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Critical Cultural Legal Studies

Rosemary J. Coombe*

[My] purpose . . . is to make explicit the systems of operational combination . . . which also compose a “culture,” and to bring to light the models of action characteristic of users whose status as the dominated element in society . . . is concealed by the euphemistic term “consumers.” Everyday life invents itself by poaching in countless ways on the property of others.

—Michel De Certeau

Clint Eastwood doesn’t want the tabloids to write about him. Rudolf Valentino’s heirs want to control his film biography. The Girl Scouts don’t want their image soiled by association with certain activities. George Lucas wants to keep Strategic Defense Initiative fans from calling it “Star Wars.” Pepsico doesn’t want singers to use the word “Pepsi” in their songs. Guy Lombardo wants an exclusive property right to ads that show big bands playing on New Year’s Eve. Uri Geller thinks he should be paid for ads showing psychics bending metal through telekinesis. Paul Prudhomme, that household name, thinks the same about ads featuring corpulent bearded chefs. And scads of copyright holders see purple when their creations are made fun of. Something very dangerous is going on here.

—Judge Alex Kozinski

The law seeks to eliminate ambiguity.

—Edmund Leach

* Associate Professor of Law, University of Toronto. The text of this article is drawn from Rosemary J. Coombe, Contingent Articulations: A Critical Cultural Studies of Law, in LAW IN THE DOMAINS OF CULTURE 21 (Austin Sarat & Thomas R. Kearns eds., 1998), and from the introduction to ROSEMARY J. COOMBE, THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW (forthcoming Duke Univ. Press 1998). All rights reserved. I thank the publishers for permitting me to reprint segments of both essays here and Mark Fenster for the invitation to present my work in the context of this Symposium.


I. WALKING IN THE CITY

I am on my way to the university to teach my class in intellectual property. I decide to walk down Queen Street—into that ever-so-self-consciously hip strip officially (and painfully) known as “The Fashion District,” which runs west from the downtown core in Toronto. Parallel to King and Dundas Streets and crosscut by Dufferin, Bathurst, and Simcoe, Queen Street is central to the city’s British colonial topography, overlaid more recently by a municipally imposed multiculturalism. Just to my west, street signs proclaim me to be in “Little Portugal,” although all visible evidence suggests that “Little Saigon” might be more appropriate. Identities in such social contexts shift too quickly to be encompassed by official mappings, which, despite the liberal intentions of their cartographers, belie a colonial containment of alterity.

Shifts in relations between spaces, places, and identities are clear in the new uses of old contributions to the cityscape tendered by a now-elderly generation of Ukrainian, Polish, and Czech immigrants—Orthodox churches, butcher shops, travel agencies, and package services that long specialized in shipping goods into the Soviet Union. Gradually, these commercial spaces are being transformed. Rents along this section of the street are lower than they are closer to downtown, but even this far west, aspiring entrepreneurs accrue some of the street’s cachet. Xeroxed reproductions of Warhol posters, plastic busts of Elvis, Partridge Family gameboards, and Monkees album covers are favored forms of commercial decor in an area where Fredric Jameson’s name is often dropped in café conversations, and paraphrases of Jean Baudrillard litter the alternative press. Nostalgia with respect to histories of marketing and celebrity, and an ironic attitude toward them, create a shared identity for a generation unbound by organic traditions. This, social theorists would have us believe, is characteristic of the condition of postmodernity.

To obtain my morning espresso, I am once again compelled to choose between great pastry at the local Ukrainian bakery or better coffee at the Second Cup®, a franchised yuppie coffee bar that locals tried hard to resent when it first “invaded” their neighborhood. Priding themselves on their individuality and social distinction, residents rejected the corporate insignia of serial equivalence that they saw a “chain” to represent. Once the Ukrainian bakery obtained a trademark, standardized its logo, and opened three new locations flying the flag of Futures™, it seemed rather futile to maintain the attitude. It’s too early for decisions; characteristically, I decide simply
not to decide and visit both. Clutching poppyseed cake and skimming movie reviews, I bump into a disheveled young man. His shoulder bag proclaims him “Armed and Hammered.” I smile at the parody and think about the different ways in which we recode and recycle the detritus of commercial culture.

Standing in line amidst the predictable layout of the coffee bar (it’s probably a legally protected form of trade dress), I notice the lovely graphics of the early-twentieth-century cigarette advertisements—now enlarged and framed to hang on restaurant walls. Their availability for this purpose is a consequence of the expiration of copyright protection for the advertisements, but savvy marketers know only too well that you need only provide them with a new format to set the royalties flowing once again. Although the original image may not be protected as an exclusive property, the new presentation of it will be. In any case, the copyright notice will scare off a good number of competitors regardless of its legitimacy or the extent of its coverage.4 I glance at the display of merchandise in the coffee shop. “Old,” “colonial” trademarks have been newly reproduced to stick on bags of coffee and adorn overpriced mugs while “new” varieties of expensive Columbian beans are marketed with narratives of imperialist nostalgia. Scoring the brandnamed coffees embraced by our parents, we are nonetheless eager to embrace ever-emergent symbolic distinctions in “unbranded” goods. The social passages, from advertisement to ambience, distinction to genericity, labor to logo to libertinism (the Armed and Hammered parody), and standardization to signification that are congealed in these encounters are complex but typical of relationships of symbolic exchange (as well as capitalist patterns of manufacturing difference and consumer behaviors of social differentiation).

In the window of a Latin American import shop I recognize a familiar logo, but I can decipher no more—the rest of the label is in Spanish. Jars of Nescafé® are imported from Latin America to sell to immigrant families from Equador and Columbia, nostalgic for the tastes of home. In mass markets, I muse, “the real thing” must be authenticated by figures of standardization; somehow the trademark embodies the security and comfort afforded by familiar distinctions. This speculation is only slightly complicated when I find Jacob’s “Krim Krakers” from Malaysia in an Asian grocery—next to the more familiar Jacob’s Cream Crackers offered at a lower price. The cost of importing the pidgin packaging is clearly substantial. Also on display

4. Witness, for instance, the number of old fruit crate labels and Southern racist product logos that have been purportedly revived as exclusive properties in the form of copyrighted postcards.
are varieties of tinned beans—canned by Mr Gouda's®. Once the main source of mass-market ed Caribbean foodstuffs in Toronto—the only source of ackee, for example—the company now markets garbanzo, pinto, and kidney beans under the banner “Multicultural.” How long, I wonder, before they claim the trademark rights in the use of this term for the marketing of groceries?

On the street, hot pink posters stapled to telephone poles inform me that the Nancy Sinatras (a local lesbian band) are playing the Cameron (a local pub) again on Thursday. Huge billboard advertisements for Black Label® beer loom overhead. Populated by nonchalant black-clad youth posing in smoky billiard halls, they seem eerily to echo something of the local mien. In fact, this is exactly what they do. Black Label® had been a “dormant brand” for many years. It was precisely this lack of connotation—the mark’s minimalist economy—that made the brand a favorite among those associated with the Queen Street counterculture in the late 1980s. Any beer that wasn’t associated with suburban barbecues, babes in bikinis, and weekends with the buddies was difficult to find, and this one’s black label was coolly mnemonic of the anti-lifestyle of the area’s artists, actors, students, and cultural workers. Noticing the increase in sales, the manufacturer located the neighborhood taverns doing the brisk business and decided to explore its new market. Students “in plain clothes” were sent as detectives to investigate the rites, ethos, and symbols of this lifeworld; sufficient ethnography was accomplished to model renewed advertising upon the signifying styles characteristic of the subculture so discovered. The advertising campaign subsequently won national awards, and was chronicled and celebrated as the creative authorial work of corporatecopyrighters. For years, local residents were surrounded by commercial simulacra of their leisure (but tourists were at least assured that they were in the right neighborhood).

A teenager on the streetcar I board shrugs off a leather jacket adorned with a stitch-on emblem—a cameo of the Colonel (you know the one), his genteel Southern gentleman’s face overlaid with skull and crossbones. Food tampering, I wonder? No, too literal—maybe a comment on the company’s treatment of chickens. I ask her if she knows why there is a skull and crossbones over the Kentucky Fried Chicken® logo. Glancing quickly and curiously at her jacket she says, “It’s my boyfriend’s, but I think you can buy them.” “Do you know who makes them?” I ask. She looks at me as if I had requested the name of her narcotics source and murmurs something noncommittal.

I wave from the window to a few of my former students selling silk-screened t-shirts. This week they are embossed with the cartoon image of My Favorite Martian™, the insignia of Mattel’s Hot
Wheels®, and reproductions of popular book jackets. Recently they created t-shirts that featured the cover of anthropologist Emily Martin's book, *The Woman in the Body*, which reproduces Picasso's "Girl Before a Mirror," and the jacket of Foucault's *Discipline and Punish*, which reproduces a gruesome medieval woodblock. These were sold to local feminists, sadomasochists, and tourists seeking souvenirs to recall their experience of the street's intertextual sophistication. I'm somewhat bemused that these book covers are the most immediately useful resources they derived from my Law and Contemporary Social Theory course. At least in some eyes, I'm uncomfortably aware, my status as a professor teaching intellectual property at the country's most esteemed faculty of law demands a less reflexive view of my students' entrepreneurial activities. I'm more concerned that their inventories may at any time be seized without notice by zealous monitors of those private properties that circulate culturally in the public sphere, and that criminal charges may be laid by state officials whose sense of the public interest seems shaped primarily by profit-oriented actors. It is difficult merely to wink in the students' direction.

A young girl I guess to have Salvadorean ancestry walks by carrying a bottle of water trademarked "Clearly Canadian™." How much easier it is to acquire membership in a national community through the indicia of consumption than through the bureaucracy of immigration tribunals and refugee claims procedures. On the back of the newspaper I'm carrying, a major brewery advertises one of its flagship brands ("Canadian" beer). The slogan "I am... Canadian" surrounds an image of a young white man struggling with his fly in what appears to be a motel room. "Next time, I'll remember to bring underwear," the caption reads. The welfare state is slowly but surely dismantled and ideologists of free trade sacrifice national traditions of care, shared responsibility, and social commitment for the uncertain benefits of foreign investment and competitive standing in a global economy. A tawdry and exclusionary image of national belonging circulates in the press, while others struggle to have the dimensions of their suffering heard in parliaments. Market forces shape the commerce of meanings that citizenship may acquire, ever proclaiming the transparency of the nation-state and the simplicity of its claims upon us.

In a grocery store window incongruously juxtaposed with more fashionable retro facades, the Land'o'Lakes® Indian princess peeks

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out from amidst the clutter. Nearby, expensive art deco and fifties collectibles are represented by dozens of gleaming chrome objects displayed in the front window of the Red Indian™ store. Such slick nostalgia, marketed with an emblem from an era when “we” were more “innocent” and less “politically correct,” sits altogether too smugly across the street from a crafts outlet owned by native peoples, in which exquisite beadwork sits abandoned on dusty sheets of pegboard. A few yards away, advertisements for Indian™ jeans dominate the walls of a bus shelter where a man of First Nations ancestry is unconsciously sprawled, suffering the devastating cumulative effects of solvent abuse in a hostile urban environment. More “Clearly Canadian™,” I wonder? A cheerful Disney film titled The Indian in the Closet is advertised through marketing tie-ins promoted by McDonalds®—children are promised their own free “Indian” with every Happy Meal™. Both in the Magic Kingdom® and under The Golden Arches®, native peoples are mere toys to fire fantasy. Attempts by First Nations peoples to “come out of the closet” and protest their stereotyping in commercial culture provide poignant reminders of the political stakes in contemporary struggles over commodified representations.

On my way into the subway, I pass the Twiggy restaurant and reluctantly shift my attention to the intellectual property lecture ahead of me. Already I have considered at least thirty-four legally protected cultural texts, run into about a dozen potential intellectual property infringements, and encountered a score of other intellectual properties I didn’t reflect upon. Other representations, no longer protected by laws of trademark and copyright, are now part of the city’s vibrant public domain, while elements of the public domain are constantly appropriated in the proprietary expressions of those whom the law recognizes as authors. Intellectual property issues press upon me in the commercial culture I share with my students, but eighteenth-century philosophical frameworks are deemed the appropriate academic vehicles with which to explore the dusty doctrines of copyright. There are “cases to cover” and I must get through them all on time.

My meanderings along Queen Street mirror and compress the major themes of my work on intellectual property over the last decade. These issues, concerns, and practices include: the constitutive role of intellectual properties in commercial and popular culture; the forms of cultural power the law affords holders of copyright, trademark, and publicity rights; the significance of celebrity images in alternative imaginations of gender; the commodification of citizenship and the negotiation of national belonging on commercial terrain; the appropriations, reappropriations and rumors that continually
reactivate and reanimate commodity/signs\textsuperscript{7} to make them speak to local needs; the colonial categorical cartographies that underlie our legal regimes; and the postcolonial struggles of indigenous peoples to eliminate commodified representations of their alterity. Consideration of these themes has enabled me to delineate the parameters of what I nominate “a critical cultural legal studies.”

II. THE INTERPRETIVE LIFE OF THE LAW

The cultural dimensions of social life and the interpretive nature of human experience have become issues of concern in legal scholarship primarily in the last decade.\textsuperscript{8} The \textit{Yale Journal of Law & the Humanities} has been a significant venue for such work. As I have suggested elsewhere, literature in this vein too rarely addresses the legal status of the signifying vehicles with which meaning is made.\textsuperscript{9} Intellectual property laws, which create private property rights in cultural forms, afford fertile fields of inquiry for considering the social intersections of law, culture, and interpretive agency. The rights bestowed by intellectual property regimes (copyright, trademark, publicity rights, design patents, and associated merchandising rights in particular) play a constitutive role in the creation of contemporary cultures and in the social life of interpretive practice. As the Colonel Sanders image, the nomination of Nancy Sinatra, and the appropriation and reappropriation of the Picasso print indicate, the imagery of commerce and the commodification of imagery provide a rich semiotic source for expressive activity. In consumer cultures, most pictures, texts, motifs, labels, logos, trade names, designs, tunes, and even some colors and scents are governed, if not controlled, by regimes of intellectual property. These legal frameworks enable the reproduction and repetition of cultural forms as ever the same marks of authorial proprietorship, while paradoxically prohibiting and inviting their interpretive appropriation in the service of other interests and alternative agendas. The law’s recognition and protection of some activities of meaning-making under the guise of authorship

\textsuperscript{7} A commodity/sign is a sign that is a commodity with an exchange value in its own right as well as a signifier with a field of cultural connotation.

\textsuperscript{8} Those concerned with interpretive issues focus primarily upon the interpretation of legal texts, with some lesser attention to the interpretation of legal facts. For an overview of the development of the field of “law and interpretation,” see Rosemary Coombe, \textit{Same As it Ever Was: Rethinking the Politics of Legal Interpretation}, 34 \textit{McGILL L.J.} 603 (1989). For discussions of the interpretation of legal facts, see \textit{CLIFFORD GEERTZ, LOCAL KNOWLEDGE} (1983); Kim Lane Scheppelle, \textit{Facing Facts in Legal Interpretation, in LAW AND THE ORDER OF CULTURE} 42 (Robert Post ed., 1990); Kim Lane Scheppelle, \textit{Manners of Imagining the Real, 14 L. & SOC. INQUIRY} 995 (1995).

(the corporate advertising copy) and its delegitimation of other signifying practices as forms of piracy (the shoulder bag parody) create particular boundaries for cultural agency. This dialectical relationship between authorship and alterity is a significant, if overlooked, dimension of contemporary cultural politics.

Scholars in literary theory, communications, film studies, and political theory point to the social importance of media-circulated cultural forms and their political significance in contemporary consumer societies. As my saunter down Queen Street illustrates, the texts protected by intellectual property laws signify—they are cultural forms that assume local meanings in the lifeworlds of those who incorporate them into their daily lives. Circulating widely in contemporary public spheres, they provide symbolic resources for the construction of identity and community, subaltern appropriations, parodic interventions, and counterhegemonic narratives.

In philosophical, economic, moral, and utilitarian arguments, legal scholars tend to address intellectual property laws purely abstractly, as promoting reified rights in unremarkable, indistinguishable intangible properties. For too long, legal scholars addressed intellectual property protections in terms of incentives to produce abstract goods, without considering what was “owned,” or how rights of possession were (or were not) exercised. There has been too little consideration of the cultural nature of the actual forms that intellectual property laws protect, the social and historical contexts in which cultural proprietorship is (or is not) assumed, and the manner in which these rights are (or are not) exercised and enforced to intervene in everyday struggles over meaning. The political consequences of expanding intellectual property rights in a democratic society are only now receiving long-needed attention.11 Not insig-

10. See, e.g., sources cited infra note 32.
significantly, much of this new academic work is being carried out by younger, female, and minority legal scholars sensitive to the workings of power and the effects of subjection and subjugation that pervade even the most facially "neutral" areas of legal doctrine. My own work is very much part of this larger critical project; it is distinguished (as works and signatures must be in market economies) from other recent work in the same vein by an ethnographic sensibility, greater attention to the workings of law in everyday life, local knowledges and local practices—and by a greater cynicism with respect to the potential for categories derived from Enlightenment traditions to adequately address the issues raised by contemporary forms of cultural politics. Moreover, I believe that controversies over intellectual properties speak to larger debates in the humanities and social sciences about cultural texts and subject-formations, identity and community, hegemony and alterity, democracy and difference, imagery and embodiment, nationality and narrativity.

Laws of intellectual property mediate a politics of contested meaning that may be traced in the creation and appropriation of symbolic forms and their unanticipated reappropriations in the agendas of others. Intellectual property protections may disrupt activities of meaning-making, but such activities may also disrupt the positivity of legal meanings. The mass-reproduced, media-circulated cultural form accrues social meaning in a multiplicity of sites, but legally, the meaning of a text is produced exclusively at a mythic point of origin. Thus, the Black Label® advertising campaign was, in legal terms, corporately authored, even though the revitalized realm of
connotation in which the brand became central was created by the expressive work of consumers.

The law may freeze the play of signification by legitimating authorship, deeming meaning to be value properly redounding to those who "own" the signature or proper name, without regard to the contributions or interests of those others in whose lives it figures. This enables and legitimates practices of cultural authority that attempt to contain the expression of difference (and difference) in the public sphere. Emergent social differences are often expressed through the medium of commodified texts—texts that are defined legally as properties. Such differentiations in interpretive practice paradoxically may be encouraged even as they are explicitly deterred by regimes of intellectual property. These are propositions I develop and substantiate in my forthcoming work, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law.*

With respect to the potential parameters of an interdisciplinary project like a cultural studies of law, certain convictions have emerged from and guided my research. There is little purchase, I am convinced, in constructing an ideal bridge to join two autonomous realms of "law" and "culture," insofar as this would reinforce the metaphysics of modernity that enabled their emergence as discrete and naturalized domains of social life. An exploration of the nexus of law and culture will not be fruitful unless it can transcend and transform its initial categories. A continuous mutual disruption—the undoing of one term by the other—may be a more productive figuration than the image of relationship or joinder.

My encounters along Queen Street reflect and refract the major themes of my work. The lecture that followed this walk—at a time when I half-heartedly acquiesced in merely covering and questioning


13. Law and culture(s) emerge conceptually as autonomous realms of being in Enlightenment and Romantic imaginaries; they share a parallel historical trajectory in ideologies that legitimate and naturalize bourgeois class power and global European hegemonies. To ask how it became possible to frame questions in these terms—under what conditions it became conceivable to comprehend law as something that regulates culture or culture as something that helps us to understand law—is to inquire into a history of mutual implication in European modes of domination. Recognition of the Eurocentric, racist, and colonialist provenance of these categories does, however, open up conceptual space for new avenues of inquiry. Whether this interdisciplinary opportunity is deemed a cultural studies of law, a critical legal anthropology, and/or a genre of cultural studies, matters less than a continuing rejection of reified concepts of law and culture. I develop this point at more length in Rosemary J. Coombe, *Contingent Articulations: A Critical Cultural Studies of Law, in Law in the Domains of Culture* 21 (Austin Sarat & Thomas R. Kearns eds., 1998). For discussions of the histories of the emergence of law and culture as discrete and autonomous realms, see Peter Fitzpatrick, *Mythologies of Modern Law* (1992); and Robert Young, *Colonial Desire: Hybridity in Theory, Culture and Race* (1995).
the doctrine contained in appellate-level judicial decisions as a model for legal pedagogy—does not figure as significantly. Although litigated and reported cases are important, I believe that a critical cultural studies of law should not put its primary interpretive emphasis on these. Like other practitioners of cultural studies, my approach is antipositivist. I do not presuppose that the social life of the law can be explored simply in terms of its logos, positivities, or presences. It must also be seen in terms of “counterfactuals,”14 the missing, the hidden, the repressed, the silenced, the misrecognized, and the traces of practices and persons underrepresented or unacknowledged in its legitimations. To embody a sensitivity to the marginalized—the absences and inaudibilities in contemporary cultural spheres—I have avoided limiting my inquiries to reported cases or even to litigated disputes. The law’s impact may be felt where it is least evident and where those affected may have few resources to recognize or pursue their rights in institutional fora. This is certainly true in the field of intellectual property, where the interpretive life of the law may be found in rumors and myths about rights and obligations, local conventions of textual appropriation, cease-and-desist letters, and injunctions threatened and settled without hearings in disputes rarely addressed at trial on their legal merits. To understand the power of law in such circumstances requires a more robust theoretical framework that more adequately addresses the law’s cultural power.

Although my sensibility is an ethnographic one, an entrenched skepticism toward both law and culture as reified fields of social life animates my anthropological perspective upon issues of intellectual property. In short, I suggest that exploring law culturally provides a more focused and politicized emphasis upon meaning in those disciplinary spaces that are preoccupied with questions of power. Similarly, studying culture legally in fields like anthropology and cultural studies will enable disciplines with tendencies toward culturalism to have more specific and material theories of power. Considered as a field of cultural politics, intellectual property has provided an especially promising point of entry for exploring the prospects for an interdisciplinarity that enmeshes perspectives drawn from anthropology, cultural studies, and law and society scholarship. These perspectives are informed by a decade of debates about the concept of culture that emerged (for better or for worse) under the rubric of postmodernism.

III. AGAINST THE DISCIPLINE OF CULTURE(S)

Discussions about culture—its heuristic value and political limitations as a term of analysis—reveal a pervasive unease. Misgivings about the heuristic value of studying culture(s) and the powers legitimated by such reifications have generated new perspectives and avenues of research in both the discipline of anthropology and the interdisciplinary field of cultural studies. As anthropologists acknowledged the orientalizing tendencies of a concept of culture that delineated discrete cultures as formations to be studied in their own terms (cultures with a lowercase "c"), they became increasingly cognizant of the complex relations between power and meaning in everyday life. Culture has been largely reconceptualized as activities of expressive struggle rather than symbolic context, as involving conflicted signifying practices rather than integrated systems of meaning. Influenced by Gramsci—often mediated through Raymond Williams—anthropologists over the past two decades have become more comfortable with the idea of culture as both the medium and the consequence of social differences, inequalities, dominations, and exploitations—the form of their inscription and the means of their collective and individual imbrication.

Similarly, in reaction to the Eurocentrism and elitism of the humanities’ privileging of "Culture" as a canon of discrete works of European art and literature (which I will hereinafter designate culture with an uppercase "C"), a critical cultural studies was forged. Cultural studies is not "a tightly coherent, unified movement with a fixed agenda, but a loosely coherent group of tendencies, issues, and questions." Emerging from a widespread dissatisfaction with the Eurocentric elitism characteristic of those fields of humanities that traditionally took Culture as their object of inquiry, cultural studies practitioners rejected the modernist insistence upon the integrity and autonomy of the literary or artistic work and the value of studying cultural artifacts as self-sufficient wholes. They connected texts to the specific histories of their production, consumption, reception, and circulation within socially differentiated fields. In accordance with Williams’s dictum that "culture is ordinary," British cultural studies

16. Id. at ix. A good history of cultural studies is provided in IOAN DAVIES, CULTURAL STUDIES AND BEYOND: FRAGMENTS OF EMPIRE (1995). Summary overviews of cultural studies abound; metatheories of the field’s coverage and import are now almost as ubiquitous as examples of the genre. Toby Miller provides an irreverent overview of the overviews and a copious bibliography. See Toby Miller, Introducing Screening Cultural Studies, 7 CONTINUUM 11 (1994).
centered upon everyday life—the structures and practices within and through which societies construct and circulate meanings and values. Like contemporary ethnographers, practitioners of cultural studies reject the modern focus upon the singularity and integrity of authorial works. They study cultural forms not as timeless statements of value but as "the real, the occasional speech of temporally and historically situated human beings." They emphasize contingency and particularity, affect and ambivalence, iteration and itinerance rather than "the eternal and the abstract in language and experience." Again, we see a shift toward the cultural politics of quotidian practice. Rejecting modernity's boundaries between culture and everyday life as well as the related distinction between high culture and popular culture, cultural studies attends to everyday cultural practices as the locus both of domination and transformation. In its connection of the social life of textuality with everyday experience and its attention to the social centralizations and marginalizations realized through rhetorical deployments, this approach shares many of the inclinations that shape postmodern anthropology.

These scholarly tendencies to write against culture have parallels in the field of law and social inquiry. In the last decade, many law and society scholars have turned away from positivist, formalist (doctrinalist or structuralist), and institutionally centered accounts of law to explore law as a more diffuse and pervasive force shaping social consciousness and behavior. Although sociolegal studies has no explicit agenda of writing against law, such tendencies are nascent, if not fully realized, in a growing body of literature. As disillusionment with instrumentalist, functionalist, and structuralist paradigms have set in, concerns with law's legitimation functions—its cultural role in constituting the social realities we recognize—were emphasized. Constitutive theories of law recognize law's productive capacities, as well as its prohibitions and sanctions, shifting attention to the workings of law in ever more improbable settings. Focusing less

17. See BRANTLINGER, supra note 14, at 37.
18. STEVEN CONNOR, POSTMODERNIST CULTURE 120 (1989).
19. Id. at 121.
20. Most scholars of law and society write against law as a body of self-sufficient doctrine, or law as an autonomous set of institutions. They also reject the abstractions of structuralist analyses of law or liberal legal discourse, even when such practices are allegedly critical, as they are in Critical Legal Studies and critical race theory. These might be seen as propensities to write "against law" in the sense that these scholars are writing against its dominant self-representations.
exclusively upon formal institutions, law and society scholarship has begun to look more closely at law in everyday life, in quotidian practices of struggle, and in consciousness itself. A critical cultural studies of law should be informed by all of these tendencies to write "against culture." As Arjun Appadurai suggests:

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

Connecting texts to contexts, however, does not assume holistic systems of meaning—that is, culture in the Romantic or modern anthropological sense. Indeed, cultural studies eschews social organismic, or the idea that the life of a nation may be found embodied in its “works” of cultural expression:

[C]ultural processes are intimately connected with social relations, especially with class relations and class formations, with sexual divisions, with the racial structuring of social relations and with age oppressions as a form of dependency. [C]ulture involves power and helps to produce asymmetries in the abilities of individuals and social groups to define and realize their needs. [C]ulture is neither an autonomous nor an externally determined field, but a site of social differences and struggles.

To fully appreciate such sites, we need to adopt multiple and shifting perspectives that consider multiple moments of a cultural form’s social life. These would include places in people’s daily lives, in the realm of public representations, the contexts and conditions of interpretive

constitutive perspective, see Austin Sarat & Thomas R. Kearns, Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life, in LAW IN EVERYDAY LIFE 21 (Austin Sarat & Thomas R. Kearns eds., 1993).

22. See, for example, the essays collected in LAW IN EVERYDAY LIFE, supra note 21. See also Craig A. McEwen et al., Lawyers in Everyday Life: Mediation in Divorce Practice, 28 L. & SOC’Y REV. 149 (1994).


26. See id.
reception, the influence and contestations of those readings in private lives and social lifeworlds, the authorization, legitimation, denial, or injunction of those interpretations in institutional fora, and the potential transformation of such readings in the production of new cultural forms.

Such multidirectional social circuits of textuality are all too rarely addressed. More often than not, scholars focus on one or two movements in this journey as if the other moments in some way followed. As Richard Johnson asserted in an influential overview of cultural studies, we cannot know how a text will be read simply from the conditions of its production, any more than we can know which readings of a text will assume salience within people’s everyday lives.27 Scrutinizing texts in terms of their formal qualities tells us nothing about their conditions of production or consumption, the basis of their authority, nor their likely interaction with existing ensembles of cultural meanings in socially specific experiences. These ensembles, “reservoirs of discourses and meanings, are in turn raw material for fresh cultural production. They are indeed among the specifically cultural conditions of production.”28

Cultural studies theorists attend too little, however, to the political economies that enable cultural forms to circulate—economies with legal infrastructures. The legal dimensions of cultural production, circulation, and reception have been shamefully neglected.29 There

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27. See id.
28. Id. at 47.
29. Some recent works addressing intellectual property are welcome exceptions. See Boyle, supra note 11. James Boyle provides a characteristically elegant structuralist analysis of the liberal legal discourses that legitimate new forms of property in the information age under the rubric of authorship in Shamans, Software, and Spleens: Law and the Construction of the Information Society. Id. The collapsing of cultural questions into issues of information circulation, however, obscures the worlds of human significance in which cultural forms have social consequence. Moreover, by accepting the entertainment industry’s position that copyright is a means of managing and capitalizing upon information in a postindustrial world, the historically fundamental limitation upon copyright—the restriction of protection to prohibitions upon the reproduction of expressive works—is foregone. In my view, this limitation is simply too central—both to copyright’s ideology, and to any principled boundary to the copyright monopoly—to be ignored, glossed over, or effaced. For a fuller discussion of this issue, see Rosemary J. Coombe, Authorial Cartographies: Mapping Proprietary Borders in a Less Than Brave New World, 48 STAN. L. REV. 1357 (1996); Rosemary J. Coombe, Left Out on the Information Highway, 75 OR. L. REV. 237 (1996). Thomas Streeter shows the pervasive resurgence of the figure of the author in the allocation of property and the attribution of revenue in the wake of new communications technologies. See THOMAS STREETER, SELLING THE AIR: A CRITIQUE OF THE POLICY OF COMMERCIAL BROADCASTING IN THE UNITED STATES (1996). Celia Lury provides a superb historical sociology of the development of various forms of intellectual property, their role in changing forms of social reproduction and in constituting modes of cultural authority. See CULTURAL RIGHTS: TECHNOLOGY, LEGALITY AND PERSONALITY (1993). Lury accords little specificity to the legal frameworks she sees as having such social and cultural significance, however, and does not address the deployment and interpretation of law. See also the historical studies reviewed in Rosemary J. Coombe, Contesting Paternity: Histories of Authorship, 6 YALE J.L. & HUMAN. 397 (1994).
has been too great a tendency in cultural studies either to metaphorize law (as in the psychoanalytic Law of the Father), or to fetishize it, according to it a unity and canonical existence that would be rejected were it to be applied to other textual forms. Only at cultural studies conferences, for example, is it possible to hear scholars authoritatively proclaim that “the law says,” as if the law spoke in a singular, unambiguous voice. It is precisely the formalist emphasis upon texts—even legal ones—as isolated works, that a cultural studies of law should avoid. Rather than stress isolated decisions, statutes, or treatises, we need to attend to the social life of law’s textuality and the legal life of cultural forms as it is expressed in the specific practices of socially situated subjects.

The proliferation of textuality, is, of course, yet another of the processes to which the vexed term postmodernity refers. It “indicates something of the size and the scale of the new global and local social relations and identities set up between individuals, groups, and populations as they interact with and are formed by the multiplicity of texts and representations which are a constitutive part of contemporary reality and experience.” This textually-saturated, hyper-

These scholars provide important historical overviews of the evolution of legal structures to which my own work is greatly indebted. None, however, shares either the emergent emphasis in cultural studies upon the everyday life of textuality or recognition of the imbrication of textuality in struggles over identity and community. Ironically, as Toby Miller reminds us, the British school of cultural studies was initially focused upon legal questions, and the Birmingham school was funded with the settlement of a legal struggle involving issues of literature and censorship. Commenting upon Richard Hoggart, Miller remarks:

The oldest of the three men conventionally catalogued as the founding parents of cultural studies, and the first director of the Birmingham Centre, [Hoggart] is oft-listed alongside Raymond Williams and Stuart Hall, but rarely made the subject of equivalent exegetical projections. It is worth remarking that, in Hoggart’s phrase, cultural studies always had a significant engagement with the bureaucratic public sphere (also known as the law). Hoggart it was who gave the crucial testimony at the Lady Chatterley trial. Penguin Books it was that subsequently made the endowment-in-gratitude which was used to establish the Centre. And Hoggart it was that served on the United Kingdom’s Pilkington Committee on Broadcasting.


31. For a more elaborate outline of the parameters of such a perspective, see Rosemary J. Coombe, Room for Manoeuver: Towards a Theory of Practice in Critical Legal Studies, 14 L. & SOC. INQUIRY 69 (1989).

32. ANGELA MCROBBIE, POSTMODERNISM AND POPULAR CULTURE 26 (1994); see also George Marcus, Past, Present and Emergent Identities: Requirements for Ethnographies of Late Twentieth-Century Modernity Worldwide, in MODERNITY AND IDENTITY 309 (Scott Lash &
significant world needs to be reintegrated with the regimes of law and regulation that govern and shape it if we are to understand the relationship between the word and the world as a dialectical space of governance and praxis as well as one of authorship and readership. Intellectual property protections are central cultural conditions of production, circulation, and reception—providing incentives to produce and disseminate texts, and regulating modes of circulation for cultural forms, while enabling, recognizing, and enjoining alternative forms of reception and interpretation. An ethnographic approach to intellectual properties, I suggest, provokes new insights into the struggles over meaning and power that define many ongoing political dramas of possession and dispossession in so-called postindustrial contexts where a proliferation of textuality and mass-reproduced imagery constitutes new realities.

IV. LAW’S CULTURAL POWER

Legal fora are obviously significant sites for practices in which hegemony is constructed and contested—providing institutional venues for struggles to establish and legitimate authoritative meanings. The adoption of legal strategies may give meanings the force of material enforcement. Law is constitutive of social realities, generating positivities as well as prohibitions, legitimations, and oppositions to the subjects and objects it recognizes. The revitalization of legal anthropology has been especially significant in contributing to our theoretical understandings of power, hegemony, and resistance. Legal discourses, we now understand, provide resources for resistance as well as regulation, possibility as well as prohibition, subversion as well as sanction. If law is central to hegemonic processes, it is also a key resource in counterhegemonic struggles. When it shapes the realities we recognize, it is not surprising that its spaces should be seized by those who would have other versions of social relations ratified and other cultural meanings mandated.

Law, then, is culturally explored “as a discourse, process, practice, and system of domination and resistance.” Historically structured and locally interpreted, law provides means and fora both for legitimating and contesting dominant meanings and the social hierarchies they support. Hegemony is an ongoing articulatory


33. See John Comaroff, Foreword to Contested States: Law, Hegemony and Resistance ix, ix-xii (Susan Hirsch & Mindie Lazarus-Black eds., 1994) [hereinafter Contested States].

34. Susan Hirsch & Mindie Lazarus-Black, Introduction to Contested States, id. at 1, 1-2.
practice that is performatively enacted in juridical spaces, where, as Susan Hirsch and Mindie Lazarus-Black put it, "hegemonic and oppositional strategies both constitute and reconfigure each other." The law creates spaces in which hegemonic struggles are engaged over signs and symbols, the connotations of which are always ever at risk. Legal strategies and legal institutions may lend authority to certain interpretations while denying status to others. The multiple connotations contextually created by my student's t-shirts, however significant, bear no weight when up against the crushing pressures of private interests and public power. Such reactivated meanings, however, are only possible given the contingent fixities enabled by the law's proprietary guarantees. Had intellectual property laws not protected such texts in the first instance, they would not have acquired the posterity that makes them such ideal candidates for parodic redeployment.

Relations between legal owners and others—legally authorized texts, their alterations, and ensuing altercations—provide a social nexus for illustrating these propositions. Differences within the social fabric are expressed with commodified texts, and differences in meaning are inadvertently encouraged and overtly contained by regimes of intellectual property. Differences between those who disseminate commodity/signs and those who consume them animate the legal regulation of cultural forms; such cultural forms simultaneously become media for expressing alterity while they function as expressions of authorial distinction.

Practices of authorial power and appropriation, authorized meanings and alternative renderings, and owners' interests and others' needs cannot, however, be addressed simply in terms of dichotomies like domination and resistance. Romantic celebrations of insurrectionary alterity—long popular in cultural studies—cannot capture the dangerous nuances of cultural appropriation in circumstances in which the very resources with which people express difference are the properties of others. Acts of transgression, though multiply motivated, are also shaped by the juridical fields of power in which they intervene.

Legal regimes shape the social meanings assumed by signifying properties in public spheres. Such meanings are socially produced in fields characterized by inequalities of discursive and material resources, symbolic capital, and access to channels of communication. The commodification of cultural forms creates new relations of power in contemporary cultural politics—areas for connotative struggle or

35. Id. at 9.
"contested culture," as Jane Gaines so nicely put it in the title of her pathbreaking book. If we recognize cultural signifiers as multivocal sites of conflict, which bear the traces of social struggles and historically inscribed differences, then laws that prohibit the circulation of these forms—their ironic reproductions and parodic recodings—necessarily intervene in processes of hegemonic articulation. Moreover, if signifying forms have meaning only within specific histories and political practices, the investigation of power and meaning in legal studies must not be permitted to devolve into an "abstract deconstruction of metaphysics but [must involve] a resolutely historical inquiry into the concreteness of the ordinary," a "return to the terrain of lived experience." Like other cultural studies, legal studies might attend to "the important but often unnoticed dynamics of everyday life: the sounds in the kitchen, the noises in the home, and the signs and styles on the street." I take t-shirts and bumper-stickers, billboards, newspaper debates, product labels, neon signs, lapel buttons, and cartoon figures as "signs and styles on the street" that figure in everyday expressive activity and in the articulation of that space we define as the social.

Laws protecting intellectual properties influence (although they do not determine) the ways in which cultural signs are re/appropriated by those who assert difference in the spaces of similarity—imitating and mimicking the signs of authority to express relations of alterity. Intellectual property law does not function simply in a rule-like fashion, nor is it merely a regime of rights and obligations. Although it is constructed through a rhetoric of rights, law is simultaneously a generative condition and a prohibitive boundary for hegemonic articulations and subaltern practices of appropriation.

Deciphering struggles over signification, law is at work shaping social worlds of meaning not only when it is institutionally encountered, but also when it is consciously and unconsciously apprehended. Hegemonic power is operative when threats of legal action are made as well as when they are actually acted upon. People's imagination of what "the law says" may be a shaping force in those expressive activities that potentially violate it and in those practices that might be considered protected acts of speech, constitutionally defined. People's anticipations of law (however reasonable, ill-informed, mythical, or even paranoid) may actually shape law and the property rights it protects. This is especially the

37. BRANTLINGER, supra note 14, at 66.
38. MCROBBIE, supra note 32, at 40.
39. Id. at 41.
case in areas like trademark, which are premised upon legal fictions of public meaning and consumer confusion. The law is a palpable presence when people create their own alternative standards and sanctions governing the use of cultural forms—for example, in the moral economies that emerge to regulate the use of images like those of Kirk and Spock in fanzine subcultures shared by middle-class women alienated from mainstream media representations.

The law’s ideological effects are also realized when subaltern peoples mimic the modes of communication effected by the commodity form—when national borders and boundaries of belonging are negotiated through the deployment of the trademark and the form of its authority by lesbian activists, ethnic minorities, and indigenous peoples. The law’s hegemonic power is also felt when rumors circulate about the origins of corporate trademarks. The demonic rumors that attach to some consumer goods reveal both the law’s power to regulate the circulation of signs of corporate origins and its relative incapacity to do so when this power is confronted with covert social contestations.

40. This theme is developed in COOMBE, supra note 12, at 41-87.

41. Celebrity names and likenesses protected by laws of publicity and privacy, for example, provide signifying resources for the production of alternative gender identities. Judy Garland, Dolly Parton, James Dean, Nancy Sinatra, Luke Skywalker, and Kirk and Spock are only some of the figures in which libidinal energies are invested and around which identifications emerge and new social identities congregate in relations of community. These are practices that deploy media forms in cultural self-fashionings both engendered and endangered by the law. As intellectual property laws operate to protect the exchange value of media-circulated cultural forms, subcultural practices are themselves both enabled and constrained by legal regimes of commodification. People’s relations to these signifiers are shaped by the knowledge that these signs are both socially shared and individually owned. Those with specific attachments to a particular star’s image or fictional character often develop their own moral economies of ownership, proprieties of possession, and ethics of use in the shadow of the law, developing complex attitudes toward the exclusive rights legally held by others. See COOMBE, supra note 12, at 88-129; Rosemary J. Coombe, Publicity Rights and Political Aspiration: Mass Culture, Gender Identity, and Democracy, 26 NEW ENG. L. REV. 1221 (1992); see also Tushnet, supra note 11, and sources cited therein (for further examples of emerging ethics of textual appropriation in other fan communities).

42. See Rosemary J. Coombe, Embodied Trademarks: Mimesis and Alterity on American Commercial Frontiers, 11 CULTURAL ANTHROPOLOGY 202 (1996), for an historical discussion of American Indian representations in trademark usage and a consideration of contemporary protests against stereotypical images in commerce.

43. The mass-mediated nature of corporate power that is signified through the trademark is simultaneously recognized and resisted in the bizarre rumors that people spread about the meaning and origins of corporate brandnames, logos, package designs, and advertising campaigns. Exploring prominent North American rumors in the 1980s, I consider these as commentaries upon the fetishism of the legally constituted commodity/sign—the meaning of postmodernity and its marginalizations emerging in the fantastic fabulations through which marketing signs are reenchanted—in contexts where processes of production are invisible and the signs of consumption ubiquitous. Rumors, I suggest, mimic the modes of circulation through which trademarks make their way into our daily lives, simultaneously adopting and challenging forms of corporate authorship and their legitimation in cultures of commerce. See Rosemary J. Coombe, The Demonic Place of the “Not-There”: Trademark Rumors in the Imaginary Culture of Postindustriality, in CULTURE, POWER, PLACE: EXPLORATIONS IN CRITICAL ANTHROPOLOGY 249 (Akhil Gupta & James Ferguson eds., 1997).
unlicensed) Black Bart (Simpson) t-shirts, the law is at work, as it is when rumors circulate that a twelve-year-old boy has been arrested for selling them.

A critical cultural legal studies demands more, then, than an abstract "constitutivism," discursively modeled. It requires consideration of concrete fields of struggle and their legal containment, the legal constitution and recognition of symbolic struggle, and the law's capacity to fix meaning while denying this as an operation of power. It compels a perspective sensitive both to everyday practices of worldmaking and to their institutional acknowledgment in juridical spaces where material relations between meaning and power are forged. Critical cultural legal studies recognizes culture as signification, but also addresses the materiality of signification by recognizing the symbolic power of law and law's power over signification. This material struggle over signification is at once concrete and textual as it takes place in the daily lives of contemporary subjects.

Law is an authoritative means and medium of a cultural politics—in which distinction and difference are constructed and contested—that actively articulates that which we define as the "social." Recognizing that the social world must be represented, performatively expressed, and institutionally inscribed, we can avoid a metaphysics of political presence that presupposes a realm of self-evidently political practices. Drawing upon poststructuralist, deconstructivist, and psychoanalytic insights,44 I reject any vision of a social world in which differences preexist the law, and law is called upon merely to resolve and legitimate social claims generated elsewhere. Instead, I suggest we see law as providing many, if not most, of the very signifying forms that constitute socially salient distinctions, adjudicating their meanings and shaping the very practices through which such meanings are disrupted. Rather than assert the positivity of any social identity, we might see identities as merely temporary, anxious, and uncertain resting points in quests for recognition, legitimation, and identification.

The actual engagement of the political involves historical moments in which particular cultural forms become meaningful for particular agents. Situations of subordination are transformed into spaces for articulation through identifications with specific signifiers that hold promise for new forms of political recognition. Because meanings expressed through systems of signification are, by definition, perpetually unstable, they are always capable of being deployed against the grain. The ambiguities and traces of cultural forms may be seized upon by those who may well repeat, imitate, and appropriate elements of a dominant cultural order while critically marking differences in social experience. The signifying forms around which political action mobilizes and with which social rearticulations are accomplished may be attractive and compelling precisely because of the qualities of the powers legally bestowed upon them. Law is not simply an institutional forum or legitimating discourse to which social groups turn to have preexisting differences recognized; more crucially, law is a central locus for the control and dissemination of those signifying forms with which identities and difference are made and remade.

Considerations of identity and its construction increasingly preoccupy anthropologists and focus work in cultural studies and sociolegal inquiry. Individual and collective identities are actively

45. The forms of signifying power that law enables may provoke or invite particular forms of resistance and particular forms of alternative inscription. Such appropriations are awfully appropriate to the forms of legally regulated signification to which they might be seen as forms of response. The public propensity to remark upon dominant forms of signifying power is first explored in a consideration of "official marks"—signs held by public authorities in the name of the public interest. These are often key symbols in national and international cultural lexicons with which subaltern groups seek affirmative association. Examining instances involving a gay rights group in the United States, and Sikhs in Canada, I argue that the arbitrary exercise of power to control the circulation of a sign, or the failure to exercise such a discretionary power, may have significant political repercussions for the cultural identities of minority groups. There are both real possibilities and real limitations on political activism posed by practices of appropriation that recode these forms and by the legal regimes of trademark that govern them. The use and abuse of powers to control such signs may both constitute or reverse perceptions of social devaluation or stigma, articulate alternative narratives of national understanding, and challenge exclusionary imaginaries of citizenship. When "Lesbians Fly Air Canada," and a "Gay Olympics" are not prohibited, and Sikh Mounties are seen as representative Canadians (to take a few examples), legal action and inaction will be central to such reinscriptions in the public sphere. See COOMBE, supra note 12, at 130-65. An early and abbreviated version of the argument appears in Rosemary J. Coombe, Tactics of Appropriation and the Politics of Recognition in Late Modern Democracies, 21 POL. THEORY 411 (1993).

46. The intellectual history behind this agenda is complex; it involves an analysis of issues of consciousness, ideology, interpellation, subject-formation, and psychoanalysis engaging the theoretical work of Marx, Althusser, Gramsci, Foucault, and Lacan. For representative and influential works that embody such considerations, see POLITICS AND RIGHTS (Austin Sarat & Thomas R. Kehans eds., 1995); QUESTIONS OF CULTURAL IDENTITY (Stuart Hall and Paul duGay eds., 1996); PAUL SMITH, DISCERNING THE SUBJECT (1988); and R. Sullivan, Marxism and the "Subject of Anthropology," in MODERNIST ANTHROPOLOGY 243 (M. Manganaro ed., 1990).
created by human beings through the social forms through which they become conscious and sustain themselves as subjects in communities of similarity. It is now widely acknowledged that law interacts with other forms of discourse and sources of cultural meaning to construct and to contest identities, communities, and authorities. An emphasis upon identity is congruent with the contemporary anthropological uneasiness with the reification of culture and the conviction that we need to understand culture as a description of particular processes. Indeed, one anthropologist has gone so far as to redefine culture as the act of identity construction: "Cultures are the way specific social groups, acting under specific historical and material conditions, have 'made themselves.'" Identity is a trope that enables us to consider the practices through which senses of self and community are practically expressed and projected through the medium of signifying texts.

Practitioners of cultural studies continually assert that media forms provide the cultural vehicles through which new social meanings are forged and stress their constitutive role in the creation of identity. Cultural studies has devoted great energies in the study of subcultures: media and genres of representation consumed, appropriated, resisted, and recoded by groups on the margins of society. Those representations protected by intellectual property (advertising, lyrics, brandnames, corporate logos, slogans, indicia of government, and celebrity images, for example) are prevalent and promising cultural forms with which to consider cultural authority, subcultural formations, and hegemonic struggles. The most vibrant, compelling, and ubiquitous of cultural signifiers—those around which marginal groups tend to mobilize—are often the properties of corporate others. Indeed, it can be argued plausibly that the protections intellectual property law affords (and the promise of revenue that legal protections offer) induce actors to invest in the widespread dissemination of cultural forms. Media may become "mass" primarily by becoming juridical, but culture becomes "popular" to the extent that these forms are animated by the interpretive practices of others.

If the life of the law is experience, then the pervasive textuality of experience in the late twentieth century needs to be understood legally, and the local animation of the law should be addressed experientially, in terms of the way law manages meaning, shapes

relations of cultural authority and contestation, provokes a politics of property, propriety, and appropriation, and provides forms and fora for articulations of identity and difference. Jolted by espresso, awakened by life on the street, and alert to the properties of contemporary cultural life, a critical cultural studies of law comes into view.