



## HUMAN RIGHTS

Dr. Mark Gibney - 414 Lecture in the Humanities Lecture Hall  
Friday, September 15 at 11:25 am



### I. The Promise of Human Rights

The International Human Rights movement is decidedly a reaction to the horrors of World War II. While international law regulates relations between states (horizontal), what is unique about international human rights law is that it regulates the relationship between a state and the citizens of that state (vertical).

#### A. Universal Declaration of Human Rights (1948)

**Political Rights:** speech, thought, ability to worship religion freely, freedom from torture and ill-treatment, access to courts, and so on. These rights should be familiar to you because these rights are enshrined in our own Constitution.

#### **Economic Rights:**

**social security** "through national effort and international cooperation,"

**right to work** "under just and favorable conditions and with protection from unemployment,"

**right to wages** sufficient to ensure "an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection,"

**right to form and join trade unions** for the protection of those interests,

**right to rest and leisure**, "including reasonable limitation of working hours and periodic holidays with pay,"

**right to education**, that is to be "directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms

Article 25 (UDHR): Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age and other lack of livelihood in circumstances beyond his control.

#### B. Major Human Rights Treaties

Covenant on Civil and Political Rights

Covenant on Economic, Social and Cultural Rights

Convention on Torture

Convention on the Rights of Child

Convention on the Elimination of Racism (CERD)

Convention on Refugee Protection

Convention on the Elimination of Discrimination Against Women (CEDAW)

Convention on Genocide

Convention on Landmines

### **C. Torture Convention as an Example**

Torture defined as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . .”

According to Alberto Gonzalez, President Bush’s designee as Attorney General, torture occurs only when “severe pain” is inflicted – but only if there was an intent to inflict such pain. In addition, the severity of the pain must rise to the level of “death, organ failure or permanent impairment of a significant bodily function.” Finally, Gonzalez goes on to say that as Commander in Chief, the President is not bound by the provisions of the Torture Convention.

Duties Under the Torture Convention: 1) make torture illegal; 2) investigate and prosecute those who carry out torture; 3) either “prosecute or extradite” all torturers found within that state’s territorial jurisdiction.

Has the Torture Convention Eliminated Torture? More than 160 countries are State Parties to the Torture Convention. Each one of these states has not only legally obligated itself to halt the practice of torture and to enforce the prohibition against torture, but they have obligated themselves to become a part of an international constabulary force to either “prosecute or extradite” any torturers found within its territorial borders. Yet, more than 125 countries (many of which are State Parties to the Torture Convention) continue to practice torture and 75 governments do so systematically.

### **D. Four Good Things That Have Happened in the Realm of Human Rights**

**Alien Tort Statute Litigation in the United States: *Filartiga v. Pena-Irala* (1980).** The Alien Tort Statute (1789) reads in its entirety: “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, in violation of the law of nations or a treaty of the United States.”

Pinochet Principle

International Criminal Court (Genocide, War Crimes, Crimes Against Humanity and Crime of Aggression) The United States has been one of the few countries that have not signed this Convention, even giving rise to “Invasion of Holland” Act.

Non-Government Organizations: Amnesty International, Oxfam, Doctors Without Borders, Human Rights Watch and on and on.

## **II. The Disappointment of the Human Rights Movement**

A. The West’s Focus on Civil and Political Rights – at the Expense of Economic Rights

B. The Manner in Which Western States Restrict Their Human Rights Obligations

*Sale v. Haitians Center* (19XX)

*Rasul v. Bush* (2004)

C. Whose Idea of Democracy? Iran (1954), Guatemala (1954), Zaire/Congo (196), Indonesia (1965), Chile (1973) and, most recently, attempts to overthrow Yasir Arafat (former Palestinian leader) and Hugo Chavez (Venezuela).

D. No Mechanism for Human Rights Enforcement: Create an International Civil Court?