

Course Outline

COURSE:	LAWS 4105 A - Global Justice Theory
TERM:	Fall 2010
PREREQUISITES:	Fourth year Honours standing and one of LAWS 2105, PHIL 2103, PSCI 3307
CLASS:	Day & Time: Tuesday: 8:35-1:25 am Please note: While the official start time is 8:35, I will propose in the first seminar that we agree to meet at 9 am sharp and run to 11:25 without a break every week after the first week.
	Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Dr. Amy Bartholomew
CONTACT:	Office: D581 LA (Loeb) Office Hrs: Fridays: 2:30-4:30 pm Telephone: 613-520-2600 x 3696 Email: Amy.Bartholomew@carleton.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

GLOBAL JUSTICE THEORY

The fourth year seminar in global justice theory will focus in the fall term 2010 on challenges to and the promises of international law and 'global governance' in the aftermath of the post Cold War era and 'humanitarian' intervention, on the one hand, and the 'global war on terror', on the other.

Some of the questions that will bedevil us include: What is and what should be the role of international law today? Are human rights threatened by both humanitarian intervention and the 'war on terror'? Should states always obey international law?

Why are we – human rights and global justice 'types' – so attached to international law?

Is international law constraining state violence or is it spreading it today?

Is there a meaningful distinction to be made between international law and the international rule of law?

How might we reconceptualize and reform or contest international law and global governance?

What role do or should struggles in 'global civil society' play in relation to international law and global justice?

READINGS

Almost all of the required readings are on Web CT under LAWS4105 Fall 2010.

Readings that are not on Web CT are either provided with an internet address or will be available in class as photocopies that students can share (indicated in the syllabus with 'pc' after the citation).

If you wish to purchase books, I suggest the following, all of which we will use:

Habermas, Jürgen. 2001. *The Divided West*, ed. and trans. Max Pensky. Cambridge, MA.: The MIT Press. An important book for current debates over international law by one of the leading philosophers of the 20th and 21st centuries.

Falk, Richard. 2009. *Achieving Human Rights*. New York: Routledge. An important political and legal discussion of international law and human rights today. If you are uninitiated in international law, this is an especially helpful book. Yet, it is sophisticated, not simplistic. Falk is one of the leading international law scholars who is now the UN Special Rapporteur for Human Rights in the Palestinian Occupied Territories.

Mamdani, Mahmood. 2009. *Saviors and Survivors: Darfur, Politics, and the War on Terror*. New York: Pantheon. Mamdani's critique of the Save Darfur movement may interest you. Mamdani is widely regarded as an expert on issues of "humanitarian intervention" and civil war.

Where to buy? Use your own judgment but consider supporting a local bookstore. I recommend Octopus Books on 3d Avenue in the Glebe.

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. You are expected to participate on the basis of having read and reflected seriously on the literature and issues each week. Please come to seminar with a question, an objection, or an issue you would like to discuss and be prepared to discuss it with the seminar. Our discussion will focus on the literature; making sense of and evaluating the claims the literature makes.

Please read the **memo on discussion leadership** posted on Web CT for important information on what I expect of you as a discussion leader.

2. At least **3 very short essays** over the course of the term 4 to 5 (max) pages (double-spaced) **20%**. The short essays may generally be written for any of the weeks 2 through 10. 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 week 9 even if you lead the discussion that week. 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. Your 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, not merely empirical. The short essays will be marked on the basis of **demonstrated understanding of the main themes in all of the literature for that week**, the thoughtfulness of the issue(s) 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.

Please provide a title page for your essay that includes your name, student number, date, course number and an indication of which essay (first, second, third etc) is being submitted. Please number your pages.

I will return your marked essays in class within two weeks of their submission. If you are not in seminar that day, I will leave them in the main Law Dept office for you to pick up.

You may write two extra essays, if you choose to do so. If you do this, I will throw out your one or two (if you write two extra essays) lowest marks. The one exception to this rule is that I will not throw out the mark for your essay for class 9.

3. Take home examination or research essay 60%. Due December 10 before 4pm

The take home examination will be distributed in the 12th class meeting. It is due on December 10 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. The take home examination will pose a question and ask you to integrate and assess the literature we have read and discussed this term. You will not be required to do outside research for the examination. But, you will be expected to have mastered a wide swath of the literature. The exam answer should be approximately 3750 words (about 15 pp double spaced). It may be no longer than 4500 words (about 18 pp double spaced).

You may choose to do a research essay instead of the take home examination. However, you need to clear the subject with me by October 29 if you choose this option. The research essay must draw on an area of research related to the course and either have a conceptual/theoretical and empirical importance in relation to the 'global war on terror' or 'humanitarian intervention' and international law or be a primarily theoretical/conceptual inquiry. You will be required to do research beyond the readings in the course. The essay must be original to this course. The research essay should be about 4500 words (about 18 pp. double spaced) and no more than 5500 words (about 22 pages double-spaced) not including notes. It is due December 10 before 4pm. Late essays will result in failure in the course in the absence of a medical excuse that I judge to be adequate.

SEMINAR

This is a fourth year seminar. As a seminar, there will be virtually no lecture component. I view it as a 'reading course' or a 'reading seminar' the success of which is dependent on you, each student, as well as upon me. I will attempt to guide the discussion where I think it needs guidance. I will also set the context for debates, where necessary. And, I will debate with you and sometimes (be prepared) suggest you need to rethink matters, or, even, that I think you are wrong. But, this seminar is a *completely collective project* for which we are all responsible and should be embraced as such by each of you.

You absolutely must read everything, closely, for the seminar, before the seminar. The success of a seminar depends on informed, lively and critical student participation. Regular attendance in seminar is necessary, but not sufficient, to constitute participation. The participation mark evaluates student discussion leadership, weekly participation in discussions and any other exercises, which may include short written summaries (1-2 pages) of the weekly readings if I detect that you are not engaging with the literature seriously or consistently. The foundation for participation is close study of the readings before the class in which they are assigned. This requires more than skimming a text. It requires of most scholars at least one careful reading, a written summary of the material, a set of questions or criticisms, and a review before class.

GENERAL RULES

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

"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."

COURSE SCHEDULE**Week Date Content**

1 Sep 14 Introduction

I. The 'Global War on Terror' and 'Humanitarian Intervention'

2 Sep 21 The 'Global War on Terror'

Jayasuriya, Kanishka. 2005. *Reconstituting the Global Liberal Order*. London: Routledge, pp. 1-37. Available as an 'e-book' on the MacOdrum Library website.
 Bhuta, Nehal. 2003. "A Global State of Exception? The United States and World Order." *Constellations* 10:371-391.

Supplementary:

Gunther, Klaus. 2005. "World Citizens: 'Between Freedom and Security.'" *Constellations* 12: 379-391.

Cole, David. 2006. "Are We Safer?" *New York Review of Books* 53:

www.nybooks.com/articles/18752

Gregory, Derek 2006. "The Black Flag: Guantanamo Bay and the Space of Exception." *Geografiska Annaler, Series B: Human Geography* 88: 405-427.

3 Sep 28 The 'Global War on Terror' cont'd

Dunne, Tim. 2007. "'The Rules of the Game are Changing' Fundamental Human Rights in Crisis after 9/11." *International Politics* 44: 269-286.

Willis Susan. 2006. "Guantanamo's Symbolic Economy." *New Left Review* 39:123-131.

Supplementary:

Listen to interview with Glenn Greenwald, "2009 in Perspective: Glenn Greenwald on The Five Wars the US is Fighting in Muslim Countries." Democracy Now, 31 December 2009. Available at: <http://www.democracynow.org/2009/12/31/glenn>

Fitzpatrick, Joan. 2003. "Speaking Law to Power: The War Against Terrorism and Human Rights." *European Journal of International Law* 14: 241-264.

McCulluch, Jude and Sharon Pickering. 2009. "Pre-Crime and Counter-Terrorism." *British Journal of Criminology* 49:628-645.

International Commission of Jurists, *Assessing Damage, Urging Action*. 2009

http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_02_09_ejp_report.pdf

Jamieson, Ruth and Kieran McEvoy. 2005. "State Crime by Proxy and Juridical Othering." *British Journal of Criminology* 45: 504-527.

4 Oct 5 The 'Global War on Terror' Cont'd: Torture and Legality

Waldron, Jeremy. 2005. "Torture and Positive Law: Jurisprudence for the White House." *Columbia Law Review* 105: 1681-1750.

Supplementary:

Waldron, Jeremy. 2010. *Torture, Terror and Trade-Offs: Philosophy for the White House*. Oxford: Oxford UP.

Luban, David. 2005. "Liberalism and the Unpleasant Question of Torture." *Virginia Law Review* 91:1425-1461.

Lewis, Anthony. 2004. "Making Torture Legal." *New York Review of Books* LI: 4

Koh, Harold H. 2005. "A World Without Torture." *Columbia Journal of Transnational Law* 43:641-661.

Sussman, David. 2005. "What's Wrong with Torture?" *Philosophy and Public Affairs* 33 2008. Special Issue on Torture. *Journal of International Criminal Justice* 6

Frankenberg, Gunther. 2008. "Torture and Taboo: An Essay Comparing Paradigms of Organized Cruelty." *The American Journal of Comparative Law* 56: 403-

5 Oct 12 'Humanitarian' Intervention

Habermas, Jürgen. 1999. "Bestiality and Humanity: A War on the Border between Legality and Morality." *Constellations* 6, no.3: 263-272.

Mamdani, Mahmood. 2009. "Introduction," "Globalizing Darfur," "The Politics of the Movement to Save Darfur," and "Conclusion: Responsibility to Protect or Right to Punish?" *Saviors and Survivors: Darfur, Politics, and the War on Terror*. New York: Pantheon, pp. 3-74, and 271-300. (pc) (Read 19-74 quickly/skim)

Supplementary:

Fine, Robert. 2006. "Cosmopolitanism and Violence: Difficulties of Judgment." *British Journal of Sociology* 57: 49-467.

Orford, Anne. 1999. "Muscular Humanitarianism: Reading the Narratives of the New Interventionism." *European Journal of International Law* 10: 679-771.

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 Amy Bartholomew. London: Pluto.

Anderson, Perry. 2005. "Arms and Rights: Rawls, Habermas and Bobbio in an Age of War." *New Left Review* 31: 5-40

Bartholomew, Amy, and Jennifer Breakspear. 2003. "Human Rights as Swords of Empire." In *The New Imperial Challenge* (The Socialist Register 2002), eds. Leo Panitch and Colin Leys, pp. 125-45. London: Merlin Press.

Zizek, Slavoj. 2005. "Against Human Rights." *New Left Review* 34: 115-131.

Zizek, Slavoj. 1999. "Against the Double Blackmail." *New Left Review* 1/234: 76-82.

Zolo, Danilo 2002. *Invoking Humanity: War, Law and Global Order*. London & New York: Continuum.

Seymour, Richard. 2007. "In the Name of Decency: The Pro War Left." *International Socialism* 113:<http://www.isj.org.uk/index.php4?id=275&issue=113>

II. Is International Law Constraining or Empowering States/ Empire Today?**6 Oct 19 Constraining: The Post-Sept 11 Legalist Reaction in the Face of the American Imperial Project**

Cohen, Jean L. 2006. "Sovereign Equality v. Imperial Right: The Battle over the 'New World Order.'" *Constellations* 13, no.4: 485-505.

Habermas, Jürgen. 2003. "Interpreting the Fall of a Monument". *Constellations* 10, no.3: 364-370.

Habermas, Jürgen (interview with Eduardo Mendieta). 2004. "America and the World: A Conversation with Jürgen Habermas." In Habermas, Jürgen. 2001. *The Divided West*, ed. and trans. Max Pensky. Cambridge, MA.: The MIT Press. Also available at: Logos 3.3:np. http://www.logosjournal.com/habermas_america.htm

Obama, Barak. 10 December 2009 "Nobel Peace Prize Acceptance Speech."

http://www.huffingtonpost.com/2009/12/10/obama-nobel-peace-prize-a_n_386837.html

(If you have trouble with that link, there are many places on the web you can find the speech.)

You can also listen to the speech, here:

<http://www.youtube.com/watch?v=rMaTIEKluRI&feature=related>

Supplementary:

Mayer, Jane. 2009. "The Hard Cases: Will Obama Institute a New Kind of Preventive Detention for Terrorist Suspects?"

http://www.newyorker.com/fact/content/?050214fa_fact6 23 February

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.

Krisch, Nico. 2003. "More Equal than the Rest? Hierarchy, Equality and US Predominance in International Law". In *United States Hegemony and the Foundations of International Law*, ed.

M Byers, G Nolte International Commission of Jurists 2009. Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, International Commission of Jurists, Geneva.

7 Oct 26 Empowering: The role of the Security Council in spreading the 'war on terror'

Scheppele, Kim Lane 2008. "The Empire's New Laws: The International State of Emergency after 9/11." Unpublished paper available on web ct.

Cohen, Jean L. 2008. "A Global State of Emergency or the Further Constitutionalization of International Law: A Pluralist Approach." *Constellations* 15, no.4: 456-484.

Supplementary:

Jayasuriya, Kanishka. 2008. "Struggle over Legality in the Midnight Hour: Governing the International State of Emergency." Pp. 360-384 in Victor V. Ramraj ed., *Emergency and the Limits of Legality*. Cambridge, UK: Cambridge University Press.

Whitaker, Beth E. 2007. "Exporting the Patriot Act? Democracy and the 'War on Terror' in the Third World". *Third World Quarterly* 28:1017-1032.

Keller, Helen and Andreas Fischer. 2009. "The UN Anti-Terror Sanctions Regime Under Pressure." *Human Rights Law Review* 9: 257-266.

Flynn, EJ. 2007. "The Security Council's Counter-Terrorism Committee and Human Rights." *Human Rights Law Review* 7.

III. Squaring the Circle via an International Rule of Law, International Constitutionalism and Democratic Juridification, Global Civil Society?

8 Nov 2 Rule of International Law and Legitimacy

Nardin, Terry. 2008. "Theorising the International Rule of Law." *Review of International Studies* 34: 385-401; read entire article, but just skim pp 387-394.

Kuum, Mattias. 2004. "The Legitimacy of International Law: A Constitutionalist Analysis." *European Journal of International Law* 15: 907-931.

Supplementary:

Bohman, James. 2009. "Living Without Freedom: Cosmopolitanism at Home and the Rule of Law." *Political Theory* 37: 539-561

Nardin, Terry. 2000. "International Pluralism and the Rule of Law." *Review of International Studies* 26: 95-110.

Buchanan, Allen and R. Powell. 2008. "Survey Article: Constitutional Democracy and the Rule of International Law: Are They Compatible?" *The Journal of Political Philosophy* 16: 326-349.

Koskenniemi, Martti. 2001. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1969*. Cambridge: Cambridge UP.

- 9 Nov 9 Habermas, International Constitutionalization and a Chain of Democratic Legitimacy**
- (Note: mandatory short essay)**
- Habermas, Jürgen. 2007. "Does the Constitutionalization of International Law Still Have a Chance?" Pp. 113-193 in Jürgen Habermas, *The Divided West*, ed. and trans. Max Pensky. Cambridge, MA.: The MIT Press. (pc)
- Habermas, Jürgen. 2008. "The Constitutionalization of International Law and the Legitimation Problems of a Constitution For World Society." *Constellations* 15, no. 4: 444-455.
- Supplementary:
- Scheuerman, William E. 2008. "All Power to the (Stateless?) General Assembly!" *Constellations* 15, no. 4: 485-492.
- Lafont, Christina. 2008. "Alternative Visions of a New Global Order? What Should Cosmopolitans Hope For?" *Ethics and Global Politics* 1: 41-60.
- 10 Nov 16 Implicit and explicit criticisms of Habermas's Position**
- Scheuerman, William E. 2008. "All Power to the (Stateless?) General Assembly!" *Constellations* 15, no. 4: 485-492.
- Lafont, Christina. 2008. "Alternative Visions of a New Global Order? What Should Cosmopolitans Hope For?" *Ethics and Global Politics* 1: 41-60.
- Supplementary:
- Scheuerman, William E. 2008. "Global Governance without Global Government? Habermas on Postnational Democracy." *Political Theory* 36, no.1: 133-151.
- 11 Nov 23 Alternative (?) Perspectives on International Reform and Global Civil Society**
- Falk, Richard, Strauss, Andrew. 2000. "On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty." *Stanford Journal of International Law* 36: 191-219.
- Santos, Boaventura de Sousa. 2006. "Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality." On line at: <http://www.ces.uc.pt/bss/documentos/chapter2.pdf>
- Supplementary:
- Falk, Richard. 2009. "Toward Global Democracy." In Falk, Richard. *Achieving Human Rights*. New York: Routledge. (pc)
- Buchanan, Allen and R.O. Keohane. 2006. "The Legitimacy of Global Governance Institutions." *Ethics and International Affairs*
- Patomaki, H. "Rethinking Global Parliament: Beyond the Indeterminacy of International Law." *Widener Law Review* 13: 375-394.
- 12 Nov 30 Wrap Up, Make Up, Reflections**
- Final Exam Distributed

Exam and research essays due December 10 by 4pm.