

REJOINDER TO PROFESSOR SEIDMAN

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I hope readers do follow Seidman's advice and read my book. This will enable them to decide who misspoke and who misread, and it will allow them to judge whether my explanation for behavior is restricted to "values and attitudes," and whether I want "tame" African lawyers to play at "elegantia juris." I doubt that Seidman is well placed for the latter charge. African societies consist not only of lawyers, law is not the only means of social and political action,¹ and not even African lawyers are restricted to their professional role if they want to change their countries. To nurture illusions about the contribution they can make by inventing new constitutional provisions might be more rightly criticized as encouraging play at elegantia juris than my attempt to establish the limits of law as a means of development.

These limits are underscored by Seidman's examples: What has been the impact of the institutionalization of a Planning Commission in Lesotho's constitution? What of Zambia's Leadership Code? If Tanzania's Code appears to work better, this suggests that political and economic factors are more important than the drafting of the Code. Without denying its importance, I believe that TANU would also have succeeded in containing corruption below the African average by informal means.

I also do hope that Seidman one day will give us a legal explanation for the different development of India and China.² This is admittedly an unfair suggestion, as he can hardly win. Even if one reached the conclusion that the legal system did make a difference, this finding would not be helpful to Seidman's argument. China is the one major country that has shown a pointed disregard for law as an instrument³ and manages pretty much without professional lawyers. If one could generalize from the Chinese example (which I doubt) the advice to African countries would be to burn law-books, abolish law-faculties, and send the lawyers to farms and factories.

I will end here, because an exchange of blows like this almost necessarily leads to the kind of oversimplification I tried to avoid in my book. Seidman's one-sided insistence on the importance of law might provoke me into seeming to argue an equally one-sided position (stateways cannot change folkways) which I do not hold. I suspect I could agree to the usefulness of most concrete research projects Seidman thinks to be important, as long as the potential contribution of law and lawyers is seen in realistic perspective.

NOTES

1. I fail to see why my conclusions about the limitations on law should equally apply to other social sciences.
2. I forgo the temptation to discuss Seidman's assumption that these two countries started from "similar bench marks."
3. Constitutions, e.g., serve merely to ratify changes of the political power-structure long after the event.