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In and Out of the State

Working the Boundaries of Power in the Democratic Republic of the Congo

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BIO SKETCH

Patience Kabamba has a BA from the Jesuit School of Philosophy in Paris, a Masters Degree in Economic Development from the University of Kwazulu-Natal in Durban, an MA in Philosophy from The Catholic University of Leuven, Belgium, and a PhD in cultural anthropology from Columbia University, New York. He was a Senior Lecturer in the department of Development Studies at the University of Johannesburg before moving to Marymount Manhattan College as Assistant Professor of International Studies. Kabamba has intensive ethnographic experience of emergent social formations when states disintegrate in war-torn Africa: in DRC, Rwanda, Burundi and Uganda. His theoretical interests include the dynamics of conflict, new state formations, transnational trade networks, ethnicity and global political and economic governance. His publications include: “Ethnic Alternative to the Post-Colonial State: Case of Nande from Butembo and Luba from Mbuji-Mayi in the DRC” (*Canadian Journal of African Studies*, 42(1), 2008); “Where does the value added go in the Rebel Controlled Territory of the DRC?” (*Congo-Afrique*, 2004); “Heart of Darkness: Images of the Democratic Republic of the Congo and their theoretical underpinning” (*Anthropological Theory*, Vol. 10 (3) September 2010); “Economic Empowerment without the State: Lessons from the Nande,” (*Africana* Vol. 5 (2), June/July 2011); “Articulation of modes of political production in the Democratic Republic of the Congo” (*Congo-Afrique*, N. 456, June 2011). His forthcoming book with CODESRIA Press is *Business of Civil War: New forms of life from the debris of the Congolese State*.

ABSTRACT

The idea that power usually flows top-down from a state monopoly is increasingly questioned in an era of networks fuelled by interactive decision-making processes that include non-state actors. Power theoretically understood as *potentia* – the elementary power through which human beings deploy their productive capacities and creative possibilities – is ontologically prior to power expressed as an obsession with order that is often repressive (*potestas*). Granting precedence to *potentia* over *potestas* inevitably leads us to question the conceptual centrality of the state. The Congo (DRC), which has long stood – and stands today – as a symbol of the antithesis of social order, offers much material for reflection on this issue. This paper considers how people

negotiate the boundaries between state and non-state power in the contemporary DRC.

Introduction

When asked to name the conflict that has claimed most lives in Africa during the last decade, most of my American students cite Darfur or Somalia. They are surprised when I show that the Congo conflict has accounted for 4 million deaths (IRC 2008), while that in Darfur on a conservative estimate claimed at most 400,000 deaths (United Nations 2008). Students of contemporary Africa are often surprised that the media have little to say about the Congo conflict. Mahmood Mamdani (2004) believes that the reason for the media's near silence on the DRC conflict is that two of the major protagonists there, namely Rwanda and Uganda, are friends of the United States. It would be embarrassing for the Western media which makes of Rwanda's post-genocide president Kagame of a new Moses to accuse him of murdering so many Congolese people. Indeed all attempts to make Kagame and Museveni accountable for the Congo conflict have met with resistance from the US and Britain in the United Nations. But this line doesn't really work, given that a number of scholars have begun to criticize Kagame's handling of power in Rwanda recently (Reyntjens 2006, Pottier 2000).

The real cause of the media's relative silence about the main African conflict today, which has claimed the most victims of any conflict since the Second World War, is that it goes far beyond the categories we usually use to define such conflicts. In the Congo there are no easily identifiable good guys and bad guys, no regular armies fighting against non-uniformed belligerents. Our usual categories do not work there. This partly explains why journalists, especially foreign journalists, who are used to constructing conflicts according to a binary logic, can't understand one which involves a government army, a dozen Congolese rebel militias, a dozen foreign rebel groups and UN peace-keepers. The complexities of the Congo war defeat the normal categories of our understanding. We need to find other ways of theorizing not only this type of conflict, but also the types of states that house them, and the notions of power we use to conceptualize them.

We need new concepts if we wish to understand power in Africa. The traditional ways of conceptualizing power and sovereignty do not help us to grasp the dynamics of state formation there, especially when we attempt to understand what is being produced at the local level beyond

the state's reach. I examine here the emerging forms of society where the state's traditional monopolies – welfare, prosperity and security – are increasingly replaced by non-state actors. To understand what is happening in countries like Congo, we must move from conceiving power only as a kind of repression undertaken by the unchallenged authority of a government or ruler manifested in a territorial state. We must also see power, following Spinoza, as *potentia*, the productive and creative capacities of the human species. The notion of sovereignty needs to be conceived as an ontological attribute of humanity that is anterior to state sovereignty (De Genova 2002).

Spinoza made a distinction between power as *potestas* and as *potentia*. The concept of 'power' reified in notions of the state is defined as *potestas* – the unchallenged authority of a despotic ruler. The power of the sovereign state captures and cannibalizes its subject. Power as *potestas* characterizes the state of exception where the sovereign power of the state gives itself the right to dehumanize its subjects and turn their lives into 'bare life' (Agamben 1998).

This paper promotes another theorization of African state power in general and the Congo in particular as *potentia*. This is the sort of power Foucault is concerned with when he writes: 'Power is something that is acquired, seized, or shared, something that one holds on to or allows to slip away; power is exercised. . . . Relations of power . . . have a directly productive role, wherever they come into play. Power comes from below' (1996[1980]: 94). In rejecting a focus on sovereignty and state, Foucault contends that these are merely endpoints or crystallizations of power relations that are understood to be ubiquitous and elemental and therefore must be seen from the bottom-up.

Human subjects deploy their productive capacities and possibilities through *potentia*. This sort of power is an elementary aspect of human possibility and capability. It is ontologically prior to and ultimately autonomous of the reified power of the sovereign state that captures it. This theorization of power brings us to the fundamental sense of power expressed in the tradition of social contract. In the midst of chaos, some people have demonstrated their creative ability to escape the 'bare life' the Congolese State sought to impose on them. Here I will focus on the Nande whom I have studied. Through their transnational activities, Nande people resisted the cannibalizing power in trying to control their own destiny. Butembo is a city in Northern Kivu, an area ravaged by the Congo civil war. The organization and regulation of public goods such as

roads, universities and health provision there are taken care of by an alliance of merchants, the Catholic Church and a militia whose coercive power is combined with the patronage of traders. They taught me a new way of conceptualizing not only power, but also the notion of sovereignty which is attached to it.

Theorized as *potentia*, the notion of sovereignty may be redefined as not belonging to the State, but rather as an inalienable attribute of human beings. As an ontological attribute of the human species, sovereignty is anterior to state sovereignty. From this standpoint, sovereignty is never a monopoly of the state. As we will see, the Nande people in eastern DRC exercise their inalienable sovereignty by taking control of their wealth and destiny in the face of the DRC state's predatory power.

This paper first discusses the traditional ways state power has been conceptualized in Africa. It analyses a body of academic literature on the state and its sovereign power that has generally been conceptualized as *potestas*. Second, in empirical support of this theoretical claim, it provides an ethnographic account which calls for a re-conceptualization of the state and the notion of power in central Africa,. Finally, it discusses the implications of understanding power to be not only repressive, but also productive. This new understanding of power may help us better to grasp the dynamism of African state formation today.

African state power: the debate

The conceptualization of power in Africa has been traditionally skewed towards what Deborah Bryceson (2011) called “cultural essentialist thinking which identifies African power with patrimonialism, informality, deviance and, in some cases, criminality or with neo-patrimonialism, shadow, failed, collapsed, or in decay” (Clapham 1996, Erdmann and Engel 2007, Reymaekers 2004, Zartman 1995, Reno 1999, O’ Brien 1998, Bayart, Ellis and Hibou 1999, Chabal and Daloz 1999). As Bryceson accurately observes, this sort of analysis refers to cultural repertoires, registers and rationalities that convey the notion of a distinct African culture of power in contrast to universal (Western) standards of bureaucratic and legal practice. In most cases power is understood as *potestas* exercised by the government which according to these authors has a universalistic claim. Indeed for them Western forms of state are the universal standards which should work across time and space.

Inside Africa, the debate among African scholars is oriented towards understanding the structural reasons why power in many African countries has come to be understood as it is. A consensus amongst them points to what Mamdani refers to as ‘paradigm of state-civil society’ (1995 and 1996). For him, the key to understanding the state in contemporary Africa is the historical fact that it was forged in the course of colonial occupation. The colonial state was then organized around a central and overriding dilemma: “the native question”. How can a tiny foreign minority rule over an indigenous majority?

Colonialism created different institutions that made minority rule possible. Instead of racializing the colonized into a majority identity, as did nineteenth-century direct rule, twentieth-century indirect rule dismantled this racialized majority into many minorities. Furthermore, indirect rule in colonial Africa meant that the linkage between state and society was constituted by African collaborators, whether they were ‘native’ authorities or new rulers created by colonial administrations. For most of Africa, Mamdani argues, the ‘decentralized despotism’ of chiefs was the unique mediating linkage with the colonial state that shaped access to resources through the state’s patronage. Thus, the political authority that emerged from the national independence process inherited the role played by chiefs during the colonial period. The new class of rulers, not bothering to articulate a social dream, was concerned primarily with maintaining ethnic and regional patronage. The colonial world has only been turned upside down without being changed. True, there is a state collapse, but it is just not any state that is collapsing; it is specifically what remains of the colonial state in Africa that is collapsing. For Mamdani, postcolonial African elites are predators like their colonial masters rather than real leaders interested in political reform of the state inherited from colonialism (1996:179). Why were post-independence leaders more interested in their political position than in profound reforms?

Claude Ake (2000) has a better answer to this question. Ake argues that the colonial powers could only justify colonialism with the fiction that Africans were less than human and could not be entitled to the amenities of civilization, especially democracy. In the colonial era, political discourse excluded not only democracy but also the idea of good governance. After political independence, the African nationalist leaders continued this legacy by turning against democracy. Independence in Africa changed the manager of the State, but not the state’s arbitrary and totalitarian character. Ake explains that the African elites who came to power decided to

exploit the colonial system they inherited for their own benefit rather than transforming it into a democracy. The use of force increased the mutual alienation of the elite and the masses, so that rulers relied even more on coercion. Franz Fanon (1963) characterized the African post-colonial elite as an “envious man.” “The look that the native turns on the settler’s town is a look of lust, of envy; it expresses his dream of possession – all manner of possession – to sit at the settler’s table, to sleep in the settler’s bed, with his wife if possible.” And Fanon warns that if Africans want to move away from envy, from an appropriation without understanding, they must turn over a new leaf and work out new concepts. This paper is one response to Fanon’s invitation long ago.

I generally agree with these analyses of the post-colonial state by African scholars. But they focus on the state’s actions without much information about what it means to be on the receiving end of these actions. In other words, this body of African literature on the construction of order and authority in post-colonial states accurately understands and conceptualizes the role of imperial power conceived of as *potestas* (Mamdani 1996, Zegeye 2004, Mbembe 1992, 2000, Ake 2000, Fanon 1963). But there is a lack of research on the initiatives of non-state agents in this post-colonial period, especially on the production of cross-border social order and economic management. I have sought to address this omission by examining the transnational activities of local “ethnic” communities and by reformulating power as “potential”. In this way I hope to make sense of Africa’s social transformation today.

Indeed, in places like the DRC, nation-state competence in any Western meaning of the term has all but disappeared (Reno 1998). Mobutu’s strategy of building political authority through market control increasingly impinged on local non-state agents who then used access to illicit trade to help themselves and their neighbors weather the collapse of state institutions. Janet MacGaffey (1990) has shown how in the 1980s and the 1990s, some community trade networks developed ways of avoiding the predations of Mobutu’s political network. In the 1990s, while the formal economy was collapsing in Zaire, the Eastern part of the country prospered as a result of cross-border trade by the Nande with Uganda, Tanzania and Dubai in the Gulf (MacGaffey 1997). With the collapse of the shadow state and precarious security in the mid-90s, local strongmen emerged with ties to warlords from Rwanda and other neighboring countries who started the war that overthrew Mobutu. According to MacGaffey, many Nande entrepreneurs had

to deal with local strongmen whose predatory powers rose after the state collapsed.

With the demise of normal state functions and use of any remaining state apparatus just to enrich its personnel in the interests of the powerful, the 'second economy' virtually replaced the official recorded economy. In other words, the decline in government revenues in the long economic crisis and pervasive corruption and clientelism among government personnel led to the devastation on the economic and transport infrastructure, with widespread food shortages and the virtual disappearance of public health and education. For the general population, rampant unemployment and impossibly low wages meant that town dwellers had to find the means for survival and essential supplementary income outside formal wages. Using their capacity to think and to fight not only for survival, but also for prosperity, people responded by 'informalizing' society. The Nande turned to informal transnational commerce. These processes provided the material basis for reconstitution of the state or, to be precise, for new kind of social formations whose success was linked to the absence of state structures. Does this transnational economy imply the end of state or is it the expression of people's creative capacities to reinvent the state in new ways when faced by the failure of what went before?

Transnationalism

The anthropological literature on transnationalism focuses particularly on the related mobility of labor and capital, on the globalization of capital and labor. Leslie Sklair (1995) recognizes that the central feature of the idea of globalization current in the social sciences is that many contemporary problems cannot be adequately studied at the level of nation-states, in terms of national societies or international relations, but need to be theorized in terms of global (transnational) processes, beyond the level of the nation-state. Global system theory is based on the concept of transnational practices that cross state borders but do not necessarily originate with state agencies or actors.

The keenest disagreement between globalization theorists and their opponents, however, concerns the extent to which the nation-state is in decline. This entails disputes over the relevance of terms such as "informality," "illegality" in the new context of transnationalism, given that in African countries, for example, people have developed informal strategies of survival or even prosperity in the absence of formal structures associated with the developmental

state. To call these actions ‘illegal’ maintains the fantasy of the state in its real absence and ignores the point that ‘illegality’ is a constructed form of social relations which has limited historical scope and holds sway only when the conditions of its objectification persist. Why should citizen of the Congo pay taxes when the state that collects them provides no return in terms of public infrastructure? A sort of ‘natural’ resistance has risen from the local, not so much as a weapon of the weak (Scott 2000), but resistance emerging from the inner capacity of human beings to pursue their aspirations through the best social arrangements they can produce. The *potestas* of the government does not exhaust our human creative capacity to organize power. The Weberian idea of the state as a monopoly of force is just one among others. It may or may not work for the West, but it remains a colonial anomaly in the countries formed by empire.

People often do not primarily identify with the state they live in; it is not for them the most significant ‘imagined community’. Identities derived from regional and local associations are usually more significant in people’s daily experience, especially in a world where globalization at one level and regional autonomy movements at the other challenges the nation-state’s *raison d’etre*. Globalization may be defined as a process whereby the constraints of geography on social and cultural arrangements recede and people become increasingly aware that they are receding (Waters 1995:3). As Appadurai puts it, “deterritorialization is one of the central forces of the modern world, since it brings laboring populations into the lower class sectors and spaces of relatively wealthy societies, while sometimes creating an exaggerated and intensified sense of criticism attached to the politics of the home state” (1986:301). The social relations emerging from these contemporary developments are not confined within the borders of nation-states. Thus, they may be regarded as transnational, a term which indicates a relation over and beyond, rather than between or inside nation-states.

The debate on transnationalism in anthropology opposes those for whom the state has lost its relevance to those who think the state is still important. Work on transnationalism raises the question whether life across borders involves resistance to the nation-state and allows previously marginalized groups to challenge the social hierarchy (Lewitt 2001). In my opinion, transnationalism, as a search for more creative ways of organizing the social contract, is more likely to stimulate a transformation of the nation-state as it is rather than to make its functions and existence disappear. MacGaffey has shown that Nande traders benefit from the borders of the

DRC state when organizing their cross-border activities. Drawing inspiration from her, I spent more than a year of ethnographic fieldwork in the Nande region of eastern DRC.

The Nande of North Kivu: an ethnographic account

I carried out ethnographic field research among Nande people for 14 months in Butembo in the north Kivu territory of Beni-Lubero (Kabamba forthcoming). Briefly, in the past decade endemic conflict in the Democratic Republic of the Congo has precipitated the collapse of public authority and the brutal disintegration of the formal state. The facts are well known: four million dead, entire zones of the country controlled by foreign armies, and the withdrawal of the state from an effective presence in several regions. In the midst of this chaos, however, certain ethnic groups have been able to take advantage of the state's absence to prosper and institute new forms of order and development.

In the next pages the paper will describe an empirical example of power understood as *potentia* in that a group of Congolese traders took the destiny of their region into their own hands in the midst of war. In the absence of effective state sovereignty and national government and in the presence of numerous armed contenders for power, Nande traders have managed to build and protect a self-sustaining, prosperous transnational economic enterprise in eastern Congo. But why them and what gave the Nande the capacity to extract their population from despotic and predatory rule, from the exercise of power as *potestas*?

North Kivu is predominantly inhabited by the Nande in northern Beni and Lubero, by the Banyarwanda (primarily Bahutu and some Tutsi) in Rutshuru and Masisi, and the Hunde in Walikale. There is no linguistic relation between these groups. The name Nande is of relatively recent origin. Elderly people in the region do not remember the term being used in their youth, and it is thought to have been introduced by the Belgians, or possibly by Arab slave and ivory traders who penetrated the northern Mitumba Mountains region at the end of the nineteenth century. The term *Yira* was used to speak of the Kinande-speaking people in general, but this term took on derogatory connotations during the colonial period, when it was used to refer to backward, uncivilized persons. *Yira* sometimes refers to the lower social strata of the population (Bergmans 1970:8). Rather than adopting a cultural definition, anthropologists such as Bergmans and Remotti (1993) see the term *Yira* as a reflection of a triple opposition. First against the *Hima*

pastoralist ruling class (this division is also present in other traditional Interlacustrian kingdoms, such as Toro, Ankole and Bunyoro); second, as agriculturalists in opposition to the land-owning aristocracy (in Nande traditional society); and finally as primitives in opposition to civilized in the context of colonial society. This socio-economic status was also traditionally linked to the customary authorities' tolerance of others engaging in private commerce. Such acceptance of private initiatives apparently stimulated a spirit of 'constructive competition', which allowed individuals to measure their success to that of others (Sarata 2002:40). This was in sharp contrast to surrounding communities where the customary chiefs had the tendency to strangle merchant initiatives. In the Hunde community from Bwiti and Bwisha in North Kivu, for example, a vassal was not allowed to be richer than the local chief (*Mwami*) (Kasay 1988).

The common language used by Nande people –Kinande - is shared with the Konjo people living in the foothills of the Ruwenzori Mountains in Western Uganda. Oral tradition in the region suggests that there were successive waves of migration from the Ruwenzori region across the Semliki Valley to the Mitumba Mountains since the end of the sixteenth century (Packard 1981), while the Yira traced their origin to the kingdom of Kitara in today's Uganda.

The result, in Packard's opinion, was a social organization only loosely based on descent, with clans having "very little corporate identity" as they are neither "geographically cohesive, nor are they totemic or exogamous units". The forms of territorial leadership that emerged seem to have been based on ritual control of rain-making using rain stones. This was in turn altered, at least in the Isale region studied by Packard, when Hima-Bito pastoralists (who apparently had been able to survive an earlier famine in the valley) began migrating into the mountain regions during the early part of the nineteenth century. Packard documented in the Isale region a history of alliance-building rather than open conflict, whereby pastoralist groups, using their cattle as a greater economic resource and co-opting the support of existing ritual leaders (rain chiefs, original clearers of the forest, diviners, and healers), were able to broaden their spheres of political control. Tribute payments were the primary form of link between dominated groups and ruling classes. The rights of the original occupants (Bakonde) continued to be respected, annual tribute payments were maintained, and the ritual authority of rain chiefs continued to be a factor in politics. To this was added a system of tribute payments to the new chiefs (Bwami) and an enhanced ideology of their consolidated ritual control over nature and the wellbeing of society.

It is important to note that the Yira never seem to have organized themselves into a centralized government. On the one hand, their community remained historically divided between the Nande and the Kondjo, two branches of the Yira community that live respectively in the DRC and Uganda today. On the other hand, the Nande community is also divided between several clans or sub-clans: the Nyisanza, Bashu, Baswagha, Batangi and Bamate. This political dispersion resulted in the maintenance of a certain degree of local autonomy, even though they were integrated into a single kingdom. For Bergmans (1970), the Nande political system contains in itself the seeds of a fragmentation of power. The Nande political system also contained important centrifugal tendencies that were directed more towards expansion and conquest than territorial consolidation (Raeymaekers 2007). This illustrates how the claim of ‘sovereignty’, rather than being an expression of a single ruler or actor finds its expression in a system of codes and rules that govern a particular social domain. In the Nande community, ‘sovereignty’ was traditionally instituted in two figures: the *Mwami*, the chief, and the ‘*Mughula*’, a kind of anti-power figure who intervened in crucial phases of the *Mwami*’s life. Indeed, this ‘sovereignty’ is expressed specifically in the “vast network of tributes” that made it possible to individuate particular links between different clans and persons (Remotti 1993: 45). This “vast network” of tributary relationships finds its contemporary expression in the Nande’s economic organization, as I will show. Ultimately, the informal economic activities taking place currently should be understood above all as a particular expression of the social dynamic of the societies that have developed them. Economic agents mobilize and use resources for economic development as a function of their insertion into a plurality of social networks, primarily of family and kin, but also friends, neighbors and other members of the community.

Through their transnational trading activities, Nande people today have produced and organized themselves around a historically specific social arrangement based on a reconfiguration and mobilization of kinship, as well as ethnic ideologies and practices identified with “Nandenness” (an ensemble of social relations in which human productive powers and creative capacities are paramount). Indeed, Nande people have managed to insulate themselves from the chaotic conditions around them and maintain a framework of public order centred on trading networks reflecting the structures and values of indigenous Nande society as well as to the history of their incorporation into international networks and structures. The Nande’s

capacity to exercise their *potential* today has its origins in what Packard identified as the centrifugal tendencies in their traditional social organization.

I will explore here the origins, reproduction, and conditions of possibility for the emergence of a network of transnational traders in Butembo, who have gradually captured the social and economic surplus within the Nande society. This group includes at the top of the commercial hierarchy in Butembo and its hinterland a dozen import-export traders who are millionaires. They import from East Africa, the Persian Gulf, Southeast Asia and China containers of goods ranging from motorbikes, automobiles and spare parts to textiles, medicine and many other commodities. They export agricultural products including coffee, potatoes, beans, papaya latex and other vegetables, in addition to minerals such as gold, coltan, wolfram, and cassiterites. The group maintains a high level of internal cohesion and trust between its members.

If you stand on any hilltop of Butembo, you can observe the growing wealth of the city. New villas, constructed by traders, are rising up all over. In the central commune of Bulenghera (12 kilometers square) these properties proliferate. According to Raeymaekers (2007) these new buildings each cost around USD 300,000. A shopping center, “*gallery Tsongo Kasereka*”, reportedly cost around 3 million USD to build. The total value of new real estate in Butembo is roughly 20 to 35 million USD. Prices have skyrocketed in recent years. A friend of mine, the son of a prominent Butembo trader who holds a bachelor’s degree from a school in Boston, is building a mansion that will cost USD 400,000 when it is finished next year. All the construction materials are imported from China. His swimming pool will be one of the biggest in the city.

The first question is: where does the money come from? How do they accumulate so much? Before I try to answer it, I would argue that the emerging property market in Butembo comes from economic activity that is ‘embedded’ in the local community. Unlike the capital flight we see from some DRC politicians who are anxious to establish a stake abroad, in Butembo houses are built at home and only some abroad, while profits are invested in the same environment where they are being made.

Butembo commercial traditions predate the current era of globalization. Vwakyanakazi (1982:2) noted, already in the 1970s, that 75 to 80 percent of households in Butembo were selling goods ranging from agricultural foodstuffs to small household necessities. Today, on every corner of Butembo, there are mini-shops, boutiques, and galleries offering cell phone cards at \$1 or \$5

apiece, high-quality computer equipment, motorbikes, etc. Market women usually sell foodstuffs like onions, beans, tomatoes, or '*araque*' (alcoholic maize drink). These small trades usually reflect domestic needs for petty cash to cover a family's immediate concerns or school fees. The retail trade in cars, computers, textile, or electric engines is no different from what is taking place in the globalized world, except for the level of bargaining involved. Everything in Butembo's market, from the quality of the product to delivering the merchandise, is subject to endless bargaining between vendors and their clients.

The Nande trading association, a branch of the Federation of Congolese Entrepreneurs known by its French acronym FEC, regulates how traders tend each 50 km of road they are in charge of. This involves running the tollgate and using the revenue to mend the road. This is the only part of the country which has good roads beside the minerals region of Katanga. When one of the sections of road is not functioning, the trader in charge has to answer to other users of the road. Local social control can be quite effective.

This part of the region is also the only one with a school system that works. The University of Graben (UCG) for example, an institution of higher education in Butembo, was created ten years ago by the Roman Catholic bishop, Monsignor Kataliko, with the help of Nande traders. The UCG is among the best institutions of higher education in the Congo. Despite the trouble that has afflicted the Congo from 1996 to this day, UCG has continued to function with its four faculties of law, civil engineering, medicine and political sciences. Most of the auditoria were built with the help of traders. The bishop gave each trader a list of 100 books to buy for the university library. They were proud to provide the books the bishop asked for. Many of the books come from a link between UCG and the University of Grenoble in France. The university also has a nutritional center and medical students practice at the Matanda hospital run by the Catholic Church. Medicines for the nutritional center and Matanda hospital are imported by Nande traders. To solve the problem of personnel, the university flies in professors from all over DRC and many Nande professors who live in Europe come back to regularly to teach at UCG without compensation. Before the creation of the Catholic University, students had to travel to Kisangani in Oriental Province or to Kinshasa for their higher education. The rector of the UCG, Abbé Malu-Malu, was chosen to organize the 2006 DRC general elections, the first democratic election for 40 years. The university is involved in the development of the city's

electrification and traders are employing engineers from the UCG to that end. Butembo maintains a sort of social cohesion thanks to an alliance between traders, who are in charge of economic production, the Catholic Church in charge of development sector and the militia responsible of the exercise of coercive power. Militias are in fact junior partners to traders.

When power as *potestas* is absent, we have been led (from Hobbes onwards) to assume that selfishness will reign; thus, a 'failed state' adversely affects the lives of all who continue to believe in its aegis, and its weakness ensures suffering for anyone who does not manage to circumvent the system. These circumventions are understood not only as corruption, but as criminal acts from which only a few will benefit. The economy is inseparably linked to this model of the state. A strong state survives because it can regulate production, trade and profit (through taxation, etc.), thus sustaining itself (and the society as a whole). Accordingly, when a state is politically and economically unstable, weak, or absent, it is commonly supposed that all will suffer. The informal economy is particularly irksome because it works outside state (and taxation) structures. As a symptom of the state's 'weakness,' therefore, a thriving informal economy is identified with the poor health of the society at large. Power as *potestas* is fetishized in our political theories and popular beliefs.

Within the territories of Beni and Lubero, the state is surely very weak, even absent. Yet the Nande have thrived in this context. To call their actions 'corrupt' is to apply a one-dimensional view to a very complex picture with a complicated history. The paradox of this situation is that the Nande traders are rich, yet the entire area prospers; they amass fortunes and they feed them back into the community. As a result, this is one of the few regions in the DRC with a flourishing economy, decent schools, and health care. They do not rely on the nation's ports but rather have strong ties that take them regularly to the Middle East and East Asia. The *potentia* begins with trade and is carried on within the region by social organization outside the framework of the state. Transgression of frontiers through this transnational move is fuelled by a creative capacity to free oneself from the territorial impositions of despotic rulers, exercising *potestas*.

A transnational network

Nande people do not identify primarily with the DRC state; it is not their most significant

‘imagined community.’ Their identity derives from belonging to networks that are more significant in their daily experience. The transnational production of Nande community through ‘illegal’ or ‘informal’ cross-border trading activities shows that these are not only strategies for survival, but also “spaces of resistance against the violence generated by the failure of a postcolonial mode of accumulation, the state’s dictatorship and its episteme of leadership” (Mbembe 1992:3). Hence, even the concept of “illegality” becomes questionable. Laws which make actions legal or illegal are indeed forms of social relations objectified or codified under certain conditions. If the conditions of the codification of the law disappear, the law loses its relevance. Legality or illegality are, in my view, ‘dependent variables’ whose value depends on the continuing existence of the conditions which led to social relations being codified as law.

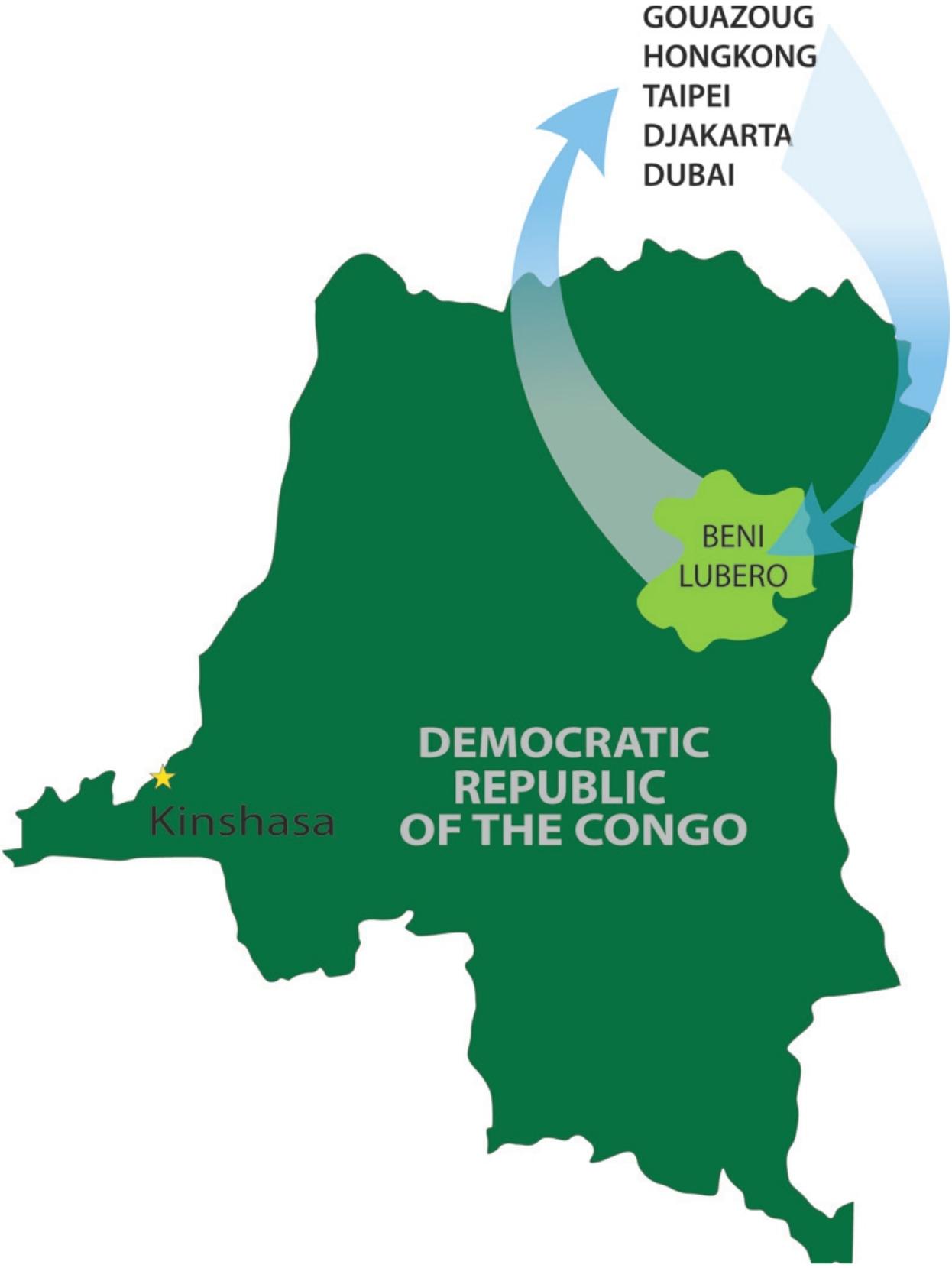
The Nande’s construction of a peaceful trading community in the midst of war shows how their particular form of transnationalism and ‘ethnic’ insularity colludes with internecine (even genocidal) violence in its seemingly remote home on the distant borders of a “collapsed” state. Horrendous civil wars like the Congo’s may provide opportunities for a cynical restructuring of global capital accumulation where effective access to valuable resources is what matters to capital and the lives and limbs of those who inhabit that particular corner of the planet is utterly expendable. Seen in this light, the Nande’s newly found desire to keep government at a distance while relying on governance through local communitarian mechanisms could be said to articulate a kind of neoliberalism: one where a weak national state serves as a hollow shell, providing minimal security and stability for unhindered capital accumulation, and the so-called free market is entirely unencumbered; where local communities and networks are free from the onerous regulations, interference, and impositions of a state that might otherwise, if only occasionally, be an impediment to plunder.

The Nande do not desire full autonomy or complete separation from the DRC state nor anything resembling a Nande ‘national’ self-determination; but rather they welcome attempts to stabilize the national state, but only in a relatively weak and unobtrusive form that would leave them unencumbered by intrusive state surveillance and excessive taxation of their transnational and cross-border trade. In short, they prefer an arrangement not very different from the situation that has persisted in various forms throughout recent decades (even back into the Mobutu era). The Nande capitalist class welcomes the same sort of frail neoliberal national state that appeals

to the agenda of global corporations interested in the DRC's resources. At the same time, a pernicious armed conflict in this region, the Kivus of East Congo, has claimed 4 million lives or more. The Nande case is ostensibly outside or exempted from this horrific calamity, but it actually underlies and helps to explain its persistence.

What I have just said is true, but so too is the observation that, in all the DRC's troubles, Butembo offers a glimpse of a new emergent African society. In more stable countries with prosperous cities like Dar es Salaam or Luanda, Accra or Dakar, a gradual transformation is taking place in the hands of an emergent ruling class where money-making is linked to state contacts at home and abroad; but the economic and political spheres are not so starkly demarcated, given continuities with a past from which there has been no violent break (Freund 2009). This is an Africa that is slowly divesting itself of the neo-colonial ties that dominated the years after independence. The Nande offer a sharper image of the direction in which Africa is really moving. The horrors of war in the eastern Congo may not just block what we wish to think of as 'development'; they might also be speeding those processes along.

The Nande case shows the ontological primacy of power as *potential* – creativity and productivity – over power as repression or *potestas*. We urgently need new theorizations of power that can grasp a context where state is neither the necessary core nor the only unit of analysis. The map below illustrates this situation.



Is this an example of a failed state?

The concept of a failed state does not capture what is really happening in places like Butembo which is an island of prosperity in the DRC's civil war. There are three principal flaws when applying the concept to Africa. First, it conflates failed government and failed governance (Reymaekers 2007). William Zartman (1995) equates state collapse with the collapse of the society, yet the Nande case shows that non-state agents – in this case the trader networks -- have taken over the role played by the state and provide security and economic well-being. The failure of *potestas* does not necessarily mean the failure of *potentia*. The second flaw is that non-failed states are presented as being normative. The United States might be an example of a non-failed state when seen from Silicon Valley or Wall Street. But it is a failed state when seen from the perspective of those who live miserably around Moore House College in Atlanta or faced the devastation of Hurricane Katrina. Finally, the theory of state failure is misleading because it gives an impression of something that was once integrated and is now falling apart. No African state ever reached this sort of social integration since it was imposed by colonial empire and never took root to grow organically from the bottom up. In sum, talk of failed states simply reproduces the same essentialist and hegemonic paradigm that has always accompanied the projection of western state power into the world.

Moreover, the Nande case shows that the state is never the only and exclusive form of social relations, which are rather “always un-predetermined, agonistic, and unresolved.” These “relations of struggle” entail a “full panoply of contests over the objectification and fetishization of human productive powers as alien forces of domination” for which “the state tends... to be the hegemonic manifestation” (De Genova 2007: 442; see also Holloway 1994). The Nande region is one of many places where the state is continually experienced and undone through the illegibility of its own practices, documents, and words. Unlike in the rationalized world of Weberian abstractions, the DRC state, as seen from its margins, is inscrutable, incoherent, unpredictable, and unreliable. But to characterize these features as “failure” is merely to retain and recapitulate the illusion of inevitable state dominance.

I have tried in this paper to dissolve the state as a rigid category while seeking to understand the state as a social form, as a form of social relations (Holloway 1994). By defining

the state as a social phenomenon, as relations between people, I hope to recognize the creativity, fluidity, unpredictability and instability of this category. Indeed, these relations have been solidified as certain forms that have acquired their own autonomy, their own dynamic. The semblance of rigidity accorded the state in some classical conceptions lends it the appearance of being a given and positive fact. The notion that African states have failed or collapsed is part of the same drive to reify and fetishize the colonially imposed model of statehood. The state in Africa is a colonial abnormality which needs to be rethought in the light of the local creative and productive capacities of Africans themselves in order to build de-centralized social arrangements from the bottom up that are more suited to the realities of struggles on the ground.

The consequences of understanding power as *potentia*

The Congo situation begs for new categories to understand its situation and to break the silence around its predicament. In the absence of state sovereignty and the presence of numerous contenders for coercive power, Nande traders have managed to protect their self-sustaining and prosperous transnational enterprises in eastern Congo. Perhaps their example reflects the direction towards which 21st century Africa is really moving. In order to understand this Africa, we need to abandon old theorizations of power and sovereignty. The Nande case shows us that, before being an attribute of the state, sovereignty is an ontological and inalienable quality of human species. Power in this context is fundamentally an elementary aspect of human possibility and creative capacities. Reified and rigid notions of state power and sovereignty confront and are contradicted by the flexibility of human relations and by the productive capacities inherent in human nature unleashed by a theorization of power as *potentia*.

The ethnographic case study shows that in a chaotic situation or one of protracted, fragmented and proliferating violence, it is always possible to construct political and economic order, relying on agencies of governance other than the state. Indeed, new kinds of regulation and governance practice, which have emerged from the retreat of state power, are shaping the ongoing formation of a genuinely postcolonial state.

This is an Africa that is slowly divesting itself of the neo-colonial links which seemed dominant in the years after independence. The horrors of war in the eastern Congo may block what we wish to think of as 'development', but they might also be speeding the process whereby

power as ‘repression’ is giving way to power as ‘production.’ Efforts by some scholars such as Zartman (1995) to restore the “pre-failed arrangement” only guarantee the failure of their own policy recommendations.

The current situation in the Congo can only be understood if the way we think of power refers back to individual creative and productive instincts. Since many scholars cannot go beyond the Westphalian categories of power and sovereignty (*potestas*), they see the Congo as nothing more than a desperate “failed state”. If this is so for many Western scholars, their journalists are running out of categories to define the Congo conflict. It is a conflict that blows up the division between good guys and bad guys (terrorists or enemy combatants) on which their traditional construction of conflict is based. In the Congo case, the local militias, government soldiers, Congolese rebels, Ugandan, Rwandan or Burundian rebels and the UN peace (or war) keepers all share a social space where mineral extraction remains the common denominator and women’s bodies constitute the front line of the conflict. Imprisoned in their binary logics, the western media are rendered speechless by a linguistic repertoire wholly inadequate to address the complexity of the DRC’s predicament.

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