

## State, Wealth, and Criminals\*

The corruption of civil servants and members of the highest echelons of certain States, as well as their occasional direct involvement in criminal activities, can lead observers to use suggestive phrases like « malefactor State, » « narco-State », « predator » or « smuggler State, » « mafia State, » and other avatars of the more generic notion of the « criminal State ». The authors of *La criminalisation de l'État en Afrique*, for example, describe in a precise and informed manner the phenomena that, in their opinion, justify the use of these unsettling notions<sup>1</sup>; others show how the representatives of certain States, on every continent, abuse their authority to control and organize themselves illegal traffic in drugs, arms, and laborers or smuggling at a national level... The notion of a « criminal State », however, raises many questions, starting with the problem of identifying the actual perpetrator of the crime, the smuggling, or the trafficking : is it the State itself that is responsible, or rather certain individuals among its representatives who take advantage of their State functions and use them as a cover for trafficking and smuggling ? Indeed, the term « criminal State » is not anodyne ; it has serious implications. We may wonder, for instance, what kind of relationship exists between States listed as « trafficking States » – and so as « criminal » and « malefactor States » – and the Nazi State, to take that example, the designation of which as criminal as a State is unchallenged – as a matter of fact, it was judged as such at Nuremberg...

It is true that traffickers occupy leadership positions in certain States, where they violate their own laws by exploiting the functions that they exercise in the name of the law, but does that make these States « trafficking States » ? Does this expression even have any meaning so long as the government of such States does not include a Department of Cocaine, the

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1. J.-F. BAYART, S. ELLIS & B. HIBOU, *La criminalisation de l'État en Afrique*, Paris, Éditions Complexe, 1997, 167 p.

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name of which would then be inscribed on the façade of an official building ? Does the phrase « criminalization of the State » ultimately amount to anything other than an elision operated upon the more complete locution « criminalization of the activity of certain representatives of the State » ? If such were the case, we would have to recognize that this elision is so frequent – if not systematic – that it cannot be fortuitous : it may reveal a deeper lack of definition touching the nature of the State. I aim here to reveal some of the ambiguities involved in the definition of the State and, as a consequence, in the definition of corruption.

I will begin by discussing the situation of a Brazilian federal deputy who is a trafficker, J.R., whose activities I studied during an investigation carried out in 1995-1996 in the federate State of Rondônia<sup>2</sup>. The federal deputy was the object of a scandal much talked about in judicial and news media headlines in 1991, when his brother was taken into custody by the São Paulo police in possession of 540 kilograms of cocaine. The news of his arrest caused a great deal of commotion in the R. s'city<sup>3</sup>, São João, the mayor of which hastily called the City Council to session in order to organize the concealment of the deputy's fortune before the arrival of the federal police in the city : his trucks were sent to Nordeste, thousands of heads of livestock were moved onto the estates of other sympathetic traffickers, etc. For our purposes here, it is noteworthy that the elected officials, whether they were traffickers themselves or simple henchmen of the deputy, did not find it necessary to act in secret ; they formed the City Council and it seemed simplest to them to hold their meeting within the official space of the city hall, as usual. A *criminal* course of action was thus planned by certain local representatives of the Brazilian State, from inside of a State entity and within its walls – one example among many others of what is called « criminalization of the State », which I am seeking to understand here : how was such a meeting possible ?

J.R. was a criminal before later becoming a representative of the State on top of his participation in criminal activity. His case will be differentiated from that of representatives of the State who follow the opposite trajectory by later becoming criminals on top of their State position. In the latter case, civil servants or elected officials no longer content themselves, for example, with the misappropriation of public funds and take advantage of their power to claim their share from criminal activities, either by putting these activities under their supervision or by getting directly involved in them. I will attempt to understand how the various individuals in each type of situation use their illegally acquired wealth in their local or regional economic and social contexts, in terms of consumption, investment, or redistribution of wealth. In the interest of this inquiry, I will propose a model making it possible to reveal the two primary sources of illegal income – criminal activities and embezzlement of public funds – and their relationship with two generic forms of corruption : neutralization and abuse

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2. The facts presented here have, for the most part, never been published ; they are drawn from the documentation available in the archives of the Superintendência da Polícia Federal of Porto Velho, Rondônia (police reports, minutes from interrogations, and items of evidence from the trial of the deputy's brother) and matched up with other sources (interviews, media, other documents from administrative, law-enforcement, and judicial archives), during a study carried out between October 1995 and August 1996 in Mato Grosso and Rondônia. See C. GEFFRAY, *Rapport d'activité n° 4, Trafic international, blanchiment local et politique* (April-August 1996), typed, 138 p.
  3. The family's name is replaced here with a pseudonym.
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of State power. I will furthermore have recourse to a distinction, and opposition, between two non-market forms of the circulation of wealth: civic *entitlements* and clientelist *manna*.

We will see, at the conclusion of this discussion, that the analysis of the forms of « criminalization of the State » requires reflection about the *ideal* of the common good governing, in all places and at all times, the social legitimacy and existence of the institution of the State. The ideal itself being immutable, it is perhaps less the letter of the laws (however « fundamental » they be) that distinguishes the « modern » form of the State from « patrimonial » ones, than that which is supposed to guarantee this ideal and these laws in the minds of populations. Since such a guarantee can ultimately only be a matter of *belief*, the question that ultimately interests us may also be that concerning where sovereignty resides in people's beliefs: does it lie in the People, or in some kind of *Imperator* figure, even one that is an outlaw? I will do no more here than pose the terms of the problem.

### **Criminals Become Representatives of the State**

#### *J.R., Trafficker, Thief, and Federal Deputy*

In the early 1980s, well before becoming a federal deputy, J.R. was an official in the Institute for Colonization and Agrarian Reform (Incra), which was responsible for buying the crops of the recently colonized region. He associated with the first traffickers in Rondônia and, like them, took care of buying in São Paulo the chemical products necessary for fabricating cocaine hydrochloride in neighboring Bolivian laboratories. He was on good terms with agricultural and trafficking circles and very quickly began to misappropriate part of the crops that he purchased on behalf of the State in order to smuggle them out to Bolivia, where traders exchanged them (rice, coffee) for cocaine. He rapidly became the proprietor of several businesses; he started buying up coffee crops; created a logging company, as well as a road haulage business; he bought a river barge for mining the gold of Rio Madeira; he ran commercial concessions; and he became the proprietor of a considerable amount of real estate in São João and elsewhere, of several hotels and *fazendas*, some of them with landing strips, of planes, etc. When access to cocaine through barter became widespread near the end of the 1980s, the Bolivian suppliers accepted all kinds of stolen or smuggled goods coming from Brazil: jewels, livestock, gold, cassiterite, agricultural products, and especially cars, trucks, farming or construction equipment, etc.<sup>4</sup> At that time, J.R. financed a group of vehicle thieves (who stole trucks and cars to be bartered for Bolivian cocaine) and had a man he could trust appointed to the head of the State organism responsible for registering motor vehicles, Ciretran, whose civil employees legalized the documentation of stolen goods

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4. It was said of the estate of Yayo Rodriguez, one of the primary Bolivian suppliers of cocaine in the region, that it « resembled a parking lot. » A Volvo, Scania, or Mercedes trailer truck could be exchanged in Bolivia for 70 kilograms of cocaine, which could be resold for nearly a million US dollars on the Atlantic coast, and for nearly seven million US dollars on the European market. The truck cost little more to the operation's silent partner than the salaries of his hired men.

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for him. Indeed, the amount of cocaine given in exchange for these stolen goods was higher if the truck or car came with valid paperwork<sup>5</sup>.

The trafficker owned a barge on the river that was equipped for gold mining, but he did not find much. He contented himself with buying up at a good price the gold found by neighboring prospectors, which he then sold on the legal market as the product of his own mines ; this allowed the gold miners to get around taxation and to sell their gold for a higher than market price. He operated the same way with his logging company, the declared employees of which may never even have felled a single mahogany : he bought up the precious wood that authentic loggers surreptitiously cut down, at night, in regions strictly protected by the State (National Parks or Indigenous Reservations) ; he made it possible for these « *picapaus* » to sell their fraudulently acquired precious wood at a good price, while he declared it to be the production of his own business and resold it...

These money-laundering techniques were common in the region and hardly set J.R. apart from his trafficking peers. Through coffee, however, his operations reached a different order of magnitude. When he established his own coffee-buying company, in the early 1980s, his illegal resources were already sufficient to enable him to buy at a higher-than-market price and to resell the coffee outside the State at a price lower than his competitors. They did not have the same illegal resources at their disposal, and some of them were ruined, while others changed their occupation or fell back onto cocoa, and still others were bought out by J.R. (or a frontman). As a result, within a few years J.R. took control of the regional coffee market, well beyond his own district of São João. The whole commercial structure of the coffee market was undermined at the level of Rondônia, where the trafficker ultimately, around the beginning of the 1990s, enjoyed a position of monopoly. Without J.R.'s providential intervention, it should be noted, the coffee-growing industry probably would not have survived from the competition with the same product (« *robusta* ») grown near ports for exportation on the large plantations of Espírito Santo, 3,000 miles from Rondônia. Indeed, Rondônia's productivity was comparatively low, and it took weeks for J.R.'s trucks to collect the handful of bags of coffee that the small-scale colonists lined up along thousands of kilometers of rain-damaged roads...

The State did not provide any subsidies in this sector, nor was any request or complaint concerning this topic addressed to the State, such that the local officials of the World Bank, for example, ended up marvelling over what they called the « Rondônia coffee miracle ». They seemed – or wanted – to be unaware of the secular cause of the mystery, namely the fact that the production of coffee in the State of Rondônia, which was and continues to be a source of pride to its political representatives, was secretly « subsidized » by the cocaine money of the federal deputy J.R. Through the sale of their coffee, tens of thousands of small-scale producers actually

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5. These practices were widespread in all of the federate states of Brazil along the Bolivian border, and they stimulated auto theft (among other forms of wealth) throughout the whole federal Union. Because of this, the circulation of a large quantity of stolen goods was reoriented and passed on from thief to receiver, from receiver to trafficker, from São Paulo, Rio de Janeiro, Espírito Santo, Salvador de Bahia, Brasília, Belém, etc., to Bolivian cocaine suppliers near the Brazilian border along Mato Grosso, Rondônia, and Acre. The drivers were sometimes killed in order to avoid the crime being reported before the vehicle crossed the border. Serious security problems affected the entire network of roads in the border States, where hardly anyone drove at night in the early 1990's.

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became the beneficiaries of manna generously delivered by J.R., and the genesis of this trafficker's political and social fortune lies in this legal economic activity, which became his specialty in the State, and without which it would not be possible to understand the strange São João City Council meeting.

### The Dirty Money's Destination

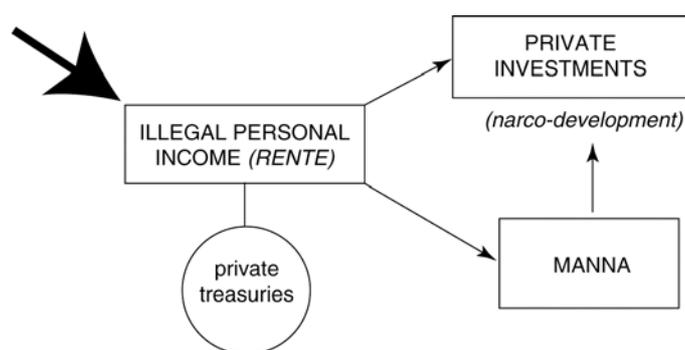
Wealth from elsewhere thus changed the course of regional economic life in the same manner as a subsidy would have. Unlike a subsidy, however, the wealth came, in this case, not from the Public Treasury, but from criminal activity; and it was not allocated in pursuance of a State law governing its legal distribution, but according to the discretionary authority of an outlaw. It is for this reason that I prefer to call it « manna » rather than using ambiguous notions like « dirty », « tainted » or « illegal » subsidies. Indeed, J.R.'s money appeared as manna to the sellers of gold, precious wood, or coffee, since the one with this money bought from them at a higher price than the other traders. Another type of « manna » was the granting of low-interest or interest-free credit, which the trafficker was in a position to lavish upon entrepreneurs, cattle-breeders, and local tradesmen who were having difficulties, and upon certain elect members of the middle classes. His benefactions were perceivable among members of all levels of local society, not only among the most disadvantaged, and each individual (had he wished to do so) could have traced the series of links in the chain of providential goods and services for which they were beholden to someone: he would have eventually come to the name of the man unsurprisingly elected citizen of honor in São João (in 1997) - J.R., cocaine trafficker, thief, and patron of a clientele. Compared to the fortunes that he distributed in the form of loans or commercial transactions that were deliberately unfavorable to himself, the gifts that he conspicuously gave (chocolates, toys, soft-drinks, and candy doled out to poor children at Christmas and Easter, as well as other displays of evergetism common in the region) represented little more than the public exhibition of a clientelist following that was acquired by other means and was far more substantial and obscure than it appeared.

A vast and robust web of direct collusion, and of outright, tacit, or even unconscious connivance, was constituted around the criminal, involving members from the entirety of civil society and local representatives of the State, even though everyone was aware of the illegal, sometimes murderous, character of their citizen of honor. These redistributive practices ultimately gave rise to the creation of a pocket of *narco-development* around the hub allocating the manna coming out of the illegal profits from commerce in cocaine. The beneficiaries of this development were all beholden, directly or indirectly, to the hard core of the federal deputy's clientele; he was the actual originator of the Rondônia coffee « miracle », as it was called by the World Bank's agents, who perceived the phenomenon's providential dimension... Finally, the allocation of the manna gave rise to a new kind of social differentiation among the populations, since certain of J.R.'s beholden-clients, who were among the most advantaged members of the region's society, were in turn able to win for themselves a preeminent or dominant position in the sector of legal activity in which they were active by

undercutting the competition through the manna allocated to them by the trafficker. The most powerful of the merchants, automobile dealers, air-taxi companies, real estate agents, etc., were often also among the trafficker's most beholden clients. They were in a position to provide, by themselves and on their own behalf, for the allocation of a portion of the manna resulting from narcotics traffic, and thereby to promote themselves to the status of sub-patrons with their own clients.

The circuit of wealth at issue here can be represented in a diagram showing that the illegal personal income (*rentes*)<sup>6</sup> resulting from cocaine commerce can be converted into three distinct kinds of wealth: (a) into *capital* that is invested in the legal economy (or in the illegal economy until it is always ultimately funneled back into the legal economy and laundered; (b) into *manna* circulated in the form of gifts or wealth added to the capital invested in the legal economy, the manna tending in this case to break down the competition and concentrate the market; and finally (c) into private *treasuries* that are either hoarded or consumed by the traffickers.

Fig. – 1. Source and destination of criminal income (*rentes*)



### *Manna*

The notion of « manna » is too seldomly used in the social sciences – and that of clientelism perhaps too commonly – to allow us to avoid explaining what is meant here. The word « manna » is commonly borrowed from biblical vocabulary to designate wealth having a providential character (« the food that God made fall from the sky for the children of Israel while they were in the desert »)<sup>7</sup>, and it is taken up by A. Morice in his analysis of economic processes to qualify the nature of wealth circulating in clientelist networks<sup>8</sup>. Taken in this sense, the term offers multiple analytical

6. The term « *rente* » designates here revenues from illegal activity.

7. É. LITTRÉ, *Dictionnaire de la langue française. Vol. IV*, Paris, 1958 : 1963.

8. A. MORICE, *Recherches sur le paternalisme et le clientélisme contemporain : méthodes et interprétations*, tenure thesis for qualification as research director, Paris, EHESS, 1999, 227 p., typed. See also, by the same author, « Corruption, loi et société : quelques propositions, » *Revue Tiers Monde*, XXXVI (141), January-March : 41-65, 50.

advantages. (a) It allows us to acknowledge that the goods constituting this wealth (the manna) are not put into circulation as merchandise, even when the wealth changes hands through a transaction that is commercial in form, since profit is not what governs its transmission : if ordinary traders were to sell or buy at the same price adopted by those who distribute manna, they would quickly go bankrupt. (b) It also allows us to acknowledge that this wealth is not drawn from the Public Treasury nor distributed in pursuance of a legal principle governing its allotment, but results from criminal activity and is allocated according to the whim or the strategy of an outlaw ; *it does not constitute subsidies any more than it does merchandise.*

This kind of wealth can confound economists, since it appears in effect as a *benefaction* conferred upon people who will perhaps never be in a position to reciprocate on a par with what they owe their benefactor. Wealth distributed in this manner aims to and does in fact create debts that are morally impossible to repay, which distinguishes it from merchandise, since traders as such are interested only in the financial, and not moral, solvency of their partners. This kind of wealth is moreover distinct from goods that are given within the framework of the gift, which is fundamentally equal on both sides, since the allocation of this wealth does not call for reciprocity and, in fact, only acquires its social meaning from the partner's inability to reciprocate at the same level. Indeed, gift exchange – where it has acquired institutional status – is based on the mutual discharging of debts, or, to be more precise, on the endless renewal of mutual indebtedness that consecrates the alliance between equal partners<sup>9</sup>. Traffickers can, of course, *give* in this sense, as can anyone, when they seek to renew or expand their alliances among their peers or among other patrons having their own clientele, through the reciprocal exchange of gratuitous services, by hosting extravagant parties for each other... But manna does not allow for reciprocity and, as such, only affects, through these parties, the actual or virtual clientele consisting of the guests that are incapable of reciprocating for the invitation. We might say that, in the eyes of its beneficiaries, manna has the character of gift without reciprocity, the social effects of which logically are the opposite of those resulting from the institution of the gift, since they are essentially unequal. The *moral obligation* placed upon the beneficiary of the manna to anticipate the wishes of his benefactor, *does not constitute a form of reciprocity* as is sometimes claimed. Quite the contrary, *it is the subjective effect of the inability to reciprocate*, of the impossibility of reciprocity, that subjugates the beneficiary to the wishes of the one to whom he is beholden and confers upon the allocated wealth its providential character. This expression makes it possible to avoid the impasses toward which, in my view, we are inevitably led by the analysis of the phenomenon in terms of « reciprocal exchange » of a « political » or « social » good for an « economic » good. In the final analysis, we should note that the notion of manna allows us simply to characterize the wealth involved in any type of redistributive dependence, as this latter was brought to the fore by K. Polanyi<sup>10</sup> and energetically formalized by C. Meillassoux, for example<sup>11</sup>. This notion could contribute to the analysis of the social bond that these

9. M. GODELIER, *L'énigme du don*, Paris, Fayard, 1996 : 54-60.

10. K. POLANYI, *Primitive, Archaic and Modern Economics*, New York, Doubleday, 1968, 346 p.

11. C. MEILLASSOUX, « Essai d'interprétation du phénomène économique dans les sociétés traditionnelles d'autosubsistance, » *Cahiers d'Études africaines*, 4, 1960 : 38-67, and *Femmes, Greniers et Capitaux*, Paris, Maspero, 1975, 251 p.

authors were able to bring to light by enabling us to look at the subjective structure of this bond, an issue which was hardly discussed by Polanyi or Meillassoux but which is considered here.

The clientele's boss thus puts an obligation upon all those to whom he offers wealth when in their eyes that wealth takes the form of a favor that they know they will never be able to return, and that they will never be asked to return so long as they remain faithful (just as believers would not be able to reciprocate to their gods on a par with what they believe they owe them, however many sacrifices they make to attest to their devotion). J.R.'s acts of munificence were not in the least motivated by the « laws » of the market any more than they were by those of the State ; they were dependent upon the trafficker's concern and subjective state of mind – upon his generosity, if not his whim. It is in this sense that, in my view, they took the character of manna, wealth allocated to people who were beholden to the trafficker and to whom he incarnated, *ipso facto*, that double figure of Providence and Commander common to all imaginary fathers. And J.R. was usually referred to, loved, or feared as such by thousands of residents of São João, whether they be humble pioneers or not : « *É um pai para nos* ».

We are now leaving behind the sphere of merchandise to probe into the heart of that which founds the legitimacy of an authority, that furthermore has nothing to do with the legal law, namely *clientelist* legitimacy. Around this legitimacy are structured networks of networks that are simultaneously hierarchical and informal, that are deeply opaque to those who do not belong to them, but able to haunt economic, social, and political life to the point of seeming to control completely its dynamics and the directions it takes. « "We live mysteriously", confided a man from Zaire to J.-F. Bayart, to explain his country's economy » and to highlight its obscure requirements<sup>12</sup>. This is a disturbing kind of power, indeed, if it can in fact result from legal as well as criminal activity, its legitimacy being *indifferent to the law* in its very principle. This legitimacy inevitably arises as soon as some person, independently of any institution, finds himself in the position of being able to take it upon himself simultaneously (a) to offer benefactions providentially to an entourage that he protects and (b) to pose a threat to others and punish unfaithful beneficiaries if ever they should transgress the ideal law that he thereby incarnates for them. We know that these two functions – benefaction and punishment, the promise of help and the threat of harm – actually define the principle of legitimacy in any social order (they are usually distributed across a structure of multiple institutions – judiciary, religious, executive – that constitute the charm of civilizations)... The patron of a clientele, however, presents himself – according to his very definition – as a person ready to undermine any institutional edifice, while incarnating these universal functions in his own person. In so doing, he acts like any paternal figure and thereby finds himself credited, by those whom he makes beholden to him, with the altogether paternal ability to declare where good and evil reside, *even when his words are in contradiction with what is prescribed by the legal law*... This ability to undermine the law as well as the market is what distinguishes the clientelist nature of the bonds of allegiance woven around the patron's person through the transmission of his manna, as

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12. J.-F. BAYART, « Le "capital social" de l'État malfaiteur, ou les ruses de l'intelligence politique, » in J.-F. BAYART *et al.*, *La criminalisation...*, *op. cit.* : 63.

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opposed to the legal redistributive bonds that M. Weber, for example, qualifies as « patrimonial »<sup>13</sup>.

### *Corruption as Neutralization of the State*

Clientelist bonds are indifferent to what is prescribed by the legal law, but, even so, they do not abolish its effects, nor do they affect the social existence of the State behind which clienteles grow and multiply. These bonds can sometimes be formed with indifference to whether they are legal or illegal and be one or the other by chance, but they can also be organically formed through the subversion of the laws, when they result from the instrumentalization of these laws, in which case the laws are simply « landmarks to be gotten around, pivots around which procedures are invented for developing new relationships, » as B. Hibou has written<sup>14</sup>. In the case of drug traffickers (the focus of the present discussion), where the bonds are formed around criminal activities constituting a violation and not a subversion of the law, the traffickers are faced with the problem of escaping the constraints of the legal law, for example by neutralizing those whose duty it is to apply and enforce it. So, they take the initiative of corrupting the State's representatives according to a procedure that is relevant for perverting any institution : they invite an official to renounce carrying out his duty to their detriment, holding out to him (a) the promise of benefit, in the form of particularly desirable and providential favors or wealth, or, on the contrary, (b) the threat of some dreadful harm, including that of death. In such a situation, they are not plotting to buy « power, » as is often claimed ; if this were the case, they would enjoy the use of this power, which they would own and exercise themselves, like with venal offices during the *Ancien Régime*. Nor do they buy « the official, » who – in the strict sense – would become their slave... What they buy from the official is a specific service, namely his renouncement of the exercising of his function against them, *even as he continues to hold his office*, since it would not be of any help to them if he resigned. « Treason » is not too strong of a term for characterizing the behavior of corrupted State representatives, though such a forfeit does less harm to the official's superiors, as J. Cartier-Bresson notes<sup>15</sup>, than it does to the very ideal of the State that he has committed himself to serve, an ideal that resides beyond his person and that of each of his superiors.

Indeed, whatever form it takes, corruption presupposes the official's forsaking of the subjective commitment that he is reputed to have undertaken in the service of the State's ideals. Accordingly, corruption entails at the same time (a) *renouncing* the ideal of the public good that universally legitimates the exercising of State power, whatever its historical form, and,

13. M. WEBER, *Économie et société/1. Les catégories de la sociologie*, Paris, Plon, 1995 (1956) : 285-349.

14. B. HIBOU, « Le "capital social" de l'État falsificateur, ou les ruses de l'intelligence économique, » in J.F. BAYART *et al.*, *La criminalisation...*, *op. cit.* : 136.

15. J. CARTIER-BRESSON, « Causes et conséquences de la délinquance financière "grise" : le cas de la corruption », *Noir, gris, blanc, les contrastes de la criminalité économique, Les Cahiers de la Sécurité Intérieure*, 36, trimestre, 1999 : 63-90, 68. See also « Les analyses économiques des causes et des conséquences de la corruption : quelques enseignements pour les PED, » *Mondes en Développement*, 26, 1998 : 25-40, 27.

as a consequence, (b) *committing treason* against populations who respect the State to the full extent that its activity seems to them to correspond to the requirements of such an ideal. We should note along the way that the social existence of the State is not the result of violence, but of the populations' *belief* that the exercising of State power is based on some form of the ideal of the public good, upon which alone its legitimacy can be founded... This, in my view, is an anthropological fact concerning the nature of the State and not a moral opinion, a fact which, if it were not taken into consideration in the analysis of corruption, would make the phenomenon incomprehensible. The *moral* effects of betraying the ideal of the public good are, as such, *social* effects : according to whether identification with ideals succeeds or fails, collective beliefs – and, thus, institutions – either flourish or disintegrate (often in violence). The moral dimension belongs in substance to corrupting practices and manna alike, and this may explain why the positive social sciences have some difficulty grasping the principle of either of these.

Any kind of legitimacy is based on faith, as corrupting criminals well know – and they are careful to have an official betray the ideal of the State less out of greed than out of adherence to the clientelist ideal that they represent (belief *versus* belief). If they are successful in this, then their money does not buy anything anymore, since it takes the form of manna, the devolution of which brings along with it, in the symbolic order, the conversion of the official – however vacuous the clientelist credo may appear (the profession of faith on the part of those who are beholden in São João, for example, whether or not they are officials, is always reducible to the same basic statement : « I believe in J.R. ; he is a strong and good man who protects me ; he violates the legal law, but he knows where good lies (ideal law), and I must serve him... »). As a general rule, it is true, criminals do not care a jot about the beliefs of those whom they corrupt : as far as they are concerned, the officials' greed is a sufficient guarantee of their loyalty, so long as the outlaws are able to neutralize the effects of the legal law beyond the officials themselves. If they are not able to guarantee this loyalty through adherence or through greed, then the charming criminals become threatening and promise to cause *harm*. They threaten and kill :

« Dear colleague ! Henrique. Faithful [?]. We were hoping that you would respect our arrangement. You know what we mean ! No ? Yes, you know, Henrique ; it is you who have forgotten. Not us. You promised to inform us about any investigation concerning us. Fortunately for us, you have a price – a very low one – you are not even worth a packet of cigarettes. You remember having helped us in certain difficult situations ? Situations in which we earned millions and you a few cents ? Henrique is so doltish [*lotário*] that he has not even realized that he was being used. He has sold himself for : some packets of cigarettes – a few small bottles of beer – some whisky and a few liters of gasoline. You are nothing to us – and to the police, because you leave your colleagues' lives hanging from a thread. All of that is going to cost you dearly ; your days are numbered because you have not respected the arrangement. (*vida jaz*) »<sup>16</sup>.

16. This message was found in a drawer at the São João civil police station by agents of the Federal Police in 1991 ; it had been addressed a few months earlier to a certain Henrique by police officers involved in trafficking. I do not know if these police officers had a connection with J.R. (*Porto Velho Federal Police documentation, A.R. trial*).

A subject can find himself committed through his allegiance to the different ideals of the State, of patrons of clientele, and of his family, and these ideals correspond to the requirements of various credos that are potentially antagonistic to each other every time that he cannot serve one without betraying another, like Antigone and Creon. Furthermore, these credos, like all beliefs, are open to being undermined in a way that can destroy all of them together, through the simple effect of commercial activity and the prevalence of interests. We get a glimpse here of the complexity of the moral universe within which certain social strategies are deployed in regions where there is a great deal of State corruption, and, thus, where clientelist followings are strong – where people live exceedingly « mysteriously » indeed. Pretending to believe what this or that group says or keeping quiet – in other words, imposing upon oneself or internalizing rigorous self-censorship – can become an absolute necessity for social, if not physical, subsistence.

As for J.R., he obviously did not believe in the State, but he could hope that it would remain stable, with its hierarchical structure intact, while at the same time being under his control and strictly paralyzed in the accomplishment of those of its functions posing a threat to him. This trait is probably common to all outlaws : their social existence is secondary to and parasitic of the populations among which they prosper as predators. This existence is dependent upon that of the society in which those populations subsist *within* their laws, and thus, paradoxically, it is dependent upon the State that guarantees the laws ; and outlaws hardly imagine overthrowing that State, even when its officials ferociously harass them... In the final account, criminals behave toward the State as a whole in the same way as they do toward each of its representatives whom they individually corrupt : it is a matter of getting the State *to renounce exercising its function against them, even as it continues to hold its place*. J.R. corrupted and threatened, and he carried out or caused to be carried out his threats against State representatives. Nonetheless, he had nothing to gain from getting involved in politics to publicly contest the legitimacy of that State, and he probably never imagined serving such an ideal (which he could not have done without contradicting the principle of his clientelist project). His political activity did, however, help him in his endeavor to neutralize the State, while enabling him to increase his social prestige and following.

J.R. used the resources of his powerful clientelist legitimacy to reap its benefits in the legal political sphere, getting himself elected to the Union's federal Congress. Having done so, he himself held a public office enabling him to supplement advantageously his strategy for neutralizing the State, to control in an official capacity the public decisions and nominations that were useful for his business, while benefiting from the judicial immunity conferred upon him by his congressional mandate. Many humble voters were even able to perceive this whole process, paradoxically, as a kind of revitalization of the State's authority and legitimacy : after all, J.R. made his clientelist legitimacy coincide with his legal one as a people's representative in the State. He caused the fusion of the two ideals and thereby acted in accordance with the populist imperative, the slogan for which could be expressed, in Brazil and anywhere else, as « *rouba mas faz* », that is, literally : « he steals, but he is doing something ; » in other words, *he violates the legal law, but he does something for us, in accordance with the ideal law*.

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The local State structures were progressively emptied of their substance, and certain strategic leadership positions were occupied by traffickers or neutralized through corruption or the threat of death, but that did not provoke any particular social, political, or judicial reaction : the populations seemed to live in peace in a situation of relative social and political stability (there was comparatively little crime in São João), even in a certain degree of economic prosperity. The traffickers had legally won their positions in the City Council, and, with the backing of unquestionable social support, they had no more doubts than their constituency that they were in their rightful place within public edifices. It is true that open or tacit censorship concerning information about their representatives' covert activities weighed heavily upon the populations – if for no other reason, to protect the comfort of all those who did not want to know anything about what was being done... The arrest of the federal deputy's brother in possession of half a ton of cocaine shattered this censorship and endangered the *pax traficana* reigning in São João : we can understand that it led to the calling of an extraordinary City Council meeting<sup>17</sup>.

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Corrupting is the preoccupation of any criminal who is outside of the State, once he is exposed to the possibility of being punished by the State and concerned to avoid this. Some criminals, like J.R., are able to solve the problem by occupying a position within the State. Criminals themselves thus become State representatives, and nothing keeps them from increasing their illegal income by exploiting another generic form of corruption that was hitherto inaccessible to them : on top of the revenue from drug trafficking, they can add that coming from the misappropriation of the public funds to which they have been given legal access. Senator Olavo Pires<sup>18</sup>, for example, whose fortune (like that of J.R.) came out of the import-export of Bolivian cocaine, misappropriated shipments of medicine and sanitary supplies from the Ministry of Health in order to distribute them charitably within the framework of his « Olavo Pires Foundation. » He abused his legal power to convert public property into manna allocated on his behalf, such that the products that people ought to have received simply by virtue of their citizenship were transformed into personal favors. The populations became the beholden debtors of the beneficent trafficker-senator as an individual ; they were, *ipso facto*, disenfranchised of their egalitarian civic subjectivity. These misappropriations, which are common in Brazil and

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17. The only case from São João that I have developed is that of the federal deputy J.R., who is probably the city's most consequential trafficker and the only one to have gotten so deeply and spectacularly involved in the conquest of State offices ; he seemed exemplary to me in this respect. My discussion should not, however, lead to a misconception : the R. family was not the only one controlling traffic in São João, where (as in Rondônia's other districts) several trafficking networks act independently of each other and are careful to maintain elementary mutual respect guaranteeing their discretion. I studied the cases of at least two other large-scale traffickers operating in São João (that is, not counting those who occasionally undertake the commercialization of a few kilograms of cocaine). These men invested locally in city commerce or cattle breeding, but had no link to the regional coffee economy and stood discreetly aside from public and political affairs, and thus from J.R. This latter had his federal mandate taken away from him following his brother's arrest, but it was not possible to incriminate J.R. directly.

18. Olavo Pires, who was a friend of J.R. and a fellow large-scale trafficker, probably would have become governor of Rondônia if he had not been assassinated on the eve of his election.

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elsewhere, were independent of the criminal activity of O. Pires, who was acting in this instance simply as a corrupted senator, and not as a trafficker : the criminal had become a State representative, and his behavior was no different from that of the Angolan President, Eduardo dos Santos, for example, who took part of international funds, State revenue unaccounted in the national budget, and even funds of some government's departments, to allocate this public wealth in the name of his « E. dos Santos Foundation »<sup>19</sup>. In both cases, the operation consisting in the conversion of public property into personalized manna is strictly identical.

This development, through which outlaws like J.R. or Pires can become State representatives, constitutes only one form of the so-called « criminalization of the State ». Now we need to consider the opposite occupational trajectory, at the end of which State representatives get involved, directly or indirectly, in criminal activities.

## Representatives of the State Become Criminals

### *Corruption as Abuse of State Power*

The form of corruption that Pires used in appropriating the medicine of the Ministry of Health, or that E. dos Santos – just like Pires – used to supply the foundation bearing his name (which was devoted to *bearing* his name), is different from the type of corruption upon which we have been focusing thus far. In the case of this other kind of corruption, it is no longer a matter of a criminal *neutralizing* the State's power from outside of it, but of a State official using his power to personal ends, which contradict the State's ideal ends that he has promised to serve : in other words, it is a matter of him *abusing* that power. The *neutralizing* of power and the *abuse* of it constitute, in my view, two generic modes of forsaking the State's ideals that are easy to differentiate from each other in terms of the source of the illegal income that they make it possible to accumulate. Criminals operating from outside the State draw their revenues from sources independent from the State (trafficking, prostitution, theft, etc.), and corruption, in their case, takes the form of an operation to defuse law enforcement. This type of corruption does not itself authorize the gaining of income ; it is even *costly* to carry out for those who take the initiative to do so. But when officials draw their illegal revenues from the Public Treasury (whether directly or on the way in or out of the Treasury, by whatever means, and to the detriment of the rightful beneficiaries of the wealth), corruption in that case *is* the income-obtaining operation itself ; it *profits* those who take the initiative to execute it. Given that the law has force, let us say that there are those who stand outside of it and strive to neutralize it and those who straddle it and endeavor to divert its ends to their own advantage.

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19. C. MESSIANT, « La Fondation Eduardo dos Santos (FESA) ; À propos de l'"investissement" de la société civile par le pouvoir angolais, » *Politique africaine*, 73, March 1999 : 82-101.

The carrying out of this latter operation makes it possible to qualify a civil servant or an elected official as corrupt, but it is not sufficient in and of itself to make that person a criminal... Indeed, State representatives' abuse of their power and misappropriation of public funds are not sufficient to constitute the trajectory we are concerned with here, one in which they end up becoming criminals themselves. Rightly or wrongly, this designation is customarily reserved for those who benefit from income coming out of illegal activities that are *independent of their official capacities*, such as theft, drug trafficking, prostitution, etc. In other words, officials as such become criminals either when they abuse their powers not to embezzle funds, but to place criminal activities under their supervision to the end of sharing the revenues they produce with the outlaws, or when they get directly involved in such activities at a reduced risk, under the protection of their office.

*Placing criminal activities under one's supervision* - The placing of criminals under the supervision of State representatives was long prevalent in Mexico, for example, and is developing on a large scale in China, where officials collectively *abuse* their power, in networks, to force outlaws to pay the price of their own *neutralization* as representatives of the State<sup>20</sup>. Luis Astorga interprets this behavior on the part of State representatives as the levying of an « illegal tax »<sup>21</sup>, whereas Jean Riveleois sees it as « legal racketeering »...<sup>22</sup> The expressions « clean racketeering » and « dirty taxation » refer to a situation wherein State representatives find themselves in a position to abuse their power to set their own price for their refusal to exercise it. The two generic forms of corruption mentioned above are deeply interlinked in this kind of mechanism, where that which is gained from the *abuse* of power merges with the outlay agreed upon by the criminals for *neutralizing* that power. The price of corruption is, indeed, set by the State representatives themselves (abuse of power), but the content of the corrupting transaction remains the same (neutralization), since the officials, once they are payed, forsake carrying out their official duty while continuing to hold their office : they neutralize themselves<sup>23</sup>. In so doing, State representatives give themselves access to income arising out of crime, and the two sources of *rentes* (criminal activities and misappropriation of public funds) merge into what is virtually a single pool, which is placed under the personal authority

20. J. ANDRIEU, « Chine : une économie communautarisée, un État décomposé, » *Revue Tiers Monde*, XXXVII, 147, July-September 1996 : 659-687. Guilhem Fabre elaborates a joint critique of culturalist (J. Andrieu) and functionalist (J.-L. Rocca) approaches to Chinese corruption, within a perspective similar to my own ; see G. FABRE, *Décentralisation, corruption et criminalisation : la Chine dans une perspective comparative*, Paris, MOST-IRD seminar, May 2000, 18 p., typed.

21. L. ASTORGA, *Drug trafficking in Mexico*, report from the 2nd annual MOST-UNESCO seminar, Rio de Janeiro, 1998 : 36, 36 p., typed.

22. J. RIVELOIS, « Drogue, corruption et métamorphoses politiques (application à une comparaison Mexique-Brésil), » *Revue Tiers Monde*, XL (158), April-June 1999 : 280.

23. This presupposes a particular, historically-rooted struggle between the State and the criminals. The cases of Mexico and China suggest that the phenomenon can be linked with the existence of a powerful single-party authority over the State. By contrast, corrupted officials in Brazil can only form a band, for the purposes of systematically « taxing » traffickers, at the level of small-scale, urban distribution ; higher up in the hierarchy, it is the traffickers who impose the price of corruption upon the officials. A military police officer from Mato Grosso, known by the nick-name of « Rambo, » thought himself powerful enough to impose his price for silence on the traffickers (\$200,000 US to look the other way for a shipment) ; he was gunned down along with his family in Rondónopolis during my study in 1995.

of the corrupt and criminal official. These two sources of income can then provide for paradoxical operations, as in the case of that governor of one of Mexico's federal States, who transferred money that he had received from drug traffickers into his State's accounts to fill the coffers back up opportunely. When the two flows of illegal income feed into each other, all kinds of routes become imaginable, from the bailing out of a criminal activity with taxes to the opportune bailing out of the Treasury with trafficking money, according to the circumstantial requirements of populism. Populism is, ultimately, the law structuring the political field in a context where the social subsistence of populations depends on clientelist networks that are supported with funds from a State whose legal leaders are elected to office: the criminal origin of the resources allocated by the government, in order to bear the name of the governing official, is irrelevant.

*Involvement in criminal activities* – Certain networks of State representatives do not limit themselves to controlling criminal activities and sharing the profits. Their members take a further step when they exploit the prerogatives attached to their office to carry out directly a criminal operation themselves. An example of this shift could be found in the activities of a group of local police officers from São João, who manufactured fake cocaine out of cornstarch to be legally incinerated in the presence of a judge, while they sold the real cocaine for their own profit<sup>24</sup>. Naturally, these practices become increasingly preoccupying as the officials involved occupy higher and more central positions in the State hierarchy, as in the case of that State Secretary of the Interior and Justice for Rondônia, who was caught in a Bolivian laboratory in the company of Olavo Pires while in the process of negotiating with drug traffickers<sup>25</sup>. In fact, the involvement of officials in drug trafficking in Bolivia was long connected with military networks going all the way up to members of the senior staff... Concerning similar activities other than drug trafficking outside of Latin America, J.-F. Bayart mentions the existence of large networks of officials turned smugglers in Gambia, Togo, Benin, Equatorial Guinea, Burundi, and Somalia, to which we could add China (with its smugglers in the armed forces)<sup>26</sup>, or cite the involvement of high-level authorities of certain African countries in counterfeiting, as well as the export traffic in laborers or prostitutes, diamonds, semi-precious gems, ivory, or the meat and skins of wild animals, etc.<sup>27</sup>

24. They forced a former «chemist» who was familiar with Bolivian laboratories to fabricate the product, by threatening to put him in prison on the basis of a falsified file. The chemist sacrificed a kilogram of real cocaine to produce about ten kilograms of cornstarch that reacted positively to the cobalt test. C. GEFFRAY, *Rapport d'activité n° 4...*, op. cit. : 87-91 ; Porto Velho, Forum de Justiça, trial 188/94.

25. C. GEFFRAY, *Rapport d'activité n° 4...*, op. cit. : 106-108 ; Porto Velho, Forum de Justiça, *M.A. da Silva Souza trial*, fl. 638-640.

26. « [In] the province of Guandong, in 1994, security forces, the armed police, and all of their subordinate units were ordered "to stop running or acquiring an interest in leisure centers, including saunas, massage parlors, and hair salons". The general inspector's office of the Ministry of Security took the same steps at the national level to put an end to the development of "leisure clubs and casinos prospering because of their links to local police", which were supported by former prisoners, compromising the campaign against crime », *China Daily*, Oct. 18, 1994, quoted by G. FABRE, *Décentralisation...*, op. cit. : 14 [translator's note : the quotation is translated from Fabre's French text].

27. J.-F. BAYART, S. ELLIS & B. HIBOU, *La criminalisation...*, op. cit.

This criminalization of the *sources* of certain State representatives' illegal incomes leads to the supposition that the classic procedures for abusing power – misappropriation of funds in the framework of what J.-F. Bayart calls the « kleptocratic State » – no longer satisfy the financial aspirations of State elites. The traditional sources of clientelist manna are drying up, and many commentators correlate this phenomenon with the genesis of the widening of the contemporary field of power abuse, where networks of officials endeavor to place criminal activities under their control – when they are not getting directly involved in them themselves in the framework of what Bayart calls a « malefactor State »<sup>28</sup>. Indeed, it is logical to suppose that the drying up of the source of traditional forms of illegal income drawn from the State (*rentes étatiques*) causes growth simultaneously in (a) the social following of certain criminals providing manna (up to the point of enabling them to occupy a position in the State) and (b) certain State representatives' enticement toward tapping this criminal wealth themselves (by abusing State power). Through this process, then, criminals and officials are likely to grow closer, to meet with each other and work together, while at the same time the competition for access to the different sources of illegal income (*rentes*) is exacerbated. This rivalry can reach a point of rupture when one group decides to contend through military means with the elites controlling the State over access to the sources of illegal income. An armed group could remain in place in such circumstances, thanks to their success in tapping the wealth, and, potentially, to the support of external commercial or political powers themselves attracted by the same wealth (or motivated by other ends)... In any case, such a group would have trouble surviving in a position of sedition, unless it were to claim legitimacy for its intervention on the basis of the ideal by invoking the name of some communitarian principle. Ethnic affiliation remains one such principle (the principle of collective identification), in Africa and elsewhere, by virtue of which a fraction of the beholden populations *cut off from the manna* can take the initiative (or take it anew) to intervene in a political arena structured by clientelism.

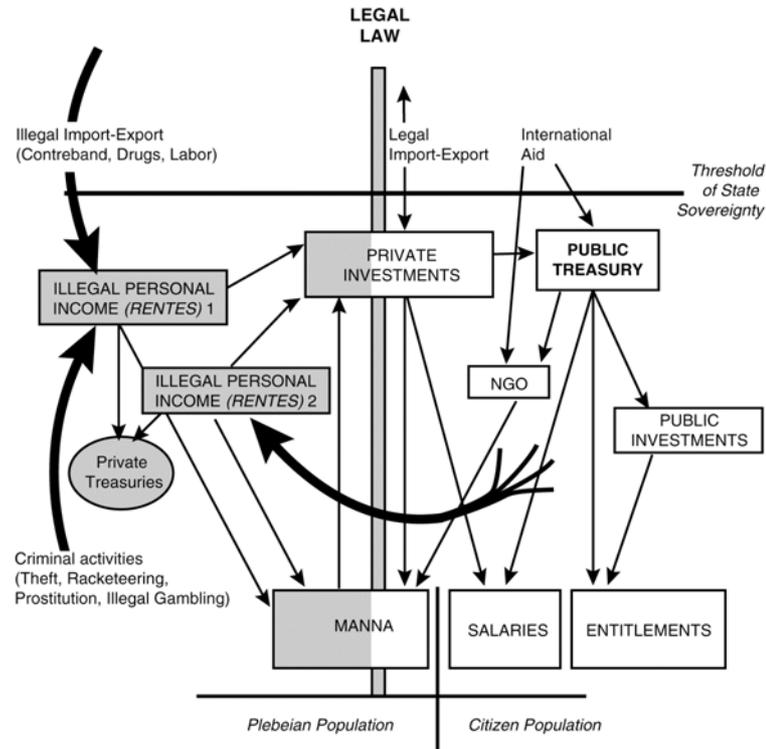
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We can fill out our diagram in Figure 1 by adding the traditional source of illegal income, the use of an official capacity to pillage the Public Treasury in order to contribute to « illegal personal income 2 », independently from the criminal activity in the strict sense, which constitutes « illegal personal income 1 » (national and international trafficking, theft, racketeering, prostitution, etc.). This allows us to get a global image of the various wealth flows, of their sources and destinations, within and outside the legal law.

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28. Making the State itself the culprit of the « wrongdoing, » however, is still improper, in my view ; in this case too, it is not possible to speak of a counterfeit State as long as an Annex to the State Treasury responsible for the printing and administration of counterfeit currency has not been officially inaugurated. In this sense, the kleptocratic State does not exist either : there are only networks of officials who have been entrusted with certain State duties and who abuse these to steal or print counterfeit currency.

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Fig. – 2. Sources and destinations of illegal income (*rentes*)

*Commentary for Figure 2*

All of the flows of wealth appearing in the legal sphere in the above diagram can be diverted in order to feed into « illegal personal income (*rentes*) 2 » in the illegal sphere, each deviation constituting one of the many forms of the abuse of power (misuse of public property, misappropriation of funds, overbilling or underbilling of imports and exports, etc.). The destination of « illegal income 1 » and « illegal income 2 » remains the same, though they have different sources : they are equally liable to be converted into private treasuries or manna, or reinvested in the legal commercial sphere, where they are laundered. In all cases, the manna that is added to investment capital has the same capacity to polarize a differentiation within the legal economy to the advantage of the more consequential clients to whom the manna is allocated, regardless of its source.

In addition, two large pools of wealth are respectively situated on opposite sides of the boundary constituted by the legal law : on one side, the stockpiles of illegal personal income (1 and 2), and, on the other, the Public Treasury as it is supposed to be managed in a State deemed technically trustworthy from the perspective of the contemporary international community within which it is integrated. The wealth distributed from each of these pools, in turn, takes two distinct forms, since the wealth issuing

legally from the Treasury does not resemble the manna allocated in the illegal sphere. The wealth legally issuing from the Treasury takes the form of shares that are granted in pursuance of a written legal code governing their distribution and that do not take the character of benefactions granted to beholden beneficiaries. Indeed, as long as they are distributed according to the norm of the modern State, the public funds comprise a set of shares disbursed to the (tax-paying) citizens entitled to receive them, who are in a position to claim on the basis of the legal law their rightful portion in the sharing out of them, *viz.* the allotment of their *entitlements*. In other words, the wealth issuing from the Public Treasuries of contemporary States does not, according to the letter of the States' laws, constitute a set of « benefactions » that may be credited to a person incarnating Providence, but a set of entitlements that may only be credited to the carrying out of the legal law ; accordingly, this wealth is not manna<sup>29</sup>.

Finally, these two forms of non-market wealth, manna and entitlements, are allocated according to two distinct principles of distribution, and they institute populations whose subjective structure, too, is radically different, since the citizen people is not equivalent to the subjected population beholden to someone. The two populations are not, of course, physically separate, they can even coincide with each other, but this still does not keep each individual from having to face the dilemma of choosing between alternative identities as a *client* (plebeian) or as a *citizen* in the State. In such a context, the conditions governing subsistence weigh heavily upon what each person *believes* himself to be, especially in the case of those who are not in a position to earn a decent living from their *salary* (legal monetary revenue) and their *entitlements* (legal State allocations and services, if they exist) alone, and who are drastically dependent upon manna (personalized clientelist allocations and services, whether legal or illegal)...

It is worth noting that the three forms of wealth allocated to the mass of the population, manna, legal salaries, and entitlements, correspond to the three components of the real remuneration paid for work that were distinguished by A. Morice in Brazil's construction and public works sector, for example<sup>30</sup>. Morice interprets the notorious lack of legal sources of revenue (salaries and entitlements) as a structural phenomenon that renders indispensable the supplementary allocation of favors at the employers' discretion, which is a precondition for the paternalistic mobilizing of the labor force. The patronal manna, while not necessarily illegal, is not a recognized source of income ; it belongs to the domain that is commonly referred to as « informal ».

29. Contrary to what is implied by the infelicitous expression « Welfare State. » [in French « État providence »]. The public funds allocated to associations tend to take the character of legal (non-illegal) manna when national NGOs appear as the new institutional purveyors of State clientelism from outside the State.

30. A. MORICE, *Recherches sur le paternalisme...*, *op. cit.* : 114. Morice differentiates salaries in the strict sense, which appear on paychecks, « deferred salaries, » consisting of entitlements whose administration is delegated to the employers (contingency funds for duration of service, paid vacations, annual bonuses, « to which can be added the unemployment benefits paid for by the State, » etc.), and « clandestine compensation, » which corresponds to – and functions as – manna.

### The Modern State as Belief

Thus far, I have proceeded in my reflection as if it were self-evident, in a way, that the Public Treasury was to be pillaged by those who were in charge of it and managed it in the name of the State ideal. It is as if the States' written legal laws and Constitution were detached from any kind of ideal law and, consequently, as if practically no one believed in the proclaimed ideals of the State any more than they did in the legal destination of the funds from the Public Treasury. It is as if it were self-evident that, whatever a State's legal configuration and whatever its representatives' rhetoric, the collective faith maintaining the legitimacy of public authorities could in fact only result from the allocation of manna circulating from under the State and the letter of its laws, within clientele focused around powerful personalities who are loved or feared by the obscure or colorful crowd of those beholden to them. I have proceeded as if these personalities had themselves undertaken a career in the State not to serve its ideals, but because having control over State functions appeared as a strategic necessity for gaining access to *rentes* that could be converted into private treasuries, capital, and manna. Finally, as if there were nothing more at stake in controlling the State than the fact that it is a precondition for that kind of clientelist promotion, such that the patrons of clientele, while not abandoning the public good, interpreted its ideal in such a way that they condemned its official and proclaimed version to the inevitable fate of populist subversion, with the populations' shared (sometimes passionate) consent. I have not raised the issue connected with this official version of the common good which the State's representatives publicly affirm as the ideal and which is, therefore, considered to govern the social existence of the State: this official characterization of the common good is everywhere conditioned by the internationally dominant figure of the State as functioning under the « rule of law », wherein common wealth is subject to a law governing its legal distribution.

What are we to think about this discrepancy between the State's laws and clientelist practices, if we grant that the reference to a State where the rule of law obtains boils down to just the effect of a new « conditionality » for access to international aid or a simple reflection of world dependence upon the West? One cannot fail to recognize the existence among populations of a democratic aspiration to the rule of law, beyond the structural populist falsification of its public expression; nor can one ignore the deep hopes invested in the appeal to the authority of the legal laws, hopes which are all the more moving because the multitude of these petitions renders them no less powerless to retain the law when it evades them... This is one aspect of the social and political suffering that exists in dependent countries, and it is precisely for this reason that it is important to understand what makes legal laws fall away like this from any kind of symbolic anchoring in the ideal. What brings it about that no point of law succeeds in ruling as law and in being applied to the full extent of its principle (except in a circumstantial relation of forces), and that a modification of the law would not change anything, since, as B. Hibou notes, « the principle governing behaviors consists precisely in getting around and scoffing the rules »?<sup>31</sup> It is as if these

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31. B. HIBOU, « Le "capital social" de l'État falsificateur, ou les ruses de l'intelligence économique », in J.F. BAYART *et al.*, *La criminalisation...*, *op. cit.* : 136.

rules comprised a sort of imaginary tapestry into the stitches of which clientelist relationships are to be tirelessly woven to form the nodes at which social subsistence actually resides, even if this entails constantly having to recast them in adjustment to the upheavals affecting the legal laws' web. The tapestry is imaginary, which also means it diverts attention, but whose attention? That of the sponsors? That of the populations who, despite all odds, still willfully want to believe in the social existence of the law? That of the brave souls who denounce the subversion of the laws and end up all alone, banging their head against the symbolic wall of the law, while the patrons of clientele and their retinues pass right through it like ghosts?

We could pose the problem in an entirely different way, even though it might mean giving our questions a more provocative air. If it is true that modern law is unable to obtain according to its principle, then why is it that populations and those who dominate them cannot benefit instead from a legal system that conforms to the clientelist ideal law, in which they evidently believe and which ultimately engages their faith? After all, the State long allowed the wealth from its Treasury to be allocated in the form of manna; this principle of distribution even characterized the mode of circulation of public wealth since its origin, six thousand years ago... Since the kingdom of Sumer up to the last (non-constitutional) monarchies, manna was always legally redistributed as such within the space of the State<sup>32</sup>. The public good inevitably proceeded from some *Imperator's* person, who was the guarantor of the Treasury and the *institutional* leader of a people comprised of individuals legally beholden to him, that is his subjects. The king's person was itself an institution (unlike the patron of a clientele), and this was written in the tables: the Sovereign King *legally* incarnated the double figure of Providence and the Commander for his subjects, in conformity with an ideal law whose various statements were deployed in the religious sphere, since the matrix of the law was always, in that era, of a divine order. This is Max Weber's « patrimonial » State, whose forms of subjection admittedly coincide in many respects with those of clientelism, to such a degree that J.F. Médard qualified the contemporary manifestations of the latter as « neo-patrimonial »...<sup>33</sup> We should note, however, that clientelist practices do not result from the carrying out of the legal laws, since they are indifferent to these laws and can just as well be performed in subversion or violation of them. In this sense, the a-legal practices of clientelism can, it seems, hardly be assimilated with patrimonial legality. Taking clientelism as a sort of outlaw patrimonialism and patrimonialism as a form of legal clientelism is perhaps not sufficient for resolving the difficulty, as J.-F. Médard seems to suggest it is. It is of no little importance, in my view, that manna is allocated *within* or *outside* the constraints of the law, in the fulfilling of the institutions or in the hastening of their downfall. The distinction seems to mark a crucial difference, and it is not certain that its

32. It is to be remembered that the State, in the sense in which it is evoked here, was born six thousand years ago around the administration of repositories or depots storing treasuries for public use – basic food reserves in this instance – and that these storage sites for public goods were fortified, according to A. Joxe, before the construction of city walls and before the invention of the permanent army of specialized soldiers and imperial wars: A. JOXE, *Voyage aux sources de la guerre*, Paris, PUF, 1991 : 91-99, 443 p.

33. J.-F. MÉDARD, « La crise de l'État néo-patrimonial et l'évolution de la corruption en Afrique subsaharienne, » *Mondes en Développement*, 26, 1998 : 55-67.

naming, through the use of the suffix « neo » (patrimonialism), is enough to account for that which separates the two social configurations.

The somewhat brash question that I posed above could, moreover, be formulated in Weberian terms : *why has patrimonialism become impossible in today's world*, as inaccessible to the populations that interest us here as to the State governed by the rule of law ? Yet the president of Angola, Eduardo dos Santos, does not seem so far from patrimonialism. He still enjoys the legitimacy of being leader of a revolutionary and anti-imperialist single party that was forged out of the old Marxist-Leninist battles of the MPLA ; he also enjoys, starting from a more recent date, the democratic legitimacy of being the winner of elections with universal suffrage, despite the massacre of his adversaries that was perpetrated in the days following the official announcement of the election returns ; finally, he has advanced toward a form of institutionalization of his clientelist legitimacy through his E. dos Santos Foundation, which (as we have seen) enables him, *inter alia*, to convert public funds into personalized presidential manna... Notwithstanding the imposing accumulation of these interlinked forms of legitimacy, however, and despite the political power and aura of charisma that result from it for the head of State, he will most likely never manage to benefit from the institutional realization of his authority's clientelist principle : he will never be crowned as King of Angola and most probably has no such intention himself, no more than does any other domineering yet sensible statesmen in Africa or elsewhere (those who have had such an intention and have acted upon it, in Central Africa, have left an impression of tragic buffoonery staged with the consent of the former colonial administration)... These heads of State cannot make themselves kings for the same reasons, presumably, that keep patrimonialist procedures that are carried out *de facto* from being codified and proclaimed *de jure* and keep the codified and proclaimed laws of the State observing the rule of law from being integrated and carried out *de facto* according to their principle. I do not hazard entering into a discussion that would take us too far away from my subject and my sphere of expertise, but, in conclusion, I can at least hold back up for consideration the content of the very special kind of belief that is situated at the first principle of what is called the State with the rule of law – that *ideal-State* to which the members of so many populations seem to aspire without collectively believing in it for themselves, even while the State observing the rule of law, as *Ideal of the State*, is already supposed to control the social existence of the majority of their public institutions today (practically everywhere in Latin America and in many African and Asian countries).

Indeed, the modern State (like other forms of the State) is an institution whose social existence (as for other institutions) is dependent upon a belief that is liable either to be reinforced or renounced, like any belief... This belief serves an immutable ideal that stands beyond the variety of historical forms the State takes : it is always only a matter of the public good. Thus, the ideal does not in and of itself make it possible to specify the collective beliefs associated with different forms of the State. What distinctively characterizes these beliefs stems instead from that which serves to *guarantee* that ideal in the eyes of the populations and which constitutes the very object of their beliefs, by virtue of which the State remains in place and exists socially, whether according to its principle or not. In the patrimonial State, to adopt

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the Weberian typology, the situation was rather simple, since an *Imperator's* person guaranteed the public good as well as the Treasury, from which he drew the manna allotted to his subjects. All were indebted to him for his benefactions and liable to him for any of their failures to meet an ideal law that he incarnated in his person. Since the king was, after all, a real subject, in other words fallible in body and speech, and since no one really failed to realize this, some fictional subject of a divine nature (or this subject's divine will) was supposed to be incarnated or represented in him, when it was not generally believed that the *Imperator* himself was of divine origin (all kings, not only the earliest English ones, in some way possessed « two bodies »)<sup>34</sup>. These fictional subjects constituted the specific object of the ultimate belief upon which the legitimacy and social existence of States were founded.

The modern State's Treasury, however, is not manna. It is distributed according to a law governing its disembodied legal distribution, on the basis of which citizens can claim the allotment of their share of the wealth held in common ; this share does not appear to them as a favor, but as a right. In order to institute, within the course of history, such Treasuries from which no manna issues, it has generally been necessary to cut off the head of the *Imperatores* that guarded and guaranteed them, while taking care not to put others in their place. We can ask ourselves, then, what emerged to guarantee, in the eyes of all, that kind of law governing distribution and that kind of Treasury. Indeed, there was no longer a King, and the State, however much « rationality » went into its administration, could not by itself guarantee a law to which the citizens could formally have recourse against it<sup>35</sup>. What happened once the *Imperatores* were beheaded, when a divine order no longer seriously served to guarantee the public good according to which, come what may, the new representatives of the State still had to organize their action ? What took the place of the Sovereign *King's* cut-off head was no longer a divine principle, but the Sovereign *People*. This « people » only has a symbolic existence, and thus does not have any more of a real existence than the gods or the « king's second body » : it is a fictional subject that, like them, is the object of belief, but the legitimacy of the modern State organized itself in accordance with that belief. A fictional subject guaranteeing the State ideal, the Sovereign People is also a sacred fiction incarnated as such in popular juries or electoral returns, for example (procedures which, in and of themselves, are altogether irrational, being supposed to put an end to the recurring doubt about the guilt of a defendant or about the orientation of desires relating to the common good : where the King used to decide, now the People decides). Whether Gods or the People, fictional subjects are ultimately the object of any and every kind of belief that serves to guarantee the law in the minds of men : they render sacred whatever they touch...<sup>36</sup> The fiction of the People is not, for all that, of a comparable nature to that which was incarnated in sovereign Kings. In truth, the belief and its object, the new fiction, are here no longer religious, but political ; the sovereign People is even the very fiction upon which,

34. E. KANTOROWICZ, *Les Deux corps du Roi*, Paris, Gallimard, 1991 (1957).

35. Reason guarantees the ideal of the administration, but not the public good, whatever the most devoted top officials and Max Weber, in their naive rationalism, may think...

36. M. SAFOUAN, *La parole ou la mort*, Paris, Le Seuil, 1993 : 57-58, 126 p. Safouan develops an analytic conception, inspired by Lacan, that I follow here ; it postulates the invention of a named fictional subject (name of the law), which is simultaneously « useless and necessary » for guaranteeing the simple carrying out of the symbolic function (law of the name).

provided one believes in it, the possibility of *politics* as such is founded. This belief tends to undermine all others, since it prohibits any personal incarnation of the ideal law and preemptively destroys any legitimacy that *Imperatores* might have : even if someone should manage to slip into this position by breaking in, there is room there for no other kind of figure than that of the Greek tyrant endowed with the demagogic and clientelist qualities that can quickly assure his populist triumph.

The apportioning of the Treasury in the form of entitlements is a simple principle of distribution, as obvious as it is « rational » in appearance ; but, in order to be applied in reality according to its norm, it nonetheless presupposes being guaranteed from above by the success of a collective procedure that takes place in the symbolic order. In this case, the functioning of the modern Public Treasury presupposes the existence of that particular collective belief according to which the sovereign *is* the People, and not some *Imperator* who wants the people's good ; a belief according to which paying taxes is a civic act of participation in sovereignty rather than the recognition of allegiance ; according to which the community institutes itself as fraternal, its members counting as so many small-scale free masters participating in a common sovereignty that is independent of any paternal incarnation of the law (what we call, somewhat strangely, « individuals »), etc.

Everyone knows, however, that a belief is not decreed into existence, and there lies the difficulty, of course, the tricky knot of the whole matter, including for researchers. We can acknowledge that the State observing the rule of law is the name of a (symbolic) Ideal of the State and an (imaginary) ideal State, and thus, potentially, something that is a stake in social and political struggle as well as an institutional reality. But we must also acknowledge that the populations that believe in it for themselves, even as they take advantage of this belief before the others and for the others – in other words, the populations in whose eyes the State governed by the rule of law is the institution of an ideal law guaranteed by the Sovereign People in which they believe –, are still to this day the populations of States that are masters of the world. It is upon the interpretation of this phenomenon that culturalists theories are built, which run the risk of leading our reflection onto the most slippery, if not dangerous, ground ; and it is upon the denial of this same phenomenon that the most trite and soothing considerations are founded, formulated on behalf of various bodies that are, admittedly, forced by their function into a form of inanity (international diplomatic, political or economic institutions, media).

Between the two, researchers have a responsibility.

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