

Course Outline

COURSE:	LAWS 4606 A - INTERNATIONAL LAW AND ARMED CONFLICT
TERM:	Fall 2010
PREREQUISITES:	Fourth year Honours standing and one of LAWS 2601, LAWS 3603 (no longer offered)
CLASS:	Day & Time: Wednesday – 1805-2055 Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Professor Trevor Purvis → Paul Champ
CONTACT:	Office: D599 Loeb Office Hrs: Wednesday – 3:00-6:00 pm Telephone: 613-520-2600 x 3673 Email: Trevor_purvis@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

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.

COURSE ASSESSMENT

15% - Class Participation
25% - Journal
60% - Final Term Paper

Students will be required to submit a brief paper proposal in class in Week 6 (the class of **October 20**). The proposal should consist of a working title and roughly a half-page (1-2 paragraph) description of how you envisage the paper developing.

Note: All course components must be completed in order to get a passing grade.

COURSE READINGS

All course reading materials will be available on WebCT

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

The Crimes of War project, at <http://www.crimesofwar.org/index.html>, 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.

A Note on Journals

Students will be required to keep an electronic journal of their reflections on readings and the class. At the end of term you will be required to submit your journal to me electronically.

Each week's journal entry should be comprised of roughly one-and-a-half to two pages (single space) of reflections on the assigned readings and class discussion thereof.

As you will note, there is a very large reading list associated with this course. It is not my expectation that you will have time to read everything on the reading list. It is, however, expected that you will indeed read as much as you can and be able to engage thoughtfully with the material in class and in your journal.

It is imperative that you back this file up **REGULARLY**. Disk crashes will not be an adequate excuse for missing journals at the end of term.

Note: Students are strongly encouraged to check WebCT each week before class for any last-minute announcements.

SCHEDULE**Week Date Topic****1 Sep 15 Introduction****2 Sep 22 From Antiquity to the Margins of Modernity**

Thucydides (1910). The Melian Conference. In *The History of the Peloponnesian War* (R. Crawley, Trans.). London: J.M. Dent & Sons Ltd., pp.300-306.

Anghie, A. (1996). Francisco de Vitoria and the Colonial Origins of International Law. *Social & Legal Studies*, 5(4), 321-336.

Johnson, J.T. (2005). Just War, As It Was and Is. *First Things*. Online at

<http://www.firstthings.com/print/article/2007/01/just-war-as-it-was-and-is-2?keepThis=true&>

Jochnick, C. A., & Normand, R. (1994). The Legitimation of Violence: A Critical History of the Laws of War. *Harvard International Law Journal*, 35, 49.

Krauss, E. S., & Lacey, M. O. (2002). Utilitarian vs. Humanitarian: The battle over the law of war. *Parameters*, (Summer). Online at

http://findarticles.com/p/articles/mi_m0IBR/is_2_32/ai_89811492/

3 Sep 29 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), 1-80.

Colby, E. (1927). How to Fight Savage Tribes. *American Journal of International Law* 21(2)279-288.

Wright, Q. (1926). The Bombardment of Damascus. *American Journal of International Law* 20: 263-280.

4 Oct 6 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.

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.

5 Oct 13 From Nuremberg to Vietnam

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.

Wright, Q. (1947). The Law of the Nuremberg Trial. *American Journal of International Law*, 41(1), 38-72.

6 Oct 20 Problems in the Dock

Cassese, A. (1998). On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law. *European Journal of International Law*, 9(1), 2-17.

Feldstein, S. (2004). Applying the Rome Statute of the International Criminal Court: A Case Study of Henry Kissinger. *California Law Review* 92: 1663-1727.

- Hurwitz, D.R. (2008). Universal Jurisdiction and the Dilemmas of International Criminal Justice: The Sabra and Shatila Case in Belgium, in Hurwitz, D.R., Satterthwaite, M.L. and Ford, D. (eds.) *Human Rights Advocacy Stories*. Eagan: Foundation Press.
- Koskeniemi, M. (2002). Between Impunity and Show Trials. *Max Planck Yearbook of United Nations Law*, 6, 1-35.
- Peskin, V. (2005). Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda. *Journal of Human Rights*, 4(2), 213-231.
- Ralph, J. (2003). Between Cosmopolitan and American Democracy: Understanding US Opposition to the International Criminal Court. *International Relations*, 17(2), 195-211.
- Sriram, C. L. (2002). Exercising Universal Jurisdiction: Contemporary Disparate Practice. *The International Journal of Human Rights*, 6(4), 29-48.
- Zacklin, R. (2004). The Failings of Ad Hoc International Tribunals. *Journal of International Criminal Justice*, 2(2), 541-545.

7 Oct 27 '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.
- 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.

8 Nov 3 Fighting the 'Good Fight' – Kosovo Considered

- Byers, M. & Chesterman, S. (2003). Changing the Rules About Rules?: Unilateral Humanitarian Intervention and the Future of International Law. In J.L. Holzgrefe and R.O. Keohane (Eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. Cambridge: Cambridge University Press.
- Chandler, D. (2000). International Justice. *New Left Review*, 6(Nov/Dec), 55-66.
- Koskeniemi, M. (2002). 'The Lady Doth Protest Too Much' Kosovo, and the Turn to Ethics in International Law. *Modern Law Review*, 65(2), 159-175.
- Blockmans, S. (1999). *Moving Into UNChartered Waters: An Emerging Right of Unilateral Humanitarian Intervention? Leiden Journal of International Law* 12: 759-786

9 Nov 10 Imperial Outposts Amidst the Barbarians – Just War and Regime Change

- Bellamy, A. J. (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.
- 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>
- Elshtain, J. B. (2002). *A Just War?* Online at: http://www.boston.com/news/packages/iraq/globe_stories/100602_justwar.htm
- 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.
- Wedgwood, R. (2003) Legal Authority Exists For A Strike on Iraq, Expert Says. <http://usinfo.state.gov/dhr/Archive/2003/Oct/09-823433.html>

10 Nov 17 New Wars, New Rules and an Enemy Unlike Others – The Exceptionality of Terrorism

- Bugnion, F. 2002. 'Just war, war of aggression and international humanitarian law'. *International Review of the Red Cross* No. 847, p. 523-546.
- 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 Yadin, 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>
- Kasher, A. et al (2009) Kasher et al - 'Israel & the Rules of War' - An Exchange [cont]. *The New York Review of Books*
- 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
- 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>

11 Nov 24 Me

- 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.

12 Dec 1 Medieval Methods

- Bowden, B. (2007). Civilization and Savagery in the Crucible of War. *Global Change, Peace & Security* 19: 3-16.
- Denike, M. 'The Human Rights of Others: Sovereignty, Legitimacy, and "Just Causes" for the "War on Terror"'. *Hypatia* 23: 95-121.
- 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.
- Zulaika J. (1998). Tropics of Terror: From Guernica's 'Natives' to Global 'Terrorists'. *Social Identities* 1:93-108.