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Armaline

Davita Glasberg

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What Will States Really Do For Us? The Human Rights Enterprise and Pressure from Below

William T. Armaline

San Jose State University

Davita Silfen Glasberg

University of Connecticut

Abstract

International human rights standards and treaties have been plagued with disputes over the relevance and power of international law with regard to state sovereignty. These disputes commonly result in states' failure to realize the rights and standards outlined by such human rights instruments. What if states cannot or will not provide fundamental dignities to their people? Moreover, how does global restructuring affect states' ability to implement human rights? We explore these questions through what we call the "human rights enterprise," which includes conflicts between rulers and the ruled over the realization of human rights practice. As such, human rights are often developed through the struggles of grassroots organizations and non-elites from below, not simply from the compassionate actions of states to respect their international agreements.

Keywords

human rights, human rights enterprise, global restructuring, human rights movements, human rights organizations

Introduction

Though theoretically we all may have fundamental rights as human beings, many will never enjoy them. Since their inception, international instruments for human rights law ("human rights instruments")¹ have been

¹ We will refer to these as "HR instruments." These instruments include the Universal Declaration of Human Rights (UDHR), the two Covenants (ICCPR, ICESCR), the various international Conventions (such as the CRC and ICERD), regional human rights treaties, and the regulatory bodies assigned to each – meant for implementation, information dissemination, and enforcement (however limited).

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plagued with disputes over the relevance and power of international law with regard to the powers of sovereign states. In fact, as we draft this article, the US government continues to grapple with the civil and international law implications for the treatment of “enemy combatants,” where even the Geneva Conventions were suspended in the name of sovereign concerns for “national security.”

Specifically, HR instruments depend on the autonomy and cooperation of individual states to implement and enforce human rights practices to which they are party. The irony is that HR instruments’ content are intended to protect individuals and groups from abuses by (for instance) the state, yet require states to both implement these instruments and monitor their own compliance. That is, HR instruments formally expect and depend on states to *choose* the protection and provision of human rights over all other interests in the face of their conflict. Though this is not a new revelation, little has been done to address it, and we would like to highlight this persistent flaw in the ability of HR instruments to operate as ultimately effective mechanisms in their present form.

HR instruments (e.g., the Universal Declaration of Human Rights) were built, arguably against the will of many designers, on some dangerous assumptions: 1) states have the ability or political will to fulfill their responsibilities detailed in HR instruments to which they are party; 2) states are autonomous relative to each other and private interests; 3) states actually represent and/or serve the interests of their general populations. We find that many historical and contemporary struggles for human rights practice are waged *against* states, or private entities partnered with states. Here we are struck with a fundamental question: What does it say about state governance, and the supposed “social contract,” if states commonly cannot or will not provide the most basic fundamental dignities to their people? Through this critique we will also illuminate what we see as the persistent elephant in the expanding room of human rights scholarship: Actual conflicts over the realization of human rights practice take place, most notably, between rulers and the ruled – between the haves and have-nots. For human rights to be realized under these conditions, we might learn from those who have successfully struggled for finite resources and human dignity in the face of great inequalities. We find, not coincidentally, that few of these cases involve the voluntarily benevolent actions of states² to respect international law.

² Where we refer to “states” *doing* things, we are referring to the collective behaviors of

The Proposed Role of States

HR instruments were designed to work from a liberal social-contract model in which states act to preserve and protect their citizens on the assumption that states respect the human rights of domestic populations.³ Generally speaking, they assign member states the responsibility of implementing human rights practices while protecting domestic populations from human rights violations. A brief look at the Universal Declaration of Human Rights [UDHR] and the Covenants further illustrate this point.

Though the UDHR does not explicitly assign responsibilities to states, their role is implied through the social-contract model. The success of the UDHR depends on states' willingness to protect human rights, even when it seems to conflict with other state interests, agendas, and policies – such as those governing finance, trade, and the social construction of “national security.” That is, the state must reflect some version of a “rights first” model. The UDHR substantively calls for the protection of certain political freedoms and protection from state oppression (e.g., torture or unequal protection under the law), implying the responsibility of states to not implement a variety of policies (such as capital punishment) while implementing others (such as framing a rights protective judicial apparatus). Thus, the success of the UDHR also depends on whether states have the ability, infrastructure, and resources necessary to develop rights-protective policies.

As a second example, the role of states is made clear for those party to the International Covenant on Economic, Social, and Cultural Rights [ICESCR] in, for instance, the 1997 Maastricht Guidelines. The Guidelines detail expectations on states to provide for positive rights such as the rights to work, health care, or housing.⁴ Success for the ICESCR as an HR instrument depends largely on the voluntary actions and policies of states to abide by their agreements.⁵ One immediate problem for HR instruments is that many repressive and/or powerful states simply ignore, discredit, or only selectively recognize international law and standards. We can take the G.W. Bush administration's previous dismissal of UN

state actors who occupy seats of official governance. These are the actual people whose collective actions translate into formal policy and practice in the name of the nation-state they claim to represent, and to which their employment or formal position is attached.

³ Donnelly 1999, 2003.

⁴ Felice 1999.

⁵ See McCorquodale and Fairbrother 1999; Koskenniemi 1991.

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objections to pre-emptive war in Iraq, dismissal of Geneva Convention guidelines for the treatment of prisoners (Guantanamo Bay and Abu Gharib), and their repeated refusal to conform to global environmental standards outlined in the Kyoto Protocol as recent examples of this.

We should not assume that such a position was unique to the G. W. Bush administration. Though the new Obama administration reflects a more respectful discourse toward international concerns and consensus, the US continues its legacy of selective adherence to international law and standards. As Chomsky⁶ suggests for the US, a long standing political economic and military superpower:

International law is a method by which you might regulate the aggressive and destructive tendencies of the nation-state – the trouble is, international law doesn't have a police force: there are no Martians around to enforce it. So international law will only work if the powers subjected to it are willing to accept it, and the United States [for example] is not willing to accept it.

For states like the US, “national interest,” typically referring to the interests of the business community and state elites, often takes precedence over concerns with international law and standards. Given the lack of effective sanctions for powerful states, watchdog efforts by UN bodies and partnered NGOs are limited in their ability to intervene when state policies or practices violate human rights.

Substantively, human rights instruments tend to address the relationship between the state and individuals, wherein the state is charged with ensuring human rights and refraining from violating the rights of others through policy or practice. But what about protecting human rights from the threats of private interests, such as Trans-National Corporations (TNCs)?⁷ The 1999 Global Compact (from the 1999 World Economic Forum), for example, was designed to set minimum standards and guidelines for private corporations to prevent human rights violations. The Compact called for *voluntary* participation without threat of liability or sanction,⁸ limiting

⁶ Chomsky 2002, p. 314.

⁷ These are also commonly referred to as “Multi-National Corporations” (MNCs). We chose the language of “trans-national” because we agree with the notion (Robertson, 2001) that modern global corporations operate *across* nation-state boundaries – not simply within and between them. That is, corporations are not simply member “citizens” of several chosen states – their power and influence extend in ways that reveal nation-state boundaries as permeable in the face of centralized capital.

⁸ Monshipouri, Welch, and Kennedy 2003.

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its effect. In the US for example, publicly traded TNCs are structurally – many times legally – bound to place the *maximization of profit above all other concerns*.⁹ This points to an interesting conflict: HR instruments assign states the responsibility of insuring and protecting rights; yet corporations are often bound by law (the state) to protect the rights of share holders even when in violation of human rights and/or ecological standards (rights of *stake* holders). States are then expected to sanction some of the most powerful collective actors in the modern world for practices directed by those very states and their most powerful members (significant *share* holders). Human rights instruments do not address this antagonism. Moreover, global economic restructuring in its current incarnation introduces further complications for the ability of states to fulfill these expectations.

Hardly Sovereign: States after Global Economic Restructuring

Global economic restructuring and the neo-liberal logic behind it, though contested as a subject and terrain of conflict,¹⁰ may be seen as posing a number of challenges for the effectiveness of HR instruments and to the sovereignty of states more generally. The dominant logic and material effects of global production, finance, and political-economic organization from above are influential in challenging the human rights of people and the ability or willingness of states to act in the interests of human rights practice.

Global economic restructuring originates in: (1) the precedents set by efforts to resolve oil and other material resource crises of the 1970's; (2) the rise of large TNCs as the dominant corporate norm; (3) the rise of transnational financial institutions, or “postnational finance capitalism” such as the International Monetary Fund/World Bank;¹¹ (4) and the rise of transnational trade organizations such as the World Trade Organization.¹² The development of international debt is one result and defining feature of global economic restructuring and the post-colonial global economy. In relation to human rights, the process of global economic restructuring and

⁹ Bakan 2004.

¹⁰ Winant 2001; Naples and Desai 2002; Brecher, Costello, and Smith 2000; Bakan 2004).

¹¹ Parrenas 2001.

¹² Robinson 2001; Sassen 1994, 1996; Naples and Desai 2002.

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the persistence of international debt limit many states' ability to secure fundamental dignities for their populations.

Over the past 30 years the reorganization of production and repositioning of capital has placed underdeveloped and developing countries in almost hopeless positions of financial debt to global financial institutions, private banks, and (indirectly) large TNCs.¹³ Loans and the purchasing of public industries, which on the surface were presented as plans for the reinvestment of capital into impoverished economies, have actually functioned to direct capital flows back into affluent and powerful economies while increasing global disparities of power and wealth. Indebted states are often forced to choose between paying debts according to Structural Adjustment Programs [SAPs] and meeting the human rights needs of their domestic public. In many cases, states have been forced or persuaded to comply with SAPs as a requirement for the continuation of desperately needed aid.¹⁴ The case of Argentina serves as a commonly cited and appropriate historical example:

In Argentina, debt grew from \$40 billion in 1982, when the debt crisis began, to \$132 billion in 2001. At IMF request, the government introduced repeated austerity programs. But its debts grew anyway, despite its two-decade effort to repay them. The most recent austerity program, announced in 2001, required the government to cut salaries and pensions for government workers. Teachers have not been paid for months, schools can no longer afford to boil water to make powdered milk for malnourished children, and public health officials no longer vaccinate dogs for rabies, leading to a widespread outbreak of the disease.¹⁵

UN reports suggest that the historical case of Argentina is not an exception, but a manifestation of lopsided or "selective" capitalist development. Where a neocolonial approach to global capital would seem to support the importance of state actors in managing imperialist systems, Schaeffer's concept of "selective globalization" paints a different picture.¹⁶ Within "selective globalization" capitalism as an economic system works to centralize capital and wealth at the cost of impoverished populations who are disenfranchised and systematically excluded from achieving financial independence.

¹³ Schaeffer 2003.

¹⁴ Bond, 2004; Bond and Manyanya 2003.

¹⁵ Schaeffer 2003, p. 110.

¹⁶ *Ibid.*

Where “selective globalization” suggests less powerful and/or wealthy states might lack the sovereignty and resources necessary to ensure and protect human rights, particular features of the restructured global “free market” or neo-liberal political economic system suggest powerful states are similarly constrained. A notable feature of the global economic system is that this neo-liberal, “free market” model has bound states, their economies, and their banks in problematic dependent relationships. What started as mortgage and credit crises in the US has now become a global recession in what seemed like an instant. As a result, global populations continue to suffer, including those in more powerful states such as the US, China, and several members of the EU.

Massive bank deregulation in the US in the 1980s and 1990s, marked by increased concentration and centralization of financial assets in a structurally cohesive private financial industry, meant that states throughout the world were dependent on a stronger, unregulated private sector for finance capital as a unique and critical resource. Unlike other resources, finance capital has no alternatives: one’s ability to operate in the global economy as a major player becomes a function of access to this capital. To get it, one must negotiate with financial institutions that often transcend state boundaries and state control.¹⁷ Moreover, these behemoth financial institutions, such as Citigroup or Goldman Sachs not only determine lending and investments around the world; they’re also the largest investors of other people’s money in the global stock markets.

The far-reaching power of this increasingly structurally unified and deregulated financial capital industry became painfully clear in 2008: the collapse of the mortgage market in the US, largely due to aggressive predatory lending in the subprime market and the selling and re-selling of Credit Default Swaps [CDS] to “insure” the risk represented by subprime investments, sent shock-waves throughout global markets. As the now infamous financial products division of AIG was forced to admit that they had no capital to cover the impossibly risky investments of clients such as Goldman Sachs and other large banks in the US and EU, global credit was crushed as banks’ assets were revealed as packaged smoke.¹⁸ As one of many results, banks cut off credit to small businesses and large corporations (especially those without powerful contacts in the US Fed and Treasury), who then often cut from workers’ jobs, wages, benefits, and so forth.

¹⁷) Glasberg and Skidmore 1997.

¹⁸) Taibbi 2009.

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Unemployment and downward mobility now push more and more people into poverty and push food, shelter, and health care – widely established human rights – out of reach.

Though a thorough excavation of the economic crisis and resultant global bailouts are beyond the scope of this piece, it is crucial here to note how ill-equipped individually powerful states were to fend off these economic shock waves. Global restructuring of private finance capital meant that the private industry was able to transcend individual states' ability to ensure the rights of citizens to food, clothes, and shelter – let alone a living wage or health care to their populations. In sum, global restructuring simultaneously diminished states' sovereignty and autonomy in relation to private financial and corporate actors, such as AIG's financial products division. As a result, even powerful states have very little of the political economic autonomy necessary to "choose" the protection of human rights when challenged by economic interests beyond their control.

Several other lessons emerge from this development as well. First, human rights for the least powerful are the first things sacrificed in a sharp and prolonged recession that states have proven unable to predict, control, or resist. Second, we should not ignore the *actual* conflict manifested in, for example, the sub-prime mortgage crisis. Though the US news media commonly blamed the crisis on poor people buying more than they could afford,¹⁹ more thorough investigations blamed banks for predatory lending and any number of questionable investment and accounting practices.²⁰ The story is not a new one – a land owning ruling class with control over centralized capital (banks) using their position to maximize, even at the cost of potential system collapse, their political economic exploitation of everyone else. Recent attempts by the Obama administration to address the effects of the resulting collapse are really attempts to mitigate a conflict between the haves and the have-nots over access to assets (land, homes, etc.), public funds (taxpayer moneys funding bailouts) and the power to understand and participate in the design and execution of economic policy.

As a third and final lesson here, we can already see the position of the Obama administration in the unfolding drama. Contrary to the populist predictions of American liberals for the new president, the foxes have been put in charge of the henhouse at the US Treasury and Federal Reserve: players

¹⁹ Leonhardt 2008; Carlson and Cox 2009.

²⁰ Wharton School 2008; Corn 2008; Taibbi 2009.

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like former and current Treasury Secretaries Frank Paulson and Timothy Geithner who come directly from Goldman Sachs's executive ranks. As researchers and journalists such as Matt Taibbi have recently suggested,²¹

The real question from here is whether the Obama administration is going to move to bring the financial system back to a place where sanity is restored and the general public can have a say in things... By creating an urgent crisis that can only be solved by those fluent in a language too complex for ordinary people to understand, the Wall Street crowd has turned the vast majority of Americans into non-participants in their own political future. There is a reason it used to be a crime in the Confederate states to teach a slave to read: Literacy is power.

Though we would caution against a vulgar instrumentalist interpretation of current events,²² it is difficult to argue with the following two points: (1) former and current bank executives have direct access to the shaping of economic policy and regulatory decisions in the US; (2) in contrast, common working people are almost completely excluded from any and all major economic policy discussions (let alone decisions) in the US. Well-known scholars such as Domhoff²³ and Parenti²⁴ have argued for some time what now should be obvious: The US government tends to “represent” those with the power to occupy, directly or by proxy, the seats of state power and rule. In such conditions, one cannot argue that the US government represents the interests of its people in the effort to protect their fundamental rights and dignities. One could even argue that the US government has successfully facilitated socio-economic exploitation of its own majority population (workers and the unemployed) to the benefit of its powerful minority (owners).

The costs of this exploitation are laid bare in places like California. As the state of California's unemployment rate approaches 10 per cent under crushing state debt and a failing national economy, “tent cities,” already compared to the “Hooverilles” of the Great Depression, are popping up in the capital of Sacramento. Due to a massive increase in layoffs and foreclosures in an area where the cost of living is already comparatively high, *previously stable working families* are trading in the last of their resources

²¹) Taibbi 2009.

²²) Milliband 1969, 1970, 1973.

²³) Domhoff 1967, 1990, 2002.

²⁴) Parenti 2007.

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for tents along the American River.²⁵ Where California is the 8th largest economy in the world, within the most powerful nation-state in the world, it is hard to argue that citizenship in a powerful state somehow protects people from the more tangible conflict between haves and have-nots. In fact, the tent cities are growing at such a rate without response from state authorities (besides attempts to arrest and cage people, thereby criminalizing individuals' poverty and homelessness), that tent dwellers have begun electing "mayors" to care for central resources and organizing in the encampments on the long term.

When asked for comment, an activist working on behalf of tent city residents articulated the state's failure to ensure basic dignities to people: "I don't think it should be illegal for people to not have a home. It should be illegal for us to do nothing about it."²⁶ Apparently, authors of the UDHR had similar intentions for the responsibilities of states, where Article 25 begins: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his [sic.] family."²⁷ Again, we see that in the restructured global political economy even powerful states are unable, and on some level unwilling, to ensure fundamental dignity and rights to their populations.

We do not suggest this is something new, or unique to the current economic crises. To the contrary, workers in the US have been systematically downsized, displaced, de-unionized, and outsourced.²⁸ throughout the restructuring process. Often described as a problem of the global south, sweatshop labor is still the norm in many US industries such as textile manufacturing. In fact, a US Department of Labor survey found that in Los Angeles, "the overall level of compliance with the minimum wage, overtime and child labor requirements of the Fair Labor Standards Act is 33 percent."²⁹ Further, the effects of global restructuring and the economic crisis are not limited to the private sector. As illustrated in the current economic recession, corporations and some state bureaucracies tend to cut workforce and worker benefits in order to buffer profit margins and liquid assets or free up budget constraints during periods of shrinking credit and growth. As a result, the ability for working populations to secure food,

²⁵ Kim 2009.

²⁶ Kim 2009.

²⁷ UN 2009.

²⁸ Schaeffer 2003; Brecher, Costello, and Smith 2000.

²⁹ Bakan 2004, p. 75.

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shelter, employment, health care, and education (i.e. human rights and basic survival needs) is greatly diminished. So even for populations who live and work in powerful states, global economic restructuring exacerbates the inability of states to effectively protect the human rights of their people in the face of political economic constraints.

We have so far suggested that HR instruments are flawed in their dependence on states to act as sovereign defenders of human rights. Placing the modern state properly in the context of a restructured global political economy allows us to see how easily states systematically fail to protect and ensure human rights practice. This is mainly because human rights issues are often political economic issues, and states don't operate in political economic vacuums. Since state theorists have for some time argued that states are the instruments of capitalists,³⁰ are structurally bound to protecting the capitalist system,³¹ represent the career interests of state actors,³² serve as the custodian of white supremacy,³³ and/or patriarchy,³⁴ we will not re-invent the theoretical wheel here. Instead, we will draw from case examples of human rights *struggles* to illustrate that such struggles, more often than not, are ironically *against* states and TNCs partnered or supported by states.

The Human Rights Enterprise as a Struggle Against States and Capital

It is important to define what is meant by the “human rights enterprise” as a central concept moving forward. As a uniquely *sociological* concept, the human rights enterprise refers to any and all efforts to define and/or realize fundamental dignity and “right” for all human beings. More typically, under the dominance of legal studies and political science, human rights are only defined and discussed in relation to HR instruments or human rights as they have manifested in international law. Where sociology does not necessarily pre-suppose the relevance or inevitability of the state, HR instruments comprise only one small piece of the larger whole. The human rights enterprise represents this whole, where grassroots struggles outside of and potentially against the formal state arena are seen as equally relevant

³⁰ Milliband 1969, 1970; Prechel 2000; Domhoff 2002.

³¹ Poulantzas 1969, 1973, 1975, 1976, 1978; Glasberg 1989; Jessop 1990.

³² Amenta and Skocpol 1988; Block 1980; Skocpol 1980, 1985, 1992, 2000.

³³ Feagin 2001, Neubeck and Cazenave 2001; Omi and Winant 1994.

³⁴ MacKinnon 1989; Hartmann 1982; Haney 2000.

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to interpreting, critiquing, and realizing human rights in practice. The human rights enterprise should be seen as the sum total of *all* struggles to define and realize universal human dignity and “right.”

Where we do not accept the state as unquestionable and inevitable in its role(s) or existence, we do not believe that fundamental human dignity is limited to the “rights” somehow bestowed upon people by rulers. This is, first, a fundamental contradiction: If we have fundamental “rights” as human beings, why do they need to be legitimated by state authorities? Second, a purely “rights” discourse assumes that states are obligated to reach such conclusions or practices that would seek to prioritize and/or protect the fundamental dignity of people within a society or community. This is a massive political assumption that we are unwilling to make.

Looking more broadly at the HR enterprise, we see that struggles for human rights practice largely take place outside or against states and more powerful private entities, such as TNCs or large financial institutions (banks). That is, they often take place between more and less powerful social actors – haves and have-nots. This should be met with little surprise. In the construction of international law and international human rights standards, many powerful Western states prioritized nation-state sovereignty over the emergent human rights of African Americans in a segregated US, indigenous Africans in South African apartheid, and India/East Asia under English colonization.³⁵ Human Rights were considered legitimate to the extent that they did not interfere with the interests of the most powerful states and actors at the time. The US was among nation-states who consistently argued against the legitimacy of international law above and beyond their national sovereignty. That is, they resisted the idea that international law could tell them what to do – even concerning the provision of fundamental dignities to human beings. Ironically, many of the very states that championed human rights in the drafting of the UDHR, consequently argued and positioned against the legal legitimacy and “reach” of HR instruments. A struggle for human rights, in a sense, has always been a struggle against the contradictory actions and stances of these states to protect their sovereign interests. But what about other powerful actors?

The emergence of the TNC as the most influential and dominant private economic form is well documented in research.³⁶ At the same time, whether or not TNCs *should* be the key actors of economic globalization is

³⁵ Lauren 2003.

³⁶ Bakan 2004.

highly questionable from a human rights perspective. Significant empirical evidence suggests that market forces alone do not dissuade these private actors from violating the human rights of substantial populations, as neo-liberal theorists might predict. Monshipouri, Welch, and Kennedy³⁷ point to Nike's use of abusive and *state supported* sweatshops, the slave labor and anti-union policies of Walmart stores and suppliers' factories, and the pollution and over-exploitation of natural resources of Shell Oil Co. in Nigeria to illuminate the mistake of trusting TNCs not to violate the human rights of workers or host communities. However, as we will further illustrate below, to operate successfully in their global pursuits TNCs often partner with states for legitimacy and protection of their "rights" to private property and the accumulation of capital.

As a nuclear physicist, teacher, and activist Vandana Shiva has documented and helped to resist what she calls the corporate "hijacking of the global food supply"³⁸ Shiva describes how (through trade agreements via the General Agreement on Tariffs and Trade (GATT), WTO, and SAPs) corporations such as Monsanto and Ricetec have acquired land, developed monocultural (typically single crop) agricultural production, increased the use of genetically engineered crops, increased the use of dangerous herbicides and pesticides, and patented (read: "hijacked") previously unprivatized crops developed over generations of farmers in agricultural communities – primarily in the global "south." As a result, large agribusiness and biotech firms have made great profits at the expense of agricultural communities forced into single-crop export production, if not forced off their land all together. More strikingly, Shiva argues that this process also threatens the global biodiversity, soil and water rejuvenation processes, and the fundamental (culturally diverse) relationship between human and seed that determine our collective survival.³⁹ Instead of fighting famine and increasing global food supplies as companies like Monsanto have claimed, the genetically enhanced "green revolution" and the corporatization of food production has *reduced* the ability for vast populations to produce and consume nutrient rich, culturally appropriate, and ecologically sustainable food. It is, in Shiva's words, "A recipe for starving people, not for feeding them."⁴⁰

³⁷ Monshipouri, Welch, and Kennedy 2003.

³⁸ Shiva 2000, 2001, 2008.

³⁹ Shiva 2000, 2008.

⁴⁰ Shiva 2000, p. 13.

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However, companies like Monsanto (soy and pesticides), Bechtel (water), and Ricetec (rice) cannot succeed alone in their efforts to monopolize global agriculture and own what is arguably beyond ownership. Of course *states*, such as the US and India actually provide these corporations with the legitimacy and threat of force necessary to privatize soil, water, and seed through patent law, protections of “private [corporate] property,” and a police state to back up and enforce such laws. Here we might reconsider our previous suggestion: it is naïve and contradictory for HR instruments to expect states to sanction corporations for fulfilling their legal duties to maximize profits for shareholders when these profit interests interfere with human rights practices. As an implication, human rights struggles often take place as grassroots campaigns against states and TNCs – between public stakeholders and more powerful state and private interests.

In response to corporate monopolization of food production and seed, activists like Shiva have formed the Navdanya (“nine seeds”) movement in partnership with farmers, consumers, activists, and NGO’s across the globe. Through organized civil disobedience, lobbying/legal action, protest, and information sharing, Navdanya and its many partners have been relatively successful in resisting the more damaging effects of structural adjustment and corporate monopolization.⁴¹ Part of Navdanya’s success has been due to its ability to target local, national, and transnational state structures, as well as private TNCs. The Navdanya movement, like many others, is a simultaneous struggle against large TNCs and partnered states for the most fundamental survival needs: food and water. In this struggle, independent and indigenous farmers conducted a campaign that required civil disobedience – the refusal to follow laws constructed and enforced by the very states charged with protecting their fundamental human rights in the first place.

Not only has the Navdanya movement seen significant success in stopping the tyranny of large agribusiness over the global food supply, it has become a model for changing fundamental social organization. That is, through organizing for their fundamental rights to sow and trade seed, collect clean water, and harvest food, participants in grassroots organizations like Navdanya have engaged in decentralizing and democratizing their communities. As Shiva⁴² explains,

⁴¹) Shiva 2000, 2007.

⁴²) Shiva 2008, p. 119.

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Navdanya builds community seed banks based on rescuing, conserving, reproducing, multiplying, and distributing native varieties or farmers' varieties – varieties evolved and bred over millennia. On the one hand, our seed saving defends seeds as a commons – resisting through our daily actions the degraded, immoral, uncivilized idea that seeds are the “intellectual property” of corporations, and that saving them is a crime. On the other hand, Navdanya's seed banks are the basis of another food economy, one based on biodiversity and cultural diversity, on sustainability, and on the future.

In their grassroots struggle for human rights practice, as part of the larger human rights enterprise, those involved with Navdanya have succeeded in ensuring some fundamental human dignities. However, we think a more important observation should be made here: through organizing against powerful state and private actors, they illustrate the possibility for people to organize and “govern” *themselves*. They suggest that the struggle for human rights practice is not simply a pragmatic fight for any single resource. It involves a much larger project where the “legitimate” authority of state and private actors must be precluded by the power and desires of relatively autonomous communities. In a sense, the human rights enterprise then becomes a struggle to have concepts of human rights guide and preclude the legitimacy of any supposed authority – be they in the form of states, banks, or corporations.

We need not only look to Navdanya for illustrations. In fact, many researchers and activists have also documented struggles against the privatization of water in places like Bolivia.⁴³ Not unlike the farmers of Navdanya and their allies, Bolivian activists have been in the business of resisting and overthrowing state administrations that have repeatedly partnered with corporations such as Bechtel to privatize all access to clean water. Similarly, these struggles over central resources quickly evolved into struggles for wealth and power redistribution, and the power of decentralized communities against the more highly centralized nation-state and corporate owning class. To be clear, we do not see a pattern of states (be it India or Bolivia or the US) siding with their general populations, to ensure them the necessities of human survival and fundamental human right (water, seed, soil, shelter, etc.). Instead, a closer look at the human rights enterprise yields a pattern of struggle “from below” against powerful states and TNCs over the access to limited resources and political voice (in decision making).

⁴³ Shiva 2002; Bakan 2004; Dangl 2007.

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One such struggle has been waged by Food Not Bombs [FNB]. FNB consists of many local FNB collectives, each with a democratic “consensus” model for decision-making, that together form the larger FNB network. The primary activity of FNB collectives is simple: “They recover food that is wasted and serve vegetarian meals to anyone who is hungry.”⁴⁴ FNB chapters exploit sources of excess food that would otherwise spoil in dumpsters or landfills, preparing and distributing the food in open public spaces (typically urban parks) to those who wish to eat. Broadly speaking, FNB is a movement toward the decentralization of resources and decision-making – out of the hands of powerful state and corporate actors, into the hands of local communities. Peter Gelderloos suggests that the act of simply feeding people can serve several functions toward these ends: (1) vegetarian/vegan meals illustrate an alternative to problematic, centralized industrial meat production and factory farming; (2) food served in the open to anyone who wants it avoids stigmatizing the impoverished, and confronts poverty and food insecurity as a public, direct action; (3) FNB rejects the notion of charity, seeking to blur the lines between haves and have-nots and questions the very idea of owning access to food at the expense of others’ hunger; (4) as suggested in their name, FNB is in opposition to spending vital social resources on military and police states, and seek to illustrate the contradiction in excessive “defense” when people can’t meet their most fundamental needs.⁴⁵

To speak only of the US military (though FNB began in Cambridge, Massachusetts in 1980, it is now found across the world), FNB offers a reasonable critique. The US outspends its next five military competitors combined, and military expenditures, on average over the past 20 years, account for 51 per cent of the federal budget.⁴⁶ At the same time, in the wealthiest, most powerful state in the world, 36.2 million people (12.4 million children) live in “food-insecure” households.⁴⁷ FNB’s critique easily translates to one of our fundamental questions here: What good is the “protection” of states (the supposed purpose of military and police forces), when they are unwilling or unable to protect the most fundamental dignities of their people? And FNB provides a response in action: people don’t need the permission of a state authority to feed one

⁴⁴ Shannon, forthcoming.

⁴⁵ Gelderloos 2006.

⁴⁶ War Resistor’s League 2009.

⁴⁷ USDA 2009.

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another, and to demand (not beg or vote for) what is arguably a right beyond rights – the right to a dignified life, free of famine in the context of excess.

Generally an anti-capitalist, anti-statist organization, it should be no surprise that FNB shares the authors' critiques of a rights discourse, and purposely avoids using a formal human rights framework for this very reason. FNB embodies the point made previously, that concepts of fundamental human dignity might preclude and, if necessary, supplant notions of hierarchical authority manifested in states. Not unlike the seed and water movements previously discussed, the FNB movement doesn't simply seek to ensure a particular substantive right for particular populations. The structure and direct action approach of FNB challenges the very idea of state authority, especially under conditions of vast wealth disparity, and suffering in the face of excess and centralized wealth. They approach issues of hunger, poverty, and inequality as conflicts between haves and have-nots that can be solved *by the direct actions of the people* – rather than by some form of generosity or protection from above. As another similarity, the US has positioned itself starkly in opposition to FNB for its tactics. In fact, the ACLU, employing the Freedom of Information Act (FOIA), has documented several cases where the federal (FBI) Joint Terrorism Task force engaged in “political surveillance” of Food Not Bombs chapters.⁴⁸ On one hand, this is a statement on how the US government continues to define “terrorism.” At the same time, it's also an illustration of the diverse human rights enterprise – where struggles for human rights often reflect a conflict with states.

It seems that a significant substantive human rights struggle, over fundamental public resources such as food and water, is often not waged by states on behalf of the people they are presumed to represent. In fact, in the three examples given above, grassroots organizations found themselves in conflict with powerful states, TNCs and banks. As previously mentioned, these resource struggles were often more accurately described as struggles between the haves and the have-nots – mitigated by states that tended to side against the various grassroots movements. In all three cases, grassroots organizations suggested through direct action and civil disobedience that fundamental human “rights” or dignities were (1) ultimately defined in praxis by people in tangible communities, (2) these rights or dignities precluded any other “legitimate” authority – such as states or corporations.

⁴⁸) ACLU 2005.

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Some Implications

Many of the greatest atrocities ever committed – from death camps in Auschwitz to the incineration of Hiroshima and Nagasaki – were the actions of states. These very actions would influence the creation of the UN, HR instruments, and international law as we know it.⁴⁹ However, in creating HR instruments states were situated as the authorities who would collectively define, and individually protect/ensure human rights practice, and presumably monitor their own compliance. Of course, many states continue to disregard the HR instruments to which they are party. For example, contemporary human rights abuses are clearly demonstrated in the US prison system and criminal justice system against the poor and people of color.⁵⁰ According to Western, we have yet to see so much as a recognition of these abuses by the federal government – largely products of “tough on crime” and drug war policies of the past 30 years.⁵¹

However, when we look beyond the formal framework of international law, at the broader human rights enterprise, we find grassroots movements that challenge, side step, and (especially in the case of Bolivia) supplant state authority over the defining and provision of fundamental human rights. When we look at the struggle over basic human needs like food, water, and shelter, we also find this struggle carried out by those who lack these resources. Rather than being spoken for and protected by states, many grassroots human rights movements found themselves in conflict with the very governments whose job it is to provide access to such fundamental resources.

This leads us to two general directions of praxis:

- 1) As scholars and activists, we should be investigating and participating in the broader human rights enterprise. This means a willingness to redefine the formal studying and doing of human rights scholarship and activism, as one that often takes place in opposition to state policies/practices, and potentially the legitimacy of state authority or private ownership of basic public resources. Of course, many grassroots activists already conceptualize their struggles similarly. Perhaps we who occupy academe and formal state networks are behind in this regard.

⁴⁹ Lauren 2003.

⁵⁰ Amnesty International 2009; HRW 2009; Western 2007.

⁵¹ Western 2007.

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- 2) As scholars and activists, we should also be prepared to consider the implications of our own struggles and observations. Again, what is the legitimacy or “point” of a state authority that cannot or will not provide its people with the most fundamental human dignities? Our observations about the shortcomings of states to fulfill their formal obligations according to HR instruments do not simply serve to critique these instruments. They serve to critique the legitimacy of states more broadly. It is difficult to imagine the success of a human rights enterprise where the legitimacy of “sovereign” states, which have proven consistently problematic for the realization of human rights practice, is not openly challenged.

The human rights enterprise is not only a useful concept to critique and move beyond formal human rights discourse; it is useful in evaluating the “legitimate authority” of states. Formal human rights discourse presents human rights as flowing from the agreements, protections, and actions of sovereign states that claim to represent populations within their jurisdiction or territory. In contrast, the human rights enterprise presents human “rights” as flowing from the struggles of people: within, outside of, and against formal state structures and powerful global players such as banks or TNCs. When viewed through the lens of the human rights enterprise, the role and legitimacy of states (or any other form of modern governing authority, e.g. the Saudi Arabian monarchy) can be tested against their ability to protect, ensure, and provide fundamental dignities and freedoms to the populations they claim to represent, and according to their supposedly binding agreements.

Similarly, grassroots struggles, when viewed through the human rights enterprise as a lens, are not reduced to lobbies or interest groups vying for a particular substantive “right” or resource goal. They may be seen for their structural contributions, as often democratizing, decentralization movements. As seen in our previous case examples, such grassroots movements challenge the very authority of states, often positioning people and local communities as primary social actors, and any authority from above as precluded by the need for a basic, dignified quality of life.

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