

formalizing sexual misconduct on Guam: family tyrannies and bureaucratic nightmares

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We address the legal definition of the crimes surrounding behavior defined as sexual misconduct (i.e., rape, sexual misconduct, family offenses, etc.), offenses historically considered common in the islands. The number of reports and arrests in the Territory of Guam concerning these crimes during the years 1980–1992 presented in the Territorial version of the *Uniform Crime Reports* is examined, along with interview material. The findings illustrate a highly politicized application of these laws in the Territory over the period, suggesting the informality of the Territorial legal system in its control of deviant behavior. The conclusions address this issue, and suggest that the legal formalization and police discretion literatures, now generally addressed and evaluated separately, might profitably be combined to assess the ideological as well as real formality of any justice system.

INTRODUCTION

The process rationalizing deviant behavior (Weber 1978), or formalizing legal systems that may deal with it (Schwartz and Miller 1964; Nonet and Selznick 1978), in Guam and the surrounding Micronesian islands is not a well-studied phenomenon. (For a historical analogue to this lack of research, see Nelson and Nelson

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1992). Indeed, in a review of the literature, and in over 130 Master's theses and Special Projects topics on file at the University of Guam, *not one* study of, the Guam Police Department, or their official or unofficial behavior is to be found. In only a few instances, more historical than sociological in character (Rogers 1995), is the control of deviance in these contexts mentioned or dealt with at all.

The rationalization and formalization process is characterized by the transition from the 'rule of men' to the 'rule of law,' generally accompanied by bureaucratic development (Black 1976). Four important elements distinguish repressive from autonomous law: the separation of law from politics, a model of rules, the importance of procedures, and a strict obedience to the rules of positive law (Nonet and Selznick 1978). While formalization can take on a number of legal forms (Nader 1978), these four elements distinguish formal law from more repressive, personal types of jurisprudence or social control of deviant behavior.

The present study illustrates the formalization of one type of crime, sexual misconduct, in its behavioral and legal aspects in Guam for the period 1980–1992. Analysis addresses the efficacy of crime reporting, the ability to charge and consequently prosecute a given behavior, and the ability of a legal system to develop the social and police institutions to formalize such a crime so that it may be dealt with by the courts.

In Guam, the formalization process can be seen in the shift of the definition of certain behaviors and their control from family and religious institutions into the legal sphere. This shift is defined as the formalization of that system (Malinowski 1959; Schwartz and Miller 1964). The reverse process, or the deformalization of a legal system, is indicated by the tendency toward informality of both definition and procedure (see Muller, 1991).

However, the process of formalization does not appear to be the pattern found in Guam. Rather, the legal system is formal while the social, political and economic systems surrounding it remain informal. As seen below, Guam has an elaborately codified system of law, but not the police and judicial institutions with which to support it.

FORMALIZING LAW AND LEGAL INSTITUTIONS IN MICRONESIA

The formalization of a given legal system is seen to vary with, not against, other social institutions (Black 1976), so the formalization

of law is generally theorized to occur in tandem with the demographic transition of a society (Mack and McElrath 1964).

In Micronesia, much of this has not happened (Carter 1981; Tung 1982). Populations are small and widely dispersed in the Pacific between Japan, New Guinea, Hawaii, and the Philippines. Guam has nearly half of all the population, about 145,000 of 330,000 inhabitants in total (Interagency Committee on Population 1988). Shipping is sparse and restricted to American vessels for the most part, air travel to most islands is sporadic and generally unreliable, hoarding of some commodities is common in the outer islands, and markets are inconsistent in supply (Balcom 1977; Lim 1985; Guam Economic Research Center 1995). Consequently, economic conditions are somewhat chaotic and political corruption, in the forms of padding employment rolls and bribery in return for political favors, is commonplace and causes little alarm (Guthertz and Singh 1986; Department of Revenue and Taxation of Guam 1990, 1995).

Additionally, there is little if any industrial base in Micronesia. The wholesale and retail services are highly monopolized and usually family controlled, and governmental services are highly erratic and only incompletely bureaucratized (Brown 1978; Guam Growth Council 1980; Krueger 1981; Interagency Committee on Population 1988). On the other hand, there is a thriving tourist and black market economy, so much of the economy remains cash-related and unreceipted (Department of Revenue and Taxation of Guam 1990).

Within this economic, social and political informality lies a highly formal and elaborate system of law. Whether seen as a colonial legacy (Hass 1940) or as an after-effect of military occupation following World War II (De Smith 1970; Eichner 1978; Ridgell 1988), the laws of the Territory are elaborate and detailed (Eichner 1978; Aguon 1983; Cepeda 1993; Mathes 1994; Mesias 1994). In fact, to a great degree, the legal system is so formal and elaborate that many of these island societies are nearly rule-bound (De Smith 1970; Aguon 1983) in the midst of economic and political informality.

Thus, Micronesia follows no classic pattern in formalizing its legal institutions (Black 1976). The process whereby the rationalization or the formalization of legal systems is accomplished, or whereby the rule of law replaces the rule of men, is notably lacking.

ISSUES OF LAW

Since the institution of the Organic Act of 1950 (United States Congress 1950), the indigenous inhabitants, or Chamorros, of the island are more or less full citizens under U.S. constitutional law (Hass 1940; Pomeroy 1969; De Smith 1970; Ridgell 1988; Smith 1991). After World War II and until 1970, the government of the territory was either run under the auspices of the U.S. Navy or a governor. This governor, appointed by officials answerable to the President through the Department of the Interior, made the legal situation found in the territory much akin to an Indian reservation. However, unlike an Indian reservation, it operated without the legal qualifications of a treaty (Guam Law Revision Commission 1979; Guam Commission on Self-Determination 1989; Office of the Solicitor, U.S. Department of Interior 1993). Much of the Penal Code of Guam (Government of Guam 1947a; 1947b) was written and applied before a police force was instituted, court system developed, or appellate paths established. An example of this (Becker 1970; Myren 1988) are the laws dealing with sexual crimes—those of rape, sexual misconduct and family offenses. The laws address, as well, behaviors such as penetration, improper touching and/or fondling, promotion of sexual excitation in children and so on, and so are similar to or identical with laws in other jurisdictions regarding these behaviors. These behaviors can be adjudicated criminally, but also may be addressed informally and by the civil courts (Balleza 1992). With this ‘civil’ qualification, the criminal conception of these behaviors can now be defined and evaluated.¹

The crimes of rape, sexual misconduct, and family offenses are legally defined first in the *Guam Penal Code* of 1947 in Title IX, Chapters I (rape, abduction, carnal abuse of children, and seduction), V (bigamy, incest, and the crime against nature), and VIII (indecent exposure, obscene exhibitions, books and prints, and bawdy and other disorderly behavior (see Government of Guam 1947a:29; also Government of Guam 1979, 1982). They have

¹ Many civil cases are sealed and thus confidential. The Roman Catholic Church has, since 1986, referred many of its cases to the civil courts for final adjudication (Anonymous 1996a). Many past and present political, economic, and social leaders have such civil cases in their personal histories. Although the evidence for such decisions against them is anecdotal, there is indirect evidence that these cases are many in number, and the fact that many of these individuals are continually reelected or placed into positions of prominence with these personal histories well-known and sometimes discussed by the local media indicates the general unimportance of these events as seen by the voting public.

been further defined, amended and instituted in the *Guam Code Annotated* (1992, 1993) as 9 GCA sections 25.10–25.45 (sexual offenses) and 10 GCA sections 88300–88325 (child protective services).

Evaluation of each of these sources shows little substantive change in the law concerning these crimes even where some sanctions were increased (Government of Guam 1979, 1982; George, 1996). Amendments have been limited to adding some minor offenses, to making vague language clearer, and to defining small jurisdictional issues between governmental departments. For the most part then, the laws regarding rape, sexual misconduct, and family offenses have undergone few changes, other than a rearrangement of codified material, since 1947.

ISSUES OF DEVIANT BEHAVIOR

In a number of instances behaviors defined criminally are not different from those defined as normal, the difference being found in the question of intent:

Have you ever changed a diaper? If you look at that type of thing, it's hard to tell the differences [sic] between someone getting off on a baby or just cleaning its mess (Anonymous 1996b). You have to know the person doing the changing, I guess, to know the difference (Interview 95/8/6, G41).²

If the behavior in question is done with criminal intent it is defined as criminal; if not, it is generally defined as normal (Quinney 1970; Myren 1988). Questions of intent are difficult to resolve in the courts (Becker 1970), which often results in the nonprosecution of cases.

The problems surrounding the definition of intent, certainly when exploitation of the young is at issue, are contentious ones. The work of Nanette Davis (1984, 1990, 1993) illustrates these problems (especially when women are victimized) and critically evaluates the treatment by the judicial system of exploited individuals. Davis focuses on the relative 'convenience' of prosecution—if prosecution is deemed convenient, it will be pursued; if not, it will

² The use of interview material before its formal introduction in the methodology section is considered necessary due to the lack of research into this area in the Marianas and the reliance upon oral tradition found on the island. Some aspects of life on Guam are simply unwritten. See below for more detail on how the interview material was collected and used.

not be. In Davis' view (1990), the judicial system refuses to prosecute sexual crimes against women due to their 'normality.' Given that young women are usually exploited, the perceived 'normality' of this exploitation works against rigorous prosecution of crimes against them in the criminal courts.

On Guam, both male and female children are sexually exploited and Roman Catholic church officials have suggested that the number of male victims equals female ones, "but the mother's or auntie's use of a child is more a matter for the confessional than the police" (Anonymous 1996a Interview 96/20/10, P6). Since 1990 there were at least two publicized cases of male children being victimized with each case having off-island, or statesider, offenders. Both of these offenders were convicted of multiple counts of child molestation of multiple male children, and in one instance the victims were the offender's grandchildren. It is likely that the number of offenses against male children is comparable, if less reported, to the number of those against female children.

Also, there is some anecdotal evidence that the sexual exploitation of female children is common in the Marianas (including Guam) historically (Fritz 1986/1904:47–52). This can be seen with respect to stepchildren:

Two hundred years of church rule has not changed the marriage ethics of the outwardly pious natives. A Chamorro had to defend himself because of the seduction of his step-daughter. He answered "I have fed the child for years, have raised her so who else in the would have a greater right to her than I?" (Fritz, 1986/1904:49).

The historical or current extent of such exploitation on Guam of stepchildren or biological children is unknown, but church officials suggest it is rather high although usually unreported (Anonymous 1996a).³ However, mainland U.S. figures are also known to be undercounted and the extent of intrafamilial sexual exploitation is apparently similarly high there as well (De Young 1982; Butler 1985; Twitchell 1987). The attribution of higher-than-usual incest rates in the Marianas may be due in fact to an underestimation

³ Sexual misconduct shares the informal/formal problems of definition with ethnic prejudice in special education programs on Guam (Lee 1987), sexual abuse generally (Limtiaco 1995), elder abuse (Mesias 1994), legal assistance (Cepeda 1993), and even forms of appropriate political activity (Aguon 1983).

of the occurrence of such sexually exploitive behavior elsewhere (Quinney 1970).

Another problem in asserting higher-than-expected incidence rates of incest in the Marianas is that many of the historical sources are church officials who may have exaggerated morally questionable behavior (Carano and Sanchez 1964; Plaza 1973; Carano 1976; Ibanez del Carmen 1976; Johnston 1977; Marche 1982; Driver 1988, 1990; Hezel 1989; Olive y Garcia 1984). Attributions of the islander's 'sins' may be more justification for missionary zeal than accurate reporting of behavioral events (Sanchez ca. 1992; Rogers 1995).

Consequently, there is precedent for the Archdiocese of Agana to provide many of the social agencies to the inhabitants of the island, even as a secular presence is increasingly apparent for these roles since 1976 (Anonymous 1996a). Often there are close church and governmental relationships in dealing with family disturbances, intrafamily sexual exploitation, and rape. The separation between church and state for these 'private' issues is narrow (De Smith 1970; Anonymous 1996a). As one person we interviewed explained:

We deal with these situations as they arise. No one keeps records, of course, until it reaches a formal agreement. That is rare, maybe one case in 50. Oftentimes the embarrassment of the family must be taken into account as long as the harm to the child is not permanent. . . . It is a sinful situation which must be handled with all the love, and firmness, a priest can apply. All priests here face the day when these horrendous events occur, and each priest deals with them as God, and the Church, and their own conscience permits them.

Over the past 20 years, more and more secular services have been made available to the people of Guam, reducing our work here at Catholic Social Services. It really depends now on who the victim, or the family, turns to first. We get a number of referrals from the hospital, but now at least we can refer some of our clients there too. Everyone benefits from this range of services (Interview 95/9/10, C4).

The church has been often involved in attempts to resolve these disputes, informally address grievances, and sanction immoral behavior outside official or police channels (Interagency Committee on Population 1988). Relying on church officials to determine the extent of this sexual exploitation is problematic however, as

they may be oversensitized to its sinful aspects and more ready to define innocent behavior negatively.

THE NEXUS BETWEEN LAW AND DEVIANT BEHAVIOR: POLICE DISCRETION

In Guam, the link between questionable sexual behavior and charge or trial is provided by the actions of an aggrieved party, an external witness, a social services employee, cleric, or a police officer. Given the private nature of these crimes, and the problems that often accompany such private behaviors (Butler 1985), formalizing this link is defined as the actions of the police in opposition to, or in lieu of, other actions instituted by family, religious, or other social agencies.

The Guam Police Department is not a professional police force (as defined by Brown 1988). Recruits are not intensely questioned or investigated concerning their past criminal activities (Sterne 1996b), training at the police academy is under control of the Guam Community College and runs just 12 weeks per session, with an additional probationary period within the Guam Police Department of a year duration (Anonymous 1994–1996), and continuing education is usually on-the-job training rather than external to the department.⁴ Consequently, the inhabitants are resigned toward their police officers, who are familiar without being trusted (Sterne 1996a), and where discretionary behavior is often questioned:

Even if the police aren't professional, they're ours, and criticizing them is seen as disloyalty of the worst kind. It's a personal thing, not a professional one, and to forget that is to make a group of heavily armed people, along with their political supporters, extremely angry at you. No one here forgets that (Interview 95/18/6, P3).

But Guam police officers still exercise the police discretion that links questionable behavior to a possible prosecutorial reaction (Guam Police Department 1980; Williams 1984; Brown 1988; Walker 1993; Henderson 1994).

⁴ Although some higher-ranking officers are sent off-island for further training, this is generally of an administrative nature and occurs well after five or more years of service (Anonymous 1994–1996).

Ultimately, the societal response to criminal sexual misconduct, in any of its legal forms, is determined by a report made to someone else, if a report is made at all. Most instances of these behaviors are not reported (Butler 1985; Davis 1990), and so go undetected. The Church⁵ and secular social agencies handle many of these cases (Anonymous 1995–1996, 1996a, 1996b), as do the civil courts (Balleza 1992; Anonymous 1996c). What concerns us here are those remaining cases handled in the criminal courts, for which arrests are made and criminal charges filed.

Depending upon their training, individual prejudices, and professional abilities, individual police officers can change the character of prosecutions in the criminal courts, which then changes the character of the justice found there:

Who'd call these idiots for something important? Call the feds [U.S. Federal Government Officers, i.e., the Federal Bureau of Investigation, U.S. Marshals Office] or your insurance company. All these guys know how to do is lose evidence effectively and forget to use proper police procedure. GPD [Guam Police Department] is about as useless as it gets, unless you're a cousin of one of them, I guess, or related to the governor (Interview 96/3/12, V22).

If the police are incompetent, justice in the courts will be also. Thus, the key to providing legitimacy to the courts lies in the legitimacy of the police discretion practiced in Guam (Barker and Roebuck 1973; Barker and Carter 1986).

In Guam, an arrest for any form of sexual misconduct illustrates a lack of protection by the family, church, or other social agencies:

The problem on Guam is not the lack of law. We have more than enough of those and they're even well-written. If there is a problem here it's one of enforcement. Which laws does one enforce and which ones does one ignore? (Interview 95/8/12, P7).

⁵ The Archdiocese of Agaña has, since 1985–1986, referred many of their negotiating roles elsewhere due to personnel shortages (priests and nuns). Given that the character of the priesthood on Guam is no longer local (i.e., many of the priests, deacons, and nuns are imported from either the Philippines or other Micronesian islands), the loss of interpersonal power to settle these disputes is predictable, even by the church (Anonymous 1996a). Private negotiations are ultimately based on trust, and the inhabitants of Guam are just as xenophobic as are members of other societies.

A prosecution for rape or sexual misconduct illustrates the lack of protection from the police, who may exercise discretion and deformalize the accusation of sexual misconduct.

Nonet and Selznick (1978:54) identify four criteria for the formalization of a legal system: (1) law separated from politics, (2) a model of rules, (3) explicit procedure and (4) obedience to the tenets of positive law. Guam appears to uphold all but the first. Can law in the courts be separated from the application of law by the police on the streets? And what of the legitimacy of one if the other is suspect?

DATA COLLECTION AND METHODOLOGY

The Uniform Crime Reports (UCR), compiled and published by the Guam Police Department of the Territory of Guam (Guam Police Department 1980, 1985, 1989, 1993), provide one of the bases for the analysis reported here. Reported offenses indicate the formalization of police discretion and the subsequent application of criminal law. Here, the reports of crime made to the island legal system are categorized and presented. (For obvious reasons unreported crime cannot be estimated from these figures [Erickson and Empey 1963; Gove et al. 1985; Osgood et al. 1989].) These official figures possess no validity on their own, which requires interview material (introduced below) to interpret their meaning in their local context.

The UCR data are categorized by total offenses reported, total arrests made, and also into two broad criminal categories of serious or Part I offenses (i.e., murder, rape, robbery, arson, etc.), and nonserious or Part II offenses (i.e., vandalism, petty assault, public drunkenness, vagrancy, etc.), and further, by the status of the arrestee (adult/juvenile).⁶ For purposes of this analysis, the offenses of rape, (Part I offense, #3), sex offenses (Part II, #18) and offenses against family and child (Part II, #21) receive special attention.

A second foundation for this research is provided by 44 informal interviews over the period 1994–1996, selected from a total pool of 230 interviews with 118 individuals covering more than 500 hours of material collected from 1993–1996. Approximately 20% of the interviews were recorded; in most cases, only field notes were collected. Interviewees were selected through a snowball

⁶ The Guam Police Department has never *regularly* categorized arrestees by ethnic group (except in reference to military personnel).

technique and were granted full anonymity and confidentiality. Paraphrases or abstracts of material gathered from these interviews are cited as Anonymous (1994–1996, 1995–1996, 1996a, 1996b, 1996c). Direct quotations are cited only by the date the interview was recorded or written up with a nonidentifying individual notation (i.e., G4, P9). In cases where the interview setting was more formal and logged into the interviewee's official schedule, the date has been altered to obscure identification with any individual source.

When combined with the official figures, interview data give a far more comprehensive picture of the meaning of an arrest for sexual misconduct than either would permit alone. Given the lack of other published examinations of police behavior and discretion in the Territory, this approach appears to be a meaningful way to critically evaluate the Guam UCR and to assess control of criminal sexual misconduct in the Territory. These interviews provide an additional perspective for interpreting the official reports of sexual exploitation presented in the official data.

FINDINGS: THE OFFICIAL DATA

The Guam Police Department shows apparently regularized (or routine) patterns when measured by the total number of arrests.

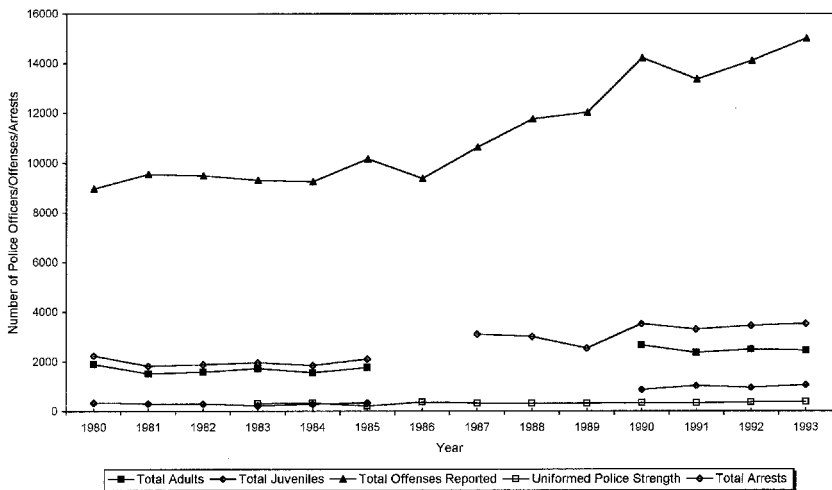


FIGURE 1 Relationship between uniformed police strength, reported offenses and arrests, 1980–1993

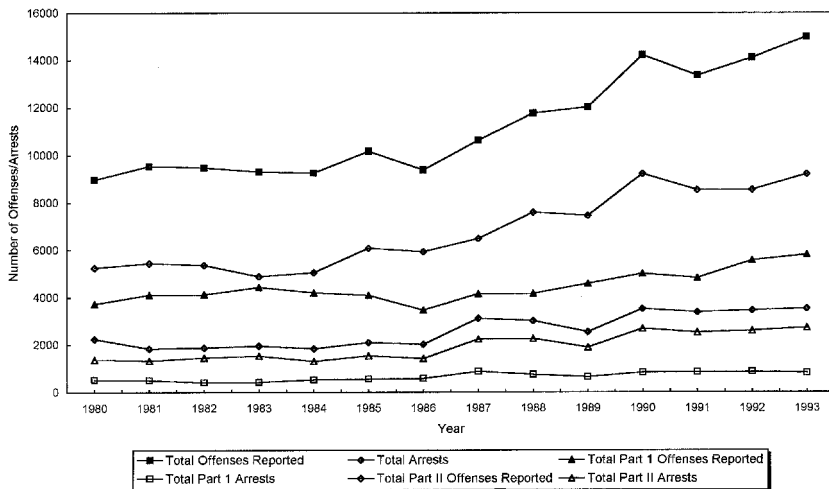


FIGURE 2 Offenses reported and arrests made, 1980–1993

Figures 1 and 2 illustrate this pattern, even with a 37.5% reduction followed by a 75.9% expansion of uniformed officer strength during 1984–1986 (due to an economic recession in 1985). General arrest rates are fairly consistent with an increasing population (Interagency Committee on Population 1988). The number of personnel on the uniformed police force, number of arrests of both adults and juveniles, and even the total arrest rates are closely related.

Figure 3 illustrates the number of reports and arrests for family offenses, assaults, and runaways (known as out-of-control offenses, usually charged by parents against their children) over the period 1980–1993. Again, there is consistency between reports and arrests with population growth, and this relationship appears stable over time. For family offenses particularly (from 24 reports and 1 arrest in 1980 to 95 reports and 14 arrests in 1993, for a 4.1% and 14.7% clearance rate respectively), assaults (from 1,010 reports and 328 arrests in 1980 to 1,283 reports and 413 arrests in 1993, for a 32.5% and 32.2% clearance rate respectively), and runaways or out-of-control offenses (from 309 reports and 10 arrests in 1980 to 461 reports and 117 arrests in 1993, for a 3.2% and 25.3% clearance rate respectively), this consistency is seen again. (Differences in clearance rates for these offenses are addressed below.)

The UCR data (presented in Figure 4) regarding the number of sexual offenses and rapes reported then cleared officially by arrest

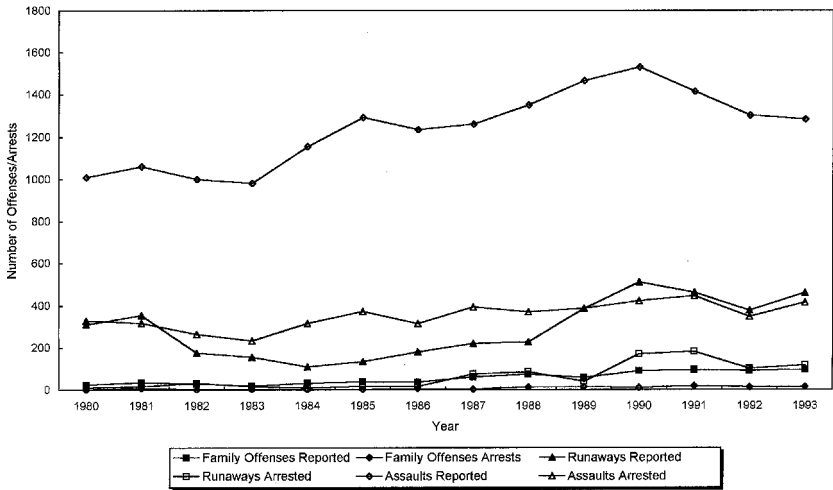


FIGURE 3 Other family related offenses and arrests, 1980–1993

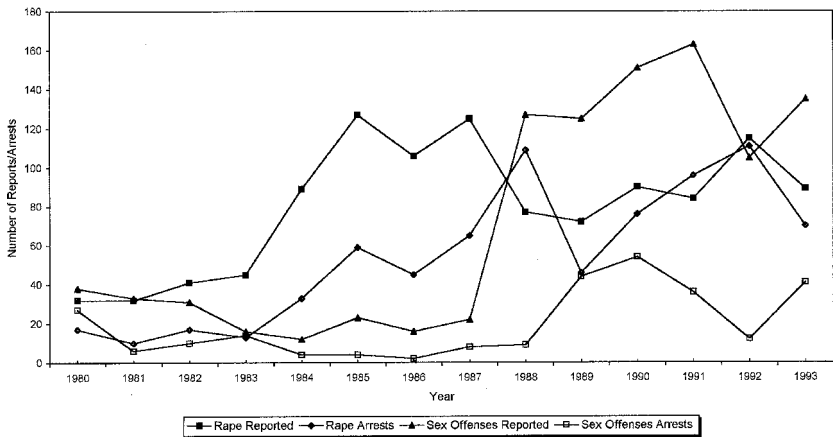


FIGURE 4 Rapes and sex crimes reported and arrests, 1980–1993

does not show the consistency or regularity illustrated in Figures 1, 2, and 3. Instead of a consistent difference or gap between the number of these offenses reported and the number of arrests made, in the case of sexual offenses (in 1987) the number of reports well exceeds the number of sexual offenses cleared through arrest. This 'broken' pattern is also evident for rape, although in this case it is 'broken' twice, the first time in 1988 and the second time in 1992. Changes in the law regarding these offenses do not explain

this broken pattern, nor do internal changes due to modifications in departmental regulations (Anonymous, 1996c).

Another break in consistency is seen in the characteristics of offenders charged for sexual offenses for 8 of the 14 study years (Figure 5, Guam Police Department 1989). First, the number of cases is inconsistent (150 in Fig. 4 to 116 for Fig. 5 in 1985, and 220 to 245 for 1992). There is no explanation for the difference in numbers, either in the tables (Guam Police Department 1989) or from interview material (Anonymous 1994–1996). Apparently this is just a 'data glitch' that, at least to the individuals interviewed, has no particular meaning.

Figure 5 is instructive for other reasons. (Even if the numbers of total offenses differ, the relationships among the categories within either total do not differ.) An abrupt increase in reports and arrests is seen in 1987 in Figures 4 and 5, and the characteristics of those charged with these offenses shows marked increases across all the categories illustrated, from immediate family to strangers. The 'unknown' category, shown uppermost in Figure 5, has decreased 66% from 1986 to 1992 and accounts for some of the increases shown in the other categories. This is a direct illustration of the importance of police discretion. Characteristics of offenders (shown in Fig. 5) are constructed from information provided by individual police officers on the crime or arrest report sheet itself (Guam Police Department 1989).

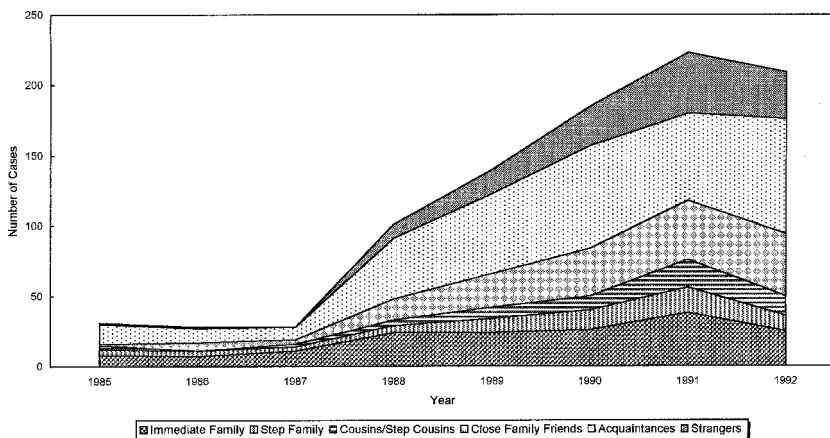


FIGURE 5 Sex crimes in the territory of Guam—characteristics of offenders, 1985–1992

If data collection were perfect, there would be an extension of this data presentation with numbers and figures from the Superior Court of Guam indicating the numbers of court cases heard, or plea-bargains registered, for each of the offenses illustrated, and thus, would complete the legal system picture. However, the Superior Court of Guam does not publish summated counts of court cases by offense, nor do they register the numbers or types of plea-bargains. Thus, no summation of court records appears to exist (Anonymous 1996c).

CONCLUSIONS REGARDING INTERPRETING OFFICIAL DATA IN A DEVELOPING JURISDICTION

Each police officer here is charged to fulfill their duty to the people of Guam (Interview 95/12/12, P2).

Arrests and subsequent prosecutions for rape, criminal sexual misconduct, or family offenses in Guam are riddled with political intervention. First, such behaviors can be ignored, hidden by the police, or both, obviating further prosecutorial or judicial activity. Second, as in the case of family feuds, charges may be trumped up to 'get' someone the police officer does not like. Either of these situations can be defined as a direct political manipulation of crime. This can also be seen as the adherence to positive law (Nonet and Selznick 1978), but only if the definition of positive law is wholly local in character and does not consider other jurisdictions an issue. This topic is further explored in the next section.

Official data, as presented in the Guam UCR, hints at the consequences of political manipulation by the police. Considered generally, the figures suggest a regularized and consistent application of law (Figs. 1–3), but when examined in more detail it was found that this pattern of regularity and consistency was broken (Figs. 4 and 5). Individual police officers, as they interpret their "duty to the people of Guam" (Interview 95/12/12, P2), continue to define this duty largely in personal, rather than professional, terms. Consequently, police discretion in Guam remains a personal and random application of personal power.

But police discretion in Guam is not idealized as in other American jurisdictions (Farmer 1984). Thus, there is no trust, or legitimacy, between the police and local inhabitants to violate or fail to fulfill. Consequently, it is the political interpretation of police

discretion and behavior, rather than its legal interpretation, that is of most importance in Guam. This differs from how police are perceived in other English-based and American jurisdictions (Gove et al. 1985). The implications of this difference in perception are profound in terms of legal evolutionary issues and legitimacy.

An individual police officer, in writing each arrest or incident report, begins an identifiable trail of decision-making that ends in a judicial process. In Guam, the trail from this initial arrest report to a possible charge at trial is visibly broken at the police level. When defining the application of law within the Territory, police discretion is indicative of the deformalization of police legitimacy. While continuity between arrest and prosecution indicates the ideological success by police departments in legitimizing their discretion (see Nonet and Selznick 1978), this continuity is not found in Guam. This lack of consistency from initial report to prosecuted charge is not generally shared by other English-based or American jurisdictions (Erickson and Empey 1963; Gove et al. 1985; Osgood et al. 1989).

This political, rather than legal, perception of the Guam Police Department can be best illustrated and summarized by the following. If a local or longtime inhabitant wishes to lodge a complaint, he or she doesn't call the Police Department but a police officer whom he or she knows, to handle the complaint. They are often related either by ties of family or friendship. Consequently, family feuds can be—and are—formalized with criminal complaints, just as many of these complaints may then be justifiably ignored. Each of these decisions is made at the level of the individual police officer. Police discretion is randomly applied depending on the officer's mood at the time and his or her evaluation of the situation and people involved. As one informant noted:

We only get calls from nonlocals first; everyone else goes through somebody or handles it themselves. If somebody makes a mistake and call [sic] us first, we can refer them, but you have to know the family to do that right. Each of us handles sex cases based on what we think is best for the family, but we talk to them about it, too (Interview 96/29/1, A23).

The idealized, generalized nature of relying upon the assistance of the police is notably a nonlocal or quite literally 'alien' phenomenon in Guam. Local inhabitants know which police

officer to call, which makes any of the official figures highly suspect as to their extension and realistic interpretation. The official numbers relating to crime offenses committed on Guam indicate political, rather than legal, discretionary powers of decision-making.

FORMALIZING THE SOCIAL CONTROL OF DEVIANCE: LESSONS FROM GUAM

From informal to the most formal levels, Guam does not share the idealized conception of the police found in other American jurisdictions (Westley 1970; Walker 1993). In Guam, police discretion is perceived, defined, considered, and practiced as a personal application of power. There are no intervening and legitimating issues of professionalism either proposed or expected that might depersonalize such assertions, behaviors, or applications of police power (Westley 1970; Wilson 1978; Farmer 1984; Henderson 1994). One attorney remarked:

I've seen it cut both ways. I've seen policemen lie on the stand to protect, or to get, somebody. Even when confronted with incontrovertible physical evidence they keep to their story. And I've never heard of a case where a police officer was accused of perjury.

I consider all police witnesses hostile, whether they're mine or not. There's nearly always a hidden agenda back in there somewhere, almost none of the testimony is completely clean. You always need to do twice the checking for half the witnesses.

This is local-local stuff, of course. It's a little different when the accused is local and the victim a statesider or a tourist. Those rarely get to trial at all (Interview 96/5/8).

The importance of looking at the legal, behavioral, and police definitions of sexual misconduct specifically through the use of the Uniform Crime Reports in the Territory now becomes clear. The laws regarding sexual offenses have not substantively changed, nor are there appellate findings that might have modified their interpretation at either the court or street level (Brown 1988). There is no evidence that sexual misconduct is suddenly (in 1987) more prevalent, but there is some anecdotal evidence that the Church has begun to shift many of the disputes that it

may have handled privately before 1986 elsewhere (Anonymous 1996a). Definitions compete with rather than mutually reinforce one another, which tends to deny a legitimating aspect to the formalizing of any justice or judicial and legal system as a consequence (Schwartz and Miller 1964; Nonet and Selznick 1978).

Most, if not all, of the literature dealing with the formalization or rationalization of legal and justice systems assumes a similarity of definition of behavior and law throughout the justice system, from police through the courts to appeals. A law defines what behaviors are criminal, just as the behaviors charged equate with the violation of the law charged. There is an assumption, often ideological in character (and legitimated in some way), that this is how the legal system works in at least its formal construction (Black 1976; Nonet and Selznick 1978; Schwartz and Miller 1964; Walker 1993; Weber 1978; Wilson 1978). There is, in other words, a direct correspondence of general agreement among all of the participants in legal institutions as to the definitions of law and the behaviors to which they refer, which can be then applied by the police.

The findings of this study question the assumption of correspondence between law and behavior (Schwartz and Miller 1964; Nonet and Selznick 1978). This may simply be due to the legitimating influence of available data which appears, at least on the surface, to support this identification between law and behavior. If someone is charged with a crime, the law used to define that crime is supported in that very charge, increasing the legitimacy of the legal system and resulting in the perceived formalization or rationalization of that legal system (Nonet and Selznick 1978).

The findings presented here illustrate the differences between two bodies of literature concerning legal systems and legitimacy (the primary tenet of formalization). These two pools of research—that of legal formalization (i.e., Malinowski 1959; Schwartz and Miller 1964; Black 1976; Nonet and Selznick 1978; Weber 1978; Wilson 1978; Walker 1993), and that of police discretion (i.e., Westley 1970; Williams 1984; Brown 1988; Walker 1993; Henderson 1994)—either support or deny a correspondence between law and behavior in the United States (or in other jurisdictions which have the English Common Law as their foundation). With correspondence lies formality; without it, lies traditional or charismatic justice (Weber 1978).

Consequently, we are left with a perceptual or ideological problem regardless of which body of literature we prefer. Either we believe the police are professional and legitimate, and thus a part of a legitimate and formalized justice system, or we see the police as political actors and police discretion seen as a problem in need of resolution. These views are antithetical. The present study illustrates that the resolution is political rather than legal, and that many 'legitimate' police departments of English origin might benefit from this kind of critical analysis. Many presumably formal police and legal jurisdictions may be, with more detailed analysis, more traditional or charismatic than they appear. Guam may provide a model through which the political significance of police forces, as well as those of other colonizing powers, might be evaluated. Rather than concluding that the Territorial justice system is informal in construction, the findings of this study suggest that the informality found here may extend to other English-based, presumed legitimate and formal, legal systems.

Defining legal issues, behavioral issues, and elements of police discretion in Guam (as has been done here) seems to resolve the formalization and discretionary problems noted previously by politicizing both problems, rather than only one of them. Either through the analysis of official data or by other means, analysis of the formalization of legal systems and police discretion must be external and political rather than internal to the justice system. No legal system, as the findings regarding the definitions of sexual misconduct in Guam illustrate, exists separately from its political milieu. The importance of these findings lies in proposing the politicization of the formalization literature, and the rationalization of the police discretion literature, into a comprehensive whole.

No police force, Territorial or otherwise, can escape its political functions. The family tyrannies and bureaucratic nightmares found on Guam may be no different from those found elsewhere, only on Guam they receive greater public scrutiny. The findings suggest that the political nature of other, presumed legitimate, police forces should be further explored. Similarly, the literature regarding formalization or rationalization of legal systems may benefit from more exacting analyses of their presumed legitimacy.

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