

Course Outline

COURSE:	LAWS 4701A
TERM:	Summer 2012
PREREQUISITES:	LAWS
CLASS:	Day & Time: Tues. & Thurs., 6:00 - 9:00 pm Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Chris McNaught
CONTACT:	Office Hrs: (best contact method = email) Email: ckmcnaugh@gmail.com

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 lesson for the twenty-first century is that the fight for security, prosperity and justice can no longer be won on any one nation’s ground. It is international.”

(Will Hutton)

“Once you assume that you are in the right, what will you not do...bring on the thumbscrews and the rack”

(Christopher Hitchens)

We inhabit an era of entitlement, state-abetted paranoia, ideological factionalism, and abstract advocacy, *at the same time, ironically*, as ‘human rights’ are becoming more entrenched as a universally enforceable value, and the International Criminal Court is gaining credibility (its recent first-ever verdict convicting a DRC war-lord user of child soldiers). How will we reconcile this conflict? What ethical criteria should apply? We will need to address new and immediate challenges, moral and logistical; especially, for example, as we engage Al Qaeda, the unfolding ‘Arab spring’ (Syria), African war-lords and various dictatorships, where, tragically perhaps, it sometimes appears politics and morality have become mutually exclusive.

This course will critically examine whether American isolationism, paradoxically reflected in costly adventurism, inconsistent Canadian foreign policy, disastrous global markets, and the festering politics of faith/ideology, have rendered us morally and practically bankrupt -- incapable of championing sound, consistent, and effective responses to key global issues. How can the full rule of law and the tolerant values of democracy be restored, much less ‘exported’?

This course will consider our moral compass settings: are they skewed, when, in the 21st century, for example, the *regulation of torture* is publicly debated? Will the ‘*end justifies the means*’ finally prevail over the *Magna Carta*, *habeas corpus*, and the great western canons separating church and state, prejudice and due process ?

Unless we understand what sustained our democracy, unless we exercise our own system of security and justice with full, and not eroded confidence, how can we ‘export’ or preach self-righteously abroad?

The course aims to elevate discussion of issues surrounding the above themes into an ethical, more comprehensive sphere which examines the impact on our society of the climate of fear and the ‘rhetoric of evil’ - ‘threat inflation’ - the ‘banality of good’ (complacent democracy), and the ‘slippery slope’ (e.g. (proselytize, then sit back and launch drone?).

REQUIRED TEXTS

There are *no required* texts. There is an eclectic, broad, reading list *below*, which students are encouraged to explore. Assigned weekly reading will either be handed out in class or posted on the WebCT for the course.

EVALUATION

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

Research essay (15-20 pp.), student choice of topic with Instructor approval, **60%**; Essay due in class at final lecture.

Seminar presentation (on topic *not* chosen for essay), *very informal*, approx. 15 mins., **25%**;

Participation 15%

SCHEDULE (** Important to please note that this schedule and its contents are not in concrete, and may well digress as per student interest and circumstances suggest...)

Week #1

- revisiting our ancient (Greek) & historical political/ethical origins--the city state, democracy, *Magna Carta*, British foundation of the *rule of law*; lessons from 20th C experience: the Red Scare, McCarthyism, Winnipeg General Strike, war-time internment of citizens, Communism, Cold War, ‘aliens’ & immigration
- assessing the state of our existing polity, the *American Dream* & current societal & ‘justice’ values; the dynamic of ideology vs reality-based policy (national & international), the lock-step of isolationism & adventurism (Viet Nam, Iraq, Afghanistan)

Week #2

- *'terrorism': truly a new phenomenon?* - identifying the *real* enemy; what do the terrorists *want*? role of the media; terrorism as *criminality* not ideology (FLQ, IRA); home-grown emergence
- our (western) responses to 9/11: *supervening the rule of law* – the *new* crusades, arrogance of power, end justifies the means, *jus ad bellum*; a ‘Bedouin State of Mind’-St. Augustine & Muslim mutual (retro)perspectives on human moral impulse
- * *students to select presentation topics & date*

Week #3

- *key ethical issues*- e.g. torture, child soldiers, war crimes, accountability, the Nuremburg legacy, the ICC & the route towards justice & human rights , fantasizing about a ‘universal jurisdiction’
- (video) the DOHA debates; Judgment at Nuremburg; TVO Interview, Ishmael Beah
- *(*student presentations*)

Week #4

- rendition, detention, treatment (& trial): Arar, Khadr, Abdelradzik; ‘two-tier’ Charter rights, government will (obfuscation) vs federal & Supreme Court adverse rulings; the MCC ‘detainee’ commission inquiry
- time-warp: the Lincoln murderers’ detention & military commission (1865) trial and post-9/11 procedure – terrorism then & now, the rush to judgment, riding off madly in all directions; why ‘special’ powers & legislation? - *Patriot Act* & our *Ant-terrorism Act*- the better efficacy of the civilian criminal courts; unlawful enemy combatants
- *(student presentations)

Week #5

- *(*student presentations*)
- Special guest

Week #6

- *(*student presentations*)‘town hall’ colloquium & pizza evening

ADDENDUM**Sample 'stream of conscience' themes and issues related to the above topics -- offered as an assist to background reading for lectures or preparation & selection of essay topic**

- early chasing of bogeyman underlying responses to '9/11, politics of divisiveness, *for us or against us*, 'Islamofascism', 'Eurabia'
- freedom of speech & dissent, international law & conventions-- dilution of sovereignty & demise of the nation-state, effective deconstruction of democracy, rise of 'smart' communities, mega-corps; yet, bilateral & jurisdictional blocks to more universal initiatives (ICC, Kyoto)—towards a concert of 'liberal' or like-minded peoples (as opposed to blind attempts to export our democracy)
- America's (the west's) eroded capacity to lead, ethically or otherwise -- acknowledging the end of empire & the rising Indian and Sino suns, the Obama ascendancy -- non-consensual political infrastructure, fractionalized interest groups; religious fundamentalism colliding with modernity & 'globalization', faith-based ideology drawing a new iron curtain;
- lessons not learned--Nuremberg, Vietnam, Iraq, Afghanistan - unilateral initiatives' negative impact on affected antagonists - Abu Ghraib, Gitmo, erosion of citizen trust in authority - Watergate, sponsorship scandals, Bush admin. moral crumbling, Geneva Conventions & rule of law expressly ignored;
- religious fundamentalism hampering more unified effort (did Bush help de-secularize government?)-- the politics of fear-mongering to consolidate power while detracting from more valid humanistic/socio-political goals
- media (dominant discourse, political exploitation)
- speaking with your 'enemies' is not appeasement (Bush vs Obama)
- 'child soldier(s)' or 'teen terrorist' (e.g. Omar Khadr); Canada as hypocritical adherent to relevant protocol
- how dirty must lawless hands get (*Ignatieff*) without killing civil liberties -- surveillance, privacy, detention, rendition, hi-tech seduction of drones – what boundaries
- CAN DEMOCRACY BE A PARTICIPATION GAME—what can *we* as individuals do?

Suggested READING LIST

A Bright Shining Lie: John Paul Vann and America in Vietnam, Neil Sheehan, Vintage, 1988

Augusto Pinochet and International Law, Wedgewood, R., (2000) 46 McGill Law Journal 241

Beyond Jihad vs McWorld, Benjamin Barber, *The Nation*, 2002 Issue, January 21

Christians and War: Thomas Aquinas refines the "Just War" Theory

http://olympia.anglican.org/churches/B/stdunstan/Beliefs/Christians_War/Christians_War_2.htm

Dark Days: The Story of Four Canadians Tortured in the Name of Fighting Terror, Kerry Pither, Penguin, 2006

Future: Tense, Dyer, Gwynne 2004 Toronto: McClelland and Stewart Ltd.

Global Organized Crime and International Security. Viano, E, ed. Vermont: Ashgate Publishing Co, 1999.

Humanitarian Intervention: Ethical, Legal and Political Dilemmas, Holzgrefe, J. L. and Robert O. Keohane, eds. 2003 New York: Cambridge University Press.

"Humanitarian Intervention and International Society." Ayooob, Mohammed. 2001, *Global Governance* 7(3), 225-230.

Human Rights and Terrorism, Paul Hoffman, *Human Rights Quarterly*, vol. 26, Number 4, Nov. 2004, pp.932-955

Human Rights as Politics and Idolatry, Ignatieff, Michael (2001) Princeton & Oxford: Princeton University Press. ISBN 0691088934

In Defense of Human Rights: A Non-Religious Grounding in a Pluralistic World, Kohen, Ari (2007). Routledge. ISBN 0415420156 , ISBN 978-0415420150

International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law, Bruce Broomhall, Oxford Monographs, 2003

Islam: The Straight Path, Esposito, John L. (2005). Oxford University Press. ISBN 0195182669

Jihad vs McWorld, How Globalism and Tribalism are Reshaping the World, Benjamin R. Barber, New York, Ballantine, 1996

Keynote Address presented at the Campus Progress National Student Conference, Swarthmore College, Swarthmore, PA., Clinton, Bill. (2005). [CampusProgress.org Online transcript: http://campusprogress.org/common/388](http://campusprogress.org/common/388)

Media Ethics: Cases and Moral Reasoning, Christians, Clifford G.; et al. (2004). *7th edition*. Allyn & Bacon. ISBN 0-205-41845-7.

Nemesis: The Last Days of the American Republic, Chalmers Johnson, Metropolitan Books, 2007

Non-State Actors and Human Rights, Alston, P. (Ed) OUP 2005

Nuremberg and Vietnam: an American Tragedy, Telford Taylor, New York Times Books, 1970 (also) Quadrangle 1970

Reflections on the Prosecution of War Crimes by International Tribunals, Meron, T., American

Journal of International Law, July 2006, Vol. 100, No. 3

“Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq.” Bellamy, Alex. 2005, *Ethics and International Affairs* 19(2), 31-53.

“Righting the Wrongs of Past Interventions: A Review of the International Commission on Intervention and State Sovereignty.” Williams, Ian. 2002. *International Journal of Human Rights* 6(3), 101-113.

“Roundtable: Humanitarian Intervention after 9/11.” Farer, Tom et al. 2005 *International Relations* 19(2), 211-250.

September 11: Consequences for Canada, Kent Roach, Queen’s/McGill U. Press, 2003

‘Situation of human rights in the Darfur region of the Sudan’, Report of the High Commissioner for Human Rights, *E/CN.4/2005/3*, 7 May 2004, 3

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2005.3.En?Open document](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2005.3.En?Open%20document)

The Just War Theory: A traditional Catholic moral view, Benson, Richard, The Tidings (2006).

The Lesser Evil: Political Ethics in an Age of Terror, Michael Ignatieff, Princeton University Press, 2003

“The Responsibility to Protect”, International Commission on Intervention and State Sovereignty, December 2001. <http://www.iciss.ca/report2-en.asp>

The Return of History and the End of Dreams, Robert Kagan, Random House, 2008

The Sorrows of Empire, Johnson, Chalmers 2004 New York: Metropolitan Books

The Sun Climbs Slow: Justice in the Age of Imperial America, Erna Paris, Random House, 2008

The Trial of Henry Kissinger, Hitchens, Christopher (2002) Verso. ISBN 1859843980

The United States and the International Criminal Court: The ICC’s Jurisdiction Over the Nationals of Non-Party States: A Critique of the US Position, Scharf, M., 64 *Law & Contemporary Problems* 67 (2001) (also internet) <http://www.law.duke.edu/journals/lcp/>

“Transnational Criminal Organisations and International Security” In Athena’s Camp: Preparing for Conflict in the Information Age, Williams, Phil
http://rand.org/pubs/monograph_reports/MR880/MR880.ch14.pdf

Uncle Sam and Us, Globalization, Neoconservatism, and the Canadian State, Stephen Clarkson, U. of Toronto Press, 2000,

Universal Jurisdiction: Clarifying the Basic Concept, O’Keefe, R., *Journal of International Criminal Justice*, 2004 2 (3): 735 http://www.oxfordjournals.org/jicjus/awards_jnlannual.html

Vietnam, A History, Stanley Karnow, Viking Press, 1983; Penguin 1997

“War in Iraq: Not a Humanitarian Intervention” Roth, Kenneth. 2005, in Richard Ashby Wilson, ed., **Human Rights in the ‘War on Terror’**, Cambridge: Cambridge University Press.

“We the Peoples”, September 2000. U.N. Secretary General’s Millennium Report.

Weapons of Mass Persuasion: Marketing the War Against Iraq, Paul Rutherford, U. of Toronto Press, 2004

(documents / materials)

the U.N. 2002 *Optional Protocol to the Convention on the Rights of the Child* (use of child soldiers)

Geneva Convention relative to the Treatment of Prisoners of War Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949, entry into force 21 October 1950

General Assembly Resolution 95 Affirming the Principles of International law Recognized by the Charter of the Nuremburg Tribunal

(International Criminal Court site; note under ‘Highlights’ that some hearings are streamed video...)
<http://www.icc-cpi.int/home.html&l=en>

London Charter of the International Military Tribunal (Nuremburg)

Rome Statute of the ICC

The National Security Strategy of the United States of America, White House Washington, Sept. 2002,
<http://www.whitehouse.gov/nsc/nss.html>

United Nations Charter

Cases

A-G of the Government of Israel v Eichmann (1961) 36 International Law Reports 5

US v Calley 22 USMCA 534 (1973)

(Canada) Mahar Arar, Omar Khadr, Abdelradzik: Federal & Supreme Court