

Commentary

A COMMENTARY ON THE BOOK DISCUSSION 'THE HUMAN RIGHT TO DOMINATE'

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Introduction

On Friday 21 April 2017, the Amsterdam Centre for Contemporary European Studies ACCESS Europe —a joint cooperative initiative of the University of Amsterdam (UVA) and the Vrije Universiteit (VU)— organized a discussion on the book *The Human Right to Dominate*, co-authored by Nicola Perugini and Neve Gordon.¹ The event, which took place at the University of Amsterdam (UVA)², was convened by Thomas Spijkerboer —professor of Migration Law at the Vrije Universiteit (VU)³— and moderated by Yvonne Donders —head of the Department of International and European Public Law at the University of Amsterdam (UVA).⁴ In addition to the co-authors, Anja Eleveld and Maarten den Heijer also participated in the discussion as reviewers.⁵

The Human Right to Dominate was first published by Oxford University Press in 2015, as part of the series 'Oxford Studies in Culture and Politics'.⁶ Since then, it has gained international prestige, receiving a wide range of positive reviews and being globally praised by scholars in

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¹ Amsterdam Centre for Contemporary Amsterdam Studies ACCESS Europe, '*The Human Right to Dominate*: A discussion of the book by Nicola Perugini and Neve Gordon', at: <https://www.accesseurope.org/events/eventdetail/269/-/the-human-right-to-dominate> (accessed on 5 May 2017).

² *Ibid.*

³ Faculty of Law Vrije Universiteit Amsterdam (VU), 'Constitutional and Administrative Law: Thomas Spijkerboer', at: <https://www.rechten.vu.nl/en/about-the-faculty/faculty/faculty/constitutional-and-administrative-law/spijkerboer-l-a-j.aspx> (accessed on 5 May 2017)

⁴ University of Amsterdam (UVA), 'Prof. Yvonne Donders', at: <http://www.uva.nl/profiel/d/o/y.m.donders/y.m.donders.html> (accessed on 5 May 2017).

⁵ Amsterdam Centre for Contemporary Studies ACCESS Europe 2017, *supra* note 2.

⁶ Oxford University Press, '*The Human Right to Dominate*: Overview', at: https://global.oup.com/academic/product/the-human-right-to-dominate-9780199365005?cc=nl&lang=en&#_ (accessed on 5 May 2017).

different academic publications, such as by Lori Allen in *Global Discourse*⁷ and James Eastwood in the *Journal of Palestine Studies*.⁸

Both Perugini and Gordon have vast academic experience in analysing the universalization of the human rights discourse as a moral justification for the furthering of politics based on relationships of domination by different state and non-state actors in a variety of contexts.⁹ Nonetheless, *The Human Right to Dominate* adopts the Israeli-Palestinian conflict as its central case-study and as a framework in which the existence of a direct link between the manipulation of the human rights discourse and domination becomes particularly evident. The authors 'extensive research on this particular case-study, enabled them to conduct the complex analysis that they present in their latest work'¹⁰. Since the publication of this book, both authors have also collaborated on two academic articles regarding the politics of human shielding, for the journals *Environment and Planning D: Society and Space* and the *American Journal of International Law*.¹¹

The anthropologist Nicola Perugini is a lecturer at the University of Edinburgh, as well as a Mellon Postdoctoral Fellow in Italian Studies and Middle East Studies at Brown University. His academic research encompasses different domains of study, including law and spatial practices, embedded anthropology, asylum seekers, humanitarianism and settler colonialism.¹² Furthermore, in 2011 he was the co-recipient of the 2011 Melina Mercouri International Prize for the Safeguarding and Management of Cultural Landscapes, awarded for his work with the project DAAR (Decolonizing Architecture Art Residency, Belt Sahour, Palestine) and previously worked as a consultant for UNESCO in Palestine¹³.

The political scientist Neve Gordon is Professor of Politics and Government at Ben-Gurion University in Israel. He is also a member of the Institute for Advanced Study at Princeton University, as well as a visiting scholar at the University of California, Berkeley and the Watson Institute of the Brown University. His main research interests are the fields of Human Rights, the Israeli-Palestinian conflict and general political theory.¹⁴ He has published numerous articles on these issues in a variety of academic journals, such as the *International Journal of Human Rights*, *International Studies Quarterly* and *Middle East Law and Governance*. He is also the author of the 2008 book *Israel's Occupation*, and Editor of *From the Margins of Globalization: Critical Perspectives on Human Rights and Torture: Human Rights, Medical Ethics and the Case of Israel*.¹⁵

⁷ L. Allen, 'The human right to dominate, by Nicola Perugini and Neve Gordon', *Global Discourse* 2016-3 vol. 6, pp. 535-537.

⁸ J. Eastwood, 'Review: *The Human Right to Dominate*, by Nicola Perugini and Neve Gordon, *Journal of Palestine studies* 2017-2 vol. 46, pp. 91-92.

⁹ Oxford University Press 2017, supra note 7.

¹⁰ Ibid.

¹¹ University of Edinburgh, 'Research outputs: Nicola Perugini', at: [http://www.research.ed.ac.uk/portal/en/persons/nicola-perugini\(d420ff45-2724-4219-bddf-94f5aa2a1e89\)/publications.html](http://www.research.ed.ac.uk/portal/en/persons/nicola-perugini(d420ff45-2724-4219-bddf-94f5aa2a1e89)/publications.html) (accessed on 5 May 2017).

¹² University of Edinburgh: School of Social and Political Science, 'Dr. Nicola Perugini', at: [http://www.research.ed.ac.uk/portal/en/persons/nicola-perugini\(d420ff45-2724-4219-bddf-94f5aa2a1e89\).html](http://www.research.ed.ac.uk/portal/en/persons/nicola-perugini(d420ff45-2724-4219-bddf-94f5aa2a1e89).html) (accessed on 5 May 2017).

¹³ Brown University: Middle East Studies, 'Introducing Nicola Perugini into Middle East Studies', at: <http://middleeastbrown.com/introducing-nicola-perugini-mellon-postdoctoral-fellow-italian-studies-middle-east-studies/> (accessed on 5 May 2017).

¹⁴ Palestine Book Awards, 'Authors: Neve Gordon', at: <https://www.palestinebookawards.com/authors/item/neve-gordon> (accessed on 5 May 2017).

¹⁵ Ben-Gurion University of the Negev: Department of Politics and Government, 'Faculty of Humanities and Social Sciences: Prof. Neve Gordon', at: http://in.bgu.ac.il/en/humsos/politics/Pages/staff/neve_gordon.aspx (accessed on 5 May 2017).

As mentioned above, *The Human Right to Dominate* makes use of the current conflictive situation in Israel and Palestine. It reflects on the global threat posed by the legalized 'appropriation' of the human rights discourse by dominant groups as a moral justification to advance their political interests through different strategies, used to demonize the weak and undermine their own human rights.¹⁶ According to Perugini and Gordon, this instrumentalist use of the human rights discourse has been universalized and it has become a common practice for different liberal and conservative groups worldwide. Thus, this new *lingua franca* of global morality has gained different political meanings in different contexts of power and has corroborated and reinforced the existent patterns of domination.¹⁷

The authors mention different strategies used by different state and non-state actors to take advantage of the globalized human rights discourse in this regard. The 'appropriation' of the human rights discourse has become a decisive political resource by influential political groups to seek power and justify their struggles under a common moral language. This has led to a growing 'convergence' on the concepts and practices used by conservative and liberal actors, such as NGOs, within the content of their speeches, which are often delivered to a wide audience.¹⁸

Perugini and Gordon use the term 'mirroring' to reflect this deployment of similar strategies by different organizations and political groups in the advancement of their objectives. Thus, they argue that conservative groups are using the same language and institutional framework that certain liberal organizations, as well the same methodologies, to explore the political potential of the human rights discourse.¹⁹ Thus, despite their different ideological orientations, both types of organizations have shown an agreement in certain juridical assumptions materialized in a legalistic approach towards human rights. Such approaches concerned the law's authority, the courts' decisive role as the arbiters of disagreements and the adequate rules guiding the use of the of the legal vocabulary of human rights to discuss evidence.²⁰

Nonetheless, Perugini and Gordon note the growing manifestation of the existence of numerous 'inversions' in the use of the human rights discourse, as these organizations pursue distinct and often opposing political objectives, based on different ideals and beliefs. Therefore, although advocacy by both conservative and liberal NGOs often contains a similar use of the human rights language to address the same moral dilemmas, the goals that are advanced can differ radically.²¹ This is emphasized in the case of the Israeli-Palestinian conflict. The authors reflect on how the same human rights language is used in order to convey completely opposing views regarding the legal status of the Palestinian population and the legitimacy of the arguments claimed by both the Israelis and the Palestinian. For example, several liberal NGOs oppose the settlement expansion and oppression by Israel over the Occupied Palestinian territories, as a means to denounce the human rights abuses against the Palestinian people. On the other hand, conservative Israeli NGOs define the Palestinian as invaders, considering the Jewish settlers as indigenous victims. Thus, both authors consider that the human rights discourse has the potential of shaping legal categories of victims and perpetrators, altering the existing definitions through its manipulative use.²²

¹⁶ N. Perugini & N. Gordon, *The Human Right to Dominate*, 'Introduction', New York: Oxford University Press 2015, pp. 7-18.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

The Israeli-Palestinian case-study is analysed under the framework of four basic arguments in *The Human Right to Dominate*. Firstly, Perugini and Gordon criticize the classic ‘hydraulic model’, which assumes that the promotion of the human rights discourse leads to less domination, serving as an instrument for righting the historical injustices and exposing violations, restraining the power and actions of states.²³

Secondly, the authors emphasize the malleability of the human rights discourse, as it can justify domination, and simultaneously oppose it. In fact, it continuously produces new political meanings and is open to successive reinterpretations, subject to time-bound articulations, codifications and applications adopted by different political actors and translated into local idioms. Therefore, the ‘illusion of the original’ content of the human rights discourse as non-political and essentially neutral constitutes a misconception, according to the authors.²⁴

Thirdly, Perugini and Gordon argue that the state is not losing its centrality within the global order, as central unit of human rights advocacy, as it is still the source and target of human rights activism. Aside from its traditional role as the major perpetrator of the human right’s abuse in the modern post-World War II era, it has also become the protector of the human rights of its population. Moreover, the state also provides legitimacy to the global human rights regime, through the ratification of the pertinent conventions. Nonetheless, the authors acknowledge the growing importance of civil society and other non-state actors from different political orientations, such as NGOs, in human rights ‘advocacy. These non-state actors can align with the state’s political goals and as such, have the capacity to foster patterns of domination, as in the case of conservative NGOs in the Israeli-Palestinian case.²⁵

Finally, Perugini and Gordon emphasize the ability of the human rights discourse to define who is the subject of human rights, thereby demarcating the limits of their allocation and protection from abuse. In fact, the patterns of domination create and protect these borders, as in the case of conservative NGOs in Israel, which consider that the protection from human rights abuses needs to be granted to an exclusive community —the Jews —, as the Palestinian are deliberately excluded.²⁶

The book discussion started with a presentation of the main arguments discussed within *The Human Right to Dominate* by Perugini and Gordon. Perugini delivered a speech based on the content of the third chapter of the book, ‘The Human Right to Colonize’, which focuses on the appropriation of the human rights discourse by different conservative Israeli NGOs. These NGOs mirror the strategies of other liberal organizations within the framework of a colonial dialect, to further their settler’s objectives. This is based on the political domination over the Palestinian population, who are considered as invaders deprived of rights.²⁷

Thus, these conservative NGOs have promoted law enforcement, have reported on police violence, and have made use of litigation, lobbying and media mechanisms for these purposes.²⁸ The authors refer to the campaign promoted by the NGO Regavim, based on the notions of law enforcement and discrimination. The campaign has been aimed to promote the demolition of Palestinian houses, achieve the restriction of Palestinian construction in Israel, denounce the

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Idem*, ‘Chapter 3: The Human Right to Colonize’, pp. 53-81.

²⁸ N. Perugini & N. Gordon, ‘Human Rights and Domination’, *Amsterdam Law Forum* 2017-2 vol. 9

‘illegal’ Palestinian production of charcoal and demonize the Palestinian Bedouin villages as illegal outposts²⁹.

Finally, the authors provided a set of solutions to prevent future use of the excessively legalized and professionalized human rights discourse as an instrument of domination over the weak by political elites. Perugini and Gordon reflected on the content of the conclusion of their work, ‘What Remains of Human Rights?’. An opinion article based on the content of this presentation by the authors can be found within the present issue, under the title ‘Human Rights and Domination’.³⁰

The book discussion was followed by the presentation of two book reviews by the Assistant Professor at the department of Social Law at VU Anja Eleveld³¹, and the Professor of International Law at the Amsterdam Centre for International Law, and Vice-chairman of the Meijers Committee Maarten den Heijer.³² Eleveld analysed the content of the book from a theoretical perspective, by applying the speech acts framework developed by Austin to human rights claims to assess their perlocutionary dimension. Eleveld mentioned the work of Karen Zivi *Making Right Claims* as her main source of inspiration to focus on the performativity of human rights in connection with different contexts of political struggle.³³

Therefore, Eleveld concluded that the act of claiming human rights still has the potential to transform relations of domination, although this is doubtful in the case of the Israeli-Palestinian conflict. Finally, she considered that the performative act of making human rights present among the public audience could become more persuasive and effective than merely presenting a verbal human rights discourse. Her contribution can be also found as an opinion piece within the present issue, under the title ‘Performing Human Rights in the Context of the Palestinian Conflict’.³⁴

Den Heijer presented his personal view of the content of the book, considering the valuable contributions of the author’s work as a radical approach to analyze the abusive use of the human right’s discourse as a form of lawfare in the context of the Israeli-Palestine case. Nonetheless, he considered that while the analysis of the institutionalization of the human rights discourse is adequate in the Israeli-Palestinian situation, it may not be applicable to other contexts. Furthermore, he raised concerns regarding the authors’ approach towards International Humanitarian Law, as they aim to change the existing norms to enact an absolute prohibition of attacks against protected persons and buildings when they are used as shields. Finally, he determined that the value of the book was mainly based on its analysis of the manipulation of the human right’s discourse as an instrument of political domination, rather than on the solutions provided within its conclusions.

The lecture ended with the presentation of different questions by the members of the audience and the reviewers, which were answered by the authors. This initiative provided the opportunity of engaging in an open discussion of the most controversial aspects of the potential abuses that

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Vrije Universiteit Amsterdam (VU): Faculty of Law, ‘Anja Eleveld’, at: <https://rechten.vu.nl/en/about-the-faculty/faculty/faculty/constitutional-and-administrative-law/eleveld-a.aspx> (accessed on 5 May 2017).

³² University of Amsterdam (UVA), ‘Mr. Dr. M. Maarten den Heijer’, at: <http://www.uva.nl/en/profile/h/e/m.denheijer/m.denheijer.html> (accessed on 5 May 2017).

³³ A. Eleveld, ‘Performing Human Rights in the Context of the Israeli-Palestinian Conflict’, *Amsterdam Law Forum* 2017-2 vol. 9.

³⁴ *Ibid.*

can be perpetrated through the articulation of a human rights discourse based on politics of domination by different state and non-state actors.