



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute  
2008 Volume I: Controlling War by Law

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## Introduction

Warfare, both in the United States and elsewhere, typically has two recurring features: the expansion of Executive power, unchecked by democratic processes in legislatures or courts; and the suppression of individual rights, including the infliction of terrible atrocities. This seminar and the curriculum units that emerged from it explored the way that legal institutions have responded, or failed to respond, to these distinctive features of warfare.

We began this exploration by considering the role of the United States Supreme Court during the nineteenth century in responding to the U.S. Civil War. The curriculum units by Robert Osborne, “Lincoln and the Constitution,” and Ralph Russo, “Law and the Civil War,” address this issue.

We then proceeded to examine the role of American courts during twentieth century warfare. We considered judicial responses

- (1) to governmental restrictions on free speech (including criminal prosecution of wartime dissent during World War I, and the Executive branch attempt to suppress publication of the Pentagon papers during the Vietnam War): the curriculum unit by James Brochin, “The Switchroom,” considers this issue;
- (2) to restrictions on individuals’ rights against arbitrary detention (including the Japanese West Coast internment during World War II, and the current confinement of so-called “illegal enemy combatants” at Guantanamo): Matthew Dooley’s curriculum unit, “The Japanese West Coast Internment in World War II,” addresses this issue;
- (3) to infliction of atrocities in the My Lai Massacre during the Vietnam War and in Abu Ghraib prison during the current conflict in Iraq: Joseph Corsetti’s curriculum unit, “The My Lai Massacre,” deals with this issue.

We then shifted our attention to the role of tribunals in other jurisdictions (including international institutions) in attempting to provide retrospective justice after the conclusion of warfare. We considered (1) the trial of Adolph Eichmann in Jerusalem for his role in the Nazi Holocaust; (2) the trials of other Nazi officials,

immediately following the war in the Allied War Crimes trials at Nuremberg and subsequently in German courts; (3) the reaction of international institutions to the 1994 genocide in Rwanda; and (4) the work of the South African Truth and Reconciliation Commission in its efforts to devise a novel form of retrospective justice to the human rights abuses committed during the apartheid regime. The curriculum units by Julia Biagiarelli, "Accountability and Reconstruction after the U.S. Civil War," and Melanie Laputka, "Southern Cone Transition from Dictatorships," deal with these general questions about retrospective justice.

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