

NEW BLACKWELL COMPANION TO POLITICAL SOCIOLOGY

Towards a political sociology of human rights

There is no doubt that until recently, the study of human rights was completely dominated by scholars of law and by political philosophers. Now sociologists (including those located institutionally within the discipline as well as those working with sociological concepts in anthropology and International Relations) are beginning to make a contribution towards understanding how human rights are developing. It seems evident that working from a sociological perspective that takes seriously questions of power and politics, social divisions and conflicts, differences in interpretations of human rights and in the conditions of social action needed to realise them, enables insights into human rights practices beyond those of positive law and normative philosophy. Much discussion amongst sociologists has, however, turned on why the discipline itself has historically neglected questions of rights. One of the main reasons is undoubtedly the now familiar charge of “methodological nationalism”, the way in which sociologists have tended to equate “society” as the object of their study with the borders of nation-states in a way that precludes understanding of social relations and interdependencies across state borders (see Beck and Sznaider 2006; Sznaider and Levy 2006). Interestingly, it is not only the growing interest in globalization that now leads to new consideration of human rights; it is also that (as we shall discuss below) human rights are themselves globalizing. In general, however, there appears to be a consensus emerging that tendencies towards cultural relativism combined with a suspicion of the individualism of rights have generally contributed to a lack of sociological interest in human rights. Studies of citizenship, focused on institutions and collectivism, have not faced the same difficulties. Although citizenship and human rights are increasingly entwined (see, for example, Soysal 1996; Somers 2008; Nash 2009a), human rights are still less concrete, less tied to the nation-state, and to legal facts of membership and territoriality than citizenship rights, and they seem, therefore, to raise difficult questions of universality, morality and ontology that sociology, formed in terms of value-neutrality and relativism, is ill-equipped to address (Turner 1993; Morris 2006; Somers and Roberts 2008).

Now that the sociological study of human rights is underway, however, how much of an obstacle are relativism and the putative individualism of rights to its development? In one of the earliest discussions of human rights in contemporary sociology, Bryan Turner has argued that, in order to be go beyond relativism and value-neutral positivism, sociologists, and others, should understand the value of human rights as founded on an appreciation of common humanity: he suggests that the vulnerability of the human body provides the necessary universal basis for human rights (Turner 1993, 2006). Similarly, but without making a foundational argument, Blau and Moncada argue that sociologists should embrace the moral project of the human rights movement, becoming as committed to their realization as any other activists (Blau and Moncada 2005). Neither foundationalism nor activist commitment seems to me to be necessary, or desirable, as a condition of the development of the sociology of human rights. In the first place, foundational claims do not seem to be necessary to motivate the majority of secular human rights activists (Christians, of course, may continue to see human rights as founded in natural law, and other religious groups may also human rights as sacred) (Gearty 2006: chapter 2). One reason why

sociologists have become so interested in human rights is their expansion since the end of the Cold War, which is due to geo-political contingencies rather than the achievement of solid ontological foundations on which to base human rights claims. Similarly, sociologists may be convinced of the general validity and value of universal human rights and yet be sensitive to the effects of the specificity of their historical and geographical origins and how they are mobilized today. Indeed, it also seems clear that uses of human rights are not always of general benefit; we have only to consider how arguments for the illegal war in Iraq were couched in terms of human rights (Chandler 2006). Whilst the study of human rights offers a great opportunity to study how moral ideals motivate social action, it is also necessary to develop theories and methodologies that enable us to gain some critical distance on how they are used and institutionalized in a range of different ways.

In practice, most sociologists (and also our fellow travellers in anthropology and IR) tend to think of human rights as socially constructed (see, for example, Donnelly 1989; An’Naim 2002; Kurasawa 2007; Somers 2008; Keck and Sikkink 1998; Goodale and Merry 2007). Studying the social construction of human rights enables us to understand how their historically and geographically specific meanings are formed and contested, how authority is created or won to define what human rights are and should be, and whose rights and obligations are at stake in a particular contest (see Nash 2009b: chapters 1 and 2). This approach to the study of human rights extends the concepts and methodologies of sociology to deal with new objects and sites of action without requiring that the discipline take a ‘moral’ turn.

In terms of their supposed individualism, there is no doubt that human rights are predominantly, though not exclusively, individual rights. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948 and supplemented by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which entered into force in 1976, are the basis of human rights practice today. The first Articles of the UDHR and the ICCPR concern classic civil rights of the individual. Especially in the West, it is these civil rights that have set the human rights agenda, with an emphasis on freedom of speech and association, the prevention of wrongful imprisonment, torture, and murder by the state. These agreements also include political rights, the right to participate in government whether directly or through representatives. The UDHR also contains articles specifying social, cultural and economic rights in some detail, including the right to education, to a decent standard of living, to health care and so on. It is these that form the basis of the ICESCR. However, although all members of the UN have signed and ratified the UDHR, and most (with the glaring exception of the US) have signed and ratified the ICESCR, ‘human rights’ in the West is virtually exclusively used to refer to civil rights: social, economic and cultural rights tend to be ignored or devalued by Western states. It has, therefore, been difficult for NGOs and developing states to put these rights on the agendas of Inter-Governmental Organizations such as the World Bank and the G8, and also of the most effective bodies of the UN, notably the Security Council.

In fact, even though social rights have been part of the human rights regime since 1948, it has often been argued, especially throughout the Cold War, that it is only civil rights that can really be treated as human rights at all. Civil rights are seen as

negative rights, meaning that they enable the clear identification of specific obligations on the part of specific agents to *stop* acting in certain ways, to stop state repression (Donnelly 1989: 33-4). As such, legal judgement is generally considered sufficient to identify and rectify violations of human rights. In contrast, social, economic and cultural rights are positive rights, which require open-ended obligations on the part of states to provide resources and benefits that can not be as clearly specified, or as easily put into practice, especially where states have very limited capacities in terms of a tax base. From a sociological point of view, however, the distinction between negative and positive rights is misleading. This is not because social, economic and cultural rights are more valuable than civil rights, even if it is certainly true that without the basic means of subsistence freedoms of speech, protest and mobilization are worth nothing. It is rather that both types of human rights, civil rights and social, economic and cultural rights, are equally social: the realization of human rights in practice requires the formation of political will, which requires at least minimal agreement on the inter-subjective meaning and value of human rights; and it also requires specific social institutions to promote, monitor and safeguard the ongoing exercise of those rights. This is no less true of civil rights to individual freedom than it is of social rights to education or health-care. Human rights not to be arbitrarily imprisoned and tortured are far from easily put into practice, as we have seen all too clearly in the denial of fundamental rights to detainees in Guantanamo Bay (Johns 2005; Nash 2009b). Clearly the fact of a reasonably well-functioning liberal-democracy is insufficient to prevent violations of human rights: well-funded, professional and highly-motivated human rights organizations and forms of communication to put pressure on the judiciary and on the government are crucial to remedying human rights violations. Even where merely 'negative' civil rights are concerned, then, a wide range of social institutions and the mobilization of collective meanings of human rights both outside and inside the state are absolutely necessary to ensure that they are upheld.

In broad terms, then, the sociology of human rights involves studying human rights as practices, as the ongoing achievements of social action rather than as legally codified individual entitlements. Human rights are social in that they are constructed and sustained in ongoing practices that enable us to make sense of our common life and to orient our intentions and action in relation to each other. Human rights are also social in that, although they may be claimed by individuals, it is only collective meanings and institutions that enable those claims to be in any way effective. There are currently a number of areas in which those studying human rights as social, whether or not they identify as sociologists in narrow disciplinary terms, are making important contributions to the study of human rights.

Human rights and state transformation

Human rights are globalizing. This may seem a strange statement: as human rights are universal, they are supposed to apply to all individuals as human beings; surely, therefore, they are necessarily global? Human rights are now globalizing, however, insofar as the vast majority of states have now committed themselves to precise and detailed international human rights agreements, and human rights activists at the international level and within states are working to deepen and extend those commitments. As such the globalization of human rights is part of the wider, and continuously changing, pattern of flows of people, goods, images and ideas across territorial borders that characterise globalization. Human rights differ, however, from

other such transnational flows, which often call into question states' capacities to manage their own domestic affairs. Human rights claims are ultimately directed to states as the only forms of social organization with the resources and legitimacy to properly guarantee human rights. It is also only state actors (and occasionally those who are complicit with them, like multinational corporations in US tort law), who may technically be in breach of international human rights law (Meckled-Garcia and Cali 2006). The globalization of human rights therefore adds to states' responsibilities, rather than undermining them, and so it contributes to state transformation.

Modern states were established in accordance with the legal convention of 'sovereignty', which regulates affairs between states as discrete and (even if they are actually unable to maintain their autonomy) as each one in principle independent from the others. The history of 'sovereignty' is highly complex; established in principle in the Treaty of Westphalia in 1648, it was extended to European colonies only in the twentieth century. The UDHR was actually created at the high point of the ideal of sovereignty, and upholds it as a legal convention: it is state parties that agree to uphold and respect universal human rights (see Nash 2010: XX-XX). With the globalization of human rights, however, 'sovereignty' is coming under pressure, albeit pressure that is unevenly distributed following existing geopolitical fault-lines. The 'thickening' of international legal agreements and the complex arrangements into which states enter in order to draw up those agreements and to organise their implementation, monitoring and, where necessary, their supplementation with other agreements, is transforming states as such. As Slaughter argues, states are now disaggregating across borders, as government regulators, judges and legislators network with their counterparts from other states and from supranational institutions like the EU, in order to share information, harmonize regulation and develop ways of enforcing international law (Slaughter 2004; see also Held 1995). Similarly, Sassen has analysed how, in specific cases, the work of national legislatures and judiciaries is now caught up in processes of globalization which 're-orient particular components of institutions and specific practices... towards global logics and away from historically shaped national logics' (Sassen 2006: 2). What is most significant in this respect is the scale at which human rights claims are made. As we shall discuss further in the following section, transnational advocacy networks mobilize and act at both international and national levels, often drawing on both international and national law and addressing state officials in international and national courts and governments as appropriate. Indeed, human rights are very often 'intermestic', both international and domestic at the same time. The chief example is when customary international law is used in national courts, confirming and extending its status *as* law whilst binding the national state to its observance in the particular case in question (see Nash 2009b: 32-40). It is through such practices that the state is transformed. Indeed, sovereignty itself is potentially altered in this way. It would be mistaken to see sovereignty as obsolete, or as justified now only insofar as states adopt the responsibility to protect human rights (see Bickerton et al. 2007). On the contrary, the contestation of state sovereignty, linked to ideals of democracy as popular sovereignty, is crucial to mobilizations against the extension of human rights. However, there is no doubt that, especially in international settings, the responsibility to uphold human rights is important; it now co-exists, and is often in conflict with, traditional justifications of sovereignty as the ultimate guarantee of state security (Sznajder and Levy 2006; Nash 2009a: chapter 3).

Human rights organizations, legalization and the limits of law

If human rights are ultimately secured only through states, what is invariably also crucial is the pressure political and legal advocacy organizations put on governments and the judiciary to uphold the international human rights agreements to which states have committed themselves in principle. Just as states are being ‘stretched’ through the globalization of human rights, so too human rights organizations, even those that operate within states, are now invariably linked into global networks. Indeed, in cases where states are extremely repressive, such organizations may survive only because of the way they are supported across national borders; they certainly can not succeed without such networks. Commonly, domestic human rights organizations bypass their own repressive states and search out international allies – INGOs and/or representatives of state actors that are powerfully positioned in IGOs, – by means of which pressure can be brought to bear on state elites from above and below. If such organizations are successful, and it may take many years to make a difference, eventually state elites will alter their behaviour to comply with international human rights norms (Keck and Sikkink 1998; Risse et al. 1999). In many cases, of course, human rights organizations are not successful and state elites continue either to deny, ignore, or, occasionally, to offer justifications for the human rights violations for which they are responsible, whilst ordinary people are also often willing to ignore or deny what they know to be happening (Cohen 2001).

Why do organizations have such difficulty in successfully bringing pressure to bear on states, even when they have signed up to international agreements which ostensibly commit them to accepting responsibility for guaranteeing human rights? There is no doubt that law is important to securing human rights, but it is clearly not enough, neither at the international nor the national level. One reason for the inadequacy of law in this respect is that human rights law itself is somewhat ambiguous: although it is predominantly concerned with protecting the civil rights of the individual, it has been crafted by state elites who have the aim of protecting the very existence of the state itself. State security remains a dominant consideration for state elites. This is very clearly seen, for example, in the fact that the traditional state prerogative to suspend law in times of national emergency is explicitly enabled in international human rights law. This means that, under certain conditions, states may legally detain individuals without proper procedures of law just at the point at which ‘suspicious individuals’, often members of racialized ethnic minorities, are likely to be the victims of a state supported by a majority fearful for its safety (Agamben 2005; Rajagopal 2003: 176-182; Gearty 2006). In addition, again, as we have seen in the case of those arbitrarily detained and tortured in Guantanamo Bay, even where the law appears to be absolutely clear in prohibiting certain state actions, and even in states which are apparently well-regulated by the rule of law, responsibility for human rights can quite easily be evaded by professional legal obfuscation. Detainees were incarcerated in Guantanamo without recourse to courts that were recognised as legitimate by international human rights organizations from 2001 until 2008, when after lengthy and hugely elaborate legal proceedings the US Supreme Court finally ruled that their cases should be tried in civilian courts (see Nash 2009b: chapter 3).

The law is important, then, to respect for human rights, but even when the law is well-established and there are reasonably well-functioning institutions to put it into practice, it is far from enough. The law itself does not stand outside or above social

life: what the law means depends on how it is socially constructed and on how actors are able to win the authority to definitively pronounce on its meaning. The law is itself social; whether and how the law is institutionalized is a factor in how well human rights ideals are realized in any particular case, but it is just one factor amongst others. The codification of human rights in international law is important in that it may enable organizations to formulate concrete and specific demands of states, which may then be supported by other influential actors in the human rights field. But a sociology of human rights that focuses on how organizations actually succeed, and fail, to put human rights ideals into practice displaces law as the main focus of research into human rights: its focus will be at least as much on the limits of law as such, and on the other important factors that are necessary to realise human rights.

Subjectivity and solidarity

If sociologists of human rights are concerned with the ways in which the social institutions of citizenship and the state are being altered by particular uses of human rights, they are also concerned with the effects of uses of human rights on cultural formations, especially on the inter-subjective sense of how 'we' experience political community. One of the main areas of debate in this respect is the question of how far uses of human rights are contributing to cosmopolitan identities, to disengaging from the nation, the dominant form of organization of political community in modernity, and to experiencing oneself as part of 'humanity', as a human being amongst other human beings. Here questions of collectivism and individualism are debated explicitly in relation to uses of human rights.

Kurasawa's (2007) study of global practices of human rights suggests that they may be producing new forms of unity and solidarity, piecemeal and from the 'bottom up'. A principal fear of those working on cosmopolitanism and human rights, however, is that, because of the emphasis of human rights practices on individual rights, they are rather more likely to exacerbate the individualizing effects of neo-liberalism (Beck 2006; Bauman 1999), and to undermine still further experiences of national solidarity on which policies of redistribution through the welfare state have depended (Turner 2002). It is surely the case that, for the most part those who practice 'cosmopolitan virtues' of disengagement from the nation are likely to be the more privileged in society, those Calhoun has called 'frequent flyer cosmopolitans' (Calhoun 2003).

Although Kurasawa's view that transnational communities are being formed around victimisation and the remedying of human rights wrongs is important, it may also be that the imagined community of the nation, far from becoming out-dated as a result of creative uses of human rights, is at the same time becoming important in new social conflicts over resources, both material and moral. In fact this is what I found in my comparative study of uses of human rights in the US and UK. It is only really human rights activists who now understand human rights as already having established a kind of global citizenship, and who identify as members of a global political community in which rights and obligations are clearly specified. These activists are generally members of transnational human rights organizations. For the most part, human rights issues are framed in terms of the interests and values of the nation; even where it is strongly argued that human rights should be respected, this is quite often seen as a question of national pride and/or national shame rather than in terms of global citizenship or universal morality as such. In the cases I studied it seemed that national identities were being reworked, even revived, in the context of globalizing human

rights, not necessarily against human rights, as we might expect, but often in quite unexpected ways to justify upholding the moral equality of persons who were not citizens, and who were sometimes not even resident within the territory of the state in question (Nash 2009b).

Comparative political sociology of human rights

It is common as a sociologist working on human rights to be asked whether or not you are yourself in favour of human rights. I have argued here that it is unnecessary to establish an ontological and moral foundation for human rights in order to study them sociologically, and also that it is important not to assume that human rights are necessarily a progressive force for justice. This professional scepticism need not preclude personal support for the universality of human rights, but it does mean that what the sociologist must advocate is close empirical investigation of each instance of their use before reaching judgement. On the other hand, the theoretical aim of the sociology of human rights as I have outlined it here, to investigate how social constructions of human rights are formed, mobilized and defended, would seem to militate against, even potentially undermine, their moral worth as universals. What remains of the universality of human rights when social constructions are so various, and so specific to social actors who mobilize in any given context? Does the sociological perspective on human rights contribute to value relativism in terms of its public impact, and potentially, therefore, to undermining support for human rights altogether?

This is a difficult question, but it can not be avoided. From a methodological point of view what makes human rights distinctive as an object of sociological study is lost if we are unable to take into account not only the variety of empirical uses to which ‘human rights’ is put, but also the way they are intended to protect and sustain all human beings, regardless of where and how they live. In addition, it is the value of human rights that motivates its advocates. In other words, if we treat ‘human rights’ as nothing more than the empirical uses to which the term is put, we lose sight of the quasi-transcendental, moral value of human rights, which is what makes them politically distinctive and – at least in part – motivates those who are actively trying to extend and secure human rights.

One solution to this problem could be to consider the positive law of international human rights as providing a universal framework against which any particular uses of human rights might be assessed. In this way ‘human rights’ apparently become a neutral object of study (see, for example, Landman 2006: 5). But this methodological strategy begs a number of questions. Firstly, as we have seen, there are serious lacunae in the law of human rights where state repression of individuals may actually be legal under certain conditions – where individuals may be imprisoned without due process of law in cases of declared states of emergency. And secondly, whilst there is apparently a reasonable degree of consensus on the value of international human rights law, judging by the number of states who have signed and ratified human rights agreements, there remain vigorous disagreements on which aspects of this body of law should be emphasised and prioritised. Most obviously, there is sharp disagreement between the US and many developing countries, including China, on the relative value of civil and political rights on one hand, and social and economic rights on the other (Woodiwiss 2003).

One way for sociologists to approach the study of human rights as social constructions whilst nevertheless retaining a view of the significance of their quasi-transcendental, universal status, is through comparison across different contexts. In fact, the question of the extent to which particular uses of human rights militate against, mitigate, or alternatively actively encourage the repression of particular groups in society is one that implies comparison with human rights ideals and legalized human rights norms, but this is rarely made explicit. Qualitative comparison must be carried out case by case, it is difficult because the relevant standards of comparisons must emerge through the course of the research rather than being specified completely in advance, not least because there must be sensitivity to differences as well as similarities between cases, and it is therefore extremely time-consuming. Qualitative comparison is a solution to the potential erosion of the value of human rights that is a danger in social constructionist approaches, however, insofar as it enables, even compels, assessment of universal human rights claims both in their own terms and relative to the uses of human rights in comparable cases, whether of other states or of other groups within the same state.

As normative standards, human rights raise very particular theoretical and methodology difficulties for political sociology. But at the same time they offer significant opportunities to expand the scope of sociology, to take normative dimensions of social life seriously as such rather than trying to neutralize them (by conflating human rights and positive law, for example), or evading them (either by passionate advocacy of human rights norms, or by refusing to engage with their value as universals at all).

Human rights are political

What this brief outline has shown, I hope, is the relevance of the sociological imagination to the study of human rights. As human rights are social, and not merely legal, a sociological perspective is necessary to understanding what difference uses of human rights are making to individuals and to collective life today. Although I have been writing about 'sociology' very generally in this chapter, following most of the commentators in this area, I actually want to argue for a political sociology of human rights, as dimensions of power and politics are so crucial to their realization and to unintended consequences of attempts to put them into practice. To conclude, then, I will briefly attend explicitly to the political dimensions of human rights.

Human rights are political both in the narrower and the broader sense of the term. They are political in the narrow sense in that they almost invariably concern the state. Indeed, the international law of human rights is clear (as we noted above): it is only state actors (and in some cases those who are complicit with them) who violate human rights. The same acts carried out by private persons may be morally wrong and/or criminal in national or international law, but in legal terms they are not strictly human rights violations. In legal terms what is in question in human rights cases is how social actors who hold positions such that they are authorised to act 'in the name of the state' enable, permit, or fail to prevent human rights violations by mis-use of law and policy and/or by diffusing responsibility for the harm that is done to individuals through hierarchical bureaucratic structures. I have argued here against taking a perspective on human rights that simply follows international law, but the institutionalization and effects of law in this area are an important topic for the sociology of human rights. In addition, it is also important to note that human rights

claims are invariably addressed to states: it is only through states, with their concentration of the means of force and capacities to amass and distribute resources that no other social organizations approximate, that can ultimately guarantee the security and welfare of all that human rights ideals promise

Human rights are also political in the broader sense of the term, involving the contestation of existing power relations and the articulation of new political visions. In this respect, what is sometimes referred to as ‘the politics of politics’, the remaking of the state as the site of ‘normal’ politics, is especially important to social forms of human rights. If human rights are socially constructed, the task of sociologists is to understand how particular definitions of human rights become established. Who decides what human rights are and should be? Who has which entitlements? And how these conflicts are to be settled? Legitimate conflicts in the human rights field are ended temporarily, if not finally resolved, through authoritative definitions that decide the limits and scope of how they are to be administered. As the result of these contestations is often regulation, policy or law, this understanding of the ‘human rights field’ links micro-social interactions to macro-institutional structures, conflicts over particular human rights cases to fundamental changes in state formation.

Finally, there is also a good argument to be made for treating human rights as inherently political, rather than as moral and foundational. As Michael Ignatieff has argued most forcibly, it is only where human rights are treated as one set of political tools among others in campaigns to bring about a more peaceful and just world that they stand a chance of being effective. Where human rights are treated as moral ‘trumps’, which admit of no discussion or compromise over their limits in a particular case, they can lead rather to an intensification of disputes, as well as to the pre-emption of democracy by an international elite of lawyers, judges and advocacy organizations (Ignatieff 2001). It is in this respect that, rather than acting directly as human rights advocates, sociologists comparing different cases in order to establish when and how human rights are effective may contribute to their realization as political ideals.

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