

Carleton University

Department of Law and Legal Studies

Course Outline

COURSE: LAWS 5904.W

TERM: Winter 2013

CLASS: Day & Time: Mondays, 2:35-5:25

INSTRUCTOR: Professor Christiane Wilke

CONTACT: Office: D485 Loeb

Office Hrs: Friday 10-12(walk-in) & by appointment

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 Francisco de Vitoria's consideration of the Amerindians mean for the debate between universalism and relativism? What does Hugo Grotius' work suggest about who has the right to go to war, then and now? And what is the relationship between the classical liberalism of John Stuart Mill's *A Few Words on Non-Intervention* and colonial warfare? We will read classic authors in the history of international law. In order to show the effects of their ideas in practice, we will consider case studies: first, the 1885 Berlin Conference, the "scramble for Africa," and the atrocities in the Congo Free State; second, the League of Nations Mandate System and the debate about the French bombardment of Syria in 1925. Throughout the course, we will also read Anne Orford's new book *International Authority and the Responsibility to Protect*.

This course is set out to be theoretical and historical in its orientation. It aims to give historical 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 Vitoria, Grotius, or Mill. 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:

It is highly recommended that you purchase one book:

Anne Orford, *International Authority and the Responsibility to Protect* (New York: Cambridge University Press, 2011).

It is available in paperback from all major book sellers as well as our lovely little local store:

Octopus Books, 116 Third Ave, off Bank Street. (613)233-2589, <http://www.octopusbooks.org>.

A copy of the readings will be available in the Legal Studies Graduate Lounge.

All other materials will be available on cuLearn..

The following books that we don't read in the course 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)**
- **Research 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.) **If you miss three or more classes, you probably have missed so much of the material and class discussion that you should consider withdrawing from the course. If you're in this situation, please come and see me.**

- **Critical Response Papers** are short essays that offer a critical analysis of or argument about key issues from assigned readings. You choose which question raised in or by the readings you write about. This means that your paper might reference 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 during or 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 **January 28th**. The second response paper is due no later than **March 4th**. The third response paper is due no later than **March 25th**.

- You cannot write a response paper on the same text that you are giving a presentation on. You cannot write more than one response per week.
- The **research paper** challenges you to develop a more sustained argument in 20 double-spaced pages based on readings from this class and outside research. The research paper is due on **April 15th at noon**. Over the course of the term, you will have to submit an initial **paper topic (due March 11th)** and a **paper draft or outline (due April 1st)**. Those are **mandatory** but not graded. **I will not mark papers from students who have not submitted paper drafts.**
Late research papers will not be accepted without a documented emergency.

SCHEDULE:

1. JANUARY 7TH

INTRODUCTION

2. JANUARY 14TH

INTERNATIONAL LAW, VIOLENCE, PROTECTION

Readings:

Antonio Cassese, *International Law*, 2nd edition (Oxford: Oxford University Press, 2005), 3-45. [*course pack*]

Anne Orford, *International Authority and the Responsibility to Protect* (New York: Cambridge University Press, 2011), 1-41.

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 Mgbeoji, "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. JANUARY 21ST

HISTORY? THEORY? METHOD?

Readings:

Anne Orford, "In Praise of Description," *Leiden Journal of International Law* 25 (2012): 609-625.

Anne Orford, *International Authority and the Responsibility to Protect* (New York: Cambridge University Press, 2011), 42-108.

Anne Orford, "The Past as Law or History? The Relevance of Imperialism for Modern International Law." *Institute for International Law and Justice, New York University School of Law Working Paper* 2012/2. [cuLearn]

Paul Farmer, "On Suffering and Structural Violence: A View from Below." *Daedalus* 125 (1996), 261-283.

Recommended:

Luis Eslava & Sundhya Pahuja, "Beyond the (Post)Colonial: TWAAIL and the Everyday Life of International Law," *Journal of Law and Politics in Africa, Asia, and Latin America* 45 (2012): 195-221. Available on SSRN.

Hilary Charlesworth, "Feminist Method in International Law." *American Journal of International Law* 93 (1999), 379-394.

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].

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.

4. JANUARY 28TH

LAW AND THE SPANISH CONQUEST OF THE AMERICAS

The first response paper is due no later than January 28th

Readings:

Francisco de Vitoria, "On the American Indians," in Anthony Pagden and Jeremy Lawrance, ed, *Political Writings* (Cambridge: Cambridge University Press, 1991), 239-292.

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

Pablo Zapatero, "Legal Imagination in Vitoria. The Power of Ideas," *Journal of the History of International Law* 11 (2009): 221-271.

Recommended:

Martti Koskenniemi, "Empire and International Law: The Real Spanish Contribution," *University of Toronto Law Journal* 61 (2011): 1-36.

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. FEBRUARY 4TH

VARIETIES OF VIOLENCE: PIRATES, MERCENARIES, AND MORE

Readings:

Hugo Grotius, *Commentary on the Law of Prize and Booty*. Edited and with an introduction by Martine Julia van Ittersum (Indianapolis: Liberty Fund, 2006), xiii-xxi, 300-390.

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.

6. FEBRUARY 11TH

JUST WAR, CIVILIANS, AND WAR'S VIOLENCE

Readings:

Hugo Grotius, *The Rights of War and Peace*, Book III, edited by Richard Tuck (Indianapolis: Liberty Fund, 2005), 1246-1269, 1270-1302.

Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), 78-108.

Helen Kinsella, "Gendering Grotius: Sex and Sex Difference in the Laws of War." *Political Theory* 34 (2006), 161-191.

Derek Gregory, "The death of the civilian?" *Environment and Planning D: Society and Space* 24 (2006): 633-638.

Recommended:

Claire Garbett, "The concept of the civilian: legal recognition, adjudication and the trials of international criminal justice," *International Journal of Law in Context* 8 (2012): 469-486.

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. FEBRUARY 25TH

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.
- Casper Sylvest, "Our Passion for Legality': international law and imperialism in late nineteenth century Britain." *Review of International Studies* 34 (2008), 403-423.
- Jennifer Pitts, "Empire and Legal Universalism in the Eighteenth Century," *American Historical Review* (2012): 92-121.
- Andrew Fitzmaurice, "Liberalism and Empire in Nineteenth-Century International Law," *American Historical Review* (2012): 122-140.

Recommended:

- Duncan Bell, "John Stuart Mill on the Colonies." *Political Theory* 38 (2010), 34-64.
- 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).

8. MARCH 4TH**"THE MERRY DANCE OF TRADE AND DEATH": INTERNATIONAL LAW AND THE CONGO**

The second response paper is due no later than March 4th

Readings:

- Kevin Dunn, *Imagining the Congo: The International Relations of Identity* (New York: Palgrave, 2003), 21-59, 171-181.
- General Act of the Berlin Conference* (1885), selection.
- E.D. Morel, *Red Rubber* [1906] (New York: Negro Universities Press, 1969), vii-xvii, xix-xxviii, 24-39.
- Jesse S. Reeves, "The Origin of the Congo Free State, from the Standpoint of International Law," *American Journal of International Law* 3 (1909): 99-118.
- Matthew Norton, "Narrative Structure and Emotional Mobilization in Humanitarian Representations: The Case of the Congo Reform Movement, 1903-1912," *Journal of Human Rights* 10 (2011): 311-338.

Recommended:

- Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Boston & New York: Houghton Mifflin Co., 1998).
- Siba N'Zatioula Grovogui, *Sovereigns, Quasi-Sovereigns, and Africans* (Minneapolis: University of Minnesota Press, 1996), 77-110.
- Martin Ewans, *European Atrocity, African Catastrophe: Leopold II, the Congo Free State, and its Aftermath* (London: Routledge, 2002).

Guy Fiti Sinclair, "The Ghosts of Colonialism in Africa: Silences and Shortcomings in the ICJS 2005 Armed Activities Decision." *ILSA Journal of International and Comparative Law* 14 (2007), 121-143.

Jesse S. Reeves, "The Origin of the Congo Free State, Considered from the Standpoint of International Law." *American Journal of International Law* 3 (1909), 99-118.

9. MARCH 11TH

FROM COLONIES TO MANDATES

Paper topic proposals are due on March 11th

Readings:

Susan Pedersen, "Metaphors of the Schoolroom: Women Working the Mandates System of the League of Nations." *History Workshop Journal*, Issue 66 (2008), 188-207.

Covenant of the League of Nations (1919), selection.

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

Elbridge Colby, "How to fight Savage Tribes," *American Journal of International Law* 21 (1927), 279-288.

Recommended:

Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 115-195.

Sven Lindqvist, "Bombing the Savages." *Transitions* 10 (2001), 48-64.

10. MARCH 18TH

HUMANITARIANISM AND PROTECTION

Readings:

ICISS, *The Responsibility to Protect: Report of the International Commission on State Sovereignty* (2001), 1-18.

Anne Orford, *International Authority and the Responsibility to Protect* (New York: Cambridge University Press, 2011), 109-188.

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

Recommended:

Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (New York: Routledge, 2007).

Jean Cohen, "Whose Sovereignty? Empire versus International Law," *Ethics & International Affairs*, Vol. 18, No. 3 (2004), 1-24.

11. MARCH 25TH

EMPIRE, WAR, PROTECTION, FRICTIONS

Unless we add readings for the last weeks, the third response paper is due on March 25th at the latest.

Readings:

Jeremy Elkins, "The Model of War," *Political Theory* 38 (2010): 214-242.

Ann Laura Stoler, "On Degrees of Imperial Sovereignty," *Public Culture*, Vol. 18, No. 1 (2006), 125-146.

Anne Orford, *International Authority and the Responsibility to Protect* (New York: Cambridge University Press, 2011), 189-212.

Recommended:

Frédéric Mégret, "From 'savages' to 'unlawful combatants': a postcolonial look at international humanitarian law's 'other.'" In Anne Orford, ed., *International Law and its Others* (Cambridge: Cambridge University Press, 2006), 265-317.

Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2004), 273-309.

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.

12. APRIL 1TH

CLASS FORMAT TBA

The research paper draft/outline is due on April 1st

13. APRIL 8TH

CLASS FORMAT TBA

Don't forget: The research paper is due on Monday, April 15th, at noon.

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.