
Law's Fictions, State-Society Relations and the Anthropological Imagination—Pathways Out of Africa: Introduction

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The long 20th century has embraced both the epoch of high colonial domination as well as its aftermath—the generalization of the nation-state model and its multiplication around an increasingly interconnected globe (Anderson, 1991 [1983]). The transition from colonial subjugation to independence in Africa, Asia and the Pacific has been strung out over a period of nearly five decades following World War II. But no matter the timing, for the colonized peoples of the world crossing the political frontier into independence has been marked by a formal shift in jural status from “colonial subject” to “national citizen” (Mamdani, 1996). What difference, if any, has this made in the way in which people experience and attribute significance to the power of the state? What kinds of identities and what arenas of action has “the law”—in both its colonial and postcolonial manifestations—made it possible for subjects and citizens to imagine? How, from our unique vantage point at colonialism’s end, might we rethink the figure of “the law” in the encounter between society and polity?

In the spring of 1995, we convened a group of junior Canadian anthropologists to address some of these questions.¹ The results of our individual presentations and common discussions are, with some amendments, presented here.² In different ways, each contribution explores how the social identities that the law creates, invokes and animates are reinterpreted in practices of everyday life and in situations of social conflict.

Our cases are drawn from Eastern and Southern Africa. They thus extend, albeit in a critical vein, the classical focus on matters of “law and order”—and perhaps on “rebellion” as well—that once constituted the special, if controversial, contribution to the discipline as a whole made by anthropologists working out of British colonial Africa.³ Yet the concerns our articles express, as much as the way in which we address them, might serve as a gauge for something more general—as a barometer, perhaps, of our own anthropological age set’s sensibilities and preoccupations. Specifically, we hold in common

a desire to discover meaningful ways for anthropology to contribute to the comparative and historically grounded study of law and violence, and to the understanding of the increasingly volatile relations between state and civil society that have come to characterize the postcolonial world.

From “Invention” to “Imagination”: Identity under the Law

On reflection, it seems apparent that a broad set of assumptions underlies our efforts; indeed these assumptions might seem so self-evident to anthropologists working in Africa, or anywhere else in the 1990s as to be almost unworthy of explicit articulation. All of us, for example, were trained to treat as deeply suspect the colonial generation’s cultural “facts.” Our collective inclination was to see “traditions” as imported or home-grown inventions (Ranger, 1983), “ethnic” or “tribal” identities as historically recent fabrications (Vail, 1989) and “customary law” as a useful fiction that provides the occasion, the instrumentation or merely the legally sanctioned space for the exercise of a limited and unequally distributed local power (Chanock, 1985, 1991; Mamdani, 1996; Moore, 1986).

These sentiments can be traced back at least to the early 1980s, to a time when Foucault began to supplement, if not entirely displace, Marx as the dominant theoretical muse whispering in many a young, left-leaning, North American ethnologist’s ear. From Foucault we learned to ask how identity categories—the familiar trio of ethnicity, race and gender, for example—were produced as part of the apparatus of modern disciplinary power brought to bear on colonial subjects. And yet the deeply ingrained scepticism toward “customary” practices and identities that this view implied was tempered by two qualifications: first, a concern with how people might experience these same identities and customs as existential, if sometimes contestable, facts, and hence as the basis for political action in the domestic, local and national spheres; and secondly, a concern to explore how colonial and postcolonial subjects continuously carve out a self-sovereign, undisciplined, or otherly disciplined, moral space for themselves, whether it be by means of, or in spite of, the legal machinery of the modern state.

Much of the discussion centres on the legacy of “customary law.” The establishment of a separate domain of “customary law,” in which appointed chiefs combined administrative and judicial functions under the watchful eye of the local colonial administrator, was the pre-eminent technique for native governance under colo-

nial rule in Africa. The question of what it allowed in terms of freedom of manoeuvre for those subjected to it remains sharply debated. Mamdani (1996) is perhaps least sanguine, suggesting that the racialized colonial division between an urban, European “civil” legal regime and a rural, tribalized “customary” legal sphere was the vehicle for implementing what he calls “decentralized despotism,” an enduring model that has plagued the democratization project across the continent long after independence. Moore (1986) and Ranger (1993), on the other hand, take the view that the sphere of customary law in some instances permitted and protected a realm of relative freedom in which novel identity categories could be imagined, contested and made operational.⁴

In a magisterial review of the literature on “invented traditions” in Africa, a literature that was largely spawned by his own work (see Ranger, 1983), Terence Ranger has charted the course that we have broadly followed here:

It is clear, then, that as with ethnicity so with customary law we need to trace a constant process of imagining and re-imagining, and the ways in which Africans exploited “inventions” useful to the colonial rulers so as to preserve areas of autonomy in which unexpected and disconcerting changes might take place. (Ranger, 1993: 105)

The word “exploited” here may well imply a level of intentionality and freedom beyond what we, or indeed Ranger himself, would fully support. Yet the thrust of his argument encourages us to move away from an emphasis on the self-conscious, manipulative inventions of rulers, and to focus instead on how communities creatively imagine a moral space, one that is enabled, but not wholly determined, by the kinds of ethnic ascriptions and inscribed cultural practices to which colonial “customary law” gave such enduring weight.⁵

Complicating “Civil Society”

Between the discursive practices, jural identities and institutional arrangements which form “the state” (Mitchell, 1991) and the varied uses and reinterpretations of these fictions of law by citizens and subjects (Mamdani, 1996), there is, then, a gap that our works seek to explicate. One might imagine that the resurgent concept of “civil society,” now fashionable in academic and development literature, would capture the location of this contested terrain. Yet Africa offers its own challenges to this notion for reasons that we now explore.

With the meltdown of the Cold War, the (forced) adoption of structural adjustment policies throughout the

Third World, the dismantling of the welfare state, the increasing number of social movements struggling for "democracy" over the past decade, the restoration or establishment of civil society has (re-)emerged in research agendas, policy-making circles and activists' demands, sometimes as a midwife to economic growth (Cohen and Arato, 1992; Hadenius and Ugglå, 1996; Macdonald, 1994; World Bank, 1995). This trend is reflected in both the shape of recent studies and in development policies directed towards Africa (e.g., Harbeson, 1994; Robinson, 1995; Whaites, 1996); other analyses of the space between state and society on the continent, however, have challenged both the focus and assumptions embedded in this literature: its unanalyzed grounding in the teleology of modernization; its overprivileging of a select few organizational forms (non-governmental organizations, trade unions, churches, political parties), and the sharp contrast or opposition it posits between "civil society" and "the state" (Hutchful, 1995; Lemarchand, 1992; Monga 1995; Simone and Pieterse, 1993). Indeed, one can challenge the heuristic, policy and political utility of "civil society," as it is normatively understood, on strictly empirical grounds. From Senegal to South Africa, Niger to Namibia, the neat division between state and society, the legal and the illegal and the morally legitimate and the morally outrageous, certainly blurs from the point of view of ordinary citizens, when

[s]treet gangs become block associations, clans become crime families and then turn into legitimate business syndicates, fashion movements become healing practices, religions become devil worship, devil worship becomes entertainment, and history, ethnicity and identity are continually being invented. The problem is differentiating the philosophers from the fools, the witches from the Jehovah's Witnesses, the police from the thieves. Everyone learns and takes something from each other, borrows an expression or look. (Hecht and Simone, 1994: 19-20)

In the articles that follow, we extend this critical trend emerging out of Africa. Our authors eschew the explanation of the hybrid forms and processes that have emerged from state-society relations through a static, formulaic narrative about the iterative interaction between "tradition" and "modernity." Rather, they investigate how administrative structures, national identities and legal property divisions establish rules, interests and power relations that are always in tension with, and reconfigured by, the projects of citizens and subjects—projects that are always partially fuelled agendas of their own making.

In the suggestive ethnographic story from Gokwe in northwestern Zimbabwe offered by Eric Worby, a set of male collaterals created a corporate structure shortly after Independence in 1980, one loosely based on the constitutional form of farmer groups set up by the colonial agricultural extension service. Their intention was to use this organ of "invented tradition" as a vehicle for asserting male moral authority in the public sphere of their peasant community. Although the official judiciary in the rearranged postcolonial legal system ultimately asserted its superiority over this novel and, from the state's perspective, illegitimate representative of civil society, Worby's argument persuasively cautions against assuming the Zimbabwean state will be able to wash away all alternative sources of power and moral authority.

In her article, Teresa Holmes also pays attention to the submerged dialogues on the margins of state-society interactions (Tsing, 1993). In her analysis of disputes over land ownership in western Kenya in the 1930s, Holmes goes beyond the "invention of tradition" literature and its set of questions which focus, narrowly, on how the colonized manipulate, negotiate or appropriate the collective identities manufactured for them by the colonial state. She argues that assertions of ownership by a Luo clan association crosscut the model of agency and legitimacy imposed by the British on African identities. In provocative detail, Holmes builds a case, so to speak, that the community identity forwarded by the Luo clan association was situated in a cultural register quite different from the image of patrilineal clans making claims about original occupancy.

But how can one question, and perhaps destabilize, the resonance of state-authorized identities and practices in Rwanda, where the outgoing regime sponsored a genocide in 1994 that left over a half million dead, ostensibly, according to international media reports, because of their ethnicity? As Villia Jefremovas contends in her richly illuminating article, it is by taking history seriously. Jefremovas shows how careful historical research can explain how state fictions of ethnicity in the Great Lakes region, notably the division between Tutsi and Hutu, have rested on competing and shifting sources of authority and legitimacy over the last several centuries, including, in this century, the resource of "history" itself. Although these ethnic identities have structured administrative, political and economic relations in Rwanda during this century, they did not necessarily provide the main motivational ground for the genocide. In a chilling account, Jefremovas discusses how the violence and the killings were strongly shaped by political rivalry, socio-

economic class antagonisms and regional histories. In doing so she shows us that, contrary to the caricature of the violence presented in international media, state fictions do not necessarily dominate and determine the actions of citizens, even in the exercise of state-sponsored genocide.

The international media, a typical foil for academics, are not the only source of commentary which posits a simple relationship between state and society in Africa. In his article, Blair Rutherford offers a sympathetic critique of an important stream of feminist literature on "gender and the law" in Southern Africa. Through an ethnographic discussion of the contested valuations of gender, marriage and the "laws of the farm" on a commercial farm in Zimbabwe, Rutherford exposes analytical and political difficulties that follow from reducing state laws and practices to a unitary gender, class and/or racial interest that purportedly underlies them, as many proponents of the "gender and the law" literature do. In contrast, he suggests that it is heuristically, and potentially politically, useful to concentrate on how gendered interests are shaped by jural identities that have emerged within the interaction of state and society in spatially significant locations.

In the final contribution to this collection, John Galaty astutely captures and exemplifies a set of analytical and methodological implications borne implicitly by all the articles. He attends to the specificity of the meanings of actions deduced from ethnographic or archival sources, showing their resonance with state practices and international forces while, at the same time, not making them derivative from these wider spheres. Building on his own wealth of experience and knowledge of Maasai histories, politics and cultural practices in the Rift Valley of Kenya, Galaty situates a specific conflict over land, resonant with undertones of violence, within the imbricated levels of Kenyan land law, international pressure for democratization, national and local political manoeuvrings based on rigid ethnic blocks, (post)colonial administrative boundaries and internal Maasai conflicts between segments, classes and age sets. Galaty's narrative thus illustrates perfectly our larger goal in this collection: to show that within the shifting grounds of locality, state and globalism there lie enactments of power, realizations of law's fictions and innovative ways for anthropologists to represent them.

Notes

- 1 These papers were presented at two successive conference venues: the first at the Canadian Association of African

Studies (CAAS) meetings in Peterborough, Ontario on May 13, 1995; the second at the Canadian Anthropology Society (CASCA) meetings in Montreal on May 27, 1995. We would like to give special thanks to David Howes for his encouragement and advice in the development of this project. We are very grateful as well to Andy Lyons who, together with an anonymous reviewer, provided exceptionally helpful suggestions in revising these papers for publication and for framing this introduction. Finally, we dedicate the collection to the one (not very elderly!) elder among us. As doctoral supervisor, friend and mentor to us both, John Galaty has been of inestimable importance in giving shape to the substance and spirit of our ideas over many years. We hope this will stand as merely one expression of our deep appreciation and affection.

- 2 Eric Worby and Villia Jeffremovas have submitted different works from those presented at the conferences. Although we were unable to include a further paper presented by Michael O'Flaherty, we gratefully acknowledge here his contribution to the discussion and to the project as a whole.
- 3 One thinks of the focus on dispute settlement and the more general problem of political order in classic ethnographies by Evans-Pritchard (1940), Gluckman (1955a, 1955b) and Turner (1957) as well as the more specialized treatments of customary law by Meek (1937), Rattray (1929) and Schapera (1938). A vast and diverse Africanist literature followed in the 1960s and 1970s. See Chanock (1985: chap. 2) and Mann and Roberts (1991: chap. 1) for useful reviews.
- 4 The debate parallels and intertwines, of course, with that which attempts to sort out "hegemony" and "resistance" in relation to autonomy and agency (see Comaroff and Comaroff, 1991; Hirsch and Lazarus-Black, 1994; Scott, 1990). For an exemplary exploration of these processes elsewhere in the world, see Keesing (1992).
- 5 Ranger's shift from "invention" to "imagination" draws of course upon Benedict Anderson's path-breaking rereading of nationalism, *Imagined Communities* (1991 [1983]). Other key resources in the recent Africanist literature that Ranger relies upon include Berman and Lonsdale (1992), Chanock (1991) and Moore (1986).

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