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Comment on Kate Nash/3

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by George Steinmetz

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Kate Nash's insightful article can be read as a critique of cosmopolitan human rights theory (CHRT) from the standpoint of a realistic sociology of the state and the international system of states. By failing to take seriously the sociology of the state, empires, geopolitics, and even political processes in the broadest sense, she suggests, CHRT has failed to analyze the reasons why human rights laws so often fail to ensure actual human rights. This analytical failure on the part of sociological CHRT is particularly puzzling given that sociologists like Tilly, Jessop, and Mann have focused their attention on two aspects of states that are extremely relevant to understanding how problematic it is to expect states to ensure human rights. The first is the state's variable effectiveness in actually implementing the policies it claims to adopt, or the policies that are written into law. States vary enormously in their "infrastructural power," including their ability to turn human rights law into human rights protection [Mann 1986]. More precisely, Nash argues, a state needs to be relatively autonomous from the interests of social elites in order to implement international human rights laws that will violate these elites' interests. Second, sociology has long encompassed a view of states as repressive and bellicose [Gumpłowicz 1883; Gumpłowicz 1905]. Max Weber's discussion of rational-legal authority cannot be separated from his definition of the state as a (would-be) monopolizer of violence. In addition to being the precondition of human rights, states are the authors of the worst violations of human rights, including conquest, genocide, colonial domination, and enforced religious and cultural conversion. The second face of state autonomy,

Nash notes, is the state's ability to defy external institutions that are trying to force it to adopt international human rights norms.

International human rights law will constantly run up countervailing policy agendas with powerful foundations both inside the state and in civil society. One of the great achievements of Nash's paper is her careful differentiation between the conditions prevailing in different sorts of states in the global south and north. Within the subset of more effective and less corrupt "Northwestern" states, government policy and state structure nonetheless often favors dominant economic interests even in the absence of direct instrumental control of government by those interests, due to the dependence of such states on revenues generated largely from taxes on privately owned means of production [Block 1988]. Many African postcolonial states bypass "sanctioning" by private capital and domestic civil society through their reliance on international aid [Tilly 1990; Bayart 1993]. State ownership of mineral resources like oil can also insulate a state from domestic political society [Luong and Weinthal 2010]. In "cellular societies" that are organized around "extended networks of reciprocal relations based on 'moral communities' of kinship, caste, or religion," Nash continues, "a strict line between legality and illegality would work to the detriment of those most vulnerable to violence and exploitation" since they gain *de facto* rights through these networks and "not as individuals through impartial procedures of law and bureaucracy."

Like globalization theorists and other believers in "the decline of the state," CHRT downplays the continuing importance of geopolitical asymmetries of power and imperial politics [Steinmetz 2012]. Empire is always first and foremost a project of geopolitical domination and command, as the word *Imperium* suggests, and is therefore always rooted in states and larger political formations [Steinmetz 2005]. Of course governments are coming under increasing pressure due to global flows of finance capital, but states continue to play the role of *primus inter pares* among the array of contending *political* entities on the global stage. States still control the largest armies and the most powerful weapons. Even a relatively decentralized and allegedly "weak" state like the United States [but see Steinmetz 2003; Novak 2008] dominates the hugely important domestic fields of the law, natural science funding, and a huge swath of economic activity (including taxes, social insurance, national security reviews of significant foreign acquisitions of American companies), and spies on its own population. And it does all of this with a great deal of secrecy, classifying documents at an ever increasing rate [Shane 2005].

For historical reasons that are only contingently related to the social ontology of the problem of global human rights, CHRT has gravitated toward theories of globalization and state decline. An adequate understanding of the expansion of human

rights, however, would have to acknowledge that powerful geopolitical political formations continue to pose enormous, though highly variable, barriers to such expansion. Nash discusses the relative impotence of the UN “white jeep states,” as in the Eastern area of the Democratic Republic of Congo. What needs to be added to this discussion of the UN is the use of the United Nations Security Council by its key member, the United States, to implement a very different sort of international law – security law, since 2001. The new international security law “requires all states to take radical steps to criminalize terrorism, curb terrorist threats at home and to act as barriers to the transnational flows of people and money involved in terrorism,” and “not surprisingly, these domestic actions have had repressive effects on particular domestic populations [...] and] on the expression of political dissent and on the budding constitutional structures of rights protection in many states” [Schepple forthcoming]. As Nash points out, state actors resist or deform human rights norms “in the name of sovereignty as well as security”; she mentions that “routine and exceptional violence” is “sanctioned by security laws” in India. By sweeping global power asymmetries under the rug, theorists of global human rights may actually strengthen the very forms of western intellectual and political-economic domination they hope to be subverting.

Even if we disregard elite class interests in shaping state policy, and even if we restrict our attention to the northwestern “core” states, there are severe limits to a strictly law-based approach to the problem of human rights extension. As Nash observes, that these “juridical states” make “no guarantees, especially where ‘national security’ and unpopular minorities are concerned.” Furthermore, and even more fundamentally, all states arrogate to themselves the power to declare *states of exception*, to step outside the law – if only (allegedly) to preserve the law, as in Schmitt’s “commisarial dictatorship” or a partial version thereof [McCormick 1997; Agamben 2003]. In the US, national security concerns have driven the expansion of the so-called “new imperial presidency” and the increasing use of the doctrine of Presidential “inherent powers” in [Rudalevige 2005; Fischer 2007]. As Nash points out “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.” Nor, incidentally, are there any tools to be used against the European states that collaborated with the CIA’s practices of extraordinary rendition and harbored “black sites” for torture.

Cosmopolitan human rights theory often substitutes wishful thinking for critical social analysis. Kate Nash’s essay has the salutary characteristic of not countering this wishful thinking with bloody-minded, amoral realism. Neither does she surrender to a helpless cultural pessimism transfixed by the inevitability of a uniform state of emergency. Instead, Nash provides tools for beginning to theorize the structural barriers to expansion of human rights and the possible chinks in this social-structural armour.

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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 "state-ness" 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.

Keywords: State sovereignty, state autonomy, juridical state, postcolonial state, predatory state.

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