

Law/Culture: Power, Politics and the Political

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Abstract: This paper is concerned with the dialectical relationship of law and culture. Recent academic work in the sociology of law positions such a relationship within a concept of power, specifically the power of law/culture to render the world meaningful not only in reciprocally constitutive ways but also in mutually deconstructive ways. While this kind of scholarship moves us some way beyond accounts which insist on law and culture as autonomous realms of human experience, it has created a context of consensus which is largely uncritical of their relationalities. Whilst not denying moments of creative synergy which emerge in productive and positive relations of mutuality, this discussion re-opens old antagonisms, and revisits law/culture as an ongoing contest and a dichotomous struggle over meaning, interpretation and judgement. I make use of a (familiar) Foucauldian vocabulary to delineate three modalities of power - sovereign, disciplinary and discursive – and use this as a framework for critically interrogating how law/culture stages different kinds of politics, which have varying effects in the broader political field of 'justice'. The paper concludes by arguing for both a modified and an intensified approach to power which builds on the conceptual insights of an eclectic body of contemporary political theoretical work.

Keywords: Law, culture, politics, power, representation, Foucault, Rancière.

INTRODUCTION

How do we figure the relationality of law and culture? For some, it should not be figured at all and what is called for is 'an ongoing and mutual rupturing – the undoing of one term by the other' (Coombe, 2001: 21) so as to displace their reification as autonomous spheres of human endeavour. For others, there is little sense in delineating the interconnections of law and culture given the 'spectacular intractability of the things to be related' (Fitzpatrick, 2005: 3). Despite this, the question of relationality is both the hallmark of and remains central to theoretical work in what Sarat and Simon talk of as the 'postrealist legal landscape' (2003: 4) incorporating critical (feminist, postcolonial and queer) legal studies, the law and literature movement, as well as the post-critiques of law and society which make use of deconstructionist, psychoanalytical and genealogical perspectives (Ewick and Silbey, 1998; Gaines, 1991; Hutchings, 2001; Leonard, 1995; MacNeil, 2007; Redhead, 1995; Sarat and Kearns, 1993, 2001; Sarat and Simon, 2003; Sherwin, 2000, 2006; Young, 2005). Across this diverse literature there are, broadly speaking, two key frameworks at play. The first subscribes to a constitutive theory of law. For example, and preferring the phrase 'law as culture', Mezey notes:

This conceptualization is related more generally to what many in sociolegal studies call a constitutive theory of law, in

which law is recognized as both constituting and being constituted by social relations and cultural practices. In other words ... (l)aw participates in the production of meanings within the shared semiotic system of a culture, but it is also a product of that culture and the practices that reproduce it. A constitutive theory of law rejects law's claim to autonomy and its tendency toward self-referentiality (2001: 46-47).

Emphasised here is a relationship of symbolic, performative and discursive exchange where meanings are produced, consumed, challenged and negotiated in and through practices and processes of cultural and legal signification. As Sarat and Kearns comment: 'Meaning is perhaps the key term in the vocabulary of those who speak about the cultural lives of law, of those who seek to connect the word and the world' (2001: 6, *Original emphasis*). A second perspective, however, is less concerned with meaning-making within a mixed economy of semiotic resources, and is more focused on commonalities and similitude in legal and cultural form. It is an orientation which finds expression in much of the work concerned with law and aesthetics (Butler, 2003; Douzinas and Nead, 1999; Gearey, 2001; Manderson, 2001; Young, 2005). For example, in posing the question of how to imagine the relation between law and art, Young argues that: 'Similarities can be identified, and thus we proceed by means of the relations of resemblance, similarity and substitution – that is, of metaphor' (2005: 11). Since 'law is an aesthetic enterprise' (Schlag, 2002: 1049), its architectural styles, ritual practices, modes of dress

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and address can all be read as forms of cultural expression; at the same time, it is argued, the legal imaginary of artistic practice and aesthetic expertise can be found in the working knowledges, rules and conventions of the creative arts. Putting this somewhat poetically, Schlag states 'that law paints its order of pain and death on human beings with no more ethical warrant or rational grounding than an artist who applies paint to canvas (2002: 1050, *Emphasis added*).

Both the constitutive and similitude perspectives create a context of relative consensus about law/culture wherein old antagonisms about their intersectionalities have given way to a productive and positive politics of mutuality. Indeed, Coombe, eschews what she terms 'a metaphysics of political presence' (2001: 36) and calls for a culturally materialist approach which not only insists on foregrounding the historical contingencies and spatial particularities of law/culture, but which also tracks how, through the flows and nuances of their interrelationality, the concept acquires new political valencies and resonances – relations of mutuality and alliance, of accommodation and compromise, and of enlightenment and enrichment, for example. At the same time, Young's (2005) work on the relationship of law and aesthetics rejects conventional readings which portray their conjunction as a 'series of encounters in which the relation between legal studies and aesthetics is usually constructed as a hierarchy between two unequal parties' (2005: 11). Young prefers the notion of co-implication, seeing it as better equipped to capture the complexities and fluidities of a coupling 'in which law and the image are enfolded within each other, their contours and substances passing through and around each other' (2005: 10). It could be argued, then, that law/culture has entered a post-political phase in which any sense of a dichotomous struggle between opposing camps appears to have been transcended.

Nonetheless, as Fitzpatrick complains, law/culture intersectionality continues to be provocative and has an 'edgy quality' which suggests that 'the relation of law to culture remains "disputed" and "uneasy"' (2005: 2). There is certainly no agreement that such a coupling makes a desirable or necessary contribution to the legal canon, nor that such an interdisciplinary focus does and should authorise the way that law is practised, taught and theorised (Brooks, 2003). This is not to devalue or obviate the important insights of mutuality and co-implication but to signal that there remains a tension at the heart of law/culture which *politicises* the (inter-)disciplinary field. What concerns

me here is the extent to which this sense of politicisation has been played down or minimised in a way which obscures continuing partisan quarrels and turf wars over boundaries, the production of meaning and forms of knowledge. Consequently, law/culture relationality is rarely (these days) positioned within an arena of conflict, or figured within a politics of contestation over representation, interpretation, governance and judgement. Yet, the persistence of a more contentious relationship is noted by Sarat and Kearns: they state:

Law's cultural lives and its power in and over cultural production are continually renewed, re-created, defended, and modified. But they are also consistently resisted, limited, altered, challenged. Law's cultural lives are, as a result, not placid and calm. They are alive with the push and pull of contestation (2001: 8).

In light of this, it is not so much that consensus perspectives of law/culture intersectionalities are 'wrong', so much as they are partial and, importantly, have become disengaged from the kind of critical work which interrogates how power circulates and punctuates the ebb and flow of the legal-cultural terrain transforming it into a political minefield. To be sure, there is now an abundance of insightful and innovative analyses which bring together these two frameworks of inquiry – the legal and the cultural – to address thorny questions concerning, for example, justice, rights, security, citizenship and equality; and following MacNeil (2007: 156), it may be widely accepted that this kind of epistemological dialogue constitutes a 'mode of theorizing and method of explication' which allows us to read cultural texts *jurisprudentially*, and conversely to read legal texts *aesthetically*. It is also the case that such accounts pay good attention to the ways in which these intersectionalities have reconfigured the juridico-cultural landscape suggestive of an activist and reformist orientation which has political transformation in its sights. Despite this, there has been a marked reluctance to engage with theoretical perspectives on power to make critical sense of the dialectical and dynamic *political* spaces of law/culture relationalities. In short, law/culture scholarship has lost touch with its critical imaginary. This paper begins the task of opening up to scrutiny the *politics* of the law/culture interface, regarding it as a key surface of emergence for the exercise of power, the staging of a politics, and the opening up of a political field marked by antagonism, resistance and opposition.

In the next several sections, I undertake something of a ground-clearing task by unpacking the configurations of power which currently permeate the law/culture scholarship, making explicit the range of political frameworks and (un)critical perspectives which are implied by them. This clears a space for re-thinking the potential for re-politicising law/culture's critical terrain as well as our political commitments to law/culture intersectionalities. The paper concludes, then, by sketching out both a modified and intensified approach to power which builds on the conceptual insights of an eclectic body of contemporary political theoretical work.

SOVEREIGN POWER

A useful starting point for understanding law/culture relationalities as a political field, is Golder's and Fitzpatrick's (2009) exegetical account of *Foucault's Law*. In this eloquent and timely text, Golder and Fitzpatrick remind us of Foucault's insistence on the *relational* nature of power, and it is this aspect which makes reference to Foucault so fitting in this context; they state:

The law, which in certain positivist accounts is rendered in autonomous and hermetically sealed terms, is here described by Foucault in relational terms. The law... is not so much the putatively contained entity that we have come to expect from these positivist accounts; rather the condition of law is that of a perpetual hyphenation, reliant in some measure upon 'the scientific', 'the epistemological', and 'the anthropological' to give it some purchase – 'the political' also figures significantly in this relation..... Foucault's law is anything but a law unto itself. Rather, in his understanding, the law and the powers apart from it would seem to be relationally interdependent (2009: 60-61).

Foucault's analytic is not introduced here to bring ontological clout to the proposition of law/culture as a relationality of power. Rather, it is to preface my exploitation of the familiarity of Foucault's conceptual vocabulary, which is invoked on this occasion as an ordering matrix for the purposes of exposition. Tacit alignment with notions of sovereign, disciplinary and discursive power percolate under and through the surface of law/culture texts; at such junctures, the political terrain of law/culture shows up in sharp relief.

Taking each of these modalities of power in turn, this section begins the task by casting a critical eye over law/culture and sovereign power.

The figuration of law/culture as a relationality emerging from and (re-)produced through the exercise of sovereign power looms large within socio-legal research concerned with cultural justice. Consider, for example, Ross's (2001) delineation of the struggle for cultural recognition, considered here as indicative, rather than representative, of this strand of scholarship. Borrowing Taylor's (1994) concept of a 'politics of recognition', Ross positions law/culture, as a political relationship, within a 'landscape of globalization' (2001: 206) where proprietary rights 'over language, religion, and traditional practices ... including Native jurisprudence' (2001: 206) are asserted and claimed by cultural minorities 'threatened with extinction by majoritarian forces' (2001: 206). It is a landscape, moreover, which is infused with and shaped by repressive modalities of power - conflict, control, domination, resistance and exploitation. Ross persuasively and incisively documents the limits of 'affirmative justice', noting how constitutional protections – enshrined in race-conscious legislation, the 'ordinary principles of law' (2001: 212), 'the fair play scenario' (2001: 211) – are neutralised, in practice, and turned on their head to buttress a monoculturalist agenda forged in the name of national identity, heritage, and shared values. Overt political commitments to multiculturalism, bilingualism, political correctness and civil rights, and formal recognition of cultural diversity and difference within liberal democratic polities, Ross argues, merely service 'a prescription for segregationism (which) masquerades as tolerance for human variation' (2001: 226). There is considerable merit in Ross's insightful and critical overview of what passes for (and what might count as) cultural justice within a framework of positive, affirmative action¹. As Dillon and Valentine comment:

The logarithm of this enterprise is condensed in the opposition between homogeneity and identity, and heterogeneity and difference, where the latter terms designate the character of the dominated and excluded, and stand for everything that should be affirmed by a morally justified political project (2002: 5).

¹It should be noted that Ross rejects the commitment to an affirmative justice in favour of a transformative approach which 'involves a deep restructuring of the relations of production, in the economic sphere, and the relations of recognition, in the cultural sphere' (2001: 205).

Dillon and Valentine, however, articulate a tendency, which is woven through Ross's account, as well as critical legal-cultural studies more generally, to invoke a sovereign model of power as the organising principle of (affirmative) cultural politics. Such a schema remains problematic, not least because it forecloses more complex questions about the political cartography of law/culture relationalities. That is to say, despite a political field with several configurative possibilities, law/culture is repeatedly mapped across a dichotomous terrain which aligns the former with the geo-political (and socio-economic) interests of national territories, regional blocs, trading partnerships, inter/cross-national institutions and the state; and the latter with the cultural dynamics and aspirations of civil society, local communities, 'the street' (Ross, 2001: 225) and everyday cultural settings. Within a framework of 'popular sovereignty' (Singer and Weir, 2006: 446)², law/culture as a *political* relationship involves, then, an ongoing conflict between opposing and differently empowered camps in which the transformation of cultural actors into legal subjects – with rights and obligations, freedoms and protections – is at stake. At the same time, to all intents and purposes given an 'entrenched resistance to change' (Ross, 2001: 21), this conflict does not conform to the 'fair play scenario' beloved of legal liberalism; at the interstices of law/culture, cultural identities and practices enter into politics only *via* the concessionary exercise of law's sovereign power.

In the struggle for cultural recognition within a legal order, the terms and conditions of political agency are set by law. While important advances are made in the cause of rights and recognitions for minority groups, institutional hierarchies and vested interests remain largely unchanged; what appear to be gains and triumphs, and the imprint of culture on the legal landscape, are merely markers of law's assimilation and accommodation of cultural diversity. It perpetuates what Dean (2011: 75) describes as the 'fantasy of politics' wherein the continuing disavowal of its own antagonistic dynamic – law/culture – engenders a depoliticised situation in which 'everyone and everything is included, respected, valued and entitled. No one is made to feel uncomfortable. Everyone is heard and seen and recognized and has a place at the table' (*ibid*:

75). As Dean goes on to argue, the 'fantasy of politics' resonates with mainstream concerns about the end of ideology, the rise of consensus politics and the crisis of de-democratization; it also reflects the de-politicization theses of critical political theory. As Žižek notes, 'the political act (intervention) proper *changes the very framework that determines how things work*' (1999: 199, *original emphasis*); while Rancière comments that 'politics is not the exercise of power' (2010: 27), but emerge when the contingency and arbitrariness of the legal order is exposed by 'the sudden [*brutale*] revelation of the ultimate *anarchy* on which any hierarchy rests' (Rancière, 1999: 16, *original emphasis*). Davis's reading of Rancière's *Disagreement* sums this up neatly: 'Politics embarrasses the police order by seeing through the imaginary garments of elaborate hierarchy which cover its naked contingency' (2010: 79).

DISCIPLINARY POWER

To position law/culture within the tensions of repressive, negative modes of juridical power elides the productive and formative capacities of their intersectionalities; and for that strand of socio-legal work which seeks out the generative power of law/culture, alternative political landscapes are brought into view. I am thinking here of analyses which critically interrogate law/culture's complicity in the adjudication, normalisation, moralisation and surveillance of the body and its compartments, the *classicus locus* for the exercise of disciplinary power (Valverde, 2003). In the original Foucauldian formulation:

The body is directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it This political investment of the body is bound up, in accordance with complex *reciprocal* relations, with its economic use; it is largely as a force of production that the body is invested with relations of power and domination; but, on the other hand, its constitution as labour power is possible only if it is caught up in a system of subjection ... the body becomes a useful force only if it is both a productive body and a subjected body (Foucault, 1977: 24-25, *Emphasis added*).

From this vantage point, the politics of law/culture are captured, held within a relationship of reciprocity, and are grounded in the sites and surfaces of the

²In their critical re-reading of the politics of sovereign power, Singer and Weir comment on Foucault's (1980: 105, 2003: 37) brief references to the democratization of sovereignty in later modernity; they state: 'Later juridical systems, at the level of both legal codes and normative political theory, democratized sovereignty by linking it with public right, i.e. popular sovereignty' (2006: 446).

corporeal. But what are we to make of the notion of reciprocity – elsewhere described as collusive, mutually reinforcing, converging - as the motor force of a political field. It is a turn of phrase which altogether obviates the tensions, disagreements and argumentation inherent to law/culture's co-production of the disciplined body and the disciplined subject, as well as their equidistance from the disciplinary sciences (psychology, medicine, economics, sociology, pedagogy, criminology, for example) which compete for space in this crowded political arena. Whether we are concerned with the subject-ed bodies of non-consensual, invasive surgery (Smith, 2000), or the consumers of 'extreme pornography' (Johnson, 2010), or female, Muslim asylum seekers (Hua, 2010), what is at stake is not the recognition of juridical-cultural subjects *per se* – as competent, moral and/or persecuted people with rights to refuse treatment, to enjoy freedom of expression, or to be granted asylum – but the claim to possess (and apply) an expert knowledge and understanding of their capacities (moral, social, economic, ethical, discursive, material and behavioural), to participate in political life. Put another way, given this joint enterprise to know, produce and adjudicate 'the subject of rights', the politics of law/culture emerge in and through the cut and thrust of epistemological and methodological exchange.

There is no space here to fully elaborate the frameworks of inquiry which inform and authorise modes of legal and cultural knowledge production³; but this is less important than a consideration of the power effects of their (inter-)relationalities at the epistemological level. Hua's (2010) account of the asylum claims of Iranian women in the US courts, is instructive here. For Hua, such claims pivot on the ontological question of who qualifies as a 'persecuted subject', and are settled with reference to both legal and cultural insights. Based on six exemplary cases⁴, she powerfully deconstructs law/culture intersectionalities as sites of contradiction and paradox which expose 'the fundamental conundrum of human rights (that is) the competing desire to uphold

universal principles ... while at the same time simultaneously disavowing and celebrating relativism' (2010: 377). That is to say, in the way that legal arguments take account of cultural (and racialized) difference, and in the kind of cultural evidence which is sought (Islamic dress codes, patriarchal practices, markers of violence, persecutory narratives), the adjudication of women's right to asylum pushes petitioners to 'a place where they must reiterate troubling arguments of their own cultural "backwardness"' (2010: 376). This kind of analysis suggests that there is an irreconcilability at the heart of law/culture which is not best represented as a relationship based on reciprocal exchange. Even so, Hua does not subscribe to a 'cultural justice' perspective which sees law/culture as contestative and oppositional; nor even to Berman's optimistic view of culture as a corrective which enables law to tell 'a less suspicious story' (2003: 105). Rather, there is a recognition within this work, and other studies, of the presence of law/culture's 'constitutive negation' (Fitzpatrick, 1992: Chapter 1) from which there are likely to be no clear winners. As Hua puts it:

(T)he very notion of universality is constituted through the concept of particularism. While the concepts are defined in opposition to each other, they are nonetheless mutually constitutive. Any claim to universalism necessitates the simultaneous disavowal and recognition of particularity. It is no wonder neither position challenges the neo-colonial operations of racial power at work (2010: 390).

However, the notion of 'constitutive negation' altogether understates the power dynamics of the universalism/particularism (law/culture) dyad. Hua quite rightly points to the contradictions of legal redress and claims-making on behalf of particular cultural subjects, but does not regard these as indicators of the limits of law/culture relationalities and the basis for critical reflexivity of their political fit. In other words, reciprocity and common cause in adjudicating the legal-cultural subject in the name of justice, minority protections or cultural freedoms sits uncomfortably within universalist frameworks which may be homophobic, patriarchal, racist or imperialist. Mirroring Ranciere's (1992) comments on the political spaces of democracy, this treats the interstices of law/culture as habitat rather than a locus of struggle, 'as an ambient

³On legal method, see, for example, Anderson, Reinsmith-Jones and Mangels (2011); Hesselink (2009); Mossman (1987). On cultural theory and analysis see, for example, Bennett (1998); Giles and Middleton (2008); Smith (2001). For a good account of how, in practice, disciplinary epistemologies may be conflated, see Grazin (2004) and Zacharias (2011).

⁴*Fatin v INS* (12 F.3d 1233, 1993); *Safaie v INS* (25 F.3d 636, 641 n.1, 1994); *Fisher v INS* (79 F.3d 955, 1996); *Sharif v INS* (87 F.3d 932, 1996); *Yadegar-Sargis v INS* (297 F.3d 596, 2002); *Mazhari-Ravesh v Gonzales* (135 Fed. Appx. 71, 2005).

milieu' (1992: 22) rather than the setting for political challenge and dissent.

DISCURSIVE POWER

MacNeil's (2007) *Lex Populi: The Jurisprudence of Popular Culture* opens with an impressive "Cook's tour" of contemporary interdisciplinary scholarship in progressive law' (2007: 7). Noting the contributions of North American (especially the US), European (particularly the UK) and Australian research, and taking account of the contours and folds of its development over time and space, MacNeil pays tribute to critical socio-legal work which crosses the boundaries between law and literature, art, film, aesthetics, music, architecture, television, and popular culture (Butler, 2003; Chase, 2002; Greenfield and Osborn, 2001; Haldar, 1999; Hutchings, 2001; Manderson, 2000; Rapping, 2003; Schlag, 2002; Sherwin, 2000; Threadgold, 1997; Turner and Williams, 1994; Young, 2005). For MacNeil, "culture" has replaced "critique" as not only le mot juste but also the fulchrum of millennial legal studies' (2007: 7). This is a bold claim, especially when it is backed up with the further anticipation that we are entering a post-theoretical era characterised by a 'distinctive mode and a new mise-en-scène of interpretation the Imaginary of global popular culture' (2007: 8). There is clearly no shortage of work which might fulfil such promise⁵, and its intellectual credentials to fashion a critical paradigm of culturo-legal research is not at issue here. Of greater concern, is how the politics of such an endeavour are being staged and framed.

At the risk of running roughshod over the nuances of a rich and diverse portfolio of interdisciplinary research, I want to suggest a shared focus on the

constitutive power of law/culture relationalities. As Mezey notes in her elaboration of the mutually constitutive nature of law/culture:

law as culture and culture as law (means) showing the ways in which law is one of the signifying practices that constitute culture and vice versa (It) envisions an unstable synthesis between the two, formed by a continuous recycling and rearticulation of legal and cultural meanings' (2001: 38).

Though varying in their scope and emphasis, constitutive accounts are primarily centred on an exposition of 'discourse' as the site of political meaning-making, where 'discourse' incorporates a range of representational forms (imagery, speech, text, performance, material culture and sound). Valverde (2006), for example, draws attention to the ways in which visual (film, television, photography, finger-print technology, DNA profiling), literary (novels), and material (statues, windows) cultures collectively nurture and privilege different forms of legal and criminological knowledge. She talks of the 'forensic gaze' of this host of cultural media, in as far as their combined discursive effects are to mobilise and perpetuate faith in the authority of legal/criminal justice expertise. Brown makes a similar argument in her analysis of cultural representations of penalty; but she talks more forcefully of the political transformation of an imagined audience who are not only moved from the 'passivity of penal spectatorship to an informed and engaged mode of citizenship' (2009: 191), but are also, through that process, tacitly embroiled in the disciplinary gaze of the penal landscape. Travis (2011), on the other hand, sees popular cultural media – specifically, science fiction film – as performing 'an essentially epistemological function' (Travis, 2011: 252) wherein 'science fiction becomes the source of meaning, and the language in which society discusses new legal challenges' (Travis, 2011: 252). Indeed, much of this strand of research, regards law/culture as a venue for theoretical and political inquiry; as a discursive, or intertextual space in which core issues relating to legal reasoning, jurisprudence, methodology and judgement can be interrogated – see, for example, Friedman, 1989; Greenfield and Osborn, 1995; Sherwin, 2000; Rosenberg, 2001; Chase, 2002; Seymour, 2004; MacNeil, 2007. Alternatively, constitutive approaches also point to a politics of assimilation, and question the importation of cultural frames of reference into legal practice, especially within the courtroom (Meyer, 2001;

⁵There are now a substantial number of edited volumes which bring together a range of popular cultural research studies (Fineman and McCluskey, 1997; Moran *et al.*, 2004; Sarat and Kearns, 2001; Sherwin, 2001; Thornton, 2002); this is in addition to a proliferation of research monographs which explore and develop specific analytical foci for interpreting 'the legal' culturally, and 'the cultural' legally (Brown, 2009; MacNeil, 2007; Redhead, 1995; Valverde 2006; Young, 2005). To this we can add the calendar of established annual conferences and symposia, dedicated to the furtherance of an international law/culture scholarship – *Conference of the Association for the Study of Law, Culture and the Humanities* (coming into its 16th year in March 2012); *Intersections of Law and Culture Conference* (Franklin College, Switzerland), and the annual conferences hosted by the Legal Intersections Research Centre at the University of Wollongong. The depth and breadth of this interdisciplinary field is also traced through the publication of journals which foreground the interface of law and culture – *Law and Critique* (Springer); *Law and Literature* (University of California Press); *Law, Culture and the Humanities: An Interdisciplinary Journal* (Sage); *Law, Text, Culture* (University of Wollongong); as well as the regular appearance of law/culture articles within a range of academic journals – *Crime, Media, Culture* (Sage); *Law and Society Review* (Blackwell); *Social and Legal Studies* (Sage); *Theory, Culture and Society* (Sage); *Theoretical Criminology* (Sage); *Yale Journal of Law and the Humanities* (Yale Law School).

Mezey, 2001; Zacharias, 2011). Of interest here is how cinematic tropes, cultural idioms and narrative forms are increasingly built into the discursive architecture of legal argumentation, judicial decision-making and evidential presentation; as Meyer notes of the thirteen week trial of *United States v Bianco*⁶: 'The stories in that trial presented a remarkably complex interweaving of plots, counterplots, and subplots. There was drama, speculation as to motive and meaning, alternative visualizations of the past: a carnival of theatricality and storytelling' (2001: 147).

Despite the multiple merits of this variegated body of work, the constitutive model advances a relatively impoverished political analysis of law/culture intersectionalities. There are two key aporia relevant to the discussion at hand. The first concerns a tendency to be guided by a 'politics of representation' without any reflexivity about or critical engagement with the problematic of representationalism as a political strategy; the second centres on the failure to adequately theorise processes of political subjectivation. Taking each of these points in turn. In recent years, cultural geographers have questioned the ontological and epistemological wherewithal of representationalist approaches, and call for a perspective informed by nonrepresentational theory (NRT). Primarily associated with the work of Nigel Thrift (1996, 1997, 1999, 2000), this is a framework which eschews the established precepts of representational accounts – that is, the objectification of representational form and content; adherence to processes of categorisation; the search for stable identities and fixed essences; and a preference for representing what can be known, what can be spoken about and what can be seen, over what can be felt, experienced and done (Hinchcliffe, 2001, 2003; McCormack, 2003; Thrift and Dewsbury, 2000; Whatmore, 2002). As Thrift notes, NRT is a processual perspective concerned with 'effectivity rather than representation: not the *what*, but the *how*' (2000: 216, *original emphasis*). From this viewpoint, the sustained focus on law/culture as a relationship which is (or can be) captured in and through representational media (film, artworks, newspapers, trial transcripts, police reports and defense summations) is misplaced and obviates the 'connective sensibilities' (McCormack, 2003: 489) of cultural-legal life – those relational and ontogenetic spaces which emerge from performativity,

affect, desire, and corporeality⁷. To put this more bluntly, representation may have reached the point of 'diminishing theoretico-political returns What would one more decoding of a sign, symbol, or metaphor achieve?' (Castree and MacMillan, 2004: 471).

There is no need to buy into NRT⁸ to accept the point that '(r)epresentation is constitutively inadequate' (Castree and MacMillan, 2004: 476) and it will always be exceeded by the legal-cultural world it seeks to capture. Even so, and whatever its limitations as an ontological and epistemological category, representation remains the primary vehicle for exposing, illustrating, evaluating and questioning law/culture relationalities and their embeddedness in the exercise of discursive power, processes of meaning-making, and practices of resistance⁹. In short, so long as the silenced, marginalised, excluded, and disempowered can be mis-represented, under-represented, poorly-represented, or over-represented in matters of social and legal justice, there will be a need to engage in representational politics. Representation, then, is 'intensely political It is at once dangerous and useful, incomplete and material, inclusive and exclusive' (Castree and MacMillan, 2004: 476). If, then, representation matters, then the task for law/culture scholarship is to remain vigilant about how it does so in all of its generative and performative complexities; as Prendergast notes: what is required is 'the constant renewal of a different, more judicious reflexive turning back on the concept (of representation)' (2000: ix).

A second concern arising from a commitment to a constitutive model and its attendant 'politics of representation', hinges on the absence of an account of political agency. Throughout the literature, assumptions are made about the intentionalities, motives and capacities of both producers and consumers of legal-cultural media, but with no

⁷An important exception to recognising the 'erotics of law' is found in Redhead's monograph, *Unpopular Cultures* (1995). In the context of his review of the contribution of psychoanalysis to culturo-legal work, Redhead identifies the unexplored terrain of 'legal desire' (Redhead, 1995: 82). However, beyond an anticipation that such a line of enquiry might be 'important and fruitful' (Redhead, 1995: 82), the point is not elaborated beyond an entry in a glossary of terms; here, he suggests that an 'erotics of law is the sexualisation of law, the way in which law itself becomes, desired, seduced and consumed' (Redhead, 1995: 111).

⁸NRT does not come without health warnings, and there is no shortage of constructive criticism of its rejection of representationalism – see, for example, Castree and MacMillan (2004); Thien (2005); Tolia-Kelly (2006). For a specific discussion of the political value and impact of NRT, see Barnett (2008).

⁹Elsewhere, I have developed a concept of performance/choreography to make the case for retaining a representationalist orientation at the same time as embracing the insights of NRT and its emphasis on the performative and affective relations of culturo-legal life (Campbell, 2012).

⁶*United States v Bianco*, No. H-90-18 (AHN) (D. Conn. July 16, 1991)

questioning or analysis of how political subjectivities are formed; how the constitutive 'realities' of law/culture are intersubjectively communicated, negotiated and agreed; or who, indeed, has (more or less) political agency in this discursive exchange. So, for example, whether analyses are concerned with popular cultural representations of the legal regulation of paedophilia (Khan, 2009; Kohm and Greenhill, 2011), or the ethico-political power of photographic imagery (Biber, 2006; Valier and Lippens, 2004; Valverde, 2006: 155-163), or the jurisprudential insights of *Harry Potter*, *Legally Blonde* and *Million Dollar Baby* (MacNeil, 2007), the approach has been one of reading *for* the legal-cultural subject, and speaking *on behalf* of the (putative) publics who, despite being the illusory effect of rhetorical strategies of representation, are implicated in these (same) representational worlds as audience. Though much of this scholarship is inflected by a poststructuralist orientation, which eschews simplistic notions of 'media effects', the political engagement of imagined spectators tends to be asserted rather than demonstrated. Where, for example, Brown suggests that prison film audiences are transformed to an 'engaged mode of citizenship' (2009: 191), it is assumed that this transformation involves the movement from passive consumer to ethical witness of the work of punishment. How this shift in viewing position occurs is not explored; neither is there any questioning over whether the transformative moment may also be one in which the (already) 'ethical viewer' is repositioned as a pro-death penalty fundamentalist, or apathetic bystander. There is much, therefore, about contemporary law/culture analyses - despite its post-credentials - which sustains the ethos of the 'law as ideology' movement and reproduces its political shortcomings. More than two decades have passed since Anthony Chase raised concerns about the political inadequacy of extant 'law and ideology' accounts; pointing to the 'absence of a convincing legal sociology (or "reception theory")' (Chase, 1986: 544), he fully recognised the need to demonstrate the popular cultural currency of legal ideas, and to establish how, precisely, legal ideology 'works' through cultural forms to persuade and seduce readers/viewers. Such complaints remain relevant for contemporary work which continues to be hampered by the absence of an agential, representing subject. In short, if law/culture 'is *inscribed politically* through the category of the subject as the constitutive locus of meaning and action' (Dillon and Valentine, 2002: 5), then we should take seriously the situated practices and technologies of media reception.

CONCLUDING COMMENTS

How, then, do we figure the politics of law/culture? I have argued that contemporary work has entered a post-political phase in which an hitherto tendency to characterise the politics of law/culture as an intractable and dichotomous, inter-disciplinary contest over meaning, interpretation and knowledge-production, has given way to a consensus over their (mutually) constitutive relationality. The discussion opened up to scrutiny the power dynamics of legal-cultural intersectionalities as manifest in a range of specific political projects - the politics of recognition; the politics of judgement; and the politics of representation. In each case, what is captured is the contingency, instability and fluidity of law/culture wherein different political aspirations - the pursuit of cultural justice; the adjudication of a right to asylum; the 'forensic gaze' of popular cultural media - rest on a shifting ground of political possibilities. So, for example, where we may have anticipated law/culture as a relationship of mutual accommodation in the determinations of juridico-cultural rights and identities, in practice culture is admitted into politics only at the concessionary discretion of a sovereign law. Similarly, by overly focusing on the constitutive and assimilative power of legal-cultural media and practices, not only is critical reflexivity about representationalism lost; but the performative, affective and corporeal effects of representation in the domain of the 'real' tend to be ignored. Moreover, across these variegated political scenarios, legal-cultural subjects appear to be mere 'stakes in political games' (Valentine, 2002: 53), rather than authoritative interlocutors and active contributors to the political cut and thrust of law/culture debates. Furthermore, though this discussion has offered a deconstructive mapping of the politicising and politicised scope of law/culture relationalities, it has failed to identify how such a variegated political landscape might 'work' to transform the 'realpolitik' of, for example, security, justice, equality and rights. Put another way, it may be a little premature to think that law/culture has transcended the binary politics of antagonism and contestation; at best, we can postulate a rather open-ended and relativist notion of law/culture as an interstitial space of infinite political potentialities.

From outset, I located the politicising force of law/culture within its capacity to create tension and disquiet for disciplinary purists. As a point of departure, this agonistic orientation foreshadows a number of politically-inflected issues concerning not only how this tension is played out across a myriad of legal-cultural

sites, but also for whom (both inside and outwith the academy), and in what ways, the law/culture dispute is problematic. It also raises more intriguing questions as to whether the disruptive and disquieting force of law/culture might *sui generis* constitute the mainspring of political practice and action. I will address each of these issues in turn. A continuing programme of empirical research which pays attention to the everyday contingencies and struggles of law/culture will certainly build on the kind of work already accomplished. Yet, given the need for a sustained and more nuanced focus on the power relations and political effects of highly situated (and mediated) events and practices, both a modified and an intensified perspective on power is called for. Modification comes through the use of alternative theories of power. Notably, this discussion has made no reference to Foucault's thesis on governmental power despite its usage across a substantial body of research and analysis within criminology and socio-legal studies (Ashenden, 1996; Hunt, 1999; Lippert, 2002; O'Malley, 1992; Stenson, 1993), as well as within cultural studies (Bennett, 1998; Simons, 2002; Valentine, 2002). Certainly, a governmental framework opens up the ground of law/culture as a space of practical politics where 'counter-conducts', conflicts and struggles over the sites, techniques, discourses and subjects of law/culture are rendered explicit as a problem for government. Mackenzie's (2008) analysis of how the therapeutic jurisprudence of US drug courts mobilises an ethopolitics of pleasure is one of the few examples of a governmental approach to the relational spaces of law/culture. Here we find a detailed and eloquent account of the ways in which court practices and public health initiatives intersect and mediate cultural constructions of 'pleasure' in an ongoing politics of exclusion/inclusion. There are, of course, other theories of power available: for example, Latour's (2005) work on actor-network theory turns attention to the connections and networks of social interaction, where power is conceptualised as an effect of the situated interpretations and meanings which emerge through interaction about (in this context) legal-cultural contingencies. Alternatively, theories of performative power (Butler, 1990, 1993, 2004), and affective power (Connolly, 2002; Deleuze, 1990; Deleuze and Guattari, 1996; Massumi, 2002) open up novel, innovative and intellectually invigorating lines of inquiry which position the politics of law/culture within an understanding of the everyday flux of embodied, corporeal and emotional life.

Indeed, these perspectives signal a more intensified concern not only for the power dynamics of agency,

personhood, experience and resistance, but also for the range of subjectivities and identities which populate and inhabit the crowded political spaces of legal-cultural worlds. For example, drawing on Butler's thesis on performativity, Wilcox (2011) suggests that for those who are seriously concerned about the gendered politics of security, the need to problematise the meaning and nature of violence, and to trace the connections across violence, subjectivities and embodiment, has enormous implications for the way in which feminist culturo-legal work might rethink not only how security practices are gendered, but also how the very nature of 'security' has lent itself to particular conceptions of 'the body'. These kinds of insights emerge from analyses which not only require an altogether more precise specification of the panoply of critical voices who (may) speak at the interstices of law/culture, but which also have the potential to explore their complex cartographies of power.

All that said, I want to return to what is, perhaps, the more compelling or, at least, interesting prospect for law/culture analyses, especially in terms of making good use of an emerging (and not yet popularised) theoretical framework for thinking about political life. That is to say, the idea that law/culture is provocative and has an 'edgy quality' (Fitzpatrick, 2005: 2) has considerable resonance with Jacques Rancière's thesis of a 'politics of aesthetics' (Rancière, 1999, 2004, 2010). For Rancière, power is not co-extensive with politics; rather, politics emerge from 'ontological conflicts' over what he describes as the 'distribution of the sensible' – systems of divisions and boundaries which define the nature of things and how things may be thought, desired, done, experienced and felt within a particular aesthetic regime. From this perspective, how power is exchanged and exercised within and across the law/culture dyad is of less analytical interest than the 'stuff' of disagreements and dissensus about what is thinkable, sayable, doable, legible, scriptible and visible *in the name* of justice (or freedom, equality, rights, fairness and so on). Using Rancière to critically appraise the intersections of law/culture involves, then, an exploration of moments of aesthetic disturbance – that is, those events and practices, representations and statements, images and symbols, materialities and affects which unsettle our sensibilities and destabilise the established categories and definitions of 'justice' with which we may have become (all too) accustomed.

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