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ORIGINAL ARTICLE

Permeating the boundaries: A call for critical socio-legal scholarship

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Abstract

The focus of this paper is to challenge the boundary demarcation between socio-legal and critical legal studies. Through identifying and interrogating similarities and divergences, this paper argues that it would be more productive to work along the permeated border between the two, towards a critical socio-legal scholarship. This article will argue how critically, socially and interdisciplinary engaged scholarship challenges separations and divisions, which motivates agency and participation needed for a progressive approach to researching law and legal cultures.

1 | INTRODUCTION

Socio-legal studies (SLS) and critical legal studies (CLS) are often positioned together as non-doctrinal or progressive approaches to studies of law and legal cultures.[1] Both have emerged as challenges to the authority and orthodoxy of legal doctrine and have sustained as viable alternatives for over half a century. However, there has always been tension and disagreement between the two.[2] From their emergence in the 1960s, fiery divergences and demarcations have been

[1] S.M. Beynon-Jones and E. Grabham (eds), *Law and Time* (Routledge 2019) 1; S. Wheeler, 'Socio-Legal Studies in 2020' (2020) 47 *J Law & Soc* S209; N. Creutzfeldt, 'Traditions of Studying the Social and the Legal' in N. Creutzfeldt, M. Mason and K. McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2020); E. Grabham, 'The Crafty Power of Text: Methods for a Sociology of Legislative Drafting' (2022) 49 *J Law & Soc* S1.

[2] Creutzfeldt, id., pp. 5–8; C. Douzinas, 'Oubliez Critique' (2005) 16 *Law & Crit* 47.

promulgated in publications and presentations.[3] Each movement has established homes for themselves through the founding of dedicated journals and conferences. While such delineation and infrastructure are part of the production and development of knowledge, they also risk reinforcing boundaries and creating intellectual silos. In defining who we are, we also define who we are not. A practice that, while necessary to a certain degree, can also serve as a limitation. Reflecting on the positionality of SLS, Thomas states, 'Socio-legal studies was always oppositional, you could almost define it as something that is not doctrinal – as something that *isn't*, the 'other', rather than something that *is*'.[4] Similarly, CLS also defines itself in opposition to the doctrinal but through direct critique of it. Critical scholars Fitzpatrick and Hunt further distinguish the CLS approaches from what they see as the 'limitations of the socio-legal approaches',[5] carving a line between the two.

This paper argues that the perception of strict and conflicting distinctions between the two movements limits the potential of both. Rather than work in tension, it is more productive to recognise how the unique approaches, theoretical frameworks and methods of both CLS and SLS can be mobilised to achieve their shared aims. To better understand the tensions between these two, it is necessary to situate CLS and SLS within their historical, political, social and geographical contexts. This process of contextualisation demonstrates how, despite differences, the two movements are driven by some common motivations. While not limited to these two jurisdictions, both approaches originate in the United States and quickly became well established in the United Kingdom. These countries have emerged as prominent centres for the development of two approaches internationally. This article focuses on the origins and developments of the movements within the United States and the United Kingdom while acknowledging the broader international exchanges that shape, challenge and broaden these centres. While maintaining distinct identities within each jurisdiction, the political and intellectual goals of SLS and CLS nurture distinctive conceptual and methodological approaches, which are practised internationally, though arguably are not as institutionally integrated.[6]

The origins of the movements are a normalised and inseparable part of the story, underpinning the historical and contemporary narratives. These narratives offer important insights into the movements' contemporary identities, ambitions and how they came to be understood as academic movements. By analysing the dialogue between SLS and CLS, we can begin to appreciate how their origin stories, identities and aspirations are woven into the ways in which their differences have come to be understood. To illustrate this, the paper draws on an analysis of publications in the *Journal of Law and Society* that articulates the boundaries between the movements, but also those which work on or across the boundary, as potential spaces of permeation. The *Journal of Law and Society* was the first and remains one of the leading journals of SLS in the United Kingdom. It is driven by 'challenging the boundaries of our discipline' and creating bridges of

[3] Douzinas, id., p. 57; P. Fitzpatrick and A. Hunt, 'Introduction Critical Legal Studies' (1987) 14 *J Law & Soc* 1, at 1; Wheeler, op. cit. n. 1, p. S13.

[4] P. Thomas, C. Boukalas and L. Hayes, 'The *Journal of Law and Society* at 40: History, Work, and Prospects.' (2015) *J Law & Soc* 1, at 5–6.

[5] Fitzpatrick and Hunt, op. cit., n. 3, p. 1.

[6] For scholarship in other jurisdictions, see R. Colson and S. Field, 'Socio-Legal Studies in France: Beyond the Law Faculty' (2016) 43 *J Law & Soc* 285; J. Hendry, N. Creutzfeldt and C. Boulanger, 'Socio-Legal Studies in Germany and the UK: Theory and Methods' (2020) 21 *German Law J* 1309; V. Bhagat-Ganguly, M. Finn and M. Parikh, Sociolegal Challenges for the Social Justice Continuum: Perspectives from India and South Africa (2024); R. Saikumar, 'New Directions for Critical Legal Studies in India: Oishik Sircar's Violent Modernities' (*Critical Legal Thinking*, 13 November 2024) <https://criticallegalthinking.com/2024/11/13/new-directions-for-critical-legal-studies-in-india-oishik-sircars-violent-modernities/> accessed 26 June 2025.

scholarship on legal cultures between different subject disciplines.[7] As such, scholarship from the journal is drawn on as a lens to explore this relationship. Mapping and tracing how both movements portray themselves and each other is not simply an intellectual exercise; this analysis helps uncover nuanced points of synergy. These synergies blur the boundaries between the movements, identifying shared research areas, aims and questions. In doing so, the analysis highlights the possibilities and opportunities for collaboration, showing how the two movements, despite their differences, could work together and mobilise each other's strengths towards a field of critical socio-legal scholarship.

Rather than further delineation or arguing for one approach over the other, I will provide an empirical analysis that will contribute to the call for more critical socio-legal scholarship. I will do this by identifying scholarship that is permeating, blurring and working beyond the boundaries of these two approaches as well as other disciplinary boundaries. This emerging inter-multi-cross-disciplinary method invites a more expansive approach and refuses to limit and intrench scholarship within schools of thought or methods. The liberation achieved by moving beyond the boundary enables a plurality of critical and social work that can be a tool of navigation, creating 'catalytic ways of seeing, knowing, being and learning'.[8] Two areas that exemplify this emerging critical socio-legal move are prefigurative theory and art/law. Both are approaches that transcend and demonstrate imaginative and expansive scholarship, which is enacted in material ways. In doing so, the emerging move to critical socio-legal scholarship disrupts the boundaries that shape CLS and SLS and widens the frame, extending the potential of both movements. Demonstrating, as Philippopoulos-Mihalopoulos suggests, there is little to be gained from boundary distinction other than protecting territory.[9]

1.1 | The limits of the boundary

Law is no stranger to distinction; '[t]he notions of boundaries, borders, circumferences and peripheries have considerable power in legal rhetoric',[10] the process of legibility delimits routes of evolution, cutting off some while sanctioning others.[11] They determine and narrow the possibilities within and across boundary definitions.[12] Policing boundaries contains those within the boundary as belonging and excludes those outside, which 'assures the material basis for domination while enabling the members of the dominant group to define themselves'.[13] Identity formation is a constitutive process that relies on other identities to establish and distinguish who we are and who we are not. These binaries create a paradoxical interdependence and encourage

[7] P. Thomas in L. Mulcahy, 'The Many Beginnings of Philip Aneurin Thomas' (2020) 47 *J Law & Soc* S191, at S208.

[8] L. Finchett-Maddock, 'Forming the Legal Avant-Garde: A Theory of Art/Law' (2019) *L Culture & Human* 1, at 2.

[9] A. Philippopoulos-Mihalopoulos, 'Writing beyond Distinctions*' in N. Creutzfeldt, M. Mason and K. McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2020).

[10] H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester UP 2000) 128.

[11] T. Mulqueen and A.Tataryn, 'Don't Occupy This Movement: Thinking Law in Social Movements' (2012) 23 *Law & Crit* 283, at 287.

[12] S. Duffy, 'Shouting "What Makes a Real Woman" as the Earth Is on Fire!*' (*Critical Legal Thinking*, 24 April 2025) <https://criticallegalthinking.com/2025/04/24/shouting-what-makes-a-real-woman-as-the-earth-is-on-fire/> accessed 25 April 2025.

[13] M.L. Fellows and S. Razack, 'The Race to Innocence: Confronting Hierarchical Relations Among Women' (1998) 1 *J Gender, Race & Just* 335, at 343.

an essentialised and othered understanding of the subject.[14] Identities are inseparable through this relational understanding and formation of self – both through our commonalities and our differences.[15] These boundaries are constantly challenged, redrawn and reaffirmed, becoming interwoven into formal and everyday practices and habits.[16] As Philippopoulos-Mihalopoulos writes, neither CLS or SLS, or interdisciplinarity or ethnographic research for that matter, have a monopoly on theory, critique or reality. It is a false dichotomy that does not bear out in practice.[17]

There is a small but sustained call to look past the boundary distinctions and nurture a critical socio-legal approach to legal questions and legal cultures. Thomas advocates for the 'critical bite' from the early years of SLS and appeals for a 'return to our identity as critical socio-legal scholars'.[18] Hillyard and Sim petition for commitment to a critical socio-legal agenda through 'sustained moral critique of law'.[19] In this, they argue for a prioritisation to 'larger questions of social justice, power and powerlessness' rather than a pull towards the technocratic and pragmatic.[20] Collier furthers an analysis of how the knowledge economy is supporting and undermining the environment and resource available for a critical socio-legal agenda in the United Kingdom.[21] While some gains have been made, he argues, critical work must persevere despite its confinement within the broader political and economic environment.[22] These approaches are about putting the critical into the socio-legal, whereas other theorists argue for breaking down the distinction between socio-legal and critical legal. Davies collapses theoretical boundaries and approaches legal understanding in an imaginative and expansive capacity beyond law as belonging to the state. Through a critical socio-legal theoretical approach, the 'what is law' question that has long been central to the study of it decentres law by broadening an understanding of what constitutes it.[23] By holding the discursive and the material duality of law, Philippopoulos-Mihalopoulos argues that critical socio-legal research can observe openings of the horizon of justice in the lawscape.[24] Justice of, from and through law are essential in critical research. These positions start from the preposition of undermining the taken-for-granted orthodoxy and authority of laws, while also moving beyond the state as having a monopoly of law. I will build on these appeals and argue how critically, socially and interdisciplinary engaged scholarship challenges separations and divisions, which motivate agency and participation needed for a progressive approach to researching law and legal cultures.

[14] P.J. Williams, 'On Being the Object of Property' (1988) 14 *Signs* 5.

[15] Y. Winter, 'Conquest' (*Political Concepts: A Critical Lexicon*) <http://www.politicalconcepts.org/issue1/conquest/> accessed 29 April 2020.

[16] G.C. Bowker and S.L. Star, *Sorting Things Out. Classification and Its Consequences* (1999) 319.

[17] Philippopoulos-Mihalopoulos, opt. cit., n. 9, p. 71.

[18] Thomas in Mulcahy, op. cit., n. 7, p. S206.

[19] K. Economides, 'Review of Socio-Legal Studies' (1997) 24 *J Law & Soc* 587, at 588.

[20] Id.

[21] R. Collier, 'We're All Socio-Legal Now - Legal Education, Scholarship and the Global Knowledge Economy - Reflections on the UK Experience' (2004) 26 *Syd L R* 503.

[22] Id., pp. 523–525.

[23] M. Davies, 'Doing Critical-Socio-Legal Theory', in N. Creutzfeldt, M. Mason and K. McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2019).

[24] A. Philippopoulos-Mihalopoulos, 'Conclusions: A Socio-Legal Metatheory' in D. Cowan and D. Wincott (eds), *Exploring the 'Legal' in Socio-Legal Studies* (Palgrave Macmillan 2016).

2 | CONTEXTUALISING SOCIO-LEGAL AND CLS

Rather than redrawing lines, my aim is to identify how socio-legal and critical legal approaches define themselves and each other to map the boundaries that shape the movements. Despite their clear divides, SLS and CLS share their aims and practices of challenging the neutrality and exceptionalism of law – conceptually and systematically – through the belief that law is person-made and is not above or separate from politics, culture, society or the economy.[25] Both are unapologetic in their interdisciplinary approaches to understanding law and owe an intellectual debt to Legal Realism. They are partisans in their leftist politics, and both are explicitly against the 'apolitical' and neutral 'truth' and institution of law.[26] Both SLS and CLS developed through deep political, social and intellectual engagement in the Global South and the civil rights and feminist movements in the United States.[27] SLS developed the practice of placing 'law in context' to understand the political, economic, historical and cultural dynamics, which shaped the development and application of law. In doing so, attention was refocused towards how law works outside of law of books, outside of jurisprudence and black letter law and towards a broader view of where and how 'law [works] in action'. Oxbridge and London university graduates experienced this when they took their doctrinal legal learning to teach in new universities in East and Southern Africa and soon came up against the parochial limits of English legal education within de-colonial and neo-colonial realities.[28] Intellectually and politically transformed from these experiences, they returned to isolated and protectionist law schools in the United Kingdom or went via the United States.[29] Borne out of the radical politics of the civil rights and feminist movements of the 1960s and 1970s in the United States, CLS developed as an intellectual movement. Scholars turned their critiques to liberalism, modernism and structures of law from within but also to the hierarchies and politics of the Ivy League law schools by bringing together critical theory with legal realism.[30] 'Crits' employed tactics of provocation and 'trashing' black letter law and legal institutions, as well as jurisprudence and legal theory of the previous generations of academics.[31] Inspired by this, CLS developed in the United Kingdom in the early 1980s and emerged as a distinct approach with the first Critical Legal Conference (CLC) in 1984.[32] The 'fortress walls of law-as-discipline were well guarded',[33] but there was a movement to challenge the status quo of black letter law within legal education through a 'web of exchange and influence' between the Global South, the United Kingdom and the United States.[34]

[25] M. Atienza and R. Gama, 'An Intellectual Journey with William Twining: An Interview' in A. Paliwala, C. McCrudden and U. Baxi (eds), *Law's Ethical, Global and Theoretical Contexts: Essays in Honour of William Twining* (CUP 2015); D. Kennedy and C. Blalock, 'Provocation as Strategy: An Interview with Duncan Kennedy' (2022) 121 *SAQ* 1.

[26] Thomas, Boukalas and Hayes, op. cit., n. 4, A. Hunt, 'The Theory of Critical Legal Studies' (1986) 6 *Oxford J Leg Stud* 1, at 1.

[27] J. Harrington and A. Manji, 'The Limits of Socio-Legal Radicalism: Social and Legal Studies and Third World Scholarship' (2017) 26 *Soc Leg Stud* 700, at 703; Kennedy and Blalock (n. 25) 377.

[28] Ibid., pp. 702–703.

[29] R. Cotterrell, 'Subverting Orthodoxy, Making Law Central: A View of Sociolegal Studies' (2002) 29 *J Law & Soc* 632, at 633.

[30] Kennedy and Blalock, op. cit., n. 26, p. 377.

[31] Ibid; M. Kelman, 'Trashing' (1984) 36 *Stan L Rev* 293.

[32] D. Sugarman, 'Becoming Peter Fitzpatrick (1941–2020)' (2021) 17 *Int JLC* 2, at 8.

[33] Cotterrell, op. cit., n. 29, at 633.

[34] Harrington and Manji, op. cit., n. 27, p. 703.

While emerging around similar times and similar circumstances, there is significant divergence in the approaches or methods of challenging laws domination, which are still distinct some six decades later. Rather than the traditional black letter instruments of law, SLS starting position is looking to where, how and by whom the 'legal' operates 'in the everyday'.[35] This includes the practice and action of law, as well as the contexts within which these are taking place.[36] The place and relationship of theory and empirical methods within SLS are much discussed, with theoretical developments also being undertaken within the sociology of law, another approach with a distinct but permeated border with SLS.[37] This has led to some criticism that SLS is too focused on policy change for a policy audience.[38] While SLS asks questions about legal practices, processes and practitioners, much of its scholarship is theoretically rich and distinctively empirically grounded, though not necessarily both. These methods can support research that challenges and complicates assumed knowledge as well as develop it. SLS' theoretical and empirical focus draws from other disciplines, traditionally social sciences.[39] More firmly rooted within the law school in the United Kingdom,[40] SLSs origins in the United States were and are overtly interdisciplinary.[41] The Law and Society Association (LSA) was incorporated in the United States in 1964, with board members from a range of disciplines.[42] It was not until 1990 that the Socio-Legal Studies Association (SLSA) in the United Kingdom was established, further anchoring law and law schools as the starting position of SLS.

The discipline and school of law is also the starting point for CLS. In an inaugural collection of CLS publications in the United Kingdom, critical scholars Fitzpatrick and Hunt distanced CLS from the 'limitations of the socio-legal approaches which have characterised some recent attempt escape from orthodoxy which tend to see law through the conceptual apparatus of other disciplines'.[43] This criticism highlights a conflict between the two approaches; by turning away from doctrinal law and towards other disciplinary theories and methods, the SLS approach abandons substantive law in favour of external ideas that are superimposed onto legal practices, processes and activities to 'save legal scholarship from itself'.[44] While CLS scholarship predominantly draws its theoretical approaches from critical social theory and philosophy, it has established its own

[35] Wheeler, op. cit., n. 1.

[36] Atienza and Gama n. 25, p. 5.

[37] See Wheeler, op. cit., n. 1, pp. 212–213; R. Cotterrell, 'Socio-Legal Studies, Law Schools, and Legal and Social Theory' (2018) *J Oxford Centre Socio-Leg Stud* 19, at 25–27; E. Cloatre and D. Cowan, '"Indefensible and Irresponsible". Interdisciplinarity, Truth and #reviewer2' in N. Creutzfeldt, M. Mason and K. McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2020) 98; B. Garth and J. Sterling, 'From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State' (1998) 32 *L & Soc Rev* 409; C. Menkel-Meadow, 'Uses and Abuses of Socio-Legal Studies' in N. Creutzfeldt, M. Mason and K. McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2020); Creutzfeldt op. cit., n. 1.

[38] A. Sarat and S. Silbey, 'The Pull of the Policy Audience' (1984) 6 *L & Pol'y* 97.

[39] For theoretical approaches, see N. Creutzfeldt, M. Mason and K. McConnachie (eds), Routledge Handbook of Socio-Legal Theory and Methods (Routledge 2020) at Section II; D. Newman and R. Sandberg, *Law and Humanities* (Anthem Press 2024), D. Feenan, *Exploring the 'Socio' of Socio-Legal Studies* (Palgrave Macmillan 2013).

[40] Creutzfeldt, Mason and McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods*, op. cit., n. 39, at 16.

[41] As evidenced by the origins and continued operation of the LSA, id., p. 14. For an overview of socio-legal personnel, see also Garth and Sterling, op. cit., n. 37.

[42] Garth and Sterling, op. cit., n. 37.

[43] Fitzpatrick and Hunt, op. cit., n. 3, at 1.

[44] Cotterrell, op. cit., n. 29, p. 633.

internalist method – a critical analytic of substantive law through legal realism and critical theory.[45] A central preoccupation within the CLS approach is to take 'legal doctrine seriously' and expose the internal chaos, contradictions and incoherencies, thereby tackling the nucleus of the legal discipline.[46] The first CLC in the United Kingdom clearly stated the aim and purpose of the emerging school of thought:

> The central focus of the critical legal approach is to explore the manner in which legal doctrine and legal education and the practices of legal institutions work to buttress and support a pervasive system of oppressive, inegalitarian relations. Critical theory works to develop radical alternatives, and to explore and debate the role of law in the creation of social, economic and political relations that will advance human emancipation.[47]

Rather than 'a "correct" theory or method', CLS sought a political commitment to intellectually radical and diverse scholarship.[48] As SLS moved away or rejected a doctrinal legal focus, CLS centred black letter law as the subject of critique, interrogation and deconstruction, predominantly through critical theory. This approach frames, targets and rejects doctrinal law within an orthodoxy of the dominant Anglo-American tradition.[49] The method and purpose of CLS undoes law's autonomy and logic, exposing the dynamics of legal power within and beyond the legal world to forge space to think differently.

As such, critical legal scholarship has traditionally paid little attention to the 'pragmatic considerations' of law that preoccupy much SLS scholarship, such as the role of 'legal insiders', to use Hunt's term.[50]

> Critical scholars are motivated by a much broader political objective within which it is 'the law' itself that is 'the problem'; law is not conceived as being capable of resolving the problems that it apparently addresses. Rather law is seen as a significant constituent in the complex set of processes which reproduces the experience and reality of human subordination and domination; thus the wider concern with the conditions and possibility of human emancipation forms the extended political perspective of the movement.[51]

Therefore, jurisprudence and legal doctrine remain central to the critical legal project:

> Until such time as we are persuaded to renounce the very concept itself we are constrained to pursue its theorisation, that is, to explore different ways of formulating and explicating both its internal and external connections. We are required by our

[45] Kennedy and Blalock, op. cit., n. 25, p. 13.

[46] Hunt, op. cit., n. 26, pp. 14–15.

[47] Reproduced in Fitzpatrick and Hunt, op. cit., n. 3, pp. 1–2.

[48] Id., p. 1.

[49] Id.

[50] Hunt, op. cit., n. 26, p. 43.

[51] Id.

> own conversation to accept that there can be no escape from the project of theorising law.[52]

In this, CLS scholarship demonstrates an acceptance of law's autonomous position by critiquing the indeterminacy and incoherence of law's jurisprudence, reasoning and claims to autonomy.[53] In contrast, while SLS undermines the autonomy of law by placing it within its social context,[54] critiques of law's autonomy are often stepped over in an 'escape from orthodoxy'[55] as these critiques undermine law's capacity for social change.[56]

These distinctions can be seen within scholarship on im/migration in how law supports, shapes and limits migrant justice. Working within the legal system, a broader acceptance of responsibility to refugee law and protection has been argued for, such as by reimagining colonial debt through refugee applications.[57] How migrants experience and engage with the legal system[58] and how legal actors use conceptions of citizenship within criminal court proceedings provide insight into the cultural legal power of these categories.[59] In this framing, legal reform is seen as a step towards greater asylum, immigration and citizenship rights protection.[60] These appeals for change within legal frameworks sit at odds with critiques that demonstrate the colonial and racist foundations of asylum, immigration and citizenship laws,[61] which perpetuate the incoherence and racist logics through these legal categories.[62] Moments of White compassion to people dying at sea in pursuit of asylum, widely seen as turning points within Europe's ruthless approach, are dismantled through a critical race critique of racist outrage exposing acceptance of violence to people who are not read as White.[63] The prominence of data governance in border control demonstrates the empty promise of modernity's ideals of solidarity, equality and collectivity in international law.[64]

[52] A. Hunt, 'The Critique of Law: What Is "Critical" about Critical Legal Theory?' (1987) 14 *J Law & Soc* 5, at 10.

[53] See P. Fitzpatrick, 'Racism and the Innocence of Law' (1987) 14 *J Law & Soc* 119; P. Fitzpatrick, The Mythology of Modern Law (1992); C.I. Harris, 'Whiteness as Property' (1993) 106 *Harv L Rev* 1707; C.W. Mills, *The Racial Contract* (Cornell UP 1997); B. Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke UP 2018); D. Prabhat, 'Unequal Citizenship and Subjecthood: A Rose by Any Other Name.?' (2020) 71 *NILQ* 175.

[54] Creutzfeldt, Mason and McConnachie, op. cit., n. 39.

[55] Fitzpatrick and Hunt, op. cit., n. 3, p. 1.

[56] See Fitzpatrick's argument that anti-racist legislation will bring about racial justice due to the racist origins of modern law, Fitzpatrick, 'Racism and the Innocence of Law' op. cit., n. 53.

[57] E.T. Achiume, 'Migration as Decolonization' (2019) 71 *Stan L Rev* 1509.

[58] H. Scott, '"We Can't Help You – It Doesn't Concern Us": The Legal Consciousness of Young People Seeking Asylum in Sweden Who Report Violent Crime' (2024) 51 *J Law & Soc* 36.

[59] A. Aliverti, 'Law, Nation and Race: Exploring Law's Cultural Power in Delimiting Belonging in English Courtrooms' (2019) 28 *Soc Leg Stud* 281.

[60] C. O'Brien, *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK* (Hart Publishing 2020); T. Basok and E. Carasco, 'Advancing the Rights of Non-Citizens in Canada: A Human Rights Approach to Migrant Rights' (2010) 32 *Hum Rts Q* 342.

[61] A. Bashford and C. Gilchrist, 'The Colonial History of the 1905 Aliens Act' (2012) 40 *J Imp & Commonw Hist* 409; H. Wray, 'The Aliens Act 1905 and the Immigration Dilemma' (2006) 33 *J Law & Soc* 302; L. Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking* (Rowman & Littlefield International 2017).

[62] Prabhat, op. cit., n. 53; N. El-Enany, *(B)Ordering Britain: Law, Race and Empire* (Manchester UP 2020).

[63] N. El-Enany, 'Aylan Kurdi: The Human Refugee' (2016) 27 *Law & Crit* 13.

[64] D. Van Den Meerssche, 'Virtual Borders: International Law and the Elusive Inequalities of Algorithmic Association' (2022) *EJIL* 171.

Since their emergences, there has been a tension between approaches. Twining demonstrates this longstanding frustration with CLS 'outsider' critiques of 'systematic description and sustained scepticism' as luxuries, which are not afforded to people who are subjected to legal oppression in the here and now.[65] He articulates the friction of priorities through the *reformist verses abolition* dichotomy, which has defined the relationship, with reformist being – or seen to be – 'a derogatory term'.[66] While necessary and valuable, the insistence on critiquing law's futility and incoherence, whether as concept, as text or as tool, can create an impasse in how law can be practically and tactically employed by those facing the immediate realities of suffering and oppression.[67] Herein lie the tensions.

3 | WHAT IS THE PROMISE OF SOCIO-LEGAL AND CLS?

The growth of SLS and CLS over the decades is an achievement that has enabled provocative ideas that challenge the mainstream to become more mainstream.[68] Critique and context have permeated laws doctrinal walls. However, as Thomas questions, do the identity and purpose of these approaches as an alternative become diluted in the process?[69] As argued above, the foundations of SLS and CLS are both rooted within progressive social change, emerging from the radical post-colonial, civil rights and feminist movements of the 1960s. Some six decades later, what can be understood by the promises of both movements?

The growth of infrastructure to support SLS can provide a lens into the growth of the approach. In the United Kingdom, SLSA hold a growing annual conference – some 40 streams and 800 delegates in 2023 – and fund prizes, workshops and bespoke conferences.[70] There are a number of journals, blogs and podcasts that publish socio-legal scholarship.[71] There are many more law schools and academics who affiliate with SLS, and research councils explicitly support empirical research through PhD funding and training partnerships.[72] This has led to questions as to whether 'we are all socio-legal scholars now'.[73] SLS practising scholars hold management positions, are on Research Excellence Framework (REF) panels, are on funding boards and therefore are in positions of power to shape legal scholarship through their own approach. However, as with the challenge to doctrinal scholarship, the 'parameters of "acceptable" research… are not fixed'.[74] Even with the mainstreaming of socio-legal ideas and approaches, Cloatre and Cowan remind

[65] W. Twining, 'Some Scepticism about Some Scepticisms (Continued)' (1984) 11 *J Law & Soc* 285, at 298.

[66] Id.

[67] For a notable acknowledgement of employing both approaches, see M. Matsuda, 'When the First Quail Calls: Multiple Consciousness as Jurisprudential Method. A Talk Presented at the Yale Law School Conference on Women of Color and the Law, 16 April 1988', (1989) 11 *Women's Rts L Rep* 7, at 8.

[68] C. Douzinas, 'A Short History of the British Critical Legal Conference or, the Responsibility of the Critic' (2014) 25 *Law & Crit* 187, at 189–190.; Mulcahy, op. cit., n. 6, p. S207.

[69] Mulcahy, op. cit., n. 7, p. S207.

[70] For an overview, see Creutzfeldt, Mason and McConnachie, op. cit., n. 39, pp. 17–18.

[71] For example, but not limited to, the *Journal of Law and Society*, the *Law and Society Review*, the *International Journal of Law in Context*, *Social and Legal Studies*, the *Journal of Social Welfare and Family Law*, *Journal of Empirical Legal Studies*, *Legalities* and *Law & Social Inquiry*.

[72] See L. Mulcahy, and R. Cahill-O'Callaghan, 'Introduction: Socio-legal Methodologies' (2021) 48 *J Law & Soc* S6.

[73] Cotterrell, op. cit., n. 37, p. 21.

[74] Collier, op. cit., n. 21.

us that scholarship is not immune from the pull back to traditional understandings of the legal and reality, which is doctrinal in nature,[75] and not *everyone* is socio-legal. This recognition is felt with Cotterrell's call for 'Socio-legal scholarship (theory and empirical research) … to *invade the law school*'.[76] Law still holds a separate and authoritative position. It has not yet been undone; therefore, the work of theorists and critics is not yet done.

Conversely, the formal network of critical legal scholarship in the United States was active between the mid-1970s to the late 1980s. The Association for the Study of Law, Culture and Humanities was launched in the early 2000s as an interdisciplinary re-homing for CLS. While still active and prominent, CLS is said to have peaked in the United Kingdom in the 1990/00s.[77] The CLC was established in 1984 with critical journals soon following.[78] Independent infrastructure, such as the Critical Legal Thinking blog in 2009, Counterpress in 2013 and Countersigns in 2020, were specifically set up to provide accessible and affordable academic critiques that explicitly challenge the 'privatizing and excessive profiteering of academic knowledge and to do away with unfair access restrictions to learning materials in a world of uneven globalization'.[79] As an academic network, institutional support is not sought by CLS in the same way. The CLC gives insight into the political drive and development of CLS – with no organising structure, committee, income or funding it sees – or at least saw – itself more of a movement than an organisation. Despite running longer than the SLSA annual conference in the United Kingdom, the CLC remains significantly smaller. Each year, the conference is developed and hosted with autonomy to the organising group at a different university. It is advertised through the Critical Legal Thinking blog, as there is no central association or website, and those who apply to run streams self-organise and promote the call for submissions. It has predominantly been hosted in the United Kingdom but also in other European countries as well as outside the continent in India and South Africa. This approach demonstrates the intellectual as well as structural concerns of CLS within the law school.

The 'noisy (if not dominant) discourse' of CLS has had a significant reach and influence.[80] Douzinas argues that critical engagements through law have subsequently become mainstreamed in broader legal academic publications that were pioneered at the CLC.[81] Despite no longer formally organised, Kennedy argues that the success of CLS in the United States is the politicisation of legal discourse and legal elites.[82] CLS made the political saturation of law and those who practised it visible. The explicit challenge to laws autonomy, power and structural support is radical in itself. Critique enables a broader conceptual thinking about law that is not necessarily structured around the practices, processes and practitioners of law. CLS, in the United States at least, was an internal radical movement by elites against elites. Comfortable within the law school,[83] CLS scholarship remains at a high level of theory and detailed analysis rather than

[75] Cloatre and Cowan, op. cit., n. 37.

[76] Cotterrell, op. cit., n. 37, p. 23.

[77] Wheeler, op. cit., n. 1, p. S213.

[78] For example, but not limited to, *Law and Critique*, *Social and Legal Studies*, *Feminist Legal Studies*, *Australian Feminist Law Journal* and *Law, Culture and Humanities*.

[79] 'About' (COUNTERPRESS) <https://counterpress.org.uk/about/>. accessed 8 August 2024

[80] Wheeler, op. cit., n. 1, p. S213.

[81] See C. Douzinas, 'A Short History of the British Critical Legal Conference or, the Responsibility of the Critic' (2014) 25 *Law & Crit* 187 op. cit., n. 68, at 189–190.

[82] Kennedy and Blalock, op. cit., n. 25.

[83] Wheeler, op. cit., n. 1, p. S213.

a policy recommendation or choice on a practical level. Though a rebuttal of this criticism is that these recommendations can only come from a high level and closely detailed analysis.[84] Nevertheless, CLS can be abstract or ungrounded.[85] This is particularly challenging when its purpose is social transformation.[86] This begs the question, social transformation for who and by whom?

The preoccupation with the textuality – or aesthetics – of law of CLS shows us the integration of theory, critique and real-world understandings. 'If there is racism, patriarchy or economic exploitation, it will be traced in the text, in its rhetoric and images, in certainties and omissions, which will then be followed outside of the text in the lives of people and the history of domination'.[87] If we take the legal subject within Locke's second treaty, for example, and critically interrogate who was excluded, identify justifications for racism, patriarchy and economic exploitation through the slave codes Locke contributed to writing and trace the very real corporal and material impacts these had on people who were not considered legal subjects, as much critical scholarship has shown us,[88] the connection between academic enquiry and its application to real life becomes clear. This process enables an unlearning of law and its role in justice or rather injustice. This is the transformatory promise of critical scholarship, the undoing of law's promise and power. Nevertheless, if not done collaboratively or empirically, engaging those people who have been impacted by this identified oppression and exploitation – to only engage with the theoretical experience of oppression rather than experiential – then CLS offers itself up for criticism of intellectual elitism through a separation of this theorisation and those who it impacts – these 'outsiders' of law.[89] So while CLS sits 'outside' of dominant legal studies, it does not always include the voices or experiences of legal outsiders, even as it critiques or deconstructs liberal legal regimes and subjects.

Splinter areas of CLS have developed due to a frustration that gender,[90] race,[91] sexuality[92] and disability[93] were not being taken seriously enough. These in turn have moved from the

[84] M.V. Tushnet, 'Critical Legal Theory' in M.P. Golding and W.A. Edmundson (eds), *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Publishing 2005) 86.

[85] Id., p. 88.

[86] P. Fitzpatrick and A. Hunt, 'Introduction Critical Legal Studies' (1987) 14 *J Law & Soc* 1, op. cit., n. 3, at 2.

[87] Douzinas, op. cit., n. 67, p. 191.

[88] For example, see Fitzpatrick, op. cit., n. 53; Harris, op. cit., n. 53; Mills, op. cit., n. 53; Bhandar, op. cit., n. 53; C.M. Rose, *Property and Persuasion: Essays on the History, Theory and Rhetoric of Ownership* (Westview Press 1994); A. Moreton-Robinson, *The White Possessive. Property, Power, and Indigenous Sovereignty* (University of Minnesota Press 2015); Winter, op. cit., n. 15.

[89] C. Menkel-Meadow, 'Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"' (1988) 38 *JLE* 61; M. Matsuda, 'Looking to the Bottom: Critical Legal Studies and Reparations Minority Critiques of the Critical Legal Studies Movement' (1987) 22 *Harvard CR-CL Law Rev* 323.

[90] C.A. MacKinnon, 'Feminism, Marxism, Method, and the State: An Agenda for Theory' (1982) 7 *Signs* 515; C.A. MacKinnon, 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence' (1983) 8 *Signs* 635; Crenshaw id.; Menkel-Meadow, op. cit., n. 50; H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester UP 2000).

[91] D.A. Bell, 'Who's Afraid of Critical Race Theory' (1995) *U Ill L Rev* 893; K. Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' 1989 *U Chi Legal F*.

[92] D. Herman and C. Stychin (eds), *Legal Inversions: Lesbians, Gay Men, and the Politics of the Law* (Temple UP 1995).

[93] D.L. Hosking, 'Critical Disability Theory' (4th Biennial Disability Studies Conference, Lancaster University, September 2008).

margins to be recognised and given prominence as legitimate scholarly enquiry. This does not automatically address the issue of a top-down critique, but collaborative and bottom-up methods have become more prevalent through the diversity of theoretical and methodological approaches. The mainstreaming of these approaches and areas of study is not exclusive to CLS, with a proliferation of work in these areas in SLS. SLS scholarship is committed to social change,[94] though what this means is relatively ill-defined. Situating the potential for justice through law, this approach has been significantly developed through legal reform and has become an expansive framing to consider environmental, racial and migrant justice to name a few.[95] While marginalised voices have become more prominent within research on law, the exchange between the Global North and Global South is less infused then perhaps hoped at the outset of the movements,[96] leading to specific initiatives to support scholarship from the Global South within UK journals.[97] An area replete with voices from the Global South is the call to decolonise the curriculum. Inspired by student movements in South Africa, similar demands were represented in student movements and the academy globally, including the United Kingdom.[98] While by no means settled, this political movement continues to challenge the European and colonial origins and continued dominance within teaching and research of law and legal cultures,[99] echoing the origins of SLS and CLS.

While there is significant conversations and permeations, the distinction between socio-legal and critical legal approaches still holds in more recent reflections; Colson and Field explain, '[i]ndeed, some legal scholars from these critical currents might eschew the label "socio-legal" exactly because of its association with more reformist ambitions: they do not want to see themselves as repointing the legal brickwork when the aim should be to tear the house down'.[100] However, Colson and Field argue, SLS's interdisciplinary approach has been essential to understanding, critiquing and decentring law's autonomy, authority and power, though 'by no means a dominant force in socio-legal studies'.[101] In this framing, the *critical* aspect of this socio-legal research, I would argue, is in the research questions posed, which shape the method of enquiry. As such, this could be a space of synergy and exchange for critical, grounded, experiential scholarship.

[94] S.L Roach Anleu, *Law and Social Change* (SAGE Publications 2000).

[95] M. Lee and C. Abbot, 'The Usual Suspects? Public Participation Under the Aarhus Convention' (2003) 66 *MLR* 80; O.W. Pedersen, 'Environmental Justice in the UK: Uncertainty, Ambiguity and the Law' (2011) 31 *Leg Studies* 279; M. Pieraccini, 'Rethinking Participation in Environmental Decision-Making: Epistemologies of Marine Conservation in South-East England' (2015) 27 *JEL* 45; I. Solanke, *Making Anti-Racial Discrimination Law. A Comparative History of Social Action and Anti-Racial Discrimination Law* (Routledge 2009); B. Malkani, *Racial Justice and the Limits of Law* (Bristol UP 2024); C. O'Brien, *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK* (Hart Publishing 2020); E.T. Achiume, op. cit., n. 57.

[96] Harrington and Manji, op. cit., n. 27.

[97] J. Harrington and A. Manji, 'Socio-Legal Journals Writing Workshops' (*S&LS Blog*, 30 May 2018) <https://socialandlegalstudies.wordpress.com/tag/global-south/> accessed 26 June 2025.

[98] A. Elliott-Cooper, '"Free, Decolonised Education": A Lesson from the South African Student Struggle' (2017) 49 *Area* 332.

[99] A.R. Memon and S. Jivraj, 'Trust, Courage and Silence: Carving out Decolonial Spaces in Higher Education through Student–Staff Partnerships' (2020) 54 *L Teacher* 475; F. Adébísí, *Decolonisation and Legal Knowledge. Reflections on Power and Possibility* (Bristol UP 2023).

[100] Colson and Field, op. cit., n. 6, p. 286.

[101] Id.

4 | CRITICAL SOCIO-LEGAL SCHOLARSHIP

I have argued above that the transformatory power of CLS is in the undoing of law's logic, autonomy and power, but can be unrooted from the real-world implications. I have also argued that SLS can offer grounded understanding and perspective but while working within the hegemonic liberal and modern structures. Through critique, law's promise of justice and fairness becomes incomprehensible. However, through critical disruption, a conceptually expansive space is created, and opportunity is provided for conceptualising alternative ways of organising, governing and living that can be materialised through creative, collaborative and empirical methods. It is this reciprocal space – of approaching critical questions through a critical legal analytical method as well as socio-legal and creative empirical methods – that I argue has great productive and transformatory value.

What I am suggesting is a synergetic approach. The transformatory core of critical legal questions challenges and dismantles the self-proclaimed authority and power of law and frustrates research in upholding and reproducing law's autonomy, authority and assumptions, which cause harm, a criticism of SLS. Interdisciplinary or transdisciplinary approaches can pluralise the internal critique of CLS. As argued by law and humanities advocates, law 'is not competent to see itself through its own eyes only'.[102] Humanities and social sciences enable expansive thinking, beyond the constraints of legal definition by bringing law out of its insularity and exceptionalism and into conversation with culture and society, into the context in which it is created and interacted with. This can allow a grounded understanding of legal critique through its context of culture and society. Approaching critique in this way centres law as the object of study in the CLS tradition while also decentring law through the interdisciplinary tools of analysis, which define the approach of SLS. Empirical approaches can further ground critical questions and theoretical critique in a material or participatory way, again, bringing law into its context and action.

As researchers know, finding the right methods or tools for the research questions is paramount. Critique is necessary in developing our understandings of the role of law in shaping the world, and this understanding is an important position to come from when doing the empirical work of SLS. While not traditionally common in CLS, the importance of empirical approaches to draw out dynamics, questions and considerations that are not present within existing theories or knowledge was accepted, if not prominently practised by critical scholars from the beginning.[103] Collaborative and empirical work goes some way to addressing criticisms of the ungrounded theoretical work of CLS. However, the politics of collaborative and empirical work is not easy. Much time, training and reflection are needed to ensure this process holds an ethics of care and is not extractive.[104]

In the United Kingdom, empirical work is predominantly seen as something external to legal studies, which is brought in from other disciplines and is almost absent in undergraduate legal education.[105] Within legal studies, SLS leads in empirical methods, but Mulcahy and Cahill-O'Callaghan argue there is insufficient training and development of methods and methodological

[102] P. Raffield and G. Watt, 'Editorial' (2007) 1 *L & Human* iii, iii.

[103] Hunt, op. cit., n. 26, p. 16.

[104] A. Flint and others, 'Equity in Global North–South Research Partnerships: Interrogating UK Funding Models' (2022) 1 *Global Soc Challenges J* 76; J. Kofoed and D. Staunæs, 'Hesitancy as Ethics' (2015) 6 *RERM*; M. Guillemin and L. Gillam, 'Ethics, Reflexivity, and "Ethically Important Moments" in Research' (2004) 10 *Qualitative Inquiry* 261.

[105] L. Mulcahy, and R. Cahill-O'Callaghan, op. cit., n. 72, p. S5.

understanding for law students and academics taking this approach.[106] This is despite a number of reports demonstrating the need for empirical methods training to support research funding at all stages of academic careers.[107] However, there is no distinct dichotomy of theory and empirical work nor is empirical work inherantly uncritical.

While the advocates for critical socio-legal studies I have highlighted here would identify themselves as theorists, they do not subscribe to a limitation or duality between theoretical and empirical approaches. As Davies highlights, '[a]lthough socio-legal theory has some relationship to and background in empirical studies of law and society, it is by no means constrained by a need for empiricism and is methodologically and theoretically interwoven with the critical tradition'.[108] Philippopoulos-Mihalopoulos explains that 'this distinction is about the way in which our writing enters the world: an embracing of law's transformative potential and a problematisation of law's inherent inequalities, and an assembling of a common front, both theoretically and empirically engaged, against the various challenges that we are facing'.[109] Davies theoretically engages with empirical work to understand how law flattens distinctions between the researcher and the researched, as well as the causal effects of law and self.[110] Creating space for intellectual and experiential critique offers grounded insight. New theories of social transformation and a connection between theory and practice are, according to Hunt, what differentiates critique from criticism.[111] In its simplest form, critical work is motivated to change society rather than simply understand it. Critique is therefore essential for the work of social change. Enacting that change in the here and now, rather than waiting for the perfect theoretic or political conditions, is the approach of prefigurative politics.[112] Through analysis, critique and a demonstration of an alternative change is written into theory, which then contributes to the role of theory in understanding and interpreting the world.[113]

In *Everyday Utopias*, Cooper explores functioning material sites that demonstrate the 'paradoxical articulation of the utopia and the everyday'.[114] The case studies of democratic space demonstrate 'oscillating movement between imagining and actualizing' in everyday life.[115] This not only provides a place for assessment and critique but also offers a '*viable* alternative' to begin to restore the space made by deconstructing norms.[116] They achieve this by *doing* and demonstrating that there are alternatives.[117] They offer manageable localised projects (geographically or conceptually) that pertain to a wider understanding in different environments and situations. It is

[106] Id.

[107] H. Genn, M. Partington and S. Wheeler, 'Law in the Real World: Improving Our Understanding of How Law Works' (Nuffield Foundation Report, 2006); M. Adler, 'Recognising the Problem: Socio-Legal Research Training in the UK' (ESRC, 2007) <https://www.nuffieldfoundation.org/about/publications/law-in-the-real-world-improving-our-understanding-of-how-law-work> accessed 09 July 2025.

[108] Davies, op. cit., n. 23, p. 88.

[109] Philippopoulos-Mihalopoulos, op. cit., n. 24, p. 79.

[110] Davies, op. cit., n. 23, p. 93.

[111] Hunt, op. cit., n. 26 p. 15.

[112] Davies, op. cit., n. 23, p. 93.

[113] Id., p. 94.

[114] D. Cooper, *Everyday Utopias: The Conceptual Life of Promising Spaces* (Duke UP 2013) 3.

[115] Id., p. 9.

[116] Id., p. 5.

[117] Id.

this paradoxical 'estrangement' and 'critical proximity' that allows a broad yet intimate and practical knowledge that is vital for the potential of these communities and activities.[118] It is this that offers the possibility to re-address the way we see and do the everyday, and, further, how these two approaches interact with one another. By challenging current structures and demanding different ways of being, living and belonging, those participating in critical and grounded practices and projects are realising an imagined alternative; they are sharing 'glimpses of the utopian'.[119]

Bringing participatory democratic action into legal discourse challenged the relationship between theory and practice. Scholarship on spectatorship can elucidate the importance of theory, which brings living alternatives to light. Placing productive challenges that embody and practice critical modes of being is both an invitation and a challenge to the reader to bring themselves into relationship with the work. The process of reading, seeing and learning about alternative ways of being in the here and now bridges the gap between author and audience. Much like the spectator of art works, they are brought into a participatory role of cause and effect with the subject matter of the work. An 'organisation of view' that divides the world into two can be created through exhibitions.[120] This can happen in two ways, first, through their gaze, the viewer renders the viewed a spectacle. Second, this gaze is rendered invisible, making it objective.[121] This creates two realms, the represented and the real.[122] Challenging this passivity and objectivity, Debord argues, '[t]he spectacle is not a collection of images, it is a social relation between people that is mediated by images'.[123] The viewed makes the viewer, as the viewer makes the viewed. The realms produce a co-constituting relationship. As Manderson argues, the temporal and spatial relationship between the viewer and viewed, in his case the art work, transforms from one of distance to one of closeness 'by introducing the viewer as a key component of the effect of the image'.[124] Breaking down the distance between the viewer and the viewed generates an 'immediate, urgent and unavoidable – indeed revolutionary – demand for action'.[125] Manderson calls this new relationship 'now-time'. Through this understanding, we can see that art has the power to call into question the spectator and the audience distinction. Critical engaged scholarship, both through theory and practice, I argue, has this ability too.

Critical and contextual scholarship does not generate passive consumers or conforms to the dominant mode of thinking, as is Debord's critique of the spectacle, but highlights the structures that work to remove or reduce agency. The internalisation of legal norms limits ways of understanding and being in the world, as well as the imaginable possibilities of legal approaches or remedies.[126] Critical work calls into question these normalised and taken-for-granted modes of thinking and can create 'disruptive opening[s]'.[127]As Pollock proposes, '[a]rtistic practices are a form of witness, a testimony or survival, a promise of imaginative projection as well as the

[118] Id., p. 9.

[119] Id., p. 3.

[120] T. Mitchell, *Colonising Egypt: With a New Preface* (University of California Press 1991) 2.

[121] Id., p. 1.

[122] Id., p. 40.

[123] G. Debord, *The Society of the Spectacle* (Pattern Books 2020) para, 4.

[124] D. Manderson, *Danse Macabre: Temporalities of Law in the Visual Arts* (Cambridge UP 2019) 106.

[125] Id.

[126] Matsuda, op. cit., n. 89.

[127] V. Hartouni, *Visualizing Atrocity Arendt, Evil, and the Optics of Thoughtlessness* (New York UP 2012) 80.

commitment to honest appraisal, to stories that must be told'.[128] Prefigurative theory and politics do this too. Kemp asks how solidarity can be navigated between people outside and people inside immigration detention through the lens of SOAS Detainee Support.[129] His analysis is grounded in a critique of how immigration law individualises, dehistoricises and pacifies, which is empirically animated with people *doing* solidarity work within and beyond the immigration industrial complex's walls. Collaborative and co-produced projects move beyond a singular and textual conception and communication of law, bringing legal concepts and understandings to different audiences through visual, creative and participatory processes. Transdisciplinary projects can help to broaden the skills and communities who engage with legal questions and offer a diversity of perspectives through empirical and creative methods and lenses.[130] The Scottish Feminist Judgment Project brought legal academics and artists together to reinterpret legal judgements. In addition to rewriting judgements from a feminist perspective, itself a prefigurative action that has been built on in other areas,[131] the group took their project outside of the capital's academic, art and political institutions, and collaborators cycled the exhibition around Scotland, bringing the works, concepts and creations to meet people where they are.[132] Participatory art practices challenge who produces knowledge, as indicated above, but also break down the separation of the 'art' and the 'spectator', through a mediated social relationship between all those involved through the art.[133] Participatory projects, creative or otherwise, can facilitate a democratic space for dialogue and collaboration.[134] Altering our perspective and relationship to the object of engagement, be it law, scholarship or art, 'transforms our temporal and aesthetic relationship to the image [or text], unleashing its critical potential by changing our point of view'.[135] These projects embody practice that permeates boundaries. They start from a critical perspective and analysis and ground the exploration and development of the research through empirical and collaborative approaches, which in turn alter and complicate our position and relationship to the research.

Changing perspective brings the spectator into, or in relation to, the frame. Be it literal or conceptual. This shift generates active participation in the cause and effect of the work, bridging the spatial and temporal distance between the 'here and now' of the work and the person in relation to it.[136] This is a shift from the perceived passive spectator to the active participant of all those who hold a gaze and perspective. Debord's understanding of the social relationship of the spectacle supports expansive understandings of laws location and integration as part of every aspect of life.

[128] G. Pollock, *Generations and Geographies in the Visual Arts: Feminist Readings* (Routledge 1996) xviii.

[129] T. Kemp, *Activism and the Detention of Migrants: The Law and Politics of Immigration Detention* (Routledge 2023).

[130] S. Cowan, C. Kennedy and V. Munro, 'Seeing Things Differently: Art, Law and Justice in the Scottish Feminist Judgments Project' (2020) 10 *Feminists@law* 1.

[131] For a collection of projects, see 'Critical Judgment Projects' (*Critical Judgment Projects*, accessed 12 June 2025) <https://criticaljudgments.com>.

[132] Cowan, Kennedy and Munro, op. cit., n. 130.

[133] b. hooks, 'The Oppositional Gaze. Black Female Spectators', Black Looks: Race and Representation' in b. hooks (ed), *Black Looks: Race and Representation* (South End Press 1992); Debord, op. cit., n. 123; Manderson, op. cit., n. 124.

[134] L. Willmington, 'Everyday Resistances: Walking and Talking the Hostile Environment', in E. Lekakis and L. Finchett-Maddock (eds), *Art, Law, Power: Perspectives on Legality and Resistance in Contemporary Aesthetics* (Counterpress 2020); A. Hayat and L. Willmington, 'Reading Rooms as Spaces of Decolonial Education for Young People' (*Global Policy*, 17 April 2025) <https://www.globalpolicyjournal.com/blog/17/04/2025/reading-rooms-spaces-decolonial-education-young-people> accessed 23 April 2025.

[135] Manderson, op. cit., n. 124, p. 108.

[136] Id., p. 4.

Through this relationship, the duality of 'voyeuristic separation' is explicitly challenged,[137] blurring who creates and contributes to the process and outcome.[138] A relationship of action or agency is generated between research and those who engage with it. As Kennedy states, 'the idea is that law professors are basically trapped in their own passivity and that a goal of CLS aside from changing particular legal rules is liberation'.[139] Social relationships are built through critique, between the reader, the object and materials of study, participants, collaborators and reviewers. What is research if not an effort to understand the world we ourselves live in and explore routes in which we can be part of changing it. Research is a social and collaborative process.[140]

4.1 | Beyond boundaries

Finchett-Maddock argues art/law is a 'simultaneous reunion of law, art and resistance as one', which provides an opportunity to hold uncertainty and change, as well as criticisms of art and law together rather than dismissing them.[141] Similarly to the turn away of the 'law-' and 'law and' formations, which keep the separation and hierarchy between law to what comes after it,[142] the '/' serves to collapse the barrier of two worlds and enable the emergences of a new and open oneness.[143] In this conceptual space, we are encouraged to sit with, push at or dissect the paradoxes and uncomfortableness with the messy and difficult. This is the point, 'the beauty is in the incompleteness'.[144] These spaces can serve as crucial sites of critique, capture moments and enhance movements of civil disobedience and model new forms of participation and collective engagement.[145] Art, in its broadest sense, has the power to *em*power and 'expand… consciousness and create'.[146] Utilising the tools available in creative practices holds the potential for a more imaginative development of this process. This in turn offers an opportunity to push the structures of what is possible while working together in new ways.

There are overlapping skills and methods between legal and creative approaches. As Perry-Kessaris argues, learning from design can help 'generate new structured-yet-free spaces in which

[137] L. Mulvey, 'Visual Pleasure in Narrative Cinema' (1975) 16 *Screen* 6.

[138] For a critique on the passivity of the gaze from a Black female perspective, see b. hooks, *Art on My Mind. Visual Politics* (The New Press 1995).

[139] Kennedy and Blalock, op. cit., n. 25, p. 9.

[140] Davies, op. cit., n. 23.

[141] Finchett-Maddock, op. cit., n. 8, p. 1.

[142] Wheeler, op. cit., n. 1; Cloatre and Cowan, op. cit., n. 37, p. 98.

[143] Finchett-Maddock, op. cit., n. 8.

[144] Id., p. 23.

[145] Examples include R. Fletcher, 'Cheeky Witnessing' (2020) 124 *Feminist Rev* 124; L. Finchett-Maddock and E. Lekakis, *Art, Law, Power: Perspectives on Legality and Resistance in Contemporary Aesthetics* (Counterpress 2020); S. Cowan, C. Kennedy and V. Munro, 'Seeing Things Differently: Art, Law and Justice in the Scottish Feminist Judgments Project' (2020) 10 Feminists@ law, 1. (Scottish Feminist Judgments Project) <https://www.sfjp.law.ed.ac.uk/artists/>; Detained Voices, 'Detained Voices' <https://detainedvoices.com/> accessed 16 May 2021; T. Fazlalizadeh, 'Stop Telling Women to Smile' <http://stoptellingwomentosmile.com/> accessed 16 September 2021; Y. Begum, 'Cardiff's History of Migration Inspired Me to Live-Tweet the 1919 Race Riots' (*gal-dem*, 5 November 2019) <https://gal-dem.com/cardiffs-history-of-migration-inspired-me-to-live-tweet-the-1919-race-riots/> accessed 16 September 2021.

[146] hooks, op. cit., n. 138.

lawyers can be at once practical, critical, and imaginative'.[147] Finchett-Maddock and Lekakis argue that 'the importance of the legal context and its negotiations' can be highlighted by 'politically driven art and creative practices'.[148] Both of these creative methods employ cross-disciplinary and methodological tools to uphold transformatory commitments within research and not reproduce internal legal power dynamics. Converging law and creative spaces challenges traditional legal consciousness and opens it to the powerful possibilities of the creative imagination.[149] As Graeber argues, '[i]t's not so much a matter of giving 'power to the imagination' as recognising that the imagination is the source of power in the first place'.[150] Creative practices have the potential to do this, 'in stretching the legal imagination by playing with consciousness, and in sustaining the everyday grind of making a better world'.[151] Art is a tool or 'a means of challenging prevailing legal common sense and imagining law otherwise'.[152] Employing this through a critical analysis helps ensure the power structures developed through art and the art world are not reproduced.[153] Matsuda advocates for storytelling and counternarratives as modes of challenging the imaginative limitations of legal consciousness and forging new ways of thinking.[154] Fletcher develops a creative interplay with Matsuda's argument, evocatively expanding it, stretching and creating legal consciousness into something different and new.[155] Fletcher understands legal consciousness as the 'taken-for-granted and not-immediately-noticeable: the background assumptions about legality which structure and inform everyday thoughts and actions'.[156] Limitations of thinking enable structures to appear invisible, or taken-for-granted, unless or until you come up against them.[157] Critical interruptions can disturb the settled, accepted and unnoticed ways of thinking, seeing and speaking in the everyday.

It is generally accepted that SLS and CLS were born out of political movements and understood themselves as situated within these as intellectual movements which challenge doctrinal law.[158] Are they still movements, intellectually or otherwise? While CLS is seen more as a school of thought,[159] and SLS as a paradigm,[160] others hold on to the movement's conceptualisation.[161] What does thinking about SLS and CLS in this way do? How does it frame the work, aims and purpose? With the increasing pressure and need to frame research and teaching within quantifiable

[147] A. Perry-Kessaris, 'Legal Design for Practice, Activism, Policy, and Research' (2019) 46 *J Law & Soc* 185, at 192.

[148] Finchett-Maddock and Lekakis, op. cit., n. 145, p. 5.

[149] Finchett-Maddock, op. cit., n. 8.

[150] D. Graeber, 'On the Phenomenology of Giant Puppets' in G. Grindon and C. Flood (eds), *Disobedient Objects* (V&A Publishing 2014) 77.

[151] Fletcher, op. cit., n. 145, p. 127.

[152] M. Enright, 'Four Pieces on Repeal: Notes on Art, Aesthetics and the Struggle Against Ireland's Abortion Law' (2020) 124 *Feminist Rev* 104, at 105.

[153] Manderson, op. cit., n. 124.

[154] Matsuda, op. cit., n. 89.

[155] Fletcher, op. cit., n. 145.

[156] Id., p. 127; S. Halliday and B. Morgan, 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66 *Crit Legal Probs* 1, at 2.

[157] S. Keenan, 'Subversive Property: Reshaping Malleable Spaces of Belonging' (2010) 19 *Soc Leg Stud* 423.

[158] Mulcahy, op. cit., n. 7; Fitzpatrick and Hunt, op. cit., n. 3; Kennedy and Blalock, op. cit., n. 25.

[159] Kennedy and Blalock, op. cit., n. 25.

[160] Wheeler, op. cit., n. 1, p. S211.

[161] Id.

results so coveted by neoliberal institutions,[162] it is an important reminder to both *do* and *undo* these institutional frameworks and requirements.

If SLS and CLS are – or want to be – movements, Mulqueen and Tataryn can help us consider and continue with the 'what must we do' question, both in terms of movement as a form of evolution, to move and change, as well as movement as a form of social being in relation to one another. Law is the object of our enquiries as well as 'coming *from within* the community'.[163] It is being made and unmade through the movement, to propel social change and transformation. How does law regulate us, as socio-legal, critical-legal or indeed critical socio-legal scholars? How do we simultaneously de- and re-construct law and our community through our expressions of the limiting power of law and exceed these boundaries? This is a 'creative process of continuous becoming' that is part of a social movement.[164] It is the 'law in action *in* social movements' that has been taking place for over half a century.

Moving through socially driven research with a critical frame of analysis enables a conceptual opening up. 'Critical work doesn't just show what is wrong, it also scoops out space (destabilises a settled landscape) for other kinds of work as well'.[165] As such, engagement with prefigurative and interdisciplinary scholarship demonstrates that radical possibilities are not only possible, but happening – they are already being created, practised and enacted. They are 'everyday utopias'.[166] The work detailed above is a reminder that there are radical alternatives already here, building and enacting counter-social arrangements of being in community. We do not need to feel abandoned in the rubble of critique and deconstruction of hegemonic liberal modern structures. Reconceptualising and rebuilding have already begun and can inspire academic work, including, and most importantly, from outside the academy. In offering radical alternatives, Cooper and the examples given above encourage a re-wilding in our thinking of what is not only possible in a conceptual sense but do-able in a social and material sense. It is an outcome of what critique and critical interrogation does – enables us to think, consider, act and be beyond outmoded expectations and structures. It is a question of who the audience is, individually or collectively, as to the purpose of the research.[167] It is also a question of who is undertaking the research and why. If SLS and CLS have permeated the traditional approach to researching law and legal cultures, it has done so through the researchers. Therefore, there is agency in the researcher, individually and collectively, to drive to a movement of social change.[168] 'The function of art is to do more than tell it like it is – it's to imagine what is possible'.[169] So does research; 'Critique must always include a utopian moment; otherwise it remains subservient to dominant understandings'.[170] We need to keep an eye on the horizon of justice, while focusing on the here and now to ground and utopian

[162] Mulqueen and Tataryn, op. cit., n. 11, p. 288.

[163] Id., p. 289.

[164] Id., p. 292.

[165] D. Cooper, 'Can Projects of Reimagining Complement Critical Research?' (davina cooper, 20 April2018) <https://davinascooper.wordpress.com/2018/04/20/can-projects-of-reimagining-complement-critical-research/> accessed 21 June 2018.

[166] Cooper, op. cit., n. 114.

[167] Cloatre and Cowan, op. cit., n. 37, p. 104.

[168] Philippopoulos-Mihalopoulos, op. cit., n. 9; Garth and Sterling, op. cit., n. 37; Collier, op. cit., n. 21.

[169] b. hooks, *Outlaw Culture: Resisting Representations* (Routledge 1994) 281.

[170] Douzinas, op. cit., n. 68, p. 192.

moments of reality.[171] Of course, that is easier said than done. It is difficult to unshackle ourselves from dominant frames of thinking, but this could be a transformatory process through critical, collaborative, interdisciplinary and empirical approaches.

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[171] Philippopoulos-Mihalopoulos op. cit., n. 24.