CHALLENGING THE LAW

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Frédéric Mégret's engaging contribution, *A Look Back at The Women's Hague Peace Conference: What Contribution To International Law Today?*, exposes a legal duality. On one hand, the legalist perspective: law is a closed system. From this perspective, law is objective, hard, universal, and bounded. On the other hand, the sociocultural perspective: law is a human practice. From this perspective, law is subjective, organic, particular, and porous. This Essay reads Mégret's analysis of the 1915 International Congress of Women in The Hague as a "sociocultural challenge," disrupting the legalist perspective on international law, war, and peace during World War I. This Essay lauds this women's peace movement through this lens, and then argues that such sociocultural challenge must continue to be fostered by embodied legal and non-legal actors in the world, as well as by theorists with sociocultural theoretical commitments.

TABLE OF CONTENTS

I. INTRODUCTION

Law is curiously dualistic. On one hand, the *legalist perspective:* law is a closed system.[1] From this perspective, law is objective, hard, universal, and bounded. All first-year law students must contend with stern law professors' perennial maxim that they must "learn to think like a lawyer." Such students experience a narrowing process of de-individuation, socialized into dexterously marshaling a closed list of authorities: a hierarchy of constitution, statutes, regulations, and cases. Legal arguments must be narrowly tailored to sources of law. Legal reasoning

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1. *See generally* JUDITH N. SHKLAR, LEGALISM: LAW, MORALS, AND POLITICAL TRIALS (1986).

must nimbly thread predictive and persuasive arguments within such closed authority. Such a closed system brooks little dissent, nor arguments "from the outside." Broader theoretical perspectives from undergraduate studies—humanities and sciences—are irrelevant. The same occurs with most lived experiences. The default is the "view from nowhere."[2]

On the other hand, the *sociocultural perspective:* law is a human practice. From this perspective, law is subjective, organic, particular, and porous. Law begins and ends with us: human beings create, interpret, and apply the law. We have seemingly abandoned any notion that law is divine.[3] We are now the gods, and legal rules are our sacred creations. In "the aftermath of legal realism . . . the law [can no longer] glow with an innocence and pristine autonomy; no longer can it be seen to subsist in elegant and evolving patterns of doctrinal rules."[4] And when we step further back, we realize the contingency and insularity of our closed legal systems.

This may seem abstract, so let us briefly make a concrete, mundane analogy: American table etiquette. The legalist perspective is the rules of etiquette, presented abstractly as objective universals. The fork is always placed on the left side of the plate, the knife and spoon always on the right. One should always hold a fork between thumb, index finger, and middle finger. An alternative grip—say, holding the fork within a closed fist—is the wrong way. No alternatives exist for eating from a plate, save the occasional use of hands for bread. Such rules are objective (a way of holding), hard (right and wrong ways), universal (applying at all times), and bounded (confined to etiquette tradition).

By contrast, the sociocultural perspective does not look at compliance with rules but rather the rules' nature. This is more trenchant than the realist insight that "etiquette rules are whatever people say they are." This perspective is more subjective, organic, particular, and porous. Continuing with the analogy: American rules of table etiquette—involving fork, knife, and spoon—lacks any internal cognizance of chopsticks. Chopsticks fall wholly outside of such rules. But an awareness of chopsticks' existence recasts the entire enterprise of American table etiquette. From this vantage point, we may ask: why is it that the West evolved to have a fork, knife, and spoon, whereas parts of Asia evolved to have chopsticks and spoon? One begins to ask questions of history, climate, and culture. One sees the interrelationship between utensils and food (e.g., a Western steak vs. Korean kimbap). This may

2. Kimberlé W. Crenshaw, *Forward: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L. J. 1, 2–5 (1988).

3. *But see* THE SACRED AND THE LAW: THE DURKHEIMIAN LEGACY (Werner Gephart & Daniel Witte eds., 2017) (exploring enduring questions regarding law and the sacred from a Durkheimian perspective).

4. ROBERT POST, CONSTITUTIONAL DOMAINS 1 (1995).

also be *embodied*: When a Westerner goes to a Korean restaurant, he is immediately flummoxed by chopsticks, lacking grip and dexterity. But he may also quickly intuit the physical similarities between forks and chopsticks—functionally, both help get food from plate to mouth. At the same time, he will see how each utensil includes within it a distinctive set of contingent cultural assumptions. In other words, he will notice overarching patterns in the question: "how do people eat?"

Law is similar.[5] Sometimes, we can step away from the closed internal dispute (e.g., interpretation of the Second Amendment) and ask how law is formed across time and space. In so doing, we grasp the limits and contingency of our particular legal rules. To use Paul Kahn's analogy, this view of law is more akin to *religious studies* than theology.[6] Instead of engaging in internal theological dispute (e.g., transubstantiation vs. consubstantiation), we step out externally, asking how religions are similarly patterned worldwide and throughout history. Once we do so, we realize the limits and contingency of any theological dispute.

Frédéric Mégret's engaging contribution, *A Look Back at The Women's Hague Peace Conference: What Contribution To International Law Today?*, exposes law's duality. By reviewing the embodied praxis of women peace activists at the 1915 International Congress of Women in The Hague (the "1915 Congress"), he ably helps us to see the rules taken to be objective, factual sources of legal authority to be contingent and socioculturally embedded. As Mégret deftly shows, the women's peace movement embodied a distinct form of pacifism, focusing on practical activism over legal norms. As such, the *legalist perspective* would ask a decidedly doctrinal question: "What influence, if any, did the 1915 Congress have on contemporary, positive international law?" This is a technical task: trace the historical conference to some contemporary provisions of individual positive sources of law. But Mégret rightly mines this space for a different reason. From the *sociocultural perspective*, the 1915 Congress interrogates many of the very assumptions on which such sources are based. Why does war arise? How do women's perspectives on violence and peace differ from the contemporary orthodoxy? How did these women's perspectives differ from each other?

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5. In fact, a sociocultural perspective denaturalizes many "obvious," "rational," or "logical" systems that purport to stand on their own in modernity. *See, e.g.*, RENÉ ALMELING, SEX CELLS: THE MEDICAL MARKET FOR EGGS AND SPERM (2011) (biological reproduction); EMILY ERIKSON, TRADE AND NATION: HOW COMPANIES AND POLITICS RESHAPED ECONOMIC THOUGHT (2021) (economic rationality and national markets); ALKA MENON, REFASHIONING RACE: HOW GLOBAL COSMETIC SURGERY CRAFTS NEW BEAUTY STANDARDS (2023) (beauty standards); PHIL SMITH, WHY WAR? THE CULTURAL LOGIC OF IRAQ, THE GULF WAR, AND SUEZ (2005) (war and geopolitical conflict).

6. *See* Paul W. Kahn, *Freedom, Autonomy, and the Cultural Study of Law*, 13 YALE J. L. & HUMAN. 141, 158–59 (2001) ("Just as a cultural study of religion focuses on religious experience rather than on the truth of religious doctrine, a cultural study of law should focus on the character of the experience under belief in the rule of law.").

In this Essay, I read Mégret's contribution—and thus the 1915 Congress itself—as a *sociocultural challenge*, or an embodied disruption of the legalist perspective. Part II engages in this reading of Mégret. Part III then argues that such sociocultural challenge must continue to be fostered by embodied legal and non-legal actors in the world, as well as by theorists with sociocultural theoretical commitments. This Essay thus echoes age-old questions at the intersection of positive law, legal theory, social theory, and philosophy. Indeed, law's duality emerges in various species of legal theory, from H.L.A. Hart (internal vs. external perspective)[7] and Ronald Dworkin (plain fact vs. law as integrity)[8] to Catharine MacKinnon (liberal legalism vs. feminist jurisprudence).[9] Political philosophers such as Jürgen Habermas (facticity vs. validity) have also explored this question.[10] And scholars like Monica Bell,[11] Joshua Kleinfeld,[12] Rachel López,[13] and myself have touched on this duality in domestic and international law scholarship.[14]

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7. *See generally* H.L.A. HART, THE CONCEPT OF LAW (1961).

8. *See generally* RONALD DWORKIN, LAW'S EMPIRE (1986).

9. *See generally* Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS: J. WOMEN CULTURE & SOC'Y 635 (1983).

10. *See generally* JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY 197 (William Rehg trans., MIT Press, 1998) ("Within this sphere of adjudication, the immanent tension in law between facticity and validity manifests itself as a tension between the principle of legal certainty and the claim to a legitimate application of law, that is, to render correct or right decisions.").

11. *See generally* Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017) (legal estrangement as sociocultural challenge to procedural justice scholarship).

12. *See generally* Joshua Kleinfeld, *Reconstructivism: The Place of Criminal Law in Ethical Life*, 129 HARV. L. REV. 1485, 1495 (2016) (Hegelian reconstructivism as sociocultural challenge to political philosophical accounts of criminal law and punishment).

13. *See generally* Rachel López, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795 (2023) (participation of those not trained in law in legal scholarship as sociocultural challenge to scholarly assumptions).

14. *See, e.g.*, Steven Arrigg Koh, *How Do Prosecutors "Send a Message"?*, 57 U.C. DAVIS L. REV. 353 (2023); Steven Arrigg Koh, *Prosecution and Polarization*, 50 FORDHAM URB. L.J. 1117 (2023) (How does prosecutorial decisionmaking foster solidarity and polarization?); Steven Arrigg Koh, *Core Criminal Procedure*, 105 MINN. L. REV. 251 (2020) (To what degree are Constitutional criminal procedural protections absolute or contingent?). *See also* Steven Arrigg Koh, *Foreign Affairs Prosecutions*, 94 N.Y.U. L. REV. 340 (2019); Steven Arrigg Koh, *The Criminalization of Foreign Relations*, 40 FORDHAM L. REV. 737 (2021); Steven Arrigg Koh, *Othering Across Borders*, 70 DUKE L.J. ONLINE 171 (2021); Steven Arrigg Koh, *Policing & The Problem of Physical Restraint*, 64 B.C. L. REV. 309 (2023) (How do notions of police violence fall on Western constructions of violence?); Steven Arrigg Koh, *"Cancel Culture" and Criminal Justice*, 74 HASTINGS L. J. 79 (2022) (explaining how American punitive impulses foster cancel culture, and its interrelationship with criminal justice).

II. PEACE CONFERENCE AS SOCIOCULTURAL CHALLENGE

Mégret's reading of the 1915 Congress may be construed as a *sociocultural challenge*. Indeed, the women in the peace movement evinced "unusual ability and willingness to involve themselves collectively in ways that clearly challenged the status quo."[15] Their work was *embodied*, a physically engaged "struggle that helped reshape the contours of what might be accomplished by social activists in times of war."[16] In this way, the mere act of self-organization and transnational solidarity constituted its own praxis.[17] By gathering in The Hague during war, their very bodies and perspectives challenged the legal rules themselves.

Embodied sociocultural challenge disrupts disembodied legalist universality in a way that echoes many patterns in Western intellectual history. The universal and abstract perspective, epitomized by a thinker like Immanuel Kant, contrasts with the particular and organic perspective, epitomized by philosophers like Georg Wilhelm Friedrich Hegel. Hegel was skeptical of Kant's broad, universal categories of rules, believing they lacked actual content because their formulation was so abstract.[18] By contrast, Hegel argued that we are embodied beings who gradually understand the world through sense certainty and through relationality with other consciousnesses.[19] Only through this intersubjectivity—mutual recognition and shared understanding—can we achieve any certainty about how the world works.[20] Hegel saw much of human understanding as rooted in history, culture, consciousness, and the dynamics of interpersonal relations.[21]

Hegel's spirit emerges in Mégret's review of the 1915 Congress. The embodied perspectives of the women's peace activists disrupted universal, objective World War I era international laws. Mégret asks whether this group offered a "specific corpus of visions about

15. Frédéric Mégret, *A Look Back at the Women's Hague Peace Conference: What Contribution to International Law Today?*, *in* THE OXFORD HANDBOOK OF WOMEN AND INTERNATIONAL LAW 3 (J. Jarpa Dawuni, Nienke Grossman, Jaya Ramji-Nogales, and Hélène Ruiz Fabri eds., 2025).

16. *Id.*

17. *Id.*

18. *See generally* GEORG WILHELM FRIEDRICH HEGEL, THE PHENOMENOLOGY OF SPIRIT (1807); GEORG WILHELM FRIEDRICH HEGEL, ELEMENTS OF THE PHILOSOPHY OF RIGHT (1820); SALLY SEDGWICK, HEGEL'S CRITIQUE OF KANT (2014).

19. GEORG WILHELM FRIEDRICH HEGEL, THE PHENOMENOLOGY OF SPIRIT (1807).

20. GEORG WILHELM FRIEDRICH HEGEL, THE PHENOMENOLOGY OF SPIRIT (1807).

21. *See generally* SALLY SEDGWICK, HEGEL'S CRITIQUE OF KANT (2014); Frederick C. Beiser, *Hegel's Historicism*, *in* CAMBRIDGE COMPANION TO HEGEL 270 ("Rather than seeing philosophy as a timeless a priori reflection upon eternal forms, Hegel regards it as the self-consciousness of a specific culture, the articulation, defense, and criticism of its essential values and beliefs.").

international law and war."[22] This is not necessarily a doctrinal question, rooted in positive law. Instead, it is a sociocultural inquiry: How did *these women* view conflict and norms? Mégret answers this by showing that the women's peace movement distinctively approached peace and international law on three fronts.[23] First, it reflected an "embodied pacifism," wherein they engaged in transnational solidarity through activism.[24] Second, they advanced a critique of war rooted not in orthodox notions of self-defense but on societal origins.[25] And finally, they were openly skeptical of attempts to normalize or humanize war and militarism.[26]

Such a sociocultural challenge even disrupts universalized claims about these particular women. Notably, within the movement, disagreements emerged about the relationship between gender, war, and peace.[27] Some viewed violence as "irredeemably gendered" and war as "inherently masculine."[28] They thus argued that "women's socialization as nurturers and upholders of virtue could actually be used to their advantage."[29] However, others opposed such claims as a "pipe dream."[30] At the same time, Mégret shows a preoccupation with the societal causes of war, as opposed to one of states anarchically locked in sovereign competition without any higher authority to restrain them.[31] They identified particular sub-sets of national populations that clamor for war, and thus argued for greater enfranchisement to prevent its outbreak.[32]

III. CONTEMPORARY SOCIOCULTURAL CHALLENGE: LAW AND REFLEXIVITY

What lesson may we take from the 1915 Congress? The answers are legion.[33] The most obvious is that sociocultural challenge must always continue across history, to facilitate reflexivity about the very assumptions embedded in law. We may recognize not only the limitations that the 1915 Congress women perceived and embraced at that time, but

22. Mégret, *supra* note 15, at 2.
23. *Id.* at 3.
24. *Id.*
25. *Id.*
26. *Id.*
27. Mégret, *supra* note 15, at 5.
28. *Id.*
29. *Id.*
30. *Id.*
31. Mégret, *supra* note 15, at 7.
32. *Id.*
33. We may consider, for example, the implication for historical and contemporary women's transnational solidarities, the development of international humanitarian law, or the analogous examples of sociocultural challenges in the history of domestic or international law.

also the limitations of our own deep conceptions of law.[34] In 1915, the movement fostered transnational solidarity, arising from a shared sense that the dominant, orthodox perspectives on war were limited. Today we may similarly foster solidarities as we cultivate reflexivity about law's limits. To take just one very specific contemporary example, substantive criminal law doctrine on adequate provocation in manslaughter can reify problematic gendered or heteronormative assumptions.[35] In response, legal advocates and non-legal actors may then mix social movements and litigation strategy to amend such statutes, removing such problematic provisions.[36]

Legal practitioners, educators, and scholars alike will benefit from such continued reflexivity about the intellectual history animating our legalist perspective. Such legalist perspective often evinces an immanent Anglo-American legal philosophy and pedagogy.[37] Rooted in Enlightenment ideals of reason and rationality, the legalist perspective fosters what Dworkin called the problematic "plain fact" conception of law, where law is seen to simply exist as an objective fact and individuals either recognize it or fail to recognize it in certain circumstances.[38] The reality of law and its philosophical foundations are much more socioculturally complex because contemporary philosophy has unmasked the contingent contextuality of the seemingly objective Kantian fundamentals of reason and rationality.[39] The Frankfurt School

34. This arises in other fields as well. In the same way that many founding thinkers in sociology were outside of the mainstream white European Christian male perspectives—thinkers such as Karl Marx, Émile Durkheim, W.E.B. Du Bois, or Simone de Beauvoir—many of the women at the 1915 Congress likely grasped the limits of identifying war guilt and justifying self-defense or of international law's focus on state sovereignty and war responsibilities.

35. Cynthia Lee, *The Trans Panic Defense Revisited*, 57 AM. CRIM. L. REV. 1411 (2020), https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2020/05/57-4-Lee-The-Trans-Panic-Defense-Revisited.pdf.

36. *Id.* The entire history of American civil rights litigation may be seen as a sociocultural challenge married to legal strategy, with individuals of or fighting for those of historically marginalized backgrounds challenging orthodox legal assumptions. *See, e.g.*, GILBERT KING, DEVIL IN THE GROVE (2013); ROBERT TSAI, DEMAND THE IMPOSSIBLE: ONE LAWYER'S PURSUIT OF EQUAL JUSTICE FOR ALL (2024).

37. *See* JUDITH N. SHKLAR, LEGALISM: LAW, MORALS, AND POLITICAL TRIALS 8–9 (1986) ("Legalism is, above all, the operative outlook of the legal profession, both bench and bar. Moreover, most legal theory, whether it be analytical positivism or natural law thinking, depends on categories of thought derived from this shared professional outlook.").

38. *See* Dworkin, *supra* note 8.

39. *See* Bryan D. Lammon, *What We Talk About When We Talk About Ideology: Judicial Politics Scholarship and Naïve Legal Realism*, 83 ST. JOHN'S L. REV. 231, 232 (2012); Lee Ross & Donna Shestowsky, *Contemporary Psychology's Challenges to Legal Theory and Practice*, 97 NW. U. L. REV. 1081, 1081 (2003) ("[O]ur legal institutions rest on the same rationalist assumptions about human inference and decision making that underlie classic economics.").

of Critical Theory has illustrated the "dialectics of enlightenment."[40] In response, many philosophers and social theorists have sought to rescue the Enlightenment project in light of challenges to rationality and reason. Thinkers like Habermas have tried to salvage the Enlightenment's legacy by showing deliberative democracy and intersubjectivity as essential foundations.[41] Some theorists in sociology have further explored how democracy manifests within the thick texture of cultural autonomy.[42]

Much of this intellectual history is lost within American legal culture. Judges, lawyers, and legal commentators often act as if there is a "right" answer that exists independently in the world, one that reason and rationality alone can reveal. This view quickly leads to accusations of bad faith and claims of opposing ideology.[43] If a single, correct answer exists and the other side does not arrive at it, it becomes easy to assume that the other side is engaging in deep bad faith. Legal actors and scholars may, at one moment, admit to legal indeterminacy and, at the next moment, maintain that our interpretation is 100% correct while the opposition's is wholly incorrect.

This creates confusion, starting with law students in their first year who enter a world of such ambiguous positivism. On one hand, students are taught in lawyering and legal writing classes to write predictive memos and, in doctrinal courses, take final exams with multiple-choice questions suggesting "right" answers. After graduation, they will have to learn positive law and accurately apply it to pass the bar exam. On the other hand, they are also socialized into believing that certain courts are judicially activist and wrong.[44]

Legal educators must redress this by fostering reflexivity. As Crenshaw has correctly noted, a strange perspectivelessness reigns in legal classrooms.[45] Often, the default is the "view from nowhere." As a result, students are sometimes regrettably left lurching from one theoretical perspective to another.[46] As I have recounted previously,

40. MAX HORKHEIMER & THEODOR W. ADORNO, DIALECTIC OF ENLIGHTENMENT (Gunzelin Schmid Noerr ed., Edmun Jephcott trans., Stanford Univ. Press 2002) (1947).

41. *See generally* JÜRGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION, VOL 1: REASON & THE RATIONALIZATION OF SOCIETY (1981); JÜRGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION, VOL 2: LIFEWORLD & SYSTEM: A CRITIQUE OF FUNCTIONALIST REASON (1981); JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS (1992).

42. *See generally* JEFFREY C. ALEXANDER, THE CIVIL SPHERE (2006).

43. *See* Steven Arrigg Koh, *Legal Ideology* (unpublished draft) (on file with author); Duncan Kennedy, *The Hermeneutic of Suspicion in Contemporary American Legal Thought*, 25 LAW & CRITIQUE 91(2014).

44. *See* Koh, *supra* note 43.

45. *See generally* Kimberlé W. Crenshaw, *Forward: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L. J. 1, 2–5 (1988).

46. *See* Steven Arrigg Koh, *Teaching "Is This Case Rightly Decided?"*, 108 MINN. L. REV. HEADNOTES 125 (2024).

when I was in law school in the mid-2000s, the dominant paradigm for legal analysis was law and economics.[47] We lived in the shadow of yet another Richard Posner tome on some area of the law. The way we internalized sounding sophisticated about law was to talk about externalities, the Coase theorem, efficiency, and distribution.[48] Now, the dominant paradigm is critical.[49] Law students approach the study of law thinking that sounding sophisticated should include references to oppression, hegemony, and marginalization.[50] Such unconscious theoretical engagement must become more overt. Any perspective is inherently limited. Epistemologists who draw on perspectivism and neo-pragmatism realize that no one system may fully understand the object of study.[51] Perspectivism encourages us to don many lenses, peering at the same object to see the gaps in any approach. Thus, if law is a social practice rooted in sociocultural foundations, perspectives from other groups force us to question the assumptions upon which domestic and international law rests.

Finally, we as legal scholars may also foster such reflexivity and sociocultural challenge. In other disciplines, theoretical training fosters reflexivity about scholarly inquiry, rejecting positivism as an immanent framework in the world.[52] Because we, as legal scholars, are not trained in theory, we may also foster imprecision in our analysis due to a lack of theoretical engagement. As George Fletcher has noted, "our methods of argument are a hodgepodge of intuition, citations to case law, philosophical references (sometimes laced with misreading), and, of course, policy arguments about the behavior we seek to encourage and discourage."[53] Sam Moyn is thus correct in recently arguing that, in American legal scholarship, "theory cannot be avoided forever."[54] This must be a central preoccupation for legal scholars as we engage in descriptive, normative, and prescriptive claims. For Moyn and others, the starting place for theory is the critical tradition.

Critical claims are powerful and useful in mining structural

47. *See id.* at 149.

48. *See id.* ("Students sensed that the best way to 'sound smart' in the classroom was to demonstrate knowledge of economic terms such as externalities, distribution, and efficiency.").

49. *See id.*

50. *See id.*

51. *See, e.g.*, RICHARD RORTY, PHILOSOPHY AND THE MIRROR OF NATURE (1979) (neo-pragmatism and anti-essentialism); HILARY PUTNAM, REASON, TRUTH, AND HISTORY (1981) (internal realism); HANS GADAMER, TRUTH AND METHOD (1960) (philosophical hermeneutics).

52. *See* Koh, *supra* note 43.

53. George P. Fletcher, *The Nature and Function of Criminal Theory*, 88 CAL. L. REV. 687, 697 (2000) ("[T]here has not been enough attention paid to the difference between moral, political, and other kinds of arguments about the proper approach to criminal law.").

54. Sam Moyn, *Reconstructing Critical Legal Studies*, 134 YALE L. J. 77, 110 (2024).

questions. In international law, Global South critiques of the international legal system question the deeper logics of the contemporary system. Similarly, much contemporary criminal law scholarship engages in radical imagination of futures without the burdens of contemporary society's strictures.[55] While often immanent in legal argumentation, the frequent claim is often one of instrumental domination—the strategic use of legal reason to control others.[56] Claims of power may also encompass critical theoretical notions of hierarchy, hegemony (everyday assumptions that present authoritatively and thus trigger consent) and social control (rules and mechanisms that circumscribe individual action.[57] Critical legal studies, itself flowing from Gramscian and Marxist critical thought.[58] And related schools include feminist legal theory (e.g., Catharine MacKinnon) and critical race theory (e.g., Derrick Bell).[59] Such

55. *See, e.g.*, I. Bennett Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 N.Y.U. L. REV. 101 (2019); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1787 (2020); Thomas Ward Frampton, *The Dangerous Few: Taking Seriously Prison Abolition and Its Skeptics*, 135 HARV. L. REV. 2013 (2022).

56. *See* MICHELE DILLON, INTRODUCTION TO SOCIOLOGICAL THEORY: THEORISTS, CONCEPTS, AND THEIR APPLICABILITY TO THE TWENTY-FIRST CENTURY 208 (3rd ed. 2020) ("strategic use of reason knowledge, science, technology to control others").

57. MICHELE DILLON, INTRODUCTION TO SOCIOLOGICAL THEORY: THEORISTS, CONCEPTS, AND THEIR APPLICABILITY TO THE TWENTY-FIRST CENTURY 179–210 (3rd ed. 2020) (reviewing critical theory in the history of sociological thought); *Social Control*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/social%20control (last visited May 12, 2025). *See also, e.g.*, BERNARD HARCOURT, THEORY AND PRAXIS (2020); DAVID W. GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 205 (2001) ("In the complex, differentiated world of late modernity, effective, legitimate government must devolve power and share the work of social control with local organizations and communities.").

58. Mark Tushnet has recognized critical legal studies' indebtedness to Marxist thought, particularly Antonio Gramsci's notions of hegemony and humanist Marxism. *See Critical Legal Theory*, *in* THE BLACKWELL GUIDE TO THE PHILOSOPHY OF LAW AND LEGAL THEORY 83 (Martin P. Golding & William A. Edmundson eds., 2005); Steven Arrigg Koh, *Criminal Law's Hidden Consensus*, 101 WASH. UNIV. L. REV. 1805, 1814 (2024).

59. *See, e.g.*, Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515, 515 (1982) ("Sexuality is to feminism what work is to marxism: that which is most one's own, yet most taken away."); Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 364 (1992) ("By viewing the law—and by extension, the courts—as instruments for preserving the status quo and only periodically and unpredictably serving as a refuge of oppressed people, [Black people] can refine the work of the [Legal] Realists."); Steven Arrigg Koh, *Criminal Law's Hidden Consensus*, 101 WASH. UNIV. L. REV. 1805, 1814 (2024). Critical race theory, in particular, is undergoing a transformation in contemporary public discourse. Yagmur Karakaya & Penny Edgell, *The Curious Transformation of "Critical Race Theory" to "CRT": The Role of Election Campaigns in American Culture Wars*, 108 POETICS 101964 (2025) ("By demonstrating how the Youngkin campaign helped concretize CRT as a new flashpoint in the culture wars our analysis provides broader insight into the mechanisms through which obscure ideas can

discourse often draws on social conflict theory, which holds that individuals and groups are locked in perpetual conflict over limited societal resources.[60] This resembles Pierre Bourdieu's materialist conceptualization of social reproduction: everything is a hierarchy, and individuals use culture and ideology to climb the social ladder (field, habitus, capital).[61] However, theoretical rigor and sociocultural challenge need not be critical.[62] The central weakness of the critical tradition is its reduction of everything to power. No space exists for altruism, good faith, virtue, or benevolence. From a pure power perspective, every parent engages in materialist social reproduction. Every educator in America—from legal educators to primary school teachers—reproduces hierarchy.[63] Every government official is fomenting social control. Humans lack any motivation other than their own crude calculation for power, whether explicit or implicit.[64]

One promising addition is the rich social theory lying outside the critical tradition. On this account, human beings are born into thick worlds of symbolic meaning. As Clifford Geertz, citing Max Weber, has noted, "[m]an is an animal suspended in webs of significance he himself has spun."[65] Specifically, cultural sociological thought views law as a system of meaning that both promotes solidarity and lays the discursive

become powerful cultural symbols—a process we term "transformative surprises.").

60. *See, e.g.*, Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L. J. 2497, 2564 (2023) ("Campaigns for non-reformist reforms seek to create social conflict among and between classes in order to build class consciousness and force people to pick a side."); SHAUN L. GABBIDON, CRIMINOLOGICAL PERSPECTIVES ON RACE AND CRIME 121 (3d ed. 2015) ("Theories that focus attention on struggles between individuals and/or groups in terms of power differentials fall into the general category of *conflict theory*." (quoting J. ROBERT LILLY, FRANCIS T. CULLEN & RICHARD A. BALL, CRIMINOLOGICAL THEORY: CONTEXT AND CONSEQUENCES 149 (4th ed. 2007))); Steven Arrigg Koh, *Criminal Law's Hidden Consensus*, 101 WASH. UNIV. L. REV. 1805, 1814 (2024).

61. *See generally* PIERRE BOURDIEU, DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGEMENT OF TASTE (Richard Nice, trans., Harv. Univ. Press, 1984). *See also* Jeffrey C. Alexander and Philip Smith, The Strong Program in Cultural Sociology, *in* THE MEANINGS OF SOCIAL LIFE (2004) (critiquing this approach to culture).

62. Steven Arrigg Koh, *Criminal Law's Hidden Consensus*, 101 WASH. U. L. REV. 1805, 1831 (2024) ("Often, the assumption in law school classrooms, scholarship, and popular discourse is that a structural account *must* be critical.").

63. DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY (1983).

64. Clifford Geertz, *Ideology as a Cultural System*, in IDEOLOGY AND DISCONTENT 202 (David E. Apter ed., 1964) ("Lacking a developed analysis of motivation, [power] has been constantly forced to oscillate between a narrow and superficial utilitarianism that sees men as impelled by rational calculation of their consciously recognized personal advantage and a broader, but no less superficial, historicism that speaks with a studied vagueness of men's ideas . . . . [T]he view that social action is fundamentally an unending struggle for power leads to an unduly Machiavellian view of ideology as a form of higher cunning and . . . a neglect of its broader, less dramatic social functions.").

65. CLIFFORD GEERTZ, THE INTERPRETATION OF CULTURES 5 (1973).

foundations for legal disagreement.[66] International law may render communities symbolically intelligible to one another, while criminal law may foster civil repair.[67] Such an approach is structural without reducing structure solely to power. Instead, it invites sociocultural challenge as a reciprocal inquiry into law's possibility to structure subjective meaning and, in turn, for law to itself reflect such deeper meanings.[68]

V. CONCLUSION

Law is inherently dualistic. Legalist discourse fosters bounded objectivity, while sociocultural perspective underscores contingent particularity. Frédéric Mégret's enlightening *A Look Back at The Women's Hague Peace Conference: What Contribution to International Law Today?* highlights such duality. It does so historically, mining the contributions of women to new perspectives on international law and war at the 1915 International Congress of Women in The Hague. But it also serves as a call to legal actors, educators, and scholars today to marshal sociocultural challenge as part of a broader reflexive, theoretical understanding of law's duality.

66. *See generally* JEFFREY C. ALEXANDER, THE CIVIL SPHERE (2006).

67. *See generally* JEFFREY C. ALEXANDER, CIVIL REPAIR (2024). *See also* Joshua Kleinfeld, *Reconstructivism: The Place of Criminal Law in Ethical Life*, 129. HARV. L. REV. 1485, 1487 (2016).

68. Menachem Mautner, *Three Approaches to Law and Culture*, 96 CORNELL L. REV. 839 (2011)