ial, bureaucratic state into governance-by-franchise, and into an institutional nexus for the distribution of public assets into private hands, has exceeded at its most unmediated and unmitigated in many former onies. So, too, expedited by one or other Washington consensus, have: radical privatization of the means of coercion, from policing and terror through incarceration to war and revolution; the displacement of the critical into the realm of the legal, most notably into the interstices between rights and torts; the distillation of social policy, under the aegis of national and non-governmental organizations, into discourses of clinical necessity; the increasing reduction of culture to intellectual property; the supersession of the Age of Ideology by the Age of ID-ology, in which identity-driven interest — identity defined by culture, confessional congregational affiliation, race, gender, generation, sexual orientation, whatever — becomes the motor of most collective action. And much else besides.

It is from the perspective of the post-colony, then, that understanding the twenty-first century, to wit our, might begin. Decentered estrangement is, finally, the objective of this book. And of the historical anthropology of the present, to which it seeks to make a modest contribution.

Note

economic liberalization on which it has floated, have both implied, as their
dark underside, an ipso facto deregulation of monopolies over the means
of legitimate force, of moral orders, of the protection of persons and prop-
erty. And an unraveling of the fabric of law and order. This may not be all
that easy to demonstrate empirically; it depends in large part on how
democracy and criminality, past and present, are measured.\(^1\) But, as popular
decolonization and party platforms across the planet focus even more on
escalating crime, and on the “problem” of dis/order, the co-incidence cer-
tainly seems to be beyond coincidence.

It has long been argued that social disorder, expressed in elevated rates
of criminality, is in the nature of transition itself, that it inevitably follows
epochal changes in the order of things. Our times, like many before, are
commonly described in the language of historical disjunction, whether
by appeal to retrospection and renaissance (neoliberalism, neomedieval-
ism), to ironic aftereffect (the postmodern, posthuman, post-Fordist,
\(_f\)-utilitarian),\(^2\) or to the portentous dawning of New Eras (of Empire, Ex-
ception). Little wonder, then, that the ruptures of the ongoing present, real
or imagined, are often associated, in collective consciousness as well as in
social theory, with transgression, liminality, and lawlessness. As Hannah
Arendt reminds us, Marx long ago saw a \textit{generic} connection between
transformation and violence, which, he insisted, “is the midwife of every
old society pregnant with a new one”; even more, of “all change in history
and politics.”\(^3\) Foreshadowings here of Fanon (1968) and other theorists
of decolonization. To be sure, modern history has seen some very bloody
transitions to populist rule. And it has born witness to regimes that, under
the alibi of liberal democracy, have sanctified and sustained criminally
brutal modes of domination, some of them highly rationalized, highly
technicized, highly sanitized. Indeed, the relative ease with which autocracies
have made the transition to constitutional democracy points toward
the possibility that they—aucracy and liberal democracy, that is—share
more mechanisms of governance than has conventionally been recog-
nized, not least their grounding in a rule of law, an Iron Cage of Legality
itself predicated, more or less visibly, on sovereign violence (cf. Agamben
1998: 10; Foucault 1978). Whether or not there is a necessary relationship
between the lethal and the legal, as Walter Benjamin (1978) and his
intellectual progeny would have it,\(^4\) their historical affinity seems beyond dis-
pute.

The coincidence of democratization and criminal violence has been
most visible in, and most vividly remarked of, postcolonies: that is, na-
tion-states, including those of the former USSR, once governed by, for,
and from an elsewhere; nation-states in which representative government
and the rule of law, in their conventional Euro-modernist sense, were pre-
viously “underdeveloped”; nation-states in which the “normalization” of
organized crime and brutal banditry, themselves the product of a complex
play of forces (see below), has been a central motif of the chapter in their
history that began, at fin de siècle, with the end of the Cold War and the
triumpal spread of neoliberal capitalism. With a new Age of Empire,
the Age of US and Them.\(^5\) This age has its mythic \textit{fons et origin}
1989, the year that history was supposed to end (Fukuyama 1992) with the
\textit{political} birth of a Brave Neo World.\(^6\) The “neo” here refers to a reani-
mation—or, more precisely, to the fetishizing anew—of old panaceas from
the history of liberalism: two in particular.

One dates back to the second half of the eighteenth century, to a time
when political authority, social order, citizenship, and economy were also
urgently in question (see, e.g., Becker 1994). It is the idea, often associated
with Adam Ferguson (1995), that a measure of control over arbitrary gov-
ernmental power, especially over the power of autocratic potentates, ought
to be vested in, and exercised by, a citizenry.\(^7\) This idea has come to be sub-
sumed, loosely, in the term “civil society” which, in its neo guise, stands
for many things, among them: (1) “society against the state,” itself a highly
ambiguous aphorism; (2) “the” market, often glossed as “the private sec-
tor,” utopically envisaged as a technically efficient mechanism for produc-
ing the common good; and (3) “the community,” a vague abstraction
posited, somewhat mystically, as an appropriate site for, and agent of, col-
clective action—and, more cynically, as the end point of the devolution of
the costs and responsibilities of governance (J. L. Comaroff and J. Com-
roff 1999).\(^8\) But above all, since the late 1980s, “civil society” has con-
noted a teleological reversal: a move from increasingly rationalized, in-
creasingly bureaucratized, increasingly elaborated regimes of rule toward
ever more outsourced, dispersed, deinstitutionalized, constitutionally or-
dained governance—from political evolution, classically conceived, to
political devolution. In theory, at least.

The other panacea is the ballot box: an appeal to the classic apparatus
of mass participatory democracy. In its postcolonial neo-life, however,
this has often proven, in practice, to involve a very “thin” distillation of
the concept: a minimalist, procedural version that, notwithstanding the
claims made for it by some political scientists (see, e.g., Przeworski et al.
2000; and, for a critique, Wedeen 2004 and forthcoming), equates free-
don with the occasional exercise of choice among competing, often in-
distinguishable alternatives. Which, as we have said elsewhere (J. L. Coma-
John L. Comaroff and Jean Comaroff

The franchise to *homo politicus* what shopping has long been to *homo economicus*: a beatified, cosmic fusion of free will, human satisfaction, and ethical righteousness. This is historically apt: it is a version of democracy that shadows closely the neoliberal apotheon of the market, the displacement of *homo faber* by the consumer-citizen, and the reduction of collective action to the pursuit of “enlightened” interest. It is also the version of representative government—a “small idea,” Malcolm Bradbury (1992: 276) once wrote in a postmodern fiction, which “promises hope, and gives you Fried Chicken”—that is currently being thrust upon the world at large. Often it is imposed as a condition of financial aid, foreign investment, and moral salvation by an unadornedly coercive Western consensus led by the United States (see, e.g., Young 1993: 299–300) and abetted by such instruments of the new global economy as the World Bank and the International Monetary Fund (Stiglitz 2002). Indeed, this is the translucent veil behind which has closed the iron fist of structural adjustment, with its demands on postcolonies to cleave to market principles and to deregulate in ways that privilege the private sector over the state. It hardly bears repeating any longer that these demands have had unintended, highly destabilizing effects on the fragile political and economic arrangements—on the ecologies of patronage, redistribution, and survival—that developed in many nation-states across the global south with the end of the high age of colonialism. Of which more in due course.

As this implies, civil society and the ballot box, as they have come popularly to be understood at the dawn of the twenty-first century, are not just panaceas for the contemporary predicament of postcolonies. More significantly, they have taken on the substantive forms of the Brave Neo World of which they are part. This, in turn, raises an obvious, and obviously loaded, question: To the degree that there has been an epidemic of criminal violence in these polities in recent times—to the degree, also, that they have seen the emergence of criminal “phantom-states” in their midst (Derrida 1994: 83) or even “the criminalization of the state” tout court (Bayart, Ellis, and Hibou 1999; see below)—does it really have anything at all to do with democratization? Or, pace the commonplace with which we began, does electoral democracy, itself long an object of critique outside the West (see, e.g., Mamdani 1996, 1992; Makinda 1996; Karlstrom 1996), veil the causes and determinations of rising lawlessness, just as the material realities of the Brave Neo World disappear behind the ballot box?

The answers are not as straightforward as they may seem. Why not? Because rising criminality in postcolonies is not simply a reflex, antischolar response to poverty or joblessness, scarcity, or other effects of structural ad-

justment, important though these things are. Neither is it merely the working of unchecked power, clothed in the trappings of state—or of bandit quasi states—serving itself by monopolizing the means of extracting value and doling out death (cf. Bataille 1991; Hansen and Stepputat 2005: 13–14). Nor even is it the consequence of normative slippage occasioned by the radical transitions of the recent past. It is part of a much more troubled dialectic: a dialectic of law and dis/order, framed by neoliberal mechanisms of deregulation and new modes of mediating human transactions at once politico-economic and cultural, moral, and mortal. Under such conditions—and this is our key point—criminal violence does not so much repudiate the rule of law or the licit operations of the market as appropriate their forms—and reconstitute their substance. Its perpetrators create parallel modes of production and profiteering, sometimes even of governance and taxation, thereby establishing simulacra of social order. In so doing, they refigure the pas de deux in which norm and transgression, regulation and exception, redefine each other both within and beyond national polities. In the process, the means and ends of the liberal democratic state are refracted, deflected, and dispersed into the murkier reaches of the private sector, sometimes in ways unimaginable by even the most enterprising of capitalists, sometimes without appearing to be doing very much at all to disturb the established order of things.

Just as, according to Charles Tilly (1985: 170–71), many modern “governments operate in essentially the same ways as racketeers”—especially in the “provision of protection”—so, in many postcolonies, violent crime increasingly counterfeits government, not least in providing fee-for-service security, and social order (J. Comaroff and J. L. Comaroff, forthcoming: chap. 1). With market fundamentalism has come a gradual erasure of received lines between the informal and the illegal, regulation and irregularity, order and organized lawlessness. It is not merely that criminal economies are often the most perfect expressions of the unfettered principle of supply and demand, nor only that great profit is to be made in the interstices between legitimate and illegitimate commerce, between the formal and underground vectors of global trade, from differences in the costs and risks of production, north and south (see Mbenbe 2001: 73). Vastly lucrative returns also inhere in actively sustaining zones of ambiguity between the presence and absence of the law: returns made from controlling uncertainty, terror, even life itself; from privatizing public contracts and resources; from “discretionary” policing and “laundering” of various kinds. From amassing value, that is, by exploiting the new aporias of jurisdiction opened up under neoliberal conditions.

Or so we shall argue.
But how particular is all this to postcolonial societies? After all, the coexistence of neoliberalization with the proliferating problem of lawlessness would appear to be an ever more global phenomenon; although whether there is more crime (Gray 1998: 32), more of an obsession with it (Baumann 1998: 47), or a greater readiness under current conditions to criminalize dystopic social phenomena, among them poverty and race (Wacquant 2001), remains a fraught question—especially if, as is likely, all are true, but in indeterminate proportions. That there is an empirical connection, though, is rarely in doubt these days. Thus, for example, the director of Europol, the European police agency, declared in 2001 that transnational crime posed a mounting threat to domestic security in Europe: its governments, he said, should “examine whether the resources that had previously been spent on military defense would be better invested . . . in domestic security.” And this was before 9/11, before established distinctions between criminality and terror, lawlessness and war, private enterprise and state control, governance and vengeance, were seriously undermined, making palpable the imminent threat of disorder everywhere. Might it be that, in this as in other respects, the world at large is looking ever more “postcolonial”? And what might that mean?

We shall return to these large questions in due course. Let us begin, however, by interrogating the forms of criminal violence, the lawlessness and disorder, typically taken to be symptomatic of the postcolony.

Inside the Postcolony: Geographies of Violence, Cartographies of Crime

Lawlessness and criminal violence have become integral to depictions of postcolonial societies, adding a brutal edge to older stereotypes of underdevelopment, abjection, and sectarian strife. “LATIN AMERICA: Graft Threatens New Democracies,” “AFRICA: Corruption Is Crippling Growth,” screamed twin, internationally syndicated headlines in August 2005, under a picture of tropically shaded hands passing banknotes.1 Mounting images—of Colombian drug lords and Somali warlords, Caribbean pirates and Nigerian gangsters, Afghan poppies and Sierra Leonean blood diamonds—add up to a vision of global enterprise run amok: a Hobbesian nightmare of dissipated government, suspended law, and the routine resort to violence as means of production. More disturbing still are allegations that the line between the political and the criminal is fast eroding. In Africa, the epitome of postcolonial misrule in European eyes, metaphors of malefance—kleptocracy, neopatrimonialism, clientalism, prebendalism14—have long been the accepted terms, popular and scholarly alike, for indigenous modes of governance. But in the late twentieth century, these conventional images began to assume an even more sinister cast: in 1995, the French Ministry of Foreign Affairs issued a report on the radical “criminalization of politics” south of the Sahara, claiming that popular reformist movements were being resisted in many places, while links between the ruling regimes and organized crime were growing apace (Bayart, Ellis, and Hibou 1999: xiii). Elsewhere, vectors of state repression and sectarian conflict—their logic hitherto relatively transparent—appeared ever more chaotic and opaque as access to the means of force proliferated and crass utility reigned supreme. In fact, the “criminalization of politics” came to signify a new epoch in the sorry history of incivility in the global south: Bayart, Ellis, and Hibou (1999: 1), among the most acute observers of the African scene, went so far as to suggest that we are witnessing a move, there, from “kleptocracy to the Felonious State.”

For many, this merely confirms that the non-Western world remains inhospitable to representative government. But, argues Mbembe (2000, 2001, 2002), the new patterns of lawlessness are less obstacles to democracy than the consequence of what it has come to mean in places like Africa. In “the fuss over transitions to . . . multi-partyism,” he notes (2001: 66), something far more significant has gone unremarked: the rise of “private indirect government,” a caricature of liberalization in which the norms of redistribution once associated with clientelist rule have fragmented in the face of the displacement of sovereignty into more concentrated forms of power and accumulation, rooted in brute control over life and death. This shift has been accompanied by a transformation in the manner in which Africa is linked to the global market system: the continent, he claims, has not so much been marginalized as entangled in a parallel, pariah economy of international scale (2001: 66). The process has analogues elsewhere: in parts of the former Soviet Union, like the Balkans, a fairly predictable culture of state-centered corruption appears to have given way to a “free-for-all,” making crime “the biggest single industry of the region”;15 likewise, in Latin America, where “epidemic” lawlessness is said to have accompanied the “democratic wave,” linking local to transnational criminal networks and turning poor urban neighborhoods in Colombia, Brazil, and Mexico into battlefields (Pinzón 2003; Caldeira 2000: 373).16 “Democratic Brazil,” writes Scheper-Hughes (see chapter 4 below), has “the demographic profile of a nation at war, which in a sense it is.” Criminality with violence, it seems, has become endemic to the postcolonial condition.
What makes the characterization of “private indirect government” so persuasive is its resonance with popular pessimism about the malaise and mayhem that continue to bedevil former colonies. Here, Africa retains pole position, having been excised from the map of global futures by such print media as the Economist, by the daily grind of television reportage, and by any number of conservative public intellectuals. These depictions have provoked criticism, of course: efforts to break into the definite article, the postcolony, and to deconstruct “its” archetypical representation; also to argue that conditions on the continent are less apocalyptic than they are made out to be, less extraordinary by contemporary planetary standards, more “business as usual.” And very good business at that. A recent World Bank report shows foreign direct investment south of the Sahara to have “yielded the highest returns in the world in 2002.” Not only have fresh infusions of capital come from the Middle East and Asia, but a “new scramble for Africa” is discernible among the nation-states of the Northern Hemisphere in pursuit of diamonds, oil, and the like. These neo-colonial quests, which have reaped huge returns at the intersection of outsourced and outlaw economies, blur the line between profit and plunder. While not strictly part of the “parallel” global economy, they interfere with indigenous means of producing wealth, recruiting local functionaries, brokers, even warlords, to facilitate their enterprises, often by extremely questionable means. As we write, investigators in the United States and Nigeria are looking into allegations that a number of international companies, including a Halliburton subsidiary—paid hefty bribes to secure the contract to build a $4 billion liquefied-natural-gas plant on the oil-rich West African coast. All of this exacerbates the unrest associated with many parts of the postcolonial world and renders murky the geographies of crime and violence that configure popular perceptions of that world. Lawlessness often turns out to be a complex north-south collaboration.

For now, suffice it to note that, as Cold War geopolitics has given way to a global order greased by transnational commerce, accounts of postcolonial disorder elsewhere have come to echo Africanist stereotypes: whether in Latin America or Indonesia, Eastern Europe or India, autocratic government is said to have mutated into a less stable species of politics in which personnel and institutions of state collaborate with enterprises deemed illegal by Euro-American norms. In fact, efforts on the part of the World Bank, the World Trade Organization, and governments of the north to democratize patrimonial systems—thus to eliminate the “polities of the belly” (Bayart 1993), caudillos, communalism, and their cognates—have only exacerbated their unruliness. Those calls to reform, it hardly needs noting, set great store by liberalization, both economic and political, the latter centered squarely on the panaceas mentioned earlier: on multiparty politics and the cultivation of civil society. And on unrestrained privatization. But such measures, as the Report on the World Social Situation, 2005 (United Nations 2005) reiterates yet again, have widened inequalities within and across nation-states, abetting the accumulation of wealth and power by elites, both licit and illicit. As Larry Rohter and Juan Forero, commenting on Latin America, point out, “With once-closed economies having been opened up and corporate profits at record levels, the opportunities for graft and bribes are larger than ever.”

Clearly, liberalization and democracy have done little to reduce violence. Quite the opposite. Not only have those excluded from the spoils tended to resort, ever more prosaically, to militant techniques to survive or profit (Bayart 1993: xiii; Olivier de Sardan 1999a; Caldeira 2000), but many ruling regimes have ceded their monopoly over coercion to private contractors, who plunder and enforce at their behest. In some African, Asian, and Latin American contexts, banditry shades into low-level warfare as a mode of accumulating wealth and political allegiance (see chapters 4, 5, and 9 below), yielding new cartographies of disorder: postnational terrains on which spaces of relative privilege are linked to one another by slender, vulnerable corridors that stretch across zones of strife, uncertainty, and minimal governance. Here the reach of the state is uneven and the landscape is a palimpsest of contested sovereignties, codes, and jurisdictions—a complex choreography of police and paramilitaries, private and community enforcement, gangs and vigilantes, highwaymen and outlaw armies. Here, too, no genre of communication is authoritative: “dark circuits” of rumor and popular media alike flash signs of inchoate danger lurking beneath the banal surface of things, danger made real by sudden, graphic assaults on persons and property. What is more, capricious violence often sediments into distressingly predictable, repeated patterns of wounding as those most vulnerable—but sometimes also, Patricia Spyer (see chapter 5 below) notes of Indonesia, those precisely in “one’s own image”—become the bodies on which mastery is acted out (see Gore and Pratten 2003). Thus it is that sexual violence in postapartheid South Africa, the execution of young “marginals” in Northeast Brazil, and the reciprocal slaughter of Christians and Muslims in Indonesia are the lethal labor that authorizes stark inequalities (see chapters 2, 4, and 5 below). Zones of deregulation are also spaces of opportunity, of vibrant, desperate inventiveness and unrestrained profiteering.

At the same time, patently, deregulation and democratization have not
eliminated older-style autocrats or oligarchs. They have merely altered the sorts of resources and rhetoric at their command. Now organs of civil society and humanitarian aid, alike local and transnational, exist alongside the Mugabes of this world, who seize incoming assets and feed their clients in the name of majority rights, redistribution, and anti-imperialism. Kleptocrats may no longer draw succor from superpowers with geoeconomic anxieties. But they do very well out of donor aid and no-questions-asked global commerce. “Dictator’s Son on City Spending Spree” blared the Cape Times of 20 July 2005, detailing the millions spent in Cape Town on cars, hotels, and entertainment by the ruling dynasty of oil-rich Equatorial Guinea, the latter having recently staved off a coup funded by European corporate bandits of the “neo-criminal classes”—like Mark Thatcher, himself a beneficiary of state kickbacks, British style. Again we glimpse the entanglements that tie postcolonial graft to the metropolitan scramble for tropical spoils.

Globalization, Crooked and Straight

Postcolonial societies, most of them rooted in historically extractive economies, with small bourgeois sectors, low levels of formal skill, and modest civil administrations, have shown varying capacities to profit from mainstream global enterprise. While a few have prospered, many fill a classic neocolonial niche: they are providers of raw materials and cheap labor. But the very qualities that constrain their participation in the world of corporate endeavor—that have rendered them, as one African statesman put it, “appendages of metropolitan powers” in the global trading regime—have made postcolonies ready and able players in the twilight markets fostered by liberalization. Thus, in the face of the subsidies and trade tariffs that have sped the onslaught of agribusiness, non-Western producers find a competitive edge in contraband cultivation. Notoriously extensive regional economies, as vibrant as they are violent, flourish in the Golden Crescent of Afghanistan-Iran-Pakistan and in Colombia-Peru-Bolivia around crops like opium poppies or coca. As with mainstream enterprise, the value added, and the profit reaped, increase as these products move further away from the sites of their primary production. Nature also yields other illegal niche markets based on the canny commodification of the “inalienable” qualities widely associated with “third-world” peoples: endangered species and ancient artifacts, sex workers and undocumented migrants, human infants and organs. There is, as well, the lucrative, often bloody trade in illicitly extracted raw materials that are in especially high demand, most notably gemstones and coltan.

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Crooked economies, like their straight equivalents, show a massive recent expansion in their service sectors. Here again, postcolonial workforces find employment where formal opportunities are few. Some national treasuries now rest almost entirely on conveying contraband: former entrepôts like Gambia, Togo, Benin, and Somalia, for example, have morphed into “smuggling states” (Bayart, Ellis, and Hibou 1999: 20). While a proportion of their traffic in pirated goods, stolen cars, and drugs finds local markets, most valuable cargo makes its way to merchants and customers in the north, some slipping seamlessly into respectable, aboveground commerce. It has also been widely noted that the business of transporting narcotics—centered in Nigeria, Senegal, Ghana, Togo, Cape Verde, and South Africa but shifting in response to local opportunity and patterns of policing—links African, Latin American, and central Asian producers to consumers in Europe and North America (Bayart, Ellis, and Hibou 1999: 9ff.). Suave couriers traverse the planet, swelling the population of migrants to Europe, where “Nigerian” almost invariably qualifies “drug dealer” and “illegal alien,” and to North America, where “Mexican” has similar connotations (Ajibade n.d.). Anxieties about immigration and terror are not far behind, feeding fears about the link between organized crime and underground cells and fueling the racialization of lawlessness. As a result, profiles of criminality become more explicitly xenophobic: “Illegal Aliens’ Unstoppable Third World Crime Wave in US” runs one exasperated headline. “Immigrants ‘Behind Crime Wave’” trumpets Britain’s Observer, sparking yet another asylum row.

These instances remind us, if a reminder is needed, how politics and crime, legitimate and illegitimate agency, endlessly redefine each other. The line between them is a frontier in the struggle to assert sovereignty or to disrupt it, to expand or contract the limits of the il/llicit, to sanction or outlaw violence. Most postcolonies, as we suggested above, bear the historical traces of overrule that either suspended legalities or deployed them to authorize predation and criminalize opposition. A decade after the end of apartheid in South Africa, the poor and the marginal still look skeptically upon statutes protecting the rich: a large proportion of them see crime as an acceptable means of redistribution (Sissener 2001), even vengeance. Nigerian tricksters think similarly about defrauding gullible Europeans. As privatization and enclosure create new forms of property, they simultaneously define new forms of theft, from piracy and poaching to cloning and hacking. Such practices are not always deemed illegitimate across social and national divides. Hence the disregard for copyright shown by producers of generic pharmaceuticals in Thailand, India, and
Brazil. And the attacks by “cyberpunks” on the “Patent Absurdity” of proprietary computer software (Coleman 2005).

The species of property that have emerged out of the digital revolution have had an especially profound effect on the means of producing and controlling value—and on definitions of the licit and illicit. While most post-colonials lack the wherewithal to navigate the fast lanes of the knowledge economy or the electronic commons, they have again found profitable niche markets by making a virtue of their situation. A massive increase in outsourcing Western technological services and telemarketing to India, for instance, has led to the dispersal of personal information across space, priming a thriving business in cybercrime and data theft. Likewise, factories—often small family firms—have sprung up in Asia to supply cloned credit cards, complete with holograms and embossing, to those who perpetrate “plastic fraud” across the planet (Levi 1998: 427). The former third world, it appears, has cornered the market in the manufacture of counterfeit documents, fake IDs, and fakes of every conceivable kind.

At one level, this growing specialization is no mystery. A volatile mix of economic exclusion, technological enablement, and lax policing here meet an almost insatiable planetary demand for instruments of personal authentication. In an age of heightened mobility and government-at-a-distance, human identities congeal along borders in paper and plastic; certification, ultimately, controls the capacity of people and objects to cross frontiers and to enhance their value. This is particularly so for those who traverse the routes that separate peripheries from centers of prosperity and relative security, both within and between national spaces. Where aspiration, even survival, is tied closely to the capacity to migrate (see chapter 9 below), official “papers” take on a magic of their own. And the techniques of their manufacture command a compelling power and fascination, rendering forgery a form of creativity that transcends easy definitions of legality (Siegel 1998: 58). Thus, a huge industry has evolved, especially outside the West, for the fabrication of false credentials, from marriage and divorce certificates to passports and university degrees; entire bureaucratic biographies and family archives are expertly counterfeited by means that wrest control over the production of the insignia of civic personhood from the state. It is an industry astonishingly in step with the latest techniques of authentication; so much so that the Fifth International Conference on Fraudulent Documents, held in Amsterdam in 2002, drew scientific experts from all the major countries of Europe and North America in pursuit of new methods, from laser procedures to biometrics, to keep abreast of the inspired captains of fakery to the east and the south.39

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Fakery has also been expedited by ever more effective, affordable, personalized machinery. With the advent of highly-quality desktop reproduction, the arts of counterfeiting, of literally “making money,” have expanded rapidly in the non-Western world.40 It has been estimated that as much as a third of all currency now in circulation is false—although paranoia in this respect, most of all in the United States, multiplies with advances in technology and with a sense of threat to national sovereignty. Suspicion comes to rest on familiar foes, on “highly-skilled counterfeiters backed by Iran and Syria,” held to have produced as much as $1 billion in old US hundred-dollar bills; North Korea, believed to be engaged in similar mass printings of “Superdollars”; the Philippines, where a raid is said to have discovered some $50 billion in bogus cash and Treasury notes; or Colombia, thought guilty of manufacturing more than a third of the forged notes seized in the United States in 1999.41

Counterfeit Modernities

All of this points to something much larger: to the fact that post-colonies are quite literally associated with a counterfeit modernity, a modernity of counterfeit. With palsu, as Indonesians term it—the word derives from the English “false”—which, according to James Siegel (1998: 52), is more a matter of the “almost authentic” than the bogus. Mimesis has classically been an attribute projected onto Europe’s others, of course, marking the distance between civilization and its apprentices, those perpetually deemed “almost, but not quite,” the real thing (Bhabha 1994: 91). Times, though, have changed. In the postcolonial era, copies declare independence as commodities and circulate autonomously. The electronic revolution has abetted this by democratizing the means of mechanical reproduction. It has demystified proprietary goods, whose aura can be mass-produced and flogged at a discount. These brazen simulacra, like counterfeit money, expose a conceit at the core of the culture of Western capitalism: that its signifiers can be fixed, that its editions can be limited, that it can franchise the platonic essence of its mass-produced modernity. Branding, the assertion of a monopoly over a named species of value, invites cloning; this because something of the exclusive cachet of the “authentic article” is congealed in the copy. Thus it is that a recent Internet ad from Malaysia offers “high quality” Rolexes, complete with logos, at 40 percent the cost of other unlicensed replicas.42 As this implies, fakes also circulate in a sphere of their own. Common in South Africa and elsewhere is the idea of the “genuine fake,” which, ironically, underscores the
industry in Nigeria. It is estimated to be second only to oil and narcotics in generating foreign currency.

Some of its perpetrators may regard 419 as righteous reparation, reversing the flow that, since the age of slavery, has diverted African assets into European hands (see chapter 7 below). But the scam pervades the Nigerian social fabric, not discriminating among those whom it rips off. It capitalizes on a “crisis of value” precipitated by the boom-and-bust oil economy of the Babangida years—a crisis also discernible in other post-colonies that have suffered structural adjustment, hyperinflation, drastic currency devaluations, and excessive violence (Apter 1999: 298). In disrupting received relations between media and the value they represent, these convulsions unsettle accepted indices of truth (Blunt 2004; chapter 5 below). They open an uncertain space between signifiers, be they omens or banknotes, and what it is they signify: a space of mystery, magic, and uncanny productivity wherein witches, Satan, and prosperity prophets ply an avid trade (see chapter 6 below). Under such conditions, signs take on an occult life of their own, appearing capable of generating great riches. Under such conditions, too, there is little practical difference between real and faux currency.

Forgery also begets forgery, in an infinite regress: witness a fantastic meta-419, in which fake cops “double-dipped” victims by posing as government agents investigating past scams—and by promising, for a fee, to restore their lost funds. Crime itself is frequently the object of criminal mimesis. Counterfeit kidnappings, hijack hoaxes, and bogus burglaries are everywhere an expanding source of profit, to the extent that, in the Cape Province of South Africa, where simulated claims are becoming epidemic, a Zero Tolerance Task Group has been created to put a stop to them. Hibou (1999: 102ff.) adds that, in countries hospitable to the “economics of dirty tricks,” many “official” investigations and initiatives are themselves false, generating a spiral of double-speak in which agents of enforcement, international observers, and donors all become implicated. In the absence of robust political institutions, an intricate tissue of gifts, favors, services, commissions, and rents knits outsiders to insiders in what is sometimes called the “development state”—but is better described as a state of endemic expropriation. Efforts to make foreign aid accountable by introducing tight auditing regimes have offered fresh formulae for fabrication, rendering even more inchoate the line between the forged and the far-fetched, the spirit and the letter of the counterfeit. The fetish and the fake. Each, finally, fades into the other.

Thus, argues Andrew Apter (1999: 300), in Nigeria fetishism has come
to saturate the state itself, yielding a politics of illusion that, more than just front the appropriation of resources by ruling elites, has erected an edifice of “simulated government”: government that concocts false censuses and development schemes, even holds fictitious elections. Bogus bureaucracy, in fact, has surfaced as a pervasive theme in analyses of postcolonial politics. Reno (1995, 2000), for example, speaks of “the shadow state” in Sierra Leone and beyond, in which a realpolitik of thuggery and profiteering is conducted behind a facade of formal administrative respectability; similarly, Bayart, Ellis, and Hibou (1999: 20ff.) stress that, in the “felonious” state, hidden power brokers, dopplegangers of a legitimate civil service, control political and economic life, often ostensibly under the sway of partisan spiritual forces. Shades here again of Derrida’s (1994: 83) “phantom-states,” in which organized crime performs for citizens the functions once provided by government. In these circumstances, the official edifice becomes the counterfeit, predation the reality. Indeed, as James Ferguson (2006: 15) remarks, there is “an abundance of shadows” in recent accounts of African political economy. But not only there. Saddam Hussein’s “shadow state” was said to “defy democracy” in Iraq;47 nocturnal “shadow players” are alleged to thrive where offshore banking meets illegal money laundering in Belize (Duffy 2000); “shadow” business is blamed for thwarting economic growth in Peru.48 Conversely, the fragile peace that currently prevails in Ambon, Spyer (chapter 5 below) says, was made “in the shadow of the law.” Ferguson (2006: 16f.) insists, correctly, that there is more at work here than old colonial archetypes: the trope conveys a contemporary sense of inscrutability. And also a doubling, the existence of parallel worlds of clandestine government, irregular soldiers, and occult economies that revives long-standing talk about “dark” vestiges of the modernist idyll. But shadows, he reminds us, are less dim copies than likenesses, others who are also selves. After all, many have insisted that the vaunted European state is itself as much a chimera as a reality (Miliband 1969: 49; Abrams 1988: 76).

The Shadow and the Thing Itself

The resonance between shadow and counterfeit realities also captures something of the effects of neoliberal deregulation on governance, something evident worldwide but most marked in postcolonies: the unsettling counterpoint between the outsourcing of the state and the usurpation of sovereignty, not least in the realm of policing and warfare. Government, as it disperses itself, becomes less and less an ensemble of bureaucratic institutions, more and more a licensing-and-franchising authority. This, in turn, provides fresh opportunities, at all levels, for capitalizing both on the assets of the state and on its imprimatur. Kickbacks have become a sine qua non of office in many places, countries with sustained cultures of corruption heeding the list. In India, for one, bribes are said to be routine in securing contracts, loans, and handouts, although, as Akhil Gupta (1995: 384) notes, high-level functionaries raise large sums from relatively few clients, while their humbler counterparts collect small amounts from larger constituencies—and hence are more visibly “corrupt.”49 Nothing new, this, for those familiar with politics in cities like Chicago. But in South Asia, Africa, and Latin America, these practices are often disarmingly explicit and unpolicied. To wit, police and customs personnel, especially where their pay is low or unreliable, frequently take part in modes of extraction in which insignias of public position are deployed to raise rents (Blundo and Olivier de Sardan 2001; Reitman 2005: 186). Reports of cops who turn checkpoints into private tollbooths are legion; an Economista team driving in 2002 from Douala, Cameroon, to a town less than five hundred kilometers to the southeast encountered more than forty-seven roadblocks.50 Revenues are also routinely raised by impersonating the state: by putting on counterfeit uniforms, bearing phony identity documents, and deploying other fake accoutrements of authority.51 In like vein, as sovereignty splinters, agents of a motley array of statelike entities, from quasi-corporate religious organizations to militias, find ways of demanding recognition and tribute.

The readiness of ordinary people to exploit the interstices between official and backstage realities, and to seize insignias of authority, may be symptomatic of the tendency under market fundamentalism everywhere to blur the lines separating licit from illicit business. Heightened pressure to make profit, to undercut competition and reduce costs, has spawned ever more complex articulations of “formal” and “informal” production. As a recent account of the construction industry in Miami makes plain, convoluted chains of subcontracting now tie the most reputable firms to traffickers in illegal immigrant labor, building criminality into the very heart of the “American dream business.”52 In the murky world of outsourcing, the informal shades into the illicit, whether it be in hiring undocumented workers, greasing palms, or moving contraband. This reinforces our earlier observation about the dangerous liaisons between north and south, about the ways in which “respectable” metropolitan trade gains by deflecting the risks and moral taint of outlaw commerce “beyond the border.” An increasing proportion of postcolonial enterprise may appear shady and brutal, but it is integral to the workings of the global scheme of things.
embraces a very large population, is not easily separated from lawful, mainstream commerce. What is more, argues André Standing (2005: 1), in impoverished areas, where the legacy of apartheid has been exacerbated by a withdrawal of capital and the state, organized crime may be a “rational” strategy of social survival. While the white bourgeoisie of the city lives a protected, cosmopolitan existence, its underclasses of color must fend for themselves in an environment in which steady incomes are scarce, in which unemployment rates hover around 46 percent, in which 61 percent of those under thirty have no work. Here the illegal sale of drugs, guns, sex, and stolen goods represents a major sector of the market, much of it controlled by an elaborate underworld of gangs and criminal elites that links street to prison populations and reaches deep into the fabric of community life (Steinberg 2004; chapter 4 below). The violent fallout of its enterprise, and its mythic imperviousness to policing, have provoked spates of local vigilantism. But its insouciant druglords, apostrophes of consumption-without-constraint, also enjoy frank admiration. Like the bosses of Brazilian favelas and the big guns of “Cities of God” across the world, they disburse flamboyant philanthropy (Standing 2005: 9). At the same time, “Gangland (Pty) Ltd,” aka Gangland Inc., is a sophisticated, multimillion-dollar business. Supporting a workforce of tens of thousands, its upper levels operate like multinational corporations while its street outlets are said to be run “like 7-Eleven franchises.” Reminiscent of the bush economies of the Chad Basin, its ways and means are treated by those whom it serves as legitimate, as acceptable, that is, in a context in which “transgression [is] the norm” (chapter 7 below). Its organizations, which are known to employ accountants and consultants, invest in legitimate businesses, from hotels and nightclubs to taxis and fisheries—which is how they extend into the underground economy and local governance. Said to trade regularly with Chinese triads and other “mobs” across the globe, they are showing signs, too, of becoming transnational, although they are not as much so yet as, say, Salvadoran youth gangs, notably Mara Salvatrucha (MS-13), which have become a major presence in the cities of the United States (Richter 2005: 8).

The Law, Again

Neoliberalism may have intensified the presence of organized crime in the social and moral fabric of postcolonies. But these polities are by no means “lawless.” On the contrary, as we have suggested and will return to show in some detail, their politics and popular cultures, even their outlaw cultures, are infused with the spirit of the law, a spirit as much the prod-
which they are seen to “crack down” on mythic felons, thereby enacting the very possibility of governance in the face of rampant lawlessness (chapter 8 below; see also Siegel 1998). Mass mediation gives law and disorder a “communicative force” that permits it to “traverse the social field,” to use Rosalind Morris’s terms, appearing to deliver its publics, again and again, from “the “primal confusion between law and lawlessness” on which “all states are founded” (see chapter 2 below).

Law and lawlessness, we repeat, are conditions of each other’s possibility. As a motorcycle-taximann in Cameroon told Janet Roitman (chapter 7): “So that the system can continue to function properly, it’s important that there are people in violation.” Conversely, criminal profits require that there are rules to be broken: without some modicum of border control, there can be no smuggling, just as the legalization of drugs would inevitably reduce their market value. Also, twenty-first-century kleptocrats commit grand larceny as much by deploying legalities—by enacting legislation in order to authorize acts of expropriation—as by evading them (see below). Money, as we have said, is also to be made in the aporias of regulation, perhaps the best examples being the “flex organizations” of the former Soviet bloc, which mobilize shadowy networks that are neither illicit nor licensed and exploit gaps in the penal code to redirect public resources into private hands;

or a range of questionable new cyberoperations that accumulate wealth in the lee of the law, compelling the United Nations to take a lead in subjecting them to international convention.

But the fact that crime demands rules to break, evade, or circumvent in order to be profitable, or that “the system,” à la Durkheim, demands “violators” to sustain itself, or that kleptocrats mobilize legalities to their own nefarious ends, or that money is to be made in the interstices of regulation, only scratches the surface of the dialectic of law and disorder in the post-colony. So, too, does the fact that, when the state tries to deal with perceived threats to public order by judicial means, as Geschiere (chapter 6) shows of witchcraft in Cameroon and South Africa, it merely intensifies fears of disorder. Questions remain: Why has a preoccupation with legalities, and with the legal subject, come to be so salient a dimension of post-colonial disorder and its mass-mediated representation? What is the evidence that it is as ubiquitous as we have asserted? And is it particular to postcolonies? Most importantly, how might all this be related to the rise of a neoliberalism that—in restructuring relations among governance, production, the market, violence—seems to have abetted criminal economies everywhere? To address this clutch of questions, to move beyond the surfaces of the dialectic, let us turn our attention to the fetishism of the law.

The modernist nation-state, it hardly needs saying, has always been erected on a scaffolding of legalities. Not only the modernist nation-state. In classical Greece, too, Hannah Arendt (1998: 194–95) observes, “the laws [were] like the wall around the city”: “Before men began to act, a definite space had to be secured and a structure built where all subsequent actions could take place, the space being the public realm of the polis and its structure the law.” The metaphorical link here between the architectural and the juridical is noteworthy. Thomas Hobbes (1995: 109), whose specter hovers close to the disorderly surfaces of life in the postcolony, was even more explicit: “Laws [are] the walls of government, and nations.” Since the dismantling of the wall that marked the end of the Cold War—and, with it perhaps, the ideological monopoly over the political exercised by the modernist nation-state—law has been further fetishized, even as, in most postcolonies, higher and higher walls are built to protect the properties of lawlessness, even as the language of legality insinuates itself deeper and deeper into the realm of the illicit. “The Law,” upper case again but not now as a Nigerian criminal alias, has become the medium in which politics are played out, in which conflicts are dealt with across otherwise incommensurable axes of difference, in which the workings of the “free” market are assured, in which social order is ostensibly erected and the substance of citizenship made manifest (see chapter 2 below). “Lawfulness,” argues Roger Berkowitz (2005: ii), “has replaced justice as the measure of ethical action” in the world. Indeed, as the measure of a great deal of action beyond the ethical as well.

On Constitutions, Criminality, and Cultures of Legality

Striking, in this regard, is the number of national constitutions (re)written since 1989: roughly one hundred and five, the vast majority of them in postcolonies (Klug 2000). Also striking is the almost salvific belief in their capacity to conjure up equitable, just, ethically founded, pacific polities; this in the midst of the lawlessness that has accompanied laissez faire in so many places. There are now forty-four constitutional courts, the ultimate arbiters of the law and executive propriety; functioning across the planet, from Uganda to the Ukraine, from Chile through Croatia to the Central African Republic, Madagascar to Mongolia, Slovenia to South Africa. Many of them have had to deal with moral panics arising from crime waves, imagined or real, and from the “popular punitiveness” of the age (Bottoms 1995; Haggerty 2001: 197)—not least in respect of capital punishment, for some the ultimate signifier of sovereignty. Many enjoy a great deal of authority: in India, for instance, the highest tribunal in the land became so powerful in the mid-1990s that, according to the Wall Street Journal, it was the effective hub of governance (see below). As Bruce Ackerman (1997: 2, 5) puts it, “faith in written constitutions is sweeping the world,” largely because, in many places, their promulgation marks a “new beginning,” a radical break, at once symbolic and substantive, with the past. And with its embarrassments, its nightmares, its torments. What is more, the “constitutional patriotism” that often accompanies such new beginnings, Paul Blokker (2005: 387) notes in a discussion of Eastern Europe, envisages a democratic “political culture” erected on “popular sovereignty, individual rights, and association in civil society.” Civil society little troubled in its imaginings, we might add, by the criminal violence within its walls.

Even more important than the number of new constitutions drafted over the past two decades is a not-so-subtle change in their content, especially in former colonies. It is a change, David Schneiderman (2000) argues—using Colombia, often said to be the “murder capital of the world,” as a case in point—owed to a global shift in “constitutional design.” The move from a state capitalist model to a neoliberal one is, for him, largely the product of an epochal transformation in the relationship between the economics and politics of market capitalism. Thus, whereas the constitutions promulgated in the decades of “decolonization” after World War II gave little autonomy to the law, stressing instead parliamentary sovereignty, executive discretion, and bureaucratic authority, the ones to emerge over the past twenty years have tended, if unevenly, to emphasize the rule of law and the primacy of rights, even when both the spirit and the letter of that law are violated, offended, distended, purloined.

Take the case of Togo, for instance, whose late president, Eyadema Gnassingbé, came to office in 1963 in a coup. During his reign, in 1992, a new democratic constitution was approved by referendum. Togo also became a member of the Human Rights Commission, in spite of its dubious record in this respect. Although two national elections were held in the 1990s, both were heavily tainted with accusations of fraud and violence. Then, on 5 February 2005, Eyadema suffered a fatal heart attack. The army—which, along with its “clan,” had underpinned his power—replaced him with his son, Faure; the law had been changed in 2002 to admit this possibility, reducing the eligible age of the presidency to thirty-five. Nonetheless, the installation was unconstitutional. The speaker of
parliament ought to have become temporary ruler and elections called within sixty days. But the generals exploited the fact that the man in question, Mbaré Outtara Natchaba, was out of the country—and they made sure he stayed away by sealing the borders. In the circumstances, they could easily have staged a putsch. Instead, the legislature was instructed to dismiss Natchaba and elect Faure in his place, thereby making his accession lawful. The military also insisted that the Constitution be amended to remove the clause requiring elections within two months, which, de jure, made the younger Gnassingbé acting president until the end of his father’s term. It also provided legal language with which to reply to the surrounding West African states that demanded adherence to the Constitution. Faure ruled for twenty days. Still under pressure from neighboring countries, he then resigned and a ballot was scheduled for April. In the midst of this flurry of events, Parliament reversed its constitutional changes, though Faure was not required to stand down. He won the election, ignoring allegations of fraud, and was sworn in on 4 May. Togo, governed by an extended family firm, military strong-arm, and a strangely refracted conception of the Spirit of Law, continues to drape itself in constitutionality.68

This case is interesting not just because Africa has produced so many variants of it, most dramatically, of late, the Mugabe regime in Zimbabwe, which demonstrates ready fluency in the langue of legality—it regularly enacts into law the whims of the president and ruling party—while playing havoc with its parole (see below).69 The Togo story is also telling because, by comparison to post-Soviet Europe and other postcolonial theaters, African nations are commonly said not to show as great a commitment to constitutionalism (see Mbaku 2000: passim; Oloka-Onyango 2001), even as thirty-six of them have produced new constitutions since 1989.70 But that is not our only, or our primary, point here. There are two others.

One, to reiterate, is that the fetishism of constitutionality may be as evident in the breach—in acts of suspension, exception, violation—as it is in contexts in which the Spirit and the Letter of the Law appear to pervade social, moral, and political being. The other is that “constitutional patriotism” also manifests itself, albeit variably, at levels “beneath” that of the state, beyond the horizons of political and legal institutions, across the ordinary axes of civil society. In South Africa, the Constitution—both its content and the found object itself, as aura-infused in its little red-book reproductions as in the original—is the populist icon of nationhood (J. Comaroff and J. L. Comaroff 2003). Possibly because of the particular history of national liberation and rebirth there, citizens, even in the remote reaches of the countryside, even in penitentiaries, have come to speak its text as a lingua franca; this at the same time as they bemoan the criminal violence that imprisons them in their homes and mocks the freedoms conferred by the new democracy (cf., on Brazil, Caldeira 2000: chapter 3 below).

But there is more to the fetishism of the law than merely an enchanted faith in constitutions. As the essays below make plain, a “culture of legality” seems to be infusing the capillaries of everyday life, becoming part and parcel of the metaphysics of disorder that haunts all postcolonies (see chapter 6), if in variable measure. In rural north India, to take one instance, villagers discuss the penal code in agonizing detail as they argue over the legality of the behavior of local officials who routinely “circumvent” normal procedures (Gupta 1995: 375). The term itself—“culture of legality”—appears in a recent initiative of the Mexican Ministry of Education as the cornerstone of its new “citizenship education program.”71 It is also the rationale behind a game for children and teachers in Sicily, mythic home of northern banditry. Called, yes, Legalopoli, its object is to promote “the diffusion of [a] culture of legality.”72 Even Vatican scholars have been intoning the phrase: in February 1998, Jubilaeum carried, as its opening contribution, an essay with the title “A Strong Moral Conscience for a Culture of Legality” (Torre 1998). A new chapter in the “judicial experience has been opened,” it declared, one we might “call the ‘rights of [individual] desires’. . . [T]he emancipation of rights is a phenomenon in expansion, easily seen by anyone.”

Whether this is true or not, there has certainly been an explosion of law-oriented nongovernmental organizations in the postcolonial world: lawyers for human rights, both within and without frontiers; legal resource centers and aid clinics; voluntary associations dedicated to litigating against historical injury, for social and jural recognition, for human dignity, and for material entitlements of one kind or another. Situated at the intersection of the public and the private, nongovernmental organizations of this sort are now commonly regarded as the civilizing missions of the twenty-first century. They are asserting their presence over ever wider horizons, encouraging citizens to deal with their problems by legal means. The upshot, it seems, is that people, even those who break the law, appear to be ever more litigious, sometimes with unforeseen consequences for states and ruling regimes. In South Africa, as we write, a plumber convicted of drunk driving is demanding $167,000 in damages from three cabinet ministers and the commissioner of Correctional Services for holding him in custody when, he says, by rights they should have had him in rehabilitation.73 And two well-known alumni of the liberation struggle,
the national chair and the secretary of the Umkhonto weSizwe Military Veterans Association (MKMVA), announced in 2005 that they would seek a high-court interdict against two others who had claimed to be elected officials of the organization and had entered financial deals, fraudulently, in its name. In times past, this kind of conflict among the African National Congress elect would have been fought out by more conventional political means, less by using the law and its brach as their weapons of combat. But then, in times past, the MKMVA would not have been a thoroughly neoliberal organization, as much an investment holding company for its members as a commons for guerilla heroes.74

The global impact of legal nongovernmental organizations on postcolonial consciousness is such that it is not uncommon nowadays to hear the language of jurisprudence in the Amazon or Aboriginal Australia, in the Kalahari or the New Guinea highlands, or among the homeless of Mumbai, Mexico City, Cape Town, and Trench Town. Spyer (chapter 5) notes for Ambo that, even where all means of enforcement are absent, there may be “a genuine regard for the law” and “repeated appeal to the judiciary” to restore order. Postcolonies, in sum, are saturated with self-imaginings and identities grounded in the jural, even in places in which trafficking outside it is as common as trafficking within it—presuming, of course, that the distinction can be made at all. In Nigeria, for instance, where the fetishism of the legal has very different parameters than in constitution-obsessed South Africa, the tax code requires that adult citizens must swear to having children and aged dependents to obtain family deductions. Everyone, it is said, claims the maximum number, whether they have them or not. And every bureaucrat, it appears, is aware that they do so. The infractions go unprosecuted and nobody is self-abnegating enough not to take advantage of the fact. But the legal fiction, indeed a whole plethora of legal fictions, is sustained as though a perfectly ordinary judicial order exists;75 faint traces here of 419, which also mimics, disdents, and mocks the form and substance of fiscal law.

The Judicialization of Politics: From Liability to Lawfare

It is not just self-imaginings, interests, identities, rights, and injuries that have become saturated with the culture of legality. Politics itself is migrating to the courts—or to their popular, even criminal, replicas. Conflicts once joined in parliaments, by means of street protests, mass demonstrations, and media campaigns, through labor strikes, boycotts, blockades, and other instruments of assertion, tend more and more—if not only,
south, the politics of health being among the most significant issues of mass public concern across much of the postcolonial world (Robins 2004; J. Comaroff, forthcoming). In a single year it involved, among a bewildering fall of suits, threatened suits, lawmaking, lawbreaking, and challenges to the global intellectual property regime: (1) litigation initiated—and aborted under pressure—by the Pharmaceutical Manufacturers’ Association of South Africa, representing subsidiaries of thirty-nine multinational corporations, against the South African government over its Medicines and Related Substances Control Amendment Act 90 of 1997, which set aside the complainants’ patents; (2) the intervention in that suit, via an amicus (“friend of the court”) brief, of the Treatment Action Campaign (TAC), which, along with trade unions, OXFAM, Médecins sans Frontières, and others, pronounced the outcome a major political victory over the market; (3) mock murder trials—an especially provocative genre of street theater in the circumstances—held by advocacy groups in front of the US headquarters of GlaxoSmithKline (GSK) and Bristol-Myers Squibb; (4) formal complaints made, and later dropped, by the United States to the World Trade Organization against Brazil, which had used its patent and trade laws first to manufacture its own drugs and then to pressure Roche to reduce the price of Nelfinavir by 40 percent; 5 threats of legal action on the part of GSK against Cipla Ltd., the Indian generic drug producer, for selling an inexpensive version of Combivir in Africa; (6) a successful court action by TAC against the South African government, whom it had supported earlier against the pharma, to enforce the “rollout” of anti-retrovirals; and (7) a campaign by the Affordable Medicines and Treatment Campaign in India to enshrine access to medicines as a fundamental human right in the constitution. Even before all this, the TAC leadership had flagrantly smuggled generics into South Africa, challenging the state to prosecute it, thus to open up a site of confrontation over the politics of “bare life” and the entitlements of citizenship. Throughout the entire chain of events, conventional politics was limited to threats by the US administration, which colluded with the drug companies, and protests by advocacy groups under the “Lilliput Strategy”—itself orchestrated by the World Social Forum, which is dedicated to “globalization from below” to resist the planetary expansion of neoliberalism. 6 Both interventions, though, were intended to influence the legal proceedings in play: the law was the instrument connecting political means to political ends on all sides.

The history of AIDS drugs notwithstanding, the judicialization of politics has been mobilized effectively by corporate capitalism to create a deregulated environment conducive to its workings—and, at times, to protect some of its more equivocal operations from scrutiny. But, as we have already intimated, it has also been deployed at the nether end of the political spectrum by the “little” peoples and marginal populations of the world. Some of those deployments have been intended to stop harmful intrusions into their lives. Others have sought restitutions for damages arising out of egregious acts of violence against them: witness Nancy Schepers-Hughes’s (chapter 4) account of the efforts of ordinary people and activists in the Northeast Brazilian interior to take a stand against death squads by invoking constitutinal and human rights; or the civil proceeding against Plustop in 2002 by the Inter-ethnic Association for Development of the Peruvian Amazon to demand the cleanup of, and compensation for, an oil spill in the Marañon River; or the class actions filed by 16,000 or so alumni of Indian boarding schools in Canada against the Anglican, Presbyterian, Roman Catholic, and United Churches, alleging physical, sexual, and cultural abuse. 7 While most such suits arise out of an originary act of criminal violation, not all of them are directed primarily at reparation. The effort in 2001 by relatives of those killed by the Israelis at Shatila to indict Ariel Sharon for war crimes was intended as a volley fired in the struggle against Zionism, itself seen by its opponents as a crime against humanity. Many, although not all, such cases have failed. The Ogoni, for one, lost a landmark claim brought in the United States under the Alien Tort Claims Act against Shell for its activities in Nigeria, in particular for its complicity in the execution by the Babangida regime of those politically opposed to the operations of the oil company. The law often comes down on the side of bandit capital, especially when the latter dons the mask of respectable business. 8

It is not just the politics of the present that is being judicialized. The past, too, is increasingly caught up in the dialectic of law and disorder: hence the mobilization of legalities to fight anti-imperialist battles anew, which has compelled the British government to answer under oath for having committed acts of unspeakable atrocity in its African “possessions” (D. Anderson 2005; Elkins 2005), for having killed local leaders at whim, and for having unlawfully alienated territory from one African people to another. By these means is colonialism, court, rendered criminal. Hauled before a judge, history is made to break its silences, to speak in tongues hitherto unheard and untranslated, to submit itself to the scales of justice at the behest of those who suffered it, of its most abject subjects—and to be reduced to a cash equivalent, payable as the official tender of damage, dispossession, loss, trauma. In the process, too, it becomes
clear that what imperialism is being indicted for, above all, is its commission of lawfare: its use of its own rules—of its duly enacted penal codes, its administrative law, its states of emergency, its charters and mandates and warrants, its norms of engagement—to impose a sense of order upon its subordinates by means of violence rendered legible, legal, and legitimate by its own sovereign word. And also to commit its own ever-soci- civilized, patronizing, high-minded forms of kleptocracy.

Lawfare—the resort to legal instruments, to the violence inherent in the law, to commit acts of political coercion, even erasure (J. L. Comaroff 2001)—is equally marked in postcolonies, of course. As a species of political displacement, it becomes most readily visible when those who act in the name of the state conjure with legalities to act against some or all of its citizens. Any number of examples present themselves, but the most infamously contemporary is, again, to be found in Zimbabwe. The Mugabe regime has consistently passed laws in parliament intended to silence its critics and then has proceeded to take violent action against them; the media regulations put in place just after the presidential election of 2002 are a case in point. Operation Murambatsvina (“Drive out Trash”), which has razed informal settlements and markets, forced people out of urban areas, and caused a great deal of hardship, ill-health, and death under the banner of “slum clearance,” has recently taken this practice to unprecedented heights—or depths. The most persuasive explanation for the operation, says Allister Sparks,86 is that it is, first, an act of vengeance against urban Zimbabweans who voted overwhelmingly for the opposition Movement for Democratic Change in the national election of March 2005; second, an attempt to preempt uprisings on the part of a largely out-of-work population desperately short of food and fuel; and, third, a strike against the black market that has arisen in the informal sector to trade in the foreign currency sent back by citizens laboring abroad. Murambatsvina, according to the Mugabe regime, is merely an application of the law of the land: it is a righteous effort to demolish “illegal structures.” For critics, on the other hand, it is not that at all. As one Caribbean journalist put it, in a phrase especially apt here, it is “political criminality.”87 Note, in this respect, how the Zimbabwean embassy in Jakarta responded to a censorious piece in an Indonesian newspaper:

The rapid development of illegal informal small-scale industries, trading centers and outbuildings in all the cities and towns had destroyed the status of these urban centers and outstretched the capacity of the municipalities to provide adequate services. The inability of the urban local authorities to levy

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most of the illegal vendors created an untenable situation that victimized everybody, including the licenced traders. Many illegal activities such as the hoarding of basic commodities and dealing in gold and foreign currency were thriving in the illegal informal sector. Over 22,000 people have been arrested for various offenses during the ongoing exercise. . . . The court also ruled that most of the structures were illegal as the owners did not follow the set approval channels with the respective local authorities.89

The word “illegal” appears five times in this passage.

Lawfare can be limited or it can reduce people to “bare life”; in some postcolonies, it has mutated into a deadly necropolitics with a rising body count (see chapter 9). But it always seeks to launder brute power in a wash of legitimacy, ethics, propriety. Sometimes it is put to work, as it was in many colonial contexts, to make new sorts of human subjects; sometimes it is the vehicle by which oligarchs seize the sinews of state to further their economic ends; sometimes it is a weapon of the weak, turning authority back on itself by commissioning the sanction of the court to make claims for resources, recognition, voice, integrity, sovereignty.89 But ultimately, it is neither the weak nor the meek nor the marginal who predominate in such things. It is those equipped to play most potently inside the dialectic of law and disorder. This, to close a circle opened in the preface, returns us to Derrida, Agamben, and Benjamin: to the notion that the law originates in violence and lives by violent means, the notion, in other words, that the legal and the lethal animate and inhabit one another. Whatever the truth of the matter, politics at large, and the politics of coercion in particular, appear ever more to be turning into lawfare.

But this still does not lay to rest the questions that lurk beneath our narrative, although it does gesture toward some answers: Again, why the fetishism of legalities? What are its implications for the play of law and disorder in the postcolony? And what, if anything, makes postcolonies different in this respect from other nation-states?

Of Heterodoxy, Commensuration, Camera Obscura, and Horizontal Sovereignties

At one level the answer to the first question looks to be self-evident. The turn to law, like the popular punitiveness of the present moment (see above), would seem to arise directly out of a growing anxiety about lawlessness; although, as we have already noted, more law, far from resolving the problem of disorder, draws attention back to rising criminality, further compounding public insecurities. But none of this explains the
displacement of the political into the legal, the ready turn to civil proceedings to resolve an ever greater range of private wrongs, and so on. To be sure, the fetishism of the law runs far deeper than purely a concern with crime. It has to do with the very constitution of the postcolonial polity. And its history-in-the-making. The modernist nation-state appears to be undergoing an epochal move away from the ideal of an imagined community founded on the fiction, often violently sustained, of cultural homogeneity (B. Anderson 1983), toward a nervous, xenophobically tainted sense of heterogeneity and heterodoxy. The rise of neoliberalism has heightened all this, with its impact on population movements, on the migration of work and workers, on the dispersion of cultural practices, on the return of the colonial oppressed to haunt the cosmopolites that once ruled them and wrote their histories, on the geographical redistribution of sites of accumulation. These effects are felt especially in former colonies, which were ejected from the first on difference, itself owed to the indifference of empires that paid scant attention to the organic sociologies of the “countries” they casually called into being. In the event, as is increasingly the case everywhere, postcolonials are citizens for whom polymorphous, labile identities coexist in uneasy ensembles of political subjectivity. In many postcolonies, the “vast majority . . . principally think of themselves” as members of “an ethnic, cultural, language, religious, or some other group” and “attach their personal fate” to it, rather than to the nation, although this does not necessarily imply that most of them “reject their national identity” per se (Gibson 2004: chap. 2). Indeed, so-called communal loyalties are frequently blamed for the kinds of violence, nepotism, and corruption said to saturate these societies, as if cultures of heterodoxy bear within them the seeds of criminality, difference, disorder.

But an awareness of difference itself also points the way to more law. Why? Because, with the growing heterodoxy of the twenty-first-century polity, legal instruments appear to offer a ready means of commensuration (J. Comaroff and J. L. Comaroff 2000): a repertoire of more or less standardized terms and practices that permit the negotiation of values, beliefs, ideals, and interests across otherwise-impermeable lines of cleavage. Hence the displacement of so much politics into jurisprudence. Hence the flight into constitutionalism, which, in its postcolonial guise, embraces heterogeneity within the language of universal rights—thus dissolving groups of people with distinctive identities into aggregates of persons who may enjoy the same entitlements and enact their difference under the sovereignty of a shared Bill of Rights. Furthermore, because social, spiritual, and cultural identities tend increasingly to cross frontiers, resort to the

jural as a means of commensuration also transcends nation-states, which is why there is so much talk nowadays of global legal regimes. Meanwhile, the effort to make human rights into an ever more universal discourse, and to ascribe ever more authority to it, gives impetus to the remapping of the cartography of jurisdictions.

While the growing salience of heterodoxy has been partly responsible for the fetishism of the law, another consideration is every bit as critical. It arises from a well-recognized corollary of the neoliberal turn, one spelled out earlier: the outsourcing by states of many of the conventional operations of governance, including those, like health services, incarceration, policing, and the conduct of war, integral to the management of “bare life.” Bureaucracies do retain some of their old functions, of course, most notably the transfer of public wealth into private hands. But progressively (or, depending on ideological orientation, retrogressively), twenty-first-century governments have attenuated their administrative reach, leaving more and more routine political action—be it social projects, the quest for redress, or the search for (anything other than national) security—to citizens as individuals, as communities of one kind or another, as classes of actor, social or legal. Under these conditions, in which the threat of disorder seems everywhere imminent, everywhere proportional to the retraction of the state, civil law presents itself as a more or less effective weapon of the weak, the strong, and everyone in between. This, in turn, exacerbates the resort to lawfare. The court has become a utopic institutional site to which human agency may turn for a medium in which to achieve its ends—albeit sometimes in vain, given the disproportion everywhere between populist expectations of legal remedy and, law-oriented non-governmental organizations notwithstanding, access to its means. This is all the more so in postcolonies, where bureaucratic apparatuses and bourgeoisies were not elaborate to begin with; where the executive was typically unapproachable; in which heterogeneity was undeniable from the start, often without the requisite instruments; in which state control over the means of violence was never that firm; in which foreclosed access to power makes Liliputian crusades into foreign jurisdictions very appealing.

Put all of these things together and the fetishism of the law seems overdetermined. So, too, do its implications. The distillation of postcolonial citizens into legal subjects, and postcolonial politics into lawfare, charts the road from the past to the future, albeit less sharply in some places than in others. Not only are government and public affairs becoming more legalistic, but so are “communities” within the nation-state—cultural communities, religious communities, corporate communities, resi-
dential communities, communities of interest, outlaw communities—in regulating their own internal affairs and in dealing with others (see chapter 6). Everything, it seems, including the metaphysics of disorder, exists here in the shadow of the law (see chapter 5), which also makes it unsurprising that a “culture of legality” should saturate not just civil order but also its criminal undersides, its camera obscura, and the ambiguous, gray, alegal zones that infuse both, drawing them together into an intricate weave of practices, relations, and mediations (see chapter 7).

In a previous section, we spoke of the ways in which criminality appropriates, recommissions, and counterfeits the means and ends of polite society, of the state, of the market. Recall Gangland (Pty) Ltd. on the Cape Flats: organized crime there is not just a mirror image of the business world, a lumpen stand-in for those excluded from the service economy. For its consumers and customers, it also takes on some of the positive functions of government, not least the safety and security of its taxed client communities. Illicit corporations of this sort across the postcolonial world—loosely dubbed “mafias” and “gangs” but frequently much more complex, flexible structures than these terms suggest—often appoint shadow judicial personnel, duplicate legal rituals and processes, and convene courts to try offenders against the persons, property, and social order over which they exert sovereignty. Even in prison. Observe, in this regard, Steinberg’s (2004) extraordinary account of the elaborate mock judiciary and its even more elaborate proceedings, which extend to capital punishment, among the Numbers gangs in South Africa. Many outlawed “vigilante” groups have developed quite complicated simulacra of the law as well. Some even have… constitutions and, significantly, are said to offer “alternative citizenship” to their members.91

It will be self-evident that the counterfeiting of a culture of legality by the criminal underworld—and by those who occupy the spaces between it and the realm of the licit—feeds the dialectic of law and disorder. After all, once government begins seriously to outsource its services and to franchise force, and once extralegal organizations begin to mimic the state and the market by providing protection and dispensing justice, social order itself becomes like a hall of mirrors: at once there and not there, at once all too real and a palimpsest of images, at once visible, opaque, and translucent. What is more, this doubling, this copresence of law and disorder, has its own geography, a geography of discontinuous, overlapping sovereignties.

We stated a moment ago that, with the proliferation of a culture of legality and the burgeoning resort to lawfare, “communities” of all kinds have become ever more legalistic in regulating their internal lives and in dealing with others; it is often in the process of so doing, in fact, that they become communities at all, the act of judicialization being also an act of objectification. Herein lies their will to sovereignty. Without joining the conversation occasioned by the revivification of interest in the work of Carl Schmitt on the topic, we take the term “sovereignty” to connote the more or less effective claim on the part of any agent, community, cadre, or collectivity to exercise autonomous, exclusive control over the lives, deaths, and conditions of existence of those who fall within a given purview, and to extend over them the jurisdiction of some kind of law (see Hansen and Stepputar 2005). Sovereignty, pace Agamben (2005), is as much a matter of investing a world with regulations as being able to suspend them, as much a matter of establishing the normative as determining states of exception. Any sovereignty, even if it is a criminal counterfeit, depends also on the institution of an order of rules in order to rule. “Lawmaking,” argues Benjamin (1978: 295), “is power making, and, to that extent, an immediate manifestation of violence.” But “power [is] the principle of all mythical lawmaking.” In sum, to transcend itself, to transform itself into sovereign authority, power demands at the very least a minimal architecture of legalities—or, once again, their simulacra.

Because of their historical predicaments, postcolonies tend not to be organized under a single, vertically integrated sovereignty sustained by a highly centralized state. Rather, they consist in a horizontally woven tapestry of partial sovereignties: sovereignties over terrains and their inhabitants, over aggregates of people conjoined in faith or culture, over transactional spheres, over networks of relations, regimes of property, domains of practice, and, quite often, over various combinations of these things; sovereignties longer or shorter lived, protected to a greater or lesser degree by the capacity to exercise compulsion, always incomplete. Note, in this respect, Arendt’s (1998: 234) observation that “sovereignty, the ideal of uncompromising self-sufficiency and mastership, is contradictory to the very condition of plurality”—plurality, patently, being the endemic condition of the postcolony. It is also why so many postcolonial polities appear to be composed of zones of civility joined by fragile corridors of safety in environments otherwise presumed to be, literally, out of control. Those zones and corridors are, to return to Thomas Hobbes, the “walled” spaces of sovereign legality, mondo juralis, in the patchwork geography that maps out the dialectic of law and order in the postcolony, the patchwork that makes human life habitable in a universe represented, archetypically, as at once ordered and umuly. And always just one step away from implosion.
Postcolonies in Perspective:  
Taking Exception to Exceptionalism

Which brings us, finally, to the question of exceptionalism. Is the criminal violence archetypically attributed to “the” postcolony all that singular these days? Is the fetishism of the law in the south any different from that found in the north? And what of the dialectic of law and disorder? Is it confined purely to the postcolonial world? Geschiere (chapter 6), who thinks not, suggests that the point of posing the question is not just to understand postcolonies better but to subject to critical scrutiny tendencies otherwise taken for granted “in the supposedly modern countries” of the global north. His point is well taken.

One way to answer the question is to turn to the empirical for counter examples. There is plenty of evidence that the countries of Africa, for example, are more similar to than different from, say, Russia. In 1999 the Economist anointed that country, not Nigeria, the “world’s leading kleptocracy.” Crime there, it went on, “is not at the margin of society, it is at its very centre.”92 Consider the reported facts: the Russian underworld controls 40 percent of the economy and half of the nation’s banks and is famous for its export of the arts of assassination; corruption and money laundering flourish largely unchecked, to the extent that 78 percent of all enterprises report that they regularly pay bribes;93 state personnel, especially the likes of customs officers, are constantly on the take; many thugs don fake uniforms to become counterfeit security personnel; “new organized crime,” increasingly advanced in its business practices, preys on the private sector — and when the state will not help collect debts, secure businesses, or provide public services, it offers those very services at a competitive price. At the same time, while vast amounts of wealth flow through a “shadowy netherworld,” the “structures and values of legality are in place,” and “even the most corrupt politicians pay lip service” to them.94 Sound familiar? There is one difference, though. If the Economist is to be believed, the United States, quick to point to corruption in Africa when loans and aid do not reach their intended recipients, has long turned a blind eye to similar things in Russia, typically for political reasons.

Or, if Russia is set aside as itself postcolonial, which is implausible given that it was until recently the imperium of the second world, Germany offers a salutary alternative. Often vaunted as the very epitome of corporate respectability, that country has been rocked by revelations of a “virus of corruption — not only in officially protected niches or in the profit-crazy milieu of stock exchange brokers, but everywhere.”95 Echoes here of Enron and epidemic corporate malfeasance in the United States.

This, of course, is not to suggest that Russia is just like Rwanda or Germany just like Guatemala or the United States just like the Ukraine. But it does point to the fact that, across the planet and often in the most unlikely places (Sweden, the Netherlands, Japan, England, and Canada, among others), there is growing anxiety, even moral panic, over rising malpractice, crime, and disorder — which has led to calls for more law, harsher enforcement, longer sentences, even citizen militias, and, in turn, especially as media attention focuses on these things, to yet more fear. Nor is that fear altogether groundless. Conservative theorist John Gray (1998) and others have argued that the downside of neoliberalism is an escalation in global incidences of lawlessness, due in part to the retraction of the state, in part to opportunities for outlaw activity arising out of deregulation and new business practices, in part to the ready market for the means of violence. All of which conduces, as in postcolonies, to a widening populist impression that the line between order and disorder is very fine indeed.

This impression was given prima facie support in the United States during the late summer of 2005 by the looting and shooting in New Orleans that followed Hurricane Katrina, much of it perpetrated by victims left resourceless, unsaved, and unserviced by a regime whose president’s first reaction, as the wealthy fled in their luxury vehicles, was to urge the poor to “take responsibility” for their situation. Having little alternative, many of them did. The repeatedly televised scenes, underscored by the slow reaction of the state, left embittered Americans gazing upon Louisiana in incredulity, confessing that what came to mind amid the scenes of destitution and violence were familiar pictures of . . . Africa. Complete with what were quickly called “refugees.” The United States had come face to face with the reality that it, too, looks more than a little postcolonial: that it has its own “south,” a racialized world of the poor, excluded and criminalized. In a striking reversal, South Africans likened “apocalyptic, devastated, benighted” New Orleans to Rwanda — and admonished themselves not to become “like that.”96

But might this not be an exceptional event? Is Gray correct in claiming that there is more lawlessness everywhere? According to Barclay and Tavares (2003: 2), whose statistics come from the British Home Office, both robbery and crimes of violence did increase sharply across the world between 1997 and 2001: the former by 24 percent in Europe and a whopping 128 percent in Japan, the latter by 22 percent in Europe (50 percent in France, 35 percent in the Netherlands, and 26 percent in England and Wales) and 79 percent in Japan; and this does not include Internet criminality, which, according to a widely disseminated study done at Carnegie
Mellon University, is effecting a “profound change” in the nature and proportions of lawlessness as “cyberextortion” is added to the “digital Mafia's bag of tricks.” But here is the thing: in the United Nations “grand total of recorded crime” for 2000, which includes both violent and nonviolent offences, the ten leaders were New Zealand (at 11,152 felonies per 100,000 head of population), Dominica (10,763.01), Finland (10,242.8), England and Wales (9,766.73), Denmark (9,449.78), Chile (9,275.91), the United States (8,517.19), the Netherlands (8,211.54), Canada (8,040.65), and South Africa (7,997.06). While these counts have to be read skeptically (many nations do not submit figures and the reliability of those that are submitted are hardly beyond question), seven of the most crime-ridden reporting countries are not postcolonies, conventionally speaking. Moreover, in all of these nation-states, organized crime also appears to be extending its compass, reaching deeper and deeper into the inner cities of the United States and Europe (see Venkatesh 2000), becoming ever more sophisticated in its commercial practices, consolidating its spectral forms of governance in the mediated image of the rule of law—and doing ever more business with licit corporations and political cadres.

Given these facts and figures, it is not hard to conclude, as so many around the world have done, that the likes of the United States and the nations of Europe are themselves rife with corruption, even if they are more skilled than their postcolonial counterparts at hiding their questionable practices in a skein of lawfulness. After all, the first election of the current US president, determined not by popular franchise but by a nepotistic intervention and an ideologically stacked Supreme Court, was far from the epitome of political propriety; and his subsequent conduct of domestic and foreign policy to the express benefit of American capital—indeed, of cronies and corporations closely associated with his power base—appears to legalize by sovereign fiat precisely what is dubbed “corrupt” elsewhere. Thus is exception compounded of deception and extraction; not surprisingly, in Africa, where might does not always deceive as successfully, joking analogies are often drawn between Mr. Bush and Mr. Mugabe. Similarly in England, the Conservative governments of Margaret Thatcher and John Major were rocked by serial scandals, not least as they sold off public assets to wealthy Britons for a song and as one parliamentarian after another was revealed to have broken the law; the Labour government that followed has been shown less than honest in taking the country to war. As David Hall (1999) notes, speaking of the “more mature systems” of corruption in Europe: “recent years have seen leading politicians prosecuted and convicted of corruption in many Western European countries, includ-

ing Austria, Belgium, France, Germany, Italy, Spain and the UK. In 1999, the entire European Commission, the highest political authority in the EU, resigned over corruption allegations. . . . According to a BBC radio program, bribery is so routine that UK companies employ agents to recover bribes which have failed to produce the desired result.”

It is hardly unexpected, then, that statepeople and politicians the world over, not just in postcolonies, have become figures of ill-repute, suspected or proven, that multinational companies are widely presumed to be complicit in their webs of deceit, that the line between licit business and the practices of organized crime are often difficult to tell apart; or that, just as the former bleeds into the latter, the latter tends more and more to counterfeit the former. In the final analysis, it is impossible to know whether or not there is as much bribery, violent crime, and organized lawlessness in the north as there is in the south. Apart from all else, official statistics of corruption, especially when they serve authority, often hide as much as they disclose. And, in any case, many things taken to be signs of graft in postcolonies—like massive “contributions” to politicians paid by interested businesses and individuals, or the blatant distribution of the spoils of warfare and power among political elites—are “lawful” activities in the north, where they are covered by the chaste clothing of an accountability culture. But, as we have seen, the south often takes the rap for shady collaborations: a bribe is often a “commission,” a “finder’s fee,” or a “consultation fee” in “the supposedly modern countries of the West.” The point? That many of the practices quintessentially associated with postcolonies are not confined to them. They are discernible elsewhere as well, if not perhaps as acutely or as vividly—or living under a legal alias.

This is true, too, of the other side of the dialectic of law and order, the culture of legality and the judicialization of politics. The non-postcolonial world, under the impact of neoliberalism, also appears more litigious than ever before; the United States, which used to be far ahead of everyone else in this respect, is becoming increasingly average. The readiness of Europeans to act first and foremost as legal subjects and to engage in lawfare is being exacerbated by the kind of market fundamentalism that makes the consuming citizen the guardian of her or his own well-being. But there is another consideration here, too. The growing heterodoxy of most nation-states, not only of postcolonies, has encouraged peoples of difference everywhere to protect their rights and entitlements by appeal to the one institution designed to deal with those rights: the courts. As we have noted, many of them are demanding to regulate their own affairs, frequently by recourse to their own tribunals under their own authorities. The struggle
over Muslim headscarves in France, the effort of religious Jews in Manchester to constitute a Pale, and the growing assertions of autonomy by First Peoples in Canada and the United States are tokens of an even more familiar type. In the north, where the centralization of authority in the state has a longer and more elaborate history, a single, vertically integrated sovereignty may still continue to hold sway, preventing the politics of recognition from giving way to the sedimentation of horizontal, partial sovereignties—except in criminal enclaves and in inner cities, over which policing has as little purchase as it does in any postcolonial context. Yet the pressure to spin off into horizontal sovereignties, as Russia knows from its experience in Chechnya, seems to be becoming more and more insistent, particularly at the behest of religious and ethnonationalist movements, organized crime, multinational corporations, nongovernmental organizations, and other disparate forces in the world that seek the greatest possible independence in a deregulated universe. It is as if the south, again reversing the taken-for-granted telos of modernity, is the direction to which points the signposts of history unfolding.

The dispersal of politics into the law is also readily discernible in the north. The U.S. case is legend. Perhaps its most flagrant instance is the appointment of justices to the Supreme Court: in spite of right-wing rhetoric against judicial activism, the Republican Party has, since the Reagan years, sought to stack the Court in order to have the bench institutionalize conservative ideology in such a way as to put it beyond the reach of formal politics, which is the most effective political act of all. The GOP has also turned to the legislature, most notably in the Terry Schiavo “right-to-die” case in 2005, in efforts to force the judiciary to do its bidding, not least in matters of faith. Such things, patently, are not confined to America. Most Italians, for example, have long believed that Sergio Berlusconi has used “his iron majority in Parliament to pass custom-made laws to resolve legal problems related to his business empire.” But, as in the postcolony, the law is also a site and an instrument of politics from the bottom up. Take, in the United States again, labor and welfare: with the weakening of labor associations and social services, the global market in cheap, unregulated work, and other effects of laissez faire, there has been a huge growth of suits against government agencies arising out of employment conditions and welfare provision, so much so that the state of Washington, for one, finds it difficult to purchase liability insurance anymore.

There are many other sites of political contestation through litigation “from below.” One concerns the place of religion in society, the object of numerous legal actions. A couple of years back, to take an unusual in-

stance, George W. Bush was sued in a Texas court by a certain Douglas C. Welsch, a prison inmate, who alleged that, as state governor, he had violated the constitution by turning the pastoral care of the penitentiary over to the Prison Fellowship Ministry, thereby deliberately advancing evangelical Christianity over other faiths or no faith at all; the dialectic of law and disorder has its own moments of divine irony. Gender equality, rights to sexual freedom and gay marriage, abortion, environmental protection, capital punishment, and the politics of race have also had many days in the courts of the north, all the more so since the public contexts in which they may be effectively fought out seem constantly to recede.

In sum, the similarities between the postcolony and the world beyond it are unmistakable. Everywhere these days, criminal violence has become an imaginative vehicle, a hieroglyph almost, for thinking about the nightmares that threaten the nation and for posing “more law and order” as the appropriate means of dealing with them. And everywhere the discourse of crime displaces attention away from the material and social effects of neoliberalism, blaming its darker underside on the evils of the underworld. But the differences are also palpable. There is no question that the dialectic of law and disorder appears inflated, and more dramatically visible, in postcolonial contexts. In those contexts, the dispersal of state authority into patchworks of partial, horizontal sovereignties is far more advanced, although the devolution of governance is beginning to become more palatable in the north as well. Partly because of their colonial history, partly because they inherited political institutions ill-suited to their contemporary predicament (see Davidson 1992), partly because of the unequal effects of structural adjustment (see Hansen and Stepputat 2005), disorder seems more threatening, more immanent, more all-encompassing in them.

As this suggests, postcolonies are hyperextended versions of the history of the contemporary world order running slightly ahead of itself (J. Comaroff and J. L. Comaroff 2003). It is the so-called margins, after all, that often experience tectonic shifts in the order of things first, most visibly, most horrifically—and most energetically, creatively, ambiguously. Nor are we speaking here of a period of transition, a passing moment in the life and times of the postcolony, a moment suspended uneasily somewhere between the past and the future. This is the ongoing present. It is history-in-the-making. Which is why the “problem” of lawlessness, itself just one half of the dialectic of law and disorder, is so much more than merely a corollary of democratization, whose own recent Renaissance seems suspiciously correlated with the migration of politics away from conventional
political institutions. And why, as we said in the preface, "the" postcolony has become such a crucial site for theory construction, sui generis. To the extent that they are harbingers of a global future, of the rising neoliberal age at its most assertive, these polities are also where the limits of social knowledge demand to be engaged.

Notes

We would like to thank Lisa Wedeen and Jeremy Jones for their astute feedback on this chapter.

1. Gross comparative statistics for the past few years—to be very skeptically regarded, of course—point to substantial increases across the world in both property crimes and crimes of violence (see J. Comaroff and J. L. Comaroff 2006), a matter to which we return below.

2. The term "futilitarian" is our own (J. Comaroff and J. L. Comaroff 1999). It is meant to capture the odd mix of postmodern pessimism and utilitarianism that followed the neoliberal turn, wherever the promise of post-Cold War plenty—to be delivered by the triumph of the free market—gave way to growing poverty at the hands of so-called structural adjustment.


4. See preface; also below. We have in mind here Derrida 2002 and Agamben 1998.

5. For discussion of the periodization of postcolonial history after World War II, see Bhabha and Comaroff 2002.

6. “Brave Neo World” is a term that we have used elsewhere in respect to postcolonial South Africa (J. L. Comaroff and J. Comaroff 2004) and revisit in the subtitle of a book currently in preparation (forthcoming).

7. Note, in this respect, Bayart’s (1986: 111) conception of civil society less as a thing than as a process whose object is to “counteract the ‘totalisation’ unleashed by the state.”

8. For a wide-ranging discussion of the quest for “civil society” in what were then still called the “second” and “third” worlds, see, e.g., Woods 1992; Bayart 1993; Blaney and Pasha 1993; Fatton 1995; Monga 1996; Owusu 1997; Haynes 1997; Harbeson et al. 1994; Chabal 1996; Kazir 1998; Hann and Durn 1996. Hall and Trennmann’s (2004) recent compendium also offers a broad spectrum of conceptual writings on the topic.

9. The United States is not the only state to exercise coercion of this kind. James Copnall (2005: 26) reminds us that, in 1990, the move toward democracy in Francophone Africa was “encouraged” by France when, at a summit at La Baule, President Mitterand told assembled leaders that “only those who opened their countries up to multiparty politics would continue to receive lavish aid packages.”

10. When Tel Quel magazine and the US-funded National Institute for Democracy explored public attitudes to democracy in Morocco recently, not a single respondent associated it with elections; most linked it to the right to be protected from the police and other authorities (Harter 2005: 22). This is telling: in many parts of the world, see Przeworski et al. (2000; and see above), the concept, at its most minimalist, has little to do with ballots and everything to do with rights.

11. See Navaro-Yashin 2005, although she uses the term in a somewhat different sense than we do here.


14. The term “prebendalism” may be unfamiliar to general readers. Derived from Weberian historical sociology, it refers to a political order in which the wealth that accrues to any office may be appropriated by its holder for his or her personal benefit and that of his or her kin, constituents, or followers. In Africa, it has been applied especially to Nigeria (see, e.g., Joseph 1987; Lewis 1996). The reduction of African political systems—and their so-called corruption complex (Olivier de Sardan 1999)—to such terms invokes a comparative political-science literature too large to annotate here. However, a volume entitled Corruption: A Selected and Annotated Bibliography, published online by the Norwegian Agency for Development Cooperation (NORAD), provides a useful point of departure; see www.norad.nodefault.asp?V_ITEM_ID=1663, chapter 2 (accessed 12 July 2005).


18. Most famously, Robert Kaplan 1994, but for another egregious example, see Richburg 1997.


24. Consistent with what we said above, the Executive Summary of the Report on the World Social Situation, 2005, whose subtitle is The Inequality Predicament, begins by stating that the “global commitment to overcoming inequality . . . is fading,” as a result of which many “communities, countries and regions remain vulnerable to social, political and economic upheaval” (United Nations 2005).

25. Rohter and Forero add that postauthoritarian governments across Latin America, with the exception of Chile and Uruguay, have all seen increased corruption; Larry Rohter and Jast Forero, “Latin America: Graft Threatens New Democracies,” New York Times, articles selected for Sunday Times (Johannesburg), 15 August 2005, pp. 1, 2.


28. Thus, Brazil is among the world’s top ten economies, a matter to which we shall return. India has attracted a good deal of outsourcing in fields like electronic communications, while Mexico’s maquiladora borderland prospered until undercut by sweatshops in East and Southeast Asia. Africa, on the other hand, while rich in primary resources, has benefited little from the global dispersal of industrial work. All of which raises questions, neither for the first nor for the last time, about the meaningfulness in this respect of the category “postcolonial.”

29. The remark was made by Benjamin Mkapa, president of Tanzania; see Anthony Mitchell, “Globalization Like Slavery—Mkapa,” Cape Times, 1 September 2005, p. 28.


31. See n. 32.


40. It is estimated that some 43 percent of counterfeit money is now produced by inexpensive desktop publishing systems with the graphics necessary for printing plausible notes, rather than by cumbersome and expensive printing and engraving machines. One company, Eurovisions, actually used a scan of the microprinting on the new hundred-dollar bill to advertise the fact that “no other scanner can . . . capture the hidden detail as well as ours”; http://www.sniggle.net/counterfeit.php (accessed 2 August 2005).


42. “Replica For You,” from Cora Wong, corawong@pc.jaring.my, received 29 August 2005.

43. An estimated $30 billion international trade in bogus pharmaceuticals is prompting corporations like Pfizer and Lilly to develop a high-tech system that will equip medications with a radio chip tracking device. Fake drugs are thought to be concentrated in India, Africa, and Southeast Asia: 60 percent of all court cases involving counterfeit medicines are said to occur in developing countries. Given lower production costs and levels of risk, some narcotics dealers appear to be shifting
their trade to fake medications; see Ben Hirschler, "Fake Drugs a Bitter Pill for Manufacturers: Increase in Lifestyle Medicines Has Created a Demand on the Illicit Supply Chain," Cape Times, 3 August 2003, p. 9.

44. During the late 1920s and 1930s, two American tricksters defrauded scores of their countrymen by convincing them that, for a fee, they could acquire shares in Drake’s hitherto-unmapped estate (Rayner 2002). The Nigerian fraud is named for the article of the British colonial penal code that it flouts (Apter 1999).


52. Alpen Suresh Sheth, “Under Construction: The Informality of Labor in Miami’s Construction Industry,” BA Honors paper, University of Chicago, 2005. As this study makes clear, illegal laborers—and those most directly responsible for recruiting them—are associated with various Latino ethnonational identities.


55. The Cape Flats is a large sandy plain that forms the hinterland of the peninsula south of Cape Town, contrasting with the salubrious, white areas at the base of Table Mountain. It has historically been the home of peoples of color (many settled there through forced removals during the apartheid era) and is characterized by relatively low levels of capital investment and high levels of poverty and violence.


58. As he does so, Anini evokes with particular vividness Walter Benjamin’s portrayal of the “great criminal”; see chapter 8 below.


60. See Wedel 2003: 230 on postcommunist Europe and Kaminski 1997 on Poland.


62. For a recent critique of the contradictory relationship between contemporary capitalism and the law, pointedly titled Unjust Legality, see Marsh 2001.

63. This number is based on the latest figures in the World Fact Book, 14 July 2005, http://www.odci.gov/cia/publications/factbook/fields/2063.html (accessed 27 July 2005). It includes only countries that have either enacted entirely new constitutions (ninety-two) or heavily revised existing ones (thirteen). Included are the nations of the former Soviet Union; see Wikipedia, the online encyclopedia, http://en.wikipedia.org/wiki/List_of_constitutional_courts, for an almost complete list (accessed 26 July 2005).

64. Peter Waldman, “Jurists’ Prudence: India’s Supreme Court Makes Rule of Law a Way of Governing,” Wall Street Journal, 6 May 1996, http://lawgsu.edu/ccuningham/fall03/WallStreetJournal-India’sSupremeCourt.htm (accessed 5 May 2005). India does not have a constitutional court, but like many other nation-states, its supreme court enjoys judicial authority in matters pertaining to the constitution. Its extensive powers are based largely on two articles of that constitution: 142, which authorizes the court to pass any decree “necessary for doing complete justice,” and 144, which commands the cooperation with it of all other authorities.

65. Central and Eastern Europe have been the focus of much concern with, and debate about, constitutionalism; they have yielded a substantial scholarly literature, not to mention a journal dedicated to the topic, East European Constitutional Review.

66. Blokker (2000), among others, also notes—that of Eastern Europe in particular—that civic nationalism, constitutional patriotism, and deliberative democracy are not without their critics. But that is a topic beyond our scope here.

67. In a summary sketch of constitutional changes in Latin America, for example, Pinzón (2003) notes that, while some new constitutions (notably those of Colombia and Chile) emphasize basic freedoms and individual rights, others (e.g., Brazil and Venezuela) still favor the executive and “presidentialism.” If Schneiderman (2000) is right, though, the trend in this region is toward the “neoliberal model.”

69. A recent report of the International Bar Association speaks of a "crisis of the rule of law in Zimbabwe," while making it clear that the state often takes pains to discriminate lawful from unlawful acts—and, indeed, has consented to court orders, which it has then violated. In short, the Mugabe regime makes excessive use of the legislative process and sustains the principle that there ought to be an effective judiciary, as long as it does the bidding of the president in the putative national interest. For the executive summary of the report, see http://www.ibanet.org/humanrights/Zimbabwe_report.cfm (accessed 18 August 2005).


71. See http://bibliotecadigital.conebyr.org.mx/transparencia/Formacion_ciuadana_Gto071103.pdf (accessed 1 August 2005). A somewhat similar initiative, directed at democracy and the rights of citizenship, has also been introduced for young children in Brazilian schools; see Veloso 2003.


74. See Wiseman Khuzwayo, "MK Veterans' Row Heads for Court," Sunday Independent, 14 August 2005, Business Report, p. 1. The story made it clear that MKMVA has a complex corporate life: the men against whom the interdict was to be sought were referred to as "directors" of MKMVA Investment Holdings (which represents 60,000 members and their dependents) and of its financial arm, the Mabutho Investment Company (which serves 46,000); the former, moreover, has a 5 percent holding in Mediro Cidet 517, a consortium, with large stakes in six major corporations and several other business interests.

75. We are grateful to Harry Garuba, of the University of Cape Town, for alerting us to this case; it forms part of an essay of his in progress.

76. For an especially informative contemporary account, see "Indian Government Files Lawsuit against Union Carbide," Houston Chronicle, 6 June 1986, section 1, p. 19.


Law and Disorder in the Postcolony: An Introduction

Identities Ruptured by the Bakassi Boys.” Unpublished paper produced in partial fulfillment of the MA, University of Basel.


Law and Disorder in the Postcolony: An Introduction


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Torre, Giuseppe Dalla. 1998. "A Strong Moral Conscience for a Culture of Legality." Jubi-
The Mute and the Unspeakable
Political Subjectivity, Violent Crime, and “the Sexual Thing” in a South African Mining Community

Rosalind C. Morris

Violence has been the single most determining factor in South African political history.

TRC REPORT

In the beginning, as it were, all states are founded upon a primal confusion between law and lawlessness, for every state must institute the authority and produce the forms by which law can express itself. Before this moment, its power is not distinguished from its capacity to exercise force. Yet it is rare to recall the violent acts by which law is first asserted. The exception is provided by those instances in which a new state emerges from the wreckage of an old one or from an empire whose foreign rule has at last collapsed in the face of an emergent sovereignty. Nonetheless, few states have been confronted with a more acute problematization of the political and the criminal than has that of postapartheid South Africa. And few governments have staked their claims to relative political legitimacy so firmly on their capacity to control crime as has that of the African National Congress (ANC). Not surprisingly, the period of transition, as this awkward moment of still-youthful legitimacy in South Africa is termed, has been marked by a perceived efflorescence of criminality and by a sensation of political crisis.

Sexual violence is widely thought to lie at the heart of this crisis of crime and is often read as the symptom of a failure both in the formation of the public sphere and in the restoration of previously damaged institutions like the family.1 Its elevation to the status of metonym for the history of criminality in South Africa has taken two somewhat antithetical forms. On the one hand, sexual violence has been recognized, retrospectively, as a possible mode of political violence (instrumentalized in the struggles between the apartheid state and its opponents). On the other, its recent proliferation is read as evidence of the failure of the new polity to extend the rule of law (even into the domestic sphere) in such a way as to prevent or contain sexual violence.

The fact that sexual violence can be read, simultaneously, as a possible