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# THE AGINCOURT CAMPAIGN AND THE LAW OF WAR

THEODOR MERON, *HENRY'S WARS AND SHAKESPEARE'S LAWS: PERSPECTIVES ON THE LAW OF WAR IN THE LATER MIDDLE AGES*. Oxford: Clarendon Press, 1993. xii + 237 pp.

*Reviewed by A.W.B. Simpson\**

This is an unusual book. Theodor Meron is an international lawyer, well known for his distinguished contributions to the literature of human rights. Here he turns his attention to the evolution and earlier history of the law of war. Today, this is usually called international humanitarian law, to mark what is thought to be its function — humanizing war, so far as this is possible, by making it less nasty than it might otherwise be. In its mediaeval form it was not a branch of international law as it is now conceived, but rather the law of the warrior class of Christendom, and it was intimately associated with the conception of chivalry, which represented an idealized vision of the activity to which that class was dedicated. Mediaeval warfare was both extremely unpleasant and extremely brutal, but it did not simply take the form of anarchic violence. It was the business of professionals, and it was to a considerable degree structured, regulated and even a little softened by customary law. This law was also related to a strange form of aristocratic war game, the tournament, which, though it remained alarmingly dangerous, simply had to be regulated to some degree to be tolerable at all. The possibility of regulating the tournament perhaps made more plausible the notion of regulating war itself.

Meron's book examines the late mediaeval and early modern law of war, gives an account of its more important features, and compares it with contemporary international humanitarian law. The story he has to tell is given focus by using William Shakespeare's dramatic account of the Agincourt campaign, in *The Life of Henry V*, as a starting point:

I have examined clusters of medieval norms that underlie Shakespeare's account in *Henry V* of a phase of the Hundred Years War . . . . I have used *Henry V* as a vehicle to analyse the issues of law that governed, or should have governed, that historic con-

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flict, and to develop an intertemporal, historical perspective on the law of war and its evolution.<sup>1</sup>

So Meron provides a scholarly exegesis of those incidents in the play which raises legal and moral issues about the initiation and conduct of the campaign — but his book is broader in scope. Although the point of departure is Shakespeare's play, and the historical sources he principally relies on are the chronicles of Edward Hall and Raphael Holinshed, Meron is also interested in other evidence as to what actually happened in France. He discusses historical incidents which were not used by Shakespeare, and were probably unknown to him. His information therefore comes from other sources, in particular the *Gesta Henrici Quinti (Gesta)*, which was written by an English royal chaplain who was actually present behind the lines at Agincourt, and a remarkably dispassionate account from the French side, the *Chronique du Religieux de Saint-Denys*. This is now thought to have been the work of one Michel Pintoin, who was chronicler and cantor of the Abbey. In order to establish the legal context, Meron weaves into his study other material whose connection with the play is quite peripheral — documents about earlier stages in the Hundred Years war, mediaeval ordinances of war, and earlier works on the law of arms, such as *The Tree of Battles* of Honoré Bonet or Bouvet.

Meron is also concerned to present a picture of the way the law of war evolved, and in order to trace this evolution into the early modern period he discusses the writings of later publicists, such as Franciscus de Vitoria (1480–1546), Alberico Gentili (1552–1608), and Francisco Suarez (1548–1617), as well as Hugo Grotius (1583–1645), whose *De iure belli ac pacis* appeared in 1625, some years after Shakespeare's death. (If international law has a founding father, it is surely Grotius.) Meron's comparisons with modern law involve reference to some texts which are important today: the Hague Convention Respecting the Laws and Customs of War on Land of 1907, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 1949, the British *Manual of Military Law* of 1958, and even a U.S. Department of Defense *Final Report to Congress on the Conduct of the Persian Gulf War* of 1992.

Meron does not present a full history of the law of war, but rather a discursive essay. It all sounds very confusing; a lesser scholar might have failed to handle texts emerging from seven centuries in a coherent

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1. THEODOR MERON, *HENRY'S WARS AND SHAKESPEARE'S LAWS: PERSPECTIVES ON THE LAW OF WAR IN THE LATER MIDDLE AGES* 211 (1993).

way. However, Meron is master of this material, and his book is always clearly organized and easy to follow. Indeed, his book would be an excellent read for anyone, whether legally trained or not, who wanted to obtain a general picture of the history and character of the law of war in a painless and even enjoyable way. The fact that everyone is broadly familiar with the Agincourt story, if only through attending the movies, makes the issues which he examines immediately accessible.

Law and war appear, at first sight, to be antithetical conceptions, for war involves violence at its most terrible, and the rule of law and the rule of violence seem to be fundamentally at odds with each other. There is, to be sure, a sense in which they are indeed at odds, but there is also a sense in which law and violence, and law and war, are intimately connected. Modern domestic legal systems everywhere rely upon the use of coercive and sometimes brutal violence; the categorization of such violence as legitimate or illegitimate is a defining characteristic of law. Furthermore, philosophical analysis apart, if we turn to history, at least in some instances law as we know it emerges from the violent institution of the blood feud, which in its turn can, in certain conditions, be a powerful mechanism for the preservation of social harmony. The relationship between war and law, and between war and institutions which we think of as intimately connected with law, in particular the nation state, is one aspect of the deeply puzzling and indeed paradoxical connection between law and violence.

The mediaeval law of war was not simply a body of custom or practice; it became an amalgam. The fundamental basis was the observances of the fighting men (and occasional woman) of western Christendom, who belonged to a culture in which engagement in war was regarded as an honourable activity for nobles. The connection with honour served to dignify the activity; in reality war was also pursued for loot and plunder, that is, for economic gain. Superimposed upon military custom was legal learning, developed by scholarly and learned lawyers versed in civil and canon law, and anxious to rationalize an activity which they did not themselves experience directly. They accepted what they could not alter. Neither scholars nor anyone else could possibly have been unaware of the sheer nastiness of war, but in mediaeval intellectual thought war was presented as legitimate under both divine and natural law. Both of the principal writers, John of Legano and Honoré Bonet, pointed out that "war is justified by all laws."<sup>2</sup>

Sense could only be made of this view if the war was a just war, and the conception of the just war was greatly elaborated. The starting

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2. M.H. KEEN, *THE LAW OF WAR IN THE LATE MIDDLE AGES* 8 (1965).

point, to be found in Augustine, was that war was legitimate only when it was a remedy, not when it was a wrong:

Wars are defined as just when their aim is to avenge injury, that is when that people or city against whom war is to be declared has neglected either to redress the injuries done by its subjects, or to restore what they have wrongfully seized.<sup>3</sup>

It helped, but was not perhaps essential, that the war had been declared by a prince, a notion inimical to private war. Of course there was no superior human authority to determine whether a war was just, and both sides would commonly claim that justice was on their side. This did not necessarily present a fatal problem, however; ultimately the matter fell to be decided by God through battle, which was what war was all about, and this was to happen at Agincourt on Friday, October 25, 1415.

Here there is sharp discontinuity with modern thought, according to which the humanitarian rules apply to combatants and non-combatants irrespective of the justice of the war.<sup>4</sup> This is a reflection of a change in the understanding of the laws of war — they are now directed at the reduction of human suffering which is the inevitable consequence of a basically evil institution. Back at the time of Henry V, war, conceived of as a remedy, was viewed positively as contributing to the just society.

Meron brings this out particularly clearly. The vision of the Agincourt war, as presented both by Shakespeare and by contemporary sources, is that of a law suit culminating in trial by battle, which will establish justice. Neither Henry V nor Shakespeare had been persuaded by Clausewitz to think of war as the continuation of policy by other means.<sup>5</sup> Furthermore, in Henry V's time the conception of wars as being fought by states hardly existed; the claim was personalized. This makes sense of Henry's offer of single combat with the Dauphin (his father was infirm). Shakespeare made no use of this incident, being in all probability unaware of it.<sup>6</sup> By 1415, trial by individual battle in domestic civil law had long been obsolete, though a battle was actually fought later in the fifteenth century in an appeal. In the chivalric world, however, it still existed as an option.

3. Quoted in *id.* at 66.

4. MERON, *supra* note 1, at 44–45. For a discussion of the development of this idea by Gentili, see *id.* at 41.

5. JOHN KEEGAN, *A HISTORY OF WARFARE* 3 (1994) points out that what he actually wrote is more accurately translated as saying that war is the continuation “of political intercourse” (*des politischen Verkehrs*) “with the intermixing of other means” (*mit Einmischung anderer Mittel*).

6. For the full text of the formal challenge, issued under the Privy Seal at Harfleur on the 16th or more probably the 26th of September, 1415, see MERON, *supra* note 1, at 132 n.7.

The challenge to the Dauphin was not accepted, and the consequence was a more bloody judgement of God in the battle of Agincourt itself. A passage in Holinshed, giving Henry's reaction to the small size of his army, brings out the reliance upon the certainty of the outcome as a judgement of God:

we are indeed in comparison to the enimies but a few, but, if God of his clemencie doo favour us, and our just cause (as I trust he will) we shall speed well inough . . . .<sup>7</sup>

Did people really believe that God would ensure that a just claim was vindicated? Well, all one can say is that even in modern times there are no atheists to be found in the zone of combat, and in 1415 there were many fewer out of it. The spectacular victory at Agincourt, against all the odds, surely confirmed the view that the right could only have triumphed with divine assistance.

So "the Hundred Years War was a war of rights."<sup>8</sup> It resembled a sort of *Jarndyce v. Jarndyce*<sup>9</sup> of a law suit, asserting a property claim. On his death bed Henry V protested:

that neither the ambitious desire to inlarge his dominions, neither to purchase vaine renowme and worldlie fame, nor anie other consideration had mooved him to take the warres in hand; but onelie that in prosecuting his just title, he might in the end atteine to a perfect peace, and come to enjoie those peeces of his inheritance, which to him of right belonged . . . .<sup>10</sup>

Henry spoke as if he had a positive duty to assert his title, and Honoré Bouvet, in *The Tree of Battles*,<sup>11</sup> argued not simply that making war to right a wrong was permissible, but that it was an obligation. The same notion is also found in connection with the early English blood feud.<sup>12</sup>

This conception of war as a remedy for dispossession of an inheritance is expressed in Shakespeare's play by the exposition of Henry's title by the Duke of York, and in the legal opinion on the irrelevance of

7. RAPHAEL HOLINSHED, *HOLINSHEAD'S CHRONICLES, HENRY V*, 35 (R.S. Wallace & Alma Hansen eds., 1923), *quoted in MERON, supra* note 1, at 155 n.1.

8. *MERON, supra* note 1, at 17.

9. *See CHARLES DICKENS, BLEAK HOUSE* (1853).

10. *HOLINSHED, supra* note 7, at 129–30, *quoted in MERON, supra* note 1, at 34 n.72.

11. His last name is more properly rendered Bonet. HONORÉ BONET, *THE TREE OF BATTLES* 125–26 (G.W. Coopland ed., 1949); *see also MERON, supra* note 1, at 9 & n.5.

12. *See A.W.B. Simpson, The Laws of Ethelbert, in ON THE LAWS AND CUSTOMS OF ENGLAND: ESSAYS IN HONOR OF SAMUEL E. THORNE* 3 (Morris S. Arnold et al. eds., 1981).

the Salic law delivered by the Archbishop of Canterbury, Henry Chichele.<sup>13</sup> In Lawrence Olivier's film of *Henry V* the significance of this speech is lost. It is delivered as the pedantic ramblings of a boring, pettyfogging lawyer; to a twentieth century audience that may perhaps be the best way to present it. In Shakespeare's time its function was more generally intelligible: to show that the war is a just war, and that Henry is entitled to proceed by way of war (*per voie de guerre*) rather than by negotiation (*per voie de justice*).

The need to do this explains one of the numerous very puzzling features of the Agincourt campaign from a military viewpoint, namely the fact that Henry's army landed in France ridiculously late in the campaigning season, on August 14, 1415, with autumn almost upon him. Part of the explanation lay in the need for Henry to show that, to quote his own words, he had "done all which our rank allows peaceably to recover the possession of that which belongs to us . . . so that from your refusing justice, we may justly have recourse to the force of arms."<sup>14</sup> Meron is inclined to view the negotiations as lacking good faith, and certainly military preparations were begun well before the negotiations failed, but this is not incompatible with the view I have suggested.

Shakespeare returns to the theme of the *ius ad bellum* in the scene in which Henry moves incognito amongst his soldiers before the battle.<sup>15</sup> The need for a just cause is there related not to the responsibility of states, with which the law of war of this period is not concerned, but with the individual responsibility of the King, and of his soldier subjects — "when all those legs and arms and heads chopped off in a battle shall join together at the latter day."<sup>16</sup>

Wars conceived as legitimate assertions of rights of property are of course by no means extinct — consider the invasion and re-invasion of the Falkland/Malvinas Islands in recent times. Today, though, as Meron points out, the mediaeval view of war has faded. Important traces remain, however; he discusses briefly the argument that force may be used to vindicate a just claim as in wars of national liberation, and under Articles 42–43 and 51 of the United Nations Charter.<sup>17</sup>

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13. More probably the legal advice came from Henry's Chancellor, Beaufort. MERON, *supra* note 1, at 31 n.62.

14. Letter of July 28, 1415 from Henry to Charles V, *quoted in id.* at 22.

15. WILLIAM SHAKESPEARE, *THE LIFE OF HENRY THE FIFTH* act 4, sc. 1, ll. 125–86 (Stanley Wells & Gary Taylor eds., 1988) [hereinafter HENRY V]; *see also* MERON, *supra* note 1, at 64–65.

16. HENRY V act 4, sc. 1, ll. 134–36.

17. MERON, *supra* note 1, at 45–46.

Meron shows how in mediaeval thought the justice of the war was closely linked to the rules governing the conduct of war — the *ius in bello*. These regulated a variety of matters. One was communication. The carrying of a red banner, the *oriflamme*, announced the intention to fight to the death and give no quarter, and white flags signalled a truce. Another was the conduct and ending of sieges, they, rather than battles, being the principal form of conflict in mediaeval war. Also, because war was of course conducted for booty — conceptualized as the just reward for those who fought in a just war — there were rules for division of the spoils, and elaborate rules governing the ransom of captives. Title to booty depended upon the justice of the cause. Then there were rules under which certain persons were supposed to be immune from war — for example, heralds, clerics, and peasants.

To be sure, all rules for the conduct of war were regularly violated, but they were also respected at times, and even enforced in military courts. They were viewed by scholars as part of the *ius gentium*, and basically applied to those legitimately engaged in war. It was not so clear that they applied to combatants of lower birth outside the world of chivalry. For example, the archers of Agincourt were yeomen, and as such in some sense had no business to be there at all. Today the rules for the conduct of war are thought to be linked by a humanitarian purpose, and some of the mediaeval rules, insofar as anyone attended to them, may well have reduced the misery of war. The rule declaring the immunity of peasants would have had this effect. Rules which were capable of having such beneficial effects seem to have been the least regarded, however; peasants suffered very badly whenever there was an army around. It would be quite anachronistic to rationalize mediaeval rules for the conduct of war as linked to some general humanitarian purpose. There was nothing humanitarian in the display of the red banner that announced that no quarter would be given. Conceivably though, some of the more brutal rules, such as those governing sieges, may have had the paradoxical effect of reducing the aggregate level of brutality, as we shall see.

An important point which Meron brings out is that today we tend to think of the law of peace as the most important aspect of international law, and indeed of the preservation of peace as the principal aim of its institutions. Meron points out that Shakespeare wrote *Henry V* before the birth of modern international law, when “[t]he law of peace was largely limited to rules dealing with the termination of war and the



conclusion of peace.”<sup>18</sup> The law of war, as part of the European *ius gentium*, was elaborated earlier than the law of peace, just as in domestic law the law of the feud may precede the civil and criminal law, which can be viewed as the law of domestic peace.

Henry conformed to the contemporary requirements by making what we now call a declaration of war. I can well recall listening on a somewhat crackling radio to the uninspiring voice of Neville Chamberlain in 1939, telling us that since no reply had been received to the British ultimatum on Poland, a state of war “must be taken to exist” with Germany; he made it all sound as if he was not himself wholly convinced but thought he ought to warn us of the risk. In the fifteenth century it was all more robust; you issued letters of defiance, as Henry did on July 28.<sup>19</sup> War was now imminent, and Meron’s account moves on to consider the issues which arose in the actual conduct of hostilities. I shall not discuss them all, but concentrate on the principal events only.

Henry V landed his invading army at the mouth of the Seine on its north bank a few miles from the fortress town of Harfleur on August 14, 1415 — hence the muddy autumnal battlefield at Agincourt, depicted in the more recent movie by Kenneth Branagh. He besieged Harfleur, and it was not until September 22 that it capitulated. Mediaeval sieges were particularly nasty. In the play, Henry makes a notably unpleasant speech, threatening the inhabitants with, amongst other things, including rape, having “[y]our naked infants spitted upon pikes;”<sup>20</sup> Meron quotes the whole and says that it would be difficult to find “a more terrifying catalogue of violations of the law of war” — the modern law, that is.<sup>21</sup> Shakespeare presents Henry as being in the event merciful, and Meron shows how he may indeed have displayed what was then conceived to be mercy.<sup>22</sup> Precisely what happened is not certain, but the city was only sacked in the sense that all property became loot of war. Many poor citizens were expelled, and some held to ransom; they were not, however, slaughtered, and the city, which Henry wished to settle with English, was not destroyed. Yet mercy is a matter of grace, not of justice, and it was not something to which either soldiers or civilians were entitled under the laws of war if they persisted in defense of a city or fortress. Appalling orgies of brutality were quite normal at the conclusion of a successful siege. The theory was that this was punishment for

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18. *Id.* at 11.

19. *Id.* at 22.

20. HENRY V act 3, sc. 2, l. 121.

21. MERON, *supra* note 1, at 75–76.

22. MERON, *supra* note 1, at 77–81.

contumacy. The prospect of the license to rape and pillage was thought to encourage the soldiers to persist in the arduous business of siege warfare, and the fact that the Ordinances of War under which Henry's army operated forbade rape and pillage did not mean that Henry could not permit these practices if he wished.

Paradoxically, fear of what might happen if a siege was resisted for too long may have had some beneficial effects, in encouraging cities and fortresses to capitulate early, though there is no real way of making up a balance sheet. Meron shows, however, how the germ of the idea of protecting certain special classes of non-combatant already existed — in particular women, the infirm, and churchmen — and of course one of the central ideas in the modern law of war is that non-combatants should be protected. There are however, as he points out, many modern instances of warfare in which military commanders have either tolerated or even encouraged violation of the protective norms — in the Second World War acts of rape took place on a massive scale in some theatres of operation, and rape as an instrument of policy persists. Under the Geneva Convention of 1949 rape was, for the first time, singled out for specific condemnation, but it was even then not listed as amongst the “grave breaches” for which special provision is made.

It is not easy to make much sense of what followed the fall of Harfleur, given the overall plan to reclaim the throne of France, and in particular the Duchy of Normandy. Having acquired a base for future operations, Henry set off, with his army much weakened by disease, northwards towards Calais, a hundred and sixty miles away in what seems the wrong direction. He was in fact heading home. A French army set out to block his path, and succeeded in doing so between Agincourt (today Azincourt) and Tramecourt, some 35 miles from Calais, after a proposal to arrange a suitable battlefield was turned down. By the time the battle was joined, Henry's army was reduced to around 6,000 men, of whom only about 1000 were armoured men-at-arms. The rest were archers. The size of the French army is not known, but it is thought to have been about 25,000 men — there is no doubt that it was very much larger than Henry's. It suffered as catastrophic a defeat as has ever been recorded in the history of warfare. Estimates of the English losses of course vary, but the lowest figure is fifteen killed. Estimates by serious historians all accept something around one hundred or less. The French losses are not precisely known, but it is known that 5,800 bodies were interred in three grave pits some time after many bodies had been interred elsewhere in consecrated ground near local churches. Given the fact that the death of less important people tended to be ignored, it is not unreasonable to suppose that something on the

order of 8,000 to 10,000 French died at Agincourt.<sup>23</sup> Only superior technology can explain this; for a modern example one has to turn to the battle of Omdurman, where the British under Kitchener mowed down the army of the Mahdi with Maxim guns. The fifteenth century equivalent was the longbow, with its very high rate of fire and capacity to kill at long distance.

The campaign was renewed the following year in Normandy, but Shakespeare's play does not deal with the later tedious military operations. Henry's triumph was sealed in the Treaty of Troyes on May 21, 1420, and by his marriage to Princess Catherine on June 26. "The day ended with the wine-cup and the blessing of the bed." Two years later Henry was dead.

*Henry V* was written in or before 1599, nearly two centuries after the events it depicts, and Shakespeare's principal literary sources were the two *Chronicles*, and the earlier anonymous play, *The Famous Victories of Henry V*. So far as the laws governing the conduct of war are concerned, the incidents which the playwright emphasized, in addition to the siege of Harfleur, were the theft by a soldier of a pyx and the order given by Henry in the course of the battle of Agincourt to kill the prisoners.

The story of the pyx illustrates the notion that there were, or ought to be, immunities from pillage; the sacred property of the Church, much of which was extremely valuable and readily portable was a great temptation. The enforcement of the laws of war must necessarily be largely in the hands of military commanders on each side, motivated either by notions of honour, shared Christian and chivalric culture, or simply the need to maintain military discipline and prevent an army degenerating into a pillaging mob. Anyone who, like myself, has commanded soldiers — I hasten to add wholly in peace — knows of their relentless enthusiasm for pillage, if only to obtain firewood to boil water. Usually the Church suffered badly in war; there is an account by an eyewitness in 1373 of the English knight John Harleston and his companions drinking from more than a hundred stolen chalices.<sup>24</sup> It is probable that Henry V's army owed its success in battle in part to good military discipline; like earlier monarchs he issued Ordinances of War, and the text of his

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23. The *Gesta* gives the size of the French army as 60,000, but estimating crowds is notoriously difficult. Counting the dead was a more exact science, and he gives the noble dead as between 4,600 and 5,600; this would mean that there were many other unimportant persons killed.

24. M.H. KEEN, *supra* note 2, at 192, citing E. de Fréville, "Les Grandes Compagnies au Quatorzième Siècle," *Bibliothèque de L'École de Chartes* Tome V, at 246 (1843-44).

Ordinances of 1419 survive.<sup>25</sup> They prohibited, amongst other things, the violation of churches, so tempting to pillagers. The French *Chronique du Religieux de Saint-Denys* confirms that he had a reputation for controlling excesses by his soldiers.<sup>26</sup> The theft of a pyx containing the sacrament was a particularly gross violation. The incident was based on historical fact — indeed Henry had another soldier hanged in 1421 for the same offence. Meron traces the development of Ordinances of War after Henry's time; under different names they still exist. One of the starting points for the modern laws of war was the "Instructions for the Government of Armies of the United States in the Field" of 1863, drafted by Dr. Francis Lieber of Columbia University, and issued on April 24, 1863.<sup>27</sup>

The other immunity which features in the play is that of heralds, and the French herald Montjoy figures prominently. He was a real historical figure, appearing in Holinshed as Montjoie. He and the other heralds observed the battle from a hill. None of the historians of the battle identify this hill, though it can only be the rising ground somewhere near Agincourt, to the right of the French array. Heralds were privileged messengers, in theory immune from violence though one was killed at Agincourt.<sup>28</sup> They performed various functions associated with the world of chivalry, including identifying knights and counting the dead. Montjoy informs Henry that he has won the battle, and assists in giving it an appropriate name derived from the nearest castle. With their immunity from violence, heralds, who also acted as referees at tournaments, were the nearest thing to independent arbitrators or mediators, but the institution in its mediaeval form died with the world of chivalry. Their office never really developed to provide something which the law of war has so persistently lacked, a system of regular independent adjudication. I suppose their modern equivalents are the blue-helmeted United Nations observers.

The battle of Agincourt itself, notwithstanding the scholarship which has been deployed, remains in my view very difficult to understand or visualize. The only near contemporary picture I know depicts a scene which bears not the least resemblance to it.<sup>29</sup> The site of the battle has

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25. MERON, *supra* note 1, at 92–93.

26. See M.H. KEEN, *supra* note 2, at 190 nn.6–7 (citing Henry V's Ordinances and the *Chronique*).

27. See ADAM ROBERTS & RICHARD GUELF, *DOCUMENTS ON THE LAWS OF WAR* 7 (2d ed. 1989).

28. MERON, *supra* note 1, at 175 n.25 (citing *Gesta* at 75 n.4), 173 n.10.

29. Reproduced in JOHN KEEGAN, *THE ILLUSTRATED FACE OF BATTLE* 72 (1989). It is from the Chronicles of the Monastery of St. Albans in Lambeth Palace Library.

changed little, and it is not difficult to relate the main features of the engagement to the ground. The site of the three grave pits will be near to where the greatest slaughter took place, which must have been to the left of the French array. There was no need for an English grave pit; of the English dead two bodies, those of the Duke of York and the Earl of Suffolk, were parboiled for ease of transport, some were burnt in a barn, and some, found on the field the next day, were probably buried where they lay. These grim details still leave much of the conduct of the battle obscure — it is recorded, for example, that in some places the French dead lay piled in heaps higher than a man, an idea which John Keegan finds ludicrous, but the author of the *Gesta* who was there, though behind the lines when the killing took place, did not. However it came about, after about three hours actual combat the English were “in possession of the field,” having inflicted devastating slaughter on their opponents. The incident Shakespeare singles out is the King’s order to kill the prisoners, which earned him the title “Cut-throat” in the French mythology of the battle. Nothing could be more at odds with the rules of modern law.

Shakespeare presents the King’s order to kill the prisoners as a reprisal for an attack on his baggage train in which some young servants were killed, and as a response to the threat of a renewed French attack. Both incidents certainly happened. The raid on the baggage was conducted by local peasants led by the Lord of Agincourt; no doubt they anticipated a French victory and wanted to get to the loot first. However, the author of the *Gesta*, who was sitting on his horse at the spot, makes it clear that this attack took place about the time when battle was joined; it had nothing to do with the killing of the prisoners.

The threat of a renewed attack from the French third line, which had not been engaged, was real, and it occurred after the fighting had ended. As it happened, this attack never took place. The reason for Henry’s order is in line with his general practice of not allowing his soldiers to be distracted from their fighting duties by their enthusiasm for gain. He did not want them busied with their prisoners, held for ransom when they should be making ready to receive a charge from the French. The *Gesta*, whose author was at the battle, but probably still to the rear, explains the context. At the height of the fighting no quarter was given, and therefore no prisoners taken; given the disparity of numbers one can understand why. This explains the large number of important knights who were killed, rather than held for ransom.

Once the French were routed, however, the taking of prisoners for ransom would begin, and suitable individuals would now be in somewhat short supply. One can see how military discipline would be threat-

ened by preoccupation with the securing of prisoners. Henry's order was not obeyed by the men at arms, who were now engaged in the economic side of war, so two hundred archers were sent off to kill the prisoners. The author of the *Gesta* says that a very few were killed; he was there and cheerfully recorded the earlier refusal of quarter. Some later accounts suggest that considerable numbers were killed, some having their throats cut, others being brained or disembowelled. Whatever the truth, Henry spared the most important people, who would of course command the highest ransom. A Frenchman actually present, and held wounded in a barn, tells how the building, which contained other prisoners, was set on fire. Holinshed records that Henry later sent through a herald a further threat to kill what prisoners remained, and give no quarter in the future unless the remaining French quitted the field. They left and this threat, which Meron finds quite unlawful, was never carried out.<sup>30</sup> Near contemporary sources, including the French chronicle, make no great point of the killing of the prisoners, and in mediaeval battles unimportant people tended to be finished off anyway. The following day the English soldiers killed such of the wounded as lay on the field and had not died of their wounds. Somewhere between one and two thousand prisoners were eventually escorted away from the battlefield. They were the lucky ones.

Meron discusses the various views which have been advanced either in criticism or defense of Henry. He thinks the order did not clearly violate the laws of war at the time — the point turns upon the conception of military necessity. The starting point has to be, as he concedes, that refusal of quarter in battle was not at the time viewed as illegal.<sup>31</sup> Today, of course, the killing of prisoners still goes on, but is a grave crime against international humanitarian law. At the time of Agincourt, however, the theory of the matter was somewhat different; the protection of prisoners was an aspect of the law of ransom. The objection to captors killing their prisoners was that it was a breach of contract, and anyone else who killed a prisoner was interfering in a property right. The relationship between captor and prisoner was personal, and analogized to vassalage.

Agincourt is a good battlefield to visit; unlike for example Thermopylae, where I once slept the night where Leonidas fell, the terrain has not changed, and there is no difficulty in locating the scene of the fighting. The most eerie survival is the copse which contains the

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30. MERON, *supra* note 1, at 170.

31. MERON, *supra* note 1, at 109 (citing BOUVET, *supra* note 10, at 152).

three great grave pits, a little to the east of the old road to Calais, where there is a small memorial. There is always a problem as to what to do on vacation, and a visit to the scene, armed with Shakespeare's play, Meron's book, and perhaps John Keegan's *The Illustrated Face of Battle* and A.H. Burne's *The Agincourt War* would be no bad way to while away some time. You can wander around Maisoncelles as Henry did the night before the battle, and reflect on the moral and legal issues which, so Shakespeare tells us, preyed upon the mind of the King then, and which continue to arise in the different and even more terrible world of modern warfare. In nearby Tramecourt a grim memorial to the local aristocrat who fought and died for the resistance in the Second World War will bring home to a visitor the persistence of the problem of violent human engagement.