

The End of the Social Contract and the Rise of Durable Poverty

Brian Shoup and Ellen Davis¹

Introduction

The study of humanitarian assistance, whether in the form of economic aid programs or military interventions aimed at rebuilding failed states, is a broad field that often suffers both from its interdisciplinary breadth and the seemingly Sisyphean task it purports to analyze. At the most basic policy level, contemporary debates surrounding humanitarian aid tend to revolve around two core positions. The first position, generally advanced by Sachs (2005) and Collier (2007), suggests that advanced industrial societies possess wealth, expertise and technology that, properly harnessed, can help make poor states better off and improve the lot of the billions of people living in poverty. The second position argues that the problem of underdevelopment is really not a question of inadequate resources at all, but rather is a consequence of poor governance. Scholarly accounts by Easterly (2006), Englebert and Tul (2008), and Moyo (2009) arrive at the common conclusion that aid is largely ineffective owing to a number of governance deficits that render well-intentioned forms of humanitarian assistance only marginally effective at best and wholly destructive at worst. Coyne's (2012) *Doing Bad by Doing Good* is a further argument in favor of this position and, like Coyne, our arguments fall squarely in the latter camp.

That said, we further suggest that a core dilemma of the governance deficit is not simply the absence of effective institutions for collective action. Indeed our fieldwork experiences in underdeveloped states suggest that citizens and governments routinely develop novel and effective mechanisms for addressing collective dilemmas. A key question is why the potential merits of polycentric modes of governance seem inert in places that possess a remarkable panoply of institutions that, if allowed to flourish, would do more to generate improved social welfare. To move towards an answer to this question, we build on predatory theories of the state and contemporary ideas about the nature of

state sovereignty to suggest that most poor countries achieved independence under a constitutional-level order that generated severe disincentives for economic growth. Following Ostrom (1982) and Kiser and Ostrom (1982), we understand constitutional-level orders to be that arena of collective action which establish the institutional arrangements and enforcement mechanisms that determine how authority is defined and proscribed. Constitutional-level orders shape the incentives faced by actors at the collective choice level in which authoritative decisions occur and also at the operational level in which action takes place. We focus on how the constitutional-level order structuring the community of states changed in the wake of WWII by making the maintenance of statehood ‘cheap.’ In particular, and building on our current research projects, we argue that the contractarian impulses (i.e. the effective coordination of the three levels of collective action) that are felt to lie at the heart of economic and social exchange (Olson 1993; Myerson 2008; Wallis, North and Weingast 2009; Boix 2003; Fearon 2011) are perhaps the greatest victims of these constitutional-level changes.

Our objective in this essay is to lay out two key points. First, the ostensible limitations of humanitarian aid programs are fundamentally related to the ways that the post-WWII international state system has made the maintenance of statehood ‘cheap.’ By making sovereignty a purely juridical construct the constitutional provisions that created the international system effectively eliminates the contractarian principles upon which most political economy theories of the state are founded. As a consequence, many humanitarian aid programs proceed from the false assumption that juridical and empirical sovereignty are the same. They are not, and the difference matters.

Second, related to this development, there is a problem of equating government (the formal institutions of the state charged with using coercive force to compel participation in the policy process) with governance (the collectively legitimized and commonly shared sets of rules and norms that allow for peaceful and productive social and economic exchange). This dilemma exists all over the world, but its implications are far more onerous in post-colonial states where citizens are keenly aware of the thin threads by which collective orders hold. Put simply, it is easier to say ‘the emperor has no clothes’ in post-colonial states where the gross ineffectiveness of the policy process lays bare the distinctions between the formal offices of government on one hand and the available, and often informal, mechanisms of self-governance and collective action on the other.

State Predation and the Contractarian Disposition

Predatory theorists of the state assume that the principal function of government is the acquisition of revenues. The only way to acquire such revenues is through theft, either by forcibly despoiling the resources of individuals or through a process of taxation that establishes an exchange of revenue for security. Olson (1993) characterizes the theory succinctly in his depiction of a Hobbesian state of nature beset by 'roving bandits' who make their living through robbery of the productive efforts of individuals. Clearly under such a chaotic state of affairs there exist few incentives for capital intensive economic activity, to say nothing of the disincentives for trade over time and space. The optimal solution is that one bandit, through superior tactics or strength, eliminate all competitors and establish herself as a 'stationary bandit' who extracts rents from the populace. A stationary bandit who is confident in her position and believes she has time on her side is likely to set an extraction rate that is somewhat low. After all, it is better to receive a smaller payoff many times than it is to extract all resources only once. This is especially true when the lower extraction rate generates incentives for individuals to invest in new production since subjects will retain more of their output for their own use and can be confident that their efforts will not be plundered randomly by rapacious bandits. Since her monopoly gives her significant economic benefits the stationary bandit-cum-warlord has a strong incentive to punish any potential bandits who would reduce the rents available.

Bates (2001) characterizes these stationary bandits, and by extension all leaders emerging from this typified state of nature, as 'specialists in violence.' These leaders possess little by way of innovative practices and productive capacity. Rather, they possess the scarce skill of effectively mobilizing force. Other scholars working in this tradition (Levi 1988; Tilly 1990; Myerson 2008; Wallis, North and Weingast 2008) essentially suggest that the creation of modern states derives from the ability of one specialist in violence to defeat all potential competitors, establish a mechanism for tax extraction, and to devise some institution to transfer political authority to their chosen successors.

Critically, these theories are attached to the concept of social contractarianism. Social contracts are, at base, the sacrifice of a small amount of personal liberty in exchange for the recognition of a common authority to adjudicate disputes and eliminate the perils of the Hobbesian state of nature. In their more developed forms, they incorporate first and second-order characteristics that establish not merely a legitimate leviathan, but also the mutual expectation among individuals in a community not to use violence against one another (Shoup and Holmes 2013). Ultimately, the conception of the social contract was intended to answer the question of how modes of

political hierarchy evolved from a relationship between sovereigns and subjects (in which sovereigns are merely the stationary bandits of Olson's model) towards a relationship between government and citizens (in which the government needs its citizens as much as the citizen needs his government). The answer lies in the perpetual threat of invasion. Sovereigns require taxation not simply to possess the luxuries of royalty, but rather because money is needed to ensure survival in the face of other sovereigns seeking to acquire new sources of wealth. Among our key arguments in this essay is that the constitutional-level order of the international state system has effectively retarded the contractarian path that leads from sovereign/subject to government/citizen and that this dilemma has made development a difficult goal to achieve.

Predatory state theorists see this evolution in terms of a purely European history. As Tilly (1990) and North (1976) note, medieval Europe was a place in which land was considerably more scarce than people. As such, sovereigns had incentives to put forts and infrastructure throughout the whole of a territory, to establish bureaucratic agents charged with taxing, counting, and managing their subjects in remote regions, and to maintain ceaseless vigilance over one's lands lest a more capable sovereign take these resources. In other words, the structural characteristics of Europe compelled sovereigns to entreat with subjects. To be sure, the history of medieval Europe is replete with many examples of brutal and exclusionary violence, but the grand narrative of the predatory theorist is one of slow and unjustly uneven but nevertheless steady movement towards individual liberty, the rise of free markets, and the gradual inclusion of previously marginalized groups into broader social exchange.

Beyond the mere survival instincts of sovereigns, the contractarian move from sovereign/subject to government/citizen is broadly felt to have hastened because of changes in the relative factor price of labor owing to disasters like the Black Death (North 1976) as well as the growth of new modes of civil discourse that questioned previously held models of communicative authority (Habermas 1991). Demonstrating these themes, Root (1989) and North and Weingast (1989) each point to the periods of European history where a sovereign's reach exceeds his grasp and compels shifts in constitutional orders that attach the provision of future revenues to greater individual oversight of choice at the collective and operational level. Put simply, there will be no taxation without representation and credible commitments by the sovereign to abide by his agreements.

Taken together, predatory state theory suggests that the creation of 'successful' states and the attendant benefits of good governance that accrued to societies that enabled polycentric orders to emerge without repression is a consequence of an international system in which nothing could be taken for

granted. The perpetual threat of invasion in a structural milieu characterized by land scarcity compelled sovereigns to take steps towards gradual inclusion of previously marginalized social groups as well as a tolerance for the emergent and effective localized institutions that allowed for increased economic productivity and higher standards of living for all citizens. In exchange for these steps, future revenues needed to fend off potential foreign threats were secured. Further, we observe the need for the state to simultaneously prove its presence on one hand but not to wantonly exercise violence against its citizens on the other for fear of alienating a burgeoning and rapidly urbanizing population (Thies 2007). Social contracts and economic development occurred simultaneously.

Making State Maintenance ‘Cheap’: The Shifting Constitutional-Level of the International State System

Internal rebellions carried a significant cost in the pre-WWII state system. Peasant rebellions or urban uprisings were costly not merely for the loss of life, but also because they indicated weakness to other sovereigns bent on expanding their territorial holdings. As such, periods of internal strife were disconcerting and all subjects, not merely the sovereign, saw virtue in a swift conclusion to periods of turmoil. Moving forward many centuries (and not blind to the myriad social and political developments of the intervening years), the terrible violence of WWII compelled significant changes in the international system of states. Given the immense human costs of the first fifty years of the 20th Century, the new constitutional order privileged *juridical* as opposed to *empirical* statehood. Jackson and Rosberg (1982) characterize juridical statehood as a being comprised of international recognition of a defined territory and its current government. In contrast, empirical statehood occurs when a society has managed to cultivate a shared set of norms and rules, sees long-term virtue in sustaining stable political relationships, and grants legitimacy to the agents charged with overseeing the collective-level of human action. According to juridical standards, a viable nation-state such as Japan, with its universally accepted and enforced constitutional provisions and ability to peacefully navigate shifts in citizen expectations, is just as much a ‘state’ as a country like Somalia, a place where formal political rules (to the extent that they can even be said to exist) extend a mere few blocks outside the capital buildings in Mogadishu.

To be sure, this new constitutional order was crafted by and for the dominant industrial democracies of the day. Upon its establishment, diplomats were scarcely concerned about the newly emergent polities in former colonies.

Worried about perpetual territorial conflicts in Europe, the powers of the post-war world devised a set of rules that made the forcible acquisition of territory an impossibility by refusing to recognize seized territories and by committing to collectively punish any state so brash as to invade a neighbor. By eliminating the possibility of Germany and France fighting over Alsace and Lorraine, however, the new constitutional-level rules inadvertently made the soon-to-be states in the colonial world subject to a set of unintended consequences that effectively hindered the development of institutional incentives consonant with economic growth.

The ratification of UN General Assembly Resolution 2621 in 1970 was the second, and potentially more significant, constitutional-level change that impacted the potentials for economic development in the post-colonial world. The resolution is rightly viewed as a powerful and wholly justified statement in favor of the process of decolonization. To this end, the resolution called for an end to colonial subjugation and its attendant exploitative practices and reiterated the global community's support for self-determination. That being said, Herbst (2000: 98) notes that it effectively institutionalized juridical statehood by simply giving to newly independent states the status that pre-WWII states crafted through centuries of institutionally incentivized processes. These were states, but most certainly not nations.

The persistence of insurgency in many parts of the post-colonial world occurs in part because of the perceived lack of benefit for fighting to control territory. Why expend resources to control land and citizens that the international system gives to you by fiat? Indeed, Herbst (2000) illustrates how political sovereignty in Europe was equated to control over land. In many parts of Africa, such authority manifested in control over people, a far scarcer feature. Thus, on at least one level we see that the impetus for state control and the objectives of power projection render traditional notions of predatory state theories somewhat more convoluted. Ultimately, the costs of expansion are high for many African leaders. Granted, these costs were high for European leaders as well, but European leaders' calculations were affected by the economic and security benefits of expansion relative to the costs incurred by action or inaction and the absence of universally recognized constitutional-level orders that privileged juridical sovereignty over empirical sovereignty.

Put another way, given the international community's disdain for allowing partition or acquisition of new territories by force of arms, leaders in post-colonial states must ask if 'proving' control over a territory is even worth the effort. Leaders will not lose control of their territory owing to invasion and the long-term costs of trying to assert control over rebellious territories may not prove worth it in terms of future taxable revenue. Ultimately, the move away from a constitutional-level system based on empirical statehood to one

that privileges juridical statehood has made the contracting process inherent within the predatory model utterly unnecessary. Not surprisingly, scholars working in the area of post-colonial state-building continually return to the question of whether poorly formed states who received authority by virtue of international recognition might be better off by simply partitioning into smaller, and presumably, more homogenous units (Kaufmann 1996; Kumar 1997; Waters 2004). The question of partition is beyond the scope of this essay, and to our mind it is beside the point in any case. A newly partitioned state would face precisely the same dilemma that any society predicated upon juridical fiat would face. Without a constitutional-level order that is aligned with the collective and operational-levels of collective action we are unlikely to see the types of civil society and self-governing orders associated with wide-scale economic growth. The transition from subject/sovereign to government/citizen is impossible and, worse yet, post-colonial leaders face few incentives to do more than survive in office for the rents they can accrue.

Government versus Governance

The citizens of advanced industrial societies may perhaps be forgiven for conflating government and governance. After all, with the relatively rare exception, formal agents of the constitutional-level order are competent and most citizens are inculcated into a national project that makes them at least somewhat more willing to forgive the inefficiencies of bureaucracies. Further, as Ostrom, Tiebout, and Warren (1961) note, the tendency of governments to operate at multiple levels and concurrently with multiple service producers under polycentric order make the operational distinctions between government and governance difficult to ascertain for an untrained eye.

That said, the average citizen of a post-colonial state is keenly aware of the disjuncture that exists between the formal institutions of government and the informal, yet surprisingly robust, models of self-governance that allow social and economic exchange to take place. De Soto (1989; 2000) observes this through an analysis of the informal markets in a number of developing societies. The capacity of citizens to cooperate, innovate, and devise means of survival, despite the onerous barriers placed in front of them by sovereigns who seek not to maximize revenue but to acquire short-term wealth, presents a remarkable resource. This mode of self-governance occurs precisely because of citizens' awareness of the motives of leaders who are products of a juridical as opposed to empirical legitimacy. The question remains as to precisely *why* this resource goes either unused or misappropriated.

The incorporation of self-governance into the broader framework of social life is no trivial issue. In regards to the principal thesis of this essay it

goes far towards the aligning of the multiple levels of collective action and does much to make the promises of social contracting a reality for the billions of people around the globe who have no recourse to the true spirit of the law. Beyond this, it generates precisely the same revenue generating incentives that compelled growth in European states during the early modern period. In a fascinating study, Thies (2007) notes that the increased ability for some rulers to improve revenue collection has not manifested in the same types of processes that led to the inculcation of social contractarianism in more economically well-off states. That such improvements in revenue acquisition has occurred in some states is remarkable given that many other post-colonial states are in a perpetual crisis when it comes to getting citizens to pay taxes. Levi (1988: 52-53), for example, observes how tax compliance is a ‘semi-voluntary’ exercise in many states owing to the spotty enforcement mechanisms possessed by leaders. Indeed, in his study of tax policy in sub-Saharan Africa, Kasara (2007) finds that among the most effective means of ensuring compliance with taxation is for a political leader to focus his tax authority on his ethno-regional group since leaders can use better knowledge of local elites to minimize shirking. Given that conventional logics would lead us to think that a leader would try to shield members of his identity group, Kasara’s findings are remarkable. That said, they speak to the limitations faced by post-colonial leaders who, while confident in their authority by virtue of international laws and norms that privilege their status as sovereign ruler, are in reality buying survival at the expense long-term economic growth in a system that makes their sovereignty little more than a sham buttressed only by the inabilities of other social groups to overcome their own collective action problems and dispose of him.

The reluctance of governments to press their luck when seeking tax compliance as well as the tendency for citizens to seek to evade paying taxes wherever possible is, in our view, among the best proxies for the ways that individuals differentiate between government and governance. That said, it does little to help us navigate the morass identified by DeSoto, Ostrom, Levi and Thies—how can the capacities of local communities be harnessed in such a way as to realize the economic potential of post-colonial states?

To our mind, this question can only be answered by addressing the fundamental paradox of contemporary statehood. By making the maintenance of statehood ‘cheap,’ the international system has unintentionally rendered poor countries incapable of navigating a paradox not of their making. Specifically, new states are simultaneously strong and weak. States in the post-WWII world are ‘strong’ in the sense that they are immune from the risk of conquest by foreign powers. Further the focus on juridical sovereignty has given them enormous authority over areas of social life in which they lack

enforcement capacity. At the same time, many modern states are 'weak' in the sense that they utterly lack any ability to govern large swaths of their respective territories. For some (and I assume it is safe to include the audience of this journal among this group) the weakness of the state is no bad thing to mourn, but it carries with it the serious dilemma of perpetual conflicts that undermine the ability of effective polycentric orders to flourish and emerge. This dilemma, in our opinion more than any other problem, has kept poor states in an ostensibly permanent state of underdevelopment.

Conclusion

Up to this point we have neglected to discuss humanitarian aid in any great detail. The reason for this is simple: poverty is the symptom, not the root, of the problem. We suggest that the current structure of the international system and the disincentives for juridical states to do the needful to establish viable contracts with their citizens makes aid an utterly hopeless tool to address chronic human underdevelopment. This is not to say that aid has few uses or that it cannot assist in addressing the short-term needs of those most harmed by the failures of leaders. Indeed, Peterson's essay in this volume suggests that aid organizations have many potential goals when crafting aid packages and that, in some instances, these goals are readily satisfied through assistance packages. Rather, it is to say that humanitarian aid cannot build a state or integrate disenfranchised communities into a broader political unit despite the laudable intentions of donor agencies.

The sources that have defined legal statehood in the post-WWII era are, much like Myerson's 'constitutions without personal foundation', hollow constructs. They exist solely by virtue of the recognition of the embassies of other countries, but for all functional purposes are merely husks within which a number of non-regulated (at least formally) contests for power and wealth take place. These may be states by some poorly defined juridical definition, but they are most certainly not stable arrangements within which citizens engage one another according to self-enforcing rules. Not surprisingly, it is within these cases that we find most examples of state-failure. By our argument, these are not so much examples of state-failure (following Jackson (1987), there was never a state to begin with) but are, more precisely, examples of state-building failure that result from the inability of post-WWII institution builders to heed Ostrom's (1997) warning that participatory politics is not merely the holding of elections and the responsiveness of elected officials to public demands. It is instead a demanding vocation that relies on the ability for free people to work in 'epistemic' and self-organized associations with one another. To be sure, government has a role to play. Indeed, for Ostrom the role of government is

vitaly important and far more difficult to achieve than the mere beating down of internal opposition. As an artifact of humans' abilities to adapt and devise institutions to address a limited range of different collective action needs government serves a vital role in helping to make human society function. That said, it must always be at minimum a working partner beholden to, if not wholly derived from, the self-governing capacities of individuals it purports to reflect. Tragically, the post-WWII world has evaded this call and has instead opted to allow any person with sufficient weaponry or charisma in a capital city to claim the mantle of leadership. This is not the result of some deficiency in the political culture of the post-colonial world but rather the direct result of a distension between the constitutional-level order that structures the incentives of agents at the operational level of human action.

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Notes

¹ Mississippi State University, Department of Political Science and Public Administration, PO Box PC, Mississippi State, MS 39759

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