

## PHIL 423/POL SCI 490 – Global Capitalism & Law: An Interdisciplinary Seminar

Instructors:

Karen J. Alter, Professor of Political Science and Law

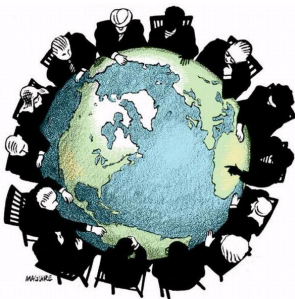
Cristina Lafont, Professor of Philosophy

T 2:00-4:50

Scott Hall 201 (Ripton Room)

This graduate seminar is associated with the Buffett Institute [Global Capitalism and Law Research Group](#). The seminar themes and focuses change yearly, depending on the instructors.

### SYLLABUS



This seminar focuses on the parallel development of international law and capitalism since the industrial revolution, considering this development from both a normative and historical perspective. In particular, we will explore tensions between the principles of peace and protection of human rights that guide international law as a system of sovereign states, on the one hand, and the complex set of laws and policies that regulate global market economies and empower private actors, on the other. In our discussions, we will weave together normative debates on the justification of property rights, the proper role of the State vis-à-vis society, and the legitimacy of international law (from classic authors like Locke, Kant and Grotius to contemporaries like Milton Friedman, Rawls and Habermas) with historical and sociological analyses of the development of capitalism and international law (from classic authors like Braudel and Polanyi to more recent but still historically oriented scholars like Watson and Bull). A question we will be investigating is if and how debates about national and global capitalism have changed over time. Our historical and normative focus should help us address in the last part of the seminar some of the current challenges that the development of global capitalism poses to the system of states at the core of international law: from non-territorial intellectual property rights to the role of the State vis-à-vis society in current systems of multilevel governance, democratic deficits of global governance institutions, etc.

#### *Reading Materials*

Required readings for this course include the books listed below, a case study (required for our first session), and a coursepack.

**Books** (available at Norris)

Polanyi, K., *The Great Transformation*, Beacon Press, 1957.

Rawls, J., *The Law of Peoples*, Harvard University Press, 1999.

Wenar, L., *Blood Oil*, Oxford University Press, 2016.

**Case Study** (purchase on line and read for the first class)

*Food Fight: The US, Europe, and Trade in Hormone-Treated Beef* –Kennedy Case N14-02-1677. Purchase at: <http://case.hks.harvard.edu/food-fight-the-us-europe-and-trade-in-hormone-treated-beef-abridged/>

**Course Packet** (available at *Quartet Copies*, 818 Clark St.) *Expected cost \$47*

*In the course-pack:*

Alter, K., *The New Terrain of International Law: Courts, Politics, Rights*, Princeton University Press 2014, 335-344, 351-365.

Bernstein, S., “Ideas, Social Structure and the Compromise of Liberal Environmentalism,” *European Journal of International Relations*, 6/4 (2000), 464-512.

Braudel, F., “Capitalism and Dividing up the World”, in *Afterthoughts on Material Civilization and Capitalism*, Johns Hopkins University Press, 1977, 79-117.

Buchanan, A., “Rawls’ Law of Peoples: Rules for a Vanished Westphalian World,” *Ethics* 110/4 (2000), 697-721.

Bull, H., “The Importance of Grotius in the Study of International Relations,” in H. Bull, B. Kingsbury and A. Roberts, eds., *Hugo Grotius and International Relations*, Oxford: Clarendon Press, 1990, 65-94.

Bull, H., “The Emergence of an International Society,” in H. Bull and A. Watson’s *The Expansion of International Society*, Oxford University Press, 1985, 117-126.

Fakhir, M., *Sugar and the making of international trade law*, Cambridge University Press, 2015, 10-17, 211-214.

Freeman, S., “Illiberal libertarians: Why Libertarianism Is Not a Liberal View”, *Philosophy and Public Affairs* 30/2 (2001), 105-151.

Friedman, M., *Capitalism and Freedom*, The University of Chicago Press, 1962, 1-36.

Gourevitch, P., *Politics in Hard Times: Comparative Responses to International Economic Crisis*, Cornell University Press, 1986, pp. 71-123.

Habermas, J., “A Political Constitution for the Pluralist World Society?” in *Between Naturalism and Religion*, MIT Press, 2008, pp. 312-53,

Habermas, J., “From the international to the cosmopolitan community,” in *The Crisis of the European Union. A Response*, Polity Press, 2012, pp. 53-70.

Hayek, F., “The Economic Conditions of Interstate Federalism,” in *Individualism and the Economic Order*, The University of Chicago Press, 1948, 255-72.

Harmes, A., “New Constitutionalism and Multilevel Governance” in Gill & Cutler, eds. *New Constitutionalism and World Order*, 143-158.

Holmes S. and C. Sunstein, *The Cost of Rights. Why Liberty Depends on Taxes*, W. W. Norton & Company, 1999, 13-48.

Kant, I., “Private Right”, §§1-17, 41-42, in *The Metaphysics of Morals*, ed. by M. Gregor, Cambridge University Press, 1996, 37-56, 84-86.

Kant, I., “Perpetual Peace” in *Political Writings*, ed. by H. S. Reiss, Cambridge University Press, 1991, 93-130.

Lafont, C., “Alternative visions of a new global order: what should cosmopolitans hope for?” *Ethics & Global Politics* 1/2 (2008), 41-60.

- Lafont, C., "Human Rights, Sovereignty, and the Responsibility to Protect," *Constellations* 22/1 (2015), 68-78.
- Locke, J., "On Property" in *Two Treatises of Government*, P. Laslett, ed., Cambridge University Press, 1988, 285-302, 350-53.
- Ripstein, A., *Force & Freedom. Kant's Legal and Political Philosophy*, Harvard University Press, 2009, 86-106, 145-181.
- Shue, H., "Correlative Duties", in *Basic Rights*, 1996, 2nd edition, Princeton University Press, 35-64.
- Trubek, D., "Max Weber on Law and the Rise of Capitalism," *Wisconsin Law Review* 3 (1972), 720-753.
- Waldron, J., *The Right to Private Property*, Clarendon Press, 1988, 137-252.
- Watson, A., "European International Society and its Expansion," in H. Bull and A. Watson, *The Expansion of International Society*, Oxford University Press, 1985, 13-32.
- Walker, N., *Intimations of Global Law*, Cambridge University Press, 2015, 1-28, 178- 205.

### ***Assignments & Evaluation***

A benefit of an interdisciplinary course is that you will learn to think about the topic from the perspective of different disciplines. A cost, however, is that you will be pushed out of your disciplinary comfort-zone. Philosophy and political science have different reading and seminar practices. The philosophy readings tend to be shorter, but they must also be read in greater depth and detail. The non-philosophy readings are longer and provide more empirical information. Students will need to adapt to the varying workloads. If the reading is shorter for the week, expect the discussions to go into the readings and arguments in greater depth. If the readings are longer, you must read them all but you probably do not need to deconstruct the readings in the same way.

**Participation (30%)** includes:

- **Two short reflection papers one submitted in January and another in February or March, submitted in Canvas.** These papers should be 1-2 pages in length, engaging the week's 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. We prefer if you post the papers the day before the class to which they refer. If we get them by 5pm Monday, we can read them before class. They must be submitted by noon on Tuesday, thus before the class in which they will be discussed.
- **One class presentation of the reading materials.** Presentations should highlight the main claims, arguments and conclusions of each of the readings, evaluate their strengths and weaknesses, raise questions of interest for class discussion, etc.
- **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.

**Research paper (70%): 18-25 pages long, Topic due February 17. Paper due on Canvas March 14:**

We 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. Please talk to the instructor closer to your disciplinary home about what makes the most sense for you. Note that we will try to distribute the papers across both instructors.

### *Schedule of Reading Assignments for seminar*

January 10 – Introduction: Rights & the Market in a Globalizing World

At our first session we will lay out the course goals and objectives. We will also discuss a WTO case study involving a transatlantic dispute regarding beef hormones. The dispute raises the issue of what happens when we let binding international law and international dispute adjudication determine what is legally allowed. The short reading by Robert Hudec shows how a self-aware legal insider--someone who understands the law and politics of international trade regulation-- thinks about the dilemmas of using international law to regulate global trade. We will explore the nuts and bolts of the case to better understand how the international legal process works, in practice. In class discussion, we want to start brainstorming on what values, interests, and political priorities are left out of the conversation and the process of international law-making/dispute adjudication.

- *Food Fight: The US, Europe, and Trade in Hormone-Treated Beef* –Kennedy Case N14-02-1677 Purchase at: <http://case.hks.harvard.edu/food-fight-the-us-europe-and-trade-in-hormone-treated-beef-abridged/>
- Hudec, Robert “Circumventing” Democracy: The Political Morality of Trade Negotiations” 311-322

## **PART I: DEVELOPMENT OF CAPITALISM**

### **A. Normative foundations:**

This part focuses on different justifications of property rights and how they ground very different views of the proper role of the State in protecting citizens’ rights and freedoms. An important question for us to think about is how these views give rise to different justifications of the proper scope, function, and value of key institutions of capitalism (markets, property rights, etc.)

January 17 – Property rights & Original Acquisition:

- Locke, “On Property” in *Two Treatises of Government*, 285-302, 350-53
- Waldron, *The Right to Private Property*, 137-252.

- Kant, “Private Right” in *The Metaphysics of Morals*, 37-56, 84-86.  
Ripstein, *Force & Freedom*, chapters 4 & 6.
- Freeman, “Illiberal libertarians: Why Libertarianism Is Not a Liberal View”, 105-151.

January 24 – Capitalism & the State:

- M. Friedman, *Capitalism and Freedom*, 1-36.
- H. Shue, “Correlative Duties”, in *Basic Rights*, 35-64.
- Holmes & Sunstein, *The Cost of Rights*, 13-48.

*Recommended but not required:* Bernstein, S., “Ideas, Social Structure and the Compromise of Liberal Environmentalism,” 464-512.

### **B. Historical development:**

For a political scientist, political possibility and sustainability are defined by the political process, which is of course infused with power dynamics that are neither fair nor just. As we think about the political scientist's approach to imagining what is “possible,” and whether “an improvement is politically sustainable” we return to history to better understand whether and how globalization has changed, or requires us to change, the way we think about the relationship between rights and markets. We will also explore the interaction between domestic and international processes over time.

January 31 – The Emergence of Capitalist Markets

- Braudel, “Capitalism and Dividing up the World”, 79-117.
- Polanyi, *The Great Transformation*, chapters 35-187.

*Recommended but not required:* Gourevitch *Politics in Hard Times: Comparative Responses to International Economic Crisis*, 71-123.

## **PART II: DEVELOPMENT OF INTERNATIONAL LAW**

### **A. Normative foundations:**

This week focuses on different justifications of the normative principles that guide international law understood as a system of rules to promote the peaceful and mutually beneficial interactions of states. A question we want to think about is how the notion of peace evolves to include the protection of human rights and the tensions that including human rights generates between statist and cosmopolitan conceptions of international law.

February 7 – Normative Foundations of International Law

- Grotius, “The Importance of Grotius in the Study of International Relations” by H. Bull.

- Kant, “Perpetual Peace” in *Political Writings*, 93-130.
- Rawls, *The Law of Peoples*, 3-43, 59-81.

*Recommended but not required:* Buchanan, “Rawls’s Law of Peoples: Rules for a Vanished Westphalian World”

### **B. Historical development:**

This historical set of readings considers how international law responds to its social and political context. Until the Post-WWII era, European colonial powers dominated the making of international law; unsurprisingly international law was crafted to serve colonial purposes. As the world transitioned from the colonial order, does the content and our expectations for international law also change? What does a ‘universalist’ international law mean in practice? Should the way we think about law and capitalism change when law is no longer designed to serve the imperial/colonial economic system?

February 14 – The Emergence of International Law

- Watson, “European International Society and its Expansion,” 13-32.
- Bull, “The Emergence of a Universal International Society,” 117-126.
- Trubek, “Max Weber on Law and the Rise of Capitalism,” 720-753.

## **PART III: TENSIONS BETWEEN MODERN GLOBAL CAPITALISM & INTERNATIONAL LAW**

This part includes three sessions with different approaches towards the question: How do we think about what we do now? On February 21 we read a trade book (e.g. popular audience) written by a philosopher, questioning the inconsistencies among the principles of international law that regulate global markets for natural resources. February 28 we will focus on Professor Alter’s more empirical way of thinking about the question of political reform (no solutions offered!). On March 7 we will focus on Professor Lafont’s way of approaching this question.

### **Property Rights after Globalization**

February 21 – Property Rights & Original Acquisition of Natural Resources

- Wenar, *Blood Oil*, chapters 5, 9-12, 16-17.

### **Global Capitalism in a World of States:**

February 28 – Getting Beyond the limits of international law: Can we? Should we? Can we get beyond the limits of international law? International law, for better or worse, is made by states, in order to bind states. If we accept that states will define international law to serve their purposes, and only follow international law that does promote their purposes, what can be done? The standard answer would be to convince states that

valuing justice is important, and that justice is important for political sustainability of international law and international order. These are just a few readings that consider how international law perhaps becomes more just, while still reflecting the reality that states make international law and decide when and whether to adhere to international law. These readings reflect how Karen Alter thinks about these questions. The readings prioritize both democracy and justice. Is this a problem?

- Fakhir, *Sugar and the making of international trade law*, 10-17, 211-214.
- Alter, *The New Terrain of International Law: Courts, Politics, Rights*, 335-344, 351-365.
- Walker, *Intimations of Global Law*, 1-28, 178-205.

### **Capitalism & Multilevel Governance (March 7):**

These readings reflect how Cristina Lafont thinks about these questions. One of the limits of current international law is the erosion of State sovereignty due to the growing structures of multilevel governance. This erosion, however, has not yet led to the formation of a cosmopolitan order with legitimate supranational institutions to effectively protect peace, security and the protection of human rights worldwide. We will explore the difficulties for achieving these avowed goals of the current international order under neither Westphalian nor cosmopolitan conditions.

- Hayek, "The Economic Conditions of Interstate Federalism," 255-72
- Harmes, "New Constitutionalism and Multilevel Governance," 143-158
- Habermas, "A Political Constitution for the Pluralist World Society?" 312-53, and "From the international to the cosmopolitan community," 53-70.
- Lafont, "Alternative visions of a new global order: what should cosmopolitans hope for?" 41-60, and "Human Rights, Sovereignty, and the Responsibility to Protect," 68-78.