



Ethics and Law in Armed Conflict

Seminar, 2nd term 2017-2018

Organised by Jennifer Welsh & Emanuela-Chiara Gillard

Please register [online](#)

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Course Overview

This course addresses the controversial questions of whether and how moral and legal principles can operate in the challenging context of armed conflict. Some advance the view that the most defensible moral position is pacifism, given the lethal violence involved in war, while others from a more realist perspective deny that the context of war is one in which morality can or should apply. The main focus of our discussion is on those ethical traditions and legal regimes that have sought to regulate the recourse to war (jus ad bellum), the conduct of war (jus in bello), and war's aftermath (jus post bellum). Throughout the course we attempt to bring together arguments from key thinkers within the ethics of war, who seek to identify the norms that should limit war (and how they should apply), with the "really existing" provisions of public international law, international humanitarian law, and human rights law that are relevant to armed conflict. We also focus on contemporary challenges to the dominant moral and legal paradigms that have regulated armed conflict (including Revisionist Just War Theory), and on emerging issues (such as cyber-attacks, armed drones and transnational non-state armed groups) that have led some to call for revisions to how we evaluate and regulate war.

Requirements

The seminar is taught in two-hour sessions. Each meeting will be initiated by one or two short oral presentations by students, based on response papers that have been written to answer the set questions for that week. The response papers should be between **500-700 words**, and the presentation **should be no longer than 10-12 minutes** (Please note: the presentations and response papers are not designed to be recaptulations of the readings, but rather an attempt to answer the set questions!)

Students who wish to take this seminar for credit must meet Department attendance requirements, complete all required readings, and participate actively in seminar

discussions. Students have the option of writing a term paper for the class, and if they wish to take this option they should discuss their proposed topic with Professor Welsh well before the Department's due date for term papers. Anyone wishing to audit the class must fulfil all requirements expected of other students.

Schedule

The seminar takes place on **Thursdays at 11:00-13:00**, at the Badia Fiesolana, and will run **from Thursday 11 January to Thursday 15 March**. Please take note of the following locations for the sessions:

Session 1:	Thurs 11 January	11:00 – 13:00	Emeroteca
Session 2:	Thurs 18 January	11:00 – 13:00	Seminar Room 4
Session 3:	Thurs 25 January	11:00 – 13:00	SPS Meeting Room, Villa Sanfelice
Session 4:	Thurs 1 February	11:00 – 13:00	Seminar Room 4
Session 5:	Thurs 8 February	11:00 – 13:00	Seminar Room 4
Session 6:	Thurs 15 February	11:00 – 13:00	Seminar Room 4
Session 7:	Thurs 22 February	11:00 – 13:00	Seminar Room 4
Session 8:	Thurs 1 March	11:00 – 13:00	Seminar Room 4
Session 9:	Thurs 8 March	11:00 – 13:00	Sala del Capitolo
Session 10:	Thurs 15 March	11:00 – 13:00	Sala del Capitolo

Syllabus

Session 1 (11 January 2018)

THE JUST WAR “TRADITION” (11 January 2018)

This session introduces the “just war tradition” as a paradigm for morally assessing both the resort to war and the conduct of war. We will set just war thinking against its two major alternatives – realism and pacifism – and discuss what kind of ethical analysis it promotes. We will also examine two ways of viewing the just war tradition: as a way of limiting the destructiveness of war (while recognizing its occasional necessity), and as a vehicle for the punishment of ‘wrong doing’. In so doing we will focus in particular on the key modern expression of the tradition, Michael Walzer's *Just and Unjust Wars*.

Question a: Is the just war tradition a viable ‘middle way’ between realism and pacifism, or does it merely ‘sanitize’ war?

Question b: ‘Theories of just war are more concerned with protecting the sovereignty of states than with protecting the lives of individual persons.’ Do you agree?

Essential reading

- Rengger, *Just War and International Order* (2013), Chapters 2 and 3.
- Walzer, *Just and Unjust Wars* (5th edition, 2015). Preface to the first edition, Chapters 1, 2, 3 and 16. (NOTE: you can also read any of the earlier editions)

- Mapel, “Realism and the Ethics of War and Peace”, in Nardin, ed., *The Ethics of War and Peace* (1996), Chapter 3
- Ryan, “Pacifism” in Frowe and Lazar, eds., *The Oxford Handbook of the Ethics of War*. Available online at <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199943418.001.0001/oxfordhb-9780199943418-e-21>

Further reading

- Shue, “War”, in LaFollette, ed., *Oxford Handbook of Practical Ethics* (2003), 734-61
- David Luban, “Just War and Human Rights”, *Philosophy & Public Affairs* (1980), 160-181

Session 2 (18 January 2018)

JUS AD BELLUM: THE PROHIBITION ON THE USE OF FORCE

This session examines the emergence and nature of what Walzer refers to as ‘the legalist paradigm’ governing the resort to war. We will briefly discuss the precursors to the UN Charter, and the move to outlaw aggression in the inter-war period, before moving on to analyse Article 2(4) of the Charter - which prohibits the use of force - and Article 51 - which permits the use of force in self-defence. In so doing, we will also discuss application of the ad bellum principles of necessity and proportionality.

Question a: What constitutes “armed force” within the meaning of Article 2(4) of the UN Charter?

As you answer, reflect on issues such as whether cyberattacks fall within the scope of this article, whether economic force is prohibited, and when/whether support to non-state armed groups would amount to the use of force.

Essential reading

- Walzer, *Just and Unjust Wars*, Chapter 4 (Law and Order in International Society)
- Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law*, (2010), 50-92.
- Melzer, *Cyberwarfare and International Law*, (2011), 1-19, (<http://unidir.org/files/publications/pdfs/cyberwarfare-and-international-law-382.pdf>).
- Akande, ‘Would It Be Lawful For European (or other) States to Provide Arms to the Syrian Opposition?’, *EJIL:Talk!* January 2013, (<https://www.ejiltalk.org/would-it-be-lawful-for-european-or-other-states-to-provide-arms-to-the-syrian-opposition/>).

Further reading

- Schmitt, *Tallin Manual 2.0 on the International Law Applicable to Cyber Warfare* (2017), 328-339.

Question b: What constitutes an armed attack for the purpose of Article 51 UN Charter?

As you answer, reflect on what is implied by the requirements of **necessity** (for example, must all peaceful means of dispute resolution be exhausted?) and of **proportionality**.

Essential reading

- Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law*, (2010), Chapter 7, 401-406 and 470-494.
- Akande and Lieflander, 'Clarifying Necessity, Imminence and Proportionality in the Law of Self-Defence' (2013) 107 *AJIL* 563.
- Ruys, 'Armed Attack' and Article 51 of the UN Charter, (2010), 139-184.

Further reading

- Kretzmer, 'The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum', (2013) 24 *EJIL* 282, (<http://www.ejil.org/pdfs/24/1/2380.pdf>).
 - Responses by Lubbell, Heathcote, Lieflander, and O'Connell, *EJIL:Talk!* (April 2013); and
 - Rejoinder by Kretzmer at *EJIL:Talk!* (April 2013).
- Chatham House: *Principles of International Law on the Use of Force by States in Self-Defence* (2005), (<https://www.chathamhouse.org/publications/papers/view/108106>).

Session 3 (25 January 2018)

JUS AD BELLUM: CONTROVERSIES AND EMERGING ISSUES

Session 4. (1 February 2018)

JUS AD BELLUM: HUMANITARIAN INTERVENTION AND COLLECTIVE SECURITY

Session 5. (8 February 2018)

JUS IN BELLO: CLASSIFYING CONFLICTS

Session 6. (15 February 2018)

JUS IN BELLO: REGULATING THE CONDUCT OF HOSTILITIES

Session 7. (22 February)

REVISIONIST JUST WAR THEORY

Session 8. (1 March 2018)

JUS IN BELLO: DEPRIVATION OF LIBERTY

Session 9. (8 March 2018)

JUS IN BELLO: HUMANITARIAN ACTION (LAW AND PRINCIPLES)

Session 10. (15 March 2018)

JUS POST BELLUM: RESPONSIBILITY, REPARATIONS, AND REBUILDING

Last updated 21.12.2017