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To cite this article: Alan Norrie & Jamie Morgan (2021) Realism, dialectic, justice and law: an interview with Alan Norrie, Journal of Critical Realism, 20:1, 98-122, DOI: [10.1080/14767430.2021.1881274](https://doi.org/10.1080/14767430.2021.1881274)

To link to this article: <https://doi.org/10.1080/14767430.2021.1881274>



Published online: 23 Feb 2021.



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DEBATE



## Realism, dialectic, justice and law: an interview with Alan Norrie

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### ABSTRACT

In this wide-ranging interview Alan Norrie discusses how he became involved with Critical Realism, his work on Dialectical Critical Realism, and responses to it amongst the Critical Realist community. He also discusses the role of law in society, law's relation to philosophy, and his various related research interests over the years. This extends to his most recent work on moral psychology and the underappreciated connection between metaphysical and meta-psychological categories such as love in Critical Realism, and its importance in ethical and legal contexts.

### KEYWORDS

Alan Norrie; critical realism;  
dialectical critical realism;  
justice

Alan Norrie is Professor of Law at the School of Law, University of Warwick and served as its Head of Department from 2011 to 2015.<sup>1</sup> He is a significant figure within legal scholarship and critical legal studies (Norrie 1997), and is perhaps best known among Critical Realists for his work on Dialectical Critical Realism (DCR, see Hartwig 2007; Norrie 2007b). His book *Dialectic and Difference* (Norrie 2010a) did for Bhaskar's *Dialectic: The Pulse of Freedom* and *Plato Etc.* (Bhaskar 1993, 1994) what Andrew Collier's *Critical Realism* (Collier 1994) did for many of Bhaskar's previous works (Bhaskar 1975a, 1979, 1986, 1989, 1991).<sup>2</sup> Norrie was an editor of one of Critical Realism's most important and influential popularizing texts – *Critical Realism: Essential Readings* (Archer et al. 1998), which reproduces some of his essays (e.g. Norrie 1996a, 1998).<sup>3</sup> In general, Norrie's work ranges across law, philosophy, social theory and ethics and extends into such issues as crime, punishment, justice and most recently the moral psychology of guilt and forgiveness – incorporating exploration of the concept of love (e.g. Norrie 2018a, 2018b, 2019a, 2019b, 2019e, 2020; and see in different contexts Gunnarsson 2014; Assister 2009).<sup>4</sup> This latter work has emerged from his Leverhulme Major Research Fellowship, 2015 to 2018. Prior to taking up a Chair at Warwick in 2009, Norrie had been Edmund-Davies Professor of Criminal Law and Criminal Justice at King's College London between 1997 and 2009 and held the Drapers' Chair in Law at Queen Mary and Westfield College, University of London between 1994 and 1997. He previously lectured at the Universities of Dundee and Warwick.

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Norrie first studied at Edinburgh University, graduating in law in 1975, and then took a Master's degree in Criminology at Sheffield University. He wrote a doctorate while teaching law at Dundee. He is an original and continuing trustee of the Centre for Critical Realism and a founding member of the International Association for Critical Realism (IACR). He was elected a Fellow of the British Academy in 2011. He served as President of IACR between 2006 and 2018 and is a longstanding supporter of the *Journal of Critical Realism* under its different editors (e.g. Norrie 2017b), beginning with its earlier guise as *Alethia* (e.g. Norrie 2000b; Hostettler and Norrie 2000).<sup>5</sup> He has published a number of essays and reviews in the journal (e.g. Norrie 2004a, 2005b, 2012a, 2013b, 2016, 2017c).<sup>6</sup> He has also been a frequent contributor to the journals *Social & Legal Studies* (e.g. Norrie 1996b, 2000c, 2003, 2019a, 2019c; Carvalho and Norrie 2017), *Criminal Law and Philosophy* (e.g. Norrie 2007a, 2015, 2019b, 2019d) and *New Criminal Law Review* (e.g. Norrie 2008, 2010b, 2011), as well as other forums (e.g. Norrie 2004b, 2012b, 2018c). In addition to *Dialectic and Difference* his books include *Law, Ideology and Punishment* (Norrie 1991), *Crime, Reason and History* (1993a, 2001, 2014), *Closure or Critique* (as editor, Norrie 1993c), *Punishment, Responsibility and Justice* (Norrie 2000a), *Law and the Beautiful Soul* (Norrie 2005a, see also Norrie 2004b) and his recent collected essays *Justice and the Slaughter Bench* (Norrie 2017a). He has published numerous edited chapters (e.g. Norrie 1993b, 2013a), including in collections devoted to Critical Realism (e.g. Hostettler and Norrie 2003; Norrie 2005c). He is currently working on a book provisionally entitled *Moral Psychology and Criminal Justice* for Cambridge University Press.

Norrie won the Hart/SLSA Book Prize for *Law and the Beautiful Soul* in 2005. The citation recognized

an important book which crosses a breathtakingly diverse terrain, co-locating socio-legal, critical legal, ethical and historical studies around common themes of contradictory identities in legal discourse and the nature of legal critique ... a beautifully written book, which also demonstrates the author's own journey.

He was awarded the Cheryl Frank Memorial Prize for *Dialectic and Difference* in 2011 (sharing the prize with Christian Smith). *Dialectic and Difference* was described by Mervyn Hartwig as 'Elegant, thoroughgoing, accessible, genuinely illuminating. It brilliantly elucidates dialectical critical realism's ethics and how it trumps poststructuralism in particular and irrealism in general.'

The following interview with Alan Norrie was conducted by Professor Jamie Morgan for *Journal of Critical Realism*.<sup>7</sup>

**Jamie Morgan (JM):** Let's start with your recollection of how you became involved with the realist movement, how you became aware of Critical Realism, how this fitted with your interests and concerns in legal studies, your role in the formation of the Centre for Critical Realism (CCR) and IACR. Doug Porpora, Margaret Archer and Tony Lawson have all discussed their recollections in recent interviews – and, of course, Andrew Collier and Roy Bhaskar are no longer in a position to do so (however, see Bhaskar and Hartwig 2010; Collier and Calder 2008, 2009). Tony Lawson is a little sketchy on events (we are all getting older), but recalls meeting you in an office in Islington around 1996.

**Alan Norrie (AN):** I remember sharing a beer with him around then in Barking! I became involved with the CCR and IACR in the mid-late 90s, when I became involved in the CCR. I have always had an interest in philosophy and in how a discipline like law is related to underlying philosophical questions. Once you start thinking about law, you quickly get into issues that seem, at least as some lawyers would have it, to be non-legal. In truth, legal and other questions of a theoretical kind coexist on a continuum. Traditional legal approaches are often not very interesting, or at least weren't to me, because they are dogmatic and doctrinal in their form. You don't have to spend too long around law to realize the range of questions and issues that come in its train. My earliest experience of legal studies was one of deep dissatisfaction on account of its practical empiricism, while I was also lucky to experience a broad-ranging jurisprudence course at Edinburgh, and a number of honours subjects in sociology of law, criminology and moral theory. These were interesting for what they had to say about law, and because they turned law into a window on issues seemingly beyond it. Critical Realism became important in this setting because it offered ways of thinking systematically about the underlying grounds and nature of law as a social phenomenon.

I'd say my work has always been about the working in law and beyond law, with the two aspects complementing each other. Critical Realism has been crucial in holding the 'in' and the 'beyond' in a relation to each other. This kind of inter/intra/ trans-disciplinary approach sometimes seems to work well, while at other times leaves me feeling unsure how to self-identify. I've tended to oscillate between periods when I have been more directly focused on legal studies and periods when I've set these aside to think about general theoretical issues, particularly in Critical Realism. Those latter periods have sometimes felt 'self-indulgent' or to be at the expense of my 'day job', straying outside my discipline, yet in the long run they have proved indispensable to my work in law itself.

**JM:** Interesting, Doug Porpora mentioned something similar about the pressure in sociology to redirect attention from fundamental philosophical issues and to 'get back to work', as though engagement with and appreciation of fundamental matters was somehow already settled, self-indulgent or superfluous.

**AN:** Maybe there is also a sense that others ought to carry that particular weight in a sensible division of labour, but the intra-connections are so important that I think people in specific fields have to take part of the load. The engagement has to be in terms of what specific subjects need, and there aren't any ready-made solutions from another discipline. You have to go through, beyond, and then come back to, your own discipline.

**JM:** In any case, the 'necessity' of philosophical engagement is, of course, the very basis of realist philosophy in the social sciences, with its ontological emphasis (i.e. it can be counterproductive to ignore matters of ontology because one will be relying on an implicit one). Though perhaps the pressure to get on with the 'day job' is even greater in the study of law and we might return to this later. In any case, your interest in Bhaskar's work as part of this interdisciplinary interest began ...

**AN:** I first became aware of Roy Bhaskar as a masters student at Sheffield. At that time, there was substantial interest in the question of what constituted a science given the kind of sceptical treatment provided by Thomas Kuhn and, from a very different point of view, Louis Althusser. Bhaskar had published what seemed to me a brilliant essay in the *New Left Review* in 1975 which showed parallel problems in Anglo-American and French philosophy as represented by Feyerabend and Bachelard (Bhaskar 1975b). He showed how distinguishing epistemology and ontology could permit emphasis on the social construction of knowledge but still permit an understanding of a science's real achievements. This was a very complex area involving different philosophical traditions which didn't easily translate one to the other; and this essay produced for me a 'scales falling from my eyes' moment. I found there were to be a few of those with Bhaskar. I bought a copy of his *Realist Theory of Science*, which struck me as powerful for its ability to take apart orthodox discussions in the philosophy of science, and find a novel way beyond them. The fact that this came through reworking Oxford philosophy gave it added strength – a form of building with the master's tools.

**JM:** And it is sometimes neglected that Bhaskar's reworking had further personal context. As David Graeber states in his obituary, Bhaskar was motivated to provide tools for understanding societies' deepest structural problems by his experience studying PPE at Oxford and after working as a lecturer in economics there – training a future policy influential elite (Graeber 2014). His point of departure may have been philosophy of science, but this was not just philosophy for philosophers that then was taken up by social scientists – a point that resonates perhaps with your own unease with the boundaries of disciplines and the concerns expressed or prioritized in them.

**AN:** Yes, Bhaskar often spoke about his interest in economics, though his own contribution was to work at a level deeper than a particular subject field. In so doing, he did a service to a number of fields including economics, law, sociology and so on. His underlying point, I felt, was to set the particular discipline in a deeper setting where its governing assumptions could be exposed and subjected to a broader and transforming perspective. Taking law, lawyers needed to understand that it was not, as in its orthodox guise, something autonomous or *sui generis*, or simply and simplistically aligned with normative political theory, its usual bedfellow. It was rather embedded in structured social fields which revealed its limitations, what was problematic about it in ethical or justice terms, and then what remained its strengths, now understood in a more complicated context. Unlike Bhaskar, I stayed with my initial discipline, but taking his and others' philosophical approach, I wanted to look at things more deeply and critically.

After my masters work, my first job was lecturing in law at Dundee, where I did my doctorate. Among the things I worked on was a critique of an abstract rational approach to practical reasoning, and the ability of orthodox approaches in criminal law and criminology to understand decisions to commit crimes. It was quite a limited study, and didn't make it into my PhD, but it picked up a theme of my later work on law's abstract individualism, and the way it establishes the idea of responsibility (Norrie 1986). I used Bhaskar's *Possibility of Naturalism* to think about individual agency as a positioned practice, indebted to social structure. What did make it into the thesis was a discussion of

freewill, determinism and criminal justice, which also referenced Bhaskar (Norrie 1983). More generally, my thesis was about the theory of punishment, and took an historical and social structural perspective linking the development of ideas to development of state and economic forms. Whilst I drew on Bhaskar's work, I also drew on other people like Ted Benton, Russell Keat and John Urry, and Derek Sayer. We sometimes look back and see Bhaskar as the creator of Critical Realism, but there were a number of people writing cognate works in the late Seventies and early Eighties, so that the contemporary sense was of a general wish to understand science in a realist and a social way. The particular 'science' I discussed in my thesis was the modern theory of punishment, and the thesis became my first book, *Law, Ideology and Punishment* (Norrie 1991).

By the way, one key theorist of punishment for me was Hegel, and I read his *Philosophy of Right* closely at this time. I was surprised at how little he was understood in philosophical circles, but mainly, I was very taken with his dialectical logic at the same time as I thought his account of punishment very problematic.

**JM:** Hegel is a subject we can come back to, but that seems a quite different set of intellectual inspirations for a work on punishment than say Michel Foucault's *Discipline and Punish*, though his later essays and interviews indicate he possibly had greater affinities with agent/ structure ways of thinking than some might expect.

**AN:** I have to say that I also found *Discipline and Punish* really exciting at this time. For someone studying critical issues in criminology and criminal justice, Foucault showed something of the way. His work argued for an historical method, but it fell short by essentializing power, and he was also more interested in forms of social 'discipline' than he was in legal 'punishment'. Thinking about the influences which underlay my development, the additional person I'd mention would be the Russian Marxist legal scholar, E B Pashukanis, who linked the question of legal form to that of commodity exchange and produced some quite brilliant insights into the nature of law itself as a specific social form.<sup>8</sup> For a critical lawyer, his work offered me more than Foucault, but it's important to say that these interests in studying law per se were underpinned for me by Critical Realism as a theory that could grasp the structural layering of the different levels of social life and affirm the importance in philosophical terms of historical method. These grounded my approach to punishment theory.

Staying with the early work by Bhaskar and others for the moment, you say in your kind introduction that my main contribution to Critical Realism has been on Dialectical Critical Realism, which would be true; but I found Bhaskar's first two books really foundational – and these led eventually to his later dialectical work. I recently went back to my early thoughts on the freewill/determinism debate, a debate that has come up again in law and justice discussions recently. The field is divided between 'compatibilists', 'freewill sceptics' and 'libertarians', and it occurred to me that so much of the early Bhaskar is very relevant to a debate which has become more sophisticated and exhaustive (and exhausting), yet not really changed. Bhaskar's critique of regularity determinism and his account of agency as natural and *sui generis* remain important and so far as I can tell unsurpassed at least as a starting point for a sensible position. That said, I was delighted to find a passage on freedom and open systems in *A Realist Theory of Science* which I had marked with a decisive 'NO', written almost 40 years ago in the margin. I found myself

agreeing with my earlier objection and I hope to write something on this debate, which will bring out what I thought was mostly right and what at least incomplete in Bhaskar's original argument.

**JM:** Realism of course, emphasizes that all work is fallible and the world changes, which can render some aspects of some works redundant ... It would be an odd *Critical Realism* that found no room for critique of its own key works.

**AN:** Indeed; though I have had the experience of being sure that Bhaskar was wrong on something only to recant later. But the side of Critical Realism that emphasizes the social production of thought is what you allude to, and we are all formed differently in a changing world which must play its part in our thinking and being, subject of course to debate and questions of judgemental rationality.

That thought about change takes me to the next stage in my development. After reading *A Realist Theory of Science* and *Possibility of Naturalism* when they came out, my interests in law came to the fore in the 1980s, and I put Critical Realism on the backburner. I focused on my thesis in the early Eighties and finished it in 1985, moving to Warwick University in 1987. There I developed my work from general legal theory and theory of punishment into a critical, but I'd like to claim technically precise, study of criminal law. In this period, Critical Realism was still the backdrop. I wrote a book called *Crime, Reason and History* (Norrie 1993a), which analysed critically the general principles of criminal law (lawyers call this 'the general part'). It treated these principles as socially and historically emergent in modern liberal society and as essentially contradictory. The last section of the last chapter is called 'Criminal Law as Praxiology', and this was a term I drew from Bhaskar's *Possibility of Naturalism*. It signified the limitations of any practical ideology which is shaped by its social functions in a particular historical context. My point was that law was full of conflicts and oppositions, and not, as it saw itself, a project of rational reconstruction from universal first principles. (That wasn't a new thought, by the way, it had come across the Atlantic from the US critical legal studies movement, but that work was not that systematic and lacked a deep grounding in history, ideology, or philosophy such as provided by Critical Realism). That thought, that law was full of conflicts and contradictions, was what eventually pushed me back, and further, into Critical Realism, but in a different way, by exploring dialectical thinking.

**JM:** So you never lost interest in what was going on in Critical Realism?

**AN:** I was also following, albeit at a distance the direction taken by Critical Realism in the 1980s, but it seemed in that period that it was looking for something else, a next step in its development.

**JM:** So working on the law and using realism in an under-labouring sense you were also thinking informally about the way realist philosophy might develop?

**AN:** Yes, and in connection to my understanding of the nature of law and its relationship to society, history and ethics. How would Critical Realism under-labour for what I wanted



to do, without quite knowing where or how I wanted to go: how might Critical Realism meet up with me on that?

**JM:** You were finding something less satisfactory in how one informed the other?

**AN:** Here the focus does become more on Bhaskar himself, or at least did for me. I found the works he wrote in the 1980s less compelling. I had attended a Critical Realism conference in Bristol in about 1988, and had found the discussion there rich, but it didn't seem to offer me what I needed, albeit that I didn't really know what that was. As it turned out, Bhaskar's 1980s work was also searching for a new development – his dialectical approach – and here our different processes of development came together again.

**JM:** Bearing in mind that what we are talking about here is that his work became *about* dialectics rather than merely stating that it was dialectical (since much of his prior work includes comment that one must have a dialectical view of reality in order to address the nature of potential, complexity, process and change)?

**AN:** But where was that aspiration articulated even in half-formed ways? What struck me when I came across the dialectical work in the early 1990s was that it seemed to spring new and fully-formed on the page. I was aware that my work on punishment and criminal law had brought out historically-formed contradictions – what I would begin to see as the antinomial quality of basic legal categories. I needed to think about how one could understand conflict, opposition, contradiction, antinomy in a more general way, but how? In legal theory at this time, critical understanding was overwhelmingly provided by Derrida and deconstruction, but while ideas of *différance* and the 'dangerous supplement' had their attractions, and while the idea of aporia added a further term to the lexicon of antinomy, this seemed to promote only an 'ethical turn' that no longer saw social forms like those of law as structurally embedded in socio-historical process.<sup>9</sup> The deconstructive commitment to difference and otherness did celebrate human diversity and creativity in a world dominated by stereotypes, but too much was left out. What was also needed was an emphasis on material change, how you could think such change along with contradiction and antinomy, while leaving a place for genuine difference. How could one think this through? Of course, there was Hegelian and Marxist dialectics and the dialectical tradition, but I had read at least some Hegel and I didn't think he offered what I needed, Marx was an empty space needing filled, and I knew too little of Adorno at that point to think he was the way to go.

So it was all a bit of a muddle for me, and it was then, unexpectedly, that I came across a new book in a bookshop in Coventry on dialectics by one Roy Bhaskar called *Dialectic: The Pulse of Freedom*. Given my background in Critical Realism and my interest in thinking about historicity, contradiction and antinomy in law, this seemed an auspicious moment. I took the book home and began to read it.

**JM:** I expect there are one or two who are sceptical about whether 'fully-formed' quite captures the experience of reading *Dialectic* (there being a possible distinction between necessary complexity to deal with genuinely complex issues and overly



complex and sometimes abrupt argumentation, and Critical Realists seem divided on this in regard of *Dialectic*). But what did you make of it?

**AN:** I was enthusiastic. It was plain to me that this was an extremely serious effort to do something that hadn't been done before. Bhaskar's background was on the left, and his early emphasis on material mechanism and structure was looking for a new way forward though a serious engagement with Hegelian dialectics on realist ground. The effort to rethink causation as spatio-temporal, emergent, in relation to negation, and as enabling an understanding of product and process drew a picture of materiality in action that would at the same time promise an ethical engagement around agency. This was hard reading, but two things kept me going. One was just determination. I'd read and got the early Bhaskar and I wasn't going to be beaten by his new work, especially when it seemed to connect with what I wanted. The other was a sense of discovering nuggets among the system building that could be lifted out and used more or less immediately. For example, there was a passage around p.60 where Bhaskar started talking about entity relationism and the way that our identity is always with and through others, as much in the past as in the present.

**JM:** Heikki Patomäki makes much the same point that *Dialectic* has numerous brilliant individual parts one can appropriate (e.g. Patomäki 2017). I might add though that there are quite a few Marxists who would contest whether in fact Marx was 'an empty space that needed filling' (given how much work others too have put into dialectics in a Marxist tradition).

**AN:** On the question of Marx and Marxists, of course you are right, dialectics is not exactly an unploughed field. I was alluding to something more specific to Marx though – in a letter to Engels he had expressed the ambition to clarify his position in relation to Hegel in two or three 'printers' sheets', but had never done so. I think *Dialectic: The Pulse of Freedom* is an effort to make sense of the Marx-Hegel relationship. Of course, Bhaskar is not the only one to make that attempt and there is an interesting and helpful account of different strands of Marxist thought on the subject by Bhaskar himself in Bottomore's *Dictionary of Marxist Thought*. But Bhaskar is one of the few to treat the question systematically, and, of course, was seminal in bringing the already existing philosophical achievements of Critical Realism around ontology to bear.

As for the question of difficulty, *Dialectic* is a difficult book, and it took a number of readings to come to grips with it. But I continue to think the effort is worthwhile and the arguments are well-made if not always expressed elegantly. As I said at the beginning of *Dialectic and Difference*, there is an interesting way in which 'difficult' philosophical texts become seen as 'Difficult' with a capital 'D'. With some works, difficulty is seen as a positive merit of the text indicating profundity; with others, it becomes a pretext not to take a work seriously. I think the problem for Bhaskar was that his approach challenged too many existing positions in the field, so it was easy to focus on its long sentences and the 'Niagara of neologisms' as Andrew Sayer put it (Sayer 2000, 170).

**JM:** That seems plausible. Though it might also be the case that *Dialectic* required the reader to have a depth and breadth of knowledge of an array of equally difficult works

that many working social scientists would not have had the time or inclination to read. It was possible to follow the argument in *A Realist Theory of Science* irrespective of whether you had ever read Kant's *Critique of Pure Reason*, Hume's *Treatise or Enquiry* or even Kuhn, since the core problems of philosophy of science had wide currency at the time (how do we know what we know, what can we know etc). However, *Dialectic* was published in a different context and sat differently with current social science. Is it a book that makes more sense if you have a working knowledge of Hegel's *Philosophy of History*, *Philosophy of Right*, the *Phenomenology* etc etc. and a reasonable appreciation of what Marx was trying to glean from Hegel?

**AN:** That could be the case. On the one hand, every 'working social scientist' needs theory to get their social science to work; on the other hand, not every such person wants to think to the theoretical depths of their discipline. Theory for its own sake can seem self-indulgent, as it sometimes is; but at the same time, responsible scientific work must continue to think through underlying assumptions, and how and why these change over time. It ought not to accept the idea of Critical Realism as just a 'toolkit' in my view.

I was always drawn to theory, though not at the cost of investigating legal material concretely. *Crime, Reason and History*, now in its third edition, is very much a law book, though its overall theoretical cast makes it relevant beyond legal scholarship. You mention a preformed interest in the Hegel-Marx nexus as being relevant to attraction to Bhaskar's *Dialectic*, and that would be true in my case; but the thing that drove me into that work was having reached a limit in reading law – in *Law, Ideology and Punishment* and *Crime, Reason and History*. It was seeing law as a very contradictory phenomenon that pushed in the direction of dialectical theory, so it was what I discovered as a 'working social scientist' that pushed me towards dialectical theory. There was the pull of elective affinity, but there was also the push of ongoing disciplinary enquiry.

The broader point to make is that it just seems plain to me that we live in an extremely contradictory social world, so I'd encourage Critical Realists in whatever area both to reflect philosophically on their 'working social science', and to think how they might develop their work in light of dialectical ideas.

**JM:** If we are thinking about contrasts and motives for engagement, I guess this also indicates how much the early influence of Critical Realism owed to its focus on depth realism, the epistemic fallacy, under-labouring and then a highly generalizable agent-structure solution, rather than, if we take Graeber's point, Bhaskar's interest in emancipatory politics; whilst acknowledging that tying the two together was part of his appeal to some Marxists and socialists, like Andrew Collier (and source of partial disagreements with others, such as Alex Callinicos). In general though, would you suggest a concern in *Dialectic* with themes arising from Marx and Hegel probably seemed odd (Derrida's *Spectres of Marx* notwithstanding) at a time poststructuralism was making significant headway in social science and humanities departments?

**AN:** This is again a question of why Dialectical Critical Realism didn't have the same impact as the original form. With regard to its likely audience among existing Critical Realists, there was a problem of existing intellectual allegiances. Some Critical Realists didn't

like it because the dialectical work tied Critical Realism more closely to Marx, while many Marxists didn't like it because it challenged existing conceptions of Marx, and many Hegelians didn't like it for a similar reason. There was also the broader issue of, for want of a better term, the *Zeitgeist*. Bhaskar published his *Dialectic* in 1993, when the world of critical theory was dominated by either Habermas's critical liberalism or the poststructuralism of Derrida, Foucault and Deleuze. These divergent trends presented dialectical thinking in particular, unflattering, ways. Of course, Bhaskar's *Dialectic* had important things to say about these other trends in critical theory, but they had to be dug out of his argument, and could have been more developed. I regret that having written it, Bhaskar did not find the time to engage more fully with other positions. His own journey was towards what would become metaReality and Eastern thought, and this occurred soon after developing his dialectical position. This led to important further thought, but it meant he was unable to nurture his dialectical work as he otherwise might have, had he not moved on so quickly.

**JM:** The antipathy to Marx varied of course and Foucault's difficult relationship with the theory and party politics of Marxism (in the wake of Althusser etc.) is among the best documented. In *The Lives of Michel Foucault* Macey provides the following well known quote:

Don't talk to me about Marx any more! I never want to hear anything about that man again. Ask someone whose job it is. Someone paid to do it. Ask the Marxist functionaries. Me, I've had enough of Marx. (Macey 1993, 348)

However, many of the concepts and themes of *Dialectic* seem to speak to overlapping concerns and interests of continental philosophy. Relationality, for example, is a common theme in much of modern continental philosophy and social theory, from Henri Bergson on duration and time to Paul Ricoeur's three volume *Time and Narrative* ...

**AN:** With regard to the quote, the words 'baby' and 'bathwater' come to mind, but of course we are all capable in our 'not best moments' of making sweeping statements, including Foucault. Your further point is the important one. I was interested in relationality, but I was interested in thinking about relationality in relation to the position-practice and structure-agency elements of Bhaskar's *Possibility of Naturalism*. Thus one of the first things that struck home in *Dialectic* was a comment Bhaskar made there about this. For anyone, he said, who doubts the significance of relationality, just think how much we are creatures of history. A further point it is worth reiterating is that when we talk about dialectic relationality, there is another side to *Dialectic* in that Bhaskar insists on human agency ... So similarities, but also specificities.

More generally, I would say that the deepest point in Bhaskar's dialectical work is precisely how it makes connections with other traditions. There is a basic realist point at stake in seeing connections across approaches, because there is a sense in which philosophy is generally seeking to understand the human condition, so it is a question of connections as well as differences between different approaches. His second book on dialectics is called *Plato Etc*, which takes up the view of Whitehead that Western philosophy is a series of footnotes to Plato. That's a significant guide to seeing how Bhaskar was thinking through the relationship between the different philosophical traditions in which his

work was located – the Greeks, the British materialists, the German idealists, Marxists and the modern continental approaches – all in their connection and (sometimes wilful) disconnection to dialectics.

As regards ‘continental philosophy’, it’s of course a large field, but one of the things I sought to do in *Dialectic and Difference* was to show how issues concerning difference, plurality and the multi-faceted and often disjointed nature of social reality which postmodernism had emphasized could be reached through a sufficiently flexible account of dialectic, what Bhaskar described as its materially diffracted quality. And at the same time, I tried to develop in the later chapters his critique of poststructuralism for its one-sided emphasis on negativity as difference (linked to the Parmenidean ban on ‘not’, and Plato’s explanation of this), and to the exclusion of negativity as material change. Here, the thematic of ‘footnotes to Plato’ really comes out, because the poststructuralist impulse to acclaim radical difference can be seen as a critical inversion of Plato, or a continuation of the contemporary, radical, Heraclitan, critique that Plato sought to counter. This was Mervyn Hartwig’s point about trumping poststructuralism that you quote in your introductory comments.

**JM:** Coming back to the point about Marxism (or at least prompted by Marxism), the insistence on emancipatory agency may also partly explain why *Dialectic* encountered resistance from some, if we return to currents in social science. As Andrew Sayer notes in *Why Things Matter to People* social science tends to place its emphasis on the *science* and takes the view that objectivity requires it to be distanced from norms, emotion, and projects of human flourishing – an odd situation to end up in, given the focus is knowledge of people and society in various ways (and what else is knowledge for if not to better ourselves). In any case, the purpose for which Bhaskar tackles human agency (a systematic exploration of the scope for emancipation, human flourishing, and well-being) sits awkwardly with contemporary social science concerns and frameworks – even some of the more instrumental realist ones which encourage an interest in explanatory mechanisms.<sup>10</sup> And from a post-structuralist point of view the very notion of agency for the purposes of freedom seems naïve and, arguably some branches of Marxism had started to inadvertently end up in this territory – Hardt and Negri, for example (though this is a decade after *Dialectic*; e.g. Morgan 2018). Marxists, of course, as your prior comments intimate already had a variety of systematic approaches (historical materialism, labour theory of value, transformation in ownership of the means of production, a class in itself for itself, etc.).

**AN:** For some critical theorists, it seems to be very dangerous even to talk about emancipation because, I think, this is associated with past promises that have become a part of the social process of domination under modern conditions. Of course that is an issue, but it ought not to be allowed to stop us talking about what emancipation would mean today, and in a way that links the past struggles to ones in the present – so not just in the terms of ‘an “other” emancipation’, whatever that might be. Given Bhaskar’s insistence on the ongoing importance of power<sub>2</sub> relations or generalized master-slave relations today, he couldn’t avoid the importance of emancipation, and it’s hard to think what critical analysis is about if it is not this.

In the work I am doing now, I draw on what I think is potentially a highly emancipatory strand in Freudian metapsychology associated with Hans Loewald (1980) and Jonathan Lear (1990). There I find questions of human freedom are brought to the surface, while Bhaskar's insistence on emancipation across the range of human, social and natural experience remains essential. What the Loewald/ Lear approach adds is an elaboration of human ontology at what Bhaskar calls the intrapsychic plane in four planar social being. This is an area where Critical Realism is not well-developed, and I think that focusing on the human being as a loving animal capable of processes of psychic formation and development represents a missing link in social ontology. It also provides the material groundwork for understanding the kind of metaphysical experience that Bhaskar called metaReality. With regard to the naturalistic understanding of a particular animal and its species being, how could we have a metaphysical sense of ourselves without there being a meta-psychological basis thereto? I think there is a strong complementary relationship between this kind of Freudian metapsychology as a specific science and Critical Realism as a general philosophy of and for the human and natural sciences, in all its forms, original, dialectical and metaphysical (Norrie 2020). This seems fundamental to thinking through how human being interrelates freedom with love, why freedom is central to human being, and various kinds of emancipation are necessary.

**JM:** The other strand that we began with was your role in the formation of the Centre for Critical Realism and IACR, by way of your prior intellectual development, so how did *this* lead to your involvement in the CCR and then IACR in the 1990s?

**AN:** My memory is of attending a Critical Realism conference in the mid-90s at University of East London, when Bhaskar was still working through dialectical themes, but now talking about the demi-real – a concept that would find fuller statement in his later work on metaReality. This was before he set up the Centre for Critical Realism (CCR), and it was probably the time when we began to connect more. I do remember first meeting Tony Lawson at that conference – the beer in Barking. It was out of these meetings that I became a founding member of the CCR. Tony and Maggie Archer were both around at this point, and Andrew Collier of course. There was also a conference at Warwick in 1997, and I remember that one as being where Bhaskar's dialectic came under scrutiny from those unconvinced by it.

At that time, the idea of the MELD system came into play, which is there in *Dialectic*, and I think that I was somehow involved in pushing it. The basic thought was that original Critical Realism had had a 'first moment' (1M), from which the dialectical work developed a 'second edge' (2E) around negativity, which was followed by a further 'third level' (3L) of totality, before finding a 'fourth dimension' (4D) around agency. So MELD described the overall movement, as Bhaskar's argument described in the broadest terms its relationship to what he had already argued for (1M – original Critical Realism); and then added to it the importance of understanding what material change meant (2E – the real determinate negation of what was presently there); before arguing that a world in which material change related to structure and mechanism entailed an understanding of how a material totality or whole operated (3L – with holistic causality and concepts like the constellation and four planar social being); before circling around to an understanding of how real agency and moral commitment was possible in this material world (4D – the possibility

of a world of human flourishing and praxis). Nowadays, I still think this describes Bhaskar's journey in his dialectics ...

**JM:** 'Journey' is an interesting term to use here, since MELD is clearly useful as an organizing schema but, of course, provokes different responses: is it possible to be 'dialectical' and Critical Realist without subscribing to MELD (Tony Lawson seems to take this view in his recent interview), and does MELD adequately express the complexity of *Dialectic* (to what degree does an organizing schema invite reduction)? Perhaps you might comment on this ...

**AN:** Looking back on MELD, I would try in a way to defuse the sense of it as some kind of necessary path, which tends to underplay the richness of the argument, and to give it too easy a catchphrase.

**JM:** Many Hegel scholars say the same thing about reductive uses of thesis, antithesis and synthesis ...

**AN:** I think with Bhaskar's *Dialectic*, we are thrown on our own devices. By all means use MELD if it helps – and remember that Bhaskar himself built on it to develop the further levels in his thought constituted by metaReality ('MELDARA'!) – but don't make it into a fixed statement of a system. The way I see it now is that the elements Bhaskar identified were necessary to develop original Critical Realism from the early positions, and this involved an understanding of change and totality and the continuing importance of ethics. However, I'd rather say that these are the things we need for a good social theory, rather than insist on a 'true path' that has to touch the four bases of MELD, and in that order. Another dialectical theorist, call her Xhaskar, might have started from change, totality and agency, and *then* seen that what she needed was an account of real, material, determinate structure and difference (Critical Realism's initial ontological starting point). The thing to remember is that in Critical Realism, theory is always an attempt to under-labour for an overall understanding of our natural world and our human place within it. So what we need is an understanding of the different things MELD describes (i.e. structure and difference, change and negativity, totality and agency). Rote repetition of a formula has to be of quite limited significance, and as you say may be likely to invite reduction. For example, I think one of the really significant aspects of Bhaskar's dialectical work is its metacritique of Western philosophy (the 'Plato Etc' argument). That involves understanding how Western philosophy has always failed fully to address the four elements in the MELD schema, but it's not reducible to it, nor represented in the acronym.

**JM:** You've already spoken about themes in *Dialectic and Difference* ... what were you trying to achieve?

**AN:** Five things. First, and most obviously, I was trying to understand it for myself. Second, I wanted to make Dialectical Critical Realism more available to a Critical Realist audience. Third, more particularly to myself, I wanted to think through how it grounded my understanding of law. Fourth, related but also separate from that, I wanted to find out what it

had to say about the nature and status of modern ethics. Fifth, in the last two chapters, I sought to think through what a dialectical Critical Realist engagement could make of the preponderance of postmodern and poststructuralist thought in modern critical social theory. This was where a critique of ‘radical anti-Platonism’ came in.

**JM:** So, writing it provided another, if extended, ‘scales falling from the eyes’ for you? Earlier, you mentioned ‘Criminal Law as Praxiology’ and the limitations of any *practical* ideology, which is shaped by its social functions in a particular historical context. You also referred to ‘law as structurally embedded in socio-historical process’ and the need to contest laws ‘abstract individualism’. Clearly, philosophy has meant a lot to you and thinking philosophically has informed your work on law. Just as clearly, there are academic journals and encyclopaedia that combine the two (and for which you write). I am curious though about the more prosaic aspects of praxis for law. Do practicing lawyers read these things? Is there a socialization of law and lawyers, but also a critical reflective nuance to the process? How does it filter through ... and in what sense does this inform the work that you do? Is there a ‘politics’ to this perhaps?

**AN:** This is a big question. To start with a recent example of working across theory, law in the academy, and legal practice, I wrote a piece in the *Criminal Law Review* a couple of years back (Norrie 2018d) which explored the possibility that deaths at the Grenfell Tower fire in London could fall in the legal definition of the most serious homicide charge murder, rather than the less serious manslaughter and in addition to corporate manslaughter. The definition, I argued, is more open than many think, and subject ultimately to moral and political judgment as to how a judge and a jury interpret actions. The background to this was that some politicians were saying this was a case of ‘social’ murder, which they thereby distinguished from ‘legal’ murder. I wanted to suggest that placards held by residents outside the official Inquiry calling what had happened ‘murder’ were not necessarily incorrect. I did not say that what happened was murder, only that the legal definition was wider than we might think. Ultimately there was a judgment to be made. What effect did this have? The *Criminal Law Review* is the leading English and Welsh criminal law journal, read by both academics and practitioners, and I also sent the article to a leading QC in the area, and had a briefer piece published in a human rights magazine, *Lacuna*. So far as I can tell, the article has had little traction, though it is discussed in the leading English student criminal law text as a valid argument. Here, the underlying question is what gives a particular argument appeal, and this is obviously a question of politics and the socialization of law and lawyers. In another time and place, things might be different, but I thought it important to make the argument.

Your overall question could be answered in several ways. For sure, the practice of law is limited by its nature as a specific form of social life in a particular historical period and context. Much of a critical approach involves thinking through law’s limits and showing what is excluded in the process. In that way, there is an under-labouring for legal practice in that one tries to show what would otherwise be missed but is nonetheless an immanent possibility. ‘Officially’, legal rules should be clear, derived from authoritative sources, and based on underlying principles, but this is not possible. Legal interpretation is also a question of skill, craft and rhetoric, and legal creation and application is



contradictory, historical, contextual, and changing. Legal forms, for example of justice or responsibility, should be clear and grounded in principles that respect human freedom and agency, but as we all know, what it means to be a free agent or to talk of justice involves questions where answers are fundamentally disputed. If that is true in society at large, why would we expect society's law to maintain consistent lines? The thing is that as a social, historical, and political practice, or as a praxiology as I called it, law really must forget the questionability of its premises. It must act 'as if' it is something it is often not.

I would say that one main critical task has been to show how underlying social problems in a Western polity are often hidden by a form of legal justice portrayed in individualistic terms, where questions of responsibility and justice are often pushed to a point where we are dissatisfied with such terms. From there, law can sometimes be pushed beyond its limits to accommodate something of what was excluded. Behind all this, there are of course questions of social control and politics. There is also a question about how changing times perhaps bring out different challenges for critical understanding – and we see quite a lot of that now, in an age where taken-for-granted procedures come under attack.

What this points to eventually is the point you raised in your question about the relationship between academic law and legal practice. I think practical lawyers should recognize the value of academic legal understanding, while academics should recognize the values and intrinsic strengths of legal practice. The two different kinds of law are important but have different places in the world.

**JM:** And there is of course a combination of these – academic and campaigning practices sometimes combine in legal practice don't they? This seems quite notable now when we have a government in the UK who find the law sometimes to be an inconvenience and are quite willing to undermine its standing through the media. For example, response to the Supreme Court finding September 2019 on the prorogation of Parliament and more latterly briefing from Boris Johnson and Priti Patel that positions 'activist' 'lefty lawyers' as politicizing immigration to make careers – a move that prompted an amusing response in *The Times Law Supplement* echoing the famous Monty Python sketch and titled 'What have the lefty lawyers ever done for us?' (Baksi 2020). Through the work of the Haldane Society of Socialist Lawyers and other organizations quite a lot, as it turns out: contesting major miscarriages of justice (the Guildford Four, Birmingham Six etc.), creating pressure for societal recognition of important events (the Bloody Sunday tribunal, Hillsborough, the Stephen Lawrence inquiry) and by taking on important cases and setting precedent and testing rules (defending the magazine *Oz*, *Gay News*, etc.), whilst offering free support to those who might be unable to access representation. 'So, apart from women's rights, gay rights, workers' rights, legal aid, free speech and a fairer justice system, what have lefty lawyers ever done for us?' (Baksi 2020, 54).

**AN:** I support this kind of legal practice. There should be synergy and overlap between the academy and the law in practice. I see the kind of theoretical work I do as sometimes providing arguments for pressing the law in a particular direction, and I'm glad to work in, and to have helped develop, a Law School at Warwick which combines a variety of

contextual, theoretical and practice-oriented approaches to law. The combination is what is important.

**JM:** And, of course, there are many areas of law one might apply these approaches to including ones which have less intrinsic popular interest, but nonetheless are an important part of the ‘public interest’. For example, activities of corporations, tax avoidance, finance, labour law etc. Simon Deakin at Cambridge works on these kinds of things and takes an interest in social ontology and law (e.g. Deakin 2017). But this whole area of discussion of context – the intrinsic politics of law, the use of law for political ends, the politicization of law, etc. – prompts a broader question of the relation between law and society, convention and change. The Black Lives Matter movement, for example, is not merely legal, but has a legal component. How do you see the relationships? What are the dialectics of this?

**AN:** That is another big question. As a legal academic, I’m aware that legal solutions are only ever a part of an answer, because social issues have to be worked through at different levels to bring about change. Just passing a law is no good if it doesn’t gain social acceptance, but legal change can link with social movements to produce change. The question ultimately comes back to the values that are enshrined within law, which may be emancipatory, but law also exists in social frameworks which portray it as good to cause pain and suffering, and law also reflects these regressive practices. Liberal lawyers are right to proclaim the values of the rule of law, and increasingly so at present, but we should also remember that law has potent symbols for casting people out of the polity. So-called ‘law and order’ politics which practice law as a form of authoritarian rule are also a part. We like to see the emancipatory side of law, but we forget how from a psychological point of view it can be used to persecutory effect through severe forms of punishment. From a critical legal perspective, we also need to recognize the value of forms of freedom and equality within liberal legality and the rule of law, while at the same time seeing that those forms don’t get to the heart of exploitation in a capitalist society. Here, I go back to the simple point made by Pashukanis, following Marx, about a capitalist economy generating spheres of exchange and production operating according to different logics, where market exchange produces abstract forms of freedom and equality that don’t reflect what is going on beneath the surface.

**JM:** Spheres of exchange and market exchange have resonance for the question I posed. Black Lives Matter is a current movement but a response to hundreds of years of treatment and at its root is slavery and its legacy – people as property – and then a history of separation where the law plays multiple roles: laws to treat someone differently, different treatment under the same laws, willingness to put aside law and act unlawfully from a position of power and authority etc. A whole history and sociology that creates quite different perspectives and experience for some than others – as, for example, the 1619 project highlights.<sup>11</sup>

**AN:** Yes, I’ve mentioned one kind of critique of law and liberal society contrasting the different spheres of exchange and production. As we look out at homelessness in a time of pandemic, Anatole France’s famous observation that the majestic law of France

forbids both rich and poor from sleeping under the bridges of the Seine sums the position up. A related critique is to look historically at how setting up the forms of liberal law and politics we live within suppressed alternative histories, voices and experiences. I'm not sure how the work you mention positions itself, but I'm reminded of the idea of history from below, which was pioneered at my University by E.P. Thompson and his collaborators. A pivotal work for me here was *Albion's Fatal Tree*, which shows historically how social exploitation engineered modern abstract legal form. For example, there is a long-standing distinction in the principles of the criminal law between motive and intention, where the latter goes to culpability and the former is irrelevant. But it is motive which ties agency to the social context which generates it and leads to the intentions that are then formed. The distinction was always accepted as simple legal fact, but it looks very different if you go back to the beginnings of the modern legal code and see that motive was first denied by a Scots criminal lawyer, who wrote that 'we must not steal leather to make poor men's shoes' (Norrie 2014, 44–45).

**JM:** There is perhaps a further context to this if we consider populist nationalist variants of government, which place new pressures on truth and on checks and balances on power.

**AN:** Taking a more detached view of this than I do, one could say that the present period is providing an interesting test case on the relationship between law and society. As we speak, a process is occurring in the US, which appears to show the ultimate ability of legal and democratic process to govern serious efforts to disrupt it. When it is all over, will Americans consider that a liberal legal democracy is indeed built on firm social and ethical foundations, or will they wonder if a more organized and less obviously narcissistic effort, backed by a constitution supporting gun rights, and with a politically appointed Supreme Court, might have led to something else? Of course, lawyers play their part in these fights, but they do so on both sides. There are much, much more sophisticated arguments out there than we heard from Trump's 'dream team' – as we saw in the efforts in the US to justify torture and detention without trial in the early 2000s. Law is a place where battles take place.

**JM:** Yes, your reference to previous controversy regarding what is torture is an important reminder that law is struggle over meanings and these have material consequences ... Time, of course, will tell whether Trump's period as President of the USA changed its norms or only violated them – and to what degree it has eroded trust (see Gills, Morgan, and Patomäki 2019; Colledge, Morgan, and Tench 2014). Trump is interesting in numerous ways: his general conduct has been a reminder that a President can get away with public behaviour and utterances that would not be tolerated in any other formal position (where employment law and some degree of standard and sanction can be applied); his first impeachment reminded Americans that evidence and guilt are not the main issue when a President is investigated (since impeachment is decided by Congress and not by a court of law), though s/he is still subject to state law and in some ways Federal law; similarly, discussion of use of the 25th Amendment to remove him is a reminder that the checks and balances on a President are only as effective as the determination and willingness to use them and to use them with a view to some notion that the institution is a good whose survival transcends the fate of the individual

who occupies the position. That, in turn, depends on the willingness of others to hold a person to account – something put in doubt when partisan politics take short term gain as a reason to risk the long term health of the institutions on which the current capacity to function ultimately rests; which is to say nothing of particular violations such as use of pardons, incitements to insurrection and many other acts that are morally and legally contestable. Here the very nature and relevance of truth are put in question – perhaps most fundamentally by a combination of the far right tendency to value loyalty rather than conditional service, and the conspiracy theory escape clause that ‘the absence of evidence is proof’ – including that an election was ‘stolen’ – and this provides a way for politicians to exploit (and for media to commodify and monetize) a credulous ‘base’.<sup>12</sup> The long term consequences of this remain open: is he a reminder that there are lines that should not be crossed or that it is easier to cross lines than we thought? Is he a source of renewal or a sign of degeneration? To what degree is Trump a symptom of the times utilizing ‘hyper’ or more intensive versions of already normalized social and political strategies and practices etc.? These questions raise dialectical matters as features of process that are not yet complete, perhaps? But the general subject brings us back to the point you made earlier that law may see itself as a process of rational reconstruction but is full of conflicts and contradictions – as well as dangers. It seems a person can be too irresponsible to retain a Twitter account, but can still hold onto the nuclear codes of the most powerful and heavily armed country in the world – albeit only for a few days.

On a more positive note, perhaps we might return to your work on love. Love like emancipation and human flourishing is not a word that has wide currency in social science and probably for similar reasons (extending to issues of spirituality Hartwig and Morgan 2014). Psychiatrists and psychologists are, of course, interested in it – and there is a certain cultural fascination with those who are damaged by lack of love, or are somehow deemed incapable of it (the classic psychopath), or present behaviours that subconsciously seek approval as a substitute etc., and there is some interest in linguistics and cultural categories of conduct or feeling – for example, Tim Lomas’s work, which identifies 14 categories and 609 words for love with no equivalent in English. Lomas describes himself as a positive psychologist and is influenced by Buddhism. His primary concern is the nature of well being. The subject seems an odd one though for a legal scholar such as yourself, even a critical legal scholar, until of course, one thinks of examples like South Africa’s Truth and Reconciliation Commission (TRC). Perhaps you might elaborate ...

**AN:** I think you were glad to get that off your chest! The recent US events have turned savage irony and cruelty into daily currency. I saw the use of the Federal death penalty after decades of inactivity as a lashing out – for political gain or just because he could? I also read that the so-called Qanon Shaman’s lawyer has written asking for a pardon, as he was doing the President’s bidding. You couldn’t make it up. It’s a bit of a jump from all this to the workings, though not perhaps what Freud called the vicissitudes, of love – how love becomes corrupted and turned into aggression and hate. Here, I think the work of Melanie Klein is important to see how anger and exclusion can inform vindictive and persecutory acts, including state punishments (Reeves 2019; Reeves, Norrie, and Carvalho 2019; Norrie 2020).

But you ask more directly about love and its link to justice and there is a lot to say of a more positive kind here. I do in fact work on ‘transitional justice’ (TJ) – the study of justice forms in societies undergoing social and political transformations, including South Africa and its TRC. The reason for this for me is because TJ processes reveal the strength of human love as a motivation to demand justice in relation to murdered or disappeared family members. Such motivations suggest that underlying any victim demand for justice is the need to grieve and mourn for the love of a lost other. Not only this, insofar as some perpetrators feel a sense of guilt, it can be said to come from a loving identification with another, even a stranger, whose life they have violated. In the course I teach, we speak about two brilliant films, one on perpetrators (Joshua Oppenheimer’s *The Act of Killing*), the other on victims (Patricio Guzman’s *Nostalgia for the Light*). What is interesting here is that the underlying moral-psychological condition for both victims and perpetrators who get beyond denial is grief at violation. In the former, it is grief at having lost a loved one, in the latter it is grief at having caused a loss of a loved one with whom the perpetrator can humanly identify. Beyond this similarity in moral psychology, the experience of victimhood rubs up against issues not only of mourning but also melancholia in the classic Freudian sense. In *Nostalgia for the Light*, the human rights struggles of family members against the Chilean state to find their loved ones’ remains is a battle both to mourn and to refuse the State’s definition of them as unworthy of the respect mourning requires, that is, to resist a melancholic position (Norrie 2019e). About guilt, I find this such a broad-ranging phenomenon including perpetrators, bystanders, forms of complicity, survivors and future generations, all of which involve loving identifications with those who have been murdered. If I am interested in criminal justice, ought I not also to be interested in issues of guilt and forgiveness as these emerge, or don’t, in legal or quasi-legal processes?

The South African TRC was one of many TJ processes which seek to get to the core meaning of loss in the aftermath of systematic violations of human life – though, it must also be said, such processes are also part of efforts to recreate forms of state power. From a legal point of view, I see law as a mediating form between politics and ethics, between political economy and moral psychology, but what it is ultimately mediating is the play of love. Of course, your initial thought about law and love makes perfect sense because love is so often banished from academic consideration, and law is a good case in point.

**JM:** Yes, for something so basic to desirable societies, in so far as it is intrinsic to so many social relations, to the needs of humans and to our sense of humanity, to also be something we resist discussing in academic contexts (unless in a removed or distanced sense as a lack, from the point of view of welfare services or social policy) is curious – whatever one thinks of metaReality. And the oddity for law ...

**AN:** To think that love is an odd topic for a legal scholar is still not unusual, and it was one that I shared until a few years back. An old teacher and friend from my time as an undergraduate at Edinburgh, Zen Bankowski, has written a lot on law and love, and I look back on some of my reactions to that work with some embarrassment. I had a similarly negative reaction to Bhaskar’s metaReality in the first instance, where love is also a central category.

I now have two responses to the question of oddity. One is to say that it might at least be productive to think of law in terms of what is normally seen as its other: to push on what is not present to see what might emerge as a result. The other is more assertively to say that love is law's hidden other, immanent in its practices, and inclined to force its way to the surface given half a chance. There is a subterranean dialectic of law and love, and this would be a position that critical realists who support Bhaskar's later work would understand. There are a variety of things within law I would point to in order to make my case. You mentioned the role of institutions like the TRC, to which we could add practices around what is called restorative justice, and in criminal law in its central doctrinal forms, I would take you to the relationship between intention and motive, the doctrines of 'mens rea' and defences like necessity, duress and self-defence, and practical cases like 'mercy-killing' and assisted suicide, where we see love break through law's formal carapace (Norrie 2017a, ch.5). Of course, this is still quite a limited canvass in that I can only speak of my own patch of the legal world, but I think, for example, feminist legal scholars have added much to the overall picture.

**JM:** I hadn't thought about that; the right to die seems one where moral dilemmas and ethics intersect with basic issues regarding compassion and this quintessentially involves issues of love, responsibility, sense of duty of those who love us to do what society may for other reasons want not to be done ... This seems a fascinating subject in general.

**AN:** It is a very moving and troubling area, where you see law negotiating situations where people kill with a good motive, or as one woman put it in a recent case 'with love in her heart'. It's a complex set of issues where legal and political normativity and individual moral conscience come apart and have to somehow be reconciled. Writing about euthanasia and assisted suicide, I suggested that these were situations where the abstraction of the legal categories of responsibility such as intention were co-opted towards a greater ethical good, permitting at least a *modus vivendi* between very conflicting alternatives.

The other exciting thing about this love and law project is that it seems to be contributing to Critical Realism and to legal studies in equal measure. As I said above, thinking about love has taken me not just into philosophical accounts of love but into Freudian metapsychology. From a Critical Realist point of view, work has been done on love as a metaphysical category, but not nearly so much in terms of psychoanalysis and its metapsychology. I argue that this is a missing element in a Critical Realist human ontology for which (as I intimated previously) Bhaskar's intrapsychic plane in four planar social being is a placeholder. If, as the later Bhaskar holds, we are to see metaphysical experience as ingredient to humankind, we should understand what kind of animal the human being is such that it can develop such experience. Using the Loewald-Lear approach to Freud, which sees the human being as an animal with drives and the mental potential to transform the basic libidinous drive for life and love into ego- and superego formation, this gives us the material basis for thinking why a metaReal understanding of humans might be so important. So love, I would say, is an underdeveloped category in both Critical Realist ontology and law. It's also, as Jonathan Lear makes clear, an underdeveloped category in

Freud, though it is interesting to see just how much his sketched comments on the subject align with Bhaskar's (Norrie 2020).

**JM:** This seems an appropriate place to start to draw this interview to a close. Perhaps a final question. You were President of IACR between 2006 and 2018. What do you take from that experience?

**AN:** I very much enjoyed the experience and felt honoured to have the position. I worked with Tone Skinningsrud, Lodve Svare and Mervyn Hartwig, and always appreciated having such a good team. Until his death, Roy Bhaskar was always close and he provided real intellectual leadership as well as much in the way of personal kindness and humour, which I miss. Together we travelled to many parts of the world and had some funny scrapes. I might have stepped down in 2015, but with Bhaskar's death the year before, I felt I should stay on for the sake of continuity in a difficult time. I was then glad to hand over to such an able successor as Doug Porpora in 2018. One issue to acknowledge and discuss is that Critical Realism lost its mainstay in 2014, and it is identified with a generation of academics who are now approaching the end of their careers. There is always great energy around our annual conferences and our journal, and the task ahead is for a new generation to come to the fore, as they are now doing. While Bhaskar is gone, and before him Andrew Collier, their work lives on, and Critical Realism has solid intellectual foundations in its vindication of real ontology. These need to be developed in relation to a changing world and in different disciplines. The biggest advantage the philosophy has is what Bhaskar called the inexorability of realism – that no matter how philosophers and others seek to deny real depth ontology, and no matter how much established forms of power may support this 'not-seeing', truth in a Critical Realist sense tends to endure in the long run.

## Notes

1. For information on and access to Norrie's work and related activity visit: [https://warwick.ac.uk/fac/soc/law/people/a\\_w\\_norrie/](https://warwick.ac.uk/fac/soc/law/people/a_w_norrie/)
2. Note from Jamie: Collier's *Critical Realism* does discuss DCR briefly.
3. Note from Jamie: for something more recent see Bhaskar, Danermark, and Price (2017), for review see Holland (2019a, 2019b).
4. Note from Jamie: for a review of Assiter's work see Morgan (2011).
5. Note from Jamie: for Hostettler's work see Hostettler (2012) and for review see Morgan (2013).
6. Note from Jamie: in relation to Norrie (2013b) see Roberts (2013).
7. See also in this series Archer and Morgan (2020); Rescher and Morgan (2020); Porpora and Morgan (2020); Lawson and Morgan (2020).
8. Note from Jamie: see Norrie (1982).
9. Note from Jamie: 'aporia' typically refers to the contrastive tensions or contradictions inherent to what may otherwise present as consistent or plausible statements, theories etc. There are various interpretations of Derrida's work and intent, but it is fairly typical to locate his work as initially a response to Saussure – contesting the preference or dominance or purity of speech over writing (via 'logocentrism') and critiquing a set of 'binaries' (speech, writing; signified, signifier; present, absent etc.), in order to make the case that neither is prior or dominant and both are internal to a procedure that is constantly seeking to make and make sense of the world (and so 'deconstruction' highlights that one cannot escape from this ambiguous process of fixing what cannot be definitively and decisively fixed in place



or meaning – there is ‘nothing outside the text’). What this implies for ontology or the nature of the world is where realism parts company with postmodern and post-structural theory – as Christopher Norris notes, Derrida’s work may be more or less problematic for a realist perspective (Derrida seems to have in mind what he sees as inescapable problems and not a repudiation of critical faculties or of a world which has some implications for what we think and know – provocative though his work has been for philosophers such as John Searle). See Norris (1991).

10. Note from Jamie: though not all those interested in emancipatory social science were taken by Bhaskar’s work on dialectics. Alan referred earlier to Andrew Sayer’s comments on *Plato Etc.* as a ‘Niagara of neologisms ...’ This continues: ‘it leaps from transcendental deductions of critical realist philosophy, to indications of the shape of a eudemonistic society, ignoring substantive social and political economic theory on modernity and the intractable practical dilemmas which it identifies. The resulting impression is of pulling global salvation out of the critical realist hat.’ (Sayer 2000, 170). Arguably Norrie’s work goes some way to counter-acting this impression. David Elder-Vass and various others are also skeptical regarding the moral aspects of argument (for a general survey of Elder-Vass’s work see Morgan 2014). However see Collier (2005).
11. [https://en.wikipedia.org/wiki/The\\_1619\\_Project](https://en.wikipedia.org/wiki/The_1619_Project)
12. To provide just one example of egregious conduct and norm violation, Trump – following his election defeat – began to use the presidential right of pardon (traditionally effected at the end of a presidential term, though he had not yet acknowledged defeat) in December 2020 to pardon Mueller inquiry loyalists and those who had broken the law on his behalf or remained silent in regard of his complicity in alleged crimes, such as Paul Manafort, Roger Stone, Michael Flynn and George Papadopoulos. He also pardoned his son-in-law’s father Charles Kushner, for tax evasion and witness tampering and (referring only to their ‘long history of service to the nation’) the four members of the Blackwater security company responsible for the massacre of 14 civilians and injury to 17 others (men, women and children) in Iraq in 2007 (Betsy DeVos, who was Trump’s Secretary of Education prior to her resignation January 2021 is sister to Erik Prince founder of Blackwater). Accusations immediately began to emerge that Trump was monetizing his power to pardon and that he was using it in Mafia style to reward rather than in its traditional form for acts of compassion or to overturn miscarriages of justice.

## Disclosure statement

No potential conflict of interest was reported by the author(s).

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