

**The Laws of Nature and Nations:  
War, conquest, and power in early modern political and legal theory**

**Draft Syllabus**

(NOTE: This syllabus is built upon Anthony Pagden's course on the Laws of War and Peace but has been significantly adapted and expanded. This syllabus was drafted with the permission of Professor Pagden)

**Instructor:** Mack Eason  
**Email:** mack.eason@ucla.edu  
**Class Time:** \_\_\_\_\_  
**Class Location:** \_\_\_\_\_  
**Office:** \_\_\_\_\_  
**Office Hours:** \_\_\_\_\_  
**Moodle Website:** \_\_\_\_\_

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**Course Description:**

This course will look at the development and evolution of the political theories which attempted to define and control the international sphere from the sixteenth to the twentieth centuries. Since the main concern of states in the modern world has been to regulate conflict, we will be concentrating on the struggle to create international agreements on how to control and, if possible, end warfare, define and establish peace. These in turn depend upon an interpretation of the 'natural law' and of the 'law of nations', which would eventually be transformed into modern 'international law'.

We will begin with the debates in Europe the over the justification of the conquest of America – which were the beginning of the concept of an international order and of international law. We will end with a look at where we stand now, with the emergence of so-called 'rogue states', with terrorism as a new mode of international conflict and the concept of 'human rights' as a new mode of universalism.

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**Learning Objectives:**

By the end of the course, students should be able to demonstrate:

- knowledge of the historical events, intellectual trends, and common themes explored by the historical authors that form the focus of this course,
- an understanding of how to employ reading strategies like surveying, questioning and restating in order to complete and comprehend a large amount of assigned reading,
- the ability to take and support an argumentative position – building on evidence drawn from primary and secondary sources – in favor of or against a given interpretation of a historically influential text.
- and the capacity to draw historically-sensitive connections between early modern accounts of the laws governing the relations of states in matters of war and commerce and contemporary international law doctrines on similar issues.

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### **Course Requirements:**

The grade will be decided on the basis of one mid-term and one final exam. Both will be taken in class.

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### **Participation, Exam and Grading:**

For the first hour of each lecture period, the instructor will give a lecture. The second hour of each lecture period will be dedicated to a Q&A session led by the TA. The inclusion of this Q&A section is meant to make the class feel less like a straightforward lecture and more like a mixed seminar. As such, students are encouraged to ask questions. The quality of these discussions will depend heavily on students coming to class prepared and actively listening to the lecture. The goal is that every student will participate in these discussions, even if by only actively listening to the conversation.

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### **Readings:**

All texts are available on-line. You are expected to have read the assigned sources before the start of each week's first lecture. NOTE: We have also included supplementary sources that may prove helpful to your understanding of the assigned material. These readings are provided for background or additional exploration of the topic that week. You will not be held responsible for the content of any supplementary readings on the exams.

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## **Schedule:**

### **Week 1 - Internationalism from the Roman Republic to the early modern period:**

#### **• Assigned Reading:**

- Anghie, Antony. "Basic Principles of International Law: A Historical Perspective" in *International Law for International Relations*, 46-70.
- Tuck, Richard. *Natural Rights Theories*, Cambridge University Press, 1981, pp. 5-31 (ch. 1 - "The First Rights Theory", a quick intro to medieval natural law/rights)

#### **• Supplementary Sources:**

- David Kennedy, Primitive Legal Scholarship, 27 Harv Int'l L. J. 1, 1-12, 95-98 (1986) (useful for getting a sense of the *style* of international legal argument we will see in Vitoria and that is referenced in later authors)
- Koskenniemi, Martti. *From apology to utopia: the structure of international legal argument*. Cambridge University Press, 1989, pp. 95-106 (account of the style and content of "early scholarship")
- Nussbaum, Arthur. *A concise history of the law of nations*. Macmillan, 1954.
  - Ch. 1, "Antiquity", pp. 7-22
  - Ch. 2, "The Middle Ages", pp. 23-51

### **WEEK 2 - Conquest, expansion and the origins of 'International Law': Francisco de Vitoria (1492 - 1546)**

#### **• Assigned Reading:**

- Francisco de Vitoria, "On the American Indians," in *Vitoria: Political Writings*, eds. Anthony Pagden and Jeremy Lawrance (Cambridge, 1991), 231-293
- Cavallar, Georg. "Vitoria and the Second Scholastic", ch. 2 in *The rights of strangers: Theories of international hospitality, the global community and political justice since Vitoria*. Ashgate, 2002.

#### **• Supplementary Sources:**

- Pagden, Anthony. "Introduction" in in *Vitoria: Political Writings*, eds. Anthony Pagden and Jeremy Lawrance (Cambridge, 1991).
- Koskenniemi, Martti. 'Empire and international law: The real Spanish contribution', *University of Toronto Law Journal* 61 (2011).

### **WEEK 3 - *Mare liberum* and the creation of the international order: Hugo Grotius (1583 - 1645)**

#### **• Assigned Reading:**

- Hugo Grotius, *On the Law of War and Peace* (1625): Book 1, Ch 1, “What War is and What Right is” and Book 2, Ch 22, “Of the Unjust Causes of War” (full text available at <http://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-2005-ed-3-vols>)
- Hersch Lauterpacht, *The Grotian Tradition in International Law*, 23 *British Yearbook of International Law* 1, 18-30, 42-46 (1946) (addressing Lauterpacht’s view of Grotius’ importance, his addressing “fundamental aspects” of IL)
- **Supplementary Sources:**
  - Tuck, Richard. *The Rights of War and Peace*, Oxford University Press, 2002, pp. 78-108 (ch. 3 - “Hugo Grotius”).
  - Ileana Porras, *Constructing International Law in the East Indian Seas: Property, Sovereignty, Commerce and War in Hugo Grotius’ De Iure Praedae—The Law of Prize and Booty, Or “On How to Distinguish Merchants from Pirates,”* 31 *Brooklyn J. Int’l L.* 741, 741-748, 756-766, 774-792, 802-804 (2006).

#### **WEEK 4 - The sovereignty of states: Thomas Hobbes (1588-1679)**

- **Assigned Reading:**
  - Hobbes, T., (ed. Richard Tuck), 1998. *Hobbes: On the Citizen* [or *De Cive*]. Cambridge UP. **Ch. VI, “On the right of the Assembly or Man”**, pp. 75-90.
  - Hobbes, T. (ed. Richard Tuck), 2006. *Hobbes: Leviathan: Revised Student Edition*. Cambridge UP. **Part I, Ch 8, “Of the Natural Condition of Mankind”**, pp. 86-90
  - Malcolm, Noel. “Hobbes’s theory of international relations.” *Aspects of Hobbes* (2002): 432-56.
- **Supplementary Sources:**
  - Armitage, David. “Hobbes and the foundations of modern international thought.” *Foundations of Modern International Thought*, Cambridge University Press, 2013: 59-74. (useful for illustrating the ties between Hobbes’ work and the themes of internationalism running through this course).

#### **WEEK 5 - REVIEW AND MID TERM EXAM**

#### **WEEK 6 - Westphalia, 1648, and the beginnings of the modern state system: Samuel Pufendorf (1632 - 1694)**

- **Assigned Reading:**
  - Pufendorf, Samuel. *On the Law of Nature and of Nations* (Drawn from ed. Craig L. Carr, trans. Michael J. Seidler. *The Political Writings of Samuel Pufendorf*. Oxford University Press, USA, 1994)
    - Book 7, Ch. 1, “On the Cause Impelling Men to Establish the State”, pp. 202-208.

- Book 7, Ch. 6, “On the Characteristics of Supreme Sovereignty”, pp. 230-235.
- and Book 8, Ch. 6, “Of the Law of War”, pp. 257-261.
- **Supplementary Sources:**
  - Leo Gross, The Peace of Westphalia 1648-1948, 42 Am. J. Int'l L. 20 (1948) pp. 20-26, 26-41
  - Stephane Beaulac. The Westphalian Model in Defining International Law: Challenging the Myth, 8 Aust. J. Int'l Legal Hist. 181, 181-186, 198-213 (2004)

### **WEEK 7 - The quest to synthesize natural law and state practice: Vattel (1714-1767)**

- **Assigned Reading:**
  - Emer de Vattel, *The Law of Nations*. ed. B. Kapossy, R. Whatmore. (2008)
    - Book 2, Ch. 1, “Of the common Duties of a Nation towards other States, or the Offices of Humanity between Nations”, pp. 259-273.
    - Book 2, Ch. 4, “Of the Right to Security, and the Effects of the Sovereignty and Independence of Nations”, pp. 288-295.
    - Book 3, Ch. 3, “Of the Just Causes of War”, pp. 482-500.
- **Supplementary Sources:**
  - Kapossy and Whatmore, “Introduction”, Emer de Vattel, 2008. *The Law of Nations*. ed. B. Kapossy, R. Whatmore.

### **WEEK 8 December - Rejecting “sorry comforters,” the fall of natural law, and the quest for Perpetual Peace: Immanuel Kant (1724-1804)**

- **Assigned Reading:**
  - Kant, Immanuel. “Perpetual Peace. A Philosophical Sketch” in *Toward perpetual peace and other writings on politics, peace, and history*. (ed. Pauline Kleingeld, trans. David L. Colclasure). Yale UP, 2006. pp. 67-109
  - Immanuel Kant, *The Metaphysics of Morals*, ed. Mary Gregor (Cambridge University Press, 1991)
    - “The Right of Nations”, pp. 150-157.
    - “Cosmopolitan Right”, pp. 158-159.
  - Habermas, Jürgen. "Kant's Idea of Perpetual Peace, with the Benefit of 200 Years' Hindsight." *Perpetual peace: Essays on Kant's cosmopolitan ideal* (1997): 113-53.
- **Supplementary Sources:**
  - Nussbaum, Martha. "Kant and Cosmopolitanism." *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (1997).

### **WEEK 9 - Major developments in International Law in the Century after Kant's Perpetual Peace: 19th century publicists and the turn to “international law”**

- **Assigned Reading:**

- Koskenniemi, M. "International Law and Imperialism." In *Contemporary Issues in International Law: a Collection of the Josephine Onoh Memorial Lectures*, 2002.
- Cavallar, G. (2008). *Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans*. *J Hist Int'l L*. (Good overview of the positions and context of four of our authors, as well as the debate over their degree of complicity with colonialism).

- **Supplementary Sources:**

- To be determined.

## **WEEK 10 - REVIEW AND FINAL EXAM**