

FAIR 334C – INTERNATIONAL HUMAN RIGHTS
CLASS QUESTIONS

Substantive Rights, Group Rights: Equality and Non-Discrimination; Sexual Orientation

Henkin, pp. 1208-1233; Alston & Goodman, 220-238

Smith, 2020: pp. 185-209

Smith, 2018: pp. 195-216

1. What is discrimination? Do human rights treaties guarantee a freedom from discrimination? Should human rights treaties guarantee the formal equality of all persons? Are human beings equal? What is the relationship between the guarantees of equality and the prohibition of discrimination found in human rights instruments?
Smith, 2020: 185-192
Smith, 2018: pp. 195-202
2. Can you identify forms of discrimination? What are the forms of discrimination covered by human rights instruments? What is race discrimination? Is positive discrimination or affirmative action compatible with prohibitions of discrimination? Can racial profiling be justifiable and under what circumstances? What is religious discrimination? Is a binding international agreement necessary to deal with the issue?
Smith, 2020: 192-208
Smith, 2018: pp. 203-216
3. (General) Should the law prohibit discrimination on grounds of genetic or other disorders? Are there hierarchies of discrimination and is it helpful to single out grounds of discrimination? Should States regulate expressions of faith, if faith is a private matter? Is it feasible for governments to adopt policies that consider each individual based on their defining characteristics and self-identification, rather than generalizing because of a single factor?
Smith, 2020: Discussion topics, pp. 193, 195, 197, 199, 204
Smith, 2018: Discussion topics, pp. 202, 204-205, 206, 208, 212
4. Alston and Goodman: Q4/Q5: "What are the strongest arguments made by opponents of LGBT rights? What are their weakest arguments?" (**Alston & Goodman, 220-238**)
5. **Henkin et al. reading: Notes and Questions: 2:** Why did Toonen and Lawrence challenge the sodomy statutes of Tasmania and Texas, respectively, as a violation of their privacy and equality rights? What strategic advantages might have resulted from challenging the statute on both of these grounds? Did the Human Rights Committee decide both the privacy and equality claims? Did the U.S. Supreme Court? pp. 1220-1221 **Henkin, pp. 1208-1233**
Henkin et al. reading: Notes and Questions: 5: How broadly do you interpret the Committee's analysis in *Toonen*? In particular, does anything suggest that the decision applies only to Australia, or to countries in which LGBT individuals enjoy widespread legal and social acceptance? Conversely, can you identify any evidence that the decision is applicable to all of the more than 150 states parties to the ICCPR? p. 1221 **Henkin, pp. 1208-1233**

6. **Henkin et al. reading: Notes and Questions: 2,3,4: *X v. Colombia*: 2.** What justifications did Colombia provide for granting pension benefits to opposite-sex unmarried couples but not to same-sex couples? Are you persuaded by the Committee's response to the state's arguments? Which party bears the burden of proving whether or not Colombia's pension scheme is discriminatory? **3.** Do you agree with the assertion of the two dissenting members of the Committee that the majority "has gone beyond mere interpretation" to create "new rights which are by no means clearly implied by the Covenant"? Is the dissent advocating an interpretation of the ICCPR that varies with the social and cultural norms that prevail in a state party? Can such an approach be reconciled with a universal understanding of human rights? **4.** Reconsider whether discrimination on the basis of sexual orientation is a form of sex discrimination. Are the arguments in favor of this interpretation of the ICCPR more or less compelling in *X v. Colombia* or in *Toonen*? Does the Human Rights Committee adopt a consistent position on this issue in the two cases? If not, how does the Committee's analysis in *X v. Colombia* differ from its analysis in *Toonen*? (Review in particular paragraphs 6.2, 7 .2 and 9 of the *X* case) p. 1230 **Henkin, pp. 1208-1233**
7. **Henkin et al. reading: Notes and Questions: 7:** The Nigerian Minister for Justice introduced the Same Sex Marriage (Prohibition) Act in the Nigerian Parliament in January 2006. To date it has not been enacted. Assume that the bill is eventually adopted as set forth above. On what other grounds could the law be challenged as contrary to the ICCPR or to other human rights treaties? If you were a staff attorney with an NGO such as Amnesty International working to repeal the statute, what strategies would you adopt? Before answering these questions, consider the following:
- Consensual homosexual acts between adults are already illegal in Nigeria. Chapter 42, Section 214 of the Nigerian Federal Code penalizes consensual same-sex acts by 14 years imprisonment and in the Shari'a states the punishment for "sodomy" can be death. Meanwhile, there's been virtually no public advocacy for same-sex marriage in Nigeria. Why then, is the Nigerian government considering this legislation at this time? Clearly, the introduction of the [bill] is designed to silence the increasingly vocal and visible local LGBT community and its supporters.
- International Gay and Lesbian Human Rights Commission, Voices from Nigeria: Gays, Lesbians, Bisexuals, and Transgenders Speak Out About the Same-Sex Bill at 1 (Nov. 2006). **Henkin, pp. 1208-1233**