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Legal Critique in the Polycrisis

The Project

The project of assembling this collection of essays on law and critique began in 2022 under the auspices of a different group of editors than those who head the controversial book series now.[1] To further the completion of this mixed-language publication, I was given the task of approaching potential authors working in English. My invitation to individuals to write short essayistic texts on the relationship between law and critique summarized the concept for the volume that had been written by Christian Schmidt in German:

> On the one hand, social reality can be criticized *with* law, in other words, with reference to legal norms and the assistance of legal institutions. On the other hand, critique can be performed *on* law itself and the degree to which current conditions are legally enacted and protected by legal sanctions. Both should be reflected on in the volume: critique *using* law and critique *of* law.[2]

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1 My thanks go to Felix van Groningen and Maureen Schwarz for their assistance with the considerable task of assembling this mixed-language publication. I am grateful to Laura Goller and Maureen Schwarz for their support in summarizing the German contributions, including the choices of sentences to cite and translate. Sincere gratitude also goes to Anat Rosenberg and my co-editors for their helpful feedback on this text.

2 Christian Schmidt, "Anschreiben kontrovers Band 2 Recht und Kritik." All translations by the author with generous assistance by Laura Goller and Maureen Schwarz in the citations of the German contributions.

As a group of six persons with a variety of disciplinary backgrounds, the editors then solicited texts from what has ended up being a group of twenty-nine contributors, whose very different responses to our invitation I reflect on in the following.

The Context

Law and Critique / Recht und Kritik constitutes a group project. Yet as a child of what Donna Haraway termed "situated knowledges,"[3] I maintain awareness that no goddess-like omniscience or communal we-ness is possible in my articulations. Thus, I state my situated relationship to the subject of this book and its making before reflecting on its historical context, including the legal-political events that have accompanied this volume's genesis.

The Author's Situatedness

It is a useful academic tradition to state how one uses terms and concepts, based on the history of their usage and the critique thereof. Every other editor of this volume would define the terms "law" and "critique" differently, and several do just that in their individual essays in the volume.

My understanding of law in "law and critique" is a pluralistic one that takes in the claims of Indigenous law, *adat*, and what Eugen Ehrlich called *living law*, as well as other forms of normative ordering that are not state made or codified. My notion of critique references the Kantian insight that performing analysis can only be accomplished through critical reflection on the lens through which one analyzes, and the Frankfurt School's attention to the ideological formations that inform articulations of theory.

3 Haraway (1988), 579.

To perform critique is to adopt a self-reflexive stance to the object of analysis, the person performing the analysis as well as the material context. Further, critique involves taking an active interest in altering unjust social relationships, as referenced in critical race theory and critical cultural studies.

In my work, the critical analysis of cultural-legal phenomena is directed at the narrative, tropic, and other imaginative elements in legal texts that demonstrate their non-divisibility from their contexts. I have looked critically at Law and Affect, proposed a transing of law, written about law and utopianism, and argued for the need to decenter the Anglophone and common-law emphasis of dominant Law and Literature and Law and Humanities scholarship to examine other histories and legal systems and to practice comparatism instead. More recently, I introduced an expansive notion of legality that includes individuals' and groups' subjective relations to whatever they feel to be law – whatever popular discourse presents to them as law-full – and to the manner in which individuals assert rights-based arguments as a way to legitimate political convictions. Influenced by a large research project in which I am fortunate to work, I look critically at how verbal and visual images of migration influence human rights consciousness and legal debates.[4] Each of these foci shapes my critical lens and hence the framing of this essay collection.

Historical Entanglements

When we began work on the collection of essays, Russia had not yet invaded Ukraine and the Hamas Attacks of 7 October 2023 on Israel had not yet occurred. Joseph Biden was in the middle of his presidency of the United States, and this expatriate

4 Menschenrechtsdiskurse in der Migrationsgesellschaft (MeDiMi), https://www.medimi.de/.

U.S. American believed that the political-legal violations that had recently occurred in her country of origin had been overcome. This included the attempt to overturn the results of the 2020 presidential election, and the 6 January 2021 mob invasion of the U.S. Capitol. The U.S. had just returned from the brink of an autocratic self-coup. We appeared to be back on the road to a democratic rule of law.

7 October 2023 left a mark on this book as it leaves a mark on our present historical moment. A postcolonial theorist from the UK whom we invited to contribute asked to write about the limits of German *Vergangenheitsbewältigung* – the understanding that we, as Germans, must come to terms with the past, particularly the Shoah and Nazi Socialism – given injunctions on protests against the Gaza War, the point being that Palestine solidarity activism was impossible in Germany. Our editorial collective asked if we could evaluate the piece before deciding on whether to publish it, acknowledging the politically sensitive nature of addressing this topic in Germany. The author subsequently withdrew, citing the demands of Strike ~~Germany~~ – a 2024 call to "cultural workers to strike from German cultural institutions" and "refuse German cultural institutions' use of McCarthyist policies that suppress freedom of expression, specifically expressions of solidarity with Palestine."[5]

I mention these events to demonstrate that a discussion of law and critique never takes place in an apolitical space. As the Marxist critic Fredric Jameson writes, we must "Always historicize!"[6] Discussions are always determined by their context, and the time at which the twenty-nine contributors submitted their essays for review influenced their individual takes on the relationship between law and critique. Diagnoses became more dire over time.

5 Strike ~~Germany~~ (2024).
6 Jameson (1987), ix.

In our current political moment, law and legal certainty are frequently invoked in affective political debates, a point that comes up repeatedly in the essays printed here. In a volume on "*Rechtsgefühle*" – feelings about law and justice, I wrote:

> Because we live in what has been described by Chantal Mouffe as a period in which agonistic or antagonistic affectively-driven politics alternate with one another, people's individual and group allegiances to what they view as 'their' legitimate and passionately defended laws and legal orders take on a particular salience. These evident passions for law (*Rechtsgefühle*) – or what is perceived or imagined to be law – suggest that the notion of law as the repository of the rational and the rule-driven, and as a complex system for resolving social conflicts is in the best case fragile.[7]

The past two years have demonstrated law's fragility quite dramatically, with the huge election successes of the rightwing Alternative for Germany party, which is widely viewed as anti-democratic and anti-constitutional. The EU is frequently described as being in a period of crisis marked by an erosion of the belief in the legitimacy of the judiciary.[8] Since the beginning of 2025, the second Trump administration has embarked on continuous attacks on judges, judicial institutions, due process, and civil and human rights. At the time of writing, the administration appears to be largely successful in its efforts to limit the judiciary's power to correct its transgressions. Justice Ketanji Onyika Brown Jackson writes forcefully about the danger of the entailing "lawlessness" in her dissent to the Supreme Court Decision *TRUMP v. CASA, Inc.* (2025), which severely curtailed the power of lower courts to determine executive actions as unlawful:

> Stated simply, what it means to have a system of government that is bounded by law is that everyone is constrained by the law, no exceptions. And for that to actually happen, courts must have the

7 Olson (2023), 23.

8 See, for example, Uitz (2022); Södersten/Herock (2023).

> power to order everyone (including the Executive) to follow the law — full stop. To conclude otherwise is to endorse the creation of a zone of lawlessness within which the Executive has the prerogative to take or leave the law as it wishes, and where individuals who would otherwise be entitled to the law's protection become subject to the Executive's whims instead.[9]

In agreement with Brown Jackson, I find myself in the position of many progressive critics who are now defending the independence of legal structures and institutions that they have spent much energy critiquing in the past.

We live in a moment of political disruption and polycrisis with varying, competing histories. Whether the polycrisis began with the Great Recession, from 2007 forward, or long beforehand in the combination of the environmental crisis with other perils, cannot be decided here. Whatever the case, polycrisis has become a buzzword because the lexeme expresses the affective sense of dread many feel in the face of continuous threats to political communities and the earth's integrity, a dread that was abetted by the uncertainty that prevailed during the COVID-19 pandemic and the concurrent 'infodemic' of misinformation that facilitated a largescale distrust in how governments handled health regulations. A simultaneous decrease in trust in the reliability of traditional sources of information, caused in part by the affordances of digital platforms, has led to a proliferation of crisis rhetoric and the sense that critique is unable to adequately address these developments.

Debates about the meaning of crisis and polycrisis can undermine critique's potential to catalyze needed change, also concerning legal matters. Päivi J. Neuvonen makes this point when she asserts that

9 *Trump v. CASA, Inc.* (2025), 2.

> the crisis of critique can refer to the way in which the normalisation of crisis talk has seemingly diluted the more radical political potential of crises. But it can also refer to more general anxiety about how critique has "run out of steam."[10]

Neuvonen refers to Bruno Latour's essay "Why Has Critique Run out of Steam? From Matters of Fact to Matters of Concern" (2004), which was held, first in lecture form shortly after the United States' invaded Iraq in 2003 on the basis of the specious argument that the country possessed "weapons of mass destruction."[11] Latour argues that critical analyses of the constructedness and contingency of facts play into the hands of the New Right to further conspiracy theory narratives and "anti-science obscurants."[12] In our moment of post-truths and anxieties concerning the rapid dissemination and commodification of misinformation through digital channels, the crisis of critique and its aftermaths have a particular painful saliency.

One result of Trump's eminent success as "the Great Disrupter"[13] has been that many other Disrupters in Chief are also successfully following the dictatorship playbook by undermining democratic legal structures and institutions. This pattern is occurring not only in the United States but has also been the case in Hungary, Poland, and elsewhere.[14] Attacks on democratic institutions made by employing the tools and methods of law have been called law-fare. They belong to what Kim Lane Scheppele calls legalistic autocratism:

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10 Neuvonen (2025).
11 Okrent (2004).
12 Flatscher/Seitz (2020), 1.
13 Koch/Nanz/Rogers (2023), 1–29. Note that Elon Musk was also called the "Disrupter-in-chief" in a cover article by The Economist on 23 November 2024.
14 Drzemczewski (2021), 149–168; International Bar Association's Human Rights Institute (IBAHRI) (2012).

> [Legalistic autocrats] use their democratic mandates to launch legal reforms that remove the checks on executive power, limit the challenges to their rule, and undermine the crucial accountability institutions of a democratic state. Because these autocrats push their illiberal measures with electoral backing and use constitutional or legal methods to accomplish their aims, they can hide their autocratic designs in the pluralism of legitimate legal forms.[15]

One witnesses this autocratic legalism forcefully in Israel, since the 37th government came to power in December 2022 with a plan to limit the power of the Supreme Court, government lawyers, judicial nominations, and to reduce the role of an independent judiciary as a check on executive power.[16] It is also occurring in Brazil, India, South Africa, and other "zones of authoritarianism."[17]

To a far lesser degree, we are experiencing the testing of the rule of law and judicial independence in Germany, where the six editors of this volume work and live. Under the current coalition government's election promise to turn asylum seekers away at the border – in a process called pushback – a legal dispute has developed about whether the government must apply EU regulations when processing asylum requests. A political claim comes into conflict with standing legal regulations, and politicians insist that the executive can interpret the law as it wishes.

Despite the Berlin Administrative Court's ruling that rejecting asylum seekers at the border is unlawful, the current government has continued the practice, arguing that the court's decision applies only to the case of the three Somali asylum seekers who were turned back in May 2025 and not the general policy.[18] De-

15 Scheppele (2018), 547–548.
16 See Anat Rosenberg in this volume.
17 See The Pall Project, https://www.autocratic-legalism.net/.
18 *Asylrecht (Somalia): Eilrechtsschutz gegen die Einreiseverweigerung* (2025).

scribing the current situation in an interview, Jürgen Bast states that:

> The federal police are now in a very unpleasant situation. […] Now, on the one hand, they have to follow an order by the Federal Minister of the Interior; and they must not simply ignore it. At the same time [i.e., on the other hand], a court has just now certified that they are being pressured by their own Minister of the Interior to act illegally. […] This creates a constitutional problem if what is legally clear is not actually done here by hook or by crook until the very last legal instance. There is a basic understanding that we have in Germany's constitutional state that politics may not override the law. After all, law sets the framework in which politics takes place.[19]

Bast's words echo those of Justice Brown Jackson. A state of lawlessness ensues when the executive insists on its right to interpret law as it pleases.

The Need for Hope

One asks, how do we maintain a resistant stance during the current polycrisis that is also affecting law? As many of the authors in this volume assert, legal critique can be a tool of resistance and a vehicle for societal transformation. The decision to maintain hope

19 "Also die Bundespolizisten sind jetzt in einer ganz unangenehmen Situation. [...] Jetzt müssen die einerseits eine Weisung des Bundesinnenministers befolgen und dürfen dies auch nicht einfach ignorieren. Und gleichzeitig haben die jetzt gerade von dem Gericht bescheinigt bekommen, dass sie von ihrem eigenen Innenminister zu rechtswidrigem Handeln gedrängt werden. [...] Insofern ist es eigentlich schon auch eine rechtsstaatliche Problematik, wenn hier mit Biegen und Brechen bis in der allerletzten Instanz, eigentlich das, was rechtlich klar ist, nicht gemacht wird. Das ist ein Grundverständnis, dass wir in Deutschlands verfassungsstaatlicher Art haben, dass sich die Politik nicht über das Recht hinwegsetzen darf. Das Recht setzt an der Stelle ja den Rahmen, in dem Politik stattfinden darf." See rbb24 Inforadio (2025), 00:00:47–00:02:21.

despite a critical awareness of the present can also be an active decision. In a text concerning maintaining hope in a democratic crisis characterized by autocratic legalism, Anat Rosenberg asserts that examining hope functions as a way to learn about how to face future crises. She describes a Kierkegaardian-like rationally based leap of faith in future possibilities:

> In the eye of the storm, hope is not naïve but history making. To interrogate hope's workings without the perspective of a history that has been lain to rest and without pronouncing judgement, [...] manifests hope in yet another sense, the hope of learning enough to face still more crisis.[20]

It is in the face of a polycrisis characterized by planetary demise, autocratic legalism, law-fare, and a crisis of critique itself that the twenty-nine authors who contributed to this volume answered our request that they elucidate their understandings of the relationship between critique and law. Some managed to follow the editors' request to the letter that they avoid excessive referencing. Others, like myself in the present text, found it impossible to make articulate arguments without citational place markings.

How the Contributions Speak to One Another in Crisis and in Its Aftermaths

The original call for essays asked authors to explore the relationship between law and critique as they wished, suggesting two possible avenues of approach. As cited above, authors could alternatively perform "critique *using* law and critique *of* law." Some authors focus on the crisis of critique, legal and otherwise. Others dwell on aftermaths of this crisis. As the following discussion of the twenty-nine essays demonstrates, there are far more than two ways to consider the relation between law and critique. As

20 Rosenberg (forthcoming), quoted with kind permission of the author.

suggested by a comparative reading of the contributions, these include the following approaches: historicizing law and critique, theorizing legal criticism, critiquing existent law and human rights, examining legal subjectivity and subjugation, defending the rule of law in democratic crises, pluralizing law, and reconstructing law through alternative sources.

The reader may note that these topics are rendered in present participle form in the section titles to denote that they are processual and ongoing rather than fixed in time. In the following overview, I briefly describe all of the essays in English as a way to open the German texts, at least imperfectly, to non-German speakers. Each description quotes at least one seminal sentence from the essay in question. In the descriptions of the German texts, the quoted sentences are cited in translation as well as the original.

I chose not to group essays under the joint rubric of their applying anti-racist, decolonializing, or de-cisheterosexualizing frameworks. To do so would be to relegate their authors' critiques to a category of otherness from the bread-and-butter business of articulating legal criticism and performing critical legal theory. The authors' calls for pluralization and political and historical contextualization go beyond individual social movement struggles and belong centrally to law itself.

I. Historicizing Law and Critique

Two masters of their fields and also colleagues at the same institution, the Benjamin N. Cardozo School of Law, Yeshiva University, Stanley Fish and Peter Goodrich open the volume with historicizing accounts of Law and Critique. Fish's and Goodrich's contextualizing texts could not be more different from one another in their approaches or more varying in their conclusions. Whereas Fish argues that Critical Legal Studies caused law and legal training

to devolve into politicized identity points, Goodrich understands critique to be an exercise in imagining possible futures.

Fish argues that the appearance of Critical Legal Studies in the 1970s was motivated by a post-structuralist and critical theoretical hermeneutics of suspicion, sensu the Frankfurt school, that sought to uncover the class discriminatory and masculinist structures of society. Critical Legal Studies practitioners' sense of permanent suspicion led them to critique legal training, which "camouflage[s] laws political bias in favor of the status quo."[21] Yet when law's pretense to a disinterest in outcomes is deconstructed, nothing remains, as Fish argues, except identity politics, rights talk, and "collective passivity."

Fish detects a problematic desire for authenticity in calls for anti-disciplinarity as well as in critiques of professionalism in Critical Legal Studies, which, if successfully carried out

> would result not in a purer form of that practice but in its disappearance. You can't just *do* law or literary criticism; those activities only exist in a form defined and constituted by the formal categories and procedures that mark professional membership.

Punchy and famously provocative, Fish suggests that critique in itself is meaningless. Yet he exercises this critical faculty energetically in the analysis of the underlying motives of the Critical Legal Studies he so actively derides.

Peter Goodrich's "CYCLES OF CRITIQUE: From Critical Legal Studies to the Critical Legal Collective" narrates developments in Critical Legal Studies from the 1990s forward. As Goodrich shows, a recognition of exclusions in the legal academy and the critical legal project caused the movement to splinter early on. White men, who had dominated the movement, criticized

21 All citations are from Stanley Fish in this volume.

"the dreariness, and predictability of institutionalization"[22] and the deafness of the academy to leftist politics. The critique of statism led to these men's eventual redundancy:

> The face of the law school changed in significant part because the critical legal scholars in positions of influence were often true to their principles and insisted on diversity, on an intersectionality that brought not only historical materialism and deconstruction, but also feminism, race theory, latcrit and now in the U.S. at least, the Law and Political Economy movement and the neonate Critical Legal Collective, into the corridors and offices of the law professoriat.[23]

In lyrical and tropic terms – a hallmark of the author's work – Goodrich highlights the cyclical nature of waves of critique. Moving into the present, Goodrich reviews the centrality of material criticism as well as planetary awareness:

> Reverting again to an antique concept, the laws of the earth, *leges terrae*, now increasingly matter and materially impact the thought, action and collectivity of an Anthropocene humanity and law that cannot but respond to climatic and planetary disturbances. The universe, to borrow a phrase, has to be met half-way. In medial forms, global warming, global viruses, global web connectivity, change the nature and constituencies of groups, rendering community both serial, temporary, mobile and visible online.

For Goodrich, critique is a form of listening and is cyclical, because "critique is recollection, reflection, resistance, and reinvention of the communities to come." Inviting us to attend to the planet's fragile materiality, the essay looks forward to Susanne Krasmann's, Frans-Willem Korsten's, Cheryl Suzack's, and Eva Maria Bredler's texts, which also concentrate on the defense of the planet as a central motivation for practicing legal critique.

22 All citations are from Peter Goodrich in this volume.

23 For information on the Critical Legal Collective, see https://criticallegalcollective.org/.

Jochen Bung's "Kritik des Rechts als Finger in der Wunde" (Critiquing Law as Putting a Finger in the Wound) completes the essays on histories of legal criticism by focusing on German developments. Bung points out that when The Young Forum for Philosophy of Law (Das Junge Forum Rechtsphilosophie) made "*Rechtskritik*" (legal criticism) the subject of its conferences in 2006 and 2007, the topic was not yet well established. Yet the history of legal criticism is extensive in German philosophy: "Hegel's legal philosophy was not only the first legal sociology but also the first instance of legal critique. Putting a finger in the wound, this philosophy and critique demonstrate the discrepancy between law and the good."[24] Moving through a discussion of Hegel's, Walter Benjamin's, Theodor Adorno's, Gayatri Spivak's, Daniel Loick's, and Christoph Menke's legal-critical positions, Bung argues that too negative critiques of law are as unhelpful as blank affirmations.

For Bung, law is connected to the structural conditions of an economic system that utilizes forms such as private property to falsely identify social systems as free and equal. Arguing that the connection between law and property occurred far earlier than that between the law and the state, and that the contractual dimension of law is primary, he suggests that property and contract should be understood as more "than instruments of private autonomy," but as relationships based on agreement through mutual understanding:

> What I am proposing is not a state or state-mediated but a natural concept of law that must be distinguished from the ambiguous (and much abused) concept of natural law. Naturalness does not refer to nature but rather to social practice, [functioning] similarly to the concept of naturalness in natural languages: it includes an awareness of language's essential changeability.

24 All citations are from Jochen Bung in this volume.

> Was ich vorschlage, ist kein staatlicher oder staatsvermittelter, es ist ein natürlicher Begriff des Rechts, den man vom missverständlichen (und missbrauchten) Begriff des Naturrechts abgrenzen muss, weil mit Natürlichkeit nicht Natur, sondern soziale Praxis gemeint ist, ähnlich wie im Begriff natürlicher Sprachen, der wesentlich auch ihre Veränderbarkeit einschließt.

With its review of major moments in the history of legal philosophy, Bung's essay opens the way for the explicitly theoretical reflections on the relationship between law and critique that constitute the second section.

II. Theorizing Legal Criticism

Ino Augsberg's "Krima. Zum Verhältnis von Recht und Kritik" (Krima: On the Relationship between Law and Criticism) begins the philosophical discussions of the subject. In a series of five short meditations, Augsberg argues that critique can never be divided from its object, because the two mutually imply one another. The argument proceeds in a series of deductive steps. One, the copula "and" in "law and critique" can be understood variably as denoting an additive, an alternating, or an explanatory relationship. Two, the conventional understanding of legal critique as criticism of existing law strengthens the mistaken view that law and critique are separate, and serves instead to solidify the understanding of the copula as indicating a successive relationship. Three, critique is, for Kant, a form of differentiation that follows out of reason.

Four, through a reflection on the legal historian Pierre Legendre's discussion of "The Crime of Corporal Lortie" (2011 [1989]) and an exploration of the etymology of "*krima*" – meaning both "judgement" and "crime" – Augsberg highlights the proximity of the two. Lortie's statement about his crime "That was me, that wasn't me" resulted out of his inability to distinguish

himself from his act of having killed three people and from the breakdown of the act of differentiation itself that would have been necessary for Lortie to be constituted as a subject. Accordingly, "crime does not result out of excess, but rather out of a lack of that differentiating and separating that the root of *krima* stands for."[25] Five, critique cannot follow from outside the law in moralistic terms, but has to be performed as internal reflection. As Augsberg states:

> Criticism is therefore not something that is alien to the law that only arises retrospectively and points out its shortcomings. Rather, as the etymological explanation suggests, criticism coincides with the law itself.
>
> Die Kritik ist also nichts, was dem Recht gegenüber fremd ist, ihm erst nachträglich gegenübertritt und seine eigenen Defizite vorhält. Die Kritik fällt vielmehr – wie die etymologische Erläuterung nahelegt – mit dem Recht selbst zusammen.

Claudia Wirsing's ‚Recht im Widerspruch. Zur Bedeutung der 'Kritik' in der Kritischen Theorie' (Law in Contradiction: On the Importance of "Critique" in Critical Theory) speaks to Ino Augsberg's essay directly in that the author argues that the critique of law has to be exercised as an act of "inner self-differentiation."[26] Wirsing opens her text with the poet Hölderlin's idea that law and violence are inseparable to eventually conclude that violence and oppression belong to "political logic of law." As thinkers such as Marx, Walter Benjamin, Theodor Adorno, and Christoph Menke have pointed out, law aims to render justice while simultaneously implementing social violence.

The task of critical legal theory must therefore be to make law's internal contradiction visible and is based on three principles: one, criticism requires theory; two, theory needs practice if it is to avoid redundancy; and, three, critique must be practical-

25 All citations are from Ino Augsberg in this volume.
26 All citations are from Claudia Wirsing in this volume.

ly informed and critical of itself. Without considering concrete developments of legal norms, theory is meaningless; without theoretical reflection, practice will be blind to its violent structures. Finally, critique is a method that works with concepts that derive their meaning in practice. In summary:

> A critical theory of law must identify and explicitly highlight the contradictions between conceptual and real states of being. The main concern [of critical theory] is to endure the logic of contradictions in law and to be able to think, and to develop ways of dealing with them productively and logically.
>
> Eine Kritische Theorie des Rechts hat die Widersprüche begrifflicher und realer Seinsbestände herauszuarbeiten und explizit zu machen. Ihr Hauptanliegen besteht darin, die Logik von Widersprüchen im Recht auszuhalten und denken zu können, und Wege zu deren produktiver logischer Handhabung zu erarbeiten.

With its attention to law's imbrications with violent social structures, Wirsing's essay looks forward to the next section in which authors discuss law's political entanglements and failures.

Frieder Vogelmann's "Vom Regen in die Traufe: Rechtsohne Verantwortungskritik" (Out of the Frying Pan into the Fire: Legal Critique without a Critique of Responsibility) continues the critical reflections on legal critique by highlighting an oversight, namely, the failure to analyze how subjects subjugate themselves. Legal criticism must examine the central mechanism of subjugation, even if it cannot abandon the prevailing opposition made between "responsibility" and "irresponsibility."

Vogelmann locates the attribution of responsibility to and by subjects at the core of law. The concept of "responsibility" arose in fifteenth-century German court practices and had a solely procedural meaning of consenting to trial. Only during the course of the nineteenth century did the term become morally charged with its link to a self-determined subject and a subjectivity based in discipline and subjugation. Those who assume responsibility per-

force understand themselves to be sovereign, thereby suppressing the power relations to which they are subject and to which they subject others. A sense of legal responsibility arises through the suppression of an awareness of how one is repressed:

> This is then our concept of responsibility. An ambivalent moral self-relation is constitutive of it, which forces self-objectification in order to allow the subject to experience sovereignty and to keep the subject docile and tame despite its subjugation.
>
> Das also ist unser Verantwortungsbegriff. Konstitutiv für ihn ist ein ambivalentes moralisches Selbstverhältnis, das eine Selbstobjektivierung erzwingt, um das Subjekt trotz seines Unterworfenseins Souveränität erleben zu lassen und trotz seines Unterwerfens gefügig und zahm zu halten.[27]

Even seemingly alternative concepts of responsibility – for example, those offered by Sartre, Emmanuel Levinas, or Judith Butler – remain trapped in the logic of subjugation. As long as responsibility is taken as a given, the internalized reproduction of power relations will continue.

Malte-C. Gruber's "Zwischenrufe der Rechtskritik – zugleich ein Nachruf" (Interjections in Legal Criticism – Also an Obituary) picks up on Vogelmann's focus on responsibility. The title plays on the meaning of "obituary" in that the author honors his former mentor, the late legal theorist Rudolf Wiethölter (1929–2024), while lamenting the demise of legal criticism. Making an impassioned call for legal criticism's radical re-politicization, Gruber unfolds Wiethölter's "discomfort with a law" that is "not able to fulfill either the dreams of ideal justice or the hopes for a realistic relationship to social reality."[28]

The path to "enlightened, free law" is long and, in light of the new authoritarianism, is at the present juncture particularly

27 All citations are from Frieder Vogelmann in this volume.
28 All citations are from Malte-C. Gruber in this volume.

difficult to imagine. Nonetheless, lawyers cannot retreat into performing technical applications of law or doing exercises in state authority. Rather, they need to be actively aware of their responsibility to stand up for freedom, truth, and justice:

> No power law can abolish law as long as critical jurisprudence is still politically capable of doing justice.
>
> Kein Machtrecht kann Recht abschaffen, solange es kritische Jurisprudenz politisch noch vermag, mit Recht zu Recht zu kommen.

Gruber's clarion call for re-politicized law opens up the way for the politically based critiques of law in the next section.

III. Critiquing Existent Law and Human Rights

In this section, authors highlight social hierarchies that underscore legal education, human rights, family, and criminal law. The authors demand socio-legal transformation and call for a law that would account for political formations.

Nicole Mansfield Wright's "Political Siloization of Legal Critique for Mainstream Academia and the Christian Right: An Unbridgeable Divide?" opens the discussion by pointing to the polarization of critical legal discourse in the United States. Whereas progressive viewpoints dominate in Law and Humanities journals, conservatives attract private funding for non-academic publications and successfully promote agendas such as advancing Christian religious rights. Further, "traditionalist academics [present themselves] as the embattled group oppressed by the powerful."[29]

Rather than ceding legal critical discourse to conservatives, Wright suggests strategies for "bridging the divide," such as inviting journals to publish articles on "racial disparities in sentenc-

29 All citations are from Nicole Mansfield Wright in this volume.

ing" with an invited response by a conservative theorist and a variety of rebuttals. Wright warns against the current instrumentalization of critical race discourse to white supremacist purpose, thus recurring to Latour's awareness of the cooption of critique to further politically regressive aims. Importantly, for this reader, Wright also echoes a thesis promoted by Lilie Chouliaraki that conservatives adopt a position of being victimized so as to reverse actual hierarchies of power and patterns of discrimination discursively:

> [I]nstead of highlighting the actual and ongoing suffering of the systemically vulnerable, [victimhood discourse] casts those people as by default perpetrators of the imagined harms they are anticipated to commit and treats the felt reality of white fear as the only legitimate claim to victimhood.[30]

Wright encourages progressive legal critics to get their hands dirty by debating legal conservatives and refusing to cede ground in public debates.

Like Wright's essay, Heide Gerstenberger's "Wessen Recht? Vom Recht als Resultat sozialer und politischer Bewegungen" (Whose Law? Law as the Result of Social and Political Movements) demonstrates the inextricability of law from political movements. Law is never neutral but functions as an expression of social relations. In colonial contexts, law served to further the systematic exploitation, disenfranchisement, and subjugation of Indigenous populations. In Germany, the Federal Constitutional Court is called on to render decisions for political reasons under a legal guise. Even international human rights agreements fail to provide reliable protections due to national interests. Achieving and maintaining rights constitute constant processes of negotiation and struggle, with some groups gaining rights and others being excluded.

30 Chouliaraki (2024), 124.

Legal criticism needs therefore to address not only the political formations that inform the creation of new laws but also the politics that accompany concrete applications of law. As Gerstenberger writes:

> The task of legal criticism is not to demand an apolitical jurisprudence, but to analyze the politics that have found their way into specific judgments.[31]
>
> Nicht die Forderung einer unpolitischen Rechtsprechung, sondern die Analyse der Politik, die in konkrete Urteile Eingang gefunden hat, ist Aufgabe von Rechtskritik.

Gerstenberger is the first of many contributors in this volume to take up the trope of law as perpetual struggle. This trope will be explored in depth by Carolina Alves Vestena, Ralph Grunewald, and Tim Wihl, and to a lesser degree by Susanne Krasmann and Christian Schmidt.

The following two essays speak to one another in that both demand a de-gendering of existing legal practices that disadvantage women and members of queer families. Whereas Benno Zabel's text addresses the patriarchal structures that inform how law deals with gender and sexuality-based violence, Esther Neuhann's essay argues that German family law hinders noncisheternormative family structures.

Zabel's "Recht, Ohnmacht, Geschlecht oder: warum die Gewalt nicht enden will" (Right, Powerlessness, Gender or: Why Violence Doesn't Want to End) speaks to the entrenched problem of dealing with intimate partner and sexualized violence legally. Zabel asks why, despite the formal equality of rights between the genders, violence against women continues unabetted. An examination of women and feminized legal subjects' vulnerability highlights reasons for law's never-ending violence. Distinguishing

31 All citations are from Heide Gerstenberger in this volume.

between femicides and intimicides, Zabel demonstrates how instances of private violence reveal law's "gendered DNA."[32] For instance, the state has historically protected women better outside of marriage than within it.

Rather than an abolitionist break from existing law, Zabel calls for transformation through taking gendered experiences of violence seriously:

> A different approach to gender relations and conflicts can only be achieved if subjects' suffering and undesirable normative developments are recognized as having the potential to enact change, as driving forces for eliminating oppressive power structures.
>
> Ein anderer Umgang mit Geschlechterverhältnissen und -konflikten, lässt sich nur erreichen, wenn auch die Leidenserfahrungen der Subjekte und die normativen Fehlentwicklungen als Veränderungspotentiale, als treibende Kräfte erkannt werden, um freiheitsunterdrückende Herrschaftsverhältnisse aus dem Weg zu räumen.

Zabel's essay sets the scene for Esther Neuhann's "Die fortschrittshemmende Kraft des (Familien-)Rechts" (The Progress-Inhibiting Power of (Family) Law). Neuhann argues that while new forms of co-parenting have gained societal acceptance, German family law continues to insist on the "dogma of two parents" with equal rights.[33] Alternative family models with more than two caring adults, such as in queer care communities, go unrecognized. Thus, family law promotes the classic model of the nuclear family even though this model relegates women to dependence and the exclusive performance of care work. As Neuhann argues:

> The law therefore turns the thesis that the nuclear family is (still) best for the child into a self-fulfilling prophecy – and thus slows down social developments that could enable freer and more equal care communities and gender relations.

32 All citations are from Benno Zabel in this volume.

33 All citations are from Esther Neuhann in this volume.

> Das Recht macht daher die These, dass die Kleinfamilie (immer noch) das Beste für das Kind sei, zu einer sich selbsterfüllenden Prophezeiung – und bremst somit gesellschaftliche Entwicklungen, die freiere und gleichere Care-Gemeinschaften und Geschlechterverhältnisse ermöglichen könnten, aus.

Family law reduces the acceptance of alternative family models. Therefore, a more conscious and critical approach to its norm-setting power is necessary.

Franziska Martinsen's "Menschenrechte *nicht* nicht wollen können" (Not Being Able to *Not* Want Human Rights) closes the set of essays that critique the political underpinnings of law and rights recognition processes. Martinsen deals with a common saying in post- and decolonial discourse, that human rights cannot *not* be wanted, demonstrating that the double negation reveals tensions between the normative affirmation of human rights and the simultaneous critique of these rights as Eurocentric and based on concepts of individual ownership that exclude collectivity.

Martinsen highlights three sources of tension concerning human rights: One, human rights promise protection but often remain ineffective, for example, for refugees or stateless persons. Two, human rights are considered universal yet are based on contingent historical conditions and Western norms. Three, from a postcolonial perspective, human rights further colonial structures and racialized power asymmetries. Thereby, an idealized Western subject is contrasted with a devalued 'other.'

Martinsen advocates for a more inclusive, contextually sensitive, and dialogic conception of human rights as "universalizable"[34] rather than as universal. This reconception would allow human rights to be mobilized against injustices caused by colonialism and to have an emancipatory effect. As she writes:

34 All citations are from Franziska Martinsen in this volume.

> The [first step constitutes recognizing the] difference between an undifferentiated universalism [regarding human rights] that ignores particular variants and deviations, on the one hand, and an openness to a difference sensitive, inclusive universalization [of human rights], on the other. This difference sensitive and inclusive universalization of human rights has to be continually reactivated. Recognizing the difference makes it possible, in a second step, to apply corresponding legal norms to explicitly combat the injustice[s] that colonialism itself has produced, despite the colonial entanglements of these norms.
>
> Der Unterschied zwischen der Setzung eines undifferenzierten, partikulare Varianten und Abweichungen ignorierenden Universalismus auf der einen Seite und der Offenheit für eine differenzaffine, immer wieder aufs Neue zu reaktualisierende, inklusive Universalisierung auf der anderen ermöglicht in einem zweiten Schritt, entsprechende Rechtsnormen trotz ihrer kolonialen Verstrickungen zu nutzen und sie explizit gegen das Unrecht einzusetzen, das der Kolonialismus selbst produziert hat.

IV. Examining Legal Subjectivity and Subjugation

Susanne Krasmann's "Das Subjekt des Rechts? Für eine relationale Perspektive" (The Subject of Law? For a Relational Perspective) examines the question of who or what can be considered the subject of human rights. It speaks to Martinsen's decolonial examination of human rights but moves the discussion into a posthumanist critique of legal subjectivity. Departing from Jacques Rancière's political theory, Krasmann problematizes the liberal concept of rights, which conceives of the subject as an autonomous individual, to examine the transfer of elementary rights to non-human entities such as plants, animals, mountains, rivers, and ecosystems. As Krasmann argues, for all of their seeming progressiveness, these extensions follow the liberal legal emphasis on subjective rights.

Calling for a more radical perspective than that of Rancière, Krasmann proposes a relational approach to human rights that decentralizes the individual as rights-holding subject and acknowledges that humans cannot exist without their surroundings. She illustrates this point using the phenomenon of urbicide – the deliberate destruction of cities – as witnessed in Russia's war against Ukraine. Urbicide destroys not only buildings but also the social, cultural, and material fabric of urban life that lends protection and creates a sense of belonging. Rather than a self-centered concept of the human, Krasmann argues that humans need to accept relational ties:

> Yet to decenter the central figure of the legal subject – and the human being – requires more. […] it would mean recognizing that people are nothing without others: without other people, other living beings, without built things and so on.[35]
>
> Doch die zentrale Figur des Rechtssubjekts – und des Menschen – zu dezentrieren, erfordert mehr. Es hieße […] einzusehen, dass Menschen nichts ohne ein anderes sind: ohne andere Menschen, andere Lebewesen, ohne Gebautes und so fort.

The critical examination of legal subjectivity continues in Daniel Loick's "Recht, *race* und relationale Subjektivierung" (Law, *Race*, and Relational Subjectification). Like Krasmann, Loick adopts a relational perspective to explore the divergent effects of law in the highly racialized context of the United States, arguing that law subjugates some individuals while empowering others. The 2020 police murder of George Floyd occurred nearly simultaneously to Amy Cooper's invocation or racial privilege in Central Park, when she called the police to say that she was being threatened by an African American man after having been challenged by a Black birder to curb her dog. Such events demonstrate how modern, liberal legal systems distribute rights unequally. This inequality

35 All citations are from Susanne Krasmann in this volume.

is systematically inscribed in law, which reproduces social differences along dominant axes of power:

> Law is both subjugating and empowering. It empowers some by subjugating others.[36]
>
> Recht ist beides, unterwerfend und ermächtigend. Es ermächtigt die einen, in dem es die anderen unterwirft.

By creating normative entitlements, law shapes subjective attitudes to create a sense of entitlement. Law authorizes the disciplining of those who are perceived as threatening entitlements, as demonstrated by Amy Cooper's call to the police. The affective dimension of law creates a permanent mechanism of exclusion that continues in the form of racial capitalism. As long as it is based on an unequal distribution of power, law will remain trapped in this relational logic. Liberation can only be achieved by turning away from the model of legal subjectivity that finds freedom in the punishment of others.

According to Carolina Alves Vestena's "Rechtskämpfe auf einem unwegsamen Terrain" (Legal Battles on Rough Terrain), legal criticism is necessary because, despite the principle of equality, only selected individuals have privileged access to law. Legal criticism needs therefore to address law's power-stabilizing effects and examine how law triggers new conflicts:

> The law does not remain untouched by its environment: legal struggles are the objective manifestations of social struggles in the juridical field.[37]
>
> Das Recht bleibt hier von seinem Umfeld nicht unberührt: Rechtskämpfe sind die objektive Erscheinung sozialer Kämpfe im juridischen Feld.

36 All citations are from Daniel Loick in this volume.

37 All citations are from Carolina Alves Vestena in this volume.

For Vestena, social struggles transfer antagonisms into the logic of law and are played out on the rough legal field. Social inequality occurs at the level of substantive legal conflicts, and professional jurists vacillate between interpreting norms and negotiating conflicts of interest. Emphasizing its central ambivalence, Vestena argues that law can cement social inequalities, on the one hand, and provide the basis for progressive transformation by neutralizing social contradictions, on the other. Legal battles can be won when social movement actors cooperate with lawyers, who render collective action compatible with law.

Christian Schmidt's analysis of law proves more critical than Vestena's espousal of law's ambivalent role in social movements. Schmidt's "Rechtsfreie Räume" (Lawless Spaces) questions the common demand that there should be no lawless spaces. While this slogan appears plausible given crimes such as human trafficking and child pornography, closing "lawless spaces" goes hand in hand with increased control. The cost of such closures, Schmidt attests, are felt in increased policing and surveillance, since legal enforcement disproportionately targets marginalized groups, for instance racialized, queer, and poor persons, while failing to protect these persons from the violence of dominant groups and the expansion of state power. Additionally, legal controls create new offenses by depoliticizing social conflicts. Political struggles such as those concerning housing are transformed into legal regulations that render collective mobilization difficult and curtail democratic debate. As Schmidt writes:

> In many cases, closing lawless spaces means that political conflicts and the forms of debate surrounding these conflicts are recoded. The problematizations, negotiations, and struggles in which questions of legality and legal regulations play only a subordinate role or no role at all are replaced by their juridification (*Verrechtlichung*).[38]

38 All citations are from Christian Schmidt in this volume.

> Rechtsfreie Räume zu schließen, heißt also in vielen Fällen, dass politische Konflikte und die Formen der Auseinandersetzung um diese Konflikte recodiert werden. An die Stelle der Problematisierungen, Aushandlungen und Kämpfe, bei denen Fragen der Legalität und gesetzliche Regelungen überhaupt nur eine untergeordnete oder gar keine Rolle spielen, tritt deren Verrechtlichung.

While acknowledging its seductive power, Schmidt concludes that juridification is often counterproductive, with implications for legal criticism:

> Instead, legal criticism must aim to open up social and political spaces. Under the battle cry, "There should be more lawless spaces!" it must seek to free these spaces up from the constraints and tyranny of the law.
>
> Die Kritik des Rechts muss stattdessen darauf zielen, die gesellschaftlichen und politischen Räume zu öffnen. Unter dem Schlachtruf: „Es soll mehr rechtsfreie Räume geben!", muss es ihr darum gehen, diese Räume von der Einengung und Tyrannei durch das Recht zu befreien.

V. Defending the Rule of Law during Democratic Crisis

The next set of essays describes what the authors understand to be a democratic crisis, in which judicial independence or the liberal rule of law is fundamentally threatened. This recurs to the theme of polycrisis described at the beginning of this text.

Anat Rosenberg opens the discussion with her "Affective Propaganda and Liberal Legalism in Israel." In a history of the present, she recalls the protest that took place continuously after the Netanyahu coalition government took power in December 2022 and until 7 October 2023. The protest defended Israel courts' liberal-democratic power to check executive power and limit legislation as well as the separation of powers. Rosenberg traces the affectively resonant mediatized means that were employed

to defend the liberal judiciary and explicates the "juris-affective hold" that legal-political symbols took on. Examining affective reverberations, Rosenberg explains how the Declaration of the Establishment of the State of Israel, 1948, for instance, became a "sacred scroll of liberal-democratic norms."[39] Her analysis suggests the need to rethink liberal legalism as based solely in rationality.

Rosenberg's text also challenges Robert Cover's notion of nomos as an expression of High Culture in that it recognizes social media's performative power as a vehicle of resistance, which was used in this case to awaken "the liberal bear." Popular media lent the protest the affective resources needed to defend liberal legalism against authoritarian attack:

> Affective propaganda injected liberal legalism with value in the face of depreciating forces and temporarily saved it. The tools that made critique into a weapon were turned around and at least for a while gave the liberal rule of law an affective popularity with which to battle populism.

The text, like Rosenberg's more recent one quoted from above, acknowledges that treating Israeli symbols as reverential has become extraordinarily problematic after 7 October 2023, and, as she describes it, the "horrors" of what followed in Israel and in Gaza.[40]

Like Rosenberg, Jonas Heller analyzes the problematic historical present in his essay "Chefsache: Die Entkräftung des Rechts durch gegenstaatliche Souveränität" (A Matter for the Boss: The Weakening of the Law through Counter State Sovereignity). Heller investigates the form of executive sovereignty embodied by Donald Trump, Javier Milei, and Jair Bolsonaro. These politicians deploy a sovereignty that differs from Carl Schmitt's model of central decision-making power in the service

39 All citations are from Anat Rosenberg in this volume.

40 Rosenberg (forthcoming).

of state order and from Judith Butler's concept of bureaucratized sovereignty, which diffuses into administrative action. Rather, they employ a "sovereignty against the state":[41]

> In this altered form of sovereignty, the executive personalism of the first model is combined with the population-administering managerialism of the second. At the same time, [this sovereignity] differs from both models in that it aims at a problematic equality in the name of unrestricted individual freedom.
>
> In dieser veränderten Form der Souveränität verbindet sich vielmehr der exekutive Personalismus des ersten Modells mit einem bevölkerungsverwaltenden Managerialismus des zweiten. Zugleich unterscheidet sie sich von beiden Modellen darin, dass sie im Namen einer schrankenlosen Freiheit der Individuen auf eine problematische Gleichheit zielt.

Politicians like Trump direct their actions against the regulated state order, while adopting an authoritarian management style. Executive decision-making and neoliberal population management merge into policies that are directed against the state, law, and social justice measures. Accordingly, those who "do not perform" are treated as superfluous:

> The individual freedom embodied and promised by the new sovereign state of exception results in repressive equality.
>
> Die individuelle Freiheit, die das neue souveräne Ausnahmehandeln verkörpert und verspricht, hat eine repressive Gleichheit zum Resultat.

The next essay continues the negative diagnoses of the curtailment of legal independence through political interests. Ralph Grunewald's "The Mundane Tasks of Any Legal System and the Vanishing Promise of Legal Certainty" laments the loss of predictable legal interpretation in common law settings such as the United States. Grunewald first examines criminal law cases

41 All citations are from Jonas Heller in this volume.

in which the court decided to reinterpret the substance of the criminal offence so as to punish actions after the fact, for instance, the failure to keep someone from killing themself, or the failure to impede one's child from killing other students as forms of manslaughter. Legal certainty is lost when prosecuted persons could not have known the implications of their actions.

Grunewald moves on to a close reading of Rudolf von Jhering's "The Struggle for Law" ("Der Kampf ums Recht," 1872) and interprets the "struggle" in the title as based on an effort to achieve legal reforms and guard against vigilantism or excessive *Rechtsgefühle* (legal feelings or affects). Grunewald's dismay at the loss of legal certainty in the United States takes in the Trump administration's attacks on judicial independence, including the order that the Attorney for the Southern District of New York dismiss the indictment against New York mayor Eric L. Adams, because prosecutors have to "make good-faith arguments in support of the Executive."[42] As Grunewald points out, without legal certainty, structurally weaker parties have no recourse to justice:

> Laws must serve those on the fringes because they have no clout, no leverage, or anything else that gives their status stability. They cannot rely on a powerful community that shares their values or understands them. Law is what allows them to anticipate the consequences of their actions.

Sara Gebh's "Subversion durch Recht: Radikaldemokratie und der Entfremdungseffekt alternativer Ordnungen" (Subversion through Law: Radical Democracy and the Alienation Effect of Alternative Orders) differs from the other three essays in this section of the volume in that it focuses on the relationship between democracy and law rather than law in crisis. Gebh affirms that law can provide emancipatory impulses. Radical democratic thinking needs to harness the subversive potential of law – not only against but through the law – to transform existing normative orders. If

42 All citations are from Ralph Grunewald in this volume.

law is challenged, for instance through civil disobedience, power relations can shift.

Contrary to the Marxian tradition, Gebh views alienation positively – as a driving force in achieving radical democracy, because democracy thrives on the constant disruption of the status quo. Alienation is not a deficit but provides the productive distance needed to enable democratic renewal through legal means:

> Used as a source of alienation, law can therefore be subversive. It not only has a stabilizing effect on the status quo, but is also used for the purpose of criticism, disruption, and transformation.[43]
>
> Eingesetzt als Quelle der Entfremdung kann Recht also subversiv sein. Es hat nicht nur einen stabilisierenden Effekt auf den Status Quo, sondern wird ebenso zum Zweck seiner Kritik, Erschütterung und Transformation eingesetzt.

To address the "incompleteness of the democratic project," democracy must be constantly challenged. Gebh's analysis manifests one of the most positive readings of law's jurisgenerative potential in this volume. The essay looks forward to the legal pluralistic texts that comprise the next section.

VI. Pluralizing Law / Law's Pluralities – Die Vielfalt des Rechts

Gerlov van Engelenhoven's essay "Law, Justice and the Problem of Universalizability: The Case of *adat* Law" demonstrates that as soon as one takes a pluralistic approach to law, one departs from discussions of what law is to focus instead on what law, or normative regulations, performatively do. Van Engelenhoven uses the example of *adat*, which originally meant that which could not be circumscribed by Islamic law in the area that now comprises Indonesia. Following the history of *adat*'s uneasy relationship with

43 All citations are from Sara Gebh in this volume.

Dutch colonial law, including efforts to incorporate this changing set of customary regulations into codified law, van Engelenhoven explicates *adat* as "an exemplary case for the critique of law, in that it points toward a fundamental problem of law, that is, its relationship to justice."[44]

Whereas law, in the Western state-centered sense, seeks to be generalizable, justice is always – like *adat* – situational and can have multiple meanings:

> What is *adat*? [...] It was always *who is doing adat, under which circumstances and for which purposes?* [...] *adat*'s negotiable and situational character resembles the Deleuzian idea of *multiplicity*.

Van Engelenhoven argues that *adat* demonstrates that law is "based in the needs of whoever is shaping it in a particular time and place, for better or worse" and can hence only be understood selectively in terms of "who is executing [law] on behalf of whom, and in defiance of whom, for which reasons and under which circumstances." One needs to attend not only to law's situated qualities but also its "affective dimensions."

Franz-Willem Korsten's "Towards an Ecological Legal Culture? Law's Incapacity to Critically Reconfigure Itself" could also have been included in the section of texts on law's failures, as the essay considers national and international law's steadfast neglect of ongoing environmental destruction. Korsten bases his critique on the Netherlands, where, due to the degradation of the nation's waterways through industrial farming, "biodiversity [...] is currently at only 15 % of its expected level."[45] Continuing in the same vein as van Engelenhoven's emphasis on the affective dimensions of pluralistic law, Korsten promotes a defense of the environment based on obligations rather than individualized rights.

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44 All citations are from Gerlov van Engelenhoven in this volume.

45 All citations are from Frans-Willem Korsten in this volume.

Korsten argues that the expansion of environmental laws that attribute legal personhood to rivers and other natural entities has led to "legal absurdities":

> it makes more sense to recall Ockham's razor and consider human obligations (of all legal subjects and persons) as the basis of legal thinking, practices, and attitudes. Giving rights to a mountain to protect it against pollution is a complex substitute for imposing a simple obligation: that people should not pollute.

Korsten applies intersectional critique to legalistic efforts to differentiate between types of harm to displace responsibility, as well as to continue to view the environment in the patriarchal terms that underlie Roman-law based legal systems. Accordingly, the environment is conceived of as a household, whose "*pater familias* rul[es] his household and keep[s] it in good order." Instead, Korsten advocates for a new *Rechtsgefühl*, or structure of feeling – to use Raymond Williams's concept – that would consider the environment in relational, planetary, and affective terms. Implementing such a structure of feeling would entail the creation of a new legal culture. Korsten's essay looks back to Susanne Krasmann's critique of the extension of legal personality to non-human entities, a topic that Eva Maria Bredler will take up as well.

I have chosen to place Cheryl Suzack's "Countering the Criminalization of Indigenous Land Defenders" after Frans-Willem Korsten's essay, because Suzack similarly performs a critique of current land regulations. In her case, critique is based on Indigenous human rights. Suzack reviews the "ten-year struggle of the Wet'suwet'en peoples [in Canada] to protect their land from pipeline trespass by Coastal Gaslink Ltds and other fossil fuel companies" as well as efforts to expose the "silencing practices"

used against land defenders in an Amnesty International Report and the documentary film *Yintah* (2024, which means "land.")[46]

Suzack argues that documentaries and international human rights organization reports counter the criminalization of Indigenous land defenders. These formats offer first-hand reports of human rights abuses by the Royal Canadian Mounted Police that were intended to demean and dehumanize. Abuses included placing Indigenous land defenders in shackles or forcing them into dog cages for transportation, or making rape jokes about Indigenous women in these women's presence. The reports and the documentary "generate discomfort" by making colonial power relationships visible. Taking on the usually excluded perspective of land defenders, the documentary offers "an understanding of Indigenous law and Wet'suwet'en justice," including "Indigenous human rights obligations that are premised by community consultation and respect for free, prior, and informed consent."

The film leaves the viewer and the persons it depicts with uncomfortable questions such as: How can the land defenders "restore their lifeways when the disputes end?" The struggles of the Wet'suwet'en peoples to practice "Indigenous reconciliation" suggest that current understandings of human rights, property rights, and land ownership are based on untenable legal principles.

Eva Maria Bredler's "Wie ist es, ein Affe zu sein?" (What Is It Like to Be a Monkey?) examines the ambivalence of assigning legal subjectivity to non-human beings, echoing themes from Krasmann's and Korsten's essays. The prima facie progressiveness of these entitlements comes at the cost of further establishing legal personality as a hegemonic and leveling form. The text discusses attributions of legal personality to non-human beings, such as the chimpanzee Cecilia in Argentina in 2016, on the background of

46 All citations are from Cheryl Suzack in this volume.

Franz Kafka's story "A Report to an Academy" (1917), in which the ape Rotpeter becomes human.

The boundary between "res" and "persona" is fluid and historically contingent, as the exclusion of enslaved persons from the realm of legal personality during the nineteenth century and current "legal black holes" demonstrate.[47] These black holes include prisoners in Guantánamo like Murat Kurnaz or migrants in the Mediterranean. Bredler attests that Rotpeter could only gain rights and become human by conforming to the image of a "civilized European" – hardly a liberatory escape from the cage:

> It is not enough to bring new (involuntary) actors into the ensemble of human rights theater and, undeterred by the outside world, perform the same play, a reflection of the world. Rather, what is needed is a different sensibility, an ethics of responsibility that breaks through the fourth wall of the human rights theater and illuminates the causes and contexts of legal conflicts.
>
> Es reicht nicht, in das Ensemble des Menschenrechtstheaters neue (unfreiwillige) Akteure aufzunehmen und unbeirrt von der Welt draußen das gleiche Stück aufzuführen, ein Abbild der Welt. Vielmehr braucht es eine andere Sensibilität, eine Ethik der Verantwortung, die die vierte Wand des Menschenrechtstheaters durchbricht und die Ursachen- und Entstehungskontexte rechtlicher Konflikte ausleuchtet."

Bredler calls for radical change. An ethical relationship that goes beyond the logic of domination needs to be established. In such a radically different form of coexistence, the question would no longer be, "How similar are they to us?" but rather, "What is it like to be a monkey?"

47 All citations are from Eva Maria Bredler in this volume.

VII. Reconstructing Law through Alternative Sources —- Rekonstruktion des Rechts durch alternative Quellen

The title of this section references Daria Bayer's "Reconstructing the House of Law." Bayer's artistic and academic work, here and elsewhere, envisions a transformed law that makes use of alternative formats in which to practice law and legal critique and create alternative normative frameworks.

The section begins with Tim Wihl's "Der Kampf mit dem Recht" (The Struggle with Law). Wihl takes up the trope of the incessant battle with and against law by exploring the surplus of meanings in "*Kampf mit dem Recht*," which, in English as in German, can denote the "struggle" or the "battle with" the law, or the "struggle" or "battle" against the law. Additionally, the dual meanings of "*Recht*" as law and as justice create further polysemy.

Wihl describes the struggle with and against law as a "double-double conflict."[48] The application of the law involves a constant struggle with law; and the fight against the law cannot be undertaken without employing legal means:

> The struggle with the help of the law is also a struggle against the law; and the struggle against the law cannot be waged without the help of the law.
>
> Der Kampf mit Hilfe des Rechts ist auch einer gegen das Recht; und der Kampf gegen das Recht kommt nicht ohne den Kampf mit Hilfe des Rechts aus.

In a critique of law's "colorblindness" and goal of universal validity, Wihl argues that law must recognize difference, for instance in anti-discrimination cases, without descending into arbitrariness. Law has to be multi-perspectival rather than neutral. Judges cannot judge blindly, but, taking up Gustav Radbruch's concept of a "bad or guilty conscience," can only render just decisions with

48 All citations are from Tim Wihl in this volume.

such a conscience. Wihl calls for a law that acts as a vehicle for socially effective democratic transformation. A new political theology of law would focus on love rather than on the state of emergency to "demand the impossible." The goal of such a post-autonomous law is to be pluriversal, relationship-oriented, and open to radical democratization.

Almas Khan's "Metacritique and Black Lives Matter Judicial Opinions" follows after Wihl because the essay promotes a legal order that addresses systemic racism by using alternative sources to reform law. Khan's essay also recurs to Cheryl Suzack's discussion of Indigenous human rights and land practices, by showing that Black Lives Matter judicial opinions depart from the impersonal legal language that Suzack also criticizes. As Khan writes, Black Lives Matter judicial opinions

> are a key site to consider how criteria traditionally used to deem judicial opinions canonical have constituted the form as a white space. Black Lives Matter opinions challenge assumptions about the judicial opinion as an authoritative, insular, and impersonal form reinforcing an oppressive status quo.[49]

Khan reviews Black Lives Matter judicial opinions that, since 2013, have countered the white-centrism of U.S. American law by including Black perspectives. These perspectives remedy those typical "judicial depictions of race [that] can be [experienced as] epistemologically violent" by Black persons.

Since Black perspectives have been omitted historically, Black Lives Matter judicial opinions reference alternative sources, such as African American literature and personal testimony. Citations of African American literature serve to "vivify lived experiences," and Black judges' references to their own experiences create "counter-archive[s] of intertwined personal and public histories." Providing much needed forms of metacritique, "Black

49 All citations are from Almas Khan in this volume.

Lives Matter opinions broaden perspectives represented in a form that has historically privileged white voices."

Karina Theurer's "Epistemologische Dekolonisierung – die Überwindung von Eurozentrismus und kolonialem Rassismus als wesentlicher Bestandteil von Reparationen im deutsch-namibischen Versöhnungsprozess" (Epistemological Decolonization – Overcoming Eurocentrism and Colonial Racism as an Essential Part of Reparations in the German-Namibian Reconciliation Process) continues the series of decolonial and anti-racist analyses of law. Theurer's text also speaks to Khan's because it also explicitly addresses epistemological violence.

Theurer analyzes the importance of performing epistemological decolonization in the German-Namibian reconciliation process. In 2015, Germany became the first former colonial power to begin negotiations on reparations for colonial crimes. Yet the German government nonetheless cites the principle of intemporality, according to which a historical injustice can only be adjudged according to the law at the time it occurred. Decolonial legal theories, however, explicate how international law has historically legitimized colonial violence and reinforced racist structures. This history of exclusions continues to hinder making reparations for colonial crimes, as in the case of the Ovaherero and Nama.

Inclusive international law requires the recognition of non-Eurocentric knowledge systems: "The transformative potential of critical legal research and strategic litigation lies in making visible the concealment of the reproduction of domination in law."[50] Theurer reflects on occlusions in existing law as follows:

> Power relations and domination are most effectively (re)produced through law when the underlying differences are socially and cul-

50 All citations are from Karina Theurer in this volume.

> turally constructed as natural and outside the scope of law and legal access.
>
> Machtverhältnisse und Herrschaft werden durch Recht am effektivsten (re-)produziert, wenn die ihnen zugrunde liegenden Unterschiede als natürlich und außerhalb des Rechts sowie des rechtlichen Zugriffs liegend sozial und kulturell konstruiert sind.

Theurer concludes that Germany must actively incorporate decolonial perspectives in the reparation process.

The final two essays in the volume speak strongly to one another. Both address the possibility of transforming legal critique through embodied, performative means. Daria Bayer's "Reconstructing the House of Law" plays with the parable of Kafka's short story "Before the Law" ("Vor dem Gesetz," 1915) in that it investigates the difficulties artists and other lay people have in entering the seemingly impenetrable gates of law.

Reasons for this impenetrability are multiple: "Laws are formulated in technical language. Legal procedures take a very long time. German bureaucracy and courts still work mostly with paper. A lot of paper."[51] In considering how to reconstruct law, Bayer references Audre Lorde's insight into the structural difficulty of combating racism and sexism with historically problematic, existent methods, for "the master's tools will never dismantle the master's house."[52]

Bayer proposes that law be constantly reconstructed, recognizing that "law is not only the frame in which art takes place but is the framework for all our social interactions." She asks "enlightened citizens" and "critical legal scholars" to "push wide open the entry door of the house of law" to achieve its transformation. Bayer also meditates on a legal turn in the arts, in which law has become the object of artistic practice while it is simultaneous-

51 All citations are from Daria Bayer in this volume.
52 Lorde (2020 [1970]), 39–44.

ly recognized as a feared force of regulation. She requests that lawyers not romanticize the arts in view of the material precarity of lives spent pursuing artistic endeavors. Rather, lawyers need to recognize their privilege and embark on other forms of production than solitary critique:

> Our legal surroundings offer a stable framework with less precarious conditions in which to take the risk of producing art than in the art market. We should be willing to take this risk because there is a difference *in form* when we consider the law through the artistic lens as an object of *art*, if we try not only to criticize, but to actively *create* something.

Actively deconstructing formal restraints can lead to the transformative reconstruction of law.

Laura Petersen's "Feet Notes: Walking as a Technique of Law and Humanities Education" concludes the volume with an essay that provides a wonderful play on words and academic form. Meditating on how authority is conveyed through footnoting, Petersen requests that readers leave familiar referencing habits behind and literally go outside for a walk. She describes this Law and Humanities project as an effort to be in immediacy rather than in a retroactive act of looking back deferentially to those who came before us in the archive of knowledge. In her own words:

> As an early career researcher attempting to stand on the shoulders of giants, these tiny superscript foot note numbers are freighted with that sense of responsibility to the past, as well as a responsibility to ethical scholarship regarding attribution and accuracy.[53]

She proceeds to move through fellow colleagues' efforts in Law and the Humanities to take their students outside of the classroom, to go on "legal walks" to interact bodily with legal spaces or "lawscapes." As Petersen points out, during the pandemic, the streets "became very legible as an act of law – it was a dance

53 All citations are from Laura Petersen in this volume.

with a set choreography [...] full of allowed and not-allowed movements and face-coverings." Accordingly, legal scholars may wish to consider their preoccupation with footnotes from a material perspective:

> Noticing the practice of writing with footnotes means thinking about what it means to practice a scholarly ethos and join a community of scholars. But it also means noticing the way form matters, and materially affects the way we write and what we are able to say.

Petersen's essay invites scholars to clear pathways for the future by adopting new forms of articulation and choosing to move into creative critical spaces.

The Future of Law and Critique

Based on the manner in which their author approaches law and critique, the twenty-nine essays assembled here suggested the titles for the sections. Similarly, the overview of the essays above reveals common themes that comprise topics for future law and critique research and activism, in the "during" and the "after" of polycrisis.

Notably, the essays vary in their degrees of abolitionism and critique. Esther Neuhann's condemnation of German family law, Susanne Krasmann's critique of subjective rights, Daniel Loick's analysis of the racial inequality inscribed in current law, Christian Schmidt's call for law-free spaces, Frans-Willem Korsten's diagnosis of law's failure to protect the environment, Cheryl Suzack's witnessing of the destruction of Indigenous human rights, and, finally, Eva Maria Bredler's demand for a radically different sensibility as the basis for co-existence could all be described as to some degree abolitionist. All of the authors suggest the need for alternative normative ordering systems that can only be founded when the failings of existent law are fully recognized. Hence, the

need for radical critique. Other authors focus on the necessity of defending existing legal institutions from interference during the current political moment (Heller, Grunewald). For them, legal critique serves as a means to protect judicial independence.

The critique of law's imbrications with hierarchical social structures constitutes a powerful theme throughout the volume. Hence, Carolina Aves Vestena's discussion of law's fundamental ambivalence proves to be a leitmotif. Benno Zabel describes the necessity for law to depart from cis-heteropatriarchal structures, a point that Esther Neuhann makes even more strongly in her critique of German family law. Many authors practice critical race, posthumanist, and decolonial criticism of law and human rights, and Jochen Bung suggests a reconstitution of law based on mutual understanding.

Concentrating on the aftermath of legal critique's crisis, authors such as Sarah Gebh, Eva Maria Bredler, and Daria Bayer reflect on law's capability to enact positive change. They envision a transformed law and legal practice as vehicles of emancipation (Zabel, Martinsen), or even as capable of ushering in radical or wild democracy (Gebh, Wihl). For the authors who critique law and critique in itself, such as Ino Augsberg and Claudia Wirsing, legal reform must arise within law as an intrinsically motivated act of differentiation, a point that Ralph Grunewald echoes in his discussion of Rudolf von Jhering's concept of the struggle for law as an internal process of renewal.

Many readings of the politics of law focus on law's failures, its submission to economic interests (Bung, Korsten), its inability to reckon with the uneven distribution of entitlements it legitimates (Loick), or its link to violence (Wirsing). Stanley Fish derides legal criticism's affinity with identity politics. By contrast, most of the other authors call for the explicit politicization of legal critique. To achieve a re-politicized law, as Malte-C. Gruber attests, legal practitioners are charged with enacting change. Oth-

er contributors also make explicit calls on legal actors to join with activists in altering current law (Vestena, Bayer), or to seek dialogue with conservative legal practitioners so as to hinder further political polarization (Wright).

A transformed law can only be achieved through a renewed sense of responsibility (Vogelmann) or through an understanding of law that is not based on individualized and defensively guarded rights, but on obligations (Korsten, Suzack). Autonomized rights and the expansion of attributions of legal subjectivity to non-human animals or other natural entities prove inadequate in addressing the planetary challenges of the present. Hence, Frans-Willem Korsten, Susanne Krasmann, and Eva Maria Bredler all critique the seeming progressiveness of assigning legal personality to animals or other non-humans. Rather than the current rights orientation of law, authors posit the need for a law based in relationality (Krasmann, Korsten), or for a human rights founded on the postcolonial critique of universality (Martinsen).

A point of contention that comes up in many essays is the degree to which law and legal critique contain affective elements and whether or not these elements have beneficial effects. Anat Rosenberg offers a contemporary history in which mediatized affect functions effectively in the defense of Israel's culture of legal liberalism. Gerlov van Engelenhoven and Tim Wihl, in turn, describe the centrality of affect to positive legal reform, as does Almas Khan. By contrast, Ralph Grunewald attests to the centrality of law's continuing to be practiced on the basis of legal certainty and impartiality. And Daniel Loick highlights how the affective dimension of law allows individuals who are entitled within their legal systems to authorize unjust actions.

The crises in legal practice and legal theory that have been caused by attacks on legal autonomy in democratic systems constitute another central theme in this volume. Theorists' varying remedies for how to defend law in polycrisis recur to my mention

of Mouffe's position in the first part of the introduction, that we live in a period of post-Habermasian political and, hence also, legal affect. For Grunewald "notions of popular justice" problematically interrupt the principle of due process and legal certainty. Discussions of affect and law also interface with the motif of the "struggle" or "battle" with law that recurs in many essays (Krasmann, Loick, Vestena, Schmidt, Wihl); the sense of struggle speaks strongly to our historical moment and the politicization of law and legal processes.

Another motif that runs through the collection is the critical emphasis on the impersonality of legal language and formats. Seeming impartiality can occlude the political underpinnings of law (Gerstenberger). For instance, U.S. American legal texts mask their racializing underpinnings by practicing supposedly colorblind justice. The neglect of historical injustices that was legitimized by law in colonial contexts functions as an epistemological violence that is felt, in particular, by those groups of people who have been made subject to racializing and colonial practices (Theurer). Newer forms of regulation, such as those offered by documentaries or NGO reports, are called for to make current injustices known, as against the Wet'suwet'en peoples in Canada (Suzack), or to create new archives of knowledge as in Black Lives Matter judicial opinions (Khan). Daria Bayer and Laura Petersen recommend creative formats for reconstructing law and performing legal critique.

Returning to an insight by Peter Goodrich in the essay that opened this collection: "The universe, to borrow a phrase, has to be met half-way." The call for an ecological reform of law to counter the current destruction of the planet informs not only Goodrich's text but also the essays by Susanne Krasmann, Frans-Willem Korsten, Cheryl Suzack, and Eva Maria Bedler. Embracing planetary thinking involves a critique of the current expansion of rights and new understandings of relations of care, obligation, and collectivity as we move legal critique into the future.

Literature

Chouliaraki, Lillie (2024). *Wronged: The Weaponization of Victimhood*. Columbia: Columbia UP.

Critical Legal Collective (n.d.). "Critical Legal Collective." Critical Legal Collective, n.d. Web. <https://criticallegalcollective.org/> (18 June 2025).

Haraway, Donna (1988). "Situated Knowledge: The Science Question in Feminism and the Privilege of Partial Perspective." *Feminist Studies* 14.3: 575–599.

Drzemczewski, Andrzej (2021). "The Erosion of the Rule of Law and of Judicial Independence in Poland since 2015: the Council of Europe's Reaction – too Little, too Late?" *Περιμένοντας τους Βαρβάρους. Law in a Time of Constitutional Crisi.* Ed. Jakub Urbanik, and Adam Bodnar. Warsaw: C.H.Beck. 149–168.

Flatscher, Matthias, and Sergej Seitz (2020). "Latour, Foucault, and Post-Truth: The Role and Function of Critique in the Era of the Truth Crisis." *Le foucaldien* 6.1: 1–23.

International Bar Association's Human Rights Institute (IBAHRI) (2012). "Courting Controversy: the Impact of the Recent Reforms on the Independence of the Judiciary and the Rule of Law in Hungary." Report. Web <https://documents.nycbar.org/files/IBAHR_Courting_Controversy_report_Hungarian_judiciary.pdf> (03 September 2025).

Jameson, Fredric (1987). *The Political Unconscious*. Abingdon: Routledge Classics.

Koch, Lars, Tobias Nanz, and Christina Rogers (2023). "The Great Disruptor. Eine Annäherung." *The Great Disruptor. Über Trump, die Medien und die Politik der Herabsetzung*. Ed. Lars Koch, Tobias Nanz, and Christina Rogers. Berlin, Heidelberg: Springer. 1–29.

Lorde, Audre (2020 [1970]). "The Master's Tools Will Never Dismantle the Master's House." *The Selected Works of Audre Lorde.* Ed. Roxane Gay. New York: W. W. Norton & Company, 39–44.

Menschenrechtsdiskurse in der Migrationsgesellschaft (MeDiMi) (n.d.). Menschenrechtsdiskurse in der Migrationsgesellschaft, (n.d.). Web. <https://www.medimi.de/>.

Neuvonen, Päivi J. (2025). "The 'Crisis of Critique' in EU Law." VerfBlog, 07 May 2025. Web. < https://verfassungsblog.de/the-crisis-of-critique-in-eu-law/> (03 September 2025).

Okrent, Daniel (2004). "The Public Editor: Weapons of Mass destruction? Or Mass Distraction?" The New York Times, 30 May 2004. Web. < https://www.nytimes.com/2004/05/30/weekinreview/the-public-editor-weapons-of-mass-destruction-or-mass-distraction.html > (17 September 2025).

Olson, Greta (2023). "Why *Rechtsgefühle*? The Turn to Emotion and Affect in Legal Studies." *Feelings about Law/Justice. Rechtsgefühle*. Ed. Thorsten Keiser, Greta Olson, and Franz Reimer. Baden-Baden: Nomos. 17–53. Online.

rbb24 Inforadio (2025). "Rechtsprofessor: Bundespolizisten in unangenehmer Situation." rbb24 Inforadio, 03 June 2025. Web. <https://www.ardaudiothek.de/episode/politik/rechtsprofessor-bundespolizisten-in-unangenehmer-situation/rbb24-inforadio/14670611/> (03 September 2025).

Rosenberg, Anat (forthcoming). "Hope against Autocratic Legalism during the Democratic Crisis in Israel." LSE Working Papers.

Scheppele, Kim Lane (2018). "Autocratic Legalism." *The University of Chicago Law Review* 85.2: 545–584.

Södersten, Anna, and Edwin Herock eds. (2023). *The Rule of Law in the EU: Crisis and Solutions*. Swedish Institute for European Policy Studies.

Strike ~~Germany~~ (2024). "Statement." Strike ~~Germany~~, January 2024. Web. <https://strikegermany.org/en/archive/statement-jan-2024/> (05 September 2025).

The Pall Project (n.d.). The Pall Project, n.d. Web. <https://www.autocratic-legalism.net/>.

Uitz, Renata (2022). "The Rule of Law in the EU: Crisis, Differentiation, Conditionality." *European Papers* 7.2: 929–948.

Cases and Legislation

Trump v. CASA, Inc., 606 U.S. (2025).

Asylrecht (Somalia): Eilrechtsschutz gegen die Einreiseverweigerung, 6 L 191/25 (2025) (court order). Berlin.de, 02 June 2025. Web. <https://gesetze.berlin.de/bsbe/document/NJRE001609913> (05 September 2025).