

McCall-Smith, Review of Helle Porsdam, *From Civil to Human Rights: Dialogues on Law and Humanities in the United States and Europe*
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Helle Porsdam, *From Civil to Human Rights: Dialogues on Law and Humanities in the United States and Europe*

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Reviewed by Kasey L. McCall-Smith

PhD Researcher, University of Edinburgh School of Law; LL.M in International Law from University of Edinburgh; JD from University of Arkansas School of Law; BA from University of Arkansas.

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The interrelated nature of law and politics is not a new theme amongst academics in either field though history has proved that Europe and America have divergent views on exactly how these relate to one another in the area of human rights. In *From Civil to Human Rights: Dialogues on Law and Humanities in the United States and Europe*, Helle Porsdam manages to concisely and convincingly argue that in addition to law and politics, culture should be a mandatory consideration in the struggle to establish a meaningful transatlantic dialogue that will serve the world community in not only the promotion of human rights, but also in a better understanding of the best in one another.

Porsdam approaches her topic as a self-proclaimed cultural historian asking why certain things have been done as opposed to what could have been done. Both historic and contemporary American authors emphasise that Americans are defined by the law, a concept that is increasingly being recognised in European human rights discourse even if Europeans are loathe to attribute this to American. Using transatlantic tensions in the run-up to the Iraq invasion as a departure point, the book sets out to explore Europe as a contested terrain in an effort to ease the tensions on both sides of the Atlantic and quell some of the pent-up anti-American/anti-European feelings. As she points out, there is much common ground in the cultural and intellectual heritage that unites Europeans and Americans. Upon reaching the final page, the only conclusion is that these commonalities should be celebrated and used to create an all-encompassing transatlantic discourse on human rights.

The narratives presented range from academic and/or policy based to culturally based, including commentary by pre-eminent artists, which supports Porsdam's point that popular culture is increasingly intermingled with contemporary themes promoted by both law and politics. Each source utilised makes clear the European desire that human rights underpin the advancement of European culture in many spheres of influence including not only political, economic, or legal but, and arguably more important to many, also in the arts—those tangible expressions of European culture that can be exported.

The book reads as a presentation of three different considerations: Europe as a challenge, the divergent transatlantic dialogues, and, finally, the opportunities in commonality in transatlantic dialogues, especially those related to culture. The initial chapters are primarily concerned with a survey of Europe and the challenges inherent in creating a union out of the multitude of identities stemming from the historic use of national or ethnic markers as defining parameters. The underlying premise of the entire work is that Europeans, including politicians, policy makers, intellectuals, innovators and artists, all want to use human rights as the common glue that will bind Europe together. Chapter 1 examines the 'soul' of Europe and how the struggle for cultural identity plays a central theme in all aspects of European life. Chapter 2 then outlines the problems inherent in trying to define 'European' culture with respect to the vastly non-homogenous populations that fall under that remit. The second part of the chapter introduces the transatlantic relationship as a subtext for one of the major causes of the European identity crisis and ultimately uses American identity issues as a counterpoint to explain that it is the combined fear, loathing and intrigue of the American experience that drives European discussions on the matter. Underlying both ideas of Europe and America there is an obvious defining feature and that is how people do, and strive to, treat one another, whether this treatment is based on legal or moral mores. This discussion transitions into the second part of the book which analyses the current transatlantic dialogues, or lack thereof, that are taking place but where Europe and America seem to be unable to see eye to eye.

Chapter 3, 'Transatlantic dialogues, past and present', delves into the historical relationships between American and Europe from the inception of the former in order to set the stage for the present positions of each on the role of domestic law and the judiciary in human rights, rights-speak dissimilarities, and the role of international law, which are addressed in turn by the next three chapters. As much as the initial chapters focus on condescending European attitudes toward America, Chapter 3 points out that since its beginning in 1776 America has used Europe to define what it is and is not just as Europe has done the reverse. These anti-isms on both sides have moved from purely cultural movements into political platforms used on both sides of the pond to influence policy developments. The book interestingly notes the similarities in the historical dilemmas on issues such as slavery, expansion, war and peace but points out that America had the unique opportunity to create something entirely new and this newness was largely shaped by not only the successes but also by the failures. It is these successes and failures that continue to define America and Europe as they are measured on the human rights progress chart. The chapter also delivers hope that though transatlantic dialogues on the surface may seem in a dire situation, there are in fact efforts being made on official levels (including the New Transatlantic Agenda and EU-US summit meetings) to develop common approaches

to the environment, war and conflict because these are the issues that are important to both Europeans and Americans.

The role of the judiciary in the protection of human rights is an area where Europe and America have far more in common than they realise. Chapter 4 presents the idea of ‘Institutionalized European human rights’ and is focused on the development of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR). Citing Goldhaber’s observation that ‘the field of European human rights was pioneered by a handful of lawyers who studied American law during the civil rights era’¹, Porsdam considers that a failure to communicate or listen to one another explains, at least in part, why transatlantic dialogues on the issue are not in a better state when one considers the history of the European human rights movement. An important point of the chapter is the recognition that the European human rights institutions were greatly influenced by America but that between the ECJ and ECtHR Europe has taken the American Supreme Court model and advanced it to accommodate an integrated European Community. Where law has always been a large part of the American identity, human rights law is increasingly playing a part in what defines Europeans under this model and by recognising these similarities there is a great opportunity for a transatlantic dialogue.

Chapter 5 introduces the difference in the way America and Europe talk about human rights, crucially focussing on the American apathy toward second generation rights. American rights speak stems largely from the civil and political rights protected by its Bill of Rights while European rights speak aligns itself largely with the promotion of the welfare state. Though quickly pointing out that these are not staid divisions for each side of the Atlantic, the importance of understanding what motives lay behind the language used on both sides underpins the final chapters of the book and recognising the division provides some background as to why there is a lack of communication across the divide. The book has pulled together excerpts from various scholars about the unique law-based rights talk, or ‘law’s promise’, so important in America as a juxtaposition to the social fabric argument so prevalent in Europe which makes for very interesting reading. While not belabouring Sunstein’s concept of American exceptionalism as a reason for anti-European rights sentiment, there is a logical call to speak to the American opponents of second generation rights in a language they understand, that of the market, which is widely recognised as the increasingly common global language.

The next chapter, ‘Divergent transatlantic views on human rights: the role of international law’, presents the contrary American and European considerations of international law. The self-reflective Europe embraces the stability of an international order while America, by contrast, has adopted a less than enthusiastic regard for far-removed governance.

The chapter concludes with an adroit discussion about the full circle that the constitutionalism has travelled and notes the commonalities between America’s constitutional democracy and the current phenomenon which finds many European states moving toward the American style of law-based constitutionalism. The conclusion submits that regardless of the perceived failings of America’s highly legal,

¹ p. 80.

civil rights based approach to human rights, the European trend seems to be recognizing the value in using hard and fast laws as opposed to empty rhetoric even if they are using slightly different forms of constitutionalism.

Chapters 7, 8 and 9 explore the concept of culture and how it has tipped the empathy balance of the ordinary citizen in favour of human rights.

Focusing on ownership of the right to knowledge as a hot-button issue in Chapter 7, 'Transatlantic dialogues on copyright: cultural rights and access to knowledge', Porsdam argues that the access to knowledge is intricately linked to cultural pride. Copyright, she maintains, is the most pure expression of the relationship between law and literary ideas and here there seems to be increasing common ground in the form of internationally recognised standards even if the basis of ownership rights stem from different legal concepts. The main concern is that access to knowledge is now, more than ever, being treated as a right but it must be tempered against the right of the author to his/her work. The dilemma is being aggressively addressed not only by Europe and America but also across the globe, which affords common ground and the potential to further develop positive transatlantic relations.

Particularly interesting is the law and literature offshoot of law and popular culture which is a focus of Chapter 9, but to which allusions are made throughout the book and brought to the fore in Chapter 8, 'Transatlantic dialogues on 'law and literature': from 'law and literature' to 'law and humanities'.' The discussion highlights the fact that '[m]ost people learn about their legal system only indirectly, from crime novels, newspapers, films and television...' ² thus these are the media that must be examined in order to better understand the popular beliefs about law and justice of people and this is true on both sides of the Atlantic. This is a poignant point in terms of transatlantic dialogues about law when one considers the American crime dramas and novels that have become so popular in Europe. Here, Porsdam makes a case that the entrenched American phenomenon of 'law and literature' has gradually been accepted by European academics but should be expanded to 'law and humanities' in keeping with the methodological approach of the entire book.

Finally, the book culminates in Chapter 9 with the human embodiment of the transatlantic tension in 'Transatlantic dialogues on film: the case of Lars von Trier. Von Trier, a filmmaker, reflects the ironic position existing on both sides of the Atlantic where critiques of Europe or America use a language developed by the other to point out their shortcomings thus giving credence to the concept that exchange (and adoption) of ideas continues to flow between the two despite the vocal opposition to one another. Using von Trier's films to illustrate her point, Porsdam gives a human face to her theoretical contentions which drives home her main point that there is, in fact, transatlantic exchange happening.

Porsdam concludes her study with an optimistic outlook for both transatlantic relations and the future of human rights albeit tempered by the recollections of the multitude of scholars and artists she relies upon throughout her work. What is abundantly clear from the work is that there is no one definitive method of advancing either. Improving human rights dialogues across the board is going to take a wide

² p. 170.

range of efforts using an even wider range of approaches on both sides of the Atlantic and all should be mindful of the increasingly intertwined relationship between law and humanities, including popular culture. As she stresses in the final pages, ‘there is a common core upon which future transatlantic dialogues may be built’³. Both Europe and America should accept this commonality and progress it for the benefit of and opportunity to create a stronger human rights based world.

³ p. 204.