

Carleton University

Course Outline

Department of Law

COURSE: LAWS 4106.A

PREREQUISITES: 4th Year Honours Standing

TERM: Fall 2009

CLASS: Day & Time: Fridays, 11:35-2:25

INSTRUCTOR: Professor Christiane Wilke

CONTACT: Office: D485 Loeb
Office Hrs: Monday 10-12(walk-in) & by appointment
Telephone: 613-520-2600 ext.4168
Email: christiane_wilke@carleton.ca
[*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 allow and make invisible. What does Hugo Grotius' work suggest about who has the right to go to war, then and now? And what 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.

**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 after the need for accommodation is known to exist.

Students with disabilities requiring academic accommodations in this course must register with the **Paul Menton Centre for Students with Disabilities (PMC)** for a formal evaluation of disability-related needs. Documented disabilities could include but not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. Registered PMC students are required to contact the PMC, 613-520-6608, every term to ensure that your Instructor receives 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 only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the last official day to withdraw from classes in each term.

Students requiring accommodation on the grounds of religious observance must submit to their instructors a formal request with suggestions for alternate dates and/or means of satisfying any academic requirements involved. Such requests should be made during the first two weeks of any given academic term, or as soon as possible after a need for accommodation is known to exist, but in no case later than the second-last week of classes in that term.

Pregnancy accommodation may involve a temporary modification of the elements of the student's academic program (e.g., laboratory, mid term, final exam, or field work).

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, attendance and participation: 15%**
- **Three critical response papers: 15% each (45% combined)**
- **Final paper: 40%**

- **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. This can be one of the readings assigned for the week, or all of them, or some of them. You choose a question and argument that addresses a major point raised in the readings. The goal is not to summarize the readings, but to provide a critical response to them. This should all fit 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 **October 2nd**. The second response paper is due no later than **November 6th**. The third response paper is due no later than **December 4th**. **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 7th**. 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. September 11th**Introduction****2. September 18th****Violence, Law, and Politics**Readings:

- Antonio Cassese, *International Law*, 2nd edition (Oxford: Oxford University Press, 2005), 3-45. [*course pack*]
- Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (New York: Routledge, 2007), 236-268. [*course pack*]
- Paul Farmer, "On Suffering and Structural Violence: A View from Below." *Daedalus* 125 (1996), 261-283. [*pdf*]

Recommended:

- Hannah Arendt, *On Violence* (New York: Harcourt Brace & Company, 1970), especially 3-14, 35-56.
- Mahmood Mamdani, "Making Sense of Political Violence in Postcolonial Africa," *Identity, Politics, and Culture*, Vol. 3, No. 2 (2002), 1-24.
- Ikechi Mgbеoji, "The civilized self and the barbaric other: imperial delusions of order and the challenges of human security." *Third World Quarterly* 27 (2006), 855-869.
- David Kennedy, "International Law and the Nineteenth Century: History of an Illusion." *Nordic Journal of International Law* 65 (1996), 385-420.

3. September 25th**Why History? Why Theory? What Method?**Readings:

- B.S. Chimni, "The Past, Present and Future of International Law: A Critical Third World Approach." *Melbourne Journal of International Law* 8 (2007), [no pagination]. [*pdf*]
- Hilary Charlesworth, "Feminist Method in International Law." *American Journal of International Law* 93 (1999), 379-394. [*pdf*]
- Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003), 158-185. [*course pack*]

Recommended:

- Pooja Parmar, "TWAAIL: An Epistemological Inquiry." *International Community Law Review* 10 (2008), 363-370.
- Madhav Khosla, "The TWAAIL Discourse: The Emergence of a New Phase." *International Community Law Review* 9 (2007), 291-304.
- Steven R. Ratner and Anne-Marie Slaughter, "Appraising the Methods of International Law: A Prospectus for readers." *American Journal of International Law* 93 (1999), 291-302.
- 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*]

4. October 2nd**Law and the Spanish Conquest of the Americas**

[The first critical response paper has to be submitted in or prior to the class of October 2nd]

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.

5. October 16th**Workshop on Graduate School Applications**6. October 23rd**Hugo Grotius and the Varieties of War**

[The paper topic statement has to be submitted no later than October 23rd]

Readings:

- Hugo Grotius, *The Law of War and Peace*. Transl. Francis W. Kelsey (Indianapolis and New York: Bobbs-Merrill, 1925), 91-101, 169-182, 462-478, 502-521. [course pack]
Ileana Porras, "Constructing International Law in the East Indian Seas: Property, Sovereignty, Commerce and War in Hugo Grotius' *De Jure Praedae*—*The Law of Prize and Booty*, or 'On How to Distinguish Merchants from Pirates.'" *Brooklyn Journal of International Law* 31 (2006), 741-804. [pdf]

Recommended:

- Michael Kempe, "Beyond the Law: The Image of Piracy in the Legal Writings of Hugo Grotius." *Grotiana* 26-28 (2005-2007), 379-395.
Peter Borschberg, "The Seizure of the *Sta. Catarina* Revisited: The Portuguese Empire in Asia VOC Politics and the Origins of the Dutch-Johor Alliance." *Journal of Southeast Asian Studies* 33 (2002), 31-62.
Martine Julia van Ittersum, "Hugo Grotius in Context: Van Heemskerck's Capture of the *Santa Catarina* and its Justification in *De Jure Praedae* (1604-1606)." *Asian Journal of Social Science* 31 (2003), 511-548.

7. October 30th**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. [*course pack*]
- Corey Robin, *Fear: The History of a Political Idea* (Oxford: Oxford University Press, 2004), 31-50. [*course pack*]
- Iris Marion Young, "The Logic of Masculinist Protection: Reflections on the Current Security State," *Signs*, Vol. 29, No. 1 (2003), 1-25. [*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).
- Carl Schmitt, *The Concept of the Political*, transl. by George Schwab (Chicago: University of Chicago Press, 1996), 19-37, 45-58.
- 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.

8. November 6th**Locke: Slavery, Property, and Conquest**

[The second critical response paper has to be submitted in or prior to the class of November 6th]

Readings:

- John Locke, "Second Treatise on Government," in Peter Laslett, ed., *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), 267-302, 318-349. [*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 McClure, 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.

9. November 13th**Kant and Kantians: From Anti-Imperialism to the Spread of Democracy?**

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

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).

10. November 20th**Mill: Non-Intervention, Civilization and Empire**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*]

Casper Sylvest, "'Our Passion for Legality': international law and imperialism in late nineteenth century Britain." *Review of International Studies* 34 (2008), 403-423. [*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).

11. November 27th**Security and Intervention**Readings:

Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003), 1-37. [*course pack*]

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:

- Harald Müller, "The Antinomy of Democratic Peace," *International Politics*, Vol. 42 (2004), 494-520. [[pdf](#)]
- Jean Cohen, "Whose Sovereignty? Empire versus International Law," *Ethics & International Affairs*, Vol. 18, No. 3 (2004), 1-24.

12. December 4th**Responses to Violence**Readings:

- 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](#)]
- Didier Fassin, "Humanitarianism as a Politics of Life," *Public Culture*, Vol. 19 (2007), 499-520. [[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.

Don't forget: The research paper is due on Monday, December 7th.

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/howdoi/citing.html.