

International Law in/as Political Science, History, and Philosophy

In this seminar we will explore how international lawyers, political scientists, historians, and philosophers approach the question of international law. Is international law a coherent concept? Is it simply a codification of “the will of the stronger”? Can international law bind states to agreements and enforce compliance? What is the colonial legacy of international law, and is it relevant to its modern forms? How do regimes and doctrines emerge in international law?

The course is divided into four parts. The first part focuses on what international law *is*, and introduces how lawyers, philosophers, and international relations theorists approach the question of international law. Part two introduces the relationship between international law and colonialism; colonialism and imperialism were *legal* practices, and were constitutive of the development of international law. Part three traces the long emergence of the Responsibility to Protect (R2P) as both a norm and legal doctrine, beginning with early 20th century legal debates about the rights of national minorities and refugees, continuing into debates and innovations in the status of Internally Displaced Persons (IDPs) in the aftermath of decolonization, culminating in sovereignty-as-responsibility, the conceptualization of sovereignty upon which R2P is based. The final section introduces international humanitarian law (IHL), emphasizing the questions of when the resort to war is legal, and who may be killed in war.

This course takes an interdisciplinary approach to the study of international law; as such, the readings are not limited to legalist approaches but are also political, philosophical, and historical. Students are welcome to foreground whatever interpretive approach they desire; however, as a class we will resist the claim that there is a single “proper” field for the study of international law. Because the reading load is both heavy *and* draws from approaches in which students may not have expertise, I strongly encourage students to set aside significant time to complete the readings for each class session. While some of the readings may be complex and students may reasonably be confused by the readings, failure to be *familiar* with the readings in class will be taken as a sign that the student did not attempt the readings for the week, and will result in the student in question being marked absent. More than three (unexcused) absences over the term means the student will have to take the course pass/fail.

Students will write one book review (2-3 pages) for a book assigned on the syllabus, and one final paper (15-25 pages) due at the end of the term. Book reviews will be in the form of a standard academic book review, of the sort published in major peer-reviewed journals. A sign-up sheet for book reviews will be circulated the second week of the term; the week one’s book review is due, the student will also serve as discussion leader for the seminar and be expected to bring 3-5 discussion questions to class. Students will develop paper topics in consultation with the instructor, and will be expected to have met with the instructor by week 7 to discuss possible topics. Depending on the student’s interest, the instructor will provide a tailored supplemental reading list to assist the student in completing their paper.

Part 1: Groundings

Week 1: Can law be international?

Martti Koskeniemi, "The Politics of International Law"

Adil Haque, "The Inner Logic of International Law"

Hans Kelsen, "The Essence of International Law"

Week 2: International Relations, Liberalism, and the Law: a binding practice?

Robert Keohane, "The Demand for International Regimes"

Christian Reus-Smit, "The Politics of International Law"

Kenneth Abbot and Duncan Snidal, "Hard and soft law in international governance"

Week 3: Liberalism as a commitment strategy

Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, chapters 2, 3, 4

Sonia Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure*, chapters 1 and 6

Week 4: Is international law the enforcement of dominance? Perspectives of German Nazis and German Jews

Carl Schmitt, *The Nomos of the Earth in the Jus Publicum Europaeum*

Hans Morgenthau, "The Main Problems of International Law"

Martti Koskeniemi, "Carl Schmitt, Hans Morgenthau, and the Image of Law in International Relations"

Week 5: International law as generative, not restraining

Ian Hurd, *How to do Things with International Law*

Part 2: International Law, history, and colonialism

Week 6: Can international law escape its colonial history? Part 1

Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law*

Week 7: Can international law escape its colonial history? Part 2

Jennifer Pitts, *Boundaries of the International: Law and Empire*

Week 8: International law and dominance through *inclusion*

Sinja Graf, *The Humanity of Universal Crime: Inclusion, Inequality, and Intervention in International Political Thought*

Part 3: The emergence of a new regime, or the evolution of an old one? Displacement, sovereignty, and R2P

Week 9: Statelessness and Displacement in law and institutions

Emma Haddad, *The Refugee in International Society: Between Sovereigns*

Mark Mazower, *No Enchanted Palace: the end of empire and the ideological origins of the United Nations* chapter 3

Mira Siegelberg, *Statelessness: a new history*, chapter 2

Week 10: Changing our questions, changing our concepts: the emergence of IDPs

Francis Deng and Roberta Cohen, *Masses in Flight: The Global Crisis of Internal Displacement* chapters 1, 2, 3

Catherine Phuong, *The International Protection of Internally Displaced Persons*, chapters 1, 2, 3, 6

Week 11: From IDP to R2P, by way of sovereignty-as-responsibility

Francis Deng, "Frontiers of Sovereignty"

Francis Deng et al. *Sovereignty-as-Responsibility: Conflict Resolution in Africa*, chapters 1, 4

Adom Getachew, "The Limits of sovereignty as responsibility"

Gabriel Mares, "Recovering African Contestation and Innovation in Global Politics: Francis Deng and Sovereignty-as-Responsibility"

Week 12: R2P against or as imperialism?

Anne Orford, *International Authority and the Responsibility to Protect*

Part 4: Armed Conflict: International Humanitarian Law and its sources

Week 13: When is the resort to force legal? Can it be justified when it is not legal?

Michael Walzer, *Just and Unjust Wars*, part 2

Article 4(h) of the African Union Constitutive Act

Martti Koskeniemi, "The Lady Doth Protest Too Much: Kosovo, and the Turn to Ethics in International Law"

Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War*, chapters 2, 3, 5, 7

Week 14: Who can be killed in war?

Common Article 3 of the Geneva Conventions

Dapo Akande, "Clearing the Fog of War? The ICRC's Interpretive Guidance on Direct Participation in Hostilities"

Gabriel Mares, "Just war theory after colonialism and the war on terror: reexamining non-combatant immunity"

Helen Kinsella, "Settler Empire and the United States: Francis Lieber and the Laws of War"