

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:

Order of Custom

unwritten
inefficient
irrational
vague
difficult to change
personal
particular
uncertain

Rule of Law

written
efficient
rational
clear
repealable
impersonal
universal
predictable

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

Family

blood tie
birth (kinship)
tribe, clan
order of custom
virtue: courage
philos (blood relative)
Gods below in Hades
Antigone
female

State

civil tie
territory
citizens
rule of law
virtue: reason, persuasion
philos (friend)
Gods above, Zeus
Creon
male

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