

Course Outline

COURSE:	LAWS 4701A – Special Topic: The War on Terror: the Ethical Impact on Democracy
TERM:	Summer 2011
PREREQUISITES:	Fourth-year Honours standing
CLASS:	Day & Time: Tues. & Thurs., 6:00-9:00 pm Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Chris McNaught
CONTACT:	Office Hrs: (best contact method = phone or email) Telephone: 613-960-0848 Email: chris.mcnaught@justice.gc.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 June 10, 2011 for Spring term exams and July 29, 2011 for Summer term exams. 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)

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 the West morally and practically incapable of championing sound 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' ? The answer must include a search for leadership which can compel an international focus of integrity – where is Atticus Finch ?!

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'...

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

(Christopher Hitchens)

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%**; seminar **presentation** (on topic not chosen for essay), *very informal*, approx. 15 mins., **25%**; **participation, 15%**. NB. Essay due in class at final lecture.

SCHEDULE**Week #1**

- 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)
- revisiting our ancient (Greek) & historical political/ethical origins--the city state, democracy, *Magna Carta*, British foundations to 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 - cheap labour, cheap citizenry

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);
- our (western) response: 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- eg. torture, child soldiers, war crimes, accountability, the Nuremburg legacy, the ICC & the route towards justice & human rights commanding a 'universal jurisdiction'
- (video) the DOHA debates; Judgment at Nuremburg; TVO Interview, Ishmael Beah
- *(student presentations)

Week #4

- rendition, detention, treatment (& trial) of certain individuals as bitter fruit of our political/judicial tree: 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, students' opportunity to raise new, or expand on, course discussions and themes

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' (eg. Omar Khadr);
- how dirty must lawless hands get (*Ignatieff*) without killing civil liberties-- surveillance, privacy, detention, rendition –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

"Canadian Politics: Critical Approaches." Dyck, Rand. 2004, Fourth Edition. Nelson Thomson Canada Limited.

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.
{ **Global Policy Forum** }, read various topics there, including *Defining Globalization, and Globalization of Law*
www.globalpolicy.org/globaliz/index.htm

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.” Ayoob, 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 Human Rights in Context: Law, Politics, Morals, Steiner, J. & Alston, Philip. (1996).. Oxford: Clarendon Press. ISBN 019825427X

International Criminal Law, Kittichaisaree, K., OUP 2001

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

International Law and the Use of Force by States Brownlie, Ian. 1963. Oxford: Clarendon Press

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>

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

Philosophy and the Mirror of Nature, Richard Rorty, Princeton University Press, 1980

Principles of International Law, Brownlee, I., OUP (Oxford University Press) 2003

“Principles, Publicity, and Politics: Notes on Human Rights Media”, McLagan, Meg (2003) *American Anthropologist*. Vol. 105 (No. 3). pp. 605-612

“Private authority: Non-State Actors and Global Governance” Hall, Rodney Bruce. *Harvard International Review*, 27.2 (Summer 2005): 66-70.

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

“Sudan,” Burkhart, Ford. New York Times Online, May 31, 2007.
<http://topics.nytimes.com/top/news/international/countriesandterritories/sudan/index.html?inline=nyt-geo>

The Challenge of Imposing Human Rights on Corporate Actors De Schutter, NYU Global Law Working Paper, 2005 *Introduction* http://www.nyulawglobal.org/workingpapers/gl_2005.htm

“The Economics of Organized Crime and Optimal Law Enforcement” Garoupa, Nuno December 1997.
<http://www.econ.upf.es/deehome/what/wpapers/postscripts/246.pdf>

The Globalization of World Politics: An introduction to international relations, Baylis, J., S. Smith. Second Ed. New York: OUP, 2001.

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 Retreat of the State: The Diffusion of Power in the World Economy. Strange, Susan, Cambridge: Cambridge University Press, 2004.

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/>

“The UN Responds to the Crisis in Darfur: A Timeline”, United Nations
http://www.un.org/News/dh/dev/scripts/darfur_formatted.htm

“The world reflects on Rwanda genocide”, *Africa Recovery*, United Nations, New Releases. <<http://www.un.org/ecosocdev/geninfo/afrec/newrels/rwanda.htm>>

“Transnational Criminal Organisations and International Security” In 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_inlannual.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](#))

Draft united Nations Convention Against Transnational Organized Crime . Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime. United Nations General Assembly, First Session, January 1999. <http://www.uncjin.org/Documents/Conventions/dcatoc/4e.pdf>

Extradition Act (Canada)

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)

Mahar Arar, Omar Khadr, Abdelradzik