WAR AND LAW SEMINAR
Fall, 2016
Joyce Malcolm

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

Office: 418 Hazel, X9150, jmalcolm@gmu.edu
Office Hours: Tuesday 11:30- noon; Thursday 1:00-1:45 pm and by appointment.

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

The array of legal issues raised by war are among the most urgent 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 and Congress. Placing these
legal questions in an historical context is enlightening and tremendously helpful. This
course will examine these and other issues 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 (70%), a presentation and short paper
(15%) and class participation (15%).

Please collect a reading packet [table outside my office 418]; on occasion other
readings will be distributed in class or sent by TWEN.

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

August 18  Introduction: War and Law: Rules of Warfare  
The Melian Dialogue, Thucydides, *The Peloponnesian Wars*  
https://www.mtholyoke.edu/acad/intrel/melian.htm

August 23  Reading Packet: Clausewitz, *On War*, excerpts and  

August 25  Just War, The Code of Chivalry  

August 30  Honor, Dishonor, and the Legacy of Medieval Warfare:  

September 1  Mercenaries vs Militia  
Reading: Reisman & Antoniou, pp. 44-45.  
Reading Packet: Machiavelli, excerpt from *The Prince*  

September 6  Warriors vs Military Professionals  
Reading: Michael Robert, “The Military Revolution”

September 8  Controlling the Military: The English Strategy  
Reading: English Bill of Rights  
http://avalon.law.yale.edu/17th_century/england.asp  
Reading Packet: The Mutiny Act, 1689

September 13  America Forces and the English Legacy  
Handout: Excerpts from debates at Constitutional convention and state ratifying conventions.

September 15  Civilians and Mass War  
Reading: Howard, *The Laws of War*, chap. 6, The Age of Napoleon

September 20  Guerilla Warfare  
Reading: Reisman & Antoniou, *The Laws of War*, Hague Convention,  
Qualifications of Belligerents, pp. 41-42  
Handout: Excerpts, Geoffrey Best, *Humanity in Warfare*
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<tr>
<th>Date</th>
<th>Topic</th>
<th>Reading</th>
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<tbody>
<tr>
<td>September 27</td>
<td>Drones, Law Enforcement, and Civil Liberties</td>
<td>Live Session from Cato Institute Conference</td>
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<td>Reading: Reisman &amp; Antoniou, <em>The Laws of War</em>, pp. 35-36, 150-152</td>
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<td><em>RESEARCH PAPER TOPIC [must be approved in advance]</em></td>
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<td>October 4</td>
<td>Men against Fire, World War I</td>
<td>Reading Packet: Michael Howard, “Men Against Fire”</td>
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<td>Reading: Keegan, <em>Face of Battle</em>, The Somme, pp. 219-230, 247-251, 285-289</td>
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<td>October 6</td>
<td>Conscientious Objectors, Traitors, Spies</td>
<td>Reading: Reisman &amp; Antoniou, <em>The Laws of War</em>, p. 83</td>
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<td>US Treason, US Code, Title 18, part 1, chap. 115, ss2381.</td>
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<td>October 20</td>
<td>Bombing Civilians, POWs, Saboteurs: Lessons of Nuremberg</td>
<td>Reading: Howard, <em>The Laws of War</em>, chap. 9, Air Power, pp. 140-154</td>
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<td>Reisman &amp; Antoniou, pp 318-332</td>
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<td><em>RESEARCH PAPER: OUTLINE &amp; PRELIMINARY BIBLIO.</em></td>
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October 27  Detainee Cases  
Excerpts  
Public Committee Against Torture v. State of Israel, Supreme Court of Israel, Sept. 6, 1999.

November 1  The Breaking Point: Post Traumatic Stress  
**Handout:** Jonathan Shy, Achilles in Vietnam, chaps. 1, 3, 6

November 3  Biological Hazards  
**Reading:**  

November 8  Drones and Robotic Weapons  
**Reading:**  
https://www.asme.org/engineering-topics/articles/robotics/risks-of-robotic-warfare

November 10  On Killing  
**Reading:** excerpts from Lt. Col. Dave Grossman, On Killing: The Psychological Cost of Learning to Kill in War and Society

November 15  “EYE IN THE SKY”  
Film – watch and discuss

November 17  Refugees of War  
**Reading:**  
http://data.unhcr.org/syrianrefugees/regional.php

November 22  Preemption?  
**Handout:** John Yoo, Point of Attack: Preventive War, International Law, and Global Warfare, pp. 1-6.  

November 29  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 10  RESEARCH PAPER DUE (noon)