From Law and Colonialism to Law and Globalization

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MARTIN CHANOCK. *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*. Portsmouth, N.H.: Heinemann, 1998. Original edition, New York: Cambridge University Press, 1985. Pp. 286. $29.50

The study of law's place in the colonial enterprise has finally come of age. The reissue of Martin Chanock's important study on law and colonialism in Africa is an opportune moment to reflect on the emergence of this field of scholarship over the 15 years since its publication. His richly detailed, innovative study of the making of customary law showed for the first time the centrality of law to the colonial process, tracing how it emerged out of intersections among British officials, African chiefs, Christian missionaries, urban migrants, and rural villagers. Law and colonialism is now a mature field with a rich variety of detailed case studies and a sophisticated theoretical understanding of the nature of customary law, the dynamics of legal pluralism, and the kinds of transformations that the legal transplants of colonialism engender. This is no longer understood as a simple process of imposition of law: instead there are spaces of resistance, struggles among colonizers, and forms of accommodation by colonized elites. Although this process was fundamentally one of transforming the colonized society to conform to that of the colonizer, all the while extracting labor, land, and mineral resources, it was never complete. Nor was it completely successful. The effort transformed the society at home as well as in the colony. It is continuing to do so as the former colonized now take up homes in the metropole.

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The reappearance of Chanock's book also offers an opportunity to speculate on the relevance of the insights derived from studies of law and colonialism for the contemporary moment. As in the colonial period, we now see an unprecedented transfer of legal ideas, institutions, and technologies from one society to another around the world. And, as in the colonial period, the rule of law and judicial reforms are at the center of these efforts. In both time periods, such legal reforms were and are thought to contribute to a better society. As Chanock points out, for the British colonizers of Africa, their "last surviving myth," was that they had left a beneficial legacy of the rule of law and an equal and uncorrupt justice (p. 5). Legal transfers today are an effort to promote the rule of law and democracy. They are encouraged by economic considerations, such as the need to establish a legal infrastructure for investment and trade, by political considerations, such as the need to construct some normative order above the level of the nation state, and by cultural considerations, as countries all over the world strive in various ways to become valued members of the so-called international community. These considerations are of course interrelated, since good standing in the international community is important to maintaining positive trade, investment, and international aid relationships. Compliance with human rights norms, or at least the appearance of compliance with human rights norms, is important for all but the most powerful nations. As in the imperial era, these flows of law, knowledge, and expertise take place among countries and peoples of vastly unequal power and resources.

What can we learn about law and globalization today from revisiting the law and colonialism literature? There are clearly similarities. Both are global processes in which smaller countries and peoples are swept up in larger economic and political changes over which they have relatively little control. Both contain powerful forces toward homogenization, although there are now and have been resistance movements. Both are driven by economic forces that inexorably link people together ever more closely and that have continued to generate increasing levels of economic inequality, both among nations and within nations. Much of the similarity comes from the ongoing inequalities of wealth and power that still divide the world of the former colonizers from that of the former colonized.

But both the historic era of colonization and the present one of globalization incorporate social reform movements as well as wealth extraction systems. Reform programs, along with capitalist land and labor systems, transform a whole array of social and cultural activities from sexuality to eating to kinship systems to forms of education. Reformers see themselves as promoting a better, more just, and more "civilized" society. In both the imperial and the global era, the reformers did not always feel appreciated by those they endeavored to help but continued their efforts out of a moral certainty that they could envision the shape of a better world. During the colonial period, social reformers established temperance movements, formed mothers'

clubs to train women to raise their children to be healthier and better workers (e.g., Hunt 1997), encouraged soap and scrubbing (e.g., McClintock 1995) and inveighed against practices such as sati, or widow immolation, in India. Transplanting British law to the colonies was a reform effort of central importance (p. 49). Similar moral reform and sexual purity movements existed in the metropoles as well (see, e.g., Valverde 1991). In the current era of globalization, reformers promote human rights, development, and the rule of law and campaign against female genital mutilation/cutting, trafficking in women, and honor killings (e.g., Boyle 2002). UNICEF trains mothers to prepare their children for school more effectively. These movements share the transcendent ideal that the improvements they advocate are of universal value. In many ways, they benefit weaker and more vulnerable groups and serve as a counterbalance to the disruptive effects of economic globalization, militarization, and endemic local warfare. In other ways, they legitimate and conceal the expansion of economic and military control.

Thus, as we look at colonization and globalization, we see many similarities. But there are also differences. The current system lacks the political control of colonialism. In his preface to the new edition of his book, Chanock argues that the current pressures of globalization are more benign and less totalizing than those of the imperial process (p. viii). The language of race, while still powerful, is increasingly replaced by references to culture or religion as the definitive marker of difference. The explicit ideologies are now democracy and human rights rather than civilization and Christianity, although the language of civilization is creeping back in. The emphasis on compliance with the forms of "civilized" behavior rather than the substance of social justice is still there but the details are different. In the 1820s in Hawai'i, for example, civilization meant pouring tea from Chinese porcelains while wearing European waistcoats (Merry 2003). That these luxuries were paid for by the sweat of Hawaiian commoners scouring the forests for sandalwood rather than growing food did not diminish their importance as markers of civilization. In 2002, achieving "civilized" behavior can mean holding an election even though everyone knows it was rigged or ratifying a United Nations convention even if the government fails to translate it into the vernacular or inform the public of its adoption. Following the forms is important in being accepted into the international community, increasingly referred to as the community of civilized nations. But in the present, as in the colonial era, it is important to distinguish the acquisition of forms of behavior labeled *civilized* from the way reforms are or are not promoting a more equal and just society.

LAW AND COLONIALISM

Martin Chanock's work is a good place to begin considering the development of the study of law and colonialism, since he was one of the founders

of the field. A series of studies in the mid-1980s introduced an historical dimension to the study of legal pluralism and colonial law, previously marked by a rather administrative approach focusing on how to make indirect rule function effectively. With Chanock's book, the work of Francis Snyder on the colonial construction of customary law (1981), and Sally Falk Moore's study of colonial law in Chaggaland (1986), the question of the intersection among legal systems became a central concern. Previous work had often sought to subtract the influence of the colonial system in order to unearth the "real" authentic one; these works took the interaction, and its development over time, as their key problem. *Law, Custom, and Social Order* examined the historical formation of African customary law in Central Africa during the colonial era. Its central thesis was that customary law was not a residue of the past, but a product of contemporary colonial relationships.

> The law was the cutting edge of colonialism, an instrument of the power of an alien state and part of the process of coercion. And it also came to be a new way of conceptualizing relationships and powers and a weapon within African communities which were undergoing basic economic changes, many of which were interpreted and fought over by those involved in moral terms. The customary law, far from being a survival, was created by these changes and conflicts. It cannot be understood outside of the impact of the new economy on African communities. Nor can it be understood outside of the peculiar institutional setting in which its creation takes place. African legal conceptions, strategies and tactics are formed both by the impact of capitalism and by the interaction of the communities thus affected with the concepts, strategies and power of British colonial legal institutions. (P. 4)

In this statement, Chanock articulates clearly his argument that customary law was made, not found. Moreover, he notes that it developed at a regional level, not at the level of individual tribes, and that it was a response to the colonial situation itself. This book marks an important break with traditions of legal scholarship that saw in customary law the ancient or original law of African peoples. Legal nationalists, in the early years of independence, relied on this earlier understanding as they sought to build an Africanized legal system on the basis of mythic customary law. Chanock shows in rich detail how customary law was forged in the struggles over land, labor, and property in the colonial era and how it combined British law and a range of chiefly and tribal forms of law. Although the focus of customary law was on marriage and the family, these were institutions that had enormous significance for the allocation of land and labor. Customary law had always been innovative and flexible, but as it intersected with British law and the demands of colonial administration, it fossilized into a fixed and rigid system.

One of Chanock's central arguments is that customary law was formed through historical processes. He critiques the work of early anthropologists

of law such as Max Gluckman for their indifference to history. Chanock shows how these ahistorical anthropologists presented customary law as a remnant of the precolonial and unchanging past rather than as the product of the complex intersections of precolonial African polities, Christian mission law, British law as understood by early administrators, and the emerging African elites' efforts to shape the law to fit changing political and economic conditions (pp. 29–30). These anthropologists were influenced by nineteenth-century British views of jurisprudence that emphasized the function of law in maintaining social order. British jurisprudence saw law as a problem of social order and obedience, not as a system that fostered a market, that expressed class interests, or that served to define rights. This vision of British jurisprudence shaped anthropological writing about African law, he argues, much as it influenced the perspectives of the early emissaries of British law in Central Africa (p. 219). An historical analysis, in contrast, sees customary law as continually constructed and reconstructed over time, both in response to the changing needs and objectives of the colonial administrators and in response to the changing social fabric of African peoples.

The British interpretation of customary law was the product of an analytical lens provided by European theories of evolution. At the beginning of the twentieth century, in the early years of colonialism, customary law was thought to represent a primitive stage of legal evolution. At first, administrators were anxious to help customary law evolve by judging as many cases as possible and by allowing the law to remain flexible and unwritten. Even though anthropologists began to contest the evolutionary framework in the interwar years, administrators hung on to it. Those who served as judges in the courts of the early twentieth century had little legal training but were heavily influenced by these evolutionary theories of law. They contrasted the apparently primitive law of the Africans with their conceptions of modern, or civilized, law. The minds of the district officers, Chanock asserts, "were full of legal ideas which they imagined to be the basis of the law of their own culture and which they thought of as universal" (p. 75). They brought with them an idealized picture of British law, envisioned as a matter of applying clear rules to particular situations. The flexibility of rules and the importance of unequal relations between the parties in the African system disturbed them. In these African societies, as Chanock points out, custom was a political resource useful in continuing renegotiations of status and access to resources. It was not a "rule" to be "applied." However, these white courts wanted to know what the "customs" were because they sought rules. And in this process, customs became rules (p. 76). The flexibility of African legal proceedings confirmed the British officials' belief in the primitive nature of African law. These interpretive frameworks overrode other ways of understanding African legal practices. Had the British colonial officials in Zambia and Malawi spent some time in London lower courts, they might have had a different understanding of British law and been less critical of the Africans.

In the early years, before 1910, Africans brought their problems to the colonial courts in significant numbers (pp. 103–4). Women were particularly eager to use this new resource. Early British administrators and judges endeavored to protect women from abusive husbands and slaves from masters. They tried to undo existing inequalities of age, gender, and chiefship, as did missionary courts in the 1880s (p. 83). But major changes in social relations associated with the spread of the market, migratory wage labor, and the growth of towns in the 1920s and 1930s began to undermine the authority of elders over younger people, chiefs over subjects, and men over women. With the spread of capitalism, the system changed from one in which wealth and power depended on rights in and control over people to one in which wealth and power came from rights in and control over property. Perceiving this social transformation as an indication of social breakdown and a threat to political stability, colonial administrators sought to shore up traditional authority, and they became less enthusiastic about protecting women. Chanock describes a case from 1916 in Zambia in which an African woman, beaten by her husband for adultery, was accepted back into her natal family by her father. This was unusual, since most parents sent women back to their abusive husbands. But the white judge complained about the father's action, saying that because of the adultery, the father should let his daughter stay with her husband, who "wishes his wife to be a pure woman" (p. 150). Women soon lost the sympathy of the courts in their efforts to escape male control. The women who had flocked to the courts for protection against abusive husbands now found the courts more interested in upholding the authority of men and in preserving customary marriages than in providing them protection from violence. The colonial authorities no longer sought to westernize Africans but to leave village justice in village hands. Old men were seen as the repositories of customary law, conceived as a set of rules existing in the precolonial past even though, by the 1930s, old men had little adult experience with the precolonial era (p. 77). As conflicts developed between the old rulers and the "new" Africans, specifically the mission-educated elites, the government sided with traditional rulers (p. 138).

By the 1920s and 1930s, the local British courts had become to a large extent places to enforce discipline and punish violations of new British regulations about work obligations, labor contracts, vagrancy, and tax paying (p. 108). Fewer brought their cases to the courts voluntarily. Courts began spending much of their time convicting men for absconding from work and deserting government service. In areas with white settler communities, the lower courts quickly shifted to enforcing the labor discipline and the social hierarchies of colonialism, prosecuting workers for "absence from duty" and "neglect of work" (p. 107). Colonial administrators thought it increasingly desirable to codify customary law and promote more formalistic procedures under the authority of the traditional chiefs. By the late 1920s, there was

interest in formally recognizing African courts (p. 111). A new system of Native Courts established in 1930 under the control of the rural chiefs was enjoined to enforce custom, imagined as the rules of the past. Although an emerging mission-educated African elite wanted a more legalistic, British form of law, the new legal institutions were to administer customary law. While British legal scholars pushed for the legalization of law, really its Anglicization, colonial administrators pressed to retain its customary basis (pp. 45–48). In the 1920s and 1930s, educated Africans also began to complain about the racial discrimination of the legal system (pp. 130–31).

With the advent of cultural nationalism surrounding independence and the new interest in law and development in the 1960s, customary law was redefined as indigenous African law, the basis for building a new unified African legal system. African elites and African lawyers took control, searching in customary law for the African element of law. Yet, as Chanock's rich and detailed analysis of the creation of customary law shows, this law was formed within the structures of white administration (p. 141). Far from being a set of rules handed down from the precolonial period, it was a historical product created by the interactions among a range of local African laws and practices and colonial institutions (p. 145). It emerged in the context of a colonial need for administration and control, an amalgam of "the summary and technical legalism of British forms of justice, a remote and despotic legal style, a fiery view of sin and, above all, the vision of a strict and moral golden age" (p. 136). Chanock worries that the customary law that is now touted as African law is the product of colonial relations despite its claims to represent a precolonial African legality. Colonial inequalities rather than those of precapitalist African systems of hierarchy shaped its formation.

> [I]f it is rules that the legal systems of the successor states require in the areas in which the customary law now operates, it would be possible to formulate far more equitable ones than those deriving from the inequities of the colonial situation which currently find acceptance on the basis that they are essentially and traditionally African. (P. 238)

Chanock worries that if this customary law, forged by the unequal power relationships of the colonial era, is made the basis of a new unified African legal system, it will bring these inequalities into the legal system of the modern state. Of course, the legal system of the modern state is built on its own system of inequalities, which it both reflects and reproduces.

DEVELOPMENTS IN THE STUDY OF LAW AND COLONIALISM

One of Chanock's goals in this book was to criticize legal anthropology for its failure to incorporate historical analysis. Anthropologists of law of

the 1940s and 1950s endeavored to prove that the Africans had a law system similar to that of the colonial government by emphasizing continuities of function. Ordeals, for example, were discussed as examples of evidentiary proceedings. As these anthropologists focused on processes of dispute settlement and order maintenance, they promoted an analysis of law indifferent to history and political economy and presented African law as existing in a single legal field. Relations of colonial domination and subordination were not considered. Chanock's book made a major contribution to rethinking the colonial construction of customary law by its emphasis on the historical creation of customary law and its analysis of the way customary law arose out of struggles over land, labor, and marriage.

Since this initial pathbreaking work, research on law and colonialism has demonstrated the centrality of law to the colonizing process (see Comaroff 2001). At the same time it has challenged ideas that law was simply imposed or that its impact was direct or straightforward. There have been several studies of the historical formation of customary law in Africa and its fluid role in moments of dispute (e.g., Comaroff and Roberts 1981; Snyder 1981; Moore 1986). Research has demonstrated variations in the way law was adopted, appropriated, and imposed in colonial situations and the way it operated in practice (e.g., Brown 1997; Cohn 1996; Comaroff and Comaroff 1991, 1997; Gomez 2000; Griffiths 1997; Hirsch 1998; Lazarus-Black 1994; Lazarus-Black and Hirsch 1994; Mamdani 1996; Shamir 2000; Merry 2000, to name only a few). Chanock himself has contributed to this more nuanced understanding of law and colonialism in his recently published study of the making of South African legal culture (2001). His book examines the creation of a jurisprudence of custom, the transplantation of British and European legal ideas, and the impact of pervasive racialized thinking in the creation of the complex colonial state in South Africa.

Research on law and colonialism shows the complexity of colonial situations and the lack of unanimity among both colonizing groups and the colonized. Newly arriving Europeans were often citizens of deeply hostile nations. In nineteenth-century Hawai'i, for example, the colonial situation I know best, the American settlers, merchants, and missionaries perceived the French as deeply threatening, both because they advocated Catholicism and because they sought generous terms for importing French brandy. Meanwhile, the British and American merchants engaged in ongoing quarrels with one another, while British whalers fought American missionaries over prostituting Hawaiian women (Merry 2000).

Europeans of the same nation were also often at odds, particularly missionaries, merchants, and settlers (see Cooper and Stoler 1997). It was common in the white settler states of Africa for the missionaries to seek to defend the land and labor of the Africans against the demands of white settlers (see Cooper and Stoler 1997; Comaroff and Comaroff 1991, 1997). Chanock describes the struggles in Central Africa among British legal scholars, who

wanted to formalize African law, British colonial administrators, who sought to maintain its flexibility and informality, and African legal nationalists who wanted to unify and formalize African law through gathering formal rules from elders, court assessors, chiefs, and other repositories of customary knowledge (p. 56). In the late nineteenth century, Christian missionaries in Malawi were very active as judges, applying a Victorian interpretation of biblical law along with English procedures (p. 79). Some were notorious for imposing harsh punishments such as flogging and heavy fines. In the 1930s, while colonial administrators sought to govern the urban Africans in Zambia's Copperbelt through a system of tribal elders, trade union organizers from Britain created a movement that crosscut tribal boundaries and joined workers on the basis of their labor status rather than their tribal identity (Epstein 1955).

The colonized were also deeply divided by social class, region, language, and their ability to benefit from the new economic and political relationships. In late-eighteenth and early-nineteenth-century Hawai'i, while the chiefs benefited economically from the new trade relations with Europeans and Americans, the common people were largely excluded from these opportunities. As commoners became less important as loyal followers than as sources of labor and revenue, they were driven to exhaustion by increasing demands for labor and taxes from the chiefs. Chanock describes similar differences in the ways the peoples of Central Africa benefited from colonialism. Some moved into the cash economy and gained education through the missionaries while others faced increasing emiseration in the rural areas. Laura Gomez's (2000) study of colonial law in New Mexico shows how a group of established, landed Mexicans was able to retain power in the courts and use them to control the roving white and Mexican poor even after the United States had taken political control over the region in the late nineteenth century.

Nor was law always imposed on unwilling colonial subjects. In many places, there were some who desired the forms and texts of European law in order to construct a society they were told was more civilized. Colonized elites and even commoners sometimes took to the new legal systems with enthusiasm, bringing their disputes to them and seeking out training in the new legal practices. Chanock describes the initial enthusiasm for the courts in Central Africa, a pattern also found in nineteenth-century Hawai'i. Even in slave communities, there were sometimes slaves who took legal recourse to protect themselves (Lazarus-Black 1994). Nevertheless, it was the educated elites of the colonial space who had greater control over the law. Colonized elites educated in the new way were able to seize economic possibilities or to acquire positions in the new government, while other groups found themselves pushed off ancestral lands, conscripted to miserable work in mines or on plantations, or decimated by new diseases.

We are now witnessing another era of global legal transplants carried

out in the name of democracy, human rights, and the rule of law. Although the current movement is quite different from the imperialist one because it is embedded in a very different form of capitalism and state sovereignty, there are significant parallels in politics and practices. There is a similar conjunction of choice and constraint, a desire for modernity and a resistance to homogenization. Just as some colonial subjects sought to appropriate imperial legality in order to reconstitute themselves as civilized beings and to better manage the new opportunities and oppressions of the colonial state, so some contemporary postcolonial elites see in transplanted law the forms which will earn them greater international respect and increasing support for their claims to sovereignty. Understanding the complicated role law played in colonialism—as a mode of coercion, a form of social transformation, and a discourse of power developed by dominant groups but also open to seizure by subordinates—is helpful in making sense of the dynamics of globalization and the expansion of the rule of law taking place today.

LAW AND GLOBALIZATION

In order to think about the implications of the study of law and colonialism for law and globalization, I propose to consider some of the connections between Chanock's book and studies of law and globalization. Although there has been an explosion of work on globalization, careful studies of the legal aspects of this transformation are relatively rare. Some of the most valuable are those of Yves Dezalay and Bryant Garth, found in a series of recent publications (1996, 2002a, 2002b). Their recent book *The Internationalization of Palace Wars* (2002b) provides a particularly interesting comparison with Chanock's book in its examination of contemporary processes of law and globalization. A full review of the book is beyond the scope of this essay, but I will focus on its analysis of the relationship between the circulation of elites and forms of legal and economic expertise between North America and Latin America and the kinds of transformation this engenders. Dezalay and Garth examine the forms of knowledge and expertise these transnational actors adopt, their locations in structures of power, and the state structures they are attempting to transform, by examining four Latin American countries.

At first glance, Chanock's work seems unrelated to Dezalay and Garth's. One traces the implementation of British law in an African colony in the early twentieth century, the other studies the networks of power and influence among lawyers and economists in Europe, the United States, Chile, Argentina, Brazil, and Mexico. The former talks about the changes in legal practice and the nature of law in colonies, the latter examines how changes in academic expertise and theory in the global North affect policy and state structure in Latin America. It seems an unlikely comparison.

However, these two books have in common an analysis of how law moves from one place to another and under what conditions it is incorporated into existing relations of power. Both recognize that the way legal transplants adapt to new situations is very much a product of context: of the structure of power and authority in the receiving country and of its everyday ways of doing things. For example, during the colonial period the British courts in Central Africa refused to recognize the existence of witchcraft but prosecuted and sentenced witch finders. As a result, local people assumed that the British were on the side of the witches (p. 100).

What happens on the ground also depends on the transplanted law itself: its particular legal techniques, forms of knowledge, resources, and sources of power and legitimacy. New legal institutions and regulations can piggyback onto other economic and political shifts to facilitate change. For example, Chanock describes the changes in the early twentieth century among the Tonga people following the introduction of cash earned through wage labor. When the migrant laborer sent his wages home to his mother's brother to invest in cattle, there was some ambiguity about whether the cattle belonged to him alone or to his matrilineage. Because the courts rather than groups of kin ruled on these cases, the younger man's claim to property was reinforced. Thus, the new legal institutions and their ways of defining property encouraged people to break away from obligations to kin and to move toward a more individuated petty capitalism. As Chanock points out, "Economic individualizing and jural individuation went hand in hand" (pp. 36–37).

Similarly, Dezalay and Garth (2002b) trace the way new forms of legal and economic expertise from the United States displaced earlier ways of doing law based on European models. As lawyers began to study in the United States instead of Europe, they acquired new ideas about law and governance, such as neoliberalism, that they carried back to Latin America, transforming legal practices and expertise. In both cases, social transformation depended both on transnational expertise and domestic conditions.

Both studies emphasize how individuals carrying knowledge and expertise from one site to another affect the kind of law that develops and the social transformations that follow. In both cases, individuals vested in particular positions bring new ideas that shape their practice, although their long-term effect on changing the larger society depends on the conditions they encounter. Chanock shows how the evolutionary models of law and lack of legal training of the early district magistrates shaped their attitude toward African customary law, leading them to assume that it was simple and primitive (pp. 71–72). This made them more critical of customary law and eager to reform it. Some of the more-educated, affluent Africans saw in this reformist ideal the opportunity to reshape customary law in ways that would benefit them. Their efforts helped to develop a customary law reflective of the new inequalities of the colonial era.

Similarly, the Latin American lawyers and economists Dezalay and Garth describe brought back from North America and Europe ideas, such as human rights, that had potential value in local struggles over power. However, their ability to transform societies according to these new forms of expertise depended to some extent on the nature of the state that was in place. For example, the eminent Argentine economist Raul Prebisch used his training and his ideas of the developmental state to promote economic development, but he was hindered in his efforts to transform the Argentine state by domestic political changes. Although he worked for the government in Argentina from the 1920s to the 1940s and was a professor of political economy in Buenos Aires during this period (Dezalay and Garth 2002b, 24–25), when Peron came to power in 1946, Prebisch and those who worked with him were excluded from the government and the university. Prebisch went to Chile to work for the Comision Economica para America Latina (CEPAL), a UN initiative. After Peron's overthrow in 1955, Prebisch came back to Argentina to advise the government, but when the government changed a few years later, he returned to CEPAL and later headed the United Nations Conference on Trade and Development (UNCTAD). Because of these political shifts, he was unable to shape Argentine institutions directly but exerted indirect influence from outside the state. In contrast, Chile and Brazil, with different structures of power, were more fully transformed into "developmental states."

The circulation of people in these situations takes place within a web of social relationships and the bodies of expertise. Importing law transnationally is not just a transaction between Britain and Zambia or the United States and Chile. It occurs within a network of shared ideas and technologies and by means of individuals who move through these networks and learn through experience. The British Empire was one of these networks and bodies of knowledge. Administrators moved from place to place within a world of shared cultural understandings about race and power. They first experimented with the governance of colonies in Ireland. Subsequent efforts at imperial rule gradually built up a body of knowledge about strategies of rule and the characteristics of the ruled. British colonial elites developed approaches in one place that were then transferred to another. For example, the British governor of Fiji in 1874, Sir Arthur Gordon, began his career as a colonial administrator governing multi-ethnic communities with Indian laborers in the plantation societies of Mauritius and Trinidad (Lal 1992, 12). Lord Lugard's policy of indirect rule was developed for the centralized states of Northern Nigeria in the early twentieth century then disseminated throughout British Africa as well as the African colonies of the French, Belgians, Portuguese, and Italians (Mamdani 1996, 78–88). Indirect rule moved into Central Africa after the First World War, justified by administrators as a way of helping Africans evolve a sense of discipline and respect for the authority of the new state (p. 49). By the early twentieth century, the

British had accumulated vast experience in running colonial places. Shamir quotes an American journalist traveling through Palestine in the 1920s who notes that the British knew how to treat the Arabs and what to expect of them because they were familiar with governing peoples who were natives on their own lands. "They can play their pipes as they have played them in a hundred lands," the journalist reports. The Jewish settlers from Europe were quite a different proposition, neither submissive nor grateful but familiar with English ways (Shamir 2000, 20).

Similarly, leading U.S. and French academic institutions are the source of a contemporary network and body of knowledge of economic and legal expertise. The current U.S.-based system of higher education in law is linked to international human rights, NGOs, and to American commitments to neoliberalism, privatization, and the expansion of rule of law. The Chicago-trained economists and lawyers or the Parisian-trained lawyers bring this knowledge and expertise to Argentina and Chile based on their experiences in the United States, France, and the international legal world (Dezalay and Garth 2002b). These are transferable systems of knowledge and approaches to rule. Those who have knowledge of how a particular system of law works, what it can accomplish, and how it can be directed and channeled in complex, legally plural settings are the people who manage legal transplants, whether during colonialism or globalization.

In the imperial era, circulation took place from metropole to colony and back again. British colonial officials and settlers went to Africa while Africans and Indians went to Britain and France to study and work. There they learned about nationalism and self-determination, but when they took these ideas home, they were accused of fomenting tribalism. They acquired the trappings of civilization, as the British and French defined the concept, but they also discovered, as Gandhi did when thrown off a first-class train car in South Africa, that they were never quite there. Race remained an immiscible element of difference. Nevertheless, these colonial students, like some of the Latin American students Dezalay and Garth describe, went back home with their newly acquired ideas, connections, and knowledge to become the educated elites. Frantz Fanon railed against this class, arguing that it had sold out to Europe and that authentic consciousness could only be found in the unschooled peasant (1963). These people became the new postcolonial elites as well as national leaders under globalization.

Dezalay and Garth track similar routes from elite families in Latin America to the premier educational institutions of Europe and the United States and back to positions of leadership in Chile, Argentina, Mexico, and Brazil. Through these passages, these people acquire not only expertise and language skills, but also connections and values. The pattern of circulation is now changing. The gentleman lawyers, oriented toward Europe, are being replaced by "technopols," economists trained in the United States. For both groups, international linkages are important to their social networks and

their careers and to their capacity to introduce new ideas and practices and engineer the kinds of transformations they envision. Thus, transnational exchanges of knowledge and expertise about law and governance shape the way legal systems are transplanted and power allocated in global society, as they did in the British Empire.

This circulation of persons and knowledge not only transformed the colony and postcolony, but also the metropole. Comaroff and Comaroff examine the colonial history of South Africa from the perspective of how these encounters reshaped Britain (1991). Ideas of race, difference, sexuality, and morality emerged as a coproduction of these interactions. The European self was defined as rational and self-governing in opposition to an allegedly savage "other." As Foucault notes, displacements of sexual desire onto the allegedly erotic colonial peoples was fundamental to the way the Victorians managed their own sexuality (1996). Peter Fitzpatrick argues that modern law was transformed by its role in regulating colonial relationships (1992). The social field created by the transplantation of colonial law and practice is a coproduction that has changed the identity and the forms of law (Fitzpatrick 2001). The opposition to an "other," defined as different and savage, made law modern. Law transformed the colonies, but colonialism also changed the law.

Along with people and expertise, discourses and representations of "others" also circulated during colonialism and globalization. The British colonial officials looked down on Africans as backward and irrational because of their evolutionary models and their ideology about African law. They treated witchcraft accusations with disdain (pp. 85–102), disparaged the use of ordeals as evidentiary proceedings (p. 71), and were horrified that sentences varied with the status of the victim. They interpreted these practices as evidence of the arbitrary and despotic nature of African law. In coming to this conclusion, colonial authorities drew on the popular colonial repertoire of distinctions between civilized and savage, Occident and Orient, and images of bestiality and infancy used to interpret the behavior of people with darker skins. This form of interpretation conformed neatly to the evolutionary models of social difference that were widely accepted in the early twentieth century.

Such representations were more common in the imperial era than in earlier periods. Explorers of the eighteenth century such as Captain James Cook described the Hawaiians and other Polynesians as noble and industrious, for example. By the middle of the nineteenth century, however, Hawaiians too were being described as childlike and simple. The "Hawaiian" was close to nature and not enthusiastic about working in the disciplinary regime of the sugar plantation. As Pratt demonstrates, the shift from nobility to bestiality was widespread in travel writings between the eighteenth and nineteenth centuries in Latin America and Africa (1992).

Contemporary globalization has shed the more blatantly racist and evo-

lutionary frameworks for thinking about difference, but subtle exclusions marked by references to culture and tradition remain. Now the peoples of Africa and Asia are more often described as mired in "traditional culture," and therefore unable to change, than as racially inferior in intellect and energy. The new framework still impugns the rationality and inventiveness of traditional peoples, defined as those living in the developing countries of the global South. They are described as unable to seize new opportunities or make choices for themselves, slow to develop, and unable to create an orderly, stable, democratic society. Critics point to the retention of practices such as female genital cutting or differential female foeticide as evidence of the way traditional people are ruled by culture. These interpretations still rely on an underlying evolutionary framework that defines some peoples as backward and others as more advanced.

But many of these practices are actually promoted by contemporary conditions. Customs that appear to be ancient are often bolstered by modernity. Female genital cutting and female foeticide are certainly cultural practices that are harmful to their victims, yet despite local efforts to end them, they are being encouraged by the uncertainties of global transformation and its apparent threat to the nation. These and other practices sometimes define national or religious identities. Women's bodies become the bearers of national or religious identity as they are draped, surgically altered, slenderized, or sheltered within marriage at an early age. Representations of "others" as bound by culture differ from imperial images of racial inferiority, but they continue to explain inequality in terms that focus on the inadequacies of the poor and their way of life rather than on the structure of the global economic and political systems in which they live. Many of the hardships faced by people in the societies that practice these customs are the product of globalizing forces such as endemic warfare, environmental degradation, and increasing economic inequality.

USING LEGAL COLONIALISM TO UNDERSTAND LEGAL GLOBALIZATION

Studying law and colonialism provides insights into how new legal regimes intersect with changing structures of state power and conceptions of authority to produce social change over time. Globalization is too new to see such effects, but comparing globalization's changes with those experienced under colonialism exposes the long-term consequences of transplanting legal forms or inventing new legal ones. There are at least two important lessons to be learned about globalization and law from the historical study of colonialism and law.

The first is that as hybrid systems of law develop, they reflect the power structures within which they are formed. This follows from Chanock's point

that customary law gradually crystallized into a more fixed form following the model of British law. As it did, it was shaped by the inequalities between Africans and whites that underlay the colonial situation. In a similar way, international law is being made and remade within the inequalities of the contemporary global system. The building blocks of global law include fragments of national law, long-standing international treaties, a body of commercial law with a long lineage, and global processes of consensus building and institutional development. International human rights lawyers today strive to solidify the human rights legal system as coherent, unified, and codified and to suppress its fragmentary, provisional, and inventive qualities much as the British lawyers did in colonial Africa. International law grows out of particular crises and offers creative new ways of thinking about problems. But it too reflects the inequalities between rich and poor nations, developed and developing, from which it is emerging, just as customary law did. For example, the United Nations system operates in a context of formally equal sovereignty but vastly unequal levels of national power and resources. Dianne Otto argues that by basing participation in the UN system on a set of standards for statehood derived from the European experience, the system maintains the colonial predominance of European institutions and excludes many groups that are not states. Of course, nonstate actors do exert considerable influence on the UN through their efforts to influence states although many of these are also supported by the states of the global North. Otto also argues that the UN system requires states to assume a European form of sovereignty in order to participate (Otto 1999, 145–80).

A second important insight relevant to the postcolonial present is that the consequences of new legal mechanisms and rules are often quite different from what their proponents expect. New systems of courts, policing, and laws may undermine local social hierarchies in surprising ways. As Chanock shows, colonial authorities discovered that their goal of liberating subordinated people such as women and slaves disrupted marriage and village life by undermining established hierarchies of chiefs over followers and men over women. The new cash economy of wage labor and cash cropping in Central Africa further disrupted preexisting hierarchies. Colonial officials turned to reinforcing traditional chiefly power in order to maintain social stability. In another surprising turn, colonial authorities who sought to eliminate witchcraft by ignoring accusations of bewitching were accused of strengthening the witches.

Sometimes legal innovations were adopted by societies facing the risk of imperial acquisition in order to fend off takeovers. These innovations allowed states to constitute themselves as sovereign on the European model. Presenting themselves as civilized and modern—as governed by the rule of law and an independent judiciary—slowed the process of political takeover. The monarchs of nineteenth-century Hawai'i, for example, adopted a constitution, a bill of rights, and a written legal code, and then sought treaties

of noninterference from major European and North American powers. Emissaries from the Kingdom of Hawai'i arrived in Washington, London, Brussels, and Paris in the 1840s seeking treaties of independence for their Christian kingdom governed by law. Yet, the very reforms that maintained their sovereignty sowed the seeds of their ultimate conquest and dispossession, as I describe in more detail in the next section.

Similarly, as nations today adopt reforms such as an independent judiciary and the rule of law, they may experience unanticipated consequences. These changes may produce a society more governed according to the rule of law, for example, but they may also increase dependence on foreigners or foreign-educated nationals to run the new systems. Foreign-trained lawyers, such as those Dezalay and Garth describe, may become essential to running these mechanisms.

LAW AND COLONIALISM IN HAWAI'I

Using the period before formal colonial takeover in Hawai'i, I will illustrate two points: how developing legal systems reflect the inequalities of power in which they form and how legal change produces unintended consequences. Prior to colonization, the transformation of Hawaiian law occurred gradually, through a process of adopting new legal codes and institutions. This was never a coherent and thought-through process, but one of incremental decisions at various moments of crisis. Yet, it was directed by an overarching ideology of progress and civilization. These features are also characteristic of the globalization processes described by Dezalay and Garth (1996, 2002a, 2002b).

Between 1825 and 1852, the chiefs and king of Hawai'i adopted an Anglo-American system of statutes, courts, prisons, and procedures. The leaders were eager to stave off a colonial takeover and imagined that recreating themselves as a civilized nation through adopting the rule of law would protect them from imperial acquisition.[1] But Hawai'i's leaders ultimately failed to preserve their sovereignty. The new legal regime permitted foreigners to take control of their land, import outsiders, and to some extent to run the government. When the chiefs realized that they had opened the door to foreigners in ways that they did not want, it was too late; they could not run the new system of law and governance without them. Hawai'i's experience shows the difficulty of predicting change in the face of a rapid shift to a capitalist economy and pressures from competing imperial powers.

New laws governing relations of land, labor, and family life were adopted in Hawai'i on the advice of American lawyers and officials who were hired by the Hawaiian government to help them deal with the obstreperous

1. I have written about this transformation more extensively elsewhere (2000).

merchants and sailors in Honolulu and the threats of foreign warships. These laws were based on U.S. models. In 1848, 50 years before the colonial takeover of Hawai'i, laws introduced from the United States replaced communal landownership under the authority of chiefs with private land tenure. This change radically undermined the authority of chiefs and opened the land to purchase by foreigners, who soon converted the land from subsistence taro farms to sugar plantations. Apprenticeship laws introduced from New England created a contract labor system that enabled the planters to import foreign workers for the new plantations. A proposed Massachusetts penal code adopted as the criminal law of the kingdom established a radically different regime of marriage and sexual relations through its criminalization of adultery and fornication. Instead of a flexible institution, marriage became a permanent and enduring tie, while adultery was subject to severe penal sanctions. Coverture, introduced in 1845, reduced the status of women, including high-ranking chiefs, to that of legal dependents of their husbands. These laws concerning land, labor, and family were often passed without much discussion or debate by the newly created legislature. The new laws proved deeply transformative to Hawaiian practices of marriage, to chiefly authority, to ownership of land, and to forms of work. They established the power of private landowners over tenants and husbands over wives and facilitated the shift in political power from Hawaiian chiefs to white sugar planters and the owners of railroads and shipping lines. Thus, the new legal arrangements contributed to a significant realignment of power in the kingdom and paved the way for the expansion of capitalist agricultural and ultimately the takeover by the United States in 1898.

The new laws were accompanied by the development of new institutional structures such as courts and prisons. Continuing complaints about the way the laws were administered came from the settler community, forcing the kingdom to hire foreigners to run the new systems. Thus, the introduction of new legal mechanisms meant displacing authority from Hawaiians to foreigners. The commoners signed petitions to protest the use of foreigners in government, predicting that in time the government would fall into the hands of the foreigners and the Hawaiian people would become their servants and work for them. In the 1860s, the Hawaiian historian Samuel Kamakau wrote in his newspaper column about the period in the 1840s when the Hawaiian people began to complain to the king about employing so many foreigners in the government. He quotes the people saying:

> "We shall see that the strangers will complain of the natives of Hawaii as stupid, ignorant, and good-for-nothing, and say all such evil things of us, and this will embitter the race and degrade it and cause the chiefs to go after the stranger and cast off their own race." (Kamakau 1961, 399)

According to Kamakau, the king replied that he could not let his foreign advisors go. He could not govern his people, cope with the unruly foreign merchants, and stave off the demands of imperial European powers and their gunships without the help of his American and European advisors.

Thirty years later, a plantation sugar economy under the management of Americans and worked by imported Chinese laborers was booming. Missionaries' children turned into planters and business magnates led the movement against the king, and a new constitution forced on the kingdom in 1887 virtually eliminated his power (see Osorio 2002). The new laws of private landownership and labor importation contributed to this transformation in the locus of power even while sovereignty formally remained in the hands of the Hawaiian monarch.

Legal transplantation in Hawai'i did not take place in one smooth and coherent process. In the long term, the trajectory of change is clear, but in the short run people were simply trying to make sense of complex and difficult situations. For example, the missionaries and American lawyers who promoted the transition to private landownership in Hawai'i thought they were protecting the commoners from the arbitrary power of chiefs and encouraging them to invest in their own lands. At the same time, they thought they were promoting the prosperity of the kingdom by developing its agricultural resources. They apparently failed to see that this change would result in massive loss of land by the commoners and the creation of an even more destitute peasantry. Instead of living at the mercy of the chiefs, the commoners now lived at the mercy of the market.

Today, states negotiating structural adjustment programs or hiring "technopols" instead of the gentlemen of the law as advisors may also not be able to anticipate the consequences of foregrounding these imported economic policies. Even if they could, of course, they often have little choice. Structural adjustment, import substitution, labor market reallocation, even social reform legislation governing minorities, women, and children may be required of poor countries by global lending institutions. Yet, the long-term consequences of these reforms are often increased economic dependency and an inability to provide government services to the public. This leads to further dependence on foreign NGOs as well as foreign investors, foreign aid, and foreign resource extraction. The political side of globalization appears different from that of colonialism, but the gradual loss of autonomy through economic, social, and cultural dependence is eerily similar.

On the other hand, Dezalay and Garth also note that foreign knowledge and expertise promote a vision of social order in Latin America that respects human rights. For example, Harvard Law School provided a critical impetus to the human rights movement through its program of bringing scholars from around the world for training in this newly developing area (Dezalay and Garth 2002b, 166). The graduates from this program were

found in prominent NGOs and state administrations and in international organizations dealing with human rights.[2] Of course, the long-term impact on sovereignty of these reforms is not yet clear, and the pattern may be quite different from that of colonized societies such as Hawai'i.

Historically specific narratives legitimate these transfers of legal knowledge and expertise. In nineteenth-century Hawai'i, the narratives were about civilization, progress, and Christianity. The rule of law became the sign of civilization, the coin with which brown Hawaiian monarchs sought to purchase sovereignty in a white imperialist world. The narratives of globalization today are different, yet the rule of law, democracy, and human rights remain implicit measures of civilization and acceptability to a Euro-American global order. Just as the British colonial officials in Central Africa assumed that they brought with them civilization and order, so contemporary legal reformers take for granted the benefits of their proffered vision of democracy and the rule of law. As the British confronted signs of savagery and degradation that legitimated their intervention, so contemporary reformers struggle against the legacies of harmful traditional practices. Yet, in colonial Central Africa, as in Central Africa today, many of the problems people face are the product of the rapid transformation of the global economic and political order and its increasing inequalities rather than the remnants of tradition. Cultural explanations for poverty and suffering obscure the critical importance of power inequalities in producing these problems.

CONCLUSION

Martin Chanock's book provides valuable insights into the complexity of changes wrought over time by the introduction of new legal forms. It shows how alterations that appear minor in the present can have major long-term consequences in the future and underscores the difficulty of predicting those consequences. It is too early to determine the consequences of globalization over the long run, but drawing analogies with the changes wrought by colonialism offers a way of guessing at the future. In neither case do good intentions alone avoid disastrous shifts in power.

Comparing Chanock's book with Dezalay and Garth's work on law and globalization shows the importance of tracing the movement of individuals and expertise in understanding both colonialism and globalization. More-

2. This role of Harvard Law School is reminiscent of William Little Lee's experience at the same institution 150 years earlier. Lee, the American lawyer who wrote the 1850 penal code and much of the 1852 constitution in Hawai'i, had been trained at Harvard Law School in 1843 by Simon Greenleaf, a law professor who had already drafted a constitution for Liberia and was providing legal advice to poorer regions of the United States (Fred Konefsky, personal communication.) Lee thanks Greenleaf for sending him a copy of the proposed Massachusetts penal code in a letter to Simon Greenleaf, 4 September 1850, archived in the Papers of Simon Greenleaf, Treasure Room of the Harvard Law Library, located by Fred Konefsky.

over, it underscores how systems of knowledge and characterizations of difference carried by these emissaries shape their interventions as they seek to understand and change the worlds they enter. Legitimating narratives are critical to understanding the process at both time periods. The legitimating narratives of the present are not dissimilar from and those of the colonial past, since both incorporate ideas of civilization, evolution, and race. But now they emphasize democratization and human rights rather than Christianity and the moral value of labor. The speed and intensity of the circulation of ideas and symbols have obviously increased since the early twentieth century, yet the importance of representations and expertise is as important now as it was a century earlier. In fact, some contemporary resistance to globalization uses anticolonial arguments.

By showing how customary law is made in the context of political and economic inequalities, Chanock's work offers a way of understanding the contemporary development of international law. Although international law is more like British colonial law than customary law, like customary law it is a pastiche of different forms of law that reflects the power structure that produced it. Thus, the study of law in a colonial context alerts us to the effect of contemporary inequalities on the emergence of new forms of international law. Now as then, the details of the process are shaped by wide disparities in economic and military power. Ultimately, this comparison emphasizes that legal reforms are inseparable from the relations of power and inequality within which they occur.

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