HUMAN RIGHTS IN CANADA: ‘WE MAY BE BETTER THAN MANY, BUT THAT SHOULDN’T BE THE MEASURING STICK’

NINETTE KELLEY

Ninette Kelley is a former senior officer with the UN High Commissioner for Refugees. She is the author of *People Forced to Flee: History, Change and Challenge* (2022) and previously served in several senior management positions with the UN agency for refugees in Geneva, Beirut and New York. In Canada, she served eight years on the Immigration and Refugee Board and held various policy roles with international humanitarian agencies focusing on development, immigration and refugee issues. She is also the co-author of *The Making of the Mosaic: The History of Canadian Immigration Policy*, with Michael Trebilcock, and they are currently writing a book on contemporary Canadian immigration policy. Her other publications are in the areas of human rights law, citizenship, refugee protection, gender-related persecution, and the Canadian Charter of Rights and Freedoms. She is a lawyer by training.

Ninette Kelley spoke with Randy Boswell, guest editor of this edition of Canadian Issues, in December 2023.

Universally, across the globe, are we on the right path when it comes to human rights? Are we making continuous progress? Or is this something that can ebb and flow?

Well, from my perspective, I think the trajectory is definitely a positive one. But it’s not necessarily a line that just keeps on accelerating upward… If you look at our society — the rights of women,

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the rights of minorities, the rights of LGBTQ individuals — there's still a lot to a lot of progress we need to make, but it's nothing like it was 50 or 100 years ago. So, it's a question of whether you see the ground glass half empty, or the glass half full. I always prefer to see it as half full — but cautionary, that we can't become too complacent. Because there are so many areas in our lives, in our own practice, in practice of governments, that are inconsistent, and that we need to constantly hold ourselves to account.

The Universal Declaration of Human Rights is a set of words. It is a set of statements of principles. Do these things matter? Because, of course, human rights and their implications happen in real life, on the ground, where people live and interact with other people and militaries and other things. What does a declaration, a set of words, accomplish?

I think it does matter. I think it sets at least a normative framework, a threshold by which you can measure your actions against others. But the devil is always in the details. And I get a little tired, I would say, of a lot of rights talk. 'I have a right to this. I have a right to that.' Because quite frankly, I think we all have rights, and almost any manifestation of an expression of human preference or will or accommodation is a reflection of a right. Where it becomes difficult is when you have competing rights, (where one person says) 'I want my rights respected.' And another person says, 'That infringes on mine.' And that's where words themselves can't make the difference. What you need to do is (look to) a system of adjudication, of balancing of my rights against somebody else's — how much does this mean to me versus how what is the cost to others. And that's where I think the interplay of rights becomes much more difficult. So while I think it's really important to have normative frameworks, I don't think standing in the middle of the street and chanting, 'We have a right and my right has been violated,' gets us very far. It's really in the adjudication of those rights, that the real progress is made, I would say.

In 1948, Canada initially abstained from supporting the Universal Declaration of Human Rights. It subsequently, under some pressure, signed on with the community of supporters who brought this into effect. Looking at Canada specifically, how would you characterize this country's embrace of the principles of human rights?

It depends on which period of time. Certainly in the post-war period, we were not very stellar. And in the area that I'm most familiar with, which is immigration, citizenship and all the rest, we were quite slow — particularly on immigration. We did not abandon our racial preferences until the late 1960s. We started to in the early 1960s, but they didn't really get banished until 1969 or so. We were very reluctant to take in refugees, including in the post-war period. We didn't sign the international refugee convention of 1951 until 15 years later, because we wanted to maintain our ability to select who came into our country and to do it in a way that preferenced those that we thought were the most desirable people. And others? We didn't open our doors. And even when we did start opening our doors in the refugee sphere, in the Cold War period, we were also very partial in that regard, too. So, tending to give preferential treatment to refugees from Communist bloc countries and very little attention to refugees from Africa or from the Americas who are fleeing right-wing dictatorships

and so forth. So I think our progress was initially very slow.

I would say, however, that with the advent of the multiculturalism policy, the *Multiculturalism Act*, the Charter of Rights and Freedoms, we made much more progress — which goes to show you, again, how normative policies can actually help shape developments going forward. So they remain very important. Now, are we fully there? Obviously not. I think there is a tendency for Canada and Canadians to view ourselves as honest brokers, as fair-minded, as generous. But there are many examples in our own policies, processes, approach to 'other', that still need a lot of work. And we may be better than many. But that shouldn't be the measuring stick. We should always strive to reach the ideals that we aspire to.

Your career has involved more than just speaking about human rights. And I wonder if you can conjure a time for us when you felt . . . I want to say an exhilaration, but maybe it is the opposite — frustration — when it comes to achieving progress in human rights. I'm asking you to talk about something personal. Is there something that stands out in your mind, from your time in this field, that helps illuminate what it means to achieve a human rights progress?

I've never really thought about it that way. But what an interesting question. There's not just one moment in time, but I can give you, maybe, more. I think I had the great privilege of sitting on the Immigration and Refugee Board, where I was heard refugee claims as well as appeals of removal orders in the denial of family sponsorships. And I have to say those two positions were wonderful. Because we could provide, in that job, protection to people who were really in need of it. And I think that speaks well that we had a system and we continue to have a system that recognizes the rights of refugees to come to this country and have their claims determined, and to receive protection when they are in need of it. So that was pretty rewarding.

And secondly, on the immigration side, to be able to say to somebody who was brought up before the board for criminality, because they had mental difficulties, but they'd been in Canada for their whole lives, to give equitable relief in those circumstances. Again, that's a balancing of rights — the rights of the person versus the rights of Canada to say you must leave. And it was, it's in those, those experiences, I think, where you can feel heartened by the fact that we do have systems and mechanisms in place to give real meaning to the human rights that are embodied in these loftier principles.

Now, on the other side of it, I would say that probably my experience in Lebanon was among the most viscerally formative, in many respects, even though it came later in my career. But there, to witness first-hand the absolute shredding of all attention to human rights — the brutality inflicted on the Syrian refugees that fled into Lebanon, the loss of their entire lives and and really, in many respects, their futures, too. It was, well, it was searing in a way that I will never forget. And it shows how quickly we can slide off the rails — not we, but (a community, or some in a community) can violate people's individual human rights and collective human rights. (This is) tempered, of course, by the fact that there was a lot of international assistance that came in, to try to bring greater hope and dignity to the lives that were so uprooted and torn

apart. So you had those two sitting in the same in the same context — one, a positive one, that there's a lot that we can, coupled with this depressing scenario of ongoing war, conflict and violence that we see today, not just in Syria, but now elsewhere. That reminds us of how far we still need to go.

What is it that Canada can be doing — should be doing — on the international front to try to meet not just its own obligations, but to encourage other countries around the world to move in the right direction when it comes to recognizing and protecting human rights?

Well, it's interesting, as you say, not just in what we can do, because that's where I think you start. With Canada, we're very strong on vocalizing powerful sentiments of respect for human rights. And yet, in our own backyard, we have work to do. And I think if we look at our Indigenous communities, that is an ongoing issue that we need to really take much more seriously than we do right now. It's easy for us to preach to other countries (but) in our own backyard, we're not doing well. I can tell you, on the refugee side, — we're pretty good. We are seen as a very solid actor, and rightly so. We bring in a lot of refugees for resettlement. But remember, they're also ones that we select. And while the government selects persons that are the most vulnerable, we are moving more to a private sponsorship model that doesn't necessarily reflect (that); it chooses people (who) have connections in Canada, but they might not be the most vulnerable. And so, we're already starting to see our commitment to the most vulnerable refugees sliding. And where I think there's a real concern is our approach to asylum seekers who come to Canada to claim asylum. We are doing whatever we can to limit those numbers. We have taken steps in the last 20 years to block access, to find people ineligible to make a refugee claim on, I would say, very dubious grounds. We've restricted rights of appeal, we've done all sorts of things that are inconsistent with our often-quoted and stated values of respect for human rights, responsibility and burden-sharing. That's in the refugee field, not to mention other areas of immigration law practice. So, I do think we need to start there. And I think we need to be a little bit humble on the international stage. I've been to many international meetings where Canada — for example in 2016 — got up and spoke in a very prideful way, understandably, about our how we had agreed to accept 40,000 Syrian refugees. But please remember, at the same time, Lebanon, which is probably a third of the size of Ontario, had taken in a million. So it's also respecting where we stand in relation not just to our peers in the developed world, but to those countries who have to shoulder far more in the middle- and low-income countries that are taking in way more refugees than we do. We need to to keep that perspective. I think sometimes we lose it.

We sometimes imagine ourselves, that Canada is a beacon to the world, when it comes to human rights. How bright, or dim, is that beacon in your view?

I think it's pretty good — I really do. But I think, again, we have to be humble. Look at the size of our population versus the size of our country . . . With environmental migration (for example), we should be expected to do more. I think you'd find us wanting, certainly, in respect to what our commitment is to foreign aid, foreign assistance, and also in terms of rights within the workplace and criminal law — there's all sorts of areas that I think we would

not compare favorably to other nations. I put the Nordics as an example. So I keep coming back to this — I think we've got to be humble and take and take a hard look at what we're doing well and what we still need to improve on, and be a little more transparent about recognizing the progress we still need to make.