

11

Where Are the Margins of the State?

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In their thoughtful introduction to this rich collection of essays, Veena Das and Deborah Poole question the definition of the state in terms of centralized control over a determinate territory, and they propose that we explore the state's "margins"—that is, the places where state law and order continually have to be reestablished. For state power, they insist, is always unstable, something best seen when one moves away from the "center." They proceed to identify three ways in which the state's margins may be imagined: first, as peripheries or territories in which the state has yet to penetrate; second, as "spaces, forms, and practices through which the state is continually both experienced and undone through the *illegibility* of its own practices, documents, and words"; and, finally, as the "space between bodies, law, and discipline." Each of the splendid essays brought together here traces one of these ways of imagining the state's margins.

The overall argument that seems to emerge from the introduction is that the state's margins can be viewed differently precisely because "the state" itself is not a fixed object. This argument is enormously suggestive, and I want to think a little along these lines.

The term *state* is, of course, used in a number of different discourses. These include (but are not exhausted by) the discourse of sovereign states (whether princedoms or republics) facing one another in war and peace; the discourse of state governance (in the regulation of behavior, the acquisition and distribution of resources, the care of populations, the maximization of security); and the discourse of state politics (the struggle to establish a nation-state; competition over policy). Such discourses invoke languages of law, of justice, of *raison d'état*, of benefit—languages that define and redefine the foundations of sovereignty and the obligations of obedience, the criteria of citizenship and nationality, the rights of self-defense and punishment. The boundaries of “the state” vary accordingly, as does its internal morphology: the different ways of determining membership and inclusion, inside and outside, the law and the exception.

The modern idea of the “state” has a complicated Western history, and a contested one at that.¹ In the late Middle Ages, the Latin word *status* and the vernacular equivalents *estat*, *stato*, *state* had a variety of political meanings, but mainly these words referred to the standing of rulers. According to medieval legal theories, the ruler possessed or even embodied the government. In Renaissance Italy, histories and advice books for magistrates (as well as the mirror-for-princes literature to which these eventually gave rise) initiated a tradition of practical political reasoning in the context of new city republics that gave a novel sense to the terms *status* and *stato*.

The writers in this tradition were concerned above all with the conditions for the successful maintenance of these republics—especially after their widespread usurpation by hereditary princes. Because they considered the ability to secure a particular *kind* of government (over and above the person of the ruler) to be essential, these writers tended to use the terms *status* and *stato* to refer to it. Among the conditions necessary for successful maintenance of the government was the defense of territory over which the ruler had authority—and so the land itself came to be denoted by the same words. But perhaps the most significant extension of the term *state* was its reference to the structures of administration and force by which the prince controlled his domain (*regnum* or *civitas*).

It seems to have been the humanist republicans who originated the idea of a sovereign authority that would regulate the public affairs of an

independent community. And it was they who first used the word *status* or *stato* to refer to the apparatus of government that rulers were obliged to maintain. But they attained to only half the doubly abstract notion of the state as it is widely understood today. For according to the modern concept, the state is an entity with a life of its own, distinct from both governors and governed. And because of this abstraction, it can demand allegiance from both sides. For the humanist republicans, in contrast, the state (or “commonwealth” and “political society,” as they preferred to call it), being an expression of the powers of the people, could not be quite detached from the entire community. Of course, they distinguished between the apparatus of government and those temporarily in charge, but they always regarded the powers established by the community in such apparatuses as essentially the powers of the community as a whole. However, the fully abstract idea of the state was developed by those who argued against this tradition of popular sovereignty, most famously Hobbes ([1651] 1968).

In this conception, the state dominates and defends the community, orders and nurtures its civil life. The state, independently of the entire population, embodies sovereignty. Far from being a myth, the state’s abstract character is precisely what enables it to define and sustain the margin as a margin through a range of administrative practices. (In the republican tradition, by contrast, the sovereignty of the state is delegated by rather than alienated from its subjects. This, in a sense, makes the governing state a margin of the citizen-body it represents.)

In some critical literature on the state (especially in anthropology), one finds the word *fetish* used to suggest that because the state has an abstract character, it is merely an ideological construction and its claim to solidity and power is therefore empty. This allusion to Marx’s ([1867] 1961) famous account of the commodity as a fetish seems to me unhelpful. For Marx, it will be recalled, the fetishism of commodities refers to the fact that “a definite social relation between men... assumes, in their eyes, the fantastic form of a relation between things.” This points us, he argued, toward the imaginary world of religion. “In that world the productions of the human brain appear as independent beings endowed with life, and entering into relation both with one another and the human race. So it is in the world of commodities with the products of men’s hands. This I call the fetishism which attaches itself to the products of labour, so soon as they are produced in

commodities, and which is therefore inseparable from the production of commodities” ([1867] 1961:72). However, the reification of social relations of production that characterizes the commodity is quite different from the abstract character of the modern state. The commodity form *hides* the productive power of the laborer. It is merely inert material falsely taken to be alive. The abstract structure of the state, on the other hand, is the essential condition for the exercise of specific kinds of legal power—whether they are claimed by government or by citizens. Although officials and politicians may lie and deceive, the state’s abstract character hides nothing. It is not an illusion.

This may seem all very theoretical, but part of the point I want to make is that abstraction is a necessary feature of both the state and the citizen precisely because they are concepts in modern political discourse. Abstractions are inevitably used in everyday discourse, and they inform everyday practices. When we abstract a term from one context and employ it in another, we treat something in the two contexts as equivalent. Historian of statistics Alain Desrosieres puts it thus: “The only way of understanding the recurrent opposition in politics, in history and in science between on the one hand contingency, singularity and circumstance and on the other hand generality, law, regularity and constancy is to ask: ‘for what purpose?’ The question is not: ‘Are these objects *really* equivalent?’ but: ‘Who decides to treat them as equivalent and to what end?’” (1990:200–201). The idea of abstraction is necessary to the notion of equivalence, and both are integral to the modern liberal state.

Thus, political theorists often claim that the liberal state is required to treat all citizens with equal concern and respect. For example, Ira Katznelson argues that “what is distinctive to liberalism, as compared to other political theories, is the type of equality it values: ‘the requirement that the government treat all those in its charge *as equals*’ (Dworkin 1978:125), that is, with equal concern and respect. The issue of who gets included ‘in its charge’ may be contested but not the standing of liberal citizens” (Katznelson 1994:622). But the principle of *legal* equality doesn’t depend on attitudes of “concern and respect.” Nor, conversely, does the expression of concern and respect presuppose the principle of legal equality. On the contrary, the strict application of the principle requires that citizens be treated with absolute *indifference*. For

only indifference enables citizens to be counted as equivalents. Yet, when individuals are treated as *really equivalent*, a bureaucrat may judge them as he pleases. In other words, when faced with *substitutables* from among whom he has to choose, his choice is by definition completely free and therefore uncertain. He may tend to choose a white over a black in the United States, a Muslim over a Copt in Egypt, a Jew over an Arab in Israel—so long as, in each case and on every occasion, the pair are representable as “equal” in the sense of being *the same*. Only a tally of the choices reveals the structure of bias in the statistical sense against a political category that is taken by critics to be *different*. (For example, of immigrants applying for French citizenship in 1997, 35 to 50 percent of Africans did not qualify, compared with 20 percent of North Africans and 8 percent of southern Europeans.)² The uncertainty of choice is expressible in probabilities, but even the statistical structure of bias does not prove that a biased decision was made in a particular case. To determine *that* probability, a profile of decisions must be constructed for each bureaucrat.

If it is the case that people in society are never homogeneous, that they are always constituted by different memories, fears, and hopes, that they have different histories and live in different social-economic conditions, then the official who chooses or judges may be held accountable for who, how, and why he categorizes. But the act of categorizing always involves abstraction from one context and its application to another context—and it is always, in a sense, uncertain.

Equality, generality, and abstraction thus rest on uncertainty. They define the margins of the state, where immigrants abstract themselves from one “national body” and seek to enter another, where they are aliens and where they confront officials who apply the law.

Let us take France, with its intense political demands to reject elements of “foreignness” from the national body. The suspicion these demands encourage among officials and the powers given to them to pursue their suspicion whenever it is aroused make for uncertainty about who can be a national. Here is a case reported in a recent article:

Jacques R was annoyed back in 1995 when he left his identity card in a jacket that he had sent to the cleaners, but he wasn't worried; he thought that he could pick up a duplicate

card from police headquarters. To his surprise, the clerks asked him to prove that he was French, so the next day he returned with a pile of papers, and was even more surprised when they were immediately confiscated. He lost his temper, asked whether they thought he was a forger and told them again that he needed his ID card urgently. They assured him he would get it soon. Three months later, on Christmas Eve, he got a summons from the state prosecutor, which explained that in 1953 his father had been awarded French citizenship by mistake (Jacques had been born in 1954). As his father now counted as a foreigner and as Jacques had not applied for French nationality before the age of 18, he was not French either, and proceedings were under way to confirm this. The court later ratified the prosecutor's decision. Jacques was not French. He could not understand. He had always lived in France; he had studied there, had done his military service, married a Frenchwoman, and ran a shop. He had never been in trouble with the police, and had already renewed his ID successfully. Fortunately he was able to prove that he had lived in France for more than 10 years, and that the authorities had always considered him to be French, so he was entitled to right of abode at least. Two years later, the court accepted his plea and, at the age of 43, he at last became French. But his children, with their "foreign" father, lost their French nationality, and the family had to initiate legal proceedings to establish that the children too were entitled to right of abode. (Maschino 2002)

No one, the writer goes on, can now be sure of avoiding this treatment.

The nationality law in France is not complicated. A person is French if at least one parent is French. Children born in France of foreign parents can opt to be French at the age of eighteen. People may also become French by naturalization. However, because only official documents can confirm the required facts needed to acquire French nationality, the possibility always exists that they are forged. So in recent years, officials have been told to follow the rules carefully to lessen the likelihood that immigrants will be able to circumvent the

law. Under these rules, the applicant must produce his or her own birth certificate and one for each parent and grandparent. He or she must also submit a *livret de famille* (an official document recording births and deaths in each family), as well as *livrets* of parents, in-laws, and grandparents, and marriage certificates for everyone. Finally, applicants must produce personal military service records and work testimonials. All these documents are essential before a certificate of nationality can be issued. The printed instructions that enumerate these requirements warn applicants that this is “a provisional list, to which other items may be added following an initial review of the application.”

Now there is nothing *arbitrary* about any of this. The rules (an abstraction) are being strictly followed. Officials use the nationality law to defend the idea of “being French.” At stake are the conditions necessary for the application of the law. The most important of these is the elimination of any suspicion of a material irregularity in an applicant’s case. This calls for careful probing, the asking of personal questions that many people find offensive (What kind of food do you normally eat [or language do you normally speak] at home? Who are your friends? Why do you wear that headscarf?).³ Particular officials use particular words in particular places in obedience to the rules and to the state’s law (an abstraction).

Suspicion (like doubt) occupies the space between the law and its application. In that sense, all judicial and policing systems of the modern state presuppose organized suspicion, incorporate margins of uncertainty. Suspicion is like an animal, “aroused” in the subject, it covers an object (a representation or person) that comes “under” it. Suspicion seeks to penetrate a mask to the unpleasant reality behind it: the unauthorized creation of an authorizing document, a hidden motive to commit a crime, a latent disease, a terrorist in disguise. Suspicion initiates and is an integral part of *an investigation*, and the investigation ends when suspicion is put to rest—when a “reasonable” person comes to a conclusion, one way or the other, on probable evidence. Suspicion opposes and undermines trust (Khan 2002).

It is worth remembering that the origins of the modern (secular) state are connected to the concern for agreement among “reasonable” men and thus to the creation of a margin to which “religion” (and other forms of uncertain belief) properly belonged.

The truths of religion and morality, so it was argued in the sixteenth and seventeenth centuries, could not be known for certain. This position was not confined to religious skeptics. Even religious believers like Locke could point to an important fact: that political conflicts over religious doctrines appeared to be incapable of final solution by rational means, whereas everyone could agree that such things as social unrest and political persecution were sources of harm to life, limb, and property in this world. In delimiting the realm of legitimate politics—so Locke and others reasoned—let us therefore attend to the harms of this world about which we can all be certain, rather than the harms of the next world, on which we shall never agree.⁴ The plausibility of this argument was important in facilitating the subordination of the religious domain to the practical and ideological power of the early modern state.

By the twentieth century, however, it became increasingly evident that the truths not merely of the hereafter but also of this world are not knowable with certainty. Society, in particular, is increasingly constructed, apprehended, and represented by statistical probability. Yet, this has not resulted in arguments for excluding social and psychological facts from the realm of legitimate politics or the administrative activity of the state. On the contrary, what we find is increasingly widespread argument over how knowledge of a commonly shared social world is to be politically interpreted, and therefore how aspects of that world are to be defended or changed. The fact that these arguments—just like seventeenth-century theological arguments—seem to be incapable of being rationally concluded is no longer regarded as a good reason for declaring them “outside politics.” In modern liberal societies, public arguments over the economy, racial discrimination, multiculturalism, medical ethics, pornography, gender identity, religious education, and a host of other questions are not only endless, they are each carried out through statistical discourses in which figures and their meanings are presented and contested and policies formed. Certainty gives way to contestable estimates of probability. Does the margin therefore now pervade the entire state?

This wonderful collection of articles sensitizes us to such questions. By analyzing in different ways the margins of the modern state where uncertainty obtains, they make us aware that “the modern state” does

not always possess the firmness that many commentators assume to be essential to it. Veena Das, in her brilliant contribution, alerts us to the uncertainty of legal rules: Does a written rule apply in a particular case, and if so, how should it be applied to practice? Does the rule conflict with other rules, and if so, how can they be reconciled? Where does the authority of laws lie? The answers to such questions, to the doubts generated by them, must be given authoritatively—that is to say, *from beyond the written rules*. It is this *alien* authority and not the written rule itself that constitutes the law of the state. The authority of the law seeks to make things *definite* within the continuous flow of uncertainty by imposing itself from outside, as Freud would say. In liberal democracies, the theory is that citizens make the law their own by collectively willing it. But *authority* is always prior to acts of submission, whether they are coerced or consented to. The *force* of the law therefore derives from beyond the general will of citizens.

Das's sensitive discussion of the illegibility of legal rules seems to get to the heart of the question of how we can best conceive of the margins of the state. Her answer, in effect, is this: In order to identify the margins of the state, we must turn to the pervasive uncertainty of the law *everywhere* and to the arbitrariness of the authority that seeks to make law certain.

This brings me to my final comment. As a mode of addressing social uncertainties, statistical arguments are now widely used in administration, legislation, and the judiciary. The language of statistics has become integral to the modern mode of government, which has learned to thrive on probabilities and risks—that is to say, on marginal spaces. That is why—as Das has argued—the entirety of the state is a margin. Or rather, the sovereign force of the law is expressed in the state's continual attempts to overcome the margin.

Notes

1. The comments that follow rely on Quentin Skinner (1978).
2. See Maschino (2002). The ministry subsequently stopped mentioning the country of origin of unsuccessful applicants.
3. "It is not unusual for clerks to ask personal questions designed to detect 'foreignness.' A barrister of North African origin was asked how many times she ate couscous, whether she often visited Morocco, what nationality her friends

were and which newspapers she read. A Tunisian was asked why he had twice made the pilgrimage to Mecca. A Serbian academic, whose children were preparing for the entrance exam for France's top teacher training college, was asked which language she spoke at home. Clerks even query levels of education. Small details influence the decision and an application may be adjourned because the person is too openly foreign (that headscarf), has family ties outside France, or seems 'fundamentalist'" (Maschino 2002).

4. I draw this interpretation of Locke's views on toleration from Ashcraft (1992), Dunn (1984), Mendus (1989), and McClure (1990).