

The Utopian Beginning

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*I found an island in your arms
A country in your eyes
Arms that chain us
Eyes that lied
Break on through to the other side*

--The Doors, 1967

Back when I was still smoking and drinking in about 1976, I was a beginning law teacher during the week but I would get up early on Saturday morning and go into my office to work on my first law review article, an agitated attempt to overthrow the utterly stifling and oppressive blanket of verbiage and cultural roles that had been cast over me in my suffocating three years at Harvard law school. When I finished it and thought I had totally demolished those who had been trying to kill me, I sent it to one person, Duncan Kennedy, whom I had met once at a cocktail party while I was a third-year student and he a beginning teacher at HLS. He had long hair & was obviously weird and against the system in some way...maybe possibly he would like it?

To my shock, he called and said "It's great!" or something like it and that he and some others were planning a conference in Madison because it turned out that various people in all kinds of places were beginning to produce some creative work critiquing the legal system, that something seemed to be bubbling up. And fairly soon after, I received a formal letter inviting me to be a part of the first "Conference on Critical Legal Studies" that would bring this disparate but linked group together...I recall that the letter, now no doubt in the hands of the Princeton archive, said some of us had been influenced by Max Weber, which puzzled me, and some of us by other even more radical writers, but without actually mentioning the name of Marx, which at that historical moment seemed to be He Who Must Not Be Named but which gave the letter its incendiary feel. Yes I definitely wanted to go to this event—no more arms that chain us, eyes that lie, break on through to the other side!

Life can only be understood backward but must be lived forward, said Kierkegaard. And as I lived that original moment forward, I only really understood that a group was springing into being that I was willing to take a risk on, the risk being that I could be humiliated and destroyed by my father as the representative of prior generations. Looking backward I now understand that that initial birth of CLS was possible because those of us who were receiving that first letter (written I think by Duncan and Mark) had already been partly liberated by the force of the 60s as an upward movement of desire, that people as distinct as, say, myself and Bob Gordon were ready to declare for a new world that would no longer conform to the oxygen-deprived, deadening-to-the-soul norms that were passing for necessity in the law schools that we had recently gone through as new recruits. We were in some ways culturally similar, in some ways culturally disparate in terms of our prior conditioning—in terms of how we had been made up to that point—but we were all ready to take some kind of leap toward each other to assert who we really were...inspired by the civil rights movement, by the anti-war movement, by the sexual revolution and rock n roll, by the feeling in the air of the prior ten or so years, to try to stand up for ourselves and demand a more just and human world. No more pompous bullshit rationalizing death (the Vietnam War) and human suffering!

The point here is that the early CLS experience was an exhilarating breaking-free of the weight of the 50s that was palpable even into the 1970s at law schools, with the large majority of students still white men in suits and ties or other very neat garb in class, and with very few women (maybe ten in my section of 150, in dresses) and very few people of color (my torts professor in 1969 referred to blacks as Negroes). And the nascent theory of CLS generated during those early

years was a mirror of the breaking-free experience, with a primary goal of the work in its various manifestations (critique of determinacy and false necessity, critique of rationalism, critique of alienation, critique of legitimation and reification of a surface image of the world masking an unjust underlying reality) being liberation from the indoctrination we had experienced as students not too long before. Boldly universalizing from my own experience (and thus setting myself up for a critique which may come on this panel), I would say that the 60's extending through the 70s had begun to shake us free of our conditioning, had made us somewhat malleable compared to the normal imprisonment in roles and ideas that dooms us in periods of wall-to-wall alienation, and CLS entered into that new space and catalyzed our capacity to rebel, and to fall in love somewhat. "I found an island in your arms, a country in your eyes..." Thus the breaking on through was also the discovery of a new experience of community, not just liberation from the roles of law school and the ideology of law, but the discovery of a new sense of connection and solidarity.

That early utopian period of CLS lasted for quite a while, perhaps three or four years, but both external and internal dynamics made it hard to hold onto the joyfulness of our early gatherings--and here I mean not just the annual conferences and cross-speaking engagements at each other's law schools, but the summer camps of as many as 25-40 people in Andover and on Cape Cod that lasted up to a week and included fun and dancing in the evenings and serious studying of Freud, Marx, and Marcuse, and Sartre and Deleuze and Guattari, and Chodorow and Dinnerstein and Fanon, and sometimes each other's writings, during the day. None of us who were there would be likely to entirely forget the intense debate of summer camp 1981 about "Why the Air Traffic Controllers Struck Too Soon"—a reference to the collective political dynamics of that historical moment when Ronald Reagan had been able to fire with political impunity all the PATCO air traffic controllers who struck for better working conditions, which turned out to be a major defeat for the labor movement and a moment of great consolidation of Reagan's cultural power (recall that he had just barely beaten Jimmy Carter in the election of 1980). That summer-camp debate was the context for testing the relative merits of the irrationalist vs. the rationalist approach to history within CLS, with Alan Freeman and me defending irrational, symbolic elements (the relatively autonomy of fear of flying in both the literal and the Erica Jong sense) while Dave Trubek and Morty Horwitz defended a more "sound" structural and economic analysis of why the timing of the strike reflected poor judgment by the PATCO leadership. And then a group dinner and hanging out and lots of fast talking ("What on earth does the category of Being add to the conversation?") and rock 'n roll.

But as I say, there were some storm clouds on the horizon that did come to eclipse some but not all of the utopian beginning, this early period of falling in love and feeling we were carrying over the radical spirit of the counterculture into law schools and then perhaps spilling out into law practice and the world. The first challenge—the external one—came from the consolidation of the Reagan Revolution with the return of the forces of reaction within the law schools themselves. Just as Ronald Reagan and Ed Meese and Caspar Weinberger began to consolidate the New Right's hold on American culture in a wicked backlash against the 60s, momentarily forcing the liberatory energy of the cultural id released by the 60s back under the thumb of the inherited cultural superego, so also the force of hiring and tenure committees began identifying, demonizing, and in some cases kicking out crits. Although I was not in a traditional institution where the fear of direct force must have been palpable, it obviously became difficult for those seeking appointments or tenure to retain and carry their crit identities while also seeking to get or keep their jobs. As Reaganism sucked the air out of the wider political culture, so Carringtonism—a shorthand for the buzzing influence of Paul Carrington's published claim that CLSers had an obligation to "leave the academy" because they were nihilists who didn't believe in law-- began to constrain the available space to resist within the law schools themselves. And at the same time the liberal media made themselves partners of the right-wing counterattack against the crits by ridiculing a few CLS leaders as faux radicals sipping lattes (The New Republic's mocking cover story on "Duncan the Doughnut"), summarizing our world-view in phrases like "determined to get the power of Big Capital out of Harvard Law School" (The Boston Globe), and most subtly, by defining CLS as being mainly some kind of cultural uproar and

crisis taking place at Harvard and Stanford Law School, thus marginalizing in the cultural mirror held up to all, including us, everyone who was not at Harvard or Stanford.. And then there was also the well-funded rise of the conservative law-and-economics movement that sought to naturalize the values of the capitalist free market and the founding of the Federalist Society, which Ronald Reagan himself publicly congratulated as having rescued the law schools “where just a few years ago the critical legal studies movement stood virtually unchallenged, like some misplaced monster of prehistoric radicalism”. Taken together these external factors during the 1980s made the utopian dimension of the origins of Critical Legal Studies harder to remember and harder to hold onto as a possible real destiny for ourselves as a radical community based on love and solidarity and carriers of a creative hopeful vision of the society we wanted to bring into being. Those of us who lived through the early years together did have this important experience, and I think still today feel bound together by it as a kind of sacred comradeship, but as the various negations of who we were and what we aspired to were piled on top of us “from the outside,” we could no longer so easily see ourselves reflected back to ourselves in the widespread cultural representations of CLS or in the everyday life of the law school environment.

And at the same time the utopian beginning began to come up against the internal challenge of the emergence of the femcrits and race crits within our own existential interspace, which in part took the form of a critique of our original unity itself. This interspace that had originally been a kind of communal sanctuary against the alienation of the law school culture that we were collectively formed in revolt against was forced, by the internal dynamics we went through in the period from the mid 80’s for the next ten or fifteen years, to become a space in which conflict and contradiction and anger had to co-exist with the utopian aspirations and intentions and feelings that libidinally bound us together. How we did with these challenges regarding race and gender within our own community I think is something very worth talking about because these challenges has such an impact on the long-term fate not only of CLS but of all the movements of the 1960s, and because it remains pivotal to the fate of the Left today as I watch my straight white male son grow up within the emerging progressive movements of this era. But I will make this one point here in addressing my sense of the Critical Legal Studies Experience as a now 73 year-old veteran of the experience: I think we did ok in the sense that I still feel love for my early comrades and loyal to the bond that we first experienced that contributed to the idealism that I still feel about the possibility of social transformation, and because I also feel a deep bond, although not always spoken of, with Mari and Kim on this panel and most others who may have been angry at the early group of mainly white males who brought whatever strengths and limitations we brought to the CLS experience. There are some people who are not here at this conference who were probably too injured by the dynamics of what I am calling our internal challenges, and I’m sorry they’re not here and I wish they were. But it’s perhaps a testament to the success of our experience itself as a radical communal effort that so many people are here and want to be in the presence of what we have lived through together and what have tried to bring into being interpersonally and intellectually.

Having said that, I think we would have done even better and even more with our experience if we had had what I would call a spiritual dimension to our politics--the politics of our own group and the politics of law that we put forth for coming generations. The “Critical Legal Studies Experience” was and is created in the invisible interspatial field that either connects us or separates us, and I believe that to build most successfully upon the moment that originally brought us together requires that we engage in a collective work of “spiritual stitching” in which we intentionally, through collective spiritual practices, remind ourselves of the bond that connects us by helping ourselves to actually feel it through song, dance, and other common activities of the heart that help us endure and integrate the external and internal challenges that otherwise tend to undermine us by playing upon the weakness or fragility of our own revolutionary bond. We were and are trying to create something new in human relations and in social and legal thought, and that requires that we experience what we are trying to create, and then re-experience it to gain more confidence in it, and then know it together at the level of reflection. That last part—that knowing of the disalienating intention and direction of our life and work—we have not really done yet.

