Chapter 3

Is there a Cultural Studies of Law?

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To address the question of whether there is a cultural studies of law, I will explore contemporary scholarship that assumes cultural perspectives on law by focusing on some of its most recent thematic preoccupations: identity, narrative, and justice. This survey is representative rather than comprehensive and concludes with an assertion and an agenda. The assertion is simple: although there are numerous cultural legal studies, no cultural studies of law is easily discernible. Although legal texts, legal forums, and legal processes have been analyzed as cultural forms, no substantial body of work demonstrating the methodological commitments, theoretical premises, and political convictions that characterize the interdisciplinary field of cultural studies has yet appeared with respect to law. The agenda I propose is more complex and, at this point, somewhat enigmatic. I suggest that a cultural studies of law will only emerge as a distinctive field of academic inquiry when scholars stop reifying law and start analyzing it as culture.

Defining the cultural studies of law is no easy task. Over the last 20 years, we have witnessed a proliferation of legal studies that borrow methods and approaches from the humanities and focus quite self-consciously on law's textuality. During this time we have seen the scholarship from the "sister" field of law and society adopt a less behavioralistic and richer interpretive approach to the social life of law, resulting in law's effects being understood less instrumentally and more constitutively: as legitimating the meanings, shaping the identities, and defining the perspectives through which we understand ourselves in the world. Finally, a revitalized legal anthropology continues to explore and develop these propositions in a wide variety of ethnographic studies (Darian-Smith 1999; Maurer 1997; Riles 1999). These three streams – legal humanities, interpretive sociolegal studies, and legal anthropology – primarily constitute the body of cultural legal studies. As with other scholarly fields in the 1980s and 1990s, this field embraces a social-constructionist framework where the law is seen not simply as applying to a preexisting social world but as actively creating the social world as we experience it.

The cultural study of law, then, is an interdisciplinary enterprise involving sociologists, anthropologists, literary scholars, and legal academics. Its traits clearly distinguish it from traditional legal scholarship. As Paul Kahn argues in *The Cultural Study of Law* (1999), conventional legal scholarship has been a remarkably undertheorized discipline precisely because most of its students have never stood outside of its practice. Legal critique has been pervasively tied to the empirical project of legal reform and legal scholars have come to the study of law with deep commitments to continue as citizens of law's republic to seek its improvement (Kahn 1999: 7). Because theory and practice are conceptually inseparable in this kind of intellectual work, nothing separates the conventional legal scholar from the object of her study and even those legal scholars who borrow from other disciplines largely do so in order to rationalize legal judgment, to better analyze social policy issues, and to expose particular ideological positions in order to achieve clarity and integrity in legal thought. Many critics argue that legal scholarship has been impoverished by the almost exclusive mandate directed at legal reform as well as the predominant assumption that scholarly work should be oriented towards judicial edification (Schlag 1996).

Cultural legal studies may be distinguished from conventional legal scholarship by a lack of commitment to the traditional legal scholar's main motivation for critical study: the perfectibility of legal reasoning. Moreover, cultural studies of law look at legal sites in ways that differ from the institution's own self-understandings and self-descriptions. For example, in a representative collection entitled *Law's Stories*, editor Paul Gewirtz tells us that: "Books about law typically treat it as a bundle of rules and social obligations. This book is different. It looks at law not as rules and policies but as stories, explanations, performances and linguistic exchanges – as narratives and rhetoric" (1996: 2). Questions about legal representation – the images, conventions, and narratives used in legal reasoning – preoccupy those working in the cultural study of law. Some of the earliest constructionist work focused on the way in which the law operates as a particular form of world-making. Anthropologist Clifford Geertz (1983) showed us that the law never simply finds facts but actively creates those facts to which it seemingly applies universal and neutral rules. Critical legal studies demonstrated early on that the way in which the law constructs legal facts results in the legal recognition of some harms but not others (Kelman 1981). Kim Lane Scheppele, for example, has explored the legal treatment of rape in terms of men's and women's conflicting understandings of events, the way facts are deemed relevant or irrelevant, and the process by which appellate-level opinions engaged in determinations of consent arrive at an understanding of the "truth" often through the manner in which the event is recounted (1992). Through her analysis, Scheppele successfully shows that law is biased not simply in terms of doctrine, but in its very construction and reading of the facts. Similarly, Gary Peller (1985) has considered the ways in which the existence or non-existence of consent in rape cases turns upon the expansion or contraction of the time frame or the perceived relevance of surrounding circumstances. All are astute readings

of how the law works through selective representations that construct legally relevant facts. Purely textual readings of judicial opinions that consider legal representation of bodies (Hyde 1997) – which I will discuss below – and sexualities (Colker 1996) provide similar insights.

The studies discussed above can be described as analyses of legal constructionism. Because they see law as having cultural form and consequence, each is a cultural study of law. Nonetheless, none of them provides much evidence of a cultural studies of law as a distinct field of legal inquiry.

Identity

We can best understand the insights of legal constructionism by considering how it contrasts with more conventional approaches in a particular field of inquiry. The development of feminist concerns with sexual inequality and gendered injustice provide an apt illustration and historical precedent for the growing understanding of law as constituting social identity. For many years, feminist legal scholarship assumed a modern instrumentalist understanding of law as a set of rules that could be transformed through reform to better serve all women's interests. The law was seen as the impartial instrument offered by the state to mediate and arbitrate neutrally. According to liberal feminists, both the state and the law could be amended incrementally through feminist reform to promote women's equality and to instill a gender-neutrality that would open public spheres to women. For radical feminists, on the other hand, law operated as a tool of patriarchy maintaining male dominance through the imposition of false dichotomies such as the public/private that maintained the invisibility of women's subordination. Law reform efforts were seen by most radical feminists to be misguided projects likely to be co-opted until women, through consciousness-raising, came to see the artificiality of these dichotomies and took direct control over sexuality and reproduction through separatist strategies. Although the radical feminist realization that legal structures were neither impartial nor objective but contained fundamentally androcentric biases was important, many feminists became frustrated by the theoretical and practical obstacles inherent in both the radical and liberal approaches as well as their lack of politically workable strategies:

> Two main problems have been identified, both of which stem from the instrumentalist, dichotomous analytical focus of liberal and radical feminisms. First, abstract concepts such as law and state are reified. That is, "things" are materialised and transformed into determining and controlling "actors"; for example, law becomes either the liberator or oppressor of (passive) women. Second, liberal and radical feminisms are characterised by essentialism or the attribution of an innate meaning to concepts, such as law, state, and sex/gender, which unifies the concepts and leads to dichotomization (e.g., male versus female). If we consider women and men to be homogenous groups, for instance, both intra-gender

> differences and inter-gender commonalities are erased. In efforts to avoid reification and essentialism, feminists have developed a diversity of theoretical approaches to law that collectively have shifted the analytical focus from law as an instrument to law as a gendering practice. (Chunn & Lacombe 2000: 6–7)

Approaches to law as a gendering practice are inspired by a "social constructionist conception of law as a hegemonic discourse that can be deconstructed and reshaped through the mobilisation of feminist counter-discourses" (Chunn & Lacombe 2000: 2). Both Marxist and Foucauldian approaches have been influential in this understanding. Marxist legal history showed not only how law operated historically to create and maintain power differentials in society, but that it also afforded ideological resources and opportunities to simultaneously challenge these structures of inequality. Socialist feminists came to understand that Law's influence in maintaining female subordination was more complex and shifted over time: sometimes law played an overt role through legislation and criminalization but, in other historical periods, law's role might be more ideologically indirect in its legitimizing and sustaining of male supremacy. Carole Smart's work (1989, 1992, 1995) was important in developing the distinction between law as adjudication and legislation and the law as practice. Her work also illustrated the ways in which formal legal gains may actually disadvantage women to the extent that women's class positions are not fully taken into account. In the social world, law does not apply evenly and the law's "uneven development" is a consequence of the law's formal application of equality to women who are differently situated socially. Smart's "woman-in-law," or the "gendered subject position which legal discourse brings into being" (1992: 34), has, however, been criticized by contemporary feminists as too monolithically constructed by too unidirectional a process emanating from a too-limited articulation of law as a site and a practice.

A recognition of the legal construction of identity is perhaps most fully developed in current feminist scholarship. Today's feminist cultural studies of law reject liberal understandings of the subject as an autonomous, intentional, and freely operating agent and share the social-constructionist insight that subjectivities are shaped by legal structures that constrain agency even as that agency may, in turn, transform these same structures (Coombe 1989). As discussed above, the law as structure is better understood in Foucauldian terms as both a discourse (a coercive web of interconnecting disciplines of knowledge governed by a particular conception of rationality) and a set of institutions and institutional practices through which the discourse is made manifest. The law, therefore, is no longer conceived as a power that resides exclusively with the state but participates in the creation of diffuse and pervasive forms of power that constrain and enable agency in social life. This view of social relations significantly informs a poststructuralist feminism that draws upon both Foucault and Bourdieu as theoretical touchstones. Judith Butler's (1990) poststructuralist anti-essentialism has been particularly influential in this respect. Her work reverses traditional wisdom that saw gender as the social interpretation of natural sexual

differences and asserts instead that the sexed body is an artifact of legal and medical impositions of gender. Similarly, Chunn and Lacombe write that "[u]nderstanding the role of law in the production of gender is all the more important today because law is so pervasive, having penetrated every corner of our lives" (Chunn & Lacombe 2000: 17).

Many poststructuralist and anti-essentialist theoretical premises connect a growing body of American identity-based legal scholarship (Aoki 1996; Chang 1999; Delgado 1995a; LatCrit 1997) which shares the understanding that:

> The law functions as one of the principal social forces constructing individual and collective identities in direct and indirect ways. The legal system's role in defining and often circumscribing the meaning of race, color, ethnicity, national origin, and other such categories forms, conforms, and deforms the identities of racial and ethnic minorities. This process has been a central theme in critical race theory, Asian American legal theory, and most recently LatCrit theory. The legal system's role in defining gendered identities has been a central theme in radical legal feminism and its role in defining sexual identities has been a central theme in queer legal theory. (Montoya 1998: 37; citations omitted)

As Margaret Montoya further notes: "courts often choose to validate or to invalidate characteristics pertaining to individual and collective identities that are inconsistent with the way individuals see and define themselves. In its hegemonic reinforcement of a majoritarian identity as normative, the legal system confounds the attempts by Chicanos/as and other Outsiders not to be seen as aberrant, deviant, or Other" (1998: 140). However, the attempt by such outsiders to voluntarily "racialize" themselves, by adopting such signs of otherness as their own expressions – as affirmative markers of their consciousness of difference – is often prescribed by courts and legislatures who have upheld the rights of employers and others to prohibit certain styles of clothing, speech, and hairstyle (Montoya 1998: 141–2).

The limited ability of legal categories to acknowledge multiple forms of social subordination was one of the early insights from identity-based scholarship and nurtured the now burgeoning literature on intersectionality. The concept of intersectionality developed from the understanding that persons rarely occupy just one legal category of identity and that the law fails to recognize the complexity of their situations as a consequence (Crenshaw 1989, 1991). A disabled woman of color, for example, experiences gender oppression differently because of her race and experiences racial discrimination differently because of her gender and disability. Many women of color complain that white feminists still do not recognize that these dimensions of women's lives are not mutually exclusive but operate as intersecting and often invisible matrices of domination (Agnew 1996). More recently, national, cultural, and historical contexts have been added to those factors which combine to create subject positions. Ratna Kapur (1999) advocates the use of a concept of hybridity to understand postcolonial identities in her reading of India's cultural wars as a means of countering

the longing for purity in cultural groups, values, and traditions. The desire for substantive essentialism manifested in the search for authentic cultural identities inevitably becomes reactionary and exclusive and effects a form of conceptual violence that may be actualized in physical violence against ethnic, sexual, and racial others. Intersectionality and hybridity have become the basis for a variety of politics – a strategic intersectionality – which "attempts to substitute analysis of differences based on essences for those based on political and cultural contexts, thereby creating the possibility for deeper comprehension and political alliance between feminists" and other potential political coalitions (Belleau 2000: 22).

Although much of this identity-based scholarship allegedly professes to understand the ambiguity of identity, ambiguity is too often merely asserted rather than described and explored. Moreover, much of this literature projects a possessive individualism onto subjects in the attribution of their identities. People always already "have" and possess awareness and ownership over their identities even when these are constructed or intersectional. An allegedly social-constructionist stance is often disarmingly coupled with a humanist insistence upon the centrality and unimpeachability of "lived experience" and the individual capacity to excavate one's authentic or "hidden self" (Montoya 1998: 139). The transparency of experience assumed here belies the very tenets of social constructionism, such as its understanding of the unrelenting social shaping of consciousness and the cultural forms of experience which are branches of knowledge molded by multiple fields of power.

Indeed, identity-based scholarship may overemphasize the law as a form of discourse without paying adequate attention to the material and institutional techniques of governmentality through which subjectivities are constituted and self-governance inculcated. Cultural studies that deploy the Foucauldian framework of governmentality explore law as a "legal complex" that intersects with other domains (e.g., economy, welfare, education) and their logics (e.g., health, longevity, death), sites (e.g., family, school, business), and modes of governance:

> Foucault suggested [that] the workings of this legal complex had become increasingly pervaded by forms of knowledge and expertise that were non-legal. Its regulations, practices, deliberations and techniques of enforcement increasingly required supplementation by the positive knowledge claims of the medical, psychological, psychiatric and criminological sciences, and the legal complex thus enroled a whole variety of "petty judges of the psyche" in its operations. Further, the legal complex had itself become welded to substantial, normalizing, disciplinary and bio-political objectives having to do with the reshaping of individual and collective conduct in relation to particular substantive conceptions of desirable ends. The legal complex, that is to say, had been governmentalized. (Rose & Valverde 1998: 542–3)

As a methodological approach, governmentality asks why, for instance, homelessness or prostitution emerge as a focus for government attention and action and what role is played by legal institutions, officials, and rationalities in this

process. In other words, how does a problem become the object of legislation and who are the authorities that define the problem? Sean Watson (1999) uses the lens of governmentality to understand the affective milieu of the collective social life particular to police officers, characterized by a kind of paranoia centered on the "thin blue line between chaos and order" (p. 234). The institutional and social consequences of a cultural milieu that cannot deal with ambiguity, complexity, or difference and which highly valorizes authority, control, rightness, stability, security, dominance, and masculinity manifest themselves in discriminatory beliefs and practices directed at particular social groups such as black youth and gays and lesbians and the contrasting lack of concern about and punishment of white-collar criminals (Watson 1999: 236).

Indeed, the "new penology" is considered the quintessential area for sociolegal cultural studies:

> The project of new penology is to identify the kinds of persons who pose risks to others, and to render them harmless through exclusion (from certain venues such as public houses, football grounds, shopping malls or residential areas, or from society as a whole through long-term incarceration); surveillance (CCTV, electronic tagging); or by rendering them harmless through chemotherapy or allied techniques (compulsory medication of psychiatric patients).
>
> With its changed objectives, new penology uses techniques such as actuarial calculation of population characteristics and crime rates, and computer mapping of crime locations. Statisticians and geographers become the new criminologists, displacing sociologists, whilst psychologists engage in factor analysis of populations of offenders rather than analysis and therapy with individuals. (Hudson 1998: 556)

Governmentality has colonial origins and implications. Duncan Ivison (1998) discusses the significance of the nation and its "biologized state racism" which operated to identify, contain, or erase "degenerates" or "abnormals" conceived of ethnically, physically, or psychologically in colonial regimes of power (p. 564). Conceptions of citizenship, rights, and liberty formed the self-image of the colonizers who carried these emergent logics with them. Given the ongoing relationship of aboriginal peoples to a history of colonial administration, this is one area of legal study where the governmentality framework is considered especially promising.

As the governmentality literature suggests, considerations of identity rooted in an understanding of law as discourse often ignore the importance of institutional matrices, technologies of power, and material constraints that have historically shaped subjectivities. In identity-based scholarship, the "legal system" appears to refer exclusively to appellate-level courts and their reported reasons for judgment. This is not altogether surprising given the combined effect of the location of these scholars – in the legal academy – and their disciplinary expertise – primarily consisting of the interpretation of authoritative legal texts. Within anthropology and sociolegal studies, however, the law's construction of social

identities is more likely to be explored empirically and in its inception in local legal disputes. For example, a 1994 symposium issue of the *Law and Society Review* devoted to "Community and Identity in Sociolegal Studies" contained three articles about Native American peoples' struggles to shape and influence the legal categories of identity used to define them. In this symposium, Wendy Espeland, Carole Goldberg-Ambrose, and Susan Staiger Gooding all recognized that "the potential of legally mediated categories to mark difference, shape consciousness, and inform the actions of those who confront them is a crucial form of power" (Espeland 1994: 1176). These ethnographically based studies give us a richer understanding of the processes through which the cultural self-understandings of a people confront the structures of definition that characterize Western legal systems.

As a growing body of law and society scholarship illustrates, the law itself plays an important role in shaping consciousness. These scholars share a commitment to examine legal structures and relationships in people's everyday social experience – often referred to as the "commonsense." David Engel (1998) outlines two widespread and overlapping approaches to the study of legal consciousness:

> At one end of the continuum, the power and resistance model sees law as significant because of its capacity to organize the categories, structures, meanings, and practices which less powerful people must then negotiate as they attempt to reclaim some portion of social space for their own. At the other end of the continuum, the communities of meaning model sees law as significant because of its symbolic centrality in the struggle among social groups to develop authoritative definitions of community, of social order and belonging, of appropriate behavior, and of law itself. (p. 138)

The most important, and arguably the most undertheorized, aspect of legal consciousness is the link between structure and agency. Culture and consciousness, writes Peter Fitzpatrick (1998), link structure and agency, yet social-constructionist and identity-based scholarship rarely problematize the basic claim that law, as a social construct, permeates and is inseparable from everyday living and knowing but nonetheless is tempered by human agency which can avoid, resist, invoke, or reconstruct this structure (pp. 188, 198). We need a dialogic and dynamic understanding of legal consciousness, then, that can address how ordinary citizens become knowing and effective agents who challenge and transform aspects of particular forms of structural domination (Fitzpatrick 1998: 191–4).

Given the proliferation of identity-based scholarship in the past decade, it would be premature to anticipate its demise. A transmutation is more likely given that scholars who are engaged in identity-based work express an evident desire to link studies of identity-formation to a larger set of issues and a wider field of contexts that will shed light on historically specific forms of power and knowledge. Thus, for example, Robert Chang (1999) considers the "Asian-American" in relation to the racialized and sexualized narratives of an American national imaginary and the history of nativism, and advocates a move away from identity

politics and towards political identities based upon shared political commitments "using the goal of a radical and plural democracy as an organizing principle" (p. 8). Similarly a group of scholars call for a "postidentity scholarship" that attempts to "articulate a set of strategies that acknowledge our simultaneous and ambivalent desire both to affirm our identities and to transcend them" (Danielson & Engle 1995: xv). Despite the desire to transcend identity, however, few would concur with Kenneth Karst's assertion (1995) that racial and sexual orientation identities are myths and that social groups identified thereby are mere metaphors that need to be destroyed. Nor would many agree with Walter Benn Michaels (1997), who argues that all cultural identities are essentially racial and therefore must be dismantled. More typical is Dorothy Roberts' position (1999) that identity is an activity rather than an essence, a history, or a property and serves as a political act of identification that remains open to critique in ongoing movements for social change.

An understanding of law "as a hegemonic process, an apparatus, or ensemble of practices, discourses, experts, and institutions, that actively contributes to the legitimation of a social order" (Chunn & Lacombe 2000: 10) may be more promising for considerations of identity. Legal arenas and legal discourses are important sites for the construction of hegemony because they provide spaces and resources for struggles to establish and legitimate authoritative meanings (Coombe 1989, 1991). Conversely, law will be key to counterhegemonic political struggle as movements like LatCrit begin to offer what Francisco Valdes (2000) calls a "postsubordination" vision that "goes beyond critique, beyond unpacking and deconstructing . . . [and] . . . entails articulation of substantive visions about reconstructed social relations and legal fields . . . Postsubordination vision as jurisprudential method therefore calls for some hard thinking and honest talking about the type of postsubordination society that 'we' are struggling toward" (p. 839; see also Harris 1999). Elsewhere I have argued that law not only provides the generative conditions and prohibitive boundaries for hegemonic articulations (Coombe 1998b, 2000a) but also constitutes one of the means and media for the cultural politics that articulates the social. The law provides the very signifying forms that constitute socially salient distinctions, adjudicating their meanings, and shaping the practices through which such meanings are contested or disrupted. The law invites and shapes, but never determines, activities that legitimate, resist, and potentially rework and transform the meanings that accrue to these public discourses (Coombe 1998b: 35–7). From this position, identities may be seen as no more than temporary and unstable resting points in longer and heterogeneous political quests for recognition, inclusion, legitimation, and identification.

Narrative

Since the 1980s, sociolegal scholars have turned their attention increasingly towards the study of the power of language in legal processes. I cannot do justice

here to all of the various approaches and perspectives upon legal language, but will point to particular themes that are likely to be of most interest to those working in cultural studies. For many scholars, law's hegemonic power is located in its forms of discourse, with narrative being recognized as one of its most powerful.

Paul Gewirtz asserts that scholars and the public are drawn to law as a theater where vivid human stories are played out – and where they are told and heard in distinctive ways and with distinctive stakes (1996). As they came to recognize the analogies between law, literature, and drama, sociolegal scholars increasingly turned to theories of narrative to understand law's rhetorical and epistemological power. Gewirtz points to the growing disenchantment with law's claims to the superiority of its own forms of reason as motivating the narrative turn and relates this to a wider loss of faith in objectivity (and other metanarratives) as well as the embrace of social constructionism.

Martha Minow offers Hannah Arendt's methodological commitment to narrative over more conventional forms of social-science exposition to buttress the claims of those scholars who study the narratives law offers and occludes (Minow 1996). Although Arendt felt that social science was necessary to describe human behavior, she also argued that narrative was necessary to capture the often ineluctable meaning of human action. In the aftermath of totalitarianism, storytelling was for Arendt the proper communicative mode for political theory, rather than the rational discourse of the social sciences which conventional legal scholarship aspires to replicate:

> Storytelling can disrupt the illusion that social sciences create in the service of rational administration, the illusion that the world is a smoothly managed household. Storytelling invites both teller and listener to confront messy and complex realities – and to do so in a way that promotes communication and thinking about how to connect the past and the future by thinking about what to do. Rather than taking the view that only experts understand and act in the political world the political theorist who tells stories thinks about politics in a way that remains faithful to the capacity of citizens to act together. (Minow 1996: 33)

Following Arendt, Minow sees the narrative form as having a particular moral resonance that connects past to present as well as author to reader and thereby has an innate capacity for rendering evident that plurality of perspectives at play in any given event or phenomenon. Stories, she suggests, do not articulate principles, provide consistency, guide future action, or provide firm grounds for evaluation or judgment; nor do they replace legal doctrine, economic analysis, jurisprudence, or sociological explanation. Instead, the revival of narrativity should be welcomed as a healthy disruption and dialogic challenge to the certainties of these other forms of approaching the law (Minow 1996: 36).

> Examining law as narrative and rhetoric can mean many different things: examining the relation between stories and legal arguments and theories; analyzing the

> different ways that judges, lawyers, and litigants construct, shape, and use stories; evaluating why certain stories are problematic at trials; or analyzing the rhetoric of judicial opinions, to mention just a few particulars . . . it means looking at facts more than rules, forms as much as substance, the language used as much as the idea expressed . . . how it is made, not simply what judges command but how the commands are constructed and framed . . . It sees laws as artifacts that reveal a culture, not just policies that shape the culture. And because its focus is story as much as rule, it encourages awareness of the particular human lives that are subjects or objects of the law, even when that particularity is subordinate to the generalizing impulses of legal regulation. (Gewirtz 1996: 3)

The trial is seen as a particularly important arena where multiple actors (lawyers, witnesses, and judges) compile and communicate stories; it is also a forum in which particular kinds of stories are rendered out of bounds – confessions and some victim impact statements, for instance. Scholars believe that "focusing on the trial process as a struggle over narratives can give even familiar trial phenomena a fresh look" (Gewirtz 1996: 7). The recognition that trials have multiple audiences, e.g., juries, judges, fellow counsel, potential clients, the media, the public, and that audiences themselves have an impact upon how narratives are presented, adds new interpretive dimensions to our understanding of legal processes. I would suggest, however, that a more fully interpretive and historically contextualized scholarship might explore the ways that courtroom narratives intersect, refract, and compete with broader social narratives (Coombe 1991; Ferguson 1996; Weisberg 1996), and that a fuller understanding of the role of narrative in the legal process must attend to the full range of pre-trial processes. Few disputes are litigated, and of those cases that are, few go to trial; nonetheless legal narratives are shaped and shape consciousness and behavior at every step along the way.

In much of the work on legal narrative, however, the object of study seems to become its own subject or agent of powers that appear rather magical. Marianne Constable (1998) cites Douglas Maynard's study of plea bargaining, in which narrative forms "shape and narrow the range of what kind of truths can be told" (1990: 89). In his view, the characteristics of a case, or the legal niceties it poses, are not irrelevant to the plea bargaining process, but they "are talked into being by way of narrative and narrative structure" that "clearly affects the course of negotiations" (1990: 92). Indeed, Maynard even suggests that "narratives and their components may be devices for 'doing' the identities by which principal actors in the discourse are known" (1990: 87). Similarly, in Bennett and Feldman's work on the representation of the real in courtrooms, the ability of people with very different relationships to the law to communicate meaningfully about the issues in legal cases has to do with the fact that "stories produce a clear definition of an action and the conditions surrounding it" (1981: 10). This is because juries transform evidence into stories that create the contexts for social action and frameworks for judgment (Bennett & Feldman 1981: 3, 7). Other, less deterministic studies suggest that "jurors come to the trial with a set of

stock stories in their minds and that they try to fit trial evidence into the shape of one of those stock stories. Lawyers, then, will have an easier time persuading a jury that their side's story is true if they can shape it to fit some favorable stock story" (Gewirtz 1996: 7). Joseph Sanders' work (1993) on pharmaceutical product liability trials tends to support this; he found that plaintiff's lawyers, despite the legal merits of the case and good scientific evidence that suggested that the drug was not the cause of the injury, nonetheless presented stories of corporate malfeasance. Juries seemed to find statistical evidence of probabilities unsatisfactory and discounted it because it didn't provide the comfort of narrative closure (Munger 1998: 48). Like most people, they "are not good at thinking statistically or probabilistically; they are much more comfortable thinking literarily, teleologically, religiously, narratively" (Dershowitz 1996: 104).

Indeed, Alan Dershowitz argues that such stock stories are both powerful and deceptive. Everyday life, after all, is rarely structured by the canons of dramatic narrative and is filled with irrelevant actions, coincidences, and random events: "In Chekhovian drama, chest pains are followed by heart attacks, coughs by consumption, life insurance policies by murders, telephone rings by dramatic messages. In real life, most chest pains are indigestion, coughs are colds, insurance policies are followed by years of premium payments, and telephone calls are from marketing services" (Dershowitz 1996: 100–1). To the extent that juries come to trials with expectations shaped by Chekhovian (or television) dramas, then, the truth finding function of the adjudicative process is imperiled: "A good defence lawyer – at least one with a client who has a motive and an opportunity – will not offer a competing narrative, but instead refute the narrative form by convincing the jury that the narrative is an uninformed fantasy and that the crime is random, inexplicable and perhaps, from an aesthetic point of view, disappointing" (Dershowitz 1996: 101).

The majority of scholarship on narrative in the legal process, however, focuses upon legal judgments, which are increasingly read as literary texts. It is impossible to review the entire body of law and literature scholarship that focuses on the US Constitution and its interpretation, but, as Peter Brooks reminds us, such cases provide obvious opportunities for rhetorical analysis.

> The story of the case at hand must be interwoven with the story of precedent and rule, reaching back to the constitutional origin, so that the desired result is made to seem an inevitable entailment. If narrative may be said to start at the end – in that we know an end is coming and that beginning and middle will retrospectively make sense in its terms and seem an enchainment of cause and effect – constitutional adjudication claims to start from the beginning, in first principles laid down in the Constitution itself. Constitutional adjudication is always in some measure a story of origins, reaching back to our founding text and ur-myth . . . As in Sartre's description of narrative, the story really proceeds in the reverse: its apparent chronology, from beginning to end, may cover up its composition, from end to beginning. (Brooks 1996: 21)

However, as Robert Weisberg asserts, there may be "some dangerously unexamined ethical and political consequences of 'narrative affirmance' " (Weisberg 1996: 63). The law engages the aesthetic strategies of narrative in the service of an authoritative version of the cultural identity of a nation, and to that extent, enshrines ethical and political values. Drawing upon Hegel, he represents the desire to narrate as the desire to represent authority and history as "the relation that the state has established between a public present and a past that a state endowed with a constitution made possible." The state requires narrative for the representation of its particular politics of community; "a nation emerges into political rationality through narrative – with its textual strategies and 'metaphorical displacements' " (Weisberg 1996: 78). The social authority of the nation is the basis of law, but the devices of law are continually required to represent the nation and its authority. Narrative study in legal scholarship should, according to Weisberg, attend to this unstable relationship. Weisberg points to a deeper subtext of historical cultural narratives that are reenacted in important trials as the community itself is put on trial and reconstructs itself poetically.

As well as a body of scholarship that attends to the influence of narrative in shaping legal forms of power, there is also a revival of the use of narrative in the self-conscious scholarship of law professors who identify with minority communities and seek to redress the injustices visited upon these communities by legal structures. This work uses stories or defends storytelling as having a distinctive power for those who stand in opposition to legal regimes and for outsider groups in general: "Telling stories (rather than simply making arguments), it is said, has a distinctive power to challenge and unsettle the status quo, because stories give uniquely vivid representation to particular voices, perspectives, and experiences of victimization traditionally left out of legal scholarship and ignored when shaping legal rules" (Gewirtz 1996: 5; Dalton 1996). Such "outsider scholarship" includes critical race theory (Delgado 1989, 1990, 1995a, 1995b; Johnson 1991; Matsuda et al. 1993; Williams 1991), Asian-American thinking (Aoki 1996; Chang 1999), LatCrit scholarship (Montoya 1998), and new variants of gay and lesbian scholarship (Fajer 1992; Valdes 1995), all of which draw upon personal histories, parables, chronicles, dreams, poetry, and fiction that help to reveal and undermine the law's dominant structures.

These scholars understand narrative as central both to identity formation and to activities that resist and challenge traditional forms of legal knowledge. Dwight Conquergood's conception of narrative is an apt description of the concept of narrative that informs this type of work:

> Narrative is a way of knowing, a search for meaning, that privileges experience, process, action, and peril. Knowledge is not stored in storytelling so much as is enacted, reconfigured, tested, and engaged by imaginative summonings and interpretive replays of past events in the light of present situations and struggles. Active and emergent, instead of abstract and inert, narrative knowing recalls and recasts

> experience into meaningful signposts and supports for ongoing action. (Montoya 1998: 130; citing Conquergood 1993)

Margaret Montoya, for instance, offers narrative as "mediating" the constructionist effects of law and as offering an expressive counterpoint to the legal categories that minorities are forced to occupy. She draws on the critical pedagogy of Peter McLaren, who argues that "border identities" are created out of empathy for others through means of a passionate connection that is furthered by narrative. For such identities to be created, however, it is necessary to forge critical connections between "our own stories and the stories of others" (Montoya 1998: 134). Evidence of such linkages is, unfortunately, still quite rare in this literature. Nor is it clear what "mediation" is being accomplished and in what fashion. "Narratives, and especially autobiographical stories, can be acts of resistance and acts of transformation," we are advised (Montoya 1998: 142). But when, and how, will this occur?

By speaking personal truths to institutional powers, these "outsider scholars" attempt to strengthen their ties to their communities of identification, publicly affirm an othered identity, and give cultural specificity and experiential dimension to the histories of legal identification and categorization. For example, Montoya puts historically important cases involving Latinas/os into narrative form and juxtaposes these with more personal narratives to make manifest the relation between individual and collective experience; in so doing, she asserts that the effects of a [legal] discourse that has been used to disempower Latinas/os are somehow mitigated. Montoya herself is unsure to what extent these narratives are "subversive" and draws upon Patricia Ewick and Susan Silbey's (1995) distinction between hegemonic and counterhegemonic narratives. A hegemonic story depicts understandings of particular persons and events while effacing the connections between the particular and the social organization of experience, whereas a counterhegemonic narrative is one that is narrated from a position of social marginality, reflects upon how the hegemonic is constructed as an ongoing concern, and is told in circumstances that "reveal the collective organisation of personal life" (Ewick & Silbey 1995: 220–1). A good storyteller, it would appear, is simply a good sociologist.

As Gewirtz notes, there are many questions about this scholarship that remain unaddressed (1996: 6). When do stories compel and when do they repel audiences? What attributes of "outsider stories" enable them to have an impact upon listeners who are otherwise unreachable by traditional arguments? The legal storytelling movement tends to valorize narrative as more authentic, concrete, and embodied than traditional legal reasoning. But, Brooks insists, "storytelling is a moral chameleon, capable of promoting the worse as well as the better cause every bit as much as legal sophistry. It can make no superior ethical claim" (Brooks 1996: 16). Chang (1999) would appear to agree. He validates the use of narrative in critical scholarship not because he believes in the existence of a unique and unquestionably authentic voice that belongs to people of color, but

because narrative self-consciously introduces the issue of social perspective into a scholarly field that has traditionally denied its significance. He does not believe that personal narrative can be validated on the basis that it challenges the current formulation of legal objectivity, reveals its biases, and provides the means to reconstruct it to make it more inclusive (Chang 1999: 69). Instead, he assumes a more radical, poststructuralist approach that rejects "standpoint epistemology" and favors an antifoundationalism that permits value judgments only from within particular social contexts and recognizes that no external or fully inclusive social standard for legitimation may in fact exist. Narrative's chief purpose is to persuade, and since it is the existence, nature, scope, and variety of forms of social oppression and subordination that outsider scholarship aims to make visible and have redressed, narrative is compelling for this limited, but still vitally significant, goal (Chang 1999: 75).

An emerging group of scholars use narrative analysis as a means of rethinking the nature of the sexualized, racialized, and gendered subject. Their work is distinctive in its emphasis upon corporeality. For example, both Alan Hyde and Peter Brooks attend to the body as a bearer of narratives: "the private body is a kind of narrative total or all the moral choices made by the subject that owns the body, the individual protagonist of the narrative: the crimes committed, the drugs ingested. Such bodies are narrative texts that the law relates to as a reader" (Hyde 1997: 152–3). Hyde asks how legal discourse constructs the body as a holder of legally relevant evidence, and examines the process through which such evidence is legally extracted, presented, and analyzed. He notes that this public use of the body is jurisprudentially balanced against and ultimately limits the privacy of any given person's body (Hyde 1997: 158–61). Invasive procedures like body cavity searches, medical diagnoses of sexual offenders, and medical testing for drug use are publicly acceptable forms of embodied violence. It is impossible, however, to maintain that more justice will result from the endorsement of a more "privatized" body because this simply operates to condone the varieties of "domestic" violence that are often publicly ignored.

Rather than accept the legal tendency to render judgment upon spurious categorizations of bodily practices as public or private, Hyde attempts to "denaturalize" social constructions of the body by highlighting the instability and incoherence of the categories in actual social life. He contrasts, for example, the legal treatment of nudity, and particularly female exposure and the relative acceptance of strip clubs and newspaper pin-ups, with the ambivalence or rejection of breastfeeding in public, topless sunbathing, or Mapplethorpe portraits of male body parts (Hyde 1997: 131–50). In feminist scholarship, Frances Olsen points out that not only has the traditional juridical subject been male but the universal "unproblematic body" has also been male (Olsen 1996: 211–12). Often corporeality, associated with the feminine, comes to signify the uncontrollable, disruptive, irrational, and expansive. Social fears become located in and represented by the female body (Bumiller 1998: 151) and nurtures scapegoating

and loathing while fostering a concurrent repressed desire for this conceptualized opposite.

Pheng Cheah and Elizabeth Grosz (1996) go so far as to propose that "[p]lacing the body, rather than consciousness, intention or interiority in the center of legal focus . . . may help account for and perhaps even transform the existing social inequities which make an abstract system of law participate in and reproduce these inequities" (p. 25). The widespread acceptance of rape as a war crime or crime against humanity is one instance where an understanding of the narrativization of corporeality in forging ethnic and national identities has helped to influence a major shift in the international legal order and its treatment of women. Attending to the body in these theoretical and practical projects has produced, incrementally yet hopefully not minimally, an opportunity for realizing greater justice.

Justice

In most of the cultural studies of law we have explored, the power of language in constituting legal power, and the power of certain linguistic forms to challenge that power, is flatly assumed. As Marianne Constable notes, language in this work is conceived of as resolutely social, and the social, it would appear, is all-encompassing (Constable 1998). In these texts, there is nothing outside of the social world, or beyond its representations, therefore the social world can fully represent itself. A certain metaphysics of social presence pervades these works. Consequently, they cannot adequately address the phenomenon of justice; though arguably a sense of injustice motivates many of these studies. Constable remarks that the lack that is injustice appears always to be located in silence – in the absence of story and voice, the absence of an articulable relation with the past, traditions which cannot represent their knowledge of themselves – such that the law speaks and the other is mute before it. An absence of voice is presumed to mean both an absence of power and an absence of justice; conversely, to posses voice is to be fully empowered and to realize justice (Constable 1998: 30). This inattention to justice issues, she suggests, is due to the very positivity of law (whether it is glossed as the legal system or legal discourse) that so much of this work assumes. Rather than emphasize the law's complete presence, she proposes that considerations of justice compel us to articulate the law's historical indeterminacy – the "eternal deferral of the coming-into-existence of any actual positivist legal system" (Constable 1998: 25).

The equation of voice with power and justice, as Constable suggests, affirms a particular constellation of legal positivism, liberalism, and a positivist social science which sociologizes law and accepts without question liberalism's construction of subjects who are compelled to speak in order to legitimate government. The speaking subject, she reminds us, is a liberal imposition, and liberal theory must constantly project speech onto silence in order to find in this silence

messages of consent or resistance. Invoking the work of poststructuralist legal theorists such as Drucilla Cornell (1992) and Peter Fitzpatrick (1992), Constable urges scholars to attend to "the limits of speech and to places where the texts of liberalism, positive law, and sociolegal study fall silent. In these places one encounters the limits of liberalism, legal positivism, and sociolegal study: the justice of which they do not speak" (Constable 1998: 32). To grasp law exclusively as a powerful social discourse is to fail to comprehend its limits and to encounter its others.

There is now a large scholarly literature deploying the methods or techniques of deconstruction. Although most of it engages in purely philosophical and doctrinal analysis, some of this scholarship takes seriously the claim that "deconstruction is justice" (Derrida 1992: 15) because it addresses the limits of law's rationality and its constitutive absences. Deconstruction is a means of making visible those others who are invisible in legal discourse and the dominant narratives it reproduces. Shannon Bell and Joseph Couture, for example, discuss the moral panic over child pornography that gripped a Canadian city in 1993 and show how the court – in conjunction with the psychiatric/psychological/social work professions, the police, and the media – "gendered the young male hustlers as victims and their gay male clients as abusers in a hegemonic narrative of justice . . . premised on homophobia, ageism, and whorephobia" (Bell & Couture 2000: 40), This narrative ignored the high incidence of physical abuse visited upon female teenage prostitutes, denied the active desire and consent expressed by male teenage hustlers, and excluded the very possibility of hebephilia (love for the young man who has passed the age of puberty). By using testimony, victim impact statements, and media interviews, Bell and Couture resurrect the representations of these interactions offered by the boys and young men involved. By uncovering complex relationships in which the interplay of power, desire, need, and pleasure exceeded the law's categorical imperatives, their study also recovered evidence of police pressure deployed to compel these boys into characterizing their activities in legally recognizable forms of culpability and injury that reinforce heterosexual normativities.

If legal processes and determinations effect characteristic forms of social repression, such repressions, according to Robert Ferguson (1996), never die but return to haunt legal consciousness. If Freud equates the rule of law with the development of civilization and civilization with creating a force-field of repression, then the performance of the rule of law, not surprisingly, sees the return of the repressed in the form of the uncanny (Ferguson 1996: 89). Unfortunately, Ferguson provides little explanation or elaboration for the underlying proposition that the law can be understood using a psychological dynamic, and we are given no basis to comprehend how the law comes to be structured psychically. An anthropological explanation for the institutional creation of shadowed places as well as the analysis of structural amnesia, however, is offered as an alternative approach that places the emphasis upon ascertaining "the impossible thoughts" and "the principles of institutional coherence that allow some repressed thoughts

to escape oblivion'' (Ferguson 1996: 89). In a remarkable reading of a brief trial following an 1800 slave insurrection, Ferguson effectively makes the case that because processes of public memory are enacted in courts of law, trials enable and invite the return of the repressed:

> [A] story wrongly refused by the law will return in the republic of laws as cultural narrative and, often enough, as renewed legal event. The law does not get beyond what it has not worked through. The pendulum swings back because the culture has made an ideological commitment to social justice and because the expectation of justice causes injustice to loom large. (Ferguson 1996: 97)

A consideration of law as a site of memory is an important recent theme in cultural studies of law. Like Ferguson's work, many of these studies draw upon psychoanalytic theory to focus upon trials as sites of commemoration and remembrance in which past trials are drawn upon, and key hidden or repressed elements in national historical cultural dramas return to contemporary consciousness (Sarat & Kearns 1999). Reva Siegel, for example, compares race and sex discrimination claims and shows how the former, inevitably linked to memories of slavery and segregation, always recall dramas of national shortcoming in a fashion that the latter do not (Siegel 1999).

Shoshana Felman explores the law's limits and the return of the repressed in her demand that cultural studies of law respect ''the absolutely fundamental relation of the law to the larger phenomenon of cultural or collective trauma'':

> the law remains professionally blind to this phenomenon with which it is nevertheless quite crucially and indissociably tied up. I argue that it is because of what the law cannot and does not see that a judicial case becomes a legal trauma in its own right and is therefore bound to repeat itself through a traumatic legal repetition . . . Legal memory is constituted, in effect, not just by the ''chain of law'' and by the conscious repetition of precedents, but by a forgotten chain of cultural wounds and by compulsive or unconscious legal repetitions of traumatic, wounding legal cases. My analysis will show how historically unconscious legal repetitions inadvertently play out in the historical arena the political unconscious of the law (the unconscious of past legal cases). These traumatic repetitions illustrate, therefore, in legal history, the Freudian notion of ''a return of the repressed''; in the ghost of the return of a traumatizing legal case, what compulsively, historically returns from the forgotten legal past is the repressed of the judicial institution. (Felman 1999: 30)

She perceives the O. J. Simpson trial (although she appears to restrict her analysis to media reports and their interpretations of the trial) as reenacting national traumas of interracial and gendered violence. Cases like these, she suggests, inadvertently trigger the movement of a repetition or the dynamics of legal recall (i.e., the Simpson case reviving the Rodney King trial which itself may have conjured up the Dred Scott case). In such repetition the trial tries to resolve the trauma, but through such repetitions the trauma repeats itself by

reopening an unconscious legal memory that, as Ferguson asserted, is ever bound to resurface. The O. J. Simpson trial, in her reading of it, revolved around something that could not be seen and that in fact was not seen – the invisible relation between marriage and domestic violence (Felman 1999: 58). The (black) jurors were unable to see the victim's battered face, her bruises or the husband's blows, just as (white) jurors in the Rodney King case could not see the beating or police abuse. The inability to see abuses of power is, she insists, "inscribed in culture as a trauma" (Felman 1999: 63). Felman assumes that trauma may be collective as well as individual, that traumatized communities, including oppressed groups, suffer repeatedly beyond the shock of the initial act of wounding, and that these repetitions are paradoxically both a reenactment of the injury and a form of psychic survival. Trauma is precisely that which cannot be seen – even within the law's penetrating gaze. Nonetheless, trauma is constitutive of law:

> Despite its topicality in modern thought, trauma theory has not yet penetrated jurisprudential studies. Since the consequence of every criminal offense (as well as of its legal remedy) is literally a trauma (death, loss of property, loss of freedom, fear, shock, physical and emotional destruction), I advance the claim that trauma – individual as well as social – is the basic underlying reality of the law. (Felman 1999: 35)

Such psychoanalytically informed work is promising from the perspective of a critical cultural studies of law because it provides analytical means for moving beyond law's positivity and presents avenues for exploring legal ambiguity and the absences, blindnesses, and characteristic failures that shape fields of legal power and knowledge. Still, a number of issues remain vexing. So much of this work centers upon American race relations that one cannot help but wonder whether it has wider applications. "The law," moreover, seems to have a unitary and reified quality in this scholarship that tends to narrowly focus on either constitutional cases or highly publicized criminal trials. References to a national cultural unconscious may be justified in this context, but how helpful will such an approach be in other doctrinal areas and other legal forums? Is it entirely illegitimate to pose questions about the representivity of such cases when they are offered up as representing the basic underlying reality of law? Isn't the very idea of an institution as complex as law having a singular, basic, underlying reality a structuralist claim incongruent with the very tenets of poststructuralist theory and deconstructionist methods? What other cases were considered in the process of arriving at this assertion? Now that cases are recognized as possessing an unconscious, the work of reading them has no doubt doubled in terms of the effort it requires, but surely the task needs to be undertaken if generalizations about the law are going to be made. Whether generalizations about "the law" should be made on the basis of singular cases, even if they can be shown to be representative, is a larger and perhaps more significant question.

In a more nuanced and more thoroughly researched study of the use of chain gangs in Arizona prisons, Joan Dayan (1999) reminds "us that the commemorative sites of law are not simply textual, but may also involve particular kinds of materialization of legal power. The memory that is encoded in the materializations of law's power found in chain gangs is the memory of slavery" (p. 19). The spectacle of contemporary chain gangs, which she relates to prison isolation units, conditions of confinement, and executions, reproduces a peculiar specularity in which the judicial non-existence of particular (black, male) bodies is marked by and attached to a historical regime of hypervisibility which, nonetheless, the law does not see by virtue of a blind adherence to precedent that denies the inmate any civil status. Through historical investigation, textual analysis, and ethnographic inquiry, Dayan's work points to the constitutive absences in the law's fields of vision as she explores the material realities of contemporary correctional practices and the ruses state officials deploy to justify their denial of inmate rights in knowing relation to the law's symbolic power. This work is especially welcome for its variety of sources and its diversity of analytical methods as well as for providing a rare example of cultural materialism in legal studies. It points in the direction of a cultural studies of law by attending to meaning and materiality as these are produced in a multiplicity of social sites.

Conclusion

The interdisciplinary field of cultural studies is distinctive and valuable because of its potentially careful consideration of the local complexities in the relations between power and meaning in everyday life. If the cultural study of law were to treat law the way the field of cultural studies has learned to approach culture, a critical cultural studies of law might become a meaningful, robust, and exciting field of intellectual inquiry (Coombe 1998b and 1998c; Coombe & Cohen 1999). Rather than applying a formalist approach to cultural artifacts as discrete works or self-contained texts, cultural studies focuses upon the social power of textuality. However, in many – if not most – cultural studies of law, the approach to law is as a body of discrete works (appellate cases) or singular texts (usually trials) which are simply read internally for an understanding of their cultural effects. In too many instances we get little or no inkling of the specific histories of these texts' production, consumption, reception, or circulation. Moreover, we are not given any sense of the social power of forms of legality or their meaning in forms of life that exist anywhere outside of the legal trial or the reported case. A cultural studies of law should become more attentive to social fields of inscription and the social life of law's textuality. With the emergence of identity-based scholarship and work on legal consciousness, however, this work is beginning to get done. Some of these texts give us more understanding of how some of law's dominant forms of representation are experienced by those in subordinate positions.

Cultural studies, however, requires multiple and shifting perspectives through the diverse contexts of a cultural form's social being in the world:

> [W]e 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 of 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." If we think about law as central to the cultural conditions of producing everyday life we would recognize that we need to augment the interpretive strengths of textual analysis with sociological methods of tracing networks of actors and considerations of the political economy of seeking justice. (Coombe 1998b: 47; citing Johnson)

Whereas cultural studies has showed us that the privileged canon of the humanities – literature – was not a discrete form of discourse that could be clearly distinguished, segregated, and elevated, but shared properties and relationships with a variety of discourses including travel-writing, medical texts, radio talk-shows, and mass media, many of those who study law culturally make vague references to "legal discourse" that serves to avoid any need to go beyond a Lexus database of cases, statutes, and legal doctrine. When such scholarly acts of traveling and "transgression" do occur (as with comparative readings of literature and film), they often skim the theoretical surfaces, providing brief if entertaining enlightenment of discrete texts, but often leaving unexplained the rationale for the textual comparison or its social consequence.

The starting-point for cultural studies is that culture is contested, fractured, marred by contradictions, and therefore the site of social struggle. Feminist and gay and lesbian legal studies in particular (Bower 1994) have made substantial headway in exploring the ways in which legal terms and categories contain fissures and faultlines that become the sites for political mobilization. Too many cultural studies of law treat contradiction as if it were purely an internal and resolvable property of legal discourse. The politics of producing and maintaining legal structures of meaning cannot be explored in many of these works because no agents of production are ever identified. I would agree with Austin Sarat's contention that, even in legal scholarship that attempts to treat law culturally, "[l]aw acts, law rules. There are no people, no actors, no agency" (2000: 139). The law too often appears as a monolithic, undifferentiated, univocal power akin to some sort of totalizing *deus ex machina*. Legal pluralism is rarely acknowledged, and the social situation and motivations of those actors who act within specific legal institutions and local legal structures are seldom considered. And, while cultural studies articulates relationships between cultural meanings and social and material inequalities, the cultural studies of law largely avoids any

investigation into the material dimensions of legal meaning. As I have elsewhere implored:

> It is important that in the turn toward understanding law culturally . . . we do not lose sight of the political stakes at issue, the material domains of signification, or the distributional impacts 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. (Coombe 1998b: 45)

The scholarly transition from seeing the law as fully representing and shaping a social world that is transparent to the legal system, to acknowledging the significance of the repressed, the silenced, and the misrecognized in law, is a change long overdue and most welcome. For a critical cultural studies of law, however, this movement might suggest more than the postulation of a national repressed or the unconscious of a legal case and point more specifically to spaces of social marginality. We might consider that the law's greatest cultural impact may be felt where it is least evident, that the law is working not only when it is encountered in its most authoritative spaces, but also when it is consciously and unconsciously apprehended. The moral economies created in the shadows of law, the threats of legal action made as well as those that are carried out, people's everyday fears and anxieties about the law, are all loci where the law is doing cultural work (Coombe & Herman 2000b). The law shapes social identities and forms of politics even when it fails to recognize identities (Bower 1994) and, as I show elsewhere, a politics of non-identification based on non-identity has been legally engendered (Coombe 1998b). Law's absences may have presences elsewhere, but these traces will not be revealed to those who study law culturally but do not move beyond legal texts and media accounts of legal proceedings.

Although we can discern a large and engrossing body of legal studies that assumes cultural perspectives and considers law as a cultural phenomenon, there is as yet no substantial body of work that can be identified as a cultural studies having law as its subject-area of inquiry. Until scholars attend to the social life of law's textuality and address law's multiplicity and multivocality in creating fields of cultural politics, the cultural study of law is likely to remain a predominantly formalist and politically irrelevant branch of the humanities.

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