Prof. Timothy William Waters
office: Rm 311B (phone 812 856-2748)
office hours: drop-in or by appt.
email: tiwaters@indiana.edu
secretary: TBD

International Criminal Law: Legal Responses to Mass Atrocity and War Crimes
Indiana University School of Law, Fall 2008
Rm. 214; Wednesday 4:30-6:30

Introductory Course Description

What does it mean for criminal law to be international? Along with the monopoly on violence, the legal and bureaucratic power to define and sanction wrongful behavior is one of the core functions – and definitions – of the modern state. How does this function translate to the realm of inter-state relations?

This course provides an introduction to the politics, institutions, processes, and substantive commitments of international criminal law. It will consider international criminal law in its broader political context, as one response (among many) to episodes of mass violence and social disruption, as well as a mechanism for control and replication of values, and will focus in particular on how the international aspect – the horizontality of legal relations in the state system – shapes that response.

The course will survey the historical development of legal responses to war and atrocities, especially through the politics and jurisprudence of the principal international tribunals of the modern era. Particular attention will be paid to the issues arising out of the Yugoslav conflicts, as well as responses to mass atrocity and war crimes in Rwanda, the Great Lakes region, West Africa, East Timor, and World War II. The entire course will be an implicitly comparative legal exercise, considering various attempts to create international tribunals and domestic efforts to respond to international atrocities.

There are no prerequisites, but courses in area studies, history, political science, international law, human rights, criminal law, and international relations will all prove complementary.

Required Readings

- Robert Cryer, Håkan Friman, Darryl Robinson, Elizabeth Wilmshurst, INTERNATIONAL CRIMINAL LAW AND PROCEDURE (2007)
- Roy Gutman, David Rieff, and Anthony Dworkin, eds. CRIMES OF WAR 2.0 (2007)
- Readings available electronically or distributed.

We will employ ICLP as a standard account of doctrinal and procedural issues; Crimes of War will provide readable introductions to a range of subjects; the copied readings will consider broader contextual issues of politics, philosophy, and purpose and to provide case studies. Both books and the readings are integral to our discussions.

Grading

Students will complete a take-home final exam, which will count towards 80 percent of the final grade. Participation will count for the remaining 20 percent.

Preliminary Syllabus

I. General Considerations

1. Introduction: What is International Criminal Law?

themes of the course – location of ICL within international law, human rights, and the globalized state system; concepts, scope, values, aspirations and limits of ICL – 'international,' 'criminal', and 'law'

Read:
ICLP 1-6, 17-30
CoW 8-16 (Prefaces)
excerpts from ICTY, ICTR, and ICC websites (6 pages)
Stephen, Court Wants Exemplary Karadzic Trial, BBC (3 pages)
International Military Tribunal, Nuremberg – Defendants (photograph)
Okervill River, The War Criminal Rises and Speaks (1 page)

CoW 86-92 (Chechnya), 110-4 (Colombia), 76-83 (Cambodia), 252-9 (Iran-Iraq War)

We will consider what is uniquely 'international' about ICL – how does its international character change its purposes, methods and possibilities, or our expectations for it? Look at the website excerpts to consider what claims, aspirations, and self-image ICL's institutions and actors have of themselves and their enterprise: are they justified? worthwhile? attainable? what do they not *do? How are those claims and expectations likely to play out in the Karadžić trial?*

The readings on Chechnya, Colombia, Cambodia and Iran-Iraq are intended as spurs to initial discussion: What sorts of crimes occur in these wars? what responses make sense? what kinds of problems do these conflicts raise for an institutional project of ICL?

I. General Considerations

2. Historical Development: The Evolution of Norms and Institutions

historical limits on the resort to violence, early attempts to define criminal responsibility; the post-war moment – the WWII tribunals, the post-war conventions and codification efforts; the post-Cold War institutional wave – ad hoc tribunals, ICC, hybrid courts

Read:
ICLP 91-100, 221-3
Treaties of Versailles and Sèvres, penalty provisions (3 pages)
Bassiouni, From Versailles to Rwanda in Seventy-Five Years 11-21, 58-62
Bass, Stay the Hand of Vengeance 106-46
Taylor, Nuremberg and the Laws of War 3-20

CoW 22-6 (IHL Overview), 132-4 (Courts and Tribunals)
CoW 40-8 (Arab-Israeli Wars), 49-53 (Second Intifada), 54 (Israel's View of IHL), 167-70 (Due Process), 183-4 (Camera as Witness)

We will consider two principal strands of development within ICL – the conceptualization of general principles of criminal law at the international level, and the creation of international institutions. How have these two strands interacted? We can discern particular periods of activity; why did ICL develop when and how it did – what were the political and conceptual constraints? what lessons for thinking about, advocating, or opposing ICL today? We will discuss in some detail the attempts to try Turks and Germans after WWI, so as you read Bass and Bassiouni, consider what the Allied Powers and US hoped to achieve, and what conditions contribution to the failure of the trials. We will compare these with Nuremberg (Taylor.)

The readings on Israel-Palestine provide a survey of a conflict that has developed over the lifespan of modern ICL.

I. General Considerations

3. Foundational Issues – Doctrines and Politics

sources of authority; questions of competence and jurisdiction, primacy and complementarity; practical capacity and resource constraints – the problem of acquiring defendants; the choice of international adjudication – costs, benefits, conditions for success

Read:
ICLP 6-16, 37-43, 373-7
CoW 141-2 (Customary Law) 142 (Customary Law – ICRC), 275 (Jus ad Bellum/in Bello), 409-11 (UN and Geneva Conventions)
Judgment of the International Military Tribunal for the Trial of German Major War Criminals, excerpt (5 pages)
UN Security Council Resolution 808, Report of the Secretary General under SC Res 808, in Steiner and Alston, International Human Rights in Context 1146-1150
UN Charter Ch. 7, excerpt (1 page)
Prosecutor v. Tadić, jurisdiction decision, in Steiner and Alston 1159-1164 (Comment 1156-1159 for background)
Rome Statute of the International Criminal Court, on jurisdiction (2 pages)
Comment on the Eichmann Trial, in Steiner and Alston 1138-1140
Simons, Rwanda is Said to Seek New Prosecutor for War Crimes Court (2 pages)
Lederer, Security Council Told to Stop Complaining About High Cost of War Crimes Tribunals (1 page)
Rome Statute of the International Criminal Court, excerpt on finances (1 page)
Burns, First Case Against Hussein, Involving Killings in 1982, Is Sent to a Trial Court (3 pages)
CoW 252-9 (Iran-Iraq War)

We will consider the foundational doctrinal and political problems accompanying the enterprise of international criminal law, and especially of its institutions. When reading the Tadić and

Nuremberg excerpts, consider how satisfactory ICL's own answer is about the source of its authority. What is ICL's capacity to act in a world of states? How have ICL's advocates responded to the concerns of political actors in crafting their rules and institutions? In this context, when reading the Eichmann, Rwanda, Iraq and finance readings, consider in particular the problem of investigating and trying individuals at international tribunals that lack independent resources. Finally, what are the conditions for success of international adjudication – when will it work, and when will it not?

II. Fundamental Principles – Substantive Crimes

4. General Considerations about Substantive Crimes; Genocide, Ethnic Cleansing

substantive categories of crime – focus and priorities; genocide: genesis of the concept, development of law, elements, definitional problems, politicals contexts

Read:
ICLP 165-85
Convention on the Prevention and Punishment of Genocide (excerpt, 1 page)
CoW 191-5 (Genocide), 360-4 (Rwanda), 236-8 (Incitement to Genocide), 146-51 (Darfur)
Askin, Jelišić summary (1 page)
Prosecutor v. Jelišić, Judgment (Appeals), excerpts (15 pages)
Prosecutor v. Bagosora, Concise Statement of Facts (from Indictment)(six pages)
Bagosora Trial Chamber Decisions – List (1 page – link only)
Sullivan, Milosevic and genocide: Has the prosecution made the case?, Observer Int'l (5 pp.)
Kristof, Genocide in Slow Motion, New York Review of Books (6 pages)
Report of the Int'l Comm. of Inquiry on Darfur to the UN Secretary-General 1-6, 158-162
Second Report of the Prosecutor of the ICC to the Security Council 1-10
ICC Warrants of Arrest for Darfur (1 page – link only)
Dunlop, Cambodia's Trial by Fire, Los Angeles Times (2 pages)
Bransten, Bosnia Ruling Sets Important Precedents, RFE/RL (3 pages)
Simons, Genocide Court Ruled for Serbia without Seeing Full War Archive, NYT (4 pages)
CoW 4 (Unlawful Confinement), 225-6 (Humanitarian Aid, Blocking), 392-4 (Starvation), 186-8 (Forced Labor), 121-5 (Concentration Camps) 157-8 (Deportation), 242-4 (Internal Displacement),175-7 (Ethnic Cleansing), 404-6 (Transfer of Civilians)

As a general introduction to Section II, consider why certain categories of crimes have attained priority within ICL – what relationship is there to political and institutional agendas? Concerning genocide, we will consider the problematic nature of special intent, and why this crime seems hard to prove. In this regard, we will consider the dangers of fetishization – are other criminal categories displaced by 'the ultimate crime?' What is the relationship between genocide and ethnic cleansing? Turning to cases: Why was Jelišić acquitted of genocide? What would it have taken? Looking at the reported facts in Bagosora, what would you predict will be the outcome, and what strategies for prosecution and defense would you adopt? What would have happened in Milošević's case?

More broadly, what are the rights or obligations of states to respond to genocide, and how do these doctrinal commitments affect real-world behavior – we will consider Darfur on this point. Are the events there genocide, or something else? How do we know? What responses are possible or obligatory if it is – or if it is something else? Why has the ICC not charged genocide? What about Cambodia? Finally, note the two readings on the ICJ genocide case. This is not a question of individual criminal responsibility. Which is the right forum to address a crime like genocide?

NB: The Kristof reading is copied from a large-format text; some of the pages have to be read in pairs, flipping back and forth; the black line indicates where to begin. Also, the Jelišić judgment and Bagosora decisions should give you a little flavor about the process and style of these cases.

II. Fundamental Principles – Substantive Crimes

5. Crimes against Humanity and War Crimes

origins; elements; customary law; interactions between crimes against humanity and war crimes; deformalization: nexus to conflict and the internal-international distinction

A. *Crimes against Humanity*. Read:
ICLP 187-208, 213-8
CoW 135-6 (Crimes against Humanity), 318-21 (Persecution on Political, Racial, Religious Grounds), 400-1 (Torture), 59-61 (Biological Experiments), 93-4 (Chemical Weapons), 287-8 (Medical Experiments on POWs)
Ratner and Abrams, Accountability for Human Rights Atrocities 58-62, 77-79
Statute of the ICTR, on crimes against humanity (1 page)
Rome Statute of the ICC, on crimes against humanity (2 pages)
ICC, Elements of Crimes, on crimes against humanity (3 pages)
Prosecutor v. Kupreškić, and notes, *in* Van Schaack *et al*, Int'l Criminal Law and its Enforcement 368-75, 379-82
Meier, Akayesu summary (1 page)

B. *War Crimes*. Read:
CoW 420-2 (Categories of War Crimes), 239-40 (Indiscriminate Attack), 278-80 (Legitimate Military Target), 299-301 (Military Objectives), 178-9 (Evacuation of Civilians), 423-4 (Destruction of Water Supplies)
ICLP 221, 223-61
Ratner and Abrams, Accountability for Human Rights Atrocities 105-107
Statute of the ICTY, on war crimes (1 page)
Rome Statute of the ICC, on war crimes (4 pages)
Fourth Geneva Convention excerpts (7 pages)(*reference*)
CoW, 249-50 (Int'l vs. Internal Armed Conflict), 251 (Article 3), 342-4 (Protected Persons), 196-7 (Gray Areas)
Prosecutor v. Tadić and Prosecutor v. Blaškić, and notes, *in* Van Schaack *et al*, Int'l Criminal Law and its Enforcement 221-34
Orentlicher, Internationalizing Civil War, in Cooper, War Crimes 154-158
CoW 58 (Belligerent Status), 101-2 (Civil War), 115-6 (Combatant Status), 205-7 (Guerillas), 316-7 (Perfidy and Treachery), 103 (Civilian Immunity), 104-6

(Civilians, Illegal Targeting), 107 (Collateral Damage), 234-5 (Immunity from Attack)

For the readings on crimes against humanity, consider the problems or possibilities created by the relative inexactitude of these crimes and their customary law origins – in particular with regard to the shifting law concerning the requirement of a nexus to armed conflict (Kupreškić).

When reading about war crimes and the Tadić and Blaškić cases, pay attention to the bases for determining whether a conflict is international – why should this matter, and what does the move towards eliding this distinction indicate about ICL as a project?

What interactions are there between war crimes and crimes against humanity? What advantages and disadvantages does their overlap confer on different parties? Note also the textual development of the definitions from the ad hoc tribunals to the ICC.

II. Fundamental Principles – Substantive Crimes

6. New and Disputed Categories: Aggression, Sexual Violence

aggression – definition and politics; sexual crimes – novel responses in existing doctrine

A. *Aggression*. Read:
ICLP 262-79
CoW 28-9 (Act of War), 37-8 (Aggression), 137 (Crimes against Peace), 227-30 (Humanitarian Intervention), 276 (Just and Unjust War), 367-8 (Sanctions), 366 (Safety Zones)
de Gurmendi, The Working Group on Aggression at the ICC, Fordham Int'l L. J. (2001) at 589-605
Definitions of Aggression, *in* Van Schaack *et al*, Int'l Criminal Law and its Enforcement 345-52

B. *Sexual Violence*. Read:
CoW 369-73 (Sexual Violence), 373-6 (Enslavement), 376-7 (Systematic Rape)
ICLP 208-13
Sellers, Rape under International Law, in Cooper, War Crimes 159-166
Goldstone and Dehon, Engendering Accountability 5-23, 28-31
Waters, Unexploded Bomb, NYU J. Int'l L. & Pol. 1075-1080
Prosecutor v. Musema § 220-229 *in* Paust, *et al*, International Criminal Law 913-915

C. *Other Crimes*. Read:
CoW 396-9 (Terrorism), 138-40 (Cultural Property), 172-3 (Environmental Warfare), 174 (Kuwaiti Oil Wells), 216-7 (Health Care System)
ICLP 281-94

We will consider categories of international crime that are contested or recently developed, and what this novelty indicates about the sourcing and legitimacy of ICL. We will consider the question of why

certain international crimes have been afforded greater priority – why have certain kinds of disapproved activity not *been made the subject of ICL?*

What makes aggression different from other international crimes? Why has aggression proved difficult to define? Which, if any recent wars have constituted aggression? Look at the proposed definitions – what perspectives and agendas do they represent? Which do you prefer? What problems might you anticipate with them?

Jurisprudence addressing sexual violence is relatively recent. For these readings, consider how the felt imperative of addressing sexual violence responded to existing doctrinal limitations. What was the interaction between adjudication, institutions, and politics on sexual violence issues?

II. Fundamental Principles – General Adjudicative Concepts

7. Liability and its Limits: Individual Criminal Responsibility, Modes of Offense; Defenses, Excuses, Procedural Standards

individual criminal responsibility; mens rea; modes of offense – special problems of mass violence; superior responsibility; attempt; defenses, excuses – superior orders and duress; procedural standards: adversary vs. investigative models – fairness, outcomes, priorities

A. *Individual Criminal Responsibility*. Read:
ICLP 301-4, 318-20
Nuremberg Principles and report of the Secretary General re ICTY, *in* Paust *et al*, International Criminal Law 28-30
Finta case, *in* Paust, *et al*, International Criminal Law 892-904
CoW 427-8 (Willful Killing), 429 (Willfulness)

B. *Modes of Offense*. Read:
ICLP 312-8, 320-30
CoW 117-8 (Command Responsibility), 84-5 (Carpet Bombing)
Lael, The Yamashita Precedent 79-95

C. *Defenses, Excuses, Procedural Standards*. Read:
ICLP 331-3, 338-46, 348, 349-57
Rome Statute of ICC, General Principles, Art. 22-33 (3 pages)(*reference*)
CoW 297-8 (Military Necessity), 341 (Proportionality)
Bakker, The Defense of Obedience to Superior Orders: The Mens Rea Requirement, in Kritz, Transitional Justice 441-450, 450-455 (*skim*)
Prosecutor v. Erdemović, Joint Separate Opinion of Judge McDonald and Judge Vohrah (excerpts) 1-19, 26-34

For A and B: *The substantive crimes of ICL take place in situations of mass violence, but its processes focus on individuals; why is this? Consider how this dichotomy affects adjudicative and interpretative strategies – what is gained by this, and what is foregone? How consistent is this individual focus with other priorities for ICL, such as creating definitive narratives or a sense of justice for victims? Consider problems raised by mens rea (Finta) – are they the same as in domestic*

law? – and by command responsibility: military chains of command present a special problem – how does individual responsibility change when one is ordering rather than acting (Yamashita)?

For C: *Consider what limits ICL places on liability: how do they differ from domestic, common law standards? When reading about procedure, consider how (if) the wartime context and ICL's novelty affect its process commitments. How important are outcomes to the integrity of the ICL project – and which outcomes? Also, why has have international tribunals adopted a predominantly adversarial model, and what effects might this have on its truth-seeking functions or its legitimacy?*

Read the Erdemović case with an eye both to the substantive rules on duress and how the Court deals with differences between common law and civil law systems – what effect did these have on issues of duress or the guilty plea?

III. Tribunals – Politics, Institutional Identities, Effects

8. *ad hoc* Tribunals – the ICTY and ICTR

disputes over founding, purposes; interrelationship with state actors; case studies: Milosevic – Kosovo/NATO, Barayagwiza

Read:
CoW 66-72 (Bosnia)(*reference*), 72-4 (Yugoslav War Crimes Tribunal), 284-6 (Mass Graves)(*reference*), 291-3 (Medico-Legal Investigations)
ICLP 102-17
Ratner and Abrams, Accountability for Human Rights Atrocities 201-206
Taylor, Tribunal Law Made Simple (survey of ICTY)(4 pages)(*reference*)
Kittichaisaree, International Criminal Law 26-27
Williams and Scharf, Peace with Justice? 91-101, 109-135
NATO-Kosovo readings, *in* Van Schaack *et al*, Int'l Criminal Law and its Enforcement 256-68
Prosecutor v. Barayagwiza, Judgment (Appeals) 1-17 (*main points*)
Prosecutor v. Barayagwiza, Separate Declarations of Nieto-Navia and Vohrah (in full) and Shahabuddeen (excerpts) 1-7, 24-27

Your main focus should be on Williams-Scharf, NATO-Kosovo and Barayagwiza. What calculations and aspirations contributed to the creation of the tribunals as they exist (here consider the Williams-Scharf readings through 112 and Ratner-Abrams)? What political and institutional pressures and incentives have the two tribunals faced and how have they responded? What other actors have played a role in defining the course of ICL? Read Williams-Scharf (latter sections), NATO-Kosovo and Barayagwiza to reflect on how independent ICL is, or can be: what balance does it strike between outcomes and process? (Should NATO have been investigated? What would an actual indictment have meant for the Tribunal?) Are they any aspects of the process that are particularly vulnerable or resistant to political pressure? (Note: Why was Barayagwiza really being reviewed? What are the 'new facts'?)

The CoW readings are principally to familiarize yourself with the political context of the conflicts and the politics surrounding the role of ICL in those conflicts.

III. Tribunals – Politics, Institutional Identities, Effects

9. A Permanent Court – the ICC

prospects, powers, aspirations, limitations of ICC – prosecutorial discretion and complementarity; case study Uganda; the US-ICC controversy

Read:

Rome Statute of the ICC (extract) and Prefatory Note, *in* Roberts and Guelff, Documents on the Law of War 667-671 (*read*), 671-3 and 680-92 (*reference*)
WCRO, ICC Chronology (5 pages)(*reference*)
Brown, The Statute of the ICC: Past, Present and Future 1-13, 38-42
ICLP 119-47, 63-4, 412-3
Office of the Prosecutor, Paper on some policy issues 1-9
Goldstone and Fritz, 'In the Interests of Justice' 655-667
Goldsmith, The Self-Defeating ICC, Univ. Chicago L. Rev. (8 pages)
Statement by Chief Prosecutor on Uganda Arrest Warrants (8 pages)
ICC OTP, The Investigation in Northern Uganda (8 pages)(*reference*)
Human Rights Watch, ICC Takes Decisive Step for Justice in Uganda (2 pages)
BBC, Uganda Rebels on Historic Visit, in Global, BBC (2 pages)
Egadu, Kony Rejects Talks Deadline, IWPR (2 pages)
ICC, First appearance of Mathieu Ngudjolo Chui, press release (2 pages)
ICC, Statement by the OTP following transfer of Ngudjolo Chui (3 pages)
Prosecutor v. Katanga, Prosecution's Response to Defence Document in Support of Appeal Against 'Decision on the Defence Request Concerning Languages' (14 pages)(*skim*)
ICC, OTP statement in relation to events in Kenya (1 page)
CoW 126-31 (Congo), 146-51 (Darfur)

This week we consider the permanent ICC. What goals are achieved or issues raised by its permanent nature? What compromises have been structured into its powers (Brown)? Why is the US opposed to the ICC? Read ICLP and the OTP policy paper regarding the relationship of states (and their courts) to the ICC; why has complementarity been made the standard for this court?

Much ink has been spilled on the powers of the prosecutor and how to properly define or limit them. As you read Brown, Goldstone-Fritz and Goldsmith, consider whether this is a powerful or weak prosecutor. What changes would you have to make to increase the court's effectiveness – and at what costs? We will look at the Uganda (and Congo) cases for evidence of the ICC's jurisprudence in operation. Read—skim—the Katanga document with an eye towards the process and 'start-up' obstacles a new court faces; how do the parties exploit the court's new and untested position? (This document is also a good example of how cases are argued.) Finally, what do you make of the Prosecutor's statement about Kenya? Do you notice any patterns in the situations the ICC follows?

III. Tribunals – Politics, Institutional Identities, Effects

10. Hybrid Court – Sierra Leone

politics of mixed courts; problems of amnesty and extradition – Charles Taylor; relationship to truth commissions; outreach, assessment and completion strategies

A. *The SCSL*. Read:
Sierra Leone background information and map (2 pages)
ICLP 149-53
CoW 95-8 (Child Soldiers), 99 (Children as Killers)
Statute of the Special Court for Sierra Leone (12 pages)(*reference*)
HRW, Justice in Motion 1-11, 14-19, 20-24, 27-39
Wetin Na Di Speshal Kot? The Special Court Made Simple (31 pages)(*reference, skim*)
Sankoh, Special Court Rules It Has Jurisdiction to Try Indictees (1 page)
Stephens, Forced Marriage Pursued as Crime in S.L. Tribunal Cases (1 page)
Adongo, Taking Stock of Sierra Leone's Truth Commission (2 pages)
Nichols, Truth Challenges Justice in Freetown, Wash. Times (3 pages)
Completion Strategy (16 pages)(*main points only*)
$10 Million for Sierra Leone Special Court, Far Short (2 pages)
HRW, Funding Needed for the Special Court (1 page)
ICLP 153-63 (*reference*)

B. *Charles Taylor in The Hague*. Read:
ICLP 441-4
Special Court Requests Expanded Mandate (1 page)
Kabbah Endorses Taylor's Asylum, The Analyst (1 page)
Security Council Resolution 1638 (1 page)
HRW, Prompt Action to Ensure Taylor's Surrender Needed (2 pages)
Security Council Resolution 1688 (3 pages)
HRW, Trying Charles Taylor in The Hague: Making Justice Accessible to Those Most Affected 1-12
Pailey, Even Former Warlords Deserve a Fair Trial, Pambazuka (3 pages)
Mwaura, Can Africa's Most Notorious Warlord Get a Fair Trial, Nation (2 pages)
Rights Group Joins Prosecutor: More Funding for Taylor Trial, China Post (2 pages)

This week we examine one of the hybrid courts that incorporate both international and domestic aspects. When are such solutions preferable? What advantages and disadvantages do they present (for conflict resolution, reconciliation, adjudication)? What compromises do they involve for ICL?

One of the SLSC's claimed attractions has been its cheap and efficient operation. How successful has this approach been? How replicable? What problems does it raise? HRW's 'Justice in Motion' report discusses witness protection, outreach, and legacy, while the 'Court Made Simple' pamphlet is part of the SCSL's outreach program. What purposes does outreach have? What are its limits? How much should the core ICL model respond to local circumstances, logistics, security and culture?

A protracted concern of the Sierra Leone court has been the indictment and extradition of Charles Taylor. What problems do amnesties and extradition from third countries raise for ICL and reconciliation? Why is he being tried in The Hague?

IV. Special Topics

11. Universal and National Jurisdiction; Problems of Collective Responsibility

rationale, elements, sources; choice of international or domestic prosecution; problems of politics and immunity – Yerodia Ndombasi, Pinochet, Eichmann; principles of individual responsibility; collective responsibility at Nuremberg; joint criminal enterprise

A. *Jurisdiction.* Read:
ICLP 44-53, 54-63, 64-70, 404-8, 417-21, 422-41
Princeton Principles and commentary 28-55
CoW 274 (Universal Jurisdiction)
Bassiouni, Universal Jurisdiction for International Crimes, Va. J. Int'l L. 89-99
Letter of from Argentina to Security Council (Eichmann) and commentary (3 pages)
Ex Parte Pinochet, in Paust et al 34-37
Ex Parte Pinochet, in Damrosch et al 1139-1142
Yerodia Ndombasi (ICJ, Congo v.Belgium)(Summary of judgement, separate opinon of Guillaume, and dissent of Van den Wyngaert) 1-11, 15-18

B. *Collective Responsibility.* Read:
ICLP 304-9
CoW 108-9 (Collective Punishment)
Danner and Martinez, Guilty Associations 1-5, 10-21, 26-39, 42-43
Drumbl, Atrocity, Punishment, and International Law 23-41
Prosecutor v. Milutinovic et al, Decision (Ojdanić Motion) 1-5, 6-18
General Prosecutor v. Sarmento et al (East Timor Trans. Administration)(2 pages)
Prosecutor v. Gbao (Sierra Leone)(2 pages)

For A: *Much of ICL has been developed and advanced at the national level, and universal jurisdiction looks to national courts to apply ICL with a more ambitious scope. What problems are presented by allowing any state to pursue ICL? What opportunities or goals can be better realized by a universal jurisdiction approach? What crimes should be covered by universal jurisdiction, and how do we decide? (For that matter, consider where these principles come from: what law-creating function do projects like the Princeton Principles have? How do universal jurisdiction principles interaction with international institutions like the ICC – complementary? competitive?*

Who should be the targets of universal jurisdiction – low-level perpetrators or leaders? Many of the most important cases have dealt with the latter: read Eichmann, Pinochet and Yerodia Ndombasi to consider how courts have dealt with the concerns of morality, politics, and international law. Would the problems be different if universal jurisdiction were applied against low-level perpetrators?

For B: *ICL focuses strongly on individual criminal responsibility, and indeed bases much of its normative legitimacy precisely on the claim that in punishing individuals it avoids assigning collective responsibility. How then does it deal with complex offenses, especially in the context of wartime when criminal activities are often coordinated and responsibility diffused among many actors. What effects on truth-telling does a court's approach to individual or collective responsibility have?*

We will focus on Danner-Martinez and the Ojdanić Motion decision. What do you think of Danner-Martinez's doctrinal proposals? Will they resolve underlying tensions concerning the individual focus of ICL (Drumbl)? How did the court deal with these concerns in Ojdanić? What

relationship does JCE have to command responsibility? (Sarmento and Gbao are for your reference, to see the form employed and consider what issues might arise concerning collective responsibility.)

V. Special Topics

12. International Criminal Law and its Alternatives

truth commissions, amnesties, transitional justice, symbolism; value and values of ICL

ICLP 30-6, 393-7, 400, 446-55
Minow and Strom, The Lessons of Nuremberg, Boston Globe (2 pages)
Teitel, Bringing the Messiah through the Law, in Hesse and Post, eds, Human Rights in Political Transitions 177-190
Vizvary, Unexploded Bomb, NYU JILP 1151-1131 (*main text only*)
Huyse, Justice after Transitions: On the Choices Successor Elites Make, *in* Kritz, Transitional Justice 104-115
Brody, Justice: The First Casualty of Truth?, The Nation (6 pages)
Albon, Truth and Justice: The Delicate Balance, *in* Kritz, Transitional Justice 290-291
Steiner and Alston, International Human Rights in Context (truth commissions 1217-1226
Readings on transitional justice, lustration (6 pages)
CoW 415-6 (Rights of Victims)
Human Rights Watch, Policy Statement on Accountability, *in* Kritz, Transitional Justice 217-218
Amnesty International, Policy Statement on Impunity, *in* Kritz, Transitional Justice 219-221
Smith, The 'Tribunal Movement' Holds Court in Istanbul, Truthout (2 pages)

In summing up, we consider the value and values of ICL and some alternative approaches to human rights violations and mass violence. We first consider, with Teitel and Waters, what values ICL can and should achieve. How successful has it been? What are its prospects?

Then we turn to alternatives: Which methods – truth commissions, reparations, lustration, amnesties, etc. – are appropriate in which circumstances? With Huyse in mind, what structural or political factors define the choice of responses and its potential scope? Finally, what is the role and value of symbolism in this? Are any methods inherently at odds with each other, or can they jointly contribute? And to what end – what is the purpose of post hoc responses to rights violations and mass violence: is it justice? reconciliation? stability? peace?