

# Charting Hinduism's rules of armed conflict: Indian sacred texts and international humanitarian law

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## Abstract

*What does Hinduism have to say about the rules of armed conflict? How might Hinduism enrich the modern global discourse on international humanitarian law (IHL)? What convergences might be found, and what areas of divergence? This paper examines and contextualizes the rules of armed conflict advocated in classical Hindu texts, especially in the epic Mahābhārata, where important norms of Hinduism are established. It also examines the other major epic, the Rāmāyaṇa, and the Dharmaśāstras (Law Codes), as well as the Arthaśāstra, which takes an alternative (realpolitik) approach. This paper focuses on conduct during armed conflict (jus in bello), now synonymous for many with IHL, rather than considerations leading up to war (jus ad bellum). The paper seeks to illuminate*

\* This work was funded by the International Committee of the Red Cross (ICRC). The authors thank the ICRC's Head of the Global Affairs Department in Asia, Andrew Bartles-Smith, and Daniel Ratheiser for administering the funding, for excellent coordination and for very useful feedback. Expert insights were also kindly provided by Dr Noel Maurer Trew of the International Law Department, British Red Cross, and Ted Ulrich of St Thomas University. Excellent research assistance was provided by Valters Negribs, Purushottam Pratik and Heeral Kahlon. Any errors in the text remain the authors' alone.

*both convergences and divergences with IHL and highlight particular Hindu approaches on the righteous (dharmic) application of violence. Like IHL, classical Hinduism values (1) proportionality of force during armed engagement; (2) the minimization of human suffering during combat; (3) care for survivors of war; (4) immunity towards non-combatants, especially civilians; and (5) balancing military necessity with humanity. With respect to divergences, classical Hinduism extols non-violence in ways that critique even the warrior's duty to engage in righteous war (dharma yuddha). In contrast to IHL, the Hindu epics have some different limitations; for instance, they limit the right to combat to a particular caste, the kṣatriyas, though this concept could be modernized to mean uniformed personnel of the State. The epics also disavow certain practices that are legal under IHL, such as ambushes and surprise attacks against legitimate targets. The Hindu proportionality provision goes beyond IHL by prescribing that only warriors of the same type should fight. With its many deeply ethical considerations, Hinduism enriches modern IHL through its heightened emphasis on fair and humane conduct in battle and its call towards compassion on behalf of both combatants and non-combatants.*

**Keywords:** code of conduct, combat, *dharma yuddha*, Hinduism, international humanitarian law, *jus in bello*.

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## Setting the “Hindu” stage

Key to understanding Hinduism is knowing that “Hinduism” is not a religion in the traditional Western sense of the word. Hinduism is not even an indigenous Indian word, nor does it have a corollary in any Indian vernacular. The term was coined in early nineteenth-century colonial India by the British to label and demarcate one set of religious traditions of India as distinct from the Abrahamic religions (i.e., Christianity, Islam and Judaism) and other forms of Indic worship (e.g., Jainism and Sikhism, which are closely linked as dharmic religions). The term “Hindu” was an innovation on the ancient Sanskrit term “Sindhu”, which was a Persian term for those who lived beyond the Indus river, a river referred to in ancient Sanskrit texts. The term “Hinduism” refers to a civilizational ecosystem of culture, thought and practice indigenous to large parts of what is now called South Asia and also practised in other parts of the world.

The word “Indian” in this paper refers to this very same “civilizational India” that far surpasses the temporal and geographical boundaries of the modern nation State of the same name.<sup>1</sup> India remains a cultural ecosystem, the

1 Analogues to this distinction include civilizational “Egypt” versus Egypt the modern nation State, and likewise, the ancient notion of Israel, which far transcends its nation-State namesake.

religious aspects of which we consider primarily Hindu. Hinduism is not one body of thought and beliefs but a complex network of traditions. Therefore, the common description of Hinduism as a religion without a founder or central canon is inapt, though it is often used to contrast Hinduism to Judaism, Christianity and Islam, among “world religions”. There are a number of Indian religious, philosophical and spiritual traditions that have founders and central texts, but all would consider themselves applications within the civilizational ecosystem we label as Hinduism. Beyond species or genus, Hinduism refers to the religious “jungle” we find in India. And yet, far from being complete chaos, there are discernable patterns, principles and relationships in Hinduism.

Given the vast spans of time and religious change being referred to, “Hinduism” must be viewed as an umbrella term denoting multiple traditions. While the textual tradition of the Purāṇas (compendia of mythological lore and popular teachings) is considered relatively late (circa 500 CE), authored after the Sanskrit epics (circa 400 BCE–400 CE) and long after the appearance of the Rig Veda (circa 1500 BCE), they were nevertheless authored some fifteen centuries ago. This relatively late Purāṇic tradition is therefore approximately the age of Islam, while most of Hinduism originates from far earlier.

The ancient Sanskrit texts – narrative/story texts in particular – continue to play a crucial role in articulating and perpetuating Hindu values and beliefs. It is therefore inapt to conclude that “most Hindus base their practice on the lives and teaching of medieval and modern saints, rather than on the ancient texts themselves”.<sup>2</sup> The Sanskrit epics, in particular, are invoked at every turn throughout the Hindu world as scriptural sources and exemplars for Hindu life. As such, this is where we find the most cogent and influential articulations of Hindu codes, including the rules of engagement for combat that will be considered in this paper.

The paper thoroughly reviews Indian attitudes towards combat in the sacred Hindu texts. It compares these rules of armed conflict to international humanitarian law (IHL) in order to elucidate both the similarities and the differences between them. While the convergence is remarkable, the differences are, in places, also significant. These rules must also be viewed within the larger debate within Hinduism on violence and non-violence.

## Syncretic soil and (non-)violence

The Hindu soil is a syncretic one, to which traditions have been grafted over the ages – yet it is watered by the wellspring of ideologies in the Sanskrit epics. Thinkers and reformers will innovate religious beliefs and practices, but they will almost always invoke tradition and the epics while doing so. Even new religious ideas are usually folded into long-standing religious traditions. Far from being monolithic, Hindu religious traditions are varied and textured. Hinduism thrives

2 Valerie Morkevicius, “Hindu Perspectives on War”, in Howard M. Hensel (ed.), *The Prism of Just War*, Routledge, London and New York, 2010, p. 170.

on the syncretic spirit, and multiple waves of religious traditions have been grafted onto what we think of as Hinduism.

The Sanskrit epic tradition marks a very important project reconciling two conflicting religious traditions – Vedic and ascetic – and forms the bedrock of current Hindu ideals. Yet crucial to understanding the Hindu approach to armed conflict is the fact that these two ancient traditions have diametrically opposing attitudes towards violence. The Vedic religion is the oldest surviving strata of Indian traditions, and stands in stark contrast to the ascetic tradition. The Vedic tradition comes from the ancient Aryans from whom we get the Sanskrit language, the most ancient member of the Indo-European language group. To this day, Sanskrit is the sacred tongue of Indian traditions, used for ritual utterance, philosophy and narrative. Sanskrit brings with it an air of culture and religious orthodoxy. The most ancient surviving religious texts in the world are the Vedas, the Sanskrit hymns intoned by the ancient Aryan priests into the ritual fire. The Rig Veda is the most ancient part of this compilation, conservatively dated to circa 1500 BCE. The Vedic tradition is very much alive to this day, and is a cornerstone of Hindu practice. The Vedic fire sacrifice at the centre of ancient Aryan religion is a religious strand that is widely observed today in the Hindu world.

## Vedic ideals

The Vedic hymns are addressed to a pantheon of Vedic gods, primarily Indra, the thunderbolt-wielding king of the gods (cf. Zeus, Jupiter, and Odin); Agni, the fire god; and Soma, the god of the inebriating sacrificial brew and plant, with the brew being given the same name. Vedic religion is world-affirming and seeks progeny, prosperity in the world and heaven in the afterlife. The Vedas are the most authoritative texts since they are considered unauthored, divinely inspired, revealed to the ancient seer-hymnists. As might be expected from a nomadic people invoking a thunderbolt-wielding sky god, Vedic religion places great emphasis on masculinity, virility and martial prowess. Scott Dunbar writes:

India's written record of warfare began during the Vedic period (1700–600 B.C.E.), when regular clashes between peoples called *Aryans* (meaning “Noble Ones”) and *Dasyus* (Dark-skinned ones) characterized ancient Indian society. The Aryans were hunter-warrior tribes who rose to social-political prominence in northern India around 1700 B.C.E. They were renowned for being proficient in the art of war. Indeed, an ethos of combat was at the very heart of their social fabric.<sup>3</sup>

3 Scott Dunbar, “Classical Hindu Views of ‘Righteous Warfare’ (Dharma Yuddha) in Light of Michael Walzer’s Just War Theory”, PhD thesis, University of Saskatchewan, July 2011, p. 168, available at: <https://harvest.usask.ca/handle/10388/ETD-2011-07-28> (all internet references were accessed in August 2022).

Whether the Aryan invasion theory is valid or not,<sup>4</sup> Jarrod Whitaker shows that many ancient Vedic hymns are imbued with Aryan militancy, especially those referring to the exploits of Indra and his conquest of the demon Vṛtra.<sup>5</sup> For instance, the Rig Veda permits the use of poisoned weapons and advocates the conquest of all corners of the world.

A crucial element of Vedic culture was the division of society into four broad classes, or castes. The *brahmins* were the priest-scholars at the apex of society, while the next rung down was occupied by *kṣatriyas*, warrior-administrators entrusted with social governance. Heaven was the reward for warriors who died in battle. There was a fundamental complementarity between the secular power of the ruler and the sacred power of the *brahmin*: the first needed to be consecrated by the second, the second protected by the first. But above and beyond the work of warriors, we see virile imagery at play in the Vedic literature, where celestial battles are glorified, weapons divinized and incantations deployed in battle, all linked to Hindu mythology. Perhaps the clearest exemplification of this correlation is the sacred horse sacrifice said to be performed by the *brahmins* in order to consecrate royal power. In the Vedic period, it appears that very few limitations on warfare were adopted by the Aryan tribes which expanded into the Indian subcontinent, but a chivalric code began to emerge in the post-Vedic period as the Indo-Aryans tribal warlords fought among themselves for dominion. In the post-Vedic age, marked by the rise of armies and States, sophisticated legal codes emerge. The martial, world-affirming Vedic ethos represents one of two significant contributors to classical Hinduism, as enshrined in the Mahābhārata (explored later).

## Ascetic ideals

The second strand of Indian religion is the more far-reaching philosophically. In the centuries leading up to the time of the Buddha, there were great religious changes sweeping across the subcontinent: those of the renouncer traditions. These traditions may well be much more ancient, but it is in around 500 BCE that we see them take hold within Brahmanical Sanskritic traditions. Starting around 800 BCE we see the emergence of the first Upanishads, texts prioritizing social renunciation, chastity, non-violence and philosophical speculation. We find in these texts critiques of the caste system, sacrificial violence and the Vedic rituals themselves. Instead, they advocated studying in seclusion with a wise teacher who had divine knowledge, and it is from this tradition that we have the philosophy of karma, rebirth and the pursuit of liberation – the Upanishads make almost no mention of armed force. So divergent was this wave of religion that it resulted in traditions that broke away from the Vedic priesthood and the Sanskrit language.

4 There is much debate about the origins of the Aryans. For a good overview, see Edwin Bryant and Laurie Patton (eds), *The Indo-Aryan Controversy: Evidence and Inference in Indian History*, Routledge, New York, 2005.

5 Jarrod L. Whitaker, *Strong Arms and Drinking Strength: Masculinity, Violence, and the Body in Ancient India*, Oxford University Press, New York, 2011.

Two such traditions survive to this day: Buddhism and Jainism.<sup>6</sup> Furthermore, the spiritual insights of the cyclical worldview established by these wisdom traditions remain to this day the dominant perspective throughout the Hindu jungle, forming the basis of classical Hinduism. The Sanskrit epics were authored in large part to perpetuate Brahminism by folding in and domesticating ascetic ideals, lest it be replaced by Buddhist and Jain traditions. This campaign contributed to Buddhism's drastic reduction in India, though it thrived in Sri Lanka, Tibet and elsewhere.

## Epic synthesis

The third stratum of Indian religions, the Epic period, is crucial in that it forms the very platform of classical Hinduism whereby Vedic and ascetic ideals were integrated into a shared social platform. This period is marked by the development of the Sanskrit epics, especially the Mahābhārata (400 BCE–400 CE), which exhibits a “conspicuous attempt on the part of *bhrāhmaṇas* [*brahmins*] to synthesize diverse religious systems”.<sup>7</sup> The Mahābhārata is an elaborate, massive, rich work spanning eighteen volumes and some 80,000 Sanskrit verses. It is a conscious conference of sorts of the various religious strands known to the Brahmanical world, and an attempt to systematize and bring them into conversation. Perhaps its most important function, apropos the theme at hand, is the legitimization of the violence required for warfare and the welfare of society. In its deliberations about *dharma* – what is righteous, virtuous, moral, ethical – it integrates two disparate strands: the *dharma* of remaining in the world, and the ascetic ideal of non-violence. As such, the Mahābhārata weaves a prevalent social and moral platform of Hinduism, a bipedal, ambivalent attitude which one can think of as the “dharmic double helix”. While strands of the envisioned helix never touch, and are ever at odds, they nevertheless contribute to a shared structure. This tension – particularly towards uses of violence – is very much at the centre of the Hindu worldview, informing the approaches taken by modern Hindu thinkers such as Gandhi and his opposing interlocutors. While violence and non-violence (*hiṃsā* and *ahiṃsā*) are religiously sanctioned as two types of *dharma*, another approach within the Hindu universe is considered adharmic: the cut-throat approach adopted by the secular strategist Kauṭilya (discussed below in

6 Buddhism was disseminated in middle Indo-Aryan dialects called Prakrit, and it was not until probably the first century of the Common Era (five hundred years after the death of the Buddha) that Sanskrit was adopted by Buddhist thinkers, since it remained the prime philosophical and scholastic medium of ancient India. A similar process occurred with Jainism, but we do not see Jain works appear in Sanskrit until circa 500 CE. Moreover, while the Upanishads, Buddhism and Jainism emerge from the same renouncer religion which revolutionized the Vedic world, the Upanishadic texts were canonized as part of the orthodox (*āstika*) Vedic corpus, whereas Jainism and Buddhism were considered heterodox (*nāstika*) schools of thought denouncing Vedic Brahmanism.

7 Govind Prasad Upadhyay, *Brāhmaṇas in Ancient India: A Study of the Role of the Brāhmaṇa from c. 200 B.C. to c. 500 A.D.*, Munshiram Manoharlal, New Delhi, 1979, p. 37, cited in Arti Dhand, *Woman as Fire, Woman as Sage: Sexual Ideology in the Mahābhārata*, State University of New York Press, Albany, NY, 2008, p. 24.

the section on the Arthaśāstra). While the Sanskrit epics advance ancient India's vision of righteous warfare (*dharma yuddha*), Kauṭilya advances ancient India's vision of treacherous warfare (*kūṭa yuddha*).

One of the most intriguing and lasting innovations of the Mahābhārata is its synthesis of two overarching types of *dharma* – duty and virtue – thereby integrating the Vedic and ascetic ideals. The *mokṣadharmā* section of the Śāntiparvan (the twelfth and largest of the epic's eighteen volumes) declares that religious activities (*dharmas*) are of two essential types: *pravṛtti dharma* (the world-affirming duties of “active life”) and *nivṛtti dharma* (the world-eschewing duties of “retired life”). These two broad religious codes attract different sorts of aspirants, as they are oriented towards different goals. The most salient feature for the discussion at hand is that these two strands of *dharma* offer opposing views on the use of violent force.<sup>8</sup>

The term *pravṛtti* connotes an active interest in worldly affairs. This brand of religiosity is a direct evolutive of Vedic ideals. It represents the religious impulse of the vast majority of society, as it is oriented towards worldly aims. It is staunchly situated within societal and familial life. This is the *dharma* of domesticity, as it were, which the Dharmasāstras (discussed below) prescribe in great detail. This is the *dharma* that pertains to one's caste, gender and stage of life. Attempts have also been made to universalize this branch of *dharma*. The Mahābhārata, for example, lists the following qualities as universal values: freedom from anger, truthful speech, agreeableness, forgiveness, fathering children, purity, conflict-avoidance, integrity, and support of one's dependents (Mahābhārata (MBh) 12.60.7–8). However, these characteristics depend on one's station in life, one's life stage, and one's gender and caste. *Pravṛtti dharma* is largely social ethics, addressed primarily to twice-born (upper three castes) male householders. The goals of this strand of religion are narrow, pertaining to the trajectory of one's personal, earthly existence. One follows these goals until one is reborn ready for the ultimate religious path, the supreme *dharma* geared towards permanent release from cycles of rebirth: *nivṛtti dharma*. The fruits of *pravṛtti dharma* are temporary, thus that *dharma* itself is referred to as rebirth-oriented.

*Nivṛtti dharma*, on the other hand, is aimed at the soul's liberation from the cycle of birth, death and rebirth that characterizes the Hindu world. In order for one to pursue one's spiritual salvation, one needs to eschew the world and steer clear of its material trappings. Those who are trapped in the cycle of rebirth suffer perennially due to their ignorance of what lies beyond mundane awareness, but only the extraordinary, exceptional, tenacious few are equipped to walk the razor's edge that is the path of *nivṛtti*, a path demanding self-discipline in earnest

8 A. Walter Dorn, Raj Balkaran, Seth Feldman and Stephen Gucciardi, *The Justifications for War and Peace in World Religions, Part II: Extracts, Summaries and Comparisons of Scriptures of Religions of Indic Origin (Buddhism, Hinduism, Jainism and Sikhism)*, Contract Report 2010-034, Defence Research and Development Canada, 2010, available at: [www.walterdorn.net/pdf/ForcInWorldReligions-Scriptures\\_PartII\\_IndicReligions\\_Dorn-Balkaran-Feldman-Gucciardi\\_DRDC-Report\\_AsPublished\\_CR-2010-34\\_12Jan2011.pdf](http://www.walterdorn.net/pdf/ForcInWorldReligions-Scriptures_PartII_IndicReligions_Dorn-Balkaran-Feldman-Gucciardi_DRDC-Report_AsPublished_CR-2010-34_12Jan2011.pdf).

pursuit of the blissful release of cyclical existence in the world. Adherents to the *nivṛtti* path renounce bodily and emotional comforts for the sake of arduous self-purification, yet this sort of rigorous asceticism exhibits great empathy and compassion for the suffering of others (MBh 12.231.21, 12.321.23, 12.286.28). *Nivṛtti* is therefore a path committed to *ahimsā*, non-violence towards all. It calls the aspirant towards peacefulness, tranquillity, patience and equanimity. Such a sagacious practitioner becomes the refuge of all creatures.

The tension between these world-affirming and world-denying strands of *dharma* is tacitly reconciled through the use of life stages, where one can enjoy worldly pursuits earlier in life, and renounce the world in later life. Yet, irrespective of where one is in one's life journey, one is called to revere the *nivṛttic* precept of non-violence as a categorical ideal. Still, regulated violence is sanctioned for the welfare of the society – i.e., for certain types of warfare, disciplining wrongdoers, protection of others, self-defence etc. And even if violence is sanctioned for righteous warfare (*dharma yuddha*), it must be undertaken only once all other means of conflict resolution have been explored. These include conciliation (attempting to compromise using pacifying language, *sāma*), dissension (attempting to create division in the enemy camp, *bheda*), and gift-giving or bribery (*dāna*). Once these have been exhausted, the only option left is force (*daṇḍa*, punishment). Yet one is called to engage in such combat with a poised mind, bereft of anger, malice, hatred, wrath, vengeance. Additionally, ethical conduct is called for in a similar manner to IHL. In the words of L. R. Penna, Hindu epic literature is “of considerable importance for humanitarian law because the references to the precepts of war, the means of warfare, and the treatment of combatants and non-combatants bear a startling resemblance to the modern concepts enunciated in the Geneva Conventions and their Additional Protocols”.<sup>9</sup> Such a chivalrous code is spelled out in detail in the supremely important epic, the Mahābhārata.

## The Mahābhārata: Combat ethics in India's great epic

The Mahābhārata is a vast Sanskrit epic, widely read, recited and recounted across the Hindu world. Its most popular component, particularly among Western audiences, is the Bhagavad Gītā (discussed below), which is often treated as a separate, stand-alone scripture. While this very famous sliver of the Mahābhārata contains 700 verses over eighteen chapters, the epic from which it hails contains some 80,000 verses (i.e., over 100 times longer) spanning eighteen volumes, each subdivided into several chapters and cantos.

While the Mahābhārata consists of a complex array of subplots (developed over the centuries), its primary plot pertains to a dynastic squabble surrounding

9 Lakshmikanth R. Penna, “Written and Customary Provisions relating to the Conduct of Hostilities and Treatment of Victims of Armed Conflicts in ancient India”, *International Review of the Red Cross*, Vol. 29, No. 271, 1989, p. 336.

legitimacy of succession to the throne of Hastinapur. The Pāṇḍava faction consists of the rightful rulers, but their cousins the Kauravas refuse to give up the usurped throne. Books 1 to 5 (titled “The Beginning”, “The Assembly Hall”, “The Forest”, “The Virāṭa” and “The Effort” respectively) concern events leading up to the great war of Kurukṣetra (pertaining mostly to *jus ad bellum*). Books 6 to 10 (“Bhīṣma”, “Droṇa”, “Karna” and “Śalya”, named after admired Kaurava warriors, and “Sleep”) concern the war itself, while Books 11 to 18 (“Women”, “Peace”, “Instruction”, “Horse Sacrifice”, “Hermitage”, “Clubs”, “Great Journey” and “Ascent”) concern the aftermath thereof.

Book 5 (the Book of the Effort) is most pertinent to *jus ad bellum* concerns as it emphasizes the attempt to avoid war. The heroes and advisers of the Mahābhārata unquestionably favour peace over war. Therefore, this book details the exhaustive attempts on behalf of the heroes to seek reconciliation and avert bloodshed. This is a crucial component of the epic, which retains an ethos valorizing non-violence as of supreme moral significance, yet concedes that in certain circumstances war is the only resort in defence of *dharmā*. As part of the efforts exerted to avert bloodshed, the final of several messengers is Kṛṣṇa himself, who successively applies the four diplomatic tactics (*upāya*, literally “means”) recognized by classical Hindu texts (e.g., Manu 7.109): *sāma* (conciliation); *dāna* (gift or bribery); *bheda* (subversion of allies); and *danḍa* (punishment). Rosen elaborates:

In the Indic tradition, the just war doctrine is reminiscent of the Caturōpāyas, “the four means”, which include three methods of diplomacy that attempt to avoid war (the fourth and final alternative). If one observes the first three of these tactics and cannot find a peaceful solution, then war becomes inevitable and may even be deemed righteous (*dharmayuddha*). ... A righteous war, by this definition, is not necessarily religious but is based on principles of justice and self-defense, and is always engaged in as a last resort.<sup>10</sup>

It is clear that peace is of great value in the tradition, and ironically, is much praised throughout the Mahābhārata – but inevitably, upon exhaustion of all available recourses to resolve the conflict peacefully, the war ensues as a last resort.

More to the focus of this present study, what does the great epic have to say about the ethics of combat once it has been decided that war must ensue? Right before the great war begins, the vying factions state the rules of engagement to which they are both expected to adhere throughout the conflict (MBh 6.1.26–33). These rules represent the established norms accepted in the epic, both in its discursive and its narrative segments. The primary preoccupation of these rules is ensuring a fair fight between duelling opponents. Nick Allen summarizes the rules as follows:

10 Steven Rosen, *Holy War: Violence and the Bhagavad Gita*, Indic Heritage Series, Deepak Heritage Books, Hampton, VA, 2002.

Ideally, then, one member of the warrior estate fights another member of the same estate using similar equipment and techniques – a chariot warrior versus a chariot warrior, and if one fighter uses deceit, so should the other. In general, one should not fight people who are at a disadvantage – those whose accoutrements are or have become deficient, who lack or have lost their armour or chariot, whose weapons are broken, whose bowstring is cut, nor those who are unprepared or unaware of their danger, whose chariot is unyoked, who are asleep, having a meal or grieving, nor those who have laid down their weapons, are retreating, weak, wounded, exhausted or terrified or have left the ranks, nor those who have surrendered, or are doing so, or are suppliants, nor those already engaged in a duel with someone else.<sup>11</sup>

Beyond the fairness dimension, the present study not only looks at the rules laid out at this pivotal juncture just prior to the commencement of armed conflict, but surveys the entire epic for passages pertaining to the detailed rules of armed conflict. This study, therefore, constitutes a comprehensive account of the cases of combat ethics in the Sanskrit epics. The entire Sanskrit critical edition of the Mahābhārata is examined, with a comparison to IHL.<sup>12</sup>

## Fair fight

Below are key passages illuminating the ethics of combat prescribed in the epic. The most substantive of these occurs, ironically, after the war, in the Book of Peace (*Śānti Parvan*), when the venerable grandfather Bhīṣma elucidates the finer points of virtue while laying on a deathbed of arrows, awaiting an auspicious moment to leave his body. He counsels that one ought not to engage an unarmed warrior,<sup>13</sup> and specifically that one should not attack one who is wounded, nor one whose sword is broken, whose bowstring has been cut, or whose horse or chariot have been compromised in some manner. Armies should only engage armies, and chariot warriors should only engage other chariot warriors (MBh 12.96.1–13).<sup>14</sup> This parallels IHL's prohibitions on attacking non-combatants, including combatants *hors de combat* ("out of action"). However, fighting an unarmed opponent is lawful under IHL, unless that opponent has surrendered. Moreover, IHL is not nearly as concerned with a "fair fight" since unequal fights may still be lawful – for example, a fighter jet can attack a sniper position. IHL is concerned primarily with limiting human suffering, and not so much with establishing a level playing field.

11 Nick Allen, "Just War in the Mahabharata", in Richard Sorabji and David Rodin (eds), *The Ethics of War: Shared Problems in Different Traditions*, Ashgate, Burlington, VT, 2006, p. 139.

12 Vishnu Sitaram Sukthankar *et al.*, *The Mahābhārata: For the First Time Critically Edited*, 19 vols, Bhandarkar Oriental Research Institute, Poona, 1933–66. The critical edition is available online at the Göttingen Register of Electronic Texts in Indian Languages at: <http://gretil.sub.uni-goettingen.de/gretil.html>.

13 James L. Fitzgerald (ed. and trans.), *The Mahābhārata: Volume 11: The Book of the Women; Volume 12: The Book of Peace, Part One*, Vol. 7, University of Chicago Press, Chicago, IL, 2004, p. 411.

14 *Ibid.*, p. 411.

While the Mahābhārata contains a great deal of instruction, as with Bhīṣma's words of wisdom above, one must note that the epic encodes prescription within its narrative plots and characterization. It often places sage insights in the mouths of characters in the midst of battle. This is not mere speculative philosophy; these insights provide rules that compare and contrast with IHL. The injunctions prescribed by Bhīṣma are reiterated by another epic hero, the mighty Bhīma, as follows:

It does not please me to fight against a man who has laid down his weapons, who has fallen, or whose armour and standard are lost; a man who flees, a fearful man, or one who has surrendered; a woman, a man with a woman's name, a cripple [disabled person], or the father of a single son; or a childless man, or a deformed man. [MBh 6.103.72–73]<sup>15</sup>

While IHL provides protection to surrendering combatants, it does not provide this kind of protection against attack to a soldier who has fallen or is disabled, or whose equipment has malfunctioned. The Mahābhārata's injunction for a fighter to be matched with a similarly equipped opponent is again emphatically voiced by the Kaurava leader Duryodhana mid-conflict in one scene:

You Parthas still all have your friends, as well as your chariots and animals. I am alone and wretched and have no chariot or animals. How can a man, who is alone and on foot, wage war if he has no weapons and is surrounded by many troops who are equipped with arms and chariots? You should fight me one against one, Yudhishtira. For it is not right for one man to fight many heroes in battle – especially if he is armorless, exhausted, and fallen on misfortune, and if his limbs are severely mangled and his troops and animals fatigued.<sup>16</sup>

Moreover, it is a question not just of being matched at the onset of combat, but of remaining matched throughout. Take, for example, the following insistence that one must cease engagement while one's opponent (Karna in this case) repairs a chariot wheel:

Forbear for a moment, O Pāṇḍava! You can see that fate has caused my wheel to sink up to the axle; abandon your intention to act as only a coward would do, son of Kuntī! One whose ... weapons are lost or broken – no hero strikes at such a man on the battlefield, O Arjuna, nor does any prince do so to serve a king. And you are a hero, son of Kuntī; therefore forbear for a moment while I raise this wheel out of the earth! You should not slay me, O wealth-winner, for you are mounted on a chariot and I am standing unready on the ground. [MBh 8.66.60–64]<sup>17</sup>

15 John D. Smith (ed. and trans.), *The Mahābhārata*, Penguin Classics, London, 2009, p. 402.

16 Justin Meiland (trans.), *Mahābhārata: Book 9: Śalya, Volume 1*, 1st ed., Clay Sanskrit Library, New York University Press, New York, 2005.

17 J. D. Smith (ed. and trans.), above note 15, pp. 521–522.

Similarly, one should even cease combat when one's opponent loses his footing, as happened to Kṛpa when he faced Arjuna:

All the horses, hit with the sharp shafts like flaming serpents, reared up violently, so that Kṛpa lost his balance. When the scion of Kuru [Arjuna] saw that Gautama [Kṛpa] had lost his footing, the killer of enemy heroes refrained from striking him in order to preserve the other's dignity. [MBh 4.52.9–10]<sup>18</sup>

Without question, the epic advocated equal footing for combatants. Consider the case of Abhimanyu, the son of Arjuna, who was encircled and slain by six Kaurava warriors while he fought alone:

Celestial beings cried out when they saw that hero fall, like the moon falling from the sky: "This single warrior lies here slain by six great Dhārtarāṣṭra chariot-fighters led by Droṇa and Karṇa. This is not *dharma*, we maintain!" [MBh 7.48.21]<sup>19</sup>

Similarly, when Arjuna severs his opponent Bhūriśravas' arm in a surprise attack, Bhūriśravas admonishes him thus:

You know your *dharma* better than anyone else in this world, so how did you strike a warrior who was not engaged in combat with you? The wise do not strike at a warrior who is distracted or frightened, chariotless or pleading, or one who is overcome by misfortune; such a base deed would be practiced only by the wicked. [MBh 7.117.62–7.118.15]<sup>20</sup>

Arjuna counters with a similar allegation of wrongdoing:

[W]hat righteous man would applaud the killing of Abhimanyu [son of Arjuna], a child, disarmed, chariotless and without armour? [MBh 7.118.22–26]<sup>21</sup>

## Sleeping warriors

One of the most (purposefully) disturbing elements of the epic takes place in Book 10, known as the *Sauptika Parvan*, the Book of Sleep. It depicts tragic events at the end of the epic war wherein the character Aśvatthāman mercilessly avenges his father Droṇa's death by slaughtering Dhṛṣṭadyumna and other warriors, in their sleep – plus the Pāṇḍava's children (of varying ages), having mistaken them for their fathers. This slaughter of sleeping warriors and children is one of the most egregious violations of the epic's warrior code. The book reveals insight into the code, most of which is articulated by Kṛpa, who counsels

18 J. A. B. van Buitenen (ed. and trans.), *The Mahābhārata: Book 4: The Book of Virāṭa; Book 5: The Book of The Effort*, Vol. 3, University of Chicago Press, Chicago, IL, 1978, p. 103.

19 J. D. Smith (ed. and trans.), above note 15, pp. 428–429.

20 *Ibid.*, pp. 447–448.

21 *Ibid.*, pp. 448–449.

Aśvatthāman to wait until the morning, and not kill his enemy in their sleep. His warning is as follows:

In this world, slaughter of the sleeping  
Is not respected as conforming to dharma.  
The same applies to those whose arms have been laid down,  
To those whose fighting chariots have been unyoked,  
To those who have declared their allegiance,  
To refugees, and to those with disheveled hair [one in flight],  
To those, as well, whose chariots have been destroyed....  
The wicked man who seeks to harm them in that state,  
Without a doubt, would dive into a raftless,  
Fathomless, shoreless hell. [MBh 10.5.9–12]<sup>22</sup>

Aśvatthāman, in his own defence, lists the various breaches of conduct made by the Pāṇḍavas.<sup>23</sup> These Pāṇḍava breaches are made to show that one cannot always maintain the pristine standards laid out in the epic (discussed below), but equally, that transgressions of combat ethics are problematic, even when undertaken by its heroes. Aśvatthāman calls them out as follows:

My father, who had laid aside his sword, was felled by Dhṛṣṭadyumna.  
And the great warrior Karṇa, when his chariot's wheel  
Was stuck, and he was motionless in supreme  
Distress was killed by [Arjuna's] Gāṇḍīva bow.  
In this same way, Bhīṣma, Śāmtanu's son, unarmed,  
His sword laid down on Śikhaṇḍin's account,  
Was killed by Arjuna.  
So too the great archer Bhūriśravas,  
While fasting to death on the field of battle,  
Was felled by Yuyudhāna though kings cried out.  
And Duryodhana, confronted in battle  
By Bhīma with a mace, was unlawfully felled. [MBh 10.5.17–21]<sup>24</sup>

Despite his attempts at self-justification, it is clear that the epic finds this massacre of the sleeping to be atrocious, and well beyond the boundaries of accepted combat ethics:

Who that considers himself a Kṣatriya would slay men who were sleeping as if already dead? Son of Hṛdika, the Yādavas could never pardon what you did. [MBh 16.4.17]<sup>25</sup>

22 W. J. Johnson (trans.), *The Sauptikaparvan of the Mahābhārata: The Massacre at Night*, Oxford University Press, Oxford and New York, 1998, p. 22.

23 In the West, this would be called a *tu quoque* (“you too”) argument. The use of this argument by war crimes defendants has been expressly rejected by international courts, though they may have some power in public opinion. See, for example, Katerina Borrelli, “Between Show-Trials and Utopia: A Study of the *Tu Quoque* Defence”, *Leiden Journal of International Law*, Vol. 32, No. 2, 2019.

24 W. J. Johnson (trans.), above note 22, p. 22.

25 J. D. Smith (ed. and trans.), above note 15, p. 760.

Now the three mighty chariot-fighters, having completed that most evil massacre of the Pāṇḍavas, all congratulated one another. [MBh 10.8.148]<sup>26</sup>

By contrast, IHL does not prohibit killing those who are sleeping, though targeting civilians (including children) is a crime. However, IHL and international criminal law do allow for mistakes on the part of combatants – for example, if they did not know they were killing civilians and did not intend to do so.

## Deceit and manipulation

The Mahābhārata considers deceitful and manipulative tactics to be beneath respectable engagement in armed conflict:

Dhrishtadyumna will witness the extremely terrible consequences of that. He has performed an extremely ignoble deed and so has the liar Pandava [Yudhiṣṭhira]. They resorted to deception against the preceptor [Droṇa], when he had cast aside his weapons. That is the reason the earth will drink Dharmaraja's [Yudhiṣṭhira's] blood today.<sup>27</sup>

My father [Droṇa] was brought down by inferior ones after he had cast aside his weapons. A wicked act has been committed by those who should have upheld the standard of dharma. Dharma's son [Yudhiṣṭhira] acted ignobly and cruelly.<sup>28</sup>

In Yudhiṣṭhira's case, he conveyed during the battle information that he knew to be false to the warrior Droṇa: that Droṇa's son, Aśvatthāman, was dead, though under his breath Yudhiṣṭhira then whispered, "Aśvatthāman the elephant" (a creature that had been deliberately killed to enable the deception). Since this caused Droṇa to give up his weapons (and he was immediately attacked), it is a case of perfidy. The act was condemned in the epic, despite being carried out by one of its most virtuous characters.

Under IHL, ruses of war (intended to confuse the enemy) are permitted, but perfidy is not, perfidy being defined as "[a]cts inviting the confidence of an adversary to lead him to believe he is entitled to, or is obliged to grant, protection under the rules of international humanitarian law ... with intent to betray that confidence".<sup>29</sup> For instance, perfidious acts would include faking injury, sickness or surrender in order to attack an enemy; using certain protective emblems (such as the red cross or red crescent) to benefit from IHL

<sup>26</sup> *Ibid.*, p. 574.

<sup>27</sup> Bibek Debroy (trans.), *The Mahabharata*, 10 vols, Penguin Books, Gurgaon, 2015. Dharmaraja is the God of death and justice.

<sup>28</sup> *Ibid.*

<sup>29</sup> ICRC, "Perfidy", *ICRC Casebook*, available at: <https://casebook.icrc.org/glossary/perfidy>; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rules 57, 65, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>.

protections; or using enemy uniforms in order to shield, favour, protect or impede military operations. Perfidy or treachery would be against the rules in the Indian epic, though, as in IHL, ruses would be permitted (and we shall give examples of this below).

## Respecting the fallen

The Mahābhārata advocates respect for one's opponents, especially when fallen:

O king, the righteous-minded Somaka leaders were not happy to see joyful Bhīma mean-mindedly placing his foot on the head of the Kuru king. Yudhiṣṭhira lord of *dharma* spoke to the wolf-belly as he boasted and danced about after striking down your son: “Do not trample his head with your foot, do not let your great *dharma* fail! He is a king and a kinsman, and he lies fallen; sinless Bhīma, it is not right for you to behave thus. He is destroyed; his ministers and brothers and sons are all slain; no one survives to perform his funeral offerings; he is our brother. It is not right for you to behave thus. People used to call you ‘Righteous Bhīma’ – so why, Bhīma, are you trampling the king?” [MBh 9.58.13–17]<sup>30</sup>

IHL has a similar provision on respect for dead bodies.<sup>31</sup>

## Hitting below the belt

In the Mahābhārata, Kṛṣṇa's brother, Balarāma, clearly states that one should never hit below the belt or navel:

A curse upon you, Bhīma, a curse upon you for striking a warrior of blameless valour below the navel! What the wolf-belly has done is something never before seen in a battle with clubs: the learned texts are clear that no blow should be struck below the navel, but Bhīma, this unlearned fool, acts however he wishes! [MBh 9.59.5–7]<sup>32</sup>

While IHL has a general principle against causing “unnecessary suffering”, there is no specific prohibition against hitting another warrior below the belt. In sports, of course, such rules do exist.

## Treacherous weapons/weapons of mass destruction

Like in IHL, weapons causing unnecessary suffering were prohibited in the ancient Indian scriptures.<sup>33</sup> The Mahābhārata counsels against the use of unnecessarily cruel weapons, including poisoned arrows among many others:

30 J. D. Smith (ed. and trans.), above note 15, p. 553.

31 ICRC Customary Law Study, above note 29, Rule 113.

32 J. D. Smith (ed. and trans.), above note 15, p. 544.

33 V. S. Mani, “International Humanitarian Law: An Indo-Asian Perspective”, *International Review of the Red Cross*, Vol. 83, No. 841, 2001, p. 63.

They employed no form of warfare contrary to *dharma* or to the rules of weaponry: no barbed arrows or reed-arrows, no poison-smearred arrows or poison-injecting arrows, no needle-arrows or monkey-arrows, no arrows of cow-bone or elephant-bone, no double-arrows or infected arrows, no crooked-flying arrows. The weapons they all used were straight and pure, for all desired to gain the world of heaven, and glory too, through fair fight. [MBh 7.164.8–13]<sup>34</sup>

In the epic, some of the heroes have access to divine weapons of mass destruction, which are prohibited at every turn:

But it is not proper to kill ordinary men in battle with divine weapons: we shall fight the enemies honourably. [MBh 5.195.15]<sup>35</sup>

Arjuna, Arjuna, do not employ the divine weapons! They are never to be used on an unfit target, Bhārata, nor should one use them ever on a fit target, when not pressed; for in the use of these weapons lies very great evil, joy of the Kurus! If you guard them as you have learned, Dhanamjaya, these mighty weapons shall doubtless bring happiness, but if not so guarded they will lead to the destruction of the universe. [MBh 3.172.18-21]<sup>36</sup>

However, Pārtha, you must never let it loose at any man in wanton violence, for if it hits a person of insufficient power, it might burn down the entire world. [MBh 3.41.15]<sup>37</sup>

My son, you must never launch this weapon,  
Even when in battle mortal danger threatens,  
And above all never against human beings. [MBh 10.12.8]<sup>38</sup>

Similarly, IHL bans or greatly restricts the use of weapons of mass destruction, in part because of the indiscriminate and widespread suffering they inflict.

## Immunity from attack

There are a number of actors in the Mahābhārata who do not qualify as proper combatants in war. Nick Allen lists these as follows:

women and children, the aged (once), brahmans and ascetics, those from whom one has received food, drivers, transporters, drummers, conch players, foragers, camp-followers, doormen, menials or servants in charge of menials, artisans

34 J. D. Smith (ed. and trans.), above note 15, p. 472.

35 J. A. B. van Buitenen (ed. and trans.), above note 18, p. 530.

36 J. A. B. van Buitenen (ed. and trans.), *The Mahābhārata: Book 2: The Book of the Assembly Hall; Book 3: The Book of the Forest*, Vol. 2, University of Chicago Press, Chicago, IL, 1975, pp. 553–554.

37 *Ibid.*, p. 303.

38 W. J. Johnson (trans.), above note 22, p. 64.

such as miners, those who are beginning a sacrifice, seeking Deliverance (*mokṣa*) or undertaking a religiously motivated fast to death (*prayā*).<sup>39</sup>

Presented below are direct passages from the epic pertaining to those deemed to be excluded from engagement in armed conflict, and therefore immune to attack:

The wealth-winner is a supporter of Brahmins and a speaker of truth; self-controlled and compassionate to all, he would not slay a sleeping or distracted man, or one who had laid down his weapons and sued for peace, or one fleeing with dishevelled hair. This dreadful thing is done to us by cruel Rākṣasas. [MBh 10.8.118–119]<sup>40</sup>

No one born in the lineage of Vṛṣṇi ever forsakes his given word or kills a fallen foe or one who surrenders. No one kills a woman, a child, or old man, one unseated from his chariot, one gone to pieces, or one whose sword and weapons are broken. [MBh 3.19.13–14]<sup>41</sup>

Strict, honest, law-abiding people have always instructed us in the world not to raise weapons against women, cows, brahmins, him whose food one has eaten, and him who seeks mercy with you. [MBh 2.38.13–14]<sup>42</sup>

IHL provides immunity to civilians and surrendering combatants and those *hors de combat*, though not to combatants whose weapons are merely broken (e.g., a jammed rifle). IHL provides protection to “religious personnel”, which could be considered equivalent to *brahmins* and ascetics in Indian terms.<sup>43</sup> IHL also provides protection to civilian property.

## Women

I shall *not* kill a woman, or one who was a woman before. [MBh 5.169.19]<sup>44</sup>

Those wise in the Law declare in the decisions on the Law that women may not be killed. [MBh 1.146.29]<sup>45</sup>

Even in anger, tigerlike Bhīma, never kill a woman! Preserve the Law, Pāṇḍava, before you preserve your life. You have killed the mighty rākṣasa who came

39 N. Allen, above note 11, p. 139.

40 J. D. Smith (ed. and trans.), above note 15, pp. 572–573.

41 J. A. B. van Buitenen (ed. and trans.), above note 36, p. 259.

42 *Ibid.*

43 ICRC Customary Law Study, above note 29, Rule 27.

44 J. A. B. van Buitenen (ed. and trans.), above note 18, p. 493. The mighty warrior Bhīṣma refuses to shoot arrows at Arjuna because the latter is standing behind Śikhaṇḍin, whom Bhīṣma recognizes as a reincarnation of a woman. Respectful treatment of women is emphasized across the Mahābhārata. When women’s rights and dignity are disrespected, as in the case of the attempted disrobing (a form of sexual violence) of the Pāṇḍava’s wife, Draupadī, there is enormous criticism and shame. Indeed, this is one of the causes of the war.

45 J. A. B. van Buitenen (ed. and trans.), *The Mahābhārata: Book 1: The Book of the Beginning*, Vol. 1, University of Chicago Press, Chicago, IL, 1973, p. 306.

intending to kill us. But what could his sister do to us, even if she were angry? [MBh 1.143.2–3]<sup>46</sup>

In the modern era, women who serve in the armed forces may be targeted and the targeting protections are exactly the same for non-combatant women as for non-combatant men. IHL does, however, have some extra protections for women who are captured, as well as for civilian women who find themselves in the power of a party to the conflict.

## Envoys

“Listen to what I have determined is my important task: I shall take captive Janārdana, who is the last resort of the Pāṇḍavas. With him in fetters, the Vṛṣṇis, the earth, and the Pāṇḍavas will submit to me. Tomorrow morning he will be here. Tell me sir, by what means Janārdana can be prevented from finding out, so that no harm comes to us.” *Vaiśampāyana said*: When Dhṛtarāṣṭra and his councillors heard these dreadful words of threat to Kṛṣṇa, they were hurt and perturbed. Dhṛtarāṣṭra told Duryodhana: “If you are the protector of your subjects, don’t talk like that! This is not the sempiternal Law! Hṛṣikeśa is an envoy and our dear friend. He means no harm to the Kauraveyas, so how does he deserve being held?” [MBh 5.86.13–18]<sup>47</sup>

In IHL, envoys (called parlementaires) must also be afforded protection.<sup>48</sup>

## Summary

According to the Mahābhārata, one must not engage in combat against the following people:

- *brahmins*;
- children;
- the aged;
- the disabled;
- the grieving;
- the mentally ill;
- the weary;
- those drinking or eating;
- those support workers in army camps;
- those walking along a road;
- those who are sleeping;
- those who surrender; or
- women.

<sup>46</sup> *Ibid.*

<sup>47</sup> J. A. B. van Buitenen (ed. and trans.), above note 18, p. 366.

<sup>48</sup> ICRC Customary Law Study, above note 29, Rules 66–68.

When one engages in combat, one must not

- attack one's opponent without warning;
- engage in deceit or trickery;
- engage someone whose armour is broken;
- engage someone of inferior status;
- engage someone at a strategic disadvantage;
- fight during the night;
- fight with one unclad under a coat of mail; or
- hit below the belt.

Through severe limitations, India's great epic both legitimizes and regulates armed conflict. But violence – even when wholly sanctioned – always provokes moral anxiety in the Indic world. This is owing to the exaltation of *ahimsā* (non-violence) as a paramount virtue. The most famous component of the Mahābhārata, the Bhagavad Gītā, unfolds in response to this very apprehension towards even sanctioned violence. The Bhagavad Gītā is a conversation between the great Mahābhārata hero Arjuna and his cousin/charioteer Kṛṣṇa, who reveals himself as divinity incarnated. Their epic conversation takes place on the battlefield right before the start of the great war. At first, Arjuna takes stock of the enemy forces, populated by members of his own family, and loses his will to fight. In an effort to quell the hero's unbecoming despondency at that crucial hour, Kṛṣṇa takes him through a discussion of various branches of Indian philosophy.

## The Bhagavad Gītā

The Bhagavad Gītā is one of the most widely referenced and most revered scriptures in Hinduism. It is the 700-verse dialogue between a reluctant warrior, Arjuna, and his charioteer Kṛṣṇa (pronounced and often written as Krishna), who is revealed to be an *avatāra*, a direct incarnation of the god Viṣṇu. The Bhagavad Gītā (or Gītā, for short) is commonly read as an independent text, but it is in actuality a segment of Book 6 of the Mahābhārata.<sup>49</sup>

In the Gītā, Kṛṣṇa calls Arjuna to engage his violent duty throughout, but owing to the dual legacy contributing to Hinduism's dharmic double helix, Kṛṣṇa also calls Arjuna to engage the sagacious qualities of *nivṛtti* religion in his inner life, while engaging his social duties in the outer world. He calls Arjuna not to inaction, nor to unbridled action, but to detached action:

Therefore, without attachment, always do whatever action has to be done; for it is through acting without attachment that a man attains the highest. . . . Partha, as for me there is nothing whatever that has to be done in the three worlds; there is nothing unaccomplished to be accomplished. Yet I still engage in action. [Bhagavad Gītā (BhG) 3.19–22]<sup>50</sup>

49 See, for instance, Robert N. Minor (ed.), *Modern Indian Interpreters of the Bhagavad Gita*, SUNY Religious Studies, State University of New York Press, Albany, NY, 1986, p. 3.

50 W. J. Johnson (trans.), *The Bhagavad Gītā*, Oxford University Press, New York, 1994, p. 16.

So, Great Arm, having learned what is higher than the intelligence, and having strengthened yourself through the self, kill that enemy in the shape of desire, so difficult to pin down. [BhG 3.43]<sup>51</sup>

Like all classical Hindu texts, in tandem with an endorsement of restricted force, the Gītā endorses non-violence:

Lack of pride, lack of deceit, nonviolence... this, it is declared, constitutes knowledge; anything opposed to this is ignorance. [BhG 13.7–11]<sup>52</sup>

In other places as well, the Gītā advocates non-violence by citing it as a virtue or including it among a list of virtues.<sup>53</sup> Yet overall, the text serves as a running call to action for Arjuna to pick up his bow and fight. The Gītā, without question, advocates the righteous use of force. Kṛṣṇa deploys the following arguments towards this end:

1. social criticisms of Arjuna's reluctance to fight (e.g., cowardice);
2. Arjuna's caste duty as a warrior;
3. superiority of action over inaction;
4. virtue of disinterested action;
5. nature of the *guṇas* (dispassion versus passion versus inertia);
6. human agency nullified by divine agency;
7. indestructibility of the soul;
8. non-violence as a general (but not absolute) virtue.<sup>54</sup>

Since the Gītā is about reasons to go to war (*jus ad bellum*) and not about the code of conduct during war (*jus in bello* or IHL), it is not reviewed in detail here. But it has often been used at the tactical level by fighters to justify the application of armed force against opposing forces – the situation in which Arjuna finds himself. Unsurprisingly, the Gītā has been the object of immense referencing, interpretation, commentary, veneration and some critique over the centuries, including by prominent Indian thinkers from Shankara (788–820 CE) to twentieth-century Hindu leaders such as Sri Aurobindo, Gandhi and Tilak. The Gītā has garnered a great deal of interest in the West as well, referenced by scholars such as Emerson, Thoreau, Einstein and Huxley, and has been invoked through the ages for a variety of military, social and spiritual goals.<sup>55</sup> The ways it can be interpreted are many, from the practical to the metaphorical to the spiritual; still, given its emphasis on the justifications to go to war and not on the manner of fighting war, its provisions are not reviewed in depth here. Instead, we review another epic that provides abundant insights into Hinduism's *jus in bello*, as well as its *jus ad bellum* rules.

51 *Ibid.*, p. 18.

52 *Ibid.*, p. 57.

53 BhG 10.5, 10.45, 13.8–12, 16.1–3, 17.14.

54 A. W. Dorn *et al.*, above note 8, pp. 46–55.

55 A passage from the Gītā (11:32) was even quoted by Robert Oppenheimer, the chief atomic scientist of the Manhattan Project, after he witnessed the first nuclear explosion.

## The Rāmāyaṇa: Violence and non-violence in India's second epic

While the Mahābhārata is very much the bedrock of classical Hindu ideals, the second Sanskrit epic, the Rāmāyaṇa, goes a long way towards crystallizing and advancing the ethos established in the Mahābhārata. The Rāmāyaṇa, or “story of Rāma”, is one of the most widely engaged narratives across the Indic world, and into Southeast Asia. Conscious about crafting ideals, the epic presents its protagonist, the noble prince Rāma, as the ideal man and the most valiant warrior bar none. Like his heroic counterparts in the Mahābhārata, however, Rāma's actions are called into question. Both epics preserve the *nivṛtti–pravṛtti* tension comprising the dharmic double helix at the heart of the Hindu world. The authors of the present paper have already shown, through an exhaustive survey of the Rāmāyaṇa, that each of the standard *jus ad bellum* criteria proper to just war theory are amply articulated in the ancient Indian epic's plot, characterization and instruction.<sup>56</sup> The present paper emphasizes the Rāmāyaṇa's commentary on combat ethics, highlights of which follow.

Like the Mahābhārata, the Rāmāyaṇa prescribes engaging those in combat who are on an equal footing and proscribes unfair combat:

For whoever kills anyone who is drunk or heedless or asleep or without weapons or, like you, completely stupefied by passion is regarded in this world as the murderer of an unborn child. [Rāmāyaṇa (Rām) 4.11.34]<sup>57</sup>

Meanwhile, wise and powerful Hanūmān, now recovered and eager for battle, saw that Rāvaṇa, the lord of the *rākṣasas*, was engaged in battle with Nīla. Angrily he said, “It is not appropriate to attack someone who is locked in battle with another.” [Rām 6.47.69–70]<sup>58</sup>

As for what you accomplished in battle on that other occasion by making yourself invisible, that is the way of thieves. It is not to be followed by heroes. [Rām 6.75.12]<sup>59</sup>

Then the gods, *gandharvas*, and *dānavas* declared, “This combat between Rāma, who is standing on the ground, and the *rākṣasa*, mounted in his chariot, is not fair.” [Rām 6.90.4]<sup>60</sup>

56 Raj Balkaran and A. Walter Dorn, “Violence in the ‘Vālmiki Rāmāyaṇa’: Just War Criteria in an Ancient Indian Epic”, *Journal of the American Academy of Religion*, Vol. 80, No. 3, 2012.

57 Rosalind Lefebvre (trans.), *The Rāmāyaṇa of Vālmiki: An Epic of Ancient India. Volume IV: Kiṣkindhākāṇḍa*, ed. Robert P. Goldman, Princeton University Press, Princeton, NJ, 2005, p. 76.

58 Barend A. van Nooten (trans.), *The Rāmāyaṇa of Vālmiki: An Epic of Ancient India. Volume VI: Yuddhakāṇḍa*, ed. Robert P. Goldman, Princeton University Press, Princeton, NJ, 2009, p. 256.

59 *Ibid.*, p. 372.

60 *Ibid.*, p. 420.

It is only out of fear of incurring censure that I have not killed you thus far, hero. For you must be exhausted after performing this feat. Once you are rested, you shall witness my strength. [Rām 6.63.44]<sup>61</sup>

The Rāmāyaṇa also advocates refraining from engaging certain types of people:

### *Those seeking refuge*

For the sake of compassion, scorcher of your foes, one ought never slay a poor wretch who has come for refuge, begging for protection with his hands cupped in reverence, even should he be one's enemy. Even at the cost of his own life, a magnanimous person should save an enemy who has come for refuge from his enemies, whether he be abject or arrogant. Should one fail to offer this protection to the best of one's ability and the limits of one's strength, whether through fear, confusion, or greed, that would be a sin condemned by all the world. ... Thus, it is a serious transgression to fail to protect those who come seeking shelter, for it blocks the path to heaven, destroys one's reputation, and undermines one's strength and valor. [Rām 6.12.11–18]<sup>62</sup>

### *Emissaries*

Whether he is good or evil, he has been sent by others. Expressing the intentions of others, entirely under their control, a messenger never deserves death. [Rām 5.50.11]<sup>63</sup>

The execution of an emissary is not sanctioned in the treatises on kingship, *rākṣasa*. An emissary bearing a beneficial message must convey it accurately. O you whose valor is unequalled, even when an emissary has committed some grave offense, then, according to the treatises, only disfigurement is sanctioned, never execution. [Rām 5.56.126–127]<sup>64</sup>

### *Women*

Nor, best of men, should you be soft-hearted about killing a woman. A king's son must act for the welfare of the four great social orders. [Rām 1.24.15]<sup>65</sup>

61 *Ibid.*, p. 340.

62 *Ibid.*, p. 149.

63 Sally J. Sutherland Goldman (trans.), *The Rāmāyaṇa of Vālmiki: An Epic of Ancient India. Volume V: Sundarakāṇḍa*, ed. Robert P. Goldman, Princeton University Press, Princeton, NJ, 2005, p. 253.

64 *Ibid.*, p. 274.

65 Robert P. Goldman (ed. and trans.), *The Rāmāyaṇa of Vālmiki: An Epic of Ancient India, Volume I: Balakāṇḍa*, Princeton University Press, Princeton, NJ, 1985, p. 173. The verse actually suggests that killing a woman can be justified if a greater good results, but it implies that the act of killing a woman is itself a sin.

I alone just barely escaped from the great and celebrated Rāma: Although he treated me with contempt, he shrank from killing a woman. [Rām 3.32.11]<sup>66</sup>

### *Children and the aged*

Once you have slaughtered the male population of Laṅkā with your waves of arrows, sparing only the children and the aged, and have slain your enemy Rāvaṇa, you shall surely recover Sītā. [Rām 6.40.57]<sup>67</sup>

### *Weapons of mass destruction*

Beyond fair footing and exemptions for combat engagement, the Rāmāyaṇa, like the Mahābhārata, cautions against the use of weapons which, though effective, would cause too much devastation to possibly justify:

Then, in a towering rage, Lakṣmaṇa said these words to his brother: “I shall use the divine weapon-spell of Brahmā in order to exterminate all the *rākṣasas*.” But Rāma said this in reply to Lakṣmaṇa of auspicious marks: “You must not slaughter all the *rākṣasas* of the earth on account of a single one. A foe who does not resist, is in hiding, cups his hands in supplication, approaches seeking refuge, is fleeing, or is caught off guard – you must not slay any of these.” [Rām 6.67.36–38]<sup>68</sup>

While the Rāmāyaṇa unquestionably sanctions ethical combat – and goes a long way towards establishing the ethics thereof – the text also exhibits a pervasive discomfort with violence of any kind, and a correlate valorization of non-violence. Rāma himself goes so far as to say that he rejects the warrior code “where unrighteous and righteous go hand in hand, a code that only debased, vicious, covetous and evil men observe” (Rām 2.101.20).<sup>69</sup> This occurs when he insists on accepting forest exile on the day of his would-be coronation. One of the most telling expressions of this tension is voiced by Sītā, who cautions her husband Rāma about the use of weapons in the forest among the pacifist ascetics, declaring: “Mighty kshatriyas, finding themselves in the forests inhabited by men who practice self-restraint, need bows only for protecting those in distress.”<sup>70</sup>

The kings of the Sanskrit epics, Mahābhārata and Rāmāyaṇa included, endure imposed forest exile so as to converse with ascetics. The king is the paragon of *pravṛtti dharma* (world-engagement), while the ascetic is the face of *nivṛtti dharma* (world-denial). The narrative trope of exiled kings engaging forest

66 Sheldon Pollock (trans.), *The Rāmāyaṇa of Vālmiki: An Epic of Ancient India. Volume III: Aranyakāṇḍa*, ed. Robert P. Goldman, Princeton University Press, Princeton, NJ, 1991, p. 154.

67 B. A. van Nooten (trans.), above note 58, p. 230.

68 *Ibid.*, p. 351.

69 Sheldon Pollock (trans.), *The Rāmāyaṇa of Vālmiki: An Epic of Ancient India. Volume II: Ayodhyākāṇḍa*, ed. Robert P. Goldman, Princeton University Press, Princeton, NJ, 1986, p. 557.

70 S. Pollock (trans.), above note 66, pp. 100–101.

ascetics therefore cleverly weaves the opposing dharmic elements (like a double helix), pointing to the antithesis at play between ascetics and kings. Sītā notes: “How incongruous they are, weapons and the forest, the kshatriya order and the practice of asceticism – it is all so at odds”;<sup>71</sup> she even goes so far as to say: “Wicked thoughts, my noble husband, can come from handling weapons.”<sup>72</sup> She encourages Rāma to refrain from engaging the warrior code until he returns to the city, and to instead engage the sagacious ethos of non-violent restraint while in the forest (Rām 3.8.10-29).<sup>73</sup>

One of the most contentious scenes in the Vālmiki Rāmāyaṇa revolves around this very tension between socially sanctioned violence and the moral imperative of non-violence. In the scene, Rāma transgresses the warrior's code, killing an opponent while in hiding (i.e., waiting in ambush). While ambushes, and ruses of war, are permitted by IHL, they are prohibited by the ancient Indian warrior code. This is a severe transgression for one so noble as Rāma, a paragon of human virtue. Rāma's opponent in this instance is the monkey-man Sugrīva. Note that the monkey people are not mere animals: far from it, they possess speech, a reasoning mind, and a sophisticated anthropomorphic society complete with stringent rules of ethical combat mirroring those of human society. Rāma regards them as proxies for human warriors, forming an alliance with one faction of the monkey people in order to gain their support to rescue his abducted wife Sītā. When Rāma shoots from hiding, his target, Sugrīva, explicitly asks how one such as Rāma, who is virtuous, reputable and of exalted lineage, could possibly attack someone who was already engaged in battle with another, describing such an act as that of a “vicious evildoer” (Rām 4.17.12–21).<sup>74</sup> Rāma sophisticatedly defends himself by invoking his right to punish citizens who transgress. He also invokes his right to hunt, since this particular opponent is another of the monkey-men of the forest. Rāma's defence is a flaccid one, however. It is deployed by the epic's author so as to posit a parallel between the warrior and the wanton hunter, the latter of which is the face of vice in Indic culture.<sup>75</sup> The Rāmāyaṇa, like the Mahābhārata, thereby brilliantly encodes the ambivalence between legitimized violence and staunch non-violence at the heart of the Hindu world.

To resolve this tension between violence and non-violence (non-harm), both Hinduism and IHL find a common solution: placing restrictions on the means and methods of warfare. Like the epics, IHL offers protections to children and the aged, and to those who have surrendered or are seeking refuge.<sup>76</sup> It also protects parlementaires, and prohibits or greatly restricts the use of weapons of mass destruction.

However, there are many differences between the Rāmāyaṇa's rules and those of IHL. The latter permits targeting women if they are combatants, though

71 *Ibid.*

72 *Ibid.*

73 *Ibid.*

74 R. Lefeber (trans.), above note 57, pp. 88–89.

75 Raj Balkaran, “The Sarus' Sorrow: Voicing Nonviolence in the Vālmiki Rāmāyaṇa”, *Journal of Vaishnava Studies*, Vol. 26, No. 2, 2018.

76 ICRC Customary Law Study, above note 29, Rule 131.

it provides such women with extra protections if they become *hors de combat*. IHL also allows targeting combatants while they are already engaged in fighting with others, or from a place of hiding. IHL does not place persons *hors de combat* if they drink alcohol, unless they are so inebriated that they cannot function at all as a combatant. And it is not necessary under IHL to wait for a fatigued enemy to catch their breath in a fight – but someone who is completely exhausted might be considered *hors de combat* because of sickness, in which case they might be protected under IHL. Unlike the Rāmāyaṇa’s prohibition on “making yourself invisible”, camouflage and ruses of war are permitted under IHL.

Hinduism offers other sacred texts aside from the epics. Some are not story-based, and some provide, like IHL, explicit lists of rules for acts that are permitted and prohibited in armed conflict.

## The Dharmaśāstras: The law codes of ancient India

The Dharmaśāstras are a vast group of texts dealing with law and proper action – i.e., *dharma*. They seem to have been written in order to codify behaviour, though they were never to be read by the common person; they are clearly the domain of administrators and priests. Hundreds of these texts were once in existence, but most of them have been lost to history.

The Dharma Sūtras are the earliest of the Dharmaśāstras (third–first century BCE), created by members of a specific lineage of *brahmins*. They share content in common. Popular surviving works include the Āpastamba, Baudhāyana and Vaikhānasa Dharma Sūtras. These works cover social dictates, and as such, the Indian king – the centre of society in this era – is much discussed. The texts offer a peephole into times past, and into values very much alive today.

Some telling passages about combat ethics – entirely consistent with the material in the epics – can be found:

There is no higher duty for men of the military caste, than to risk their life in battle. Those who have been killed in protecting a cow [a sacred animal for Hindus], or a Brāhmana, or a king, or a friend, or their own property, or their own wedded wife, or their own life, go to heaven. [Viṣṇu Smṛti 3.44–45]<sup>77</sup>

He commits no sin if he kills someone in battle, except the following: those who have lost their horses, charioteers, or arms; those who join their hand in supplication or have dishevelled hair; those who are fleeing or hunkering down; those who have climbed on to a ledge or a tree; messengers; and those who say they are cows or Brahmins. [Gautama Dharmasūtra 10.17–18]<sup>78</sup>

The king should not turn back in battle or strike with barbed or poisoned weapons. He should not engage in battle people who are afraid, intoxicated,

77 Julius Jolly (trans.), *The Institutes of Vishnu*, Clarendon Press, Oxford, 1880, p.18.

78 Patrick Olivelle (trans.), *Dharmaśāstras: The Law Codes of Ancient India*, Oxford University Press, Oxford, 1999, p. 94.

mad, or delirious, or who have lost their armour; as also women, children, old people, and Brahmins, unless they are trying to kill him. [Baudhāyana Dharmasūtra 1.18.9–12]<sup>79</sup>

In war, people should conduct themselves according to the strategies taught by those proficient in such matters. Āryas condemn the killing of those who have thrown down their weapons, who have dishevelled hair, who fold their hands in supplication, or who are fleeing. [Āpastamba Dharmasūtra 2.10.10–11]<sup>80</sup>

By contrast in the last instance, protection under IHL requires more than merely the throwing down of one's weapons. Surrendering combatants typically need to raise their hands in supplication, wave a white flag or otherwise communicate (e.g., by radio) a clear intention to surrender.

Still, there are many similarities between the Dharmasāstras' rules and those of IHL. The non-use of barbed weapons finds parallels in the IHL prohibitions on hollow-point and exploding bullets, and in the central IHL principle of not causing unnecessary suffering.<sup>81</sup> The non-use of poisoned weapons finds an exact parallel in IHL.<sup>82</sup>

The Dharmasāstras list an interesting exception to the non-killing of civilians that is not highlighted in the epics: "unless they are trying to kill him" (Baudhāyana Dharmasūtra 1.18.12, cited above). Similarly in IHL, if an otherwise protected person directly participates in hostilities, they lose their protection under IHL and may be targeted.

The most widely known Dharmasāstra text is the Manu Smṛti, or Laws of Manu (officially called the Mānava Dharma Śāstra (Dharma Text of Manu)), dated anywhere from 200 BCE to 200 CE. As Wendy Doniger writes, this text discusses "the social obligations and duties of various castes and of individuals in different stages of life; the proper way for a righteous king to rule, and to punish transgressors in his kingdom[;] ... cosmogony, karma, and rebirth".<sup>83</sup> The epic sentiments on combat rules are very much echoed in the Laws of Manu:

When he is engaged in battle, he must never slay his enemies with weapons that are treacherous, barbed, or laced with poison, or whose tips are ablaze with fire. He must never slay ... an effeminate man, a man with joined palms, a man with loose hair, a seated man, a man declaring "I am yours," [a] sleeping man, a man without his armor, a naked man, a man without his weapons, a non-fighting spectator, a man engaging someone else, [a] man with damaged weapons, a man in distress, a badly wounded man, a frightened man, or a man who has turned tail – recalling the Law followed by good people. When a man is killed in battle by the enemy as he turns tail frightened, he takes upon

79 *Ibid.*, p. 159.

80 *Ibid.*, p. 53.

81 ICRC Customary Law Study, above note 29, Rules 77, 78 and 70 respectively.

82 *Ibid.*, Rule 72, and also the Chemical Weapons Convention.

83 Wendy Doniger and Brian K. Smith (trans.), *The Laws of Manu: With an Introduction and Notes*, Penguin Books, Harmondsworth and New York, 1991, p. xvii.

himself all the evil deeds committed by his master; while any good deeds that a man killed as he turns tail has stored up for the hereafter, all of that his master takes from him.<sup>84</sup>

While IHL permits engagement with a combatant already engaged with another, the prohibition on engaging those who are badly wounded directly parallels Geneva Convention I.<sup>85</sup> Also, IHL includes a rule prohibiting the use of incendiary weapons against combatants.<sup>86</sup> Note that, contributing to the argument made in this paper, the Dharmaśāstras also include valorization of non-violence in tandem with establishing norms for combat:

A man who refrains from causing injury to living beings goes to heaven.  
[Vasiṣṭha Dharmasūtra 29.3]<sup>87</sup>

Neither the Sanskrit epics nor the Dharmaśāstras can get around the divergent structure of righteousness in the Indic context that sanctions violence while also rebuking it. However, one Hindu text discounts non-violence almost entirely.

## The Arthaśāstra: India's realpolitik approach

As in all civilizations, India was not without pragmatists in the enterprise of war, foremost of which was Kauṭilya, who is traditionally considered to be the author of the Arthaśāstra. Unlike the Indian epics, the Arthaśāstra is a secular text, not a sacred one. It does not advance the cause of *dharma*, righteousness, but rather justifies *adharmā* (non-*dharma*) for the sake of achieving pragmatic, ambitious, worldly goals. Kauṭilya was likely the *guru* (mentor) of King Chandragupta (322–293 BCE) and possibly his prime minister. Chandragupta was king of Magadha and founder of the great Maurya Empire, with its capital Pāṭaliputra (modern Patna, south Bihar). He was the grandfather of Emperor Aśoka, who greatly expanded the Maurya Empire before converting to Buddhism. While the Sanskrit epics lay the foundation for “righteous wars” (*dharma yuddha*) – that is, wars fought to protect the sacred and social order – Kauṭilya's Arthaśāstra advocates *kūṭa yuddha* – that is, warfare entailing the use of trickery, deceit and cunning for personal gain. He was perhaps the most important individual thinker on the messy pragmatics of statecraft in India. His ideas held great influence on the subcontinent and into Southeast Asia.

Kauṭilya espoused a cynical view of politics and the human condition that provides a sharp contrast to the chivalrous vision espoused in India's great epics. The tension between these two traditions is aptly described by Torkel Brekke as

84 Patrick Olivelle (ed. and trans.), *Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra*, Oxford University Press, New York, 2005, p. 159.

85 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950).

86 ICRC Customary Law Study, above note 29, Rule 85.

87 P. Olivelle (trans.), above note 78, p. 324.

“a tension within the Hindu tradition between heroism and prudence, between the tradition that sees war as a royal duty according to *dharma* and the tradition that sees war as a means to the ends of security and prosperity”.<sup>88</sup> While the cultural ethos crystallized in the Mahābhārata emphasises *dharma* (duty, virtue), Kauṭilya's tradition prioritizes *artha*<sup>89</sup> (aim, advantage, gain) irrespective of *dharma*. As Brekke sums up the contrast between the epics and the Arthaśāstra, “one has a deontological ethical theory, whereas the other has a consequentialist theory; one sees war as an end, the other sees war as a means; ... one expresses devotion to God where the other objectifies religion”.<sup>90</sup>

Kauṭilya's Arthaśāstra, for example, advocates engaging in combat even in sacred spaces where individuals are engaged in veneration:

During a pilgrimage for worshipping a divinity, there are numerous places that (the enemy) will visit to pay homage according to his devotion. At those places, he should employ trickery on him. [Arthaśāstra (Arth) 12.5.1–2]<sup>91</sup>

Kauṭilya has no qualms about the use of powerful spiritual weapons:

With secret measures accompanied by ritual formulae and medicines and those produced by magical means, he should annihilate his enemies and protect his own people. [Arth 14.3.88]<sup>92</sup>

Yet, given the value system laid down in classical Hinduism, we see hints of nobility even in this unabashedly cut-throat work:

This Law laid down in the Triple Veda is of benefit because it enunciates the Laws specific to the four social classes and the four orders of life. [Arth 1.3.4] ... That of a Kṣatriya consists of studying, offering sacrifices, giving gifts, obtaining a livelihood through the use of weapons, and protecting creatures. [Arth 1.3.6] ... Non-injury, truthfulness, purification, lack of malice, compassion, and forbearance – these are common to all. [Arth 1.3.13]<sup>93</sup>

Despite its advocacy of ambush tactics, the Arthaśāstra nevertheless concedes:

War at a pre-announced time and place, however, is the most righteous. [Arth 10.3.26]<sup>94</sup>

By contrast, IHL permits surprise attacks, as long as they steer clear of protected persons and places. IHL also encourages advanced warning for attacks that affect

88 Torkel Brekke, “Between Prudence and Heroism”, in Torkel Brekke (ed.), *The Ethics of War in Asian Civilizations*, Routledge, London, 2006, pp. 137–138.

89 In its earliest iterations, *artha* means aim or purpose. Over the course of its usage, it has come to also connote advantage, gain, material security and wealth.

90 *Ibid.*

91 Patrick Olivelle (trans.), *King, Governance, and Law in Ancient India: Kauṭilya's Arthaśāstra*, Oxford University Press, New York, 2013, p. 401.

92 *Ibid.*, p. 433.

93 *Ibid.*, p.68.

94 *Ibid.*, p. 378.

civilians<sup>95</sup> and demands warnings for attacks against civilian medical units.<sup>96</sup> Religious and cultural properties are also protected from attack, though they can become legitimate targets if they are found to be used for military purposes – worship not being one of those purposes.<sup>97</sup>

Overall, the Arthaśāstra stands in stark contrast to the humanitarian and compassionate imperatives behind IHL and the epics. The Arthaśāstra is very much aware of the combat ethics that it flouts at every turn; as such, it is properly regarded as a pragmatic manual of cynical, realist rules, rather than the source of pan-Indic values that the Indian epics provide.

## Analysis

While it is undeniable that the Mahābhārata advances parameters for combat ethics that parallel modern IHL, it is vital to understand Indic standards on their own terms. Hindu rules of armed conflict emerged from the religious and statecraft works of ancient India, and are therefore grounded in a cultural ethos very different from that which spawned classical Western just war theory (*jus ad bellum* and *jus in bello*). Impartially studying the values and ideologies of ancient India not only affords a greater appreciation for the combat ethics valorized in India (to this day), but may well empower Indian traditions to enrich the modern global discourse on IHL.

With its core provisions contained in the Geneva Conventions of 1949 and their Additional Protocols, IHL seeks to mitigate the horrors of war by limiting the harmful effects of armed conflict, especially on civilians. It prohibits, for example, targeting civilians in armed conflicts, chemical warfare, torture, and rape as a means of warfare. The purpose of this body of law is a humane one, aimed at minimizing human suffering.

The dharmic traditions have much to add to the conversation on IHL. The religions of India are united in viewing the human condition as one in which individuals are made to endure the suffering they inflict on others, owing to karmic theory (discussed below). Like IHL, the Hindu provisions aim to minimize suffering. India has produced a heightened humanitarian ethos that holds compassion to be of paramount significance, even for combatants. It also embraces a deep sense of fair play. As such, the Mahābhārata explicitly prohibits armed engagement with priests, the aged, the disabled, women, children, the mentally ill, support workers, the grieving and the weary. Furthermore, when engaging qualified combatants, the epic prohibits the use of deceit, trickery, unfair strategic advantage and certain weapons like world-destroying missiles.

95 ICRC Customary Law Study, above note 29, Rule 20.

96 Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 13.

97 ICRC Customary Law Study, above note 29, Rule 38.

Parties are called to treat prisoners of war with compassion, minimizing their suffering.

Because Hinduism is a religion which deals with the afterlife, it takes an approach that goes beyond earthly law and IHL. Indic traditions posit endless cycles of creation, destruction and re-creation. The dharmic traditions – Hinduism, Buddhism, Jainism and Sikhism – all subscribe to the notion of reincarnation, that each human has had multiple lives prior to the one he or she is currently living, and that the vast majority of humans will need a great many more future incarnations before they attain enlightenment (self-realization) and the release (*mokṣa*, or freedom) from the cycle of rebirth that comes with it. This world view will have profound implications for how one views just combat and the reasons for respecting the rules of armed conflict. Penalties for breaches might come in this life or in a future life.<sup>98</sup>

A linked aspect of Indic tradition is the notion of fate, and the connection to the principle of *karma*. According to Hinduism, no one comes to a situation without being connected to previous deeds, including from past lives. Karmic theory is rich and complex, encompassing both sides of the Western “free will versus fate” philosophical debate. One’s fated circumstances constitute the portion of one’s amassed *karma* (*saṃcita karma*) which is ripening in this life (*prārabdha karma*); yet one has the power to freely act (*kriyamāṇa karma*), creating new karmic consequences to be ripened in the future (*āgami karma*). In short, the results of one’s *karma* which one must experience at any given time are delivered by destiny, and yet one is always free to respond to one’s *karma*. These four types of *karma* are propelled by a metaphysical action-reaction mechanism also known as *karma*. And so, the merits of one’s actions – in the context of armed conflict and inflicting harm on others or doing good to them – are of crucial significance to Hinduism as one will necessarily be made to experience the consequences of those actions down the road, whether in this life or a subsequent one. This would include, in particular, the actions of mortal combat.

The ancient Vedic world view of going to heaven after a single life on earth is subsumed into the ascetic world view entailing the principle of *karma* delivering one the result of one’s meritorious and unmeritorious actions. And this world view has greatly coloured, and problematized, even violence that is justified. As Jeffery Long writes:

On the one hand, the necessity for violence to defend the just rule of a kingdom is not denied. But on the other hand, the law of karma cannot be denied either. The final chapter of the *Mahābhārata* is revealing here. The heroes of the epic end up reborn in hell, while the villains enjoy themselves in heaven. This is not, however, a permanent denouement. We are informed that all the characters’ karma, good and bad, must be resolved. The heroes therefore suffer the effects of their violent deeds – represented by their rebirth in hell. But they

98 Bimal N. Patel, “India”, in Bardo Fassbender *et al.*, (eds), *The Oxford Handbook of the History of International Law*, Oxford University Press, Oxford, 2012, p. 514.

will eventually have paid the price for these actions, and will be reborn in heaven to experience the rewards of their just rule. The villain is also not wholly evil. Having ruled the kingdom well during his appointed time, he is reborn in heaven. But this will be followed by a span in hell: the price of his evil deeds. A king must engage in violence as part of his duty for the protection of the social order. But the harm done by this violence is not thereby expunged. For this reason, the Dharma Śāstras say that, for all its worldly benefits, a rebirth as a warrior is unfortunate.<sup>99</sup>

Afterlife considerations are important for Hindu warriors, as for any religious persons, since their behaviour in armed conflict may be affected by what they believe comes thereafter. The anticipated rewards and punishments to be meted out after death, whether they be immediate or eventual, will influence compliance with the religious prescriptions and prohibitions on the use of deadly force. The soldier in the Indic context understands themselves to be bound by *karma* to endure at a later time whatever undue suffering they have inflicted, including in combat.<sup>100</sup> Hence, a supremely humane ethos and ultimately just universe undergirds Hindu rules of armed conflict. By contrast, IHL relies on a system of human justice, relying on courts (and courts martial) to address violations of the rules of armed conflict.

Another very important religious aspect is the role of divinity on earth. For instance, one of the most important characters in the Mahābhārata, if not in Hinduism overall, is Kṛṣṇa, an *avatāra*, or incarnation of the divine in flesh, as it were. As previously noted, Kṛṣṇa is the cousin of the epic heroes and serves as the charioteer of the great archer Arjuna. It is their battlefield conversation which constitutes almost the entirety of the Bhagavad Gītā. While Kṛṣṇa is shown to be an incarnation of the god Viṣṇu on earth, this identity is concealed for the vast majority of the epic, where he appears to function as a regular human being and is regarded as such by almost all the other epic characters. Indeed, Kṛṣṇa behaves in all too human fashion in most of the Mahābhārata, and his less scrupulous actions, including his code of conduct during war, are hotly critiqued throughout the epic. He is not infallible, and if he is omnipotent, he curtails this power throughout the epic, relying on human agency to win the war. And so, notions of “Holy War” from this angle are an imposition on the Hindu norms of war. Rather, one is best served by acknowledging the role of the *avatāra*, the divine descended into flesh to live as a human being, with all of the failings that come with assuming a human form. Moreover, this very commingling of human and divine aspect within the *avatāra* are analogous to higher and lower selves commingled in each human being. When thinking of an avatar “god” in Hinduism, it is important not to project Abrahamic or secular presumptions.

Most importantly for this study, Kṛṣṇa advocates on many occasions that warriors violate well-established rules of armed conflict. As in so many Hindu

99 Jeffery D. Long, “Religion and Violence in Hindu Traditions”, in Andrew R. Murphy (ed.), *The Blackwell Companion to Religion and Violence*, John Wiley & Sons, Malden, MA, 2011, p. 204.

100 *Ibid.*

stories, such as the Purāṇas, the evil (adharmic) forces are more powerful (like the vastly larger army of the Kauravas in the Mahābhārata) but the gods resort to cunning and trickery to win over the demons (*asuras*). In this case, Kṛṣṇa urges war (after his valiant but failed efforts at mediation). Kṛṣṇa is prepared to break his vow of not participating directly in combat in order to kill Bhīṣma, but is restrained by Arjuna. He then tells Arjuna how to defeat Bhīṣma by shooting from behind a woman (from a previous incarnation). Also, in the final fight he indicates to Bhīma that he should hit his opponent Duryodhana below the hip. So does Kṛṣṇa's example reinforce or weaken the rules? Perhaps he is playing by a higher set of rules, to which most humans cannot aspire – thus, his violations are divine exceptions.

The Mahābhārata blurs the boundaries between human and divine agency at every turn. In one of the most intriguing passages on this tension in the Gītā, Kṛṣṇa reveals his divine form to Arjuna and indicates that it is ultimately his own divine agency that is operative at all times:

I am time run on, destroyer of the universe, risen here to annihilate worlds. Regardless of you, all these warriors, stationed in opposing ranks, shall cease to exist. Therefore go to it, grasp fame! And having conquered your enemies, enjoy a thriving kingship. They have already been hewn down by me: Savyasachin, simply be the instrument. Kill Drona, kill Bhishma, kill Jayadratha and Karna, and the other warrior heroes as well: they are killed by me. Don't waver – you must fight! In battle you shall overcome your enemies. [BhG 11.32–34]<sup>101</sup>

Yet this blurred boundary between the divine and human agency of Kṛṣṇa need not be vexing. Indian traditions incorporate more of a “dial” consciousness than a “switch” consciousness: they do not ultimately take a position as to whether all is divine or human agency, but rather oscillate between the two as if to suggest a paradoxical coexistence of both orders of reality. The boundaries are blurred in a meaningful and sophisticated manner. As Nick Allen writes:

First, I would now separate off the fatalistic/deterministic dimension: the difficulty of harmonising it with the free-will agency of humans and gods is an enduring philosophical problem, and rather than blaming the epic for not providing a solution, I respect it for including the problem. Second, what I took to be incoherence between the human and divine aspects of the story now seems to me to be recognition of a profound and genuine tension or polarity in the human condition, albeit one that might nowadays be expressed in different language and with different emphases.<sup>102</sup>

Understanding the Indic view of humanity necessitates understanding that the divine is at the heart of every human being. The Indian vision of spiritual striving entails realizing the indwelling divine presence as the essence of human selfhood.

101 W. J. Johnson (trans.), above note 50, p. 51.

102 N. Allen, above note 11, p. 146.

This is the crux of why Indian religion so emphasizes a human vision of armed conflict: humanism is tantamount to piety when the divine lives within all humans.

In most schools of Hinduism, the ultimate goal is realizing one's innate divinity. And so, the virtue of compassion towards other beings is of great significance in the Indian consciousness. When classical Hindu texts counsel that a warrior should not engage in combat with, for example, the aged, the mentally ill or the grieving, is that strictly because of the pragmatic disadvantage which these individuals have? That is, is this insistence merely to enforce the "fair fight" directive? Or is it perhaps in light of the innate compassion that arises in the presence of the vulnerable, at least for decent people? Bhīṣma, lying on his bed of arrows, counsels that a combatant should not use tactics which cause undue suffering such as poisoned or barbed arrows, nor should anyone be abused or tortured in any way. Moreover, one needs to have compassion for, and therefore not engage, the exhausted, the terrified, the defenceless, the weeping, the compromised, the ill, those seeking refuge, the young, the aged (MBh 12.97.1–14).<sup>103</sup>

The virtue of compassion plays a significant role in Indian religions, even in the midst of warfare. We know this through passages such as the following concerning the siege of Kṛṣṇa's capital city, Dvārakā, after the Kurukṣetra war: "[The army settled in], avoiding only burning grounds, sanctuaries of Gods, anthills, and burial mounds" (MBh 3.17.3).<sup>104</sup> The army exhibits respect for the sacred, for the dead, and even for ants. This behaviour far surpasses deliberations on fighting fairly. It bespeaks, perhaps with some literary flair, an acknowledgement of the sacrality of all life. Compassion among warriors is explicitly extolled in the Mahābhārata: "For he who spares the life of an enemy, defeated by strength and unconscious, when he pleads for mercy, what beautiful gifts does he not deserve?" (MBh 1.158.39)<sup>105</sup>

A warrior does not refrain from fighting with the disempowered strictly because of the personal dishonour that may come from taking unfair advantage over another: he also does so compelled by compassion for their suffering. The former motivation may be to prevent the tarnishing of one's reputation as a warrior. This motivation is external to oneself, dependent upon one's social status and one's own sense of self-importance. This is distinct from the latter reason, being intrinsically moved by compassion, which has to do with the cultivation of one's own spiritual self. One acts by compassion irrespective of the opinion of others.

Despite justifying and legitimizing the use of violent force for the sake of social welfare, classical Hindu texts adhere in tandem to the virtue of non-violence. This is also seen *post bellum*. India's great epic counsels that prisoners of war be treated humanely, as in IHL.<sup>106</sup> An effective way of corroborating this Hindu ethos is by examining how the warriors behave after the Mahābhārata war is won:

103 J. L. Fitzgerald (ed. and trans.), above note 13, p. 412.

104 J. A. B. van Buitenen (ed. and trans.), above note 36, p. 256.

105 J. A. B. van Buitenen (ed. and trans.), above note 45, p. 322.

106 Surya P. Subedi, "The Concept in Hinduism of 'Just War'", *Journal of Conflict & Security Law*, Vol. 8, No. 2, 2003, p. 356.

The Kaurava king honored all the women there whose men had been slain, or whose sons had been killed, and he compassionately extended his protection to them. Kindness was most important to the king – the lord favored those in distress, the blind, and the wretched with housing, clothes, and food. [MBh 12.42.10–11]<sup>107</sup>

After the victory, he should pay homage to gods and righteous Brahmins; grant exemptions; and issue proclamations of amnesty. [Manu 7.201]<sup>108</sup>

After vanquishing the Kurus in battle, the bull-eyed hero herded back the vast wealth of Virāṭa. When the sons of Dhṛtarāṣṭra had all been crushed and gone, many soldiers of the Kurus came out of the dense woods; with their heart trembling from fear they appeared from hither and yon. They were seen to stand there with disheveled hair and folded hands, plagued with hunger, thirst, and fatigue in an alien land, and out of their wits. They bowed and in confusion said to the Pārtha, “What should we do?” *Arjuna said*: Go safely, be blessed. Have no fear at all. I have no wish to slaughter the miserable, I want to assure you. [MBh 4.62.1–5]<sup>109</sup>

Not only were the women of fallen soldiers cared for, the fallen were given proper burials out of respect:

“Heir of Bharata,” said Dhṛtarāṣṭra [father of the defeated Kauravas], “some of these men have people to care for them, while others do not; I trust that all their bodies will be burnt in the proper manner? Some have no one to perform the rites for them, others have not installed the sacred fires in their homes. They are so many: for whom should we perform the rituals, son? Eagles and vultures are dragging them to and fro, but through the rituals these men will attain the heavenly realms, Yudhiṣṭhira.”

When wise Yudhiṣṭhira, Kuntī’s son, heard these words, he gave orders .... “Gentlemen, have the rites for the departed performed for all these men: let no one’s body perish as if not cared for.” [MBh 11.26.21–26]<sup>110</sup>

There are direct similarities between the above passages and the rules from the ICRC Customary Law Study pertaining to “Treatment of the Dead”, “Disposal of the Dead”, “Return of the Remains and Personal Effects of the Dead” and “Accounting for the Dead”.<sup>111</sup>

While there are many principles in common between the Hindu epics and IHL, there are some points of divergence, as might be expected between traditions

107 J. L. Fitzgerald (ed. and trans.), above note 13, p. 261.

108 P. Olivelle (ed. and trans.), above note 84, p. 164. This directly parallels Rule 159 of the ICRC Customary Law Study, above note 29, on “Amnesty”.

109 J. A. B. van Buitenen (ed. and trans.), above note 36, p. 119.

110 J. D. Smith (ed. and trans.), above note 15, p. 593.

111 ICRC Customary Law Study, above note 29, Rules 113–116.

that were created centuries apart. For instance, classical Hinduism strongly limits the right to combat in war to a particular caste, the *kṣatriya*, but this concept can be transferred to the modern era by taking this to mean uniformed military personnel of the State. As with almost all ancient empires, war in Hinduism was the domain of male combatants; women were excluded. Modern wars, on the other hand, allow women the right to serve as soldiers and combatants. Classical Hinduism disavows ambushes and surprise attacks, while modern IHL permits such attacks, provided they are on legitimate military targets and meet other criteria. Proportionality in Hinduism goes beyond IHL in several ways, including by prescribing equality of arms – i.e., only warriors of the same type should engage in combat. Some textual passages also add impractical constraints, such as not fighting someone who has dishevelled hair, someone who is fearful (including someone who is fearful in a battle), a man with a woman's name, the father of a single son, or a childless man (MBh 6.103.72–73). These ultra-humane constraints may not have been considered as strict rules; rather, they bespeak the elevated humanitarian impulse in the Indic context discussed above, stemming from a uniquely Indic cosmology, soteriology, warrior ethos, and divine vision of human personhood. Finally, while both Hinduism and IHL are normative frameworks, the latter has the status of international law, to which parties to armed conflict are legally bound to comply. Given the large overlap between IHL and Hindu teachings and rules, the latter can certainly contribute to IHL compliance, which is generally less restrictive, though much more rigorously codified through treaties.

## Conclusion

The present paper has carefully reviewed the Sanskrit verses of key classical Hindu texts. Foremost of these is the Mahābhārata, India's great epic (in literary tradition and in popular view), which coconsciously legitimizes and regulates the use of violent force while still preserving non-violence as a significant moral virtue. Along with the Rāmāyaṇa, the Mahābhārata enshrines Hindu values and what Hindus believe in, particularly with respect to the use of force and the moral imperative of non-violence. These values strongly influence thought and actions pertaining to armed conflict. The epic very consciously syncretizes and integrates views on violence so as to solidify the dominant ethical paradigms of the Hindu world, paradigms internalized and invoked to this day. The present study demonstrates the following strong convergences between classical Hinduism and IHL with regard to the conduct of armed conflict:

- minimization of human suffering;
- proportionality in the use of force;
- protection of non-combatants;
- restrictions on many weapons systems;
- special care for survivors of war;

- special protections for civilian women, children, the aged, parlementaires, religious personnel and displaced persons.

The Mahābhārata demonstrates through stories the particularities unique to the Indic context, most notably the call for compassion on behalf of combatants, and a heightened emphasis on humane and fair conduct in battle. This corroborates Sinha's assertion that "in terms of the ideals of humanitarianism of ancient India the laws of war were more progressive" than the modern ones.<sup>112</sup>

Righteous war is informed in the Indian context by a particular vision of the righteous warrior, one who is able to fulfil his violent social duty while maintaining a non-violent, compassionate attitude. The quintessence of this noble warrior is communicated to the great archer Arjuna by Kṛṣṇa in the Gītā on the cusp of the dreadful war: beyond intellectualism and idealism, this philosophy is meant to help warriors like Arjuna navigate the horrors of war. How is Arjuna to do so? Indeed, what is his specific duty (*dharma*) at the hour of war? It is noteworthy that the very emphasis on duty (versus rights) inherent to Indian traditions renders Hinduism a natural conversation partner in discourse on IHL. The warrior's duty in this context is not only a socio-political one, but also a spiritual and humanitarian one. The rich and ancient discussion of combat ethics in Indian traditions therefore serves not only to invite Hinduism into the modern global conversation on IHL, but to greatly enrich that conversation, raising the humanitarian bar in both war and peace.

112 Manoj Kumar Sinha. "Hinduism and International Humanitarian Law", *International Review of the Red Cross*, Vol. 87, No. 858, 2005, p. 293, available at: [www.icrc.org/en/doc/assets/files/other/irrc\\_858\\_sinha.pdf](http://www.icrc.org/en/doc/assets/files/other/irrc_858_sinha.pdf).