

treaties actually spur investment flows. In a fascinating paper, Adam Chilton, who is joining the faculty at the University of Chicago Law School, explores an alternative theory that foreign policy interests best predict the countries with which the United States signs BITs. International law, in other words, can purport to have a particular focus, but it involves strategies and has effects that are not reflected in the text. Chilton provides an excellent review of the existing literature, presents an important new theory, and thoughtfully analyzes new data in support of this theory. His project shows how realist perspectives remain important for empirical investigation.

The law of armed conflict is notoriously the most challenged in terms of its effectiveness given the extreme context in which it operates. Using important original survey research, Andrew Bell, a graduate of the University of Virginia School of Law and current Ph.D. candidate at Duke, turns to micro-analysis of organizational culture to explore how training over time affects cadets' ethical norms toward the treatment of civilians during armed conflict. Earlier work has speculated that it is such training that should give meaning to the law of war, such as the treatment of civilians during armed conflict, but this theory has not been tested. Bell does so by turning his research away from macro-state analysis and toward micro-organizational analysis. He examines the effects of training at the U.S. Military Academy and Army ROTC through comparative surveys of cadets during their freshman and senior years. This ongoing research, which examines the effects of law of war training on both military members' internal norms and their behavior in combat, represents an important, cutting-edge turn in the assessment of how, and the conditions under which, international law matters.

Finally, Anna Schrimpf, a Ph.D. candidate at Princeton, who unfortunately cannot be part of these published proceedings, presented compelling work building from an original dataset that investigates international NGOs' behavior in the international law sphere. As initiatives increasingly involve public-private partnerships to develop international law, exemplified in the realm of health law in particular, empirical investigations of NGO activity become critical. In this work, Schrimpf investigates how NGOs in the field of health law make decisions as to what health law initiatives to support.

These scholars, at various points in their early careers, are to be followed. We are fortunate to have them as part of a collective effort to build better understanding of how international law conditionally operates, whether among states, engaging private actors, or operating transnationally at the national and subnational levels. Their work reflects how international law's reach has expanded and how it dynamically interacts with domestic legal systems and sub-national organizations.

LEASHING THE “DOGS OF WAR”: EXAMINING THE EFFECTS OF LOAC TRAINING AT THE U.S. MILITARY ACADEMY AND IN ARMY ROTC

*By Andrew Bell**

What effect does international law have on military behavior on the battlefield? What factors drive states to comply—or not comply—with the law of armed conflict (LOAC)? In recent decades, legal scholars have wrestled with this question, arguing variously that the law's effects come from the shaping of actors' internal norms, the changing of external

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incentive structures, or that the law possesses no force at all. Constructivists and organizational culture theorists suggest that actors' internalized norms and identities drive compliance, contradicted by instrumentalists, who find that international law's incentive structures determine actors' behavior.¹ Rejecting the influence of law outright, realists find that international law has no effect on combat behavior: actors engage in whatever behavior brings battlefield success.²

Despite the attention devoted to this issue, such arguments rarely incorporate empirical analyses to test the predictions of these theoretical frameworks. Additionally, such theories tend to operate at the *macro* level only, ignoring analysis and testing of international law's causal mechanisms at the *micro* level. As scholars of political processes have noted, however, it is at the micro level that the fundamental causal mechanisms of political behavior can best be understood.

My research examines the effect of international law on combatant behavior by analyzing the results of a survey of combat ethics administered to freshmen and senior cadets at the U.S. Military Academy (USMA) and in U.S. Army Reserve Officer Training Corps (ROTC). Using a "quasi-longitudinal" research design, this survey examines the difference in cadet norms regarding battlefield ethics and civilians in combat between the start of cadet training in the cadets' first year and the end of the cadets' final year of training.

Norms of civilian protection in wartime are today codified in the 1949 Geneva Conventions and its 1977 Additional Protocols. Common Article 3 of the Geneva Conventions mandates that "persons taking no active part in the hostilities . . . shall in all circumstances be treated humanely."³ Similarly, Additional Protocol I provides a number of articles that enshrine the norm of civilian immunity in international law, including Articles 48 and 51, which mandate the principle of distinction and prohibit making civilians the objects of direct attack.⁴ International LOAC conventions also carry a requirement for state parties to implement LOAC training within state militaries.⁵

Despite these requirements, recent empirical studies have demonstrated that there is no link between LOAC treaty ratification status and increased protection for civilians in war.⁶ In light of these findings, a growing body of literature is beginning to acknowledge that rather than the simple signing of abstract international treaties, it is the training and culture of soldiers that create an "ethos" of law of war compliance which leads to LOAC adherence

¹ See, e.g., ROBERT O. KEOHANE, *AFTER HEGEMONY* (1984); Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. J. INT'L L. 487–502 (1997); Laura A. Dickinson, *Military Lawyers on the Battlefield: An Empirical Account of International Law Compliance*, 104 AJIL 1–28 (2010); Colin H. Kahl, *In the Crossfire or the Crosshairs? Norms, Civilian Casualties, and U.S. Conduct in Iraq*, 32 INT'L SECURITY 7–46 (2007); James D. Morrow, *When Do States Follow the Laws of War?* 101 AM. POL. SCI. REV. 559–72 (2007).

² See, e.g., JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2006).

³ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea art. 3, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protections of Victims of International Armed Conflicts (Protocol I), 8 June 1977 arts. 48, 51, 1125 U.N.T.S. 3.

⁵ *Id.* arts. 80, 83(2) & 87(2). See also ICRC, *INTEGRATING THE LAW* (2007).

⁶ See, e.g., Benjamin A. Valentino, Paul Huth & Sarah Croco, *Covenants Without the Sword: International Law and the Protection of Civilians in Times of War*, 58 WORLD POL. 339–77 (2006). On the strategic incentives for targeting civilians, see also ALEXANDER B. DOWNES, *TARGETING CIVILIANS IN WAR* (2008).

in the challenging, morally complex environment of combat.⁷ However, there currently is no clear understanding of what methods of ethics and LOAC training lead to the greatest LOAC compliance on the battlefield.

This study attempts to begin to fill this gap by providing the first methodologically rigorous examination of the foundational assumptions of military culture theories and the mechanisms by which such culture affects combatant norms. To do so, I used surveys to examine the impact of USMA and ROTC training on U.S. Army cadets' norms regarding civilians on the battlefield, examining the change in their perceptions of LOAC principles over the course of their training experience.

USMA and ROTC make a compelling comparative case study in examining the effect of training on military cadets. USMA was the first U.S. service academy to institute a LOAC training program, and USMA training is perhaps the most robust LOAC training program of any military academy in the world. ROTC provides a notable but far less intensive LOAC and combat ethics training program, with far fewer contact-hours with cadets than the immersive academy environment of West Point. Additionally, perhaps no other military training institution that places such an explicit emphasis on combat ethics has had its graduates face such adversity of counterinsurgency combat as the graduates of USMA and Army ROTC have faced in the last decade's wars in Iraq and Afghanistan.⁸

The data for this study are drawn from the Battlefield Ethics Survey, a survey of cadets collected at USMA and multiple ROTC battalions around the United States. The study measured cadets' attitudes toward various behaviors and actions on the battlefield.

An analysis of cadet survey responses indicates that cadets generally become more sensitive to civilian casualties and emphasize stricter compliance with military rules of engagement (ROE) and the laws of war as a result of both USMA and ROTC training. Both USMA and ROTC training correlate with a significant increase in sensitivity toward civilians in cadets' proportionality calculations in balancing military necessity and humanity for high-value objectives.

However, the effects of training are more mixed in the questions regarding distinction, observance of ROE, force protection, and the assumption of risk. Notably, in the most difficult of combat scenarios—using force to protect fellow soldiers—USMA training correlates with a significant shift of cadet norms toward greater sensitivity toward civilians, a shift lacking in ROTC training.

Similarly, USMA and ROTC seniors report markedly different results in issues of force protection and willingness to expose unit members to greater harm in order to limit collateral damage. USMA seniors shift from prioritizing force protection to recognizing a greater imperative to limit civilian casualties, even in increasing risk to unit members. Conversely, ROTC training is not correlated with a statistically significant impact on cadet norms. These results are particularly surprising, again given the likelihood that the West Point experience, compared with ROTC, creates stronger bonds of comradeship and esprit de corps among graduating cadets.

⁷ See W. Hays Parks, *The United States Military and the Law of War: Inculcating an Ethos*, 69 SOC. RES. 981, 982 (2002). See also H.R. McMaster, *Remaining True to Our Values—Reflections on Military Ethics in Trying Times*, 9 J. MIL. ETHICS 183, 186 (2010).

⁸ Over 90 West Point graduates have been killed in the wars in Iraq, Afghanistan, and in the "Global War on Terror." See *In Memoriam: Deaths in Iraq, Afghanistan and GWOT*, WEST POINT ASSOCIATION OF GRADUATES, <http://www.westpointaog.org/page.aspx?pid=734> (last visited Mar. 11, 2013); Rick Hampson, *At West Point, a Quiet Place to Honor Warriors*, USATODAY.COM (2012), <http://www.usatoday.com/news/military/story/2011-12-27/iraq-war-cost-west-point/52247758/1> (last visited Mar. 11, 2013).

Overall, this survey analysis reveals that LOAC and battlefield ethics training does shape combatants' underlying norms, significantly changing their perception of appropriate behavior toward civilians on the battlefield—a necessary step in effecting military compliance with LOAC. Consistent with the theoretical expectations of constructivist and organizational culture theories, LOAC and ethics training appears to shift cadet norms toward greater sensitivity regarding civilians. Additionally, as expected by such theories, more intensive training, such as that at USMA, results in a greater shift in cadet norms. This study thus provides unique empirical support for constructivist and organizational theories of LOAC compliance, theories that stand in contrast to instrumentalist and state-oriented accounts of international law.

This research advances our current understanding of the impact of international law on state wartime behavior through two means: First, it provides a micro-level empirical analysis of the effect of the law of armed conflict training on the norms and beliefs of individual combatants regarding civilians on the battlefield.

More broadly, this research provides empirical support for constructivist and organizational accounts of international law, demonstrating that individual norms do indeed change as a result of training and culture. The findings of this research should encourage legal scholars to focus their attention not only at the state level, but to also take into account the subnational- and organizational-level processes that can influence individual—and thus state—compliance with LOAC and international law.

RECONSIDERING THE MOTIVATIONS OF THE U.S. BILATERAL INVESTMENT TREATY PROGRAM

*By Adam S. Chilton**

Over the last thirty years, the United States has entered into nearly fifty bilateral investment treaties (BITs).¹ A foundational question that has not yet been adequately explained, however, is why the United States has signed these agreements. Despite the fact that this question has not been empirically studied, a dominant narrative in the academic literature has emerged to answer it. The logic of that narrative is simple: the United States negotiated investment treaties to protect American capital invested abroad.² This view of the U.S. BITs program should not only be unsurprising because of the content of the treaties, but also because the

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¹ See U.S. DEPARTMENT OF STATE, UNITED STATES BILATERAL INVESTMENT TREATIES, available at <http://www.state.gov/e/eb/afd/bit/117402.htm> (last visited May 15, 2014). For a discussion of the establishment of the U.S. BITs Program, see Kenneth J. Vandeveld, *U.S. Bilateral Investment Treaties: The Second Wave*, 14 MICH. J. INT'L L. 621, 624–27 (1993); Pamela B. Gann, *The U.S. Bilateral Investment Treaty Program*, 21 STAN. J. INT'L L. 373, 373 (1985).

² See, e.g., Kenneth J. Vandeveld, *The Bilateral Investment Treaty Program of the United States*, 21 CORNELL INT'L L.J. 201, 201–02 (1988) (“The purpose of [BITs negotiated by the United States] is to protect investments of each party’s nationals and companies in the territory of the other.”); Gann, *supra* note 1, at 374 (“The BIT program resulted from the U.S. government’s determination that a more favorable framework for U.S. investment in developing countries should be created. This new framework has a twofold purpose: to encourage as well as to protect such investment.”); Jeffery Lang, *Keynote Address, The International Regulation of Foreign Direct Investment: Obstacles and Evolution*, 31 CORNELL INT'L L.J. 455, 457 (1998) (arguing that the United States’ goals in negotiating BITs are: (1) protecting U.S. investment abroad; (2) encouraging adoption of market-orientated domestic policies; and (3) promoting development of international law that meets these objectives). It is worth noting that the argument that the United States has signed BITs to promote the development of legal regimes that protect property rights has also been made.