

Epilogue

The Travels of Gender and Law

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1. A striking feature of the contemporary world is the extent to which isolated pockets of social life have disappeared. As the articles in this impressive collection indicate, even regions thought to be remote from the global circulation of ideas and institutions, such as parts of the Pacific, are grappling with new ideas and institutions and redefining them in creative ways. Travelling ideas include gender equality and human rights; new economic arrangements based on the private ownership of land and resources; and conflicts derived from displacement and marginalisation. Clearly, contemporary social theory needs ways to explain how ideas, practices and institutions circulate and how they come to ground. It is in these processes of movement, incorporation and resistance that culturally embedded concepts become visible.
2. The articles in this issue of *Intersections* offer a variety of readings on this problem, focussing in particular on processes of localisation and vernacularisation. Examining circulation through the lens of localisation has the advantage of recognising the extent to which the lives of people in poorer countries are being shaped by external institutions and projects and at the same time emphasising their agency in responding to outside ideas and pressures. While much of the discussion of the global circulation of ideas focuses on progressive ideologies, circulating ideologies also include capitalist ideas of extracting resources at minimum cost, systems of bureaucratic governance, techniques of corruption and abuse of power, and practices of drug production and circulation. While we focus on the circulation of ideas designed to improve the human condition, it is important to remember that they include the modes of establishing and maintaining control of populations. They include technologies of governance such as bureaucracies, censuses, licensing regimes and zoning systems which appear neutral but in practice incorporate local communities into forms of state management.
3. The external regimes that reshape local communities include new systems of land ownership and property which can force existing populations off their long-established lands and plunge them into poverty. These external regimes include major environmental intrusions such as mines or copra plantations. They can also offer new job opportunities, but in some cases this attracts one ethnic group to move into the traditional homeland of another, creating ongoing tensions and conflicts, as occurred in Fiji and the Solomon Islands. These are examples of the way larger forces can eclipse the desires of local communities and drive changes that disrupt local livelihoods.
4. However, a focus on vernacularisation highlights the agency of those coping with such external economic and political pressures. Sometimes the new institutions offer possibilities for resistance, particularly ideas of human rights or gender equality. They may provide new social settings and opportunities for developing identities, as AIDS treatment programs did for LGBT communities in many parts of the world. New ideas, such as conceptions of gay identities, may help people develop new identities that are unacceptable in local communities.

5. Often, those engaged in the creative process of vernacularisation are women. This collection usefully focuses on the implications of these global circulations for women's lives. As the articles in this collection demonstrate, women are often at the front line of changes taking place in their homes, families, and work places and are those who need to adapt most rapidly. Yet, their creative energies are all too often ignored. They are frequently in the position of adapting to changes thrust upon them rather than initiating change. The translator, the role that many women adopt or find thrust upon them, is one of power, in that the translator knows both sides, and danger, since the ultimate loyalty of the translator is always in question. In many Pacific societies, this role for women is hardly new. The advent of Christian missions in the nineteenth and early twentieth century brought demands for translation. In some Pacific countries, it was women who were the translators to Christianity, sometimes leaving them with a relatively strong contemporary power based in Christian churches.
6. One of the circulating images is that of intersectionality, the idea that women are not all the same but that their lives vary based on race, class and a variety of other factors. In order for policy decisions to take into account the differences between men's and women's situations, and among differently situated women, it is essential to categorise them separately. If they are not counted as different, their different needs and circumstances will not be noticed. The idea is slowly making its way into national and international statistical systems under the rubric of disaggregation of data. For these differences to be recognised and form a basis for policy, they must be counted.
7. Law is one of the most important cultural and institutional products that circulates and is adapted, as the articles show. It plays a critical role in the economic transitions of capitalist development, guaranteeing control over resources such as land and money and providing the stability necessary for further economic development and resource exploitation. It also offers ways of conceptualising persons, relationships and duties that are deeply constitutive of social life. In many of the situations described here, a colonial legal system existed historically in parallel with a local system of law, called *kastom* in many Pacific countries. Yet, despite efforts to recognise customary law, state law remains the dominant force in many societies.
8. Law operates in highly visible ways in courts and policing, but it also shapes everyday relationships and identities in very diffuse ways. In Hawai'i, for example, the early nineteenth-century monarchs determined that it was illegal for foreigners to own land, thus holding back the dispossession of Hawaiians until 1850, when the law changed under the idea that a liberal, republican system was superior.¹¹ The British managers of Fiji, seeing the massive land loss that accompanied the changes in land tenure laws in Hawai'i, established a very different, paternalistic system of landownership that protected the rights of kin groups but imagined Fijians as living unchanged in rural villages. This policy prevented most of the immigrant sugar workers from India from owning land and becoming full members of Fijian society. Thus, the law created a difference in Fijian and Indo-Fijian identities that has had lasting, and unfortunate, consequences until today, including repeated coups that restrict Indo-Fijians from assuming political power.²¹
9. My research has often been inspired by travels, both my own and those of others. In 1989, at a conference in Honolulu, I noticed the close parallels between the situation in Hawai'i and in the postcolonies of Africa, both in the timing and the experience of colonialism. A colleague showed me a ledger book from a district court from 1874, and the parallels and contrasts with my previous work on lower courts in New England were striking. Indeed, I discovered that not only the system of laws, but also the New Englanders themselves, had traveled to Hawai'i. In the 1820s, 30s and 40s, New Englanders sailed a weary six months around Cape Horn to bring Christianity and American law to the islands. One of the exciting moments of my research on American

colonialism in Hawai'i was discovering two books in the Harvard libraries: a copy of the Hawaiian Penal Code of 1850 and a copy of the proposed Massachusetts code of 1844, on which the Hawaiian code was based. As I put the two books side by side, it was clear that New England ideas of crime and its categorisation had moved virtually unchanged to the radically different social world of Hawai'i. I was looking at one small step in the New Englanders' transformation of the legal system of the Hawaiian kingdom and with it their ideas of property, sexuality and marriage.

10. Studying travelling ideas often requires travelling with the people who are carrying them. In my research project exploring how the UN came to define gender violence as a human rights violation, I travelled to Fiji to study the movement against gender violence.³¹ One of the women's groups in Fiji ran workshops to teach women about the Women's Convention, or CEDAW, by translating the ideas in the convention into terms that helped women cope with their everyday problems. The program was so successful in Fiji that it expanded to several other Pacific countries. When Fiji reported to the CEDAW committee in New York, I met with the NGO delegation from Fiji that had travelled to New York to participate in the hearing. I listened to them discuss their approach to the CEDAW committee. During Fiji's formal report to the CEDAW committee, committee members criticised the use of *bulubulu*, a traditional system for reconciliation, for rape. I followed this issue back to Fiji, travelling to Suva to interview delegation members. Some felt angry at the committee for its critique of Fijian culture. I also talked to feminist activists, prominent Fijian religious leaders and members of the judiciary in Fiji, who were concerned not about using techniques of reconciliation in Fijian culture but about the abuse of the reconciliation system by urbanites seeking to escape penalties for their behaviour. A system that was effective in rural, isolated villages no longer had clout in urban settlements. In New York, this appeared to be a problem of Fijian culture, but from the perspective of Fiji, it was clear that this was a problem of mobility and urbanism, more complex than appeared in the brief and formal CEDAW hearing.⁴¹
11. World conferences are ideal places to see how new ideas develop and are shared. The impact of the Fourth World Conference on Women in Beijing in 1995 was immense. As I travelled through the Asia-Pacific region in the early 2000s studying approaches to gender violence, I found many people who had gained new perspectives and even initiated new programs as a result of the conference. Similarly, an important conference in 2000, *The Color of Violence*, brought together women of colour from North and South America, the Pacific, and Australia and New Zealand to a large gathering in Santa Cruz, California to theorise gender violence. This conference developed a strong critique of the criminalisation approach to controlling gender violence and spawned a new organisation, *Incite!* A conference on gender violence in the Asia Pacific region in Sydney in the early 2000s brought together representatives of Pacific countries, Aboriginal activists, and other feminist activists from Australia and New Zealand. It is clear that in these settings, new ideas are born. In these global conferences, participants discuss the way they define problems, the approaches they have tried, and their fields of accomplishment. Out of the exchange, new perspectives emerge.
12. My own travels provide wonderful opportunities for the circulation of ideas and theories. I have travelled three times to the exciting intellectual environment of the Australian National University created by RegNet and Anthropology. I have benefitted from many inspiring conversations with Margaret Jolly and Hilary Charlesworth as well as a group of terrific graduate and postdoctoral students, many of whom have work in this collection. Clearly, travel and collaboration are essential to understanding the global circulations and transformations of the contemporary moment.

Notes

[11](#)] Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law*, Princeton, NJ: Princeton University Press, 2000.

[21](#)] Sally Engle Merry and Donald Brenneis (eds), *Law and Empire in the Pacific: Hawai'i and Fiji*, Santa Fe, NM: School of American Research Press, 2004.

[31](#)] Merry, *Colonizing Hawai'i*.

[41](#)] Sally Engle Merry, *Translating International Law into Local Justice*, Chicago: University of Chicago Press, 2006; and 'Transnational human rights and local activism: mapping the middle,' *American Anthropologist*, vol. 108, no. 1 (2006): 38–51.

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