

INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS: THEORY, LAW AND PRACTICE (LL102)

Course duration: 54 hours lecture and class time (Over three weeks)

LSE Teaching Department: Department of Law

Lead Faculty: Dr Jo Murkens & Dr Emmanuel Voyiakis

Pre-requisites: None

Aims and intended learning outcomes:

This course will be concerned with a critical exploration of the idea of human rights and in particular with the possibility that the international human rights movement, together with the law that underpins it, can provide the basis of a universal ethical and legal order. The course will begin with an introductory account of the general idea of human rights and of the history of the idea from ancient Greek origins and the Enlightenment to contemporary understandings of human rights. Early on, students will be exposed to several enduring human rights critiques and, through a series of case-studies, examine the tensions that the practice of human rights today highlights, such as in the areas of free speech, prohibiting torture, and countering terrorism. Having considered the theories of along with challenges to human rights, the course will then turn to assess the structure and standards that govern international human rights law, beginning with an introduction as to what modern international law is and how it is made. This part of the course will consider the international and regional human rights systems and the range of legal instruments and standards that have been developed. We will then look at various key issues in human rights including the techniques that human rights institutions have developed; the relationship between human rights and pressing global problems, such as poverty and climate change, and the role of non-state actors (from NGOs to transactional corporations) in relation to human rights.

The intended learning outcome is an informed and critical understanding of contemporary international human rights theory, law and practice.

Assessment:

One piece of written work at the mid-term point (25%) and one written examination (75%). The assessed essay will be on one of a range of offered topics, and can be no more than 1,000 words. The essay topics will be set at the start of the second week. The exam (unseen) will consist of six questions of which three are to be answered, with a writing time of two hours. Illustrative examinations from previous years are available on Moodle (the LSE's learning portal). Although the course changes somewhat from year to year, exams from previous years offer a good indication as to what you may expect. Finally, you will be asked to deliver one classroom presentation, on a topic to be arranged with your class teacher.

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Primary Texts:

There are several good human rights textbooks on the market, and you are strongly encouraged to purchase one. Having the very latest edition has obvious advantages, but it's not absolutely essential. Earlier editions, as long as they're not more than 2-3 years out of date, should be fine, and will come much cheaper too.

Here are some titles for your consideration. Look them up in the library or online, skim a chapter or two, and get a feel for which one you'd be comfortable with:

- D Harris, D Moeckli et als (eds) *International Human Rights Law* (2nd edition, Oxford University Press, 2013)
- P Alston - R Goodman, *International Human Rights* (Oxford University Press, 2013).
- R Smith, *Texts and Materials on International Human Rights*, (3rd edition, Routledge, 2013).

Secondary Texts:

- J Donnelly, *Universal Human Rights in Theory and Practice*, (3rd edition, Cornell University Press, 2013).
- M Freeman, *Human Rights: An Interdisciplinary Approach*, (2nd edition, Polity, 2011).

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Two very useful books are:

- S Marks and A Clapham, *International Human Rights Lexicon* (Oxford University Press, 2005).
- J Nickel, *Making Sense of Human Rights* (2nd edition, Blackwell Publishing, 2006)

Further reading: see below for annexes attached to this reading list. The first provides helpful websites and the second offers a further reading list.

Course Structure:

This course is divided into three parts, covering 23 themes in the course of 12 three hour lectures. The reading for each theme is included alongside the theme.

PART ONE: THEORIES AND HISTORIES OF HUMAN RIGHTS

Lecture One

- **Introduction:** the course lecturers set out the nature of the course and explain its structure, logic, and content.
- **The history of the emergence of human rights as an idea:** Greek beginnings; respect for human dignity and human flourishing; the origins of human rights in the emergence of the rule of law; the Church and natural law; Hobbes, Locke, Pufendorf; the English revolution of 1688; three generations of human rights.
 - Donnelly, *Universal Human Rights in Theory and Practice*, Ch.1
 - Freeman, *Human Rights: An Interdisciplinary Approach*, Ch. 2

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Lecture Two

- **Human rights after the Enlightenment:** Kant and the construction of a new cosmopolitan ethic; Hegel and rights; their contemporary incarnations.
 - Alston and Goodman, *International Human Rights in Context* 490-498
 - Freeman, Ch. 4
- **The universality of human rights:**
 - Lord Steyn, 'Human Rights: The Legacy of Mrs Roosevelt', *Public Law* (2002) 473-484
 - Alston and Goodman, 531-557.
- **Human rights critiques:** Bentham; Marx
 - Freeman, Ch. 4

- **Non-Western critiques of human rights:**
 - Alston and Goodman, 531-557.
 - Donnelly, Ch. 5

Lecture Three

- **The move to contemporary 'human rights'** from those (western) beginnings – civil liberties – civil and political rights.
- **International law and human rights: background, politics and values.** Human rights as subversive of traditional international law
 - Donnelly Ch. 2
 - Alston and Goodman, 135-154.
 - Freeman, Ch. 3
- **The sovereignty critique:** the continuing power of the nation state, originally hostile to *human* rights: are traces of this hostility left?
 - Alston and Goodman, 685-9.

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Lecture Four:

- **Human rights and human rights challenges:** the practice/case studies – historical values in contemporary society, tensions:
 - **freedom of expression - hate speech;**
 - E Heinze, 'Wild-West Cowboys *versus* Cheese-Eating Surrender Monkeys' in J Weinstein and I Hare (eds), *Extreme Speech and Democracy* (2009).
 - **prohibition on torture;**
 - Alston and Goodman, 238-276.
 - **war on terror**
 - J Waldron, 'Security and Liberty: The Image of Balance' 11 *Journal of Political Philosophy* (2003) 191.
 - K Gunther, 'World Citizens Between Freedom and Security' 12 *Constellations* (2005) 379.

PART TWO: STRUCTURES AND STANDARDS

Lecture Five

- **What is international law and how is it made?** Where does the branch of international human rights law fit into this scheme and what are its particularities?
- **Which human rights are 'international' in character?** Determining the boundary between national sovereignty and international competence.
 - C. Chinkin, 'Sources', Chapter 4 in Harris D et als (eds), *International Human Rights Law* (2nd ed., 2013) 75-95.
 - S. Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010), Chapter 5.
 - J. Raz, 'Human Rights Without Foundations' in J. Tasiuolas – S. Besson (eds), *The Philosophy of International Law* (OUP, 2010), Chapter 15.
 - A. Buchanan, 'Why International Legal Human Rights?' in Cruft R. – Liao.M. – Renzo M., *Philosophical Foundations of Human Rights* (2015) 244.
- **Instrument**
 - United Nations Charter, available at <http://www.un.org/en/documents/charter/>

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Lecture Six

- **The United Nations Human Rights Systems:** Examine the use of treaties as instruments for engineering the development of human rights in international law. Lay out the classification of human rights treaties and categories of rights. Explore the nature of different generations of human rights and the corresponding obligations. Identify the charter-based human rights bodies, their working methods, and implementation of standards.
 - O. de Schutter, *International Human Rights Law* (2nd ed., 2014), Chapter 9.
 - T. Buergenthal, 'The UN Human Rights Committee', 5 *Max Planck Yearbook of United Nations Law* (2001) 341, available [here](#)
 - I. Bantekas – L. Oette, *International Human Rights Law and Practice* (2013), Chapter 4.
 - A. Abebe, 'The Role and Future of the Human Rights Council' in S. Sheeran – N. Rodley (eds), *Routledge Handbook of International Human Rights Law* (2013), Chapter 40, available [here](#)
 - R. Smith, "'To see Themselves as Others see Them": the Five permanent Members of the Security Council and the Human Rights Council's Universal Periodic Review' 35 *Human Rights Quarterly* (2013) 1-32.

Instruments: The Universal Declaration of Human Rights and the core UN human rights treaties

- Universal Declaration of Human Rights (1948)
- Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD)
- The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)
- The International Covenant on Civil and Political Rights, 1966 (ICCPR)
- Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (The Women's Convention/CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, 1984 (The Torture Convention/CAT)
- Convention on the Rights of the Child, 1989 (the Children's Convention/CRC)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), 1990
- Convention on the Rights of Persons with Disabilities 2006 (CRPD)
- International Convention for the Protection of All Persons from Enforced Disappearance 2006 (ICCPED).

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Lecture Seven

- **Regional human rights systems:** Europe, Americas, Africa, and other regional systems.
 - R. Smith, *Textbook on International Human Rights* (6th ed., 2014), Chapter 7 (Europe)
 - Pasqualucci J., *The Practice and Procedure of the Inter-American Court of Human Rights* (2nd ed., 2013), Chapter 1 (Americas)
 - J Rehman, *International Human Rights Law*, 2nd edn (2009), Ch. 10 (Africa)
 - N. Bratza, 'Living Instrument or Dead Letter : the Future of the European Convention on Human Rights' 2 *European Human Rights Law Review* (2014) 116 (available through WESTLAW)
 - L. Lixinski, 'Treaty Interpretation by the Inter-American Court of Human Rights: Expansionism at the Service of the Unity of International Law' 21 *European Journal of International Law* (2010) 585 available [here](#)
 - C. Nkongolo, 'The Justiciability of Socio-Economic Rights Under the African Charter on Human and Peoples' Rights : Appraisal and Perspectives Three Decades After Its Adoption' 22 *African Journal of International and Comparative Law* (2014) 492-511 available [here](#)

Lecture Eight

- Concepts and techniques: positive obligations, proportionality, and the margin of appreciation

Positive obligations

- *Airey v Ireland* (1979), ECtHR, §20-28, available at <http://www.bailii.org/eu/cases/ECHR/1979/3.html>
- R. McQuigg, 'Domestic Violence and the Inter-American Commission on Human Rights: *Jessica Lenahan (Gonzalez) v United States*' 12 *Human Rights Law Review* (2010) 122.

Proportionality

- S. Tsakyrakis, 'Proportionality as an Assault on Human Rights?' 7 *International Journal of Constitutional Law* (2009) 468.
- M. Khosla, 'Proportionality as an Assault on Human Rights? – a Reply' 9 *International Journal of Constitutional Law* (2010) 298.
- E. Brems – L. Lavrysen, 'Don't Use a Sledgehammer to Crack a Nut': Less Restrictive Means in the Case Law of the European Court of Human Rights' 15 *Human Rights Law Review* (2015) 139-168, available [here](#)

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Margin of appreciation

- D. McGoldrick, 'A Defence of the Margin of Appreciation and an Argument for its Application by the Human Rights Committee', 65 *International and Comparative Law Quarterly* (2016) 21.
- G. Letsas, 'Two Concepts of the Margin of Appreciation' 26 *Oxford Journal Legal Studies* (2006) 705 available [here](#)
- E. Wicks, 'A, B, C v Ireland: Abortion Law under the European Convention on Human Rights' 11 *Human Rights Law Review* (2011) 556 available [here](#)
- A. Legg, *The margin of appreciation in international human rights law: deference and proportionality* (OUP, 2012), Part III, available [here](#)

Lecture Nine

- Concepts and techniques: HR-based analyses of social problems: poverty and climate change

- C. Chinkin, 'The United Nations Decade for the Elimination of Poverty: What Role for International Law?' 54 *Current Legal Problems* (2001) 553.

- D. Shelton, 'Human Rights, Health and Environmental Protection: Linkages in Law and Practice', 1 Human Rights and International Legal Discourse 1 (2007) 9.
- S. Freeman, 'Women and Poverty – A Human Rights Approach', Oxford University Working Paper No.2 (2015) available [here](#)

- Instruments

- International Covenant on Economic, Social and Cultural Rights
- Declaration on the Right to Development (1986). <http://www2.ohchr.org/english/law/rtd.htm>
- Intergovernmental Panel on Climate Change, Summary for Policymakers & Stern Review (2007), reproduced in S Humphreys (ed.), Human Rights and Climate Change (2010), Appendix, pp.320-331.

Lecture Ten

- Assessing the effectiveness of HR institutions

- D. Kosar – L. Lixinski, 'Domestic Judicial Design by International Human Rights Courts' 109 *American Journal of International Law* (2015) 716
- X. Dai, 'The Conditional Effects of International Human Rights Institutions' 36 *Human Rights Quarterly* (2014) 569.
- C. Fariss, 'Respect for Human Rights has Improved Over Time: Modeling the Changing Standard of Accountability' 108 *American Political Science Review* (2014) 297.
- T. Pegram, 'Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions' 32 *Human Rights Quarterly* (2010) 729 available [here](#)
- B. Çalı – A. Koch, 'The Legitimacy of Human Rights Courts: A Grounded Interpretivist Analysis of the European Court of Human Rights' 35 *Human Rights Quarterly* (2013) 955 available [here](#)
- S. Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (CUP, 2006), Chapter 2, available [here](#)

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PART 3: HUMAN RIGHTS BEYOND THE STATE

Lecture Eleven

- Self-determination

- *Re Secession of Quebec*, Supreme Court of Canada, [1998] 2 SCR 217 available at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do> (read only the case-note, until the 'Cases Cited' heading)
- M. Craven, 'Statehood, Self-Determination and Recognition' in M. Evans (ed.), *International Law* (4th ed., 2014), Chapter 8.
- J. Crawford, 'The Right of Self-Determination in International Law: Its Development and Future', in P Alston (ed), *Peoples' Rights* (2001) 7

- Instruments

- International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights (1966), Art.1
- African Charter on Human and Peoples' Rights, Arts. 20-24.
<http://www1.umn.edu/humanrts/instree/z1afchar.htm>

- The extra-territorial application of human rights

- R. Wilde, 'The extra-territorial application of international human rights law on civil and political rights' in S. Sheeran – N. Rodley (eds), *Routledge Handbook of International Human Rights Law* (2013), Chapter 35.
- C. Keitner, 'Transnational Litigation: Jurisdiction and Immunities' in Shelton D., *The Oxford Handbook of International Human Rights Law* (2013), Chapter 33, available [here](#)
- M. Milanovic, *Extra-Territorial Application of Human Rights Treaties: Law, Principles, and Policy* (2011), Chapter 4, available [here](#)

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Lecture Twelve

- Human rights and non-state actors

- General Reading

- P. Alston – R. Goodman, *International Human Rights* (2013), Chapter 16.

- Non-governmental organisations

- B. Simmons, 'The Future of the Human Rights Movement' 28 *Ethics & International Affairs* (2014) 183 available [here](#)

- H. Haddad, 'Judicial Institution Builders: NGOs and International Human Rights Courts' 11 *Journal of Human Rights* (2012) 126 available [here](#)
- E. Thrandardottir, 'NGO Legitimacy: Four Models' 51 *Representation* (2015) 107.
- L. Logister, 'Global Governance and Civil Society. Some Reflections on NGO Legitimacy' 3 *Journal of Global Ethics* (2007) 165 available [here](#)
- M. Zhou, 'Global Distribution of Transnational Human Rights NGOs: The Effects of Domestic Resources and Institutions' 85 *Sociological Inquiry* (2015) 576 available [here](#)

- Transnational corporations

- M. Karavias, *Corporate Obligations under International Law* (OUP, 2014), Chapter V.
- A. Clapham, *Human Rights Obligations of Non-State Actors* (OUP, 2006), Chapter 6.
- M. Scheinin, 'IOs and TNCs at a World Court of Human Rights', 3 *Global Policy*, 4 (2012) 488 available [here](#)
- P. Alston, 'Against a World Court of Human Rights' 28 *Ethics & International Affairs* (2014) 197 available [here](#)

ANNEX I: HELPFUL WEBSITES

For links to online human rights materials, you may wish to consult:

- Full texts of international human rights instruments
<http://www2.ohchr.org/english/law/index.htm#instruments>
- University of Minnesota, Human Rights Library
<http://www1.umn.edu/humanrts//index.html>
- American Society of International Law – human rights
www.asil.org/resource/humrts1.htm
- International Human Rights Lexicon
www.internationalhumanrightslexicon.org

The homepages of principal human rights organisations are:

- UN High Commissioner for Human Rights
www.ohchr.org
- European Court of Human Rights
www.echr.coe.int/echr
- Inter-American Commission and Court

www.oas.org/OASpage/humanrights.htm

- African Commission on Human and Peoples' Rights

www.achpr.org

- African Court on Human and Peoples' Rights

<http://www.african-court.org/en/>

- Amnesty International

www.amnesty.org

- Human Rights Watch

www.hrw.org

- Interights

www.interights.org

ANNEX II: SELECTED FURTHER READING

- African Commission on Human and Peoples' Rights, *Report Working Group of Experts on Indigenous Populations/Communities* (International Work Group for Indigenous Affairs, 2005). Available at: <http://www.iwgia.org/>
- P Alston, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals', 27 *Human Rights Quarterly* (2005) 755.
- J Anaya, *Indigenous Peoples in International Law* (2nd edn, Oxford University Press, 2004).
- B A Andreassen and S P Marks (eds), *Development as a Human Rights* (2nd edn., Intersentia, 2010).
- Ch. Beitz, *The Idea of Human Rights* (Oxford University Press, 2011)
- A Cassese, *International Law* (Oxford University Press, 2005).
- A Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006).
- R Dworkin, *Taking Rights Seriously* (Gerald Duckworth & Co, 1978).
- R Dworkin, 'Rights as Trumps' in J Waldron (ed), *Theories of Rights* (Oxford University Press, 1984).
- A Eide, and E-I. Daes, *Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and those of Indigenous Peoples*, UN Doc. E/CN.4/Sub.2/2000/10.
- T Evans, *The Politics of Human Rights: A Global Perspective* (Pluto Press, 2001).
- J Griffin, *On Human Rights* (Oxford University Press, 2009)
- R Higgins, *Problems and Process: International Law and How we Use It* (Oxford University Press, 1994).
- M R Ishay, *The History of Human Rights. From Ancient Times to the Globalization Era* (University of California Press, 2004)
- M T Kamminga and M Scheinin (eds) *The Impact of Human Rights Law on General International Law* (Oxford University Press, 2009)
- S Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010)
- S Moyn, *Human Rights and the Uses of History* (Verso, 2014)
- R Rorty, 'Human Rights, Rationality and Sentimentality' in S Shute and S Hurley (eds), *On Human Rights* (Basic Books, 1993)

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- K Roth and M Worden (eds), *Torture. Does It Make Us Safer? Is it Ever Ok?* (The New Press, Human Rights Watch, 2005)
- M E Salomon *Global Responsibility for Human Rights: World Poverty and the Development of International Law* (Oxford University Press, 2007)

Credit Transfer: If you are hoping to earn credit by taking this course, please ensure that you confirm it is eligible for credit transfer well in advance of the start date. Please discuss this directly with your home institution or Study Abroad Advisor.

As a guide, our LSE Summer School courses are typically eligible for three credits within the US system and 7.5 ECTS in Europe. Different institutions and countries can, and will, vary. You will receive a digital transcript and a printed certificate following your successful completion of the course in order to make arrangements for transfer of credit.

If you have any queries, please direct them to summer.school@lse.ac.uk