Chapter 2
Reflections on the Anthropology of Law, Governance and Sovereignty

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Prolegomenon

Just over a quarter century ago, John Comaroff and Simon Roberts opened Rules and Processes, their study of African jurisprudence, with a statement that did not win them many friends among their colleagues at the time. “It is doubtful,” they wrote, “whether [legal anthropology] should exist at all” (Comaroff and Roberts 1981, 3). Their point was not that the comparative study of law was too insignificant or too marginal to claim a discursive domain of its own. Quite the contrary. It was because its subject matter—and especially its theory-work—was too important to be confined to an island unto itself. Nor were they alone in thinking this. Max Gluckman was wont to assert that legal anthropology was the root of all anthropology: not only did much of modernist Western thought owe its understanding of the social to one or another version of contract theory, but it rested on the implicit truth that Homo sapiens was, everywhere, Homo juratis. Gluckman also liked to say that, were apprentice anthropologists to read just one text, there was no question what it should be: Henry Maine’s Ancient Law (1919). Anthropology in the Maine-stream, some of his younger Manchester colleagues used to joke (J.L. Comaroff 2002).

Now, an epoch later, this seems more than a little overdrawn. Comparative law is not everything. Nor, patently, ought it to be the primary source of social theory. But there is reason to believe that legal anthropology warrants a more prominent place at the core of the social sciences than ever before: that it is fundamental to making sense of our Brave Neo World, a world whose incantations are only beginning to make themselves visible, a world for which we do not yet have adequate analytic equipment. If the idea of anthropology in the Maine-stream appeared first as farce, it returns to history a second time in deadly earnest. So much so that, in thinking out loud here about the present and future, we shall concern ourselves with two things, in counterpoint: one is to consider why it is impossible to approach the contemporary global order without close attention to law; to law especially in its polyvalent relation to governance. We shall argue, in this regard, that the latest chapter in the longue durée of capital, the chapter often titled “neoliberalism”, has led to a hyper-extended, often counter-intuitive deployment of legalities in the social, geographical, political, moral and material
reconstruction of the universe, a process most usefully estranged, and grasped, by a critical legal anthropology. Our second objective is part programmatic, part problematic: it is to sketch three potential directions for that anthropology, three directions—among many, we stress—in which it may do both forensic and theory-work at the vanguard of the social sciences.

Before we begin, let us digress for just a moment. Much of what we shall say would have been impossible without the development of a discursive field now known as ‘legal pluralism’, a field productively cultivated at the Max Planck Institute in Halle, under whose aegis this chapter began its life.1 Notwithstanding the critiques it has attracted (for example, Moore 1978; Merry 1988; Roberts 1998), legal pluralism—as an orienting sensibility, as a call to re-conceptualize the scope of the law, as provocation (F. von Benda-Beckmann 2002, 37)—sent a wave of creative energy through our discipline. Intersecting with other scholarly initiatives, it has compelled us all to look anew both at the colonial past and at the neo-colonial present—in particular, at the legal institutions, practices and processes to which they have given rise. The question for us now, though, is not what has been accomplished. That has been answered cogently by von Benda-Beckmann and von Benda-Beckmann (2006) and others. For us, the question is the future. Where do we go from here? As we shall see, the move from legal pluralism, as orienting gaze, to law and governance, as problématique, turns out to be a highly productive one.

Cardinal Pointers: Mapping the Anthropology of Law and Governance

We begin with the most general of our three cardinal directions. For want of a better signpost, since it will take us down several intertwined pathways, let us refer to it as...

The Fetishism of the Law

The modernist nation-state, we hardly need say here, has always been erected on a foundation of legalities.2 Not only the modernist nation-state—among the pre-modern Nuer of the Sudan, who had no government sensu stricto, the line between a tribe and its exteriors, that Schmittian frontier between friend and enemy, was, according to Evans-Pritchard (1940, 278–9), precisely the point at which the law gave way to war, the legal to the lethal. It was similar in classical Greece, where, Arendt (1998 [1958], 194–5) observes, ‘the laws [were] like the wall around the city’. Since the destruction of The Wall that marked the end of the Cold War, law...
where trafficking outside the law is as common as trafficking within it – Nigeria, Russia, Zimbabwe – the self-imaginations of citizenship, and actions taken in its name, tend to be infused with that language. Nor is it just rights, interests, identities and injuries that have become saturated with legality. Politics itself is migrating to the courts. Conflicts once joined in parliaments, by means of street protests, media campaigns, strikes, boycotts, blockades, tend more and more to find their way to the judiciary; note Julia Eckert’s observation that, in India, the ‘use of the law’ now ‘complements or replaces’ other species of counter-politics (Eckert 2006, 46 et passim). As we have noted before (Comaroff and Von Dichter 2006b, 27), class struggles are giving way to class actions in which people drawn together by material predicament, culture, race, sexual preference, residence, faith and habits of consumption become legal persons as their common plaints turn them into plaintiffs with common identities. Citizens, subjects, governments, congregations, chiefdoms, communities and corporations ligate against one another in an ever-mutating kaleidoscope – changing ‘constellations’, legal pluralism might call it – often at the intersections of tort law, human rights law, constitutional law and the criminal law. Even democracy has been judicialized: few national elections these days go by without some resort to the courts. No need to mention the American presidential election of 2002, which was decided by an ideologically stacked judiciary, thereby aborting the democratic process – this in the unipolar that imposes its political theology of ‘freedom’ upon much of the rest of the planet.

For their part, states are having to defend themselves in courts against unprecedented sorts of things in unprecedented ways and against unprecedented sorts of plaintiff. The legal struggle between the ANC and AIDS sufferers in South Africa is legion. But there are many others: like that of the Brazilian government, which in 2000 was ordered to pay damages, by its own high court, for the death and suffering of Panã Indians; or Nicaragua, held to account a year earlier by the Inter-American Court for violating the territory of Ngäbe Indians by granting a timber concession to a Korean company.9 Suits of this species – which exemplify Eckert’s ‘legalism from below’ (Eckert 2006, 50–54) – are often abetted by advocacy groups. In them, the law connects political means to political ends. At times, too, legalities are directed against unexpected sites of authority – in a manner that reverses the Foucauldian notion of capillary biopower. Thus, 16,000 graduates of Indian schools recently filed suits in Canada against the Anglican, Presbyterian and Catholic Churches, alleging physical, sexual and cultural abuse.10

6 The train was operated by Legal I, a non-profit enterprise with a board of directors representative of the law societies, the Black Lawyers Association, the National Association of Democratic Lawyers and various consumer agencies. It was supported by the European Union.

7 See, for example, Fatima Schroeder, ‘Drunk Driver Sues over Being Kept in Jail Instead of Rehab’, Cape Times, 8 August 2005, p. 7. The plaintiff, Andre Schleschus, was given a three-year sentence, suspended on condition he had treatment, by a magistrate who ordered that he be jailed until he could be placed in rehabilitation; Schleschus argued that the court had been obliged to require that the Director-General of Health designate an appropriate institution and ensure immediate treatment, and had failed to do so.

8 See Wiseman Khuzwayo, ‘MK Veterans’ Row Heads for Court’, The Sunday Independent, 14 August 2005, Business Report, p. 1. Under a banner headline, the story made it clear that MKMVA has a complex corporate existence: the two people against whom the interdict was sought were referred to as the ‘directors’ of MKMVA Investment Holdings (which, allegedly, represents 60,000 members and their dependents), and of its financial arm, the Mabutho Investment Company.


10 Perhaps the best popular account of these remarkable lawsuits, which ended in the payment of major sums of money to the plaintiffs – most of whom had been forced into the schools – is to be found in James Booke, ‘Indian Lawsuits Threaten Canadian Churches’, Issite Newsletter, May 2001, <www.issite-national.org/news/lawsuits.html>, accessed 9 August 2005.
They won. But many such initiatives fail. Thus, the Ogoni lost a claim against Shell for its complicity in killing those opposed to its presence in Nigeria. Patently, the law often comes down on the side of the powerful, and of big business, which also flexes its legal muscles as far as possible to create deregulated environments conducive to its workings.

In sum, while the law has always been a battle-ground, it appears ever more so; ever more, people seek and find, legal justifications and jurisdictions on the basis of which to attack rogue capital, the state and their enemies, real or imagined — extending, in the process, what has long been known as ‘forum shopping’. Note the increasing appeal to the Alien Tort Claims Act in the USA, which allows those who have suffered wrongs at the hands of American parties abroad to take their suits to federal courts. Their efforts have enjoyed some success. Unsurprisingly, mega-corporations have responded by trying to have the Act repealed, and by offering as an alternative ‘corporate social responsibility’ and ‘soft law’ — that is, self-regulation and mediation. A luta continua. But what this means is that the political geography of the planet is no longer suffused by the kind of thing taught in school, the kind of geography that began with Kant and von Humboldt. The cartography of our times transacts the order of nation-states with another, equally significant set of co-ordinates: the jurisdictional axes of effective collective action. Indeed, an urgent task of legal anthropology, which will have to await another occasion, is to establish the epistemic basis for this new geography.

Let us return, though, to the judicialization of politics.

It is not only the politics of the present that are being judicialized. The past, too, is being fought out in court. As Anja Peleikis (2006) and Judith Beyer (2006) have shown for Lithuania and Kyrgyzstan, history enters the law in diverse ways, often insinuating itself into the cultural underpinnings of everyday jurisprudence, into its ways and means, its materialities and motivations. But we mean here something yet more specific: the struggle actually to repossess and repossession the past. Just as Brazil has had to recognize its part in the ethnocide of the Panari Indians and to make material amends for it, so Britain is having to answer for atrocities in East Africa (cf. Anderson 2005; Elkins 2005): for having killed local leaders at whim, for having alienated land from one people to another, and for other such illegalities. By these means is colonialism itself rendered criminal. Handed before a judge, history is made to break its silences, to submit to the scales of justice at the behest of those who suffered it — and to be reduced to a cash equivalent, payable as the tender of damage, dispossession, loss, trauma. What imperialism is being indicted for, above all, is lawfare: the use of penal powers, administrative procedures, states of emergency, mandates and warrants to discipline its subjects by means of violence made actual by its own sovereign word.

As a species of displacement, lawfare — the resort to legal instruments, to the violence inherent in the law, for political ends — becomes most visible when those who ‘serve’ the state conjure with legalities to act against its citizens. Outside the USA, the most infamous instance right now, perhaps, is Zimbabwe, where the Mugabe regime consistently passes statutes to justify the silencing of its critics. Operation Murambatsvina, which forced dissidents out of urban areas under the banner of ‘slum clearance’, took this to unprecedented depths. Murambatsvina, said the authorities, was merely an application of existing statutes to raze dangerous ‘illegal structures’.11 Lawfare may be limited, or it may reduce people to ‘bare life’. And it may mutate into necropolitics. Typically, it seeks to launder power in a wash of legitimacy as it is deployed to strengthen the sinews of state and enlarge the capillaries of capital, all under the sign of governance. Hence Benjamin’s (1978 [1921]) thesis that the law originates in violence and lives by violent means; that the legal and the lethal animate one another. Of course, in 1921, when he wrote his critique, Benjamin could not have envisaged the possibility that lawfare might also become a weapon of the weak, turning authority back on itself by commissioning courts to make claims for resources, recognition, voice, integrity, sovereignty.

But this still does not lay to rest the key questions: Why the fetishism of legalities? What are its wider implications?

Modernist nationhood seems to be undergoing a tectonic shift: the ideal of cultural homogeneity on which it was founded, always more aspiration than achievement, is giving way to a recognition of greater heterogeneity. It is a move marked almost everywhere by nervous xenophobia, a move closely linked to the rise of neoliberalism, to its impact on population flows, on the dispersion of images, objects, desires, identities, on new geographies of production and accumulation. And heterogeneity begets more law. Why? For one thing, because legal instruments appear — we stress, appear — to offer a means of commensuration: a repertoire of standardized signs and practices that, like money in the realm of economics, permit the negotiation of values and interests across otherwise intransitive lines of difference. Hence the planetary flight into a constitutionalism that explicitly embraces heterodoxy in highly individualistic, universalistic Bills of Rights, even where states are paying less of those bills. Hence the effort to make human rights into an ever more global, ever more authoritative discourse. Hence the extension of the model of the market to ever more domains of everyday existence — and, to close an epistemic circle, to legal theory itself. Hence the displacement of so much politics into jurisprudence.

But there is something else at work, too. Another well-recognized feature of the neoliberal turn has been the outsourcing by government of many of its conventional operations, including those integral to the management of ‘bare life’. The Weberian bureaucratic state has mutated into a rather different beast: a state that is not just a corporate management enterprise — although, as Rancière (1999, 11 For a persuasive explanation of the Zimbabwean government initiative, see Allister Sparks, ‘Now It’s a Crime against Humanity: A Million Zimbabweans Left Homeless’, Cape Times, 29 June 2005, <www.capetimes.co.za/index.php?SectionId=332&ArticleId=2604905>, accessed 30 January 2009. The official line of the Mugabe regime, including its talk of ‘slum clearance’ and ‘illegal structures’, is spelled out in a letter from its embassy in Indonesia in response to a critical report published by The Jakarta Post; see <www.zimbabwesituation.com/9929a_2005.html>, accessed 30 January 2009.
113) says, it is ever more overtly just that – but one whose principal regulatory work lies in franchising and licensing, not least in the realm of policing and warfare. Where the modernist state undertook the redistribution of private wealth for public ends, the neoliberal state redistributes public wealth into private hands. Bureaucracies do retain some of their old functions, of course. But most regimes have reduced their administrative reach, entrusting ever more to the market and devolving ever more responsibility to citizens as individuals, communities or classes of consumer. This has a number of corollaries, variably felt across the world. One is that, with states no longer the sole guarantor of the security of citizens – with many shrinking their policing operations and relinquishing their monopoly over the means of violence to the private sector – populations tend to become more fearful about the prospect of disorder, more anxious about criminal violence, real or imagined (of which, more later). A second corollary is that, with the outsourcing of government, counter-politics tends to be criminalized; this, because it is treated not as the expression of democratic dissent, but as illicit action against the person, property and prerogatives of those who act, contractually, in the name of authority. Which in turn quickens the resort to lawfare on all sides. A third corollary is that, with the sacrifice of the originary ideal of Leviathan to the deities of self-regulation, self-protection and self-interest, the court – one institution still securely under the purview of the state, the one ostensibly capable of commensuration – becomes a utopic site to which human agency believes it may turn in order to pursue a widening horizon of ends.

Put all this together, and the fetishism of the law seems over-determined. Not only is public life becoming more legalistic, but so, in regulating their own affairs and in dealing with others, are sub- and transnational ‘communities’: cultural communities, corporate communities, residential communities, communities of faith or interest. Sometimes, as in India, these communities appropriate the law of the state unto themselves, which, Eckert (2006, 47–8) notes, dissolves legal pluralism into judicial pluralism; sometimes they assert autonomy in specific domains, but leave others to government. And sometimes, as we shall see, they seek juridical independence. Nor is it only the communities of civil society that are saturated with legality. So are its criminal undersides. In the USA, South Africa, Brazil, Russia and elsewhere, ‘gangs’ of various scale – that is, organized crime – mimic both the state and the market. Many provide their ‘tax-paying’ clients with the policing and protection that government has stopped supplying; some have shadow judiciaries to try offenders against the persons, property and social orders over which they exert sovereignty. In South Africa, recall, a number have constitutions. Several are structured as franchises. A few even offer ‘alternative citizenship’ to their members. Tilly (1985, 170–71) once noted that the modern state operates much like organized crime. These days, organized crime is operating ever more like the modernist state – concretely, we mean, not just, as Derrida (1994) once suggested, in the manner of a spectre.

In the process of becoming ever more legalistic, communities of all kinds, including outlaw communities, appear increasingly to evince a will to sovereignty; by ‘sovereignty’, we mean the exercise of control over the lives, deaths and conditions of existence of those who fall within its purview – and the extension over them of the jurisdiction of some kind of law (cf. Hansen and Stepputat 2005). ‘Lawmaking’, said Benjamin, ‘is power making’ (Benjamin 1978 [1921], 295). But ‘power [is] the principal of all . . . lawmaking’. In sum, to transform itself into sovereign authority, power demands an architecture of legalities or their simulacra. Perhaps because of changes in the relationship between law and governance in the age of neoliberalism, perhaps because so many of the operations of the bureaucratic state now live within the realm of the market, perhaps because the outsourcing of its authority has stretched so deep into the management of ‘bare life’ – in short, because we live in a world at once post-Weberian and post-Foucauldian – more and more non-state institutions, from corporations through cultural communities and churches to criminal organizations, are asserting sovereignty of greater or lesser scale. Modernist political theory, of course, allows only one sovereignty to any nation, a vertically integrated one vested in the state. Increasingly, however, politics consist in a horizontal tapestry of partial sovereignties: sovereignties over territories and their inhabitants, over people conjoined in faith or culture, over transactional spheres, networks of relations, regimes of property; sovereignties at war or peace with each other; sovereignties longer or shorter lived, protected by more or less violence. Under such conditions, the social world tends to be imagined as an archipelago of zones of civility, of Arendt’s ‘walled’ spaces of legality, under one or another sovereign jurisdiction; civil zones joined by corridors of tenuous safety in environments otherwise presumed to be, literally, out of control – inhabited by criminals, warlords, druglords, immigrants and other alien non-persons – with the mediating reach of government over the whole being distinctly uneven.

If vertical and horizontal sovereignties are archetypical ends of an imaginary continuum, the states of the global North tend to be associated more with the former, those of the South with the latter. But the global North seems to be edging southward. Russia has found as much with Chechnya and Tatarstan, two notable, if very different, instances of centrifugal sovereignty. So has the UK with the devolution of its Celtic fringe; also the USA, where Native Americans are claiming ever more autonomy under the sign of exception, where mega-churches are asserting ever more regulatory control over the lives of their congregants, and where inner cities, increasingly seen as a problem of human waste-management by the state, are the exclusionary domain of underworld syndicates. And these are only the most dramatic instances of a thoroughly, often dispersed, process. The more general point? That sovereignty – as Agamben, Arendt, Bataille and Benjamin understood – is the root construct, the encompassing algorithm, on which the unfolding, labile relationship between law and governance is wrought. How it is exercised, by whom, in what name and with what effect; how it interpellates itself in the state, the market, civil society, faith, identity, even criminality; how it constructs a geography of jurisdictions and a cartography of violence; in these things lie the present and future of the Brave Neo World, of its social character, of its political life, of its architecture, of its ethics, even of its aesthetics. It is towards
when it comes to managing internal affairs and conflicts — and defer voluntarily to the Chinese authorities in matters of criminal violence. But the appeal to the sovereignty of culture or faith against government seldom stops at this felicitous border, the border of disorder. With neoliberal nationhood having to admit ever-increasing heterodoxy, with its explicit recognition in post-1989 constitutional design, ontological otherness is widely invoked these days to make substantial claims to autarkic self-regulation — claims that exceed the polite politics of recognition proffered by liberal philosophers as a panacea for the demands of difference in multicultural times. We have written of this in respect of South Africa (Comaroff and Comaroff 2003), which may exemplify a phenomenon spreading with exponential gravity.

South Africa, being a postolony, was erected from the first on difference. Like most other places, it has seen a significant shift in the dialectic of law and governance. Here as elsewhere, neoliberalism has emerged triumphant, its language spoken as a national vernacular, albeit not without challenge. Here, too, it has hidden its ideological scaffolding, reducing government to, and representing it as, technical management. Here, too, partisan politics has become a tournament in the promise of competing profitabilities and efficiencies. Here, too, there has been a displacement from the struggle between political visions to struggles in the name of interest and affect. And interest and affect, in their collective voice, congeal in identity — itself naturalized, as though it were a generic and genetic condition of human being. For more and more people, the site of politics has shifted from ideology, theology of the idea, to ID-ology, the ‘-ology’ of identity. 12 Notwithstanding all the noisy debate about the future of the country that swirls around the African National Congress, its leadership and its policies, the ‘vast majority’ of South Africans think of themselves first and foremost as members of ‘an ethnic, cultural, language, religious or some other group’ to which they attach their personal fate (Gibson 2004, 2).

The most comprehensive assertions of ID-ology, as we have already implied, are those made in the name of culture and faith; most comprehensive because they are existential in their foundations — based, in the instance of faith, on transcendent truths and sacralized sanctioned ways and means, and in the instance of culture, on shared essence and bio-genealogical alterity. Let us take each in turn.

ID-ology under the sign of culture and shared understanding, when it is translated into a will to sovereignty, yields pluriculturalism. The prefix ‘poli’- denotes both plurality and a political claim to the exercise of governance over, well, everything; this through the instrumentalization of a law accountable to no temporal authority. In South Africa, it asserts itself most articulately, perhaps, in the argot of cultural jurisprudence, of the right of Zulu, Xhosa, Tsawana and others to rule and be ruled.

12 See Rapula Tabane and Ferial Haffajee, ‘Ideology is Dead, Long Live ID-ology’, Mail and Guardian, 27 June–3 July 2003, p. 6. To our knowledge, this is the first time that the term ‘ID-ology’ appeared in public discourse. Tabane and Haffajee use it in a manner slightly different from the way we do here and elsewhere.
according to their own customary ways. Note that this is taken to be quite different from the custom of colonialism, although it may unwittingly reproduce some of its effects. It is, quite expressly, a living, Afro-modern law (Comaroff and Comaroff 2004a), one that—now unencumbered by the ancien régime—is said, from within, to be vital and growing, but in vernacular ways that apply long-standing principles of Africanity to the life and times of the postcolony.

The cause of policulturalism here has been most fervently fought—no surprise, given what we have said about the fetishism of law—in the terrain of the South African constitution. Its primary protagonist is the Congress of Traditional Leaders (Contrasela). For the past decade, Contrasela has put pressure on government to change the Bill of Rights, which subjects all forms of difference to the universal rights of citizens,13 it argues that ‘chiefs and kings’ ought to enjoy sovereign authority over their realms. By statute, their formal powers, although amended several times, are confined to the administration of ‘customary law’, the co-ordination of cultural activities, any ‘function … delegated by a competent authority’, and such odds and ends as ‘the gathering of firewood’.14 Matters came to a head at a national conference held in August 200015 to discuss ‘[indigenous] leadership and institutions’ with a view to producing a parliamentary White Paper.16 Contrasela refused to take part, although many of its members were physically present. Even more, it declined to talk to anyone other than the president—and only about constitutional change. There have been times when the organization was sure that the state had been persuaded to do its bidding and times when it has declared that the ANC, acting in bad faith, has never intended ‘to accommodate [chiefs’ authority in] the making of the new South Africa’.17 Such assertions have typically drawn denials from government, leaving behind them a trail of ambiguity, to the extent that there remains ‘considerable confusion as to what exactly the constitutional recognition [of chiefs] implies’18—all the more so since the state has enacted laws, like the Recognition of Customary Marriages Act (no. 120 of

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13 Section 36 of the Constitution allows that some constraints on those rights are ‘reasonable and justifiable in an open and democratic society’, but stresses that any such constraint is to remain bound by the Bill of Rights. As we shall see, protagonists of the sovereignty of tradition have invoked this ‘justifiable and democratic limitation’ in their struggles with the state.

14 This is a virtual paraphrase of the Local Government: Municipal Structures Amendment Bill, 2000.


17 These were the words of Mangosuthu Buthelezi; see M. Juba & T. Mkhize, ‘Unite against ANC Treachery – Buthelezi’, Sunday Times, 4 August 2002, p. 4.


19 The Customary Marriages Act allows polygamy, this notwithstanding the fact that it had long been treated by South African law, and by native administration, as ‘repugnant’ to civilization. The Act also raises questions of gender equality, to which the Constitution and statutory law give a great deal of anxious attention.

20 This is most notable in respect of the ‘principle of ubuntu, a notion of humanity founded on a sense of social and ethical connectedness. It was famously cited by the Constitutional Court in The State v. T. Malebanyane and M. Mabola, 6 June 1995 (CC7/94), which outlawed the death penalty. At note no. 244, a long list of other cases is given in which this vernacular concept has figured. In his judgment, Justice Madala (no. 237) argued that, while ubuntu appears only in the postamble, it ‘permeates the Constitution’. Added Justice Yvonne Mokgoro (no. 307): ‘It is is value and ideal that runs like a golden thread across cultural lines … in this country.’


22 Bhe and Others v. Magistrate, Khayelitsha and Others, 15 October 2004 (CC74/93). The quoted passage is from The Order (para 4, p. 80). One justice, Ngcobo, wrote a cogent dissent, arguing that African vernacular practice could and should be brought into line with the Law of the Land.
from her father, Fofiza – who ruled the Valoyi of Limpopo Province until his death in 1962 – has been ‘stolen’ by her cousin, Sidwell Nwanitwa. The intricacies of the conflict need not detain us, save to say that Fofiza died without male heirs at a time when daughters could not succeed to office, and was therefore followed by his brother, Richard, also now deceased, and then by Sidwell, Richard’s son. Most significant about the story is the fact that, in 1996, when Ms Shilubana approached the Valoyi people with her desire to become their ruler, they agreed, citing the gender equality clause of the Constitution and recognizing her genealogical status. But Sidwell went to law, asserting the principle of patrimony. He won a decision from the Pretoria High Court and then from the Supreme Court of Appeal, why either entertained a quarrel that, by ‘tradition’, fell within the purview of the sovereign politics of an African chiefdom was never breached (cf. Tebbe 2008). Both benches ignored the publicly sanctioned change in Valoyi succession rules, they paid no heed when Ms Shilubana insisted, correctly, that ‘customary law’ is constantly evolving. And both, acting like colonial tribunals, held that male primogeniture ought to prevail since, ‘pursuant to tribal custom and tradition, a Hosi [chief] is born not elected’. This simply ignored Bhe. The case, not surprisingly, has been taken on by the Constitutional Court. What is surprising, however, is that Ms Shilubana is opposed by many of her ANC parliamentary comrades, who think that a victory for her would lead to ‘instability’ throughout Southern Africa’s traditional communities. To tamper with vernacular sovereignty, they believe, is to enter a policultural minefield, with explosive consequences. Not to do so, of course, is to affirm that sovereignty, at least by omission – and to limit the jurisdictional reach of the Constitution.

The struggle for sovereign indigeneity – and against Euromodern liberal democracy, conventionally conceived – seems to be spreading across the legal terrain of the country. A few instances, true social dramas in the old anthropological sense of the term, have come to stand as paradigmatic of this struggle. While often arising out of conflicts of value within African politics, their intended audience, and ultimate respondent, is the state itself. And, not infrequently, they play on the incoherence of the judiciary in dealing with Afromodern ‘custom’. One, a cause célèbre in the late 1990s, pitted a staunch Jehovah’s Witness, Mrs Kedibone Tumane, against Chief Nyalala Pilane of the Bakgatla, under whose jurisdiction in the North West Province she was then resident. For reasons of faith, Mrs Tumane had violated a burial taboo which enjoins bereaved women to remain confined for a specified period and, when going abroad, to sprinkle a herb (mogaga) on their paths; not to do so is to risk spreading death pollution (seshoeho), with potentially lethal consequences for the ‘nation’ (morafe). When Mrs Tumane tried to leave her home and refused to broadcast mogaga, she was stopped from doing so by the Tribal Authority. Some of her neighbours, reacting with a mixture of fear and fury, called for her banishment. In contemporary South Africa, riddled with AIDS and other perennial threats to life, dying with death evokes deep existential anxieties – and mass anger.

To cut a tortuous story short, Mrs Tumane, abetted by the South African Human Rights Commission (SAHRC), took Chief Pilane to court late in 1998. Her constitutionally protected rights had been deliberately trampled, she said. Having been put under ‘house arrest’ – note her use here of an apartheid-era euphemism – she had been forced to ‘live . . . as an outcast’. In an affidavit sworn prior to the case, Mrs Tumane claimed that, in June 1998, the ruler had agreed to call a mass gathering and had promised to announce the end of her confinement, but had failed to do so. Pilane replied that he could not ‘release’ her at the meeting in question, since ‘the tribe’ had taken a ‘democratic’ decision there to the contrary. He added that Mrs Tumane was ‘confined’ not by the tribal authority, but by ‘her own custom’, which could not be changed save by the ‘consent of the Kgatlana nation’, of which she herself was a member. Her rights had been respected, he said, except where they were in tension with the Section 36 of the Constitution, which acknowledges that some limitations on individual freedoms are ‘reasonable and justifiable in an open . . . society’. For Kgatlana, a received practice whose transgression presented a clear and present danger to their community and was recognized as such in a democratically constituted public forum, was just such a justification. To this, the complainant answered that, while an indigenous people is entitled to promote its culture and religion, it has to do so within the compass of the Bill of Rights, which places individual freedoms above all things. This argument won, at least in the short run: in July 1998, the court agreed that the compulsory performance of mogaga violated the Constitution. An interim order instructed the chief to lift Mrs Tumane’s confinement immediately.

Nothing happened. Political pressure from the state mounted. Counter-pressure came from the House of Traditional Leaders, which put three questions to the state. In paraphrase: Why did the Constitution place individual rights above those of ‘tribes’? Why were cultural practices not similarly protected? And why was the Tumane case being handled by the High Court and not by their own House.

23 For the Supreme Court of Appeal case, see Nwanitwa Shilubana v Nwanitwa, [2006] SCA 174 (RSA); for the latest documentation on the Constitutional Court case, see Shilubana and Others v Nwanitwa, 27 November 2007 (CCT03/07). It is from the media summary in the Constitutional Court record that the quotations in the previous sentences are taken.
24 The South African press has covered the case extensively. This particular quotation is from ‘Woman Fights for Right to Lead Clan in Case that Weighs Constitution and Custom’, Cape Times, 17 May 2007.
25 See ‘Clash of Customs, Constitution’, The Mail (Mafikeng), 31 July 1998, p. 17; we have also analysed the case in extenso (Comaroff and Comaroff 2003).
26 High Court of South Africa (Bophuthatswana Provincial Division), Case no. 618/98.
27 Ibid., Founding Affidavit, p. 3.
28 See note 13 above.
where it belonged? For its own part, Pilane's defense fused British functionalist anthropology with Agamben on sovereignty: 'Tradition is the glue that holds the tribe together, gives it purpose, sustains its identity ...'. Virtually all Kgatla, irrespective of religion or education, observe mogaga, it went on. The transgression of death rituals endangers social life. Only Jehovah's Witnesses refuse to comply. This explained why his people, following due democratic procedures, had decided to sacrifice Mrs Timane's 'rights' and — deploying the exception authorized by Section 36 of the Constitution — to condemn her to social death. This was their right as a sovereign nation; his sovereign obligation was to do their will. What is more, the SAHRC, clearly seen here as a cipher of government, had exploited the circumstances to criminalize an unobjectionable rite in the hope of bringing a cultural practice under the penumbra of the Bill of Rights. Pilane added, in a subtle legal stratagem that seemed to reverse his earlier statement, that mogaga was a ritual voluntarily followed by Kgatla, and that Mrs Timane had therefore not suffered compulsion. Per contra, being 'eccentric', she had shown contempt for a constitutionally protected practice. Stressing that mogaga had been 'declared voluntary' — that it belonged to the 'private' domain of individual choice and did not compel anyone to violate their religious beliefs — the court dismissed the case. It clearly did not want to enter deep constitutional waters by being seen to outlaw an indigenous rite. As it happened, Mrs Timane's period of mourning was by then long over.

Here, then, is a paradigmatic instance in which policulturalism expressed itself. Here, the sovereignty of a vernacular jurisprudence, and the political order in which it is embedded, was asserted against the state. Here, the fundamental lines drawn by the Constitution — between the private and the public, the religious and the secular, the prerogatives of the individual and the imperatives of the communal — were directly challenged. Here, an existential struggle over sovereignty itself was conducted by means of lawfare, deploying the political into the legal. Note that this was also a confrontation between Euromodernism and Afromodernity: Pilane did not simply invoke 'custom'. He sought to re-write it into the thoroughly contemporary language of democratic decision-making, jural exception, freedom of choice, rights-talk. Thus do constitutional jurisprudence and culture recast each other — and the political geography of a nation-state now built on the irreducibility of difference. Thus does policulturalism, its imbrications and its effects, become the urgent object of legal anthropology.

But it is not merely on the rarified scope of constitutionality that policulturalism is making itself felt. The confrontation between the Euromodern and the Afromodern, the displacement of the politics of sovereignty into the juridical, and the reworking of legal subjectivities are occurring in more mundane contexts as well. For example, so-called customary courts across the country are constantly having to deal with practices that are outlawed or unrecognized, yet are part of everyday life for much of the population. Most notable in this respect are conflicts arising out of the African occult — whose practice, real or alleged, remains illicit — which call into doubt the capacity of the state to impose both its rule of law and its monopoly over the means of violence (cf. Geschiere 2006). Precisely because they do, they provide a theologico-legal space for indigenous rulers to assert sovereign control over their realms. On occasion, these kinds of conflicts also filter into the lower reaches of the judiciary, where they compel the authorities to deal with the ineluctable pragmatics of difference. Which, at times, has called forth a strikingly novel, and an analytically unexpected, species of jurisprudence (Comaroff and Comaroff 2004a).

Because we know it best, we have taken South Africa as the ground on which to open up the matter of policulturalism, of the processes it sets in motion, of its capacity to transform the interiors of both the national and the native, of its challenge to liberal notions of legality, of the analytic and theoretical issues that it raises. We could equally have looked elsewhere; for example, to France and its treatment of Muslim head scarves, or to the banning of female circumcision, most lately in Eritrea, or to the outlawing of sati in India. Also, as in our discussion of the fetishism of the law, we have barely scratched at its surfaces. For now, though, let us turn to the other domain of ID-ology that poses important questions of sovereign difference, and its implications, for legal anthropology: faith.

We said earlier that faith and the law are the twin obsessions of the twenty-first century, that we are living in an age of legal theology, of theo-legality: faith, it seems, is taking more and more to the law to re-make the world in its own image, to extend is sovereignty, to police populations. Not everywhere, patently, nor always in the same way, but palpably. Many religions, of course, not least those that bear the capitalized adjectives 'Great' or 'World', have long had a juridical scaffolding. What appears different nowadays is the degree to which they are resorting to lawfare to extend their imperium and to displace liberal reason, albeit often by liberal means.

Take orthodox Islam. Where there have been efforts to reassert the foundations of nation-states in its name, they have been deeply invested in the rule of Sharia law. The same applies to regions within states, as in Northern Nigeria, and Aceh, Indonesia; also to Muslim initiatives that would extend the dominion of both the faith and the faithful, like the Salafiyya movement in Morocco, which propagates a return to legal Islam (Turner 2006, 101). Indeed, the force of Sharia law in the
lives of Muslim populations was dramatically affirmed in early 2008 when, of all people, the Archbishop of Canterbury, Dr Rowan Williams, suggested that some measure of official recognition be given to it by the British state for purposes of everyday governance in predominantly Islamic communities – perhaps the first time, this, that a religious leader of his stature has called for the policiatual acceptance of (even partial) sovereignty for another faith. ‘As a matter of fact,’ he noted, ‘certain provisions of Sharia are already recognised in our society and under our law’ – as they are in India and Egypt – to the extent that their adoption was ‘unavoidable’. Predictably, his statement sparked a bitter controversy. Said his predecessor, Lord Carey, ‘there can be no exceptions to the laws of our land’. What is significant, however, is that the argument has been joined at all. Clearly, we have reached a historical juncture in the convergence of faith and the law at which it has become thinkable.

But it is not only for the governance of everyday life that Muslim theo-legality has been evoked in policiatual assertions of sovereignty. The religion itself is being reframed in these terms. A dramatic instance is to be found in Pakistan. It began in the 1970s, when the ulama, orthodox religious authorities, sought and won an injunction against the Ahmadis, a movement they declared heretical, to prevent them from using any of the Sha’ir (‘signs’) of Islam; these, they said, belonged solely to ‘proper’ Muslims (Ahmed 2006, 19–24, 40–45). When, in 1978, the Ahmadis appealed to the Lahore High Court, counsel for the ulama again argued that Muslim-ness is the exclusive property of Muslims alone, that certain Muslim terminology is analogous to copyright and trademarks, and that their improper use is therefore an infringement of the rights of the faithful (Ahmed 2006, p. 21). On this occasion, the judge found against the religious authorities on the technical ground that they could not show that a material loss had been incurred (Ahmed 2006, p. 41). But fifteen years later, in 1993, in a Pakistan Supreme Court case that addressed the constitutional bases of Muslim identity, the same argument was accepted by a majority of the justices: ‘They argued that certain signs were not just distinctive characteristics and practices but the exclusive property of Islam’ (Ahmed 2006, pp. 41–2). Thus was Islam transformed into property, something that could be owned, possessed and bounded off from others (Ahmed 2006, ibid.).


35 Abidar Rehan Muslimi v. Syed Amir Ali Shah, PLD 1978 Lahore 113. We were made aware of this case, and derive our summary of it, from the doctoral dissertation research of Asad Ahmed (2006, ch. 3); all the page references in this paragraph are to Ahmed’s study.


something whose true nature vested in the law. In some religions, as we have observed elsewhere (Comaroff and Comaroff 2009), divinities may themselves have a jural identity. In 1986, when the Indian government sued for the return of a twelfth-century bronze Shiva that had been looted from a village in Pathur, ‘it did so on behalf of the offended god himself’, who was the ‘named ... plaintiff in the case’ (Keefe 2007, 60–61; emphasis added). Thus does a Deity, and the faith for which it stands, become a legal person.

Contemporary Christianity is also interpellating itself into the law—and, through it, into governance—in the effort to extend the reach of faith-based sovereignty. This, too, has precedents: Protestant and Catholic missions have, throughout their history, sought to create more or less closed, sovereign communities, thereby to exercise an authority over their citizens at once institutional and capillary. And the Church, in its various denominational guises, has always taken pains to exert influence on political society and the state. But we appear to be seeing an acceleration, and an accretion, of this tendency, evident both in small Christian movements and in large evangelical awakenings across the world. Henning Mankell, the noted crime novelist and organic anthropologist of Sweden, writes of these movements in One Step Behind (2003): ‘No longer [are they] simply charismatic; he observes, ‘they are corporate franchises run by lawyers and accountants’ (Mankell 2003, p. 351), legal persons that strive to change the world by means of legal ploy. The extent to which this is true has been brought to light in the US, on unprecedented scale, since the turn of the new century: reminiscent of the rise of Christian Political Economy (CPE) at the dawn of the modern Age of Capital (Waterman 1991), conservative Protestantism would render social, moral and material life according to the dictates of faith—although, in its second coming, CPE seems much more anxious to insinuate itself directly into the workings of state.

Witness, in this respect, the spread of so-called denominationism, whose ‘global “kingdom” agenda’ is founded on the belief that Jesus will not return ‘until the Church has taken ... control of the earth’s governmental and social institutions (Leslie 2008, 2, 3), including the market and the courts; its “three-legged stool” subserves the state, business and civil society (Leslie 2008, 6). Even among Christians who do not explicitly see themselves as part of this movement, many support the effort to entrench ‘godly dominion over our neighborhoods, our schools, our government, our literature and arts, our sports arenas, our ... media, our scientific endeavors—in short, over every aspect and institution of human society’. For some, the longer-term objective is to make the country over into a theocracy, thereby to reverse the course of history, and to put an end to the hegemony of secular reason. The ideology of the religious right is too familiar to bear repeating: its assaying of ‘family values’ and laissez-faire, its antipathy to

abortion, homosexuality, welfare and stem cell research, its hard-nosed positions on poverty, the environment, theological and cultural relativism, immigration, ‘just’ wars and the like. In pursuing its imperial ends, conservative Christianity has been quick to resort to the means of lawfare.38 Recall the disturbing Jesus Camp (2006, directed by Rachel Grady and Heidi Ewing), a documentary about the indoctrination of very young people, who spend their summers learning to ‘seize back’ the USA for Christ. The film may seem extreme in its choice of subject matter and in the manner of its subjects’ choices. But it captures a rising tide in modern America. Other than footage of a Christian leader claiming to have open access to the White House and its decision-making processes, its most potent motif is a life-size cardboard effigy of George W. Bush, the ultimate American Idol: prayers are said for (or to?) him, urging that he install ‘righteous judges’ – the youths chant the mantra ‘righteous judges’, over and over – who would conjure into being a truly Christian commonwealth. The fight for dominion, in short, gives yet further impetus to the fetishism of the law, and with it the judicialization of politics. Legality is the secular instrument by which civil society is to be remade in the image of the sacred.

Also uncivil society – over the past decade or so, penitentiaries have become a major target of Christian movements in many countries (Burnside et al. 2005); in the USA, this initiative is associated primarily with PFM, the conservative Prison Fellowship Ministries founded in 1976 by Charles W. Colson, ex-Watergate conspirator and alumnus of an Alabama correctional facility. Neither Durkheim nor Foucault would have been surprised, of course, given their grasp of the constitutive relationship between the prison and the world, the disgraced and the disciplined. PFM’s ‘cultural commission’ is to assist the Church in evangelizing inmates, to promote ‘biblical standards of justice in the criminal justice system’, and more broadly, ‘to cultivate righteousness in society, strengthening the work of God’s kingdom’.39 In its Utopia, the Lord’s Leviathan – about which Hobbes (1986, II.3) himself would have felt distinctly queasy, given his belief that religious power ought always to be subordinate to civil authority – would be ruled by a seamless fusion of the Laws of Leviticals and the Laws of the Land. Again, the Protestant presence in prisons has a deep history: The Bishop of Norwich, Barry Unsworth reminds us in Sacred Hunger, owned one of England’s more notorious houses of detention in the late eighteenth century (Unsworth 1992, 158). But there was less concern then for the promiscuous interpellation of Church into state. Ironically, as Governor of Texas, George W. Bush was sued by a convict for violating the Constitution by turning the pastoral care of the penitentiary over to PFM, hence to

advantage evangelical Christianity over other faiths or no faith at all.40 PFM has had to answer to the law on its own account as well: its InnerChange Freedom Initiative (IFI), partly funded by the state under President Bush’s Faith Based Community Initiatives Program, was the object of a suit filed in Iowa in 2003 by Americans United for the Separation of Church and State. It ‘is unconscionable’, said the plaintiffs, for ‘government to give preferential treatment to prisoners based solely on their willingness to undergo religious conversion and indoctrination’. The real controversy here, argued MinistryWatch, a Christian organization sympathetic to PFM and IFI, is about whether ‘our nation’s basic approach to solving social problems [is] secular humanism powered by big government and void of transcendent values [or] real and lasting social change ... effected by “armies of compassion” working for true justice based upon unchanging principles.41

Critics of PFM accuse it of religious coercion, indeed, of theologically-lawfare. They point out that the evangelical Christian Ministry, committed to dominionism, has persuaded several states to make its programmes, paid for by tax dollars, a requirement of parole – and to give better carceral treatment to those who sign on.42 As it turned out, the Iowa suit was successful. Both the lower courts and a federal appeals court, the second in late 2007, found that IFI does violate the constitutional separation of Church and state. Although the plaintiffs took the ruling to be ‘a major setback for the White House’s “faith-based initiatives”’, the IFI was banned only if it continued to operate with government funds.43 In other words, as long as it is privately financed, it will continue to have access to prisoners, and be free to press its convictions on convicts. At the time of writing, PFM was considering an approach to the ideologically stacked Supreme Court – in respect of whose composition President Bush has answered the prayers of the Jesus Campers – there to persuade the most level-headed of the judiciary that government should pay for its work, and that the constitutional wall between Church and state, the sacred and the secular, ought to be re-aligned: again, the struggle continues. Nor only in the USA. In South Africa, where the constitutional protection for religious expression is much greater than it is in the USA, there is ongoing debate about the

38 So, of course, have liberal Christians in their struggles against injustice and inequality; they too have become much more adept at deploying the law. But that is beyond our present scope.


place of faith in civil society and its governance, not to mention ongoing efforts on the part of religious parties to deploy the judiciary to extend their sovereignty.44

Similar things might be written about other faiths, other places. For example, the popularity of fundamentalist Judaism has grown strikingly over the past decades. In Israel, the role in government of the religious parties — in particular, their control over family law — has long posed a problem for the full accomplishment of a secular liberal democracy. With the occupation of Palestine and the expansion of settlements dominated by Orthodox Jews, the West Bank has become an archipelago of faith-based sovereign communities notorious for their aggressive self-assertion. Outside Israel, throughout the Jewish diaspora, ultra-conservative congregations have tended to be highly protective of their integrity, closing themselves off to the world and its interventions, settling disputes, enacting sociality, managing their public finances and negotiating their own moral economies — with rabbinical courts as the arbiters of order and propriety. Some time back, Channel 4 in the UK presented a television programme entitled 'Jewish Law' in its series Faith and Belief.45 Focusing on just such a 'self-contained' community in Manchester, it showed scenes of religious authorities 'enforcing an array of intricate regulations' governed by biblical texts, rules that cover 'every element' of people's lives — and deaths.

The degree to which ultra-conservative Jews seek sovereign autonomy, and succeed in attaining it is highly variable, of course — as it is among other communities of conviction, be they evangelical Christians or orthodox Muslims, Mansions of Rastafari or ancestor-worshipping Africans. But the overall trend seems clear. The sovereignty of difference, of ID-ology under the sign of culture or faith or the fusion of the two, is decreasingly a matter of indifference, increasingly the stuff of lawfare, ever more world-altering in its will to self-expression.

*Note: World-altering*

It is not simply that faith or culture are becoming more significant. In claiming sovereignty for culture and/or faith, the turn to ID-ology is having a fundamental impact on the very nature of political society. Nation-states may seek to subordinate these sovereignties to them; although, in the USA, it often seems the other way around. But, inevitably, they find themselves locked in a dialectic of mutual transformation, albeit an under-determined, as yet far from decided one. How so? Because assertions of sovereign difference, of pellucialism, seek to reconstitute the lineaments of the universe. Not only do they insist on a realignment of the relationship between the public and the private, the sacred and the secular, the empirical and the ineffable,

and other founding oppositions at the core of liberal modern society. They also demand that the authority of the state — in respect of governance, legality, the means of violence, the fiscus and many things besides — no longer be cast as universal, that it be parsed rather along lines of difference, of different universalities: that is, those of god rather than government. This is similar to citizenship, whose rights and responsibilities are no longer to be defined purely in relation to the body politic, but to identities than nestle within it, transcend it, or transact its boundaries. Which returns us, full circle, to the historical shift of which we spoke earlier, the shift from a world built on vertical sovereignties to one erected on horizontal, partial ones.

Once again, the theory-work in all this for legal anthropology is to plumb the dialectic. It is a complex one, we reiterate, not one of winners or losers, domination and subordination, or even simple synthesizes. It is one of translucent subilities of substance, altering, as we have said, the political ontology of the lived world in such a way as to re-ground the future history of democracy, of law and governance, of our ways of being-and-knowing — of the Order of Things, tout court.

Could this be why so many people in so many parts of the world are concerned right now with order — and, conversely, with disorder? That is the question that points us finally, and very briefly, towards our third cardinal direction...

*On the Metaphysics of Disorder, or Towards a Criminal Anthropology*

We live, it seems, in an age of anxiety, an age of fear, an age of ambivalence. It is not the first, nor will it be the last. On the contrary, apprehension and uncertainty — at times acute, often just naggingly there — are the perennial undersides of social existence.

But what is notable about this age, if we tap into populist discourses across much of the globe, is the extent to which social Angst manifests itself in the gathering idea that criminality is almost everywhere out of control, everywhere excessive, everywhere a danger to life, limb, liberty, property (Comaroff and Comaroff 2004b) — even to society itself. Moreover, it is common cause, among many national publics, that the fight against lawlessness and disorder can no longer be won, except maybe in fiction, film, melodrama. Bertrand Russell's 'arduous journey', that great modernist march towards 'a social organization which eburns private violence and gives a measure of security to daily life' (Russell 1950, 143), appears to have ground to a halt: Moral panics have surfaced in many places: the Netherlands, Guatemala, Argentina, El Salvador, Haiti, Papua New Guinea, Japan, Australia. Brazil, we are told, lives with a culture of fear (for example, Caldera 1996, 303f.; 2000). In sedate Sweden, citizens have come to see their country as 'a place of dark crimes and vicious psychopaths, of fractured families and a fraying society'.46 In Britain, the 'rule of lawlessness' was a major issue in the 2001

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elections. At the time, England, which today has more students of criminology than students of sociology, was so vexed by the problem of social disorder that Polly Toynbee spoke of it as being on the verge of a ‘nervous breakdown’; things have not improved appreciably since. In North America, where panics over crime peaked a little earlier, they have given way to a horror of terrorism, of warfare made criminal.

In sum, criminality has become a more or less global trope of undoing, of the imminent demise of civility, democracy, social order, just as economic meltdown, contagion, nuclear holocaust, moral decay, ecological catastrophe and other things have been in previous historical epochs. Seldom seen as political in its causes or effects – or, for that matter, as having anything at all to do with political economy – lawlessness is now, in vernacular imaginations, exactly what Durkheim’s normative sociology long ago made it out to be: a human pathology that, unchecked, threatens the viability of modernist politics. Concomitantly, policing has come to ‘stand for … order’ in twenty-first-century notions of governance (Corrigan and Sayer 1985, 4). It – or, more generally, security – is now the state function par excellence. It is also a major criterion by which the strength of regimes is measured; hence its rhetorical significance when those regimes perform themselves for their citizens (Comaroff and Comaroff 2004b). This is in spite of the fact that, all over the world, the work of enforcement and incarceration is being ever more displaced into the private sector – or, more likely, because of it. There is good reason to believe that contemporary obsessions with disorder, themselves fed by a mass-mediation, are a corollary of the outsourcing of many of the operations of government, leaving the national citizen unsure of who or what might be the guarantor of life and death, of private property and public space. As Kevin Haggerty puts it, mass anxieties with lawlessness and punishment have more to do with ‘the late-modern breakdown of a host of … social security systems’ than with the brute fact of ‘criminal victimization’ (Haggerty 2001, 197). This, in turn, raises a number of questions, among them whether felony rates are not in fact rising precipitously, fed by the massive economic impact of upward flows of wealth and rising Gini coefficients, by the retreat of the welfare state and morphing labour markets. Some criminologists of both the left and the right have argued that they are. And crime statistics seem to bear them out, although the crime statistic itself is an inherently unstable knowledge-object (Comaroff and Comaroff 2006b). Whatever the ‘truth’ in this respect, there is a well-established disproportion in many places, including the USA (see, for example, Garland 2001, 10f) and UK, between fear and risk.


We already have some extraordinary examples of course: James Siegel’s New Criminal Type in Jakarta is one. So, too, is Malcolm Young’s An Inside Job. Each, in its own way, shows how it is that uncertainty and ambivalence, concealed in the spectre of lawlessness — in a metaphor of disorder, so to speak — have come to haunt the present. Both underscore the contention with which we began: that those who fear lawlessness most do not typically suffer it worst; those who suffer it worst do not tend to fear it most. In Cape Town, South Africa, for instance, where 350 murders occur in the poor black township of Khayelitsha for every one in wealthy, white Camps Bay, residents of the latter evince far greater concern with criminal violence. This disproportionality is why police departments often spend more these days on fighting the fear of crime than on fighting crime itself (cf. Haggerty 2001). It also points to something more general: that criminality is an ethical vernacular, a reflexive language in terms of which populations frame their discourses of deficit, arguing among themselves about what it is that stands between them and the good life. Which is why it always takes on a profoundly contingent, local content: such things as the alleged incapacity of the government of the day to deliver on its responsibility to it citizens, or worse yet, the corruption of its personnel; the inherent unruliness, incivility, violence of racialized others (a.k.a. young black men); the insidious presence of immigrants (a.k.a. ‘illegal aliens’); the evil of those whose pious terror would wilfully destroy our civilization (a.k.a. Muslim fundamentalists). It is, conversely, by virtue of their translation into the argot of criminality that racism, xenophobia and their ilk may be spoken, and enacted, without being named.

Crime, to invoke Foucault, is productive: it is productive of emergent discourses of politics and law, of economics and ethics, of liberty, civility, sociality and religiosity — all of which it defines by its transgressions. As Durkheim (1938, xxviii) noted, Carol Greenhouse (2003, 276) reminds us, ‘a society … free of crime would fall into chaos, since it would be bereft of the signs of its own existence as an authoritative order’. Like the African witch, in other words, the felon is a ‘standardized nightmare’ (Wilson 1951): an embodied figure by means of whom, as camera obscura, a civil order may conceive of itself — and, to the degree that nightmares are historical in their content, locate itself in its own contemporaneity. If, therefore, we are to interrogate law and governance at the dawn of the new century, if we are to understand the nature of its socialities and sovereignties, one way of doing so is to develop, within legal anthropology, an anthropological criminology that takes as its problem:

- what criminality and policing mean, what they convey and communicate in the here-and-now;
- how we read crime ‘facts and figures’, even fictions, as a species of political and social knowledge;
- what kinds of governmentality they bespeak;
- what sorts of world they conjure up.
a critical legal anthropology is foundational to the theory-work required to make sense of the twenty-first century.

This brings us to one or two words by way of conclusion.

Ends, Endings

Our three cardinal *topoi* - the fetishism of the law, ID-ology and anthropological criminology - converge. They are triangulated dimensions of the same thing: the growing centrality of a culture of legality, broadly defined, in the post-Cold War (neo-liberal?) era, in its politics and sociality, in its economy, both moral and material, in its emergent forms of sociality, religion and citizenship, collective consciousness and subjectivity - in short, in world-making in the wake of the millennium. We have tried to take the measure of this 'legal turn', of its expression in such diverse things as the judicialization of political life, changing patterns of sovereignty, the rise of politiculurism and new faith-based movements, and spreading obsessions with lawlessness and disorder. But our primary objective has been more general, more programmatic. It has been to show why it is that a critical legal anthropology - one unafraid to take on Big Issues, even as it continues to interrogate small things - is so crucial to contemporary social theory at large, especially to theorizing the twenty-first century. In sketching one possible set of horizons for that anthropology, we seek to claim for it its proper place in the mainstream.

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