Abstract: This article addresses the following question: what insights can the literature on legal pluralism and cultural pluralism written by ethnographers of courts provide analysts interested in studying legislatures? The ethnographic insights developed by anthropologists of courts can not be imported into the study of legislatures wholesale. In this article, I explore the ways analyses of cultural pluralism shift when one changes institutional vantage points from courts to legislatures. I discuss how the courts’ legal labor occurs while people strive for objective justice while legislatures’ legal labor occurs while people strive for accountable representation. I argue that three central analytical shifts take place for scholars. First, in courts, contexts are often made cultural as one technique among many to create a suitable interpretation that will lead to resolution. From a legislative perspective, contexts are often made cultural using a demographic imagination, that is, through a form of quantification. Second, in courts, only outsiders tend to embody culture, contributing to an ahistorical account of what culture is. In legislatures, anyone, even representatives themselves, can be cultural, making being cultural into a political tactic centered on rendering historical and social connections visible. Third, in legislatures, law is always a compromise. As law travels out of legislatures and into courts, the agonism at the heart of law is forgotten, and law becomes acontextual, and putatively objective.
Legal scholars have long known that much-needed insights become inaccessible when one characterizes the state in monolithic terms.\(^1\) Nuanced approaches to how states are comprised of diverse and multifaceted institutions have become even more urgent as contemporary governments restructure courts, legislatures and the executive branch in response to international institution-building and neoliberal re-structuring. In the wake of these political and legal transformations, scholars have called for greater attention to how the legislative branch functions. Bauman and Kahana have recently edited a volume on the legislative branch calling for new theoretical approaches to this branch of government, one which they argue has faced “systematic neglect by legal and political philosophers.”\(^2\) Yet theoretical approaches to legislatures do not need to be cut entirely out of new cloth. Much of the ethnographic work on how courts function can also shed light on how legislatures function. These ethnographic accounts suggest that the challenge for legal practitioners is to intertwine laws and contexts\(^3\), a challenge that is made particularly vivid by multicultural populations. In this article, I ask: what insights can the literature on legal pluralism and cultural pluralism written from the vantage point of the courts provide those interested in studying legislatures?


3 By context, I mean everything that is happening in the world, some of which will, through social effort, become the substance for adjudication or legislation. Typically when a case is transformed into an adjudicable case, there are legal mechanisms for filtering which social events are included and which are excluded in the case. Legislators and their aides also engage in a parallel process of filtering as they try to transform what they know about the world into the basis for laws. When using context, I am referring to what must exist prior to this filtering.
The ethnographic insights developed by anthropologists of courts can not be imported into the study of legislatures wholesale. In this article, I explore the ways analyses of cultural pluralism shift when one changes institutional vantage points from courts to legislatures. Some scholars have examined how, under forms of indirect rule, colonial governments codified both indigenous and colonial laws, others have studied the aftermath of this process. Other studies have turned to other contemporary legacies left by colonialism, asking after current politics of recognition and sovereignty. Yet other scholars are concerned with how people on the ground navigate multiple and often contradictory legal arenas. In all these studies of legal pluralism, scholars have focused on the ways laws and social contexts are intertwined in courts when culture and in particular, culture as context, is an issue.

This article is a thought exercise in how ethnographic studies of legal pluralism in courts might be made relevant for ethnographic studies of legislatures in multicultural but

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4 For an early and trenchant ethnography of law-makers, see Isaac Schapera’s discussions of Tswana chiefs (Schapera 1969; 1970).
putatively mono-legal nations. I locate my analysis in studies of Anglo-American statutory laws, how Anglo-American legislatures make laws and how these laws are then interpreted by Anglo-American courts. Despite the specificity of discussing only Anglo-American statutory laws, this article aims to describe institutions in ways that offer comparative analytical purchase for other legal arenas. In short, I explore what legal scholars can learn when they use an ethnographic toolkit to analyze courts and legislatures that engage with the same body of laws in culturally plural situations.

As people in courts and people in legislatures engage with laws, they do so under two different evaluative rubrics. In courts, people grapple with applying laws to cases to produce what they hope will be perceived as objective justice. By contrast, legislators write laws anticipating that others will evaluate their actions in terms of whether they are providing accountable representation. These different evaluative frameworks shape how court officials and legislators attempt to interweave laws and contexts.9 In courts, people apply laws to particular situations, putting laws and contexts in dialogue with each other in order to produce objective justice. For example, when Trinidadian judges and lawyers apply the Domestic Violence Act, they are determining whether a particular law is appropriate for a specific case.10 In legislatures, people write laws after debating the contexts which appear to create the need for the legislation, moving from contexts to laws. They do so as spokespeople for others’ interests and needs. When Trinidadian

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9 Laws are often explicit guidelines of how the world should be, accounts that must be applied to given contexts and constitute the contexts through these technologies of application. In this sense, people engaged with laws understand laws to be apart from the world and applicable to the world. This very applicability to the world is the instantiation of law’s power.

10 M. Lazarus-Black, ‘Law and the Pragmatics of Inclusion: Governing domestic violence in Trinidad and
legislators formulated the Domestic Violence Act, they needed to understand violent interactions between men and women as practices that could be transformed into legislative objects – indeed much of the parliamentary debate revolved around whether this was the prerogative of the legislature to do so. ¹¹ The difference between writing and applying, and the attendant evaluative frameworks, ensure that people understand and create the links between laws and contexts differently in courts and in legislatures. This forms the basis of my comparison – what one can do with, through and about law because of laws’ different relationships with contexts in these two arenas.

In seeking to apply laws, people in court contexts are relying on the way laws are acontextual, the way laws represent a universalizable rationality that is supposed to produce objective justice. Bourdieu writes:

Indeed, what we could call the "juridical sense" or the "juridical faculty" consists precisely in such a universalizing attitude. This attitude constitutes the entry ticket into the juridical field -- accompanied, to be sure, by a minimal mastery of the legal resources amassed by successive generations, that is, the canon of texts and modes of thinking, of expression, and of action in which such a canon is reproduced and which reproduce it. This fundamental attitude claims to produce a specific form of judgment, completely distinct from the often wavering intuitions of the ordinary sense of fairness because it is based upon rigorous deduction from a body of internally coherent rules. ¹²

Bourdieu suggests that for courts, the fact that laws exist outside of context enables people to see laws as instantiations of objective justice. He argues this supposed objectivity is re-affirmed by the very struggle to make laws apply, that is, by the labor inherent in making laws’ abstractions relevant to diffuse contexts.

¹¹ Id.
¹² P. Bourdieu, ‘The force of law: toward a sociology of the juridical field’ 38 Hastings Law Journal
By contrast, objective justice is not the dominant achievement one strives for in a legislative context. I want to suggest, reading alongside Carol Greenhouse’s analysis of how neoliberal principles encroach on legislative practice,\(^\text{13}\) that the parallel to the court’s claims to provide objective justice is the legislature’s claims to provide accountable representation.\(^\text{14}\) Legislators vindicate their practices by supplying evidence that they are performing accountable representation, just as court officials must perform their engagements with objective justice. While it might appear that democratic representatives are in positions of power, they themselves express their position as one that is hampered and constricted. Greenhouse writes: “Moreover, we should not assume that holding office maximizes power. Given the embeddedness of state power in the private sector, it would seem that the interregnum is the power position, rather than the incumbency with its imperatives of accountability and availability.”\(^\text{15}\) In much the same way that court officials see themselves constrained by the parameters inherent to interpreting laws, politicians are constrained by the requirements of speaking for others in a monitorable fashion. In this sense, as Greenhouse points out, even those in elected positions feel themselves confined and thwarted by hegemonic structures. Just as a court’s performance of objectivity constrains court official’s actions, so too does a

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\(^{13}\) C. Greenhouse, ‘Hegemony and Hidden Transcripts: The Discursive Arts of Neoliberal Legitimation’ 107 American Anthropologist 356-368.


\(^{15}\) C. Greenhouse, op.cit. 360.
legislator’s performance of auditable or monitorable representation. To undermine either is to undermine the legitimacy of the court or the legislature.

When cultural pluralism is at issue, the questions of objective justice or accountable representation take on new valences. It becomes harder to portray laws as objective or transcending context when faced with cultural pluralism. It is in these moments when cultural differences raise the possibility of a relativism that challenges laws’ objectivity. In Sarat and Berkowitz’s article “Disorderly Differences”, the authors discuss how some differences are so disorderly that for the court officials, their mere existence appears to undercut legal order, in particular Mormon polygamous marriage in Reynolds vs. the United States. Waite, the judge in Reynolds vs. the United States, saw polygamous marriage as fundamentally detrimental to the order laws seek to maintain. Sarat and Berkowitz explain:

To admit of this exemption would, on Waite’s account, lead immediately onto a slippery slope, in which savagery would find its place in the midst of civilization. To condone that difference, to welcome the stranger within, would be an invitation to an escalating savagery. Disorderly difference is the invitation to dread, which it is the job of law both to name and to tame.\textsuperscript{16}

What counts as a challenge to laws’ ordering is itself a social construct – the invitation to dread is thus also an invitation to construct disorder. They argue that faced with such disorderly difference, laws often end up being an assertion of power, not an assertion of objectivity.\textsuperscript{17}


\textsuperscript{17} Sarat and Berkowitz, op.cit. 100.
Similarly, accountable representation is rendered problematic when there are different cultural strategies for producing appropriate representation. Accountability is meant to be as universal and universally applicable as laws’ objectivity. Yet appropriate representation is not a universal by any means, different social groups have different expectations for what counts as responsible representation. In asking how and whether one can represent people from other cultures adequately in political contexts, I am not suggesting this is an academic question reserved for analysts of cultural pluralism. Rather, it is the quandary representatives and their constituents can face, depending on their ideologies of culture and representation.

In the next section, I lay out the ways in which objective justice and accountable representation shape how courts and legislatures attempt to interweave laws and context. It is the differences in the legal labor between writing laws and applying laws which grounds this section’s comparison. The labor of legislatures and the labor of courts produce commensurable and distinct engagements with laws, shaped by the overarching evaluative frameworks people bring to bear on the different institutions’ projects. The rest of this article explores three ways in which cultural pluralism challenges the labor of these institutions. In the first section, I look at the techniques by which contexts are framed as cultural in these two legal arenas. In legislatures, laws are understood to originate as condensed compromises of plural and agonistic interests. When writing laws, laws are understood to emerge out of compromises between perspectives that can potentially be framed as culturally plural perspectives. From this perspective, different
laws can have conflicting cultural contexts at the heart of their origin stories. In courts, laws’ presumed objectivity ensures that the contexts to which the courts will apply laws tend to be framed as cultural. Thus, contexts and people (not associated with the court) can be cultural, but laws and court officials will often not be understood as cultural. In this section, I focus on the implications having acultural laws and cultural contexts has for analyzing cultural pluralism from a court’s perspective.

My third section explores how people are understood to embody cultural difference in both areas. Participants in courts and legislatures pay ever more attention to questions of “culture,” but often deploy the term in ways which presume that only select people are understood to be culture-bearers. In courts, as I mentioned, people outside the courts often stand for culture, which entails the dilemmas inherent when a person indexes a way of life. In legislatures, representing culturally diverse constituents is one variant of the challenge to produce accountable representation. In both cases, the analytical questions revolve around the quandaries that arise when a person embodies another level of social unity, be it an ethnic group or a culture. The institutional vantage point shapes what it means to collapse types of social unities, or levels of scale, in each instance.

In my fourth section, I look at how the tensions between making laws and applying laws enable cultural difference to be a source of transformation in legislatures more readily than courts. Court officials experience cultural pluralism as another sort of challenge—they make culture and cultural expectations explicit in order to transform cultural context into something analogous to laws. In doing so, cultural assumptions often lose their ability to unsettle and potentially transform. By contrast, in legislatures,
cultural difference often underpins debates between different perspectives on how laws should best regulate different contexts. Through these debates, assumptions and alternative possibilities are made explicit, and, as a consequence, laws become open to change. In legislatures, the explicitness that cultural pluralism engenders creates possibilities for legal change. As laws travels from legislatures to courts, revealing cultural assumptions can shift from having the potential to transform laws to becoming a path towards re-affirming law’s power.

Comparing Legal Labor

To understand the institutional specificity at hand, one must pay attention to how these two different institutions structure people’s pragmatic relationship to laws and their relationship to contexts. Each institution enables people to engage with both laws and contexts differently. Here I discuss how the projects of writing laws versus adjudicating laws shape people’s experiences of how laws and contexts are interwoven. For court officials, laws are both acontextual and applicable to context, linked to particular circumstances through competing interpretations and ideally an instantiation of an objective justice. For legislators, laws are proleptic projects, produced out of agonistic discussions and through practices ideally transparent to a nation’s citizenry.

In comparing adjudicating and legislatting, it is useful to turn to how people understand legal interpretation. Court officials have an equivocal relationship to laws’
susceptibility to context. Judicially, this aspect can often be experienced as an imposition. While legislators might see themselves as empowered to respond positively to laws’ vulnerability, this vulnerability is precisely what court officials experience as the challenge of law, that laws requires interpretation. As Bourdieu points out, interpretation is the source of contention in the juridical field. He claims that the struggle in courts is over “the authority of the act of interpretation.”\(^\text{18}\) By focusing on the authority of the interpretation, the court officials disguise the ways in which they are engaging with power, emphasizing instead legal interpretation. Bourdieu writes:

> Even though jurists may argue with each other concerning texts whose meaning never imposes itself with absolute necessity, they nevertheless function within a body strongly organized in hierarchical levels capable of resolving conflicts between interpreters and interpretations. Furthermore, competition between interpreters is limited by the fact that judicial decisions can be distinguished from naked exercises of power only to the extent that they can be presented as the necessary result of a principled interpretation of unanimously accepted texts.\(^\text{19}\)

The contests often enable court officials to see themselves as merely providing competing rational interpretations of how laws and cases might connect. The challenge in navigating the judicial field successfully lies in winning this battle of interpretation, while committing to seeing this as an issue of successful interpretation, not simply implementing law’s power.

In struggling over which interpretation is legitimate, those people who belong to the courts legitimate the notion that laws themselves are acontextual and rational. Their success depends upon their ability to extend the “rationality” of laws to the everyday

\(^{18}\) Bourdieu, op. cit. 828 ftn. 38
\(^{19}\) id 818.
intricacies of a particular situation. They are simultaneously validating laws’ timelessness as they attempt to outdo each other in rational interpretation. Carol Greenhouse warns readers that this is a particularly Western approach to law, stating: “In the contemporary West, liberal jurisprudence represents justice as impartial and inclusive in its invocations of the simultaneity of timeless principles of order and their enactment in the social sphere.” That is, in the West, laws are taken to be available for interpretation but in themselves fundamentally outside of the subjective and ideological pitfalls of interpretation. From a judicial perspective, it is the burden of people belonging to the courts to transform laws from their privileged and acontextual space into being applicable.

By contrast, legislators are trying to create laws that can stand outside daily practices and constitute them simultaneously. Legislators are concerned with how a law under debate will re-configure current economic and social relationships because of how the law may be interpreted. The political battles, in these cases, are all over prospective interpretations, that is, how a law might re-formulate the relations between social groups which inspired the law in both intended and unintended ways. As a consequence, often the ways in which laws remain vulnerable to changing circumstances haunts legislator’s strategies. Laws’ vulnerability to context from a legislator’s perspective provides the impetus for their labor, continually revising laws to accommodate changing nations.

In short, in legislatures, laws’ interpretability is proleptically imagined. A legislative perspective locates interpretation in the future and in its audiences. As Tim

20 Conversely, as Marc Galanter points out: “Courts are reactive: they do not acquire cases on their own
Murphy points out: “The reference point for legislative action is the output and consequences of adjudicative activity, i.e. the draftsman has to ask what ‘the law’ (i.e. the courts) would make of anything he writes in his legislative text, not because litigation is always anticipated (though many assume that this is more likely now than it used to be) but for the more basic reason that this is the reference point, the audience, the location of reader-response which may or may not feed back into the conditions of initial textual production.”

Legislators attempt to anticipate acts of interpretation, often battling over the wording of bills in efforts that acknowledge the context-dependent nature of laws as they are being made as well as the pitfalls of applying them. In short, the difference between a legislative and juridical perspective in interpretation is that in courts, laws are texts to be read while, in legislatures, laws are texts to be written.

Both in courts and legislatures, connecting laws and contexts is an agonistic activity. In each institution, the translations between laws and contexts at the center of any engagement with laws are invariably contested ones. Juridical and legislative translations each try to transform the complexities of daily practices into explicit legal formulations. By this I mean that in courts, those belonging to juridical field struggle to control how people’s pre-juridical behavior and understandings are transformed into legally adjudicable formulations. As Bourdieu points out, lawyers and expert witnesses are all intent on refiguring others’ speech and behavior into legally interpretable forms. Those under the courts’ jurisdiction must have their interactions translated into court motion, but only upon the initiative of one of the disputants.” (op. cit. 19)


decisions. At the same time, their advocates are also struggling over the precise nature of the interpretation, each hoping to determine which version of rational interpretation will dominate in the final rendition of how laws apply to the situations that require such reformulation. In this sense, battles over translation are at the heart of every court proceedings.

Similarly, translation is at the heart of every legislative proceedings. What legislators attempt to do is translate constituents’ needs and their political party’s ideologies into laws. They are also refiguring their claims, anticipating and responding to other parties’ critiques. In each arena, linking laws and contexts is invariably a contested activity, and this foundational antagonism requires techniques for evaluating and choosing one’s own and others’ interpretative efforts for temporary resolutions.

**Legal Labors and Cultural Pluralism**

While plurality poses challenges to people’s efforts both to make and apply laws, these challenges emerge in analytically distinctive ways in courts and legislatures because of where and how cultural difference is located in each arena. Courts and legislatures bring institutionally specific challenges to studies of cultural pluralism. In general, from a perspective of cultural pluralism, one of law’s significant labors is to constitute the social groups to which it is then applied. In these moments, people deploying laws reflexively understand laws to be pluralistic, framing the relationships between groups and potentially framing different laws for each group. Wastell explains: “So it follows that law . . . not only objectifies social groups (among other things), but
also the very act of law-making through which those social groups are constituted.”

Laws, in the example Wastell borrows from Annelise Riles, can designate a group as European (living and owning land individually in Fiji), another group as native Fijian (and owning land as a village or chiefly led group), and a third group as indentured laborers from India (regardless of how many generations they have lived on Fijian soil) and thus unable to own property. In determining who can own land and in what fashion, Fijian laws sort people and help to structure the relationships between the groups people have been sorted into. As Wastell points out, laws can classify the social world, and in doing so, determines how to comprise relations between entities.

In being the source for constituting appropriate relations between and within social groups, laws make themselves vulnerable. After all, their objectifications are attempts, not certainties, and can stop being relevant for a particular context. In courts, a mismatch between laws and contexts challenges laws’ effectiveness directly. Court officials are not responsible for laws’ failures when they are applying laws to particular situations, the law is. In courts, the further the tacit assumptions about social groups and their relations drift from the contexts to which they must be applied, the more problematic the particular law becomes. Laws are not expected to integrate seamlessly with their contexts—in fact much of the work of court officials is to bring laws and contexts together. When judges apply laws in court, there are always already ambiguities

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23 Wastell, op. cit. 74.
and incongruities. Yet too wide a gap between laws and contexts results in challenges to the law itself in the judicial arena.

By contrast, in legislatures, the labor in legislatures, that is, of taking social contexts and turning them into facts that can inspire legislation, makes representatives politically vulnerable, instead of laws. Representatives face being thwarted by political opponents declaring convincingly that they are inappropriately linking laws and contexts. Efforts to make this critique effective underlies many legislative debates--rival party members often claim their opponents are misrepresenting how a proposed law will ameliorate a problem, that is, how laws and contexts will intertwine. For example, Paul Spencer describes how Labour members and Conservative members will criticize each other publicly in an English town council. When the town council was discussing whether to allow a corporation to purchase publicly owned land for development, both sides attacked each others’ legislative policies in terms of what the corporation putatively was capable of accomplishing.

The two part groups faced one another as adherents of opposed political ideologies. But in the context of the council chamber, their arguments inevitably tended to focus on the performance of the corporation’s undertakings, especially in those respects in which Labour policies were seen to stand or fall. By generalizing the theme, any activity to the credit or to the discredit of the council, regardless of its true political content, could be used by the two sides to bring credit or discredit to the Labour group, and by implication, to its policies.25 The arguments in this council all revolved on different parties’ success in interpreting fluctuating contexts adequately into appropriate laws. Underlying their critiques is the

assumption that the responsibility for shaping laws to contexts is in the hands of legislators, or a political party’s ideology. In short, implicitly, legislators are responsible for whether laws and contexts are adequately and competently connected. In the following sections, I explore how cultural pluralism affects plays in the dynamics I sketched above, that is, what happens when people understood contexts in terms of culture.

*Seeing Culture as Context through Demography,*

*Seeing Culture as Context through Cases*

From an anthropological perspective, contexts by definition are cultural. Yet people in courts and in legislatures are not anthropologists, their commitments to interpreting with culture have very different political and analytical origins. For example, from an anthropological perspective, one cannot have an action or interpretation that is acultural. In courts and legislatures, however, the interplay between what is cultural and what is acultural is crucially constitutive for how contexts can be anticipated as cultural prior to being interwoven with laws. In comparing how courts frame what is cultural and acultural versus how legislatures do so, I want to suggest that this difference primarily lies in how the different institutions figure people’s relationships with the larger social unities, often states. In courts, the primary focus is on how people forge bonds in front of these social unities—states, villages, religious communities, and so on. By contrast, in
legislatures, the primary focus is on how people forge bonds to these social unities. In courts, cultural differences are performed for the state or community, while in legislatures, cultural differences are the bases for conceptualizing and quantifying various populations’ collective interests. In legislatures contexts are imbued with “culture” largely through a demographic imagination while in courts, culture is but one frame for using analogies to translating the dynamics of a particular case.

In courts, people tend to present contexts in front of the state, rather than exploring the obligations of people and nation-states implicit when emphasizing relationships to the state. In legislatures, the concern is predominantly on how to imagine the qualities of people populating a situation—how to render needs and inequalities visible through quantification. This shift in focus alters how contexts become cultural. The move from courts to legislatures in this case is a move from seeing cultural differences in terms of analogies to seeing cultural differences in terms of equivalences. In courts, however, the question is how to apply laws to a context by making the situation or context analogous to other cases that the laws have already defined. Mather and Yngvesson describe this process in their summary of Levi’s intervention:

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26 See Greenhouse (2002: 196) for another engagement with the prepositional relationships that people can have with states.

The legal process, says Levi, is not “the application of known rules to diverse facts, but rather a system of rules which are discovered in the process of determining similarity or difference between cases; “the finding of similarity or difference is the key step in the legal process” (1949: 3, 2). What determines that key step? Levi says that litigants and their lawyers must present competing examples or analogies to the court, and the judge will then choose the determining classification (1949: 2-5).28

The work of courts is to create analogies, to link narratives and circumstances to each other in a chain of precedent, or, occasionally, to break the chain by fashioning new precedent. In forging these analogies, culture is often but one frame to accomplish this.

When adjudicating, the frames are created through analogies to other legal cases, not through competing evaluations of measurement, as in legislatures. Mather and Yngvesson argue that in the process of fashioning analogies, people contend with each other to determine how best to frame or classify the situation. Mather and Yngvesson suggest that the dispute has its seeds in how people define the dispute, and that the initial stages involve determining what analogy or frame will dominate.29 As Felstiner, Abel and Sarat point out, to enter the judicial field, disputes have to be recognized as cases, as situations in which engagement with laws are sought-after transformations of the interactions.30 When disputes enter the judicial field, they are transformed, largely in response to having an officially constituted public or third party. Those who bring these cases to court often find the legal contexts imposed by court officials will transform their disputes in unexpected and unanticipated directions. Conley and O’Barr write: “Second, we learned that people had not foreseen that the law itself would have a similar

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29 Id. 775-822.
transforming effect, reworking their stories into disputes that were sometimes unrecognizable . . . They had been equally unprepared for the way in which the courts would shift the focus of their cases from such global issues as moral probity and social responsibility to specific questions about contractual language and monetary remedies.”

As Conley and O’Barr detail, courts re-structure disputes in a variety of ways, often producing conflict resolution that those involved in the case will experience as disconnected or tangential to the actual case as they experience and narrate it. In general, the audiences that the court officials constitute play the central role in determining which of the several possible analogies will dominate in a case.

Mather and Yngvesson suggest that some form of translation must occur in judicial contexts for laws to become successfully interwoven with contexts. It is not just that laws proffer explicit guidelines, it is that laws require explicit and mutually agreed upon framing for its application. People do not need to share the same interpretation of events, but there does need to be an agreement about what laws or guidelines should best address the particular situation. For example, a dispute can be either about malicious property damage or property ownership, but not both. Mather and Yngvesson argue that how courts constitutes an audience affects the ways in which people engage with the terms of their disputes in two possible ways. People can begin to narrow the possible frames available to them as explanations, settling on agreed upon frames (which is a step towards agreed upon resolutions). They write:

In these settings, as in specialized forums, participants argue about which definition should be imposed on the events and relationships in a dispute;

32 See also Galanter, op. cit. 11.
33 Mather and Yngvesson, op. cit. 788.
the question of which definition will be used is of considerable significance to the outcome. Whether the discourse is specialized or more general, disputes will be narrowed in ways acceptable to a third party (either to appeal to the third party or inflicted by the third party). This introduces interests beyond those of the disputants into the dispute at hand; most likely these additional interests will reflect the power of the third or political interests of those connected to the third.  

People try to enter into some agreement about how best to link their situation to available legal categories. This then enables court officials to find similarities between cases, opening the path for resolution through analogies. Mather and Yngvesson point out that people might attempt the opposite as well, seeking to expand the terms for understanding the situations entirely. In these moments, participants are often attempting to overturn or speak against the normative order. They are trying to find ways to use interpretations to show the failure of analogy, and perhaps introduce newness into the legal order. In short, in court contexts, laws can only be applicable to context when a form of categorization through analogy occurs. This form of categorization is substantively different than the categorization by equivalence required by a legislature’s demographic imagination.

Culture plays a different role in defining context when courts use the similarities of cases to link laws and contexts in contrast with legislatures, which do so by using quantifiable distinctions between populations.

Because from a judicial perspective analogy is the dominant analytical tool for interpreting context, when contexts are framed as cultural in courts, the judicial perspective often requires that culture function as an analogy to law. The judicial perspective expects that culture operates in contexts as though it was a series of

34 Id 783.
35 Id. 791.
guidelines. “In discussions of legal pluralism and ‘customary law’, the underlying assumption has usually been that there are two laws, cultures, sets of rules – in other words, two internally coherent systems – which must somehow be grafted onto one another.” As Demian points out, both law and culture are presumed to be explanatory frameworks that lie outside of the context and yet are constitutive of the situation. Culture becomes a rebellious handmaiden to law from this perspective, providing rules derived from tradition or custom as a stepping-stone for connecting laws to contexts, but also subtly challenging law’s status as a process geared towards objective justice. After all, with law and culture defined as analogous, claiming that law is cultural (and thus not objective) is but one analytic inversion away. In short, culture provides a frame for laws to intertwine with contexts, but only as a double-sided sword, a frame that is perceived as potentially threatening law’s power.

Cultural perspectives can also be relevant to the challenge at the heart of democratic representation—how can one know what another wants or needs adequately enough to represent their interests? Since the 1950s, in many countries statistics has become legislators’ epistemological lens of choice for discussing what their constituents need. Knowing how to represent others was not always a task dependent on numbers, this historical transformation, circa 1950s in many countries, is the result of epistemological shifts in understandings of how to constitute the political public. When legislators began to address their relationships to their constituents numerically, they

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37 Demian, id. 111.
38 See Demian id. 99.
39 Poovey op. cit., Herbst op. cit., Hacking op.cit.
became able to compare citizens according to a new logic. As Poovey points out: “... to assign numbers to observed particulars is to make them amenable to the kind of knowledge system that privileges quantity over quality and equivalence over difference.”

Legislators use this type of knowledge system to make social groups visible as statistically describable entities—interpreting different groups in terms of their numerically derived equivalences or quantifiable features. As a consequence, for legislators, laws are frequently responses to contexts defined by their statistically framed social inequalities. In legislatures, cultural difference is often imagined through a demographic lens, so that groups with culture are often understood in terms of their statistical indices, not their political connections to the state.

I turn now to an example from my own research on the New Zealand parliament. Edwin Perry in the 2003 New Zealand parliament argued that Asian youth were prone to violence using the following demographic brushstrokes:

The Department of Labour’s 2002 briefing, and the incoming Minister of Immigration Service, found that the repercussions of the Government’s immigration policy were creating undue strain. Violent crime committed by Asians has risen 67 percent in the last 5 years, compared with only 9 percent by Caucasians, 9 percent by Māori, and 5 percent by Pacific Islanders. Violent crimes committed by those born in China have risen by 297 percent in the last 5 years. Crimes of dishonesty by Asians have risen 167 percent in the last 5 years, compared to a drop of 5.4 percent amongst Māori, 4.8 percent amongst Caucasians, and a 5 percent rise amongst Pacific Islanders.

Extortion-type crimes committed by Asians in Auckland City have increased 760 percent in the last 3 years, to the point where one Auckland judge asked whether it was “kidnap week”. Senior constables from around the country are saying that Asian crime is a huge problem. Top Chinese officials state that young Asians are getting hooked on crime in this country, and still the Minister denies that there is a problem that needs to be addressed under this bill.

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40 Poovey id. 4.
In Perry’s speech, “culture” or identity becomes what can be quantified and compared with other groups that are also defined as having culture through similar statistical indices. Quantifiable difference shapes how legislature’s focus on people’s relationships to the state. By this, I mean that legislatures focus on populations and inequities that can be understood through technologies of quantification. In short, legislatures’ emphasis on people’s bonds to social unities can promote a demographic imagination at the level of the state.

In a legislative arena, culture is understood in terms of its statistically visible effects. As a consequence, when cultural difference is the basis for legislation supporting cultural pluralism, it is typically a cultural pluralism that is expected to resolve a statistically framed inequity experienced by a portion of the population. For example, when the New Zealand Parliament began to debate whether to create culturally specific legal responses to child abuse and juvenile delinquency, children’s needs were discussed in terms of their culturally-based statistical risks. Māori representative Tirikatene-Sullivan characterized Māori children as being at risk in the following manner during this debate:

Statistics show that 56 percent of all Māori births were ex-nuptial, compared with the non-Māori figure of 17.8 percent of births. Those figures highlight my concern for the children of those mothers, especially given that perhaps half of the Māori children born in 1984 began their lives in an unstable family position.43

In this, and many other moments, legislators see people with cultures largely in terms of how they quantify in relation to other populations. The social groups that are being

fashioned in legislation are groups emergent out of a demographic imagination, not a historical one. This raises dilemmas which I will address in my second section on how people can embody these distinct forms of difference.

To sum up, contexts are framed as cultural through substantively different techniques in legislatures and in courts. In legislatures, where people are forging bonds to the state, contexts are quantifiably cultural. Here culture often exists as a marker to explain inequalities in population. In courts, by contrast, where people are in front of the state, culture is often an analogy to law. Culture serves an alternative set of guidelines that court officials can use as a resource as they attempt to create consensus over how to frame the context that laws are meant to be addressing. In the next section, I compare how people embody culture in legislatures versus courts. In addition, I address some of the quandaries that emerge when culture is expected to behave as law, especially in the contexts of battles over indigenous recognition.

*Politically Significant Others, Legally Significant Others*

How people embody cultural difference shifts from courts to legislatures. As I mentioned earlier, legislatures are dominated by the need to produce accountable representation. Legislators are faced with the challenge of representing culturally mixed populations, providing laws that apply to them all. Courts offer a different conundrum in the ways they require people to embody culture, since select outsiders to the courts are typically the ones treated as culture-bearers. Court officials will tend to portray themselves as acultural in their efforts to fashion objective justice, treating those who
travel through the courts as potentially cultural. By contrast legislators sometimes speak to the ways they themselves are cultural to justify their stances as representatives of particular constituents. In both cases, issues of scale are at stake. In courts, the question is how can one person stand for a culture? In legislatures, the question is how can one person speak for a multitude? In practice, the difference between speaking for multitudes and speaking as a culture has different consequences as people’s relationships to laws unfold.

In both courts and legislatures, certain people can embody culture, while others remain resolutely understood through acultural frameworks. In the court context, often people involved in the cases can be interpreted along cultural lines, while court employees are figured as acultural. For example, lawyers and judges invoke culture to contextualize others’ behavior, not their own. Cultural difference is often figured along similar lines in legislatures, with certain minority legislators or represented groups that serve as the objects of policy discussed as cultural, yet legislative practices are rarely understood as cultural in their own right. For people in these legal contexts, the culture concept since the 1980s has increasingly become available as an interpretative tool for comprehending difference. The differences culture is meant to explain are frequently differences derived from context, and are not presumed to underpin the legal institutions involved. This raises the question: what are the consequences for these legal arenas of having culture embodied by some people and not others?

As many scholars have pointed out, unevenly attributing culture puts an onus on the people expected to embody culture. When people are described as having culture in

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44 C. Briggs, ‘Modernity, Cultural Reasoning, and the Institutionalization of Social Inequality: Racializing
a legal context, they are presumed to be engaging with an identifiably different and
historically indeterminate (yet nonetheless locatable) social order that contains explicit
guidelines for behavior. There is often an implicit expectation that these people can be
consistently interpreted as culturally different—participating in modern practices like
bingo games and Tupperware parties places these cultural interpretations in jeopardy.
That is, the differences must be different enough.\textsuperscript{45} In addition, often experts in the
culture, not necessarily people from that culture, must be able to address explicitly how
disparate practices are all unified under the rubric of a culture. From a legal perspective,
to have culture, thus, is to have an explicit understanding of why one does what one does,
an understanding that must be contextualized in terms of one’s relationship to traditions.
Notice that in these legal situations, other people present will not be required to be
accompanied by a concept of tradition that frames their actions.

Within the politics of recognition, indigeneity and its representations frequently
condense many of the dilemmas emergent when a person embodies culture, particularly
when first nation issues haunt the political landscape. Indigenous people represent a
moment supposedly timeless, their social unities are assumed to exist prior to the
surrounding modern unities. As a result, the arrangement that indigenes have with
current social unities are invariably markers of those unities’ origins. Jeffrey Sissons
reminds readers:

\begin{quote}
R. Handler, \textit{Nationalism and the Politics of Culture in Quebec} (1988); E. Mackey, \textit{The House of
Difference: Cultural Politics and National Identity in Canada} (2002); A. Orta, \textit{The Promise of
Particularism and the Theology of Culture: Limits and Lessons of ‘Neo-Boasianism’} 106 \textit{American
3-24; J. Taylor, \textit{“Confronting “Culture” in Medicine’s “Culture of No Culture.”} 78 \textit{Academic Medicine}
\textsuperscript{45} Povinelli (2002) \textit{op.cit.}
\end{quote}
In order to maintain an illusion of political legitimacy these post-settler states have been forced to recognize the prior occupation of colonized peoples, or first peoples, and the right of these peoples to maintain and develop their indigenous cultures. Postsettler nationhood and indigeneity are, therefore, inseparable; they are two sides of the same coin, literally so in some cases.\textsuperscript{46}

In court contexts, people are often asked to embody cultural difference in a fashion that condenses or sharpens the paradoxes of the liberal multicultural nation-state. In \textit{The Cunning of Recognition}, Povinelli points out that indigenous in particular are often expected to speak for a circumscribed radical difference in courts of law. This radical Otherness is circumscribed in two senses. First, the indigene is expected to represent a complex intersection between modern experiences and traditional practices. Indigenes are presumed to have knowledge of what traditional laws and other social practices used to be prior to colonialism or other encounters with a transformative modernity. They do not live according to these principles currently, because they are forced to navigate the treacherous demands of modern life, such as the capitalist market. As a consequence, while they are able to speak for the traditional cultural practices which the court wants to validate, their testimony is always suspect. They become vehicles through which the court can reach an understanding of a pre-contact culture, but this is labor on the part of court officials as they seek to disentangle the corrupting influences of modernity from their testimony. In short, in standing for cultural difference, indigenous are not allowed to stand for a hybridity, any indication that they are not other enough make them suspect.

In addition, Povinelli argues that the indigene can not stand for cultural traditions repugnant to the liberal morality of that nation. To do so transforms such

\textsuperscript{46} J. Sissons, \textit{First Peoples: Indigenous Cultures and Their Futures} (2005) 11-12.
practices, such as female circumcision,\textsuperscript{47} polygamy\textsuperscript{48} or withholding medical treatment on religious grounds, into challenges for liberal morality. When cultural traditions are antithetical to liberal morality, two principles clash – cultural tolerance and ideals of what makes a good citizen. Povinelli writes:

\ldots in actual social worlds those who consider themselves to be liberal are confronted with instances of intractable social differences that they do not set aside—that they do not feel they can or should set aside. They encounter instances of what they experience as moments of fundamental and uncanny alterity: encounters with differences they consider abhorrent, inhuman, and bestial, or with differences they consider too hauntingly similar to themselves to warrant social entitlements—for example, land claims by indigenous people who dress, act, and sound like the suburban neighbors they are.\textsuperscript{49}

The indigene is trapped into displaying a cultural difference that is alternative enough to vindicate the possibility that they stand for a different world view, but not so different that they threaten liberal morality.

Sometimes one’s culture is supposed to be the intelligible (and translatable) context that shapes one’s sociality instead of one’s engagement with “modern” and putatively acultural context. As I mentioned earlier, when culture is viewed from a judicial perspective, culture becomes analogous to law. In practice, this means that when the culture concept is used as the foundational building block for legal pluralism, culture becomes operationalized as a set of rules or explicit formulations that can be applied to contexts and parallels law. In courts, when people are representing a culture, they are representing a set of rules that distinguishes them from everyone else. For example,

\textsuperscript{48} Sarat and Berkowitz, op. cit.
\textsuperscript{49} Povinelli op. cit. 13.
under the cultural defense, the culture invoked often becomes a substitute for their intentions\textsuperscript{50}—instead of intending to kill, their culture made them murder.

In courts, the people who are framed as culture-bearers often are not the ones translating culture into a legal rubric. Often it is expert witnesses and court officials who serve as the interpreters. In the case of indigenous plaintiffs or defendants, they often embody culture in suspect ways, precisely because they are interpreting cultural rules and applying them to contexts. The problem court officials must engage with when faced with cultural claims is how to navigate the ways in which scale gets conflated when a person speaks for culture, that is, how a person can speak as culture without implicitly discrediting law by revealing law to be cultural.

In legal arenas dominated by accountable representation, people can stand for culture in another fashion. When legislatures must pass laws that address indigenous people, they are simultaneously commenting upon the origins of the nation and how the nation has evolved in its relations with the indigenous since. Thus indigenes stand for culture in a different fashion than other groups, especially since the 1970’s civil and indigenous rights movements in most settler nations such as Australia, Canada, the United States, and New Zealand. Indigenous people have found this particular status useful only if they strategically essentialize their culture, articulating a commitment to nature as well as to cultural practices as though they are traditions performed without changes since time immemorial.\textsuperscript{51} The legislatures have tailored their imagination of the state’s obligations to the indigenous accordingly, since legislatures are often called upon to allow indigenous people to “protect” the land.

In addition, legislators will occasionally claim culture for themselves in an attempt to account for how they can in fact speak for others. When using culture to speaking about their commonality with their constituents, shared cultural backgrounds often serves as justifications for why representations know what a particular social group needs. From my own research, a Māori member of parliament, Ron Marks, made a typical claim during the previously mentioned debate about legislation addressing juvenile delinquents:

There has been a lot of talk in this House about Māori MPs and their criminal convictions and what they have done in their past. I use that as an example and say to people in this House: do the numbers; do the statistics. Members talk about the statistics all the time. They know the percentage of Māori people who have had brushes with the law. They should count up how many are here. The one thing we should know is that if this House is a true representation of New Zealand, then there are people here who have criminal convictions. That might be a great thing, because they might have come from a hard-core life and bring some experience to this House.

In my own family we had to deal with a man who beat not just his wife---my niece---but also his children. We were strong enough to deal with that, but there are many families out there who are not, and that is where this House comes in.\(^{52}\)

Here, and in other cases, the culture concept is used by representatives to claim special knowledge and justify making decisions on their constituents’ behalf.

Thus, while in courts, culture-bearers are the objects of adjudication, and not adjudicators themselves, this is not the case in legislatures. Legislators can and will speak about their own complex cultural histories. Phyllis Peace Chock provides an example of how this possibility alters conversations in her analysis of U. S. Congressional subcommittees hearings on immigration in 1975. In this article, she

\(^{51}\) Sharp op. cit.
\(^{52}\) NZPD July 25, 2000.
argues that Congressmen must navigate the paradoxes generated when illegal immigrants are discussed alongside the origin myth of the United States as a migrant’s ideal. She claims that Congressmen have difficulty condemning illegal immigrants at the same time as they extol America as a country filled with the opportunity for social mobility for hardworking migrants. If the United States is the land of opportunity for migrants, how does one justify withholding opportunity from illegal migrants? Illegal migrants present an intriguing challenge, with their reputed willingness to work and longing to improve their economic lot. Often, to distinguish between legal migrants and illegal migrants, representatives had to dehumanize the illegal migrants, framing the debate as a question of population (and an inappropriately expanding population at that) rather than of people striving to better their situations.  

In the course of debating legislation about illegal immigration, various representatives and expert witnesses also discussed their own family’s experiences of migrating the United States. Reflecting on their own historical connections to this dilemma tended to accomplish two things. First, it tended to undermine other representatives’ attempt to dehumanize the illegal immigrants. Through these narratives, the representatives and expert witnesses made visible the ways in which the myth of opportunity applied to illegal migrants. Second, the representatives used these personal accounts to promote dyadic connections, to point out one-to-one relationships between representatives and a single constituent. This focus served to undercut other legislators’ attempts to conflate scale, which was implicit when these anti-migration legislators

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insisted on describing migrants in terms of population. Personal narratives made visible the representatives’ own historically nuanced relationship with the nation. In so doing, the representative made the personal a basis for connecting with those they legislate. In short, representatives have available to them as a political resource the possibility of reflecting on their own cultural or historical connections as arguments for particular laws.

In part, legislators are able to embody cultural difference while court officials are not because of the exigencies of representation in contrast to the exigencies of adjudication. In representing, people will have to justify the grounds for which they can understand the needs and wants of their constituents. Claiming complex cultural connections can be one vehicle for doing so. In legislating, it can be important to make visible the kinds of social connections and social knowledge one can have of others. In these instances, it is not only a population that is cultural, it can be a representative as well. In courts, this is most distinctly not the case, since often courts demand that judges and lawyers speak from their legal position, from stances that are presumed objective. To be cultural in these instances would be to undermine their authority.\textsuperscript{55}

\textsuperscript{54} Id. 281, 290. 
\textsuperscript{55} Is there a parallel to the legislators who embody cultural contexts in their historical trajectories within courts? The cultural defense offers a neat inversion of what the legislators’ claim to being a cultural being offers. Just as with the cultural legislator, in the cultural defense, people hope to apply laws to a particular context by describing a person as a culture-bearer. However, this conflation of person and culture in the name of understanding laws and context may be the primary similarity between the cultural legislator and the cultural defense. The cultural legislator uses their cultural engagement as another venue for demonstrating accountable representation—their particular history is meant to provide them with insights that supposedly lead to appropriate representative action. The direction is to enrich laws, and make them more fluidly applicable to particular contexts. The cultural defense takes precisely the opposite approach in making connections between laws and contexts. Rather than making laws more plural or more nuanced, the cultural defense reveals laws’ supposed lack of culture. Laws can not apply properly in contexts where people’s intentions are by contexts outside of the court’s legal
While people might embody culture in both legislatures and courts, the institutional vantage point determines what the consequences might be for those embodying culture. Court officials find their justifications through their relationships to objective justice, as a consequence, culture bearers in courts will tend to be those connected to the cases, not to the courts. By contrast, for legislators, embodying culture can often be a solution to the epistemological and practical question of justifying one’s representation of others’ political needs and concerns. In courts, people can embody culture in an arena where a different labor of division occurs. In judicial arenas, the court officials are linking laws to contexts--that is, judges are applying laws to the facts before them--while the culture bearers are constrained to stand as exemplars of culture, not agents deploying culture for their own ends. In legislatures, people can speak for cultural groups or communities, with culture as the link and rationale. In these moments, when legislators embody culture, they are actively advocating ways in which laws and contexts should be interwoven. In short, the difference lies in the kinds of agency culture enables as well as the ways in which levels of social unity are constituted and crossed in each institutional arena.

_How Laws Travel_

imagination. In the cultural defense, culture as a set of norms is substituted for the defendant’s intentions. It does not explain how laws can be linked to this particular context, but rather explains why laws are not appropriate to explain this context. It is no accident that the cultural defense arises in moments of sentencing, and has too often been described as comparable to the insanity defense (see Demian forthcoming, op. cit.). Here culture and insanity both are used to fracture a court’s attempts to reconcile laws and situations, arguing instead that the situation was fashioned by people unable to act in ways that could put them in relation to laws.
Legislatures locate pluralisms, both cultural and legal, at different moments in the legal process than courts do. In legislatures, differences are explicitly at stake in the construction of laws. From a legislative perspective, pluralism is imagined in terms of interest groups or competing agendas between law-makers. Difference is at the heart of the legislative process, the cause for the compromises that affects the eventual shape and wording of laws. Laws may be described as the objectified compromises between different interest groups, different political agendas, or different cultural assumptions. Regardless of how legislators or scholars choose to frame what constitutes difference, particular laws are invariably understood to be the result of compromises that respond to these differences.

These differences move to the background as laws travels into courts. In courts, people do not engage with laws as though they are a consequence of difference and compromise. Instead, in courts, the cultural differences that are foregrounded lie between courts and other arenas of dispute resolution or, more frequently, are embodied in the people who travel in and out of courts. As laws travel from legislatures to courts, the location of difference shifts from being embodied in the law itself to being embodied in the people who come before the law.

Legislatures, in part, are arenas of contesting definitions, constructing how to carve up the world through laws they will write in the process of debate and political compromise. What is intriguing about legislatures as an arena of law, as opposed to courts, is that explicitness has its own peculiar hazards in these contexts. When a political party frames the need to redress a social inequity, the grounds for how best to
understand this social inequity are immediately opened for debate. For example, when the Labour party in New Zealand argues for legislation to support Māori rights under the Treaty of Waitangi as historical redress, the National party responds by claiming that this would be race-based legislation. By insisting that culture is in fact race, National MPs can advocate against policies that they believe privilege one race over another – for example, getting rid of the seven parliamentary seats currently designated for Māori only to fill. In short, defining the Māori as racial is a way to sidestep obligations arising from historical injustices. National instead frames Māori problems in terms of contemporary economic inequalities. Through these techniques, the National Party is trying to eliminate Māori as a population requiring special legislation. In this moment, historical injustice competes with racial privilege as potential frames for understanding the context. Precisely because legislatures are structured around promoting contestation as an essential part of the democratic process, very few definitions of difference emerge without the definition itself becoming a topic of debate. Once the law has passed, this instability recedes to the background. But until the law has passed, making explicit one’s assumptions underlying how unequal social groups are constituted and how one should best respond legislatively to this inequity entails opening up a path towards debate. The hazards of explicitness in legislatures is that the very grounds of the argument can shift dramatically in the course of delineating one’s rationale through debate.

In order to understand the different analytic tasks confronting the legal scholar when they shift their focus from courts to legislatures, I turn to Mindie Lazarus-Black’s article on how a Trinidadian law about domestic violence travels from parliament to the

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In this article, she takes different approaches to how social unities—constructed and yet always already presumed to exist—intersect with each other, depending on the institutional vantage point of her analysis. In particular, she examines the differences between the ways the courts and parliament address the division between the boundaries of the family and the boundaries of the state.

This division between Family and State is one that Donzelot argues is a central achievement of the modern state. He claims that before modern nation-states could emerge, families need to be construed as a space both apart from the state, and requiring state intervention from time to time. This distinction is crucial both to how the state legitimates itself, and how the state organizes its relationship with its citizens. While from the perspective of both the court and the legislature, this division between Family and State must constantly be reaffirmed and renewed, this is precisely the labor that the analyst should unravel. In the legislature, the task of unraveling this distinction is a fundamentally different analytical challenge than the task of unraveling how this distinction becomes visible and compelling in the courts. To illustrate this, I will discuss Mindie Lazarus-Black’s account of the consequences of how laws travel from parliament to courts.

When Trinidad’s Domestic Violence act was discussed in the Trinidadian parliament, the debate centered around the question – how best to draw the boundaries between the state and the family. The legislators specifically focused on whether the state had the right to intervene in “private” business, or whether the state had the right,
through court orders protecting the woman, to separate an abusive man from his property. In short, what was being debated was how best to preserve unities—state and family—that were presumed to already be distinct, but under threat.

To analyze this distinction in parliament, Lazarus-Black examines how the task of the legislatures is to interweave the ways in which the State and the Family should engage. Because political debates make certain topics explicit, legislators were constantly revisiting and re-establishing what in other contexts are already presupposed divisions, in this instance between families and governments. Lazarus-Black points out that during the debate over a bill that enabled victims of domestic violence to obtain protection orders from the magistrate’s court, many other issues arose. Various legislators and political commentators questioned who counted as a spouse, whether a citizen’s safety was more important than one’s right to property, and so on. Debating a bill on domestic violence raised questions about what exactly is a family, and whether a family is distinct enough from the state so that the family as a unit must be protected from the state over and beyond the state’s commitment to protect citizens from harming each other. Because legislators were so intent on critiquing each other’s policy positions, they end up questioning many of the tacit framing assumptions their political opponents were using. This clearly still occurs within parameters. Because the questions made many tacit assumptions explicit, even the parameters were at constant risk of being exposed. For Lazarus-Black, while tracing how debates transform the implicit into the explicit, her task became to delineate why some connections and not others are foregrounded in this legislative arena.

59 Id. 994.
Lazarus-Black then turns to how the Domestic Violence Bill is implemented in the courts. In this moment of the analysis, Lazarus-Black shifts from focusing on the ways in which State and Family are seen as distinct entities that others must actively interweave through the vehicle of law. Instead, her task is to see how the two different regimes are in fact interwoven into a gendered bureaucracy that ultimately imbricates and assists each other’s gendered agendas. In analyzing judicial practice, she argues that the Act never became as effective a protection as the lawmakers and feminist activists would wish. Cases were occasionally dismissed because court officials decided the case was not properly analogous to domestic violence cases. Lazarus-Black explains: “Sometimes after a case begins the magistrate realizes that the dispute is not ‘really’ about domestic violence; it may be a long-standing quarrel about rights to property.”60 The courts were focusing on how to frame a particular complaint, and in the process, taking the law so literally that women did not receive protection orders.61 The court officials were not, as legislators had, questioning the underlying assumptions behind different ways to define a complaint.

Lazarus-Black focuses on how the very procedures courts used to process cases turned out to make the Act ineffective at re-structuring the ways in which Family and State were distinguished and interconnected in Trinidad. She discusses how the ways in which court officials controlled time disempowered women. By the role of time in these cases, she refers to the time in which protection orders were processed, the time it took for cases to come to trial. Lazarus-Black writes: “Once they had made the decision to file a complaint, all of the women experienced what they referred to as the problem of ‘time.’

60 Id. 994.
Importantly, the interviews revealed that by ‘time’ these women meant a variety of different circumstances involving different actors in the criminal justice system."\(^{62}\)

Lazarus-Black points out that when women faced these time delays as well as other obstacles, they were encountering “structural deflection,”\(^{63}\) which ensured that this Act was infrequently put into practice. In looking at structural deflection, Lazarus-Black is examining how court practices engages with families and the state as interconnected unities. In general, when studying legislatures, analysts focus on how unities become actively interwoven, while studying courts, the task is to untangle the ways in which these unities are intertwined.

To sum up, laws in their originary moment in legislatures are widely understood to be the product of compromise and even shared disagreements. Because of the nature of political debate, distinctions and assumptions are often made explicit, and thus are open to revision, while elsewhere the same presuppositions may be kept stable and implicit. As a consequence, explicitness in legislatures often engenders the possibility of legal change. As laws travel into courts, this divisive origin, with its transformative potential, often moves into the background. For the legal scholar, this shift changes the task of analysis. In analyzing a legislative arena, scholars examine how writing laws are a series of compromises that merge (or ignore) a wide range of assumptions and conceptual resources available to the legislators. In analyzing a judicial arena, scholars turn to deconstructing the assumptions at play, and that are often implicitly adhered to through court practice.

\(^{61}\) Lazarus-Black, personal communication.
\(^{62}\) Id. 999-1000.
\(^{63}\) Id. 997.
Conclusion

I have been exploring the ways one’s institutional vantage point affect scholarly analyses of cultural pluralism in legal arenas. I suggest that courts are dominated by concerns with objective justice while legislatures are primarily concerned with accountable representation. As a consequence of this different emphasis in legal labor, three central analytical shifts occur when looking at cultural pluralism from the perspective of legislatures instead of courts. First, in courts, contexts are often made cultural as one technique among many to create a suitable interpretation that will lead to resolution. From a legislative perspective, contexts are made cultural using a demographic imagination. I discussed this as a difference between engaging with contexts through analogy versus through equivalence. Second, in courts, only outsiders tend to embody culture, leading to a static and timeless account of what culture is. In legislatures, anyone, even representatives themselves, can be cultural, making being cultural into a political tactic centered on making historical and social connections visible. Third, and finally, in legislatures, laws are always a compromise, and thus is an object rift with the tensions inherent in the context it is meant to be a response to. As laws travel out of legislatures and into courts, the agonism at the heart of a law is forgotten, and the law becomes acontextual and applicable as a judicial object.

In this article, I recommend that scholars of cultural pluralism take more seriously the institutional vantage point shaping their object of inquiry. When one shifts institutions, how people engage with laws, culture and various forms of pluralism shift as
well. One has to rethink questions that legal scholars have begun to take for granted after decades of tracing courts’ engagements with cultural pluralism, questions revolving around how laws are linked to contexts, how law and social unities are interwoven, and how to locate legal change. When shifting to legislatures, our analytical toolkit needs to be re-fashioned, without discarding the insights that scholars of cultural pluralism in courts can provide.

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