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The Making and Maintenance of Human Rights in an Age of Skepticism

Abram Trosky¹

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***The Sociology of Human Rights* by Mark Frezzo
Cambridge: Polity, 2015**

***The Political Sociology of Human Rights* by Kate Nash
Cambridge: Cambridge University Press, 2015**

***Keeping Faith with Human Rights* by Linda Hogan
Washington, D.C.: Georgetown University Press, 2015**

As in 2001, the events of 2016 mark a year people will remember in the context of “before and after.” Authors of books on global terror, national security, or international politics published in 2000 or early 2001 were likely to have experienced a surfeit of handwringing after the September 11th attacks, since in addition to the tragic loss of life, their recent publications were rendered instantly irrelevant. While the Brexit and Trump phenomena might have delivered similar blows to those having just published on European Union, American, or British politics, a trio of books on human rights dating from 2015 are made no poorer by their vintage. If anything, the respective authors’ defenses of universalism *and* pluralism at this centrifugal moment in global politics makes each more vital reading for undressing the unhelpful relativism now viral in the “post-truth” era.

As their titles indicate, each book discussed in this essay approaches the history and prospects of human rights from a novel disciplinary perspective—a refreshing and important expansion from the hegemony of history, political science, and international legal studies. Refreshing, too, since the social sciences have generally been aligned with the fringier humanities in their embrace of cultural and moral relativism as orthodoxy—an orthodoxy entailing a thoroughgoing skepticism of human rights as

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an instrument of postcolonial oppression. One will find, for example, over half a million hits for the phrase “human rights imperialism” in a web search.

During the initial postwar debate in the United Nations that birthed the 1948 Universal Declaration of Human Rights (UDHR), the American Anthropological Association (AAA) protested the draft of the UDHR for its alleged ethnocentrism, arguing the infeasibility of any transcultural, globally binding ethical framework. By 1988, the AAA had reversed its position on human rights, only to hedge again in 1999, substituting “respect for concrete human differences, both collective and individual” for what it called “the abstract legal uniformity of the Western tradition” (Nash, 8). Such oscillations have meant that the social sciences, outside of political science, have been late to the human rights party. As each of these authors recognize, however, there remain serious epistemological challenges to the universalist conception of human rights that is seen as foundational to the viability of the international human rights regime. The fact that each of these works, in addition to representing its particular field or subfield, takes seriously and meets this epistemological challenge—answering, in essence, how a social construct can be *both* time-bound human creation *and* morally binding across space and time—makes them compelling works of philosophy as well.

The first book, *The Sociology of Human Rights* by sociologist Mark Frezzo, is perhaps the least philosophical (and the most consciously sociological) of the three, but is also the most accessible and suitable for undergraduate or introductory courses. It begins with what appears to be a tautology: how people think about human rights influences their interpretation of news and events; this in turn influences emotion and action directed toward those caught up in the events witnessed. This human capacity for empathy, the author submits, *is* a basis for human rights, in turn influencing the way we and others think about it. If the *capacity* for moral sentiments like empathy is universal in the species, as David Hume originally argued, its *expression*, like our interpretations, varies greatly from person to person and culture to culture, seeming to confirm Herodotus’s observation, “Custom is king.” Sociology, Frezzo argues in the book’s introduction, is uniquely equipped to illuminate *both* the mutability of custom or culture—including of social constructs like “human rights”—*and* the potential to influence the processes by which we shape and are reciprocally shaped by them.

The contest between universalism and cultural pluralism plays out across disciplines, in this case in the debate over “public sociology” and the compatibility between obligations of analysis and advocacy. Rather than discovering the way the world and society works, Frezzo agrees with fellow sociologist Bruno Latour that his field is engaged in “knowledge production,” which, per the original tautology, is not a neutral activity. At a minimum, increased availability of (and access to) information is supposed to make individuals, particularly in the Global North, *more* aware of the planet and species’ interconnection, and *more* willing to address issues of inequality. Sociology (and this book in particular), Frezzo argues, properly serves that end by (a) reframing social and ecological problems (such as poverty or pollution) as human rights issues and (b) describing these realities in a way that points to some prescriptive amelioration. This, the author states, “is not only a normative claim; it is also a *social scientific obligation*...natural and social scientists have a responsibility to operate in the service of human welfare” (ix & xix, emphasis in original).

Though it expresses clear sympathies with social and global justice orientations, *The Sociology of Human Rights* does not propose specific programs or policies.

Acknowledging that the nation state remains the vehicle most capable of implementing and enforcing rights, policies must be proposed through NGOs like the UN and what Frezzo rather infelicitously calls “social movement organizations” (SMOs). Academics and students have a role to play in this process, he argues, particularly in issue “framing”—sociologist’s Erving Goffman’s phrase that has become standard in political science, media studies, and cognitive linguistics (for example in the work of George Lakoff). Frezzo’s own framing recurs in two ways. First, because “by training and by inclination sociologists tend to emphasize the *social* character of human rights”, these are “defined as a set of protections and entitlements that regulate relations among such social actors as transnational corporations, national and local governments, communities, families, and individuals” (3–4) rather than the individual properties of persons. Frezzo further frames rights inquiry in the context of “causes, context, and consequences” that focus on the “rights conditions” that give rise to grievances, their conglomeration into “rights claims” made by SMOs, and the “rights effects” of implementation (xiii–xiv).

Second, Frezzo’s most unique contribution is to borrow the concept of rights “bundles” from contract law to define parcels of interconnected rights claims ordered at the discretion of the owner, as with the layered uses and restrictions a piece of land might have. Sidestepping the family feud between the “three generations” of human rights—civil and political, economic and social, or cultural and environmental—over which deserve canonical or constitutional status, he argues instead that individuals ought to develop and promote their own rights bundles as their community needs. Each of these “tiers” gets a chapter in the book, with book-ending chapters on the Sociology of Human Rights and Rights Bundles. The book concludes with the author’s own candidate bundle of potential universals: the rights to longevity, full development of the person (including education, work, and leisure), and peace.

Because *The Sociology of Human Rights* intentionally stops short of offering specific research paradigms or policy prescriptions to achieve, its own normative political position might be summarized as “deliberative democratic”: the idea that every person at minimum has the right to membership in the informal human rights community and to join the conversation about what ought to count as human rights. The irony of this position, and a critique of the book, is that it expresses precisely the rights to speech and expression that are core to the “canonical” first generation of civil and political rights—rights that Frezzo’s analysis virtually ignores in favor of the sexier second and third generations. A further critique, made more obvious in the populist surge of 2016, is that if speech precedes education and proceeds in disregard of truth claims, it might well contribute to the infringement of the very rights the author holds most dear—longevity, development, and peace. Consensus, political scientists and philosophers recognize, is a qualified good.

Kate Nash’s contribution, *The Political Sociology of Human Rights*, is prescient in this regard from her use of Arendt’s epigram onward: “Equality, in contrast to all that is involved in mere existence, is not given to us, but is the result of human organization *insofar as it is guided by the principle of justice*” (emphasis added). She acknowledges some of the same challenges to human rights advocacy as Frezzo. First, Eurocentrism: the persistent idea also behind modernization theory and neoliberalism, that the development of what she curiously calls the “Northwest” (to include the West and settler states like southeasterly Australia)—including its formulation of human rights—

provides a universal pattern justifiably imposed on the Global South and East. A second, related challenge comes from Marxist, feminist, and postcolonial critics of human rights who see the construct as an Enlightenment vestige offering false progressive comfort at best, cultural imperialism at worst, but both of which, Nash argues, are unhelpful simplifications. The third challenge concerns the appropriate scope of sociological inquiry, which has traditionally been limited to individual communities, or “local” sociocultural or idiographic facts and meanings (as with anthropology), but which she argues ought to include nomothetic, structural, and institutional analyses typical of political science.

Balancing the challenges posed in *The Political Sociology of Human Rights* involves a reexamination of two ideas touched on in *The Sociology of Human Rights*: framing and social constructivism. Nash examines successes and failures of human rights advocacy and international humanitarian law (Chapter 8) and several timely challenges including torture (Chapter 3), refugee rights (Chapter 7), and women’s rights (Chapter 6). In some cases, law is the solution; in other cases, it is the problem. In all cases, it, and human rights, are political. This text shines in arguing that it is precisely the universal framing of human rights that makes the concept so powerful in *both* cases—eliciting legislation that protects vulnerable groups and discouraging or dismantling laws and institutions that harm them. As Arendt’s quote indicates, it is a stand-in for “justice,” the demands of which evolve with the understanding, technology, and organization of the species.

Nash’s framing of human rights, and emphasis thereupon, connects with social and international relations constructivism. It is “counter-Enlightenment” in that it delegitimizes the idea that some perfect, rational human rights formula, legal regime, institutional arrangement, or combination thereof will “solve” the problem of oppression and violence. The struggle to build and connect communities in which justice and human rights are operative is permanent; these are always “under construction.” But she is also critical of the critics, whose attractive but flawed conclusion is that “constructed” inevitably means “arbitrary” and that the ideas of law and right are bound to be instruments of power. Nash rightly implies that many human rights critics unwittingly partake in either the realist’s conceit that lack of enforcement negates the existence of rights, or the positivist’s conceit that justice only exists where there is law.

As social cognitive psychologists such as Albert Bandura have argued for almost 40 years, identity itself can be leveraged (through shame, for example, in “human rights wrongs”) to change minds and behavior without coercive action. To form consensus, mobilize groups, and marshal the authority of law, people need to be persuaded. This process can deteriorate into homonymous “martial law” under conditions of rapid social change and/or privation when masses are persuaded that some “other” is responsible for one or both, but it is a process generally bounded by human reasonableness and compassion. Nash therefore agrees with Frezzo (and any number of political theorists) that the conditions for reasonable deliberation must be preserved as fundamental to human rights in order for the construct that emerges to fairly be called “pluralistic.” Humans of all cultures have the capacity to be persuaded just as they have the capacity to be empathic; the capacity to *do* evil or *remain* ignorant does not undo this more fundamental sociable and communicative orientation. As Nash aptly puts it, “Everything may be constructed, but only *some* constructions become

established, enduring across space and time. Constructions become ‘social’ when they are taken for granted” (10)—much in the way human rights have been, and not only in the West.

Put differently, everything may be structured, including access to and control of material resources. Yet contrary to the materialism and determinism of many Marxist, feminist, and postcolonial critics, structures do not *necessarily* reinforce “domination and ideological closure” but are “inherently open to change,” Nash argues, including by mobilization of *moral* resources (12). Moral authority, as Nash has it, “rests on the construction of the duty-bearer as above politics and personal interests, as concerned only with impartial justice, with getting better treatment for people who are currently being treated unfairly” (15). The interest of elites may be to reify structures or frames that preserve the current, advantageous distribution of wealth and political power; however, “interests” Nash points out “are themselves socially constructed” and can change under the pressure of moral, popular, and/or expert authority.

The central contribution of *The Political Sociology of Human Rights* is to thematize the roots of both those disciplines, allowing us to reexamine just what the categories “social” and “political” entail. The significance of the sociopolitical for the author is this: while human rights are negotiated through deliberative and diplomatic means, through some combination of action by grassroots, governmental, nongovernmental, and intergovernmental and media organizations, they are always structured (or “framed”) in “identical” or philosophic questions about inclusivity, obligation, and the role and limits of government, the answers to which are never simply about power. If not power, this process of persuasion *is* always about authority—of which Nash identifies five varieties: moral, popular, expert, rational/legal, and delegated. However, like Bandura, Nash equivocates on moral authority by using this phrase to refer to both genuine impartiality, and the appearance thereof—being “*seen as* being above politics” (15 emphasis added). Similarly, popular authority in this text refers to the authority conferred to groups *claiming* to speak for the people, not genuine majoritarian consensus. Finally, Nash follows Martha Finnemore in defining an expert as “a person who *should* be respected because of their training, knowledge and principles [which] very often overlaps with what it is to be ‘*in*’ authority” (14, first emphasis added).

Alas, as 2016 illustrated so floridly, the distance between “very often” and “always” can be decisive. One discomfiting implication of this hedging on moral and popular authority is an unmooring of the other three forms: expert, legal-rational, and delegated authority. This is particularly true in the USA, where trust and approval of Congress, courts, bureaucracy, journalism, police, universities, the United Nations (which Nash discusses in Chapter 4)—nearly all institutions with the possible exception of the military—are at historic lows. The exacerbation of these trends in 2016, dramatically illustrated in the run-up and aftermath of the US election, will likely reveal the age of this book. At such moments in history, when volume, viciousness, vanity, and veneer trump expertise or goodness, global citizens must keep faith with human rights.

This sentiment provides the title and theme of the third 2015 offering on human rights reviewed here, authored by Georgetown and Trinity University theologian-cum-provost Linda Hogan. Perhaps even more than the preceding pair, this book is a philosophically rigorous apologia for universalism in human rights, punctuated by a useful history of the concept’s development and a sustained engagement with critics from philosophic and theological corners. It is not afraid to get into the weeds of either, entertaining

pragmatists, postmoderns, and communitarians, but doing so with such conviviality that even those who think they have no interest in theology might find themselves reading seamlessly into the second chapter.

Keeping Faith with Human Rights mercifully skips the ritual beating of the dead Enlightenment horse but is attuned from the gate to the stakes of what Foucault called “The Blackmail of the Enlightenment” or elsewhere, invoking Nietzsche, “The Death of Man”—namely, that human rights hung on “the concept of an essential, shared human nature and the commitment to a concept of objective truth grounding all reasoning” (30)—beliefs both long on the ebb. The book begins fittingly with a chapter titled “The Crisis of Legitimacy” which outlines in rich and engaging detail historical and contemporary controversies and criticisms over human rights in political and philosophical circles. The suspicion that human rights are cover for Western imperialism, individualism, and global homogenization, Hogan says, has dogged the phrase from its inception. What is less well known, she relates, is that “from the nineteenth century onward a pluralism of different political, cultural, philosophical, and religious perspectives began to impact on the substantive meaning of the category of human rights” (15).

The best evidence for this de facto procedural pluralism in the development of human rights comes from the deliberations in the run-up to the 1948 UDHR. Hogan meticulously documents the last decade of scholarship highlighting the contributions of Arab, Asian, and Latin American delegations “at every stage of the process” (18). The evidence that third world’s contributions were more than merely symbolic is that UDHR’s British and French drafters included the economic and social rights to which their colonialist constituencies and the USA objected so strongly. (This was less out of overt neocolonialism than that the U.S.S.R. and its bloc had advocated for inclusion of social and economic rights, as well). In fact, the only dissenters were newly apartheid South Africa over freedom of movement, and Saudi Arabia over redundancy with (*not* compatibility of) Sharia law, with the other nine Arab nations adopting.

In a fascinating, though not entirely original, critique of the critics, Hogan shows that the first challenge to the universality of the UDHR came not from marginalized nations but from the very colonial powers who supposedly held all the cards at the UN table—which Roland Burke points out in *Decolonization and the Evolution of International Human Rights* “is the exact opposite of what academic proponents of cultural relativism hold as orthodoxy” (quoted in Hogan, 20). Even UDHR drafter René Cassin attempted to walk back the claim of universalism by questioning whether granting this much power to under-developed nations or under-educated families in developed nations was prudent. The most vociferous critics of the “colonial clause” and advocates of universalism were, however improbably by today’s assay: China, Chile, India, Iraq, Indonesia, Lebanon, Cuba, Egypt, and the Philippines.

While it is true that in the two decades following its promulgation, “the newly independent countries in Africa and Asia along with the Arab nations were among the most enthusiastic champions of human rights” (23), Hogan tracks the unraveling of consensus as several of these eventually gave way to authoritarian pressures amidst the instability of Cold War geopolitics. The failed proposal to establish a High Commissioner for Human Rights (HCHR), and, later, the 1990 Cairo Declaration of Rights on Human Rights in Islam along with the “Asian Values” debate in the run-up and proceedings of the 1993 Vienna Conference on Human Rights, marked the

confluence of anti-universalist movements in a growing commitment to cultural relativism among postcolonial nations” (28).

While the HCHR scrum of the 1970s was short-lived, the Arab and Asian critique of Western individualism and permissiveness and advocacy for rights language rooted in concepts like duty, respect for religious custom, and loyalty to one's community dovetailed with communitarian critiques of the “culture war” period—most notably the publication of Alasdair MacIntyre's landmark 1989 text, *Whose Justice, Which Rationality*. The remainder of the chapter and book turns to intellectual challenges to human rights, including an admirable summary of Foucault, Rorty, and postmodern/poststructuralist/postcolonial fellow travelers. Hogan seems most sympathetic to MacIntyre's original communitarian critique, however, which balances a “realist conception of truth and endorse[s] a pluralist stance regarding moral values” (40), and in so doing, continues to represent the strongest challenge to the abstraction, if not universalism, of human rights.

The life stages of the international and human rights communities after the postwar birth of the United Nations and the nascent UDHR are not unlike the waves of feminism that Hogan, Nash, and Frezzo each allude to. Developing nations first desired a seat at the table and repeal of discriminatory laws and practices but when one-nation-one-vote did not result in equal treatment, the persistence of hierarchy helped developing nations awaken to their own evolving national identities, and they wished to be recognized as not only equal, but different and unique. Now, the challenge for all nations, their citizens, and for the human rights community (as these authors tell it) is to deliberately decide what values unite these identities beyond pluralist self-determination, and extend them toward the goal of a just global whole.