

Encountering Human Rights: Redrawing the lines of Engagement: Relocating sites of Governance

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As discussant for the 'In-Spire' Roundtable, Keele, I was intrigued by the recurring theme - 'Encountering Strangers'. Anne Orford's presentation highlighted the Kantian 'dream or nightmare' of international law's encounter with states as 'cosmopolitan right' is enacted through 'statecraft', limiting the subject's autonomy and empowering the state. In Bailey's critique of the UK 'shoot-to-kill policy' the State encounters 'the other' in death, and Sevo critiques how 'just encounters' in Bosnia were mediated in the Dayton Peace Accords, to limit resistance within and between State 'borders'. Through these arguments we are made strikingly aware of both the overwhelming distance in political, economic and geographical borders between the 'autonomous' subject, the sovereign state and the cosmopolitan right and yet the bodily proximity of violations of rights by the state in the subject's 'just', 'civil' or actual death. In this article I draw upon my research on rights and gender in post-disaster reconstruction processes to understand rights as a site of encounter where the subject and state intersect at different spatial scales of governance. I argue that rights mark the intersection of the subject and 'state', at bodily, familial, community, national and international sites. At this intersection, the separateness of the autonomous subject and sovereign state is eroded, towards dynamic, and radically transformative rights strategies in the day-to-day encounters of subjects in 'states' of everyday life.

Introduction: Rights in Reconstruction

In 2002 the Secretary General of the United Nations (UN) at the Commission on the Status of Women (CSW) stated that post-disaster reconstruction processes present a

window of opportunity for social change in the wake of disaster to introduce new policies, programmes and legislations and make efforts to change stereotyped behaviour ... that can generate transformation towards gender equality and empowerment (UN/CSW, 2002: 30).

The UN identification of post-disaster reconstruction as a 'window of opportunity for social change', marks an important shift away from understanding disaster as a "strategic site in which to learn about social processes" (Fothergill, 1988: 11), to become a site in which 'policies, programmes and legislation' may be used to *transform* gender relations. It is this move within the international human rights forum, from intervention in disaster relief and recovery to reconstruction for social change, which presents new and important questions for gender and rights theory and has driven my wider research on the legitimacy, material determination and location of rights in reconstructing gender relations.

In this article I draw upon Anne Orford's 'paradox' of the Kantian dream/nightmare of international law's 'cosmopolitan right', whereby

Human rights law in its liberal manifestation offers limited means for countering the administration of human life represented by biopolitics, and indeed in some ways *supports* this mode of governmentality (2006: 206 italics added).

I consider the paradox of how cosmopolitan right is enacted and engaged through sovereign administration to consider how the UN introduction of "new policies, programmes and legislation to change stereotyped behaviour" may be considered as a method of 'statecraft' in what Orford refers to as the 'excesses of biopolitics' (Orford, 2006: 206).

In 'Biopolitics and the Tragic Subject' Orford describes how "(h)uman rights become caught up in the practice of statecraft" whereby "(r)ights are never absolute but can be limited to the extent necessary in a democratic society to protect other values or interests such as public morals or

security” (2006: 216). Orford’s analysis of the Woomera Immigration and Processing Centre traces how detainees became the “civil dead” (2006: 208), and how:

the Palmer Report drew attention to a paradox at the heart of the biopolitical state. How can such a state drawing its legitimacy from its capacity to protect, guarantee, and cultivate the life of the individual and the population, justify its exercise of the old sovereign power to kill or expose some people to the risk of death? (2006: 222).

Gavin Bailey’s article in this issue presents perhaps the epitome of modern statecraft in the UK shoot-to-kill policy as the civil subject is ‘misrecognised’ as the ‘other’ and legitimately erased under the policy of ‘risk management’ within the ‘socially and economically acceptable limits’. Marijana Sevo’s analysis of the Dayton Peace Accords for Bosnia in this issue reveals international peace keeping as a method to define ‘legitimate’ violence through the political engineering of identities through borders, keeping human rights subjects firmly in their place. Yet, from the site of the ‘civil dead’ Orford draws upon the natural law tradition to challenge the separation of the individual from the divine, in helping us to understand the separation of the ‘other’ from social relations through the tragic subject’s “different vision of the social” (2006: 217). Orford argues that the paradox of the biopolitical state as both a protector and a violator of human rights, is only possible when the “population is fragmented” (2006: 222). According to this ‘paradox’, I would argue that if the population is united, then to encounter the subject would be to encounter the state itself, for which perhaps the death of a subject would lead to the death of the legitimate state.

In this article I draw upon my research on gender, rights and reconstruction to question the distance between the autonomous subject as the rights-bearer, from the sovereign state and the United Nations as the rights-giver. Through the Roundtable’s examples of the bodily, physical and mental impact of encounters I trace rights as relational, which erode both the ‘autonomy’ of the subject, ‘sovereignty’ of the state and distance from the ‘United Nations’. I seek to understand rights as a mode of engagement in social relations at different spatial sites of governance, operating across different sites of the body, inter-personal, familial, community, state and international, as spatial scales of global governance.

My research is based upon the post-earthquake reconstruction process in Latur, Maharashtra, where I lived and worked as a community development worker in the village of Nandurga and Lohata from 1993-1997. Through a series of articles (2007, a, b, c, 2008, a, b) I have analysed the relation between the rights-bearer, the earthquake victim, and the rights-giver, the World Bank and State Government of Maharashtra at various sites of governance in the home, the village, the community, formal courts of law, informal legal fora, local state and national government committees, and informal organisations such as women’s groups. I have argued that in the modern human rights framework, the subject-bearer of rights is positioned as an individual in constant competition to claim rights of cultural recognition, material redistribution and spatial relocation in an existing liberal, patriarchal and distant/unreachable framework of rights. In this article I seek to draw together these three distinct strands of analysis to consider how the methods of engagement between the rights bearer and giver are currently drawn. I consider how the hierarchical, dominant and distant framework constructs the subject as an individual ‘other’, the ‘stranger’, to compete to ‘win’ or ‘lose’ claims to cultural, material and spatial rights, pre-determined by the framework in which their claims are located and defined, rather than understanding the contextual, intimate and shared framework of their everyday lives.

Through the analysis of women’s groups in the post-disaster reconstruction process, I have sought to understand how local rights strategies may redraw the lines of engagement, away from a competitive ethos of distant rights claims to reconstructing dynamic and mutual relationships between the rights-giver and claimant through rights strategies of reflection, revaluation and relocation. Drawing upon the examples of Orford, Bailey and Sevo I consider the potential of this analysis to inform a feminist understanding of an intimate relational, dynamic and transformative model of a rights regime. In this brief article I consider how everyday ‘rights’ are shaped by the foundational liberal principles of governance: political legitimacy in the cultural recognition of the civil subject, political economy in the material redistribution of resources, and political spheres in the location of sites of governance within the state and the international human rights framework. Through the analysis of the state in processes of reconstruction, from post-disaster to everyday life, I engage an intersectional strategy of reconstructing rights through cultural reflection, material revaluation, and the spatial relocation of rights regimes.

Rights as the Site of Encounter

Didi Herman's concept of "human rights law as a disciplinary regime ... where dominant legal ideologies themselves shift and are reconstituted through social struggle" (1996: 6) has helped me to understand the post-disaster reconstruction process in which rights 'policies, programmes and legislation' are used towards 'social change' as a micro-example of a 'rights regime'. Through my studies of the post-disaster reconstruction process I have understood the rights regime to be historically constructed. The World Bank and State Government Maharashtra Earthquake Policy, the legislation of the modern legal system, the non-formal legal and local community practices have each played a historical role in constructing social relations through rights. Further, I have argued that the post-disaster reconstruction process, as a rights regime, is dynamic, wherein the local community demonstrates the cultural, economic and political resistance to such 'social change'. Yet within the interaction of the local community and external reconstruction process, gender is silenced. This experience of rights exemplifies the feminist question 'where is gender on the axis of rights?' which has been asked across the nationalist versus colonial (Spivak, 1988: 102), secular versus communal (Menon, 1998: PE-3), north versus south (Mohanty, 2002: 515) and local versus global (Marchand, 2000: 226) terrains.

Women's experiences in the post-earthquake reconstruction process present a site of social organisation of international, state, non-government organisations and local community, to understand how the social relations and organisations in which women are active are constructed through rights. In a recent chapter (2008 b), I have drawn upon Dorothy Smith's concept of a network of social relations as "an intersection to explore the social from the site of women's experience", "as their experiencing participates in and is shaped by that organisation" (1990: 3). I identify rights as the axis of this inter-relation. Just as rights can be used as a tool for the 'ruling apparatus', which I apply to the 'policies, programmes and legislation', so rights may also provide a language of 'consciousness-raising' that I argue, can express and shape a collective experience of rights-bearing (Friere, 1970; Schnieder, 1991). I suggest the subject may reject the practice of statecraft and reclaim cosmopolitan right at the point of encounter between the state and subject.

In this article I identify how this intersection of rights, between the external ruling apparatus and the actual practices of the local community at a point of disaster, at a point of fracture in social relations between the external and internal, provides a site to understand how the rights regime works. I assert gender as a vantage point to question the premise and constituents of the rights regime, by pursuing the following questions:

- i. Who is using rights? How is the legitimate subject constructed? Does this create agency?
- ii. What is the material nature of rights? How are they distributed? How are resources constructed? Does this create capacity?
- iii. Where is the rights regime located? Where are the boundaries? How is location constructed? Does this create mobility?

Redrawing the Lines of Engagement

In a recent article 'Rights to Govern Lives' (2008 a), I have explored the questions of legitimacy, material determination and location to develop a specific formula for rights in governance. In this brief article I would like to apply the formula to the contemporary global examples of the role of rights in the different modes of 'encountering strangers' in the Australian detainee camps, the UK shoot-to-kill terrorism policy and the Bosnian 'Peace Accords' to challenge the legitimacy, material determination and location of modern statehood in international human rights law.

Recognising the Legitimate Subject

I drew upon the first set of questions to explore the legitimacy of the earthquake reconstruction process as a rights regime. From the liberal theory that rights may claim legitimacy "only if those possibly affected could consent to it after participating in rational discourses" (Habermas, 2001: 116), global north and south feminist critique suggests that this process is dependent upon rights of recognition (Fraser, 1997; Benhabib, 2002; Rege, 2000; Majumdar, 2003). Through my analysis of

women's role in the post-earthquake reconstruction process, I have argued that the framework of 'recognition' actively constructs identities in a static and hierarchical manner, which limits the effectiveness of rights strategies (Krishnadas, 2007b). Bailey, Sevo and Orford question the legitimacy of state practice in relation to the autonomy of the civil subject. Bailey's critique lies in the construction of the victim as the 'other' in order to gain legitimacy for state action in protecting the common good (2008). Sevo questions the grounds of 'international humanitarianism' to legitimise not only military intervention in Bosnia, but also in Kosovo, Afghanistan and Iraq (2008). Orford refers to the detainees as the 'civil dead', who, whilst abandoned and negated within the camps, were constructed as a 'threat' to the nation (2006: 214). The 'recognition' of the subject in all cases was constructed as an 'other' in relation to civil society and therefore legitimised the negation, withdrawal or annihilation of the rights-bearing subject. Through this analysis I suggest that it is only the legitimate subject who is recognised as a bearer of rights. The legitimacy is dependent upon how the subject is constructed within the framework of the national and sovereign state. I suggest that in order to gain a cosmopolitan conception of legitimacy the subject is to be constructed within a global framework – a framework of reflection wherein the subject is not recognised but reflected in "a balanced reciprocity where the people were both the spectator and the show" (Taylor, 1992: 47).

Redistributing Resources

It is here that I suggest the need to address the recognition of the subject in relation to my second question regarding the material framework of rights: How is the framework in which the subject is recognised materially constructed? And how does the material determination of rights create competition and conflict amongst subjects for resources? In this issue, Orford refers to Kant's term 'reciprocal action' whereby each subject has a 'cosmopolitan right', "the right of a stranger not to be treated with hostility when he arrives on someone else's territory" (In Orford, 2008: 8). Yet as Orford indicates, this is dependent upon Kant's principle of common interest whereby "all nations should be understood as 'originally members of a community of the land'" (2008: 8). In the context of the post disaster reconstruction process I have formed my second question drawing upon the materialist theory that "the determining factor in history is in the final instance the production and reproduction of immediate life" (Engels, 1972: 71). Feminist theories of economic justice are based upon rights of redistribution (Fraser, 1997; Hennessey and Ingraham, 1997). However through my analysis of post-earthquake reconstruction process, I have argued that the framework of redistribution has prioritised capital based resources and not valued non-capital modes of production through the common ownership of land and livestock (Mies, 1982; Agarwal, 1994; Datar, 1999; Mohanty, 2002). Orford's attention to Kant's principle of "reciprocal action (commercium)" whereby States are not to "limit the capacity of people to have commerce with the rest" (2008: 8) is particularly interesting in the way material rights may determine social relations, when they reclaim capacity in non-capital skills, rather than revaluing resources (Krishnadas, 2007c). In Orford, Bailey and Sevo's articles in this issue, the construction of the 'other' as devoid of cultural rights is closely tied with the marginalisation of the 'other' from competing for material resources. This is strikingly evident in Orford's citation of the former Australian Prime Minister John Howard's election campaign "Who do you trust to keep the economy strong and protect family living standards?" (2006: 212) and Sevo's citation of Rasch in this issue to 'talk quite simply and directly of war, economic booty, and the installation of compliant regimes' (In Sevo 2008: 14) whereby state encounters with subjects are pitched within the competition for resources at the local and international level.

Relocating sites of Governance

My final set of questions has explored the construction of the boundaries of the reconstruction process, the rights regime: the "mechanisms of power ... in which each individual is constantly located" (Foucault, 1977: 197). Through my analysis of women's experience at different sites of the relocation process, the World Bank and State Government, the community and the family I have drawn upon feminist theories questioning the boundaries of rights (Smart, 1989; Massey, 1994; Nedelsky, 1990). Through the study of the reconstruction and relocation of 52,000 houses I have traced how 'rights' can construct physical borders between ourselves and our relations with others. Yet in the post-disaster reconstruction process the borders were constructed through layers of intersections of the World Bank, State Government, Local Government and village committees to families, revealing scales of the mechanisms of power from the international to familial level. The roundtable articles presented similar scales in the administration or 'management' of the 'cosmopolitan right'. Orford's analysis of the detainee camps is rooted in Foucault's mechanisms of

power, whereby the bodies and the camps become sites of daily encounters of governance, management, exception and abandonment (2006). Bailey's analysis of the 'shoot-to-kill' policy follows a chain of sites of decision-making from the Commissioner to the individual police officer at the site of final encounter. Sevo's analysis of the Dayton Peace Accords focuses upon how subjects are located within local territories according to the international drawing of boundaries as a method to locate and manage violence, combining and conflating territory with ethnic identity.

The study of the post disaster reconstruction process reveals the different sites and scales of governance from the international organisations to the government to within the home. Accordingly this study reveals our location as subjects, not fixed but in constant flux and engagement with the potential to transform our 'location' across the public and private, place and space and local and global terrains. (Massey, 1994; Youngs, 2002). In order to transform our 'location' in the mechanisms of power, subjects need mobility to move within and across the public/private, space/place, local/global terrains, so creating mobilised regimes/'states' of empowerment (Krishnadas, 2007 a).

Conclusion

In this brief article I have sought to understand rights as a site of encounter in which cultural, material and spatial modes of governance intersect at different scales of governance. In so doing I hope to move away from the overwhelming and often paralysing distance perceived between the subject and state in international human rights discourse, to understand the role of rights as operating at different spatial scales from the international to the most intimate encounter. Identifying the relations of encounter at the intimate level provides a site of engagement within reach and with the possibility of change. Through the analysis of women's organising in Latur, I have argued that we may reconstruct the constituents of the rights and the regime in which they exist. Similarly I suggest we question the constituents of rights as being legitimate, determinate and located within comparative rights strategies. I suggest rights may be legitimate not through the recognition of the distant 'other' but through the reflection of different and collective modalities of agency. In Orford's study of the detainee camps it is the construction of the detainee as the 'illegal other' that fragments the individual subject from the collective and empowers the state. The hope within Orford's article lies in the solidarity of subjectivity from those "who showed their solidarity with asylum seekers by lining up for hours outside the camps to bring food or letters or telephone cards or company to those detained" (2006: 211). Bailey's study reveals the media and state role in recognising de Menezes as the "illegal immigrant who had overstayed his welcome" rather than reflecting empathy and solidarity in his reflection as a Mother's son, regardless of national borders (2008: 26). In Sevo's article it is the physical relocation of ethnic identities within internationally drawn borders that puts the subject within their place. Sevo makes a strong argument that "quite a different story of the conflict could therefore be told by reference to the political economy of the region, but even this particular narrative becomes a subject of nationalist imagination around which it is organised" (2008: 15).

In relation to each of the above articles I suggest that is through understanding the cultural legitimacy, material determination and spatial framework of the encounter that presents a site of transformation. In separating the constituents of rights, I suggest three underlying strategies for the reconstruction of the rights regime. Firstly I suggest a shift from seeking recognition of the individual subject to understanding our subjectivity as a collective state through processes of reflection. In Orford's article, the Australian citizens at the gate passing food and letters to the 'strangers' present a powerful collective subjectivity to encounter the state. In the UK, the familial image of Jean Charles de Menezes' mother mourning her son created global empathy and outcry for the IPCC inquiry. In the Dayton Peace Accords, the imperial appeal to 'wider humanity' to legitimise intervention in Bosnia against the barbaric 'other', has been questioned by the wider 'other' experience of global US interventions. Secondly I suggest a shift from a competitive material framework of rights to resources, to a revaluation of resources along the Kantian principle of being "members of a community of the land" (Orford, 2008: 8). In each of the Roundtable articles the 'other' was constructed as a threat to resources. The detainees were portrayed as a threat to the Australian economy; in the UK de Menezes was portrayed as an illegal immigrant who overstayed his welcome on the student visa; and Sevo suggests that international borders were redrawn on the grounds of political economy, rather than 'peace keeping', a similar argument made in relation to Afghanistan and Iraq. In each case, the competition of resources and devaluing of the 'other' fragmented the political community. Finally in each of the articles, the location of sites of governance reveals a chain of spatial scales of governance from the illusive cosmopolitan right, formidable sovereignty of the state and isolation of

the subject. In each case, a closer analysis of the spatial scales of governance reveals chinks in the chain of governance. The Palmer Report's exposure of 'management failures' provided sites of weakness and failure, the Independent Police Complaint's Commission inquiry and prosecution under the Health and Safety at Work Act 1974, exposed inaccuracies and inconsistencies, and the Dayton Peace Accord reveals how the national borders which define the 'Other', are the manmade product of 'map drawing exercises'.

Just as the empowerment of the State is dependent upon the fragmentation of the subjects, each of these articles present 'states' of governance as transient, fragmented and weak. I suggest that it is at the point of encounter that alternative rights strategies may be drawn: from recognition of individual subjects to the reflection of shared subjectivities, from the material competition for resources to shared ownership and belonging, and from the separate location of the subject to being part of a global 'state' of being. Such strategies may provide both the practical elements and analytical distinctions towards an intersecting holistic analysis and transformation of the dynamic rights regime (Krishnadas, 2008 a, b). I hope that an understanding of the contextual and relational models of rights will help reconstruct a rights regime that can provide shared agency, capacity and mobility at sites of encounter in interdependent bodily 'states' of global relations.

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