

**COMPARATIVE CRIMINALIZATION:
CULTURAL MEANINGS OF ADULTERY
AND GENDER VIOLENCE IN HAWAI'I IN 1850 AND 1990**

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This essay analyzes the impact of court cases concerning sexuality and adultery on customary understandings of kinship and gender in Hilo, Hawai'i. During the periods covered the nature of the cases, the content of the law, and the implementation of punishment changed radically. Nevertheless, there are similarities in modes of criminalization during the 1840s and 1850s, on the one hand, and during the 1990s, on the other. Both used the authority and sanctioning power of the law to redefine marriage and gender relations. Both were implemented through local practices of police, courts, and corrections/treatment officials, which provided incentives for compliance as well as opportunities for resistance, evasion, and noncompliance from the general population. The periods are also substantially different. The first sought to place women under the control of husbands in a private sphere beyond the law, while the second invited the law into the family to protect the woman. A comparison provides insight into changes in the elements that focus the moral values of a community.

THE LOWER COURTS of the Kingdom of Hawai'i in the 1840s and 1850s were full of cases of adultery and fornication. The flood of cases about sexuality outside marriage reflected the New England Calvinist missionaries' harnessing of the legal system to the project of containing the Hawaiian body: swathing it in clothing, containing desire within the bonds of a lifelong marriage, restricting sexual behavior to private spaces. The New England missionaries subjected themselves to the same family form and sexual restraints, defined by a legal system already in force in New England in the eighteenth and early nineteenth centuries (Grimshaw 1989). In both instances, the com-

munities imposed moral dicta through a definition of good conduct within the family.

In 1850, the Kingdom of Hawai'i adopted a penal code based on an 1844 proposed Massachusetts penal code. The missionaries had succeeded in imposing their viewpoints onto constables and magistrates in the kingdom and through these officials onto both commoners and kings. Customary Hawaiian kinship patterns were transmuted into the Victorian bourgeois family, its internal space subject only to the sovereignty of the husband, while its external shape came under the supervision of the state. Everyday forms of sexual interaction and marriage that had been approved or at least tolerated became the object of legal censure and surveillance; in effect the everyday practices of the Hawaiian people were criminalized (see Merry 2000). Another example of the criminalization of family and gender practices occurred in the 1990s, in the campaign against gender violence.¹ In Hawai'i, a series of legal and procedural reforms during the 1980s significantly increased the scope of punishment, the severity of the criminal justice response, and the availability of treatment programs for wife battering. The officials and the goals behind these programs differed from the movement a century earlier, but the clash of community morals has something in common.

I argue that there are fundamental similarities in the two waves of criminalization. Both use the authority and sanctioning power of the law to redefine gender and marriage relations. Both are dedicated to a new vision of family life and gender relationships framed in a larger social/religious theory brought by outsiders. Both are implemented through local practices of police, courts, and corrections/treatment officials that provide incentives for compliance as well as loopholes and opportunities for resistance, evasion, and noncompliance from the general population. Both are embedded in reform movements brought to Hawai'i from the U.S. mainland. And both are premised on the assumption that constructing a moral community requires a transformation of the gender order.

The two moments of criminalization had different goals. The first sought to place women more clearly under the control of husbands in a private sphere beyond the law, while the second invited the law into the family to protect the woman, even if this meant sacrificing her marriage. The first wave embodied the expansion of modernity, the second wave the twilight of modernity and its replacement by a globalizing postmodernity. In the mid-nineteenth century, Hawai'i experienced the transformation from mercantile capitalism to an industrial capitalism of sugar plantations. In the 1850s, defendants were mostly suppliers of food, sex, and other services for merchant exchanges with visiting ships or were self-sufficient farmers outside the global market. The 1990s criminalization took place after the residents

of Hilo were fully incorporated into the social and economic arrangements of modernity and the global economy. But like their predecessors, defendants in wife-battering cases were at the margins of the economic system, working in poorly paid and unstable jobs, if at all.

The two waves of criminalization also took place within different political situations. The first occurred in a sovereign Hawaiian nation struggling to retain its independence in the face of colonial takeovers elsewhere in the Pacific. During the 1840s, the government adopted the Anglo-American rule of law and constitutional government to acquire recognition in the global arena as “civilized” and sovereign in European terms. But disciplinary systems—such as police, prisons, and social services—necessary for successful social transformation through law were rudimentary. In contrast, 1990s criminalization takes place in a society with a complex system of interconnected social service agencies in which the boundaries between the law and services are blurred and often effaced.

The First Wave: Establishing the Bourgeois Family through Law

Establishing a new gender order was a fundamental part of the social transformation of Hawai'i. Only after two decades of efforts to control sexuality, to establish the discipline of the body and contain its sensuality within the bonds of marriage, did Native Hawaiians become in any significant way a part of a capitalist labor force. The bourgeois family, with its contained sexuality and ideology of masculine self-governance, was a precondition to the creation of a capitalist economic order based on wage labor and individual responsibility for production. Policing of the family formed the core of missionary efforts to redesign Hawaiian conduct, and intrusion into the lives of Hawaiian women and men was thorough.

Men and women in 1840s Hilo were brought to court for behavior that had long been condoned by Native Hawaiians. Couples were caught by constables in situations defined as appropriate—relationships of cohabitation or of love. Some cases report that constables followed couples into coffee fields, others that they peered through the thatch or broke into a house in the middle of the night. In most instances, these couples were living together in a way their kin and community found acceptable.

According to virtually all sources, early Hawaiian marriage was not marked with much formality at its initiation and was easily broken (Linnekin 1990: 121; Ellis 1969; Handy and Pukui 1972:105–111). Sexuality was relatively unconstrained during certain periods of life, particularly for young people and for chiefly men and women after their first children were born. There was clearly a different economy of the body and desire among the Hawaiian

population than among the New England missionaries. Customs clashed as missionaries claimed the right to question applicants for marriage about their religious affiliations and to forbid non-Christians from marrying converts (Linnekin 1990). Marriages had to be registered and conform to the conditions established by the state. Divorce became very difficult, requiring lengthy and expensive legal proceedings.

When cases appeared in court of men beating their wives, if a weapon was involved or the beating severe, the witnesses unambiguous, and the injury significant, the man was usually fined. Under other circumstances, he was not. However, not infrequently a woman went to court several times about a man beating her, and then she finally deserted him. The court, under these conditions, usually returned the woman to the husband.

Acceptable reasons for divorce changed. Being battered did not justify a wife leaving her husband, but a man's absence of four years did. A person could also receive a divorce as a result of his or her partner's adultery. However, in the early years of Western influence, an adulterer was not permitted to remarry as long as the cuckolded person remained alive.

This family form was fundamental to the creation of modern society. The sovereign male subject was given dominion over female subjects, understood as less capable of self-governance. The public sphere was constituted by agreement among equals, and a private sphere, outside the law and different in kind, was the realm of emotions, desires, needs, and cultural traditions (Collier, Maurer, and Suarez-Navez 1995:8). In the private realm of the family, inequalities were understood as the result of naturalized differences and capacities such as those based on gender.

This family form is also fundamental to the rule of law in the modern liberal state. As legal scholars note, modern law claims universal applicability but marks out a free, private realm of the family within which the subject engages in self-governance subject to the forms of self-discipline and policing embodied in the microtechnologies of power of the modern period (Fitzpatrick 1992:180). The private space of the family is externally structured by law, which regulates marriage, divorce, property rights, and inheritance, but its internal governance is vested in the sovereignty of husband over wife and father over children. In other words, the state constitutes this private space but cedes authority inside the space to the father/husband.

Imposed by missionaries, the bourgeois form of family was very different from prevailing Native Hawaiian practices of the nineteenth century. The speed with which new social forms and practices penetrated Hawaiian society, however, was not the same for urban and rural areas. While Honolulu, Lahaina, and to a lesser extent Hilo were inundated with ships, foreigners, and new opportunities to marry and earn cash and goods for sexual work,

rural areas remained less changed. In addition to rural-urban differences, there was a major difference between the social lives of commoners and chiefs. The latter are far better described by visiting merchants, whalers, and missionaries than the former and are even more clearly presented in the accounts of missionized Hawaiians, such as John Papa ʻĪi and Samuel Kamakau in particular. Accounts of commoner practices, based on written sources and court documents, suggest a gradual change.

Writing in the 1860s about commoners, Kamakau, a mission-educated Hawaiian, distinguishes between cohabitation, the most frequent type of attachment, and “the binding form of Hawaiian marriage,” called *hoʻao paʻa* (1961:347; Handy and Pukui 1972:52; quoted in Linnekin 1990:123). The former involved many wives or many husbands. The latter could not be dissolved and involved ceremony and reciprocal exchanges between the families, while children born to the couple sealed the relationship between the two families. *Hoʻao paʻa* was the custom of the chiefs, the firstborn children of prominent people, and children who were family pets, according to Kamakau. Among the commoners, firstborn children of prominent people and chosen favorites were also most likely to become family leaders. For the young, for junior siblings who could not move into leadership positions, and for most Hawaiian commoners, cohabitation was the norm. In this type of attachment, the pattern for the vast majority of the Hawaiian population, women were free to leave when they wished (Linnekin 1990:58).

Chiefly marriage, in contrast, was politically important, and the sexual behavior of *aliʻi* women was hedged with restrictions. Although chiefly women had liaisons and secondary unions, they could not do so with impunity, especially if they had high *kapu* rank or politically critical relatives (Linnekin 1990:60). Linnekin notes that although women flocked to the ships in large numbers to make alliances with the newcomers, chiefly women gave material gifts, while only the commoners provided sex (*ibid.*:156). Both commoner and chiefly women, however, lived in separate spheres from men and enjoyed considerable autonomy. Gender relations appear to have been fairly egalitarian (*ibid.*:114). Ties between brothers and sisters were stronger than those of marriage.

Transforming such family relationships into the model of the bourgeois family with enduring husband-wife bonds, female subordination to male sovereignty, and exclusive sexual relationships was not easy, at least for women. Although it is hard to recognize in the documents and court records that remain, there are hints of resistance. A moral discourse, bemoaning licentiousness and vice, suggests Hawaiians continued to behave in ways the missionaries disapproved of. For example, a missionary in Honolulu proclaims that Hawaiian women need to learn to “make their homes comfortable and

remove the temptation to wander about and commit crime in order to get money or fine dress.” Men and women, he continues, need restraints when they travel to cities like Honolulu and Lahaina. “Much licentiousness too is practiced on small vessels going to and from these central towns” (Kingdom of Hawai‘i 1846:32–33).

Another missionary adds that licentiousness is the prevailing vice of his district, as it is of the entire islands: “More married persons than unmarried are guilty of this sin, thus adding adultery to uncleanness. Of late, I have not heard of very many cases, still they occur often enough to cause me to tremble for the nation; for ‘sin’ and no sin more perhaps than this, ‘is the reproach’ and ruin ‘of any people’” (E. Green, in Kingdom of Hawai‘i 1846:31). Another missionary, Artemis Bishop, also says that the most prominent vice is licentiousness, although “much diminished from its former universal prevalence”: “During the first years of my residence on these islands, it was shocking to witness the entire want of decency, both of feeling and action, among all classes.” The problem, he adds, is idleness: Women and children have scarcely any employment, and women are “given to gossiping or absolute idleness, and the latter [children] of both sexes are left to grow up untaught in all kinds of work” (Kingdom of Hawai‘i 1846:33–35).

At the same time, by 1848 the mission community was beginning to see signs of improvement. For example, in their general letter on the state of the mission to Rufus Anderson, assessing improvement since 1820, the missionary authors note that the people now wear clothes, whereas before even high chiefs would swim naked and walk from house to beach naked. Family and marriage, too, had improved.

Now all the natural social and domestic relations are respected—the duties of each in some measure respected, and regulated by good and wholesome laws; and a neglect to perform the duties attached to these various relations is punishable by fine, imprisonment or other disabilities. Parents and children, husbands and wives, masters and servants, are recognized in laws and on any delinquency in the performance of the duties of their respective relations, they are answerable to the laws of the land. (Letter from Thurston, Hitchcock, Paris, and Comee dated 2 June 1848, American Board of Commissioners for Foreign Missions, vol. 13, nos. 10–12, Houghton Library, Harvard University, Cambridge)

By the end of the nineteenth century, when Hawai‘i was annexed to the United States as a colony, the project of transforming the Hawaiian family had apparently succeeded. With American court systems and legal codes,

marriage was a more durable relationship, divorce virtually impossible. Yet the change increased women's vulnerability to violence, because violence and fear of violence were defined as irrelevant to ending the relationship. Women who deserted in fear were returned to their husbands, sometimes with penalties. Within the family, the sovereignty of the husband dominated all relationships. The woman was expected to remain in the house performing domestic tasks rather than wandering more broadly visiting, farming, and keeping ties with other kin (Grimshaw 1989). This cultural transformation subjected women to a kind of isolation and caught them in a nexus of power and control practices characteristic of battering families today. The transformation of older patterns into the circumscribed bourgeois family with a private core protected from the intervention of the state or public scrutiny of any kind made women far more vulnerable to gender violence than they had been before.

The Second Wave: Criminalizing Gender Violence in the 1990s

Since the late 1970s, an activist feminist movement in Hawai'i has produced a gradual change in the law's stance toward domestic violence in Hawai'i as it has nationwide. Laws have targeted wife battering, and penalties have become more stringent. A law passed in 1973 distinguished domestic violence from other assaults, but it did not immediately produce significant numbers of arrests and convictions. During the 1980s it was augmented by stronger sentences, longer cooling-off periods, more energetic police arrest policies, and more diligent prosecution. A 1985 addition to the statute required all convicted batterers to attend a treatment program for battering. In the town of Hilo, local feminists started a shelter in 1978 (Rodriguez 1988) and, in 1986, working with the activist local judiciary, developed a violence control program that offered violence control training for batterers and a women's support group.

These newly constituted communities gave women the moral support they needed to go to court for restraining orders and to prosecute their batterers.² During the twenty-year period from 1974 to 1994, the population of the County of Hawai'i almost doubled, but the number of calls to the police for domestic trouble cases more than quadrupled (State of Hawai'i 1994). The number of requests for civil protective orders, commonly called temporary restraining orders or TROs, has increased dramatically since the early 1970s. Between 1971 and 1978, seven temporary restraining orders were issued in Hilo for domestic violence situations. However, by 1985, the year the new spouse abuse law went into effect, the numbers were much larger. I could not find data for the period from 1979 to 1984, but in the ten years

from 1985 to 1995, the number almost doubled, increasing 182 percent. The most spectacular increase has been in criminal cases: During the sixteen years between 1979 and 1995, the number of criminal cases of wife battering increased twenty-five times from a very small initial number to almost 800 out of a population of 135,000. In 1993, there was one call to the police for every 58 residents and one charge of Abuse of a Household Member for every 183 residents in the county. In 1994, domestic violence cases made up 30 percent of the active probation caseload of the criminal court.

The increase in civil temporary restraining orders suggests that women have become more inclined to turn to the legal system for help. The even greater increase in criminal cases indicates that police are more energetic in making arrests and prosecutors in pressing charges. By 1995, the courts handled approximately the same number of civil as criminal cases. I interpret these statistics as indicating that wife battering has long existed as a social practice but that, as public consciousness increased during the 1980s, more women turned to the courts for help. As courts became more attuned to this problem, a higher proportion of cases were prosecuted. However, the fact that calls to the police for help have increased more slowly than criminal prosecutions suggests that the change is not the result of more wife battering but of victims' greater willingness to turn to the law for help and for police, prosecutors, and judges to take their complaints seriously.

The sharp increase in criminal cases is in part the result of a decision by the police to arrest all perpetrators of abuse in a household relationship—not just those who resist leaving, who come back before abuse has stopped, or who inflict serious injury. I was told by a public defender that this policy change occurred in 1989. There has also been an expansion of the victim/witness program that endeavors to encourage women to press charges, particularly in the last three years. At the same time, the victim/witness program has developed a more cooperative working relationship with the shelter, which facilitates prosecutions. These changes are even more marked in urban areas, such as Honolulu. A bill presented to the State House of Representatives for the Sixteenth Legislature (H.B. 364, S.D. 1) claims that on O'ahu, arrests for domestic violence increased from 128 in 1986 to 1,400 in 1988, while restraining orders issued by the family court on O'ahu increased from 164 in 1980 to 918 in 1988.

Over the last twenty years, there has been a sea change in the legal system as police, prosecutors, and judges have been willing to take domestic violence seriously and to prosecute the behavior. At the same time, women have become far more active in asking for the help of the legal system in situations of battering. I think that there has been a massive, one-time movement of wife battering cases into the courts. Most, but not all, of the defen-

dants are men, and the victims are women.³ They are going to court for behavior that twenty years ago was taken for granted as a part of male authority.

These cases have long appeared in court in small numbers but rarely received severe penalties. An examination of the case records for the lower court of Hilo from 1853 to 1913 indicates that the courts heard 473 cases involving domestic violence over these sixty years, averaging about eight a year in a fairly stable pattern. Only eight had female defendants, and thirteen had male and female defendants. Ninety-six percent were male defendants. Of these defendants, 48 percent of those whose plea is recorded pleaded not guilty. The court convicted 76 percent of these, but of those convicted, 88 percent were given a fine under \$100, generally \$6. There was no further penalty or treatment for batterers during this period.

In the 1980s, batterers' treatment programs became the cornerstone of the local judiciary's increasingly assiduous attack on domestic violence.⁴ All convicted batterers and many of those subject to restraining orders, particularly contact restraining orders,⁵ were mandated by the court to attend a violence control program. Judges sometimes required women to attend a women's support group. Four hundred men were referred to this program over a three-year period from 1990 to 1993.

The batterers' treatment program teaches men to manage their anger and provides new perspectives on gender privilege. Leaders of the program say their main concern is with women's safety, but because the government is interested in rehabilitating men, they offer treatment for batterers. Program staff believe that batterers should be offered education and that they will respond when they are ready, although they have limited hopes for reforming men who batter. Education from the outside, in other words, may not alter self-images that are tied to older constructs of identity. Still, feminist advocates depend on this program and on the legal system to construct new gender identities. Women are told they do not deserve to be hit no matter what they do, and men are told that they can win love, trust, and affection through negotiation and collaboration instead of force. The men are taught how to control their violence and rethink their beliefs about male-female relationships, and the women are offered support in negotiating the legal system and provided with linkages to other women who have experienced violence. Communities of instruction and support emerge within the larger Hawaiian population, apart from and crucial to kinship and family.

Comparative Criminalization

How do the two instances of criminalization compare? The earlier is a product of advancing modernism, the later reflective of modernist collapse and the

postmodern era. Both expand state regulation of the family. Both seek to transform family and gender inequalities through enunciating a new moral order backed by relatively severe penalties, even though these penalties were probably as irregularly and uncertainly imposed in the nineteenth century as they are now. In both cases, the reformers came from outside, bringing a vision of rights and relationships to be imposed through law. In both, reforms were dedicated to the notion of a transformed family, although the notions differ significantly. The first is dedicated to protecting the woman morally and sexually within the family, the second to protecting her physically and emotionally from family relationships.

In the twentieth as in the nineteenth century, those whose behavior becomes the object of court surveillance are primarily the lower social classes. In both cases, the objective of the criminalization process is to construct an autonomous, choice-making rational subject within this class segment. In the nineteenth century, this was a male subject who was to take authority within the family. In the present period, it is women who are encouraged to leave partners who batter and to prosecute their batterers. If a woman fails to testify in support of prosecution, she may be seen as troublesome and difficult even though legal action subjects her to danger from an angry spouse and risks alienating relatives. Men are encouraged to take responsibility for their violence and to see it as a choice that harms their relationships with wives and children rather than an inner force they cannot control.

In the name of protecting women, both instances increase surveillance and control over men. In the first period women were to be protected from degradation, including their husbands' adultery; in the second, women were protected from violence. Yet it is unclear whether women's situations have been improved by either intervention. In both cases, changing the gender order required changing other aspects of social life. In the first case, locking women into permanent marriages under husbandly authority diminished their mobility and economic autonomy as well as reducing the importance of kinship linkages to members of the extended kin network or *'ohana*. In the second instance, women needed the financial and kinship resources to leave a man and set up a separate household, yet the legal system was unable to provide such resources.

In both cases, the law was limited in its effectiveness. Intervention evoked resistance, although the resistant practices are much easier to observe in contemporary ethnography than for the past (see Modell, this volume). Men argue with the judges who impose temporary restraining orders, pointing out that the problem is a woman's provocative behavior. They fail to come to the treatment program or come sporadically, offering excuses, evading requests to come again until their period of probation is over. They sit in treat-

ment programs and say nothing, apparently not becoming engaged in accepting the messages, or they joke about controlling women, thus undermining the message of the facilitators of the program (see Merry 1995).

In both cases, however, legal intervention produced new cultural meanings and new statements about the normativity of relationships. In the face of legal sanctions, good conduct acquired a heavy significance, and if the terms of conduct were unfamiliar (or disagreeable), the consequences of bad conduct were unmistakable. The clash of standards for behavior within a family had a profound impact on individual men and women in both periods.

There are numerous differences between the two moments of criminalization. Perhaps most important, the reforms were premised on different visions of marriage and gender inequality. The missionaries brought notions of a Christian family with a submissive wife busy in the domestic sphere; the feminists bring a secular vision of an egalitarian gender regime organized by mutual respect between autonomous individuals who can separate if there is abuse. The first vision privileges the maintenance of the nuclear family, the second the maintenance of the autonomous subject. Both promote the self-governing subject, but in the recent intervention women as well as men are considered candidates for this subjectivity. Remnants of the nineteenth-century image of the family persist in some of the counseling programs developed by evangelical Christian churches that expanded rapidly throughout the 1990s: Scriptural counseling promotes the continuity of the family while seeking reconciliation and forgiveness.

In contrast, the feminist-inspired batterers' treatment program and the courts see separation and prosecution as the only practical solution. Women are encouraged to look out for themselves and not take responsibility for the battering behavior of a man. The feminism of the treatment program asserts that women need protection, that they should be separated from battering men, and that battering behavior cannot be resolved with traditional methods of negotiation. While individuals are subjects of the programs, moral sanctions have been placed in the hands of outside institutions: Battering behavior within a family is tracked, reported, disciplined, and punished by external authorities. Sanctions are imposed by a community of experts, not through communal decisions made at family gatherings.

At the same time, there is not the large gap that there was in the nineteenth century between the social practices the law is encouraging and those of the community. In the 1850s, reformers gave rewards for catching offenses, thus encouraging spies within the community. Although victims did bring violence cases to the courts in small numbers, most of the adultery cases were uncovered by constables who spied on "known *moekolohe*s," a term that appears in nineteenth-century court records, or by disgruntled dis-

placed partners who enlisted constables to help them spy on offenders. The second wave of criminalization is far more dependent on the initiative of the victims, who must call the police for help or go to family court requesting a temporary restraining order. That victims take advantage of external authorities in increasing numbers suggests that approved social practice coincides with the standards of good conduct in law.

There is a different cultural framing of identity in the two periods. The missionaries and court officials in the first wave (often members of the same social world and even families) held an infantilized view of the Hawaiians, designating Hawaiians as incapable of self-governance and in need of missionary intervention. The second wave has a tendency to see men as inherently violent and women as not violent, thus essentializing gender identities. But a critical difference is that the missionaries were not open to local meanings and understandings; they persisted in interpreting the world in a particular frame despite evidence to the contrary. Missionaries shared a self-preoccupation and cultural obliviousness that is not generally characteristic of the late twentieth century.

It seems likely that the missionaries were unintentionally collusive with capitalism in their effort to control sexuality, emotion, and expressiveness and encourage the turn toward rationality. The missionaries fought bitterly against the merchants of the early nineteenth century, but by 1850 they were beginning to forge a collaboration with the emerging industrial elite and to take on important roles in the Hawaiian government. Strategies for reform shifted from criminal law to the civil laws governing land and labor (such as the Mahele land division and the Masters and Servants Act of 1850). Missionary teachings of literacy, industry, and conserving resources within the nuclear family rather than sharing with the *'ohana* plus restrictions on games and recreation, traveling, surfing, and the hula clearly predisposed Hawaiians to enter the capitalist labor market or to work as entrepreneurs. As Kame'elehiwa points out, commercial enterprise fit with Hawaiian cultural practices far better than ideas that were precursors of industrial capitalism (1992). There is no equivalent collusion between 1990s feminism and capitalism, except that the movement against gender violence has generated a new surveillance system for people who cannot fit into the new capitalist economy. Such people are taught to control impulses, a step toward gaining jobs in the tourist and service economies.

Another difference is the link between the courts and other disciplinary systems. In the first wave, the court worked alone, although its efforts were supported by churches. In the second wave, the court is connected to a disciplinary system of treatment programs, alcohol programs, and shelters that appear to be separate but in fact are intimately connected and share similar

views of the family and the necessity of breaking apart the family in order to protect the woman. Indeed, this intervention is part of a larger welfare-state system in which individuals are linked to institutions of the state in many ways, from welfare to child protective services to regulations of licensing and insuring cars to zoning regulations on housing. The blend of services and punishment that constitute the disciplinary matrix of the late twentieth century was clearly not present in the mid-nineteenth. The new initiative seems dedicated to dismantling the bourgeois family through the disciplinary mechanisms of the state and agents attached to it. In the present period, the opportunities for resistance to the disciplinary systems of the state, embedded as they are in other forms of regulation, are far less than they were in the 1850s at the dawn of the creation of the modern disciplinary society.

Another core difference is the relationship of the individual to the community. While the first wave of criminalization endeavored to subordinate the woman to her husband, this was in the interests of creating a Christian community. The second wave seeks autonomy at the price of community and, unlike other contemporary interventions in gender violence, argues that safety is more important than getting along and staying together.

Intervention and Cultural Imperialism

Are these instances of legal intervention to promote change examples of cultural imperialism? This comparison has proved very troubling for me. I have continually wanted to deny the obvious parallels between the missionary assault on sexuality and the feminist assault on gender violence. They re-emerge, and I try again to find ways that they are different. My desire to find them different is moral and political: While I am offended at the way the missionaries thought about Hawaiians and their sexual mores that led them to attack this behavior, I support feminist efforts to reduce violence against women. The first seems deeply intrusive and disrespectful of Hawaiian culture, while the latter conforms to my commitment to gender equality. Are they really the same? What are the differences between them? And, perhaps more important, is the world in the 1990s like the world in the 1850s, or are there fundamental differences that change the meaning and implications of transferring ideas about family life through the law from one place to another? I think that there are.

The main form that the critique of both forms of intervention has taken, and continues to take today as human rights becomes a global language, is that intervention is ethnocentric. The critique holds that the spread of human rights is like imperialism: It is a Western concept that is being imposed on cultures that are quite different and do not share similar ideas about rights.

China made this argument forcefully in Vienna at the World Congress on Human Rights in 1993. Any claims to universal standards for moral behavior violate cultural differences and, like imperialism, represent acts by the West to reshape the rest in its own image. I think the analogy between nineteenth-century imperialism and late-twentieth-century human rights is fundamentally wrong. I will begin to explain why I think so by telling a story.

A few years ago a nagging back pain drove me to the office of a local chiropractor. He diagnosed my problem as a backbone out of line and recommended frequent visits over a period of months in which he would straighten my backbone and hold it in place. As he put it: "It is like orthodonture: You have to put the bones in the right place and hold them there until they stay there themselves." I dutifully submitted to a few weeks of unhelpful chiropractic visits, then turned to a physical therapist, who found a cure to what turned out to be a muscle problem. This experience led me to consider the power of the analogy that the chiropractor had offered me to think about my back. Are spines like teeth? Is the process of straightening a backbone in fact analogous to orthodonture? Is the relationship between the backbone and its surrounding tissue the same as that between teeth and the bone that holds them? It is clear that this analogy makes no sense. Yet the power of the analogy held me for several weeks.

This experience is relevant to the present comparison. There are clear analogies between the missionary efforts to control Hawaiian sexuality in the mid-nineteenth century and the introduction of mainland feminist efforts to reduce domestic violence in the late twentieth century. There are also substantial differences. One of the most important is that the world is not the same. In the nineteenth century, there were sharp cultural differences between the missionaries and the Hawaiians. Although the Hawaiians had experienced forty-two years of contact with Western traders before the missionaries arrived, they had not experienced a sustained effort to reshape their family and community life. Values generated in the family and community were nothing like the notions of law, government, religion, family, and sexuality that the missionaries brought.

In the late twentieth century, the globalization of culture means that the cultural world of Hilo is in some ways different but in other ways deeply similar to that of the rest of the United States. There are not separate and distinct cultures into which feminist ideas intrude. Instead, there are local communities with some variations in cultural traits, but they are not mapped out as distinct cultures with sharp boundaries. Each group has repertoires of cultural meanings and practices that overlap with those of other groups while being in some ways distinct. In this context, the concept of culture in the classic anthropological sense is misleading. There are not distinct, bounded

groups sharing integrated and cohesive sets of practices and worldviews. Instead, there are multiple, overlapping, communicating communities that share some ideas and contest others; within communities, different groups have different interpretations of the same symbols.

The situation was different in the contact zone of the mid-nineteenth century. The notion of a bounded, isolated, and static culture was still not accurate, since Hawaiian culture itself had changed and developed over the centuries of residence on the islands and had experienced massive transformations during the period of disease and death following contact. Nevertheless, the missionaries arrived in a complex, hierarchical, ancient cultural space armed with a clear agenda of cultural transformation accompanying religious conversion, a denigration of Hawaiian culture, and a desire to civilize the "savages." They helped the settlers create private landownership and wage labor with the belief that these moves toward capitalism would benefit the Hawaiian people. Missionaries even hoped to stem the dying by giving Hawaiians land of their own to work. This is the classic imperialist situation, replicated throughout Africa, Asia, and the Pacific.

Cultural relativism emerged in response to this kind of imperialism. An early proponent of relativism, Malinowski used the argument to challenge the cultural transformation project. He argued that cultures need to be understood in their own terms, that customs should be evaluated by internal standards of social functioning rather than by the norms of European civilization. Ironically, such a defense of local cultures against nineteenth- and early-twentieth-century imperialism produced the static, bounded, cohesive vision of culture that now burdens our efforts to understand the fluidity and globalization of culture in the current period.

Cultural relativism, in the form it took in the wars against imperialism in the early twentieth century, is no longer adequate as a moral position in the late twentieth century, nor is the concept of culture on which it is founded an accurate description of the world. Tolerance for difference is insufficient in a world in which the institutions of capitalism and Western culture have penetrated to virtually all segments of the globe and are being reappropriated and mobilized in various ways, in various communities, as forms of resistance. Cultural relativism grew out of an artificial imagining of cultural distinctiveness and boundedness, an imagining that provided useful fodder for resisting colonialism. But, just as the analogy of orthodonture is inaccurate and misleading for thinking about backbones, so is cultural relativism and the notion of separate and contained cultures inaccurate and misleading as a moral guide in the late twentieth century.

The communities now experiencing the influences of the West, such as the criminalization of gender violence or the dissemination of concepts of

human rights, are already participating in social worlds that have by and large been shaped by capitalism and by Western law and its concepts of rights. These ideas have been and are still being seized, appropriated, and re-deployed in moments of resistance. A close analogy is the spread of the labor movement from Britain to the cities of Africa and from California to the docks and plantations of Hawai'i. This is not imperialism in the same way that the missionary introduction of Christianity to Hawaiians is. Instead, the spread of unions followed the spread of capitalism, and they emerged in Africa as they did in Europe in response to similar conditions of capitalist labor. This is different from imperialism, because the societies receiving the labor organizers already have a culture that includes capitalist labor relations. European nationalism, defined in linguistic and ethnic terms, has similarly been seized on in many parts of the formerly colonized world.

The Hawaiian sovereignty movement is another parallel process of introducing apparently "foreign" ideas into Hawai'i. Although many of the leaders are Hawaiian, they have typically been educated in Western conceptions of rights, sovereignty, and political struggles. Many are women (Trask 1993). While the men engage in electoral politics, the women pursue a more radical course, charting a demand for self-determination rather than simply participation in the electoral process. The form this self-determination took included the creation of a constitution, an electoral system, and a governing assembly. Is this an example of Hawaiians borrowing a Western form? I think not. The Western form of government was introduced to Hawai'i in the 1840s, under considerable duress. But, 150 years later, Hawaiian activists drawing on various facets of their culture in order to construct a new order find this form of government part of their own tradition, tailored in the constitution of Ka Lahui to a Hawaiian framework. In other aspects of its activity as well, the sovereignty movement has drawn on law to make demands for reparations, to try the U.S. government for its crimes against the Hawaiian people and their culture, to demand the right to sue over the misuse of Hawaiian homelands. This recourse to law is not to a "foreign" cultural repertoire; on the contrary, it is a turn to concepts of law and rights that have been part of Hawaiian social organization for over 150 years. As these concepts were absorbed, they were also adapted and appropriated to the Hawaiian context.

In the current movement, the concept of law itself is being redefined as both global and local rather than national. Areas of contest between cultural meanings cannot be thought of as occurring between distinct cultures; instead they occur among various groupings within cultures, such as those based on race, class, gender, region, and history. Moreover, meanings are constantly reformulated as these communities of common interest shift, succumbing to changing circumstances and changing populations. The moral

component of cultural meanings plays a crucial role, integrating competing interests and providing the wherewithal for local leverage in global movements. The moral component grants collective solidarity to communities engaged in a continual struggle for autonomy and participation.

The claim that the global spread of feminism or ideas of human or indigenous rights replicates nineteenth-century imperialism is wrong. Arguing cultural relativism as a barrier to global interventions in behavior viewed as offensive by some groups does not recognize the nature of globalization or the postmodern society. Nor does it recognize the fluidity and the overlapping nature of communities of "culture" throughout that global arena.

NOTES

1. The term "gender violence" emphasizes that the violence occurs in culturally defined gender relationships that privilege male authority and control and to some extent legitimate violence as discipline.

2. In Hilo, the number of requests for civil temporary restraining orders has increased dramatically since the early 1970s. Between 1971 and 1978, there were seven issued in Hilo for domestic violence situations. In 1985, there were 250; in 1991, 320; in 1992, 404; in 1993, 451; and by the middle of 1994, there were 252. The number of criminal cases of domestic violence has increased even more, from 31 in 1979 and 9 in 1980, to 291 in 1990 and 551 in 1991.

3. When the 151 calls for domestic trouble to the Hawai'i County police are broken down by gender, of the 130 for which information is available, 117 (90 percent) have female victims and male perpetrators, 10 (8 percent) have male victims and female perpetrators, and 3 (2 percent) have male victims and male perpetrators (Hawaii Spouse Abuse Task Force 1989:A-3).

4. A 1985 statute defining abuse of a family or household member as a misdemeanor adds the provision that a person convicted will serve a minimum jail sentence of forty-eight hours and "be required to undergo any available domestic violence treatment and counseling program as ordered by the court" (Hawaii Revised Statutes 709-906, section 5).

5. This is an order that allows the restrained person to see the other person but prohibits him from using violence against that person.

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