Sociology of Human Rights

Lecture 3

Robert Fine

Toward a sociology of human rights: human frailty and human rights

A discussion of the contribution of Bryan Turner

The current period can reasonably be described as an 'age of rights' (Bobbio 1995; Fine 2009)

1. Consolidation of human rights principles in the post-war era:
   i. Institutionalisation of human rights through the UN Charter as central aspect of globalisation
   ii. Contest over rights claims as major feature of social life
   iii. Expanding framework of international human rights conventions
   iv. Emergence of regional systems of human rights protection

2. Increasingly important social functions of human rights
   i. In face of unpalatable aspects of capitalist globalisation provides a platform on which to contest raise questions about social responsibilities of international corporations
   ii. In the aftermath of the Cold War provides a platform for realising universal principles that were previously channelled into one camp or another
   iii. In the face of a growing diversity of cultures and beliefs provides a means to bind and cement an otherwise fragmentary society
iv. in a ‘godless age’ (Klug, 2003) provides a solution to the problem of values

v. basis for claims to recognition of neglected particularities (Taylor 1994)

vi. means of superseding citizenship as the dominant status for rights claims (e.g. Soysal, 1994).

**Why then has sociology neglected the issue of human rights? Does it simply lack a theory of rights and how is this neglect now being adequately addressed?**

Certainly prescient of Bryan Turner to identify this neglect and lack when few sociologists recognised rights as central to social structures, processes and identities

In an age of rights Turner argues that Sociology needs to develop a theory of human rights as a supplement to more traditional theories of citizenship because

a) citizenship is tied to the nation state,

b) the nation state is an uncertain guarantor of rights and potential source of oppression,

c) appeals to courts outside the state can provide protection for people from state power

to which we can add

d) the decline of the nation state can be even worse for human rights and appeal to courts outside the state can provide some law in the absence of state power.

**Turner's explanation for this neglect lies in part in the limitation of classical sociology**

i. Durkheim's (1895) positivism leads to an insistence on the analysis of social facts as things. It treats legal norms as external constraints on the individual and thereby robs idea of rights (i.e. freedom of individuals) of normative or analytical content.
ii. Marx’s critique of rights as bourgeois leads to an insistence that human rights express conflict between property owners and the alienation of ‘man’ from other human beings. It treats human rights as a facade for hiding class relations and inequalities or as a mechanism for imposing class rule.

iii. Weber’s faith in the increasing rationality of law (manifest in decline of religious justifications, codification, systematisation, professional training, etc.) based on repudiation of whole idea of natural right. It robs rights of their ‘metaphysical dignity’. The sole concerns are domination, legitimation, competition for scarce resources and the authority of the state. Value free social science means in this context freedom from all values. Turner writes of Weber upholding doctrine of ‘might is right’.

**Turner writes of sociology’s scepticism toward human rights**

i. Reduction of rights merely to claims for services or for privileges by social groups involved in competitive struggles (Weberian point), serving as an instrument of class rule, and expression of individualistic, possessive and egoistic society (Marx). This reduction couples with strong notion of sociology’s separation from natural right theory (Durkheim)

ii. Sociology’s concern is with structural determination and not with rights talk (‘nonsense on stilts’) and its conception of agency concerned more with action than rights

iii. Sociology more comfortable with citizenship within the context of the nation state than with human rights but nation state not the most suitable frame for thinking about rights. The problem of sociology’s methodological nationalism (Beck)

iv. Concern of sociology is with difference and cultural relativism whilst human rights seek out the universalistic core of what it is to be human.
Turner’s solution

i. development of what was missing in classical sociology: a universalistic ontology to ground human rights without appealing to traditional natural law theory

ii. construction of ontological foundation for claims to universality in the common human condition of bodily frailty and social precariousness

iii. recognition of universal need for protection, extension and deepening of feelings of sympathy for others

iv. call for normative recognition of human rights as universal, contemporary, and liberatory in relation to citizenship rights

v. call not only for the deconstruction of natural right theory but also for the construction of a possible substitute in the form of a philosophical anthropology (Arnold Gehlen and Helmut Plessner) i.e. search for what constitutes a common humanity across cultures.

Turner’s philosophical anthropology

i. Human beings are ontologically frail (i.e. in the nature of their being) because our lives are finite, we exist in conditions of scarcity and danger, we are constrained by processes of decay. We are members of a community of suffering from which there is no escape.

ii. Human beings live under social arrangements that are ontologically precarious because as old sources of precariousness decline, so new sources of risk rise up. Institutions designed to protect human beings (state, church) become those which threaten human life (Hobbesian problem). Unintended consequences of human action constitute a ‘tragedy of culture’ as creative aspects of life are destroyed by institutionalisation, iron law of oligarchy, conformity, routinisation, corruption, etc.
iii. Human beings are ontologically capable of sympathy with the plight of others, because they see in it their own possible plight. The strong can empathise with the weak because old age and death of part of our human condition.

Critical assessment of Turner's sociology of human rights

1. Reconsider Turner's assessment of the sociological classics as sceptical of rights:

Durkheim

a. Durkheim was preoccupied with the problem of anomie in modern society and the need for a new moral consensus based on growing individualism: 'there remains nothing that men may love and honour in common, apart from man himself' (quoted in Morris). Durkheim developed a theory of human rights as a possible source of social cohesion in the modern world.

b. For Durkheim human rights were not based on the human condition but on what is bestowed on individuals by society: it is the state that creates, organises and makes a reality of these rights. The cult of the individual expressed in the institution of human rights is the product of society itself. ‘It is society that ... made of man the god whose servant it is.’

c. Can we not find in Durkheim’s work an agenda for the study of rights and a theoretical position within which to locate such a study. His approach provokes the sociological question of how far rights serve as a route to social cohesion, how far there is public support for a system of rights, how far the state serves to secure or undermine human rights, and how far civil society groups are capable of both generating and defending rights.

Marx
a. Marx not only supported the right of Jews to full civil and political rights; in so doing, he begins to offer a social theory of rights in his text.

b. He contrasts political emancipation (full civil and political rights) with human emancipation not to demean the rights of man but the opposite: not to treat it as nothing because it is not human emancipation. Right of property means abolition of privileges associated with traditional property, that is, the abolition of property qualifications in the civil and political sphere. Right of religious freedom means right to be religious or not in any way one wishes. Equal right does not mean abolition of social distinctions between human beings based on education, occupation, gender, religions, etc., but the transformation of these distinctions into non-political distinctions. The declaration of the rights of man and citizen marked the transition from ‘the old state of privileges’ and ‘the modern state’.

c. Marx upholds the rights of Jews regardless of whether or not they choose to remain Jewish. He characterises the rights of man not only as a huge step forward but as the only way forward. States which cannot yet politically emancipate the Jews must be rated under-developed by comparison with states that do recognise the rights of Jews. The state may subsume freedom of religion to freedom from religion, but it requires the exercise of terror for its success.

What we find in the young Marx is the germ of a sociological theory of human rights. In the mature Marx we find something more like a full blown theory. See my own *Democracy and the Rule of Law* and *Political Investigations*.

I shall not discuss here Weber and Simmel.

Turner not wrong to point to neglect of human rights in sociology. But perhaps what is needed is not a break from the alleged rights-scepticism of the classics but rather a return to (or re-reading of) the sociology of human rights developed in the classics and forgotten by us.
2. Waters’ defence of ‘social construction’ against Turner’s ‘foundationalism’:

Human rights is an institution specific to a particular cultural and historic context and its very universality is a human construction.

Definition: Turner defines human rights as social claims for institutionalised protection that relate to corporeal frailty.

Waters responds that human rights are only those social claims that are universal and political and they are not necessarily to do with frailty.

Human rights are simply those claims that a political community recognises as fundamental to the humanity of its members and become institutionalised to the extent that claimants are able to exert sufficient pressure on the state.

Social constructionist proposition: institutionalisation of human rights as product of particular configuration of interests and values.

It does not explain why a particular configuration of interests takes the form of human rights. It may be taken as proving Turner’s point: that it does not offer a theory of human rights but only of sectional interests.

Another ways of putting this is that positivism offers no solution.

Historicity of human rights

Turner contrasts human rights with citizenship: human rights offer a means of superseding citizenship as the dominant status for rights claims. He draws on T H Marshall’s seminal essay (1950) on ‘citizenship and social class’:

http://books.google.co.uk/books?hl=en&lr=&id=kSwy6f0PghMC&oi=fnd&pg=PA30&dq=Marshall+citizenship+and+social+class&ots=bBHDS388dl&sig=pQqbctZPzBniuhARP1cOMOYWPmo#v=onepage&q=Marshall%20citizenship%20and%20social%20class&f=false
Marshall gives an account of the development of civil, political and social rights in Britain – i.e. of rights of personal freedom, right to participate in exercise of political power, rights to social inclusion. All ways of combating the material inequalities of class though Marshall recognises that rights themselves are subject to various forms of civic stratification. Marshall is often criticised for an implied evolutionary logic but he makes no claim that the order of the British model will be maintained elsewhere.

Employing these insights we may view the idea of human rights as a stage in the development of the idea of right itself: one that Marshall prefigured, even if it remained at the margins of his thinking. Its emergence should not be understood as making obsolete less developed legal forms. It does not supplant the civil, political, and social rights associated with the nation-state, it supplements them. When Marshall analysed the development of citizenship as a development of civil, then political, then social rights, he assigned them broadly to the evolution of constitutional states in the eighteenth, nineteenth, and twentieth centuries. His distinctive contribution, however, was to argue that modern citizens are only full citizens if they possess all three kinds of right.

This reconstruction might indicate that human rights are in some sense a further stage in the development of the idea of rights in general and that the world citizen is one that possesses all four kinds of right.

If this or something like this is right, then the sociology of human rights is not so much in need of an ontology of human rights that supersedes citizenship, but rather a dialectic of human rights that transcends national citizenship but also reproduces the abstraction of civil, political and social rights at the level of world society.

Human rights imply recognition of human frailty, the precariousness of social institutions and compassion for others. But do they also have a relation to the egoism, indifference, and class character of subjects in modern capitalist societies? This question will take us down a road to which we must return after considering further the modern history of human rights itself.