

Carleton University

Department of Law

Course Outline

COURSE: LAWS 5904.X Law and Violence

TERM: Winter 2009

CLASS: Day & Time: Tuesdays, 8:35-11:25am
Room: B454 Loeb

INSTRUCTOR: Professor Christiane Wilke

CONTACT: Office: D485 Loeb
Office Hrs: Wednesday 1-3 (walk-in) & by appointment
Telephone: 613-520-2600 ext.4168
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[please mention the course number in the email subject line]

ACADEMIC ACCOMMODATION

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 documented 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 include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC, 613-520-6608, early each 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 require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by November 7, 2008 for December exams, and by March 6, 2009 for April exams.”

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 OBJECTIVES & CONTENT:

How does law define, facilitate, justify, and address violence? This course will examine the relationship between law, legality, and collective violence with a focus on international law.

What is war, and how do war, terrorism, and crime differ? How is violence in (and) against military interventions understood and justified? How do the morality and legality of violence change across time and space? How is organized violence organized around ideas of race, gender, and sexuality? How is violence represented in visual culture, literature, and law?

Theoretical readings, including texts by Mahmood Mamdani, Robert Cover, Carl Schmitt, and Edward Said will be combined with case studies focusing on facets of the current war on terror.

COURSE MATERIAL:

Please get a copy of Joseph Conrad's *Heart of Darkness* at a local bookstore of your choice (or online). The *course pack* will be available in the Legal Studies Graduate Student Lounge and in the Chet Mitchell Reading Room.

Please note the availability indications in the outline next to the readings. Materials marked [*lexis-nexis*] are available through lexis-nexis, and you are responsible for locating them. (If you should have trouble accessing them, please ask me.) Materials marked [*pdf*] or [*WebCT*] are posted on WebCT.

EVALUATION:

- **Class presentation and participation: 15%**
- **Three short essays: 15% each (45% combined)**
- **Research paper: 40%**

- **Class presentation and participation:** This graduate seminar relies on informed participation and discussion. The presentations should provide a short (5 min) critical analysis of the text(s) and set a possible frame for further discussion. Presentations should not summarize the text(s).
- If everyone brings their own critical perspectives on the texts to the table, we will be able to gauge the range of possible interpretations and critiques of the texts. Thus, everyone's active participation is crucial for the success of the class. Participation presumes, of course, that you have read the texts carefully.

- **Short essays** offer either a critical analysis of a key issue from assigned readings or make an independent argument on the basis of the assigned texts. You choose the readings you write about in 4-5 pages (double-spaced). Short essays should mainly rely on critical analysis and conceptual arguments, not on outside research. Essays are due at the beginning of the class for which the reading covered in the essay is assigned. **Late essays are not accepted.** The first essay has to be submitted no later than **January 27th**. The second essay is due no later than **March 3rd**. The third essay is due no later than **March 24th**. **You cannot write an essay engaging with the same text that you are giving a presentation on.**

- The **Research Paper** allows you to develop a more sustained and complex argument. The desired page length is 15-20 pages (double-spaced). The research paper is due on **April 10th**. Over the course of the term, you will have to submit an initial **paper topic statement (due on February 24th)** and a **paper draft (due on March 17th)**. Those are **mandatory** but not graded. **I will not mark final research papers from students who have not submitted a detailed paper outline or draft. You cannot pass the class without submitting an outline/draft.**

SCHEDULE:

1. January 6th

Introduction

2. January 13th

Approaching Law & Violence

Antonio Cassese, *International Law*, 2nd edition (New York and Oxford: Oxford University Press, 2005), 399-434, 463-481.

Robert Cover, "Violence and the Word" in *Narrative, Violence, and the Law*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: University of Michigan Press, 1995), 203-238.
[course pack]

Mahmood Mamdani, "The Politics of Naming: Genocide, Civil War, Insurgency," *London Review of Books*, 8 March 2007, online: http://www.lrb.co.uk/v29/n05/mamd01_.html

Recommended:

Walter Benjamin, "Critique of Violence" in *Reflections*, ed. Peter Demetz (New York: Schocken, 1978), 277-300.

Mahmood Mamdani, *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* (New York: Pantheon, 2004).

Hannah Arendt, *On Violence* (New York: Harcourt Brace & Company, 1970).

3. January 20th

Locating International Law, Then and Now

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.
[pdf]

Derek Gregory, *The Colonial Present* (Malden: Blackwell, 2004), 1-29, 47-75. [course pack]

Recommended:

Richard Tuck, *Rights of War and Peace: Political Thought and the International Order from Grotius*

- to *Kant* (Cambridge: Cambridge University Press, 2004)
- Doris Buss and Ambreena Manji, ed., *International Law: Modern Feminist Approaches* (Oxford and Portland, OR: Hart, 2005).
- Anthony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge and New York: Cambridge University Press, 2005).
- Richard Falk, Lester Edwin Ruiz and R.B.J. Walker, ed., *Reframing the International: Law, Culture, Politics* (New York: Routledge, 2002).
- Michael Byers and Georg Nolte, ed., *United States Hegemony and the Foundations of International Law* (Cambridge: Cambridge University Press, 2003).
- Upendra Baxi, "What may the 'Third World' expect from International Law?" *Third World Quarterly* 27 (2006), 713-725.

4. January 27th

Sovereignty, Civilization, and War

- Martti Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge: Cambridge University Press, 2002), 98-178. [course pack]
- Quincy Wright, "The Bombardment of Damascus," *American Journal of International Law*, Vol. 20, No. 2 (1926), 263-280. [pdf]
- Elbridge Colby, "How to fight Savage Tribes," *American Journal of International Law*, Vol. 21, No. 2 (1927), 279-288. [pdf]

Recommended:

- Gerrit Gong, *The Standard of Civilization in International Society*. Oxford: Clarendon Press, 1984.
- Brett Bowden, "In the Name of Progress and Peace: The 'Standard of Civilization' and the Universalizing Project." *Alternatives*, Vol. 29 (2004), 43-68.
- Georg Schwarzenberger, "The Standard of Civilisation in International Law." *Current Legal Problems*, 1955.
- Jack Donnelly, "Human Rights: A New Standard of Civilization?" *International Affairs*, Vol. 74 (1998), 1-23.
- David Fidler, "International Human Rights Law in Practice: The Return of the Standard of Civilization." *Chicago Journal of International Law*, Vol. 2 (2001), 137-157.

[The first short essay has to be submitted in or prior to the class of January 27th]

5. February 3rd

Cultures of Law & Empire

- Edward Said, *Orientalism* [1978] (New York: Vintage, 2003), 1-28. [course pack]
- Edward Said, *Culture and Imperialism* (New York: Vintage, 1994), 1-43. [course pack]
- Piyel Halder, *Law, Orientalism and Postcolonialism* (London: Routledge, 2007), 1-26. [course pack]

Recommended:

Teemu Ruskola, "Legal Orientalism." *Michigan Law Review*, Vol. 101 (2002), 179-234.

Piyel Haldar, "The Jurisprudence of Travel Literature: Despotism, Excess, and the Common Law," *Journal of Law & Society*, Vol. 31, No. 1 (March 2004), 87-112.

Jean Allain, "Orientalism and International Law: The Middle East as the Underclass of the International Legal Order," *Leiden Journal of International Law*, Vol. 17, No. 2 (2004), 391-404.

6. February 10th**Imagining Colonialism**

Joseph Conrad, *The Heart of Darkness* (New York: Penguin, 1994), entire.

Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York and London: Routledge, 1995), 21-74. [course pack]

7. February 24th**Conceptualizing War and Combatants**

Nathaniel Berman, "Privileging Combat? Contemporary Conflict and the Legal Construction of War," *Columbia Journal of Transnational Law*, Vol. 43, No. 1 (2004), 1-71. [pdf]

Helen Kinsella, "Gendering Grotius: Sex and Difference in the Laws of War," *Political Theory*, Vol. 34, No. 2 (2006), 161-191. [pdf]

Derek Gregory, "The Death of the Civilian?" *Environment and Planning D: Society and Space* 24 (2006), 633-638. [pdf]

Recommended:

Amy Bartholomew, ed., *Empire's Law: The American Imperial Project and the 'War to Remake the World'* (London: Pluto, 2006).

Marco Sassoli, "Terrorism and War," *Journal of International Criminal Justice*, Vol. 4 (2006), 959-981.

Derek Jinx, "The Declining Significance of POW Status," *Harvard International Law Journal*, Vol. 45 (2004), 367-442.

[The research paper topic has to be submitted in or prior to the class of February 24th]

8. March 3rd**Terrorists, Citizens, Enemies**

Carl Schmitt, "Theory of the Partisan: Intermediate Commentary on the Concept of the Political," *Telos* No. 127 (2004), 11-78. [course pack]

Teodoro Klitsche de la Grange, "The Theory of the Partisan Today," *Telos* No. 127 (2004), 169-175. [course pack]

Jon Beasley-Murray, "The Common Enemy: Tyrants and Pirates," *The South Atlantic Quarterly*, Vol. 104, No. 2 (2005), 217-225. [pdf]

Recommended:

- Jörg Friedrich, "Defining the International Public Enemy: The Political Struggle Behind the Legal Debate on International Terrorism," *Leiden Journal of International Law*, Vol. 19 (2006), 69-91.
- Fleur Johns, "Guantánamo Bay and the Annihilation of the Exception," *European Journal of International Law*, Vol. 16, No. 4 (2005), 613-635.
- George Fletcher, "The Indefinable Concept of Terrorism," *Journal of International Criminal Justice*, Vol. 4 (2006), 894-911.
- Noya Rimalt, "Equality with a Vengeance: Female Conscientious Objectors in Pursuit of Voice and Substantive Gender Equality," *Columbia Journal of Gender and Law*, Vol. 16, No. 1 (2007), 99-147.
- Helen Kinsella, "Understanding a War that is Not a War: A Review Essay," *Signs: Journal of Women in Culture and Society*, Vol. 33, No. 1 (2007), 209-231. [This piece is excellent for suggesting further readings]
- Iris Marion Young, "The Logic of Masculinist Protection: Reflections on the Current Security State," *Signs: Journal of Women in Culture and Society*, Vol. 29, No. 1 (2003), 1-25.

[The second short essay has to be submitted in or prior to the class of March 3rd]

9. March 10th

New Violence, New Legalities? Guantánamo and Beyond

- Mark Danner, *Torture and Truth* (New York: New York Review Books, 2004), 78-106. [course pack]
- Nasser Hussain, "Beyond Norm and Exception: Guantánamo," *Critical Inquiry* 33 (2007), 734-753. [pdf]
- Jasbir Puar, "On Torture: Abu Ghraib," *Radical History Review*, Issue 93 (2005), 13-38. [pdf]
- Ghassan Hage, "'Comes a Time We Are All Enthusiasm': Understanding Palestinian Suicide Bombers in Times of Exigophobia," *Public Culture*, Vol. 15, No. 1 (2003), 65-89. [pdf]

Recommended:

- Nehal Bhuta, "The Antinomies of Transformative Occupation," *European Journal of International Law*, Vol. 16, No. 4 (2005), 721-740. [pdf]
- Sherene Razack, *Dark Threats & White Knights* (Toronto: University of Toronto Press, 2004), 15-50. [course pack]
- Vasuki Nesiah, "From Berlin to Bonn to Baghdad: A Space for Infinite Justice," *Harvard Human Rights Journal*, Vol. 17 (2004), 75-98. [pdf]
- Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003).
- Karma Nabulsi, *Traditions of War: Occupation, Resistance, and the Law* (Oxford: Oxford University Press, 1999).
- Nathaniel Berman, "Interventions in a 'Divided World': Axes of Legitimacy," *European Journal of*

International Law, Vol. 17, No. 4 (2006), 743-769.

10. March 17th

Refugees and Representations of Violence

Liisa Malkki, "Speechless Emissaries: Refugees, Humanitarianism, and Dehumanization," *Cultural Anthropology*, Vol. 11, No. 3 (1996), 377-404. [pdf]

Didier Fassin and Estelle d'Halluin, "Critical Evidence: The Politics of Trauma in French Asylum Policies," *Ethos* 35 (2007), 300-329. [pdf]

Lawrence Douglas, "The Shrunk Head of Buchenwald: Icons of Atrocity at Nuremberg," *Representations*, No. 63 (Summer 1998), 39-64. [pdf]

Recommended:

Susan Sontag, "Regarding the Torture of Others," *New York Times Magazine*, 23 May 2004.

Judith Butler, "Torture and the Ethics of Photography," *Environment & Planning D: Society and Space*, Vol. 25 (2007), 951-966.

David Altheide, "The Mass Media, Crime and Terrorism," *Journal of International Criminal Justice*, Vol. 4 (2006), 982-997.

James Dingley and Marcello Mollica, "The Human Body as Terrorist Weapon: Hunger Strikes and Suicide Bombers," *Studies in Conflict & Terrorism*, Vol. 30, No. 6 (2007), 459-492.

[The research paper draft or detailed outline has to be submitted by March 17th]

11. March 24th

Violence and Citizenship

Audrey Macklin, "From Cooperation, to Complicity, to Compensation: The war on Terror, Extraordinary Rendition, and the Cost of Torture," *European Journal of Migration and Law* 10 (2008), 11-30. [pdf]

Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002. Online: <http://csc.lexum.umontreal.ca/en/2002/2002scc1/2002scc1.pdf>.

[The third short essay has to be submitted in or prior to the class of March 24th]

12. April 1st

Concluding Discussion

Don't forget: The research paper is due on Tuesday, April 7th.

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 citation styles! The Carleton University library has many resources that can help you. See: www.library.carleton.ca/howdoI/citing.html.