

## International Law

Academic year 2019-2020

### Political Justice and Human Rights: Foundational Questions

DI094 - Autumn - 6 ECTS

Monday 14h15 - 16h00

### Course Description

Human rights have become one of the most powerful political and legal instruments of our time. Individuals and groups increasingly articulate their claims in the language of human rights, typically as a way of stressing the need to preserve some basic goods or fundamental needs as a matter of justice. The evolution of the recognition and institutional protection of human rights, both domestically and internationally, can be seen as the institutional implementation of such demands. Yet the normative underpinnings of the concept of human rights remain disputed. This course aims at critically exploring the theoretical foundations of human rights through the lens of major contemporary theories of justice. Students should gain a deeper understanding of the nexus between normative theories of (social and political) justice and human rights law and policies. The readings will also expose the students to critical challenges posed by those who argue that human rights are culturally specific of the West and used to pursue neo-imperialistic goals; or that the era of globalisation, and the emergent global order, renders the category of human rights obsolete; or that human rights are very limited a tool to further ideals such as gender equality and global justice and to tackle conflicts of identity in multicultural societies. The course aims at unpacking these challenges as well as the way reasons of justice play out in public argumentation on human rights through exploring a number of contemporary disputes, including transnational migrations and democratic exclusions; freedom of religion and the banning of veils; surrogate motherhood and the limits of reproductive rights, gender equality and affirmative action; and the responsibilities toward the global poor.

### > PROFESSOR

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# Syllabus

## Course Requirements and teaching methods

The course will be mostly taught in a seminar-style format. We will read some key works in contemporary political theory that have shaped the concept of human rights and explore their impact on different legal approaches to controversial issues, such as those mentioned in the course description. Hence the course demands a willingness to engage with interdisciplinary perspectives, as it aims at offering insight into normative theories of justice and human rights that transcend a specific scholarly subject. Students are expected to attend regularly and be ready to contribute and participate in all sessions, engaging actively with the reading materials assigned. In addition, they can volunteer in small groups to give a presentation on specific issues/topics, which will be suggested at the beginning of the course. They are also required to submit a short research essay (details will be clarified via Moodle), which will work as an examination paper. Overall, the course aims at facilitating group and individual work, class debates over specific cases/topics as well as improving analytical research and oral skills.

## Course Goals

The course will improve students' understanding of the evolving ethical and political framework within which International Human Rights Law has developed, as well as the limitations facing human rights today. Students should also gain a basic knowledge of major contemporary theories of justice and their impact upon the theoretical foundations of human rights. By engaging in class discussions over controversial human rights cases in light of philosophical debates on justice and rights, students should be better able to engage critically with the literature, defend their position coherently in public, and develop their analytical skills to write a well-structured short essay.

## Evaluation

The course grade consists of a 20% component for class (regular and informed) participation. Students who volunteer to give a presentation in small groups towards articulating and defending orally their position they will be additionally graded (20%). The remaining percentage of the grade will be decided through the submission of a short research paper at the end of the course. The paper will be graded on the basis of clarity, analytical structure, familiarity with the concepts and theories examined throughout the course, and the ability to engage critically with the topic selected. All students need to submit a paper proposal and a short abstract by mid-October (specific deadline to be announced via Moodle), which will be then approved by the Professor.

## Readings

The course does not use a particular textbook, and the list of assigned readings will be available on Moodle. The following books will be used regularly, as they provide basic introductions to the central concepts and themes that will be studied:

Michael Sandel, *Justice. What's the Right Thing to Do* (Penguin, 2010): Sandel addresses the main (alternative) theories of justice, from liberalism and utilitarianism to communitarian conceptions. Will Kymlicka, *Contemporary Political Philosophy. An Introduction* (OUP, 2002, 2d. Ed.): presents and discusses the most significant developments in Anglo-American political philosophy over the last two decades; *Global Basic Rights* (ed. by Beitz & Goodin, OUP 2009) offers insightful political and philosophical contributions into the notion of basic rights, which permeates current debates on justice

and human rights that we will investigate throughout the course; *Universal Human Rights in Theory and Practice*, by Jack Donnelly (Cornell University Press, 3th edition, 2013) draws on several disciplines (including international law, sociology, political theory and international relations) to offer an extensive introduction to different aspects that are central to understanding human rights.

Other assigned readings include writings by other contemporary political philosophers and human rights theorists, court cases, and articles about public controversies that raise key questions about justice and the role of human rights. Students are also welcomed to share suggestions for complementary useful references or materials (not necessarily academic; can also be films, literary pieces or visual art documents, etc.) both general and related to the specific topics to be discussed. Each session will contain a list of both required and optional readings.

## **Course Structure**

*Important Note: The reading list below is provisional, and some of the readings might be subject to change. The definitive required readings will be accessible via Moodle at least a week in advance before each session.*

### **Week 1 (September 23). Introductory session: Politics, Law, Morality as Intersecting Spheres**

This session will introduce the central themes of the course, using some current controversies involving human rights in conflict as a point of departure. Some key general distinctions on the structure and concept of rights will be introduced, which will be useful for students who are unfamiliar with the legal domain. We will also discuss to which extent law, morality and politics can be conceived as intersecting spheres, and identify the main questions and challenges that will be addressed throughout the course. The general goal is to signify the subject of human rights as a coherent preoccupation of contemporary legal and political theory and identify the main challenges involved in human rights claims.

#### **Readings**

##### *Required:*

Beitz, Charles, Goodin Robert E. (eds.) *Global Basic Rights*, Oxford UP (2009): pages tbc  
Clapham, Andrew. *Human Rights. A Very Short Introduction*, Oxford, 2.ed (2015): pages tbc  
Vincent, Andrew. *The Politics of Human rights*, Oxford UP (2010): pages tbc

##### Non academic reading:

Eric Posner (author of *The Twilight of Human Rights*), "The Case against Human Rights" in *The Guardian*, 4 December 2014: <https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>. You can also listen to the podcast of this article through: The Guardian's Audio Long Reads at: <https://soundcloud.com/theguardianlongread/the-case-against-human-rights-by-eric-posner>.

### **Week 2 (September 30) Understanding and Justifying Human Rights (I)**

Drawing on foundational readings from political philosophy, legal theory, and human rights scholarship, this and the following session will focus on identifying on-going conceptual and legitimacy challenges to human rights. We will begin by exploring different accounts of the human and of 'humanity' and discussing the relevance of humanist and political conceptions of human rights. In Week 3 we will critically discuss whether human rights are universal or relative, and what is the

meaning and practical implications of such features in an increasingly globalised and multicultural world.

### Readings

#### *Required:*

Gilbert, Pablo. "Humanist and Political Perspectives on Human Rights", *Political Theory*, v.39, n. 4 (2011): 439-467.

Phillips, Anne. *The Politics of the Human*, Cambridge UP (2015): chaps. 2 and 5.

Tasioulas, J., "On the Nature of Human Rights", in G. Ernst, J. Heilinger (eds.), *The Philosophy of Human Rights: Contemporary Controversies*, Walter de Gruyter, Berlin (2012): 17-59.

#### *Optional:*

"Human Rights", in *Stanford Encyclopedia of Philosophy* (especially sections 1-4).

Mendus, Susan. "Human Rights in Political Theory", in *Political Studies* (1995), XLIII: 10-24.

Vincent, Andrew. *The Politics of Human rights*, Oxford UP (2010): 158-170.

### Week 3 (October 7). Understanding and Justifying Human Rights (II)

#### *Required:*

Donnelly, Jack. *Universal Human Rights in Theory and in Practice*, Cornell UP (2013): chap. 6.

Martin, Rex. "Are Human Rights Universal", in C. Holder, D. Reidy, (eds.), *Human Rights: The Hard Questions*, Cambridge UP (2013): chap. 3.

Griffin, James "The Relativity and Ethnocentricity of Human Rights, in R. Cruft, S. Matthew Liao, M. Renzo (eds.), *Philosophical Foundations of Human Rights*, Oxford UP (2015): 555-569.

Makau W. Mutua. 'Savages, Victims and Saviours: The Metaphor of Human Rights,' *Harvard International Law Journal* 42 (2001): 201–245

#### *Background Readings (optional):*

Walker, Neil. "Universalism and Particularism in Human Rights", in C. Holder, D. Reidy, (eds.), *Human Rights: The Hard Questions*, Cambridge University Press (2013): chap. 2.

Beitz, Charles. *The Idea of Human Rights*, Oxford UP (2009).

Donnelly, Jack. *Universal Human Rights in Theory and in Practice*, Cornell UP (2013): Chapter 1.

Phillips, Anne. *The Politics of the Human*, Cambridge UP (2015).

Valentini, Laura, "In What Sense Are Human Rights Political? A Preliminary Exploration", *Political Studies*, 60, n. 1 (2012): 180-194.

Raz, Joseph. "Human Rights Without Foundations", in Besson, S., Tasioulas, J. (eds.), *The Philosophy of International Law*, Oxford UP (2010): 321-337.

### Week 4 (October 14) Human Rights and Utilitarianism

From this session onwards, we will explore human rights in light of different accounts of political justice. We will begin by exploring utilitarianism, and we will inquire into whether this political philosophy is compatible at all with the notion of human rights. The sources of discontent with utilitarian justifications of rights (and, more generally, with the politics of utilitarianism) will be scrutinised against the backdrop of the problem of (forced) transnational migrations, refugee claims and the ethics of borders.

## Readings

### *Required:*

Kymlicka, Will, *Contemporary political philosophy. An Introduction*, Oxford UP (2002), Chap. 2: 10-48.  
Mill, John Stuart, *On Liberty* (1859); especially chaps. 1 and 5.  
Sen, Amartya, "Rights consequentialism", in J. Glover, *Utilitarianism and its critics*, Macmillan (1990): 111-118.  
Boehm Omri, "Can Refugees Have Human Rights?", in *The New York Times (The opinionator; October 19, 2015)*. Available at: [Tb http://opinionator.blogs.nytimes.com/2015/10/19/could-refugees-have-human-rights/?\\_r=0c](http://opinionator.blogs.nytimes.com/2015/10/19/could-refugees-have-human-rights/?_r=0c)

### *Optional:*

Bader, Veit. The Ethics of Immigration, in *Constellations*, Vol. 12, issue 3 (2005): 331-361.  
Chetail Vincent, "Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law", in R. Rubio-Marin (ed.) *Human Rights and Immigration*, Oxford UP (2014), especially, pp. 19-50.  
Sandel, Michael, *Justice. What's the Right thing to Do?* New York, Penguin (2009): 31-57.  
Sen, A., Williams B. (eds.), *Utilitarianism and Beyond*, Cambridge, Cambridge University Press (1982). [This book contains different chapters with various interpretations, conceptions and criticisms of utilitarianism].

## Weeks 5 and 6 (October 21, 28). Political Liberalism: Minimalist versus Egalitarian Conceptions of human rights

### Session I

Political liberalism, as the most influential ideology inspiring Western conceptions of human rights, will be the main focus of the following two sessions. We will start from the basic ideal of liberal justice as articulated by Rawls in his landmark book *A Theory of Justice* (1971). We will explore key notions such as freedom, impartiality and equality of opportunity, which are central to contemporary human rights understandings, and trace the implications of endorsing a deontological (non-utilitarian) approach. The UN Declaration of Human Rights (and the evolution of the international human rights framework) will be analysed in light of different conceptions of liberalism. The aim of this and the following session is to discuss the concrete implications of understanding and interpreting human rights from a liberal perspective.

## Readings

### *Required*

Donnelly, Jack. *Universal Human Rights in Theory and in Practice*, Cornell UP (2013), Chapter 4: 55-71.  
Kymlicka, Will. *Contemporary Political Philosophy. An Introduction*, OUP (2002): Chapter 3: 53-79; and Chapter 4:102-115.  
Sandel, Michael. *Justice. What's the Right thing to Do?*, Farar, Straus and Giroux, New York (2009): 58-74.

### *Legal Sources*

Preambles and text of the UN Declaration of Human Rights, and the International Covenant on Civil and Political Rights.  
International Covenant on Economic, Social, and Cultural Rights, 1966.  
European Social Charter, Council of Europe (see: collected text 2015 edition).

### *Optional*

Nickel, James. *Making Sense of Human Rights*, 2nd ed., Blackwell Publishing (2007): Chapter 9.  
Rawls, John. *Political Liberalism*, Columbia UP (1993), "The idea of an Overlapping Consensus": 143-150.  
Rawls, John. *A Theory of Justice*, Harvard UP (1971).

## Session II

In this second session we will focus on two conflicting conceptions of liberalism - libertarian and egalitarian - that are conceived as a criticism to the standard conception examined earlier. Furthermore, these different strands of liberalism conform the main theoretical background informing debates over the specific content and application of human rights. We will begin with the libertarian position – which is regarded by many as the 'moral' basis of neoliberal politics and conceptions of rights - and then focus on the egalitarian critique. The disputed status of social and economic rights will provide a practical illustration for this debate.

### Readings tbc

#### *Required*

Kymlicka, Will. *Contemporary Political Philosophy. An Introduction*, OUP (2002): Chapter 3: 53-79; and Chapter 4:102-115.  
Dworkin, Ronald, *Sovereign Virtue. The Theory and Practice of Equality*, Harvard University Press (2000): 11-14; 65-71.  
I.M. Young, "Equality for Whom? Social Groups and Judgments of Injustice", *The Journal of Political Philosophy*, volume 1, n.9, 2001, pp. 1-18.  
Sandel, Michael, *Justice. What's the Right thing to Do?*, New York, Penguin (2009): Chapter 6, The Case for Equality: 140-166  
Wolff, Jonathan, "Not Bargaining for the Welfare State", *Analysis*, 52/2 (1992): 118-25

## Week 7 (November 4). Communitarianism and the critique to individual rights.

Under the label of 'communitarianism' we can find a diverse array of political theories that challenge political liberalism and 'liberal' conceptions of human rights. In this session, we will explore the most prominent articulations of communitarian approaches, which point at the limits of the "individual rights talk" to offer a proper account of the role of the community and of group-rights claims. We will try to single out different 'communitarian' conceptions of society, identity and culture and discuss how they could be used to justify various forms of group (human) rights. A specific practical context is given to the discussion which will focus on assessing the role played by communitarian arguments in debates over indigenous rights.

### Readings

#### *Required*

Sandel, Michael J. *Justice. What's the Right thing to Do?*, Farar, Straus and Giroux, New York (2009): 244-269.

Kymlicka, Will. *Contemporary Political Philosophy. An Introduction*, OUP (2002): Chapter 6: 208-210 (Introduction); 212-221.

### *Debate on Group (Cultural) Rights and Indigenous Rights*

Relevant International Legal Documents: Universal Declaration of Human Rights (1948); International Covenant on Economic, Social, and Cultural Rights (1966); The African Charter on Human and People's Rights (1981); UN Resolution 47/135, 1992, containing the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; UN Human Rights Committee, General Comment on Art. 27 of the ICCPR (1994); Framework Convention for the Protection of National Minorities (Council of Europe, 1995); UNESCO Universal Declaration of Cultural Diversity (2003); Fribourg Declaration of Cultural Rights (2007); United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007

### Weeks 8 & 9 (November 11, 18). Multiculturalism and group-differentiated rights

Communitarian proponents and its critics usually presuppose that group rights stand in deep tension with individual human rights. The debate on multiculturalism emerges in part as a reaction against liberal views of the state and society that are deeply entrenched in the classical human rights doctrine. The scope and limits of human rights in multicultural societies and the compatibility of group-differentiated rights and the politics of recognition with the conventional liberal framework of interpretation of human rights will be scrutinised against the backdrop of current debates about the scope and limits of freedom of religion (and of religion expression) in a multicultural and multi-faith society.

#### Readings

##### Session 1

##### *Required*

Fraser, Nancy. "From redistribution to Recognition", in *Justice Interruptus. Critical Reflections on the 'Post-Socialist' Condition*, Routledge, 1997 (also in the *New Left Review*, 212, 1995): pp. 68-74 only (the rest of the article will be assigned in a subsequent session).

Kymlicka, Will. *Multicultural Citizenship*, Oxford, Clarendon Press (1995): chapter 2 (10-33).

Taylor, Charles. "Multiculturalism and the Politics of Recognition", in A. Gutmann (ed.), *Multiculturalism. Examining the Politics of Recognition*, Princeton UP (1994): focus on sections III, IV, V (skim the rest).

Jones, Peter. "Human Rights, Group Rights and People's Rights", *Human Rights Quarterly*, vol. 21, 1, 1999, 80-101.

##### *Optional*

Addis, Adeno. "Individualism, Communitarianism and the Rights of Ethnic Minorities", *Notre Dame Law Review*, 67 (3), 1992: 615-676.

Appiah, Anthony K. *The Ethics of Identity*, Princeton UP, 2005: 62-71.

Barry, Brian. *Culture and Equality An Egalitarian Critique of Multiculturalism*, Polity Press, 2001, 264-271; 279-291

Parekh, Bhikhu. *Rethinking Multiculturalism. Cultural Diversity and Political Theory*, Palgrave, 2000, 118-123; 127-141; 172-178.

Torbisco-Casals, Neus. *Group Rights as Human Rights. A Liberal defence of Multiculturalism*, Berlin, Springer 2006.

Session 2. Debate on Freedom of Religion expression in a Multicultural Society

Weeks 10 and 11 (November 25, December 2). Human Rights and Women's Rights

In this session, we will seek to explore women's rights as human rights. More precisely, we will focus on feminist approaches to (and critiques of) human rights and also on assessing the feminist critique to both liberalism and multiculturalism. In this context, we will scrutinise the meaning of contested concepts such as 'gender' and 'discrimination' in the context of debates over affirmative action and women's representation.

Readings tbc

Week 13 (16 December): Global Justice and the Rights of Peoples: On the Limits of Human Rights.

Theories of justice are concerned with what we owe to one another, and human rights are a central part in this discussion. However, contemporary political theorists and human rights scholars have often taken for granted the state framework as a background of their debates; yet while some matters have long been of concern for cosmopolitan-oriented thinkers, others are more recent and arise especially in the context of phenomena like globalization, economic integration and potentially catastrophic anthropogenic climate change. Several questions have become prominent, including: What principles should guide international action? What responsibilities do we have towards the global poor? Should global inequality be morally troubling? Are there types of non-liberal people who should be tolerated? Are human rights just a "utopia" in the global domain?; How should we allocate responsibilities for reducing global injustice in our world? The goal of our final session will be to tackle the expanding field of the so-called 'global justice' studies, and the intersection with human rights.

Required readings (*Provisional, excerpts to be confirmed*)

John Rawls, "The Law of Peoples", *Critical Inquiry*, vol. 20, n.1, 1993

Thomas Pogge, *World Poverty and Human Rights*, *Ethics and International Affairs* 19, n.1, 2005; plus: "Severe Poverty as a Violation of Negative Duties".

Joshua Cohen, *Towards International Consensus Minimalism About Human Rights: The Most We Can Hope For?* *The Journal of Political Philosophy*: Volume 12, Number 2, 2004, pp. 190–213

Week 14 (December 23): Deadline to submit research paper