

Human Rights Course Syllabus

Dr. Tania Reytan-Marincheshka

Spring semester 2006, BA on European Studies, Faculty of Philosophy, Sofia University, Bulgaria

Aims of the course

The course provides an introduction to basic human rights philosophy, principles, instruments and institutions, and also an overview of current issues and debates in the field with focus on the problems specific to Bulgaria.

This course aims to explore some aspects of the diverse and increasingly complex body of international law of human rights that has both national and international application. The course also seeks to analyze the ways in which allegations of human rights violations are dealt with in the Bulgarian courts and the impact of human rights discourse on international politics and relations.

Structure of the course

The course is divided into three parts, as follows:

The ***first part*** introduces the conceptual foundations of rights from a historical and philosophical perspective. The focus is not only on the Western human rights tradition, but on other sources of human rights, and several alternative philosophical perspectives to human rights, are considered. Also discussed is the concept of "constitutionalism", and its commitment to individual rights and bills of rights as supreme law.

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

The ***third part*** considers selected human rights issues under international and national law. The focus here is on the particular rights that are topical and burning for the Bulgarian society, as well as for the European Union.

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 European standards, (3) the practices of various States under their domestic and constitutional systems and (4) the Bulgarian regime.

The class will also explore the position of the Bulgarian Constitution in the system of rights protection, its legal and political significance, as well as the issues of human rights protection and promotion by the local legislative and law enforcement institutions. A further aim is students to learn to relate the universal rights concept, guaranteed by international institutions, to individual rights, established by the Bulgarian Constitution and protected (or not) by the state.

Educational objectives of the course:

Upon completing this course, students should:

- understand the key historical, political, legal and moral influences that have shaped the idea of "human rights" and be able to explain the concept of a right, and to analyze the contemporary challenges and trends in human rights theory and practice,

and to understand the general affinities and divergences in sources, substance and application of rights in international, regional, constitutional and domestic contexts;

- identify the major international declarations, treaties, and covenants governing human rights, and identify mechanisms for monitoring and enforcing human rights standards, they should also have a strong working knowledge of the major human rights conventions, processes and techniques and be able to identify and use the human rights instruments Bulgaria is a party to and apply those mechanisms in concrete situations;
- know how to research, and where to find, human rights materials and relevant issues that will be necessary to future work in the field, and how to construct and advocate effective legal and policy arguments using international human rights norms and discourse;

Advocacy and Written Argument Skills

One of the major aims of the course is to equip students with the basic tools necessary to work with the specific sources, methods and institutions of the international human rights system and to apply them in the Bulgarian context.

Implicit in this approach is the assumption that human rights call for legal and other advocacy skills. Accordingly, the course requirements will focus on developing the ability to recognize the factual and the legal problems and to analyze them, the capacity to apply the legal information in practical situations as well as the mastery of the applicable law –knowledge of the applicable law, understanding of the norms, aptitude to interpret and provide a critical analysis of the law, competence to understand the context in which the law exists.

Course Requirements and Grading Policy

1. Presentation before the class of one of the themes assigned in the first week, classroom participation, and the results after the midterm examination (20%).
2. A written essay /memorial and a subsequent thesis defense, or oral argument before a simulated international treaty body, court, committee, on the basis of selected human rights issues of current controversy and importance: the essay/ memorial should be 10-15 pages and the oral presentation should last 5 minutes for each student (50 %).
3. Final oral examination (30%).

Content of the course

I. Human Rights Ideology – Antecedents, History and Theory

1. Western Individual Rights Tradition –the road from natural rights to civil rights-theories of rights:

Where do "human rights" come from? What are their philosophical foundations and justifications? What influence have eighteenth century political and moral philosophical conceptions of rights, social contract and "human dignity" had on the modern international rights movement?

Structure of the course:

1. *Various historical sources of human rights emergence:*
 - ***The traditional notion of Justice*** [*Code of Hamourabi (around 1300 BC in Babylonia); Confucius (551-479 BC in China);, Mahabharata (2nd Century BC in India), African Oral Traditions, The Semitic Traditions, Greece, the Sophists (1st definition of “natural right”); the Stoics (Zenon, 3rd Century BC); Roman Law (Cayus 110-180 – the right of the people); Customary Rural European Law].*

- **The progressive Globalization**(contacts between civilizations and societies, equal status between human beings) [*Valadolid Dispute (1539); Sal manqué School of Thought, (Francisco Vitoria, Bartholomé Las Casas, Francisco Suares); Anti-Slavery; République de Haiti (1803); National Independence Movements; Alger Declaration (1960)...*];
 - **Confronting power and promoting freedom of conscience** [British legacy - *Magna Carta (1215); l' Habeas corpus (1679); School of Natural Rights: (John Locke, The Bill of Rights, Thomas Paine, John Stuart Mill; French legacy – Declaration on the Rights of Man and Citizen, Jean Jaques Rousseau, Benjamin Constant).*
 - **Harm by the Industrial Revolution** [European revolutions (1848); Workers movements (19th and 20th Century); Russian Revolution (1917); Oil Crisis (1974); Ecologist movements...]
 - **Disasters of two World Wars** [First World war (1914-1918); Second World War (1939-1945)...
2. Human dignity – as a categorical imperative – Emmanuel Kant
 3. The American experience—rights as constitutional protections - Virginia Bill of Rights, the Declaration of Independence, the US Constitution, the Bill of Rights, Thomas Jefferson, The Federalist Papers.
 4. The Bulgarian experience – The Bogomils (10th -12th century), the 18th -19th century national liberation movement legacy (Hristo Botev, Vasil Levski); the Tarnovo Constitution

Number of classes (lectures & seminars): **6+2**

Working Bibliography:

1. Aristotle - "Politics"
2. Cicero - "The Laws"
3. John Locke – *The Second Treatise of Civil Government*
4. Thomas Hobbes – *The Leviathan*
5. Thomas Paine – *The Rights of Man*
6. Jean Jaques Rousseau – *On The Social Contract*
7. Jean Jaques Rousseau – *Traite sur l'inegalite parmi les hommes*
8. John Stuart Mill – *On Liberty*
9. Madison, Jay, Hamilton – *The Federalist Papers*
10. *The Declaration of Independence*
11. *The US Constitution and the Bill of Rights*
12. *The French Declaration of the Rights of Man and of the Citizen*
13. Isaiah Berlin – *Two Concepts of Liberty*, 1950
14. Hannah Arendt – *On Revolution*, 1994
15. Hannah Arendt – *The Origins of Totalitarianism*, 1994
16. Immanuel Kant – *Foundations of the Metaphysics of Morals*, 1992
17. Micheline Ishay, *The History of Human Rights : From Ancient Times to the Globalization Era*, 2004
18. Patrick Hayden, "The Philosophy of Human Rights (Paragon Issues in Philosophy)", 2001
19. Yannaras Christos, *Human Rights and the Orthodox Church*, ©Greek Orthodox Archdiocese of America, 2003.

2. Defining the notion of "rights" – conceptual foundations

What are "rights"? Are there any human rights?

Structure of the course:

1. Rights, immunities, privileges; negative or/and positive rights; retained rights; rights defined as being universal, inalienable, imprescriptible, claims upon society, etc;
2. The beneficiary of the rights - individual and collective rights;
3. Constitutional rights - human rights – international or universal rights

Number of classes: **1+1**

government", "democracy", "liberty" and "individual rights"? What is the link between human rights and economic prosperity or political stability?

Structure of the course:

1. The internationalization of human rights and the universalization of human rights –the Universal Declaration of Human Rights – creation, evolution and critiques;
2. Challenges to the human rights ideology –communitarianism, cultural relativism versus universality of human rights;
3. Human Rights and Democracy;
4. International accountability – from Nuremberg to the International Criminal Court;
5. Human Rights and Globalization – trade, labor, human rights;

Number of classes: 3+1

Working Bibliography:

1. Louis Henkin – *The Age of Rights*
2. Saskia Sassen – *Losing Control? – Sovereignty in an Age of Globalization*
3. Carlos S. Nino - *Radical Evil on Trial*
4. Lammy Betten – *International Labor Law*
5. Martin Dixon, Robert McCorquodale – *Cases and Materials-International Law*
6. *The Statute of the International Criminal Court*
7. _____, _____, “ _____ ”, _____, 1997
8. _____, _____, _____, _____, 1994.

III. The Universal Bill of Rights

What rights are protected and defined in the "International Bill of Rights"? What is the relationship between the rights contained in the Universal Declaration, the ICCPR and, the ICESCR? What are the strengths and weaknesses of the specific human rights conventions, and how could they be reformed to work more effectively? What are the advantages and disadvantages of a regional rather than a universal system? What are the key characteristics and features of each regional system, and what impact these have on the protection of human rights there?

Structure of the course:

- 1. Customary international law of human rights**
 - the scope of customary international law of human rights;
 - the conditions to be fulfilled in order to qualify as violations of customary international law;
 - the list of the human rights that achieved the status of customary international law: genocide, slavery or slave trade, the murder or causing the disappearance of individuals, torture or other cruel, inhuman, or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination, and a consistent pattern of gross violations of internationally recognized human rights;
- 2. Peremptory norms of international law - *jus cogens* norms;**
- 3. Traditional canon of human rights law - the UDHR and the Covenants;**
- 4. Other human rights instruments:** the Genocide Convention, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, the Convention on the Rights of the Child, the Convention Relating to the Status of Refugees.

- 1503 Procedure – structure of the petition-information alleging the existence of a consistent pattern of gross and reliably attested violations.
- UN reform
- Are human rights on the defensive?

Number of classes: 4+3

Working Bibliography:

1. Jack Donnelly – *Human Rights in Theory and Practice*, 2002
2. Thomas Meron – *Human Rights in International Law*
3. T. Farer – *The UN and Human Rights: More than a Whimper-* ASIL 1997
4. Hurst Hannum – *Guide to International Human Rights Practice*
5. Jochen Motte/Wolfgang S. Heinz (editors), 2004 *Are Human Rights on the Defensive? The Future of the Commission on HR in the UN Human Rights Protection Context*, 2004.
6. _____, _____, _____ “_____” _____, 2002

V. The European Human Rights System

What is the institutional framework of the European system for the protection of human rights and fundamental freedoms? What are the successes and what are the failures of the European system? What are the rights protected in the European system and what are the mechanisms of protection? What are the substantive and formal requirements when bringing a case before the European Court of Human Rights?

Structure of the course:

1. The European Convention for the Protection of Human Rights and Fundamental Freedoms and the additional protocols – the content of the rights protected; individual complaint and inter-state complaint, substantive and formal requirements.
2. The European Social Charter and the Revised European Social Charter;
3. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
4. European Framework Convention for the Protection of National Minorities;
5. Analysis of the cases against Bulgaria decided by the Strasbourg Court.

Number of classes: 7+3

Working bibliography:

1. Vincent Berger – *Case law of the European Court of Human Rights*
2. Elspeth Guild – *The European Court of Justice on the European Convention on Human Rights – Who said what when?*
3. Mark Janis – *European Human Rights Law: texts and materials*
4. D.J. Harris – *Law of the European Convention on Human Rights*
5. Karen Reid – *A Practitioner’s Guide to the European Convention on Human Rights*
6. Dr. Borchardt, Klaus-Dieter, ‘The ABC of Community Law’, Office for Official Publications of the European Communities, 2000.
7. Lammy Betten and Nikolas Grief “EU Law and Human Rights”, 1998
8. _____, _____, _____, C_ “_____”, 2005.
9. _____, _____, _____, 2001 (European Court of Human Rights. Selected decisions, Sofia, 2001)
10. _____ “_____”: _____, 2001 (T. Marincheska “EU policy in Human Rights: Evolution and Challenges”, in: “European Studies Annual, SU 2004)

VI. International Rights in Bulgarian Law - Analyze of some specific rights generating most of the human rights violations in Bulgaria

