

Talking about Critical Legal Studies While We Are On the Short Clock of the World

We are given eight minutes to speak, and we have eight minutes left on the clock of the world. Nuclear proliferation, neo-fascism, wealth inequality, and climate-generated scarcity mean we are sitting on a dry-wood funeral pyre, talking about the origins of Critical Legal Studies, while miscreants in Washington are throwing lit matches our way.

That is to say, in the beginning, we argued to get the analysis right. Today, we argue to save our lives.

I still believe we need to get the analysis right, that what we do as political actors and intellectual workers matters. I just feel, now, that we have so little time, and that our embodied selves, with our glorious, lived human lives, are standing on a brittle ledge, while everything is cracking.

Some say when everything is cracking, the new emerges. Let's make it a good new. But I have eight minutes, and that new thing is the last of three things I want to say.

First: Critical Legal Studies was, in complicated ways, a welcoming place for people of color. It was not safe space, or a place where one moved quickly to shorthand because basic assumptions were shared, but it did make me, as a young untenured assistant prof from a place one CLS scholar actually referred to as "the provinces," feel as though I had something to say that would add to an important conversation about legalism, history, and progressive values.

Special acknowledgement goes to people like Clare Dalton [others to add here] who pushed for the women-centered CLS meeting in Boston, and Kimberle' Crenshaw who pushed for the race-centered CLS meeting, "Sounds of Silence," in Los Angeles. At these meetings we experienced the discomfort of intercultural communication and the politics of identity. Unlike the right-wingers who use identity as a dirty word, I believe our thinking grew sharper by asking hard questions about the collapse of the civil rights movement into liberal legalism, and the role of white supremacy in keeping capitalism on life support. I also acknowledge Alan Freeman and Betty Mensch, warm and welcoming house parents at summer camps where these questions were struggled around. The forming of relationships regardless of theoretical gulfs and academic status markers was a real gift of CLS. It helped me get tenure.

There was, simply, no place else to go if you took both material and ideological analysis seriously, identified as left progressive, and worked at a law school. CLS was it, and odd bits of

things people said to me and told me I had to read - including 4 inch wide 3 ring binders stuffed with old articles by process theorists and early 20th century empiricists and EP Thompson shaped how I respond to the looming crisis we now face.

Second, critical race theory is a kissing cousin of critical legal studies. Meaning, we traveled the same river - protested the same wars (or at least did - I found fewer allies in CLS when I went up against the current round of endless wars), and hated the same justificatory formalism, hierarchy, and conservatism-that-thinks-it's-not of American law schools. I still, to this day, do not know how left CLS really was or is, but it was, maybe in spite of itself, a place to go if you believed radical change was necessary to bring about justice. If you went looking for that, you found others looking for that, and that is why I credit CLS as a catalyst of CRT. Critical Race Theory's calendar start date is the Harvard boycott of 1985, which brought together the students and scholars who would form the core of CRT. CLS became a place to continue the Critical Race conversation alongside white allies. Allyship is not easy, so thank you to all who read early CRT work and took it seriously.

Thank you Peter Gable who stormed across a cafeteria to challenge my talk "Looking to the Bottom," excited, agitated, scary as he never intended to be. I was in unfamiliar territory, intimidated, and later offended. And, then. I came to see, within as short a time as 10 days as Peter continued to reach out, that the lumbering pterodactyl who stood over me expressing disagreement, was trying to make friends. Because he thought the point of disagreement - about rights and what CLS was actually saying - was an important location for further conversation. Because he never walked away from a good ideological fight. Because he believed these fights mattered, for actual human beings, who needed to live under better circumstances.

I would call the relationship between CLS and CRT dialectical, a useful confrontation that led to important thinking - for me, around issues like affirmative action and hate speech.

Third: Critical Race Theory is and always was intersectional. Influenced by CLS, it explored the role of ideology, reification, hegemony in getting people to NOT see what was right in front of them. What was right in front of us was massive violence against Black Americans in the form of exclusion, poverty, and imprisonment. All of which was a product of race, class, gender, and homophobia, normalized in law. Our writing was an effort to explain this. Critical race scholars came out of the civil rights movement and racial conflagration, in many cases our very admission to law school a concession to burning cities. Many of us came out of what was called the Third World Liberation Movement, where analysis of militarism, colonialism, and the origins of wealth in white supremacy were centered. Out of this we asked what to make of law, law's

powers and limits. The neorealism of CLS helped dig into these questions, but the power analysis we saw as central required a return to our movements of origin.

I believe, like Patty Smith, that the people have the power. Like Marvin Gay, that we need to get ready. I return to the short clock. Today we argue to save our lives. I am glad that because of CLS I read a lot of British legal history. I know that always, ordinary people have resisted empire and nothing contains the human will to freedom forever. The questions we never answered because the arguments were too hard and people got tired and went on to other things are questions we must answer now. If the state will not save us, how will we save ourselves? How much of the state is still worth capturing to try to stop the short clock? What will cities look like when we end hierarchy and govern ourselves? And how will we respond to the fundamental contradiction?

My answer: I feel deep love for anyone who ever asked these questions, meaning the people in this room. The petty humanness that makes it hard to tolerate actual humans is no hell compared to the hell of living alone in a bunker. The state is capturable, people are ready to reject everything they ever believed because nothing works anymore, and we can organize them with a vision of egalitarian life. Even the wounded haters. We can get some of them, too, as the CIO did, organizing across racial lines deep into the woods around us.

CLS was accused of nihilism, but the people I knew doing CLS work wanted to solve problems. As I talk to young organizers on the frontlines - from Black Lives Matter to the ones taking on hedge funds - they are asking the same questions CLS asked. And they are asking Kim Crenshaw's question: if our own constituency cannot let go of male privilege how are we going to liberate anybody?

The same questions, but on the short clock, as crisis pushes us all into the streets. With half-formed analysis, informed by history and years of fights over ideology, the better way emergent as we struggle - this time we will not have the choice of taking a time out when so-and-so is just not getting it. Grab them and bring them along, everyone in, everything is at stake, and as Chuck Lawrence says, I would rather storm the barricade than hide, terrified, behind it.