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## **Building a political sociology of legal professions in Africa: Stakes for an open research agenda**

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*Postcolonies are  
hyperextended versions of the history of the contemporary world order running slightly ahead of itself.*<sup>1</sup>

### ***Abstract***

Law in Africa often conjures the question of colonial legacies or the image of a legal vacuum. Counter to this deceptive representation, the aim of this presentation is to lay the stakes for the development of a political sociology of lawyers on the African continent. Built as a *trend report* it draws a reflexive analysis of past research and trends on legal processes and legal institutions on the continent, looking in particular at: the (dis)entanglements between scholarship and imperial and post-imperial practices on the continent; the articulation between law and politics of the state; and the relationship between political economy, political configurations and legal practices. It then lays the ground for an open research agenda focused on lawyers: It argues that lawyers offer an entry-point that highlights transformations of the state and politics, as well as the historicity of dynamics of globalization on the continent, including the colonial enterprises and their aftermaths. Tracing the social characteristics of lawyers, their professional strategies and their political mobilizations points to individual biographies that collectively connect different sites, at the local, national and international levels, in the *longue durée*. It underscores meanwhile that it is in these so-called African peripheries that major legal, political and economic revolutions are at play. This trend report is the extended version, in English, of the introduction to *Juristes, faiseurs d'État*, edited by S. Dezalay, with the contribution of G. Karekwaivanane, *Politique africaine*, 138, 2015. <https://www.cairn.info/revue-politique-africaine-2015-2.htm>

### ***Law in the 'African post-colony': the puzzle of legacy***

The high profile of International Criminal Court prosecutions against African dictators and warlords, massive rule of law investments in conflict and post-conflict situations, or the formidable stakes of natural resources in the continent taint Africa with the deceptive image of a new political, economic and legal frontier. Yet the 'Africa rising' picture contrasts sharply with the touting of the rule of law and human rights 'as twin catalysts' to reform weak legal institutions in so-called fragile states<sup>2</sup>. This re-enchantment of the law in the unfolding phase of globalization is, as elsewhere, a key component of contemporary politics in Africa. But this Janus-faced opposition between Afroptimism and lawlessness masks more than it reveals. Discussions on the role of law and lawyers in the continent are often mired by a degree of defensiveness, if not outright suspicion. More than for any

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<sup>1</sup> Jean and John Comaroff (eds.), *Law and Disorder in the Postcolony*, Chicago, Chicago University Press, 2006, Introduction, p. 41.

<sup>2</sup> Mark Fathi Massoud, *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan*, Cambridge University Press, 2013, p. 9.

region or continent, the threshold question centers on the degree of failure of legal and institutional mimetism and transplants<sup>3</sup>, and the twin legacies of brutal colonial experience<sup>4</sup> and Big Man politics<sup>5</sup>.

Yet, the question of legacy is predominantly staged in terms of dis-junctures: that of the *new* colonialism of the 19<sup>th</sup> century, *post*-Independence, or of a *new* imperialism unfolding in Africa. The case of the continent loomed large in the wider transformation of international development policies, North-South relations, and the expansion of the rule of law enterprise from the 1990s: World Bank's commissioned reports linked the 'curse' of protracted violence and development failure in former African colonies to the weakness of legal institutions and corrupt rulers<sup>6</sup>. Another World Bank report at the beginning of the 2000s staked the debate on the role of law for economic growth by decrying the inefficiency of the civil law regime inherited from colonization in former French colonies<sup>7</sup>. From the 1990s, the democratic turn and the promotion of the rule of law and 'civil society' across the continent contributed to a widespread transformation of politics with an increased traction of the law as a resource in political and social struggles, notably with the multiplication of law-oriented NGOs and a general expansion of legal professions. The paradoxical effect of political liberalization coupled with neoliberal deregulation<sup>8</sup>, this 'fetishism' of the law thus seemingly became the panacea of violent and corrupt rulers, 'private indirect government'<sup>9</sup>, as much as civil society, this 'new civilizing mission of the twenty-first century'<sup>10</sup>. Adding yet another paradoxical layer, the growth of 'project financing' from the turn of the 2000s for natural resources extraction and infrastructure projects has reinstated the 'developmental state'<sup>11</sup> as the necessary ally of foreign corporations and investors on the continent. But the predominantly journalistic and expert accounts on the 'new scramble for Africa'<sup>12</sup> further contribute to reproducing this dialectic between law and lawlessness: the high legal sophistication of these projects would only serve the looting of the continent. It is indeed 'fashionable, these days, to be upbeat about Africa'<sup>13</sup>: any other way would just be the business as usual of colonial exploitation.

However, this obfuscates how the encounter between the continent, law, politics and economic power has unraveled in the *longue durée* of colonialism, imperialism and the current globalizing phase. Nor is this story confined to the geographical frontiers of Africa: it is also played out elsewhere, in the capitals of the former *métropoles* and of international finance, as much as in these new *global cities*, Johannesburg, Luanda or Casablanca, that emerge as beachheads between Europe, America and Asia. Lawyers in their various capacities be they public defenders, state agents, judges, academics or members of NGOs remain a conspicuous and predominant gap in scholarly and policy accounts on these processes. This special issue of *Politique africaine* takes on the challenge of exploring the roles of lawyers historically, in the formation of the colonial and post-colonial state, and as brokers of globalization. Lawyers, indeed, provide a key to understand not only how politics of the past are woven into dynamics of the present, but also highlight the so-called African peripheries as the sites of major legal, political and economic revolutions<sup>14</sup>.

### ***Legal entanglements: between imperial knowledge and Empires of knowledge***

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<sup>3</sup> See Jean du Bois de Gaudusson, "Le mimétisme postcolonial, et après?", *Pouvoirs*, 129, 2009, pp.45-55.

<sup>4</sup> Jean-François Bayart and Romain Bertrand, "De quel legs colonial parle-t-on?", *Esprit*, 12, 2006, pp. 134-160.

<sup>5</sup> Peter Anders VonDoepp, "The Problem of Judicial Control in Africa's Neopatrimonial Democracies: Malawi and Zambia", *Political Science Quarterly*, 120(2), Summer 2005, pp. 275-301

<sup>6</sup> World Bank, *From crisis to sustainable development*, Washington D.C., 1989; e.g. Paul Collier and Anke Hoeffler, "Greed and Grievance in Civil War", The World Bank Development Research Group, May 2000.

<sup>7</sup> See World Bank, *Doing business 2004. Understanding Regulations*, World Bank, the International Finance Corporation and Oxford University Press, 2003 (the first of yearly reports).

<sup>8</sup> See Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Julia Eckert (eds.), *Rules of law and laws of Ruling. On the governance of law*, Ashgate, 2009.

<sup>9</sup> Achille Mbembe, *De la postcolonie. Essai sur l'imagination politique dans l'Afrique contemporaine*, Paris, Karthala, 2000.

<sup>10</sup> Comaroff, *Law and disorder in the postcolony*, *op. cit.*, p. 25.

<sup>11</sup> See on the 'developmental state', David Trubek, Helena Alviar Garcia, Diogo Coutinho and Alvaro Santos (eds.), *Law and the New Developmental State: The Brazilian Experience in Latin American Context*, New York, Cambridge University Press, 2013.

<sup>12</sup> E.g. Michel Beuret and Serge Michel, *La Chinafrique. Pékin à la conquête du continent noir*, Paris, Grasset, 2008.

<sup>13</sup> Michela Wrong, "Sunday Book Review. 'The Looting Machine,' by Tom Burgis", *The New York Times*, March 20, 2015.

<sup>14</sup> Jean and John L. Comaroff, *Theory from the South. Or, How Euro-America is evolving toward Africa*, Boulder, London, Paradigm Publishers, 2012.

The risk of thinking of social objects such as the state or legal professions is to fall into the trap of ‘analyzing them according to conceptual categories constructed by and for these institutions’<sup>15</sup>. The double pitfall of disciplinary ‘entanglements’<sup>16</sup> and amnesia is particularly acute in the case of former African colonies. ‘Legal pluralism’ which emerged as the overarching lens from the end of the 1980s to discuss legal institutions and processes on the continent is a case in point. The ‘rediscovery’ of informal mechanisms of conflict regulation spearheaded by the World Bank’s *Justice for the poor* program from the mid-2000s recalls in perfect bureaucratic oblivion the approach already favored by colonial rulers in their reinvention of ‘customary’ justice during the later phase of colonialism<sup>17</sup>. By the same token, criticisms of undue encroachments by the state and formal judicial institutions into ‘traditional’ dispute resolution mechanisms<sup>18</sup> tend to displace, at another level, the perception of postcolonial societies grappling with the legacies and contradictions of the state-centered form of ‘legal pluralism’ - or dual regime between ‘colonial’ and ‘customary’ justice - which by the early twentieth century imposed itself as a common institutional ‘fix’ in the face of diversity, local conflicts and contradictions, throughout the different Empires<sup>19</sup>.

As a domination enterprise, colonization was accompanied and nurtured by scholarly, literary, and artistic representations that served to legitimate it. The criticism and deconstruction of these representations emerged as a major stake of the *Subaltern* and ‘postcolonial’ trends from the mid-1980s. Those however displayed little interest for the social conditions of production, circulation and reproduction of these representations and their legacies on disciplinary constructions, institutionalization and hierarchies<sup>20</sup>. The connections between French, German, British or American social sciences, and these countries’ colonial policies have recently been mapped as ‘fields that have often been configured according to the geopolitical scale and shape of empires’<sup>21</sup> as traced in the genealogies of ethnology and anthropology, the ‘colonial sciences’<sup>22</sup> *par excellence*, and sociology<sup>23</sup>. Steinmetz underscored the (trans)national configuration of these scientific fields, which were determined both through the competition between Empires, as much as logics internal to these academic fields in their relation to national fields of power<sup>24</sup>. Yet, the law, as a science, the disciplines that have taken it as its object in legal anthropology and history, as much as the law as a practical response to disorder and social conflicts, stand by and large aloof of these exercises of academic reflexivity.

The prevailing focus on ‘legal pluralism’ masks these disciplinary legacies, their differentiated paths at the national level, as much as effects of (mis)translations across national fields<sup>25</sup>. Thus, the atony that marked the historiography of colonial law in France following the waves of decolonization was recently and ambiguously revived after the importation of the postcolonial debate in France at the beginning of the 2000s, triggering a general denunciation of the violence of French colonial rule,

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<sup>15</sup> Pierre Bourdieu, “Esprits d’Etat: Genèse et structure du champs bureaucratique”, *Actes de la recherches en sciences sociales*, 96–97, 1993, p. 51.

<sup>16</sup> George Steinmetz, “The Imperial Entanglements of Sociology and the Problem of Scientific Autonomy in Germany, France, and the United States”, 2012, pp. 857-871.

<sup>17</sup> See Dominik Kohlhagen, “Oser une refondation de la Justice en Afrique. Attentes citoyennes et alternatives au Burundi”, in Christoph Eberhard (ed.), *Le courage des alternatives*, Cahiers d’anthropologie du droit. Hors-série, Paris, Karthala, 2012.

<sup>18</sup> See Fatima Diallo, “La justice de proximité: sens et contresens de la justice alternative au Sénégal”, African Courts: Actors, Institutional Developments and Governance, Workshop at the LASDEL, Niamey, December 4–10, 2014.

<sup>19</sup> Lauren Benton, *Law and colonial cultures. Legal regimes in World history, 1400-1900*, Cambridge, Cambridge University Press, 2002, p. 4.

<sup>20</sup> See Gisèle Sapiro, George Steinmetz and Claire Ducournau, “La production des représentations coloniales et postcoloniales”, *Actes de la recherche en sciences sociales*, 185, 2010, p. 8.

<sup>21</sup> Steinmetz, “The Imperial Entanglements”, *op. cit.*, p. 857; by the same token, see Norbert Rouland, *Anthropologie juridique*, Paris, PUF-Que Sais-Je, 1988, p. 88, on the development of legal anthropology.

<sup>22</sup> See on the French side, Claude Blanckaert (ed.), *Politiques de l’anthropologie: pratiques et discours en France (1860-1940)*, Paris, L’Harmattan, 2001; on the US side, e.g., Joan Vincent, *Anthropology and Politics: Visions, Traditions and Trends*, Tucson, University of Arizona Press, 1990.

<sup>23</sup> See George Steinmetz, “A child of the empire: British sociology and colonialism, 1940s-1960s”, *Journal of the history of the behavioral sciences*, 2013.

<sup>24</sup> Steinmetz, “The Imperial entanglements”, *op. cit.*

<sup>25</sup> Pierre Bourdieu, “Les conditions sociales de la circulation internationale des idées”, *Actes de la recherche en sciences sociales*, 145, 2002, pp. 3-8.

including through law<sup>26</sup>. However, the terrains of colonial law in former French colonies remain by and large uncharted in French legal history<sup>27</sup>. The ‘cutting-edge’ of colonialism<sup>28</sup>, law and justice played a central role in European Empire-building: the law, at least until the 1930s, was at the core of the nebulous of knowledge produced on the colonies. The law was central to imperialism as a ‘civilizing mission’ by providing arguments in favor of colonial expansion, and articulating the exercise of domination through the prism of legal-administrative concepts<sup>29</sup>. By the same token, colonies played a key role in the emergence of international law as a discipline and to legitimate the coexistence of ‘civilized nations’ from the end of the 19<sup>th</sup> century through to the inception of the United Nations<sup>30</sup>. Yet, this centrality of the law translated with great variation in academic disciplinary constructions and hierarchies, and its value as a symbolic resource differed greatly within each Empire.

Though this is but a sketch of a wider debunking process yet to be mapped out, three variables could explain this relative salience of the law. Steinmetz underscores how ‘ethnographic knowledge’ emerged as the main symbolic resource within the German ‘colonial state’ as a social field<sup>31</sup>, as opposed to the formal ‘juridicism’ that characterized the early colonial science in France, which developed as an ancillary discipline to law with ‘little regard for actors and their practices and even less for the complexities of the power relations between the colonizers and the colonized’<sup>32</sup>. This differentiation echoed the prevailing symbolic resource within the German and French fields of power in the 19<sup>th</sup> century: educational capital in Germany, versus law as the science of government and administration in France until the Second World War. In turn, the value of this ‘colonial expertise’ as a scientific resource was weighed against academic *doxas* in the *métropole*. The ‘colonial question’ remained at the edge of the hierarchies of the law as a discipline in France<sup>33</sup>; similarly, ‘ethnographic capital’ in the German case could not be reimported as such in the *métropole*<sup>34</sup>. Indeed the relative autonomy of each ‘colonial state’, and social struggles within them - among the different fractions of colonizers and between the colonizers and the colonized -, contributed to the valorization, at specific junctures, of modalities of management of conflicts whose scientific and practical efficiency fitted the double game of legitimating colonialism as a ‘civilizing mission’ in the *métropole* while administering order at the local level. In the British Empire, the crisis of British rule in the 1930s played a crucial role in the formation of the discipline of anthropology: the ‘reinvention’ of customary law was fathomed as a way to further social order against the demands of the ‘new’ Africans educated by the missionaries, with the law then viewed as a modality of social order and obedience<sup>35</sup>. This genesis and the flourishing, in turn, of legal anthropology outside of the legal discipline contributed to the centrality of ‘processes’ and the resolution of local conflicts as a prevailing focus of ‘legal pluralism’ in the UK. By the same token, on the US side, Laura Nader exercised a huge pull on the social sciences by mainstreaming legal anthropology through a universalization of its focus towards disputes processes in ‘modern’ contexts and not just ‘traditional’ ones<sup>36</sup>.

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<sup>26</sup> See Jean-Philippe Bras (ed.), *Faire l’histoire du droit colonial, cinquante ans après l’indépendance de l’Algérie*, Paris, Karthala, *forthcoming*; E.g. on the importation of the postcolonial debate in France, Jean-François Bayart, *Les études postcoloniales, un carnaval académique*, Paris, Karthala, coll. « Disputatio », 2010.

<sup>27</sup> See Florence Renucci, “Les chantiers de l’histoire coloniale. Introduction”, *Clio@Themis*, n°4 *Chantiers de l’histoire du droit colonial*, 2011. Bernard Durand and Martine Fabre have thus produced a pioneering research on the judiciary in French colonies (with the six volumes of *Le juge et l’Outre-mer*) but this work focuses on norms and their application by judges, rather than these judicial actors themselves and their relation to the fields of power and legal fields in the *métropole* and the colonies.

<sup>28</sup> Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge, Cambridge University Press, 1985, p. 4.

<sup>29</sup> Emmanuelle Saada, “Penser le fait colonial à travers le droit en 1900”, *Mil neuf cent. Revue d’histoire intellectuelle*, 27(1), 2009, pp. 103-116.

<sup>30</sup> Martti Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870–1960*, Cambridge, Cambridge University Press, 2004.

<sup>31</sup> George Steinmetz, “Le champ de l’État colonial. Le cas des colonies allemandes (Afrique du Sud-Ouest, Quigdao, Samoa)”, *Actes de la recherche en sciences sociales*, 171-172, 2008, pp. 122-143.

<sup>32</sup> Saada, *op. cit.*, p. 116. My translation.

<sup>33</sup> Saada, *op. cit.*

<sup>34</sup> Steinmetz, “Le champ de l’État colonial”, *op. cit.*

<sup>35</sup> Chanock 1985, *op. cit.*

<sup>36</sup> Laura Nader and Harry F. Todd, *The Disputing process: law in ten societies*, New York, Columbia University Press, 1978; see also, e.g. Rick Abel, “Theories of Litigation in Society: «Modern» Dispute Institutions in « Tribal » Society and « Tribal » Institutions in « Modern » Society as Alternative Legal Forms”, *Alternative Rechtsformen und Alternativen zum Recht* (E.

These differentiated genesis and disciplinary legacies question the specific position of law among the scientific fields that emerged out of colonialism, and the apparent tension or duality between the law as a practical modality of management of disorder and conflict in the colonies, and the law as a science, or cultural field, and as such a buffer and ‘prism of refraction’<sup>37</sup> of external discourses and forces. Thus, the crisis triggered in the French *métropole* by Independence as much as the demise, from the Fifth Republic, of the law as a science of government, may contribute to explaining the later development of legal anthropology from the 1960s at a guarded distance from the law<sup>38</sup>. Yet, this importation in France of the Anglo-Saxon understanding of ‘legal pluralism’ as legal processes also contributed to legitimating the position, in particular, of the ‘Laboratoire d’anthropologie juridique’ of the Sorbonne in Paris, within the huge market for legal expertise that opened after the waves of Independence in Francophone Africa, as a hub for new generations of African lawyers and the constitution of a corps of constitutionalists and public servants.

### ***Escaping a conundrum: opposing law to politics***

Perhaps precisely because of these imperial entanglements, discussions on law in African contexts share a common blindness on lawyers and their characteristics: either because the focus on processes seeks the autonomy of spaces of practice distinct from the state and formal legal institutions, or because the stake is about producing a practical knowledge *by* and *for* lawyers. Comforting the law as a science without agents<sup>39</sup>, scholarship and policy discourses on law in contemporary African politics also confirm the law as a science and practice defined in its opposition to politics and the state. While distance from politics is a necessary condition for the autonomy of the law, this obfuscates, as shown famously by Kantorowicz<sup>40</sup> and others, how the social credibility of legal institutions is a condition for, as much as an outcome of, the legitimacy of state power. Indeed, one of the difficulties of examining the role of law and lawyers in contemporary African politics is that the usual categories of analysis are construed either as external, or they come from within the legal profession. This duality is apparently echoed in practical and scholarly divisions of labor.

The African continent is a primary focus of the policy-oriented knowledge produced by legal practitioners, NGOs, or development agencies on partnerships between public and private actors for the extraction of natural resources, rule of law reforms, or international criminal legal processes. But this practical expertise is by and large disconnected from historical accounts on state structures and legal institutions<sup>41</sup>. The law (and lawyers) was not at the core of the response to the crises linked to the waves of Independence on the continent. Characteristically, accounts on foreign interventions from the Cold war through to the War on Terror, or on the geopolitical stakes of oil and natural resources, scarcely - if at all - mention the law or lawyers<sup>42</sup>. With some exceptions<sup>43</sup>, the overall tendency of the

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Blankenburg – E. Klaus – H. Rottleuthner eds.1979) (*6 Jahrbuch für Rechtssoziologie und Rechtstheorie*), pp. 165-191; and generally on these developments, Rouland, *op. cit.* pp. 89-90.

<sup>37</sup> Steinmetz, “The Imperial Entanglements”, *op. cit.*, p. 858.

<sup>38</sup> See the first and only issue of *Politique africaine* on the question of law in the post-colonies, Gerti Hesselting and Étienne Le Roy, “Avant propos. Le droit et ses pratiques”, *Politique africaine*, 40, 1990, pp. 2-11.

<sup>39</sup> Pierre Bourdieu, “Les juristes, gardiens de l’hypocrisie collective”, In François Chazel and Jacques Commaille (eds.), *Normes juridiques et régulation sociale*, Paris, LGDJ, collection Droit et Société, 1991, pp. 95-99.

<sup>40</sup> E. H. Kantorowicz, “Mysteries of State. An absolute Concept and Its Late Mediaeval Origins”, *The Harvard Theological Review*, 48(1), 1955, pp. 65-91.

<sup>41</sup> To provide one example, among many others, on a context we are more familiar with, that of Burundi: while authors such as Stef Vandeginste (e.g. *Stones Left Unturned. Law and Transitional Justice in Burundi*, Antwerp, Oxford, Portland, Intersentia 2010) acknowledge - albeit to underline it as a paradox - the constant and violent use of the law to access and ascertain political power throughout the turbulent and violent post-Independence history of this country, the effects of this articulation between law and violence on the trajectory of the state, and with it, that of the legal field in Burundi remain unexplored.

<sup>42</sup> E.g. Elisabeth Schmidt, *Foreign Intervention in Africa: From the Cold War to the War on Terror*, Cambridge, Cambridge University Press, 2013; Odd Arne Westad, *The Global Cold War: Third World Interventions and the Making of our Times*, New York, Cambridge University Press, 2007; Tom Burgis, *The Looting Machine. Warlords, tycoons, smugglers and the systematic theft of Africa’s wealth*, Harper Collins Publishers, 2015.

booming policy and scholarly literature on ‘transitional justice’ that emerged out of the Latin American, East European, South African and later transitions from authoritarian regimes and war is to oppose - and disconnect - the one size fits all approach of global prescriptions to local politics of law. Scholarship in political science did provide a welcome enlargement of discussions on the ‘new terrains’ of international law and judicial authority in global politics following the end of the Cold war towards the fast-growing judicial landscape of the continent<sup>44</sup>. The arguable backlash of the African Union against the International Criminal Court also triggered a vibrant debate on the position of Africa in global politics<sup>45</sup>. While studies on the globalization of corporate law and its impact on domestic legal markets in emerging economies<sup>46</sup> have as yet by and large ignored transformations on the African continent, these different bodies of scholarship share a similar tendency to focus on legal imports and exports, rather than the position of law in domestic fields of power. But the usual categories used to describe these developments, such as juridification, justicialization, legalization or a return to law, appear ill-fitted as they seemingly stumble against protracted neo-patrimonial politics and the instrumentalization of law for political gains - or ‘lawfare’ - at the domestic level<sup>47</sup>.

In sharp contrast with the wealth of scholarship on legal professions in Europe, North America, Latin America and more recently South-East Asia, there is as yet a dearth of research on lawyers in African contexts, with few exceptions<sup>48</sup>. In their pioneering volume Halliday, Karpik and Feeley<sup>49</sup> specifically posit a putative difference inflected by the colonial legacy of the British Empire, in Asia and Africa. Contrarily to the ‘commonalities of politically liberal regimes’ arising out of ‘widely divergent histories and regions’ in North America and Europe, their reversed presumption is how divergent state paths have emerged out of the seemingly similar colonial legacy and contradictions of the British Empire<sup>50</sup>. However, their stylization of different types of post-colonial orders is doubly constrained by the assumption of the qualitative seizure triggered by Independence, and the ‘universal’ association of the ‘legal complex’ - i.e. law-practicing occupations - with political liberalism. The argument that ‘politics matter’ to understand the structure and role of legal professions provided a welcome shift away from a functionalist and market perspective<sup>51</sup>. It rests however on a restrictive view of the relationship between lawyers and the field of state power: that ‘political liberalism’ or the defense of freedoms should be inscribed in the legal profession, against encroachments by the state.

But this downplays the historical and double bind of lawyers as an intermediary elite serving both to legitimate power and defend the contours of its professional territories<sup>52</sup>. In this volume, Gobe underlines how professional and socio-political variables have continuously played into the structure of the legal field in Tunisia and its relation with the field of power<sup>53</sup>. Far from being monolithically opposed to the political field, the ‘legal complex’ is characterized by struggles between - but also

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<sup>43</sup> Kathryn Sikkink, *The justice cascade: how human rights prosecutions are changing world politics*, The Norton Series in World Politics, 2011; Sarah Nouwen, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan*, Cambridge University Press, 2013.

<sup>44</sup> E.g. Karen J. Alter, *The New Terrain of International Law: Courts, Politics, Rights*, Princeton University Press, 2014; Karen J. Alter, Laurence R. Helfer, and Jacqueline R. McAllister, “A new international human rights court for West Africa: the ECOWAS Community Court of Justice”, *The American Journal of International Law*, 107, 2013, pp. 737-779; Rachel Ellett, *Pathways to Judicial Power in Transitional States. Perspective from African Courts*, Routledge, 2013.

<sup>45</sup> E.g. David Bosco, *Rough Justice*, Oxford University Press, 2014.

<sup>46</sup> E.g. David Wilkins and Mihaela Papa, “Globalization, Lawyers, and India: Towards a Theoretical Synthesis of Globalization Studies and the Sociology of the Legal Profession”, *International Journal of the Legal Profession*, 18, 3, 2011, pp. 175-209; see more generally the research project ‘Globalization, Lawyers, and Emerging Economies (GLEE)’ of the Harvard’s Law School’s Program on the Legal Profession.

<sup>47</sup> John L. Comaroff, “Colonialism, Culture, and the Law: A Foreword”, *Law and Social Inquiry*, vol. 26, n°2, Spring 2001, pp. 305-314.

<sup>48</sup> Eric Gobe, *Les avocats en Tunisie de la colonisation à la révolution (1883-2011). Sociohistoire d’une profession politique*, Paris, IRMC-Karthala, 2013.

<sup>49</sup> Terence C. Halliday, Lucien Karpik, Malcolm M. Feeley (eds.), *Fates of Political Liberalism in the British Post-Colony. The Politics of the Legal Complex*, Cambridge, Cambridge University Press, 2012.

<sup>50</sup> Halliday, Karpik and Feeley, *op. cit.*, p. 4.

<sup>51</sup> See Yves Dezalay and Bryant Garth, “State Politics and Legal Markets”, *Comparative Sociology*, 10, 2011, pp. 38-56.

<sup>52</sup> See e.g.; Antoine Vauchez, “Une élite d’intermédiaires. Genèse d’un capital juridique européen (1950-1970)”, *Actes de la recherche en sciences sociales*, 166-167, 2007, pp. 54-65; Pierre Bourdieu, *Sur l’État: Cours au Collège de France (1989-1992)* (Paris: Seuil, 2012), pp. 480-543.

<sup>53</sup> Eric Gobe, “Penser les relations avocats et magistrats dans la Tunisie indépendante: conflictualité professionnelle et dynamique politique”.

within - fractions of the legal professions - particularly between the judiciary, enrolled in the service of Ben Ali's dictatorship, and the bar. The latter however is not simply a political arena of substitution in an authoritarian context: the massification of a 'lower bar' less politically, economically and socially endowed thus contrasts with the closeness of the 'high bar' to the political and economic interests of the dictatorship. The 'fluidity' of the specific political juncture of the demise of Ben Ali contributed to both lowering the cost of dissidence for the institutional leaders of the bar and enabling lawyers, though transiently as a unified corps, to promote themselves as the shapers of the legitimacy arithmetic of the transition.

These changes in the continuity, rooted in the longer history prior, during and after the French Protectorate over Tunisia, underline what is but a truism: across Africa, from a juridical point of view - at the level of norms, institutions, education as much as legal professions - decolonization was a very slow process. They also point to the very different roles played by law - and lawyers - in and through colonial encounters and subsequent globalization dynamics. Indeed, 'processes viewed with equanimity at home form part and parcel of 'colonization' or 'colonialism' abroad'<sup>54</sup>. Temporal as much as geographical seizures therefore mask what is played out when the gaze shifts from places where the institutionalization of the law followed specific historical, social, political and economic dynamics such as those that converged in the European *Rechtstaat* from the 19<sup>th</sup> century, to places where the role of law becomes a key aspect of the story, both locally and globally: that is, where the politics of law - its relationship to social, political, bureaucratic and economic power - weighs heavily on both the trajectory of the state and that of internationalization processes<sup>55</sup>. These enduring double games of lawyers are all the more visible in these global-local historical encounters, from colonization through to the international human rights movement and the current internationalization of corporate law. We see them played out with acuteness around the stakes raised by land and natural resources, with NGOs like *Survival International* standing on both sides for the defense of tribal rights and the negotiation of the price of land, or corporate lawyers as champions at once of corporate interests and human rights. More than an eerie echo of the pragmatic alliances between state power and private commercial companies that facilitated the ratification of sovereign treaties and colonial expansion from the latter part of the 18<sup>th</sup> century<sup>56</sup>, the networks fusing state and corporate power around resource extraction and infrastructure projects on the continent<sup>57</sup> underline these continuously shifting frontiers between law and lawlessness, state and non-state, the local and the global.

### ***Legal 'revolutions' as symbolic and successive 'coups d'Etat'***

The surge of interest in legal historiography on the relation between law and imperialism, predominantly in the former British Empire<sup>58</sup>, has opened up numerous avenues on the complex and enduring dynamics of 'counter-flows' that characterized 'imperial universalism' as a multi-centered phenomenon of global restructuring, in the peripheries but also from the peripheries to the cores<sup>59</sup>. By tackling globalization as a historical process, this rich scholarship suggests that many aspects of the current globalizing moment are entwined with imperialism, and that this exploration of the past has relevance for contemporary legal debates. Indeed it pinpoints the centrality of European law to the

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<sup>54</sup> Chidi Oguamanam and Wesley Pue, "Lawyers' Professionalism, Colonialism, State Formation and National Life in Nigeria, 1900-1960: 'the fighting brigade of the people'", 2006, available at SSRN: <http://ssrn.com/abstract=953313>.

<sup>55</sup> Yves Dezalay and Bryant G. Garth, *Dealing in virtue. International commercial arbitration and the construction of a transnational legal order*, Chicago, The University of Chicago Press, 1996, p. 12; Yves Dezalay and Bryant G. Garth, *Asian Legal Revivals. Lawyers in the Shadow of Empire*, London, The University of Chicago Press, 2010, p. 299.

<sup>56</sup> Lauren Benton, *A search for sovereignty. Law and geography in European Empires, 1400-1900*, Cambridge, Cambridge University Press, 2010.

<sup>57</sup> See Gilles Lhuilier, "Minerais de guerre. Une nouvelle théorie de la mondialisation du droit", FMSH Working Paper Series, n°36, July 2013; Benjamin Rubbers (coord.), *Micropolitiques du boom minier, Politique africaine*, 131, 2013.

<sup>58</sup> E.g. Benton, 2002; Bonny Ibhawoh, *Imperial Justice. Africans in Empire's Court*, Oxford University Press, 2013; Shaunnagh Dorsett and John McLaren (eds.), *Legal Histories of the British Empire. Laws, engagements and legacies*, Oxon, Routledge, 2014.

<sup>59</sup> Ibhawoh, *op. cit.*



colonizing process<sup>60</sup>. But it also shows that law became central to the colonial enterprise when it emerged as *crises of imperialism* at the level of colonies as much as within the *métropoles* at the end of the 19<sup>th</sup> century through to the inter-war period and Independence. Thus, the transfer of European ‘rule of law’ as a central device of the ‘civilizing mission’ of colonialism reflected the heightened competition between Empires<sup>61</sup>, as much as conflicts within fields of power in the *métropoles*<sup>62</sup>. In turn, the wide move, across Empires, towards a form of indirect rule based on dual legal systems<sup>63</sup> followed the apparent breakdown of order in the 1920s under the growth of wage labor, urbanization and the emergence of African elites educated by the missionaries: as shown in the cases of Zambia and Malawi, for example, the British shifted course to put greater support behind traditional authorities, giving formal recognition to customary courts to shore up traditional authority and strengthen customary custom<sup>64</sup>.

While these wider imperial moves to the law were not specific to African colonies, discussions on contemporary transitions and crises in African contexts share a common ‘exceptionalist’ perspective. In policy and scholarly prescriptions on the rule of law and state building following the end of the Cold war, the ‘African state’ occupies center stage - after a widespread devaluation in development scholarship and policy in the 1980s. It is however under the lens of exceptionalism that transitions in African contexts have been staged, with the ‘collapsed’, ‘failed’, ‘fragile’ state<sup>65</sup> justifying internationally sponsored policies of legal reforms - through the bifurcation of disqualified state institutions. For their part, studies in political anthropology on the historical and practical operations of the transition from the ‘colonial state’ to the ‘post-colonial state’<sup>66</sup> have paid scant attention to the connection between national fields of state power and legal fields. In his recently published *Collège de France* lectures from the early 1990s, *Sur l’État*, Bourdieu describes the embeddedness of legal fields within the field of state power: the structuration of legal fields as crossroads enables the mobilization of resources that are played out simultaneously to develop legal capital and autonomy, and as political or state resources<sup>67</sup>. Meanwhile this provides inroads to understand transformations - including in the heightened form of military coups or revolutions - that are at the same time legal and political<sup>68</sup>.

The cue of this special issue of *Politique africaine* is that looking at transformations within legal fields provides a key to understand changes in fields of state power, and *vice versa*: one needs to understand the state, or more precisely, the various stages in the formation of state power in its historicity and differentiation, to understand the structure and transformation of legal fields. The five papers of this volume focus on three sets of crisis that are also junctures or stages of the state, within colonial and post-colonial contexts. Terretta focuses on the last crisis of the crumbling French Empire in relation to its West African colonies<sup>69</sup>; looking at the first years of Independence, Karekwaivanane highlights how the ‘Africanization’ of law, legal education and institutions was a major stake of the post-colonial state in Zimbabwe<sup>70</sup>. In turn, Gould examines the effects of the post-Cold war legal

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<sup>60</sup> See the excellent review essays by Sally Engle Merry, “Review Essay Law and colonialism”, *Law & Society Review*, 25, 1991, pp. 889-922; “From Law and Colonialism to Law and Globalization”, *Law and Social Inquiry*, 28(2), 2003, pp. 569-590.

<sup>61</sup> See Christophe Charle, *La crise des sociétés impériales. Allemagne, France, Grande-Bretagne, 1900-1940. Essai d’histoire sociale comparée*, Paris, Le Seuil, 2001.

<sup>62</sup> Steinmetz, “Le champ de l’État colonial”, *op. cit.*

<sup>63</sup> Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press, 1996, pp. 78-88.

<sup>64</sup> Chanock, *Law, Custom, and Social Order*, *op. cit.*

<sup>65</sup> See Kevin C. Dunn and Timothy M. Shaw (eds.), *Africa’s Challenge to International Relations Theory*, Basingstoke, Palgrave, 2001.

<sup>66</sup> Crawford Young, *The African colonial state in comparative perspective*, New Haven and London, Yale University Press, 1994; Richard Banégas, *La Démocratie à pas de caméléon. Transition et imaginaires politiques au Bénin*, Paris, Karthala, 2003; and more recently, Thomas Bierschenk and Jean-Pierre Olivier de Sardan (eds.), *States at work. Dynamics of African Bureaucracies*, Leiden, Brill, 2014.

<sup>67</sup> Bourdieu, *Sur l’État*, *op. cit.*

<sup>68</sup> Yves Dezalay and Bryant G. Garth, “Lawyers and the transformation of the fields of state power: osmosis, hysteresis and aggiornamento”, In Michael Rask Madsen and Chris Thornhill (eds), *Law and the Formation of Modern Europe. Perspectives from the Historical Sociology of Law*, Cambridge, Cambridge, University Press, 2014, pp. 218-240.

<sup>69</sup> Meredith Terretta, “Anticolonial Cause Lawyering, Political Activism and the Rule of Law in French Africa, 1946-1960”.

<sup>70</sup> George H. Karekwaivanane, “Lawyers, ‘Africanisation’ and Political Transition: Remaking the Legal Field in Post-Colonial Zimbabwe, 1980-1995”.

boom on the articulation between law and politics in Zambia<sup>71</sup>. Lastly, Brett explores the judicialization of ‘existential national questions’ in Southern Africa in the current context of heightened pressure over land and the redistribution of economic power<sup>72</sup>, while Gobe looks at the specific juncture of the ‘Arab Spring’ in Tunisia and the transition out of Ben Ali’s rule.

In this co-structuration of legal fields and fields of state power, the apparent tension between judicialization, juridification or a return to law, and exceptionalist politics as a form of ‘political legality’ through the political instrumentalization of the law, are also part of readjustments within legal fields in relation to transformations within fields of state power: each political crisis is also a legal crisis that unfolds simultaneously in the field of state power and within the legal field. This focus thereby expands the dynamic literature that emerged from the 1990s on ‘cause lawyers’ and the collective mobilization of the law for political change until then only cautiously and partially applied to African contexts<sup>73</sup>: it underlines that the deployment of law against politics is a historical and multi-scale dynamic. But it is not just ‘politics by other means’: through law it is the state and politics that are continuously transformed. Characteristically, Gould underlines that the post-Cold war legal boom in Zambia enabled legal professions to expand and carve out new professional markets while also accessing political positions and providing Big Man politics with newfound ways to mobilize the law for political gains. Karekwaivanane highlights how race became an ambiguous form of political, social and legal capital in post-Independence Zimbabwe, enabling a level of autonomy of the legal profession while emerging as a central feature of the political economy of violence of the Zimbabwean regime. Quite dramatically and ambiguously race reemerges as the backbone of the cases described by Brett: endorsed by White members of the bar in South Africa, morally reinvigorated by the transition from Apartheid, these ‘causes’ vindicate the land rights of White settlers expropriated under the Black rule governments of the region. Gobe in turn shows how the ‘fluidity’ of the transition in Tunisia enabled lawyers to bargain for a capital of revolutionary legitimacy to stake both professional and political claims. We could multiply the examples where ‘crises’ of state power are played out in sectorial readjustments simultaneously within the political and legal fields: though the aftermaths of the attempted military coup in May 2015 in Burundi are yet to be measured, the law as a political resource is deployed along the lines of a bifurcation between a judiciary enrolled in the services of violent politics and a bar deeply dependent on external funding and support<sup>74</sup>.

It also underlines that this coterminous relationship between the legal field and the field of state power unfolds simultaneously in the ‘cores’ and in the ‘peripheries’, from the ‘cores’ to the ‘peripheries’, and back. It thereby underscores how these spaces have been molded by their interconnectedness<sup>75</sup> in the global-local encounters of successive globalizing moments, in which the law, and lawyers played a key, though highly differentiated, role: be it in the extraversion that historically shaped the state in colonial and postcolonial contexts<sup>76</sup>, in the competition between successive imperial politics, or within national fields of power in the former *métropoles*. Terretta highlights this complex and two-sided global-local dynamic in the mobilizations of Left-leaning French lawyers for the defense of political rights within France as an ‘empire-state’<sup>77</sup> in the last years before the Independence of its West African colonies: the legal politics deployed to stifle the demands of emerging elites *within* the French Empire precipitated both Independence while shaping the exceptionalist relationship between law and politics of post-Independence regimes in Madagascar, Côte d’Ivoire and Cameroon.

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<sup>71</sup> Jeremy Gould, “Lawyers, politics and the production of postcolonial legality. A Zambian case study”.

<sup>72</sup> Peter Brett, “Cause Lawyers Beyond Borders: the South African Legal Profession and Regional Judicialisation”.

<sup>73</sup> E.g. Lucie White, “Two worlds of Ghanaian Cause Lawyers”, In Austin Sarat and Stuart Scheingold (eds.), *Cause Lawyering and the State and in a Global Era*, Oxford, Oxford University Press, 2001, pp. 35-67; Richard Abel, *Politics by other means. Law in the struggle against Apartheid, 1980-1994*, New York, Routledge, 1995.

<sup>74</sup> See Sara Dezalay, “Stay the hand of justice in post-conflict Burundi: Lawyers between *lawfare* & *extraversion*”, presentation at the Centre for African Studies, University of Edinburgh, October 8, 2014.

<sup>75</sup> Sanjay Subrahmanyam, *Explorations in Connected History. From the Tagus to the Ganges*, New Delhi, Oxford University Press, 2005; Serge Gruzinski, *Les Quatre parties du monde. Histoire d’une mondialisation*, Paris, La Martinière, 2004.

<sup>76</sup> Jean-François Bayart, “L’Afrique dans le monde: une histoire d’extraversion”, *Critique internationale*, 5, 1999. pp. 97-120.

<sup>77</sup> Frederick Cooper, *Colonialism in Question. Theory, Knowledge, History*, Berkeley, University of California Press, 2005, p. 153.

### ***Connected histories and continuous displacements: between the moralization of politics and the economy of violence***

Indeed, in these political battles waged on the terrain of the law, colonialism was as much involved in the making of the *métropole* as it was in the making of its peripheries<sup>78</sup>. While comparisons have the advantage of drawing a map of possible legacies<sup>79</sup>, the stake thus is not simply to draw a comparative grid of the legal legacies left by the various imperial enterprises on legal norms, institutions and professions. Rather, we emphasize the need for a political sociology that takes into account historicity and these multiple scales of reciprocal circulations between the ‘cores’ and the ‘peripheries’ to explore in turn how they are woven back into contemporary politics and legal practices. Exploring the puzzle of the highly different colonial policies in German colonies - with the apex contrast of extermination in South-West Africa versus policies of transculturation in Qingdao - Steinmetz underscores how the field of power in the *métropole* was refracted, but only partially, within the colonial state: each colonial state developed a relatively autonomous internal trajectory, shaped by specific conflicts between different fractions of colonizers, and between the colonizers and the colonized. The characteristics of colonial agents within each colonial state - militaries, lawyers, merchants or missionaries - and their struggles shaped the ‘universe of possible stances’ in the practice of colonial rule at the local level; but at specific junctures, colonial policies were also over-determined by the competition between Empires and struggles internal to the field of power in the *métropole*<sup>80</sup>. The creation of the Indian Raj in 1859 thus resulted from events in England and in India that came together to change the orientation of the Empire<sup>81</sup>. Conflicts of interests within the field of power in England, between trade interests, state power and missionaries were displaced on the terrain of the law as a resource of moralization and ‘civilization’<sup>82</sup>: court reforms in India and the promotion of an enlightened Indian legal elite served both the purpose of promoting India as ‘shining example’ of the British Empire while reverberating back into the British field of power as a laboratory of a rule of law based on legal rationality. Thus, European law was central to the colonizing process, but in a ‘curiously ambiguous way’<sup>83</sup>: with the double purpose of a moral economy of justification and control, the cooptation of local elites furthered the promotion of the law and legal arenas as sites of contests and relative emancipation. The intense circulation of agents within each Empire, and from the peripheries to the *métropoles*, facilitated the spread of these ‘trappings of civilization’<sup>84</sup>: ‘colonized peoples’ legal resistance to colonialism is most often at once a project *without* European liberalism and deeply imbricated *within* Western liberalism<sup>85</sup>.

In the synchrony however, this also translated in highly differentiated colonial investments in the law, legal institutions and indigenous legal agents at the local level, across Empires as much as within each Empire. Though this is a tentative hypothesis as further investigations are needed, regarding in particular investments in the law and legal institutions in former French and Belgian colonies<sup>86</sup>, in Africa there was no ‘showcase’ of the rule of law but, rather, an intense differentiation and variation depending on the combination of colonial interests - economic, military, religious - within each colonial state. Thus, in the French Protectorates, investments in judicial reforms and legal

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<sup>78</sup> See Ibhawoh *op. cit.*; Frederick Cooper and Ann Laura Stoler (eds.), *Tensions of Empire. Colonial cultures in a bourgeois world*, Berkeley, University of California Press, 1997.

<sup>79</sup> Frederick Cooper, *Colonialism in Question. Theory, Knowledge, History*, Berkeley, University of California Press, 2005, p.22 sq ; Bayart & Bertrand, *op. cit.*

<sup>80</sup> Steinmetz, “Le champ de l’État colonial”, *op. cit.*

<sup>81</sup> Dezalay and Garth, *Asian legal revivals*, *op. cit.*, p. 41.

<sup>82</sup> See Roland Lardinois, “Entre monopole, marché et religion. L’émergence de l’État colonial en Inde, années 1760- 1810”, *Actes de la recherche en sciences sociales*, 2008, n° 171-172, pp. 90-103.

<sup>83</sup> Merry, “Law and colonialism”, *op. cit.*, p. 891.

<sup>84</sup> Merry, “From and colonialism”, *op. cit.*, p. 576.

<sup>85</sup> Oguamanam and Pue, “Lawyers’ Professionalism, Colonialism”, *op. cit.*

<sup>86</sup> Jean-Claude Farcy has thus provided some empirical evidence on the trajectories of French colonial magistrates within the French Empire (“Quelques données statistiques sur la magistrature coloniale française (1837-1987), *Clio@Themis*, n°4 “Chantiers de l’histoire du droit colonial”, 2011); see also, in the case of former Belgian colonies, Bérengère Piret, Charlotte Braillon, Laurence Montel and Pierre-Luc Plasman (eds.), *Droit et justice en Afrique coloniale. Traditions, productions et réformes*, Bruxelles, Publications de l’Université Saint-Louis, 2014. But little is known, as of yet, on the characteristics of ‘customary’ judges and local legal elites.

education - along the lines of a dualism between civil law and Islamic law - furthered the emergence of a strong legal elite at Independence, with the likes of Habib Bourguiba as the father of the Tunisian nation<sup>87</sup>, or in Morocco, with a particular appetite for the law among emerging elites in the inter-war period which ‘translated the conscience, among urban elites, of its importance for the appropriation of the state apparatus’<sup>88</sup> and to ‘rattle with the weapons of the colonial authorities’<sup>89</sup>. By contrast, the ideology of indirect rule was most thoroughly applied in the interwar period in the Belgian mandates of Burundi and Rwanda: ‘the juridical framework of intermediation was cast, absorbing the intensely legalistic culture of the Belgian state’<sup>90</sup>, but economic exploitation was favored to the detriment of investments in the formation and education of elites, including lawyers<sup>91</sup>. Similarly in the cases of former British colonies, where these colonial investments in the law and lawyers have been more thoroughly documented, there was a high differentiation between ‘Statute of Westminster Colonies’ (Newfoundland, South Africa, New Zealand, Canada and Australia), as opposed to non-settler colonies: in West Africa, in Ghana in particular<sup>92</sup>, there were thus large numbers of indigenous lawyers from the 1890s, and even more so the 1920s and 1930s, with the emergence of an African intelligentsia, who used the British imperial justice system by taking appeals to the Judicial Committee of the Privy Council<sup>93</sup>. By contrast, there were very few indigenous lawyers in the White settler colonies of Eastern and Southern Africa<sup>94</sup>. This differentiation also played at the level of colonial states: in Nigeria, for instance, where there was an outpost of commercial interests in the South, a British model style legal and judicial system was set up in Lagos, to shield British and European commercial interests, while native courts mixing Sharia and customary law were built up in the hinterland<sup>95</sup>.

This varied investment in the law and lawyers impacted on the involvement of legal professionals in advancing the cause and course of colonial and postcolonial state formation. Indeed, the specificity of each encounter in these global-local histories explains subsequent developments: the current re-enchantment of the law in contemporary African politics is in this sense not a ‘return’ to the law, but a ‘legal revival’ wherein the ‘colonial imprint of law provides the core that defines the revival’<sup>96</sup>. In each colonial and postcolonial state, the specific combinations between politics, economic and social power, and knowledge, in their global-local articulations, defined the salience of the law as a political and moral resource in state politics and the structure of domestic legal fields. The contradictions of these initial encounters between law and politics in colonial states can thus be traced as they are revived in the successive transformation of each postcolonial state and each globalizing moment: the relative failure of the Ford Foundation programs of legal education predominantly in Eastern Africa during the 1960s and 1970s<sup>97</sup> - at the height of the first law and development movement of the cultural Cold war - thus hinged on the politics of ‘Africanization’ of the customary legal system left by colonial rulers by newly Independent states, as they were variously reinvented as ‘authentic’, as much as the degree of development and differentiation among national legal elites. Similarly, in this volume Brett underlines how the expansion of ‘cause lawyering’ in the ‘judicialization of mega-politics’ in Southern Africa from the 1990s resulted both from the transformation of the field of power in post-Apartheid South Africa and the imprint of global investments in the rule of law, also by the Ford Foundation; but this regional expansion of ‘cause

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<sup>87</sup> Gobe, *Les avocats en Tunisie*, *op. cit.*

<sup>88</sup> Zeroual Abdellatif, “Modernisation néolibérale et transformation du profil des dirigeants des entreprises publiques au Maroc. Cas de la Caisse de Dépôt et de Gestion (CDG): 1959-2009”, *Afrika Focus*, 27(2), 2014, p. 35. My translation.

<sup>89</sup> Pierre Vermeren, *Ecole, élite et pouvoir au Maroc et en Tunisie au XXème siècle*, Rabat, Editions Alizée, 2002, p. 100; quoted in Abdellatif, *op. cit.*, p. 35. My translation.

<sup>90</sup> Young, *The African colonial state*, *op. cit.*, p. 154.

<sup>91</sup> In Burundi for example, there were only four lawyers at Independence. See S. Dezalay, “Stay the hand of justice”, *op. cit.*

<sup>92</sup> See Jan Budniok, “Lawyers’ Politics and Processes of Differentiation in Ghana’s Legal Profession”, Presentation at Law and Society Annual meeting, Seattle, May 2015.

<sup>93</sup> Ibhawoh, *Imperial Justice*, *op. cit.*

<sup>94</sup> Martin Chanock documented in particular how the Transvaal Law Society kept non-white lawyers out of the profession in South Africa, See “Chapter 10 The Legal Profession”, *The Making of South African Legal Culture, 1902–1936. Fear, Favour and Prejudice*, Cambridge, Cambridge University Press, 2007, pp. 211-242.

<sup>95</sup> Oguamanam and Pue, “Lawyers’ Professionalism, Colonialism”, *op. cit.*

<sup>96</sup> Dezalay and Garth, *Asian legal revivals*, *op. cit.*, p. 2.

<sup>97</sup> Jayanth K. Krishnan, “Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957-1977”, *American journal of legal history*, 52, 2012, pp. 261-324.

lawyering’ was all the more efficient that it involved political and economic stakes, such as expropriation, too politically risky to be taken on by domestic lawyers in Zimbabwe, as shown by Karekwaivanane. There was thus a multiplicity of investments in the law; in all these instances, however, the law emerges as a modicum of intermediation, as it links different stages of the state: the only way, however, to trace these successive changes is to go beyond instituted categories and oppositions, such as the state versus non-state, the local versus the global, but also institutionally defined categories such as that of judge, or barrister or state law versus customary law, to focus on lawyers as intermediaries in these cycles of transformation between the law, politics, social and economic power.

### ***Dealing in law to continuously rebuild the state: spatial reconfigurations of regulatory devices***

At play, thus, is a continuous reconfiguration of state power, played out at multiple scales and enabling a degree of independence of the law and legal practices below and beyond the state apparatus. Indeed, what distinguishes, perhaps, these imperial investments in the law in African contexts, and their imprint on the successive development of postcolonial states and globalizing moments, is the highly differentiated and fluid combination between political, military, economic and moral interests - as opposed, for example, to the economic interests that were at the core of the imperial enterprises in Asia. With relatively few commercial outposts in which, such as in Cairo<sup>98</sup> or Lagos, ‘offshore’ types of metropolitan justice were put in place, and with the exception of South Africa where a strong commercial bar developed from the 19<sup>th</sup> century, judicial decolonization was otherwise generally conducted along the fluid and continuously reinvented bifurcation of ‘legal pluralism’ understood as a dualism between state versus customary law<sup>99</sup>. By contrast, from Independence until the 1980s, there was a continuous shielding of the economic interests of former *métropolitain* powers and the US within corporate-state alliances<sup>100</sup>, with some exceptions, such as the aggressive legal strategies of nationalizations of oil in Algeria.

The boom of international commercial arbitration from the 1980s built indeed on another bifurcation in the judicialization of corporate interests, flexibly institutionalized away from domestic courts, by relying on ‘gentlemen politicians of the law’ from the Souths - including Africa<sup>101</sup>. There is thus a form of bifurcation of the two legal hemispheres, to use the image of Heinz and Laumann<sup>102</sup>, played out not within domestic legal fields between corporate law and solo practitioners, but between the domestic level, with a dualism between state/customary law and the internationalization of corporate justice. The ongoing judicialization of the institutional landscape at the regional level seems indeed to further this bifurcation between state politics of the law and global corporate interests: the strategies of notables of state politics, for example within the African Commission on human rights and peoples, contribute to the salience of human rights in domestic politics of state power and the relative autonomy of human rights as a technical and extraverted resource<sup>103</sup> but highlight what otherwise appears as a paradox with institutions such as the East-African court of justice emerging as a human rights court despite its economic mandate<sup>104</sup>.

The high economic and political stakes involved in the increased corporate and financial interest in natural resources on the African continent thus highlight reconfigurations that are, yet again,

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<sup>98</sup> Dezalay and Garth, *Dealing in virtue, op. cit.*

<sup>99</sup> With, for example, the recent introduction of common law rules within Sharia litigation in North Nigeria, see Abdulmumini A. Oba and Ismael Saka Ismael, “Justice delayed, justice denied: adjudication of Islamic law cases in cases in Nigeria’s plural legal system”, African Courts: Actors, Institutional Developments and Governance, Workshop at the LASDEL, Niamey, December 4–10, 2014.

<sup>100</sup> See Benoît Verhaegen, ‘Les safaris technologiques au Zaïre’, *Politique africaine*, 18, 1985, pp. 71-87.

<sup>101</sup> See Sara Dezalay and Yves Dezalay, “Professionals of international justice. From the shadow of state diplomacy to the pull of the market of arbitration”, In A. Nollkaemper, J. d’Aspremont, W. Werner & T. Gazzini (eds.), *International Law as a Profession*, Cambridge University Press, *forthcoming*.

<sup>102</sup> John P. Heinz and Edward O. Laumann, *Chicago Lawyers, The Social Structure of the Bar*, Russell Sage Foundation, 1982.

<sup>103</sup> See Lison Guignard, “Les stratégies professionnelles de juristes dans un espace transnational: l’exemple de la Commission africaine des droits de l’homme et des peuples”, unpublished manuscript.

<sup>104</sup> See James Gathii, “Mission creep or a search for relevance: the East African court of justice’s human rights strategy”, *Duke Journal of Comparative and International Law*, 24, 2013-2014, pp. 249-296.

both legal and political, beyond and below the state. There is a vast specialist literature, including growingly on the African continent<sup>105</sup> on corporate law, but little is known, with some exceptions<sup>106</sup>, as to the actors and connections between corporate legal markets at the global level and domestic level in African contexts. ‘Public private partnerships’ promoted as a device by the World Bank - and now within the UN sponsored Sustainable development goals - further such readjustments, with the ‘African developmental state’ re-emerging as a necessary ally for corporations and financial institutions investing on the continent. Paris thus appears as a microcosm of these connected histories of reconfiguration of regulatory devices combining, through law, corporate and economic interests and state power, at the global and local level<sup>107</sup>. The key position of Paris in relation to former colonies in Francophone Africa furthered the emergence of an ‘Africa bar’ of corporate law, dominated by French and a handful of African lawyers, operating within the Paris branches of major US and British law firms, building on the double legacy of the US import of corporate law in Europe and colonialism, though with a slight displacement. The emergence of Paris as a beachhead for offshore legal markets operating on the African continent thus followed successive stories: the transplantation in Europe of a US model of legal practice from the 1960s and further in the 1980s<sup>108</sup>, the reorientation of corporate legal markets following the financial crisis of 2008 towards Africa as much as the US influenced financialization of the legal practices involved in the negotiation of ‘complex contracts’ for the purposes of natural resources extraction and infrastructure. These ongoing developments yet again highlight the continuous transformation of the combinations between economic and state power involved in the restructuring of the state and legal markets in Africa, and back. ‘It is the so-called margins, after all, that often experience tectonic shifts in the order of things first, most visibly, more horrifically - and most energetically, creatively, ambiguously’<sup>109</sup>.

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<sup>105</sup> See for example, Claire Moore Dickerson, “Harmonizing Business Laws in Africa: OHADA Calls the Tune”, *Columbia Journal of Transnational Law*, 44, 2005, pp. 17-73.

<sup>106</sup> See Jonathan Klaaren, on South Africa, “African Corporate Lawyering & Globalization: A Research Agenda”.

<sup>107</sup> We base these last developments on ongoing fieldwork with the ‘Africa bar’ of Paris, Spring 2015.

<sup>108</sup> Yves Dezalay, *Marchands de droit. La restructuration de l’ordre juridique international par les multinationales du droit*, Paris, Fayard, 1992.

<sup>109</sup> Comaroff, *Law and disorder in the postcolony*, *op. cit.*, p. 41.