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Spring 2021

## DIPL 4106 AB Human Rights Law and Policy

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HUMAN RIGHTS LAW AND POLICY  
DIPL 4106AB  
Professor Miller

Spring 2021

COURSE DESCRIPTION

What are human rights? What do they promise and how often is that promise achieved? This class will examine the law, politics, policy, and advocacy practices of human rights, focusing on the *dilemmas* that ensue. In addition to examining human rights as law, we will also analyze the political, policy, and philosophical implications of human rights. We will explore the role of international and domestic law in enacting and enforcing human rights claims, the institutions of international human rights law, and the relationships between different types of rights.

Throughout the course, we will pay special attention to three sets of questions:

- How can one most effectively mobilize a human rights agenda? What tools do you have at your disposal? Is litigation the best way to promote a particular human right? UN monitoring? Criminal prosecution? Naming and shaming? Protest? Are human rights an end in themselves or one part of a larger strategy?
- Are human rights “part of the problem” or part of the solution? Do they mobilize or demobilize activism? Are human rights about universal guarantees, particularistic values, widespread dignity, neocolonial domination, or all of the above?
- Our world is facing unimaginable challenges: radical racial injustice, vast poverty and inequality, global health crises, threats to democracy, climate change, mass population movements, conflict and insecurity. Can a human rights agenda help us face up to those challenges? How? What should the future of human rights be?

While we will discuss many places, we will often focus on South Africa and the United States. South Africa’s experience during and after apartheid provides a key example of a national struggle for democracy and equality and of the constitutionalization of human rights. We examine the United States because it’s important to think about the context in which we are studying these issues, because the U.S. is a key player in international law and international relations, and because struggles for racial justice in the U.S. have long used the language of human rights.

By the end of the semester, students should have developed knowledge of the key concepts, doctrines and debates involved in the study of international human rights law. Students will build familiarity with legal reasoning and analysis; become skilled at identifying, critiquing, and developing legal arguments; and develop critical reading and writing faculties that extend beyond the legal field. Students will learn how to think like a lawyer, like a critic, and like an advocate – and sometimes how to think like all three at the same time. As a movement, a set of institutions, and a body of law, human rights promises a great deal. We will take those promises seriously as we ask how, whether, and where they are frustrated or fulfilled.

## COURSE MATERIALS

All materials for this course are available on Blackboard. There is no separate textbook. Please make sure to have your readings available for every class, whether printed out or onscreen.

If you have not taken Public International Law (or are eager for a refresher), you may want to take a look at one or both of the following short texts:

Mark Janis, *An Introduction to International Law* (2012)

David Bederman and Chimène Keitner, *International Law Frameworks* (2016)

## EVALUATION

**Participation and Reading (15%):** Participation is a major part of this course, all the more so because we are remote. *This is not a lecture course.* That means I depend upon you to help me think through the ideas, to ask questions, to come up with good arguments. **To participate well, you will also need to *do your readings and participate in all class exercises.*** Because this class meets once a week, the reading load is higher per class than for a twice a week class. Please know that my choices are not random; I really try to think about what would be most useful for you to read and think about before class so that we can have interesting discussions.

**How do I get an A for participation?** Participation means making useful contributions to the discussion, listening to your peers (and me), referencing the readings or other points of the discussion. It means trying to answer my questions - not because you'll be right all the time (none of us are), but because you're trying to understand the material. It also means participating in the small group exercises, volunteering information from what you discussed in breakout rooms, and actively engaging in class discussion and debate. Legal material is tough and I know that for many of you, this is the first time you're reading cases. And some of the articles we read are complicated. Don't worry! My only expectation is that you have read carefully and that you have made a real effort to understand as much as you can. My goal for every classroom, whether we're in an actual room or we're doing this whole Zoom thing, is to make everyone feel welcome, included, safe, and confident. I include participation as part of the evaluation because it helps us get to know each other better and it helps you learn the material. **All of that said, if you are for any reason uncomfortable speaking in class, please sign up to come chat with me in office hours and we will work together to develop a participation strategy that works for you.**

## **Writings (20%)**

### **1. Case Briefs**

There are **2 case briefs (for Week 3 and Week 5)**. Briefs are due **before class**. **The briefs will be submitted through Safe Assign. Late briefs will be penalized 1/3 a mark; briefs that are more than a week late will not be accepted.** Each brief will be approximately a page in length (single spaced), **12 point Times New Roman font, and should be clearly divided into four sections, with headings to identify each:**

- The title of the case, the court deciding the case, and the date of the decision.
  - **Facts:** A brief, one to three sentence summary of the facts.
  - **Question:** A brief, one-sentence statement, in question form, of the issue(s) in the case.
  - **Holding:** A brief description of the court’s decision, or “holding,” on each of the issues
  - **Reasoning/Analysis:** A brief summary/analysis of the court’s reasoning.
2. **Reflection:** You will each be assigned one class in the second half of the semester for which you will write a short reflection. I will post the list of assignments on Blackboard.
- A reflection paper should be **approximately 500 words**. It should address **three or more readings** from that week’s assignment. A stellar reflection will be well-written, concise, and demonstrate a thoughtful reflection on the materials. You are welcome to use the week’s reading questions as a guide but it is not required. Any author you discuss should be cited with a parenthetical citation with their last name and page number, e.g., (Miller, 2). You do not need a works cited page as you will only be referencing that week’s readings.
  - Your reflection should be 1.5 spacing, Times New Roman font, 12pt.
  - Reaction papers are always **due Sunday at NOON** before class.
  - Late papers will be graded down a third of a grade; papers that are more than 3 days late will not be accepted.
3. **Midterm Exam (30%):** There will be a midterm exam on March 23.
4. **Take Home Final Exam (35%):** There will be one cumulative exam for this class due during final exam period. More details forthcoming as we approach the end of the semester.

**NOTE: Make sure to carefully proofread all writing before you turn it in on Blackboard. We will rarely discuss **statues** or **trials** in this class, but often **statutes** and **trials**.**

### ATTENDANCE AND PARTICIPATION

**Attendance, reading, and participation are not optional.** This class depends upon full participation. If due to circumstances beyond your control, you have to miss a class, please alert me by e-mail **BEFORE** class. Barring exceptional circumstances, you are responsible for the class reading for any missed class. If you miss more than two classes over the course of the semester, you will lose points from your final grade. **Excessive absences will result in a failing grade** for this course.

### TAKING NOTES

More than one study has concluded that taking notes by hand rather than by typing improves learning; when you cannot transcribe but rather have to translate class discussion and lecture into hand-written notes, you are far more likely to retain the information in more detail and for longer. Of course, there’s no such thing as a no-electronics rule for this class! But precisely

because the class is on Zoom, it is all the more helpful to take notes by hand. It will help you integrate different ideas better, to participate more consistently, and to retain the semester's knowledge in a more complete way. This is, of course, not a rule. But it is a strong recommendation for how to succeed in this class. If you want to discuss strategies with me, I'm always available in office hours to do so!

### “OFFICE” HOURS AND CONTACT INFORMATION.

My meeting-with-students-to-discuss-stuff hours are Tuesdays 2-4:00pm, Wednesdays 2:00-3:00PM and by appointment. My e-mail address is [Zinaida.Miller@shu.edu](mailto:Zinaida.Miller@shu.edu). I do make an effort to respond promptly to all email questions and concerns, but I will not respond to emails received after 9:00PM until the next day. On Blackboard, you will find a link to a Google doc where you can sign up for a slot. These slots are first come, first serve. Please do not change anyone else's appointment! If those times don't work for you, just send me an email and we will find another time.

### IMPORTANT NOTE: ABOUT THIS TIME

Here's the thing. Newsflash! These times are (still!) NOT NORMAL. There's a global pandemic, almost everything feels uncertain, and everyone is struggling in different ways. That's not only understandable; it's expected right now. Neither you nor I need to pretend that things are normal when they are not. Please know that if you need to miss a class, need extra help, need more time an assignment, you should by all means ask me. I can't necessarily grant every single request, but I can promise I will listen and work with you to make this class work for you. You do not owe me personal information about your life. Most importantly: you will *never* be judged for asking for help. Please know that I am VERY aware that there is a lot going on for all of us and that the watchwords of this semester in particular are flexibility and compassion. **The most important thing you can do is tell me the type of flexibility you need, because I can't know unless you ask. The sooner you tell me what you need, the better I can help you.**

### GENERAL INFORMATION

#### ACADEMIC INTEGRITY

Plagiarism and other forms of academic dishonesty will be reported to the administration, and may result in a lowered or failing grade for the course and up to possible dismissal from the School of Diplomacy. See University and School standards for academic conduct here: <https://www.shu.edu/student-life/upload/Student-Code-of-Conduct.pdf> and <http://www.shu.edu/academics/diplomacy/academic-conduct.cfm>

In a paper, where you quote language word for word from a source, you must place it in quotation marks or in a block quote and **give the exact source** for each quoted passage. Where you paraphrase something, you must **cite the source**. Where you refer to or use an author's insight or idea, you must **cite the source**. Lifting or paraphrasing language from a web site without indication and citation is plagiarism.

***Any indication of plagiarism on a case brief or response paper will result in a failing grade for the assignment and a reduction in the participation grade for the class.*** A repeated incident of plagiarism (i.e., more than one) is likely to result in a failing grade for the class and will be reported to the administration. All materials will be turned in through Safe Assign.

### INCLUSIVE LEARNING

It is the policy and practice of Seton Hall University to promote inclusive learning environments. If you have a documented disability you may be eligible for reasonable accommodations in compliance with University policy, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and/or the New Jersey Law against Discrimination. Please note, students are not permitted to negotiate accommodations directly with professors. To request accommodations or assistance, please self-identify with the Office for Disability Support Services (DSS), Duffy Hall, Room 67 at the beginning of the semester. For more information or to register for services, contact DSS at (973) 313-6003 or by e-mail at [DSS@shu.edu](mailto:DSS@shu.edu).

### INCOMPLETES

Incompletes will be given only in exceptional cases for emergencies. Students wishing to request a grade of Incomplete must provide documentation to support the request accompanied by a Course Adjustment Form (available from the Diplomacy Main Office) to the professor *before* the date of the final examination. If the incomplete request is approved, the professor reserves the right to specify the new submission date for all missing coursework. Students who fail to submit the missing course work within this time period will receive a failing grade for all missing coursework and a final grade based on all coursework assigned. Any Incomplete not resolved within one calendar year of receiving the Incomplete or by the time of graduation (whichever comes first) automatically becomes an “FI” (which is equivalent to an F). It is the responsibility of the student to make sure they have completed all course requirements within the timeframe allotted. Please be aware that Incompletes on your transcript will impact financial aid and academic standing.

### CAPS

As part of our commitment to the health and well-being of all students, Seton Hall University’s Counseling and Psychological Services (CAPS) offers initial assessments, counseling, crisis intervention, consultation, and referral services to the SHU community. The CAPS office is located on the second floor of Mooney Hall, room 27. Appointments can be made in-person or by calling 973-761-9500 during regular business hours, Monday-Friday, 8:45 a.m. - 4:45 p.m. In case of a psychological emergency, call CAPS (973-761-9500) at any time to speak to a crisis counselor. For more information, please visit: <https://www.shu.edu/counseling-psychologicalservices/index.cfm>

# Part I. Introductions: International Law, Human Rights, and History

## Class 1 (February 2)

### Introduction to the Course and Human Rights

## Class 2 (February 9)

### The Development of Human Rights

*What do we mean when we talk about “human rights”? When did they become influential in the world? What is a human rights system and when did it begin? Why does it matter? In today’s class, we will compare different accounts of the precursors and rise of human rights in the world. We will also do a close reading of the Universal Declaration of Human Rights. Are human rights for everyone? Are some rights more important than others? More universal?*

#### 1. Overview

- Bates, “History” in Moeckli et al

#### 2. The Anti-Slavery Movement

- Adam Hochschild, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire’s Slaves* (2005), 1-8

#### 3. 1940s and the Universal Declaration of Human Rights

- Universal Declaration of Human Rights
- Alston & Goodman, 145-54 (Mary Ann Glendon, Makau Mutua, Hersch Lauterpacht on the UDHR)
- Jack Donnelly, “The Relative Universality of Human Rights” (excerpts)

#### 4. The 1970s

- Sam Moyn, “Human Rights in History,” *The Nation* (August 11, 2010)

#### 5. But wait, what about all those years in between?

- Steven L. B. Jensen, Decolonization—not western liberals—established human rights on the global agenda”, *Open Global Rights* (Sept. 29, 2016)

## Class 3 (February 16)

### Introducing International Law & International Human Rights Law

#### **\*\*Brief #1 Due on Makwanyane**

*In this class, we will discuss human rights as a species of international law and international law as a reference for national law. We will focus on two cases, one from South Africa and one from the U.S., both on the death penalty. As you read them, consider the ways in which the two courts discuss international law and its role in their domestic law. After we look at the cases in detail, we will turn to some divergent perspectives on the role of international law in the United States in particular. What are the different perspectives? How does each author defend their idea?*

*What do you think about the role of international law in domestic courts generally and in the U.S. in particular? What does all this mean for human rights as a form of international law?*

### **1. An Emerging International Common Law?**

- Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010 (pp. 31-34)

### **2. International Law in National Courts Case Study: Death Penalty Litigation**

- WATCH “Apartheid, 46 Years in 90 Sections,” *BBC News*, <https://www.youtube.com/watch/2f2k6iDFCL4>
- Alston & Goodman, *International Human Rights Law*, pp18-41, 51-56 (Pay attention to the differences between the South African and U.S. approaches in *Makwanyane* and *Roper*)
- Alison Nathan, “Arresting Juxtapositions: The Story of *Roper v. Simmons*” in *Human Rights Advocacy Stories*, pp 318-322, 329-331

### **3. International Law, Human Rights, and Sovereignty: Competing Positions**

- Harold Koh, “Transnational Legal Process After September 11<sup>th</sup>”, *Berkeley Journal of International Law* (2003-2004)
- John Bolton, “The First Post-American President and American Sovereignty”, Speech to the American Enterprise Institute (2010)
- Michael Hirsch, “Scholars Fear a More Nationalist Supreme Court Under Barrett”, *Foreign Policy* (Oct. 14, 2020)

## **Part II. Rights and Rights-Holders**

### **Class 4 (February 23)**

#### **Civil and Political Rights**

*This week, we will discuss the general idea of civil and political rights and its development in the International Covenant on Civil and Political Rights and then focus on two particular topics: the right to be free from torture and the suspension of certain rights in times of emergency. The first set of readings is about the post-UDHR developments at the United Nations, in particular the writing of the ICCPR and the practices of the Human Rights Committee (its monitoring body). The second set of readings is about the prohibition against torture. Focus on the arguments made about why torture should sometimes be permissible in democracies or why it should not. If we know that torture will happen, what does that mean for the prohibition? What role does popular culture play in shaping our understandings of torture? Finally we'll turn to the topic of emergency and terrorism. It turns out that the government can sometimes “suspend” our rights - lawfully. What does that mean and when can it happen? Is it a good system?*

### **1. Development of the ICCPR and the Human Rights Committee**

- Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010 (12pp.)
- International Covenant for Civil and Political Rights



- Alston & Goodman, *International Human Rights*, pp763-765 (Human Rights Committee)

## 2. Case Study: Torture

- UN Convention Against Torture
- Alston & Goodman, *International Human Rights*, pp 238-264 (The Torture Prohibition)
- Susan Marks and Andrew Clapham, “Torture”, *International Human Rights Lexicon*
- Carol Rosenberg, “Psychologist Who Waterboarded for the CIA to Testify at Guantanamo,” *The New York Times* (Jan. 20, 2020)
- Jane Mayer, “Whatever It Takes: The Politics of the Man Behind ‘24’”, *The New Yorker* (Feb 19, 2007)
- Kiran Grewal, “To change torture practices, we must change the entire system”, *Open Global Rights* (March 15, 2017)

## 3. States of Emergency: Suspending Civil and Political Rights

- Alston & Goodman, *International Human Rights*, pp 394-403 (Public Emergencies and Derogations)
- Susan Marks and Andrew Clapham, “Terrorism”, *International Human Rights Lexicon*

## Class 5 (March 2)

### Economic and Social Rights

#### **\*\*Brief #2 Due on Treatment Action Campaign**

*This week we will look at another major category of human rights: economic, social and cultural rights. Although these two categories were formally separated in the two Covenants (partly for ideological and political reasons), they are now considered indivisible and interdependent. Nonetheless, the two Covenants differ in how they frame these types of rights. How different are they? How similar? What does it look like when economic rights are put into action in national constitutions? We will use South Africa as our example here, reading two of the more famous early post-apartheid cases on economic rights.*

### 1. What Are Economic, Social, and Cultural Rights?

- International Covenant for Economic, Social, and Cultural Rights
- Alston & Goodman, *International Human Rights*, pp. 291-299, 305-6 (Competing Perspectives on Economic Rights)

### 2. Case Study: South Africa’s Constitutionalization of Economic and Social Rights

- Alston and Goodman, *International Human Rights* pp. 353-355, 358-369: (Excerpts, South African Constitution; *Government of South Africa v. Grootboom*; *Treatment Action Campaign v. Minister of Health*)
- Amy Kapczynski & Jonathan Berger, “The Story of the TAC Case” in *Human Rights Advocacy Stories*, 43-51, 78-79
- William Forbath, “Cultural Transformation: Deep Institutional Reform and ESR Practice: South Africa’s Treatment Action Campaign,” in *Stones of Hope: How*

## **Class 6 (March 9)**

### **Race, Racism, and Human Rights**

*What happens at the intersection of racism, racial justice, and human rights? In the first part of class, we will discuss the most obvious way in which international law has addressed race: the prohibition on discrimination based. We will read a case from the Inter-American Court of Human Rights to see how that plays in practices as well as an important critique of the focus on antidiscrimination in human rights law. The rest of class will be focused on the United States. Black activists and their allies have deployed the human rights framework to address racial inequality in the U.S. since the founding of the United Nations – with varying successes and failures. Today, many Black Lives Matter activists have invoked the human rights framework too. We'll discuss what it means to think of the struggle for racial justice as a human rights struggle. What are the benefits and limitations of the framework? How do activists use human rights to advance an agenda for justice?*

#### **1. Discrimination Based on Race in International Human Rights Law**

- David Weissbrodt and Connie de la Vega, *International Human Rights Law*
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- *Simone André Diniz v. Brazil*, Inter-American Court of Human Rights, Report on the Merits
- Anna Spain Bradley, Human Rights Racism, *Harvard Human Rights Journal* 32(1)(2019), Excerpts

#### **2. U.S. Racial Justice as a Human Rights Struggle**

- Margaret Somers and Christopher Roberts, "Toward a New Sociology of Rights," *Annual Review of Law and Social Science*, 392-94 (2008)
- Carol Anderson, *Eyes Off the Prize: The United Nations and the African-American Struggle for Human Rights, 1944-55* (2003), Excerpts
- Malcolm X, "The Bullet or the Ballot" (1964)
- Hope Lewis, "Race, Class and Katrina: Human Rights and (Un)natural Disaster" in *Environmental Justice in the New Millennium* (2008)
- Michelle Alexander, Introduction, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010)
- Frederick C. Harris, "The Next Civil Rights Movement," *Dissent Magazine* (Aug 15, 2015)
- Opal Tometti and Gerald Lenoir, Black Lives Matter Is Not a Civil Rights Movement, <https://www.opaltometti.org/black-lives-matter-is-not-a-civil-rights-movement/>
- Sejal Parmar, "The Internationalisation of Black Lives Matter at the Human Rights Council", *EJIL Talk* (June 26, 2020), <https://www.ejiltalk.org/the-internationalisation-of-black-lives-matter-at-the-human-rights-council/>

## Class 7 (March 16)

### Indigenous Rights

*How are Indigenous groups protected – or not – by international law? How do Indigenous rights differ necessarily from other types of human rights protections? We'll start today by examining some general ideas about group protection before turning to Canada, where questions of Indigenous justice, rights, and history are part of key political and legal debates – particularly after the establishment of a Truth and Reconciliation Commission to address the horrific abuses of the Indian Residential School system and in light of ongoing protests against extractive projects.*

#### 1. International Legal Frameworks

- Robert McQuorqudale, “Group Rights” in *International Human Rights Law*
- UN Declaration on the Rights of Indigenous People (2007)

#### 2. Spotlight on Canada

- Canadian Truth & Reconciliation Commission Report, *Honouring the Truth, Reconciling for the Future*, Excerpts (2015)
- Leanne Betasamosake Simpson, "Land & Reconciliation: Having the Right Conversations", *Electric City Magazine* (Jan 7, 2016)
- Sarah Morales, "Braiding the Incommensurable: Indigenous Legal Traditions and the Duty to Consult"
- Tracey Lindeman, "Revolution is alive: Canada protests spawn climate and Indigenous rights movement", *The Guardian* (Feb 28, 2020)
- Mia Rabson, "Without indigenous consent for pipelines, more protests to be expected", *The Canadian Press* (March 5, 2020)

## Class 8 (March 23)

### MIDTERM

## Class 9 (March 30)

### Women's Rights

*What does it mean to say women's rights are human rights? What are women's rights and how are they different or the same as any others? In this class we will examine the prohibition on discrimination against women and the ways in which ideas of women's rights have developed over time. We will then use this as an opportunity to discuss the question of conflicting rights. We will read a series of cases from the European context in which courts grapple with restrictions on different forms of religious attire directed particularly at Muslim women.*

#### 1. Women's Rights as Human Rights

- Convention on the Elimination of Discrimination Against Women
- De Schutter, *International Human Rights Law*, p. 292-297
- Alston & Goodman, *International Human Rights*, pp191-98 (*Velasquez-Rodriguez and Private Violence*)
- Dianne Otto, “Women's Rights,” in *International Human Rights Law*, pp 319-328

- “Across the Globe, a Serious Backlash Against Women’s Rights”, The New York Times, December 4, 2019
- Charlotte Bunch and Niamh Reilly, “Women’s Rights as Human Rights: 25 Years On,” in *International Human Rights of Women* (2019)
- Lisa Levenstein, “The Forgotten Origins of ‘Women’s Rights as Human Rights’,” *Open Global Rights* (Sept. 29, 2020)

## 2. Intersectional Human Rights

- Hope Lewis, “Embracing Complexity: Women’s Rights in Critical Race Feminist Perspective,” *Columbia Journal of Law and Gender* 12(3): 510-520 (2003)

## 3. When Rights Collide: “L’Affaire Foulard” Case Study

- Dunoff et al, *International Law*, pp. 391-413 and update
- Alston & Goodman, *International Human Rights*, pp633-642 (*Sahin v. Turkey*)

## Class 10 (April 6)

### **The Rights of Refugees**

*What does it mean to be a refugee? Legally, experientially, politically, what is a refugee? Who gets to move freely in the world and who does not? How is refugee status assessed and what protections do refugees receive? Is the system broken? How has the Covid-19 pandemic affected global movement patterns and mobility? In this class, we will discuss these questions from multiple perspectives: how international law establishes refugee rights; what the experience of being a refugee might be; and what the current status of global population movement is. What do you think of the current system? How might we rethink our understandings of population movement, sovereignty, and individual rights?*

- UN Convention Relating to the Status of Refugees (1951) and Protocol to the UN Convention on Refugees (1967)
- Alice Edwards, “International Refugee Law” in *International Human Rights Law*, 513-527
- Hannah Arendt, ‘We Refugees’, *Menorah Journal* 30(1)(1943)
- James Davis, “Rethinking the Role of Human Rights in the International Refugee Regime,” *Lawfare* (Mar 10, 2017)
- International Rescue Committee, How the U.S. Vetting and Resettlement Process Works, <https://www.rescue.org/article/how-us-refugee-vetting-and-resettlement-process-really-works>
- E. Tendayi Achiume et. al., Introduction to the Symposium on COVID-19, Global Mobility, and International Law, *AJIL Unbound*, pp 312-315
- John Reynolds, Fortress Europe, Global Migration, and the Global Pandemic, *AJIL Unbound*
- **WATCH** Exodus: Our Journey to Europe, Ep. 1 (56 min) available at <https://vimeo.com/185455685>

## **Part III. Advocacy and Enforcement**

## Class 11 (April 13)

### **Enforcing Human Rights Law**

*Although enforcement is in many ways a weak area of human rights, there is a long tradition of prosecuting certain international crimes whether in national courts or in specialized international tribunals. This week we will look at both, focusing first on the practice of universal jurisdiction, in which individuals including ex-heads of state can be tried for certain human rights crimes, and second on the practice of international criminal law. For both, we will be asking two types of questions: first, what is required legally to pursue a human rights prosecution? How does it actually happen? Second, is criminal law a good way to enforce human rights? Do we want more criminal punishment or less? Are human rights crimes different from domestic crimes or the same?*

#### **1. Prosecuting Human Rights Violations Domestically: Universal Jurisdiction**

- Introduction to Universal Jurisdiction: Hannum et al, 1003-1010
- Case of Pinochet Materials
- Henry Kissinger, “The Pitfalls of Universal Jurisdiction”
- *Arrest Warrant Case*, International Court of Justice
- Glenn Frankel, “Belgian War Crimes Law Undone by its Global Reach: Cases Against Political Figures Sparked Crises”
- European Center for Constitutional and Human Rights Q&A on prosecutions of Syrian officials in Germany

#### **2. Prosecuting Human Rights Violations Internationally: International Tribunals**

- Susan Marks and Andrew Clapham, “International Crimes” in *International Human Rights Lexicon*
- Opening Statement, Chief Counsel for the U.S. Robert Jackson, Nuremberg, Excerpts
- Judgment, International Military Tribunal at Nuremberg, Excerpts
- Ronald C. Slye and Beth Van Schaak, *International Criminal Law: The Essentials*
- Rome Statute of the International Criminal Court
- Zeid Ra’ad Al-Hussein, “Despite Setbacks, Fight Against Impunity Continues,” *ICTJ Debate* (March 4, 2015)
- Thierry Cruvellier, “The ICC, Out of Africa,” *The New York Times* (Nov. 6, 2016)
- Gareth Evans, “Peace v. Justice”

## Class 12 (April 20)

### **Transitional Justice**

*Prosecutions are only one of the ways in which societies and states approach mass atrocity and the violation of human rights over time. Others include truth commissions, reparations, and amnesties for past violence. Together with prosecutions, we call these practices “transitional justice”, an enterprise that developed towards the end of the Cold War and continues today. In this class, we will examine the history and practice of transitional justice, particularly truth commissions. We will first examine the development of transitional justice in the Latin American context before turning to the case of South Africa, whose Truth and Reconciliation Commission*

*remains the most famous in the world. Then we will discuss the application of transitional justice to the United States. Does the US need a truth and reconciliation commission?*

### **1. Introduction to Transitional Justice**

- David Weissbrodt and Connie de la Vega, *International Human Rights Law*
- Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice (2010), Excerpts
- Thabo Mbeki and Mahmood Mamdani, “Courts Can’t End Civil Wars”, *New York Times*

### **2. Truth & Reconciliation in South Africa**

- Truth & Reconciliation Commission Final Report, Excerpts
- WATCH The Daily Show, “Trevor Celebrates Nelson Mandela’s 100<sup>th</sup> Birthday” <https://www.youtube.com/watch?v=XOVsDOG6WWw>
- *AZAPO v. President of South Africa*, South African Constitutional Court, 25 July 1996
- WATCH SABC Excerpts, TRC Special Report (on Blackboard)

### **3. Transitional Justice for the United States?**

- TBA

## **Class 13 (April 27)**

### **Advocacy: The Politics and Practice of Human Rights Work**

*What does it mean to “do” human rights work? There are, of course, many answers to that question and we’ve seen quite a few over the course: there are court cases, there are UN monitoring bodies, there are prosecutions. But a huge part of human rights work is finding facts and disseminating stories of what’s happening to people. This week we have two parts to our study: first, some general readings fact-finding and advocacy. Second, we’ll watch the Kony2012 video and read some critical pieces about it. Please watch the video first so that you can form your own opinions, and THEN read the pieces so you can decide whether you agree or disagree. In class, we’ll discuss the ways human rights researchers go about their work and the efficacy and shortcomings of the Kony2012 advocacy strategy.*

### **1. Fact-Finding and Transnational Advocacy**

- Human Rights Watch, “About Our Research”, <https://www.hrw.org/about-our-research>
- Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders*, **READ pp 102-110, 116-120**
- Susan Marks and Andrew Clapham, “Victims” in *International Human Rights Lexicon*

### **2. Case Study: Kony 2012**

- WATCH **Kony 2012 video** (30 minutes), <https://invisiblechildren.com/kony-2012/>

- Mareike Schomerus, “‘Make Him Famous’: The Single Conflict Narrative of Kony and Kony 2012” in *Advocacy in Conflict: Critical Perspectives on Transnational Activism*, edited by Alex de Waal, pp 142-163.
- Teju Cole, “The White-Savior Industrial Complex,” *The Atlantic Monthly*, March 21, 2012
- Adam Branch, “Dangerous Ignorance: The Hysteria of Kony 2012”, *Al-Jazeera*, March 12, 2012

## Part IV. New Frontiers

### Class 14 (May 4)

#### Facing Up to Global Challenges

*The world faces many crises right now. In addition to conflict, insecurity, and population movement, we are also facing radical economic inequality, horrific poverty even in rich nations, and the existential threat of climate change (not to mention a global pandemic, but we’ll discuss that next week). What, if anything, does human rights have to do with these problems? What it comes to inequality, does human rights have a robust position or does it simply offer protections against the most dire poverty? When it comes to climate change, what are the human rights implications? In addition to a general discussion, we’ll look at a current court case at the European Court of Human Rights, where a group of young people have brought a major case against 33 states for human rights violations related to climate change.*

#### 1. Human Rights and Climate Change

- UN Office of the High Commissioner for Human Rights, “Human Rights and Climate Change” Intro (October 2018)
- OHCHR, “Key Messages on Human Rights, Climate Change and Migration”
- Universal Rights Group, “Human Rights, Climate Change and Cross-Border Displacement” (Aug. 2015)
- Jonathan Watts, “European states ordered to respond to youth activists' climate lawsuit,” *The Guardian* (Nov. 30, 2020)
- Sam Varvastian, “Children’s climate change case at the European Court of Human Rights: what’s at stake?” *The Conversation* Dec. 4, 2020), <https://theconversation.com/childrens-climate-change-case-at-the-european-court-of-human-rights-whats-at-stake-151417>
- LISTEN: <https://soundcloud.com/user-163824213/bbc-world-service-features-glans-climate-change-action> (4 min.)

#### 2. Poverty and Inequality

- UN General Assembly, Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston (May 27, 2015)
- Samuel Moyn, “Do Human Rights Increase Inequality?” *The Chronicle of Higher Education* (May 26, 2015)
- OpenDemocracy Debate Contributions: Introduction; Philip Alston; Radhika Balakrishnan and James Heinz; Chris Albin-Lackey; Gaby Oré Aguilar and Ignacio Saiz

- Mariano Aguirre, “The Impact of COVID-19 is All Down to Inequality”, *opendemocracy* (April 7, 2020)

## **Class 15 (May 11)**

### **Reflections: Where Do We Go From Here?**

*What should we do now? After three months of studying different aspects of human rights, what do you think? Where should the human rights movement go? What are the pitfalls and promises? What kinds of goals can human rights accomplish? Are we tackling the right things in the right ways? Do we need different objectives and/or different strategies? The first piece for this week is from 15 years ago and lists a series of ways in which human rights might be “part of the problem” instead of the solution. What do you think about Kennedy’s list? The other pieces are more recent and they offer a combination of criticisms and ideas for human rights. Which do you find most compelling and why? What questions has the Covid-19 pandemic raised for the human rights movement?*

#### **1. Re-Evaluating Human Rights**

- David Kennedy, “The International Human Rights Movement: Part of the Problem?”, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2004)
- Stephen Hopgood, “Preface”, *The Endtimes of Human Rights* (2013)
- César Rodríguez-Garavito, “Against Reductionist Views,” *open rights* (July 30, 2013)
- Philip Alston, “Human Rights in the Populist Era” (April 18, 2017)
- Sam Moyn, “How the Human Rights Movement Failed”, *New York Times* (Apr. 2018)

#### **2. The Future of Human Rights**

- William F. Schulz & Sushma Raman, “The Coming Good Society: Why new realities demand new rights” *Open Global Rights* (Jan. 20, 2021)
- César Rodríguez-Garavito, “Can Human Rights Deal with Existential Risks to Humanity and the Planet?” *Open Global Rights* (Jan. 22, 2021)