The Historical Society of the Courts of the State of New York

Mary E. Erckert
2nd Prize
The 2012 David A. Garfinkel Essay Competition

A Call for Quarter

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The Historical Society of the Courts of the State of New York annually sponsors the David A. Garfinkel Essay Competition. The Society launched this essay competition in 2008 with the generous funding of Gloria and Barry Garfinkel. SUNY and CUNY Community College students from around the State are invited to write an original essay on a specified topic of legal history.

This year, the topic is THE BLUE AND THE GRAY: NEW YORK DURING THE CIVIL WAR. In 1867, Court of Appeals Judge Francis M. Finch wrote a poem entitled “The Blue and the Gray” and it immediately struck a chord with the American public. For many years after the war, the poem was read at the grave-side of Civil War soldiers during Memorial Day ceremonies.

The Society was launched in 2003 by its Founder, former Chief Judge Judith S. Kaye, with the mission of preserving the legal and judicial history of New York. It seeks to foster public appreciation and a better understanding of the rich legacy of the New York courts, the legal profession, and their contributions to the State and the nation.

A Call for Quarter

An Essay Dedicated to the Honorable Soldiers Detained in Camp Chemung, Elmira, New York

The sign reads, "Welcome to the Town of Elmira - A Great Place to Live." The peaceful inheritance of this historic town, nestled in the verdant hills of the Southern Tier of New York state, casts scarcely a shadow of its once infamous past. Yet this small town, as many small things in history will do, serves as a signpost marking the way toward greater human accomplishment and understanding.

The humane and ethical treatment of prisoners of war as we know it today did not come about in a powerfully profound Pauline moment, but was an evolution of thought brought about by our shared wartime histories allied with our increased appreciation of human dignity.

The breakdown of the Dix-Hill Cartel, which allowed the exchange of Confederate and Union soldiers, left the Union with many concerns regarding the management of the growing number of Confederate insurgents. The Union troops needed clear and concise direction on how to proceed as the war was deepening in severity and aggression. General Halleck of the Union Army turned to his friend, Francis Lieber, a New York writer and educator with a keen interest in military law, for advice. Within their correspondence, the nascent Lieber Code was taking shape. Finally, Lieber was asked to formalize his writings into a Code of Conduct for the Union Army.

Both his profession as a Professor of History and Political Economy at Columbia College and his experience as a combat veteran equipped him mightily for this task. It must be noted that he did not write these orders as an arbitrary historian, for the War Between the States was a battleground for him personally. Although staunchly loyal to the Union and its cause, the eldest of Lieber's three sons, Oscar, was a Confederate soldier. Perhaps it was this attribute alone that enabled Lieber to not look upon opposing soldiers as criminals, but rather as contrary

brothers-in-arms.

The contribution of Francis Lieber to the advancement of the humane treatment of prisoners during wartime is unparalleled. Although few of Lieber's sentiments were original, he codified the most noble thoughts of his time for the benefit of the Union. It was an unprecedented move, comparable perhaps to the authoring of Plato's Republic, in which he methodized the Classical Liberal Arts, or to the writings of our own Thomas Jefferson, who skillfully drafted our Declaration of Independence. The Lieber Code of 1863, also noted as General Orders No. 100, was an instruction for the government of armies of the United States in the field. The first compilation of its kind, the Code consists of 157 instructions divided into 10 sections, dealing primarily with the concepts of martial law, military jurisdiction, the protection of enemy property and civilians, the treatment of prisoners of war, and notably a section on insurrection, civil war and rebellion. The beauty of these instructions is that they call one to never abuse one's power, but the code allowed enough flexibility for Union forces to do what they needed to in order to win the war.

Lieber steadfastly asserts that although war is, at times, an unavoidable necessity, one is called to maintain consistent humanitarian ideals. Lieber states in Instruction 4:
Martial law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not martial law; it is the abuse of the power which that law confers. As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed. This tenet sets the tone for the rest of the Code, and all other instructions branch off this premise. The Code addresses the protection of property, notably that art, religious items,

libraries, scientific collections, schools, and hospitals be spared whenever possible. The ideal that "so far as the law of nature is concerned, all men are equal" is upheld and slavery is a concept acknow-ledged by geographical dominions alone, but has no bearing on this ideal.

The Lieber Code denounces violence against citizens and the wanton destruction of property. It prohibits the use of poison in any manner. Intentionally killing or further injuring an enemy already wholly disabled is punishable by death. Some of these maxims are practiced today, particularly instructions 74–80, which outline the provisions for prisoners of war. They state that the prisoner is a public enemy and not the captive of any individual, and that while they are subject to confinement, they are not to be subjected to any other intentional suffering or indignity. Instruction 75 asserts, "Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity." The Code also designates, "Every captured wounded enemy shall be medically treated, according to the ability of the medical staff."

It is a sad fact, that while the Lieber Code might have been accepted as an ideology of wartime ethics, it was not widely practiced in the field. This was clearly evidenced by the brutality noted in the Union Camp Chemung in Elmira, New York. Operational as a prisoner of war camp for only 369 days, the Elmira Prison Camp saw its share of misery. Located on the banks of the Chemung River, the 30-acre camp housed 12,123 insurgents during its duration. Sadly, nearly 3,000 men perished inside its walls, making Elmira's death rate second only to that of Andersonville Confederate Prison—home of our nation's most notorious wartime atrocities. Those that did live, however, had to suffer cruel tortures and indignities that we would never force upon the most hardened criminals.

Designed to accommodate 5,000 prisoners, Elmira, or "Hellmira " as it came to be called, was pressed to serve more than double this amount. These overwhelming numbers led to

insufficiencies in food, clothing, blankets, medical care, and most notably, adequate housing. Over 900 men were forced to winter in canvas tents until January of 1865. Those housed 200 to a barracks fared little better. Two stoves poled each barracks and each supplied the only source of heat for 100 men. Two blankets were available for every six men, many of whom were insufficiently clothed. Expected to stand in the snow for roll-call each day, frostbitten hands, feet, ears and faces were common. To add insult to injury, Lt. Col. Seth Eastman, the proprietor of the camp, forbade prisoners to wear or use anything that was not colored gray. When inmates' families sent provisions of blankets, trousers, coats or sweaters, they were burned in front of prisoners while they, quite literally, froze to death.

Inside the camp walls a small back-water pool dubbed Foster's Pond served as garbage dump and latrine facilities for the prisoners. One report read that "2,600 gallons" of urine were released into the pond each day. The spread of disease was rampant and diarrhea and dysentery killed many soldiers. Food rations were very poor; men subsisted on eight ounces of bread a day and if meat was available, on less than three ounces. Vegetable broth and the occasional potato and onion was available after many succumbed to scurvy. The only godsend, it seemed, were the rats attracted to the refuse of Foster's Pond that quickly became an additional contraband food source for the prisoners. It should be noted that, although it is documented that the bakery at the Elmira camp was only equipped to feed 6,000 prisoners daily, the camp itself was located in a rich agricultural region that should have not experienced such a drastic food shortage. Unsanitary living conditions coupled with malnutrition led to a host of maladies. Because of the lack of adequate medical care, thousands fell to smallpox, typhoid, pneumonia and diarrhea.

The scope of this essay does not allow for an adequate description of the horrors suffered by these men. In addition to affliction due to a lack of sufficient care, the men were subject to

inhumane tortures, including the implementation of a device called a "sweat box," a wooden box in which the immobile prisoner was locked and deprived of food, water and fresh air. Another indignity inflicted upon the prisoners was being subject to observation by the public. Two observation towers were erected outside the prison walls and for the nominal fee of 15 cents, the audience could witness the humiliation of the prisoners in their attempts to survive. A single walnut tree stood sentinel within the walls, a silent witness to the depraved conditions.

A few historical markers and an orderly cemetery along the banks of the Chemung River are all that remain of the Elmira Prison today. What of the immortal memories of these fallen soldiers who lived and died there? Did they not also give the last full measure of devotion? One cannot help but appreciate the dignity of their lives, the depth of their sacrifices and the role each played in the formation of the rights of wartime prisoners.

The Lieber Code is still extolled as the first documented outlining of humanitarian law. Postwar, although practiced, it was limited in that it was primarily designed as an Order of the Union Army in the Civil War Between the States. As time progressed and the United States found itself thrust through the threshold of wars on a worldwide scale, a need for international codified rules of warfare became clear. This developed into the Treaties of the Geneva Convention.

The Third Geneva Convention of 1949 relates to the treatment of prisoners of war. One cannot read it without a heavy heart, and ponder the unfortunate conditions that necessitated the drafting of each of these articles. The articles effectively communicate the humane treatment that each prisoner of war should be afforded, namely, the prohibition of violence to each's life and person, including mutilation, cruel treatment, torture, intimidation, and humiliating and degrading treatment, in addition to medical care for the injured and infirm. Article 18 states that

"At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none. Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war." The contradiction of these articles and the conditions at the Elmira prison camp can hardly be measured.

I wonder if one can become dispassionate to human suffering when faced with the staggering accounts of such atrocities that occur with distressing frequency throughout even our most recent times. It is within our sensitive natures, where war does not follow, that we want to shield ourselves and not acknowledge that humanity is capable of such brutality. It is necessary and difficult, however, to examine our past so that we may build a better future. One day, we may have no need of Treaties and Rules of Conduct during war; until that time, let us live to make men free.

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