

THE POLITICS AND LAW OF INTERNATIONAL HUMAN RIGHTS (LSJ 320/Pol S 368)  
University of Washington, Autumn 2012  
[<https://catalyst.uw.edu/workspace/jasonm/32194/>]

Instructor: Professor Jamie Mayerfeld

Office: Gowen 35

Office Hours: Mon. 2:00-3:00 and Wed. 10:30-11:15

Lecture:

Paccar 192

MWF 9:30

Overview: This course examines the emergence and development, since World War II, of an international movement dedicated to the promotion of human rights. We will study the goals of the movement and the global political context in which it operates. Special attention will be given to the legal institutions, national and international, which have influenced its evolution and character. Students taking the course will acquire an enhanced understanding of the role in human rights politics played by the United Nations, national governments, non-governmental organizations, customary international law, treaty law, regional courts, and international tribunals.

Resources: This is a core course for both the [Law, Societies and Justice Major](#), and the [Human Rights Minor](#). The newly established [UW Center for Human Rights](#) promotes human rights through teaching, scholarship, and community partnerships. To learn about human rights resources, opportunities and events, explore the [web-page](#), and subscribe to the [Human Rights Newsletter](#).

Service Learning: Students who sign up for this voluntary program work a few hours each week with a local human rights organization, thereby acquiring direct practical experience with the issues discussed in class. Choosing the service learning option is one way to satisfy the experiential learning requirement of the Human Rights Minor. You can access the service learning web-site at <http://www.depts.washington.edu/leader>.

Readings: Students are required to keep up with a full, though not unreasonable, schedule of readings. Reading assignments are keyed to lecture sessions, in which informed classroom discussion will play an integral role. (In other words, I expect you to be able to answer questions about the readings when called on to do so in lecture.)

Texts: Our texts are two books, on sale at the University Book Store; a course packet, on sale at Rams Copy Center, 4144 University Way, NE; a PDF version of 25+ *Human Rights Documents* (Columbia University Press, 2005); and selected online documents.

Michael Goldhaber, *A People's History of the European Court of Human Rights*

Nicholas Kristof and Sheryl WuDunn, *Half the Sky: Turning Oppression into Opportunity for Women Worldwide*

Course Packet (on sale at Rams Copy Center, 4144 University Way, NE)

J. Paul Martin, ed., 25+ *Human Rights Documents*, 2005 edition, PDF, **optional text**

Please note that 25+ *Human Rights Documents* is **optional** rather than required, since all the material is also available online. I will send you the PDF by email and post it online.

Please note that some assigned readings, though only available online, are still required.

Quiz Sections: Quiz sections are your opportunity to explore and debate class material in greater depth, and to resolve any misunderstandings. Students are expected to attend quiz sections regularly and to contribute informed comments to class discussion.

Exams: There will be two in-class exams to test your knowledge and understanding of the course material. Study guides will be circulated in advance.

Web-based Research Exercise: This assignment asks you to research a human rights topic using resources from the Internet. Detailed instructions appear below. Along with a paper copy, you will be asked to make an electronic submission. Instructions for doing so will be provided later in the term.

Discussion Board: Students are invited, but not required, to participate in the Discussion Board, an opportunity to post your questions, arguments, and reflections on topics related to the course.

#### GRADING:

Mid-term Exam	25%	Wed. Oct. 24
Web-based Research Exercise	25%	Due in quiz section, Thurs. Nov. 15
Final Exam	35%	Wed. Dec. 12, 8:30-10:20 am
Participation	15%	

Academic Integrity: Cheating and plagiarism are offenses against academic integrity and are subject to disciplinary action by the University. Plagiarism is copying someone else's work and presenting it as your own (by not attributing it to its true source). If you are uncertain what constitutes plagiarism, please ask me.

Disabled Student Provisions: If you wish to request academic accommodations due to a disability, please contact the [Disabled Resources for Students Office](#) (DRS), 448 Schmitz, 543-8924. If you have a letter from DRS indicating that you have a disability that requires special accommodations, please present the letter to me.

Extra Credit Opportunity: During the quarter, the University of Washington will host a number of lectures on topics related to human rights. I will announce these lectures in class. Students who attend two such lectures and turn into their TA a one-page summary and reflection at the next quiz section meeting will have their final grade raised by 0.1. Only those lectures designated by me count toward the extra credit opportunity.

## WEB-BASED RESEARCH EXERCISE

Papers are due on Thursday, November 15. They should be 7-10 pages in length, double-spaced. State your name and your TA's name at the top of the first page. Give your paper a title, and number your pages. No plastic covers, cover-sheets or folders, please.

In this paper you are asked to analyze a major human rights problem in a particular country. The purpose of this exercise is to use a human rights perspective for understanding and seeking to remedy a severe social injustice.

In researching and compiling your paper, please follow the instructions below. You must cover the specified elements (ordered as you prefer), but try not to submit a paper that reads like a check-list. You are expected to fashion a coherent narrative, and to identify the most significant overall findings of your investigation. Those findings should be stated in the introduction of your essay, and reviewed in the conclusion.

1. Describe a human rights problem in a particular country. For information, consult one or more of the following sources.

- a. Amnesty International [www.amnestyusa.org](http://www.amnestyusa.org) (Go to "Our Work" and click on "Countries.") Or go directly to <http://www.amnestyusa.org/all-countries/page.do?id=1041024>
- b. Human Rights Watch [www.hrw.org](http://www.hrw.org) (Use the "Browse by Country" button at the very bottom of the page.)
- c. American Civil Liberties Union [www.aclu.org](http://www.aclu.org) (limited to the U.S)
- d. U.S. State Department Country Reports <http://www.state.gov/g/drl/rls/hrrpt> (does not include the U.S.)

In addition, you may want to consult the annual world reports of Amnesty International and Human Rights Watch, also available online. Lexis-Nexis (UW restricted) will help you locate relevant news articles. You may consult other sources if you wish.

*NOTE: If you are a service learning student, you are encouraged but not required to write about one of the human rights problems addressed by your organization. You are also encouraged (but not required) to analyze the strategies used by your organization for promoting human rights. You must, however, complete all the other elements of the assignment listed here.*

2. Identify the specific human rights that are being violated. Be alert to all the relevant human rights, and think about how violations of one human right can undermine others. Discuss how the relevant rights are defined (or ignored) in the Universal Declaration of Human Rights.

3. Read the national constitution, and discuss what protections it does or does not promise for the right in question. Use [www.constitution.org/cons/natlcons.htm](http://www.constitution.org/cons/natlcons.htm) or a similar page. If there is no English translation online, consult Constitutions of the Countries of the World, in the Law Library.

4. Identify any relevant UN human rights treaties, and describe how the rights are defined in those treaties. Here is a portal to the core UN human rights treaties: <http://www2.ohchr.org/english/law/index.htm>. (Some, but by no means all, of these treaties appear in 25+ *Human Rights Documents*.) You should probably confine your attention to the "Core International Human Rights Instruments" appearing at the top of this page, though some other treaties may prove relevant.

5. State whether the country has ratified the relevant UN treaties. You will find this information here: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>. (This chart includes far more treaties than you should examine. Consult the *major* treaties that are *relevant* to your topic.) A country has ratified a treaty if there is a date appearing in the “Ratification, Accession, Succession” column.

6. Find out if the country has ratified the regional human rights treaty (if any) in its geographic area: the [European Convention on Human Rights](#), the [American Convention on Human Rights](#), or the [African Charter on Human and Peoples’ Rights](#). (The treaties also appear in 25+ *Human Rights Documents*.) Ratification lists can be found at

- a. Africa: <http://www1.umn.edu/humanrts/instree/ratzlafchr.htm>
- b. The Americas: <http://www.oas.org/juridico/english/Sigs/b-32.html>
- c. Europe: <http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG>

Discuss how the relevant rights are defined in the relevant regional treaty.

7. Note: Here’s a convenient way to find out which human rights treaties, international and regional, the country has ratified: <http://www1.umn.edu/humanrts/research/ratification-index.html>

8. Note: Some of you may choose to write about abuses committed by insurgent groups or rebel armies. Though such organizations do not ratify international treaties, they are still governed by human rights law. You should refer to the Universal Declaration and any treaties that seem relevant. Moreover, insurgent organizations, like states, are governed by the law of armed conflict. You may therefore want to consult Articles 6-8 of the Rome Statute of the International Criminal Court. To read the treaty, please paste this link into your browser: <http://untreaty.un.org/cod/icc/statute/romefra.htm>

9. Discuss whether and in what way the government’s (or insurgency’s) conduct is in violation of domestic law, the nation’s treaty obligations, and customary international law. Is the relevant human rights law, at the national and international levels, adequate and appropriate, and if not, how should it be improved?

10. Discuss what you think government officials (or insurgent leaders), national citizens, and international actors should do in light of your findings.

You must document sources for all specific information provided in your essay. You may use either footnotes, endnotes, or parenthetical references that refer to a bibliography on the back page. Use a standard format (e.g., Chicago or MLA) and be consistent. Your citation should include enough information to identify the source clearly; please also list the web-page address. Subsequent citations to the same report should be abbreviated. Examples:

1. Amnesty International, “Dissent and Impunity in Belarus,” 21 June 2002, [web.amnesty.org/ai.nsf/Index/EUR490202000?OpenDocument&of=COUNTRIES\BELARUS](http://web.amnesty.org/ai.nsf/Index/EUR490202000?OpenDocument&of=COUNTRIES\BELARUS).
2. AI, “Dissent and Impunity in Belarus.”
3. International Covenant on the Elimination of All Forms of Racial Discrimination (CERD), art. 3.
4. CERD, art. 9.

## CALENDAR OF READING ASSIGNMENTS

Readings are due on the dates indicated.  
Starred readings are in the Course Packet.

Monday, September 24: Introduction

### **Part I: Historical Background, from the American Revolution to the Universal Declaration**

Wednesday, September 26

- \*US Declaration of Independence (1776)
- \*US Constitution (1787)

What does the US Declaration of Independence say about human rights? How do human rights inform the Declaration's theory of legitimate government and justified rebellion? Why didn't the signers try to abolish slavery before seeking independence from Britain? Which human rights are protected in the original articles and amendments of the US Constitution? How does the form of government authorized by the Constitution seek to prevent the violation of human rights? Does it assert too few rights? How does the original Constitution (prior to 1865) stand in relation to slavery?

Friday, September 28

[United Nations Charter](#), especially Preamble, Articles 1, 2, 7, 13, 23-25, 27, 55, 56, 62, 68.  
[Universal Declaration of Human Rights](#) (25+ HR Documents, pp. 5-8)

How does the UN Charter provide support for human rights? Does it also undermine human rights? What historical process led to the Universal Declaration of Human Rights? Is there an underlying principle that grounds the rights asserted in the Declaration? How do the rights asserted in the Declaration relate to each other? How does the Declaration differ from the US Bill of Rights? Does it assert too many rights? Too few?

Monday, October 1

Reread the [Universal Declaration of Human Rights](#) (25+ HR Documents, pp. 5-8)

We will continue discussing the Universal Declaration of Human Rights.

### **Part II: The Idea of Universal Human Rights**

Wednesday, October 3

- \*Maurice Cranston, "Human Rights, Real and Supposed"
- \*Jeremy Waldron, "Liberal Rights: Two Sides of the Coin"
- \*David Kelley, *A Life of One's Own* (excerpt)

\*Stephen Holmes and Cass R. Sunstein, *The Cost of Rights* (excerpt)

Should human rights include economic, social and cultural rights?

Friday, October 5

\*American Anthropological Association, “Statement on Human Rights”

\*Michael Ignatieff, *Human Rights as Politics and Idolatry* (excerpt)

Are human rights universal, or culturally specific? Should the definition of human rights vary across different societies?

### **Part III: Customary International Law**

Monday, October 8

\*Statute of the International Court of Justice, Art. 38

\*Mark Janis, *Introduction to International Law* (excerpts)

What are the sources of international law? What is customary international law? What qualifies a norm for the status of customary international law, and who decides? Why do we need customary international law? What is the power, and what are the limits, of international human rights law?

Wednesday, October 10

\**Filartiga v. Peña-Irala*, 630 F. 2d 876, U.S. Court of Appeals, Second Circuit, 1980

\*Jeffrey Davis, “The First ATS Human Rights Case”

\*Torture Victim Protection Act of 1991

How did a US federal judge come to make a pronouncement on international law? What is the significance of Judge Kaufman’s ruling for our understanding of international law? How does Kaufman argue that international law prohibits torture? What does this case illustrate about the way in which international law is formed?

Friday, October 12

\*“Thugs Brought to Book,” *The Economist*,

\* Julia Preston, “Ex-Salvadoran Colonel is Ordered To Pay for Crimes Against Humanity”

\* *Sosa v. Alvarez-Machain*, U.S. Supreme Court, 2004 (excerpt)

What is the legacy of the *Filartiga* case for human rights activists? What do Justices Souter and Scalia each think about the legitimacy of the *Filartiga* precedent? What do their opinions reveal about their respective attitudes towards international law?

### **Part IV: Treaty Law and the UN Human Rights Treaties**

Monday, October 15

SKIM: Vienna Convention on the Law of Treaties  
International Covenant on Civil and Political Rights (ICCPR), Preamble and Articles 1 through 27 (**25+ HR Documents**, pp. 16-21)

How does treaty law differ from customary international law? What are the stages in which treaty law is formed? What is the legal significance of the ICCPR? How does the ICCPR differ from the Universal Declaration of Human Rights? What accounts for those differences? How does the ICCPR seek to strengthen respect for human rights?

Wednesday, October 17

International Covenant on Civil and Political Rights (ICCPR), Articles 27 through 53 and First Optional Protocol (**25+ HR Documents**, pp. 22-30)

\*material on state reports and concluding observations, from Henry J. Steiner and Philip Alston, *Human Rights in Context*, 2<sup>nd</sup> ed.

What are the powers of the Human Rights Committee? How can it contribute to the protection of human rights, and what factors limit its effectiveness? How can human rights advocates make use of the Committee to further their cause?

Friday, October 19

\*Janis, *An Introduction to International Law* (excerpt)

\*U.S. Reservations, Understandings and Declarations to the International Covenant on Civil and Political Rights (also in course packet)

\*Louis Henkin, "U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker"

\*Jack Goldsmith, "Should International Human Rights Law Trump US Domestic Law?"

What explains the reservations, understandings, and declarations (RUDs) attached by the United States to its ratification of the ICCPR? What is the effect of the RUDs on the behavior of US judges? Was the United States right to attach these RUDs? Why or why not? Are the RUDs legally valid? In light of its RUDs, is the US ratification of the ICCPR effectively meaningless?

Monday, October 22

\*Harold Hongju Koh, "How is International Human Rights Law Enforced?"

What leads countries to comply with international human rights law?

## Wednesday, October 24: MID-TERM EXAM

### Part V: Women's Rights

Friday, October 26

**Kristof & WuDunn**, Introduction (pp. xi-xxii) and pp. 3-45, 54-79

What are the causes, and consequences, of systematic violence against women?

Monday, October 29

**Kristof & WuDunn**, pp. 81-148

How is women's vulnerability to violence linked to other rights deprivations, including those related to poverty? What are the smartest strategies for overcoming women's oppression? Is a human rights approach helpful?

Wednesday, October 31

**Kristof & WuDunn**, pp. 149-198, 205-54

[Convention on the Elimination of All Forms of Discrimination Against Women](#), Preamble and Articles 1-16 (**25+ HR Documents**, pp. 45-50)

Are women's rights human rights? Why or why not? Does the nature of women's oppression challenge us to rethink established conceptions of human rights?

### Part VI: European Convention on Human Rights

Friday, November 2

[European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (**25+ HR Documents**, pp. 146-55) (Please note that some articles in Sections II and III were amended in 2010, subsequent to the latest edition of **25+ HR Documents**. However, these changes will not be a major focus of our attention.)

**Goldhaber**, pp. 1-47, 55-75

What are the achievements and failures of regional human rights regimes? How has the European Court of Human Rights altered the policies of national governments? What are the main factors contributing to its power? What has been the interaction between the Court, individual victims, and human rights NGOs?

Monday, November 5

**Goldhaber**, pp. 101-45, 171-85

- \*Ireland v. the United Kingdom, European Court of Human Rights, 1978 (excerpt)
- \*Aksoy v. Turkey, European Court of Human Rights, 1996 (excerpt)
- \*Selmouni v. France, European Court of Human Rights, 1999 (excerpt)

How has the European Court of Human Rights contributed to the fight against torture and ill-treatment? What is the extent and what are the limits of its contributions? States use multiple strategies to deny responsibility for torture. How, in *Aksoy*, did the Court try to combat some of those strategies? Using the assigned cases, summarize the Court's jurisprudence on torture and ill-treatment.

Wednesday, November 7

- \*Ingraham v. Wright, US Supreme Court, 1977 (excerpt)
- \*Tyrer v. United Kingdom, European Court of Human Rights, 1978 (excerpt)
- \*DeShaney v. Winnebago, US Supreme Court, 1989
- \*A v. the United Kingdom, European Court of Human Rights, 1998 (excerpt)
- \*Sarah Lyall, "European Court Orders Britain to Restrict Beatings by Parents"
- \*[European Convention for the Prevention of Torture](#), Articles 1-3 (**25+ HR Documents**, p. 188) (also in course packet)
- \*Nigel Rodley, "European Convention for the Prevention of Torture"

Why have European Court of Human Rights and the U.S. Supreme Court ruled differently in cases regarding the corporal punishment and abuse of children? What is the significance of the European Convention for the Prevention of Torture?

Friday, November 9

**Goldhaber**, pp. 88-97, 149-68

- \*West Virginia State Board of Education v. Barnette, US Supreme Court, 1943 (excerpt)
- \*Sahin v. Turkey, European Court of Human Rights, 2005 (excerpt)
- \*Sabrina Tavernise, "Turkey's High Court Overturns Headscarf Rule"
- \*Sabrina Tavernise and Sebnem Arsu, "Turkish Court Calls Ruling Party Constitutional"

Compare the ruling of the US Supreme Court in *Barnette* with the ruling of the European Court of Human Rights in *Sahin*. Why do these courts seem to arrive at contrasting judgments on questions of religious freedom? Do you agree with the court's ruling in each case? Why or why not? Can you detect any general differences in the approach of these two courts? Do you think that the European Court has contributed positively or negatively to Turkey's internal debate over secularism and religious freedom?

**Monday, November 12. Veterans Day Holiday, no lecture.**

**Part VII: The Law of Armed Conflict**

Wednesday, November 14

- \*Geoffrey Robertson, “War Law”
- \*Michael Walzer, *Just and Unjust Wars* (excerpt)
- \*Martens Clause
- \*International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996), paragraph 78
- \*1907 Hague Convention Respecting the Laws and Customs of War on Land, Articles 22-28
- \*1949 Geneva Conventions, Common Article 3
- \*1949 Geneva Contentions, Grave Breaches Provisions
- \*1977 Geneva Protocol I, Articles 48-51

What connection, if any, is there between the ancient tradition of the law of war and the more recent tradition of human rights law? What are the core principles of the law of war? Why should states heed restraints on the conduct of war? Are there reasons for ignoring such restraints?

**\*\*\*Thursday, Nov. 15: Web-based Research Exercise is due.\*\*\***

Friday, November 16

- \*Henry L. Stimson, “The Decision to Use the Atomic Bomb”
- \*Michael Walzer, “The Limits of Calculation: Hiroshima”

How should we judge the US decision to drop the atom bomb on Hiroshima and Nagasaki in 1945?

## **Part VIII: International Criminal Justice**

Monday, November 19

- \*Geoffrey Robertson, “An End to Impunity?”
- \*Nuremberg Charter, Articles 1, 6-14
- [Convention on the Prevention and Punishment of the Crime of Genocide \(25+ HR Documents, pp. 34-36\)](#)

What is the significance of the Nuremberg and Tokyo tribunals in the development of international law? Were the tribunals established in compliance with international law, and does that matter? What is genocide? Why should genocide be defined as a separate crime under international law?

Wednesday, November 21

- Rome Statute of the International Criminal Court, Articles 1, 5-17, 20, 25, 27, 28, 55, 66, 67, 75, 120. To read the treaty, please paste this link into your browser:  
<http://untreaty.un.org/cod/icc/statute/romefra.htm>
- \*The ICC at a Glance

- \*Marc Grossman, “American Foreign Policy and the International Criminal Court” — official explanation of the US decision to “unsign” the ICC Treaty
- \*Benjamin B. Ferencz, “Know the Truth about the International Criminal Court”
- \*George F. Will, “U.S. Isn’t Wary Enough of New World Court”
- \*Madeline Morris, “The Disturbing Democratic Defect of the International Criminal Court”
- \*Jamie Mayerfeld, “The Democratic Legacy of the International Criminal Court”

What is the legal and political significance of the International Criminal Court? How does the ICC contribute to the further development of international humanitarian law? Why is the US government so hostile to the ICC? Should it be? Does the ICC merit support or opposition? Does it support or betray democratic principles?

### **Thursday, November 22, and Friday, November 23: Thanksgiving Holiday**

Monday, November 26

- \*David Rieff, “For Darfuris, Justice is the Enemy of Peace”
- \*Nick Grono and Fabienne Hara, “Sudan: Security Council Should Make President Meet Benchmarks”
- \*Human Rights Watch, “UN Security Council: Don’t Protect President al-Bashir from Prosecution”

Is there a trade-off between justice and peace, and if so, what should be done? In the interests of peace, should the indictment of President Bashir of Sudan be dropped or at least suspended?

### **Part IX: Human Rights Abuses in the “War on Terror”**

Wednesday, November 28

- \*President George W. Bush, Speech on Terrorism, Sept. 6, 2006
- \*Anthony Lewis, “Official American Sadism”
- \*Jonathan Alter, “Time to Think about Torture”
- \*Darius Rejali, “Torture’s Dark Allure”
- OPTIONAL: \*Jamie Mayerfeld, “In Defense of the Absolute Prohibition of Torture”

How did the Bush administration come to practice torture in the War on Terror? In what manner did the government portray and justify its policy? What is the usefulness of torture as a counter-terrorist strategy? What arguments have sometimes been used to defend torture, and how should they be evaluated?

Friday, November 30: Guest lecture by Arthur Emery on the “Enhanced Interrogation Program”

- \*Joseph Margulies, “Abu Zubaydah’s Suffering”

Monday, December 3

[Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), Preamble and Articles 1-16 (**25+ HR Documents**, pp. 71-74)

- \*Common Article 3 of the Geneva Conventions
- \*[US Reservations to the Torture Convention](#) (also in course packet)
- \*Memo from the President to Vice President et al. re: Humane Treatment of Al Qaeda and Taliban Detainees, February 7, 2002
- \*US Anti-Torture Act of 1994
- \*US War Crimes Act as passed in 1997
- \*US War Crimes Act as amended by 2006 Military Commissions Act
- \*Jamie Mayerfeld, "Playing by Our Own Rules: How US Marginalization of International Human Rights Law Led to Torture" (excerpt)

What is the status of torture in international law? What is its status in US law? What resources does existing law offer to rights advocates seeking to stop torture? How did the Bush administration devise a legal rationale for practices that most people would call torture? Discuss how the Military Commissions Act of 2006 provided partial immunity for torture.

Wednesday, December 5

- \*Sabin Willett, "Who's at Guantanamo, Anyway?"
- \*Tom Lasseter, "America's Prison for Terrorists Often Held the Wrong Men"
- \* "Ex-Terror Detainee Says U.S. Tortured Him," *CBS News*
- \*Daphnie Eviatar, "First U.S. Trial of 'Child Soldier' in Modern History Starts this Week at Gitmo," "Serious Setback for Omar Khadr as Pretrial Hearing Comes to a Close"
- \*Jamie Mayerfeld, "The Impossibility of Predicting Future Actions of Guantánamo Detainees"

What human rights have been violated in Guantanamo Bay? Who really is in Guantanamo? Was the United States justified in detaining any of the 779 individuals held there? If so, which ones, and on what grounds? Are the military commissions legitimate in your view?

Friday, December 7

- \*David Cole, "Guantanamo: The Problem of Preventive Detention," with responses by Robert Chesney, Joanne Mariner, and Eric Posner

What policy should the United States adopt toward suspected terrorists? Is prolonged detention without trial ever justified, or should all suspects be released unless charged with a crime?

**FINAL EXAM: Wednesday, December 12, 8:30-10:20 am.**