

**PHIL 455: Advanced Philosophy of Law**  
**Theory of International Criminal Law**

Fall 2012  
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Office: LT 1204

**Office Hours:** Thursday, 2:00 – 4:00 PM

I will be in my office and available during office hours, but you can make appointments to see me at other times. My preference is that we make appointments by email, and have substantive discussions face-to-face.

**Course Description**

The course will consider the proper function, scope, and methods of international criminal law (ICL). We will ask: What are the proper goals of ICL, what should it be seeking to accomplish? Is ICL justified? If so, to what extent – how far may it pursue its proper aims? Can ICL ever, legitimately, trump the sovereignty of states? What crimes are within the purview of ICL? Who should be prosecutable for international crimes? What form should international criminal court proceedings take? What punishments, or other outcomes, are appropriate for the convicted?

To address these questions, we will investigate several philosophical topics, including: the justification for and purpose of criminal punishment in general, the (special?) justification and purpose of official punishment internationally, human rights, state sovereignty, personal responsibility, the value of the rule of law (and its limits), and the legitimacy of international law. Though these matters are frequently treated independently, such that each topic has its own highly specialized academic literature, the suggestion of this course is that they are intimately related. One aim of the course, then, is to bring into relief how ICL fits into these broader philosophical problems.

In general, this is a course in normative legal philosophy. Our concern is not simply with the actual development and practice of ICL, but with how it ought to be developed and practiced.

**Objectives**

The student will:

- Be familiar with some of the central philosophical work on the topics of punishment, international law, international criminal law, human rights, and legitimacy
- Develop and be able to articulate cogent and defensible views on the function, scope, and methods of international criminal law
- Improve ability to write analytical papers
- Develop an ability to independently read and critically consider difficult texts
- Improve ability to reason through and intelligently discuss complex problems generally

## **Readings**

Students are expected to show up to class prepared to discuss, and answer questions concerning, the assigned reading. This is a seminar, so there will be a focus on student to student and instructor to student dialogue. The class discussion will center on students addressing the issues raised by the texts. Successful participation in class, then, requires familiarity with the readings for the course.

The required texts are:

Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin, 2006)  
Michael Tonry (ed), *Why Punish? How Much?: A Reader on Punishment* (Oxford, 2011)  
Samantha Besson/John Tasioulas (eds.), *The Philosophy of International Law* (Oxford, 2010)  
Charles Beitz, *Political Theory and International Relations* (Princeton, 1979/1999)  
Larry May, *Crimes Against Humanity: A Normative Account* (Cambridge, 2005)  
Mark A. Drumbl, *Atrocity, Punishment, and International Law* (Cambridge, 2007)

In addition to these texts, many of the readings will be available on Blackboard (marked [BB] on the schedule of readings).

## **Requirements**

Grade Breakdown:

Participation	25%
Paper Draft	5%
Paper	45%
Final Exam	25%

Paper Draft and Paper: Students will be required to write a 20 to 25 page paper. Students have the option of either developing their own topic or selecting one of the topics distributed by me. The writing of the paper will occur in stages, and students should expect to invest considerable effort over the course of several weeks into writing the paper.

*Stage One (Topic Selection):* One week after possible topics have been distributed, send me an email or hand in a piece of paper indicating which of the topics you are going to write on. If you are writing on your own topic, you should discuss it with me.

*Stage Two (Draft):* Three weeks after the assignment is distributed, hand in a ten to twelve page draft of your paper. The paper should provide the main line of argument you intend to use in your final draft and much of the supporting material you will rely upon (e.g., explanations of other pertinent theorist's views regarding your topic). To put it otherwise, you should provide me a condensed, polished version of your final paper. After I review it, we will schedule a time to meet one on one. I will return the draft to you then with verbal and written comments for the purpose of expanding and revising the draft into a full twenty to twenty-five page paper. Failure to turn in the draft, or turning in one that is inadequate, will have an adverse affect on your final course grade.

*Stage Three (Revision):* After the draft is returned with comments, you will have at least ten days to revise and expand your paper.

In general, papers will be assessed on the basis of: (1) its ability to identify the relevant material, (2) accuracy and completeness in portraying the material in question, and (3) the development of a well-reasoned critical assessment.

Students will be required to submit all material to Turnitin on Blackboard. An electronic version of the draft and final paper must be made available.

Participation: Students will be assessed on their contributions in class. The grade will be based on the frequency with which students provide valuable verbal contributions to the class. Such contributions include informed responses to instructor questions, participation in classroom discussions, and raising relevant and cogent questions.

Final Exam: Students are responsible for all assigned material up to the day of the exam (i.e., the final exam is cumulative).

### **Course Policies**

Attendance: Attendance in class is mandatory. Students should arrive promptly at the beginning of class with the assigned reading for the day in hand. Students are permitted (2) unexcused absence without penalty. Each additional unexcused absence will result in the student's final grade being reduced by one-third a letter grade (e.g. a B becomes a B-).

Late Papers: Papers turned in late will be penalized one-third a letter grade per day of lateness, including weekend days.

Academic Honesty: Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with Harpur College policies. The **Student Academic Honesty Code** can be found at: <http://bulletin.binghamton.edu/integrity.htm>.

### **Schedule of Readings**

The following plan is subject to revision - I will inform the class of any changes as we go.

Listed on the left are the dates of the lectures, on the right are the readings that will be discussed on those dates. Readings with [BB] next to them are available on Blackboard.

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<b>Sep 4</b>	<b>Introductory Lecture</b>
<b>Sep 6</b>	Class Canceled [academic conference]; Substitute Assignment: read Hannah Arendt, <i>Eichmann in Jerusalem</i> , 3-150
<b>Sep 11</b>	Michael Tonry, "Introduction: Thinking About Punishment" in <i>Why Punish?</i> , 3-24 Immanuel Kant, "The Penal Law and the Law of Pardon" in <i>Why Punish?</i> , 31-36 G.W.F. Hegel, "Wrong" in <i>Why Punish?</i> , 37-49
<b>Sep 13</b>	Jeremy Bentham, "An Introduction to the Principles of Morals and Legislation" in <i>Why Punish?</i> , 51-70 C.S. Lewis, "The Humanitarian Theory of Punishment" in <i>Why Punish?</i> , 91-96 Francis Allen, "Legal Values and the Rehabilitative Ideal" in <i>Why Punish?</i> , 97-105
<b>Sep 18</b>	No class (Rosh Hashanah)
<b>Sep 20</b>	Joel Feinberg, "The Expressive Function of Punishment" in <i>Why Punish?</i> , 111-125 T.M. Scanlon, "Punishment and the Rule of Law" in <i>Why Punish?</i> , 161-172 R.A. Duff, "Penance, Punishment, and the Limits of Community" in <i>Why Punish?</i> , 173-188
<b>Sep 25</b>	Class Canceled [academic conference]; Substitute Assignment: read Arendt, <i>Eichmann in Jerusalem</i> , 151-279
<b>Sep 27</b>	Class Canceled [academic conference]; Substitute Assignment: read John Braithwaite, "In Search of Restorative Jurisprudence" in <i>Why Punish?</i> , 337-350 Paul H. Robinson, "The Virtues of Restorative Processes, the Vices of 'Restorative Justice'" in <i>Why Punish?</i> , 353-365 R.A. Duff, "Restorative Punishment and Punitive Restoration" in <i>Why Punish?</i> , 367-382
<b>Oct 2</b>	Charles Beitz, "The Autonomy of States" in <i>Political Theory and International Relations</i> , 69-123
<b>Oct 4</b>	Joseph Raz, "Human Rights Without Foundations" in <i>Philosophy of International Law</i> , 321-337
<b>Oct 9</b>	James Griffin, "Human Rights and the Autonomy of International Law" in <i>Phil of International Law</i> , 339-355 James Nickel, "Eight Responses to the Relativist" in <i>Making Sense of Human Rights</i> [ER]
<b>Oct 11</b>	David Luban, "Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law" in <i>Phil of International Law</i> , 569-588
<b>Oct 16</b>	Antony Duff, "Authority and Responsibility in International Criminal Law" in <i>Phil of International Law</i> , 589-604 Larry May, <i>Crimes Against Humanity</i> , 3-23
<b>Oct 18</b>	Alejandro Chehtman, "The Extraterritorial Scope of the Right to Punish", <i>Law and Philosophy</i> 29 (2010), 127-157 [ER]
<b>Oct 23</b>	May, <i>Crimes Against Humanity</i> , 24-79
<b>Oct 25</b>	May, <i>Crimes Against Humanity</i> , 80-111
	<b>Paper Topics Assigned</b>
<b>Oct 30</b>	Andrew Altman & Christopher Heath Wellman, "A Defense of International Criminal Law", <i>Ethics</i> 115 (2004), 35-67
<b>Nov 1</b>	Massimo Renzo, "Crimes Against Humanity and the Limits of International Criminal Law", <i>Law &amp; Philosophy</i> 31 (2012), 443-476 [ER] May, <i>Crimes Against Humanity</i> , 115-138
	<b>Topic Choice Due</b>
<b>Nov 6</b>	May, <i>Crimes Against Humanity</i> , 139-176 Hannah Arendt, "Organized Guilt and Universal Responsibility" [ER]

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<b>Nov 8</b>	May, <i>Crimes Against Humanity</i> , 179-234
<b>Nov 13</b>	Jeff McMahan, "Laws of War" in <i>Phil of International Law</i> , 493-509
<b>Nov 15</b>	Henry Shue, "Laws of War" in <i>Phil of International Law</i> , 511-527 <b>Draft Due: Schedule Meeting</b>
<b>Nov 20</b>	May, <i>Crimes Against Humanity</i> , 235-253
<b>Nov 27</b>	Colleen Murphy, "Political Reconciliation and International Criminal Trials" (2010) [ER]
<b>Dec 4</b>	Mark A. Drumbl, <i>Atrocity, Punishment, and International Law</i> , 1-67
<b>Dec 6</b>	Drumbl, <i>Atrocity, Punishment, and International Law</i> , 68-148
<b>Dec 11</b>	Drumbl, <i>Atrocity, Punishment, and International Law</i> , 149-209
<b>Dec 13</b>	Max Pensky, " <i>Jus Post Bellum</i> and Amnesty" (2012) [ER] <b>Final Draft of Paper Due by 4:00 PM</b>

**FINAL EXAM WILL BE HELD IN ACCORDANCE WITH UNIVERSITY SCHEDULE –  
CURRENTLY SCHEDULED FOR 12/18/2012, AT 11:00 AM**