CRITICAL LEGAL THEORY

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ABSTRACT

Critical legal studies are the first legal theory and research movement in the United States to have a solidly left-wing political outlook. It is not just a different approach to legal study, but it also has a lot to say about the politics of law and the design and nature of an alternative society in the future. The critical legal studies movement is as varied as it is self-aware. In the critique of liberal legalism, there is a starting point, as well as an appreciation of the importance of theory and methodology. It is a unique alternative not just within legal research, but also in terms of the politics of law and the structure and character of an alternative society in the future. The pieces' inspiration comes from a clever hunt through radical and revisionist studies from the twentieth century.

INTRODUCTION

The politics of theoretical engagement are inextricably related to critical theory. The legal discourse poses a substantial challenge to the critic. The institution's logic must be defied via interpretative freeway. This is what distinguishes critical legal reasoning and makes it so demanding. 'Critical legal theory' looks at how critical thought rejects what is assumed to be the natural order of things, whether it's patriarchy (in feminist jurisprudence), the idea of 'race' (critical race theory), or the free market (critical legal studies). The illusion of determinacy is a key component of the ongoing legal attack. The law is represented as vague, imprecise, and unstable, rather than as a cohesive set of norms and doctrine. Social justice, according to critical legal studies, is an empty promise. In this article, I discuss the origins of critical legal theory and the theory's application to the law. The second half of the paper discusses the many forms of criticism used in the United States and Europe.

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CRITICAL LEGAL THEORY (ORIGINS AND TRAJECTORIES)

Critical legal studies are the first movement in legal theory and scholarship in the United States to espouse a committed left-wing political stance and perspective. The tradition of critical theory has its roots in Hegelian Marxism, its systematic development did not begin until the period after World War I. We'll start with Marx's great debt to Hegel, as stated in the 1844 Manuscripts and the Feuerbach Theses. Hegel contends that Kant's categorical separation of what is (Sein) from what ought to be (Sollen) undermines the critical effort by removing the comprehension required to figure as criticism from it. What does duty mean for us if it is not understood as a reaction to the historical conditions in which we are obligated to act, he wonders? Hegel introduces the dialectical approach to address both inadequacies of Kant's critical endeavor and to situate it concerning finite conditions. Only by becoming integrated in this manner does the crucial mission have the required purchase in the world. Marx contends that philosophers have just understood the world in various ways; the aim is to alter it. The 11th thesis teaches them that their quest for understanding cannot and should not be separated from the action with a telos, which alone, according to Marx, provides objective truth. As he states in his second thesis, "the question of whether objective truth may be assigned to human reasoning is not a theoretical matter, but a practical question."

Hegel stresses the difference between Understanding (Verstand) and Reason (Vernunft), which may aid in illuminating the critical intervention modality. Bringing to Reason is an ambitiously synthetic action that contrasts with the more superficial, common sense understanding of phenomena as discrete and independent entities. Reason inquires as to the mechanism of their individuation, i.e., what evaluative criteria are used to individuate facts and experiences that appear as given at the level of basic understanding. The growth of critical theory in Europe began with Marx's work in the 1840s and continues for several generations after him. The major protagonists are the Frankfurt School thinkers, who developed during the Weimar Republic with the establishment of the Institute for Social Research and include Herbert Marcuse, Erich Fromm, Karl Lowenthal, and Walter Benjamin. Following Auschwitz, Adorno would essentially abdicate political critique to the 'aesthetic turn,' but Horkheimer's hope of emancipation was tantalizingly tantalizing.

Criticism in the form of the communicative reason may erode the tradition's Marxist heritage, stripping it of much of its radicalism in the process of reconciling it to the law. The critical

ambitions of deconstruction (Derrida considerably closer to Adorno and, of course, Benjamin) and other currents of poststructuralist and postmodern thinking are pitted against this trend. Many of these currents are explored in this collection's contributions. Critical theory is the process of 'bringing to reason' inconsistencies and tautologies by confronting them with the explanatory frames in which they occur. With its conception of reason as situated in history and reluctance to characterize reflexivity as something that might rise above the circumstance that inspires its iteration, the word immanence conveys this. Critical theory renegotiates the border between contingency and necessity by insisting on the functionality of phenomena' givenness. To examine the processes of reciprocity and involvement that embed players in social environments and habitats, the subject of the agency was recast as a battle for recognition.

CRITICAL LEGAL THEORY AND LAW

The belief that it is feasible and important to think differently about the law is one of the defining elements of critical legal theory. Critical legal theory, often known as reactive scholarship, is an attempt to call attention to the very real challenges of defying orthodoxy. The desire to think differently about law generates several questions concerning the choices that must be made to define that 'difference'. Diverse perspectives characterize the critical legal studies initiative. Some of the variance among the participants might suggest significant intellectual and political differences. It also demonstrates a shared understanding that the difficulties experienced in articulating an alternative necessitate a significant amount of exploration. Critical Legal Theory (CLT) is an attack on jurisprudence itself, which it sees as cloaking the law and legal system in a phony legitimacy. Because the law is inextricably linked to power, it cannot transcend that power, which is primarily ideological: power-based social interactions are made to look legitimate by appearing to be beyond power. CLS views the notion of a liberal society based on the rule of law in which everyone is treated equally with mistrust. The liberalism against which critical theory directs its critical energies is the liberal theory that has generated the philosophy of legalism so decisively implanted in the academic, political and popular discourse of contemporary capitalist democracies.

The key features of this powerful doctrine of legalism are:

(a) the separation of law from other varieties of social control,

(b) that law exists in the form of rules which define the proper sphere of their application, and

(c) that they are presented as the objective and legitimate normative mechanism.

Critical legal theorists have definitely "adopted" a wide range of available theoretical positions. They oppose the notion that the law is a determining force in social behavior. In the most general terms, critical legal studies regard the law as a significant arena of struggle; it is important not only to challenge the common sense, naturalness, and inevitability of the social, economic, and political relations of capitalist society but also to empower a popular capacity both to resist and to imagine and construct alternative non-hierarchical, participatory relations. According to Ronald Dworkin, Peter Gabel, and Jay Feinman CLS is a direct challenge to legal theory, research, and education dogma. CLS bases its legal critique on politics, literary criticism, psychoanalysis, linguistics, and semiotics. Critical Legal Studies may be the 'rock' successor to American Realism's 'jazz jurisprudence.'

CRITICAL LEGAL THEORY AND CRITICISM METHODS

Given the lengthy dominance of liberal legal theory, it's difficult to take the first steps toward defining an alternative theory because we're all heavily influenced by it. These factors allow me to provide an answer to the question of whether critical legal theory favors an internal or exterior viewpoint. A quest for alternative beginning points, distinct limits, and conceptualizations of the object(s) of inquiry are at the heart of a critical theory of law. At this point, the project makes bolder and more contentious assertions, such as going beyond 'criticism' to the pursuit of 'critique.' The quest for an 'approach' rather than a 'method' is purposefully neutral on the feasibility and desirableness of prescriptive methodology.

By 'critique,' I mean a method that begins with internal criticism of current theories in terms of their criteria, then creates the conceptual tools needed to transcend them. Critique is to comprehend the historical character of these ideas as well as the circumstances that influence the feasibility of a competing theory. It also seeks to answer historically created issues that a previous theory either ignored or couldn't fully answer. The goal of critical theory is to figure out why a specific theory was produced and how it has influenced others. Ideological critique, which examines the ideological content of a social group such as attorneys and judges, is another distinctive kind of criticism. The critical legal theory provides a way to get over the issues of legal nihilism (Legal misrule) and circularity. Critical legal theorists in the United

States have sought to develop a technique of social transformation that takes existing legislation into account. The typical lack of interest in the specifics of the law in European critical conceptions of law is being challenged. The key to demonstrating a law's transformational potential is to demonstrate that existing legislation can give rise to a new conception of law. If law lacks this possibility, the orthodox legal study will either adapt or dismiss the critics' discoveries with little trouble. The goal of critical legal theory is to make the transition from critique to construction as smoothly as possible.

US CRITICAL THEORY METHOD OF APPROACH

In the United States, the deconstruction approach has grown popular among Critical Legal Theorists. The technique's non-legal origins may be traced back to French philosopher Jacques Derrida's work. A psychoanalyst investigates his patient's thoughts to identify those components of the subconscious that have managed to fool the super-ego in a deconstructive reading of a work, similar to how a deconstructive reading of a work is similar to how a psychoanalyst investigates his patient's thoughts to identify those components of the subconscious that have managed to fool the super-ego. When one of the poles of conceptual dualism is consistently favored, a hierarchical connection is formed between the poles in a specific text.

According to the deconstructionist, a corpus of law is only ever a feigned unity and is better understood as a tacitly constructed hierarchical method. This requires us to identify the harmful supplements in a legal domain and utilize them as a foundation for arguing for a fundamentally different interpretation of the law. At the cost of possibly deep-seated prejudice inherent in the judicial mind, the legislation on bias is focused on very obvious causes of bias, particularly economic interests. For example, in Ex p Church of Scientology of California, the petitioners argued that Lord Denning's decision was influenced by an unconscious bias against them. Lord Denning's case was moved to a court in which he was not a member to avoid the appearance of prejudice. The self-disqualification of Mr. Justice Frankfurter in the American case of Public Utilities Commission v Pollak is a great example.

EUROPEAN CRITICAL THEORY METHOD OF APPROACH

As a prerequisite to criticizing a theory, the approach of immanent criticism eliminates the need to reject or dismiss the validity of its underlying values. The historical context of a theory

would reveal both the values of the idea being attacked and the means to refuting it. The immanent critique also allows ECTL to avoid the issues that come with a lack of basic legitimacy. Critical legal theorists have maintained that the liberal rule of law's fundamental ideals may be used to assess the actual performance of constitutional and administrative law. They can advocate for legal and social change without going outside the law by asking that current legislation give better effect to the ideals of transparency and accountability.

Immanent criticism is a way of examining the underlying logical inter-relationships inside a theory or field of law, or its internal 'fit' or consistency. An example from natural justice may be used to best demonstrate this use of the approach. Natural justice norms are based on the adjudicative idea of listener parties, in which disputants offer proofs and reasoned arguments to an impartial judge. Because of the demands of administration, even the most fundamental components of adjudication, such as cross-examination of witnesses, may be omitted from a fair hearing. In the Bushell case, Lord Diplock warned against the investigation becoming "over-judicialized" by insisting on following court-like processes, which was incompatible with the informality necessary to receive huge numbers of representations.

CRITICAL LEGAL THEORY IN INDIA

The critical legal theory should be introduced in India, in my opinion. Critical Legal Theory (CLT) is an attack on jurisprudence as a whole, which it regards as concealing the law and legal system in a false sense of legitimacy. Rights proclaim freedom in abstraction from social conditions without really dictating the nature of that freedom, which is how liberalism hides the conflict. The liberal belief is that values, wants, and facts or reason are arbitrary and subjective, whereas facts or reason are objective and universal. In India, political and societal considerations are taken into account while making decisions. And the judges' decisions are always predictable because most of them are based on comparable situations in the past. And, in certain cases, corrective action will be performed only when there is a wide spectrum of attention because that is how the system works.

The best example is the Vishaka case, in which the Supreme Court laid down certain guidelines to prevent harassment of women in the workplace. While certain IPC provisions were already in place, the court was swayed by both national and international media because of the gravity of the case at the time. Because the court did not want to portray the Indian judicial system as weak in the international community, the court laid down proper guidelines after that incident,

but there were some exceptions as vishaka was not the first court case that was filed against sexual harassment. Although India has a legal system that declares freedom, the rights themselves have many tangents that prevent people from exercising that freedom. The implementation of critical legal theory and research in India will genuinely aid in bringing justice to all people equitably, regardless of their social, political, or economic circumstances.

CONCLUSION

To sum up, what I believe are the characteristics of criticism that, at least in the Marxist tradition, distinguish it as immanent critique. Critical theory encourages it to move beyond 'hegemonic' reasoning, which permits legal reason to organize and replicate meaning within existing systems, ensuring their survival. To claim that the critical legal school's objective is to expose law in its worst light is a perversion of their beliefs. Critical academics are truly uncertain on a slew of significant legal issues, allowing them to come closer to realizing traditional academic neutrality than their liberal counterparts. I argue that the disparities in partisanship between liberal and critical legal theory warrant a claim for critical legal theory's superiority. It is crucial to justify the importance of critical theory by detaching itself from legal professionals' preconceptions, taken-for-granted attitudes, and biases. This does not imply a choice between being "for" or "against" the law, as Dworkin suggests. It simply states that what judges and attorneys believe and feel about the law must be scrutinized as well. The idea of 'ideology' is used in critical theory, although it is missing from liberal theory.

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