Description

Economic, social & cultural rights promise to all the material means to attain satisfactory standards of living in an egalitarian society, and the socio-cultural agency to influence an enlightened society. An expansive reading of economic, social & cultural rights thus implies a radically progressive politics, structural social change and distributive justice. In practice, however, where such rights have materialised, it has primarily been as individual trumps in isolated cases. They remain constrained by the indeterminacy of law and the conservatism of legal institutions, and limited by the dictates of orthodox economics. In the mainstream, the views expressed by former U.S. ambassador to the United Nations, Jeanne Kirkpatrick, continue to hold sway: economic, social & cultural rights are of no more tangible value than 'a letter to Santa Claus'. So while on paper all human rights may be indivisible and interdependent (and important legal actors such as South Africa's Constitutional Court have asserted that the very ideas of democracy and justice will continue to 'ring hollow' where socio-economic rights are not realised), an undeniable hierarchy – that privileges civil & political rights and reinforces a 'market-friendly' conception of human rights – has pervaded the institutional, academic and public consciousness.

The course will begin by interrogating what lies behind this bias, placing economic, social & cultural rights in historical, ideological and philosophical perspective. As the semester proceeds, we will explore the substantive rights, procedures and implementation mechanisms in systems of international, regional and domestic human rights law that seek to protect and fulfil economic, social & cultural rights. What are socio-economic rights and on what terms are they justified? Does every individual hold, for example, a right to a house, or a right to a free education, or a right to a constant supply of water? Are such things 'legal' rights, in a judicially enforceable sense, or social aspirations whose availability inevitably oscillates with the politics of the day and the whims of the market? What is the relationship between economic development and socio-economic rights? What does the pervasiveness of models of neo-liberalism and austerity mean for socio-economic rights? What are the mechanisms for claiming economic, social and cultural rights? To what extent, if any, can they be claimed collectively? How can they be best articulated to overcome the structural biases and practical obstacles that they face?

On the domestic plane, there has been much debate over the ‘justiciability’ of socio-economic rights in national courts. While undoubtedly an important site of struggle, should the legal system, in narrow terms, be the primary focus when it comes to access to basic material needs or the reduction of socio-economic inequalities? Should more attention be directed towards budget allocation and public finance decisions, as the most pertinent sites for the ‘progressive realisation’ of socio-economic rights in the transformative societal sense? Elections are won and lost on the basis of such decisions. Socio-economic rights are, as such, as contingent on ideology and policy as they are on legality; struggles for their realisation, therefore, go beyond the courts and formal legal institutions.

On the international plane, economic, social & cultural rights raise pivotal questions about the structure of the international economic order: the legacies of colonialism, the effects of late capitalism and the hegemony of international trade and investment regimes. We will examine the extent to which distributive justice on an international scale, and the discourse around the right to development, for example, are constrained by global economic structures. The phenomenon of 'land-grabbing', and its implications for economic, social & cultural rights in the global South in particular, will also be explored. The emerging normative push towards extra-territorial obligations in the sphere of economic, social & cultural rights holds potentially important implications for states and multinational corporations alike, but will not easily gain traction in the face of powerful financial interests. The challenges for socio-economic rights advocates in redressing domestic and global inequalities thus remain immense. This course aims to help students to understand and analyse the roots and scale of these challenges, and to develop the tools and thinking necessary to tackle them.
Learning Outcomes

Upon completion of the course students will be able to:

- understand the ideological contestations in human rights discourse vis-à-vis economic, social & cultural rights;
- understand the content of human rights law in terms of economic, social & cultural rights, and the workings of the relevant institutional frameworks at domestic, regional and international level;
- engage with legal, policy and economic arguments with respect to social, economic & cultural rights;
- critically evaluate the social, economic & cultural rights regime, highlighting lacunae within the law and barriers to progress.

Schedule & Format


The course will be taught in weekly three-hour seminars, at which attendance is expected. An outline of the course is detailed below with the assigned readings for each seminar. Students are encouraged to express their understandings/views on the readings and the issues raised. Each week’s material includes required reading from core texts, articles and cases. Further recommended materials on the given topic are also provided for the students’ own interests and research. Students are of course free to go beyond the materials listed, and raise issues and ideas of their own where relevant to the particular seminar. Readings that are unavailable through the library or its online databases will be provided via the Blackboard system.

Assessment

Essay (85%) – submission of an essay which demonstrates significant research and which critically evaluates the literature available on a chosen topic. Case studies to illuminate the research topic are encouraged. Essays should be limited to 10,000 words (including footnotes) and submitted by 9 May 2014. Penalties of one percent per day are incurred for late submission. Only in exceptional circumstances will extensions be granted; all applications for extensions must be in writing and supported by relevant documentation.

Group presentation (15%) – short presentation in groups of 3-4 to be made in class on topics assigned by the lecturer, in consultation with students.

Useful websites / resources

- UN Committee on Economic, Social & Cultural Rights: http://www2.ohchr.org/english/bodies/cescr/
- Centre for Economic and Social Rights: http://www.cesr.org/
- War on Want: http://www.waronwant.org/
- Bretton Woods Project: http://www.brettonwoodsproject.org/
- Socio-Economic Rights Institute of South Africa: http://www.seri-sa.org/
- National Economic & Social Rights Initiative: www.nesri.org/
- FoodFirst Information and Action Network: www.fian.org
- Circle of Rights: http://www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm
- Legal Empowerment of the Poor: http://www.lepnet.org/
- Nazdeek: http://nazdeek.org/
- Comhlámh: http://www.comhlamh.org/
- UN Special Rapporteur on Extreme Poverty and Human Rights: website
- UN Special Rapporteur on Adequate Housing: website
- UN Special Rapporteur on the Right to Education: website
- UN Special Rapporteur on the Right to Food: http://www.srfood.org/
- UN Special Rapporteur on the Right to Health: website
- UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation: website
- UN Special Rapporteur in the Field of Cultural Rights: website
General Texts

Recommended core texts:
- Manisuli Ssenyonjo, Economic, Social and Cultural Rights in International Law (Hart, 2009)

Additional texts:
- Thomas W. Pogge, World Poverty and Human Rights (Polity, 2nd edn., 2008)
- Conor Gearty & Virginia Mantouvalou, Debating Social Rights (Hart, 2010)
- Aoife Nolan, Rory O’Connell & Colin Harvey (eds.), Human Rights and Public Finance: Budget Analysis and the Promotion of Economic and Social Rights (Hart, 2013)
- Fons Coomans (ed.), Justiciability of Economic and Social Rights: Experiences from Domestic Systems (Intersentia, 2006)
- Bard A. Andreassan & Stephen P. Marks, Development as a Human Right (Intersentia, 2010)
- Fons Coomans, Cases and Concepts on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights (Intersentia, 2012)
- Mesganaw Mulugueta Assefa, A Dead End or a New Beginning?: The Place of Economic, Social and Cultural Rights in the Responsibility to Protect (Lap Lambert, 2011)
1. Competing Ideologies?: Socio-Economic Rights in an Age of Neo-liberalism

Assigned reading:

- Ayn Rand, *The Virtue of Selfishness* (Signet, 1964)
  - Chapter 12, ‘Man’s Rights’ 69-74
- David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, 2007)
  - Chapter 6, ‘Neoliberalism on Trial’ → ‘On Rights’ 175-182
  - Chapter 8, ‘The Emergence of an Alternate Paradigm of Human Rights’ 234-275

Further reading:

- Karl Marx, ‘On the Jewish Question’ (1844) *Deutsch-Französische Jahrbücher*
  - Chapter 3, ‘The Politics of Human Rights and the Liberal Oligarchy’
  - Chapter 1, ‘Economics and Human Rights Lost in Translation’ 8-24
  - Chapter 4, ‘The Political Economy of Human Rights’ 77-100
2. Theoretical & Institutional Developments: Socio-Economic Rights as Human Rights

**Assigned reading:**

- International Covenant on Economic, Social & Cultural Rights [bring to class]

**Further reading:**

- Paul O’Connell, *Vindicating Socio-Economic Rights* (Routledge, 2012)
  - Chapter 1, ‘Introduction’ 1-21
  - Chapter 2, ‘International Standards on Socio-Economic Rights’ 22-47
- Mashood Baderin & Robert McCorquodale, *Economic, Social and Cultural Rights in Action*
  - Chapter 3, ‘The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development’
  - Chapter 4, ‘The History of Economic, Social, and Cultural Rights and the Most Disadvantaged’
- UN Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990) – The Nature of States Parties Obligations
3. Justiciability & Implementation: Domestic, Regional & International Frameworks

**Assigned reading:**

- Martin Scheinen, ‘Economic and Social Rights as Legal Rights’, in Eide, Krause & Rosas (eds.) 29-54
- Paul O’Connell, *Vindicating Socio-Economic Rights* (Routledge, 2012)
  - Chapter 4, ‘Developing Social Rights in India’ 78-107
  - Chapter 6, ‘The Rejection of Socio-Economic Rights in Ireland’ 138-167
- Conor Gearty, ‘Resisting Law’s Empire’, *The Rights Future*, 6 December 2010
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, annexed to UN General Assembly Resolution 63/117 (10 December 2008)

**Further reading:**

- Matthew Craven, ‘The UN Committee on Economic, Social and Cultural Rights’ in Eide, Krause & Rosas (eds.) 455-472
- Allan Rosas & Martin Scheinen, ‘Implementation Mechanisms and Remedies’ in Eide, Krause & Rosas (eds.) 425-454
- Veronica Gomez, ‘Economic, Social and Cultural rights in the Inter-American System’ in Baderin & McCorquodale (eds.) 167
4. The Right to Work & Rights at Work

Assigned reading:


  - Chapter 2, ‘Economics versus the right to work’ 25-49


- Conor Gearty, ‘Up With the Unions’, _The Rights Future_, 13 December 2010


Further reading:

- UN Committee on Economic, Social and Cultural Rights, General Comment No.18 (2005) – The Right to Work


- Manisuli Ssenyonjo, _Economic, Social and Cultural Rights in International Law_ (Hart, 2009)
  - Chapter 7, ‘Right to Work and Rights in Work: Articles 6 and 7’


- General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, European Committee of Social Rights, Decision on the Merits, 23 May 2012

- Watch: Joel Beinin, ‘Workers’ Struggles in the Arab Spring’, Portland State University, 25 February 2012 [www.youtube.com/watch?v=eB6mc4U8yTY]

- Paul Lafargue, ‘The Right to Be Lazy’, _Egalité_ (1880)

Recommended viewing:

- Film: _Bread and Roses_ (Ken Loach, 2000)

- Documentary: _Harlan County, USA_ (Barbara Kopple, 1976)
  - _Which Side Are You On?_ (Ken Loach, 1985)
5. The Right to Food

Assigned reading:

- Asbjorn Eide, ‘The Right to an Adequate Standard of Living, including the Right to Food’ in Eide, Krause & Rosas (eds.) 133-148
- Shona Hawkes & Jagjit Kaur Plahe, ‘Worlds Apart: The WTO’s Agreement on Agriculture and the Right to Food in Developing Countries’ (2013) 34:1 International Political Science Review 21-38

Further reading:

- UN Committee on Economic, Social & Cultural Rights, General Comment No.12 (1999) – The Right to Adequate Food
- Christophe Golay, ‘The Right to Food and Access to Justice: Examples at the national, regional and international levels’ (Food and Agriculture Organisation, 2009)
- Right to Food Campaign, ‘Supreme Court Orders on the Right to Food: A Tool for Action’ (October 2005), relating to the case of People’s Union for Civil Liberties v. Union of India & Others, Supreme Court of India [http://www.righttofoodindia.org/orders/interimorders.html]
- FoodFirst Information and Action Network, ‘Advancing the Right to Adequate Food at the National Level: Some Lessons Learned’ (2010)
- Combat Poverty Agency, ‘Rights-Based Approaches to Food Poverty in Ireland’ (2008)
- Via Campesina, ‘Combatting Monsanto’ (March 2012)

Recommended viewing:

- Film: Back to 1942 (Feng Xiaogang, 2012)
  The Garden (Scott Hamilton Kennedy, 2008)
6. The Right to Adequate Housing

Assigned reading:

- UN Committee on Economic, Social & Cultural Rights, General Comment No. 4 (1991) – The Right to Adequate Housing & General Comment No. 7 (1997) – Forced Evictions
- Scott Leckie, “The Human Right to Adequate Housing” in Eide, Krause & Rosas (eds.) 149-168
- Government of the Republic of South Africa v. Grootboom and Others 2001 (1) SA (CC); 2000 (11) BCLR 1169 (CC)
- Juliana Barbassa, ‘Brazil’s Olympics, World Cup Preparations Bring Evictions’, The Huffington Post, 3 February 2012

Further reading:

- Mike Davis, Planet of the Slums (Verso, 2006)
- Miloon Kothari, ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context: Mission to South Africa’, UN Doc. A/HRC/7/16/Add.3, 29 February 2008
- Tristan Gorgens & Mirjam van Donk, ‘From Basic Needs Towards Socio-spatial Transformation: Coming to Grips with the “Right to the City” for the Urban Poor in South Africa (Isandla Institute, 2011)

Recommended viewing:

- Film: District 9 (Neill Blonkamp, 2009)
- Documentary: Dear Mandela (Dara Kell & Christopher Nizza (2012)
  Voices of Cabrini: Remaking Chicago’s Public Housing (Ronit Bezalel, 1999)
7. The Right to Health

Assigned reading:

- Brigit Toebes, ‘The Right to Health’ in Eide, Krause & Rosas (eds.) 169-190
- Minister of Health and Others v. Treatment Action Campaign and Others, Constitutional Court of South Africa 2002 (5) SA 721 (CC) (5 July 2002)

Further reading:

- Manisuli Ssenyonjo, Economic, Social and Cultural Rights in International Law (Hart, 2009)
  - Chapter 8, ‘The Right to Health: Article 8’
- Anand Grover, ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: the right to health and international drug control, compulsory treatment for drug dependence and access to controlled medicines’, UN Doc. A/65/255, 6 August 2010.

Recommended viewing:

- Film: Dirty Pretty Things (Stephen Frears, 2002)
  - Sicko (Michael Moore, 2007)
8. The Right to Water

Assigned reading:

- UN Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002) – The Right to Water
  - Chapter 3, ‘Economics Versus the Provision of Goods and Services’ → ‘Economics versus the right to water’ 50-59

Further reading:

- Al-Haq, ‘Water For One People Only: Discriminatory Access and “Water-Apartheid” in the Occupied Palestinian Territory’ (2013)

Recommended viewing:

- Film: *También la lluvia* [Even the Rain] (Icíar Bollaín, 2010)
  *Thirst* (Alan Snitow, 2004)

Assigned reading:

  - Chapter 1, ‘Some Questions on Development: What is Development? What is Underdevelopment?’

  - Chapter 1, ‘The Demise of Northern Atlantic Liberalism’


Further reading:


- Mohammed Bedjaoui, *Towards a New International Economic Order* (Holmes & Meier, 1979)

  - Chapter 2, ‘From Decolonisation to Developmental Nation State’ 44-94


10. A Right to Development?

Assigned reading:


- Declaration on the Right to Development, UN General Assembly Resolution 41/128 (4 December 1986)


Further reading:


- Allan Rosas, ‘The Right to Development’ in Eide, Krause & Rosas (eds.) 119-130


- Bard A. Andreassan & Stephen P. Marks, *Development as a Human Right* (Intersentia, 2010)

- Upendra Baxi & Malcolm S. Adiseshiah, *Development as a Human Right or as Political Largesse: Does it Make Any Difference?* (Madras Institute of Development Studies, 2006)

- Stephen P. Marks (ed.), *Implementing the Right to Development: The Role of International Law* (Friedrich-Ebert-Stiftung, 2008)


11. The Global Land Grab

Assigned reading:

- Transnational Institute, ‘The Global Land Grab: A Primer’ (February 2013)
- Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011)

Further reading:

- Olivier De Schutter ‘How Not to Think of Land-grabbing: Three Critiques of Large-scale Investments in Farmland’ (2011) 38 Journal of Peasant Studies 249–279
- Tomaso Ferrando, ‘Global Land-Grabbing: A European Self-Critique’ (Sciences Po Law School, 2013)
  - 08: Joseph Shechla, ‘Land Grabs of the Arab Spring: Chronicle of Corruption as Statecraft’ 57-61
- Fons Coomans, ‘Situating the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights’ (2013)
- Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon & Ian Seiderman, ‘Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights’ (2012) 34 Human Rights Quarterly 1084-1169

Assigned reading:

  - Conclusion, ‘Economics for Human Rights’ 134-147


- Centre for Economic & Social Rights, ‘Mauled by the Celtic Tiger: Human Rights in Ireland’s Economic Meltdown’ (February 2012)

Further reading:


- Radhika Balakrishnan, Diane Elson & Rajeev Patel, ‘Rethinking Macro Economic Strategies from a Human Rights Perspective’ (Marymount Manhattan College, 2009)


- Centre for Economic & Social Rights, ‘Fiscal Fallacies: 8 Myths about the ‘Age of Austerity’ and Human Rights Responses’ (July 2012)


- NGO Joint Submission to the Committee for Economic, Social and Cultural Rights 5th Periodic Review of Spain, 48th Session of the CESCR (May 2012)
A rat done bit my sister Nell
With Whitey on the moon
Her face and arms began to swell
And Whitey's on the moon

I can't pay no doctor bills
But Whitey's on the moon
Ten years from now I'll be paying still
While Whitey's on the moon

You know, the man just upped my rent last night
Cause Whitey's on the moon
No hot water, no toilets, no lights
But Whitey's on the moon

I wonder why he's uppin' me?
Cause Whitey's on the moon?
Well I was already given him fifty a week
And now Whitey's on the moon

Taxes takin' my whole damn check
The junkies make me a nervous wreck
The price of food is goin up
And if all that crap wasn't enough

A rat done bit my sister nell
With Whitey on the moon
Her face and arms began to swell
And Whitey's on the moon

With all that money I made last year
For Whitey on the moon
How come I ain't got no money here?
Hmm, Whitey's on the moon

You know I just about had my fill
Of Whitey on the moon
I think I'll send these doctor bills
airmail special
(To Whitey on the moon)