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Towards a Critical Sociology of Human Rights

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Introduction

The work of developing a Sociology of human rights to challenge the dominance of the legal framework within which they are more usually studied is now well underway (eg Morris 2006; Turner 2006; Woodiwiss 2005, 2006).

Once we move beyond legal positivism, however, we immediately find ourselves in the rather murky and difficult terrain of moral judgement concerning human rights. What reflexive normative stance should Sociologists take towards human rights? Should we give up the rather dubious Weberian neutrality that may enable us, sometimes, to pass as 'scientific' and adopt a positive perspective on human rights, promoting their extension across the globe and championing their full adoption within our own states? What, then, of Sociology's traditionally critical perspective?

Sociology is a critical discipline, which embraced modernity whilst at the same time treating it with suspicion because of the inequalities of wealth, status and power to which it has given rise. In one way, in an increasingly globally integrated, post-socialist world, it might be argued that human rights currently offer moral values, political tools, and increasingly legal institutions that both enable hope and are reasonably realistic, so that furthering human rights through sociological argument and study is itself a critical practice. To some extent I agree with this point of view, especially because criticism

without positive alternatives is often intellectually facile and politically futile. Here, however I want to present an alternative argument, that it is important that Sociology should develop a critical perspective on actually existing human rights, as well as working for their extension. Not just for reasons of freedom of thought and intellectual development, but also because: firstly, human rights do not encapsulate everything humans can, or should, hope for, and they may actually be in tension with other values; and secondly, as the language of human rights becomes increasingly popular, it is clear that they are being used for a variety of purposes, in many different ways and with many different outcomes. Of course, it can be argued that some uses are against the spirit and even the letter of human rights as laid out in the Universal Declaration of Human Rights, but the fact that human rights are being used in this variety of ways should surely raise doubts about treating them in absolutist moral terms. Sociology should remain critical of established practices and apparently taken-for-granted values, even if they appear to offer the only realistic political hope of our times.

Let's begin with Richard Rorty's notion of 'human rights culture' (Rorty 1993). Rorty uses this term to argue against foundationalism, suggesting that human rights are well-established institutionally and that the only real problem now in realising the values of human rights is that some people continue to treat others as less than human. Rorty's concept of 'human rights culture' is left undefined, no doubt in part strategically, to enable it to act as a kind of rallying symbol for progressives, both liberal and left. However, there is no doubt that he is correct in arguing that there has been a huge increase in the use of human rights language in law and politics, especially since the end of

the Cold War. Human rights are increasingly becoming legalised: international agreements are becoming more detailed, precise and binding; and law that draws on and invokes human rights is increasingly interpreted and applied in national and international courts (see Abbot and Keohane 2001). At the same time, human rights are also increasingly politicised. The influence of NGOs in extending human rights to bring about legal and political change at the international and national levels can not be over-estimated (Risse et al. 1999; Keck and Sikkink 1998). And human rights rhetoric is also used by mainstream politicians, especially to promote particular foreign policies. In recent times, notoriously, this has tended to take the form of humanitarian intervention, or what Ulrich Beck has called 'military humanism' (Beck 2006). The pernicious consequences of such uses of human rights have been widely discussed (see, for example, Butler 2004; Ignatieff 2001).

In this chapter I want briefly to explore how a critical Sociology of human rights might approach the question of how and why the proliferation of human rights discourse has not led, in general, to the more ethical treatment of human beings across the world. On the contrary, the 'war on terror' has made it very clear that states which have been central to supporting the expansion and deepening of human rights, and that apparently have a continuing commitment to the realisation of human rights norms, are themselves among the violators of human rights. Critical Sociologists should therefore consider the possibility that there are links between this proliferation of discourses on human rights and human rights violations.

Of course, this article can not hope to outline a comprehensive critical Sociology of human rights. It is rather intended to suggest some ways in which current research might be used and extended to study human rights. In the following section, we will explore the links between the exponential increase in human rights discourse and violations of human rights in social structures of inequality and exclusion. We will then go on, in the second section of this paper, to discuss the tension between human rights and democracy as political values. Finally, changing direction somewhat in section three, we consider a contribution Sociology should make to understanding how human rights are supported or undermined by structures of embodied interaction, an area of research into human rights that has been neglected. I have chosen these three areas -social structures, political institutions, and social interaction - as representative of core concerns of Sociology in order to explore how a critical Sociology of human rights might develop.

Social structures of citizenship and human rights

Key to developing a critical Sociology of human rights is the study of the relationship between citizenship and human rights. In principle, human rights abolish the distinction between citizens and non-citizens. Article 2 of the UDHR states that 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...' and goes on to list 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' as non-viable distinctions. It is no longer quite the case that, as Arendt wrote of stateless persons between the two World Wars,

‘The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships – except they were still human’ (Arendt 1968: 299; see also Agamben 1996).

In fact, since the late 20th century, legal claims to human rights in developed liberal-democracies have been complicating the distinction between citizen and ‘mere human’ rather than abolishing or maintaining it, creating different grades of citizenship, ‘quasi-citizenship’ and even ‘un-citizenship’ status.

David Lockwood’s work on civic stratification is a very useful starting point for critical Sociology here (see Morris 2006). Lockwood argues that the actual enjoyment of rights depends on two interlinked axes of inequality: the presence or absence of legal, bureaucratic rights; and the possession of moral or material resources, which generally operate informally. As we shall see, the interplay of these two axes means that claims for human rights that are intended to ‘humanise’ the regulation of migration across borders actually produce new types of formally and substantively unequal status. At the same time, the substantive erosion of citizenship entitlements as a result of neo-liberal globalisation is not addressed by human rights claims.

An analysis of different types of status produced with respect to citizenship and human rights would have to include at least the following five distinctions. Firstly, within the legal status of ‘full citizenship’ there is a

marked difference between what we might call 'super-citizens' and 'marginal citizens' in relation to human rights. 'Super-citizens' have all the rights of citizens but increasingly, in a de-regulated global political economy, because they own the means of production or are in possession of secure employment or marketable skills which enable mobility across borders, their citizenship does not tie them to states. Overlapping with Craig Calhoun's (2003) category of 'frequent flier' elite cosmopolitans, this group stand to gain from human rights only insofar as human rights policies succeed in making the world generally more stable and profitable. Their protected mobility, however, comes from their citizenship status as well as from their wealth and/or skills. When faced with unstable or dangerous political conditions, 'super-citizens' are more likely to fly home or appeal to the authorities of the states to which they belong to intervene on their behalf than they are to claim human rights. These individuals may be involved in the extension of human rights as professionals – especially as lawyers or the leaders of INGOs – but they would not generally expect to see themselves as the subjects of human rights claims.

'Super-citizens' can be compared with a second status group, 'marginal citizens', who have full citizenship rights but who either do not have paid work, or who have insecure or partial participation in the labour market. This group enjoys full citizenship rights, which, as civil rights, protect them from state force in a reasonably functioning multi-party democracy, but increasingly the social and economic benefits of citizenship to which they have been entitled are under attack as the regulation of capitalism is altered in conditions of increased global mobility (see Turner 2001). It is only because understandings of human rights are truncated that deteriorating marginal

citizenship appears to have nothing to do with human rights. In the West, the term 'human rights' is used almost exclusively to mean the civil rights covered by the International Covenant of Civil and Political Rights (ICCPR). However, human rights also include social and economic rights - spelled out in detail in the UDHR and the International Covenant of Economic, Social and Cultural Rights (ICESCR). Claims to economic and social human rights have been somewhat effective in gaining entitlements for migrants within existing, deteriorating state regimes of welfare, but human rights language has not been developed to address issues of welfare more generally (cf Marshall 1992). Despite the importance of economic and social human rights on paper, they do not provide protection for marginal citizens and appear, rather, to have nothing to do with the welfare of citizens.

Thirdly, outside these unequally positioned citizens, there are quasi-citizens. Quasi-citizens are denizens, or long-term residents in a state who have access to employment and who have thereby gained social and even economic rights within states, but who do not have political rights. This is a diverse group, including EU citizens, guest-workers, and those who have been granted refugee status or 'exceptional leave to remain' (1). Whilst as Yasemine Soysal (1994) has argued, what she calls 'postnational citizenship' has been an important advance for migrants in terms of institutionalising their human rights, it is becoming increasingly clear that the instability of their legal status as 'not-citizens' and their reliance on organising around human rights as a means to apply pressure on national law and national bureaucracy also results in a consequent instability of their human rights as such. An excellent example of the dangers of quasi-citizenship for human rights in this respect

comes from the UK. As a result of the 'war on terror', a number of men who were granted asylum because of well-founded fears of persecution in other states and who were subsequently suspected of terrorist activities in the UK were arrested and detained without charge in Belmarsh Prison from December 2001 to March 2005. They were then detained, still without being charged, under house arrest, where they remain at the time of writing. In the name of protecting human rights – so not deporting these men to states where they have citizenship but are at risk of torture - the UK authorities are violating their absolutely fundamental human rights to individual freedom, bodily integrity and fair trial.

The precariousness of the position of quasi-citizens is even greater for sub-citizens who do not have paid employment, or entitlement to state benefits. This category includes those who are waiting to have asylum cases heard, and who may be detained indefinitely in camps whilst that process is going on. It also includes those considered to be adult dependants of quasi-citizens – wives and other family members - who have no independent right to residence and who are, therefore, potentially subject to violence and abuse within the home (without real possibility of redress), as well from their home states. This category of 'sub-citizens' is literally created by human rights, administered through state-specific policies. Again, contrary to the ideals of human rights as inviolable, universal and protective of all human beings, human rights here create a group of persons whose rights are fragile, insecure and may actually result in violations of their dignity, freedom and bodily integrity.

Finally, even sub-citizens are in a good position compared with un-citizens. This group includes illegal migrants who have no recognised status in receiving countries and who may, therefore, be immediately deported, unless they are permitted to apply for asylum. It also now includes people detained in the 'war on terror' in newly created non-spaces which are outside national territories and therefore somehow also outside the jurisdiction of sovereign states, whilst being under their administration. The most obvious example here is Guantanamo Bay, though there are also other such camps containing 'suspected terrorists' in Bagram, Kandahar and elsewhere. These un-citizens are in a legal 'black hole' because of the special status they have been assigned as 'illegal combatants' and the extraordinary lengths to which the US executive has gone to deny them access to lawyers and to keep them out of US courts (Steyn 2004). Interestingly, with regard to Arendt's suspicions concerning human rights, it is citizenship status, combined with diplomatic relations between allies, and not claims for human rights, which has enabled relief for some of the detainees in Guantanamo Bay, by political intervention rather than legal redress. All those holding British passports have been sent back to Britain and released without charge, for example, but until very recently the UK authorities refused to apply for the release of non-citizens resident in the UK. Under legal pressure from the detainees' families and possibly as a result of changes in US policy with regard to Guantanamo, there is currently ongoing negotiation between the US and UK over whether and how to deal with these non-British un-citizens, all of whom have been imprisoned without trial for several years.

The increasing legalisation of human rights has led neither to ready guarantees of human rights commitments, nor an end to human rights violations. It has led to a great deal of legal creativity. Of course, in many ways it is clear that legalisation is crucial to realising human rights. To return to the example of the arbitrary detention of terrorist suspects in the UK, it was only because the UK's highest court found that the policy was in contravention of the European Convention of Human Rights (ECHR) that the UK government was forced to release the prisoners from Belmarsh, and the policy of house arrest that replaced it has similarly been found to be illegal under the ECHR. However, one of the major drawbacks of the legalisation of human rights is the way in which those who appear to have uncertain legal status, or even no legal status in extreme cases, whether in terms of citizenship or human rights, are treated as virtually non-human. As Sociologists we are well-equipped to study how the legalisation of human rights is at best partial and at worst obfuscating of inequalities in the moral, political and material resources that have such a huge impact on the outcomes of the codification of human rights claims in practice.

Aside from the paradox of gross violations of fundamental human rights being perpetuated in the name of human rights that is practically enabled by their legalisation, there is a very important limitation to political uses of human rights in relation to social structures and inequalities. Although on paper the UDHR and the ICESCR allow for claims to social and economic rights, in practice the erosion of citizenship entitlements to welfare, housing, education and so on has not been addressed through human rights claims. Moreover, the proliferation of legal statuses in relation to human rights and citizenship,

whilst it has led to gains for some people, surely makes co-ordinated collective political action increasingly difficult. In this sense it is difficult to see how the language of human rights might function politically, as the language of citizenship rights did in the twentieth century, to harness state power to humanise capitalism.

Political institutions and democracy

In this section we will explore how human rights, even, or perhaps especially, if they work efficiently as legal rights, are in tension with another very important political value, that of democracy. There is no straightforward conflict between the values of human rights and of democracy. On the contrary, in some respects they complement each other. Democracy is generally understood to support human rights, and this may even include economic and social rights; famously, Amartya Sen has discovered that there has never been a famine in a democratic country (Sen 1999). Furthermore, respect for human rights, as civil and political rights, provide the necessary conditions for political activities of all kinds, including democratic participation – freedom of speech, of association, secret ballots free of corruption and so on (see Dworkin 1990). On this basis, in conditions of increasing globalisation in which the boundaries of political community are no longer clear-cut, theorists of cosmopolitan democracy argue that the institutionalisation of human rights as global public law is necessary to ensure individual rights to autonomy which will enable democracy at different scales, according to the ‘all affected’ rule (Held 1995). On the other hand, however, it is clear that the more the outcome of democratic deliberation is circumscribed legally, and therefore depends on the decisions of unelected and

unrepresentative judges, the less scope there is for genuine public decision-making, whether local, national or international (see Bellamy 1999 for an extended argument concerning the limitations of rights in relation to democracy).

That this is a real tension is illustrated by the example of the celebrated Pinochet case. Arrested in October 1998 with a warrant from a Spanish magistrate, Pinochet was under house arrest in the UK until he was finally declared by the Foreign Secretary to be medically unfit for trial and flown home to Chile in March 2000. The circuitous legal case resulted in a groundbreaking decision by senior judges in the UK that he should be extradited for trial in Spain for crimes of genocide, torture and disappearances committed whilst he was head of Chile (2). International lawyers, international human rights NGOs like Amnesty and Human Rights Watch, and sociologists of cosmopolitanism agree that Pinochet was a landmark – the first time a head of state came close to being tried for gross violations of human rights committed during peace-time in a domestic court (Sands 2005; Habermas 1999; Beck 2006). In relation to democracy, however, the Pinochet case is much less obviously an occasion for celebration, and should provoke critical thought concerning the extension of international law. The judges who ruled that Pinochet should be extradited for trial in Spain decided to ignore the amnesty he had been granted by a democratically elected government in Chile, so ‘piercing’ the sovereignty of the national state on which modern democracy has been founded (the term is Slaughter’s 2005). No alternative democratic forum to decide where Pinochet should be tried or if he should have been sent back to Chile was considered in relation to the case. Options that might have

been more democratic - for example, a citizens' jury or a conference of elected parliamentarians from the relevant states - were not discussed. On the contrary, the Pinochet case was generally represented as involving law, not politics, even though ultimately it involved a 'quasi-judicial' decision by the executive represented by the Foreign Secretary (see Nash *forthcoming*). Although Pinochet was not extradited to Spain for trial, the view that there is now an international consensus that crimes against humanity should be prosecuted regardless of sovereignty appeared to be confirmed, whilst no alternative forms of democratic control over powerful states was sought, or even imagined (3).

This example shows how the legalisation of human rights is in tension with democracy, even when the values of the rights themselves to democracy are not in question. However, as well as showing the dangers of legalisation for democracy, the Pinochet case also shows very well the limitation of the politics of human rights. It is widely agreed that it was diplomatic negotiations behind the scenes which led to his release, ostensibly on grounds of ill-health, and which mean that he was never tried for the crimes of which he was accused (Davis 2000). Politics is by definition unpredictable and even unfair, its outcomes are related to perceived interests, shows of strength, the ability to back persuasion with force, willingness to compromise and so on. Politics involves negotiating conflict without necessarily abolishing inequalities in power, as the law claims to be able to do, even if democratic politics gestures towards the equality of individual voices. Moreover, the legal importance of the Pinochet case was that it allowed for the trumping of sovereignty, so moving towards protection or redress for individuals regardless of citizenship

status or residence. It thus promised to disrupt existing international relations between states which are embedded in the UN system, premised on the juridical fiction of equality between sovereign states, in order to realise Article 2 of the UDHR in practice, enabling individuals access to justice for human rights violations regardless of citizenship or nationality. It is inconceivable that *real politick* would have anything like the same effect.

Like the UDHR, democracy is an achievement. Tension between human rights and democracy as incompatible political values is not absolute, but it is significant and enduring. Critical Sociologists who advocate human rights should also consider how practices of democracy in a globalising world can be supported rather than undermined, even where the risk comes from what appears on the face of it to be a valid and groundbreaking assertion of human rights principles.

Embodied interaction

In many respects, this is the most important level at which critical Sociologists should consider how commitments to human rights are formed and sustained, or denied and fail. After all, whilst human rights concern the obligations of states, it is human beings in extraordinarily intimate relationships with each other who carry out torture, murder, imprisonment without trial and so on. If vulnerability is, or should be the foundation of human rights (Turner 1993), it is in embodied interactions that the vulnerability of human beings is directly experienced, which then gives rise either to exploitation or to sympathy and kindness. However, embodied interaction it is also the least researched area in the Sociology of human rights. In particular we need more research on the

relationship of human rights language to emotions – of fear, hatred and disgust - felt in relation to those who are experienced as less-than-human and who do not therefore have to be treated as entitled to dignity and respect. It is absolutely crucial to explore what makes it both possible, and feel 'right' to those who imprison, torture and kill in the name of the state or of political ideology, to carry out human rights abuses.

For example, we know that following the Nuremberg trials soldiers and guards no longer have legal grounds for the excuse 'I was just following orders' (see Held 1995: 101), but I do not know of any research which considers state agents who have refused to follow orders in the name of human rights. On the other hand, there is widespread evidence (from Abu Ghraib and Guantanamo Bay to name only the most obvious cases) of the apparent willingness of soldiers and guards to violate human rights once they find themselves in situations in which they have the power and the desire to do so, no doubt sanctioned by their hierarchical superiors in the state in whose name they are employed. This willingness to abuse human beings does not appear to have been reduced with the expansion of legal and political discourses of human rights. An interesting example of the de-humanisation of relations between prisoners and guards comes from the film directed by Michael Winterbottom, 'Road to Guantanamo': illustrated by dramatised scenes, one of the ex-detainees recalls a technique used by the guards to avoid meeting prisoners' eyes, shouting at them to look down and gesturing with two fingers as if closing their eyes at a distance if they sought eye contact. This is clearly a technique designed to enable the 'legal black hole' of Guantanamo to run smoothly. We now know that this smooth running involved torture. How can

the abstract language of human rights possibly have any impact on the experience of individuals when it is so methodically structured in order to de-humanise those who are most vulnerable to abuse? The legal and political structures designed to prevent and to punish violations of human rights seem very far from such interactions.

What might critical Sociologists have to contribute to our understanding of the impact that human rights could and should have on those who actually carry out human rights abuses? In the first place, we might contribute the hope that human beings are not, as Freud had it, 'fatefully evil' (see Benton 2006 page 36) so that the infliction of suffering can be prevented and not merely punished. More concretely, however, anthropologists have begun the work of considering how human rights can become part of the vernacular of local cultures, translated from the terms in which they are framed by activists and lawyers in accordance with international conventions and treaties (see Merry 2006). Similarly, sociologists might examine how the language of human rights is or is not translated into the subcultures of those most at risk of carrying out human rights abuses, and try to understand how effective such human rights talk might be in the highly charged emotional settings in which abuse takes place.

Conclusion

One way to consider the role of the critical Sociologist in relation to human rights might be to ask 'who is empowered in current regimes of human rights'? It is not obvious that vulnerable individuals and groups are empowered by the ongoing legalisation and politicisation of human rights – at least not in any

straightforward, unequivocal way. On the contrary, the only actors who are clearly and unequivocally empowered appear to be professionals in the human rights business, including lawyers, judges, politicians and the leaders of INGOs. As we have seen, in relation to the proliferation of statuses with respect to the relationship of citizenship and human rights, those who are the subjects of human rights either remain or are placed in precarious, unstable and dangerous situations – sometimes in the very name of protecting their human rights. It would seem then that, at worst, the proliferation of legal and political discourses of human rights may be producing new forms of vulnerability to domination, exclusion and mistreatment. This is not to say that overall human rights are increasing suffering. The fate of quasi- and un-citizens may be worse without them, for example. But critical Sociologists are obliged to examine examples of such paradoxical outcomes of human rights claims, not to dismiss human rights as useless but in order to understand how bad outcomes are produced by good intentions and to suggest how human rights might better be realised. Finally, critical Sociologists must be aware of the limitations of human rights, the way in which, in practice, they may problematise or undermine other, equally important, political values. Whilst genuine respect for human rights may be necessary to civilised behaviour, human rights are clearly not enough to meet all the needs of human societies.

Notes

1. This typology is quite rough and ready and EU citizens are hard to place within it. Many EU citizens might be thought of as 'super-citizens', whilst

those from less economically and politically powerful states surely belong in the category of 'quasi-citizens'.

2. In strictly legal terms, the Pinochet case did not involve human rights violations. Human rights law takes the form of civil and public law and offers only civil remedies – though the increasingly overlap between humanitarian law, which does allow criminal prosecution, and human rights law, is now complicating a clear-cut distinction between them. For the purposes of sociological study, however, what is at issue is a wider sociological category of 'human rights', which includes legal definitions but enables us to understand social, cultural and political changes. It is in this sociological sense that the Pinochet case involved human rights: both Amnesty International and Human Rights Watch frequently described it in general terms as concerning human rights violations; in the media the case was invariably represented as concerning human rights; and even lawyers and judges are prone to analysing the case as part of the wider 'human rights movement' (eg see Steyn 2004).

3. Note that in relation to trying crimes under international humanitarian law the problem is not solved by the setting up of the ICC. Apart from the fact that it has not been ratified by all states a) it is only authorised to bring cases where the will or the means are judged to be lacking in national societies; b) as a matter of statute it will not recognise amnesties where crimes against humanity may have been committed.

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