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by Kate Nash

States are in a paradoxical position in relation to human rights. On one hand state actors are to be held accountable as the violators of human rights.[1] On the other hand, states are addressed in international human rights law as the guarantors of human rights.

Sociologists (and indeed, political theorists), have, however, barely begun to address questions that are raised by the paradoxes of "states of human rights." Consider, for example, the suggestion from Lydia Morris's introduction to her edited collection *Rights*, that human rights are established in the following sequence: "the assertion of a claim, the accumulation of moral credibility and support, recognition of the claim and finally its institutionalisation" [Morris 2006, 244, based on Jack Donnelly's definition]. The relative weight that is given to on how rights claims become recognized, and the brevity and ambiguity of "institutionalisation," is typical of sociological approaches to the study of human rights.[2] The central role of states in securing human rights is not mentioned in this formulation, though neither is it clear what "institutionalisation" might involve beyond states.

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[1] On occasion non-state actors may be found in breach of human rights in international law, but only in conjunction with states: where they have been delegated public functions by state actors, or where they collude with state actors in committing human rights violations [Alston 2005].

[2] Where sociologists have considered the institutionalisation of human rights, they have tended to do so in terms of their legalisation and its effects [Morris 2009; Morris 2010; Sznaider and Levy 2006; Levy 2010]. As we will see, however, this is only part of what is required in order to realise human rights in practice.

Despite the growth in importance of non-state actors, the international human rights regime remains state-centric. It is only state actors that sign and ratify agreements, donate the resources to set up international courts and commissions, and – exceptionally, in very extreme cases – invite or allow external agencies to monitor, administer and enforce law within their territories. As Douzinas [2007, 244] has pointed out, the UN system of human rights is schizophrenic. Following World War Two it inaugurated the long process of developing human rights law to protect individuals within states at the same time as it encoded respect for the integrity of self-determining sovereign states. Despite the explosion of human rights conventions and treaties, and the increased involvement of non-state actors in the system since then, its schizophrenia remains. In the UN system the legalization of human rights (the codification of human rights demands into international and national law), their translation into administration (through courts and in government policy), and their effective enforcement are only legitimate where they are undertaken by sovereign, self-determining states. The difficulty here is elegantly obscured, not resolved, by treating states as if they were agents with a conscience. According to the preamble of the International Covenant on Civil and Political Rights, for example, states parties *consider* that "the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," *recognize* "that these rights derive from the inherent dignity of the human person," and *realise* that individuals "have duties to other individuals and to the community to which they belong."[3] This kind of formulation treats states (not individual state officials) as if they were persons, capable of choosing whether to violate or to respect human rights.

The paradox of states of human rights, that they are to ensure the human rights of individuals within their territories against their own violations, is built into and at the same time obscured in international human rights law. Sociologists have considered it in terms of the effects of the legalization of human rights on state sovereignty. However, there is a tendency amongst cosmopolitan theorists who work on human rights and sovereignty to be oriented as much by the will to clarify a normative framework for human rights as by critical sociological analysis of their actualities and possibilities. Cosmopolitan "progressivists" extrapolate from the fact of international human rights agreements, and the way they are increasingly adjudicated in international and national courts (especially in high-profile cases like Pinochet and ATCA), to argue that there is a tendency towards transcending nation-state sovereignty. In its strict sense "sovereignty" is simply the legal obligation of states not to interfere in the

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[3] See www2.ohchr.org/english/law/ccpr.htm.

affairs of other states. In what is sometimes referred to as the "Westphalian order," states agree on their independence from each other; each agrees to respect the other's sovereignty. It is in this respect that David Held and others argue that, as human rights are increasingly codified in law and monitored by the UN and NGOs, states are now "sharing sovereignty": they are increasingly accepting that their legitimacy no longer depends on the principle of non-interference, but on their practical adherence to the human rights norms to which they have bound themselves in international law [Held 1995; Held 2002; Sznaider and Levy 2006]. *De jure* sovereignty overlaps with *de facto* sovereignty, the legitimate exercise of authority to impose regulatory frameworks on a population within a state. What is neglected, however, in debates over the political contestation and redefinition of "sovereignty" and "legitimacy," is state *autonomy*: the actual capacities and inclinations of state officials to exercise effective authority, to make things happen in the name of the state *in the face of resistance from other actors*. It is only insofar as states are autonomous that state actors can comply with the international human rights agreements to which they have signed up (in the face of resistance from others who will be disadvantaged by this compliance). And it is also state autonomy that is at stake here when officials act *in defiance* of international human rights norms; in this case, autonomy from other states.[4]

Another way of putting this is to say that the "progressivist" view of the transformation of sovereignty through international human rights law tends to conflate *changes in the law* with *changes in state structures*; to confuse changes in the scope of "sovereignty," with changes in the scope of "autonomy." More sceptical sociologists have taken an interest in whether and how human rights law is actually made effective once it is in place. Most notably, Hafner-Burton and Tsuitsui have used statistical methods to ask what effect the increasing convergence on human rights norms represented by states signing and ratifying international human rights agreements has on violations. According to their analysis, although state officials often intend only lip service to human rights ideals, "global civil society," by which they mean NGOs, then use these legal documents as a basis for calling them to account, with important effects for human rights. In the case of the most repressive states, however (where torture,

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[4] A partial exception in this respect is Sassen's *Territory, Authority, Rights.* However, her principal concern is with changes in political economy and the Keynsian state, of which she sees denationalizing citizenship as a feature, not with state transformation in relation to the extension of human rights as such. Moreover, her approach is also limited in that her methodology involves focussing on one critical state in each historical period of transition (the Capetian state in the Middle Ages, the British industrial state in the Nineteenth century, and the US state from the 1980s), which she takes as "emblematic" of key changes that then spread to the rest of the world once a certain "tipping point" is reached. Focussed on Western states, her methodology begs the question: are states all over the world going through the same processes of structural change?

imprisonment for political offences, disappearances and murder are common), they found that states ratifying treaties made little difference to actual abuses, even after a decade [Hafner-Burton and Tsuitsui 2005; Hafner-Burton and Tsuitsui 2007].[5]

How should we understand what is going on here? Why is the effectiveness of international human rights law so limited in repressive states? The purpose of this paper is to open up these questions by shifting focus from the activities of human rights activists and their attempts to legitimate their rights-claims in order to make law or to make law count, to look at the structures with which they must engage in trying to realise human rights in practice. How are states structured in ways that facilitate or impede the realisation of human rights? What are activists up against in trying to transform states that are violators of human rights into states that guarantee human rights?

Social Structures of Stateness

It is notoriously difficult to address questions of "stateness" without reifying "*the state*" as if it were a thing or even a person. "The state" is not a "thing," unified and complete, but nor is it an illusion, a social construct that traps us into thinking "it" exists [see Abrams 2006]. States differ, they are plural and fluid, but they all involve the structuration of violence. Force is concentrated, organised and exercised through state structures. Whilst state violence is obviously key to gross violations of human rights, the threat, and sometimes the exercise of violence, is also crucial to enforcing the rule of law and the administration of resources for rights-claimants that is required by international human rights law. State violence is something like a hinge: it opens onto either the violation of rights, or to their guarantee.

But what are states? A useful way of approaching this question is to think of structures and organisations as having degrees of "stateness" relative to an ideal-type that identifies, amplifies, and inevitably simplifies, features of the world. Charles Tilly's definition is often cited as covering much of what we intuitively understand as relevant and specific about states. According to Tilly the state is:

> An organization which controls the population occupying a definite territory is a state insofar as 1) it is differentiated from other organizations operating in the same territory; 2) it is autonomous; 3) it is centralized; and 4) its divisions are formally coordinated with one another [Tilly, quoted in Poggi 1990, 19].

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[5] In fact, their argument here is another example of the neglect of states in the sociology of human rights: pressure from powerful states is surely just as important as the actions of NGO networks in bringing state actors to account for human rights abuses – as Risse *et al.* outline in their "boomerang model" [Risse *et al.* 1999]. They do not include states within their concept of "global civil society," however, and it is far from obvious how states can be included in any concept of "civil society."

Tilly's ideal-type is deliberately low-key and open-ended. He does not, for example, adopt the classic Weberian definition of the state as "a human community that (successfully) claims the monopoly of legitimate violence within a given territory" [Gerth and Mills 1946, 78]. This definition begs too many (rather abstract) questions, especially given that it has so rarely been achieved if we take a long historical view, as Tilly [1985] does, even in Western Europe.

Though open-ended, as an ideal type Tilly's definition must be treated with caution. Ideal types are supposed to be sensitising, enabling tentative generalisation across empirical studies. They should not be treated as established and exhaustive truth, and nor should they be used too rigidly. Three features of this ideal-type should be treated with caution. Firstly, as it was developed out of historical analysis of the formation of Western European states, although Tilly's ideal-type is schematic enough to capture what "stateness" involves as such, it will certainly vary empirically according to different histories of state formation. Secondly, ideal-types are static: developed to capture "the essence" of a social phenomenon, they need to be supplemented to enable us to understand change. Finally, Tilly's ideal-type is only concerned with "stateness" in the domestic arena, with state functions internal to territories. But (some) states have also been, and continue to be, very effective on the conditions in which human rights are violated or secured within other states. It is therefore necessary to situate states geo-politically in relation to each other.

In addition to a workable ideal-type of stateness as such, then, we need conceptual tools to understand the contingency and specificity of any particular example of "the state." States are in control of populations within their territories only to a relative degree that varies in different cases and at different times. They are invariably centralised in capital cities, and they are differentiated from other organizations – in rituals and ceremonies, through special tasks and types of activity, and especially by demarcating space. (We have only to think of the appearance and atmosphere of a courtroom, for example, or what is involved in entering a government building.) However, states are never unified, nor "complete." Except perhaps in conditions of extreme authoritarianism there is invariably political conflict within the state, sometimes following party political lines, and sometimes linked to movements or to ethnic, religious or interest groups in civil society. State officials use their influence to guide law and policy-making, and to block the projects of their opponents. Ultimately these are political struggles over the form of the state itself.

Marxists and neo-Marxists have long debated the ongoing politics of state formation in trying to understand how states can be relatively autonomous from the interests of economic elites and nevertheless operate consistently to promote capitalism and to safeguard gross inequalities of wealth and influence. There is no need to go

into these complex and often rather obscure debates here [see Jessop 1982; Jessop 1990]. We may, however, borrow some of their conclusions and adapt some of their concepts for the study of states in relation to human rights.

According to neo-Marxists states are, firstly, only ever *relatively* autonomous from the social relations in which they are embedded. "Actually existing" states are the sedimented structures of previous political struggles. As such they are historically structured in ways that privilege the strategies of certain individuals and groups to pursue their perceived interests and concerns. This aspect of states is sometimes called "path-dependence." The success of these strategies depends on the possibility of strategic links between state officials and social actors outside the state, which in turn depends on how states are embedded in broader social relations. Above all, states ultimately depend on resources, especially economic resources, which are produced elsewhere [Jessop 2008, 6]. Another way of putting this is to say that states are never entirely separate from the exercise of power by ruling elites, which must sometimes accommodate other organized political actors. States are emergent, imperfectly and contingently institutionalized structures that facilitate the political projects of some over the interests or inclinations of others. Whilst formally distinct from other forms of organization, and in practice relatively autonomous, state structures can not be analysed as if they exist in isolation from political struggles over their form and capacities, while these struggles are themselves linked to unequal and exploitative social relations.

Finally, it is important to note that sovereign states have long been inter-related. There is a growing density of interconnections between states that is resulting a global bureaucracy of human rights around international human rights agreements [Slaughter 2004]. But harmonizing regulation and law at the international level by no means replaces geopolitical considerations that are far from new. The legacy of imperialism is evident in the highly unequal terms of global governance through which human rights norms are administered. At the same time, strategic decisions concerning resources and state security on the part of the officials of wealthy and powerful states continue to affect the conditions in which human rights are routinely violated around the world.

In terms, then, of the historically conditioned structures of "actually existing" states, the social relationships in which they are embedded, the economic resources to which they have access, and the administration of human rights norms in global governance, officials acting in the name of the state secure the conditions of their own positions in particular forms that result in quite different state formations. These differences in elite strategies and state formations are crucial to how human rights activists must orient themselves in order to realise human rights in practice.

Different Forms of Stateness in Relation to Human Rights

In the brief sketches that follow I emphasise differences between different kinds and degrees of "stateness." The typology is not intended to be in any way exhaustive, and "actually existing" states may fall into more than one category. The sketches are intended only to open up questions for sociological analysis concerning the institutionalisation of human rights. What are human rights activists up against in trying to turn states from violators to guarantors? What is the role of international human rights law in state transformation? And, most importantly, how can we understand how processes of transformation differ in different states?

The Juridical State and Legal Reform

The ideal state of human rights thinking is the constitutional or juridical state, well-known to sociologists in Weberian terms as based on rational-legal legitimacy, constrained by law, and administered procedurally and bureaucratically. The most important point about juridical states is that they are constrained and regulated by law, which performs two, somewhat contradictory, functions in addition to its usual functions of allocating goods and settling disputes. On the one hand it organises and limits political power itself, specifying the entitlements and obligations of state actors. In this respect the way in which constitutions are practiced determine the "checks and balances" of state power, and limit its reach in relation to the everyday life of its citizens. On the other hand, state policy is increasingly itself codified in terms of legal directives. As Poggi puts it, rather poetically, 'the state "speaks the law" in its functioning':

> It is by means of law that the state articulates its own organisation into organs, agencies, authorities; confers upon each different competences, facilities, faculties; establishes controls over the resultant activities; attributes to individuals the capacities, entitlements and obligations of citizenship; extracts from economic processes the resources with which to finance its own activities, and so on [Poggi 1990, 29].

In addition to extending the functions of law, juridical states are also marked by the growth, in absolute terms and relative to other state functions, of bureaucracy. The constitutional state involves the depersonalisation of power. Even if they are not eliminated completely in practice, any actions based on personal interest, sentiment, or belief, become effectively corrupt when they are carried out by officials who occupy official positions in state structures. State officials are expected to deal with the information and resources for which they are responsible only according to the instructions of their superiors in the bureaucratic hierarchy, and to use their skills and

knowledge only in the public interest, by fulfilling the criteria of their appointments strictly according to the letter [Poggi 1990, 30-32; Bourdieu 1994]. The relationship between bureaucracy and the resources on which juridical states are based is circular: taxes are set, collected, and administered bureaucratically, and the regularity, routine, and relatively non-political means by which they are collected and administered is necessary for bureaucracies to function as such.

In terms of the reform of the state to comply with international human rights, re-making legal code is the most important consideration. It is far from completely effective. Legal reform can be difficult, even impossible (the US is notoriously reluctant to incorporate international conventions and treaties into its domestic law [see Somers and Roberts 2008], there are legal loopholes concerning security that are sanctioned by international law (as for example in allowing states to derogate from key articles of the European Convention on the basis of a "state of emergency" defined by the executive), and administrative criteria distinguishing citizens and non-citizens that closely follow popular constructions work against international human rights norms [Nash 2009a; Nash 2009b]. Nevertheless, where human rights are made into law, the activities of professional, well-funded advocacy organisations working through the rational-legal procedures of the juridical state make it very difficult for governments and the judiciary to avoid complying with international norms. Externally on the other hand, international human rights law has proved much less effective in transforming Northwestern states into guarantors rather than violators of human rights.

The juridical state is structured to observe human rights internally once they become law by the path dependence of rational-legal procedures, and because there are extensive social networks – especially of what are sometimes called "cause lawyers" – employed in NGOs and across the branches of the state who have a professional interest in putting pressure on state officials to keep them on the straight and narrow [Schneider 1994]. The way in which human rights norms become effective as law is best exemplified in the European system, where the growth of the human rights field has led to extensive rights for citizens, and to some extent also for non-citizens, within Europe [Madsen 2004; Soysal 1994]. In member states of the Council of Europe, and increasingly through the legal system of the EU, residents in Europe can claim rights. The legal route to rights is long, expensive and difficult. It is also often highly politicised, with state actors resisting or deforming European human rights norms in the name of sovereignty as well as security (the UK opting out of the social rights of the Lisbon Treaty for example). Nevertheless, in European states, the dominant social relationships and the networks in which states are embedded help to realise human rights through legal procedures. Legal reform also makes sense for citizens and non-citizens within Northwestern states outside Europe. In the US there is cur-

rently a movement, the Poor People's Economic Human Rights Campaign, for the state to ratify the International Convention on Economic, Social and Cultural Rights [Somers 2008]. If it succeeds (which seems highly unlikely), poor people will gain legal leverage in the US courts to claim basic welfare rights.

The legal route to institutionalising human rights is much less obvious, on the other hand, where states are involved in human rights abuses in other countries and despite the wide-ranging international law of human rights that covers extra-territorial action. In large part this is due to the way wealthy and influential states in IGOs co-operate with rather than condemn actions taken on the basis of *raisons d'etat* concerning security and access to resources. We might consider in this respect the lack of sanctions against the UN and its NATO allies in the aggressive and illegal wars in Afghanistan and Iraq. Indeed, the military intervention in Kosovo, which was also illegal (if more solidly based on humanitarian principles), was retrospectively legalised (insofar as that is possible in any legal system) by a UN resolution authorising an international civil and military presence there. In part, however, it is also due to the emphasis on formal sovereignty in human rights systems, including that of the Council of Europe. In such cases, violations are committed as a part of foreign policy, which is the prerogative of the executive, and notoriously difficult to subject to law, even by the other branches of the state, the legislature and the judiciary. Consider, for example, the response to the role of European states in co-operating with the CIA to kidnap terrorist suspects (extraordinary rendition) to take them to be interrogated (and tortured). Although these actions have been investigated and condemned by the Council of Europe and the European Parliament, they did no more than require states to investigate the allegations, and the only country in which legal proceedings have followed is Italy [Committee on Legal Affairs and Human Rights of the Council of Europe 2006]. In fact, in most types of human rights abuses in which powerful and wealthy states are involved outside their own territories, there is no relevant law. Except in the rare cases in which the UN decides that economic sanctions should be brought against a country, material (aid, the sale of arms, supporting business contracts to extract valuable minerals or build infrastructure) and ideological (including preventing the UN bringing sanctions) support that props up violent dictators is not illegal unless it can be shown that such actions knowingly contributed to human rights abuses. Even when actions do seem to be clearly in breach of international human rights law, as in the case of US drone attacks currently going on in Pakistan that target Al-Qaeda and Taliban leaders and also kill civilians (though US authorities maintain that Pakistan has sanctioned them), there is no possible enforcement against such violations [see Times online 2009]. There is no possibility of "hard" enforcement of human rights – the use of economic sanctions or military force – against the US on

the part of international agencies. And even the "soft" enforcement of public outrage and shaming of those involved is likely to be extremely contentious, with the views of those who believe in global human rights "balanced" by the opinion of "realists" that officials are right to act in what they perceive to be the best interests of citizens of their own state.

Postcolonial States and Cellular Societies

Far more than the reform of legal code and its activation by lawyers and activists is needed to institutionalise human rights in postcolonial states. As "imported states," grafted onto existing arrangements within colonised territories, and without the long historical struggles to develop either the intensity or the uniformity of rule associated with the constitutional state in the Northwest, postcolonial states have particular difficulties with autonomy from the social relationships in which they are embedded. Postcolonial states were imported into what Partha Chatterjee [2004] calls "cellular societies": extended networks of reciprocal obligations based on "moral communities" of kinship, caste, or religion. In "cellular societies," to varying degrees, it is expected that the resources to which state officials have access are to be shared with those who have claims on them as part of the extended network to which they belong. "Micro-strategies" necessary for survival as well as for enriching oneself are built into the very structures of the "imported" state [Badie 2000; Hansen and Sepputat 2005; Midgal 1988].

India has a well-established history of legal rights that closely resemble those of the United Nations Declaration of Human Rights, and that are much more extensive than legal entitlements in European and North American states. Basic civil rights to freedom of the person and to collective association are supplemented in the Indian constitution by extensive rights to non-discrimination and to substantive social welfare. Furthermore, in recent decades the Supreme Court – which has been described as the most powerful court in the world in its range of powers – has acted independently of the other branches of government to extend and deepen those rights, especially with regard to social and economic necessities, such as the "Right to Food" [Gautri and Brinks 2008]. At the same time, extensive rights are accompanied by routine and exceptional violence (sanctioned by security laws) on the part of police and military across India, especially at the local level and in the "disturbed areas" of the North. It is in this context that Upendra Baxi [1998, 336] describes the Indian state as exhibiting "a variety of mulitiplicities."

Why is the rule of law so difficult to achieve in postcolonial states, even those like India that have well-established laws and that are successfully democratic? Partha Chatterjee suggests that postcolonial states can not be made acceptable to the majority of their citizens in terms of rational-legal legitimacy. Such states do not have the capacities to control populations and administer law bureaucratically. He suggests that for most people in the world it is everyday transactions over the *actual* distribution of goods that legitimate states. Even when extensive and detailed law on human rights is codified in postcolonial states, strict adherence to the rule of law is far from the most pressing issue for the majority of those affected by it. Indeed, Chatterjee argues that in "political society," as distinct from the civil society of the wealthy, the poorest people are gaining *de facto* rights, not as individuals through impartial procedures of law and bureaucracy but using "fixers," well-connected, influential people linked to political parties who co-ordinate with state officials, using the democratic power of numbers and political mobilisation in the name of "moral community." In such cases, a strict line between legality and illegality would work to the detriment of those most vulnerable to violence and exploitation, as in the case that Chatterjee expounds in some detail, where illegal squatters have managed to get substantive advantages through "fixers." They would not necessarily benefit from regularization of their situation, so that the mutual distance between the majority of citizens and local state officials works to the advantage of both sides [Chatterjee 2004; see also Corbridge *et al.* 2005; Fuller and Harriss 2001].

This is very clear in the case of the Right to Food in India. Despite the detailed provisions of the Supreme Court, families find it extremely difficult to get their allocated rations as grain is diverted to local markets from the Public Distribution System. In such cases what is needed is not legal reform, but reform of the state, especially at the local level. Grassroots movements, led by NGOs like MKSS in Rajasthan, which work with the Commissioners for the Supreme Court on the Right to Food, are trying to make human rights real for claimants in innovative ways (carrying out "social audits," surveys of villages and poor urban areas to ensure that people know what they are due, holding people's courts to make local officials accountable for their administration and distribution of government food reserves, large-scale marches and demonstrations) [Goetz and Jenkins 1999; Dreze 2008]. They face violence, lies, and bureaucratic foot-dragging at every turn in ways that seem rather to reproduce the cellular society rather than to restructure the local state.

The entrenchment of "cellular society," and the legitimation of the illegal means by which people try to get what they need in political society makes claiming legal rights extraordinarily difficult in the postcolonial state. Creating accountability and functioning rational-legal bureaucracies is not simply a matter of putting pressure on

state officials to observe the law that is already in place. Making legal rights count goes against the grain of the "micro-strategies" that structure the postcolonial state in fundamental ways and that continue to make sense and to benefit many of those involved. If institutionalising human rights in such contexts means restructuring the state, clearly this must involve a very long and complicated set of tasks, with no guarantees as to their success.

Predatory States and Extraversion

The social relationships through which states access economic resources also make for differences in possibilities of human rights reform. Predatory states are the product of elite strategies which have historically relied on what Jean-Francois Bayart [2009] calls "extraversion," profiting from dependence on external sources of wealth in order to secure one's own political position. Bayart sees "extraversion" as historically continuous, as "normal politics," in sub-Saharan Africa. Betrand Badie [2000], on the other hand, links it to decolonisation, arguing that as colonial powers withdrew, leaving behind fragile states that lacked the capacity or the means to raise taxes from largely agricultural societies, ruling elites turned to international aid and business contacts to strengthen their political position. Imported states relied less on an established tax base, generating wealth within their territories, than on the wealth they could attract from international agencies, other states, and sometimes investment in large scale projects. In any case, it is widely agreed that the strategy of "extraversion" has resulted in the formation of "predatory states," especially throughout sub-Saharan Africa [Castells 2000; Mbembe 2001].

What characterises predatory states is not just that they involve looting and violence by militarized ruling elites. It is that elite rule can *only* be exercised by looting and violence. Ruling elites must control access to wealth in order to pay their political and military allies and they must use violence to prevent rival "warlords" from seizing the state. In such cases elites use "sovereignty," international recognition of the official government of an independent state, to use aid and to establish business contracts for their own purposes. They present what Bayart calls a "virtual state" to the world, with procedures for ensuring governmental accountability, good business practice, and even democratic participation apparently established, in order to make use of the prerogatives of state sovereignty, whilst the "real state" is at work behind the scenes to maintain the wealth of the ruling elite [Bayart 2009; Reno 2004].

What are the possibilities for institutionalising human rights in such states? Clearly to begin to ensure human rights where the very form of the state involves

people being systematically deprived of their homes, livelihoods, and frequently their lives, more is required than legal reform, or even restructuring the state to ensure that formal legal entitlements are upheld. One response on the part of international agencies is to *supplement* fragile states, to strengthen them in delivering the basic rights for which they are responsible. In predatory states ruling elites concentrate their efforts on particular regions within their territories, effectively leaving much of the country stateless. They maintain control over the offices of state in the capital, in order to be officially recognised by international agencies. They also try to retain control over the regions where valuable resources (precious minerals or valuable crops) are to be found. In addition, they create ethnic conflict in order to divide and rule, unleashing militias and rebel forces and further undermining possibilities of maintaining state control outside the areas in which they have an interest. Supplementing a predatory state effectively amounts to replacing it over large parts of its territory. Bearing in mind UN commitments to state sovereignty, this is certainly not the language that is used by international agencies. Nevertheless, in terms of sociological analysis of actual practice, predatory states are effectively replaced when UN forces and humanitarian NGOs take over the basic services that are not being met through the still nominally sovereign state.

We can see this very clearly in the case of the Democratic Republic of Congo as it emerges from a war that is estimated to have resulted in the deaths of 5 million civilians. In the first place, the state is supplemented in its function of providing security. In the DRC UN peacekeeping forces are currently deployed to protect the human rights of civilians (especially women, children, and "vulnerable people") in the Eastern area (of a country which is in total the size of Western Europe). They are mandated to "use all means necessary" to demobilise and disarm rebel forces and militias, some of which originated in neighbouring states (especially from Rwanda, Uganda and Burundi) and over which no government now has control. They are also there to curb the excesses of the Congolese Army itself, which has been accused of looting and rape.[6] Secondly, as the predatory state leaves most of the country without infrastructure to deliver basic services to the people, where they are able to operate in relative safety, NGOs provide food and shelter to some of the millions of people who have had to flee their homes as a result of the conflict, and attempt to establish facilities for basic education and health-care. In effect NGOs try to replace the state to ensure that minimal human rights obligations are met, and that people are not starving and homeless. Thirdly, the International Criminal Court is proceeding

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[6] See www.un.org/en/peacekeeping/missions/monusco/mandate.shtml, Accessed November 23, 2010.

with the prosecution of some of the warlords responsible for killing, raping and kidnapping in the region on the grounds that the DRC does not have the capacities within its judicial system to bring them to account (despite the fact that the EU has spent more than forty million U.S. dollars reforming the Congolese judiciary) [Clark 2007]. In this respect international law supplements the national judiciary, which does not have the code, the infrastructure, or the personnel to deal with the war crimes and crimes against humanity with which the international court is concerned.

Supplementing the state to ensure human rights is limited. It is limited in space. Steven Sampson [2003] calls such states "white jeep states" because they are bounded by the limits of the roads along which people employed by international agencies (of which the white jeep is the icon) can travel, whether because of lack of infrastructure, danger, or the requirement to pay at borders that have been set up within the territory to extract unofficial "taxes." It is limited in time. UN peacekeeping forces are only deployed at the invitation of the state, once a peace treaty has been signed. They are ostensibly there to help a state to build up its own security forces, by training the police and army, as well as by neutralizing unauthorised militarized gangs. It is far from obvious, however, what the official view of the DRC as "transitional state" actually means in reality, especially given what is known about the "extraversion" strategies of ruling elites in predatory states, and the complicity of other states with their criminal activities. In this respect it may be extremely limited in terms of effectiveness. In the case of the DRC, for example, the processes by which public/private contracts for mining its enormous reserves of cobalt (necessary for the manufacture of microchip technology) and copper have been administered have lacked transparency, and seem to be highly disadvantageous to the economic development of the DRC.[7] If the socio-economic relationships within which a predatory state is embedded are not altered, UN forces are effectively being deployed as part of a strategy of "extraversion," to strengthen the ruling elite and to help them achieve domination over their rivals rather than preparing the ground for a new form of state. In this case supplementing a predatory state prolongs rather than transforms it.

The institutionalisation of human rights in the DRC through supplementary state structures is quite different from that envisaged in juridical or in democratic postcolonial states. Despite all the human rights provisions that are now in place in the DRC, the people who suffer violence, hunger and deprivation there are as far from being able to *claim* rights as ever. Human rights are not institutionalised in the DRC to enable people to become the *subjects* of international human rights law, in

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[7] See Rights and Accountability in Development website www.raid-uk.org/work/fair_investment.htm. Accessed November 23, 2010.

the sense that they are able to make effective rights-claims for themselves by judicial or political means. There are some local NGOs in the DRC, but they tended to be treated with suspicion by those in charge of funding [Mowjee 2008]. If humanitarian intervention is helping people in the DRC, it is as the *objects* of international governance administered by IGOs and NGOs who decide what is feasible, permissible, and advisable in their case.

Conclusion

The purpose of this article is not to develop a theory of state formation, but rather to raise questions concerning the institutionalization of human rights. I take it that the sketches of three different types of "stateness" clearly illustrate the complexity of making human rights effective in practice, and how it varies in relation to different state formations. In particular the effective realization of human rights varies in relation to their legalization, which is the strategy that is most celebrated, most frequently pursued by human rights activists in relation to international agencies, and most commonly studied by sociologists. In juridical states, getting law on the books does lead to pressure to implement and administer it in ways that contribute to citizens, and even resident non-citizens in some cases, actually enjoying rights. There are no guarantees, especially where "national security" and unpopular minorities are concerned. Law is not always enough to protect human rights in juridical states. The contestation of stereotypes and the formation of more inclusive meanings of political community are also vital, and this is well understood by human rights activists who put a lot of energy into building public opinion through media campaigns and demonstrations. In highly contentious cases legalizing human rights is often seen as part of a strategy to raise awareness about the dangers and the wrongs of disregarding human rights as it is about making or using law as such. Nevertheless, law itself is an important tool in human rights politics in that legal judgements can check dubious decisions by other branches of government, and have done so on occasion even against the mediated construction of public opinion [Morris 2009; Nash 2009a].

In the other two types of states we have considered here, however, translating "law on the books" into human rights guarantees is far more problematic. This is not to say that creating legal code that make human rights more precise, ostensibly binding on governments and judiciary, and justiciable in courts is irrelevant. What is important, however, is to understand the difficulties of *administering* law in such states. As we have noted in the case of India, even where a favourable judgement is handed down in court, the administration of the law is a further obstacle to the

realization of the human rights it supposedly guarantees. In predatory states it is even more difficult to see how law can be administered if it is at odds with elite strategies of war-making, robbery and rape. Such difficulties are clearly linked to the legitimacy of law itself, which are deep-rooted, and far from easily addressed either by procedures or by trying to change public opinion. Given how postcolonial and predatory states are maintained in "micro-strategies" embedded in everyday life, nothing less than a complete transformation of social relationships is needed in order to begin to institutionalise human rights.

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States of Human Rights

Abstract: Sociologists have barely begun to address the paradox that states are both violators and guarantors of human rights. This is necessary if we are contribute to understanding how human rights may be institutionalized in practice. There is a need to go beyond the discussion in which cosmopolitan theorists have engaged concerning international human rights law and its effects on states sovereignty, to shift the focus to state autonomy. It is only insofar as states are autonomous that state actors can comply with the international human rights agreements to which they have signed up (in the face of resistance from others who will be disadvantaged by this compliance). And it is also state autonomy that is at stake when officials act in defiance of international human rights norms. Using Charles Tilly's ideal-type of "stateness" and neo-Marxist theory concerning the basis for the relative autonomy of states, the article explores variations in state formation that are relevant to the institutionalization of human rights.

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