DRAFT CHAPTER – PLEASE DO NOT CITE WITHOUT PERMISSION

What does it matter what human rights mean?

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The cultural politics of human rights disrupts taken-for-granted norms of national political life. Human rights activists are engaged in imagining the practical deconstruction of the distinction between citizens and non-citizens through which national states have been constituted. They envisage a world order of cosmopolitan states in which the rights of all, including non-citizens, would be fully respected. How likely is it that such a form of society might be realised through their activities? Is collective responsibility for human rights currently being shaped in cultural politics? If so how, and with what consequences?

A focus on what human rights mean to social and political actors, and with how these meanings impact on their institutionalisation, has been missing from the study of human rights (1). And yet it is only through cultural politics that the ideals of universal human rights might actually be realised in practice. What I mean by 'cultural politics' is more or less organised struggles over symbols that frame what issues, events or processes mean to social actors who are emotionally and intellectually invested in shared understandings of the world. But cultural politics is not only the contestation of symbols. Cultural politics concerns public contests over how society is imagined; how social relations are, could and should be organised. It is only through practices that are meaningful to people that social life is possible at all: the social institutions that constrain our lives are nothing but routinised shared understandings of what is real and what is worthwhile. Although social actors rarely, if ever, imagine a fully formulated blueprint of a new society even during revolutionary periods, in using or contesting symbols that are meaningful to them, they are nevertheless engaged, more or less consciously, either in trying to bring one about, or, equally commonly, in defending what already exists.

Human rights are the object of cultural politics concerning global justice. Globalisation raises difficult questions concerning how justice must now be rethought beyond the national frame which successfully routinised shared understandings of justice as relevant only to fellow citizens. Human rights are themselves globalising, as they are deployed in strategies to end human rights violations or to condemn states which resist international pressure to comply with human rights norms. In this respect, in images of suffering in the global media which are framed as issues of human rights, and in responses to violations which seek to extend capacities for global governance, human rights are themselves an aspect of globalisation. However, at the same time, human rights also seem to stand above globalisation, to represent a framework through which globalisation itself might be regulated and global governance organised. The comprehensive schedules of human rights developed by the UN and in regional systems of human rights seem to offer a framework for justice beyond states, a global constitution to guide the political development of the planet.

Although it is now common to think of human rights as essential to just global governance, it is important to note that it is only through states that human rights can be realised. States do not just represent dangers and obstacles to the realisation of

human rights; they are absolutely necessary for the realisation of human rights in practice. In this respect, it is particularly important to consider how human rights are contested and defined <u>within</u> states. It is only with the collusion of state agents that human rights are violated, and only states can secure and enforce human rights within their own territories (2). Even at the international level, human rights systems exist only by state agreement; it is states that act together in international organisations to create conditions for the realisation of human rights. States raise taxes to pay for international organisations, authorise personnel to act in them on their behalf, and maintain the military and police force that can, in principle at least, be used to enforce human rights.

States, like all other social institutions, are constituted as routinised social practices which establish that members of society 'know how to go on' in any particular situation. Language, symbolic communication organised into settled patterns of shared understandings as discourse, is the most important structuring dimension of institutions. This is equally the case in formal, bureaucratic organisations, such as those of the law and government, where face-to-face interactions are generally regulated by the tasks at hand, and by written materials that guide what is to be done, as in more loosely networked and informal spaces, such as those of social movements. At certain times conflicts arise about 'how to go on' in social institutions, over whether settled interpretations are fair, or accurate, or valuable. These conflicts often begin as a result of the activities of social movements, which contest taken-for-granted understandings of routinised social life, and at the same time militate for change in policy and legal documents which share in and reinforce those understandings. During periods of cultural political activity, common interpretations are disrupted, and become open to re-interpretation. Such conflicts may, where authoritative decision-makers allow it, or where they find themselves obliged to respond to contentious re-interpretations, result directly in changes in the law, or in government policy.

Human rights culture and cultural politics

'How to go on' in the face of contention over what are clearly stated in international law as universal human rights but which are in practice selectively applied and enforced within national states, is currently highly contested. However, with the exception of anthropological studies, which are now moving beyond the debate over universalism and relativism in interesting ways, the importance of culture to the study of human rights has not been so much neglected as it has been routinely referred to as essential in literature on policy and politics without, however, being given rigorous attention in its own right (3). It is above all in references to 'human rights culture' that the importance of linking inter-subjective and institutional dimensions of human rights is noted. 'Human rights culture' marks out a fairly well-established understanding that culture is crucial to fostering the realisation of human rights in practice. However, it is invariably used to provide the <u>answer</u> to the problem of how human rights might be realised. In this study, in contrast, the concept of 'human rights culture' is the occasion for <u>questions</u> concerning the kind of research that is necessary to establish how the cultural politics of human rights is actually engaged. Rather than accepting that human rights culture is the ethical answer to the question 'how can human rights ideals be realised in practice?', it is important to think about how we might study actually existing cultural politics of human rights and their effects on social institutions.

There has been no systematic study of human rights culture. However, the term has been widely used in a diverse set of interventions in policy debates at the international and national level (UN 2004; Lasso 1997; see also www.breakthrough.tv/). It has also been discussed by theorists of human rights from different disciplinary backgrounds (Rorty 1993; Klug 2000; Parekh 2000; Mertus 2004, 2005;). 'Human rights culture' finds political and theoretical support because it marks the importance of inter-subjective understandings of human rights to their realisation, which are otherwise overlooked in policy debates and in academic studies of human rights. The common theme of the diverse uses of 'human rights culture', is that in order to be successful, human rights must win hearts and minds. Mertus puts it well (drawing on the anthropologist Renato Rosaldo's definition of culture): human rights will only be established once human rights are one of the 'forms through which people live their lives' (2005: 212). Helena Kennedy, in the foreword to Klug's Values for a Godless Age, describes human rights culture as involving, 'not just aspirational principles, but a practical code for existence' which should not be left to lawyers, 'a new erudite priesthood, taking the life out of the debates' (Kennedy 2000: xiii).

Though 'human rights culture' is used in many different ways, across all its uses there is a kernel of agreement. What is needed to establish human rights is a shift in public sentiments: every single person must simply be respected and treated as an individual human being with entitlements, regardless of their gender, racial, ethnic or religious background. It should become unthinkable and intolerable that anyone should ever act against human rights, whether at home or abroad. Ignoring human rights must become ethically and emotionally repellent if human rights ideals are to become reality. Only then is there any real possibility of establishing and maintaining institutions that uphold human rights norms.

The concept of 'human rights culture' raises two main problems for investigation in this study. Firstly, supplying an answer to the problem of how human rights are to be realised, it tends to suggest an essentialist understanding of culture as a 'way of life' (even where there is the explicit attempt to break with this conception of culture (see Mertus 2004: 212)). Advocates of human rights culture must emphasis the stability and coherence of shared values, understanding and emotional commitments to human rights – even if this is more a future aspiration than a present reality. It is the stability and coherence implied by 'culture' that is precisely the value of human rights culture when it provides an answer to the question, 'can human rights be realised?' However, there is general agreement amongst cultural theorists that culture is not stable, coherent, or enduring in the way that advocates of human rights culture must assume (Cowan et al. 2001; Ortener 2006).

Secondly, the concept of 'human rights culture' does not enable the investigation of precisely how culture effects change. In particular, it has not been developed to engage with the question of precisely how it is that state officials, who are ultimately responsible for institutionalising and enforcing human rights, might be motivated to put human rights into practice. The answer that 'human rights culture' provides to the question of how human rights are realised seems to assume either that judges and politicians who make effective decisions concerning the realisation of human rights act as a result of cultural norms that are shared by the whole society; or that they act because of public pressure, itself shaped by shared cultural norms that are developed

in civil society, the realm of sentiment and ethical values, which may then influence cold-hearted or anxiety-driven judgements of state officials.

In order to investigate the importance of culture to realising human rights ideals, I propose to replace the idea of 'human rights culture' with that of the 'cultural politics of human rights'. It is vital to preserve the insight of advocates of human rights culture that culture does make a difference to human rights. My approach is intended to expand and extend that understanding whilst avoiding reliance on a discredited essentialist definition of culture. 'Politics' could be used to sum up the principal theoretical difference between essentialist understandings of culture as a settled way of life and contemporary understandings of culture as inherently ambiguous, contested and structured by power. Cultural theorists have shown how power, and therefore politics, is inherent in all practices of symbolisation through which meaning is communicated. Culture structures institutional positions of authority which validate particular perspectives, creating hierarchies of subordination and obscuring or excluding recognition of differences and inequalities. It is not that there is no consensual stability to culture. To a large extent culture involves the reproduction of traditions, habits, perceptions and understandings. But culture is also inherently fluid and dynamic, a continually moving and 'changing same' (Gilroy 1993: 101). Constructed in relations of power, culture is always open to political challenge and contestation, whilst at the same time, caught in the inertia of repetition, it is resistant to intentional invention (see also Nash 2000).

From the perspective of contemporary cultural theory, human rights are not just supported by culture: human rights are cultural. There is nothing meaningful in social life that is outside culture: human rights are cultural insofar as they are meaningful. Furthermore, there is also, then, no absolute distinction between practices of state and civil society: culture is not a distinct arena of society; it does not just involve the media, for example, or education, or religion. Culture, as Jeffrey Alexander puts it, 'is not a thing but a dimension, not an object to be studied as a dependent variable but a thread that runs through, one that can be teased out of, every conceivable social form' (Alexander 2003: 7). In so far as representations of human rights formed in civil society are influential on state practices, this is possible because human rights are meaningful on both sides of the analytic and socially sustained distinction between civil society and the state. What links officially sanctioned state practices and public pressure from civil society is cultural politics.

It is, of course, important to maintain an understanding of the specificity of different institutional practices, including those that are legal or governmental: different spheres of social life are created and sustained by different reflexive practices, including ceremonial rituals, formal and informal codes maintaining the distinctiveness of institutional settings, bodies of regulation that are specific to particular activities and so on. Moreover, it is not that there is no value in distinguishing between state and civil society. But it is important to understand that human rights are not simply adminstered through state procedures, as if they always already existed as clear and distinct aims. As they are enumerated in international human rights agreements, the UDHR, the ICCPR, the ICESCR and so on, the meanings of human rights are relatively clear, even if their abstract formulations in these agreements allows a good deal of latitude for interpretation. These meanings are not, however, fixed; human rights are defined and redefined as policies are created

and administered, legal claims dealt with and so on – both inside and outside state procedures.

From the national to the cosmopolitan state

Human rights can only be enforced by states. But human rights are not, of course, solely, or even mainly the business of national states; in fact, it has been much more common to think of human rights as international. Human rights were initially developed in the international arena through diplomatic negotiations which led to the signing of Treaties and Conventions between states – most notably the UDHR and subsequent Conventions derived from it. In recent times, moreover, the networks of intergovernmental and non-governmental actors engaged in trying to bring about human rights in practice has become so significant within and across states that it has become common to refer to human rights as globalising (Brysk 2002; Coicaud 2003; Mahoney 2007).

What does it mean to think of human rights as globalising? In one sense, of course, human rights are necessarily global: taking a universal form, they concern all human beings by definition. It is with respect to their potential for institutional effectiveness, however, that human rights are increasingly considered to be globalising: the vast majority of states have committed themselves to precise and detailed international human rights agreements; and, as a result of human rights activism, interpretations of international law may deepen that commitment and at the same time extend it to include even those states that have not formally bound themselves to such agreements. In this respect, we might say that, because human rights are becoming increasingly institutionalised across the world, they now have the potential, historically unprecedented, to become effectively (as opposed to, or as well as, formally) global.

The potential of globalising human rights can only be realised through state transformation. Although human rights are increasingly global, the national is especially significant to the realisation of human rights. In fact it could be that it is <u>because</u> human rights are increasingly global that they have become so much more significant within states historically constituted as national. Compared to the international arena, predominantly a sphere of activity for elites, the national arena is much more populist: issues are addressed to 'the people' as democratically entitled citizens as well as to elites. What is important in the cultural politics of human rights is how the global and national are entangled in human rights practices. There is (almost) a global human rights regime and state elites are under pressure from above and below to bring policies and practices into conformity with that regime. What human rights actually mean in practice, however, depends to a large extent on the cultural politics of human rights in the national context.

In order to clarify how the cultural politics of human rights may contribute to the realisation of global human rights through state transformation, it is useful to make a working distinction between ideals of 'national' and 'cosmopolitan' states. Theorists of state transformation now generally take the view that states are not dissolving, and nor are they becoming irrelevant in the face of processes of globalisation. States are rather adapting in order to manage flows of ideas, goods, services and people across their borders, becoming increasingly integrated into international networks that link them together in dense assemblages of shared norms and procedures connecting

processes, insititutions and actors. Saskia Sassen analyses such processes of state transformation as 'denationalization'. For example, in specific cases, she says, the work of 'national legislatures and judiciaries' is now caught up in processes of globalisation which 're-orient particular components of institutions and specific practices… towards global logics and away from historically shaped national logics' (Sassen 2006: 2). Similarly, Anne-Marie Slaughter argues that states are now disaggregating across borders, as government regulators, judges and legislators network with their counterparts from other states and from supranational institutions like the EU, in order to share information, harmonize regulation and develop ways of enforcing international law (Slaughter 2004; see also Held 1995).

Where, like Sassen, theorists focus on political economy, they are generally critical of state transformation as it is currently being shaped by the de-regulation and re-regulation of national economies that leave workers unable to exercise much, if any, control over multinational corporations and flows of capital (see also Tonkiss 2007: chapter 3). A focus on human rights, however, gives rather a different emphasis to the study of contemporary state transformation. The cosmopolitan state is a condition of the full realisation of human rights as they are enumerated in international human rights agreements. This is not because human rights are inherently neo-liberal. On the contrary, international human rights agreements actually encode a political order that much more closely resembles global social democracy than neo-liberalism. Moreover, how human rights are realised in practice, the kinds of social forms that are actually enabled by the cultural politics of human rights, is precisely what is at issue. Analysis of state transformation as a necessary condition for the full realisation of human rights does, however, give our understanding of how it is happening and what form it may now be taking an explicitly normative dimension, because human rights have explicitly been encoded as universal norms for humanity.

The idea of the national state as the basis of the global order is conventionally dated to the Treaty of Westphalia of 1648, but this is controversial (4). As Craig Calhoun, for example, argues, nation-states hardly existed at this time, even in Europe; and certainly empires thrived for 300 years after the Treaty (Calhoun 2007: 14). What we can say with a reasonable degree of historical accuracy, is that, as an ideal, the national state was hegemonic from the end of World War Two, which saw the dismantling of European empires, until the end of the Cold War. The ideal of the national state involves three main features:

1. sovereignty – a state is to be free from interference by other states in its policy-making and law enforcement to enable justice as self-determination of the people;
2. for self-determination to be effective, states must have sole jurisdiction over what takes place within their own national territory, where jurisdiction concerns the 'power of the state to affect people, property and circumstances' (Shaw 2003: 574);
3. the political community is the people who make up the nation and, ultimately, they must consent to public policy made in their name – if not through elections, then by not rising up against the government or the state.

During the second half of the twentieth century, the national state was clearly staked out as a universal ideal: a state is, or should be, sovereign, democratic, serving the national political community. By comparison, since the end of the Cold War, it is argued that we are now seeing the transformation of state structures along all three dimensions as states become embedded in extended networks of global governance. The ideal of the cosmopolitan state is characterised by the following features:

1. state sovereignty is transformed in international institutions of co-operative global governance and this is necessary to meet the policy problems increasingly thrown up by globalisation (Held 1995; Slaughter 2004; Beck 2006; Sassen 2006);
2. the legitimacy of policy actors depends upon the extent to which they conform to norms of international human rights and humanitarian law developed through international state co-operation (Soysal 1996; Crawford and Marks 1998; Beetham 2000; Held 2002);
3. the legitimacy of public policy depends on the appropriateness of the scale at which it is made – from global to local - which in turn depends on the scale of the relevant policy problem and accountability to different political communities according to an 'all affected' rule (Held 1995; Gould 2004; Fraser 2005).

Human rights now play a key role in transformations of the national state because of their hybrid status as intermestic; they are both international and domestic at the same time (see Rosenau 2003; Steinhardt 1999). In conventional legal scholarship, human rights are conceived of as a matter for either international or national law. However, the reality of human rights practices is now much more complex. The intermestic status of human rights is nowhere more in evidence than the way in which international law, especially customary international law, is used in national courts. In national courts, decisions that draw on customary international law confirm and extend its status as law whilst binding the national state to its observance in the particular case in question. Human rights are not just international: they are not solely the concern of International Governmental Organisations like the UN or the Council of Europe; nor are they only of value in international courts, like the European Court of Human Rights. Human rights are not transnational either; they are not simply ideas or ideals that cross national borders. Human rights are intermestic: legal claims to human rights which draw on international law in national courts disrupt and sometimes re-configure jurisdictional borders between the international and the domestic from within states.

It is through the cultural politics of intermestic human rights that the tensions inherent in the transformation from national to cosmopolitan state may – in principle - be worked out. The ideals of the national and cosmopolitan state are not necessarily contradictory. Indeed, over two hundred years ago, at the beginning of modern state formation in Europe, Immanuel Kant suggested that national states could be transformed into cosmopolitan states, of a kind. Kant proposed that, as a result of the exercise of public reason, states should bind themselves to peaceful co-operation with other states through international law, and cultivate the exercise of hospitality towards individual strangers (Kant 1991). Kant's model of the relations between cosmopolitan republics is of discrete, sovereign states. Aside from this difference, however, his formulation is not so far from the characteristically optimistic solution

for ameliorating the tension between the national and the cosmopolitan state that has been proposed much more recently by David Held: 'The principles of individual democratic states and societies could come to coincide with those of cosmopolitan democratic law… and democratic citizenship could take on, in principle, a truly universal status' (Held 1995: 232-3).

Intermestic human rights are key to the creation of cosmopolitan states out of existing national states. At the same time, the ideal of the cosmopolitan state provides a kind of benchmark for the progressive realisation of human rights. Progress in human rights can not be assumed – especially given the fact that the cosmopolitan project, including that of the realisation of human rights, has for so long been associated with the progress of history in Western thought. What human rights actually mean in practice matters because it can not be assumed that increased activity around human rights, including their expansion in law, necessarily results in a progressive movement from national to cosmopolitan states.

Notes

1. Fuyuki Kurasawa's study of what he calls the 'ethico-political labour' of human rights is an impressive theoretical advance in terms of establishing the importance of struggles over meaning to the practices of human rights (Kurasawa 2007). It is disappointing, however, that he does not consider changes in institutions of governance and states, which are the key sites for the realisation of human rights, but confines his analysis to movements in civil society.

2. Although, in recent times powerful states have used a rhetoric of human rights to justify military intervention, the legality of such measures is highly contentious, it is never undertaken solely to secure human rights, but always primarily for reasons of security or economic advantage, and – as we have seen in Iraq and Afghanistan - it is also, unsurprisingly, ineffective (Chandler 2006; *cf* Cushman 2005).

3. Anthropological work on the meanings of human rights has been an inspiration for this project, especially for the way in which anthropologists treat human rights as culture (Cowan et al. 2001; Merry 2006; Wilson 1999).

4. Charles Tilly has suggested distinguishing nation-states, 'whose people share a strong linguistic or symbolic identity' from national states, which attempt to integrate large populations and territories, who do not necessarily share common cultural norms in the same way (quoted in Calhoun 2007: 56-7). Although 'nation-state' is the more common term, as states have generally made nations out of a diversity of groups sharing different languages and customs, rather than being found by pre-existing nations, I prefer 'national state'.

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