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Scholarship as Fun

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Introduction

One theme that traverses much of Pierre Schlag's work is a sense of profound humanity—the idea that thinking and writing about the law can and should be a deeply, genuinely human activity—an activity for which we can, and should, break up many of the barriers that stand between us, between who we *really* are, and what we think and write. It is an activity for which we should put aside our pretences and insecurities and the attached formalisms and exaggerations behind which we so often hide, and which in the end constrain our humanity so much, as they take on a dynamic of their own, a siloed technocratic rationality. It is a theme based on a belief that human beings are fundamentally good, despite all their many quirks and imperfections and doubts and destructive traits. It is a theme based on a notion that our humanness is a resource that should be tapped rather than reined in.

Where might this lead us? To many very different places, certainly, simply as a reflection of humanness's own diversity. Now, "fun" might be one of these places. And fun, despite the Judeo-Christian superego many of us share along with its attendant principled guilt and sin, is a place, a direction, a pursuit which we should embrace when we think and write about the law. I will try to show you why, and what this might look like.

I believe that Pierre Schlag would essentially agree with this idea of scholarship as fun. I am not going to show just how, by pointing out passages in his work that support this idea, or by engaging in other forms of exegetic review. My purpose in saying that Pierre would agree is not to invoke his authority to support my claim. My purpose is to give credit where credit is due; this idea of fun is the effect that reading his writings had on me. In other words, his work made my work more fun, and this is something I am seriously grateful for. I needed to acknowledge it.

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From there I will go on to suggest that the pursuit of fun is possibly better than most of our usual pursuits in legal scholarship. This will further have three likely implications, which will determine the core structure of this article: a recognition of the coexistence of mutually exclusive legal realities entertaining dialectic relationships; the abandonment of oneness of the legal academy; and situating ourselves within tangled socio-professional hierarchies.

("Oh, *that* kind of fun…" you now think. But wait.)

And as a coda to the discussion, I will address the feeling of discomfort that the open pursuit of fun sometimes elicits—"How can you have so much fun when the world is burning?" I understand the feeling, and sometimes share it, but there are many reasons not to simply give in and run with it.

The theme of this entire discussion, and perhaps Pierre's most important contribution to our business, to the business of legal scholarship, is the notion that it is alright to write about what we write about, to write about how we feel about the sort of things that we write. You can call it the candid self-reflexivity of the legal scholar, if you favour a more idiomatic turn of phrase. Then again, it remains a risky thing to do in the law review article genre. It can easily be destabilizing to suggest that these freedoms, this fun, are your right as a legal scholar, that they really are part of the basic aesthetic of legal scholarship—aesthetic not in the sense of the appreciation of beauty but in the sense of the principles underlying our work, what is "behind the text" as it were. So let us see where it takes us. Let us see where it takes you, and if you smell blood and want more.

1. *Growing up*

My argument starts as a story—a story that begins in a small town in New Jersey:

> Well, in the beginning there was a great darkness upon the waters. As a child, there was Christmas, your birthday, summer vacation, but the rest of life was a lifeless sucking black hole. A lifeless sucking black hole of homework, church, school, homework, church, school, homework, church, school, green beans, green beans, fucking green beans.[1]

That was Bruce Springsteen, of course; this is a law review article after all.

At the Walter Kerr theatre in New York in 2018, in a series of shows in an almost intimate setting, the smallest venue he had played in 40 years, he was explaining where his songs had come from. What he had

1. Bruce Springsteen, "Growin' Up," *Springsteen on Broadway*, 2018.

written them for. It was an introspection into the humanity of his lyrics, his texts, his work. In what was almost a timid whisper (by rock & roll standards), he was admitting that he hoped to be a good travel companion for whoever would care to tune in, while communicating something of value. A humble way to say that his whole career he had tried his best, the best that he could, to be authentic in the existentialist philosophy sense: to come to terms with being in a material world with external pressures while remaining congruent with one's own convictions. A truthful self-portrait performance by a rock musician, at times preoccupied, at times joyful, at times tender and grateful, at times hurt, exasperated, self-deprecating, teasing.

It reminds me of Pierre Schlag's work.

In Pierre's words, it would have gone something like this: "In the beginning, legal scholarship was a lifeless sucking black hole. A lifeless sucking black hole of methods, criteria, theories, methods, criteria, reason, methods, criteria, appellate judges, footnotes, footnotes, fucking footnotes."

Footnotes and a lot of unhappy grownups playing moot court—the central protagonist of Pierre's universe.[2]

If this is what we see, if this is what we experience, what are we to do? If legal scholarship has started to feel inauthentic, in the existentialist sense, if its aesthetic prefigurations, the principles underlying its very workings, feel somehow off, diffusely or distinctly wrong, if our own deep-set convictions come up against the way things are said to have to be, what are we to do?

> "But then, in a blinding flash of sanctified light,"—this is Springsteen again—"a human being, and just a kid, just a kid from the southern sticks. But a...new kind of man. And he split the world in two. And suddenly, a new world existed. The one below your belt. And...above your heart. On a Sunday night in 1956, at 39½ Institute Street, into a cold-water flat and into the mind of a seven-year-old kid, the revolution had been televised! Right under the noses of the powers that be, who, if they'd have known what was actually happening and the great changes, the changes that were about to come, they would have shut this shit down. Or more likely signed it up real quick. Because we, the unwashed,

2. Pierre Schlag, *Laying Down the Law: Mysticism, Fetishism, and the American Legal Mind* (New-York: New York University Press, 1996), online: <www.jstor.org/stable/j.ctt9qg0wb> "Why write to an imaginary or idealized judge when it is obvious that imaginary or idealized judges can be whatever one wants them to be? …why would one want to engage in such a practice? How could it be meaningful to argue within constraints one already knows to be a projection of false necessity? One can understand why law students do moot court.… How do we explain, however, fully grown legal academics playing moot court? How do they explain this to themselves?" (ibid at 71.) [Schlag, *Laying Down the Law*].

> the invisible, the powerless, the kids, would want more. Now more life, more love and more sex and more hope, and more truth, and more power, and more soul, and most of all, more rock and roll."[3]

This was the 1950s. This was the generation of my parents. They too wanted more life, and more freedom, and more love, made and expressed, and more conviction, in their leaders and in what was to become of their world. Out with the old establishment, the old rules, a system that had taken on a dynamic of its own, imprisoned in its own logic, dusty and out of touch, forcing inauthenticity down the throat of those who cared to think.

It has been sounding familiar again lately, no?

And yes we, the deuteragonists of law's cosmogony; we, the punk law professors, gen X, the slackers, the organisers of inter-temporal surrealist parties in law reviews; we, the crazy ones, the misfits, the rebels, the troublemakers, the round pegs in the square holes; we have been wanting more.[4] More life, more thinking, more truth, more meaning, more soul, more love of ourselves. A whole lot less normative legal scholarship—less making statements about how government decisions should be made, rather unlikely to be listened to.[5] And most of all—more fun.

> So I sat with my mom, my little seven-year-old mind on fire, staring into a blue tube as fun happened. Fun, the real kind. The joyful, life-affirming, hip-shaking, ass-quaking, guitar-playing, mind- and heart-changing, race-challenging, soul-lifting bliss of a freer existence. A freer existence exploded into unsuspecting homes all across America on a regular Sunday night. The world had fucking changed. In an instant. In a

3. Springsteen, "Growin' Up," *supra* note 1.

4. Most of these are figures from Schlag's universe: Pierre Schlag, "Spam Jurisprudence, Air Law, and the Rank of Anxiety of Nothing Happening (A Report on the State of the Art)", (2009) 97:1 Geo LJ 803, DOI: <10.2139/ssrn.976078>: 'just where are all the punk law professors? Just what happened to that generation? And where's gen X and the slackers? I want to know. The quick answer is that they were selected out or self-selected out. No doubt true—but that doesn't explain very much does it?' (ibid at 805, n 4); Pierre Schlag, "A Comment on Thomas Schultz's Editorial", (2014) 5 Journal of International Dispute Settlement 235: 'The legal academic decides what to write about, what is important, who the audience might be, what the objectives are (and so on). If he wants to throw inter-temporal surrealist parties in law reviews, he can.'

5. Pierre Schlag, "Normativity and the Politics of Form," (1991) 139:4 U Pa L Rev 801, DOI: <10.2307/3312375>: 'there is very little evidence to support the view that judges do in fact read or follow normative legal scholarship. … Citation of scholarly articles in judicial opinions is probably the strongest piece of evidence that judges are reading them. But to conclude from the fact of such citations that judges are indeed persuaded by normative thought requires some significant leaps of faith.… It is at least equally plausible that the judges (or clerks) deploy citations to legal scholarship in their opinions as a matter of style—in an effort to bolster already preformed opinions. Indeed, in informal conversations with judges at both the federal and state level, judges have told me that this is often the case.' (*Ibid* at 872, n 189). [Schlag, "Politics of Form"].

sweating wet orgasm of fun.[6]

This is the heart of what I had found in Pierre Schlag's writings. They are still Springsteen's words, but Pierre emulates this aesthetic, in his own way. This idea of fun, the fun of a freer existence. The joyful, life-affirming, mind and heart-changing, soul-lifting bliss of a freer existence as a legal academic.

"And all you needed to do to get a taste of it was to risk being your true self."[7]

Springsteen again. And again it could have been Pierre just as well.

To risk being your true self.

If your true self is to be a stickler for rules and criteria and methods and reasons, if your true self is to do, to *be* normative legal scholarship, to neatly compile and order sources on a question, to reinforce a rigid scholarly framework, to follow authorities because they are authorities, to marvel at a mirror, real or metaphorical, to play centre of town, to use fancy words and references to exhibit a hollow erudition, to stockpile citations to show adherence to hard work as an unconditional positive, to…—well why not. But what if your true self is different? What if your skills, your strengths, your aspirations lie elsewhere? Why exactly would such a different true self be wrong, be reined in? Why would it as a human being? Why would it as a human being whose specific job is to think for others?

This idea of fun, this idea of being yourself, may well be a useful fishing net to understand the spirit, raison d'être, and potential of legal scholarship. It can help us understand what we could do with thinking about law, and how we could answer Pierre's call to action. Because this pursuit of fun, this pursuit of a freer existence as a scholar, is better than the common alternatives of seeking recognition, status, notoriety, power, or even precision, coherence, and clarity. Some of this is obvious. Some of this I will try to explain.

This whole idea of fun actually matters beyond our own lives as academics and the respect these lives deserve. This idea of a happy grownup kind of fun, playing at discovering the world. It matters because what we *really* pursue as scholars has a number of implications, when we produce legal scholarship, when we think and write about law. It has a number of implications because our interests and pursuits shape our epistemologies. They determine what we see, what realities we build, and believe in.

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6. Springsteen, "Growin' Up," *supra* note 1.
7. *Ibid*.

Indeed, even in the natural sciences, as Gaston Bachelard and Bruno Latour and others have shown a long time ago, knowledge, our understanding of the world, is largely a social construct: we choose to see what we want, we reconstruct what we say is reality based on filtered data.

It all starts with a set-up, with the questions we choose to ask: as Bachelard puts it,

> in scientific life, whatever people may say, problems do not pose themselves.… [A]ll knowledge is an answer to a question. If there has been no question, there can be no scientific knowledge. Nothing is self-evident. Nothing is given. Everything is constructed.[8]

We build a reality around us, based on knowledge, which in turn is based on the questions we choose to ask. If we keep asking just the same questions, we keep building just the same reality, over and over again.

And then, when we build this reality, we face what Bachelard calls epistemological obstacles, all manner of things we are unwilling to accept, unwilling to see, when we build the knowledge we believe in.[9] From mental schemata to affects. From attempts to remain coherent with what we may have said earlier on ("Are you contradicting yourself!?"), to the emotional color of our conclusions ("The world *has to be* bad, because *I feel* bad.").

Even professional, straightforward, honest scientists, Latour later added, often unconsciously filter the data that their experiments show so that what they do see gives them a story to tell, a paper to publish, a job and reputation to keep, to get.[10] Yet the resulting knowledge is what we consider to be the truth. But it is a social construct. It is the best approximation of the truth we have, but it is a social construct. And therefore, the way it is constructed, by whom, under what conditions, following what pursuits, with what interests—all of this matters, all of this gives us the realities we ourselves believe in. (Just to be clear, it is not because scientific knowledge is imperfect, fraught with epistemological interferences, that it is just an opinion, worth the same as any other opinion, that anything goes; truth

8. Gaston Bachelard, *The Formation of the Scientific Mind: A Contribution to a Psychoanalysis of Objective Knowledge*, introduced, translated and annotated by Mary McAllester Jones (Manchester: Clinamen Press, 2002) at 25.

9. *Ibid*: "When we start looking for the psychological conditions in which scientific progress is made, we are soon convinced that the problem of scientific knowledge must be posed in terms of obstacles.… It is in the act of cognition that we shall show causes of stagnation and even of regression; there too we shall discern causes of inertia that we shall call epistemological obstacles." (*Ibid* at 24).

10. See, e.g., Bruno Latour & Steve Woolgar, *Laboratory Life: The Construction of Scientific Facts* (Beverly Hills: Sage Publications, 1979).

isn't binary but obtains by degrees; imperfection isn't nothingness.) This is in the natural sciences; with law, it is all even more so.

Now of course law, as a body of rules and institutions and ideas, is a social construct; it is a noetic entity; it is something that we have created, as societies, something that would not exist if we did not think it into existence. So much is probably obvious. But our *study* of it also is socially constructed, be it only because, not unlike Schrödinger's cat, where a cat is crystallised out of quantum superpositions and into being exclusively alive or dead by the observer's act of observation,[11] our study of law changes law as we interact with it and reconstruct it. I will return to this, below, when I make a parallel between Robert Cover's judicial violence and knowledge production about law. To keep this plain here, even if we consider that law, as a field of study, as an academic discipline, is a science, even if we consider that legal scholarship is or should tend towards scientificity, even if we consider that there is such a thing as scientific knowledge of the law, the point simply is that *that* knowledge too is a social construct. And our interests and pursuits are a significant part of the filter that creates this social construct. They are an important determinant of our knowledge actions, our epistemological moves, our confirmation biases.

And when we seek fun, the fun of a joyful, life-affirming, mind and heart-changing, soul-lifting freer existence, we are likely to engage in creative productivity. We are led to roguish experimentation, to playing legal punk, to throwing inter-temporal surrealist parties of legal thought. And all of them help us see something. As Karl Popper, and others, have suggested, for instance through the idea of truthlikeness and verisimilitude,[12] it is quite unlikely that any given account of any phenomenon is perfect, in the sense that it captures all the elements of the phenomenon and predicts with flawless accuracy what the phenomenon is going to do in a given situation. Thus, competing coexisting accounts of the same phenomenon are welcome, even if they are mutually exclusive; they provide a richer overall understanding, even if from the relative perspective of each account the other must be wrong. The same idea can be applied to normative theories just as it is to descriptive ones, and to anything in between, to any particular resultant of the dialectic relationship that these two opposite poles entertain (there is always some normative aesthetic prefiguration in any description, as the discussion so far has implicitly argued, and there

11. Erwin Schrödinger, "Die gegenwärtige Situation in der Quantenmechanik (The present situation in quantum mechanics)" (1935) 23 Naturwissenschaften 823, DOI: <10.1007/BF01491891>.

12. Karl Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge* (London: Routledge, 1963); Karl Popper, "A Note on Verisimilitude" (1976) 27:2 The British Journal for the Philosophy of Science 147, online: <www.jstor.org/stable/686164>.

is always some descriptive preunderstanding in a normative statement). Making this point understandable (and tolerably fun) will be the task for the next part of the discussion; I will take a somewhat different tack to do this.

2. *Legal realities, mutually exclusive yet coexistent*

Competing coexisting accounts of the same phenomenon are useful because, first, they all help us understand *something*. The classic example of the movement of light, which can be understood sometimes only by pretending it is a particle, sometimes only by pretending it is a wave, provides an easy way to have this problem in mind. As Albert Einstein and Leopold Infeld put it:

> But what is light really? Is it a wave or a shower of photons?… There seems no likelihood for forming a consistent description of the phenomena of light by a choice of only one of the two languages. It seems as though we must use sometimes the one theory and sometimes the other, while at times we may use either. We are faced with a new kind of difficulty. We have two contradictory pictures of reality; separately neither of them fully explains the phenomena of light, but together they do.[13]

The problem is simple: Light gets bent by large masses, and this can only be explained by saying it is a particle; it makes no sense if we characterize it as a wave, as waves don't do that. Yet if you shoot light through small slits, it should produce cleanly demarcated lines, on/off, on a screen behind the slits; if it were particles that is; but it makes brighter and darker bands instead: a wave pattern.

Now, in a sense, and despite the gravitas of an Einstein quote, it generally would not seem quite "serious," in the common, layperson's sense, to argue that light is both a particle and wave, when being a particle excludes being a wave, and being a wave excludes being a particle.

To get the point, apply this way of thinking to other fields, where it easily translates into double entendres, the humour of an innuendo, of dual interpretations of the same utterance. It implies the holding of two conflicting ideas in one's mind at the same time, and enjoying the irony that both seem true, *are* true to a certain extent, while each excludes the other. There is a certain sense of "fun" in this way of thinking. And it is a useful way of thinking because with it we might get closer to seeing the world as it really is, to reach a greater degree of combined truthlikeness,

13. Albert Einstein & Leopold Infeld, *The Evolution of Physics* (Cambridge: Cambridge University Press, 1938) at 278, online: <https://archive.org/details/evolutionofphysi0000unse_y6p7>.

and thus to see the world less only as we would want it to be. When we seek fun, we tend to embrace such geekish mind games—and at this juncture one might be reminded that a "geek" is etymologically both an obsessive enthusiast and a carnival performer (a figure of fun).

And so the classic Jewish witticism comes to mind: Two people come to see a rabbi over a dispute between them. The rabbi listens intently to the first person and says "yes, you are right." He turns to the second person, lends an attentive ear again, and again concludes " yes, you are right." At that stage the rabbi's partner, who was listening in on the conversation from an adjacent room, steps in and admonishes him: "But you can't say that! You can't say they are both right!" And again, the rabbi, warmly, enthusiastically, nods. "Yes, my dear, you too are right."

The wit, the fun of the story is simply the irony of the wave-particle duality transposed to what could well have been legal realities in the story, presented to the rabbi, mutually exclusive yet indispensably coexistent.

This approach, this notion of fun, taken this far, might in fact even colour some parts of Pierre Schlag's own work differently. He has complained much about "traditional legal-process fetishism," about "unrestrained normative messianism," about acute self-referential legalism."[14] Understandably. So he writes that, "as solemn and somber as law may be, it has been very difficult for law to be serious. If one considers recent contributions to jurisprudence, what is most striking is their utter improbability."[15]

Fair enough.

But this pursuit of fun, of scholarship as fun, may well suggest that we not be serious, not be serious in the sense of being coherent, of being probable, of rooting out what is not congruent with an overall coherent intellectual framework.

Of course, equating the opinions of any court to the works of some of the world's greatest philosophers is… curious and makes one wonder what part of the philosophers' work is exactly meant. Pierre is right in satirizing the self-centred fetishism that leads to the view that, while "Supreme Court opinions are written by clerks and read like C.F.R., [they are] still [viewed as] a kind of literature worthy of comparison with the works of Plato or Aristotle."[16]

14. Schlag, *Laying Down the Law, supra* note 2 at 13.
15. *Ibid* at 12.
16. *Ibid* at 13.

Of course, there is no dignified answer to Pierre's embarrassing question "how do we explain fully grown academics playing moot court?"[17] (He means the dominant practice of normative legal scholarship, in which academics play at addressing prescriptions to imaginary decision-makers.)

Of course, normative legal scholarship is an intellectual betrayal, as we betray with it the implicit promise to think as well, as productively as we can, not to let our intellectual energy go to waste, as it were. We betray that promise because, when we engage in normative legal scholarship, we limit our conceptual apparatus to that of a judge, to the judge's ontology and her hierarchy of desired outcomes. As Pierre puts it,

> The identification with the figure of the judge is an intellectual betrayal. It is an intellectual betrayal because, in important ways, the judge cannot speak the truth, must routinely dissemble, has, in fact, taken oaths that require subordination of truth, understanding, and insight, to the preservation of certain bureaucratic governmental institutions and certain sacred texts. To be self-identified with the subject formation of the judge is thus to be intellectually compromised. It is to be beholden to a rhetoric, an aesthetic, and normative commitments that are pervasively anti-intellectual—that are, in fact, destructive of intellectual endeavour.[18]

Of course, many exercises in legal knowledge production rest on fundamentally flawed epistemological assumptions. To pick an easy target, how can one build a whole industry of legal knowledge production based on the foundational idea that, yes, human beings can be assumed to primarily apply rules in individual instances without any sense of self, without any emotion, preference, situatedness, communal self-understanding? Knowledge universes built on such foundations bring to mind Douglas Adams's god who, at some point in a long discussion about his own existence with Man, stops dead in his track, pauses for a moment, and then, "'Oh dear,' says God, ''I hadn't thought of that,' and promptly vanishes in a puff of logic."[19]

And yet…

And yet, this acceptance of the coexistence of legal realities, of alternative claims to apprehend a given reality relating to law through a given ontology, with a given conceptual universe, this acceptance of

17. *Ibid* at 71.
18. *Ibid* at 145.
19. Douglas Adams, *The Ultimate Hitchhiker's Guide to the Galaxy* (New-York: Random House, 2002):"'I refuse to prove that I exist," says God, "for proof denies faith, and without faith I am nothing."' '"But," says Man, "the Babel fish [an impossibly useful thing] is a dead giveaway, isn't it? It could not have evolved by chance. It proves you exist, so therefore, by your own arguments, you don't. QED."' '"Oh dear," says God, "I hadn't thought of that," and promptly vanishes in a puff of logic.'" (*Ibid*, at "The Hitchhiker's Guide to the Galaxy" ch 6 at 42).

the existence of logically inexistent foundational gods and of other epistemologically flawed assumptions—this acceptance might save us from doing what Robert Cover's famous judge does to the law.

Cover put it thus,

> Judges are people of violence. Because of the violence they command, judges characteristically do not create law, but kill it. Theirs is the jurispathic office. Confronting the luxuriant growth of a hundred legal traditions, they assert that this one is law and destroy or try to destroy the rest.[20]

So much is run-of-the-mill citation, but notice how he defines a legal tradition,

> The tradition includes not only a corpus juris, but also a language and a mythos—narratives in which the corpus juris is located by those whose wills act upon it. These myths establish the paradigms for behavior. They build relations between the normative and the material universe, between the constraints of reality and the demands of an ethic.[21]

So a language (an ontology) and a mythos (a postulate; the fundamental basis of a universe of knowledge; an epistemological assumption) build the relations between our normative objectives and the constraints of the real world (they create the framework within which we reason and argue). Cover's argument seems similar enough to what we have been discussing so far, similar enough to make this parallel between judges destroying legal traditions and legal scholars destroying legal realities, in the hope that the parallel makes us see the interest of allowing coexisting legal realities to coexist.

Just as Cover's judge destroys alternative legal traditions by deciding "this is the law," we legal scholars quite often destroy alternative legal realities, alternative partial understandings of whatever we want to understand, destroy them by arguing that the understanding someone else is offering is wrong, should be scrapped, forgotten, in favour of a given other, differently logical, constructed reality.

The point might still not be quite clear. To shed light on it, consider Pierre Schlag's account of the aesthetics (in the plural) of American law.[22] He identifies four such aesthetics: the grid aesthetic (in which the key principle underlying scholarly work in law is the creation of well-bounded,

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20. Robert Cover, "The Supreme Court, 1982 Term—Foreword: Nomos and Narrative," (1983) 97:1 Harvard Law Review 4 at 53.
21. *Ibid* at 9.
22. Pierre Schlag, "The Aesthetics of American Law," (2002) 115:4 Harv L Rev 1047, DOI: <10.2307/1342629>.

determinate and fixed legal spaces, neat subdivisions of rules and elements and the like—think traditional conflicts of law or tax law scholarship, think neat dichotomies like objective/subjective, formal/substantive, etc.); the energy aesthetic (in which legal scholarship serves quantifiable policy analyses—think studies on the socioeconomic effects of, say, investment arbitration); the perspectivist aesthetic (in which "the social or political identity of the legal actor or observer becomes the crucial situs of law and legal inquiry"[23]—think feminist legal theory, critical race theory, etc.); and the dissociative aesthetic (in which any legal "X is an unstable glomming-on of many other things that cannot be subsumed or stabilized within any one thing"[24]—think of asking destabilising questions such as "what is a corporation really?' or indeed law? or a legal fact: actually show me one," etc). What is important for the point I am trying to make is not so much the precise typology of the aesthetics, what exactly the different sets of principles are that can be seen to underlie legal scholarly work. What is important is that in each of these different aesthetics, different legal realities are created. In the imagery from above, different observers open the box containing Schrödinger's cat, and the cat's quantum superpositions are crystallised into different coexistent, each relative, states of life and death. In Pierre's words, probably less enigmatic than mine here, it works something like this: the different aesthetics "help shape the cognitive, emotive, ethical, and political preoccupations, goals, values, and anxieties of legal professionals" and through them the different aesthetics bring different social constructs of "what we call law into being. Indeed, the aesthetics have an important ontological effect: they fashion law as a presence, an identity, something that is there, that we have, that we can reflect upon, and over which we can argue."[25] Put simply, different aesthetics make people think differently, and when they think differently they socially construct or reconstruct their object of analysis differently.

Pierre Schlag caps this off with a brilliant epigraph about a higher-level, or more deeply underlying, aesthetic of legal scholarship. He quotes from Otto Frisch, the discoverer of nuclear fission who had worked with Richard Feynman and Niels Bohr, and with Albert Einstein's theories. Notice how this takes us back, in fact unsurprisingly, to the wave-particle duality and to quantum theory (Feynman and Bohr also were foundational quantum physicists). Frisch recollects: "No, no," [Bohr] would say, "You

23. *Ibid* at 1052.
24. *Ibid*.
25. *Ibid* at 1053.

are not thinking; you are just being logical."[26] In other words, if you want to really think, you have to go beyond the logics of a given aesthetic, beyond the logics of a given paradigm. Remaining within a given lower level or less underlying aesthetic is not thinking but just being logical.

So my point here is in reality terribly simple: it is the idea that if we essentially strive to have fun when we do legal scholarship, the sort of fun I describe here, to 'think' in the sense of the previous paragraph, we are more likely to accept the coexistence of mutually exclusive accounts of legal realities. We are more likely to accept the coexistence of what Pierre calls attempts to "legislate reality," by which he means the creation of "self-enclosed realities which can then be used to regulate and adjudicate the claims of others."[27] And the coexistence of these parallel, self-enclosed legal realities, even if each of them cannot logically exist from the relative perspective of every other—that coexistence gives us a better overall understanding of the law like, as I have said, the self-enclosed realities of particle physics and wave physics coexist in their relevance for light and together give us a better overall understanding of it.

For all its exogenous ontological limitations, even normative legal scholarship has its use. I cannot quite prove it, but Pierre agrees, so in the self-enclosed reality of a symposium for Pierre Schlag, I am right. "Of course" Pierre wrote, "for all its drudgery, academic police work has its place. It has its role. And an important role." ("Police work" is a reference to Edgar Allan Poe's short story *The Purloined Letter*, in which the police fail to find a letter in an apartment because they comb through the apartment using their standard method, criteria, reasons, and theories, when the letter really was in plain sight but had been made to look like a different letter. In Niels Bohr's words, the police were being logical but were not thinking.)

Put differently, exasperated and irked as we might be, even green beans have a place in our cooking. Once a month perhaps.

Coexisting accounts, coexisting mutually exclusive self-enclosed realities, coexisting and mutually exclusive ontologies and approaches are also useful because they can and likely do interact. These alternative possibilities of reality constructions are not, or at least do not have to be, juxtaposed silos. Instead, they are, or at least can be, dialectically interacting. I mean Hegelian dialectics, where opposite moments of understanding pass one into the other in a process of "self-sublation," which means to

26. *Ibid* at 1049. The quote is from Otto R. Frisch, *What Little I Remember* (Cambridge: Cambridge University Press, 1979).
27. Schlag, *Laying Down the Law*, *supra* note 2 at 133.

both negate and preserve itself while passing into its opposite, which does the same in the other direction, resulting in mutual co-determination.[28] Think yin and yang, but with dynamic interactions. Think of opposites like grandiose legal idealism and the noisy bureaucratic legal grind, like the lawyers' redemption in their own utopian views and their utter cynicism: these opposites are of course not reconcilable but are indissociably linked, pass one into the other—there is something redemptive in cynicism and something cynical in redemption, there is some idealism in bureaucratic grind and something of a grind in constant idealism. And this dialectic relationship creates a tension which is useful, but it can only exist if there are opposite, irreconcilable moments of understanding, a coexistence of mutually exclusive legal realities.

3. *Bloodbuzz*

Let me briefly get back to storytelling. The story makes the argument to come with greater clarity than any jargon could.

> Now when it rains in Freehold, when it rains, the moisture in the humid air blankets the whole town with the smell of moist coffee grounds wafting in from the Nescafe plant from the town's eastern edge. Now I don't like coffee. But I loved that smell. It was comforting, it united our town, just like our clanging rug mill, in a common sensory experience. There was a place here. You could see it. You could smell it. A place where people made lives, and where they worked, and where they danced, and where they enjoyed small pleasures and played baseball, and suffered pain, where they had their hearts broke, where they made love, had kids, where they died, and drank themselves drunk on spring nights, and where they did their very best, the best that they could, to hold off the demons outside and inside that sought to destroy them, and their homes and their families, and their town.[29]

This was Springsteen's hometown. This is what belonging feels like.

(How could the dominant aesthetic prefigurations of the law review genre have allowed a better description?)

And perhaps it is one of the most natural pursuits we may have, as human beings, as social animals, this pursuit of belonging. Belonging to a community. Legal scholars seeking to belong to a community of legal scholars. That this pursuit, this want, this need exists is probably not

28. Georg WF Hegel, *Phenomenology of Spirit* translated by Terry Pinkard (Cambridge: Cambridge University Press 1977) §113, DOI <10.1017/9781139050494>; Georg WF Hegel, *The Encyclopedia Logic: Part 1 of the Encyclopaedia of Philosophical Sciences,* directed by Klaus Brinkmann, translated by Daniel O Dahlstrom, (Cambridge: Cambridge University Press, 2010) at §81.

29. Bruce Springsteen, "My Hometown. Introduction (Part 2)," *Springsteen on Broadway*, 2018.

something I have to demonstrate. But its effects on how we think, this is something we might want to consider.

So if we want to belong, what do we do? Most people, most of the time, to a large degree, have tastes, hold opinions, acquire information, make arguments because these tastes, opinions, information and arguments mark their identification with a certain group. They are acts of group positioning, of group belonging. Thus, our group belonging shapes our epistemologies, what we take to be true. It shapes what we find to be true reasoning, true conclusions. The want to belong acts as a meta-ontology, as it were, as an ontology of our choices of ontologies. It incentivises and constrains our cosmogony, how we build our universe, our representation of the world.

Brutally simplified, when we want to be part of a group, a community, we have to at least somewhat think like them, and if we do this long enough we end up believing that this is the right way to think. Put lyrically, when we think, we can easily get a "bloodbuzz": just like a sugar buzz is a feeling of excitement which affects our thinking, a bloodbuzz is this powerful feeling of warmth which comes from reaching some sort of mental home, which conditions our thinking.[30] This is not a categorical determination of thinking, of course, but wanting to belong credibly is a vector that influences how we think, and this is all I want to suggest.

Pierre Bourdieu has shown as much for tastes. In his most famous book, *Distinction: A Social Critique of the Judgement of Taste*, based on empirical observations, he showed that tastes, in the sense of predispositions to certain kinds of clothing, food, furniture, leisure activities, music, dinner menus for guests, art, …, are class-specific.[31] A choice of tastes is a self-selection into a certain social class and out of another class; what is found aesthetically pleasing, to be of good taste, is made in distinction from, in opposition to choices made by other classes. This can become fully internalized, in the sense that one may feel, as Bourdieu puts it, "disgust, provoked by horror, or visceral intolerance ('feeling sick') of the tastes of others,"[32] of the tastes of other classes. Roughly simplified for the purposes of my argument, if you think of yourself as belonging to, or if you want to belong to, a certain social class, you embrace that class's tastes.

Bourdieu was a Marxist, or at least he was influenced by Marx, and thus he tended to think in terms of social classes, but the same idea of

30. The reference is from a song by the indie rock band: *The National* "Bloodbuzz Ohio" *High Velvet* (London: 4AD, 2010).
31. Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* (London: Routledge Kegan & Paul, 1984).
32. *Ibid* at 56.

the want to belong determining one's tastes can plausibly be applied to any number of other groups and communities. Consider a parallel here between, on the one hand, the disgust provoked by the tastes of other groups, triggered by the need to self-identify as belonging to a given group and, on the other hand, the deep-set conviction that another group's way of thinking, of reasoning, its epistemological choices, its cosmogony, its worldview are fundamentally flawed, are plain wrong. The idea here is that this conviction is also triggered by a need to self-identify as belonging to a given group.

Thomas Kuhn showed as much for disciplinary ideologies.[33] The argument goes as follows: A central paradigm, and often a number of smaller secondary paradigms, structure and validate the thinking in a discipline. (To be precise, this is so for periods of "normal science" in a discipline, not for periods of "scientific revolution," during which different candidates for paradigm compete for supremacy; but this is a discussion I do not want to enter here as it would only be a distracting footnote to the argument.) A paradigm, then, is a central idea, accepted for a time by the discipline's community, which determines the appropriate choice of methods and rules of truth within a discipline. It also determines the discipline's shared beliefs, which "supply the group with preferred or permissible analogies and metaphors,"[34] and the paradigm determines the discipline's shared values. Paradigms have a profound impact on thinking; they amount to "competing modes of scientific activity."[35]

So much is Thomas Kuhn 101. But consider two further points.

Firstly, for Kuhn, a paradigm structures an entire discipline. My argument imports Kuhn's theory only to the extent that a paradigm structures a given legal reality—remember the discussion from above of "self-enclosed realities which can then be used to regulate and adjudicate the claims of others."[36] Then again, the difference between "discipline" and "legal reality" is largely a matter of semantics (What exactly is a "discipline"? A "legal reality"? A "mode of scientific activity"? And so on; you get the point.) Also, my argument could possibly be construed as a call for a period of scientific revolution, which would thus allow different candidates for paradigm to coexist. But no, no distracting footnote.

Second, and that is the key point, according to Kuhn, adherence to a paradigm is typically essential to becoming part of the discipline's

33. Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: The University of Chicago Press, 1970).
34. *Ibid* at 184.
35. *Ibid* at 10.
36. Schlag, *Laying Down the Law, supra* note 2 at 133.

dominant community. He puts it thus: "The study of paradigms…is what mainly prepares the student for membership in the particular scientific community with which he will later practice."[37] In other words, if you want to be a member of, to belong to, a given scientific community, you have to adhere to their paradigm, their central ideas, their rules of truth, their foundational beliefs, their core values, their mode of scholarly activity—in short, their way of thinking.

The core idea is that for many people it is more important to belong to a group, a community, than to understand the world as best they really can or to form an analytically useful opinion about something. Case in point: a recent popular book entitled *Factfulness: Ten Reasons We're Wrong About the World—and Why Things Are Better Than You Think* suggests (by implication) that most people's opinion that the world is getting worse on mostly every front is the opinion you need to have, the conclusion you need to come to, in order to be part of mostly every social group today, even though it is factually quite wrong on very many fronts.[38]

In legal academia, it is quite the same. Most people produce scholarship in a certain way because in doing this they show that they belong to a certain community of scholars. They might say they try to make the courts reach better decisions, to convince lawmakers to make better laws, to fix a burning social issue, and as Pierre has suggested, this is most of the time quite unlikely to succeed.[39] But what is likely to succeed is their performance of belonging to a group, a community—the community of academic legal scholars. And so it keeps going.

From this perspective a further point follows, namely, that if we keep thinking in terms of the social oneness of the legal academy, if we keep thinking and acting as if there was just one community of lawyers, or even just one community of, say, international lawyers, then we make the pursuit of belonging very difficult for the punk law professors, for the slackers, for the misfits, and for the rebels. And indeed, we do keep talking as if there were one community of lawyers, of American lawyers, of Canadian lawyers, of English lawyers, of Swiss lawyers, of international lawyers, of legal theorists, of arbitration lawyers, of… —This sends the message that there is one overarching way of thinking that one has to adapt to if one wants to belong.

37. Kuhn, *supra* note 33 at 10.
38. Hans Rosling, Ola Rosling & Anna Rosling Rönnlund, *Factfulness: Ten Reasons We're Wrong About the World—and Why Things Are Better Than You Think* (New Yo: Flatiron Books, 2018).
39. Schlag, "Politics of Form," *supra* note 5 at 872.

To pick an easy target once again, for a long while in the field of arbitration there was only one way of thinking, and one community—a community which comprised both practitioners and academics. A community in which there was only one appropriate way of thinking. Bourdieu might have said only one good taste in thinking; Kuhn might have spoken of only one controlling paradigm in the field; Pierre Schlag might call it only one aesthetic or only one type of legal reality construction. This way of thinking was legal formalism and "the grid" (recalling Pierre from above, orderly subdivisions of rules and elements and the like),[40] applied to projects of rule compilation and inter-articulation, to doctrinal exegesis, and to normative legal scholarship (the courts or the legislators should really do things differently). The cultural and conceptual reifications of the field were clear, monolithic, and terribly constraining. Their pressures easily brought one away from one's convictions. Dispirited by that state of play, a probably somewhat punk scholar created a new law review, the *Journal of International Dispute Settlement*.[41] The objective was to show, with the backing of Oxford University Press' authority (the journal's publisher), that there is a diversity of appropriate ways of thinking about arbitration, with different ontologies, different aesthetics, different social constructions of the object, and different reference communities.[42]

Abandoning the oneness, or rather the different onenesses (one for American lawyers, one for international lawyers, etc.), of the legal academy may have a further implication. An implication on the evaluation of scholarship. Pierre has shown the difficulty of controlling ideological bias in the evaluation of scholarship, and that a coherent theory of evaluation can only bring the psychological comfort of conceptual security, but cannot, in fact, discipline ideological bias. He for instance puts it thus:

> What is missing? Answer: A subject, an agent—the evaluator. But the evaluator is not here. Where is he?… [T]his evaluator is something of an intellectual embarrassment. It is he, after all, who is supposed to be "disciplined" and "controlled"by means of the evaluative criteria. And yet now it turns out that it is precisely through him, through his pre-figurations, that the means and the ends of evaluation…will acquire their actual significance and meaning. It is his pre-figurations that make the

40. Schlag, *The Aesthetics of American Law, supra* note 22 at 1052.

41. That was, er…, me.

42. Incidentally, the efforts to acknowledge the diversity in thinking in the field continue through *The Oxford Handbook of International Arbitration,* ed by Thomas Schultz & Federico Ortino (Oxford: Oxford University Press, 2020) and a project, to be conducted at the Geneva Center for International Dispute Settlement, on 'Critical Arbitration' meant, among other things, to show all those who think critical thoughts about arbitration that there is a community of such people to which they can belong.

> evaluative criteria mean something in the first place.[43]

So every theory of evaluation, however objective it is purported to be, is already a matter of aesthetic prefiguration, is already ideologically oriented, not to speak of the inevitable ideological bias, prejudice, and exercise of power by the person who does the evaluating.

Abandoning the onenesses of the legal academy will not fix the problem. But it would make it straightforward that every evaluation of scholarship is intrinsically community-specific. What is great scholarship for the punk law professor is not what is great scholarship for those within the legalist aesthetic. (If you think this is obvious, you live in a privileged quarter of the legal academy; good for you.) This would further recognise that the evaluation of scholarship is a situated political act, and just like other political acts, what might help is checks and balances. We cannot come up with a grand unifying theory that explains what good scholarship is, and how to evaluate it. We can only bring people from different communities together so that they counterbalance one another's aesthetic prefigurations.

4. *Tangled socio-professional hierarchies*

From my discussion so far a further point follows. It is a simple, almost trivial point. But it cuts to the heart of these freedoms we give ourselves when we think and write, intimately linked to the freedoms we give ourselves when we just are. It cuts to the heart of the legal scholar's fun of a freer existence and to what may well be felt to constrain it. To how this fun stands in stark contrast, and thus seems impossible, to the legal academy being felt by many as a senseless rat race, as a constant need to perform, to compete. The point is a simple implication of my arguments about multiple perspectives, about coexisting socially constructed legal realities, about multiple coexisting communities and the need to belong to one of them, about the general ideas of relativism and dialectics that have undergirded most of my argument so far. The point is this: we are situated within tangled socio-professional hierarchies, and we should simply recognize this.

I said it would be a simple point. I will get there, to simplicity, but let me start elsewhere.

In *Gödel, Escher, Bach: An Eternal Golden Braid*, Douglas Hofstadter introduced the notions of "strange loops" and "tangled hierarchies."[44] A strange loop is a cyclic structure

43. Schlag, *Laying Down the Law, supra* note 2 at 66.
44. Douglas Hofstadter, *Gödel, Escher, Bach: An Eternal Golden Braid* (New-York: Basic Books,

> in which, in the series of stages that constitute the cycling-around, there is a shift from one level of abstraction (or structure) to another, which feels like an upwards movement in a hierarchy, and yet somehow the successive "upward" shifts turn out to give rise to a closed cycle. That is, despite one's sense of departing ever further from one's origin, one winds up, to one's shock, exactly where one had started out. In short, a strange loop is a paradoxical level-crossing feedback loop.[45]

In other words, if you move only upwards through the system, or only downwards, at some stage you find yourself back where you began. Hofstadter illustrates the notion most compellingly by referencing a painting by M.C. Escher in which two hands draw one another into existence. Hand A draws hand B which draws hand A. Hand A exists because hand B created it, while hand B exists because hand A created it. The strangeness of the loop is that one would expect there to be a linear relationship between the hand and what the hand draws: what the hands draws would exist only because the hand is drawing it; the hand creates the drawing. But in Escher's painting, the relationship is not linear, as the bottom level (the drawing) reaches back up to the top level (the hand) by creating it in turn. From the respective, relative perspective of each of the two hands, *it* is the creator, *it* is the top level, *it* is the higher level of hierarchy, *it*, well, has the upper hand. And hence the hierarchies between the two mutually drawing hands is "tangled." A "tangled hierarchy," then, in Hofstadter's words, is simply "a system in which a Strange Loop occurs."[46] Something similar, Hofstadter shows, takes place in Bach's *Canon per Tonos*, in the form of an endlessly rising loop of successive modulations of keys, from C minor to D minor, and so on, which

> lead the ear to increasingly remote provinces of tonality, so that after several of them, one would expect to be hopelessly far away from the starting key. And yet magically, after exactly six such modulations, the original key of C minor has been restored![47]

And it happens in Kurt Gödel's incompleteness theorems, in the form of self-referential assertions of unprovability, where one would "merely look at what a mathematical conjecture says and simply appeal to the content of that statement on its own to deduce whether the statement is true or false."[48] Hofstadter's argument is in truth much more complex than the

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1979). [Hofstadter, *An Eternal Golden Braid*]

45. Douglas Hofstadter, *I Am a Strange Loop* (New-York: Basic Books, 2007) at 101-102.
46. Hofstadter, *An Eternal Golden Braid, supra* note 44 at 10.
47. *Ibid*.
48. Hofstadter, *I Am a Strange Loop, supra* note 3 at 170.

account I give of it here, and much richer. (It deals with self-referential, recursive, structures that give rise to the sense of "I" in the mind, and thus to cognition, and thus to meaning, which are of course some of the core themes of this article.) But this is the part of his argument I want to take to make my point.

In referring to this part of Hofstadter's argument, I follow prior works which have used the same part to explain how the different levels of rules in a legal system really interact—the constitution, primary legislation, government decisions, judicial opinions, private legal acts, etc., supposedly entertaining a unidirectional hierarchical relationship, have been shown by François Ost and Michel van de Kerchove to "fall back on each other, ignoring the presumed hierarchy."[49] The same idea can be applied to the legal academy.

Applied to the legal academy, the idea is simply one step more remote; it zooms out one notch. It goes like this: take a field of law, for example international law, English law, transnational arbitration law, etc. Understand it specifically as a field of thought, as a field of how we think about it, and not only as a set of rules and institutions (as in this court, that parliament, this treaty, that statute—so for instance the levels of rules from the previous paragraph). Include in the field the dialectic relationships of mutual influence that the thinking and the rules and institutions entertain (recall how I insisted, above, on this notion that law is a noetic entity existing only because we collectively think it into existence). Now, if you look at such a field, as a whole, what you would see is a set of strange loops, of "interaction[s] between levels in which the top level reaches back down towards the bottom level and influences it, while at the same time being itself determined by the bottom level."[50] You would see that distinct levels fall back on each other, ignoring the presumed hierarchy. You would see tangled hierarchies, in which each level—each level of influence, determination, incentivization, constraint, …—is at the same time above and below the other. You would see the multiple hands of Escher's painting, in which each level is the creator, the top level, the higher level of hierarchy, from its own perspective; and from each perspective you would see one of these projects at work which, as you will remember from above, Pierre Schlag calls attempts to "legislate reality."

Brutally simplified, the idea is that I may well be at the top of one socio-professional hierarchy and at the same time at the bottom of another, even

49. François Ost & Michel van de Kerchove, *Jalons pour une théorie critique du droit* (Bruxelles: Publications des Facultés universitaires Saint-Louis, 1987) at 213 [translated by author].
50. Hofstadter, *An Eternal Golden Braid, supra* note 42 at 704.

though we are in the same overall hierarchical system. Consider the text you are reading; some may think it is fundamentally wrong, inappropriate, will feel "disgust, provoked by horror, or visceral intolerance," will think it is at the bottom of their socio-professional hierarchy. Fair enough. Others may think it illustrates a different aesthetic, which legislates reality differently. To be clear, even though so much is probably obvious by now in the argument, the idea defended here is not the end of hierarchy in a field or the reversal of the hierarchy in a field; it is the recognition of the entanglement of coexisting hierarchies.

This would further lead us to stop saying things such as being "at the centre of international law scholarship," for instance, because there is no centre, or indeed to speak of "the leading scholar in international law," because at the same time these scholars are likely to be at the bottom of another socio-professional hierarchy within the same field.

Of course, those who thought of themselves at the top of the one and only recognised hierarchy in a given field might be given to the "melancholy" described by Jan Klabbers, in his lucidly entitled article *On Epistemic Universalism and the Melancholy of International Law*.[51] In the article, he laments the fact that "[f]or much of the 19th and 20th centuries, academic international lawyers had but a single mission; their task was to find out what the law says" and that this is no longer the case.[52] He laments the end of epistemic universalism in international law, that we no longer all study the same thing with the same approach, that we no longer share in the same epistemic project, that international law as a field of thought "is no longer about what states do, but has come to be about what international lawyers do"[53] (notice how international law is not, here, made by international lawyers), and that there now is "a strong division between doctrinal scholars, rational scholars, and critical scholars" (notice the opposition between "rational" and "critical," with the semantic implication that if one is critical one is no longer rational, which quite cuts to the heart of the whole discussion I suggest in this current article).[54] He explains that the cause for all this is that "international legal research has come to be embedded in a highly competitive setting." This suggests either the rat race I have mentioned above—and Klabbers does speak of "competition in scholarship, a spirit irreconcilable with any

51. Jan Klabbers, "On Epistemic Universalism and the Melancholy of International Law," (2019) 29:5 Eur J Intl L 1057, DOI: <10.1093/EJIL/CHY073>.
52. *Ibid* at 1060.
53. *Ibid* at 1062.
54. I appreciate I am uncharitably picking on his choice of words, as he was writing for effect, not argument. Yet I think my rendering of the spirit of his point is fair.

kind of academic ethos,"[55] which sounds like a rejection of the pursuit of excellence, like insisting on what above I called an intellectual betrayal of the promise we make as academics to think as well, as creatively as possible. Or indeed the competition he speaks of suggests the competition between different aesthetic prefigurations, into which the masters of old cannot carry their pedestals.

But that is precisely the point. My argument precisely is that the end of epistemic universalism, the end of a single way to look at things, with the attendant multiplication of coexisting and mutually exclusive legal realities, the abandonment of oneness of the legal academy (in this case in international law), and the entanglement of socio-professional hierarchies—that all of that is good, that it is fun, and is creative.

It is good, because it moves us from a world of entrenched constraints to a world of possibilities. Let me call again on Springsteen to illustrate the idea,

> There's nothing like being young and leaving someplace… Your life laying before you like a blank page. It's the one thing I miss about getting older, I miss the beauty of that blank page, so much life in front of you. Its promise, its possibilities, its mysteries, its adventures. That blank page, just laying there, daring you to write on it.[56]

Legal scholarship—a blank page, just laying there, daring you to write on it. Isn't this more fun, more creative, more likely to get something done than learning rules and applying them?

The other way to look at it is this, as Douglas Adams put it:

> Anything that is in the world when you're born is normal and ordinary and is just a natural part of the way the world works. Anything that's invented between when you're fifteen and thirty-five is new and exciting and revolutionary and you can probably get a career in it. Anything invented after you're thirty-five is against the natural order of things.[57]

This is the vindictive way to look at it. It means this: I'm old (in my head, for whatever reason), I'm no longer flexible, so I say that mental flexibility is wrong, that the way I know how to do things, to think, is the only right way to do things, to think.

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55. *Ibid* at 1069.
56. Bruce Springsteen, "Thunder Road (Introduction)," *Springsteen on Broadway*, 2018.
57. Douglas Adams, *The Salmon of Doubt: Hitchhiking the Galaxy One Last Time* (Portsmouth: Heinemann, 2005).

5. *...but the world is burning!?*

Law, as Robert Cover put it, is "a field of pain and death."[58] It is a field of pain and death because law "occasion[s] the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life."[59] Law "leave[s] behind victims whose lives have been torn apart by these organized, social practices of violence."[60] Law is there to protect people from violence, the violence of others, the violence of the state; yet it is a form of institutionalised violence itself. Law is meant to reduce social inequalities, yet sometimes it exacerbates them, when it allows the powerful to manipulate it in ways that the powerless can't. International law is there to pacify and civilize the world, to curb wars and stop climate change, to promote human rights and economic development. These are serious, grave matters. Law is no joke. There still are people being tortured, put into modern slavery, raped, abused in a thousand ways, left alone to die in the gutter as uselessly expensive cars silently roll by and private jets thunder across polluted skies; our planet is in terrible shape; hate-filled political movements are back that we probably didn't think we would see again in our lifetime. How can anyone have fun, let alone extol fun, when the world is burning?

To suggest that we should unapologetically enjoy ourselves when we think and write about law, that we should seek fun in law, when law is a serious enterprise, when law is thought to be able to fix all of the above—it can easily seem aloof, irresponsible, irreverent, ungrateful for the work of others, emotionally. And so, I can already hear the reactions to my overall argument—stop fooling around, stop having fun, stop trying to make other scholars have fun. This is serious stuff. You are not an entertainer. You are a supposedly serious intellectual, being a law professor and all that. There are lives at stake here.

As I said, I understand the feeling; sometimes I share it.

And yet we should see the question for what it is. It is whether it is morally acceptable for legal scholars to have fun while others suffer because of the imperfections of laws? To answer it, let me first recontextualise. Notice that medicine, physics, chemistry, economics, and a number of other disciplines, are fields of pain and death too—think illness, nuclear energy, pharmaceutics, economic crises. We legal scholars are nothing

58. Robert M Cover, "Violence and the Word," (1986) 95:8, Yale Law Journal. 1601 at 1601, DOI: <10.2307/796468>.
59. *Ibid*.
60. *Ibid*.

special. The question therefore becomes whether it is morally acceptable for *any* researcher to have fun while others could suffer less thanks to advances in the researcher's field? Scholars would then most likely never have fun, ever. Alright, perhaps this is the condition of the scholar. Yet let us continue looking at the question, now from the other side. Should a researcher be grave, stern, anxious, despondent, etc., when others, affected by her field, suffer? Would it help? Arguably, it would not. Having fun, the sort of creative fun in thinking I have been considering here, does not imply carelessness. Arguably, breakthroughs are fostered by curious, free spirits, by a freer existence for academics experimenting with ideas.

And so, as befits my profession (I am an academic), my contribution is to think, to think creatively, out of the box; to explore ideas and follow where they might take me, where they might take you; to indulge my curiosity; to conduct thought experiments; to offer new ways to look at a given legal provision, at a given legal theory, at law, at the world; to provoke reflection; to shake certitudes so that we can make progress; to show alternatives in order to release people from others' frames of thinking, so that they can make their own choices and live their own lives with their own thoughts; to encourage alternative thinking in order to prevent ourselves from passing on mistakes of the past to future generations through the illusion that ours is the only choice, to free others from our own flawed thinking. If we academics don't do this sort of liberating thinking, if we professors don't nurture the dreaming room necessary to think of new solutions for our burning world, who will?

Conclusion

At the centre of any lesson about thinking and writing about the law is an understanding of who we are. Going back to where we began, to the theme traversing Pierre Schlag's work—its call to humanity, to risk being your true self, to embrace this fun of a freer existence as a legal scholar—let me quote Springsteen one last time. "I never believed that people come to my shows or to rock shows in general to be told anything. But, I do believe that they come to be reminded of things, to be reminded of who they are at their most joyous, at their deepest when life feels full. It's a good place to get in touch with your heart and your spirit. It's good to be amongst the crowd, be reminded of who we are and who we can be collectively."[61] Again, this puts it more eloquently than I could have—more eloquently than the law review genre would generally allow; but this is exactly what

61. Bruce Springsteen, "The Ghost of Tom Joad (Introduction)," *Springsteen on Broadway*, 2018.

I have tried to do too, along with an encouragement to carry ourselves accordingly.