

Editorial Foreword

OTHER SIDES OF THE LAW Despite the rigid formality conveyed in court-room theatrics, lawmaking and law enforcement are among the most flexible forms of modern statecraft. Laws change constantly; they are ignored or selectively imposed; and much of everyday life is beyond the law's reach. The relentless work of state formation has, in recent centuries, established the shaping power of police forces, courts, and rule-making bodies. Entire worlds of kinship, gender, material production, and exchange have been transformed by their encounters with self-consciously modern legal systems. Just as often, however, new legal subjects interact with governmental power in ways that reveal the exceptions and extra-judicial assumptions on which the smooth functioning of the law depends. Three of our authors explore the material technologies, standard procedures, and secret handshakes that facilitate and endlessly complicate the relations between law and order.

Tony Ballantyne charts the transition of south New Zealand's indigenous people, beginning in 1770, from an order of knowledge based on oral recitation, embodied memory, and carved objects, to a system that depended on literacy, print technologies, and paper. Although Ballantyne is not interested primarily in legal systems, it is clear that the transfer of Maori knowledge to paper was part of their subordination to British law and its standards of evidence and proof. Paper, as colonial medium of knowledge preservation, became the tool of chiefly politics and property claims. As a result, the genealogies, local histories, and legal expertise once contained in the bodies of ritual specialists were published and widely disseminated by Maoris who wanted to build constituencies and identities that British officials could recognize as legitimate parties to contracts, land claims, and negotiations of local sovereignty. The indigenous communities that emerged from a century of interaction with Europeans, Ballantyne argues, retained values and practices from the pre-contact period, but these were "conditioned and irrevocably transformed" by the colonial contexts in which local knowledge was adapted to the handwritten manuscript and the printed page.

Bianca Premo engages directly with the pre-history of documentary evidence, looking at Spanish court documents of the eighteenth century as keys to the legal and extra-judicial negotiations that occurred in the medium of unrecorded speech before complaints were submitted as formal petitions. The latter usually included a first written account of the informal exchanges that led to an official hearing. Premo asks what these pre-histories can tell us about why women entered the Spanish courts and how their goals as litigants varied across the century and the empire. Urban women were more likely to

succeed in officializing their complaints than rural women, but disputes with spouses and lovers were the most common cases. Often, women went through multiple rounds of counsel before an official petition materialized. Premo believes these unofficial deliberations are the side of the law on which women's legal agency was most fully expressed. Formal petitions took great effort to produce, but Premo shows that by the end of the eighteenth century, women were trying to limit informal, extrajudicial dispute resolution. It seems that, by century's end, women saw the official side of the law, a space of documentation "and increasingly secular practice," as the side that mattered most.

Anastasia Piliavsky steps beyond the law to explore the secret world of Kanjars, a "caste of professional thieves" found in the cities and towns of Rajasthan. Kanjars are said to have magical powers, a private language, and knowledge of hidden treasures. Although Kanjar lore is shrouded in secrecy, Piliavsky shows that much of it is public knowledge. Kanjar marginality enhances their ability to work on both sides of the law. They are notorious thieves and valuable police informants. Masters of breaking and entering, they are commonly employed as watchmen. They cannot be trusted as a group, but they are used as go-betweens in private disputes between members of wealthy families. Piliavsky maps the transition Kanjars are now making between a politico-legal order in which they worked as (secret) agents of dominant families, to a new regime in which local policemen protect them in exchange for information and, it would seem, a cut of the profits Kanjars make from illegal alcohol, gambling, prostitution, and theft. It is often police who cover up evidence of Kanjar crimes, and it is often Kanjars who assist police in apprehending their fellows. The relations of ambivalent interdependence that result are easily mistaken for corruption, but Piliavsky suggests another interpretation. Kanjars allow their protectors to communicate in languages that cannot be officially spoken. These conversations are essential to the maintenance of public culture, a sphere in which the intimate affairs of elite families and the darker side of law enforcement can flourish as public secrets.

DEEPER IN DEBT The recent worldwide banking crisis, the collapse of real estate markets, and the failure of national economies and multinational corporations are forcing us to reconsider what we mean when we invoke terms such as credit, investment, risk, and debt. Key financial institutions are spinning out of control, or have been operating like glorified Ponzi schemes, and the world's two largest economies, China and the United States, are now held together by hyperactive consumerism and colossal debt. As dysfunctional as this system now looks, the key role debt plays in it is hardly new. Indebtedness is essential to social life; acts of recognition, gift-giving, and exchange are performed in the idiom of credit and debt, and human relationships tend to wither

away when people owe each other nothing. At the same time, owing and taking too much are behaviors often treated as sins, or crimes. The line between imbalance and immorality is hard to discern, and much of religious and political life is committed to drawing the line clearly. Three of our authors examine the complex moralities that emerge as we forgive our debtors, avoid and cultivate them, or take them for everything they are worth.

Albert Schrauwers analyzes the early history of banking in Canada, an enterprise that mixed cool financial calculation with Christian charity and faith in the good repute of the high and mighty. Some of the most successful banking ventures began in the 1830s as charitable arms of churches. Akin to friendly societies, the banks founded by the Children of Peace gave out alms and interest-bearing loans. Few church members accepted alms, because charity destroyed credit. When a person requested charity, not a loan, others would assume he was bankrupt and sue for his wealth. Reserving alms for the most destitute, the Children of Peace founded unlimited liability banks in which all shareholders were exposed to claims on the institution's capital. Large, secular banks, like the Bank of Upper Canada, organized as limited liability corporations. The value of their banknotes was based on the reputation of the elite families who supplied the bank's capital, but limited liability meant banknote holders and not bank owners would be liable for the cost of a run on the bank. Schrauwers uses these variations in bank organization to determine how social capital, fetishized as banknotes, could be transformed into a massive wealth generator for the already wealthy, and a potentially killing economic risk to people of ordinary means.

Evan Killick brings this discussion into the moment, focusing on the recent foreclosure crisis in the U.S. housing market, a crisis rooted in false confidence and bad lending practices. Killick compares the subprime mortgage debt to debt-peonage as practiced in the Peruvian Amazon. The comparison is provocative, and was once dismissed as absurd. Killick thinks the shock of the housing crisis has made it possible to discern the similarities between indebtedness to a bank, which helps cover the price of a home in exchange for years of payback with interest, and the relationship between Asheninka Indians and the loggers who give them money and goods up front in exchange for cutting down trees and delivering them downstream. In both cases, Killick argues, debt creates long-term relationships, and these relations are initially based on a premise of equality. Home ownership, in popular American ideology, is a social right facilitated by lenders. It is not a first step on the road to financial ruin but an act of citizenship. Likewise, debt-peonage is a relation sought out by Asheninka, who value their ties to outsiders. Killick argues that, unlike middle class Americans, Asheninka have more room to maneuver when their debts become unmanageable. They can provide for their own subsistence, move beyond the reach of their lenders, or negotiate better terms with other loggers. The extent to which either system is seen as one of inequality or

opportunity is variable, but the debt peon and the subprime mortgagor are united in the optimistic belief (not always an illusion) that debt is desirable and something they can control.

Erik Bähre shifts our attention to post-Apartheid South Africa, where social debts are now seen by millions as undesirable. In the absence of good jobs, people find themselves unable to sustain traditional patterns of mutual obligation and sharing. Instead, they rely increasingly on redistribution, an economic form that, according to Bähre, explains more about the South African political economy than do standard critiques of neoliberalism. Social welfare grants are the fastest growing category of government spending, but resort to redistribution is also visible in the popularity of commercial insurance policies, which are replacing kin-oriented friendly societies. Churches that teach the prosperity gospel also encourage redistribution by requiring their members to give substantial offerings to church leaders, an act of faith that God will reward with material wealth. Comparing a poor neighborhood to a more comfortable one, Bähre shows that South Africans who make more money have lower social capital, and they want to keep it that way. They build gates around their houses, limit social contacts with neighbors and kin, and develop “friendships” with people they meet at work. Social debts are hard to repay, and many people now see redistribution as the surer path to financial security, a conclusion that, Bähre argues, will entangle democratization and family life in new patterns of “feudalism and neopatrimonialism.”

TRAFFICKING IN SPIRITS If indebtedness to others is a fraught moral relationship, then *being owned* by others is more dramatically so. Slaves are not full citizens, or autonomous actors. They are property. In the post-emancipation era, slave owners are seen as immoral because they turn humans into commodities, an assessment that would seem extreme if leveled against bankers who own a large part of our salary, employers who own our time, or nation-states that own our allegiance. Entering into exchanges with lenders, employers, and governments defines a person as free, even when the obligations that ensue resemble enslavement. Owning humans outright, trading them for goods, currency, and other humans, is another matter. It is diabolical business, and its demonic overtones predate the abolition of slavery. In historical periods when slavery was acceptable, Christian and Muslim slavers claimed the people they captured were devil worshippers and already unfree. Indeed, this older moral economy of slavery underlies the negative, skeptical, and (at best) exoticizing portrayals of spirit possession now common in metropolitan societies.

Paul Christopher Johnson constructs a genealogy of “possession” that takes us back four hundred years to the philosophical origins of modernity. Although Johnson realizes that possession is an ancient feature of the Abrahamic traditions—and is recognizable in others as well—his first concern is to

understand possession as a term of generalized comparison that parallels the explanatory career of earlier concepts such as fetishism, totemism, or cannibalism. Possession, in Johnson's view, was critical to the development of ideas important to early moderns: property, contract, person, and society. The slave trade tested and refined these ideas, and the African slave emerged as the human type closest to possession and farthest from modernity. The strong historical ties between the slave trade and Atlantic religious traditions that privilege spirit possession—Candomble, Santeria, Voudou—are a vital legacy of this project. Because the genealogy of possession is vexed by the unstable mixture of servitude and power it transmits, Johnson concludes that thinking through and with spirits can accomplish more, intellectually and politically, than thinking around them.

CSSH DISCUSSIONS In an issue well stocked with bankers, lawyers, slave traders, and demons, it is fitting to end with the comparatively loveable character of the pirate. In his review of four recent books on “outlaw economics,” **Sebastian R. Prange** takes us on a nimble tour of piracy, smuggling, and gang life. A close look at the world of brigands, it turns out, is a fascinating complement to mainstream political science. There is a little pirate in every state official, and a little state official in every pirate. Or, as Prange would have it, “outlaw enterprises and public commonwealths ... navigate the same currents.” Yo ho!