

Précis of Remarks for

Critical Legal Studies: Intellectual History and History of the Present

Aftermath & Legacies Panel

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The Legacy of Before

The *CLS Movement* was a pedagogical, curricular, thematic, attitudinal, congregational and recruitment movement of the last quarter of the 20th century United States legal academy. Keenly aware of the centrality of legal discourse and legal actors to broader political and economic struggles, the *Movement's* larger ambitions included having a transformative impact in society beyond the privileged walls of the legal academy.

We are invited to speak of the aftermath and legacy of the *CLS Movement*. I begin with a personal recollection, meant to illustrate the distinction between *CLS-Movement* and *CLS-Theory*.

When early in this century I arrived at HLS, the *Movement* was no longer, but in my mind *Critical Legal Studies Thought* was strong and influential. In fact, the presence in the HLS faculty of *CLS* scholars was a chief reason I had wanted to study there.

And although the *Movement* was long gone by the time I arrived, I however benefitted from the institutional footprints it had left in my law school's faculty, pedagogy, curriculum and thematic horizon. There was also a less tangible but nonetheless unmistakable energy in the air – perhaps not unlike the energy one sometimes experiences when visiting old battlefields. A feeling of (now) riskless glory.

It is thus unsurprising that in my student years, I also encountered vestiges of the *Movement* in a general conservative sensibility toward it on the part of past members and student-colleagues who engaged in movement-conservation and occasional movement-revival initiatives and rituals.

That conservative attitude sought to delay – by resistance acts of academic guerrilla, sabotage, and group isolation – the havoc that economic analysis of law and public law idealism were wrecking in the *Movement's* legacy of critique

of power, of subordination and of illegitimate concentrative and decentrative distribution in society.

The *Movement* conservation attitude and its accompanying strategies of resistance were understandable both psychologically and politically. The psychological investments in *Movement* conservation were all too clear. Politically, the problem was that an overwhelming majority of graduates leaving my law school in those years seemed immunized against not only the *Movement*, but also against *CLS* as a tradition of legal thought. *CLS* thinking was important but marginal, and new legal actors coming onto the stage tended to reject it.

In all those conservation efforts, it seemed to me from the beginning, the *Movement* was dragging *CLS* as legal thought down with it to the graveyard of venerable past movements which, if only had one had better timing in life, one might have had the opportunity to join.

Hence, to continue in this exercise of remembrance, as a student, I stayed away from that *Movement*-conservation attitude in significant part because of how it operated to drag the *CLS* thought tradition down with it. As a student at HLS, I then operated with a separation of *CLS-Movement* from *CLS-Tradition of Thought*, thus seeing the *Movement* solely as a bridge or interlude to that earlier, pre-movement high legal theory.

The point is that before it became the mind of a *Movement*, *CLS* was daring, compelling and generative high legal theory, of a kind then unfashionable in American legal academy.

I learned from those pre-*Movement* foundational works, and see in them (and on the works added to the *CLS* canon of high theory by several of you here today) a canonical power. That is right, “canonical power”, for in high legal theory there are only canonical status or oblivion.

The *Movement* gone, the best work that preceded and inspired it – such as Kennedy’s *The Rise and Fall of Classical Legal Thought* and Unger’s *Law in Modern Society* – is, in my view, its most enduring legacy – *the legacy of before*. The challenge is to continue to augment that pre-movement work in ever-greater intellectual ambition, creativity and rigor, seeking to see it shape hegemonic schools of legal thought from Boston to Oxford, Rio, Berlin and beyond.

In the two minutes I have left, let me no more than say a word about the *Jurisprudence of Distribution Project* that some of us here today are involved in and I hope many of you will consider embarking on.

In every generation, you will find jurists interested in political economy. But only in every few generations legal theorists and their colleagues in the humanities rediscover *en masse* political economy. We are once again in the

midst of such a rediscovery, with remarkable individual and collective efforts throughout the world and across disciplinary boundaries. Compared to previous moments of ascent of political economy in legal thought and the humanities, the current renaissance has greater ambitions though.

The Jurisprudence of Distribution Project centers on the question of distribution in law, as seeing from legal thought. The Project aims to bring together scholars writing in various schools of legal thought to rethink questions of law, political economy, and distribution. While there are traditions that have highlighted these questions, they have left an undersized theoretical footprint. We think the time has come to change that for future generations. Works such as *Rise and Fall* and *Law in Modern Society* are central to such theoretical ambition.

I commemorate de *Movement* that once was, and enthusiastically and gratefully welcome the CLS Princeton archive project.

More importantly, I receive the best legal theory of *CLS* as a powerful and perennial enlargement of the traditions of high legal thought. I call on you to do the same, for only thus, having shed the *Movement* skin, *CLS* survives.