

Course Outline

COURSE: LAWS 4606 A - International Law and Armed Conflict

TERM: Fall 2012

PREREQUISITES: LAWS 2601 or LAWS 3603

CLASS: **Day & Time:** Wednesdays, 6:05 pm - 8:55 pm
 Room: Please check with Carleton Central for current room location

INSTRUCTOR: Trevor Purvis

CONTACT: **Office:** Loeb D599
 Office Hrs: Tuesdays & Wednesdays – 5:00-6:00
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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 are 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 I receive your Letter of Accommodation, no later than two weeks before 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 deadlines published on the PMC website: <http://www1.carleton.ca/pmc/students/dates-and-deadlines/>. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

Course Description

The laws governing resort to the use of force (*ius ad bellum*) and the conduct of hostilities (*ius in bello*) have a long pedigree, each having been central to the emergence of what we have come to know as public international law. In the Western philosophical, theological, and legal traditions the principles governing the laws of war can be traced to Greek and Roman thought, and the early Christian Church. This course traces the development of each of these branches of the laws of war, from antiquity, through the ostensible efforts to “humanize” warfare that dominated the Eurocentric development of the laws of war through the 19th and 20th centuries. Central to our considerations will be the persistent counterpoint running through this evolution; a counterpoint struck by the dark “underbelly” of humanitarian law: the constant presence of those excluded from law's reach, from the barbarians at the margins of the “universal” empires of Rome and the Holy Roman Empire, to the “terrorist” outlaws of the 21st century.

The course is arranged as a weekly seminar. Students will be assigned readings from the course reading-list to present in class. **Presentations should be brief.** Their purpose is to draw out the principle points and/or problems/themes arising from the readings, and to create a foundation for broader class discussion of the reading materials.

Required Texts

This term we will be relying on an array of reading from various sources. The one required book is:

Horowitz, A., Ratner, L. and Weiss, P. (eds.) (2011). *The Goldstone Report: The Legacy of the Landmark Investigation of the Gaza Conflict*. New York: Nation Books.

Justice Richard Goldstone's report on Israel's assault on Gaza from December 27, 2008 to January 17, 2009 is an excellent resource for our purposes. It illustrates, in a highly readable text, the nature of war crimes and crimes against humanity, and the sorts of difficulties confronting those tasked with investigating allegations thereof.

Copies of the Horowitz text have been ordered through Octopus Books at 116 Third Avenue in the Glebe and should be available at the beginning of term.

Course Evaluation

Class Participation - 20%

Take-home Exam - 40% (3,500-4,000 words)

Term Paper - 40% (3,500-4,000 words)

Students will be required to submit a brief paper proposal in class in Week 7 (the class of February 15). The proposal should consist of a working title and roughly a half-page (1-2 paragraph) description of how you envisage the paper developing.

(All components must be completed in order to get a passing grade)

A Note on Resources

There are innumerable websites with a vast wealth of material that you could draw upon as background information and/or additional sources. A few of the most interesting and useful for our immediate purposes are:

The website of the International Committee of the Red Cross at <http://www.icrc.org/eng/index.jsp>. The legacy of Henri Dunant, the ICRC is a remarkable institution whose special neutral status has granted it unprecedented credibility and authority as an official exponent of the current status of the law of armed conflict. It has, in turn, gained a reputation as the principal frontline provider of services to those *hors de combat* in warzones internationally. If you want authoritative statements of the current status of the laws of armed conflict, this is an invaluable source of information. You should be particularly aware of the materials posted at http://www.icrc.org/customary-ihl/eng/docs/v1_cha. On this page are links to a series of brief, highly readable summaries of the current status of the laws of International Humanitarian Law as Customary International Law. Here you will find succinct formulations of such crucial concepts to the law of armed as "distinction", "proportionality", and "military necessity", and much more as well. Much of what we will be reading this term is engaged directly with this orthodoxy, either arguing for its customary, universally binding character, or denying its continued relevance under conditions that render them no longer practicable or feasible (i.e. a post-Westphalian world order dominated by profound asymmetries of power and correspondingly disparate strategic approaches to conflict).

The Crimes of War Project, at <http://www.crimesofwar.org/>, that includes a glossary/dictionary of key concepts, as well as numerous brief articles on many facets of the law of armed conflict; an excellent resource.

JustWarTheory.com, <http://www.justwartheory.com/>, is a free, non-profit, critically annotated aid to philosophical studies of warfare. It is owned and maintained by Mark Rigstad, Associate Professor of Philosophy at Oakland University. His website is supported through the sale of JWT-shirts, and all profits go to UNICEF. Professor Rigstad has done an excellent job of assembling a wealth of material invaluable to the study of the law of armed conflict. Worth a look!

Class Schedule

Week 1 – September 12, 2012

Introduction

Week 2 – September 19, 2012

Theoretical Considerations

- Denike, M. 'The Human Rights of Others: Sovereignty, Legitimacy, and "Just Causes" for the "War on Terror"'. *Hypatia* 23: 95-121.
- Jochnick, C. A., & Normand, R. (1994). The Legitimation of Violence: A Critical History of the Laws of War. *Harvard International Law Journal*, 35, 49-94.
- Koskeniemi, M. (2002) 'The Lady Doth Protest Too Much' Kosovo, and the Turn to Ethics in International Law. *Modern Law Review*, Vol. 65, pp. 159-175.
- Mégret, F. (2006). From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other". In A. Orford (Ed.), *International Law and Its Others* (pp. 265-317). Cambridge: Cambridge University Press.

Week 3 – September 26, 2012

Justice and War? Antiquity's Bequest

- Thucydides (1910). The Melian Conference. In *The History of the Peloponnesian War* (R. Crawley, Trans.). London: J.M. Dent & Sons Ltd., pp.300-306. Available online at <http://www.wellesley.edu/ClassicalStudies/CLCV102/Thucydides--MelianDialogue.html>
- Anghie, A. (1996). Francisco de Vitoria and the Colonial Origins of International Law. *Social & Legal Studies*, 5(4), 321-336.
- Coverdale, J.F. (2004). An Introduction to the Just War Tradition, 16 *Pace International Law Review*. 221-277. Online at: <http://digitalcommons.pace.edu/pilr/vol16/iss2/1>
- Elshtain, J.B. (2002). A Just War? Online at: http://www.boston.com/news/packages/iraq/globe_stories/100602_justwar.htm
- Myers, R.J. (1996). Notes on the Just War Theory: Whose Justice, Which Wars? *Ethics & International Affairs*, 10(1), 115-130.
- Oberleitner, G. (2004). A just war against terror? *Peace Review*, 16(3), 263-268.

Week 4 – October 3, 2012

"Exterminate all the brutes" - Missions civilizatrice and the "White man's Burden"

- Anghie, A. (1999). Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law. *Harvard International Law Journal*, 40(1), 1-71.
- Colby, E. (1927). How to Fight Savage Tribes. *American Journal of International Law* 21(2)279-288.
- Ward, T. (2005). State Crime in the Heart of Darkness. *British Journal of Criminology* 45(4): 434-445.
- Wright, Q. (1926). The Bombardment of Damascus. *American Journal of International Law* 20: 263-280.

Week 5 - October 10, 2012

Civilizing the Un-Civilizable?

- Carnahan, B. M. (1998). Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity. *American Journal of International Law*, 92(2), 213-231.
- Davies, N.J.S. (2009). The Caroline Case and American Drone Strikes in Pakistan. *Peace Review: A Journal of Social Justice*, 21(4), 429-436.
- Zulaika J. (1998). Tropics of Terror: From Guernica's 'Natives' to Global 'Terrorists'. *Social Identities* 1:93-108.
- Meron, T. (1987). The Geneva Conventions as Customary Law. *American Journal of International Law*, 81(2), 348-370.
- Roscher, B. (2002). The "Renunciation of War as an Instrument of National Policy". *Journal of the History of International Law*, 4, 293-309.

Week 6 – October 17, 2012

From Nuremberg to Vietnam

- Hitchins, C. (2001). The Case Against Henry Kissinger, Part One: The Making of A War Criminal. *Harpers Magazine*. February. Available online at: www.icaonline.org/files/hitchens_harpers_kissinger.pdf. Read from 'Dress Rehearsal: The Secret of '68' to 'Chile Part I: Statesman as Hitman'.
- Lippman, M. (1993). War Crimes: The My Lai Massacre And The Vietnam War'. *San Diego Justice Journal* 1.

- Nagel, T. (1972). War and Massacre. *Philosophy and Public Affairs*, 1(2), 123-144.
- Prévost, A.M. (1992). Race and War Crimes: The 1945 War Crimes Trial of General Tomoyuki Yamashita. *Human Rights Quarterly*, 14(3), 303-338.
- Ryan, A. (2007). Nuremberg's Contributions to International Law. *Boston College International & Comparative Law Review* 30, 55-89. Online at <http://lawdigitalcommons.bc.edu/iclr/vol30/iss1/5>

Week 7 – October 24, 2012

“The Responsibility to Protect” or “The Burden” Revisited?

- Bellamy, A.J. (2005). Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs*, 19(2), 31-54.
- (2004). Ethics and Intervention: The “Humanitarian Exception” and the Problem of Abuse in the Case of Iraq. *Journal of Peace Research*, 41(2), 131-147.
- Branch, A. (2005). American Morality over International Law: Origins in UN Military Interventions, 1991-1995. *Constellations*, 12(1), 103-127.
- MacFarlane, N.S., Thielking, C.J. and Weiss, T.G. (2004). "The responsibility to protect": Is anyone interested in humanitarian intervention?. *Third World Quarterly* 25: 977-992.
- Orford, A. (1999). Muscular Humanitarianism: Reading the Narratives of the New Interventionism. *European Journal of International Law*, 10(4), 679-711.

Week 8 – October 31, 2012

Imperial Outposts Amidst the Barbarians

- Bhuta, N. (2003). A Global State of Exception? The United States and World Order. *Constellations*, 10(3), 371-391.
- Center for Economic and Social Rights (2002). Tearing Up The Rules: The Illegality of Invading Iraq. <http://www.cesr.org/article.php?list=type&type=43>.
- Kramer, R.C. & Michalowski, R.J. (2005). War, Aggression and State Crime. *British Journal of Criminology*, 45, 446-469.
- Roberts, A. (2003). The law and the use of force after Iraq. *Survival*, 45(2), 31-56.

Week 9 – November 7, 2012

Gaza and the Goldstone Commission

- Horowitz, A., Ratner, L. and Weiss, P. (eds.) (2011). *The Goldstone Report: The Legacy of the Landmark Investigation of the Gaza Conflict*. New York: Nation Books.

Week 10- November 14, 2012

New Wars, New Rules and an Enemy Unlike Others - The “Exceptionality” of Terrorism

- Halper, J. (2010) The Second Battle of Gaza: Israel's Undermining of International Law. *Monthly Review*. Online at <http://mrzine.monthlyreview.org/2010/halper260210.html>.
- Kasher, A. (2009). Operation Cast Lead and the Ethics of Just War: Was Israel's conduct in its campaign against Hamas morally justified?. *Azure* 37.
- Kasher, A. and Yadlin, A. (2005). 'Military Ethics of Fighting Terror: An Israeli Perspective'. *Journal of Military Ethics* 4: 3-32.
- (2005). 'Military Ethics of Fighting Terror: Response'. *Journal of Military Ethics* 4: 60-70.
- (2009). 'Israel & the Rules of War': An Exchange, *The New York Review of Books*, 56(10). Retrieved from <http://www.nybooks.com/articles/22761>.
- (2009) 'Israel & the Rules of War' - An Exchange [cont]. *The New York Review of Books*.
- Walzer, M. & Margalit, A. (2009). 'Israel: Civilians & Combatants': An Exchange. *The New York Review of Books*, 56(8). Retrieved from <http://www.nybooks.com/articles/22979>.
- Weizman, E. (2010). Legislative Attack. *Theory, Culture & Society* 27(6): 11-32

Week 11 - November 21, 2012

What about Fallujah? ... Sri Lanka? ...

- Brussels Tribunal - *Remembering Fallujah - A dossier of The BRussels Tribunal* Online at <http://www.brusselstribunal.org/pdf/Fallujah.pdf>.
- O'Huiginn, D. (2004). *Denial Of Water To Iraqi Cities*. Cambridge Solidarity with Iraq (CASI). Online at <http://www.fredsakademiet.dk/library/water.htm>.
- International Crisis Group (2010) *War Crimes in Sri Lanka - Asia Report N°191*. May 2010. Online at

<http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/191%20War%20Crimes%20in%20Sri%20Lanka.pdf>.

Week 12 - November 28, 2012

... Medieval Methods

- Bassiouni, M.C. (2005). The Institutionalization of Torture Under the Bush Administration. *Case Western Reserve Journal of International Law* 37: 389-425.
- Bellamy, A.J. 2006. 'No pain, no gain. Torture and ethics in the war on terror'. *International Affairs*. 82, 121-148.
- Brown, M. (2005). "Setting the Conditions" for Abu Ghraib: The Prison Nation Abroad. *American Quarterly*, 57(3), 973-997.
- Danner, M. (2008). The Red Cross Torture Report: What It Means. *New York Review of Books*.
- Michaelsen, S. & Shershow, S.C. (2004). Beyond and before the law at Guantanamo. *Peace Review*, 16(3), 293-303.
- Post, J.M., & Panis, L. K. (2005). Crimes of Obedience. *Democracy and Security*, 1(1), 33-40.
- Vöneky, S.N.U. (2007). Response – The Fight against Terrorism and the Rules of International Law – Comment on Papers and Speeches of John B. Bellinger, Chief Legal Advisor to the United States State Department. *German Law Journal*, 8(7), 747-759.