

PHILOSOPHY OF LAW

Philosophy 119

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University of California at Davis

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Syllabus

Course Description:

The course is designed to introduce you to some of the major authors and issues within Anglo-American Jurisprudence.

We will begin by examining some of the philosophical underpinnings of the law: What makes law different than other systems of regulation, such as moral codes, social conventions, or the rules of a game? What do judges do when they are interpreting the law? Are they merely interpreting what the law is, or are they actually creating new law? What is the connection between law and morality, and how do rules of law and moral judgments interact and relate? We will then look at the status and nature of legal rights. Do these merely mark out particularly important interests that can nevertheless be overridden by other important interests, or are rights inviolable? Next, we will look at various aspects of decision theoretic and game theoretic reasoning, and consider how this can help us understand how we might approach legal regulation and litigation. We will then turn briefly to the criminal law, and take up the issue of law and punishment. When is punishment morally justified, and what is the basis for this justification? Is it deterrence? Retribution? Something else? Finally, we will turn our attention to private law (the law of contract, property, and tort). Philosophical issues we will examine here include coercion, commodification, and fairness in contracts, causation and the law of tort, strict liability, responsibility and fault, the difference between corrective justice and distributive justice, and the nature and shortcomings of the economic analysis of law. We will then close with the examination of some philosophical issues in international law, and especially the law of war and warfare.

Students are expected to read widely, and to have completed to relevant reading prior to the lecture to which it pertains.

Assessment:

Assessment will be based on a 2,500-word essay (excluding footnotes and bibliography), and a final exam, each worth 50% of your total final mark. The essay will be due on Monday May 16 at 12 noon. Penalties for unapproved late submission will apply. For those of you who wish to do so, you may submit a draft of the paper on May 2, which we will comment on, provide suggestions for improvement, and return to you by May 9. You can then use these comments to revise your paper before you the final submission date. Only the final version will be graded. The final will be given on Monday June 6 at 3:30 pm. Essay titles and further instructions will be distributed later in the term.

For advice on writing your essays, please see the video of my 2010 lecture on writing academic essays and papers, available at: <https://vimeo.com/126752965>.

I will also post "Ten Mistakes to Avoid in Your Essays" and some tips for taking exams on the course website. I will hold a comprehensive review session of how to prepare for the exam near the end of the term.

Class participation: Those who attend lectures regularly and participate intelligently and who would not otherwise obtain an A based on their paper and exam alone can have their grades bumped up to reflect the quality of their participation. The bump will generally be one step (from an A- to an A) or two steps (from a B+ to an A) but, in rare cases for those whose participation is exceptional, could be as much as a full grade (from B to A).

Books:

No single book covers more than a few of the issues we will be examining in this course. The principle books required are H.L.A. Hart's *The Concept of Law*, Lon Fuller's *The Morality of Law*, Ronald Dworkin's *Law's Empire*, and my own *Punishment, Compensation, and Law: A Theory of Enforceability*. My book is available as an ebook through the University Library catalogue, and multiple copies of the other three are available on reserve. All four are also available in paperback and can be purchased for a reasonable price, so you might consider purchasing those that are not available electronically. Articles in Law Reviews are available through the HeinOnline database, accessible through the University Library homepage. Articles in philosophical journals are accessible directly through the ejournal database on the University Library homepage. Articles or book chapters that are not otherwise electronically available are posted on the course smartsite. Indications of where to find the reading are given in parentheses after each listing.

Note that there is both required and recommended reading for the lectures. Unless it says otherwise, you should assume the listed reading is **required**. The recommended reading is just that—recommended. You do not have to do any of it, but I think you will find it helpful to do at least some of it. I have also included some recommendations for further reading at the end of the syllabus for those of you who find yourselves especially interested in particular topics.

Handouts:

Please note that I do not distribute lecture notes or other handouts prior to my lectures. Instead, I distribute very detailed lecture notes after my lectures on that topic is completed. Even though my lecture notes are very detailed, they are designed to be a supplement not a substitute for your own. You should do your best to have done all the required reading for each topic prior to the lecture on that topic and take as detailed notes as you can during class. Once I have finished my lecture on each topic, I will post my notes on the course website.

Lecture Topics and Reading:

The following is a list of topics we will cover, together with citations to the reading for each topic. On some topics we will spend a single lecture, but on others we may spend a week or more. To give you an idea of how long we shall spend on each topic, I have noted the

approximate number of lectures I will do on each topic after each topic heading. The specific reading required and recommended for each topic is listed below the topic heading.

1. **Introduction: What is Legal Philosophy? (1 lecture)**
N. E. Simmonds, *Central Issues in Jurisprudence* (4th ed., 2013), Introduction (if you go to Amazon.com, you can read the introduction as a free sample)
2. **The Nature of Law (2 lectures)**
H.L.A. Hart, *The Concept of Law* (2d ed. 1994 or later), pp 1-154, 185-212 (reserve)
3. **Adjudication and Interpretation (2 lectures)**
Ronald Dworkin, *Law's Empire* (1986), pp. 1-150, 225-275 (reserve)
H.L.A. Hart, "Postscript," *The Concept of Law* (2d ed. 1994 or later), pp. 238-276 (Hart's response to Dworkin's criticisms) (reserve)
4. **The Connection between Law and Morality (2 lectures)**
Lon Fuller, *The Morality of Law* (1969 rev. ed.), pp. 1-151 (reserve)
H.L.A. Hart, *Essays in Jurisprudence and Philosophy* (1983), Essay 16, pp. 343-364 (Hart's review of *The Morality of Law*)
Lon Fuller, "A Reply to Critics," from *The Morality of Law* (1969 rev. ed.), pp. 184-242
5. **The Nature of Rights: The Philosophy of Settlement and Compromise (1 lecture)**
Mark R Reiff, "Proportionality, Winner-Take-All, and Distributive Justice," *Politics, Philosophy, and Economics* 8 (2009): 5-42, 5-34 (smartsite)
John E. Coons, "Approaches to Court Imposed Compromise—The Uses of Doubt and Reason," *Northwestern University Law Review* 58 (1964): 750-794 (HeinOnline) (recommended).
Joseph Jaconelli, "Solomonic Justice and the Common Law," *Oxford Journal of Legal Studies* 12 (1992): 480-506 (HeinOnline; international section) (recommended)
6. **The Philosophy of Regulation and Litigation: Game Theory and Decision Theory (4 lectures)**
Daniel Ellsberg, "The Theory and Practice of Blackmail" (available online at <http://www.rand.org/pubs/papers/P3883/>)
Michael Trebilcock, "The Private Ordering Paradigm and Its Critics," from Trebilcock, *The Limits of Freedom of Contract* (1993), chap. 1, pp. 1-22 (on reserve)
Mark R. Reiff, *Punishment, Compensation, and Law: A Theory of Enforceability* (Cambridge: Cambridge University Press, 2005), pp. 12-15, 22-25, 68-73, 90-95 (available as an ebook through the Library catalogue)
Shaun Hargreaves Heap and Yanis Varoufakis, *Game Theory: A Critical Introduction* (Routledge, 2d ed. 2004) (recommended)

7. The Philosophy of Punishment (2 lectures)

- Mark R. Reiff, "Punishment," *The Routledge Companion to Social and Political Philosophy*, ed. Fred D'Agastino and Gerald Gaus (Routledge, 2012), pp. 765-776 (smartsite)
- Mark R. Reiff and Rowan Cruft, "Antony Duff and the Philosophy of Punishment," in *Crime, Punishment and Responsibility: The Jurisprudence of Antony Duff*, ed. Matthew Kramer, Rowan Cruft, and Mark Reiff (Oxford: Oxford University Press, 2011), pp. 6-21 (covers some of the same material but in a little more depth) (smartsite)
- Mark R. Reiff, *Punishment, Compensation, and Law: A Theory of Enforceability* (Cambridge: Cambridge University Press, 2005), pp. 76-98 and 111-159 (available as ebook through the Library catalogue)
- Jeremy Bentham, *An Introduction to the Principles of Morals in Legislation*, ed. J.H. Burns and H.L.A. Hart (1970), pp. 158-186 (recommended)
- Immanuel Kant, "On the Right to Punish and to Grant Clemency," from *The Metaphysics of Morals*, ed. Mary Gregor (1996), pp. 104-109 (recommended)
- G.F.W. Hegel, *Elements of the Philosophy of Right*, ed. Allen Wood (Cambridge University Press, 1991), sec. 90-103, pp. 119-131 (recommended)
- John Rawls, "Two Concepts of Rules" *Philosophical Review* 64 (1955): 3-32 (recommended)
- H.L.A. Hart, "Prolegomenon to the Principles of Punishment," from *Punishment and Responsibility* (1968), pp. 1-27 (recommended) (smartsite)
- Antony Duff and David Garland, *A Reader on Punishment* (Oxford, 1994) (a good selection of essays on a wide variety of issues) (recommended)

8. Philosophy and Contract Law (4 Lectures)

a. The Philosophical Basis of Contract Law

- Morris Cohen, "The Basis of Contract," *Harvard Law Review* 46 (1933): 553-592 (HeinOnline)
- Charles Fried, *Contract as Promise* (1981), chap. 2, pp. 7-27 (smartsite)

b. Coercion

- Michael Trebilcock, *The Limits of Freedom of Contract* (1993), chap. 4, pp. 78-101
- Charles Fried, *Contract as Promise*, "Duress and Unconscionability," chap. 7, pp. 92-103 (smartsite)
- Robert Nozick, "Coercion," from *Socratic Puzzles* (1997), pp. 15-44 (recommended)

c. Commodification

- Michael Trebilcock, *The Limits of Freedom of Contract* (1993), chap. 2, pp. 23-57

Debra Satz, *Why Some Things Should Not Be For Sale: The Moral Limits of Markets* (Oxford University Press, 2010) (recommended)

Matter of Baby M, 537 A.2d 1227 (N.J. 1988) (smartsite)

d. Fairness

Anthony Kronman, "Contract Law and Distributive Justice," 89 *Yale Law Journal* 472-511 (1980) (HeinOnline)

Charles Fried, *Contract as Promise*, "Duress and Unconscionability," chap. 7, pp. 103-111 (smartsite)

9. Philosophy and Tort Law (4 lectures)

a. Causation

Richard Wright, "Causation, Responsibility, Risk, Probability, Naked Statistics and Proof: Pruning the Bramble Bush by Clarifying the Concepts," *Iowa Law Review* 73 (1988): 1001-1077 (HeinOnline)

Sindell v. Abbott Laboratories, 26 Cal.3d 588 (1980) (smartsite)

Judith Thomson, "Remarks on Causation and Liability," *Philosophy and Public Affairs* 13 (1984): 101-133 (recommended)

b. Law and Economics

Ronald Coase, "The Problem of Social Cost" *Journal of Law and Economics* 3 (1960): 1-44

Richard Posner, "Utilitarianism, Economics, and Social Theory," from *The Economics of Justice* (1981), pp. 44-87 (smartsite)

Ronald Dworkin, "Is Wealth a Value?" *Journal of Legal Studies* 9 (1980): 191-226, reprinted in Dworkin, *A Matter of Principle* (1985), pp. 237-266 (smartsite)

Richard Posner, "The Ethical and Political Basis of Wealth Maximization," from *The Economics of Justice* (1981), pp. 88-115 (recommended) (smartsite)

Ronald Dworkin, "Why Efficiency?" *Hofstra Law Review* 8 (1980): 563-590, reprinted in Dworkin, *A Matter of Principle* (1985), pp. 267-289 (recommended) (smartsite)

c. Corrective and Distributive Justice

Aristotle, *Nicomachean Ethics*, ed. Roger Crisp (2000), Book 5, pp. 81-102

Jules Coleman, "Corrective Justice and Wrongful Gain," *Journal of Legal Studies* 11 (1982): 421-440 (HeinOnline)

Mark R. Reiff, *Punishment, Compensation, and Law* (Cambridge University Press, 2005), pp. 132-133, 170-171, 208-209

Ernest Weinrib, "Corrective Justice," *Iowa Law Review* 77 (1992): 403-425 (recommended)

d. Negligence and Strict Liability

Mark R. Reiff, "No Such Thing as Accident: Rethinking the Relation between Causal and Moral Responsibility," *Canadian Journal*

of Law and Jurisprudence 28 (2015): 371-397 (HeinOnline; international section) (smartsite)

Richard Epstein, "A Theory of Strict Liability," *Journal of Legal Studies* 2 (1973): 151-204 (HeinOnline) (recommended)

10. Philosophy and International Law (4 lectures)

a. The Nature of International Law and the Role of the International Lawyer

H.L.A. Hart, *The Concept of Law*, pp. 213-237

Mark R. Reiff, "How the Law of War is Formed" *Vimeo* (<https://vimeo.com/89790124>) (first 12 minutes only)

b. The Rights of Nations: Aggression and Self-Defense

Michael Walzer, *Just and Unjust Wars*, chapters 2, 3, 4, and 5, pp. 21-47 and 51-86 (smartsite)

Jeff McMahan, "Preventive War and the Killing of the Innocent," in *The Ethics of War*, ed. Richard Sorabji and David Rodin (2006), pp. 169-190 (smartsite)

c. The Moral Regulation of Targets, Weapons, Methods, and Tactics: Four Principles

Michael Walzer, *Just and Unjust Wars*, chapters 8-9, pp. 127-159 (smartsite)

Robert K. Fullinwider, "War and Innocence," *Philosophy and Public Affairs* 5 (1975): 90-97 (a discussion of the moral basis for the principle of distinction)

Lawrence A. Alexander, "Self-Defense and the Killing of Noncombatants: A Reply to Fullinwider," *Philosophy and Public Affairs* 5 (1976): 408-415

Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114 (2004): 693-733 (recommended)

Jeff McMahan, *Killing in War* (OUP 2009) (recommended)

"Symposium on Jeff McMahan's Killing in War," *Ethics* 122:1 (October 2011), pp. 1-230 (also recommended)

David Rodin and Henry Shue (ed.), *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, (OUP 2008) (recommended)

d. Terrorism and Torture

Mark R. Reiff, "Terrorism, Retribution, and Collective Responsibility," *Social Theory and Practice* 34 (2008): 209-242

Henry Shue, "Torture," *Philosophy and Public Affairs* 7 (1978): 124-143

Selected Further Reading: Other Works, Secondary Sources, and Critiques

H. L. A. Hart:

Selected Other Works

- H L A Hart, *Essays in Jurisprudence and Philosophy* (1987) (the Introduction and each of the essays in Part I are relevant to the material we will cover in this course)
- H L A Hart, *Essays on Bentham* (the essay entitled “Legal Rights” is particularly important)
- H L A Hart, “Are There Any Natural Rights?” *Philosophical Review* 64 (1955): 175-191 (a very important essay setting forth some of Hart’s views on Natural Law)
- H L A Hart, *Punishment and Responsibility* (1968) (a collection of Hart’s essays on the justification of punishment and other aspects of the criminal law—the “Prolegomenon to the Principles of Punishment” is especially important)
- H L A Hart, *Law, Liberty, and Morality* (1963) (an important contribution to the debate over the relationship between law and morality)

Some Secondary Sources and Critiques

- Nigel Simmonds, *Central Issues in Jurisprudence* (2d ed. 2002) chap. 5 (highly recommended)
- Matthew Kramer, *Legal Theory, Political Theory, and Deconstruction: Against Rhadamanthus* (1991), chap. 3 (a very helpful analysis and friendly critique of Hart)
- Issues in Contemporary Legal Philosophy: The Influence of H. L. A. Hart*, ed. Ruth Gavison (1987) (the essays in Part I relate to the material covered in this course; the volume also contains a useful bibliography of Hart’s work)
- Neil MacCormick, *H. L. A. Hart* (1981) (the best book-length treatment of Hart’s work)
- Neil MacCormick, “The Concept of Law and *The Concept of Law*,” 14 *Oxford Journal of Legal Studies* 1 (1994)
- P Hacker and Joseph Raz, *Law, Morality and Society* (1977) (a good collection of essays on Hart)
- Rolf Satorius, “Hart’s Concept of Law,” in *More Essays on Legal Philosophy*, ed. Robert Summers (1971)

Dworkin:

Selected Other Works

- Ronald Dworkin, *Taking Rights Seriously* (1977), esp. chaps. 2, 3, and 7, which prefigure some of the material in *Law’s Empire*

Selected Secondary Sources and Critiques

- HLA Hart, “Postscript,” *The Concept of Law* (2d ed. 1994), pp. 238-276 (Hart’s response to Dworkin’s criticisms)
- Matthew Kramer, *In Defense of Legal Positivism: Law Without Trimmings* (1999), chap. 6 (a sustained and detailed critique of Dworkin—highly recommended)

- Nigel Simmonds, "Imperial Visions and Mundane Practices," 46 *Cambridge Law Journal* 465 (1987) (highly recommended)
- Nigel Simmonds, *Central Issues in Jurisprudence* (2d ed. 2002), chap. 7 (highly recommended)
- John Finnis, "On Reason and Authority in Law's Empire," 6 *Law and Philosophy* 357 (1987)
- Philip Soper, "Dworkin's Domain," 100 *Harvard Law Review* 1166 (1987)
- John Stick, "Literary Imperialism: Assessing the Results of Dworkin's Interpretive Turn in Law's Empire," 34 *UCLA Law Review* 371 (1986)
- Stanley Fish, "Still Wrong After All These Years," 6 *Law and Philosophy* 401 (1987), reprinted in Fish, *Doing What Comes Naturally* (1989), chap. 16 (short and very entertaining)
- Jules Coleman, "Negative and Positive Positivism," 11 *Journal of Legal Studies* 139 (1982), reprinted in Coleman, *Markets, Morals, and the Law* (1988), chap. 1 (highly recommended)

Fuller:

Selected Other Works, Secondary Sources and Critiques

Although I have only assigned the pages indicated, the book is very readable and the remaining pages are highly recommended. I therefore recommend you read the entire book (including the appendix) if at all possible.

- H L A Hart, *Essays in Jurisprudence and Philosophy* (1987), chap 2 (the opening shot in the Hart-Fuller debate)
- Fuller, "Positivism and Fidelity to Law," 71 *Harvard Law Review* 630 (1958) (Fuller's reply)
- H L A Hart, *Essays in Jurisprudence and Philosophy* (1987), chap 16 (Hart's review of *The Morality of Law*, to which chap 5 in the second edition of *The Morality of Law* is a reply—critical to an understanding of their debate)
- Matthew Kramer, *In Defense of Legal Positivism: Law Without Trimmings* (1999), chap. 3 (a detailed description of how adherence to Fuller's principles of legality may be motivated purely by prudential reasons—highly recommended)
- R A Duff, "Legal Obligation and the Moral Nature of Law," *Juridical Review* (1980): 61-87 (a sophisticated defense of Fuller)
- Nigel Simmonds, *Central Issues in Jurisprudence* (2d ed. 2002), chap. 7 (a highly recommended summary and critique of Fuller's views)
- Robert Summers, *Lon Fuller* (1984) (the best book-length critique of Fuller)
- Robert Summers, "Professor Fuller on Morality and Law," in *More Essays in Legal Philosophy*, ed. Robert Summers (1971) (a much shorter version of Summers' critique)
- David Lyons, *Moral Aspects of Legal Theory* (1993), chap. 1

Punishment:

For a comprehensive list of additional reading, please see the bibliography in my *Punishment, Compensation, and Law*, but the following are especially helpful:

- Jeremy Bentham, *The Rationale of Punishment* (Prometheus Book, 2009) (setting forth the views of the inventor of utilitarianism)
- David Boonin, *The Problem of Punishment* (Cambridge University Press, 2008) (a careful and interesting abolitionist argument)
- Antony Duff, *Trials and Punishments* (Cambridge University Press, 1986) (a very good and comprehensive discussion of a variety of issues)
- Antony Duff, *Punishment, Communication, and Community* (Oxford University Press, 2001) (more of the same)
- John Cottingham, "Varieties of Retribution," *Philosophy Quarterly* 29 (1979): 238-246
- Nigel Walker, "Even More Varieties of Retribution," *Philosophy* 74 (1999): 595-605
- Andrew von Hirsch, *Censure and Sanctions* (Oxford University Press, 1993)
- Ted Honderich, *Punishment: The Supposed Justifications Revisited* (Pluto Press, rev. ed. 2006)
- H.B. Acton (ed.), *The Philosophy of Punishment* (1969) (an excellent collection of various important essays)
- A. John Simmons, et al. (eds.), *Punishment: A Philosophy and Public Affairs Reader* (Princeton University Press, 1995) (another good collection of essays on a variety of topics)
- Nigel Walker, *Why Punish?* (Oxford University Press, 1991)
- Jeremy Waldron, "Lex Taliones," *Arizona Law Review* 34 (1992): 25-51

Game theory:

In general:

- Robert Axelrod, *The Evolution of Co-operation* (1984) (a classic)
- Morton Davis, *Game Theory: A Nontechnical Introduction* (rev. ed. 1983) (does what it says on the tin)
- David Kreps, *Game Theory and Economic Modeling* (OUP 1990) (another accessible introduction)
- Avinash K. Dixit and Barry Nalebuff, *Thinking Strategically* (1991) (a hip introduction)
- Thomas Schelling, *The Strategy of Conflict* (1960, 1980 ed.) (another classic)
- Avinash Dixit and Susan Skeath, *Games of Strategy* (2d ed. 2004) (a good introductory text designed for students without sophisticated math skills or a background in economics or political science)
- Francesco Parisi and Vernon L. Smith (eds.), *The Law and Economics of Irrational Behavior* (Stanford University Press, 2005)
- Joel Watson, *An Introduction to Game Theory* (2002) (a more technical and advanced introduction)
- Martin J. Osborne, *An Introduction to Game Theory* (2004) (another more technical and advanced introduction)

On heuristics and principles of decision-making:

- Daniel Kahneman and Amos Tversky (eds.), *Choices, Values, and Frames* (2000) (a collection of important essays)

- Daniel Kahneman, Paul Slovic, and Amos Tversky (eds.), *Judgment under Uncertainty: heuristics and biases* (1982) (another collection of important essays)
- Daniel Kahneman, *Thinking, Fast and Slow* (Farrar, Straus and Giroux, 2011) (a very accessible description of a lot of important material)
- Paul Slovic, *The Perception of Risk* (2000)
- Cass Sunstein, *Laws of Fear* (CUP 2005)
- Stephen M. Gardiner, "A Core Precautionary Principle," *Journal of Political Philosophy* 14 (2006): 33-60

The Philosophy of War and Warfare:

My apologies for the length of this list, but there is a lot of material here that we won't be able to cover. Those interested in these issues, however, might have a look at some of the following:

- Dean Chatterjee (ed.), *The Ethics of Preventive War*, (Cambridge 2013)
- Grégoire Chamayou, *A Theory of the Drone* (2015)
- C. A. J. Coady, *Morality and Political Violence* (Cambridge 2008)
- Antulio J. Echevarria II, *Clausewitz & Contemporary War* (Oxford 2007)
- Cécile Fabre, *Cosmopolitan War* (Oxford 2012)
- Claire Finkelstein, Jens David Ohlin, and Andrew Altman (eds.), *Target Killings: Law and Morality in an Asymmetrical World* (Oxford 2012)
- John Finnis, Joseph M. Boyle, Jr., and Germain Grisez, *Nuclear Deterrence, Morality and Realism* (Oxford 1987)
- George P Fletcher, *Romantics at War: Glory and Guilt in the Age of Terrorism* (Princeton, 2002)
- Diego Gambetta (ed.), *Making Sense of Suicide Missions*, (Oxford 2005)
- Karen Greenberg (ed.), *The Torture Debate in America*, (Cambridge University Press, 2006)
- Karen Greenberg and Joshua Dratel (eds.), *The Torture Papers: The Road to Abu Ghraib* (Cambridge University Press, 2005)
- Stephen Grey, *Ghost Plane: The True Story of the CIA Torture Program* (St Martin's Press, 2006) (an up-to-date account by a respected British journalist of what we know about the CIA's extraordinary rendition program)
- David Galula, *Counterinsurgency Warfare: Theory and Practice* (1964, new ed. 2006)
- Sohail H. Hashmi and Steven P. Lee (eds.), *Ethics and Weapons of Mass destruction*, ed. (Cambridge University Press, 2004)
- Victoria Held, *How Terrorism is Wrong: Morality and Political Violence* (Oxford, 2008)
- Seymour Hersh, *Chain of Command: The Road from 9/11 to Abu Ghraib* (2004) (an account by one of America's most accomplished investigative reporters)
- Robert L. Holmes, *On War and Morality* (Princeton University Press, 1989) (see especially the chapter on just war theory)
- J.L. Holzgrefe and Robert O. Keohane (ed.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, (2003) (especially the essays by Holzgrefe and Franck)
- Michael Howard, *Clausewitz: A Very Short Introduction* (Oxford 1983, 2002)
- James Turner Johnson, *Morality and Contemporary Warfare* (Yale University Press, 1999)
- Journal of National Security Law & Policy*, volume 1 issue 2 (2005) is dedicated to a discussion of torture, and has a number of very good articles
- F M Kamm, *Ethics for Enemies: Terror, Torture, & War* (Oxford, 2011)

- Fred Kaplan, *The Insurgents* (2013) (a discussion of how US counter-insurgency strategy evolved in Iraq)
- Gregory Kavka, *Moral Paradoxes of Nuclear Deterrence* (Cambridge: Cambridge University Press, 1987)
- Larry May (ed.), *War: Essays in Political Philosophy* (CUP 2008)
- Larry May, *Aggression and Crimes Against Peace* (CUP 2008) (has interesting chapters on Just Cause and on Humanitarian Intervention)
- Larry May, *War Crimes and Just War* (CUP 2007)
- Jeff McMahan, *Killing in War* (Oxford, 2009)
- Stephen Nathanson, *Terrorism and the Ethics of War* (Cambridge 2010)
- Richard Norman, *Ethics, Killing, and War* (Cambridge 1995)
- Robert Pape, *Bombing to Win: Air Power and Coercion in War* (Cornell University Press, 1996)
- Robert Pape, *Dying to Win: The Strategic Logic of Suicide Terrorism* (Random House, 2005)
- Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq* (2006) (an award winning account of the War in Iraq through 2006, nominated for the Pulitzer Prize)
- David Rodin, *War and Self Defense* (Oxford 2002)
- David Rodin and Henry Shue (eds.), *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (Oxford 2008)
- Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (Avalon, 2007) (a disturbing account of the role of private military contractors in Iraq)
- Jeremy Scahill, *Dirty Wars: The World if a Battlefield* (2013) (an eye-opening account of US targeted assassinations and other special operations all over the world)
- Elaine Scarry, *Rule of Law, Misrule of Men* (MIT Press 2010) (a scathing account of the Bush's administration's war on terror)
- Carl Schmitt, *Writings on War* (Polity Press, 2011) (a reprint of essays by the preeminent Nazi legal theorist)
- Neil Sheehan, *A Bright Shining Lie: John Paul Vann and America in Vietnam* (1989) (a compelling analysis of the Vietnam War)
- Henry Shue and David Rodin (eds.), *Preemption: Military Action and Moral Justification*, (Oxford 2009)
- P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military* (Cornell: Cornell University Press, updated ed. 2008)
- P.W. Singer, *Wired for War: The Robotic Revolution and Conflict in the 21st Century* (2009)
- Richard Sorabji and David Rodin (eds.), *The Ethics of War: Shared Problems in Different Traditions* (Ashgate, 2006)
- Uwe Steinhoff, *On the Ethics of War and Terrorism* (Oxford, 2007)
- Jacobo Timmerman, *Prisoner Without a Name, Cell Without a Number* (1981)
- Mao Tse-tung, *On Guerrilla Warfare* (1937)
- Nick Turse, *Kill Anything That Moves: The Real American War in Vietnam* (2013) (a shocking account of war crimes large and small committed by US forces in Vietnam, many never before publically revealed)
- Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004)
- Nichols J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (2000) (contains extensive case studies of past instances of what could be considered humanitarian interventions)
- Helen Thorpe, *Soldier Girls* (2014) (explores the experiences of three women who signed up for the Indiana National Guard and ended up serving in Iraq and Afghanistan) (see

http://www.nytimes.com/2014/08/12/books/soldier-girls-by-helen-thorpe-explores-3-experiences.html?emc=eta1&_r=0)

Kim Barker, *The Taliban Shuffle* (2011) (the experiences of a female war correspondent in Pakistan and Afghanistan) (see http://www.nytimes.com/2011/03/15/books/the-taliban-shuffle-by-kim-barker-review.html?pagewanted=all&_r=0)

Juan Cole, *The New Arabs* (2014) (a book about the various recent Arab uprisings, by one of the most astute observers in the field) (see http://www.nytimes.com/2014/08/24/books/review/the-new-arabs-by-juan-cole.html?emc=eta1&_r=0)