International Law and International Politics (2019)

A Graduate Seminar taught in the Department of Political Science and Northwestern Law School
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Office Hours: Wednesdays 1:30-3:30

This seminar focuses on contemporary scholarship regarding international law as it intersects with international relations. The topic of international law is a place to study the interaction of material, power and normative forces, and a place where one can employ all of the newest methods and approaches in political science. The new international law scholarship is being built in an unusually interdisciplinary fashion. We will be reading work that builds on economic theories, sociological theories, and traditional international relations approaches. We will also be examining questions of broad interest within political science and sociology--the social construction and influence of norms in international affairs, the importance of murky issues like legitimacy and fairness in shaping public perceptions and actor behavior, and how institutions of international law including international treaties and international courts implicitly and explicitly shape the international political process and state behavior.

Reading Materials
All readings are on Canvas. Required readings are the minimum essential to do well in the class and will form the basis of class discussions and the participation grade. Reading hard copies is generally a better way to absorb the material, thus I recommend that you print out hard copies while retaining an electronic copy on your computer. Supplementary readings are not mandatory, but they will enhance your understanding of the material and are recommended for the field exam in international relations.

Assignments & Evaluation

Participation (30%) includes:

- **Three short reflection papers on the weeks of your choice, submitted in Canvas.** These papers should be 2-3 pages in length, engaging the group of readings with either the question of the day, or a subject that interests you. Papers will receive either a “√+”, “√” or “√-” which will be calculated into the final participation grade. Please make sure to have completed at least one reflection paper by week 4. If papers are posted by 7pm Monday, I can read them before class.

- **Regular in class participation.** As with all graduate seminars, the expectation is that you to come to each class prepared to discuss the readings for the week. This does not mean that you read every word of every reading. Use your time strategically, figuring out the main points of all the readings as well as similarities and contrasts between the arguments made by different authors.

Review Essay OR Research paper 18-25 pages OR two short exam style papers (70%):
The review essay or research paper option will be due during finals week some time. The exam style short papers are due the Monday after the class session you are engaging.

**A Review Essay** compare 3-5 books, using the books as data to probe a theoretical question. I will post on canvas some examples of review essays. This format is a good way to master a set of readings while thinking through a question that interests you. One can also publish review essays relatively easily. The review essay would be due during exam week.

**Research paper:** I want this paper to be useful to you, thus we will find a way to mix your interests with the general topic of the seminar. You are also welcome to team with another member of the course to submit a co-written paper, and if law is part of your dissertation, we can focus on a dissertation prospectus. Please talk with me about what makes the most sense for you.

**Two exam style short papers on the literature- Due the Monday after the class session:** Write a ten-page paper that addresses in greater depth the question of the day. The paper should explicitly engage the readings for the week. Make sure you answer the question by providing your own argument. The paper should also engage each author’s answer to the question, critiquing or building upon the readings as you defend and develop your own argument. You can submit a short paper that elaborates on your reflection paper. If you select this option, you must complete two exam style papers over the term.

**Administrative policies:**

**Late work:** I tend to be somewhat flexible on due dates for grad students, but I do insist that you get my assent for work that will be turned in late. If an assignment is late, and I have not agreed in advance, then there will be a 1/3 grade penalty for every day an assignment is late.

**Academic integrity:** All work must be your own. Also, as per departmental rules, every assignment must be original to this class. In other words, you cannot submit substantially the same project to more than one class or graduate requirement. If you do want to work on something similar to previous work, or work in another class, lets talk about how you can make your coursework original to this course.

**Getting help:** Please do not hesitate to come to me with challenges you are having in this course, or more generally. I can be really helpful. In addition, students can find useful resources for safety and security, academic support, and mental and physical health and well-being at the NUhelp website and app.
Schedule and reading assignments for seminar
First 3 weeks are assigned. The rest we will choose

Part I: Fundamental Questions About International Law in International Relations

Week 1: Is International Law as law Distinct?

Legal scholars used to debate whether international law should even be considered law, because as a formal matter international law requires domestic ratification to become legally binding, and even then international law is often not enforceable. This debate has been replaced by the new Legal Realism, discussed by Bodansky. Political scientists tend to accept at face value claims that international law is legally binding. For political science, the question is ‘what is distinct about legal rules’? We use this first class partly as a primer on IL but also to begin to think about what, if anything, is distinct about international law as law.

Required Reading

1) The Force of Law
Tom R. Tyler “Understanding the Force of Law,” a review of Frank Schauer The Force of Law Harvard University Press, 2016 (polisci)

2) Debate on international legalization-- are lawyers and political scientists debating the same thing?

3) Beyond formalism: Legal realism is not the same thing as IR realism. How do lawyers think about realism? How do lawyers think about international law?

4) To skim: 2 unusual categories specific to IL—Soft Law and Customary International Law (CIL)
Recommended reading

Comparing IL & IR Jeffrey Dunoff and Mark Pollack “Reviewing Two Decades of IR/IL Scholarship: What we have learned and what is next” in Dunoff and Pollack Eds Interdisciplinary Perspectives on International Law and International Relations: The State of the Art (Cambridge University Press, 2012): Conclusion p. 626-653. (if you are looking for paper & dissertation topics, I would look at the Intro & Slaughter’s article as well).

Skim 1-14 only.


Optional

Pure law readings about the sources of IL- This is the official answer-- in case you want to understand a bit more about the law IL in a Nutshell & Law of Nations- the chapter on the sources of IL (on canvas)

Week 2: How does law influence individuals? Can one scale up?

Question of the Day: Why does anyone follow the law? Should the answer of why people follow the law be different from the answer of why states follow the law?

The advantage of looking at individuals is that it helps us identify micro mechanisms of law compliance. With these different views, you can begin to see how the different methodologies approach understanding the normative influence of law. Can we scale up from the individual to think about how international law matters in international relations?

Required Reading

Tom Tyler: Why People Obey the Law- Part II on Legitimacy and Compliance (p 19-70) (Polisci)


Does thinking about how law is used to socially control individuals help us think about how IL can socially control states?


Recommended reading


Chayes, Abram. 1974. The Cuban Missile Crisis: International Crises and the Role of Law. New York: Oxford University Press. [This is the sort of classic that is constantly being reinvented—meaning students make Chayes argument thinking they have said something new. He had unparalleled access to the data, and the analysis is top notch.]

In the past, I have taught this article by Hurd, which makes exactly the same argument as Tyler. Students have found Hurd more convincing than Tyler—mostly because some students don’t like Tyler’s methods. Hurd skips any effort to empirically validate his argument.

**Week 3: International Law and the International System**

**Question of the day: How is international law constituting and transforming the international system?**

This week we try to figure out if and how international law constitutes the international system. We start with Reus-Smit’s idea of constitutional structures. Reus-Smit's later work develops the idea that individual rights and international law are part of these constitutional structures. Atzili suggests that international law creates border fixity, and that border fixity has fundamentally shaped international relations. Krasner examines sovereignty, inscribed in domestic law but surely also defended by the notion of border fixity. Viola et al look at the reality of sovereign inequality, which is arguably ignored by the fiction of state sovereignty. Does Viola et al’s argument contradict or challenge Krasner? The Alter reading suggests that the more things change, the more things stay the same—international law has a future, but only so long as domestic law has a future.

**Required Reading (all readings this week by IL scholars)**


Boaz Atzili “Border Fixity and the Transformation of International Relations” Harvard International Review Blog Post


**Week 4 : Global diffusion of legal norms**

Why do states end up downloading laws of international origin, or laws that were crafted in foreign systems into their national systems? Given that formal cutting and pasting is not enough to make legal transplants work, how does law get diffused in an operational (e.g. working) way?

There is incredible mimesis in many substantive laws. This is because certain laws—of domestic and international origin—are often diffused around the globe. The result is that we see similar
legal structures in many countries. Yet the way this law works can be different. Readings this week consider the fact of diffusion, the mode and reasoning for diffusion, and the challenges that diffused foreign transplants face in becoming effective.


Beth Simmons, Paulette Lloyd and Brandon Stewart “The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking, 72 *International Organization* 249 (Spring 2018) (Links to an external site.)Links to an external site.

**Recommended additional readings**


Simmons, Beth A;Elkins, Zachary “The Globalization of Liberalization: Policy Diffusion in the International Political Economy” The American Political Science Review; Feb 2004; 98, 1 (This is a quantitative version of what Dezalay and Garth’s excerpts are discussing)


**Week 5: The Adjudication Revolution**

This week examines the third dimension of legalization, how ‘delegation’ of oversight of law enforcement influences international relations. The Stone Sweet reading explains how adjudication constructs global governance. The Alter *New Terrain* chapter 2 provides a theoretical analysis of how delegating authority to international relations can alter international and domestic politics. The *International Court Authority* chapters delve deeper into how the political context in which an international court operates may influence the IC’s authority and political influence. The "Theorizing the Judicialization of IR" article (written for a general IR audience) reaches beyond the realm of international courts to think about the broader range of adjudicators that are influencing international relations. Helfer's handbook chapter reviews the older scholarship on the effectiveness of international courts.
Question of the Day: For those who believe that international law structures international relations, law shapes politics regardless of whether the law is enforceable. Why might the influence of IL in IR be different when and where international adjudicators are able to enforce the law?


Alter, Helfer and Madsen *International Court Authority* (OUP, 2018) Chapters 2 & Conclusion


The assigned readings are all about international adjudication. One can also think about the domestic adjudication revolution. The same question of the day would apply to this debate. Some relevant readings include:


**Week 6: How is IL changing when and how force is used?**

Focusing on this issue helps us to consider different methods and vantages of answering a similar question. Is there a clear answer to the question of whether IL on the US of force is impactful or effective? Why or why not? Note that Isabel Hull is investigating a period of time when IL was much less developed, and completely unenforceable. This period was arguably governed by what Hathaway and Shapiro call “The War Convention.” So first read about the transformation of IL on the Use of Force (*The Internationalists*), then a book review of Hull which lays out her argument, then read the Hull's conclusion of what she thinks. Think of this as a “before” period--the relevant law is unclear, unenforceable, and perhaps it still matters? The Chayes reading is when law is clearer, yet unenforceable. The other two readings are focused on the current period when the law and its enforcement mechanisms work better.
**Question of the Day:** If one thinks that states use force to pursue vital national interests, then the use of force is a ‘least likely’ case for IL to have an influence. Yet, there is quite a lot of compliance with IL on the use of force. When, why and how is IL on the use of force consequential? Drawing on your answer to the when and why question, what do you want to say about the effectiveness of IL?

**Historical account:**
How IL on the Use of Force Changed: Short excerpts from Hathaway & Shapiro The Internationalists

Dingleman's review of Hull's book summarizes what the book is about (download here)


**Participant account:**

**Polisci Accounts**
James Morrow Order within Anarchy: The Laws of War as an International Institution Cambridge University Press, 2014, chapters 1 & 4


**Legal-Interactional Account**


**Week 7: Lawfare-- or politics through law**

Question of the Day: Kittrie tries to give “lawfare” a very specific definition. Do we want to broaden the category? Or are lawyers correct in disliking the whole discussion? What is useful about the idea of lawfare?

Law has long been deployed as a tool to control political enemies. This week we read about how IL can be used to entrap and constrain disliked behavior. The concept of lawfare is disputed by lawyers. Kittrie has gone furthest to claim that lawfare exists. I assigned Kittrie’s introductory chapter, and a review of the book. Because lawfare is most successfully deployed domestically, I also assigned a book review of Jothie Rajah’s account of how Singapore’s government uses law to control dissent. Are the international (Kittrie) and domestic (Rajah’s) versions of lawfare different? IL can also entrap in a way that enhance the rule of law. I assigned Koh’s popular (e.g Trade book) application of his transnational legal process argument. Koh is claiming that IL is (so far) constraining Donald Trump. Meanwhile investor-state arbitration is among the most
contested versions of legal entrapment. I assigned Stone Sweet’s account of commercial arbitration as a private version of legal control, and St John’s account of why states are finding it so hard to escape the investor-dispute system that they dislike.

Kittrie, Orde F. 2016. Lawfare : Law as a Weapon of War. Oxford: Oxford University Press. (Chapter 1) [I suggest you also read Michael Becker’s review of the book, to get a sense of the chapters not assigned.]

Review of Jothie Rajah’s Authoritarian rule of law: legislation, Discourse and Legitimacy in Singapore

Harold Hongjuh Koh The Trump Administration and International Law Oxford Unversity Press 2018. Theory chapter. (an interesting thought piece trying to apply Koh’s argument more broadly is Sean Murphy’s review on opinio juris)

On investor-state arbitration:


**Week 8: A legal infrastructure for stopping transborder illicit behavior**

Most international law creates obligations that coordinate state policies, prohibits certain state policies, or international law creates a positive obligation for states vis-à-vis legal persons operating within national borders. When it comes to the transnational regulation of illicit behavior, the challenge of coordinating state policy is especially hard. One challenge is that police-power falls within the exclusive prerogative of a state; it generally is not part of the domain of international law. A second challenge is that every country defines crime and illegality somewhat differently, and prosecutors and judges may enforce law on the books differently. A third challenge is that criminals exploit legal lacunae and hide in the shadows, so the illicit behavior may in fact exist outside of any legal framework (e.g. imagine hackers in a world where there is neither national nor international regulation banning hacking). A fourth challenge is that transnational coordination is both beyond what a state can do, and perhaps not something that is done (yet) by international actors. Bo Won selected readings focused on the rise of illicit activities at the international level, the institutionalization of legal structures to address these activities, and the enforcement mechanisms associate with these legal structures.

1. *How does crime become global? How do global prohibitions regimes arise?*

Friman, H. Richard “Crime and the global political economy” in Crime and the Global Political Economy Friman, H. Richard ed. (Volume 16 of the International Political Economy Yearbook, Lynne Reiner Publishers, 2009); 1-20; *(This is a primer on globalization and crime that links to IPE literature on crime)*

Nadelmann, E. A. (1990). Global prohibition regimes: The evolution of norms in international society. International Organization, 44(4), 479-526. *(Although the article is old, Nadelmann is the first scholar that introduced the concept of “global prohibition regimes.”)*
He theorizes why such regimes have been established by mentioning the efforts of “moral entrepreneurs.” This is a canonical reading from the literature discussing illicit activities within the field of international relations.

2. How are such institutions legalized and why are such particular institutions chosen?
Jojarth, C., & Ebrary, Inc. (2009). Crime, war, and global trafficking: Designing international cooperation. Cambridge, UK; New York: Cambridge University Press. Introduction, Chapter on international legalization, chapter on Narcotics (This is one of the first books that are situated in literature of legalization and illicit/criminal activities. It focuses on the particular design choices of institutions that deal with illicit behavior at the international level. It will be interesting to link this reading to the previous reading on legalization, as there are significant overlaps.)

3. In terms of illicit activities, how does enforcement work at the international level? How does transnational policing work?
Sheptycki, J. (1995). Transnational Policing and the Makings of a Postmodern State. The British Journal of Criminology, 35(4), 613-635. (Sheptycki was one of the first scholars to discuss the concept of transnational policing from an interdisciplinary approach. The onset of transnationalization calls for policing that goes beyond state boundaries. While the more comprehensive version has been published in 2000 as a book titled "Issues in transnational policing," a shorter version has been chosen for easier reading.)

Week 9: Beyond State Centrism: How Non-State Actors Contribute to the Making and Meaning of International Law

Question of the day: IR scholarship focuses on the choices and actions of states. But if law is made and changed by actors other than states, what does this mean for international law and international relations?

This set of readings provides different ways to think about how non-state actors become important in the politics of international law. Non-state actors can include IO agencies, transnational advocacy movements, or local actors (social movements, judges, lawyers etc). The New Terrain of International Law already suggested that international courts can shift interpretations of the law, and compliance constituencies (which are broader than states) can pressure states to comply. These readings go beyond. The first two readings are introductions of volumes that consider the role of nonstate actors more generally. The last 3 readings are more specific. The Kittrie reading is also relevant—perhaps review his pictograph.

Required reading
Avant, Finnemore and Sell Who Governs the Globe “Introduction” (CUP, 2010)
Risse, Ropp & Sikkink The Persistent Power of Human Rights Intro & Conclusion (CUP, 2013)
Rajagopal International Law From Below: Development, Social Movements and Third World Resistance excerpts on cultural change, plus the chapter on social movements (CUP, 2003)