Law and Violence in the Colombian Post-Conflict: State-Making in the Wake of the Peace Agreement*

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ABSTRACT | Colombia's 2016 Peace Agreement with the FARC guerrilla extends beyond the end of the war, and beyond measures for the disarmament, demobilization and reincorporation of former guerrillas. A large portion of the agreement is dedicated to the extension of the presence of the Colombian State into those areas of the country formerly under FARC control. The premise behind this extension, shared by Colombian elites as much as by former guerrilla leaders, is that if the State remains absent, then the areas will be occupied by criminal organizations interested in controlling the FARC cocaine trade, and, more generally, the vast and sparsely populated territories will further descend into barbarism. This premise resonates with a long arc of persistent aspiration for a national identity that is shaped by the opposition between civilization and barbarism. The expansion of civilization has, especially since the transformations effected by Colombia's 1991 Constitution, been increasingly identified with the expansion of the rule of law, and hence with law's mythical powers to order society and control barbarism. Violence is then equated to lawlessness, and the remedy for violence equated with the expansion of the *Estado social de derecho*, the State that embodies the rule of law in the Colombian Constitution. The foundational narrative of civilization versus barbarism, inherited by the hopes placed on the rule of law, and on the recipes for State-building, by the 2016 Peace Agreement, continues to obscure the continuities between law and violence, and particularly the fact that the execution of legal institutions in formerly "lawless" territories continues to enact the violent moment of the adoption of legality. Both theoretical and empirical explorations of the present process of the expansion of the Colombian State requires critical examination of the hopes vested on law, a critical examination that needs to engage with the many continuities between law and violence explored in contemporary political philosophy, and developed in Jean and John Comaroff's ethnography. The productivity of this approach is highlighted in the essays in this dossier, which share the impulse to interrupt the foundational narrative of civilization and barbarism that remains in the institutions of the present post-conflict endeavor.

KEYWORDS | *Thesaurus*: civilization; peace. *Author*: barbarism; Jean and John Comaroff; law and violence; post-conflict; state-making; territorial peace

Derecho y violencia en el posconflicto colombiano: formación y transformación del Estado tras el Acuerdo de Paz

RESUMEN | El Acuerdo de Paz suscrito con las FARC en 2016 extiende sus efectos más allá de la terminación de la guerra y de las medidas de desarme, desmovilización y reincorporación de las antiguas fuerzas guerrilleras. Una parte importante de este acuerdo tiene que ver con la ampliación de la presencia del Estado a aquellas

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zonas del territorio nacional que estaban bajo el control de las FARC. El fundamento de esta extensión —compartido tanto por las élites como por los líderes guerrilleros— sostiene que, si no se enfrenta la ausencia del Estado en estos territorios, ellos serán ocupados por organizaciones criminales interesadas en controlar el tráfico de cocaína antes dominado por las FARC, o de modo más general, que estas zonas inmensas y poco pobladas serán presa de la barbarie. Este fundamento es reminiscente de la vieja aspiración a una identidad nacional modelada por la oposición entre civilización y barbarie. Particularmente desde la expedición de la Constitución de 1991, la expansión de la civilización ha estado asociada a la consolidación del Estado de derecho y, en esta medida, a los poderes míticos del derecho de ordenar la sociedad y controlar la barbarie. Aquí, la violencia es equiparada al desorden producido por el incumplimiento de la ley, y el remedio a la violencia es equiparado con la expansión del "Estado social de derecho"; ese tipo de Estado que encapsula el imperio del derecho en la Constitución colombiana. La narrativa fundacional de la civilización y la barbarie, reflejada en las esperanzas que el Acuerdo de Paz de 2016 deposita en el Estado de derecho y en un conjunto de recetas de construcción y transformación del Estado, oscurece las continuidades entre el derecho y la violencia y, especialmente, el hecho de que la ejecución de las instituciones jurídicas en territorios que antes "carecían de ley" reinstala la violencia del momento de adopción de la legalidad. Los estudios teóricos y empíricos dedicados hoy en día al análisis del proceso de expansión del Estado colombiano se beneficiarían de un examen crítico de las esperanzas puestas en el derecho que dé cuenta de las múltiples continuidades entre este y la violencia estudiadas por la filosofía política contemporánea y desarrolladas por las etnografías de Jean y John Comaroff. La utilidad de una aproximación de este tipo aparece reflejada en los ensayos contenidos en el *dossier*, que, en conjunto, comparten el impulso de interrumpir la narrativa fundacional de la civilización y la barbarie que aparece en las instituciones del posconflicto colombiano.

PALABRAS CLAVE | *Thesaurus*: civilización; paz. *Autor*: barbarie; derecho y violencia; formación del Estado; Jean y John Comaroff; paz territorial; posconflicto

Direito e violência no pós-conflito colombiano: formação e transformação do Estado após o Acordo de Paz

RESUMO | O Acordo de Paz firmado com as Forças Armadas Revolucionárias da Colômbia (Farc) em 2016 estende seus efeitos para mais além do fim da guerra e das medidas de desarmamento, desmobilização e reincorporação das antigas forças guerrilheiras. Uma parte importante desse acordo se refere à ampliação da presença do Estado nas zonas do território nacional que estavam sob o controle das Farc. O fundamento dessa extensão —compartilhado tanto pelas elites quanto pelos líderes guerrilheiros— sustenta que, se não se enfrenta a ausência do Estado nesses territórios, eles serão ocupados por organizações criminais interessadas em controlar o tráfico de cocaína antes dominado pelas Farc, ou, de modo mais geral, que essas áreas imensas e pouco povoadas serão alvo da barbárie. Esse fundamento faz lembrar a aspiração de longa data a uma identidade nacional modelada pela oposição entre civilização e barbárie. Em particular, desde a expedição da Constituição de 1991, a expansão da civilização tem estado associada à consolidação do Estado de direito e, nessa medida, aos poderes míticos do direito de ordenar a sociedade e controlar a barbárie. Aqui, a violência é equiparada com a desorganização produzida pelo incumprimento da lei, e o remédio para a violência é equiparado com a expansão do "Estado social de direito"; o tipo de Estado que encapsula o império do direito na Constituição colombiana. A narrativa fundacional da civilização e da barbárie, refletida nas esperanças que o Acordo de Paz de 2016 deposita no Estado de direito e num conjunto de receitas de construção e transformação do Estado, ofusca as continuidades entre o direito e a violência e, em especial, o fato de que a execução das instituições jurídicas em territórios que antes "careciam de leis" reinstala a violência do momento de adoção da legalidade. Os estudos teóricos e empíricos dedicados hoje em dia à análise do processo de expansão do Estado colombiano se beneficiariam de um exame crítico das esperanças postas no direito que evidencie as múltiplas continuidades entre este e a violência estudadas pela filosofia política contemporânea e desenvolvidas pelas etnografias de Jean e John Comaroff. A utilidade de uma aproximação desse tipo aparece refletida nos ensaios contidos no dossiê que, em conjunto, compartilham o impulso de interromper a narrativa fundacional da civilização e da barbárie que aparece nas instituições do pós-conflito colombiano.

PALAVRAS-CHAVE | *Thesaurus*: civilização; paz. *Autor*: barbárie; direito e violência; formação do Estado; Jean e John Comaroff; paz territorial; pós-conflito

Introduction

Colombia's 2016 Peace Agreement with the FARC guerrilla extends beyond the end of the war, and beyond measures for the disarmament, demobilization and reincorporation of former guerrillas (Gobierno Nacional de Colombia and FARC-EP 2016). A large portion of the Peace Agreement is dedicated to the extension of the presence of the Colombian State into those areas of the country formerly under FARC control. The first point in particular, devoted to rural reform, focuses on bringing State institutions to underdeveloped territories, promoting equality and full citizenship rights for their inhabitants. The second point, on political participation, among other goals enhances the representation of these territories in Congress and citizen participation in planning their development. The third topic, on the definitive cease-fire, also strengthens State-institutions, particularly new institutions dedicated to fighting the paramilitary armies and criminal organizations that might fill the power void left by the FARC. Point four focuses on creating and directing State institutions to fight drug trafficking, and point five creates a new transitional justice system, including a tribunal, a truth commission and a new State entity dedicated to finding people who went missing during the war. Point six focuses on the implementation and verification of the Peace Agreement. Woven across these six points that are the core of the Peace Agreement is what former Peace Commissioner Sergio Jaramillo described as "territorial peace": the expansion of the State and the rule of law to the territories formerly dominated by the guerrilla, a robust expansion that goes beyond Army and Police presence, and includes manifold development programs and participatory government designed to expand the presence of the Colombian State.

The premise behind this extension of State presence, shared by Colombian elites as much as by former guerrilla leaders, is that if the State remains absent, then the areas will be occupied by criminal organizations interested in controlling the FARC cocaine trade, and, more generally, the vast and sparsely populated territories will further descend into barbarism. This premise resonates with a long arc of persistent aspiration for a national identity that is shaped by the opposition between civilization and barbarism, an opposition that remains present in the aspirations of the 2016 Peace Agreement when it assumes it is State presence that will, effectively, guarantee peace.

The expansion of civilization —especially since the transformations effected by Colombia's 1991 Constitution— has been increasingly identified with the expansion not only of State presence, but also of law's mythical powers to order society and control barbarism (Asamblea Nacional Constituyente 1991). Violence is equated to law-less-ness, and the remedy for violence equated with the expansion of the "Estado Social de Derecho;" the State that embodies the rule of law in the Colombian Constitution. The foundational Republican narrative of civilization and barbarism, which Colombia shares with most countries in Latin America, is premised on the radical and antipodal separation between law and violence: the latter is the preeminent civilizing device that operates as *the* remedy for the former. Since independence, this narrative may be detected at every major juncture in Colombia history.

The 2016 Peace Agreement is not an exception. As we will argue in this essay, this foundational narrative —with its hopes placed on the rule of law and on diverse recipes for State-building— obscures the continuities between law and violence. Ignoring this continuity, in our view, hides the fact that the execution of legal institutions in formerly "lawless" territories continues to enact the violent moment of the adoption of legality. Instead, we argue, both theoretical and empirical explorations of the present process of the expansion of the Colombian State require critical examination of the hopes vested on law. This critical examination demands, in turn, a theoretical engagement with the many continuities between law and violence explored in contemporary political philosophy. The productivity of this approach is highlighted in the essays in this dossier, which share the impulse to interrupt the foundational narrative of civilization and barbarism that remains in the institutions of the present post-conflict endeavor.

On October 25 and 27, 2017, a group of scholars met in Bogotá with Jean and John Comaroff to reflect on several aspects of the idea of "territorial peace" that operates as a thrusting principle of the 2016 Peace Agreement between the Colombian government and the FARC. Taking as a starting point many of Comaroffs' theoretical and ethnographic insights that complicate the separation of law and violence in the postcolonial world of our times, the papers discussed at the workshop took on diverse analytical avenues that interrupted the foundational narrative of civilization and barbarism. In this essay, we frame the workshop and the papers in the dossier around our argument that the foundational narrative of civilization and barbarism obscures the many ways in which legal reform and State-making recipes do not bring about civilization, but, quite on the contrary, reinstate and fuel the very violence and barbarism they sought to eradicate.

In the first two sections of the essay, we tell the story of how the foundational narrative of civilization and barbarism has played out throughout Colombia's history, particularly drawing attention to how law and society studies would greatly benefit and gain analytic advantage from interrupting the separation of law and violence that premises the foundational narrative. In the third section, we show how Jean and John Comaroff's work is an exemplary theoretical and ethnographic

work that embraces the continuity of law and violence. Here, we argue how, by making the idea of spectrality a centerpiece of their work, their insights fit within a wider tradition of political philosophy that —since Walter Benjamin's 1921 *Critique of Violence*— has recovered the continuity of lawmaking and law-preserving violence as a useful device for the analysis of diverse social phenomena. In the final section of the essay, we return to the foundational narrative of civilization and barbarism to show how the official idea of "territorial peace" at the center of the 2016 Peace Agreement is the modernized version of that narrative. In this context, we present the papers in the dossier as a welcomed example of the sort of theoretical and empirical work that —productively drawing on the continuity between law and violence— shows how civilizational post-conflict public policies have reproduced many of the material and symbolic forms of violence that the Peace Agreement sought to overcome.

Civilization or barbarism: The foundational narrative[1]

Since independence in the early nineteenth century, Latin American elites have been engaged in a quest for national identity, and anxiety about the nation has been a persistent preoccupation. The civilizing power of law has been central to that endeavor, exemplified in national constitutions as well as through the regulation of everyday life by civil, commercial, family, and labor laws. Underlying the search for national identity through law is political liberalism's foundational metaphor: will Latin American nations be civilized, or will they fall under the sway of barbarism?

Colombian nineteenth century liberal elites shared this aspiration, and hoped that law would be instrumental in the construction of national civilizations, both as a bulwark against Spanish authoritarianism and religious fanaticism, and as protection against dictatorships by military leaders and other *caudillos*. Belief in republican law as a means to usher in civilization and progress was widespread among liberals, as was the call for the education of the people in the forms and substance of liberal law and democratic values. This education however was frequently built on intense elite mistrust and contempt for the people who needed "education."

Conservatism, a fierce reaction against early nineteenth century liberalism, shared with its antagonist the desire to construct national civilizations, and the centrality of law to this endeavor. Conservatives resisted turning to France, England and the United States for inspiration and instead coined a Hispanic nationalism that was also romantic and rebellious, and where law was natural as read by neo-scholastic theology and legal doctrine. Natural law was as the embodiment of civilization, and conservatives promoted the recovery of its Catholic lineage, against the liberal notion of natural rights. Natural law, rather than republican institutions, was the legal cornerstone of this conservative civilization, expressed in constitutions that re-established Catholicism as a State religion, and gave the Church extensive powers for the administration of indigenous territories through "*misiones*" or covenants.[2]

By the late nineteenth century, liberalism, triumphant over conservatism in most of the region, was transformed by the influence of positivist philosophy and its call to both order and progress, not just liberty (as reflected in the Brazilian flag and its motto: *Ordem e Progresso*). Positivism built on the representation of elites as leading the nation from barbarism to civilization, except European civilization was now represented as the endpoint of a scientific social evolution. In Colombia, the conservative triumph against liberals during the civil wars resulted in the establishment of a deeply influential political project, Regeneration ("Regeneración"), which would rule the country under the sign of its 1886 Constitution. Regeneration, welded conservative veneration for Catholic institutions, Hispanic nationalism, and the same positivist modernizing drive shared by liberals in the region, a drive that embraced science, transformed the economy and ushered the country into the twentieth century (Consejo Nacional de Delegatarios 1886).

Law was at the center of this transformation, beyond the 1886 Constitution. Codification of legislation, especially the adoption and adaptation of Napoleon's Civil Code, was part and parcel of Colombia's conservative positivism. Codification was "scientific" because it was systematic; its "science" was also deeply racist. Intellectuals for the most part believed that nation building required the "improvement" of the mixed raced population through the introduction of "white blood" by miscegenation and, in some countries, through fostering white European immigration. Liberty was increasingly subordinated to order, and new limitations on suffrage reflected both the fear of popular uprisings and racist positivist science that attested to the superiority of

1 Most of the ideas in this section have been previously explored by one of us. See Lemaitre 2011; 2015 and especially Lemaitre (forthcoming 2019) for a more detailed account of the implications for legal culture of the foundational narrative.

2 Notably, Law 89 of 1890 in Colombia exempted indigenous peoples from criminal responsibility and from the dissolution of collective property precisely because they were "not civilized" and therefore not subject to general laws (Congreso de la República de Colombia 1890). Similar provisions exempting indigenous people from criminal responsibility due to their "diminished responsibility" or cultural condition were common to criminal procedures codes throughout Latin America in the late nineteenth and early twentieth centuries. They coexisted with indigenous servitude and slavery-like exploitation justified by their lack of civilization.

European whites. The task was still first to *civilize* peoples that were indigenous and brown, peasant and heretic, physically located in the hinterlands and lawless. Civilization, in these terms, was well worth violence and authoritarian rule, or, in the Colombian version, the severely restricted democracy enacted under the 1886 Constitution.

The triumph of conservative positivism did much to isolate Colombia from most of Latin America, where liberalism triumphed, and the first half of the twentieth century was dominated by social uprisings and challenges to the political projects of the previous century. A persistent longing for progress and development among elites became embedded in a growing sense of failure. Governing elites faced new political challenges, especially from the emerging Latin American left, whose cosmopolitan allegiances to international socialism imbricated with local rebellions, especially those of indigenous peoples demanding collective land ownership, and with the remnants of a defeated egalitarian liberalism that remained in abeyance.[3] Echoes of this emergence in Colombia were adopted by a liberal party that moved to the left, a move that also fueled the mid-century civil war, and that would plant the seeds for the communist guerrillas founded in the 1960s.

Emerging socialist frames did not abandon the foundational metaphor of civilization versus barbarism; instead, they inverted the terms. Indigenous and peasant peoples were reimagined as virtuous and law-abiding, and capitalists and landowners as depraved and lawless. When the law did not defend the rights of the downtrodden, especially indigenous peasants and workers, it was denounced as barbaric: the aspiration was to enshrine laws and constitutions that would reflect the moral superiority of the poor, thus bringing progress and civilization. Liberalism was also condemned for its failure to ensure the implementation of laws that (on the books) protected the poor, but that in practice did little to limit abuses and humiliation, keeping the nation in a state of barbarism.

Demands for justice as the effective implementation of laws fueled not only the Revolution in Mexico, but also the emergence of a new type of liberal governments, now influenced by socialist and communist ideas, with liberals working sometimes in alliance with communists and socialists. When liberals came into power again in the 1930s, they soon adopted a "social" definition of civilization, materialized in social welfare and labor protection legislation, and aspiring to fulfill the old promises of liberty and equality. Again, these new laws often remained "on the books" generating a new wave of protest and frustration which threatened the stability of elite rule, setting the stage for a backlash of anti-communist rhetoric during the Cold War.

Colombia arrived on the scene of the Cold War rather late, as it fought its last civil war between liberals and conservatives from 1948 to 1958, just in time for the Cuban revolution in 1959. The war, known as "La Violencia," ended with a successful liberal-conservative power sharing agreement, one that allowed the emergence of an establishment firmly committed to the alliance with the United States. Power alternation re-shaped the 1886 Constitution, which had survived the social reform of the 1930s, and its restricted democracy was carefully administered by both parties, making Colombia the only country to almost completely escape the military dictatorships in the years that followed.

The Cold War meant for Colombia as for Latin America, a renewed commitment to authoritarian rule. Yet, underlying the justification of the use of violence by both Cold War liberals and by communists, remained the rhetorical use of the appeal to civilization and law. Cold War liberalism was clearly aligned with the need to suspend laws protecting civil liberties in order to defend the nation from communism. However, civil liberties were suspended but not rejected; the rhetoric was instead of exceptionalism, a suspension but not a subversion of liberal values. These values were also expressed in the law-and-development nation-building projects that flourished hand-in-hand with dictatorships and restricted democracies.

But the 1960s saw the failure of liberal reforms and the frustration of attempts to achieve social justice within the framework of existing legal systems, symbolized by the U.S. package known as the Alliance for Progress. The groundwork for increased political violence was set. Communist armed struggle, supported by the Soviet Union and China, seemed to be the only solution for socialists and communists that had previously actively participated in national politics. The appeal to law also persisted in the armed struggle embraced by communists, who frequently evoked the socialist inversion of terms of the earlier decades, arguing for the need for the people to take up arms to defend law against elite lawlessness. The Cuban revolution of 1959 became a symbol of the need for violence to transform unjust regimes, and Marxism built on a Catholic culture arguing that rebellion was justified by natural law, and often by the fact that laws that granted rights were never put into effect.

The end of the decade brought a dramatic increase in the number of communist guerrillas in the region, the collapse of the Alliance for Progress and its reformist aspirations, and a wave of military coups, as well as nominal democracies with radically restricted civil rights under harsher state-of-siege legislation.

3 For this egalitarian liberalism, also known as radical liberalism, see Gargarella (2005; 2014). He distinguishes it from liberalism proper, which he sees as an eventual ally of conservative forces through power-sharing agreements.

It ushered in Colombia as elsewhere in the region a time of unabashed lawlessness, enacted as a defense of order, sometimes within the forms of the law. Support for military and state-of-siege domestic rule came both from national anti-communist movements, and from the United States in its role as regional hegemon. The defense of civilization became part of the rhetoric of the dictators, just as it had been of the Cold War liberals; legality and legal reform, however, was seldom part of this defense, suspended until it could be enjoyed once the nation was safe from communist threat.

In Colombia, the Cold War dissolved the old links between liberals and Colombian communists, and set the stage for the emergence of communist guerrillas following international schisms: the 1960s saw the foundation of pro-soviet and pro-China communist guerrillas, and other guerrillas inspired by the Cuban revolution. They flourished in the vast and fertile areas of the country that were sparsely populated, where landless peasants sought to stake a claim, and where indigenous peoples still refused to settle in towns under the supervision of the Catholic Church.

By the 1980s, repression had engendered a wide-ranging resistance, extended beyond the proportionately small guerrillas. New alliances brought forth the regional human rights movement, which peacefully resisted the massive violation of civil and political rights. The human rights movement once more trusted the civilizing power of law against the monstrosity of dictatorships and restricted democracies, with their mass detention centers and routine practice of forced disappearances, torture and executions of suspected communist sympathizers and subversives. Lawyers and activists defended political prisoners and denounced abuses, and eventually brought perpetrators to trial. The human rights movement and its political commitments have dominated Latin American politics —and a considerable proportion of law and society studies— since the end of the Cold War in 1989, heralding the return of a triumphant liberalism represented by the "new constitutionalism."

The new constitutionalism and the new barbarians

Latin America renewed its commitment to law after the Cold War ended, placing it at the center of social movement activism and policy-making (Couso, Huneeus and Sieder 2010). A wave of new constitutions swept the region, fanning hopes for redistribution and welfare reform (Barrett, Chávez and Rodriguez-Garavito 2008; De Sousa Santos 2010) as well as hopes for democracy and the rule of law through more liberal reforms (García 2002). With the new constitutions came the development of new constitutionalism, comprised of normative legal theories that defend liberal egalitarianism (Alegre and Gargarella 2007; Arango 2012; García, Rodríguez and Uprimny 2006; Vásquez 2015) as the foundation of Latin American nations. Aspiration to social justice through redistributive constitutionalism has not been without its critics, and neither has the elevation of the rule of law as an end in itself (Nader and Mattei 2008; Trubek and Santos 2006). However, despite such criticism, the increasingly hegemonic position on the continent is that the road to justice is paved with legal reform, and the civilizing power of law remains unquestioned.

The turn to left-liberal legal reform is deeply linked to the vibrant human rights movement against dictatorships. This movement was the prelude to the new constitutions, and provided much of the energy fueling the normative aspirations of the period. It garnered support from different fronts, from former insurgents to traditional liberals to US foundations (Keck and Sikkink 1998; Meili 2001). It also gave rise to a transnational movement clamoring for trials of former dictators and abusive military officers, and to a specific branch of human rights focusing on transitions to democracy (Sikkink 2011). Other social movements, including indigenous and Afro Latin Americans, women and LGBTI, tapped into an international turn to human rights frames for social movements and lobbying for legal reform (Lemaitre 2009).

Colombia both followed regional trend and set their trajectory, in aspiration as well as in its internal contradictions. The country adopted a new Constitution in 1991, touted as the final peace treaty that would end war with the guerrillas and the sense of generalized violence and chaos emerging from the war between the State and the increasingly strong cocaine cartels (Lemaitre 2009; 2011). Several guerrillas, in the wake of the fall of the Soviet Union, gave up armed struggle and joined the new regime, overtly more democratic and with more robust human rights guarantees than the 1886 Constitutions. Pablo Escobar himself, who had led cartel-sponsored terrorism against State institutions, turned on the same day the Constituent Assembly voted favorably for an article prohibiting extradition of nationals to the United States. And in the years that followed, the newly created Constitutional Court adopted a vigorous jurisprudence for the defense of the liberal values that had been mauled by Cold War authoritarianism, making Colombia a beacon for regional constitutional law.

Social science literature on human rights in Latin America (much of it written by foreign visitors), as well as human rights reports, chronicled the traumatic effects of widespread human rights violations under military regimes or restricted democracies like those of Colombia and

Mexico.[4] Their regard, and their emphasis on violations of human rights, however, has had little comprehension of the role of law in the creation of horror, beyond the description of lawlessness as its necessary pre-condition. Instead, like liberals and socialists before them, they share an appreciation of law as civilization, and a rejection of lawlessness as a separate space of barbarism. Old tropes die hard. With the return of democracies, the experience of horror has faded, but not the rejection of lawlessness represented by both popular culture and by crime. Also persistent is the romantic description of the poor whose protection seems to require revolutionary violence against elite lawlessness.

Academic literature persistently describes lawlessness as the warp and woof of everyday life in the region. The persistent concern with lawlessness as the root of violence and inequality echoes the nineteenth century themes of civilization and barbarism. Cultural change and the creation of a "culture of citizenship" (*cultura ciudadana*) are frequently presented as the solution for popular culture's penchant to flout the law. State-building also appears as a favored solution to the cultural problem presented by lawlessness. Both in the cultural explanation and in the State-building prescriptions for lawlessness, the rule of law (if not the State itself) appears to exist in a different world from that of violence. Civilization, civility, citizenship and law appear radically opposed to everyday lawlessness, which generates violence, chaos, and injustice. The underlying call seems to be: if only the law were obeyed, there would be justice.

The pull of the foundational metaphor, pitting law against barbarism, tends to ignore the many ways in which law and violence are mutually constitutive. The turn to human rights, as a reaction against dictatorships that gave life to sections of international law and constitutional law that were previously devoid of much practical meaning. This relationship has limited the potential of human rights as a vocabulary for emancipatory aspirations, limited as they tend to be, to the rejection of State violence. Law also shapes violence, most obviously by definition: either directly (by deeming certain social practices and worlds illegal, thus shaping the exact contours of violence), or indirectly (by refusing to regulate social life where conflict is bound to happen, as in informal and illegal markets). Both moves are exemplified through two phenomena directly linked to social violence: prohibition, and the reduction of the size and presence of the State as provider of social and police services.

Prohibition, a complex national and international legal regime whereby the interdiction of certain drugs is carried out through the use of military force, is directly responsible for the sharp rise both in cartel and police violence in large sections of Latin America. While the violence in Colombia in the 1980s and in Mexico in the 2000s is the most visible, prohibition is also the direct cause of elevated murder rates in Central America and the Caribbean, and contributes significantly to violence in Venezuela, Brazil and Colombia. The militarization of interdiction generates a constant slippage of the State's use of lethal force away from the democratic constitutional frame, and into both martial law and the illegal use of State force. It also keeps the price of drugs artificially high, and the absence of taxes or any form of regulation produce enormous profits, which in turn, finance corruption of State officials as well as full governance by criminal organizations in some territories. [5]

The reduction of State functions after neoliberal reforms is also clearly linked to the rise of certain types of violence. As Comaroff and Comaroff (2006) explain for Africa, neoliberal policies advocating a reduction of the State have resulted in increased violence as armed groups strive to dominate deregulated economies and spaces. State reduction has multiple causes: it can be linked to neoliberal structural reform programs that promote self-help (as argued for example by Goldstein 2005), but it can also have other origins. For example, the dramatic increase in violence in Venezuela after Chavez' socialist revolution is not linked to a neoliberal reform program, but rather to the erosion of certain State institutions under socialism, particularly the police and criminal investigation units (Briceño 2012).

Furthermore, the civilization championed by liberalism can also be violent, and lawless spaces a place of refuge. Historically there is ample evidence of indigenous peoples, former slaves and landless peasants fleeing the purview of the State into the hinterlands in order to avoid injustice, especially forced labor and conscription, but also to avoid the regulation of everyday life that comes with living under the law (Clastres 1989; Scott 2009). Within these lawless spaces, however, norms emerge as do forms of regulation that are increasingly studied by social scientists, forms that signal the absorption or assumption of State functions by different organizations.

Some legal scholars who have articulated a counter-hegemonic view of law build their understanding on the idea that ordinary people self-regulate in the margins of State power, and that this is the only legitimate kind of law. Similarly, some legal scholars have

4 In the 1970s, Amnesty pioneered reports on disappearances and imprisonments under military regimes in Latin America, see https://www.amnesty.org/en/documents/amr13/083/1977/en/. See also Green (1994); Tate (2007); Taussig (1984).

5 Prohibition gives a market advantage to the ruthless and to those who can ensure territorial control. For a thoughtful explanation of this link see: Andreas and Wallman (2009). See also Reuter (2009) linking violence to the youth of participants, the high value of the drug and the intensity of law enforcement. See Snyder and Duran-Martinez (2009) for a surprising take on the role of the State in drug related violence.

also turned to legal pluralism as a framework that can represent law outside the boundaries of State law, building on the early work of Boaventura de Sousa Santos (1977). For Antonio Wolkmer (2003) and Oscar Correas (2003), legal pluralism is, at its heart, emancipatory because its origin lies outside the power of the State. However, as De Sousa Santos has also pointed out (2001), armed non-State actors can also regulate illegal and informal social relations. In Colombia for example, guerrillas benefiting from cocaine and illegal mining markets set up their own forms of insurgent governance that include taxation and the provision of social services, conflict resolution, and sometimes also infrastructure such as roads (Arjona 2015). In Mexico, cartels have also assumed similar State functions in the regions they dominate (Maldonado 2011).

Similar mechanisms are at work, although with a much smaller investment in policing the boundaries, in other illegal and informal markets. Less violent than illegal markets, informal markets also suffer because of lack of State regulation (or benefit from a lack of enforcement of rules, depending on the point of view).[6] Communities often assume the functions that the State refuses to perform in markets that are not formally legal, for example, by solving conflicts through community justice mechanisms, as in De Sousa Santos' example of a neighborhood association solving disputes between tenants and landowners in an informal settlement (De Sousa Santos 1977; see also Godoy 2006; Goldstein 2003).[7]

In sum, when scholars face the conceptual challenges presented by violence, they find a productive avenue in overcoming the historical pull of the dichotomy between "civilization and barbarism." They might for example explore instead the ways in which law is in fact a constitutive part of the social spaces described as lawless, and the ways in which social spaces defined as lawless are effectively regulated. They find law in practice is not firmly located on the side of civilization as the absence of violence, nor is violence consistently an expression of barbarism located in marginal physical and social spaces. These insights, expressed in Walter Benjamin's much-cited *Critique of Violence* (1996 [1921]), can undergird complex examinations of the ways in which law and violence constitute and define each other, the mutual dependency of State-controlled and so-called "lawless" lands, and the forms of governance that regulate everyday life outside the purview of the State. A theoretical consideration of the continuity of law and violence is thus in point. What does it mean to approach the dynamics of State-making through a conceptual lens that sees the continuities between law and violence? What does it mean for law and society studies to oppose the idea that legal reform is, by essence, a civilizing instrument that can be explicitly directed by policymakers to end material or symbolic violence? In what sense is the foundational narrative of civilization and barbarism transformed by a perspective that looks at the continuity between law and violence? The next section examines such questions.

Civilization, barbarism, and the continuity of law and violence

Our answer to these queries takes as a starting point some of the insights of a tradition of political philosophy that, since Walter Benjamin's 1921 essay *Critique of Violence*, has critically approached the liberal conception of law as the preeminent antidote against violence. In our view, the "philosophico-historical" critique proposed by Benjamin (Benjamin 1996 [1921] 238; see also 241, 251), and developed by an almost century-long tradition of political philosophy that has followed his ideas, grounds the possibility to interrupt the Colombian foundational myth of civilization and barbarism. Rather than summarizing this theoretical debate, we concentrate on examining what we deem to be an exemplary body of work that could be mobilized to perform that interruption. Jean and John Comaroff's work —and especially "Law and Disorder in the Postcolony" (2006) and *The Truth about Crime* (2016)—, productively draws on Benjaminian insights to explore the complex intertwining of law and violence in polities in the global south at this stage of "millennial capitalism" (Comaroff and Comaroff 2000). In addition, understanding how the Comaroffs' theoretical and ethnographic views are driven by the Benjaminian canon also helps to frame and articulate many of the ideas elaborated by the authors of the essays included in the dossier.

Walter Benjamin's *Critique of Violence* is constantly mentioned in Jean and John Comaroff's work. However, detecting the extent and direction of this influence is a more complex endeavor. On the one hand, as María del Rosario Acosta contends in her essay in this dossier, "Benjamin remains a constant reference in the [Comaroffs'] analysis, even though [...] he is mentioned more often than his work is examined" but, on the other hand, "Benjamin [...] is *the condition of possibility* of a critique of the postcolony in the Comaroffs' work" (Acosta 2019, 3; emphasis added). The interesting point, however, is the way in which Acosta —in spite of pursuing a different analytical path focusing on how the

6 For the argument stating that the lack of enforcement is a deliberate political move, see Holland (2015).

7 There is abundant social science literature in English and in Spanish describing informal markets in housing (see for example Fischer, McCann and Auyero 2015), commerce and informal labor (Centeno and Portes 2006), mining and the exploitation of natural resources, and illegal economies generally. The governance of these illegal worlds remains little studied and little understood in law and society scholarship, even though there is ample evidence in political anthropology of their intersections with state law and institutions (Arias 2006; Dewey and St. Germain 2012; Holston 2008).

Comaroffs flesh out a postcolonial form of critique that signals the limits of Foucault's theory of power— ends up offering the clues to unraveling Benjamin's influence in Jean and John Comaroff's work.[8] Indeed, in locating in their critique a shuttling "between the visible theatricality of power and its invisible imperceptible spheres of action" (Acosta 2019, 11) and the interest of the state "with *making visible* its capacity for hiding and keeping *invisible* [the structural violence that supports it] and the arbitrariness of their foundation" (Acosta 2019, 12), she directs our attention to what we think is the Benjaminian backbone of the Comaroffs' theoretical and ethnographic elaborations on the continuity of law and violence in postcolonial settings. Indeed, as we will see, the dialectic of visibility and invisibility conjured up by Acosta's essay puts forward one of Benjamin's central ideas in *Critique of Violence*. In what sense is the dialectic of the visibility and invisibility of power in the postcolony Benjaminian? Why is the continuity of law and violence in Benjamin's *Critique of Violence* foregrounded by this dialectic? In trying to answer these questions we take up the challenge posed by Acosta of exploring how it is that Benjamin is *the* condition of possibility of Jean and John Comaroff's work that, paradoxically, remains unexamined.

Discerning how a given body of theoretical work follows in Benjamin's footsteps in *Critique of Violence* is not an easy task.[9] To be sure, "this uneasy, enigmatic, terribly equivocal text" (Derrida 1990, 973 note 1), an essay "remarkable for its lofty and somber tone poised on the edge of incantation" (Taussig 2006, 184), which could be read in numerous ways for its "structure is far more a series of overlapping elements than the presence of sustained and deliberate argumentation" (Benjamin 2013, 94), offers several analytical avenues to approach the continuity between law and violence. The mosaic-like texture of Benjamin's writing-style (Ferris 2004, 5-6) therefore allows us to trace which of the "elements" in *Critique of Violence* is the explicit or the unstated premise of a work drawing on Benjamin's ideas. In this vein, we suggest that Jean and John Comaroff's work could be productively read in light of the *spectrality* of the continuum between lawmaking and law-preserving violence —encapsulated in the idea of the "police"— that haunts Benjamin's text. Let's see how.

In *Critique of Violence*, Benjamin provides a number of examples of the continuity between lawmaking and law-preserving violence. He, however, devotes a greater deal of attention to the death penalty and the police. These two cases, for Benjamin, seem to put forward, in the most striking fashion, "law itself in its origin," the very moment of "violence crowned by fate" where "the origins of law jut manifestly and fearsomely into existence" and "law reaffirms itself" revealing "something rotten" at its heart (Benjamin 1996 [1921], 242). Yet, if these "fearsome" origins of the law are brought about by the death penalty, they are revealed with even greater force by this "institution of the modern state" that is "the police," which "can intervene 'for security reasons' in countless cases where no clear legal situation exists" (242-243). Here, lawmaking and law-preserving violence appear in a "far more unnatural combination… in a kind of *spectral* mixture", so that the power of police derives from its being "*formless*, like its *nowhere-tangible*, *all-pervasive*, *ghostly* presence in the life of civilized states" (242-243, emphasis added). Although, of course, Benjamin literally refers to the police as a materially locatable institution of the state — the one that is generally the conceptual object of classic constitutional and administrative law—, "policing," as Andrew Benjamin remarks, "is a process that need not depend on the actual presence of the police" (Benjamin 2013, 111).[10] In our view, the idea of the "police" can be approached beyond its usual institutional manifestations precisely because it is "spectral," "formless," "intangible" and "ghostly."[11] In this sense, it stands as an allegory for what the law *is*—the very continuity (not to say the indistinction)[12] between lawmaking and law-preserving violence. In other words, the law *is* the

8 Even if Acosta pursues this different path, she ends up returning —with her dialectic of the visibility and invisibility of power in Jean and John Comaroff's work— to the very central meaning of the idea of *spectrality* at the center of Benjamin's discussion of the continuity between lawmaking and law-preserving violence. This, to some extent, confirms the Derridian idea that *Critique of Violence* is a "haunted" text that contaminates —with its ghosts— any text in its vicinity (see below). In this sense, Acosta's essay, even if trying to take a detour from Benjamin, ends up being haunted by Benjamin's specters.

9 The secondary literature on *Critique of Violence* is vast and rich. For a sampler of exemplary readings of Benjamin's text see Benjamin 2013, 137 note 1.

10 Derrida also highlights the ubiquity of the police, understood as the encapsulation of the continuum between lawmaking and law-preserving violence. In his view, "[w]here there are police, which is to say everywhere and even here, we can no longer discern between two types of violence, conserving and founding, and that is the ignoble, ignominious, disgusting ambiguity" (Derrida 1990, 1007).

11 Michael Taussig puts forward a similar argument when he remarks —drawing on Coetzee and Benjamin— that policing is a form of "mythological warfare" because of "their [the police] ghostly being, a suspended sort of violent nothingness." He goes on to explain that the Benjaminian police occupy "a sort of no-man's land indispensable to the maintenance of the law" (Taussig 2006, 176). Taussig's key point, in our view, is that police functions as the stand-in for the general operation of law because it indicates that law in the Benjaminian sense (as the continuity between lawmaking and law-preserving violence) is not subjected (and cannot be subjected) to law in the liberal sense (law as the opposite and antidote to violence); that the means and ends of law are indistinguishable because self-preservation is the law's sole purpose; that the reproduction of the violence of legal foundation in the implementation of law is endless.

12 Benjamin remarks, "the ignominy of such an authority [the police]… lies in the fact that in this authority, the separation of lawmaking and law-preserving violence *is suspended*" (Benjamin 1996 [1921], 242-243; emphasis added).

law precisely because it conflates these two forms of violence and this conflation ubiquitously reproduces itself whenever the law is invoked and implemented (cf. 112, 117-118).[13] Drawing on Christoph Menke's reading of *Critique of Violence*, it is possible to suggest that the spectrality of the police (as a stand-in for the idea of the law itself) reveals the "rotten" nature of law because it shows how the violence of its creation is *endlessly* reinstated in each and every act of legal implementation—something "rotten" dwells at the heart of the law because its only purpose is its self-preservation (Menke 2018, 31-32). The violence of the foundational act of the law is thus *doubled*, once and again, in all of its enforcements, like a ghost that obsessively comes to haunt the realm of the living.

It is the very idea of spectrality in a *Critique of Violence* that brings the Comaroffs to repeatedly resort to the continuum of lawmaking and law-preserving violence to ground their theoretical and ethnographic observations on law and disorder in the postcolony. It is as if their texts were haunted by similar specters to those haunting Benjamin's text.[14] From Benjamin to Derrida to the Comaroffs, spectrality shrouds all their arguments —the "quasi-logic of the phantom" (Derrida 1990, 973 note 1) is the decisive force undergirding their most important ideas.[15] Like a virus, spectrality contaminates any text that pursues Benjamin's ghosts. Even if direct references to *Critique of Violence* are scant in Jean and John Comaroff's work —or, in María del Rosario Acosta's words, Benjamin "is mentioned more often than his work is examined"— the fact that spectrality is the logic of their most decisive arguments, makes Benjamin's ideas "the condition of possibility of [their] critique of the postcolony." In the classic and influential introduction to *Law and Disorder in the Postcolony*, they read the Benjaminian canon as establishing that law and violence —whose "historical affinity seems beyond dispute" (Comaroff and Comaroff 2006, 2)— are not pitted against one another, but are mutually constitutive. In their view, "law originates in violence and lives by violent means... in other words, the legal and the lethal animate and inhabit one another" (31).

These direct references to Benjamin provide literal grounding to a *spectral logic* that is the key analytical framework to understanding the dynamics of law and violence in times of neoliberal governance in the postcolony. By this logic, the Comaroffs provide an explanation of the "metaphysics of disorder" in the postcolonial world; of how it is possible that liberalization, democratization and a fetishism of the law coincide with "an epidemic of criminal violence in these polities" (Comaroff and Comaroff 2006, 2-4). In their view, under the "effects of neoliberal deregulation on governance" (16) the state has lost its monopoly over sovereignty as the sole producer of law and order. State sovereignty in the postcolony is an item that —like a Rolex watch or a Louis Vuitton bag— can be *counterfeited* by countless private authorities that enforce their particular regimes of law and order in intersecting particular geographical locations. In these settings, "the reach of the state is uneven and the landscape is a palimpsest of contested sovereignties, codes, and jurisdictions —a complex choreography of police and paramilitaries, private and community enforcement, gangs and vigilantes, highwaymen and outlaw armies" (9). The Comaroffs' postcolony is the site of a "counterfeit modernity" (13) where the sovereignty of the state is permanently haunted by the specters of perfectly counterfeited private sovereignties. The interplay between original sovereign powers and their replicas makes it impossible to discern a unique center of law and order, thus opening up a space of spectrality ("an *uncertain* space between signifiers" [15; emphasis added]) between the legal and the illegal. This space "actively [sustains] zones of *ambiguity* between the presence and absence of the law" (5; emphasis added), "[exploits] the

13 Although allegorical in the indicated sense, spectrality *does have* material effects. In the context of the contemporary operations of global capitalism, the continuity of lawmaking and law-preserving violence has distinctive material consequences on the distribution of power, wealth, and affect. This point is clearly made by Jean and John Comaroff when they argue, "unlike others who have discussed the 'new spectral reality' of that economy..., we do not talk here in metaphorical terms. We seek, instead, to draw attention to, to interrogate, the distinctly pragmatic qualities of the messianic, millennial capitalism of the moment: a capitalism that presents itself as a gospel of salvation; a capitalism that, if rightly harnessed, is invested with the capacity wholly to transform the universe of the marginalized and disempowered" (Comaroff and Comaroff 2000, 292).

14 It is no wonder that Jacques Derrida —whose whole thinking could be considered a "hauntology" (Derrida 1994, 62-63)— organized his reading of *Critique of Violence* around the permanent doubling of the violence of the foundational moment of the law in every one of its later instantiations. In the second part of "Force of Law", one of the most influential readings of *Critique of Violence*, he insists on reading Benjamin's essay through the prism of spectrality. In his view, this is a text that "is haunted by *haunting* itself, by a quasi-logic of the phantom which, because it is the more forceful one, should be substituted for an ontological logic of presence, absence or representation" (Derrida 1990, 973 note 1). Later in his essay, while reading the idea of the "police," Derrida intimates that "this text is a ghost story," which "does not escape the law that it states. It is ruined and contaminated, it becomes the specter of itself" (1007, 1009).

15 The Comaroffs also make explicit reference to the passage of *Critique of Violence* dealing with the police. At times, their analysis refers to the institutional, material dimension of the police —the police as armed "cops" in uniform, as it were— like, for example, when they argue that "[e]choes of Walter Benjamin, almost a hundred years on: the cops are still making the law as they break it, but even more so, and in more militarized manner" (Comaroff and Comaroff 2016, 36). On other occasions, they seem to refer more generally to the police as the master trope for the continuity of lawmaking and law-preserving violence, which "stands as a cogent counter to Weberian idealism" (14).

new *aporias* of jurisdiction" (5; emphasis added), produces "*murky* geographies of crime and violence" (8; emphasis added), occurs "in the *twilight* markets fostered by liberalization" (10; emphasis added), renders "even more *inchoate* the line between the forged and the far-fetched, the spirit and the letter of the counterfeit" (15; emphasis added), allows "people to exploit the *interstices* between official and *backstage* realities" (17; emphasis added), and produces "*shadowy* networks that are neither illicit nor licensed" (21; emphasis added). In the postcolony, the zone between legality and illegality, order and disorder, the legitimate and the counterfeited, is therefore more a twilight zone than a bright line; a shadowy, aporetical and interstitial region of uncertainty, ambiguity, and murkiness that creates "a *contemporary* sense of inscrutability" (16; emphasis in original).

Jean and John Comaroff further pursue the trope of spectrality in *The Truth about Crime*. Here, they argue that the twilight zone of legality and illegality —this time called the "specter of crime" (Comaroff and Comaroff 2016, 27-36)— has the conceptual power to reveal the truth of state-making (or what they call the "morphing of the state") not only in the postcolonial world, but in the world at large. Following Durkheim's observation that "without law-breaking... societies would resolve into chaos" (xiv), they intimate that "law-making, law-breaking and law-enforcement are especially critical registers in which societies construct, contest, and confront truths about themselves" (xii).[16] Crime has thus become a "vernacular" that will produce "truths" of a world that is "growing increasingly inscrutable" (xiv), for it is undergoing "a tectonic shift in the relationship between capital, governance, and the state" (8). Here, the expansion of neoliberalism has produced a paradoxical situation where the state is, at the same time, "hyperpresent" (through strong law-enforcement practices aimed at the criminalization "protest, poverty, difference, and dissent" [26]) and "palpably absent" (because of the devolution of basic policing and welfare state duties into private hands [27]). Again, sovereignty becomes an equivocal item appearing in the spectral space of presence/absence. Against the backdrop of growing planetary inequality and the lack of any serious talk (let alone any implementation) on structural solutions to the extensive precarization of populations, the "criminal specter" —a combination of the blurring of the line between the legal and the illegal and the "pervasive sense that crime lurks everywhere" (31)— appears as a rhetorical device for discussing major anxieties of our time. Crime has therefore become the "lingua franca" (37) to talk about the "inscrutability" of our times. The truth that will be revealed through the "metaphysical optic" (8) of that language will not, however, appear in terms of transparent representation. Rather, it will be as spectral as the spectral and fractured sovereignties whose manifestations it seeks to explain.

In sum, through a set of notions that constantly conjure up the idea of spectrality, Jean and John Comaroff engage Walter Benjamin's continuity between law-making and law-preserving violence and develop a "postcolonial form of critique" —to borrow María del Rosario Acosta's argument— that helps to unravel the complexities of the mutually constitutive nature of law and violence in the postcolony. Their work is thus the sort of theoretical and ethnographic query capable of interrupting the Colombian foundational narrative of civilization and barbarism that, as we argued above, has obscured the possibility to understand in what sense legal reform may reproduce the very violence that it intends to end. The essays in the dossier —drawing on many of the Comaroffs' insights— examine several aspects of the continuum between law and violence after the signature of the Peace Accord between the Colombian Government and the FARC. In the next section, we explain how these essays fit within a "postcolonial form of critique" that —based on the logic of spectrality— shows how, in Colombia, law and violence —or civilization and barbarism— are mutually constitutive.

The foundational narrative and the continuity of law and violence in Colombia's post-conflict scenario

Will the promises of peace brought by the Peace Accord deliver? Current trends seem to forecast a failure of the state-expanding dimensions of the Accords, brought about by government's inability to deliver the robust state-presence promised. The spiral of violence persists in some regions, notably the southern Pacific coast border with Ecuador and the Catatumbo border with Venezuela, associated with the growing strength of drug trafficking cartels. Some regions of the western plains also bear the threat of dissident guerrillas that failed to disarm. In this context, the threat of violence posed by state-expansion itself is missed, as violence is consistently portrayed as the result of state absence, and the role of prohibition and austerity programs downplayed in the descending spiral. The articles in this dossier however point to the dangers of ignoring the continuities of law and violence.

16 In the context of his reflections on the spectrality of the police in Benjamin's *Critique of Violence*, Michael Taussig makes a similar point. In his view, what the law and its attendant order are (meaning the liberal view of law as the antipode of violence) can only be discerned in the moment of their transgression. In this sense, there is no clear boundary between legality and illegality, order and disorder, but a spectral zone of indetermination. The police (being the suspension of the distinction between law making and law-preserving violence) as boundary-keeper and the boundary to be policed (between legality and illegality) are both spectral: law thus seems to operate in an eerie zone where spectrality polices spectrality. For Taussig, "the spectral nature of the police is due *not to unclear boundaries but to the incessant demand for transgression by the boundary itself*" (Taussig 2006, 185; emphasis in original).

In "Security and Development? A Story about Petty Crime, the Petty State and its Petty Law," Lina Buchely and Luis Eslava tell a story about how the "tectonic shift" in the articulation of capital, governance, and the State —the condition that, according to the Comaroffs, characterizes our times— has taken place in Cali through the implementation of "security and development" policies. For Buchely and Eslava, these policies are exemplary of the dynamics of state-making in post-conflict Colombia where public authorities are forced to respond to citizenship perceptions that criminality is out of hand, but are unable to respond to human vulnerabilities at the root of criminal phenomena through the implementation of truly structural solutions. Caught in this paradox, local authorities can only take action through "marginal," "small," "trivial," and "flimsy" solutions representing "second-class fixes which produce second-class subjects and second-class visions of State and law" (Buchely and Eslava 2019, 3). Under the security and development aegis, the State and its law thus become "petty."

Buchely and Eslava rehearse these arguments in the context of the analysis of *Jóvenes sin fronteras*, a program implemented by Cali's local administration aimed at including young people at risk of entering criminal networks into city life through "systematic affective interventions." Instead of focusing on "collective or structural causal factors," Cali's authorities intervene in the lives of the youngsters in the program through seeking their "individual healing" (Buchely and Eslava 2019, 4) and their assimilation to "the community values required by (formal and legal) city life" (Buchely and Eslava 2019, 8). These "neo-developmental punitive technologies" —as Buchely and Eslava dub them— exemplify the simultaneous "hyperpresence" and "palpable absence" of the state of our times that the Comaroffs so strikingly describe in their work. Indeed, *Jóvenes sin fronteras* saturates the lives of its beneficiaries with the state and its law, but this saturation creates a "petty state" and a "petty law" for it never has the potential to intervene in the root causes of their vulnerability. The "petty state" produces second-class subjects whose precarity is reproduced by the very state action that was supposedly aimed at eradicating it. For Buchely and Eslava, "[p]etty criminals and the (petty) state and its (petty) law mutually create and recreate themselves without ever definitively eradicating their liminality or the insecurities that unite them" (Buchely and Eslava 2019, 4). This idea clearly recreates the notion that civilization and barbarism (or law and violence) are not dichotomous, but rather that they stand in a continuum. At the heart of "petty" local public policies lies the ideal of including unruly young people into "civilized" city life. In their "petty" operation, however, these policies reinstate the very violence of precarity they seek to overcome.

Another variation of the "criminal specter" and the spectral dialectic of presence/absence of the state is pursued by Carolina Olarte in "From Territorial Peace to Territorial Pacification: Anti-Riot Police Powers and Socio-Environmental Dissent in the Implementation of Colombia's Peace Agreement." In her essay, Olarte explores how differing notions of "territorial peace" have played out in the Colombian post-conflict. While the Government has sought to address inequality and poverty and respond to local needs in terms of purely developmental policies, many local communities have opposed this vision with competing notions of what the territory means. This debate —which, for Olarte (2019, 3), is about "the meanings, representations, and interventions of the territory as a lived experience (*el territorio vivido*), its scope, and relational dimensions"— has been at the center of the many socio-environmental conflicts that transpired during the negotiation of the Peace Agreement and, later, in the context of its implementation. Here, Olarte detects a contradiction between the governmental promise of demilitarization and the rising presence of anti-riot police in those territories where socio-environmental conflicts have been on the rise.

Policing of land use and access to natural resources reveals, on the one hand, how space is being produced in the Colombian transitional scenario and, on the other hand, how the historical continuity of socio-economic injustices is being rendered invisible and depoliticized by this practice. Indeed, as Olarte intimates, rearranging "postconflict rurality" according to a (policed) notion of development "the natural bridge that will connect conflict societies with past and present socio-economic issues and injustices" is a form of "geographical taming" (Olarte 2019, 10) that immunizes and legitimates historical forms of dispossession; a mode of "sanitizing a political economy of inequality" (Olarte 2019, 11). The Benjaminian specter of the police —the very continuity between lawmaking and law-preserving violence— appears in post-conflict government initiatives seeking to civilize violent, underdeveloped and barbaric territories through development public policies. By turning socio-environmental dissent into a public order issue, Colombian post-conflict law —encapsulated in a set of police manuals and protocols that stigmatize social protest— violently preserves itself by hiding the historical continuity of dispossession of land and natural resources in Colombia. Olarte illustrates her argument by showing how the policing by the ESMAD of local protests against the Ituango dam and the "liberation of Mother Earth" in Northern Cauca turned peaceful protesters into a threat against public order and rightful land-claimants into trespassers. In both cases, the presence of anti-riot police is a clear manifestation of the "criminal specter" that operates in neoliberal times, for it presents social mobilization against inequality and precarization as a form of rampant criminality. Here, the state is simultaneously "hyperpresent" through its anti-riot police and "palpably absent" in the correction of those structural inequalities undergirding social protest.

In "Religious Practices, State Techniques and Conflicted Forms of Violence in Colombia's Peace-Building Scenarios," Carlos Manrique recreates the continuity of lawmaking and law-preserving violence in the context of some conflicts over the secular nature of the state in post-conflict Colombia. In his piece, he sets out to "critically interrogate this dominant framework [liberal secularism] of interpretation and political evaluation" by trying to "re-conceptualize what does it take for a religious discourse or practice to inscribe itself in the law" (Manrique 2019, 3-4). Manrique's reframing of the "theoretical-philosophical tools" needed to critically gauge liberal secularism in our times, first appears in his discussion of the official consecration in 2017 of two Colombian towns to Jesus Christ and, then, in his analysis of the deep involvement of Buenaventura's Catholic authorities in the 2017 civic strike in that same town. In the first case, he shows how the liberal secularist condemnation of the legal consecration of towns to Jesus Christ hides the way in which the nature of the law as law is to silence "certain forms of life, of conduct and of sensibility" (Manrique 2019, 15). This silence —akin to Benjamin's spectral police power— is "an irreducible silence that haunts the law's language" (Manrique 2019, 16). For Manrique, by presenting these decrees —whose material effects on the lives of people are "almost null"— as scandalous, barbaric and highly exceptional, the civilizing liberal secularist argument obscures the ways in which everyday legislation has true materially depriving effects on people's and communities daily lives.

This theme is further developed in Manrique's analysis of the defense by local Catholic authorities of the legitimacy of Buenaventura's 2017 civic strike. In his view, this religious involvement in social protest challenges the liberal secularist argument that only focuses on the "explicit appearance of religious language in the text of the law" (represented, for example, by the legal consecration of towns to Jesus Christ) and simultaneously ignores other ways in which religion may transform state practices (such as the agreement that put an end to the Buenaventura strike where the Colombian government committed to invest more resources to improve the material welfare of the town). In this sense, Manrique's theoretical venture recreates the spectral dialectic of visibility and invisibility. He tries to explain why liberal secularist arguments are exceedingly intense when the State is "hyperpresent" (the decrees case) and have almost nothing to say when what is at stake is the state's "palpable absence" (the strike case). On the one hand, for Manrique, secularism ignores the continuity between pastoral practices and State governance that tends to appear in less spectacular forms of religious political participation such as the Catholic Church's participation in the Buenaventura strike. On the other, when liberal secularists do react in these cases, their arguments end up silencing the "transformative and emancipatory forces and political processes that vindicate the experiences and demands of the most disadvantaged of our social order" (30). Here, civilizing liberal secularist discourse sought to domesticate unruly local priests in a move that reproduced a history of official violence against social protest in Colombia.

Conclusion

The articles in this dossier follow John and Jean Comaroff's lead in resisting the opposition of law and violence. Instead they explore the ways in which they are mutually constitutive, in the Benjaminian tradition explained by Acosta. The normalization of poverty through state programs that refuse to engage with structural causes of exclusion and the criminalization of poverty (Eslava and Buchely). Laws are also complicit in the criminalization of resistance of the concentration of land property for example, and fail to limit its effects on peasant communities, including violence (Olarte.) The State's all-encompassing ambition to rule through law can also silence alternative forms of legitimate governance such as pastoral care (Manrique). A closer reading of the peace agreement through this lens might reveal the costs of even a successful implementation of the Peace Accord.

A conceptual lens that sees the continuities between law and violence might reveal the violence woven into an accord that, in many ways, builds on the lessons of counter-insurgency programs by expanding State presence with little consideration of its costs. Some of these costs are already emerging in ways that can only be thought about through this conceptual lens: for example, the commodification of rapidly disappearing forests, the tensions between peasant communities and transnational extractive companies, the lack of legitimacy of state institutions and the erosion of traditional forms of leadership and problem solving. Only if law and society studies resist the idea that State presence and the rule of law are at the core of civilization and peace, can they recognize the struggle between forms of civilization and coexistence and the expansion of State rule. And this requires us to finally abandon the foundational narrative of civilization and barbarism, in its conservative, liberal and leftist forms, to instead study the complexity of transactions, the exact transformations and the baring of costs and enjoyment of the benefits brought about by peace.

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