What is Legal Culture? An Anthropological Perspective

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What is legal culture? This has proved an enormously productive concept, used to describe the characteristics of whole countries, for example as 'litigious societies', or to refer to broader dispositions to law, such as a human rights culture. A recent use of the term legal culture comes from the field of economic development. In response to failures in development interventions, development agencies are now seeking to promote a 'rule of law culture'.[2] They argue that the kinds of economic changes necessary for development will not take place without changing the culture of corruption and the culture of legality. Achieving development now requires establishing such a rule of law culture.

This new usage confronts old theoretical problems. Is legal culture a set of ideas or a body of practices? Does it describe how people think about the relevance of law to their everyday lives or the practices that take place within the legal system? Does it differ by nation, by ethnicity, by religion or by locality, or by some combination of these factors? Legal culture turns out to be a very complex concept, subject to considerable debate. Yet it holds an enduring appeal. In his introduction to a volume on adapting legal cultures, David Nelken says that the idea of 'legal culture ... points to differences in the way features of law are themselves embedded in larger frameworks of social structure and culture which constitute and reveal the place of law in society'.[3] Legal culture, in his usage, covers a wide area including the extent to which the legal system is led by the state or by the party, the number and power of courts, the nature of the legal profession, the importance of the judiciary, and the nature and extent of legal training, as well as ideas about what law is for, where it is to be found, and how regulation and dispute resolution should take place.[4] Clearly, this concept marks out a vast array of human behaviour. While it is undoubtedly productive to look for interconnections among these forms of belief and behaviour and the relations among them, it is also challenging to imagine an empirical study that could grasp

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[2] Cohen, AJ (2009) 'Thinking with Culture in Law and Development' (57) *Buffalo Law Review* 511.

[3] Nelken, D (2001) 'Towards a Sociology of Legal Adaptation' in Nelken, C and Feest, J (eds) *Adapting Legal Cultures* Hart Publishing 7 at 25.

[4] Ibid.

this range of ideas, institutions and practices. Moreover, it is not clear how such a concept can deal with the extensive borrowing, transfer and imposition of legal ideas and forms which takes place across the borders of legal fields.

There is a substantial body of critique of the concept of legal culture in law and society scholarship. Roger Cotterrell has offered a trenchant observation of the way the term is used in Lawrence Friedman's work, advocating a focus on legal ideology in its place.[5] Legal ideology is better, he argues, because it is clearly connected to doctrine and avoids a holistic view of culture. Since one of the drawbacks of the legal culture concept is its tendency to see culture as a unity rather than an aggregate, he suggests using the approach of ideal types rather than culture to avoid reification.[6] David Nelken, while more sympathetic to the concept, acknowledges that it is theoretically difficult and incoherent as a mode of explanation. Susan Silbey notes the long-standing difficulty of defining culture and urges using it in conjunction with the concept of 'legal consciousness'. The latter refers to the micro dimensions of law's engagement in everyday life rather than the more macro, aggregate concept of legal culture.[7] She sees law as a set of 'cultural materials with which people produce and experience legality as a structure of social action'.[8] However, she notes that legal consciousness refers not simply to attitudes towards the law but derives from a Marxist paradigm which incorporates dimensions of power and inequality in the concept.[9]

Despite these clear conceptual difficulties with legal culture, it is clearly an appealing and enduring idea, continually resurrected even as scholars complain about its vagueness, inadequacy as an explanation and conceptual incoherence. The 'rule of law culture' is yet another manifestation of the resilience of the idea of legal culture. Specifying the constituent dimensions of the concept facilitates using this provocative, if murky, idea. This article advocates grounding the concept of legal culture in an anthropological understanding of how culture works and dividing it into its distinct but interconnected dimensions.

Anthropologists have been arguing about the meaning of the term 'culture' for at least a century, but some of the meanings of the term have moved into popular discourse. For example, common usage sometimes refers to culture as an explanation for residual features that fall between the cracks of structure. A trite example is the explanation that the Chinese do not drink milk because of their culture. But the argument appears in more subtle forms as well. In another example, at a side meeting Sweden sponsored at the UN Statistical Commission in 2010, a statistician argued that it is hard to reform national statistical practices because of the culture of the bureaucrats. Culture is the residual explanation left over when other modes of explanation are not quite sufficient.

A common meaning of the term culture, also derived from early anthropological usage, is a set of ideas shared by a collectivity. In this version, culture is assumed to be homogeneous, consensual and acquired through membership in a group. It is bounded and static. While this idea has been critiqued extensively, it still appears in a variety of contexts. In UN international meetings, for example, culture is often used to describe the way of life of rural or isolated peoples in villages or remote islands. However, the shared

[5] Cotterrell, R (2006) *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* Ashgate.

[6] Id at 89-91.

[7] Silbey, S (2001) 'Legal Culture and Legal Consciousness' in *International Encyclopedia of Social and Behavioral Sciences* Pergamon Press 8623 at 8624

[8] Id at 8627

[9] Silbey, S (2005) 'After Legal Consciousness' (1) *Annual Review of Law and Social Science* 323.

practices, assumptions, discursive forms and techniques of decision-making found within UN conferences and commission meetings in New York, Geneva and Vienna are not typically understood as cultural.[10]

Within anthropology, notions of culture as residual cause or as holistic system have long since been rejected as inadequate. Instead of seeing culture as referring to the integrated and relatively harmonious ideas and practices of a particular group, anthropologists increasingly see it as a repertoire of actions, practices and beliefs that are relatively flexible and open to change. Cultures are not bounded entities but porous, with ideas and practices that are constantly shifting. Changes are not random, however, but take place in terms of existing cultural ideas and practices. Culture provides the lens through which new institutions and practices are adopted and transformed. For example, Thomas Boellstorff describes how gay and lesbian young people in Indonesia adopt transnational gay identities through connecting their own experiences to the fragments of stories they encounter in international media. Through this process, they acquire new ways of understanding themselves, layering new transnational gay identities on to their existing local ones.[11]

Cultural ideas are contested and connected to relations of power. Cultural repertoires include values and practices, ideas and habits, and innovations along with commonsensical ways of doing things. They are typically plural, with contending ideas about many crucial areas of social life. Culture is the product of historical influences rather than evolutionary change. It is marked by hybridity and creolisation rather than uniformity or consistency.[12] Local systems are embedded in national and transnational processes and particular historical trajectories. This is a more dynamic, agentic and historicised way of understanding culture. It emphasises the active making of culture, society and institutions, and the grounding of this action in specific places and moments.[13]

An example can illustrate such a complex understanding of culture. At a conference on culture and violence against women held in Sydney, Australia in 2002, representatives from an Australian Aboriginal group dealing with violence against women displayed a brochure they had developed for battered women that was richly decorated with the swirls and spots of Aboriginal art. They drew on the artistic traditions of Aboriginal peoples to tailor information about how to seek help for battering in a way that might appeal to other Aboriginal women. They used existing cultural practices, such as art, to package a new idea.

But this is not the only way to localise imported practices. Representatives from another Aboriginal group described their efforts to protect young Aboriginal men from harassment in shopping centres in Sydney. They had developed a tee shirt. The back of the tee shirt listed the legal rights of people in public spaces while the front displayed several stylised faces, some apparently Aboriginal, and the phrase, 'It's public space, Get

[10] See Merry, SE (2006) *Human Rights and Gender Violence: Translating International Law into Local Justice* University of Chicago Press.

[11] Boellstorff, T (2003) 'Dubbing Culture: Indonesian *Gay* and *Lesbi* Subjectivities and Ethnography in an Already Globalized World' (30) *American Ethnologist* 225.

[12] See Khan, A (2007) 'Good to Think? Creolization, Optimism, and Agency' (48) *Current Anthropology* 653.

[13] See Comaroff, JL and Comaroff, J (1997) *Of Revelation and Revolution: The Dialectics of Modernity on a South African Frontier. Vol. II* University of Chicago Press.

Outta My Face'.[14] The Aboriginal presenter explained that 'get outta my face' is a phrase commonly used by young Aboriginal people which was why it was chosen by the young people for the tee shirt. However, the words and images were not those of Aboriginal art but of African-Americans protesting against racism. The young people, facing racism in Australia, chose a phrase from the transnational language of resistance. They localised their claims to rights with transnational images. These examples show the creativity and flexibility of culture in its mobilisation by local activists, and contradict claims about the persistence of an unchanging 'traditional culture' among these indigenous peoples. Such processes of appropriating signs and sentiments are fundamental to the way culture works within contemporary globalisation.

What can such a concept of culture add to the prevailing views of legal culture? Answering this question requires two steps. The first is to examine the intellectual origins of the concept of legal culture in comparative law, anthropological theories of culture as interpretation, and law and society scholarship. Given my own expertise, I will focus on the latter two and not attempt an analysis of the comparative law dimensions of the concept, while noting that comparative law has changed its use of the concept over time.

The second step is to develop a more complex model of legal culture by disentangling its constituent parts. I argue that there are at least four distinct social phenomena that are referred to from time to time as legal culture. Sorting them out is very useful for understanding the concept sociologically. Each dimension of legal culture can be distinguished analytically, although in practice the lines dividing them are quite blurry and each influences the others. After examining the ancestry of the legal culture concept, I discuss these four aspects. I then argue that two of these aspects, legal mobilisation and legal consciousness, offer the best way to understand the cultural dimensions of law and its relationship to a social context. They also provide a more satisfactory analysis of the processes of translation across legal fields and the hybridity of these fields. I will illustrate this point with a case study from Gujarat in India.

DISAGGREGATING LEGAL CULTURE

I discuss four dimensions of the way the term legal culture has been used: legal practices, understandings of the place of law in society held by the public, legal mobilisation, and legal consciousness. After a brief overview of all four, the article discusses each one in greater detail.

The first dimension is the *practices and ideologies within the legal system.* A legal system has work groups, everyday ways of getting things done, shared assumptions about good and bad clients, and other internal rules and practices, some of which are based on legal doctrine and others on common ways of handling problems. One of these everyday practices is the set of categories, such as ideas of race and gender, by which litigants are understood. This dimension refers to the way practitioners within the law see the rules, the legal system and the kinds of people who use it. Lawrence Friedman uses the term internal legal culture to describe this perspective.[15]

[14] Presentation from Wirringa Baiya/Tranby Aboriginal Cooperative College, 22 February 2002, Sydney.

[15] Friedman, L (1975) *The Legal System: A Social Science Perspective* Russell Sage Foundation.

A second dimension of legal culture is the *public's attitude towards the law*. The legal system may be seen as a source of corruption and ethnic preference, for example, or it may be viewed as an institution that offers the rule of law for all people equally, regardless of their background. In some contexts, the public sees law as a source of order and justice, while in others it appears corrupt and erratic. Of course, people vary greatly in their opinions depending on their own personal experience with the legal system. This is somewhat similar to what Friedman calls external legal culture.[16]

Third, legal culture refers to how readily people define their problems in legal terms, which is generally referred to as *legal mobilisation*. This refers to instances when individuals in various social groups and situations turn to the law for help. Legal mobilisation involves calling the police, filing a lawsuit or criminal complaint, or even reporting a neighbour to the legal system. Social movements that rely on legal discourse and legal strategies also engage in legal mobilisation.

A fourth dimension of legal culture is *legal consciousness*. This describes the extent to which individuals sees themselves as defined by the law and entitled to its protections. When people take a problem to the legal system, they are acting in response to their legal consciousness. However, experience with the law, both good and bad, can change legal consciousness. It may encourage further use or may drive the litigant to avoid the law next time.

Separating these dimensions of legal culture analytically clarifies the concept of legal culture and makes it a more amenable to empirical research. Each dimension requires a specific method of research. The first requires organisational analysis and ethnographic study of legal institutions, the second a survey of public attitudes and perspectives, the third the analysis of recourse to legal remedies, and the fourth a study of how people conceive of problems and the relevance of the law to these conceptions.

However, since in practice each of these categories overlaps and influences the others, it is important to see that they are not distinct forms of social behaviour but dimensions of social life always reshaping each other in some ways. For example, the claim that a society is litigious relies on all four aspects of legal culture. It says that legal mobilisation is excessive. The overuse of the law is the product of a legal consciousness of entitlement and an institutional framework that makes the legal system relatively accessible. Public perception that a society is litigious implies that the public sees the legal system as too available, and is too ready to see its problems in legal terms. Further, it implies that the practitioners within the system feel overburdened by the amount of work they are doing. Thus, while each of the constituent dimensions is separate, they are clearly interconnected as explanations of this phenomenon.[17] This article argues that considering the constituent dimensions of legal culture separately provides far better insight into the law/society relationship, greater scope for agency, and a more nuanced analysis of processes of legal transfer, translation and hybridity.

[16] Ibid.

[17] Galanter, M (1983) 'Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society' (31) *University of California at Los Angeles Law Review* 5.

THEORETICAL ORIGINS OF THE CONCEPT OF LEGAL CULTURE

The concept of legal culture has at least three distinct theoretical genealogies. One comes from the field of comparative law, which in the past studied legal families and traditions, examining how they develop and how they cluster together. The second is an anthropological focus on the way law expresses ideas and values that are shared within the larger society, both reflecting and creating these larger systems of thought and action. The third is a sociolegal perspective on the way legal institutions operate in practice. Clearly, these are quite different approaches to the concept, each with value in its own terms and yet suggesting different perspectives on legal change and comparison.

In the past, comparative law scholars used the concept of legal culture to describe the traditions or families of law, emphasising the similarities between closely related legal systems, although this is now changing. Sociologists of law, in contrast, see law as a product of its social context, and emphasise the role of economic and social factors in promoting change.[18] In an Onati conference discussing legal transplants, comparative law scholars argued that the widespread transplantation of law shows its indifference to context, while sociologists of law focused on processes of adaptation and diffusion.[19]

The interpretive anthropology of Clifford Geertz and Lawrence Rosen provides another approach to legal culture. In the early 1980s, Clifford Geertz suggested a cultural approach to law, arguing that law is not just a bounded set of norms, rules and principles but a frame within which the world is made sense of, 'part of a distinctive way of imagining the real'.[20] In his interpretive theory of culture, culture is a system of meaning, incorporating symbols that are shared and public. These symbols and systems of symbols constitute, communicate and alter structures of meaning in the domain of law as well as in other domains of social life.[21] Geertz advocates a hermeneutic approach rather than a functional one, arguing that 'meaning, not machinery' is the fundamental problem.

The concept of legal culture in this tradition sees law as a set of cultural principles and categories, crystallised into legal concepts.[22] In Lawrence Rosen's introduction to his book on law as culture, he argues that cultural concepts stitch together the various domains of social life such as economy, politics and kinship. Members of a given culture see them as logical and obvious but also immanent and natural. 'In short, we create our experience, knit together disparate ideas and actions, and in the process fabricate a world of meaning that appears to us as real.'[23] Law is one of these cultural domains with a distinctive history, terminology and personnel. It is not isolated, however, but a part of this more comprehensive culture. For example, when judges speak of 'the reasonable man' or talk about whether a frozen embryo can be 'owned', they draw on the broader assumptions that characterise the culture of which law is a part. To understand law, it is essential to see how it is embedded in these wider cultural systems. Rosen suggests viewing law

[18] See Nelken 'Towards a Sociology of Legal Adaptation' supra n 2 at 7-8, 14; Nelken, D (2006) 'Rethinking Legal Culture' in Freeman, M (ed) *Law and Sociology* Oxford University Press; Cotterrell, R (1997) 'The Concept of Legal Culture' in Nelken, D (ed) *Comparing Legal Cultures* Dartmouth 13.

[19] Nelken 'Towards a Sociology of Legal Adaptation' supra n 2 at 7-12.

[20] Geertz, C (1983) *Local Knowledge: Further Essays in Interpretive Anthropology* Basic Books at 184

[21] Id at 182.

[22] See Rosen, L (1980-81) 'Equity and Discretion in a Modern Islamic Legal System' (15) *Law and Society Review* 217; Rosen, L (2006) *Law and Culture: An Invitation* Princeton University Press.

[23] Rosen *Law and Culture* supra n 21 at 4.

as a 'framework for ordered relationships, an orderliness that is itself dependant on its attachment to all the other realms of its adherents' lives'.[24] In different societies, there may be other institutions that create this sense of order, such as rituals in Bali and India, but law is virtually always part of a system that gives meaning to the life of a community.

Citing Geertz, Rosen sees law as a species of social imagination. Law offers a window into the larger culture and culture offers a window into legal processes.[25] For example, to compare Islamic, Indic and customary *adat* law in Indonesia, Geertz picks key terms to explore systems of thinking and practice. His analysis is based not on behaviour but on cultural categories embodied in key terms.[26] Similarly, in his analysis of Moroccan lower courts, Rosen shows that the Arabic term *haqq* that describes ideas of 'right', 'duty' and 'truth' refers as well as to the sense of mutual obligation and indebtedness, ideas basic to Moroccan social and family life.[27] An assertion becomes 'true' or 'real' when it has been validated by a formal agreement in front of others or by the actions of others to support it. Thus, the term refers both to underlying principles of Moroccan social life and to the way the legal system determines facts. According to this approach, the court renders interpretations in terms of a particular 'legal sensibility' enshrined in the judicial forum which are also linked to conceptions within everyday life. Law is local knowledge, 'vernacular characterizations of what happens connected to vernacular imaginings of what can'.[28]

Work in this tradition explores the fundamental categories of meaning embedded in law and culture. Within this framework, comparison requires examining the metaphors and cosmologies of legal systems as well as the common and diverse problems that they face. This approach focuses on the shared meanings of public symbolic systems within a social group. It links the cultural meanings within legal systems with those outside the law, tracing continuities in underlying cultural assumptions. While this approach is clearly valuable in seeing how law is embedded in everyday life and expresses its fundamental values, it does so at a very general level. Although it is useful as an orienting concept to suggest broad linkages, this model implies a level of social homogeneity that is rare. It is clearly not useful for analysing the complex legal terrains produced by legal transfer, adaptation and hybridisation. It presumes a relatively stable and unchanging legal sphere and social field, a situation that rarely survives the effects of urbanisation, globalisation, legal transplants, war and many other transformations of the contemporary period. Although Cotterrell thinks this model might work in small-scale societies such as the Trobriand Islands studied by Malinowski in the 1910s,[29] even this society had experienced substantial transformation from missionaries, traders and palm plantations.[30]

A third strand of work on legal culture comes from the sociology of law and sociolegal studies. Here, Lawrence Friedman's work on legal culture since the 1960s has been very influential.[31] Friedman defines legal culture as 'the ideas, values, attitudes, and opinions

[24] Id at 7.
[25] Id at 12.
[26] Geertz *Local Knowledge* supra n 19 at 183.
[27] Rosen 'Equity and Discretion' supra n 21 at 221-23.
[28] Geertz *Local Knowledge* supra n 19 at 215.
[29] Cotterrell *Law, Culture and Society* supra n 4 at 92.
[30] Malinowski, B (1926) *Crime and Custom in Savage Society* Littlefield and Rowan.
[31] Friedman *The Legal System* supra n 14; Friedman, L (1994) 'Is there a Modern Legal Culture?' (7) *Ratio Juris* 117; see Cotterrell *Law, Culture and Society* supra n 4 at 82.

people in some society hold, with regard to law and the legal system'.[32] He claims that each person has a legal culture as an individual but is also part of a collective and shares in the ideas and habits of that group. Legal culture consists of ideas, values and attitudes that are held by a community, although not all in the same way. Instead, they can be thought of as patterns, tendencies and trends.[33] It describes public attitudes towards law.

Moreover, legal culture serves as the source of law, in that cultural norms create legal norms and determine the impact of legal norms on society. As the subjects of law react to the orders and institutions of laws, they determine the effect of these orders and institutions. Friedman argues that legal culture is, in effect, an intervening variable. Social forces make law, but not directly. They change society as a whole and the way people see their society, which in turn changes their orientation towards law.[34] Using this idea, Friedman claims that there is an emerging modern legal culture in developed nations focused on ideas of individualism and rights. This is fundamental to the modern legal culture found in several countries. The rights consciousness generated by individualism has a profound effect on legal culture and on the development of law itself, as increasing numbers of people seek help for injustices, leading to what has been called a 'litigation explosion'.[35] Foreshadowing future developments, Friedman points out that law reform needs to take legal culture into account.

Clearly, Friedman offers an overarching conception of legal culture that includes many of the dimensions discussed already. In fact, he sees legal culture as a broad term for attitudes and opinions that he sometimes describes as legal consciousness and sometimes as knowledge and opinion about law. He also notes that it can be measured by asking people questions about how they think about the law or by watching what they do. One can ask what they think about speed limits, for example, and watch how fast they drive.[36]

While he sees the possibility of using this concept for work on comparative legal culture, Friedman notes that this is very hard to do in practice. One of the difficulties is the lack of comparable categories for measurement; another is the lack of data on legal culture.[37] However, I think the problem of comparison is made more difficult by the failure to separate the empirically distinct dimensions of the concept. Recent efforts to measure law and the rule of law by international financial institutions and NGOs such as the World Justice Project are currently grappling with similar problems, both those of incommensurability and a lack of data. They are confronting questions about whether to measure the law on the books or the law in action, recognising that these two perspectives require very different kinds of information. They are also struggling with how to develop universal categories for comparison while recognising the importance of local knowledge. The latter is essential to carry out an analysis of the complexity of each legal system and the way it is understood and used by various publics. Some facets of the Geertz/Rosen approach to legal culture are important, yet make comparison even more difficult. In the next section, I disaggregate the concept of legal culture into four dimensions. I think these distinct areas render comparison somewhat easier.

[32] Friedman 'Is there a Modern Legal Culture?' supra n 30 at 118.
[33] Id at 120.
[34] Id at 118-19.
[35] Id at 125.
[36] Id at 119.
[37] Ibid.

FOUR DIMENSIONS OF LEGAL CULTURE

The Practices of Legal Institutions

Legal culture refers to the culture of legal institutions. In this sense, it describes the norms and practices by which specific legal institutions operate. Thus, it refers to the culture of courts, lawyers' offices or WTO dispute mechanisms. Lawrence Friedman refers to this as the internal legal culture, and emphasises the central role of lawyers in creating and maintaining it. Ethnographic studies describe the cultural space of local legal institutions through norms, practices, ideologies and structural factors. For example, Barbara Yngvesson investigated the work of court clerks and judges in a small New England town[38] while Susan Terrio explored the place of juvenile delinquents in the Paris Palace of Justice.[39] Legal ideas about evidence, case-handling and procedural routine affect decision-making and the daily operation of legal institutions, as Malcolm Feeley showed in a court in New Haven, Connecticut.[40] The culture of legal institutions is shaped by structural characteristics such as how people get into positions of power, the views they bring with them, their training and their connection to the political process. At the same time, implicit judgments about gender, class and race establish cultural codes and ways of doing things. John Hagen and Ron Levi's study of the ICTY, the international court for Yugoslavia, shows how its development was influenced by the ideas of legal practice that various prosecutors brought to the task of constructing a new legal institution, for example.[41] Clearly, there are cultural practices and understandings within legal institutions and the legal profession that shape how the law works.

Public Attitudes and Beliefs about the Law

A second dimension of legal culture refers to the public view of the place of law in social ordering. This dimension describes the extent to which the public sees law as relevant to the governance of society and their expectations about how the legal system works. For example, publics in India expect the process to be very protracted, while in Italy they recognise considerable delay.[42] Social psychologists such as Tom Tyler have explored the extent to which members of a society say they will comply with the law and find that compliance is associated with a sense that the legal system is procedurally fair.[43] Thus, studies of procedural justice address public perceptions of the fairness of the legal system and willingness to comply with its requirements. Friedman refers to this as external legal culture.

However, there is clearly no sharp dividing line between the external and the internal. Non-professionals acquire training to enter the law, while untrained people participate in

[38] Yngvesson, B (1993) *Virtuous Citizens Disruptive Subjects: Order and Complaint in a New England Court* Routledge.

[39] Terrio, S (2009) *Judging Mohammed: Juvenile Delinquency, Immigration, and Exclusion at the Paris Palace of Justice* Stanford University Press.

[40] Feeley, M (1979) *The Process is the Punishment* Russell Sage Foundation.

[41] Hagan, J and Levi, R (2005) 'Crimes of War and the Force of Law' (83) *Social Forces* 1499.

[42] Nelken, D (2007) 'Defining and Using the Concept of Legal Culture' in Orucu, E and Nelken, D (eds) *Comparative Law: A Handbook* Hart 109.

[43] Tyler, T (2006) *Why People Obey the Law* 2nd ed. Princeton University Press.

the legal system as litigants, witnesses, juries, audiences for court TV and citizens voting for legislators, as well as compliant or criminal members of a society. The law not only exercises its authority over those who bring their problems to it, but also over those who never darken its doors. It creates identities and conveys messages to the wider society.[44] Social movements such as the battered women's movement[45] or the pay equity movement[46] call on the symbolic resources of the law ('it is a crime to hit your partner' or 'unequal pay is a form of discrimination') even when they don't actually use legal strategies. In another example, a poster from Vikalb, a women's organisation in Gujarat, India, declared, 'Lesbian Rights are Human Rights.' The law is clearly a cultural resource for making meaning within a society.

Legal Mobilisation

A common approach to understanding legal culture is to focus on when and how often problems are defined as legal. Legal mobilisation describes the tendency for various individuals and groups to define their problems as legal ones and take them to some legal regime for help or settlement. Once individuals decide that they have a grievance that demands action, they typically choose among a series of legal or quasi-legal forums.[47] How they handle their problem depends on how they conceive it in the first place and what kinds of options they think are available, as well as the costs and benefits of each. Costs and benefits can be financial, moral, social or religious, among others.

Research on dispute processing shows that not all problems are thought of as legal issues, nor do those who think their problems are legal necessarily take them to the legal system. When and how a problem becomes a legal one is highly contextual. Some research has tracked the trajectory of disputes, exploring when and why a person comes to see an experience as injurious and under what conditions that problem is brought to the attention of the legal system.[48] Some problems are more readily defined as legal than others. Sometimes even a problem defined as a legal one leads to relatively little mobilisation of the formal legal system. Civil rights violations,[49] street harassment[50] and disability rights[51] are all situations in which Americans seem reluctant to assert the legal rights provided them.

Some groups are less enthusiastic about thinking about their problems as legal than others. Indeed, there are groups that refuse to define their problems as legal or to mobilise

[44] Eg French, JH (2009) *Legalizing Identities: Becoming Black or Indian in Brazil's Northeast* University of North Carolina Press.

[45] Merry, SE (2003) 'Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence' (25) *Human Rights Quarterly* 343.

[46] McCann, M (1994) *Rights at Work* University of Chicago Press.

[47] See Nader, L and Todd, H (eds) (1978) *The Disputing Process: Law in Ten Societies* Columbia University Press; von Benda-Beckmann, K (1981) 'Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra' (19) *Journal of Legal Pluralism* 117.

[48] Felstiner, WLF, Abel, RL and Sarat, A (1981) 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming' (15) *Law and Society Review* 631; Merry, SE (1990) *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* University of Chicago Press.

[49] Bumiller, K (1992) *The Civil Rights Society: The Social Construction of Victims* Johns Hopkins University Press.

[50] Nielsen, LB (2006) *License to Harass: Law, Hierarchy, and Offensive Public Speech* Princeton University Press.

[51] Engel, DM and Munger, FW (2003) *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* University of Chicago Press.

the legal system. For example, in her study of a Southern Baptist community, Carol Greenhouse found a religiously based reluctance to take problems to the legal system and a preference for prayer[52] while Carol Greenhouse, David Engel and Barbara Yngvesson find significant variations in the way Americans in different communities mobilize the law.[53] In some parts of the mid-western USA, David Engel finds that personal injuries are understood as part of the risks of living and should not serve as the basis for lawsuits.[54] In his recent study of injury victims in Thailand, Engel observes that individuals in this society also prefer to deal with injuries through religion, increasingly turning to Buddhism in response to globalisation. Instead of relying on the law, which looks increasingly valueless against more powerful strangers, the personal injury victims Engel and Engel interview seek explanations for their misfortunes in the spiritual domain.[55]

Social movements also mobilise legal arguments, both at the domestic and the international level.[56] Social movements may use law directly in litigation strategies, or more aspirationally as a source of standards and norms and common ground for building alliances. The movement against violence against women is based on redefining some forms of violence, such as domestic violence, as a crime rather than as a form of discipline or an unfortunate dimension of marriage.[57] Even in the absence of litigation, rights concepts such as human rights offer fertile sources of inspiration for activists and contribute to the use of law 'from below'.[58]

People who frequently resort to legal strategies for dealing with problems may be labelled litigious, with the implicit normative judgment that they use law too often. Sometimes the label 'overly litigious' is applied to a society as a whole, implying that these 'excessive' patterns of legal mobilisation are so widespread that the society can be characterised as overeager to turn to law. Yet careful research has cast doubt on such claims even for the United States.[59] Indeed, some research shows that even those who possess legal rights are relatively reluctant to assert them, whether to deal with street harassment[60] or disabilities.[61] Despite some evidence that populations gradually acquire a sense of

[52] Greenhouse, C (1989) *Praying for Justice: Faith, Order, and Community in an American Town* Cornell University Press.

[53] Greenhouse, C, Engel, D and Yngvesson, B (1994) *Law and Community in Three American Towns* Cornell University Press.

[54] Ibid

[55] Engel, D (2005) 'Injury Narratives: Globalization, Ghosts, Religion, and Tort Law in Thailand' (30) *Law and Social Inquiry* 3; Engel, DM and Engel, JS (2010). *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand* Stanford University Press.

[56] McCann *Rights at Work* supra n 45; Keck, ME and Sikkink, K (1998) *Activists beyond Borders: Advocacy Networks in International Politics* Cornell University Press; Merry, SE, Levitt, P, Rosen, MS and Yoon, DH (2010) 'Law from Below: Women's Human Rights and Social Movements in New York City' (44) *Law and Society Review* 101.

[57] Merry, SE (2009) *Gender Violence: A Cultural Perspective* Blackwell.

[58] Santos, BdeS and Rodriguez-Garavito, CA (2005) 'Law, Politics, and the Subaltern in Counter-Hegemonic Globalization' in Santos, BdeS and Rodriguez-Garavito, CA (eds) *Law and Globalization from Below: Towards a Cosmopolitan Legality* Cambridge University Press 1; Rajagopal, B (2003) *International Law from Below: Development, Social Movements, and Third World Resistance* Cambridge University Press; Rajagopal, B (2005) 'The Role of Law in Counter-hegemonic Globalization and Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India' (18) *Leiden Journal of International Law* 345.

[59] See Galanter 'Landscape of Disputes' supra n 16.

[60] Nielsen *License to Harass* supra n 49.

[61] Engel and Munger *Rights of Inclusion* supra n 50.

possessing human rights,[62] it is clear that a simple training regime fails to inculcate an active engagement with human rights in which subjects see themselves in this new form.

Legal mobilisation describes actions, not rules, yet these are actions that are shaped both by the way various publics see and understand the law and the kinds of interventions the law provides. Local police may appear helpful and fair or corrupt and indifferent, affecting the willingness to call on them. As Tyler argues, the perception of fair treatment induces a greater sense of the legitimacy of law.[63] Nielsen's study of street harassment suggests that one reason people are reluctant to turn to the law for help is that they expect nothing will be done.[64] Reinforcing legal claims induces a greater sense of entitlement and more legal mobilisation.

Legal Consciousness

Legal consciousness is a term developed to describe the way individuals experience and understand the law and its relevance to their lives. It builds on shared understandings embedded in a local or national culture but is also inflected by the individual's experience with the legal system. Thus, this is an assessment of an individual's subjectivity with relation to the law: the way the individual comes to relate to the social world through legal categories and discourses.[65] People's subjectivity with relationship to law is linked to their sense of themselves as members of a community, since communities are typically defined by their legal fields, whether a town, a state or a nation. To identify as a person with human rights, it may be necessary to see oneself as a world citizen, for example. Engel and Engel use the concept of legal consciousness as a precondition to legal mobilisation. It describes individuals' understanding of the relevance of the law to their own problems. This affects their inclination to ask for help from the legal system. Thus, legal consciousness of Thai citizens is a way of understanding legal mobilization.[66]

Legal consciousness develops in relationship to the legal system itself. Those who experience support for their legal claims will develop a different legal consciousness from those who are ignored or find their claims belittled. Legal consciousness, in other words, is acquired as part of an individual's cultural repertoire but can change with experience, particularly experiences with the legal system. For example, the US battered women's movement emphasises to those who have experienced domestic violence that they have the right not to be hit, no matter what they do, and that they can appeal to the state for relief. For women who find the police and the courts supportive, these ideas may well become part of their legal consciousness, but for those who find little encouragement from the law, their legal consciousness may remain sceptical about the role of law in this problem. A consciousness of legal entitlement requires positive reinforcement from system. Despite significant efforts to teach people that they have rights, including human rights, without positive feedback from the legal system, rights consciousness fails to take hold.

[62] Risse, T, Ropp, SC and Sikkink, K (eds) (1999) *The Power of Human Rights: International Norms and Domestic Change* Cambridge University Press.

[63] Tyler *Why People Obey the Law* supra n 42.

[64] Nielsen *License to Harass* supra n 49.

[65] See Merry *Getting Justice and Getting Even* supra n 47 at 6; McCann *Rights at Work* supra n 45 at 7; Engel and Engel *Tort, Custom, and Karma* supra n 54 at 3.

[66] Engel and Engel *Tort, Custom, and Karma* supra n 54.

Legal consciousness is an example of how culture creates subjectivity through experience. It builds on the idea that culture is both a set of ideas and a set of habits and ways of doing things, some of which are not theorised or consciously recognised. In this latter category are rules like personal space and waiting in queues. Legal consciousness takes different forms. Patricia Ewick and Susan Silbey argue that legal consciousness refers to a limited set of narratives that ordinary Americans have about the law, which they characterize as 'before the law', 'with the law' and 'against the law'.[67] These represent three distinct schemas, or cognitive maps, through which individuals see themselves in the world. They are ways of understanding how the law works in relation to the self. Any person may have more than one schema, deployed at different times depending on the situation.

Legal consciousness leads individuals to make claims based on their membership in communities, regions, nations or the international world. In order to make claims on a state legal system, for example, it is necessary for individuals to conceive of themselves as a citizen in a cultural and social as well as a legal sense. Citizenship is a legal status, but it is also a social one, on the basis of which individuals feel entitled to make claims on the state.[68] For example, James Holston argues that in the growing population of the urban poor in Brazil, there is an increasing consciousness of citizenship and a concomitant rise in political activism and sense of entitlement.[69] Those who assert human rights claims tend to imagine themselves as world citizens as well as members of states and communities. Many forms of local justice are defined as relevant to those who identify with a community or ethno-national group.[70]

In sum, legal consciousness is the interpretive framework individuals develop based on their socialisation into various culturally patterned legal spheres and the subjectivity of membership in a group defined by these spheres. It is shaped by their experiences with these legal spheres.

HYBRID AND VERNACULAR LEGAL CULTURE

Under contemporary conditions of globalisation and the widespread transfer of legal knowledge and technique, legal culture tends to be hybrid. Legal systems in the current era typically consist of procedures, institutions, rules and practices that are imported from other legal systems and translated into the local context, a process I call vernacularisation.[71] All the parts are reconstituted in some way in the new assemblage.[72] For example, as litigants and ordinary people encounter new courts or forms of policing, their legal consciousness and legal mobilisation practices change. Transplanted legal mechanisms

[67] Ewick, P and Silbey, S (1998) *The Common Place of Law* University of Chicago Press.

[68] See Coutin, SB (2007) *Nations of Emigrants: Shifting Boundaries of Citizenship in El Salvador and the United States* Cornell University Press.

[69] Holston, J (2008) *Insurgent Citizenship: Disjunctions of Democracy and Modernity in Brazil* Princeton University Press.

[70] See Merry, SE (1997) 'Legal Vernacularization and Transnational Culture: The Ka Ho'okolokolonui Kanaka Maoli, Hawai'i 1993' in Wilson, R (ed) *Human Rights, Culture and Context: Anthropological Perspectives* Pluto Press 28.

[71] Merry, *Human Rights and Gender Violence* supra n 9.

[72] Merry, SE (2006) 'Transnational Human Rights and Local Activism: Mapping the Middle' (108) *American Anthropologist* 38.

such as alternative dispute resolution facilitate the emergence of new sets of ideas about the relevance of law, new patterns of legal mobilisation and a different legal consciousness. To understand legal culture under conditions of hybridity and change, it is helpful to separate analytically the four dimensions of legal culture. I will use a case study of women's courts in India to illustrate this method of analysis.

Women's Courts in Gujarat

Over the last two decades, the women's movement in India has created a set of 'women's courts' to provide women with support in conflicts over marriage, divorce, inheritance and violence. The *nari adalat* or women's court was inspired by a women's development programme funded by the Dutch government and administered by the Indian government's Department of Education. The programme created local women's collectives or *sanghas*, and asked each to identify problems they wanted to redress. Domestic violence and divorce emerged as core issues. Since violence in the home was a major concern to many of the village women, the collectives developed a system of women's courts to handle domestic violence, divorce and other family conflicts. These courts began in Gujarat in 1995 and in Uttar Pradesh in 1998.[73] A 2001 study reported that in the six years since they were initiated, the four *adalats* in the Vadodara (Baroda) district handled about 1,200 cases of marital violence, harassment, divorce, maintenance, property and child custody, and successfully resolved a majority of these. The clients were mostly low caste and tribal women.[74]

The *nari adalat* were modelled after the village court or *panchayat*. Although a *panchayat* or village council with judicial functions is a familiar feature of village and caste life in rural and small-town India,[75] a *panchayat* consisting only of women is highly unusual. These courts merged ideas of women's human rights, Indian feminism, women's empowerment and development, and traditional local governance by councils. The *nari adalats* added a new legal sphere to the already existing system of state law and legal aid services, village *panchayats*, and informal family and community mediation. They operated according to sociocultural principles drawn from the women's movement and human rights as well as local and national law.

The idea of a women's court was initiated by the Indian women's movement. In 1974, the Government of India's Committee on the Status of Women issued a report, *Towards Equality*, which proposed establishing women's *panchayats*, although they were not created at the time. As the focus on women's development shifted from a concern with women's welfare in the 1960s, to the productive roles of women within the modernization paradigm in the 1970s and 1980s, to a more feminist vision bent on challenging social inequalities and promoting a radical vision of women's empowerment in the mid-1980s, however, the idea of a women's *panchayat* reemerged.[76]

[73] International Center for Research on Women (ICRW) (2002) *Women-Initiated Community Level Responses to Domestic Violence: Domestic Violence in India: Exploring Strategies, Promoting Dialogue 5* ICRW, USAID/India at 34

[74] [73] Krishnamurthy, M (2002) 'In the Shadow of the State, in the Shade of a Tree: The Politics of the Possible in Rural Gujarat' BA thesis, Harvard University (ms on file with the author) at 3, based on MS Annual Reports

[75] Galanter, M (1989) *Law and Society in Modern India* Oxford University Press.

[76] Sharma, A (2006) 'Cross-breeding Institutions, Breeding Struggle: Women's "Empowerment", Neoliberal

The *nari adalats* built on a long tradition of women's movement activism as well as government and international donor support. The parent programme, called *Mahila Samakhya* (MS), is a national-level rural women's 'empowerment' programme started by the Indian government's Department of Education in 1989 with funding from the Dutch government.[77] MS endeavoured to promote gender equality, development and social change by empowering poor women and providing them the knowledge and self-confidence to make changes.[78] The programme introduced human rights ideas to its clientele of poor, illiterate women, many of whom are tribals or Dalits, low-caste people. Domestic violence was a core concern.[79]

During the first four years of the MS programme, participants were trained by Jagori, a feminist resource and training centre in Delhi.[80] Seventeen women were trained as paralegals with a feminist critique of the legal system and alternative definitions of violence against women and divorce.[81] When I visited Jagori in 2001, the director said that the programme puts a strong emphasis on women's rights but that they were inspired more by national than international law. They sometimes refer to international conventions and treaties but Indian sources of inspiration are more important. The *nari adalat* articulates and enacts this diverse set of legal principles.

The members of the *nari adalat* tour the district, meeting at regular days and times in public places near government offices to dispense legal advice and settle marital disputes.[82] They are not paid nor are their travelling expenses covered. They have no legal authority but rely on pressure and shaming. Like the parent MS programme, they straddle the government/NGO divide, claiming either identity as it seems helpful.[83]

Krishnamurthy's ethnography describes how *nari adalats* move creatively between community and state to gain recognition in the villages and access to formal institutions.[84] The women meet in government compounds close to police and local government offices, assert their status as part of the official MS programme, use state symbols such as files, stamp paper and seals, call on the police for protection, and cite formal laws to support their decisions as they were trained to do by urban activists. At the same time, they reflect the communities they come from. They use humour and shaming to pressure litigants, adjust their meeting times to the rhythms of village life, and use their knowledge of local practices, customs and social networks to gather evidence and negotiate agreements. They do not try to end marriages but emphasise the rights of the woman within marriage.[85]

Governmentality, and State (Re)Formation in India' (21) *Cultural Anthropology* 60; Sharma, A (2008) *Logics of Empowerment: Development, Gender and Governance in Neoliberal India* University of Minnesota Press.

77 ICRW *Women-Initiated Community Level Responses to Domestic Violence* supra n 72; Sharma *Logics of Empowerment* supra n 75.

78 Poonacha, V and Pandey, D (1999) *Responses to Domestic Violence in the States of Karnataka and Gujarat* Research Centre for Women's Studies, SNDT Women's University at 161; Sharma 'Cross-breeding Institutions, Breeding Struggle' supra n 75; ICRW *Women-Initiated Community Level Responses to Domestic Violence* supra n 72 at 32-65.

79 ICRW *Women-Initiated Community Level Responses to Domestic Violence* supra n 72 at 70.

80 See Krishnamurthy 'In the Shadow of the State, in the Shade of a Tree' supra n 73 at 42.

81 ICRW *Women-Initiated Community Level Responses to Domestic Violence* supra n 72 at 49.

82 Poonacha and Pandey *Responses to Domestic Violence in the States of Karnataka and Gujarat* supra n 77 at 161-78.

83 Sharma 'Cross-breeding Institutions, Breeding Struggle' supra n 75.

84 Krishnamurthy 'In the Shadow of the State, in the Shade of a Tree' supra n 73 at 12, 51.

85 ICRW *Women-Initiated Community Level Responses to Domestic Violence* supra n 72 at 51.

Their authority is limited, and they seem to be most successful in helping women arrange divorces and escape violent marriages, particularly among poor families. They are less successful with wealthy families and with cases of rape and molestation, which require greater evidentiary effort.[86]

Nevertheless, an ICRW study in 1999–2000 indicated that the operation of these courts and the closely related *mahila panch* (Women's Councils) made violence in the home a more open and public offence. ICRW evaluations of these programmes indicate that those who experienced the *nari adalats* were more aware of their rights and better able to speak up.[87] A counter-culture based on resisting violence in terms of the intrinsic rights of women is developing slowly, largely in local terms: 'Research documented the innovative ways in which activists use their local knowledge to reshape and reinterpret community idioms, phrases and beliefs to create and persuade the community to adopt new perspectives'.[88] As they promote the ideology of human rights, some women say they have learned to stand up for themselves.

The *nari adalat* in Gujarat state was thriving when I visited one of its sessions in 2005 together with Peggy Levitt, N Rajaram at the Department of Sociology, MS Univ of Baroda, and Vaishali Zararia, our graduate research assistant. We were working together on an NSF-funded study of the vernacularisation of women's human rights in four parts of the world.[89] The research focused on two women's NGOs in Beijing (China), Baroda (India), Lima (Peru) and New York City (USA).

The women's court met once a week in the village square of a town called Padra, a hot, dry plaza with a large tree in the centre that was surrounded by a raised concrete platform. The police station faced the square on one side, the courthouse on another. About 15 women of middle age, including some grey-haired older women, travelled there each week from surrounding villages and towns. They held a court for women seeking help with problems such as husbands who beat them or who refused to return a portion of their dowry following their divorce.

When we visited the court, it had been operating for almost 15 years. Most women judges volunteered; only two or three leaders received a small stipend for their work. We watched one case in which a young woman dressed in a demure green dress with a headscarf complained that her husband beat her. The husband, who had been summoned to appear at the court, retorted that she deserved to be beaten because she was such a poor cook. The women seated in judgment raised their voices as one to challenge this claim, arguing that women don't deserve to be beaten under any circumstances. Undeterred, the man's father, standing by his son's side, reiterated that the woman deserved what she got. While the woman's father, who lingered timidly in the background, said nothing in his daughter's defence, the *nari adalat* leaders sternly criticised the husband. A crowd of some 25–30 men stood on the outskirts of the circle, watching with fascination as the husband was upbraided and told not do this again. Some of the people in the audience

[86] Id at 99.
[87] Id at 40-41, 54.
[88] Id at 72.
[89] Levitt, P and Merry, SE (2009) 'Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States' (9) *Global Networks* 441; Rajaram, N and Zararia, V (2009) 'Reducing Gender Injustice in a Globalizing World: Challenges in Translating Women's Human Rights in Baroda, India' (9) *Global Networks*.

were lawyers, dressed in white shirts and black trousers, listening intently. During this public event, new standards were articulated for how husbands should treat their wives, performed in front of this mixed-gender audience.

The women of the *nari adalat* are informal leaders in the villages surrounding this town, but they are also connected to the state. They record all cases in an official book, require small filing fees and issue decisions on legal stamp papers. Some also resolve cases on their own in their home towns for a small fee. The support of local headmen, the use of state legal formalities, access to a Government of India jeep through the women's development programme and occasional support by police all help convince male defendants that they must appear and face the accusations of their wives and family members. On the other hand, the women 'judges' also say they are part of an NGO. Their work is currently supported by an NGO, and its origins were in the work of a women's NGO also connected to the state.[90]

These women say they are using human rights. But when we asked them what human rights mean, they said that they did not really know and wanted to know what we thought. In their practices of case handling, they told women that they should stand up for themselves, that they did not have to be hit, and that if they divorced their husbands, they could take some of their dowry property with them. Yet their opposition to domestic violence drew direct inspiration from the human rights documents that laid the foundation for their intervention. They did not cite articles, sections or texts from CEDAW. Instead, they insisted that women should stand up for themselves, an idea they modelled through their own actions. They translated the language of human rights produced in New York, Geneva, Vienna and Beijing into a set of ideas that made sense locally. They argued that a woman can oppose the violence of her husband and family. In many places, this is a radical idea. Thus, this new legal regime articulated a legal culture concerning women's position in the family and the relevance of the local courts to domestic violence that combined Indian law, Indian feminism and international human rights.

Legal Hybridity and Legal Culture

The women's court is a new, hybrid legal regime. Women who previously sought help from the caste or village *panchayat* or the state legal system now have another choice. Not only has the *nari adalat* changed patterns of legal mobilisation, it has also changed ideas about how the law will intervene in family conflicts. Using ideas of empowerment, 'standing up for yourself' and human rights, the *nari adalat* articulates and enacts a new understanding of women's role in marriage and husbands' rights over them. It calls male authority into question and asserts women's right to part of their dowry. As women mobilise this legal regime and their cases are heard in the public square, a new cultural view of women's roles and of the responsibility of legal institutions is articulated and performed to a large and attentive male audience. Women's rights not to be treated cruelly, although already embedded in Indian law, are enacted publicly in a law-like forum.

The four aspects of legal culture are all transformed in the operation of this hybrid legal institution. *Legal practices.* The everyday practices of the court combine those of village *panchayats*, as the group of 15 women gather regularly in the village square and

[90] Krishnamurthy 'In the Shadow of the State, in the Shade of a Tree' supra n 73.

hear cases, and the courts. The record book and stamp paper plus small filing fee replicate the techniques of the legal system. Yet the judges are all women, often of lower caste. They insist that women have the right not to be hit and to recover some of their dowry payments. While these provisions are found in the law, they are not always enforced. The women's court also brings a broad set of human rights ideas into the operation of this quasi-legal institution.

Public understandings of the place of law in society. The very public nature of these hearings, and the large audience of watching men and lawyers, suggests that these courts are creating a new understanding of the role that a court can play in the sphere of marriage, divorce and violence. Not only are they emphasising the role of law, but they are also changing the way law intervenes. Instead of supporting male authority, these courts are asserting a human rights' view of women's equality and autonomy, at least in some areas of life. They are bringing both the ideas of the Indian women's movement and women's human rights into the village square by means of a quasi-legal mechanism.

Legal mobilisation. The statistics on the number of women using the courts provided above suggest that significant numbers of women are mobilising these courts. These are problems that were viewed as part of everyday life in families in the past. For example, a survey of 89,199 ever-married women in 1998–99 in India indicated widespread acceptance of domestic violence. In the survey, 56.3 per cent of respondents agreed that under some conditions husbands have the right to beat their wives. Among rural women, the percentage rose to 59.5 and among illiterate women, 61.6. For those with a low standard of living, the percentage was 62 per cent. While only 21 per cent of women respondents, and 29 per cent of low-income women, said they had been beaten or physically maltreated since the age of 15, the survey responses suggest a high level of acceptance of domestic violence.[91] The mobilization of law through the *nari adalats* challenges this widespread idea that domestic violence is an appropriate mode of disciplining women and outside the scope of the law.

Legal consciousness. The availability of this new legal resource, joined with the ideas of the women's movement and the human rights movement, offers women the opportunity to exercise rights. As they find that some legal institutions support them, they are more likely to claim these rights and to transform their legal consciousness about domestic violence. As they participate in this forum, women seem to develop new ideas about their entitlement to help from the legal system. Insofar as the court is able to enforce its decisions, it helps them to develop a new legal consciousness of their rights and their entitlement to legal help. While it is hard to know to what extent the woman in the example I gave developed a new consciousness, it is clear that her experience of violence was being redefined as a violation, and that this was done in a public setting with a large number of male observers. She returned the next week for further assistance from the women's court. As mobilisation of this forum leads to a changed legal consciousness about domestic violence, it will be used more often. Such practices can change broader cultures of gender and violence as well as ideas about the relevance of law to these practices.

[91] International Institute for Population Sciences, Mumbai, MEASURE DHS+,ORC Macro (2000) *India: National Family Health Survey (NFHS-2), 1998-99.* Calverton, MD at 73

CONCLUSIONS

This article advocates a more disaggregated approach to describing and measuring legal culture. Disentangling the constituent elements of legal culture renders a vague and underspecified concept amenable to empirical analysis. Moreover, this approach facilitates the analysis of legal culture under conditions of hybridity and vernacularisation of global legal norms and practices such as those of human rights. It makes legal culture a more useable concept and less vulnerable to ambiguity in definition and inconsistency in its uses. This framework sees the cultural domain as a resource, a practice and a dimension of institutions but not a residual cause. Such a dynamic mode of analysis is a far more promising way to incorporate the dimensions of the cultural into the analysis of law/society relations than the holistic idea of legal culture.

Some aspects of the concept are more empirically accessible than others and warrant special attention. Legal mobilisation is particularly empirically accessible. Legal consciousness and the practices and ideologies of legal institutions can be studied with ethnographic and survey approaches. Holistic conceptions, such as those advocated by Geertz and Rosen, are more difficult to use in practice and are not so useful under conditions of rapid change.

In sum, this article suggests that there are important dimensions of legal culture that warrant continued empirical research and theoretical development. The term has been so enduring, despite its incoherence, that it is clear that it is important. Pulling its constituent elements apart will make it a more valuable and viable concept.