Political Science 329: The Political Foundations of International Law

University of Victoria

Class Schedule & Location:

September – December 2019
Mondays and Wednesdays 4:30pm – 5:50pm
Cornett B129

Instructor

David Lark
Office: DTB A307
Office Hours: Wednesdays 2:30pm – 4:30pm
Email: dlark@uvic.ca

About the Instructor

I specialize in the fields of international law and global political economy. My ongoing doctoral research focuses on the critical intersections of international investment law with the pursuit of sustainable development, corporate social responsibility, and democratic governance. Since arriving at the University of Victoria, I have worked on diverse research projects relating to global supply chains, the global governance of tax evasion and avoidance, regulatory capture, and theorizing forms of resistance to global law and capitalism. My research, and this course, reflects a deep curiosity with the dual role that law (and legal authority) plays in structuring, locking-in, and potentially uprooting dominant relations of power in the global political economy.
Course Description

This course provides students with a critical introduction to the political foundations of international law. What are ‘origins’ of international law? What (and who) are its major sources and subjects? How do different theoretical paradigms inform the substance and practices of international law? Is international law ‘effective’? Does international law actually shape state and non-state behaviour? What role does international law play in creating, maintaining, and/or uprooting dominant relations of power? What are some of its promises and limitations? This course explores these questions and more by highlighting the contested historical and contemporary relationships of international law with global politics.

Part I of the course provides students with an introduction to the historical and analytical foundations of international law. Part II of the course overviews dominant theoretical paradigms that inform the intersection of international law (IL) and international relations (IR), as well as the new and emerging critical approaches that challenge IL’s foundations as colonial, oppressive, and/or exploitative. Part III digs deeper into some of the most prominent substantive areas of international law. This final section provides students with a very brief introduction to existing legal doctrines and some of the most prominent debates regarding the intersection of international law with the regulation of the environment, war, human rights, and the global economy.

Course Objectives

The main objectives of this course include: i) equipping students with the basic tools for understanding how the international legal system operates; ii) giving students an understanding of its history, who comprises this system, and how it seeks to regulate a broad range of activities, including the use of force, the environment, human rights and the global political economy; and, iii) encouraging students to think critically about the role, effectiveness, and potential of international law in governing global affairs. Students will grapple with questions of the general impact and efficacy of multiple areas of international law and critically engage with the politics of who gets what from the substance and practices of these legal orders today.

Through lectures, discussion groups, assignments, mid-term examination, and group projects, students will be required to critically engage with some of the most significant international legal challenges facing the world today. They will have a chance to think critically about how global politics intersects with international law in a variety of subject areas and dig deeper into an area of their choosing through course assignments. By taking this course, students will have an opportunity to engage in developing and presenting an academic research paper, similar to what is expected at an academic conference.

To achieve the course objectives students must do the following:

1. **Attend classes regularly.** Attendance is important and mandatory. Regular attendance gives you an opportunity to ask questions and engage with the course materials beyond the readings. Lectures are planned with the intention of encouraging critical reflection and debate on ongoing issues in international law. Also, exam questions will be derived from course themes discussed in class (and not necessarily those covered in the textbook)!!
2. **Do the required readings:** The required readings (especially those additional to the textbook) form an essential part of the course. It will be insufficient to solely attend classes and rely on the PowerPoint Presentations. Examinations, final papers, and group projects are unlikely to receive passing grades if they do not incorporate and reflect an understanding of all of the required readings.

3. **Participate actively in the Group Project and Classroom Discussion:** Participation in the Group project will add tremendously to your learning experience. This means both participating in the construction of your group’s presentation and practicing active and engaged listening while other students are presenting. Attendance and participation grades will also reflect discussion in classroom lectures. Students are encouraged to ask questions and start classroom debate. The more you articulate, the more you learn! This is a valuable part of your education.

4. **Think critically and politically about international law:** This course is designed to give a very brief introductory look at the field of international law – its history, sources, subjects, theoretical approaches, and substantive areas. However, success in this course requires that you go beyond comprehension of “black letter law” and seek to challenge conventional wisdom by thinking critically about the politics of international law. This means beginning your analysis by questioning who gets what from the substance and practices of international law, and, reflecting on the failures and opportunities for the future of international law as a foundational institution of global governance.

### Course Assignments

1. **Midterm Exam (30%):** In-class examination on Wednesday, October 23rd.

2. **Term Paper Proposal (5%):** Due on CourseSpaces on Wednesday, October 30th.

3. **Term Paper (35%)** Electronic copy due on CourseSpaces on Wednesday, November 20th.

4. **Group Project Presentations (20%):** To take place the final two weeks of class. A mandatory group project preparation session will take place on Wednesday, November 6th.

5. **In-Class Attendance and Participation (10%):** Attendance taken each class.

**Midterm Examination (30%):**

There will be a midterm examination held in class on Wednesday, October 23rd. The midterm will cover the subjects discussed in Part I and Part II, as well as any other material discussed leading up to the examination. Instructions on preparation and the format of the examination will be given in advance during class.

**Term Paper Proposal (5%):**
Students are required to submit a 500-1,000 word Term Paper Proposal on Wednesday, October 30th. The intention of this assignment is to get students thinking early about their term paper and gain feedback on the direction of their project. The proposal should include a working research question (and why it ‘matters’), a strong, clear thesis on a specific topic, and an outline of how the paper will explore this thesis. More details will be discussed in advance and during class.

**Term Paper (35%):**

Students will select a “Group Project Issue-Area” on CourseSpaces within the first two weeks of class. There will be limited slots for each group, so early registration is encouraged. Students will then be required to write a Term Paper of 3,000 to 4,000 words in length, analyzing a specific topic relating to the subject-matter of the Group Project.

Term papers will be marked individually on the quality of the paper. Papers must include a minimum of 6 (six) academic sources, consistent citation, a title page, bibliography, and provide a word count. Further information and a grading rubric will be provided in class.

Papers will be due electronically on CourseSpaces on Wednesday, November 20th. Late papers will receive a deduction of 3% per calendar day unless the student provides medical documentation stating the reason for late submission. In accordance with UVic policy, papers cannot be submitted after the last day of class without an Academic Concession.

**Group Project Presentations (20%):**

In the final weeks of class, students will participate in a collaborative learning project that includes designing and presenting a PowerPoint presentation based on their Group Project Issue Area. During the presentations, each student will be asked to present the findings of their research paper as it relates to their selected subject area of international law.

While preparation of the presentation is collaborative, each student will be graded individually on both their presentation’s fit within the Group Project and its content/delivery. Further information and a grading rubric will be provided in class.

**In-Class Attendance and Participation (10%):**

Throughout the course, attendance will be taken at every class. In addition, there will be opportunities for participation in CourseSpaces forums, class discussions, the Group Project preparation session, and during the Q&A portions of Group Project Presentations. At the end of the course, students will be graded on both the strength of their participation and on their contribution to the overall learning environment.

**Important Note:** Students who fail to attend the Group Project Preparation Session without prior approval will receive a 0% for this portion of the grade, and, depending on the circumstance, may not be permitted to present their Group Project Presentations resulting in further penalty. Please speak with the instructor in advance if you have any concerns regarding attendance throughout the class.
Course Readings

Required Textbook:


Optional Textbook (not a replacement for the required textbook):


Additional readings will be posted on CourseSpaces.

Notes on the Course Readings

Additional readings to the textbook will be posted on CourseSpaces throughout the class and will be labelled as mandatory or optional. It is expected that students will read all of the mandatory readings listed on the syllabus. I may also periodically post news articles and additional short readings to the CourseSpaces page for viewing. All of these additional readings are posted to help those wanting more information or clarification leading into the mid-term exam and final papers.

In short, read what content you find interesting and/or helpful to your understanding of the course material discussed in class. Your objective in doing so should be to gain deeper knowledge about the specific concepts and issue areas discussed and to contribute to class debate/discussion. As there is no final examination, all of the readings included after the mid-term are aimed at sparking deeper interest in ongoing events and highlighting key academic debates not covered within the textbook.

Readings are subject to change to reflect ongoing class interest, but students will be informed well in advance about any changes to reading material. Please check emails and CourseSpaces for updates.

Key Dates

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>Monday, October 14th</td>
<td>Thanksgiving (No Class)</td>
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<tr>
<td>Wednesday, October 23rd</td>
<td>Mid-Term Exam</td>
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<tr>
<td>Wednesday, October 30th</td>
<td>Paper Proposal Due</td>
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<td>Wednesday, November 6th</td>
<td>Mandatory Group Project Preparation Session</td>
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<td>Monday, November 11th</td>
<td>Remembrance Day (No Class)</td>
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<td>Wednesday, November 13th</td>
<td>Reading Break (No Class)</td>
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<tr>
<td>Wednesday, November 20th</td>
<td>Final Papers Due Online</td>
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<td>Monday, November 25th</td>
<td>Group 1 &amp; 2 Presentations</td>
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<td>Wednesday, November 27th</td>
<td>Group 3 &amp; 4 Presentations</td>
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<tr>
<td>Monday, December 2nd</td>
<td>Group 5 &amp; 6 Presentations</td>
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<tr>
<td>Wednesday, December 4th</td>
<td>Last Day of Classes</td>
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1. **Opening Class (Sep 4)**

Administration session detailing class objectives, structure of course, assignments, and expectations.

**Themes/Questions:**

- Why study international law?
- What do you hope to gain by studying international law?
- Are you hopeful/pessimistic about the influence of international law on global politics?
- What do you think is the most prevalent issue facing international law today?

**Readings:**

* Akehurst, Chapter 1.

2. **An Introduction to the Political Foundations of International Law (Sep 9)**

**Themes/Questions:**

- What is international law? Is international law really “law”?
- Why do some scholars doubt that international law is really “law”?
- What is the ‘nature’ and ‘function’ of international law?
- What is the difference between international law and domestic law?
- What is the relationship between international law and international relations?
- What is the impact of international law? How do we measure impact?
- Compare and contrast the views articulated by Higgins and Goldsmith & Krasner.

**Readings:**

* Akehurst, Chapter 1.


3. **Situating International Law in History: The Origins of International Law (Sep 11)**
Themes/Questions:

- What are the origins of international law?
- What are the major watersheds in the historical development of international law?
- What are the most significant developments in the contemporary era of international law?
- Why do some believe that international law has colonial and imperial roots?
- In what ways does the history of international law inform its present day?
- Why is understanding international law’s history important to evaluating its impact today?

Readings:

*Akehurst, Chapter 2.


4. Analytical Foundations of International Law I: Sources (Sep 16 – Sep 18)

Themes/Questions:

- What is meant by the ‘analytical foundations of international law’?
- How does international law relate to domestic law?
- What is meant by ‘legal formalism’, the ‘domestic analogy’, and the ‘autonomy of law’?
- What are the different sources of international law?
- How do the sources of international law differ in nature and function?

Readings:

*Akehurst, Chapters 3; 4.


5. Analytical Foundations of International Law II: Subjects (Sep 23 – Sep 25)

Themes/Questions:

- Who are the subjects of international law?
- What is the status of the individual under international law?
- What is the status of the corporation under international law?
• What developments are “breaking the analytical frames” of international law today?
• To what extent is there significant resistance to international law today and why?
• How do non-state actors challenge the international legal and political system?

Readings:

* Akehurst, Chapters 5; 6.


6. Theoretical Approaches to International Law (and International Relations):
Conventional (Sep 30 – Oct 2)

Themes/Questions:

• What is ‘natural law’ and ‘legal positivism’?
• What are the differentiating characteristics of the ‘conventional approaches’ to International Law (positivism; natural law; process school)?
• How do conventional International Relations theories (realism; liberalism; constructivism) inform the study of international law?
• How does the theoretical approach adopted influence which sources and subjects are deemed important to the study of international law?
• Do different theoretical approaches have varying explanations as to why states comply with international law? How do they differ?

Readings:


7. **Theoretical Approaches to International Law (and International Relations): Critical (Oct 7 - Oct 9)**

**Themes/Questions:**

- What is the contribution of the ‘critical legal studies’ approach?
- In which ways do critical approaches, such as ‘Marxism’, ‘Feminism’, and ‘Post-Colonial/Third World Approaches to International Law (TWAIL)’ contribute to our understanding of international law? What are their main insights?
- What is the difference between ‘conventional’ and ‘critical’ approaches to international law (theoretically and analytically)?
- What is the difference between ‘problem solving theory’ and ‘critical theory’?

**Readings:**


**Themes/Questions:**

- What is the primary function of the UN, with respect to international law?
- How has the UN system changed the laws governing the use of force in international affairs?
- What are the importance of the UN Charter, Chapters VI and VII: Articles 2(4); 2(7); 51?
- Was the US invasion of Iraq ‘legal’ according to Franck? Was the Syrian intervention ‘legal’?
- Describe the work and importance of the International Court of Justice?

**Readings:**

*Akherst, *Chapters 20; 21; 22.

9. Midterm Examination (Oct 23)

The midterm exam will take place in class and will comprise of all material leading up to the exam (subject to change from syllabus, based on timing constraints). Further instructions on studying, strategies for answering questions, and the exam format will be discussed in class.

10. International Law, the Regulation of Criminality, and the Protection of Human Rights (Oct 28 – Oct 30) **Paper Proposals Due Oct 30**

**Themes/Questions:**

- How does the ICC differ from the ad hoc war crimes tribunals set up in Nuremberg, Tokyo, Yugoslavia, and Rwanda?
- What is the difference between jus in bello and jus ad bellum?
- Describe the significance of the Rome Treaty.
- What is “genocide”? What are “war crimes”? What are “crimes against humanity” and “acts of aggression”?
- What penalties may be imposed by the ICC?
- Why is the ICC controversial? Is it ‘breaking frames’?
- Why does Franceschet have doubts about the ICC? Do you agree?

**Readings:**

*Akehurst, Chapters 16; 19.


11. International Law and the Environment (Nov 4)

**Themes/Questions:**

- What are the sources of international environmental law?
- What types of environmental treaties are there?
- What is the relationship between environmental principles and sustainable development?
- If the protection of the environment is a global phenomenon, why is there no global environmental treaty today?
- Are existing ‘soft law’ mechanisms effective in the regulation of the environment?
- What are the major barriers to an effective international environmental law regime?
- What role do non-state actors (and private transnational governance mechanisms) play in the regulation and protection of the environment?

**Readings:**
12. Group Project Preparation Session (Nov 6)

There will be a group project preparation session for students to discuss their contribution to the group project and coordinate PowerPoint responsibilities. Attendance at this preparation session is mandatory. Students that do not attend (without accommodation) may not be able to present their final papers in class. This may result in a potential loss of an additional 20% of the student’s final grade.

13. International Economic Law (Nov 18)

Themes/Questions:

- Why do states enter into trade / investment agreements?
- What impacts do the “Bretton Woods Institutions” have? How are decisions made/enforced?
- Does economic law impede the ability of states to pursue environmental/social problems?
- What role does international investment law play in the global political economy?
- Why is international investment law seen as ‘transformative’ to the substance and practices of international law?
- What are the dominant criticisms of existing mechanisms of international economic law? Are these criticisms irredeemable? How might one’s theoretical approach inform their answer?

Readings:

* Akehurst, Chapter 18.


14. Non-State Actors and Transnational Law (Nov 20) **Term Papers Due Nov 20th**

Themes/Questions:

- How are non-state actors relevant to the creation, maintenance, and enforcement of international law?
- Has the role and relevance of non-state actors in international law increased in past decades?
- What impact does international law have on non-state actors?
• What are the strengths/weaknesses of international law in governing MNCs to date?
• How is the proliferation of private transnational governance impacting international law?

Readings:

*Akehurst, Chapter 6 (Refresh)*


15. **Group Presentations (Nov 25; Nov 27; Dec 2)**

A minimum of three classes will be dedicated to group presentations. Instructions will be distributed in class at to the length of each presentation and individual contribution. Time limits of presentations will be strictly enforced. Practice and brevity are encouraged.

16. **Final Class Debate: The Future(s) of International Law (Dec 4)**

Themes/Questions:

• What are the successes and failures of international law?
• Which pathways forward do you think are most fruitful for strengthening international law into the future? Should it be strengthened?
• What are the gaps that need to be addressed in international law? Think both in terms of its processes/function and its subject areas.
• Are new international law regimes needed and feasible to establish in international relations? Discuss with reference to: (a) a world court of human rights; (b) an international environmental court; (c) a world court dedicated to regulating impacts of MNCs.
• What are the biggest threats to the future of international law?
• How should we assess the future of international law in international relations?

Readings:


Course Administration

Plagiarism and Academic Integrity

Academic integrity is intellectual honesty and responsibility for academic work that you submit individually or as a member of a group. It involves commitment to the values of honesty, trust, and responsibility. It is expected that students will respect these ethical values in all activities related to learning, teaching, research, and service. Therefore, plagiarism and other acts against academic integrity are serious academic offences.

The responsibility of the institution: Instructors and academic units have the responsibility to ensure that standards of academic honesty are met. By doing so, the institution recognizes students for their hard work and assures them that other students do not have an unfair advantage through cheating on essays, exams, and projects.

The responsibility of the student: Plagiarism sometimes occurs due to a misunderstanding regarding the rules of academic integrity, but it is the responsibility of the student to know them. If you are unsure about the standards for citations or for referencing your sources, ask your instructor. Depending on the severity of the case, penalties include a warning, a failing grade, a record on the student’s transcript, or a suspension. It is your responsibility to understand the University’s policy on academic integrity, which can be found on pages 32-34 of the undergraduate calendar.

Please note that the Department and University rules on plagiarism are enforced. Students must retain an electronic copy of their assignments and submit them on request in order to receive a final grade for this course.

Note Concerning N Grades

Students who have completed all of the above assignments will be considered to have completed the course and will be assigned a final grade. Failure to complete one or more of these assignments will result in a grade of “N” regardless of the cumulative percentage on other elements of the course. An N is a failing grade, and it factors into a student’s GPA as 0. The maximum percentage that can accompany an N on a student’s transcript is 49.

University of Victoria Percentage Grading Scale

<table>
<thead>
<tr>
<th>Passing Grades</th>
<th>Grade Point Value</th>
<th>Percentage</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>A+</td>
<td>9</td>
<td>90 – 100</td>
<td>Exceptional, outstanding and excellent performance. Normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation and has an insightful grasp of the subject matter.</td>
</tr>
<tr>
<td>A</td>
<td>8</td>
<td>85 – 89</td>
<td></td>
</tr>
<tr>
<td>A-</td>
<td>7</td>
<td>80 – 84</td>
<td></td>
</tr>
<tr>
<td>B+</td>
<td>6</td>
<td>77 – 79</td>
<td>Very good, good and solid performance. Normally achieved by the largest number of students. These grades indicate a good grasp</td>
</tr>
<tr>
<td>B</td>
<td>5</td>
<td>73 – 76</td>
<td></td>
</tr>
<tr>
<td>B-</td>
<td>4</td>
<td>70 – 72</td>
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</tbody>
</table>
of the subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.

<table>
<thead>
<tr>
<th>Grade</th>
<th>Grade Point Value</th>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>C+</td>
<td>3</td>
<td>65 – 69</td>
<td>Satisfactory, or minimally satisfactory. These grades indicate a satisfactory performance and knowledge of the subject matter.</td>
</tr>
<tr>
<td>C</td>
<td>2</td>
<td>60 – 64</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>1</td>
<td>50 – 59</td>
<td>Marginal Performance. A student receiving this grade demonstrated a superficial grasp of the subject matter.</td>
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### Course Experience Surveys (CES)

I value your feedback on this course. Towards the end of term, you will have the opportunity to complete a confidential course experience survey (CES) regarding your learning experience. The survey is vital to providing feedback to me on the course and my teaching, as well as to help the department improve the overall program for students in the future.

When it is time for you to complete the survey, you will receive an email inviting you to do so. If you do not receive an email invitation, you can go directly to [http://ces.uvic.ca](http://ces.uvic.ca). You will need to use your UVic NetLink ID to access the survey, which can be done on your laptop, tablet or mobile device. I will remind you when the time comes, but please be thinking about this important activity, especially the following three questions, throughout the length of the course.

1. What strengths did your instructor demonstrate that helped you learn in this course?
2. Please provide specific suggestions as to how the instructor could have helped you learn more effectively.
3. What aspects of the course structure were valuable? Please provide specific suggestions as to how this course could be improved.
4. If you could redesign the course material, what would you change? What would you add?
Resources for Keeping Up with World Politics (and International Law)

Students often ask where they can learn more about world politics in their spare time. Below are a few resources to consider. Keep in mind that part of your formal education in Political Science is the ability to decipher the validity of all sources you come across. While the list below is representative of my own interests, I would encourage students to include a wide range of (well-researched) sources / opinions on a topic when investigating any political issue. Do not shy away from taking the time to hear different perspectives on a topic. In addition to the below, the websites of the major international organizations (United Nations, World Bank, World Trade Organization, etc.) and NGOs have fantastic data sets and written reports available for public use. These are invaluable resources for constructing academic papers.

If you have any additional recommendations for adding to this list, please let me know!

**Academic Journals/Book Publishers:**

**Academic Journals:**
- Review of International Political Economy
- Review of International Studies
- International Studies Quarterly
- Third World Quarterly
- World Politics
- European Journal of International Law
- Harvard Journal of International Law
- Leiden Journal of International Law
- New Political Economy

**Academic Book Publishers:**
- Routledge University Press
- Cambridge University Press
- Oxford University Press
- University of Chicago Press
- Palgrave MacMillan Press
- Polity Press
- Haymarket Books
- Verso Books

**News Sources/Magazines:**
- CNN
- BBC World News
- The Guardian
- The Globe and Mail
- The Washington Post
- The New York Times
- Foreign Affairs
- Foreign Policy
- The Atlantic
- E-International Relations
- Jacobin Magazine
- Canadian Dimension Magazine
- The Conversation

**YouTube / Video Entertainment:**
- Vox
- Vice
- Ted Talks
- Kurzgesagt – In a Nutshell
- The School of Life
- TopDocumentaryFilms.com
- Power & Politics (CBC)
- The Daily Show with Trevor Noah
- Last Week Tonight with John Oliver
- Real Time with Bill Maher

**Podcasts:**
- The Daily (Guardian)
- Global News Podcast (BBC)
- Front Burner (CBC News)
- NPR Politics Podcast / Up First
- Global Transformations
- Philosophize This! (Political Philosophy)
- Intelligence2 Debates
- Democracy Now!
- Best of the Left