

2014

Law and the Possibilities of Peace

Yxta Maya Murray
Loyola Law School

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/sjsj>

Recommended Citation

Murray, Yxta Maya (2014) "Law and the Possibilities of Peace," *Seattle Journal for Social Justice*: Vol. 13 : Iss. 2 , Article 3.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol13/iss2/3>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized editor of Seattle University School of Law Digital Commons. For more information, please contact coteconor@seattleu.edu.

Law and the Possibilities of Peace

Yxta Maya Murray*

INTRODUCTION

This essay introduces the Law, Peace, and Violence Symposium, which took place at Seattle University School of Law on March 14, 2014. In its first part, I describe the foundations of a Law and Peace school of thought, whose forefathers include philosopher and political leader Vaclav Havel, legal scholar Robert Cover, peace theorist Johan Galtung, Partners in Health co-founder Paul Farmer, and law professor Carrie Menkel-Meadow.

These philosophers offer us three forms of counsel that aid a law and peace jurisprudence: they (1) help us fathom how law encourages violence; (2) aid our definitions of the very concepts of violence and peace; and (3) in some cases, offer hope that the law might promote peace, or at least anti-violence. Havel proves to be one of the most compelling of these thinkers, particularly in his exhortation that we must live “within the truth,”¹ and I will use his counsel as a frame for this essay. I argue that if we are to live in truth when it comes to matters concerning jurisprudence and peace, we must contend not only with Havel’s demands but also with Yale Law

* Professor of Law, Loyola Law School. Thanks to Mark Drumbl, Mary L. Dudziak, David Glazier, Priscilla Ocen, Roxana Florea, Bernard Hibbits, Dean Spade, Kathy Abrams, Chandan Reddy, Amy Maguire, Uché Ewelukwa, Jane Stoeber, Kathleen Kim, Gabriel Arkles, David Dana, John Kang, Nehal Patel, Deborah Weissman, Nadav Shoked, the editors of the *Seattle Journal for Social Justice*, and Seattle University Law School’s Dean Annette Clark. Special thanks to Sonia Katyal, Mary Dudziak, Angela Harris, and Paola Bacchetta. Please note that in this article, I refer to symposium participants by their first names after their first mention. I do this out of a sense of warmth for the panelists, and also as an experiment in upending law review conventions that create hierarchies. All complaints can be sent to yxta.murray@ll.edu.

¹ See text accompanying note 19, *infra*.

Professor Robert Cover's: Cover urged us to acknowledge that law is an agent of violence. He maintained that law could never achieve peaceful aims.

Johan Galtung and Paul Farmer add to the foundations of a jurisprudence of nonviolence by helping us define our terms. They observe different forms of violence and peace. Galtung describes cultural violence as social and legal constructs that make violence “look and feel right.”² Galtung and Farmer also define “structural violence,” which exists when there are unequal distributions of disease, death, inequality, and blood violence through legal and social means.³ Galtung additionally identifies “negative peace,” being the absence of violence, and “positive peace,” which he accounted as “social justice.”⁴ Together with Cover and Havel, these writers and activists help us ask critical, first-principles questions about a law and peace project; namely, can law create positive or negative peace if it manufactures cultural violence that hides the structural violence it commits? While Cover clearly concluded no, I will recount how Menkel-Meadow gives us some hope for yes.

² Johan Galtung, *Cultural Violence*, 27 J. OF PEACE RESEARCH 291, 291 (1990).

³ My paraphrase of Galtung borrows from CYNTHIA COCKBURN, *ANTIMILITARISM: POLITICAL AND GENDER DYNAMICS OF PEACE MOVEMENTS* 242, 255 (2012). See also Johan Galtung, *Violence, Peace, and Peace Research*, 1 PEACE STUDIES 21, 31 (1969) (“the general formula behind structural violence is inequality, above all in the distribution of power.”). Nancy Scheper-Hughes and Philippe Bourgois also include “humiliation” in the list of harms performed by structural violence. See NANCY SCHEPER-HUGHES & PHILIPPE BOURGOIS, *VIOLENCE IN WAR AND PEACE* 1 (2004) (“Structural violence—the violence of poverty, hunger, social exclusion and humiliation—inevitably translates into intimate and domestic violence.”) In 1990, Galtung also wrote of structural violence’s effects on the “mind and spirit” as well as structural violence’s relationship to environmental destruction. See his *Cultural Violence*, *supra* note 2, at 294. For Paul Farmer, see PAUL FARMER, *PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS AND THE NEW WAR ON THE POOR* 40 (2005) (describing conditions like “grinding poverty” as a form of structural violence.).

⁴ Galtung, *supra* note 3, at 190.

In the second part of this essay, I describe the proceedings of the symposium. In Seattle, we learned from four different panels: “Law, Peace, and Property”; “War and Peace”; “Law, Peace, and Human Rights”; and “Peacemaking, Resistance, and the Law.” Our panelists included Mark Drumbl, Mary L. Dudziak, David Glazier, Priscilla Ocen, Bernard Hibbitts, Dean Spade, Kathy Abrams, Chandan Reddy, Amy Maguire, Uché Ewelukwa, Jane Stoeber, Kathleen Kim, Gabriel Arkles, David Dana, Nadav Shoked, John Kang, Nehal Patel, and Deborah Weissman. These pioneers introduced us to many ways the law makes real Cover’s warning that jurisprudence proves to be an instrument of violence. The panelists also delivered critiques of the law and peace project.

During the property panel, scholars explained how property law can foster human and environmental wreckage but also how property “outlaws” are pushing its boundaries to create a more inclusive and peaceable jurisprudence. In the “War and Peace” panel, we discovered how the law suborns war. In the human rights panel, we learned about the sometimes violent roots of human rights traditions, and the ways that human rights law can do harm while pretending to heal. In the resistance section, panelists questioned whether peace is a valid objective for legal reform, and whether nonviolent protest is the gold standard of resistance. Together, the panelists’ revelations and challenges raised crucial inquiries about our definitions of peace and violence, and about the prospects of a jurisprudence of nonviolence.

In the third part of this essay, I harness the lessons learned from the symposium to articulate goals for the law and peace undertaking. First, I note that peace scholars and activists who care about law must develop a larger vocabulary for describing violence and peace. Legal scholars have more words for violence than we do for peace, and also understand brutality in more myriad ways than we do harmony. A larger lexicon for both conditions will aid a law and peace endeavor. Second, I note that our methods must attend to the local culture that is being addressed, and also

interrogate our aims, since history is rife with violence committed in the name of an abstract goal of peace. Third, I face up to Cover's challenge and admit that the law is hostile to peace. Very often, law cannot achieve peaceful ends. I conclude that we must begin to think about post-legal methods of alleviating avoidable violence and nourishing social justice. I suggest imagining accompaniments, encores, accessories, and alternatives to legal thought that might create uplift. But I argue that we should do this in tandem with a jurisprudential effort to allay cultural and structural violence and to foment the possibilities of affirmative peace.

I. THE POSSIBILITIES OF A JURISPRUDENCE OF PEACE, AND FOR LIVING "WITHIN THE TRUTH"

When we ask whether the law can further the possibilities of peace, the first answer we hear is no. Law is violent, we are told by some. Law frightens the bad man into submission, others explain. Law is retributive. Law is racist. Law is classist. Law is sexist. You cannot legislate good will. We are powerless to make the law otherwise.

Yet as the lawyer and poet Wallace Stevens once wrote, "[a]fter the final no there comes a yes, [a]nd on that yes the future world depends."⁵

And, as another poet counseled, beneath the ashes of our powerlessness smolders an auspicious strength. Within our obedience and haplessness clamors a stubborn imprudence that seeks the truth.⁶

But what is the truth?

In 1978, ten years after the Prague Spring, and 11 years before he would become president of Czechoslovakia and then the Czech Republic in the nonviolent change of state called the Velvet Revolution, Vaclav Havel

⁵ Wallace Stevens, *The Well Dressed Man With a Beard*, in *THE COLLECTED POEMS OF WALLACE STEVENS* 247 (2011).

⁶ See discussion of Havel's *Power of the Powerless*, *infra* note 7.

wrote the now-famous essay *Power of the Powerless*.⁷ Here, the poet and playwright described the costs of living in a totalitarian regime, which in his country's case was the Soviet dictatorship. Havel argued that tyrannical rule entices the people into a voluptuous surrender. "Elaborat[e]" and "complet[e]," he wrote, the totalitarian or post-totalitarian nation proves to be almost a "secularized religion."⁸ In its readiness to supply answers to the heart-clenching questions that face every person—what is right? what is wrong? what should I do?—the overreaching state offers an ideology so delirious that it anesthetizes its acolytes with its "hypnotic charm."⁹

Havel cautions us that indulging the temptation to follow orders, to do things as they have always been done, precipitates a deadly Fall. "The principle involved here is that the center of power is identical with the center of truth."¹⁰ Can we resist such a catechism? Havel imagines that all people share some essential characteristics, that "[i]n everyone there is some willingness to merge with the anonymous crowd and to flow comfortably along with it down the river of pseudolife."¹¹ If we succumb to this lure, Havel cautions, we are lost. Except, there does remain some hope: he also allows for the possibility that within that same soul doomed to conformity vibrates another creature, a seeker who hungers for something real, even if it's confusing or painful.¹²

Which of these longings will direct our destinies? Havel, the able charismatic leader, assures us without irony that our need for honesty will always push its way forward: "In everyone there is some longing for

⁷ Vaclav Havel, *Power of the Powerless*, in *POWER OF THE POWERLESS: CITIZENS AGAINST THE STATE IN EASTERN EUROPE* 10 (John Keane ed., 1985).

⁸ *Id.* at 11.

⁹ *Id.*

¹⁰ *Id.* at 12.

¹¹ *Id.* at 20.

¹² See text accompanying note 13, *infra*.

humanity's rightful dignity, for moral integrity, for free expression of being and a sense of transcendence over the world of existence."¹³

Havel illustrates this contest between the interior serf and rebel with the story of an Everyman—a greengrocer. Havel's greengrocer has his modest business, selling his onions and carrots, and one day the state orders him to post a slogan in his window that exhorts passersby, "Workers of the World, Unite!"¹⁴ "Enterprise headquarters" has delivered to him this little stigma, and he knows he must put it up or face the loss of his profession, and even hazard social and political banishment.¹⁵ So, he pastes it to his window. He doesn't read it. No one else reads it. No one believes it. "He put up [all such signs] simply because it has been done that way for years, because everyone does it, and because that is the way it has to be."¹⁶

But one day the greengrocer blanches at this task. He tears the sign from his window because something "snaps."¹⁷ After that, the dominos begin to tumble. He commences following his conscience. He speaks up when he sees injustice. He stops voting in elections he knows are rigged. He supports others who also refuse to float down the river of least resistance. He does this even while he understands that he will pay. And he's right because the "bill is not long in coming."¹⁸ Soon after his rebellion, his boss demotes him. The authorities deny him permission to go on holiday in Bulgaria. His superiors and associates begin to harass him. And yet the greengrocer invited such condemnation by renouncing the pseudolife, and living instead in the dolorous vibrancy that Havel calls "living within the truth."¹⁹

¹³ *Id.*

¹⁴ *Id.* at 13.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 21.

¹⁸ *Id.*

¹⁹ *Id.*

“Living within the truth” is *Power of the Powerless*’s urgent takeaway. It energized the 1980s breakaway solidarity movement in Poland, pushing dissidents like Zbigniew Bujak to resist Soviet control.²⁰ Chinese refuseniks harnessed its velocity in the 1990s.²¹ Feminists applied the provocation to the embarrassment of patriarchy.²² More recently, ecologists lean on Havel’s exhortation when wrestling with the causes of global warming.²³

The more one pushes at Havel’s urging that we live in truth, though, the less clear his mandate becomes. Havel defines his beguiling doctrine in the negative, showing how a failure to resist the unjust state prohibits truthful life. In his words: Living within a lie is living within a system that proves to be “permeated with hypocrisy and lies,”²⁴ where the “working class is enslaved in the name of the working class, and the complete degradation of the individual is presented as his ultimate liberation.”²⁵ False-life also exists

²⁰ See Robert J. Gilbert, *Transformation Political Leadership: Insight from the Example of Vaclav Havel*, in TRANSFORMATIONAL POLITICS: THEORY, STUDY, AND PRACTICE 206 (Stephen Brim Woolpert, Christa Daryl Slaton, & Edward W. Scherwin eds., 1998). Bujak is quoted as saying:

This essay reached us . . . at a point when we felt we were at the end of the road. . . . Reading it gave us the theoretical underpinnings for our activity. It maintained our spirits; we did not give up. . . . When I look at the victories of Solidarity, and of Charter 77 [which criticized Czechoslovak law], I see in them an astonishing fulfillment of the prophecies and knowledge contained in Havel’s essay.

Id.

²¹ See GEREMIE BARMÉ, IN THE RED: ON CONTEMPORARY CHINESE CULTURE 360 (2013) (discussing Cui Jian, “the leading dissident rock ‘n’ roll star of Beijing,” titling his 1998 album *Power of the Powerless*).

²² CHARLOTTE KRAUSE PROZAN, FEMINIST PSYCHOANALYTIC PSYCHOTHERAPY 66 (Leslie Block ed., 1992) (“Havel helps us to see how essential conformity is to a social system and the ideology by which it is maintained.”).

²³ JOHN BARRY, THE POLITICS OF ACTUALLY EXISTING UNSUSTAINABILITY: HUMAN FLOURISHING IN A CLIMATE-CHANGED, CARBON-CONSTRAINED WORLD 285 (2012) (“Though clearly written with the then communist regime in mind, Havel’s call to ‘live in truth’ is equally pertinent to consumer capitalism.”).

²⁴ Havel, *supra* note 7, at 15.

²⁵ *Id.*

where the “use of power to manipulate is called the public control of power, and the arbitrary abuse of power is called observing the legal code.”²⁶ Such a system “pretends to respect human rights. It pretends to persecute no one. It pretends to fear nothing. It pretends to pretend nothing.”²⁷

Readers may respond that Havel’s apocalyptic vision has no application to the law of the United States. After all, participants in the March 14, 2014, symposium on Law, Peace, and Violence do not live in Soviet-controlled Czechoslovakia. We need not put up any posters. We supposedly do not buckle beneath learned helplessness. We do not believe ourselves enthralled with state propaganda’s hypnotic charm. Instead, we live in vivid democracies, where we cherish hard-won freedoms.²⁸ We enjoy the right to speak, to teach, to write. Or—do we? Many Westerners congratulate themselves on their licenses to vote, to travel, and to be free of most forms of racial and gendered discrimination. In the United States, we witness an expansion of the right to marry and to adopt. Women still retain some rights over their bodies. But in the wake of US spying allegations, new abortion limitations, and deportation scandals, even these guardians can seem spectral at best. And if due process, free speech, and Eighth Amendment protections do exist in this part of North America, these latitudes are certainly not universal.

Moreover, this procession of formal rights is not the whole story of “the law.” I invited each panelist to deliver a paper at the March gathering because she or he had detected how the law *does* bewitch us with elaborate

²⁶ *Id.*

²⁷ *Id.*

²⁸ *But see* Dean Spade, Assistant Professor at Seattle University School of Law, Remarks at the Law, Peace, and Violence Symposium (Mar. 14, 2014), <http://www.law.seattleu.edu/multimedia-library/seattle-journal-for-social-justice/sjsj-public?destinationID=EcBMTObDV0SXshOhlQtrng&contentID=W-nRLwVxo0uolKAu3zL-9A&orderBy=videoDateProduced&orderByDirection=desc&pageIndex=1&pageSize=10> (commenting during the Resistance panel, when he replied to one of my questions, “I do not believe that we live in a democracy”).

and complete assurances that things are as they should and have to be. The panelists at this symposium do not merge with the anonymous crowd, but instead recognize how our concordant self-governance is granted through a covenant of legal rules, regulations, and prohibitions that may indeed amount to Havel's totalizing ideology, the state's "secularized religion."²⁹ This dazzling indulgence threatens to distract us from a key revelation: the law perpetuates violence upon the people.

At our symposium we wondered at this prospect that the law induces violence. When defining the scope of jurisprudential brutality, we first summoned images of waterboarding and drones and refreshable kill lists, and history's long ledger of law-supported war. Yet we also recognized that legal violence does not remain contained in offshore coordinates such as Vietnam, Afghanistan, and Guantanamo Bay. It also perplexes domestic life. Our discovery was not without precedent: in 1986 Yale Law Professor Robert Cover published an essay called *Violence and the Word*,³⁰ a work as nerve-wracking as that of other legal provocateurs like Malcolm X, Catharine MacKinnon, and Oliver Wendell Holmes. The law *is* brute force, Cover argued, whether here or there: "Legal interpretation takes place in a field of pain and death," he wrote. "Neither legal interpretation nor the violence it occasions may be properly understood apart from one another."³¹

According to Cover, the law is violent because of its chronic human breakage: every minute it wrests people from their freedom, their property, their families, and their lives.³² To consult the work of our panelists, we see that nothing has changed since Cover published his mid-1980s railings. Dean Spade and Gabriel Arkles have written of the violence of mass

²⁹ See Havel, *supra* note 7, at 11.

³⁰ See generally Robert Cover, *Violence and the Word*, 95 YALE L.J. 1061 (1986).

³¹ *Id.* at 1061.

³² *Id.* ("A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life.")

incarceration,³³ and Priscilla Ocen has taught us of the raced violence that occurs in prisons.³⁴ David Dana has described the pain suffered by those ousted by eminent domain.³⁵ Deborah Weissman has written of family disbanding and eruptions of domestic violence in the era of financial downturn, and of the criminal justice system's role in these problems.³⁶ Mary Dudziak and David Glazier have written of the United States' unfading state of war.³⁷

We may discover even more violence than that. Not only does the law impose violence through commission, say, in its blight condemnations, crusades, and hatchings of prison systems, but it also performs violence through omission. For example, I live in a place called Studio City, California, a modest-to-sumptuous enclave that nuzzles Hollywood studios such as NBC and CBS. In my weekly walkabouts to Trader Joe's or

³³ See, e.g., Dean Spade, *The Only Way to End Racialized Gender Violence in Prisons is to End Prisons: A Response to Russell Robinson's "Masculinity as Prison,"* 3 CAL. L. REV. CIRCUIT 184, 193 (2012) ("Because of the nature of our criminal systems and prisons, there is not a fair or safe way for queer, trans, and gender non-conforming people, or anyone, to be imprisoned."); Gabriel Arkles, *Marriage and Mass Incarceration*, 37 N.Y.U. REV. OF LAW & SOC. CHANGE 13, 13 (2013) ("Conditions of confinement for all prisoners are violent and at times deadly.").

³⁴ See generally Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration and the Shackling of Pregnant Prisoners*, 100 CAL. L. REV. 1239 (2012).

³⁵ David A. Dana, *The Law and Expressive Meaning of Condemning the Poor After Kelo*, 101 NW. U. L. REV. COLLOQUY 5, 19 (2006).

³⁶ See generally Deborah M. Weissman, *The Personal is Political—And Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387 (2007).

³⁷ See generally MARY DUDZIAK, *WAR TIME: AN IDEA, ITS HISTORY, ITS CONSEQUENCES* (2012). As David Glazier explained:

Despite recent bipartisan support and several years of effort to improve their legal foundations, the reality is that the current military commissions remain badly flawed. It appears that a primary, albeit typically unstated, reason underlying their continued use is an effort to secure convictions that might be unobtainable in courts meeting accepted U.S. domestic and international legal standards, including the use of evidence gained through coercion or even torture.

David Glazier, *Still a Bad Idea: Military Commissions Under the Obama Administration* 7 (Loyola-LA Legal Studies, Paper No. 2010-32, 2010).

Ralph's, I spy well-upholstered TV directors gazing warily at the world from beneath their trucker caps, as well as legions of shining, supernatural women darting in and out of boutiques. Cars glisten past. Luxury cross-body bags bang against Pilates-hewn thighs. Nannies push infants about in thousand-dollar strollers.

Yet, we have a homelessness problem.³⁸ "We." Lowering my gaze from the marauding directors and actress-wives, I see other people. The members of this second, shadow community wear unwashed rags and squat in the doorways of Banana Republic and Barnes & Noble with their hands outstretched. They lay down on bus benches. They lay down on the sidewalks. The hard lines of their faces reveal the rigors of their lives, and their shredded voices also express a hardship so malign that it must amount to a kind of violence.

And still, the shining women walk by. The auteurs walk by. I walk by. The law does nothing about this. In my criminal law class at Loyola Law School, I teach my students that most jurisdictions forgo passing Good Samaritan laws, which would require us to help those in need.³⁹ In the newspaper, I read that Los Angeles is in financial bedlam, and that our poverty problem is only escalating.⁴⁰ But no laws bring deliverance.

³⁸ Studio City homelessness is omnipresent and any resident can describe it to you. It doesn't seem to be much of a news item, however. The last report I can find on Studio City homelessness comes from a 1990s article in the Los Angeles Times. See Carol Watson, *Booklets Point Way for Studio City Homeless*, L.A. TIMES, Feb. 19, 1993, http://articles.latimes.com/1993-02-19/local/me-222_1_studio-city. See also *Rebranding Republicans in California*, ECONOMIST, Sep. 13, 2014, <http://www.economist.com/news/united-states/21616962-neel-kashkari-will-not-unseat-californias-democratic-governor-he-may-help-his-party> ("California's poverty rate [is] the worst in America if you account for the cost of living.").

³⁹ See, e.g., Susan Hoffman, *Statutes Establishing a Duty To Report Crimes or Render Assistance to Strangers: Making Apathy Criminal*, 72 KY. L.J. 827, 829 (1984) ("The undisputed general rule under both the criminal law and tort law is that there is absolutely no duty to rescue a stranger.") (internal footnotes omitted).

⁴⁰ Adam Nagourney, *Report Finds Los Angeles at Risk of Decline*, N.Y. TIMES, Apr. 9, 2014, <http://www.nytimes.com/2014/04/10/us/report-finds-a-los-angeles-in-decline.html?>

Moreover, in a recent State of the Union address, President Barack Obama touched on the minimum wage,⁴¹ but that will not do enough to address the manifold causes of poverty and homelessness.⁴²

So what good is the law if it will not relieve the worst suffering? The answer may be *not much*, or at least less than we supposed. This truth beckons. It stings. And so molested, we wake up. We begin to wonder if human degradation and want that go unrepaired by law could qualify as a kind of violence.

When studying this key question, I have found that Havel's encouragement to pursue the truth and Cover's conception of law's broad brutalities join productively with the work of renowned peace theorists and activists Johan Galtung and Paul Farmer. Galtung, a white-haired, bespectacled philosopher whose bemused air and reliance on flow charts

hpw&rref=us; LOS ANGELES 2020 COMMISSION, A TIME FOR ACTION 2, (2014), available at <http://www.la2020reports.org/reports/A-Time-For-Action.pdf> ("Far too many Angelenos live in poverty, both those unemployed and those earning low wages."); see also *id.* (explaining that the Commission would not address homelessness as it proved "beyond the scope of what [it] [was] asked to address.").

⁴¹ President Barack Obama, State of the Union Address (Jan. 28, 2014), <http://www.whitehouse.gov/the-press-office/2014/01/28/president-barack-obamas-state-union-address> ("In the coming weeks, I will issue an Executive Order requiring federal contractors to pay their federally-funded employees a fair wage of at least \$10.10 an hour—because if you cook our troops' meals or wash their dishes, you shouldn't have to live in poverty."); Reid J. Epstein, *President Obama Signs Minimum Wage Executive Order*, POLITICO, Feb. 12, 2014, <http://www.politico.com/story/2014/02/minimum-wage-executive-order-barack-obama-103450.html>.

⁴² See, e.g., NAT'L COAL. ON HOMELESSNESS, EMPLOYMENT AND HOMELESSNESS, NCH FACT SHEET #4, (2007), available at <http://www.nationalhomeless.org/publications/facts/Employment.pdf> ("[C]limbing out of homelessness is virtually impossible for those without a job."); Susan R. Jones, *Representing the Poor and Homeless: Innovations in Advocacy Tackling Homelessness Through Economic Self-Sufficiency*, 19 ST. LOUIS U. PUBLIC L. REV. 385, 385 (2000) ("Homelessness is caused by the shortage of affordable housing, poverty, low wage work insufficient to pay for basic living expenses, and the lack of services to help people overcome personal challenges such as mental and physical health problems and alcohol and substance abuse.").

belies his status as a revolutionary, was born in Oslo, Norway, in 1930.⁴³ His authorship of works such as *Peace by Peaceful Means* (1996) and *Conflict Transformation by Peaceful Means* (1998) broke first ground in the field of peace studies. Dr. Paul Farmer serves as the Kolokotronis University Professor of Global Health and Social Medicine at Harvard Medical School,⁴⁴ and his efforts to stop the international ravages of curable diseases such as tuberculosis have earned him a prickly hagiography by Tracy Kidder⁴⁵ and other accolades, such as a 1993 MacArthur “genius” grant.⁴⁶ Both men offer additional tools to help us comprehend law’s permission of human want as a form of violence. Specifically, Galtung and Farmer have conceptualized two key forms of violence, being cultural and structural violence.

Cultural violence, writes Galtung, issues from elements of culture, such as the law, that make violence “look, even feel right.”⁴⁷ In other words, there are parts of culture and law that allow us to dismiss violent human indignities as just the way things are. Structural violence consists precisely of how those “things are”: that is, the portioning of disease, death, suffering, and blood violence through governmental or social means. Galtung tallies structural violence as “inequality, above all in the distribution of power,”⁴⁸ and Farmer understands it as “historically given (and often economically

⁴³ See Johan Galtung, *Biography*, TRANSCEND.ORG, <https://www.transcend.org/galtung/> (last visited Oct. 8, 2014).

⁴⁴ See Paul E. Farmer, HARVARD MEDICAL SCHOOL, DEP’T OF GLOBAL HEALTH & SOCIAL MEDICINE, <http://ghsm.hms.harvard.edu/people/faculty/paul-e-farmer> (last visited Oct. 8, 2014).

⁴⁵ See generally TRACY KIDDER, *MOUNTAINS BEYOND MOUNTAINS: THE QUEST OF DR. PAUL FARMER, A MAN WHO WOULD CURE THE WORLD* (2009).

⁴⁶ See MacArthur Fellows Program, *Paul E. Farmer, Medical Anthropologist and Physician*, MACARTHUR FOUNDATION (Jul. 1, 1993), <http://www.macfound.org/fellows/157/>.

⁴⁷ Galtung, *supra* note 2, at 291.

⁴⁸ Johan Galtung, *Violence, Peace, and Peace Research*, 6 J. OF PEACE RES. 167, 175 (1969).

driven) processes and forces [that] conspire to constrain individual agency.”⁴⁹

These concepts might elevate the law in ways that build upon previous revolutionary work: scholars and activists decades back made a home for naming inequality and suffering in legal discourse. Practitioners of critical race theory, feminist legal theory, queer legal theory, disability law, poverty law, vulnerability theory, and restorative and therapeutic justice all seek to repair the discrimination, ignorance, and social insensitivity to human pain that Galtung and Farmer lament.⁵⁰ By working against discrimination, legal

⁴⁹ PAUL FARMER, INFECTIONS AND INEQUALITIES: THE MODERN PLAGUES 79 (2001) (describing how women in Sub-Saharan Africa, India, Thailand, and other parts of Asia “have been rendered vulnerable to AIDS through *social* processes.”).

⁵⁰ I have written of this project as it concerns critical race theory, feminist theory, queer legal theory, and therapeutic justice. *See generally* Yxta Maya Murray, *A Jurisprudence of Nonviolence*, 9 CONN. PUB. INT. L.J. 65 (2009). For the anti-violence commitments of poverty law, see, e.g., the work of Denise G. Reaume:

Social assistance recognizes that those unable to find adequate employment nevertheless need a roof over their heads and food on the table. The alternative is life on the streets having to beg or pilfer, exclusion from most social activities, subjection to the constant risk of violence and disease, the waste of one’s talents, and the likelihood of premature death.

Denise G. Reaume, *Dignity, Equality, and Second Generation Rights*, in *POVERTY: RIGHTS, SOCIAL CITIZENSHIP, AND LEGAL ACTIVISM* 292 (Susan B. Boyd, Gwen Brodsky, & Shelagh Day eds., 2011). For the anti-violence commitments of disability lawyers, see, e.g., Rodrigo Jimenez, *The Right to Live a Life Free of Violence for People With Disabilities: International Human Rights Law and Non-Violence Against People With Disabilities*, in *CRITICAL PERSPECTIVES ON HUMAN RIGHTS AND DISABILITY LAW* 405 (Marcia H. Rioux, Lee Ann Bassler, & Melinda Jones eds., 2011) (“Criminal and discriminatory practices that constitute violence on grounds of disability not only cause harm, suffering or death for each person that experiences them, but also have an unestimated social cost as they deprive society of the full participation of this population group in all the areas of development.”). Martha Albertson Fineman’s work on vulnerability and violence includes *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251, 270 (2010) (describing social institutions that “provide us with resources in the forms of advantages of coping mechanisms that cushion us when we are facing misfortune, disaster, and violence. Cumulatively these assets provide individuals with resilience in the face of our shared vulnerability.”). For resources on restorative justice, see *infra* note 92.

theorists have for many years essayed to repair maldistributions of social power, an effort that identifies them as champions of nonviolence in Galtung's terms.

A Law and Peace movement seeks to build upon this foundation by offering its explicitly peace-focused and idiomatic inquiries to see whether peace theory and activism could help legal strivings against avoidable violence and toward the pacific. It makes nonviolence one of law's express goals, and grafts Galtung's and Farmer's discoveries of cultural and structural violence onto jurisprudence. In so doing, we hope to rise to the challenge set out by Robert Cover in 1986: can law make a home for peace even though its landscape is littered with pain and death? May we gain hope from the likes of scholar Carrie Menkel-Meadow, an early visionary of Wallace Stevens's "yes"?

Like Stevens, Menkel-Meadow answers what seems to be an impossible challenge with an affirmation. She believes that law can be harnessed for nonviolent and fruitful means and encourages us to see beyond its repressive character that so chagrined Cover. As she writes,

we might consider reframing legal issues—to see law as not only prohibitory, but also as pro-active, life-supporting and enhancing, and empowering. To think about what is 'right' and 'good,' and not just what is 'wrong' and punishable.⁵¹

This contrast between Cover and Menkel-Meadow is no mere setting up of quarrelsome antagonists. Instead, it discloses two designs of a Law and Peace school of thought. One aim weighs Cover's warning, which is also a demand that we live within truth: Cover calls upon us to discern how the law commits violence while it shams that it does otherwise. The other aim considers how the law can advance not just the absence of violence, but also

⁵¹ Carrie Menkel-Meadow, *Toward a Jurisprudence of Law, Peace, Justice, and a Tilt Toward Non-Violent and Empathetic Means of Human Problem Solving*, 8 UNBOUND: HARV. J. LEGAL LEFT 79, 102 (2012).

Menkel-Meadow's enhancing life support, or what peace theorists have otherwise called "positive peace."⁵²

At our symposium, the bulk of our attention shifted toward the first of these goals. Considering the definitions of violence set forth by Galtung and Farmer, we concentrated on whether the law creates a culture of violence that denies the structural violence it commits. Many panelists showed us how the law does succumb to such fictions and such sins. That is, the panelists showed us how the law in many cases pretends to persecute no one, and pretends to pretend nothing, even while it abuses its subjects and commits perjury about its own ends.

II. WHAT WE LEARNED AT THE SYMPOSIUM

Our first panel, on "Law, Peace, and Property," featured scholars who struggle with law that appears to enhance the individual and the group: it claims to protect solitary rights through the "bundle of sticks" and bolster shared values through the Fifth Amendment's Taking Clause, which permits the state to acquire land in the interest of the public good. Panelists on that morning slot taught us that while US property law may bestow certain gifts, its jurisprudence often grows from a cultural denial of connectivity—that is, connections between humans and the earth, humans and history, and human networks, and that these denials promote structurally violent severances.

University of Michigan–Dearborn scholar Nehal Patel's talk described this violent severance in environmental law. First, he detailed how humans' effects on the environment ignored our relation to the earth. In response, he advocated a Gandhian environmental jurisprudence, which he described as

⁵² Galtung, *supra* note 48, at 183. *See infra* text accompanying notes 80–81.

an ecological trusteeship that recognizes the “world . . . as a family.”⁵³ Fordham professor Sonia Katyal also resisted law’s fractures. She recounted how property “outlaws,” such as homelessness and environmental activists, work to reconfigure property law’s culturally and structurally violent winner-take-all triumphalism by dilating its power to reach sociable loyalties that include care for low-income people.⁵⁴ Following Sonia, Northwestern Law School’s David Dana and Nadav Shoked prompted us to think about community and individual property rights in the context of the Occupy Movement. In ways similar to Nehal and Sonia, David and Nadav impugned property law’s traditional exclusions and forceful ousters. They observed how Occupy Wall Street protesters blurred borders when setting up direct action camps outside of privately owned Wall Street banks. They advocated a First Amendment theory that allows a temporary right to rally in front of these establishments. This transient, legally privileged connection between Occupiers and elite real estate would stretch the boundaries of private property to challenge capitalism’s parceling of cultural and structural harms with protesters’ dreams of a better world.

The naming of cultural and structural violence and denial also caused much thunder on the other panels. During the “War and Peace” panel, scholars lambasted a legal culture that brutally suppresses peace. Emory Law School’s Mary Dudziak wove a riveting tale of Ares and Cronos: she captured the myth of “wartime,” that story of peace’s supposed persistence and war’s rarity, which the state discharges to lull the rule of law during hostilities. But Mary has clocked US conflicts and found that the only real suspension is the citizenry’s disbelief, since US belligerence proves

⁵³ Nehal A. Patel & Lauren Vella, *A Mindful Environmental Jurisprudence?: Speculations on the Application of Gandhi’s Thought to MCWC v. Nestlé*, 30 PACE ENVIRONMENTAL L. REV. 1116, 1140 (2013).

⁵⁴ See generally EDUARDO MOISÉS PEÑALVER & SONIA K. KATYAL, PROPERTY OUTLAWS: HOW SQUATTERS, PIRATES, AND PROTESTERS IMPROVE THE LAW OF OWNERSHIP (2010).

constant. State power and voter credulity, then, form the real ignitions for “exceptional” detentions, waterboardings, and kill lists.⁵⁵ Washington and Lee University Law School’s Mark Drumbl enlightened us about international law’s dangerous rhapsodies concerning child soldiers. Mark studies world treaties and instruments. Through this work, he discovered that international law treats children-at-arms as passive victims, in many cases absolving them of responsibility. This approach appears initially peaceable. But Mark explained how failure to behold the sometimes peripheral, sometimes extreme brutality committed by minors increases suffering of both these soldiers and their victims by preventing the soldiers from participating in truth and reconciliation processes as well as indigenous cleansing ceremonies.⁵⁶

Loyola Law School’s David Glazier increased our dread by flashing across the lecture hall’s overhead screen that morning’s headlines announcing the massing of Russian forces on Ukraine’s border.⁵⁷ David then held forth on how the obstacles of state self-interest and hypocrisy have prevented the international community from prosecuting war crimes in the International Criminal Court until 2017.⁵⁸ This lacuna may trammel deterrence, thus spurring more violence.⁵⁹ Following David, St. Thomas University School of Law’s John Kang described how US laws punish violent masculinity in civil society but demand it in war. Through stories

⁵⁵ See generally DUDZIAK, *supra* note 37 (performing a brilliant forensics of this practice).

⁵⁶ See generally MARK A. DRUMBL, *REIMAGINING CHILD SOLDIERS IN INTERNATIONAL LAW AND POLICY* (2011).

⁵⁷ See Steven Lee Myers & Alison Smale, *Russian Troops Mass at Border with Ukraine*, N.Y. TIMES, Mar. 14, 2014, http://www.nytimes.com/2014/03/14/world/europe/ukraine.html?_r=1.

⁵⁸ See generally Prof. David W. Glazier, *Still a Bad Idea: Military Commissions Under the Obama Administration*, 2010-32 *Legal Studies Paper 2* (2010), available at <http://ssrn.com/abstract=1658590>; David Glazier, *Playing by the Rules: Combating al Qaeda Within the Law of War*, 51 WM. & MARY L. REV. 957 (2009).

⁵⁹ *Id.*

about shark hunts, friendships, and foxhole terror, he made us understand how this clefted culture may exacerbate violence. John paid particular attention to the cases of soldier self-harming that multiply once the warriors return, baffled, to a seemingly meaningless “peacetime.”⁶⁰ University of Pittsburgh Law School’s Bernard Hibbitts also named law’s cultural violence when he explained how lawyers pretend to be peacemakers but exist in a warrior tradition, which he proved by treating us to the obscure lawyering past of some of the United States’ most famous martial figures. When lawyers look away from this history, Bernard suggested, they might ignore how their own use of the law dangerously renews the ancient marriage between jurisprudence and the sword.⁶¹

The scholars who assembled for the “Law, Peace, and Human Rights” panel brooded over how pro-rights regimes look and feel “right,”⁶² to use Galtung’s phrase, but actually spring from a hidden ancestry of inequality that haunts current reliefs. Loyola Law School’s Kathleen Kim dissected human trafficking statutes that criminalize this ghastly mercantilism. She showed us how such a punitive response does not spring from means-ends Benthamism⁶³ or even glowering retributivism. Prurience, also, drives the enactments of these laws that silence and harm trafficking victims.⁶⁴ Northeastern Law’s Gabriel Arkles limned a similar double bind regarding

⁶⁰ See generally John M. Kang, *Manliness and the Constitution*, 32 HARV. J.L. & PUB. POL’Y 261 (2009).

⁶¹ See Bernard Hibbitts, *Martial Lawyers*, LEGAL HISTORY BLOG (Feb. 24, 2014, 7:00 AM), <http://legalhistoryblog.blogspot.com/2014/02/martial-lawyers.html> (this formed the basis for his talk and paper at the *Law, Peace, and Violence* Symposium).

⁶² See Galtung, *supra* note 2.

⁶³ See, e.g., Steven J. Burton, *Judge Posner’s Jurisprudence of Skepticism*, 87 MICH. L. REV. 710, 715 n. 10 (1998) (“Bentham’s distinctive ethics require normativity as the greatest good, impartiality through the pleasure principle with everyone counting for one, and good judgment by way of consequentialist or means-ends rationality.”)

⁶⁴ See generally Kathleen Kim, *The Coercion of Trafficked Workers*, 96 IOWA L. REV. 409 (2011); Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, 3 STAN. J. C.R. & C.L. 317 (2007).

criminal interdictions of prison rape, revealing how correctional anti-rape efforts often ignore sexual violence committed by guards and persecute consenting lovers.⁶⁵ University of North Carolina School of Law’s Deborah Weissman built upon her scholarship that details how human rights traditions emerge from and replicate colonial histories, and also elaborated on her studies of feminist anti-domestic violence ambitions that ignore the role of poverty in intra-family violence.⁶⁶ Deborah taught us that remembrance of the “will-to-power” must shape international human rights as well as domestic reform to repulse the hazards warned of by Cover.

Following Deborah, University of Washington’s (English Department) Chandan Reddy reminded us that human rights only collect around those harms that mainstream society considers “grievable,” and that outcasts, such as gay teens, may well find themselves outside of that dominion of care.⁶⁷ University of California at Irvine’s Jane Stoever offered an important complement to these stories of a human rights system gone awry by recalling how her loving parents, both social justice activists, trained her in the high arts of the march and the chant. Jane’s account of her family’s commitment can inspire a human rights practice that remains conscious of the deadfalls of power plays and solipsism while working for the more peaceable world hinted at earlier by Nehal and Sonia on the Property panel.⁶⁸

⁶⁵ See generally Gabriel Arkles, *Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention*, 18 TEMPLE POL. & CIV. RTS. L. REV. 515 (2009) (discussing violence and incarceration).

⁶⁶ See generally Weissman, *supra* note 36; Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 COLUM. HUM. RTS. L. REV. 259 (2004).

⁶⁷ See, e.g., Chandan Reddy, *Political Tears*, 41 SW. L. REV. 275 (2012).

⁶⁸ See generally Jane Stoever, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483 (2013) (Stoever’s upbringing led her to concentrate her talents on eradicating domestic violence); Jane K. Stoever, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303 (2011).

Our gathering on “Peacemaking, Resistance, and the Law” offered yet new insights and challenges. Scholars pursued a critique of nonviolence, which proves one of the hearts of the Law and Peace project. For though we may thrill at attempting to “live within” Havel’s “truth,” what exactly does that *mean*? A legal revolution based on such miasmal rights versus wrongs should be branded with large font warnings, for what may be your truth will not be mine, and vice versa. An ill-considered jurisprudence of nonviolence could effortlessly collapse back into the culture of violence. So of course we must look and listen and question and wonder and learn, which is what this panel—as all the others—helped us achieve.

To this end, Seattle University Law’s own Dean Spade took up Cover’s gauntlet and gainsaid that US law could *ever* be used to further the aims of peace. In Dean’s assessment US jurisprudence proves wholly belligerent to peace because the United States *is* itself violence.⁶⁹ Peace, if we are to find it, must arrive through means other than the law. Boalt’s Kathy Abrams described a different skepticism. While she did not despair of using the law to shore up peace, her studies of Arizona immigration activists did highlight protesters’ impatience with Gandhian and Kingian styles of resistance. Kathy gave accounts of activists initiating their direct action with a course of sit-ins and hunger strikes, but then shifting to “bolder” gestures including “taking over” buses and occupying buildings. Activists had grown tired of seeking social approval and began to risk a defiant atmosphere wherein they could muster personal power.⁷⁰ Newcastle Law School’s Amy Maguire also

⁶⁹ See generally DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS AND THE LIMITS OF LAW* (2011).

⁷⁰ See generally Murray, *supra* note 50, at 136; Menkel-Meadow, *supra* note 51. Kathy Abrams teaches about Arizona immigrant activism at Boalt Hall School of Law; her class is called Law and Social Change: The Movement for Immigrant Rights in Arizona: “The Immigrant Rights Movement in Arizona.” See 221.71 *sec. 1—Law and Social Change: The Movement for Immigrant Rights in Arizona (Spring 2015)*, BERKELEY LAW, UNIVERSITY OF CALIFORNIA, <https://www.law.berkeley.edu/php->

reflected on flaws in nonviolent ideology in her talk about the Northern Ireland “peace process.” Amy taught us that while Northern Ireland’s 1998 Good Friday Peace Agreement signaled a transition from violent conflict to political conflict, this apparently peaceable move has not resolved a meta-conflict concerning self-determination. Amy counseled us how a just peace must be pursued, suggesting that some peace politics can run roughshod over equal dignity.⁷¹

University of Arkansas Law School’s Uché Ewelukwa offered one of the more positive, if still subtle and contentious, defenses of nonviolent resistance in her description of nonviolent protesters who resist colonial depredations. Uché first taught us about the 1929 Igbo Women’s War, where Nigerian women agitated against Colonial rule by “sitting upon”—that is, harassing—warrant chiefs who intended to tax the women in violation of Indigenous custom with the backing of British overseers.⁷² Eventually, these tactics eased the way for some reforms by 1933.⁷³ Uché compared the Women’s War to recent protests by Nigerian women against martial oil companies that shrug at Nigerians’ poverty. Uché recounted how these rebels used nudity as a powerful form of political shaming.⁷⁴ Uché explained that these protests, while newsworthy, did not achieve the same gains as did the 1929 Women’s War. This is perhaps because of a failure by the protesters to win signed promise agreements from the companies to change their practices or provide reparations.⁷⁵

programs/courses/coursePage.php?CID=15862&termCode=B&termYear=2015 (last visited Jan. 11, 2015).

⁷¹ See generally Amy Maguire, *Contemporary Anti-Colonial Self-Determination Claims and the Decolonisation of International Law*, 22 GRIFFITH L. REV. 238 (2013).

⁷² See, e.g., Judith Van Allen, *Aba Riots or the Igbo Women’s War?—Ideology, Stratification and the Invisibility of Women*, 6 UFAHAMU: J. AFR. STUD. 11, 13 (1975).

⁷³ *Id.* at 23.

⁷⁴ See generally *Nigeria: Half-Nude Women Protest Against Shell in Bayelsa*, ALLAFRICA (Jan. 8, 2014), <http://allafrica.com/stories/201401080080.html>.

⁷⁵ See generally Uché U. Ewelukwa, *South-South Trade and Investment: The Good, the Bad and the Ugly—African Perspectives*, 20 MINN. J. OF INT’L L. 513 (2011) (providing

III. WHERE TO GO FROM HERE

The symposium in Seattle was a beginning, not an end. Our panelists surfaced at least three future charges in the work of understanding law's possible connections to harmony. First, our discussion revealed that we understand far more about violence than we do about peace. We must build a larger vocabulary to describe both of these conditions so as to precisely name what we might deter and what we might assist. Second, the panelists disclosed that any efforts to remedy violence and create peace through law require a fitted and interrogative approach. That is, our methods must pay intense attention to the local culture that is being addressed, and must also prioritize critiques such as Dean's and Amy's, in order to avoid what Mary described during our proceedings as "peace essentialism."⁷⁶ Third, our conversations, to my surprise, revealed an unexpected truth: peace might come not only from saying yes, but also from admitting no. The panelists revealed how legal institutions so effectively destroy peace that legal actors must sometimes travel beyond their familiar wars and into a post-law territory to achieve real change.

A. Language

Our panelists began to map a language for how the law commits cultural and structural violence. Property law, we learned, spreads hurt when it denies human and historical connections. Human rights law distributes fear and pain when it succumbs to moral blindness and fails to account for poverty and power. The law of war multiplies death and anguish when it deals in fictions and blinkered self-interest. Even the goal of nonviolence

an analysis of African trade relations); Uché U. Ofodile, *Trade, Empires, and Subjects: China-Africa Trade Relations—A New Fair Trade Arrangement or the Third Scramble for Africa?* (Sep. 1, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2344323.

⁷⁶ Mary invented this phrase at our symposium. Her phrasing found inspiration in the work of Angela Harris, see *infra* note 78.

can harm instead of help when it imposes a mandate of passivity, muffles expressions of agony and anger, and vetoes self-defense.

These forms of violence lurk within the kingdoms of cultural and structural violence, and belong to law. They deserve to be named and sifted. They are the cultural violence of denial, solipsism, and prurience. They are the structural violence of exclusion, forced masculinity, and forced victimhood. Upon absorbing Mary's critique of peace essentialism, we also learned about the cultural violence of monolithic approaches to nonviolence.⁷⁷

But what about peace? At the symposium we admitted that we understood much less about this benefaction. Also, our vocabulary proved impoverished when trying to describe its lineaments. As I have just mentioned, Mary ushered in this anxiety when she questioned whether we risked falling prey to an incurious peace essentialism.⁷⁸ In other words, did we hazard a grand—and far too simple—theory of legal peace? Galtung observed the potential ambushes of peace rhetoric even as he helped birth peace theory:

Few words are so often used and abused [as peace] . . . when efforts are made to plead almost any kind of policy . . . it is often asserted that [a favored policy] . . . will also serve the cause of peace . . . regardless of how tenuous the relation has been in the past or how dubious the theory.⁷⁹

⁷⁷ *Id.*

⁷⁸ *See id.* *See also* Angela P. Harris, *Race Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (introducing a concept of essentialism into legal discourse and asking how feminist legal theory reduced women into an “essence” and presenting the notion that a “unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience”). Peace essentialism, then, would be a reductive, even stereotypical, definition of peace that ignores how peace interacts with race, gender, nationality, sexual orientation, and other manifold identities and experiences.

⁷⁹ Galtung, *supra* note 48, at 167.

This dilemma of oversimplifying legal “peace” redoubles when we ponder whether peace exists only in the absence of violence or promises something more. Is the first definition a cop-out? Is the second answer utopian?

Galtung again offers aid here, as he coined the concepts of negative peace and positive peace.⁸⁰ Negative peace exists in the “the absence of personal violence,” and positive peace consists of “social justice.”⁸¹ These definitions are helpful, but incomplete. At the symposium, several moments passed when we felt this landmark challenge of defining legal peace as a community.

Mary brought us to this important crossroads. While lecturing on war and time, she projected a recently-snapped photo of the Mall of America, that symbol of US plenty. She queried whether this image of a shopping coliseum relayed “peace” as it certainly seemed to, being that the Mall is a pleasure garden. “But *is* this American peace?” she asked us. Since the United States waged war in Iraq and Afghanistan at the time that the picture was taken, then the seeming tranquility of the Mall began to appear, under Mary’s prodding, as yet another site of cultural violence. The amusements of the Mall pacify the people who might otherwise object to war if made to wrangle with its rigors and discomforts.

Mary’s questions illuminate that *tranquility that promotes violence is not peace*. Or, in the spirit of avoiding peace and violence essentialism, perhaps the better account is that tranquility that promotes violence can only constitute a partial or qualified peace. Even the most benign forms of amity or joy (such as the bemusement of consumers or the rapture found at rallies) that flourish during wartime could be said to foster war’s violence.

A similar disenchantment flowered during Uché’s talk when she projected a photograph of armed soldiers guarding Nigeria’s corporate oil fields. She next displayed images of local poverty, revealing people

⁸⁰ *Id.* at 183.

⁸¹ *Id.* at 183, 190 (emphasis omitted).

standing around polluted areas or perhaps even scavenging. “Is this peace?” she asked us, shaking her head. “I don’t know.” And neither did we—but we began to suspect that if it were, it was not anything that we wanted to promote. Moreover, while the absence of war could clarify a legal definition of peace, at least in the negative sense, the omnipresent threat of violence urged an opposite conclusion. Uché showed us that *quiescence in the shadow of force is not peace*. Or, again, such dead calm may be at best a partial or qualified peace.

Uché’s and Mary’s descriptions of these admixed realities recall my earlier mention of the nabobs of Studio City, who levitate above the homeless people collected at their literal feet. These are violent peaces. They are darknesses visible. But to upend the balance, and admit more light than shadow, requires that we first see and describe the paradox.

What I suspect then is that peace will almost always prove to be an incomplete state, particularly when we gauge it in relation to the state’s behavior. Perfect peace probably does not exist except in very brief moments, and on a personal level. In a private conversation that I shared with Deborah, we considered the elusive character of peace, and agreed that it is usually experienced in lucky, fugitive hours shared with family and friends. Instead of quixotically searching for a legal means for guaranteeing these fragments of bliss, our panelists suggested how the law could moot skills and attitudes needed to chart a world where negative peace prevailed and human flourishing could exist. That is, they gave voice to legal values that might create the possibilities of a more coherent peace.

Sonia, Nehal, and Jane all sketched the promises of peace in the values of community, of Gandhi’s *satyagraha*, and in the loving bonds of kindred. Peace, like violence, they taught us, is created by and through relationships. And Dean, during the question-and-answer phase of the Resistance panel, offered the following related definition of peace, “Peace” he said, “is when people have what they need.” Together these scholars help us discern that love, happiness, sharing and giving, and care might bend the law—or, as

Dean urged, some other system—toward the many varieties of peace. Scholars have already articulated such aspirations in human rights, queer legal theory, mindfulness, and feminist legal theory.⁸² Human rights theorists, queer legal theorists, critical race theorists, and feminist legal theorists have also commenced developing vernaculars that might express

⁸² See Henry J. Richardson, III, *Dr. Martin Luther King, Jr., as an International Human Rights Leader*, 52 VILL. L. REV. 471, 476 (2007) (“King projected an approach to international relations, new to the twentieth century, based [in part on] love. Even love of opponents and enemies.”); MARTHA C. NUSSBAUM, *FROM DISGUST TO HUMANITY: SEXUAL ORIENTATION AND CONSTITUTIONAL LAW* xvii (1st ed., 2010) (advocating a launching ground for law and policy that eliminates the politics of disgust and replaces it with a politics of humanity that fosters sympathy, imagination, and respect, as well as “something else, something closer to love.”); Angela P. Harris, *Toward Lawyering as Peacemaking: A Seminar on Mindfulness, Morality, and Professional Identity*, 61 J. LEGAL EDUC. 647, 648 (2012) (describing teaching a seminar on peacemaking, law, and mindfulness, which involved “the cultivation of love and compassion for ourselves and others and discourage[ing] the cultivation of anger, hatred, jealousy, resentment, envy and other ‘negative’ emotions.”); Cf. Allegra M. McLeod, *Confronting Criminal Law’s Violence: The Possibilities of Unfinished Alternatives*, 8 UNBOUND: HARV. J. LEGAL LEFT 109, 121 (2013) (making a space for nonviolent change within criminal law and policy by incorporating “unfinished alternatives” within such systems; “unfinished alternatives” are open ended, and resemble certain key emotional states, such as love, which is “boundless” and “uncertain”); GENE SHARP, *THE POLITICS OF NONVIOLENT ACTION: PART ONE POWER AND STRUGGLE* vi (1973) (“exhortations in favor of love and nonviolence have made little or no contribution to ending war and major political violence.”); ROBIN WEST, *CARING FOR JUSTICE* 143 (1999) (advocating not for cultivating love within the law or policy but still seeking to nourish peaceful values within law and society and calling for a state of law that would help create some of the preconditions necessary for the development of loving bonds). Professor West explains that “[t]he state needs to be more, not less, involved in the work of supporting families so as to ensure the presence, in every family, of parents who have the time required to provide not just physical necessities but love, play, companionship, and fun for their children.” *Id.*; Mary Becker, *Women, Morality, and Sexual Orientation*, 8 UCLA WOMEN’S L.J. 165, 195 (1998) (“[W]e need to increase the odds of women being able to develop as sexual subjects should they so choose.”); Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181, 183 (2001) (“Can law protect pleasure? Should it?”); JAMES BOYD WHITE, *LIVING SPEECH: RESISTING THE EMPIRE OF FORCE* 77 (2009) (arguing that the aim of life is love and justice); Clare Huntington, *Repairing Family Law*, 57 DUKE L.J. 101 (2008) (encouraging intimacy in family by arguing that family law should observe a Reparative Model).

human problems unrecognized in legal discourse.⁸³ If a jurisprudence of nonviolence requires a midwifery of new language, this young discipline must join hands with these other schools of thought. So perhaps it is no accident that Sonia, Nehal, Jane, and Dean arrived to the symposium as formidable critics of race, gender, class, and sexuality oppression. Their expertise helped them identify love, care, sociability, family, *satyagraha*, and even skepticism as briefs we might depend on when suing for a more complete peace through law.

B. Questioning Law, Peace, and Violence

The call for a greater lexicon that describes violence and peace raises an opportunity: as we search for manifold descriptions of these conditions, some of our definitions will clash and require rethought. This is as it should be, for the writers and practitioners of peace jurisprudences must interrogate themselves as well as this new discipline. Mary's warning about peace essentialism, as well as Dean's, Uché's, and Kathy's questions about nonviolence activism, encouraged careful deliberations of whether a behavior is violent or peaceful. I surmise that peace and violence exist on a continuum, much as scholars and other writers have discovered how gender,

⁸³ See, e.g., Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, in *CRITICAL RACE THEORY: THE CUTTING EDGE* 326 (1995) (quoting Audre Lorde, *The Transformation of Silence into Language and Action*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES* 44 (1984)) (the proposition that "there needs to be an end to the silence around . . . the interactions of race, class, gender, and sexuality, and the 'transformation of silence into language and action.'"); Harris, *supra* note 78, at 616 (naming race essentialism); Francisco Valdes, *Afterward and Prologue: Queer Legal Theory*, 83 *CALIF. L. REV.* 344, 346 (1995) (taking as a project of Queer Legal Theory "Finding, Naming, & Situating the Missing Voice"); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes*, in *AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY: VOL. 1* 57, 58 (Martha Fineman ed., 2012) (citing Mary Daly and Audre Lorde in her invocation of a feminist and anti-poverty "emancipatory language practice").

race, illness, and disability endure in multiple dimensions.⁸⁴ Again, we are made to look to critical race, queer, and feminist legal theory for searching and alloyed models.

But grand theories of peace do exist. We must grasp the challenges of Martin Luther King, Jr., Gene Sharp, and more pressingly, Mohandas Gandhi, who in the latter case advanced a nearly absolute pacifism.⁸⁵ Are we legal pacifists? No one at the symposium, as far as I could tell, advocated such a winnowed legal approach to problems of violence. I have already written of the hazards of such supposed purism,⁸⁶ and the papers at the symposium reinforced this conclusion.⁸⁷ As a consequence, there will be times when law and peace advocates contest over the proper use of force used in self-defense, punishment, and war.

These conflicts give rise to a legal method. First, we can study whether an individual or state action is violent, that is, whether peace has been abridged. This pursuit requires readings of the manifold, inessential definitions of violence and peace. Second, we can inquire whether more peaceful legal solutions may be found, which (at least for me) is the main priority of a peaceful jurisprudence. If not, then we must entertain whether

⁸⁴ See, e.g., Dylan Vade, *Expanding Gender and Expanding the Law: Toward a Social and Legal Conceptualization of Gender that Is More Inclusive of Transgender People*, 11 MICH. J. GENDER & L. 253, 275 (2005) (describing a “gender galaxy.”); Darren Lenard Hutchinson, *Critical Race Histories: In and Out*, 53 AM. U. L. REV. 1187, 1200 (2004) (“Today, many Critical Race Theorists have recognized multidimensionality as a natural progression of intersectionality.”); WORLD HEALTH ORG., WORLD REPORT ON DISABILITY 21 (2011), available at http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf (defining a disability as a “complex multidimensional experience [that] poses several challenges for measurement. Approaches to measuring disability vary across countries and influence the results.”).

⁸⁵ See Murray, *supra* note 50, at 70 (noting Gandhi’s approach to nonviolence and his allowance of some exceptions for the rule of “soul” not “body” force).

⁸⁶ *Id.* at 136.

⁸⁷ See *supra* Part II (detailing the theses of the panelists. Their critiques of the way the law fosters violence and critiques of the nonviolence project led in directions opposite to a legal pacifism).

the problems at stake require a forceful, violent, or bold response—whatever we determine these concepts mean. In all of these analyses, we must challenge our own definitions and assumptions, and recognize the varied workings of power as well as the vicissitudes of that sometimes brute thing, language.⁸⁸

The panelists brought to light another imperative, which is how attention to the local culture being addressed will help us grasp the colliding meanings of violence and peace. Just as we must avoid peace essentialism, develop our lexicon, and question ourselves, we should also reflect on how peace and violence's designations will depend on geography, culture, government, and economics.

Uché's talk helped us understand the importance of context. Negative peace may constitute some kind of authentic or "good enough" peace in certain situations—say, when attempting to curb sexual violence in the United States, a goal so fraught that adding the demands of positive peace could be too cumbersome for the immediate present. However, negative peace might mean too little in the Nigeria Uché taught us about, where there is an absence of official armed conflict but guns everywhere, as well as poverty, and want, and pain.

David's and Nadav's talks also emphasized the importance of local culture and industry: They called for increased First Amendment freedoms

⁸⁸ See, e.g., Harris, *supra* note 78, at 602–03 (analyzing and critiquing race essentialism); see generally Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (analyzing abuses of power that exist in anti-racist and feminist politics); JANET HALLEY, SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM 330 (2006) (critiquing feminism for ignoring the harms suffered by men); Hutchinson, *supra* note 83, at 602 (advocating an open and interrogative jurisprudential method that may help recognize how race, class, gender, sexual orientation and other factors influence life under the law); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 1, 3 (1995) (advocating a multivocal narrative jurisprudential method).

specifically for Occupy protests that occurred on Wall Street. While property owners might sense a violent penetration of their rights—and they could be correct in that—site-specific analysis may make us discern also that their exclusion of protesters on Wall Street crushes peace-seeking dissent. After all, an anti-Wall Street protest that is forced into Brooklyn loses a great deal of its meaning and impact.

The two Kathleens—Kathy Abrams and Kathleen Kim—offered their own takes on locality. Kathy’s description of the specific cultural politics that now threaten Arizona’s Latinos explained why immigrant activists’ direct action pivoted from classical nonviolence to “boldness,” which blurred the line between violence and nonviolence. And Kathleen observed victims’ own lives to establish a legal response to human trafficking. She noted that lobbyists’ tone-deafness and concupiscence can obscure victims’ stories, and so create violence in the name of peace.

In all of these ways the panelists taught us that the local—meaning everything from the specific site of violence to the particular culture and worldview of perpetrators and victims—will matter in a searching, subtle, sometimes antipodal, and always ambitious peacemaking jurisprudence.

C. Robert Cover Was Right

We found possibilities of peace in Seattle. But we also rediscovered that Robert Cover was onto something, and learned, too, that Dean knows what he is talking about. Nearly all the scholars at the symposium limned law’s brutality. Let us live in truth, then: law is expert at killing peace. Not for nothing, after all, did Max Weber define the state as a monopoly on legitimate violence.⁸⁹

⁸⁹ Max Weber, *Politics as a Vocation*, in THE VOCATION LECTURES: “SCIENCE AS A VOCATION” “POLITICS AS A VOCATION” 33 (2004) (“the state is the form of human community that (successfully) lays claim to the *monopoly of legitimate physical violence*.”).

This means that peacemaking lawyers might consider sometimes moving out of the house that the master's tools built. If Janet Halley is rash enough to suggest that we take a break from feminism,⁹⁰ we could take a break from law. We can do this not only in theory, but also in practice.

I have tried this myself, and found it a bracing exercise in losing status. I return again to my homeland, the storied village of Studio City. I have lived there for 19 years, and spent most of these past decades holed up in my bedroom furiously typing away about violence and poverty in East Los Angeles, Detroit, New York, Europe, and the Americas—in short, anywhere but the place that I supposedly know best. It wasn't until a friend of mine pointed out the homelessness problem in my own backyard that I realized that I could just work *here* for the rest of my life and still not resolve local cruelty. This realization also opened my eyes to the way law and culture worked together to make the nightmare of Studio City violence look and feel right, and how I had to move outside of my comfort zone to try to change that.

Shortly after my friend shook me awake, I began to work in the North Hollywood Interfaith Food Pantry, an interdenominational organization that runs out of a local church and is staffed by Jewish and Christian—and, in my case, befuddledly agnostic-verging-on-hardcore-atheist—volunteers. I worked on Fridays under the guidance of Beth Greenburg, one of the Pantry's supervisors. People from the community show up at First Christian Church of North Hollywood, sign up on a sheet, and then stand in line for a sack of groceries. Some groceries are bagged for families, whom I observed to be largely of color. Others are wrapped up for homeless people, who are mostly Anglo. For the weeks that I worked at the Pantry, I helped load foodstuffs for homeless people, which meant wrapping dinged up, bakery-donated sweets for shy, silent folks with substance abuse problems. I did

⁹⁰ See generally HALLEY, *supra* note 88.

this under the direction of Beth, a silver-haired saint with a gift for efficiency and warmth and giving hugs.

My service at the Pantry taught me that law didn't do much good for the homeless people of Studio City. Law professors didn't either, at least I didn't, since I kept wrapping up the wrong items and getting in the way. Eventually Beth assigned me to care for another volunteer, whom I will call Sandy. Sandy had early onset Alzheimer's and, like me, created more mischief than added value. Sandy and I milled around the Pantry and chatted about the weather until I eventually stopped showing up.

I learned a lot about the limits of law and myself at the Pantry. I realized that the law has a lot less power than I gave it credit for. As I wrapped up pastries, monitored Sandy, and helped folks with sign-up sheets, jurisprudence's influence mostly made itself felt in its revealed myth-making that the United States is a peaceful and fair nation, a tale belied by the suffering of people waiting in line for food. I also learned that lawyers—or at least I—have few skills to help others outside of their mastery of the written word. In the end, I created less peace than I observed its manufacture through Beth, who has no legal training but has devoted herself to the alleviation of local anguish for decades. I saw her develop both negative peace—in the assuaging of pain, that is, hunger—as well as her cultivation of positive peace, through smiles and well-wishes and the aforementioned hugs. She even performed peace on my own person by making me feel like a valuable member of the team even though I contributed less than Sisyphus.

I am hopeful. I am ambitious. But my time at the Pantry and at the symposium taught me this: if other lawyers and legal scholars angling for peace want to live in truth, then challenges like Wallace Stevens's and Vaclav Havel's are going to take us in several different directions. I cannot escape the fact that it is probably a good idea for us to absorb the final "no" that I now understand has been here all along. That is, we must confront how legal institutions help create a society where consistent, whole peace

seems impossible—even in the midst of affluence and presumably free election. Indeed, the lessons I’ve learned from Cover, my fellow panelists, and my “break from law” at the Pantry have led to a realization that peace development requires even more than a jurisprudential rest, à la Halley.⁹¹ The problems of poverty, punishment, jealous property rights, war, ecological despair, and human trafficking are, right now, insoluble. And why wouldn’t they be? So much of legal code assumes that we are engineered for hoarding and for hate, and offers no other manner of living. My condemnation need not lead to apathy, for at the symposium we discovered many ways to reshape the law from a blunt force weapon into a force of creation. But it is also time to think in different terms.

To preserve life, and to relieve suffering, legal scholars should begin to consider non-law as a fertile field for change. Restorative justice and negotiation resolve problems by looking to native and historical customs, expressions of emotions, and communication styles rather than to “retributivist and vengeance-seeking forms of justice.”⁹² As such, they offer two iconic offspring of law.⁹³ Interdisciplinary legal study also

⁹¹ *See id.*

⁹² Carrie Menkel-Meadow, *Restorative Justice: What Is It and Does It Work?*, 3 ANN. REV. L. & SOC. SCI. 10.1 (2007). *See also* Jean R. Sternlight, *Is Alternative Dispute Resolution Consistent with the Rule of Law?*, 56 DEPAUL L. REV. 569, 570 (2006) (“Inspired by concerns about efficiency, access, and justice, ADR advocates urged that disputes be resolved, not only in public trials, but also through negotiation, mediation, and arbitration.”).

⁹³ *See, e.g.*, Menkel-Meadow, *supra* note 92, at 10.6 (“Modern restorative justice traces its origins to objections to both retributivist and failed rehabilitative models of criminal law and punishment.”); Carrie Menkel-Meadow, *Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve*, CURRENT LEGAL PROB. 84, 101 (Jane Holder, Colm O’Cinneide, & Michael Freeman eds., 2004) (“[The] various forms of modern dispute resolution suggest we have evolved into something different in this new process pluralism that we are increasingly using, or we are, at least, reinventing or redesigning the myriad ways our early predecessors chose different processes for different purposes.”). *See also* Laurie S. Kohn, *What’s so Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517, 530 (2010) (“Restorative justice,

acknowledges the limits of jurisprudence, and seeks to expand legal thought to include insights gleaned from psychology, sociology, mindfulness, economics, and literature, among other fields.⁹⁴ These innovations can inspire us to go even further. Beyond interdisciplinary practice exists the permission for legal actors and scholars to search for redresses to war, poverty, and discrimination wholly outside of law's models. This project involves more than conflict resolution; we must invent other ways of being that might be liberated from the law's field of blood and death.

I am talking about accompaniments, encores, accessories, and alternatives to law. I am, more specifically, beginning to imagine post-law. I admit the very concept of post-law could be terrifying, since the opposite of law is lawlessness. But within the gap between judging and anarchy lies uncharted space for the "yes." As legal scholars, we know the designs of jurisprudence and its deadly habits. Such knowledge may carry us into a new era whose citizens do not consider peace a dream or a nullity, and work toward it as a form of justice. My fantasy future will inevitably have its own problems and its own traumas. Still, peace and its bold inventions remain goals worth pursuing nevertheless.

CONCLUSION

But let us return to the remaining possibilities of achieving peace through law. Robert Cover's 1986 essay, morose and brilliant, has long waited to burst forth into a new way of thinking about the legal institutions. We have begun to do so. Like other scholars heedful to the pain and hypocrisies that

which has long been a justice system norm in indigenous populations and has increasingly appeared in juvenile justice interventions since the 1970s, focuses on addressing harms caused by socially unacceptable or criminal behaviors by engaging the community, victims, and offenders themselves.").

⁹⁴ See generally Carrie Menkel-Meadow, *Symposium, Taking Law and _____ Really Seriously: Before, During, and After "The Law"*, 60 VAND. L. REV. 555 (2007) (One of the best meditations on the values of interdisciplinary study in law and legal education can be found in this article of Carrie Menkel-Meadow's).

pass as the way things “have to be,” we perceive that the law performs violence. We discern that the law *is* violence. We see that it causes the people to suffer, and does little to prevent their afflictions. The question is, what to do with this knowledge?

Even as I continue to wonder at my fecklessness at the Pantry, and try to see past the law’s long reach, I still join in Carrie Menkel-Meadow’s aspirations to grow a greater, if incremental, peace from the legal code’s rocky soil. The work will be hard, but we are not alone in hewing a new way. Legal scholars naming race, class, disability, sexuality, and class oppression have already done so. And just as Havel observed that the cozy nihilist inside us always jockeys with the committed idealist, we may think back on the all ways in history that people have tried to do better.

At our symposium we participated in this effort. Our struggles make me remember the work of the economist Albert Hirschman. Around the same time that Havel wrote his deathless treatise on dissent, Hirschman also wrote of the trials of transformation. He noted that folks working within failing institutions usually take one of three options—dissenters exit, exercise their voice, or stay steadfast in loyalty.⁹⁵ In our work at the symposium, we wielded all three of these gestures. We exited as much as possible legal constructs that do harm, gave voice to the harm that they do, and in this fashion, also expressed a loyalty to the rule of law that we hope can help the people. In other words, we helped map the DNA of a nascent Law and Peace school of thought. We also edged just a little closer to a legal world that ceases to pretend and lives more in an important, if still contested, truth.

⁹⁵ See generally ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSE TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970).