

RESEARCH ARTICLE

Atrocity and reciprocity during the Boxer War (1900–1901): Socio-legal perspectives

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Abstract

Recent discussions among historians, jurists, and political scientists have increasingly centred on the effectiveness of the Laws of Armed Conflict in safeguarding legally protected groups such as civilians and prisoners of war. Central to this debate is the question of how a state's public commitment to international law aligns with the actual conduct of its armed forces in combat zones. This article contributes to the discourse by examining the Boxer War in China (1900–1901), during which seven Western powers and Japan opposed an anti-foreign Chinese sect supported by military forces loyal to the Qing court. The analysis focuses on the legal stance of five key members of the anti-Boxer coalition—Germany, the United States, Great Britain, Russia, and Japan—and evaluates the conduct of their troops towards Chinese civilians and prisoners. Particular attention is given to Japan, offering insights into how the application of the international laws of war is shaped not only by the expectations of belligerents and their adversaries, as prominent scholars have suggested, but also by the dynamics among allies, including competition, as well as by each belligerent's unique history and cultural context. This nuanced perspective highlights the interplay of legal commitments, alliance politics, and national identity in determining the behaviour of military forces during wartime.

Keywords: Boxer War; war crimes; laws of war; standard of civilization; Imperial Japanese Army

Introduction

Recent years have witnessed vivid discussion among historians, jurists, and political scientists on the effectiveness of the Laws of Armed Conflict (also known as the Laws of War and as International Humanitarian Law, or IHL) in mitigating harm to legally protected groups, such as civilians and prisoners of war. Specifically, the debate centres on the relationship between a state's public commitment to international law—through treaty ratification or declared adherence to customary legal practices—and its armed forces' actual conduct in the field.

Valentino et al. and Downes conclude that there is little to no correlation between such publicly declared commitments and the protection actually accorded on the

ground.¹ By contrast, a recent study of the International Committee of the Red Cross (ICRC) is more optimistic, maintaining that informal culture and ingroup socialization can serve as facilitators of wartime soldierly restraint.² Morrow, employing a game theory framework, presents yet another, somewhat more nuanced, view, suggesting that IHL commitment may be effective under certain conditions; notably, when it may help to align expectations among warring parties, provided they are inclined to restrict warfare in the first place. However, even according to Morrow, the IHL rules meant to protect civilians and prisoners-of-war (POWs) are often the least observed. Despite formal policies, individual soldiers frequently violate protections IHL prescribes for enemy civilians and POWs on their own initiative. In contrast to centralized control of prohibited means of warfare such as chemical weapons, effective protection of enemy civilians and POWs depends on the independent choices of multiple actors and, consequently, demands a military justice system that is both willing to and capable of actively investigating and punishing violators. Regrettably, such systems often lack the resolve or resources to act as an effective deterrent.³

However, large-scale quantitative studies often overlook much of the detail and subtleties inherent to human interactions, and a case study can be an effective tool to uncover such overlooked factors. Accordingly, in this article, we aim to scrutinize and reassess the conclusions of the aforementioned large-scale studies, by delving into a particularly complicated historical event: the Boxer War in China (1900–1901), a conflict between a coalition comprising eight powers—the United States, Great Britain, Germany, Japan, Russia, France, Italy, and Austria-Hungary—and an anti-foreign religious sect, known among Westerners as the ‘Boxers’, supported by certain regular military units loyal to the Qing court.

Did the different members of the anti-Boxer coalition view themselves as committed to the laws of war during this conflict, and if so, how did that influence their behaviour on the ground? Our examination focuses on dissecting the intricate dynamics of public adherence to international norms concerning the protection of unarmed Chinese civilians, wounded enemies, and captives by key members of the anti-Boxer coalition. This conflict presents an exceptional case study, occurring as it did in the interlude between the formulation of the first and second Hague Regulations (1899 and 1907), both cornerstones of contemporary IHL. Our focus will be more on battlefield behaviour and less on allied occupation regimes. For reasons of space, we will also not discuss the war crime of pillage, frequently committed by all allies, except when it was accompanied by physical harm to civilians or captured enemy fighters.

This analysis will focus on Japan, which, during the era of the Boxer War, sought to align itself with Western international law. This strategic alignment was aimed at

¹Benjamin Valentino, Paul Huth and Sarah Croco, ‘Covenants without the Sword: International Law and the Protection of Civilians in Times of War’, *World Politics*, vol. 58, no. 3, 2006, p. 368; Alexander B. Downes, *Targeting Civilians in War* (Ithaca: Cornell University Press, 2008), pp. 246–247, 256–257.

²Fiona Terry et al., *The Roots of Restraint in War* (ICRC, 2018), p. 65, available at https://icrcndresourcecentre.org/wp-content/uploads/2018/09/4352_002_The-roots-of-restraint_WEB.pdf, [accessed 24 April 2025].

³James D. Morrow, *Order within Anarchy: The Laws of War as an International Institution* (Cambridge: Cambridge University Press, 2014), pp. 15, 68, 85–87, 124, 127, 131, 144, 180, 238, 269, 315, 317.

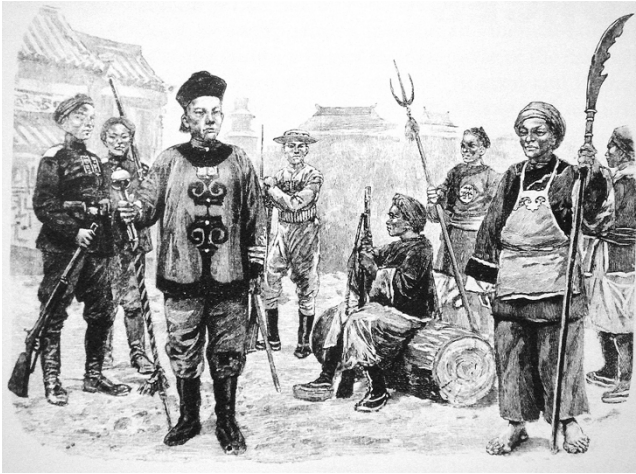


Figure 1. 1900 drawing of Qing Regular soldiers (left) and Boxers (right). Source: Peter Harrington, 'The Boxer Rebellion', in *Leipziger Illustrire Zeitung*, 1900, p. 24: https://en.wikipedia.org/wiki/Boxer_Rebellion#/media/File:Chinese_soldiers_1899_1901.jpg. (Please note that the images in this article are for illustration purposes only).

establishing Japan's status as a 'civilized' nation, in the belief that that would release it from the unequal treaties imposed on it since the 1850s. Adherence to the (originally European) international laws of war was considered a prime criterion for determining a nation's 'civilized' status. Japan's involvement in the Boxer War, its first joint international intervention, therefore, provided a critical opportunity to affirm this status. This backdrop explains our particular emphasis on Japan, a newcomer to the established international legal community. Notably, most states' acceptance into this community occurred only after the main body of the laws of war had already been established.⁴ Thus, like Japan, each such state, at its admission point, was legally required to accept the existing laws-of-war corpus wholesale. Admittedly, this requirement was not quite as restrictive as it first seems, for, as newcomer states quickly learn, much of this corpus is subject to a range of competing concurrent interpretations. Unfortunately for newcomers, however, they also soon discover that much of that flexibility is denied to them, as they are often required to display exemplary conduct, far beyond what is contemporarily expected from established Great Powers, if not from most long-standing members.⁵ Japan, at the time of the Boxer War, was among the

⁴Richard Collin, *An Introduction to World Politics* (Lanham: Rowman and Littlefield, 2013), p. 109 (showing that most states had formed only after 1950, which means they are younger than the current Geneva Conventions); Geoffrey Parker, *Empire, War and Faith in Early Modern Europe* (Westminster: Allen Lane, 2002), p. 168 ('[m]ost of the actions today outlawed by the Geneva Conventions have been condemned [by customary international law] in the West for at least four centuries'); Ziv Bohrer, 'Nuremberg and Grotius's Scholarship as Non-Grotian Moments: On Novelty-Bolstering in International Law', *Grotiana*, vol. 44, no. 1, 2023, pp. 33, 57–53.

⁵See, generally, Oliver Stuenkel, *The BRICS and the Future of Global Order* (Lanham: Lexington Books, 2020), p. 164 ('... established powers still consider themselves to be the ultimate arbiters of international norms, unaware of their own hypocrisy'); Harry Papasotiriou, 'The Problem of Order in an Anarchical Society', in *International Politics in Times of Change*, (ed.) Nikolaos Tzifakis (Berlin: Springer, 2012). Specifically regarding



Figure 2. 1900 caricature acknowledging atrocities on both sides, *Puck*, 3 August 1900. Jesus and Confucius jointly wonder: 'Are our teachings, then, in vain?', while watching the Boxers and the allies fight. Artist: Udo Keppler; Publisher: Ottmann Lith. Co.; Original copyright: Keppler and Schwarzmann. Source: Library of Congress Prints and Photographs Division (LCPPD), LC-DIG-ppmsca-25461/.

first non-Western newcomers to be faced with such a predicament (preceded to some extent by Russia and the Ottoman empire). Therefore, its experience, from that war, merits greater attention.

Thus, we will explore how Japan developed its legal position in this context and how this influenced its soldiers' conduct towards Chinese civilians and captives, taking into consideration the hierarchies and internal dynamics of the Japanese expeditionary

the supposed standard of civilization and Japan, see Tomoko Okagaki, *The Logic of Conformity: Japan's Entry into International Society* (Toronto: University of Toronto Press, 2013), pp. 116–119.

force. Motivated by a desire for recognition and influenced by interstate competition, the Japanese military command often favoured adopting, among its allies' diverging legal approaches, the most expansive interpretation of the protections afforded to enemy civilians, but less so regarding captured enemy combatants. Furthermore, Japanese soldiers on the ground often exhibited closer adherence to their military's formally stated policies than some of their allies, largely due to the highly disciplined nature of Japanese military culture at that time. Nevertheless, even in the Japanese case, alignment between formal policies and actual actions was far from absolute, with the degree of divergence depending on various factors. In summary, as we will demonstrate, the factors influencing Japanese military behaviour were complex, with some promoting restraint, while others fostered brutality and atrocities.

The article proceeds as follows: it lays out the background of the Boxer War and of the relevant contemporary laws of war, followed by a discussion of both the legal approaches embraced, and of the actual conduct in the field by the soldiers of other members of the eight-nation alliance—Germany, Great Britain, the United States, and Russia (for reasons of space, we excluded discussions of France, Italy, and Austria-Hungary). The article then shifts to Japan's formulation of its legal policies, as well as to examining to what extent these policies were actually implemented on the ground. Finally, we will situate our findings within a broader context, offering insights into both Japan's peculiar position as well as the larger issue of the complex relations between formally adopted legal approaches and actual military practice in the application of IHL. This is an elaboration of Morrow's arguments, showing how, as in the case of Japan, the extent and manner in which belligerents apply the international laws of war are not only the result of an alignment of expectations between them and their enemies, but also of their relations (including competition) with their allies, as well as of their own specific history and culture.

The Boxer War

The Boxer War (or Boxer Uprising or Rebellion), spanning approximately June 1900 to September 1901, is commonly recalled as an imperialist venture. Rightly so, as each anti-Boxer alliance member was considerably driven by similar—partly aligned, partly competing—objectives, of protecting their nationals, economic interests, and territorial concessions in northern China. However, colonialist-imperialist aims notwithstanding, it was also an international humanitarian military intervention focused on the rescue of foreigners and Chinese converts besieged in Peking's foreign legations.⁶ Furthermore, this war marks a significant chapter, not only in the history of international law, modern warfare, and Western imperialism, but also in the history of Qing China.

The coalition's primary target—the militant societies known in the West as 'Boxers'—became increasingly popular among peasants in the North Chinese provinces of Shandong, Shanxi, Zhili, and as far as Manchuria, in late 1899 and throughout 1900.

⁶Peter Tze-Ming-Ng, *Chinese Christianity* (Leiden: Brill, 2012), p. 49.



Figure 3. 1898 (pre-war) caricature illustrating the allies' imperialist motivations, *Le Petit Journal*, 16 January 1898. China is depicted as a pie about to be carved up by Queen Victoria (Britain), Kaiser Wilhelm (Germany), Tsar Nicholas (Russia), Marianne (France), and a samurai (Japan), despite the protests of (the derogatorily portrayed) Chinese General Dong Fuxiang (who during the Boxer War would fight alongside the Boxers). Source: Bibliothèque nationale de France: https://en.wikipedia.org/wiki/Boxer_Rebellion#/media/File:China_imperialism_cartoon.jpg.



Figure 4. Christian victims of the Boxers. Left: Illustration of the 'Moukden Massacre', *Le Petit Journal*, 5 August 1900. Source: gallica.bnf.fr/Bibliothèque nationale de France; <https://gallica.bnf.fr/ark:/12148/bpt6k716393g/f8.item>. Right: 1900 picture of Chinese Christian refugees at Tientsin. Photographer: James Ricalton; Publisher: Underwood and Underwood. Source: https://visualizingcultures.mit.edu/boxer_uprising_02/gallery/pages/libc_1901_3c03013ub.htm.

Rooted in a tradition of mystical Daoism, they were intensely anti-Christian and anti-foreign.⁷ Numerous Chinese peasants, desperate following a prolonged drought, had to watch with clenched fists as foreign diplomats and missionaries intervened on behalf of Christian converts in local disputes over resources, while they, the 'heathen' Chinese, could resort only to futile pleas to unresponsive Qing officials. In addition to this irksome, parallel power structure, Christian missionaries and their Chinese followers also railed against local folk beliefs, including rain rituals, and thus were blamed by many for the drought of 1899–1900. The Boxers offered the frustrated, unemployed peasants exciting diversion, access to resources squeezed from Christians, and magical rituals supposed to protect them from enemy bullets. As 1899 gave way to 1900, violent attacks against Chinese converts escalated, followed by assaults on missionaries and other Westerners who roamed the countryside. The foreign diplomats sharply protested to the Qing court, asking for immediate remedy.⁸

⁷See Joseph W. Esherick, *The Origins of the Boxer Uprising* (Berkeley, CA: University of California Press, 1987), pp. 136–167; Tanabe Kumasabū, Consul in Niuzhuang, to Foreign Minister Aoki Shūzō, 15 July 1900, Japan Center for Asian Historical Records (hereafter JACAR), ref. C08040787600, p. 453. For a vivid description of Boxer penetration into Manchuria, see C. Dugald, *Thirty Years in Moukden* (London: Constable and Company Ltd, 1914), pp. 133–150.

⁸David J. Silbey, *The Boxer Rebellion and the Great Game in China* (New York: Hill and Wang, 2012), pp. 42–43, 63–76; Lanxin Xiang, *The Origins of the Boxer War* (London: Routledge, 2003), pp. 104–105, 236, 253; Paul Cohen, *History in Three Keys: The Boxers as Event, Experience and Myth* (New York: Columbia University Press, 1997), pp. 17, 19, 26, 34–36, 72–89.

Throughout the spring and early summer of 1900, the Imperial court in Beijing vacillated about the Boxer Movement. On the one hand, the Chinese central government had a long tradition of suppressing secret societies. Furthermore, the Boxers undermined social stability by attacking their Christian neighbours, openly defying Qing authority, endangering delicate relations with foreigners, and destroying precious national infrastructure such as railways and telegraph lines. In several instances, they even killed government soldiers sent to suppress them. On the other hand, the Boxers also had the potential to become an auxiliary militia that could help the court deal with foreign threats, an idea that had become increasingly attractive to the de facto ruler of China, Empress Dowager Ci Xi.⁹

Throughout May and June, foreign diplomats grew increasingly nervous. On 10 June, the Empress Dowager appointed the staunchly anti-foreign Prince Duan to head the Zongli Yamen (the Qing rough equivalent of a foreign ministry). The prince was a known Boxer sympathizer.¹⁰ As it was rumoured that the Boxers would soon reach Beijing, the diplomats resorted to the forceful methods all too common in the tradition of foreign imperialism in China: calling upon their troops to protect the legations. Keen to secure the communication lines between the concession port in Tientsin and Beijing, the Westerners and the Japanese occupied the Dagou Forts, China's primary fortifications en route to the capital. In response, the Empress Dowager tried to compel the foreign diplomats to leave Beijing under escort.¹¹ But, this attempt failed, as violence on the streets escalated. The foreign diplomats and their guards, especially the Germans, behaved bullishly towards Beijing residents, who in turn grew increasingly pro-Boxer.¹² Anti-foreign sentiment also became commonplace among Qing soldiers. On 11 and 20 June, respectively, Chinese imperial troops killed the Japanese diplomat, Sugiyama Akira, and the German minister, Baron Clemens von Ketteler. Now in a state of complete mistrust of the court, the foreign diplomats refused to leave Beijing.¹³

An initial relief expedition, led by British Admiral Sir Edward Seymour, failed to break through to Beijing.¹⁴ With the danger to the diplomats growing increasingly acute, the foreign powers had to dispatch a stronger relief force, and rapidly. On 21 June, following the Dagou Forts' occupation, the Empress Dowager declared war on all foreign powers, but without mentioning any of them by name. She also executed or marginalized moderate court officials.¹⁵ For many foreigners, the Boxers and the Qing court had now become one and the same. Meanwhile, fighting spread into the three

⁹For the most comprehensive, and perhaps best, analysis of these events, see Xiang, *The Origins*, pp. 129–231. See also Lin Huagao, 'Guānyú Yìhétuán yùndòng gāocháo jiēduàn de jǐ gè wèntí' ['Several Questions Regarding the Peak Stage of the Boxer Movement'], *Jindaishi Yanjiu*, vol. 1, 1981, pp. 200–201.

¹⁰Xiang, *The Origins*, p. 245.

¹¹*Ibid.*, pp. 282–290.

¹²Gerd Kaminski, *Der Boxeraufstand—entlarvter Mythos* [The Boxer Rebellion: The Myth Exposed] (Vienna: Löcker Verlag, 2000), p. 199; Xiang, *The Origins*, pp. 268–269, 272.

¹³Xiang, *The Origins*, pp. 252–254, 332–333; Lin, 'Guānyú Yìhétuán', p. 204.

¹⁴Xiang, *The Origins*, pp. 256–265.

¹⁵Esherick, *The Origins*, pp. 303–304; Lin, 'Guānyú Yìhétuán', pp. 206–207.



Figure 5. Sugiyama Akira's and Clemens von Ketteler's assassinations. Left: Illustration of Clemens von Ketteler's assassination, *Le Petit Journal*, 22 July 1900. Source: gallica.bnf.fr/Bibliothèque nationale de France; <https://gallica.bnf.fr/ark:/12148/bpt6k716391/qfl.image>. Right: Sugiyama Akira's assassination as portrayed in a 1900 French advertisement card. Source: Card purchased by the authors.

provinces of Manchuria, where invading Russian troops led large-scale battles against Boxers and Qing units.¹⁶

Being geographically closer to China than all other powers (except Russia), as well as contemporaneously uninvolved in any other war, Japan was the only country that could immediately dispatch a decisive force. In addition, Japan was widely regarded as having proven capability to beat China, in light of its recent victory in the 1894–1895 (First) Sino-Japanese War. As a result of that war, Japan also possessed the necessary

¹⁶Victor Zatzepine, 'The Blagoveshchensk Massacre of 1900: The Sino-Russian War and Global Imperialism', in *Beyond Suffering: Recounting War in Modern China*, (eds) James Flath and Norman Smith (Vancouver and Toronto: UBC Press, 2011), pp. 109–110; Zhang Li, 'Lùn Yìhétuán Yùndòng Shíqī Wéitè de Mǎnzhōu Zhèngcè' [On Witte's Manchurian Policies During the Boxer Movement Period], *Wén Shǐ Zhé*, vol. 2, no. 347, 2015, pp.110–111.



Figure 6. 1900 drawing of Admiral Seymour and his wounded troops returning to Tianjin. Artist: J. Randier. Source: commons.wikimedia.org/wiki/File:SeymourTianjin.jpg.

expertise and intelligence on Chinese geography, society, and armed forces.¹⁷ Britain implored Japan to act promptly, as the news from Beijing grew increasingly alarming. Since 24 June, the foreign community (along with several thousand Chinese Christians) had been besieged in two enclaves, the legations quarter and the Beitang Cathedral, under conditions that—as the besieged themselves continuously reported back to their homelands—were deteriorating by the day. ‘The situation is desperate. Make haste’, the British cabled the Japanese foreign minister.¹⁸ The *North China Daily News*, a China-based foreign newspaper, reminded its readers that Western countries had just humiliated Japan, robbing it of some of the fruits of its victory over China with the infamous 1895 ‘triple intervention’ by France, Germany, and Russia. ‘The other European powers and the United States cannot get large forces on the spot without a delay of weeks, and it is to Japan that we are all turning to stem the tide of rapine and rebellion against civilization.’¹⁹

Japan, which until recently was not really considered fully ‘civilized’ by most European powers, despite its rapid Western-style modernizing reforms, was now

¹⁷James Harrison Wilson, *China: Travels and Investigations in the ‘Middle Kingdom’* (New York: D. Appleton, 1901), p. 376.

¹⁸J. B. Whitehead, acting British Minister in Tokyo to Foreign Minister Aoki Shūzō, 3 July 1900, in *Nihon Gaikō Bunsho* [Japan’s Diplomatic Records], (ed.) Gaimushō (Tokyo: Gaimushō Chōsabu, 1947–1953) (hereafter NGB), vol. 33, supplementary volume: *Hokushin Jihen* [The North China Incident], part 1(2), pp. 544–546; Edward Seymour, ‘Affairs at Tianjin, 27 June to 11 July 1900’, 12 July 1900, p. 1, WO 23/6145, The National Archives (hereafter TNA), p. 1.

¹⁹‘The Crisis’, *North China Daily News*, 25 June 1900, reproduced in NGB, vol. 33, supplementary volume: *Hokushin jihen*, part 1(2), p. 539.

ironically called upon to 'save civilization'. In the late nineteenth century, any non-European country hoping to 'join the club' of Western nations, enjoy equal rights, and rid itself of humiliating unequal treaties was formally required to meet Western imposed standards of 'civilization', including efficient administration, abolition of seemingly 'barbarian' customs, and adherence to international (i.e. Western) law, especially its laws of war. Japan now had an opportunity to 'show off' its newly acquired level of (Western) 'civilization' to its allies.

As a non-Christian country, Japan was of course less concerned with the fate of missionaries and converts in China. But it did feel a need to retaliate for its diplomat's death.²⁰ Moreover, Tokyo was apprehensive of the anti-foreign movement in China, as well fearing that it would be outmanoeuvred by other foreign powers. Based on such considerations, Prime Minister Yamagata Aritomo decided to send the 5th division to China, representing a commitment of 10,000 troops.²¹ Japan eventually increased its commitment to about 20,840 troops, thus becoming the largest force, by far, among the eight-nation military expedition to Beijing (which, all in all, consisted of about 50,000 soldiers, of which about 13,150 were Russians, 12,020 British, 3,520 French, 900 Germans, 80 Italians, and 75 Austro-Hungarian).²² Separately from the multinational expedition to Beijing, Russia also launched a unilateral invasion of Manchuria with over 100,000 soldiers, justifying its actions as a response to cross-border raids by Boxers and to secure its extensive railway concessions in the region.²³

For convenience's sake, and for the benefit of our later analysis, we shall divide the Boxer War, after the failure of Seymour's expedition, to four distinct parts: 1) the occupation of Tianjin (13–14 July); 2) the march to Beijing, including the storming of the city and the relief of the besieged legations, up to the occupation of the Forbidden City (4–28 August); 3) the allied occupation regime in Beijing (August 1900 to September 1901); and 4) mop-up operations in the countryside, designed to eliminate suspected Boxers and their sympathizers (September 1900 and the following months).

Race to the bottom: The dynamics of radicalization on the ground

Prior to describing the allies' varying legal positions and behaviour patterns, it is important to note the war's brutalizing impact on all participants, regardless of their legal approaches. As early as June 1900, during the failed Seymour expedition, the allies noticed that it was highly difficult to distinguish between civilians and combatants,

²⁰Saitō Seiji, *Hokushin jihen to Nihongun* [The North China Incident and the Japanese Army] (Tokyo: Fuyō Shobō, 2006), pp. 37–38.

²¹François Pavé, 'L'image des armées alliées à travers les journaux des diaristes français de la guerre des Boxers' [The Image of the Allied Armies through the Diaries of French Diarists of the Boxer War], *Annales de Bretagne et des pays de l'Ouest*, vol. 115, no. 4, 2008, p. 129.

²²Paul E. Fontenoy, 'Boxer Rebellion', in *China at War—An Encyclopaedia*, (ed.) Xiaobing Li (Santa Barbara: ABC-CLIO, 2012), pp. 24–26. In the late stages of the war, the Allied force grew further, at its height numbering 90,000 men, among them, according to Kuss: 22,000 Germans, 17,000 British, 17,000 French, 16,000 Russians, and only 16,000 Japanese. Susanne Kuss, *German Colonial Wars and the Context of Military Violence*, (trans.) Andrew Smith (Cambridge, MA: Harvard University Press, 2017), p. 23.

²³Geoffrey Jukes, *The Russo-Japanese War 1904–1905* (Oxford: Osprey Publishing, 2002), p. 11.

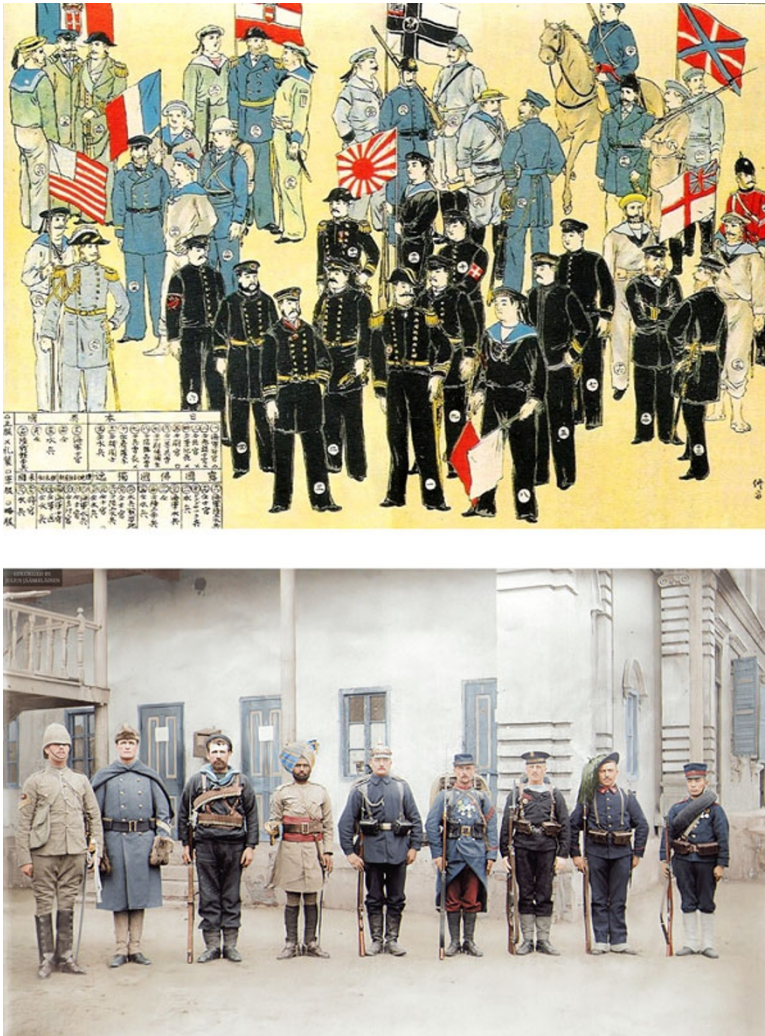


Figure 7. Soldiers of the Eight Nation Alliance. Above: 1900 Japanese print of the Eight Nations' Navy soldiers (from top to bottom, left to right, representations of the Italians, Americans, French, Austro-Hungarians, Japanese, Germans, Russians, and British). Source: <https://commons.wikimedia.org/wiki/File:BoxerTroops.jpg>; <https://flickr.com/photos/155661213@N08/49652330563>. Below: 1900 picture by British Captain C. F. O'Keefe of soldiers from forces of all allies but Russia. From left to right, soldiers from Britain, the United States, Australia, India, Germany, France, Austria-Hungary, Italy, and Japan. Source: [https://en.wikipedia.org/wiki/Eight-Nation_Alliance#/media/File:Troops_of_the_Eight-Nation_Alliance_\(except_Russia\)_that_fought_against_the_Boxer_Rebellion_in_China,_1900._From_the_left_Britain,_United_States,_Australia,_India,_Germany,_France,_Austria-Hungary,_Italy,_Japan._\(49652330563\).jpg](https://en.wikipedia.org/wiki/Eight-Nation_Alliance#/media/File:Troops_of_the_Eight-Nation_Alliance_(except_Russia)_that_fought_against_the_Boxer_Rebellion_in_China,_1900._From_the_left_Britain,_United_States,_Australia,_India,_Germany,_France,_Austria-Hungary,_Italy,_Japan._(49652330563).jpg)

as *all* Boxers were not regular soldiers, but rather arose from the civilian population. As British Captain Gordon Casserly related: 'a very slight alteration of dress sufficed to convert into a harmless peasant the Boxer whose hands were red with the blood of defenceless Europeans, or of Chinese Christians whose mangled bodies had choked



Figure 8. 1901 picture titled 'Company of Boxers, Tien-Tsin, China', demonstrating the difficulty of distinguishing Boxers from civilians. Original copyright: Whiting View Company. Source: LCPPD, LC-USZC4-3917.

the river'.²⁴ In the Langfang battle (18 June), the Boxer crowds who charged against Admiral Seymour's machine guns included scores of both teenagers and elderly people. Sometimes even children participated in Boxer assaults.²⁵ Additionally, because Boxers wore red sashes, troops sometimes saw every Chinese dressed in red as a Boxer, killing such people without further ado.²⁶

The challenge of distinguishing between Boxers and 'peaceful' civilians created a vicious cycle. The more rural Chinese joined the Boxers—whether coerced by activists or to defend their towns from invading forces—the more the soldiers of the various allies became inclined to regard all Chinese as Boxers. Once (nearly) all villages came to be considered sources of danger, the expediency of razing 'hostile' villages to prevent

²⁴Gordon Casserly, *The Land of the Boxers, or China Under the Allies* (London: Longmans, Green and Co., 1903), p. 29. See also Charles C. Dix, *World's Navies in the Boxer Rebellion* (London: Digby, Long and Co., 1905), p. 270.

²⁵Xiang, *The Origins*, p. 173.

²⁶Kaminski, *Der Boxeraufstand*, p. 196.



Figure 9. Russians soldiers demolishing houses that might shelter Boxers at Tongu (1901). Publisher: Underwood and Underwood. Source: LCPD, LC-DIG-stereo-1s48012.

the formation of enemy bastions in their rear became manifest; a policy which, in turn, further compelled Chinese villagers to join the Boxers.²⁷

The Chinese fighters, both Boxers and Qing soldiers, were also major contributors to the escalating brutalization. Allied soldiers who fell into Chinese hands rarely survived. In fact, Boxers and Qing soldiers typically killed all foreigners they encountered, including civilians, often after severe torture, notwithstanding the efforts of some Qing commanders to protect foreign non-combatants. Chinese violence also spilled from enemies towards compatriots. Often, in cases where Chinese squabbled among themselves, regular soldiers killed Boxers and vice versa, as well as civilians. When the allies approached Chinese towns, they often encountered severed heads glaring at them from the city walls.²⁸

²⁷Amar Singh, *Reversing the Gaze: Amar Singh's Diary: A Colonial Subject's Narrative of Imperial India*, (eds) Susanne Hoerber Rudolph, Llyod L. Rudolph and Mohan Singh Kanota (Boulder, CO: Westview Press, 2002), p. 129.

²⁸Fukuda Eiji, *Kunshō morai sokone no hanashi: ikkashikan no Hokushin jihen jūgunki* [How I Missed a Medal: The Story of a Non-commissioned Officer's Service in the North China Incident] (Tokyo: Shuppanchi Fumei and Fukuda Kōhei, 2017), pp. 178, 266–269; A. H. S. Landor, *China and the Allies* (New York: Scribner, 1901), pp. 133, 148; Frederick Brown, *From Tientsin to Peking with the Allied Forces* (London: C. H. Kelly, 1902), p. 53; Cohen, *History in Three Keys*, p. 179; Benjamin E. Brockman-Hawe, 'Accountability for "Crimes against the Laws of Humanity" in Boxer China: An Experiment with International Justice at Paoting-Fu', *University of Pennsylvania Journal of International Law*, vol. 38, no. 2, 2017, p. 704.

From a humanitarian perspective, the anti-Boxer campaign in northern China was a quick race to the bottom. The legal positions of the various contingents and interventions by commanders could sometimes ameliorate this brutalization, but only up to a point. This should be remembered when examining the legal positions of the different allies.

How to treat Chinese civilians, *hors de combat*, and enemy captives? Perspectives of international law

In 1899, all the nations that would later participate in the Boxer War attended the Hague Conference. There, among other treaties, they concluded the Hague Convention with Respect to the Laws and Customs of War on Land, also known as the ‘Hague Regulations’, which provided various protections to POWs, including to enemy soldiers incapacitated by injury or disease (*hors de combat*), and to surrendering enemy soldiers as well as to civilians.²⁹ All eight allies had signed this multilateral treaty by 1899, at the Conference. Seven of them further ratified it during the Boxer War: the six European allies on 4 September 1900, when the treaty also came into force, and Japan soon thereafter, on 6 October 1900. Although the United States only finalized its treaty ratification after the conclusion of the Boxer War (in April 1902), it expressed presidential intention to do so in April 1900. Qing China, by contrast, despite attending the 1899 Hague Conference, chose not to sign the Hague Regulations (unlike certain other conference-promulgated treaties), because its diplomats ‘feared that accession to the Convention would be disadvantageous to [it] ... in subsequent wars with foreign states’.³⁰ The Chinese ambassador to St Petersburg further explained that the Qing Army was insufficiently advanced to correctly uphold the treaty provisions.³¹

Considering this context, the Hague Regulations did not formally apply during the Boxer War, irrespective of either their general coming into effect or their ratification by most allies, as treaty Article 2 clearly stated that its provisions were binding only in wars in which *every belligerent* was a party to the convention. But unlike ‘treaty international law’, ‘customary international law’ is considered, in essence, obligatory

²⁹Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899.

³⁰Zuozhen Liu, *The Case for Repatriating China's Cultural Objects* (Singapore: Springer Singapore, 2016), pp. 62–63. See also <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899/state-parties>, [accessed 2 April 2025]; James B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907* (New York: Oxford University Press, 1915), pp. 230–232; Brockman-Hawe, ‘Accountability’, pp. 654–656; Arthur Eyffinger, *The 1899 Hague Peace Conference: The Parliament of Man, The Federation of the World* (The Hague: Kluwer Law International, 1999), pp. 137–138, 160, 429. Note that China did, however, ratify the 1864 Geneva Convention, although it, unlike its successors, was relatively undemanding, only including 10 articles; moreover, with the onslaught of the Boxer War, the ratification documents were lost; see C. B. Reeves, ‘The Power of Mercy: The Chinese Red Cross Society, 1900–1937’, PhD thesis, Harvard University, 1998, pp. 81–90 (somewhat conflating references to the Hague and Geneva conventions). Regarding the United States, see *U.S. Statutes*, vol. 32, no. 1, 1901–1902, p. 51; and *Journal of the Executive Proceedings of the [U.S.] Senate*, no. 32, 1901, p. 482.

³¹Peter Holquist, ‘By Right of War: Imperial Russia and the Codification of the Laws of War’, unpublished manuscript, June 2024, Chapter 6, pp. 24, 26–27. The authors thank Professor Holquist for kindly sharing this manuscript.

irrespective of any enshrining of it in a treaty. Thus, rules inscribed in an international convention may apply even if the convention, as a whole, does not, and even to states not party to the convention, when they are deemed reflective of customary international law.³² But, to what extent were each of the Hague protections afforded to civilians, wounded enemies, and captives expressions of pre-existing customary laws of war? Moreover, to what extent, if any, did customary laws of war apply at the time, in a conflict such as the Boxer War? Admittedly, answering such questions is difficult, as the content of customary norms is almost inherently vague and, at least to some degree, disputed.³³

In addition, the currently prevailing narrative among scholars of international law maintains that the international laws of war, and indeed international law at large, were, at the time, only applicable between states.³⁴ Accordingly, until the mid-twentieth century, the laws of war did not generally extend to internal wars, such as civil wars and rebellions, or to any other form of armed conflict against non-state armed forces. An exception applied, however, when a state involved in an internal conflict chose to grant 'belligerent status' to its non-state adversary, thereby voluntarily applying the laws of war as if it was engaged in an interstate conflict. Such internal conflicts were termed 'belligerencies', distinguishing them from other internal conflicts, termed 'insurgencies' or 'insurrections', which were ungoverned by the laws of war.³⁵ A popular version of this prevailing scholarly narrative additionally maintains that, in keeping with traditional international law's emphasis on state sovereignty and consent,³⁶ not even all inter-state armed conflicts were legally required to be regulated by the laws of war, but rather only those that were formally declared as wars.³⁷

The prevailing narrative of the present day further holds that traditional international law, having been nearly entirely rooted in practices of European nations, was generally seen as only applicable to them and to their offshoots (i.e. other Western powers, such as the United States) and not to non-Western nations. Such nations were traditionally deemed 'uncivilized' by Europeans-Westerners, and, thus, beyond the pale of international law. By the late nineteenth and early twentieth centuries, there had already been a gradual recognition that international legal norms could

³²See 'Judgement (1 October 1946)', in *Trial of the Major War Criminal Before the International Military Tribunal—Nuremberg—14 November 1945–1 October 1946* (Nuremberg: IMT Secretariat, 1947), vol. 1, pp. 172, 253–254.

³³Gary Solis, *The Law of Armed Conflict* (Cambridge: Cambridge University Press, 2010), p. 54. See also Grant Doty, 'The United States and the Development of the Laws of Land Warfare', *Military Law Review*, vol. 156, 1998, p. 224.

³⁴For example, Denise Wallace, *Human Rights and Business: A Policy-Oriented Perspective* (Leiden: Brill, 2014), p. 356; Tim Hillier, *Sourcebook on Public International Law* (London: Routledge-Cavendish, 1998), p. 674.

³⁵Cecily Rose et al., *An Introduction to Public International Law* (Cambridge: Cambridge University Press, 2022), p. 235.

³⁶Heath Pickering, 'Why Do States Mostly Obey International Law?', *E-International Relations*, 2014, p. 1; Werner Levi, *Law and Politics in International Society* (Cambridge: Cambridge University Press, 1976), p. 45.

³⁷Frits Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War*, 4th edn (Cambridge: Cambridge University Press, 2011), p. 31.

potentially also apply to non-European and non-Western nations. But this acknowledgment was subject to the condition that those nations met the supposed 'standard of civilization' established by European and Western powers.³⁸

If any of the abovementioned elements of the present-day prevalent narrative were, indeed, accurate, then the laws of war, or even of international law as a whole, should have been regarded by the allies as utterly irrelevant to the Boxer War. At the time, many Europeans and Westerners regarded China as being among the uncivilized (or, at best, semi-civilized) nations, and the Boxers' violence against foreigners had only heightened support for that view.³⁹ In addition, there was no formally declared state of war between the allies and China, because the Empress Dowager's war declaration avoided naming any particular state; and, in any case, the Boxers were primarily a non-state armed force, rather than a Qing government organ.⁴⁰ So, given the supposed inapplicability of international law to the conflict, why did the allies in their joint note to the Chinese government deem the Boxers' wartime acts of 'murde[r], tortur[e]', 'massacr[e] ... desecrate[ions]', 'pillag[e] and destr[uction]' to be 'crimes against the law of nations'?⁴¹ How did the allies regard themselves as having a legal basis, in international law, to punish Boxer fighters and Qing officials for such acts, actually prosecuting many such individuals, including some even by means of an international criminal tribunal?⁴² Even more importantly, why did many of the allies, including Japan, regard the application of at least some, varying portion of the laws of war to be legally mandated in the Boxer War?

The short answer is that the present-day prevalent narrative, as presented above, is far from accurate. The element of truth in that narrative lies in the fact that the legal positions depicted in it—positions which limited the application of international law and, accordingly, regarded it as inapplicable to conflicts such as the Boxer War—had, indeed, enjoyed significant support throughout the nineteenth century and that support had even peaked in the decades leading up to the First World War, the era during which the Boxer War had occurred. Yet, the significant faulty element in that narrative lies in the fact that it assumes that in the past there was wide consensus regarding the scope of application of the laws of war, and of international law at large, and that the legal positions denying the applicability of international law to conflicts such as the Boxer War represented that consensus. In truth, those positions were never consensually held, not even during the decades leading up to the First World War. But

³⁸Max Hilaire, *The Evolution and Transformation of International Law* (Berlin: Logos Verlag Berlin, 2021), pp. 18–21; Carl Schmitt, *The Nomos of the Earth in The International Law of the Jus Publicum Europaeum*, (trans.) G. L. Ulmen (New York: Telos Press, 2003), p. 226; Joseph R. Stromberg, 'Sovereignty, International Law and the Triumph of Anglo-American Cunning', *Journal of Libertarian Studies*, vol. 18, no. 4, 2004, pp. 29–30; Wilhelm Grewe, *The Epochs of International Law* (Berlin: De Gruyter, 2000), p. 263. See also Gerrit Gong, *The Standard of 'Civilization' in International Society* (Oxford: Oxford University Press, 1984), pp. 32–33.

³⁹Joanne Miyang Cho (ed.), *Sino-German Encounters and Entanglements* (London: Palgrave Macmillan, 2021), p. 64. See also Shogo Suzuki, *Civilization and Empire* (London: Routledge, 2009), pp. 178–179.

⁴⁰Regarding those two elements, see also Hamilton v. McClaughry (U.S. Circuit Court, District of Kansas, First Division, Judgment of 12 April 1905), 136 *Federal Reporter* 445, p. 450.

⁴¹The allies' 'Joint Note' (24 December 1900), reproduced in P. H. Clements, *The Boxer Rebellion* (New York: Columbia University, 1915), pp. 207–208.

⁴²James L. Hevia, *English Lessons* (Durham: Duke University Press, 2003), pp. 224–229.

before expounding on the narrative's element of inaccuracy, some further elaboration is needed on its element of truth.

During the late nineteenth and early twentieth centuries, there was significantly less willingness to apply the laws of war to undeclared conflicts, particularly those involving non-European groups or forces not aligned with a sovereign state. This contrasted sharply with the practices of the late eighteenth century and the period following the First World War. Additionally, there was a broader reluctance to apply international law to interactions outside the traditional framework of European sovereign states.

The relatively high support for limiting the application of international law during the nineteenth century, particularly in the decades leading up to the First World War, stemmed from a complex interplay of factors. During this period, liberal ideologies held less sway compared to the late eighteenth century or the post-First World War era, as many of Europe's leading powers were non-liberal monarchies. The development of laws governing warfare was significantly influenced by a pervasive fear of rebellions, a fear heightened by the trauma of the French Revolution and subsequent uprisings, such as the 1871 Paris Commune during the Franco-Prussian War.

Although disregard for non-European and non-Western nations was evident even during the eighteenth century, a period marked by the flowering of liberalism, this sentiment grew nonlinearly throughout the nineteenth century. It was particularly influenced by rising nationalism, the acceptance of Social Darwinist theories in later decades, and a renewed surge in colonialist initiatives. Additionally, this era witnessed the consolidation of the modern state in Europe and a decline in the influence of natural law jurisprudence. Replacing it were two dominant jurisprudential schools: historical-sociological jurisprudence, which viewed international law as a product of European-Western culture rather than a universal code, and statist-positivist jurisprudence, which emphasized the primacy of domestic legislation and reinforced a rigid approach to legal distinctions, including those between domestic and international law, war and peace, and the roles of state and individual.

These shifts contributed to a growing Western preference for domestic legal norms over those derived from natural law and the law of nations, clearly manifest in how European powers regulated insurrections and other internal emergencies—termed 'states of siege' in Continental Europe and 'martial law' in England. This trend also significantly affected the interactions between European powers and the non-European nations under their control.⁴³

⁴³See Ziv Bohrer, 'International Criminal Law's Millennium of Forgotten History', *Law and History Review*, vol. 34, no. 2, 2016, pp. 393, 409–418; Jennifer Pitts, 'Empire and Legal Universalisms in the Eighteenth Century', *American Historical Review*, vol. 117, no. 1, 2012, pp. 92, 92–121; Eliav Lieblich, 'Internal Jus Ad Bellum', *Hastings Law Journal*, vol. 67, no. 3, 2016, pp. 1, 10–19; David Kennedy, 'International Law and the Nineteenth Century: History of an Illusion', *Quinnipiac Law Review*, vol. 17, no. 1, 1998, pp. 99, 131; David Kennedy, 'War and International Law: Distinguishing the Military and Humanitarian Professions', *International Law Studies*, vol. 82, no. 1, 2007, pp. 3, 9; Ziv Bohrer, 'Divisions over Distinctions in Wartime International Law', in Z. Bohrer, J. Dill and H. Duffy, *Law Applicable to Armed Conflict* (Cambridge: Cambridge University Press, 2020), pp. 106, 112–179; Wim Voermans, *The Story of Constitutions* (Cambridge: Cambridge University Press, 2023), p. 145; Stephen Neff, 'A Short History of International Law', in *International Law*, (ed.) M. Evans (Oxford: Oxford University Press, 2018), pp. 38–48; Douglas Johnston, *The Historical*

These (and other) factors all contributed to the contemporary surge in support for the positions reflected in the prevalent narrative presented above. Nevertheless, the narrative is inaccurate, as none of those positions had ever been unanimously held, not even during the late nineteenth and early twentieth centuries. Rather, alongside each of those positions, other competing legal positions regarding the 'correct' meaning of the relevant law had always existed, and relative support for each competing position fluctuated over time.⁴⁴

Using a broad brush, one may say that by the turn of the twentieth century, four competing approaches coexisted regarding the extent of the application of the customary laws of war to conflicts such as the Boxer War.⁴⁵

A punishment approach, perhaps the oldest of the four, advocated for unrestricted warfare against so-called 'uncivilized' nations, as well as against nonstate armed groups, such as rebels. In this view, being an unlawful combatant (in other words, a 'rebel', 'brigand', 'bandit', etc.) constituted an international crime in and of itself, and so did being part of an 'uncivilized' group. Moreover, the two were believed to belong to a small, unique subcategory of international crimes so severe that they merited accountability both individually from the persons involved and collectively from their groups as a whole. Individual accountability meant that those identified as such criminals could be put on trial for these international crimes, as well as for any other war crimes they might have personally committed. However, such trials often ended up being superfluous, because immediate extrajudicial execution of such 'perpetrators' was considered legal in certain situations—such as when they were caught in the act. Moreover, the necessity for trials was further diminished in light of the collective accountability for unlawful combatancy and for being 'uncivilized'. Such a form of accountability was presumed to legally authorize unrestricted warfare against both fighters and civilians of the offending group, with such warfare viewed as a collective punishment for the group's violation of international law.⁴⁶ In sum, this approach could have allowed the allies to place Boxers on trial for war crimes, as well to extrajudicially kill them and the civilian population from which they came, while absolving their own [allied] troops from any war crime accusation.

The second doctrine may be called the **non-application approach**. In contrast to the punishment approach, this doctrine was not based on a punitive rationale but rather on the belief that international law simply did not apply to dealings with 'uncivilized' or nonstate adversaries. The key practical difference between these

Foundation of World Order (Leiden: Brill Publishers, 2008), pp. 507–687; Peter Stirk, 'The Westphalian Model and Sovereign Equality', *Review of International Studies*, vol. 38, no. 4, 2012, pp. 641, 652–654; Hew Strachan, 'A General Typology of Transcultural Wars: The Modern-Ages', in *Transcultural Wars: From the Middle-Ages to the 21st Century*, (ed.) H. H. Kortum (Berlin: De Gruyter, 2006) pp. 89–96; Eyal Benvenisti and Doreen Lustig, 'Monopolizing War: Codifying the Laws of War to Reassert Governmental Authority, 1856–1874', *EJIL*, vol. 31, no. 1, 2020, pp. 127–169; Philip Alston, 'Book Review: Does the Past Matter? On the Origins of Human Rights', *Harvard Law Review*, vol. 126, no. 7, 2013, pp. 2043, 2068–2070; Michael Dawkins, *Social Darwinism in European and American Thought, 1860–1945* (Cambridge: Cambridge University Press, 1997), p. 90.

⁴⁴Bohrer, 'Divisions over Distinctions', pp. 112–179.

⁴⁵For a further discussion of these four approaches, see *ibid.*, pp. 146–150.

⁴⁶See Ziv Bohrer, 'Jolly Roger (Pirate Flag)', in *International Law's Objects*, (eds) J. Hohmann and D. Joyce (Oxford: Oxford University Press, 2018), pp. 259–261; Bohrer, 'Divisions over Distinctions', p. 146.

two approaches lay in their legal implications for enemy combatants. While both approaches allowed European-Western state soldiers to operate free of the constraints of the laws of war, only the punishment approach still required that the ‘uncivilized’ or nonstate adversaries adhere to these laws. Consequently, under the non-application approach—unlike the punishment approach—European-Western states could not legally prosecute captured enemy fighters like the Boxers for criminal violations of international law on an individual basis.⁴⁷

In wars with ‘uncivilized’ and nonstate adversaries, a **minimalist-discretionary approach** substituted the robust requirements of international law with a minimal obligation merely to apply ‘such rules of justice and humanity as recommend themselves in the particular circumstances of the case’.⁴⁸ According to this approach, while not directly applicable in wars against those kinds of enemies, the laws of war, at least the most basic of them, did, nonetheless, provide some guidance regarding the constraints that must be maintained. Therefore, it was made clear under this approach that ‘[t]he mere fact that certain laws of war are applied to insurgents [or to uncivilized], out of a sense of humanity, does not in itself constitute recognition of the status of belligerency’.⁴⁹ In practice, the result of the application of this approach was usually only a little more restrictive than the application of the ‘punishment’ or ‘inapplicability’ approaches because it was usually understood as only prohibiting exceptionally cruel, clearly unnecessary measures.⁵⁰ Nevertheless, interpretations of the notion of ‘minimal’ differed among observers and policymakers, with some applying greater legal restrictions on European and Western state armies than others.⁵¹

Lastly, an **expansive-application (or adaptation) approach** sought to adjust international law to accommodate cross-cultural interactions or to the conditions of wars involving nonstate actors. This approach mandated that, even in such conflicts, all parties—or, alternatively, at least the European/Western side, regardless of the opposing side’s conduct—should adhere to the rules of civilized warfare ‘as far as possible’. Interpretations of the ‘as far as possible’ notion and its applicability varied among proponents of this approach. Note that even proponents of this restrictive approach classified certain combatants as ‘unlawful’ and maintained that they could be criminally prosecuted or sometimes even summarily executed. However, they applied this classification narrowly, reserving it only for combatants such as those who fought in civilian clothing or belonged to non-state forces primarily engaged in looting. Moreover, they did not consider the involvement of such fighters as a justification for

⁴⁷See, for example, Elbridge Colby, ‘How to Fight Savage Tribes’, *American Journal of International Law*, vol. 21, no. 2, 1927, pp. 279, 285–287 (briefly contrasting non-application and punishment approaches).

⁴⁸UK War Office, *Manual of Military Law* (London: HMSO, 1914), p. 235.

⁴⁹Institut de Droit International, *Droits et devoirs des Puissances étrangères, au cas de mouvement insurrectionnel, envers les gouvernements établis et reconnus qui sont aux prises avec l’insurrection* (Session de Neuchâtel, 8 septembre 1900), Article 4(2).

⁵⁰For example, *ibid.*, Articles 3 and 4(2); Francis Lieber, *Guerrilla Parties* (New York: D. Van Nostrand, 1862), p. 21.

⁵¹For example, Theodore Dwight Woolsey, *Introduction to the Study of International Law* (Boston: J. Munroe Company, 1860), §§ 136, 204.

broadly reducing the application of the laws of war to the overall conflict, for example, by justifying mass killings of uninvolved enemy civilians.⁵²

As we shall see, those different approaches were embraced (with numerous variations) by different allies during the Boxer War. It is important to note that the sudden and chaotic outbreak of this unforeseen conflict, coupled with the rapid escalation of the crisis in China, prompted all involved powers to enter the fray hastily. This urgency left no time for the development of clear, systematic legal policies. Therefore, the legal approach of each ally is usually only implicit in various documents, as opposed to being clearly delineated in comprehensive position papers. Moreover, the hurried nature of the response meant that each power's existing perspectives and experiences from recent and historical conflicts played a crucial role in shaping their legal stances and actions.⁵³

The position and behaviour of imperial Germany

Among the five nations discussed herein, Germany was arguably the one most strongly influenced by the aforementioned nineteenth-century trends which diminished the scope and applicability of international law. The sociological-historical and statist-positivist jurisprudential schools wielded significant influence in Germany, fostering deep resistance to the expansion of international law beyond the inter-state and Western spheres. Accordingly, many contemporary German jurists asserted that international law's scope of application was limited to interactions between states, or between nations of a European culture, rejecting its application to internal conflicts as well as to wars against non-Western enemies. Others went even further, generally exhibiting very limited commitment to customary international law, if not to international law in general. Such positions had received considerable support from the founding fathers of the German empire, including Prince Otto von Bismarck.⁵⁴ In addition, from the early nineteenth century onwards, Prussia, and later the German empire, had assumed a leading role in the anti-revolutionary camp among

⁵²See, for example, relevant American practice: Robert D. Powers, 'Guerrillas and the Laws of War', *U.S. Naval Institute Proceedings*, vol. 85, no. 3, 1963, pp. 82, 85; N. Lester and R. W. Barrett, 'Legality of Guerrilla Forces under the Laws of War', *American Journal of International Law*, vol. 40, no. 3, 1946, pp. 563, 570–577; Willard B. Cowles, 'Universality of Jurisdiction over War Crimes', *California Law Review*, vol. 33, no. 2, 1945, pp. 177, 202, 215.

⁵³Bohrer, 'Non-Grotian Moments', pp. 57–58.

⁵⁴A. P. V. Rogers, *Law on the Battlefield* (Manchester: Manchester University Press, 2005), p. 2; Robert Kolb, *Truyol y Serra's Doctrines of International Law* (Northampton: Edward Elgar Publishing, 2018), p. 13. See also Jochen von Bernstorff, 'German Intellectual Historical Origins of International Legal Positivism', in *International Legal Positivism in a Post-Modern World*, (eds) J. Kammerhofer and J. d'Aspremont (Cambridge: Cambridge University Press, 2014), pp. 50–51; Jochen von Bernstorff, 'The Historical School and German International Legal Thought in the Nineteenth Century', *Journal on the History of International Law*, vol. 25, no. 4, 2023, pp. 311–353; Karl Lüder, 'Das Landkriegsrecht im Besonderen', in *Handbuch des Völkerrechts*, (ed.) Franz von Holtzendorff (Hamburg: Aktien-Gesellschaft, 1889), p. 391; Oleksiy V. Kresin, 'Origins of the Idea of Social International Law (XVI–XIX Centuries)', *Jus Gentium*, vol. 1, no. 1, 2016, pp. 33, 48; Kenny Yang, 'The Rise of Legal Positivism in Germany: A Prelude to Nazi Arbitrariness?', *Western Australian Jurist*, vol. 3, no. 1, 2012, pp. 245, 247–249; Antonio Cassese, *International Law* (Oxford: Oxford University Press, 2005), p. 180; Hersch Lauterpacht, *International Law* (Cambridge: Cambridge University Press, 1970), p. 382.

the European powers.⁵⁵ Similarly, during the nineteenth century, the liberal movement and its influence in Prussia and then in unified Germany were relatively weak compared to their counterparts in England, France, and the United States.⁵⁶

Moreover, Germany directly experienced the actions of the irregular French fighters ('*francs-tireurs*' or 'free shooters') during the Franco-Prussian War. This made Germany especially adamant, even more than other powers, in its refusal to apply the laws of war when fighting non-state or otherwise irregular forces.⁵⁷ Indeed, the trauma of that war deeply influenced German military culture, instilling in it the belief that conflicts with such forces were inherently total wars of annihilation.⁵⁸ Finally, Germany was a latecomer to the colonialist venture, which led to the rise of a popular sentiment, shared even by German international law experts, that 'colonization was a natural part of Germany's development into a leading European power'.⁵⁹ This colonial ambition, combined with rising German nationalism and racism, contributed to increasingly ruthless colonial policies in Africa, which culminated in the near-extirpation of the Herero and Nama in 1904. These harsh policies further reinforced Berlin's belief that international law, especially the laws of war, did not apply to non-European 'barbarians'.⁶⁰ Accordingly, Germany entered the Boxer War with a quite firmly established stance opposed to applying the laws of war in this case. In addition, it was also generally more willing than other powers to unshackle its soldiers from the constraints of the laws of war, regardless of the specifics of the conflict, a tendency that would later become evident during the First World War.⁶¹

The events prior to the anti-Boxer intervention only hardened the German standpoint. China participated in the 1899 Hague conference only in a very 'inferior way', wrote Georg Jellinek, a leading German jurist, 'and under the prevailing circumstances, it [China] naturally has not ratified these conclusions. Therefore, China is not even formally obligated to the civilized world in this respect.' In addition, according to Jellinek, China's atrocities against civilians and POWs exposed its barbarous nature. The powers, he argued, should indeed behave towards the Chinese with a mere minimum standard of humanity, not because the Qing empire had any rights or protections under

⁵⁵Johannes Paulmann, "'Dearest Nicky...': Monarchical Relations between Prussia, the German Empire and Russia during the Nineteenth Century", in *The German Lands and Eastern Europe*, (eds) Roger Bartlett and Karen Schönwälder (London: Palgrave MacMillan, 2016), p. 159; Roderick Stackelberg, *Hitler's Germany: Origins, Interpretations, Legacies* (Oxfordshire: Routledge, 2014), p. 44.

⁵⁶Thomas Weber, *Our Friend 'The Enemy': Elite Education in Britain and Germany before World War I* (Stanford: Stanford University Press, 2008), p. 6. See also Thomas Vormbaum, *A Modern History of German Criminal Law* (Berlin: Springer Berlin Heidelberg, 2013), p. 112.

⁵⁷See Emily Crawford, *Identifying the Enemy: Civilian Participation in Armed Conflict* (Oxford: Oxford University Press, 2015), pp. 29–33; Benvenisti and Lustig, 'Monopolizing War', pp. 144–164.

⁵⁸Thomas Kühne, 'Todesraum: War, Peace, and the Experience of Mass Death, 1914–1945', in *Oxford Handbook of Modern German History*, (ed.) H. W. Smith (Oxford: Oxford University Press, 2013), pp. 527, 531–532.

⁵⁹Mohammad Shahabuddin, 'The Colonial "Other" in the Nineteenth Century German Colonization of Africa, and International Law', *African Yearbook of International Law Online*, vol. 18, no. 1, 2010, pp. 15, 27.

⁶⁰See *ibid.*, pp. 15–39; Dieter Langewiesche, "'Savage War' as 'People's War': Nineteenth-Century African Wars, European Perceptions, and the Future of Warfare", *Journal of Modern History*, vol. 94, no. 3, 2022, pp. 537, 537–563.

⁶¹The influence of the Franco-Prussian War is evident, for example, in the following op-ed written by a German officer during the Boxer War: 'China', *The Times*, 11 January 1901, p. 3.

international law, but because doing so ‘keeps the nations, who feel themselves the upholders of civilization, from sullyng themselves before the judgment of history’.⁶²

If Jellinek at least gave lip service to a discretionary-minimalist approach, the German emperor, William II, clearly saw the war as punitive and unrestrained, for example, when he called for Beijing to be erased from the face of the earth in retribution for the assassination of the German minister.⁶³ In an infamous farewell speech to his troops on 27 July 1900, after making the accusation that ‘the Chinese have overturned the law of nations’, he ordered his troops to avenge and punish the Chinese. The crucial passage of the speech reads as follows:

Should you encounter the enemy, he will be defeated! No quarter will be given! Prisoners will not be taken! Whoever falls into your hands is forfeited. Just as a thousand years ago the Huns under their King Attila made a name for themselves, one that even today makes them seem mighty in history and legend, may the name Germany be affirmed by you in such a way in China that no Chinese will ever again dare to look cross-eyed at a German.⁶⁴

Interestingly, despite the prevalence in Germany of the view that international law did not apply to rebellions or to wars against ‘uncivilized’ nations, the German authorities did not adopt an absolute non-application approach during the Boxer War. Instead, as reflected in the Kaiser’s speech, they inconsistently vacillated between the non-application and punishment approaches. The punitive aspect of the German legal stance is further evidenced by Germany’s participation in several trials of Boxers before multinational military tribunals, where German officers served as judges alongside officers from other allied armies. Both the very existence of these tribunals and the charges against the Boxer defendants were necessarily based on a premise that at least some customary international laws did indeed apply to their conduct.⁶⁵

Note that the aforementioned paragraph of the Kaiser’s speech was omitted from the official transcript. This suggests that the Germans believed that their allies would not endorse such an unrestrained approach to warfare and would disapprove of Germany’s position. It also probably reflects some internal dissent within the German

⁶²Georg Jellinek, ‘China and International Law’, *American Law Review*, vol. 35, no.1, 1901, pp. 56–62, at 61–62; Bernd Martin, ‘Soldatische Radikalisierung und Massaker: Das Deutsche Erste und Zweite Seebataillon im Einsatz im “Boxerkrieg” in China 1900’, *Militärsgeschichtliche Zeitschrift*, vol. 69, no. 2, 2010, p. 239; Susanne Kuss, ‘Deutsche Soldaten während des Boxeraufstandes in China: Elemente und Ursprünge des Vernichtungskrieges’, in *Das Deutsche Reich und der Boxeraufstand*, (eds) S. Kuss and B. Martin (Munich: IUDICIUM, 2002), pp. 174–175; Gustav Paul, *Der Boxerkrieg in China 1900–1901: Tagebuchaufzeichnungen des späteren Hildesheimer Polizeioffiziers Gustav Paul* (Hildesheim: Gerstenberg, 2001), pp. 98, 100–101.

⁶³Emperor William II to Foreign Secretary von Bülow, 19 June 1900, in *Die Grosse Politik der Europäischen Kabinette 1871–1914: Sammlung der Diplomatischen Akten des Auswärtigen Amtes*, (eds) Johannes Lepsius et al. (Berlin, 1924), vol. 16, p. 14.

⁶⁴‘Wilhelm II, “Hun Speech”’, (trans.) Thomas Dunlap, GHDI, published online, available at https://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=755, [accessed 2 April 2025].

⁶⁵Brockman-Hawe, ‘Accountability’, pp. 661–663. See also Susanne Kuss, ‘Co-operation between German and French Troops during the Boxer War in China, 1900/1: The Punitive Expedition to Baoding’, in *Imperial Co-Operation and Transfer, 1870–1930: Empires and Encounters*, (eds) Voker Barth and Roland Cvetkovski (London: Bloomsbury Academic, 2015), pp. 197, 208–209.

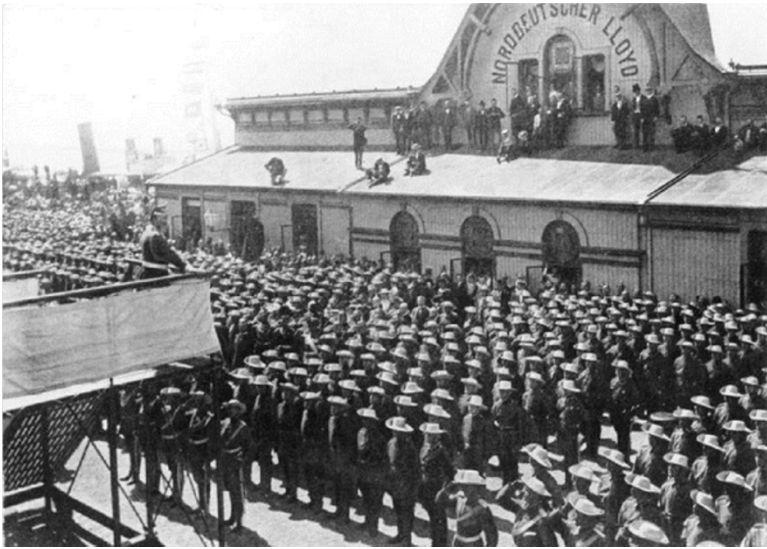


Figure 10. Kaiser Wilhelm giving his 'Huns Speech', 27 July 1900. Source: German Federal Archives; wikidata: Q685753; Bild 183-B0313-0014-067.

government regarding the pursuit of unrestrained warfare. Regardless, the German government's attempt to suppress the circulation of the complete speech failed, as several reporters, including one from the international agency Reuters, had already obtained the full transcript.⁶⁶

Moreover, the content of the emperor's address was passed by word of mouth among the German soldiers. Indeed, this speech deeply influenced the troops, especially their willingness to kill all Chinese captives. For the benefit of soldiers who did not read the speech, local commanders distributed William's photograph engraved with the phrase 'no quarter'. Soldiers even inscribed this message on their train carriages.⁶⁷ 'The words of the emperor: "no quarter will be given" were a natural measure of self-defense', related one German account. Another soldier wrote to his mother back home that the Chinese were 'outside international law, no captives are taken and everyone is shot to death'. And indeed, German commanders commonly ordered the killing of all Chinese enemies, including wounded ones. Prisoners were seen as a burden.⁶⁸

However, sometimes German commanders did decide to release Qing troops who surrendered, hoping that they would become 'peaceful coolies' or even mercenaries in one of the foreign contingents. Only during the later stages of the war, in the winter

⁶⁶Alexander Nalbach, "The Ring Combination": Information, Power, and the World News Agency Cartel', PhD thesis, University of Chicago, 1999, vol. 1, pp. 277–278.

⁶⁷Xiya Zhao and Patrick Pasture, 'The "European" in the Boxer Movement', *The International History Review*, vol. 45, no. 1, 2023, p. 84; Kuss, 'Co-operation', pp. 201–203.

⁶⁸Kaminski, *Der Boxeraufstand*, pp. 193–194; Kuss, 'Deutsche Soldaten', p. 178.



Figure 11. Execution of a death sentence issued by an International Tribunal at Pao-Ting-Fu consisting of a German, a Briton, an Italian, and a French officer. Notice the officers' uniforms, demonstrating that they came from different nations. Source: *Le Petit Journal*, 20 January 1901.

and spring of 1901, did the Germans begin to occasionally offer quarter to such prisoners and place them under guard.⁶⁹ That belated restraint was possibly an attempt to assuage the scathing criticism against the cruelty of the army expressed in the German Reichstag since November 1900, especially by Social Democrats but even by liberals and some conservatives.⁷⁰

To be sure, German military criminal legislation forbade wartime rape and mistreatment of civilians, but those prohibitions came automatically into force only in declared interstate wars. In contrast, their coming into effect in the context of an insurrection was subject to the commanders' discretion. Thus, in the context of the Boxer War, the relevant laws were either not brought into force, or if brought into effect were not enforced against German soldiers.⁷¹ Field Marshal Alfred Graf von

⁶⁹F. O. Löffler (ed.), *Deutschland in China, 1900–1901* (Düsseldorf: A. Bagel, 1902), pp. 139, 210, 339–340.

⁷⁰John C. G. Röhl, *Wilhelm II: Into the Abyss of War and Exile, 1900–1941* (Cambridge: Cambridge University Press, 2013), pp. 84–85.

⁷¹*Militär-Strafgesetzbuch für das Deutsche Reich* (1872 edn), articles 9, 127, 135, available at https://de.wikisource.org/wiki/Milit%C3%A4r-Strafgesetzbuch_f%C3%BCr_das_Deutsche_Reich, [accessed 2 April 2025]; Xiya Zhao and Patrick Pasture, 'The "European" in the Boxer Movement', *The International History Review*, vol. 45, no. 1, 2023, p. 84; Kuss, 'Co-operation', pp. 201–203; Susanne Kuss, 'Deutsche Strafexpeditionen im Boxerkrieg', in *Kolonialkrieg in China: Die Niederschlagung der Boxerbewegung, 1900–1901*, (eds) M. Leutner and K. Mühlhahn (Berlin: Verlag, 2007), p. 142.



Figure 12. 'German Marines burning Tsung-II-Yamen'. Source: *Le Petit Journal*, 22 July 1900.

Waldersee, the commander of the German contingent (and nominally of all allies) did issue an order to spare Chinese women and children, but his remark that Chinese should be 'treated like dogs' diluted the effectiveness of that order, leading to indiscriminate slaughter of women and children in many cases.⁷² The Germans behaved with similar cruelty during the mop-up operations (stage four of the war) as well, detailed later in this article. No German soldier, as far as we know, was tried for crimes against the Chinese civilian population, except one Bavarian ensign punished for looting.⁷³ As one scholar noted, 'the [German] soldiers ultimately operated in a zone of impunity'.⁷⁴

⁷²Brockman-Hawe, 'Accountability', p. 651; Sabine Dabringhaus, 'An Army on Vacation? The German War in China, 1900–1901', in *Anticipating Total War: The German and American Experiences, 1871–1914*, (ed.) M. F. Boemeke (Cambridge: Cambridge University Press, 2013), p. 466.

⁷³Kuss, 'Deutsche Soldaten', pp. 175–176; Paul, *Der Boxerkrieg*, pp. 98–99; Brockman-Hawe, 'Accountability', pp. 641, 645–646; Löffler, *Deutschland in China*, p. 442; Holquist, 'By Right of War', p. 87.

⁷⁴Kuss, 'Deutsche Strafexpeditionen', p. 142.



Figure 13. (Chinese) 'coolies' bringing (German) guns into position. Source: 1900 German postcard (purchased by the authors).

The position and conduct of Great Britain

Great Britain was also significantly influenced by the various nineteenth-century trends discussed earlier. As the dominant colonial power, it had a particular motivation—which grew over the century, as the power gap widened between the empire and the non-European rulers and nations it had subjugated—to reconceptualize such relationships as being internal to the empire ('domestic'), rather than international. From a British legal perspective, such intra-empire conceptualization excluded applying international law to these relations.⁷⁵

The colonialist domestication project had an unintended side effect related to insurgencies: as it progressed, Britain increasingly perceived clashes with non-Europeans as domestic-internal conflicts. This perception is likely to have contributed to the growing overlap between laws governing insurgencies and those governing colonial 'small wars'. Simultaneously, the laws relating to insurgencies had also independently undergone increasing domestication. In Britain, this process took on distinct characteristics, as contemporary ambitions to liberate soldiers from legal constraints in times of emergency clashed with a long-standing British aversion to martial law.⁷⁶

These conflicting motivations resulted in three markedly divergent legal perspectives on what laws should govern internal emergencies, such as insurrections. Unlike

⁷⁵See Lauren Benton, 'From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870–1900', *Law and History Review*, vol. 26, no. 3, 2008, pp. 595, 595–619; John Westlake, *Collected Papers of John Westlake on Public International Law* (Cambridge: Cambridge University Press, 1914), pp. 141–152, 209, 232. See also Casper Sylvest, 'Our Passion for Legality: International Law and Imperialism in Late Nineteenth-Century Britain', *Review of International Studies*, vol. 34, no. 3, 2008, pp. 403–423. For the difference between the British position and both its earlier and the American positions, see the treatment in *Wi Parata v. Bishop of Wellington*, 3 NZ Jur SC 72, pp. 77–78 (1877). For the fact that the reconceptualization was never fully successful, see Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), p. 81. For a nuanced comparison of the prevalent late nineteenth-century position and earlier ones, see Pitts, 'Empire and Legal Universalisms', pp. 92–121.

⁷⁶For sources noting that aversion, see Shereen Ilahi, *Imperial Violence and the Path to Independence* (London: I. B. Tauris, 2016), p. 118; Michael Head, *Calling Out the Troops* (Annandale, N.S.W.: Federation Press, 2009), pp. 37–43.

previous generations, proponents of each approach tended to assume that the law of nations did not directly apply to these situations. They also commonly relied on the age-old common law axiom, 'Martial Law is really ... no law but that of necessity.'⁷⁷ Despite these two points of convergence, the contemporary debate on the three leading views on the matter was so intense that, as illustrated below, each viewpoint was embraced in different turn-of-the-century official British military sources, despite the armed forces' striving towards uniformity.

One perspective, which most strongly embodied the English aversion to martial law, interpreted the aforementioned axiom as asserting that there was no legal doctrine of martial law within the English legal system. According to this view, each action taken by a soldier or commander during an internal emergency, for example while suppressing an insurrection, should be judged individually based on standard criminal law defences, such as necessity. The only exception to this would be if the legislature later passed an indemnity act that shielded relevant commanders and soldiers from criminal prosecution. The 1899 British *Manual of Military Law*, published one year prior to the outbreak of the Boxer War, clearly embraced that view.⁷⁸ The Manual's premise that the laws of war did not apply to insurrections is further implicit in its definition of 'war [a]s not a relation of man to man, but of State to State'.⁷⁹

A second perspective, quite opposite to the first, asserted that during an internal emergency, often referred to as a state of martial law, military commanders become unrestrained by any and all legal constraints and were entitled to act as they deemed necessary.⁸⁰ This perspective, which in practice adopted the non-application approach to insurrections, was endorsed (though without explicit use of the term 'martial law') in Major-General Sir C. E. Callwell's significant manuscript, *Small Wars*, which was formally adopted by the Royal Army as a British military textbook, and whose second edition was published in 1899, a year before the Boxer War began. Accordingly, this military textbook even went so far as to maintain that in contrast to 'regular campaigns', in a war against an 'insurrectionary movement', and likewise against a 'savage race', intentional targeting of enemy civilians was permitted, 'because [in such wars] beating of the hostile armies is not necessarily the main object ... and ... the operations are sometimes limited to committing havoc which the laws of regular warfare do not sanction'.⁸¹

The third perspective on the martial law debate sought to both spare soldiers and commander the confusion inherent in the 'case by case' perspective, while limiting the permissiveness of atrocities implied by the 'no restraints' perspective. It did so by defining martial law as a legal framework distinct from English common law and derived from natural law. This framework provided commanders with the authority to respond to severe emergencies, such as insurrections, while also placing limits on

⁷⁷For example, Edward Gunter, *Outlines of Military Law and Customs of War* (London: William Clowes and Sons, Ltd., 1897), p. 24.

⁷⁸UKWO, *Manual of Military Law* (London: War Office, 1899), pp. 4–5.

⁷⁹*Ibid.*, p. 286.

⁸⁰See Alexander James Edmund Cockburn, *Charge of the Lord Chief Justice of England to the Grand Jury at the Central Criminal Court in the Case of the Queen Against Nelson and Brand* (London: W. Ridgway, 1867), p. 22.

⁸¹Charles Edward Callwell, *Small Wars: Their Principles and Practice* (London: H. M. Stationery Office, 1899), p. 21.

their actions. Those limits presumably stemmed from the fundamental natural law principles of necessity, humanity, and justice. The laws of war, or at least their most basic tenets, often served as guidelines for the constraints required by these natural law norms.⁸² In other words, this view held that a minimalist-discretionary approach applied to martial law situations, including insurrections. Contemporary support for this perspective was strong enough that the authors of the 1899 *Manual of Military Law* could not avoid acknowledging it, albeit in a footnote.⁸³ Moreover, despite being the only legal view among the three not embraced in any 1899 official military manual, it had been the one most commonly implemented during the Second Boer War—a conflict, deemed an insurrection by the British, which began shortly before the Boxer War.⁸⁴

Another moderating factor in British behaviour, partly linked to their aversion to martial law but also evident in their conduct during conflicts with non-Europeans, was the relatively strong influence of liberalism in British public discourse. For instance, domestic liberal criticism of British military conduct during the 1898 campaign against the Mahdist Revolt in Sudan led to increased governmental support for a minimalist-discretionary approach in colonial wars.⁸⁵ Similarly, the significant adoption of this approach during the Second Boer War was derived, at least in part, from liberal public pressure.⁸⁶ In the same vein, during the Boxer War, although the British adopted a relatively harsh stance both legally and in practice, they did not go as far as the Germans, possibly in part due to this liberal lobby.⁸⁷

In light of the inconsistency between different contemporary British military textbooks, as well as in actual British conduct in different late nineteenth and early twentieth century conflicts, it is difficult to determine with full certainty which legal

⁸²For example, Hamilton Tovey, *Martial Law and the Custom of War* (London: Chapman and Hall, 1886), pp. 62–63, 71, 74, 77, 95, 99–100, 114–115; Thomas E. Holland, *The Laws and Customs of War on Land* (High Wycombe: Harrison and Sons, 1904), pp. 4–5 (a textbook commissioned by the British military, which embraced this view following the common reliance on it during the Second Boer War).

⁸³UKWO, *Manual of Military Law*, p. 6 (footnote a), referring to W. F. Finlason, *Martial Law as Allowed by the Law of England in Time of Rebellion* (London: Stevenson and Sons, 1866), see especially pp. xii–xx.

⁸⁴Michael Lobban, *Imperial Incarceration* (Cambridge: Cambridge University Press, 2021), p. 329; Lia Brazil, 'British War Office Manuals and International Law, 1899–1907', in *Empire and Legal Thought*, (ed.) Edward Cavanagh (Leiden: Brill, 2020) pp. 564–571.

⁸⁵See Christopher Szabla, 'Civilising Violence: International Law and Colonial War in the British Empire, 1850–1900', *Journal of the History of International Law*, vol. 25, no. 3, 2023, pp. 70, 71–72, 85–96. As Szabla notes, an influential voice in the public outcry against British conduct in that campaign was the liberal war correspondent (and later politician) Ernest Bennett. He, we should add, clearly advocated for the minimalist-discretionary approach (while embracing a demanding interpretation of it); see Ernest Bennett, 'After Omdurman', *Contemporary Review*, vol. 75, 1899, pp. 18, 19.

⁸⁶Lobban, *Imperial*, pp. 323–381; F. Orazi, 'The Pro-Boer Representation of War and the Origins of New Liberalism', *Cahiers Victoriens et Édouardiens*, published online in 2007, available at <http://journals.openedition.org/cve/10535>, [accessed 9 April 2025]. See also Charles Townshend, 'Martial Law: Legal and Administrative Problems of Civil Emergency in Britain and the Empire, 1800–1940', *The Historical Journal*, vol. 25, no. 1, 1982, pp. 167, 167–195.

⁸⁷For examples, see the scathing criticism of allied breaches of international law during the Boxer War: 'Looting in China', *Review of Reviews*, March 1901, p. 272; John Macdonell, 'Looting in China', *The Contemporary Review*, vol. 79, 1901, pp. 444–452, and in a somewhat more diluted form, 'Looting at Peking', *North China Herald*, 24 April 1901, p. 784.

approach was specifically embraced by the British armed forces in the Boxer War. Moreover, we located no formal policy paper, or other document, dating to this conflict that explicitly provides the answer. However, circumstantial evidence suggests that the British armed forces largely cleaved to a minimalist-discretionary approach. For instance, just a few years after the conflict, a committee of officers and legal experts was appointed by the British War Office to revise the chapter on the laws of war in the *Manual of Military Law*. This committee formally and explicitly adopted the minimalist-discretionary approach as the British position on the law applicable to wars against ‘uncivilized people’. Their legal text was first published as a separate military textbook in 1909⁸⁸ and then incorporated as the new laws of war chapter in the 1914 edition of the manual.⁸⁹

Most importantly, certain British documents from the Boxer War itself strongly suggest that the British practically embraced the minimalist-discretionary approach as their policy, and that General Alfred Gaselee, the commander of the British contingent, interpreted the concept of ‘minimal standards of humanity’ in a relatively broad manner. For example, he warned his troops that ‘the strictest discipline will be maintained within the force, and ... any ... ill-treatment of the inhabitants will be severely punished’.⁹⁰ Gaselee indeed tried to prevent depredations against Chinese civilians and promoted a policy of distinguishing between ‘peaceful villagers’ and Boxers.⁹¹ In an oral government report to parliament, it was recounted that Gaselee had maintained that the troops were disciplined, ‘and their humanity has been unquestionable. Hardly any outrage has been committed, and in proof of this he has pointed to the very few instances of courts-martial or of summary awards of punishment’.⁹² Both this vocabulary of the report, and its content (regarding British soldiers as constrained by certain core laws of war in this conflict) seem to indicate embrace of the minimalist-discretionary approach.

But the extent of the constraints embraced should not be exaggerated. Whenever the British saw a need, they were ready to employ extreme and sweeping violence against entire communities. During the first phase of the war, in the Battle of Tianjin, the British consul warned the inhabitants that if they did not surrender peacefully, ‘they will be shot, and their property destroyed’. Unfortunately, this threat was largely implemented during the occupation of the city.⁹³ In another case, a British commander

⁸⁸Sir James Edward Edmonds and Lassa Oppenheim, *Land Warfare: An Exposition of the Laws and Usages of War on Land, for the Guidance of Officers of His Majesty's Army* (London: H. M. Stationery Office, 1909), p. 14. See also Brazil, ‘British War Office Manuals’, p. 574.

⁸⁹UKWO, *Manual of Military Law* (London: War Office, 1914), p. 235 (‘the rules of international law apply only to warfare between civilized nations ... They do not apply in wars with uncivilized states and tribes, where their place is taken by the discretion of the commander and such rules of justice and humanity as recommend themselves in the particular circumstances of the case.’).

⁹⁰‘Standing orders, China Expeditionary Force (July 17 1900)’, reproduced in E. W. M. Norie, *Official Account of the Militar Operations in China 1900-1901* (London: H. M. Stationery Office, 1903), p. 431.

⁹¹Brockman-Hawe, ‘Accountability’, p. 670; ‘Gen. Gaselee to Lord Salisbury (Jan. 17 1901)’, reproduced in Norie, *Official Account*, p. 321.

⁹²Earl of Hardwicke, British Under-Secretary of State for India, in ‘China—Present Position and Policy (28 March 1901)’, 92 HL Deb 12, p. 35, available at https://api.parliament.uk/historic-hansard/lords/1901/mar/28/china-present-position-and-policy#column_35, [accessed 9 April 2025].

⁹³‘Military Operations in North China’ (Japanese report), 1 July 1900), p. 2 (15), WO 32/6145, TNA.



Figure 14. 1900 print of British and Japanese troops engaging Boxers at Tianjin. Artist: Kasai Torajirō. Source: LCPPD, LC-DIG-jpd-02533.

held hostage half of the headmen of a Chinese village until they gave over suspects to the occupying troops.⁹⁴

Evidence in British documents on the treatment of captives is scarce. The official policy, according to the 1899 *Manual of Military Law*, was that irregular troops, such as the Boxers, were 'marauders' who were not eligible for POW rights and that they should be punished for the mere act of engaging in illegal warfare.⁹⁵ Yet, scattered remarks suggest that the British often gave quarter (though certainly not full POW rights as per the Hague Regulations) to captive Boxers and Qing soldiers and employed them in manual labour for the army.⁹⁶

As might be expected, British soldiers on the ground often behaved more cruelly than the dictates of Gaselee's official policy. For example, British soldiers participated in the sacking and subsequent mass killing perpetrated in the city of Tongzhou in the second phase of the war. Though Gaselee issued an order against looting, and even arrested some soldiers who looted from his own contingent, he and other British officers could not control their men in the narrow streets of the town. Many Chinese, including women and children, were killed when they tried to resist, or simply failed to flee the advancing British soldiers rapidly enough.⁹⁷

⁹⁴Brockman-Hawe, 'Accountability', p. 633.

⁹⁵UKWO, *Manual of Military Law*, p. 291.

⁹⁶'Gen. Gaselee to Lord Salisbury (17 January 1901)', reproduced in Norie, *Official Account*, pp. 320, 324; Diana Preston, *The Boxer Rebellion: The Dramatic Story of China's War on Foreigners that Shook the World in the Summer of 1900* (New York: Walker, 2001), p. 225.

⁹⁷George Lynch, *The War of the Civilizations: Being the Record of a 'Foreign Devil's' Experience with the Allies in China* (New York and Bombay: Longmans, Green and Co., 1901), pp. 45–50, 53–54; Brown, *From Tientsin to*



Figure 15. 1900 illustration of British soldiers burning a temple at Shanhaiguan. Artist: Amédée Forestier, in *The Illustrated London News*. Source: <http://www.artfinder.com/work/the-destruction-of-a-chinese-temple-on-the-bank-of-the-pei-ho-am>.

The position and behaviour of the United States

The United States adopted the expansive application approach as a legal framework in the Boxer War. This choice was partly born out of foreign policy concerns, to maintain 'relations of friendship with the part of Chinese people and Chinese officials not concerned in outrages on Americans'.⁹⁸ However, this was also partly due to certain restraining characteristics of American legal and political culture. Admittedly, by the late nineteenth century, the United States had experienced, to some extent, most previously mentioned trends, including the decline in liberal influence, heightened fear of rebellions, renewed surge of colonial ambition, reduced respect for non-European nations (including specifically towards the Chinese), rising influence of statist-positivist jurisprudence at the expense of natural law jurisprudence, and increasing efforts to domesticate the legal basis both for regulating most states of emergency and for defining relationships with subjugated non-European

Peking, p. 101; Léon Silbermann, *Souvenirs de campagne par le Soldat Silbermann* (Paris: Plon Nourrit et Cie, 1910), p. 191.

⁹⁸Corbin, Adjutant General, to General Chaffee, 19 July 1900, in *Correspondence Relating to the War with Spain, 15 April 1898–30 July 1902* (Washington DC: War Office, 1902) (hereafter CRWS), vol. 1, p. 431; 'Gen. Chaffee's Leniency: War Department fully Indorses His Policy in China', *New York Times*, 12 March 1901; Aaron Simon Daggett, *America in the China Relief Expedition* (Kansas: Hudson-Kimberly, 1903), pp. 259–260.



Figure 16. Caricature expressing the American self-perception of having purer intentions than other imperialist powers. 'Too Many Shylocks', *Puck*, 27 March 1901. Artist: John Pughe; Publisher: J. Ottmann Lith. Co.; Original copyright: Keppler and Schwarzmann. Source: LCPPD, LC-DIG-ppmsca-25511.

nations (primarily Native American tribes).⁹⁹ Nevertheless, certain countering characteristics of American culture somewhat mitigated the impact of many of these trends.

For one, liberal public opinion in the United States had remained stronger than in Europe, including Britain.¹⁰⁰ The contemporary growing colonial-imperialist ambitions had clashed with a long-standing disdain for European interventionist approaches, often used to justify imperialist expansion. This tension led to an American desire to more thoroughly justify their interventions, imperialist initiatives, and the conduct thereof.¹⁰¹

The numerous 'Indian wars' that the United States had fought against Native American nations from its very birth up to 1924, profoundly influenced the American approach to the laws of war, particularly regarding their application in conflicts

⁹⁹James Young, *Reconsidering American Liberalism* (Boulder: Westview Press, 1996), pp. 107–148; Christopher Pyle, *Extradition, Politics, and Human Rights* (Philadelphia: Temple University Press, 2001), p. 118; Morton Horwitz, *The Transformation of American Law, 1870–1960* (Cambridge: Harvard University Press, 1994), p. 116; Jules Lobel, 'The Limits of Constitutional Power: Conflicts between Foreign Policy and International Law', *Virginia Law Review*, vol. 71, no. 7, 1985, pp. 1071, 1110–1114; Colin Moore, *American Imperialism and the State, 1893–1921* (Cambridge: Cambridge University Press, 2017), pp. 1–37; Trevor Getz, *The Long Nineteenth Century* (New York: Bloomsbury Publishing, 2018), pp. 225–226; H. W. Halleck, 'Military Tribunals and Their Jurisdiction', *American Journal of International Law*, vol. 5, no. 4, 1911, pp. 958–967; Mark Hirsch, '1871: The End of Indian Treaty-Making', *American Indian Magazine*, vol. 15, no. 2, 2014.

¹⁰⁰See Eugene Leach, 'Liberalism', in *Encyclopedia of the United States in the Nineteenth Century. Volume 2*, (ed.) P. Finkelman (New York: Charles Scribner and Sons, 2001), pp. 185–186.

¹⁰¹See Paul A. Kramer, 'Empires, Exceptions, and Anglo-Saxons: Race and Rule between the British and United States Empires, 1880–1910', *Journal of American History*, vol. 88, no. 4, 2002, pp. 1315–1353.

against non-European ‘uncivilized’ nations, and potentially also against other non-state forces. While American forces had committed numerous atrocities during those wars, the American legal stance was nevertheless relatively restrained. They adhered to the expansive-application (or adaptation) approach, considering many (though not all) laws of war applicable in such conflicts. Moreover, they believed they were authorized to try both American and Native American fighters for war crimes that violated those laws of war and occasionally conducted such trials. Additionally, American authorities even extended POW status to captured Native American fighters, except those who had violated the applicable laws of war. Due to the ‘stickiness’ of legal precedents, this legal policy remained consistent in the Indian wars even into the late nineteenth century and early twentieth centuries.¹⁰²

The American perspective also tended to apply the expansive-application approach to insurrections. This legal approach most likely developed under the influence of the American Revolution,¹⁰³ and was certainly followed during the American Civil War.¹⁰⁴ Accordingly, in August 1900, during the Boxer War, an US Naval War College publication by American international law expert George Grafton Wilson insisted that contemporary customary international law instructed ‘that the parties to ... an insurrection shall observe, as far as possible, the rules of civilized warfare’.¹⁰⁵

Like Britain and Germany, the United States entered the Boxer War while already engaged in another colonial war, namely the Philippine Insurrection (1899–1902), an offshoot of the Spanish-American War (1898). Despite the contribution of that conflict to the contemporary American increase in colonialist-imperialist motivations, aversion of irregular fighters, and disrespect towards non-Western nations, all leading to several horrifying atrocities, the United States had embraced the expansive-application approach in that conflict as well.¹⁰⁶

¹⁰²Joshua Kastenber, *The Blackstone of Military Law: Colonel William Winthrop* (Lanham: Scarecrow Press, 2009), pp. 186–191; *Connors v. United States*, 180 U.S. 271, 275 (1901); *Montoya v. United States*, 180 U.S. 261 (1901); *Scott v. United States*, 33 Ct. Cl. 486, 486, 488, 494 (1898); *Montoya v. United States*, 32 Ct. Cl. 349, 358–59 (1897); *Leighton v. United States*, 29 Ct. Cl. 288, 301 (1894); *Love v. United States*, 29 Ct. Cl. 332 (1894); *Woolverton v. United States*, 29 Ct. Cl. 107, 109 (1894); ‘Plenty Horses Free’, *The New York World*, 29 May 1891; U.S.A.G. George Williams, ‘The Modoc Indian Prisoners’, 14 Op. Att’y Gen. 249, 249–253 (1875). For the influence of the actual attitude-conduct on the ground in the ‘Indian wars’ on the American understanding of the laws of war, see Helen Kinsella, ‘Settler Empire and the United States: Francis Lieber on the Laws of War’, *American Political Science Review*, vol. 117, no. 2, 2023, pp. 629, 629–642. For the decline in peacetime respect of tribal sovereignty, see Hirsch, ‘1871’, as well as *U.S. v. Kagama*, 118 U.S. 375 (1886), with *Worcester v. Georgia*, 31 U.S. 515 (1832).

¹⁰³See, in this regard, the law of war violation accusations made against English King George and his fighters, in the ‘Americans Declaration of Independence’ (US 1776), which refer to actions committed at a time in which even the Americans themselves did not consider the conflict to be neither an interstate war, nor a belligerency, as evident in: U.S. Continental Congress, ‘A Declaration by the Representatives of the United Colonies of North-America’ (Philadelphia, 6 July 1775).

¹⁰⁴Burrus Carnahan, *Lincoln on Trial* (Lexington: University Press of Kentucky, 2010), pp. 9–33.

¹⁰⁵George Grafton Wilson, *Insurgency: Lectures Delivered at The Naval War College, Newport, Rhode, Island, August 1900* (Washington DC: U.S. Government Printing Office, 1900), p. 14. But see Freeman Snow, *International Law: A Manual* (Washington DC: U.S. Government Printing Office, 1898), pp. 12–14, 42–46, 79.

¹⁰⁶See Max Boot, *The Savage Wars of Peace: Small Wars and the Rise of American Power* (New York: Basic Books, 2002), pp. 123–124, 127; and see also, to some degree, Will Smiley, ‘Lawless Wars of Empire? The International Law of War in the Philippines, 1898–1903’, *Law and History Review*, vol. 36, no. 3, 2018, pp. 511–550.

Similar to domestic military legislations of many other countries, American military law codes generally applied to the country's soldiers even abroad. Accordingly, and with the aim of protecting the local Chinese population, a General Order issued by the United States-China Expedition Headquarters, about two weeks into that operation (on July 29), instructed all American commanders to ensure their subordinates' knowledge of certain specifically relevant articles of that legislation, while clarifying that: 'in th[os]e articles[,] ... clauses referring to citizens of the United States will be construed as referring with equal force to the citizens of China ... [because] the honor of the United States and the good repute of its armed forces must be maintained unsullied'.¹⁰⁷ Although the contemporary American military law code was named (for historical reasons) 'The Articles of War', most of its articles actually applied also in peacetime, with just a few specific articles coming into force only during armed conflicts. While the American authorities possibly did not initially classify the operation in China as a war, they clearly came to do so within a short while (at the latest).¹⁰⁸ Accordingly, they deemed those wartime code articles as being in effect for American soldiers in China and that determination was subsequently also judicially affirmed. Drawing on legal precedents concerning the American Civil War, American judges strongly rejected the contemporary popular position that classified only declared interstate conflicts as legally constituting 'wars' and insisted instead that 'war' as a legal concept also referred to undeclared armed conflicts, including internal ones (i.e. insurrections) such as the Boxer War.¹⁰⁹

Shortly after the occupation of Beijing during the conflict, the Americans deemed General Orders No. 100, also known as the Lieber Code, to be applicable.¹¹⁰ From their perspective, it applied both to the conduct of American soldiers and to Chinese fighters. This military legislation, authored by jurist Francis Lieber during the American Civil War and adopted by the Union Army, codified key customary laws of war. It distinguished between combatants and non-combatants, protected prisoners of war, the sick, and the wounded, and limited violent actions to those necessitated by military operations, although it still interpreted the laws of war to permit severe tactics, such as starving civilians in enemy territory through siege.¹¹¹ Most importantly, Article 152

¹⁰⁷'General Orders, No. 2, HDQRS China Relief Expedition (Taku, China, July 29 1900)', in U.S. War Department, *Annual Report of the Secretary of War for the Fiscal Year [that] Ended [on] June 1900—Part 7* (Washington DC: U.S. Government Printing Office, 1900), p. 87.

¹⁰⁸See 'Gen. Chaffee's leniency', *New York Times*, 12 March 1901.

¹⁰⁹*Hamilton v. McClaghry*, p. 450. See also Judge Advocate General of the U.S. Army, 'Memorandum in the Petition of Habeas Corpus in the Case of Fred Hamilton v. R. W. McClaghry', 10 February 1905, Record Group (RG) 153, Entry 9 (Document File, 1894-1912), File no. 16596, pp. 1-2, as well Judge Advocate General to the Military Secretary, 21 March 1905, *ibid.*, File no. 17609, U.S. National Archives and Records Administration (hereafter NARA). Both opinions relied on the Prize Case, 67 U.S., p. 6868, according to which 'a state of actual war may exist without any formal declaration of it by either party; and this is true of both a civil and a foreign war'. See *ibid.*, pp. 2-4.

¹¹⁰*General Orders No. 100*, by President Lincoln, *Instructions for the Government of Armies of the United States in the Field*, prepared by Francis Lieber (24 April 1863). For the decision to apply it in China, see Hevia, *English Lessons*, p. 215; Wilson, *China*, p. 389.

¹¹¹For a thorough analysis of the Lieber Code, see, for example, Richard Shelly Hartigan, *Military Rules, Regulations and the Code of War: Francis Lieber and the Certification of Conflict* (New York and London: Routledge, 2017); Peter Maguire, *Law and War: International Law and American History* (New York: Columbia University Press, 2010), pp. 30-37.

of the Lieber Code stipulated that ‘humanity [could] induc[e]’ the application, either ‘partial[ly] or entire[ly]’, of ‘the rules of regular war [i.e. the laws of war] toward rebels’ such as American Confederates or the Boxers, though they could be tried after the war, unlike enemy state soldiers. While the article implied that a state had discretion to only partially apply the laws of war (and, thus, provided for possible embrace of the minimalist-discretionary approach), in practice, the Americans applied General Orders No. 100 fairly comprehensively, during both the Boxer War and the Philippine Insurrection, indicative of their contemporary embrace of the expansive-application approach.¹¹²

In accordance with that approach, during the Boxer War, the War Department ordered General Adna Chaffee, the commander in chief of the American contingent, to show ‘absolute regard for the life and property of non-combatants’ and punish all Americans wrongdoers ‘sternly’ and ‘severely’. Chaffee gave his troops corresponding orders. On 24 November, for example, he reported that when obliterating a camp of ‘robbers’ (a term historically often used in reference to unlawful combatants), his men were able to save the women and the children. In August, American troops stopped French soldiers who were about to massacre a group of women and children in a village near Beijing.¹¹³

Despite conflicting contemporary accounts, which may have self-servingly exaggerated or minimized American respect for the laws of war,¹¹⁴ it can generally be assessed that Americans were also less likely to summarily execute captive Boxers and Qing soldiers compared to other allies, and often treated such detainees relatively decently. However, based on the limited available sources, it also appears that such captives were not typically afforded full POW rights by the Americans.¹¹⁵ Initially, the American preference for detention over summary executions was justified by a legal rationale quite distinct from that advocated by contemporary proponents of unlimited war in China. This rationale was based on the initial non-classification of the engagement in China as a war, leading to an American conclusion that more legal constraints—rather than fewer—were applicable to the military in such scenarios. Later, once the Lieber Code was deemed to be in force, and thus the engagement was officially classified as a war by the Americans, this policy of humane treatment continued, but justified as being mandated under that Code.¹¹⁶

¹¹²For the application of the code in the Philippines, see Smiley, ‘Lawless Wars’, pp. 518–534. Further see, Andrew J. Birtle, *U.S. Army Counterinsurgency and Contingency Operations Doctrine 1860–1941* (Washington DC: Center of Military History United States Army, 2009), p. 35.

¹¹³Corbin to Fowler, 21 July, 25 November 1900, CRWS, vol. 1, pp. 434, 492; *Annual Reports of the War Department for the Fiscal Year ended June 30, 1900: Report of the Lieutenant-General Commanding the Army* (Washington DC: War Department, 1900) (hereafter ARWD), p. 62; Michael H. Hunt, ‘The Forgotten Occupation: Peking, 1900–1901’, *Pacific Historical Review*, vol. 48, no. 4, 1979, p. 505.

¹¹⁴Cf., for example, ‘Gen. Chaffee’s Leniency’, *New York Times*, 12 March 1901, with Littleton Waller’s testimony at his court martial, reproduced in Christopher Thomas Dean, *Atrocity on Trial: The Court-Martial of Littleton Waller* (Tempe: Arizona State University, 2009), p. 92.

¹¹⁵ARWD, Part 7, pp. 102, 104; William Harlow, ‘Logistical Support of the China Relief Expedition’, MA thesis, U.S. Army Command and General Staff College, 1991, p. 159; Jonathan Vance, ‘Boxer Rising (1900)’, in *Encyclopaedia of Prisoners of War and Internment* (Santa Barbara: ABC-CLIO, 2006), pp. 50–51. For visual evidence of Boxer prisoners in American custody, see Emily Abdow, *The Boxer Rebellion: Bluejackets and Marines in China 1900–1901* (Washington DC: Department of the Navy, 2023), p. 71.

¹¹⁶See ‘Gen. Chaffee’s Leniency’, *New York Times*, 12 March 1901.



Figure 17. American cavalry bringing in 'Boxer' prisoners near Tientsin. Source: <https://www.flickr.com/photos/nationalarchives/7837142738>.

And yet, high-minded rhetoric and enlightened formal policies cohabited with crimes of varying magnitudes. American troops sometimes did execute prisoners.¹¹⁷ Also, regardless of their formal orders, American patrols in the countryside outside Beijing often 'burned down houses on small provocations, shot recklessly at Chinese and attacked Qing army units without warning', moving Chaffee to limit the dispatch of such patrols as much as he could.¹¹⁸ Eventually, Chaffee took steps to discipline his troops. From the beginning of the campaign to the end of the war, there were 271 courts martial against American soldiers for various criminal offences, 244 of which resulted in convictions. Not all cases, of course, were crimes against Chinese, but at least some of them were, including for assault, theft, robbery, forced labour, sexual assault and rape of locals.¹¹⁹

For example, the Americans severely punished one of their own marines who was accused of rape and murder on 17 August 1900, while chaos still reigned in Beijing. The culprit, Private Stephen Dwyar, broke into a family owned opium den to rob silver ingots. After driving the husband to the street, he beat a small child with a stick and tossed him through the door—causing injuries that led to the child's death a short time later. The president of the court admonished the other presiding officers that the case had to be swiftly dealt with 'because an immediate example in this case was essential'. The tribunal convicted the marine for rape, and acquitted him of murder,

¹¹⁷Cohen, *History in Three Keys*, p. 191.

¹¹⁸Hunt, 'The Forgotten Occupation', pp. 526–527. See also Zhao and Pasture, 'The European', p. 89.

¹¹⁹Xiangyun Xu, 'The Crucible of Empire: The American Experience in the China Relief Expedition of 1900', PhD thesis, Pennsylvania State University, 2019, pp. 148–170, 230; Daggett, *America in the China Relief Expedition*, p. 112; Hamilton v. McClaughry.

but still discharged him with dishonour and sentenced him to life imprisonment with hard labour in Alcatraz.¹²⁰

Though all powers committed numerous atrocities, there is a widespread agreement that the American soldiers were more restrained than their counterparts from other contingents, at most places and most of the time, in contrast to the more brutal behaviour of the Russians and the French.¹²¹ The British press, echoing local missionaries, even criticized General Chaffee for his leniency.¹²² As a result of this relatively enlightened American policy, merchants in Beijing petitioned the Americans to remain in control of the city after the end of the war.¹²³ Many other Chinese, however, did not differentiate between the degrees of violence committed by their various conquerors, and saw all foreign soldiers, including the Americans, as equally evil.¹²⁴

The position and behaviour of the Russian empire

The prevailing legal perspective among influential contemporary Russian international law experts endorsed an expansive-application approach in the context of the Boxer War.¹²⁵ Certain factors most likely explain Russia's adoption of a constrained approach, despite its autocratic monarchy and the influence of the aforementioned nineteenth-century trends. Like their peers from Britain and the United States, Russian international law experts too were influenced by liberal values. Also, in contemporary Russia, the impact of Social Darwinism was comparatively small, and

¹²⁰Case #20279 (Private Stephen Dwyar), pp. 7–8, 13–14, 23, 25, 27, 30–32, 47, RG 153, Records of the Judge Advocate General, Entry 15-AA Court Martial Case Files 1894–1917, NARA. The sentence was later commuted to 20 years. See ARWD, Part 7, p. 91. See also James L. Hevia, 'Looting and its Discontents: Moral Discourse and the Plunder of Beijing, 1900–1901', in *The Boxers, China and the World*, (eds) R. Bickers and R. G. Tiedemann (Lanham: Rowman and Littlefield, 2007), pp. 99–100.

¹²¹Keyes, *Adventures*, pp. 265, 302; Kobayashi, *Giwadan*, p. 352; Katō, consul general in Tianjin, to Foreign Minister Aoki, 10 July 1900, NGB, vol. 33, supplementary volume: *Hokushin jihen*, part 1(3), pp. 655–656; Nishida, '100 nen mae', p. 58; Dix, *World's Navies*, pp. 240, 292; Holbrooke had a similarly low opinion of the French (Frederic A. Sharf and Peter Harrington (eds), *China 1900: The Eyewitnesses Speak* [London: Greenhill Books, 2000], pp. 237–238). As for the Americans, see Landor, *China and the Allies*, pp. 202–205; Ricalton, *China through the Stereoscope*, pp. 236–237; Cohen, *History in Three Keys*, pp. 182–184; Li Cheng, 'Bā Guó Lián Jūn Fēn Qū Zhàn Lǐng yǔ Běijīng Chéngshì Guǎnlǐ de Biàngé' [The Partition of Occupied Zones by the Eight-Nation Alliance and Changes in Beijing's Urban Administration], *Běijīng Shǐxué*, vol. 9, 2019, p. 145. Li Hongzhang wrote in a memorial to the court in early June that the Germans and the Russians were particularly furious due to the depredations of Boxers and Chinese soldiers against Christians. Though Li did not mention it specifically, that mood was also translated into brutality towards Chinese civilians. See Li Hongzhang to the Court, 8 June 1900, reproduced in *Qīng Guāngxu Cháo Zhōnggrī Jiāoshe Shìliào* [Historical Materials on Sino-Japanese Relations during the Guangxu Era], (ed.) Peking Palace Museum (New Taipei City: Wen Hai Press Company, 1963), vols. 55–56, doc. no. 3916.

¹²²'Gen. Chaffee's Leniency', *New York Times*, 12 March 1901; Chamberlin and Chamberlin, *Ordered to China*, p. 129.

¹²³Eric Quellet, 'Multinational Counterinsurgency: The Western Intervention in the Boxer Rebellion 1900–1901', *Small Wars and Insurgencies*, vol. 20, no. 3–4, 2009, p. 518.

¹²⁴See, for example, the Chinese testimonies cited in Hu Cheng, 'Zhímín bàoli yǔ shùnmín qīxià de huīsè shēngcún' [Colonial Violence and Gray Survival Under the Banner of Submission], *Dúshū*, no. 3, 2004, available at <http://www.wenxue100.com/BaoKan/135.shtml>, [accessed 10 April 2025].

¹²⁵Holquist, 'By Right of War', pp. 22, 108.

natural law remained rather influential. Most importantly, Russia sought to prove itself to European counterparts who repeatedly questioned its level of civilization. The influence of such factors led the Russians to become international law pioneers in the late nineteenth century, as evident in the fact that they convened the peace conferences in both Brussels (1874) and The Hague (1899).¹²⁶ Nevertheless, these significant factors alone do not fully explain why Russia adopted the most constrained approach specifically in the Chinese context. This is particularly notable given that, among the same Russian experts, views persisted that deemed China uncivilized. Moreover, there was a prevailing endorsement of a non-application approach in other theatres, such as the Caucasus and Central Asia, where the adversaries were not considered sovereign states. Additionally, there was notable Russian scholarly support for generally applying the minimalist-discretionary approach in interactions with nations deemed uncivilized.¹²⁷

The endorsement of this specific, most expansive approach in the case of the Boxer War was, therefore, most likely due to Russia's desire to maintain good relations with China, with which it shared a long border.¹²⁸ Sergey Witte, one of the Tsar's senior ministers, feared that if the Qing dynasty were excessively weakened, the great powers would initiate a scramble for China in which Russia would inevitably emerge as the loser.¹²⁹ In a memorandum he wrote in the beginning of the war, in August 1900, Friedrich Martens, a contemporary international law luminary and an indispensable member of the Russian Foreign Ministry, noted that 'for Russia, China is a great neighboring state that has every right to independent life'.¹³⁰ In short, Russia, by means of a policy of restrained-humanitarian application of the laws of war during the Boxer War, wished to simultaneously convey to its Western counterparts that it was one of them, and to the Chinese that it was not.

The Russian government went so far as to formally assert that the conflict was not a war with China but rather a campaign to assist the legitimate Chinese government in suppressing the Boxer rebels. However, the Russian Army rejected this 'fiction', as Vice-Admiral Yevgeny Alexeyev, commander of the South Manchurian region, described it, urging the government to acknowledge a state of war. His appeal, however, was overruled by Emperor Nicholas II.¹³¹

Martens believed that protections for unarmed enemy civilians amounted to customary international law and were therefore binding, even though China was not party

¹²⁶Peter Holquist, 'The Russian Empire as a "Civilized State": International Law as Principle and Practice in Imperial Russia, 1874–1878', paper submitted to NCEER, Title VIII Program (July 2014), pp. 2–3.

¹²⁷Holquist, 'By Right of War', pp. 22, 108. See also, F. F. Martens, *Sovremetnoe Mezhdunarodnoe Pravo Tsivilizovannykh Narodov* [Modern International Law of Civilized Nations], 2 vols., 4th edn (St Petersburg: Tipografiya A. Benke, 1898), vol. I, pp. 14, 179–186, 223 (notably, pp. 184–185: 'international law is limited only to ... civilized peoples ... [while] relations between civilized and uncivilized peoples ... must [only] obey the dictates of natural law'); Martens, *Sovremetnoe*, vol. II, pp. 122–124, 135–138 (notably, p. 222: 'Uncivilized states, such as China ...').

¹²⁸For the aforementioned, and additional, reasons for the Russian approach, see Holquist, 'By Right of War', pp. 108–113.

¹²⁹Zhang Li, 'Lùn Yihétuán', pp. 114–115.

¹³⁰Zapiska F. F. Martensa 'Evropa i Kitay' // Krasnyy arkhiv. 1927. T. 1 (20). C. 185, available at https://www.vostlit.info/Texts/Dokumenty/China/XX/1900-1920/Martens_F_F/text1.htm, [accessed 10 April 2025].

¹³¹Holquist, 'By Right of War', pp. 17–21.



Figure 18. General Alexander von Kaulbars (centre) alongside other Russian officers in Manchuria during the Boxer War (1900). Source: NSW State Library, PXA 208, commons.wikimedia.org/wiki/File:Russian_soldiers_during_the_boxer_rebellion.jpg.

to the Hague Convention. Atrocities against civilians also ran contrary to natural law, Christian values, and military discipline. Indeed, both before and during the Boxer War, St Petersburg repeatedly ordered its troops to use deadly force only against Boxers and other armed enemies while sparing innocent Chinese civilians.¹³² Here, too, reciprocal influence between allies was among the factors at play. The Russians took pride in their humanity and adherence to Christian values, vis-à-vis the senseless cruelty that they ascribed (justly) to the Germans and (less accurately) to the Japanese.¹³³

The Russian high command ordered the troops to give quarter to prisoners, both Boxers and Qing troops. When captured, they should either be released or forcibly employed as ‘coolies’. In later stages of the campaign, Russian commanders also exiled certain captives into the depths of Russia, and recruited others as mercenaries. Many commanders obeyed these orders.¹³⁴ However, in many other cases, and especially during the expedition to occupy Beijing, Russian commanders violated such orders and executed captives outright. The Boxers were typically described as ‘rebels’, unworthy of mercy. They were also commonly associated with the Manchurian bandits (‘Red Beards’) whom the Russians saw as insurgents, ‘parasites’, and a ‘disease’ that must be

¹³²*Ibid.*, pp. 18–19, 24, 26–30, 53, 58, 61–67.

¹³³*Ibid.*, pp. 26–27, 91; Russian economic attaché in Beijing to the Ministry of Finance, St Petersburg, 17 August 1900, available at https://www.vostlit.info/Texts/Dokumenty/China/XIX/1880-1900/Boxer_vosst/frame.htm?fbclid=IwAR2n-LVV7YTBkRh1q9o2ZaQgByx9x7YV_PukWHa5utiQ2sj7fiEq5vODTMM, [accessed 10 April 2025].

¹³⁴Holquist, ‘By Right of War’, pp. 65, 95–100; Charles Hawes, *In the Uttermost East* (Shribner: New York, 1904), pp. 372–373.

eradicated.¹³⁵ Such terms labelled the Boxers as brigands, and thus as war criminals, and were used especially to emphasize the authority to summarily execute them as such when caught in the act.¹³⁶

Russian conduct towards civilians also often diverged from the lofty declarations of high officials. The case of the Russian Army in China shows, in fact, that there was sometimes little correlation between a country's official stance and the behaviour of its troops, particularly when commanders did not make active and constant attempts to discipline them and slow down the brutalizing race to the bottom. Indeed, the repeated issuance of orders urging troops to protect Chinese civilians suggests that those orders were repeatedly violated.¹³⁷

Best documented of these violations was the opening shot of the Russian occupation of Manchuria, a violent ethnic cleansing on the Russian side of the Amur, in Blagoveshchensk. In response to supposed Boxer attack on infrastructure around the town, Russian forces rounded up about 3,500–4,000 local ethnic Han, Manchu, and Dar, many of whom were Russian rather than Qing subjects, and in the course of doing so, some Russian troops (mainly, local militia recruits and Amur Cossacks) began killing the civilians, eventually massacring around 3,000–3,500 men, women, and children, shooting them, hacking them with axes, or drowning them in the river. The troops carried out this pogrom on the orders of mid-level officers, and a prevalent justification for it, by such commanders and perpetrators, was that among the Chinese that attacked the town there were many bandits, Boxers, and other armed civilians. This massacre was stopped by the commanding general only after three days. Urged by the high command in St Petersburg, local authorities later investigated the massacre. But the key culprits received only small administrative punishments, merely a slap on the wrist.¹³⁸

While subsequently the Russians did not commit a massacre on a similar scale, their formal legal approach continued to contrast with a much crueller attitude on the ground. First and foremost, following direct orders of the emperor and the war minister, Russian troops expelled Chinese from some border regions and razed their settlements. This action was further accompanied by the killing of thousands of civilians.¹³⁹ In Tongzhou, a town near Beijing, Russian troops committed numerous acts of rape, arson, and murder, acquiring a terrible reputation among both the Chinese and the other contingents.¹⁴⁰

During the war's second phase, as the storming of Beijing unfolded, a critical moment arose when Russian diplomats and military leaders were considering strategies to wind down the Boxer War and secure the cooperation of the Qing dynasty

¹³⁵M. A. Sokovnin, 'Hunkhuzy Man'chzhurii', *Voennoye sbornik* [Red Beards of Manchuria: Military Collection], vol. 12, 1903, pp. 194, 205–207, 210–211, 217, available at https://drevlit.ru/docs/kitay/XIX/1880-1900/Sokovnin_M_A/text1.php, [accessed 10 April 2025].

¹³⁶D. G. Yanchevsky, *U sten nedvizhnovo Kitaya* [All the Walls of Unmoving China] (St Petersburg: Izdaniye P. A. Artemyeva, 1903), pp. 112, 535, 574–575.

¹³⁷Holquist, 'By Right of War', pp. 61–68, 78–81, 114.

¹³⁸Zatsepine, 'The Blagoveshchensk Massacre', pp. 110–122; Micheal Clodfelter, *Warfare and Armed Conflicts: A Statistical Reference to Casualty and Other Figures, 1500–2000* (London: McFarland, 2002), p. 356; Holquist, 'By Right of War', pp. 35–42, 69, 74–77.

¹³⁹Holquist, 'By Right of War', pp. 51, 54–59.

¹⁴⁰Lynch, *War of the Civilizations*, pp. 46–47. Compare with the description of Fukuda, *Kunshō*, p. 229.



Figure 19. Russian soldiers tying up a local Blagoveshchensk Chinaman, presumably preparing to kill him (1900). Source: <https://commons.wikimedia.org/wiki/File:%E6%B5%B7%E5%85%B0%E6%B3%A1%E6%83%A8%E6%A1%88.jpg>.

towards this end. These strategies emphasized the importance of restrained conduct. Despite these deliberations aimed at moderation, Russian forces, together with their French counterparts, carried out a widespread massacre in northern Beijing. This brutal act was ostensibly in retaliation for the siege of the Beitang Cathedral, marking a stark contrast between the intended diplomatic posture and the vengeful attitude of soldiers actually in the field. For those Russian soldiers, wrote British Naval Commander Roger Keyes, ‘every Chinaman within miles of the cathedral was treated as a Boxer ... and the slaughter of men, women and children in retaliation was revolting’.¹⁴¹

On orders from St Petersburg, Russian commanders repeatedly launched investigations against delinquent troops, but such proceedings were often reluctant and half-hearted. General Subotić, for example, explained both looting and burning of villages as ‘a force of nature’, nothing but a natural outcome of war’s inherent savagery. Nevertheless, due to the insistence of higher authorities, some rapists and murderers in the Russian Army did receive severe punishments, and some were even hanged. Unlike the Germans and similarly to the Americans, Russian authorities clearly undertook sincere, if inconsistent and all too often ineffective, efforts to

¹⁴¹Holquist, ‘By Right of War’, pp. 1, 4–15; Keyes, *Adventures*, p. 296.

punish transgressors.¹⁴² This ineffectiveness, however, is best explained as stemming not from official policy and intentions at the top, nor from the deliberate rejection of moderate policies by military officers, but rather from a generally rigid and ineffective chain of command, which struggled to control a relatively undisciplined body of troops without the aid of authoritative and professional non-commissioned officers (NCOs).¹⁴³

The legal position and behaviour of the Japanese empire

The Japanese had to find their own legal voice within this cacophonous concert. As newcomers with a relatively clean slate concerning international law, they could have chosen between the expansive application policy of the Americans and the Russians, the minimalistic-discretionary approach of the British, or the punitive doctrine of the Germans. In practice, they adopted the lenient American and Russian approach towards civilians, combined with the merciless German approach to captured enemy fighters.

Japan, just like Russia, cared deeply about the Western gaze (i.e. the views held by Westerners on its level of 'civilization'). It had already faced the challenge stemming from this critical gaze in the Sino-Japanese War of 1894–1895, but now it had to chart unfamiliar waters. In 1900, for the first time, the foreign powers were not only onlookers and competitors but also Japan's allies. All powers were suspicious and weary not only of the Chinese but also of one another, lest one country sought to pressure the Chinese for more concessions at the expense of its allies. Japan, particularly, looked askance at Russia, while the Russians stubbornly refused to accept Japanese command in joint operations. Four years later, this rivalry led both countries into the Russo-Japanese War.¹⁴⁴

Indeed, Japanese field commanders asked their troops on several occasions to display bravery and professional soldierly behaviour in order not to compromise Japan's reputation in the eyes of their foreign partners.¹⁴⁵ These concerns, emphasized by the commanders in the field, trickled down to the soldiers. Letters from the front show

¹⁴²Holquist, 'By Right of War', pp. 78–90.

¹⁴³*Ibid.*, pp. 113–115.

¹⁴⁴Urs Matthias Zachmann, *China and Japan in the Late Meiji Period: China Policy and the Japanese Discourse on National Identity, 1852–1904* (London and New York: Routledge, 2009), p. 128; Norie, *Official Account*, p. 35; Dai Haibin, "'Wú Zhǔ Zhī Guó': Gēngzǐ Běijīng Chéngxiàn Hòu de Shìxù yǔ Chóngjiàn—Yǐ Jīngguān Dòngxiàng Wéi Zhōngxīn' [A Country Without a Lord: Disorder and Reconstruction in Beijing After the Gengzi Occupation—Focusing on the Dynamics of the Capital], *Qīng Shǐ Yánjiū*, no. 2, 2016, p. 115.

¹⁴⁵Kobayashi Kazumi, *Giwadan sensō to Meiji kokka* [The Boxer War and the Meiji State] (Tokyo: Kyūko Shoin, 1986), p. 221; Zachmann, *China and Japan*, p. 138; Sir Claude MacDonald, minister in China, to Foreign Secretary, 7 June 1900, ADM 116/116, TNA; Fujimura Shuntarō, *aru rōhei no shuki: hiroku kita-shin jihen* (Tokyo: Jinbutsu Ōraisha, 1967), p. 140; Saitō, *Hokushin Jihen*, p. 96, quoting Fukushima's dispatch from 6 July 1900. Foreign officers, of course, felt the anxious need of the Japanese to impress the other contingents. More often than not, they were indeed impressed. See Casserly, *The Land of the Boxers*, p. 49; Charles C. Dix, *The World's Navies in the Boxer Rebellion: China 1900* (London: Digby, Long and Co., 1905), pp. 215–216; Roger Keyes, *Adventures Ashore and Afloat* (London: G. G. Harrap and Co. Ltd., 1939), p. 272.



Figure 20. Japanese print 'Taking pride in the collaboration between Japan and its allies', showing Japanese commander, Major General Fukushima, standing alongside allied commanders, as their troops attack Tianjin. Artist: Ishimatsu Nakajima. Source: LCPPD, LC-DIG-jpd-02539; <https://www.loc.gov/pictures/resource/jpd.02539/>.

that they took pride in the honour they brought to Japan in the eyes of allied troops.¹⁴⁶ Unsurprisingly, adhering to the international laws of war was part of the civilizational package. Could Japan showcase that it was better and more civilized than the Western powers by upholding international law commitments and treating unarmed Chinese civilians better than they did?

Ariga Nagao, the major international law instructor at the military and naval academies (and the legal adviser to the Japanese delegation at the 1899 Hague Conference), expressed the views of the military leadership when he argued that whether one saw the Boxer War as a conventional war, international intervention, or even a punitive campaign (as the German emperor did) all armies were still bound by the basic principles of international law. Above all, they were enjoined to never harm peaceful civilians, rape women, loot private property, or force enemy subjects to fight against their own country.¹⁴⁷ In other words, he tacitly adopted the expansive application approach towards civilians, without formally committing Japan to that specific position within the legal debate.

¹⁴⁶See, for example, Mori Yukimasa to Mori Yasaburō, 18 July 1900, in Mori Yukimasa, *Hyakunenme no kenshō: wakakushite itta gihei no shōgai: Hokushin jihen de Shinkoku e happei saretai ihheishi no tegami* [A One-hundredth Anniversary Examination: The Life of Yukimasa Who Died Young: The Letters of a Soldier Dispatched to Qing China during the North China Incident] (Takashima: Kaiyōsha Takashima, 2005), p. 47.

¹⁴⁷Ariga Nagao, 'Shinkoku jiken to kokusai kōhō', *Gaikō Jihō*, vol. 32, September 1900, pp. 199–200; Kita Yoshito, 'Nihon Rikugun no Kokusaihō Fukyū Sochi-Shōkō ni Taisuru Kokusaihō Kyōiku no Kentō' [International Law Dissemination Measures of the Japanese Army: An Examination of the International Law Education of Officers], *Nihon Hōgaku*, vol. 63, 1997, p. 126; Doris Appel Graber, *The Development of the Law of Belligerent Occupation 1863–1914: A Historical Survey* (New York: Columbia University Press, 1949), p. 31; Eyffinger, *The 1899 Hague Peace Conference*, p. 162.

The government adopted Ariga's legal approach. On 19 June, General Fukushima Yasumasa, the commander in chief of the Japanese contingent, instructed his officers that international law strictly forbade the killing of 'enemy wounded who can no longer fight, the sick, women, children and suchlike people'. 'Whoever violates these rules commits a barbarous act, unworthy of a civilized country's army ... I hope you will pay strong attention not to let such barbarous behavior spread [among the troops].' Importantly, Fukushima did not distinguish clearly between civilians and soldiers, as the Boxers were all male civilians, but between those who actively fought and those who did not. There was also no mention of captives as such and of enemy troops who surrendered, only of enemies who could no longer fight because they were wounded.¹⁴⁸

As with other contingents, Japanese behaviour on the ground was mixed. To ensure decent treatment of women and children, Fukushima stressed that as there were not sufficient military policemen, each officer and NCO should do his best to ensure strict discipline.¹⁴⁹ Léon Silbermann, a French soldier, noted that Japanese troops were disciplined to begin with and only rarely punished by their commanders. But when justified, the punishments were heavy and meted out without mercy.¹⁵⁰ After the war, Fukushima himself took pride in the fact that while the troops of the other countries, especially Indian-British soldiers and the Chinese mercenaries in British employ, plundered, killed, and raped women following the fall of Tianjin in July, the Japanese not only maintained perfect discipline but also worked hard to protect the Chinese civilians, an observation shared by some Japanese diplomats as well. Fukushima reported that he was able to convince the assembled commanders to appoint soldiers to protect the civilians of Tianjin, with Russian support.¹⁵¹ The Japanese Red Cross treated Chinese 'peaceful civilians' in Tianjin (and later in Beijing) with great kindness and on an equal footing with Japanese and Western soldiers, charity that 'strengthened the trust of the local Chinese in the Japanese Army'.¹⁵² British Naval Commander Keyes testified that the Japanese behaved in a very disciplined manner towards Chinese women, though he ascribed this not to superior morality, but to the their commanders having supplied their troops with 'regimental wives' (i.e. prostitutes), housing them in special installations in occupied towns. These were, in fact, private prostitution ventures that operated with the army's passive support: a continuation of the licensed prostitution system in Japan, which eventually developed into the 'comfort women' practice of the Second World War.¹⁵³

¹⁴⁸Fukushima to the troops, 19 June 1900, JACAR, ref. no. C09122667800. See also the order cited in Kobayashi, *Giwanan*, p. 230n24. For analysis, see also Saitō, *Hokushin jihen*, p. 54.

¹⁴⁹Saitō, *Hokushin jihen*, p. 100.

¹⁵⁰Silbermann, *Souvenirs*, p. 193.

¹⁵¹Fukushima's report, 22 July 1900, JACAR, ref. no. C09122673500; Tayui, consul in Chefoo, to Foreign Minister Aoki, 20 July 1900, NGB, vol. 33, supplementary volume: *Hokushin jihen*, part 1(3), p. 668; *Meiji sanjūsan-nen Shingoku jihen senshi* (Tokyo: Sanbō Honbu, 1904) (hereafter MSJS), vol. 2, pp. 255, 263–264.

¹⁵²Kita Yoshito, 'Hokushin jihen to Nihon Sekijūjisha no kyūgo Jigyō [The Northern China Incident and the Relief Activities of the Japanese Red Cross Society]', *Nihon Hōgaku*, vol. 76, no. 2, 2010, pp. 555–556, 561–562; MSJS, vol. 4, p. 207.

¹⁵³Keyes, *Adventures*, p. 303; Kurahashi Masanao, 'Jūgun ianfū zenshi: Nichiro sensō no baai' [Complete History of Military Comfort Women: The Case of the Russo-Japanese War], *Rekishi Kagaku kyōgikai*, vol. 467, 1989, p. 65.



Figure 21. Japanese execution of a suspected Boxer. Source: LCPPD, DIG-stereo-ls48109; <https://www.loc.gov/pictures/item/2004670922/resource/>.

But the usual dynamics of wartime brutalization remained in play. Cavalry Sergeant Fujimura Shuntarō confessed that initially he felt pity when he saw dead Chinese, but as his friends began to fall in battle his positive feelings transformed into hatred. Another veteran, Fukuda Eiji, later recalled how he and his troops laughed when they saw a wounded old woman trying to walk in a ruined, burned village.¹⁵⁴ And yet, the orders from above to treat civilians decently made a difference, especially because direct commanders (i.e. mid-level officers and NCOs) were successfully enlisted in the effort to enforce the higher echelons' policy of restraint. Fujimura testified that during a raid on a village near Tianjin, his company commander yelled to the troops that 'it's forbidden to kill women and children'. A few moments later, Fujimura stopped one of his soldiers from stabbing a woman. 'Didn't you hear the company commander?' he rebuked his comrade, 'it's forbidden to kill women and children!'¹⁵⁵ In the Japanese Army, soldiers had to obey all orders they received from superiors, even when in variance with standing laws, rules, and regulations. Therefore, the behaviour of junior officers and NCOs, who could verbally command the troops, influenced the treatment of civilians far more than the appeals of high commanders such as Fukushima, in contrast with the dilution of official Russian policy in its passing down the chain of command.¹⁵⁶ We also know that from 5 September 1900, the Japanese authorities established a court martial system to punish their soldiers who transgressed against Chinese civilians, but we were not able to find further details on these proceedings.¹⁵⁷

Unlike their treatment of women, children, and the elderly, the Japanese regarded most of their combatant captives, particularly the Boxers, as evil beings to be killed

¹⁵⁴Fujimura, *Aru rōhei*, p. 51; Fukuda, *Kunshō*, pp. 199–200.

¹⁵⁵Fujimura, *Aru rōhei*, pp. 105–106.

¹⁵⁶Danny Orbach and Ziv Bohrer, 'Let the Commander Respond: The Paradox of Obedience in the Imperial Japanese Armed Forces', *Law and History Review*, vol. 41, no. 4, 2023, pp. 837–839.

¹⁵⁷Saitō Seiji, *Hokushin jihen*, pp. 168–169; Fukuda, *Kunshō*, pp. 282–283.

without hesitation. The high command never issued formal guidelines on the treatment of captives, at least as far as we have been able to establish, but it was clear to everyone in the field that they did not enjoy POW rights. Japanese writers of all ranks and diplomats on the ground universally referred to the Boxers as 'bandits' (*hito*, 匪徒), a familiar term in the Sino-Japanese sphere traditionally used to describe rebels who deserved no quarter. When Japanese actors used this word, or the equivalent terms *bōto* (violent gangs), *danhi* (bandit gangs), or *dōhi* (local bandits), they viewed their campaign in terms drawn from the Sino-Japanese tradition of rebel suppression (such as 'suppression and punishment of bandits', *danhi tōbatsu*). It is worthy of remark that such traditional notions were often mixed with Western parlance. In contemporary international law, 'bandits' was also a term used to describe unlawful combatants, who were considered war criminals for their unauthorized participation in the fighting and could often be summarily executed upon capture. To give a clearer example, Japanese accounts condemned the Boxers as both 'insurgents' and 'enemies of humanity' (*jindō no teki*). The latter term was borrowed from Western legal tradition, where it indicated a criminal who could be tried by anyone, regardless of jurisdiction, and could even be executed without trial if caught red-handed.¹⁵⁸

Fujimura emphasizes in retrospect that unlike in the First Sino-Japanese War and Russo-Japanese War, no enemy captives were sent to Japan during the Boxer War. They were usually 'disposed of' (i.e. killed) on the spot. Fujimura had once 'tried his sword' on a 'robust' Boxer captive, killing him sadistically with several blows. That was the same Fujimura who personally prevented a soldier from killing a Chinese woman.¹⁵⁹ Keyes also testified that the Japanese gave no quarter, and in one case, near Dagu, British soldiers had to prevent them from killing wounded enemies on the battlefield.¹⁶⁰ However, there were also cases when Japanese soldiers detained Qing soldiers without killing them and even released captive Boxers, especially if they surrendered without resistance.¹⁶¹ Accordingly, Japanese and Western sources quote information that came from the questioning of captives. Although the Japanese consul general in Tianjin took note of enemies taken prisoner, it is not completely clear whether they were Boxers or Qing soldiers.¹⁶² Gordon Casserly relates that the Japanese employed their prisoners as 'coolies' and paid them 'liberally'.¹⁶³

The policy of executing most captive Boxers adversely affected civilian non-combatants, of course. The distinction between Boxers, who deserved nothing but death, and peaceful civilians, was quite difficult to ascertain accurately. Women and children were certainly in the latter, safer category, while young men were always suspected. Boxers commonly stripped their distinctive garb when facing capture, making

¹⁵⁸ See, for example, Fukuda, *Kunshō*, pp. 269–270; Tanabe Kumasaburō, Consul in Niuzhuang, to Foreign Minister Aoku Shūzō, 17 June 1900, JACAR, ref. C08040787600, p. 441. For analysis, see Kurobane Kiyotaka, 'Nihonjin no "danhi" kan', *Shichō*, vol. 11, 1982, pp. 98–118, especially p. 99.

¹⁵⁹ Fujimura, *Aru rōhei*, pp. 107–108; Landor, *China and the Allies*, vol. 1, pp. 133, 148; Brown, *From Tientsin to Peking*, p. 53.

¹⁶⁰ Keyes, *Adventures*, p. 302.

¹⁶¹ MSJS, vol. 4, p. 130.

¹⁶² Japanese consul general in Tianjin to Foreign Ministry Aoki, 13 June 1900, NGB, vol. 33, supplementary volume: *Hokushin jihen*, part 1(2), p. 659; Fukushima's report, 17 July 1900, JACAR, ref. no. C09122672400; MSJS, vol. 2, p. 244; Landor, *China and the Allies*, vol. 1, p. 366.

¹⁶³ Casserly, *The Land of the Boxers*, p. 50.



Figure 22. Band of 'coolies' under the Japanese at Tientsin (1901). Publisher: Underwood and Underwood. Source: LCPPD, LC-DIG-stereo-1s48047; <https://www.loc.gov/pictures/resource/stereo.1s48047/>.

most male civilians suspicious by definition.¹⁶⁴ As Fujimura made clear, anyone defined as a suspect Boxer could be killed on the spot.¹⁶⁵

After the war, the Japanese commanders praised their troops fulsomely, certain that they satisfied foreign onlookers and even shamed them, in light of the abject behaviour of European soldiers. 'The praises on the strict discipline and the total absence of criminality in the [Japanese] Army had added another layer to the Divine Land's [Japan's] prestige,' wrote Fukushima to Prime Minister Yamagata.¹⁶⁶ The reality on the ground, as we have seen, was somewhat more nuanced.

Brutality as a joint venture

Finally, it is important to note that some of the more extreme cruelties during the Boxer War were committed by mixed gangs of soldiers from various nationalities. The British officer Bertram Lenoux Simpson described in his memoirs how a group of French and their Vietnamese colonial soldiers, along with both Indian and Russian troops, forcibly broke into a pawn shop and lynched the owners who dared to resist.¹⁶⁷ A. H. S. Landor describes a blood-chilling execution of a prisoner by American, French and Japanese troops. Being presented with a bound Chinese, suspected of being a 'Boxer spy', an American officer told the soldiers to 'take him away and do with him what you please'. When the Americans began beating the poor man, a French soldier who passed by shot him, and then Japanese soldiers stampeded on his face. The officer did not interfere. The importance of the event lies in the mixed character of the perpetrating group. Vice-Admiral Alexeyev, too, ruefully noted that his Russian soldiers

¹⁶⁴James Ricalton, *China through the Stereoscope: A Journey through the Dragon Empire at the Time of the Boxer Uprising* (New York and London: Underwood and Underwood, 1900), p. 236; Fujimura, *Aru rōhei*, p. 110.

¹⁶⁵Fujimura, *Aru rōhei*, p. 110.

¹⁶⁶Kobayashi, *Giwadan*, p. 350.

¹⁶⁷B. L. Putnam Weale, *Indiscreet Letters from Peking* (Shanghai: Kelly and Walsh Limited, 1922), pp. 345–347.



Figure 23. German and Japanese soldiers jointly witnessing the execution of a Boxer (1900). Source: www.ifuun.com/a2017743546567/.

were badly influenced by the cruelty of comrades from other contingents. When soldiers of different contingents mixed and fought together, joint cruelty towards the Chinese became a hobby and a common denominator. This, too, was a race to the bottom.¹⁶⁸

Particularly horrifying examples of such cruelty abounded in the various 'punitive expeditions' and 'mopping up operations' in which all contingents took part, except the Americans who did so only rarely.¹⁶⁹ Both British and Japanese burned entire villages if firearms were found even in one house, or in order to deny cover to the enemy.¹⁷⁰

Sometimes, however, brutality by soldiers from certain contingents was resisted by officers from other nations. On April 1901, for example, a Chinese girl was raped by a mixed band of French and American soldiers, and was later rescued by a Russian officer who threatened them with his gun and insisted on their arrest. General Chaffee pressed for conviction, but the US Army Advocate General released them due to suspicion of mistaken identity, as the crime was perpetrated in a dark night and the victim, as well as other Chinese eyewitnesses, could not recognize the faces of the American assailants.¹⁷¹

¹⁶⁸Landor, *China and the Allies*, vol. 1, pp. 364–365; V. G. Datsyshen, *Russko-Kitayskaya Voyna 1900 g: Poxod na Pekin* [The Russo-Chinese War, 1900: The March to Peking] (St Peterburg: Galeya Print, 1999), p. 36.

¹⁶⁹Chaffee to Corbin, 12 October, 14 November 1900, 2 January 1901, Corbin to Chaffee; 18 February 1901, CRWS, vol. 1, pp. 485, 490, 496.

¹⁷⁰Silbey, *The Boxer Rebellion*, p. 107; Landor, *China and the Allies*, vol. 1, pp. 97, 105; Seymour, 'Affairs at Tianjin, 27th June to 11th July 1900', 12 July 1900, p. 1, WO 23/6145, TNA; 'Account of Jasper Whiting', in Sharf and Harrington, *China 1900*, pp. 228–229; Norie, *Official Account*, pp. 135, 139, 145.

¹⁷¹Judge Advocate General of the U.S. Army to the Secretary of War, 2 July 1901, RG 153, Entry 9 (Document file 1894–1912), File no.10733, NARA. The names of the soldiers were McPherson and Konkel.

Conclusion

It is appropriate to conclude this article with the question we began with: how did legal positions of governments and high commands, in this case during the Boxer War, influence their soldiers' behaviour towards civilians, captives, and wounded enemy combatants?

In his model on the influence of the international laws of war, Morrow maintains that when adversaries are interested in limiting warfare, international conventions may serve as useful guides to align expectations of reciprocal behaviour.¹⁷² In this study of the Boxer War, we have shown that behaviour towards protected groups may be influenced, at least in part, not only by reciprocity between enemies, but also by two main additional factors. One is the cultural and historical 'baggage' with which a belligerent arrives to a specific conflict.¹⁷³ The second factor is its relations with allies, including the element of competition between them. In occupied Beijing, for instance, the Germans grew envious of gifts of gratitude bestowed by Chinese merchants upon the Americans and demanded similar recognition. The Chinese, however, responded that the Germans would first need to improve conditions in their sector.¹⁷⁴

For Japanese war leaders, intervening on behalf of Chinese civilians was also appealing, as Japan was fighting alongside its primary rival, Russia. The Japanese, both high commanders and common soldiers, tended to despise their Russian rival-allies, seeing them as brutes and cowards at the same time.¹⁷⁵ Thus, it was satisfactory for them to prove, from their perspective, through decent behaviour, that the Japanese were more civilized than the Russians who had an enlightened policy in theory, but less so in practice. When choosing between the minimal-discretionary approach of Great Britain and the expansive application approach of the United States, it was attractive for the Japanese to choose expansive application, because that seemed to be the direction in which 'civilization' was heading. Why pick second-best?

The view of the Japanese commanders that their country had to be 'more civilized' than other powers, especially Russia, filtered down to the troops and restrained their behaviour. The memoirs of the soldier Fukuda Eiji are an interesting case in point. Deeply contemptuous of the Chinese and not free of cruelty himself, Fukuda used all possible rhetorical devices to decry Russian ruthlessness. When he describes the Japanese and Russian zones of occupation in Beijing, he muses that the Japanese and Russian flags—flying on opposite sides of the street—were dichotomous, one representing culture and the other barbarism, 'like the Mediterranean Sea is the boundary

¹⁷²Morrow, *Order within Anarchy*, p. 320.

¹⁷³See also, along this line, Holquist, 'By Right of War', pp. 107–108.

¹⁷⁴Cited in Hu, 'Zhímín bàoli'.

¹⁷⁵A. G. Churchill, 'Diary of the Tientsin-Pekin Operation' (undated), pp. 6–7, WO 32/6145, TNA, p. 7. This, of course, did not remain static. Churchill testified that eventually the Japanese 'showed some admiration for the ["Asian"] Cossacks individually, as being fine, brave, sturdy fellows, who thought nothing of hardship or discomfort', but continued to despise the Caucasian troops from European Russia; Quellet, 'Multinational Counterinsurgency', p. 514. This suspicion was mutual, as the Russians, too, distrusted the Japanese. See Datsyshen, *Russko-Kitayskaya Voyna: Poxod na Pekin*, p. 100.

between Europe and Africa'.¹⁷⁶ It seems, in any case, that Fukuda's main motive to treat the Chinese a little bit less roughly was to beat the Russians in the race for civilization. In such cases, the interaction between the soldiers incentivized a race to the top.

But in the case of captives, other forces were at play that drove the Japanese in the opposite direction. The designation of the Boxers as 'brigands' [*hitō*] in all orders and official documents, made a connection between them and a deeply ingrained concept in Japanese military culture, suggesting to the soldiers that the Boxers were beyond the pale of all laws. The practical meaning was unrestrained killing of enemy prisoners. As it was difficult to differentiate between Boxers and peaceful civilians, young men—suspected to be Boxers—could expect the worst from the Japanese soldiers when they were at high-tide moments such as pitched battles in village streets or mopping up operations. Women, children, and the elderly, not suspected of being Boxers, could expect relatively better treatment from the Japanese most of the time, though there were some who were beaten by soldiers.¹⁷⁷

We also conclude that the ramifications of a formal legal position are dependent not only on the level of disciplinary control within the ranks, but also on the particulars of hierarchies and power dynamics, formal and informal. In tandem with the finding of the ICRC study by Terry et al., our account demonstrates that in the Japanese case, active interference of junior commanders was of paramount importance in protecting enemy civilians.¹⁷⁸ The scene described by Fujimura, of an officer shouting at soldiers during a raid that they should not harm women and children, and Fujimura's own stern warning to a soldier who was about to kill a woman, are very telling in this respect. The same Fujimura, one should remember, sadistically executed a Boxer captive, because that was a brutality that commanders allowed. Japanese commanders could improve their troops' behaviour during dangerous moments, because Japanese soldiers were by and large disciplined, especially if they received oral orders from their immediate commanders.

Similarly, Russian military leaders issued repeated orders to respect international law and protect Chinese civilians. However, these directives were less effective due to the lower level of discipline among Russian soldiers, particularly in regard to the treatment of enemy civilians and captives.¹⁷⁹ The case of German soldiers offers a contrast. Despite a discipline level comparable to the Japanese, the Germans committed many more atrocities. This discrepancy was not due to a lack of control but stemmed from their commanders' view of international law as non-binding in the situation. This perspective, combined with a punitive ideology and the broad discretion afforded to local officers, allowed junior commanders to order the destruction of entire villages. In comparison, American troops, like the Japanese, were disciplined and positively influenced by their commanders. Such discipline, reinforced by clear and consistent leadership, promoted greater adherence to international laws and enhanced the protection of non-combatants.

¹⁷⁶Fukuda, *Kunshō*, p. 309.

¹⁷⁷Fujimura, *Aru rōhei*, p. 110.

¹⁷⁸Terry et al., 'The Roots of Restraint', p. 21.

¹⁷⁹Zatsepine, 'The Blagoveshchensk Massacre', p. 117; Yanchevsky, *U sten*, pp. 535–536; Holquist, 'By Right of War', pp. 108, 114–115.

To conclude, in more disciplined military forces, the legal framework of a nation plays a crucial role: higher-level interventions can significantly shape the grass-roots dynamics of brutalization, with both positive outcomes (the Americans and the Japanese) and negative ones (the Germans). Terry et al. posited that, by contrast, within less disciplined forces (like the Russians during the Boxer War), the formal legal stance of a country holds comparatively less sway. Instead, external influences on the troops become more pivotal.¹⁸⁰ While the analysis of Terry et al. highlighted the significance of community norms, it seems to us that a paramount external factor that must not be ignored is the reciprocal dynamics inherent in warfare. In such less disciplined forces, interactions between soldiers and the civilian population are often dictated by personal whims, the influence of brutalization, and the usual ebbs and flows, and high and low tides of war.

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¹⁸⁰Terry et al., 'The Roots of Restraint', p. 23.

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