

**LAW 6389: HEALTH, HUMAN RIGHTS AND
THE INTERNATIONAL SYSTEM**

Fall 2013
(Rev. 2)

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Office hours: By appointment, before and after class.

Credits: 3

Day, Time, and Place: Monday/Wednesday, 6 – 7:30 pm, TU2-117

Scope of the Course:

This course is designed to provide an overview of the nature and role of international norms, processes and institutions and their relations to health and human rights issues, focusing on the responses of the international political and legal order to some of these issues.

What place do health and human rights occupy in international affairs? How can the effectiveness of norms and institutions relating to these issues be gauged? What insights may be derived from the way health and human rights are approached in the international system? To answer these questions, we need to comprehend the nature of the norms, processes, and actors of the international system; the legal and political context of international efforts to promote health and human rights; and the explicit and implicit interpretation of the issues by international actors. Throughout the course we will explore the dialectical relation between, on the one hand, the pursuit of national interests by governments and shareholder interests by the private sector and, on the other, the global objectives and practice of the intergovernmental agencies and nongovernmental actors that include health or human rights within their mandates. Students are encouraged to develop their own theoretical perspectives on understanding the international system and to test their ideas in class.

Students will be exposed to different ideas and images of the law. They will be able to understand law narrowly, as legislation and judicial opinion, and more broadly as a concept that is referred to by, or synonymous with, *right*, *justice*, *ethics (morals)* and *political theory*. International law and human rights, a category of international laws, including the right to health, are legal things embodied in various non-judicial and non-legislative institutions.

Students will be introduced to the problems that arise at the edge of human identity by considering the legal status of animals, disability and non-constitutional (international or transnational) legal systems (i.e., states).

Students will learn about the four kinds or sources of laws, broadly speaking, that are intended to uplift the human condition: human rights; humanitarianism; laws of war; and development.

Students will learn about ways in which health is understood, and become familiar with the tension between health considered as a characteristic of an individual organism and health considered as a characteristic of a political organization. In the process of understanding health, the student will be exposed to the language of science, and the languages in which science is critiqued,

Learning Objectives of the Course:

At the conclusion of this course, students will be able to:

1. Critically evaluate the literature on health and human rights
2. Apply international relations theory to understanding the behavior of the principal actors in world politics with respect to health and human rights
3. Understand and apply the basic concepts of public international law to the process of standard-setting and interpretation of documents relating to human rights from a public health perspective
4. Understand and apply the distinctions and overlap between international human rights and international humanitarian law
5. Understand and interact professionally with governmental, intergovernmental (regional and global), and nongovernmental institutions and processes dealing with issues of health and human rights.

Method

The course will combine lectures with strong student participation and one or more class exercises. Concepts and readings will be used from several social sciences in addition to law, mainly political science, jurisprudence and international law and relations.

Readings

The texts (titles are linked to Amazon) for the course are:

[INTERNATIONAL HUMAN RIGHTS](#)

Philip Aston, Ryan Goodman, eds., 1st ed., 2012.

[THE HUMAN RIGHT TO HEALTH](#)

Jonathan Wolff (2012)

Additional readings will be in handouts, and from the following two books:

THE RIGHT TO HEALTH IN INTERNATIONAL LAW
John Tobin (2012)

HEALTH AND HUMAN RIGHTS IN A CHANGING WORLD (2013)
Eds.: Michael Grodin, Daniel Tarantola, George Annas, Sofia Gruskin

Course requirements

This course will stress active participation of students in a critical discussion of the literature assigned for each session. After introductory matters are covered, individual students or teams will prepare presentations in the context of a simulation designed to illustrate how the various norms work in practice. I will assign brief exercises for the class during the semester.

The grade will be constituted from the final exam grade (75 percent), class participation (5 percent), and the class exercises (20 percent).

The final exam is take-home and will consist of two questions, one of which follows. The other question will be an issue spotter.

Final Exam Question #1:

WHAT IS THE RIGHT TO HEALTH?

Instead of the final exam, a student may write a 5,000 word paper. If you might be interested in this option, please meet with me within the first 2 weeks of school.

Please note that the end of the syllabus contains some alternate subjects we may cover in the last quarter of the class, classes we will devote to addressing specific problems. The syllabus may change as the class develops, depending on the interests of the class.

SYLLABUS

WEEKS 1 & 2. AUG 26 & 28, SEP 4.

PART 1.

THE MORAL PROBLEM. OF PUBLIC ACTS

Is there moral certainty about anything? Can moral certainty be derived from the characteristics of the human body/mind? What is the relationship between health and morality? How can *right* be determined?

Required readings:

[Alastair MacIntyre, Emotivism, in AFTER VIRTUE, pp. 6-22](#)

PART 2.

HEALTH & HUMAN RIGHTS

What are the moral wellsprings that drive the desire to help the less fortunate? Are sick people sick because they are poor? Or are poor people poor because they are sick? Is it only the poor that need “social justice?” Are the poor some kind of different category of people, like people of a different religion, or people of a different ethnicity, language or culture? Do we, more fortunate people, have a duty to protect the poor, or help them live longer, healthier lives? Would it make any difference if we could achieve that end without spending money? Or if we have to spend money to help the poor, is that of moral significance? What if the poor do not want to be helped? Or perceive the “help” as meddling in personal decisions? Who or what gives wealthy elite white folks the warrant or permission to go help the miserable people of other cultures, races, histories? Does it make a difference if the suffering of the other was caused by the elites? If poverty is the main characteristic or requirement for human rights, then how do we deal with communities that cannot be characterized as poor, but which seem to violate universal human rights norms pursuant to customary law? Are human rights really universal?

Readings:

[Martha Nussbaum, Capabilities Approach, from FRONTIERS OF JUSTICE, pp. 155-195](#)

[Martha Nussbaum, SOCIAL CONTRACT THEORY, from Frontiers of Justice](#)

Week 3. Sep 9 & 11.

JUSTICE AND RIGHT

The readings this week focus on some structural features of the law and legal discourse centered on the idea of justice. A system of political (legal/moral) justice is the main way

we identify *right*, so having some sense of justice as a source of law and legal norms is required as we begin the study of human rights and international law. There are long-standing arguments international law is not really law. If international law is not law, then human rights are also not law. What is international law compared to so that it can be said it is not law? Are there two kinds of law? What does the word “law” actually mean? What is the relationship between justice, law and health? What role does morality play in discussions of law and justice? What role does power play? What is the relationship between right and power? If a human right, e.g. the right to life, is not linked to power, is it really a right?

Required readings:

Donnelly on human rights.

Paul Farmer, *PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS AND THE NEW WAR ON THE POOR* (2003) pp. 137 – 178.

Panos briefing “The Main Players in the Global Health Arena” pp. 13-17.

Week 4. Sep 16 & 18

MONDAY – FGM

Today we look at a HHR problem, female genital cutting (mutilation, circumcision). I will assign the members of the class into 3 groups (for, against, in-between), and then during class we will argue various positions.

Text: pp. 528-565. (On female genital mutilation or cutting)

WEDNESDAY – INTRODUCTION TO INTERNATIONAL LAW; IDEOLOGY

In this class we introduce the main features of the international system; and we introduce the concept of ideology as a critical technique central to understanding complex socio-political structures.

Antonio Cassese, *International Law* 3- 21

Susan Marks, *THE RIDDLE OF ALL CONSTITUTIONS: INTERNATIONAL LAW, DEMOCRACY, AND THE CRITIQUE OF IDEOLOGY* (2000) pp: 8-15; 18-25

Week 5. Sep 23 & 25..

INTERNATIONAL LAW

We continue the introduction to international law in general.

MONDAY

Cassese: 22-68

WEDNESDAY

Text: 668-679

Marks (Susan): 101-109

Louis Henkin, HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY (1968) pp: 84-87.

Week 6. Sep 30 & Oct 2.

**POSITIVE AND NEGATIVE RIGHTS –
THE INTERNATIONAL BILL OF HUMAN RIGHTS**

INTERNATIONAL HUMAN RIGHTS INSTITUTIONS AND THE ICCPR

The United Nations plays a unique and central role in international law and the international order. What does it look like? How does it function? What role does it play in “human rights?” Can a United Nations Organ be transplanted?

Readings: The readings are designed to cover Chapter 9, the UN Human Rights System, of the Text, and are the first few pages of each major subsection. Also, you make acquaintance with the ICCPR.

MONDAY

Text: 133-48
735-42
746-50
754-62
765-71

WEDNESDAY

774-75
782
791-815
824-30
835-43.
151-174. [ICCPR]

Week 7. Oct 7 & 9.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The ICESCR contains the right to health. What is the problem with second generation rights? Why hasn't the United States entered into this Covenant? What does it mean when people say human rights are indivisible? How can they argue rights are indivisible when obviously they are divided into so many covenants, declarations, treaties and constitutions? What is dignity, and what role does it play in rights discourse?

Readings (from Text)

MONDAY

263-312

WEDNESDAY

313-374

Week 8. Oct 14 & 16.

PUBLIC HEALTH, SOCIAL DETERMINANTS

What kind of social institution is public health? Is it a legal system? That is, if human rights is a legal system, is public health the same kind of thing, so that we speak of health and human rights we are talking about apples and apples, and not oranges and apples? What is the relationship between health and the public health community? Are doctors and managed care organizations part of public health? How is public health organized legally? Is there a unified set of laws that defines and organizes the field or discipline known as public health? Does it have a unified theory of its own identity?

Readings: Monday

Lawrence Gostin, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT (2000) pp: 61-83.

Colgrove: The McKeown Thesis: A Historical Controversy pp 725-726

Cohen: Human Population: The Next Half Century; p 1172

Marmot/Wilkerson: Social Determinants of Health: The Solid Facts: Contents; pp 7-9

Explore Gapminder at www.gapminder.org.

Wednesday

Lawrence Gostin, PUBLIC HEALTH LAW AND ETHICS: A READER (2002) pp: 23-77.

Week 9. Oct 21 & 23.

HUMANITARIANISM/WAR

How do human rights and humanitarian action belong together? The debate within humanitarianism: charity, the humanitarian imperative, and rights. Why are humanitarians calling on rights? Which version(s) of rights? What are the overlaps and distinctions between rights and politicization? Is all rights work political? In what way? What role does exposure and denunciation play in rights? In humanitarianism? What are contemporary manifestations of humanitarian action, and how are they criticized (militarization, politicization): are they really new? Are they perversions of the goals? What is the relationship between the law and humanitarianism? In what legal framework(s) does humanitarianism take place?

Readings:

Monday

Hugo Slim, Not Philanthropy But Rights: Rights-Based Humanitarianism and the Politicisation of Humanitarian Philosophy in War 1-26.

David Rieff, Humanitarianism in Crisis, 81 Foreign Affairs (2002) 111-121.

Wednesday

Nicolas de Torrente, Humanitarian Action Under Attack: Reflections on the Iraq War, 17 Harv. Hum. Rts. J. (2004) 1-29.

Paul O'Brien, Politicized Humanitarianism: A Response to Nicolas de Torrente, 17 Harv. Hum. Rts. J. (2004) 31-39.

Week 10. Oct 28 & 30.

MONDAY

Exercise: The Rwandan Refugee Crisis (1994-1996)

WEDNESDAY

Rubenstein & Bittle, Responsibility for Protection of medical workers and facilities in armed conflict, 375 Lancet 329-338 (2010)

Spiegel et al, Health-care needs of people affected by conflict, 375 Lancet 341-345 (2010)

Growth of Aid and the decline of humanitarianism, editorial, 375 Lancet 253 (2010)

MATTHEW ROSENBERG and GRAHAM BOWLEY, Security Fears Lead Groups to Rethink Work in Afghanistan, New York Times, March 10, 2012

Week 11. Nov 4 & 6.

Science and Morality: the Sociology of Science; Definitions of Health

Why is there no such thing as science, rather what exists is a variety of sciences? What makes communication with and between scientists difficult? Why is medical science problematic? Is it a reliable source of true things? If there are theoretical as well as practical impediments to saying science produces reliable knowledge, then how should policy makers use science? That is, how can it be used for the common good? Should there be a human right to scientific information? Is the social institution of science and ethical structure in the system of justice? Is the rejection by science of morality possible? Is it good?

Readings:

Monday

Immanuel Wallerstein, *European Universalism: The Rhetoric of Power* (2006) pp: xiii-xv; 1-21; 51-65; 71-79.

Sheldon Krimsky, *Science, Society, and the Expanding Boundaries of Moral Discourse*, in *SCIENCE, POLITICS AND SOCIAL PRACTICE: ESSAYS ON MARXISM AND SCIENCE, PHILOSOPHY OF CULTURE AND THE SOCIAL SCIENCES IN HONOR OF ROBERT S. COHEN* (eds. Kostas Gavroglu, John Stachel, Marx Wartovsky, 1995) pp: 113-126.

Wednesday

David Michaels & Celeste Monforton, *Manufacturing Uncertainty: Contested Science and the Protection of the Public's Health and Environment*, *AMERICAN JOURNAL OF PUBLIC HEALTH* (2005) pp: S39-S45.

George Annas et al, *Protecting the Endangered Human: Toward and International Treaty Prohibiting Cloning and Inheritable Alterations*, in *PERSPECTIVES ON HEALTH AND HUMAN RIGHTS*, pp. 135-151.

Week 12. Nov 11 & 13..

HUMAN EXPERIMENTATION

What is the link between human experimentation and human rights? Is unethical human experimentation a kind of torture?

Readings:

ICCPR art. 7,
ICCPR art. 7, reservations and other commentary

Abdullahi v. Pfizer, Inc., Not Reported in F.Supp.2d, 2005 WL 1870811
(S.D.N.Y., 2005).

Jonathan Todres, *Can Research Subjects of Clinical Trials in Developing Countries Sue Physician-Investigators for Human Rights Violations?*, 16 N.Y.L. SCH. J. HUM. RTS., 737 (2000).

United States v. Stanley, 483 U.S. 669, 107 S. Ct. 3054, at 709 (1987)(O'Connor dissenting).

In re Cincinnati Radiation Litigation, 874 F. Supp. 796, at 821 (S.D. Ohio, 1995).

Wright v. Fred Hutchinson Cancer Research Center, 269 F. Supp. 1286 (W.D. Wash., 2002).

PROJECT: The use of technology from the tortures committed during WW2 by the Germans, the Japanese and the United States or the EPA pesticide experiments in children

Week 13. Nov 18 & 20.

TORTURE

Is torture wrong? How and why do medical personnel get involved in torture? Are ethical codes sufficient to stop state actors from recruiting willing medical personnel to assist them in torture?

Readings:

Michel Foucault, Discipline and Punish

British Medical Association, The Medical Profession & Human Rights
PROJECT: Bioterrorism
Weeks 14 & 15. Nov 25, Dec 2 & 4

Alternative subject

DISABILITY

What is it to be human? Are there living things born from human mothers that are not human? Is humanness a mental state? Or a physical condition? What is mental deviation, or, as it is mostly called, mental illness? How can mental illness be exported or created? Do the citizens of non-western countries have a human right to their own cultural norms for what it means to be healthy and human?

Readings:

Martha Nussbaum

NYT's on exportation of mental illness

Friedson E. (1970). Profession of Medicine: A study of the sociology of applied knowledge. New York: Dodd, Mead and Company. (Chapter 10: Illness and social deviance; and Chapter 12: The professional construction of concepts of illness.) Reading distributed in class.

Goffman E. (1963). Stigma: Notes on the management of spoiled identity. New York: Simon & Schuster, Inc. (Chapters 1 and 2)

PROJECT: International standards for mental illness

Alternative subject

THE INTERNATIONAL MARKET IN MEDICAL DRUGS

What is the relationship between the private sector and the public sector with regard to drugs? Why does the same international order that promotes human rights also promote the idea that drug companies can charge so much for their intellectual property that the drugs are unavailable to people that need them? How can human rights be used to correct this wrong, if indeed it is a wrong?

Readings:

Phillipe Cullet, Patents and Medicines: The Relationship between TRIPS and the Human Right to Health pp. 179-197.

Ellen 't Hoen, TRIPS, Pharmaceutical Patents, and Access to Essential Medicines: A Long Way From Seattle to DOHA, pp 203-219

PROJECT: Brazil and the WTO

Alternative subject

DEVELOPMENT

What is the relationship between economics and rights? Are these really two quite distinct theories for organizing human beings, theories of justice? If so, what are the moral implications of choosing development as a means to realize ESCR?

Readings:

Stephen Marks, Human Rights in Development: The Significance for Health, 95-113

Craig G. Mokhiber, *Towards a Measure of Dignity: Indicators for Rights-Based Development* 383-390

Gare A. Smith, *An Introduction to Corporate Social Responsibility in the Extractive Industries*, Yale Human Rights & Development Law Journal Volume 11, 2008, 1-9

Lisa J. Laplante & Suzanne A. Spears, *Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector*, Yale Human Rights & Development Law Journal, Volume 11, 2008, 69-106

PROJECT: Rio Tinto