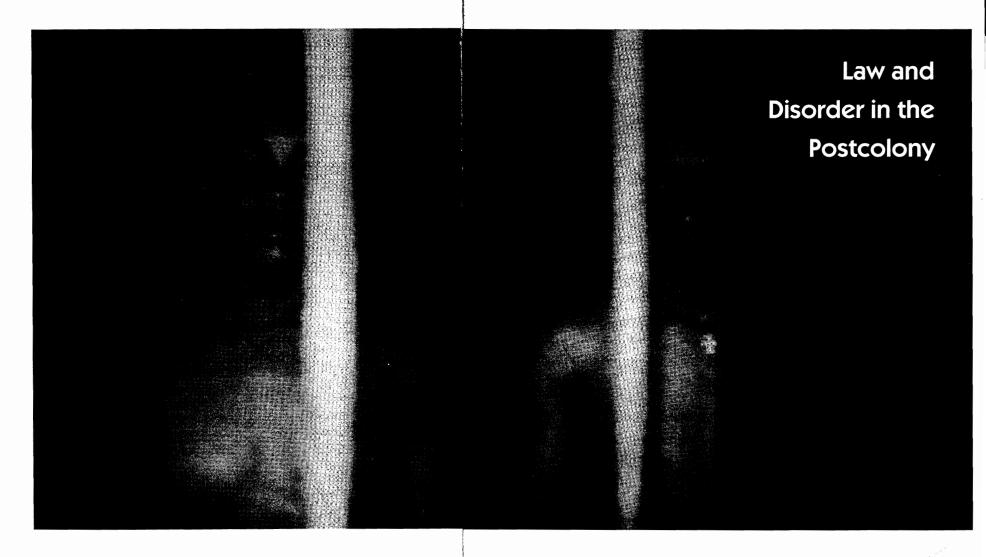
${\it Edited by } \textbf{Jean Comaroff and John L. Comaroff}$



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Preface

ial, bureaucratic state into governance-by-franchise, and into an instiional nexus for the distribution of public assets into private hands, has
needed 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 terr through incarceration to war and revolution; the displacement of the
litical into the realm of the legal, most notably into the interstices bereen rights and torts; the distillation of social policy, under the aegis of
oth government and nongovernmental organizations, into discourses of
chnical necessity; the increasing reduction of culture to intellectual propty; the supersession of the Age of Ideology by the Age of ID-ology, in
hich identity-driven interest—identity defined by culture, confessional
r congregational affiliation, race, gender, generation, sexual orientation,
hatever—becomes the motor of most collection action. And much else
esides.

It is from the perspective of "the" postcolony, then, that understanding he twenty-first century, tout court, might best begin. Decentered estrangenent 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

1. See Walter Benjamin, "Critique of Violence," in his Reflections: Essays, Aphorisms, Autobiographical Writings, ed. Peter Demetz, trans. Edmund Jephcott (New York: Schocken Books, 1978); Jacques Derrida, "Force of Law," in Acts of Religion, ed. Gil Anidjar (New York: Routledge, 2002); and Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998).



Law and Disorder in the Postcolony

An Introduction

John L. Comaroff and Jean Comaroff

Notes from the Front

CRIME VS....

Who're the criminals, the gangs or the government?

Did the Capital just happen to have the power to punish men?

MonoPolice manipulate majoraties to run with them

So whats the police force but a resource to reinforce the plans of the dominant?

I'm haunted by questions, spending time behind bars
Statistics on TV, that concede we're sadistic, deceive me
'cause murder and thievery thrives on all sides of the lines that
divide class.

I take pepper-spray with a pinch a'ssault and battery and I'm charged to step 'n say:

"yo honour, go bother the office of your bosses where the crime starts."

And I ask, while cleaning dirty white collars for a living, why law suites the raw brutes in board rooms that horde loot? They set the precedent then send the president to assure you, his lady, Justice, is blind. But she's got contacts that say too! The colonists, the capitalists and wordy bright scholars make a killing.

MARLON BURGESS, hip-hop verses, Cape Town, 15 September 2004

AMONG ALL THE THINGS that have been said about the spread of democracy since the end of the Cold War—and a great deal has been said about it, in every conceivable voice—one thing stands out. It is the claim that democratization has been accompanied, almost everywhere, by a sharp rise in crime and violence (see, e.g., Karstedt, forthcoming; Caldeira 2000: 1): that the latter-day coming of more or less elected, more or less representative political regimes—founded, more or less, on the rule of law—has, ironically, brought with it a rising tide of lawlessness. Or, put another way, that political liberation in postcolonial, posttotalitarian worlds, and the

Ι

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 property. 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. But, as popular perception and party platforms across the planet focus ever more on escalating crime, and on the "problem" of dis/order, the co-incidence certainly *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 disjuncture, whether by appeal to retrospection and renaissance (neoliberalism, neomedievalism), to ironic aftereffect (the postmodern, posthuman, post-Fordist, f-utilitarian),2 or to the portentous dawning of New Eras (of Empire, Exception). 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 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." 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—autocracy and liberal democracy, that is—share more mechanisms of governance than has conventionally been recognized, 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 dispute.

The coincidence of democratization and criminal violence has been most visible in, and most volubly remarked of, postcolonies: that is, nation-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 previously "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 triumphal spread of neoliberal capitalism. With a new Age of Empire, the Age of US and Them.⁵ This age has its mythic *fons et origo* in 1989, the year that history was supposed to end (Fukuyama 1992) with the *political* birth of a Brave Neo World.⁶ The "neo" here refers to a reanimation—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 governmental power, especially over the power of autocratic potentates, ought to be vested in, and exercised by, a citizenry. This idea has come to be subsumed, 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 sector," utopically envisaged as a technically efficient mechanism for producing the common good; and (3) "the community," a vague abstraction posited, somewhat mystically, as an appropriate site for, and agent of, collective action—and, more cynically, as the end point of the devolution of the costs and responsibilities of governance (J. L. Comaroff and J. Comaroff 1999).8 But above all, since the late 1980s, "civil society" has connoted a teleological reversal: a move from increasingly rationalized, increasingly bureaucratized, increasingly elaborated regimes of rule toward ever more outsourced, dispersed, deinstitutionalized, constitutionally ordained 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 freedom with the occasional exercise of choice among competing, often indistinguishable alternatives. Which, as we have said elsewhere (J. L. Coma-

roff and J. Comaroff 1997), renders 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 apotheosis of the market, the displacement of homo faber by the consumercitizen, 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)9 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 1990, 1992; Makinda 1996; Karlstrom 1996),¹⁰ 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, antisocial 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 states¹¹—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 recommission 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 unimagined 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 Mbembe 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." 12 And this was before 9/11, before established distinctions between criminality and terror, lawlessness and war, private enterprise and privateering, governance and vengeance, were seriously undermined, making palpable the immanent 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 dis/order, 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.¹³ Mounting images—of Colombian druglords and Somali warlords, Caribbean pirates and Nigerian gangsters, Afghani 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 post/colonial misrule in European eyes, metaphors of malfeasance-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."

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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 clientalist 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, 17 by the daily grind of television reportage, and by any number of conservative public intellectuals. 18 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." 19 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."20 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.21 These neocolonial 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 liquified-natural-gas plant on the oilrich West African coast.²² 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 "politics of the belly" (Bayart 1993), caudillismo, communalism, and their cognates23—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,24 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."25

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 dis/order: 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 geostrategic anxieties. But they do very well out of donor aid and no-questionsasked 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,26 the latter having recently staved off a coup funded by European corporate bandits of the "neo-criminal classes"27—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.28 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 regime²⁹—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.30 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.31

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.³² 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.).33 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.).34 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.³⁵ As a result, profiles of criminality become more explicitly xenophobic: "Illegal Aliens' Unstoppable Third World Crime Wave in US" runs one exasperated headline.36 "Immigrants 'Behind Crime Wave'" trumpets Britain's Observer, sparking yet another asylum row.³⁷

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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/licit, 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 postcolonials 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.38 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, faux 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-adistance, 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

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

Law and Disorder in the Postcolony: An Introduction

Counterfeit Modernities

All of this points to something much larger: to the fact that postcolonies are quite literally associated with a counterfeit modernity, a modernity of counterfeit. With fictitious documents, fake brand names, pirated drugs and movies, and a range of other sorts of appropriated intellectual property. 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

uniqueness of the original, with which it exists in a reciprocally reinforcing relationship. The zest and ingenuity with which such "quality" counterfeits are fabricated make it plain that this kind of artifice is a legitimate practice, almost an aesthetic form, for many of those who fashion and consume them (Sissener 2001; chapter 7 below). Producers of faux commodities seem less concerned to pretend that their goods are the real thing than to take hold of the very mystique of the first-world "label" and flagrantly, joyously, appropriate the means of its replication. The genuine fake gives South African or East Asian teenagers access to things they could not otherwise have, filling the gap between globally tweaked desires and local scarcities. The admiration at work here, Siegel (1998: 57) insists, is not about defying authority. It is about "creating a sort of authority for oneself."

The enterprise that drives cultures of counterfeit recalls an observation made by Béatrice Hibou (1999: 105) with regard to fakery in contemporary Africa-from the fabrication of faux currency, reports, and statistics to the production of bogus fertilizer, pharmaceuticals,43 and salt. These practices, she says, should be understood less as "a tendency to criminalization per se than in terms of the widespread use of deception and 'dirty tricks,' represented by games of chance, pyramid schemes and other adventures" (see also Niger-Thomas 2001); they are much in the spirit, too, of "casino capitalism," the ethos of neoliberalism that favors speculation, play, and gambling over virtuous labor as a source of wealth (J. Comaroff and J. L. Comaroff 2000; chapter 6 below). The resort to deception is tangible, as well, in the notorious, irrepressible Nigerian 419, an inspired postcolonial pastiche of its American original, the Francis Drake scam of the Depression years.44 The ruse is initiated by a letter, nowadays mostly an e-mail, that reproduces, more or less effectively, the verisimilitude of para-statal communication. It offers the Western "investor" huge profits for allowing her or his bank account to be used in the transfer abroad of an otherwise-inaccessible estate, often that of a deceased adventurer like Jonas Savimbi and Lauren Kabila. In its beguiling invocation of intestate dictators, ill-gotten gains, and the secret transfer of vast fortunes, the hoax exploits common stereotypes of African corruption as the key to its plausibility (Apter 1999: 274). Another scam does the opposite, taking the moral high ground to work its tricks: a bogus Nigerian "Nelson Mandela Foundation" recently solicited dot.com donations for the indigent, payable into a Cypriot bank account (O'Toole 2005: 54). Apter (1999: 270) notes that "419" has come to refer, broadly, to a mode of production based on impersonation and forgery, itself a major, often government-backed industry in Nigeria. It is estimated to be second only to oil and narcotics in generating foreign currency.

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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 postcolonies 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. 45 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. 46 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, doppelgangers 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 heading 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 unpoliced. 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; Roitman 2005: 186). Reports of cops who turn checkpoints into private tollbooths are legion; an Economist team driving in 2002 from Douala, Cameroon, to a town less than five hundred kilometers to the southeast encountered more than fortyseven roadblocks. 50 Revenues are also routinely raised by impersonating the state: by putting on counterfeit uniforms, bearing phony identity documents, and deploying other fake accounterments 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.

The labyrinthine entanglements of these worlds of light and shade come through clearly in a recent survey conducted by Gallup International. It concluded that there has been a sharp rise in the efforts of multinational corporations to secure valuable contracts—especially in arms and defense, public works and construction—by paying off officials in "emerging economies"; Western media sometimes gloss this, disingenuously, by noting that companies setting up shop in the south must deal with local "cultures of business," informal "start-up costs," "import duties," and the like.⁵³ The Gallup Bribe-Payers Index was commissioned by fifteen countries (among them, South Africa, Nigeria, and Argentina) to counter a prior study, undertaken for Transparency International, that had targeted only bribe-takers, not bribe-givers, and had stressed the prevalence of payoffs in "developing" countries. While Gallup found that firms in a few developing countries do engage in a great deal of bribery, they were followed closely by Russia, China, France, the United States, Japan, and Italy, all of whom were among the top ten. African commentators noted that, as members of the G8 alliance, these nations were supposed to be committed to "kick-starting prosperity" on the continent by boosting trade and uprooting malpractice. But kick-backs negate kick-starts: their proceeds tend to end up in offshore bank accounts in the north, further draining resources from the resource poor.54

The symbiosis revealed by the Gallup Bribe-Payers Index between overt and covert deals, bribe-givers and bribe-takers, involves chains of transaction that diffuse accountability as they cross social, national, and moral frontiers, chains built on a complicity between legal and illegal practice. It is tempting to see in all this a neocolonial map of unequal interdependence between northern profit, probity, and security and southern poverty, plunder, and risk. This geography is not so simple, however. As Étienne Balibar (2004: 14) remarks, "the line of demarcation between 'North' and 'South,' between zones of prosperity and power and zones of 'development of underdevelopment,' is not actually drawn in a stable way." The north, these days, contains much south. And many others from the south hope to follow. Brazil and South Africa complicate the picture, having substantial, vibrant economies, although they too permit Western capital to profit from cheap labor, raw materials, and lax enforcement. Because they are highly polarized societies, however, they exemplify postcolonial landscapes in which domains of prosperity and order feed off, and perpetuate, zones of scarcity and violence.

Take, again, South Africa: a recent study of the Cape Flats⁵⁵ in Greater Cape Town (Standing 2005) reports that the outlaw economy there, which

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, apotheoses 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.⁵⁶ 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."57 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 aboveground 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 product of the moment as is new-wave criminality. Hence the dialectic of law and disorder that runs through the essays below. A pertinent example of this is the impact on the Babangida regime in Nigeria, itself the apotheosis of malfeasance, of the heroic exploits of the elusive bandit Lawrence Anini, aka Jack the Ripper, Robin Hood, and, most tellingly, "The Law": "The Government itself had become increasingly concerned about 'The Law.' It saw Anini not just as a threat to law and order, a common criminal terrorizing people, but as the 'hit-man' of an organized conspiracy by powerful groups to undermine the military regime's legitimacy, and to show it as incapable of protecting order, law, and the people" (Marenin 1987: 261). So much so that Babangida felt moved to announce increased support for "enforcement agencies" to ensure the safety of "law-abiding citizens," although it was less public security that was put at risk by Anini than the sovereign authority of the state.

Why this anxiety about "The Law" and why the public fascination with a figure iconic of the very law that he so flagrantly violates⁵⁸ when, as Marenin (1987: 261) emphasizes, large numbers of criminals operate in Nigeria all the time, little hindered by the police? Both the anxiety and the fascination point to a very general preoccupation in the postcolonial world with "the law" and the citizen as legal subject (see chapter 2 below), a preoccupation growing in counterpoint to, and deeply entailed in, the rise of the felonious state, private indirect government, and endemic cultures of illegality. That counterpoint, so easily read off the schizophrenic landscapes of many postcolonies, has come to feature prominently in popular discourses almost everywhere. As governance disperses itself and monopolies over coercion fragment, crime and policing provide a rich repertoire of idioms and allegories with which to address, imaginatively, the nature of sovereignty, justice, and social order: thus the lyrics of underworld hip-hop in São Paulo, verses—as in "Crime vs....," to recall Marlon Burgess, with whom we began-that give voice to "attitude" in the face of terrifying violence, much of it meted out by the cops (see chapter 3 below); or the action movies of Nollywood, 59 Nigeria's \$45 million straight-to-video film industry, in which forces of justice joust with outlaws, both human and supernatural; or the immensely appealing Hong Kong gangster genre, whose plotlines offer the assurance that brutality can be brutally overcome; or the vibrant home-grown television shows in South Africa, in which, night after night, fictional detectives apprehend felons like those on the loose in real life, iterating an order that remains distinctly fragile by day. Compromised rulers, too, under pressure to act authoritatively in the face of civil unrest, stage police dramas in

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-taximan 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;60 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.⁶¹

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 postcolony. 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 postcolonial dis/order 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 Fetishism of the Law: Sovereignty, Violence, Lawfare, and the Displacements of Politics

The modernist nation-state, it hardly needs saying, has always been erected on a scaffolding of legalities. Nor 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 jural 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 Warand, 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 propertied from lawlessness, even as the language of legality insinuates itself deeper and deeper into the realm of the illicit. "The Law," uppercase 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 otherwiseincommensurable axes of difference, in which the workings of the "free" market are assured,62 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).⁶³ 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). 64 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, 65 envisages a democratic "political culture" erected on "popular sovereignty, individual rights, and association in civil society." 66 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, Eyadéma 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, Eyadéma suffered a fatal heart attack. The army—which, along with his "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 cloth 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 breach 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 ex-guerilla heroes.⁷⁴

The global impact of legal nongovermental 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 Ambon 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 selfimaginings 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 infraction goes 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, distends, 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,

or in just the same way everywhere—to find their way to the judiciary. Class struggles seem to have metamorphosed into class actions (J. Comaroff and J. L. Comaroff 2003); people drawn together by social or material predicament, culture, race, sexual preference, residential proximity, faith, and habits of consumption become legal persons as their common plaints turn them into plaintiffs with communal identities—against antagonists who, allegedly, have acted illegally against them. Citizens, subjects, governments, and corporations litigate against one another, often at the intersections of tort law, human rights law, and the criminal law, in an ever mutating kaleidoscope of coalitions and cleavages. For example, in the wake of the Bhopal disaster, the Indian government, having passed legislation to make itself the sole guardian of the legal interests of its citizens, sued Union Carbide in 1986, first in New York and then back home, 76 eventually yielding a \$470 million settlement—only to see the victims initiate their own action in 1999, in part to "take back control" of the litigation itself.⁷⁷ Even democracy has been judicialized: in the Argentinian national elections of 2002, amid floods of accusations of improper and illegal conduct, the bench was asked to decide "hundreds" of disputes involving primaries—echoes here of the United States, to which we shall return—and even to set the day on which ballot boxes should be ready for the polls.78 By such pathways are quite ordinary political processes held hostage to the dialectic of law and disorder.

For their part, states find themselves having to defend against public actions in unprecedented numbers, for unprecedented sorts of things, against unprecedented kinds of plaintiff. In 2000, the Brazilian federal appeals court found the government of Brazil, along with Fundação Nacional do Índio, guilty of the death and suffering of Panará Indians since the time of "first contact" and ordered that compensation be paid. A year earlier, the Nicaraguan regime was held to account by the Inter-American Court on Human Rights for violating the territory of a community of Awas Tingni by illicitly granting a logging concession to a Korean timber company (Hale 2005: 14-15).79 As this instance also indicates, the global map of jurisdictions is changing—a fact attested to, famously, by the trials and tribulations of Augusto Pinochet—as courts reconsider the spectrum of complainants and the species of suit, many of them profoundly political in the old-fashioned sense of the term, that they are prepared to entertain. Which, in turn, has added both quantitatively and substantively to the judicialization of politics and to its conduct as a practice of law and order. Or, rather, law and disorder.

Thus the well-known chain of events involving HIV/AIDS drugs in the

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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 free 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;80 (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 pharmas, 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.81 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 restitution for damages arising out of egregious acts of violence against them: witness Nancy Scheper-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 constitutional and human rights;82 or the civil proceeding against Pluspetrol 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.83 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 Act⁸⁴ 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.85

Law and Disorder in the Postcolony: An Introduction

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, tout 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-socivilized, 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 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.88

The word "illegal" appears five times in this passage.

Law and Disorder in the Postcolony: An Introduction

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 dis/order in the postcolony? And what, if anything, makes postcolonies different in this respect from other nation-states?

Of Heterodoxy, Commensuration, Cameras 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 cosmopoles that once ruled them and wrote their histories, on the geographical re/distribution of sites of accumulation. These effects are felt especially in former colonies, which were erected 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).90 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.

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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 person 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 transects 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-firstcentury 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 immanent, 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 nongovernmental 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 Lilliputian 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 Stepputat 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 unruly. 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." 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 embarrassed 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

Law and Disorder in the Postcolony: An Introduction

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."97 But here is the thing: in the United Nations' "grand total of recorded crime" for 2000,98 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), 99 the Netherlands (8,211.54), Canada (8,040.65),100 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.

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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, including 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, ¹⁰¹ 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 statespeople 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 accountancy culture. But, as we have seen, the south often takes the rap for shady collaborations: a bribe there 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 point the signposts of history unfolding.

The dispersal of politics into the law is also readily discernible in the north. The US 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 notoriously in the Terry Schiavo "rightto-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." 102 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. 103

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;¹⁰⁴ 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 undersides 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 palpable 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-inthe-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 "f-utilitarian" 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.
- 3. Arendt's (1998: 228 n. 70) citation is to the Modern Library edition of Capital (Marx 1936: 824).
- 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 post-colonial 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 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 1986; Kasfir 1998; Hann and Dunn 1996. Hall and Trentmann'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 pro-

tected from the police and other authorities (Harter 2005: 22). This is telling: in many parts of the world, *pace* 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.
- 12. See Johannes Leithäuser, "Crime Groups Become an Increasing Security Threat, Officials Assert," *Frankfurter Allgemeine Zeitung*, 22 May 2001, English edition, p. 2.
- 13. Larry Rohter and Juan Forero, "Latin America: Graft Threatens New Democracies," and Sharon La Franiere, "Africa: Corruption Is Crippling Growth," New York Times, articles selected for Sunday Times (Johannesburg), 15 August 2005, pp. 1, 2.
- 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 1999b)—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.no/default.asp?V_ITEM_ID=1663, chapter 2 (accessed 12 July 2005).
- 15. David Binder, "Dimensions of Organized Crime in the Balkans" (paper presented at the conference "The Dark Side of Globalization: Trafficking and Transborder Crime to, through, and from Eastern Europe," UCLA Center for European and Eurasian Studies, 14 May 2004), http://www.isop.ucla.edu/article.asp?parentid=11513 (accessed 27 July 2005).
- 16. See also Paulo de Mesquita Neto, "Crime, Violence and Democracy in Latin America" (paper presented at the conference "Integration in the Americas," University of New Mexico, 2 April 2002), http://laii.unm.edu/conference/mesquita.php (accessed 27 July 2005); Andrew Gumbel, "Druglords Turn Mexican Town into Bullet-Scarred Battlefield," Sunday Independent, 7 August 2005, p. 16.
- 17. See, e.g., its notorious leader, "Hopeless Africa," *Economist*, 13 May 2000, p. 17, which was followed by a longer article, "Africa: The Heart of the Matter," pp. 22–24; see also "Economic Focus: The African Exception," *Economist*, 30 March 2002, p. 68.
- 18. Most famously, Robert Kaplan 1994, but for another egregious example, see Richburg 1997.
- 19. Or, as a recent New York Times headline put it, describing pervasive corruption in Russia, "Just... Business"; see Steven Lee Myers, "Pervasive Bribery in Russia Today 'Is Just Called Business," New York Times, articles selected for Sunday Times (Johannesburg), 28 August 2005, p. 3.
- 20. A synopsis of the report is to be found on the Global Policy Forum Web site; see "Africa 'Best for Investment," http://www.globalpolicy.org/socecon/develop/

africa/2003/0408fdi.htm (accessed 1 May 2005). This raises unnerving parallels with earlier moments of colonial extraction, given the reluctance of Western corporations to see the continent as a site of autonomous economic development.

21. David Leigh and David Pallister, "Revealed: The New Scramble for Africa," Guardian, 1 June 2005, p. 1.

22. Steve Inskeep, "Corruption Clouds Nigeria's Growing Gas Business," NPR, 26 August 2005, morning edition, http://www.npr.org/templates/storey/story.php?storyId=4797944 (accessed 31 August 2005).

23. Luis Vega, "A Plague on Latin America," GO Inside, 10 September 2004, http://goinside.com/04/9/plague.html (accessed 27 July 2005); Utkarsh Kansal, "Why Is Corruption so Common in India?" India Information Initiative, 2001, http://www.india-reform.org/articles/corruption.html (accessed 27 July 2005).

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 Juan Forero, "Latin America: Graft Threatens New Democracies," *New York Times*, articles selected for *Sunday Times* (Johannesburg), 15 August 2005, pp. 1, 2.

26. Karen Breytenbach, "Dictator's Son on City Spending Spree," Cape Times, 20 July 2005, p. 1.

27. See Mark Hollingsworth, "Wizard Jape That Cost Mummy R3 Million," Sunday Independent, 11 September 2005, p. 16.

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.

30. "Field Listing—Illicit Drugs," World Factbook 2002, http://www.faqs.org/docs/factbook/fields/2086.html (accessed 1 August 2004).

31. See n. 32.

32. It is estimated that a proportion of so-called blood diamonds from Sierra Leone, Angola, and Liberia has found its way into the hands of De Beers, although an international outcry has led to the imposition of tougher regulations on the trade; see Dick Durham, "De Beers Sees Threat of Blood Diamonds," 18 January 2001, http://cnnstudentnews.cnn.com/2001/WORLD/africa/01/18/diamonds.debeers/ (accessed 15 July 2005). Most of the coltan (i.e., columbite tantalite, a vital component of cell phones and computer chips) illegally extracted in Zaire is thought to make its way, via secretive chains of exchange, into the stock of main-

stream high-tech companies in Europe, Japan, and North America; see Kristi Essick, "Guns, Money and Cell Phones," *Industry Standard Magazine*, 11 June 2001, http://www.globalissues.org/Geopolitics/Africa/Articles/TheStandardColtan .asp (accessed 1 July 2005).

33. See also "Cartels Shipping Drugs via Africa," *Mercury*, 29 July 2005, http://www.themercury.co.za/index.php?fSectionId=284&fArticleId=2644688

(accessed 28 July 2005).

34. See also "Mexican Drug Commandos Expand Ops in 6 U.S. States: Feds Say Violent, Elite Paramilitary Units Establish Narcotics Routes North of Border," World Net Daily, 21 July 2005, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=44899 (accessed 28 July 2005).

35. "U.N.: Drug Cartels Using African Connections," World, 27 July 2005, http://www.cnn.com/2005/WORLD/americas/07/27/cartels.reut/ (accessed 1 August 2005).

36. Frosty Wooldridge, "Illegal Aliens' Unstoppable Third World Crime Wave in US," 1 February 2004, http://www.rense.com/general48/comp.htm (accessed 28 July 2005).

37. Kamal Ahmed, "Immigrants 'Behind Crime Wave'—Police Claim by Britain's Most Senior Officer Sparks New Asylum Row," *Observer*, 18 May 2003, http://observer.guardian.co.uk/politics/story/0,6903,958380,00.html (accessed 15 August 2005). For a sensitive treatment of the subject—one that makes clear how these "criminals" are often themselves victims of organized crime—see Ian Rankin's *Fleshmarket Close* (2004, especially at p. 391), a work in the genre of detective fiction.

38. "India Cyber Crime," *VoIP Blog—Rich Tehrani*, 5 July 2005, http://voip-blog.tmcnet.com/blog/rich-tehrani/voip/india-cyber-crime.html (accessed 15 July 2005).

39. Fifth International Conference on Fraudulent Documents, Amsterdam, 10 April 2002, http://www.vehicle-documents.it/convegni_corsi/1.pdf (accessed 2 August 2005).

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).

41. "Counterfeiting," *Sniggle.nett*, 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 low 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 2005, 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-untapped estate (Rayner 2002). The Nigerian fraud is named for the article of the British colonial penal code that it flouts (Apter 1999).
- 45. "Fake Nigerian Cops Help Victims Recover Losses," Loss Prevention Concepts Ltd., 2 November 2001, http://www.lpconline.com/Nigerian_fake_cops.html (accessed 8 August 2005).
- 46. For just two media reports, see "Lying about Crime," editorial, *Cape Argus*, 10 January 2002, p. 13, and Helen Bamford, "Probe into Arrests Based on False Charges," *Weekend Argus*, 7 August 2004, p. 8. The phenomenon is discussed further in Comaroff and Comaroff, forthcoming.
- 47. "Saddam's 'Shadow State' Defies Democracy," Oxford Analytica, 15 May 2003, http://www.oxanstore.com/displayfree.php?NewsItemID=91576 (accessed 4 August 2005).
- 48. Larry Muffin, "Slaying Latin American Corruption Dragon," *United Press International*, 3 March 2005, http://www.Washtimes.com/upi-breaking/20050303-045537-8073r.htm (accessed 27 July 2005).
- 49. See also Utkarsh Kansal, "Why Is Corruption so Common in India?" *India Reform Initiative*, 2001, http://www.inida-reform.org/articles/corruption.html (accessed 4 August 2005).
- 50. At one of the stops, a "robber-cop" declared: "I have a gun, so I know the rules"; see "The Road to Hell Is Unpaved: Trucking in Cameroon," *Economist*, 19 December 2002, print edition, http://www.economist.com/displaystory.cfm?story_id=1487583 (accessed 8 August 2005). Also see Steve Inskeep, NPR, "Navigating Nigeria's Muddy Landscape," 24 August 2005, http://www.npr.org/templates/story/story.php?storyId=4797950 (accessed 30 August 2005).
- 51. See, e. g., "Four Fake 'Cops' Hijack Truck on N12 near Delmas," KN News Desk, 15 July 2005, http://www.keralanext.com/news/index.asp?id=272150 (accessed 8 August 2005); "Fake Cops' Affair Earns Them Jail," *Times of India News Network*, 29 June 2005, http://timesofindia.indiatimes.com/articleshow/1156155.cms (accessed 8 August 2005); "Fake Cops—Beware," *Channels*, http://www.channels.nl.knowledge/26122.html (accessed 27 July 2005).
- 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.
- 53. Ben Cratner, "South American Start-up," *Duke Magazine* 89(4) (May-June 2003), http://www.dukemagazine.duke.edu/dukemag/issues/050603/startup-shop1.html (accessed 8 August 2005).
- 54. See, e. g., Anthony Stoppard, "Corporate Bribery on the Rise Worldwide," *Inter Press Service*, 14 May 2002, http://www.globalpolicy.org/nations/corrupt/2002/0514rise.htm (accessed 8 August 2005).
- 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.

- 56. Michael Morris, "Gangland (Pty) Ltd," Cape Argus, 4 August 2003, p. 1.
- 57. Michael Morris and Ashley Smith, "Gangland's Drug Franchises: Police Tactics on Gangs Blasted by New Report," *Cape Argus*, 18 August 2005, p. 1.
- 58. As he does so, Anini evokes with particular vividness Walter Benjamin's portrayal of the "great criminal"; see chapter 8 below.
- 59. Neely Tucker, "Nollywood, in a Starring Role: Nigeria's Thriving Film Industry Gets a Showcase at AFI Silver," Washington Post, 5 February 2005, p. C04.
- 60. See Wedel 2003: 230 on postcommunist Europe and Kaminski 1997 on Poland.
- 61. "UN Suggests International Cybercrime Convention," http://www.out-law.com/page-1649 (accessed 10 August 2005). The commission noted that cybercrime was increasingly becoming a problem in developing countries.
- 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://law.gsu.edu/ccunningham/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 (2005), among others, also notes—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."

- 68. A useful summary of these events is to be found in Wikipedia, http://en.wikipedia.org/wiki/Faure_Gnassingb%C3%A9 (accessed 25 July 2005).
- 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 extensive 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).
- 70. World Fact Book, 14 July 2005, http://www.odci.gov/cia/publications/factbook/fields/2063.html.
- 71. See http://bibliotecadigital.conevyt.org.mx/transparencia/Formacion_ciudadana_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.
- 72. Legalopoli: The Game of Legality has its own Web site: www.legalopoli.it. We came across it at http://www.cmecent.org/Legalopoli.htm (accessed 1 August 2005).
- 73. See, e.g., Fatima Schroeder, "Drunk Driver Sues over Being Kept in Jail instead of Rehab," *Cape Times*, 8 August 2005, p. 7.
- 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 Clidet 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.
- 77. See "Bhopal Victims File Lawsuit against Union Carbide," on the Democracy Now Web site, 17 November 1999, http://www.democracynow.org/article.pl?sid=03/04/07/0413230 (accessed 8 July 2005).
- 78. See Kroll Argentine Risk Monitor, 4 October 2002, p. 7, http://www.krollworldwide.com/library/arm/arm_041003.pdf (accessed 7 August 2005). Kroll, Inc. is a risk consulting company.
- 79. See also Amazon Update, no. 63 (November 2000), published by the Amazon Alliance for Indigenous and Traditional Peoples of the Amazon Basin, http://www.amazonalliance.ord/upd_nov00_en.html (accessed 15 July 2005).
- 80. On negotiations between Brazil and Roche, see, e.g., http://www.globaltreatmentaccess.org/content/press_releases/a01/090101_BG_HGAP_Brazil_efa.html. On the US complaint and its withdrawal, see, e.g., http://www.hsph.harvard.edu/bioethics/archives/200102/msg00000.html and http://news.bbc.co.uk/1/hi/business/1407472.stm (all accessed on 7 September 2005).

- 81. See Jeremy Brecher and Tim Costello, "Global Self-Organization from Below," http://countercurrents.org/organisationfrombelow.htm (accessed 1 June 2005).
- 82. Some of the cases mentioned here are summarized in M. A. Shaikh, "Lawsuits by 'Third World' Claimants a New Weapon against Multinationals," *Crescent International*, 1–15 July 2001, http://www.muslimedia.com/archives/features01/lawsuits.htm (accessed 9 August 2005). It should be noted that in suits filed in foreign courts, especially in the United States, it is often difficult actually to collect damages.
- 83. An informative popular account of these suits, which ended in the payment of major sums of money to the plaintiffs—most of whom had been forced into the schools—can be found in James Booke, "Indian Lawsuits Threaten Canadian Churches," *Incite Newsletter*, May 2001, http://www.incite-national.org/news/lawsuits.html (accessed 9 August 2005).
- 84. This act, which has a very long history, allows American courts to exercise supraterritorial jurisdiction over a range of claims, including some human rights violations. Significantly, it seems to be invoked more and more nowadays.
- 85. Interestingly, a federal court in New York *did* rule that relatives of political opponents killed in the run-up to the 2000 elections in Zimbabwe could file a \$400 million suit against the Zanu PF; the defendants, however, did not respond, simply denying the existence of the case. The court also ruled that Robert Mugabe could not be sued because of the immunity granted to heads of state under the law. But it added, ambiguously, that, as Zanu PF's first secretary, he *could* be served with the legal complaint. For one account, see the archives of the Zimbabwe Information Centre, 4 November 2001, http://www.zic.com.au/updates/2001/4november2001.htm (accessed 3 August 2005).
- 86. Allister Sparks, "Now It's a Crime against Humanity: A Million Zimbabweans Left Homeless," *Cape Times*, 29 June 2005, online edition, http://www.capetimes.co.za/index.php?fSectionId=332&fArticleId=2604095 (accessed 4 July 2005).
- 87. Rickey Singh, "The Corruption of Absolute Power," *Trinidad Express*, 29 June 2005, reprinted online, http://www.zimbabwersituation.com/jun29a_2005.html (accessed 10 August 2005).
- 88. This letter to the *Jakarta Post* is also to be found at http://www.zimbabwesituation.com/jun29a_2005.html (accessed 10 August 2005).
- 89. The term "lawfare" has, of late, been applied by the Bush administration to describe the "strategy of using or misusing law as a substitute for traditional military means to achieve military objectives"; see Phillip Carter, "Legal Combat: Are Enemies Waging War in Our Courts?" Slate, 4 April 2005, online edition, http://slate.msn.com/id/2116169 (accessed 20 May 2005). "Lawfare," Carter adds, citing the National Defense Strategy published by the Pentagon in March-2005, is a weapon "of the weak using international fora, judicial processes, and terrorism" to undermine America. We are grateful to Omar Kutty, a graduate student at the University of Chicago, for pointing this out to us. In our own first use of the term, it connoted the systematic effort to exert control over and/or to coerce political subjects by recourse to the violence inherent in legal instruments.
- 90. Gibson (2004) is speaking of South Africa, although his findings resonate elsewhere. The citations here are from an insightful analysis of his study; see Jan

Hofmeyr, "Our Racially Divided City Can Ill Afford Another Fear-Based Election Campaign," *Cape Times*, 3 August 2005, p. 11.

- 91. For an excellent account of Mapogo a Mathamaga, South Africa's best-known (and much documented) "vigilante" organization—the scare quotes are meant to denote the fact that its leader repudiates the term—see Oomen 2004.
 - 92. "Crime without Punishment," Economist 352(8134) (1999): 17-20.
- 93. This figure is from a recent World Bank survey. It is reported in Steven Lee Myers, "Pervasive Bribery in Russia Today 'Is Just Called Business," *New York Times*, articles selected for *Sunday Times* (Johannesburg), 28 August 2005, p. 3.
 - 94. Ibid.
- 95. The quote is from an editorial in *Die Zeit*. It is cited in Jeffrey Fleishman, "Virus of Corporate Corruption Contaminates Germany," *Sunday Independent* (Johannesburg), 28 August 2005, p. 14.
- 96. See, e.g., Tony Weaver, "Get Tough On Tik or Scenes Like Those from New Orleans May Not Be So Far from Home," *Cape Times*, 9 September 2005, p. 11.
- 97. See Timothy L. O'Brien, "Tracking the Crimes of the Digital Thugs," *New York Times*," articles selected for *Sunday Times* (Johannesburg), 28 August 2005, p. 8.
- 98. These figures are contained in the Seventh United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems (1998–2000), http://www.unodc.org/pdf/crime/seventh_survey/7sc.pdf (accessed 13 July 2003).
- 99. The US figure is for 1999, but there is no evidence of a major drop between 1999 and 2000.
- 100. There is a discrepancy here: Statistics Canada puts the rate for all crimes at 8,404.7 for 2000. See http://www.statcan.ca/english/Pgdb/legal02.htm.
 - 101. The program, Bribes, was broadcast by BBC Radio 4 on 28 April 1996.
- 102. Daniel Williams, "With Italy's New Laws, an Anti-corruption Era Wanes," Washington Post, 11 November 2002; see http://www.globalpolicy.org/nations/corrupt/governmt/2002/1111berlusconi.htm (accessed 12 August 2005).
- 103. See, e.g., Jason Mercier and Amanda Jarrett, "Tort Suits: State Treats Symptoms, Not Problems," Evergreen Freedom Foundation, *Policy Highlighter* 11(8), (10 October 2001), http://www.effwa.orf/highlighters/v11_n28.php (accessed 9 August 2005).
- 104. "Lawsuits against Prisons: Texas Prisoners' Religious Rights Violated," North Coast Xpress, http://www.sonic.net/~doretk/Issues/01-03/lawsuits.html (accessed 9 August 2005).

References

- Abrams, Philip. 1988. "Notes on the Difficulty of Studying the State. *Journal of Historical Sociology* 1(1):58-89. (Originally published 1977.)
- Ackerman, Bruce. 1997. "The Rise of World Constitutionalism." Yale Law School Occasional Papers, 2d ser., no. 3.
- Agamben, Giorgio. 1998. Homo Sacer: Sovereign Power and Bare Life. Trans. Daniel Heller-Roazen. Stanford, CA: Stanford University Press.
- ——. 2005. States of Exception. Trans. Kevin Attell. Chicago: University of Chicago Press. Ajibade, Babson. n.d. "Nigerian Igbo Youths in the Fragile European Diaspora: Re-mediating

- Identities Ruptured by the Bakassi Boys." Unpublished paper produced in partial fulfillment of the MA, University of Basel.
- Anderson, Benedict. 1983. Imagined Communities: Reflections on the Origin and Spread of Nationalism. London: Verso.
- Anderson, David. 2005. Histories of the Hanged: The Dirty War in Kenya and the End of Empire. London and New York: W. W. Norton.
- Apter, Andrew. 1999. "IRB=419: Nigerian Democracy and the Politics of Illusion." In Civil Society and the Political Imagination in Africa: Critical Perspectives, Problems, Paradoxes, ed. John L. Comaroff and Jean Comaroff. Chicago: University of Chicago Press.
- Arendt, Hanna. 1998. The Human Condition. 2d ed. Chicago: University of Chicago Press. (1st ed., 1958.)
- Balibar, Étienne. 2004. We, the People of Europe? Reflections on Transnational Citizenship. Trans. James Swenson. Princeton, NJ: Princeton University Press.
- Barclay, Gordon, and Cynthia Tavares. 2003. "International Comparisons of Criminal Justice Statistics, 2001." London: RDS Communications and Development Unit, Home Office, Government of the United Kingdom. http://www.homeoffice.gov.uk/rds/pdfs2/hosb1203.pdf (last accessed 1 September 2003).
- Bataille, Georges. 1991. The Accursed Share: An Essay on General Economy. Vols. 3 and 4. Trans. Robert Hurley. New York: Zone Books.
- Baumann, Zygmunt. 1998. Globalization: The Human Consequences. New York: Columbia University Press.
- Bayart, Jean-François. 1986. "Civil Society in Africa." In Political Domination in Africa: Reflections on the Limits of Power, ed. Patrick Chabal. Cambridge: Cambridge University Press.
- ----. 1993. The State in Africa: Politics of the Belly. New York: Longman.
- Bayart, Jean-François, Stephen Ellis, and Béatrice Hibou, eds. 1999. The Criminalization of the State in Africa. Bloomington: Indiana University-Press; Oxford: James Currey in association with the International African Institute.
- Becker, Marvin B. 1994. The Emergence of Civil Society in the Eighteenth Century: A Privileged Moment in the History of England, Scotland, and France. Bloomington: Indiana University Press.
- Benjamin, Walter. 1978. "Critique of Violence." In Reflections: Essays, Aphorisms, Auto-biographical Writings, ed. Peter Demetz, trans. Edmund Jephcott. New York: Schocken Books.
- Berkowitz, Roger. 2005. The Gift of Science: Leibniz and the Modern Legal Tradition. Cambridge, MA: Harvard University Press.
- Bhabha, Homi J. 1994. The Location of Culture. New York: Routledge.
- Bhabha, Homi J., and John L. Comaroff. 2002. "Speaking of Postcoloniality, in the Continuous Present: A Conversation between Homi Bhabha and John Comaroff." In *Relocating Postcolonialism*, ed. David Theo Goldberg and Ato Quayson. Oxford: Basil Blackwell.
- Blaney, David L., and Mustapha Kamal Pasha. 1993. "Civil Society and Democracy in the Third World: Ambiguities and Historical Possibilities." Studies in Comparative International Development 28(1):3-24.
- Blokker, Paul. 2005. "Populist Nationalism, Anti-Europeanism, Post-nationalism, and the East-West Distinction." German Law Journal 6(2):371-89.
- Blundo, Giorgio, and Jean-Pierre Olivier de Sardan. 2001. "La corruption quotidienne en Afrique de l'Ouest." *Politique Africaine* 83:8–37.

- Blunt, Robert. 2004. "'Satan Is an Imitator': Kenya's Recent Cosmology of Corruption." In Producing African Futures: Ritual and Reproduction in a Neoliberal Age, ed. Brad Weiss. Leiden and Boston: Brill.
- Bottoms, Anthony E. 1995. "The Philosophy and Politics of Punishment and Sentencing." In The Politics of Sentencing Reform, ed. C. M. V. Clarkson and R. Morgan. Oxford: Clarendon Press.
- Bradbury, Malcolm. 1992. Doctor Criminale. New York: Penguin Books.
- Caldeira, Teresa P. R. 2000. City of Walls: Crime, Segregation, and Citizenship in São Paulo. Berkeley and Los Angeles: University of California Press.
- Chabal, Patrick, ed. 1986. Political Domination in Africa: Reflections on the Limits of Power. Cambridge: Cambridge University Press.
- Coleman, Enid G. 2005. "The Social Construction of Freedom in Free and Open Source Software: Hackers, Ethics, and the Liberal Tradition." PhD diss., University of Chicago.
- Comaroff, Jean. Forthcoming. "Beyond the Politics of Bare Life: AIDS and the Global Order." In AIDS and the Moral Order, ed. Ute Luig.
- Comaroff, Jean, and John L. Comaroff. 1999. "Occult Economies and the Violence of Abstraction: Notes from the South African Postcolony." American Ethnologist 26(3): 279-301.
- ——. 2000. "Millennial Capitalism: First Thoughts on a Second Coming." Public Culture 12(2):291-343.
- -----. 2003. "Reflections on Liberalism, Policulturalism, and ID-ology: Citizenship and Difference in South Africa." Social Identities 9(4):445–74.
- -----. 2006. "Figuring Crime: Quantifacts and the Production of the Unreal." Public Culture 18(1):209-46.
- ———. Forthcoming. The Metaphysics of Disorder: Crime, Policing, and the State in a Brave
- Comaroff, John L. 2001. "Law, Culture, and Colonialism: A Foreword." Law and Social Inquiry 26(2):101-10.
- Comaroff, John L., and Jean Comaroff. 1997. "Postcolonial Politics and Discourses of Democracy in Southern Africa: An Anthropological Reflection on African Political Modernities." *Journal of Anthropological Research* 53(2):123–46.
- ——. 1999. Introduction to Civil Society and the Political Imagination in Africa: Critical Perspectives, Problems, Paradoxes, ed. John L. Comaroff and Jean Comaroff. Chicago: University of Chicago Press.
- ——. 2004. "Criminal Justice, Cultural Justice: The Limits of Liberalism and the Pragmatics of Difference in the New South Africa." American Ethnologist 31(2):188-204.
- Copnall, James. 2005. "France in Africa: No Smoke without Fire." BBC Focus on Africa 16(3):26-27.
- Davidson, Basil. 1992. The Black Man's Burden: Africa and the Curse of the Nation-State. New York: Three Rivers Press.
- Derrida, Jacques. 1994. Specters of Marx: The State of Debt, the Work of Mourning, and the New International. Trans. Peggy Kamuf. New York: Routledge.
- -. 2002. "Force of Law." In Acts of Religion, ed. Gil Anidjar. New York: Routledge.
- Duffy, Rosaleen. 2000. "Shadow Players, Ecotourism Development and Corruption in State Politics in Belize." Third World Quarterly 21(3):549-65.
- Elkins, Caroline. 2005. Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya. New York: Henry Holt.

Fanon, Franz. 1968. The Wretched of the Earth. Trans. C. Farrington. New York: Grove Press. Fatton, Robert, Jr. 1995. "Africa in the Age of Democratization: The Civic Limitations of Civil Society." African Studies Review 38:67-100.

Law and Disorder in the Postcolony: An Introduction

- Ferguson, Adam. 1995. An Essay on the History of Civil Society. Ed. Fania Oz-Salzberger. Cambridge: Cambridge University Press. (1st ed., 1767.)
- Ferguson, James. 2006. Global Shadows: Essays on Africa in a Neoliberal World Order. Durham, NC: Duke University Press.
- Foucault, Michel. 1978. The History of Sexuality. Trans. R. Hurley. New York: Pantheon Books.
- Fukuyama, Francis. 1992. The End of History and the Last Man. New York: Free Press.
- Gibson, James L. 2004. Overcoming Apartheid: Can Truth Reconcile a Divided Nation? New York: Russell Sage.
- Gore, Charles, and Charles Pratten. 2003. "The Politics of Plunder: The Rhetorics of Order and Disorder in Southern Nigeria." African Affairs 102(407):211-40.
- Gray, John. 1998. False Dawn: The Delusions of Global Capitalism. London: Granta.
- Gupta, Akhil. 1995. "Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State." American Ethnologist 22(2):375-402.
- Haggerty, Kevin D. 2001. Making Crime Count. Toronto: University of Toronto Press.
- Hale, Charles R. 2005. "Neoliberal Multiculturalism: The Remaking of Cultural Rights and Racial Domination in Central America." Political and Legal Anthropology Review [POLAR] 28(1):10-28.
- Hall, David. 1999. "Contracts, Concessions and Corruption in the Water Sector." United Nations Centre for Human Settlement (Habitat). http://www.unhabitat.org/HD/hdv6n3/ contracts.htm (accessed 7 July 2005).
- Hall, John A., and Frank Trentmann, eds. 2004. Civil Society: A Reader in History, Theory and Global Politics. Basingstoke: Palgrave Macmillan.
- Hann, Chris, and Elizabeth Dunn, eds. 1996. Civil Society: Challenging Western Models. New York: Routledge.
- Hansen, Thomas Blom, and Finn Stepputat. 2005. Introduction to Sovereign Bodies: Citizens, Migrants, and States in the Postcolonial World, ed. T. Blom Hansen and F. Stepputat. Princeton: Princeton University Press.
- Harbeson, John W., Donald Rothchild, and Naomi Chazan, eds. 1994. Civil Society and the State in Africa. Boulder, CO: Lynne Rienner.
- Harter, Pascale. 2005. "Egypt: Shouting for Democracy." BBC Focus on Africa 16(3):20-22. Haynes, Jeff. 1997. Democracy and Civil Society in the Third World: Politics and New
 - Political Movements. Cambridge: Polity Press.
- Hibou, Béatrice. 1999. "The 'Social Capital' of the State as an Agent of Deception, or the Ruses of Economic Intelligence." In The Criminalization of the State in Africa, ed. Jean-François Bayart, Stephen Ellis, and Béatrice Hibou. Bloomington: Indiana University Press: Oxford: James Currey in association with the International African Institute.
- Hobbes, Thomas. 1995. Three Discourses: A Critical Modern Edition of Newly Identified Work of the Young Hobbes, Ed. Noel B. Revnolds and Arlene W. Saxonhouse. Chicago: University of Chicago Press.
- Joseph, Richard. 1987. Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic. Cambridge: Cambridge University Press.
- Kaminski, Antoni Z. 1997. "Corruption under the Post-Communist Transformation: The Case of Poland." Polish Sociological Review 2(118):91-117.

- Kaplan, Robert. 1994. "The Coming Anarchy." Atlantic Monthly 273(2):44-76.
- Karlstrom, Mikael. 1996. "Imagining Democracy: Political Culture and Democratization in Buganda." Africa 66:485–505.
- Karstedt, Susanne. Forthcoming. "Democracy and Violence." In "Violence," ed. Pieter Spierenburg. Special issue of *Theoretical Criminology*.
- Kasfir, Nelson, ed. 1998. Civil Society and Democracy in Africa: Critical Perspectives. London: Frank Cass.
- Klug, Heinz. 2000. Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction. Cambridge: Cambridge University Press.
- Levi, Michael. 1998. "Organizing Plastic Fraud: Enterprise Criminals and the Side-Stepping of Fraud Prevention." *Howard Journal* 37(4):423–38.
- Lewis, Peter. 1996. "From Prebendalism to Predation: The Political Economy of Decline in Nigeria." *Journal of Modern African Studies* 34(1):79-103.
- Makinda, Samuel. 1996. "Imagining Democracy: Political Culture and Democratisation in Buganda." *Africa* 66(4):485–505.
- Mamdani, Mahmood. 1990. "State and Civil Society in Contemporary Africa." Africa Development 15(3-4):47-70.
- ——. 1992. "Africa: Democratic Theory and Democratic Struggles." Dissent, Summer, 312–18.
- Marenin, Otwin. 1987. "The Anini Saga: Armed Robbery and the Reproduction of Ideology in Nigeria." *Journal of Modern African Studies* 25(2):259-81.
- Marsh, James L. 2001. Unjust Legality: A Critique of Habermas's Philosophy of Law. Boulder and New York: Rowman and Littlefield.
- Marx, Karl. 1936. Capital: A Critique of Political Economy. Vol. 1, The Process of Capitalist Production. Ed. Frederick Engels, revised and amplified according to the 4th German ed. by Ernest Untermann. Trans. from the 3d German ed. by Samuel Moore and Edward Aveling. New York: Modern Library.
- Mbaku, John Mukum. 2000. "Minority Rights in Plural Societies." Seminar, 409, "African Transitions: A Symposium on the Continent's Engagement with Democracy." http://www.india-seminar.com/2000/490.htm (accessed 7 July 2005).
- Mbembe, Achille. 2000. "At the Edge of the World: Boundaries, Territoriality, and Sovereignty in Africa." *Public Culture* 12(1):259–84.
- 2001. On the Postcolony. Berkeley and Los Angeles: University of California Press.
 2002. "African Modes of Self-Writing," Public Culture 14(1):239-73.
- Miliband, Ralph. 1969. The State in Capitalist Society. London: Weidenfeld and Nicholson. Monga, Célestin. 1996. The Anthropology of Anger: Civil Society and Democracy in Africa. Trans. Linda L. Fleck and Célestin Monga. Boulder, CO: Lynne Rienner.
- Navaro-Yashin, Yael. 2005. "Confinement and the Imagination: Sovereignty and Subjectivity in a Quasi-State." In Sovereign Bodies: Citizens, Migrants, and States in the Postcolonial World, ed. Thomas Blom Hansen and Finn Stepputat. Princeton, NJ: Princeton University Press.
- Niger-Thomas, Margaret. 2001. "Women and the Arts of Smuggling." African Studies Review 44(2):43-70.
- Olivier de Sardan, Jean-Pierre. 1999a. "African Corruption in the Context of Globalization." In Modernity on a Shoestring: Dimensions of Globalization, Consumption and Development in Africa and Beyond," ed. Richard Fardon, Wim van Binsbergen, and Rijk van Dijk. Leiden: European Inter-university Development Opportunities Study Group.

- ——. 1999b. "A Moral Economy of Corruption in Africa?" Journal of Modern African Studies 37(1):25-52.
- Oloka-Onyango, Joe. 2001. Constitutionalism in Africa: Creating Opportunities, Facing Challenges. Uganda: Fountain Publishers.
- Oomen, Barbara. 2004. "Vigilantism or Alternative Citizenship? The Rise of Mapogo a Mathamaga." African Studies 63(2):153-71.
- O'Toole, Sean. 2005. "Devaluing Mandela." BBC Focus on Africa 16(3):52-57.
- Owusu, Maxwell. 1997. "Domesticating Democracy: Culture, Civil Society, and Constitutionalism in Africa." Contemporary Studies in Society and History 39(1):120-52.
- Pinzón, Martha Lucia. 2003. "Latin America's Constitutions: Achievements and Perspectives." Commentaries, Summit of the Americas Center (Latin America and Caribbean Center), Florida International University. http://www.americasnet.net/Commentators/Martha_Pinzon/pinzon_94_eng.pdf (accessed 29 July 2005).
- Przeworski, Adam, Michael E. Alvarez, Jose Antonio Cheibub, and Fernando Limongi, eds. 2000. Democracy and Development: Political Institutions and Well-Being in the World, 1950–1990. Cambridge: Cambridge University Press.
- Rankin, Ian. 2004. Fleshmarket Close. London: Orion.
- Rayner, Richard. 2002. Drake's Fortune: The Fabulous True Story of the World's Greatest Confidence Artist. New York: Doubleday.
- Reno, William. 1995. Corruption and State Politics in Sierra Leone. Cambridge: Cambridge University Press.
- 2000. "Clandestine Economies, Violence, and States in Africa." Journal of International Affairs 53(2):433–59.
- Richburg, Keith B. 1997. Out of America: A Black Man Confronts Africa. New York: Basic Books.
- Richter, Kelly. 2005. "From U.S. Funded Death Squads to L.A.-Bred *Maras:* The Rise of Transnational Salvadoran Youth Gangs." *Diskord* 1(3):8–11.
- Robins, Steven. 2004. "'Long Live Zackie, Long Live': AIDS Activism, Science and Citizenship after Apartheid." Journal of Southern African Studies 30(3):651–72.
- Roitman, Janet. 2005. Fiscal Disobedience: An Anthropology of Economic Regulation in Central Africa. Princeton, NJ: Princeton University Press.
- Schneiderman, David. 2000. "Constitutional Approaches to Privatization: An Inquiry into the Magnitude of Neo-liberal Constitutionalism." Law and Contemporary Problems 63(4):83-109.
- Siegel, James T. 1998. A New Criminal Type in Jakarta. Durham, NC: Duke University Press.
 Sissener, Tone Kristin. 2001. Anthropological Perspectives on Corruption. Bergen: Chr. Michelson Institute.
- Standing, André. 2003. "The Social Contradictions of Organised Crime on the Cape Flats." Institute for Security Studies, Pretoria, South Africa, Occasional Paper no. 74.
- 2005. "The Threat of Gangs and Anti-gangs Policy." Policy discussion paper, Institute for Security Studies, Pretoria, South Africa, Paper no. 116.
- Steinberg, Jonny. 2004. The Number. Cape Town: Jonathan Ball.
- Stiglitz, Joseph E. 2002: Globalization and Its Discontents. New York: W. W. Norton.
- Tilly, Charles. 1985. "War Making and State Making as Organized Crime." In *Bringing the State Back In*, ed. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol. Cambridge: Cambridge University Press.
- Torre, Giuseppe Dalla. 1998. "A Strong Moral Conscience for a Culture of Legality." Jubi-

- laeum, "Tertium Millennium," no. 1. http://www.vatican.va/jubilee_2000/magazine/documents/ju_mag_01021998_p-8_en.html (accessed 1 August 2005).
- United Nations. 2005. Report on the World Social Situation, 2005: The Inequality Predicament. http://www.un.org/esa/socdev/rwss/media%2005/cd-docs/media.htm (accessed 29 August 2005).
- Veloso, Leticia Medeiros. 2003. "Remaking the Future: Childhood and the Paradoxes of Citizenship in the Brazilian Democratic Imagination." PhD diss., University of Chicago.
- Venkatesh, Sudhir. 2000. American Project: The Rise and Fall of a Modern Ghetto. Cambridge, MA: Harvard University Press.
- Wacquant, Loïc. 2001. "The Penalisation of Poverty and the Rise of Neo-Liberalism." European Journal of Criminal Policy and Research 9(4):401-12.
- Wedeen, Lisa. 2004. "Concepts and Commitments in the Study of Democracy." In *Problems and Methods in the Study of Politics*, ed. Ian Shapiro, Rogers M. Smith, and Tarek E. Masoud. Cambridge: Cambridge University Press.
- ——. Forthcoming. Peripheral Visions: Political Identifications in Unified Yemen.
- Wedel, Janine R. 2003. "Mafia without Malfeasance, Clans without Crime: The Criminality Conundrum in Post-Communist Europe." In Crime's Power: Anthropologists and the Ethnography of Crime, ed. Philip C. Parnell and Stephanie C. Kane. New York: Palgrave Macmillan.
- Woods, Dwayne. 1992. "Civil Society in Europe and Africa: Limiting State Power through a Public Sphere." *African Studies Review* 95(2):77–100.
- Young, Tom. 1993. "Elections and Electoral Politics in Africa." Africa 63(3):299-312.



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. 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