

## Course Outline

<b>COURSE:</b>	<b>LAWS 4105A – Global Justice Theory</b>
<b>TERM:</b>	<b>Fall 2008/09</b>
<b>PREREQUISITES:</b>	<b>LAWS 2105, PHIL 2103 or PSCI 3307 and fourth-year Honours standing</b>
<b>CLASS:</b>	<b>Day &amp; Time: Tuesday – 8:35-11:25 am</b> <b>Room: B243 LA Loeb)</b>
<b>INSTRUCTOR:</b>	<b>Professor Bartholomew</b>
<b>CONTACT:</b>	<b>Office: D581 LA (Loeb)</b> <b>Office Hrs: Thursday – 3:00-5:00 pm</b> <b>Telephone: 613-520-2600 x. 3696</b> <b>Email: <a href="mailto:Amy_Bartholomew@carleton.ca">Amy_Bartholomew@carleton.ca</a></b>

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"Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre, 613-520-6608, every term to ensure that I receive your letter of accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by November 7, 2008, for December examinations, and March 6, 2009, for April examinations." With regard to accommodations for religious obligations and pregnancy, please see [http://www.carleton.ca/pmc/students/accom\\_policy.html](http://www.carleton.ca/pmc/students/accom_policy.html)

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**GLOBAL JUSTICE THEORY****MILITARY FORCE FOR HUMANITARIAN PURPOSES: LESSONS SINCE 9/11?**

The fourth year seminar in Global Justice Theory will focus in the years 2006-2008 on questions involving the legitimacy of, and constraints on, the use of military force to advance global justice. We will consider these questions in the context of American empire and the global 'war on terror'. Some of the most important theorists of justice, including John Rawls, Michael Walzer, and Jürgen Habermas, have considered questions surrounding the use of military force and other violence in the pursuit of some conception of justice, human rights or security. In this seminar we will draw on these theorists and others to consider whether military force/violence should ever be used to promote human rights and justice justly, under what conditions and with what constraints. In particular, we will consider the role of law in both constraining and legitimizing violence.

**EVALUATION:**

Evaluation will be based on the following combination of seminar participation and written work.

1. **A participation mark of 20%** based on discussion leadership and weekly participation. The participation mark is a *composite mark*, evaluating your performance over the entire term and with respect both to discussion leadership and weekly participation.
2. **4 very short essays** over the course of the term (2 (min) to 4 (max) pages double-spaced) **20%**. The short essays may generally be written for any of the substantive weeks of the course: weeks 2 through 12. However, you may *not* write a short essay for a class when you are a discussion leader. There is one exception to this rule: Everyone *must* write a short essay for weeks 6 and 9. Each short essay is worth 5% for a total of 20% of your mark. The short essay is due in the class for which it is submitted. No late essays will be accepted. You may submit your essay via email prior to class if (and only if) you will miss class that day.

The short essays should critically *evaluate* some aspect of the literature for the relevant week and raise at least *one question* for discussion in class. The evaluation may be tentative but you must go beyond mere description or summary of the literature. The paper and question(s) should be conceptual in nature. The short essays will be marked on the basis of the thoughtfulness of the issue chosen for consideration, the evaluation provided and the question posed. While short essays need not be as formal as a research essay or the final exam, writing style, grammar etc. will count and citations are necessary.

3. **Take home examination. 60%.** The take home examination will be distributed in the 12<sup>th</sup> class meeting. It is due on Thursday, December 11 before 4pm. Late exams will result in failure in the course in the absence of a medical excuse that I judge to be adequate. You may submit your exam as an email attachment so long as: (1) you get it to me before 4pm on the due date, and (2) you take the responsibility for any technological failures. In other words, late exam answers will not be accepted.

### General rules:

**Failure to complete any aspect of the requirements may result in failure in the course** with the following exception: While you are expected to submit all 4 short essays, if you miss one (resulting in 5% reduction in course grade) you will not fail for that reason unless the 5% reduction results in an overall failing mark for the course.

**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.*

### REQUIRED READING:

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

1. Rawls, John. 2001. *The Law of Peoples*. Cambridge, Ma.: Harvard University Press. [will be on reserve]
2. Walzer, Michael. 1977 (Third Edition 2000). *Just and Unjust Wars*. New York: Basic Books. [also on reserve]
3. Habermas, Jürgen. 2007. *The Divided West*. London: Polity Press. [difficult to get at libraries]

Many of the readings will be available on line as indicated by inclusion of the URL, below.

### COURSE SCHEDULE:

#### I. Introduction: Contemporary Issues

1. **Administrivia - Sept. 9**
2. **R2P...In Afghanistan? In Iraq? - Sept. 16**

Ali, Tariq. 2008. "Afghanistan: Mirage of the Good War." *New Left Review* 50: 5-22. [distribute]  
 Anderson, Perry. 2005. "Arms and Rights: Rawls, Habermas and Bobbio in an Age of War." *New Left Review* 31: 5-40. (ignore discussion of Bobbio) [distribute]

3. **American Empire, Informal Imperialism - Sept. 23**

Tully, James. 2005. "On Law, Democracy and Imperialism." University of Edinburgh, Edinburgh. Retrieve from: <http://web.uvic.ca/polisci/tully/publications/index.htm> (Forthcoming in Tully, *Public Philosophy in a New Key* Volume 2 Imperialism and Civic Freedom Cambridge UP, November 2008)

Panitch, Leo and Sam Gindin. 2006. "Theorizing American Empire." Pp. 21-43 in *Empire's Law: The American Imperial Project and the 'War to Remake the World'*, edited by Amy Bartholomew. London: Pluto.

Boot, Max. 2005. "The Case for American Empire." *The Weekly Standard* 7 (No. 5)  
[http://www.weeklystandard.com/Utilities/printer\\_preview.asp?idArticle=318](http://www.weeklystandard.com/Utilities/printer_preview.asp?idArticle=318)

Supplementary:

- Harvey, David. 2004. *The New Imperialism*. Oxford: Oxford University Press.
- Harvey, David. 2005. *A Short History of Neoliberalism*.
- Panitch, Leo, and Sam Gindin. 2003. "Global Capitalism and American Empire." In *The New Imperial Challenge: The Socialist Register 2004*, edited by Leo Panitch and Colin Leys, 1-42. London: Merlin Press. (and see other essays in that volume).
- Panitch, Leo V. 2000. "The New Imperial State." *New Left Review* 2 (March-April): 5-20.
- Johnson, Chalmers, 2004. *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic*. New York: Metropolitan Books.
- Walker, R.J.B. 2006. "Lines of Insecurity: International, Exceptional, Imperial." *Security Dialogue* 37:65-82.

**4. The 'War on Terror': What kind of war is this? - Sept. 30**

- Gregory, Derek. 2006. "Vanishing Points: Law, Violence and Exception in the Global War Prison." In *Violent Geographies: Fear, Terror and Political Violence*, edited by Derek Gregory and Allan Pred. New York: Routledge.
- [http://web.mac.com/derekgregory/iWeb/Site/The%20global%20war%20prison\\_files/Vanishing%20points%3AFINAL.doc](http://web.mac.com/derekgregory/iWeb/Site/The%20global%20war%20prison_files/Vanishing%20points%3AFINAL.doc)
- Willis Susan. 2006. Guantanamo's Symbolic Economy. *New Left Review* 39:123-131.

Supplementary:

- Gregory Derek. 2004. "Palestine and the 'War on Terror'." *Comparative Studies of South Asia, Africa and the Middle East* 24:182-95
- Munster Rens Van. 2004. "The War on Terrorism: When the Exception Become the Rule." *International Journal for the Semiotics of Law* 17:141-53
- Megret, Frederic. 2002. "'War?' Legal Semantics and the Move to Violence." *European Journal of International Law* 13: 361-399. [avail online through MacOdrum]
- Smith, N. (2006). "Global Executioner." *South Atlantic Quarterly* 105(1): 55-69.
- Jabri, Vivienne. 2006. "War, Security and the Liberal State." *Security Dialogue* 37:47-64.
- Anghie, Antony. 2005. *Imperialism, Sovereignty and the Making of International Law*: Cambridge University Press.
- Bhuta, Nehal. 2003. "A Global State of Exception? The United States and World Order." *Constellations* 10:371-391.
- Hardt, Michael, and Antonio Negri. 2004. *Multitude: War and Democracy in the Age of Empire*. New York: Penguin Press, pp. 3-32.
- Bauman, Zygmunt. 2001. "Wars of the Globalization Era." *European Journal of Social Theory* 4:11-28.
- Brunnee, Jutta and Stephen Toupe. 2004. "Slouching Toward New Just Wars: International Law and the Use of Force After September 11." *Netherlands International Law Review* 51 (3): 363-392. [avail online through MacOdrum]

**5. Humanitarian Intervention and the War on Terror - Oct. 7**

- The Euston Manifesto. [http://eustonmanifesto.org/?page\\_id=132](http://eustonmanifesto.org/?page_id=132)
- Douzinas, Costas. 2006. "Humanitarianism and Politics." <http://www.re-public.gr/en/wp-print.php?p=30>
- Fine, Robert. 2006. "Cosmopolitanism and Violence: Difficulties of Judgment." *British Journal of Sociology* 57:49-67. [avail online through MacOdrum]
- Anderson, Perry. 2003. "Casuistries of Peace and War." *London Review of Books* 25.
- <http://www.lrb.co.uk/v25/n05/print/ande01.html>
- Zizeck, Slavoj. 2005. "Against Human Rights." *New Left Review* 34(July-Aug): 115-131. JUST READ 125-131 on human rights/humanitarianism/interventionism [distribute]

Supplementary:

- Kurasawa, Fuyuki. 2006. "The Uses and Abuses of Humanitarian Intervention in the Wake of Empire." Pp. 297-312 in *Empire's Law: The American Imperial Project and the 'War to Remake the World'*, edited by A. Bartholomew. London: Pluto.

- Massing, Michael. 2003. "The Moral Quandry: Anti-Imperialism v. Humanitarianism." *The Nation* 6 January 2003:17.
- Bennoune, Karima. 2002. "Sovereignty v. Suffering? Re-examining Sovereignty and Human Rights through the Lens of Iraq." *European Journal of International Law* 13:243-262. [avail online through MacOdrum]
- Zizek, Slavoj. 1999. "Against the Double Blackmail." *New Left Review* 1/234:76-82.
- Krisch, Nico. 2002. "Review Essay: Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo." *European Journal of International Law* 13: 323-335. [MacOdrum online]
- Beck, Ulrich. 2000. "The Cosmopolitan Perspective: Sociology of the Second Age of Modernity." *British Journal of Sociology* 51, No. 1: 79-105. Just read...
- Berman, Nathaniel. 2006. "Intervention in a Divided World:." *European Journal of International Law* 17:743-769.
- Bricmont, Jean. 2007. *Humanitarian Imperialism: Using Human Rights to Sell War*
- Zizek, Slavoj. *Welcome to the Desert of the Real*. 2004

## II. Rawls and Walzer on Global Justice and Military Violence

### 6. Rawls, The Law of Peoples and Just War - Oct. 14 Obligatory SE

#### Background:

Rawls, John. *A Theory of Justice*. Cambridge, Ma.: Harvard University Press, pp. 3-15.

#### Main Readings:

Rawls, John. 2001. *The Law of Peoples*. Cambridge, Ma.: Harvard University Press, pp. 3-113.

Harvey, David. 2005. *A Brief History of Neoliberalism*. Oxford: Oxford University Press, selected pages.

Suggestions for short essay: discuss Rawls position on intervention, its advantages and disadvantages or discuss the democratic peace thesis in light of empire or global capitalism.

#### Supplementary:

Harvey, David. 2004. *The New Imperialism*. Oxford: Oxford University Press.

Benhabib, S. (2004). *The Rights of Others: Aliens, Residents and Citizens*. Cambridge, Cambridge University Press, ch. 3.

### 7. Walzer and Contemporary Just War Theory - Oct. 21 Obligatory SE

- Walzer, Michael. 1977 (Third Edition 2000). *Just and Unjust Wars*. New York: Basic Books. Selections. Preface to 3d edition, Chapters 4, 5, 6 (skip 91-101), 11, 12, and afterword.
- Walzer, Michael. 2004. *Arguing about War*. New Haven: Yale.3-32; 67-81, 143-168. [rsv] What to use now that I've added below?
- Walzer, Michael. 2007. "The Crime of Aggressive War." *Washington University Global Studies Law Review* 6: 635-643.

#### Supplementary:

- Walzer, Michael. 2003. "The United State in the World Today -- Just Wars and Just Societies: An Interview with Michael Walzer." *Imprints* 7: <http://mail.bris.ac.uk/~plcdib/imprints/michaelwalzerinterview.html>
- Walzer, Michael. 2003. "Judging War." *Heinrich Boll Stiftung*. Unpublished paper available on Boll website.
- Elstain, Jean Bethke. 2002. "How to Fight a Just War." Pp. 263-269 in *Worlds in Collision: Terror and the Future of Global Order*, edited by Ken Booth and Tim Dunne. Houndsmills, Basingstoke, Hampshire: Palgrave Macmillan.
- Burke, Anthony. 2004. "Just War or Ethical Peace? Moral discourses of strategic violence after 9/11." *International Affairs* 80:329-353.

### III. Habermas(ian)'s Turn to Legality

#### 8. Introduction: Kosovo v. Iraq - Oct. 28

Habermas, Jürgen. 1999. "Bestiality and Humanity: A War on the Border between Legality and Morality." *Constellations* 6: 263-272. [avail on line through MacOdrum]

Habermas, Jürgen. 2003. "Interpreting the Fall of a Monument." *Constellations* 10: 364-370. (Reprinted in Bartholomew, *Empire's Law*) [avail online through MacOdrum]

##### Supplementary:

Apel, Karl-Otto. 2001. "On the Relationship Between Ethics, International Law and Politico-Military Strategy in Our Time." *European Journal of Social Theory* 4: 29-39. [avail on line through MacOdrum]

Apel, Karl-Otto. 2000. "Globalization and the Need for Universal Ethics." *European Journal of Social Theory* 3:137-155. [avail on line through MacOdrum]

Borradori G, ed. 2003. *Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida*. Chicago: University of Chicago Press

Zygmunt Bauman, 'Wars of the globalization era', *European journal of social theory* 4 (2001) pp. 11-28

Zygmunt Bauman, 'Reconnaissance wars of the planetary frontierland', *Theory, culture and society* 19 (2002) pp. 81-90

Held, David. 2002. "Violence, Law and Justice in a Global Age." *Constellations* 9: 74-88.

#### 9. Habermas on Cosmopolitan Law - Nov. 4 Obligatory SE

Habermas, Jürgen. 1997. "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight." Pp. 113-153 in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, edited by James Bohman and Mathias Lutz-Bachmann. Cambridge, Ma.: The MIT Press. [book on rsv]

##### Supplementary:

Habermas, Jürgen. 2001. *The Postnational Constellation: Political Essays*. Edited and translated by Max Pensky. Cambridge, Ma.: The MIT Press. Pages TBA [book on rsv]

#### 10. Habermas on the prospects for Multi-level Governance, Legality and the Use of Force - Nov. 11

Habermas, Jürgen. 2007. "Does the Constitutionalization of International Law Still Have a Chance?" Pp. 113-193 in Jürgen Habermas, *The Divided West*. London: Polity Press.

Habermas, Jürgen (interview with Eduardo Mendieta). 2004. "America and the World: A Conversation with Jurgen Habermas." In *The Divided West*. Also available at: Logos 3.3:np.

[http://www.logosjournal.com/habermas\\_america.htm](http://www.logosjournal.com/habermas_america.htm)

##### Supplementary:

Habermas, Jürgen. 2003. "Dispute on the Past and Future of International Law: Transition from a National to a Postnational Constellation." Unpublished presentation delivered to the *World Congress of Philosophy*. Istanbul, Turkey. 10 August

Habermas, Jürgen. "The Kantian Project of Cosmopolitan Law" Purdue Lecture.

<http://www.cla.purdue.edu/phil-lit/events/habermas.cfm>

Deppe, Frank. 2005. "Is 'Europe' an Alternative to US Imperialism? A Critique of Habermas's 'Manifesto'." *Socialist Register*.

Beck, Ulrich. 2003. "Make Law, Not War." *Translation from German in Spiegel* 2/2003.

Matustik, Martin Beck. 2004. "Between Hope and Terror: Habermas and Derrida Plead for the Im/Possible." *Epoche* 9:1-18.

Matustik, Martin Beck. 2006. "Habermas' Turn?" *Philosophy and Social Criticism* 32:21-36.

Pogge, Thomas W. 2006. "Moralizing Humanitarian Intervention: Why Jurying Fails and How Law Can Work." In *Humanitarian Intervention: NOMOS* vol. XLVII, edited by Terry Nardin and Melissa S. Williams, 158 -187. New York: New York University Press.

- Pattison, J. (2007). "Humanitarian Intervention and International Law: The Moral Importance of an Interveners' Legal Status." *Critical review of international social and political philosophy* 10(3): 301-319.
- Preuss, Ulrich K. 2003. "The Iraq War: Critical Reflections from 'Old Europe'." *Constellations* 10, No. 3: 339-351. (Reprinted in Bartholomew, *Empire's Law*).
- Cohen, J. L. (2008). "Rethinking Human Rights, Democracy, and Sovereignty in the Age of Globalization." *Political Theory*.

#### IV. The contamination of law or, Are the Cosmopolitans overly optimistic?

##### 11. The Critics I - Nov. 18

- Krisch, Nico. 2005. "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order." *European Journal of International Law* 16: 369-408. [avail online through MacOdrum]

##### Recall/Review:

- Tully, James. 2005. "On Law, Democracy and Imperialism." University of Edinburgh, Edinburgh. Retrieve from: <http://web.uvic.ca/polisci/tully/publications/index.htm>  
[From week 2, above]

##### Supplementary:

- Megret, Frederic. 2006. "From 'Savages' to 'Unlawful Combatants': A post-colonial look at international humanitarian law's 'other'." Pp. 265-317 in *International Law and its Others*, edited by A. Orford. Cambridge: Cambridge University Press.

##### 12. The Critics II. And Wrap Up/Make Up and Distribution of Take-Home Exam - Nov. 25

- Anderson, Perry. 2005. "Arms and Rights: Rawls, Habermas and Bobbio in an Age of War." *New Left Review* 31: 5-40. (ignore discussion of Bobbio) [distribute]
- Ali, T. (2008). "Afghanistan: Mirage of the Good War." *New Left Review* 50: 5-22. [distribute]

##### Supplementary:

- Baxi, Upendra. 2006. "What May the Third World Expect of International Law?" *Third World Quarterly* 27:713-725.
- Anghie, Antony. 2005. *Imperialism, Sovereignty and the Making of International Law*: Cambridge University Press.
- Rasch, W. 2000. "A Just War: Or Just a War? Schmitt, Habermas, and the Cosmopolitan Orthodoxy." *Cardozo Law Review* 21: 1665-1684.
- Fitzpatrick, Peter. 2003. "'Gods would be needed...': American Empire and the Rule of (International) Law." *Leiden Journal of International Law* 16:429-466.
- Simpson, Gerry. 2000. "The Situation on the International Legal Theory Front: The Power of Rules and the Rules of Power." *European Journal of International Law* 11:439-464.
- Simpson, Gerry J. 2004. *Great Powers and Outlaw States : Unequal Sovereigns in the International Legal Order*. New York: Cambridge University Press. [KZ4012 .S57 2004](#)
- Baxi, Upendra. 2006. "A New Approach to International Law." *Leiden Journal of International Law*.