

What is Cultural Legal Studies?

JENNIFER L. SCHULZ*

In academia, tenured scholars can choose any research topic in the world and write an article about it. If the article is good enough to pass blind peer review, it will be published in a journal and read by other scholars and practitioners. Many of my publications have been written from a cultural legal studies perspective. That is to say, I have written about law and mediation through the prism of culture. But what does that mean exactly? Colleagues and students have asked, “What is cultural legal studies?” And, “How is it useful?” In this brief note, I will explain. My goals are to improve readers’ understanding of cultural legal studies, encourage more students and academics to adopt it as their field of inquiry, and demonstrate its usefulness for law.

Ien Ang notes that cultural studies academics are constantly reflecting upon the nature of their enterprise due to insecurity about what it is exactly that they do.¹ Jeremy Gilbert says the defining characteristic of cultural studies is conjectural analysis,² and Ien Ang says cultural studies scholars have an openness to almost everything.³ All of this breadth leads to confusion. Hickey *et al.* describe cultural studies as a failure of presence in the public’s perception⁴ or lack of a brand.⁵ Given that cultural studies

* Professor, Robson Hall Faculty of Law, University of Manitoba; and Fellow, Winkler Institute for Dispute Resolution, Osgoode Hall Law School. I would like to thank my colleagues, Professors Schwartz and MacPherson, for publishing this brief, explanatory article.

¹ Ien Ang, “On Cultural Studies, Again” (2020) 23:3 Intl J of Cultural Studies 285 at 285 [Ang, “On Cultural Studies, Again”].

² Jeremy Gilbert, “The Conjecture: For Stuart Hall” (2019) 96-97 New Formations 5 at 6.

³ Ang, “On Cultural Studies, Again”, *supra* note 1 at 287.

⁴ Andrew Hickey, Kelly McWilliam & Sally Hourigan “Undergraduate Programs in Cultural Studies in Australia and New Zealand” (2019) 33:4 Continuum: J of Media

is not clearly defined, it may not be clear what cultural *legal* studies is, since it is an offshoot of cultural studies.⁶ Most simply, cultural legal studies is an approach to law, just like the “law ands,” such as “law and society” or “law and economics,” are approaches to law. Cultural legal studies theorists examine how “that ‘anthropological’ definition of culture - is continually recreated at the intersection of social, economic and historical forces” and how those forces are “interpreted by people as ‘lived experience’”.⁷ Cultural legal studies explicitly acknowledges that law and culture co-constitute one another.⁸

Johan Fornäs enumerates three important facets of the cultural studies project: diversity, contextualization, and critique.⁹ Similarly, Benjamin Woo describes cultural studies as being engaged in learning from a range of fields and disciplines (what Fornäs calls diversity), “deep investment in understanding how social processes work from the point of view of their participants,” (contextualization) and a “willingness to challenge inherited narratives”¹⁰ (or critique). Cultural legal studies is similarly diverse because our field is inter, multi, and transdisciplinary. We are transnational pluralists who understand the term ‘culture’ very

and Cultural Studies 405 at 405.

⁵ *Ibid* at 419.

⁶ In 2004 Roger Cotterrell argued that a concept of culture is of limited utility for legal theory because ‘culture’ is too indeterminate and incongruent. He preferred a sociologically informed concept of community. See Roger Cotterrell, “Law in Culture” (2004) 17:1 Ratio Juris 1, but his is a minority voice. For example, the law and society field recognizes the great importance of culture and the existence of cultural legal studies.

⁷ Benjamin Woo, “Cultural Studies and Actually Existing Culture” (2020) 23:3 Intl J of Cultural Studies 310 at 312.

⁸ Carol J Greenhouse, “Unexpected Properties: Strathern on the Relation of Law and Culture” (2014) 31:2/3 Theory, Culture & Society 167 at 172 notes: “The idea of law as socially produced is no longer contested among social scientists (though it retains its transgressive potential in other quarters).” Ang, “On Cultural Studies, Again”, *supra* note 1 at 286 says, “In much self-reflective writing about this thing called cultural studies, it appears as an object of love, something to be nurtured and cared for, protected ... from hostile external attacks.”

⁹ Johan Fornäs, “Cultural Studies: Crossing Borders, Defending Distinctions” (2020) 23:3 Intl J of Cultural Studies 298 at 301.

¹⁰ Woo, *supra* note 7 at 314.

inclusively.¹¹ We are extremely interested in ensuring we contextualize law, cultural practices, and texts. We care about what culture means and does and the historical, material, economic, legal and political contexts in which it does it in. Finally, we care about critique, often focussing on power relations,¹² questioning dominant norms, and interrogating legality, justice, identity, power, signification and social relations of all types.

As a field, cultural legal studies is now more than 20 years old. Importantly, it goes beyond law *and* culture to understand law *as* culture and culture *as* law.¹³ Another way of saying this is that cultural legal studies goes beyond how any given text represents law, to how the representational nature of law and culture intersect. “Cultural legal studies is a burgeoning field, encountering law and justice in relation to a wide variety of cultural and artistic forms. It engages not merely representations of law and justice, but the role that culture plays in constituting the very possibility of legality.”¹⁴ Cultural legal studies has a social science component (taking the law as object) and a humanities component (law as discourse). This results in a purposeful focus on legal practices in context and law in the everyday lives of people (social sciences) and a focus on legal meaning-making and texts (humanities). In 1998, Rosemary Coombe said: “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.”¹⁵ In 2001, she noted that cultural legal studies is comprised of legal humanities,

¹¹ Fornäs, *supra* note 9 at 299.

¹² *Ibid* at 300.

¹³ Naomi Mezey, “Law as Culture” (2001) 13:1 Yale JL & Humanities 35 [Mezey, “Law as Culture”]; Naomi Mezey, “Law’s Visual Afterlife: Violence, Popular Culture, and Translation Theory” in Austin Sarat, ed., *Imagining Legality: Where Law Meets Popular Culture* (Tuscaloosa, AL: The University of Alabama Press, 2011) [Mezey, “Law’s Visual Afterlife”]; and Cassandra Sharp and Marett Leiboff, eds., *Cultural Legal Studies: Law’s Popular Cultures and the Metamorphosis of Law* (Routledge, UK, 2016).

¹⁴ “CFP: Cultural Legal Studies” (3 March 2020), online: Legal Scholarship Blog <<http://legalscholarshipblog.com/2020/03/03/cfp-cultural-legal-studies/>> [<https://perma.cc/9FNU-SX3H>].

¹⁵ Rosemary J Coombe, “Contingent Articulations: A Critical Cultural Studies of Law” in Austin Sarat & Thomas R Kearns, eds., *Law in the Domains of Culture* (Ann Arbor: The University of Michigan Press, 1998) 21 at 22.

interpretive socio-legal studies and legal anthropology.¹⁶ In 2000, Richard Sherwin said that learning the ways of meaning-making and reality construction is “an invitation to a more sophisticated sense of responsibility for the realities and meanings that we affirm or deny. It is, in short, an invitation to a heightened sense of responsibility for the world we live in.”¹⁷ In 2001, MacNeil and Hutchings highlighted the movement away from critique to culture.¹⁸ Much more recently, Leiboff and Sharp state that “cultural legal studies mobilises a constitutive and interrogative critical practice for and about law, through law’s popular cultures as the agent of encounter.”¹⁹ In their view, it is important to study how the juridical becomes visible in cultural forms, or how law’s popular cultures actively metamorphose law.

In my cultural legal work, I examine how law and dispute resolution are depicted in popular culture forms. I study law and mediation in context and in the everyday, and explain how they help make meaning for lawyers, clients, disputants and students. When we track the law in cultural representations, either for students in law school or as lawyers in practice, we are *doing* cultural legal studies. In my work, I focus on TV shows and movies, but cultural legal studies can focus on any type of popular culture, including news, music, literature and video games. I employ my cultural legal studies approach to look at law through, as, and with popular culture. This means that popular culture texts, such as films, are the agents through which I study how encounters between culture and law are played out. Importantly, these encounters help me theorize how we might do law better. And ‘do’ is the operative word.²⁰

Cultural legal studies scholars want to do something. Carol Greenhouse says, “what we might ‘do’ with law and culture, then, is not

¹⁶ Rosemary Coombe, “Is there a Cultural Studies of Law?” in Toby Miller, ed. *A Companion to Cultural Studies* (Oxford UK: Blackwell Publishers, 2001) 36 at 36.

¹⁷ Richard K Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (Chicago: The University of Chicago Press, 2000) at 233.

¹⁸ William MacNeil and Peter Hutchings, “Law’s Cultural Mediations: An Introduction by Way of Introduction” (2001) 10 *Griffith L Rev* 1 at 1.

¹⁹ Marett Leiboff and Cassandra Sharp, “Cultural Legal Studies and Law’s Popular Cultures” in Cassandra Sharp and Marett Leiboff, eds., *Cultural Legal Studies: Law’s Popular Cultures and the Metamorphosis of Law* (Routledge, UK, 2016) at 7.

²⁰ *Ibid* at 8.

insist on putting them together, but release them so as to follow their flights across unexpected properties.”²¹ When we release them, we see that law and culture interweave diverse fields and genres, leading to new understandings. Ang says, “cultural studies grapples with cultural complexity to advance more effective ways of seeing and intervening in the world.”²² Leiboff and Sharp describe it as moving past the “law and” dyads and being active – or doing.²³ Enfolding myriad fields, connecting the ephemeral with the actual, and both with law is a shift in the way law is done. The doing, the enfolding, and the working out what is going on is what marks out cultural legal studies. It is thinking about the shape of law, and the shapes it might take.²⁴ When we do cultural legal studies, we actively interpret and construct legal meanings in response to popular culture. This allows us to think about law differently, and how law could be different. So, for example, in my own work on mediation I have employed a cultural legal approach to investigate: how mediation is taught compared to how it is actually practiced,²⁵ how good mediators might be created,²⁶ and how settlement differs in Canada versus the United States.²⁷ All of these projects have combined law and culture in order to ‘do’ law and dispute resolution better. (Marett Leiboff says that “finding out what people actually do enriches the theory, and expands upon and perhaps corrects what we imagine.”)²⁸ I have also examined women, people of

²¹ Greenhouse, *supra* note 8 at 181.

²² Ien Ang, “Cultural Studies” in Tony Bennett and John Frow, eds., *The Sage Handbook of Cultural Analysis* (London, UK: Sage, 2008) 227 at 228.

²³ Leiboff and Sharp, *supra* note 19 at 8.

²⁴ *Ibid* at 23. An anonymous reviewer of this article makes the point that Leiboff and Sharp take a particularly antipodean approach to cultural legal studies that eschews anthropology. My personal approach is explicitly anthropological and connected to Canada and North America.

²⁵ Jennifer L Schulz, *Mediation & Popular Culture* (Abingdon, UK: Routledge, 2020) [Schulz, *Mediation & Popular Culture*].

²⁶ Jennifer L Schulz, “Fairly Legal: A Canadian Perspective on the Creation of a Primetime Mediator” in Michael Asimow, Kathryn Brown, and David Ray Papke, eds., *Law & Popular Culture: International Perspectives* (Cambridge Scholars Press, 2014) at 43–56.

²⁷ Jennifer L Schulz, “Settlement and Mediation in Canadian Legal Television” (2011) 1 *J of Arbitration and Mediation* at 79–104.

²⁸ Marett Leiboff, “DITTO: Law, Pop Culture and Humanities and the Impact of Intergenerational Interpretative Dissonance” (2012) 36:1 *The Australian Feminist L J*

colour and diversity on Canada's top legally themed TV shows,²⁹ studied how films portray female lawyers as mad or neurotic,³⁰ and completed a transnational study of popular culture's understanding of law in 14 different countries.³¹ All of this cultural legal work examines law in the everyday context it is most often consumed and understood by citizens – through their screens – and how what is shown on those screens makes legal meanings for citizens.

Another common way of doing cultural legal studies is through ethnographically inspired approaches, such as those suggested by Naomi Mezey³² and Cassandra Sharp.³³ Mezey's method requires us to interpret law in cultural terms using anthropology's ethnographic method of thick description, as does Sharp's, which recommends ethnographic approaches in order to approach qualitative understandings of cultural activities in context.³⁴ As Lieve Gies notes, "the ethnographic tradition of law in everyday life, which clearly adopts a constitutive approach, regards law as something that is deeply embedded in people's consciousness"³⁵ and as something co-created with culture. When we do ethnographically-inspired cultural legal studies we employ interdisciplinary interpretive lenses, thick description, discourse analysis, narrative theory, visual analysis, and other critical approaches.

145 at 151.

²⁹ Jennifer L Schulz, "Canada: Women, People of Colour & Diversity on Top Law Shows" in Peter Robson & Jennifer L Schulz, eds., *Ethnicity, Gender & Diversity: Law & Justice on TV* (Lanham, MD: Lexington Books, 2018) at 67.

³⁰ Jennifer L Schulz and JiHyun Youn, "Monsters & Madwomen? Neurosis, Ambition and Mothering in Women Lawyers in Film" (2016) 16:3 *J of L, Culture and the Humanities* 411-431.

³¹ Peter Robson & Jennifer L Schulz, eds., *A Transnational Study of Law & Justice on TV* (Oxford, UK: Hart Publishing, 2016).

³² Mezey, "Law as Culture", *supra* note 13; and Mezey, "Law's visual Afterlife", *supra* note 13 at 87.

³³ Cassandra Sharp, "Let's See How Far We've Come: The Role of Empirical Methodology in Exploring Television Audiences" in Peter Robson & Jessica Silbey, eds., *Law and Justice on the Small Screen* (Oxford, UK: Hart, 2012) at 121.

³⁴ *Ibid* at 121.

³⁵ Lieve Gies, "The Media and Public Understanding of the Law" in Steve Greenfield and Guy Osborn, eds., *Readings in Law and Popular Culture* (London, UK: Routledge, 2008) 65 at 74.

As in all ethnographically-inspired work, the influence of one's self on descriptive and interpretive processes must be acknowledged.³⁶ Cultural legal scholars must be reflexive about their effects on the subjects of study.³⁷ So, for example, for the purposes of this brief note, I will disclose some of my background in order to be transparent about the influence of myself on my work. I have a master's degree in legal anthropology from the University of Cambridge, supervised by Marilyn Strathern, and a doctorate in legal mediation from the University of Toronto, supervised by Lorne Sossin.³⁸ Legal anthropology insists that law be analysed in its cultural context. As Mertz and Goodale note: "methods emanating from legal anthropology represent a cutting edge for social scientists seeking to track the multi-layered flow of power and legal forms across cultures and societies."³⁹ Given my background, it is not at all surprising that I do not conduct "doctrinal" legal analyses. It makes sense that my work is infused with cultural or anthropological insights, and that I am qualified to impart them.⁴⁰ I do so (i) referentially: to make connections to my own and others' lives; (ii) creatively: to generate new ideas, narratives, meanings and emotional responses; and (iii) critically: with a goal of positive change. By referentially, creatively and critically examining both law and culture, we learn more than from each alone.

If I have succeeded in improving your understanding of cultural legal studies, you will know, as Clifford Geertz famously stated, that law is just one of many possible, distinctive manners "of imagining the real."⁴¹ You will also know that culture is intimately implicated in the ongoing social process that constructs our legal lifeways. You may then, like many Manitoba lawyers, choose to use cultural legal studies as a field of inquiry.

³⁶ Schulz, *Mediation & Popular Culture*, *supra* note 25 at 13.

³⁷ Elizabeth E Mertz and Mark Goodale, "Comparative Anthropology of Law" in David Clark, ed., *Comparative Law and Society* Elgar Series: Research Handbooks in Comparative Law (Cheltenham, UK: Edward Elgar Publishing Limited, 2012) 77.

³⁸ Now Dame Marilyn Strathern, DBE, retired and Justice Lorne Sossin, Ontario Court of Appeal.

³⁹ Mertz and Goodale, *supra* note 37 at 90.

⁴⁰ It is surprising how many legal academics, with only a social science major in a bachelor's degree, believe they are fully trained to do socio-legal analysis or cultural legal studies.

⁴¹ Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York, NY: Basic Books, 1983) at 173.

For the past eleven years, I have been fortunate to teach cultural legal studies in my Law & Popular Culture course at the Faculty of Law, University of Manitoba. Every year, eighteen new students take the course, which means there are now 198 new lawyers, most of whom practice in Manitoba, with cultural legal studies experience. These lawyers are reflective, creative and critical, essential characteristics for good lawyering practice. They are also compassionate. Ultimately, cultural legal studies is useful for law and lawyers because it teaches us to care. As scholars, theorists, professors, practitioners and dispute resolvers, we care about people's lives under law. We care about real people's real experiences of legal culture. We care how culture and law are lived and how they structure everyday experiences. In short, we understand law as culture and culture as law.

