

Course Outline

COURSE: LAWS 4106A – Law and Violence

TERM: Fall 2008/09

PREREQUISITES: LAWS Fourth-year Honours standing

CLASS: **Day & Time:** Thursday – 1435-1725
 Room: TBA

INSTRUCTOR: Professor Christiane Wilke

CONTACT: **Office:** D485 LA (Loeb)
 Office Hrs: Monday 2-4 pm (walk-in) – and by appointment
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 [please mention the course number in the email subject line]

COURSE OBJECTIVES & CONTENT:

How do systems of law understand, confront, and enable violence? We will examine international law's relationship to violence through reading classical and contemporary texts in the theory of law. The focus is on reading classical texts against the grain to discover how they allow for practices of violence and domination that they simultaneously make invisible. What, for example, can a critical reading of Thomas Hobbes' *Leviathan* tell us about the current politics of security? And what is the relationship between the classical liberalism of John Locke's *Second Treatise* and John Stuart Mill's *A Few Words on Non-Intervention* and contemporary slavery and colonial warfare? And how, to use another example, can appropriations of Immanuel Kant's theory of *Perpetual Peace* be linked to contemporary justifications of war?

Although this course is set out to be theoretical and historical in its orientation, it has the goal of giving context to contemporary debates about the use of violence, the rules of war, and international law. These discussions are frequently based upon conceptual frameworks that derive from, for example, the theories of Hobbes, Locke, Mill, or Kant. The critical reading of these theories will therefore allow us to understand and question the presumptions about violence, law, the international order, and human nature that underwrite current practices of violence.

"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

**NOTE ON ACADEMIC ACCOMMODATION
(STUDENTS WITH DISABILITIES, RELIGIOUS OBLIGATIONS, PREGNANCY)**

You may need special arrangements to meet your academic obligations during the term because of disability, pregnancy or religious obligations. Please review the course outline promptly and write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible when you find out that you'll need some adjustments or an accommodation. I'd be happy to be flexible, but I need to know about possible concerns and conflicts **well before** the paper deadline, presentation date, etc.

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/accommodation>

COURSE MATERIAL:

The course pack LAWS 4106.A is available from:

Octopus Books, 116 Third Ave, off Bank Street. (613)233-2589, <http://www.octopusbooks.org>

A copy of the same course pack is on reserve at the library. You may take it out to read and photocopy, but please make sure to put all items back in the same order.

Materials marked [pdf] are posted on WebCT.

The following books are recommended as background readings and as starting points for your research papers.

Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt & Brace, 1951).

Edward Keene, *International Political Thought: A Historical Introduction* (Malden, MA: Polity, 2005).

Martti Koskenniemi, *The Gentle Civilizer of Nations* (New York: Cambridge University Press, 2002).

Mahmood Mamdani, *When Victims Become Killers* (Princeton: Princeton University Press, 2001).

Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003).

Jennifer Pitts, *A Turn to Empire* (Princeton: Princeton University Press, 2005).

Richard Tuck, *The Rights of War and Peace* (Oxford: Oxford University Press, 1999).

Neil Whitehead, ed, *Violence* (Santa Fe: School of American Research, 2004).

Robert Williams, *The American Indian in Western Legal Thought* (New York and Oxford: Oxford University Press, 1990).

- EVALUATION:**
- Class presentation and participation 15%
 - Three response papers: 15% each (45% combined)
 - Final paper: 40%

ALL COMPONENTS MUST BE COMPLETED IN ORDER TO GET A PASSING GRADE.

Class presentation and participation: This is a seminar, and we will read texts that are open to a range of interpretations and critiques. Discussions will be essential in allowing us to see and understand some of these interpretations, their background contexts, and their implications.

In order to focus and facilitate discussion, we will have **short class presentations** (5 min., worth **5 points**). A presentation should not summarize the text. Instead, the presenter has the choice of highlighting some issues in the text that they think are interesting to discuss.

Everyone's active participation is crucial for the success of the class. Participation is valued at **5 points** and presumes, of course, that you have read the texts carefully and that you attend class.

Attendance policy: regular attendance is the key to the success in seminar classes. In this class, attendance counts for **5 points**. After the first class you missed, each further class that is missed without a documented hardship leads to a 1 point deduction. (Example: If you miss two classes, you will get 4 out of 5 points for attendance.)

Critical Response Papers are short essays that offer a critical analysis of or argument about key issues from assigned readings. You choose the readings you write about in 4-5 pages (double-spaced). Response papers are due at the beginning of the class for which the reading is assigned. **Papers handed in after class are late and will not be accepted (no exceptions)**. If you are unable to print the paper or come to class, please email the paper to me before the beginning of the class in which it is due.

The first response paper has to be submitted no later than **September 25th**. The second response paper is due no later than **October 30th**. The third response paper is due no later than **November 20th**. **You cannot write a response paper on the same text that you are giving a presentation on.**

The **final paper** challenges you to develop a more sustained argument in 12-15 double-spaced pages based on readings from this class and outside research. The final paper is due on December 1st. Over the course of the term, you will have to submit an initial **paper topic** and a **paper draft**. Those are **mandatory** but not graded. **I will not mark papers from students who have not submitted paper drafts. Late final papers will not be accepted without a documented emergency.**

SCHEDULE:**1. Sept. 4th Introduction****2. Sept 11th Violence, Law, and Politics**

Readings: Antonio Cassese, *International Law*, 2nd edition (Oxford: Oxford University Press, 2005), 3-45. [course pack]
 Devin Pendas, “‘The Magical Scent of the Savage’: Colonial Violence, The Crisis of Civilization, and the Origins of the Legalist Paradigm,” *Boston College International and Comparative Law Review*, Vol. 30 (2007), 29-53. [pdf]
 Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (New York: Routledge, 2007), 236-268. [course pack]

Recommended:

Hannah Arendt, *On Violence* (New York: Harcourt Brace & Company, 1970), especially 3-14, 35-56.
 Neil Whitehead, ed., *Violence* (Santa Fe: School of American Research, 2004).
 Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt & Brace, 1951).
 Mahmood Mamdani, “Making Sense of Political Violence in Postcolonial Africa,” *Identity, Politics, and Culture*, Vol. 3, No. 2 (2002), 1-24.

3. Sept 18th Crusade and Conquest: Early Modern Europe discusses Non-Europeans

Readings: Francisco de Vitoria, “On the American Indians,” in Anthony Pagden and Jeremy Lawrance, ed, *Political Writings* (Cambridge: Cambridge University Press, 1991), 239-292. [course pack]
 Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2004), 13-31. [course pack]

Recommended:

Brett Bowden, “The Colonial Origins of International Law: European Expansion and the Classical Standard of Civilization,” *Journal of the History of International Law*, Vol. 7, No. 1 (2005), 1-23.
 Robert Williams, *The American Indians in Western Legal Thought* (New York: Oxford University Press, 1990), 59-115.

4. Sept 25th Violence, Othering, and Victims

[The first critical response paper has to be submitted in or prior to the class of September 25th]

Readings: Ruth Jamieson and Kieran McEvoy, “State Crime by Proxy and Juridical Othering,” *British Journal of Criminology*, Vol. 45 (2005), 504-527. [pdf]
 Neve Gordon, “Rationalising Extra-Judicial Executions: The Israeli Press and the Legitimation of Abuse,” *International Journal of Human Rights*, Vol. 8, No. 3 (2004), 305-324. [pdf]
 Newspaper clippings on the assassination of Abu Musab al-Zarqawi, *Globe & Mail*, 9 June 2006. [course pack]

Vesna Nikolic-Ristanovic, "Sexual Violence, International Law and Restorative Justice" in Doris Buss and Ambreena Manji, ed. *International Law: Modern Feminist Approaches* (Portland: Hart, 2005), 273-293. [course pack]

Recommended:

Judith Shklar, *Ordinary Vices* (Cambridge, MA: Belknap Press, 1984), 7-44.

Makau Mutua, "Savages, Victims, and Saviors: The Metaphors of Human Rights," *Harvard International Law Journal*, Vol. 45 (2001)

Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics," *Harvard Human Rights Journal*, Vol. 15 (2002), 1-37.

Karen Engle, "Feminism and its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina," *American Journal of International Law*, Vol. 99 (2005), 778-816.

5. Oct 2nd

Hobbes: War, the State, and the State of Nature

Readings: Thomas Hobbes, *Leviathan*, ed. by Richard Tuck (Cambridge: Cambridge University Press, 1996), 62-75, 86-100, 117-129, 221-244. [course pack]

Corey Robin, *Fear: The History of a Political Idea* (Oxford: Oxford University Press, 2004), 31-50. [course pack]

6. Oct 9th

Hobbes Reloaded: Enemies, Fear, and the Security State

Readings: Iris Marion Young, "The Logic of Masculinist Protection: Reflections on the Current Security State," *Signs*, Vol. 29, No. 1 (2003), 1-25. [pdf]

Carl Schmitt, *The Concept of the Political*, transl. by George Schwab (Chicago: University of Chicago Press, 1996), 19-37, 45-58. [course pack]

Wouter G. Werner, "From Justus Hostis to Rogue State: The Concept of the Enemy in International Legal Thinking," *International Journal for the Semiotics of the Law*, Vol. 17 (2004), 155-168. [pdf]

Recommended:

Yaseen Noorani, "The Rhetoric of Security," *New Centennial Review*, Vol. 5, No. 1 (2005), 13-41.

Gil Anidjar, "Terror Right," *New Centennial Review*, Vol. 4, No. 3 (2004), 35-69.

Carl Schmitt, *The Nomos of the Earth* (New York: Telos Press, 2003).

7. Oct 16th

Locke: Slavery, Property, and Conquest

Readings: John Locke, "Second Treatise on Government," in Peter Laslett, ed., *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), 267-302, 318-353, optional: 384-397. [course pack]

James Farr, "Locke, Natural Law, and New World Slavery," *Political Theory*, Vol. 36 (2008), 495-522. [pdf]

Recommended:

- James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993), 137-176.
- Nancy Hirschman and Kirstie McLure, ed., *Feminist Interpretations of John Locke* (University Park: Pennsylvania State University Press, 2007).
- Susan Dodds, "Justice and Indigenous Land Rights," *Inquiry*, Vol. 41, No. 2 (1998), 187-205.
- James Tully, "Aboriginal Property and Western Theory: Recovering a Middle Ground," in Ellen Frankel Paul, Fred Miller, and Jeffrey Paul, ed., *Property Rights* (Cambridge: Cambridge University Press, 1994), 153-180.
- Barbara Ann Hocking and Barbara Joyce Hocking, "Australian Aboriginal Property Rights as Issues of Indigenous Sovereignty and Citizenship," *Ratio Juris*, Vol. 12, No. 2 (1999), 196-225.
- David Armitage, "Locke, Carolina, and the Two Treatises of Government," *Political Theory*, Vol. 32, No. 5 (2004), 602-627.

8. Oct 23rd**Kant and Kantians: From Anti-Imperialism to the Spread of Democracy?****[The topic for the research paper has to be submitted in or prior to the class of October 23rd]**

- Readings: Immanuel Kant, "Perpetual Peace," in Hans Reiss, ed., *Political Writings* (Cambridge: Cambridge University Press, 1991), 93-115. [course pack]
- Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003), 172-209. [course pack]
- Anthony Pagden, "Stoicism, Cosmopolitanism, and the Legacy of European Imperialism," *Constellations*, Vol. 7, No. 1 (2000), 3-22. [pdf]

Recommended:

- James Bohman and Matthias Lutz-Bachmann, ed., *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997).

9. Oct 30th**Mill: Non-Intervention, Civilization and Empire****[The second critical response paper has to be submitted in or prior to the class of Oct. 30th]**

- Readings: John Stuart Mill, "A Few Words on Non-Intervention," in John Robson, ed., *Essays on Equality, Law, and Education* (Toronto: University of Toronto Press, 1984), 111-124. [course pack]
- Beate Jahn, "Barbarian thoughts: imperialism in the thought of John Stuart Mill," *Review of International Studies*, Vol. 31 (2005), 599-618. [pdf]
- Michael Walzer, *Just and Unjust Wars*, 3rd ed. (New York: Basic Books, 2000), 86-108. [course pack]

Recommended:

- Uday Mehta, *Liberalism and Empire* (Chicago: University of Chicago Press, 1999).
- Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2004), ch.2.
- Jennifer Pitts, *A Turn to Empire* (Princeton: Princeton University Press, 2005).

10. Nov 6th Democratic Peace and Troubles with Security

Readings: Harald Müller, "The Antinomy of Democratic Peace," *International Politics*, Vol. 42 (2004), 494-520. [pdf]
The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty, XI-XIII, 11-18, 29-37, 47-55 [pdf]
 Tara MacCormack, "Power and agency in the human security framework," *Cambridge Review of International Studies*, Vol. 21 (2008), 113-128. [pdf]

Recommended:

Adam Roberts, "Intervention: One Step Forward in the Search for the Impossible," *International Journal of Human Rights*, Vol. 7, No. 3 (2003), 142-153.
 Jean Cohen, "Whose Sovereignty? Empire versus International Law," *Ethics & International Affairs*, Vol. 18, No. 3 (2004), 1-24.

11. Nov 13th International Law, Humanitarianism, and Empire

[The draft or outline of the research paper has to be submitted in or prior to the class of November 13th]

Readings: Didier Fassin, "Humanitarianism as a Politics of Life," *Public Culture*, Vol. 19 (2007), 499-520. [pdf]
 Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (New York: Routledge, 2007), 51-89. [course pack]
 Nico Krisch, "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order," *European Journal of International Law*, Vol. 16, No. 3 (2005), 369-408. [pdf]

Recommended:

Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2004), 273-309.
 Ann Laura Stoler, "On Degrees of Imperial Sovereignty," *Public Culture*, Vol. 18, No. 1 (2006), 125-146.
 Amy Kaplan, "Violent Belongings and the Question of Empire Today," *American Quarterly*, Vol. 56, No. 1 (2004), 1-18.
 Linda Colley, "The Difficulties of Empire: Present, Past, and Future," *Historical Research*, Vol. 79 (2006), 367-382.

12. Nov 20th Departures from Violence?

[The third critical response paper has to be submitted in or prior to the class of Nov. 20th.]

Readings: Judith Butler, "Violence, Mourning, Politics," in *Precarious Life* (London & New York: Verso, 2004), 19-49. [course pack]

13. Nov 27th T.B.A.

Don't forget: The research paper is due on Monday, December 1st.

Note on the assignments: All assignments have to be original work by the student who is submitting them. Collaboration on assignments is not permitted. (The only possible exception to this rule in this course may be joint presentations of two or more students with the specific permission of the instructor.) In addition, students should note Carleton University's policy on instructional offences, available at www.carleton.ca/cuuc/regulations/acadregsuniv14.html. Penalties for academic offences may range from a reprimand to expulsion from the university. The use of outside material without proper references is one of the most common and most easily avoidable instructional offences. Whatever language and ideas you take from other sources needs to be referenced. Make yourself familiar with different reference styles! The Carleton University library has many resources that can help you. See: www.library.carleton.ca/howdol/citing.html.