

INTERVIEW

The Cultural Analysis of Law: Questions and Answers with Paul Kahn

Daniel Bonilla Maldonado*

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Abstract

In this interview, Paul Kahn discusses central aspects of his approach to the academic study of law. On the one hand, he reflects on the identity of the cultural analysis of law. In this regard, he points out how his approach differs from other forms of legal scholarship, in general, and from other cultural perspectives of law, in particular. He also makes explicit the philosophical tradition within which the cultural analysis of law is immersed and identifies his main theoretical influences. On the other hand, Kahn discusses the methods of the cultural analysis of law—that is, genealogy and architecture. Finally, Kahn examines the aims pursued by cultural analysis, as well as its contributions to the description and analysis of law. He also responds to some of the main objections that critics have offered against this form of scholarship.

Keywords: Constitutional identity; identity of the constitution; models of constitutional identity; constitutional amendments; Germany; Italy; Hungary; European Union no

A. Introduction

Paul W. Kahn,¹ the Robert W. Winner Professor of Law and the Humanities at Yale Law School, has been one of the main promoters of the cultural studies of law in the United States. The main aim of this approach to legal scholarship is to examine the symbolic structures that constitute individuals' legal and political imagination. It seeks, more precisely, to explore the way in which law builds the substantive notions of subject, time, and space with which individuals shape their identities and interpret the world in which they are immersed.² Law, for this form of legal scholarship, therefore, is part of culture, not its consequence.³ Law is part of the horizon of perspectives within which individuals are located; it provides the categories that allow us to create the narratives that give

*Full Professor of Law, Universidad de los Andes School of Law, Bogotá, Colombia. All footnotes were added to the interview to allow readers to find the sources of Kahn's ideas or to explain some of his key concepts. Explanatory footnotes are part of a longer introduction to the cultural analysis of law and Paul Kahn's work.

¹Among his main publications are: PAUL W. KAHN, *LEGITIMACY AND HISTORY: SELF-GOVERNMENT IN AMERICAN CONSTITUTIONAL THEORY* (Yale Univ. Press 1992); PAUL W. KAHN, *THE REIGN OF LAW: MARBURY V. MADISON AND THE CONSTRUCTION OF AMERICA* (Yale Univ. Press 1997); PAUL W. KAHN, *THE CULTURAL STUDY OF LAW: RECONSTRUCTING LEGAL SCHOLARSHIP* (Univ. of Chi. Press 1999); PAUL W. KAHN, *LAW AND LOVE: THE TRIALS OF KING LEAR* (Yale Univ. Press 2000); PAUL W. KAHN, *PUTTING LIBERALISM IN ITS PLACE* (Princeton Univ. Press 2004); PAUL W. KAHN, *OUT OF EDEN: ADAM AND EVE AND THE PROBLEM OF EVIL* (Princeton Univ. Press 2006); PAUL W. KAHN, *SACRED VIOLENCE: TORTURE, TERROR, AND SOVEREIGNTY* (The Univ. of Mich. Press 2008); PAUL W. KAHN, *POLITICAL THEORY: FOUR NEW CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* (Columbia Univ. Press 2011); PAUL W. KAHN, *FINDING OURSELVES AT THE MOVIES: PHILOSOPHY FOR A NEW GENERATION* (Columbia Univ. Press 2013); PAUL W. KAHN, *MAKING THE CASE: THE ART OF THE JUDICIAL OPINION* (Yale Univ. Press 2016).

²KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 40–41.

³Paul W. Kahn, *Comparative Constitutionalism in a New Key*, 101 MICH. L. REV. 2677 (2003).

meaning to the world in which we live. The cultural analysis of law, therefore, wants to contribute to the understanding of who we are as subjects constructed—at least partially—through law.

In this interview, Kahn discusses central aspects of his approach to the academic study of law. On the one hand, he reflects on the identity of this type of legal scholarship. In this regard, he points out how his approach differs from other forms of legal scholarship, in general, and from other cultural perspectives of law, in particular. He also makes explicit the philosophical tradition within which the cultural analysis of law is immersed and identifies his main theoretical influences. On the other hand, Kahn discusses the methods of the cultural analysis of law—that is, genealogy and architecture. He indicates how both are different from other ways of conducting historical and legal analysis and reflects upon the aspects of the legal world that they help to illuminate. Finally, Kahn examines the aims pursued by cultural analysis, as well as its contributions to the description and analysis of law. He also responds to some of the main objections that critics have offered against this form of scholarship. In particular, he explains the reasons why the cultural analysis of law is a descriptive and analytical perspective and not a normative one. He also explains why the cultural analysis of law is not an explanatory approach—which seeks to specify the causes of phenomena—but an interpretive one that is deeply enrooted in a humanist scholarship tradition.

B. The Cultural Analysis of Law (CAL): Constitutive Elements and Differences with Other Academic Approaches to Law

1. What is the Cultural Analysis of Law?

CAL takes a particular approach to the nature of experience and of our fundamental sociability. It begins from the premise that we live in a world of meanings that we both inherit and construct.⁴ There is no access to the human prior to or apart from this work of the imagination. The only world that we have is the one that appears in our narratives of who we are, what we are doing, what we have experienced, and of what we can hope for. Kant spoke of knowledge, morality, and faith, in each of which the imagination creates the conditions of our experience.⁵ CAL follows that line of thought.

CAL begins, then, from a position within philosophy: A claim about the nature of experience in all its forms and instantiations. It is an effort to work out the meaning of this position within the field of law and legal studies. Of course, I did not have a full-blown theory of CAL when I began my inquiries. What I had was a well-trained sensibility in the history of philosophical inquiry and a concern with the plural character of the paradigms that structure inquiry—that is, a concern with what I then called “conceptual models of order.” With this terminology, I meant to place myself in a neo-Kantian tradition committed to the idea that there are diverse forms of understanding, each of which pursues its own order.⁶ Alongside myth, science, and aesthetics, I proposed that we consider law as an autonomous form of understanding the social.

It was quite evident to me that over the course of American thought about public law, these paradigms had changed dramatically. In *Legitimacy and History*,⁷ I asked how it was that legal scholarship had come to take the form that it had at the end of the twentieth century. My answer was dialectical in its structure and ambition, arguing that our understanding of law had moved through distinct stages, each of which responded to the conceptual aporias of its predecessor. The present state of scholarship, I argued, represented the end of this history—for now the irresolvable tension between the dialogical and the decisionist aspects of law was fully exposed.

⁴KAHN, *THE REIGN OF LAW*, *supra* note 1, at 34–41.

⁵KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 34.

⁶The cultural analysis of law nourishes from Ernst Cassirer’s expansion of Kant’s work to include the various cultural formations that human beings effectively construct. In this sense, cultural analysis is a critical enterprise that seeks to make explicit the conditions of possibility of the world we inhabit; it seeks to describe the structure and limits of the different forms of experiencing the world. Nevertheless, cultural analysis is also a critical enterprise in a sense other than the Kantian: It seeks to make explicit the ideological horizons that make the existence of those worlds of meaning possible.

⁷KAHN, *LEGITIMACY AND HISTORY*, *supra* note 1.

This entire approach rested on two presuppositions. First, I understood the doing of law and the explanation of law to be two elements of a single practice. Law is a deliberative, self-conscious enterprise. A theory of law attaches to every act of law creation and application. This connection of theory to practice is given dramatic form in the judicial opinion.⁸ A judge decides, but he also explains why he understands the law as he does. The same is true of those who write a constitution, draft legislation, or argue a case. There is no law apart from a narrative of the law, which is only another way of saying that every legal act can give an account of itself—an account that is contestable. Law, then, is both a practice of argument and of decision. Its development is driven by the tension between these two aspects.⁹

Second, I assumed that the legal imaginary could be fruitfully approached as an autonomous, narrative field. By this, I meant that changes in the nature of legal theory were to be explained endogenously.¹⁰ Today, we would say that the rule of law is auto-poetic. That does not mean that law fails to respond to developments outside of law. Rather, it means that those heterogeneous events have no effect until they are translated into legal categories and legal accounts. I can put this point the other way around: There is no event or development to which the legal imagination cannot attach. There is no category of the alegal. The autonomy of law, therefore, is not a discrete field of objects, but a way of imagining the entire range of possible social experience.¹¹

Legitimacy and History introduced the idea of an endogenous genealogy to legal theory. *The Reign of Law*¹² introduced the idea of architectural inquiry. My approach then was phenomenological, asking how it is that the imagination constructs the object for which legal theory offers a narrative of justification. The claim was not that this object is independent of theory or that it was universal. Nevertheless, there has been a relatively stable object of legal perception over the course of American history, even as the justificatory narrative has shifted. To approach this object, I asked the questions that Kant posed in his analytic of the imagination.¹³ I began with space and time: How does the legal imagination construct space and time? I went on to examine the legal subject, who is simultaneously citizen and sovereign. Finally, I examined law's sense of alternative social formations, against which it defines itself.

⁸On the role of judges in the civil law and common law traditions, see Joseph Dainow, *The Civil Law and the Common Law: Some Points of Comparison*, 15(3) AM. J. COMP. L. 419, 424–25 (1966).

⁹On voice and vote, see Paul W. Kahn, *Unity: The Judicial Voice*, in *MAKING THE CASE* (Yale Univ. Press 2016). Kahn argues that public authorities act through a combination of voice and vote. Vote emphasizes the political dimension of public actions. Examining vote allows for understanding the balance of power that led to one decision or another. In the judicial context, this perspective focuses on the political and moral commitments of judges and how they construct alliances to make their political views triumph. This approach focuses on counting the votes that determine who wins and how the scarce resources at play are distributed in a case. In contrast, for Kahn, voice is much more important than vote: It explains what the law is to those who have decided to live under its domain. In a liberal democracy, citizens have agreed to subject themselves to the law that they themselves create as part of the sovereign people. Judicial opinions are based on narratives that weave law and facts to persuade the members of the political community.

¹⁰For cultural analysis, the law is therefore an autonomous normative field. It is a field that has the capacity to endogenously create the units that constitute it, as well as transform and eliminate these units. The legal field interacts with other social fields, of course. Nevertheless, the changes created by these interactions are explained and put into practice by means of the categories offered by the legal system. Understanding these units and their relationships involves understanding the world they make possible.

¹¹The law constitutes a field by which we create and experience the world. The law constructs particular forms of subjects that inhabit determined geographies and histories. Precedents, which constitute a key aspect of the analysis offered in *Making the Case*, thus materialize particular ways of understanding time and the relationship with legal and political authority.

¹²KAHN, *THE REIGN OF LAW*, *supra* note 1.

¹³Kant proposes and examines knowledge, faith, and morality; the cultural analysis proposes and examines law. The cultural analysis of law is therefore a form of neo-Kantism—it seeks to make the conditions of possibility of the world we inhabit explicit. In particular, it seeks to describe and examine how law constructs our imaginations and therefore how law constructs the world we occupy. Paul W. Kahn, *Freedom, Autonomy, and the Cultural Study of Law*, 13 YALE J.L. & HUMAN. 141 (2001).

Only after I had completed these two works in genealogical and architectural inquiry did I try to formulate a comprehensive methodological account in *The Cultural Study of Law*. That work framed this new form of legal study within a broad critique of existing legal scholarship. The cultural study of law is, accordingly, a critical enterprise in both the Kantian sense of critique and the contemporary sense of an exposition of the ideological predicates of a practice.

2. How Does CAL Understand the Relationship Between Culture and Law?

CAL does not think that culture is the cause of law.¹⁴ It does not think that law is simply epiphenomenal, while culture is the foundation or reality itself. Rather, CAL understands law as culture. Culture, in this view, refers to the substantive character of the social imaginary. Culture is not something that we “add” to a world to which we otherwise have access. It is not something that we can do without, as if we can get to the thing itself.

CAL begins from the idea that the imagination is plural, constructing multiple forms of experiencing a meaningful world. Law is one such culture; science would be another. Each such culture is totalizing: It can make sense of all the phenomena that can appear within that world. Thus, of every act, we can ask if it is legal; of everything, we can ask to whom it belongs; and of every place, we can ask who has jurisdiction.¹⁵

The double character of the imagination as totalizing and plural gives us a way of understanding the nature of inquiry within CAL. First, CAL investigates what we might call the elementary forms of the legal imaginary, that is, the categories within which we organize legal perception and legal argument. These categories must be sufficiently broad to be comprehensive. There must, therefore, be categories of space and time, of subject and object, as well as accounts of representation and identity.¹⁶ Formal legal argument adds another layer of categories to these elementary forms of legal perception. CAL investigates the nature of legal persuasion, which includes the study of legal hermeneutics: How do we interpret texts and persuade each other to see the law one way rather than another?

The plural forms of the social imaginary point to a second dimension of CAL: The comparative.¹⁷ The legal imaginary acknowledges this diversity of forms. Thus, law always constructs itself in opposition to an “other.”¹⁸ That “other” might be nature—as in the state of nature prior to law—or it might be a post-legal order, as in the Christian idea of love.¹⁹ One cannot take up CAL, then, without also studying competing cultural constructions. I have investigated these “others” in the form of political action and love, but the comparative issues are much broader. There is also the question of comparative legal cultures. The American culture of law occupies a place within a family of Western conceptions of law. Each emphasizes different aspects of a common inheritance.

Understanding culture as the work—but not the effect—of the social imaginary places the individual in proper perspective. No doubt law can be imposed on the individual as an alien source of order. This, however, is not the rule of law, even if it is rule by law. The rule of law as a cultural formation exists in the individual’s deployment of its categories and concepts in his or her own experience. The beliefs and practices of law are, then, constitutive of the individual at the same time that they sustain a political community. We imagine ourselves as citizens with legal rights and responsibilities, as members of political communities defined by their laws, and as committed to the defense of law as a defense of who we are.

¹⁴Kahn, *supra* note 3, at 2677.

¹⁵KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 34.

¹⁶KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 40–41.

¹⁷Kahn, *supra* note 3.

¹⁸KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 119–23.

¹⁹KAHN, *LAW AND LOVE*, *supra* note 1; KAHN, *SACRED VIOLENCE*, *supra* note 1.

3. How is CAL Different from Other Academic Approaches to the Study of Law?

One of the controversial claims of CAL has been that most legal scholarship is itself a part of the practice of law. The scholar is not “studying” the law from outside. Rather, he or she is practicing the law in and through scholarship. This is not simply because scholarship is produced by lawyers with reformist agendas. Nor is it because scholars want to use their work to advance their legal careers—although both of these points may be true. Rather, CAL’s assertion that scholarship is a form of practice is based upon the place of reason within law. The legal scholar seeks to guide legal decision making by exhibiting the reason within law. The law is always already reaching toward what it “should be.”²⁰

There is no point at which the legal imaginary relies simply upon a naked authority to decide. An explanation that points to nothing more than such authority is not an act of law, but of force under color of law. If every legal decision makes reference to a theory, then every decision invites discourse: We can ask for a justification of the decision. Having asked the question, we can challenge the response. These discourses are not outside of the law; they are not an external interrogation of law. Rather, they express the understanding of the rule of law as a practice of interpretation among free citizens who imagine themselves as both the source and object of law.

Legal scholarship is continuous with this discursive practice within the law. That is why so much of it is commentary on judicial opinions, which are the most direct expression of this practice of justification. Law purports to put reason in the place of interests or power. Reason is an internal value of the legal order, which means that a scholar who purports to offer the “most reasonable” interpretation of the law is engaged in the same practice as the judge. Consider, for example, proportionality review: What is the difference between the judge and the scholar when they assess what proportionality requires? If they disagree on the outcome, it is not because they are doing anything different. Rather, it is a friendly disagreement in the application of a common methodology.

Americans are not so interested in the method of proportionality, but they are committed to the idea that law is a working out of reason within political institutions. A law widely viewed as requiring irrational behavior would be judged unconstitutional—that is, not really law at all. Accordingly, the legal order is always open to reform as the work of reason.

The legal scholar wants to influence the judge not as a matter of political interest, but rather as a statement of what the law is. When scholarship moves away from this practice of providing the reason of law, judges criticize it as not only misguided, but also as not doing law at all. They are right: Such scholarship is not a part of the practice of law. CAL takes law as its object of study, but it resolutely resists capture by the practice of law. It stands to legal practice as a form of critical study in the Kantian sense: Not political critique, but rather critique as an exploration of the conceptual conditions of the possibility of law.²¹

4. How is CAL Different from Other Types of Cultural Studies of Law?

When people speak of culture and law, they are usually referring to the way in which law deals with the objects of cultural production—for example, books, art, trademarks, and film. These are,

²⁰Kahn, *supra* note 3, at 2678; KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 7–30.

²¹Cultural analysis does not seek to replace reformist scholarship. It recognizes its value and the contributions it makes to the political community. Nevertheless, the cultural analysis of law seeks to propose a different form of approaching the law academically, one that coexists with other possible ways of thinking about legal scholarship. This approach is also understood as part of a philosophical tradition. In this case, the legacy taken up is no longer Kantian but Socratic. Cultural analysis is understood as a form of self-examination, as a form of describing and analyzing our practices and beliefs. The aim of this exercise is not evaluating these practices and beliefs, nor is the exercise proposing to replace them. The aim is to understand who we are as subjects immersed in a particular horizon of perspectives. KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 31–33.

of course, important topics in our digital age, but they have no special relevance to the cultural analysis of law.

Law has, for some time, been an object of sociological and anthropological study. These tend to be weak areas of specialization in the United States because they have had to find their place within the law school. There is very little study of law outside the professional school, the main mission of which is the production of lawyers. One exception to this is the work of Austin Sarat,²² who is not only located outside of a professional school but teaches at an undergraduate college. He is, therefore, outside of the professional pressures of a law school and outside of the disciplinary pressures of a graduate social science program. Sarat's own work has focused on the death penalty, to which he brings broadly cultural questions even as he is an advocate for its abolition. Sarat's more important role from the perspective of CAL, however, has been as an editor and convener, putting together conferences and collections on issues that are often of great interest to CAL—for example, religion, pain, popular culture, race, professionalism, and film.²³ Because these are collections, they show no unity of method, approach, or conceptualization.

For the most part, the study of law apart from the study of doctrine has proceeded as an aspect of the social sciences.²⁴ This work labors under the dominance of economics, which is the paradigmatic social science today. There is, therefore, a good deal of pressure to replicate the positive, empirical methods of economics within these broadly sociological inquiries. We find a tendency to engage in empirical studies, to offer data, and to employ quantitative methodologies. Questions of culture, accordingly, become questions of behavior—for example, judicial votes, police practices, and legislative accomplishments. Culture appears as that which quantitative correlations are to expose and, conversely, as that which implicitly explains the behavior. Culture is a sort of *Deus ex Machina*.

CAL is first of all a humanistic inquiry, not a social science. The social sciences are—in one way or another—seeking to expose the causes of the phenomena they investigate. CAL is an interpretive practice with roots in philosophy. It is not under the influence of economics; it has little concern with quantitative data. Its interpretive method tends to focus on the single legal artifact—for example, a legal opinion—rather than on aggregates of such artifacts. It seeks to construct the macrocosm of the legal imaginary out of the microcosm of the legal decision. Its interest is not in outcomes, but in bringing to light the way in which that outcome situates itself in an entire world of meaning.

C. CAL and the Symbolic Structures That Constitute Our Political and Legal Imagination

1. CAL Attempts to Describe the Symbolic Structures That Control Our Political and Legal Imagination. Where Can These Structures Be Found? Where Should CAL Scholars Look to Find Them?

My work has tried to convey the idea that CAL scholarship must move well beyond the ordinary sites of law production. We find law wherever we look in the modern state. CAL should be looking

²²Some of his books include: AUSTIN SARAT & WILLIAM L.F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS* (Oxford Univ. Press 1997); AUSTIN SARAT, *WHEN THE STATE KILLS: CAPITAL PUNISHMENT AND THE AMERICAN CONDITION* (Princeton Univ. Press 2001); AUSTIN SARAT, *MERCY ON TRIAL: WHAT IT MEANS TO STOP AN EXECUTION* (Princeton Univ. Press 2007); AUSTIN SARAT, *GRUESOME SPECTACLES: BOTCHED EXECUTIONS AND AMERICA'S DEATH PENALTY* (Stanford Univ. Press 2014).

²³See, e.g., *LAW ON THE SCREEN* (Austin Sarat et al. eds., 2005); *LAW AND THE SACRED* (Austin Sarat et al. eds., 2006); *IMAGINING LEGALITY: WHERE LAW MEETS POPULAR CULTURE* (Austin Sarat ed., 2011); *LEGALITY AND JUSTICE IN AMERICA* (Austin Sarat ed., 2014); *KNOWING THE SUFFERING OF OTHERS: LEGAL PERSPECTIVES ON PAIN AND ITS MEANINGS* (Austin Sarat ed., 2014); *LAW AND LIES: DECEPTION AND TRUTH-TELLING IN THE AMERICAN LEGAL SYSTEM* (Austin Sarat ed., 2015); *RACIAL RECONCILIATION AND THE HEALING OF A NATION* (Austin Sarat & Charles J. Ogletree eds., 2017).

²⁴KAHN, *MAKING THE CASE*, *supra* note 1, at 173–79.

everywhere. My own studies have steadily expanded. I began with the judicial corpus, but quickly found that I was really interested in the imaginary of those who study and write about law.²⁵ There is not a big distinction to be drawn among judges, lawyers, and scholars. Why scholars should be drawn into the same practices and beliefs as those whom they study was one of the earliest questions I posed to myself.

Studying the legal imagination led me to realize how important it was to distinguish law from other forms of experience. This led me to look for a text that explored the idea of law's "other." I found that in *King Lear*, which led me to write *Law and Love*.²⁶ The work of exploring law's "others" is hardly finished. I have spoken in this regard of exploring ideas of nature and revolution, alongside ideas of grace and utopia. I hope, for example, to turn to revolution at some point, but others are far better prepared than I am to look at Christian inflected ideas of an order beyond law or Marxist ideas of an order after law.

If I am right about the breadth and scope of a cultural formation, then it must be at work in the products of the popular imagination, as well as in the professional legal imaginary. This thought led me to a work on popular film, *Finding Ourselves at the Movies*.²⁷ There remain endless possibilities for work on popular culture: Film, plays, novels, art, and even poetry.

To these fecund sources of the imagination, I would also add examination of other forms of political production. Every branch of government—not just courts—deploys an idea of law. I would very much like to do work examining major presidential addresses, for example, to see how the president imagines a nation under law. On occasion, I have had reason to work on Abraham Lincoln, our greatest rhetorician of law. But even quite ordinary presidents find that they must speak in ways that respond to the popular understanding of the meaning of the national project.

I have spoken of all of these inquiries as if they are part of my project of investigating an American imagery of law, but of course they all have comparative dimensions as well. I look forward to comparative engagement as others, some of whom were once my students, pursue these studies in their own countries.

2. How Should the Descriptions of These Structures be Supported? Aren't All References to Specific Judicial Opinions or Movies or Novels or Plays Inescapably Partial?

There will always be a charge that the texts and works examined were picked precisely because they stand out.²⁸ They are, therefore, anything but ordinary. As a form of critique, the argument will be that they were picked precisely because of the arguments they enable. Because CAL is an interpretive—not a causal— inquiry, there is no way to defeat this critique with an objective proof. This charge is easy to make, but it represents nothing more than a category mistake.

All humanistic inquiry is subject to this form of critique. If we could say nothing about a culture, then we would be unable to navigate our own history—indeed, we would have none. When we speak of revolutionary sentiment, or the legacy of the Civil War, or the Progressive era, or Victorian beliefs, we are making exactly the same move from interpretation of particular texts, events, policies, or actions to a claim that they are representative of a broader formation of the imagination.

The problem is again one of demanding causes where only interpretations are available. CAL responds to the charge by seeking to persuade the critic that the interpretation offered is convincing, that it makes sense of a domain of experience. The interpretive effort succeeds when our interlocutors find themselves using the categories and forms of explanation that we have put

²⁵KAHN, THE CULTURAL STUDY OF LAW, *supra* note 1, at 47–122; KAHN, MAKING THE CASE, *supra* note 1, at 115–35.

²⁶KAHN, LAW AND LOVE, *supra* note 1.

²⁷KAHN, FINDING OURSELVES AT THE MOVIES, *supra* note 1.

²⁸For more on the meaning of CAL as a humanistic enterprise, see KAHN, MAKING THE CASE, *supra* note 1, at 173–79.

forth. It succeeds, in other words, when it persuades. Here, law offers an excellent paradigm: An interpretation of a law or a case succeeds when it persuades. We know it has persuaded when it is put to use.

Interpretation is an endless conversation. Every position put forward is partial. Pointing this out is not a critique but a beginning. The right response to those who think they are criticizing CAL is to engage them by asking what it is that they find partial: What is the interpretation missing? The real work to be done is in this exchange of interpretive views, for one interpretation can only be defeated by another. Abstract claims of partiality are too often used as excuses to avoid the only engagements that count: To state and defend one's own understanding of the meaning of our practices and beliefs. To insist on this engagement is to imitate in contemporary circumstances philosophy's beginning in the Socratic encounter in the Athenian agora. This is the disruptive ambition of CAL.

D. Freedom and Neutrality in CAL

1. Why Are Distance from the Object of Study and Freedom so Important for CAL?

I would put the point a bit differently. Distance from the object of study is necessary if CAL is to be an exercise of freedom. The aspiration is to approach scholarship as a free practice.²⁹

The problem of freedom casts a shadow over every inquiry into the social imaginary. At issue is whether the totalizing claims for the social imaginary include the work of the scholar. Do we confront a sort of infinite regress in which there is no escaping from the forms of understanding even as we investigate those forms? This is particularly a problem for legal scholarship, for the reason I stated above: Most legal scholarship does not aspire to be something other than a part of legal practice.

There is nothing wrong with this form of scholarship any more than there is anything wrong with the practice of law. Of course, both may be evaluated from various normative perspectives. We may come to conclude that law is in serious need of reform. There are reformist scholars, just as there are reformist lawyers and judges. Identifiable injustices and inefficiencies are a problem for law. So, when I say that there is nothing wrong with the sort of scholarship, I am not endorsing the status quo. I am simply observing that the impulse to study the culture of law as itself an object of inquiry does not come from within the law.

If this approach must be brought to the law, then we are in the puzzling position of asking: "Brought from where?" We could say that the approach must be anchored in a competing imaginary—think, for example, of the economist's study of law or that of the positive, political scientist. He or she simply applies the conceptual tools of another discipline to legal artifacts. This is not CAL, which is why I resist thinking of its inquiries as an aspect of sociological or anthropological research.

CAL, reflecting its philosophical roots, is a practice of deliberative, self-conscious reflection. It is itself an existential practice in the sense that it asks its practitioner to take responsibility for the inquiry as a free act of intellectual appropriation. It is a meditation on the beliefs and practices of the scholar herself as a citizen within what Dworkin called "law's republic." CAL, thus, instantiates the same idea of freedom that was at stake in the Socratic confrontation and that has always been at stake in philosophical reflection. CAL's position is always one of a temporary suspension of beliefs as they become the object of inquiry. That suspension is the capacity to think freely with respect to the self and one's community.

By raising the question of how CAL is possible, CAL asserts the possibility of a form of scholarship that is also a practice of freedom. To ask the question is to establish the distance, which is the space of freedom. To ask the question is to acknowledge the inexhaustible character of the free subject who is not wholly captured by the forms of the imaginary.

²⁹KAHN, *THE REIGN OF LAW*, *supra* note 1, at 165–71.

2. Does Distance and Freedom Imply Neutrality?

Distance—as I have expressed it in the answer to the last question—implies a certain sort of neutrality, for its end is not the reform of law.³⁰ It is not doing law at all. Neutrality is not really the right concept here. CAL has no view on what the law should be, because it is investigating an imaginative structure that is capable of reversing itself on any particular legal proposition. We see this especially clearly in contested cases. When a case goes to the American Supreme Court, a perfectly intelligible brief can be written in support of either side—even though one side will come out as the “correct” statement of the law after the Court decides. We see the same thing when a Justice issues a dissent. We cannot distinguish the dissent from the majority by identifying factors that are internal to legal perception and argument. We distinguish the two by counting the votes.

CAL, then, is investigating a social imaginary; it is not determining outcomes of controversial cases. It is examining the imaginary structures that will inform the outcome, whichever side gathers the most votes.

The neutrality of CAL goes only this far. It says nothing about the reformist or conservative beliefs of the scholar as a participant in the legal order. There is a suspension of such commitments within the internal practice of CAL. This, however, is only a form of inquiry, not a form of life.³¹ CAL is not a political movement within legal studies, but it is not opposed to such movements.

3. If the Answer to Question 8 is Negative, Can CAL Distinguish Between Descriptive and Normative Propositions? Aren't All Descriptions Really Normative Statements? If So, How Can CAL Claim That it is a Merely Descriptive and Analytical Approach to the Study of Law?

We have to be careful when we say that descriptive statements are not independent of some normative commitments.³² This is true of CAL, but CAL is not a practice of law. Accordingly, the descriptions of CAL do not depend on normative claims within the legal order. There is no reasoning from the inquiries of CAL to answer questions about what the law should be.³³

The normative commitments of CAL run in the direction of the affirmation of the value of the free act that is realized in CAL itself.³⁴ CAL, as I have said, is a form of humanistic or philosophic inquiry. We do not take this up without affirming the value of the subject taking himself as an object of thought and thus creating the possibility of giving an account of the self. The value of such an account is not measured by the market. It is the value of an existential commitment to the self—a self that is already formed by multiple cultural forms. Because political possibilities all arise within the limits of this world, the existential attitude of CAL speaks not at all as to how to resolve contemporary controversies. That remains an obligation of citizenship to be resolved within the cultural resources to hand.

This account of the normative character of CAL is not quite complete. There is yet a deeper value involved in the existential affirmation of CAL. As an interpretive enterprise, CAL necessarily

³⁰On neutrality in CAL, see KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 33–34; PAUL W. KAHN, *Prólogo a la Edición en Español*, in *EL ANALISIS CULTURAL DEL DERECHO* (1999).

³¹Suspending our commitments to the law is always momentary and never complete, though. Once the examination has ended, the practice of law reappears without agitation. The life of law remains unmoved, as happens with the commercial, political, and aesthetic practices of the agora after the Socratic dialogue.

³²See KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 52–54 (discussing the descriptive and analytical purposes of CAL).

³³The aspiration of the cultural analysis of the law is that after the process of free self-examination that requires the temporary suspension of our commitments to law, we will be better able to understand who we are: What type of individuals and collectivities we have constructed and what type of subjects we have made of ourselves. As a consequence, cultural analysis seeks to contribute to understanding our legal imagination, which—like the moral or epistemological imagination—constitutes the conditions of possibilities of the ways we experience the world. KAHN, *THE CULTURAL STUDY OF LAW* *supra* note 1, at 53.

³⁴See KAHN, *Prólogo*, *supra* note 30.

brings an affirmative attitude to its subject matter. Interpretation requires a kind of sympathy and respect for the object of that interpretation—even if that object is the self. Culture, CAL believes, is an achievement of the imagination. It informs a way of life that is meaningful to those who fall within its reach. That calls for a respect, even as we might morally disapprove of the forms within which that meaning is realized. I disagree, for example, with the racism that informed much of American legal practice in the nineteenth century, but I still experience a sort of awe before the fact that so many Americans were willing to sacrifice themselves for the constitutional order. The capacity of the imagination to create a transcendent meaning is no less at stake in law than in religion. In both cases, we confront difficult issues of reconciling disagreement with respect.

This attitude of respect follows from CAL's rejection of reductionist or causal accounts. The work of the imagination—culture—is not “to be accounted for” by pointing to anything else. Just as it is not caused, it is not trying to achieve something other than itself. It is free standing in a literal sense: A free work of the imagination. In truth, we cannot extend recognition to an individual absent respect for the world that is constitutive of his or her identity. There is no dignity in a subject stripped of his or her world, for such a subject would be no one in particular. The dignity that is the ground of human rights has its source here, in the free work of the imagination that is constitutive of the worlds that we inhabit as our own. This is the normative attitude inseparable from CAL, for it expresses the freedom at stake in the pursuit of this discipline.

E. CAL's Method

1. *Why Are Architecture and Genealogy Relevant Methods for CAL?*

Start with genealogy.³⁵ Why not speak simply of history? That law needs to be investigated historically is an assumption of many forms of scholarship. We want to know when, where, and why a law was passed or a decision was reached. We organize legal decisions in chronological order in the various reporters. In the United States, we tend to teach law historically: We describe for the students the way in which particular legal doctrines evolved over time; we place them in their historical context. We do not teach law as an abstraction that emerges from a timeless reason. Rather, it emerges as a response to particular needs pursued by diverse interest groups exercising whatever law-making power they have.

History in these accounts adopts implicitly, if not explicitly, a causal methodology. Accounts of origins are accounts of who did what, and with what effect. The historical account traces the influence of various groups, events, and individuals, believing that law emerges as the consequence of all of these causes.

Genealogy turns to history without adopting the idea that causation is the mechanism of history. A culture of law—like any other product of the imagination—comes to us as a sort of inheritance. It informs the world we enter in the same way that language informs that world. We do not understand a language by looking to its causes. Rather, when we trace meanings and usages, we pursue an interpretive inquiry. We stay within the bounds of linguistic practice; we do not account for that practice by pointing to phenomena outside of it. The same is true with respect to the work of the legal imagination: Genealogy is the work of interpreting past practices and beliefs.³⁶

³⁵On genealogy, see KAHN, *THE REIGN OF LAW*, *supra* note 1, at 35–38; KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 41–43, 46, 48, 56–62, 75, 80, 80–81, 88–89, 91, 98.

³⁶Genealogy and architecture are nurtured on a tradition that has Friedrich Nietzsche and Michel Foucault as two of its primary representatives. From this perspective, history is not understood as a succession of points—a line that has a specific origin and an end that can be envisioned. Nor is history interpreted as a succession of points that can be explained causally. It is not a process that can be grasped through cause and effect studies. For cultural analysis, the law is both a legacy that we receive and construct. We always find ourselves immersed in a culture that precedes and survives us. See MICHEL FOUCAULT, *NIETZSCHE, GENEALOGY, HISTORY* (1977); KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 41–43, 46, 48, 75, 80, 80–81, 88–89, 91, 98.

Genealogy is essential because the concepts and categories of law are more stable than the meanings they support. These legal formations are put to different uses over time. They accrue meanings, which they then carry forward even as they are put to new uses. Think, for example, of the concept of sovereignty as it moves from a religious, to a monarchical, to a popular meaning. It carries forward remnants of all of its previous deployments. To explore the meaning of popular sovereignty, we have to trace the way in which this secular concept continues to draw on a sense of the sacred, ideas of mystery, and the awe of power.

The remnants of past meanings endure not because they are included in dictionary definitions, but because we find ourselves responding to them. They are drawn up into claims, narratives, and arguments. They remain as long as they persuade us, that is, as long as we respond to them. They become linked to other meanings as they are deployed in new contexts. In time, they may simply fail to move us.

Thinking of genealogy as legacy—not causation—introduces the importance of the second methodological prong: Architecture. My example of the concept of sovereignty³⁷ is misinterpreted if approached as if it refers to a subject that accrues meanings as accidental attributes. The meaning of sovereignty is produced only by its place in an imaginative network of possible uses. We do not first have singular words with defined meanings, which we then link according to grammatical rules. Rather, language is a network of relationships that constitute meanings. We know the meaning of words by knowing how to use them in propositions, and of propositions by knowing how to use them in narratives.

Culture is like a language: A network of meanings in which the elements gain their meaning from the uses to which they are put in their relationships with other elements.³⁸ Sometimes those uses are oppositional, that is, we distinguish one meaning from another. Sometimes, they are entire narratives: We have paradigmatic narrative forms by which we organize our experience. There are endless variations possible in the use of these narratives, just as there are endless possibilities in the juxtaposition of different concepts.

To understand the culture of law's rule, then, we have to be willing to trace out this constant proliferation of meaning.³⁹ This is the architectural method. Shifts in meaning anywhere in the network can have effects elsewhere—we find ourselves no longer quite believing what used to seem obvious or we make distinctions where we did not see them previously. Think of the way in which notions of equality have shifted over the last fifty years. Again, these shifts of meaning are not causal; they are interpretive. We move through our lives persuading and being persuaded. We find our way among the resources of the culture. Of course, we do not do this alone, but with all those with whom we come in contact, directly or indirectly.

³⁷See KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 60, 71–72, 106–17. See also KAHN, *FINDING OURSELVES AT THE MOVIES*, *supra* note 1 (analyzing the ideas of family, faith, and sovereignty that form part of the modern social imaginary).

³⁸KAHN, *THE REIGN OF LAW*, *supra* note 1, at 35–38.

³⁹Genealogy does not consider that phenomena or practices happen in linear fashion. New phenomena do not replace past phenomena completely; they are not watertight compartments that can replace each other and that the historian connects by causality. The past forms of the phenomena always leave traces in the new, mutated forms. The present iteration of the phenomenon always includes its past. Understanding contemporary legal practice is, in part, understanding the tracks that its previous forms left in the elements and dynamics that currently constitute it. In legal culture, this relationship between the past and the present is described in a particularly sharp manner. Legal categories are much more stable than their meanings. Categories are maintained for long periods, but not necessarily with the same meaning: Today's concept may express something different from what it expressed previously. Nevertheless, the meaning it has in the present partly reflects the marks that past uses have left on its conceptual body. Genealogy is also closely linked to architecture. The former focuses on the emergence and transformation of phenomena and practices. The latter focuses on the structures of current beliefs and practices. Architecture has the objective of describing and studying how subjects experience the rule of law today. It tries to account for and examine the characteristics of the web of meanings that constitute the different legal cultures at present. This dimension of the method that cultural analysis is committed to seeks to specify how the legal culture is different from other beliefs and practices of the political community. KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 41–43, 63–65, 73–74, 78–82, 93, 98; KAHN, *THE REIGN OF LAW*, *supra* note 1, at 35, 40.

Because meanings are carried forward in and through an entire network of meanings, we can never engage genealogy without pursuing architecture. Because we never construct meanings from an original position, but always stand within inherited practices and beliefs, we can never do architectural inquiry without genealogy.

2. *Would CAL Not Benefit from the Many Participatory Research Methods Used by the Social Sciences? Some Would Say That They Allow a Better Balance Between Distance from the Object of Study and Scholars' Political Commitment.*

There is a disciplinary divide between CAL and the social sciences.⁴⁰ Humanistic inquiry does not “benefit” from the social sciences. Rather, humanistic inquiry can make no appearance within the social sciences at all.

As a science, the social sciences investigate the causes of phenomena, including cultural phenomena. But CAL is an interpretive inquiry. Causal explanations are reductionist: They seek a parsimonious account of the necessary conditions for the production of a phenomenon. Interpretive accounts move in the opposite direction. They are without limit, becoming better as they become richer and broader. Interpretation is dialogic in form, beginning from the experience of asking of another what she means by a statement or action. The response invites more questions and more responses. This is a cycle without end, which means that the idea of a final interpretation is a category mistake.

This does not mean that every CAL interpretation is literally a dialogue, but it does mean that each interpretation imagines a kind of conversation with those who maintain the beliefs and practices that are the subject matter of the inquiry. Those beliefs and practices start with those of the scholar herself. I do not explain the meaning of my commitments by pointing to the causes of them.⁴¹ I do not understand how I occupy a world of meaning by pursuing data on who else believes as I do or under what circumstances such beliefs are likely to arise. The social sciences are no doubt better at predicting behavior than CAL, but they make no advance at all in explaining the world of meaning created and sustained by the imagination.

This is a perfectly obvious proposition when we turn from the social to the aesthetic imaginary. No one would think we could understand the work of art through the social sciences, although we might learn a lot about the conditions under which artists produce or market their works. These accounts do not think of themselves as offering an interpretation of the art. They are not concerned, for example, with placing the work in a history of representation, with asking how religious themes become secularized, or with exploring the vision—redemptive or otherwise—of the artist. The situation is no different with respect to the social imaginary. Its products are no less imaginative works to be interpreted, for interpretation is our way of occupying the world produced by the imagination. CAL, accordingly, must work with a method adequate to its task of interpretation. To this, the social science can make little contribution.

F. Philosophical Influences: Socrates, Kant, Cassirer, and Foucault

1. *Why Are Subject, Space, and Time Key Categories for CAL?*

These categories are central to Kant's *Critique of Pure Reason*⁴² because he understands them to frame our representation of events in the world. Everything that happens has a time and a place;

⁴⁰KAHN, MAKING THE CASE, *supra* note 1, at 173–79.

⁴¹Cultures are understood by going within their conceptual networks. Accounting for a culture—and understanding it—is therefore an interpretative practice. Cultural analysis seeks to understand this set of beliefs and practices on its own terms; it seeks to make a dense description of the webs of meaning that these beliefs and practices construct. The cultural analysis of law consequently does not pursue the aims that the social sciences seek to achieve when they have culture as their object of study. See CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* (1973).

⁴²IMMANUEL KANT, *CRITIQUE OF PURE REASON* (Cambridge Univ. Press 1998).

all representation is consciousness to a subject. By insisting that our experience of a phenomenal world is a construct of our imagination, Kant links the very idea of objectivity to the unity of a subject's perception: The world is always a world for someone.⁴³

These same ideas of the constructed character of our experience of the world are central to CAL. Now, however, the inquiry focuses on how these categories frame the legal imaginary. We are no longer talking of what Kant imagined as empty Euclidean space and time. Rather, we are talking about the territory and history of a community.⁴⁴ That history gives meaning to the territory the community occupies, just as that territory points to the history that counts in legal decision-making. We see the centrality of these concepts immediately when, in response to a legal controversy, we ask questions about jurisdiction and precedents.

Answering these questions, we construct a subject. Just as Kant saw that there must be a unitary subject to bind perception across time, there must be a unitary collective subject if we are to understand how past decisions can be authoritative in the present. The precedents are decisions of and for a community that occupies a particular jurisdiction. Absent such a unified, collective subject, appeals to time and place would appear arbitrary.

These categories become extremely complex as one investigates how they are actually deployed by the legal imaginary. Law not only has a past; it has a future. The past includes not only particular precedents, but also the origin of the entire order of law—revolution in the American imaginary. Space includes territory, as in jurisdiction, but also includes property, as in ownership. How territory relates to property is yet another complex question of interpretation. Finally, the collective subject that is the community must be connected to the individual subject as citizen. This subject is, accordingly, both the source of law and the subject of legal regulation. This, in turn, is tied to ideas of the public and the private, which take us back to ideas of territory and time.

These ideas of subject, time, and space are not matters of definition. They do not exist as a menu of choices from which we proceed to construct a legal order. Rather, they offer a family of related concepts that are bound to each other through the narratives that circulate in the community. We give accounts to ourselves and to each other of what the law is and why we are bound by it. Most often, these narratives are constructed in an effort to persuade—we argue constantly about what the law is. By arguing, we construct the categories of our experience—including ourselves—even as we rely on the categories that are already to hand. CAL is a way of reflecting upon and interpreting these narratives.

2. In Which Ways Have Foucault and Cassirer Been Influential to CAL? Are There Other Relevant Influences on CAL?

CAL stands firmly within the tradition of humanistic inquiry.⁴⁵ More particularly, it stands within the long tradition of philosophical inquiry in the West. Philosophy as a meditation on one's own practices and beliefs begins with Plato's accounts of Socrates' disruptive activities in the agora. CAL aims for a similar sort of disruption: A pause for self-examination within the practices of law.

In its emphasis on the social imaginary, CAL stands in the Kantian tradition. It draws on both Kant's First and Third Critiques. On the First in its interest in the categories by which we organize

⁴³See KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 34–41.

⁴⁴For Kant, the subject that unifies the experience is a generic subject that inhabits an empty geography and an abstract history. This is not the case for the cultural analysis of law. Its object of study is the different types of incarnated subjects that inhabit specific geographies and have particular histories. The cultural analysis of law nourishes from Ernst Cassirer's expansion of Kant's work to include the various cultural formations that human beings effectively construct. See ERNST CASSIRER, *PHILOSOPHY OF SYMBOLIC FORMS*, vols. 1–3 (Yale Univ. Press 1953–1957); KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 55–86.

⁴⁵On CAL and philosophical tradition, see KAHN, *THE CULTURAL STUDY OF LAW*, *supra* note 1, at 31–34; KAHN, *THE REIGN OF LAW*, *supra* note 1, at 151.

experience;⁴⁶ on the Third in its understanding of imagination as the site of a free interpretive practice.⁴⁷ Cassirer is particularly relevant because of his expansion of this Kantian approach to distinct cultural formations. He shows that the systemic quality of the imagination takes plural forms, each of which stands in need of critical thought.⁴⁸ CAL is that critique turned toward the rule of law.

By the late twentieth century, philosophy, with the significant exception of Charles Taylor,⁴⁹ had mostly gone in different directions. Interest in investigating the forms of the imagination moved into the fields of cultural anthropology and sociology—thus, my interest in Clifford Geertz and Michel Foucault. CAL's understanding of power as the formation of the imagination draws from them. CAL's equal concern with freedom, however, points back to the philosophical—rather than sociological—background of the discipline. Power will get us only so far in understanding what we say and how we judge. Judgment—our own and that of courts—remains an irreducible site of freedom. Were this not true, there would be no grounds to respect those cultural productions that are the object of CAL's inquiries.

G. CAL and Comparative Law

1. CAL's Main Aim Is to Examine the Symbolic Structures of Particular Cultures. Yet, You Mentioned Comparative Law in Your Last Answer. How Do You Connect CAL with Comparative Law? Aren't They Incompatible?

You are right to suggest that there is some tension here, but you go too far to suggest incompatibility.⁵⁰ CAL's first concern is to encourage a self-conscious reflection upon the forms of the political-legal imaginary with which one actually operates in the world. Today, when many people experience forms of legal pluralism, there may be no single story to tell even with respect to a single community's legal imaginary. Some of my work, for example, has looked at international law, observing the very different imaginative structures that operate there.⁵¹ The same persons may find themselves committed to both, even though there is a considerable gap between them. I recently published an essay looking at Chief Justice John Marshall's distinctly different understandings of constitutional law and the law of nations. There is the beginning of a comparative legal culture project here, even before one has left the precincts of the Supreme Court.

Much of the motivation for contemporary study of comparative law does not carry much weight in CAL. As with most other forms of legal study, comparative work often pursues the reform of law.⁵² One compares different jurisdictions' approaches to similar problems in order to determine whether there are legal mechanisms and rules that should be borrowed from another jurisdiction to improve one's own. Or one might look to the way in which proportionality review went forward with respect to a similar problem in another jurisdiction in order to learn something about the strength of different interests in the balance. As elements of a program of legal reform, these are not factors of interest to CAL.

Comparative work is attractive to CAL just insofar as it sharpens the analysis of the legal imaginary actually at work in a jurisdiction. It contributes to this process in two ways. The first way is completely unremarkable: Looking elsewhere is a way of realizing the contingency of one's own

⁴⁶See KANT, *supra* note 42.

⁴⁷See KANT, *supra* note 42.

⁴⁸See CASSIRER, *supra* note 44.

⁴⁹See, e.g., CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY* (Harv. Univ. Press 1992).

⁵⁰With regard to the relationship between CAL and comparative law, see Kahn, *supra* note 3; KAHN, *MAKING THE CASE*, *supra* note 1.

⁵¹Paul W. Kahn, *Lessons for International Law from the Gulf War*, 45 *STAN. L. REV.* (1993); Paul W. Kahn, *Speaking Law to Power: Popular Sovereignty, Human Rights, and the New International Order*, 1 *CHI. J. INT'L LAW* (2000); KAHN, *POLITICAL THEOLOGY*, *supra* note 1.

⁵²On functionalism, see Alan Watson, *Comparative Law and Legal Change*, 37 *CAMBRIDGE L.J.* 313 (1978).

situation. Of course, this does not follow simply the recognition of difference. For a very long time, Westerners looked elsewhere and saw merely primitive or less civilized versions of themselves, as if the entire world was on the way to becoming ourselves. The imperialism of the legal imaginary is not yet completely behind us, but it is sufficiently distant that the recognition of difference can contribute to the critical, detached attitude that is a condition of CAL.

The second way in which comparative work contributes to CAL is substantive. One way to think about the relationship of genealogy to architecture is that the former provides the materials that are continually reformed by the latter. That genealogy extends back to the very origins of Judeo-Christian belief. I have always thought of the American legal imaginary as one genus within the broad species of the Western rule of law. These different genera share broad aspects of a common genealogy. For one thing, we are never all that far from the Judaic ideas of covenant and Christian ideas of sacrifice. Comparative work, accordingly, is a way of exploring the relationship of architecture to genealogy, of making clear just what the genealogy provides and observing how plural forms of law emerge by putting various aspects of this common heritage to different uses.⁵³

⁵³The analysis of US judicial opinions that Kahn offers in *Making the Case* is partly an exercise in comparative law.