

SSC 3049 Human Rights: Principles and Polemics

Course Structure

A. Overview

This course aims to give the student an “advanced introduction” into the interdisciplinary field of human rights. While this course has a legal emphasis, it is not just a revision of the positive law, it delves into the theoretical grounds and practical consequences of the law. Topics covered (1) the history of human rights; (2) the types of rights that exist; (3) who has human rights, and who has obligations to protect human rights? (4) What is the relationship between human rights and international law? (5) where do human rights apply? Can they be used to hold states accountable for what they do outside their borders; (6) do human rights merely protect us from abuse, or do they also provide positive entitlements? (7) Can human rights deal with cultural relativism? (8) Are human rights rigid, or can they be made flexible to accommodate changing circumstances? The course also provides students with an overview of the main institutions enforcing human rights and explores a variety of cases in detail.

B. Prerequisites

International law (SSC 2024). Waivers of this required can be given upon request.

C. Learning objectives

This course has four general learning objectives: (1) Understand the content of modern human rights discourse. (2) Identify critical differences between different conceptions of human rights. (3) Be able to orient oneself in the normative production of modern authorities in the field of human rights. (4) Learn how to marshal and evaluate arguments within the normative field of human rights.

D. Organization

The course uses **blended learning**. A mix of online and on-site activities will be used. The online mode will cover video lectures, Q&A sessions and asynchronous discussions where students may seek clarification of the tasks in a way that approximates traditional "pre-discussion", as well as choose which questions they want to focus on and post responses online for feedback (detailed information on assignments is present on a separate file). The on-site mode will cover "post-discussion" tutorials.

The course lectures will cover 1) the different systems of human rights protection and 2) complement theoretical aspects of the course.

In order to ensure continuity of operations over the COVID period, the course has a **modular organization**. In site tutorials will be replaced with online tutorials in the same time slots and with the same duration if safety so requires.

The flow of the on-site sessions can be summarized in the following table:

Sessions	Topic A	Topic B
Week 1	History and philosophy	Integrity of the person
Week 2	Human rights in int. law	Freedom rights
Week 3	What are rights?	Fair trial
Week 4	Who? Whom? Where?	Non-discrimination
Week 5	Obligations	Welfare rights
Week 6	Reasoning with rights	Proportionality and MofA

E. Literature

Students need to buy or copy from Moeckli, Daniel, et al. (eds.), International Human Rights Law. Oxford: OUP (latest Edition).

Extra materials are provided through the internet.

Before beginning students are encouraged to read G. Arosemena "Human Rights" in Hage et al. Introduction to Law (Springer 2017).

A bibliography of recommended books will be provided through Canvas.

F. Attendance

Attendance will be flexible to allow for disruptions relating to COVID-19. In no situation should you attend class while feeling sick to address concerns about attendance. **There is no need to justify this ahead of time.**

G. Assessment

The grade will depend 75% on the final exam.

25% of the grade will depend in performance in chosen tasks which will be delivered in writing. Such performance will be graded on a pass / fail basis on the following rubric:

Grade	Meaning
25%	All tasks correctly done

20%	3/4 tasks correctly done
15%	2/4 tasks correctly done
10%	1/4 tasks correctly done
0%	0/4 tasks correctly done

The final exam will consist of three questions for related to the different substantive areas covered in the course. More information will be provided in Canvas in a timely manner.

Grading criteria, listed in order of importance, include:

- *Correctness*: Is the information provided true?
- *Completeness*: Was all the required information provided? Did the student make all the relevant distinctions? For example, if I ask for “briefly explain what is sovereignty?” and there are two types of sovereignty, the student should cover both types.
- *Clarity*: Is the answer clear, or is it cluttered with irrelevant information?
- *Avoidance of circularity*: A definition should not include the word that is being defined explicitly or covertly. (Example A property right is a right by virtue of which property is...). Arguments should not “beg the question”.
- *Proper use of legal language*: if legal words are needed they should be used and they should be used correctly.

Whether the exam will take place in person or online will depend on university policy at the time of the exam.

H. Canvas

This course manual, the e-readers, announcements and assignment will be placed on Canvas. Please check Canvas regularly.

I. Inspection hour

Feedback on examinations will take place through an inspection hour as well as a virtual exam-debriefing. The exact format of the inspection hour, physical or virtual, will depend on the evolving COVID-19 situation.

J. Contact

Announcements in Blackboard are the most common means by which information will be provided.

You can contact the course coordinator at gustavo.rosemena@maastrichtuniversity.nl (I have a student account that I do not check. Please do not send your emails to this account, but make sure that you use the email set out above).

Tasks

0 System of human rights protection

Asynchronously, the tutor will provide lectures introducing students to the UN, Inter-American, European and Regional Systems of human rights protection. Students are encouraged to read chapters 19 to 23 of Moeckli to go deeper on these topics.

1A History and philosophy:

Reflection:

- History of Human Rights: When did human rights get started? Some claim that human rights is as old as all the great world religions, and finds within them its roots. Every religion has an ethical message of human brotherhood and solidarity. Others claim that human rights arise in the Enlightenment, as man breaks free of the “self-imposed tutelage” of obscurantism and unreason. Others claim that human rights really arise in the 60s when the student movement and the struggles against colonialism in the third world take off. In *The Last Utopia*, Moyn defends the uncommon and polemical thesis that the real origin of human rights lies somewhere around 1977.
- Why do we have human rights? What theories can we marshal to **justify** the claim that all human beings deserve the same rights? Today there is a temptation to sideline this problem and concentrate on activism: as long as **we** believe in human rights, the right question is **how** can we spread the doctrine and secure its enforcement. Is there anything dangerous or paradoxical in this attitude?

Readings:

- Moeckli Chapter 1.
- Moyn, Samuel. *The last utopia*. Harvard University Press, 2012, Prologue 1.
- Text provided by the tutor

1B Integrity of the person

Report:

- A violent protest took place in Bangladesh. The police acted in defense of the human rights of the peaceful and after a warning opened fire at the protesters. Medical examinations reveal that half of the deceased had bullet wounds in their back. A local NGO claims that this is enough to show that the state committed a crime of genocide. What is the likely legal status of the acts described?
- In 20xx the state of Jamaica passed a law that convicted all killers to suffer the death penalty. According to a fledging NGO this is a human rights violation because it goes against the right to life. The NGO cites as evidence the fact that nowhere in Europe is the death penalty practiced anymore. Explore the legality of this measure.
- A was captured. He was subjected to sleep deprivation and forced to ingest a relaxing drug (anxiolytic) against his will. This was done to help interrogators to break down his personality and make him compliant. At what point is such behavior justified?
- In Guantanamo soldiers were found to humiliate and beat up the prisoners. After much investigation, it was found that there was no official policy of harassments. In fact, soldiers did this “for entertainment” as a sinister vent for stress relating to deployment. In fact, many of them were suffering from PTSD. This has created problems for the UNCAT Committee. Explore why this could be so.

Readings

- Moeckli chapter 9

2A Human rights in international law

Report:

- Can it be said that the right to water is a human right? The most logical place where one could expect to find this right is the International Covenant on Economic, Social and Cultural Right. But it is not there. If this essential right does not appear in an international treaty should we simply conclude its not there?
- According to settled international doctrine, for there to be custom there must be both state practice and “*opinio juris*”. Because states violate human rights all the time, do we run the risk that the international normative standards found in human rights will erode? In 2005 the Red Cross published a study on the customary law of war (human rights that apply in wartime). The US criticized this study because it was based merely on what military manuals state, and not on what armies actually do in the field.
- Consider a case like this: Under a trade agreement a state that does not lower its tariffs can be punished by other states refusing to do the same. The message is: “If you don’t do your part of the deal, I don’t do my part of the deal” Could this type of enforced based on self-help work in the field of human rights? What can the EU do to “punish” the rising authoritarianism of Russia?
- What happens if the United States claims that it interprets the interrogations taking place in Guantanamo bay as “enhanced interrogation” and therefore, “not torture”? Is this interpretation binding? Is it different from a reservation?
- In 1997 Jamaica decided it wanted to exit the Second Optional Protocol to the ICCPR. In the same year, North Korea decided it wanted to exit the ICCPR. The legality of these moves has been questioned, but it seems that if a state enters a treaty by giving its consent, at some point it may be able to exit a treaty by withdrawing its consent. Discuss whether human rights treaties could/should be entrenched as way to make these measures illegal.

Readings

- Moeckli Chapters 4 and 5.

2B Liberties

Report:

- After the liberal party wins the elections in Great Brittan, it passes a law against proselytism stating the following “religion is a private affair. In public, we should feel safe that nobody will try to force us to change our beliefs”. Evangelical groups have complained that the liberal party is not protecting rights, but enforcing secularism. Explore the legality of this move.
- Group XX claims that they should be allowed to smoke Marihuana because it is their religion. The state nonetheless has prohibited the practice. Assess the probability of success of this claim.
- An art piece depicting rape was presented in for the municipal fair. The piece was denied exhibition for being against morals and public order. According to the artists this is censorship. The law specially protects art which is shocking. Provide legal backing to the claim that the piece should have been shown in a special restricted area of the exhibition. Assess the probability of success of this claim.
- The Netherlands has a political party that prohibits participation of women in public life. Should this party win office, it has promised to roll back feminism, and to reassert the legitimacy of traditional gender roles. Fearing electoral losses, the current government of the Netherlands claims that it has good ground to ban the operation of this party. Assess whether the party could be rendered illegal by the standards of international human rights.

Reflection:

- We live in a post-truth age. The media is no longer a reliable source of public truths we can all believe in. Media companies all peddle “their truth” and divide and polarize the population. Against this background, assess the value of the Joint Declaration on Freedom of Expression and “Fake News”, disinformation and propaganda.

Reading:

- Moeckli chapter 12

3A What are rights?

Reflection:

- According to one author there are 1377 rights. It is not profitable to try to read of all them. First there is simply too many to commit to memory. Second, many of them cover the same ground, either because they are full blown repetitions, or because they significantly overlap. Third, accepting every listed right as a given can foster an uncritical attitude towards human rights. Maybe not all 1377 human rights are equally sensible or worthwhile, maybe some are essentials, but others are distractions. Some human rights deserve to be struck off the list. Some things deserve to be added. Maybe 1377 human rights is too much. Some believe that there is such a thing as “inflation” in the world of human rights. Too many human rights “cheapen” rights.

Report

- What does it mean to have a right? Two dominant theories are the will theory and the interest theory. According to the interest theory, a right is simply a very strong interest that is protected by law so that others have a duty to avoid infringing on it. According to the will theory this is not enough. There is a strong connection between rights and autonomy. To have a right to X does not only mean that others must respect X; it means that it is *up to me* to choose whether to enjoy X or not. I can *waive* X, or I can *renounce* to X. In this manner, to have freedom of religion is also to have the freedom not to have a religion. And privacy is also the freedom to be known if one so chooses. Discuss the pros and cons of these two theories. This apparently conceptual question has practical implications as can be seen from the case *Pretty vs. The United Kingdom*. Skim the case and report on the relevant part connecting it with the will / interest debate.

Readings:

- Moeckli Chapter 7
- Text provided by the tutor
- Foreign Affairs: The Danger of human rights proliferation: available at <https://www.foreignaffairs.com/articles/europe/2013-07-24/danger-human-rightsproliferation>

3B Fair Trial

Report:

- In 2022, Italy has taken up the practice of detaining asylum seekers trying to enter the country provisionally. Any potential asylum seeker detained in the Italian territorial waters is taken to a fenced facility in the island of Lampedusa and they cannot leave the facility until a decision has been made about the legality of their claim. Men are kept in a different building than women and children. Food is provided, and medical

care is provided once per week. If the asylum claims are found to be illegitimate, the seekers are expelled. In practice, seekers stay an average of 2 years in the facility. Explain whether this practice can be justified legally.

- Cartels have taken up the practice of murdering judges and their families. In response, the government of Peru has taken the decision that those accused of drug trafficking or of crimes associated with cartels will be judged by masked judges that come from the military courts. Assess the legality of this practice.
- NN is a black man who was arrested with allegations of aggravated assault. NN participated in the riots after the murder of George Floyd. NN is something of a Youtube media star, who examines current events and explains how current events can be related to the ideology of the Black Panthers. After his arrest, there was a media frenzy claiming that NN was innocent. Various celebrities and university professors claimed that the conditions in America are such that NN cannot be responsibly tried. Judges remained passive, and in 2 weeks the prosecutor decided to drop charges. Assess the legality of the events.
- Provide a mock dissenting opinion for the Asdany case regarding the violation of Article 6(1).

Reflection:

- The Human Rights Committee claims that "Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party". Is this special priority for prisoners legally or morally justifiable, when other demands that are social and economic in nature are subject to resource constraints?
- Explore the Convention on Enforced disappearances and report back to class what you found novel or important in this convention.

Reading:

- Moeckli chapter 14

4A Who, whom, where?

Reflection:

- Human rights are enjoyed equally by all human beings. Other creatures, for example animals, do not enjoy human rights. This has led some to question what is the "property" of human beings that justifies their having rights. Is it our rationality? Is it our ability to make plans? Note that this search for a property creates problems: properties tend not to be shared to the same degree by human beings; some human beings are more rational than others. how can then equal rights be justified, instead of rights in proportion to one's rationality?
- In an urge to define corporations. This has led to some positive developments. On the other hand, there are concerns of "rainbow-washing" the idea that corporations can coopt the cause of human rights as a PR and marketing strategy. How effective are human rights in controlling corporations? Explore the FIFA human rights complaint (National Contact Point of Switzerland, Final Statement. Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers' International (BWI))

Report:

- The country of Kenya is having a sudden influx of refugees from Sudan. These refugees live in terrible conditions. They lack access to acceptable housing, education,

sanitation... The President of Kenya has tried to deflect international criticism by stating that human rights apply in the relationship of the state with its citizens. The refugees can be grateful of whatever assistance is given to them, but should direct their complains to Sudan.

- In 2005, an American Corporation called UTO decided to begin its operation in the countryside of Brazil. As part of its business, the corporation sprayed pesticides in thousands of hectares of farmland. In 2019, the corporation was accused for a 200% rise in miscarriages in the area where it operated. The Brazilian government considers this to be a violation of the right to life and “kills” the corporation by suspending its operating permits, a new, ad hoc penalty. In response, the American corporation says that Brazil has breached its human right to fair trial and is pushing the American government for suspension of development aid to Brazil in order to persuade the country to abide by international standards.
- For years a civil war has been raging in the state of Jordan, between islamist radicals and an authoritarian government. The UN Security Council mandated a blockade on arms supply against the country. NATO took up this task through air force strikes against vehicles engaging in arms trade or supply. In 2017 an air strike bombed what appeared to be an arms convoy. But the bombing was a mistake, as in fact, the convoy was full of asylum seekers. Although NATO acts as a coalition, the bombs were dropped from a Spanish plane.

Readings

- Moeckli Chapter 7
- Moeckli Chapter 25 (optional)

4B Discrimination

Report:

- A works for the airline company British Airways as a steward. Two months into his job, A has come to believe strongly that his religion prohibits him from partaking or serving alcohol. A requests that in all cabin operations, when alcohol is requested, some other steward should attend the passenger. The manager of A believes that this is an unacceptable requirement and a cause to fire A from her job. A believes that she has been discriminated against.
- The country of Normandia has a refugee community hundred thousands. This includes a significant number of children arriving from the ages of 6 to 18. The educational policy of NN is that the decision of whether a child can go to the university is fixed in two exams, one taken at the age of 12, and another at 17. It seems that as a consequence of this, refugees in Normandia are almost never able to go to the university. Only 0.2 of members of this community manage to study at a higher level. This happens because they inevitably arrive to Normandia with significant disruptions in their education that lead to negative results in the tests. Discuss whether this situation may give rise to discrimination.

Reflection:

- Can stereotypes (as such) as such be a form of discrimination? Explore the Vertido case and assess it. Can you think of another situation where similar biases may be found? From a classical liberal perspective, would you find reasons to be concerned with the idea that law should combat stereotypes?
- While the UN has come to believe that discrimination can be unintentional, the idea that discrimination arises only where there is intent can serve as a means to "make space" between the claims of equality and other freedoms. Read the case Lee v. Ashers and explain the advantages and disadvantages of its approach.

Readings:

- Moeckli chapter 9

5A What are obligations

Workshop: Using your prior readings as a guide, explore a list of modern human rights instruments and seek examples of these obligations:

- Immediate and progressive and programmatic obligations
- Explicit and tacit
- Claims and freedoms
- Duties to respect, protect and fulfill
- Absolute and limitable obligations
- Principles

Basic human rights treaties include: UDHR, ICCPR, ICESCR, CEDAW, CRC, CAT, Declaration on the Right to Development, Rio Declaration.

Reading:

- Text provided by the tutor

5B Social rights

Mini brief:

- A new socialist government emerging in Cambodia declares that it will solve all problems of malnutrition by crushing capitalism. From now on, all farm will be collective, the state will centralize food production, which will then be distributed on the basis of need. Defend the thesis that this measure by the government is actually not in line with economic, social and cultural rights.
- A new Corona vaccine has been developed. The government has decided that the vaccine will only be tested in a pilot program for 6 months, until there is enough information that it is safe. Access to this vaccination pilot program is done on a voluntary basis from a list where citizens are chosen at random. Could this policy be a violation of the right to health?
- Amidst an economic crisis, A has stopped paying his mortgage. Accordingly, the bank has recourse to a civil judge and the judge has A evicted. In desperation, A claims that the eviction would violate his human rights. How could this claim be defended?

Reflection:

- Provide a an explanation of what the sustainable development goals are and accept or reject the thesis that these goals protect human rights, specially economic, social and cultural rights.
- Many have been afraid that having “social rights” would commit us to having judges award houses to the homeless. Why does this fear arise? South Africa is seen by many as the best example of a state has been able to provide protection for the social rights without overstepping liberal governance boundaries.

Reading:

- Moeckli chapter 10
- Text provided by the tutor

6A. Reasoning with rights

Reflect:

- Create a table of the four different types of interpretation. Going back to your readings, present at least one case where one technique of interpretation was used (or rejected).
- Read the hypothetical cases discussed below. Explore the article Proportionality: An assault on human rights? by Stavros Tsakyrakis and critically assess his thesis. Should we have human rights without proportionality? What would be the cost of this measure? *Fiat justitia ruat caelum?*

6B Proportionality and the margin of appreciation:

Report:

- In the case of S.A.S. vs. France, the European Court of Human Rights found that French women could be banned from wearing the Islamic hijab in public places. This was regarded as proportional in order to achieve the aims of the state. Assess the arguments provided by the Court and provide a dissenting opinion.
- The United States has been practicing waterboarding for years in order to extract information from would be terrorists. According to international opinion, torture can never be permitted, whatever the consequences. The defenders of the American system claim that waterboarding is not torture. They also claim that even if it were torture, at some point, the that even if it were true that it is “torture”, at some point the needs of society justify. Rights, they say, are not a suicide pact. Assess this legally and critically.
- In 2005, the German Parliament considered the possibility that a 9/11 incident happening in Germany. They decided by law that in such a case, the German armed forces would be allowed to shoot down the plane. Then in 2006 the German Constitutional Court found that this was an unacceptable restriction on human rights and struck down the law. This has been considered a hopelessly idealistic decision by some commentators. Clearly, it is better to accept the loss of life in the plane, than the loss of life in both the plane and on the ground.
- In 2014 Uganda declared that criminalized homosexuality. As a response, the West withdrew aid. The government of Uganda considers this to be a case of colonialism. If the tables were reversed, Uganda could withdraw aid on the west for not respecting its cultural standards. Make an argument defending or attacking this measure. In if instead of criminalizing homosexuality, it had been a country criminalizing abortion, would your assessment be different?

Readings

- Text Provided by the Tutor
- Re-read Moeckli chapter 5, select pages.
- Tsakyrakis, S. (2009). Proportionality: An assault on human rights?. *International Journal of Constitutional Law*, 7(3), 468–493.

7. Exam week