The Cultural Power of Law? Conjunctive Readings

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Sally Merry's (1999) *Colonizing Hawai'i: The Cultural Power of Law* provides a compelling account of the cultural transformation of the Kingdom of Hawaii in the nineteenth century. The focus is on the law, particularly on the manner in which Hawaiian alii (chiefs) and American lawyers and missionaries sought to make of Hawaii a modern, sovereign nation on the model of the "civilized world," a process that demanded the dissolution of Hawaiian modes of governance and the concomitant contortions of the system of rank that they had entailed. It is also a narrative of the competing interests of American missionaries and American traders and merchants, who desired different ends but whose means sometimes had complementary effects. For example, missionary efforts to promote marital fidelity worked in tandem with the needs of emerging and transforming social hierarchies: Adulterers had the "choice" to work off their sentences by building roads for the chiefs. And people deemed (by missionaries) incapable of governing their sexual appetites could scarcely be trusted (by plantation owners) to govern their own nation (p. 250). Notions of the body, sexuality, gender, race, citizenship, and belonging are at the center of the transformations the book documents in a richly evocative account of the colonial disciplining of a Pacific people. At the same time, Merry shows how the disciplinary process was incomplete, fractured, and uncertain, and that colonized Hawaiians of both elite and commoner rank used the colonizing process at various times to further their own ends, as an arena for making claims to personhood. Women, for example, became objects of the law's "surveillance and control" in the colonial policing of sexuality, but at the same time women were able to use the resources colonial law provided to challenge wife-battering (p. 265).

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I have been asked to provide a "reading" of Merry's book. I have been told not to review the book, but to reflect on its contribution to wider debates in sociolegal studies and the anthropology of law. Thus, I will not go into detail about the fascinating material Merry has brought together in this remarkable work. Rather, I would like to explore the book's attention to the relationship between "culture" and "law." I want to think about the ambiguities that, as Merry indicates, emerge from the conjunction linking these two terms; a conjunction that points toward a certain theoretical exhaustion in the domains of inquiry that take "culture" and "law" as their objects.

In an introduction to a recent collection of articles on law, culture, and colonialism, John Comaroff (2001) notes that much of the recent scholarship in this area has rested "between two poles": law is understood to be "a vehicle simultaneously of governmentality and of its subversion, of subjection and emancipation, of dispossession and reappropriation" (Comaroff 2001:307). "To the extent that a point of rest has been reached" between these two poles, "we are left with a very basic question: Is there anything more to say on the topic, other than to offer further historical and/or ethnographic illustration" (2001:307)? Comaroff believes that indeed there is something more to say, and that in addition to further empirical illustration (the "exactly" whys, whens, and hows, as he puts it, p. 308), we have yet to delve deeply enough into four specific areas: first, the frames of reference of colonial law; second, the manner in which law was "*constitutive* of colonialism, tout court" (p. 309, emphasis in original); third, the use of colonies as experimental laboratories for methods of governance and modalities of regulation; and fourth, the contradictions and complex relations among different kinds of colonizers that were "often negotiated in the space of law" (p. 311).

Merry's book provides ample illustration of each of Comaroff's suggestions for what more there is to say about law, culture, and colonialism. She outlines the discursive referents of law and legality in the Hawaiian context, both in the period preceding the importation by the alii of legal forms from New England and in the aftermath of that appropriation. She demonstrates the constitutive power of law to create a new, colonial society in the islands, tout court. She shows how New England lawyers and others circulated information and legal procedures back and forth between the islands and the continental United States, especially those New Englanders who were out to "do good," not just to "do well" (p. 26). The contending interests and projects of missionaries and merchants and plantation owners sometimes conflicted and sometimes worked in tandem, both in the reformation of Hawaiian society and in the legal arenas in which they found themselves thrown by circumstance and opportunity.

Still, however, I am uneasy about the place of "law and culture" in both Comaroff's program and Merry's case study. Comaroff concludes his essay by writing that case studies "offer us an eye-opening excursion into very different colonial theaters, each with its own cultures of legality" (Comaroff 2001:213). To me, this suggests that the "anything more to say" with which we are left simply takes the form of "another country heard from," Clifford Geertz's phrase to describe the anthropological project more generally as excursions into unfamiliar lifeways and conceptual territories that "present the sociological mind with bodied stuff on which to feed" (Geertz 1973:23). Restlessly between the two poles identified by Comaroff, the new scholarship on culture, law, and colonialism provides specificity and diversity, cultures of legality and different theaters—in other words, plurality and multiplicity in the interrelation and instantiation of "law and culture" in colonial contexts. Merry shows how the different cultures played out in a transnational theater that brought Hawaii and the United States onto the same stage, a co-production, as it were, constituting Hawaii as a particular kind of place with a particular kind of people even as it created the standards of the "civilization" of which American missionaries and traders considered themselves the bearers. The Hawaiian people's own resistance to American law's disciplining efforts provides insight into yet another legal theater and culture. It was a culture of illegality, complexly intertwined with the cultures of legality that conjured new subjects: the Kanaka Maoli, who possessed a "language and culture" (Merry 1999:xiii).

Merry is clearly cautious on the question of this possession, not wanting to delegitimize the rights claims of contemporary Hawaiians seeking sovereignty and redress from the "blindness" (p. 27) that has afflicted American assessments of the United States's imperial histories in the Pacific and elsewhere. I, too, am concerned lest my thoughts here further blind the imperial eye. At the same time, this caution bespeaks a slippage between two modalities of argument that are of different orders. The analytical impulse to find the cultures is a relativizing mode of knowledge production; the cautionary impulse to respect the (proprietary) claims of a movement is a normative one. As Annelise Riles argues, "[o]ne cannot be a relativist and stand for something, it is often said. Each mode engulfs the entire enterprise of representation, so that if I write in one genre, I cannot invoke the other" (1994:648). The epistemological quandary of the present can be said to lie in the translation and tracking back and forth between reflexive and normative modes of knowledge production, Riles further argues. The translation is possible, it seems to me, because the multiplicities warranted by relativism—different cultures—can be appropriated for normative projects as empirically given, abstractable and,

hence, alienable and ownable properties. To the extent that property is a normative claim, then, the empirically given facts of culture demand their own normative engagement (an engagement made evident in the slippage in Anglo-American property law between "property" as a discipline of inquiry and "property" as a sociological datum). If anthropology once provided the discipline of law with an "outside," an "over there" where (legal) things are different, the engagement between the disciplines of law and anthropology now is encompassed by the normative discussion over the very dichotomy between relativism and normativity that animates the knowledge production of each (Riles 1994:650).

I am unsettled, then, by the relativizing move to find multiple cultures and theaters, because that move is of a kind with the quest for empirically given facts whose family resemblance to objects of property reminds me of multiplicities of another kind. (I am not unsettled, as one might suppose, by their similarity to those of the old "legal pluralism" school of thought, which sought to outline the multiple and overlapping legal forms occupying colonial terrains; see Merry 1988.) The multiplicities I am reminded of are invoked by Merry herself in the introduction to her book: those that are the products of cultural fragmentation, transplantation, hybridity, appropriation, and re-appropriation that occur in the "contact zone" within and between complex social fields (see Merry 1999:28–9). The analytical notion of the contact zone of appropriation and reappropriation nicely decenters the old, bounded, statist concept of "culture" borrowed by anthropology from nineteenth-century German Romanticism (Merry 1999:29). This older notion of culture is one that contemporary ethno-national and sovereignty movements—including the Hawaiian sovereignty movement—have themselves appropriated. Merry is wary of such contemporary assertions of the "right to culture" or "right to difference," even as she is sympathetic to the fact that such claims often must be phrased in such terms in order to be audible to state and international interlocutors. Such assertions of cultural authenticity can be taken as creative rather than naïve reappropriations of the culture concept, and thus a "replaying . . . with different meanings of practices" of the old logic of "culture" (Merry 1999:30). Indeed, it is this possibility of creative recombination that interests Merry more generally, and that helps her, analytically, to obviate the old Romantic culture concept. She cites the "well-known" example of Trobriand cricket, the subject of a popular ethnographic film, as a "dramatic illustration of such subversive appropriation" (1999:30).

Although it occupies only one sentence and a footnote, Trobriand cricket stands in Merry's text as both an example of the kind of ethnographic data that cannot be accounted for by the old concept

of culture, *and* as an example of an analytical form that the book puts to use for understanding colonialism. James Clifford, in his own invocation of Trobriand cricket, makes explicit the unity of this particular ethnographic datum and its analysis by anthropology: Like the Trobriand Islanders who have incorporated and recombined cricket with their own cultural forms, "is not every ethnographer ... a reinventor and reshuffler of realities" (Clifford 1988:147)? For Clifford, as for Merry, the acknowledgement of cultural appropriation and reappropriation is a "democratizing move," in Marilyn Strathern's terms, because the specific "configuration of meaning" of the ethnographic object itself is revealed to be the creation of many other such objects (Strathern 1999:120). If culture is always hybrid and "never pure," it can also "never be pinned down, for its characteristics do not reside in any one part but in the way the parts work together" (1999:120). A hybrid, such as Trobriand cricket or Hawaiian colonial law and culture, is thus "a perfect trope for culture as re-creative combination" (1999:120). An asymmetry lies within this trope, of course, for despite the democratizing aspect of the "discovery" of cultural appropriation and reappropriation, the formulation of the trope depends upon specifically Euro-American conceptions of identity, ownership, and inventiveness. These are "not socially innocent," Strathern argues (1999:122), because they have a greater reach than non-Euro-American conceptions, such that "'we' can simultaneously recognize ourselves both in what we appropriate from others and in what they appropriate from us. We are not only here, we are also there" (Strathern 1999:123).

These conceptions are also not socially innocent because the tropes "turn out to be currency already in circulation" (Strathern 1999:130)—in the kinds of cultural rights claims that rely on cultural authenticity such as those Merry gestures toward. In their very enactment as *rights* claims, the key technology of Euro-American bourgeois legality, they demonstrate their always-already composite, hybrid nature (see Collier, Maurer, & Suarez-Navaz 1995; Maurer 1997, 2003). "Their" normative acts are "our" ethnographic facts, at the same time that the very delineation and purification of their facticity by way of their enlistment in "our" relativistic arguments itself is a normative act. So ethnographic facts are moral acts twice over.

This observation leads me to another: namely, that the exhaustion of paradigms to which Comaroff alludes ("is there anything more to say?") is specifically the exhaustion of the constitutive paradigm or social construction paradigm in sociolegal research. The status of the "and" between law and culture went from monodirectional determination (with either pole the starting point) to mutual constitution. The mutual constitution framework allowed

scholars to open up the black boxes on either side of the conjunction but, at the same time, presupposed a wider frame within which each operated (a frame delineated by power, and/or by sociality more broadly conceived) and left the conjunction itself in the black box. Leaving the "and" inside law and culture ultimately left unexamined the relationship between law/culture as modalities of knowledge (i.e., the tasks, tools, and methods of that which was supposedly doing the "constitution" in the other of the two domains) and as modalities of knowledge that call themselves "social" (i.e., the social, humanistic, and legal sciences). My use of the term *science* here is considered, for social studies of science, in "socializing" the natural facts with which scientific inquiry contends, have come up against the same theoretical exhaustion, as they discovered more and more "social" making more and more "nature," and in the process rearticulated a kind of anthropocentric Cartesianism (Latour 1999; Pottage 2001). Missing was any account of the network of human and nonhuman agents that, *together*, push back against the "social" and in the process make their own moral claims known (see Raffles 2001).

We are all too familiar with the old debates about whether law is a part of culture; culture is a part of law; culture and law are parts of each other, and of a colonial process, etc. The level of scale and the causal arrows implied by the "ands" have us engaging in debates over whether, when, how, and why law makes culture, culture makes law, and mutual constitution makes the arrows go both ways. All of these possibilities are translations of one another, for they remain within the cause-and-effect logic of the conjunction.

However, there is another sense to the conjunction between law and culture. Merry's book, particularly in its caution over the proprietary claims that complicate any reading of the past, could be pushed to present a lateralizing move, an "and" of seriation and lying-alongside rather than encompassment by causation or determination. This "and" would entail an engagement with the twin techniques of personification and reification, the making of persons and things, not by the social but by the network of human and nonhuman actors. The latter include all the ethnographic data that do not speak back: the houses, clothes, sugar, and so forth that together "worlded" colonial Hawaii (after Zhan 2001). It also includes the documents of the archive to which Merry had recourse, not as papers containing words and numbers that "say," that is, refer to, something, but rather as material objects that give to see particular realities and that as *objects*—not collections of words with meaning, but as "mere" pieces of paper—make certain realities happen and push back against any of the interpretive methods with which one might "read" them (see Riles & Miyazaki 2004).

The task for sociolegal scholars, then, may not be to "read" at all, nor to use people as a vehicle for understanding things or vice versa. Rather, the task may be to set the techniques of personification and reification alongside one another ("this, and that, and that, too," not "this causes that"), and to see what happens. Such a move will not get us closer to any "answers" of the empirical or theoretical kind. But it just may help us "stop thinking about the world in certain ways" (Strathern 1988:11). And here, stopping thinking, and stopping reading, for a moment, at least, while we catch up with our objects, may ultimately prove more productive than not.

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