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Law, Critique and the Believer's Experience

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I have come to think that, most of the time, radical critics of a given discursive practice were once believers in that practice's necessities and realities.[1] In particular, I am of the opinion that one comes to appreciate the power of a discourse only when one has genuinely and personally experienced the necessitarian pull as well as the realities such discourse creates. To put it in phenomenological terms, I think that radical scepticism is often the expression of some self-revulsion at one's earlier beliefs. The phenomenological causality described here is thus not simply about the devastating rage that one can possibly vent after feeling tricked into believing in the necessities and realities of the hard-learnt sophisticated paradigms of a system of thought. What is at stake here is a much greater phenomenological claim. It pertains to the greater potential of those who have experienced the full potency of the necessities of realities created by discourses to develop a very acute sensibility for discourses' hidden works and thought-governing structures.

In my view, legal thought is no different in that respect.[2] An earlier belief in law's systemic modes of production of necessities and realities maximizes the possibility of coming up with an acute amenability towards law's hidden works and thought-governing structures. Put differently, having been trained in the discovery, refinement, and defence of the necessities of law's system of thought and the belief in the universal truth thereof may later help one appreciate the power of legal discourse and the repression of thinking and imagination it wields. The phenomenological claim made here in relation to legal discourses simultaneously means that scholars who wield legal categories and produce legal discourses aptly, but solely out of convenience and with a certain degree of cynicism,[3] are less likely—some colleagues would say "less at risk"—of subsequently developing a radical critique of legal discourses. In my view, such believers by convenience, having not let themselves be fully governed

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1. By realities, I refer to the realities which the discourse not only produces but also makes perceived as natural. On this notion, see Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, 2nd ed (New York: Routledge, 1999) at 45.

2. On what it can possibly mean to be a legal critic, see Jochen von Bernstorff, "The Critic" in Jean d'Aspremont & Sahib Singh, eds, *Concepts for International Law*: *Contributions to Disciplinary Thought* (London: Edward Elgar, 2018) 154.

3. On the consciousness of lawyers of the belief system they are caught in, see the remarks of Judith N Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, MA: Harvard University Press, 1986) at 10.

by legal discourses and their thought categories, cannot fully appreciate how much legal discourses govern. For all these reasons, I am convinced that most of the radical legal thinkers that currently populate the legal academy once excelled at the discovery, refinement, and defence of ultra-sophisticated, aesthetical, and mutually supporting abstract categories of legal discourses, and were thus at some point in their career *believers*.[4]

I see Pierre Schlag, to whom this essay pays homage,[5] as epitomizing the phenomenological claim made above. In my reading of his work, Schlag demonstrates throughout his writings that he was once one of these believers now turned into one of legal discourses' most radical critics. Yet, the point made in this essay also goes further. It is not only about Schlag's earlier devotion. It is submitted here that Schlag was not only *once* a believer—which allowed him to develop a critique that confronts the full necessitarian forces of legal discourses—but that he remains some kind of a believer *even today*. More sharply, this essay submits that Schlag's compelling charges against legal discourses originate in his prior genuine experience of the necessitarian pull of legal discourses and the realities such discourses create. It also makes the claim that Schlag remains committed to the ideal that informed such earlier belief. According to the image provided here, Schlag, once a believer, lost his belief in legal discourses' modes of creation of necessities but has always remained keen on reclaiming it. Schlag is arguably an idealist. His radical critique is an idealist critique.[6]

The point that Schlag was once a believer and wants to reclaim his earlier belief is developed as follows. This essay argues that Schlag's idealism is never more conspicuous than when he captures the dynamics

4. On the previous lives of thinkers like Philip Allott, David Kennedy, and Martti Koskenniemi, see the remarks of Akbar Rasulov, "What is critique? Towards a sociology of disciplinary heterodoxy in contemporary international law" in Jean d'Aspremont et al, eds, *International Law as a Profession* (Cambridge, UK: Cambridge University Press, 2017) 189. See also Akbar Rasulov, "New approaches to international law: images of a genealogy" in José María Beneyto & David Kennedy, eds, *New Approaches to International Law: The European and the American Experiences* (The Hague: TMC Asser-Springer, 2012) 151.

5. The work of Pierre Schlag proved a great source of inspiration for my work on the self-referentiality of the thought categories of international law and the latter's functioning as a belief system. I am indebted to Pierre Schlag for accepting to write the foreword. See Jean d'Aspremont, *International Law as a Belief System* (Cambridge, UK: Cambridge University Press, 2017).

6. John Haskell and I have elsewhere assembled a collection of essays which explores how critique and commitment work together. See John Haskell & Jean d'Aspremont, eds, *Tipping Points in International Law: Commitment and Critique* (Cambridge, UK: Cambridge University Press, 2021). In the same vein, see Edward Said, *Reflections on Exile and Other Literary and Cultural Essays* (Cambridge, MA: Harvard University Press, 2000) at 167, 171. On the idea that legal scholarship is articulated around an ideology of anti-utopianism, see Akbar Rasulov, "The Utopians" in Jean d'Aspremont & Sahib Singh, eds, *Concepts for International Law: Contributions to Critique* (London: Edward Elgar, 2018) 879.

(and the inertia) permeating legal discourses through the idea of *routine*.[7] Routine, it is submitted here, is simultaneously Schlag's most devastating description of legal discourses and the best expression of his continuous idealism.

Before engaging with Schlag's concept of routine as the epitome of his resilient idealism, an important terminological remark is in order. I have claimed above that Schlag was once a believer in legal discourse before turning himself into one of its most radical critics. It is important to stress at this preliminary stage that, by radical critique, I am referring to the type of critical engagement with law which emerged in the last decades of the 20th century, especially after what is commonly called the linguistic turn. It is a type of critical engagement that is commonly anti-foundationalist and which is suspicious of several of law's modern features. It is a critique that seeks to draw out what a legal text "fails—or wilfully refuses—to see."[8] It is a critique that builds on the insights of linguistics, anthropology, structuralism, post-structuralism, post-modernism, post-colonialism, feminism, queer theory, emotions and affects, literary theory, etc. In the following paragraphs, and notwithstanding Schlag's very distinct voice, I describe his work as belonging to this specific generation of critical engagement with law. I do so to distinguish it very clearly from a mainstream (self-labelled) critical mindset that has pervaded dominant approaches to law since the Enlightenment, a mindset geared towards reform and progress. For the sake of this essay, radical critique, used in opposition to modern critique, is accordingly used in a rather generic way to refer to what is commonly called critical theory.[9] This simultaneously means that my take on Schlag's type of critique situates him outside—and possibly in opposition to—conventions of radicalism found, for example,

7. See in particular the following pieces of work of Pierre Schlag: Pierre Schlag, "Normative and Nowhere to Go" (1990) 43:1 Stan L Rev 167, online: <lawweb.colorado.edu> [perma.cc/6Z2X-U92H] [Schlag, "Normative"]; Pierre Schlag, "Spam Jurisprudence, Air Law, and the Rank of Anxiety of Nothing Happening (A Report on the State of the Art)" (2009) 97:3 Geo LJ 803, DOI: <10.2139/ssrn.976078> [Schlag, "Spam Jurisprudence"]; Pierre Schlag, "The Law Review Article" (2017) 88:4 U Colo L Rev 1043, DOI: <10.2139/ssrn.2746650> [Schlag, "Law Review Article"].

8. Rita Felski, *The Limits of Critique* (Chicago: University of Chicago Press, 2015) at 1.

9. For some remarks on the self-labelled critical mindset of the modern mind, see generally Peter Sloterdijk, *Critique of Cynical Reason* (Minneapolis: University of Minnesota Press, 1987); Hayden White, *Tropics of Discourse: Essays in Cultural Criticism* (Baltimore, MD: Johns Hopkins University Press, 1978) at 1; Noam Chomsky & Michel Foucault, *The Chomsky–Foucault Debate on Human Nature* (New York: New Press, 2006) at 172-173; Bruno Latour, *La fabrique du droit : Une ethnographie du Conseil d'Etat* (Paris: La Découverte, 2004) at 207. Elsewhere, and in contrast with the present essay, I have referred to the idea of radical critique to distinguish myself from the common critical attitude towards historiography. See Jean d'Aspremont, *The Critical Attitude and the History of International Law* (Leiden, ND: Brill, 2019); Jean d'Aspremont, "Critical Histories of International Law and the Repression of Disciplinary Imagination" (2019) 7 London Rev Intl L 7:1 at 89-115.

in some strands of feminist critique, critical race theory, Marxist critique or the black radical tradition.[10]

It is with this terminological consideration in mind that I now turn to Schlag's idea of routine which, as I claim here, embodies the idealism of his critique. In the context of legal discourses, routine commonly refers to the regular repetition of some given postures, moves, styles, arguments, claims, modes of meaning, etc., as a result of a deeply entrenched proclivity that allows such repetition to be experienced as natural and necessary. Routine here is "highly repetitive, cognitively entrenched, institutionally sanctioned, and politically enforced…."[11] The performances dictated by routine are executed without any feeling of obligation or constraint but are instead experienced simply as what "com[es] naturally."[12] For Schlag, however, the idea of legal routine is meant to describe an utterly deplorable state of affairs, especially in relation to one type of legal discourse, namely legal scholarship.

In fact, through the concept of routine, Schlag ridicules legal scholarship for being an exercise of imitation[13] that can only lead to *ennui*.[14] By routine he means that scholarly literature offers a "recurrent sameness,"[15] so that "the discipline of law is organized as a kind of mimesis."[16] Routine, for Schlag, is a part of lawyers' discursive practice that "is not really worthy of your time or effort or perhaps even respect."[17] Taking issue with the conly iterative character of legal scholarship, Schlag particularly bemoans the "imitation of the legal brief and the judicial opinion,"[18] that is, the "imitation of judicial idioms, tasks, gestures, professional anxieties, and the like."[19] This judge-inspired mode of discourse is what he has sarcastically

10. This is a point I owe to Genevieve Renard Painter, Liam McHugh-Russell and an anonymous reviewer. Obviously, from the perspective of such radical traditions, Schlag's critique is not radical at all but confined to a rather mainstream anti-foundationalism. For some examples of such radical critique, see e.g. Derrick A Bell, *Race, Racism, and American Law*, 6th ed (Boston, MA: Aspen Publishing, 2008); Roy L Brooks & Mary Jo Newborn, "Critical Race Theory and Classical-Liberal Civil Rights Scholarship: A Distinction without a Difference" (1994) 82:4 Cal L Rev 787; Sumi Cho & Robert Westley, "Critical Race Coalitions: Key Movements That Performed the Theory" (2000) 33:4 UC Davis L Rev 1377; Tara J Yosso, *Critical Race Counterstories along the Chicana/Chicano Educational Pipeline* (Oxfordshire: Routledge, 2006).
11. Schlag, "Normative," *supra* note 7 at 167.
12. This "coming naturally" is sometimes described as a denial. *Ibid* at 190.
13. Schlag, "Spam Jurisprudence," *supra* note 7 at 807.
14. Schlag, "Normative," *supra* note 7 at 167.
15. Pierre Schlag, *Laying Down the Law* (New York: New York University Press, 1996) at 134 [Schlag, "Laying Down the Law"].
16. Schlag, "Spam Jurisprudence," *supra* note 7 at 812.
17. *Ibid* at 808.
18. *Ibid* at 807, 813.
19. *Ibid* at 812.

called "ruling from the bench"[20] or the "juridification" of legal thought.[21] Never mincing his words, Schlag goes as far as saying that, by virtue of such exercise of imitation, legal academics are destined "to play out the myth of Sisyphus," the difference being however that Sisyphus, contrary to lawyers, had a real rock to push up the hill.[22]

The description by Schlag of legal scholarship as a routine does not, however, aim only at its iterative or mimetic dimension. Had he limited his charge to the iterative character of legal scholarship, albeit while deploring the routine as "not a self-evidently good one,"[23] the critical edge of his portrayal of legal scholarship would have remained rather mild and somewhat gentle. Yet, for Schlag, the description of legal scholarship as a routine is meant to capture another dimension of this particular type of legal discourse, namely its anti-intellectual and thought-annihilating nature.[24] In fact, the routine of legal scholarship, he writes, "entails some very serious limitations on what intelligence can beget."[25] It is like working on an "imaginary bus schedule"[26] or connecting the dots.[27] At its best, such routine, he says, generates "high-end mediocrity,"[28] "rigorous mediocrity"[29] or "excellence in mediocrity."[30] Schlag even contends that "[t]he more we awaken, the more we will find that our intellectual efforts are haunted by the possibility that we are not really thinking at all."[31] Thus, for Schlag, routine is the antithesis of thinking, it is a process that produces legal scholars' thoughts on their behalf, and makes everything thought in advance. It is noteworthy that Schlag never shows any qualms in deploring the anti-intellectual character of legal scholarship and does not hesitate to claim that legal thought "is not simply or even fundamentally a kind of thought."[32] For him, legal scholarship, as a routine discursive practice, is more a neurosis than a manifestation of intelligence.[33] It is a discourse that "is in many ways intellectually arrested and arresting."[34]

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20. Schlag, "Laying Down the Law," *supra* note 15 at 142.
21. *Ibid* at 139 and 141-142.
22. Schlag, "Spam Jurisprudence," *supra* note 7 at 829.
23. *Ibid* at 835.
24. It is noteworthy that Pierre Schlag continues to use the words "legal thought" and "legal thinkers" throughout his writings.
25. Schlag, "Spam Jurisprudence," *supra* note 7 at 809.
26. *Ibid* at 832-833.
27. Schlag, "Law Review Article," *supra* note 7 at 1060.
28. Schlag, "Spam Jurisprudence," *supra* note 7 at 809.
29. *Ibid* at 809.
30. *Ibid* at 809.
31. Schlag, "Law Review Article," *supra* note 7 at 1060.
32. Schlag, "Normative," *supra* note 7 at 179.
33. Schlag, "Spam Jurisprudence," *supra* note 7 at 834.
34. Schlag, "Spam Jurisprudence," *supra* note 7 at 813.

Although neither the footnotes nor Schlag himself would divulge his main sources of inspiration, one cannot help discerning the silhouettes of Adorno,[35] Heidegger,[36] and Foucault[37] hovering over his mobilization of the idea of routine and his deploring of the anti-intellectual dimension of what legal scholars do. For instance, in the same vein as Adorno, he holds that the routine driving legal scholarship is "a routine that silently produces our thoughts and keeps our work channelled within the same old cognitive and rhetorical matrices."[38] The same idea of totalization permeates his remark that "[m]y bet is that when normative legal thought takes note of the crash, it will argue against it…on normative grounds of course."[39] Similarly, the voice of Heidegger can be heard when he writes that, "like most routines, it has been so well internalized that we repeat it automatically, without thinking."[40] And, echoing Foucault, Schlag repeats that "like most routines, it remains unseen and unobserved—which is why it is so powerful,"[41] yet adding that "maybe it doesn't have to be like this."[42]

This being said, it is important to emphasize that, for Schlag, the routine at work in legal scholarship, although derided as being devoid of any kind of thought, is no less sophisticated for this absence. It is a non-intellectual cerebral activity that may nonetheless perform all kinds of mental acrobatics. Indeed, Schlag, throughout his work, takes pains to shed light on the many facets of this routine. In particular, he shows that

35. *Cf* Theodor Adorno & Max Horkheimer, *Dialectic of Enlightenment* (London: Verso, 1997), at xi (arguing that the great discoveries of applied science are paid with an increasing diminution of theoretical awareness).
36. *Cf* Martin Heidegger, *What is Called Thinking*, translated by J Glenn Gray (New York: Harper Perennial, 1976). For Heidegger, opining, representing, reasoning, and conceiving, while all albeit important, do not constitute thinking but only customary ways of grasping thought which have their own truth. He adds that science, for him, does not think. For Heidegger, thinking entails questioning ourselves and the inherited opinions and doctrines we take for granted. It is about going beyond systems and concepts, to reach for the *meta*. For him, we can only truly think non-conceptually and non-systematically.
37. Pierre Schlag occasionally refers to Foucault. See e.g. Schlag, "Spam Jurisprudence," *supra* note 7 at 830.
38. Schlag, "Normative," *supra* note 7 at 179.
39. *Ibid* at 189.
40. *Ibid* at 179-180.
41. *Ibid* at 179-180.
42. Schlag, "Spam Jurisprudence," *supra* note 7 at 835.

this routine is normative,[43] theological,[44] magic,[45] journalistic,[46] violent, repressive, and destructive,[47] reductionist,[48] exclusive,[49] bureaucratic,[50] degenerative,[51] self-referential,[52] prolific,[53] humanistic,[54] etc.

Yet however sophisticated the routine may be, Schlag's diagnosis of anti-intellectual character remains shattering. It is even more so given his diagnosis seems to be generalizable and applied to any type of legal discourse. After the projection of the image of legal scholarship as routine on all legal discourses, nothing is left of the prestige of the legal profession nor especially of the noble intellect which lawyers allegedly deploy when they produce legal claims. After Schlag's caustic diagnosis, the virtuous (self-)image of legal discourses is left simply in ruins.

Amidst such grimness, one may wonder where any sort of idealism is to be found. Is Schlag not just an utter sceptic who strives to ridicule legal discourses and simultaneously vandalize the temples where they are recited? Is his deriding of legal discourses as routine anything more than the venting of rage by someone who is angry for having once fallen for the necessities and realities around which legal discourses are articulated. Is Schlag, no matter that he may have been a believer in some distant past, not now a bitter nihilist? What kind of commitment could such a fierce and ravaging portrayal of legal scholarship possibly bespeak? The last part of this essay argues that Schlag's shattering depiction of legal scholarship as routine expresses a continuous commitment to an ideal discursive activity which he still thinks lawyers are capable of.

That Schlag was once a believer is probably easy to fathom. He recognizes it himself.[55] The point made here, however, is that Schlag

43. Schlag, "Normative," *supra* note 7 at 178. By normative here, Schlag means that it is about deciding which norm should govern a particular activity.

44. Pierre Schlag, "Law as the Continuation of God by Other Means" (1997) 85:2 Cal L Rev 427, online: <awweb.colorado.edu> [perma.cc/R5GJ-7G7B] [Schlag, "Continuation of God"]. See also Schlag, "Laying Down the Law," *supra* note 15 at 6 ("The gods may have left the temple, but the people wish to continue their worship.").

45. *Ibid* at 434 and 437-438.

46. Schlag, "Spam Jurisprudence," *supra* note 7 at 821-823.

47. *Ibid* at 816-817 (referring to Robert Cover). See also Schlag, "Normative," *supra* note 7 at 187-188 (also referring to Robert Cover).

48. *Ibid* at 815.

49. Schlag, "Normative," *supra* note 7 at 170.

50. *Ibid* at 186.

51. Schlag, "Spam Jurisprudence," *supra* note 7 at 831.

52. Schlag, "Normative," *supra* note 7 at 186.

53. Schlag, "Spam Jurisprudence," *supra* note 7 at 804.

54. Schlag, "Normative," *supra* note 7 at 190.

55. This is something he explicitly acknowledged during the seminar which this symposium originates from. See also *ibid* at 167 ("Last I remember, it was 1979 and I was beginning my career. I had these incredible utopian visions and these absolutely uncontrollable yearnings to prescribe these

remains wedded to an ideal for the discursive activities of lawyers which he continues to strive for. I am of the opinion that Schlag assumes that it remains possible to reclaim our beliefs in legal discourses and make sense of what lawyers do. I would like to flag here two manifestations of Schlag's resilient idealism.

The idealism that informs Schlag devastating charge against legal scholarship can be witnessed in relation to the refrain he actually shows in his critical posture. After all, Schlag makes a grim diagnosis but he falls short of wishing for legal discourses—and especially legal scholarship—to succumb to their miserable anti-intellectual affliction.[56] In fact, Schlag does not go down the path notoriously suggested by Fred Rodell in relation to law reviews, of wishing the end of lawyers' discursive practice once and for all.[57] By the same token, Schlag never expresses any resignation vis-à-vis the state of affairs he deplores.[58] In that sense, his position is not purely cynical. Indeed, he repeatedly expresses the wish that something would happen or change.[59] Schlag, albeit appalled by the routine at work in legal scholarship, wants this discursive practice to survive and reinvent itself. "We are in need of another re-invention," he writes.[60]

Schlag's idealism also pervades the style in which he articulates his charge. Indeed, Schlag is not amused by what he witnesses. Actually, he is not amused at all. Had he not remained keen on reclaiming his earlier belief, his portrayal of legal scholarship as an anti-intellectual routine would probably have come in a comic form. Yet, Schlag's slamming of the legal scholarship is not comic. It is deeply ironic. Indeed, there is a great deal of irony in the way he draws his diagnosis. Irony is one of Schlag's favourite modes of narration. And irony manifests seriousness and deep concern. Schlag concedes it explicitly when he writes that "[a]ll of this can seem very funny. That's because it is very funny. It is also deadly serious."[61] It is submitted here that the irony to which Schlag systematically resorts

normative visions to large numbers of strangers").

56. To a large extent, Schlag embodies the thinker who I have called elsewhere the "self-reflective international lawyer who is neither invincible nor vulnerable but consciously standing between the mutually reflecting mirrors wearing fissured spectacles and with no intention to smash the mirror, turn off the light or close her eyes." See Jean d'Aspremont, "Three International Lawyers in a Hall of Mirrors" (2019) 32:3 Leiden J Intl L 367.

57. Fred Rodell, "Goodbye to Law Reviews" (1936) 23:8 Va L Rev 38, online: <https://openyls.law.yale.edu/handle/20.500.13051/2108>.

58. Schlag, "Spam Jurisprudence," *supra* note 7 at 835 ("…maybe it doesn't have to be like this now").

59. *Ibid* at 835 ("And then something else will happen").

60. *Ibid* at 821.

61. Schlag, "Normative," *supra* note 7 at 187.

bespeaks a very strong idealism and an assumption that it remains possible to reclaim our belief in legal discourses.

If, as is claimed here, Schlag's reduction of legal scholarship to the anti-thesis of thinking is an expression of an ideal, what can such an ideal possibly be? What is Schlag actually committed to? What could make him believe in legal scholarship again? In my view, Schlag's commitment is, unsurprisingly, a commitment to a certain way of doing legal scholarship that preserves the possibility of thinking. A few hints at the type of legal scholarship he strives for can be gathered from his writing. Unsurprisingly, he is eager to promote (and be part of) a "thought-inspiring type of legal writing."[62] Nowhere does he express more clearly his continuous belief in the possibility of redeeming legal scholarship as a thought activity than when he writes that "being a legal academic can still be, if one makes it such, one of the last truly great jobs on earth—a job where one can actually decide what to think, what to write."[63]

For Schlag, redeeming legal scholarship as a thought-inspiring activity requires one to take liberty with existing and dominant paradigms. He writes that "[a]ll of this is to say that there is no compelling reason to simply emulate the reigning paradigms of legal scholarship. No compelling reason at all."[64] Elsewhere, he is even more explicit about the need for a disruptive attitude, the latter being the condition to resuscitate thinking in lawyers' discursive activities: "Making people see things involves things far different from good judgement, groundedness, or reasonableness. It involves a kind of artistry: a reorientation of the case, a disruption of complacency, a sabotage of habitual forms of thought, a derailing of cognitive defaults."[65] Here the voice that resonate between the lines of Schlag's text is no longer that of Adorno, Heidegger, or Foucault, but of Barthes inviting us to unlearn (*désapprendre*)[66] or to mistreat (*maltraiter*) the text.[67]

Interestingly, it is in advocating a disruptive attitude for the sake of redeeming legal scholarship as an intellectual activity that Schlag reveals what he thinks legal scholarship should stand for. Indeed, in his call for disruption, Schlag tells us that legal scholarship ought to be an intellectual activity at the service of legal education: "The thing about legal scholarship is that it plays…an important role in shaping the ways, the forms, in which

62. Schlag, "Law Review Article," *supra* note 7 at 1060.
63. Schlag, "Spam Jurisprudence," *supra* note 7 at 806.
64. *Ibid* at 806.
65. *Ibid* at 829.
66. Roland Barthes, *Leçon* (Paris: Editions du Seuil, 1978) at 46.
67. Roland Barthes, *S/Z* (Paris: Editions du Seuil, 1970) at 19 [Barthes, "S/Z"].

law students think with and about the law."[68] Disruption, he writes, "is part of what really good education is about."[69] These explicit references to legal education is where Schlag's project unveils itself. Schlag's project is a project *for* and *with* law students. It is an educational project. The reinvention of legal scholarship is also a reinvention of law schools. The legal scholar who can redeem legal scholarship and think is a legal scholar who leaves his study, closes his laptop, and goes to the classroom. Having unlearnt what she knew, the thinking scholar, for Schlag, is an ignorant master. And this is where the work of Schlag comes to echo the anti-socraticism advocated by Rancière.[70]

Unlearning for the sake of thinking. Thinking for the sake of learning. Unlearning at the service of learning. Teaching as an ignorant. According to the reading of Schlag's work carried out here, his ideal postulates that the present generation of lawyers should learn to unlearn in order to ensure that the next generation of lawyers can learn through the unlearning of what they learned. This constant learning to unlearn what has been learnt is what, for Schlag, can turn legal scholarship into a thought-inspiring activity while redeeming the possibility of believing in legal discourses anew.

This essay has come to an end. Or at least it must be brought to an end. Or, rather, I am now deciding to bring to an end in the limits of the power I have as a writer, notwithstanding the fact that my understanding of Schlag's ideal for legal discourses certainly warrants more discussion. An easy and commonly practiced technique for ending a legal essay is to come back to where it all started. This technique helps endow the essay with necessity and some form of aesthetic circularity. Let me use this technique and come back to when I started. Maybe the phenomenological claim made at the beginning of this essay ought, at this final stage, to be given more nuance. Being a radical critic takes more than the prior experience of a believer. It also requires some strong and everlasting ideals about what the discursive practices concerned ought to achieve and ought to serve. In other words, a believer's experience of the necessitarian pull as well as the realities that legal discourses create does not suffice for radical critique to ever come to fruition. Radical critique, as Schlag shows us in his work, must be nourished by a faith in the possibility of redeeming our

68. Schlag, "Spam Jurisprudence," *supra* note 7 at 829.
69. *Ibid* at 829.
70. See Jacques Rancière, *Le Maître Ignorant. Cinq Leçons sur l'Emancipation intellectuelle* (Paris: Fayard, 1987).

beliefs. Radical critique *à la Schlag* is a critique nourished by dreams and ideals.

The last sentence of the previous paragraphs could have been a somewhat spectacular and easy ending. Short, snappy, and, on the surface, nicely self-contradictory, this assemblage of words would have had the potential to resonate in the mind of the reader for a few seconds. Well, as the reader can appreciate, I decided that I should not end my tribute to Schlag in a such a common manner. Schlag, if he ever gets to read this, would be appalled by such a routine ending of my discussion of his work. May the reader allow me to disregard the common aesthetic canons of legal discourses and to instead ramble a bit for the sake of concluding, also drastically changing the style and tone of how these ultimate thoughts are expressed.

As I ramble to conclude—or to avoid concluding in an ordinary way—I first want to say that this essay should not be read as an apology of the radical critic and a ridiculing of the believer. Over time, I have grown more respectful of the believers—whose attitude I once fully espoused and which I may have later on excessively disdained—than of the opportunists, namely those half-hearted lawyers whom Schlag describes as doing a "kind of pretend-law."[71] In my view, the believers carry with them the seeds of a radical critique, for, having genuinely and personally experienced the necessitarian pull as well as the realities legal discourses create, they have the potential to, someday, appreciate the power thereof. The believers, though they may be irresponsible in the sense that they do not realize the damage wrought by the thought-governing structures of legal discourses they believe in and deploy, also have dreams and ideals and, above all, are ready to work for them, just like the radical critics portrayed in this essay. As a result, I have come to think that, in legal discourses, half-hearted cynical opportunism is possibly more despicable than the thought-void routine derided by Schlag. What is more, I think that half-hearted cynical opportunism, in legal discourses, is dangerous because of its complicity with the dismaying state of the world and the utter loss of any type of compassion and care. The world needs lawyers who have dreams. In this respect—and in this respect only—whether lawyers are believers or radical critics *à la Schlag* may not matter so much as long as they are all trying to do something, to do something for the world, to do something for the suffering and misfortunes of others.[72]

71. *Ibid* at 820.
72. On the limits of a critique that is solely suspicious, see generally Felski, *supra* note 8.

This is not yet the last sentence. Because this essay has been written following a seminar specifically dedicated to Schlag,[73] I want to end this essay with both a word of gratitude and an apology, for which I will use Schlag's first name only. The word of gratitude first. It goes to Pierre. When I first encountered Pierre's work, although I had then long been intrigued by the modes of creation of necessities of legal discourses[74] and the argumentative constraints those discourses put in place,[75] I had not yet fully articulated and verbalized my anti-necessitarian and counter-modern calling.[76] There is no doubt that it was Pierre's work that allowed me to clarify my critical condition and verbalize the mourning of my earlier belief in the necessitarian pull of modern legal discourses—which, in my case, had manifested itself through a very modernist obsession with the modes of legal production.[77] Surprisingly, his contribution to the verbalization of my critical condition only dates back to the summer 2015.[78] In the years before that, I had tried hard to read Pierre's work but could not make any sense of what I then perceived as an utterly and unnecessarily cryptic type of writing. So it took me until 2015 to give it a serious go.[79] A visit at Colorado Law School in Boulder in the Spring 2016—as I was writing bits of *International Law as a Belief System*[80]—reinforced Pierre's influence on my anti-necessitarian and counter-modern move, while also allowing me to candidly share with him all kinds of theoretical quandaries I was struggling with at the time.[81] To put it simply, my anti-necessitarian and counter-modern calling was in a state of total disarray, sounding discordant

73. I am grateful to Vincent Forray for organizing this event at McGill University on Friday 13th September 2019.

74. Jean d'Aspremont, *Formalism and the Sources of International Law* (Oxford: Oxford University Press, 2011). See also Jörg Kammerhofer & Jean d'Aspremont, *International Legal Positivism in a Post-modern World* (Cambridge, UK: Cambridge University Press, 2014).

75. Jean d'Aspremont, "Wording in International Law" (2012) 25:3 Leiden J Intl L 575 at 575-602; Jean d'Aspremont, *Epistemic Forces in International Law* (London: Edward Elgar, 2015).

76. I am thankful to Sahib Singh for a very passionate and enriching exchange at the time. His criticisms of my earlier work were vital as I worked to verbalize and clarify my anti-necessitarian and counter-modern calling. He is the one from whom I borrow the expression "critical condition." I am also grateful to Akbar Rasulov, who introduced me to pieces of literature which proved decisive.

77. On the idea that the question of the production of human artifacts and human discourses is a very modern question, see Michel de Certeau, *L'écriture de l'histoire* (Paris: Éditions Gallimard, 1975) at 27-28.

78. I will always be thankful to John Haskell for giving me the right nudge to seriously read Pierre's work.

79. I was first profoundly shaken by Schlag, "Continuation of God," *supra* note 44.

80. Jean d'Aspremont, *International Law as a Belief System* (Cambridge, UK: Cambridge University Press, 2017).

81. I remember discussions about how to scrutinize the modes of creation of necessities in legal discourses without falling back into some naïve form of modern objectivism and about how immanent and internal critique is itself a very modern enterprise.

notes, and Pierre helped orchestrate them.[82] For sure, I could never have articulated my critique of modern coherence,[83] modern ontology,[84] modern textuality,[85] modern hermeneutics,[86] modern historicism,[87] modern comparativism,[88] modern consensualism,[89] modern temporality,[90] modern institutionalism,[91] and modern scienticism[92] without Pierre's decisive input nearly a decade ago. Incidentally, the moments spent with Pierre during that week in Boulder made me realize that a radical critic can also be a true gentleman, let alone a gentleman with whom I share a motherland. For all the above, and the rest, *merci* Pierre!

Now the apology—after which this essay will finally end. The reading made here has projected an image of Pierre as an intellectual heir of Adorno, Barthes, Foucault, Rancière and possibly Heiddeger. I am sure Pierre will not like me portraying him this way. This is because such genealogy is inevitably simplistic. I surmise that Pierre wants to belong to no intellectual dynasty, even the prestigious one I built for him in the previous paragraphs. May Pierre forgive me for my reading of convenience. I must confess that indeed the reading of Pierre's work offered in this essay

82. I feel I started to put it in words more or less convincingly in Jean d'Aspremont, "Three International Lawyers in a Hall of Mirrors" (2019) 32:3 Leiden J Intl L 367, online: <ssrn.com/abstract=3334075> [perma.cc/359D-4CVF].

83. See Jean d'Aspremont, "The Chivalric Pursuit of Coherence in International Law" (2024) 37:1 Leiden J Intl L 191.

84. Jean d'Aspremont, "A Worldly Law in a Legal World" in Andrea Bianchi & Moshe Hirsch, eds, *International Law's Invisible Frames: Social Cognition and Knowledge Production in International Legal Processes* (Oxford: Oxford University Press, 2021) 110.

85. Jean d'Aspremont, "Two Attitudes towards Textuality in International Law: The Battle for Dualism" (2022) 42:4 Oxford J Leg Stud 963, DOI: <10.1093/ojls/gqac010>.

86. Jean d'Aspremont, *After Meaning: The Sovereignty of Forms in International Law* (London: Edward Elgar, 2021).

87. Jean d'Aspremont, *The Critical Attitude and the History of International Law* (Leiden, ND: Brill, 2019); Jean d'Aspremont, "Critical histories of international law and the repression of disciplinary imagination" (2019) 7:1 London Rev Intl L 89.

88. Jean d'Aspremont, "Comparativism and Colonizing Thinking in International Law" (2020) 57 Can YB Intl L 89, DOI: <10.2139/ssrn.3566052>.

89. Jean d'Aspremont, "Consenting to International Law in Five Moves" in Samantha Besson, ed, *Consent in International Law* (Cambridge, UK: Cambridge University Press, 2023). See also Jean d'Aspremont, "Current Theorizations About the Treaty" in Duncan B Hollis, ed, *The Oxford Guide to Treaties*, 2nd ed (Oxford: Oxford University Press, 2020) 46.

90. Jean d'Aspremont, "Time Travel in the Law of International Responsibility," in Samantha Besson, ed, *Theories of International Responsibility Law* (Cambridge, UK: Cambridge University Press, 2022) 252.

91. Jean d'Aspremont, "The Love for International Organizations" (2023) 20 Intl Organizations L Rev 111, DOI: <10.1163/15723747-20020002>; Jean d'Aspremont, *The Experiences of International Organizations: A Phenomenological Approach to International Institutional Law* (London: Edward Elgar, 2023).

92. Jean d'Aspremont, "International Law and the Rage against Scienticism" (2022) 33:2 Eur J Intl L 679 679, DOI: <10.1093/ejil/chac041>.

fits me, fits the idea I have of Pierre, fits the idea I have of what Pierre has brought me, and last but not least, fits the image I want to build for myself in the field. I have accordingly boxed Pierre together with a few of the thinkers that have influenced me. I have thus conveniently put Pierre in my private *Pantheon*. For now, at least. This all-too-convenient reading of convenience of Pierre's work is what I call here *confirmation reading*, which is a form of self-confirming thinking.[93] Confirmation reading is what makes us find confirmation of our beliefs, of our desires, of our discursive presuppositions, of our self-image, of our ideals for the world, etc. in all that we read. Confirmation reading is what makes reading perform the role of a referendum.[94] I believe that confirmation reading is a dominant mode of reading among lawyers. Confirmation reading is also what holds the believers in their beliefs for so long. At least confirmation reading is certainly what left me stuck in my condition of belief for years. Today, confirmation reading is what makes me read Pierre as I read Adorno, Barthes, Foucault, Rancière and possibly Heidegger. Alas, confirmation reading works some of the time. And "then something else will happen."[95]

93. On the notion of self-confirming thinking, see Jean d'Aspremont, *The Discourse on Customary International Law* (Oxford: Oxford University Press, 2021), ch 7. This discursive effect is what Jacques Derrida has called the formidable "simulacrum effect" of language. See Jacques Derrida, *The Beast and the Sovereign*, vol 1 (Chicago: University of Chicago Press, 2011) at 289. For some remarks on the common move at work behind self-confirming thinking, see Bruno Latour, *An Inquiry into Modes of Existence: An Anthropology of the Moderns*, translated by Catherine Porter (Cambridge, MA: Harvard University Press, 2013) at 358-359; Michel Foucault, *Les mots et les choses* (Paris: Éditions Gallimard, 1966) at 58; Timothy Mitchell, *Questions of Modernity* (Minneapolis: University of Minnesota Press, 2000) at 17.

94. Barthes, "S/Z," *supra* note 67 at 10.

95. Schlag, "Spam Jurisprudence," *supra* note 7 at 835.