

**International Human Rights**  
Law 263  
Professor Laurel E. Fletcher  
Fall 2018

**COURSE INFORMATION**

Days/Time: Monday/Wednesday, 11:20 am-12:35pm  
Location: Room 10  
Credit Hours: 3

**INSTRUCTOR INFORMATION**

Office Hours: Monday, 1:00pm-2:30pm, or by appointment  
Office: Simon 588  
Email: [lfletcher@law.berkeley.edu](mailto:lfletcher@law.berkeley.edu)  
Phone: 510-643-4792  
Faculty Assistant: Dominique DeBerry, [ddeberry@clinical.law.berkeley.edu](mailto:ddeberry@clinical.law.berkeley.edu)

**COURSE DESCRIPTION:**

This course offers an introduction to the theory and practice of human rights. We will critically examine the international and domestic laws, actors, and institutions that play a role in the protection of human rights. We will examine the major sources of international human rights law--including treaties, customary international law, international soft law, and domestic law. Key mechanisms of human rights protection also will be discussed including, multilateral organizations (e.g. the United Nations Security Council and Human Rights Council); international, regional, and national courts and tribunals; and quasi-judicial treaty bodies (e.g. the U.N. Committee Against Torture). The role of a range of non-State actors will also be discussed including international nongovernmental organizations like Amnesty International and Human Rights Watch; multi-national corporations; and armed opposition groups like ISIL.

We will discuss the conceptual foundations of human rights and key theoretical debates about the field with a focus on recurring questions regarding legitimacy, justiciability, compliance, and efficacy. Also we will consider critical perspectives on the human rights regime from feminists, Third World Approaches to International Law (TWAIL) scholars, and advocates for rights of LGBTI communities.

**LEARNING OUTCOMES**

Students in this course will be expected to achieve the following Berkeley Law Learning Outcomes:

- a) Knowledge and understanding of substantive and procedural law;
- b) Legal analysis and reasoning.

This course will be structured around the following specific learning outcomes in international human rights:

- a) Identify, explain, and apply the major sources of international human rights law and their defining features;
- b) Identify, explain, and analyze the major international enforcement mechanisms for international human rights;
- c) Identify, explain, and analyze the nature and legal characteristics of human rights (individual vs collective; negative vs positive rights; civil and political vs economic and social);
- d) Identify, explain, and critically analyze the application of human rights law and norms to address human rights violations and abuses;
- e) Knowledge and understanding of the debates surrounding the purpose, legitimacy, and efficacy of international human rights norms and their application; application and evaluation of human rights law from these various perspectives (e.g. traditional, feminist, Third World Approaches to International Law, etc.).

### **TEXTBOOK AND COURSE MATERIALS**

#### **Required:**

Philip Alston and Ryan Goodman, International Human Right: Texts and Materials (The Successor to *International Human Rights in Context*), Oxford University Press, 2013 (“Casebook”). The casebook is available for purchase at the bookstore.

Readings from the text are marked as “Casebook.”

bCourses: Additional readings are posted on the bCourses:

<https://bcourses.berkeley.edu/courses/1472281>

Treaties: Excerpts of treaties are in the casebook. For some classes, I will ask you to review the text of treaties. The full texts of treaties can be found on line. The University of Minnesota Human Rights Library is an excellent place to start: <http://hrlibrary.umn.edu/>. You may want to review additional treaties or materials on your own (and you are encouraged, but not required to do so).

**The reading assignments listed below are subject to modification.** Additional readings **will be** posted on bCourses throughout the semester. I will notify you of the assigned readings for the week by posting on bCourses, generally on the Thursdays. **You are responsible for any information that is posted on bCourses in an announcement or other class information.**

#### **Optional Reading and References**

For background and current events: International Justice Resource Center, [www.ijrcenter.org](http://www.ijrcenter.org)

### **COURSE REQUIREMENTS**

Please attend class, arrive on time, and be prepared to participate in class discussion. Class attendance is mandatory (and required by Berkeley’s Academic Rules and the ABA), as is class

participation. Everyone is on call for potential questions each day, but if you're ever unprepared or cannot answer, on a particular day (or if you know ahead of time that you must miss class), please email me by 9 a.m. that day. My sole goal is to diversify and liven up class participation, and give you an incentive to share your thoughts, not to intimidate or humiliate anyone. You're all encouraged to volunteer answers when I seek volunteers, and to ask questions throughout class. Sometimes I'll have to postpone an answer for timing/pedagogical reasons. Feel free to bring any lingering questions to me during office hours. Class participation is not graded per se, but I will use it in determining whom to bump up/down on the margins after considering the graded material.

For further explanation of Berkeley Law's policies on preparation and participation, please read Academic Rules § 7.

Please plan to check your e-mail and bCourses regularly for course updates and materials.

### **GRADING**

Your grade will be based primarily on a take-home final examination. The exam will be a mix of "issue spotting," and policy questions. You may use the following materials: (1) the assigned casebook (or printouts of assigned cases) and class handouts (PowerPoints, hypos from class, etc.); (2) your class notes; (3) any outline or study notes that you created, either individually or as part of a group. Please be aware that time constraints may prevent extensive consultation of these materials during the exam.

Anyone who seeks an accommodated or rescheduled exam should speak directly to Student Services (280 Simon, 510-643-2744, or imayer@law.berkeley.edu). Please do not discuss exam accommodations or reschedules with me, as this could compromise the anonymity of your exam.

Between now and November 28<sup>th</sup>, in addition to the sessions below, please plan to attend at least one human rights event on campus and write a short (500 word maximum) reflection paper on it. I've provided some options below and will notify you via bCourses of additional events throughout the semester. The assignment will be ungraded but counts for 10% of your final grade.

An optional review session will be held on Monday, December 3 from 11:20am- 12:35pm in room 10.

### **HUMAN RIGHTS EVENTS (additional events to be announced during the semester)**

Thursday, October 4: 5:30pm-7:00pm Room 132

Michelle Alexander, Author of "The New Jim Crow", "Human Rights and Racial Justice in the US

Thursday, October 11: 5:30pm-7:00pm Room 132

Navi Pillay, former UN High Commissioner for Human Rights and ICC Judge, "Human Rights and Gender Justice"

Thursday, November 1: 5:30pm-7:00pm Room 132

Nazdiezhda Henríquez Chacín, Helen Mack Chang, and Berta Zúñiga Cáceres, human rights defenders, “Human Rights Victories Over Impunity and Corruption”

### **LAPTOP AND INTERNET USE AND CLASS RECORDINGS**

You may use a laptop or tablet during class, but I strongly encourage you to take hand-written notes. **Accessing the internet (or apps) during class except for class-related activities is prohibited.**

Please note that you may not record any class without my permission. I will arrange for Media Services to make recordings of make-up classes available to the class when appropriate.

### **SCHEDULE CHANGES**

Please note the following changes to our schedule:

- We will NOT meet on the following days:
  - Monday, September 3 (Labor Day)
  - Monday, November 12 (Veterans Day)
  - Wednesday, November 21 (Thanksgiving)
- We will meet for makeup classes on the following days:
  - Friday, October 5, 1:00-2:15 (room 10)
  - Friday, October 26, 1:00-2:15 (room 10)
  - Tuesday, November 27, 11:20-12:35 (room 10)

Please note that these Friday makeup classes will meet in addition to the regularly scheduled classes on those weeks.

## **SYLLABUS**

### **I. BACKGROUND AND ORIGINS**

Casebook: pp. 135-154 (Historical origins and concepts)

Universal Declaration of Human Rights (familiarize yourself with the document): available at <http://hrlibrary.umn.edu/instree/b1udhr.htm>

Opening Statement by UNHCHR Zeid Ra’ad Al Hussein at HRC, June 2018 (skim and be familiar with document): available at

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23206&LangID=E>

Samuel Moyn, How the Human Rights Movement Failed:

<https://www.nytimes.com/2018/04/23/opinion/human-rights-movement-failed.html>

## II. SOURCES OF INTERNATIONAL LAW

### A. CUSTOM

Casebook: pp. 58-85 (Comment on International Dimension of Human Rights Regime; the Law of Armed Conflict and Customary International Law; the Paquete Habana; Comment on the Law of Armed Conflict; Comment on the Role of Custom; Akehurst's Modern Introduction to International Law; Koskenniemi excerpt; Comment on Changing Character of Customary International Law and of 'Soft Law'; Roberts excerpt)

### B. LAW OF STATE RESPONSIBILITY AND TREATIES

Casebook: pp. 90-119 (Comment on the Law of State Responsibility; Comment on the *Chattin* Case; Notes; Interwar Minorities Regime and the Role of Treaties)

bCourses (and available on Schedule of Classes): Press Release 180, The Mexican Government Condemns U.S. Policy of Separating Migrant Families

### C. TREATY DEROGATION

Casebook: pp. 160-165 (ICCPR and introduction); pp. 397-403 (derogation)  
ICCPR (become familiar with arts. 1-27; focus on art. 4),  
<http://hrlibrary.umn.edu/instree/b2esc.htm>

bCourses (and available on Schedule of Classes): OHCHR, Report on the Impact of the State of Emergency on Human Rights in Turkey, read: Executive Summary, Part III (Human Rights in the Context of the State of Emergency, pp. 7-25), Part V (Conclusions and Recommendations, pp. 27-28)

## III. NATURE OF RIGHTS

### A. NATURE OF RIGHTS & HUMAN RIGHTS CRITIQUES

Casebook: Ideas About Rights, pp. 490-494 (Weston; Kamenka excerpts); pp. 498-508 (Sunstein, Klare; Kennedy excerpts); Duty-Based Social Orders, pp. 517-525 (Comment on Comparisons Between Rights and Duties in the African Charter; Mutua excerpt)

### B. CULTURAL RELATIVISM & RECOGNITION OF LGBT RIGHTS

#### 1. Gender & the Headscarf Debate

Casebook: pp. 558-562 (Higgins excerpt); pp. 628-641 (Crosette excerpt; Savage excerpt; Note; *Sahin v. Turkey*)

2. LGBTI Rights Recognition

Casebook: pp. 220-238 (Evolution of Human Rights: Sexual Orientation Discrimination)

**IV. CIVIL & POLITICAL RIGHTS: CEDAW**

A. STATE OBLIGATIONS AND VALIDITY OF TREATY RESERVATIONS TO CEDAW

Casebook: pp. 1080-1086 (Conditioning Consent and Comment on Reservations to CEDAW); pp.179-191 (CEDAW: Provisions and Committee); pp. 167-170 (Background to CEDAW); pp. 177-178 (Fredman excerpt).

B. WOMEN'S HUMAN RIGHTS: THE PUBLIC/PRIVATE DIVIDE

Casebook: pp. 191-205 ("Private" Violence Against Women"); pp. 213-219 (Reproductive Rights)

**V. TERRORISM: US RESPONSE TO 9/11**

A. TORTURE PROHIBITION AND US COUNTER-TERRORISM

Casebook: pp. 240-243 (Int'l Instruments Prohibiting Torture); pp. 246-256 (Public Committee Against Torture in Israel v. Gov't of Israel; Note); pp. 265-276 (Comment on US Law and Policy of Torture After 11 September; Conclusions and Recommendations of CAT)

David Cole Taking Responsibility for Torture, New Yorker, bCourses  
Alex Kingsbury, John Yoo Defends Torture Memo, US News, bCourses

B. RELATIONSHIP OF HUMAN RIGHTS TO INTERNATIONAL HUMANITARIAN LAW

Casebook: pp. 388-393 (11 September 2011: A Turning Point); pp. 404-411 (Comment on Relationships Between International Human Rights and the Law of Armed Conflict); pp. 415-432 (Case Study: Guantanamo Detainees)

Fletcher & Stover, The Guantanamo Effect (excerpt on Status Determinations), bCourses

**VI. ECONOMIC AND SOCIAL RIGHTS**

A. WHAT ARE ECONOMIC AND SOCIAL RIGHTS?

Casebook: pp. 277-290; pp. 292-296 (Comment on Ambivalence; Roth excerpt); pp.305-306 (Sen excerpt); pp. 310-315 (The Relationship Between the Two Sets of Rights)

Samuel Moyn, How the Human Rights Movement Failed, New York Times (Apr. 23, 2018), bCourses

B. RESOURCES & JUSTICIABILITY

Casebook: pp. 316-330; 331-332 (General Comment No. 9); pp. 344-353 (India Public Interest Litigation)

C. CASE STUDY: SOUTH AFRICA

Casebook: pp. 353-378 (South Africa: A Model Social Rights Constitution?)

**VII. INTERNATIONAL HUMAN RIGHTS ORGANIZATIONS**

A. OVERVIEW OF UN HUMAN RIGHTS SYSTEM

1. Human Rights Council & Treaty Bodies

Casebook: 685-701 (Comment on Sovereignty and Domestic Jurisdiction; Comment on Conceptions of Enforcement; Overview of the UN Human Rights Machinery; The UN Human Rights Council; Comment on the Special Procedures System); pp. 708-712 (Cambodia); pp.742-745 (The Role of the High Commissioner for Human Rights); pp. 762-767 (Treaty Bodies: Human Rights Committee)

2. UN Security Council and Responsibility to Protect

Casebook: pp. 745-759

Kathy Gilsinan, A Confused Person's Guide to Syria, *The Atlantic* (Oct. 29, 2015), bCourses;  
Kevin Jon Heller, Why Unilateral Humanitarian Intervention is Illegal and Potentially Criminal, *Opinio Juris* (Apr. 20, 2017)

**VIII: INTERNATIONAL CRIMINAL LAW**

A. EVOLUTION AND CRITIQUES OF INTERNATIONAL CRIMINAL ACCOUNTABILITY

Casebook: pp. 120-130 (Comment on the Nuremberg trial; Nuremberg judgment); pp. 1330-1333 (International Criminal Court); 1350-1358 (Alvarez; Comment on Transporting Justice)

B. JUSTICE V. PEACE DEBATES

Casebook: pp. 1391-1405

C. DOES JUSTICE SERVE VICTIMS?

Human Rights Center: The Victims' Court?, bCourses

**IX. REGIONAL SYSTEMS**

A. EUROPEAN SYSTEM

Casebook: pp. 891-894 (Introduction and Overview; Moravcsik excerpt); pp. 946-955 (Prisoners' Right to Vote)

B. INTER-AMERICAN SYSTEM

Casebook: 978-982 (Inter-American System; Comment on Development of Inter-American System; Comment on Rights Recognized); pp. 986-991 (Comment on the Inter-American and European Systems; the Standards to be Applied to Different States; pp. 1003-1018 (Court in Action; Velasquez Rodriguez; Sawhoyamaya)

C. REGIONAL SYSTEM ADVOCACY: CASE STUDY IN THE INTER-AMERICAN SYSTEM

Guest speaker: Prof. Roxanna Altholz

**X. VERTICAL INTERPENETRATION & ATS**

A. DOMESTIC INCORPORATION

Casebook: pp. 1048-49 (Committee on ESCOC); pp. 1056-1060 (Leary; Comment on Monism and Dualism); pp. 1073-1076 (Comment on Treaties in the United States)

B. ATS: THE BEGINNING (OF THE END)

Casebook: pp. 1144-1145 (US Civil Litigation and Global Comparisons); pp. 1149-1164 (Stephens; Sosa v. Alvarez-Machain)

C. THE END OF ATS: GUEST LECTURER PROF. PAUL HOFFMAN

Chimene Keiner: ATS, RIP?, Lawfare (Apr. 25, 2018), bCourses

Samuel Moyn: Time to Pivot: Thoughts on Jesner v. Arab Bank, Lawfare (Apr. 25, 2018), bCourses

D. TORTURE VICTIM PROTECTION ACT

Casebook: pp. 1173-1177 (Torture Victim Protection Act; Senate Report on the Torture Victim Protection Act); 1180-1183 (Coliver, Green & Hoffman)

**XI: HUMAN RIGHTS & NON-STATE ACTORS**

A. HUMAN RIGHTS & CORPORATIONS



Casebook: 1463-1468 (Transnational Corporations and Human Rights; Illustrating the Challenges); pp. 1479-1489 (Guiding Principles on Business and Human Rights);

Letters to the Financial Times on the New Principles, Jan. 2011, bCourses

## B. HUMAN RIGHTS & ARMED OPPOSITION GROUPS

Casebook: 1497-1501 (Armed Opposition Groups)

## XII: HUMAN RIGHTS IN THE AGE OF POPULIST NATIONALISM

Selected Readings TBD from Open Global Rights:

<https://www.openglobalrights.org/democracy-and-human-rights/>

## XIII. CRITIQUES OF HUMAN RIGHTS ADVOCACY FROM THE GLOBAL NORTH

David Kennedy: "Spring Break" [pp. 1377-1387, 1390-94; 1403-16], bCourses

Kony 2012 video (homework)

Teju Cole, The White-Savior Industrial Complex, The Atlantic Monthly (Mar 21, 2012), bCourses

Adam Branch, "Dangerous Ignorance: The Hysteria of Kony 2012," OUP Blog, (Mar 12, 2012), bCourses

## XIV. HUMAN RIGHTS: PERSPECTIVES ON THE HUMAN RIGHTS PROJECT

- Please review the scholarship below. Based upon the first letter of your last name, come prepared to present the main points of the reading identified. All readings posted on bCourses:
  - Last Names Beginning with A – D: Eric Posner, *The Twilight of Human Rights Law*, pp. 1 -78;
  - Last Names Beginning with E – J: Posner, cont. 79-end
  - Last Names Beginning with K – O: David Kennedy, *The International Human Rights Regime: Still Part of the Problem?*
  - Last Names Beginning with P – S: Jenny Martinez, *Human Rights & History*, 126 HARV. L. REV. 2043 (2013)
  - Last Names Beginning with T – Z: Gary J. Bass, *The Old New Thing*, THE NEW REPUBLIC, [HTTPS://NEWREPUBLIC.COM/ARTICLE/78542/THE-OLD-NEW-THING-HUMAN-RIGHTS](https://newrepublic.com/article/78542/the-old-new-thing-human-rights)
- Alex P. Schmid, *Twenty Human Obligations*, ETHICS FOR THE NEW MILLENNIUM (2000)