all them that profess to be Christian men, to abolish out of the city that old heresy newly raised and invented, and all them that be Huguenots, both men and women, and Grenville's wife and children, and to set up the service often the due form and manner which is used in Rome and throughout all Christendom, and as our forefathers have ever used to fore.'

⁶⁸⁴ Margaret MacCurtain, 'The fall of the House of Desmond', *Limerick Field Club Journal*, 1 (1897), pp. 28-44; M. Benvenuto, Sr., 'The Geraldine war - rebellion or crusade?', *Proceeding of the Irish Catholic committee* (1967); Anthony M. MacCormack, *The earldom of Desmond 1463-1583: the decline and crisis of a feudal lordship* (Dublin: Four Courts Press, 2005).

⁶⁸⁵ James Hogan and N. McNeill O'Farrell, eds., *The Walsingham letter-book, or, register of Ireland, May 1578 to December 1579* (Dublin: Irish Manuscripts Commission, 1959), p. 257.

⁶⁸⁶ *CSPI (1574-1585)*, p. 197; Four Masters, v, p. 1723.

⁶⁸⁷ Fig. 26. Thank you, Dr. James O'Neil for making me aware of this document: TCD MS 1209/67, this once was one of Sir George Carew's maps, c.1600-3.

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Figure 28. The town of Youghal (c.1600). Note its extensive walls.

refused an English garrison.⁶⁸⁸ Worse still, it was discovered that Coppinger held conference with the rebels and certain citizens, and it looked as if he had allied with the rebels.⁶⁸⁹ Ormond with Chief Justice Walshe arrived on 26 January 1580 to an abandoned Youghal. There were no inhabitants fit for public execution other than Coppinger, and he was left hanging outside his own home.⁶⁹⁰ An English garrison remained when Ormond and Walshe departed to repair its broken defences and hold it for the crown's use in future operations against the rebels.

The royalist officers were mostly inclined to offer mercy when rebels occupied fortifications or towns. Crown captains could justify mercy in this situation in military terms. By making a composition with a difficult garrison, officers bought with their mercy the fortifications that would have been otherwise bought with blood, and these extended their operational ability. Terror at the destruction of rebel garrisons was always desirable but such bloody displays ultimately prolonged the conflict, and convinced rebels of the futility of holding fortifications against the crown troops. The rebels on the other hand, held conflicting ideas about extending mercy to the crown troops or to the various citizens in Ireland. Rebel captains showed an awareness that their cause

⁶⁸⁸ *Irish Chronicle*, pp. 425-6.

⁶⁸⁹ *CSPI (1574-1585)*, p. 204.

⁶⁹⁰ *Irish Chronicle*, pp. 426; *Cal. Carew (1575-1588)*, p. 207.

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was an event with an external audience, just as the earl of Essex attested to, and they tailored their actions for that audience.

Fitzmaurice held the crusaders zeal for destroying heresy. Mercy for him was to be extended to those that were willing to return to the Catholic faith. The heretical English and their allies were not to be forgiven. The rebels always had to consider the means to pay necessary to maintain their private mercenary armies; therefore, mercy might be coloured with the crusading ideals, but their base purpose was also to finance the cause by sacking their enemies.

Prisoners and captives in counterinsurgency operations

Officers and soldiers in counterinsurgency operations faced moral tensions that were not present in conventional military operations. Comrades died in war, this was the reality, and soldiers at all levels understood it or ceased following the drum. No soldier ever actively seeks out his own death; however, contemporaries believed death in a just war held certain honours. The Elizabethan officer corps had an additional purpose other than administration. Their secondary purpose was to serve as examples to their men and to inspire courage among them, which meant that officers often made up a higher proportion of the casualties.⁶⁹¹ There was no shame in their deaths. In fact, their deaths became a testament of both their individual and collective honour; however, the crown's peace keeping mission in Ireland did not hold the same honours.

There were few honours to be won in fighting against rebels. Rebels were criminals not enemies, which meant royalist soldiers, killed in action, did not die honourably but were murdered. Therefore, soldiers that died in action became a clarion call for vengeance, which further suppressed martial restraint in actions against rebels. The two moral positions were identifiable in contemporary popular culture. Shakespeare's *Henry V* celebrated the soldiers' death in just war. In Pistol's exhortation amidst the chaos of battle, he cries out:

Knocks go and come; God's vassals drop and die;
And sword and shield,
In blood field,

⁶⁹¹ Manning, *An apprenticeship in arms*, p. 7. Carlton, *This seat of Mars*, p. 95.

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Doth win immortal fame.⁶⁹²

Just as the Bard's *The tragedy of Julius Caesar* pivots on treason's call for vengeance:

Woe to the hand that shed this costly blood!
Over thy wounds now do I prophesy,
... A curse shall light upon the limbs of men;
Domestic fury and fierce civil strife
... Blood and destruction shall be so in use
And dreadful objects so familiar,
That mothers shall but smile when they behold
Their Infants quartered with the hands of war
All pity choked with custom of fell deeds.⁶⁹³

In this manner, Sir Philip Sidney's death was immortalised at the battle of Zutphen 1586, and Sir Peter Carew's execution at Glenmalure became a motivation for murder.

In full view of the English army, Peter Carew had been taken prisoner and then executed. The murder scarred his brother George Carew, and reflecting upon his experience against the rebels in Ireland, George wrote to Walsingham in November 1580: '[t]he loss that I have sustained by this wicked nation is too grievous to remember, if hope of revenge did not breed me comfort.'⁶⁹⁴ George believed he had honoured his brother by killing his murderer; however, while at Dublin during the summer of 1583, rumours reached George that Owen O'Nasye was publicly boasting that he had a hand in the death of Peter, whether true or not did not matter to George.

O'Nasye, and his partner Brian Cavenaugh, may have been rebels at an earlier date, but like many of their countrymen, their allegiance was fluid. At this moment, they found it profitable to serve the Irish Council at Dublin, an epicentre of Elizabethan government in Ireland. The two mercenaries had captured Walter Eustace, brother of the rebel Viscount of Baltinglas, and returned him as a prisoner for an English bounty. Indigenous agents were difficult for the English regime to acquire which complicated matters for

⁶⁹² William Shakespeare, *The life of King Henry the fifth* in *The complete works of Shakespeare*, ed., D. Bevington, 6th ed. (New York: Pearson Education, 2009), act 3, scene 2, lines 7-10.

⁶⁹³ Shakespeare, *Julius Caesar* in *The complete works of Shakespeare*, act 3, scene 1, lines 260-271.

⁶⁹⁴ *Cal. Carew (1515-1574)*, p. xiv.

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George. Finding O'Nasye 'in the street of Dublin' and in full public view, George grabbed the man and demanded his name, 'immediately upon the naming of it, thrust his dagger into his bosom, and presently one of his men shot him in with a pistol and two bullets, and gave him many wounds, whereof he presently died.'⁶⁹⁵ George's sole motivation was vengeance, since Cavenaugh was not harmed, but was left alive to stand witness to his friend's murder. After the killing, George left Dublin before authorities could take him into custody.

The murder of O'Nasye illustrates two salient points relative to prisoners and captives in the Irish conflict. The first, the incident provides compelling evidence of the vengeful mind-set of both the crown's soldiers and the rebels, and highlights the difficulties present in restraining the crown's men of war. The second, the English government of Ireland attempted to bring George Carew to justice, even if it came to nothing, which shows that the administration had a policy on the use of violence, where and when it was acceptable.⁶⁹⁶ Violence had to be state sanctioned.

The experience of English fighting men in Ireland did not lend itself to the restraint necessary for the taking of prisoners. Prisoners might be worth as much dead as alive with the latter being more desirable. Had the rebels believed and acted as if they fought a just war, there is the possibility that mercy could have become more useful to both the leaders of the English army in Ireland and the rebels. The English experiences proved contrary since on those rare occasions the rebels did take prisoners, their conduct only served to confirm English prejudices.

September 1577, Munster was largely quiet, yet in Leinster Rory Oge O'More fought a minor rebellion. Henry Sidney, appointed his nephew Henry Harrington to the lieutenancy of King's County, and gave him orders to suppress O'More. Harrington had some limited success and O'More sent him a message

⁶⁹⁵ *CSPI (1574-1585)*, p. 454 (calendared); *Cal. Carew (1515-1574)*, pp. xvii-xviii (transcribed).

⁶⁹⁶ John Hill was with George Carew when he murdered O'Nasye, but he did not depart with George from Dublin. Hill pled ignorance of George's intentions, but he was imprisoned in Dublin Castle. See the Council of Ireland's report to the Privy Council in *Cal. Carew (1515-1574)*, pp. xvii-xviii. Walsingham wrote to Burghley greatly displeased at Carew's conduct: 'I am verie sorrie for this act, and, though I love the gentleman well, yet do I wishe some exemplarie punishment done on him for this fact.' Thomas Wright, *Queen Elizabeth and her times*, 2 vols. (London: Henry Coburn, 1838), ii, p. 203.

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that he was willing to parley for a truce. O'More used the parley as a cover to capture Harrington and those others attending him. Once O'More's custody the English prisoners were not treated according to the laws of war. Sidney claimed Harrington was treated 'like a slave', or in Hooker's words: O'More had his prisoners 'handfasted together ... and carried as his water spaniels', evoking an image of Mannering's imprisonment, led about as he was by Edward Butler with a noose tied about his neck (figure 25.).⁶⁹⁷

Sidney professed affection for Harrington that equalled the love he held for his own son Philip. Motivated to secure Harrington's release, Sidney sent O'More enquiries seeking his 'enlargment'; however, 'nothing prevailed without such conditions as I would not have enlarged Philip my own son.'⁶⁹⁸ The matter had begun as a matter of law enforcement but had, since Harrington's mistreatment, become a matter of blood, honour, and vengeance. Sidney acquired intelligence as to where O'More made his winter home, and ordered Robert Hartpole with a company to rescue Harrington. The noisy approach of the soldiers alerted O'More, and in the cabin's darkness, he attempted to fulfil his threat to kill the prisoners. With Harrington's sword in hand, O'More 'gave [Harrington] in a moment dyvers Woundes, though none deadlye or Mayme vnto hym, save onely the Losse of his little Finger on the left Hande.'⁶⁹⁹ The cabin

⁶⁹⁷ Vincent P. Carey, 'John Derricke's "Image of Irelande", Sir Henry Sidney, and the massacre at Mullaghmast, 1578', *Irish historical studies* 31 (1999), pp. 305-327, 318; Sidney's commentary has been left out of the 19th century edited version of his memoirs; MSS TNA SP 12/159/1: Sir Henry Sidney, 'Narrative ... to Sir Francis Walsingham', 1 Mar. 1583; for printed versions: Sir Henry Sidney, 'Sir Henry Sidney's memoir of his government of Ireland. 1583', *Ulster journal of archaeology* first series 3 (1855), pp. 33-44, 85-90, 336-57; 5 (1857), pp. 299-315; 8 (1860), pp. 179-95; another version of the narrative is calendared in *Cal. Carew (1575-1588)*, pp. 334-360; Ciaran Brady, ed., *A viceroy's vindication? Sir Henry Sidney's memoir of service in Ireland, 1556-1578* (Cork: Cork University Press, 2002). *Irish chronicle*, p. 396. It may have been the practice in Ireland to lead prisoners via a halter: refer to fig. 24. Also consider that the Spaniards' prepared halters to be used on English 'volunteers', described in p. 107.

⁶⁹⁸ *Cal. Carew (1575-1588)*, p. 355.

⁶⁹⁹ Collins, *Letters and memorials of state*, i, pp. 230 (Sidney's report to the Privy Council); Sidney recalled a much more terrifying version of Harrington's beating in his memoirs: 'the villainous rebel fell upon my dear nephew, being tied in chains, and most shamefully hacked and hewed with my nephew's own sword, to the effusion of such quantity of blood as were incredible to be told. He brake his arm with that blunt sword and cut off his little finger of one of his hands, and in sundry parts of his head so wounding him, as I myself in his dressing did see his brains moving.' *Cal Carew (1575-1588)*, p. 356; Sidney, 'Memoir of his government', 8 (1860), p. 186. Henry Harrington's imprisonment and abuse became part of the English lore that surrounded Rory Og O'More's legacy as an inveterate wood kern and rebel, and the story quickly spread among the both the English and Irish soldiery; George Carew, John Derricke, as well as William Camden would recall the story forever painting the Irish, and in particular the Gaelic Irish, rebels as the most treacherous opponents.

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was no easy target. The rebels had 26 picked men inside in addition to O'More, his marshal (Shane MacRorye Reogh), Cormac O'Connor, and the wives of O'More and his marshal. The soldiers held the initiative and slaughtered everyone inside and took the marshal's wife prisoner. O'More and Reogh managed to escape. The crown finally killed O'More and the remains of his army at Mullaghmast (1578), ironically in a reciprocal false parley.

Sidney assigned the destruction of the O'Mores and the Leinster rebels to Francis Cosby, and in the furtherance of that mission, Cosby was granted the authority of martial law. Royal commissions in Ireland often contained important directions for their recipients, and Cosby's directed him 'to follow and attack with fire and sword Rory oge, the O'Conors, and their company, and all other traitors and rebels in any place where they may be found'.⁷⁰⁰ Thus, Cosby's charge required him to make unrestrained war upon the rebels. Military counterinsurgency operations offered almost no room for the taking of prisoners, and it was the practice among the crown's officers to refuse quarter to rebels in the field, and exceptional circumstances were necessary for them to make compositions with rebel held fortifications. All these factors contributed to a combat environment which further limited the taking of prisoners in military operations.

The Irish conflicts produced a complex legal environment regarding prisoners that was governed by an *ad hoc* mixture of domestic and martial law, and the conventions more reflected the legal doctrines used in the Northern Rebellion than the customs of just war. English soldiers serving in Ireland thought that the rebel combatants were not their social equals, and very few captains accepted ransoms in exchange for the rebels held in their custody. Nor would the more unscrupulous captains permit such activities to be documented. Nicholas Malby turned down more than one great ransom. Instead he held the perpetrators for trial and placed the crown's justice over the possible profits from ransom, but at the same time, the crown's justice brought in its own profits.⁷⁰¹ Ransoms traditionally supplemented a soldiers' income; however,

⁷⁰⁰ Francis Cosbie commission of martial law is calendared in: 'Calendar of Fiants of reign of Queen Elizabeth', *The report of the deputy keeper of the public records in Ireland*, vol. 11-13 (Dublin: Alexander Thom, 1879), p. 25, #2997.

⁷⁰¹ Bagwell, *Ireland under the Tudors*, iii, p. 93: Malby refused a £1,000 ransom for William Burk, the son of the earl of Clanricard, and another £1,000 for Turlogh O'Brien; *CSPI (1574-1585)*,

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captains holding commissions of martial law had alternative extortions available to them.

The constable of Carlow (1567-1594), Robert Harpoole held Carlow, and its neighbouring lands, for the crown while 'remunerating themselves handsomely.'⁷⁰² Prisoners in the Irish conflict as in the Northern Rebellion divided-up according to social status.⁷⁰³ The division depended upon a captive's inheritance. In Ireland execution under martial law was commonly limited to 'persons not having 20s. of hereditaments'.⁷⁰⁴ Criminals possessing such wealth were to be tried by a jury.⁷⁰⁵ Sundry convicted prisoners were compelled to purchase pardons, while others without the means to do so were executed.⁷⁰⁶ Rebels convicted under martial law had their property seized with two-thirds to the crown and remaining third to the commissioner. Thus, there were profits to be had in the suppression of rebels and the loss of ransoms resulted in no great loss to profits.

Nevertheless, royalist soldiers took some selected rebels prisoner. In an attempted to keep Irish nobles from rebellion, their relations were surrendered and held as political hostages to ensure the compliance of their family members; however, the Irish were appeared on serious occasions quick to sacrifice their relations when their needs dictated it. Desmond and Clanricare hostages did not prevent their rebellions. Although hostages were not prisoners of war, the manner of their custody more resembled it than it did not. Hostages, according to Gentili, were 'those who are given to a sovereign or to the leader of an army for the purpose of binding the public faith'.⁷⁰⁷ A sergeant major, suppressing rebels in Leinster during the last year of Fitzmaurice's rebellion, wrote to

pp. 308, 320 (Burghley's approval); *Four Masters*, v, p. 1753 (Irish perception of their execution). Ransoming combatants might have been frowned upon but that does not mean exchanges were not made; however, their documentation was rare: *CSPI (1509-1573)*, p. 485 (the ransom offer for Con McNeill Oge).

⁷⁰² Rapple, *Martial power and Elizabethan political culture*, p. 221-2.

⁷⁰³ Froude, *History of England from the fall of Wolsey to the defeat of the Spanish Armada*, ix, p. 179.

⁷⁰⁴ 'Calendar of Fiants of reign of Queen Elizabeth', xi, pp. 52-3, #218, appears as a fairly standard template which many commissions of martial law more or less followed.

⁷⁰⁵ Rapple, *Martial power and Elizabethan political culture*, p. 231.

⁷⁰⁶ *Ibid.*, p. 242, c.f. TNA SP 63/33/39 ('The book against Robert Harpoole').

⁷⁰⁷ Gentili, *DIBLT*, ii, p. 241.

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officials that he had taken the sister of Simon McDavid prisoner, and 'whom if she do not stand me in steed I meane to execute.'⁷⁰⁸ Their lives were human insurance of obedience, if faith was broken, they were exposed to the danger of execution as punishment for their relation's rebellion.

Just as submissions were acted out as high political theatre designed to amplify the power of the state, so were executions used to bolster the appearance of sovereign authority. When so-called 'arch-traitors' - i.e. the principal military leaders of rebellion - were captured alive, their subsequent trial and execution provided the prince with powerful examples of law and order. Leading rebels were publicly executed and their bodies openly displayed. Even their corpses could fulfil this role and both John of Desmond and the earl of Desmond's bodies were displayed for this purpose. But how much more powerful was the example of Desmond's brother James?

During the summer of 1580, James's company raided livestock in Muskerry, county of Cork. A sheriff of Cork was a Gaelic Irishman, Cormac MacTiege, who roused a response force from his tenants, and they encountered James. The crown troops surprised the rebels and fought them at close quarters. James's rebels were overwhelmed, while his men attempted to surrender, their pleas were disregarded and the men were put to the sword. In the melee, James was wounded then bound and dumped in some bushes. After MacTiege's company finished their slaughter, James was recovered and taken to as a prisoner to Cork.⁷⁰⁹ Speedily James was brought before a tribunal, tried and convicted. '[U]pon judgment [James was] drawen, hanged and quartered: and his bodie being quartered, it was together with the head set on the town gates'.⁷¹⁰

Even the prisoners of the lower social classes were taken up as the crown's companies, sheriffs, and seneschals swept over the countryside for one crime or another and dumped *en masse* into jails of key walled towns. Once there these rebels would have their cases reviewed by justices of the peace or commissioners of martial law and a judgement rendered upon them from this

⁷⁰⁸ *CSPI (1509-1573)*, p. 473.

⁷⁰⁹ *Irish Chronicle*, pp. 432-3.

⁷¹⁰ *Cal. Carew (1575-1588)*, pp. 300; *Irish Chronicle*, pp. 433.

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evidence. Nicholas White recorded the lord deputy's circuit of Leinster 'took 181 prisoners, 48 were executed by trial, two principal gentlemen of the Kavanaghs who were attained.'⁷¹¹ And the earl of Ormond delivered to the jail of Kilkenny 164 malefactors for execution.⁷¹² Local sessions allowed the administrators of justice to issue punishments ranging from fines to execution.

The last group only slightly qualifies as a prisoner; these were generally military officers and administrators captured during military operations, but they were dead men walking and were kept alive to be tortured for intelligence and afterwards executed. The last sort of prisoners were namely rebel officers and administrators; these men were captured during military operations. They were held for interrogation and on the chance that captains might wrest from them actionable intelligence. These captive rebels were suffered to live and did so at the whim of their captors. Pelham used the Italian Captain Julian, captured at the siege of Carrigafoyle Castle, for this purpose.

Additionally, papal support for the Desmond rebellion meant that priests and mendicant brothers were drawn into military roles. Dr Sanders was a prolific recruiter for the rebel cause from 1579-1581. Sanders's writings provided judicial as well as religious grounds for a crusade against the English. Dr Allen had been in the front ranks encouraging the kern and gallowglasses to fight at Monasternagh (1579). The Kilmallock garrison, while on patrol in August 1580, captured James O'Haie, a Franciscan brother. O'Haie confessed to having served as Fitzmaurice's standard bearer. Furthermore, O'Haie gave extensive testimony condemning the earl of Desmond as the chief architect of the current rebellion.⁷¹³

⁷¹¹ *CSPI (1574-1585)*, p. 531.

⁷¹² *CSPI (1509-1573)*, p. 459.

⁷¹³ *Cal. Carew (1575-1588)*, pp. 304, 308-9; *Irish Chronicle*, p. 434.

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I justified every kind of cruelty against these most cruel foes. For this was so before the victory, with the purpose of gaining it; but we are now considering the time when the victory is won. And this is like the distinction between torture and punishment'.⁷¹⁴
 —Alberico Gentili

Throughout Elizabeth's long reign (1558-1603), military conflicts — 'underhand' and 'secret' wars, regular just wars, or 'war[s] against the rebel' — threatened to consume the kingdom. France had reclaimed Calais in 1558 from England, and by 1560 soldiers bearing the fleurs-de-lis were lodged in Scotland and threatening England's northern border. European political and military alignment was fundamentally changed when Philip II of Spain decided to send a powerful army to the Low Countries (1566), and the duke of Alba led the army out of Italy marching overland into the provinces of the Low Countries (1568). Alba's orders tasked him with suppressing the growing Protestant rebellion there, and this Spanish reorientation would establish an enduring and significant Spanish presence in the region. The English viewed the Spanish occupation of the Low Countries as an eminent threat. As a Protestant state, England interpreted Spanish imperialist aggression in the Low Countries as part of a wider Catholic attack on Protestantism and a prelude of invasion. The English feared that once Protestantism had been extirpated from the provinces, Catholic Spain would turn against the heretics in England. England and its dominions were not free from religious strife. Religious tensions in England and Ireland came to a head in 1569, Catholics in both kingdoms rebelled against Elizabeth's Protestant monarchy. England acted decisively against militant Catholicism in Northern England, but in Ireland, Catholicism would become a key element in an emergent proto-nationalist ideology which linked loyalty to Ireland with the Catholic religion. Irish leaders hoped to use this ideology to unify the fractious

⁷¹⁴ Gentili, *DIBLT*, ii, p. 293.

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ethnicities inhabiting Ireland against English dominion and Protestant heresy. The ideology failed to achieve Irish unity but spawned several rebellions (Fitzmaurice Rebellion, 1569-1573; Desmond Rebellion, 1579-1584; Tyrone's Rebellion, 1598-1603). Unrest at home did not stop England's peoples from becoming increasingly interested in the continent's religious conflicts, and Elizabeth at times both covertly and openly supported English mercenary participation. English 'volunteers' would serve in France and the Low Countries throughout her reign until 1585 when the queen declared war against Spain. With a formal declaration of war, Elizabeth openly intervened and sent royal forces to the provinces to fight against Spain. Despite the multiplicity of threats, the Dutch and Irish theatres remained top among regime's concerns and demanded ongoing commitment of blood and treasure. England, although spared open warfare on the home island, would not have peace in either Ireland (1603) or on the continent (1604) until after Elizabeth's death.

The ever-present threat of war posed significant challenges to the Elizabethan regime. Far weaker than the world-spanning empire of Spain and the European powerhouse France, English resources were insufficient to address all their threats head-on, but the need to meet them in some fashion served as a crucial catalyst that militarised the Elizabethan state.⁷¹⁵ The wider strategic situation has been well studied, as well as has the technological and financial developments occurring at this time; however, the attitudes of the soldiers and their officers towards military operations, the English martial culture of honour and its customs of restraint, and the permissibility of wars of elimination. This thesis has followed up on previous historical surveys of the early modern European laws of war by focusing on the perceptions and practices of Elizabethan England, and it begins to illuminate a series of complex relationships that formed the contextual environment surrounding the state's conflicts, and described their influence on the soldiery's application of the laws of war or

⁷¹⁵ Nolan, 'The militarization of the Elizabethan state'; Neil Younger, 'If the Armada had landed: a reappraisal of England's defenses in 1588', *History* 93 (2008), pp. 328-354; idem, 'War and the counties. The Elizabethan Lord Lieutenancy, 1585-1603' (Unpublished doctoral thesis, University of Birmingham, 2006); Hammer, *Elizabeth's wars*. These works strike a more positive note contrasted with the more negative interpretations in older English historiography: e.g. Geoffrey Parker, 'If the Armada had landed', *History* 61 (1976), pp. 358-368; Cruickshank, *Elizabeth's Army*; Boynton, *The Elizabethan militia 1558-1638*.

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armed conflict. The most important relationships included the monarchy, Church of England, and Privy Council's role in culturally defining conflicts, the professional soldiery's martial customs, attitudes, and expectations in executing different military campaigns. This thesis examined these relationships and the extent to which these and the laws of war moderated military violence.

The thesis began by recognising the importance of the sword and the law in political discourse and iconography. All Elizabethan men of war would have agreed with Lord Deputy Perrot's guiding principle: '[t]he sword and the law he made the foundation of his gouvernement'.⁷¹⁶ Perrot's arguments have their origins in Tudor interpretation of St Paul's letter to the Romans, which Englishmen believed was divine law and God's mandate granting temporal supremacy to secular authorities. 'The prince by gods ordina[n]ce beareth ye sword', repeated Bilson time and again.⁷¹⁷ The magistrate's sword was an important religious, intellectual, and political concept that established and defined the temporal authority's supremacy and fundamental powers: 'God hath giuen them the sworde to maintaine iustice: and if that be refused, to offer force both at home and abroade'.⁷¹⁸ Thus, God's gift of the sword to secular rulers imbued them, and them alone, with the right to declare war and keep the peace within the realm. This idea was fundamental to the Elizabethan world view, which all members of their society both knew and understood; it formed the core cultural lens through which they interpreted and understood conflict. Chapter 2, 'The legal foundations of the Elizabethan laws of armed conflict', observed how a conflict's wider political-legal context influenced an individual commander's actions and their appreciation and application of the laws of war.

The English monarchy's *raison d'être* was defence of the realm, the church, and the preservation of domestic peace. To these ends, the crown could raise armies and lawfully command its military agents to act, if not always in a proscribed fashion, then at least in a predictable manner given a specific set of external circumstances. The defence of the realm was a problem rightly

⁷¹⁶ Irish Chronicle, p. 396.

⁷¹⁷ Bilson, *The true difference betweene Christian subiection and unchristian rebellion*, p. 103.

⁷¹⁸ *Ibid.*, p. 381.

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addressed through the mechanisms contained in a developing body of international law and war. The defence of the church was historically accomplished through the medieval tradition of holy war and crusade, but following the English Reformation, defence of the church became equated with the defence of the state, which meant that the Church of England's defenders were either the instruments of regular warfare in the case of external threats or the application of domestic law within the kingdom. The Elizabethan political-legal reframing of holy war was significant. Medieval interpretations of holy war could justify rebellion by subjects against their sovereign if Catholic authorities vouchsafed it. In contrast, Elizabethans argued to take up arms against one's lawful sovereign for any reason threatened God's divine ordering of society. The divine hierarchy was unassailable, and the chronicler John Hooker summarized the state's position:

[I]n a commonwealth, when euerie subiect is dutifull to his prince, obedient to his magistrate, and liueth according to his vocation and calling, the same prospereth and flourisheth; but let the wicked be left at libertie, and vnpunished, the whole state is disturbed, & the commonwealth ... in perill and danger to be ouerthrowne. The best commonwealth in all ages then prospered best, when the wicked were well punished, as the good conserued. And experience teacheth, that a theef, murtherer, a traitor, & such malefactors doo neuer better seruice to their prince & commonwealth, then when they be hanged on the gallows.⁷¹⁹

Thus, English contemporaries considered rebellion, regardless of its religious justifications, a capital crime, and magistrates were expected to use their swords to mete out justice. Whatever the conflict, be it regular war regulated by the laws of war or 'war against the rebel' and its merciless code of conduct, the Elizabethan soldier closely obeyed the dictates of complex systems of law and honour.

In just wars, university trained jurists like the Protestant refugee Alberico Gentili and the military lawyer Matthew Sutcliffe articulated comprehensive doctrines on the laws of war that took into consideration European martial customs as well as international legal norms. Commentators in the just war tradition disagreed on technical points of war, but sixteenth-century jurists were unanimous that war was by definition international; this is belligerency between

⁷¹⁹ Irish Chronicle, p. 383.

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states and not private individuals. These same jurists also attributed a common set of characteristics to wars. Firstly, all just wars had to be fought under the authority of a sovereign head of state. A conflict that lacked sovereign authority was something other than war and was illegal under international law. Secondly, warfare served a judicial function; it was a tool to adjudicate between sovereigns and their states when no other solution was available or desirable. Thirdly, since the belligerents were equals under the law, their military agents were also acknowledged as equals and possessed customary rights and protections. Lastly, because war was between sovereign states and their agents, international law sought to keep violence confined to soldiers and to limit war's impact on non-combatants. War, therefore, was a public event performed in the open according to customary law, and in order that internal and external observers can witness its conduct, judge its merits, and render either glory to the virtuous or condemnation to the cruel.

The public quality of just war was essential to the proper operation of the laws of war. Elizabethan just war doctrines described the prevailing 'war' mind-set among the soldiery, and this shared perception of war led soldiers to take enemy prisoners of war, capture enemy banners, and offer the defeated enemy terms of composition. Lawful conduct in just wars won the professional soldier honour and glory in proportion to their actions and status. Honour and glory was often the product of attaining the correct balance between violence and restraint. For example, Essex was duly regarded by peoples in England and Spain for his army's conduct during the English capture of Cadiz (1596). The English army had assaulted the town, penetrated its defences, and by the end of the first day controlled most of the town. The glory of Essex's victory would have been greatly reduced, if Essex had not magnanimously entreated the town to yield, which it humbly did. Once Cadiz had surrendered, the English army's purpose changed from combat to occupation. There would have been no honour or glory if Essex had ordered his soldiers to execute all the inhabitants, and allowed the soldiers to sack the town without restraint. The English had roundly condemned the Spanish for their cruelty in the Low Countries; therefore, there was a strong correlation between the legal restraints imposed by the laws of war on military operations and the honour and glory sought after by professional soldiers. Violence and mercy were factors closely intertwined and inseparable

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from just war and the rewards of honour and glory made soldiers stakeholders with a strong interest in the practice and perceptions of the laws of war.

Where the politics and laws of international warfare were largely uniform across Europe, religion as a justification for war was less easily defined or even agreed upon across the region's divergent Christian theologies. Catholic theology advanced the view that the Roman church had the right to declare holy wars against heretics and infidels, but even among Catholics there were debates concerning the precise legal framework of so-called holy wars. The exile Cardinal William Allen believed strongly in a Roman Church centred interpretation of holy war; in his view, the church had sole discretionary authority to declare holy wars. Allen's interpretation described a 'war of elimination' which had no religious or legal requirement for restraint. By way of papal bull, official church sanction legitimated all formulations of conflict; for example, a prince's punitive campaign against popular heresy or popular rebellion against heretical princes, and all faithful Catholics were required to lend support or service. Protestant English writers condemned this interpretation of holy war because it used religion to promote tyranny and rebellion. It is interesting to note, the adjutant general for the Army of Flanders, Balthazar de Ayala, while acknowledging the pope's authority to depose heretical monarchs via excommunication, and thus, the church's authority to legitimise popular uprisings against heretical governments, he did not think the pope alone could lawfully declare international holy wars. Ayala recorded in his treatise that just wars could be fought for certain religious causes, but the pope was required to coordinate with temporal princes and kings.⁷²⁰ In this instance, Ayala's holy wars between states was regular war with religious *casus belli*, and because it was a just war, it was limited by the laws of war; however, the conflict in the Netherlands, since it was a rebellion inspired by heresy, does not fit within this rubric.

⁷²⁰ Ayala, *DIOBDM*, ii, pp. 19-21. The late Elizabethan legal synthesizer William Fulbeck noted: 'the late king of Spaine Phillip, did pretende this defence of his warres (as some testifie) that they were against Infidels, and Heretikes. Yet a Doctor of his owne sect Baltasar Ayala thinketh that warre is not leuied against Infidels, because they be Infidels, although the Emperor or Pope should command it.' Fulbeck, *The pandectes of the law of nations*, f. 40^v.

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Similar debates concerning holy war occurred in England. Most Protestants in England and Anglicans advanced holy war doctrines that either incorporated holy war within just war theory or rejected religion as lawful cause for war. In both cases, all wars remained under secular control and limited by the laws of war. Most Elizabethan sermons addressed ‘the problems of war and the virtues of peace on a broader theological and philosophical level, and were usually attentive to pragmatic policy concerns.’⁷²¹ Dr Lowe’s research on religious war and the ‘common peace’ found that ‘[t]o say that even most strong, evangelical Protestants were clamouring for holy wars and radical religious restructuring cannot be sustained and intimates that too much attention is probably being paid to those who made the noise.’⁷²² Perhaps a speculative extremist Protestant minority wanted holy wars authorised and directed by Protestant theologians and waged without restraint, but such a position was antithetical to prevailing Elizabethan religious practices and secular views.⁷²³ Religious and legal writers acknowledged religion could provide justifications for wars; however, these arguments did not amount to a declaration of holy war or crusade against the infidel or heretic. Wars justified on religious as well as natural law were not to be fought without regard to customary restraints. War commentators argued clearly that wars should be fought with mercy: ‘[a]lthough the saints in arms may be called to take drastic actions for which they are equipped with “a special habit” of cruelty, they are not to engage in wanton violence indiscriminately or to rejoice in the spilling of innocent blood.’⁷²⁴

Holy war outside the just war framework had the potential to weaken or at least challenge the secular authority. In defence of secular power, English authorities limited theological power in temporal affairs which protected and preserved secular supremacy. Elizabeth jealously guarded her monarchical

⁷²¹ Lowe, ‘Religious wars and the “common peace”’, p. 418.

⁷²² Ibid.

⁷²³ Even religious reformers in the puritan tradition did not abandon the just war framework: Timothy George, ‘War and Peace in the Puritan tradition’, *Church history* 53 (1984), pp. 492-503, 495.

⁷²⁴ George, ‘War and Peace in the Puritan tradition’, p. 502-503; Edward Vallance, *Revolutionary England and the national covenant: state oaths, Protestantism and the political nation, 1553-1682* (Woodbridge: Boydell Press, 2005), pp.40-42.

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power against any encroachment.⁷²⁵ This led her to reject her more radical Protestant calls for religious war against Spain, and consistently the Elizabethan regime pursued a just war policy with regards to foreign wars. Radical Protestants outside England developed biblical justifications that permitted active resistance against an idolatrous, i.e. Catholic, regime. The most well-known of these in England was the Scottish Calvinist John Knox. Knox developed arguments that sanctioned rebellion for religious causes under certain circumstances which amounts to another type of Protestant holy war.⁷²⁶ In a letter written in 1560 to the English commander Sir Henry Percy then fighting in Scotland, Knox wrote '[w]e mean neyther sedition, neyther yit rebellion against any just and launchfull authoritie, but onlie the advancement of Christes religion, and the libertie of this poor realm.'⁷²⁷ However, Knox had almost no currency in England, and even puritan commentators remained distant from reformist doctrines of resistance.⁷²⁸ This enabled the Elizabethan regime to propagate and maintain its law and order policy against internal decent and rebellions.

When considering religious and ideological factors in England's conflicts, it is necessary to recall that the Elizabethan regime acted most often according to the *realpolitik* considerations of the moment.⁷²⁹ The regime could both condemn and support Catholics as easily as it did their fellow Protestants; it promoted prayers for the survival of the Knights of St John during the siege of Malta (1565) and celebrated the victory at Lepanto (1571). The regime also cultivated relations with the enemy of Christendom - the Ottoman empire - following Elizabeth's excommunication.⁷³⁰ If Catholics were idolaters and the Turks infidels, we must conclude that the regime was exceedingly pragmatic and

⁷²⁵ The most powerful example of this was Queen Elizabeth's anger at the earl of Leicester's assumption of the sovereignty of the United Provinces, a grant of power that she had previously turned down.

⁷²⁶ Richard L. Greaves, 'John Knox, the reformed tradition, and the development of resistance theory', *The journal of modern history* 48 (1976), pp. 1-36.

⁷²⁷ *Ibid.*, p. 25.

⁷²⁸ Greaves, *Society and religion in Elizabethan England*, p. 539; George, 'War and Peace in the Puritan tradition', p. 502.

⁷²⁹ Wilson, *Queen Elizabeth and the revolt of the Netherlands*, pp. 126-128.

⁷³⁰ Lisa Jardine, 'Gloriana rules the waves: or, the advantage of being excommunicated (and a woman)', *Transactions of the royal historical society* 14 (2004), pp. 209-222.

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could be most often predicted to act in its political interests rather than the more restrictive dictates of faith.

English commanders viewed Spanish and Irish militarised Catholicism negatively, and through the lens of their own national theology which influenced their approaches. As a Protestant state opposed to Spanish expansion, England was all but forced to choose its geographic neighbour and confessional ally in the Dutch revolt and their war for independence. Religion would influence the English colonization of Ireland; it was, however, not always antagonistic, and underwent alternating periods of conciliation and forwardness.⁷³¹ As Dr Trim has noted: the defence of international Protestantism was an important motivation among the soldiers serving in Elizabeth's wars and the conflicts in Ireland.⁷³² He often referred to these as Protestant 'holy wars', but Trim never specifically defines what this meant either legally or theologically to the English Protestants. This thesis has speculated and identified the initial outlines of a policy that was advanced by key members in the Elizabethan regime and long serving veterans who either rejected traditional interpretations of religious war out of hand or viewed holy war as one more just cause of regular war which retained customary limitations on violence. At the same time, the politico-legal reframing of rebellion, even when it was sanctioned by a religious authority, permitted English officials to summarily execute anyone suspected of treason or rebellion without any substantial legal hindrance.

English law of war theorists like Gentili or Sutcliffe might debate about whether wars could be justly waged solely upon on religious grounds, but they agreed that this manifestation of war, in legal and ethical terms, should be executed in the same manner as just and regular war. If Elizabethan Protestants' had an applicable doctrine of holy war, soldiers and theorists alike held that it

⁷³¹ Hutchinson, 'Reformed Protestantism and the government of Ireland, c. 1565-1580', pp. 71-74.

⁷³² Trim, 'Fighting "Jacob's war's"': idem, "'Put all to the sword": the effects of reformation on the ethics of war in sixteenth-century Germany and England', in *Sister reformations II: Reformation and ethics in Germany and in England*, eds., D. Wendebourg and A. Ryrle (Tübingen: Mohr Siebeck, 2014), pp. 271-298; idem, 'Conflict, religion, and ideology', in *European warfare, 1350-1750*, eds., F. Tallet and D.J.B. Trim (Cambridge: Cambridge University Press, 2010), pp. 278-299; idem, '[Book reviews] Holy war and English culture under Elizabeth I: rhetoric and reality', *Journal of early modern history* 4 (2000), pp. 447-451.

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was a part of international law's just war doctrine, and its conduct should not deviate from the customs of regular war. Where the notion of Protestant holy wars can be seen to depart from the conventions of just war was in ending war. Belligerents, infused with the ideological certainty that their side was on the right side, were far less willing to accept a compromise peace with those they saw as heretics or infidels, or as Essex, and the anti-Spanish hawks, would argue such a peace could never be trusted since their enemies viewed them as heretics, and Catholics could violate oaths made with heretics.⁷³³ Wars in this case could not hope for an enduring peace and the belligerents forced to accept an armistice for a time. Just wars fought for religious causes, then in other words, did not alter materially the basic principles of international warfare or the laws of war. Furthermore, the English purposefully emphasized the need for increased obedience to the laws of war in international wars. The English had severely criticised Spanish conduct in the Low Countries claiming it was tyrannical and cruel. This position also represents that of a weaker power, and one that understood its soldiers faced a greater likelihood of defeat and capture at the hands of the enemy, but it also played to the Elizabethan regime's broader focus on the rule of law.

William Cecil, Lord Burghley, among others within the regime, argued that English actions against both foreign enemies and domestic insurgents were entirely grounded in sound legal precedents. Central to this view was Lord Burghley's *The execution of justice in England* (1583). This document was a key position paper, which the regime used to counter Catholic criticisms that it had persecuted Catholics because of their religion. The regime countered these claims by asserting that it acted in accordance with the law which required rebels and traitors to be punished. The regime's law and order policy provides an important departure point separating rebellion and holy war from just war. This approach rejected a subject's right to religious resistance, or holy war, against infidel or heretical monarchs. Furthermore, by making law and order the pivotal point in England's military campaigns, the regime skilfully sidestepped

⁷³³ Camden, *Annals* (1635), p. 493; this was an argument that Essex himself employed in Devereux, *Apologie*, sigs. [no sig. Div^v]-E^r.

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theological debates and positioned England as the defender of justice both domestically and abroad.

This was the main reason that the Elizabethan Irish campaigns were more harshly prosecuted than continental wars. Just war doctrine had developed in accordance with the growth of centralised European states, but laws and theories related to domestic law enforcement and governance were simply different from those used in regular war. The *jus ad bellum* of just war doctrine could not be used to justify rebellion; a fact which Dr Johnson has noted in his research, and if *jus ad bellum* could not be used to justify rebellion then as ‘the Irish case illustrates ... *jus in bello* was not perceived to apply in suppressing rebellion either.’⁷³⁴ From government officials to common soldiers, all agreed that rebels were criminals and to whom ‘the Law of Armes is not to be obseured’.⁷³⁵ Commentators on the laws of war provided slight advice regarding the soldiers conduct against rebels. What advice that was given was clear and simple: soldiers could and should kill rebels without restraint; oaths made to rebels, particularly if made under duress, were not binding; additionally, there were no non-combatant protections. Hence Gilbert and Pelham’s attacks on non-combatants were licit, and Grey’s massacre of the papal garrison at Smerwick in 1579, the regime justified on multiple levels but foremost among these was the preservation of law and order.

Appointed a colonel, and holding a commission of martial law, Gilbert waged a war upon the rebel. His army had standing orders to offer rebels one, and only one, opportunity to surrender to the queen’s mercy, and if they resisted, the inhabitants of the fortification were to be ‘put man, woman and child to the sword’.⁷³⁶ He could not afford to waste his limited resources taking ‘euery pettie forte’, so each instance of resistance had to serve as an example to every other potential rebel.⁷³⁷ Gilbert’s policy was not his own novel invention. It was a practice with precedence in wars and certainly in ill-defined

⁷³⁴ Johnson, Just war tradition and the restraint of war, p. 58.

⁷³⁵ Fulbeck, The pandectes of the law of nations, p. 81.

⁷³⁶ Edwards, Campaign Journals of the Elizabethan Irish wars, p. 16.

⁷³⁷ Churchyard, A generall rehearsall of warres, sig. Q. ii^r.

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conflicts.⁷³⁸ The Duke of Alba had exercised a similar policy in 1572 during the Dutch rebellion and again in 1580 to unify the crown of Portugal with that of Spain. Cruelty of this sort, Gentili ascribed to the defender's obstinacy and not to the innate bloodthirstiness of the commander, who was bound by duty to take such a course⁷³⁹. Rebellions would not survive without popular support, so it was an accepted practice to slaughter peasants that had either willingly or unwillingly proffered material support to the rebel armies. Therefore, Pelham's attacks against non-combatants were fundamentally attacks on the logistical underpinnings necessary for rebellion. Grey had determined that the papal troops did not have a lawful commission, and English doctrine did not acknowledge the pope as a sovereign, and thus, he could not declare war. The Italians and Spaniards openly professed that they had come to aid rebels, and, thus, they were counted as rebels themselves, just as Gilbert and Pelham had slaughtered non-combatants because they had materially supported the rebels. Furthermore, the surrender of Castello del Oro was made upon terms of 'mercy', a specific type of composition that put the lives of the surrendered – for life or death – into the hands of the victorious captain. A similar composition of 'mercy' was given to the earl of Leicester during his expedition to the Low Countries, which he acknowledged necessitated the execution of additional enemy combatants to serve as an example to others considering an obstinate defence. English soldiers had themselves been slaughtered for similar cause, and the veterans knew the risks when they entered foreign conflicts covertly and without lawful commission; participation in this manner was construed as supporting rebels, and devoutness in religion did not protect Protestant adventurers and neither would it shield Catholics.

Waging war without a lawful commission from a prince made the adventurers participation in war unjust and unlawful soldiers were liable to gross abuses. Elizabeth on occasion purposefully allowed her subjects to covertly serve foreign princes without providing them royal commissions. This problem was addressed in chapter 3, "'Underhand" and "Secret" Warfare between States: the conduct of English volunteers in the Dutch Rebellion'. In early

⁷³⁸ Gentili, *DIBLT*, ii, p. 214.

⁷³⁹ *Ibid.*

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Elizabethan expeditions to France (1562), the English had dispatched both volunteers as well as soldiers commissioned by the queen to aid the Huguenots then in rebellion. The French were merciless towards the English volunteers because firstly, they were illegal combatants and secondly, understanding their unlawful status, the English had made an obstinate defence of Rouen. Even the wounded were slaughtered in a fashion that foreshadowed the destruction of the papal garrison at Smerwick (1580): '[the] great number of English soldiers ... hurt and laid together in a house, [who] a short time before the [royal] soldiers departed hence had their throats cut and were thrown into the river'.⁷⁴⁰ Yet, in this same revolt, the Army Royal commissioned by the queen and led by the earl of Warwick captured Le Havre (called Newhaven by the English), which they lawfully surrendered 28 July 1563.⁷⁴¹ English soldiers were divided into legitimate and illegitimate cohorts based in part on their commissions; this permitted Warwick's Army Royal to be treated in accordance with the laws of war, and the volunteers at Rouen to be slaughtered.

During the years that England fought a 'secret war' against Spain (1572-1584) in the Low Countries, the laws of war were not technically in effect, which resulted in a certain degree of confusion among the belligerents. Successive captain-generals of the Army of Flanders considered the Dutch to be rebels, and anyone that came into the conflict with the intention of aiding them was equally guilty of the same crimes. A contemporary chronicler recalling one Spanish massacre noted that the Spanish killed 'as many French, English and Scots as Walloons', but the Protestant combatants' willingness to return atrocity for atrocity made law of war practices more attractive over time.⁷⁴² English volunteers perceived the conflict in the Low Countries to be a just war, despite king Philip and his governors' views to the contrary. The English emphasis on just war and lawful conduct better served their position, since they were always outnumbered and against a superior military organisation. The reasons are

⁷⁴⁰ Trim, 'The "Foundation-stone of the British army"? The Normandy campaign of 1562', p. 86 c.f. *CSPF (1562)*, p. 434.

⁷⁴¹ *CSPF (1563)*, pp. 471 (Warwick rejects calls for his surrender claiming that he had no commission from the queen to do so), 480 (Smith receives commission from the queen to surrender Le Havre), 480-1 (Terms of Le Havre's surrender).

⁷⁴² Trim, 'Put them all to the sword', p. 295, c.f. Baudart, *Les Gverres de Nassav*, p. 117.

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somewhat murky but the Spanish appear generally less inclined to massacre the English mercenaries in Dutch service. Over time a grudging respect was established between the Army of Flanders and the English volunteer companies. Slowly the Dutch revolt transitioned into a regular warfare. Perhaps one reason for this was the enduring presence of English mercenaries.

Despite the use of terror strategies, or perhaps because of them, Spain's victories in the Low Countries remained ephemeral until more conventional strategies were adopted by Alexander Farnese, duke of Parma. Chapter 4, 'War between Sovereign States: English intervention and regular war in the Netherlands', closely examined how Elizabeth's declaration of war and the dispatch of an Army Royal to defend the Dutch further altered the Spanish military's operational environment in favour of the Dutch. English officers conducted warfare in the Low Countries with a high degree of ritual and formality. The set piece nature of field battles and sieges created a ritual space for the performance of certain actions; for example, taking prisoners, hearing parleys, and receiving surrenders. Slaughters generally occurred when one side manifested a clear military superiority, and caused the other side to retreat in chaos. During these instances, the common soldiers' role was to be an executioner, and the victor acted within the bounds of the laws of war when the routed soldiers were killed *en masse*.⁷⁴³ In the same manner, a town, or other type of fortification, taken in an assault could be likewise marked by lawful mass killings. Military necessity required these types of mass killings, and it was neither desired nor desirable to halt such actions.⁷⁴⁴ The secondary means of waging war, for example skirmishes, ambushes, surprises, or other less conventional tactics were not strictly governed by the laws of war;⁷⁴⁵ however, martial honour, and thus the laws of war, persisted even in these environments which helped to moderate violence. Opportunity and inclination permitted soldiers in these circumstances to execute so-called guerrilla operations with

⁷⁴³ Gosson, *The trumpet of warre*, p. 32.

⁷⁴⁴ Grossman, *On Killing*, pp. 127-129, which helps to describe the psychological element in these types of mass killings.

⁷⁴⁵ Gentili, *DIBLT*, ii, p. 13.

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varying degrees of restraint. Nevertheless, the laws of war only had their full weight during conventional military operations: sieges and set piece battles.

There was no greater threat in the Tudor imagination than the dangers associated with rebellion. A divided English kingdom was more likely to be defeated by the Catholic anti-Christ and its servants. Chapter 5, ““War upon the rebel”: Elizabethan military conduct in Ireland (1569-1584)”, returns to the subject of rebellion and the conduct of Elizabethan soldier serving in the Irish theatre. It is important to stress the point made by earlier researchers that the English army in Ireland often had as many Irishmen as they did English and Welshmen under arms.⁷⁴⁶ Rebellions endangered the health of the commonwealth, and in response, political commentators argued for no restraints, and men from all parts of the commonwealth served against the rebels. Mercy for rebels promised greater pains in the future: ‘[e]very chief rebel’s pardon is a hundred men’s death’.⁷⁴⁷ Many officers and administrators serving in Ireland thought that the crown had too often held back when it should have punished more harshly. A frustrated Sir Henry Wallop advised Walsingham: ‘[t]here is no waye to daunt these [rebellious] people but by the edge of the sworde, and to plant better in there places’.⁷⁴⁸ Ireland’s geographic isolation inhibited continental Catholics from rendering the kind of aid that might alter the legal environment, and the Elizabethan regime’s aggressive

⁷⁴⁶ The ethnic composition of the English military establishment in Ireland is a subject that needs further research; however, initial research shows that in March 1598 the army’s ethnic composition was: 20% of horse and 37% of foot were English born (which appears to include soldiers from Wales); 55% of horse and 25% of foot were Palesmen/Anglo Irish; and 25% of horse and 28% of foot were Gaelic Irish, c.f. David Edwards, ‘Ireland: security and conquest’, *The Elizabethan world*, eds., S. Doran and N. Jones, the Routledge worlds (London: Routledge, 2011), pp. 182-284, 195, table 11.1. Welsh participation is detailed in Rhys Morgan, ‘From soldiers to settler: the Welsh in Ireland, 1558-1641’ (unpublished doctoral thesis, Cardiff University, 2011) also published as *The Welsh and the shaping of early modern Ireland, 1558-1641* (Woodbridge: Boydell Press, 2014). Elsewhere it was reported in 1597 that Irishmen (presumably Anglo and Gaelic Irish) had outnumbered the English in some companies three to one: Cruickshank, *Elizabeth’s army*, p. 34.

⁷⁴⁷ *CSPI (1574-1585)*, p. lxxiv; Barnabe Rich, *A new description of Ireland* (London: Thomas Adams, 1610), pp. 101-103 (Rich cites excessive granting of pardons as a key reason that the rebellions arose in Ireland).

⁷⁴⁸ *CSPI (1574-1585)*, p. lxxxii; this remark relates closely to analysis made by Davies, *A discovery of the state of Ireland*, pp. 4-5.

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counterinsurgency strategy successfully prevented the Irish from transforming their conflict into a regular war.

It might appear as if there were no opportunities to restrain the sword of the magistrate and his 'men of war' in Ireland's frequent rebellions; however, restraint did manifest on occasions. Lord Deputy Sidney and Lord Justice Pelham had offered terms of composition to the garrisons at Old Castle and Carrigafoyle Castle respectively, and the massacres that followed were licit according to contemporary ideas concerning laws of armed conflict. When rebels accepted terms with crown officials, the terms of these agreements were most often fulfilled. Sidney granted terms of composition to the rebel garrison holding a castle in Tipperary, and, while acting as the military governor of Munster, Perrot made a composition with the garrison of Castle Maine. In both instances, the rebels departed their fortifications with at least their lives if not more. In many sieges with rebels, however, the ritualised space that permitted prisoners to be taken or fortifications and towns to surrender was simply ignored. Restraint typically became a feature of English operations when regional operations were upset by prolonged localized considerations, and the commander condescend to accept terms with rebel garrisons; these were done out of necessity rather than desire. Restraint was unthinkable in field battles with rebels. By accepting battle, every rebel soldier under arms had shown themselves to be traitors to the crown, and therefore the crown and its servants would brook no mercy, and every rebel under arms were liable to be killed. Yet, the question of slaughter or mercy ultimately had to be determined and on occasion justified by the commander in the field. Commanders in counterinsurgent operations had the same latitude as other officers in regular warfare, but there were increased social pressures to withhold restraint.

Social status also played a key role in determining the level of restraint exercised by the regime. During the Northern Rebellion, the Elizabethan regime took steps to preserve wealthy rebel subjects from which the state sought punitive extortions, while the commonality was slaughtered and displayed *ad terrorem*. The submission or execution of notable rebels was an important feature in Elizabethan wars against the rebel. In the aftermath of Fitzmaurice's rebellion (1569-1573), Elizabeth granted mercy and life to Fitzmaurice and his

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entourage once they formally submitted to Perrot. Their surrender was performed in Kilmallock's church. With his lieutenants on their knees and hangman's nooses placed around each of their necks, Fitzmaurice swore an oath of fidelity to Queen Elizabeth, in both English and Irish, while Perrot witnessed and held his sword point over the traitor's heart. An oath which Fitzmaurice broke when he left for the continent in 1575. Fitzmaurice undoubtedly believed that an oath to a heretic was no oath at all. The submission of rebel leaders included their followers as well, and the calendars are filled with the names of pardoned rebels. However, with each rebellion and the rising costs in blood and treasure, the crown felt compelled to harden its position, and submission could not in every case guarantee life.

The regime employed public executions to instruct the populace on the futility of rebellion. These were tangible expressions of the crown's power over life and death. By submitting to the queen's agents, rebels were often publicly displayed, and many had their deaths used to show their folly. The theatre of law featured prominently in these executions; for example, after the powerful Anglo-Irish lord John of Desmond was taken prisoner, his criminal case was heard and a council determined him guilty of treason. Shortly after his judgment, Desmond was publicly executed and his body publicly displayed. In the larger Irish towns, the gallows were kept full, and throughout Ireland, the severed heads of rebels were mounted on the city walls or otherwise displayed to serve as a grim warning against the perils of rebellion.

Thomas Newton poetically described the discipline of a soldier through an allegory employing the scales of justice; wherein, the soldier's actions were balanced against justice. In just wars, the scales of justice were weighted in favour of mercy. Soldiers that obeyed the laws of war were rewarded with honours and glory. In rebellion, the determiners of legitimate actions were reversed. Mercy was viewed as weakness, and soldiers were expected to mercilessly enforce the law of the land. The scales of just action during times of rebellion therefore were weighted against mercy when compared to regular war.

The arguments presented in this thesis have implications for future researchers. Early modern martial culture influenced military methods and

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strategies, and the thesis has shown that contemporary debates concerning the morality of violence directly influenced the actions of belligerents. While the levels of disorganisation among sixteenth-century armies is alarming to current readers, in matters of violence and restraint, the Elizabethan military possessed a clear cultural understanding of right and wrong. Future researchers will benefit from a more nuanced and less superficial understanding of the wide range of influences acting upon men of war.

Although the laws of war did not technically bear upon the Irish conflicts since they did not fit within the Elizabethan theories of just war, their principles were regardless carried into other types of armed conflict. The career soldier and veteran officer, whose lives were spent and fortunes were made in the wars, would have found it difficult to completely disassociate themselves from all martial customs and traditional honour codes connected with war when engaged in operations other than war. For theorists, the law was clear cut and iron clad: '[t]he question is not, what can be done with such men [that are rebels and brigands], or even what has usually been done, **but what must be done.**'⁷⁴⁹ However, under fire or in the press of arms, commanders on the ground and in the fight had to make difficult choices that were not always so clear. Contemporaries clearly understood military operations through traditional honour codes and customary martial practices which formed the basis for the laws of war; however, circumstances might compel a commander to act in a manner that was beyond what the laws of war might actually permit.

During military operations, the senior military official had the latitude to determine where and when to restrict the soldiers' fury. In Ireland, English captains applied certain customs of regular war against rebels, but what is seldom discussed are the external influences and their direct effect on military operations. Just as a commander in the field could situationally determine whether to apply customary restraint or not, they were subjected to other outside influences as well. The English state fostered a popular culture that thoroughly condemned rebellion, while the regime accepted compromises with rebels only when doing so presented additional benefits beyond displays of

⁷⁴⁹ Gentili, *DIBLT*, ii, p. 23 (emphasis added).

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mercy. Officers would have certainly felt influenced by the state's political-legal policies and larger military considerations to more often reject mercy.

Furthermore, an officer could have his position undermined if he was thought overly friendly with the Gaelic Irish. Writing to Lord Burghley, Andrew Trollope noted 'Captain [Warham] Sentleger proffesseth himself to be an earnest Protestant, and I think he meaneth well, yet being married to an Irish woman, overmuch favoreth her countrymen ... and I have heard and seen him speak earnestly for a rude Irish kerne'.⁷⁵⁰ Here Trollope exhibits the Elizabethan's well-known contempt for Irishmen.

Perceptions of the enemy are without a doubt important factors because soldiers find it easier to kill a dehumanised enemy.⁷⁵¹ The Gaelic Irish, in contemporary Elizabethan propaganda, were characterised as barbarous and uncivilised which led English officers to pursue so-called genocidal strategies against the Irish.⁷⁵² These views were a significant departure from the perceptions of the enemy promulgated in just war theory, which argued a sovereign possessed equal status with other sovereigns, and therefore, soldiers of one state, acting in the service of their sovereign, held the same and equal status with the soldiers of another state. This state of equality between belligerents, it was believed, necessitated restraint between belligerents.⁷⁵³ The English believed their activities in Ireland would civilise the barbarous Irish; Gentili claimed '[e]ven if you are governing ... savage and barbarous peoples, it is part of humanity to look out for their welfare and safety.'⁷⁵⁴ However, good governance required that the law be kept, and it was detrimental to the health

⁷⁵⁰ *CSPI (1586-1588)*, p. 429. Note, the *Calendar* records 'Anthony St. Ledger' as the captain in question; however, more recent research has identified him as Sir Warham St Leger (d.1600); Terry Clavin. 'St Leger (Seintleger, Sallinger), Sir Warham'. [Cambridge University] *Dictionary of Irish Biography* <<http://dib.cambridge.org/viewReadPage.do?articleId=a8225>> [accessed on 7 June 2017].

⁷⁵¹ Grossman, *On killing*, see sections IV 'An anatomy of killing: all factors considered', pp. 141-194, and V 'Killing and atrocities: no honor here, no virtue', pp. 197-229; Gray, *The warriors*, p. 133.

⁷⁵² Murphy, 'Violence, colonization and Henry VIII's conquest of France, 1544-1546', pp. 13-51; Edwards, 'Tudor Ireland', pp. 23-37; Kiernan, 'The English conquest of Ireland, 1565-1603', pp. 169-212.

⁷⁵³ Gentili, *DIBLT*, ii, pp. 12, 13, 25; Sutcliffe, *Practice, proceedings, and lawes of armes*, ff. 11-12 (implied); Gosson, *Trumpet of war*, ff. 36 (wrong intentions of the soldier), 37 (magnanimity in victory).

⁷⁵⁴ Gentili, *DIBLT*, ii, p. 292.

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of the state permit violations of the law to go unpunished. Thus, by promoting an image of the Irish as barbarous, English culture further reduced the human being's natural inhibitions against killing.⁷⁵⁵

Elizabethan commentators often employed arguments promoting civilisation over barbarity to justify English policies in Ireland: 'the vulgar sort [of Irish], through their dull wits and their brutish education, cannot conceive what is profitable for themselves and good for their country'.⁷⁵⁶ However, such a view cannot be extended to Elizabeth's just wars. English soldiers respected the soldiers serving Spain in the Army of Flanders. The veteran commander Lord Willoughby remarked, when considering reforms for the Berwick garrison:

Though as an Englishman I love not the Spanish nation, yet their martial laws are the best, and "if charge and trial may breed perfectnes, they have had it in more royall manner then any nation, savinge our nation of late." [...] There is no man so "silly" that has been in the Low Country wars ... who would not receive such law and reformation as a "puritane" soldier'.⁷⁵⁷

Sir Roger Williams's *A breife discourse of warre* (1590) was little more than an extended dialogue praising the merits of the Spanish discipline. English propagandists routinely argued for a perception of the Spanish as boundlessly ambitious and at times unnaturally cruel.⁷⁵⁸ Yet, English soldiers continued to respect the troops mustered under Spanish banners, but their respect was a soldiers' measured respect. Renowned for their discipline, the Army of Flanders provided the English men of war a fitting challenge which explains why the Low Countries remained the 'school of war'. As this thesis has shown, the laws and customs of the soldier were important determiners that often accurately

⁷⁵⁵ James P. Meyers, ed., *Elizabethan Ireland: a selection of Elizabethan writers on Ireland* (Hamden: Archon Book, 1983) provides samples from the Elizabethans themselves on the Irish. The semi-official propagandist and authority on Irish affairs Barnabe Rich described 'From whence it proceedeth that the Irish are so repugnant to the English', in his *New Description of Ireland* (1610): 'Now to speak of their dispositions, whereunto they are addicted and inclined: I say, besides they are rude, uncleanly and uncivil, so they are very cruel, bloody-minded, apt and ready to commit any kind of mischief.' Idem, p. 130.

⁷⁵⁶ Meyers, *Elizabethan Ireland*, p. 131.

⁷⁵⁷ *CBP (1595-1603)*, ii, p. 641.

⁷⁵⁸ Mark G Sanchez, 'Anti-Spanish sentiment in English literary and political writing 1553-1603' (unpublished doctoral thesis, University of Leeds, 2004), pp. 102, 124-125.

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explained Elizabethan military conduct, and provides useful insights into the factors most important to the veteran soldier.

The laws of war and military conduct provides an excellent pathway for future research. An area that would benefit from further inquiry, if not necessarily practicable, is increased attention to the day-to-day management and functioning of specific English military units. Captains and other commanding officers were responsible for achieving operational goals as well as making immediate determinations in the field regarding mercy and restraint. Conflict archaeologists have been making important discoveries into actual practices of battle and siege which has the potential to shed additional light upon their relationship to military law and the laws of war in practice, and it is necessary to incorporate these elements into future narratives.⁷⁵⁹ These men were often occupied with their own interests and needs, but their importance to war is largely neglected because of the limitations of the documentary record; however, one area that has been neglected and has room for further research were the public-private military partnerships utilized in the colonisation of Ireland.

Semi-private wars were given official sanction through public-private partnerships, and on several occasions these formations were deployed against the Irish. Preceding the tumultuous Desmond Rebellion, Irish colonisation was prosecuted via public-private partnerships between the English state and private adventurers. Walter Devereux, earl of Essex and Robert's father, embarked on a particularly brutal campaign to establish an English colony in Ulster. The private army raised by the 1st earl of Essex performed some of the most infamous atrocities associated with the so-called Elizabethan reconquest of Ireland. Another Ulster colonisation scheme was put forth by the junior Thomas Smith in 1571. Smith's promised 'to obtain Arde and other lands thereto adjoining at their own charge and perils', but his plans came to naught and Smith was killed

⁷⁵⁹ For example: The current research being conducted by Damian Shiels and René R. Gapert in Ireland, and studies such as Andre Schürger, 'The archaeology of the battle of Lützen: an examination of 17th century military material culture' (unpublished doctoral thesis, University of Glasgow, 2015); Marnix Pieters, et al, 'De materiële bronnen over het beleg van Oostende of de archeologie van een in de vroege zeventiende eeuw zwaar geteisterde stad', in *De val van het Nieuwe Troje: het beleg van Oostende, 1601-1604*, ed., W. Thomas (Leuven: Davidsfonds, 2004), pp. 139-145.

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in 1573.⁷⁶⁰ These public-private colonial adventures have not had their conduct scrutinised in relation to the laws of war. Perhaps a better understanding of military instructions and commissions will help to answer some of the questions regarding public-private military partnerships while also illuminating the conduct of English counterinsurgency practices.

There is some evidence that leads to speculation that an English officer bearing a commission to execute operations against rebels by 'fire and sword' - conventional military methods - perhaps understood that he was commanded to conduct measured operations. The same commission appended with an authorization for the use of martial law suggests that the recipient was further compelled more vigorously destroy rebellion by whatever means necessary. Notably, Sir Humphrey Gilbert's commission was latter type. This however might be a dead-end. Commissioned officers often interpreted their instructions in a manner that fulfilled their own desires or were simply ignored. Further research into martial conduct during the Eighty Years War has the potential to determine how the Dutch rebellion evolved into a regular war.

The sources consulted for this thesis were insufficient for determining the precise causes that transformed the Dutch rebellion into the Eighty Years War. War in the strict legal sense only existed between England and Spain from 1585 to 1604 but the alliance made between England and the United Provinces - the Treaty of Nonsuch (1585) - perhaps extended belligerency rights to the Dutch. Furthermore, the intervention of Elizabeth I - an acknowledged sovereign prince - in 1585, and perhaps, the dangerous assumption of Dutch sovereignty by the earl of Leicester, the queen's subject, perhaps helped to settle the legitimacy question. These conclusions must be tempered with an awareness of the pivotal change in Spanish attitudes ushered in during the tenure of Alexander Farnese, Duke of Parma and captain general of the Army of Flanders.

Spanish perceptions of the Dutch appeared remarkably consistent. The Duke of Alba and succeeding governors from Don Luis de Requesens to Don John

⁷⁶⁰ Hiram Morgan, 'The colonial venture of Sir Thomas Smith in Ulster, 1571-1575', *The historical journal* 28 (1985), pp. 261-278, 264.

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of Austria maintained that the Dutch were rebels, which prompted the continuation of a policy of little or no quarter. Although the English were alarmed by Spanish cruelties, English soldiers were subjected to very few atrocities at the hands of the Army of Flanders. The Duke of Parma's appointment to governor general led to a major change in Spanish conduct. Parma reorganised the leadership of the Army of Flanders and introduced policy changes. Following his own experiences with terror, Parma determined it to be a flawed strategy, and he used reconciliation to achieve the Reconquista of the southern provinces. Prior to the 1585 intervention, the Dutch themselves believed their legitimacy required bolstering, and certainly after witnessing the Duke of Alba's terror tactics in 1568 and again in 1572, there was no doubt that Philip II thought that Dutch opposition was criminal rebellion.

William 'the Silent' of Orange struggled during his lifetime to achieve just recognition of Dutch combatants, but his assassination in 1584 left a power vacuum, which Leicester attempted to fill. Leicester's government of the Netherlands has been characterised as one of failures and defeats, but before rendering our final judgement on Leicester's success or failure, consider that during Leicester's government the United Provinces, the war's shift towards conventional military operations continued and perhaps quickened. Without a doubt, Parma achieved notable successes after he rejected the laws of armed conflict relating to wars on rebels in favour of conventional military strategy. Despite political set-backs and in-fighting among his officers, Leicester practised regular warfare, and Leicester and Parma prosecuted their military operations with increased adherence to the laws of war.

Not enough is known about Dutch conduct during the period of rebellion or the war, nor are the contributions of the French Huguenots and German reiters well understood. These aspects of the Dutch conflict need to be further studied to properly weight Leicester and the English soldiers' contributions. Huguenot perceptions of war and its laws certainly influenced English readers, but whether these ideas were applied by the Huguenots themselves during their campaigns will require further inquiry. Although Leicester's victories were often reversed, he and his officers were always ready to negotiate a composition with forts flying Spanish colours. The English disciplined their soldiers' greed and

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surrendering towns were not exposed to the same violent sacks that the Duke of Alba and the Prince of Anjou, the later, sadly fighting on behalf of the Dutch, had done or Requesens's suffered. The worst side of the English officers was shown when Stanley and Yorke sold-out Deventer and the Zutphen scone for Spanish silver, albeit under the cover of religion. Stanley and Yorke had also sold their citizenship and would never be allowed to return to England so tainted with treason. As leaders, they alone bore this stain, and some subaltern officers did apply for and received pardons to return to England. It has been noted that the English contribution of men never surpassed twenty-five percent of the total men in Dutch service, but their significance exceeded their numbers. It would be a significant shift in the historiography of the Eighty Years War, if it was English intervention in 1586 in conjunction with reoriented Army of Flanders that completed the Sisyphean challenge and shifted the rebellion towards regular war.

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