Just War Theory

The Justice of War
(Jus ad Bellum)

Justice in War
(Jus in Bello)
International Law I

Law and the Formation of States

Law and Custom

The Transition from an Order of Custom to a System of Law
The Formation of the New City----States

Aristotle: ""The private rites of families should be converted into public ones; in short every means should be adopted which will mix the citizens one with another and get rid of the old connections."" Politics 1319
A Smooth Transition?

R. J. Bonner: "The rites paid to the dead, like the loyalty to the family, seem to have been regarded with a hostile eye by the polis at a certain stage of Athenian development. The legislation by Solon against undue expenditure on funerals was a political measure directed against the influence of the great aristocratic families. It hindered the cult of the grave in which the populace could not participate."

M. L. Walker: "The substitution of the deme for the clan meant in effect the transition from a principle of kinship to that of locality. Athens after the reforms of Cleisthenes was no longer a federation of kindreds." Cambridge Ancient History
From Families, Tribes and Clans to Individuals

Henry Maine: ""As the state develops the individual is steadily substituted for the family as the unit of which the civil law takes account."

Jehrings: ""The progress of law consists of the destruction of every natural tie in a continual process of isolation and separation."

Antigone: ""A brother is a friend forever.""
What is a State?

Max Weber: ""[A state is that entity which has] a monopoly on the legitimate use of force within a given territory.""
From Custom to Law

Idealization of the advantages of the rule of law over a system of customary practices:

<table>
<thead>
<tr>
<th><strong>Order of Custom</strong></th>
<th><strong>Rule of Law</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>unwritten</td>
<td>written</td>
</tr>
<tr>
<td>inefficient</td>
<td>efficient</td>
</tr>
<tr>
<td>irrational</td>
<td>rational</td>
</tr>
<tr>
<td>vague</td>
<td>clear</td>
</tr>
<tr>
<td>difficult to change</td>
<td>repealable</td>
</tr>
<tr>
<td>personal</td>
<td>impersonal</td>
</tr>
<tr>
<td>particular</td>
<td>universal</td>
</tr>
<tr>
<td>uncertain</td>
<td>predictable</td>
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The Principle of Double Institutionalization

From Duties as Obligations to Others to Duties as Tax

Census, Conscription, Taxation

Globalization and the International World Order
From Families to States

<table>
<thead>
<tr>
<th>Family</th>
<th>State</th>
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</thead>
<tbody>
<tr>
<td>blood tie</td>
<td>civil tie</td>
</tr>
<tr>
<td>birth (kinship)</td>
<td>territory</td>
</tr>
<tr>
<td>tribe, clan</td>
<td>citizens</td>
</tr>
<tr>
<td>order of custom</td>
<td>rule of law</td>
</tr>
<tr>
<td>virtue: courage</td>
<td>virtue: reason, persuasion</td>
</tr>
<tr>
<td>philos (blood relative)</td>
<td>philos (friend)</td>
</tr>
<tr>
<td>Gods below in Hades</td>
<td>Gods above, Zeus</td>
</tr>
<tr>
<td>Antigone</td>
<td>Creon</td>
</tr>
<tr>
<td>female</td>
<td>male</td>
</tr>
</tbody>
</table>
From Blood Tie to Civil Tie

I. Aeschylus’ “Oresteia”

II. Sophocles’ “Antigone”

The Vietnam War, Lyndon Johnson and the Bombing of Hanoi

IV. Iraq: Sunnis, Shiites and Kurds
What is a Nation-State?

Nation = Community of Common
Religious, Ethnic, Cultural Identity

State = Administrative Apparatus

The Horizontal and Vertical Contract
From Moral to Political Community

Locke’s Second Treatise of Nature (1689)

“but for a few degenerate individuals . . . “

Legislative, Executive, Judicial Institutions
Modern Political Theory
The Morality Precedes the Politics

In John Locke (1632-1704)

Immanuel Kant (1724-1804)

John Stuart Mill (1806-1873)

John Rawls (1921-2002)
John Wilkes (1725-1797)

Louis XVI (1754-1783)

The Abolition of Slavery

Universal Suffrage

Nuremberg