

Panel discussion: “The view from the disciplines”
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(for a fuller version of this talk see Morris (ed.), Rights: Sociological Perspectives, London: Routledge, 2006)

A good starting point for a consideration of the role of sociology with respect to human rights can be found in Turners (1993) article ‘Outline for a Theory of Human Rights’. This is a provocative article, built around the assertion that Sociology offers no foundation for a contemporary theory of rights. Attributed to the value-free nature of the discipline, this is in turn argued to lead to an evasion of truth claims and to offer no basis for moral judgement.

Turner works through the classics to make this point. Hence, in Marx he sees a view of rights as a mask for bourgeois privilege; in Weber he sees a view of rights shaped by group competition for resources; and in Durkheim a view of rights as social facts, with no external grounding in moral principles. This leaves the only obvious source of a sociology of rights to be Marshall’s (1950) work on citizenship, which is limited by its grounding in national belonging.

Arguably, the search for foundations is not what sociology as a discipline is best suited to, though the rejection of such a search raises fears of legal positivism, in which rights derive simply from what the law states. An alternative position is offered in Water’s (1996) reply to Turner, advocating a social constructionist approach to rights, which sees rights as rooted in social and political interests. This work does contain the notion of the universalisation of human interest, but the idea remains obscure and undeveloped. Yet a focus on more narrowly defined interest seems more cynical than many would wish and loses sight of the universal ideal.

Many, of course, would argue that cynicism with respect to the universal is well grounded and this has been one strand of sociological work in the area of human rights. So sociology has been a strong influence on particularist critiques of the universal, as for example in the feminist critique of gendered assumptions shaping ‘universal’ rights, and its challenge to the public/private division informing liberal conceptions of rights (Phillips, 1992). This critique is closely linked to an emphasis on embodiment and rights, which focuses on the lived experience of difference, and sees rights as mediated through race, ethnicity, gender, age, sexuality, disability, etc. We can also find a particularist challenge to universalism in its neglect of cultural difference, as discussed by Marie Dembour in this panel. This position is to some

extent informed by the communitarian critique of liberalism (Taylor, 1994), which emphasises both the collective and particular sources of identity.

Other critiques of universalist claims see rights as an instance of social closure, and this view may be set against optimism with respect to trans-national universals, and the emergence of a 'post-national' society (Soysal, 1994). I have pursued this argument myself in the context of immigration and asylum law, using Lockwood's (1996) notion of civic stratification. This yields a view of rights as formally stratified with respect to entitlement, and informally stratified by processes of gain and deficit. The latter dimension is exemplified by discrimination or stigma affecting particular groups, while the notion of deficit is also useful in illustrating the indivisibility of rights. Hence, the right to property means little to the poor, the rights to freedom of expression means little to the uneducated, and equality before the law means little without legal aid (cf. Marshall, 1950). Civic stratification thus focuses on differentiated entitlement, access and delivery in the practice of rights.

Indeed, much of what I have said so far is suggestive of a sociology of the practice of rights. Such an approach admittedly evades the problem of foundations, but in doing so breaks down the particularist / universalist opposition by leaving aside ideal conceptions of universal rights. Instead it recognises that we do not have a fully operating system of universal human rights; that few rights are absolute, and even these require interpretation; and that established human rights instruments contain their own hierarchy of absolute, limited and qualified rights. A practice approach can recognise and explore these issues, and also accommodate the possibility that the boundaries of rights are in constant negotiation.

So a practice approach begins to address the scepticism about universality informed by critiques of grand narratives such as progress, justice, equity, etc. But there is nevertheless a reluctance to let go of the universal ideal. There have been some attempts at finding a way through this impasse, through concepts such as interactive universalism (Benhabib, 1992) or differentiated universalism (Lister, 2003) which draw on Habermasian discourse ethics. Such approaches could be seen as one attempt to address the process of the 'universalisation of human interest', but I am not sure these hybrid concepts do more than name a problem. There are certainly reasons to be cautious about a dialogic perspective, as for example the tendency to underestimate the impediments of material inequality. Claire Moon has, for example, shown how the truth and reconciliation process, too narrowly conceived, can be in tension with more substantive claims to restitution and material equity.

So how else might we pursue a sociology of the practice of rights? There is more in the classics than Turner acknowledges. From Marx we can take both a macro analysis of the political and economic context in which rights function, as well as an incipient view of rights as emancipatory. From Weber we can build an institutional approach to the bureaucratic implementation of rights, the significance of formal and informal status difference, and also an interpretive approach to rights claims. In Durkheim we can see the source of thinking on communitarianism, and a view of

rights which recognises connectedness to others. We could add to these a Foucauldian approach, seeing rights as bound up with the micro-management of populations, and a conflict approach, recognising that the rights of one group may conflict with another.

But are we again losing sight of the universal? I find Laclau's (1996) work useful here, through the idea of the universal as an empty signifier, or better stated, a constantly contested space, which whenever filled becomes particular, and hence the contestation. It is this determinate and contested nature of rights which I find sociologically most interesting. It opens up an exploration of the process by which the space is filled, which can be approached in part through the empirical study of claims making. Such a study would address the formulation and negotiation of a claim, the context in which it arises, and how and by whom it is adjudicated. A claim can be read through particularist frameworks of meaning, yet we can also see how it might be presented in terms of its universalist content. This could contribute to an understanding of movement in a regime of rights, though such an understanding must recognise the possibility of both expansion and contraction.

Building on this, we may see rights as both reflecting and shaping the moral climate of the time. Hence we can ask how groups accrue moral standing in society, whether the granting of rights can enhance moral standing, and whether the denial of rights can detract from moral standing. All could be part of a practice orientation, which reveals the multi-faceted nature of rights: as expressions of moral responsibility; as claims to moral entitlement; as elements in a status ranking; as tools of governance; as components of a culture, and as claims in political negotiation.

To return to my opening comments, this is not to denigrate the search for foundations, or the usefulness of legal positivism. Rather the intention is to argue that the particular contribution of sociology lies in steering a path between the two, and an attention to the practice of rights, informed by (classical) sociological theory offers one way to achieve this.

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