

Columbia University

Human Rights in International and Domestic Law & Institutions

Spring 1999- Course U6142y

Mr. Peter Danchin

**Office Hours: Wed 10-12 am, or by appointment
(Room HB2-4, Heyman Center, East Campus)**

Tel: 854 1675

E-mail: pdanch@law.columbia.edu

Time and Location

Class: Monday 4:10-6 pm, 413 IAB

Discussion Session: Wednesday 2:00-3:00 pm, 908 IAB

Course Description

This is the core human rights course for students in the Human Rights and Humanitarian Affairs Concentration (as well as those in other concentrations). The course provides both an introduction to basic human rights philosophy, principles, instruments and institutions, and an overview of several current issues and debates in the field. At a time when virtually all states proclaim their acceptance of and adherence to international human rights norms, and when the law of nearly every state purports to protect fundamental human rights, this course aims to explore the diverse and increasingly complex body of international law and agreements which have both national and international application. It also seeks to analyze the ways in which allegations of human rights violations are dealt with in international politics and relations, and to expose some of the limitations in the architecture of the international system.

The course is divided into three parts. Part I introduces the conceptual foundations of the idea of rights from an historical and philosophical perspective. The focus is on the Western rights tradition, however other sources of rights, and several alternative philosophical perspectives to rights, are also considered. Also discussed is the concept of "constitutionalism", and its commitment to individual rights and bills of rights as supreme law.

The second, and largest, part covers the International Human Rights movement beginning with its historical origins and examining the key international declarations, agreements and instruments. Our main concern is the means by which human rights norms are implemented and applied by national and international courts, and other treaty and political bodies. Also covered are economic and social rights, regional human rights systems and the role of non-governmental organizations.

The third part considers selected human rights issues under international and national law. The focus here is on Group Rights and so-called "third generation" rights. In examining the ways in which different societies have chosen differing configurations of rights, we will explore whether the historical and cultural "pluralism" of human rights visions is reconcilable with the more universal and international claims of international human rights. The issues raised in all parts of the course will be

analyzed in a comparative mode using (1) the standards developed in international human rights law, and (2) the practices of States under their domestic and constitutional systems.

Advocacy and Written Argument Skills

A major aim is to equip students with the basic tools necessary to work with, and within, the distinctive sources, methods and institutions of the international human rights movement. Implicit in this approach is the assumption that human rights requires legal and other advocacy skills. Accordingly, 30% of the formal assessment for the course comprises the preparation of Written Memorials on selected human rights issues of current controversy and importance, and subsequent oral argument before a simulated international treaty body, court or committee. Students will be allocated to three-person "teams" and assigned a fact scenario that raises human rights violations or issues. Each team will be required to research and prepare a 30-page written submission (a "Memorial") and to make an oral presentation of the arguments in their Memorial (each advocate will speak for approximately 15 minutes).

The simulated treaty bodies will comprise (1) the Instructor; (2) a Human Rights Advocate or Practitioner with expertise on the topic in question; (3) an International Human Rights Law Professor; and (4) a student(s) from last year's HRHA concentration with a specific interest or specialization in the area. Each session will be video-taped to be viewed and critiqued jointly by the participants and the Instructor.

Course Requirements

Multiple Choice Reading Test on reading assignments, documents and institutions: 2:00 3:00 pm Wednesday, March 24 (10%)

Written Memorial and Oral Argument: 10-15 pages per student (approx. 30 pages for each Memorial); *due*: 4:00 pm Monday, April 5 at the start of class; appearance times of oral argument to be scheduled (during the 2 week period: April 5 April 19) (30 %)

Final 24-hour Take-Home Examination: 2 hypothetical fact scenarios/problems; 1 conceptual essay (60 %)

Required readings (including for Discussion Group sessions), classroom attendance and participation. Recommended readings will not formally be examined, but are included for students who wish to explore topics in greater depth. Attendance at all Discussion Sections and Presentations of Oral Argument is not mandatory, but is strongly recommended (in particular, the Oral Argument sessions provide an excellent opportunity to learn about international complaint mechanisms and processes not covered in detail in class)

Required Readings:

1. *Twenty-Five Human Rights Documents*: New York: Center for the Study of Human Rights, Columbia University, 1994
2. Louis Henkin, *The Age of Rights: New York*, Columbia University Press, 1990
3. Henry J. Steiner and Philip Alston (eds.), *International Human Rights in Context: Law, Politics, Morals*: Oxford University Press, 1996
4. Course Packet: assigned readings

Recommended:

5. Jack Donnelly, *Universal Human Rights in Theory and Practice*: Cornell University Press, 1989
6. Jack Donnelly, *International Human Rights*: Westview Press, Second Edition, 1998
7. Burns H. Weston & Stephen P. Marks (eds.), *Symposium: International Human Rights at Fifty*, 8 Trans. L. & Cont. Probs. 113-436 (1998)
8. Reserve Readings: photocopied articles in Lehman Library and Center for the Study of Human Rights Reading Room (Heyman Center, East Campus)

Availability: (1), (4) and (7) are available at the Center for the Study of Human Rights, 1108 IAB; (2), (3), (5) and (6) are available from the Columbia University Bookstore on Amsterdam Ave at 118 th Street.

Course Objectives

While this is a core course in the HRHA concentration, it should not be seen as a survey course. The orientation of the syllabus, and the selection of readings, is towards conceptual depth and understanding of key human rights ideas, norms and conflicts in preference to "coverage" of all issues falling within the rubric "human rights". This approach to the subject necessitates that the burden of understanding the growing array of human rights processes, texts and institutions falls, in large part, to individual reading and study. As regards more specialized areas of human rights (such as human rights and foreign policy, refugees, children's rights, worker's rights, women and rights, human rights and economic development etc.) students should also look further to complementary Human Rights offerings at the University. For a good introduction to these areas, see Louis Henkin and John Lawrence Hargrove (eds.), *Human Rights: An Agenda for the Next Century: The American Society of International Law* (1994). &

Upon completing this course, students should:

1. understand the key historical, political, legal and moral influences that have shaped the idea of "human rights";
2. have a strong working knowledge of the major human rights conventions, processes and techniques of the international human rights system;
3. understand the general affinities and divergences in sources, substance and application of rights in international, regional, constitutional and domestic contexts;
4. be able to construct and advocate effective legal and policy arguments using international human rights norms and discourse;
5. know how to research, and where to find, human rights materials and relevant issues that will be necessary to future work in the field;
6. have questioned, and thought about, the role of human rights in contemporary international political and legal affairs; and
7. identified points of conceptual uncertainty or controversy in the field, and areas where the human rights system is deficient in some way (and where future thinkers and leaders may have a role to play).

Syllabus and Course Schedule

Part I: The Idea of Human Rights

1. Rights: Domestic, Constitutional, International, Human [Jan 25]
(Introduction and Overview of the Course): Basic Concepts
2. Conceptual Foundations: Philosophical and Historical [Feb 1]
(Western Rights Tradition; Alternative Conceptions of Rights, Duties, Justice)
3. Rights/Remedies in Constitutional & Domestic Law: Individual Rights in the U.S. [Feb 8]
(Rights under the United States Constitution and Domestic Law)

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Part II: International Human Rights

4. Antecedents, History and Theory [Feb 15]
(The International Human Rights Movement)
5. Human Rights in International Law -- The International Bill of Rights [Feb 22]
(From the Charter of the United Nations to the International Bill of Rights)
6. "Second Generation" Rights [Mar 1]
(Economic and Social Rights)
7. Specialized Human Rights Treaties [Mar 8]
(Selected Conventions: Genocide -- Racial Discrimination -- Discrimination Against Women)
8. Spring Recess -- No Class
9. Regional Human Rights Arrangements and Enforcement [Mar 22]
(Comparison between Universal and Regional Systems; Case Study: European Convention)
* Reading Test (in class, 1 hour) [Mar 24]
10. International Human Rights: Implementation, Enforcement and Remedies (I) [Mar 29]
(Remedies under National Law; Judicial Enforcement of International Standards)
11. International Human Rights: Implementation, Enforcement and Remedies (II) [Apr 5]
(International Enforcement of Human Rights Norms: The U.N. System)
** Written Memorials Due at Beginning of Class
12. Non-Governmental Organizations [Apr 12]
(Monitoring and Reporting Human Rights Violations)

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Part III: Selected Human Rights Issues under International and National Law

13. Group Rights [Apr 19]
(Self-Determination, People's Rights and Minority Rights)
14. "Third Generation" Rights [Apr 26]
(Human Rights and Development)
15. Concluding Discussion [May 3]
(Universal Values and Cultural Relativism)

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Abbreviations of Major Sources and Course Materials

Bdocs Twenty-Five Human Rights Documents, 1994
S&A Steiner & Alston, International Human Rights in Context: Law, Politics, Morals, 1996
Henkin Louis Henkin, The Age of Rights, 1990
CP Course Packet: assigned readings

Recommended

Donnelly(I) Jack Donnelly, Universal Human Rights in Theory and Practice, 1989
Donnelly (II) Jack Donnelly, International Human Rights, 1998
Symp Symposium: International Human Rights at Fifty: 8 Trans. L. & Cont. Probs. 113-436 (1998)
Reserve Photocopies on reserve at Lehman Library and Reading Room, H.R. Center

Quote:

Alice Ehr-Soon Tay: "Education is not about moralising, telling people what is good for them. It is not about indoctrination, trying to convince others to think as I do. And it is not about providing simplistic formulae, to suggest that things can be done without pain and struggle, discipline and even sacrifice".

O W Holmes: "A page of history is worth a volume of logic".

Ambassador Allard K Lowenstein, United States Ambassador to the United Nations for Special Political Affairs, 1978: Quote from 1716: "It is true that sometimes a lawyer diplomat has made a great success of negotiation. But in general the training of a lawyer breeds habits and dispositions of minds which are not favorable to the practice of diplomacy. Though it is true that success in the law courts depends largely on the knowledge of human nature and an ability to exploit it, which are both factors in diplomacy, it is nonetheless true that the occupation of the lawyer, which is largely to split hairs about nothing [mention Clinton here], is not a good preparation for the treatment of grave public affairs and in the region of diplomacy."