

What are the Laws of War?

“The more vigorously wars are pursued the better it is for humanity. Sharp wars are brief.” (#28)

“Men who take up arms against each other in a public war do not cease on this account to be moral beings, responsible to one another and to God.” (#15)

How do we reconcile these two sentiments? Is it possible to wage war and to maintain morality? Do the laws of war maintain morality or justify vigorous wars? Do the laws of war even matter? If so, how do they matter? If not, why do they not?

These are some of the broader questions that will guide us in our collaborative exploration and discussion of the laws of war and, importantly, in our assessment of the applicability of the laws of war to the current war on terror. Accordingly, we have two main tasks this semester.

The first is to become familiar with the specific tenets of the laws of war, primarily as codified in the 1949 Geneva Conventions and their 1977 Additional Protocols. The second task is to become familiar with the broad contours of the war on terror, which include but are not limited to the ground wars in Afghanistan, so as to evaluate the applicability and the adequacy of the laws of war. And, the third, is to be aware of the historical development of the laws of war vis a vis the United States’ experiences in the American Civil War.

We will be considering questions of immediate importance—e.g., are those detained at Camp X-Ray deserving of P.O.W. status, are the United States’ military tribunals legal or not etc., But, as we shall be considering these questions even as the war on terror (still) continues to unfold, we should not expect these questions to remain exactly the same throughout the semester.

Furthermore, since even those experienced and trained in the laws of war are not in agreement as to the proper answers, we should not imagine that we

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1 Para#28, 15, from The Lieber Code of 1863, or General Orders 100, codified during the American Civil War.
can or will reach consensus. We too will encounter great debate and disagreement as we sort through our own answers, or even adjudge the proper questions to be asked.

Thus, to best facilitate our exploration and discussion, I expect that all of us attend class having read the material closely and prepared to participate fully. I also expect that we shall each take responsibility for following daily news with an eye to new information and developments in the global war on terror. And, most importantly, I expect that our class discussions will be engaged, lively, and consistently respectful of differences in opinion, attentive to differences of interpretation, and responsive to differences in experience. For bear in mind, at stake are not solely matters of law, but also matters of life.

**Formal Requirements**

1) **Two class presentation: 20% (in pairs)**

The presentation should be for the same class as you are writing one of your 2-page analytic discussion papers. However, the presentation should not be a public reading of your discussion paper. Rather, while you need to present the same three analytical points as in your paper (descriptive, critical, synthetic), your primary responsibility is to teach/involve the class in the readings. This can be a difficult task, so you and your partner should brainstorm ways to generate excitement and interest—from role-playing, to jeopardy style games, to theater . . . the choice is yours. Importantly, each presentation should conclude with 4 questions to pose to the class to lead both general/small group discussions—so think creatively about what you would like us to debate, learn, and conclude from the readings.

For the presentations, please email or see me for brief and additional resources that might be of use in preparing your presentations. Please make sure to read major newspapers before your presentation, as many themes/elements of our reading continue to appear in contemporary events.

2) **Five 3-5-page analytic discussion papers. 50%**

These discussion papers serve as the basis for the presentations, and also as independent records of your thinking. They should display the following: 1)
understanding descriptively the three major points made in each reading, that is make sure to identify and state the principle theses; 2) critically engaging these three major points—e.g., does the author present a convincing argument regarding these points, how so, why or why not, what counts as evidence, in what theories or traditions are these arguments situated, is there an obvious or not so obvious blind spot in the author’s reasoning and so forth, and; 3) relating the argument of one reading to at least 2 of the other readings—e.g., showing how one argument is disproved or improved if another argument is accounted for, showing how one each argument responds to or builds upon another. Crucially, both your presentation and your analytic discussion papers should conclude by raising 3 effective questions for class discussion and debate. These 3 questions can be specific clarification questions—e.g. how did Walzer define combatants and does it shift in the book—or substantive questions—e.g. can the community to which Walzer refers include those who believe that war should be fought without rule or law—but cannot be only one type. An effective question is one that helps us comprehend new ideas, construct an improved argument, generate debate, orient or introduce a unique approach.

Please note that it is a requirement that two of your 3-5-page discussion papers must be turned in before Spring Break (by March 19th) and that one paper must be turned in the final day of our class (May 7).

If that requirement is not fulfilled, the grade for those papers will be a zero.

Because these papers are essentially the preparation for our class discussion and debate, it is a requirement that the papers be handed in sequentially at the end of the class—i.e., only one paper per class in class—and in class. Only in extraordinary circumstances will I accept a paper outside of class attendance.

3) Class participation: 20%

In our reading and discussion, we will be relying closely on the written text to substantiate our positions and to document our reasoning. Consequently, I expect that the readings for class will be present in each class for easy reference. I am utterly sympathetic to occasional statements such as—“I think she said something about Islam and suicide bombing in the middle, near where the stuff about jihad comes in, but it could have been last week’s reading, does anyone know what I mean?”—but, they should occur only once
or twice over the course of the semester because they are just frustrating to everyone. . . . including the speaker!

If bringing the readings to class poses a hardship, please let me know as soon as possible. Otherwise, bring the books to class—I expect pages and authors to be used in our conversations!

4) **Brief: 10%**
A one page brief analyzing the U.S. application (under President Obama) of the laws of war to an event in contemporary politics. I will explain more in class, and it will become clearer in class as we will do a practice brief together. This is due between March 26th and May 7th.

Finally, I reserve the right to change the readings with two weeks notice. I will not increase the number of readings, but I may subtract or shift readings.

Anybody who wishes to discuss specific academic/learning concerns or requirements that could affect participation in this course please let me know immediately. Otherwise, I will assume that all are aware of and responsive to the academic standards, e.g. regarding plagiarism, set forth by the University of Wisconsin, and all violations of those standards will be handled accordingly. Incompletes will only given in case of extreme emergency and demonstrable hardship.

**COURSE TEXTS:** In addition, I will send around PDF of any assigned readings not listed here.

Lincoln's Code: The Laws of War in American History by John Fabian Witt
War is a force that gives us meaning by Chris Hedges
On Suicide Bombing by Talal Asad
Torture and Impunity: The U.S. Doctrine of Coercive Interrogation by Alfred W. McCoy
Detention and Denial: The Case for Candor After Guantanamo by Benjamin Wittes
Just And Unjust Wars: A Moral Argument With Historical Illustrations, by Michael Walzer
Arguing the Just War in Islam by John Kelsay
Andersonvilles of the North: The Myths and Realities of Northern Treatment of Civil War Confederate Prisoners by James M. Gillispie
Constraints on the Waging of War: An Introduction to International Humanitarian Law by Frits Kalshoven, and Liesbeth Zegveld (Author)

January 22: Class Introduction and Syllabus.
January 29: Chris Hedges (all)

February 5th Fabian Witt: Chps 6, 7, 8, and 9, pgs. 170–284

February 12 Fabian Witt: Chps 10 and 11, pgs. 285–365

February 19: John Kelsay: Chps 2, 4, 5, and 6

February 26: Walzer: Jigsaw (so Part III, IV, and V to be split among the class)

March 5: Kalshoven and Zegveld 16-81

March 12: CATCH UP on all the reading

March 19: Kalshoven and Zegveld 82-141 and 169-190 and 218-222

March 26: Spring Break

April 2: James M. Gillispie (all)

April 9: Alfred McCoy Chps 1-4 pgs 3-150

April 16: Alfred McCoy Chps 5-7 pgs 151-268


April 23: Benjamin Wittes (all)

April 30 Talad Aasad: (all)

May 7: Drones (to be decided)