

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

It is from the perspective of “the” postcolony, then, that understanding the twenty-first century, tout court, might best begin. Decentered estrangement is, finally, the objective of this book. And of the historical anthropology of the present, to which it seeks to make a modest contribution.

Note

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).

1

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 majorities 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

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.¹ 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-occurrence 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.”³ Foreshadowings here of Fanon (1968) and other theorists of decolonization. To be sure, modern history *has* seen some very bloody transitions to populist rule. And it *has* born witness to regimes that, under the alibi of liberal democracy, have sanctified and sustained criminally brutal modes of domination, some of them highly rationalized, highly technicized, highly sanitized. Indeed, the relative ease with which autocracies have made the transition to constitutional democracy points toward the possibility that they—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 New 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.⁷ 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. Com-

1989
AD
1989

Ballot box
Civil society

freedom and choice

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 consumer-citizen, and the reduction of collective action to the pursuit of “enlightened” interest. It is also the version of representative government—a “small idea,” Malcolm Bradbury (1992: 276) once wrote in a postmodern fiction, which “promises hope, and gives you Fried Chicken”—that is currently being thrust upon the world at large. Often it is imposed as a condition of financial aid, foreign investment, and moral salvation by an unadornedly coercive Western consensus led by the United States (see, e.g., Young 1993: 299–300)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.

state
means
privatized into
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explaining
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But how particular is all this to postcolonial societies? After all, the co-existence 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.”

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 does this mean?

Modernity has fragmented sovereignty into more concentrated forms of power and accumulation

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” archetypal 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 neo-colonial quests, which have reaped huge returns at the intersection of out-sourced 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 oil-rich 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 post-colonial 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: post-national 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*

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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-questions-asked global commerce. "Dictator's Son on City Spending Spree" blared the *Cape Times* of 20 July 2005, detailing the millions spent in Cape Town on cars, hotels, and entertainment by the ruling dynasty of oil-rich Equatorial Guinea,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, above-ground 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

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 illicit, to sanction or outlaw violence. Most postcolonies, as we suggested above, bear the historical traces of overrule that either suspended legalities or deployed them to authorize predation and criminalize opposition. A decade after the end of apartheid in South Africa, the poor and the marginal still look skeptically upon statutes protecting the rich: a large proportion of them see crime as an acceptable means of redistribution (Sissener 2001), even vengeance. Nigerian tricksters think similarly about defrauding gullible Europeans. As privatization and enclosure create new forms of property, they simultaneously define new forms of theft, from piracy and poaching to cloning and hacking. Such practices are not always deemed illegitimate across social and national divides. Hence the disregard for copyright shown by producers of generic pharmaceuticals in Thailand, India, and

Brazil. And the attacks by “cyberpunks” on the “Patent Absurdity” of proprietary computer software (Coleman 2005).

The species of property that have emerged out of the digital revolution have had an especially profound effect on the means of producing and controlling value—and on definitions of the licit and illicit. While most post-colonials lack the wherewithal to navigate the fast lanes of the knowledge economy or the electronic commons, they have again found profitable niche markets by making a virtue of their situation. A massive increase in outsourcing Western technological services and telemarketing to India, for instance, has led to the dispersal of personal information across space, priming a thriving business in cybercrime and data theft.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-a-distance, human identities congeal along borders in paper and plastic; certification, ultimately, controls the capacity of people and objects to cross frontiers and to enhance their value. This is particularly so for those who traverse the routes that separate peripheries from centers of prosperity and relative security, both within and between national spaces. Where aspiration, even survival, is tied closely to the capacity to migrate (see chapter 9 below), official “papers” take on a magic of their own. And the techniques of their manufacture command a compelling power and fascination, rendering forgery a form of creativity that transcends easy definitions of legality (Siegel 1998: 58). Thus, a huge industry has evolved, especially outside the West, for the fabrication of false credentials, from marriage and divorce certificates to passports and university degrees; entire bureaucratic biographies and family archives are expertly counterfeited by means that wrest control over the production of the insignia of civic personhood from the state. It is an industry astonishingly in step with the latest techniques of authentication; so much so that the Fifth International Conference on Fraudulent Documents, held in Amsterdam in 2002, drew scientific experts from all the major countries of Europe and North America in pursuit of new methods, from laser procedures to biometrics, to keep abreast of the inspired captains of fakery to the east and the south.³⁹

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

Counterfeit Modernities

All of this points to something much larger: to the fact that post-colonies are quite literally associated with a counterfeit modernity, a modernity of counterfeit. With 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.

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 forty-seven roadblocks.⁵⁰ Revenues are also routinely raised by impersonating the state: by putting on counterfeit uniforms, bearing phony identity documents, and deploying other fake accouterments 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 prod-

uct 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.

Crime & Policing
Marenin 1987: 261

Crime & Policing
Marenin 1987: 261

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 War—and, with it perhaps, the ideological monopoly over the political exercised by the modernist nation-state—law has been further fetishized, even as, in most postcolonies, higher and higher walls are built to protect the property 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 otherwise-incommensurable 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,⁶⁷ 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, *Jubilaem* 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 nongovernmental organizations on postcolonial consciousness is such that it is not uncommon nowadays to hear the language of jurisprudence in the Amazon or Aboriginal Australia, in the Kalahari or the New Guinea highlands, or among the homeless of Mumbai, Mexico City, Cape Town, and Trench Town. Spyer (chapter 5) notes for 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 self-imaginings and identities grounded in the jural, even in places in which trafficking outside it is as common as trafficking within it—presuming, of course, that the distinction can be made at all. In Nigeria, for instance, where the fetishism of the legal has very different parameters than in constitution-obsessed South Africa, the tax code requires that adult citizens must swear to having children and aged dependents to obtain family deductions. Everyone, it is said, claims the *maximum* number, whether they have them or not. And every bureaucrat, it appears, is aware that they do so. The 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 complaints 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 Awás 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

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 "roll-out" 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 Marañón 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

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-so-civilized, patronizing, high-minded forms of kleptocracy.

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

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

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.

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 Sovereignities

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 cosmopolis 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.

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

jurial 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-first-century governments have attenuated their administrative reach, leaving more and more routine political action—be it social projects, the quest for redress, or the search for (anything other than national) security—to citizens as individuals, as communities of one kind or another, as classes of actor, social or legal. Under these conditions, in which the threat of disorder seems everywhere 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 non-governmental organizations notwithstanding, access to its means. This is all the more so in postcolonies, where bureaucratic apparatuses and bureaucisies 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. “Law-making,” 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.

sovereignty
plurality

what is more, this doubling, this copresence of law and disorder, has its own geography, a geography of discontinuous, overlapping sovereignties.

Postcolonies in Perspective: Taking Exception to Exceptionalism

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

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

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

This, of course, is not to suggest that Russia is just like Rwanda or Germany just like Guatemala or the United States just like the Ukraine. But it *does* point to the fact that, across the planet and often in the most unlikely places (Sweden, the Netherlands, Japan, England, and Canada, among others), there is growing anxiety, even moral panic, over rising malpractice, crime, and disorder—which has led to calls for more law, harsher enforcement, longer sentences, even citizen militias, and, in turn, especially as media attention focuses on these things, to yet more fear. Nor is that fear altogether groundless. Conservative theorist John Gray (1998) and others have argued that the downside of neoliberalism *is* an escalation in global incidences of lawlessness, due in part to the retraction of the state, in part to opportunities for outlaw activity arising out of deregulation and new business practices, in part to the ready market for the means of violence. All of which conduces, as in postcolonies, to a widening populist impression that the line between order and disorder is very fine indeed. This impression was given prima facie support in the United States during the late summer of 2005 by the looting and shooting in New Orleans that followed Hurricane Katrina, much of it perpetrated by victims left resourceless, unsaved, and unserved 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

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.

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

ing Austria, Belgium, France, Germany, Italy, Spain and the UK. In 1999, the entire European Commission, the highest political authority in the EU, resigned over corruption allegations. . . . According to a BBC radio program,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 “right-to-die” case in 2005, in efforts to force the judiciary to do its bidding, not least in matters of faith. Such things, patently, are not confined to America. Most Italians, for example, have long believed that Sergio Berlusconi has used “his iron majority in Parliament to pass custom-made laws to resolve legal problems related to his business empire.”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-in-the-making. Which is why the “problem” of lawlessness, itself just one-half of the dialectic of law and disorder, is so much more than merely a corollary of democratization, whose own recent renaissance seems suspiciously correlated with the migration of politics away from conventional

political institutions. And why, as we said in the preface, “the” postcolony has become such a crucial site for theory construction, *sui generis*. To the extent that they are harbingers of a global future, of the rising neoliberal age at its most assertive, these polities are also where the limits of social knowledge demand to be engaged.

Notes

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

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

2. The term “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 postcolonial South Africa (J. L. Comaroff and J. Comaroff 2004) and revisit in the subtitle of a book currently in preparation (forthcoming).

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

8. For 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; Faton 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 Mitterrand 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://laili.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/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.

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/store/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.facts.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/convegna_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.net*, <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.org/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, "Law-suits by 'Third World' Claimants a New Weapon against Multinationals," *Crescent International*, 1–15 July 2001, <http://www.muslimmedia.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.zimbabwewsituation.com/jun29a_2005.html (accessed 10 August 2005).

88. This letter to the *Jakarta Post* is also to be found at http://www.zimbabwewsituation.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.org/highlighters/v11_n28.php (accessed 9 August 2005).

104. "Lawsuits against Prisons: Texas Prisoners' Religious Rights Violated," *North Coast Xpress*, <http://www.sonic.net/~doret/k/Issues/01-03/lawsuits.html> (accessed 9 August 2005).

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The Mute and the Unspeakable

Political Subjectivity, Violent Crime, and "the Sexual Thing" in a South African Mining Community

Rosalind C. Morris

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

TRC REPORT

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

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

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

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Criminal Obsessions, after Foucault

Postcoloniality, Policing, and the Metaphysics of Disorder

Jean Comaroff and
John L. Comaroff

Perhaps it is because our lives are so chaotic, so filled with unsolved mysteries, incomplete stories, uncaught murderers that crime fiction is so popular. I believe that is why South Africans are so hooked on American TV crime series . . . because somewhere, somehow, someone is solving crimes. At least in fiction justice is served.

MICHAEL WILLIAMS, *The Eighth Man*

PEOPLE ACROSS THE PLANET HAVE, in recent years, been uncommonly preoccupied with public order, crime, and policing. From Britain to Brazil, Nigeria to the Netherlands, Slovakia to South Africa,¹ the specter of illegality appears to be captivating popular imaginations. In much of the world, to be sure, this preoccupation is far from groundless. It is true that "accurate" crime statistics may be impossibly difficult to arrive at;² such actuarial artifacts depend, after all, on what is seen to constitute a felony in the first place, on what counts as evidence, on how much is conceded to the truth claims of aggregate numbers. It is also true that the *perceived* threat of criminal assault is often incommensurate with the "real" risk to persons and property; as it happens, that risk remains more unevenly distributed in South Africa than it is in most places.³ All this notwithstanding, the incidence of violent crime here, and its effects on the lives of ordinary citizens, are *not* to be trivialized. They are perfectly real. As criminologists have come to recognize, the burgeoning violence endured by segregated black communities under apartheid has, especially since the late 1980s, spilled over into once-tranquil, tightly policed "white" cities and suburbs.⁴ This is an integral part of our story.

And yet, at the same time, there seems to be more to the public obsession with criminality and disorder than the mere *fact* of its reality. South Africans of all stripes are also captivated by *images* of crime and policing, whether it be in the form of avid rumor or home-grown *telenovelas*, Hollywood horror or high theater, earnest documentaries or trashy melodramas. Whatever dangers they may dodge on the streets by day, at night,

behind carefully secured doors, a high proportion of them indulge in vicarious experiences of extravagant lawlessness by way of the media, both imported and local. Why should this be so?

The South African preoccupation with law and order—or, rather, with its mediated representation—is neither new nor unique. “Even though crime exists . . . in what the public chooses to think of as epidemic proportions,” wrote Stuart Scheingold of the United States two decades ago, “we still feel compelled to invent it.”⁵ For over a century, in fact, fictional “cops and robbers” have provided a compelling topos for popular myth-making all over the world; clearly, they offer pliant allegorical terms for exploring the nature and limits of social being almost everywhere. This taste for crime fiction is not restricted to those who consume it as mass entertainment. Nor is it of interest only to those who contemplate order in the abstract. To the contrary, theater and fantasy appear integral to the workaday routines of policing itself. As if to make the point, Scotland Yard recently hired a professional magician, using “illusions as a metaphor for real life situations” to “boost [the] confidence and . . . leadership skills” of its superintendents.⁶ In like vein, as we shall see, the strained South African Police Services (SAPS), whose cadres include some successful diviner-detectives,⁷ devote considerable effort to staging illusory victories over the dark forces of violence and disorder. But why all the drama? Why would august officers of the law—the very embodiment of the state at its most rational, legitimate, and forceful—feel a need to play around, to act out, in this manner? Has Foucault not convinced us that it is the panopticon, rather than the theater, that holds the key to power in its modernist form?

The Uses of Horror

Crime looms large in the post-Cold War age. Increasingly flexible in its modes of operation, it often mimics corporate business,⁸ constituting an “uncivil society” that flourishes most energetically where the state withdraws: hence the implosion of ever more virtual, more vertiginous forms of fiscal fraud, ever more supple, border-busting markets in illegal substances, armaments, and mercenary violence—all facilitated by the liberalization of trade, by new kinds of financial instruments, and by cutting-edge communications media. Hence, also, the role of organized crime: of mafias, and of business-oriented “gangs” in posttotalitarian polities which, for a fee, perform services that governments no longer provide.⁹ Such criminal “phantom-states,” notes Derrida,¹⁰ are a fact of our times. Often embedded in complex transnational relations, often relying on highly sophisti-

cated technologies, they shade into the networks of terror that are rapidly replacing conventional threats to “national” security.¹¹ Indeed, received distinctions between crime and terror, always inchoate, are being revised as we speak, each term being deployed, ideologically, to make sense of, and to “fight,” the other. Thus it is that we have “the war” on terror, on drugs, on gangs, on illegal aliens, on corporate corruption, and so on. Note, in this respect, that in 2002 Egged, the Israeli bus company, sued Yasser Arafat and the Palestinian Authority for damages incurred as a result of suicide bombings; in the same year, Americans bereaved on 9/11 filed a claim against Islamic charities, the Sudanese state, Saudi Arabian banks, and others for their support of Osama bin Laden—actions that would reduce the *intifada* and World Trade Center attacks to common illegalities actionable by recourse to tort law.¹² Under these conditions, abetted by such instruments as the U.S. Patriot Act, crime and terror merge in the epistemic murk of a “new” global system that both reproduces and eclipses its old international predecessor. The upshot is that social order appears ever more impossible to apprehend, violence appears ever more endemic, excessive, and transgressive, and police come, in the public imagination, to embody a nervous state under pressure. Officers of the Los Angeles Police Department, hardly known for their civility, have described themselves as “the outer membrane of civilization” in a disorderly world.¹³ Similarly, the policeman protagonist in a stunning piece of postcolonial South African theater, Neil McCarthy’s *The Great Outdoors*, observes that the “line between order and chaos” is like “one strand of a spider’s web.”¹⁴

The obsession with crime and lawlessness is not merely a commentary—at least, in South Africa—on social order, *sui generis*. It is also a reflection on the state of the nation. Take mass advertising, a genre that seeks to transform nightmare into desire. In April 2001, the *Guardian* observed that “bolted doors, patrolling dogs defending gated communities and dark figures cocking guns in the shadows appear even in ads for toilet paper and popcorn.”¹⁵ At the time, a music radio station in Johannesburg was promoting itself, on huge billboards, by means of just two words: MORE POLICE.¹⁶ And, even more wryly: “YOU CAN TAKE THE CAR. JUST LEAVE THE RADIO. 98.7FM.” This counterpoint between panacea and panic, pop and the politics of enforcement, ardent consumerism and Hobbesian anarchy, is hardly subtle. Texts like these are haunted by the specter of immanent attack, above all, attack by unruly black youths. Violent crime, here as in the United States, has become the lightning rod for an escalating range of everyday anxieties, which are fed by the insecurity of the privileged as they witness the anger and impatience of those excluded from the Promised

race-crime 276

Land. In the banal theatrics of the mass media, crime becomes racialized and race criminalized. And both, if we may be forgiven the term, are youthenized.

Regarded in this light, South Africa appears to evince what Mark Seltzer has termed a "pathological public sphere;"¹⁷ it is increasingly at the "scene-of-the-crime," he argues, that contemporary publics are constituted. But there is more at stake in the popular obsession with scenes of violent disorder in this particular postcolony. This, after all, was, until not long ago, a racist police state; its transition from the *ancien régime*, moreover, was husbanded by a celebrated Truth and Reconciliation Commission whose deliberations were based on a model of justice that sought to address atrocities past without resort to punishment. Consequently, beyond constituting a public, the "scene-of-the-crime" in South Africa, broadly conceived, is also the source of a passionate politics on the part of government, a politics aimed at making manifest both the shape of the nation and a form of institutional power capable of underwriting its ordered existence. What we have here, in other words, is an *inversion* of the history laid out by Foucault in *Discipline and Punish*,¹⁸ according to which, famously, the theatricality of premodern power gives way to ever more implicit, internalized, capillary kinds of discipline. Indeed, it is precisely this telos—which presumes the expanding capacity of the state to regulate everyday existence and routinely to enforce punishment—that is in question in South Africa. To wit, the drama that is so integral to policing the postcolony is evidence of a desire to condense dispersed power in order to make it visible, tangible, accountable, effective.¹⁹

These theatrics, we shall see, are anything but hidden or half-hearted. More often than not they assume the overdrawn shape of melodrama, a genre, according to Peter Brooks, that polarizes conflicting forces in such a way as to "make evident, legible, and operative" values that lack the transcendent authority of a religion, a dominant ideology, or whatever.²⁰ So it is with the spectacle of policing, the staging of which strives to make actual, both to its subjects and to itself, the authorized face, and force, of the state—of a state, that is, whose legitimacy is far from unequivocal. Nor is this true only in postcolonies. According to Malcolm Young, an ethnographer of British law enforcement: "police culture possesses a dramaturgical or melodramatic inflection." It mobilizes "illusion, praxis, and imagery" in "well-directed" social productions, deploying "mythical archetypes . . . in exaggerated games of 'cops' and 'robbers';"²¹ melodrama in blue, so to speak. Young should know. He was himself a career police officer. His testimony returns us to one of our opening questions, now phrased more specif-

truth/reconciliation
1990s/1990s
desire to condense dispersed power
Melodrama
police culture as melodrama

ically: In what ways have illusion and fantasy been implicated in the work of law enforcement in recent South African history? And what might changes in the nature of police performance, in all senses of that term, tell us about the postcolonial—post-Foucauldian?—state, about its powers and its differences from its precursor? → MINOR QUES (POST-FOUCAULT STATE)

A great deal, in answering these questions, hangs on the way in which we grasp the connection between modernist state power and popular fantasies of law and order. Gramsci, for instance, observed that judicial apparatuses are "always in discredit" with the public, a corollary of which is the enduring appeal of private and amateur sleuths.²² Especially pertinent to our story, in this respect, is the reflection of C. L. R. James on detective fiction in America after the Great Depression.²³ There has, of course, been a long-standing infatuation with extralegal enforcement in US history; it has expressed itself not just in the popularity of such things as the dime western but also in the horror of public lynchings. James's exploration of the salience of the genre in the 1930s is to be read against this backdrop. Popular film, comics, and radio at the time, he recalls, were finely tuned to mass desire and frustration, giving allegorical shape to apprehensions about the meaning of freedom, prosperity, and nationhood in the midst of epic crisis. It was a moment of reckoning, too, for the liberal state and its moral economy; its failure to nurture a capitalist commonwealth had driven many ordinary people to desperation. Yet the avidly consumed crime drama of the period seldom spoke of economic collapse, labor struggles, or fear of war. This, James insists, was less a matter of deliberate sabotage than of a silent, "armed neutrality" among the classes.²⁴ In the space vacated by politics, dyspeptic private eyes sallied forth in the name of the law, sharing some of the hoodlum chic of gangsters themselves: above all, a "scorn for the police as the representatives of official society."²⁵ As ruling institutions lost legitimacy, gumshoes—men of iron, men of irony—became purveyors of a cynical justice that acknowledged anger, appetite, fallibility, power. In so doing, they made it possible to imagine a social order wrought by heroic action in the cause of a greater moral good. → Countering of Leibman

The detective fiction of post-Depression America bears some kinship with popular imaginings of law and order in South Africa after apartheid: its reference to rapidly changing social and economic conditions; to the shock effect of mass joblessness and the unfulfilled promise of a new age of prosperity; to a perceived failure of the regulatory state; to a view of the police as inefficient and easily corruptible; to the bipolarization of crime into, on the one hand, petty felonies committed by drab *misérables* driven

Gramsci

by necessity and, on the other, the flamboyant larceny of defiant anti-heroes. If the US crisis yielded the New Deal, it remains to be seen what kind of deal the "new" South Africa fashions for itself. In the meantime, criminality has come to be represented, as it was in America during the 1920s and 1930s and would be again in the late-twentieth-century inner city, as a means of production—or, rather, of productive redistribution—for those alienated by new forms of exclusion. At the same time, there is more at work in contemporary South Africa than simple deprivation. As Jonny Steinberg points out, and mass-mediated drama affirms, the local underworld is not the sole preserve of the poor; it is peopled, as well, by the "well-healed and well-educated." This suggests that, for an ever more visible sector of the population, most of all young black men, gangster "lifestyles" have a seductive appeal.²⁶ It also suggests, after C. L. R. James and many popular movies and musics since his day, that the outlaw embodies, often in deeply racialized guise, a displaced discourse about desire and impossibility, one as characteristic of the neoliberal moment in South Africa as it was of the Depression era United States. Here, too, the state is regarded with ambivalence, roughly in proportion to its alleged failure to secure the well-being of its citizens. Here, too, violence speaks elegiacally of a very general angst about the (anomic) implosion of the established order of things.

The sheer fecundity of *crime-as-imaginaire* is no mystery. Thoroughly grounded in the experience of the real, it gives voice to a fundamental conundrum of social being in the secular liberal state, a conundrum of unsettling relevance in the United States since 9/11: How much freedom ought to be alienated, in the cause of security, to any regulatory regime, especially one whose legitimacy is open to question. This is a tension that dramas of law and order tend everywhere to resolve, in Durkheimian fashion, by making the obligatory appear desirable.²⁷ But fantasy is never reducible to pure functionality. Crime fiction also provides readily available tropes for addressing ironies, for ventilating desires, and, above all, for conjuring a moral commonweal, especially when radical transformation unseats existing norms and robs political language of its meaning. In these circumstances, the felon personifies an existence beyond the law, an existence at once awesome, awful, and sublime. Mogamat Benjamin, high-ranking member of a deadly gang in Cape Town's notorious Pollsmoor Maximum Security Prison, told a TV team: "I am powerful; I am partly God."²⁸ He was referring to his capacity to determine the lives and deaths of other inmates, even warders. Brusque iconoclasm of this kind opens a space of possibility, a space in which order is up for grabs, a space in which

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new modes of being are forged in the heat of unspeakably transgressive violence as the state withdraws or is rendered irrelevant. Benjamin and his brethren run a complex organization in the dark interstices of the jail by means that elude its administration, means that spill back into the tough terrain on which their gang does its usual business.²⁹ Shades here of another revered Benjamin, Walter Benjamin, for whom violence in its archetypal, mythic form was a "manifestation of the Gods."³⁰ It is awesome, he argued, *because* it threatens state monopoly over the law; note how "great criminal[s]," even when their ends are repellent, arouse the "secret admiration of the public."³¹ But why do these figures, large and small, take on such intense salience in the here-and-now? Is this a result of the unique predicament of the postcolony? Or did it exist before? *Why now?*

Some clues from elsewhere may be helpful. James Siegel, for example, shows how, in an Indonesia facing political and economic dissolution, "the body of the criminal" has become the alibi against which the integrity of the nation and the law is asserted.³² The "dangerous classes" serve a similar symbolic end in an ever more polarized, postindustrial Britain, says Malcolm Young: police invoke them to authorize "wars"—again, that term—on behalf of "the social order" against whatever is seen to imperil it.³³ Likewise, in parts of the Mediterranean and Latin America outlaws are cast as a fearsome anachronism over which modernist states must exercise authority in order to sustain the viability of the polity and its sovereign space.³⁴ In sum, the figure of archfelon, albeit culturally transposed, seems to be doing similar work in many places, serving as the ground on which a metaphysics of order, of the nation as a moral community guaranteed by the state, may be entertained, argued for, even demanded.

The question, then, is plainly this: To the extent that discourses of crime and enforcement, as *popular* national fantasy, are endemic to the imaginary of modern state power, how might current changes in the nature and sovereignty of states—especially postcolonial states—be tied to the criminal obsessions sweeping so many parts of the world? Why do outlaws, as mythic figures, evoke fascination in proportion to their penchant for ever more graphic, excessive, unpredictable violence? In South Africa today, Rob Marsh points out, it is *white-collar* crime that is most likely to "bring the country to its knees."³⁵ But it is red-blooded assault on persons and property that is of most public concern. Violence, in short, is immensely productive, sometimes horrifyingly so: quite apart from its capacity to redirect the flow of wealth, it *usurps representation*, reveals the limits of order, and justifies state monopolies over the means of coercion.

Self-evidently, violence is never just a matter of the circulation of

admiration - God

archfelon

violence as
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images. Its exercise, legitimate or otherwise, tends to have decidedly tangible objectives—and effects. Indeed, it was the raw clarity of physical force that persuaded Fanon of its potential for liberating colonized bodies and minds.³⁶ This notwithstanding, its means and meanings always exceed its immediate ends, precisely because they rely on poetic techniques to inflate their impact. Could this be why brute coercion everywhere is inherently theatrical, its perpetrators upping the emotional ante via a host of self-dramatizing techniques—before, during, and after the fact? Begonia Aretxaga, following Zulaika and Douglass, notes that brutality sets those who wield it in a “play-like” frame, one in which extraordinary feats seem achievable, in which all pretense of distinguishing fact from fabrication disappears.³⁷ Those who wish to command must constantly invoke violence, if not directly, then in displaced or mimetic form. It is this invocation—above all, by those entrusted with the impossibility of enforcing the law—with which we are concerned here: its rough play, its predilection for criminal fantasy, its response to the vicissitudes of state power. The police become visible, argues Giorgio Agamben, citing Benjamin, where the legal dominion of the state runs out; their “embarrassing” proximity to authority is manifested in perpetual displays of force, even in peaceful public places.³⁸ As we shall see, where governance is seriously compromised, law enforcement may provide a privileged site for staging efforts—the double entendre is crucial here—to summon the active presence of the state into being, to render it perceptible to the public eye, to produce both rulers and subjects who recognize its legitimacy. Herein, we shall argue, lies the affinity between policing, drama, and illusion. Herein, too, lies the source of popular preoccupations with the representation of law and order. Those, recall, were the two issues with which we began.

Let us move, then, onto the shifting planes of recent South African history. Scene 1 opens in the late 1980s, in what was the last act of the dying apartheid regime.

Capers with Coppers: The Closed Museum and the Spectral State

We begin with an anomaly: a public museum closed to the public, perhaps indefinitely. If this is an oxymoron, it is one that indexes the contradictory implications of radical democratization for the construction of a nation of free citizens on the vestigial ruins of a police state, the ruins of a polity founded on racial exclusion.

In 1999, when we first visited the South African Police Museum, housed in a shabby, elegant Victorian building in Pretoria, the executive

capital of the country, it was shut for “renovation.” The edifice, which had been the national Police Headquarters in the 1930s, was, we were told, in dangerous disrepair. This was visibly so, although it soon became clear that the wear and tear was not merely architectural. For the public exhibition space had coexisted, in the apartheid era, with something else, something clandestine, something now abhorrent: the epicenter, and an interrogation facility, of the infamous national security service. The bizarre coexistence of the two within the same walls—the museum below, the secret police above—appeared to be beyond coincidence. But more of that in a moment. It was not only the lurking traces of state terror that compromised the building. The content of the exhibits, once very popular with patrons, had themselves become inappropriate. State museums, of course, are more or less blatant statements, conjuring up the national populations, subjects, and interests for which, and to which, they speak. In times of historical change, they offer glaring indictments of denatured ideologies, of a slippage between state and nation, signifiers and signifieds. Not surprisingly, they have become prime objects of argument about the politics of representation in the “new” South Africa. Behind closed doors, in the late 1990s, the staff of the Police Museum pondered how to make their displays relevant to the postapartheid era.

We had been drawn to the place by an interest in the changing public sense of police work brought by the advent of majority rule.³⁹ The indefinitely closed museum called forth a historical speculation, a hypothesis if you will: that reforming the image of the old South African Police Force, jackboot of the state, into that of the South African Police Services, a gentler, human-rights-oriented, community-friendly agency, could well turn out to be an exercise in impossibility. By the late apartheid years, when it became increasingly difficult to contain the contradictions of the racial state, the South African Police Force operated, for the most part, as a paramilitary force. Its security branch existed above the law, torture and deadly force were routine in the treatment of political dissidents, and a dense network of informers extended its capillaries into every sphere of existence. Against this background, the state portrayed the police as heroic defenders of order against terror, treason, and savage insurrection.

The Police Museum spoke unchallenged from the heart of that state. It began life in 1968 as a haphazard collection of relics—murder weapons, graphic photographs of “ritual” mutilations, the personal effects of a famous female poisoner—all from landmark cases of the more or less distant past, these being used, early on, in the training of cadets. With the recruitment in 1982 of a museologist, Tilda Smal, herself a police officer, the

Fanon

Heater

 Div. of Law,
 South African
 Police Museum
 Pretoria

collection was developed in an altogether-more-ambitious direction, combining edification with entertainment, high melodrama with low-tech installations. Central to its design was a series of tableaux that, together, composed a specifically South African history of crime and punishment. They also served as the setting for what would become the best-known feature of the institution, its Night Tours, during which staff of the museum and the Police Education Unit brought epic felonies to life by impersonating famous "criminals."

There could hardly be more literal or vivid evidence of the dramaturgy, the melodrama, of police work. But what did it all mean? What prompted otherwise-austere officers of a police state to inhabit the personae of their archenemies—indeed, to make public exhibitions of themselves in order to delight and terrify rather-ordinary patrons and their children? What might their play have had to do with the more sinister rituals that took place backstage in this extraordinary venue?

We take up the story with the help of the curator.⁴⁰ The museum, said Sergeant Smal, was allowed to display artifacts only from cases that had ended in convictions. It cataloged the triumph of law and order over enemies of the state. In the 1980s, the range of exhibits—a mixture of dioramas, documents, and objects—covered two key domains of police work. One was the apprehension of spectacular criminals; the other, the protection of "national security" against the threat of "terrorism" and, later in the decade, "dangers on the borders." Installations of the first kind featured the likes of Daisy de Melker, perhaps South Africa's most notorious serial killer: indicted for poisoning two husbands and one of her children, de Melker was a horrific inversion of the national stereotype of the genteel white female, entrusted with reproducing the moral essence of her race.⁴¹ Such emblems of aberration *within* the nation were set off from the peril to its existence posed by those alienated from it: by Poqo, the armed wing of the radical Pan-African Congress, for instance, which, in the early 1960s had made a particular target of the police,⁴² and by the "Rivonia conspiracy," uncovered with the arrest, in 1962, of several top African National Congress (ANC) leaders, most notably Nelson Mandela, who were alleged to be plotting treason. Dioramas dealing with defensive action on the borders depicted a hostile alliance of others bent on bringing down the ruling regime: exiled "terrorists," sympathetic frontline African states, and international communism. As this installation underlined, the dividing line between the military and the police was conspicuously fuzzy in the late years of minority rule.

Night Tours, in which the tableaux were animated, were started in

1990 as a onetime experiment to entertain a group of "VIPs" from the International Police Association. Word spread. Besieged by inquiries from an interested public, the staff decided to offer the tours on request. Soon the demand became overwhelming: at one point, there were three a week, all year, each for forty visitors. Performances continued until the building closed in April 1999. Initially, most visitors, both night and day, were white Afrikaans-speaking South Africans. Later, Africans, especially school groups, began to patronize the place. By that time, efforts had been made to revise the exhibits (see below). The Police Museum, in which everything was free of charge, seems to have been popular above all with the superpatriotic and the very poor. Toward the end, the Night Tours attracted some cultured critics of the regime, for whom this dark, if not wholly intended, parody—its freak-chic—became an excursion into the comic underside of the police state.

The staff look back on the tours with great fondness. These were occasions of carnivalesque camaraderie, occasions that gave license for various sorts of play, some of it decidedly ambiguous. As visitors entered the building, they came upon cops in anachronistic uniforms on antique bicycles; a somewhat heavy-handed signal, this, that they had departed real time for the domain of history-as-theater, of docudramaturgy. As we intimated earlier, the vaudeville itself turned on the willingness of the officer-players to inhabit the identities of public enemies. This willingness, almost a caricature of the mix of outrage and enjoyment that Lacan calls *jouissance*, may be read, following Aretxaga,⁴³ as an appropriation by state functionaries of the "seductive and fearful power" of their adversaries. But there is more at work here. The performance also recalls the repetitive enactment of paradox characteristic of African rituals under colonial conditions.⁴⁴ The Night Tours replayed the Hegelian enslavement of white rulers to the terror of the *swart gevaar*, a "black danger" largely of their own making. In the play, the pragmatics of melodrama permitted the separation of the civil from the savage, enabling the law to appear to act decisively upon forces of darkness, as if to redress the contradictions endlessly reproduced by colonial rule. The curator acknowledged that her staff presumed that patrons would be fascinated by sensational crime—and eager for vicarious terror. Consequently, they sought to provoke first horror and then deliverance, such "vicarious adventures in the illicit and the brutal," Scheingold notes, being a "prelude" to the gratification, to the "discharges of anger," promised by "society's act of retribution."⁴⁵ In dramatizing the difficulties of defending an enlightened order against uncouth odds, the police-players elevated their audience into metonymic citizens of the

nation as moral community—and, also, into a public in need of state protection from a vast mass of unruly others.

Visitors remember the tours vividly. One critical observer described the performance as a “home-grown chamber of horrors”: part amateur theater, part fairground haunted house. Thus, Daisy de Melker walked the halls dressed in period costume, offering visitors coffee from her poison flask. The real thing, that is, *not* a facsimile. Setting the scene was a cast of characters who embodied less alarming threats to everyday order: a few policewomen garbed as prostitutes; a couple who postured as addicts in front of a light show that simulated a bad trip; a group of “authentic” *sangomas* (traditional healers), who enacted a trance to dramatize the dangers of “black magic.” Also brought to life was Panga Man, a notorious black criminal who attacked courting white couples while they were parked in a leafy spot in Pretoria, not far from the museum. Bearing a panga, a large scythe, he would assault the men and rape the women—to whom, it was said, he then gave bus fare home. There could hardly have been a more intense figuration of the dark, erotically charged menace that stalked the cities in the white imagination, threatening civility and its social reproduction. This nightmare gained fantastic irony when the attacker turned out to be a mild-mannered “tea boy” at police headquarters.⁴⁶ Epitomizing the standard colonial terrors of rapacious black sexuality and subaltern betrayal, Panga Man featured centrally in a regular museum display, which depicted a car sawn in half to reveal a couple looking up in petrified expectation of an imminent strike. During Night Tours, a door would burst open in the wall behind, and an African officer would leap out, brandishing the eponymous weapon. “We thought of having him shout something as he did so,” the curator told us. “But the first time we tried it everybody screamed so loudly, he could hardly be heard. People nearly fainted.”

By the mid-1990s, with the dawn of the postcolony, efforts were made to add fresh exhibits to the museum, acknowledging the possibility of different readings of history and the presence of new sorts of citizen-consumer. The aim, said Tilda Smal, was to document the role of the police in the apartheid years in such a way as to capture black viewpoints on that history. This took it on faith that it was possible, *within* the same signifying economy, to pluralize existing displays, their ideological scaffolding, and the kind of nation they presumed. Thus, installations on terrorism were revised to explain the rationale of the liberation movements. And tableaux were included to document the Sharpeville massacre of 1960, in which scores of nonviolent African protestors were shot to death by police, and the insidious indignities of the pass system. Popular with the

public, itself now changing in social composition, was a depiction of the saber-rattling antics of the white-right Afrikaner Weerstand Beweging (Afrikaner Resistance Movement), whose assertive racist posturing was the very essence of neofascist melodrama. These changes produced some paradoxical moments—like one in which Nelson Mandela, played by a SAPS look-alike, stood inside a replica of his Robben Island cell and answered polite questions from curious visitors.

Nor were the tours uncontroversial, particularly among older white police officers. The museum, now under the jurisdiction of an ANC-administered Ministry of Safety and Security, had entered an era of post-colonial contestation, becoming a space of argument as never before. Whatever the contingent causes, its closure suggests that it collapsed under the weight of its own contradictions, wrought by thoroughgoing changes in the racial composition and status of the police, in the ideology of enforcement, and, most of all, in the relation of citizenry to government. But the question of what should be exhibited, how and why, pointed to something more than a shift in the way in which the nation narrates its past and future. It signaled a transformation in the social imaginary of the state itself—and the ways in which it deploys horror to make itself visible. About which more in a moment. In the meantime, the museum staff, undaunted, continue to plan future displays: on, for example, the more sensational abuses revealed by the Truth and Reconciliation Commission,⁴⁷ on the “evils” of the “witch doctor’s art,” and on such spectacular murderers as the so-called Norwood serial killer, who, as it happens, had been a regular police sergeant. But, as these museologists are coming to realize, it is difficult to capture, in tableau, the realities of policing the postcolony, at least not without rethinking the regime of representation required by the present moment. To be sure, in the final years, the Night Tours themselves ran up against this difficulty, finding that the line they presumed between fact and fantasy, order and chaos, safety and violence, was dissolving. In one instance, a harbinger of things to come, the police actors staged a robbery involving hostages and a fake intervention on the part of the Flying Squad, a rapid-response unit, firing blank bullets. By this time, however, violent crime had become a pervasive preoccupation, especially in the inner city, where the museum was located. As the shots went off, panic ensued. Unclear, in the midst of the mayhem, was whether or not the performance had been overtaken by a real attack from the streets outside.

It was not the first time that theater and brute reality had been confounded in this house of horrors. As we sat in the closed museum, talking to the curator about its past and its (im)probable future, Smal gestured

toward the ceiling and recalled how, in the old days, the Pretoria branch of the Security Police had been housed above. "A lot of famous people were interrogated here," she said, "almost the whole current government." The edifice had been home, then, to another, more sadistic form of theater: the surreal techniques of information gathering, of violence and terror, that were the stock-in-trade of "special policing" under apartheid. Since 1994, several prominent figures have revisited the site of their incarceration and torture: the upper reaches of the building have, for former enemies of the state, become a space for revisiting the past, a space for personal and collective re-membering.⁴⁸

During the heyday of the museum in the 1980s, its staff and visitors used an entrance on the east side of the building. The Security Police used the west side. When political prisoners were brought in, the clanking of their handcuffs and leg irons was audible in the exhibition space below. Smal said that she had found it hard to believe what she had heard and seen at the time. But, she noted, for patrons it all seemed "part of the show." In this way, the museum was the facade for state terror, and state terror the mise-en-scène for the museum.

We are confronted here with the strangeness of the real,⁴⁹ the unnerving interpenetration of force and fantasy, of policing and performance, of the interiors and exteriors of the state-as-violence. There was no simple line, in this house with two entrances, between backstage and frontstage, between actors and audience, between the producers and consumers of a phantasmagoric reality. Ordinary citizens unwittingly played along in the fabrication and reproduction of precisely the sense of apocalypse—the terrifying threats to order—that legitimized the deadly exercise of coercion in the name of governance. Despite the distinction between public display and secret interrogation, each represented an aspect of the melodrama, of manufacturing truth by evoking terror, that appears essential to enforcement everywhere, one that takes especially cavalier and destructive forms in totalitarian states, where a continuing sense of emergency exonerates the most savage of disciplinary practices. In South Africa, in the present era of "human-rights" policing, these practices have been radically transformed. But, as we shall see shortly, the reliance of the law on melodrama has not disappeared. In answer to one of our opening questions, there is both continuity, because it is in the nature of enforcement, and change, because of shifts in the political culture of its context.

Old horrors leave their traces. While the future of the Janus-faced edifice hangs in the balance, its uncanny past haunts those who were part of it, those who seek now to reconfigure its purpose in the present. Toward

the end of our conversation, the curator remarked: "We have a few resident ghosts in the building." One, she confided, likes to play (note that verb again) with the security system when people work after hours, a phantom, perhaps, with a particularly poignant sense of irony. Museum personnel attest to strange nocturnal experiences. South Africans of all races have always been actively engaged with the supernatural, although an obsession with the occult has been especially noticeable during this time of transition.⁵⁰ One Sunday evening, when Smal was alone in the building, the alarm began to sound furiously. Unable to switch it off, she sat resignedly for two hours, waiting, as she put it, "for the spirit to play herself out." On another occasion, she reports having shouted: "Daisy," de Melker, that is, "leave the intercom alone!" The mechanism, she said, "went wild."

But other, unnamed forces also spook this building, struggling to find voice in the great re-visioning of the past occasioned by the birth of the postcolony. It is as if the specters of bygone events are unable to find embodiment—or a means of representation—in the present, notwithstanding laudable efforts to foster new cultures of recollection; as if farce and tragedy, humor and horror, must confront each other before an awful history can become a habitable present. Those who spend time on the upper floors during the small hours speak of an unquiet presence along the corridors. Some say that it is because many prisoners had "committed suicide" here, "suicide" being a secret-police euphemism for "killed in custody." More recently, a security guard shot himself on the premises. Another person came off the street to take his own life in the courtyard. Black South Africans, in particular, disliked working in the place. Many still do. Here we get to the nub of the issue. The lower floors of the building may be frequented by the ghosts of playful lady poisoners and other random spirits, but the upstairs has an altogether more sinister aura. Museum staff told us that, in the former Security Police stronghold, "there is a really strange feeling." People hear the footsteps of those long departed. No one feels comfortable in the place. This is hardly surprising: only perpetrators and victims know what unspeakable acts and agonies those walls have witnessed. Thus it is that history shadows the reluctant consciousness of those—above all, those responsible for justice, law, and order—who must find ways to reconcile their activities in the past, a past that truly *was* another country, with the radically altered moral sensibilities of the present.

No wonder the Police Museum remains shut. It does so not just because its cabinet of horrors requires drastic revision in the postcolony, but be-

Manufacturing
truth by evoking
terror

cause it must find new modes of melodrama, new forms of conjuring order from terror—all the more so since, in recent times, the public preoccupation with violent crime, fed by avid electronic and print media, has made humdrum reality seem much scarier than fiction. In the event, the now-multiracial staff of the SAPS Education Unit has, over the past few years, begun experimenting with other genres of self-representation—among them, video shows, popular puppetry, and street theater—to dramatize a contemporary clutch of nightmares: domestic assault, rape, gun-related violence, drug abuse.⁵¹ As befits the ethos of a liberalizing state, they take their shows on the road to the various provinces of the postcolony. We follow them to one such provincial outpost, there to explore the nature of police drama after apartheid. And so, on to scene 2.

Play Accidents, Choreographed Crimes: Performing the State

In November 1999, we read in the national press that Mafikeng-Mmabatho—capital of North West Province, where we were living and working at the time—was to host an exhibit on violence against women.⁵² This was to be part of a countrywide campaign, Project Harmony, that sought to draw public attention to the government's newly minted Domestic Violence Act. Members of the North West Police Services, the papers announced, would stage educational performances at taxi ranks, those remarkable agoras of African postcolonies. Our inquiries about the event drew a blank, however. Nobody, neither the local police nor anyone else, knew a thing about it.

It was only after we traveled to the Secretariat for Public Safety and Liaison at its provincial headquarters, ten kilometers north of town, that we learned the whereabouts of the exhibit. It was to be held in the foyer of the North West Provincial legislature. The Secretariat, it should be noted, is a regional division of the national Department of Safety and Security, under whose aegis falls the newly reorganized SAPS;⁵³ although, at the time, relations between the two bodies were rather ill-defined. The new National Crime Prevention Strategy, adopted in 1996, promulgated a dispersed but “integrative” approach in which provincial governments were charged with “co-ordinating a range of . . . functions . . . to achieve more effective crime prevention.”⁵⁴ Precisely how this was to be done remained opaque, however, even to those entrusted with the urgent task of promoting “community security.” Here, patently, was local government faced with the demand to invent itself.

This is where Project Harmony came in. The directive from the state

that provincial governments should raise public awareness of the then-imminent Domestic Violence Bill implied a clear line of action—hence the announcement of the exhibit that proved so strangely elusive. But why, we wondered, *had* it been so hard to find? And why was it being staged in the Provincial Parliament? This is hardly a *public* space: security was so tight that only members of government, their staff, and accredited visitors were admitted. Inside, in the grand lobby, two rather-flamboyant members of the Police Education Unit fussed, with professional flourish, over a single tableau. The display was small but striking. A *very* still life, its centerpiece was a bed with disheveled sheets. Across them lay a life-size model of a female, race indeterminate, clad in the shredded remnants of upmarket underwear. Her body was bruised and bloody, her throat cut. A knife lay close to her face. Yellow tape cordoned this off as a crime scene, which was framed by posters and works of art, all depicting violence against women, all urging the public—in English and Afrikaans but *not* Setswana, the local language—to “speak out against abuse.”

What are we to make of this grisly spectacle, whose artful detail seemed so to exceed its function? And why was a diorama ostensibly intended to educate “the public” placed so securely beyond its gaze? The actions and anxieties of the police artistes offered a clue. The display had to be ready for viewing by the parliamentarians, political and civic dignitaries, and press people who had been invited to attend a ceremonial session marking the passage of the Domestic Violence Act. *They* were the target audience. It was they who were meant to witness that, notwithstanding mounting skepticism, local police and local government could cooperate effectively to fight crime. But the investment of those responsible for the exhibit, and the emotional power packed into it, implied that it was also a site of *self*-construction. Its authors, in the name of the SAPS, seemed intent on figuring a collective sense of moral purpose in the face of a daunting world in which violence was thought to have become endemic, ubiquitous, even unpoliceable.

What we were witnessing, in short, was the state performing for itself, performing itself. The state making statements. And drawing its charge from a violated female body that, in a shift from the older signifying economy, had come to stand for the moral citizen victimized by the new arch-enemies of the people. For the salience of the meticulous melodrama played out in this political setting was that it was a simulacrum of *governance*, a rite staged to make actual and authoritative, at least in the eyes of an executive bureaucracy, the activity of those responsible for law and order. And, by extension, to enact the very possibility of *government*. For

the battle against crime, epitomized in sexualized attacks on women, has become diagnostic of the efficacy of the postcolonial regime at a time when the nation's foes—its rapists and murderers, its gangsters and gunmen, its carjackers and drug dealers—are, for the most part, also its own recently liberated subjects; this, recall, being one of the contradictions faced by the Police Museum in its efforts to revamp its signifying economy. In showing visible attentiveness to the sanctity of the female body, to the specter of violence against it, and to policing those who would desecrate it, the state objectified itself—to itself.

But the institutional face of government also insists that it be recognized by its subject-citizens—which takes us to the other face of police performance, its *public* enactment. One such enactment came at us, literally, two months later. At 8:30 a.m. on a Tuesday morning in downtown Mafikeng, as children rushed to school and businesses opened their doors, we heard an oncoming cacophony of horns and sirens, obviously a motorcade. Down the street hurried a motley array of conveyances: a few lumbering Public Order Police trucks (aptly named “hippos” in the bad old days), a number of patrol cars, and several civilian sedans, about twenty vehicles in all. Each contained a few uniformed officers of different ranks and races, who waved energetically to those gathered in bewilderment on the sidewalks. On the doors and hoods of these vehicles were scrawled messages in English. One condemned the abuse of women. The other proclaimed, “Give them toys, not guns,” invoking a growing concern about violent acts perpetrated by children. This, self-evidently, was yet a further nod toward crime prevention. But it was also an effort to establish a palpable police presence on the streets by playing on the nightmare of a nation consumed by brutality, a nation in which violated mothers were producing a generation of infant felons.

People along the roadside, having discerned that the motorcade was “put on by the police,” paid it little heed. The once-ubiquitous, menacing presence of the law has been drastically reduced here as elsewhere in the “new” South Africa. By contrast, police *performances*, especially under the sign of mass education and public relations, have become much more common. “The streets are full of *tsotsis* [gangsters],” one old man complained to us, “and all the police can do is play.” The choice of this last word will not go unnoticed.

The observation itself has some basis. Local law enforcement officers, sensitive to the ambivalence with which they are regarded, have devised various home-grown techniques through which to enact their visibility, efficacy, resolve, and responsibility before a population fearful to inhabit

public space. One of their performances—a fake traffic pileup, staged without warning at a busy intersection in Mafikeng during the morning rush hour—was so authentic that it caused pandemonium. And one, all too real, accident. Ironically, the aim of the exercise had been to draw attention to a campaign for safe driving: carnage on the roads, much of it caused by alcohol and criminal negligence, is another evil besetting the province. So rapid has been the rising death toll that it seems less accidental than an index of new dangers lurking in the unrestrained pursuit of freedom, not least the freedom to consume, that has come with the end of apartheid—and with the expansive, and expensive, ethos of neoliberalism.

Unlike the rape scene but like the motorcade, the accident inserted itself into the thick of street life. It deployed the full power of the law—the right to usurp public space and time, to conjure with truth, to evoke terror by mimicking death—all to impress upon “the community” the authoritative presence of the police, whose absence from crime scenes had been subject to much local criticism. But the smash was *also* intended, as was the Rabelaisian procession, to be a functional ritual: one that would turn popular ambivalence toward the SAPS into positive affect by dint of carefully staged emotions as transformative for the actors as for their audience. For here, again, the actors *were* the audience, the audience actors. Their drama was at once opaque to the public, yet made that public part of the staging. The unmarked pileup, along with the almost-illegible signs in the motorcade⁵⁵ and the hidden-away exhibit at the Parliament, implies a form of reflexivity in which the performers sought, by aping epics of disorder, to interpellate themselves as legitimate agents of caring enforcement: agents whose role in grappling with a new catalog of national nightmares would be recognized, and respected, by the populace at large. For policing in this new era presumes a high measure of consent from citizens, a consent still very much in question.

If, as Malcolm Young says, policing everywhere relies on “well-directed social productions” to maintain the mythic divide between good and evil, is it any wonder that the new SAPS, still struggling to define itself on a re-configured moral and political landscape, should evince a strong tendency to “act out”?⁵⁶ Or, as in the Police Museum, is it any wonder that the line between staged performances and the melodrama of everyday police work should often disappear—which it does in many theatrically staged, mass-mediated arrests. This was brought home to South Africans a few years back by a series of ostentatiously publicized raids, led with extravagant ceremony by the national chief of police, on those Johannesburg “gentleman’s clubs” alleged to be trafficking in alien sex-workers.⁵⁷ While it did

not lead to many arraignments, the operation dramatized a recurrent terror of the reconstituted nation: the growing mass of illegal immigrants, archetypal others, whose very being-there is thought to endanger both the borders and the interiors of the postcolony. That such performances—many of which feature police showing off their mastery in melodramas of despoiled female bodies—may be tentative and dispersed, that they lack the compelling power often attributed by anthropologists to communal rituals, is precisely the point. It is through their uncertain playing out that the “new” South African polity is taking tangible shape.

Conclusion

We have argued that, in postcolonial South Africa, dramatic enactments of crime and punishment—both those disseminated by the state and those consumed by various publics—are not merely fabrications after the event; nor are they reflections, inflections, or refractions of a simple sociological reality. To the contrary, they are a vital part of the effort to produce social order and to arrive at persuasive ways of representing it, thereby to construct a minimally coherent world-in-place; even more, to do so under neoliberal conditions in which technologies of governance—including technologies of detection and enforcement—are, at the very least, changing rapidly and are, in some places, under dire threat. In these times, criminal violence is taken to be diagnostic of the fragility of civil society; concomitantly, officers of the law become the prime embodiment of a state-under-pressure—thus the irony of contemporary South Africans who, in the effort to build a posttotalitarian democracy, find themselves calling for “more Police.” There appears to be a decidedly post-Foucauldian predicament, wherein disorder seems to exceed the capacity of the state to discipline or punish. It is a predicament in which both those who would wield power and their putative subjects find it necessary to resort to drama and fantasy to conjure up visible means of governance.

This story could, of course, be read *not* as post-Foucauldian but as a historical narrative that proves the Foucauldian point; or, rather, that reinforces a Foucauldian telos by playing it in reverse to show how, when modern power runs out, primitive spectacle returns once more. We would argue otherwise: that the distinction between politics-as-theater and biopolitics underlying this telos is too simple; that it is itself the product of a modernist ideology that would separate symbolic from instrumental coercion, melodrama from a politics of rationalization. Melodrama may be the medium of first resort where norms are in flux and the state is incapable of ensuring order. But the history of modern policing suggests that

theater has *never* been absent from the counterpoint of ritual and routine, visibility and invisibility. It has always been integral to the staging of power and of law and order in authoritative, communicable form; recall, one last time, the testimony, in this respect, of Malcolm Young, the policeman-ethnographer. That counterpoint, in short, lies at the very heart of governance, be it metropolitan or colonial, European or African, past or present.

There is a more than arbitrary connection, then, between law enforcement, theater, and dramatic fiction.⁵⁸ Crime and punishment are especially salient to the reciprocal fantasy through which police and public construct each other across the thin blue line⁵⁹ that makes palpable the power of the state, the thin blue line that, imaginatively, stands between anarchy and civility, the thin blue line that underscores the fragility of order and gives focus to popular preoccupations with the threat of social meltdown. All the more so since, with the rise of global capitalism and the mutation of the old international system, new geographies of crime and terror, themselves ever more murkily interrelated, have rearticulated criminality inside nation-states with criminality across nation-states, making both harder to contain or comprehend. All the more so, too, since the world-historical conditions of this neoliberal age—among them, the weakening sovereignty of nations and their borders, the diminishing capacity of governments to control either the means of coercion or the commonweal, the challenge of cultural politics to the liberal rule of law and its grounding in universal human rights—have made policing in its modernist sense difficult, perhaps even impossible.

This may be most readily visible in postcolonial, posttotalitarian contexts, where there is a paucity of civil institutions to counter the contraction of the welfare state. It is, however, as urgently felt in, say, the post-industrial north of England⁶⁰ as in the northerly provinces of South Africa. And it expresses itself everywhere in the criminal obsessions of both rulers and subjects. Thus, while much current opinion, stretching from libertarian to Foucauldian, might minimize the importance of “the state,” there is plentiful evidence in popular fantasy of a nostalgia for authoritative, even authoritarian government. This much is evident in the reflexive self-constructions of South African police, who dramatically inflate both the necessity to wrest community from chaos and their capacity to do so. Their melodramas are founded on a dialectic of production and reduction: on the productive conjuring of a world saturated with violence and moral ambiguity, the threat of which they alone are able to reduce to habitable order. Thus it is that, in their *imaginaire*, a metaphysics of disorder—the hyperreal conviction, rooted in everyday experience, that society hovers on

the brink of dissolution—comes to legitimize a physics of social order, to be accomplished through effective law enforcement. Thus it is, reciprocally, that many ordinary South Africans are drawn to mass-mediated dramas in which men with badges confront, and typically overcome, the most heinous, most violent, most antisocial of felons. Thus it is, too, that, distilled in a fictional economy of representation, fantasies become facts, impossibilities become possible, and the law, as foundation of the nation-state, becomes visible once more.

Notes

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1. In our forthcoming study *The Metaphysics of Disorder: Crime, Policing, and the State in a Brave Neo World*, we interrogate patterns of crime and their representation in South Africa, past and present—and annotate, in detail, both primary and secondary data on the topic. Given constraints of space in this context, we are compelled to offer a relatively sketchy set of references in support of our statements here and below. For further relevant evidentiary materials, and materials on evidence, see the *Nedbank ISS Crime Index* and the monographs published by the Institute of Security Studies; these are to be found on the Web at www.iss.org.za.

2. The general point has been made often, of course; it is part of the more general question of the nature of quantitative evidence: how it is constructed, by what processes of abstraction it takes on significance, how it circulates, and how it is attributed meaning. More mundanely, however, for just one example that relates specifically to South African crime figures (as everywhere, a highly controversial question), see Rob Marsh, *With Criminal Intent: The Changing Face of Crime in South Africa* (Cape Town: Ampersand Press, 1999), pp. 176–86.

3. See, e.g., Mark Shaw and Peter Gastrow, “Stealing the Show? Crime and Its Impact in Post-apartheid South Africa,” *Daedalus: Journal of the American Academy of Arts and Sciences* 130, no. 1 (2001): 235–58, especially 243; Martin Schönreich, “Sleeping Soundly, Feelings of Safety: Based on Perceptions or Reality?” *Nedbank ISS Crime Index* 5, no. 2 (2001): 1–6.

4. See, e.g., Tony Emmett, “Addressing the Underlying Causes of Crime and Violence in South Africa,” in *Behind the Mask: Getting to Grips with Crime and Violence in South Africa*, ed. Tony Emmett and Alex Butchart (Pretoria: Human Sciences Research Council Publishers, 2000), p. 290; John Matshikiza, introduction to *The Drum Decade: Stories from the 1950's*, ed. M. Chapman (Pietermaritzburg: University of Natal Press, 2001), p. xi; Mungo Soggot, “When Orange Farm Meets Sodwana Bay,” in *From Jo'burg to Jozi: Stories about Africa's Infamous City*, ed. Heidi Holland and Adam Roberts (London: Penguin Books, 2002), p. 227.

5. Stuart A. Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (New York: Longman, 1984), p. 68.

6. See Jamie Wilson, “War on Crime Is Just an Illusion,” *Guardian*, 28 April

2001, p. 11. Said one skeptic in the force: “Perhaps he could make several thousand more police officers appear on the streets of the capital to help combat the number of burglaries and robberies and help us protect the public.”

7. Some of these diviner-detectives have drawn the attention of the national media: see, e.g., Sam Kiley, “SAPS Man Aims to Kill in His Role as *Sangoma*,” *Star*, 7 August 1997, p. 2; see also *Search for Common Ground*, a widely watched television documentary first broadcast by SABC3 on 17 July 1997. Others, like Sergeant Moshupa of the SAPS at Itsooseng in North West Province, with whom we worked in 1999–2000, were known locally for bringing visionary powers to bear on their police work.

8. Johannes Leithäuser, “Crime Groups Become an Increasing Security Threat, Officials Assert,” *Frankfurter Allgemeine Zeitung*, 22 May 2001, English edition, p. 2.

9. On Russia, see Nancy Ries, “Mafia as a Symbol of Power and Redemption in Post-Soviet Russia,” paper read at workshop “Transparency and Conspiracy: Power Revealed and Concealed in the Global Village,” London School of Economics, May 1999. In Cape Town, South Africa, a daily newspaper, *Cape Argus*, published a four-day series (4–7 August 2003) of headline feature articles under the title “Gangland (Pty) Ltd.” “(Pty) Ltd.” designates a limited company in South Africa. The series—and especially the article by Michael Morris, “Gangsterism Provides . . . but It Takes Away More,” 6 August, p. 14—makes exactly this point.

10. Jacques Derrida, *Specters of Marx: The State of Debt, the Work of Mourning, and the New International*, trans. Peggy Kamuf (New York: Routledge, 1984), p. 83.

11. The director of the European police agency, Europol, noted in 2001 that transnational crime posed a growing threat to domestic security in European countries, and that governments should “examine whether the resources that had previously been spent on military defense would be better invested . . . in domestic security”; see Leithäuser, “Crime Groups Become an Increasing Security Threat,” p. 2.

12. These legal actions were reported all over the world. In South Africa, news of the impending Egged suit first appeared in “Israel to Begin Pulling Out of Gaza, Bethlehem,” *Cape Times*, 19 August 2001, p. 2. The story of the 9/11 suit was carried by most major U.S. newspapers in August 2002.

13. Peter J. Boyer, “Bad Cops,” *New Yorker*, 21 May 2001, p. 60.

14. Neil McCarthy, *The Great Outdoors*, unpublished playscript, p. 23. The play was premiered on 30 June 2000, at the Standard Bank National Arts Festival in Grahamstown, South Africa.

15. Jacques Peretti, “Selling the Same Old Story,” *Guardian* (Media), 30 April 2001, p. 8.

16. “Police,” of course, is the name of an internationally famous rock group.

17. Mark Seltzer, *Serial Killers: Death and Life in America's Wound Culture* (New York: Routledge, 1998).

18. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Press, 1995).

19. Here, and in general, we acknowledge with gratitude the extraordinarily insightful reading given to this argument by the editors of *Critical Inquiry* and, in particular, by Bill Brown.

20. Peter Brooks, *The Melodramatic Imagination: Balzac, Henry James, Melodrama, and the Mode of Excess* (1976; New Haven: Yale University Press, 1995), p. viii.
21. Malcolm Young, *An Inside Job: Policing and Police Culture in Britain* (Oxford: Clarendon Press, 1991), pp. 3–4.
22. Antonio Gramsci, "The Detective Novel," in *Selections from Cultural Writings*, ed. David Forgacs and Geoffrey Nowell-Smith, trans. William Boelhower (Cambridge, MA: Harvard University Press, 1985), pp. 369–70.
23. C. L. R. James, *American Civilization*, ed. Anna Grimshaw and Keith Hart (Cambridge and Oxford: Blackwell, 1993), pp. 118–19. On the relevance of James's work to the current South African scene, see Leola Johnson, "The Social Bandit after Apartheid," *Macalester International* 9 (2000): 260–68, especially 260.
24. James, *American Civilization*, p. 123.
25. *Ibid.*, p. 124, emphasis in original.
26. Jonny Steinberg, "Introduction: Behind the Crime Wave," in *Crime Wave: The South African Underworld and Its Foes*, ed. Jonny Steinberg (Johannesburg: Witwatersrand University Press, 2001), p. 4.
27. See, e.g., Victor W. Turner, *The Forest of Symbols: Aspects of Ndembu Ritual* (Ithaca, NY: Cornell University Press, 1967).
28. Mogamat Benjamin quoted in Allan Little, "Miracles in Maximum Security," *Guardian* (Saturday Review), 28 April 2001, p. 3.
29. See Kelly Gillespie, "Bloodied Inscriptions: Institutionalization, Productivity, and the Question of Authorship" (MA thesis, University of Chicago, 2002).
30. Walter Benjamin, *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz (New York: Schocken Books, 1978), p. 294. Cf. Michael Taussig, *The Nervous System* (London: Routledge, 1992), p. 116.
31. Benjamin, *Reflections*, p. 281; cf. Gramsci, "Detective Novel," pp. 69–70.
32. James T. Siegel, *A New Criminal Type in Jakarta* (Durham, NC: Duke University Press, 1998).
33. Young, *Inside Job*, 3.
34. Paul Sant Cassia, "Better Occasional Murders Than Frequent Adulteries: Banditry, Violence and Sacrifice in the Mediterranean," *History and Anthropology* 12 no. 1 (2000): 65–99, especially 66–67.
35. Marsh, *With Criminal Intent*, p. 178.
36. Frantz Fanon, *The Wretched of the Earth*, trans. Constance Farrington (New York: Grove Press, 1968), p. 86.
37. Begoña Aretxaga, "A Fictional Reality: Paramilitary Death Squads and the Construction of State Terror in Spain," in *The Ethnography of Political Violence: The Anthropology of State Terror*, ed. Jeffery A. Sluka (Philadelphia: University of Pennsylvania Press, 2000), p. 64; Joseba Zulaika and William Douglass, *Terror and Taboo: The Follies, Fables, and Faces of Terrorism* (New York: Routledge, 1996), p. 135.
38. Giorgio Agamben, *Means without End: Notes on Politics*, trans. Vincenzo Binetti and Cesare Casarino (Minneapolis: University of Minnesota Press, 2000), pp. 104–5; Walter Benjamin, p. 287.
39. We thank Hillel Braude, Claudia Braude, and Mark Gevisser, whose ac-

- counts of visits to the museum in the early 1990s are reflected in our description here.
40. Interview with Sergeant Tilda Smal, South African Police Museum, Pretoria, 10 August 2000.
 41. Daisy de Melker was hanged in 1932 for the murder of her son Rhodes. The court also believed that she had killed her two husbands—in order to inherit their money—but could not establish conclusive evidence to this effect. De Melker was widely rumored to have put five of her other children to death as well, but she was never charged with these homicides. See, e.g., Rob Marsh, *Famous South African Crimes* (Cape Town: Struik, 1991), chap. 6.
 42. Poqo (which, in Xhosa, means "for ourselves alone") patterned itself on the Kenyan Mau Mau liberation movement. Its cadres staged attacks on police and other whites in Cape Province, often using pangas. In 1963, acting on a tip-off from the authorities in Basutoland, where the organization's leadership was in exile, the South African Police arrested some two thousand suspected members; see, e.g., Tom Lodge, *Black Politics in South Africa since 1945* (London: Longman, 1983), p. 247.
 43. Aretxaga, "A Fictional Reality," p. 64.
 44. Max Gluckman, "Rites of Rebellion in South-East Africa," in *Order and Rebellion in Tribal Africa: Collected Essays* (London: Cohen and West, 1963); Turner, *Forest of Symbols*; Jean Comaroff, *Body of Power, Spirit of Resistance* (Chicago: University of Chicago Press, 1985).
 45. Stuart A. Scheingold, *The Politics of Street Crime: Criminal Process and Cultural Obsession* (Philadelphia: Temple University Press, 1991), p. 175.
 46. Inside knowledge enabled the culprit to evade the police for four years. Eventually convicted on multiple counts of rape, he was sentenced to death and hung.
 47. Plans center on such sites as Vlakplaas, notorious for the training of terror troops to counter "enemies" of the apartheid state.
 48. According to Smal, Tokyo Sexwale, former premier of Gauteng Province (which includes Pretoria), recalled, on a recent visit, the last time he had been inside the building. It was when he was brought there "at 4 a.m. on a cold morning in July, directly from prison"; he was detained for several days of interrogation. Interview with Tilda Smal, 10 August 2000.
 49. E. J. Clery, *The Rise of Supernatural Fiction, 1762–1800* (Cambridge: Cambridge University Press, 1995), p. 174.
 50. See Jean Comaroff and John L. Comaroff, "Occult Economies and the Violence of Abstraction: Notes from the South African Postcolony," *American Ethnologist* 26, no. 3 (1999): 279–301; Jean Comaroff and John L. Comaroff, "Alien-Nation: Zombies, Immigrants, and Millennial Capitalism," *Codesria Bulletin* 3/4 (1999): 17–28, reprinted in "Enduring Enchantments," ed. S. Dube, special edition, *South Atlantic Quarterly* 101, no. 4 (2002): 779–805.
 51. To date, the Education Unit has not dealt with witch killings and other occult activities, largely because officers of the Occult Related Crime Unit have suggested that doing so might draw the wrath of Satanists. Museum staff told us that "satanic graffiti" have, in fact, been painted in the vicinity of the building.
 52. *Citizen*, 20 November 1999, p. 6. Mafikeng-Mmabatho designates a com-

posite town with a complex history. Mafikeng, the Place of Stones, was, from the late nineteenth century, the capital of the Tshidi-Rolong, a large Tswana chiefdom. With the coming of European settlers and colonial overrule, a segregated white town, (mis)named Mafeking—made famous by the siege of 1899–1900, during the South African War—grew up across the railway line from the African village. When the ethnic “homeland” of Bophuthatswana was created by the apartheid regime in the 1970s, its center, Mmabatho, was built alongside Mafikeng/Mafeking. Thus it was that the conurbation came to be referred to, rather awkwardly, as Mafikeng-Mmabatho. The old Mafeking, as exclusive white enclave and as a spelling for the place, has disappeared since 1994. We refer to either Mafikeng or Mmabatho below, depending on where in the town the events in question occurred.

53. The national Secretariat for Safety and Security was established by the Police Service Act of 1995, which emphasized three key policy areas: democratic control, police accountability, and community participation in issues of safety and security. See Department of Safety and Security, Republic of South Africa, *In Safety and Security*, White Paper on Safety and Security, 1999–2004 (Pretoria: Department of Safety and Security, 1998).

54. *Ibid.*, p. 31.

55. It is noteworthy that, when we mentioned the procession to police at the Lomanyaneng station, one of the largest community police centers on the outskirts of Mafikeng, none of them knew anything about it.

56. Young, *Inside Job*, p. 4.

57. “Brothel Raided,” *Pretoria News*, 3 March 2000, p. 1; P. Molwedi, “Brothel Owner Granted Bail of R10 000,” *Star*, 7 March 2000, p. 2.

58. Echoes, here, of D. A. Miller’s claim that there is a “radical *entanglement* between the nature of the novel and practice of the police.” D. A. Miller, *The Novel and the Police* (Berkeley and Los Angeles: University of California Press, 1988), p. 2 et passim.

59. For a comparative insight into the difficulties, under contemporary conditions, of holding the “thin blue line,” see Boyer, “Bad Cops,” p. 60. Boyer notes that the phrase “the thin blue line” was coined by William H. Parker, a revered police chief during the Eisenhower era.

60. Again, this paradox readily takes theatrical form. Recall that in the climactic scene of one of the most acute cinematic explorations of postindustrial Britain, *The Full Monty* (directed by Peter Cattaneo, 1997), the male strippers come onstage dressed as policemen.



On Politics as a Form of Expenditure

Achille Mbembe

THE FOLLOWING STUDY seeks to analyze modes of imagining politics in contemporary Africa that confer a central place to thoughts and practices of power as thoughts and practices of war. The notion of “war,” as it is used here, does not refer merely to those specific moments in a conflict’s dramatization which express themselves through hostile confrontations of forces, intensifications of combat, and subsequent acts of destruction involving human losses on battlefields. This sort of adversity, whose outcome hangs from start to finish on the decisions of armies, was well studied by Clausewitz in his time. In the case of Africa, this feature has been the object of increasing—and increasingly sophisticated—accounts over the past decade.¹

Intent on describing particular events, these accounts have, however, underestimated the centrality that war has come to acquire in the contemporary African subject’s representations of life, of the political realm, and—in particular—of the relationship to death. In fact, for more or less protracted periods in the recent history of several countries, *the giving of death* has become a *prime means of creating* the world (Mbembe 2003). War, in other words, has become one of the main sources of emergency, with the consequence that death has been assigned a central place both in the process of constituting reality and in the general psychic economy. As such, African wars have set in motion at least two *logics of expenditure*, neither of which, unfortunately, has been the object of systematic study.²

The first type of expenditure has to do with the capacity of combatants completely to invest in—and intensely sublimate—objects, resources, and even human persons; then to release an extraordinary amount of energy which functions to ensure their repetitive destruction—a destruction that results in a relative pleasure. From this perspective one could affirm, following Bataille’s discussion of the exclusionary act, that the warlike act in contemporary Africa contains an erotic dimension. It is an aspect of anal eroticism, “just as sovereignty is . . . one particular form of sadism” (Bataille 1970, 220). This *work of destruction* has two aspects. The first concerns the extraction/consumption/excretion of natural resources (gold, diamonds, and other products of the subsoil).³ The second logic essentially