

Notes

SWIMMING THE NEW STREAM: THE DISJUNCTIONS BETWEEN AND WITHIN POPULAR AND ACADEMIC INTERNATIONAL LAW

I. INTRODUCTION

In the postwar era, legal scholars moved to a pragmatist approach in international legal thought.¹ Pragmatism refers to “a modern consequential philosophy that emphasized institutional process, functional progress, or rule-centered doctrinal specificity, while denying the relevance of coherent abstraction.”² This approach attempted to cultivate a just world order based on the rule of law, forcing nations to adhere to legal principles at the expense of raw aggression.³ Its goal was to use doctrinal analysis as the ultimate technique in analyzing issues of institutional process and order in the international arena.⁴ Unfortunately, pragmatism never set forth a central theory of social behavior, but simply hovered between the older naturalist and positivist⁵ schools of thought. Pragmatism focused only on descriptions of varying institutional forms and practices at the expense of theorizing about the nature of law and social behavior.⁶ Without reference to a core theory to explain the nature of social interaction in the international context, the pragmatist approach foundered on doctrinal shores. Thus the resultant research that it yielded produced a fragmented body of highly specific lists and observations about international law lacking a cohesive evaluation of

1. Nigel Purvis, *Critical Legal Studies in Public International Law*, 32 HARV. INT'L L. J. 81 (1991).

2. *Id.* at 83.

3. *Id.* at 84.

4. *Id.*

5. By “positivist” I refer to the idea that government, as opposed to nature, is the source of law. *Id.* at 82.

6. *Id.* at 87.

the international legal order. The lesson, then, was that there can be no substantive body of doctrine without an equally substantive theoretical foundation. Due to its elevation of doctrine over theory pragmatism failed as an effective paradigm.

Pragmatism did, however, open the door for later scholarship by delving into the economic, and thus interdisciplinary, nature of international law. Based on the pragmatist suggestion that concepts of law are not located in a vacuum, but are explainable from more than one philosophical perspective, public international law gradually evolved from an apparatus for settling transnational jurisdictional conflicts,⁷ to a broader field emphasizing "greater importance to the economic activities of private entities and of parastatal enterprises."⁸ Despite the failure of the pragmatists' doctrinal approach, their awareness of the growing interpenetration of world economies laid the basis for later and more important theoretical developments.

Today, pragmatism has been replaced by a "new stream" of public, economic, and interdisciplinary international legal scholarship. The new stream includes a wide variety of fields and methodologies that can be divided between value-neutral (objective) and value-central (subjective) paradigms. Objective scholars of public choice theory, game theory, and, most importantly, law and economics assume that social behavior is determined by "rational choice" and should therefore be construed, predicted, and governed by this premise. Conversely, theorists in critical legal studies, feminism, and law and society (including cultural anthropology), posit the idea that legal thought cannot escape the boundary of human subjectivity because all models of social behavior will, in many ways, determine what behaviors we see, notice, and emphasize. Despite these differences, it is important to note that all these theories represent a massive shift away from doctrinal analysis and towards core social theory.⁹

New stream scholars attempt to transform the older, dichotomous debates of naturalism versus positivism, and the "national" as opposed to the "international," into a dialogue about the core nature of social behavior and the appropriate formulations of international institutions and practices that flow from this nature. These scholars use specific

7. Joel R. Paul, *The New Movements in International Economic Law*, 10 AM. U. J. INT'L L. & POL'Y 607, 609-10 (1995).

8. *Id.* at 613.

9. *Id.*

theoretical bases to create an interdisciplinary awareness of vital issues such as the massive global redistributions and flexible accumulations of capital (i.e., the conditions of globalization), the systematic exclusion of women from the international legal process, and the cultural models which illuminate the exercise of political and military power.¹⁰

It is also necessary to note that one cannot understand the shape of international law and diplomacy without an awareness of the rhetoric of a key international concept: the "new world order". I contend that the best way to analyze the influential implications of the new world order doctrine is to examine the definitions, justifications, and applications of this doctrine in the news media. In doing so, we come to comprehend the corpus of international legal thought as it appears in actual political discussion directed at the vast majority of citizens in the most powerful nation on earth. To that end, I locate the doctrine of the new world order in a rhetorical arena which I call "popular international law," meaning the rhetorical dimension of public and economic international law as reflected by the statements of powerful politicians and influential journalists. This rhetoric shapes the American understanding of and support for international legal doctrine. Subjective new stream theorists, such as cultural anthropologists, are increasingly focusing on everyday life as an important locus of study.¹¹ In this vein, I examine the logical consistency of the new world order doctrinal philosophy within the quintessential realm of popular international law: the news media. A critical examination of the new world order doctrine within the news media reveals an outdated and contradictory hodgepodge of concepts, corollaries, and ideas that mirrors the discarded academic approach of pragmatism. Likewise, the new world order doctrine suffers from the same malaise as did the pragmatist approach, namely, an intense interest in doctrine with little concern for a unified and cohesive theory of social behavior that can effectively reformulate doctrine according to key theoretical

10. See generally David Kennedy, *The International Style in Postwar Law and Policy: John Jackson and the Field of International Economic Law*, 10 AM. U. J. INT'L L. & POLICY 671 (1995); Karen Engle, *Views from the Margins: A Response to David Kennedy*, 1994 UTAH L. REV. 105 (1994); Jennifer Schirmer, *The Dilemma of Cultural Diversity and Equivalency in Universal Human Rights Standards*, in CULTURAL SURVIVAL: HUMAN RIGHTS AND ANTHROPOLOGY (Theodore E. Downing & Gilbert Kushner eds., 1988); Rosemary J. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 AM. U. J. INT'L L. & POL'Y 792 (1995).

11. Coombe, *supra* note 10, at 810.

premises.

I focus on the disjunctions between and within popular and academic international law. In this article I utilize both the objective and subjective paradigms of the new stream¹² to demonstrate the logical and moral superiority of theory-based (as opposed to doctrine-based) international law concepts. I conclude that academic international law can illuminate the logical inconsistencies within popular international law. More importantly, this insight contains the morally compelling idea that because American foreign policy often involves the mobilization of massive amounts of resources and numbers of lives, there is a responsibility to justify decisions and actions with a clear, cohesive, and logically tenable core theory about the social behavior of humanity.

This article is based on the premise that an important area of study in the new stream of academic international law is discursive power.¹³ In Part II, I argue that the theatre of the news media is a worthy field of study for new stream scholars. A greater comprehension of the rhetoric of everyday life allows us to define the ideas and ideological forces which shape the American public's conceptual understandings and collective actions. In Part III, I counterpose academic insights with statements on the new world order doctrine taken from popular international law to demonstrate the problematic nature of the new world order doctrine from both the objective and subjective new stream perspectives, demonstrating the logical fallacies embedded in the philosophy of the doctrine. The explanations of and justifications for the new world order doctrine strongly suggest an inherently contradictory and outdated corpus of thought in light of the new stream of academic scholarship. Furthermore, an analysis of the internal criticisms between various new stream perspectives illustrates valuable multidisciplinary insights. Finally, in Part IV, I conclude that despite the rhetorical and political obstacles of this analysis, there is a morally compelling responsibility to use academic international law to theoretically reformulate public and economic international law.

12. I tend to focus on an anthropological (law and society) approach in my critique. I also utilize insights from the fields of feminism, public choice theory (international relations), and international trade.

13. I am using the terms "discursive[ly]" and "discourse" here in terms of their analytical value as rhetorical mechanisms. Rhetorical mechanisms in discourse reflect subjective perspectives on social behavior and reveal political agendas and power relationships. SALLY E. MERRY, *GETTING JUSTICE AND GETTING EVEN* 9 (1990). It is for this reason that we should engage in discourse analysis of popular international law.

With power comes the obligation to influence, intervene, and negotiate from a coherent theoretical, philosophical, and doctrinal agenda.

II. STUDYING THE NEWS MEDIA

A. Law and Society in Everyday Life

The rhetoric of popular international law is forged in the realm of the news media. How power is exercised, justified, and actualized is shaped by the news media's dialogue on international issues. The philosophical rationale for the exercise of power, whether through overt influence, intervention, or negotiation, is central to the public understanding of and support for specific foreign policies. In sum, the news media provides us with fertile ground for examining the rhetoric of the American keystone in the bridge of public and economic international law. Thus it is extremely important to analyze American foreign policy's¹⁴ presence in popular international law. Anthropological considerations, stemming from the subjective side of the new stream, also exemplify the importance of studying popular international law.

Anthropologists are interested in disjunctions: gaps and alternatives within and between forms of discourse. Rosemary Coombe has noted that law and society scholars such as cultural anthropologists are increasingly focusing on law in everyday life in order to understand discursive power. She argues that anthropological scholarship needs to "regard the worlds of trade and investment, the worlds of migration and production . . . as proper fields for ethnographic inquiry."¹⁵ Thus it becomes important to "do anthropology" of national and international issues as economies become globalized.¹⁶ Such a project necessitates a closer look at law in everyday life.¹⁷

It is a short step from a focus on "everyday life" to an analysis of the news media. In order to understand how political support is cultivated for major legislation and policy decisions, statements by powerful politicians and journalists need to be analyzed *as they are received* by the vast majority of Americans. This kind of analysis is

14. I am speaking of American foreign policy broadly, not just in terms of public international law, but also in terms of international economic law.

15. Coombe, *supra* note 10, at 810 (citing JEAN COMAROFF & JOHN COMAROFF, *ETHNOGRAPHY AND THE HISTORICAL IMAGINATION* (1992)).

16. *Id.*

17. *Id.* at 793.

also in harmony with a more politically savvy anthropology, which increasingly seeks to examine its ethical responsibilities and applications. This reexamination is a necessary step if anthropology, law and society as a whole, as well as other subjective new stream disciplines are to have an influential voice in shaping popular international law in a more logically and morally tenable fashion. By shaping popular international law new stream theorists can begin to influence international legal doctrine. Coombe emphasizes this point in her work. She views her attempt to shed light on the transnational status of marginalized persons "as the ethical and political responsibility of legal scholars in contemporary contexts"¹⁸

This argument draws heavily on Jennifer Schirmer's analysis of cultural relativism and diversity.¹⁹ Schirmer argues that anthropologists need to bring an understanding of culture into the absolute, seemingly objective, world of western human rights considerations.²⁰ Anthropology can be particularly powerful in its attempt to contextualize "rights" and "wrongs."²¹ Schirmer explains the powerful impact subjective new stream thought can have upon actual economic and political decision making:

Here is where the calls for moral and legal constraints upon state powers by both the human rights standard makers and by cultural diversivists and contextualists are most crucial, for it is these individuals who are in a position to recognize the immediate, systematic abuse of the powerless by the powerful.²²

Ultimately, an anthropological focus can provide an informed voice in public international law as well as in international economic law. Unfortunately, politicians embracing flawed political doctrines currently have the strongest voices.

Anthropology is also extremely useful as a counterpart to objective new stream thinking. Objective public choice theorists²³ and international tradists²⁴ point to (and, in a very real sense, argue in favor of) a homogenization of law through proper interface mecha-

18. *Id.* at 794.

19. Schirmer, *supra* note 10.

20. *Id.* at 93.

21. *Id.*

22. *Id.* at 95.

23. See generally Mark W. Janis et. al., *The Challenge of Universality*, 83 AM. SOC'Y INT'L L. PROC. 547 (1989).

24. See generally Kennedy, *supra* note 10.

nisms and policy management.²⁵ Conversely, subjective anthropologists offer counterpoints that explain how diverse legal understandings emerge. These counterpoints are particularly relevant to the rhetoric of popular international law because most marginal economic actors today must navigate through a complex sea of legal rules and cultural expectations which is routinely ignored by objective new stream scholars. Generally speaking,

[t]raditionally, legal scholars of globalization addressed such issues as . . . the arbitration of international disputes, the spread of the rule of law, and the transformation of legal practice - topics in which a growing homogenization of law and the tendency toward a greater similarity between legal regimes is often assumed. Anthropologists, on the other hand, argue that the globalization of the economy and the interdependence of societies has *not* led to homogenization, but rather to a proliferation of new legalities and juridical sensibilities at the intersections of legal cultures and legal consciousness as new juridical norms are generated in their interstices. . . . Anthropologists generally accept the proposition that the significance(s) of capitalist developments are best comprehended in terms of the cultural frames of reference within which they are encountered and accomodated, countered or resisted. I shall, therefore, proceed upon a premise that is self-evident to anthropologists but may be counter-intuitive to international legal scholars: the premise that the "global" can only be understood locally and culturally.²⁶

Public international lawyers, politicians, and objective new stream scholars such as economists hardly engage this premise. Subjective new stream scholars such as cultural anthropologists must be the ones to bring an analytical focus on power and discourse into the new stream of academic international law and into the rhetoric of popular international law. The actors who have the most powerful influences over actual governmental policies are objectivist economists and public international lawyers who are often either unaware or uninterested in people marginalized by race, gender, and class; the disturbing dislocations of globalization are not given enough thought. If anthropology is to have any real value, it must use its insights to change governmental doctrines and policies. This goal is a critical step. Otherwise, the central premises of important subjective new

25. *Id.* at 703-08.

26. Coombe, *supra* note 10, at 796-97.

stream lines of thought (i.e., class, gender, and race based hierarchies of power related to the evils of terror, genocide, and ethnocide²⁷) are moot. If international trade and objectivist economics present one manner of understanding globalization, then anthropology, an equally valid subjective new stream discipline, presents a perspective that is at least as valuable.

The goal, then, is to not just understand the "global" through the lens of the "local", but to also understand the "local" through the legal power of the "global". In this sense, new stream thinking becomes less two branches of a river running on opposite sides of a sandbar and more like two interspersed currents flowing through an unbroken body of water. The objective side of the new stream is only objective as long as we adhere to its basic premise: People always make rational choices in the context of wealth maximization. But people do not always make objectively rational choices, and other important premises (e.g., peace, human rights, feminism, race relations, wealth redistribution) obtain in social behavior besides economic ones. Once we recognize this fact, it obviates the mutually exclusive nature of objective and subjective new stream disciplines, bringing both bodies of insightful theories under the umbrella of observational thought. In this manner popular international law can be construed from a truly holistic perspective.

B. The Theatre of the News Media: The Stage for Popular International Law

Americans pay attention to and are influenced by the news media.²⁸ For example, during the Persian Gulf war, a Times Mirror News Interest Index demonstrated the central role of the media. Fifty nine percent of survey respondents stated that they were paying close attention to news reports.²⁹ Strikingly, almost the same percentage had given serious thought to military intervention in Kuwait,³⁰ suggesting a correlation between media reports and public consideration of events bearing on international legal thought as well as the primacy of the media stage in formulating Americans' understandings of international legal doctrine and policy.

27. See generally MICHAEL TAUSSIG, *SHAMANISM, COLONIALISM, AND THE WILD MAN: A STUDY IN TERROR AND HEALING* (1987).

28. *Divided Public Focused on Gulf News; Braced for Bloody War, Times Mirror News Interest Index Shows*, PR Newswire, January 10, 1991, available in WL, PR News Database.

29. *Id.*

30. *Id.*

Furthermore, the public tends to trust the news media. In the same index, seventy eight percent of the respondents gave the media a "good" or "excellent" rating, and sixty percent stated that the Gulf story was being reported in a fair manner.³¹ Interestingly, despite the broad impact of television reports in the information age, forty percent stated that they were mostly informed by newspapers.³² These empirical data exemplify the need to study the realm of the news media as a primary locus of discursive power as it shapes and cultivates popular international law.

III. POPULAR INTERNATIONAL LAW AND ACADEMIC INTERNATIONAL LAW: THE CONFUSED STUDENT AND THE INSIGHTFUL TEACHERS

An examination of key political statements can illuminate the inherent problems in establishing the new world order doctrine as the bedrock of popular international law. I focus on the Bush Administration's as well as journalists' statements made during the Persian Gulf war and the Somali humanitarian mission. These events have ramifications implicating a broad array of new stream insights, including objective theories such as international trade and relations, as well as subjective theories such as feminism and cultural anthropology. These events also demonstrate a key flaw in popular international law: The shortcomings of doctrine without coherent theory.

A. The New World Order Doctrine in the Gulf: Basic Flaws, Inconsistencies, and Disjunctions in the Stable Sovereigns Approach

Throughout the Bush years, the president was highly focused on foreign policy. Undeniably,

it was foreign policy that delighted, engaged and occupied Bush. He joined forces with . . . James A. Baker III and Brent Scowcroft, at the State Department and National Security Council, and they plotted the U.S. response to the shocking collapse of communism, the reunification of Germany, the Iraqi invasion of Kuwait, the opening for peace in the Middle East, the coup against then Soviet President Mikhail Gorbachev and finally the dissolution of the

31. *Id.*

32. *Id.* This is a significant point because I will be focusing only on newspaper articles in my analysis. A fuller treatment of television, radio, and magazine reports would be desirable, but due to time and budgetary constraints such an analysis must be left to a future article.

Soviet empire—a march of events that had been unthinkable when Bush took office.³³

Given the supremacy of the United States in the contemporary international framework, Bush's assertions hold great sway over popular international law.

The cornerstone of Bush's foreign policy was the new world order doctrine. According to this doctrine, America would assume a central leadership role in cultivating an intense respect for the sovereignty of all existing nations which would in turn provide for a peaceful world:

Mr. Bush devoted much of his speech to a general, almost philosophical, explanation to Americans of why he thinks U.S. armed forces should be leading the fight to evict Iraqi troops from Kuwait. He returned again and again to the theme that success in the battle will ensure a more tranquil world for decades to come. "We will succeed in the Gulf," he said. "And when we do, the world community will have sent an enduring warning to any dictator or despot, present or future, who contemplates outlaw aggression." Mr. Bush argued that the U.S. has a special responsibility to accomplish such lofty goals because of America's powerful position in the world. "This is the burden of leadership, and the strength that has made America the beacon of freedom in a searching world."³⁴

Bush's rhetoric validates the sanctity of the new world order doctrine. He "declared, 'we have before us the opportunity to forge, for ourselves and for future generations, a new world order, a world where the rule of law, not the law of the jungle, governs the conduct of nations.'"³⁵

The doctrine seems to work as follows: There must be either strategic (preferably) or humanitarian issues at the fore of a conflict (preferably international)³⁶ in order for the United States to consider involvement. Next, a careful weighing of the costs and benefits is

33. Ann Devroy, *The Nation Changed, But Bush Did Not*, WASH. POST, January 17, 1993, at A01.

34. Michel McQueen & Gerald F. Seib, *Bush Vows Victory in the Gulf War: State of Union Puts War in Moral Terms, Recasts SDI Plans*, WALL ST. J., Jan. 30, 1991, at A3.

35. Gerald F. Seib, *Bush Tells Nation Operation is Going According to Plan*, WALL ST. J., Jan. 17, 1991, at A1.

36. This distinction, of course, may exclude internal conflicts that have extremely worthwhile strategic and humanitarian issues which nonetheless fail to insult the sovereignty-based new world order.

entered into, and when the “good” substantially outweighs the “bad,” American intervention is appropriate.³⁷

The Bush administration sought to freeze the late 1980s world geography in a permanent, crystallized matrix of international order:

Secretary of State James Baker has said repeatedly that—except for the three small Baltic republics, whose incorporation into the Soviet Union the U.S. specifically refused to recognize—“the United States has recognized the boundaries of the Soviet Union since 1933.” . . . “Our policy is that we don’t favor the breakup of the Soviet Union,” except for the independence of the Baltics, explains a senior administration official. “We have one policy for the U.S.S.R., for Canada, Yugoslavia, Czechoslovakia—all the countries that are threatening to break up. And that is that we’d like to see them stay together.” . . . Many in Congress agree that backing independence for every ethnic group that wants it would mean chaos in country after country. “You really have to deal with nation states as they exist,” says Democratic congressman Steny Hoyer, who chairs the U.S. commission that monitors the Helsinki accords. “In a hard-headed way, we have little alternative to sovereignty, because of the incredible difficulty of sorting out claims once you get beyond sovereign nations.”³⁸

Furthermore,

tumultuous change can be inconsistent with Mr. Bush’s vision of the “new world order.” Mr. Bush wants an international system in which existing nations honor each other’s integrity and work together to ensure that change takes place peacefully under international law. That, in fact, was the principle behind the drive to liberate Kuwait. Such an approach envisions working closely with the leaders of existing nations—not undermining them or their states.³⁹

37. At this point the nonpartisan emphasis of this critique should become clear. President Clinton, a Democrat, engages in the same type of logically flawed analysis:

We can’t be everywhere. We can’t do everything. But where our interests and our values are at stake—and where we can make a difference—America must lead. We must not be isolationist or the world’s policeman, but we can be its best peacemaker. By keeping our military strong, by using diplomacy where we can, and force where we must, by working with others to share the risk and the cost of our efforts, America is making a difference for people here and around the world.

State of the Union, “America Must Lead”, N.Y. TIMES, Jan. 24, 1995, at A10.

38. Walter S. Mossberg, *In “New World Order”, U.S. Military Help Is Reserved Solely for Sovereign Nations*, WALL ST. J., Apr. 15, 1991, at A10.

39. Gerald F. Seib, *U.S. Commitment to Status Quo in World May Not Be Good Foreign Policy in 1990s*, WALL ST. J., July 8, 1991, at A3A.

Thus the cornerstone of the new world order is stability through sovereignty. The justification for this premise is twofold: First, a lasting world peace can only be achieved through an intense respect for current national boundaries; and second, if the United States were to give greater deference to displaced and subjugated groups claiming status as a nation, it would then be impossible to evaluate, negotiate, and attempt to resolve international (and therefore important) disputes.

But, considering the failure of the pragmatist movement in international law, this approach is probably doomed to failure because of its focus on the "rule of law" at the expense of a theoretical vision.⁴⁰ Certainly teaching and research based on a rule of law approach has severely atrophied.⁴¹ Moreover, the most successful cultivation of the rule of law has been in the economic, not the political arena, as the Bush Administration would have it.⁴² And unlike Bush's approach, the economics of international trade proceed from a core theory that overall wealth and standards of living will be advanced by free trade: "the goal [is] to minimize the amount of interference of governments in trade flows that cross national borders."⁴³ Ultimately, the difficulties presented by creating a political realm satiated by the rule of law must speak to the greater "imaginative challenges . . . [and] new opportunities . . ."⁴⁴ to formulate a theoretically coherent body of doctrinal international order.

Another problem obtains in the diplomatic convenience of only recognizing sovereigns. To illustrate, in "the Democratic response, Senate Majority Leader George Mitchell of Maine [stated] . . . 'Students massacred in China, priests murdered in Central America, demonstrators gunned down in Lithuania—these acts of violence are as wrong as Iraqi soldiers killing civilians . . . We cannot oppose repression in one place and overlook it in another.'⁴⁵ This is not to

40. I do not mean to suggest that these are mutually exclusive categories. The point is that if theory is "A" and doctrine is "B", then if one has A, it is possible to have B, but if one only focuses on B, without A, then B is logically untenable under this analysis.

41. Janis et. al., *supra* note 23, at 555.

42. *Id.* at 549.

43. Kennedy, *supra* note 10, at 679 (citing JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* (1989)).

44. Janis et. al., *supra* note 23, at 555.

45. McQueen & Seib, *supra* note 34.

say that participation in the Gulf war was an unwise choice by the Bush Administration, or to delve into a partisan critique,⁴⁶ but rather to point out that it is extremely unlikely that the United States has sent an “enduring warning to any dictator” when there are many dictators who regularly engage in “outlaw aggression” whose nations nonetheless receive most favored nation trade status regardless of such conduct. One need look no further than America’s healthy trade relationship with China, which invaded and is currently occupying the nation of Tibet.⁴⁷ Given these realities, America’s actions in the Gulf alone would not seem to live up to a “special responsibility” to achieve the “lofty goal” of ensuring the integrity of every nation’s sovereignty.⁴⁸

To his credit, Bush recognized these obvious shortcomings towards the end of his administration:

Sometimes the United States will intervene, President Bush offered in a foreign policy farewell at West Point yesterday, and sometimes it won’t. But when? When the stakes warrant, when the benefits outweigh the costs, when there’s a plan to get in and a plan to get out. On these criteria, Mr. Bush put American troops into Iraq and Somalia and in a decision “just as difficult as a decision to send our soldiers into battle,” chose not to dispatch troops to Yugoslavia. “Important humanitarian and strategic interests” are at issue there, he said, but so far it’s not been clear that limited force would do the job.⁴⁹

Journalists pounced on the West Point speech as the Bush Doctrine. In the theater of the news media,

[h]is doctrine came down to this: it depends. . . . “I know that many people would like to find some formula, some easy formula to apply, to tell us where and when to intervene with force.” That formula, Bush said, does not exist. . . . Why Somalia and not Bosnia Because, Bush finally responded, we can easily make a difference in Somalia and may not—with a lot more effort—be able to do very much in Bosnia. “The former Yugoslavia—well, it’s been

46. The lack of American political partisanship cannot be emphasized enough. I hope that any suggestion of such thinking in the mind of the reader will be eliminated by the relevancy of this critique for President Clinton as well, as previously noted.

47. Janis et. al., *supra* note 23, at 556-58.

48. A goal which, as we will see later, may be an unwise one in a world moving towards multilateral free trade.

49. *American Intervention* . . . , WASH. POST, Jan. 6, 1993, at A16.

such a situation." . . . Bush felt compelled to offer some sort of summing up. He mentioned that he had not been loath to use force where he thought it could matter—Panama, Iraq, Somalia—but that he always did so when he thought he could do the maximum good at the least cost. This, it turns out, is the Bush Doctrine⁵⁰

Perhaps the Bush Doctrine is better thought of as a corollary to the new world order doctrine. The problem with this corollary is that the process of defining the maximum good, and for that matter, defining a cost or a benefit as well, is inherently tied to a theory or vision of social behavior. Without a core vision, the cost analysis varies in its methods and results depending on the situation at hand, producing an inconsistent corpus of decision making. Because Bush never resolved this inherent tension, his doctrinal philosophy's emphasis on the preeminence of sovereignty as a prerequisite to a peaceful and stable new world order is flawed. Criticisms within popular international law and critiques from academic international law illuminate these flaws.

Journalists have noted the "form over substance" nature of the international dispute requirement in the new world order doctrine. Although the doctrine assumes that the enemy of peace is international instability:

[T]he mess in Iraq casts shadows beyond the Mideast and across the entire "new world order" that Mr. Bush is trying to craft out of the end of the Cold war as well as the defeat of Iraq. Mr. Bush says he envisions a world in which a vigilant, American-led world community keeps "the dangers of disorder at bay" by ensuring that one country doesn't interfere with another. . . . The first priority in that new world is the stability and sanctity of existing states. That creates a vexing problem, administration aides acknowledge: What to do for Kurds and other oppressed groups who don't think they have got a fair shake? Under the administration's vision, the U.S. can't do much more than hope that current states can be pressured into forming more enlightened and democratic governments that satisfy restive minorities.⁵¹

Thus there are at least two fundamental paradoxes of stability in the sovereign-minded new world order. First, the doctrine uses a

50. Richard Cohen, *Summing Up the Bush Doctrine*, WASH. POST, Jan. 7, 1993, at A31.

51. Gerald F. Seib, *How Miscalculations Spawned U.S. Policy Toward Postwar Iraq*, WALL ST. J., May 3, 1991, at A1.

vacuous dichotomy of intranational versus international conflict⁵² as the method for identifying serious dangers of disorder. But in doing so, highly dangerous internal conflicts that may also determine the maintenance of peace and the outbreak of war (i.e., stability) are effaced. Second, a central premise of the new world order is that peace is a necessary ingredient in cultivating an international respect for the value of human life and rights. However, stability can exist between nations while degradations of human rights are occurring within nations. It would seem, then, that stability alone is not the hallmark of a new world order, but a particular form of stability is.⁵³ This insight is lost in the "inter" versus "intra" national focus. The goal of peace is compromised by the lack of a coherent sociolegal theory as to which form of stability is desirable in order to create peace between and within nations.

B. The New World Order Doctrine in Somalia: The Difficulties Involved in Treating Destroyers as Saviors, Determining Citizen Consent to Government, and Conceptualizing Civil Society

The Somali experience serves as an awkward precedent for future humanitarian missions. In fact, one of the first questions raised in popular international law was whether the mission was purely humanitarian:

Many observers accept that the U.S. intervention in Somalia was spurred by George Bush's avowed humanitarian concerns . . . Last week, in a speech critical of the Clinton Administration, Bush reiterated that view: "The mission was to go in and save lives," Bush said. "People were starving, and American troops went in there and they opened the supply lines and they took food in. They weren't fighting."⁵⁴

Yet one may ponder why the United States intervened in Somalia instead of Liberia, or the Sudan, which are similarly torn by internal

52. Note that this is an outdated dichotomy which has been transcended in new stream scholarship. See generally Kennedy, *supra* note 10, and Jackson, *supra* note 43.

53. William Butler has noted the necessity of delineating between the *forms* of international order posed in international law. For instance, in examining Soviet and Russian international thought, he notes a change from a vision of a tense coexistence of states, engaged in political struggle, to a vision emphasizing greater cooperation and peaceful competition as opposed to struggle. Janis et. al., *supra* note 23, at 563-64.

54. Christopher Whalen, *In Somalia, the Saudi Connection: Is America Intervening in the Horn of Africa in order to Protect Persian Gulf Oil?*, WASH. POST, Oct. 17, 1993, at C02.

strife. Was the state of affairs in Somalia simply too horrible to “stomach” compared to other “hot spots” around the globe? An answer from popular international law places a strategic focus at the heart of the humanitarian mission:

Specialists in Gulf oil politics, such as veteran journalist Sol Sanders, also recognize that Iran’s limited but growing role in East African states like Sudan and Somalia is part of a much larger strategy to gradually encircle the prime target in the region—Saudi Arabia—with a web of regional alliances and covert military operations.⁵⁵

In light of these observations, the American mission in Somalia takes on strategic overtones. A similar perception was widely shared among Mexican journalists and politicians during the Gulf war:

To many Mexicans, the U.S. motive for going to war isn’t so much creating “a new world order” as defending an old one: First World interventionism to secure Third World oil. And that touches a raw nerve in Mexico, which has a lot of oil and a lot of experience with U.S. intervention. “If a producing country doesn’t respond to the interests of Washington, then the U.S. will do whatever it takes to guarantee its energy security,” wrote a columnist in the business newspaper *El Financiero*. “That is the lesson of the Persian Gulf war for all of the oil-producing countries, among them Mexico.”⁵⁶

To some extent, then, the humanitarian discourse on American intervention may betray a hidden agenda⁵⁷ suggesting an alternative and more strategic focus. Thus, under the new world order doctrine, humanitarian considerations alone may not be important enough to trigger American intervention.

Regarding the political negotiations in Somalia, it appears that America was engaged in a disjointed and contradictory attempt at nation-building. Robert Oakley, former ambassador and U.S. special envoy to Somalia, characterized the mission as an overwhelming success:

55. *Id.*

56. Matt Moffett, *In Mexico, Deep Suspicions of Americans’ Motives May Affect Oil Policy*, WALL ST. J., Jan. 25, 1991, at A9.

57. See John Conley and William O’Barr, *Hearing the Hidden Agenda: The Ethnographic Investigation of Procedure*, 51 LAW & CONTEMP. PROBS 181 (1988).

President Bush announced early last December the U.S. intention to protect humanitarian activities and stop mass death in Somalia with an international military coalition The United States applied what could be likened to a heavy, smothering blanket of military and political power, drawing upon its military might—proven in Desert Storm—its aura as a superpower and its manifest determination to stop the killing. . . . The goal has been to gradually empower Somali women's groups and nongovernmental organizations, clan elders and religious leaders, intellectuals and others by involving them in community development . . . while stopping forceful intimidation. This double barreled approach has already achieved enough success that the political conference meeting in Addis includes as many representatives from these "new" civil society groups as from the old "factions" A realistic outcome at this time would be the establishment of regional administrations, perhaps modeled on the clan/regional political system that existed before The next step could be some sort of loose national authority.⁵⁸

This picture presents America as the key world leader actively engaged in transforming the political landscape of a troubled nation by empowering civil society groups. This imagery is contradicted, however, by American support for the United Nations sponsored meetings of the warring Somali factions. A frustrated American diplomat negated Oakley's picture of nation-building:

"We Americans can't be coach, quarterback and linebacker all at the same time. We want to stay with the process, but we want the U.N. to be fully engaged," said one U.S. diplomat, speaking on condition of anonymity. "Politics is really their mandate, not ours." . . . A top U.N. official, who spoke on condition of anonymity, defended the invitation of the 14 Somali factions [including warlords]. "We have no alternative," he said. "They are the power brokers. It is like dealing with (Serbian President Slobodan) Milosevic in Yugoslavia." Ethiopian president Meles Zenawi [stated]: "You stand now before the Somali people, the international community and history as the principal engineers of the tragedy in Somalia," Meles told the faction leaders. "You must lead the way in the resurrection of Somalia, a country that has collapsed in front of your eyes because of your failure to keep the family quarrel within acceptable limits."⁵⁹

58. Robert B. Oakley, *Mission Accomplished in Somalia*, WASH. POST, Mar. 21, 1993, at C07.

59. Jennifer Parmelee, *U.N. Hosts Meeting of Somali Factions: World Body Reasserts Role in Peace Process*, WASH. POST., Jan. 5, 1993, at A11.

This statement presents an overwhelming theme in popular international law: A disjointed and contradictory mode of analysis. Despite Oakley's characterization of America's political mandate to transform Somalia, the political conference meetings shockingly placed women's leaders and clan elders side by side with the very warlords who were responsible for the horrible state of affairs that triggered American intervention. Although Oakley discusses empowerment, civil society, and nongovernmental organizational development, the American appeal to the destroyers to serve as saviors stands in contradiction to the goal of nation-building. In fact, it would appear that Steny Hoyer more accurately described the application of the new world order doctrine when he emphasized dealings with power brokers that have claims to sovereignty because America is not in the business of sorting out civil society claims.⁶⁰ Moalin Abdullah, a Rahanweyn elder, also emphasized this point: "One of the mistakes," he said through a translator, "was to contact and approach the warlords who destroyed this country, instead of contacting and approaching the suffering people."⁶¹

The very idea of treating the warlords as proper representatives bespeaks another flaw in the new world order doctrine: The confusion of states with individuals. Fernando Tesón has noted this confusion, contending that such thinking analogizes individuals, as autonomous beings, with states, as equally autonomous corporate entities exercising fundamental rights, such as sovereign freedom from intervention.⁶² This analogy stands the whole purpose of individual rights on its head. Rights attach to the individual in order to privilege a sphere of personal choice.⁶³ From a public choice perspective, individuals would hypothetically agree to governmental structures that provide relatively large realms of private choice. By attaching rights of sovereignty and nonintervention to the state one actually engages in a destabilizing process because the "'freedom' of the state . . . means, more often than not, the demise of individual freedoms."⁶⁴ Thus it would be a fallacy to assume that governments are analogous to citizens and especially so to assume that a collection of horribly

60. Mossberg, *supra* note 38.

61. Keith S. Richburg, *Somalis Express Familiar Fears Over U.S. Troop Withdrawal: Many See Civil Upheaval Similar to Fighting That Followed 1991 Pullout—Only Worse*, WASH. POST, Oct. 24, 1993, at A27.

62. Janis et. al., *supra* note 23, at 562.

63. *Id.* at 561.

64. *Id.* at 562.

dangerous warlords could adequately serve "the interests of the citizens over whom they rule."⁶⁵ In the end, "only a State that respects human rights and the principle of democratic representation is legitimate and therefore entitled to represent citizens internationally."⁶⁶

The plethora of states that do not respect human rights leads us to the project of international civil society and its attempt to transcend and displace sovereignty. Some feminists have seized on this concept as politically expedient. While Karen Engle has noted the allure of state sovereignty as protection for those in the margins,⁶⁷ Karen Knop observes that "women may feel themselves members of a group . . . that extends beyond their State."⁶⁸ Because "women's interests and concerns . . . are shaped by gender, sexuality, culture, and other factors. . . . [C]ommon citizenship does not mean that women and men of the same State think similarly or are affected similarly by international issues on which their State takes a position."⁶⁹ By using nongovernmental organizations (NGOs) and networks that define international civil society, women can arguably influence the evolution of public international law.⁷⁰ Knop feels that the growing acceptance of NGOs at the Conference on Security and Cooperation in Europe and the United Nations is promising, but she contends that NGOs will never provide an opportunity "for women's voices to be heard unmediated by States" unless they can "develop an international legal basis, independent of the consent of States, for NGO participation in the creation of international law."⁷¹ This point is particularly salient in light of America's equivalence of Somali women's groups and Somali warlords at the United Nations sponsored meetings.

NGOs' marginal status removes them "from the narrow confines of self-interest that often dictate the position of States"⁷² This freedom allows NGOs "to be more responsive to women's aspirations and more creative in developing proposals for change."⁷³ Nonethe-

65. *Id.*

66. Karen Knop, *Re/Statements: Feminism and State Sovereignty in International Law*, 3 *TRANSNAT'L. L. & CONTEMP. PROBS.* 293 (1993) (citing Fernando R. Tesón, *The Kantian Theory of International Law*, 92 *COLUM. L. REV.* 53 (1992)).

67. See Engle, *supra* note 10.

68. Knop, *supra* note 66, at 309.

69. *Id.*

70. *Id.* at 308.

71. *Id.* at 311.

72. *Id.* at 316.

73. *Id.*

less, the NGOs that create an international civil society are highly limited because the “margins are defined by the mainstream fora.”⁷⁴ NGOs must bend and orient themselves to the structure of regional and international organizations of states as well as to the parameters of issues drawn by those powerful organizations.⁷⁵ In that sense, the concept of an international civil society lacks access to power. Furthermore, in many respects “international civil society . . . replicate[s] the imbalance of political and economic power that characterizes the system of States, an imbalance apparent in relations between First World and Third World NGOs.”⁷⁶ Due to these problems, Knop ultimately rejects international civil society as a feminist project, hoping “that some form of meaningful public debate is possible under the conditions of the late twentieth century economic order.”⁷⁷ Despite the lack of resolution of the issue of civil society in academic international law, clearly these orders of consideration are relevant to an effective reformulation of popular international law’s contradictory notion of nation building.

C. Valuable Multidisciplinary Insights from the New Stream:
 Critiquing the New World Order Doctrine through the
 Objectivity of International Relations and Trade as well as the
 Subjectivity of Feminism and Cultural Anthropology

International relations theory has generally assumed that a convergence of economic and legal development would lead to a homogeneity of political systems.⁷⁸ The failure of this convergence to occur bespeaks an international relations critique of the new world order doctrine. James Feinerman has noted this failure with regard to China, whose increasing participation in the global economic system has paralleled its increasing reliance on a doctrine “which essentially boiled down to the single idea that sovereign nations should respect each other’s independence and not interfere in each other’s internal affairs.”⁷⁹ China refuses to accept or obey rules for international conduct that do not further Chinese interests⁸⁰ and rejects commentary critical of China’s human rights record as unwarranted interfer-

74. *Id.*

75. *Id.*

76. *Id.* at 317.

77. *Id.* at 318.

78. Janis et. al., *supra* note 23, at 556.

79. *Id.* at 557.

80. *Id.* at 558.

ence by outsiders.⁸¹ However, China's conduct is contradictory, for "[i]n the face of the objections of large numbers of its "own people" (particularly because Chinese claims to sovereignty over Tibet give Tibetans status as Chinese citizens), these arguments are bankrupt and untenable."⁸² Moreover, this observation points to another previously noted contradiction: By supporting the integrity of all states as a prerequisite to a peaceful world order, the Bush doctrine enhances the integrity of many nations which are wholly lacking in human rights standards, and thus is incompatible with American humanitarian interests.

A further problem with the ascension of sovereignty as the key to a stable and peaceful new world order is that it is incompatible with notions of international trade. In international trade thought, liberal trade's benefits for interdependent nations are taken as a fact.⁸³ Based on this assumption, the public international landscape of treaties fostering substantive human rights improvements is "replaced by a network of market relations for which only a few substantive rules will be necessary."⁸⁴ The picture changes considerably in this paradigm, "for now the driving image is not a public order of sovereigns, but a market of economic actors."⁸⁵ Thus traditional pragmatist and current new world order distinctions such as the "international" as opposed to the "national" and the "political" as opposed to the "legal," are transcended by a deep concern with the nation as a quagmire filled with tariff and nontariff barriers to free trade.⁸⁶ The increasing interdependence of the world creates problems in managing this interdependence.⁸⁷ Such management requires international economic policy specialists to create interface mechanisms that will bridge cultural differences and allay political fears as national markets are increasingly transformed into global ones.⁸⁸

From an international trade standpoint, the goal of organizing governments into an international public law regime is displaced by the goal of facilitating the steady flow of goods and services across

81. *Id.*

82. *Id.*

83. Kennedy, *supra* note 10, at 678.

84. *Id.*

85. *Id.* at 681.

86. *Id.* at 682.

87. *Id.* at 686.

88. *Id.* at 708.

national boundaries by eliminating governmental interference.⁸⁹ The key issue in international conflict becomes a question of whether the policy in question was devised to promote the project of international trade.⁹⁰ From this perspective the international landscape is fragmented:

The result . . . is a regime divided into two zones: one of international economic flows, and another of the underlying terrain of national politics. The upper zone is sophisticated, rational, and humane; the lower zone is murky, indulgent, physical, and frightening. . . . We are no longer situated nationally, anxious about things foreign. We are now secure in the cosmopolitan world of international economic law, and uneasy only about the shady doings of an outmoded national politics.⁹¹

How then, are human rights abuses to be resolved in light of the negative influence of governmental intervention? One policy that has been suggested is “benign neglect” . . . the possibility that over time many of these problems will sort themselves out as the necessity of substantial health and safety regulation becomes apparent to more nations.”⁹² In a world of growing interdependence, it is presumed that states will cultivate proper interface mechanisms which will allow them to harmonize their political standards in order to facilitate the overarching agenda of liberal trade policy. In this post-sovereign vision, market actors navigate through a wide variety of institutions which are independent of a national contextualization:

a manager of the international trade regime, wherever he or she works, internationally or nationally, must harness a wide variety of international, domestic, and foreign entities to get anything done. . . . [I]nterdependence brings with it a fragmented sovereign with many players, which the sophisticated policy manager will understand as numerous opportunities for engagement.⁹³

Thus, the new world order doctrine’s emphasis on traditional sovereignty appears untenable from an international trade standpoint. Strangely, in other contexts the Bush administration has embraced

89. *Id.* at 692.

90. *Id.* at 701.

91. *Id.* at 693.

92. *Id.* at 705 (quoting Jackson, *supra* note 43, at 210).

93. *Id.* at 689.

liberal trade theory, culminating in the Uruguay Round General Agreements on Tariffs and Trade (GATT) as well as the North American Free Trade Agreement (NAFTA). Therefore the new world order philosophy of sovereignty appears especially contradictory given the post-sovereign emphasis in international trade.

However, international trade theory has come under attack from within new stream scholarship. From an international relations perspective, Tesón argues that interdependence, while serving as a causal factor in the development of international law, should not be confused with a justification for a specific international law paradigm.⁹⁴ He is particularly concerned with the argument that a mutuality of moral obligations will devolve from shared economic dependence. Such a contention leads to the result that those nations that depend less on others “benefit from a correspondingly lesser allegiance to international law.”⁹⁵ Ironically, a high degree of interdependence may also encourage nations to ignore their obligations: “We have seen only recently Western democracies respond in a hesitant, almost servile manner to Iran’s unlawful threats and acts of terrorist violence, presumably because of fear of losing trade partners or strategic allies.”⁹⁶ Therefore economic interdependence offers little hope for harmonious human rights standards because “it makes legal obligation dependent on the contingent degree of interdependence.”⁹⁷ Similarly, because the stability of sovereigns approach ignores potentially highly destabilizing internal conflicts, the new world order doctrine also “cannot provide an independent basis of international obligation.”⁹⁸

Another attack on international trade thinking comes from feminist insights about international trade’s discursive power. Karen Engle notes that the post-sovereign vision is closely tied to international trade’s political agenda.⁹⁹ International economic law replaces substantive human rights standards with benign neglect because public international regimes may create nontariff trade barriers. This international trade agenda contrasts sharply with that of feminists:

Women aim to be inside public international law . . . because they

94. Janis et. al., *supra* note 23, at 560.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 561.

99. Engle, *supra* note 10, at 109.

believe it may offer them protection that is unavailable in the family or even in municipal law. Market actors, on the other hand, want to be outside international law because they believe they have greater power with the market's background rules than with increased regulation.¹⁰⁰

For these reasons international trade theorists reject the "core" of government intervention and prefer to operate in the margins of private transnational commerce.¹⁰¹ To that end, international trade theorists accept the benefits of liberal trade as "science-like" facts, and characterize public international law as an ossified and overly political and theoretical approach incapable of providing a workable structure for thinking about international order.¹⁰²

Engle observes that, in contrast to commercial actors, many women are drawn to the core of law and away from the margins of business. While market actors see international law as chaos, interference, fiction, theory, and politics, feminists see the potential for a better world order that will include protection, facts, practice, and law.¹⁰³ Many women's rights advocates view modern international law as the only feasible provider of universal rights and individual liberties.¹⁰⁴ As economic interdependence foists conditions of globalization upon the international landscape, these feminists note that sovereignty is diminished by greater participation in "international instruments and institutions."¹⁰⁵ And if, as popular international law assumes, international legal doctrines should be premised on the goal of creating peace and pervasive respect for human rights, then modern international law must protect a huge demographic group whose rights are regularly abused: Women.¹⁰⁶

In fact, protecting marginalized groups offers a particularly imaginative and problematic challenge from an anthropological perspective. The new world order doctrine makes all types of conflicts equivalent: International conflicts are worthy of American intervention and internal conflicts generally are not. Both types of conflicts are subject to the corollary that intervention can still occur if the maximum "good" can be achieved with a minimum of "cost".

100. *Id.* at 108.

101. *Id.* at 115.

102. *Id.*

103. *Id.* at 118.

104. *Id.* at 117.

105. *Id.*

106. *Id.*

Nonetheless, these simple equivalencies ignore and efface many important anthropological considerations. The new world order doctrine precludes the asking of a key question in formulating human rights standards: “[T]o what extent do we press our own cultural logics and moral views on others . . . ?”¹⁰⁷ How do we ensure basic health, housing, and community development standards while recognizing the vast cultural diversity of legal forms and systems?¹⁰⁸ After all, “[w]hat one culture regards as permissible killing in temporal ways (trimesters of pregnancy), another defines linguistically (by naming), and yet another defines spatially and in terms of self-definition.”¹⁰⁹ Jennifer Schirmer argues convincingly that we must incorporate a notion of proportionality in formulating human rights standards whose violation may necessitate American intervention.¹¹⁰ A notion of proportionality has one essential goal:

[T]o differentiate the nature and conditions of pain and death in terms of comparative ability to destroy life. This is not so much an issue of relativity or universality . . . but one of relative institutional domination of power in warfare . . . or in the daily violence of grinding poverty. It is meant to redress the . . . cultural distortions of equivalency.¹¹¹

Through this kind of thinking politicians can begin to cultivate an approach that will “recognize that special treatment and support need to be granted to groups that are more vulnerable to others”¹¹² In international trade we are beginning to see the emergence of such practical policy changes as GATT member nations have taken into account the tenuous economic positions of developing nations in formulating realignments of tariff and nontariff barriers to free trade.¹¹³ One begins to see how the argument shifts from protecting a stable international order from the dangers of disorder to protecting the powerless from cultural and economic dislocations fostered by the powerful.

107. Schirmer, *supra* note 10, at 95.

108. *Id.*

109. *Id.* at 97.

110. *Id.* at 95.

111. *Id.* at 97.

112. *Id.* at 95.

113. JOHN H. BARTON & BART S. FISHER, INTERNATIONAL TRADE LAW AND INVESTMENT 158 (1986).

IV. CONCLUSION

Academic international law has been reformulated by a corpus of theoretical fields which comprise the new stream. New stream scholars must turn their attention to the first world's central forum for discourse: the news media, that is, popular international law's "washing machine" of international legal statements. Cultural anthropology is a subjective new stream discipline that is especially effective at analyzing the discourse of popular international law. Furthermore, subjective new stream disciplines such as cultural anthropology need to be brought up to par with the objective side. Through greater harmony a rich body of multidisciplinary research has the potential to emerge.

The new world order doctrine dominates popular international law. This doctrine emphasizes the stability of sovereign nations as the key prerequisite for peace. Unfortunately, this doctrine has major flaws, inconsistencies, and disjunctions. By downplaying the importance of internal conflicts and failing to offer a methodology for weighing costs and benefits, the simple preservation of sovereignty cannot preclude aggression. An analysis of the rhetoric surrounding the Persian Gulf war and the Somali humanitarian mission demonstrates these disjunctions. Furthermore, the political case for the new world order doctrine fails to engage academic international law. The popular international law discussion of this doctrine has much to gain from new stream perspectives and insights. Ultimately, politicians must reformulate international legal doctrine in light of objective and subjective new stream theories.

The political realm will not be transformed into a coherent system based on the rule of law until politicians commit to core theories of sociolegal behavior. Otherwise, they will "go the way" of the pragmatists, fading into the obscurity of a disjointed doctrine.

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