

SPRING SEMESTER 2023 Syllabus

International Human Rights Law—Immigration

Craig Jackson

832-628-5477

cjackson@tmslaw.tsu.edu

Class time: Thursday 5 pm-7:30 pm room B34

Administrative Assistant: Mattie Chadwick Mattie.Chadwick@tmslaw.tsu.edu

Course Overview:

International Human Rights is a relatively new entrant into the international law family of legal specialties. It may well be the most important. This is for the simple reason that the lives of human beings should not be subject to the local whims of governments that may be too close to the prejudices and biases that create human rights violations. Before human rights laws, it was assumed that the internal affairs of a nation were not the business of the world at large, international law being simply the obligations of states to other states to uphold treaties having to do with commerce, land, science, and strategic position to name a few areas. However World War II changed all that, though there were rumblings of a need for an all-encompassing body of law that would, on a limited basis, break the wall of national sovereignty that protected governments bent on oppressing persons within their borders.

The Holocaust in Europe, the atrocities in the Pacific and Pacific Rim during World War II made human rights a necessity and the field as we know it now and became a part of the post war constitutional order which included treaties addressing trade, monetary policy, and of course the United Nations.

In the area of immigration practice, human rights is especially important. Migration is a phenomenon as old as humankind. However, migration across national borders is a newer phenomenon harkening back to the beginnings of the nation-state roughly around the 16th and 17th centuries in Europe. The concept of state sovereignty prevailed under what was the old Law of Nations system under which nation-states determined the movement both into and out of national territory. However, as noted, the Second World War changed that as part of the human rights revolution. Now both the right to emigrate (to leave one's country of residence) and the right to fair treatment upon arrival and acceptance into one's destination state are considered important parts of the human rights discourse. However, states are understood under international law to retain control of their borders, meaning they have the right to set requirements for entry. Nonetheless, those requirements must meet international law muster.

The course begins with the reasons people leave their country of origin. This study will introduce the class to the International Human Rights Bill of Rights, which is principally a group of human rights principles and multilateral treaties defining the obligations of states regarding the civil, political, economic, social responsibilities of states to persons within their jurisdiction. The failure of nation states to attend to these responsibilities is a principal reason for migration. These materials are rather extensive and are the core of traditional human rights courses. The coverage of these materials in some detail ensures that the student will leave the course with a basic competence in the discipline.

A second question receiving attention at the beginning of the course has to do with basic rights thought to be necessary to humane migration policy, in both the emigration and immigration areas. Is there a right to emigrate, or to leave one's country to take up residence elsewhere?

The course will then look at migration from the other side, what are the obligations of receiving states toward immigrants? This section of the course will examine this large question by looking at the rule against refoulement (deportation of persons facing danger at home), and asylum.

Finally, the course will engage in two case studies involving the human rights principles already learned. First will be an examination of certain practices within the US immigration system. Issues such as detention, use of national health laws and policies to regulate flow of migration, and asylum practice have been in the news of late and will be the subject of our discussion near the end of class.

A second case study will be an extended look at the related cases of *Mexico v. The United States*, a 2004 decision of the International Court of Justice, and *Medellin v. Texas*, a 2008 decision of the United States Supreme Court. Both decisions address obligations of the United States under the Vienna Convention on Consular Relations which require states to provide notification to national consulates upon the arrest of that state's nationals. The related cases address the death penalty and US failure to notify Mexico that 51 of its nationals had been tried, convicted and sentenced to death.

The course is also multi-media. Many of the subject areas have been the focus of documentaries and live action films. Several of these will be screened during class periods as well, beginning with the 1983 classic film "El Norte", an American film in Spanish that changed the way the Academy Awards looks at independent filmmaking, and the way many look at the plight of refugees from Central America. A 39-year-old film, it is nonetheless extremely relevant today.

In a way this approach is experimental. There are no texts addressing the subject matter described, and, as far as we can tell, no courses at any other law schools fusing immigration and human rights.

Policies and Procedures:

Class Attendance: The Student Rules and Regulations allow 5 absences in three hour courses. However, because the class meets once a week, each meeting is equivalent to three 50 minute classes. Therefore, missing two classes will exceed the allotted absences under the attendance rule.

An absence is defined as failure to attend class or failure to be present in class at the commencement of class. See Article III Section 9 Student Rules and Regulations. Students absent in excess of 5 classes will be subject to having their grades reduced up to two letter grades.

Preparation and Class Participation: As a graduate program, more emphasis will be placed on class discussion and substantive learning than on lawyering skills (since most of the class is composed of lawyers). Accordingly class discussion and participation will be placed at a premium in this class. Preparation is necessary for fruitful discussion. In addition to the material listed below, additional materials may be assigned. The websites also will have links to treaties and other materials useful for this course. Full preparation will be expected in the course. Students will be expected to read all assigned materials thoroughly in order to participate in class discussion.

Grading: This course will have a single exam at the end of the semester which will be 85% of the grade. Students will also be required to submit an executive summary focusing on an issue concerning human rights and immigration. Summaries should be at least 3 pages single spaced, with footnotes at the bottom of the page. Students will also present their research to the class. The papers and presentations relevant dates are as follows:

Topic proposals: February 22, 2023

Presentations: April 19 and 26 2023

Final Papers: April 28, 2023

Both written requirements will be uploaded using the portal under Assignments.

Text and other materials: The course will use a variety of materials including law review articles, UN documents, and book chapters on reserve. In addition, much of the course will rely on materials in International Human Rights by Philip Alston and Ryan Goodman.

The New York University Professor is considered one of the leading scholars in human rights law. His co-author, Ryan Goodman is also on the faculty of New York University.

The book is one of the leading texts in international human rights law and uses both the casebook method and the course book method of teaching the subject. It should create a lot of avenues for discussion for the class.

The authors have also included a documentary supplement as part of this course of study. This supplement includes all of the human rights treaties relevant to this course and other materials used in the course. A link to the supplement is available under web links on this site.

This book is a required text for the course.

In addition other links of interest to students in international law and immigration law are available under the Thurgood Marshall School of Law Institute of International and Immigration Law (IIIL) page on the School's website. A link to the page is included as well under web links.

Office Hours:

Monday and Wednesday 10-12, 1-4 and after class.

Accommodations: Students can make arrangements for required accommodations with the Dean of Students.

Week 1: Course Overview. Film “El Norte”.

Skills and Competencies Developed:

The human rights issues relating to the reasons for migration and the treatment of immigrants upon arrival in their destination country finds no better dramatization than the 1984 American film, “El Norte”. The film deals with immigration from Central America under conditions very similar to the present Central American immigration to the United States. Understanding the human rights issues requires an understanding of the conditions leading to the decision to migrate. This film provides one perspective on Central American migration.

Week 2: International Law: Brief Overview

Skills and Competencies Developed

To provide students with no prior international law background with the basics of the field. Coverage of legal sources, the role of the international judiciary, and the political component of law making at the United Nations is crucial to student understanding of the international law aspects of immigration law and human rights.

Readings:

- Sources: Mark Janis, International Law (under Course Materials)
Christopher Greenwood, Sources of International Law (under Course Materials)
- Judicial: Statute of the International Court of Justice, Article 38 (under Web Links)
UN Handbook of Peaceful Settlement of Disputes pages 66-81 (under Course Materials)
- Political: UN Charter Chapters IV, V, IX, X
UN Treaty based Human Rights Bodies (under Web Links)

UN Charter based Human Rights Bodies (under Web Links)

Week 3: Causes of Immigration—Civil and Political Rights, Rights of Women

Readings: Appeal to the United Nations Working Group on the Rights of People of African Descent. (Course Materials)

International Covenant on Civil and Political Rights pages 14-21 (under Web Links in Alston and Goodman supplement)

Covenant to Eliminate Discrimination Against Women (CEDAW) pages 33-40 (under Web Links in Alston and Goodman supplement)

Alston and Goodman: Chapter 3 Civil and Political Rights pages 157-205

Skills and Competencies Developed

Litigation, policy-making, legislation, and activism involving immigration requires an understanding of the causes of immigration. The international human rights structure defines state obligations toward persons within state jurisdiction. The section explores the International Covenant on Civil and Political Rights, and the Convention to Eliminate Discrimination Against Women (CEDAW). Failure of states to honor civil liberties and civil rights, and to prevent violence against women in particular has been documented as a major reason for international immigration. This section will provide students with the international human rights foundation necessary in addressing human rights in immigration policy.

Week 4: Causes of Immigration—Economic, Social, and Cultural Rights

Readings: International Covenant on Economic Social and Cultural Rights (ICCPR) pages 24-28

Alston and Goodman: Chapter 4 Economic and Social Rights pages 277-330

Skills and Competencies Developed

As in the previous class, a foundational understanding of human rights standards will give students seeking careers in immigration law to understand the causes of immigration. In this section the course will examine state obligations to citizens with regard to economic social and cultural rights. The International Covenant on Economic, Social, and Cultural Rights will be examined.

Week 5: Causes of Immigration—Torture and Racism

Readings: Convention against Torture (under Web Links Alston and Goodman supplement, pages 29-33)

Alston and Goodman pages 238-243; 257-265

Convention for the Elimination of all forms of Racial Discrimination (under Web Links Alston and Goodman supplement pages 45-47.

Skills and Competencies Developed

Though covered in the ICCPR, torture and discrimination were believed to be so pervasive as to merit specific treaties of prohibition. Torture and racial discrimination have both been documented as a major cause of immigration and state obligations to prevent both will be explored.

State Responsibility toward Immigrants--Refugees

Readings: Charles B. Keely *How Nation-States Create and Respond to Refugee Flows* 30 *The International Migration Review*, 1046-1066 (Winter, 1996) (under Course Materials).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (under Course Materials).

Skills and Competencies Developed

This part of week 5, 6, 7 and 8 changes direction and looks to the movement of persons from the standpoint of the home and destination states and their responsibilities toward migrants. Addressed are the rights to migrate from a home state and the treatment they should receive in the destination state. It is likely that most students will be working in the field of immigration in destination states and this portion of the class is intended to create awareness of the international human rights law obligations of destination states toward migrants. Of particular note is the plight of refugees and the international law obligations toward such persons. These obligations include policies regarding asylum, and deportations. Deportation is especially important and states and lawyers working in the field will need to be aware of when a deportation amounts to refoulement—deportation where life or liberty will be threatened in the home state—illegal under international law.

Week 6: State Responsibility toward Immigrants--Refugees

Readings: [The Law Applicable to Forced Migrants in FORCED MIGRATION LAW AND POLICY 2d Edition pages 43-59 \(Under Course Materials\)](#)

ABA Rule of Law Initiative on Forced Migration (Under Course Materials)

Refugee Convention (in Web and Film Links)

Global Compact for Safe, Orderly, and Regular Migration, Objectives 2, 4-11, 13,14,17,23 (under Course Materials)

Week 7: Asylum, Refugees, and Deportation

Right to Emigrate

Readings: Jane McAdam, *An Intellectual History of Freedom of Movement in International Law: The Right to Leave As A Personal Liberty*, 12 *Melb. J. Int'l L.* 27 (2011) (Under Course Materials).

Asylum and Non-Refoulement

Readings: Boed, *The State of the Right of Asylum in International Law*, DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW (1994).

Lauterpacht, S., & Bethlehem, D. (2003). The scope and content of the principle of non-refoulement: Opinion. In E. Feller, V. Türk, & F. Nicholson (Eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (pp. 87-177). Cambridge: Cambridge University Press. (under Course Materials)

Week 8: Asylum, Refugees, and Deportation

Readings: [Continue with Lauterpacht and Bethlehem]

Note on Non-Refoulement (Submitted by the High Commissioner) (under Web Links)

OHCHR Discussion paper Expulsions of aliens in international human rights law *Expulsions of aliens in international human rights law OHCHR*, Geneva, September 2006. (under Course Materials)

Week 9: Case Study 1: US Immigration Policies and Human Rights—Entry and Treatment of aliens within US Jurisdiction—Constitutional Rights, International Law.

General: International Standards for treatment of Immigrants:

Readings: Immigration and Migrant Rights--International Justice Resource Center (under Web and Film Links)

Skills and Competencies Developed

Weeks 9, 10, 11 and 12 are devoted to case studies involving the United States its laws on immigration. The purpose of the work during these classes is to compare US legislation to the international human rights obligations required of the United States government. Students will learn and encouraged to suggest interpretations of US law to make them more in line with international norms where necessary, and to suggest changes to US law as well.

US –Non-Refoulement and Asylum

Readings: **Protection under United States Law in FORCED MIGRATION LAW AND POLICY 2d Edition pages 85-97 (Under Course Materials)**

What is Persecution in FORCED MIGRATION LAW AND POLICY 2d Edition pages 131-156 (Under Course Materials)

Non-Refoulement and US implementation (Torture) in FORCED MIGRATION LAW AND POLICY 2d Edition pages 591-616 (Under Course Materials)

Week 10: Case Study 1 (cont'd):

Deportation:

- Readings: INS v. Cardoza-Fonseca, 480 U.S. 421 (1987)
 Vartelas v. Holder, 566 U.S. 257 (2012)
 INS v. Elias-Zacarias, 502 U.S. 478 (1992)

Undocumented Immigrants—Criminal Justice—Search and Seizure and Equal Protection

- Readings: Arizona v. United States, 567 U.S. 387 (2012).

Week 11: Case Study 1(cont'd):

Undocumented Immigrants—Education

- Readings: Fons Coomans, *Education as a Human Right for Migrants*, UNESCO (2018)
 (Under Course Materials)
 Plyler v. Doe 457 U.S. 202 (1982).
 Weeden, *GOOD PUBLIC POLICY OCCURS UNDER PLYLER WHEN IN-STATE COLLEGE TUITION RATES ARE AWARDED TO UNDOCUMENTED BONA FIDE RESIDENT IMMIGRANTS*, 25 Geo. Mason U. C.R. L.J. 191 (2015).

Dreamers Legislation/DACA

- Readings: Feasley, *THE DREAM ACT AND THE RIGHT TO EQUAL EDUCATIONAL OPPORTUNITY: AN ANALYSIS OF U.S. AND INTERNATIONAL HUMAN RIGHTS FRAMEWORKS AS THEY RELATE TO EDUCATION RIGHTS*, 24 ST. THOMAS LAW REVIEW 69 (2011) (Under Course Materials)
 Department of Homeland Security v. Regents of the University of California
 Ninth Circuit Opinion pages 25-39 (Under Course Materials)
 Oral Argument before the United States Supreme Court (Under Course Materials)

Week 12: Case Study 1:

Permanent Residents

Readings:

- Johnson, *An Immigration Gideon for Lawful Permanent Residents* 122 Yale Law Journal 2106 (2013). (Under Course Materials).
Salinas, *DEPORTATIONS, REMOVALS AND THE 1996 IMMIGRATION ACTS: A MODERN LOOK AT THE EX POST FACTO CLAUSE* 245 Boston University International Law Journal 22 (2004). (Under Course Materials).

Week 13: Case Study 2: Consular Notification—The Avena Case

Readings:

Reynaldo Valencia, Craig L. Jackson, Leticia Van de Putte, Rodney Ellis, *Avena and the World Court's Death Penalty Jurisdiction in Texas: Addressing the Odd Notion of Texas's Independence from the World* 23 Yale Law and Policy L. Rev 455 (2005) (under Course Materials)

Avena Decision (under Course Materials)

Federal Notification of Consular Officials 28 C.F.R. § 50.5 (2012) (under Course Materials)

Texas Attorney General Vienna Guidelines (Under Course Materials)

Medellín v. Texas, 552 U.S. 491 (2008)

Skills and Competencies Developed

This section will address one of many criminal law/immigration law intersections in the practice of immigration law. Students will explore the international and constitutional law issues regarding the international obligation of states to notify the consulate of foreign persons detained by law enforcement. In addition to the international obligations, students are exposed to the criminal procedure consequences and federal and state procedures regarding consular notification.

Weeks 14: Executive Summaries Class Presentations

Week 15: Executive Summaries Class Presentations and Review