LAW 751, PHIL 205R, ETHICSOC 205R & 305R:
JUST AND UNJUST WARS
Winter Quarter, 2014-2015

2 units
Professors: Avishai Margalit & Allen Weiner

Meeting Times: Tuesday 4:15 – 6:15 pm
Law School Room 271

Faculty contact information and office hours:

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Course Description:

War is violent, but also a means by which political communities pursue collective interests. When, in light of these features, is the recourse to armed force justified? Pacifists argue that because war is so violent it is never justified, and that there is no such thing as a just war. Realists, in contrast, argue that war is simply a fact of life and not a proper subject for moral judgment, any more than we would judge an attack by a pack of wolves in moral terms. In between is just war theory, which claims that some wars, but not all, are morally justified. We will explore these theories, and will consider how just war theory comports with international law rules governing recourse to force. We will also explore justice in war, that is, the moral and legal rules governing the conduct of war, such as the requirement to avoid targeting non-combatants. Finally, we will consider how war should be terminated; what should be the nature of justified peace? We will critically evaluate the application of just war theory in the context of contemporary security problems, including: (1) transnational conflicts between states and nonstate groups and the so-called “war on terrorism”; (2) civil wars; (3) demands for military intervention to halt humanitarian atrocities taking place in another state.

Required Texts:

We have ordered three texts that are available at the Stanford Bookstore:

2. Jeff McMahan, Killing in War (Oxford University Press, 2009)

There are only limited selections assigned from the *Arguing About War* book, and we will make copies of those excerpts available on CourseWork, so students are not required to purchase that book.

We will assign additional selected book chapters, articles, and primary source documents in this course. These additional materials will be posted on CourseWork under “Course Materials.” Some of the materials on the syllabus may be linked to data bases that are available only to members of the Stanford community and may be accessible only from on-campus computers or computers configured for access to these materials. Supplementary materials may be distributed during the semester.

**Requirements/Grading:**

1. Short (4-6 pages) mid-term paper (25%): Students will select from one of several prompts to engage critically with one of the topics covered by this point in the course.
   
   **NOTE:** Mid-term papers will be due by 5:00 pm on Friday, February 6.

2. Final one-day take-home examination paper (12-15 pages) (50%): Students will have 24 hours to prepare an essay responding to one of several common prompts.

3. Participation (25%): Particularly in a seminar of this nature, class participation is extremely important and will be factored into the grade. Thoughtful seminar participation outside the context of students’ formal presentation demonstrates attention to the readings and command of the subject matter. Classroom participation will be assessed based on the quality, not quantity, of comments.

**Topics and Readings**

**CLASS 1 (Tuesday, January 6):** Introduction and overview of the course:

Is there such a thing as “just war theory,” or is that an oxymoron? Do these concepts have any relevance in the real world? Is pacifism a viable alternative to just war theory?

1. Walzer, *J&UW*, chapter 1 (pp. 3 -20): “Against ‘Realism’”


3. President Barack Obama, Remarks at the Acceptance of the Nobel Peace Prize (Dec. 10, 2009)
CLASS 2 (Tuesday, January 13): Basic *jus ad bellum* principles: The prohibition on aggression/right of self-defense

When is the use of force by states unjust, and when is it just? How do the prevailing international legal rules comport with the dictates of just war theory?

2. Walzer, *J&UW*, chapter 4 (pp. 51-73): “Law and Order in International Society”

CLASS 3 (Tuesday, January 20): *Jus ad bellum* challenges: Preemptive force and humanitarian intervention

Must a state wait until it sustains an attack – potentially a devastating one – before it may use force in self-defense? Does just war theory prohibit states from intervening to halt atrocities being perpetrated by a government against its own people in another state?

6. Alan Kuperman, “How Not to Intervene,” Belfer Center for Science and International Affairs Policy Brief, September 2013

CLASS 4 (Tuesday, January 27): The moral equality of combatants

Debating the claim: “Soldiers fighting for an aggressor state are not themselves criminals: Hence their war rights are the same as their opponents” (Walzer)


**CLASS 5 (Tuesday, February 3):** Noncombatant immunity

Can we reconcile noncombatant immunity with military necessity? What is the meaning and force of the double-effect doctrine? Consideration of the principle of proportionality and collateral damage.


**FEBRUARY 6 AT 5:00 PM: Mid-term papers due**

**CLASS 6 (Tuesday, February 10):** Terrorism and guerrilla war

“Throwing a bomb is bad/ Dropping a bomb is good;/ Terror, no need to add,/ Depends on who's wearing the hood.” (Roger Woddis)

Is the theory of just war adequate in dealing with terrorism? Can it handle guerrilla wars?


**CLASS 7 (Tuesday, February 17):** Further reflections on war against nonstate groups

What are, or should be, the war rights of nonstate groups engaged in armed conflict? Can only states justly wage war? How do the prevailing international legal rules comport with the dictates of just war theory?

Required readings:

3. Cecile Fabre, *Cosmopolitan War* (2012), chapter 4 (pp. 130 – 165)
5. United States v. Omar Ahmed Khadr (charge sheet), in Guantanamo Bay Detainee Litigation, Misc. No. 08-442 (TFH)
Supplementary materials:

For those who wish to compare the specific legal rules applicable to the status of combatants in international armed conflict and fighters for nonstate groups in non-international armed conflict, or to explore additional readings on the topic, we have also posted the following OPTIONAL materials on CourseWork:

1. 1949 Geneva (Third) Convention
   Read arts. 2, 3, and 4
2. 1977 Additional Protocol I to the 1949 Geneva Conventions
   Read arts. 1, 43, and 44
3. 1977 Additional Protocol II to the 1949
   Read arts. 1 and 6

**CLASS 8 (Tuesday, February 24):** Proportionality and the moral rights of civilians and soldiers

What risks, if any, must soldiers assume in order to reduce the risk of civilian casualties? What role does the “guilt” or “innocence” of the civilian population play?


**CLASS 9 (Tuesday, March 3):** Supreme emergency

Are there warranted fears in extreme cases that justify or excuse the use of the measures banned by war conventions?

1. Walzer, J&UW, chapter 16 (pp. 251 – 268): “Supreme Emergency”