THE WORD OF A GENTLEMAN AND THE OATH OF A PATRIOT

Military Parole in the American Civil War

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Abstract

The use and eventual demise of military parole in the American Civil War provides a key insight into the changing nature of ‘military honour’ in America’s bloodiest conflict. This thesis will use parole to examine America’s engagement and dedication to European international law, the prevalence of ‘honour’ in Union and Confederate armies and the way a pre-war culture of honour was challenged both by the harsh realities of nineteenth-century warfare and by the uniquely American way parole was employed during the Civil War.
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INTRODUCTION

In April 1861, in San Antonio, Texas, the first prisoners of war (POWs) of the American Civil War were captured. In a confused and heated confrontation, Captain Wilcox of the newly declared Confederate States of America entered the office of Federal Colonel Waite and informed him that he and all his men were now POWs of the Confederacy.¹ Colonel Waite was naturally indignant and protested that the Confederate Captain’s actions were a “violation of the modes and customs of civilized warfare.”² Nonetheless, Waite conceded to be taken to Major Maclin, the man who issued the order, when it was revealed that Wilcox commanded thirty-six Texas troops “armed with rifles and saber bayonets.”³ On the authority of the “President of the Confederate States”, an authority Waite claimed “I do not know, nor shall I obey”, Maclin gave the Union prisoners a choice: they could sign a parole of honour not to fight against the Confederacy or be held in confinement until exchanged.⁴ After twenty-four hours to consider the situation, the officers gave their word of honour and the soldiers gave their oath not to take up arms or pursue any course of action detrimental to the Confederate States of America—a Government whose authority they did not recognise but were now honour bound to respect.⁵

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² OR, Series 2, Volume 1, p. 45.
³ OR, Series 2, Volume 1, p. 45.
⁴ OR, Series 2, Volume 1, p. 46.
⁵ OR, Series 2, Volume 1, p. 48.
Despite the confused scene at San Antonio, military parole in the American Civil War (1861-1865) became a common way of dealing with POWs between the years 1861-1863. A product of eighteenth-century and nineteenth-century European international law, the practice essentially entailed an officer, captured by the enemy, giving his word of honour that he would not fight or take any actions against the opposing army or government. Instead of being confined in a prison camp at the captor government’s expense, the paroled officer was at liberty to return home, or was given partial freedom within a designated area.\(^6\) The parole system was part of the broader attempt from the seventeenth century onwards, to legitimise warfare by limiting gratuitous violence.\(^7\) When two belligerent sovereign states found themselves at war, practices such as parole highlighted the ‘civilised’ character of their army, and as influential Swiss jurist Emmerich de Vattel put it, the “honour and humanity” of the nation.\(^8\)

In previous scholarship on POW practices during the American Civil War it is generally taken for granted that both the Union and Confederate forces employed parole. Greater emphasis is placed on the Civil War prisons themselves, where men, for political or military reasons, were not offered parole and were consequently confined at the expense of the captor’s government.\(^9\) Historian William Best Hesseltine’s seminal work, *Civil War Prisons: A Study of War Psychology*, for example, does address the practice of parole but within the broader narrative of what led to the dire conditions of the Civil War prison

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As historian Benjamin G. Cloyd argues, since the conclusion of the conflict, both historians and the American public have been embroiled in a blame-game over which side was responsible for the deterioration of the Civil War prison system. In 1863 prisoner exchange and parole broke down resulting in the long term confinement of both Union and Confederate soldiers in over crowded, disease ridden and poorly rationed prison camps. By the end of the war, 56,000 soldiers had perished in confinement. The fate of these unfortunate soldiers has caused controversy over the morality and righteousness of both side’s cause ever since.

This thesis argues that the practice of parole, though part of the broader Civil War POW system, should be examined in its own right. The American Civil War was the last western conflict where paroles were regularly employed and honoured by both armies.

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13 Cloyd, *Haunted by Atrocity*, p. 3. These debates are still evident in recent scholarship: Jesse Waggoner, ‘The Role of the Physician: Eugene Sanger and a Standard of Care at the Elmira Prison Camp’, *Journal of the History of Medicine and Allied Science*, vol. 63, no. 1 (January 2008) suggests that the North is morally more culpable for the poor treatment of Civil War prisoners than the South, as the Union had both the means and the wealth to ensure adequate care. The Confederacy, on the other hand, was severely constrained by a lack of money and men. pp. 3-9; Robert S. Davis, ‘Escape from Andersonville: A Study in Isolation and Imprisonment’, claims that the Georgia prison camp, Andersonville, “became the world’s first great concentration camp” - language that undoubtedly calls to mind the horrors of the Second World War. p. 1065; James M. Gillispie, *Andersonvilles of the North: The Myths and Realities of Northern Treatment of Civil War Confederate Prisoners* (Denton: University of North Texas Press, 2008), contends that ultimately the breakdown of exchange rests on the shoulders of the Confederacy due to their refusal to recognise African American Union soldiers as POWs, p. 4; Charles W. Sanders, Jr., *While in the Hands of the Enemy: Military Prisons of the Civil War* (Baton Rouge: Louisiana State University Press, 2005), suggests that the governments on both sides demonstrated a remarkable lack of humanitarian concern for POWs, p. 5.

14 There were instances of parole in the Franco-Prussian War (1870-1871), the Boer War (1899-1902) and the First World War, but in general terms, after the American Civil War, the practice began its demise. For the Franco-Prussian War, see: Michael Howard, *The Franco-Prussian War: the German Invasion of France, 1870-1871* (New York: Routledge, 2004), p. 222. The Prussian army allowed French officers to leave on their parole after the Prussian victory at the Battle of Sedan. For the Boer War, see: Major Gary D. Brown, ‘Prisoner of War Parole: Ancient Concept, Modern Utility’, *Military Law Review*, vol. 156 (June 1998), p. 207. The Boer guerrillas tried to place British POWs on parole, but these were largely disregarded. For the First World War, see: Paul Robinson, *Military Honour and the Conduct of War: From Ancient Greece to Iraq* (London and New York, 2006), p. 156. The French placed some German officers on parole early in the conflict, but the practice was not reciprocated by the Germans.
This is made all the more intriguing because the Union was under no obligation to recognize the practice. As the First Chapter will discuss, although the Americans subscribed to theories of international law, the American Civil War was not a conflict between two belligerent states. In nineteenth-century international law, the term ‘belligerent’ signified that the opposing army was a legitimate force and entitled to the privileges, such as parole, set forth in the international laws of war.\(^\text{15}\) As Waite made very clear, the Confederate States was an authority “I do not know”. When the eleven Southern states seceded in 1861 to form the Confederate States of America, the Union’s official policy, as set out by President Abraham Lincoln, was to refuse the Confederacy any recognition of state legitimacy. The Union instead labelled Confederate armies ‘rebels’.\(^\text{16}\) In this context, the Union was under no international legal obligations to recognize the paroles issued by Confederate officers.

Nevertheless, the Confederate officers issuing the paroles at San Antonio clearly believed the act to be valid. Despite Waite’s protestations that he did not recognise the Confederacy, he and his men left Major Maclin on nothing more than their word of honour that they would not fight. The Southern officer’s belief that the Northern soldiers would abide by their word of honour proved, for the most part, well founded. From April 1861 onwards, paroles were regularly and systematically employed between the Confederate and Union armies in absence of any official policy or agreements on the treatment of POWs between the two governments. In July 1862 an official agreement on POWs was reached with the Dix-Hill Cartel, but this merely legitimated and defined the parole system already


The privilege of parole, typically reserved for the commissioned officer, was even extended to the soldiers he commanded, with one difference: the officers gave their word of honour while the soldiers gave their oath.18

The initial use and eventual demise of the parole system in the American Civil War, being one of the last instances of military parole in western conflicts, provides a useful case study on the nineteenth-century American understanding of ‘military honour’ and the changing nature of warfare. As historian John A. Lynn argues, “by adopting a cultural approach to the study of war and combat, we better appreciate the variety and changes that have typified military institutions, thought and practices over the ages.”19 As the First and Second Chapter will argue, the concept of ‘honour’ at both an international ‘state’ level and on a personal basis allowed the parole system to operate in the early years of the American Civil War. Both the North and the South were interested in, and subscribed to, the European conception of the international laws of war and both armies, somewhat surprisingly as from the Union’s perspective the war was a rebellion, believed the other side to be honourable.

As past scholarship on the European use of parole demonstrates, the practice was a product of different ideals of honour within different nations. Historians Gavin Daly, Michael Lewis and Norman Hampson in their works on parole in early nineteenth-century Britain and France, suggest that the practice in European conflicts was defined by an

17 OR, Series 2, Volume 4, pp. 266-268.
aristocratic conception of honour. Officers were drawn from the aristocracy in the
eighteenth and early nineteenth centuries and were entitled to parole because their ‘word of
honour’ was respected by other officers of similar social standing. Parole was as much a
product of cultural assumptions within different nations as it was a practical system of
looking after prisoners. It therefore stands to reason, that parole would be influenced by the
culture in which it was employed. Historian Paul Robinson claims, for example: “Whereas
in previous wars, parole was something only an officer could give, in the American Civil
War all ranks were considered to be gentlemen whose word of honour was sufficient
guarantee for release.” As Robinson does not expand on this point any further, this thesis
will subsequently examine the significance of the ‘oath of honour’ given by patriotic
citizen-soldiers in the American Civil War.

The democratic nature of American society and the high esteem paid to the dedicated
and virtuous ‘citizen-soldiers’ meant that the military honour reserved for the
commissioned officer was extended to the soldiers he commanded. Historian Gerald
Linderman pioneered the idea that the values of nineteenth-century American society were
carried into the war by the “young men of the 1860s”. As America, a democracy, had no
hereditary aristocracy and ‘honour’ was a value esteemed in both marital and civilian

22 Robinson, Military Honour and the Conduct of War, p. 129.
23 Gerald F. Linderman, Embattled Courage: The Experience of Combat in the American Civil War (New York: The Free Press, 1987), p. 2; Somewhat limited by his use of only a few select diaries and memoirs, Linderman contends that ‘courage’ was the main virtue held by Civil War soldiers. Lorien Foote, The Gentlemen and the Roughs: Manhood, Honor, and Violence in the Union Army (New York and London: New York University Press, 2010), makes the valid claim “[i]t is important to link courage with related traits of manhood, something that Linderman does not do adequately...Courage was intimately connected with honor”, p. 57.
contexts, the privilege of parole could hardly be given to the officer but denied to the soldier. By extending the practice of parole to accommodate thousands of men, previously held assumptions and beliefs towards this ‘honourable’ practice started to change. Traditionally, the collapse of the parole system in 1863 is credited to poor administrative foresight and the irreconcilable discord in relations between the North and South, caused by Lincoln’s Emancipation Proclamation of January 1863. While the political debates and acts between the Union and Confederacy should not be undervalued, this thesis proposes that prior to the Emancipation Proclamation, parole was no longer viewed as a viable POW policy for soldiers. As Chapter Three will argue, changing perceptions regarding the ‘honourable’ practice of parole can be linked to the uniquely American way the practice was used and the harsh reality of the American Civil War.

Ultimately then, this thesis is concerned with understanding the practice of parole in the American Civil War by looking at America’s engagement and dedication to European international law and the prevalence and importance of ‘honour’ in Union and Confederate armies. International law served as the framework for POW policies while the cultural assumptions within America regarding honour both allowed the practice to operate while fundamentally changing its character. The nature of the Civil War forced officials and soldiers to question a pre-war culture of honour.

To understand nineteenth-century international law and the military culture in America, works by prominent Victorian international legal theorists and the American Articles of War will be examined. These sources present an idealised picture of both state

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behaviour and military discipline. As John A. Lynn claims, “[f]or a number of reasons, the discourse on war tries to modify reality to more nearly resemble conceptions of how war should be. Thus societies impose conventions and laws on the conduct of war.”

Even if theories did not always match reality, international legal textbooks and the Articles of War made a strong argument for ‘honour and humanity’ in warfare and the importance of the ‘word of a gentleman’—arguments and language used both by military men and in official policy to shape and justify the character of the war. The letters, reports and proclamations contained in the 126 volume series, The Official Record of the War of the Rebellion will also be examined. Though there are thousands of documents detailing debates and policies relating to the issue of POWs, this thesis is concerned mainly with instances of parole which demonstrate how the practice was used and carried out, in addition to official POW policies that had a significant affect on the practice. As the debates over parole and honour were not confined solely to official letters, newspaper reports on the use of parole will also be considered. Newspapers in America during the 1860s were numerous and partisan, generally supporting the Republican aspirations for the preservation of the union and abolition, or the Southern Democrat support for secession. As these newspapers wrote for the expectation of their readers, newspaper articles provide a useful insight into changing public perceptions on the practice of parole.

The changing perceptions regarding parole are important as they point to a broader change in warfare. The transitional nature of the American Civil War and its status as a forerunner to the ‘total wars’ of the twentieth century has long been debated in the

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25 Lynn, Battle: A History of Combat and Culture, p. XXI.

The use of parole in the American Civil War demonstrated “a gentlemanly conduct, even towards the enemy” akin to the limited wars of the eighteenth century. This gentlemanly conduct was challenged, however, by the magnitude of the Civil War. With thousands of men fighting, dying, and being captured in confusing, long and bloody battles, it became increasingly difficult to uphold the ideal of individualised and personal honour in combat as exemplified by parole. Esteem for honour and a gentleman’s word did not completely fade in this period, but the decline of parole shows how an ideal of personal honour in warfare—recognised and enforced by individuals who gave their word and expected it to be trusted—was rendered less effective by the brutal reality of the American Civil War.

27 For works that challenge the idea that the American Civil War was a ‘total war’, see: Mark Grimsley, The Hard Hand of War: Union Military Policy Toward Southern Civilians, 1861-1865 (Cambridge: Cambridge University Press, 1995); Mark E. Neely, Jr., “Civilized Belligerents”: Abraham Lincoln and the idea of “Total War”, in John Y. Simon and Michael E. Stevens (eds.), New Perspectives on the Civil War: Myths and Realities of the National Conflict (Madison: Madison House, 1998), pp. 3-25; Mark E. Neely, ‘Was the Civil War a Total War?’, Civil War History, vol. 50, no. 4 (December 2004), pp. 434-458; For works that suggest the American Civil War was a ‘total war’, see: James M. McPherson, Battle Cry of Freedom: The Civil War Era (New York: Oxford University Press, 1988) p. 333; Linderman, Embattled Courage, p. 3.

Military parole was a product of international law, intended to be applied between two belligerent states during war. It was part of the larger attempt to apply legal principles and rules of restraint to the chaos of war during the eighteenth and early nineteenth century. From an international legal perspective, the use of parole in the American Civil War is both understandable and intriguing. Perhaps unsurprisingly, given the relative youth of the American nation and its ‘experimental’ Republican government, there was considerable interest in international law throughout the nineteenth century. The practice of parole highlighted a nation’s adherence to the principles of honour and humanity in warfare. It proclaimed the ‘civilisation’ of ‘great nations’. There were clear cultural dimensions to the practice, as ‘honour’ was a cultural construct, but it is first necessary to examine how both the Confederacy and the Union viewed parole. Throughout the American Civil War, international law was as clarifying as it was confusing. In many ways, the fact that parole was even employed by the Union was contrary to international law. As the Union never recognised the Confederacy as a sovereign belligerent state, they were under no obligation to abide by the laws of war in their conduct towards the Confederate
armies.\textsuperscript{31} The fact that parole was eventually adopted into official Union policies highlights the important role that theories of international law and ‘civilised’ warfare played in the American Civil War.

Despite calls to place the Civil War in its international context, scholars looking at POW practices during the conflict have, for the most part, ignored the international dimensions or implications of the move.\textsuperscript{32} Historian Charles W. Sanders Jr., for example, implies that despite America’s extensive involvement in armed conflicts—including the American Revolution, the Anglo-American War of 1812 and the Mexican War of 1846-1848—the American leaders and people had learnt little from their experiences in regards to POW practices.\textsuperscript{33} Drawing on official records, Sanders points to the thousands of Union and Confederate men who died in war prisons as testament to the indifference and ignorance of Civil War leaders.\textsuperscript{34} Though it is difficult to dispute the fact that both the Confederacy and the Union were thoroughly unprepared for the number of POWs the Civil War created, to say that the Americans were not working from any framework or were ignorant of how to treat POWs is problematic. As United States Attorney General James Speed, adviser to the President on constitutional law, reflected in July 1865: “Congress can declare war. When was is declared, it must be, under the Constitution, carried on according to the known laws and usages of war amongst civilized nations....The Constitution does not


\textsuperscript{34} Sanders, \textit{While in the Hands of the Enemy}, p. 1.
permit this Government to prosecute a war as an uncivilized and barbarous people.”

International law, or the law of nations, was linked, according to Speed, to the American Constitution because “[t]he framers of the Constitution knew that a nation could not maintain an honorable place amongst the nations of the world that does not regard the great and essential principles of the law of nations as a part of the law of the land.” Though Speed’s opinion was given after the fighting, the debates between the Confederacy and the Union surrounding questions of international law suggests that both sides were familiar with the sentiment expressed by Speed. The practice of parole, though applied, at first, in disregard to the debates occurring between Lincoln and Confederate President Davis, was derived from the international laws of war and regularly and systematically employed by officers in the field. Americans did have a framework for POW practices; they grounded their actions in an understanding of the laws of war.

In the late eighteenth and early nineteenth century, it was the ‘great nations’ of Europe that promoted the tenants of international law. Under the intellectual environment of the Enlightenment, a great deal of military literature was published emphasizing the need, and the possibility, of turning military strategy into a universal science. In comparison to the wars of the nineteenth century, eighteenth century conflicts were more limited, precise and ‘gentlemanly’. This type of warfare was complemented by theories on the international laws of war. Warfare in the nineteenth century was distinct from the

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36 Speed, ‘Military Commissions’, p. 299.


38 Gat, A History of Military Thought, p. 95; Lynn, Battle: A History of Combat and Culture, see ‘Chapter 4: Linear Warfare: Images and Ideals of Combat in the Age of Enlightenment’, pp. 111-145.

39 Emmerich de Vattel first published his highly influential work The Law of Nations, in 1758.
conflicts of the eighteenth century, but the relevance and interest in international law remained strong.\textsuperscript{40} The French Revolutionary and Napoleonic Wars had engulfed a great many nations of Europe and the tangled web of imperial claims and international trade called for regulation.\textsuperscript{41} Public opinion on warfare, shaped and disseminated by the growth of newspapers, also called for more humane treatment for soldiers.\textsuperscript{42} International law was a way to ‘civilize’ warfare and deflect criticism of war-making. Humane POW practices were especially important in this context as they demonstrated that the intent of war was not to harm the innocent nor inflict gratuitous violence on the enemy. American legal theorist Archer Polson, for example, argued in 1853, that “[t]he modern law of nations prohibits those barbarous customs which distinguished the warfare of early times. Considering war simply as a means to protect nations in the enjoyment of their just rights and lawful possession it condemns all cruelty not absolutely necessary to secure that end.”\textsuperscript{43} In international law, parole was promoted as a humane and just way of dealing with a surrendered enemy.

Military parole, a product of international POW practices, has a long history. Its use, as with all POW practices, varied according to the time period, culture, the nature of


\textsuperscript{41} Bayly, \textit{The Birth of the Modern World}, pp. 128-132.


warfare and different armies.\textsuperscript{44} By the late sixteenth century, the practice was primarily reserved for the officers in European armies.\textsuperscript{45} Signing a parole in the context of a war meant that an officer gave his \textit{parole d’honneur} or ‘word of honour’, that he would not fight or take any actions against the opposing army or government.\textsuperscript{46} Common or enlisted soldiers, made POWs, were generally confined at the expense of the captor’s government until they could be exchanged.\textsuperscript{47} Men on parole were free to move across enemy borders to return home or were given partial freedom within a designated area.\textsuperscript{48} Records were kept of the officers who signed a parole, and if they were captured again by the enemy they could be executed.\textsuperscript{49} Despite the deterrent of death-upon-capture for parole breakers, for the parole system to work, certain criteria had to be met. Firstly, both armies had to recognise their enemy as a legitimate opponent. As the parole system worked on the premise that officers would abide by the international laws of war, it had to be assumed that they were operating as a legitimate and recognisable army. Secondly, both sides had to


\textsuperscript{46} Vattel, \textit{The Law of Nations}, p. 354.

\textsuperscript{47} As Emmerich de Vattel stated, prisoners of war “may be secured; and for this purpose they may be put into confinement...But they are not to be treated harshly”. While Vattel suggested that soldiers of whatever rank should be paroled if their captor could not maintain them, he also stated that the “European nations, who are ever to be commended for their care in alleviating the evils of war” generally exchange or ransom POWs during the war. Vattel, \textit{The Law of Nations}, p. 353 & pp. 356-357; Also see: Peter H. Wilson, ‘Prisoners in Early Modern European Warfare’, in Sibylle Scheipers (ed.), \textit{Prisoners in War} (Oxford: Oxford University Press, 2010), pp. 52-53; Frank Tallett, \textit{War and Society in Early Modern Europe, 1495-1715} (London: Routledge, 1992), p. 130; Olive Anderson, ‘The Establishment of British Supremacy at Sea and the Exchange of Naval Prisoners of War, 1689-1783’, \textit{The English Historical Review}, vol. 75, no. 294 (January 1960), p. 77.

\textsuperscript{48} Daly, ‘Napoleon’s Lost Legion: French Prisoners of War in Britain,’ p. 366.

\textsuperscript{49} Henry Wager Halleck, \textit{International Law, or, Rules regulating the intercourse of states in peace and war} (San Francisco: H.H. Bancroft, 1861), p. 438; This was not an empty threat. Parole-breakers were executed throughout the course of the American Civil War. The Northern newspaper, \textit{Chicago Tribune}, for example, reported the execution of Federal officer A.G. Webster in April 1863. Webster “was sentenced to death by court martial for violation of his parole of honor...For this military offen[s]e he was condemned to suffer death by hanging.” ‘Execution of Capt. G.A. Webster’, \textit{Chicago Tribune}, April 18, 1863, p. 3.
subscribe to similar notions of ‘honour’. It was an ‘officer’s word of honour’, after all, that formed the basis of this POW system.

The language used to promote the practice of military parole was ‘honour and humanity’. Influential Swiss jurist Emmerich de Vattel described the practice as displaying “the honour and humanity of the Europeans” as it allowed “an officer, taken prisoner in war...the comfort of passing the time of his captivity in his own country, in the midst of his family; and the party who have thus released him as perfectly sure of him as if they had him confined in irons.”50 Officers on parole therefore remained, in the formal sense, prisoners of war and could return to duty if they were exchanged.51 Describing the parole system in the late eighteenth and early nineteenth century, American legal theorist Henry Wheaton noted, sometimes “prisoners of war are permitted, by capitulation, to return to their own country, upon condition not to serve again during the war, or until duly exchanged”.52 The term ‘capitulation’ meant “surrendering to an enemy upon stipulated terms.”53 Officers, “are frequently released upon their parole, subject to the same condition. Good faith and humanity ought to preside over the execution of these compacts, which are designed to mitigate the evils of war, without defeating its legitimate purpose.”54 Parole was therefore promoted as a practice carried out by honourable nations to uphold humanity in warfare.

54 Henry Wheaton, Elements of International Law, p. 418.
It should be noted as well, that there were great practical and ‘mutual benefits’ to the practice of parole. In earlier European conflicts, mainly before the sixteenth and seventeenth centuries, POWs could be turned into slaves, held for ransom, forced or enticed into switching sides, or quite simply, be killed upon capture.\footnote{Tallett, \textit{War and Society in Early Modern Europe}, pp. 129-130; Howard S. Levie, ‘Penal Sanctions for Maltreatment of Prisoners of War’, \textit{The American Journal of International Law}, vol. 56, no. 2, (April 1992), p. 434.} By the seventeenth century, such practices denoted ‘barbarity’, and due to fear of retaliation in kind, could no longer be freely employed.\footnote{Polson, \textit{Principles of the Law of Nations}, p. 42.} Historian Barbara Donegan suggests in her work on parole in the English Civil War (1642-1651) that as the opposing armies shared conceptions about honour, a parole system could operate because it worked to the mutual advantage of both armies. As caring for POWs required money and resources, and civilised armies could no longer slaughter or turn their prisoners into slaves, parole was both a humane way of treating POWs while simultaneously removing the financial burden of caring for them; once paroled, soldiers had to provide for themselves.\footnote{Barbara Donegan, ‘The Web of Honour: Soldiers, Christians, and Gentlemen in the English Civil War’, \textit{The Historical Journal}, vol. 44, no. 2 (June 2001), p. 372; Brown, ‘Prisoners of War Parole’, pp. 1-2.} Donegan admits, however, that the parole system was successful because both sides were English. When the Irish entered the conflict, the English failed to afford them the same courtesy, viewing them as “outside the protections of honour and humanity.”\footnote{Donegan, ‘The Web of Honour’, p. 389.} Parole was both functional and a way of giving belligerents the ability to choose who was worthy of honour and who was not. Thus, the only way the parole system could work was if each side regarded the other as honourable.

Even with international legal texts, international law in the eighteenth and nineteenth centuries was notoriously difficult to enforce. Unlike domestic law, which was regulated by a well-defined government or state, there was no overarching authority to define or
enforce international law at this time.\textsuperscript{59} The concept of state sovereignty (established in Europe at the conclusion of the Thirty Years’ War with the Treaty of Westphalia) established the theoretical right of each state to act on an equal footing in relation to other states.\textsuperscript{60} The American lawyer Henry Wheaton opened his lengthy \textit{Elements of International Law} (first published in 1836) by stating: “There is no legislative or judicial authority, recognized by all nations, which determines the law that regulates the reciprocal relations of states . . . in the great society of nations there is no legislative power, and consequently there are no express laws, except those which result from the conventions which states make with one another.”\textsuperscript{61} International law in the eighteenth and nineteenth century was therefore founded on the mutual acceptance of certain practices and behaviour between states.

The majority of nineteenth-century texts dealing with the law of nations begin with lengthy attempts to define the principles and concepts of international law. In many ways, international law was as much an intellectual debate as it was a solid system of world governance. Theorists drew on and critiqued the work of other well-known theorists, such as Emmerich de Vattel, Hugo Grotius, Samuel von Pufendorf, and Cornelius van Bynkershoek.\textsuperscript{62} Their debates took place in a rarefied sphere. Typically producing weighty tomes that ran to a thousand or so pages, and frequently using Latin in their definitions, they wrote for the specialist or student, rather than for interested lay people or government officials. They were intellectuals and did not set out to produce definitive guides for state

\textsuperscript{59} Wheaton, \textit{Elements of International Law}, p. 1.


\textsuperscript{61} Wheaton, \textit{Elements of International Law}, p. 1.

practices. Indeed, a definitive guide on international law would have been impossible to write, given that international law was the product of state interaction and therefore subject to change. International legal texts consequently drew their examples from past conflicts.\textsuperscript{63} This meant that theories could sometimes be one-step behind reality. Nonetheless, their texts provide insight into how international law worked in the nineteenth century because they detailed common assumptions about how states did or should behave. They present an idealised form of international law based on history and observations of state behaviour. American officials were familiar with the language and ideas present in these texts and drew on theorists to justify their actions. Consequently, while these texts did not create international law they put forth influential intellectual debates and analyses which they derived from state behaviour.

What did serve as the guidelines for international law were common state practices based on similar cultural or political assumptions. As Henry Wheaton stated: “in the great society of nations there...are no express laws, except those which result from conventions which States may make with one another”\textsuperscript{64} To establish these practices, states ratified treaties with each other outlining expected conduct in trade and commerce, naval regulations, territorial boundaries, consuls and diplomacy and conduct in warfare. Congresses and conventions were also used, although these tended to be somewhat decadent affairs at the dawn of the nineteenth century and generally dominated by the great powers.\textsuperscript{65}

\textsuperscript{63} Halleck, \textit{International Law}, p. 36-40; Wheaton, \textit{Elements of International Law}, pp. 94-100; Polson, \textit{Principles of the Law of Nations},

\textsuperscript{64} Wheaton, \textit{Elements of International Law}, p. 1.

\textsuperscript{65} American legal theorist, Heny Wager Halleck, who would later become a leading Union general, cynically described the Congress of Paris and Vienna in 1814 and 1815 as “mainly meetings of conquerors, for dividing among themselves the spoils of conquest”, Halleck, \textit{International Law}, p. 295.
If the number of textbooks and treaties are anything to go by, Americans in the Victorian era were extremely interested in the law of nations. The famous eighteenth-century Swiss jurist Emmerich de Vattel’s work was published in English in various editions throughout the nineteenth century in America and Wheaton’s *Elements of International Law* stayed in publication from 1836 to 1936. United States’ treaties with Prussia and Spain after America declared independence further illustrate that Americans subscribed to the ideas of European international legal theorists. Though war between Prussia and America never broke out in this period, the Treaty of Amity and Commerce Between His Majesty the King of Prussia, and the United States of America (ratified in 1786), established how each country should behave towards the other in warfare. The treaty consisted of 27 articles covering a variety of state concerns (including naval considerations, how citizens or subjects of each country should be treated while in the other, trade and the conduct that should be adopted by the two nations while engaged in war either with their own enemy, a common enemy or each other) but article 24 encompassed an extended discussion about how POWs were to be treated. Indeed, article 24 comprised the largest paragraph in the whole document and stated that if war did break out between the two nations, the treaty would remain in force:

[I]t is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this & the next preceding article . . . the state of war is precisely that for which they

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are provided, & during which they are to be as sacredly observed as the
most acknowledged articles in the law of nature or nations.\textsuperscript{68}

The POW practices that were to be “sacredly observed” between the two states included
confining prisoners in “their dominions in Europe or America, in wholesome situations”
and allowing officers to be “enlarged on their paroles within convenient districts, &
have comfortable quarters”\textsuperscript{69}.

This concern with defining POW practices with other European nations was likely
the product of America’s experience with Britain during the American Revolution. Careful
not to formally recognise American independence through POW practices, Britain never
entered into any official agreements with the Americans on parole or exchange.\textsuperscript{70} However,
these practices were still frequently carried out during the war but under no mutually
agreed upon framework.\textsuperscript{71} In the eighteenth and early nineteenth century, formal POW
frameworks consisted of ‘cartels’.\textsuperscript{72} It was understood that only belligerent sovereign states
could enter into ‘cartels’. When France entered the war in 1778 on the side of the
Americans, for example, Britain sought to set up official POW policies through a general-
exchange cartel. According to historian Olive Anderson, “[w]ith France, and only with
France, the [British] government was willing and even anxious to make a general

\textsuperscript{68} Article 24, ‘Treaty of Amity and Commerce Between His Majesty the King of Prussia, and the United
States of America’. <http://avalon.law.yale.edu/18th_century/prus1785.asp>

\textsuperscript{69} Article 24, ‘Treaty of Amity and Commerce Between His Majesty the King of Prussia, and the United
States of America’. <http://avalon.law.yale.edu/18th_century/prus1785.asp>

\textsuperscript{70} Catherine M. Prelinger, ‘Benjamin Franklin and the American Prisoners of War in England during the

\textsuperscript{71} Olive Anderson, ‘The Treatment of Prisoners of War in Britain During the American War of

\textsuperscript{72} Betsy Knight, ‘Prisoner Exchange and Parole in the American Revolution’, \textit{The William and Mary
Quarterly}, vol. 48, no. 2 (April 1991), p. 201; A ‘cartel’ was a mutually agreed upon system of prisoner
exchange and ransom, see: Halleck, \textit{International Law}, p. 432.
exchange”.\footnote{Olive Anderson, ‘The Treatment of Prisoners of War in Britain During the American War of Independence’, p. 70.} In addition to this snub to American sovereignty, rumours and reports of mistreatment and hardships suffered by American prisoners at British hands circulated throughout the conflict and left a bitter aftertaste many years on.\footnote{Anderson, ‘The Treatment of Prisoners of War in Britain During the American War of Independence’, p. 82.} It therefore made sense for the newly independent American nation to advertise its sovereignty and establish its place among the ranks of ‘honourable nations’ through formal and humane POW agreements with other states. In the Anglo-American War of 1812, the work of Emmerich de Vattel served as the guide for the conduct, particularly for the Americans.\footnote{Fabel, ‘The Laws of War in the 1812 Conflict’, p. 203.} Parole and formal POW policy was also employed by the Americans during the Mexican War (1846-1848).\footnote{Halleck, \textit{International Law}, p. 438.} Again, as United States Attorney General James Speed claimed, “war is required by the framework of our Government to be prosecuted according to the known usages of war amongst the civilized nations of the earth”.\footnote{Speed, ‘Military Commissions’, p. 300.} From the early days of the American nation, there was a conscious effort to abide by international law in America’s foreign relations.

Despite the plethora of works dedicated to international law in the nineteenth century, actual definitions on how states should act were somewhat vague. From the outset, the American Civil War generated numerous difficult legal issues over how to deal with an internal, rather than an international, conflict. Facing an enemy that had declared itself a new state, the Federal government was forced to confront these issues from day one of the conflict. The newly formed Confederacy constituted a considerable stretch of American
soil, encompassing the states of South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, Tennessee and North Carolina. As soon as these states seceded, they set up their own government, headed by President Jefferson Davis in Richmond, Virginia. Drawing up a new Constitution, they asserted that they were now operating as a sovereign state. As the popular New Orleans magazine *Debow’s Review* stated in the early stages of the conflict: “No civil strife is this; no struggle of Guelph and Ghibelline; no contest between York and Lancaster; but a war of alien races, distinct nationalities, and opposite, hostile and eternally antagonistic Governments.” This somewhat hyperbolic account (not unusual in the South at this time) sums up the Confederate’s position nicely: they believed that they were a sovereign state and that this was a war between two distinct nations.

Broadly under international law, a war between two sovereign states required that the two opposing forces treat each other as equals and in accordance with the laws of war. As Wheaton defined it: “A contest by force between independent sovereign States is called a public war. If it is declared in form, or duly commenced, it entitles both the belligerent parties to all the rights of war against each other.” This is hardly surprising given that the basis of international law was the concept of state sovereignty. As outlined by numerous theorists in the nineteenth century, the laws of war required each side to treat the other in a civilised and humane manner. Wheaton defined this civilised conduct as: “No use of force

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is lawful, except so far as it is necessary. . . the inhabitants of the enemy’s country who are not in arms, or who, being in arms, submit and surrender themselves, may not be slain. . . . Those ends may be accomplished by making prisoners of those who are taken in arms, or compelling them to give security that they will not bear arms against the victor." It therefore made perfect sense for the Confederacy to put Union officers on parole. Just as America would have treated captured Prussian soldiers in an honourable and humane manner, the Confederacy wished to establish that they too were a humane and honourable sovereign nation.

The desire to act in accordance with the honourable and humane practices of war was perhaps further enhanced by the knowledge that Europe was watching the conflict intently. The Confederacy would have benefitted greatly from military support or formal recognition of independence by European states. Civil War era newspapers in both the North and the South frequently reported the views of Britain, in particular, on the conflict. The British press likewise took great interest in the incredibly bloody conflict occurring just across the Atlantic. By mid-nineteenth century, the role of newspapers in shaping public perceptions on war was exerting greater influence in countries like Britain and America due to increasing literacy and the expansion of the press and printing technology. During the Civil War there were 2,500 newspapers in print in America alone. Given the desire to be viewed as a ‘civilised’ nation by both the Union and the

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82 Wheaton, Elements of International Law, p. 417.
83 Tyrrell, Transnational Nation, p. 85.
86 Harris, Blue and Gray in Black and White: Newspapers in the Civil War, p. 2; Hanham, ‘Religion and Nationality in the Mid-Victorian Army’, p. 167.
87 Harris, Blue and Gray in Black and White, p. 9.
world, acting as an honourable sovereign state by treating Northern troops in a humane manner throughout the American Civil War was in the Confederacy’s best interest. President Davis, for example, informed President Lincoln on July 6, 1861, “[i]t is the desire of this Government so to conduct the war now existing as to mitigate its horrors as far as may be possible....Some [prisoners] have been permitted to return home on parole; others to remain at large under similar condition within this Confederacy”. The popular Southern publication the *Southern Literary Messenger*, similarly argued in October 1861 that the Confederate States “have acted towards the Northern States with the most imprudent generosity, even forbearing to require of prisoners...the customary parole.” Establishing a reputation for honourable and civilised practice in war was vital for the Confederate States.

For the Union, the issue was not so straightforward. Recognising the Confederacy as a legitimate sovereign nation would mean that the Union had little reason to meet the Confederacy in hostility. For example, if the North recognised the South as sovereign and still engaged in conflict, then the North could be perceived as an invading army seeking territorial conquest. The Federal government never recognised the Confederate States as a sovereign nation, instead labelling them rebels. The way in which the Union was meant to treat these ‘rebels’ was not clear. Wheaton argued that it did not matter if the war was of a civil nature, the same laws of war should apply: “A civil war between the different

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members of the same society is what Grotius calls a *mixed* war....the general usage of nations regards such a war as entitling both the contending parties to all the rights of war against each other”.  

Henry Wager Halleck, who was by this time a senior commander in the U.S. army, however, summed up the position or sentiment of the Union more aptly: 

> Wars of insurrection and revolution are, in one sense, *civil* wars; but this term is more usually applied to those factions, for part ascendency in a state, rather than for its dismemberment, or for a radical change in its government. . . . Mere rebellions, however, are considered as exceptions to this rule, as every government treats those who rebel against its authority according to its own municipal laws, and without regard to the general rules of war which international jurisprudence establishes between sovereign states...every neutral state, in such a contest, must determine for itself when it will consider a party in a rebellion, insurrection, revolution, or civil war, entitled to the rights of a belligerent in its international relations. Yet, it does this under international responsibility to the state, previously recognized as sovereign.

In other words, the state can deal with those involved in a rebellion as it sees fit. Under this definition, the Union was under no obligation to place Confederate soldiers on parole. Nations watching the conflict, and in the case of the Civil War this was mainly Britain and France, had to determine in what light they were going to view the conflict. It therefore was in the Union’s interest to insist that this was a rebellion, not a formal war.

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Nevertheless, as humane POW practices demonstrated that a nation was ‘civilised’ and ‘honourable’, the Union still faced a conundrum on how best to treat the Southerners. Halleck wrote in his treatise *International Law* that a government who forced their soldiers to undermine their parole by taking up arms again was evidence of “ignorance and semi-barbarism”. He used the example of America’s recent war with Mexico to demonstrate his point. The Mexican authorities, he asserted, forced paroled men to break their word by taking up arms again. According to Halleck, “[s]uch attempts to violate the ordinary rules of war not only justify, but require prompt and severe punishment. Accordingly, General Scott announced his intention to hang every one who should be retaken after violating his parole of honor.” The Lincoln administration did not have to recognise the paroles given by the ‘rebel’ army; but significantly, in America’s last major conflict prior to the Civil War, the idea that a government would force troops to undermine parole was declared ‘semi-barbaric’.

The Union’s initial position that the Confederate States were simply in rebellion also proved difficult to maintain, as scholars have noted. According to historian Phillip Paludan, Britain recognised the Confederate States of America as a belligerent power on May 13, 1861 by declaring itself neutral in the war. France followed suit and declared their neutrality on June 10, 1861. Neutrality signified a war between two belligerents, because if it was a domestic rebellion, as the Union initially insisted it was, other nation’s had no right to intervene in the state’s affairs. As Halleck stated, under international law “every

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neutral state must determine for itself when it will consider a party...entitled to the rights of a belligerent in its international relations." The Union had not helped the matter as early in the war the Lincoln administration had blockaded Southern ports, an act that signified war between two belligerents. Britain, acting with this precedent in mind, recognised the Confederacy as having belligerent rights. Desirous not to embroil itself in the conflict, however, Britain (and France) shied away from recognising Confederate State sovereignty. The status of the Confederacy was consequently not definite but the ‘neutral’ nation of Britain had made its position clear.

In 1862 and 1863 the Union also conferred belligerent rights of the Confederacy without actually recognising the Confederate States as sovereign. This was achieved through the 1862 General Exchange Cartel for Prisoners of War and the 1863 Prize Cases. The Prize Cases, in effect, saw the Federal Supreme Court determine the nature of the conflict the Union was currently engaged in. The Supreme Court drew on the definitions of Emmerich de Vattel, who defined ‘civil wars’ as conflicts that break “the bands of society and government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge”. Consequently, as these two parties have no common judge “they stand in precisely the same predicament as two nations who engage in a contest and have recourse to arms....This being the case, it is very evident that the common laws of war-those maxims of humanity, moderation, and honor- ought to be observed by both

104 Supreme Court of the United States, ‘67 U.S. 635’ (December term, 1862), available through usyd database ‘Westlaw’. 
parties”. The official stance the Union took was therefore “[i]t is not necessary that the independence of the revolted province or State be acknowledged in order to constitute it a belligerent in war according to the law of nations. Foreign nations acknowledge it as a war by declaration of neutrality.” The Union then, could also issue paroles and observe the traditional POW practices without recognizing Confederate sovereignty but still abiding by “those maxims of humanity, moderation, and honor”.

As the next chapter will demonstrate, the practice of parole was informally carried out between the Northern and Southern armies at the outbreak of hostilities. These informal practices were codified in 1862 General Exchange Cartel—an act in accordance with international law and recognizing Confederate belligerent rights. United States Attorney General Edward Bates advised President Lincoln that the Cartel “is our mutual contract, “of binding obligation” upon both parties, and neither party can avoid it, because it is inconvenient in its practical operation. It can be altered only by mutual consent.” Bates was therefore suggesting that the Cartel was an act under international law. The Union may not have recognized the Confederacy as a sovereign belligerent state, but regarding POWs, the Union conceded that the Confederacy could act in a belligerent capacity. Thus, the mutually agreed upon Cartel could only be altered by mutual consent.

The General Exchange Cartel, drawn up by Union Major-General John A. Dix and Confederate Major-General D.H. Hill, consisted of nine articles outlining the ranking systems of exchange, the logistics of exchange and the nature of prisoner confinement and

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parole.\textsuperscript{108} Article 6 stated that “all prisoners, of whatever arm of service, are to be exchanged or paroled in ten days from the time of their capture” and that during the process of exchange the officer or soldier on parole is not to be “considered as exchanged and absolved from his parole until his equivalent has actually reached the lines of his friends.”\textsuperscript{109} The Cartel provided a framework for both the Union and Confederacy regarding the practice of parole.

The American Civil War was a conflict in which both the United States and the Confederate States of America sought to justify and define their behaviour under international law. The international laws of war provided a framework for parole, and the practice’s association with honour and humanity in warfare meant that the Confederacy, and eventually the Union, recognised the paroles signed in the early years of the conflict. For the Confederacy, the practice of parole signaled to other nations and the Union that they intended to fight the war as a sovereign state operating within the framework of the laws of war. The initial place of paroles in the Union, however, was slightly more ambiguous. The Lincoln administration did not wish to recognise the Confederate States as sovereign. If sovereignty was recognised, the North would have very little reason to fight the South. POW practices, generally applied to two sovereign belligerent nations, may indicate to the rest of the world that the Union viewed the Confederacy as a sovereign state. Still, the North, similar to the South, was conscious of the arguments for honour and humanity in war. As the next chapter will demonstrate, there was also a cultural dimension to parole which allowed both Northern and Southern armies to employ the practice prior to any official POW policies between the opposing governments. The Union, eventually

\textsuperscript{108} OR, Series 2, Volume 4, pp. 266-268.

\textsuperscript{109} OR, Series 2, Volume 4, p. 267.
defining the Confederacy as belligerent but not sovereign, was able to formally recognise these paroles in official POW policy.
THE WORD OF AN OFFICER AND THE OATH OF A SOLDIER

Honour and Parole in the Early Years of the American Civil War

International law provided the framework and incentive for military practices such as parole, but the cultural assumptions and beliefs within or between nations allowed the practice to operate. Military parole was as much a cultural construct as it was a humane and logical system to deal with war captives. At its base, military parole operated on the assumption that a gentleman would abide by his word of honour. Similar to the laws of war, where honourable and humane conduct in warfare denoted ‘civilization’, the ability to keep one’s word illustrated a gentleman’s adherence to the laws of honour. In the early years of the American Civil War (1861-1863), both Northern and Southern prisoners of war could give their word of honour or their oaths that they would not take up arms against the opposing government unless exchanged. International law sanctioned this practice but given the international legal difficulties between the Union and the Confederacy at the start of the war, no POW policies were formally agreed upon until 1862. The parole system began, however, early in 1861. A similar understanding of military honour was consequently present in the two armies.

As parole was based on cultural assumptions on honour, it is logical that the practice could be shaped to suit the nations or nation employing it. Military parole in the American Civil War drew inspiration from European precedents. Parole, with its emphasis on a gentleman’s word of honour, was typically reserved on the Continent for eighteenth-century aristocratic officers. Common soldiers, under the command of their ‘noble’
officers, were not entitled to this privilege. In the American Civil War, by contrast, all white soldiers had access to parole, making the system unique. This was the result of a different conception of ‘honour’ within America. As this Chapter will demonstrate, however, the ideal military gentleman was still represented by the commissioned officer. The differentiation between a soldier’s ‘word of honour’ and ‘oath’ in paroles suggests that officers understood and abided by a code of military honour which entitled them to give their word. This ‘code of honour’ was a product of their military education and training. As the majority of Civil War soldiers were volunteers without any previous military experience, it was unlikely that they had a solid understanding of the practice of parole. The commissioned officer and his parole of honour provided an example of the practice for the men he commanded. The honour that was reserved for the officer, was, in practical terms extended to the soldier, but it is first necessary to understand what was meant by a nineteenth-century ‘officer and gentleman’.

The practice of parole, with its basis in ‘honour’, was a product of cultural assumptions within different nations. Honour was both an inclusive and exclusive cultural construct. In eighteenth- and nineteenth-century international law, “civilised” was defined against “savage” just as a “gentleman” was distinguished from a “common man”. Before

113 Emmerich de Vattel and Joseph Chitty, trans., The Law of Nations; or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns (Philadelphia: T. & J.W. Johnson, Law Booksellers, 1852), argues, for example, that if a ‘civilised’ European nation finds itself engaged in a war with ‘savages’ POW privileges do not need to apply; prisoners can be killed on surrender. Vattel maintains, however, that putting to death a great many men is only acceptable if the enemy does not understand ‘civilised’ warfare and “we be perfectly assured that our own safety demands such a sacrifice.” p. 355; for a discussion on ‘gentlemen’ and ‘common man’ in the military, see: John A. Lynn, Battle: A History of Combat and Culture (Cambridge: Westview Press, 2004), pp. 136-137.
the Napoleonic Wars and the French Revolution drastically changed warfare on the Continente, European armies drew their officers from the aristocracy. Loyalty to the sovereign was expected from these men in addition to a strict adherence to their own sense of personal honour. The aristocracy could be expected to keep their parole because, as gentlemen, their word was respected. If they failed to keep their word of honour, they would be shamed within their community and their own governments would cashier (disgrace) them. Parole tied in well with the limited and ‘gentlemanly’ war-making that was idealised during the Enlightenment. As historian Gavin Daly notes in his work on British and French prisoner treatment during the Napoleonic Wars, “[r]ather than an agreement between nation-states, parole reflected the shared cultural values of an international order of gentlemen.” Consequently, it is clear that parole was strongly linked both to the intellectual theories of international law and the cultural assumptions of European societies.

From the outset, then, it was inevitable that the use of parole in the American Civil War would be slightly different from its eighteenth-century European counterpart. America


116 Lewis, *Napoleon and his British Captives*, p. 44.


was proudly democratic. This meant, in theory, a rejection of a hereditary aristocracy and equality for all white males.\textsuperscript{120} Although America signed a treaty with Prussia outlining officer paroles in 1786, Prussia was a European nation with a monarchy and a strict class structure. The use of parole with its well-known ties to aristocratic honour consequently seems out of place in the American Civil War—a conflict solely fought by Americans. There was some precedent, however, in America’s previous wars with Britain. The British used informal paroles for captured American officers during the Revolution, and there was a formal parole system in the War of 1812.\textsuperscript{121} In some cases, the British also paroled common soldiers, though this was the exception whereas in the American Civil War it was the norm.\textsuperscript{122}

In looking at the practice of parole in the early stages of the Civil War, the concept of ‘honour’ needs to be considered. Both antebellum Northern and Southern societies esteemed and understood honour. Nevertheless, defining honour and its relationship to the ‘word of a gentleman’ is difficult because within these societies honour manifested itself in slightly different ways. In general terms, the South was more prone to ritualistic displays of honour such as duelling and lavish hospitality.\textsuperscript{123} The agricultural basis of Southern life, rooted in slavery and with a sharp division in status and wealth between the planters and

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\textsuperscript{120} This is most famously expressed in the American ‘Declaration of Independence’ (July 4, 1776) with: “We hold these truths to be self-evident: That all men are created equal”. Available at: Yale Law School, \url{http://avalon.law.yale.edu/18th_century/declare.asp} viewed 7 September 2011.


\textsuperscript{122} Bowman, Captive Americans, p. 99; Brown, ‘Prisoner of War Parole’, pp. 203-204.

yeomen, was much more conducive to a close-knit community steeped in outward displays of honour and reputation as opposed to the industrial, impersonal and heterogenous Northern states.\textsuperscript{124} Northern honour was also linked to reputation but with an emphasis on self-restraint and education.\textsuperscript{125} It is also somewhat difficult to characterise the honour cultures that permeated both the North and the South because neither society was homogenous. Honour could be affected by class, gender and racial relations. Women did not have ‘honour’ in the way it was ascribed to men, but they were influential in maintaining and defining ‘honourable’ behaviour.\textsuperscript{126} The working class had their own type of honour and ideas of ‘manliness’ that were distinct from the middle class and wealthy elite.\textsuperscript{127} The slaves in the Southern plantations did not possess any honour according to the white population, and white males defined their own honour against the slaves’ lack of honour. Indeed, all white males in the South had ‘honour by default’ by virtue of not being black.\textsuperscript{128} Furthermore, the military required its own type of ‘martial honour’ that in some cases could be distinct from civilian practices.

The Texas Surrender, April 1861, which resulted in Confederate Major Maclin placing Union Colonel Waite and his men on parole, was the first incident of paroling in


\textsuperscript{126} Glover, ‘An Education in Southern Masculinity’, p. 56; Robinson, \textit{Military Honour and the Conduct of War}, p. 131-133.


\textsuperscript{128} Bertram Wyatt-Brown, \textit{Yankee Saints and Southern Sinners} (Baton Rouge and London: Louisiana State University Press, 1985), p. 185.
the American Civil War. As such, it makes a useful case study because it demonstrates that both Northern and Southern soldiers employed and abided by paroles prior to any key battles or official POW policy. Despite the questions surrounding the international legal status of the Confederacy, the North and the South were operating under shared assumptions on honour. The surrender itself was the result of the tension that had been brewing in Texas ever since the presidential election of Abraham Lincoln in November 1860.  

When South Carolina, Mississippi, Florida, Alabama and Louisiana seceded from the Union in February 1861, the Federal government ordered General David E. Twiggs to protect Union interests in Texas.  

Twiggs was a seasoned (and war-wearied) soldier of the War of 1812, the Mexican War and the Seminole Wars and he appeared to be more concerned with his own retirement than the interests of the Union. Colonel Carlos A. Waite was to replace Twiggs and take command in February 1861.  

Around this time, a force of secessionist Texans forced Twiggs’s surrender with threats, not bloodshed. When official hostilities commenced between the Confederate States and the United States, the Confederates made all Union officers and soldiers in the Southern-supporting Texas POWs and put them on parole to effectively remove Union men from fighting prior to any actual battles. The Confederate officers clearly believed that these men would abide by their paroles as they employed very little force in making the Union officers give their word of

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133 OR, Series 2, Volume 1, p. 56.
honour. Furthermore, the fact that parole was accepted by both sides means that on the issue of POWs, both the North and the South treated the other as a belligerent state.

The paroles signed in Texas caused some confusion for the Union. De Witt C. Peters, an Assistant Surgeon of the Union army, travelled all the way from Texas to Richmond (Virginia) in the hope of being exchanged after signing a parole. He wrote to Adjutant-General L. Thomas that “[n]ot knowing in what light these paroles are to be treated I respectfully await the orders of the Secretary of War.”

Brevet Lieutenant Colonel Reeve was much more decisive on what being on parole meant. When he received a letter asking for him to report for duty in Scarsdale, West Chester County (New York), he wrote back:

I inclose herewith a copy of my parole, supposing the Adjutant-General may have forgotten its terms. It most positively forbids me from doing the duties to which I am ordered, and I do not see how it is possible to enter upon them or any other duties which will either directly or indirectly operate to the prejudice of the Confederate States or the rebel cause without a violation of my honor.

Considering that at the time no man could have predicted the absolute carnage of the years ahead, and that no real battles had taken place at this point, Reeve’s reasons for refusing to report for duty were not likely due to self-preservation, fear or war-fatigue. Undoubtedly, Reeve was being sincere when he said that he could not take any course of action that might violate his honour.

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134 OR, Series 2, Volume 1, p. 62; De Witt C. Peters was quickly released from the obligations of his parole through a mutual exchange between the Confederate and Union armies, see: OR, Series 2, Volume 1, pp. 67-68.

135 OR, Series 2, Volume 1, p. 63.
Reeve’s dedication to personal honour was given further credence in his dealings with the Union Secretary of War. The Lincoln administration was, understandably, not happy about the events in Texas. The Republican newspaper, *The National Republican*, for example, published an article stating “by the surrender of that department, the Government has lost and the rebel cause gained naval, military, and commercial advantages beyond the power of money to estimate, or language to express.”\(^{136}\) Though the language used was somewhat hyperbolic, the validity of the paroles signed in San Antonio, which the newspaper *New York Courier and Enquirer* argued were “extorted, and in violation of a compact”, was called into question by some Union officials.\(^{137}\) Upon hearing that Colonel Reeve would not resume his duty, Simon Cameron, the Union Secretary of War, wrote to his department: “I acknowledge the receipt of the letter of Col. I.V.D. Reeve referred by you to this Department. You will give the required instructions to have your orders executed, and if Lieutenant-Colonel Reeve does not comply with them he must either resign or have his name stricken from the rolls.”\(^{138}\) Even with this threat of dismissal, Reeve replied “I still deemed the duty above referred to as incompatible with my parole, but not wishing to give so strict a construction to its terms as to render myself liable to a charge of wishing to avoid such duties...I referred the matter to the President”.\(^{139}\) Lieutenant-Colonel Reeve went on to state that the President “approves my construction of the parole in relation to what duties as are consistent with my parole. I am willing and anxious to do such duties... but these are very limited.”\(^{140}\) After this, Reeve was saved from any more challenges to his word of honour. Union officials did not force the officers and

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\(^{136}\) ‘The Texas Mystery’, *The National Republican*, June 6, 1861.

\(^{137}\) *New York Courier and Enquirer*, May 29, 1861, cited in OR, Series 2, Volume 1, p. 55.

\(^{138}\) OR, Series 2, Volume 1, p. 64.

\(^{139}\) OR, Series 2, Volume 1, p. 64.

\(^{140}\) OR, Series 2, Volume 1, pp. 64-65.
soldiers to undermine their parole. Informal exchanges between the Union and Confederate armies could subsequently be carried out.\textsuperscript{141} Reeve was formally released from the terms of his parole through an exchange in January 1862.\textsuperscript{142} Throughout this whole ordeal, it is clear that Reeve placed a great deal of importance on his ‘word of honour’.

The paroles signed in the early years of the war followed a general pattern. Officers were entitled to give their ‘word of honour’ and the soldiers gave their ‘oath’. First Infantry Captain E.D. Phillips of the Union army, being a commissioned officer, signed a parole stating: “I give my word of honor as an officer and a gentlemen that I will not bear arms nor exercise any of the functions of my office under any commission from the President of the United States against the Confederate States of America...unless I shall be exchanged”.\textsuperscript{143} The parole went on to state that Phillips could also return to duty if the President of the Confederate States released him from his parole and that he could “go and come wherever I may see fit”.\textsuperscript{144} After a Union victory in 1861, several Confederate officers took the parole: “We and each of us for himself severally pledge our words of honor as officers and gentlemen that we will not again take up arms against the United States...until regularly discharged according to the usages of war from this obligation.”\textsuperscript{145} The paroles for soldiers followed a similar format but with the obvious change that they were giving their oath, not their word:

\textsuperscript{141} A letter from Union Adjutant-General to H.W. Halleck in January 1862 promoted the use of informal exchanges: “the intention is not to commit our Government by formally acknowledging the existence of the so-called Confederate States. The mode you indicate of negotiating with generals on the other side is now successfully carried out by General Wool with General Huger, and you are authorized to effect the exchange of any of our prisoners in this manner.” OR, Series 2, Volume 1, p. 74.

\textsuperscript{142} OR, Series 2, Volume 1, p. 76.

\textsuperscript{143} OR, Series 2, Volume 1, pp. 66-67.

\textsuperscript{144} OR, Series 2, Volume 1, pp. 66-67.

\textsuperscript{145} OR, Series 2, Volume 3, p. 10.
We do solemnly swear that we will not bear arms against the Confederate States of America, nor in any way give aid and comfort to the United States against the Confederate States, unless we shall be duly exchanged for other prisoners of war, or until we shall be released by the President of the Confederate States. In consideration of this oath, it is understood that we are free to go wherever we may see fit.\textsuperscript{146}

Distinguishing an officer’s parole from that of a soldier’s suggests that officers were viewed as having a higher level of honour than the men they commanded. This ties in well with the European understanding of \textit{parole d’honneur} whereby an officer, according to historian Michael Lewis, was a gentleman and therefore his word of honour could be trusted.\textsuperscript{147} However, in the American case, soldiers were entitled to the same privileges as officers. The only difference between the paroles was the use of “oath” and “word of honor”. The honour expected from an officer was therefore being extended to the volunteer or non-military trained soldier. Yet the honour of the military trained officer was the ideal. As in the case of Reeve, parole was expected to work because an ‘honourable’ man would not take any course of action that might jeopardise his personal honour. As America did not have an aristocracy or a hereditary social hierarchy (in which honour was simply assumed), the ideal military ‘gentleman’ was defined mainly by his education, conduct and respectability.

Honour in antebellum America was a way of regulating ‘respectable’ conduct. The 1857 edition of Webster’s \textit{American Dictionary of the English Language} provided quite a

\textsuperscript{146} OR, Series 2, Volume 1, p. 51.

\textsuperscript{147} Lewis, \textit{Napoleon and his British Captives}, 44.
lengthy definition of the term. In regards to having personal honour, the concept was the "esteem due or paid to worth" which was linked to “[d]ignity; exalted rank or place; distinction; fame”. Honour also consisted of “reputation” and a “good name” and could require “[t]rue nobleness of mind; magnanimity...An assumed appearance of nobleness; scorn of meanness, springing from the fear of reproach, without regard to principle.” Virtues divided along gender lines, such as “bravery in men” and “chastity in females” were further linked to honour. Acts of honour, such as giving one’s word or following the code of honour were defined: “On or upon my honor; words accompanying a declaration which pledge one’s honor or reputation for the truth of it—Laws of honor; certain rules and regulations, which prevail in fashionable society, requiring the strictest attention to outward conduct, and yet allowing the most flagrant breaches of moral rectitude.”

A key element in these definitions is the idea that honour required outward displays of conduct deemed honourable or respectable. Maintaining a “good name” was important and to pledge one’s honour was to put that “good name” to the test. As the definition of the “laws of honor” suggests, honour in antebellum America was differentiated from internal morality or conscience. Though honour could be linked to virtues such as dignity, magnanimity and nobleness, as the last definition made clear,

148 Since the 1970s, there have been numerous works on the significance of honour in nineteenth-century American society. The majority of these works focus on honour in the South, see: Bertram Wyatt-Brown, Southern Honor: Ethics and Behavior in the Old South (New York: Oxford University Press, 1982); Bertram Wyatt-Brown, The Shaping of Southern Culture: Honor, Grace, and War, 1760-1880s (Chapel Hill and London: The University of North Carolina Press, 2001); Kenneth S. Greenberg, Honor & Slavery; For recent works on Northern honour, see: Foote, The Gentlemen and the Roughs; Bruce Tap, ‘Inevitability, Masculinity, and the American Military Tradition: the Committee on the Conduct of the War Investigates the American Civil War”, American Nineteenth Century History, vol. 5, no. 2 (Summer 2004), pp. 25-26; For comparative works of Southern and Northern honour, see: Hoffer, The Caning of Charles Sumner. Wyatt-Brown, Yankee Saints and Southern Sinners; For honour in the Civil War, see: Kenneth W. Noe. “‘Damned North Carolinians” and “Brave Virginians”: The Lane-Mahone Controversy, Honor, and Civil War Memory’, The Journal of Military History, vol. 72, no. 4 (October 2008), pp. 1089-1115.


150 Webster, An American Dictionary of the English Language, p. 499.
outward displays of honourable conduct could be expected even if it did not coincide with an individual’s morals. Honour was about appearance.

Letters between officers throughout the American Civil War used the word “honor” in abundance. Phrases like “on my honor”, “it is my honor” and “with honor” were part of the polite parlance of the time.\textsuperscript{151} Though these may seem to be mere figures of speech, they took on real importance in a military context. Francis Lieber, the German-born, Napoleonic and Greek Revolution war veteran, who taught in South Carolina College before becoming an ardent Union supporter at the outbreak of the Civil War, noted the important connection between an officer and a gentleman in one of his popular publications.\textsuperscript{152} In 1846, he dedicated a whole lecture to the students of Miami University, Ohio, on the ‘character of the gentleman’.\textsuperscript{153} His lecture was extended and published into a 121 page book, which garnered favourable reviews in popular Southern publications, such as \textit{The Southern Quarterly Review} and remained in circulation throughout the North until 1864.\textsuperscript{154} Lieber suggested that gentlemanly conduct for an officer in the army or navy was essential:

\begin{quote}
A n officer of the army or navy may be tried for “conduct unbecoming a gentleman,”—a charge ruinous to his career, if the court pronounces him guilty; “on the word of a gentleman,” is considered among men of character
\end{quote}

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\textsuperscript{151} See: OR, Series 2.
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\textsuperscript{152} Frank Freidel, \textit{Francis Lieber: Nineteenth-Century Liberal} (Gloucester: Peter Smith, 1968), pp.15, 30, 115 & 342.
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equivalent to a solemn asseveration, and the charge “he is no gentleman,” as one of the most degrading that can be brought against a man of education.\textsuperscript{155}

In this passage, Lieber is referring to the American Articles of War which outlined and defined the expected conduct of officers and soldiers. As Lieber suggested, the officer was expected to behave as a gentleman; indeed, it was an integral part of his profession.

The Articles of War were primarily a guideline for discipline in the army. They provide a key insight into American military culture and a crucial link in examining how civilian values influence and shape a nation’s military. Prior to the Civil War, the American articles of war went through four revisions.\textsuperscript{156} These articles covered everything from enlistment, how officers and soldiers were to behave within the army, the proper relationship between soldier and civilian and the manner in which courts-martial were to be carried out. The Second Continental Congress enacted the first set of articles in 1775, using the British Articles of War as their basis.\textsuperscript{157}

Importantly, both the Union army and the Confederate army referred to the same Articles of War. The Union and the Confederacy used the 1806 articles of war in their armies. The North placed the ‘Articles of War of 1806’ in the appendix of the Revised Regulations for the Army of the United States, 1861 stating, “[t]hese rules and articles...remain unaltered and in force at present.”\textsuperscript{158} In March 1861, the Confederacy

\textsuperscript{155} Lieber, The Character of the Gentleman, pp. 11-12.


\textsuperscript{157} Winthrop, Military Law and Precedents, p. 21.

\textsuperscript{158} The War Department, Revised Regulations for the Army of the United States, 1861 (Philadelphia: J.G.L. Brown, 1861), p. 499.
published and issued the ‘Confederate Articles of War’.\textsuperscript{159} These articles were exactly the same as the 1806 American Articles of War with the distinction that “United States of America” was replaced with “Confederate States of America”.\textsuperscript{160} The effectiveness of these articles in maintaining discipline, however, was somewhat limited.\textsuperscript{161} As noted by numerous scholars, Civil War armies were mainly comprised of volunteers with little or no experience with military discipline.\textsuperscript{162} This made the task of enforcing discipline very difficult. A select few commissioned officers, nearly all trained at the military academy West Point, led the untrained volunteers of both the North and the South into battle.\textsuperscript{163}

While an education at West Point during the antebellum years was not solely aimed at instilling military skills (there was a strong emphasis on engineering and liberal arts in the curriculum) the officers that graduated from the academy had a firm understanding of the type of conduct expected from an officer.\textsuperscript{164} John William French, a professor at West Point, also published his lecture \textit{Law and Military Law}, which dealt with the international laws of war, in 1861.\textsuperscript{165} Graduates of West Point, consequently, were very likely educated in the laws of war. Significantly then, given that Civil War officers from both sides were trained at West Point and followed the same articles of war, both the Union and the

\begin{footnotes}
\item[159] Mark A. Weitz, \textit{More Damning than Slaughter: Desertion in the Confederate Army} (Lincoln and London: University of Nebraska Press, 2005), p. 34.
\item[161] Weitz, \textit{More Damning than Slaughter}, p. 36.
\end{footnotes}
Confederacy had a very similar ideal of conduct becoming an officer and a gentleman at the start of the war.

Similar to the way ‘oath’ and ‘word of a gentleman’ was differentiated in paroles, the expected conduct of an officer and a soldier was clearly marked in the Articles of War. Nevertheless, again like the paroles, honour was still assumed to be held by both officers and soldiers. The most obvious difference was admission into the army. Officers who commanded troops were “commissioned” which meant that their government conferred military authority to them based on the recommendation and endorsement of other officials.\(^\text{166}\) While not necessarily linked to an aristocratic conception of honour, these men still had a reputation and good name to maintain based on the recommendation and acknowledgement of their peers. Soldiers enlisted. Article 10 required all “non-commissioned officer[s] or soldier[s]” to take the “following oath or affirmation: I, A.B., do solemnly swear, or affirm (as the case may be), that I will bear true allegiance to the United States of America [or Confederate States of America], that I will serve them honestly and faithfully against all enemies or opposers whatsoever”.\(^\text{167}\) The paroles followed a similar format, but with the difference that soldiers were swearing that they would not oppose the enemy until exchanged. To give an oath simply meant making “an appeal to God for the truth of what is affirmed.”\(^\text{168}\) There was clearly honour in taking an oath because, in essence, the men were saying that they would be true to their word under God. However, an officer could give his ‘word of honour’ because to become an officer a man had to demonstrate his merit, be held in esteem by officials and maintain a good

\(^{166}\) Eicher, *The Longest Night*, pp. 59-60.


\(^{168}\) Webster, *An American Dictionary of the English Language*, p. 683.
reputation. In theory, if a soldier broke his oath, he would be breaking his word before 
God. If an officer broke his word, he would be shamed and lose his status among his peers.

Notwithstanding the formal mechanisms prescribing military honour, the values of 
nineteenth-century American society were present in its military. The American Articles of 
War, for example, illustrate that there was an honour culture in America during the 
Victorian era in the way they sought to regulate the illegal practice of duelling, the type of 
punishment they employed and the expected behaviour of men during a courts-martial.169 
All men who entered the military service were expected to behave in a respectful and 
Godly manner. The second and third articles, for example, “earnestly recommended to all 
officers and soldiers diligently to attend divine service” and any use of profanities incurred 
a fine and forfeit of pay.170 An honour culture is most overtly indicated by the articles 
relating to duelling. Articles 24 to 28 covered all aspects on duelling and insults. The duel, 
or ‘affairs of honour’, was a product of honour culture as it worked on the premise of both 
honour and its antithesis, shame.171 If a white gentleman was insulted or accused of 
falsehood, he had a right to seek redress and re-establish his reputation through the 
ritualised performance of the duel.172 If his opponent refused to fight, he was publicly 
shamed.173 Given the sensitivity of some men to ‘insults’ and the risk of death and disorder 
in the ranks, the Articles of War sought to ban all aspects of ‘affairs of honour’. Offensive 
gestures and provoking speeches were not to be used and officers and soldiers were

169 By the early 1800s, duelling was illegal in all states, see: C.A. Harwell Wells, ‘The End of the Affair? 
Anti-Dueling Laws and Social Norms in Antebellum America’, *Vanderbilt Law Review*, vol. 54, no. 4 (2001), 
p. 1821.

170 Articles 2 and 3, ‘The Articles of War 1806’, p. 976.


Duelling* (Charleston: James Phiney, 1858), p. 6.

forbidden to send or accept challenges for duels.\textsuperscript{174} The very fact that men were prone to duelling is evidence of soldiers and officers being highly concerned with their personal honour.\textsuperscript{175} The duel was a deadly performance enacted to maintain a gentleman’s good name.

Officers and soldiers may have been banned from shaming or insulting each other with charges of cowardice or deceit, but in the Articles of War, military discipline employed ‘honour and shame’ in its punishment for officers. Article 85, for example, stated:

In all cases where a commissioned officer is cashiered for cowardice or fraud, it shall be added in the sentence that the crime, name, and place of abode, and punishment of the delinquent, be published in the newspapers in and about the camp, and the particular State from which the offender came, or where he usually resides: after which it shall be deemed scandalous for an officer to associate with him.\textsuperscript{176}

Similar then, to the type of public shame suffered by a gentleman who refused to duel in civilian life, public disgrace was threatened as a punishment for both Northern and Southern officers. This is complemented by the language employed in Article 83: “Any commissioned officer convicted before a general court-martial of conduct unbecoming an officer and a gentleman, shall be dismissed from the service.”\textsuperscript{177} Nineteenth-century military discipline therefore expected men to behave bravely, have faith in God, and be respectful and honest. These virtues could easily stand independently from the wider

\textsuperscript{174} Articles 24-28, ‘The Articles of War of 1806’, p. 978.
\textsuperscript{175} Duelling is most often associated with the South, but as historian Lorien Foote demonstrates, ‘affairs of honour’ were also prevalent in the Union army, see: Foote, \textit{The Gentlemen and the Roughs}, Chapter 4: “If You Will Go With Me Outside the Lines”: Dueling and the Degenerate Affair of Honor’, pp. 93-119.
\textsuperscript{176} Article 85, ‘The Articles of War of 1806’, p. 983.
\textsuperscript{177} Article 83, ‘The Articles of War of 1806’, p. 983.
concept of nineteenth-century honour. As the articles present the need to stop duelling and personal insults between soldiers, however, in addition to the use of publicly shaming an officer for cowardice and fraud, personal honour was clearly significant for American officers. It was part of what defined him.

This regard and common understanding of the worth placed on a gentleman’s personal honour was occasionally reflected in the wording of paroles. In the border state of Missouri, where loyalty for the Union and Confederacy was divided, Union soldiers made Confederates sign a parole after they were defeated in May 1861. At first, the Missouri militia declined parole “on ground that to take oath would imply that they had been in arms against U.S. authorities which they [denied].” The staff and regimental officers did eventually pledge their “words as gentlemen” that they would not take up arms against the United States. It appears that the Union officers were sensitive to the Confederate POW’s personal honour as the parole they signed ended with the stipulation: “While we sign this parole with a full intention of observing it, we nevertheless protest against the injustice of its exactions.” Consequently, in this instance, the POWs did not have to admit that they were in the wrong, but they still gave their word of honour not to act in any way against the Union. The Northern soldiers still achieved the desired outcome of ensuring that the Confederate officers would not fight until exchanged, but seemingly understood that to accuse the men of falsehood could be perceived as impudent and a challenge to their personal honour. The Confederate officers therefore could formally

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179 OR, Series 2, Volume 1, pp. 106-108.

180 OR, Series 2, Volume 1, p. 112.
register their belief that the paroles were unjust while stating that they would honour them regardless.

The adherence to personal honour and the belief that a man’s word could be trusted, were in theory, at the heart of parole. The officer exemplified this in his position and honour and shame were used as a way to regulate behaviour and conduct in the military. In the American Civil War this honour was extended to all white soldiers, as will be examined in more detail in the next chapter, but the American military officer was most closely linked to the traditional understanding and use of parole. The behaviour outlined in the Articles of War, was of course, the ideal. More than a gentleman’s word of honour was at stake in the parole system. Parole provided an easy and inexpensive way for warring governments to ensure POWs would not fight, threats of retaliation for mistreated prisoners were taken seriously and the use of parole signaled to other nations and the enemy a dedication to humanity in war.\(^1\) Furthermore, as the Civil War descended into carnage, personal honour was probably not the only incentive for men to keep to the terms of their parole. Despite all this, parole still worked on the assumption that one’s opponents were honourable.

Given the North and the South’s esteem for honour and a similar conception of a military gentleman, paroles were recognised as legitimate and important from the first gunshots of the war. Officers, such as Lieutenant-Colonel Reeve, who were asked back into service after the Texas surrender refused, on the basis that it would violate their personal honour. International law inspired the practice of parole and provided the framework for its employment in conflict. As the First Chapter discussed, the idea that

\(^{181}\) The Union made it clear as early as December 16, 1861 that where “prisoners of war are at large on their parole they will be expected to procure their own subsistence”, OR, Series 2, Volume 1, p. 153.
governments who forced their soldiers to undermine paroles gave evidence of semi-barbarism provided a strong incentive for the Lincoln administration to allow paroles to be honoured even when the status of the Confederacy remained subject to debate. The difference between ‘word’ and ‘oath’ in paroles indicates that the practice was distinguished by a military hierarchy, but the concept of honour underpinned both the officer’s word and the soldier’s oath.
Chapter III

HONOUR ON A GRAND SCALE

The Ideal and the Reality of Parole in the American Civil War

The ‘officer and gentleman’ was traditionally linked to the practice of parole, but in the American Civil War, the soldiers he commanded were also entitled to the privilege. Military parole was a product of European international law, but as it operated on assumptions of ‘honour’ it could be changed and molded to a society’s understanding of that cultural construct. In the American Civil War, a conflict fought predominantly by volunteers, the brave and virtuous ‘citizen-soldiers’ defending the cause of the Union or the Confederacy were also considered honourable.

At the start of the war, parole was used as a propaganda tool to measure and gauge the ‘dishonour’ of the enemy while reasserting the honour of one’s own troops. Similar to the expectations for the ‘officer and the gentleman’, in the beginning of the Civil War the ‘honour’ of the enlisted soldier was measured by his ability to abide by the terms of his oath. However, as the fighting progressed, this idea, and the belief that all white soldiers were gentlemen when it came to parole, was fundamentally challenged. The American Civil War was immense. Huge, cumbersome armies fighting against each other resulted in the large-scale paroling of thousands of men. The logistical and administrative dimension to the parole system was subsequently placed under considerable strain. The use of parole in promoting the honour of troops diminished, and in its place were suggestions that the parole system was being abused both by those in power and by dishonourable men skirting their military duties. In 1863, the Lincoln administration issued two General Orders which sought to limit paroles by returning to the traditional idea that only commissioned officers
were entitled to the practice.\textsuperscript{182} This chapter will examine the uniquely American way parole was employed during the Civil War and how the conflict itself challenged previous beliefs on this ‘honourable and humane’ POW system.

As the previous two chapters have argued, parole was as much a product of cultural assumptions within nations as it was a logical system of looking after prisoners. An understanding of international law and a conscious and public effort to follow the laws of war, highlighted to the rest of the world the ‘civilised’ character of the state. Paroles could also be signed and honoured in armies, provided that both sides recognised honour in the other, regardless of whether there were any official policies to regulate behaviour. Parole was an individual act based on personal honour as opposed to patriotic fervour. Governments could, of course, force paroled men to fight on threat of dismissal or even death, but in Europe and America such an act was regarded as uncivilised. Yet towards the end of the Civil War the practice of parole was largely disregarded by government and military officials.\textsuperscript{183} After 1863 there were still informal instances of parole, but the practice, for the most part, all but ceased; it was only given a reprise at the conclusion of the war in 1865, when the Union allowed honour in defeat for the Confederate armies by offering paroles of honour upon surrender, in lieu of punishments for rebellion.\textsuperscript{184}

Certainly after Lincoln’s Emancipation Proclamation, which came into effect in January 1863, relations and discussions on the fate of POWs between the North and the South


\textsuperscript{184} Bertram Wyatt-Brown, \textit{The Shaping of Southern Culture: Honor, Grace, and War, 1760-1880s} (Chapel Hill and London: The University of North Carolina Press, 2001), p. X.
broke-down.\textsuperscript{185} The Emancipation Proclamation essentially stated that all slaves were free, and allowed African Americans to fight for the Union.\textsuperscript{186} Not surprisingly, the South, fearful of an uprising by their slave population and adamant that black troops were not legitimate soldiers, did not take kindly to Lincoln’s decision.\textsuperscript{187} Still by 1862, the same year the General Exchange Cartel was established, there was a growing disillusionment with the practice of parole. Despite the honour cultures in nineteenth-century America supporting the system’s operation and its sanction under international law, by 1863 parole was no longer viewed as a viable POW practice.

One compelling reason for the changing conceptions on parole was the changing nature of warfare. As stated in the First Chapter, international law was as much an intellectual debate as it was an international system to regulate state behaviour. As state practice defined international law, theories on the laws of war could sometimes be out of sync with the realities of warfare. At the dawn of the nineteenth century the practice of parole had already started its demise in European warfare. The two nations that Vattel had once commended for their use of the practice, Britain and France, were struggling to maintain a reciprocal parole system during the Napoleonic Wars (1803-1815).\textsuperscript{188} As

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\textsuperscript{185} James M. Gillispie, Andersonvilles of the North: The Myths and Realities of Northern Treatment of Civil War Confederate Prisoners (Denton: University of North Texas Press, 2008), p. 4.


\textsuperscript{187} See: President Jefferson Davis Proclamation (General Orders, No. 111), 24 December, 1862: United States War Department, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies, Series 2, Volume 5 (Washington: Government Printing Office, 1899), pp. 795-797, cited hereafter as Official Records with ‘OR’; Davis argued that if Lincoln’s Emancipation Proclamation was enacted the nature of the war would change, “the African slaves have not only been excited to insurrection by every license and encouragement but numbers of them have actually been armed for a servile war—a war in its nature far exceeding in horrors the most merciless atrocities of the savages.” OR, Series 2, Volume 5, p. 797.

historian Michael Lewis notes, this was more so the fault of the French than the British.189 The French Revolution and Napoleonic Wars had uprooted the traditional eighteenth-century style of warfare and definition of an officer and a soldier.190 Huge national armies were not a common feature of eighteenth-century wars and the distinction that only aristocratic officers could give their parole meant that the practice was naturally limited.191 The French Revolution challenged this. Much more emphasis was placed on the national dimensions of warfare, particularly during the Napoleonic Wars.192 The famous Prussian military theorist Carl Von Clausewitz noted the new nationalistic fervour that permeated the Napoleonic Wars when he discussed the ‘character of contemporary warfare’: "All these cases have shown what an enormous contribution the heart and temper of a nation can make to the sum total of its politics, war potential, and fighting strength."193 In other words, a state’s ability to wage war was enhanced by the nationalistic sentiment of its people. France, in particular, embraced the citizen-soldier because with Déclaration des droits de l’Homme et du Citoyen (1789) the ‘French citizen’ was created.194 The rise of the humble Corsican Napoleon Bonaparte to Emperor of France loudly proclaimed the fall of the ancien regime and the aristocratic conception of honour.195 Parole was still employed during the Napoleonic Wars, but with less regularity and regard for the practice among

189 Lewis, Napoleon’s Lost Legions, p. 45.
191 Lewis, Napoleon and his British Captives, p. 15.
French soldiers. Parole thus faded in Europe as the nature of European armies and warfare changed.

A similar argument can be made for the American Civil War. The Americans embraced parole because, despite a striking blow to the practice in Europe, military parole was still promoted in the nineteenth-century international legal textbooks and state rhetoric as being an honourable and humane POW practice. Indeed, the international Hague Convention of 1899 codified parole in its treaty on the ‘Laws and Customs of War of Land’. This was done despite the fact that the American Civil War was the last western conflict where parole was regularly employed by both sides and honoured by both armies. Ideals of international law could still be promoted even if they were not practiced. As the American Civil War was one of the bloodiest conflicts of the nineteenth century, costing over 620,000 American lives, with technological improvements in weaponry and transport and strong nationalistic dimensions, parole may have simply lost relevance in America, as it did in the Napoleonic Wars. Nevertheless, such an explanation ignores a fundamental difference between the two conflicts. Whereas in France, the fall of the aristocracy led to a disregard for the aristocratic practice of parole, in the American Civil War, parole was incorporated into arguments about the ‘honour of the

196 Lewis, *Napoleon and his British Captives*, p. 45; Daly, ‘Napoleon’s Lost Legions’, p. 367.

197 Article 10 stated: “Prisoners of war may be set at liberty on parole if the laws of their country authorize it, and, in such case, they are bound, on their personal honor, scrupulously to fulfill, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.”, ‘Laws of War: Laws and Customs of War on Land (Hague II); July 29, 1899’, in Charles I. Bevans (ed.), *Treaties and Other International Agreements of the United States of America 1776-1949*, Volume 1 (Washington, DC: Government Printing Office, 1968). Available at: Yale Law School, ‘The Avalon Project: Documents in Law, History and Diplomacy’ (2008), <http://avalon.law.yale.edu/19th_century/hague02.asp> viewed 27 August 2011.

198 There have been instances of parole after the American Civil War, but such cases are generally regarded as ‘exceptional’. See: Stephen C. Neff, ‘Prisoners of War in International Law: The Nineteenth Century’, in Sibylle Scheipers (ed.), *Prisoners in War* (Oxford: Oxford University Press, 2010), pp. 61-62.

nation’ and its soldiers. The Americans started from the assumption that all white citizen-soldiers had honour and were entitled to give their ‘oath of honour’ if made a POW.

All white soldiers, in both the Confederate and Union armies were entitled to parole, regardless of rank or social class. The only group absolutely excluded from the practice were African Americans. As an article in the abolitionist newspaper *Douglass’ Monthly* made clear in 1861, “[t]he idea of sending free negroes through here on a parole of honor was ridiculous”. For white soldiers, the idea of receiving a ‘parole of honour’ was expected. While there was a distinction between officers and soldiers, the white volunteer or citizen-soldier was highly esteemed in American society. Henry Wager Halleck addressed the common assumptions antebellum Americans held on warfare in his influential textbook, *Elements of Military Art and Science* (first published in 1846 and republished in 1861 and 1862). Halleck felt the need to dedicate a whole chapter to the importance of military education as a way to refute the arguments put forth by critics of West Point. One prominent criticism, inspired by America’s history, was:

> It has been alleged by many opponents of the West Point Academy, that military instruction is of little or no advantage to a general; —that in the wars of Napoleon, and in the American Revolution, and the American War of 1812, armies were generally led to victory by men without a military education, and unacquainted with military science; —and in the event of another war in this country, we must seek our generals in the

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200 ‘A Free Man Sold into Slavery- He Escapes with a Slave Girl’, *Douglass’ Monthly*, September, 1861. The fact that black troops were not entitled to the same POW privileges in the South became a rallying device for Union enlisted black men: “Do we wish to go down South as parole warriors? You, brethren, who have pined in bondage, you who have wives or children or parent writhing under the lash, do you, can you ask any more than a chance to drive bayonet or bullet into the slaveholders’s heart?”, ‘Frederick Douglass at the Cooper Institute’, *Douglass’ Monthly*, March, 1863.
ranks of civil life, rather than among the graduates of our Military Academy.\textsuperscript{201}

Being a graduate of West Point himself, and an officer in the United States Army, Halleck denied that civilians alone could defend the country “however intelligent, patriotic, and brave they may be.”\textsuperscript{202} The Lincoln and Davis administrations shared Halleck’s sentiments as they commissioned graduates of West Point as their officers.\textsuperscript{203} Still, newspapers and popular opinion highly praised and rallied around the citizen-soldier. The South Carolina newspaper the \textit{Charleston Daily}, for example, waxed eloquent: “Doth it not make the heart rejoice to hear of those volunteers...encounter the dangers of war, the pestilence of camp...yet each man determined upon winning a patriot’s grave or living the life of a sovereign freeman?”\textsuperscript{204} At the start of the Civil War, the examples of virtuous and dedicated citizen-soldiers defending their freedom and way of life must have been especially appealing to Americans who viewed themselves as fighting to maintain the Union or seceding to establish their independence.

The honour traditionally reserved for the officer was therefore extended to the common soldier in the early years of the Civil War. Given that Civil War armies were predominantly made up of volunteers, the paroling of citizen-soldiers, in many ways, could hardly be otherwise.\textsuperscript{205} America was a democracy, and while the majority of soldiers may

\begin{itemize}
\item \textsuperscript{201} Henry Wager Halleck, \textit{Elements of Military Art and Science; Or, Course of Instruction in Strategy, Fortification, Tactics of Battles, &c. Embracing the Duties of Staff, Infantry, Cavalry, Artillery, and Engineers} (New York: D. Appleton & Company, 1861), p. 382.
\item \textsuperscript{202} Halleck, \textit{Elements of Military Art and Science}, p. 407.
\item \textsuperscript{204} ‘Our Virginia Correspondence’, \textit{Charleston Daily Courier}, May 15, 1862, p. 1.
\item \textsuperscript{205} Joseph T. Glatthaar, ‘The Common Soldier of the Civil War’, in John Y. Simon and Michael E. Stevens (eds.), \textit{New Perspectives on the Civil War: Myths and Realities of the National Conflict} (Madison: Madison House, 1998), p. 120.
\end{itemize}
not have been familiar with military discipline, they were concerned with their rights.\textsuperscript{206} According to historian Bruce Tap, West Point had the reputation in antebellum America of being “elitist”.\textsuperscript{207} Many of the graduates came from prominent, wealthy American families who supposedly made their way through life based on their influence as opposed to their merit.\textsuperscript{208} The idea of a professional, standing army also had a decidedly “Old World” feeling to many Americans.\textsuperscript{209} Furthermore, in civilian life, nineteenth-century Americans did not ascribe honour solely to military officers. The nineteenth-century Confederate or Union officer was not aristocratic and honour was based on the recognition and esteem of one’s peers—applicable, albeit in different ways, to any social class. In both the Union and Confederate armies, soldiers from a variety of backgrounds were concerned with their personal honour.\textsuperscript{210} The need to address the practice of duelling in the Articles of War, for example, was testament to a wider honour culture among nineteenth-century American men. As a result, the privilege of parole could not be given to the wealthy officer but denied to brave, honourable and patriotic men he commanded.

In a war where the integrity and legitimacy of the nation was paramount for both sides, the honour of one’s soldiers was very important. Both ‘nations’ were also working under the same framework of military honour as outlined by the Articles of War. Somewhat paradoxically, the fact that military honour was seen as important for both the North and

\textsuperscript{206} McPherson, \textit{Battle Cry of Freedom}, p. 327.

\textsuperscript{207} Bruce Tap, ‘Inevitability, masculinity, and the American military tradition: the committee on the conduct of the war investigates the American Civil War’, \textit{American Nineteenth Century History}, vol. 5, no. 2 (Summer 2004), p. 25.

\textsuperscript{208} Tap, ‘Inevitability, masculinity, and the American military tradition’, p. 25.


the South, meant that newspapers on both sides used the early paroles to promote the honour of their troops by highlighting the dishonour of the enemy’s. Though critical of the Republican party and President Lincoln, the Northern newspaper *Brooklyn Daily Eagle* made it clear in September 1862 that the honour of soldiers reflected the honour of the nation: “No officer or private has the right while under parole to join his own or any other regiment. He might be willing to take the risk of detection at the hands of the rebels, but he has no right to jeopard the honor of the nation.”

Personal honour and the honour of the nation were therefore linked in this article. Abiding by one’s word of honour was an integral attribute of the nineteenth-century gentleman. As the gentleman was fighting for the nation he was putting both his good name and that of the nation’s to the test when he pledged his parole.

The argument that officers and soldiers who broke parole ‘dishonoured’ themselves was strong at the start of the conflict. Upon hearing rumours that the Lincoln government might not recognise the paroles signed by Union men at San Antonio, Texas, the secession-supporting New Orleans newspaper the *Daily Picayune* argued that the Federal government “insists, as it appears, on enforcing its own immoral code upon its official subordinates” by forcing men to “dishonor themselves” by breaking parole. The argument that ‘rebels’ had no honour was likewise articulated early in the Northern press. The moderately Republican and very large daily newspaper, the *New York Times* argued that the South had dishonoured themselves by seceding, stating “the idea of letting him [a Confederate soldier] off on a parole of honor is a delusion...there is no honor in a rebel.”

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The New York newspaper *Frank Leslie’s Illustrated Newspaper* in April 1862, argued that parole-breaking came naturally to the Confederates as “our foe is as unscrupulous as he is bloody and treacherous”. The article claimed: “We will venture the assertion that full half of the rebels whom Burnside parolled at Roanoke, he will be obliged to meet a second time in battle.” As these examples suggest, the dishonour of the enemy was exemplified by his failure to keep his word or oath.

Towards the end of 1862 it became apparent that the honour spread over the entire Confederate and Union armies was perhaps spread too thin. Due to the size of American Civil War armies, the sheer number of men taking an oath that they would not fight until exchanged was immense. In the first year of the war, the Union had 575,917 soldiers and the Confederacy had around 326,768 soldiers fighting for their cause. Neither the government nor people in both the North and the South anticipated the conflict to be this massive. The confusing and bloody nature of Civil War battles saw many soldiers captured as POWs in the smoky aftermath. In 1861, after the surrender of Confederate General John Pegram to Union General George B. McClellan, McClellan found himself with 900 to 1,000 prisoners to take care of. In his letters to officials, he referred to the question of what to do with these prisoners as “embarrassing” and asked “[p]lease give me immediate instruction by telegraph as to the disposition to be made of officers and under men taken prisoner of war.” McClellan was instructed to allow the soldiers their oath.

214 ‘Parole’, *Frank Leslie’s Illustrated Newspaper* (New York), April 19, 1862.

215 ‘Parole’, *Frank Leslie’s Illustrated Newspaper*.


218 For an account of the sights and sounds on the Civil War battlefield, see: James A. Davis, ‘Music and Gallantery in Combat During the American Civil War’, *American Music*, vol. 28, no. 4 (Summer 2010), pp. 142-152.

219 OR, Series 2, Volume 3, p. 9.
and the officers their ‘word of honour’.

As the war continued, the number of paroled men increased. The Confederate victories in the Battle of Richmond, Kentucky (August 29-30, 1862) and the Battle of Munfordville, Kentucky (September 14-17, 1862), for example, both resulted in the large-scale parole of roughly four-thousand Union soldiers.

After the battle of Vicksburg, Mississippi (July 4, 1863), a staggering thirty-thousand Confederate POWs were placed on parole. The traditional conception of parole, with its natural limitation to officers was therefore being extended to accommodate thousands of men.

The simple mechanisms for keeping the parole system in operation started to collapse under its own weight. Keeping records of all the men paroled for future exchanges and subsequent reentry into the army would have been a daunting an almost insurmountable task. David L. Day, a soldier in the Massachusetts Volunteer Infantry, recorded in his diary entry for the 18 February 1862: “The [Confederate] prisoners are all paroled, and were sent off today. Paroling the prisoners was rather interesting to lookers on. They were required to affix their autographs to the parole, and it was curious to observe that a large majority of them wrote it in the same way, simply marking the letter X.”

The need for clear records was vital for parole as it allowed the enemy to recognise men who broke their oath or word and it provided information for their own government on who could be exchanged and reenter the ranks of service. The marking of the ‘X’ by the

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220 OR, Series 2, Volume 3, p. 10.
Confederate soldiers on their paroles also suggests that the practice as a whole was fundamentally changing during the Civil War. Some white men in the South were illiterate during the Civil War era, especially if they came from poorer areas, but the majority of enlisted men would have had some form of education.224 Whether the soldiers observed by Day really were illiterate, simply too lazy or apathetic to sign their name or whether that aspect of the entry was an embellishment, the ‘X’ still signifies the anonymity of the Civil War ‘soldier parole’. What was intended to be an individual act based on personal honour between two military men was now a huge administrative endeavour. The personal honour that formed the basis of the parole system could get lost in the grand scale of oaths given by patriotic men. After the large-scale parole of Confederate POWs at Vicksburg, for example, Confederate Lieutenant-General E. Kirby Smith relayed an order “for all officers and soldiers paroled at Vicksburg and Port Hudson...to report to the various camps of instruction” as many of the prisoners paroled after the surrender had “yielded to the desire to visit their homes” when they were not supposed to.225 The Confederacy blamed the Union for allowing them to “pass through their lines” and become “scattered far and wide”.226

In other words, the parole system was easy to abuse. With thousands of men paroled at once, the individual emphasis on ‘personal honour’ was undermined. The war had gone on for much longer than anticipated, the number of war dead went from thousands to tens of thousands and armies continually called for more men.227 The sheer scale of the war had


225 OR, Series 2, Volume 6, pp. 203-204; Also see: Weitz, *More damning than Slaughter*, p. 165.

226 OR, Series 2, Volume 6, p. 204.

shrouded the common soldier in a cloak of anonymity. Both armies recognised this and sought to find justifications and loop-holes for disregarding soldiers’ oaths by getting men back into battle. Union Major-General Nathaniel Prentiss Banks, for example, wrote to Confederate General Richard Taylor in August 1863 “I have the honor to inform you that I have directed the immediate return to duty of all prisoners paroles by you....My reasons for doing so are that the paroles were in violation of the cartel of exchange”.228 An article in the Southern, pro-Confederacy newspaper, *The Charleston Mercury* in July 1863, justified the government’s refusal to recognise “the paroles given to officers and soldiers captured by the Yankee forces under Sanders, in their recent raid in Tennessee” by claiming that the Union government had never recognised the paroles given to Union soldiers by guerrilla fighter Morgan.229 The personal honour of the men was not discussed in these two examples, and it appears that the idea that it was semi-barbaric or immoral to force paroled men to fight had lost most of its influence. Both sides still justified their actions, but practical considerations outweighed considerations of honour.

The use of large-scale paroles also profoundly affected the practice in another way. Whereas at the start of the conflict, the personal honour of the soldier was linked to the honour of the nation, by late 1862 and early 1863 criticism was directed towards the idea that paroles were preventing, or being deliberately used by soldiers to avoid, their military duty. Desertion through parole became a problem for both Confederate and Union armies by late 1862.230 The nature of the war itself provided strong incentives to desert. The American Civil War was undoubtedly America’s bloodiest conflict, costing more lives,

228 OR, Series 2, Volume 6, p. 209.


according to historian James McPherson, than all of America’s “other wars combined through Vietnam”. Dead bodies accumulated both as a result of the fighting and the diseases that flourished under the hardships of the war. Guerrilla warfare and irregular killings in the ‘border states’ (states loyal to the Union but divided within by loyal Northern and Southern supporters) also saw the level of violence escalate with mutilated corpses. The North, and particularly the South, began to feel the economic strain of the conflict as the war transformed into one of attrition. In the spring of 1862 conscription was employed by the Confederacy and the Lincoln administration issued their conscription act in March 1863. Men were no longer flocking to defend their cause and coercion was needed to fill the ranks. The large-scale use of paroles, in this context, became a convenient excuse for men who no longer wanted to fight.

A patriot could not defend his cause if he was placed on parole. As historian Paul Robinson suggests, by the First World War, the ‘honour’ of the captured soldier had undergone a complete change. Both Britain and Germany “forbade their men from giving their paroles. After capture, a man was now expected to regain his honour by trying to escape.” This was not yet the case in the American Civil War soldier. Still, while keeping one’s oath or word was honourable, it became dishonourable if that oath was used to avoid military obligations. The Northern newspaper Chicago Tribune, a major Republic paper, published an article in February 1863 on 10,000 blank paroles printed by a Union


232 Capdevila and Voldman, War Dead, p. 2.


234 McPherson, Battle Cry of Freedom, p. 333.


general (referred to as “Gen. Gunspiker”) to be signed and handed to the Confederates prior to any actual fighting. The article concluded with: “Gen. Gunspiker represents a too large class of men in the service, who are eager to find any enemy not to fight, but to parole them.”237 The satirical ‘Song of the Sneak’ was likewise published in the Northern magazine The Continental Monthly in December 1862. The song told the story of a group of Union soldiers only too happy to be placed on parole: “When we won’t have no more fighting...Yet in our pay delighting/ We can loaf at ease, all day/ And keep clear of guns affrighting”.238 The song subverted the idea of paroles being honourable by suggesting that the men who signed them were cowards, given their desire to keep clear of “guns affrighting”, and dishonest as they took pay while loafing “at ease, all day”. The song was preluded with the message: “Thousands and thousands ‘have taken the word’ and thereby incapacitated from taking further part in the war” the ‘Song of the Sneak’ was intended to awaken people to “the infamy which a ready surrender on parole conditions brings”.239 These articles were referring to the dishonour of Union men by publications that were sympathetic to the Union cause.

There was justification in their complaints. Two Union POWs, after being asked back into the service, for example, informed their officer “we were taken prisoners at Lexington and there surrendered our arms to General Price of the Confederate Army. We there took a solemn oath before God and man that we would not take up arms against the Southern Confederacy.”240 Accordingly, these men claimed that it was their “duty to stand by that

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239 ‘Song of the Sneak’, pp. 750-751.

240 OR, Series 2, Volume 1, p. 144.
oath”. While this was admirable, they also insisted “we do not think that an exchange will relieve us from that oath....The officers of this regiment can return to service with a clear conscience as they did not take an oath but were released on a parole of honor and have been exchanged.” Not being able to get men back into the army would have been just as problematic for the parole system as soldier’s breaking their oath. The argument put forth by these two men was perhaps even more insidious than breaking one’s oath by fighting again for the nation’s cause. They were using the pretext of an ‘honourable obligation’ to the terms of their oath as a way to avoid their obligations to the army. There was a fine line between honourable and dishonourable uses of parole.

General Orders No. 49 and General Orders No. 100 issued by the Union, sought to limit the use of parole by returning to the traditional European idea that only commissioned officers were entitled to the practice. General Orders No. 49, published in February 1863, made it clear that “[n]one but commissioned officers can give the parole for themselves or their commands, and no inferior officer can give a parole without the authority of his superior within reach.” Non-commissioned officers or privates could not give their parole “except through an officer” and “[i]ndividual paroles not given through an officer are not only void but subject the individuals giving them to the punishment of death as deserters”. General Orders No. 49 therefore made it unambiguously clear that common soldiers giving their oath that they would not oppose the enemy would no longer be tolerated—on threat of a dishonourable death. General Orders No. 100, published two months later, stated that release “of prisoners of war by exchange is the general rule;

241 OR, Series 2, Volume 1, p. 144.
242 OR, Series 2, Volume 1, p. 144.
243 War Department, ‘General Orders, No. 49’, p. 90.
244 War Department, ‘General Orders, No. 49’, p. 90.
release by parole the exception”. Additionally, both documents stated that there was to be “[n]o paroling on the battle-field; no paroling of entire bodies of troops after a battle; and no dismissal of large numbers of prisoners, with a general declaration that they are paroled is permitted, or of any value.” This was less than a year after the 1862 General Exchange Cartel stated that all prisoners, of whatever rank, were to be paroled or exchanged within ten days of their capture.

As outlined in the Second Chapter, the idea that only officers could give parole was the common practice in eighteenth-century and early nineteenth-century Europe. Francis Lieber, a German immigrant with military experience in the Battle of Waterloo and the Greek Revolution, was the main author of General Orders No. 100 and was well educated in international law. Emmerich de Vattel and other prominent international legal theorists had always maintained the distinction that parole was generally reserved for officers—General Orders No. 49 and 100 were consequently not creating a new use for parole but rather were reaffirming the traditional idea.

This did not stop the Confederate government, however, from objecting to the Union’s departure from the terms agreed upon in the 1862 Cartel. The Confederate Secretary of War James A. Seddon, upon receiving notice that General Orders No. 100 was to serve as the basis for military practices between the North and the South objected “to the claim of the United States to determine under when or what circumstances the parole of a

245 War Department, ‘General Orders, No. 100’, p. 66.
246 War Department, ‘General Orders, No. 49’, p. 90; War Department, ‘General Orders, No. 100’, p. 66.
prisoner may take place.”248 Seddon even accused Lieber of being “one much more familiar with the decrees of the imperial despotisms of the continent of Europe than with Magna Charta, the Petition of Rights, the Bill of Rights, the Declaration of Independence, and the Constitution of the United State.”249 Seddon’s language made it very clear that the idea of changing the parole system back to its traditional use was ‘un-American’. The Lincoln administration, however, remained firm in their stance on paroles, and while the Confederacy complained about the change to the Cartel agreement, large-scale paroles were problematic for Confederate armies too.250

The Davis administration did not waver in their stance, at least in rhetoric, that they could employ large-scale paroles against their enemy.251 If paroles ceased, then the principles of honour and humanity in international law dictated that prisoners were to be well-fed and comfortably defined at the captor government’s expense. This posed a problem for the poorly prepared and financially drained Confederate States.252 Nevertheless, according to historian Mark A. Weitz, desertion through parole was a key problem for Confederate armies, exacerbated by the fact that Southerners in 1863 were fighting what now seemed to be a losing war.253 As desperate, sometimes starving family members appealed to their male relatives for help, and as Confederate rations dwindled,


249 Seddon, ‘Confederate Secretary of War, Richmond, to Ould’, p. 128.


251 OR, Series 2, Volume 5, p. 979.

252 Sanders, While in the Hands of the Enemy, p. 52.

253 Weitz, More Damning than Slaughter, p. 165.
returning home was increasingly tempting for Confederate soldiers. Any potential agreements or new mutually agreed upon POW policies were also out of the question once the Emancipation Proclamation forced the Confederacy to face its own racial fears. By placing black Union soldiers “outside the protections of honour and humanity” relations between the North and South broke down and paroles, for the most part, ceased. The Emancipation Proclamation, however, was simply the final nail in the coffin. The parole system had been faltering since late 1862. The personal honour that formed the basis of the practice of parole became dissipated in the immense wave of ‘patriots’ taking an oath that they would not fight until exchanged.

In the American Civil War, the practice of allowing all white soldiers the privilege of parole was crushed by the sheer number of men giving their oath. What was generally conceptualised by international legal theorists as a limited POW practice between officers, was stretched to facilitate thousands of men. At the start of the conflict, parole was used to highlight the honour of one section’s soldiers by arguing for the dishonour of the other army. International law served as the framework for POW policies, and the honour traditionally reserved for the commissioned officer, was extended to the men he commanded in compliance with America’s democratic character. As the conflict continued, however, large-scale paroling garnered criticism for its logistical problems and an attempt was made by the Union to return to the traditional practice of paroling only commissioned officers. The parole system was under considerable strain by 1863 and with the Emancipation Proclamation communications and reciprocal efforts to fix the system were not carried out. Still, prior to the Emancipation Proclamation, the pledging and keeping to

one’s word of honour was no longer linked to the honour of the nation. A patriot could not
defend his cause if he was placed on parole. In linking the ‘honourable’ practice of parole
to the ‘dishonourable’ act of desertion it is clear that there was a general disillusionment
with the system, particularly in the North, mid-way through the conflict. The ideal of
military honour did not completely fade in this period, but the personal honour and
individual act of pledging one’s word or oath was increasingly lost in the grand scale of the
American Civil War.
CONCLUSION

On the 9th of April 1865, at the Appomattox Court House, Virginia, Confederate General Robert E. Lee signed the most important parole of the American Civil War. Lee and his men pledged to Union Lieutenant General Ulysses Grant that they “do hereby give our solemn parole of honor that we will not hereafter serve in the armies of the Confederate States, or in any military capacity whatever, against the United States of America.”\textsuperscript{256} The Confederate armies issued the first paroles of the American Civil War and the Union issued the paroles that concluded the four years of carnage.

The parole signed by Confederate General Robert E. Lee suggests that the ideals of military honour and humanity made it through the conflict. However, they did not make it through unscathed. The paroles signed at the conclusion of the American Civil War were a reprieve of a practice that largely ceased in 1863. The concept of nineteenth-century military honour, exemplified by the practice of parole, was severely challenged throughout the course of the American Civil War.

At the start of the war, the parole system was quickly and naturally adopted by the two armies. Both Northern and Southern soldiers recognised honour in the other and trusted their enemy to keep his word. The use of parole in the early years of the conflict demonstrates that nineteenth-century American military institutions were engaged with, and promoted, European tenants of international law and ‘gentlemanly’ conduct in warfare. Both the Confederate and Union governments wished to be viewed as ‘honourable’ nations in an international context. The honour cultures that permeated both Northern and

Southern societies and found expression in the 1806 Articles of War, provided the basis for the practice of parole in the American Civil War. Pledging one’s word or oath was a serious business in a society where the concepts of honour and shame were used to regulate respectable conduct. In the community of nations, the distinction between ‘savage’ and ‘civilised’ modes of warfare provided a strong incentive for the newly declared Confederate States of America to issue paroles and for the initially wary Union to accept and reciprocate the practice. The use of parole was even incorporated into the larger debates about the righteousness of both sides’ ‘cause’ and the honour of Union and Confederate soldiers.

By taking military parole out of the broader narrative of Civil War POW policies and placing it within the context of a nineteenth-century understanding of military ‘honour’, it is possible to examine the way in which Civil War armies interpreted the practice of parole and the implications this had on its use. In compliance with the democratic character of American society and the esteem held for the dedicated, volunteer citizen-soldier, the privilege of parole was permissible for all ranks of white conventional soldiers. By extending the privilege of parole to all soldiers in a war on the scale of the American Civil War, the personal honour that formed the basis of the practice began to dissolve.

Military parole worked best in a world where men who dishonoured their word would be found out and shamed. As honour was about appearance, the pledging of one’s word or oath was done not only for the individual himself but for his audience. On a limited scale, the laws of honour were easier to observe and wielded more influence because of man’s ‘good name’ or personal honour was more pronounced. In the American Civil War, as enlistments rapidly increased and the number of dead soldiers went from
thousands to tens of thousands, the individual soldier became increasingly anonymous. He was just one in thousands who pledged his oath and then waited for instructions on what was expected of him next.

As the nature of the Civil War itself took on a more brutal and less ‘honourable’ character, the problem of desertion through paroles warranted official attention. The anonymity brought about by the use of large-scale paroles, meant that the parole system was easy to abuse. Due to war weariness and the unexpected longevity of the conflict, by 1863 both the North and the South were using conscription to help fill their ranks. Around this time a changing public perception regarding the ‘honourable’ nature of paroles was discernible, particularly in the North. The idea that keeping one’s word was always honourable was replaced with the criticism that men were using their ‘oath’ or ‘word of honour’ to avoid their duties to the nation. Using parole solely to avoid military obligations was cowardly, not honourable. As suggested by the two General Orders issued by the Lincoln administration in 1863, mid-way through the conflict there was a general disillusionment with parole. By extending the practice of parole to all white soldiers in a large and brutal war, the word of an officer and the oath of a patriot was transformed from an idealised and highly esteemed display of military honour, to a military anachronism.
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