Comment on Comments

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It is a rare pleasure to have three excellent scholars read and comment on one's book and think about its implications for sociolegal studies. Each of these commentaries makes valuable suggestions for expanding and developing a sociolegal studies framework that incorporates history. Some suggestions would have improved the book, while others point to new projects that could contribute theoretically and methodologically to developing an historical approach to sociolegal studies.

In his insightful essay, Bill Maurer reminds us that in the law and culture equation, we have devoted far more attention to the analysis of the terms that anchor the equation ("law" and "culture") than to the meanings of the "and" itself. The same is true for "law" and "society," of course. Scholars have challenged the separation into two discrete entities that the "and" entails, but as Maurer points out, too few have explored what kinds of processes are subsumed under the term. The notion of mutually constitutive relations between law and culture is an advance over the notion that these are simply separate entities, but this formulation ignores the relative power relations of the two terms along with the complicated ways that one comes to shape the other. It seems similar to issuing mutual restraining orders in cases of domestic violence. In that case, the mutuality indicates that there is some interaction within the violence, but the nature of the blows, their sequence, their provocations, the way each assault changes the conditions for the next blow, are completely effaced in a framework of apparent equality entailed in the notion of mutuality. Similarly, once the interconnectedness of law and culture are acknowledged, the concept of mutual constitution does little analytic work in disentangling the important questions of power and change. These include the relative power of forms of law, law enforcement, legal consciousness, and legal regulation in forming cultural practices and the power of cultural practices to influence and channel legal regulations.

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Maurer suggests that one way to deepen our analysis of the "and" is to consider techniques of personification and reification, to take seriously the objects of law such as documents, papers, texts, and forms. This is clearly a productive mode of inquiry. These instantiations of legal practice bring a fixity to legal relations which themselves constitute a form of power (see Riles 2004). Thinking about the "and" over time provides another way of conceptualizing this relationship. Although causality is notoriously elusive, an historical analysis provides at least one way of thinking about how change in one sphere is temporally related to others. One of the advantages of historical research is the possibility of tracing law's changing intervention in everyday life over time with relation to changes to politics, economics, and society, as I tried to do with nineteenth-century Hawai'i. Does this mean that the law produced culture, or that its changing operations were caused by changes in culture? Not in any simple sense, but it did appear in my research that the law was mobilized in different ways at different periods. Although it was often a means to control the social lives of new immigrants, the identities of the immigrants changed. Cultural definitions of groups that appeared dangerous shaped prosecution patterns, while features of these groups' everyday lives, such as smoking opium or gambling, were defined as worthy of legal intervention.

These examples show how law and culture are two sides of a system of power relations. Law is not equivalent to culture but is a distinctive set of institutions, practices, and rules used by states to exert control over everyday social life. Although law's rules, institutions, and practices are culturally formed, their exercise plays a particularly powerful role in forming the rules and practices of everyday life. Because law is linked to state power, law and culture are not two equal entities but fundamentally unequal in their access to power. As Maurer notes, the paradigm of law and culture is not exhausted; but the nature of the "and" requires further theoretical and empirical investigation. Historical analysis provides one approach to theorizing the "and" more extensively.

In Kunal Parker's thoughtful comments on my book, he notes that my approach to the analysis of the court records depends too heavily on a homogeneous notion of time. This is a very interesting idea, and I agree fully that an approach less bounded by the abstract grid of time would have provided a better grasp of the flow of events through this court. He points out that time itself is cultural, experienced according to different cultural logics by different groups such as Native Hawaiians and whites, a perspective that I do not consider in the book. Instead, I imposed a grid of years and case samples on my data long before I had any idea what the relevant time periods or categories of temporal experience might be. It is intriguing to consider what might have emerged had I done

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the study differently, in a way more attentive to the cultural construction of time. It would have produced a different book. I did return to the records to focus in more detail on domestic violence and wife desertion cases and analyzed all the cases for a sixty-year period rather than sampling every decade (Merry 2002). The advantage of this approach was greater flexibility in my temporal analysis and the possibility of following the patterns of particular individuals over time. By using litigants' names, I could trace reappearances in court over time. This also freed me from the time grid I had developed for analyzing the other court data. There was a more gradual ebb and flow of cases as well as a pattern of repeat users I observed earlier in New England courts (Merry 1990).

The focus of Parker's comments is the relationship between anthropological and historical conceptions of the field and the nature of data. His valuable comparison of anthropology and history and each discipline's understandings of the "field" emphasizes their differences. While I am persuaded that anthropologists and historians take different perspectives on the nature of the sources they have available to them and their open-endedness, I think the differences are far less stark than Parker suggests. Perhaps the differences do exist in their fantasies, as he suggests, but only there. While anthropologists begin from the notion that there are too many facts and too much context so that the problem is selection rather than discovery, they are also fully aware that some facts are more accessible than others and that ethnography is limited by the need to find places where people gather and social life takes place. Every ethnographer is conscious of all that he or she cannot observe, of the facets of social life that are closed to him or her, and of the limited slice that can be glimpsed and understood. Access to information may be easier with living subjects than with archives, but the sense of limitation and restriction is very present in ethnography as well. Theory alone does determine the "field" in anthropology; the nature of the field also shapes theory.

On the other hand, it seems to me that history operates with a more unbounded sense of facts than Parker suggests. Although I am not a professional historian, I found that beyond the core documents and texts I examined, the court records, there was a limitless expanse of private letters, photographs, journals, newspaper clippings, and missionary reports, which, despite my sustained efforts, I was unable to exhaust. Surely the professional historian has the same experience. As with ethnography, I was forced to select what seemed relevant to my theoretical concerns out of the vast sea of available materials. I have the impression that historians, at least in practice, if not in fantasy, face the same dilemma.

But is the data used by anthropologists different from those used by historians? In their historical anthropology, the Comaroffs

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work with data broader than the archive (1991, 1997). They look at the shape of houses, the clothing that people wore, the networks of trade that brought the clothing to them, the everyday habits of cultivators and market women, and the material forms that money assumes. This approach creates a space to examine the intersection of values, practices, and objects, a social space important to anthropological analysis but probably relevant to history as well. Maurer similarly advocates a focus on the objects, the physicality of evidence of law. There are certainly different ways of thinking about data in the two fields, but I am not persuaded that anthropology's view is as unbounded or history's as bounded as Parker suggests.

Parker concludes with an intriguing question about why the archive was fascinating to me as an anthropologist. I think, in retrospect, that it was the parallels between these court cases and those I studied a decade earlier in local courts in the Boston area that intrigued me. Here again, at the bottom tier of the court system, I found the messy details of everyday life. The problems were similar to those I had seen in twentieth-century Boston, yet the actors and their communities were dramatically different. I tried to imagine the lives and concerns of these litigants in nineteenth-century Hawai'i. But I could not visit their neighborhoods or interview the litigants as I did in the Boston study. Indeed, it was the similarity between these data and those of my earlier study that both intrigued and frustrated me. I knew something about the complexity of court processes as social events and the insights to be gained from talking to the litigants, judges, attorneys, and court officers. I looked at these historical data as an anthropologist rather than as an historian, trying as much as possible to replicate the forms of data collection I would use in a contemporary ethnographic study. During the 1990s, I was also studying the way the courts in this Hawaiian town dealt with domestic violence cases, thus giving me some ethnographic insight into the town and its courts a century later. I visited the neighborhoods where litigants had lived and the sugar fields they had worked, although conditions had changed dramatically. I did some interviews with elderly inhabitants, again seeking to reconstruct that era. I think these ethnographic efforts did help me understand a little more about the historical materials I was reading, but as Parker points out, the relationship to historical data is inevitably different.

Lauren Benton takes a world historian's perspective on *Colonizing Hawai'i*, showing how the analysis could be enriched by comparing the processes in Hawai'i with those happening at the same time in other colonial sites. The insights she develops from this comparison show clearly the value of such an approach, which she has developed in her magisterial, award-winning book (Benton 2002). There is, of course, an inevitable trade-off between the in-

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tensive study of a single place, such as my study of Hawai'i, and a broader, comparative approach of the kind she has done, but both are valuable. Her comments show clearly the additional insights possible from a broad historical approach that compares developments taking place at the same time around the world.

Although there is no denying the value of this kind of comparison, she mentions a second form of analysis that is also important. Comparisons can also trace linkages between people and ideas as they circulate globally at particular historical moments. As Benton points out, colonial historians have not paid sufficient attention to informal circuits of lawyers within an empire as a dimension of legal change. Yet the analysis of such circuits is a critically important way of thinking about legal change. Tracing the movements of people, ideas, and laws from one colonial situation to another provides an invaluable perspective on changes in one place as well as the interconnectedness of the colonial legal project. The activities of many transnational colonial actors were grounded in shared ideas about race, about civilized and uncivilized behavior, and about the capacity of the law to serve as a civilizing agent. Such cultural circulation is clearly a part of globalization and promotion of the rule of law today as well. Yves Dezalay and Bryant Garth demonstrate the value of this approach for understanding contemporary globalization and law (1996, 2002; see also Merry 2003). To use this mode of analysis in historical studies of legal change would clearly be of great value.

This approach to research could make an important contribution to our understanding of colonialism and legal change and present global movements of ideas about law and rights. In my historical study, I noted that individuals often arrived in colonial spaces carrying laws developed elsewhere, but I did not examine the global circulation of such ideas and texts. Yet they are clearly important. As Benton notes, there are important linkages between the legal policy toward Native Americans and Hawaiians in the nineteenth century. Many of the missionaries who went to Hawai'i in the early nineteenth century came from parts of rural New England engaged in converting native peoples, but I did not theorize this relationship. In another example, a Harvard Law School professor who helped a former student set up the legal system of Hawai'i in the 1840s also wrote a constitution for Liberia and provided legal advice for southern states in the United States.[1] The Hilo Boarding School, established in Hawai'i in the 1830s, may have been the model for the Carlisle Indian School in Pennsylvania and the Hampton Institute for freed slaves in Virginia later in the

[1] Treasure Room of the Harvard Law Library, located by Fred Konefsky, who generously shared his discovery with me.

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nineteenth century, an intriguing circulation of the tradition of industrial education for subordinated peoples. John Kelly demonstrates how the ideas of scholars such as J. W. B. Money and Henry Maine circulated throughout the Pacific in the nineteenth century, creating cultural frameworks for promoting the colonial project (2004). The legacy of these circulations continues into the present. For example, there is currently a major debate in Hawai'i about whether Native Hawaiians should seek to be classified as Native Americans, thus extinguishing their claims to sovereignty and creating new divisions among the peoples of Hawai'i, or whether they should continue to seek independence from the United States on a model that incorporates all the citizens of the kingdom (see Goldberg-Hiller & Milner 2003:1099–110).

In sum, these thoughtful comments point to new areas of exploration and new questions for further research. These questions include understanding the place of law in the colonial project, the circulation of ideas and people in the colonial endeavor and in contemporary law and globalization movements, and a deeper engagement with theorizing the linkage between law and culture. The project of law and culture is not exhausted but open to new theoretical elaborations and exploration, particularly from the perspective of an historical as well as an anthropological mode of analysis.

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