

THE PROCESS GEOGRAPHY OF LAW (AS APPROACHED THROUGH ANDALUCIAN GITANO FAMILY LAW)

Susan G. Drummond

Introduction

The idea of place for the social sciences is undergoing a massive transformation in response to the effects of, and theories about, globalization. A relatively fixed and enduring geography has been holding notions of state, region, and locale in place for centuries. Comparative law and legal anthropology have been building theoretical edifices on the stable ground of this traditional geography. Within the more or less durable boundaries of state, comparative law was able to group legal traits, values and systems together for the purposes of cross border comparison. Similarly, legal anthropology was able to ground the idea of legal culture on the device of the 'field': a place that one could fly, paddle, or trek to in order to record all of the material practices, ecological adaptations, marriage patterns, religious beliefs, and legal habits of a spatially-contained, enduring people. The imagery of durable frontiers that contain stable and homogeneous cultures (national or local) is giving way to an imagery of processes – action, interaction, and movement. The massive flows of globalization (flows of capital, of information, of technology, of populations . . .) have forced a new reckoning about traditional ideas of place. But they have done so principally by underlining that the borders and frontiers of traditional geography have always been little more than heuristic devices, not enduring aspects of reality. Both state and locale have always been impinged upon, and have strategically constructed themselves out of and in reaction to, broader historical processes.

Process geography, to borrow Appadurai's (2000) felicitous phrase, presents a new set of issues for comparative law and legal anthropology. The fixedness of place can no longer be taken for granted. Conversely, we are left with the

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impression that place has little importance in shaping local identities. If the forces of globalization are eroding the relevance of state borders in the daily lives of citizens, then the importance of national legal cultures, and indeed of positive state laws, is decreasing. Similarly, 'traditional' societies are negotiating their own multifaceted, globally-connected, modernities, having long left behind legal anthropology's conventional pieties about holistic legal systems. The idea of place-based identity is now seen as contrived and unsophisticated. This gives rise to a suspicion that place and locale have become completely irrelevant. Globalization, it is conjectured, is a powerful homogenizing force that sweeps away the very particularities that make up the grist for the comparativist mill. A single legal order impinges upon and will eventually triumph over the legal diversity of the world making of the documents and texts of legal comparativists at best a rich historical archive.

This paper seeks to wrestle with the growing awareness of the impact of globalization on legal diversity. It takes up the invitation to think of the various multi-sited interactions and processes that generate legal cultures. But it also contests the idea that globalization is a synonym for homogenization and that place is increasingly (and suddenly) irrelevant to legal identity. It offers an alternative to the image of the legal anthropologist and legal comparativist as salvagers, steadfastly collecting, classifying, and preserving (for posterity) the world's legal orders in the last anti-deluvial moment before global modernity levels everything in its path.

In teasing out the dimensions of the problematic, I focus on several sites of legal movement. In 1996, I spent seven months with another ethnographer and our son in Jerez de la Frontera, a medium sized agro-town in Andalucia, Southern Spain. One of the central focuses of my ethnographic research was family law in the Gitano communities of Jerez. Gitanos are ethnographically grouped with the Roma, or Gypsy, diaspora. There have been sedentary Gitanos in Spain for roughly five hundred years and the Gitanos of Jerez are reputed to be well-integrated into the non-Gitano population. As my research was focused on the interactions that create legal cultures, I was less interested in Jerezano Gitanos as an independent group and more interested in how local, regional, state, and transnational law interacts with local, national, and global influences. The long historical interactions between Gitanos and non-Gitanos in Jerez makes of them an ideal focus for a study in processes, movements, and strategies. This paper, then, is not a traditional ethnography, focused on a single place. It offers instead a multi-sited view on how the places in which law emerges are interpenetrated by and infused with displaced influences. It suggests new ways of carrying out the missions of comparative law and legal anthropology.

Comparative Law and Salvage Anthropology

Kahn-Freund, in a seminal article (1974) on comparative law, makes out two arguments that, on the face of it, seem to operate at cross-purposes. He appears to stress simultaneously the importance of context for the viability of legal transplants across national borders and the increasing homogeneity of context across national borders such that transplants are increasingly viable. He argues both for the persistent importance of locale and for its growing redundancy. It is this paradoxical tension between the local and the global that I want to explore in this paper in the context of Southern Spanish Gitano Family Law.

On the side of context, Kahn-Freund takes up Montesquieu's climactic theory of law (Montesquieu 1749: Book I, Chapter 3) and makes out the case for ongoing sensitivity to context as a natural limitation on the effectiveness of law, particularly laws transplanted from other legal systems. The practical significance of different laws is limited by the local context which allows only certain uses to be made of them. Montesquieu believed that these uses were constrained by environmental factors such as geography, climate, fertility of the soil, and the size and geographical position of the country, and social and economic factors such as the way of life of a people, wealth and population density, popular religion, mores and manner, the nature of government, and the degree of liberty that the national constitution could sustain. Kahn-Freund replaces this fully organic view of law and the limits of transplantation with a continuum. On one end, transplants from one jurisdiction to another are little more than mechanical transfers not unlike the transfer of a wheel or carburettor from one car to another. On the other end of the continuum, legal borrowings are like surgical transplants comparable to the transplant of a kidney or heart, attended by all the risks of organ rejection. If a law is vitally and organically connected to a particular society, it would be perilous to transplant it into a jurisdiction with a vitally and organically distinct social constitution. In this regard, Kahn-Freund is calling on comparativists to continue the Montesquieuesque tradition of sensitivity to context.

Kahn-Freund then proceeds to argue, however, that the transnational context for several bodies of law has been levelled to such an extent that national borders are increasingly irrelevant as impediments to legal transplants successfully taking root. Thousands of minute and large-scale sub-legal assimilations in the modern era have generated a sameness between national cultures such that they can accept the insertion, in a mechanical fashion, of law reforms fashioned elsewhere. He takes this homogenisation of the social, cultural, and economic environment to be so obvious as to be above argument (Kahn-Freund 1974: 8). Local conditions may determine the effectiveness of state manufactured law; but local conditions have become so penetrated by global factors that statecraft has little difficulty

harmonizing what is already homogeneous across huge swathes of the modern, democratic, industrialized, urbanized world.

Preoccupation with this tension between the continuing importance of local context in the light of global influences has increased in the 25 years since Kahn-Freund's article. Perhaps more apt to contemporary preoccupations about globalization than Kahn-Freund's image of an inserted carburettor might be the Volkswagen take-over of the Spanish Seat. Seat, the Spanish national car, was offered, in one colour only, to privileged Spaniards of the Franco era by Seat's quasi-monopoly of the car industry. Now powered by a Volkswagen engine, its body and colour range keeping pace with global tastes in car design, it can be driven by middle class Spaniards right across the European union, without a cursory stop at national borders.

Globalization theory, sensitive to these transnational movements, has in many ways become one of the central preoccupations of the academy. Comparative law threatens (as the state is in danger of becoming an even quainter social unit than the tribe) to be taken over by legal anthropology as the key discipline calibrating the appropriate balance between the local and the global. On the one hand, the scope of context has shifted from the national to either the local or the multi-sited field. On the other hand, the comparativist's straw man of the positivist theory of sources has been blowing away in the growing suspicion that the state has been rendered redundant as a source of law by phenomena like multinational corporations, international financial organizations, mass migrations of labour and capital, and a rapidly growing infrastructure of transnational mass communications.

The idea that we are now at the last antediluvian moment (or already, alas, in the process of being swept away by global processes) is problematic. It not only misconceives the current relationship between global forces and national and local contexts; it also misconstrues the historical relationship between world events and local constructions of culture and state. Anthropology used to be dominated by the idea that local cultures were being flooded by modernity and that it was the job of the anthropologist to salvage as many artifacts and cultural practices as possible before the inexorable onslaught of modernity moved in and Disneyfied and MacDonaladized everything. This imagery of shoring up local practices against world historical influence is only conceivable when aided by the imagery of remote, isolated people, self-generating their own culture, wholly untouched by extraneous processes. Anthropologists have gone some way to disabusing themselves of this imagery, acknowledging that all folks have been actively forging their own paths through modernity, constructing, not losing, themselves in the process. Conventional legal comparativists are more under the sway of the

imagery of contained populations self-generating their own legal cultures according the principles of coherence generated by the family of law to which they belong (civil law, common law, socialist law . . .)

Both projects - the conventional comparativist's and the salvage anthropologist's - rely on the notion that one can descriptively fix the boundaries of legal orders and cultures, highlighting persistent structural features. These structural features would make them amenable both to comparison by a neutral unit of measure and to assessment on a neutral scale of progress. The recent Cassandra cries about the dissolving integrity of the nation state have the virtue of pushing the comparativist enterprise into a state of conceptual crisis similar to that which has pushed anthropologists into reimagining the very axes about which the discipline spins: people and culture, field and fieldwork.

The Issue Approached through Gitano Family Law

In this paper I question Kahn-Freund's certainty about the homogenisation of social, cultural and economic environments by examining one of the bodies of law that he thinks prototypically illustrates the transnational levelling of contextual difference that renders transplants mechanical: family law. *Prima facie* family law ought to provide the greatest validation of Montesquieu's warnings about the localised spirit of law. The making and unmaking of marriages and families would seem to be paradigmatically linked to local moral and religious convictions, local habits and mores and the social structure of the community. One would expect a high incidence of resistance to any foreign law that was inserted into this domain. And yet family law in the West has seen the most rapid and intense assimilation of ideas and institutions across national borders in recent history. Country after country has undergone a shift from the deeply rooted idea of divorce as redress for fault or sin to the idea of divorce as a relief from marriage failure. Kahn-Freund accounts for the rapid migration of the institution of faultless divorce as a result of the conformity of social, cultural, and economic climates that has emerged in the West over the last 200 years. Family law systems are harmonized because of new relations created by global markets, the gradual replacement of kin relations by labour relations, and a more direct rapport between state and individual through usurpation of the kinds of public services previously provided by kin, community, and church. (See also Glendon 1981.)

Using, by way of example, particular moments in Andalucian Gitano family law I want to revisit Kahn-Freund's thesis about the transnational homogenization of family law and the redundancy of locale. I also want to derive from the particular case a way of thinking overall about the relationship between the local and the

global. This will entail looking at ways in which instances of repugnancy (the legal terminology of incommensurability) and trump (the attempt of a legal order to impose, through a variety of coercions, a single commensurating standard) are digested in incommensurate and incompletely commensurate contexts. I shall suggest that although locales persist as meaningful sites of inquiry they are (as they have always been) thoroughly suffused with remote influences. Both nation and culture are continually changing the style in which they are imagined in response to constantly changing foils.

In order to tease out the tensions between repugnancy, trump, and locale I focus on the historical battle between the Holy See and Madrid for monopoly over the official organization of the Spanish family. Having outlined this I then move in to focus on the carnivalesque Andalusian refashioning of the appointed place of Catholicism in local society. Finally I turn to the uses made in Andalusian Gitano communities of the spectacle of marriage-making. This latter repertoire plays with regional, national, and global representations of a Gitano identity as consolidated, in this case, during the marriage ceremony. I focus most particularly on the delicate and adroit responsiveness to the subtle, diffuse, but pervasive gaze of a floating global tourist culture which permeates Andalusia like the unbearably hot, dry, suffocating *solano* wind that descends on the Andalusian plain in the spring and summer. I focus, therefore, on three localizable, multifaceted struggles: I) between The Holy See and Madrid, II) between Andalusia, Madrid, and the globally dispersed Catholic and tourist populations, and III) between Gitano families, Andalusia, Madrid, and the globally shifting tourist population.

1. The Holy See and the Spanish State

The first struggle between The Holy See and Madrid over a monopoly on family law - over whose standard was to trump others for the Spanish 'citizenry' or 'flock' - goes back hundreds of years. The greatest disruption to the Catholic monopoly over European family law was not the Protestant Reformation: Protestant communities subsisted alongside Catholic communities, each governing principally their respective flocks; it was the rise of the secular state that created a notion of citizenship that overlay the territory that also housed diverse religious communities (Gaudemet 1987: 313).

Even before the French Revolution, diverse European states began to legislate and establish adjudicative structures in a secular domain parallel to the Church's. Early state interventions in Spain, as in other Catholic countries, did not contest the sacramental nature of the marriage bond itself but rather tinkered with procedural details (Gaudemet 1987: 319). Through gradual movement by the time

of the French Revolution, various states had created a parallel concept of a marital contract that had originally not been intended to disrupt the sacramental marriage regime, but merely to manage the secular incidents of marriage in civil society. The contract of marriage and its accompanying contractual regime grew increasingly severable from the sacrament, however, threatening to usurp the sacramental regime and make of it a private, civilly inconsequential regime – a secular project which was brought to fruition after the French Revolution (Gaudemet 1987: 376-77). This narrowly construed battle between sacrament and contract attests to a larger struggle to fix descriptive priority between the category of citizen and the category of adherent.

Occupants of the same geographical space could be members of both communities. The elaboration of categories like contract and sacrament filled out what it meant to be a citizen or an adherent. Once fully articulated as categories, each often in response and counter-response to developments in the other category, the means for determining which trumped the other also took shape: conflicts would be settled on the common ground of formal legal argument. Thus Pothier, writing in 1771, could affirm that ‘sans doute le mariage est-il contrat et sacrement. Mais, comme contrat, il appartient à l’ordre politique . . . Il est, en conséquence, sujet aux lois de la puissance séculière’ (Gaudemet 1987: 333). The civil idea of a marriage contract was an outgrowth of the same Roman law tradition from which Canon law derived. It was not, then, in principle incommensurable with Canon law norms. It was primed to shift the internal coherencies of the Romano-Germanic tradition so that that tradition would need to accommodate both views of the nature of marriage. Sensitive to the dangers of a shift in discourse by another powerful participant in the tradition, the Church moved belatedly to insist that the contract and sacrament of marriage were inseparable.¹ Both forms of life, though in conflict at many points of contact, inscribed their practices in the regimes of formal law, civil or canon, both with

¹ Pope Pius IX made this unequivocally clear in the *Syllabus of Errors* in 1864:

It is an error and it is not permissible for a Catholic to believe that the sacrament of marriage is a mere accessory to, and is separable from, the contract or that marriage can occur between Christians by virtue of a mere civil contract or that controversies concerning marriage or promise of marriage belong by their nature to the secular jurisdiction. (Cited in Rheinstejn 1972: 163.)

roots in the same Roman legal system. That system thus provided an inchoate ground for a trumping: an ultimate means of commensurating the incommensurable.

The struggle for ideological dominance between sacrament and contract, adherent and citizen, shifted and took different shapes over centuries. By the time of Spain's Second Republic (1931-36), official religious affiliation and citizenship were construed as incommensurable and the Republic imposed a fairly crude and provocative formulation of a trump. The constitution of the Second Republic was gilded with high-minded revolutionary clauses such as the declaration that Spain was a "Republic of workers of all classes" (Blinkhorn 1988: 17) and the provision that made property of all kinds "the object of expropriation for social utility" (Carr 1992: 605). Far more incendiary than these declarations, however, was article 26. This separated church and state and in very swift order authorized the transformation of the Catholic Church into an association, like any other association, subject to the law of the land. Spain, no longer in possession of an official religion, was committed to recognizing freedom of worship (Carr 1992: 605). Clerical salaries were cut, the Jesuit order dissolved, religious burials were effectively abolished, crucifixes were ordered to be removed from public schools, and parish priests teaching in state schools had their salaries cut. In the domain of family law, the only form of marriage recognised in Spain was, in accordance with the state monopoly on the pattern of that established by the French Revolution, civil marriage which clarified marriage as an ordinary civil contract. The role of the priests in family law became redundant and the body of canon law that used officially to govern family relations in Spain became an informal, private, customary choice of the parties. The Republic also adopted one of the most liberal divorce laws in existence at the time. This was the regime that had been experimented with by the French in the Law of 1792, then quickly abandoned in favour of fault based divorce by the Code Napoleon (Rheinstein 1972: 203).

The dramatic use of fiscal instruments to enable civil law to trump religious law and the precipitous plunge into a civil family law regime with surpassingly liberal divorce laws was followed by the demise of the socialists within two years. Women, reluctantly granted suffrage by the Republic, are reputed to have voted *en masse* against the reforms. They were particularly vexed by reforms in the area of family law that left them exposed to the harshness of a market that had only marginal room for them as workers and a society that offered little but Catholic charity as security. The conservative government that followed the political collapse of the Left in 1933 swiftly converted the family law reforms into dead letter law, retroactively annulling the divorces of the prior two years. Just after Franco came to power in 1936, he restored the family law regime to its earlier

position whereby Catholics were obliged to marry by a priest and have their marital relations officially governed by the substantive canon law regime of the Holy See. Non-Catholics were, at various times during Franco's reign, either entitled to be married through civil law ceremonies performed by a municipal official or obliged to be married by a priest. This so called Latino system of multiple substantive regimes (civil and canon) for different citizens (Catholic and non-Catholic) persisted until the family law reforms of 1981.

By the time of the most recent reforms in the 1980s, Spain had been economically transformed by the economic *milagro* of the '60s and '70s, had urbanized at a dizzying pace leaving large swathes of the Spanish countryside depopulated and urban centres ringed by *chabollas* (shantytowns), had joined the European Union, had put in place a modestly respectable social service system, had spawned a rapidly expanding, leisure- and consumer-conscious middle-class, and had come to see more tourists pour over its territory in each year than its permanent population. Spanish society was 'salvaged' over this period more by the floating class of nostalgic Northern European tourists than by the floating class of international anthropologists and folklorists, although they also began to scour Spanish communities. Both groups re-indexed local values to their home economies by generating demand for objects (spectacles, views, commodities. . .) that coincided with the projects of the leisure-class.

By the late 1970s the Vatican had passed from the papacy of Pius XII. He had promoted a policy of Concordats with 'Catholic' states to effect a bureaucratic and hierarchical centralization of Church authority as well as the imposition of the 1917 Code of canon law, an orderly reorganization of the internal laws of the Catholic Church that had been growing in an organic manner for centuries (Cornwell 1999). But by the time of Spain's family law reforms in the 1980s, the new Canon law codex was about to come out, recognizing the legitimacy of civil marriage and divorce. The sacrament of marriage was still protected in the abstract by canon 1118 that excluded dissolution of a valid marriage bond by human agency (Codex Iuris Canonici 1919: Canon 1118). But local refinements around the world of the bases of annulment, focused on the very plastic notion of 'validity', had been so artfully and amply used that the canon had been transformed by interpretation, making a frontal assault on indissolubility almost unnecessary (Glendon 1981: 120-21, 123).

The context for reform of the family law system had so changed that the achievement of primacy by state law required none of the emphatic and coercive fiscal manoeuvres of the Second Republic. The triumph of secularism provoked little of the dramatic propagandist counter-imagery of the Second Republic such as the tales of the miraculous survival of images in burnt convents and schoolboy

'martyrs' carrying round their necks replicas of crucifixes torn down from the walls of their class-rooms (Blinkhorn 1988: 608). The Second Republic's dramatic and provocative trump of the confessional state was replaced, 40 years later, by a kind of innocuous death by legal procedure.

By the time of the latest family law reforms of 1981, the Holy See was attempting to retain its tenuous hold over Spanish families from the seat of a foreign jurisdiction by pleading for a deep pluralism. Rome wanted to establish its own substantive regime of family law in parallel to the secular regime broadcast out of the seat of political power at Madrid, to which the church was making its pleas, intrinsically compromised, for recognition. The Catholic church wanted a 'Latino' style family law that not only obliged the state to recognize plural means of entry into marriage - that is, formal pluralism - but also a parallel substantive regime, the formal entry point in each case determining whether Rome or Madrid would govern the family instituted at that point. The final reforms promoted an 'Anglo-Saxon'-style pluralism that allowed for a diversity of recognized religious officials to officiate over legally valid Spanish marriages. Under this new regime, the state could impose criteria of validity (consent, capacity) that conflicted with canon law criteria of validity for the formal point of entry. After the point of entry the marriage was governed by the civil regime including a conception of dissolubility enabled by human agency.

The manner of effecting this transplant of a secular organism into the putatively Catholic body and soul of the Spanish citizenry was more like a legalistic incantation than a surgical procedure. Separate legal documents seemed to contradict not only each other but also their own internal logic (Pablo 1985; Dominguez 1983; Berdejo 1990; Agar). For example, the 1978 Constitution guaranteed the nonconfessionality of the state, the equality of all citizens, and the ongoing recognition of the historical and sociological place of Catholicism in Spanish society. The 1979 Concordat between Spain and the Holy See (enacted into municipal law in accord with constitutional requirements, not of its own force) guaranteed a prestigious place for canon law marriages, governed by the law of the Vatican, by a foreign jurisdiction, in Spanish law. The latest reforms, embodied in The Family Law Act of 1981, by sleight of drafter's hand placed Catholic marriages on the same footing as other marriages celebrated in religious form, all of which are equally subjected to the civil laws of the Spanish citizenry in accord with the constitution. In this manner, the state effectively treated the problem of incommensurability as a psychosomatic disorder requiring only a talking cure, albeit the soporific talk of law.

The cure seems to have taken effect. The secular state appears to have triumphed by locating Catholicism squarely within the household of the state, that wholly

manages it. Very similar reforms in the Second Republic provoked monster meetings and theatre demonstrations, and added imagery and fuel to sentimental defenders of a destitute priesthood condemned, with their female dependants, to die in hunger. The reforms of the 1980s mostly provoked cranky doctrinal treatises about constitutional improprieties. Buried in documents of state that referred to other procedural documents of state, Spain wholly incorporated Canon law into its hierarchy of sources and thereby gained license to manage it. This was a pact with legalism that the Vatican had entered into when it agreed to argue within the terms of reference of the state. The legal personality of the Holy See submitted itself, in Spain, to a demise not unlike suffocation by burial in popcorn. The state could claim to have engineered a harmony between its citizenry and that of the rest of the West, a tranquil, abstract harmonization.

Kahn-Freund's thesis about legal harmonization when broader contexts are harmonized seems to have been played out fully in Spain's recent shift from Latino style pluralism to Anglo-Saxon pluralism - weak pluralism, as John Griffiths would have called it (Griffiths 1986), in which the included field has its boundaries delimited, modifications anticipated, and imaginative manipulations contained by an all-encompassing central system. The Spanish nation, insofar as it was indexed to a Catholic imagery of the family, has lost its distinctiveness in the greater salience of a European *society*. The Spanish nation state, in losing what nationalists have often imagined to be one of the hallmarks of *hispanidad* - a deep-rooted and pervasive Catholicism - has lost a good deal of the definition of its borders with France, Britain and North Africa. The territoriality of an imagined Spanish nation, carved out most distinctively over the last two centuries by a juxtaposition against secular, liberal France, has become less substantial.

2. Andalucia, Madrid, and the Tourist Population

This suggestion that national space has become increasingly irrelevant I now explore in the context of Gitanos in Southern Spain. The Spanish nation state emerged from a set of bifocalities focused as much on both French secular liberalism and Vatican claims to supranational spiritual sovereignty as on local conditions. A new kind of territoriality is now reinscribed by a bifocality between local practices and a floating tourist population that specifically seeks out, and thereby partially constructs, Spanish culture, Andalucian culture, and Gitano culture. As Gupta and Ferguson argue,

...the irony of these times is that as actual places and localities become ever more blurred and indeterminate, *ideas* of culturally and ethnically distinct places become perhaps even more salient. It is here that it

becomes most visible how imagined communities come to be attached to imagined places, as displaced peoples cluster around remembered or imagined homelands, places, or communities in a world that seems increasingly to deny such firm territorialized anchors in their actuality. The special challenge here is to use a focus on the way space is imagined . . . as a way to explore the mechanisms through which such conceptual processes of place making meet the changing global economic and political conditions of lived spaces . . . Places, after all, are always imagined in their context of political-economic determinations that have a logic of their own. Territoriality is thus reinscribed at just the point it threatens to be erased (Gupta and Ferguson 1997: 39-40).

For the remainder of this paper, I want to examine new ways of conceiving of the context of law - the place at which transplants from other jurisdictions will be at risk of rejection like a grafted cornea or mechanically inserted like a German Volkswagen engine into a Spanish Seat. The place, in this case, are the streets of the Andalusian agro-town of Jerez de la Frontera.

If we now focus even more particularly on the ongoing place of Catholicism in Andalusia, we see that neither secularism nor orthodox Catholicism has ever really taken hold in the way that the two metropolises (Madrid and the Vatican) intended, and that the hocus pocus of official legal debates between Madrid and Rome are shrugged off like the magical thinking of charmingly deranged family members. Andalusian practices persist in accommodating the presence of those family members while making room for additional parties. The steady influx of tourists with *their* charmingly deranged gaze is being noted by an increasing number of authors of new configurations of self-consciousness on the ground.

Mary Crain has written about the meaning of the concept of local community in the world of simulations and commodified differences engendered by the tourist gaze in the context of the Andalusian pilgrimage tradition (Crain 1997: 291). She focuses on the pilgrimage to Rocio that, in recent years, has become an object of urban nostalgia that transforms localness into a packageable good to be served up to the touristic gaze. This purveying of an 'authentic', rural Andalusian experience for tourist-spectators is not a new phenomenon. Franco marketed Andalusians as prototypical Spaniards to the principally northern European tourists who began to come to Spain in the 1960s and '70s. The 1978 constitutional creation of regions of autonomy facilitated (and in some cases created) the assertion of a self-conscious regional identity juxtaposed against a central bureaucratic state peopled by nondescript citizens as opposed to colourful communities. The pilgrimages to Rocio, which had been taking place on a modest scale by local religious brotherhoods since the 17th century, became increasingly

popular, Crain argues, as it became a marker of condensed Andalusian regional identity and cultural pride. The local population incorporates the new uses to which the pilgrimage is put (in the most direct sense by profiting from the seasonal boost to the local tourist industry) but it also demonstrates a parallel critical stance towards the hordes of tourists and the consumer capitalism that drives them into the area every spring.

The odd, mediating, and mediated, presence of the tourist gaze in the global construction of local identity is captured in Crain's accounts of the exit of the Virgin of Rocio from the chapel. Local people, now selling souvenirs of the Rocio pilgrimage at makeshift shacks directly across from the chapel can be found fixated on the television sets at the back of the shop as international camera crews capture the Virgin's exit from the Church, just metres from the television sets. Constructive of the event as the media's gaze is, it is also contested and indisputably present and located within the event. Local pilgrims vociferously resisted the interpolation of the camera crews between themselves and the Virgin – a prize position which had been licensed to the international crews by the newly organized municipal managers of the event – at the crucial moment of her exit. This is the moment when the crowd typically rushes forward to touch her *paso* (the raised platform on which she is carried by *aficionados*) in adoration.

The place of Catholicism on the streets of Jerez exhibits a similar dynamic reconfiguration of the local in light of struggles for local allegiance between remote metropolises like the Vatican and Madrid and the more immediate presence of a globally floating tourist population. *Semana Santa* (Holy Week) provides a good illustration of the tensions between local, national, and global ideation.

The Andalusian celebration of the Holy Week stands out from Easter celebrations in the rest of the world. To a foreigner, it is distinctively Spanish. For that very reason it draws tourists from around the world to witness its peculiar dimensions. Partly through this identity, fixed by its distinctiveness from the other, *Semana Santa* becomes a 'cultural' phenomenon. No doubt the presence of those tourists and media crews from around the world generates a degree of self-consciousness that feeds back into Jerezano conceptions of the value and meaning of *Semana Santa*. It retains, nonetheless, its particularity and does so with vigour despite the official separation of church and state in the 1978 constitution. It also does so despite the odd and compelling moments when it diverges from Catholic dogma on the event. *Semana Santa* brings people *en masse* to the streets to bear witness; but what they bear witness to, what they are doing there, and how they feel the tone, character, and quality of -their lives through the event in which they participate seem far from determinate - and also very far from determined by a putative central authority, Spanish or Catholic.

One of the more striking things about Jerez's Holy Week is not entirely visible on the streets, or at least it has a subdued presence compared with the exhausting glamour of the rest of the week. The resurrection of Christ, generally considered the pivotal moment of the Holy Week in Christian doctrine, is barely celebrated at all by the populace. The Church, not one of the neighborhood religious brotherhoods, sponsors a *paso*, paying for its decoration and upkeep, on Easter Sunday. This event is barely attended. Only stragglers on the street who have obligations that take them out of their recuperative beds, bear witness to the redemptive moment in suffering. The official version of the culmination of *Semana Santa* is imposed, and not very effectively, on a population that has gone off in several other, sometimes overlapping, directions all week.

Semana Santa is not an orthodox Catholic event. And yet, most acutely for foreigners, the ethos on the streets has an aesthetic style and mood that is overwhelmingly Catholic, from the ubiquitous Virgin to the incense filled churches and the enthusiasms around the exits of the churches.

Yet if *Semana Santa* is aesthetically and morally infused with Catholicism, the celebration is simultaneously *de los calles* (of the people). For example, the bishops dictate that the *chico* (children's) *pasos* – generally held in the days leading up to Easter – are unorthodox and inappropriate in timing and sentiment for the Holy Week. They are therefore forbidden. The *chico pasos* blithely proceed. This surging unorthodox messiness of the event turns up at every corner. Each Christ, materially manifested, is possessed, fondled, appropriated, affiliated with a neighborhood, invested with a particularly *local pride* (*Olé, el Cristo del barrio*: Olé, Christ of the neighborhood, shout the crowds around a *paso* of their Christ. *Olé, el Cristo de los Gitanos*, shout the Gitanos crowded around the San Miguel Christ).

Semana Santa is overwhelmingly popular in the sense that the streets are dense with both dramatically solemn and revelling celebrants. It is both Catholic and popular in ways that sometimes coincide and sometimes contradict each other. The ritual draws on significance that is both remotely constructed and locally appropriated. The Church cannot completely control the event, either from afar or through the offices of the local bishops and priests. But neither has the modern state (secular, urban, industrialized, progressive) left a decisive imprint on how Jerezanos practice the Holy Week. Certainly article 16 of the 1978 Constitution, which precludes any religion from having a state character, does not stop Catholicism from infusing the character, mood, and aesthetic style of the mass of Jerezanos.

Charles Taylor's notion of dialogic co-agency captures the events of the spectacle of *Semana Santa* (Taylor 1992). Participants (including the Vatican's representatives) do not attend only to their own sense of how the Holy Week should proceed. They are also attuned to, and moderate their own expectations and responses to the shifting and unpredictable event that they share with their contemporaries. This more dialogic phenomenon, less discrete and graspable than a nominal culture or state or religious group, contributes to the diffuse spirit of the place. The spirit of a place, one of the main tributaries to Montesquieu's *esprit des lois*, is a messy, diffuse, semi-autonomous, loosely organized, and quintessentially *volatile* phenomenon. The organism that breathes spirit into the laws is more shifting, dividing and joining, and amoeba-like than perhaps either Montesquieu's or Kahn-Freud's organic conception of the law would admit. Their organic imagery tends to conjecture about a well-functioning, homeostatic system. The notion of there being one overall organism – the nation, for example – is misleading to the extent that it does not incorporate the central jumble of arguments, counterploys, and incorporations that make up a more dialogic conception of identity.

Semana Santa itself is a jumble of appropriations and glosses and manifestations that in one moment appear paradigmatically Catholic and in another an emphatic denial of its Catholic character; at one moment a rejection of orthodoxy, in the next a fresh conception of it. In the same instance the phenomenon looks like both an acceptance of and a struggle for meaning. *Semana Santa* is, like Spanish history, the Spanish economy, the Spanish nation, and Spanish family law, both here *and* there, and neither here *nor* there at one and the same time, to paraphrase Angelika Bammer's gloss on the postmodern geography of identity (Bammer 1994: xii).

This sense of the state of Catholicism in officially secular Andalucia sets the tone, character, and quality of marriage for Jerezanos, and the Jerezano family's moral and aesthetic style and mood. At the same time that the state trumped the Church in official matters of family law with legalistic family law reforms, new foils for national identity and new locations for its expression were emerging. The kind of logic that went into the formalistic criteria of repugnancy and trump in Spain's 1981 family law reforms belongs in many ways to an era where the rest of the ideological field was occupied by other nation states with their alien ethos, or sovereign bodies such as the Holy See. In the area of family law the reforms of the last several centuries were directed to the elite audiences that made up the governing classes of different states and that cared about legitimacy in ways that were consistent with legitimacy as construed by the state or church. But popular culture has transformed the arenas and locales in which predominant versions of the family are purveyed. Popular understandings of the family have rendered, to

some extent, the recent trump of state over church redundant. Like Holy Week, however, popular representations of the family have incorporated and appropriated official elements, accepting and struggling for what official versions of the family will mean.

3. The struggle between Gitano families, Andalucia, Madrid, and the Tourist Population

Having moved from the official trump of secular family law over Catholic family law in 1981 to the reinscription of local, regional, and national identity in popular events and spectacles, I now move down one more time to a specific frame, in this case from the region to the city and the culture. Having moved from the tensions about family identity between Madrid and Rome to the tensions of national identity played out in Andalucia, I now consider the way that Gitanos in the city of Jerez construct a local family law by a mixture of pragmatics, appropriation and invention.

Jerez is an Andalucian agro-town with a population of roughly 200,000. It is reputed to be unusual in Spain (if not the Western world) for being the city where Gitanos and non-Gitanos have achieved a singular degree of peaceful co-existence. This is recognized officially. It is registered, for example, in the encyclopaedia of the province of Cadiz in its description of Jerez, and in awards granted by other municipalities to Jerez in recognition of its successful integration of Gitanos. It is also recognized unofficially. The uniqueness of the coexistence of Jerez's Gitanos and *payos* (non-Gitanos) is a refrain heard over and over again from both Gitanos and non-Gitanos, locals and outsiders. Peaceful co-existence between Gitanos and *payos* is one of the key markers of Jerezano identity.

The two major Jerezano industries are Jerez wine (sherry) and tourism, and, of the latter industry, Flamenco provides one of the principal attractions for the scores of tourists and aficionados from around the world that flow through Jerez's maze-like streets every year. Jerez is reputed to be the cradle of Flamenco. There is a vigorous and highly interested debate about whether Gitanos are the creators of Flamenco deep song (Mitchell 1994). In a province with unemployment rates above 20%, establishing authenticity is a key means of tapping into the tourist market primed to pay for commodities valued for their presumed authenticity. The purer the Flamenco, the steeper the price. One of the means of establishing the purity of Flamenco is through its affiliation with the Gitano culture that allegedly produced the song form. The interest in consolidating a specific Gitano/Flamenco identity is different from the interests that set the symbolic markers around Roma identity, the typically travelling ethnic group with which Gitanos are

ethnographically linked. Both groups, however, are wed to the larger economy to which they are marginal and upon which they are reliant. The elaborate tourist market, scaled to haute cultural tastes for pure raw Flamenco down to the low brow tastes of spectators who crowd into the bars and cafes for rehearsed spectacles, is the most conspicuous transformation of the local economy to which Gitanos have adapted.

This transformation of the economy over the last forty years has promoted a shift in the way that Gitano culture is construed. Spectacles are used strategically to create local cultural capital. Ideological uses are made of idealized versions of authenticity. Local idealized conceptions of the family are closely linked with the project of inscribing a motley of diverse families and individuals, practices and beliefs, with manifestations of a culture. I shall focus on the ideological use of versions of authentic family life by looking at the spectacle of Gitano marriage formation. As one of the parallel principal projects of municipal identity formation includes the ideology of peaceful coexistence between Gitanos and *payos* in Jerez one would expect that one of the ideological uses of the spectacle of marriage formation would be to exploit this imagery. Similarly, the imagery of Andalusian Catholicism, also of both local and global provenance, should have a role in a Gitano identity wed to an imagery of coexistence.

The ideological use of an idealized version of the law which I use in this case is a culturally distinct type of marriage formation that has no place in official family law. I use the concept in describing a spectacle to distinguish it from the far more ordinary and prosaic types of couple formation in which self-identified Gitanos engage. Historically, Gitanos, like other Andalusian poor folks, did not marry in the Catholic Church. Archival research indicates that .01% of weddings registered in the parish churches over the 16th to the 19th centuries were between Gitanos, who make up, on a conservative estimate, 3% of the population. Marriage via the only official legal means in Spain was not an historical Gitano practice. Common contemporary routes to coupledness and family life include an elopement arranged between the two central parties or a long drawn out consolidation and community recognition of the bond. Neither of these far more ordinary and statistically normal means of family formation is particular to Gitanos. They are so regular for poor folks generally in Jerez that they go unnoticed when an ethnographer asks: How do Gitanos get married? They only become salient when the question is: How did *you* get married? The ideological and ideal nature of the marriage spectacle I am about to describe is highlighted by the fact that only five such spectacles had taken place over the preceding five-year period. Yet these fiestas are repeatedly and automatically recounted as a response to the question: How do Gitanos get married?

The most dramatic example of an 'authentic' Gitano wedding that we (both my husband and I were engaged in ethnographic fieldwork in the same field) were exposed to occurred at the end of our sojourn. We were told that, if we really wanted to see how Gitanos get married in Jerez, we should go to this particular *pedimiento* (engagement party) in one of the two supposedly ancient Gitano neighborhoods of Jerez. According to Jerezano Gitano custom, anybody who wanted to attend was welcome, so we, utter strangers to the couple, attended along with hundreds of other Jerezanos. A supposed tradition of admitting all comers was on the way to being transformed to accommodate the floating class of tourists, comprised in this case of aficionados. Thus, like the interpolation of camera crews around the exit of the Rocio virgin, one of the most local and intimately circumscribed of rituals (marriage) became linked with one of contemporary society's most alienated and impersonal of phenomena (tourism). This was the engagement party. The wedding was held a month later.

We turned up at the engagement party at midnight to a fiesta in full swing that lasted until five o'clock the next evening. The couple's parents were wealthy (for Jerez): the girl's father was one of the wealthy fishers of Jerez, the *novio* (fiancé) was a pharmacist, son of a taxi-driver. There was an abundance of food and whiskey, ladled out of buckets. World class Flamenco singers turned up and spontaneously sang in the centre of groups clapping out *bulerias* rhythms (their presence being one of the central draws for hard core aficionados of authentic/spontaneous Flamenco deep song). The sole instrument, apart from the raw voices of these singers, was the endless train-rolling rhythm of hand clapping.

The *novia* (fiancée) danced all night in the inner patio responding to non-stop invitations from children, old men, young women, adult men . . . in the form of *dulces* - large blocks of candy tied to ribbons and placed around her neck. The most striking events of the night were the three separate occasions when the seated women, dressed in the polka-dotted sevillana-style dresses of the region and forming the small circle in which the *novia* danced, arose in unison and surrounded the dancing girl to conceal her. Then they ripped off her dress and pulled another equally comely one over her head. The original dress was then torn up and passed around the crowd for people to tie around wrists, necks and necklaces as the *novia* continued to dance. The men also ripped off their shirts when they felt so moved and the torn up silk would be passed around in a similar way.

We left the engagement party at nine in the morning. The couple was married in the Catholic Church a month later after which they held a private wedding banquet to which I have already alluded. Flamenco aficionados from Belgium, Greece, Holland, England and Japan, all strangers to the couple, came to Jerez to

attend the reception. However, on this occasion the banquet was a private affair. Non-intimates were barred at the door.

This, the exclusion of opportunistic voyeurs, would seem natural in virtually any other wedding context. However it led people, even among those who were invited, to whisper about how *mal educado* (badly brought up) the couple's families were. Like the half-invited, half-reviled international camera crews at Rocio, the international arena in which Jerezano Gitano families live has an effect on the local home and community. This international presence cannot be fully evicted without leaving a local history, like that of the family marked by having finally pushed a parasitic adult child out of the home.

Conclusion

As more or less comfortable participants in Spain's emerging middle class, the families hosting this *pedimiento* had a stake in using a variety of forms of legitimation that could be used to bring a couple into a community and a community into its place in the national identity. Exceptionally, marriage and family are pressed into the service of a specific group or organ of society. These cases are distinguished from the far commoner pedestrian arrangements by positive or negative features. The interests that determine ideologically dominant norms are varied and change with changes in a larger, loosely organized context. So, for example, what Jerezano Gitano informants represent as 'getting married the way that Gitanos get married' will change depending on (to list a limited range of variables) the situation of Gitanos in Jerez, the situation of Jerez in Andalusia and of Andalusia in Spain, and the situation of Spain in the European union and in a global economy. What Gitanos represent as Gitano marriage will also change as Gitanos and other Andalusian poor folks see the prospect of gaining by upward mobility, and thus gaining from a trade-off between the cultural capital of culture (spectacular Gitano weddings) and other modes of enhancing legitimacy (so that a spectacular Gitano wedding may be followed by a church wedding and private banquet). The representations of this particular spectacle with its semi-self-conscious protocol serve to consolidate a version of how real Gitanos (as opposed to the travelling Roma) who are really from Jerez (as opposed to less idealized or even ideologically opposed municipalities) really get married (as opposed to the more common process of shacking up). This kind of strategic use of cultural or familiar ideology ties in with interests that are historically conditioned. In this particular case, some of the unruly, unpredictable historical factors might include the facts that tourism has become one of Spain's most important industries and that that industry is fuelled to some degree by the promotion of Spain's most culturally recognizable group, the Gitanos of Andalusia, and its most stereotypical

tourist fare, Flamenco. Jerez, the so-called cradle of Flamenco, has an interest in promoting a distinctive version of Gitanitude, which will be palatable to touristic sensibilities. Gitanos, who are (probably erroneously) labelled the creators of Flamenco, have an interest in consolidating a Gitano identity around spectacular events like the *Boda Gitana* (Gitano wedding), which creates an unofficial taxonomy distinguishing those who legitimately draw on the cultural capital of true, uncontaminated, *puro, duro* (pure and hard) Flamenco from those who provide degenerate tourist fare.

Given these kinds of unruly features in the context surrounding marriage and the family, idealized accounts of both official and unofficial family law tend to a kind of simplicity that verges on over-simplification. Family law, as practiced and idealized, continues to respond to local, national, and global imageries, selectively incorporating and resisting meanings in the way that *Semana Santa* both rejects Catholic orthodoxy and presents a fresh version of it. The creation of global markets and the omnipresence of mass media and a globally floating touristic gaze has not served to flatten national cultures and create homogeneous geopolitical societies into which laws can be inserted mechanically to produce instantaneous harmony. Rather the reshaping of national identity in the light of globalization has produced a new set of political economic determinants with their own logic to which communities dialogically respond, reinscribing their identities against a shifting backdrop. What is happening is not so much harmonization but constantly renewed ways of digesting a multiplicity of official presentations of the family, of negotiating the character of the family and the character of the self in the family according to a vast multiplicity of signifiers from many dispersed locales.

This analysis suggests that the focus for comparative law and legal anthropology ought not to be formulation of repugnancy and trump. Rather emphasis ought to be placed on the local use of the pretension that a metropolitan centre can dictate for the hinterland, and on the conflicts between multiple jurisdictions, multiple sites, and multiple intersections emerging from multiple remote locales.

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