International Law

Academic year 2019-2020

History and Theory of International Law

DI019 - Printemps - 6 ECTS

Course Description

This course operates at the nexus of public international law, politics of international law, history of legal and political thought, and intellectual history. It aims at deepening our understanding of international law by exploring the intellectual foundations of contemporary international law. Without knowledge of the origins of international law and the various theoretical approaches in its regard, today’s prevailing concepts and principles are hard to understand and alternatives for the future are difficult to grasp.

Each week we read texts by historic as well as contemporary scholars – from Grotius, Hobbes, Leibniz, Kant, and Hegel, to the early twentieth century scholars, such as Hans Kelsen, Hersch Lauterpacht and Nicolas Politis, to today’s ‘post-modernist’ or critical legal scholars, such as Martti Koskenniemi, Anne Orford, and Duncan Kennedy, and their critics. We will discuss core concepts such as sovereignty; just war; balance of power; accountability; individual rights and duties; but also examine how the history of colonialism helps us understand what is currently happening in the sphere of ‘Big Data’. We will end this course with a discussion of the responsibility of the international lawyer today. This course combines both a lecturing and a seminar style of teaching.

The course runs in the Spring Semester of 2020. Four hrs of teaching a week.

PROFESSOR
Janne Nijman
Office hours

ASSISTANT
Aliki Semertzi
Office hours
Syllabus

Compulsary literature
Richard Tuck, *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant* (Oxford University Press, 1999) and the readings as indicated in this Syllabus’ course outline.

Course requirements

Assessment for this course will be based on two reaction papers (20%) and a final paper (80%). The two sessions for which the students want to write reaction papers should be of the first 10 sessions. The reaction papers have to be limited to a maximum of 1750 words. They shall engage critically with one or more of the readings of the chosen sessions and shall be sent by email before midnight of the Sunday preceding the week of the sessions to the professor and the teaching assistant. The final paper, limited to a maximum of 5000 words, shall be send by May 15th, 2020, before midnight. Further instructions regarding the final paper will be provided during the semester.

Class participation is expected and valued as an important way of learning about our discipline, ie public international law. Class discussions are meant to savour texts together and to enjoy intellectual exchange – as such, they are an important factor in making this course a success. So please feel encouraged by the fact that class participation is not part of the grading.

Course outline

1. General Introduction of the Course: the ‘Turn to History’ in International Law

   19 February 2020, 16h – 18h, room S5

   • Richard Tuck, *The Rights of War and Peace*, pp. 1-15

2. Spanish scholastic Francisco de Vitoria (c. 1486-1546): *ius gentium* in the context of Spanish imperialism

   21 February 2020, 10h – 12h, room S2
Thomas Aquinas, *Secunda Secundae* Question 40.1 ‘Whether it is always a sin to wage war?’, excerpt from *Summa totius Theologiae* (c.1273/4), eg included in *Aquinas Political Writings* Cambridge Texts in the History of Political Thought (CUP), available online. 3 pp.

Francisco de Vitoria, the two famous lectures from his *Relectiones Theologicae* XII (c. 1537-9) collected in a volume of ‘The Classics of International Law’ series published by the Carnegie Institute of Washington, edited by James Brown Scott.
  - On the De Indians Lately Discovered (c. 1538), pp. 115-162.


3. **Northern Humanist Hugo Grotius (1583-1645) : human nature and *ius gentium* (1)**

26 February 2020, 16h – 18h, room S5

  - Prolegomena; pp. 9-30.
  - Book I, chs. 1 and 2.4; pp. 31-57
  - Book II, ch. 20, sections 40-44.4; pp. 504-510.

4. **The Grotian Tradition Today**

28 February 2020, 10h – 12h, room S2


5. Th. Hobbes (1588-1679) and GW Leibniz (1646-1716): human nature and *ius gentium* (2)

4 March 2020, 16h – 18h, room S5


6. Emmerich Vattel (1714-1767) and A Pluralist World Order

6 March 2020, 10h – 12h, room S8

  - Preface by Vattel pp. 3a-13a,
  - Book I, Introduction and Chs I-IV, pp. 3-27;
  - Book II, Chs 1-4, pp. 113-134.

7. Kant (1724-1804), Cosmopolitanism, and International Law

11 March 2020, 16h 18h, room S5

- Immanuel Kant, from H.S. Reiss (Ed.) *Kant Political Writings* (2nd edition, CUP 1991)
o Idea for a Universal History with a Cosmopolitan Purpose (1784), pp. 41-53.
  o Perpetual Peace (1795), 91-130
  o Metaphysik der Sitten (The Metaphysics of Morals) (1797), pp. 164-75.
• Kjartan Koch Mikalsen, Kant and Habermas on International Law, 26 (2) *Ratio Juris* 2013, 302–24.

8. **Kant (1724-1804), Anti-Cosmopolitanism, and International Law**

13 March 2020, 10h-12h, room S2

• Seyla Benhabib, Carl Schmitt’s Critique of Kant: Sovereignty and International Law, *Political Theory* 2012, pp. 688-713.

9. **Nineteenth century international Law: Colonialisation, Empire and Eurocentrism**

18 March 2020, 16h – 18h, room S2

10. G.W.F. Hegel (1770-1831) and international law

20 March 2020, 10h – 12h, room S8


11. Early 20th century: Kelsen and Politis on the basis of obligation in international Law

22 April 2020, 16h – 18h, room S5

- Nicholas Tsagourias, Nicolas Politis’ Initiatives to Outlaw War and Define Aggression, and the Narrative of Progress in International Law, 23 *EJIL* (2012), pp. 255-266.

12. Late-20th Century: Possibilities and Limits of International law

24 April 2020, 10h – 12h, room S8


13. Late 20th and early 21st Century: The Politics of International Law

28 April 2020, 18h – 20h, room S5

• Martti Koskenniemi, The Politics of International Law, 1 *EJIL* 1990, pp. 4-32.

*See also for Koskenniemi’s third EJIL contribution on ‘The Politics of International law’ – Week 4.*

14. The Responsibility of the International Lawyer

30 April 2020, 10h – 12h, room S2

• Martti Koskenniemi, Between Commitment and Cynicism: Outline for a Theory of International Law as Practice, in *Collection of Essays by Legal Advisors of States, Legal Advisors of International Organizations and Practitioners in the Field of International Law* (United Nations, NY, 1999), pp. 495-523 available online.