Introduction: Law and Literature from the Global South

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Guest Editors

In his essay, "Violence and the Word," the late legal scholar Robert Cover offers an unusual definition of law as "the projection of an imagined future upon reality" (1604). Setting aside the, perhaps, unintentional suggestion that law is a kind of speculative fiction, this definition enables us to see a distinct colonial impulse in the law: the colonization of a present reality by some imagined, future ideal. Law is, by this account, a better, even more civilized future imposed on reality with the hope of bringing that reality up to its (impossible? unrealistic?) standard. This is a striking—and, no doubt, debatable—characterization, particularly when seen in light of the law's dramatic temporalization in the history of European colonization, a time when law was equated with modernity and thereby projected onto the complex and heterogeneous realities of subjected peoples the world over. Although Cover's definition has a hint of the utopian, the imagined future of modernity and progress projected by colonial powers did more to enact or otherwise open the door for dystopias, both governmental (e.g., postcolonial dictatorships) and capitalist (e.g., exploitative multinational corporations), than utopias. Legal scholarship has come to recognize the close relationship between colonialism and modern law in the west—indeed, Peter Fitzpatrick has argued that colonialism was not an aberration in western legal history but a key phase (146). As Sally Engle-Merry puts it, "Modern law itself is a creature of colonialism" (19). This suggests that law, as the projection of an imagined future, is not incidentally but essentially colonial.

This is not to say, of course, that modern, western, or "occidental" law (as Fitzpatrick tends to call it) is necessarily in the service of overt colonial projects as it was in the days of the British Empire. It is, however, to say that there are residues of colonial ideology or colonial form present in the law that manifest to a greater or lesser degree depending on the uses to which law is put, where, and by whom: one would expect to see colonial residues in the legal systems of post-colonial countries, of course, but even in the west, the ghosts of colonialism haunt, for example, the recent histories of counter-terrorism law and prison law and the ongoing treatment of indigenous land claims in the U.S.[1] As strongly as we would hope that the law's imagined futures would be egalitarian and democratic, far too often their projections elide and naturalize inequalities and injustices of different kinds. Postcolonial literature and theory would seem to be particularly well-suited to critiquing such projections. One can find a long tradition of engagement with law and

justice among postcolonial writers themselves[2] and a more recent tradition of postcolonial thought by legal scholars like Fitzpatrick, Engle-Merry, Antony Anghie, and others,[3] but it has not been until somewhat recently that the interdisciplinary field of Law and Literature has consistently attended to the postcolonial question.[4] As much as we laud this shift, however, we also have a sense that it is perceived by the larger law and literature community as simply one new direction for the field—a single branch in an increasingly diverse and widening tree. For us, however, given the law's colonial DNA, the significance of this shift is much broader, and the history of the shift's delay, lagging behind the larger turn in the humanities from a primarily Anglo-American canon, for example, is something we feel is necessary to revisit as we consider what it means, for both fields, to do work at the intersection of postcolonialism and law and literature. Does this work simply consist in "applying" the methods of law and literature analysis to postcolonial texts and contexts? Or is there a way of—or, indeed, a *need* for—decolonizing the methods themselves? What would it mean to think law and literature *from* the post-colony? To think *from* the Global South?[5]

To begin answering these questions, we must first recall the that field of law and literature has, to a degree, been part of a tradition that openly and rigorously critiqued the imagined futures of the law, which tend often to enforce the utopian visions of some at the expense of others. Emerging at a time that also saw the rise of Critical Theory in humanities departments in the west, law and literature formed one of several responses to what was then—in the 1970s and early 1980s—the dominant theoretical paradigm in American law schools: Law and Economics. Itself a product of the legal realist reaction against the dominance of legal formalism in Anglo-American jurisprudence in the late 19th century, law and economics carried on the realist belief that law should be grounded in social realities rather than derived from abstract rules. However, as law and economics came to focus primarily on the social costs of laws and policies and the ways in which both can contribute to wealth maximization, critics of the movement worried that such prioritizations became a new form of abstraction that ignored actual human values in teaching, practicing, and theorizing law. It was at this point that law and literature, along with Critical Legal Studies (CLS) and Critical Race Theory (CRT), emerged to offer alternatives and correctives to law and economics. For scholars like Owen Fiss and James Boyd White, literature held out the promise of bringing human values back to the legal conversation. There is much more to this story, of course,[6] but what is key for our purposes is that from the beginning, the law and literature movement offered a radical critique of the hegemony and political conservatism then dominant in Anglo-American law.

Strange, then, that the desire to humanize the law through literature was itself indebted to and aligned with the desires of cultural conservatives who

saw "great" works of literature as depositories of universal human values. One reason for this was that the humanities themselves were experiencing what Brook Thomas calls a "crisis in representation," triggered by the rhetorical/philosophical skepticism of poststructuralism, on the one hand, and the political skepticism of cultural theories (e.g., postcolonialism) on the other (512). Legal scholars turning to the humanities for support, then, found a field in crisis, and in looking for the upper hand in the debate with law and economics, some adopted the supposedly more stable "traditional" conception of the literary as representative of universal human values. At least in part because of this, the radically disruptive and counter-hegemonic character of law and literature, which we find in its early stages, was somewhat obscured. Law and literature infamously held to a narrow Anglo-American canon for many years and resisted following postmodern humanists into the uncertain (but promising) paths of crisis and canon re-creation. Not until the early 2000s did we begin to see an emerging effort among law and literature scholars to expand and revise their canon. It seems, to us, a missed opportunity for law and literature to have come so late to the postcolonial conversation, but the growing number of scholars examining the intersections of law and literature in postcolonial contexts suggests, of course, that it is not *too* late—each year, there are more and more articles, conferences, symposia, monographs, and edited collections that reveal the mutually-enriching nature of law and literature and postcolonial/Global South studies. Indeed, for us, given the extent to which modernity and modern law today are products of colonialism, there are few interdisciplinary ventures that promise a greater understanding of the forces that have shaped and continue to shape our world than postcolonial law and literature. Put differently, if law and literature was, is, and can yet be a discipline resistant to legal dogmatism and political hegemony and to the exploitation of the other through law and culture, then we should see the "postcolonial/Global South turn" not simply as a trend or new branch of the field, but as a critical evolution with comprehensive implications for all facets of the field. Indeed, at the risk of overstating the moment we seek to mark, we might see this turn as the fulfillment of law and literature's potential as an inter-discipline.

Perhaps that is overstating the case; perhaps we are, ourselves, projecting an imagined future upon our current disciplinary reality. Nevertheless, given the remarkable insights, interventions, and necessary perspectives coming from cutting-edge scholarship in this area, some of which we feature in this special issue, there is reason for excitement and optimism. For us, what is particularly intriguing about the emerging relationship between law and literature and postcolonial thought is the idea that we might find in the latter methodological possibilities that can change the way we do the former. Is it possible, in other words, to do law and literature *from*, and not just *about*, the Global South? Our initial inspiration for this issue—or, better, our initial

provocation—thus comes from Jean Comaroff and John L. Comaroff's book *Theory from the South* (2012). Their intervention is a call to look to the Global South as "sources of refined knowledge" rather than "reservoirs of raw fact" (1). The knowledge that we find there, far from being merely self-reflective, includes "privileged insight into the workings of the world at large" (1). The crux of this argument is that the Global South is where the processes and pitfalls of capitalist modernity assume a more naked form, making visible forms of victimhood which might go unnoticed in advanced welfare states. This allows the Comaroffs to suggest that the north is evolving *towards* the Global South in many crucial ways, ways that are obscured by modernity's deep-seated developmental narrative. The point of their project is not only, then, to understand southern sites on their own terms (though this is a prerequisite), but to then use the acquired vantage point to reconceptualize our shared contemporary global modernity. They write, "It is the south that often is the first to feel the effects of world-historical forces, the south in which radically new assemblages of capital and labor are taking shape, thus to prefigure the future of the Global North" (12). The point of such a statement, as the Comaroffs are quick to point out, is not its apparent reversal of temporal directionality (which would simply reinscribe the south as an intellectual resource for the north), but its intimations of a more complex, multi-directional web of temporalities and historical relationships prevailing within the world-system.

The Comoroffs' work helps us understand how the Global South, precisely because of its vexed history, may provide a crucible for all manner of creative ferment regarding how law originates, how it functions, how it changes, and how people respond to it. Whether staging the confrontation between colonial institutions and indigenous systems of thought, or exploring modes of subjectivity generated by the uneven power relationships of global modernity itself, artists in the Global South operate at the limits of law's legitimacy, of its claims to represent the binding *nomos* of the community. In this guise, literature can become a conduit for both of Walter Benjamin's two kinds of violence: law-preserving and law-creating. A good example of literature's law-preserving violence is offered by Joseph Slaughter's *Human Rights, Inc.* (2007), which shows how global literary culture provides the "common sense" that buttresses the contradictory assumptions held within the text of the law, ensuring their ongoing normativity (though by the same token, literature can also capture and amplify their contradictoriness). More recently, Anne Gulick's *Literature, Law, and Rhetorical Performance in the Anticolonial Atlantic* (2016) offers numerous examples of literature's law-creating force by showing how literature was crucial to the formation of revolutionary and postcolonial legal authorities in African and Caribbean nations, grounding both itself and the larger nomos within the performative context of the law's enunciation.

In the Global South, law's status as a political instrument of power is historically manifest; it must operate without the stabilizing illusion of universality or objectivity that it has for many authorities in the north. For this reason, the essays collected here are uniquely situated to show how literature participates in the political violence that alternately undergirds and challenges legal institutions. They reveal the complex strategies artworks use to contest certain legal fictions, while at the same time acknowledging the force that those fictions carry. In addition, they show how literature can participate in the formation of subversive and resistant subjectivities *around* unjust legal systems, in the ways oppressed subjects fashion forms of life and communal identities in response to adverse laws. Finally, they demonstrate how essential linguistic and cultural translation is to the implementation of the law—a task that literature has the power both to facilitate and to obstruct.

In order to think through the intersections of law and literature from the Global South, the contributors to this issue have also had to confront methodological difficulties extant within the postcolonial studies field itself. Postcolonial studies' project of displacing the *episteme* of empire—that is, exposing the ways that eurocentrism is baked into the categories and practices of western knowledge—has predominantly taken a deconstructive form. The foundational work of Homi Bhabha and Gayatri Spivak, such different thinkers in many respects, share a methodological commitment to deconstruction as a procedure for locating previously unrecognized subaltern subject positions within the interstices of colonial discourse. Yet, as Neil Lazarus has argued in *The Postcolonial Unconscious* (2011), deconstructive procedure has subsequently proven limited in its ability to represent liberatory, let alone revolutionary, subjectivities; at the very least, we need more tools at our disposal for bringing radical potentiality into public consciousness than classic postcolonial studies may have indicated. Still, postcolonial studies' theoretical skepticism—that subaltern voices (or any "voice" for that matter) can speak and be heard in any straightforward, immediate way—remains binding. While both postcolonial studies and its critics search for liberatory forms of writing and praxis, postcolonial history also teaches us how easily the language of "liberation" can be coopted to turn people's actions against their interests. The problem left to practitioners of postcolonial studies is finding language, imagery, and artistic forms adequate to the project of liberation, allowing people to envision it in compelling, grounded, and responsible ways.

Within this context, we also view the present collection as a contribution to this necessary flourishing of the postcolonial idiom. Thinking law and literature from the Global South allows scholars to identify discrete political spaces where competing colonial, anticolonial, and neocolonial discourses actually take place. It arrests the literary text at a particular instant in its circulation, where it enters into relation with a particular legal undertaking. It allows us to substantiate, sharpen, and give determinate form to our critical

intuitions about literature's social force and creativity, rather than assigning works of literature a vague cultural or social representativeness that they often cannot claim. To this end, the present collection of essays participates in the project of developing a more robust language for understanding the discursive agency of writers in the Global South. The contributors give us cause for optimism about the ability of the literary sphere to influence and reshape the legal sphere, and its cultural environment, in significant, knowable ways. As machines for focused cultural reflection, literary texts have a unique opportunity to shape the way that anti- and postcolonial conceptual frameworks career through the discursive systems of global modernity—law being preeminent among them—perhaps to transform those discourses in a direction more adequate to the lives of individuals and societies in the Global South.

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We have arranged the essays according to the chronological order of their subject matter, and in so doing some thematic patterns have emerged which we remark upon here. Our hope is that it helps to lend shape to some of the important trends and conversations we see emerging amongst these various approaches, but these patterns certainly do not exhaust the conceptual richness and scope of each article's intervention. The first two essays stage the complex interaction between colonial legal systems and indigenous concepts and imaginaries, which generate unique outcomes in both legal and literary realms. Mithi Mukherjee shows how literature dramatizes this encounter between colonial law and indigenous systems of thought, giving those systems a new political and ethical role *vis-à-vis* colonial power. Her reading of two stories by Bengali writer Bankim Chandra Chatterjee shows how important cultural concepts—dharma and moksha—were transformed in their very engagement with colonial legal discourse. According to Mukherjee, the author negotiates this encounter strategically, actively restructuring the concepts as a confounding space of exteriority to the colonial legal system.

Taking us to the late colonial era, Aqdas Aftab presents an instance of legal reading that points up areas of unintelligibility within a literary text. In their account of the 1944-1946 censorship trial of Ismat Chughtai's "Lihaaf" and Saadat Hasan Manto's "Boo," Aftab notes significant parallels between the difficiulties of representing inter-caste desire and queer desire. Because the bodies of these "sexual subalterns" were effectively invisible within the social text, Aftab argues, the two works' erotic allusions to desires for or between these bodies proved effective as literature but unrepresentable within the language of the courtroom. This legal unintelligibility remarkably becomes a successful ground of defense, intimating that certain cultural vanishing points may be used tactically in legal contexts.

As we move closer to our contemporary moment, we see the essays focus on the ways in which literature contributes to ongoing cultural shifts, which

potentially herald emergent legal models. Rose Casey looks at how literary writing attempts to model alternative forms of interrelationality that can have a transformative effect on legal concepts. Situating Ben Okri's 1987 short story "What the Tapster Saw" amid the legally sanctioned land appropriations by oil companies in the Niger delta, Casey discerns an implicit challenge to the system of property law that facilitated such appropriations. In its place, Casey identifies an aesthetic of inter-relationality in the story, an aesthetic that corresponds to, and provides conceptual resources for, a parallel movement in international land law towards a "sterwardship model." According to Casey, this movement originates in a postcolonial, indigenous perspective that seeks to combat a regime of liberal property rights that tends overwhelmingly to dispossess local actors and benefit entities in the Global North.

Similarly, Meredith Shepard looks at the way film can transform the underlying affects and habits of thought undergirding the law. Shepard, however, shows how this transformation works in the aftermath of national crisis, asking how literature's symbolic work might prepare a robust cultural embrace of reconciliation over revenge as a legal ideal. In her reading of the 2007 film *Munyurangabo*, directed by Lee Isaac Chung, she reads the film as an indispensible cultural supplement to the global legal form of the truth and reconciliation commission. For any commission to be successful, she suggests, the culture needs a vocabulary of images and narratives that makes reconciliation as affectively compelling as revenge. The film contributes to this through an imaginative transformation of warriorship that privileges the establishment of social relationships over the prevailing narrative of community-founding violence.

Finally, we have two essays that explore cultural responses to already instituted legal norms, as groups of people seek to theorize and assume agency over their legal modernity in the process of taking shape. Lubabah Chowdhury shows how literary texts renegotiate feminine identity within the context of changing British immigrant law. Starting from the 1981 British Nationality Act, which allowed citizenship rights to be conferred through the maternal line as well as the paternal, Chowdhury offers a comparative analysis of two contrasting literary responses to this legal sea-change, Salman Rushdie's 1988 *The Satanic Verses* and Sanjeev Sahota's 2015 *The Year of the Runaways*. Reading these two British immigrant novels (contrasting in their representation of "good" and "bad" immigrants), Chowdhury shows how changes in British immigrant law render marriage an issue of *legal* identity, not just cultural. Focusing on the *resistance* of women, the way they refuse and even subvert their legal positioning as carriers of national identity, Chowdhury shows how culture processes and explores the human possibilities of changing legal landscapes.

Gianluca Parolin takes us into the realm of popular culture as an effective space where alternative theories of law may be developed, in response to

existing legal norms. To substantiate this, he focuses on representations of law enforcement in Ramadan television series commonly referred to as *musalsalat*. In Parolin's analysis, these series show how a complex matrix of language and class determines the practice of law enforcement, sometimes sabotaging justice and other times recovering it. While these show that legal positivism has indeed "taken root" in Egypt, Parolin speculates that these series offer a commentary not only on a problematic Egyptian modernity, but amplify problems at the heart of legal positivism all over the world, including the Northern metropole. Egyptian diglossia emphasizes the linguistic divides that inform all positivist legal systems and, indeed, become the repressed of those systems.

These essays show us the necessity of thinking our legal modernity through its global conjunctures, in order to avoid an unwitting provincialism or, worse, neo-colonialism in the concepts and values that shape the field. To have any hope of attaining these vantages, however, we must examine the Global South not merely as a critical counterweight to the Global North, but a multiplicity of distinct places and peoples existing for themselves, each confronting the same global modernity with unique ideas about what needs to be preserved, defended, overthrown, disposed of, and achieved. Of the various subject matters taken up in this collection, we may say, as Achilles Mbembe does of African societies, that "their own raisons d'être and their relation to solely themselves, are rooted in a multiplicity of times, trajectories, and rationalities that, although particular and sometimes local, cannot be conceptualized outside a world that is, so to speak, globalized" (9). Our task, then, is not to binaristically oppose indigenous (much less "southern") forms of knowledge to "northern" ones, but rather to do justice to this multiplicity, to see how its locality takes place within a globalized field of forces. As our six contributors demonstrate, the intersections of the legal and the literary offer us an intellectual space where the temporal and conceptual tensions that characterize the Global South may be sustained. It is at the conjuncture of such tensions that we find our legal frameworks stretched beyond recognition, demanding we see past their utopian promise to the field of political violence that both constitutes them and allows for their potential transformation.

Notes

1. On counter-terrorism law see Laura K. Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom, 1922-2000* (2001); on the connections between slave law and contemporary prison law in the U.S., see Colin Dayan, *The Law is a White Dog* (2011); on indigenous land and resource issues, see Kyle Whyte, "The Dakota Access Pipeline, Environmental Injustice, and U.S. Colonialism" (2017) and the many debates about the U.S. Interior Department's reduction of the Bears Ears National Monument despite strong opposition by the Bears Ears Inter-Tribal Coalition.
2. A complete list would be far too long for a footnote, but among the many influential postcolonial texts that address law in explicit ways, Wole Soyinka's *Death and the King's Horseman* (1975), Ngugi wa Thiong'o's *The Trial of Dedan Kimathi* (1976), and Michael Ondaatje's *Anil's Ghost* (2000) would no doubt stand out. See also, of course, the texts and authors examined in this special issue.
3. See Anghie, *Imperialism, Sovereignty, and the Making of International Law* (2004). See also, Nasser Hussein, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (2003).
4. A special issue of *ARIEL: A Review of International English Literature* appeared in 2004 on the topic "Law, Literature, and Postcoloniality," bringing together what had, until then, been a few scattered conversations on the topic. Over the next decade or so, additional conversations emerged through various conferences and symposia, articles and book chapters, with early monographs appearing in the late 2000s, the most influential of which would no doubt be Joseph Slaughter's *Human Rights, Inc.: The World Novel, Narrative Form, and International Law* (2007).
5. We are interested, of course, in the term "Global South" as a conceptual framework that has emerged alongside, or even as a replacement for, the "postcolonial." Though we recognize their differences, we use the terms somewhat interchangeably due to their obvious overlap in terms of theoretical concern and geographical scope, even as one emphasizes time while the other space. Our intention is not to weigh in on which of the terms is preferable, nor to debate the pros and cons, though we recognize and value these debates. Rather, given the extent to which this issue is partly inspired by Jean Comaroff and John L. Comaroff's *Theory from the South* (2012) and simultaneously invested in the growing impact of postcolonial studies, as such, on law and literature, we attempt to make use of both terms as highly valuable and closely aligned bodies of knowledge, conceptual frameworks, and sources of critical methodology.
6. For more, see Brook Thomas, "Reflections on the Law and Literature Revival" (1991) and, more recently, "Part One: Genealogies and Futures" in *New Directions in Law and Literature* (2017), edited by Elizabeth Anker

and Bernadette Meyler, and "Origins" in *Law and Literature* (2018), edited by Kieran Dolin.

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