

# I

## Introduction

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### **The Definition of Human Rights**

We begin with the most fundamental question in the field: What are human rights? By definition, human rights are a set of protections and entitlements held by all members of the human species—irrespective of race, class, gender, sexual orientation, cultural background, or national origin. If membership in the human community is the only precondition for human rights, then the same protections and entitlements should be available across the global system. In appealing to universalism—the regulative idea that all humans have the same fundamental needs, desires, and aspirations—rights discourse stresses the importance of eliminating inequalities not only within nation-states, but also between them. In light of its intrinsic and irreducible universalism, rights discourse has a direct bearing on the policies and practices of intergovernmental organizations, nation-states, transnational corporations, nongovernmental organizations (NGOs), community groups, and individuals. In short, human rights norms constrain and facilitate the undertakings of both state and nonstate actors; offer inspiration to scholars, policymakers, and activists; and provide a grammar and vocabulary for the articulation of demands and the settlement of disputes.

What kinds of protections do human beings have? In principle, human beings are supposed to be protected from abuse or exploitation imposed by

national governments, corporations, organizations, groups, and individuals. Known as “negative rights”—that is, rights that may not be denied by state or nonstate actors—these protections include the rights to life, bodily integrity, dignity, due process of law, association, assembly, free speech, religious affiliation (or nonaffiliation), and representation in government. Taken together, these civil and political rights guarantee not only the individual’s safety, security, personality, and conscience but also his or her participation in public life and freedom from undue interference on the part of the state.

What kinds of entitlements do human beings have? In principle, human beings are entitled to economic structures and social programs that provide them with access to the means of subsistence, allow them to develop their bodies and minds, facilitate access to trades and professions, provide them with leisure time, and protect them from a range of catastrophes (including fluctuations of the market, human-made crises, and natural disasters). Known as “positive rights”—that is, rights that must be provided by public authorities—these entitlements include the rights to food, clothing, housing, health care, an education, employment, unemployment and disability insurance, social security, and a minimum standard of living. Taken together, these economic and social rights promote longevity and self-actualization among individuals. Alternatively, the objectives of longevity and self-actualization can be conceptualized as “rights bundles”—packages of rights that imply or necessitate one another. While the objective of longevity—the ability to lead a long, healthy life—presupposes access to food, water, shelter, proper hygiene, a clean environment, and health care, the objective of self-actualization—the ability to develop one’s talents, personality, interests, and tastes—presupposes access to education, training, information, and a range of choices in defining one’s identity. Far from being exclusively economic and social in character, both rights bundles—longevity and self-actualization—are filtered through culture.

What does culture—defined as a collection of shared values, symbols, and practices within a group or society—have to do with human rights? The category of positive rights includes cultural rights, as well as economic and social rights. In principle, all human beings—whether in the Global North or the Global South and irrespective of social standing within nation-states—are entitled to have a culture; to inhabit ancestral lands (where applicable); to affirm the rituals, practices, and customs of their ethnic group, tribe, or clan (where applicable); and to learn and speak a minority language in school (where applicable). By design, these entitlements promote the preservation of the world’s cultural diversity—a crucial objective

in a globalized age marked by the deepening of consumerism, the homogenization of cultures, and grave threats to the life-ways of indigenous peoples and peasants, as well as to racial, ethnic, linguistic, and religious minorities. While globalization—defined as increased interdependency among the world’s peoples—has produced new opportunities for transnational cooperation in the name of human rights, social justice, and peace, it has also endangered the world’s cultural diversity. For this reason, sociologists of human rights—following the example of their counterparts in anthropology—have devoted considerable attention to cultural rights.

## The Foundation of Human Rights

Having defined the basic forms of human rights, we can proceed to the next fundamental question in the field: Where do human rights—whether negative or positive, civil and political, economic and social, or cultural—come from? In answering this question, Turner (2006) advances the following argument:

The study of human rights places the human body at the center of social and political theory, and it employs the notion of embodiment as a foundation for defending universal human rights. My argument is based on four fundamental philosophical assumptions: the vulnerability of human beings as embodied agents, the dependency of humans (especially in their early childhood development), the general reciprocity and interconnectedness of social life, and, finally, the precariousness of social institutions. (P. 25)

In a nutshell, the foundation of human rights can be found in the human body and its fundamental needs. Though nurtured differently according to culture and geography, the human body—in its intrinsic vulnerability—constitutes the basis for universalism.

In answering the question of the foundation of human rights from a different angle, Ishay (2008) advances the following argument:

Human rights are rights held by individuals because they are members of the human species. They are rights shared equally by everyone regardless of sex, race, nationality, and economic background. They are universal in content. Across the centuries, conflicting political traditions have elaborated different components of human rights or differed over which elements have priority. In our day, the manifold meanings of human rights reflect the process of historical continuity and change that helped shape their present substance and

helped form the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948. (P. 3)

Though consistent with Turner's (2006) ontological approach, Ishay's (2008) historical approach emphasizes the role of past struggles—on the part of workers in the socialist movement, women in the feminist movement, popular forces opposing colonialism, and a host of other activists—in expanding the scope of human rights. In effect, the human rights available to the inhabitants of the early twenty-first century—the civil and political, economic and social, cultural, and other forms of rights examined in this book—can be seen as the accumulation of social knowledge from previous generations. What is the origin of this social knowledge? Over time, social movements—in laying claim to Enlightenment doctrine while exposing the limitations of existing forms of government—have greatly expanded what are thinkable and realizable as human rights. Accordingly, in documenting the range of human rights available to the inhabitants of the United States, this book points to the need to reflect on the possibility of revising the Constitution in keeping with contemporary thinking in the field.

## **Sociology, Human Rights, and the U.S. Context**

This volume is intended not only for undergraduate and graduate students in the social sciences but also for scholars, policymakers, and activists in the broader domain of human rights. As a contribution to the sociology of human rights—a growing academic field that analyzes the social conditions under which human rights norms emerge, evolve, and inspire the creation of laws, social programs, and institutions—this volume proposes a comprehensive revision of the U.S. Constitution (1787) to reflect recent innovations in civil and political rights, economic and social rights, nondiscrimination, the rights of vulnerable people, cultural rights, immigrants' rights, environmental rights, and a range of other rights. While these innovations in rights thinking have been incubated largely outside of the United States (especially in Latin America, with the recent proliferation of social movements and the growth of the World Social Forum), they harbor profound ramifications for U.S. society, politics, and law. More to the point, the adoption of new conceptions of human rights represents the key to the deepening of democracy in the United States.

In tracing the practical applications of cutting-edge rights thinking for the U.S. context, this volume explains the conventional categories of rights

(i.e., first-generation civil and political rights, second-generation economic and social rights, and third-generation cultural rights), while exploring the recently postulated right to a clean environment and other “fourth-generation” rights. At the same time, this volume affirms the indivisibility of rights: civil and political rights—including the freedoms of association, assembly, and speech, along with the right to vote—acquire considerably more substance when articulated with such economic and social rights as subsidized food and housing, medical care, education, disability and unemployment insurance, and social security; meanwhile, an expanded social safety net—though crucial to the promotion of longevity and self-actualization across the population (without regard to race, class, gender, sexual orientation, or national origin)—must be supplemented by the right to have a culture, the protection of indigenous practices, the right to inhabit an ancestral land, and the right to learn and speak a minority language in school. In sum, these rights form the basis of a pluralistic and participatory democracy—pluralistic insofar as the government protects the diversity of the U.S. cultural landscape and participatory insofar as the government brings more voices into the decision-making process (e.g., through federal, state, and local referenda on public policies). In short, though we may place rights in distinct categories for analytic and pedagogical purposes, we must also recognize the inextricability of rights in the “real world.”

Notwithstanding the powerful legacy of rights-oriented movements (organized by workers, women, African Americans, the LGBTQ community, environmentalists, and many other constituencies), along with previous proposals for an “Economic Bill of Rights” to advance the interests of poor and working-class citizens and an “Equal Rights Amendment” to advance the interests of women, U.S. scholars and activists alike have proved reluctant to embrace the idea of amending the Constitution to accommodate demands that would have been unimaginable in the time of the founders. Instead, scholars and activists have tended to support legislative change—the addition or subtraction of federal, state, and local laws in accordance with changing tides. Well documented by sociologists of law and social movement researchers, the legislative strategy—that is, the utilization not only of the voting booth but also of cyber-activism, public protests, building occupations and sit-ins, labor slowdowns and strikes, boycotts of prominent corporations, and other tactics to pressure elected officials in Congress, state legislatures, and city councils to (a) ratify laws that mitigate inequalities of race, class, gender, sexual orientation, national origin, and physical disability and (b) repeal laws that calcify or exacerbate such inequalities—would be more effective if it included a demand for constitutional amendments. Arguably, the aforementioned

tactics would exert more influence if they were linked to an explicit demand for the revision of the Constitution.

## Bringing Human Rights Back Home

One of the major arguments of this book is that lawmakers should craft constitutional amendments that render such United Nations (UN) treaties as the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) legally binding on U.S. soil. As the authors in this volume demonstrate, the constitutional strategy would serve three significant functions. First, it would cement the achievements of past movements in the United States. Second, it would create a platform—or, more precisely, a political opportunity structure—for future movements in the United States. Third, in keeping with a cosmopolitan vision that has been alternately nurtured and suppressed since the Enlightenment, a decision on the part of U.S. policymakers to adopt and enforce the ICCPR and the ICESCR would expand and intensify the connections between the inhabitants of the United States and their counterparts in the rest of the world.

Since the ratification of the ten amendments that compose the Bill of Rights in 1791, four amendments have testified to the existence of political opportunity structures or conjunctions between movements in civil society and progressive forces in the federal government: the Thirteenth Amendment abolishing slavery in 1865, the Fourteenth Amendment guaranteeing equal protection under the law in 1868, the Fifteenth Amendment granting African Americans and other racial minorities the right to vote in 1870, and the Nineteenth Amendment giving women the right to vote in 1920. Subsequently, the New Deal, the civil rights movement, the Great Society, the “new social movements” of the late 1960s and early 1970s, and the spate of subsequent legislation to mitigate inequalities of race, class, gender, and sexual orientation—though successful in many ways—have fallen short of producing constitutional change.

Why is it problematic that the aforementioned currents failed to change the Constitution? It is widely acknowledged that the most significant legacy of the New Deal—namely, the Social Security system established in 1935—could be abolished by an act of Congress. In fact, recent years have witnessed considerable debate on the future of Social Security and other social programs. But it is often forgotten that the two most significant legal contributions of the civil rights movement—the Civil Rights Act of 1964, which abrogated the “Jim Crow laws” and banned segregation in schools, workplaces, and other public accommodations, along with the Voting

Rights Act of 1965, which reinforced the Fifteenth Amendment and banned the discriminatory practices that had prevented African Americans from voting—could be overturned by an act of Congress. This is the rationale for current proposals to (a) cement the achievements of the New Deal in an “Economic Bill of Rights” (akin to the amendments President Franklin Delano Roosevelt had proposed in 1944 amid preparations for the postwar reconstruction of the global economy and the interstate system around the principle of “One World”); (b) extend the accomplishments of the civil rights movement in amendments banning racial discrimination in education, employment, and the enjoyment of public life; and (c) solidify the gains of the women’s movement in an “Equal Rights Amendment” (akin to the declaration drafted by suffragette Alice Paul in 1923, entertained by public officials in the 1960s, approved by Congress in 1972, and ratified by 35 of the necessary 38 states before its expiration date in 1982).

In light of the precariousness of the aforementioned legislative gains, this book argues for the need to formalize the past accomplishments and facilitate the future undertakings of popular movements by amending the Constitution. If U.S.-based scholars and activists have fallen out of the habit of proposing amendments to the Constitution, where might they turn for ideas on how to proceed? In a plea to U.S.-based scholars and activists to join forces in reinterpreting the Constitution, the authors draw on the advanced thinking and social learning that have accumulated not only in Latin America (where the World Social Forum has built on the previous efforts of the Landless Rural Workers’ Movement in Brazil and popular mobilizations in neighboring countries), but also in Africa and Asia. If recent university conferences on human rights and the 2007 and 2010 installments of the US Social Forum are any indication, U.S.-based scholars and activists have begun to strengthen their ties not only to one another but also to their colleagues abroad. In the process, they have been the beneficiaries of novel ideas from human rights advocates across the globe.

At the very least, it is clear that the process of transnational coalition building can be facilitated through the adoption of the malleable language of human rights. It is instructive that an array of grassroots movements, NGOs, and UN agencies—though vastly different in worldview, mandate, and power—have articulated their demands and policy proposals in the language of human rights. In implying a complex universalism that allows for geographic variation and cultural specificity, the adoption of human rights as a “master frame” has cultivated transnational alliances among a diversity of actors (including indigenous peoples; peasants; workers; racial, ethnic, and religious minorities; women; and LGBTQ communities). In sum, grassroots groups and their NGO partners have grappled with the enduring contradictions of Enlightenment thought—including

the articulation of an emancipatory project alongside the preservation of colonialism, slavery, and other forms of domination, exploitation, and exclusion—in renovating the cosmopolitan vision for the twenty-first century. As if to respond to the trenchant critiques of Enlightenment thought offered by poststructuralism and postmodernism, postcolonial theory and subaltern studies, Third World and global feminism, and other schools of contemporary social theory, popular forces and intellectuals in the Global South have advanced a new form of universalism. In principle, there is no reason why this new universalism should not take root in the United States—after all, the U.S. university system has, for some time, been the world leader of research and innovative ideas.

While U.S.-based scholars and activists have grown accustomed not only to supporting imperiled academics, intellectuals, journalists, political leaders, and movement organizers but also to providing material and logistical assistance to community groups, social movement organizations, and NGOs elsewhere in the world—examples include Amnesty International campaigns on behalf of prisoners of conscience, the Zapatista solidarity network, campaigns launched by United Students Against Sweatshops and other challenges to the labor and environmental practices of transnational corporations, and coalitions against human trafficking and sexual slavery—they have not regained the habit of importing new conceptions of human rights to the United States. Phrased differently, the outflow of solidarity (as manifested in the provision of material, logistical, and moral support) to the Global South has only recently been accompanied by a backflow of ideas to the United States. In essence, this book is designed to facilitate the transmission of human rights-oriented ideas across the United States.

Although an explanation of the aforementioned phenomenon falls beyond the purview of this book, it is worthwhile to mention two contributing factors. First, the residues of positivism (i.e., the belief that the social sciences should be value-free) and relativism (i.e., the belief in the impossibility or undesirability of making value judgments across cultural contexts) have, until recently, prevented social scientists from building an explicit concern for human rights into their research (Turner 2006). Second, in the world of activists, the daily grind for resources and publicity—exacerbated by a history of competition between groups, infighting within groups, and a marked susceptibility to identity politics—has impeded the formation of enduring alliances among factions. In this light, the emergence of the public sociology initiative in the American Sociological Association (ASA) in 2004 and the US Social Forum three years later marked a significant breakthrough for academics and activists, respectively. It comes as no surprise, therefore,



that a large number of scholars have participated in the activities of the US Social Forum.

To date, the sea change among scholars and activists has exerted little or no influence on the Democratic and Republican parties in the United States. Notwithstanding its tendency—especially since the administration of President Jimmy Carter (1976–1980)—to invoke the language of human rights in justifying a foreign policy that often conflicts with the rights of peoples elsewhere in the world, the U.S. government has carefully avoided using human rights terminology in its articulating of domestic policy. Recognizing the paradoxical role of the United States as a founder and chief sponsor of the UN and yet a reluctant party to international treaties that would provoke the reconsideration or transformation of domestic policy, this book aims to bring human rights “back home.” This process entails sustained reflection on the history, structure, and mandate of the UN—not least because UN declarations serve as reference points for human rights advocates across the world.

Designed not only to manage the interstate system but also to promote national self-determination, nation building, and development in the Global South, the UN has, throughout its 65-year history, served as a cauldron for research and debate on human rights. Reflected in the 1948 Universal Declaration of Human Rights (UDHR), the 1966 ICCPR, the 1966 ICESCR, and an array of other declarations, the knowledge-producing function of the UN should not be ignored. On one hand, the UDHR, the ICCPR, and the ICESCR can be characterized as the intellectual expressions of popular mobilizations for human rights, peace, and justice. On the other hand, these documents can be characterized as springboards for new forms of advocacy and movement activity. In short, even though the UN has outstripped the United States in rights thinking—in part by sponsoring conferences for academics, policymakers, NGO staff, and activists across the world—there exists no formal obstacle to applying the insights of the UN and its intellectual orbit in the U.S. context. Hence the question arises: What would happen if the United States took seriously the ICCPR and the ICESCR? Phrased differently, how would the implementation of these treaties affect U.S. society, politics, and law? How might the United States contribute to the debate on the contents of such treaties? It is incumbent upon us to explore such questions without fear of seeming utopian or out of touch with domestic norms, customs, and practices.

Building on a series of projects associated with the scholarly NGO Sociologists without Borders<sup>1</sup>—including the journal *Societies without Borders: Human Rights and the Social Sciences*<sup>2</sup>; a number of panels at the annual meetings of the ASA, the International Sociological Association (ISA), and other disciplinary organizations; and the collected volume *The*

*Leading Rogue State: The U.S. and Human Rights* (Blau et al. 2008)—the present book emphasizes three interrelated questions. First, how might we apply sociological expertise in illuminating recent advances in the theory and practice of human rights? Second, how might we draw on innovations in rights thinking in updating the Constitution to meet the demands of a changing global economy, interstate system, and global civil society? Third, what are the implications of the rights project for sociology as a discipline? In answering these questions, the present book argues that the tools of sociology are well suited to elucidate the invariably complex and often contradictory interactions among academics, policymakers, and activists operating in the field of human rights. Consequently, the present book can be seen as a corollary of the ongoing efforts of the Human Rights Section of the ASA<sup>3</sup> and the Thematic Group on Human Rights and Global Justice in the ISA<sup>4</sup> to systematize the sociology of human rights.

In conceptualizing the human rights community as a knowledge movement—a transnational consortium of university researchers, UN officials, NGO staff, and movement organizers citing the ICCPR and the ICESCR as touchstones—this book excavates the idea systems, institutions, and policies associated with a vision of human rights that has evolved markedly since the founding of the UN system in 1945. In addition, this book argues for the need to import rights thinking from abroad in an effort to breathe new life into the U.S. Constitution. In principle, there is no reason why the United States cannot follow the example of countries that have revised their constitutions.<sup>5</sup> Finally, this book argues for the abandonment of a social problems approach that presumes value neutrality in favor of a human rights approach that affirms such values as equality, solidarity, diversity, and sustainability as objectives of scholarly research, teaching, and service.

In building a concern for human rights into the conduct of social science, we find support not only in the ASA's (2009) "Statement Affirming and Expanding the Commitment to Human Rights,"<sup>6</sup> but also in the American Anthropological Association's (1999) "Declaration on Anthropology and Human Rights"<sup>7</sup> and the Science and Human Rights Program launched by the American Association for the Advancement of Science (2009).<sup>8</sup> Taken together, the efforts of these organizations to incorporate values into social and natural scientific research can be seen as a movement beyond the false opposition between positivism and relativism. It is possible to reconcile scientific rigor with the advocacy of human rights; social and natural scientists can—and should—have it both ways. More broadly, it is clear that a number of events—including financial crises from East Asia to Russia, to Latin America, and more recently to the United States and the European Union; social unrest across the Global South; the U.S. wars in Iraq and Afghanistan;

increasing environmental degradation; the rapid spread of treatable diseases across sub-Saharan Africa; civil wars and genocides in poor countries; and the disastrous effects of Hurricane Katrina on the inhabitants of New Orleans and the coastal communities of Louisiana and Mississippi—have prompted many social and natural scientists in the United States to become advocates of human rights. This represents an extremely important development. As the case of Katrina and its aftermath suggests, the next step is for social and natural scientists to apply their growing awareness of human rights problems to the U.S. context. Alas, human rights issues exist not just “over there,” in the Global South, but also “right here,” in the United States. In this light, low life expectancy, high infant mortality, and limited access to educational and professional opportunities among poor and working-class people; the persistence of discrimination on the basis of race, gender, and sexual orientation; and the rapid advance of environmental degradation can be defined as human rights issues. This is the essence of the human rights approach to sociology.

## Conclusion

As this chapter has argued, the constitutional strategy—that is, codifying the achievements of social movements at the level of the Constitution—would present three significant advantages over the legislative strategy. First, it is appreciably more difficult to repeal constitutional amendments than it is to overturn legislation. For example, a civil rights amendment would concretize the rights of African Americans, Latinos, and other racial and ethnic minority groups appreciably more than existing legislation outlawing discrimination in education, work, and the public sphere. Similarly, an equal rights amendment would secure women’s rights to a much greater degree than existing legislation banning sexual discrimination and harassment in schools, workplaces, and other public institutions. Second, constitutional amendments pertaining to human rights would have the effect of legitimizing and enabling social movements pursuing projects of emancipation or pushing for the expansion of democracy. For example, a constitutional amendment banning discrimination and harassment according to sexual orientation and legalizing same-sex marriage would, in all likelihood, provide momentum for the LGBTQ movement in its pursuit of other objectives. Third, constitutional amendments would offer the possibility of linking domestic law to international law in a more robust way. Phrased differently, constitutional amendments on civil rights for African Americans, Latinos, and other minority groups; equal rights for women; and an array of rights for the LGBTQ community would serve to bring the United States into a more productive dialogue not only with

nation-states that have revised their constitutions but also with a spectrum of NGOs and UN agencies operating in the field of human rights. This would allow the United States—a hegemonic power with an extensive university system (including numerous law schools), a high number of NGOs and other civil society organizations, a dense concentration of foreign embassies and consulates in Washington, D.C., and a massive conglomeration of foreign missions to the UN in New York—to participate more fruitfully in debating, enacting, and enforcing international law. It is high time for the United States to mobilize its vast reservoir of talent and its substantial infrastructure for the cause of human rights.

## Notes

1. <http://www.sociologistswithoutborders.org/>
2. <http://societieswithoutborders.org/>
3. <http://www.asanet.org/sections/humanrights.cfm>
4. <http://www.isa-sociology.org/tg03.htm>
5. See the University of Richmond Constitution Finder: <http://confinder.richmond.edu/>
6. [http://asanet.org/about/Council\\_Statements.cfm](http://asanet.org/about/Council_Statements.cfm)
7. <http://www.aaanet.org/stmts/humanrts.htm>
8. <http://shr.aaas.org/>

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