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Toward a Sociology of International Law: John Hagan and Beyond

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Socio-legal scholars these days devote themselves routinely to the study of international law. It was not always thus. In the late twentieth century, no more than a handful of law-and-society scholars asked themselves how international law worked. Even fewer ventured into the field. John Hagan was one of those who did and the first sociologist to study empirically—and rigorously—what we now call international criminal law. In this article, I use Hagan's oeuvre to reflect on the intellectual history of international legal scholarship in the twenty-first century. I argue that Hagan brought three things to the study of international law: criminology, methodology, and ideology. I trace each of these contributions in detail, assess their intellectual import, and relate them to alternative ways of seeing international law. The story I tell is of a pioneering scholar who charted an empirical path toward the sociology of international law, but whose moral compass—acquired during his socialization in the Vietnam era—also occasionally blinded him to the dark sides of virtue.

> To understand is first to understand the field with which and against which one has been formed.
>
> — Pierre Bourdieu ([2004] 2007, 4)

> The pursuit of justice is the aim of legalistic politics, both domestic and international. To understand both legalism's view of politics and its relations to policies other than its own, one must first consider the notion of justice and then see what the single-minded devotion to that virtue entails.
>
> — Judith N. Shklar ([1964] 1986, 110)

> For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics.
>
> — Oliver Wendell Holmes Jr. (1897, 469)

INTRODUCTION

"It is trite to say," Joseph Gabriel Starke (1965, 136), Queen's Council, opined half a century ago, "that any methodology to be adopted by a sociology of international law must be such as to accommodate foreseeably new patterns of collective behaviour in the

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international order." John Hagan, the world-leading criminologist, has devoted a considerable part of his distinguished career—notably its second half—to identifying new patterns of collective behavior in the international order. In a sense, Hagan is "the man of statistics" that Oliver Wendell Holmes Jr. conjured in the nineteenth century. This type of scholar has represented the future of international law for a while now. From Beth Simmons in the social sciences to Eric Posner in law, this exemplar of the *homo academicus* (Bourdieu [1984] 1988) has been at the wheel of the so-called empirical turn in international legal scholarship (Shaffer and Ginsburg 2012). This makes Hagan an ideal focal point for an intellectual history of the sociology of international law—the least developed branch of socio-legal studies. The case for singling him out rests on Hagan's extraordinary range. The case for parsing his intellectual biography is even stronger if one takes into account his unrivalled publication record. In the span of twenty years, Hagan wrote four books, thirty articles, and a dozen chapters on the topic. No other social scientist has published more—and more parsimoniously—on the operation of international law, especially international criminal law.

Hagan's international turn started at the beginning of the millennium. He announced his professional swerve in the marketing materials of the Russell Sage Foundation, where he spent the academic year of 2001–2 to write "a book on the International Criminal Tribunal for the former Yugoslavia (ICTY)."[1] This study, he pledged at the time, would include "an analysis of the factors leading the transformation of a social movement into a functioning legal institution."[2] Hagan delivered on his promise. *Justice in the Balkans*, his first and foremost foray onto the terrain of international law, saw the light of day in 2003 (Hagan 2003). It told a riveting story about international criminal law as a social movement. The book was a pioneering achievement. It showcased Hagan's greatest strengths as a scholar: his sophisticated understanding of structural parameters to choice; his genuine fascination with, and great sympathy for, the *dramatis personae* who populate his books; and a knack for putting a mixed-method approach to analytically intriguing use. But the book was not perfect. Missing from it—and from Hagan's other writings on international law—was reflexivity. This lack of introspection, of what Max Weber ([1905] 1922) a century ago called *Wertanalyse*, is hardly uncommon in the study of international law. Weber's methodology of the social sciences fell out of favor decades ago, and only a smattering of scholars of international law have taken up Bourdieu on his invitation to reflexive sociology (Bourdieu and Loïc Wacquant 1992; Dezalay and Madsen 2012). Especially in the English-speaking world, objectivism has turned the study of international law into a science, often to the detriment of knowledge.

Aside from tremendous insight, *Justice in the Balkans* is shot through with value judgments—with Hagan's personal beliefs and attitudes. *Darfur and the Crime of Genocide*, his co-authored book with Wenona Rymond-Richmond is even more so (Hagan and Rymond-Richmond 2009b), and the co-authored *Iraq and the Crimes of Aggressive War: The Legal Cynicism of Criminal Militarism* no less (Hagan, Kaiser, and Hanson 2015). Although it is unfashionable, outside of anthropology, to take positionality seriously in

1. See "John Hagan," *Russell Sage Foundation*, https://www.russellsage.org/visiting-scholars/john-hagan.
2. See "John Hagan."

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social inquiry, the protracted debate (see, for example, Dunoff and Pollack 2013) about how international law works, which has pitted positivists (for example, Goldsmith and Posner 2005; Guzman 2008; Koremenos 2016) and post-positivists (for example, Koskenniemi [1989] 2005; Ohlin 2015; Orford 2021) against one another in an epistemological forever war, would benefit from greater introspection—on all sides.

I develop this argument with particular reference to Hagan's science of international law. To nudge the sociology of international law in the direction of greater reflexivity, I trace the interplay among criminology, methodology, and ideology in Hagan's international legal scholarship. By rereading the influential oeuvre of a leading sociologist, I take stock, *pars pro toto*, of the sociology of international law. What follows is an exercise in the sociology of legal knowledge. I shine a light on professional formations and deformations, with Hagan as my unit of analysis. I inquire into Hagan's fervent commitment to the virtue of international justice—an unexamined commitment that is discernible in all of his writings and which, some think, mars them. I ask, with Judith Shklar ([1964] 1986, 110), what his "single-minded devotion to that virtue entails." I identify in Hagan's writings a self-consciously utopian disposition toward international law. I refer to this disposition as the liberalism of hope. I juxtapose his way of seeing international law, which has its roots in the cosmopolitan tradition (for a recent critique, see Nussbaum 2019), with Shklar's "self-consciously dystopian" vision of liberalism (Benhabib 1996, 55). I trace Hagan's more hopeful vision of liberalism, in general—and of liberal internationalism in particular—back to a generation of progressive social scientists in North America whose research trajectories were shaped profoundly by the experience and memory of the Vietnam War as well as by the rise of the formidable social movements that preceded—and succeeded—that global conflagration. In the process, I raise more general questions about partisanship and bias in the study of international law (Hammersley 2000).

The remainder is organized as follows. The first section appraises Hagan's criminological contribution to the study of international law. The second section locates his methodological contribution. The third section turns from appreciation to critique. There, I probe Hagan's science of international law by excavating its normative foundations. This value analysis—the heart of the article—traces Hagan's socialization during the Vietnam War. I argue that the moral compass he acquired during this formative time, and the epistemic lessons he drew from his experience as a bystander to war in the twentieth century, have introduced bias into his towering contribution to the study of international law. The final section concludes with a call for a reflexive sociology of international law.

STRUCTURAL CRIMINOLOGY

With over thirty thousand citations to his name, Hagan is an intellectual force. *Mean Streets* alone, the book on youth and homelessness that he wrote with Bill McCarthy, has been referenced more than a thousand times (Hagan and McCarthy 1997). His power-control theory has been influential in demonstrating that the relationship between gender and common forms of delinquency is mediated by class structure (Hagan, Simpson, and Gillis 1987). This scholarship is widely seen as "the first

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major work in a 'structural' perspective since the 1950s" (Williams 2019, 37)—ever since the publication of Edwin Sutherland's ([1949] 2009) landmark study *White Collar Crime*, a book that has had an outsized influence on Hagan's contribution to the sociology of international law.

Attuned to life on the margins, Hagan, in his co-authored work on the structural determinants of youth delinquency, advanced criminological research by "combining critical and feminist thought" (Williams 2019, 37). As Frank Williams III (2019, 37) recently explained, Hagan meshes structural variations in crime rates with a version of stratification informed by neo-Marxist conflict theory. Rather than using the concept of class or income as measures of stratification, he uses power. In fact, here, the argument is rather straightforward conflict theory: those with more power are less likely to be criminalized or punished, and, conversely, actions against them are more likely to be viewed as serious. Where it diverges, however, is that the notion of degree of power is rejected for a version in which who controls whom is critical. Thus, a "command" status is derived for those who have freedom of activity, who control the activities of others, and who share the authority of society. This status also conveys that these individuals are relatively free from control themselves. An "obey" status is reserved for all those who are subordinate to such control.

Hagan's focus on "a larger version of 'crime' than street crime" foreshadowed his turn to international crimes (Williams 2019, 37). It has also shaped this turn. As Hagan and Rymond-Richmond (2007, 78) put it, "[m]ass incarceration and genocidal death and displacement display an awkward symmetry along the mean streets of the global village" (see also Hagan 2021). This hunch—that local and international crimes are more similar than commonly thought—first appeared in Hagan's scholarship in 2000 when he was on the cusp of his international turn. At the time, he, together with McCarthy, complained about "a perverse rigidity that keeps North American criminologists off the streets and so close to home. The wider world beckons and indeed beseeches American criminology to move beyond its doorstep; we hope to help push it forward" (Hagan and McCarthy 2000, 239). Hagan, with an everchanging cast of co-authors, did just that. With recurring visits to The Hague, he demonstrated with great passion and compassion of what "global lawmakers" at the ICTY were capable (Block-Lieb and Halliday 2017) and the forces they were up against in their quest for international justice (see also Hagan and Levi 2004, 2005; Hagan, Levi, and Ferrales 2006; Schoenfeld, Levi, and Hagan 2007). With this ecology of international law, Hagan reiterated his belief in the importance of thinking structurally—in this case, about how international institutions think (see also Douglas 1986).

Hagan's ontological holism is also prominently on display in *Darfur and the Crime of Genocide*, the book he wrote with Rymond-Richmond (Hagan and Rymond-Richmond 2009b). This study brought power-control theory to the international stage. It rehearses Hagan's deeply held convictions about the structure of the (international) system that go back to the intuitions that he and McCarthy first formulated in the early 1980s (see also Hagan and McCarthy 2000). Hagan and Rymond-Richmond (2009b, 162) dubbed theirs "a collective action theory of genocide," but, in effect, they ascribe a "command" status to Sudan's former president, Omar al-Bashir, and what they call the "genocidal state system," a structure that, they assert, is synonymous with "the government of Sudan" (165) and that, if we accept their argument, propped up a

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"supremacist ideology" and "an Arabization policy" (165). Hagan and Rymond-Richmond assign the "obey" status from the earlier criminological model to "racially identified African farmers and villagers" (169).

They travelled the distance between power-control theory and collective action theory in the "Coleman boat" (Coleman 1990, 702; for a critique, see Ramström 2018). Hagan and Rymond-Richmond attempted to heed the plea for explanation based on "the actions and orientations of individual persons" (qtd. in Coleman 1990, 4) while also trying to stay true to the tenets of structural criminology. It was a neat conceit, if not an entirely convincing one. Although the parsimonious argument in *Darfur and the Crime of Genocide* is logically plausible, and, from a liberal vantage point, emotionally satisfying, it is also analytically reductionist. It is reminiscent of—and partially mirrors—the reductionist line of argumentation taken at the International Criminal Court (ICC) in the prosecution's application under Article 58 of the Rome Statute for a warrant of arrest against al-Bashir.[3] The similarity is not an accident. Hagan and Rymond-Richmond took sides very deliberately. They sought "proof," as Bruce Hoffman (2009, 483, 484) wrote, "of intentionality which can enable the ICC to prosecute leaders on charges of genocide." Their single-minded devotion to an anti-impunity agenda, however, came at a cost.

Upon publication, a number of commentators, and this collaborator, raised questions about partisanship. Daniel Chirot (2009), a scholar of mass violence, responded more vociferously than most to Hagan and Rymond-Richmond's scholarly intervention. A political scientist, Chirot likened their work genealogically—and disapprovingly—to that of Samantha Power. For him, *Darfur and the Crime of Genocide* was more sophisticated in design, but in its partisanship—and bias—no different from "*A Problem from Hell*," Power's (2002) morality tale about bystanders to genocide. What Chirot (2009, n.p.) found most unsettling, aside from their taking sides, was that Hagan and Rymond-Richmond compared violent practices in Sudan "to the way in which the United States criminalizes and mistreats some of its minorities." Ross Matsueda (2009, 499), although more sympathetic to Hagan and Rymond-Richmond's criminological agenda, found this exercise in analogical reasoning "curious" as well. He chided them, more gently than Chirot and Mahmood Mamdani (2009, 2020), their fiercest critic, for giving "short shrift to alternative explanations" (Matsueda 2009, 499): "A more satisfying discussion, on scholarly and policy grounds, would address competing interpretations of the Darfur conflict" (499). Did Hagan and Rymond-Richmond care too much? Did their beliefs about that conflict—and about international law—cloud their framing of both? Was their sociology too public (see generally Burawoy 2005, 2021; Clawson et al. 2007)?

"[A]lthough a sociologist," according to Anthony Kronman (1983, 17), "must empathize with his subjects, he does not treat their values as normative criteria in his own investigations. He attempts to understand the normative commitments of those he is studying without, as it were, reproducing the same commitments in himself." In Hagan's case, there is some evidence to suggest a transference may have taken place. Here, for starters, is Hoffman (2009, 484) again:

3. *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Prosecution's Application under Article 58, ICC-02/05-151-US-Exp, July 14, 2008.

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> *Darfur and the Crime of Genocide* presents criminology as a source of scientific and moral clarity, a resource which can be used to define legally Darfur's violence, name its perpetrators and victims, and support and extend the reach of international criminal law. Perhaps of necessity, this clarity comes at the cost of simplifying aspects of Darfur's internal politics and the complex contexts of international criminal investigations. . . . However, a more sustained account of the organization and experience of ethnic identity in Darfur and local understandings of conflict could be developed to give criminologists a fuller awareness of the historical, cultural, and political contexts in which international criminal intervention plays out.

But I want to give credit where credit is due. Throughout his career, Hagan (1988, 14) has made it his mission to push for "a broader, structural vision" in the study of crime. Because he cast about far and wide in this quest, Hagan was better prepared than almost any other social scientist for thinking about "system criminality" in international law (Meierhenrich 2006a, 2006b; Nollkaemper and van der Wilt 2009). For as George Fletcher (2002, 41) observed, at around the time Hagan became interested in international criminal law, "[t]he polycentric collective as a subject is basically foreign to the legal way of thinking." Buoyed by his immersion at the ICTY, and especially the award-winning Darfur book, Hagan returned repeatedly to the task of precising his argument about the logic of the polycentric collective (see, for example, Hagan, Levi, and Ferrales 2006; Hagan and Haugh 2011; Hagan, Kaiser, and Hanson 2015). This pursuit has left an indelible mark on the sociology of international law. Hagan's formidable contribution can be traced back to his advances in structural criminology and to the theoretical ideas he pieced together in the early 1980s. Robert Sampson (1990, 1340) has highlighted this theoretical thread in Hagan's scholarship. "The unifying principle," he writes, "is that the explanation of crime is found in structural relations organized along hierarchical lines of power and authority. Whether individual or corporate in form, Hagan's structural emphasis on relational components of power provides the basis for a theory of the commission and punishment of crime." Thirty years later, Hagan is placing the same emphasis still.

The ingenuity of his craftsmanship, and his commitment to honing it, explain why Hagan's contribution to the sociology of international law is so important. The number of scholars who have the analytical dexterity to speak authoritatively—and empirically—not only to the question of how law works but also to the question of how violence works is small. The number of international legal practitioners who have that skill set is close to nil. To address this particular knowledge deficit, Hagan has labored to make structural criminology usable for the prosecution of international crimes. With the support of major funding bodies—most importantly, the National Science Foundation in the United States—and a revolving cast of co-authors, he took strides toward a very public sociology of international law. Earlier in his career, Hagan observed that "[t]he purpose of a structural criminology" was "to suggest a methodology by which this work can usefully proceed" (Hagan and Palloni 1986, 446). Let us examine the methodologies he has suggested to ensure that the sociology of international law can usefully proceed.

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THE SCIENCE OF INTERNATIONAL LAW

Methodologically speaking, *Justice in the Balkans*, Hagan's (2003) most important publication on international criminal law, is an outlier. Because this book contains more *doxa* than data, it is not representative of his methodological approach to international law. Hagan, by habitus and inclination, is an empiricist, not an interpretivist. This is not to say that he is not skilled at thick description, for he is. Hagan's ICTY book, much like *Northern Passage* before it (Hagan 2001), was the result of an extended listening tour. Hagan is not averse to pounding the pavement. He also has an eye for people and for a telling vignette. Better yet, Hagan likes people, despite being a self-declared introvert. This comes through in the empathetic readings of the "legal activism" about which he writes (Hagan 2003, 30), often with awe, as he recently marveled: "[A]ctivists have been surprisingly creative in finding ways to mobilize the influence of international law" (Hagan 2021, 41). The list of Hagan's heroes is long. Like Richard Abel, Hagan has a soft spot for cause lawyers and for none more so than Louise Arbour, a former justice of the Supreme Court of Canada, who, before becoming the UN High Commissioner for Human Rights, was chief prosecutor of the ICTY and of that organization's overseas twin, the International Criminal Tribunal for Rwanda.

Despite Hagan's fondness for charismatic leaders, his project of "using social science to frame international crimes" has always been heavily skewed—perhaps too heavily—in favor of nomothetic reasoning (Rowen and Hagan 2014). This methodological preference is noteworthy considering that he and Alberto Palloni once insisted that "a structural criminology cannot be developed, explored, or tested with one-sided methodologies" (Hagan and Palloni 1986, 446). Although for a scientific empiricist the methodological differences among survey instruments, measurement models, event-history analysis, and sentencing experiments are considerable, for interpretivists they are not (see, for example, Hagan and Levi 2004; Hagan and Palloni 2006; Kutnjak Ivković and Hagan 2011; Hagan, Kaiser, and Hanson 2015; Kaiser and Hagan 2015). To the latter, they all are one-sided methodologies, blighted by a misplaced belief in naturalism.

Hagan is more inclined than most to engage with scholars who see the world differently from him, scholars who are more interested in phenomenology than parsimony, who favor understanding over explanation (Meierhenrich 2013). Hagan, a critic of "indoor criminology," is genuinely sympathetic to qualitative research (Hagan and McCarthy 2000, 232). In fact, he has relied on interviews and observations more than other scholars who have made the science of international law their vocation (see, for example, Simmons 2009). Hagan is not content with desk research. In his quest for a public sociology of international law, he has pounded the genteel streets of The Hague. An indoor sociologist he is not. In one sense, Hagan's international legal scholarship is a perfect example of "phronetic social science" (see, for example, Flyvbjerg, Landman, and Schram 2012; see also Meierhenrich 2013). However, Hagan's research on international criminal law has more in common with the "new generation of empirical studies" currently dominant in law and the social sciences (Shaffer and Ginsburg 2012). For the vast majority of Hagan's collected writings on international criminal law are data driven. Although Hagan values phronesis, he trusts surveys more, which arguably is

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why he occasionally gives short shrift to alternative ways of seeing, including competing scholarship.

Consider Hagan's work on "gendered genocide" (Kaiser and Hagan 2015). In this project, he and Joshua Kaiser claim that "genocide is rarely understood as intending social destruction" (72). This is a curious statement considering that a long line of scholars had written, long before they did, about the dynamics of "ontological destruction," including the late Claudia Card (2003), who appears in Kaiser and Hagan's references, and Andrew Woolford (2009), who does not. The example illustrates a tendency to target intellectual strawmen. Instead of taking "asocial accounts of genocide, displacement, and rape" by black-letter lawyers like William Schabas and Rhonda Copelon as their "null hypotheses" (Kaiser and Hagan 2015, 71), it would have been prudent, analytically speaking, for Kaiser and Hagan to situate themselves more carefully in the vast literature on genocide (see, most recently, Moses 2021; for an anthology, see Meierhenrich 2014). What they would also have found there—aside from an abundance of empirically rigorous yet non-naturalist arguments about social destruction—is a litany of critiques of hierarchical models of genocide—the type of explanation that Hagan favors.

A stated methodological goal of Hagan's has been to develop "new types of evidence to aid in the investigation and prosecution of international crimes" (Hagan, Brooks, and Haugh 2010, 883). Inspired by the evidentiary standard in Article 58(1) of the Rome Statute of the International Criminal Court, he and colleagues called what they were generating "reasonable grounds evidence" (883).[4] Although their effort is commendable, the missionary zeal running through the publications that resulted is not. It is hard to shake the impression that Hagan, not content with explaining large-scale social violence sociologically—with detachment—has made it his mission to set the world to rights and prove international crimes. During the Darfur conflict, Hagan mimicked the craft of an international prosecutor. In his scholarship, he was consumed by the task of demonstrating that Sudan's former President al-Bashir "indeed had 'specific intent' to destroy" (912). He was trying to prove the crime of genocide, to help the likes of Xabier Agirre Aranburu (2010), a senior analyst in the Investigation Unit of the ICC's Office of the Prosecutor (OTP), achieve international justice "for the most serious crimes of international concern."[5] In *Darfur and the Crime of Genocide*, Hagan and Rymond-Richmond (2009b, xxi) tell with pride of how they removed evidentiary obstacles on the way to "a genocide charge," helping to overcome resistance "both at the UN and from within the Prosecutor's own office." As they put it, "the Prosecutor eventually became convinced by the kind of evidence presented in this book that al-Bashir had mobilized the entire apparatus of the Sudanese state with the intention of genocidal group destruction" (xxi). What they fail to mention is that not everyone in the OTP was as convinced, including Andrew Cayley (2008), the OTP's senior trial lawyer who, up until 2007, led the investigation and pre-trial proceedings of international crimes in Darfur.

In the wake of the American war in Iraq, Hagan was again seized by the impulse to prove international crimes. This time, he and his collaborators set out to demonstrate

4. Rome Statute of the International Criminal Court, 1998, 2187 UNTS 90.
5. Rome Statute, art. 1.

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that the 2003 invasion "was an unjust form of criminal militarism that constituted a war of aggression" (Hagan, Kaiser, and Hanson 2015, 3). My quibble is not with the conclusions that Hagan and his co-authors reached, although I do have reservations about them, but with the methodological routes that took them there and the values that drove them. Their considerable merits notwithstanding, both of Hagan's aforementioned inquiries into the operation of international law were marred by an excessive zeal. This precipitated a related failing: the insufficient attention that Hagan and his co-authors paid to international law, notably international criminal law. Their failing was not an altogether surprising one. Alex de Waal's unfamiliarity with black-letter law did not stop him either from playing fast and loose—in the service of an ulterior motive—with the language of international law in his scholarship about the Darfur conflict. He, too, was after a policy goal unrelated to explanation and understanding, except that de Waal's motive was diametrically opposed to Hagan's. Hagan wanted to accelerate Luis Moreno Ocampo's prosecution of al-Bashir, de Waal wanted to stop the first ICC prosecutor in his tracks (see, for example, Flint and de Waal 2009). The scholarship of each man was caught in a web of significance that he himself had spun. Without their realizing it, both scholars—representing opposing sides in the argument about legal intervention—had turned into partisans. Like de Waal, Hagan wears his zeal lightly; he is a 'reasonable' zealot. But his partisanship is real. This fact forces us to return in the domain of international law to age-old questions about the relationship between methodology and ideology. Is a "committed sociology" of international law possible (Gouldner 1962, 1973) or is the idea of "objective partisanship" a fallacy (Hammersley 2000, 90–123)?

In *Mean Streets*, an example of "committed sociology" if ever there was one, Hagan and McCarthy (1997, 1) opined that "[t]he depiction of social experience is most revealing when it considers people in extreme circumstances." Hagan takes this truth to be self-evident, which is probably why, in their epilogue to *Darfur and the Crime of Genocide*, he and Rymond-Richmond drew, to the bafflement of several reviewers, parallels between "wars on crime" in the global North and "wars of counterinsurgency" in the global South (Hagan and Rymond-Richmond 2009b, 222). Hagan's criminological and sociological scholarship has long been concerned with "people in extreme circumstances" (Hagan and McCarthy 1997, 1). Victimhood is the overarching motif, the recurring figure that ties together the different strands of Hagan's professional trajectory. To attenuate the violence of victimhood, Hagan has been partial, from the beginning of his career, to a "crime victimization approach" (Hagan and Rymond-Richmond 2009b, 221). Giving a voice to people in extreme circumstances, and shining a light on their plight, appears to be a moral imperative that cuts to the heart of Hagan's understanding of science as a vocation.

Hagan concluded the second article of his career with a cautionary note about what, in the 1970s, was called the "sociology of the interesting" (Davis 1971). "What is interesting to some," he wrote, may be painful for others" (Hagan 1973, 456). Hagan ended on this "moral" note, as he called it, to subvert Murray Davis's (1971) argument about the determinants of sociological greatness (Hagan 1973, 456). Hagan set out to demonstrate that a sociologist is great when their theories have an impact in the real world. Forty years later, during his international turn, Hagan reprised this message. With an air of pathos, he recounted how "how sociology and its sister sciences took the

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stand" at the ICC to buttress the "belated charge of genocide" against al-Bashir, Sudan's former president (Hagan 2011, 23). Buoyed by a liberalism of hope, Hagan then conjured a scientific utopia:

> Social science's key roles in international criminal law are apparent in establishing basic facts of death and displacement, in helping to model and explain patterns of extermination and elimination involved in crimes against humanity and genocide, in stimulating theories used in the prosecution of perpetrators, and in evaluating and assessing programs for the rehabilitation of survivors and the restoration of community justice. Maybe it's too much to think sociology and its sister sciences can save the world, but it's good to know we can help. (28)

His steadfast belief in a committed sociology may explain why Hagan's co-authored Iraq book (Hagan, Kaiser, and Hanson 2015), like his Darfur one with Rymond-Richmond (Hagan and Rymond-Richmond 2009b), was written for American audiences. Ever since the Vietnam War, Hagan has been on a mission to help the country of his birth atone for its original sins. The "orgies of destruction" that accompanied the My Lai massacre of March 16, 1968 (Collins 2008, 88), and other international crimes perpetrated by US forces, coupled with the individualization of guilt (Belknap 2002 and the "cleansing of American memories of atrocities" in their aftermath (Savelsberg and King 2011, 53), are the hinge on which Hagan's intellectual biography turns. Hagan's work on international law has more to do with the United States than any other site of violence, which is arguably why he eventually pivoted to the mean avenues of Washington, DC, where he has, multiple times during his lifetime, seen "legal cynicism" and "criminal militarism" lead to moral bankruptcy and mass death.

Grounded in a structural approach, Hagan's macro-sociology of international law is, above all else, about explanation. *Justice in the Balkans* was an outlier in this regard, its nod to understanding an aberration (Hagan 2003). Methodologically speaking, Hagan's first outing in the global village has more in common with *Northern Passage* than with the bulk of his writings on international law. This brings me to Pierre Bourdieu's ([2004] 2007, 4) proposition that the act of grasping a social phenomenon—like international law—requires a prior understanding of "the field with which and against which one has been formed." What do we know about Hagan's socialization? Where is this field that formed him? Whence the sociologist as a young man?

THE IDEOLOGY OF INTERNATIONAL LAW

Locating ourselves inside of an academic field provides "an opportunity for conscious neutralization of the probabilities of error which are inherent" in the position we occupy, which Bourdieu ([1984] 1988, xiii) "understood as a point of view implying a certain angle of vision, hence a particular form of insight and blindness." But to locate bias, culpable and otherwise—to *really* understand why we think the things we do—requires more. It requires an account of life *beyond* the fields. Entering life worlds (Jackson 2013), our own and those of others, must be a part of any value analysis worthy

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of the name. Bourdieu ([1984] 1988, xiv) likened this additional step on the path to reflexivity to "a kind of phenomenology of one's initial experience of the social world and of the contribution which this experience makes towards one's construction of that world." The sociology of sociological knowledge is part of "an accountability system" (Hammersley 2000, 161), but it is not punitive: "[W]hat we know now often enables us to see how researchers of the past went wrong, yet without necessarily implying that they should have known better" (Hammersley 2000, 163; emphases omitted). Did Hagan go wrong?

Hagan, like Kathryn Sikkink in political science, belongs to a postwar generation that, according to Samuel Moyn (2017), has been "restive in the cage of liberal internationalism." One of Hagan's (2001) best-known books, as mentioned, is *Northern Passage*. A well-regarded study, it immediately preceded Hagan's turn to international law. It, too, was concerned with international crimes, if only indirectly. In the main, it was about the lifeworlds of American resisters of the Vietnam War who made their way to Canada. The Vietnam War was a formative experience in Hagan's intellectual development. It is impossible to make sense of his contribution to the sociology of international law without taking into account the moral compass he acquired in the 1960s. Hagan's intellectual journey from My Lai to The Hague was as meaningful on a personal level as it was on a professional one. The journey was accountability redux.

Doug McAdam (1989, 758) has asked what happens when individuals, like Hagan, are exposed to "an activist subculture." To investigate the biographical consequences of activism, he relied on Richard Travisano's (1981, 243) idea of "alternation," a concept that Travisano took to refer to "changes of life ... which are part of or grow out of existing programs of behavior." Taking as his subject the experience of activists mobilized by the Student Non-Violent Coordinating Committee during the "Freedom Summer" in the United States, McAdam (1989, 751) found that the contentious politics in 1964 "served as an instance of alternation in the lives of the volunteers and was largely responsible for the shape of their subsequent activist histories" (see also McAdam 1988). He argued that the alternation experience had path dependent properties. According to McAdam (1989, 752), many of the thousand or so Freedom Summer volunteers (most of them white college students from northern states) who had participated in the drive to register black voters in Mississippi subsequently were, as a result of their journey south, "more attitudinally disposed toward activism." In fact, "New Left politics became the organizing principle of their lives, personal as well as politics. In effect, the summer set them on course for a kind of activist career that has continued to shape all aspects of their lives down to the present" (758). As McAdam concludes, "[t]hey have continued not only to voice the political values they espoused during the 60s, but to act on those values as well" (758). The consequences of alternation experiences can be "lifelong or at least long-term" (758).

There is evidence to suggest, in Hagan's case, that "life-stage specific activism" became "life course persistent activism," to borrow language he himself coined (Hagan and Hansford-Bowles 2005, 235; emphases omitted). Hagan has continued to not only voice political values he acquired during the Vietnam era but also to act on those values. It is undeniable that a "secular imaginary of communion and redemption," which is what Didier Fassin (2012, xii) has called "humanitarian reason," has informed the science of international law. There is "salutary power" in thinking—and

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governing—in humanitarian terms "because by saving lives, it saves something of our idea of ourselves" (Hagan and Hansford-Bowles 2005, 252). Hagan's socialization also is reminiscent of C. Wright Mills (1959, 226), for whom sociology was the translation of "personal troubles" into "public issues." However, as Mills (1959, 226) also knew, there are dark sides to virtue and to "the liberal practicality of the moral scatter." Or, as Fassin (2012, xii) writes, with the twenty-first century in mind, "[h]umanitarianism has this remarkable capacity: it fugaciously and illusorily bridges the contradictions of our world, and makes the intolerableness of its injustices somewhat bearable. Hence its consensual force" (see also Kennedy 2004; Mamdani 2020). This consensus is not as strong as it used to be, however. Critical international lawyers charge that the world of international law is full of "delinquent Samaritans" (Gillis and Hagan 1990). They question not only the imperative of saving strangers but also the supposed duty to prosecute international crimes. Karen Engle (2016, 44) belongs to those who regard the criminalization of international law with more trepidation than Hagan: "The criminal law lens often reveals a simple picture of a world infused with a few bad actors, even monsters." This brings us back to Hagan's partisanship.

Reflecting on the values of others, Hagan (2003, 32) briefly addressed the question of alternation in *Justice in the Balkans* to account for the choices of prosecutors—from the indefatigable Ben Ferencz, who led one of the twelve additional Nuremberg trials, to the staff in the ICTY's OTP: "Ferencz responded with a form of agency that was shaped by his exposure to liberal legalism while at Harvard University. Legalism became activism in the work of Ben Ferencz. The events in Croatia, Bosnia, and Kosovo have more recently created the circumstances of parallel alternation experiences for individuals and teams at the Hague tribunal." The Vietnam War was Hagan's alternation experience. In a vocational move that bears a resemblance to Ferencz's life choice, Hagan responded with a type of agency all his own—a scholastic one. His science of international law is the continuation of activism by other means. Take *Darfur and the Crime of Genocide*. Hagan and Rymond-Richmond (2009b, 219–22) ended their book with an epilogue entitled "Collective R2P." Theirs was a call to criminological arms: "The next generation of criminologists," they wrote, "need never again be bystanders to genocide" (222). This line is reminiscent of another that Hagan and Rymond-Richmond (2009a) used: "Whose side are you on?" The line is a variation of Howard Becker's (1967) famous article title, which, in turn, was inspired by Florence Reece's 1931 protest song in support of the miners' strike in Harlan County, Kentucky. Hagan and Rymond-Richmond took sides just as Reece had done. They saw themselves as standing up for the victims of genocide. They defended themselves vigorously against those who found fault with their uses of criminology and methodology, but they were unable to see—and, thus, unwilling to countenance—how ideology was imbricated in their data-driven approach to international law.

Bourdieu ([1972] 1977) defined *doxa* as the acquired, fundamental, deeply ingrained, unconscious beliefs and values that we take as self-evident universals (for a critical discussion, see Myles 2004). Socialization is what produces *doxa*, he argued, which is why the line between objectivity and subjectivity cannot be drawn as sharply as foundationalists in the philosophy of science tend to think:

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> Schemes of thought and perception can produce the objectivity that they do produce only by producing misrecognition of the limits of the cognition that they make possible, thereby founding immediate adherence, in the doxic mode, to the world of tradition experienced as a "natural world" and taken for granted. The instruments of knowledge of the social world are in this case (objectively) political instruments which contribute to the reproduction of the social world by producing immediate adherence to the world, seen as self-evident and undisputed, of which they are the product and of which they reproduce the structures in a transformed form. (Bourdieu [1972] 1977, 164)

Hagan and Rymond-Richmond (2009a, 504) are right in saying that some of the critiques levelled against them were, as they put it, "wildly inaccurate and tragically misguided." However, it is also true that they did not fully appreciate the validity of some of the critiques. After all, it was not just Mamdani (2009, 2020), whom they dubbed an "intellectual provocateur" (Hagan and Rymond-Richmond 2009a, 504), who found fault with *Darfur and the Crime of Genocide*. Other scholars, too, had concerns. Most were left wanting "more history and complication in the volume" (Hinton 2009, n.p.). Alexander Laban Hinton (2009, n.p.), for example, wanted to see "a more complex account of perpetrator motivation." Concerned by the unconscious usage of primordialist tropes in *Darfur and the Crime of Genocide*, he wondered whether Hagan and Rymond-Richmond had an adequate grasp of local understandings of the violence in Darfur: "Landless, nomadic Arab groups" are not just "pawns" who can readily be imbued with a "collective racial intent to kill, rape and destroy"—they are complex human beings like all of us who vary in their motives and beliefs. We may not have the data to explore this complexity, but it should at least be acknowledged (Hinton 2009, n.p.).

Has Hagan reflected enough on the *doxa* of his life? We know that he and Rymond-Richmond responded to criticism in style, with rigor: "Social science evidence supports the application of the law of genocide in Darfur" (Hagan and Rymond-Richmond 2009c). Or does it? In the year preceding their uncompromising response to critics, Cayley (2008, 840), the previously mentioned OTP practitioner, in a carefully worded article publicly repudiated Moreno Ocampo's approach to the Darfur situation and, therewith, at least indirectly, also the empirical case that Hagan and Rymond-Richmond presented in *Darfur and the Crime of Genocide*:

> The crimes perpetrated by Al Bashir's regime are proven facts. Serious disagreement remains, however, as to whether Al Bashir and the Sudanese government intended actually to destroy, in part, the Fur, Masalit and Zaghawa peoples of Darfur. Some have termed this mere speculation. It is difficult to cry government-led genocide in one breath and then explain in the next why 2 million Darfuris have sought refuge around the principal army garrisons of their province. One million Darfuris live in Khartoum where they have never been bothered during the entire course of the war.

None of this is to question the rigorous research Hagan and Rymond-Richmond conducted. Rather, it is a reminder that those who see the world differently use rigor

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too. As Michael Burawoy (2019, 48) recently put it, "[e]vidence is as important for interpretative anthropology as it is for scientific sociology. Just the purpose is different." Or, as Bruce Hoffman (2009, 484) thinks, the purpose of *Darfur and the Crime of Genocide*, was "to mobilize criminologists and strengthen the ICC's ability to respond to Darfur's violence." I do not think Hagan and Rymond-Richmond would disagree. They take pride in their partisanship and in their mobilization of humanitarian reason. But should we?

Judith Shklar ([1964] 1986, 3) regarded legalism "as a political ideology." She was a lone voice among twentieth-century liberals and was virtually alone in portraying the International Military Tribunal (IMT) at Nuremberg as a "destructive trial," to use a term Devin Pendas and I coined a few years ago (Meierhenrich and Pendas 2016, 41), when she expressed the idea in the 1960s that the proceeding against the so-called major war criminals in Germany "was a political one, in that it aimed at the elimination of a political enemy and of a hostile ideology" (Shklar [1964] 1986, 170). Shklar had no problem with "legalistic statesmanship" at the IMT, and she would likely have appreciated as much as Hagan does Arbour's charismatic leadership at the ICTY. At the same time, Shklar was suspicious of attempts by the nascent international rule-of-law movement in the 1950s to conceal the violence of international law behind a "justice facade" (Hinton 2018; Meierhenrich 2023; see also Humphreys 2021). The politics of international law, for her, were a given. No account of positivism or naturalism, she was convinced, could or should gloss over the violent origins of international justice in Germany and Japan and of international law more generally.

Shklar would have bristled at statements by activists like Aryeh Neier (2020, xiv), formerly of Human Rights Watch and the Open Society Foundations, who for decades has steadfastly championed "the values represented by rights" as if rights had never been used in the name of illiberalism and as if "legal remedies" were a panacea for the ills of historic injustice. Shklar "positioned herself against too much self-congratulation on the part of liberal democracies," which is why she is relevant to the thinking about a corpus of international legal scholarship like Hagan's, which, arguably, has conjured too hopeful a vision of international law (Benhabib and Linden-Retek 2021, 296). The values of liberalism, Shklar was convinced, stand in the way of seeing international law for what it is. The rise of ideal theory in contemporary legal thought, in particular, drew her ire: "It is that very liberalism and the standards of intellectual objectivity that it demands, which make it apparently difficult for those thinkers to recognize the extent to which their preferences mold their conceptions about law and morals" (Shklar [1964] 1986, 41). The problem, she reasoned, was "not hypocrisy, nor even just international law as such, but legalism as a whole, as a comprehensive view of man and society" (142). If my interpretation of his intellectual biography is correct, Hagan has held such a view ever since his alternation experience in the Vietnam era. Hagan's empiricism is considerably more sophisticated than Neier's activism. And, yet, as Joachim Savelsberg (2013, 528) has pointed out, Hagan's account of the ICTY, for example, "does not differ substantially from Neier's," which is to say, it is informed by an equally unshakeable faith in the virtue of liberal internationalism, especially the power of international courts and tribunals.

Georg Schwarzenberger, a student of Gustav Radbruch's, was one of the earliest students of international courts and tribunals. The first volume of his trilogy on

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international law came out in 1945. Already in 1939, he had co-authored a book with a programmatic title: *Making International Law Work*. Schwarzenberger, like Hagan, was an advocate of macro-sociology. He once complained, in the *American Journal of International Law*, that the modern approach to the subject was "a medley of doctrines and assumptions" (Schwarzenberger 1943, 465). Schwarzenberger found the "*ad hoc* sociology of international lawyers" wanting (467). And, like Hagan, he built a case for an empirical approach to the study of international law. This is where the methodological similarities between Schwarzenberger and Hagan end, however. Whereas Schwarzenberger's "prolegomena to a sociology of international law" were dystopian, Hagan's science of international law has been positively utopian (460). Schwarzenberger, like Shklar, was an émigré scholar, a refugee from Nazi dictatorship. This, together with a decidedly European sensibility, compelled him to call for "a scientific analysis of international law," albeit one which recognized that the values associated with liberal internationalism were "far from being self-explanatory." The way he saw it, "the analytical and descriptive work of past generations must be supplemented by a sociological analysis of international law ... as an ideology, reality and utopia" (466, 477). In certain respects, Hagan's contribution to the study of international law exemplifies the best of socio-legal studies. But if a "liberalism without illusions" is the goal of socio-legal inquiry (Yack 1996, 1), we must learn from Hagan's masterful scholarship—especially from *Justice in the Balkans*—and go beyond.

Methodology is ideology. And the study of international law is wanting for *doxa*, not data. This does not invalidate the science of international law, but it does require its practitioners to be more reflexive than is their wont, to handle the methodology of the social sciences with greater care. Peter Berger's well-known *Invitation to Sociology*—unlike Moshe Hirsch's (2015) recent *Invitation to the Sociology of International Law*—highlighted the question of bias with the seriousness it deserves: "[T]he sociologist, being human, will have to reckon with his convictions, emotions and prejudices. But it is part of his intellectual training that he tries to understand and control these as bias that ought to be eliminated, as far as possible, from his work. It goes without saying that this is not always easy to do, but it is not impossible" (Berger 1963, 6). Berger's "humanistic perspective," like Max Weber's, called on sociologists to reject Auguste Comte's vision of sociology "as the doctrine of progress" (6). This ties in with Sundhya Pahuja's (2011, 260) argument about international law and its ideology: "We must always remember that the universality of international law's key concepts is a claim, not a fact." To facilitate such remembrance, argues Pahuja, reflexive scholars of international law need to resist attempts to produce a framework that "recognizes" the universality of certain values, and instead recognizes both the contingency of any value put forth as universal and the frame of reference supporting the universal claim (260). Whether or not we can reconceive of an open universality, we need at the very least to reconceptualize the discipline to take account of the dynamic of its universal claim and its relationship to international law's institutional structure.

By the same token, sociologists of international law should be weary of thinking about international law unreflexively as the epitome of a "*mission civilisatrice*." Fundamental critiques of international law are on the rise (see, for example, Orford and Hoffmann 2016; Eslava, Fakhri, and Nesiah 2017; Hinton 2018). They question, with good reason, the rise of "behavioral international law" and the ontological and

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epistemological assumptions that sustain the science of international law (Broude 2015). And, yet, as indispensable as critical international law is for the theory and practice of international law, the road from scholarship to partisanship is no longer for radical scholars as it is for liberals, like Hagan. In the twentieth century, many sociologists thought Weber was the best guide for navigating this treacherous road: "The sociologist tries to see what is there. He may have hopes or fears concerning what he may find. But he will try to see regardless of his hopes or fears. It is thus an act of pure perception, as pure as humanly limited means allow, toward which sociology strives" (Berger 1963, 6). Hagan and his co-authors tried, without a doubt, to see "what is there" in every single project on international law they pursued. In the twenty-first century, however, sociology's standard operating procedure may no longer be enough. It stands to reason that more reflexivity is required than sufficed in the twentieth century. Or, as Wendy Brown (2023, 77), recently put it, "the mere possibility of . . . value-neutrality or objectivity in depicting or analyzing anything is widely and rightly challenged today." An invitation to the sociology of international law should perhaps come with an invitation to unconscious bias training. We have come to regard such training as valuable for improving our teaching. How come we do not think it essential to improving our scholarship?

There is knowledge to be gained from observing "the effects produced on the observation, on the description of the thing observed, by the situation of the observer," as Bourdieu ([1987] 1990, 60; emphasis omitted) argued, because such a reflection makes it possible "to uncover all the presuppositions inherent in the theoretical posture"—Hagan's and our own. The move toward a "reflexive sociology" of international law (Bourdieu and Wacquant 1992; Madsen 2011, 2018) would already be enriched if those of us who are committed to its advancement simply gathered the "scraps of self-objectivation" that may already be in our possession and endeavored to "systematize" them (Bourdieu [2004] 2007, 3). Bourdieu called this exercise "*auto analyse*." Weber termed it *Wertanalyse*.

Whatever we call it, if Shklar is correct, there exist only two ways of coping with bias in the study of international law: "Either one recognizes one's moral impulses and their bearing upon one's conceptions, or one does not" (Shklar [1964] 1986, 224). "In neither case do they disappear" (224). The more we know about "the juridical unconscious"—ours and that of others—the more meaningful (in all senses of the word) the sociology of international law will be (Felman 2002). What is required is nothing less than a "double rupture" (Bourdieu, Chamboredon, and Passeron [1968] 1991). Because this technique implicates "both the subject and the researcher," it is epistemologically demanding and requires an analytical two-step: "[F]irst a critical reflection on the preconstructions that dominate a given subject area and, second, a self-critique as the means for considering one's own scientific and social assumptions of the subject area" (Madsen 2018, 204). The two-step must become routine if it is to truly illuminate the ideology of international law and its reification. For this to happen, writes Mikael Madsen (2018, 204–5), scholars of international law would need to accept that the double rupture "is not an operation that is done once and for all but is instead an ongoing measure for questioning findings and the way they are gathered." This is not a small ask, but it is a meaningful one.

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CONCLUSION

"We all carry with us a mixed bag of *idées reçus*," Judith Shklar ([1964] 1986, 28) wrote. "[I]n order to travel with it through an everchanging world we must shift it around occasionally—drop something here and add something there" (28). Over his long and distinguished career, Hagan has fit a tremendous amount into his travel bag. Through publications in the *American Journal of Sociology*, the *American Sociological Review*, and the *Annual Review of Sociology*, he put the study of international law on a firmer criminological and methodological footing. And with publications on international law in all of the socio-legal studies' major outlets—*Law & Social Inquiry*, *Law & Society Review* and twice in the "Cambridge Studies in Law and Society" book series—Hagan has signposted and widened what used to be a narrow, nearly deserted path of social inquiry. For this, he deserves credit and gratitude from the next generation of scholars.

A single-minded devotion to furthering the cause of international law through a "science of human rights" (Hagan, Schoenfeld, and Palloni 2006) is valuable, but it can be treacherous. As Anthony Kronman (1983, 16; emphasis added) writes, channeling Weber, "[t]he sociologist's inquiry can be both value-free *and* value-laden because it is so in different respects or at different levels." Those keen to emulate Hagan's science of international law may want to take a closer look at his intellectual baggage. They may feel inspired to shift around some of the *idées reçus* in his luggage. Indeed, if we accept that "the real is relational," as Bourdieu wanted us to, "participant objectivation" may be a more promising way to advance the sociology of international law than its continued quantification *à la* Hagan (Bourdieu 2003; see also Vandenberghe 1999).

Grounded in a philosophy of "sobjectivism" (Pouliot 2007), Bourdieu's call for reflexivity was a response to, and critique of, Weber's methodology of the social sciences. As Bourdieu (2003, 291) put it toward the end of his life: "I have said, against the methodological orthodoxy sheltered under the authority of Max Weber and his principle of 'axiological neutrality' (*Wertfreiheit*), that I believe that the researcher can and must mobilize his experience . . . in all his acts of research." No sociologist of international law has mobilized his experience as consistently—and persistently—in his research as Hagan. But Hagan never quite took the next step on the road to "enlightened scepticism" in legal science (Holmes 1897, 469). Throughout his career, he has avoided the *auto-analyse* that reflexive sociology also demands. A sociologist, according to Bourdieu (2003, 291), is entitled to mobilize their experience only on the condition that it is subjected to "rigorous scientific examination." This, he argued, was necessary for escaping the iron cage of values and achieving "social naturalism" (Vandenberghe 1999, 36). A century before Bourdieu, Weber ([1919] 1946, 146) put it cogently: "[W]henever the man of science introduces his personal value judgment, a full understanding of the facts *ceases*."

In her recent reappraisal of Weber—her effort to think *with* him—Wendy Brown (2023) reached a similar conclusion for our time. She, like me, thinks it is essential to revisit his methodology of the social sciences. "Weber," we are reminded, "treats values as emerging from *Weltanschauungen* without rational origins or ultimate foundations, yet no less analyzable for that" (62).[6] If we believe Brown,

6. Note that I corrected Brown's misspelling of the German term's plural form.

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> treating values in scholarly fashion is all important in a scientific age that both threatens value and confuses us about its status. The paradox of the "irrational" origin, content, and play of value, and a commitment to rationally analyzing it, is a vital dimension of what makes his perspective useful today. Weber implores scholars, especially but not only in their teaching capacity, to approach contemporary value concatenations "scientifically" even though the origins of values and the ultimate domain for their contestation lie in nonscientific domains—feeling or attachment for the former and politics for the latter. (62).

Where does this leave the sociology of international law? Those committed to promoting international law—like those intent on subverting it—ought to ask themselves this: whence does my single-minded devotion to virtue come and what does it prevent me from seeing? For Brown (2023, 8) is right: "We need sober thinkers who refuse to submit to the lure of fatalism or apocalypticism, pipe dreams of total revolution or redemption by the progress of reason, yet aim to be more than Bartlebys or foot soldiers amid current orders of knowledge and politics." Or, as Foucault ([1982] 2023) might have put it, *homo academicus* must better understand the techniques of the self. The vocation of science demands it, and the future of international law depends on it.

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