



The Cultural Politics of Human Rights

Comparing the US and UK

KATE NASH

CAMBRIDGE

The Cultural Politics of Human Rights

Comparing the US and UK

KATE NASH



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
São Paulo, Delhi

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by

Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521618670

© Kate Nash 2009

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2009

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Nash, Kate, 1958–

The cultural politics of human rights : comparing the US and UK / Kate Nash.
p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-85352-1 (hardback) – ISBN 978-0-521-61867-0 (pbk.)

1. Human rights–United States. 2. Politics and culture–United States.

3. Human rights–Great Britain. 4. Politics and culture–Great Britain.

I. Title.

JC599.U5.N277 2009

323.0941–dc22

2008055954

ISBN 978-0-521-85352-1 hardback

ISBN 978-0-521-61867-0 paperback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party internet websites referred to
in this publication, and does not guarantee that any content on such
websites is, or will remain, accurate or appropriate.

The Cultural Politics of Human Rights

How does culture make a difference to the realisation of human rights in Western states? It is only through cultural politics that human rights may become more than abstract moral ideals, protecting human beings from state violence and advancing protection from starvation and the social destruction of poverty. Using an innovative methodology, this book maps the emergent 'intermestic' human rights field within the US and UK in order to investigate detailed case studies of the cultural politics of human rights. Kate Nash researches how the authority to define human rights is being created within states as a result of international human rights commitments. Through comparative case studies, she explores how cultural politics is affecting state transformation today.

KATE NASH is Reader in Sociology at Goldsmiths College, University of London and Faculty Fellow of the Center for Cultural Sociology at Yale University.

Preface

On paper there is, I think, not much to find wrong with the principles of human rights as they are listed in the Universal Declaration of Human Rights: every human being should be equally respected by every other, every human being should be free in their embodied integrity from state repression, and every human being should live in socio-economic, cultural and political conditions in which they might flourish. Nevertheless, human rights have many enemies, from across the political spectrum. Far from effecting the transformation of political questions into legal technicalities, human rights are one of main points at which passionate politics are engaged around topics of belonging and exclusion, equality and difference, freedom and constraint.

Human rights inspire antagonistic political perspectives because – as we shall see in this book – they are inherently paradoxical. In this study I try to be agnostic about the value of human rights, to refuse the blackmail of considering them either as a force for good, as intuitive moral principles which should be above politics, or as a force for evil, as fatally compromised by their association with adventures which actually turn them into their opposite. I try to untangle some of the paradoxes they create to consider what difference human rights are actually making in practice. The argument I offer in this book is a kind of thought experiment based on empirical research: *if* human rights are to be realised in practice, *then* what kinds of conditions do they require, and how close are human rights activists to achieving those conditions? In order to address these questions I assess what human rights mean to different actors in the human rights field in selected, critical cases and whether and how human rights are contributing to the conditions necessary

for their own realisation, especially to the transformation of the state from 'national' to 'cosmopolitan'.

In making this argument I have had the benefit of the help of a number of people – many of whom have been especially generous in reading and commenting on this work as they have suspended their own views on the politics of human rights. A big thank you to Kirsten Campbell for advice on the legal aspects of the cases I studied as well as for many interesting discussions along the way – any mistakes are, of course, my responsibility. Also to Roberta Sassatelli for helping me think about how to structure the book to make it interesting to Sociologists studying issues of culture and cosmopolitanism, not just those already interested in human rights. If I have failed in that task, it is not for lack of good suggestions. To George Lawson for reading a number of chapters, and also the whole draft of the book, for inspiring ways of thinking outside my own discipline, and for helping out with some of the details of the resulting inter-disciplinarity. To Anne-Marie Fortier for helping me to think through some of the paradoxes of human rights in relation to nationalism, drawing on her work in the area and her detailed comments on earlier draft chapters of the analysis. To David Hansen-Miller, Cindy Weber, Anna Marie Smith, Nick Stevenson and Dora Kostakopoulou for wonderfully close readings of particular chapters – David, especially, as he heroically read more than one. Conversations with Marie Dembour, Basak Cali and Paul Stenner have also helped refine my ideas about human rights. Thank you to Alan Scott and Fran Tonkiss for making me think again about the Pinochet case in different ways. And to many people, but especially Clare Hemmings, Monica Greco, Suki Ali, Zee Nash, Chris Alhadeff, Anne Phillips and Amanda Welch just for making me think, about human rights and other things too. I organised symposiums at Goldsmiths with Nancy Fraser and Jeffrey Alexander to discuss their work during the course of writing this book and the talk on those occasions has undoubtedly made its way into the project, not only where their writings are referenced in the text. I also, with John Street, organised a workshop on Cultural Politics

with the European Consortium for Political Research in Granada, which proved very useful to thinking through some of the concepts discussed in these pages. Thank you to those who participated in the discussions that took place over that week. Thank you to Sarah Caro, John Haslam and Carrie Cheek for helpful and sensitive editing. And last but far from least, thank you to Neil Washbourne, wonderfully encouraging, enthusiastic and supportive throughout the long process of researching, thinking, writing and re-writing.

Material from Chapter 3 has previously been published in 'The Pinochet Case: Cosmopolitanism and Intermestic Human Rights', *The British Journal of Sociology* 58/2, 2007; and from Chapter 5 in 'Global Citizenship as Showbusiness: the Cultural Politics of Make Poverty History', *Media, Culture and Society* 30/2, 2008. Thank you to both publications for permitting me to reprint portions of these articles.

List of acronyms used in the book

International governmental organisations

EU	European Union
NATO	North Atlantic Treaty Organisation
UN	United Nations

International human rights agreements

ECHR	European Convention on Human Rights
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights

Non-governmental organisations (NGOs)

ACLU	American Civil Liberties Union
CAIR	Council for American-Islamic Relations
CCR	Center for Constitutional Rights
MPAC	Muslim Public Affairs Committee

International non-governmental organisations (INGOs)

AI	Amnesty International
EI	Earthrights International
GCAAP	Global Call to Action Against Poverty
HRF	Human Rights First
HRW	Human Rights Watch

US laws

ATCA	Alien Tort Claims Act
------	-----------------------

UK laws

ATCSA	Anti-Terrorism, Crime and Security Act 2001
HRA	UK Human Rights Act 1998
PTA	Prevention of Terrorism Act 2005

Table of cases

LEGAL REFERENCES: US

Boumediene et al. v. Bush et al.; al Odah et al. v. United States et al. – F.3d (D.C. Cir. 2007).

Boumediene et al. v. Bush et al.; al Odah et al. v. United States et al. (549 S.Ct._ 2007).

Doe v. Unocal, 963 F. Supp.880 (C. D. Cal. 1987); summary judgment granted, Doe v. Unocal, 110 F. Supp 2d 1294 (C. D. Cal. 2000); rev'd in part, remanded, Doe v. Unocal, 2002 US App LEXIS 19263 (9th Cir. 2002); vacated, reh'g granted en banc, Doe v. Unocal, 2003 US App LEXIS 2716 (9th Cir. 2003).

Filartiga v. Pena-Irala, 630 F.2d 876 (2nd Cir. 1980).

Hamdan v. Rumsfeld (126 S.Ct. 2749 2006).

In re Guantanamo Detainee Cases, 355 F. Supp. 2d 443 (D.D.C. 2005).

Rasul et al. v. Bush et al.; al Odah et al. v. United States et al. (542 S.Ct 466 2004).

Sosa v. Alvarez-Machain (124 S.Ct. 2739 2004).

United States v. Alvarez-Machain, 504 U.S. 655, 657 (1992).

'FRIEND OF THE COURT' BRIEFS

Brief for the United States of America as Amicus Curiae in Doe v. Unocal, 2003 US App LEXIS 2716 (9th Cir. 2003).

Plaintiffs-Appellants Supplemental Brief in Opposition to Amicus Curiae Brief Filed by the United States in Doe v. Unocal, 2003 US App LEXIS 2716 (9th Cir. 2003).

Brief for the United States as Respondent Supporting Petitioner in Sosa v. Alvarez-Machain (124 S.Ct. 2739 2004).

Brief of Amici Curiae International Human Rights Organizations and Religious Organizations in Support of Respondent in *Sosa v. Alvarez-Machain* (124 S.Ct. 2739 2004).

Brief of Amici Curiae Lawyers Committee for Human Rights and the Rutherford Institute in Support of the Respondent in *Sosa v. Alvarez-Machain* (124 S.Ct. 2739 2004).

Brief of 175 Members of both Houses of the Parliament of the United Kingdom of Great Britain and N. Ireland as Amici Curiae in Support of Petitioners in *Rasul v. Bush* (542 S.Ct 466 2004).

LEGAL REFERENCES: UK

A and others v. Home Secretary (UKHL 56 2004).

A and others v. Home Secretary (UKHL 71 2005).

DD and Home Secretary; AS and Home Secretary (SC/42 and 50/2005).

Home Secretary v. E and another (UKHL 47 2007).

JJ and others v. Home Secretary (UKHL 45 2007).

LEGAL REFERENCES: EUROPEAN COURT OF HUMAN RIGHTS

Chahal v. United Kingdom (Application 22414/93) ECHR 54 (1996).

Contents

Preface	<i>page</i> vii
List of acronyms used in the book	x
Table of cases	xii
1 What does it matter what human rights mean?	1
Human rights culture and cultural politics	4
From the national to the cosmopolitan state?	9
Comparing the US and UK	20
Outline of the book	23
2 Analysing the intermestic human rights field	30
Authority as power: the intermestic human rights field	30
Cultural political strategies: justifications of human rights	58
3 Sovereignty, pride and political life	71
American exceptionalism	78
Human rights at home in the UK	93
Learning from Guantanamo and Belmarsh	100
4 Imagining a community without 'enemies of all mankind'	105
Human rights against 'enemies of all mankind'	110
Imagining a community of global citizens	113
Re-imagining an (inter)national community of citizens	120
Cosmopolitan national citizenship	127
Cosmopolitanism-from-below	134
5 Global solidarity: justice not charity	137
Popular global solidarity	142
Rights against poverty	148

Justice or charity	153
Campaigning for social and economic rights	160
6 Conclusion	166
The institutional–legal realisation of human rights	168
Human rights as a cosmopolitan ethical framework	182
Towards a cosmopolitan state?	186
References	190
Index	204

I **What does it matter what human rights mean?**

The cultural politics of human rights disrupts taken-for-granted norms of national political life. Human rights activists imagine practical deconstruction of the distinction between citizens and non-citizens through which national states have been constituted. They envisage a world order of cosmopolitan states in which the rights of all would be fully respected. How likely is it that such a form of society might be realised through their activities? Is collective responsibility for human rights currently being shaped in cultural politics? If so, how, and with what consequences? If not, how is it that the vision of human rights activists is failing to take effect given the explosion of discourse on human rights in recent years?

A focus on what human rights mean to social and political actors, and on how these meanings impact on their institutionalisation, has been missing from the study of human rights.¹ And yet it is only through cultural politics that the ideals of universal human rights may be realised in practice. What I mean by 'cultural politics' is more or less organised struggles over symbols that frame what issues, events or processes mean to social actors who are emotionally and intellectually invested in shared understandings of the world. But cultural politics is not only the contestation of symbols. Cultural politics concerns public contests over how society is imagined; how social relations are, could and should be organised. It is only through

¹ Fuyuki Kurasawa's study of what he calls the 'ethico-political labour' of human rights is an impressive theoretical advance in terms of establishing the importance of struggles over meaning to the practices of human rights (Kurasawa 2007). Ultimately, however, it is disappointing that Kurasawa does not link this labour to changes in institutions of governance and states, but confines his analysis to movements in civil society.

practices that are meaningful to people that social life is possible at all: the social institutions that constrain our lives are nothing but routinised shared understandings of what is real and what is worthwhile. Although social actors rarely, if ever, imagine a fully formulated blueprint of a new society, even during revolutionary periods, in using or contesting symbols that are meaningful to them they are nevertheless engaged, more or less consciously, either in trying to bring one about, or, just as likely, in defending what already exists.

Human rights are the object of cultural politics concerning global justice. Globalisation raises difficult questions concerning how justice must now be rethought beyond the national frame which successfully routinised shared understandings of justice as relevant only to fellow citizens. Human rights are themselves globalising as they are deployed in strategies to end human rights violations or to condemn states which resist international pressure to comply with human rights norms. In images of suffering in the global media which are framed as issues of human rights, and in responses to violations which seek to extend capacities for global governance, human rights are themselves an aspect of globalisation. However, at the same time, human rights also seem to stand above globalisation, to represent a framework through which globalisation itself might be regulated and global governance organised. The comprehensive schedule of human rights developed by the UN and in regional systems of human rights seem to offer a framework for justice beyond states, a global constitution to guide the political development of the planet. This book is concerned with whether and how globalising human rights may become established as norms of global justice through cultural politics.

Although it is now common to think of human rights as essential to just global governance, it is important to note that it is only through states that human rights can be realised. States do not just represent dangers and obstacles to the realisation of human rights, as sometimes appears to be the case in the literature on human rights violations; they are absolutely necessary for the realisation of

human rights in practice. In this respect, it is particularly important to consider how human rights are contested and defined *within* states. It is only with the collusion of state agents that human rights are violated, and only states can secure and enforce human rights within their own territories.² Even at the international level, human rights systems exist only by state agreement; it is states that act together in international organisations to create conditions for the realisation of human rights. States raise taxes to pay for international organisations, authorise personnel to act in them on their behalf, and maintain the military and police force that can, in principle at least, be used to enforce human rights.

States, like all other social institutions, are constituted as routinised social practices which establish that members of society 'know how to go on' in any particular situation. Language, symbolic communication organised into settled patterns of shared understandings as discourse, is the most important structuring dimension of institutions. This is equally the case in formal, bureaucratic organisations, such as those of the law and government, where face-to-face interactions are generally regulated by the tasks at hand, and by written materials that guide what is to be done, as it is in more loosely networked and informal spaces, such as those of social movements. At certain times conflicts arise about 'how to go on' in social institutions, over whether settled interpretations are fair, or accurate, or valuable. These conflicts often begin as a result of the activities of social movements, which challenge taken-for-granted understandings of routinised social life and militate for change in policy and legal documents which share in and reinforce those understandings. During periods of cultural political activity, common

² Although, in recent times powerful states have used a rhetoric of human rights to justify military intervention into other states, the legality of such measures is highly contentious, military intervention is never undertaken solely to secure human rights, but always primarily for reasons of security or economic advantage, and – as we have seen in Iraq and Afghanistan – it is also, unsurprisingly, ineffective (Chandler 2006; see also Cushman 2005).

interpretations are disrupted and become open to re-interpretation. Such conflicts may, where authoritative decision-makers allow it, or where they find themselves obliged to respond to contentious re-interpretations, result directly in changes in the law, or in government policy.³

'How to go on' in the face of contention over what are clearly stated in international law as universal human rights but which are in practice selectively applied and enforced within national states is currently highly contested. In this book I analyse precisely how cultural politics are constructing human rights in particular forms. I do so through a series of in-depth case studies comparing the US and UK. Both states have been and are currently prominent in extending human rights internationally; in both, within the national arena, the cultural politics of human rights practices is complex and hard-fought. Officials in these liberal-democratic states of long-standing clearly find it difficult, imprudent or unnecessary to adopt universal norms of human rights in practice, despite the fact that leaders of these states have been responsible for developing and promoting them in the international arena. In-depth study of the role of cultural politics is crucial to understanding their reluctance to realise human rights in practice and what it means for their future possibilities.

HUMAN RIGHTS CULTURE AND CULTURAL POLITICS

With the exception of anthropological studies, which are now moving beyond the debate over universalism and relativism in interesting

³ I developed this understanding of cultural politics in *Contemporary Political Sociology*, where I drew on the work of post-structuralists, especially Laclau and Mouffe, and of sociologists, especially the work of Giddens on structuration theory (Nash 2000). This approach also has a good deal in common with that of American cultural sociologists, though I remain of the view that specifically in order to study social institutions we must understand culture as constitutive (rather than causal): whilst the cultural and the social may be separated analytically, symbolic meaning and social institutions are, in reality, so interrelated as to be indistinguishable. If culture is *constitutive*, it is not possible to identify an independent causal direction to its *influence* (see Alexander and Smith 2003).