

## About Legal Culture: Main Theories and Their Consequences

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### Abstract

The terminology of legal culture has been widely used in both common language and jurisprudence over the last few decades without its actual meaning being defined. Almost everyone agrees that the concept of legal culture is undefined and vague. Giving a brief and concise definition is not possible in jurisprudence, as the term refers to several concepts. This study tries to present the essence of some basic theories in connection with legal culture and argues that adopting an approach on the basis of legal culture creates more advantages than disadvantages in jurisprudence. It tries to summarise and review the key findings of the published literature on this topic. Consequently, this article aims to provide a theoretical overview. It is useful to periodically evaluate the progress that academic discourse has made in clarifying the meaning of a contested concept. The paper begins by clarifying the concept of culture, the complex meaning of which gives rise to the even more complex concept of legal culture. The starting point is actually Lawrence M. Friedman, who first introduced the modern concept of legal culture in a book in 1975. A brief summary of Friedman's ideas is provided, alongside a systematic critique by Roger Cotterrell, who developed his own conceptual approach, too. This is followed by a section on the widespread use of the concept of legal culture. Although the term is popular, users always define it slightly differently and attribute their own meaning to it. However, the common thread is that the use of this concept emphasises the study of law as a social phenomenon. From a philosophical point of view, it is possible to recognise that cultural relativism and culturalism can lead to theoretical and methodological problems. However, the conclusion is that the careful and well-founded use of this concept in research has more advantages than disadvantages. This finding is reinforced by an illustration of its application in the fields of legal sociology and comparative legal studies. The conclusion of the majority of the reviewed literature is that when applied correctly, legal

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culture is an effective tool for analysing law. It is a valuable resource for legal studies, the sociology of law, comparative law and legal history. As the examples demonstrate, legal culture can also provide a foundation for empirical research. At an analytical level, legal culture can be used to break down the complex social phenomenon of law into elements that can be effectively examined, either theoretically or empirically, through appropriate conceptualisation and operationalisation.

**Keywords:** culture, legal culture, sociology, legal sociology, comparative law, analysis of law

## I Introduction

The terminology of legal culture has been widely used in both common language and jurisprudence over the last few decades without its actual meaning being defined. While in ‘common language’ this deficit has not necessarily caused any problem – although there may have been misunderstandings, of course –, serious disputes have taken place regarding the meaning and applicability of the term ‘legal culture’ in the field of law and in jurisprudence. It is no coincidence that a huge effort has been put into clarification, as the concept of legal culture offers the promise of being able to analyse a complex social phenomenon: the law. Moreover, not only does it seem capable of helping to create holistic ‘grand’ theories in the sociology of law, but it can also be applied to the more specific fields of jurisprudence (and even to the analysis of particular legal institutions).

Unfortunately, almost everyone agrees that the concept of legal culture is undefined and vague. Giving a brief and concise definition is not possible in jurisprudence, as the term refers to several other concepts.

This article, therefore, draws its conclusions based on a review of recent and relevant literature on the issue of whether the concept of legal culture makes a useful contribution to legal studies (eg the sociology of law and comparative law). The main objective of this paper is to provide an answer to the previous question based on a presentation and evaluation of authoritative authors’ views. The cited articles also provide examples of different interpretations and ways of answering the above question. The intention is to trace the emergence, spread and evolution of this scholarly concept.

It is fruitful to summarise and review the key findings of the recently published literature on this topic. Consequently, this article aims to provide a theoretical overview. It is useful to periodically evaluate the progress that academic discourse has made in clarifying the meaning of a contested concept. This notion is special in that it can serve as both a theoretical framework and an approach to help formulate comprehensive explanations (eg of a legal system as a whole, of the similarities and differences of entire legal systems around the world, of a legal institution, or of legal transplantation), as well as being a basic concept that can be

the starting point for empirical studies. Of the vast number of relevant publications, I have focused on those that I consider to be essential.

The study begins by clarifying the concept of culture, the complex meaning of which gives rise to the even more complex concept of legal culture (Section II). The starting point is actually Lawrence M. Friedman, who first introduced the modern concept of legal culture in a book from 1975. I will provide a brief summary of Friedman's ideas alongside a systematic critique by Roger Cotterrell, who developed his own conceptual approach at the same time (Section III).

This is followed by Section IV on the widespread use of the concept of legal culture. Although the term is popular, users always define it slightly differently and attribute their own meaning to it. However, the common thread is that the use of this concept emphasises the study of law as a social phenomenon. Authors have examined legal culture as a complex social concept which can be disaggregated by analysis into a number of elements that can be further explored. David Nelken's work is outstanding. He has examined the issue from many angles and concluded that it is useful to employ this concept in a well-defined manner. Others highlight the problems and suggest using other concepts instead, such as tradition (or, as Cotterrell suggests, the notion of legal ideology). From a philosophical point of view, it is possible to recognise that cultural relativism and culturalism can lead to theoretical and methodological problems. However, the conclusion is that the careful and well-founded use of this concept in research has more advantages than disadvantages.

This finding is reinforced by its application in the fields of legal sociology and comparative legal studies (Section V). In the first case (Section V1), I cite an example of the characteristics of Dutch legal culture. Then, referring to the concept of 'culture shock', I analyse the clash between Western (civil and common law) legal cultures and Islamic legal culture resulting from migration. The significant explanatory power of the concept of legal culture is evident here. In the second case (Section V2), I address the inconsistencies in the use of legal culture in comparative legal studies. I start with the study by Balázs Fekete and summarise his article's suggestions for using the concept in legal comparison. The conclusion also emphasises that, with methodological awareness and precise definitions, legal culture can be effectively applied in post-functionalist comparative law. I then demonstrate how useful legal culture is in clarifying the characteristics of post-socialist legal systems in Eastern Europe (or in Central and Eastern Europe).

The evaluation of the literature here summarised, which also highlights the importance of clear, careful and precise conceptual definitions, creates the basis for the main points of the assessment (Section VI) and the conclusion (Section VII). In essence, according to these sections, when applied correctly, legal culture is an effective tool for analysing law. Its ambiguity is precisely its advantage, as scholars can adapt it to their own research with careful work, using it as a conceptual framework or basis. It is a valuable resource for legal studies, the sociology of law, comparative law and legal history. Furthermore, legal culture can also provide a foundation for empirical research.

At an analytical level, legal culture can be used to break down the complex social phenomenon of law into elements that can be effectively examined, either theoretically or empirically, through appropriate conceptualisation and operationalisation. This seems to be the conclusion of the majority of the reviewed literature, which argues that using the concept of legal culture is associated with more advantages than disadvantages in legal scholarship. At the same time, we should not hide the difficulties that can lead to fundamental philosophical questions. Discussion of the concept itself seems to promote its application in concrete research, even if this is only tentative in many case studies.

In my opinion, such an overview is useful in itself as it provides a summary of the discourse for use in further discourse.

## II Culture and legal culture

The first appearance of the term ‘culture’ in its present-day meaning is linked to Cicero, since the concept of culture comes from the Latin verb *colere*, which means cultivating. Cicero, however, used the term *cultura animi* (cultivation of the soul) in his work *Tusculanæ disputationes* (in the first century BC).<sup>1</sup> The meaning of the concept has changed in line with various academic trends and schools in different countries throughout the years. For example, some researchers have contrasted the expression culture with civilisation, thus examining the differences between the uses of the notion of culture and civilisation in Great Britain, France and Germany. The different content of the different meanings has reflected different historical traditions. The meaning of the term ‘culture’ has thus been approached from many perspectives recently.<sup>2</sup>

Social researchers (eg sociologists) use the concept of culture in a broad sense. In this sense, culture is a complex notion that contains the following elements: the institutions, values and the experiences of a given society. The concept of culture thus encompasses a set of symbols, processes and values that are inherited from generation to generation.<sup>3</sup>

The concept of culture includes material and intellectual work and the habits and lifestyles of societies or social groups – the distinctive features of a group of people. Culture, therefore, means common, learned, symbol-based and interrelated systems of behaviour and mentality. The symbol system that mediates culture primarily is language. The capacity for culture is an innate property of humans, which manifests itself in various forms during the socialisation process. The term ‘culture’ may indicate the specific process of mental, spiritual and aesthetic development or a particular lifestyle of a social group, a nation, a historical era,

<sup>1</sup> Raymond Williams, ‘Kultúra’ [Culture] in Anna Wessely (ed), *A kultúra szociológiája* [The sociology of culture] (Osiris – Láthatatlan Kollégium 1998, Budapest) 28–32.

<sup>2</sup> Wessely, ‘Előszó: A kultúra szociológiai tanulmányozása’ [Foreword: The sociological study of culture] 7–27.

<sup>3</sup> Péter Niedermüller, ‘A kultúrák közti kommunikációról’ [Intercultural communication] in István Béres, Özséb Horányi (ed), *Társadalmi kommunikáció* [Social communication] (Osiris 1999, Budapest, 96–113) 98–102.

mankind, and, moreover, the practice and creations associated with intellectual and artistic action. In analysing these phenomena, we can distinguish between elite and mass culture, and we must consider the existence of different subcultures: behavioural patterns and values that are different from the majority.<sup>4</sup>

It is also worth considering some other conceptual interpretations, such as that of David Nelken, who refers to culture as a ‘...fluid, contested and changing set of values and practices...’<sup>5</sup> I could also quote T. S. Eliot, who employed vivid examples to illustrate the concept: ‘Culture includes all the characteristic activities and interests of a people: Derby Day, Henley Regatta, Cowes, the twelfth of August, a cup final, the dog races, the pin table, the dartboard, Wensleydale cheese, boiled cabbage cut into sections, beetroot in vinegar, nineteenth century Gothic churches and the music of Elgar.’<sup>6</sup>

Since the meaning of culture has proven to be so obscure, unclear and generic, we face a bigger challenge when creating a new concept: legal culture. According to Susan Silbey, the concept of legal culture is positioned between law and culture, with open boundaries in both directions. In her opinion, some confusion has arisen due to the ‘...intermingling of two meanings of culture. One meaning refers to a particular world of beliefs and practices associated with a specific group. The second meaning is analytical rather than empirical, referring to social analysis – an abstracted system of symbols and meanings, both the products and context of social action.’<sup>7</sup>

### III Two ‘classic’ approaches and a remark

One of the classical and committed defenders of the application of legal culture is Lawrence M. Friedman. According to him, the most commonly defined meaning of legal culture is the ideas, values, expectations and attitudes towards law and legal institutions that a community or part of it shares.<sup>8</sup>

Based on his theory, the concept of legal culture analytically highlights the implicit and tacit social interactions that determine the relationship between the legal system and society. At the same time, it helps to describe how people understand, perceive and interact with the legal system (introducing the following related concepts: legal knowledge, legal awareness

<sup>4</sup> Zoltán Fleck, *Szociológia jogászoknak [Sociology for lawyers]* (Napvilág Kiadó 2004, Budapest) 219.

<sup>5</sup> David Nelken, ‘Legal Culture, Transnational Legal Processes and Conformity’ in Péter Cserne, István H. Szilágyi, Miklós Könczöl, Máté Paksy, Péter Takács, Szilárd Tattay (eds), *Theatrum Legale Mundi* (Societas Sancti Stephani 2007, Budapest, 303–320) 304.

<sup>6</sup> Thomas Stearns Eliot, *Notes Toward a Definition of Culture* (University Press Glasgow 1954, Glasgow) 31.

<sup>7</sup> Susan S. Silbey, ‘Legal Culture and Cultures of Legality’ in Hall J. R., Grindstaff L., Lo M.-C. (eds), *Handbook of Cultural Sociology* (Routledge 2010, London – New York, 470–479) 470.

<sup>8</sup> Lawrence M. Friedman, ‘The Concept of Legal Culture: A Replay’ in David Nelken (ed), *Comparing Legal Cultures* (Routledge 1997, Dartmouth-Brookfield, 33–40) 34.

and behavioral patterns related to legal system). These include judgements about the fairness, legitimacy and utility of law.<sup>9</sup> These behavioural patterns and attitudes and their extent are perceptible within a population and vary from one group or state to another, so – Friedman says – it is possible to speak of legal culture(s) of groups, organisations and states.<sup>10</sup> Additionally, Friedman distinguishes between the internal legal culture of professionals working within the legal system and the external legal culture of citizens interacting with the legal system.<sup>11</sup> He argues that legal culture is measurable using certain indicators in connection with descriptive sociological notions (eg attitude, legal consciousness) with empirical methods.<sup>12</sup>

Roger Cotterrell, however, believes that Friedman's theory is inaccurate and contains a lot of uncertainty. In his view, Friedman's theory takes into account two incompatible things at the same time: ideological content, such as the attitudes and values of a group of people towards the legal system and the practice of human actions in connection with the legal system. He considers Friedman's definition of legal culture to be too general, covering many elements far from each other, so the theory loses its significant and substantial explanatory power. Friedman's approach to legal culture is problematic because it is not verifiable with the methodology of legal sociology (empirical research). According to Cotterrell, the elements of Friedman's theory belong to legal ideology rather than legal culture. The latter can be used if we examine the well-defined, separable and determinable set of social phenomena from within a sufficiently narrow circle. This is a more limited, experiential, descriptive framework. Cotterrell believes that 'legal culture' should apply to precisely defined social phenomena and geographical areas. The rules of ethnography and cultural anthropology, laid down by classical researchers such as Bronisław Malinowski, must therefore be followed. Cotterrell also called attention to the fact that legal culture is a specific aspect of culture, involving viewing culture from a legal point of view and researching legally relevant elements in relation to the complex phenomenon of culture.<sup>13</sup>

It is important to point out that the use of the notion of legal culture was not a radical innovation, as elements of culture had already been taken into consideration in jurisprudence. Although the concept of legal culture has only been used by jurisprudence for a relatively short time, this does not mean that the factors that led to the use of this concept earlier were not taken into account.<sup>14</sup>

<sup>9</sup> Silbey, 471–472; Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage 1975, New York) 193–194.

<sup>10</sup> Friedman, *The Legal System: A Social Science Perspective* 194.

<sup>11</sup> Friedman, *The Legal System: A Social Science Perspective* 223–224.

<sup>12</sup> Lawrence M. Friedman, 'Is there a Modern Legal Culture?' (1994) 7 (2) *Ratio Iuris* 117–131, 118, DOI: <https://doi.org/10.1111/j.1467-9337.1994.tb00172.x>

<sup>13</sup> Roger Cotterrell, 'The Concept of Legal Culture' in Roger Cotterrell (ed), *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Ashgate 2006, Aldershot) 81–96, DOI: <https://doi.org/10.4324/9781351217989-6>

<sup>14</sup> Jørn Øyrehagen Sunde, 'Champagne at the Funeral – An Introduction to Legal Culture' in Jørn Øyrehagen Sund, Knut Einar Skodvin (eds), *Rendezvous of European legal cultures* (Fagbokforlaget 2010, Bergen) 11–28.

#### IV The diversity of theories and the difficulties of applicability

In fact, almost every social researcher who has dealt with the issue of legal culture has created their own concept about legal culture to enable their work with it, or at least selected one of the existing theories, which they applied to their own research. For example, Jan Winczorek referred to the many different theories in the title of his study, *Systems Theory and Puzzles of Legal Culture*. In his work, he listed twenty-one different attempts to define legal culture, including Friedman's, and then separately demonstrated the explanatory forces attributed by scholars to legal-culture-based approaches.<sup>15</sup>

Ali Acar examined legal-culture-based theories, starting with the situation of Turkey. He also described the positions of several scholars, including Friedman and Cotterrell. He emphasised the work of Hayrettin Ökeşiz and Volkmar Gessner, who built their own approaches to legal culture from more elements. According to Acar, Gessner perhaps developed the most comprehensive framework for examining legal culture. He differentiated four areas: 1. legal norms, 2. decisions of the supreme court and the judiciary, 3. institutional actors (the courts and the administration), and 4. non-institutional actors (lawyers, citizens and economic companies). Legal and theoretical comparison can work in the first field. The examination involving the second field is legal comparison itself, and extending this to the third field, the operation of legal institutions can be compared. We can talk about comparing legal systems and legal cultures regarding the fourth field. Of course, it can be seen that the theory is concentrated on the comparison of legal cultures, but according to Acar, this framework encompasses all the relevant elements of legal culture; therefore, a complex result may be obtained from the consideration of all the features. In addition, this takes into account the essential elements of legal systems that should be used to map the legal culture of a given country.<sup>16</sup>

Why does Acar think it is so important to argue for the use of legal culture as an interpretative framework? The answer is surprisingly brief, and we can find it in the introduction and at the end of his study. He refers to the need to examine the Turkish legal system in this way, but he highlights just one of the features that should be analysed from the perspective of legal culture. According to him, the Turkish legal system is a specific Western-oriented legal system that was formed through the reception of foreign legal examples (the Civil Code followed a Swiss pattern and the Criminal Code followed an Italian pattern). In his view, the purpose of this process was to unite and unify the country, as non-Muslim social groups in the Ottoman Empire previously had their own traditional laws and dispute resolution procedures. However, the state building based on the one-nation conception

<sup>15</sup> Jan Winczorek, 'Theory and Puzzles of Legal Culture' (2012) 1 *Archiwum Filozofii Prawa i Filozofii Społecznej* 107–125, 107–108 <[https://archiwum.ivr.org.pl/darmowe-artykuly/pl\\_004\\_7.pdf](https://archiwum.ivr.org.pl/darmowe-artykuly/pl_004_7.pdf)> accessed 1 December 2025.

<sup>16</sup> Ali Acar, 'The Concept of Legal Culture with Particular Attention to the Turkish Case' (2006) 3 (2) *Ankara Law Review* 143–153, DOI: [https://doi.org/10.1501/Lawrev\\_0000000036](https://doi.org/10.1501/Lawrev_0000000036)

abolished the validity of other ‘legal systems’ and developed a specific Western-type legal system. In the conclusions, he points out that during Turkey’s preparations for membership of the European Union, it would be essential to analyse the legal culture of the country; in particular, the legal *acquis* required by the European Union. He also considers this research necessary, since the practical functioning of legislation has to be examined beyond its mere legal adaptation.<sup>17</sup>

David Nelken has studied the possibility of applying legal culture as a theory of interpretation in several studies from several perspectives. These studies have aimed largely at answering the question of whether there is any valuable benefit from legal culture approaches. Nelken did not fail to draw attention to Friedman’s uncertainty in connection with the concept of legal culture. Namely, Friedman introduced the theory of legal culture into scholarly debates with great success, but his point of view changed, and he has recently described legal culture as an uncertain, confusing, abstract concept associated with serious difficulties. Perhaps he is uncertain about the usefulness of this concept in legal studies.<sup>18</sup>

Nelken summarised in his study (in 2014) a lot of doubts and difficulties he had about legal culture supported by abundant literature references, but he also stressed the possibilities of this approach at the same time and presented several examples of the use of legal culture as an interpretation framework.<sup>19</sup> He recalled in his writing that Friedman originally used the term ‘legal culture’ in a specific sense in an effort to demonstrate how social pressures and needs shape legal change and the development of law within a given legal tradition. However, others did not limit themselves and took advantage of the complex meanings of legal culture. Namely, the concept of legal culture can cover many issues and areas, thus it can be a productive – but controversial – framework.<sup>20</sup>

Based on various arguments for and against, it is a correct conclusion that the concept of legal culture can be useful for social research in the field of law due to its complexity, but it remains a controversial concept for the same reason. It might happen that different scholars, in different ways, elsewhere and otherwise, identify legal culture (eg some in legal habits, others in the style of reasoning of judges, while others in the function of institutions). Of course, this also affects where to draw the boundaries of the different legal cultures: should we distinguish between the law of states, customary law and the law of organisations, and so on? Can we also talk about a worldwide – global – legal culture that may conflict with the

<sup>17</sup> Acar 152–153.

<sup>18</sup> David Nelken, ‘Using Legal Culture: Purposes and Problems’ in David Nelken (ed), *Using Legal Culture* (Wildy – Simmonds – Hill 2012, London, 1–51) 4; David Nelken, ‘Thinking about Legal Culture’ Legal Studies Research Paper Series 2014/33 King’s College London Dickson Poon School of Law, 2, DOI: <https://doi.org/10.1017/als.2014.15>; Here, Nelken refers to Lawrence M. Friedman, ‘The Place of Legal Culture in the Sociology of Law’ in Michael Freeman (ed), *Law and Sociology* (Oxford University Press 2006, Oxford, 185–199) DOI: <https://doi.org/10.1093/acprof:oso/9780199282548.003.0011>

<sup>19</sup> Nelken, *Thinking about Legal Culture*.

<sup>20</sup> Nelken, *Thinking about Legal Culture* 5.

local legal culture (which may mean the legal culture of the legal order of the state)? These questions remind us of the plurality of law.<sup>21</sup>

Nelken's other article reviews the relevant literature well and explores '...what is assumed or asserted by given authors with respect to three key issues: the kind of facts that are thought to make up legal culture, the chosen approach within which the concept is deployed, and the normative aspects of the enquiry.'<sup>22</sup> He evaluates the literature widely and concludes that...

Contributions to the field will be the more valuable the more they offer plausible accounts of why the facts they seek to explain or understand are best illuminated by the theoretical approach they have adopted and the values that guide their research. Whether the facts of legal culture are taken to be attitudes or consciousness or discourses has implications for the appropriate approach and methods to adopt (and vice versa). Moreover, because law is not just a matter of facts but also a matter of counterfactual expectations and aspirations, finding ways to grasp (and evaluate) these is more than just an explanatory task.<sup>23</sup>

The possibilities of application seem broad, but it is advisable to be cautious. On the one hand, the success of interpreting certain legal phenomena through legal culture is questioned in some cases. Thus, for example, it is refuted that the appearance of some kind of global legal culture is demonstrable in East Asia (based on the results of legal awareness research conducted in the second largest city in Thailand). Furthermore, many researchers explain the traditional marginalisation of lawyers, judges and legal disputes in Japan by pointing to politically established institutional barriers instead of the general characteristics of Japanese legal culture.<sup>24</sup> On the other hand, the elements of legal culture can be analysed individually, allowing us to obtain measurable 'sub-concepts'. However, this approach would then make it difficult to restore the 'unit' and draw general conclusions from it, as legal culture can mean everything and nothing at the same time.<sup>25</sup>

Still, the interpretation framework of legal culture can be used to arrive at serious scholarly explanations. Nelken says:

The different ways of using the term, as cause or result, have also to be understood against the background of theoretical developments that have produced two rather different uses of the term culture. One, the so-called anthropological approach to legal culture, takes it to refer to patterns of law-related behaviour in given places or contexts as contrasted with other times or places. Here, the main task is explaining legal culture. The second approach is more

<sup>21</sup> Nelken, *Thinking about Legal Culture* 1–51.

<sup>22</sup> David Nelken, 'Comparative Legal Research and Legal Culture: Facts, Approaches, and Values' (2016) 12 *Annual Review of Law and Social Science* 45–62, 45, DOI: <https://doi.org/10.1146/annurev-lawsocsci-110615-084950>

<sup>23</sup> Nelken, *Comparative Legal Research and Legal Culture: Facts, Approaches, and Values* 57.

<sup>24</sup> Nelken, *Thinking about Legal Culture* 2–3.

<sup>25</sup> Nelken, *Thinking about Legal Culture* 30.

interested in uncovering the ongoing process of meaning making within a given society, as a way of studying legal consciousness (as well as getting 'beyond legal consciousness').<sup>26</sup>

In practice, of course, the interpretation of the legal culture chosen by the particular scholar for the research, as well as the empirical methods and measurements used for explanation, will determine the given explanatory power (and each method may miss something that is captured by another).<sup>27</sup>

For example, Nelken used the framework of legal culture to analyse the practical effectiveness of the 'Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons'<sup>28</sup> in different countries. This analysis, explicitly presented by the author as a case study, illustrates the potential benefits of such an approach and the importance of considering cultural diversity when examining the practice of law enforcement. Nelken also makes it clear that taking account of the legal culture will help us to understand the 'law in action' dimension of the legal system.<sup>29</sup>

Others warn that although it is indisputable that law and culture influence each other, it is not always easy to demonstrate this, and we would have to take too big a step away from law in the direction of culture in general. Therefore, Reinhard Zimmermann proposes the introduction of the concept of 'legal tradition' as a bridge connecting the concepts of law and culture. In his view, this term emphasises that the character of law and legal culture is something that is undoubtedly determined by history. Moreover, in this way, it is possible to avoid facing the complex and contradictory meaning of the concept of culture.<sup>30</sup> However, it should be noted that the word culture is, therefore, sometimes used synonymously with tradition.<sup>31</sup> Thus, the distinction is not so obvious.

There is one more point I must mention, which can lead to philosophical questions that relate to the possibility of cognition. This refers to the interrelated concepts of 'culturalism' and 'cultural relativism'.

First, it is questionable whether we can abandon our own culture; whether we can be impartial observers, or whether we always evaluate the world and other cultures (in this case, legal cultures) on the basis of the customary values of our own culture.<sup>32</sup> Of course, we may

<sup>26</sup> Nelken, Thinking about Legal Culture 32.

<sup>27</sup> Nelken, Thinking about Legal Culture 33.

<sup>28</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Dec. 15, 2000, 2237 U.N.T.S. 319.

<sup>29</sup> David Nelken, 'Human Trafficking and Legal Culture' (2010) 43 Israel Law Review 479–513, DOI: <https://doi.org/10.1017/S0021223700000868>

<sup>30</sup> Reinhard Zimmermann, 'Roman Law and European Culture' (2007) 2 New Zealand Law Review 341–372, 345–346.

<sup>31</sup> Peter de Cruz, *Comparative law in a changing world* (Cavendish Publishing Ltd. 1999, London–Sidney) 5, DOI: 10.1017/S0922156500220335.

<sup>32</sup> Nelken, Thinking about Legal Culture 6–9.

arrive at philosophical questions along this path, such as whether we know the world and whether the world is as we think.

András Karácsony also notes these difficulties in an extremely interesting short piece of writing. The most important point in terms of jurisprudence is the undeniable advantage of the cultural approach to the law. It can ensure a wider scope and the possibility of revealing new contexts. Nevertheless, we cannot ignore the fact that, despite all inconsistencies, the law is a normative system with authority over decision-makers.<sup>33</sup>

Second, in Karácsony's above-mentioned work, we can also read about the claimed disadvantageous consequences of a legal comparison based on legal culture, which can be collectively called cultural relativism. These views come from different philosophical traditions, including Ludwig Wittgenstein's linguistic philosophy. Cultural anthropologists and philosophers (such as Peter Winch) have formulated them. Accordingly, all conceptual and moral conceptions and views (as well as language and language usage) are culturally defined. From this point of view, there is no objective, experiential scholarship, nor are there universally valid moral bases. The culturally specific way of life of every society has its own unique value. The identity of a person is determined by their community traditions; for this reason, it is impossible to overcome the moral disputes between cultures using the concept of general human nature. The situation is rendered more complicated by the fact that existing societies are not culturally homogeneous – even in Europe – because they have different subcultures (partly due to migration) that can share mutually exclusive values and views.<sup>34</sup>

However, we would argue against cultural relativism that actually assumes the existence of a universal principle: that all cultures are equally valuable.<sup>35</sup>

The difficulties are evident, but we can apply the framework of legal culture to interpret and explain legal phenomena carefully and successfully. For example, we can attempt to approach and evaluate several aspects of various elements of legal culture, and then incorporate them into a more or less unified conceptual framework. All of this makes it easier to understand how some social groups (lawyers and non-lawyers) think about the law in a given society. Moreover, we can get an idea of how issues arise within the given legal system, how disputes are handled, how legal arguments are used, what values are attributed to law, when it is considered valid, why, and to what extent the laws are followed.

<sup>33</sup> András Karácsony, 'A jog mint kulturális jelenség' [Law as a cultural phenomenon] (2002) 3 Jogelméleti Szemle 3, <<http://jesz.ajk.elte.hu/karacsony11.html>> accessed 1 December 2025.

<sup>34</sup> Cees Maris, Frans Jacobs, *Law, Order and Freedom: A Historical Introduction to Legal Philosophy* (Jacques de Ville tr, Springer 2011, Dordrecht–Heidelberg–London–New York) 327–331, DOI: 10.1007/978-94-007-1457-1; Karácsony.

<sup>35</sup> Elizabeth M. Zechenter, 'In the Name of Culture: Cultural Relativism and the Abuse of the Individual' (1997) 53 (3) Journal of Anthropological Research 319–347, DOI: <https://doi.org/10.1086/jar.53.3.3630957>

## V Instead of closing: Examples

### 1 The use of legal culture in legal sociology

As we have seen, legal culture as a concept of legal scholarship arose explicitly in connection with the sociological (or social theoretical) analysis of law. Lawrence M. Friedman in his classic book *The Legal System. A Social Science Perspective*, published in 1975, explicitly analysed the legal system using the methods of the sociology of law. As Balázs Fekete wrote: 'Indeed, this book can definitely be regarded as a symbolic [...] starting point of the contemporary inclusion of the legal culture concept into legal scholarship.'<sup>36</sup> The analysis of law as a social phenomenon seemed to become easier with its help. Thus, the concept of legal culture is often used in the field of legal sociology. In the following, I will only refer to a few examples very briefly that clearly illustrate the usefulness of legal culture as an interpretative framework in relation to specific phenomena of law in a society (without going into the debates and views related to the subject and methodology of the sociology of law).

It can be noted that Wibo van Rossum's work highlights the application of the soft approach as the most important feature of Dutch legal culture. The essence of this is the communicative style, which considers persuasion more important than coercion or punishment. Therefore, in the field of law, there is also a perception that views law as an invitation to initiate a multipolar dialogue between parties of roughly equal standing, including state offices and mediating organisations (eg, trade unions).<sup>37</sup> This gives rise to fundamental principles, such as the principle of proper and fair public administration or the principles that pervade private law, such as the principle of reasonableness and, in general, the pragmatic and non-legal (non-legalistic) features of Dutch legal culture.<sup>38</sup>

A real understanding of Dutch legal culture, however, presupposes a certain amount of knowledge of Dutch history. For example, we must be aware of the features of political history in order to correctly interpret previous trends, which in turn reveal a close connection with Dutch social history. An example is the division of Dutch society into pillars, which meant that Dutch society was divided into different social groups horizontally on a religious basis and vertically according to socioeconomic factors between 1900 and the 1960s. Each pillar had its own values and beliefs (attitudes), which determined private life and work, but also who voted for which political party. Despite this social division, relative unity could be maintained by a flexible and tolerant political and legal system (*gedogen*, tolerance, is also a fundamental principle of Dutch legal culture). This is one of the reasons for the above-

<sup>36</sup> Balázs Fekete, 'Inconsistencies in the use of legal culture in comparative legal studies' (2018) 25 (5) *Maastricht Journal of European and Comparative Law* 551–564, DOI: <https://doi.org/10.1177/1023263X18796978>

<sup>37</sup> Wibo van Rossum, 'Dutch Legal Culture' in Jeroen Chorus, Ewoud Hondius, Wim Voermans (eds), *Introduction to Dutch Law* (5th edn, Kluwer Law International BV 2016, The Netherlands, Ch. 2) 17.

<sup>38</sup> Van Rossum 18.

mentioned peculiarities and other characteristic features of the Dutch legal culture. Among these, the *polder* model can be highlighted, which refers to a mentality that seeks to ensure the achievement of regulatory goals through agreement, with a strong emphasis on the enforcement of mutual trust, or *beleid*, which means the application of specific policies in such a way that the viewpoints of all those affected also find an audience.<sup>39</sup>

Van Rossum also draws attention to the contradictions of the specific Dutch legal culture. According to him, it is difficult to draw an unequivocal conclusion concerning drug-related policy according to these principles, as the available data are contradictory (the results so far cannot be considered either definitely positive or definitely negative).<sup>40</sup> In light of this, the Dutch example does not support the position of those who argue in favour of drug liberalisation. Similarly, the evaluation of the settlement of legal situations related to euthanasia is not clear.<sup>41</sup> Moreover, the principles at the centre of Dutch legal culture can also fail – for example, when a firework factory exploded in the city of Enschede, with the overly tolerant and flexible (one could say forgiving) preventive approach of the authorities contributing to the accident. An example of the same is the fire that occurred on New Year's Eve 2001 in an overcrowded nightclub in Volendam, in which 14 young people lost their lives and more than two hundred were injured. There were no adequate emergency exits, and the place did not even have an operating license, but it was still able to continue its activities. It is no coincidence that there is debate around the aforementioned central guiding principle of the Dutch legal culture, the soft approach, and related principles such as administrative tolerance.<sup>42</sup> Although such cases may also occur in other legal systems, which in different legal cultures can be evaluated simply as the omissions of public administration bodies, Van Rossum's examples aim to draw attention to the excessive application of the core principles of Dutch legal culture, which can have serious adverse consequences.

The peculiarities of different legal cultures are most striking when they come into conflict with each other in some way. This can happen, for example, when Western people unexpectedly (for instance, as tourists) experience a legal procedure that is in stark contrast to the principles of Western law that they more or less know. The opposite of the legal principles rooted in different cultures is a trauma for them; they do not understand, perhaps they cannot understand the specific features of the given legal rules, and they are hit by culture shock.<sup>43</sup>

In this field, Western countries and their populations have faced a more significant issue in recent decades: international migration. As a result, people from diverse legal cultures have begun to appear in greater numbers within their respective legal systems. Moreover, in some

<sup>39</sup> Van Rossum 19–23.

<sup>40</sup> Van Rossum 23–26.

<sup>41</sup> Van Rossum 26–28.

<sup>42</sup> Van Rossum 29–31.

<sup>43</sup> Concise definition of culture shock: 'Culture shock' Merriam-Webster.com Dictionary, Merriam-Webster, <<https://www.merriam-webster.com/dictionary/culture%20shock>> accessed 1 December 2025.

cases, legal regimes based on completely different legal cultures have emerged in practice alongside national legal systems. The reason for this may also stem from the specifics of the different legal culture itself: for example, Sharia law is based on the principle of personal scope, thus in principle it covers all Muslim persons, wherever they live. So, this different legal culture requires validation and practical implementation. For example, cases related to the wearing of the veil have been generating controversy in France for a long time.<sup>44</sup> But in practice, many other legal cases can occur that justify the importance of legal culture. In Sweden, for example, in one case, the first-instance criminal court considered the different cultural background of a Kurdish immigrant from Iraq when it only imposed a suspended sentence and a fine for assaulting, coercing and threatening his pregnant ex-girlfriend, as opposed to the judicial practice of imposing a prison sentence to be served in similar cases. Social debate developed in connection with the verdict, and the second-instance court finally imposed a two-month prison sentence. In the United Kingdom, a serious political and legal dialogue has started about whether certain elements of Sharia law should be incorporated into the legal system, and to what extent they should be considered. For example, what role can the emerging quasi-courts acting based on Sharia law play in the legal system of the United Kingdom?<sup>45</sup>

On this last question, a rather lively debate has been taking place. In practice, these 'Sharia councils' act as special quasi-courts in family law and some property law matters, but their decisions are not formally binding. One of the subjects of the debate is whether it would be necessary for the state's legal system to regulate their operation in some way. Although they cannot formally make legally binding decisions based on the legal system of the United Kingdom, Muslim communities still consider them binding in certain cases, which raises many questions. One of them is the problem of legal equality and compliance with human rights. According to some, certain human rights may be violated during the proceedings of these councils – for example, the rights of women in the case of divorce, who may not be guaranteed equal rights. The fact that the state could intervene through legislation and adopt some kind of guaranteed regulation regarding the operation of these councils can be justified by the need for the protection of human rights. However, viewed from the other side, this would mean recognising these bodies as special courts (by the way, a tangible solution in practice is to extend the legal regulation of arbitration and mediation to them).<sup>46</sup>

<sup>44</sup> Raphael Cohen-Almagor, 'Indivisibilité, Sécurité, Laïcité: the French ban on the burqa and the niqab' (2022) 20 French Politics 3–24, DOI: <https://doi.org/10.1057/s41253-021-00164-8>

<sup>45</sup> Reza Banakar, 'The Politics of Legal Cultures' (2008) 123 (4) *Retfaerd Argang* 37–60, 31, DOI: 10.1007/978-3-319-09650-6\_7

<sup>46</sup> Shona Lester, 'The State and the Operation of Sharia Councils in the United Kingdom. A Critical Response to Machteld Zee' (2015) 17 (1) *Journal of Religion & Society* 1–9; Maria Reiss, 'The Materialization of Legal Pluralism in Britain. Why Shari'a Council Decisions Should be Non-binding' (2009) 26 (3) *Arizona Journal of International & Comparative Law* 739–778.

All this highlights the fact that in practice, there may exist a legal system parallel to the state one among Muslim people living in a close and separate, culturally defined community in the United Kingdom that they accept as binding on themselves. On the one hand, this actually reflects the plurality of law from a sociological point of view, even within the framework of a developed state legal system. On the other hand, from the perspective of the state legal system, all of this poses a threat: a parallel law with significantly different characteristics may undermine the latter's validity, thereby calling into question its legitimacy and enforcement. This can have serious consequences, and the same is true if the state tries to incorporate this particular parallel law into the state's legal system through formal legislation or judicial application.

It is worth noting that the 'clash of legal cultures' also allows for a more general interpretation, which Cotterrell also raises. According to this, we can talk about different cultural interpretations of the law when different social groups, who may form different cultural communities, interpret the law (including state law) in different ways. It is not only lawyers who interpret the law, although in principle they are the ones who reveal the 'best reading' of the law through their professional knowledge. It may also happen that other groups in society attribute a different meaning to the given legislation or legal institution and evaluate it differently. This again draws attention to cultural differences and can lead to viewing the law as an object or tool of a cultural competition or struggle.<sup>47</sup>

These examples demonstrate the application of the concept of legal culture within the sociology of law or the sociological methodological approach to law. If the conceptual framework of legal culture is properly applied, it can lead to a better understanding of the analysed legal phenomena.

## 2 The use of legal culture in comparative legal studies

As H. Patrick Glenn wrote:

In thinking about the laws of the world, in their diversity, we appear driven by an epistemological urge to think of different laws as representative of larger, explanatory categories of being. It is not clear why this is so but it is a widespread phenomenon. The laws of the world are thus seen or grouped (the list is probably not exhaustive) as systems, cultures, traditions, styles, mentalities, families, circles or spheres (Rechtskreise) or civilizations.<sup>48</sup>

<sup>47</sup> Roger Cotterrell, 'Law in Culture' in Roger Cotterrell (ed), *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Ashgate 2006, Aldershot) 97–108, DOI: <https://doi.org/10.4324/9781351217989-7>

<sup>48</sup> H. Patrick Glenn, 'Legal Cultures and Legal Traditions' in Mark Van Hoecke (ed), *Traditions Epistemology and Methodology of Comparative Law* (European Academy of Legal Theory Series, Hart Publishing 2004, London, 7–20) 7, DOI: <https://doi.org/10.5040/9781472559586>

Very generally, this activity is an essential part of comparative law.<sup>49</sup> It is not possible here to go into the history of comparative law in detail (or to discuss whether it is a method or an independent social scholarly field),<sup>50</sup> but the idea of legal culture has had an important place in major recent debates about the nature and aims of comparative law.

Balázs Fekete addressed this issue in his paper *Inconsistencies in the use of legal culture in comparative legal studies*.<sup>51</sup> First, he emphasised that the use of legal culture is not a contemporary conceptual innovation (as I have mentioned above myself). He points out that Friedman did not claim that it was his innovation either. Fekete establishes: 'In sum, the recent flourishing of legal culture in comparative legal studies has not been without antecedents; they can mostly be found in the turn of the 19–20th century German legal scholarship.'<sup>52</sup> As he further states: 'In the German legal scholarship of the turn of the 19–20th century, under the influence of both Hegelian and Neo-Kantian philosophical thinking, the application of the term "legal culture" as a key conceptual tool was coined by such important authors as Jozef Kohler or Gustav Radbruch.'<sup>53</sup> Second, he indicates in his study that the opposition between a functionalist and a cultural approach to comparative law is relative. It depends on the applied approach and methodological tools as to which 'trend' of comparative law prevails in the given research. It is most fruitful if these two main methodological trends of comparative law are applied in a complementary way, with a holistic approach.<sup>54</sup>

He highlights the three – the most typical – predominant understandings of legal culture in comparative law: 1. legal culture as the background of law (essentially: the influence of extra-legal factors on law as such or on a given legal institution or provision), 2. legal culture as interactions around law (in summary: how the results of legal sociology, legal anthropology and cultural studies can help to understand the interactions related to the normal functioning of the legal system), 3. legal culture as the sum of attitudes towards law (which is also rooted in Lawrence M. Friedman's conception of legal culture, as you may read earlier).<sup>55</sup> Thereafter, he presents three typical inconsistencies in the application of legal culture in comparative law ('certain typical scholarly mistreatments of legal culture'):<sup>56</sup> 1. confusion of different understandings in the same study (for example: mixing the previous three approaches and their associated methodological tools), 2. under-theorisation of legal culture (oversimplification, applying this term without any real scholarly reflection, failing

<sup>49</sup> George Mousourakis, *Comparative Law and Legal Traditions, Historical and Contemporary Perspectives* (Springer Nature Switzerland AG 2019, Cham, Switzerland) 1–18, DOI: <https://doi.org/10.1007/978-3-030-28281-3>

<sup>50</sup> See Balázs Fekete, *Paradigms in Modern European Comparative Law: A History* (European Academy of Legal Theory Series, Hart Publishing 2021, London) DOI: <https://doi.org/10.5040/9781509946952>

<sup>51</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 551–564.

<sup>52</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 553.

<sup>53</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 553.

<sup>54</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 554.

<sup>55</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 555–559.

<sup>56</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 559.

to provide a solid methodological framework), 3. over-theorisation of legal culture (creating such a complex working concept of legal culture that it clearly overtheorises it, requiring the use of too many and complex methodological tools belonging to various scholarly fields).<sup>57</sup>

Finally, he reaches three important methodological conclusions: 1. There are research subjects to which – because of their nature – the legal culture approach cannot be applied. 2. There are many other research methods applicable to comparative law; those based on legal culture can only be chosen in appropriate cases based on the research questions and the professional background of the researcher. 3. If the use of legal culture in a comparative study seems to be supported, the researcher should choose the most appropriate approach to it, bearing in mind the methodological implications. The theoretical distinction between legal culture as a background, as a set of interactions surrounding law, and as a set of attitudes related to law may facilitate the choice, as it represents three most common ways of applying legal culture, but other approaches may also be appropriate, as Nelken has indicated (and as I have also mentioned earlier).<sup>58</sup>

Overall, Fekete sees the methodological approach based on legal culture as a fruitful tool – as do I – but draws attention to the fact that ‘[...] a much more self-reflective methodological and critical application of “legal culture” seems to be needed in comparative legal studies [...] to find the proper place for this term in the structure of the emerging post-functional comparative law.’<sup>59</sup>

On the basis of the above considerations, let us look at another experiment when attempting to apply the framework of legal culture to analyse a given question. The question was posed as to whether there was a Central European legal culture with specific characteristics. Of course, we must accept that we apply legal culture as an explanatory theory in this case.

The meaning of the notion of Eastern Europe and of Central Europe in history has been the subject of long debate,<sup>60</sup> so the question is not brand new, having been raised in comparative law when grouping legal systems.

Balázs Fekete starts with a cultural comparison of law when he tries to formulate his own answer.<sup>61</sup> He considers that the most important insight from a cultural perspective is that law

<sup>57</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 559–563.

<sup>58</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 564.

<sup>59</sup> Fekete, *Inconsistencies in the use of legal culture in comparative legal studies* 564.

<sup>60</sup> See Emil Niederhauser, *Kelet-Európa története [History of Eastern Europe]* (MTA 2001, Budapest); and Oskar Halecki, *Borderlands of Western Civilization: A History of East Central Europe* (2nd edn, Simon Publications 2000, Safety Harbor).

<sup>61</sup> Balázs Fekete, ‘Megjegyzések a közép-európai jogi kultúrákról’ [Notes on Central European Legal Cultures] (2012) 3 (4) *Jogi Iránytű* 57–58 <[https://jog.tk.hu/uploads/files/Jogi\\_Iranytu/Jogi\\_Iranytu\\_2012\\_4\\_Fekete\\_Balazs.pdf](https://jog.tk.hu/uploads/files/Jogi_Iranytu/Jogi_Iranytu_2012_4_Fekete_Balazs.pdf)> accessed 1 December 2025; See also Balázs Fekete, ‘The Concept of Legal Culture Revisited: An East-Central European Perspective’ in Miodrag A. Jovanovic, Bojan Spaic (eds), *Jurisprudence and Political Philosophy in the 21st Century: Reassessing Legacies* (Peter Lang 2012, Frankfurt am Main, Berlin, Bern, Bruxelles, New York, Oxford, Wien, 56–68) DOI: <https://doi.org/10.3726/978-3-653-01540-9>

is not merely a closed system with internal contexts, but it is also a cultural phenomenon. Historical, social, anthropological, psychological and other aspects of law are also important in any comparison. He states that a comprehensive approach to legal culture is not possible due to the diverse and incompatible definitions of legal culture. However, this does not mean that certain aspects of these eastern or central European legal cultures cannot be examined within a single framework. He attempts to address this question using the theory of 'law and emotions', which may be part of the law and culture framework.<sup>62</sup> Overall, he concludes that legal cultures in Central Europe have specific features that are sporadic and difficult to explain, but using the perspective of emotions, they can be integrated into a coherent frame of reference. Based on this theory, these special features arise from the general social emotions that emerge as a result of the historical characteristics of a region.<sup>63</sup>

The author refers to the need for further evidence to confirm his claims. Nevertheless, his short essay, despite its questionable generalisation, still shows the validity of the statement cited above, which emphasises the scholarly usefulness of the legal framework based on legal culture.

In any case, during the preparation for the accession to the European Union, the former socialist (post-socialist) states applying for membership were often classified into one group during the study of legal cultures, although their differences were also emphasised. For example, an analysis undertaken in 2000 by a research group led by Erhard Blankenburg examined the legal culture of five countries: Slovenia, Estonia, Poland, Hungary and the Czech Republic. Meanwhile, they considered and called them 'Central European countries'.<sup>64</sup>

According to this analysis, legal historical traditions have had differing impacts on the legal culture of these countries. 'Looking at the new formation of the rule of law, it is apparent that Slovenia, Hungary and the Czech Republic share their legacy with Austrian traditions, Poland has in the past looked to French institutions as a model and in Estonia the influence of German and Scandinavian law has been paramount.'<sup>65</sup> At the same time, the study also finds that...

[...] the new elements of post-communism are common to all of them:

- In reaction to the past political dependence of the judiciary, they establish self-governing judicial councils guaranteeing the independence of the judiciary more rigidly than in the West;
- In reaction to the repression of the past, they introduced constitutional review, which is separate from regular judicial practice, while at the same time binding regular courts to the constitutional courts' interpretation of statute law;

<sup>62</sup> Fekete, Megjegyzések a közép-európai jogi kultúrákról [Notes on Central European Legal Cultures] 57.

<sup>63</sup> Fekete, Megjegyzések a közép-európai jogi kultúrákról [Notes on Central European Legal Cultures] 58.

<sup>64</sup> Erhard Blankenburg in cooperation with Nena Tromp, Airi Kana, Michiel Notten, Laszlo Maracz, Hank Geerts, *Legal Culture in Five Central European Countries* (2000) WRR Working Documents no. W111, The Hague <<https://library.oapen.org/bitstream/handle/20.500.12657/34059/439723.pdf?sequence=1&isAllowed=y>> accessed 1 December 2025.

<sup>65</sup> Blankenburg, 11.

- In reaction to the lack of remedies against public administrations in the all-encompassing communist states, they developed a dual system of formal action before administrative courts on the one hand, and informal complaints with an ombudsman institution on the other.<sup>66</sup>

The analysis assesses the consequences of the European Union's expectations regarding the establishment of the rule of law in these countries in the 1990s:

The emerging Central European model combines a double ambition of ideals which are often seen as opposites: on the one hand, a rather legalistic *rechtsstaat* in which public administration is strictly bound to statute law and compliance is bound to judicial review; and, on the other, informal mechanisms to enhance the responsiveness of public services.<sup>67</sup>

Overall, the authors considered it necessary, above all, to conduct a more in-depth analysis of legal institutions. As they wrote about their evaluation: 'It tries to form comparative indicators for institutions of legal culture: legal education, the legal profession, civil and criminal justice and the institutions of administrative and constitutional review.'<sup>68</sup>

## VI Assessment

It is clear from the above that legal culture is a fluid concept which does not have a generally accepted definition, although there are more or less similar interpretations. It can be used in a much broader sense than is acceptable in precise research work. Of course, this concept can cover trends that cannot be grasped precisely in relation to one or more legal systems: it can be used as a 'decorative element' to support a theory, or it may be considered to have a meaning so self-explanatory that it does not even require a separate explanation, and it can also be considered as a framework (collective concept) covering all legal phenomena in society.

However, from a scholarly point of view, as I mentioned earlier, and as other authors have pointed out, it is advisable for researchers to define the meaning of legal culture according to the subject, objectives and hypotheses of the given research. Furthermore, scholars should also take into account the applicable methods. If they plan and act with sufficient care, they can achieve useful results. They can develop an explanatory conceptual framework in this way, with the help of which it is possible to move beyond a legislation-centric explanation of legal phenomena. The social phenomena that function as law, with their specific characteristics, can become better understood in this way.

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<sup>66</sup> Blankenburg, 11.

<sup>67</sup> Blankenburg, 11.

<sup>68</sup> Blankenburg, 12.

I will summarise in a few additional points what lessons can be learned from the issues discussed so far:

1. Legal culture often seems to be an approach – a conceptual framework in legal research to which different research methodologies can be connected (eg anthropological, statistical and any method of the sociology of law). Such a scholarly application of legal culture can help to understand the complicated social phenomenon of law. One could also say that legal culture as a framework can be filled with a number of elements that can be examined in order to get a more complete picture of the legal system of a given society or of a legal phenomenon across multiple societies. This, of course, requires an adequate methodology. The more such elements are considered, the more complete the understanding will be. Such elements may include, for example, the system of legal sources, judicial practice, legal education, the legal professions, the legal knowledge and understanding of the law of the population, and so on. In my opinion, therefore, over-definition is not a real problem if the research and the study that reflects it are sufficiently accurate. After all, a more detailed definition of legal culture allows for a deeper understanding.

2. Furthermore, legal culture can also provide a foundation for empirical research. The elements mentioned in the previous point can be investigated using descriptive sociological notions (eg attitudes, legal consciousness, etc.) with the help of indicators that can be measured by empirical methods.

3. This approach and conceptual framework can be used in comparative jurisprudence, but also in legal sociology or legal history research. It is a conceptual framework that can be applied flexibly across different fields of jurisprudence, provided it is managed with the necessary precision. It can help us gain a deeper understanding of people's patterns of behaviour regarding law, as well as how they think about the law, and what attitudes characterise them in relation to it.

4. The concept of legal culture must always be carefully defined. It depends on the subject and method of the research. It also, of course, determines the outcome of it. It is therefore an essential part of a well-founded research plan.

5. This is closely related to the previous point, but it is worth separate emphasis that it seems advisable to define the research subject as precisely as possible (this is always recommended, in any case).

6. For my part, if there are sufficient resources and time, I see no obstacle to a large-scale project based on the concept of legal culture that sketches a large, comprehensive, but at the same time sufficiently detailed picture of either a legal system or the legal systems of the world. It could be akin to Manuel Castells' renowned monumental work on societies at the end of the 20th century, which is based on the concept of networks.<sup>69</sup>

<sup>69</sup> Manuel Castells, *The Information Age. Economy, Society and Culture* (Vol 1-3, 2nd edn with a new preface, Wiley-Blackwell 2010, Oxford).

7. It is also worth noting the following. The different legal cultures of the world have a significant impact on each other, and the goals of comparative law itself, or the comparison of legal cultures, also include a strong emphasis on acquiring experience for legislation and legal reform. But the comparison of different legal cultures can also be used as a constructive tool in the application of law, in the creation of legal concepts, as an aid to the interpretation of legislation or, as is the case in Europe, for harmonisation and unification. In practice, the comparison of legal cultures can differ from traditional legal comparison in that the sociology of law may use this concept to operate in a broader field (eg by studying legal practice, legal education, legal knowledge and awareness, value relations, etc.) and make extensive use of empirical methods to investigate how legal institutions function in society.<sup>70</sup>

8. Last but not least: legal sociology and jurisprudence only model reality, but the concept of legal culture can provide important help in this; the advantages of its application are more numerous than its disadvantages.

## VII Conclusion

In my view, the above shows that this concept is special in that it can serve as both a theoretical framework and an approach to help formulate comprehensive evaluative explanations (eg of a legal system as a whole, of legal systems' similarities and differences around the world, of a legal institution, or of legal transplantation), as well as a basic concept that can be the starting point for empirical studies.

The evaluation of the literature reviewed here highlights the importance of clear, careful and precise conceptual definitions, which will provide the basis for the conclusion: when applied correctly, the concept of legal culture is an effective tool for analysing law. It is a valuable resource for legal studies, the sociology of law, comparative law and legal history. Furthermore, legal culture can also provide a foundation for empirical research. In the meantime, as Nelken suggests, there are three main issues to be aware of: the kind of facts that are thought to make up legal culture, the chosen approach within which the concept is deployed, and the normative aspects of the enquiry. Discussing the concept itself seems to promote its application in concrete research, even if this is only tentative in many case studies.

To sum up, the concept of legal culture is undefined and vague. Indeed, giving a brief and concise definition is not possible in jurisprudence. Nevertheless, we can argue convincingly, based on an overview of the basic theories related to legal culture, that an approach based on legal culture is associated with more advantages than disadvantages in legal studies. Its ambiguity is precisely its advantage, as each scholar can adapt it to their own research with careful work, using it as a conceptual framework or basis. At the same time, we must be aware of the difficulties that can lead to fundamental philosophical questions.

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<sup>70</sup> de Cruz 10–18.

The main benefit of the conceptual framework of legal culture in socio-legal studies is that it can be used to deconstruct the complex social phenomenon of law into elements that can be effectively investigated, either theoretically or empirically, through appropriate conceptualisation and operationalisation. As has been presented, with its help, the historical determination of law can also be revealed. In brief, the notion of legal culture is an effective tool for analysing law.

These conclusions and the assessment in Section IV are strongly supported by the findings of the majority of the literature that has been reviewed, as my article has shown.