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Taking workers' rights to unexpected places

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To help prevent discrimination, particularly against women and ethnic minorities, policymakers in the United States (US) have written and passed civil rights laws that require employers to address hate or harassment at workplaces. Sometimes, however, the programs that corporate managers create do not actually give workers a full opportunity to resolve their complaints; the programs are, instead, symbolic attempts to comply with federal and state civil rights legislation. Moreover, judges have come to see the mere existence of these programs, inadequate as they are, as evidence that corporations protect workers' rights.

Lauren B. Edelman (1955–2023) and I have approached this problem of how workers achieve their rights by studying it in two very different contexts—Edelman in the US, and me in South Sudan. This essay honors Edelman's body of scholarship by describing what I learned about workers' rights in a context—a new nation emerging from civil war—radically different from the North American corporations and courts that Edelman studied. More personally, I also share what I learned from Edelman—as her student and, later, her professional colleague—about designing and executing a research project and writing up the results for an interdisciplinary audience.

COMING TO SOUTH SUDAN

In 2010, I traveled to South Sudan before it became the world's newest country.[1] South Sudan was a few months away from its independence from Sudan, a hard-fought prize after one of Africa's longest and deadliest civil wars. My own family had fled Sudan during the early 1980s when I was a boy, as this war was just beginning. Decades later, I arrived in South Sudan as a lawyer and a professor seeking to understand what the law, especially human rights law, looked like at the moment of a nation's founding. Where was the law, who was creating and using it, and how did it matter in the transition to political independence?

When I arrived in Juba, South Sudan's capital city, I found that many courthouses were still under construction. There were also just a few lawyers in a nation about the same size as France. Not far from the government's construction sites, it was hard to miss the dozens of other buildings dotting the

[1]Elements of this section and the next draw from Massoud (2015).

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city, each safely ensconced within its own walled compound. Inside each of these guarded compounds was the local office of a non-governmental organization (NGO), typically an established aid group whose global headquarters was far away in Europe or North America.

These international NGOs operating in South Sudan had varying goals like promoting the rule of law, protecting children's rights, building literacy, advocating for peace, or drafting legislation to hold national elections or encourage foreign investment. Staff who worked in these organizations shared a desire to build up the new nation's capacity to commit to democracy and protect human rights. With financial support from United Nations agencies and other aid groups, foreign managers in these offices hired South Sudanese employees to work under them. Those South Sudanese employees were essential to helping the NGOs access people and places across South Sudan. The employees' jobs typically were defined by one-year, sometimes renewable, employment contracts.

Whereas there was little state law to speak of outside the NGOs' compounds, inside of them, they were teeming with laws. NGOs were circulating constitutional texts, promoting international treaties, and sharing global policies designed to compel the new government and its citizens to learn how to prevent violence and guarantee human rights. Law also existed in a much more mundane form in the files of the NGOs themselves. This includes documents like employment contracts, employment terms of reference, employee codes of conduct, and employee handbooks that new, young workers—themselves recent survivors of the war—signed. Law also existed in the spreadsheets and accounting systems that they used daily. During my research, I found that these handbooks, accounting systems, and spreadsheets, remarkably, did little to liberate the survivors of war who were employed by these organizations. Instead, to some of these workers I met, everyday bureaucratic practices became the symbols of their continued oppression.

When South Sudan was emerging from civil war and becoming an independent nation, NGOs' internal bureaucracies created a kind of legal authority under which employees labored, which influenced their legal consciousness. Much like Edelman's research shows how for-profit American companies paradoxically shaped the very laws that were meant to regulate them—what Edelman termed "legal endogeneity" (Edelman, 2016)—my research in South Sudan revealed how non-profit aid groups created and used workplace bureaucracies that sidelined workers' rights in the places where these NGOs operated. My article about this phenomenon of how organizations behave in post-conflict settings, "Work Rules," appears in the *Law & Society Review* (Massoud, 2015). In "Work Rules," I argued that human rights NGOs created "repetitive and formalistic processes" that constituted "an everyday legal order that pervaded local employees' … postwar livelihoods" (Id., 359).

From my research with people working their way out of civil war, I learned that the content of human rights, when seen from the perspective of local staff, failed to live up to its expectations. This is a striking parallel to Edelman's central claim that US civil rights law, when studied from American workers' perspectives, also fails to live up to its promises. This research does not stand alone. Other scholars, some of whom are Edelman's co-authors or, like me, her former students, have applied or extended Edelman's findings about the bureaucratization of law to different settings. These include civil rights (Edelman & Talesh, 2011), workplace discrimination (Edelman et al., 2016), sex-based harassment (Edelman & Cabrera, 2020), school discipline (Preiss et al., 2016), social movements (Edelman et al., 2010), judicial decision making (Edelman et al., 2011), equal employment opportunity grievance procedures (Edelman et al., 1999), consumer protection law (Talesh, 2009), insurance law (Talesh, 2015), privacy law (Talesh, 2018), and high technology law. This body of scholarship is focused on the United States, and it speaks to the concept of legal co-optation, or the ways that organizations seize and subvert the laws that were designed to regulate them. There is also a parallel story to be told, from workers' perspectives, about legal resistance. The case of South Sudan tells that story.

RESISTANCE TO WORK RULES

Consider the office cleaners, drivers, and other staff I met who worked for international NGOs in South Sudan. Many of them—especially those who were unable to read and write well in English,

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the operating language of the NGOs—were not aware that their employment handbooks gave them some rights, such as the right to be free from harassment. These handbooks sometimes emerged out of employment laws in the foreign nations where the NGOs had their headquarters, and at other times they grew out of local laws, if applicable. However, in my interviews with South Sudanese "national staff" of these aid groups, they told me that their foreign managers often ignored or even dismissed South Sudanese employees who tried to organize with co-workers to secure their rights. Human rights seemed to be a goal that existed outside, rather than inside, the NGOs.

Patricia, a South Sudanese woman I met, had recently left a short-term job with an international NGO for another organization. She told me that in her previous position she had tried to organize her co-workers to talk about the health, transportation, and holiday benefits that foreign or "international staff" had been receiving, but that South Sudanese staff had not been receiving. Patricia's superiors on the managerial team learned about her advocacy and told her that she was sowing dissent and "confusion," she told me, during our interview at a café in Juba not far from that NGO's office.[2] Managers also withheld information from her because she had been trying to help her co-workers understand their rights. Patricia said her managers wanted to stop her from doing "capacity building" with her fellow South Sudanese employees. Her superiors "fear[ed] they would lose their jobs" if the South Sudanese employees became "educated" about their rights, she said. "I was fighting for their rights until the end of my contract," she lamented to me after the job ended. "To be employed" by an international NGO, Patricia said, turning her attention back toward the old office, "no way!"

Some workers did not try to assert the rights that they knew they had or that they felt they needed, partly because a strong culture of rights claiming did not exist, especially against powerful NGOs. Terrence, an Arabic- and English-speaking South Sudanese person who worked for an organization that operated primarily in French, told me that he resigned his position instead of claiming the right to work free from discrimination. He said that his boss "would skip" over him to speak to Terrence's own "French subordinates."[3] This left Terrence feeling isolated at work, as if his foreign manager was forcing his "segregation [and] discrimination," he told me when we met later in Khartoum, Sudan's capital city. When I asked him if he ever filed a claim for discrimination, he told me that fighting for his rights was akin to seeking revenge, and "avenging is not good."

Others did not assert their rights because NGOs are the primary source of stable employment in a post-conflict context. South Sudanese staff I met either did not want to antagonize their line managers or adversely affect their ability to find new work, not least because of the unceasing pursuit of short-term contracts from NGOs whose offices were all down the road from one another. After one or two years, "your job is gone," one South Sudanese international NGO worker told me.[4] Another person, Luca, had been given two months' notice of redundancy by his employer, an international NGO, even though Sudanese labor law, which at the time also governed South Sudan, required a minimum of three months' notice. When I asked Luca about this, he said it had seemed futile to raise a labor law violation with the human resources manager. "I have a … copy of the labor laws," Luca said, but "at the end of the day, we … worked together, we stayed together."[5] He struggled in those two months to find another job so that he would not lose income after his contract ended. Just days before the two months passed, he landed a short-term contract with another nearby humanitarian agency.

The German sociologist Max Weber (1978, 212) discussed this phenomenon of resistance and dependency when he argued that the structure of large organizations is bureaucratic, hierarchal, and legalistic in order to create an "interest in obedience" (Weber, 1978, 212) and to cultivate a

[2]Interview with Patricia, South Sudanese staff member with international NGO, in Juba, South Sudan (June 2010) (Author's file reference number 190). All names herein have been changed to preserve confidentiality.
[3]Interview with Terrence, South Sudanese NGO director, in Khartoum, Sudan (June 2010) (Author's file reference number 153).
[4]Interview with Philippa, South Sudanese aid worker, in Juba, South Sudan (June 2010) (Author's file reference number 168).
[5]Interview with Luca, South Sudanese program manager in international NGO, in Juba, South Sudan (June 2010) (Author's file reference number 177).

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"belief in [the organization's] legitimacy" (Id., 213). Edelman's work shows how this finding holds for commerical organizations in the US. I had not anticipated confirming Weber's and Edelman's theories when I was investigating how human rights organizations operated. As I concluded in the article "Work Rules," a "culture of legalism … often does not translate into actual rights for employees, even within NGOs whose outward mission is to promote human rights" (Massoud, 2015, 350).

EDELMAN'S LEGACY

I thought about Edelman's scholarship while I was interviewing workers about their rights in South Sudan in the early 2010s, and later on after I returned to California to write up the analysis for publication in this journal. I also thought about the ways that Edelman mentored me when I was a doctoral student with the Jurisprudence & Social Policy Program at the University of California, Berkeley, where she taught during most of her career until her death in 2023. I carry three important lessons from Laurie's mentorship into my career advising and supporting the next generation of students.

First, I have learned to follow a structured format when writing for an interdisciplinary audience. At the Law and Society Graduate Workshop, one of Edelman's courses that I took at UC Berkeley, Laurie shared with me the importance of situating my work in a literature, and of explaining how other people have tried to answer the question that I am asking. She asked me to explain my methods as clearly as possible—how did I make contacts and collect data, who did I meet, and why? She encouraged me to give the reader a clear sense of what my ethnography was by integrating description and using detailed quotes from interviews. She pressed me to consider what is outside my analysis, saying that "It is incumbent on you [as the author] to talk about data that doesn't fit." She also told me that the burden was mine to convince the reader that my interpretation of the data was the correct one. Looking back at my notes from nearly 20 years ago, I see now that Laurie's advice to me is similar to what I share with doctoral students and other early career scholars.

Second, I have learned to be grateful for my accomplishments and to create space for others to flourish. Laurie was a successful scholar who also went out of her way to help others do well. She nominated students and colleagues for national and international awards. Laurie and I last communicated in 2022 a few months before her death. I thanked her for bringing together a group of us to nominate Malcolm M. Feeley for the American Political Science Association Law and Courts Section Lifetime Achievement Award, which Feeley had just received. I have tried to follow Laurie's example in my own career by setting up labs and workshops for early career scholars from different parts of the world—especially those who come from diverse backgrounds that are under-represented in law and society or who took career breaks due to family obligations—to share their research and receive structured feedback from one another and from me. My efforts are founded upon the model that Laurie pioneered for me.

Third, and finally, I have learned not to rest on laurels. Whether in regard to an article pitch, a book proposal, or a grant application, Laurie told me always to "give the reader … a sense of how and why your work is important by explaining its merits." She wrote those words to me in an email message in 2014, after she reviewed my draft application for a fellowship that she had earned nearly 15 years earlier in 2000. Her advice led me to revise and rethink how I had been writing grant proposals generally. I began to focus my energy on maintaining the reader's attention on what I was proposing to do during the grant period, rather than on what I already knew or what the literature said. On the day that I was awarded this research fellowship in April 2015, I wrote to Laurie, "Thank you for the support and wisdom you have shared with me … I would not be where I am today without your positive impact on my life and work." I could not say this better today.

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