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Fall 2019

Religion, Law and War

Catherine Tinker

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SETON HALL UNIVERSITY
SCHOOL OF DIPLOMACY AND INTERNATIONAL RELATIONS
AND CORE COURSE

DIPL/CORE 3851 - RELIGION, LAW AND WAR

MONDAYS: 2:00 pm - 4:15 pm Section AA, Stafford Hall, SH07

DR. CATHERINE TINKER, JD, JSD
McQuaid Hall 101C; catherine.tinker@shu.edu

SYLLABUS August 26, 2019 (initial; may be revised)

This course will examine the relationship of the terms *religion*, *law* and *war* and how political and legal philosophers have understood these terms in different centuries, continents and contexts. As both a CORE course and a DIPLOMACY course, students from different backgrounds will be encouraged to learn from one another. Students will become more aware of their own perspectives and come to understand others through an exploration of the teachings of different world religions on war, peace, and law. The development of laws of war and humanitarian law in international armed conflicts, individual criminal responsibility for war crimes, crimes against humanity and genocide and collective responses to aggression will be studied and discussed.

The course will encourage students to engage in a process of critical response to and logical, objective analysis of traditional concepts of the international laws of war and humanitarian law. By the end of the course, through readings, written assignments, and an in-class simulation of a United Nations negotiation in an actual conflict situation, students will understand how doctrines of law and religion apply to war and violent political events, and how the international legal system can contribute to the quest for peace.

The course will involve an analysis of original documents like the UN Charter, Pope Francis' encyclical *Laudato Si, On Care for Our Common Home*, the Universal Declaration of Human Rights, and portions of certain treaties. peace and respect for humanitarian law. In addition, students will read selections from books and articles on the history of the Crusades and aspects of war, peace, and respect for humanitarian law as described in the class schedule below.

OFFICE HOURS: McQuaid Hall, Mondays from 4:15 pm to 5:15 p.m. by appointment – please request and confirm by email to catherine.tinker@shu.edu.

STUDENT LEARNING OUTCOMES:

By the end of the semester, students should have acquired knowledge and understanding of the relationships among religion, law and war, and the development of modern international laws of war and humanitarian law. By exploring the long history and origins of these concepts, students

should be prepared to analyze the difficulties in addressing and defining various religious and legal bases for acts of war -- or their prohibition -- as understood and applied today. Students will examine and expand their own perceptions related to religion, law, and war through assigned readings and class discussions, small group presentations throughout the semester, and participation in a simulation exercise in class with other students, developing the skills to synthesize information, analyze complex situations and unfamiliar points of view, and share knowledge and feedback.

COURSE OBJECTIVES:

This course will focus on how religious, philosophical and political perspectives in different times and places have developed into current international laws of war and humanitarian law governing international armed conflicts between nation-states. Collective and individual criminal responsibility for war crimes, crimes against humanity, genocide and crimes of aggression will be examined, along with the international institutions and courts created over the last century to address such crimes and preserve peace. The applicability of this body of law to non-state actors, including terrorist groups, or to internal conflicts within a sovereign state, will be explored.

The course will focus on three major religious traditions (primarily Judaism, Christianity and Islam) with references to Buddhism and Hinduism or other religions selected by students in the class, and examine particular historical episodes of religious conflict, notably the early Islamic wars of expansion, the Christian Crusades, and the Protestant Reformation. The UN Security Council and member state actions after Iraq's invasion of Kuwait in 1990-1991 and the US return to Iraq in 2003 will be explored in an in-class simulation exercise. Contemporary threats to the peace and new challenges posed by cyberwarfare and violence by groups claiming to act on the basis of religion may be discussed. Students will seek an understanding of the complexities and challenges of the relationship of religion, law and war around the world, and the guidance provided by modern international laws of war and multilateral institutions.

COURSE REQUIREMENTS:

This course will include several requirements, more fully described below:

- (a) Completing assigned readings before class; participating in and leading class discussions;
- (b) Contributing your own personal initial statement about the relationship among religion, law and war in the first class, and contributing to a class statement on the last day of class.
- (c) Taking a mid-term exam in class on October 21st; and
- (d) Participating in an in-class simulation exercise on both November 18th and November 25th; submitting a 2-page position paper due October 28th in advance of the in-class exercise about your role; and submitting a 4-6 page analysis after the exercise due no later than December 3rd evaluating how your role fit into the simulation and assessing your personal experience of the simulation exercise.

Class participation and the personal and group statements together will be worth 20% on a "complete/incomplete" basis to be used in computing your final grade up or down with a benefit for quality of contributions and a subtraction for late submissions; the midterm exam will be worth

40%; and the in-class exercise (with three elements: participation, the 2-page position paper and particularly grading on the 4-6 page analysis paper) will be worth 40% of the final grade. Failure to complete each assignment on time will be reflected in the grade. **No incompletes will be given except for medical or other serious emergency with notice. There is no make-up for the in-class exercise; all students must participate in order to receive full credit and grade.**

DETAILS OF COURSE REQUIREMENTS:

- (a) **READINGS AND PARTICIPATION:** Class attendance and participation are a required part of the course, and will be considered in determining your grade. I will expect you to read the assigned readings before class and to be prepared to discuss them in class. I will feel free to call on you to contribute even if you have not raised your hand. You are expected to answer. After the first few classes, I may select several students to lead discussion in each class. Some participation may be assigned through Blackboard “Discussion Groups” instead of in-class discussion on selected dates and topics.
1. **PERSONAL AND CLASS STATEMENTS:** You will write an initial statement in class on the first day about your personal view of the relationship among religion, law and war. Throughout the course, you will keep a personal journal of your thoughts on the subject as we progress through the readings.
 2. **A CLASS STATEMENT** will be drafted, discussed and produced in the last class on May 2nd and may be posted on Blackboard as a group outcome document. If you are absent and/or do not contribute to this group process, no credit will be given for that part of the assignment.
 3. **SMALL GROUP PRESENTATION** on the teachings of different religions around the world regarding war, peace and law (sign up in class on Sept. 9, 2019)
- (b) **MIDTERM EXAM:** You will take an in-class mid-term exam on **October 21, 2019.**
- (c) **IN-CLASS EXERCISE:** **Please be prepared to participate in the exercise scheduled for class on Nov. 18th and Nov. 25th** and participate in preparations during the previous weeks with your classmates in your roles; please plan your schedule accordingly to be sure to participate on both of these dates in class. Make-ups are not feasible for the two days of the in-class group exercise. Roles will be assigned in class on September 30th, and you should meet in small groups or bilaterally outside of the class hours with other students. **Your final analysis paper is due no later than December 3rd through Blackboard. You may submit the paper any time after Nov. 25th. Please bring a paper copy to class on December 2nd if possible as a courtesy for the professor. There are 3 elements to this assignment:**
1. **By October 28th by midnight through Blackboard** you will submit a two-page individual paper identifying your initial position on the issues from the perspective of your assigned role; this position paper will outline your expected allies and opponents, and your goals for the results of the Security Council meetings on the subjects and steps in the designated resolutions (SC RES 660, 661, 678, 687, and 1441). You are free to propose or consider additional or different resolutions. Please bring a paper copy to class.

2. In class on **November 18th and November 25th** you will participate in the simulated SC meetings (75 minutes for RES 660-678 and 45 min. on SC RES 687, with additional time for caucusing (hallway discussions or small group consultations) with other states, upon request to the President of the SC. In class on November 25th you will participate in a simulated SC meeting on SC RES 1441, with 15-30 minutes for caucusing. UN Secretary-General Tinker will offer comments and begin a discussion of the situation in Syria and Yemen or other conflict situations today. Will the Security Council take action in these circumstances? Can it? You can illustrate your conclusions by references to the readings and discussions through the semester and the student presentations on specific religions' teachings on war and peace.
3. **By December 3rd at midnight at the latest, your analysis paper of the exercise and your role in it is due through Blackboard; also bring a printout of your paper to class on December 2nd if possible as a courtesy for the professor.** This analysis paper will be a 4-6 page double-spaced paper *expanding* your initial two page summary of your role, *describing* your strategy and anticipated goals during the in-class simulation exercise; your interaction with students in other roles (in caucus or in preparatory negotiations, allies or coalitions you formed or joined to advance your position, etc.); and *analyzing* the results of your proposals or strategies. The majority of this paper will address the process and outcome from the point of view of your role. At the end, please offer personal comments on the process and experience of the simulation, and any suggestions for a similar exercise in the future in other classes.

REQUIRED READING:

Jonathan Riley-Smith, *The Crusades, Christianity, and Islam*, New York: Columbia University Press, 2011. Copy on reserve in the Walsh Library under Prof. Tinker's name and course #.

Pope Francis, *Laudato Si, On Care for Our Common Home*, 2015. (encyclical letter), available online, http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf.

Lt. Col. Reeves and David Lai, "A Broad Overview of the Law of Armed Conflict in the Age of Terror," available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2375935. *Crossing the Divide: Dialogue Among Civilizations*, South Orange, NJ: SHU, 2001 (on reserve).

GOOD BACKGROUND READING MAY BE FOUND IN THE FOLLOWING:

David Bederman, *International Law Frameworks*, 3rd ed. 2010 or 4th ed. 2016, New York: Foundation Press, 2010, as introduction to public international concepts; certain chapters may be recommended by the professor through the course and the final chapter is assigned (on reserve). Jessica Stern and J.M. Berger, *ISIS: The State of Terror*, New York: Ecco/Harper Collins, 2015, skim selected pages to be assigned.

ADDITIONAL READING:

Charlotte Ku and Paul F. Diehl, eds., *International Law: Classic and Contemporary Readings*, 3d ed., Lynne Rienner, Boulder, CO, 2008.

Michael Wolzer, *Just and Unjust Wars, a Moral Argument with Illustrations*. Basic Books, 1977; 5th ed. 2015.

Oona A. Hathaway and Scott J. Shapiro, *The Internationalists, How a Radical Plan to Outlaw War Remade the World*, Simon and Shuster, 2017; and Philippe Sands, *East West Street, On the Origins of "Genocide" and "Crimes against Humanity,"* Knopf, 2016.

Robert Serry, *The Endless Quest for Israeli-Palestine Peace: A Reflection from No Man's Land*, Switzerland: Palgrave Macmillan Springer, 2017.

Jessica Stern, *Terror in the Name of God: Why Religious Militants Kill*, New York: HarperCollins, 2003.

J.I. Coffey and Charles T. Mathewes, eds., *Religion, Law and the Role of Force: A Study of Their Influence on Conflict and on Conflict Resolution*, Ardsley, NY: Transnational Publishers, 2002.

Popovski, Reichber and Turner, *World Religions and Norms of War*, Tokyo: UNU Press, 2009

CLASS SCHEDULE:

AUGUST 26th: INTRODUCTION TO COURSE:

Introduction and review of syllabus, readings, and assignments with Prof. Catherine Tinker.

Guest: Professor Gabriela Lima Moraes, Universidade da Brasilia Law School.

Write personal statement on the meaning to you of the course and title: religion, law & war.

SEPTEMBER 2nd: NO CLASS, LABOR DAY HOLIDAY

SEPTEMBER 9th: HISTORY OF RELIGION, LAW AND WAR: JUDAISM AND PEACE

Read The Roman Empire Treaty between the Jews and the Romans, 74 CE.

Read the Kellogg-Briand Pact of 1928; the Holocaust and the creation of the state of Israel.

Read the United Nations Charter, Preamble, Articles 1 and 2. Universal Declaration of Human Rights -- 20th Century documents designed to end war and achieve international peace and cooperation. Lecture and discussion.

Read Jonathan Riley-Smith, *The Crusades, Christianity, and Islam*, "Introduction," pp. 1-7.

Student small group presentation on Judaism.

SEPTEMBER 16th: HISTORY OF RELIGION AND WAR: THE ISLAMIC CRUSADES. RELIGION, TERRITORY, CONQUEST, AND CIVILIZATION.

Read Jonathan Riley-Smith, *The Crusades, Christianity, and Islam*, Chapter 4, "Crusading and Islam," pp. 63-78.

Timeline and maps; history, geography and culture; "Al-Andalus" in Cordoba, Spain, a beacon of peace, tolerance and learning; translation of Greek and Roman texts; Arabic, Latin and vernacular European languages, ending with the Inquisition.

Student small group presentation on Islam.

SEPTEMBER 23rd: HISTORY OF RELIGION AND WAR: END OF THE DARK AGES AND THE MIDDLE AGES IN EUROPE - CRUSADES AND CHRISTIANITY; THE INQUISITION AND THE PROTESTANT REFORMATION.

Read Jonathan Riley-Smith, *The Crusades, Christianity, and Islam*, Chapter 1, "Crusades as Christian Holy Wars," pp. 9-27. St. Augustine and "right intention;" moral theology of violence; legitimacy of war. "Just war" theory and *jus ad bellum*
Student small group presentation on Christianity.

SEPTEMBER 30th: THE INTERNATIONAL LAWS OF WAR. 17th century Europe; Grotius, *On the Law of War and Peace*, 1625. The sovereign state and the significance of the Peace of Westphalia. **Skim** Jonathan Riley-Smith, *The Crusades, Christianity, and Islam*, Ch. 3, "Crusading and Imperialism," pp. 45-61. **Read** U.N. Charter, Chapter VII on collective security. **Read** article by Lt. Col. Shane Reeves and David Lai, "A Broad Overview of the Law of Armed Conflict in the Age of Terror," https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2375935.
Discussion of in-class exercise and assignment of roles for November 18 & 25, 2019.

**SEPTEMBER 30 - OCTOBER 1st SHU PEACE CONFERENCE,
"Materium Pacis: Just Peacemaking through Nonviolence."**

The conference will feature a keynote by Cardinal Turkson from Ghana, the top Vatican official for issues of peace and justice.
Students need to pre-register. Attendance is voluntary but relevant and important for all.
Please plan to attend.

OCTOBER 7th: HUMANITARIAN LAW and *jus in bellum*. **Read** U.N. Charter, Chapter VII on collective security. **Read** article by Lt. Col. Shane Reeves and David Lai, "A Broad Overview of the Law of Armed Conflict in the Age of Terror," available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2375935. (same as Sept. 30th)
Responses to atrocities in the Crimean War and the founding of the Red Cross and Red Crescent, the Hague Peace Conferences and the Hague Conventions; response to atrocities in World War I and the Geneva Conventions; subsequent protocols. Rules for combatants, non-combatants, civilians, and unlawful belligerents.
Student small group presentation discussing Cardinal Turkson's address and Peace Conference.

[**OCTOBER 10th:** International Law Association (ILA) International Law Weekend at the NYC Bar Association, panel discussion and reception, 6:00-8:30 pm with Dr. Tinker. Free admission, but need to inform Dr. Tinker if you are coming to be on the guest list. Voluntary participation.]

OCTOBER 14th: NO CLASS: FALL BREAK

OCTOBER 21st: MIDTERM EXAMINATION IN CLASS.

OCTOBER 28th: INDIVIDUAL INTERNATIONAL CRIMINAL RESPONSIBILITY for war crimes, crimes against humanity, genocide and crimes of aggression. Morality, ethics & law. The Nuremberg Trials; special war crimes tribunals (ICTY, Rwanda, Cambodia); the International Criminal Court. **Read** the Rome Treaty of the ICC, Preamble and Articles 1-10, 14,

available at https://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf.

Student small group presentation on recent violent conflicts based on religious differences, such as the Hutus and Tutsis in Rwanda; Rohingya in Myanmar; Hindus and Muslims in Kashmir; Uighars in China; or other situations around the world; accountability under international law?

INITIAL POSITION PAPERS DUE BASED ON ASSIGNED ROLES FOR THE NOVEMBER 18th and 25th IN-CLASS SIMULATION EXERCISE; SUBMIT THROUGH BLACKBOARD BY MIDNIGHT ON OCT. 28th AND BRING A PAPER COPY TO CLASS OCTOBER 28th.

NOVEMBER 4th: ADDRESSING ROOT CAUSES OF CONFLICT AND THE ROLE OF RELIGIOUS VALUES AND SPIRITUALITY; NATURE AND FAITH: Read the Universal Declaration of Human Rights, the UN Covenant on Economic, Social and Cultural Rights and Covenant on Civil and Political Rights, and the UN's 2030 Agenda for Sustainable Development. Read a theology of nature in the encyclical letter by Pope Francis, *Laudato Si, On Care for Our Common Home*, http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf.

Basic human rights and faith, preservation of natural resources and benefit-sharing, and the relation to religious teachings and *jus cogens* norms (natural law), morality and spirituality. Student presentation on _____ (choice of religion to be confirmed—Hinduism?)

NOVEMBER 11th: POSSIBILITIES OF UNDERSTANDING COMMONALITIES AND RESPECTING DIFFERENCES. Read *Crossing the Divide: Dialogue Among Civilizations* (2001), selected pages to be assigned. Analysis of the message and its relevance today. Discussion of procedures for the in-class simulation for Nov. 18th and 25th. Information will be posted on Blackboard under "assignments" with more details and guidelines. Student presentations on _____ (choice of religion to be confirmed: Buddhism?)

NOVEMBER 18th: IN-CLASS EXERCISE during class period.

Simulation of meeting of UN Security Council on collective security and use of force in Iraq in 1990-1991. Discussion/adoption of UN SC RES. 660, 661 and 678 (1990) by students in assigned roles during the in-class simulation of a Security Council meeting.

NOVEMBER 25th: IN-CLASS EXERCISE CONTINUED during class period: Discussion/adoption of UN Security Council Resolution SC RES. 687 (1991) and RES. 1441 (2003) by students in assigned roles. Discussion of international law, the role of religious divisions (such as Shiite and Sunni) in relation to war and the use of force in Iraq, Yemen and Syria, 2019.

DECEMBER 2nd: TERRORISM, CYBERWARFARE, AND CIVIL CONFLICT: RELIGIOUS DIMENSIONS? COLLECTIVE RESPONSES? ISIS and the Caliphate, Al Qaeda, Boku Haram, and other non-state actors challenging the traditional structure of the laws of war and *jus cogens* principles applicable to nation-states. Do the laws of war and humanitarian law apply to these groups or individuals? Do they follow the laws of war and humanitarian law? **Skim**

selected pages (to be assigned) including glossary in Jessica Stern and J.M. Berger, *ISIS: The State of Terror*, Harper Collins, 2015; skip introduction to the book. **Read** Jonathan Riley-Smith, *The Crusades, Christianity, and Islam*, Chapter 2, "Crusades as Christian Penitential Wars," pp. 29-44 **Read** Bederman, *International Law Frameworks*, pp. 331-338 ("Current Challenges").

INDIVIDUAL ANALYSIS PAPERS DUE THROUGH BLACKBOARD NO LATER THAN TUESDAY, DEC. 3rd AT MIDNIGHT, with paper copy for professor in class on Dec. 2nd if possible as a courtesy.

DECEMBER 9th: LAST CLASS. Disarmament and peaceful change led by religious groups; effect and morality of sanctions and trade embargoes. Ending corruption and civil unrest and the rule of law (SDG 16). Economic, social and environmental goals. Read the Preamble to the UN 2030 Sustainable Development Agenda and the 17 SDGs with the goals and targets, available at <https://sustainabledevelopment.un.org>. See especially SDG 16 on institutions and peaceful societies. Students will lead discussions for selected topics. Development of a class statement on religion, law and war by the close of class today based on class drafting and consensus adoption.

GRADING:

1. 40% of the final grade will be based on the midterm exam in class on **Monday, October 21st**. The exam will cover the material studied by this point in the course in the lectures, readings and class discussions, and presentations, and will count as 40% of the final grade. There will be ten true-false questions, five multiple choice questions, and two short essay questions.
2. 20% of the final grade (on a plus or minus basis which can raise or lower your final grade) will be based on class participation in the discussion of the readings and lectures; student small group presentations in class on the values and teachings of various religions on laws of war and peace; and other contributions to class learning.
3. 40% of the final grade will be based on the in-class exercise, which has three elements: a position paper outlining the issues and strategy by your role due on **October 28th**; discussion and negotiations in your assigned role both before and during the in-class exercise on **November 18th and November 25th**; and *primarily* the final analysis paper due **no later than December 3rd at midnight** with your analysis from the point of view of your role in the simulation, the process and results, with your personal comments on the simulation experience. Details follow here:
 - a. **A position paper** of 2 pages typed, double-spaced, 12-point font, one inch margins, in preparation for the in-class exercise about your assigned role is due **October 28th through Blackboard**.
 - b. **November 18th and November 25th** the simulation will be held during regular class time. Participation is mandatory; there is no possibility of a "make-up" for the in-class exercise. Absence from class on either November 18th or November 25th without

notification to the professor and approval of the circumstances will result in loss of full credit for this assignment, and the student's total grade will be lowered accordingly.

- c. **A final analysis paper** of 4-6 pages typed, double-spaced, 12-point font, one inch margins, after the in-class exercise to be prepared individually is **due no later than midnight December 3, 2019 at midnight through Blackboard**. Final analysis papers may be submitted through Blackboard at any time after November 25th.

The grade for this exercise (40% of the final grade) will primarily be based on the final analysis paper, which in turn reflects your work on the initial position paper and your participation in your role in the two days of the in-class simulation. Papers submitted after the deadline will receive a lower grade than they otherwise would have received; papers submitted more than forty-eight hours late will not be read at all and no credit will be given for them.

The SHU grading scale will be used for the final grade, as follows: 93 AND ABOVE = A; 90-92 = A-; 87-89 = B+; 83-86 = B; 80-82 = B-; 77-79 = C+; 73-76 = C; 70 -72 = C-; 67 – 69 = D+; 63 – 66 = D; 60 – 62 = D-; BELOW 60 = F.

SETON HALL UNIVERSITY POLICIES ARE POSTED ON BLACKBOARD