

COLUMBIA UNIVERSITY

School of International and Public Affairs
School of Public Health
School of Social Work

RETHINKING HUMAN RIGHTS
SPRING 2003 | U8178y
Thursdays 4:10-6 in 902 IAB

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Purposes. The course is aimed at graduate students in all Columbia schools and programs who have substantial expertise or experience in human rights. It seeks to discuss problematic, troubling, or controversial topics within human rights theory, discourse and practice, as a way of forging new understandings, new ideas, and new practices. The course is built around discussion of selected writings that bring to the surface contested and controversial issues.

Enrollment. Enrollment is limited to 20 students, and we will seek maximum diversity in terms of schools, experience, and specializations represented

Requirements. Besides doing the reading and participating in class discussion, participants are asked to present a significant piece of writing which is consistent with their professional development. The specific project will be negotiated between the student and one of the course instructors.

Readings. Starred readings are required, all others are recommended. Assigned books have been ordered at Labyrinth Books. A coursepack of starred items is available at Copyquick, Amsterdam at 118th.

Application. All students (regardless of school affiliation) must apply for the course from www.sipa.columbia.edu/registration. Go to application courses. Directions can be found for the **on-line application form**. In addition to the on-line application form, a copy of your **resume** must be emailed to Peter Danchin at pgd6@columbia.edu.

Application Deadline: The deadline for applications is **12:00 noon on January 16** and students will be notified on the first day of classes, January 21.

CLASS SCHEDULE

PART I. Conceptualizing Human Rights: Under Law or Beyond Law, With or Without the State?

January 23. Introduction

January 30. Trooping through the Tropes of Human Rights
One strategy for legitimizing human rights has been to stress its legal

protection under international law, historically and today. What are the implications of this way of basing human rights claims for the movement's avowed aims? For its potentials for change? For contestation? For alternative formations? Who gets authenticated to speak?

*Philip Alston, "Conjuring Up New Human Rights: A Proposal For Quality Control," *American Journal of International Law* (Volume 78, 1984).

*Lata Mani, "Contentious Traditions: The Debate on Sati in Colonial India," in Kumkum Sangari and Sudesh Vaid, eds., *Recasting Women: Essays in Colonial History* (New Brunswick: Rutgers University Press, 1990), pp. 88-126.

*Makau wa Matua, "The Ideology of Human Rights," *Virginia Journal of International Law* (Volume 36, 1996).

Nivedita Menon, "Rights, Bodies and the Law: Rethinking Feminist Politics of Justice," in N. Menon, ed., *Themes in Politics: Gender and Politics in India* (Delhi: Oxford University Press, 1999), pp. 262 -295.

Balakrishnan Rajagopal, "International Law and the Development Encounter: Violence and Resistance at the Margins," *American Society of International Law Proceedings* (Volume 93, 2000).

*Issa Shivji, "The Life and Times of Babu: The Age of Revolution and Liberation," *Journal of Law, Social Justice and Global Development* (Volume 2, 2001).

February 6. Human Rights as Protection from Violations versus Creation of Conditions or Capacity

How and where does this debate arise today? Does it affect the conceptualization of human rights problems as individual versus collective, and as civil and political versus social and economic? Does it affect how we conceptualize who are the agents and what are their responsibilities, particularly in regard to the role of the state-centered system of rights accountabilities? How does thinking of human rights in terms of conditions for rights enjoyment (specifically through the capabilities approach or otherwise) engage with the problem of cultural relativism?

*Abdullahi An-Na'im, "Human Rights and the Challenge of Relevance: The Case of Collective Rights," in M. Castermans-Holleman, and F. van Hoof, eds., *The Role of the Nation State in the 21st Century* (Amsterdam: Kluwer Law International, 1998), pp 3-16.

*Martin Chanock, "'Culture' and Human Rights: Orientalizing, Occidentalizing and Authenticity," in Mahmood.Mamdani, ed., *Beyond Rights Talk and Culture Talk* (New York: St Martin's Press, 2000), pp 15-36.

Lynn P. Freedman, "Censorship and Manipulation or Reproductive Health Information: An Issue of Human Rights and Women's Health" in Sandra Coliver, ed., *The Right to Know: Human Rights and Access to Reproductive Health Information* (London and Philadelphia: ARTICLE 19/University of Pennsylvania Press, 1995), pp. 1-37.

*Rosalind Pollack Petchesky, "From Population Control to Reproductive Rights: Feminist Fault Lines," *Reproductive Health Matters* (Volume 6, 1995).

Saskia Sassen, "Introduction: Whose City is it? Globalization and the Formation of New Claims," in *Globalization and its Discontents: Essays on the New Mobility of People and Money* (New York: The New Press, 1999), pp. i-xxxvi.

Please look at: <http://hdr.undp.org/hd/default.cfm>.

Part II. Is Human Rights a New Colonialism?

February 13. Institutionalized Structures of Power in the NGO Community

Do the structures of authority and power within the human rights NGO community replicate and reinforce the same global structures of power which generate many of the violations it seeks to combat? How do we see the answers to these questions as being part of a process to progressively advance human rights?

*Larry Cox, "Reflections on Human Rights at Century's End" in *Human Rights Dialogue* (Winter 2000), Series 2 No. 1, pp. 5 - 6.

*Bahey El Din Hassan, "The Credibility Crisis of International Human Rights in the Arab World," in *Human Rights Dialogue* (Winter 2000) Series 2 No. 1, pp. 9-10.

Barbara Harrell-Bond, "Can Humanitarian Work with Refugees be Humane?" *Human Rights Quarterly* (24.1/2002), pp. 51-85.

*Makau Mutua, "Human Rights International NGOs, A Critical Evaluation," in Claude E. Welch, Jr., ed., *NGOs and Human Rights* (Philadelphia: University of Pennsylvania Press, 2000), pp. 151-163.

*Uma Narayan, *Dislocating Cultures: Identities, Traditions, and Third World Feminism (Thinking Gender)*, (NY: Routledge, 1997), Ch. 2: "Restoring History, and Politics to 'Third World Traditions'," pp.41-80.

*Peter Rosenblum, "Teaching Human Rights: Ambivalent Activism, Multiple Discourses and Lingering Dilemmas," *Harvard Human Rights Journal* (Volume 15, Spring 2002), pp. 301-315.

February 20. The Activist Dilemma

What do we understand a "human rights NGO" to be? What implications do the "institutionalization" and "professionalization" of human rights organizations have for the human rights community? What relation do human rights NGOs have to social movements, and political change? How does one constructively use the language of human rights in relationship to other discourses of justice and social change?

*Sonia E. Alvarez, "Translating the Global: Effects of Transnational Organizing on Local Feminist Discourses and Practices in Latin America," *Meridians* (Vol. 1, No. 1, 2000), pp. 29-67.

*Hilary Charlesworth, "Author! Author!: A Response to David Kennedy," *Harvard Human Rights Journal* (Volume 15, Spring 2002) pp. 127 - 130.

*Alex de Waal, "Human Rights Organizations and the Political Imagination: How the West and Africa Have Diverged," *Justice Africa Occasional Papers Series* (October 2002).

*David Kennedy, "The International Human Rights Movement: Part of the Problem?" *Harvard Human Rights Journal* (Volume 15, Spring 2002), pp. 245-267.

Valerie Miller, "NGOs and Grassroots Policy Influence: What is Success?" *IDR Reports 11, No 5* (Boston: Institute for Development Research).

*Chidi Anselm Odalinku, "Why More Africans Don't Use Human Rights Language," *Human Rights Dialogue* (Winter 2000) Series 2 No. 1, pp. 3-4.

David Rieff, "The Precarious Triumph of Human Rights," *The New York Times Magazine* (August 12, 1999), pp. 36 - 41.

February 27. American Exceptionalism and Human Rights

Michael Ignatieff has observed that "Americans don't see it this way, but the country with the most puzzling human rights record in the world is their own." Given its leadership role in the global ascendancy of human rights, why has the U.S. refused to comply with important international rights covenants? Why hasn't human rights worked as an appeal for most kinds of human rights related work in the U.S. context? What are the historical and contemporary examples of framing rights claims in the U.S. in an "internationalized" way? Does the current climate paradoxically reveal a moment for greater global rights talk in the face of apparent absolute intransigence? What are the implications for the thinking and advocacy of U.S.-based human rights activists of the way that U.S. groups have been implicated in the imperfect US ratification of some human rights treaties, and silence on others?

*John R. Bolton, "Is There Really 'Law' in International Affairs?," *Transnational Law and Contemporary Problems* 10 (2000), pp. 1-47

*Andrew Moravcsik, "Why is U.S. Human Rights Policy So Unilateralist?" in Stewart Patrick and Shepard Forman, eds., *Multilateralism and U.S. Foreign Policy: Ambivalent Engagement* (London: Lynne Rienner, 2002), pp. 345-76

*Stewart Patrick, "Multilateralism and Its Discontents: The Causes and Consequences of U.S. Ambivalence," in Stewart Patrick and Shepard Forman, eds., *Multilateralism and U.S. Foreign Policy: Ambivalent Engagement* (London: Lynne Rienner, 2002), pp. 1-44

Cass R. Sunstein, "Why Does the American Constitution Lack Social and Economic Guarantees?," unpublished paper, March 15, 2002

Patrick E. Tyler, "U.S. Strategy Plan Calls for Insuring No Rivals Develop," *The New York Times* (March 8, 1992)

*Detlev F. Vagts, "Hegemonic International Law," *American Journal of International Law* 95 (2001), pp. 843-8

March 6. Universal Jurisdiction and the International Criminal Court

The growing acceptance by states of the concept of "universal jurisdiction" has raised hopes in the human rights community that, for the first time in history, impunity is yielding to justice at least for the most egregious crimes under international law. Following the landmark *Pinochet* case, prosecutions have been brought in national courts against individuals (including officials and heads of state) for serious human rights violations. At the same time, following the urging of thousands of human rights NGOs in Rome in 1998 an International Criminal Court (ICC) has finally been created and is about to commence its work. However, these developments—both national and international—have not met with universal acceptance. The U.S., in particular has vigorously opposed the creation of the ICC and has sought to limit and control the use of universal jurisdiction in its national courts in various ways (including in the areas of immunities and international terrorism). What are the implications of these developments for the enforcement of human rights both in the U.S. and in countries around the world? Who uses universal jurisdiction against whom and why? Are there any strategic justifications for unequal application of universal jurisdiction?

Peter H. F. Bekker, "World Court Orders Belgium to Cancel an Arrest Warrant Issued Against the Congolese Foreign Minister", *ASIL Insight* (February 2002).

*John R. Bolton, "The Risks and the Weaknesses of the International Criminal Court from America's Perspective", *Virginia Journal of International Law* 41 (2000), pp. 186-203.

*Bartram S. Brown, "Unilateralism, Multilateralism, and the International Criminal Court" in Stewart Patrick and Shepard Forman, eds., *Multilateralism and U.S. Foreign Policy: Ambivalent Engagement* (London: Lynne Rienner, 2002), pp. 323-44.

*Henry Kissinger, "The Pitfalls of Universal Jurisdiction," *Foreign Affairs* (July/August 2001).

Affidavit of Harold Hongju Koh, *John Doe I v. Exxon Mobil Corporation*, District Court for Columbia, August 28, 2002.

Bryan MacPherson, "Authority of the Security Council to Exempt Peacekeepers from International Criminal Court Proceedings", *ASIL Insight* (July 2002).

Sean D. Murphy, "U.S. Judgments Against Terrorist States" in "Contemporary Practice of the United States", *American Journal of International Law* 95 (2001), pp. 132.

*"The Pinochet Litigation" in Henry Steiner and Philip Alston, eds., *International Human Rights in Context: Law, Politics, Morals* (New York: Oxford University Press, 2nd ed., 2000), pp. 1198-1216.

**The Princeton Principles on Universal Jurisdiction*, Program in Law and Public Affairs, Princeton University (2001).

*Kenneth Roth, "The Case for Universal Jurisdiction," *Foreign Affairs* (September/October 2001).

**The United States and the International Criminal Court*, Carr Center for Human Rights Policy Working Paper (2000) (later published in the *Lawyers*

Committee for Human Rights report *In the National Interest 2000: Human Rights Policies for the Bush Administration* under the chapter title "Supporting the International Criminal Court").

March 13. Documentation and Representation in Human Rights Work and Discourse

Analysis of narrative strategies for representing harm, and the power relations that these strategies construct and reproduce.

*Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics," *Harvard Human Rights Journal* (Spring, 2002).

*Huma Khan, "Reflective Paper " (on file with the Center for the Study of Human Rights, New York, 2002).

*Arthur and Joan Kleinman, "The Appeal of Experience, the Dismay of Images: The Cultural Appropriation of Suffering in our Times," *Daedalus* 125: 1 (1997).

*Liisa Malkki, "Citizens of Humanity: Internationalism and the Imagined Community of Nations," *Diaspora* 3: 1 (1994).

Video From Amnesty International USA, to be shown in class.

Part III. Reshaping Human Rights Claims at the Intersection of Race, Sexuality and Gender

March 27. Race and Human Rights

Is the contextual, historical, and multi-directional aspect of racial dimension under-attended to in certain conventional analyses of human rights violations, leading to a distorted understanding of what is at stake and of the dynamics of conflict in certain situations? Does the reification of race as an identity category in human rights law (e.g., in the Genocide Convention) lock victims and advocates into the use of racial categories in order to obtain relief, even when these racial categories are constructed, false, and harmful?

Benjamin P. Bowser and Raymond G. Hunt, eds., *Impacts of Racism on White Americans* (Thousand Oaks, CA: Sage 1996), Chs. 11, 12.

*Lisa A. Crooms, "Indivisible Rights and Intersectional Identities or, What do Women's Human Rights have to do with the Race Convention?" *Howard Law Journal* 40 (1997), pp. 619-40.

Rush W. Dozier, Jr. *Why We Hate: Understanding, Curbing, and Eliminating Hate in Ourselves and Our World* (NY: Contemporary Books, 2002), Ch. 8.

*W.E.B. DuBois, excerpts from *The Souls of Black Folk*, in Diana Kendall, ed., *Race, Class and Gender in a Diverse Society* (NY: Bantam, 1989), pp. 1-9.

George M. Fredrickson, *The Arrogance of Race: Historical Perspectives on Slavery, Racism and Social Inequality* (Hanover, NH: Wesleyan University Press, 1998), pp. 216-270.

*bell hooks, "Beloved Community," in Diana Kendall, ed., *Race, Class and Gender in a Diverse Society* (NY: Bantam, 1989) pp. 431-436.

*Stuart Malcomson, *One Drop of Blood: The American Misadventure of Race* (NY: Farrar Straus Giroux, 2000), pp. 277-291, 346-393.

Manning Marable, *The Great Wells of Democracy: The Meaning of Race in American Life* (NY: BasicCivitas Books, 2002), Ch. 2.

*Robert Myers, "The Fallacy of Neutral Humanitarianism In Bosnia," *Human Rights Dialogue*, Series 2 No. 5 (Winter, 2001).

*Siobhan Somerville, "Scientific Racism and the Intervention of the Homosexual Body," in Roger N. Lancaster and Micaela di Leonardo, eds., *The Gender/Sexuality Reader: Culture, History, Political Economy* (NY: Routledge: 1997), pp.37-52.

Howard Winant, *The World is a Ghetto: Race and Democracy Since World War II* (NY: Basic Books, 2001), Chs. 1, 7.

Film to be shown in class.

April 3. Sexuality and Human Rights

Sexuality is increasingly being treated as a subject for human rights norms. What are the implications of addressing issues related to sexuality in this frame as opposed to other frames, such as health or morality? What are the implications for contemporary rights work that this application of rights to sexuality is occurring as rights work localizes and globalizes? Can a sexual rights framework hold together questions of identity, practice, meaning and conditions without resorting to a specific body and culture?

*Sonia Correa and Rosalind Petchesky, "Reproductive Rights and Sexual Rights in Feminist Perspective" in Gita Sen, Adrienne Germain, and Lincoln C. Chen, eds., *Population Policies Reconsidered: Health, Empowerment and Rights* (Cambridge and New York: Harvard University Press and IWHC, 1994), pp. 107-126.

*Donald L. Donham, "Freeing South Africa: The Modernization of Male-Male Sexuality in Soweto," *Cultural Anthropology* 13:3 (1998).

John D'Emilio, "Capitalism and Gay Identity," in Ann Snitow, Christine Stansell, et al., eds., *Powers of Desire: The Politics of Sexuality* (New York: Monthly Review Press, 1983), pp. 100-113.

*Oliver Phillips, "Constituting the Global Gay: Issues of Individual Subjectivity and Sexuality in Southern Africa" in Carl Stychin and Didi Herman, eds., *Sexuality in the Legal Arena* (London: The Athlone Press, 2000).

*Thom Shakespeare, "Sexuality and Disability: Towards Rights and Recognition," [Reprint #4591] (Calgary: Vocational and Rehabilitation Research Institute, 2000).

Part IV. Areas of Rights Thinking

April 10. Collective Rights and the Rights of Indigenous Peoples

Where is the concept of "group" or "collective" rights today and where does the debate stand? What are some of the specific forms of collective rights claiming and what constitutes a cultural claim? How have indigenous people been constructed as a 'special case' of minority rights? Why, and in answer to what pressures and interests? Where does the human rights framework fit in this dynamic? What different kinds of sovereignty are being created? How do we understand the contradictions arising in cases where indigenous peoples claims seem to result in protection for their right as a group to determine unequal rights for their members?

Paula Gunn Allen, "Angry Women are Building: Issues and Struggles Facing American Indian Women Today" in M. Andersen & P. Collins, eds., *Race, Class and Gender: An Anthology* (NY: Wadsworth Publishing Company, 1998), pp. 43-47.

*S. James Anaya, "The Capacity of International Law to Advance Ethnic or Nationality Rights Claims," in Will Kymlicka, ed., *The Rights of Minority Cultures* (New York: Oxford University Press, 1995), pp. 321-31.

*Abdullahi An-Na'im, "Human Rights and the Challenge of Relevance" in Monique Castermans-Holleman, Fried van Hoof and Jacqueline Smith, *The Role of the Nation-State in the 21st Century: Human Rights, International Organizations and Foreign Policy* (The Hague: Kluwer Law International, 1998), pp. 3-16.

*Rhoda Howard, "Dignity, Community and Human Rights", in Abdullahi An-Na'im (ed.), *Human Rights in Cross-Cultural Perspective* (1992), pp. 81-102.

Benedict Kingsbury, "Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy", *American Journal of International Law* 92 (1998).

*"Introduction" in Will Kymlicka, ed., *The Rights of Minority Cultures* (New York: Oxford University Press, 1995), pp. 1-27.

*Will Kymlicka, "The Good, the Bad and the Intolerable: Minority Group Rights", *Dissent* (Summer 1996), pp. 22-30.

*Jeremy Waldron, "Minority Cultures and the Cosmopolitan Alternative" in Will Kymlicka, ed., *The Rights of Minority Cultures* (New York: Oxford University Press, 1995), pp. 93-122.

April 17. Reparations, Apology, and Memory.

How has the rise of human rights language changed the concepts of reparations and apology? Have demands for reparations and apologies affected the human rights concept? Does a law-based rights approach to "accountability" limit our understanding of reparations? What are the differences between international reparations and intra-national reparations?

Miriam Aukerman, "Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice," *Harvard Human Rights Journal* 15 (Spring, 2002), pp. 39-98.

Mitchell T. Maki, Sarah Megan Berthold, and Harry Kitano, *Achieving the Impossible Dream: How Japanese Americans Obtained Redress* (Illinois: University of Illinois Press, 1999).

Manning Marable, *The Great Wells of Democracy: The Meaning of Race in American Life* (NY: Basic Civitas Books, 2002), Ch. 9.

*Randall Robinson, *The Debt: What America Owes to Blacks* (NY: Plume, 2001).

Other materials on reparation claims and debates to be distributed in class.

April 24. Cross-Border Population Flows and Human Rights

How is the accelerated flow of people across borders exposing gaps and tensions within the human rights system and in the inter-connection of rights and other international regimes such as humanitarian and refugee law and policy? What new issues are raised, and is the human rights framework adequate or appropriate to deal with them? Is the "war on terror" having the effect of militarizing what had previously been a policing issue and what effects may this be having? We will deal with two facets of this issue in particular: (a) asylum seekers and legal regimes for refugees; and (b) irregular migrants, including responses to 'trafficking'.

* Uma Narayan, *Dislocating Cultures: Identities, Traditions and Third World Feminism* (New York: Routledge, 1997), Ch. 3, "'Cross-cultural connections, border-crossing, and 'death by culture': thinking about dowry-murders in India and domestic violence murders in the United States," pp. 85-117.

*Jacqueline Babha, "Internationalist Gatekeepers?: The Tension between Asylum Advocacy and Human Rights," *Harvard Human Rights Journal* (Spring 2002).

*David Kyle and John Dale, "Smuggling the State Back In: Agents of Human Smuggling Reconsidered," in David Kyle and Rey Koslowski, eds., *Global Human Smuggling: Comparative Perspectives* (Baltimore: The Johns Hopkins University Press, 2001), pp 30-57.

*John Morrison, with Beth Crosland, "The Trafficking and Smuggling of Refugees: The End Game of European Asylum Policy?" (UNHCR, 2000)
Excerpts: at: http://www.ecre.org/eu_developments/traffick.pdf

"Prevention of Trafficking and the Care and Support of Trafficked Persons: In the Context of an Emerging HIV/AIDS Epidemic in Nepal," (The Asia Foundation, Population Council/Horizons, 2001),
www.popcouncil.org/pdfs/horizons/trafficking1.pdf

UNHCR, *THE STATE OF THE WORLD'S REFUGEES 1997-1998: A HUMANITARIAN AGENDA* (Oxford: Oxford University Press, 1997)

May 1. The Global Justice Debate

How does a call for the global redistribution of wealth fit within human rights ideas? What are the moral and economic rationales for and against redistributing wealth? What are the implications for human rights thinking of what we know about the causes of poverty?

Alternatives to Economic Globalization: A Better World is Possible (A Report on the International Forum on Globalization (San Francisco, CA: Berrett-Koebler Publishers, Inc. 2002), Chs. 1, 2.

*Thomas Friedman, *The Lexus and the Oliver Tree* (NY: Anchor Books, 2000), Ch. 6.

*John Gray, *False Dawn: The Delusions of Global Capitalism* (NY: The New Press, 1998), Ch. 4.

Pablo de Greiff and Ciaran Cronin, eds., *Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Globalization* (Cambridge, MA: MIT Press, 2002).

Makau wa Matua, "Hope and Despair for A New South Africa: The Limits of Rights Discourse," 10 *Harvard Human Rights Journal* (1997).

*Thomas W. Pogge, *Global Justice* (MA: Blackwell Publishers, 2001), Chs. 1, 2, 5.

John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999), Ch. 1, Section 3 and 4, Ch. 2, Section 11.

John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), Introduction.

Saskia Sassen, *Globalization and Its Discontents: Essay son the New Mobility of People and Money* (NY: The New Press, 1998), Introduction, Chs. 2, 5.

*Amartya Sen, *Development as Freedom* (NY: Anchor Books, 2000), Introduction, Ch. 4.