

**Princeton University**  
**Woodrow Wilson School of Public and International Affairs**

**WWS516: HUMAN RIGHTS AND DEMOCRATIC LEGITIMACY**

**Spring 2004**  
**Mondays, 1:00-4:00**  
**Robertson Hall TBA**

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**Course Description**

This seminar will examine the democratic legitimacy of international human rights law. In the years since World War II, international law has undergone a transformation. It now holds nations accountable not simply for how they treat each other, but for how they treat individuals. Yet, the most common democratic justification for this change namely, that nations have delegated portions of their sovereignty through treaties is often regarded as insufficient to justify the intrusions on internal governance that contemporary human rights standards entail. This seminar will survey political theory, comparative law, and evolving international practices and institutions to consider the plausibility of alternative democratic justifications and their likely impact. The theoretical issues will be investigated in the context of specific international controversies. Experts in political theory, international law, and human rights advocacy will visit the seminar to share their perspectives.

**Course Requirements**

Seminar participants will be required to submit two short papers. Each short paper should consist of a critical evaluation of one of the articles required for class reading. The first paper will be due by 5:00 p.m. on March 12, 2004; it should respond to an article assigned for one of the first six sessions of the class. The second paper will be due by 5:00 p.m. on April 30, 2004; it should respond to an article assigned for one of the last six sessions of the class.

Seminar participants must also either submit a research paper of 15 to 25 pages or take a final examination. Students who elect to submit a research papers must do so by 5:00 p.m. on Tuesday, May 11, 2004.

Grades will be determined on the basis of the following considerations:

First short paper: 25%  
Second short paper: 25%  
Research paper final exam 40%  
Class participation 10%

Policy regarding late papers: Late papers will be assessed a penalty of one-third of a grade (e.g., an A- becomes a B+) per day late. No extensions will be granted except on the basis of severe personal distress (e.g., a significant illness (verified by a note from a physician) or a death in the family). Please plan ahead.

## Required Reading

HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* (2<sup>nd</sup> ed. 2000)

LOUIS HENKIN, *THE AGE OF RIGHTS* (1996 ed.)

MICHAEL IGNATIEFF, *HUMAN RIGHTS AS POLITICS AND IDOLATRY* (Amy Gutmann, ed.) (2003 ed.)

ELIZABETH NEUFFER, *THE KEYS TO MY NEIGHBOR'S HOUSE: SEEKING JUSTICE IN BOSNIA AND RWANDA* (2002 ed.)

## Part I: Theoretical, Legal, and Institutional Foundations

### 1. Introduction

#### Preface

- Jed Rubenfeld, *The Two World Orders*, 27 WILSON QUARTERLY 22-36 (no. 4, autumn 2003)
- Anne-Marie Slaughter, *Leading Through Law*, in *id.* at 37-44.

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#### The Case of the Death Penalty: Overview

- *The Cruel and Ever More Unusual Punishment*, THE ECONOMIST (May 15, 1999)

#### Death Penalty: International Standards

- INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, Article 6(2)
- SECOND OPTIONAL PROTOCOL TO THE ICCPR, AIMING AT THE ABOLITION OF THE DEATH

#### PENALTY

- RESTATEMENT (3<sup>RD</sup>) FOREIGN RELATIONS LAW OF THE UNITED STATES §702, *comment f* (1986)
- EUROPEAN CONVENTION FOR HUMAN RIGHTS, Articles 2, 3
- EUROPEAN CONVENTION, Protocol No. 6, Articles 1, 2, 3

#### Death Penalty: U.S. Jurisprudence

- *Atkins v. Virginia*, 536 UNITED STATES REPORTS 304 (2002)

#### Death Penalty: International Jurisprudence

- STEINER & ALSTON, 18-55
  - Lawrence R. Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*, 102 COLUMBIA LAW REVIEW 1832, 1832-39, 1866-9, 1910-11 (2002)

## **2. International Human Rights Law**

### General

- LOUIS HENKIN, THE AGE OF RIGHTS 1-5, 31-41 (1990)
- Daniel Philpott, *Sovereignty: An Introduction and Brief History*, 48 COLUMBIA JOURNAL OF INTERNATIONAL AFFAIRS, (no. 2, spring 2002)
- STEINER & ALSTON, 126-35, 136-58
- STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, Article 38
- RESTATEMENT 3<sup>rd</sup>, §701
- J. L. BRIERLY, THE LAW OF NATIONS 45-56 (6<sup>th</sup> ed. 1963)

### Treaties

- CHARTER OF THE UNITED NATIONS, Preamble, Articles 1, 2, 39-42, 55 & 56
- “International Bill of Rights”
  - UNIVERSAL DECLARATION OF HUMAN RIGHTS
  - INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
  - INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### Customary International Law & Jus Cogens

- RESTATEMENT 3<sup>rd</sup> §§ 201, 702
- VIENNA CONVENTION ON THE LAW OF TREATIES, Article 53

### 3. Rights Defined and Justified

#### Overview

- HENKIN, AGE OF RIGHTS, 6-10
- STEINER & ALSTON, 322-42

#### Foundationalist Justifications

- JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (1989)
  - Richard Rorty, "Human Rights, Rationality, and Sentimentality" from ON HUMAN RIGHTS, (Stephen Shute & Susan Hurley, eds. 1993)

#### Positivist (Democratic?) Justifications

- JOHN RAWLS, THE LAW OF PEOPLES 23-44, 78-85 (1999)
- MICHAEL IGNATIEFF, HUMAN RIGHTS AS POLITICS AND IDOLATRY 3-98 (2003)
- Amy Gutmann, "Introduction," in *id.* at vii-xxviii
  - K. Anthony Appiah, "Grounding Human Rights," in *id.* at 101-16
- Diane Orentlicher, "Relativism and Religion," in *id.* at 141-58

## Part II. Three Problems of Democratic Legitimacy

### 4. The Persistence of Sovereignty Defenses

- Daniel Philpott, *Usurping the Sovereignty of Sovereignty?*, 53 WORLD POLITICS, 297-324 (no. 2, 2001) (review essay)
- John McGinnis, *The Political Economy of Global Multilateralism*, 2 CHICAGO INTERNATIONAL LAW JOURNAL 381 (2000)
- Kal Raustiala, *Sovereignty and Multilateralism* 1 CHICAGO JOURNAL OF INTERNATIONAL LAW 401-19 (2000).
- Louis Henkin, *That 'S' Word: Sovereignty and Globalization and Human Rights, etc.*, 68 FORDHAM LAW REVIEW 1 (1998).
  - Jack N. Rakove, *Making a Hash of Sovereignty, Part I*, 2 GREEN BAG 2d 35 (1998)
  - Jack N. Rakove, *Making a Hash of Sovereignty, Part II*, 3 GREEN BAG 2d 51 (1999)
- Thomas W. Lacquer, "The Moral Imagination and Human Rights, in HUMAN RIGHTS AS POLITICS AND IDOLATRY, 127-40
- Thomas H. Lee, *International law, International Relations Theory, and Preemptive War: The Vitality of Sovereign Equality in a Unipolar World*," JOURNAL OF LAW AND CONTEMPORARY PROBLEMS (forthcoming 2004)

### 5. Democratic Theory and Constitutional Self-Government: The U.S. and Europe

- Christopher L. Eisgruber, *Constitutional Self-Government and Judicial Review: A Reply to Five Critics*, 37 UNIVERSITY OF SAN FRANCISCO LAW REVIEW, 115-77, 188-90 (2001)
- Jeremy Waldron, *A Right-Based Critique of Constitutional Rights*, 13 OXFORD JOURNAL OF LEGAL STUDIES, 18 (1993)
- Stephen J. Macedo, *What Self-Governing Peoples Owe to One Another: Universalism, Diversity, and The Law of Peoples*, 73 FORDHAM LAW REVIEW \_\_ (forthcoming 2004)
  - Andrew Moravcsik, *In Defense of the “Democratic Deficit”: Reassessing Legitimacy in the European Union*, 40 JMCS 603 (2002)
- Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 INTERNATIONAL ORGANIZATION 217, 217 (2000)

## 6. The Claims of Culture and the Rights of Women

### Overview

- Tracy Higgins, *Anti-Essentialism, Relativism, and Human Rights*, 19 HARVARD WOMEN’S LAW JOURNAL 89 (1996)

### CEDAW

- CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
  - STEINER & ALSTON, 403-04, 439-45
- JOSEPH R. CROWLEY PROGRAM IN INTERNATIONAL HUMAN RIGHTS, PROMISE UNFULFILLED: LAW, CULTURE, AND WOMEN’S INHERITANCE RIGHTS IN GHANA 2-31, 42-61 (2002)

### Female Genital Mutilation/Circumcision

- STEINER & ALSTON, 404-05, 409-25

## Part II - Case Studies and Controversies

### 7. The UN and the International Treaty System

#### Legitimacy and the UN

- Richard Falk, “The United Nations and Cosmopolitan Democracy: Bad Dream, Utopian Fantasy, Political Project,” in RE-IMAGINING POLITICAL COMMUNITY: STUDIES IN COSMOPOLITAN DEMOCRACY, 309-331 (Daniele Archibugi, David Held & Martin Kohler, eds. 1998)

### Treaties as “Hard Law”: Child Soldiers

- INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS, 37-82 (David Weissbrodt & Joan Kirkpatrick, eds, 3<sup>rd</sup> ed 2001)

### Principles, Declarations, Resolutions and Other “Soft Law”: Lawyers and Judges

- UN BASIC PRINCIPLES ON THE ROLE OF LAWYERS AND JUDGES
- Martin S. Flaherty, *Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland* 7 HARVARD HUMAN RIGHTS JOURNAL 87 (1994)

## **8. International Criminal Law and Universal Jurisdiction**

- Tim Judah, *The Fog of Justice*, THE NEW YORK REVIEW OF BOOKS, 23-25 (no. 1 Jan. 15, 2004)
- STEINER & ALSTON, 1131-43, 1192-1216
- ELIZABETH NEUFER, THE KEYS TO MY NEIGHBOR’S HOUSE, xi-xix, 59-82, 107-131, 132-62, 165-89, 271-92, 337-50, 371-88, 389-402
- GARY BASS, STAY THE HAND OF VENGEANCE 3-36 (2000)

## **9. Regional Approaches**

- Mattias Kumm, Article regarding Democracy and the European Union
- STEINER & ALSTON, 779-836, 840-59, 862-67, 867-881, 920-30

## **10. International Civil Society: NGOs,**

- STEINER & ALSTON, 938-89
- Richard Falk and Andrew Strauss, *On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty*, 36 STANFORD JOURNAL OF INTERNATIONAL LAW 191 (2000)
- Kenneth Anderson, *The Limits of Pragmatism in American Foreign Policy: Unsolicited Advice to the Bush Administration on Relations with International Non-Governmental Organizations*, 2 CHICAGO JOURNAL OF INTERNATIONAL LAW 371 (2001)
- Peter J. Spiro, *Accounting for NGOs*, in *id.* at 161 (2002)

## **11. Alien Tort Claims Act & Customary International Law**

- STEINER & ALSTON, 1049-81
- Brief of Petitioners and Respondent in *United States v. Sosa*

- Curtis A. Bradley & Jack L. Goldsmith, *The Current Illegitimacy of International Human Rights Litigation*, 66 FORDHAM LAW REVIEW 319 (1997)
- Gerald R. Neuman, *Sense and Nonsense About Customary International Law: A Reply to Professors Bradley and Goldsmith*, in *id.* at 371 (1997)

## 12. Judicial Globalization

- Martin S. Flaherty, *Aim Globally*, 17 CONSTITUTIONAL COMMENTARY 205 (2000).
- Anne-Marie Slaughter, *Judicial Globalization*, 40 VIRGINIA JOURNAL OF INTERNATIONAL LAW 1103 (2000).
- *Atkins v. Virginia*, 536 UNITED STATES REPORTS 304 (2002)
- *Lawrence v. Texas*, 124 SUPREME COURT REPORTER 1504 (2003)
- *HKSAR v. Ng Kung Siu*, [1999] 2 HKC 10 (opinion of the Court of Appeal of Hong Kong)
- *Soobramoney v. Minister of Health (Kwazulu-Natal)* 1998 (1) SALR 765 (CC) (opinion of the Constitutional Court of South Africa)