

JEAN AND JOHN COMAROFF

Law and disorder in the postcolony*

Are postcolonies haunted more by criminal violence than are other nation-states? In this paper, Jean and John Comaroff argue that the question is misplaced: the predicament of postcolonies arises from their place in a world order dominated by new modes of governance, new sorts of empire, new species of wealth; an order that criminalises poverty and race, and entraps the 'south' in relations of corruption. But there is another side to all this. Postcolonies may display endemic disorder, but they also often fetishise the law, its ways and means. In probing the coincidence of disorder and legality, this essay suggests that postcolonies foreshadow a global future under construction.

Key words lawfare, disorder, crime, postcoloniality, neoliberalism

In recent years, depictions of postcolonial nations have congealed into a terrifying epic of lawlessness and violence, adding a brutal edge to older European archetypes of underdevelopment, abjection and ethnic strife. Child bandits in Africa, drug-lords in the Andes, intellectual piracy in China and e-fraud in India add up to a picture of politics and economics run grotesquely amok: to a nightmare of dissipated government, of law profaned, of the routine resort to violence as means of production – a nightmare, also, in which the line between the political and the criminal disappears entirely. In Africa, this is captured in well-worn metaphors of malffeasance. 'Kleptocratic' is now an accepted adjective of state. So much so that, in 1995, an official French report claimed that ruling regimes and organised crime were dissolving into one another. And that both had become excessively violent. Gone are genial accounts of a 'politics of the belly'. A more sinister sense of 'criminalisation' has come to characterise the latest epoch in the sorry history of the global south.

Which raises a problem, a presumption and a paradox. In that order.

First, the problem. Are postcolonies in Africa, Asia, Europe or Latin America haunted by more unregulated violence, uncivil graft and uncontrolled terror than are other 21st century nation-states? Are they sinking ever more deeply into disorder? Is there something distinctive about the kinds of criminality, coercion and corruption, characteristic of them? Does the hyphenation on which they are erected – the disarticulation, that is, between the post and coloniality – refer to an epochal transition, a Rabelaisian liminality? Are postcolonies living examples of Marx's (1936: 824) famous

* This essay is an abridged version of 'Law and disorder in the postcolony: an introduction, in Jean and John Comaroff (eds.), *Law and disorder in the postcolony*. Chicago: University of Chicago Press, 2006.

dictum that violence ‘is the midwife of every old society pregnant with a new one’, indeed, of ‘all change in history and politics’? Or is theirs a permanent condition: a *longue durée* unfolding, in which the modernist states put in place with ‘decolonisation’ can no longer hold in the face of the privatisation of almost everything, of gathering lawlessness, of creeping anarchy? The reflex answer to all these questions, alike from critical scholars, conservative public intellectuals and popular media – which is where the presumption comes in – is yes. Yes, postcolonies are excessively, distinctively disorderly. Yes, they are sinking ever further into chaos. Yes, this does seem to be a chronic state of being. The evidence is taken to be, well, self-evident. Not enough heed is paid to the possibility that something deeper may be at issue here, something inherent in the unfolding conjuncture everywhere of violence, sovereignty, il/legality. Also, in the ways in which the idiom of criminality, and a metaphysics of disorder, have impinged on the social imagination – colouring apprehensions of identity and exclusion, as well as the means and ends of governance.

At the same time, and here is where the paradox appears to lie, many postcolonies make a fetish of the law, of its ways and means. Even where those ways and means are mocked, mimicked, suspended or sequestered, they are often central to the everyday life of authority and citizenship, to the interaction of states and subjects, to the enactments, displacements and seizures of power. New constitutions are repeatedly written, appeals to rights repeatedly made, procedural democracies repeatedly reinvented, claims of inequity repeatedly litigated. And, repeatedly, governments, groups of various composition and coalitions of interest go to the judiciary to settle differences. As we shall see, even the past is re-argued before bewigged judges, often in the tortured language of torts. All this in spite of the fact that more and more rulers show themselves ready to suspend the law in the name of emergency or exception, to ignore its sovereignty, to franchise it out or to bend it to their will.

How do we make sense of all this? Of, on the one hand, the excessive disorderliness of postcolonies, real or imagined, and, on the other, their fetishism of the law? Is it really a paradox? Or just different aspects of one phenomenon? What, in these respects, may we draw from Walter Benjamin’s thesis (1978) – recently reworked by Derrida (2002) and Agamben (1998) – that violence and the law, the lethal and the legal, constitute one another?

Let us begin, though, with an excursion into the ostensible heart of darkness, there to examine its implosive interiors.

Speaking of African postcolonies, Achille Mbembe (2000, 2001, 2002) argues that, in all the fuss about the criminalisation of the state, something more significant goes unremarked: the rise of ‘private indirect government’, a caricature of liberalisation in which older norms of patronage and clientelist redistribution fragment as sovereignty diffuses into privatised forms of power and accumulation, power rooted in brute control over life and death. This shift has been accompanied by a change in the manner in which Africa is linked to the global order: the continent, Mbembe claims, has not so much been marginalised as entangled in a parallel, pariah economy of international scale (2002: 66). There are many analogues elsewhere: in the former Soviet Union, where state-centred corruption has given way to a ‘free for all’, making crime ‘a major industry’;¹ also in Latin America, where epidemic lawlessness

1 ‘Dimensions of Organized Crime in the Balkans’, David Binder, paper presented at a conference on The Dark Side of Globalization: Trafficking and Transborder Crime to, through,

is said to have accompanied the 'democratic wave', linking local to transnational criminal networks and turning poor urban barrios into battlefields (Pinzón 2003; Caldeira 2000: 373).² 'Democratic Brazil', says Scheper-Hughes (2006: 154), 'has the profile of a nation at war.' Criminality with violence, it seems, has become endemic to the postcolonial condition.

Mbembe's characterisation of 'private indirect government' resonates well with popular pessimism about the malaise and mayhem that bedevils ex-colonies. Here Africa retains pole position, having been excised from the map of global futures by such print media as *The Economist*³ and by the daily grind of televisual rapportage. This has provoked the counter-argument that conditions on the continent are less apocalyptic than they are usually made out to be, less exceptional by planetary standards, more 'business as usual'.⁴ And good business at that. A recent World Bank report shows that foreign direct investment south of the Sahara 'yielded the highest returns in the world in 2002'.⁵ Indeed, a 'new scramble for Africa' is discernible among the nation-states of the north in pursuit of diamonds, oil, coltan.⁶ These neocolonial quests, which reap huge returns at the intersection of outsourced and outlaw economies, blur the line between profit and plunder. They also interfere with the indigenous production of wealth, recruiting local brokers, even warlords, to facilitate their enterprises – often by illicit means. At this very moment, investigators are looking into allegations that several international companies, including Halliburton, paid hefty bribes to secure the contract for a massive natural gas plant in West Africa.⁷ All of which renders murky the geographies of criminal violence that configure the postcolonial world. Lawlessness often turns out to be a complex north–south collaboration.

Liberalisation and democracy, the Washington-imposed panaceas for most problems in our Brave Neo World, have hardly reduced that lawlessness. To the contrary. Not only have those denied the spoils of privatisation tended to resort to more overtly militant techniques to survive or to profit (Bayart 1993: xiii; Olivier de Sardan 1999;

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.

- 2 See also 'Crime, Violence and Democracy in Latin America', Paulo de Mesquita Neto, paper presented at a conference on Integration in the Americas, University of New Mexico, 2 April 2002, <http://laili.unm.edu/conference/mesquita.php>, accessed 27 July 2005; 'Druglords turn Mexican Town into Bullet-Scarred Battlefield', Andrew Gumbel, *The Sunday Independent*, 7 August 2005, p. 16.
- 3 See e.g. its notorious leader, 'Hopeless Africa', *The Economist*, 13 May 2000, p. 17, which was followed by a longer article, 'Africa: The Heart of the Matter', pp. 22–24; also, 'Economic Focus: The African Exception', 30 March 2002, p. 68.
- 4 Or, as a recent *New York Times* headline put it, describing pervasive corruption in Russia, 'Just . . . Business'; see 'Pervasive Bribery in Russia today "Is Just Called Business"', Steven Lee Myers, *New York Times*, articles selected for *Sunday Times* (Johannesburg), 28 August 2005, p. 3.
- 5 A synopsis of the report is to be found on the Global Policy Forum website; see 'Africa "Best for Investment"', <http://www.globalpolicy.org/soecon/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.
- 6 'Revealed: The New Scramble for Africa', David Leigh and David Pallister, *Guardian*, 1 June 2005, p. 1.
- 7 'Corruption Clouds Nigeria's Growing Gas Business', Steve Inskeep, *NPR*, Morning Edition, 26 August 2005, <http://www.npr.org/templates/storey/story.php?storyId=4797944>, accessed 31 August 2005.

Caldeira 2000). 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 allegiance (Scheper-Hughes 2006; Spyer 2006; Mbembe 2006), yielding new cartographies of disorder: post-national terrains on which spaces of privilege are linked by slender corridors that stretch across zones of strife, uncertainty and minimal governance. Here the reach of the state is uneven and the landscape a palimpsest of contested sovereignties, a complex choreography of police and paramilitaries, private and community enforcement, gangs and vigilantes, highwaymen and outlaw armies. Here, too, no means of communication is authoritative: 'dark rumours' 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 patterns of wounding. Thus it is that rape in South Africa, the killing of homeless youths in Brazil, sectarian slaughter in Sri Lanka assert savage sovereignties. Yet zones of deregulation are also spaces of opportunity, inventiveness, unrestrained profiteering.

Patently, deregulation and democratisation have not eliminated older-style oligarches. They have merely altered the resources and rhetoric at their command. Kleptocrats may no longer profit from Cold War, geo-strategic anxieties. But they do well out of donor aid and no-questions-asked global commerce; especially commerce with European corporate bandits who tie postcolonial graft to the scramble for tropical spoils. The very qualities that disadvantage postcolonies in the business world – the fact that their colonial pasts ensured them small bourgeois sectors, low levels of formal skill and economies founded on extraction – equip them nicely for the twilight markets fostered by liberalisation. Thus, in the face of the subsidies and tariffs that have fuelled agribusiness, many sidelined producers find competitive edge in contraband cultivation. Vibrant, violent enterprise flourishes, for example, where poppies and coca grow, or yellow cake or blood diamonds are extracted.⁸ And wherever cultivated tastes for the exotic and the illicit yield niche markets in endangered species and protected persons and things – be they antiquities or bushmeat, body parts or babies, sex workers or mail-order brides.

Twilight economies are expanding their service sectors as well. Here, too, postcolonials find work when conventional jobs are few. The most obvious employment in this sphere, perhaps, is conveying contraband. Thus it is that ex-entrepôts like Togo, Gambia, Benin and Somalia have morphed into 'smuggling states' (Bayart *et al.* 1999: 20). But the digital revolution has also opened up new opportunities at the intersection between the licit and illicit. While many global southerners lack the means to navigate the fast-lanes of the knowledge economy, increasing numbers have found profitable niches by making virtue of their marginality. A dramatic increase in the outsourcing of Western IT services and telemarketing to India, for instance, is evidence of this. Expanding, too, is the business in cyber crime and data theft that feeds off the dispersal of private information and the means of manufacturing objects and identities of all kinds. Hence the factories that have sprung up in Asia alongside sweat shops to supply expertly cloned credit cards to those who perpetrate what is aptly-named 'plastic fraud' across the planet.

8 'Field Listing – Illicit Drugs', World Factbook 2002, <http://www.facts.org/docs/factbook/fields/2086.html>, accessed 1 August 2004.

The former Third World, it appears, has cornered the market in the manufacture of fakes of every conceivable kind, not least of counterfeit credentials, faux IDs and other forms of would-be official tender. This is no surprise. In an age in which profit rests ever more on the ability to control the long-distance migration of people and things, the interests of capital often run ahead of those of nation-states, which must devise cumbersome means of governing at a distance by regulating the plastic and paper personae of their subjects. It is these simulacra that control the capacity to cross frontiers and, literally, go places. Where aspiration, even survival, depends on the ability to move with dispatch, the capacity to produce the accoutrements of mobile citizenship have increasingly been appropriated by criminal phantom states, to use Derrida's phrase (1994: 83), by those who mimic the forms of bureaucratic authority. Hence the huge industry that has evolved in the fabrication of fake credentials, from marriage and divorce certificates through passports and university degrees to personal biographies and archives. It is an industry astonishingly in step with social convention and the latest technologies of authentication, an industry so fast-growing that, by some counts, a third of all currency now in circulation is fake.

The more general point? It is that postcolonies have come to be associated, *sui generis*, with a counterfeit modernity, with the semiosis of fictitious documents, fake objects and purloined intellectual property. Mimesis, legitimate and otherwise, has always been projected onto Europe's others, of course, marking the distance between civilisation and its imitators. But times are changing. In the postcolonial era, copies declare independence and circulate on their own account. The electronic revolution has dispersed the means of mechanical reproduction – and of access to Western proprietary goods. Brazen replicas sold at huge discounts expose a core conceit in the culture of Euro-modern capitalism: that its signifiers can be fixed by state fiat, that its editions can be limited, that its knowledge can be copyrighted as unique. Branding, an assertion of monopoly over the circulation of particular forms of value, invites cloning; this because something of the cache of the 'authentic article' is congealed in the copy. Pace Benjamin, the mass production of aura does not simply extinguish its uniqueness and worth. Thus recent internet ads from Malaysia offer 'high quality' Rolexes, complete with logos, at 40% the cost of other unlicensed imitations.⁹ Or the idea, common in South Africa and Asia, of the 'genuine fake' that, ironically, underscores its own distinction and value by reinforcing that of the original. To be sure, the ingenuity with which 'quality' counterfeits are fabricated has made them into an aesthetic form, and the object of regular commerce, for those who fashion and consume them. Producers of faux commodities do not pretend that their goods are real. They take hold of the mystique of a first-world 'label' and commandeer the means of its replication. For African or Asian teenagers, the quality fake fills a gap between global desires and immediate capacities. What is at work here is less a defiance of authority than the discovery of innovative ways of accessing and dispersing value.

The enterprise that drives this kind of counterfeit recalls an observation made of Africa by Béatrice Hibou (1999: 105). Endemic fakery there, she says, is less a product of an inherent propensity for crime than evidence of the creative possibilities of games of chance, of a culture of deception. This is epitomised by the notorious Nigerian 419, itself a postcolonial pastiche based on the American Francis Drake scam of the 1930s.¹⁰

9 'Counterfeiting', Sniggle.net, <http://www.sniggle.net/counterfeit.php>, accessed 2 August 2005.

10 During the late 1920s and 1930s, two American tricksters defrauded scores of their countrymen

As everyone knows, the ruse is initiated by a letter that offers Western ‘investors’ huge profits for allowing their bank accounts to be used in the transfer abroad of otherwise inaccessible funds, often the estate of an adventurer like Jonas Savimbi or Lauren Kabila. In its invocation of notorious dictators, ill-gotten gains and the secret movement of money, the hoax exploits common European stereotypes of African corruption. But it can also take the moral high ground: a bogus Nelson Mandela Foundation recently solicited dot.com donations for the indigent, payable at a Cypriot bank (O’Toole 2005: 54). ‘419’, named for a Nigerian anti-fraud statute with origins in the British colonial penal code (Apter 1999), has come to refer to any expropriation-by-trickery. It is held to be third to oil and narcotics in yielding foreign currency for its country of origin.

Such cultures of scamming are not only directed outward. They pervade the Nigerian social fabric, capitalising on a ‘crisis of value’ especially discernible in postcolonies that have suffered hyper-inflation, drastic currency devaluations and excessive violence (Apter 1999: 298). In dissolving received relations between signifiers and the value they denote – like that between banknotes and negotiable money – these convulsions unsettle accepted indices of truth (Blunt 2004; Spyer 2006), opening up spaces of mystery and magic wherein con-men, witches, Satan and Pentecostal prophets all ply their trade (Geschiere 2006). Under such conditions, signs take on an uncanny life of their own, appearing capable of generating great riches. There is little practical difference, here, between real and faux currency. Nor is there any limit to forgery, which begets more forgery, in an infinite regress. Indeed, crime itself is now a frequent object of criminal mimesis. Counterfeit kidnappings, hijack hoaxes and bogus burglaries are everywhere an expanding source of profit, to the extent that, in parts of South Africa, special police units exist to deal with them.¹¹ Once an ‘economics of dirty tricks’ takes hold, the line between the forged and the farfetched becomes ever murkier. The fetish and the fake finally fade into one another.

Thus, to return to Nigeria, fakery there has come to saturate the state itself, yielding a politics of illusion that has erected an edifice of ‘simulated government’, sham censuses and development schemes, even fictitious elections. Bogus bureaucracy, in fact, has surfaced as a pervasive theme in postcolonial politics. Thus William Reno (1995, 2000) speaks of ‘the shadow state’ in Sierra Leone, where a realpolitik of thug-profiteering occurs behind a facade of formal administrative respectability. Nor only Sierra Leone. The image of the shadow – in which the official becomes the counterfeit, predation the reality – is beginning to saturate accounts of African political economy. It speaks of a doubling, of the existence of parallel worlds of clandestine rule, irregular soldiers and occult economies that revive long-standing images of the ‘dark’ continent. But shadows, as James Ferguson reminds us (2006: 16f.), are less dim copies than likenesses, others who are also selves. After all, as Philip Abrams (1988: 76), Ralph Miliband (1969: 49) and others have long insisted, the vaunted European state may itself be as much a chimera as a reality.

Once again there is another, more general point to be made here. The resonance between the shadow and the fake also captures something of the effects of neoliberal deregulation on governance, something evident worldwide but most marked in

by convincing them that, for a fee, they could acquire shares in Drake’s hitherto untapped estate (Rayner 2002).

11 ‘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.

postcolonies: the counterpoint between the outsourcing of the state and the seizing of sovereignty, not least in the realm of policing and warfare. Government, as it disperses itself, becomes less an ensemble of bureaucratic institutions, more a licensing-and-franchising authority. Which, in turn, offers fresh opportunities, at all levels, for capitalising both on the assets of the state and its imprimatur. In South Asia, Africa and Latin America, these practices are often disarmingly explicit: police and customs personnel, especially where their pay is unreliable, frequently take part in modes of extraction in which insignias of public position are used to raise rents (Blundo and Olivier de Sardan 2001; Roitman 2005: 186). Reports of cops who turn checkpoints into private tollbooths are legion: a party of expatriates travelling in Cameroon in 2002 encountered 47 roadblocks in 500 kilometres.¹² Revenues are also routinely raised by impersonating the state: by putting on faux uniforms or, as we have seen, faking the production of official tender of one kind and another.¹³

This readiness to exploit the interstices between front and backstage realities, and to seize badges of authority, may be symptomatic of the tendency under market liberalisation everywhere to blur the lines separating licit from illicit business. The pressure to profit has spawned highly complex articulations of 'formal' and 'informal' production. 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 point 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 'south of the border'. Postcolonial enterprise may be more or less shady and brutal, but it is integral to the workings of the global scheme of things. This was underscored by a recent Gallup International survey, which disclosed a sharp rise in efforts of multinational corporations to secure valuable contracts – especially in defence and construction – by paying off officials in 'emerging economies'. Western media, disingenuously, call these payments 'informal start-ups', 'import costs' and the like.¹⁴ The Gallup Bribe-Payers Index was commissioned by 15 states to counter a study, undertaken for Transparency International, that had targeted bribe-takers, not bribe-givers, and had 'proved' the prevalence of corruption in 'developing' countries. Gallup found that the major sources of this graft were Russia, China, France, the US, Japan and Italy, six members of the G8 alliance committed to 'kick-starting prosperity' in Africa by boosting trade and uprooting malpractice. But kick-backs negate kick-starts: their proceeds tend to end up in the north, further draining resources from the resource-poor.¹⁵

12 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.com. From *The Economist* print edition, 19 December 2002, http://www.economist.com/displaystory.cfm?story_id=1487583, accessed 8 August 2005. Also, 'Navigating Nigeria's Muddy Landscape', Steve Inskeep, NPR.org, 24 August 2005, <http://www.npr.org/templates/story/story.php?storyId=4797950>, accessed 30 August 2005.

13 See e.g. 'Four Fake "Cops" Hijack Truck on N12 near Delmas', KN News Desk, Keralanext.com, 15 July 2005, <http://www.keralanext.com/news/index.asp?id=272150>, accessed 8 August 2005; 'Fake Cops' Affair Earns Them Jail', The Times of India News Network, 29 June 2005, timesofindia.indiatimes.com/articleshow/1156155.cms, accessed 8 August 2005. 'Beware', Channels, <http://www.channels.nl.knowledge/26122.html>, accessed 27 July 2005.

14 'South American Start-up', Ben Cratner, *Duke Magazine*, 89 (4): May–June 2003, <http://www.dukemagazine.duke.edu/dukemag/issues/050603/startup-shop1.html>, accessed 8 August 2005.

15 'Corporate Bribery on the Rise Worldwide,' Anthony Stoppard, Inter Press Service, 14 May 2002, <http://www.globalpolicy.org/nations/corrupt/2002/0514rise.htm>, accessed 8 August 2005.

The symbiosis revealed by Gallup between overt and covert deals, bribe-givers and bribe-takers involves chains of transaction that diffuse accountability, blurring the lines of the legal as they cross social, national and ethical frontiers. It is tempting to see, in all this, a neocolonial map linking northern profit, probity and security to southern poverty, plunder and risk. That geography is not so simple, however. For one thing, the boundary between north and south is inchoate in the extreme. For another, the likes of Brazil, South Africa and India have substantial formal economies whose workings reach deep into the north. But, even more to the present point, while neoliberalism may have intensified the imbrication of organised crime, violence and corruption into the socio-moral fabric of postcolonies, these polities are not 'lawless' in any simple sense. Per contra, as we shall 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. Note, in this respect, the impact on Nigeria of the heroic exploits of an elusive bandit, Lawrence Anini, nicknamed 'The Law'. So worried did the government become – accusing Anini of being a threat to order and the state – that the president strengthened 'enforcement agencies' to ensure public safety (Marenin 1987: 261). But it was less the public put at risk by Anini than the sovereign authority of the regime.

Both the anxiety and the fascination with this Robin Hood figure point to a very general preoccupation in postcolonies with 'the law' and with the citizen as legal subject; a preoccupation growing in proportion to the rise of private indirect government and endemic cultures of illegality. That preoccupation has come to feature prominently in popular discourses. As governance disperses itself, and as monopolies over coercion fragment, crime-and-policing provide a rich repertoire of idioms and allegories with which to address, imaginatively, the nature of sovereignty and social order: thus the action movies of Nollywood,¹⁶ Nigeria's enormous film industry, in which forces of justice joust with outlaws, both human and supernatural; or the transnationally appealing Hong Kong gangster genre; or TV theatre in South Africa, in which fictional detectives apprehend felons on the loose in real life, dramatising an order that remains fragile by day. Compromised rulers, too, under pressure to act authoritatively, stage police dramas in which they are seen to 'crack down' on mythic felons, thereby to enact the very possibility of governance in the face of rampant lawlessness (Comaroff and Comaroff 2006; Siegel 1998). If nothing else, mass media deliver their publics, again and again, from 'the primal confusion between law and lawlessness' – a distinction on which the very possibility of society itself is founded (Morris 2006).

But does that confusion really exist? Why has a preoccupation with legalities come to infuse postcolonial life and its mass-mediated representation? Could it simply be a rational response to unprecedented levels of violence? And is the 'problem' of law and disorder particular to postcolonies? Most importantly, how might that 'problem' 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? In order to address this clutch of questions, let us turn to the fetishism of the law itself.

16 'Nollywood, in a Starring Role: Nigeria's Thriving Film Industry Gets a Showcase at AFI Silver', Neely Tucker, *Washington Post*, 5 February 2005, p. C04.

The fetishism of the law

The modern nation-state has always been erected on a scaffolding of legalities. Nor only the modernist nation-state. In classical Greece, Hanna Arendt (1988: 194–5) reminds us, ‘the laws [were] like a wall around the city’. For Thomas Hobbes (1995: 105), whose spectre hovers close to the disorderly surfaces of the postcolony, ‘Laws were the walls of government.’ Since the downing of the wall that marked the end of the Cold War, law has been yet further fetishised; even as, in most postcolonies, ever higher walls are built to protect the propertied from lawlessness. ‘The Law’, and we are not now referring to a Nigerian hood, has become the medium in which politics are played, in which conflicts are dealt with across otherwise incommensurable differences, in which the workings of the ‘free’ market are assured,¹⁷ in which social order is ostensibly erected.

Striking, in this regard, is the number of new national constitutions written since 1989: 105, most of them in postcolonies (Klug 2000).¹⁸ Also striking is the millennial belief in their capacity to conjure up equitable, ethically-founded polities. There are now 44 constitutional courts, many of which enjoy real authority: in India, the highest tribunal in the land became so powerful in the mid-1990s that, by all accounts, it was the government.¹⁹ As Bruce Ackerman puts it (1997: 2, 5), ‘faith in constitutions is sweeping the world’, largely because their promulgation marks a radical break with the past, with its embarrassments, its nightmares, its torments. But even more salient than the sheer quantum of new constitutions is a change in their content. This change, David Schneiderman (2000) argues, is owed to a global shift in ‘constitutional design’ from a state capitalist to a neoliberal model – itself the product of a transformation in the relationship between the economics and politics of market capitalism. Thus, whereas the constitutions promulgated after World War II stressed parliamentary sovereignty, executive discretion and bureaucratic authority, recent ones give primacy to civil and political rights and to the rule of law.²⁰

Even, as we said before, when both its spirit and its letter are violated, offended, distended, purloined.

As in Togo, whose brutally authoritarian president, Eyadéma, died suddenly in 2005. The army – which, along with his clan, had underpinned his power – replaced him with his son, Faure. This was unconstitutional. The speaker of parliament ought to have taken over and elections called within 60 days. The generals could easily have staged a putsch. Instead, they insisted that the legislature amend the constitution to

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

18 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>, last accessed 27 July 2005. It includes only countries that have either enacted entirely new constitutions (92) or heavily revised existing ones (13).

19 ‘Jurists’ Prudence: India’s Supreme Court Makes Rule of Law a Way of Governing’, Peter Waldman, *The Wall Street Journal*, 6 May 1996, <http://law.gsu.edu/ccunningham/fall03/WallStreetJournal-India’sSupremeCourt.htm>, accessed 5 May 2005.

20 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) emphasise basic freedoms and individual rights, others (e.g. Brazil and Venezuela) still favour executive power and ‘presidentialism’. If Schneiderman (2000) is right, though, the trend in this region is toward the ‘neoliberal model’.

allow the son to become president. But the surrounding West African states demanded adherence to the old constitution so strongly that Faure resigned and a national ballot was held. Not surprisingly, Faure won and was sworn-in in May, 2005. Togo, governed by an extended family firm, military strong-arm and a strangely refracted conception of the Spirit of Law, continues to clothe itself in constitutionality.²¹

The Togo story is telling not just because there are many others like it, but also because, by comparison to other postcolonial theatres, Africa is commonly said not to be committed to constitutionalism (see Mbaku 2000; Oloka-Onyango 2001), even as 36 African nations have enacted new constitutions since 1989.²² But there is more to the fetishism of the law than an enchanted faith in those constitutions. A 'culture of legality' seems to be infusing everyday life, becoming part and parcel of the metaphysics of disorder that haunts all postcolonies. The term itself – 'culture of legality' – appears in a recent initiative of the Mexican state, being the cornerstone of its 'citizenship education program'.²³ In like vein, a game invented in Sicily, mythic home of northern banditry, is called Legalopoli. Its aim? To promote a 'culture of legality'.²⁴ Even the Vatican has got in on the act. In 1998, *Jubilaem* carried an essay entitled 'A Strong Moral Conscience for a Culture of Legality' (Torre 1998).

There has also been an explosion in the postcolonial world of law-oriented NGOs. The civilising missions of the new century, these NGOs actively encourage citizens to deal with their problems by legal means. In the upshot, people, even those who break the law, appear to be ever more litigious. In South Africa, a plumber recently convicted of drunk driving sued the Department of Justice for imprisoning him, claiming that, by rights, he should have been put in a rehabilitation programme.²⁵ And well-known alumni of the liberation struggle, members of the Umkhonto weSizwe Veterans Association took to fighting in court in 2005 over the investments of the organisation. In times past, this conflict among the ANC elect would have been engaged by conventional political means, not by using the law as weapons of combat. But then, in times past, Umkhonto weSizwe would not have been a thoroughly neoliberal organisation, as much an investment company for its members as a commons for ex-guerillas.²⁶

The global impact of legal NGOs is such that it is not unusual nowadays to hear the Euro-language of jurisprudence in the Amazon or Aboriginal Australia. Or among the

21 A useful summary of these events is to be found in Wikipedia, en.wikipedia.org/wiki/Faure_Gnassingbe_Togbe, last accessed 25 July 2005.

22 *World Fact Book*, 14 July 2005; see n.18 above.

23 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).

24 Legalopoli: The Game of Legality has its own website: <http://www.legalopoli.it>. We came across it at <http://www.cmecent.org/Legalopoli.htm>, accessed 1 August 2005.

25 See e.g. 'Drunk Driver Sues Over Being Kept in Jail Instead of Rehab', Fatima Schroeder, *Cape Times*, 8 August 2005, p. 7.

26 See 'MK Veterans' Row Heads for Court', Wiseman Khuzwayo, *The 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 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% holding in Mediro Clidet 517, a consortium with large stakes in six major corporations and several other business interests.

homeless of Mumbai, Madagascar, Cape Town or Trench Town. Many postcolonies, in sum, are saturated with self-imaginings grounded in the law, even in places in which trafficking outside it is as common as trafficking within it.

But it is not just interests, identities, rights and injuries that have become saturated with legality. Politics itself is migrating to the courts. Conflicts once joined in parliaments or by means of street protests, media campaigns, strikes, boycotts and blockades tend more and more to find their way to the judiciary. Class struggles are metamorphosing into class actions (Comaroff and Comaroff 2003): people drawn together by material predicament, culture, race, sexual preference, residence, faith and habits of consumption become legal persons as their common complaints turn them into plaintiffs with common identities. And citizens, subjects, governments and corporations litigate against one another in an ever mutating kaleidoscope, often at the intersections of tort law, human rights law and the criminal law. For example, in 1986, after the Bhopal disaster, the Indian government, having passed legislation to make itself the sole guardian of the legal interests of its citizens, sued Union Carbide²⁷ – only to see the victims initiate their own action in 1999, apart from all else to ‘take back control’ of their case.²⁸ Even democracy has been judicialised: in the Argentinian election of 2002, the bench was asked to decide ‘hundreds’ of disputes – and even to set the date of the ballot.²⁹ By such pathways do ordinary political processes become part of the dialectic of law and disorder.

For their part, states find themselves having to defend against public actions for unprecedented sorts of things against unprecedented kinds of plaintiff. The legal struggle between the South African government and AIDS sufferers is legend, of course. But there are also thousands of other cases of equal moment. Like that of the government of Brazil which, in 2000, was found guilty by its own high court, and ordered to pay damages for the death and suffering of Panará Indians. A year earlier, Nicaragua was held to account by the Inter-American Court for violating the territory of Tingni Indians by illicitly granting a timber concession to a Korean company (Hale 2005: 14–15).³⁰ Suits of this sort are frequently supported by advocacy groups under the ‘Lilliput Strategy’, orchestrated by the World Social Forum, which is dedicated to combat neoliberalism.³¹ In this ‘bottom up’ strategy, the law connects political means to political ends. At times it is directed at capital itself. Thus, in 2002, Pluspetrol was sued by the Inter-Ethnic Association for Development of the Peruvian Amazon; it had to clean up, and compensate for, an oil spill in the Marañon River. At times, the law is directed against unexpected sites of power: 16,000 graduates of Indian schools recently filed suits in Canada against the Anglican, Presbyterian and Roman Catholic Churches, alleging

27 For an especially informative contemporary account, see ‘Indian Government Files Lawsuit Against Union Carbide’, *Houston Chronicle*, 6 June 1986, Section 1, p. 19.

28 See ‘Bhopal Victims File Lawsuit Against Union Carbide’, on the Democracy Now website, 17 November 1999, <http://www.democracynow.org/article.pl?sid=03/04/07/0413230>, accessed 8 July 2005.

29 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.

30 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.org/upd_nov00_en.html, accessed 15 July 2005.

31 See ‘Global Self-Organization From Below’, Jeremy Brecher and Tim Costello, CounterCurrents.Org, <http://countercurrents.org/organisationfrombelow.htm>, accessed 1 June 2005.

physical, sexual and cultural abuse.³² All of those cases won, but many fail. Thus the Ogoni lost a claim against Shell for its complicity with Nigeria in killing those opposed to its presence. The law often comes down on the side of bandit capital. Especially when it dons the mask of respectable business. To be sure, corporations make good use of the courts to create a deregulated environment conducive to their workings.

Nor is it just the politics of the present that are being judicialised. As we said earlier, the past, too, is being fought out in the courts. Britain, for example, is currently being sued for acts of atrocity in its African empire (Anderson 2005; Elkins 2005): for having killed local leaders, unlawfully alienated territory from one African people to another, and so on.³³ By these means is colonialism itself rendered criminal. Hauled before a judge, history is made to submit to the scales of justice at the behest of those who suffered it. And to be reduced to a cash equivalent, payable as the official tender of damage, dispossession, loss, trauma. What imperialism is being indicted for, above all, is its commission of lawfare: the use of its own penal codes, its administrative procedures, its states of emergency, its charters and mandates and warrants, to discipline its subjects by means of violence made legible and legal by its own sovereign word. Also, to commit its own ever-so-civilised forms of kleptocracy.

Lawfare – the resort to legal instruments, to the violence inherent in the law, to commit acts of political coercion, even erasure (Comaroff 2001) – is equally marked in postcolonies. As a species of political displacement, it becomes most visible when those who ‘serve’ the state conjure with legalities to act against its citizens. Most infamous recently is Zimbabwe, where the Mugabe regime has consistently passed laws to justify the coercive silencing of its critics. Operation Murambatsvina, ‘Drive Out Trash’, which has forced political opponents out of urban areas under the banner of ‘slum clearance’ – has recently taken this practice to unprecedented depths. Murambatsvina, says the government, is merely an application of the law of the land to raze dangerous ‘illegal structures’.

Lawfare³⁴ may be limited or it may reduce people to ‘bare life’; in Zimbabwe, it has mutated into a necropolitics with a rising body count. But it always seeks to launder

32 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 – is to be found in ‘Indian Lawsuits Threaten Canadian Churches’, James Booke, *Incite Newsletter*, May 2001, <http://www.incite-national.org/news/lawsuits.html>, accessed 9 August 2005.

33 For example, suits have been filed by the Nandi, over the killing of their legendary leader Koitalel arap Samoei in 1905; by the Bunyoro-Kitara kingdom, over the transfer of two of its counties to the Buganda kingdom in 1900; and by the Samburu for injuries inflicted by munitions left unexploded from colonial times; and many others besides. All of these stories are readily accessible in media archives. For the Nandi story see, for example, ‘Nandi to Sue Britain over Leader’s Killing’, *Daily Nation On The Web* at <http://nationaudio.com/News/DailyNation/Today/News/News150920037.html>; on the Bunyoro one, see ‘Ugandan Monarchy Applies to Sue Britain’, Solomon Muyita, *Daily Nation* (Kenya), 13 October 2004; and for the Samburu case, which has received wide coverage, see <http://www.nationaudio.com/News/DailyNation/Supplements/weekend/current/story24014.htm>.

34 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 ‘Legal Combat: Are Enemies Waging War in Our Courts’, Phillip Carter, *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

visceral power in a wash of legitimacy as it is deployed to strengthen the sinews of state or enlarge the capillaries of capital. Hence Benjamin's (1978) thesis that the law originates in violence and lives by violent means; that the legal and the lethal animate one another. Of course, in 1919 Benjamin could not have envisaged the possibility that lawfare might also be a weapon of the weak, turning authority back on itself by commissioning courts to make claims for resources, recognition, voice, integrity, sovereignty.

But this still does not lay to rest the key questions: Why the fetishism of legalities? What are its implications for the play of Law and Dis/order in the postcolony? And are postcolonies different in this respect from other nation-states?

The answer to the first question looks obvious. The turn to law would seem to arise directly out of growing anxieties about lawlessness. But this does not explain the displacement of the political into the legal or the turn to the courts to resolve an ever greater range of wrongs. The fetishism, in short, runs deeper than purely a concern with crime. It has to do with the very constitution of the postcolonial polity. Late modernist nationhood, it appears, is undergoing an epochal move away from the ideal of cultural homogeneity: a nervous, often xenophobic shift toward heterogeneity (Anderson 1983). The rise of neoliberalism – with its impact on population flows, on the dispersion of cultural practices, on geographies of production and accumulation – has heightened this, especially in former colonies, which were erected from the first on difference. And difference begets more law. Why? Because, with growing heterodoxy, legal instruments appear to offer a means of commensuration (Comaroff and Comaroff 2000): a repertoire of standardised terms and practices that permit the negotiation of values, beliefs, ideals and interests across otherwise intransitive lines of cleavage. Hence the flight into a constitutionalism that explicitly embraces heterogeneity in highly individualistic, universalistic Bills of Rights, even where states are paying less and less of the bills. Hence the effort to make human rights into an ever more global, ever more authoritative discourse.

But there is something else at work too. A well-recognised corollary of the neoliberal turn, recall, has been the outsourcing by states of many of the conventional operations of governance, including those, like health services, policing and the conduct of war, integral to the management of life itself. Bureaucracies do retain some of their old functions, of course. But most 21st century governments have reduced their administrative reach, entrusting ever more to the market and delegating ever more responsibility to citizens as individuals, as volunteers, as classes of actor, social or legal. Under these conditions, especially where the threat of disorder seems immanent, civil law presents itself as a more or less effective weapon of the weak, the strong and everyone in between. Which, in turn, exacerbates the resort to lawfare. The court has become a utopic site to which human agency may turn for a medium in which to pursue its ends. This, once again, is particularly so in postcolonies, where bureaucracies and bourgeoisies were not elaborate to begin with; and in which heterogeneity had to be negotiated from the start.

Put all this together and the fetishism of the law seems over-determined. Not only is public life becoming more legalistic, but so, in regulating their own affairs and in dealing with others, are 'communities' within the nation-state: cultural communities,

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.

religious communities, corporate communities, residential communities, communities of interest, even outlaw communities. Everything, it seems, exists here in the shadow of the law. Which also makes it unsurprising that a ‘culture of legality’ should saturate not just civil order but also its criminal undersides. Take another example from South Africa, where organised crime appropriates, re-commissions and counterfeits the means and ends of both the state and the market. The gangs on the Cape Flats in Cape Town mimic the business world, having become a lumpen stand-in for those excluded from the national economy (Standing 2003). For their tax-paying clients, those gangs take on the positive functions of government, not least security provision. Illicit corporations of this sort across the postcolonial world often have shadow judicial personnel and convene courts to try offenders against the persons, property and social order over which they exert sovereignty. They also provide the policing that the state either has stopped supplying or has outsourced to the private sector. Some have constitutions. A few are even structured as franchises and, significantly, are said to offer ‘alternative citizenship’ to their members.³⁵ Charles Tilly (1985) once suggested, famously, that modern states operate much like organised crime. These days, organised crime is operating ever more like states.

Self-evidently, the counterfeiting of a culture of legality by the criminal underworld feeds the dialectic of law and disorder. After all, once government outsources its policing services and franchises force, and once outlaw organisations shadow the state by providing protection and dispensing justice, social order itself becomes like a hall of mirrors. What is more, this dialectic has its own geography. A geography of discontinuous, overlapping sovereignties.

We said a moment ago that communities of all kinds have become ever more legalistic in regulating their affairs; it is often in the process of so doing, in fact, that they become communities at all, the act of judicialisation being also an act of objectification. Herein lies their will to sovereignty, which we take to connote the exercise of autonomous control over the lives, deaths and conditions of existence of those who fall within its purview – and the extension over them of the jurisdiction of some kind of law. ‘Lawmaking’, to cite Benjamin (1978: 295) yet again, ‘is power making.’ But ‘power is the principal of all lawmaking’. In sum, to transform itself into sovereign authority, power demands an architecture of legalities. Or their simulacra.

Because of their histories, postcolonies tend not simply to be organised under a single, vertically-integrated sovereignty sustained by a centralised state. Rather, they consist in a horizontal tapestry of partial sovereignties: sovereignties over terrains and their inhabitants, over people conjoined in faith or culture, over transactional spheres, regimes of property and, often, combinations of these things; sovereignties longer or shorter lived, protected to a greater or lesser degree by violence, always incomplete. This is 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 Arendt and Hobbes, the ‘walled’ spaces of legality, *mondo juralis*, in the patchwork geography that makes human life habitable in a universe at once ordered and unruly.

35 This is also true of some ‘vigilante’ organisations, including Mapogo a Mathamaga, South Africa’s best known one; the scare quotes here are meant to denote the fact that its leader repudiates the term ‘vigilante’. On Mapogo, see Oomen (2004).

Postcolonies in perspective

Which brings us, finally, to the Big Question. Is the criminal violence archetypically attributed to postcolonies all that singular? And the fetishism of the law? What of the dialectic of law and disorder itself?

There is plenty of evidence that the countries of Africa, for example, are not that different from, say, Russia. In 1999 *The Economist* anointed that country, not Nigeria or Togo or the Congo, the ‘world’s leading kleptocracy’.³⁶ The Russian underworld controls 40% of the economy; 78% of all enterprises regularly pay bribes;³⁷ state personnel are constantly on the take; thugs mimic the police; organised crime, increasingly advanced in its business practices, preys on the private sector – and when the state will not enforce the law or provide services, offers those services at a price. At the same time, the ‘structures and values of legality are in place’; ‘even the most corrupt politicians pay lip service’ to them.³⁸ Sound familiar?

If Russia seems too easy, consider Germany, often vaunted as the epitome of corporate respectability. Germany has been rocked recently by revelations of ‘the virus of corruption – not only in the business world, but everywhere’.³⁹ Echoes, here, of epidemic corporate malpractice in the USA, where the Enron affair brought to light the financial fakery at the dark heart of counterfeit capitalism. This is not to suggest that Russia is just like Rwanda or Germany like Guatemala. But it does point to the fact that, across the planet and often in unlikely places – Sweden, Holland, Japan, England, Canada – there is growing anxiety over rising crime, violence and disorder. Nor is it groundless. John Gray (1998) and others have argued that the downside of neoliberalism is an escalation in global lawlessness; this being due to the retraction of the state, to opportunities for outlaw activity arising out of deregulation, to the growing market for the means of violence, to the criminalisation of race, poverty and counter-politics. All of which conduces to a widening populist impression that the line between order and disorder is very fine indeed – an impression given support in the US by the looting and shooting that followed Hurricane Katrina, much of it by victims left resourceless, unsaved and unserved by a regime whose president’s first reaction was to urge the poor to ‘take responsibility’. Having little alternative, many of them did; they also took a few other things, of course. The mass-mediated scenes left Americans incredulous, confessing that what came to mind was . . . Africa. The USA had come face to face with the reality that it, too, looks more than a little postcolonial: that has its own ‘south’, a racialised world of the poor, excluded, criminalised.

But might this not be an exceptional event? Is John Gray correct? Is there more lawlessness everywhere? British Home Office statistics support him (Barclay and Tavares 2003: 2): both property crime and crimes of violence did rise sharply across

36 All quotations in this paragraph concerning Russia, unless otherwise specified, are taken from ‘Crime Without Punishment’, *The Economist*, 352, no. 8134: 17–20.

37 This figure is from a recent World Bank survey. It is reported in ‘Pervasive Bribery in Russia Today “Is Just Called Business”’, Steven Lee Myers, *New York Times*, articles selected for *Sunday Times* (Johannesburg), 28 August 2005, p. 3.

38 Ibid.

39 The quote is from an editorial in *Die Zeit*. It is cited in ‘Virus of Corporate Corruption Contaminates Germany’, Jeffrey Fleishman, *The Sunday Independent* (Johannesburg), 28 August 2005, p. 14.

the world between 1997 and 2001: what is more, in the United Nations 'total of all recorded crime' for 2000,⁴⁰ the ten leaders were New Zealand, Dominica, Finland, England and Wales, Denmark, Chile, the USA, Holland, Canada and South Africa. While such counts have to be sceptically read, seven of the most crime-ridden reporting countries are not postcolonies. Organised crime is also reaching ever deeper into the global north (see Venkatesh 2000), consolidating its spectral forms of governance in the image of the law, and doing profitable business with respectable corporations and political cadres.

Those corporations and political cadres are no less prone to questionable practices than are their postcolonial counterparts, though they might be better at diffusing them in technicist or legitimising jargon. It is hardly news that the first election of George Bush was decided by lawfare. Or that his subsequent conduct of government to the benefit of his close associates has legalised by sovereign fiat – and by counterfeit – precisely what is dubbed 'corrupt' elsewhere. Thus is exception compounded of deception and extraction. Similarly in Europe: as David Hall (1999) notes, 'recent years have seen politicians convicted of corruption in Austria, Belgium, France, Germany, Italy, Spain and the UK. Bribery is so routine that UK companies employ agents to recover pay-offs that fail to produce results.' Here too, licit and illicit business are difficult to tell apart; here, too, they bleed into each other, sometimes literally. In the final analysis, it is impossible to know whether or not there is as much lawlessness in the north as there is in the south. Apart from all else, official statistics of corruption often hide as much as they disclose. And many things taken to be graft in postcolonies – like massive 'contributions' to politicians – are 'lawful' in the north, where they are covered by the chaste clothing of an accountancy culture. But what is clear is that many of the kleptocratic practices stereotypically associated with postcolonies are as discernable in the global north, albeit living under a respectable alias.

These similarities hold, too, for the other side of the dialectic of law and order, the culture of legality. Not only is the non-postcolonial world more litigious than ever, but the judicialisation of politics is proceeding apace everywhere. In the north, where the centralisation of state authority has a longer history, a single, vertically integrated sovereignty may still continue to hold, preventing the sedimentation of patchwork sovereignties, except in criminal enclaves over which policing has little purchase. Yet the pressure toward sovereign fragmentation – as Russia knows from Chechnya, and England from its 'Gallic fringe' – is growing fast; not least at the behest of ethno-nationalist movements and other forces that seek autonomy in a deregulated universe. In sum, the similarities between the postcolony and the world beyond it are unmistakable. And growing. The global north is evolving toward Africa. Everywhere, criminal violence has become an imaginative vehicle, a hieroglyph, for thinking about the nightmares that threaten the nation. And everywhere the discourse of disorder displaces attention away from the material and social effects of neoliberalism, blaming its darker undersides on the evils of the underworld. The differences are also palpable, of course. There is no question, for all the reasons we have given, that the dialectic of law and disorder appears inflated in the global south. But, we would argue, the 'postcolony' is a hyper-extension of the history of the contemporary world at large, running slightly

40 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.

ahead of itself (Comaroff and 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 transition, of a passing phase in the life and times of the postcolony. This is history-in-the-making. Which is why postcolonies have become such a crucial site for theory-construction in the social sciences. To the extent that they are foreshadowings of a planetary future, of the rising neoliberal age at its most assertive, these polities are also where the limits of social knowledge demand to be engaged.

Jean Comaroff and John Comaroff
 Department of Anthropology
 University of Chicago
 1126 East 59th Street
 Chicago, IL 60637
 jcomaro@uchicago.edu
 and
 University of Cape Town

References

- Abrams, Philip. 1988. 'Notes on the difficulty of studying the State (1977)', *Journal of Historical Sociology* 1(1): 58–89.
- Ackerman, Bruce. 1997. 'The rise of world constitutionalism'. Yale Law School Occasional Papers, Second Series, Number 3.
- Agamben, Giorgio. 1998. *Homo sacer: sovereign power and bare life*. Translated by Daniel Heller-Roazen. Stanford: Stanford University Press.
- 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. 'IBB = 419: Nigerian democracy and the politics of illusion', in John L. and Jean Comaroff (eds.), *Civil society and the political imagination in Africa: critical perspectives*. Chicago: University of Chicago Press.
- Arendt, Hanna. 1988. *The human condition*, 2nd edn. Chicago: University of Chicago Press. First edition, 1958.
- 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>, accessed 1 September 2003.
- Bayart, Jean-Francois. 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.
- Benjamin, Walter. 1978. 'Critique of violence', in *Reflections: Essays, Aphorisms, Autobiographical Writings*. Translated by Edmund Jephcott and edited by Peter Demetz. New York: Schocken Books.
- 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 Brad Weiss (ed.), *Producing African futures: ritual and reproduction in a neoliberal age*. Leiden and Boston: Brill.
- Caldeira, Teresa P. R. 2000. *City of walls: crime, segregation, and citizenship in São Paulo*. Berkeley: University of California Press.
- Comaroff, Jean and John L. Comaroff. 2000. 'Millennial capitalism: first thoughts on a second coming', *Public Culture* 12(2): 291–343.

- Comaroff, Jean and John L. Comaroff. 2003. 'Reflections on liberalism, policulturalism, and ID-ology: citizenship and difference in South Africa', *Social Identities* 9(4): 445–74.
- Comaroff, Jean and John L. Comaroff. 2006. 'Criminal obsessions, after Foucault: postcoloniality, policing, and the metaphysics of disorder', in Jean Comaroff and John L. Comaroff (eds.), *Law and disorder in the postcolony*. Chicago: University of Chicago Press.
- Comaroff, John L. 2001. 'Law, culture, and colonialism: a foreword', *Law and Social Inquiry*, 26(2): 101–10.
- Derrida, Jacques. 1994. *Specters of Marx: the state of debt, the work of mourning, and the new international*. Translated by Peggy Kamuf. New York: Routledge.
- Derrida, Jacques. 2002. 'Force of law', in Gil Anidjar (ed.), *Acts of religion*. New York: Routledge.
- Elkins, Caroline. 2005. *Imperial reckoning: the untold story of Britain's gulag in Kenya*. New York: Henry Holt.
- Ferguson, James. 2006. *Global shadows: essays on Africa in a neoliberal world order*. Durham: Duke University Press.
- Geschiere, Peter. 2006. 'Witchcraft and the limits of the law: Cameroon and South Africa', in Jean Comaroff and John L. Comaroff (eds.), *Law and disorder in the postcolony*. Chicago: University of Chicago Press.
- Gray, John. 1998. *False dawn: the delusions of global capitalism*. London: Granta.
- 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.
- Hibou, Béatrice. 1999. 'The "social capital" of the state as an agent of deception, or the ruses of economic intelligence', in Jean-François Bayart, Stephen Ellis and Béatrice Hibou (eds.), *The criminalization of the state in Africa*. 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*. Edited by Noel B. Reynolds and Arlene W. Saxonhouse. Chicago: University of Chicago Press.
- Klug, Heinz. 2000. *Constituting democracy: law, globalism and South Africa's political reconstruction*. Cambridge: Cambridge University Press.
- 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, volume 1, the process of capitalist production*. Translated from the 3rd German edition by Samuel Moore and Edward Aveling; edited by Frederick Engels, revised and amplified according to the fourth German edition by Ernest Untermann. New York: The 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.
- Mbembe, Achille. 2001. *On the postcolony*. Berkeley: University of California Press.
- Mbembe, Achille. 2002. 'African modes of self-writing', *Public Culture*, 14, 239–73.
- Mbembe, Achille. 2006. 'On politics as a form of expenditure', in Jean Comaroff and John L. Comaroff (eds.), *Law and disorder in the postcolony*. Chicago: University of Chicago Press.
- Miliband, Ralph. 1969. *The state in capitalist society*. London: Weidenfeld and Nicholson.
- Morris, Rosalind C. 2006. 'The mute and the unspeakable: political subjectivity, violent crime, and 'the sexual thing' in a South African mining community', in Jean Comaroff and John L. Comaroff (eds.), *Law and disorder in the postcolony*. Chicago: University of Chicago Press.
- Olivier de Sardan, Jean-Pierre. 1999. '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 Mapgogo a Mathamaga', *African Studies* 63(2): 153–71.
- O'Toole, Sean. 2005. 'Devaluing Mandela', *BBC Focus on Africa* 16(3): 52–7.
- 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.
- 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.
- Reno, William. 2000. 'Clandestine economies, violence, and states in Africa', *Journal of International Affairs* 53(2): 433–59.
- Roitman, Janet. 2005. *Fiscal disobedience: an anthropology of economic regulation in Central Africa*. Princeton: Princeton University Press.
- Scheper-Hughes, Nancy. 2006. 'Death squads and democracy in Northeast Brazil', in Jean Comaroff and John L. Comaroff (eds.), *Law and disorder in the postcolony*. Chicago: University of Chicago 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: Duke University Press.
- Spyer, Patricia. 2006. 'Some notes on disorder in the Indonesian postcolony', in Jean Comaroff and John L. Comaroff (eds.), *Law and disorder in the postcolony*. Chicago: University of Chicago Press.
- Standing, André. 2003. 'The social contradictions of organised crime on the Cape Flats'. Pretoria: Institute for Security Studies, Occasional Paper No. 74.
- Tilly, Charles. 1985. 'War making and state making as organized crime', in Peter B. Evans, Dietrich Rueschmeyer and Theda Skocpol (eds.), *Bringing the state back in*. Cambridge: Cambridge University Press.
- Torre, Giuseppe Dalla. 1998. 'A strong moral conscience for a culture of legality', *Jubilaeum, 'Tertium Millennium'* 1998, No. 1. http://www.vatican.va/jubilee_2000/magazine/documents/ju_mag_01021998_p-8_en.html, accessed 1 August 2005.
- Veloso, Leticia Medeiros. 2003. 'Remaking the future: childhood and the paradoxes of citizenship in the Brazilian democratic imagination'. PhD dissertation, University of Chicago.
- Venkatesh, Sudhir. 2000. *American project: the rise and fall of a modern ghetto*. Cambridge: Harvard University Press.

Abstracts

Désordre Public dans la Postcolonie

Les postcolonies sont-elles davantage tourmentées par la violence criminelle que les autres états-nations? Dans cet article, Jean et John Comaroff suggèrent que la question est mal posée: la situation critique des postcolonies vient de leur place dans un ordre mondial dominé par de nouveaux modes de gouvernance, de nouveaux types d'empires, de nouvelles sortes de richesses. Cet ordre criminalise la pauvreté et la race, et piège le 'sud' dans des relations de corruption. Mais le problème comporte un autre aspect. Si les postcolonies souffrent d'un désordre endémique, elles ont aussi tendance à fétichiser la loi, son fonctionnement et ses moyens. Examinant la coïncidence du désordre et de la légalité, cette contribution suggère que les postcolonies annoncent un avenir mondial en construction.

Gesetz und Gesetzlosigkeit in postkolonialen Ländern

Gibt es in postkolonialen Ländern mehr kriminelle Gewalt als in anderen Nationalstaaten? In diesem Artikel argumentieren Jean und John Comaroff, dass die Frage falsch gestellt ist: Die Entstehungsgeschichte positioniert die postkolonialen Länder innerhalb einer Weltordnung, die von neuen Methoden der Governance, neuen Arten des Empire und neuen Reichtümern dominiert wird; eine Ordnung, die Armut und Rasse kriminalisiert und den "Süden" in korrupten Beziehungen gefangen hält. Aber es gibt eine andere Seite zu all dem. Postkoloniale Länder können endemische Gesetzlosigkeit zeigen, gleichzeitig jedoch fetischisieren sie häufig die Bedeutung des Gesetzes. Dieser Artikel erforscht das Zusammenfallen von Gesetzlosigkeit und Legalität und legt nahe, dass postkoloniale Länder eine globale Zukunft vorausahnen lassen, die sich gerade ausbildet.

Ley y Desorden en la Poscolonia

Acaso padecen más violencia criminal las poscolonias que otros estados nación? Jean y John Comaroff argumentan en este trabajo que la pregunta está mal formulada: la difícil situación de las poscolonias emerge de su lugar en el orden mundial dominado por nuevos modos de gobernanza, nuevos tipos de imperios, y nuevas especies de bienestar; un orden que criminaliza a la pobreza y la raza, y entrapa al 'Sur' en relaciones de corrupción. Pero hay un otro lado de esta cuestión. Puede ser que las poscolonias demuestren un desorden endémico pero también tienden a fetichizar la ley, sus modos y maneras. Probando la coincidencia de desorden y legalidad, este ensayo propone que las poscolonias presagian un futuro global en construcción.