

LAWS 2105 Sections A & B - Social Justice and Human Rights**Course Outline****PREREQUISITES:** Second year standing**TERM:** Fall 2015**SECTION B:** Day & Time: Thursday, 11:35-2:25
Room: Southam 304**SECTION A:** Day & Time: Friday, 2:35-5:25
Room: Southam 306**PROFESSOR:** Dr. Amy Bartholomew**CONTACT:** Office: Loeb D 585**OFFICE HOURS:** Thursday, 2:30 to 4:00 or by appointment
Email: Amy.Bartholomew@carleton.ca
Telephone: 613 520-2600 x. 3696

Please use my email address, above, to contact me rather than leaving telephone messages, when possible.

Academic Accommodations

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and

vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/> You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

Plagiarism

Plagiarism is presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at: <http://www.carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://www.carleton.ca/law/student-resources/department-policies/>

COURSE DESCRIPTION

How should human rights obligations be conceptualized, institutionalized and enforced? What are the bounds of global justice? What role does and what role should international law play in securing human rights and justice? How do international law and domestic law interact in the context of human rights?

In this course, we will consider these sorts of questions by examining the extent to which there has been a shift away from the traditional statist paradigm of international law and human rights

toward a more cosmopolitan conception of morality, human rights and law. We will ask whether any shift that may be discernible is desirable in terms of enhancing global justice and the protection of human rights. We will do so by considering some key historical, political, and legal developments: (1) In the post-World War II era; (2) Under conditions of contemporary globalization, in general, and more particularly after the end of the Cold War; and (3) Post 9/11. Focusing on the latter, we will pose the following questions: What is happening to human rights and legality in light of the ‘war on terror’? What role might human rights and law and legality play in securing human rights and protecting them against abuse and instrumentalization by powerful states, if any?

An important dimension of the course will be our attempt to situate current controversies, challenges, and conflicts in the emergence and consolidation of moral, political and legal responses to crimes against humanity, war crimes and genocide following World War II. To this end, we will read Hannah Arendt’s important book, *Eichmann in Jerusalem*, a crucial chapter out of her equally important book, *The Origins of Totalitarianism*, and consider some key aspects of the International Military Tribunal at Nuremberg. These raise general questions that will pervade our considerations: How should we think about, and what should we do about, law and human rights under conditions of domination, exploitation, and imperialism if our aim is to develop human rights and work toward global justice, social and otherwise? To deepen and ground our considerations, we will consider the concept of “cultural genocide” as the Canadian Commission on Truth and Reconciliation has concluded Canada is guilty of in the context of residential schools and the current migration crisis across the world.

Discussion Groups: We will have discussion groups in 2105 seven or eight times during the term. They will take place during the allotted class time.

REQUIRED TEXTS

Available at Octopus Books, 116 Third Avenue (just west of Bank Street in the Glebe. See <http://octopusbooks.org> for hours etc.). (Please take the course number and professor’s name with you along with the title of the book.)

1. Arendt, Hannah.1963. *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Penguin. Available now (31 August 2015).
2. LAWS2105 Coursepack (indicated with a “!” in the syllabus). Will be available later in September.

Please Note:

It is important for you to bring the required readings to lecture and discussion groups every week.

Adjustments may be made to the required readings during the term. If any are to be made, I will announce them in class and on-line.

Supplementary Texts:

Bartholomew, Amy (ed.). 2006. *Empire's Law: The American Imperial Project and the 'War to Remake the World'*. London: Pluto Press.

cuLearn and Carleton Connect

It is important that you have access to Carleton Connect and **use a connect email address**. You must also have access to **cuLearn**.

If there is an important notice regarding a class meeting, a reading, or some other important matter, I will try to post it to cuLearn at least the evening before the relevant class.

EVALUATION

Participation in Discussion Group: 15%

Analytical Essay 40% Due Tuesday 3 November between 10 am and 2pm (see below)

Final Exam (2 hours) 45% Regular exam period

Participation in Discussion Group:

You are expected to be present and to actively participate in discussion group activities that will be assigned throughout the term. Your TA will assign this mark. It is crucial that you attend the discussion group to which you are assigned. Discussion group assignments will be made before the second class.

Essay:

The essay is due Tuesday 3 November 24, 2015 between 10am and 2pm. You may hand it in to Professor Bartholomew or one of the TA's in Professor Bartholomew's office on that day. This will ensure we have received your essay and you will know we have received it. Should you choose to deposit your essay in the Law Dept. Drop Box or submit it in any other manner, *you* assume the responsibility for it. If we do not find it there, we will assume you have not submitted it, or if we find it after the due date, we will assume it was submitted late.

The assignment is an analytical essay of 2000 words or less (under 8 double-spaced pages written in Times New Roman 12 point font) on Hannah Arendt's *Eichmann in Jerusalem*. More information will be provided later in the term. Please note the following:

- The **late penalty** for the assignment is **1 mark per day late** (e.g. 1 day late reduces an essay mark from A to A-). Any essay received after 2pm on November

3 will be treated as at least one day late. *Each* weekend day will count as one day. *The professor has final say over the submission date, not the Department of Law stamp.* Any exception to the deadline must be cleared through the professor or a TA before the due date. An extension will only be granted if a student has medical or other official documentation that I or a TA judges to be convincing or an otherwise compelling reason. Late essays will also be marked last and returned after the essays that are submitted on time. Finally, late essays will receive less feedback than those submitted on time.

Final Exam:

The final exam will be given during the regular examination period. It is a two hour exam. You will be permitted to bring 1 sheet of 8x11 inch paper into the exam with you, with notes permitted on both sides.

GENERAL RULES:

Failure to complete any aspect of the requirements may result in failure in the course.

Plagiarism will not be tolerated. There is a zero tolerance policy on plagiarism which means that any act of plagiarism – whether intentional or inadvertent – will be taken directly to the Dean.

The OED (Oxford English Dictionary) defines plagiarism as follows: “The action or practice of taking someone else's work, idea, etc., and passing it off as one's own; literary theft.”¹

Plagiarism includes failing to use quotation marks around quoted material, even if one provides a citation, or providing an inadequate citation such as failing to provide a page number for quoted material.

In addition to the Carleton website information, see the useful guide at <http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>

Standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Dean."

¹ “Plagiarism, n,” *Oxford English Dictionary*. Third Edition, June 2006.

SCHEDULE: Please note: this schedule is subject to revision during the term.

1. Introduction and Accessing Readings Section B Sept 10/ Section A Sept. 11

In this first, introductory class we will review the syllabus, introduce the themes of the course, and discuss using the library with an emphasis on accessing e-books and e-journals. I will show you how to access the required readings that are available on-line, through the library. This is an important skill for you to learn early on, as we will rely on e-journals and e-books throughout the term.

Please complete the required reading (below) prior to class.

Required reading:

Review the syllabus posted on CuLearn *and bring a copy with you* to lecture.

Skim over the *Universal Declaration of Human Rights*. Available online, just “google” it.

Ditmar, Hadani. “Canada Joins Failing War on Terror,” 24 July 2015. Al Jazeera.
<http://www.aljazeera.com/indepth/opinion/2015/07/canada-joins-failing-war-terror-bill-c51-150724092110473.html>

Ackerman, Spencer. “Pentagon Denies UN Investigator Chance to Interview Guantanamo Detainees,” *The Guardian*, 15 March 2015. <http://www.theguardian.com/us-news/2015/mar/15/pentagon-un-torture-investigator-interview-guantanamo-detainees>

Ozsu, Umut. “On Syrian Refugee Crisis, Canada Failing Miserably,” *Toronto Star* 12 August 2015. <http://www.thestar.com/opinion/commentary/2015/08/12/on-syrian-refugee-crisis-canada-failing-miserably.html>

2. Human Rights: An Introduction September 17/18

Discussion Group: In this first discussion group you will discuss how to read theory, the benefits of a good reading summary, and how to read a lot. Prepare and bring a reading summary of the Hunt reading with you to the DG. Your reading summary should have your name and section, a proper citation to the reading, a description of the main points of the reading (indicating page numbers where you find the argument you are summarizing), and one quotation from the reading (properly cited) that you think sums up the author’s argument well. It should not be longer than two pages, single spaced. Be prepared to: discuss your summary and the Hunt reading, whether you had difficulty accessing the other, short readings, and how you approached reading them (Nickel, Koh, and Merry).

Required reading:

Hunt, Lynn. 2007. *Inventing Human Rights*. New York: WW Norton. Read "Introduction," 15-34. (Available on Googlebooks. Book also on reserve).

Hirsh, David. 2003. *Law Against Genocide: Cosmopolitan Trials*. London: Cavendish/Glasshouse Press. Read pp. 1-20. Available as electronic source on MacOdrum website.

Nickel, James W. 2006: "Are Human Rights Mainly Implemented by Intervention?" in *Rawls's Law of Peoples: A Realistic Utopia?* Rex Martin and David A. Reidy, eds. (Malden, MA: Blackwell), 263-277. JUST READ p.270 (which shows as p. 288 on the online portal page box) for the list of "political roles" human rights might play. Available as an eBook from MacOdrum (4 persons at a time).

Koh, Harold Hongju. "How Is International Human Rights Law Enforced?" *Indiana Law Journal* 74 (1999): 1397-417; JUST READ 1397-1399, and 1408-1411. Available on MacOdrum.

Merry, Sally Engle. 2003. "Constructing a Global Law: Violence against Women and the Human Rights System." *Law and Social Inquiry* 28, no. 4: 941-977; JUST READ 941-946. Available on MacOdrum.

3. Human Rights, Globalization, and Post September 11: Focusing on the "Global War on Terror" and Torture Sept 24/25

Film: "Ghosts of Abu Ghraib" will be shown and discussed in class. (1:22)

Required reading:

Waldron, Jeremy. 2005. "Torture and Positive Law: Jurisprudence for the White House. *Columbia Law Review*" 105: 1681- 1750. **JUST READ** "Introduction", 1681-1691; "The Bybee Memo", 1703-1717; 1723; 1726-1728; 1734-1735; 1737-1738; and "An Archetype of International Law" and "Conclusion" 1743-1750. Note: We will re-read this later in the term.

Sanders, Lynn. 2011. "(Im)plausible Legality: The Rationalisation of Human Rights Abuses in the American 'Global War on Terror,'" *The International Journal of Human Rights* 15, no. 4: 605-626. **JUST READ** 605-610, and 615-621. Note: We will re-read this later in the term.

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Greenberg, Karen J. 2014 "Abu Ghraib Never Left Us," 27 April
<http://www.tomdispatch.com/dialogs/print/?id=175836>

Andersson, Hilary. 2015. "Ex-CIA Boss Admits to BBC Panorama that it Tortured,"
<http://www.bbc.com/news/world-us-canada-33739480> 3 August.

Lewis, Paul. 1 August 2014. "Obama Admits CIA 'Tortured some Folks' but Stands by Brennan Over Spying" *The Guardian* <http://www.theguardian.com/world/2014/aug/01/obama-cia-torture-some-folks-brennan-spying>

Shane, Scott. 19 April 2009. "Waterboarding Used 266 Times on Two Suspects." http://www.nytimes.com/2009/04/20/world/20detain.html?_r=0

4. Nuremberg and its Legacy October 1/2

Discussion Group: Is Nuremberg an important component in the development of human rights and international criminal law or is it merely victor's justice? Can it be viewed as both? What do Zolo and Kirchheimer suggest? Bring your reading summary (not outline) of the Kirchheimer and Zolo readings with you to seminar to discuss.

Required reading:

!Falk, Richard A., Gabriel Kolko and Robert Jay Lifton eds. 1971. *Crimes of War: A Legal, Political-Documentary, and Psychological inquiry into the responsibility of leaders, citizens, and soldiers for Criminal Acts in Wars*. New York: Random House. pp. 76-109. C/RSV

!Kirchheimer, Otto. 1961. "Trial by Fiat of the Successor Regime" Pp: 323-341 in *Political Justice: The Use of Legal Procedure for Political Ends*. Princeton: Princeton University Press. C/ RSV

!Zolo, Danilo. 2009. *Victors' Justice: From Nuremberg to Baghdad*. London: Verso, 138-147; and 165-166. C

Fine, Robert. (2010). "Dehumanizing the Dehumanizers: Reversal in Human Rights Discourse." *Journal of Global Ethics* 6, no. 2: 179-190; JUST READ 179-181.online

Bass, Gary Jonathan. 2000. "Nuremberg." Pp. 147-205 in *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton, NJ: Princeton University Press. JUST READ p. 175 for Stimson's Memo. This can be found on Google Books. <http://books.google.com/books>
[To find, google "Stimson's memo crimes against humanity"]

Watch first 2.5 minutes of "Nuremberg Trials: Key Moments"
<https://www.youtube.com/watch?v=kWR2I5Q9d9U>

Supp:

Short, useful recap of classic debate:

Rehaag, Sean. "Review of The Hart-Fuller Debate in the Twenty-First Century, ed. by Peter Crane, *Osgood Hall Law Review*.

Film shown at Nuremberg. Note: There are VERY upsetting images
"Nazi Concentration Camp – Film Shown as Nuremberg War Crimes Trials"

<https://www.youtube.com/watch?v=pQJ42ONPDo>

5. After Nuremberg: Eichmann in Jerusalem October 8/9

Discussion Group: Fundamentals of university writing, the importance of proper citation, and discuss paper topic.

Film: “The Specialist: Portrait of a Modern Criminal” (1999) (1:28) will be screened in class.

Required reading:

Jaspers, Karl. 2006. “Who Should Have Tried Eichmann?” *Journal of International Criminal Justice* 4: 853-858. (Originally, 1962).

Arendt, Hannah. 1963. *Eichmann in Jerusalem: A Report on the Banality of Evil*, New York: Penguin. RSV **You are responsible for reading the entire book, but concentrate on pp. 3-150; 206-298.**

6. After Nuremberg: Arendt’s Analysis October 15/16

Discussion Group: Discuss Arendt’s arguments and the paper topic. Bring your thesis statement to discuss. Be prepared to discuss what sort of textual evidence you will use to support your thesis.

Required reading:

Arendt, Hannah. 1963. *Eichmann in Jerusalem: A Report on the Banality of Evil*, New York: Penguin. Continued.

Convention on the Prevention and Punishment of the Crime of Genocide 1948. Available at: <http://www.preventgenocide.org/law/convention/text.htm>

!Marrus, Michael R. 2001. “Eichmann in Jerusalem: Justice and History,” in Steven L. Aschheim, ed. *Hannah Arendt in Jerusalem* (Berkeley: University of California Press), 205-213.

7. Cultural Genocide and Aboriginal Peoples in Canada October 22/23

Guest Lecture

Required reading: TBA

Convention on the Prevention and Punishment of the Crime of Genocide 1948. Available at: <http://www.preventgenocide.org/law/convention/text.htm>

Discussion Group: What are the implications of the conclusion that Canada committed “cultural genocide” against Aboriginal peoples? How might you apply Arendt’s analysis of crimes against humanity/genocide to this case?

TA office hours to discuss essays.

FALL BREAK October 29/30

Essays due Tuesday 3 November 10AM to 2 PM. 40%

You may hand your essay in to Professor Bartholomew or one of the TA’s in Professor Bartholomew’s office between 10am and 2pm. This will ensure we have received your essay and you will know we have received it. Should you choose to deposit your essay in the Law Dept. Drop Box or submit it in any other manner, you assume the responsibility for it. If you claim you deposited it but it is not there, you will be subject to late penalties until you get it to one of us.

8. International human rights, sovereignty, and cosmopolitanism November 5/6

Required reading:

Eleftheriadis, Pavlos. 2003. “Cosmopolitan Law,” *European Law Journal*, 9, no. 2 (April): 241-263; just read 241-246; 249-257; and 260-263. Online

Cohen, Jean L. “Sovereign Equality vs. Imperial Right: The Battle over the ‘New World Order’.” *Constellations* 13, no. 4 (2006): 485-505; just read 485-491.

May, Larry. 2011. *Global Justice and Due Process*. (Cambridge, UK: Cambridge University Press), 34-37.

Glance at:

http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/cases/Pages/cases%20index.aspx

Rome Statute http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf Read Preamble and Articles 5-9, 77. More if possible.

Convention on the Prevention and Punishment of the Crime of Genocide 1948. Available at: <http://www.preventgenocide.org/law/convention/text.htm>

9. Post 911: Torture, War Crimes, Indefinite Detention: What is Happening to Human Rights and the Rule of Law? November 12/13

Required Reading:

Waldron, Jeremy. 2005. "Torture and Positive Law: Jurisprudence for the White House. *Columbia Law Review*" 105: 1681- 1750, just read "Introduction", 1681-1688; "The Bybee Memo", 1703-1714; "An Archetype of International Law" and "Conclusion" 1743 -1750. [This is the same essay we first read in week 3]

Sanders, Lynn. 2011. "(Im)plausible Legality: The Rationalisation of Human Rights Abuses in the American 'Global War on Terror,'" *The International Journal of Human Rights* 15, no. 4: 605-626. JUST READ 605-610, and 615-621. [This is the same essay we first read in week 3]

Chamayou, Grégoire. 2011 "The Manhunt Doctrine," *Radical Philosophy* 169 (Sept/Oct). To access, enter Macodrum website, type in Radical Philosophy into the Journal title, click on "online access," this takes you to Radical Philosophy. Then, in the search box, type in Chamayou. Or, go to:
<http://www.radicalphilosophy.com/commentary/the-manhunt-doctrine>

Frakt, David J.R. "Direct Participation in Hostilities as a War Crime: America's Failed Efforts to Change the Laws of War." *Valparaiso University Law Review* 46 (2013): 729-764. JUST READ: 729-734, 737-742, 744-755, and 762-764.

Glazier, David W. "Still a Bad Idea: Military Commissions under the Obama Administration." *Loyola Law School*, no. Legal Studies Paper No. 2010-32. Just read 1-5, 31, and 67-76. [note: "Before attending law school, Glazier served 21 years as a US Navy surface warfare officer".
<http://www.lls.edu/aboutus/facultyadministration/faculty/facultyliste-g/glazierdavid/>]

Samir Naji al Hasan Moqbel, "Gitmo Is Killing Me" 14 April 2013 *New York Times*,
http://www.nytimes.com/2013/04/15/opinion/hunger-striking-at-guantanamo-bay.html?_r=0

10. Statelessness, Rightlessness, and the "Right to have Rights" November 19/20

Seminar: Objective: Understanding Arendt on rightlessness, statelessness, and the right to have rights. Bring your reading summary of the Arendt reading and be prepared to discuss that and the pages from Trubeta. What in Trubeta's analysis might Arendt's analysis illuminate?

Required reading:

!Arendt, Hannah. 1966. "The Decline of the Nation-State and the End of the Rights of Man," in *The Origins of Totalitarianism* 267-302 (read 290-302 most closely), and intro p. ix . San Diego/New York: Harvest/Harcourt. C/RSV

Trubeta, Sevasti. 2015. "'Rights' in the Grey Area: Undocumented Border Crossers on Lesbos," *Race and Class* 56, no. 4: 56-72. **JUST READ 56-58.**

Very helpful but not required reading:

Benhabib, Seyla. 2004. "The Right to Have Rights: Hannah Arendt on the Contradictions of the Nation-State," in *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press. 49-69. [electronic book, Macodrum]

11. Citizenship, Human Rights, Contemporary Statelessness, and the "Right to have Rights": Terrorism, the War on Terror, and Vulnerability November 26/27

Seminar: Bring in a recent example of exclusion, statelessness, or "global apartheid," in the context of migration. Examples might include China's stateless children, Europe's response to the boat people in 2015, Canada's revocation of citizenship and deportation, Syrian refugees in Turkey or Greece, Palestinian Statelessness/ refugees, American detention of immigrant families....etc. How might you analyze the case you have chosen through Arendt's framework? Does Hayden add anything to your analysis?

Required reading:

Hayden, Patrick. "From Exclusion to Containment: Arendt, Sovereign Power, and Statelessness," *Societies Without Borders* 3 (2008): 248-269.

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An example of an example (!) you might draw on:

Hugh Eakin and Alisa Roth, "Syria: The Threat of Indifference," *New York Review of Books* 6 August 2015. <http://www.nybooks.com/blogs/nyrblog/2015/aug/06/syria-threat-indifference/?printpage=true>

12. Dec 3/4 Catch up, review, rethink, exam preparation