

WAR AND LAW SEMINAR
Joyce Malcolm

“In time of war the laws are silent.” Roman Saying

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Books: John Keegan, *The Face of Battle*
 Michael Reisman & Chris T. Antoniou, eds, *The Laws of War: A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflict*
 Michael Howard, ed. al, *The Laws of War: Constraints on Warfare in the Western World*
 Harry G. Summers, *On Strategy: A Critical Analysis of the Vietnam War*

The array of legal issues raised by war are among the most pressing our country, and indeed our civilization, now confront. Among these are the questions of when military force is appropriate; the role of, and protections for, uniformed armies; who should serve; the proper treatment of conquered populations and non-combatants; treatment of prisoners-of-war and non-state actors; honorable behavior when waging asymmetric warfare; and the war powers of the American executive. Placing these legal questions in an historical context is enlightening and tremendously helpful. This course will examine these and other issues in that context while exploring today’s evolving legal standards.

REQUIREMENTS:

Reading is assigned for each class and should be read in advance.

Grading will be based on a research essay (75%), a presentation (10%) and class participation (15%).

Handouts: will be distributed a class in advance or sent by TWEN. PLEASE NOTE: The handouts for the first class may be picked up from the rack outside my office door, Room 418.

TWEN: This course will be listed on TWEN. Please register.

TOPICS

August 25	<p>Introduction: War and Law: Rules of Warfare Reading: “Killing No Murder”, John Keegan, <i>The Face of Battle</i>, pp. 45-52 Handout: The Melian Dialogue, Thucydides, <i>The Peloponnesian Wars</i> Clausewitz, <i>On War</i>, excerpts</p>
September 1	<p>Just War, Chivalry, Honour: The Legacy Reading: Howard, <i>The Laws of War</i>, chap. 3, The Age of Chivalry Keegan, <i>The Face of Battle</i>, Agincourt, pp. 78-86, 108-116 Reisman & Antoniou, <i>The Laws of War</i>, “Definition of</p>

Aggression,” 10-12.

- September 8** **Mercenaries vs Militia: Warriors vs Military Professionals**
Reading: Handout: Machiavelli, excerpt from *The Prince*
Michael Robert, “The Military Revolution”
Howard, *Laws of War*, chap. 4, Early Modern Europe
Reisman & Antoniou, pp. 44-45.
- September 15** **Controlling the Military: Anglo-American Strategies**
Reading: Handout: English Bill of Rights; The Mutiny Act, 1689
Declaration of Independence
Excerpts from debates at Constitutional convention and state ratifying conventions.
- September 22** **War Powers and the Constitution: The President, Congress, Courts**
Reading: the American Constitution-military articles;
Selections from state ratifying conventions; Bill of Rights
Abraham Lincoln, “Proclamation Suspending the Writ of Habeas Corpus”
Selective Service Act, May 18, 1917
Present Debate: TBA
- September 29** **Civilians and War: Impact of Mass War and the Guerrilla Challenge**
Reading: Howard, *The Laws of War*, chap. 6, The Age of Napoleon
Handout: Excerpts, Geoffrey Best, *Humanity in Warfare*
Reisman & Antoniou, *The Laws of War*, Hague Convention, Qualifications of Belligerents, pp. 41-42
- October 6** **The Guerrilla Challenge: The Vietnam War, Iraq and Afghanistan**
Reading: Summers, *On Strategy*, Introduction, chaps. 1, 3, 6, 9
***RESEARCH PAPER OUTLINE & PRELIMINARY BIBIOGRAPHY**
- October 20** **International Peace Conferences: Successes and Failures**
Reading: Handout: selections, Best, *Humanity in Warfare*, pp. 128-157, 179-200
Reisman & Antoniou, *The Laws of War*, pp. 35-36, 150-152
- October 27** **Men against Fire, World War I, Conscientious Objectors, Spies, Traitors**
Reading: Handout: Michael Howard, “Men Against Fire”
Keegan, *Face of Battle*, The Somme, pp. 219-230, 247-251, 285-289
Reisman & Antoniou, *the Laws of War*, p. 83

US Treason, US Code, Title 18, part 1, chap. 115, ss2381.
Handout: relevant cases

- November 3** **The First Casualty: The Role of the Press in Wartime**
Reading: excerpts, Phillip Knightley, *The First Casualty: From the Crimea to Vietnam: The War Correspondent as Hero, Propagandist, and Myth Maker*, excerpts TBA.
Rand Report, “Reporters on the Battlefield: The Embedded Press System in Historical Context” (online)
- November 10** **Bombing Civilians, POWs, Saboteurs: Lessons of Nuremberg**
Reading: Howard, *The Laws of War*, chap. 9, Air Power, pp. 140-154
Reisman & Antoniou, pp 318-332
- November 17** **Asymmetric Warfare and the Geneva Agreements: Soldiers vs Non-State Actors**
Reading: Reisman & Antoniou, *The Laws of War*, pp. 385-6.
The Geneva Agreements.
Hamdan v. Rumsfeld
- November 24** **Detainee Cases after Hamdan; Miranda in Afghanistan**
Reading: *Boumediene v. Bush, 2008.*
Check online for Miranda rights read to POWs in Afghanistan.
- December 1** **Should the Laws Be Silent in Times of War?**
Reading: Howard, *The Laws of War*, chap.12., Some Concluding Remarks; Keegan, *The Face of Battle*, pp. 301-331
- December 11** **RESEARCH PAPER DUE**