

COURSE OUTLINE

LAWS 2105 Sections A & B - SOCIAL JUSTICE AND HUMAN RIGHTS

PREREQUISITES:	Second year standing
TERM:	Fall 2007
SECTION A:	Day & Time: Friday, 11:35-2:25 Room: 3269 ME (Mackenzie Building)
SECTION B:	Day & Time: Thursday, 2:35-5:25 Room: 202 TB (Tory Building)
INSTRUCTOR:	Professor Bartholomew
CONTACT:	Office: D581 LA Office Hours: Friday, 9:00-11:00 or by appointment Telephone: 520-2600 x. 3696 Email: Amy_Bartholomew@carleton.ca

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is November 9th 2007. With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

There are many great services available on campus that can also provide you with advice, for example there is the Writing Tutorial Service (Learning Support Services, Room 411 ML), the Student Academic Success Centre (SASC 302 Tory) and the Learning Commons (4th Floor of the Library).

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? 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 underway 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 with regard to the end of the Cold War, and (3) post 9/11. Focusing on the latter, we will pose the question: what forms of global legal justice are possible under conditions of American empire and global inequality? What are the possibilities and dangers of cosmopolitanism? What role might law and legality play in securing the enforcement of human rights and protecting them against abuse and instrumentalization by powerful actors? These questions are examined in the context of American empire, in general, the “global war on terror”, in particular, and in relation to humanitarian intervention, the invasion of Iraq, the role of Canada within American empire and legal challenges to American empire and the rise of ‘empire’s law’.

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*, and consider some aspects of the Nuremberg Trials. Both of these raise a question that will pervade our considerations: How should we think about, and what should we do about, law under conditions of domination, exploitation and imperialism if our aim is to develop human rights and work toward global justice?

REQUIRED READING

Available at Octopus Books, 116 Third Avenue (just west of Bank Street in the Glebe):

1. Arendt, Hannah. 1963. *Eichmann in Jerusalem: A Report on the Banality of Evil*, New York: Penguin.
2. *LAWS 2105 Coursepack Fall 2007*.
3. Bartholomew, Amy (ed.) 2006. *Empire's Law: The American Imperial Project and the 'War to Remake the World'*, London: Pluto Press.

Please Note:

- Not all readings are in the coursepack.
- Some readings are in Bartholomew, *Empire's Law* or Arendt, *Eichmann in Jerusalem*.
- Some articles are available through the Carleton library as e-journals or through the journal websites. These are marked in the syllabus with an (!)
- Where articles are available online, the URL is provided. These are marked with a (^)
- If you cannot access these articles with the URL provided, google the key words.

WEB CT

We will use the course website to communicate outside of class. Therefore, it is important that you have access to Carleton Connect and **use a connect email address**. Students are responsible for checking the course page on WebCT and checking their WebCT email.

To log into WebCT go to <https://webct.carleton.ca> and enter your username and password.

EVALUATION

Analytical Essay	40%	Due Monday October 22nd (Sections A & B)
Final Exam (2 hours)	60%	Regular exam period

The final examination will be given during the regular examination period. You will be permitted to bring 5 sheets of 8x11 paper into the exam with you with notes permitted on both sides. Nothing else may be brought into the examination.

The assignment is an analytical essay of 3000 words or less (under 10 double spaced pages) on Hannah Arendt's *Eichmann in Jerusalem*. More information will be provided later in the term. Please note the following:

1. 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-). *Each* weekend day will count as one day. I will pick papers up at 6 pm on each weekend day. Anything submitted after 6 pm will be considered to have been submitted on the following 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 me before the due date. Extensions will only be granted if students have medical or other official documentation that I judge to be convincing. 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.
2. **Plagiarism will not be tolerated.** Please refer to the Departmental Course-Related Policy and Procedure Statement (<http://www.carleton.ca/law/policy.htm>). Plagiarism means passing off as one's own ideas or product the work of another, without giving credit to the source. *My position is that students who plagiarize should be expelled from university and I will work toward that end should I find you have plagiarized.*

Note on Class Participation:

Although no mark is assigned for class participation, lectures are designed to leave time for questions and the opportunity for students to discuss and debate course readings and topics. Consistently informed participation, reflecting regular, close reading of the assigned texts is expected. Consistently excellent participation may result in the course mark being increased by 1 mark (e.g. from B- to B).

COURSE SCHEDULE:**1. Sept. 6/7****Administrivia and Introduction****2. Sept. 13/14****Human Rights, Globalization and Post September 11: Overview of Developments in, and Contemporary Challenges to, the Post WW II Regime of Human Rights and International Law**

- Donnelly, Jack. 1998. "The Social Construction of Human Rights." Pp. 71-102 in *Human Rights in Global Politics*, edited by Tim Dunn and Nicholas Wheeler. Cambridge: Cambridge University Press.
- (!) Klug, Heinz. 2005. "Transnational Human Rights: Exploring the Persistence and Globalization of Human Rights." *Annual Review of Law and Social Science* 1: 85-103.
- Bartholomew, Amy. 2006. "Introduction." In *Empire's Law: The American Imperial Project and the War to Remake the World*, edited by Amy Bartholomew. London: Pluto Press. Pp. 1-17
- Paust, Jordan J. 2005. "Executive Plans and Authorizations to Violate International Law Concerning Treatment and Interrogation of Detainees." *Columbia Journal of Transnational Law* 43:811-863. **Just read the abstract and conclusion.**
- (^) Dubose, Lou. 2007. "Disappeared: Five Years in Guantanamo" *The Washington Spectator*, July 7, www.alternet.org/story/55993

Supplementary:

- Nickel, James W. 2002. "Is Today's International Human Rights System a Global Governance Regime?" *The Journal of Ethics* 6:353-371.
- Borelli, Silvia. 2005. "Casting Light on the Legal Black Hole: International Law and Detentions Abroad in the 'War on Terror'." *International Review of the Red Cross* 87: 39-68.
- Sands, Philippe. 2006. *Lawless World: America and the Making and Breaking of Global Rules From FDR's Atlantic Charter to George W. Bush's Illegal War*. London: Penguin Books.
- Chinkin, Christine. 1998. "International Law and Human Rights." Pp. 105-129 in *Human Rights Fifty Years On: A Reappraisal*, edited by T. Evans. Manchester: Manchester University Press.
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3. Sept. 20/21**The Nuremberg Legacy**

- 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.

- 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.
- 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.

Supplementary:

- Neumann, Franz. *Bebemoth: The Structure and Practice of National Socialism 1933-1944*. New York: Harper and Row, 1966 [1944] esp, 440-458 on nazi law
<http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/Alstoetter.htm>

4. Sept. 27/28

After Nuremberg: *Eichmann in Jerusalem*

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

Supplementary:

- Arendt, Hannah. *The Origins of Totalitarianism*, esp. Chapter 9: "The Decline of the Nation State and the End of the Rights of Man"
- Bernstein, Richard J. 2005. "Hannah Arendt on the Stateless." *Parallax* 11:46-60.
- Fine, Robert. 2000. "Crimes Against Humanity: Hannah Arendt and the Nuremberg Debates." *European Journal of Social Theory* 3:293-311.
- Bernstein, Richard J. 2002. *Radical Evil: A Philosophical Interrogation*. Cambridge, UK: Polity.
- Fraser, Nancy. 2004. "Hannah Arendt in the 21st Century." *Contemporary Political Theory* 3:253-261.
- Kohler, Lotte and Hans Saner—. 1992. "Hannah Arendt Karl Jaspers Correspondence 1926-1969." New York: Harcourt Brace Jovanovich.
- May, Larry and Jerome Kohn—. 1997. "Hannah Arendt: Twenty Years Later." Cambridge, Ma.: The MIT Press.
- Mertens, Thomas. 2005. "Memory, Politics and Law -- The Eichmann Trial: Hannah Arendt's View on the Jerusalem Court's Competence." *German Law Journal* 6:407-424.
- Osiel, Mark J. 2000. "Why Prosecute? Critics of Punishment for Mass Atrocity." *Human Rights Quarterly* 22:118-147.
- Schaap, Andrew. 2001. "Guilty Subjects and Political Responsibility: Arendt, Jaspers and the Resonance of the 'German Question' in Politics of Reconciliation." *Political Studies* 49:749-766.
- Cohen, Jean L. 1996. "Rights, Citizenship and the Modern Form of the Social: Dilemmas of Arendtian Republicanism." *Constellations* 3:164-189.

- Benhabib, Seyla. 2004. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press.
- Parekh, Serena. 2004. "A Meaningful Place in the World: Hannah Arendt on the Nature of Human Rights." *Journal of Human Rights* 3:41-53.

5. Oct.4 (no Friday class)

After Nuremberg: *Eichmann in Jerusalem*

- Film: "The Specialist" – Will be screened in Room: On:

6. Oct. 11/12

The Nuremberg Effect: Cosmopolitan Law and Universal Jurisdiction

- Eleftheriadis, Pavlos. 2003. "Cosmopolitan Law," *European Journal of Law*, Vol. 9, No. 2.(April): 241-263. **SELECTIONS**
- (!) Wilke, Christiane. 2005. "A Particular Universality: Universal Jurisdiction for Crimes Against Humanity in Domestic Courts." *Constellations* 12 (1): 83-102.
- (^) Henry Kissinger, "The Pitfalls of Universal Jurisdiction: Risking Judicial Tyranny," <http://www.globalpolicy.org/intljustice/general/2001/07kiss.htm>

Discussion:

- (^) Lobe, Jim. "Give Rumsfeld the Pinochet Treatment, says US Amnesty Chief Znet 27 May 2005
www.zmag.org/content/showarticle.cfm?SectionID=1&ItemID=7948
- (^) Center for Constitutional Rights, "Background Brief on the Case Against Rumsfeld, Gonzales and Others Filed in Germany On November 14, 2006.
- (^) Center for Constitutional Rights, "Rumsfeld War Crimes Case in Germany Focus of United Nations Special Rapporteur on Independence of Judges and Lawyers: Attorneys File Motion for Reconsideration of Complaint with German Federal Prosecutor
http://www.ccrny.org/v2/print_page.asp?ObjID=ACMRxLuuyb&Content=1054

Supplementary:

- Amnesty International. 1999. "Universal Jurisdiction: 14 Principles on the Effective Exercise of Universal Jurisdiction." (AI Index: IOR 53/01/99)
<http://web.amnesty.org/library/index/engIOR530011999>
- Benhabib, Seyla. 2006. *Another Cosmopolitanism*, Edited by Robert Post. Oxford: Oxford University Press.

7. Oct. 18/19**Global Justice and/or American Empire? Between Empire, Cosmopolitan Morality and Law**

- Panitch, Leo and Sam Gindin. 2006. "Theorizing American Empire" in Bartholomew, (ed.) *Empire's Law*. Pp: 21-43.
- Cohen, Jean L. 2004. "Whose Sovereignty? Empire Versus International Law." *Ethics and International Affairs* 18: 1-24.

Essays for discussion:

- Ignatieff, Michael. 2003. "The Burden." *The New York Times Magazine*, January 5, 22ff.
- (^) Ignatieff, Michael. "Getting Iraq Wrong." *The New York Times Magazine* <http://www.nytimes.com/2007/08/05/magazine/05iraq-t.html?ex=1186977600&en=74b1f238b681b2da&ei=5070&emc=eta1>

8. Oct. 25/26**Humanitarian Intervention: Cosmopolitan Morality, Legality, Empire**

- Zolo, Danilo. 2002. *Invoking Humanity: War, Law and Global Order* (London: Continuum): 66-98.
- Kurasawa, Fuyuki. "The Uses and Abuses of Humanitarian Intervention in the Wake of Empire." In Bartholomew, (ed.) *Empire's Law*. Pp. 297-312.
- Cohen, Jean L. 2004. "Whose Sovereignty? Empire Versus International Law." *Ethics and International Affairs* 18: 1-24. (from previous week)

Essay for discussion:

- (^) Bronner, Stephen. 2007. "About Saving Darfur" *Znet*. May 29. <http://www.zmag.org/content/showarticle.cfm?ItemID=12944>

Supplementary:

- Berman, Nathaniel. 2006. "Intervention in a Divided World:." *European Journal of International Law* 17:743-769.
- Pahuja, Sundhya. 2005. "'Don't Just Do Something, Stand There!' Humanitarian Intervention and the Drowning Stranger." *Human Rights and Human Welfare* 5:51-59.

9. Nov. 1/2**Just War, or Just Other Wars? The Bush Doctrine, The Iraq War and the 'Global War on Terror': Current challenges to global responsibility and legality. Or, the rise of empire's law**

- Film: *Imperial Grand Strategy* - Noam Chomsky. 2005
- Ignatieff, Michael. "The Burden." *The New York Times Magazine* (January 5, 2003): 22ff (from week 6)

- Habermas, Jürgen. "Interpreting the Fall of a Monument." Pp 44-51 in Bartholomew, (ed.) *Empire's Law*.
- Von Sponeck, Hans. "The Conduct of the UN Before and After the 2003 Invasion." Pp 71-76 in Bartholomew, (ed.) *Empire's Law*.
- Halliday, Denis. "The UN and Its Conduct in the Invasion and Occupation of Iraq." Pp 77-85 in Bartholomew, (ed.) *Empire's Law*.
- (^) Roth, Ken (for Human Rights Watch). 2004. "War in Iraq: Not a Humanitarian Intervention."
<http://www.electroniciraq.net/news/printer1354.shtml>
- (^) Amnesty International. 2005. "Amnesty International Press Release: Report 2005: A Dangerous New Agenda"
<http://news.amnesty.org/index/ENGPOL100062005>
- (^) "Forward" and "United States of America" all in Amnesty International Report 2005. <http://web.amnesty.org/report2005/message-eng>
<http://web.amnesty.org/report2005/usa-summary-eng>

Supplementary:

- Anghie, Anthony. 2005. "The War on Terror and Iraq in Historical Perspective." *Osgoode Hall Law Journal* 43:35.
- Paust, Jordan J. 2005. "Executive Plans and Authorizations to Violate International Law Concerning Treatment and Interrogation of Detainees." *Columbia Journal of Transnational Law* 43:811-863.
- Coates, David. "A 'Just' War? or Just Another of Tony Blair's Wars?" Pp.282-296 in Bartholomew, (ed.) *Empire's Law*.
- Retort. 2005. "Blood for Oil?" *London Review of Books* 27:www.lrb.co.uk/v27/n08.
- Retort. 2006. "All Quiet on the Eastern Front." *New Left Review* 41:88-91.

10. Nov. 8/9

The 'Global War on Terrorism': Challenges to Human Rights and Legality

- (^) Tisdall, Simon, Ewen MacAskill, and Richard Norton-Taylor. 2006. "America's Long War." in the Guardian, London. February 15.
<http://www.guardian.co.uk/frontpage/story/0,,1710030,00.html>
- Bartholomew, Amy. "Empire's Law and the Contradictory Politics of Human Rights," in Pp. 161-185 Bartholomew, (ed.) *Empire's Law*.
- (^) Hajjar, Lisa. "From Nuremberg to Guantanamo: International Law and American Power Politics," *Middle East Report*:
[22http://www.merip.org/mer/mer229/229_hajjar.html](http://www.merip.org/mer/mer229/229_hajjar.html)

Discussion:

- (^) Dudai, Ron. 2006. "Guantanamo Exported: 'Illegal Combatants' and the Israeli Supreme Court" *Jurist*. May 11.
<http://jurist.law.pitt.edu/forumy/2006/05/guantanamo-exported-illegal-combatants.php>

Supplementary:

- Mayer, Jane. 2007. "The Black Sites: A rare look inside the CIA's secret interrogation program" *The New Yorker*. August 13.
http://www.newyorker.com/reporting/2007/08/13/070813fa_fact_mayer
- Roth, Kenneth. 2004. "The Law of War in the War on Terror." *Foreign Affairs* January/February 2004:
<http://www.foreignaffairs.org/20040101facomment83101/kenneth-roth/the-law-of-war-in-the-war-on-terror.html?mode=print>
- Fitzpatrick, Joan. 2003. "Speaking Law to Power: The War Against Terrorism and Human Rights." *European Journal of International Law* 14:241-264.
- Borelli, Silvia. 2005. "Casting Light on the Legal Black Hole: International Law and Detentions Abroad in the 'War on Terror'." *International Review of the Red Cross* 87:39-68.
- Paust, Jordan J. 2003. "War and Enemy Status After 9/11: Attacks on the Laws of War." *Yale J. Int'l L.* 28:325.
- Paust, Jordan J. 2005. "Executive Plans and Authorizations to Violate International Law Concerning Treatment and Interrogation of Detainees." *Columbia Journal of Transnational Law* 43:811-863.
- An-Na'im, Abdullahi Ahmed. 2002. "Upholding International Legality Against Islamic and American Jihad." Pp. 162-171 in *Worlds in Collision: Terror and the Future of Global Order*, edited by K. Booth and T. Dunne. Houndsmills, Basingstoke, Hampshire: Palgrave Macmillan
- Waldron, Jeremy. 2005. "Torture and Positive Law: Jurisprudence for the White House." *Columbia Law Review* 105:1681.
- Wilke, Christiane. 2005. "War v. Justice: Terrorism Cases, Enemy Combatants, and Political Justice in U.S. Courts." *Politics and Society* 33:637-669.
- Horton, Scott. 2007. "State of Exception." *Harper's* July: 74-81.
- Cole, David. 2006. "Are We Safer?" *New York Review of Books* 53:4.
www.nybooks.com/articles/18752.

11. Nov. 15/16American Empire, the Global War on Terror and Canada: Renditions, Security Certificates and Legal Challenges

- Sanders, Doug. 2007. "A World of Maher Arar's" *Globe and Mail* February 24.
- (^)Weissbrodt, David and Amy Bergquist. 2006. "Extraordinary Rendition: A Human Rights Analysis." *Harvard Human Rights Journal* 9:123-160, exclude pp.138-141; 145-147.
<http://www.law.harvard.edu/students/orgs/hrj/iss19/weissbrodt.pdf>
- Charkaoui v. Canada (Citizenship and Immigration) [2007] S.C.J. No. 9. (Headnote)

- (^) Byers, Michael and William Schabas. 2007. Letter to ICC “Re War Crimes and the Transfer of Detainees from Canadian Custody in Afghanistan.”
<http://www.ligi.ubc.ca/admin/Information/918/Byers%20%20Schabas%20Letter%20to%20ICC%2025%20April%202007.pdf>

Supplementary:

- Mayer, Jane, “Outsourcing Torture,” *New Yorker* 14 February 2005.
http://www.newyorker.com/archive/2005/02/14/050214fa_fact6
- Arar Commission Inquiry. <http://www.ararcommission.ca/eng/index.htm>
ACLU, Extraordinary Rendition page
<http://www.aclu.org/safefree/torture/rendition.html>

12. Nov. 22-23

Attempts to Reassert Legality: The International Criminal Court, Universal Jurisdiction, and Citizens Tribunals. Or, Litigating against Empire

- (^) Archibugi, Daniele and Iris Marion Young. 2002. “Envisioning a Global Rule of Law” *Eurozine*, <http://www.eurozine.com/articles/2002-06-14-young-en.html>
- (^) International Criminal Court, Office of the Prosecutor (Luis Ocampo), Letter dated 9 February 2006
http://www.icccpi.int/library/organs/otp/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf
- (^) Human Rights Watch. April 2005. “Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees”
<http://hrw.org/reports/2005/us0405/> Read the “Executive Summary”
- (^) Brecher, Jeremy and Brendan Smith, “Torture and Legal Accountability: Command Responsibility?”
<http://www.counterpunch.com/brecher01122006.html>
- (^) Sebok, Anthony J. 2007. “A Bid to Litigate the Legality of US-Sponsored Torture in Federal Court: Will it Succeed?” *FindLaw* June 5.
<http://writ.news.findlaw.com/sebok/20070605.html>
- (^) Sartre, Jean-Paul, “Inaugural Statement” to the Bertrand Russell War Crimes Tribunal
<http://web.archive.org/web/20041025164511/www.911review.org/Wget/www.homeusers.prestel.co.uk/littleton/v1101sar.htm>

[If this address doesn't work, google “Jean-Paul Sartre Inaugural Statement Bertrand Russell War Crimes Tribunal”]

13. Nov. 29/30

Review Week: Make up, Catch up or Prepare for exam