Law, Crisis, and International Order: *The Problem of Judgement in Political History*

Full Year | Upper Level Seminar

I. Course Description & Objectives

This full-year advanced undergraduate seminar investigates the primary political and philosophical question of international law: *Quis judicabit?* ('Who will judge?'). The course examines how legal architectures and state authority are conceptualised, tested by crisis, and reconfigured philosophically throughout history. Central to this inquiry is the *clausula rebus sic stantibus* – the 'changing circumstances' doctrine – which allows a state to rescind treaty obligations given a significant alteration in the original conditions under which they were signed.

Tracing the doctrine from ancient philosophy (Plato, Cicero, Seneca) – through canon law foundations and early modern public law down to the Vienna Convention on the Law of Treaties (VCLT) and twenty-first-century geopolitical crises – the course uses *rebus sic stantibus* to interrogate how the state becomes the author of its own laws. It explores how answers to *Quis judicabit?* have been forged both theoretically, in the speculations of political philosophy, and practically, in the history of statecraft and in the international legal order.

Students will explore the structural contradiction between sovereign authority and sovereign equality, studying the rejection of the private-law maxim that no one is allowed to be the judge in their own case (*nemo debet esse judex in propria causa*) at the international level. Finally, students will analyse how the concept of equity – originally designed to judge the exceptional case within a legal-institutional order – was reconfigured in twentieth-century decisionism, challenging the classical tradition of political philosophy through the lens of political theology.

Learning Objectives

By the end of this year-long course, students will be able to:

1. Analyse complex core philosophical arguments and isolate the primary structural logic linking ancient, early modern, and modern political philosophy with contemporary international law.
2. Formulate independent critical written positions responsive to primary historical, philosophical, and legal texts.
3. Communicate abstract conceptual material effectively during peer seminar discussions, whilst engaging critically with primary and secondary materials.

II. Required Texts

- Primary source excerpts from ancient authors, early modern figures, and modern writers will be provided – in translation, where necessary – digitally via the online platform.
- Recommended weekly readings will also be available digitally.

III. Grading and Evaluation Scheme

In this full-year course, the grade weight is balanced across both semesters to ensure incremental skill development.

Assignment / Assessment	Weight	Due Date	Description
Tutorial / Class Participation	10%	Ongoing	Active, prepared weekly engagement, seminar debate and group presentations.
Primary Source Commentary	15%	Week 8 (November)	Close reading and conceptual study of an early modern or ancient text (1,200 words).
Mid-Term Take-Home Exam	20%	Week 11 (December)	Analytical essay exam covering Fall semester foundations.
Primary Source Commentary	15%	Week 18 (February)	Close philological reading and conceptual analysis of a modern or contemporary intervention on the problem (1,200 words).
Term Research Paper	30%	Week 23 (March)	Independent research essay on an historical text of political philosophy, or case study of a concept (2,500–3,000 words).
End-Term Take-Home Exam	10%	April Exam Period	Final reflection essay on the fundamental question of judgement in law, crisis, and international order (1,000 words).

IV. Course Schedule

SEMESTER 1: FALL (Foundations in Political Philosophy, Theology, and the Law of Nations)

Week 1: Introduction to the Problem: The Fundamental Question *Quis judicabit?*

Week 2: The Doctrine of the 'Borrowed Sword': Ancient Roots and Stoic Origins of *Rebus Sic Stantibus*

Required reading: *Republic*, 331c–331d; 1113b3–21; *De Officiis* 3.95; *De Beneficiis* 7.19.

Week 3: Equity in Ancient Political Philosophy and Law

Required reading: *Nicomachean Ethics*, III.5, V.10; *Verrine Orations II*, I.42.109, 238–9; *Codex*, 1.14.1.

Week 4: Augustine and the Exception: Obligation and Breaking Obligation in the Law of Contract

Required reading: Augustine, *De sermone domini in monte*, I.20.62; *Decretum*, Causa 22; *The Decretals of Gregory IX*, III.16: 'De deposito'; Thomas Aquinas *Summa Theologica* I-II q. 94; II-II q. 62; II-II q. 120; *Digest* 45.1.137.4.

Recommended reading: Robert Feenstra, 'Impossibilitas and Clausula rebus sic stantibus', in idem, *Fata Iuris Romani: Études d'histoire du droit* (Leiden University Press, 1974), pp. 364–91.

Week 5: Workshop Session: Research Methods.

Required reading: Reinhart Koselleck, 'Crisis', *Journal of the History of Ideas*, 67, 2 (2006), pp. 357–400; Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press, 2005), pp. 16–45, 224–49.

Week 6: Sovereignty and Equity in Early Modern Political Philosophy

Required reading: Selected translations and commentary from Hermann Conring, *Dissertatio philosophica de legibus* [A Philosophical Dissertation on Laws] (Helmstedt: Henning Müller, 1666), theses VI, XXVI, XXXVIII–XL.

Week 7: Reading Week / Fall Break (No Classes).

Week 8: The Transference of *Rebus Sic Stantibus* to the Law of Nations **(PRIMARY SOURCE COMMENTARY DUE)**

Required reading: Alberico Gentili, *De iure belli libri tres* III.xiv, p. 351; Hugo Grotius, *De jure belli ac pacis*, II.16.25; Samuel Pufendorf, 'Law of Nature', in *The Political Writings of Pufendorf*, edited by Craig L. Carr, translated by Michael J Seidler (Oxford University Press, 1994), III.iv., pp. 165–7; Emer de Vattel, *The Law of Nations*, II.xvii, pp. 428–34 (§§294–300).

Recommended reading: Nathaniel Boyd, 'Pufendorf on Confessional Strife and Interstate Relations', in Peter Schröder (ed.), *Pufendorf's International Political and Legal Thought*, Oxford University Press, pp. 21–43.

Week 9: The Cessation of Religious Civil War and the Emergence of the State

Required reading: Thomas Hobbes, *Leviathan*, edited by Richard Tuck (Cambridge University Press, 1992), pp. 50–9, 100–11, 117–21, 402–15.

Recommended reading: Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (MIT Press, 1988), pp. 23–39.

Week 10: The 'Sorry Comforters' of Natural Law: Perpetual Peace and Cosmopolitan Right

Required reading: Immanuel Kant, 'Perpetual Peace: A Philosophical Sketch', in *Political Writings* (Cambridge University Press, 1991), pp. 93–130.

Week 11: 'There is no Praetor to Adjudicate between States': World History as Judgement

Required reading: G.W.F. Hegel, *Elements of the Philosophy of Right* (Cambridge University Press, 1991), pp. 366–71 (§§330–40).

Recommended reading: Sergio Dellavalle, 'The Plurality of States and the World Order of Reason: On Hegel's Understanding of International Law and Relations', in Stephan Kadelbach et al (eds.), *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel* (Oxford University Press, 2016), pp. 352–78.

Week 12: MID-TERM EXAMINATION PERIOD / Winter Break (No Classes)
(MID-TERM TAKE-HOME EXAM)

SEMESTER 2: WINTER/SPRING (*Quis judicabit?* in Historical Context)

Week 13: 'No one is allowed to be the judge in their own case': The Contradiction of the London Declaration (1871)

Required reading: David J. Bederman, 'The 1871 London Declaration, Rebus Sic Stantibus: A Primitivist View of the Law of Nations', *American Journal of International Law* 82, 1 (1988), pp. 1–40; Hersch Lauterpacht, *The Function of Law in the International Community* (Oxford University Press, 2011), pp. 431–46.

Week 14: 'Only he who is able, is also permitted': Erich Kaufmann's Bismarck Hegelianism (1911)

Required reading: selected translations from Erich Kaufmann, *Das Wesen des Völkerrechts und die clausula rebus sic stantibus* (Mohr, 1911). Hersch Lauterpacht, *Private Law Sources and Analogies of International Law* (Longmans, Green, and Co, 1927), pp. 155–202.

Recommended reading: Martti Koskenniemi, *The Gentle Civiliser of Nations: The Rise and Fall of International Law (1870–1960)* (Cambridge University Press, 2009), pp. 249–61.

Week 15: The Theology of the Decision I: Carl Schmitt (1922)

Required reading: Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, translated by George Schwab (The University of Chicago Press, 2005).

Week 16: The Theology of the Decision II: Carl Schmitt (1970)

Required reading: Carl Schmitt, *Political Theology II: The Myth of the Closure of any Political Theology*, translated by Michael Hoelzl and Graham Ward (Polity Press, 2008), pp. 37–59.

Week 17: Workshop Session: Scoping the Final Research Essay

Week 18: The Codification of *Rebus Sic Stantibus* in Article 62 of the Vienna Convention on the Law of Treaties (1969) **(PRIMARY SOURCE COMMENTARY DUE)**

Required reading: Oliver J. Lissitzyn, 'Treaties and Changed Circumstances (Rebus Sic Stantibus)', *The American Journal of International Law* 61, 4 (1967), pp. 895–922; S. E. Nahlik, 'The Grounds of Invalidity and Termination of Treaties', T*he American Journal of International Law* 65, 5 (1971), pp. 736–56.

Week 19: Reading Week

Week 20: The Right to Protect: Equity in Practice or the Problem of 'Legitimate Illegality' (Kosovo 1999)

Required reading: Martti Koskenniemi, 'The Lady Doth Protest Too Much: Kosovo, Legalism and the Purpose of International Law', *European Journal of International Law* 13, 1 (2002), pp. 159–175.

Week 21: Hegemonic International Law under the Bush Administration (2003)

Required reading: Detlev F. Vagts, 'Hegemonic International Law', *American Journal of International Law* 95, 4 (2001), pp. 843–48; Bardo Fassbender, 'Quis Judicabit?: The Security Council, Its Powers and Its Legal Control', *European Journal of International Law* 11, 1 (2000), pp. 219–31.

Recommended reading: Ulrich Theile, *Verfassung, Volksgeist und Religion. Hegels Überlegungen zur Weltgeschichte des Staatsrechts* (Duncker & Humblot, 2008), 9–13.

Week 22: The Development of Authoritarian International Law and the Political Rhetoric of *Rebus Sic Stantibus* in Russian International Law (2014)

Required reading: Lauri Mälksoo, *Russian Approaches to International Law* (Oxford University Press, 2015), pp. 1–21, 66–70, 71–6; Tom Ginsburg 'Authoritarian International Law?', *American Journal of International Law* 114, 2 (2020), pp. 221–60.

Week 23: Crisis as Judgement in Political History: Year-End Review I **(FINAL TERM PAPER DUE)**

Week 24: International Law in a Fracturing International Order: Year-End Review II **(FINAL END-TERM EXAM PREPARATION)**

V. Course and Institutional Policies

- **Late Policy:** Assignments submitted late will receive a penalty of 3% per calendar day up to a maximum of five days, after which submissions are closed unless accompanied by official medical documentation or institutional accommodation.
- **Academic Integrity:** The institution treats academic misconduct (plagiarism, uncredited AI use, or unauthorised collaboration) with extreme seriousness. All submitted work must be original and properly cited.
- **Generative AI Policy:** The use of generative AI tools is strictly prohibited for all graded written assessments in this course, as the core objective is the development of independent philosophical argument and close textual analysis.
- **Email Etiquette:** Please include the course code … in the subject line of all professional inquiries. Expect a response window of 48 hours on weekdays.

VI. Useful Bibliographical Materials

David Boucher, *Political Theories of International Relations: From Thucydides to the Present* (Oxford University Press, 1998).

Aaron X. Fellmeth and Maurice Horwitz, *Guide to Latin in International Law* (2nd edition) (Oxford University Press, 2021).

Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (Oxford University Press, 2005).

Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (MIT Press, 1988).

Martti Koskenniemi, *The Gentle Civiliser of Nations: The Rise and Fall of International Law (1870–1960)* (Cambridge University Press, 2009).

Stephen C. Neff, *Justice Among Nations: A History of International Law* (Harvard University Press, 2014).

Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford University Press, 1999).

Carl Schmitt, *The Nomos of the Earth in the International Law of the* Jus Publicum Europaeum, translated by G. L. Ulmen (Telos Press, 2006).

Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols. (Cambridge University Press, 1978).