Sociology of Human Rights
2009-10

Module Code: SO213
Website: http://go.warwick.ac.uk/sociology_of_human_rights

Convenor: Professor Robert Fine
Email: robert.fine@warwick.ac.uk
Website: http://www2.warwick.ac.uk/fac/soc/sociology/staff/academicstaff/robertfine/home/
Room Nr: B1.37

Seminar tutors:
Rodrigo Cordero
Email: R.A.Cordero-Vega@warwick.ac.uk
Website: http://go.warwick.ac.uk/rodrigocordero
Room Nr: R3.19

Josh Lowe
Email: j.s.lowe@warwick.ac.uk
Room Nr: R3.19
The framework of the module in ten points

1. This is a new module. Its aim is to introduce students to what is emerging as a new field in the discipline of sociology: inquiry into the idea and experience of human rights. There is a huge amount written on the topic of human rights within the disciplines of law, politics, philosophy and to a lesser extent history. There is, however, far less work on human rights that is explicitly done within the field of sociology.

2. Today human rights constitute a sub-section of law and legal scholarship in which lawyers can specialise. The normative justification of human rights has been widely discussed by philosophers and political theorists as well as lawyers. Human rights are also widely discussed by citizens as part of the cut and thrust of political argument. This module opens up the question of what role there is for sociology and social theory more broadly in understanding human rights. As for the future, my hunch is that we shall find a lot more literature with ‘sociology of human rights’ or the like in their titles. The main reason for the growing interest in the idea of human rights within sociology has to do with the changing nature of society, where it seems that human rights have become a far more prominent feature of the social and political landscape than in the past. The idea of human rights has a long prehistory – ever since legal personality became in principle a universal property of all human beings and no longer represented a privileged status opposed to that of slaves, servants and other dependents. This was a modern development and according to Hegel I one of the defining principles of modernity.

3. The pre-history of human rights was most manifest in the 18\(^\text{th}\) century enlightenment when ‘natural right’ philosophies came to the fore. It was then picked up in a more political way in the declarations of the ‘rights of man’ that marked the revolutions in France, America, Poland, Haiti and doubtless other places too. There is lots of literature on the idea of the rights of man and on the role it played in relation not only to citizens but also to foreigners, blacks, slaves, women, Jews and the working class. Some of the literature emphasises the universalistic hope embodied in the rights of man; while some emphasises the silences and exclusions that were practiced and the difficulties encountered in addressing these exclusions.

4. By the pre-history of human rights I refer, then, to the emergence of the idea of the ‘rights of man’ in 18\(^\text{th}\) century enlightenment thought, its application in and to the French, American and other revolutions, the exclusions and silences concealed beneath its veneer of universality, and the efforts of radical thinkers and movements to overcome these exclusions and silences and extend the rights of man to women, slaves, colonial subjects, Jews and the working class. It includes in particular the philosophical endeavour represented in Kant’s cosmopolitan writings to realise the promise of universality implicit in the idea of the rights of man and counteract the forces of nationalism and imperialism. This pre-history is important for our understanding of human rights not only because it paved the way for their development but also because the ideas of ‘human rights’ and ‘rights of man’ are too often collapsed into one another. It may be more important than we think to address the distinction between them.

5. The most common narrative in historical accounts is that in the 19\(^\text{th}\) century the idea of human rights went on the back burner with the rise of nationalism, imperialism and modern forms of state power. According to this narrative human rights are a reconstruction of the rights of man, the evolution of which was halted for a couple of hundred years and only revived after the Second World War. It is said that the rights of man were a child of the 18\(^\text{th}\)
century but could not survive in the face of the modern bureaucratic state, colonial expansion, new forms of nationalism, antisemitism and racism, mechanised warfare and the displacement of large sections of the world population. The decline of the rights of man in the two hundred years that followed their ‘declaration’ is a crucial part of their history, though not everyone of course succumbed to the prevailing winds of nationalism. What is perhaps most notable is how far the rights of man were re-channelled into the right of nations to self-determination.

6. It wasn’t clear after 1945 whether the idea of human rights would be a 15 minute wonder expressing the aspirations of enlightened intellectuals but without any real staying power, or would become one of the enduring features of the postwar age. One might have been forgiven for thinking that the rise of human rights was merely a transitory moment of enlightenment enthusiasm since they seemed to retreat rapidly with the re-emergence of modern statism in the shape of the Cold War, anti-colonial struggles in the Third World, bureaucratic domination in the Eastern bloc and social struggles for full employment and a welfare state in the Western bloc. This seemed to leave little space for the idea of human rights. To the best of my knowledge, for example, little reference was made to the idea of human rights in the context of the Vietnam War or the British war against the Mau Mau in Kenya or the anti-apartheid struggle in South Africa.

7. On the other hand, the institutions and conventions of human rights and humanitarian law have taken off apace in the international arena. We need only think of the Nuremberg Tribunal (1945), the International Court of Justice (1946), the Universal Declaration of Human Rights (1948), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the European Convention on Human Rights (1950), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (from 1966), the Vienna convention on the Law of Treaties (1969), the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (1987), the ad hoc tribunals for war crimes committed in the former Yugoslavia (1993) and Rwanda (1994), and the International Criminal Court (2002). The norms contained in these treaties, conventions and declarations are frequently broken, but what is new is that they exist. They have had a major impact on the domestic constitutions of nation states and transnational federations such as the European Union, and have been supported by civil society associations like Amnesty International. Especially since the fall of the Soviet Union and end of the Cold War in 1989, it is arguable that world society cannot be understood without reference to the idea of human rights.

8. So the object of sociological knowledge we shall address is an emergent property of the modern world. Its existence is made objective in texts, treaties, conventions, constitutions, courts, social movements and NGOs. It is also present in discourses in the public sphere. The idea of human rights is not, then, a mere idea or abstract ideal, but a definite social form characteristic of our own age. The sociology of human rights is the study of this social form: its emergence and development, its uses and abuses, its functions for capitalist economy, its place within the structure of modern society as a whole.

9. It is not easy to define what sociology does in relation to human rights, which is different from what law, politics and philosophy do. What is at issue is not only a question of definition but of investigation and exploration. At the start it may be easier to say what sociology does not do. A. It is not a natural law theory that determines what human rights ought universally to be and then assesses the laws and institutions of particular societies according to this standard.
B. It is not a *legal positivism* that simply describes or at best orders what human rights law is. C. It is not a *moral philosophy* designed to justify human rights or the societies that produce them. D. It is not a *political realism* that declares power to be the only reality and all notions of right to be illusions that ought to be dispelled. If we accept that the sociology of human rights is none of these things, we may have made our first step toward finding out what it is.

10. Sociologists and social theorists have explored such questions as the increasing centrality of human rights both in national constitutions and in expanded forms of political community such as the European Union; the application of human rights principles and laws beyond the boundaries of nation states, the responsibilities of power to prevent or stop atrocities occurring in other nation states, the constitutionalisation of international law, and the rhetoric of human rights in political argument. These substantive discussions raise *historical* questions about the emergence of human rights; *conceptual* questions concerning the relation of human rights to other forms of right, including civil, political and social rights; *normative* questions concerning the right of all human beings to have rights; and *critical* questions concerning the legitimacy of human rights. It seems to me important to draw on the resources of the sociological tradition in order to develop the sociology of human rights as a field within the larger discipline.

**Module requirements**

The module is assessed by unseen examination and / or assessed essay. Students are expected to participate in all seminars and to present, individually or jointly, at least one seminar paper in each of the first two terms. Students are expected to write at least one class essay. Students are encouraged to develop their own research interests in the area of the sociology of human rights.

**There is no single text book for the module but among good or useful books you may wish to beg, buy or borrow are:**


Cambridge: Polity

Habermas, Jürgen (2006) *Times of Transitions*, Polity

Habermas, Jürgen (2006) *The Divided West*, Polity


Ignatieff, Michael *Human Rights as Politics and Idolatry*, The University Center for Human Values Series


Kant, Immanuel (1991) *Kant: Political Writings*, Edited by Hans Reiss, Cambridge University Press


WEEK 1: Introduction to the module

WEEK 2: Posing a problem historically: human cruelty and human rights

The rights of man were, in part at least, a response to bodily cruelty. But was it a response that reproduced in another form what it opposed?

Core reading:
- Foucault, Michel *Discipline and Punish*, Penguin 1979, ch.1 ‘The body of the condemned’

Background reading:
- Garland, David *Punishment and Modern Society: A Study in Social Theory* OUP, 1990

WEEK 3: A sociological response: human frailty and human rights

The temptation in Sociology is to adopt a rights-scepticism, that is, the reduction of rights to power. Such scepticism has been questioned in recent sociology. Let us see how successfully.

Core reading:
- Waters, Malcolm (1996), ‘Human Rights and the universalisation of interests’ *Sociology*, 30, [http://soc.sagepub.com/cgi/content/refs/30/3/593](http://soc.sagepub.com/cgi/content/refs/30/3/593)

Background reading:
WEEK 4: Promises, promises: revolution and the idea of the rights of man

The idea of the ‘rights of man’ was a product of the 18th century Enlightenment and played a pivotal political role in 18th century revolutions. It promised something new in human history: the idea that every human being possesses rights. Although the rights of man contained all manner of exclusions, did the universal scope of the idea of the rights of man prepare the ground for its extension to the excluded: women, criminals, the mad, blacks, slaves, the colonised, the poor, Jews, etc.

Core reading:

Background reading:
- Muthu, Sankar Enlightenment against Empire Princeton University Press, 2003 ch.3 ‘Diderot and the evils of empire’ pp. 72-121

WEEK 5: Universalising the rights of man: Kant’s cosmopolitan point of view

The enlightenment philosophy, Emmanuel Kant, supported the rights of man but was alert to their national limitations, namely that in theory they belonged to all human beings but in practice were confined within the boundaries of the nation state. To address this problem he formulated the idea of cosmopolitan rights in a number of political essays, including ‘Perpetual peace’. How far did this solve the problem he identified?

Core reading:
Background reading:

WEEK 6: Reading and researching week

WEEK 7: The decline of the rights of man: Hannah Arendt’s genealogy of rights
Kant’s concerns regarding the relationship between the nation state and the rights of man have been picked up by critical theorists in relation both to the revolutionary tradition (especially its decline into terror) and to the origins of totalitarianism (especially its roots in European nationalism). What is it that has led and might continue to lead to the decline of the rights of man in modern society?

Core reading:

Background reading:
- Hegel, *Phenomenology of Spirit* ‘Absolute freedom and terror’
WEEK 8: Reconstructing the cosmopolitan paradigm on human rights

The rise of the cosmopolitan paradigm in sociology is in part a reaction against the old rights-scepticism. It expresses the vision of a world order in which human rights are centre-stage. But does this mean that the idealisation of human rights now substitutes for the rights-scepticism of old?

Core reading:


Background reading:


- Soysal, Yasmin (1994) Limits of Citizenship,


http://www3.interscience.wiley.com/journal/122394404/abstract


- Donnelly, Jack International Human Rights (Dilemmas in World Politics), Westview Press, 2006

- Ignatieff, Michael Human Rights as Politics and Idolatry, (The University Center for Human Values Series)

- Ignatieff, Michael The Rights Revolution, Viking, 2000

WEEK 9: ‘Never again’: The beginnings of the modern human rights revolution

The human rights revolution was kick-started during the Second World War in responses to Nazism and reinforced in the 1980s by responses to Stalinism. Amongst its first manifestations were the establishment of ‘crimes against humanity’ in 1945 as an offence in international criminal law and the passing of the Genocide Convention in 1948. How far did these developments break new ground and in what ways were they undermined by countervailing social forces?

Core reading:


Background reading

- Arendt, Hannah Essays in Understanding Harcourt brace, ‘Organised guilt and universal responsibility’ pp. 121-133 (see also ‘The aftermath of Nazi rule’ pp. 248-270)
WEEK 10: Bestiality and humanity: the problem of enforcing human rights

The application of human rights beyond the boundaries of the nation state raises the question of the responsibilities of power to prevent or stop atrocities occurring in other states. This raises the thorny question of the uses and abuses of human rights in addressing the question of humanitarian military interventions: is it just an exercise of power?

Core reading:


Background reading:
Habermas, Jürgen (2006) The Postnational Constellation,


WEEK 1: Critical theory and human rights: reinventing Marxism

In thinking again about the Marxist legacy, I shall develop the notion that rights in general and human rights in particular should be understood as a contradictory legal form of capitalist society. How far do they provide a resource for power from above or struggles from below?

Core reading:


*If you have time and the inclination: ch.2 ‘Marx’s critique of classical jurisprudence’ pp. 66-85 and ch.4 ‘Law, state and capital’ pp. 95-121

Background reading

- Fine, Robert Political Investigations: Hegel, Marx, Arendt, Routledge, ch5 ‘Right and value: the unity of Hegel and Marx’

WEEK 2: The West and the rest: the dialectics of universality and difference

The universality of human rights has come under criticism by those who see it as an enforcement of western standards on other cultures. Universality is itself identified with domination. How far should human rights override cultural autonomy?

Core readings:


**Background reading:**

- Kapur, op.cit ch5 ‘The other side of universality: cross-border movements and the transnational migrant subject’

**WEEK 3: Miserable comforters? The dialectics of law and power**

*International human rights law increasingly provides a trump card in political argument. Why is this so often the case and how should we analyse and assess this phenomenon?*

**Core readings:**

- Fine, Robert ‘Political argument and the legitimacy of international law: A case of distorted modernisation?’ in Chris Thornhill and Samantha Ashenden (eds) *Normative and Sociological Approaches to Legality and Legitimacy* 2010

**Background reading:**

WEEK 4: ‘Critical criticism’ and human rights: the joys of trashing
There is a strongly critical approach to human rights within the contemporary Left and among contemporary critical theorists. What is the argument, where does it come from, how justified is it?

Core reading:

Background reading:
Santos, Boa de Sousa Law and Globalisation from Below: Toward a Cosmopolitan Legality, CUP, 2005

WEEK 5: So is there a ‘responsibility to protect’ and whose is it? Back to state power and humanitarian military intervention
Has the doctrine of humanitarian military intervention run its course and if so, by what should it be replaced?

Core readings:
Background reading:


WEEK 6: Reading week

WEEK 7: So should tyrants be prosecuted? State power and international criminal justice

*What can we learn from recent cases – Pinochet, Sawoniuk, Saddam, Milosovic – about the prosecution of heads of state and other officials for crimes against humanity and genocide?*

Core reading:

Background reading:

WEEK 8: The rise and fall of the rights of man: the ‘Jewish Question’ revisited
The so-called ‘Jewish question’ offers an example of the equivocalities of the rights of man. The French Revolution brought about the emancipation of Jews in France and yet the course of Jewish emancipation was uneven. A feature of the rise of Sociology as a discipline is that it generally fought against the antisemitic views of the world that were closely associated with rights-scepticism. How far does this remain a problem today?

Core reading:
- Fine, Robert ‘Fighting with phantoms: a contribution to the debate on antisemitism in Europe’ Patterns of Prejudice 2009 (forthcoming)

Background reading:
- Bernstein, Richard Hannah Arendt and the Jewish Question ch3 ‘Statelessness and the right to have rights’
- Traverso, Enzo (1994) The Marxists and the Jewish Question: History of a Debate 1843-1943, Humanity Books, ch1 @Marx and Engels’
WEEK 9: Is there a crisis today of human rights?
The German sociologist, Hauke Brunkhorst, argues that there is currently emerging a legitimacy crisis of human rights. We shall be looking at his disturbing argument.

Core reading: