# Columbia Law School

# The Political Economy of International Law

# Fall 2022

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# This seminar seeks to uncover the economic and political currents that shape international law and in turn, they ways in which international law promotes economic and political interests while suppressing others. The seminar offers both theoretical and historical framework to understand the evolution of international law since the nineteenth century and its possible trajectories into the future. This analytical lens offers a method by which we can assess the role not only of kings or national executives, but also of special interests, civil society activists, and courts in the evolution of international law. In fact, as we will see in this seminar, international law is often created not to regulate the relations among nations but to secure the domination of one social group over another. The tools of political economy enable us to pierce through “the state” as a legal and political unit in the international arena and identify the individuals and groups that compete for international norms and institutions as well as the ground rules of domestic law and of international law that secure their success. Employing this approach we can assess counterintuitive explanations to the evolution of international norms and institutions as well as provide constructive critique for reforming the law. The seminar’s goal is not only to understand the intricacies of the global political market and its inherent failures but also to explore the ways by which international law and institutions could be reformed to overcome those failures. In addition to exploring the methodology of political economy and its application to international law, we will examine specific areas of law, including trade, environmental protection and resource management, human rights and humanitarian law, climate change and health governance to assess the contributions of this methodology to the study of international law.

# Syllabus

**Class 1: Introduction to Economic Analysis of International Law – Basic Tools, Basic Assumptions**

This introductory session will present the basic tools of economic analysis of law (public goods, externalities, “voice” and “exit,” as well as basic insights of game theory) and discuss basic assumptions of economic analysis of international law that regard states as unitary actors operating in an anarchic space. We will apply these tools to reflect on the promise and limits of international organizations in resolving coordination and cooperation problems.

Readings: […]

**Class 2: Introduction to Political Economy of International Law: Looking Through “The State”**

Political economy seeks to study the “why” and “what for” questions (the purpose of specific laws and institutions, why politicians set up independent courts) by focusing on the “who” – the actors that compete for shaping these laws: legislators, executives, judges, special interest groups, civil society actors – and what motivates them. This session will introduce the basic assumptions and tools of political economy of international law (agency costs, collective action, the two-level game) to look inside the state to identify the variety of domestic and transnational actors that participate in the (re)construction of international law and their strategies.

Readings:

**Class 3: The Domestic Functions of International Law and International Institutions**

Various domestic actors seek to shape international law and international institutions. These actors include institutional ones, such as administrative agencies and even courts, as well as private actors such as special interests and civil society actors. This seminar will explore their motivations and their strategies. In particular we will inquire about the domestic drivers of international human rights law and of international human rights litigation, and assess whether the various expectations about this body of laws were and can be fulfilled.

Readings:

**Class 4: The Seemingly Objective Sources of International Law**

The “doctrine of sources” identifies the formal sources of international obligations, prominent among them are treaties and customary international law. In this seminar we will explore how the rules on creating and interpreting treaties, or on identifying customary law, privilege certain actors and disadvantages others, and what strategies actors use to gain interpretive authority and narrate the evolution of the law.

Readings:

**Class 5: Regulating the Use of Force**

One way of interpreting the ancient permissive approach toward the recourse to force is to suggest that wars used to be an efficient way reallocate entitlements for the management of natural resources. The rise of nationalism and ultimately World War I led the way to a different paradigm, but the prohibition on the use of force created new challenges with respect to the definition of aggression and its implementation. From the perspective of political economy, wars often reflect breakdown of communications between the fighting parties, either or both sides having insufficient information about their adversary’s intentions or capabilities. Is international law part of this problem of asymmetric information? Could it be tweaked to improve communications between the adversaries?

Readings:

**Class 6: The Political Economy of International Humanitarian Law**

The insights of political economy question the common narrative attributes the codification of the laws of war (or IHL, for International Humanitarian Law) to a series of successful campaigns of civil society, led by entrepreneurial Red Cross leaders promoting a linear progression of humanity. Instead, studies show counterintuitively that rather than limit armies in their fight, IHL norms were developed by armies seeking to consolidate power both internally (against domestic challengers) and externally (against weaker adversaries that resort to guerrilla tactics). In addition, several IHL norms are designed to resolve agency problems within the military echelon. The narrative of IHL as reflecting a linear progress of humanity inspired by visionaries and led by committed humanitarians serves international judges in transforming a politically motivated law into customary law that bids also the strong.

Readings:

**Class 7: The Motivations for Setting Up International Organizations**

This seminar will explore the different explanations for the multiplicity of international regimes and the distributional consequences for actors in the global north and the global south. We will also examine the extent to which the international law on international organization privileges the “haves” on the expense of the “have nots” and on the undergoing efforts to promote more egalitarian and sustainable global governance through law.

Readings

**Class 8: How Agency Problems Afflict (or Empower) International Organizations**

When national governments transfer authority to international organizations they extend the already long chain of principal-agent relations, as decisions are taken further away from voters and without proper accountability. Special interest often take advantage of the growing information gaps. This often results in diminishing public trust in international organizations. This seminar will explore the challenges posed by the extension of the chain of delegation of public decision-making as well as the legal tools developed in response – norms about representation, accountability and review. We will also assess the likelihood that national or international bodies have the incentives and the means to effectively monitor decision-making by international organizations.

Readings:

**Class 9: Sovereignty and its Inefficiencies**

The allocation of entitlements to control parts of the global space – both inland and in the oceans – to sovereign states resolves some externality problems but it creates new ones. In this seminar we will reflect on the economic function of sovereignty as an entitlement to natural resources, and the ways international law addresses the possible inefficiencies that are created by such a system.

Readings:

**Class 10: The Law on Natural Resources Beyond the State: “Common Pool” Resources and Global Public Goods**

“Common pool” resources – natural resources, such rivers and lakes, hydrocarbon or other mineral deposits, that straddle state boundaries – and global public goods such as the deep seabed or outer space forests pose regional or global collective action problems for states. How can international law facilitate successful management of such resources? The seminar will study the dynamics of regional and global cooperation as well as the potential for international law and institutions to overcome conflicts and promote successful management of resources beyond the state.

Readings:

**Class 11: Global Health Governance**

In this concluding seminar we will reflect on global coordination and cooperation problems and the functions of international law and of international organizations in responding to these problems. As this topic relates to many of the themes discussed throughout the seminar, it will offer an opportunity to revisit the themes we’ve discussed and employ the tools of political economy to consider ways to improve health governance.

Readings:

# Classes 12 & 13:

# Workshop for Presentation of Student Paper Drafts