

THE HISTORY AND THEORY OF HUMAN RIGHTS

Winter 2009
JRL 523, T, Th 10:30-11:50

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“Why should anyone ever want or need human rights?” “What happens if we do not have them?” “What are human rights in the first place?” This course will answer these seemingly simple questions in a sustained inquiry into the theory and the historical evolution of the modern human rights regime and especially the international rights regime after 1945. It discusses the emergence of a modern “human rights” culture as a product of the formation and expansion of the system of nation-states and the concurrent rise of value-driven social mobilizations. It juxtaposes these Western and imperial origins with competing non-Western systems of thought and practices on rights and on human rights at that. The course proceeds to discuss human rights in three prevailing modalities. First, it explores rights as protection of the body and personhood and the modern, Western notion of individualism entailed therein. In our understanding, these rights include social and economic rights. Second, it inquires into rights as they affect groups (such as refugees, ethnicities, “first nations,” but also, potentially, transnational corporations). Such group rights have been a persistent feature of human rights and humanitarian concerns. Third, we will explore the question of (national) sovereignty, the right to self-determination, and its relationship to universal or, respectively, global rights and will discuss in this context, whether a global rights regime is feasible.

-ASSIGNMENTS-

For Undergraduates: Two essays – a shorter one (8 pages) in lieu of a mid-term (due February 5, 2009, at the end of the lecture) and a longer one (12 pages) in lieu of a final (due March 12, 2009, 4pm in the History Department Office). We will provide a non-binding list of potential topics that pick up on the reading for individual sessions.

For Graduates: A research paper of 20 pages (due March 12, 2009, 4pm in the History Department Office).

-BOOKS-

All readings are on reserve. The following books are available at the Seminary Co-op (5757 South University Avenue):

Thomas Paine, *Political Writings*, ed. Bruce Kuklick (2ed, Cambridge UP, 2000).

Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford UP, 2008).

Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Belknap-Harvard UP, 2005).

Odd Arne Westad, *The Global Cold War: Third World Interventions and the Making of Our Times* (Cambridge UP, 2007).

Samantha Power, *A Problem From Hell: America and the Age of Genocide* (HarperCollins, 2003).

-SCHEDULE-

(1a) *What are human rights?*

“human rights,” *Encyclopædia Britannica* (2008).
<<http://search.eb.com/eb/article-9106289>>

THE FIRST HUMAN RIGHTS REGIME

(1b) *International Law and Cosmopolitanism*

Immanuel Kant, “On the Common Saying: ‘This May be True in Theory, but it does not Apply in Practice,’” § II “On the Relationship of Theory to Practice in Political Right” and § III “On the Relationship of Theory to Practice in International Right”; and “Metaphysics of Morals,” § II International Right and § III Cosmopolitan Right; all in *Kant: Political Writings*, trans. H.B. Nisbet, ed. H.S. Reiss (Cambridge, UK: Cambridge University Press, 1991), 73-87, 87-92, 164-171, 172-175. {chalk}

Richard Tuck, “The ‘Modern’ Theory of Natural Law,” in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge, UK: Cambridge University Press, 1987), 99-119. {chalk}

(2a) *The American Revolution*

Paine, *The Rights of Man I*.

David Armitage, “The Declaration of Independence and International Law,” *William & Mary Quarterly* 59.1 (January 2002). {jstor}
<<http://www.historycooperative.org/journals/wm/59.1/armitage.html>>

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Declaration of Independence.  
<<http://www.archives.gov/exhibits/charters/declaration.html>>

U.S. Constitution.  
<<http://www.archives.gov/exhibits/charters/constitution.html>>

U.S. Bill of Rights.  
<[http://www.archives.gov/exhibits/charters/bill\\_of\\_rights.html](http://www.archives.gov/exhibits/charters/bill_of_rights.html)>

(2b) *The French Revolution*

Paine, *The Rights of Man II*.

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Declarations of the Rights of Man 1789-1795.
Constitution of 1789: <http://avalon.law.yale.edu/18th_century/rightsof.asp>
Constitution of year I (1793): <<http://chnm.gmu.edu/revolution/browse/texts/>>
Constitution of year III (1795): <<http://chnm.gmu.edu/revolution/browse/texts/>>

(3a) *Civilizing Norms: The Age of Constitutionalism*

Gerald Stourzh, "Liberal Democracy as a Culture of Rights: England, the United States and Continental Europe," in *From Vienna to Chicago and Back: Essays on Intellectual History and Political Thought in Europe and America*, ed. Stourzh (Chicago: University of Chicago Press, 2007), 304-44. {chalk}

Antony Anghie, "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century Law," *Harvard International Law Journal* 40 (1999): 1-80. {heinonline}

(3b) *Civilizing Norms: Humanitarianism*

David B. Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006), chs. 12-13. {chalk}

Thomas Haskell, "Capitalism and the Origins of the Humanitarian Sensibility," parts 1 and 2, in *The Antislavery Debate: Capitalism and Abolitionism as a Problem in Historical Interpretation*, ed. Thomas Bender (Berkeley: University of California Press, 1992), chs. 4-5. {chalk}

Moon-Ho Jung, "Outlawing 'Coolies': Race, Nation, and Empire in the Age of Emancipation," *American Quarterly* 57.3 (September 2005) {muse}
< http://muse.jhu.edu/journals/american_quarterly/v057/57.3jung.pdf>

Samuel Moyn, "Empathy in History, Empathizing with Humanity," *History & Theory* 45.3 (October 2006): 397-415. {ebSCO}

(4a) *Transnational Movements and International Reform*

Power, *A Problem from Hell*, ch. 1.

Martha Finnemore, "Rules of War and Wars of Rules: The International Red Cross and the Restraint of State Violence," in *Constructing World Culture: International Nongovernmental Organizations since 1875*, ed. John Bolli and George M. Thomas (Stanford, CA: Stanford University Press, 1999), 149-65. {chalk}

Maira Donald, "Workers of the World Unite? Exploring the Enigma of the Second International," in *The Mechanics of Internationalism: Culture, Society, and Politics from the 1840s to the First World War*, ed. Martin H. Geyer and Johannes Paulmann, (Oxford: Oxford University Press, 2001). {chalk}

Nitza Berkovich, "The Emergence and Transformation of the International Women's Movement," in *Constructing World Culture: International Nongovernmental Organizations since 1875*, ed. John Bolli and George M. Thomas (Stanford: Stanford University Press, 1999), 100-26. {chalk}

(4b) *Treaties and International Governance: The Hague, Versailles, the League, Kellogg-Briand*

Manela, *Wilsonian Moment*.

Madelein Herren, "Governmental Internationalism and the Beginning of a New World Order in the Late Nineteenth Century," in *The Mechanics of Internationalism: Culture, Society, and Politics from the 1840s to the First World War*, ed. Martin H. Geyer and Johannes Paulmann (Oxford: Oxford University Press, 2001). {chalk}

THE SECOND HUMAN RIGHTS REGIME

(5a) World War II: The End of Enlightenment & Colonialism

Mark Mazower, "The Strange Triumph of Human Rights, 1933-1950," *Historical Journal* 47.2 (2004): 379-98. {swetswise}

Power, *A Problem from Hell*, chs. 2-3.

Hannah Arendt, "The Decline of the Nation-State and the End of the Rights of Man," *The Origins of Totalitarianism* (new ed., NY: Harcourt, Brace, and World, 1966), ch. 9. {chalk}

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Atlantic Charter.

<<http://avalon.law.yale.edu/wwii/atlantic.asp>>

(5b) The United Nations

Borgwardt, *A New Deal for the World*, intro & chs. 1-6.

Mary Ann Glendon, "The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea," *Harvard Human Rights Journal* 16 (2003): 27-40.

< <http://www.law.harvard.edu/students/orgs/hrj/iss16/glendon.pdf> >

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UN Charter.

<<http://www.un.org/aboutun/charter/>>

(6a) The Nuremberg Trials & the Geneva Conventions

Borgwardt, *A New Deal for the World*, chs. 7-8.

Best, *War & Law*, chs. 4-6.

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Jackson, "Summation for the Prosecution," Nuremberg Trials.

<<http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/Jacksonclose.htm>>

(6b) UN Universal Declaration of Human Rights

Power, *A Problem from Hell*, chs. 4-5.

Borgwardt, *A New Deal for the World*, chs. 9-10.

Susan Eileen Waltz, "Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights," *Third World Quarterly* 23.3 (2002): 437-48. {ebSCO}

Stephen P. Marks, "From the 'Single Confused Page' to the 'Decalogue for Five Billion Persons': The Roots of the Universal Declaration of Human Rights in the French Revolution," *Human Rights Quarterly* 20.3 (1998): 459-514. {muse}

< [http://muse.jhu.edu/journals/human\\_rights\\_quarterly/v020/20.3marks.html](http://muse.jhu.edu/journals/human_rights_quarterly/v020/20.3marks.html) >

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Universal Declaration of Human Rights.

<<http://www.un.org/Overview/rights.html>>

(7a) *The Cold War and the End of Colonialism*

Westadt, *Global Cold War*, introduction & chs. 1-3.

Antony Anghie, "Colonialism and the Birth of International Institutions: The Mandate System of the League of Nations," *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005), ch. 3. {chalk}

(7b) *Third World Liberation and The Rights Revolution*

Westad, *Global Cold War*, chs. 4-5.

Kenneth Cmiel, "Recent History of Human Rights," *American Historical Review* 109.1 (February 2004) {jstor}
< <http://www.historycooperative.org/journals/ahr/109.1/cmiel.html> >

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Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)  
< [http://www.unhchr.ch/html/menu3/b/c\\_coloni.htm](http://www.unhchr.ch/html/menu3/b/c_coloni.htm)>

International Convention on the Elimination of All Forms of Racial Discrimination (1965) < [http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm) >

International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) < <http://www.unhchr.ch/html/menu3/b/11.htm>>

"Dissenting Opinion of Judge Tanaka, South West Africa Cases (Second Phase), 1966," ed. Ian Brownlie and Guy S. Goodwin-Gill, *Basic Documents on Human Rights* (5th ed., Oxford: Oxford University Press, 2006). {chalk}

(8a) *The Social Mobilization for Global Human Rights*

Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998), chs. 3 & 5. {chalk}

Kenneth Cmiel, "The Emergence of Human Rights Politics in the United States," *Journal of American History* 86.3 (December 1999): 1231-1250. {historycooperative}  
< <http://www.historycooperative.org/journals/jah/86.3/cmiel.html> >

Jerome J. Shestack, "Sisyphus Endures: The International Human Rights NGO." *New York Law School Law Review* 24 (1978/79): 89-123. {heinonline}

Morton E. Winston, "Assessing the Effectiveness of International Rights NGOs: Amnesty International," in *NGOs and Human Rights: Promise and Performance*, ed. Claude Emerson Welch (Philadelphia: University of Pennsylvania Press, 2000), 25-54. {chalk}

David Rieff, "Charity on the Rampage: The Business of Foreign Aid," *Foreign Affairs* 76.1 (1997): 132-38. {proquest}

(8b) *The Strange Rise of Human Rights and the Collapse of the Cold War System*

Power, *A Problem from Hell*, chs. 7-8.

Westad, *Global Cold War*, chs. 8-10 & conclusion.

Louis Henkin, "U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker," *American Journal of International Law* 89.2 (1995): 341-50. {jstor}  
 < <http://www.jstor.org.proxy.uchicago.edu/stable/pdfplus/2204206.pdf> >

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Convention on the Elimination of All Forms of Discrimination (1979)
 <<http://www.un.org/womenwatch/daw/cedaw/>>

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
 <http://www.unhchr.ch/html/menu3/b/h_cat39.htm>

Convention on the Rights of the Child (1989)
 <<http://www.unhchr.ch/html/menu3/b/k2crc.htm>>

THE THIRD HUMAN RIGHTS REGIME

(9a) *The Vienna Conference and What International Organizations Thought Human Rights Might Be*

Michael Ignatieff, "Human Rights as Idolatry," in *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001). {chalk}

Manfred Novak and Ingeborg Schwarz, "The Contribution of Non-Governmental Organizations," in *World Conference on Human Rights, Vienna, June 1993: The Contribution of NGOs: Reports and Documents*, ed. Manfred Novak (Vienna: Manzsche Verlags- und Universitatshandlung, 1994), 1-11. {chalk}

"NGO-Forum: All Human Rights for All," in *World Conference on Human Rights, Vienna, June 1993: The Contribution of NGOs: Reports and Documents*, ed. Manfred Novak (Vienna: Manzsche Verlags- und Universitatshandlung, 1994), 65-120. {chalk}

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Vienna Declaration and Programme of Action (1993).  
 <<http://www.unhchr.ch/html/menu5/wchr.htm>>

Beijing Declaration, Fourth World Conference on Women (with Platform for Action) (1995).  
 <<http://www.un.org/womenwatch/daw/beijing/index.html>>

(9b) *The Question of Genocide: Kosovo & Rwanda*

Powers, *A Problem from Hell*, chs. 9-12.

Jacques Semelin, "What is 'Genocide'?" *European Review of History* 12.1 (2005): 81-89. {informaworld}

Theodor Meron, *War Crimes Law Comes of Age: Essays* (New York: Oxford University Press, 1998), chs. 10, 17. {chalk}

(10a) *International Law: Can Global Society be Constitutionalized?*

Daniele Archibugi, "From the United Nations to Cosmopolitan Democracy," in *Cosmopolitan Democracy: An Agenda for a New World Order*, ed. Daniele Archibugi and David Held (Cambridge, MA: Polity Press, 1995), 121-79. {chalk}

Nancy Fraser, "Reframing Justice in a Globalizing World," *New Left Review* 36 (2005): 69-88. <<http://newleftreview.org.proxy.uchicago.edu/?getpdf=NLR27003&pdflang=en>>

Buergenthal, Thomas. "Modern Constitutions and Human Rights Treaties." *Columbia Journal of Transnational Law* 36 (1998): 211-23. {heinonline}

Grimm, Dieter. "The Constitution in the Process of Denationalization." *Constellations* 12.4 (2005): 447-63. {wiley}

(10b) *The Question of American Exceptionalism & The War on Terror*

Ignatieff, ed., *American Exceptionalism & Human Rights* {chalk}

-ch. 6: Moravcsik, "The Paradox of U.S. Human Rights Policy"

-ch. 10: Slaughter, "A Brave New Judicial World"

-ch. 11, Ruggie, "American Exceptionalism, Exemptionalism, and Global Governance"