

WWS 555b: International Justice

**Tuesday 7-10pm,
Woodrow Wilson School, Princeton University
Fall 2004**

**Prof. Gary Bass
Center for International Studies
Bendheim Hall 120
258-5197; fax 258-3988; gjbass@princeton.edu
Office hours: Mondays 3-5pm, or by appointment**

This course is about the politics and ethics of punishing war criminals. Can international law help to moderate violent conflict? How do law and politics interact? Why do states pursue international justice, and how sincere are they? Is war itself a crime? Do states have the right to punish war criminals, and what makes such efforts succeed or fail? We'll be looking not just at Nuremberg, but also at efforts arising from World War I, the Armenian genocide, World War II, the Holocaust, the recent wars in the former Yugoslavia, and Al-Qaeda's terrorist campaign against the West.

Administrative details

This is a seminar primarily for Wilson School students. There are no formal prerequisites, but students with some background in international relations and 20th century history will be better off. Some students may already have expertise in human rights work or other overseas experience; this is a particular plus, but is not a prerequisite.

Everyone is expected to do the reading, to attend and participate in the seminar. There are no exams. Instead, there are two written assignments: a 6-8 page research proposal on a topic of your choice, broadly related to the themes of the course, due in my mailbox at Bendheim Hall no later than October 22; and then a final 25-30 page research paper, due at Bendheim Hall on January 10, 2003 (the last Monday of reading period), based on that proposal.

The two papers will count for the bulk of the grade; the rest will be determined by participation in seminar.

Readings

The books are available at the U-Store. There's also a required sourcebook for your personal use. There are some unpublished primary readings in the sourcebook that you can't get anywhere else. With a few obscure exceptions, noted below, all published readings are on reserve at the Wilson School library.

In the week-by-week listings that follow, ordered books are marked with two bullets (••) and sourcebook readings with one bullet (•).

Required books, at the U-Store

- Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (London: Penguin, 1994).
 - Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2002).
 - Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton: Princeton University Press, 2004).
 - Noel Malcolm, *Bosnia: A Short History* (New York: NYU Press, 1996).
 - Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, Mass.: Harvard University Press, 1986).
 - Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1992).
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Week 1 (September 14): Introduction

- Samantha Power, "Bystanders to Genocide: Why the United States Let the Rwandan Tragedy Happen," *The Atlantic Monthly*, September 2001, pp. 84-108.

Week 2 (September 21): Realists

- Thucydides, *History of the Peloponnesian War* (London: Penguin, 1972), Rex Warner, trans., pp. 223-36 (III, 51-68), 400-08 (V, 84-116).
- E.H. Carr, *The Twenty Years' Crisis 1919-1939* (New York: Harper & Row, 1946 [orig. 1939]), pp. 22-40, 63-88, 146-69, 170-80, 193-207.
- George F. Kennan, "Diplomacy in the Modern World," in *American Diplomacy* (Chicago: University of Chicago Press, 1984), pp. 91-103.
- Henry A. Kissinger, *Diplomacy* (New York: Simon & Schuster, 1996), pp. 29-55.
- John R. Bolton, "The Global Prosecutors: Hunting War Criminals in the Name of Utopia," *Foreign Affairs*, January-February 1999, pp. 157-164.

Week 3 (September 28): Liberals, and legalists

- Michael Walzer, *Just and Unjust Wars*, pp. xi-xvii, 3-47.
- Stanley Hoffmann, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Relations* (Syracuse, N.Y.: Syracuse University Press, 1981), pp. 10-27, 85-93.
- Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984), pp. 5-10, 25-64, 243-57.

- Judith Shklar, *Legalism*, pp. 111-79.
- Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice* (New York: Times Books, 1998), pp. 12-31, 210-28.
- Walzer, *Just and Unjust Wars*, pp. 287-327.
- Henry J. Steiner and Philip Alston, eds., *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996), pp. 27-39.
- Robert H. Bork, "The Limits of 'International Law,'" *The National Interest*, winter 1989, pp. 3-10.

Week 4 (October 5): Leipzig and Constantinople

- From the cabinet records of Lloyd George's government, in the British archives, Kew, London: CAB 23/43, Imperial War Cabinet 37, November 20, 1918, noon.
- CAB 23/43, Imperial War Cabinet 39, November 28, 1918, 11:45 a.m.
- CAB 28/5, I.C.-98, Inter-Allied Conference, December 2, 1918, 11 a.m.
- CAB 28/5, I.C.-99, Inter-Allied Conference, December 2, 1918, 4 p.m.
- From Foreign Office papers, Kew, London: FO 371/4271/62362, Report Presented to the Preliminary Peace Conference by Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, March 29, 1919, Annex II: Reservations of United States delegation.
- Count Brockdorff-Rantzau (president of German delegation to Paris Peace Conference) to Clemenceau, May 29, 1919, in *Foreign Relations of the United States: The Paris Peace Conference 1919* (Washington, D.C.: U.S. Government Printing Office, 1946), vol. VI, pp. 874-76.

- Bass, *Stay the Hand of Vengeance*, pp. 58-105, 106-46.

Week 5 (October 12): Victors' justice

- Robert H. Jackson, *The Case Against the Nazi War Criminals: Opening Statement for the United States of America* (New York: Alfred A. Knopf, 1946), pp. 1-11.
- Lord Hankey, *Politics, Trials and Errors* (Chicago: Henry Regnery Co., 1950), pp. 53-69.
- Richard H. Minear, *Victors' Justice: The Tokyo War Crimes Trial* (Princeton: Princeton University Press, 1971), pp. ix-xiv, 3-73, 93-102, 175-80.
- Radhabinod Pal, *International Military Tribunal for the Far East: Dissident Judgment* (Calcutta: Sanyal & Co., 1953), pp. 1-32.
- Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* (Chicago: Quadrangle, 1970), pp. 11-17, 123-53, 183-207.

Week 6 (October 19): Outlawing war

- Walzer, *Just and Unjust Wars*, pp. 51-73.
- Raymond Aron, *Peace and War: A Theory of International Relations* (New York: Praeger, 1967), Richard Howard and Annette Baker Fox, trans., pp. 111-16.

- Kenneth N. Waltz, *Man, the State and War: A Theoretical Analysis* (New York: Columbia University Press, 1959), pp. 159-61, 230-38.
- Kenneth N. Waltz, *Theory of International Politics* (Reading, Mass.: Addison-Wesley, 1979), pp. 111-14.
- A.J.P. Taylor, "Second Thoughts," *The Origins of the Second World War* (New York: Atheneum, 1961), pp. xi-xxviii.
- Robin Fox, "Fatal Attraction: War and Human Nature," *The National Interest*, winter 1992-93, pp. 11-20.
- Re-read 1919 Lansing-Scott memorandum of reservations at Paris Peace Conference.
- Robert Lansing, *The Peace Negotiations: A Personal Narrative* (New York: Houghton Mifflin, 1921), pp. 27-47.
- Jackson, *Case Against the Nazi War Criminals*, quickly re-read pp. 1-11, plus read pp. 11-13, 47-81, 86-91.
- John F. Kennedy, *Profiles in Courage* (New York: Harper & Row, 1964), pp. 231-44.

October 26: Fall recess. No class.

Week 7 (November 2): Nuremberg

- Tripartite Dinner Meeting, November 29, 1943, 8:30 P.M., Soviet Embassy, U.S. Department of State, *Foreign Relations of the United States: The Conferences at Cairo and Tehran 1943* (Washington, D.C.: Government Printing Office, 1961), pp. 553-55.
 - Murray C. Bernays memorandum, Trial of European War Criminals, September 15, 1944, in Bradley F. Smith, ed., *The American Road to Nuremberg: The Documentary Record, 1944-1945* (Stanford, Calif.: Hoover Institution Press, 1982).
 - FDR to Stimson, August 26, 1944, in Henry Morgenthau Jr., *Morgenthau Diary – Germany* (Washington, D.C.: U.S. Government Printing Office, 1967), vol. I, pp. 443-44.
 - Treasury Department minutes, Group Meeting on Disarmament of Germany, September 4, 1944, in *Morgenthau Diary*, vol. I, pp. 483-95.
 - Stimson to Morgenthau, September 5, 1944, in *Henry L. Stimson Diaries* (Yale University Library), vol. 48, pp. 41-44.
 - Stimson to FDR, September 9, 1944, in *Stimson Diaries*, vol. 48, pp. 59-61.
 - CAB 66/42, W.P. (43) 496, Winston Churchill, "The Punishment of War Criminals," November 9, 1943.
 - CAB 66/65, W.P. (45) 281, Lord Simon, "War Criminals: The Argument for Summary Process against Hitler & Co.," May 3, 1945.
- Shklar, *Legalism*, pp. 170-79.
 - Telford Taylor, *Anatomy of the Nuremberg Trials: A Personal Memoir* (Boston: Little Brown & Co., 1992), pp. 21-128.

For a more detailed overview of the Stimson-Morgenthau fight, you can read Bradley F. Smith, *The Road to Nuremberg* (New York: Basic, 1981), pp. 3-74, on reserve. For an overview of the Nuremberg trials, Taylor's excellent memoir is on reserve, and copies can be found via the Web; the best thing still in print is Joseph E. Persico, *Nuremberg: Infamy on Trial* (New York: Penguin, 1995).

Week 8 (November 9): The Holocaust, Nuremberg and the Eichmann trial

- Re-read Stimson memo for FDR, September 9, 1944, in *Stimson Diaries*, vol. 48, pp. 59-61.
- Re-read Bernays memo from last week.
- Jackson, *Case Against the Nazi War Criminals*, pp. 33-53
- Shklar, *Legalism*, pp. 154-56, 163-64, 190-200.
- David S. Wyman, *The Abandonment of the Jews: America and the Holocaust 1941-1945* (New York: Pantheon, 1984), pp. 311-40.
- Arendt, *Eichmann in Jerusalem*, pp. 3-20, 253-79.
- Tom Segev, *The Seventh Million: The Israelis and the Holocaust* (New York: Hill & Wang, 1994), Haim Watzman, trans., pp. 323-66. Recommended extra reading: pp. 421-517.

Week 9 (November 16): Bosnia and The Hague

- Malcolm, *Bosnia: A Short History*, pp. xix-xxiv, 156-271. (It might be helpful to skim pp. 1-155, but it's not required.)
- Bass, *Stay the Hand of Vengeance*, pp. 206-75, 311-24.
- Noel Malcolm, *Kosovo: A Short History* (New York: NYU Press, 1998), pp. xxvii-xxxvi, 314-56. (Skimming the rest of the book might be useful but is not required.)
- Joseph Lelyveld, "The Defendant," *The New Yorker*, May 27, 2002, pp. 82-95.
- Bass, "Milosevic in The Hague," *Foreign Affairs*, vol. 82, no. 3 (May-June 2003), pp. 82-96.

Week 11 (November 23): Democratization; the ICC

- Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, Okla.: University of Oklahoma Press, 1991), pp. 211-31.
- Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: The Johns Hopkins University Press, 1989), pp. 28-36, 75.
- Shklar, *Legalism*, pp. 200-21.
- Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts After Communism* (New York: Vintage, 1996), pp. 397-407.
- Neier, *War Crimes*, pp. 56-74, 96-107.

- Kader Asmal, Louise Asmal and Ronald Suresh Roberts, *Reconciliation Through Truth: A Reckoning of Apartheid's Criminal Governance* (New York: St. Martin's Press, 1997), pp. 12-27.

- Tina Rosenberg, "Recovering from Apartheid," *The New Yorker*, November 18, 1996, pp. 86-95.

- • Bass, *Stay the Hand of Vengeance*, pp. 284-310.

- Abram Chayes and Anne-Marie Slaughter, "The ICC and the Future of the Global Legal System," in Sarah B. Sewall and Carl Kaysen, eds., *The United States and the International Criminal Court* (Cambridge, Mass.: American Academy of Arts & Sciences, 2000), pp. 237-47.

- Ruth Wedgwood, "Fiddling in Rome," *Foreign Affairs*, November-December 1998, pp. 20-24.

- David Rieff, "Court of Dreams: A Nice Idea that Won't Work," *The New Republic*, September 7, 1998, pp. 16-17.

- Neier, *War Crimes*, pp. 252-60.

Week 12 (November 30): The Iraq war and the trial of Saddam Hussein

- Adam Roberts, "The Laws of War in the 1990-91 Gulf Conflict," *International Security*, vol. 18, no. 3 (winter 1993-94), pp. 134-81.

- Noah Feldman, *After Jihad: America and the Struggle for Islamic Democracy* (New York: Farrar, Straus & Giroux, 2003), pp. 3-16, 182-86, 210-21.

- David Rieff, "Were Sanctions Right?" *The New York Times Magazine*, July 27, 2003, pp. 41-46.

- "The Arab Media Reaction to Saddam's Arrest," parts 1 and 2, Middle East Media Research Institute, *Special Dispatch Series*, nos. 628 and 629, December 16 and 17, 2003. Available online at

- <http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP62803> and <http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP62903>.

- "Iraqi Press on Saddam's Day in Court," Middle East Media Research Institute, *Special Dispatch Series*, no. 742, July 9, 2004. Available online at

- <http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP74204>.

- Bass, "At Saddam's Trial, the Law Is Just Part of the Picture," *The Washington Post*, January 18, 2004, p. B3.

Week 13 (December 7): Terrorism after September 11

- • Walzer, *Just and Unjust Wars*, pp. 197-206.

- Michael Walzer, "After 9/11: Five Questions About Terrorism," in *Arguing About War* (New Haven, Conn.: Yale University Press, 2004), pp. 130-42.

- • Ignatieff, *The Lesser Evil*, pp. 82-170.

- Alan M. Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven, Conn.: Yale University Press, 2002), pp. 131-63.

- Jessica Stern, *The Ultimate Terrorists* (Cambridge, Mass.: Harvard University Press, 1999), pp. 1-10, 48-106; recommended, pp. 128-160.
- Graham Allison, *Nuclear Terrorism: The Ultimate Preventable Catastrophe* (New York: Holt, 2004), pp. 1-42.
- Michael Ignatieff, "Is the Human Rights Era Ending?," *The New York Times*, February 5, 2002, p. A29.

- Barton Gellman, "U.S. Was Foiled Multiple Times in Efforts To Capture Bin Laden or Have Him Killed," *The Washington Post*, October 3, 2001, p. A1.
- Greg Hansen, "War Could Make the Terrorist Threat Worse," *The Christian Science Monitor*, September 24, 2001, p. 9.
- Harold Hongju Koh, "We have the Right Courts for Bin Laden," *The New York Times*, November 23, 2001, p. A39.
- Anne-Marie Slaughter, "Terrorism and Justice," *Financial Times*, October 12, 2001, p. 23.
- Aryeh Neier, "The Military Tribunals on Trial," *The New York Review of Books*, February 14, 2002, pp. 11-15.
- Ruth Wedgwood, "Al Qaeda, Terrorism, and Military Commissions," *The American Journal of International Law*, vol. 96, no. 2 (April 2002), pp. 328-337
- Ronald Dworkin, "What the Court Really Said," *The New York Review of Books*, August 12, 2004. Available online at <http://www.nybooks.com/articles/17293>.

- *Hamdi et al. v. Rumsfeld, Secretary of Defense, et al.*, U.S. Supreme Court, no. 03-6696, June 28, 2004. Read the O'Connor judgment, the Souter opinion, and the Scalia dissent. Skim the legal argument, focusing on the underlying political questions.
- Justice Department memorandum (by Jay S. Bybee) for White House counsel Alberto R. Gonzalez, August 1, 2002: "Standards of Conduct for Interrogation."
- Human Rights Watch, *The Road to Abu Ghraib* (New York: Human Rights Watch, June 2004), pp. 1-34. Available online at <http://hrw.org/reports/2004/usa0604/>.