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

Office: 418 Hazel, X9150, jmalcolm@gmu.edu
Office Hour: Tues. after class and by appointment.

Books: John Keegan, *The Face of Battle*
Michael Howard, ed. al, *The Laws of War: Constraints on Warfare in the Western World*

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 21**
**Introduction: War and Law: Rules of Warfare**
**Reading:** “Killing No Murder”, John Keegan, *The Face of Battle*, pp. 45-52
The Melian Dialogue, Thucydides, *The Peloponnesian Wars*
**Handout:** Clausewitz, *On War*, excerpts

**August 28**
**Just War, Chivalry, Honour: The Legacy**
**Reading:** Howard, *The Laws of War*, chap. 3. The Age of Chivalry
September 4  Mercenaries vs Militia: Warriors vs Military Professionals  
**Reading:** Howard, *Laws of War*, chap. 4, Early Modern Europe  
Reisman & Antoniou, pp. 44-45.  
**Handout:** Machiavelli, excerpt from *The Prince*  
Michael Robert, “The Military Revolution”

September 11  Controlling the Military: Anglo-American Strategies  
**Reading:** English Bill of Rights [http://www.constitution.org/eng/eng_bor.htm](http://www.constitution.org/eng/eng_bor.htm)  
**Handout:** The Mutiny Act, 1689  
Excerpts from debates at Constitutional convention and state ratifying conventions. Declaration of Independence

September 18  War Powers and the Constitution  
**Reading:** American Constitution- articles touching military; Bill of Rights  
Abraham Lincoln, “Proclamation Suspending the Writ of Habeas Corpus”  
*Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866)  
War Powers Act, 1973  
**Handout:** Selective Service Act, May 18, 1917

September 25  Civilians and War: Mass War and the Guerrilla Challenge  
**Reading:** Howard, *The Laws of War*, chap. 6, The Age of Napoleon  
Reisman & Antoniou, *The Laws of War*, Hague Convention, Qualifications of Belligerents, pp. 41-42  
**Handout:** Excerpts, Geoffrey Best, *Humanity in Warfare*

October 2  The Guerrilla Challenge: The Vietnam War, Iraq and Afghanistan  
**Reading:** Summers, *On Strategy*, Introduction, chaps. 1, 3, 6, 9  
*RESEARCH PAPER OUTLINE & PRELIMINARY BIBLIOGRAPHY*

October 16  International Peace Conferences: Successes and Failures  
**Reading:** Reisman & Antoniou, *The Laws of War*, pp. 35-36, 150-152  
**Handout:** selections, Best, *Humanity in Warfare*, pp. 128-157, 179-200

October 23  Men against Fire, World War I, Conscientious Objectors, Spies, Traitors  
**Reading:** 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:** Michael Howard, “Men Against Fire”
October 30  The First Casualty: The Role of the Press in Wartime

November 6  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 13 Asymmetric Warfare and the Geneva Agreements: Soldiers vs Non-State Actors
Hamdan v. Rumsfeld

November 20 Detainee Cases
Excerpts Public Committee Against Torture v. State of Israel, Supreme Court of Israel, Sept. 6, 1999.

November 27 Should the Laws Be Silent in Times of War?

December 10 RESEARCH PAPER DUE