

ECONOMIC AND SOCIAL RIGHTS

Prof. Philip Alston

Furman Hall 210, 10.50-12.40 Mon. & Wed.

SYLLABUS, SPRING 2020

Assessment

The requirements for this course can be satisfied either by taking the end of semester exam or by writing a paper. The **exam** will be an open book, three hour, in class, exam, based on the materials prescribed for the course and the class discussions.

If you wish to write a **paper**, this is how it works:

- This is a 4 credit course, and so the paper is worth 4 credits. It must be at least 10,000 words in length (including footnotes).
- The topic must focus on an aspect of ESR and will ideally be closely related to one of the issues dealt with in the course.
- It is your responsibility to propose a topic. Once I have indicated agreement in principle, you will need to submit an outline of at least one page identifying a specific research question, describing the methodology, and outlining the proposed structure of the paper. March 15 is the strict deadline for submitting this outline.
- The paper is due by the end of the exam period, and should be sent to me at Philip.alston@nyu.edu
- No extensions of the deadline for papers will be given. A student who cannot meet the deadline will need to take the exam instead of writing a paper.

Grading

Note that the NYU grading curve is compulsory for this course. That means that papers will also be graded on a relative basis.

Final grades for the course will take account of class participation.

Office hours

Office hours are from 1.30-3.30pm on Wednesdays, sign-up with Brianne Cuffe in VH 310 (Brianne.cuffe@nyu.edu)

Learning outcomes

A student who successfully completes this course should:

- Have a sophisticated understanding of the nature of economic and social rights and where they fit into the international human rights regime;
- Be able to respond to the main conceptual and philosophical challenges to the very idea of social rights;
- Better understand the political economy of the tenets of neoliberal economic policy – including austerity, inequality, and privatization – and their implications for human rights;
- Be familiar with the approaches adopted in different legal systems to the rights to education, health, housing, and water; and
- Have a better understanding of some of the ways in which the international human rights regime could respond to populism and the other major challenges it faces.

COURSE MATERIALS

A. THE FOUNDATIONS OF ESR

1. Introduction to ESR

International Covenant on Economic, Social and Cultural Rights (1966)

Ratifications Map of the ICESCR, January 2020

Isabel Ortiz, 'Another Year of Living Dangerously', *Project Syndicate*, Dec 31, 2019

Max Lawson, 'Abolishing Billionaires'; 'Trade Unions under threat worldwide'; and 'Getting Even: Fighting inequality in Asia', from *Oxfam blog*, 2019

'The politics of human rights', Aug 16th 2001, *The Economist*

'Capitalism needs a welfare state to survive', *The Economist*, Leader, Jul 12th 2018

Peter S. Goodman, 'In Britain, Austerity Is Changing Everything,' *New York Times*, May 28, 2018

Do Poor People Have a Right to Health Care?, By The Editorial Board, *New York Times*, July 7, 2018

'Universal health care, worldwide, is within reach', *The Economist*, Apr 26th 2018

Letter from Ambassador Nikki Haley to Senator Bernie Sanders, 21 June 2018

Philipp Rehm, "The Future of Welfare State Politics", *Political Science Research and Methods* (2019)

2. The history and political economy of ESR

A. Pre-eighteenth century

Lorie Charlesworth, *Welfare's forgotten past: a socio-legal history of the poor law* (2010)

Samuel Fleischacker, *A Short History of Distributive Justice* (2004)

B. Eighteenth-Century Philosophical and Political Treatises

Jonathan Swift, *A Modest Proposal* (1729)

Immanuel Kant, *The Doctrine of Virtue*, in *The Metaphysics of Morals* (1797)

Thomas Paine, *The Rights of Man* (1792)

Declaration of the Rights of Man and the Citizen (1793)

Thomas Robert Malthus, *Essay on the Principle of Population* (1798)

Excerpts from Adam Smith and Karl Marx

3. Historical origins of the international ESR legal regime

A. Pre-1945

ILO 1919 Constitution, Preamble
ILO, Declaration of Philadelphia, 1944

B. National-level precedents

Constitution of Mexico, 1917

Constitution of the German Reich ('Weimar Constitution') 1919

Constitution of the Union of Soviet Socialist Republics, 1936

UK and US post-War planning

(a) The United Kingdom

Sir William Beveridge, Social Insurance and Allied Services (1942)

(b) The United States

National Resources Planning Board, A New Bill of Rights (1943)

Franklin D. Roosevelt's Four Freedoms Address (1941)

Atlantic Charter, August 14, 1941

Franklin D. Roosevelt, A Second Bill of Rights, State of the Union Address to the Congress (1944)

Note on the American Law Institute's Statement of Essential Rights

UN Commission on Human Rights Drafting Committee, International Bill of Rights, Documented Outline (1946)

ESR in the UDHR

Commission on Human Rights, Drafting Committee on an International Bill of Human Rights, (July 1947)

Commission on Human Rights, Working Group on the Declaration of Human Rights, (Dec. 1947)

ESCR Provisions of the UDHR

The most controversial right: rest and leisure

From the UDHR to the ICESCR

The influence of the UN Specialized Agencies

Philip Alston, 'The United Nations' Specialized Agencies and Implementation of the International Covenant on Economic, Social and Cultural Rights', 18 Columbia J Transnat'l L. (1979) 79

Annotations on the Text of the Draft International Covenants on Human Rights, UN Doc.A/2929 (1955)

4. Recent critiques of ESR

Aaron Rhodes, *The Debasement of Human Rights: How Politics Sabotage the Ideal of Freedom* (2018), pp. 36-51

Martti Koskeniemi, *International Law and the Far Right: Reflections on Law and Cynicism* (Asser Institute, 2019)

Samuel Moyn, "Human Rights Are Not Enough: We must also embrace the fight against economic inequality", *The Nation*, March 16, 2018

Interview with Samuel Moyn: "Has The Social and Economic Rights Movement Failed?" by Dylan Brethour, *RightsInfo*, 10th April 2018

Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (2018) pp. 212-220

5. Principal challenges confronting ESR

A Common Charter for Collective Struggle: Shared analysis and a call for collective action, *ESCR Net*, November 2016

Philip Alston, 'Extreme inequality as the antithesis of human rights', *Open Global Rights*, August 27, 2015

Ignacio Saiz, 'Global protests demand human rights actors tackle economic injustice', *Open Global Rights*, November 26, 2019

Samuel Moyn, 'Human rights and the age of inequality', *Open Global Rights*, October 27, 2015

Katharine Young, 'Introduction', *The Future of Economic and Social Rights* (Cambridge UP, 2019) pp. 1-34.

Gaby Oré Aguilar & Ignacio Saiz, 'Tackling inequality as injustice: four challenges for the human rights agenda,' *Open Global Rights*, March 30, 2016

The OPERA Framework: Assessing compliance with the obligation to fulfill economic, social and cultural rights (Center for Economic and Social Rights, 2012)

Philip Alston, *The RIA Framework*, UN doc. A/HRC/32/31 (28 Apr 2016)

B. LEGAL RECOGNITION

6. The ICESCR

Excerpts from the ICESCR

Differences between the ICESCR and the ICCPR

The terminology of ESCR

A typology of duties

UN Committee on ESCR, General Comment 3 (1990), The nature of States parties obligations

A Typology of Duties under Human Rights Treaties

Implementation: the ESCR Committee

ESCR Committee, The Right to Water, General Comment No. 15 (2002)

Response to the General Comment

Kerstin Mechlem, “Treaty Bodies and the Interpretation of Human Rights”, 42 *Vand. J. Transnat’l L.* 905 (2009)

Daniel Moeckli and Nigel D. White, “Treaties as ‘Living Instruments,’” in Dino Kritsiotis & Michael Bowman (eds), *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (2016)

7. The Role of a UN Special Rapporteur: Case study on Spain

Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to Spain, 27 January – 7 February 2020, Madrid, 7 February 2020

8. Rights v. welfare: What Difference Does a Human Rights Framework Make?

Allen Buchanan, *The Heart of Human Rights* (2013), pp. 107-8

World Bank and Organization for Economic Co-operation and Development, *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges* (2nd. ed., 2013)

Sally Engle Merry, Inequality and Rights: Commentary on Michael McCann’s “The Unbearable Lightness of Rights”, 48 *Law & Society Rev* (2014) 285

Colm O’Cinneide, ‘The Present Limits and Future Potential of European Social Constitutionalism’, in Katharine Young, *The Future of Economic and Social Rights* (2019) 324

Cristy Clark, “Of What Use is a Deradicalized Human Right to Water?”, 17 *Human Rights L. Rev* (2017) 231

Lola Fadulu, ‘Why States Want Certain Americans to Work for Medicaid’, *The Atlantic*, April 12, 2019

‘Benefit sanctions may do more harm than good’, *The Economist*, Aug 9th 2018

9. Gender Dimensions

Convention on the Elimination of All Forms of Discrimination against Women, 1979

Sandra Fredman, Engendering Socio-Economic Rights, Oxford Legal Research Paper Series, June 2010

World Bank, *World Development Report 2012*, Gender Equality and Development

Gender impacts of austerity, Report of the Independent Expert on the effects of foreign debt, Juan Pablo Bohoslavsky, UN doc. A/73/179 (18 July 2018)

World Bank, *Women, Business, and the Law, 2020*

10. Constitutional and legislative recognition of ESR: The right to housing

Yash Ghai & Jill Cottrell, *The Millennium Declaration, Rights and Constitutions* (2011)

Report of the Consultation Committee for a proposed WA [Western Australia] Human Rights Act, November 2007

The Constitution of Kenya, adopted on 27 Aug 2010

Jung, Hirschl & Rosevear, 'Economic and Social Rights in National Constitutions,' 62 *American Journal of Comparative Law* (2014) 1043

Leilani Farha, Access to justice: Report of the UN Special Rapporteur on the right to adequate housing, 2019, UN Doc. A/HRC/40/61

Portugal: Housing Basic Law, 3 Sept 2019

Canada: National Housing Strategy Act, 2019

11. The relationship between the two sets of rights

Janelle Jones, John Schmitt, and Valerie Wilson, '50 years after the Kerner Commission African Americans are better off in many ways but are still disadvantaged by racial inequality', EPI, February 26, 2018

Matthew Shaer, 'How Cities Make Money by Fining the Poor'; New York Times, Jan. 8, 2019

Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, 2018

The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna, 25 June 1993

Article 6, ICCPR

General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life

Danieli Evans Peterman, "Socioeconomic Status Discrimination", 104 Va. L. Rev. 1283

C. THE ECONOMICS OF ESR

12. Property and land rights

José E. Alvarez, 'Property Rights as Human Rights', in J. Queralt & B. van der Vossen (Eds.), *Economic Liberties and Human Rights* (2019) 17.

Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights on his visit to Lao PDR, 18-28 March 2019, Vientiane, 28 March 2019

K. C. Boudreaux, 'Addressing Land Rights in the Human Rights Framework', in J. Queralt & B. van der Vossen (Eds.), *Economic Liberties and Human Rights* (2019) 302.

13. Neoliberalism and austerity

'MP shames DWP by reading names of people who died struggling with benefits', 25 Feb 2020, *Metro UK*

Josephine Tucker, 'Introduction', 2020 *Vision: Ending Child Poverty for Good* (London, 2020, Child Poverty Action Group)

Philip Alston, Statement on Visit to the United Kingdom, 16 November 2018

Wolfgang Streeck, 'A New Regime', in D. King and P. le Galès (eds.), *Reconfiguring European States in Crisis* (2017) 139

Emma Luce Scali, 'Sovereign Debt, "Austerity", and Socio-Economic Rights: Italy's 2019 Budget Between EU Fiscal Rules and International Human Rights Law', 28 *Italian Yearbook of International Law* (2019) 135

14. Inequality

UN Development Programme, Human Development Report 2019, *Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century*
Oxfam, *Time to care: Unpaid and underpaid care work and the global inequality crisis* (2020)

Gráinne de Búrca, 'Review of Samuel Moyn, *Not Enough: Human Rights in an Unequal World*', 16 *International Journal of Constitutional Law* (2018) 1347

Jiewuh Song, 'Human Rights and Inequality', 47 *Philosophy and Public Affairs* (2019) 347

15. Fiscal Policy

Joseph Stiglitz, Todd Tucker, Gabriel Zucman, 'The Starving State', 99 *Foreign Affairs* (Jan/Feb 2020) 30

'IRS: Sorry, but It's Just Easier and Cheaper to Audit the Poor', by Paul Kiel, Oct. 2, 2019, *Pro Publica*

Tax Justice Network, 'Financial Secrecy Index 2020 Reports Progress on Global Transparency – But Backsliding From US, Cayman and UK Prompts Call for Sanctions', 18 Feb 2020

Zachary Liscow, 'Democratic Law and Economics', October 2019

Center for Economic and Social Rights, *Dismantling The Dogmas of Austerity and Fiscal Injustice in Latin America*, December, 2019

D. COVID-19 AND ESR

16. The impact of the coronavirus on human rights

(a) Overview

'Paying to stop the pandemic', *The Economist*, Leader, Mar 19th 2020

(b) Political Responses

'Not Just a Crisis: Coronavirus Is a Test for Putin's Security State', Anton Troianovski, *NYT*, March 19, 2020

An Open Letter to the Speaker and the Legal Advisor of the Knesset, *VerfBlog*, 2020/3/19

Joint Statement: ASEAN must uphold human rights in responding to the COVID-19 pandemic

Jedediah Britton-Purdy, 'The Only Treatment for Coronavirus Is Solidarity'

(c) Inequality

'As Coronavirus Deepens Inequality, Inequality Worsens Its Spread', Max Fisher & Emma Bubola, NYT, March 15, 2020

(d) The Role of the State

'Trump Resists Pressure to Use Wartime Law to Mobilize Industry in Virus Response', Katie Rogers, Maggie Haberman & Ana Swanson, NYT, March 20, 2020

'[Australian Government] relaxes job-seeking obligations but refuses to suspend them during coronavirus crisis', Luke Henriques-Gomes, The Guardian, 20 Mar 2020

'The virus means the big state is back', The Economist, Mar 21st 2020

(e) A turn to ESR

'Alone Against the Virus: Class & Inequality', Amy Kapczynski & Gregg Gonsalves, Boston Review, 13 March 2020

Right to Food Campaign (India), Open Letter to the Prime Minister: Demand for Urgent Steps for Mitigation of Impact of Covid-19 on the Poor and Vulnerable, 19 March 2020

Amnesty International Public Statement, 12 March 2020, Responses to Covid-19 and States' Human Rights Obligations: Preliminary Observations

17. Covid-19 & the right to health: case study of China

'The Human Toll of China's Coronavirus Control Efforts', Yaqiu Wang (Human Rights Watch China researcher), USA Today, 12 March 2020

'Virus Hits Europe Harder Than China. Is That the Price of an Open Society?', Richard Pérez-Peña, NYT, March 19, 2020

Zhang Boyuan, 'Human Rights Value Based on the Legislation Principle of the Basic Healthcare and Health Promotion Law', The Journal of Human Rights (China) Vol. 18 No. 2, April 2019

Law of the People's Republic of China on Basic Medical Hygiene and Health Promotion, adopted by the Standing Committee of the National People's Congress, December 28, 2019

18. The Future of Work, Social Protection Floors and Universal Basic Income

World Bank, *World Development Report 2019*

'Andrew Yang: The Capitalist Candidate Championing a Universal Basic Income', Billy Binion, Reason.com, 19 April 2019

'Universal Basic Income might fix our broken welfare system – Give it the serious, scholarly debate it deserves', Michael D. Tanner, *Fox News*, 22 March 2019

'The False Promise of Universal Basic Income', *Dissent*, Alyssa Battistoni, Spring 2017

Roope Mokka and Katariina Rantanen, Basic income and the new universalism, 6 Feb 2017

ILO, Social Protection Floors Recommendation, 2012 (No. 202)

19. The right to education: Non-discrimination and equality

Case of D.H. and Others v. The Czech Republic, European Court of Human Rights, Application no. 57325/00, Grand Chamber Judgment, 13 November 2007

‘Orbán’s next move: Overpowering the courts’, Zeljko Jovanovic, Politico, 28 Feb 2020

Minister of Basic Education v Basic Education for All (20793/2014), [2015] ZASCA 198 (2 December 2015)

The USA and the Right to Education

San Antonio Independent School District V. Rodriguez, U.S. Supreme Court, 411 U.S. 1 (1973)

Michael J. Kaufman, Badges and Incidents: A Transdisciplinary History of the Right to Education in America (CUP, 2019) pp 201-223

20. India’s Public interest litigation

Constitution of India, 1950

K. G. Balakrishnan, ‘Growth of Public Interest Litigation in India’, 21 Singapore Academy of Law J. 1 (2009)

Olga Tellis v. Bombay Municipal Corporation, Supreme Court of India, 1985, AIR 1986 SC 18

Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165

Rakesh Chandra Narayan v. State Of Bihar, Supreme Court of India, 1989 AIR 348,

Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42

Paschim Banga Khet Mazdoor Samity v. State Of West Bengal, 1996 4 SCC 37

Laxmi Mandal v. Deen Dayal Harinagar Hospital, W.P.(C) 8853/2008, and Jaitun v. Maternity Home MCD , Jangpura & Ors., W.P.(C) 10700/2009, Delhi High Court, 4 June 2010

Farrah Ahmed and Tarunabh Khaitan, ‘Constitutional Avoidance in Social Rights Adjudication’, 35 Oxford Journal of Legal Studies (2015) 607

Rahul Bhatia, ‘How India’s Welfare Revolution Is Starving Citizens’, The New Yorker, May 16, 2018

21. South Africa: Reasonableness Review

Note on South Africa

The South African Constitution & ESCR

Certification of the Constitution of the Republic of South Africa, Case CCT 23/96 (1996)

Soobramoney v. Minister of Health (Kwazulu-Natal), Case CCT 32/97, 27 November 1997

Government of South Africa v. Grootboom, Case CCT 11/00, 4 Oct. 2000

City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another, Case CCT 37/11, 1 December 2011

Stuart Wilson, 'Making Space for Social Change: Pro-Poor Property Rights Litigation in Post-Apartheid South Africa', (2019)

Sandra Liebenberg, *Socio-Economic Rights: Adjudication under a Transformative Constitution* (2010)

22. South Africa: The right to water

Mazibuko v. City of Johannesburg, CCT 39/09, 8 Oct. 2009

Stuart Wilson and Jackie Dugard, 'Taking Poverty Seriously: The South African Constitutional Court and Socio-Economic Rights', 22 *Stellenbosch Law Review* 664 (2011)

Lucy A Williams, *The Role of Courts in the Quantitative-Implementation of Social and Economic Rights: A Comparative Study*, 3 *Constitutional Court Review* 2010 (2011) 141

Jackie Dugard, Malcolm Langford, and Edward Anderson, "Determining Progress on Access to Water and Sanitation: The Case of South Africa", in Malcolm Langford and Anna Russell (eds.), *The Human Right to Water: Theory, Practice and Prospects* (2017) Ch. 7.

23. Privatization

High Court of Israel, *Academic Center of Law and Business v. Minister of Finance*, HCJ 2605/05

Kate Bayliss and Giulio Mattioli, "Privatisation, Inequality and Poverty in the UK", (2018)

'How did children's homes become centres of profit-making and abuse?', Sonia Sodha, *The Guardian*, 29 Dec 2019

Alessandra Cepparulo, Giuseppe Eusepi and Luisa Giuriato, 'Public-Private Partnership and fiscal illusion: A systematic review', 3 *Journal of Infrastructure, Policy and Development* (2019)

Better Finance, *Better World: Consultation Paper of the Blended Finance Task Force*, in partnership with the Business & Sustainable Development Commission and SYSTEMIQ (2018)

24. International Human Rights Law and Business

Paul Krugman, 'Why does America hate its children?', *NYT*, 18 Jan 2020

A future for the world's children? A WHO–UNICEF–Lancet Commission, 18 Feb. 2020

25. Towards a Treaty on Business & Human Rights

Introductory note

Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, UN Doc. A/HRC/17/31, Annex (21 Mar. 2011)

UN General Assembly Res. 26/9 (2014) Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights

Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises, OEIGWG Chairmanship Revised Draft 16.7.2019

26. Covid-19 & Responding to Climate Change

Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2019)

The State of The Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda, Supreme Court of The Netherlands, 20 December 2019

'Climate Change Won't Stop for the Coronavirus Pandemic', Abrahm Lustgarten, Pro Publica, April 13 2020

'The America We Need', The Editorial Board of the NYT, April 19, 2020

'Think This Pandemic Is Bad? We Have Another Crisis Coming', Rhiana Gunn-Wright, NYT, April 15, 2020

'Are We All in This Together?', Michael J. Sandel, NYT, 13 April 2020

27. Radical Prescriptions for Restructuring: Piketty's *Capital and Ideology* (2020)

Thomas Piketty, *Capital and Ideology* (2020) Introduction.

28. Rethinking Global Approaches to Poverty Elimination

'Bill Gates tweeted out a chart and sparked a huge debate about global poverty', Dylan Matthews, Vox, Feb 12, 2019

Pamela Herd & Daniel Moynihan, *Administrative Burden: Policymaking by Other Means* (2018).