

Book Review

Kate Nash

The Cultural Politics of Human Rights: Comparing the US and UK.
Cambridge: Cambridge University Press, 2009.

Reviewed by Howard A. Doughty

Human rights is an essentially contested concept. The members of the United Nations have formally agreed that an entire litany of rights varying from freedom from state interference in the practice of religion and free speech, protection against discrimination based on race or gender and positive rights such as access to clean water, food and education should be respected. Nonetheless, the fact remains that no nation on Earth has a completely unblemished record in terms of guaranteeing these rights for its own citizens, much less those of foreign nationals within its borders. So, documents such as the United Nations' *Universal Declaration on Human Rights*, the *Constitution of the United States of America* and other lesser affirmations and avowals might best be understood as guidelines pending interminable bargaining.

This is, in large part, a result of the absence of precise definitions of the nature and application of human rights doctrines. For some, human rights are specified and restricted according to the interpretation of sacred texts and are essentially divinely ordained. For others, human rights are part of natural law and, in some secular treatments, essential to the very definition of humanity and "inalienable," as a once controversial document stated. For others, human rights are the endlessly negotiable products of the political process. Kate Nash's scholarship falls into this latter category. For her, human rights are the culturally relative, often contingent consequences of differing historical narratives duly massaged by people in specific circumstances to meet their needs.

Nash operates within a research model that derives in large measure from French sociologist Pierre Bourdieu's concept of the social "field." Bourdieu's theory relies upon the capacity to identify competing agents with a policy domain, each with its own *habitus* (roughly identity, consciousness and mindset) and resources (which may be social, economic or political). In a manner a little more sophisticated but nonetheless reminiscent of American pluralism, contests are fought within a commonly accepted set of procedural rules that permit the expression of an ecology of ideas doing battle within the strictures of an ecology of games. Whereas, however, American pluralism generally assumed that the games were not stacked, and that competing interests could count on prevailing at least some of the time, Bourdieu's approach accepts that agents within fields and interacting fields are hierarchical, and that they are subservient to larger fields of social class and power. Some victories set defining precedents; some defeats are permanent.

The essential contests in the field of human rights are typically fought over both the theoretical assumptions about the origins of rights and the practical application of the concept to particular human actions and beliefs. So, there are ongoing struggles about competing claims: my right to property versus your right to a living wage; my right to free speech versus your right to enjoy a harassment-free workplace; my right to practice my religion versus your right to freedom of reproductive choice; my right to privacy versus your right to security; and so on.

Such disputes are easily recognized in the major cultural clashes of the day. Troubles over the French decision to ban the burqa in public, the Swiss decision to put a halt to the building of mosques and the debate about the construction of an Islamic community centre near “ground zero” in New York are as easy to comprehend as the outrage about stoning women to death in Saudi Arabia for adultery. Each one puts human rights in the centre of a dispute, and each reflects a cultural context in which the law is tested against the values of irreconcilable human rights.

Kate Nash places the state and the law at the center of her discussion of the ways in which such disputes are prolonged or resolved. What may strike some as unusual is the fact that the approaches to such questions are interrogated in terms of two seemingly similar democracies. When George W. Bush declared that the reason for the “war on terror” was that the “terrorists hate our freedoms,” Tony Blair cheerfully added his assent. He also added thousands of British troops to the invasion of Iraq. Yet, Nash insists that there are important differences between British and American views of the nature of human rights, and that it has been so since 1776. After all, when Thomas Jefferson and his associates put forward their views on “inalienable rights” and their endowment by the “Creator,” their chief complaint was against the British Crown, which presumably was responsible for the suppression of those rights in the American colonies in the first place. So, the world’s first major dispute over thoroughly modern ideas of human rights took place between these two allies. The differences between British and American approaches to human rights remain somewhat muted, but they nonetheless remain.

In the case of arguments over suspending the normal rights of terror suspects, Nash notes that in the United States, most decisions to limit or remove minimal 14th Amendment rights to “due process” were taken with almost exclusive reference to domestic laws and jurisprudence. They therefore largely sanctioned what many regarded as unprecedented state intrusions and what critic Gore Vidal called the “shredding of the *Bill of Rights*.” The recent US Supreme Court decision (*Holder v. Humanitarian Law Project*, 2010) which has now, for the first time in American history, criminalized speech which is deemed to provide “material support” to terrorists is a case in point. According to a 6-3 majority, people who counsel Hamas to use only peaceful methods and to seek peace with Israel can now be sentenced to fifteen years in prison. As David Cole has remarked, under the new and radical interpretation, “when former President Jimmy Carter monitored the June, 2009 elections in Lebanon, and met with each of the parties to advise them on fair election practices, he could have been prosecuted for offering ‘material support’ in the form of ‘expert advice’ to a designated group, because he advised Hezbollah.” This is a bizarre distortion of human rights, but it is one that has been set out entirely within the context of American jurisprudence.

Of interest here is the fact that American efforts to curtail the activities of individuals or groups which are deemed to be domestic and international threats make no reference to international laws and covenants. This, together with the recent and extraordinary concentration of executive power means that Americans face a unique disengagement from their traditions of limited government and their far-famed system of checks and balances. The *Patriot Act* not only enlarged presidential power but, under the title of commander in chief, it created innate and almost unlimited powers and authority in the executive branch. As Nash points out, by confining the discussion of these unprecedented measures to internal law and simultaneously manipulating public opinion through a studied campaign that fused irrational panic with national pride, the

reduction of civil rights was accomplished with only an occasional and belated caution from the judicial branch.

In the United Kingdom, however, Nash points out that greater restrictions were placed on British government actions by courts that regularly invoked international human rights law. Thus, perhaps paradoxically, the British system turned out to be a more robust defender of civil liberties than that of the United States, despite the former's monarchical traditions and the absence of a fundamental *Bill of Rights*, and the latter's rhetorical commitment to individualism and its formal constitutional defence of human rights in its first Ten Amendments to the *Constitution*. For example, a perplexing decision of the US Supreme Court (*Holder v. Humanitarian Law Project*) handed down on 21 June, 2010 held that the US Secretary of State has almost unfettered power to create a list of "terrorists" and that people may be imprisoned for up to fifteen years for giving any person or entity on the list "material support." In the court's view, material support includes providing expert advice or services. So, according to David Cole, who argued the case against then-Solicitor General Elena Kagan, the *New York Times* would be criminalized for allowing a member of Hamas to write an Op-Ed essay in the newspaper, and ex-President Jimmy Carter could be imprisoned for explaining democratic electoral procedures to Hezbollah in preparation for the most recent Lebanese elections. Add to this current efforts to repeal the 14th Amendment guaranteeing "due process," and it would appear that American traditions are in peril. In this case at least, parochialism emerges as the enemy of human rights, and cosmopolitanism as their defender.

Whether a country is content to look inward or compelled to look outward for its understanding and application of human rights is, for Nash, an important issue. She is very much of the view that abstract discussions of rights may be philosophically engaging and that universal pronouncements may be symbolically reassuring, but for any practical purpose today, the question must be raised and resolved through the nation-state which is uniquely empowered to put principles into policy and practice. So, even when individual countries delegate authority to international tribunals of one sort or another, they do so conditionally and retain the right of withdrawal.

Nash establishes this basic fact, and then goes on to examine whether and to what extent the state has the capacity and the responsibility to move, if only tentatively, to the point where it must address human rights violations abroad. She considers the case of Chilean dictator Augusto Pinochet who was almost extradited from the United Kingdom to Spain to face charges arising out of the torture and murder that took place in his home country under his administration. She offers a provocative and trenchant analysis of the way in which political activists and the media behaved as though a transnational community with an understanding of universal moral principles and both applicable and enforceable international law *already* existed as they tried in vain to put this "enemy of all mankind" to the test of a trial for his crimes. Not just because of its emotional appeal, but also because of the spotty but distinct history of what she calls "cosmopolitan law" from the Nuremberg trials to the present day. [sentence fragment]

Nash faces with confidence the challenge of balancing the fundamental place of the nation, which has a primal interest in maintaining its sovereignty, with the moral imperative of generating enforceable rules establishing and protecting "global citizenship." Her argument, in essence, is that there is a national interest in building internationally valid and enforceable rules. This

demonstrable national interest is a necessary precondition for the effective articulation and implementation of a human rights agenda.

Such an agenda would not likely be well received in the United States, which is extremely sensitive about its sovereignty and suspicious of what its citizens commonly regard as the “threat” of “world government.” Britain, in the alternative, is more open to multilateralism because of its geographical proximity and recent partial integration with Europe; though, to be fair, it can also be ever so slightly isolationist. Nash does a commendable job, however, in sorting out the general problems and the specific issues in a comparative context.

Nash addresses other issues. Insofar as human rights involves substantive positive rights such as freedom from poverty, she is drawn to discuss the need for “thicker solidarity,” a kind of global community commitment. Here too, she explores the media as a source of developing consciousness about matters that are seldom given credit by national governments and certainly not by multinational corporations. The creation of a sense of collective responsibility in the wealthy nations is no small task, especially when those nations are committed to the social values of competition, a market mentality and what C. B. Macpherson famously called “possessive individualism.” In contemporary circumstances, it seems that nothing less than comprehensive ethical standards will do, if the benefits of human rights against tyranny, against penury and ultimately against ecological devastation are to be taken seriously, universally respected and achieved.

The obvious place for developing common and enforceable ethical standards would appear to be the several international courts and tribunals, which would have to be given compelling powers for genuine progress to be made. Again, however, American reluctance to recognize the decisions of the International Court of Justice, the primary United Nations’ judicial instrument, bodes ill for such initiatives. (The United States withdrew its acceptance of compulsory jurisdiction following the Court's judgment in 1984 that called on the U.S. to “cease and to refrain” from the “unlawful use of force” against the government of Nicaragua, and remains unwilling to accept arrangements that could find American nationals guilty of “war crimes” and the like.)

Kate Nash is no Pollyanna. Her perceptions are keen, her understanding of the tasks is thorough and her astute analysis admits of no naivety. Her diagnosis is insightful. Her prognosis is responsibly cautious. But her thoughtful presentation is not only instructive in terms of the inherently interesting similarities and differences between the two Anglo-American democracies, but also as a template for expanding her vision to the entire world, a world for which the future is bleak in the absence of the building of the kind of ethical ideals which practical politics alone can achieve.

About the Author:

Howard A. Doughty teaches in the Faculty of Applied Arts and Health Science at Seneca College, Toronto, Canada. He can be reached at: howardadoughty@yahoo.ca