RINT 512/RPAD 568/RPOS 568 Human Rights
(Elective: 4 credits)

David E. Guinn, JD, PhD
Senior Associate, Center for International Development
Research Professor in International Law and Human Rights
Spring 2016

Class: Tuesday 5:45-9:25 pm, Husted 210

Office hours: By appointment
Tel: 518-495-0695
Email: dguinn@albany.edu

Course Description

This course examines the legal, political, and social dimensions of the modern human rights movement, its relationship to International Criminal Law, International Humanitarian Law and International Law as a whole and its implications for international affairs. It 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. The course also seeks to analyze the ways in which allegations of human rights violations are dealt with and to expose some of the limitations in the architecture of the international system. Case studies will be used to illustrate contemporary debates regarding hierarchy among rights, conflicts between individual rights and societal priorities, human rights in single-party states, rights and transitions to democracy, amnesty for human rights violations, and the linkage between human rights and other national interests.

Objectives

The goal of this course is to help students understand the legal protection of human rights around the world. This will include attention to both the substantive content of human rights norms embodied in treaties and customary international law as well as the procedural and administrative mechanisms associated with the protection of human rights. In particular students will be exposed to the difficulty of legal negotiation between differing cultural norms and systems that often arise within the context of human rights, their meaning and content. The course will emphasize critical thinking, the development of analytic skills and the use of applied logic.

By the end of the course, students should be able to:

- Identify internationally recognized substantive human rights
- Appreciate the emergence of potentially new human rights standards
• Understand and articulate arguments for and against contested human rights
• Situate human rights within the context of international law

**Teaching and learning modalities:**

This class will be offered for both on campus participants and distance learners. Distance learners will join the live class utilizing the synchronous distance-learning tools of Zoom and Skype to enable members to join class from remote locations as well as to enable groups of students to work together on group projects. In this new multimedia age, students should be able to express themselves and communicate in a range of formats and modes from email exchanges and informal dialogues with co-workers to formal written reports and oral presentations to the leadership of their organizations and that of other organizations with whom they may need to negotiate. This will require that all students have and, for those in Albany, bring to class internet enabled computers with video cameras.

During the first session, students will be sent an email by the instructor with an embedded link invitation to join a Zoom session. Clicking on this link will download a Zoom app, and after instillation, you will be able to participate in the class on line. After the first class, a new link will be sent for each session and will utilize the app installed in your first log in.

A brief overview of how to use Zoom will be included in the first session of the class.

**Evaluation Criteria**

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class participation</td>
<td>25%</td>
</tr>
<tr>
<td>Case study paper (3 @ 20%)</td>
<td>60%</td>
</tr>
<tr>
<td>Paper presentations/discussion-leading (3 @ 5%)</td>
<td>15%</td>
</tr>
</tbody>
</table>

You are expected to complete all readings, attend all classes (in person or online), participate meaningfully in class discussions, and keep up with significant human rights controversies. Do not let yourself fall behind in the readings and do not miss class. Any unexcused absence will affect your final grade.

**Class Participation**

The class will be run as a seminar. Participation will be evaluated based on whether you voluntarily pose and respond to questions in each class session, demonstrate that you have read and thought through the assigned readings (due on the date for which they are listed), and listen respectfully to what your peers say. All students must come to every class prepared to engage critically with both the week’s readings and with their classmates’ oral presentations.

**Case Study Papers**

All students will present and submit three case study papers on topics of their choice. The topics must be selected and scheduled to fit within one of the thematic or areas of discussions during
the course (either using the assigned “treaty” or general topic assigned for that class.) By the end of week two, students will sign up for topics/classes that they are interested in presenting on.

A case study paper will include: (1) a fact pattern illustrating a conflict over human rights protections; (2) the provisions of any treaty or convention applicable to the topic; (3) a brief outline or summary of the key arguments for and against the application of human rights protection to that fact pattern; and (4) citation of sources used. The goal of the paper is to demonstrate a command of the topic and the ability to advocate for or against a particular interpretation, so extensive research is not required. Indeed, where appropriate, the paper can be based on the assigned readings.

Each paper must be approx. 3,000 words and include a case study for use by the class whose fact pattern is complex enough to demonstrate a command of that week’s topic and offers an opportunity for constructive debate between two or more positions favoring or opposing the recognition of a particular fact pattern as a protected human right. Where the case requires reference to a specific treaty or convention or other outside resource, you will post a copy of that reading to Blackboard no later than one week before your class presentation.

Fact patterns can be taken from articles or sources from outside of the course readings (with proper attribution and with a copy of the source provided to the instructor) but they must offer grounds for debate.

Assignments for each week will be allocated during the second class. If more than one student is presenting a paper in a given week, those presenting must coordinate in advance, to be sure their foci (the questions or claims on which they center the case studies they examine) are different—and ideally complementary—rather than overly similar.

These papers will be presented to the class on the day we discuss those readings. Bring copies of the fact pattern to be shared with all of the other students and the instructor. The class will be divided up into two or more teams, which you will assign as advocates for the parties in the fact pattern. You will read out the case and answer any questions that may arise about the fact pattern. The teams will be given up to ten minutes to discuss the fact pattern. Then you will facilitate a discussion lasting up to 25 minutes at the end of which you will summarize the key arguments made on all sides.

**General Guidelines**

All written assignments must be double-spaced, with 1” margins, in Times New Roman font. Late papers will not be accepted after the case is discussed in class. If necessary, with the permission of the instructor, the class presentation may be delayed and subject to a grade reduction. Papers should be thoroughly proofread, to avoid aggravating the reader. Submit your papers under Assignments on Blackboard by the start of class on the relevant week.

Enrollment at University at Albany obligates each student to conduct all activities, both in and out of the classroom, in accordance with the rules and spirit of the school’s Honor Code. Plagiarism and other forms of academic dishonesty are inexcusable under any circumstances and will be dealt with severely. You are responsible for familiarizing yourself with the university’s guidelines on academic integrity, including what constitutes plagiarism in oral or written work you present as your own. Ignorance is NOT an excuse. If found to have plagiarized or otherwise cheated, you will fail the assignment and in most cases, the course.
Reasonable accommodation will be made for students with any documented physical, learning, or other disabilities. To ensure equitable and fair treatment of all students, such matters should be brought to my attention within the first two weeks of the semester.

Readings
Readings are due on the date under which they are listed. All are available online (via Blackboard (*) or the embedded hyperlink). Primary readings are mandatory – Secondary are recommended.

Readings are subject to change to accommodate the expressed interest of the class participants in their case study papers. Copies of readings must be submitted to the instructor no later than 2 weeks prior to class and will be posted on Blackboard not later than one week before class.

Copies of all required treaties and laws are separately available online at U of Minn: [http://www1.umn.edu/humanrts/](http://www1.umn.edu/humanrts/)

I. INTRODUCTION

Week One: 1/26  Introduction and Overview
The nature of international law and international human rights. Historical development of human rights law.

Primary Readings:

UN Charter, esp. Preamble, Arts 1, 2, 13, 39-44, 51, 55 and 56.


Michael Ignatieff, Human Rights as Politics, in Human Rights as Politics and Idolatry (Princeton UP, 2001)*

Secondary Readings:


II. THE NATURE OF HUMAN RIGHTS

Week 2: 2/2  Foundational Theories, the Nature of Human Rights and a Typology of Human Rights
Why should we respect human rights? What claim do they have on us? Legal? Moral? What types of rights are categorized as human rights?
International Bill of Rights
  UDHR  Universal Declaration of Human Rights
  ICCPR  International Covenant on Civil and Political Rights
  ICESCR International Covenant on Economic, Social and Cultural Rights

Geoff Dancy and Christopher J. Fariss, "The Hidden Successes of International Human Rights Law" (SSRN 2014)

Jeremy Waldron, "Duty-Bearers for Positive Rights" (SSRN 2014)

Vanice Lirio Do Valle, "Judicialization of Socioeconomic Rights in Brazil: Mercantilization of the Fundamental Rights as a Deviance in Rights Protection" Paper presented in the 3rd YCC Conference - American Society of Comparative law, at the Lewis & Clark University, Portland, Oregon, in April, 2014

Week 3: 2/9 Human Rights and Religion: the Relativist Challenge I

Religion is commonly viewed as the enemy of human rights. How might it be considered as supportive of human rights? Since religious freedom is commonly identified as a human right, how do we balance religious and “non-religious” human rights?

Primary Readings:


John Witte, "Religious Sources and Dimensions of Human Rights"

Cyra Akila Choudhury, "Beyond Culture: Human Rights Universalisms versus Religious and Cultural Relativism in the Activism for Gender Justice" Journal of Research in Gender Studies, 2015(Forthcoming)

Secondary Readings:


Foluke Ifejola Ipinyomi, "Where the Rubber Hits the Road: The Limitations of the Universalism vs Cultural Relativism Debate Affecting FGM Control in Nigeria" (SSRN 2014)
Week 4: 2/16  Asian and Cutural Values: the Relativist Challenges II
Many post-colonialist thinkers have challenged general human rights principles as imperialistic. How valid is this? How should we accommodate this? One such value is democracy. Is democracy a human right? What about private property and economic rights?

Primary Readings:

Bangkok Declaration  Final Declaration of The Regional Meeting For Asia Of The World Conference On Human Rights (1993)*


Fred R. Dallmayr “‘Asian Values’” and Global Human Rights” Philosophy East and West, Volume 52, Number 2, April 2002, pp. 173-189*


Secondary Readings:


III. THE LEGAL DEVELOPMENT OF HUMAN RIGHTS LAW

Week 5: 2/23 Treaties
Many of the most important human rights are embodied in multilateral conventions. How do these instruments serve to define and promote human rights. Conflicts of women’s rights are particularly common and illustrate the complexity of convention adoption and interpretation.

Primary Readings:

Vienna Convention on the Law of Treaties (VCLT)
Convention for the Elimination of Discrimination Against Women (CEDAW)

Thena Nguyen, "Through the Eyes of Women? The Jurisprudence of the CEDAW Committee" Outskirts, Volume 30, May 2014

Secondary Readings:


Week 6: 3/1 Customary Law – Jus Cogan

Human rights law are not just treaty made – they are also an outgrowth of customary law, of which jus cogens is a specialized type. How do customary laws develop and becoming binding? One area of development are laws relating to crimes against humanity, such as the use of rape as a weapon of war.


Week 7: 3/8 International Humanitarian Law (IHL) and International Criminal Law (ICL)

IHL and ICL both seek to protect international human rights and reflect international human rights values. To what extent do human rights survive a declaration of war? In an age of terror, what is war?

Primary Readings:

Geneva I Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. (1949)


Secondary Readings:

ICRC, “What is International Humanitarian Law”
III UN AND REGIONAL SYSTEMS

Week 8: 3/22 The United Nations and International Systems of Protection
The United Nation system offers a number of avenues in support of human rights, ranging from sponsoring forums for the creation of human rights conventions to hosting separate treaty bodies (such as the UN Human Rights Commission) and seeking to advance human rights through its internal organs.

Primary Readings:

Secondary Readings:

Week 9: 3/29 InterAmerican Human Rights System
The Inter-American treaty is the oldest of the regional treaties. We will review its basic structure, using its approach to indigenous rights as a key focus.

Primary Readings:
American Convention on Human Rights
United Nations Declaration on the Rights of Indigenous Peoples
Indigenous and Tribal Peoples Convention, 1989 (No.169)


Week 10: 4/5 European Human Rights System
The European human rights system is the strongest outside of the UN itself. Why? How does it handle contentious issues such as freedom of speech versus hate speech and holocaust denial?

Primary Readings:


John Stuart Mill, “Chapter II: Of the Liberty of Thought and Discussion” On Liberty (1869)

Secondary Readings:

Ron E. Hassner, Blasphemy and Violence International Studies Quarterly (2011) 55, 23–45

Week 11: 4/12 African Human Rights

The African Human Rights system, the newest and least developed system, introduced the concept of people’s rights. How does this advance human rights discourse?

Primary Readings:

African [Banjul] Charter on Human and Peoples' Rights


Secondary Readings:


V. SPECIAL TOPICS

Week 12: 4/19 Migration, Refugees, and Trafficking

People are constantly on the move, whether from seeking economic opportunity to fleeing from violence and exploitation. How do we balance the rights of national sovereignty with the interests of migrants and asylum seekers? How is the system exploited by traffickers in persons?

Primary Readings:

Convention relating to the Status of Refugees

Convention on the Rights of the Child

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Convention for the Suppression of the Traffic in Person and of the Exploitation of the Prostitution of Others

Secondary Readings:


Week 13: 4/26  Torture

Primary Readings:

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

DOJ 12/30/04 Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A (the Torture Memo)*

Secondary Readings:

US Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*

Week 14: 5/3 Military Interventions and Responsibility to Protect

Primary Readings:

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Alex J. Bellamy, *The Responsibility to Protect and the Problem of Military Intervention*” International Affairs (Royal Institute of International Affairs 1944-), Vol. 84, No. 4 (Jul., 2008), pp. 615-639*

*Secondary Readings:*


Churchman, David, *'Just War' in Seven Cultures* (December 4, 2008). Available at SSRN: http://ssrn.com/abstract=1311532 or http://dx.doi.org/10.2139/ssrn.1311532