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Contingent Articulations: A Critical Cultural Studies of Law

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The relationship between law and culture should not be defined. Law and culture(s) emerge conceptually as autonomous realms in Enlightenment and Romantic imaginaries; they share a parallel trajectory in ideologies that legitimate and naturalize bourgeois class power and global European hegemonies. Historical recognitions of the Eurocentric, racial, and colonialist roots of these terms do, however, suggest new avenues of inquiry. Whether this interdisciplinary opportunity is deemed a cultural studies of law, a critical legal anthropology, or a subgenre of cultural studies matters less than the rejection of reified concepts of law and culture.

An exploration of the nexus between law and culture will not be fruitful unless it can transcend and transform its initial categories. To ask under what conditions it became conceivable to comprehend law as something that regulates culture or culture as something that helps us understand law is to inquire into a history that reveals mutual implications in European modes of domination. To make this point, I will delineate a genealogy of these concepts as they developed in European modernity. From this genealogy we discover points of departure from which to effect a displacement of law and culture as discrete and naturalized domains of social life. An ongoing and mutual rupturing—the undoing of one term by the other—may be a more productive figuration than the image of relationship or joinder.

Recent discussions about culture—its heuristic value and political limitations as a term of analysis—reveal a pervasive unease. Scholars in

both contemporary cultural anthropology and the emergent field of cultural studies tend to write "against culture." As anthropologists acknowledged the orientalizing tendencies of a concept of culture that delineated cultures as discrete formations, to be studied in their own terms, they became cognizant of the complex relations between power and meaning in everyday life. In reaction to the Eurocentrism and elitism of the humanities that privileged Culture as a canon of discrete works of European art and literature, a body of critical cultural studies was similarly and simultaneously forged. Rejecting modern aesthetic tenets that insisted that Culture be approached as a field of self-contained texts to be studied in terms of their own formal relations, those who practiced cultural studies focused on the social power of popular forms of textuality. These disciplinary developments share a recognition of the historical contingency of the culture construct and its political provenance. Such developments have parallels in recent directions in law and social inquiry. Many law and society scholars have turned away from positivist, formalist (doctrinalist or structuralist) and institutionally centered accounts of law to explore law as a diffuse and pervasive force shaping social consciousness and behavior. Although sociolegal studies has not developed an explicit agenda of writing "against law," such tendencies are nascent, if not fully realized, in a growing body of scholarship.[1] Throughout this survey of the tendencies and tensions, propensities and potentials in the scholarly literature, I will show how the challenges of transnationalism and the politics of global capital restructuring make a cultural studies of law and juridical understandings of cultural production, dissemination, and reception ever more pressing. The articulation of this contingent relationship—law/culture—will increasingly engage our critical attention as it is rhetorically developed in new political struggles for identity, recognition, and legitimacy.

Modernity's Misrecognitions

Law and culture emerge and develop into autonomous social fields from the mid-eighteenth through the late nineteenth centuries in Euro-

1. Most scholars of law and society write against law as a body of self-sufficient doctrine, or law as an autonomous set of institutions, and most also reject the abstractions of structuralist analyses of law or of liberal legal discourse, even when such practices are allegedly critical, as they are in critical legal studies and critical race theory. These might be seen, then, as propensities to write against law in the sense that these scholars are writing against its dominant self-representations.

pean Enlightenment, Romantic, and social science thought. They share parallel trajectories and are mutually implicated in the articulation of an occidental being, the West, and in evolutionary visions of human civilization and its development. Law develops conceptually as the antithesis of culture, anthropologically defined (albeit glossed as tradition, myth, or custom), but as constitutive of civilization and thus of Culture as the preserve of European nation-states. Peter Fitzpatrick points to a narrative of law—its modern mythology—that has law emerging as the constitutive feature of a European civilization defined in opposition to a savage other characterized by a lack of law and an excess of culture.[2] As we shall see, traces of this historical development continue to haunt contemporary anthropological debates and controversies within the field of cultural studies.

Robert Young argues that the concept of culture itself has origins in European anxieties about racial difference and racial amalgamation emergent in colonial encounters and forced migrations. Culture was understood to be "symptomatic of the racial group that produced it."[3] It became a commonplace of Romantic thinking that each language embodied a distinct worldview; although distinguished from nature, cultures were conceived of as themselves organic, unified, and whole. The culture concept, however, is always defined antithetically. Whether differentiated from nature or anarchy, or distinguished as a lesser state of being from the higher state of civilization (cultures as opposed to Culture), culture develops, Young suggests, as "a dialectical process, inscribing and expelling its own alterity" (30). Culture derives its modern meaning in processes of colonization, even in its meaning as the tilling of soil, which emphasizes the physicality of territory to be occupied, cultivated, and possessed to the exclusion of tribal others (31).

Culture's original reference was an organic process. Drawing upon Raymond Williams's genealogy of the term,[4] Young finds the concept and related ideas of cultivation and civilization increasingly deployed by European elites to mark social distinctions of class, race, and gender:

> From the sixteenth century this sense of culture as cultivation, the tending of natural growth, extended to human development: the

2. Peter Fitzpatrick, *The Mythology of Modern Law* (London: Routledge, 1992).

3. Robert J. C. Young, *Colonial Desire: Hybridity in Theory, Culture, and Race* (London: Routledge, 1995), 4.

4. See Raymond Williams, *Keywords* (New York: Oxford University Press, 1983) and *Culture and Society: 1780–1950* (New York: Columbia University Press, 1983).

cultivation of the mind. In the eighteenth century it came to represent also the intellectual side of civilization, the intelligible as against the material. With this it gradually included a more abstract, general social process, and in "cultivated" took on a class-fix . . . The OED cites 1764 as the date that "cultured" was first used in the sense of "refined." The social reference of cultivation was allied to the earlier distinction between the civil and the savage . . . operat[ing] within the later ideological polarity of the country and the city, for the inhabitants of the city contrasted themselves to the savages outside by appropriating, metaphorically, an agricultural identity. The city people became the cultivated ones, and the hunters defined by their lack of culture—agricultural, civil, and intellectual. This refined culture of the city was first named as "civilization" in English by the Scot James Boswell . . . in 1772.[5]

Such an understanding of *civilization* was metaphorically extended on a global sphere in Enlightenment ideologies, which used the term to express the "sense of the achieved but still progressive secular development of modern society . . . the end-point in an historical view of the advancement of humanity."[6] Societies could be judged more or less civilized and placed upon a universal trajectory upon which their arts and institutions could be measured. By the nineteenth century, stages of civilization—reduced now "to the cultural-racial categories of savagery, barbarism and civilization" (35)—were increasingly identified with racial difference. Influenced by German Romanticism and nationalism, dominant meanings for the concept of culture subdivided during this period. No longer merely the equivalent of civilization, and that which savage others lacked, nascent tendencies within Enlightenment thought were elaborated to differentiate *between* cultures. In Romantic reactions against the disenchanted realities of a grim modernity, primitive or popular cultures could be called upon as resources for an ideological critique of civilized society:

> This is the mark of the decisive change initiated . . . by Herder: a Romantic reaction against the grand claims for civilization, in which the word "culture" was used as an alternative word to express other kinds of human development, other criteria for human well-being and, crucially, in the plural, "the specific and variable cultures of different nations and periods." (37)

5. Young, *Colonial Desire*, 31.
6. Ibid., 32.

Differentiations in race theory emerge simultaneously with this differentiation within the culture concept, and both are brought into congruence with the naturalization of the nation as the constitutive unit of human society. Herder believed that the character of a nation was intimately related to land and climate and the popular traditions generated from such conditions. Cultural achievements, then, were invariably local and tied to their native places of origin. Every place had its culture and every culture its place; the nation is the embodiment of a people, their language, and their land. As Young explains, "This Romantic passion for ethnicity, associated with the purity of a people, language and folk-art still in intimate relation with the soil from which they sprang, was also closely related to the development of racial ideologies and the idea of the permanent difference of national-racial types" (42). A homogeneous, uniform basis for a polity, culture is the natural foundation for the nation. Each people, from barbarians and savages through the ancient civilizations, had its own culture and formed its own distinct national character. National cultures, moreover, could be judged in terms of their degree of civilization. Thus, Young suggests, there were already two "anthropological" usages of culture current throughout the nineteenth century; the first "referring to the particular degree of civilization achieved by individual societies within a general notion of the culture of humanity" (44), and the second deploying a concept of culture that was often indistinguishable from race and promulgated absolute forms of difference. A nonracialized concept of culture developed only in the twentieth century and "was inextricably linked with the cultural re-evaluation of primitivism associated with early Modernism. Indeed the idea of the culture of a society worth studying in itself reflects early twentieth-century modernist aesthetic practices" (37). I will return to modern anthropology's modernist aesthetic in my discussion of contemporary controversies over the culture concept. For now, it is important to note that a people's culture, in both its racialized and ethnographic senses, was a complex of forms in which law was understood to be at least as significant as the arts in defining national character and the degree of civilization a society had achieved.

According to Fitzpatrick, it is one of modernity's myths that others live in worlds of static, uniform, and closed systems of meaning,

whereas "we" (a European, literate, and propertied male "we" in any case) occupy a world of progress, differentiation, and openness. This "white mythology" assumes that the West has law, order, rule, and reflective reason, whereas others have only violence, chaos, arbitrary tradition (mindless habit), or coercive despotism to govern social life. The mythic, cultural worlds in which others were said to live were constructed, he suggests, as "the mute ground which enables 'us' to have a unified 'law.'"[7] This is modernity's myth, in the sense that it was forged without regard for historical evidence and served to resolve tensions and contradictions in domestic and colonial social relationships and ideologies. Law was one indication of civilization, a potentially universal evolutionary pinnacle, which only the European had thus far achieved. Civilization, moreover, was equated with private property, a state of cultivated being that allegedly required an explicit and permanent set of ordering principles. Legal orders were seen as unified, harmonious, autonomous, and self-sustaining; uniform legal systems had conquered the irrational forces of custom and tradition and subsumed local differences. Such legal unities were themselves indicative of the qualities of national cultures and their level of civilization. Distinct kinds of law were tied to distinct nations, depending upon their place in a predetermined and universal teleology. A civilized human being had one king, one law, one faith, whereas the savage state admitted of no singular sovereignty, no law, and no singular deity but a multiplicity of disordered forms of authority demanding deference. The idea of law as singular integrated order, ever more differentiated and refined to meet the needs of ever more developed nations, was always already fully realized only in bourgeois society. Others were undifferentiated but indelibly different; they occupied the space of a uniform difference, whereas European societies were characterized by complex differentiations. Models of legal evolution (from Maine through Durkheim and Weber) confirmed these imaginary contrasts between the West and the rest.

The so-called study of primitive society, from which contemporary anthropology derives, has its origins in larger questions of comparative law:

> As [Adam] Kuper tells us, "the study of primitive society was not generally regarded as a branch of natural history. Rather, it was treated initially as a branch of legal studies." Primitive society itself was "a fantasy . . . constructed by speculative lawyers in the late nineteenth century." Furthermore, "the issues investigated—the development of marriage, the family, private property, and the state—were conceived of as legal questions."[8]

Such studies, of course, were integrally related to contemporaneous debates about colonial governance. Henry Maine's work *Ancient Law,* heralded as producing "the common currency of legal thought," was an entirely speculative evolutionary narrative, but one that implicitly addressed the governing of India.

The social lives and modes of power enjoyed diverse peoples could not, Fitzpatrick notes, be seen merely to be different, but had to be related historically to a trajectory in which European law saw its own past in the jural forms of others. "Such difference is accommodated as precursor to what inexorably and universally has to come about."[9] From the internal colonialisms of the sixteenth and seventeenth centuries to the overseas colonialism of the late eighteenth through nineteenth centuries, this fully evolved unitary law was both the justification for and the instrument of imperialism. It was the gift of civilization to be brought to others; as an incomparable vehicle for establishing peace and order, it was simultaneously the vehicle through which forces of violence and disordering were legitimated (107–9). In this experience, the small static, kin-based social group, governed by habitual and indolent custom (by culture, in short), "was created both in fantastic inversion of European identity and by colonial regulation" (111). Local customs and "customary law" were both fabricated and repudiated by regimes of colonial governance. Stagnant, superstitious, uniform, fixed, and self-reproducing, this colonially generated image of non-European cultures establishes the racial foundation for law's modern identity (111).

This identity was also forged with particular models of nationhood and subjectivity, Fitzpatrick suggests. Just as the residues of a colonially produced concept of culture continue to attract controversy in anthropological circles, so too, modernist understandings of the nation and subjectivity continue to inhabit the discipline's central precepts. The

7. Fitzpatrick, *Mythology,* 3.

8. Ibid., 102, citing Adam Kuper, *The Invention of Primitive Society: Transformation of an Illusion* (London: Routledge, 1988), 3–8.

9. Fitzpatrick, *Mythology,* 107.

birth of European nationalism in the nineteenth century provided new momentum for the creation and imposition of homogeneous and exclusive national cultures unified by language, law, and tradition. National literatures, musical traditions, and dance forms were discerned and their distinctions reified. Canons of discrete literary and artistic works defined a national culture and its contributions to a larger human civilization. Each nation exhibited unique examples of progress in the arts and sciences and thus could be measured by the level of its contributions to Culture, the realm of human perfection in creative endeavor.

Ideas of race were central to national identities and their presumed integrity. The self-elevation of European nations was legitimated by judicial nationalisms in which the nation's legal culture was seen to be uniquely reflective of its character as a national community and, simultaneously, evidence of the nation's place in a universal trajectory of progress toward civilization. A uniform law, encompassing and subordinating other forms of regulation and social ordering distinguished an evolved nation from those lesser races without the law, "still" ruled by custom and habit. The laws of developed nations demanded a particular form of sovereign subject—self-directing, reflexive, no longer bound by the constraints of community and tradition that so tied racial others. This self—the modern individual—is connected to other individuals, not by traditional, ritual bonds, but by modern legal forms, among which the contract was preeminent.[10] As Fitzpatrick notes, this European subject was the product of disciplinary powers, as power itself became misrecognized as a negative restraint upon free individuals (129). Others, by contrast, were incapable of self-determination, lived in societies of "inert mindless uniformity" (137), and were regulated by rigid custom. The tacit worldviews of such others were never explicit and could be made explicit only by the Western individual's rendering of "tribal" custom and the colonial administrator's determination of "customary law." Anthropology, of course, has its origins in precisely this ideology, of which the mythology of modern law is constitutive:

> placing Hart's concept of law within the European mythology of origin can help explain the silent suppression of linguistic philosophy along with the popular creation of meaning. All the inhabitants of the primal scene, from the savages of North America to the colonized of Africa, shared a convenient characteristic which prevented their contributing to linguistic use: they could not speak and thus had to be spoken for. In the imperial mentality which informs Hart's account and its sources, true knowledge is brought by the European to the mute and inglorious savages. Their reality is thereby known for the first time—known properly and fully both in itself and in the universal nature of things. Inadequate local knowledges are infinitely encompassed and given adequacy by European knowledge which is, in turn, elevated in its relation to them. (202)

10. Ibid., 118–29.

Against culture(s)

It is now critical orthodoxy that in the dominant functionalist, structuralist, and interpretive (or hermeneutical) variants of modern anthropology, cultures were depicted as holistic, integrated, and coherent systems of shared meaning.[11] This depiction of cultures enabled (and was enabled by) the elision of the social and political practices whereby meanings and texts were produced. Social relations of production and interpretation were emptied of specificity so that those who produce and interpret meanings were without class, gender, race, or age and thus did not occupy social positions that might incline them toward alternative interpretations. Interpretive processes were represented without reference to cultural differences, social inequalities, and conflicts within communities.[12] The dialogic, contested dimensions of social life were evaded by a focus on *dominant* interpretations as the univocal voice of *legitimate* meanings and values. The interpretive approach engaged scholars in the discovery and description of the distinct lifeworlds in which phenomena had significance—as Clifford Geertz put it, the task involved "placing things in local frames of awareness."[13]

In its classical modern form, cultural anthropology recognized and

11. See Robert Brightman, "Forget Culture: Replacement, Transcendence, Relexification," *Cultural Anthropology* 10 (1995): 509 for a recent overview of critical attitudes toward the concept of culture in the discipline of anthropology over the last two decades. My argument here is derived from Rosemary Coombe, "Beyond Modernity's Meanings," *Culture* 11 (1991): 111.

12. John Brenkman, *Culture and Domination* (Ithaca, NY: Cornell University Press, 1987), 30–38. I explore this proposition in a critical consideration of legal interpretation and interpretive communities in Rosemary Coombe, "Same as It Ever Was: Rethinking the Politics of Legal Interpretation," McGill Law Journal 34 (1989): 603.

13. Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), 6.

respected differences between cultures but effaced differences within cultures. Defining culture as shared, zones of difference—where alternative interpretations are generated and dominant meanings contested—appeared to be areas of deviance and marginality, not central to the culture under study.[14] Anthropologists divorced culture from creative practice and human agency. Cultural theories, Lila Abu-Lhugod suggests, tend to overemphasize coherence and tend to project an image of communities as bounded and discrete.[15] Failing to represent contradictions, conflicts of interest, doubts, or changing motivations and circumstance serves to essentialize difference between societies while denying differences within them and, in so doing, effects a recognition (and legitimation) of certain regimes of power by giving priority to dominant representations and interpretations. Anthropologists maintained a modernist aesthetic sensibility. The art museum, suggested Rosaldo, was an apt figure for a field of intellectual endeavor that privileged classic ethnographies—creative works that represented cultures as autonomous, integrated, and formally patterned:

> Cultures stand as sacred images; they have an integrity and coherence that enables them to be studied as they say, on their own terms, from within, from the "native" point of view . . . [Like the work in an art museum] each culture stands alone as an aesthetic object . . . Once canonized all cultures appear to be equally great . . . Just as [one] does not argue whether Shakespeare is greater than Dante [one] does not debate the relative merits of the Kwakiutl . . . versus the Trobriand Islanders . . .[16]

Feminist anthropologists demonstrated that the representation of culture as a unified system of meaning was achieved primarily by excluding the cultural meanings that women and other subordinate groups in society attributed to their own experiences. They suggested

14. See Renato Rosaldo, *Culture and Truth: Remaking Social Analysis* (Boston: Beacon Press, 1989), 27–30; William Roseberry, *Anthropologies and Histories: Essays in Culture, History, and Political Economy* (New Brunswick and London: Rutgers University Press, 1989), 24–25.

15. Lila Abu-Lughod, "Writing against Culture," in *Recapturing Anthropology*, ed. Richard J. Fox (Santa Fe: School of American Research Press, 1991), 137, 146.

16. Rosaldo, *Culture and Truth*, 43.

that cultural truths were partial and often based upon institutional and contestable exclusions.[17] Ethnographers too often interpreted native elite male assertions and activities to metonymically represent social reality. Instead, feminists proposed an analytical attitude that "treats culture as contested rather than shared, and therefore represents social practice more as an argument than as a conversation."[18] Moreover, they drew attention to the multiple orders of difference existing in any social arena and their intersection in shaping human experience.[19] Drawing upon this work, Nicholas Thomas proposes that anthropologists explore cultural difference or local meaning through works that convey the politics of producing and maintaining structures of meaning "so as to disclose other registers of cultural difference," replacing "cultural systems with less stable and more derivative discourses and practices."[20]

Theorists of postmodernism reiterate several of these assertions, arguing that all totalizing accounts of (a) society, (a) tradition, or (a) culture are exclusionary and enact a social violence by suppressing continuing and continually emergent differences. One form of cultural critique (which both feminist and reflexive anthropologists endeavor to realize) is "to deconstruct modernism . . . in order to rewrite it, to open its closed systems . . . to the 'heterogeneity' of texts"—to challenge its purportedly universal narratives with the 'discourses of others.'"[21] According to Steven Connor, a postmodern consideration of power and value "identif[ies] centralizing principles—of self, gender, race, nation,

17. J. Clifford, introduction to *Writing Culture: The Poetics and Politics of Ethnography*, by J. Clifford and George Marcus, eds. (Berkeley: University of California Press, 1986).

18. Rena Lederman, "Contested Order: Gender and Society in the Southern New Guinea Highlands," *American Ethnologist* 16 (1989): 230. Lederman criticizes a dominant tendency in ethnographic work on the New Guinea Highlands that represents these societies in terms of male-dominated clan relationships, giving the exchange networks in which women are prominently involved secondary or negligible significance. Such an emphasis does not represent these societies as effectively as it echoes and gives legitimacy to a specific, interested indigenous perspective—an ideology of male dominance—that is contested by women and disputable even between men.

19. Henrietta Moore, *A Passion for Difference: Anthropology and Gender* (Bloomington: Indiana University Press, 1994).

20. Nicholas Thomas, "Against Ethnography," *Cultural Anthropology* 6 (1991): 306, 312.

21. Hal Foster, ed., *The Anti-Aesthetic: Essays on Postmodern Culture* (Port Townsend, WA: Bay Press, 1983), ix, x.

aesthetic form—in order to determine what those centres push to their silent or invisible peripheries."[22]

If differences within cultures became more apparent, or were finally articulated by anthropologists with new agendas, differences between cultures were simultaneously scrutinized on both political and empirical grounds. Culture, it seemed, operated conceptually to enable us to separate so-called discrete others from ourselves and to ignore the regimes of power and circuits of exchange that both connect and divide us. Abu-Lhugod suggests that culture served to reify differences that inevitably carry a sense of hierarchy; as a discipline built upon the historically constructed divide between the West and the non-West, anthropology "has been and continues to be primarily the study of the non-Western other by the Western self."[23] Culture is the concept that consolidates and naturalizes distinctions between self and other, but it also *makes* others other. It constructs, produces, and maintains the differences it purports merely to explain.[24] Modern cultural anthropology rests on an unstated assumption that others *must* be different, from us and from each other, even though those groups of people that anthropologists referred to as having "cultures" were bounded, created, named, and reified in nineteenth-century European colonial struggles and their consequent administrative hegemonies.[25] Even in its more progressive guise as a cultural critique of Western assumptions, anthropology "depended upon the fabrication of alterity, upon a showcase approach to other cultures that is now politically unacceptable."[26]

Writing against culture(s)

To write "against culture" is to focus upon practices and problems of interpretation, exploring contradiction, misunderstanding, and misrecognition, aware of interests, inclinations, motivations, and agendas.[27] Building upon Bourdieu's insight "that culture commits anthropology to a legalist perspective on conduct,"[28] Abu-Lhugod asserted

22. Steven Connor, *Postmodernist Culture: An Introduction to Theories of the Contemporary* (London: Basil Blackwell, 1989), 228.

23. Abu-Lhugod,"Writing against Culture," 139.

24. Ibid., 143.

25. Thomas, "Against Ethnography."

26. Ibid., 310.

27. Abu-Lhugod, "Writing against Culture," 147.

28. Discussion of Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977) in Brightman, "Forget Culture," 513.

that juridical tropes like rules and models, regimes and structures need to be replaced with less static configurations that might account for the more creative and improvisational ways in which meaning is produced in everyday life.[29] Refusing distinctions between ideas and practices, or text and world, a contramodernist anthropology might emphasize individuals' usages of signifying resources and the reinforcements and transformations of dominant meanings thereby accomplished. Refusing to accept the modern predilection to avoid questions of political economy when addressing issues of culture, contemporary ethnographers seek to articulate the complex interrelationships between cultural meanings and social and material inequalities.

Culture is both the medium and the consequence of social differences, inequalities, dominations, and exploitations, the form of their inscription and the means of their collective and individual imbrication. An emphasis upon shared meanings evades (and is complicit with) those historical processes through which some meanings are privileged while others are delegitimated or denied voice—practices in which unity is forged from difference by the exclusion, marginalization, and silencing of alternative visions and oppositional understandings. Culture must be reconceptualized as an activity of struggle rather than a thing, as conflictual signifying practices rather than integrated systems of meaning.[30] To write against culture is to reject modernity's meanings, shifting focus from structures and systems to the signifying practices that construct, maintain, and transform multiple hegemonies.

Scholars of law and society have also argued for new paradigms with which to model relationships between law and society (including the necessity to stop conceiving these terms as separate entities that require the exposition of *relationship* as the adequate term of address). As disillusionment with instrumentalist, functionalist, and structuralist paradigms set in, concerns with law's legitimation functions—its cultural role in *constituting* the social realities we recognize—were emphasized. Constitutive theories of law recognize law's *productive* capacities as well as its prohibitions and sanctions—shifting attention to the workings of law in ever more improbable settings.[31] Focusing less

29. Abu-Lhugod, "Writing against Culture," 147.

30. For other examples from the field of Mediterranean ethnography, see Rosemary Coombe, "Barren Ground: Honour and Shame in Mediterranean Ethnography," *Anthropologica* 32 (1990): 221.

31. Frank Munger, "Sociology of Law for a Postliberal Society," *Loyola of Los Angeles Law Review* 27 (1993): 89. See also Alan Hunt, *Explorations in Law and Society: Toward a Con-*

exclusively upon formal institutions, law-and-society scholarship has begun to look more closely at law in everyday life,[32] in quotidian practices of struggle, and in consciousness itself.[33] Austin Sarat and Tom Kearns suggest that "a focus on law in everyday life can help to bridge the gap between so called 'constitutive' and 'instrumentalist' views of the law, providing a powerful means by which the everyday is understood and experienced, but also a tool that enables people to imagine and effect social change."[34]

Legal forums are obviously significant sites for practices in which hegemony is constructed and contested—providing institutional venues for struggles to establish and legitimate authoritative meanings. The adoption of legal strategies may give meanings the force of material enforcement. Law is constitutive of social realities, generating positivities as well as prohibitions, legitimations, and opposition to the subjects and objects it recognizes.[35] As John Comaroff remarks, the revitalization of scholarly interest in the anthropology of law has con-

stitutive Theory of Law (New York: Routledge, 1993) and Sue Lees, "Lawyers' Work as Constitutive of Gender Relations," in *Lawyers in a Postmodern World: Translation and Transgression*, ed. Christine Harrington and Maureen Cain (New York: New York University Press, 1994), 124. For a discussion of the constitutive perspective, see Austin Sarat and Thomas R. Kearns, "Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life," in *Law in Everyday Life*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1993), 21.

32. See Austin Sarat and Thomas R. Kearns, eds., *Law in Everyday Life* (Ann Arbor: University of Michigan Press, 1993). Also Craig McEwen, Lynn Mather, and Richard Maiman, "Lawyers in Everyday Life: Mediation in Divorce Practice," *Law and Society Review* 28 (1994): 149.

33. Sally Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: University of Chicago Press, 1990), Austin Sarat, "'. . . The Law All Over': Power, Resistance, and the Welfare Poor," *Yale Journal of Law and Humanities* 2 (1990): 243; Susan Silbey and Patricia Ewick, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness," *New England Law Review* 26 (1992): 731.

34. Sarat and Kearns, "Beyond the Great Divide," 21.

35. These processes are explored in relation to legal regimes of intellectual property in my following works: "Publicity Rights and Political Aspiration: Mass Culture, Gender Identity and Democracy," *New England Law Review* 26 (1992): 1221; "Tactics of Appropriation and the Politics of Recognition in Late Modern Democracies," *Political Theory: An International Journal of Political Philosophy* 21 (1993): 411; "The Properties of Culture and the Politics of Possessing Identity: Native Claims in the Cultural Appropriation Controversy," *Canadian Journal of Law and Jurisprudence* 6 (1993): 249; "Embodied Trademarks: Mimesis and Alterity on American Commercial Frontiers," *Cultural Anthropology* 11 (1996): 202; and the studies collected in *Cultural Appropriations: Authorship, Alterity and the Law* (Durham, NC: Duke University Press, 1998).

tributed to our theoretical understandings of power, hegemony, and resistance.[36] Legal discourses are spaces of resistance as well as regulation, possibility as well as prohibition, subversion as well as sanction. Beth Mertz also draws attention to the complexities of legal relations of power:

> By contrast with accounts that discuss law as the one-way imposition of power, where lawmakers simply mold social actors and groups like clay, the social constructionist approach . . . understands the subjects of law as agents, actors with at least some ability and power to shape and respond to legal innovations . . . law becomes a form of social mediation, a locus of social contest and construction. And yet, because of its social character, legal mediation does not operate on a level playing field; . . . [we must be] mindful of the effects of differential power and access to resources on the struggle and its outcomes.[37]

If law is central to hegemonic processes, it is also a key resource in counterhegemonic struggles. When it shapes the realities we recognize, it is not surprising that its spaces should be seized by those who would have other versions of social relations ratified and other cultural meanings mandated. Law, then, is culturally explored "as discourse, process, practice, and system of domination and resistance"[38] to be connected to larger historical movements, while remaining sensitive to the nuances of "the ontological and epistemological categories of meaning on which the discourse of law is based."[39] Historically structured and locally interpreted, law provides means and forums both for legitimating and contesting dominant meanings and the social hierarchies they support. Hegemony is an ongoing articulatory practice that is performatively enacted in juridical spaces, where, as Susan Hirsch and Mindie Lazarus-Black put it, "webs of dominant signification enmesh at one

36. John Comaroff, foreword to *Contested States: Law, Hegemony and Resistance*, by Susan Hirsch and Mindie Lazarus-Black, eds. (New York: Routledge, 1994).

37. Elizabeth Mertz, "A New Social Constructionism for Sociolegal Studies," *Law and Society Review* 28 (1994): 1243, 1246.

38. Susan Hirsch and Mindie Lazarus-Black, eds., *Contested States: Law, Hegemony and Resistance* (New York: Routledge, 1994), 1–2.

39. Peter Just, "History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law," *Law and Society Review* 26 (1992): 373.

Cultures of Legality

Hegemonic struggles take place in ever more expansive terrain as communications, transportations, and migrations assume global dimension. Global capital restructuring multiplies and complicates the legal venues and idioms through which processes of institutionalization and intervention take place and form. Changing configurations of power and new dimensions of representation demand new forms of attention; the relationship between law and culture, politically understood, assumes a new urgency.

The anthropological concept of culture (or the sociological preoccupation with "society," for that matter) arguably presupposed the European nation-state as a naturalized form of power rather than a nineteenth-century political artifact.[45] The contemporary decline in the significance of state power may be partially responsible for our current uneasiness with the culture concept. Comaroff asserts that the so-called crisis in representation is related to the fact that our received categories of analysis are so closely linked with the rise of the European nation-state:

> The very idea of "society" has always been tied to modernist imaginings of political community (the nation in complex societies, tribes, chiefdoms and the like in simple societies—with scare quotes); likewise culture, which in its anthropological connotation, has always referred to the collective consciousness of those who live within a territorially defined polity.[46]

As "national" workforces disperse around the globe, national governments struggle to regulate flows of people, goods, representations, and capital that threaten their administrative capacities and resources, challenges to the jurisdiction of nation-states multiply. The new global

45. See James Ferguson and Akhil Gupta, eds., *Culture, Power, Place: Critical Explorations in Anthropology* (Durham, NC: Duke University Press, 1997) for elaborations of this argument and examples of scholarship critical of the discipline's traditional relationship to bounded spaces as the locus of community and social relationships of significance.

46. John L. Comaroff, "Ethnicity, Nationalism and the Politics of Difference in an Age of Revolution," in *The Politics of Difference: Ethnic Premises in a World of Power*, ed. E. Wilmsen and P. McAllister (Chicago: University of Chicago Press, 1996).

cultural order will take shape in many forums, and in both traditional and emergent legal venues. Nations have limited (but still significant) roles in global cultural flows of representation:

> Much of the traffic in culture is transnational rather than international . . . Indeed, a corollary of the development of the postcolonial world is the growing irrelevance of old imperial centres and capitals. A few global cities may have become powerful foci for the flow of money, media, and migration. But taken over all, the emerging global order is much more dispersed: its borders are *virtual* frontiers which exist as much in electronic as in geophysical space, and its centres are the pulse points of complex networks rather than the capitals of nation-states.[47]

Cultural flows are legally regulated, imagined, managed, and contested. Let me provide some examples of this to suggest new areas of sociolegal inquiry. Legal regimes regulating the flow of imagery—telecommunications policies, regional broadcasting agreements, criminal laws in digital environments, and customs and import restrictions—are only a few that spring to mind. Empirically, we might ask, just how overwhelmed are nation-states by such invasions of textuality? How effective are such laws, and what are their unintended consequences? Do such old-fashioned notions as cultural imperialism continue to influence decision makers, and in what legal contexts? Given the international tendency to treat the flow of texts as a matter of trade, what social difference does it make when what we used to call culture is transformed into commodified information? How are "culture industries" legally defined, and how are they administratively formulated as national bastions against the effects of free trade? How are local resistances generated in relation to so-called global harmonizations—GATT rounds, Dunkel Drafts, and TRIPS Agreements, for example? What is the relation between legal and religious authorities in legislating this influx and circulation of cultural forms?

More genealogical inquiries are also invited. If, as Fitzpatrick suggested, the rise of the idea of an autonomous and integrated law was simultaneous with the rise of the European nation-state and its distinctive culture of civilization, then perhaps

47. Ibid.

> we need to understand the centrality of the culture of law in the scaffolding of the modernist nation-state; of the significance, in its architecture, of the rights-bearing subject, of constitutionality and citizenship, of private property and an imagined social contract. What exactly are the invisible components of the cultures of legality that underpin modernist sensibilities in the West . . . How exactly are they constructed and connected to one another? How and when do they come to be taken for granted? When and why do they become objects of struggle?[48]

One scholarly initiative has been a renewed interrogation of the nation as a social construct—an exploration of the forms in which it has been naturalized[49] and the forms of power it legitimates. Law may well be central to the unique culture that nations imagine they possess. Bill Maurer, for example, explores the significance of "law and order" as a rhetorical form that contains British Virgin Islanders' sense of their distinctiveness as a nation and how this collective sense of pride and attachment to juridical regimes precludes any social movement to achieve self-determination.[50]

Cultural anthropology's modernist heritage—the desire to project cultures as bounded, coherent fields of shared meaning that have an autonomous integrity—no longer commands respect in the complex cultural contexts of a postcolonial era in which global economic forces have provoked unprecedented migrations and displacements. The disappearance of any territorial boundaries between those colonial entities once identified as "cultures" is a sufficient and compelling reason for rethinking the concept. Arjun Appadurai suggests that in the late twentieth century,

> the landscapes of group identity—the ethnoscapes—around the world are no longer familiar anthropological objects, insofar as groups are no longer tightly territorialized, spatially bounded, historically unselfconscious, or culturally homogeneous. We have fewer cultures in the world and more internal cultural debates.[51]

48. Comaroff, foreword to *Contested States*, xi.

49. See, for example, Homi Bhabha, ed., *Nation and Narration* (London: Routledge, 1990) and Andrew Parker et al., eds., *Nationalism and Sexualities* (New York: Routledge, 1992) for studies of the nation's cultural articulation.

50. Bill Maurer, "Writing Law, Making a 'Nation': History, Modernity, and Paradoxes of Self-Rule in the British Virgin Islands," *Law and Society Review* 29 (1995): 255. See also Peter Goodrich, "Poor Illiterate Reason: History, Nationalism and the Common Law," *Social and Legal Studies* 1 (1992): 7.

Similarly, James Clifford asserts, "culture is contested, temporal, and emergent . . . [one cannot] occupy, unambiguously, a bounded cultural world from which to journey out and analyze other cultures. Human ways of life increasingly influence, dominate, parody, translate, and subvert one another."[52] This implies a change of scholarly direction:

> While anthropology has dealt effectively with implicit meanings that can be situated in the coherence of one culture, contemporary global processes of cultural circulation and reification demand an interest in meanings that are explicit and derivative . . . We cannot understand cultural borrowings, accretions, or locally distinctive variants of cosmopolitan movements, while we privilege the localized conversation and the stable ethnography that captures it. . . . Derivative lingua franca have always offended those preoccupied with boundaries and authenticity, but they offer a resonant model for the uncontained transpositions and transcultural meanings which cultural inquiry must now deal with.[53]

Anthropologists are ever more aware of the significance of local systems of meaning in determining world capital's impact in non-Western societies. Indigenous cultural values shape the transformations that external forces engender and the ironies and resistances they generate. Jean Comaroff,[54] for example, shows that advancing capitalist systems interact with indigenous cultural forms to produce dialectically reciprocal transformations; "indigenous trajectories of desire and fear interact with global flows of people and things."[55]

The global restructuring of capitalism, and new media, information, and communications technologies further challenge the idea of

51. Arjun Appadurai, "Global Ethnoscapes: Notes and Queries for a Transnational Anthropology," in *Recapturing Anthropology*, ed. Richard J. Fox (Santa Fe: School of American Research Press, 1991), 191.

52. James Clifford, *The Predicament of Culture* (Cambridge: Harvard University Press, 1988), 19, 22.

53. Thomas, "Against Ethnography," 317.

54. Jean Comaroff, *Body of Power, Spirit of Resistance* (Chicago: University of Chicago Press, 1985).

55. Arjun Appadurai, "Disjunctures and Difference in the Global Cultural Economy," *Public Culture* 2 (1990): 1, 3.

discrete cultures that can be studied simply in terms of their internal system of meanings. Political communities must increasingly be forged, and to be forged they must first be imagined, given the heterogeneity of peoples and the mobility of populations to which political leaders must appeal. Benedict Anderson's influential definition of nationalism as "imagined community" suggests that communities must be constructed through images of communion[56] and that polities of any scale must be created through cultures of representation. Moreover, mass media communications enable people to participate in communities of others with whom they share neither geographical proximity nor a common history, but a shared access to legally regulated signs, symbols, images, narratives, and other signifying resources with which they construct identity and convey solidarity, social challenges, and aspirational ideals. Appadurai suggests that ethnographic strategy now requires an understanding of the deterritorialized world that many persons inhabit and the possible lives that many persons are now able to envision:

> . . . we live in a world of many kinds of realism, some magical, some socialist, some capitalist . . . the latter in the visual and verbal rhetoric of contemporary American advertising . . . imagination has now acquired a singular power in social life . . . many persons throughout the world see their lives through the prisms of possible lives offered by mass media. These complex, partly imagined lives must now form the bedrock of ethnography, at least of the sort of ethnography that wishes to retain a special voice in a transnational, deterritorialized world. For the new power of imagination in the fabrication of social lives is inescapably tied up with images, ideas, and opportunities that come from elsewhere, often moved around by the vehicles of mass media . . .[57]

The ordinary, the everyday, the local life of meaning is often fueled with media forms and possibilities and their imaginative appropriations. Legal ideas and the equitable envisionings they may evoke are significant here, for it is in the juxtapositions of old juridical sensibilities and new ideas of equity, traditional senses of obligation and new conceptions of rights, that new imaginaries of justice may be forged and new

56. Benedict Anderson, *Imagined Communities* (London: Verso: 1983), 115.
57. Appadurai, "Global Ethnoscapes," 197, 199.

demands upon traditional laws and legal elites made. We need to consider the possibility that multiple, overlapping, and conflicting "juridiscapes" exist simultaneously in places characterized by transnational flows of information, representation, and imagery. Certainly one question that sociolegal scholars must address is the ways in which Western legal terms are given new meanings when deployed in new contexts or in new social structurations, not just as law is globalized "over there," but as "others" within all societies give new meanings to old terms based on their particular historical trajectories. Scholars of law and society have some distance to go in representing the complexity of such global processes and their local legal consequence.[58]

How are revitalized fundamentalisms of various sorts interacting with the legal architecture of the modern nation-state, and how is legal authority imagined in situations where separations between religious and secular power are foreign impositions?[59] How are Enlightenment imaginaries accommodating or being transformed by indigenous regimes of value? How are the impacts of global investment policies locally imagined in social worlds devastated by World Bank structural adjustment policies? How is the withdrawal of regulation and legal form represented and understood in areas of the world where the nation-state commands neither resources nor legitimacy?[60] What are the cultural means by which law's absence—the withdrawal or disappearance of modern state apparatuses—is experienced or expressed in regions suffering rapid and profound economic decline?[61] For those concerned with the social study of law, the time could not be more ripe to investigate just how influential (and in what ways) law is in shaping the nature of the cultural worlds we occupy.

In globalized conditions, modern disciplinary heritages are increasingly inadequate, as this brief genealogy of the culture construct

58. See further discussion in Rosemary Coombe, "The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization," *American University Journal of International Law and Policy* 10 (1995): 791.

59. This question is suggested by a reading of Partha Chaterjee, "Religious Minorities and the Secular State: Reflections on an Indian Impasse," *Public Culture* 7 (1995): 11.

60. See, for example, Michael J. Shapiro, "Moral Geographies and the Ethics of Post-Sovereignty," *Public Culture* 6 (1994): 479. For a recent consideration of fraud in the Nigerian political imagination, see Andrew Apter, "IBB = 419: Nigerian Democracy and the Politics of Illusion," in John and Jean Comaroff, eds., *The Struggle for Civil Society in Postcolonial Africa* (Chicago: University of Chicago Press, forthcoming).

61. This question is addressed (albeit enigmatically) in "Figures of the Subject in Times of Crisis," *Public Culture* 7 (1995): 323.

has revealed. Anthropologists now find themselves engaged in a new cultural materialism concerned with "the everyday life of persons, not the cultural life of a people."[62] Exploring a diversity of cultural forms in fields of significance and power, they consider the way these forms shape people's desires and motivations and how they are deployed to express experiences of self and community, senses of identity, and practices of identification. The forms of signification that provide the cultural resources for these ongoing activities of self-definition do not come from any singular system, nor are they contained by any singular structure of power: "twentieth-century identities no longer presuppose continuous cultures or traditions. Everywhere individuals and groups improvise local performances from (re)collected pasts, drawing on foreign media, symbols, and languages."[63] Forces of global capitalism have created a situation of late modernity that is "decentered, fragmented, compressed, flexible, refractive,"[64] and meanings are fashioned with materials from diverse cultural lifeworlds.

Understanding intersections of power and meaning, however, does not limit critical inquiry to individual performatives. We must regard the worlds of trade and investment, migration and production, no less than worlds of regulation and consumption—as proper fields for a culturally materialist inquiry. The Comaroffs, for example, call upon anthropologists to "ground subjective, culturally configured action in society and history."[65] They urge the promotion of anthropological practices capable of addressing larger and more complex fields—international armed forces and arbitrations, refugee camps and enterprise zones, diasporas and development banks (my examples).

> Such systems only seem impersonal and unethnographic to those who would separate the subjective from the objective world, claiming the former for anthropology while leaving the latter to global theories. In fact, systems appear impersonal, and holistic analyses stultifying, *only* when we exclude from them all room for human manoeuvre, for ambivalence and historical indeterminacy—when we fail to acknowledge that meaning is always, to some extent, arbitrary and diffuse, that social life everywhere rests on the imperfect ability to reduce ambiguity and concentrate power. (11)

62. Richard Fox, introduction to *Recapturing Anthropology: Working in the Present* (Santa Fe: School of American Research Press, 1991), 12.

63. Clifford, *Predicament of Culture*, 14.

64. Fox, introduction to *Recapturing Anthropology*, 14.

65. Jean Comaroff and John Comaroff, *Ethnography and the Historical Imagination* (Boulder, CO: Westview Press, 1992), 11.

Culture, in this view, is less a matter of consensus than a matter of argument, "a confrontation of signs and practices along the fault lines of power" (18), that contains polyvalent, potentially contestable messages, images, and behaviors. It is important that in the turn toward understanding law culturally—as code, communication, resources with which to construct and contest meaning—we do not lose sight of the political stakes at issue, the material domains of signification, or the distributional effects consequent upon having one's meanings *mean something*. The role of law in institutions itself must be addressed—not simply as an overarching regulatory regime, or a body of institutions to which disputes are referred, but as a nexus of meaningful practices, discursive resources, and legitimating rhetoric—constitutive features of locally specific social relations of power. However imperfect, the law is a fundamental means for reducing ambiguity and concentrating power—stabilizing relations of difference and meaning.

Indeed, anthropologist Edmund Leach once provocatively defined law as the instrument of coercion that enables those with power to make certain interpretations or meanings dominate, and to make others live with those interpretations.[66] Recognizing that social boundaries were conventional and identities socially constructed, he suggested that "the maintenance of pure categories" was law's provenance: "The law, by which I here mean the customary rules of society, however they happen to be formulated, then pretends that it is normal for everything to be tidy and straightforward . . . The law seeks to eliminate ambiguity" (19). Whether or not one accepts so broad a definition for law (or believes that "societies" have customary rules), the role of law in limiting or denying ambiguity—consolidating power by stabilizing meaning—is central to its cultural study. To write "against culture" when engaged in sociolegal inquiry necessarily involves a healthy suspicion of legal definitions and juridical resolutions of meaning combined with an engaged commitment to exposing the exclusions and marginalizations, anxieties and aporias that pure categories always betray.

66. Edmund Leach, Custom, Law and Terrorist Violence (Edinburgh: Edinburgh University Press, 1977), 19.

Writing against 'Culture'

If a critical cultural legal studies might derive resources from anthropological misgivings about culture and the political necessity to write against it, another tradition also deserves our attention. Writing against Culture has also been the preoccupation of a group of scholars whose work is generally designated as cultural studies. Cultural studies is not "a tightly coherent, unified movement with a fixed agenda, but a loosely coherent group of tendencies, issues, and questions."[67] Summary overviews of cultural studies abound; metatheories of the field's coverage and import are now almost as ubiquitous as examples of the genre.[68] Aware that no state-of-the-art summary would be complete, or completely satisfy those who identify with the practice, I think the following, admittedly partial, trajectory is likely to find wide assent. Emerging from a widespread dissatisfaction with the Eurocentric elitism characteristic of those fields of humanities that traditionally took Culture as their object of inquiry, those practicing cultural studies rejected the modernist insistence upon the integrity and autonomy of the literary or artistic work and the value of studying cultural artifacts as self-sufficient wholes. They connected texts to the specific histories of their production, consumption, reception, and circulation within socially differentiated fields. In connecting the social life of textuality with everyday experience and attending to the social centralizations and marginalizations realized through rhetorical deployments, this approach shares many of the inclinations that shape contramodern anthropology. As Appaduari suggests,

> The subject matter of cultural studies could roughly be taken as the relationship between the word and the world. I understand these two terms in their widest sense, so that *word* can encompass all forms of textualized expression, and *world* can mean anything from the "means of production" and the organization of life-worlds to the globalized relations of cultural reproduction . . .[69]

67. Patrick Brantlinger, *Crusoe's Footprints: Cultural Studies in Britain and America* (New York: Routledge, 1990), ix.

68. Toby Miller provides an irreverent overview of the overviews and a copious bibliography in "Introducing *Screening Cultural Studies*," *Continuum* 7, no. 2 (1994): 11–44.

69. Appadurai, "Global Ethnoscapes," 196.

Cultural studies is anticanonical, attentive not to a nominated chain of great works by Great Men (Culture in Mathew Arnold's sense), but to larger social fields of inscription. Showing that "literature" is not a discrete form of discourse that can be clearly distinguished or elevated (although the rhetoric used to establish this belief as self-evident *is* a continuing area of scrutiny), literature is treated as sharing properties and relationships with discourses as various as travel writing, advertising, current affairs TV, medical texts, product labels, radio talk shows, political tracts, and legal treatises. The strategy is one that connects texts with larger cultural contexts recognizing the uneven "distribution of power and subjectivity across geopolitical space."[70]

> These passages beyond the text [in the formalist sense] or even beyond literature by supposedly literary critics are clear challenges to traditional ways of understanding the humanities disciplines. They are all also movements in the direction of a cultural politics that aims to overcome the disabling fragmentation of knowledge within the discursive structure of the university, and in some cases, to overcome the fragmentation and alienation in the larger society that that structure mirrors. In these ways most versions of literary theory point in the direction of a unified, inter- or anti-disciplinary theory and practice.[71]

To connect texts to contexts is not, however, to point to holistic systems of meaning—culture in the romantic or modern anthropological sense. Cultural studies eschews social organicism, or ideas that the life of a nation may be found embodied in its works of cultural expression. Assuming instead that lines of social difference underlie and animate all forms of representation, cultural studies is attuned to themes of gender, race, and class as they manifest themselves in cultural forms. Indeed, the drive to expand the field of "cultural" studies involves an acknowledgement that culture has been a contested term since its historical origination, marked with traces of the struggles in which it has been deployed:

70. Miller, "Introduction to *Screening Cultural Studies*," 17.

71. Brantlinger, *Crusoe's Footprints*, 16.

> From the late-eighteenth century forward, culture has been a term of ideological contention and "polysemy," in whose various conflicting uses [Raymond] Williams traced, as if in etymological miniature, the larger struggles of social groups and classes for power, freedom, and education—that is, for full social and cultural representation.[72]

In an influential overview of the field, Richard Johnson suggested that the term *culture* "remains useful not as a rigorous category, but as a kind of summation of a history. It references in particular the effort to heave the study of culture from its old inegalitarian anchorages in high-artistic connoisseurship and in discourses, of enormous condescension, on the not-culture of the masses."[73] Behind this history lies a struggle to reform leftist politics so as to include concerns with women, children, gays and lesbians, immigrants, and "minorities"—to acknowledge the cultural conditions of politics and the cultural characteristics of both domination and resistance. Johnson sees a Marxist influence on cultural studies to be indicated by the following shared premises:

> The first is that cultural processes are intimately connected with social relations, especially with class relations and class formations, with sexual divisions, with the racial structuring of social relations and with age oppressions as a form of dependency. The second is that culture involves power and helps to produce asymmetries in the abilities of individuals and social groups to define and realize their needs. And the third, which follows from the other two, is that culture is neither an autonomous nor an externally determined field, but a site of social differences and struggles.[74]

In accordance with Williams's dictum that "culture is ordinary," British cultural studies has focused upon "everyday life"—the structures and practices within and through which societies construct and circulate meanings and values.[75] Like contemporary ethnographers, practitioners of cultural studies reject the modern insistence upon the integrity of authorial works. They study cultural forms not as timeless statements of value, but as "the real, the occasional speech of temporally and historically situated human beings."[76] Contingency and particularity, affect and ambivalence, iteration and enunciation are stressed rather than the eternal and the abstract in language and experience. Again, the movement is toward the cultural politics of quotidian practice. Rejecting modernity's boundaries between culture and everyday life as well as the related distinction between high culture and popular culture, cultural studies shifts attention to everyday cultural practices as the locus of both domination and transformation. Angela McRobbie stresses the scholarly "return to the terrain of lived experience":[77]

> How social relations are conducted within the field of culture, and how culture in turn symbolizes the experience of change, provide the points of reference for this body of work . . . much of the attention in cultural studies, and in this collection, is paid to the important but often unnoticed dynamics of everyday life: the sounds in the kitchen, the noises in the home, and the signs and styles on the street. (41)

Feminist concerns have been influential in shifting attention to the popular, the entertaining, and the personal as central to the reproduction of power and the transformation of meaning in contemporary societies.

Anthropologist Terence Turner (in response to the discontents within his own discipline about the propriety of "others" taking over the culture concept) quotes from a 1991 proposal for a specialization in cultural studies at Cornell University:

> "Cultural studies" is an interdisciplinary genre of cultural analysis and criticism . . . comprehends work on what has been described as the "social circulation of symbolic forms" that is, the institutional and political relations and practices through which cultural production acquires and constructs social meanings . . . a recognition of the role of "culture" in the sense of "symbolic constructions," in a broad range of social practices and identities . . . Alongside more

72. Ibid., 41.
73. Richard Johnson, "What Is Cultural Studies Anyway?" *Social Text* 16 (1987): 38, 42.
74. Ibid., 39.
75. Brantlinger, *Crusoe's Footprints*, 37.
76. Connor, *Postmodernist Culture*, 120.
77. Angela McRobbie, *Postmodernism and Popular Culture* (London: Routledge, 1994), 40.

> traditional areas of literary and historical study, [cultural studies is concerned with] cultural forms such as movies, television, video, popular music, magazines, and newspapers, and the media industries and other institutions which produce and regulate them . . . [78]

As he suggests, *culture* is nowhere in this statement treated as a reified entity or a bounded, internally consistent domain abstracted from historical forces. Rather, the emphasis is consistently on the social contextualizations of specific cultural forms as mediators of social processes and resources for social transformation. Indeed, the movement from determining structures to indeterminate (but overdetermined) practices in cultural studies has been pronounced.

Studying cultural processes "in the concreteness of the ordinary" requires multiple and shifting perspectives that consider all moments of a cultural form's social being in the world. This would include an existence in daily lives, in the realm of public representations, the contexts and conditions of its readings, the influence (and contestation) of those readings in private lives and social lifeworlds, the authorization, legitimation, denial, or injunction of those interpretations in institutional forums, and the potential transformation of such readings in the production of new cultural forms. Such multidirectional circuits of textuality are all too rarely addressed; more often than not, scholars focus on one or two movements in this journey as if the other moments in some way followed. As Johnson reminds us, we cannot know how a text will be read simply from the conditions of its production, any more than we can know which readings of a text will become salient meanings within people's everyday lives. Scrutinizing texts in terms of their formal qualities tells us nothing about their conditions of production or consumption, the basis of their authority, or their likely interaction with existing ensembles of cultural meanings in the experiences of specifically situated subjects. These "reservoirs of discourses and meanings are in turn raw material for fresh cultural production. They are indeed among the specifically cultural *conditions* of production."[79]

Although the term *postmodern* is much misunderstood by those who deploy it (often, in sociolegal studies, as a term of denigration that attributes a less substantive rigor, if not sheer triviality, to the work at

78. Terence Turner, "Anthropology and Multiculturalism:" What is Anthropology That Multiculturalism Should be Mindful of It?" *Cultural Anthropology* 8: (1993): 411, 420.

79. Johnson, "What Is Cultural Studies," 47.

issue), debates about postmodernity do have significance in this context.

> Of postmodernity it will be suggested that this remains most useful, not as an anti-foundationalist philosophical concept whose basis lies in the disavowal of truth-seeking in intellectual inquiry, and which thus differentiates itself from the project of modernity, but as an analytical/descriptive category whose momentum derives from its cutting free from the long legacy of meanings associated with modernity. The term postmodernity indicates something of the size and the scale of the new global and local social relations and identities set up between individuals, groups, and populations as they interact with and are formed by the multiplicity of texts and representations which are a constitutive part of contemporary reality and experience.[80]

Regimes of law are constitutive of the cultural conditions of production and reproduction of representations, providing both incentives to produce and to disseminate texts, regulating their modes of circulation, and enabling some while prohibiting other forms of reception and interpretation. Laws of copyright and contract, torts and telecommunications, investment and trade, publicity and privacy shape the direction and tempo of cultural flows. In global contexts these relationships become increasingly complex.

Issues of global cultural relations proliferate and press upon us, but the means and methods we have for addressing such issues are arguably inadequate, as Toby Miller points out.[81] In cultural studies, Miller suggests, the field is dominated by cultural and economic reductionism. Either the life of the text is wholly autonomous from its contexts of production and dissemination or the "truth of the text resides in its carriage" and "practices of making sense are entirely subordinated to the political economy of transmission" (29). A revitalized global cultural studies, however, would combine theories and methods across sites "in a liminal state that borrows from the interpretive strengths of textual analysis and the distributional strengths of cultural economics" (31). Adopting perspectives that combine the critical skepticism of

80. McRobbie, *Postmodernism and Popular Culture*, 26.

81. Miller, "Introducing *Screening Cultural Studies*," 29.

political economy with the antifoundationalism of poststructuralist philosophies, he suggests that we trace "actor networks, technologies of textual exchange, circuits of communication, and textual effectivity, traditions of exegesis, commentary and critical practice" (33). Whether we are concerned with the legal regulation and direction of cultural flows or with the flow of legal texts and juridical meanings, such an interdisciplinary, multisite, multilevel analysis recommends itself to a critical cultural legal studies. Such studies, I would suggest, must be capable of drawing relationships between forms of epistemology and types of power, between modes of interpellation, characteristic forms of agency, and specific activities of interpretation. Only such intersections permit consideration of the role of cultural flows in constitutions of subjectivities and identities—an increasingly significant domain of sociolegal studies and an important domain for the consideration of contemporary politics.

Legalities and Identities

Recent developments in both anthropology and cultural studies put renewed emphasis upon the centrality of subjectivity and the construction of identity in contemporary historical conditions. Recognizing the simultaneously contingent and compelling character of identity claims in political arenas, theoretical tools have been developed to deal sensitively with the nuances of such assertions. The intellectual history behind this agenda is complex; it involves a working through of issues of consciousness, ideology, interpellation, subject formation, hegemony, and psychoanalysis engaging the theoretical work of Marx, Althusser, Gramsci, Foucault, Bourdieu, and Lacan. Individual and collective identities are actively created by human beings through the social forms through which they become conscious and sustain themselves as subjects.

Although interpellation has not been a popular concept in sociolegal study, because it is too often reduced to a simplistic determinism and an implicit denial of agency,[82] some promising work has been done

82. See Rosemary Coombe, "Room for Manoeuver: Towards a Theory of Practice in Critical Legal Studies," *Law and Social Inquiry* 14 (1989): 69 and sources cited therein for a discussion of theoretical means for holding on to some of the strengths of the concept of interpellation without fully succumbing to its structuralist tendencies.

along these lines.[83] Concerns with identity, community, and subjectivity, however, are shared by many contemporary critical scholars of law and society who might be seen to share a cultural orientation with anthropologists and cultural studies scholars. The emphasis upon subjectively inhabited *forms* is not especially elaborated in critical sociolegal studies, although the resurgence of interest in narrative forms is a step in this direction.[84] One wonders what an empirically grounded study of metaphor or allegory in legal thought and consciousness might yield.

Many scholars of law and society explore the fashions in which identities are forged in relation to law, in accommodation and in resistance to it, acknowledging that law interacts with other forms of discourse and sources of cultural meaning to construct and to contest identities, communities, and authorities. Such approaches have been deemed by Elizabeth Mertz "a new social constructionism" in sociolegal studies.[85] She delineates this "innovative development" as a vision that embodies the following aspects:

> (1) a view of law as "underdeterminate" (but not entirely indeterminate); (2) an understanding that legal representations of social identities as fixed or coherent are often fictional, serving other than their apparent purposes; (3) a critical view of the constitution of the "local" in legal discourse, with careful attention to the ways in which local units and identities are actually created (at least in part) from the "top down" in interaction with national and international legal discourses; (4) a similarly critical understanding of the way in which concepts such as "customary law," "authentic indigenous voices," and "rationality" themselves reflect very particular social constructions that are far from neutral reflections of reality; and (5) a sophisticated analysis of the power of legal language to create epistemological frames. (1245)

83. See Anne Barron, "Citizenship and the Colonization of the Self in the Modern State," in *Postmodernism and Law: Enlightenment, Revolution and the Death of Man*, ed. Anthony Carty (Edinburgh: University of Edinburgh Press, 1991), 107–26.

84. See Patricia Ewick and Susan Silbey, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative," *Law and Society Review* 29 (1995): 197 and sources cited therein; Judith Greenberg and Robert V. Ward, "Teaching Race and the Law through Narrative," *Wake Forest Law Review* 34 (1995): 323.

85. Mertz, "Social Constructionism," 1243.

The "social constructionist" vision devotes particular attention to the provisional, fluid, strategic, and contested identities constructed in contexts mediated by law. In so doing, its proponents question the tendencies of legal doctrine and statutory dictates, which understand identities in static and fixed terms, embodying a unity and coherence that can be ascertained:

> [C]ommunities and identities are produced in the interstices of law and society, social and contextual creations, not the static or prefigured identities that populate legal fictions, and, too often, take on a life of their own, creating formative effects in social life . . . as people struggle to meet these definitions or to voice alternative visions. (1248)

Although the term *social constructionism* is somewhat inadequate a nomination for the tendencies of this range of scholarship (it harks back to an early sociological phenomenology that was less than attentive to inequalities in power and access to discursive resources),[86] such work portends the dawning of a cultural materialist study of law.

Carol Greenhouse suggests that the idea of cultural construction ties the poetics of identity to the materialities of power.[87] As examples she discusses two ethnographic studies of law in local constructions of identity.[88] Both Wendy Espeland and Susan Gooding "track the circulation of the law's signs and practices, emphasizing the perspectives of Indian litigants and their supporters. The law's transformative power in relation to Yavapev or Colville people's cultural identity inheres in the practical uses to which they put the law's idioms, limits, and opportunities as *their own* cultural expressions."[89] To appreciate the law's role in the cultural construction of identities, we must interrelate "the cultural, social, and legal technologies that fuse issues of representation indelibly to issues of practice and power."[90] Moreover, as implied earlier, the meaning of the cultural here does not point to culture in its modern (Romantic or racialist) senses, but upon shared meanings of experience generated in social practices. As Greenhouse puts it, "the analytical relevance of identity emerges as *social action*—as experience, not as a representational space, or, even less, a category, or type."[91] Law-and-society scholarship has been less than attentive to issues of social textuality—for example, the impact of legal inscriptions upon the availability and desirability of those cultural resources with which identities are iterated and enunciated.

More sophisticated variants of cultural studies are antipositivist in the sense that they do not presuppose that the social can be explored simply in terms of its Logos, positivities, or presences; it must be seen, as well, in terms of "counterfactuals,"[92] the missing, the hidden, the repressed, the silenced, the misrecognized, and in the traces of those persons and forces that are underrepresented or unacknowledged in any social formation.[93] For studies of law this might suggest that the law's real impact may be felt where it is least evident and where those affected may have few resources to pursue their rights in institutional channels, and that the law's workings may well be found in traces of struggles over signification—not only when law is institutionally encountered, but when it is consciously and unconsciously apprehended. It is at work when threats of legal action are made as well as when they are actually acted upon. People's imagination of what "the law says" may shape the expressive activities through which cultural meanings are created.

Moreover, the law's *failure* to acknowledge identities and meanings may play a constitutive role in shaping significations in the public sphere. For scholars concerned with gay and lesbian empowerment, for

86. I speculate that the term is used to make such work appear less threatening to social science empiricists who would at least recognize this scholarship as stemming from a recognizable lineage.

87. Carol Greenhouse,"Constructive Approaches to Law, Culture, and Identity," *Law and Society Review* 28 (1994): 1231.

88. Susan S. Gooding, "Place, Race, and Names: Layered Identities in *United States v. Oregon*, Confederated Tribes of the Colville Reservation, Plaintiff-Intervenor," *Law and Society Review* 28 (1994): 1181; and Wendy Espeland, "Legally Mediated Identity: The National Environmental Policy Act and the Bureaucratic Construction of Interests," *Law and Society Review* 28 (1994): 1149.

89. Greenhouse, "Constructive Approaches," 1239.

90. Ibid., 1238.

91. Ibid., 1240. A culturally materialist approach to law in society must approach the concept of "experience," however, with some caution, avoiding any privileging of the phenomenological as more authentic or real than social meanings. For critical discussions of experience, see Diane Fuss, *Essentially Speaking* (New York: Routledge, 1993) and Joan Scott, "On Experience," in *Feminists Theorize the Political*, ed. Joan Scott and Judith Butler (New York: Routledge, 1992).

92. Brantlinger, *Crusoe's Footprints*, 64.

93. For a longer discussion of this problem in the field of legal history, see Rosemary Coombe, "Contesting the Self: Negotiating Subjectivities in Nineteenth-Century Ontario Defamation Trials," *Studies in Law, Politics and Society* 11 (1991): 3.

example, preoccupations with the presence or absence of identity and relations between the law's recognition and identity's cultural construction have taken on new urgency as the limitations of an identity-based legal strategy have become evident. Lisa Bower, reviewing the field of queer legal theory, suggests that the failure of American law to provide equality under the trope of identity led gay and lesbian activists to question a politics based upon identity and to engage instead in a cultural politics of categorical destabilization.[94] The resort to doctrinal categories and resolutions by queer legal theorists may then be misguided, for it presupposes the continued primacy of a politics addressed to the state in appeals for official recognition. Rather, she suggests, the relation between law and politics has been transformed in gay and lesbian activism, with the politics of official recognition as evidenced in rights claims taking a back seat to a more public and performative politics that aims to change popular consciousness and disrupt existing sex-gender categories and to transform people's identities and identifications. Such a politics takes dominant signifiers in public realms and invests them with new (and superficially perverse) meanings. Ironically, the limitations of the law's ability to recognize an identity has compelled a redefinition of community and a rearticulation of the politics of asserting difference. Indeed, a politics of identification based upon nonidentity might be seen to have been legally engendered.

The current proliferation of sociolegal studies dealing with identity is congruent with the contemporary anthropological uneasiness with the idea of culture as a noun—the conviction that we need to understand culture as a description of particular practices of meaningful articulation. Turner goes so far as to redefine culture *as* the act of identity construction:

> Cultures are the way specific social groups, acting under specific historical and material conditions, have "made themselves." The theoretical contribution of the anthropological approach to culture, in sum, has been the focus on the capacity for culture as a collective power emergent in human social interaction . . . Two features of the anthropological concept of the capacity for culture are particularly relevant in this context; its inherently social character and its virtually infinite plasticity. The capacity for culture does not inhere in individuals as such but arises as an aspect of collective social life . . . Its almost infinite malleability, however, means that there are virtually no limits to the kinds of social groups, networks, or relations that can generate a cultural identity of their own.[95]

94. Lisa Bower, "Queer Acts and the Politics of Direct Address: Rethinking Law, Culture, and Community," *Law and Society Review* 28 (1995): 1009.

Many varieties of cultural studies are motivated by a conviction that "the empowerment of the basic human capacity for self-creation (i.e., for culture, in the active sense of collective self-production) for all members and groups of society"[96] is a political accomplishment. All social practices have cultural meaning and potentially do subjective work. There is no reason to limit the field to particular practices, nor to discrete genres of discourse, types of signs, or active pursuits. Ben Forest, for example, shows how in the campaign to incorporate West Hollywood as a city, a gay male identity was consolidated from a specific sense of place that became something of a new form of political subjectivity—"cityzenship," if you will.[97] The supermarket, the corporate prospectus, the football game, a particular car—these are all cultural forms that may be engaged in social constructions of identity. Real life is a textualized frame of experiential reference. It is important, however, to acknowledge that capacities for such creativity are not equally distributed, nor are the cultural resources to construct and contest identities equally accessible or available.

Some of the most influential of early cultural studies monographs addressed legal themes, looking at the ways in which legal discourse constrained and empowered those outside its official circuits. From the early "histories from below"[98] to the collective work on media representations in *Policing the Crisis*,[99] law was seen as central to consciousness and social structuration. Miller reminds us of Richard Hoggart:

95. Turner, "Anthropology and Multiculturalism," 426.

96. Ibid., 427.

97. Ben Forest, "West Hollywood as Symbol: The Significance of Place in the Construction of a Gay Identity," *Environment and Planning D: Society and Space* 13 (1995): 133.

98. See, for example, E. P. Thompson, *Whigs and Hunters: The Origin of the Black Acts* (London: Basil Blackwell, 1978); E. P. Thompson, "The Moral Economy of the English Crowd in the 18th Century," *Past and Present* 10 (1971): 75–109; Douglas Hay, *Albion's Fatal Tree: Crime and Society in 18th Century England* (London: Allen Lare, 1977).

99. Stuart Hall et al., *Policing the Crisis: Mugging, the State, and Law and Order* (New York: Holmes and Meier, 1978).

> [T]he oldest of the three men conventionally catalogued as the founding parents of cultural studies, and the first director of the Birmingham Centre, he is oft-listed alongside Raymond Williams and Stuart Hall, but rarely made the subject of equivalent exegetical projections. It is worth remarking that, in Hoggart's phrase, cultural studies always had a significant engagement with the bureaucratic public sphere (also known as the law). Hoggart it was who gave the crucial testimony at the Lady Chatterley trial. Penguin Books it was that subsequently made the endowment-in-gratitude which was used to establish the Centre. And Hoggart it was that served on the United Kingdom's Pilkington Committee on Broadcasting. (Of course there are cultural studies exponents who argue that the British contingent has always been involved with questions of policy and broad politics, far from the security of the maddening text).[100]

This interest in law, however, seems largely to have dissipated (with the significant exception of work on intellectual property as a force in cultural production, circulation, reception, and reproduction).[101] There has been a tendency in cultural studies either to metaphorize law (as in the psychoanalytic Law of the Father)[102] or to fetishize it, according to it a

100. Toby Miller, "Culture with Power: The Present Moment in Cultural Policy Studies," *Southeast Asian Journal of Social Science* 22 (1994): 264, 270.

101. See Jane Gaines, *Contested Culture: The Image, the Voice and the Law* (Chapel Hill: University of North Carolina Press, 1991); Celia Lury, *Cultural Rights: Technology, Legality, and Personality* (London: Routledge, 1993); and Thomas Streeter, *Selling the Air: A Critique of the Policy of Commercial Broadcasting in the United States* (Chicago: University of Chicago Press, 1996). Intellectual property laws, which create private property rights in cultural forms (literature, advertising, music, brand names, corporate logos, indicia of government, and celebrity images, for example) afford especially fertile ground for a consideration of relationships between and among law, cultural forms, cultural meanings, subcultural formations, and hegemonic struggles. Historical studies of intellectual property provide further examples of the genre. See Mark Rose, *Authors and Owners: The Invention of Authorship* (Cambridge: Harvard University Press, 1993) and Martha Woodmansee, *The Author, Art and the Market* (New York: Columbia University Press, 1994), as well as the collected essays in Martha Woodmansee and Peter Jaszi, eds., *The Construction of Authorship* (Durham, NC: Duke University Press, 1994). A more comprehensive compilation of the historical literature may be found in Rosemary Coombe, "Contested Paternity: Histories of Copyright," *Yale Journal of Law and the Humanities* 6 (1994): 397. See also Pheng Cheah, David Fraser, Judith Grbich, eds., *Thinking Through the Body of the Law* (New York: New York University Press, 1996) for an interesting departure from the tendency to avoid addressing legal questions.

102. Gillian Rose, *The Dialectic of Nihilism: Post-Structuralism and Law* (London: Basil Blackwell, 1984); Alain Pottage, "The Paternity of Law," in *Politics, Postmodernity and Critical Legal Studies: The Legality of the Contingent*, ed. Costas Douzinas, Peter Goodrich, and Yifat Hachamovitich (London: Routledge, 1994), 147.

unity and canonical existence that would be rejected were it applied to other textual forms.[103] It is precisely the formalist emphasis upon texts as isolated works that a critical cultural studies of law would avoid, stressing not isolated decisions, statutes, or treatises, but the social life of law's textuality and the legal life of cultural forms in the specific practices of socially situated subjects.

One could argue, as Miller does, that "culture has always been about policy"[104] and that it is only recently that the appeal to legal policies as shaping cultural milieus has been heard as polemic. The introduction to Stuart Cunningham's book *Framing Culture* is one example:

> The Prices Surveillance Authority's 1989 report on book publishing in Australia didn't make it to your local bookstore or to the review section of your weekend paper, yet it may have more impact than a dozen bestselling novels. . . . the Australian Broadcasting Corporation's (ABC) television arts magazine, didn't feature what happened in recent years in the latest round of international negotiations in the General Agreement on Tariffs and Trade (the GATT), yet cultural goods and services are high on the list of tradeable commodities, and powerful nations view these markets as strategic sites for deregulation. Cultural commentators well versed in the intricacies of film style or art history may evince little interest in the commercial businesses, labour organisations, statutory authorities, or government departments without whose activities the world of culture as we know it would be unrecognisable.[105]

Miller remarks that the need to couch these observations in such combative form is the unfortunate consequence of an untenable distinction—albeit one that threatens to become entrenched—between semiotic and textual approaches and reformist and sociological ones. In short, it is a consequence of "the failure to breach the space between the humanities and the social sciences."[106] If cultural policy has become characterized by an "abstracted empiricism . . . in the service of the

103. See, for example, Gaines, *Contested Culture*.

104. Miller, "Culture with Power," 264.

105. Stuart Cunningham, *Framing Culture: Criticism and Policy in Australia* (Sidney: Allen and Unwin, 1992), 16.

106. Miller, "Culture with Power," 269.

state" (280), cultural theory has become a form of grand moralism in the service of critique: "A rapprochement between the two, where policy studies is not valorized over critique and vice versa, is the polite return to a network of interlaced concerns which has always been part of culture and should always have been part of cultural studies" (280). This artificial division in concerns may simply mirror an older and more entrenched split between "the requirement of the social sciences to concentrate on power" and the requirement of the humanities "to concentrate on systems of meaning" (280). The whole point of engaging in cultural studies was to overcome this disabling division. This must certainly be the aspiration of a critical cultural study of law. The heuristic value of exploring law *culturally,* I suggest, is a more focused and politicized emphasis upon meaning in domains traditionally preoccupied with questions of power. Similarly, the dividends realized from studying culture *legally* is the greater specificity and materiality afforded to understandings of power in fields largely focused upon meaning. The social force of signification and the material weight of meaning are simultaneously brought to the fore in such endeavors.

One way of studying the (multi)cultural life of law in late capitalist conditions would be to "take surfaces seriously" in the global cities from which transnational flows are managed and in which migrants with culturally diverse frames of reference cross paths.[107] Such scholarly work would involve the production of ethnographies of "place," recognizing that what is specific to place is the local experience of the intersection of forces generated elsewhere. The intersections of legal sensibilities evident in cross-cultural encounters in urban spaces provide promising venues for studying law culturally and culture legally to reveal evolving relationships between power and meaning. My own ethnographic work with anthropologist Paul Stoller in Harlem among African street vendors, for instance, suggests that legal regulations and their interpretation provide the very stuff out of which cultural identities are constructed and social distinctions established and maintained. We discovered that the commercial texts that litter city streets are more than mere "noise" that detract from deeper cultural harmonies or "fluff" that can be brushed away to find the true fabric of social life. The trademarks on people's clothes, logos on the goods sold by street vendors, the videos and cassettes playing, the celebrity names and images that adorn T-shirts and baseball caps (including their counterfeit and bootleg versions), and the billboards that loom over city streets are not

107. Coombe, "Cultural Life of Things."

simply facades for something "deeper" or "thicker" that the omniscient scholar should ideally discern, but legally regulated texts that condense conflicted meanings in various social imaginaries that may be provisionally evoked. These are the lingua franca through which meanings of race, ethnicity, class, and gender are negotiated, the means through which the African and the American and their intersection in the African–American are being articulated.[108] These are contested cultural forms that express conflictual meanings about culture, race, and identity. Intellectual property laws are obviously imbricated within such commercial landscapes, but other nexuses of transnational migrations and flows in other research sites will certainly reveal the centrality of other fields of law in orienting practices and consciousness, shaping and transforming contemporary frames of reference. A cultural legal studies or a legally informed cultural studies would trace the interconnections of diverse regimes of power and knowledge and their local meanings in specific sites of transnational intersection.

Contingencies of Law and Culture

In her 1993 presidential address to the American Anthropological Association, Annette Weiner asserted that

> culture is no longer a place or a group to be studied. Culture, as it is being used by many others, is about political rights and nation-building. It is also about attempts by third-world groups to fight off the domination of transnational economic policies that destroy these emergent rights as they establish their own nation-states . . . culture has now become the contested focus of complex economic and political transformations. These shifts irrevocably alter the culture concept as anthropologists have used it in the past, and in less complex contexts.[109]

Culture, then, has become a favored idiom for political mobilization against the transnational centralization of political-economic power in defense of local interests.[110] But why and in what contexts are claims

108. Rosemary Coombe and Paul Stoller, "X Marks the Spot: The Ambiguities of African Trading in the Commerce of the Black Public Sphere," in *The Black Public Sphere,* ed. Black Public Sphere Collective (Chicago: University of Chicago Press, 1995).

109. Annette Weiner, "Presidential Address," *American Anthropologist* 95 (1995): 14.

110. Turner, "Anthropology and Multiculturalism."

made in the idiom of culture and when are similar assertions made as claims to sovereignty or rights to development? "Ethnic" culturalisms, moreover, have emerged simultaneously with culturally focused identity politics and subcultures among nonethnic groups in overdeveloped capitalist societies. In battles over multiculturalism, for example, we see distinctions between conservative and critical positions emerging. Conservative forms of multiculturalism reproduce the reifications of modern anthropology, fetishizing difference, and romanticizing essentialist forms of otherness.[111] By tearing issues of identity out of political and economic contexts, identity is abstracted from the conditions of its production, and consequentially historically specific cultural subjects are disempowered.[112] For critical multiculturalists, however, culture is not an end but a means to political ends that entail struggles for recognition of historically shaped differences and for social equalizations of the power to shape the meanings of basic political concepts and principles. Film theorists Ella Shohat and Robert Stamm suggest that the egalitarian vision of representation proposed by a critical multiculturalism does not imply an uncritical pluralism of diverse cultures but instead involves a dismantling of dominant concepts of culture:

> Multiculturalism and the critique of Eurocentrism are inseparable concepts . . . Multiculturalism without anti-Eurocentrism runs the risk of being merely accretive . . . Critical multiculturalism refuses a ghettoizing discourse that would consider groups [i.e., cultures] in isolation. It is precisely this emphasis on relationality that differentiates it from liberal pluralism . . . and substitutes for [the latter's] discourse of tolerance one which sees all [difference] in relation to the deforming effects of social power . . .[113]

It remains to be seen, however, whether such distinctions will be juridically recognized and legally legitimated in the courts and legislatures of those jurisdictions with policy commitments to multiculturalism or whether respect for cultural difference will simply entrench existing

111. See Eva Mackey, "Postmodernism and Cultural Politics in a Multicultural Nation: Contests over Truth in the *Into the Heart of Africa* Controversy," *Public Culture* 7 (1995): 403; Koglia Moodley, "Canadian Multiculturalism as Ideology," *Ethnic and Racial Studies* 6 (1983): 320; and Turner, "Anthropology and Multiculturalism" for discussions.

112. Turner, "Anthropology and Multiculturalism."

113. Ella Shohat and Robert Stamm, *Multiculturalism and Ideology: Unpacking Eurocentrism* (New York: Routledge, 1995).

hierarchies. Kristin Koptiuch, for example, has shown how the "culture" predominantly asserted in criminal cases evoking the "cultural defense" is one that ratifies (and naturalizes by culturalizing) male-on-female violence by Asian men, eerily amplifying nineteenth-century orientalist stereotypes.[114] This is one area of law where the resurgence of culture serves to reinscribe Romanticist imaginaries rather than enable postcolonial emancipations.

To explore the diverse contexts in which "culture" itself is legally evoked and to consider the current stakes of its deployment would be a fruitful area for critical cultural legal study. Certainly "culture" is the banner under which many battles are being fought, rights asserted, defenses propounded, and properties claimed. No longer a disciplinary preserve, "culture" is a lively rhetorical vehicle in new social movements that challenge Enlightenment universalities. From battles over multiculturalism and speech codes, the so-called cultural defense, "workplace cultures" in sexual harassment suits, the protection of "eco-cultures," the assertion of distinctive corporate cultures for "managing" diversity, and the exemption of "cultural industries" from free-trade obligations, to efforts to repatriate cultural properties, "culture" is cropping up in legal domains of adjudication administration, negotiation, arbitration, and regulation. As the historical genealogies of the term suggest, *culture* is a symbol whose fields of connotation have always been complex and conflicted. Culture currently appears to be undergoing yet another historical transformation. The law will play a powerful role in defining its new meanings. Particular visions of culture are routinely validated in juridical domains while other versions are delegitimated. A culturally materialist inquiry might track the resonances of the culture concept as it assumes new valences in political struggles and legal forums.

To conclude, we should avoid insisting on any singular paradigm for the study of law and culture. Paradigmatic understandings are especially misguided given the inherent instabilities that have historically provided opportunities for the disruption of the positivity of the terms and their mutual interdependence in colonial histories. Rather than privilege any particular mode of linking them, we might attend to

114. "'Cultural Defense' and Criminological Displacements: Gender, Race, and (Trans)Nation in the Legal Surveillance of US Diaspora Asians," in *Displacement, Diaspora and Geographies of Identity*, ed. Smadar Lavie and Ted Swedenburg (Durham, NC: Duke University Press, 1996).

the various ways in which the terms have been historically articulated, while recognizing the political stakes of their current destabilizations and restabilizations in struggles enacted in multiple forums. Rather than definitively and authoritatively elaborate the appropriate form of their intersection, we might become more critically cognizant of the historical forces always already at work in the world articulating this relationship. We might position ourselves to address how relationships between law and culture have been established and maintained in the world, effecting new distributions of wealth and new inequalities of power, legitimating some identities and delegitimating others, recognizing some communities of self-fashioning while prohibiting others, provoking new identifications and disrupting others. To do so, however, requires a perspective situated within and upon the everyday practices of signification and their institutional acknowledgement, where material relations between meaning and power are forged.

This endeavor will demand more than an abstract or linguistically modeled "constitutivism." It requires a focus upon concrete fields of struggle and their legal containment, the legal constitution and recognition of symbolic struggle. We need to attend to law's capacity to fix meaning while denying it as an operation of power, its tendencies to recognize culture in some social spaces and deny its significance in others, and its sporadic and arbitrary acknowledgments of the social production of meaning. To do so would be to recognize culture as signification, but also to address its materiality: to recognize both the signifying power of law and law's power over signification as evidenced in concrete struggles over meaning and their political consequence. Processes of globalization have multiplied these struggles, as significations travel with new speed and in new media, and multiple contexts of reception overlap or are brought into juxtaposition, creating new meanings and motivating new redeployments. New understandings of the boundaries between law and culture will undoubtedly be wrought by such transformations.