

**Undignified Details:
The Colonial Subject of Law**
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A legal world is built only to the extent that there are commitments that place bodies on the line . . . the interpretive commitments of officials are realized, indeed, in the flesh.

Robert Cover “Violence and the Word” (208)

At the end of Chinua Achebe’s novel, *Things Fall Apart*, readers find the narrative abandoned and replaced with another story. The novel tells the story of Okonkwo, a man from the Nigerian tribe of Umuofia who, despite a destitute upbringing, becomes one of the most powerful leaders of his clan. Achebe’s protagonist, however, is anything but an endearing hero. Haunted by the memory of his poor and hapless father, Okonkwo becomes a proud, short-tempered man, who beats his wives and treats those around him with a hard-edged lack of sympathy. The novel concludes with the arrival of Christian missionaries from England, who convert members of Okonkwo’s clan, establish a church, and eventually set up a court. Following an altercation with the priest and some of the church’s converts, Okonkwo and five other men are arrested and beaten. After their release, the clan calls a meeting, which is interrupted by the guards who had earlier imprisoned and beaten the men. This intrusion proves more than Okonkwo can bear: overcome with humiliation and rage, he confronts one of the guards and kills him.

The chapter that follows this episode shifts from Okonkwo’s point of view to that of the unnamed District Commissioner, who comes to the village in search of the guard’s murderer and is led by the clansmen to a tree from which Okonkwo’s body hangs. The tragedy of his suicide would seem to be a natural place for Achebe’s novel to end. Instead, *Things Fall Apart* concludes with the beginning of another story, which announces itself in the omniscient narrator’s shift in focus from Okonkwo to the

District Commissioner. Reframing Okonkwo's narrative from within the Commissioner's perspective, the narrator concludes the story from the subject position of a man who knows nothing of Okonkwo save the scant facts of the messenger's murder and the murderer's suicide. As the newly anointed protagonist leaves deep in thought about how the dead man's story might enter the wider colonial picture, Achebe's title and the novel's epigraph from Yeats' poem "The Second Coming"—"things fall apart, the center cannot hold"—acquires new force, inflected with the strained power relations of colonialism. In these moments, the man we had taken to be the novel's central figure is undone, and becomes little more than a small, anonymous part in a very different story:

The Commissioner went away, taking three or four of the soldiers with him. In the many years in which he had toiled to bring civilization to different parts of Africa he had learned a number of things. One of them was that a District Commissioner must never attend to such undignified details as cutting a hanged man from the tree. Such attention would give the natives a poor opinion of him. In the book which he planned to write he would stress that point. As he walked back to the court he thought about that book. Every day brought him some new material. The story of this man who had killed a messenger and hanged himself would make interesting reading. One could almost write a whole chapter on him. Perhaps not a whole chapter but a reasonable paragraph, at any rate. There was so much else to include, and one must be firm in cutting details. He had already chosen the title of the book, after much thought: *The Pacification of the Primitive Tribes of the Lower Niger*. (208–208)

The heart of Achebe's novel—Okonkwo's story—turns out to be a minor narrative within a larger one, reduced to a footnote in the master colonial narrative represented by *The Pacification of the Primitive Tribes of the Lower Niger*. The tragedy that Achebe's novel records, then, is the process by which Okonkwo's narrative recedes into the background of another, becoming an "undignified detail" that those in power would

do best to ignore. Okonkwo's suicide is reduced to "material" for the Commissioner's story, the scale of his life cut down to the size of a "chapter," even "a reasonable paragraph."

I begin with Achebe's novel not to make a claim about its place within the larger context of African literature. I invoke it, rather, to introduce and animate the terms of this essay's consideration of British colonial law as it was practiced in Nigeria. Viewed from the positions of both legal and literary scholarship, *Things Fall Apart* provides us with an occasion to reflect on the relationship between native and colonial law, and to do so in narratological terms. As Achebe's novel suggests, this relationship unfolds through a double-edged process of shortening and lengthening: the condensing and shrinking of one story and the simultaneous expansion of another, more epic narrative. The combined force of these transformations, I will argue, is accompanied by a dramatic shift in register, one that renders the colonized subject anonymous. Moreover, I will go on to argue that this effacement of identity lays the foundation for individual stories to do the work of documentation. In this essay, I examine the means through which colonial law transformed the stories of singular subjects within the legal framework, enlisting them, through an editorial process, in the project of documentation and the related task of elaborating a narrative of colonial justice.

Achebe's ending, to be sure, opens up a range of interpretive possibilities, positing—among other things—the indelibility of native stories, which persist in spite of colonial attempts to quash them. Along such lines, Okonkwo's suicide might be grasped as an act of defiance—an emphatic refusal to be co-opted by the Commissioner and his soldiers. My own focus here, however, begins by approaching the novel's conclusion as a depiction of how colonial texts, written by more powerful authors, replaced native stories. To suggest as much, however, is to offer only a partial view of the grounds that make possible such a replacement. For the novel's closing paragraphs relate not only what happens to Okonkwo's story, but also *where* this transformation occurs: "As he walked back to the court he thought about that book." The place where things fall apart turns out to be a location between two positions, between Okonkwo's hanged body in the village of Iguedo and the British

colonial court. It is here, in the movement from one to the other—on subtle but unmistakably legal terrain—that the book that promises to incorporate Okonkwo’s life in the form of “a reasonable paragraph” takes shape in the District Commissioner’s imagination. There is something in the transition from village to court—a movement towards the law—that makes it possible for the District Commissioner to conceive of his book. In presenting *The Pacification of the Primitive Tribes of the Lower Niger* as the last word on Okonkwo’s life, *Things Fall Apart* gestures towards the force that textualization exerts in a colonial framework, projecting its as-yet-unwritten coda not simply as narrative, but as written text. Crucially, however, this shift to writing occurs not simply through the act of inscription, but through the editorial work that precedes it. “One must be firm in cutting details,” editing out minutiae that detract from the larger issues in the study of pacification.

The seemingly ethical terms in which the Commissioner justifies cutting the details of his volume are exposed as pretense when we consider a different kind of cutting that he refuses to do: namely, the act of cutting down Okonkwo’s body from the tree: “a District Commissioner must never attend to such undignified details as cutting a hanged man from the tree.” This literal body may well have offered an occasion for compassion, a chance for British administration to demonstrate its humane treatment of its colonized subjects. The Commissioner rejects this possibility, however, in favor of a more pedagogical aim: “Such attention would give the natives a poor opinion of him. In the book which he planned to write he would stress that point.” The radically different objects of this cutting underscore the injustice in their being related at all. Simply stated, it is morally repugnant to equate the task of cutting down a hanged body with the labor of cutting the details of a life from a story that would purport to explain it. These cuttings may indeed strike an important contrast, but they are treated with equal steadfastness by the Commissioner in his determination to “stress that point” of not cutting down the dead man, as well as in his reflection that “one must be firm in cutting details.”

The Commissioner’s stiff resolve confirms Walter Benjamin famous assertion in “Theses on the Philosophy of History” that there is “no

document of civilization which is not at the same time a document of barbarism" (256). What emerges as especially salient here is not simply the relationship between barbarism and writing but more specifically, the brutality of documentation, the process through which a body of work, a story, an individual life must pass in order to be recognized—and recorded—as a document. It is not just the text that produces violence, in other words, but a specific kind of text: one that testifies to, documents, and establishes facts. The trajectory by which this violence exerts itself—the element that makes it violent, in other words—is another matter. It is violent, ultimately, because it effaces. The story of an individual becomes an example, a detail in a larger story of administrative success in colonial Africa.

It is important, moreover, that this transition is not one of outright elimination but of compression: the reduction of a life, and the narrative depicting that life, into a chapter or a paragraph. This process suggests the subtle complexity with which law, history and narrative were woven together in colonial Africa—a subtlety often overlooked when colonialism is imagined primarily as a system that ruled out competing indigenous legal practices. I am not suggesting here that British colonial policies did not eradicate native forms of justice; they did. I am proposing, rather, that a critical evaluation of colonialism's development demands more specificity than general descriptions of political power dynamics admit. In particular, it is this work of compression, and the redaction it enables—the ability to lift a compact story from one context and embed it in another—that is a central mechanism by which colonial law literally overwrites native law. I would like to suggest how this happens through an analysis of an exemplary opinion from colonial Nigeria, *Lewis v. Bankole*. Momentarily, I will be examining this highly significant case, which was among the first to consider the question of property rights within the context of British colonial Africa. I want first, however, to situate this case in its colonial context by setting out some basic features of the British treatment of African customary law. As I will explain, colonial law reduced and recast existing indigenous narratives and practices of law with a view to creating a more just society, one modeled upon British jurisprudence.

I.

The application of British law in Africa was heralded as one of England's most valuable contributions to its colonies, promising to institute a legacy of reason and tolerance in a context that the British saw as utterly chaotic. Even as the colonial era waned and its critics became more numerous, the sentiment persisted that common law's influence in the colonies had been, on the whole, a positive one. As one legal scholar noted in the *Journal of African Law* at the dawn of many African nations' independence, "British administration in overseas countries has conferred no greater benefit than English law and justice" (Roberts-Wray 66). Underwriting this conviction was the long-held view of the British judge and, by extension, the system he represented, as a preserver and protector of African society. A colonial judge in Nigeria viewed his court's particular duty in this way:

I regard this court in its equity jurisdiction as in some measure by virtue of the jurisdiction sections of the Supreme Court Ordinance 'the keeper of the conscience' of native communities in regard to the absolute enforcement of alleged native customs. (Ajayi 104)

The salutary appraisal of western jurisprudence in colonial Africa reflected the law's purported pluralism in integrating native custom with imported English law. Such integration, however, was idealistic at best: in reality, legal issues were addressed through parallel legal systems, that of English-administered courts and of the Native Courts, which were presided over by local chiefs. If a case could not be settled in a Native Court of Appeal, it was brought before a superior (Magistrates' or Supreme) Court. British officials in these courts were instructed to apply native or customary law to colonial subjects, provided that this law met the requirements of the Repugnancy Clause, which excluded practices that were anathema to "justice, equity, and good conscience" (Roberts-Wray 77). In theory, this integration was meant to tolerate and preserve existing African traditions by applying law in its local context. In practice, the confluence of these two legal systems often resulted in misreading and fragmentation, as magistrates and judges frequently misunderstood,

and consequently misapplied, native law. The result was a system choked with confusion, in which British officials tended to construe indigenous practices according to their own assumptions and priorities. Not surprisingly, African customs often did not meet the repugnancy test, and those that did were frequently misunderstood by magistrates and judges, who interpreted exceptional customs as legal practices.

Ironically, the repugnancy doctrine formalized a haphazard editorial process, embedding the acceptable elements of native custom into colonial law through an irregular method of incongruent decisions. In their new imperial context, these traditions acquired a textual and political stability that reinforced the aims of empire rather than sustaining a local past. Legal scholar Peter Fitzpatrick argues:

The potent implication of the repugnancy clause is that the native does not have a distinct and integral project since, with the repugnancy clause, a part of the resident culture can be denied here and a part there without any harm to a significant fabric of existence. Such an ultimate negation by imperialism was profoundly identified by Fanon as the fragmentation of a life once lived and the consequent rigidification of the fragments, the dynamic of which is now external to them. (110)

The difficulty of determining customary law, moreover, was compounded by the fact that this law was rooted in oral tradition; it was, quite literally, unreadable. It is with this illegibility in mind, perhaps, that British administrators instituted the practice of having native expert witnesses testify to the existence of their own laws—testimonies which subsequently would be recorded and integrated into the common law doctrine of *stare decisis*, the practice of relying on past precedents. Since *stare decisis* was not part of native law, the assumption that precedents existed and could be woven handily into the fabric of customary law changed this law beyond recognition, often turning a misinformed interpretation of custom into a binding decision. By recording decisions in this way, British legal administrators established “a body of precedent, turning local law into something akin to English case law. Precedents were invoked and debated not only in British courts, but also in indig-

enous ones, where actors sometimes framed their arguments against the backdrop of their understanding of how matters would be handled in colonial courts” (Mann and Roberts 14). The insistence also created, in legal practice and legal writing, a history—a juridical lineage through which the past could be traced and followed. Confounded by this complex network of intentions and circumstances—the ambiguous interface between the two legal regimes— administrators, judges, plaintiffs and defendants often missed each other in the dim light at the intersection of English and customary law.

As a way of mastering the potential uncertainty that could arise, colonial administrators drew heavily on the work of anthropologists. I will argue that the court in *Lewis v. Bankole*, in calling expert witnesses to testify to native practices, conducted itself in the manner of an investigative anthropologist. It is a well-documented fact that anthropologists were anything but foreign bodies in colonial legal policies, an involvement that resonates throughout *Things Fall Apart* in the omniscient narrator’s voice, which often sounds curiously like that of a lay anthropologist. British administration of Africa had a history of drawing upon anthropological research, which was seen as objective, thorough, and unhampered by ideology. It thus became a critical and fitting ally in jurists’ efforts to export British law to Africa. As one writer wistfully put it, “it is here that the work of the anthropologist is of such great value; he has the time to observe, he has no work which has to be done in a stated time, in fact he has no axe to grind except to obtain the information he desires” (Roberts 50). Such sentiment was not uncommon in the development of colonial law and administration, lending its architects an even-handed tone that was the benchmark of effective lawmaking and offering a studious, scrupulous promise of impartiality stripped of ideological underpinnings.

For their part, anthropologists were in no hurry to dismiss such praise. Even those critical of colonial practices were quick to defend their merits and overall good intentions—as did Edwin Smith, President in 1937 of the Royal Anthropological Institute. Smith writes apologetically in his introduction to a slim volume entitled *Tangled Justice*, “In throwing doubt upon the wisdom of some of the laws which have been put in force

in Africa one is not impugning the motive, nor questioning the ability, of the men responsible. The ideal of justice and good government is the guiding star of British administration” (Roberts 2). Presumably part of the justice and good government to which Smith refers is not unrelated to its reliance on the findings of his own discipline, which delivered critical evaluations with the reassurance of their objectivity, lending intellectual and cultural substance to colonial legal policies.

II.

The landmark case of *Lewis v. Bankole* was decided in the Colony of Lagos in 1909. The plaintiffs in *Lewis* claimed joint ownership rights to the property in question, an area of land referred to as Mabinuori’s Compound; in order to establish these rights, they sought a declaration that the land was family property—which cannot be sold according to customary law—rather than private property, which, in accordance with English common law, can be transferred through the sale of land. With this indigenous concept of inheritance at stake, the case goes back not to the onset of the family’s troubles, but to the beginning of the family itself:

Chief Mabinuori died in 1874, leaving a family of twelve children, the eldest of whom was a daughter . . . In 1905 an action was brought by certain of Mabinuori’s grandchildren . . . against certain of the occupants of the family compound who were daughters of Mabinuori and children of a deceased younger son. The claim was for a declaration (1) that the plaintiffs were entitled, as grandchildren of Mabinuori, in conjunction with the defendants, to the family compound, and (2) that the family compound was the family property of Mabinuori deceased. (*Lewis v. Bankole* 81)

In the years leading up to the decision, Mabinuori’s Compound had become a source of tension between the children of Mabinuori’s oldest son, Fagbemi, and Mabinuori’s surviving daughters. After Fagbemi’s death in 1881, his son Benjamin Dawodu took over the management of the property; after his death in 1900, his brother James Dawodu, one of the plaintiffs, succeeded as head of the family. During this time,

the management of the land—and specifically, the two shops that had been built on that land—was taken over by the defendants, Mabinuori's daughters, who assumed responsibility for leasing the shops and collecting the rents. The daughters' relations with James Dawodu deteriorated, however, following his objection to his aunts' dealings with a European firm. Asserting his position as head of the family by patrilineal descent, Dawodu and several other grandchildren of Mabinuori initiated proceedings to establish legal entitlement, together with the daughters of Mabinuori, to the family compound, a block of land on the north side of Bishop Street between the Marina and Broad Street in Lagos.

Lewis v. Bankole was one of the first cases in which native law, and specifically the notion of family property, was the governing principle. Acting Chief Justice Speed declared in the initial proceedings in 1908 that “perhaps for the first time the Court is asked to make a definite pronouncement on the vexed question of the tenure of what is known as family property by native customary law, and the principles upon which that law should be enforced” (*Lewis v. Bankole* 82). Speed ultimately ruled for the defendants, arguing that the plaintiffs had received enough inheritance from Mabinuori to disqualify them from further rights over the family's land. Six months later, however, his decision was overturned by the Full Court, which remitted the case to the Divisional Court with two instructions: the Court was to determine which native law or custom applied in the situation, and was to reconsider the case in light of that finding.

The task of responding to the Divisional Court's request amounted to more than simply identifying the guiding principles of native property law, since colonial legal doctrine considered native law to be a question of evidence rather than law. As one judge put it in a later case, reversing the decision of a lower court: “The learned Judge appears to have referred to it as though it were a legal textbook of such authority as would warrant its citation in Court, which it certainly is not, for *native law and custom is a matter of evidence and not of law*” (*Belio Adedibu v. Gbadamosi and Sanusi* 192). To attain legal status within a colonial court, in other words, native law had to be proven, not merely presented. As I have already mentioned, the business of establishing this proof often involved

authorities, such as local chiefs or individuals with expertise in native traditions, who were called as witnesses to establish the law. In keeping with this practice, the Court in *Lewis* decided to conduct a trial within a trial, consulting experts of indigenous law in order to reconstruct the case along customary lines. The story of this performance, which comes at the conclusion of several lengthy and often convoluted explanations of the case, ultimately functions as the turning point in the legal proceeding, and was viewed by the Court as the key to the legal riddle that had been troubling Mabinuori's family for years.

To establish which native law applied in *Lewis*, the Divisional Court summoned a group of Lagos chiefs to simulate a series of decisions relating to the case. The chiefs, as expert witnesses, were placed under oath and presented with a number of situations involving the vital elements of the case before the Court. The Court, in other words, did not present its expert witnesses with the case itself, but rather with a hypothetical range of scenarios, designed to extract the appropriate rule without divulging the case's actual details. For each scenario, the chiefs gave their rulings; some concurred, others differed from each other. In the end, the Court seemed to weigh only those rulings backed by consensus; the differences among the chiefs were elided, and the Court ruled that the land should be divided among the family members.

The procedure appeared reasonable enough. In order to ascertain the relevant customary law, British judges turned to native judges to see what their decision would look like in a native court, thereby gaining a sense of which precedent would operate in the case's particular circumstances. What they created, however, was an illusion of precedent, in which the Lagos chiefs delivered opinions without binding power, performing—rather than handing down—a series of decisions without force on their own terms. Their rulings could only acquire judicial power within the Divisional Court's articulation and interpretation, which proceeded as though it had uncovered the underlying precedent rather than a range of possible approaches to the case.

Given the legal reasons for relying upon expert witnesses, it is striking that what the Court in *Lewis v. Bankole* found especially praiseworthy in the chiefs' testimonies was not their impartiality or judiciousness,

but their polished presentation. Writing for the Court, Chief Justice Osborne expressed his approval of the witnesses not only because their high social status promised accuracy and truth, but also because they conducted themselves appropriately. “I have no reason to doubt the correctness of the chief’s [sic] pronouncement of the customs which exist in Lagos at the present day,” he notes. “Moreover, I was much impressed with the fair and business-like methods which they said they would have adopted if the case had been before them for decision” (*Lewis v. Bankole* 101). Osborne responds, in other words, not only to the content, but also to the form of their testimonies, a form that suggests something other than anthropological or legal objectivity and reasserts the court’s dramatic—and thus subjective—production of precedent and law. Unlike an anthropologist, what he notes is not the chiefs’ cultural or legal differences, but rather a presentation that he recognizes as his own: a similarity so striking and impressive that it confers legitimacy upon the chiefs’ pronouncements. Osborne’s account of the chiefs’ conduct leaves one with little sense of how a court in Africa looked, or of how awkward and chaotic it often was. But given how deeply he is struck by the chiefs’ “fair and business-like methods,” one might well imagine that something considerably different was often the case. Along such lines, one might entertain a far less orderly scenario, in which two legal worlds with little in common were forced into jarring collision, making any judge relieved to discover the unexpected similarity rather than stumbling over differences. One observer in 1937 noted the surreal nature of the performance that was colonial justice:

The newcomer to Africa visiting the Courts of Law in different parts of the country for the first time views with astonishment the scene before him. The presiding magistrate or Judge. On special occasions in his official robes of scarlet, seated with native assessors—counsel in their robes and the prisoner in the dock—the crowd of spectators kept back by native police in uniform. A repetition of an English scene in African surroundings, often of a primitive nature. The whole atmosphere is obviously unsuited to the African mentality. As he listens to the

proceedings he realises that no primitive or even partly educated native can hope to understand the workings of British justice. The Court procedure is not understood by the prisoner. If he is guilty and wished to admit it, he is often told to plead not guilty. If he desires to explain he is told he must remain silent. (Roberts 65–66)

The scene comes closer to a performance—one that appears either as drama, comedy, even mystery—than it does to a straightforward legal proceeding. The chiefs' speech acts have none of the power associated with the performative utterances of speech-act theory. In this particular colonial context, then, the seemingly performative becomes merely performance. The apparently juridical language of the chiefs is drained of its productive capacity to bring a legal world into being: their legal pronouncements exert no force in and of themselves, but instead are wholly dependent upon the larger power structures of colonial administration. By depicting the colonial courtroom as a play of costumes, stage directions, and lines spoken without knowledge or conviction, the relationship between performance and law becomes descriptive rather than normative, and estranging rather than illuminating.

The strangeness is amplified, too, by the fact that not only the presence, but also the words of those on the stand were often placed in a different context. Thus we find that the chiefs' judgments, which elsewhere would have been the law itself, become part of a story that the colonial court tells about native law—a story that is reduced and subjected to interpretation, and finally to the decision of another court. The two worlds seem out of joint with each other—an awkwardness to which the court responds by noting the chiefs' exemplary, English-like conduct.

The judge in *Lewis v. Bankole* adds a procedural concern to his impressions, however, by calling attention to a more directly legal matter in the case: the question of whether Mabinuori's land can be transferred to non-family members. Even as he accepts the chiefs' conclusion that the land can be partitioned and that power over it can reside with the family matriarch, Justice Osborne takes issue with the opinion that the land can never be sold:

There is one other point to which I must allude, and that is whether by native customary law the family house can be let or sold. According to the Lagos chiefs, the present custom is that it can be let with the consent of all the branches of the family, but cannot be sold. The idea of alienation of land was undoubtedly foreign to native ideas in olden days, but has crept in as a result of the contact with European notions, and deeds in English form are now in common use. There is no proposal for a sale before me, so it is not necessary for me now to decide whether or no a native custom which prevents alienation is contrary to section 19 [containing the repugnancy clause] of the Supreme Court Ordinance. But I am clearly of opinion that despite the custom, this Court has power to order the sale of the family property, including the family house, in any cause where it considers that such a sale would be advantageous to the family, or the property is incapable of partition. (*Lewis v. Bankole* 104–105)

In deferring to the expert witnesses while simultaneously asserting the court's power over them, Osborne gestures towards the limits of customary law. The Lagos chiefs may be familiar with current local practices regarding land tenure, but the ultimate authority on the issue remains the colonial judge. His statement, ironically, bears a hypothetical or conditional inflection—*if* a sale were proposed, *then* the Court would order a sale—similar to that in the chiefs' testimonies. There is, however, one crucial difference: while it may not be possible for Osborne to rule on the sale of property in this particular instance, he underscores his court's binding authority to determine such issues in the future. In harnessing the power of this hypothetical mode, Osborne turns his gaze towards the future: to the court's expanded jurisdiction and with it, to the prospect of British ownership along British lines. The status of the past in *Lewis v. Bankole* is another matter, and I turn now to the Court's iteration of law and history—a relationship that I will suggest has as much to do with historical time as it does with the time it takes for the opinion to tell its litigants' stories.

III.

The story of Mabinuori's Compound begins with the initial proceedings in 1905 and ends with the 1909 verdict. The opinion is unusually long, owing to the fact that the case was heard by a number of different courts. My citations in this essay have been drawn from the final phase of this lengthy proceeding, which embeds the opinions of lower courts in framing its decision. To be sure, the genealogy of *Lewis v. Bankole* is a complicated one, spanning several generations and a vast number of children and grandchildren. As if enacting the family repetition of successive generations, each court records its own version of events and presents them at the next appellate level, creating a confusing narrative that proceeds in fits and starts, repeating itself in spite of the fact that the story might well have been summarized more succinctly. *Lewis v. Bankole* rehearses these details a perplexing number of times and in exhaustive detail, summarizing the issues at stake and tracing their evolution again and again, as if the court suffered from a kind of narrative repetition compulsion. Enacting the very repetition that writing enables, the opinion's reiterative prose often seems to be a desperate attempt to gain mastery over a story, the complexity of which threatens to overwhelm even the steadiest hand.

The length and repetition of the story, its appeal to the distant past, lends the opinion a resonant literariness, imbued with echoes of another endless trial: Jarndyce and Jarndyce of *Bleak House* (1853). Dickens's "scarecrow of a suit" (14), without origin or endpoint, has grown to such labyrinthine proportions in the novel that "no man alive knows what it means" (14). But the resonance of this famous literary trial, in all its humor, futility, and absurdity, is framed in *Lewis v. Bankole* by a drastically different context than that of Victorian London. To read it historically is thus to politicize its rhetoric, and to understand that its length, unlike Jarndyce and Jarndyce, bespeaks not only law's futility. It also underlines the struggle to establish the legitimacy of British rule.

The process of legitimation set in motion by *Lewis v. Bankole* marks the opinion's critical difference from the twists and turns of Dickens. Rather than extending eternally into both past and future, the case worked to incorporate a pre-colonial past into the fabric of colonial

law, lending the latter an appearance of having evolved naturally from the laws of the land that preceded it. Colonial legal administrators were thus able to write into existence a long-standing relationship with native law, creating a history in which British presence was an integral part. For even as colonialism's supporters often justified its law through the British integration of native customs, this justification did not make the practice legitimate. Rather, it in fact risked underscoring just how constructed and potentially illegitimate such strategies in fact were. The repetition in *Lewis v. Bankole*, like that of written opinions and printed pages more generally, thus becomes a way to create legitimacy where none had existed before. As Hannah Arendt reminds us:

Power needs no justification, being inherent in the very existence of political communities; what it does need is legitimacy . . . Legitimacy, when challenged, bases itself on an appeal to the past, while justification relates to an end that lies in the future. (52)

The ideologies behind colonialism and colonial law had already laid the justification for the colonial legal enterprise. This justification was part of the process of imagining a future, one that would realize the Commissioner's book in *Things Fall Apart*, and that would posit a narrative—and with it, a world—in which colony and metropole balanced each other in a civilized, fruitful coexistence. What remained to be provided, however, was the legitimacy for this work, by which I mean—following Arendt's reasoning—the creation of a connection between the colonial present and the pre-colonial past.

The narrative structure of British colonial law, which offered occasions for telling old stories in their present colonial context, afforded just such an opportunity for legitimacy. It did so by suggesting, through a process that wove together colonial weft and native warp, that colonial law was part of the story from the beginning, and thus that the legal narrative had evolved through its wheels and cogs. Pierre Bourdieu, in "The Force of Law," suggests that this historical effect issues from legal language at its most fundamental. "Juridical language," he observes, "reveals with complete clarity the *appropriation effect* inscribed in the logic of the juridical field's operation. Such language combines elements

taken directly from the common language and elements foreign to its system” (819).

In colonial Africa, juridical language joined forces with the particularities of English common law—most notably, its doctrine of *stare decisis*—to appropriate not only a normative universe, but also to create a sense of historical inevitability. Piyel Haldar thus remarks that by incorporating local practices into a system of precedent, colonial jurists posited English history as the regnant paradigm:

The *legis non scripta* that forms the basis of the doctrine of *stare decisis* marks the common law system as being specifically and peculiarly English. It is for the English and, above all, it derives directly from the English since an immemorial time. . . . It is a law which, since before the beginning of legal memory, has developed with the slow accretions of ‘wisdom’ that evolve from the spirit of English existence. (450)

The act of asserting English history as African history, moreover, reinforced the sense that colonialism did not simply redeem native subjects, but actively constituted them. As Peter Fitzpatrick concludes, the development of colonial law meant that “[t]he colonized are relegated to a timeless past without a dynamic, to a ‘stage’ of progression from which they are at best remotely redeemable and only if they are brought into History by the active principle embodied in the European. It was in the application of this principle that the European created the native and the native law and custom against which its own identity and law continue to be created” (110).

Furthermore, the act of repetition itself had the effect of making something real: a story repeated often enough eventually becomes *the* story, the official version of events. The fact that legal decisions were no longer left to an oral tradition, but were printed and published, only accelerated this process of repetition: a decision disseminated as text generates an infinite possibility of repetition. Martin Chanock aptly notes, “Writing is the tool of administration” (303). Yet the potential mastery that a text’s circulation makes possible also illuminates the possibility that this official version is, at best, precarious—and at worst, illegitimate. Writing

and repetition, I am suggesting, do not “make something real,” but rather produce the *effect* of this real—an illusion of permanence and with it, a sense (rather than a guarantee) that justice has been done. Each repetition thus creates the possibility—and the desire—for administrative mastery, and simultaneously subverts it with the prospect of mastery’s impossibility, and of the tenuous hold of British administration.

IV.

Robert Cover imagines law as at once structural and temporal: for him, law was a way to imagine how things might be different in the future, but not necessarily how they *might have been different* in the past. Cover writes,

Law may be viewed as a system of tension or a bridge linking a concept of a reality to an imagined alternative—that is, a connective between two states of affairs, both of which can be represented in their significance only through the device of narrative. (“Nomos and Narrative” 101)

In the context of colonial practice, however, Cover’s bridge takes on a different form, one threatening to buckle under the weight of politics and history. In colonies, law became more than a bridge to the future: it became a way to the past; it not only reduced stories to a manageable size, but tore them out of context and recast them in new, more politically and legally convenient terms. It extended this new context into a narrative that extended the reaches of colonialism well into history—and thus, into legitimacy. Seen in this light, the gaps that colonial officials perceived went beyond those questions for which, in their eyes, customary law had no answers. The gaps they perceived, and those that were filled by repetition and publication, were those of their own absence.

Colonial legal practice gave both a history to the metropole and a language: through the work of reduction and lengthy repetition, it translated customary law into the language of English law. And in the process, it ushered in a legacy, a claim to ownership, that was more creative labor than it was historical—or, for that matter, anthropological—fact. In making sense of colonial jurisprudence, then, to speak of “the story of law” would be to offer a thin description of legal practices in Africa.

To describe it as such is to distort the way in which the practice of colonial law turned native law into stories precisely in order to dissolve their status as law—to interpret these stories in order to transform them into something else: to recast the disparate voices of the Lagos chiefs into a uniform body of law; or the novel *Things Fall Apart*, into the book *The Pacification of the Primitive Tribes of the Lower Niger*. To be sure, Okonkwo and the Lagos chiefs still form part of the colonial narrative—“perhaps not a whole chapter but a reasonable paragraph, at any rate.” When these paragraphs were spun out into narratives, subjects of colonialism could be imagined as such not simply because they were under a British rule of law, but because this law made them subjects of much larger stories—and thus, subject *to* stories.

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