Cuadernos Deusto de Derechos Humanos

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766
DOI (colección): https://doi.org/10.18543/LFGQ4860

Núm. 100

ISBN (número): 978-84-1325-270-4
DOI (número): https://doi.org/10.18543/YJCB6566

Derechos humanos: Logros y Desafíos

Giza Eskubideak: Lorpenak eta Erronkak

Human Rights: Achievements and Challenges

Felipe Gómez Isa (Coord.)

Deusto
Instituto de Derechos Humanos
Pedro Arrupe
Giza Eskubideen Institutua

12

Legal Literacy: A Key Competence in Human Rights Education

*Thérèse Murphy and Orla Ní Cheallacháin**

One of us is expert in international relations, the other in human rights law, and together we lead the European Master's in Human Rights and Democratisation[1], a pioneering cooperation between 43 European universities and a thriving part of the Global Campus of Human Rights. Leading this programme is a privilege; typically, it's also a role full of challenges. On the one hand, we have the opportunity to mobilise for human rights and democracy through teaching and learning in places and spaces that are safe and well-resourced, and with people who are knowledgeable, critically engaged and keen to collaborate. We have, in short, the privilege of being part of what has been called «education about, through and for human rights»[2]. On the other hand, this is also the source of one of the challenges we face, namely the question, what precisely is required in today's world in a master's that is about, through and for human rights?[3]

---

* Thérèse Murphy is Professor of Law at Queen's University Belfast and Chairperson of the European Master in Human Rights and Democratization (EMA). Orla Ní Cheallacháin is Director of the EMA (Global Campus of Human Rights, Venice, Italy).

[1] <https://gchumanrights.org/education/regional-programmes/ema/about.html> last accessed 17 October 2024.

[2] *UN Declaration on Human Rights Education and Training*, UN Doc. A/RES/66/137, 16 February 2012.

[3] *Ibid.*, art. 2(2).

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766 • DOI: https://doi.org/10.18543/YJCB6566 • Bilbao, 2025

This chapter examines that question. More precisely, it asks: what is the place of law and legal knowledge in graduate human rights education today? It answers by prescribing legal literacy, positioning this as part and parcel of the human rights literacy that is surely the quintessential graduate competence[4].

The structure of the chapter is as follows. It opens with a snapshot of law's conventional role in graduate human rights education. Then, it describes ways in which this role has shifted over time: it welcomes these changes but raises concerns too. Finally, responding to the concerns, it pitches legal literacy.

The Challenge

At one time, few would have asked about the place of law and legal knowledge in a graduate human rights programme. Law was pre-eminent and largely unquestioned. In certain programmes, prior knowledge of law was a pre-requisite; elsewhere, students without a law background were admitted but counselled that they would need to fall in with «law's ways» as quickly as possible. Indeed, in many places, «the law way» *was* the human rights way. Put differently, across graduate programmes, studying human rights meant studying international human rights law.

For the most part, there was also a particular approach to teaching and learning international human rights law. Slide after slide and reading list after reading list put legal instruments, institutions and actors at centre stage. The facts of cases were often the closest students got to people who were not lawyers or policymakers engaging with law. Further although theory and practice were not absent, by and large they bookended multiple sessions dealing with legal norms.

Today these trends are in decline: variation now stretches across graduate human rights education. One reason for the change is the exponential growth in graduate programmes: law-only and law-dominant programmes in human rights have been joined by others, including programmes in global or social justice which include rather than foreground both human rights law and human rights more generally[5]. Relatedly, a good number of today's graduate programmes describe

[4] We use «human rights literacy» in a general way, inspired by sister terms such as science literacy. For a related but more precise use, see eg Roux, C. & Becker, A. (eds.) (2019): *Human Rights Literacies: Future Directions*. Cham: Springer.

[5] See the characterisation designed by Nilsson, F. (2024): «Human Rights Education at Lund University: What are the Opportunities and Challenges for Collabora-

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766 • DOI: https://doi.org/10.18543/YJCB6566 • Bilbao, 2025

themselves as multi-, trans- or interdisciplinary. It is also commonplace for programme descriptions to reference theory, practice and an array of skills just as much as they reference law.

A second reason for the change is the wider trend towards acknowledging, exploring and embedding difference. Human rights research, for instance, is much more varied than in the past, thanks in part to rich and widely-read empirical studies produced by experts from fields such as anthropology and political science[6]. Moreover, legal scholars have responded in kind[7], creating a counterpoint to the recent era of Anglo-American human rights research that seemed gripped by scepticism and shaming. Engagement with human rights method has driven change too: it has become a live topic, spanning critical reflection on fact-finding and measurement tools such as indicators and impact assessment, as well as topics related to the role of lawyers in rights-based claims-making[8]. More broadly, there is a rising enthusiasm for scholarship and practice that gets «out of the courts and onto the ground»[9], and for sharper, clearer understandings of what Gráinne de Búrca calls the «experimentalist» nature of international human rights law —foregrounding its dynamic, iterative nature, driven by interaction between bottom-up and top-down actors, institutions and processes[10]. Other important trends include the growth in student numbers, in part the result of widening participation initiatives, as well as increased levels of mobility for some students. These latter trends have added diversity to the student body: there are now more «heads, hands, and hearts» in play in the graduate human rights classroom, many of whom are strong in their support for work to decolonise the curriculum[11].

---

tion?», *Lund Human Rights Reports and Working Papers*, <https://lup.lub.lu.se/search/publication/54d8c661-6373-4172-8e0b-719e0dd89955> last accessed 17 October 2024.

[6] See eg Merry, S.E. (2006): *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press; Simmons, B.A. (2009): *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: Cambridge University Press.

[7] See eg Chua, L.J. (2019): *The Politics of Love in Myanmar: LGBT Mobilization and Human Rights as a Way of Life*. Stanford: Stanford University Press; De Búrca, G. (2021): *Reframing Human Rights in a Turbulent Era*. Oxford: Oxford University Press.

[8] See eg Satterwhaite, M. (2022): «Critical Legal Empowerment». In de Búrca, G. (ed.): *Legal Mobilisation for Human Rights*. Oxford: Oxford University Press, pp. 89-122.

[9] See eg Chua, L.J. (2022): «Constitutional Interpretation and Legal Consciousness: Out of the Courts and onto the Ground», *International Journal of Constitutional Law*, Vol. 20, No. 5, pp. 1937-1957.

[10] De Búrca (n 7).

[11] Tibbitts, F. & Sirota, S. (2022): «Human Rights Education». In Tierney, R. *et al.* (eds.): *International Encyclopedia of Education*. Amsterdam: Elsevier, 4th edn, pp. 53-63,

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766 • DOI: https://doi.org/10.18543/YJCB6566 • Bilbao, 2025

These changes are welcome. However, they also reflect the growing complexity of intellectual, political and social life and the evolution of discourses on rights, partly as a result of globalisation processes. The compression of time and space due to technological developments has created new connections across boundaries, making local events global and decoupling social space from physical space[12]. While building global alliances, as a consequence of this process rights discourses can be read to mean everything and nothing: everything because as pointed out by Merry and Levitt, the human rights framework «helps ideas travel» and offers «the magic of a universal moral code and the technologies of building cases through reporting and documentation»[13], and on the other hand, nothing, because the «deterritorialisation» of social and political life raises the questions of where ideas are travelling to, and to whom are they to be addressed.

Interestingly, to date, the changes outlined above have not generated much inquiry into the role of law and legal knowledge in graduate human rights education. This is a concern because as human rights education diversifies, it is essential to take stock of and stay informed by history —both the history of human rights education and the related history of human rights. The history of human rights education demonstrates its particularity as an educational endeavour which goes beyond edification alone: part of the history of human rights education is its positioning by the UN and others as a means to ensure «the universal respect for and observance of all human rights and fundamental freedoms»[14]. Similarly, the history and evolution of human rights is part of global history[15]. In other words, human rights is not an object of scientific study alone; human rights are lived, contingent and contested.

Inquiry into the role of law and legal knowledge in human rights education is made all the more important by the rise of illiberal ver-

---

outlining the development of HRE including transformative and emancipatory HRE methodologies.

[12] Scheuerman, W. (2023): «Globalization». In Zalta, E.N. & Nodelman, U. (eds.): *The Stanford Encyclopaedia of Philosophy*. Spring 2023 Edition. <https://plato.stanford.edu/archives/spr2023/entries/globalization/> last accessed 17 October 2024.

[13] Merry, S.E. & Levitt, P. (2017): «The Vernacularization of Women's Human Rights». In Hopgood, S., Snyder, J. & Vinjamuri, L. (eds.): *Human Rights Futures*. Cambridge: Cambridge University Press, pp. 213-236.

[14] *UN Declaration on Human Rights Education and Training* (n 2).

[15] See eg Griffiths, D. (2023): «Human Rights Diplomacy: Navigating an era of polarisation», *Chatham House Research Paper Series 2023*, <https://www.chathamhouse.org/2023/04/human-rights-diplomacy> last accessed 17 October 2024.

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766 • DOI: https://doi.org/10.18543/YJCB6566 • Bilbao, 2025

sions of human rights[16]. It is clear that law is both a tool for social justice and a tool of authoritarian regimes[17]. Consequently, although law may be an imperfect tool, neglecting to teach it or to explore its capacities in multi-, inter- or trans- disciplinary courses would be irresponsible. It is also clear that legality is integral to a human rights-based approach: it is, for instance, the final letter in the widely-referenced acronym, PANEL, used to describe such approaches[18]. Moreover, the role of legal consciousness, including access to law and how a range of actors respond when the law fails them, continues to be key. Despite its limitations, groups and individuals still look to the law for social change. The polarisations emerging from and deepened by the new digital age are a further reason why we need inquiry into the role of law and legal knowledge. Martin Scheinin for example has argued that these developments demand a new approach, one that shifts away from law and legal decision-making as persuasion or rational argument, moving instead towards assessment of actual evidence using multi-disciplinary expert assessments and reconciliation[19].

Sidestepping any or all of this by stripping out law and legal knowledge, by foregrounding only criticism of human rights and human rights law, or by listing law alongside ethics and justice in a way that elides both their individual characteristics and their intersections, does no favours either to human rights education or to human rights more generally. Our view, in short, is that law's capacity needs to be seen and grasped.

The Prescription

To recap: as the leaders of a graduate programme in human rights, we repeatedly face the question: what is the place of law and legal knowledge in human rights education? It is not an easy question to answer. Wall-to-wall law is unhelpful, and the technicalities of law,

---

[16] De Búrca, G. & Young, K.G. (2023): «The (Mis)appropriation of Human Rights by the New Global Right», *International Journal of Constitutional Law*, Vol. 21, p. 205.

[17] See respectively De Búrca (n 7); Scheppele, K.L. (2018): «Autocratic Legalism», *University of Chicago Law Review*, Vol. 85, No. 2, p. 545.

[18] For an introduction to PANEL, see <https://ennhri.org/about-nhris/human-rights-based-approach/> last accessed 17 October 2024.

[19] Scheinin, M. (2024): Keynote Address, Conference of the Association of Human Rights Institutes (AHRI), «Human Rights in a Polarized World: Realizing Human Rights in the Green and Just Transition», Lund, 13 September.

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766 • DOI: https://doi.org/10.18543/YJCB6566 • Bilbao, 2025

though undeniably important in certain contexts[20], are not easily conveyed in a mixed-discipline classroom. Wall-to-wall critique of law is unhelpful too, not least because it mispresents law's role vis-à-vis human rights: law is not everything when it comes to human rights but it is not nothing either. The challenge, in a way, is about enchantment and disenchantment with law. In our experience, graduate students of human rights generally cleave to one or other of these views. As teachers and programme designers and developers, it is our responsibility to encourage students to hold enchantment and disenchantment in counterpoint, embedding a depth of sensibility as to what law is and what it can be, as to its frailties but also its potential as a spur to critique of injustice and a source of solutions[21].

One way forward is the recent call to move beyond content to capabilities when thinking about the purpose of human rights education, and to ask what would happen if we were to move beyond human rights as an «object to observe and critique» and rather see human rights as a «dynamic design Project»[22]. If human rights education is approached in this way, what role can law and legal knowledge play?

Our answer, or rather our prescription, is that legal literacy is central to any understanding of human rights as a dynamic design project. More specifically, there are at least three reasons why legal literacy needs to be a core competence in human rights education, particularly in programmes that have a multi- or inter-disciplinary character such as the one we lead. First, at domestic, regional and international levels, human rights institutions and mechanisms are not only the outcome of long historical processes of advocacy, negotiation and refinement that have led to tangible successes[23], they represent a threshold below which duty bearers should not fall, and provide tools to insist on these minimum standards in case they do. Understanding the possibilities, limitations and frailties of law as an avenue for recourse and for innovation is fundamental to critically engaging with contemporary challenges, ongoing violations and horizon scanning.

---

[20] Tobin, J. (2021): «Teaching Human Rights: Four Key Capabilities». In Bhuta, N. *et al.* (eds.): *The Struggle for Human Rights: Essays in Honour of Philip Alston*. Oxford: Oxford University Press, pp. 189-203, p. 195 nominates «technical proficiency» as one of four competences to be developed in HRE.

[21] Here we are following Fisher, E. (2021): «Legal Imagination and Teaching». In Rajamani, L. & Peel, J. (eds.): *The Oxford Handbook of International Environmental Law*. Oxford: Oxford University Press, pp. 135-149.

[22] Tobin (n 20), p. 195.

[23] See eg Sikkink, K. (2017): *Evidence for Hope: Making Human Rights Work in the 21st Century.* Princeton: Princeton University Press.

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766 • DOI: https://doi.org/10.18543/YJCB6566 • Bilbao, 2025

Second, and relatedly, cultivating skills in legal reasoning is to insist on a particular kind of evidence-based reasoning which concretises norms at local, regional and international levels. This is both an opportunity and a challenge. The opportunity can be explained with reference to mooting, a core feature of the EMA programme despite attracting a student body in which law graduates are in the minority and fewer still go on to practise law. The value of mooting in a multi-disciplinary programme is two-fold. One, students without a law background learn how to structure submissions, what conventions are relevant to which institution, and as a consequence, how to interpret the decisions of the courts. For those without legal training, mooting forces a distinction between what is possible under a particular convention and what each individual feels ought to be possible with reference to wider ethical or normative frameworks. For those with legal training, mooting with a multi-disciplinary team challenges some of the «taken-for-grantedness» of legal practice, as they are asked to explain the limitations of some conventions in addressing some harms.

Thirdly, and perhaps most importantly, legal literacy provides a method for «resolving complex and competing rights claims», a methodology that is rooted in principles of «legality, legitimacy and proportionality»[24], or to put it differently it provides a way of asking why, by whom and for what purpose? This kind of methodological thinking is a way to step outside polarising, and at times even binary, public discourses on issues that are complex and entangled. Law is not a panacea to the human suffering that we are witnessing, nor can it alone address, for example, questions of what is owed to future generations, but it does provide a way to open space for questions to be asked and answered at a step removed from the heat of politics. Legal methodologies provide at a minimum a scaffolding for accountability rooted in principle rather than pain alone, or as Martha Nussbaum argues legal order transforms retribution into forward-looking justice.

[24] Nussbaum, M. (2017): «Jefferson Lecture: Powerlessness and the Politics of Blame» delivered at John F. Kennedy Centre for the Performing Arts, 1 May, <https://www.law.uchicago.edu/news/martha-c-nussbaums-jefferson-lecture-powerlessness-and-politics-blame> last accessed 17 October 2024.

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766 • DOI: https://doi.org/10.18543/YJCB6566 • Bilbao, 2025