THE EMERGENCE OF INTERNATIONAL LAW

1. Evolution
   a. History of international law [xix-xxx]
   b. The doctrine of sources [55-58]

THE ROOTS OF INTERNATIONAL LAW

2. Naturalism
   b. Cicero, De Republica III, xxii, 33, Loeb Classical Library ed. at 211.
   c. The Declaration of Independence.

h. Immanuel Kant, The Philosophy of Law (1796)(Hastie tr. 1887).


m. Steven Pinker, The Blank Slate (appendix)(2003).


o. Oliver Wendell Holmes, dissenting opinion in Abrams v. United States (1919)(excerpt).


3. Positivism

a. Legal positivism [43-44]

b. Voluntarism and Positivism [57-58, n. 1]

c. Positivism and Its Critics [76, n. 1]

d. Hans Kelsen, Pure Theory of Law 62-69 (California 1967) and [20].


4. Pragmatism


b. Sovereignty and obligation [8, nn. 1, 2].


i. International law and national interest; Friedmann; and notes [16-17, n.1].


5. **Class discussion**: Which of the three perspectives makes the most sense? Be prepared to defend your answer.

   **CUSTOMARY INTERNATIONAL LAW**

6 & 7. **The elements of customary international law**

   a. Recurring questions [59-61]

   b. *The Lotus* (1927) [68-69]

   c. Legality of the Threat or Use of Nuclear Weapons (1996) [77, n. 3; 79-90]


8 & 9. **Conceptual problems with customary international law**

   f. *Opinio juris* [90-100]

   g. Michael J. Glennon, “Sometimes a Great Notion,” *Woodrow Wilson Quarterly* (Fall, 2003).*


j. The problem of the “persistent objector” [100-105]

k. *Jus cogens* [105-107; 110-112]


**THE LAW OF TREATIES**

10. The making of treaties
   a. Entangled treaty and custom [118-121; 122-126; 130-132]
   b. The Vienna Convention on the Law of Treaties [documentary supplement]
   c. Methods of expressing consent to be bound [136-138]
   d. Unilateral statements [292-298]
   e. Non-binding agreements [286-292]
   f. “Object and purpose” of a treaty [138-140]
   g. The SALT I extension controversy.

11. Reservations
   a. Operation and effectiveness [140-162]

12. The observance, interpretation, and application of treaties
   a. *Pacta sunt servanda* [162-163]
   b. Internal law [163-165]
   d. Interpretation [165-166; 170-184]
   f. Rights and obligations of third states; obligations *erga omnes* [516-519]
   h. Judgment of the German Constitutional Court, Feb. 15, 2006 (authorisation to shoot down aircraft in the Aviation Security Act held void).

13. Invalidity and violation of treaties
   a. Generally [184-186]
   b. Error, fraud, corruption and coercion [526-532]
   c. *Ultra vires* treaties [186-189]
   e. *Jus cogens* [194-200]
   g. Breach [207-212]
   h. *Rebus sic stantibus* [218-227]
   i. War between the contracting parties [227-232]
j. Termination by consent [200-207; n. 215]
k. State succession [1524-1530]
n. Hearing excerpt, Senate Foreign Relations Committee, May 25, 1999, legal status of the ABM treaty

OTHER SOURCES OF INTERNATIONAL LAW

14. General principles, equity, judicial decisions, and highly qualified publicists
a. The broad expanse of general principles [233-245; 246-247]
b. Considerations of equity and humanity [247-254]
c. Judicial decisions [254-261]
d. International law scholars [261-264]
e. Declarations and resolutions of international organizations [265-266; 273-279]

INTERNATIONAL LAW AND MUNICIPAL LAW

15. Conflicts between statutes and treaties
a. General principles [652-654]
b. The last-in-time doctrine [685-692]

16. International law as United States law
a. International law in the municipal law of other states [742-754]
b. International law as “law of the land” [654-666]
c. The Paquete Habana (1900) [62-68]

j. International law in U.S. constitutional interpretation [737-742]

17. Executive agreements and parallel policy declarations
   b. Executive agreements [727-737]

18. Constitutional limits on treaties
   a. Federalism and other constitutional prohibitions [679-685]
   e. Limitations concerning subject matter [141, nn. 3, 4]
   f. Interpretation and amendment: Glennon, *Constitutional Diplomacy* (1990) 134-145 (review); [718-723].
   g. Report of the Senate Foreign Relations Committee, Taiwan Enabling Act, March 1, 1979 (excerpt).
   h. Staff memorandum to the Senate Foreign Relations Committee concerning legal and procedural issues related to the SALT II Treaty (undated).

19. The constitutional power to terminate treaties
   a. General principles [723-727]
   b. The Army-McCarthy hearings
   d. The ABM Treaty

THE SUBJECTS OF INTERNATIONAL LAW

20. Statehood and recognition
   a. What is a state [299-314; notes, 318-320; 338-344]
   b. Termination of recognition [375-376, notes 1, 2]
d. Criteria, necessity and effect of recognition [348-368]

21. International organization and the principle of *ultra vires*: sovereignty vs. supranationalism
a. The United Nations Charter [documentary supplement]
b. Generally [402-407]
c. Sovereignty [24-28]
d. *Ultra vires* acts [420-429]
e. The United Nations versus other international organizations: the *Kadi Case* [112; 749]
f. Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change.

THE LIMITS OF INTERNATIONAL LAW

22. Contemporary perspectives on international law
a. Overview of methods [42-43; notes, 51-54]
b. Feminist perspectives [49-50]
c. Critical legal studies [46]
f. Law and economics [50-51]
g. International relations theory [47-49]

23. Law and morality
d. The Antelope, 10 Wheat. 66 (1825)
e. Robert Bolt, A Man for All Seasons (the devil and the law)[You Tube]

25. Law and power
d. Michael J. Glennon, “An American Empire? What’s Law Got To Do With It?” Woodrow Wilson Quarterly 70-75 (Summer, 2002).*

26. Is international law really law?
g. John Austin, “The Province of Jurisprudence Determined” (review) [16-17]
h. Lori Damrosch, “Enforcing International Law”[20-23]
i. Norwegian Loans Case, ICJ Reports 1957 (separate opinion of Judge Lauterpacht)(excerpt).
l. Is it binding? [2-9]

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Schedule. The class meets Tuesday and Thursday from 11:05 a.m. to 12:20 p.m. in room 205 Cabot. Numerical headings in this syllabus each represent one class session. Alphabetically labeled items are readings for that class session. Most
classes will consist of lectures and discussion of the readings; consequently, it is essential that all readings be completed before the relevant class session. Students are expected to attend all class sessions. Repeated absences will bar a student from taking the final exam.

Readings. Bracketed numerical references in this syllabus are to page numbers in Damrosch, Henkin, Pugh, Schachter & Smit, International Law: Cases & Materials (5th ed., West 2009). This book is required. Also required is Michael J. Glennon, Limits of Law, Prerogatives of Power: Interventionism after Kosovo (St. Martin’s/Palgrave 1990). The documentary supplement, Basic Documents Supplement to International Law: Cases & Materials (5th ed.), by Damrosch, et al, is recommended, although many documents are now available on the internet. Items marked with an asterisk are recommended but not required. Three additional books are recommended: Michael J. Glennon, The Fog of Law: Pragmatism, Security, and International Law (Stanford/Woodrow Wilson, 2010); James R. Fox, Dictionary of International and Comparative Law (Oceana, 3rd ed. 2003); and E. Allen Farnsworth, An Introduction to the Legal System of the United States (Oceana, 3rd ed. 1996). Further readings may be added throughout the semester as events unfold; always check Trunk (see below) before class.

Accessing reading materials. All of the materials in this syllabus, except textbooks, are available on the Tufts Trunk site for this course, which is accessible from any computer with an internet browser. The address is http://trunk.tufts.edu. Go to this course. The materials are saved in Adobe Acrobat files. Most computers already have an Adobe Acrobat Reader installed. If yours does not, it can be downloaded free at www.adobe.com. During the first several class sessions, students can access the materials on Trunk as a “guest”; afterwards, a Tufts ID will be required.

Recordings of class sessions. No recordings of any kind may be made of any class session or any part thereof under any circumstances.

Auditors. Auditors are not admitted to this course.

Lecture outlines. Outlines of each lecture will be available in the relevant Trunk course document folder shortly before each class. These outlines are provided to make the class easier to follow for students whose native language is not English. They are only a rough approximation of what is covered and are not a substitute for class attendance and taking notes.

Communication of class notices. Email messages concerning class information, including further readings, will be sent to each student’s Tufts email address
through the Trunk. A student who adds the class late should be sure that email communications will be received.

**Final examination.** A three-hour, closed-book examination will be held on the date specified by the Registrar’s Office. It will consist of essay and objective questions. A sample essay question and answer are available in the “Documents and Materials Folder” on the Trunk web site. To ensure the integrity of the examination process and also to ensure fairness and equal treatment for all students, rescheduling of the exam will be permitted only on an emergency basis, involving documented medical incapacity of the student or death or serious illness within the immediate family.

**Bluebook review.** Final exams will be available for review after grades are turned in. Students wishing to do so should see my assistant. Bluebooks may not be altered or removed from the reviewing area.

**Grading and class performance.** The letter grade that results from the final examination may be raised one-half letter grade for superior performance in class discussions. *Recorded grades are raised only for arithmetical or administrative error.*

**Office hours (room 315 Goddard).** Office hours are 2:00 to 4:00 on Thursday, other times by appointment—though if the door is open, as it usually is, feel free to drop in. For conversations about class topics, please stop by rather emailing.

**Contact information.** Web site: http://www.fletcher.tufts.edu/faculty/glennon. Telephone: (617) 627-3941. Email: michael.glennon@tufts.edu.