Legal Research and Its Discontents: A Bibliographic Essay on Critical Approaches to Legal Research*

Nicholas Mignanelli**

What is Critical Legal Research? What is "critical" about critical legal information literacy? What is a critical law librarian, and what must one do to be one? This bibliographic essay attempts to answer these questions in the course of providing a comprehensive introduction to the history, literature, and practices found at the intersection of critical legal theory and legal research.

> "It seems to me that the real political task in a society such as ours is to criticize the workings of institutions, which appear to be both neutral and independent; to criticize and attack them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight against them." —Michel Foucault[1]

** Research & Instructional Services Librarian and Lecturer in Legal Research, Yale Law School, New Haven, Connecticut. My thanks to Nicholas F. Stump for his thoughtful comments. An earlier version of this article won the AALL/LexisNexis Call for Papers Award, New Member Division, 2020.

1. Noam Chomsky & Michel Foucault, *Human Nature: Justice versus Power*, *in* Reflexive Water: The Basic Concerns of Mankind 133, 171 (Fons Elders ed., 1974).

Introduction: A Primer on Critical Legal Theory

"No, you won't fool the children of the revolution." —T. Rex[2]

¶1 In recent years, library scholars have used critical theory to reevaluate the concepts that lie at the heart of their field.[3] In law librarianship, however, the practice of applying the insights of critical legal theory to the legal research process is more than three decades old.[4] The law librarians and legal scholars undertaking this work—what Nicholas Stump calls "Critical Legal Research" (CLR)[5]—seek to expose how external power structures shape the organization of legal information and embed biases in the tools of legal information retrieval. Adherents of CLR (critical law librarians) develop and deploy methods and strategies designed to contend with the limitations that these power structures set on legal innovation, law reform, and, ultimately, human freedom.[6]

¶2 But to gain a deeper sense of the essence of CLR, we must first discuss critical legal theory itself. Only when we have some basic understanding of critical legal theory can we begin to appreciate the potential CLR has as a powerful toolbox for the dissidents, reformers, and rebels laboring at the margins of our legal system. Stump defines critical legal theory as "a diverse and inclusive canon of literature or ideas" that has its "theoretical underpinnings" in "such foundational movements as legal realism, neo-Marxism, post-structuralism, and deconstruction."[7] Critical legal theory is a phenomenon that has taken place in several waves, the first of which was the advent of the critical legal studies (CLS) movement in the late 1970s.

¶3 Founded at a conference held at the University of Wisconsin–Madison in 1977, CLS "continued as an organized force only until the late 1980s."[8] Members of the CLS

---

2. T. Rex, *Children of the Revolution* (EMI 1972).

3. *See, e.g.*, The Politics of Theory and the Practice of Critical Librarianship (Karen P. Nicholson & Maura Seale eds., 2018); Annie Downey, Critical Information Literacy: Foundations, Inspiration, and Ideas (2016); Critical Theory for Library and Information Science: Exploring the Social from Across the Disciplines (Gloria J. Leckie, Lisa M. Given & John Buschman eds., 2010); Critical Library Instruction: Theories and Methods (Maria T. Accardi, Emily Drabinski & Alana Kumbier eds., 2010).

4. The earliest example is Steven M. Barkan's *Deconstructing Legal Research: A Law Librarian's Commentary on Critical Legal Studies*, 79 Law Libr. J. 617 (1987).

5. Nicholas F. Stump, *Following New Lights: Critical Legal Research Strategies as a Spark for Law Reform in Appalachia*, 23 Am. U. J. Gen. & Soc. Pol'y & L. 573, 575 (2015).

6. For suggesting that "contending with" these limitations is a more realistic goal than "transcending" them, I am grateful to Yasmin Sokkar Harker, Student Liaison Librarian and Associate Law Library Professor at the City University of New York School of Law. Email from Yasmin Sokkar Harker to author (Sept. 27, 2019) (edits to program proposal in attachment) (on file with author).

7. Stump, *supra* note 5, at 600.

8. Roberto Mangabeira Unger, The Critical Legal Studies Movement: Another Time, A Greater Task 24 (2d ed. 2015). For more on the history of the CLS movement, see Mark Tushnet, *Critical Legal Studies: A Political History*, 100 Yale L.J. 1515 (1991); *see also* John Henry Schlegel, *Notes Toward an Intimate, Opinionated, and Affectionate History of the Conference on Critical Legal Studies*, 36 Stan. L. Rev. 391 (1984).

movement (crits) have long resisted attempts to define it. Writing at its zenith, two prominent crits described CLS in these broad terms: "The CLS movement has been generally concerned with the relationship of legal scholarship and practice to the struggle to create a more humane, egalitarian and democratic society."[9] Historically speaking, however, CLS can be understood, simultaneously, and somewhat paradoxically, as (1) a successor to legal realism,[10] (2) the arrival of 1960s counterculture and left-wing activism on the law school campus,[11] and (3) the adaptation of neo-Marxism, poststructuralism, and deconstructionism—among other 20th-century continental philosophies—to American law and legal theory.[12]

¶4 Duncan Kennedy opines that CLS initially had "two aspects," namely a "scholarly literature" and "a network of people who were thinking of themselves as activists in law school politics."[13] While CLS is "not a theory" but a "literature produced by this network of people," this literature has certain identifiable themes.[14] Perhaps the most prominent of these themes are the indeterminacy of legal doctrine, law as politics, the myth of legal reasoning, and the reification of legal categories.[15] CLS literature is, of course, far more divergent and complex than the following summary might suggest, but on these four themes hang all the incarnations of critical legal theory.[16]

¶5 The principle of indeterminacy holds that "the existing body of legal doctrines—statutes, administrative regulations, and court decisions—permits a judge to justify any result she desires in any particular case."[17] In short, "the idea is that a competent adjudicator can square a decision in favor of either side in any given lawsuit with the existing

9. Duncan Kennedy & Karl E. Klare, *A Bibliography of Critical Legal Studies*, 94 Yale L.J. 461, 461 (1984).

10. *See* Note, *'Round and 'Round the Bramble Bush: From Legal Realism to Critical Legal Scholarship*, 95 Harv. L. Rev. 1669 (1982) (describing CLS as a continuation of the realist project).

11. Duncan Kennedy is reported to have once described CLS as "a ragtag band of leftover '60s people and young people with nostalgia for the great events of 15 years ago." *See* Terry Eastland, *Radicals in the Law Schools*, Wall St. J., Jan. 10, 1986, at 16.

12. *See* John Henry Schlegel, *Critical Legal Studies*, *in* The Oxford Companion to American Law 202–03 (Kermit L. Hall ed., 2002) ("CLS scholars drew from an extremely diverse range of intellectual sources, including classic European Marxism, the neo-Marxism of Antonio Gramsci and György Lukács, the existential Marxism of Jean-Paul Sartre, the revived critical theory of Jürgen Habermas and Herbert Marcuse, the structuralism of Claude Levi-Strauss and Ferdinand de Saussure, the post-structuralism of Michel Foucault, the deconstructionism of Jacques Derrida, the anti-foundationalism of Thomas Kuhn and Richard Rorty, and the historical scholarship of E. P. Thompson.").

13. Gerard J. Clark, *A Conversation with Duncan Kennedy*, 24 Advocate: Suffolk U. L. Sch. J., no. 2, 1994, at 56, 56.

14. *Id.*

15. These are the major CLS themes identified by Barkan in *Deconstructing Legal Research*, *supra* note 4, at 625–34.

16. "[These themes] are sufficiently general . . . to fall within the area of convergence mentioned by Gordon." *Id.* at 619 n.8 (citing Robert W. Gordon, *New Developments in Legal Theory*, *in* The Politics of Law: A Progressive Critique 281, 282 (David Kairys ed. 1982) ("Yet for all the diversity in background of this collection of [CLS scholars], and the perpetual sharp conflicts over issues of methods within, there is an amazing amount of convergence in the work of this group.")).

17. Lawrence B. Solum, *On the Indeterminacy Crisis: Critiquing Critical Dogma*, 54 U. Chi. L. Rev. 462, 462 (1987).

body of legal rules."[18] This is because "[a] wide variety of interpretations, distinctions, and justifications are available; and judges have the authority and power to choose the issues they will address, and to ignore constitutional provisions, statutes, precedents, evidence, and legal arguments."[19] Consequently, legal decisions "are riddled with inconsistencies and contradictions of which we do not approve, but about which we can do very little."[20] Crits expose these inconsistencies and contradictions through irreverent deconstruction ("trashing").[21]

¶6 Because legal doctrine is indeterminate, "law is simply politics by other means,"[22] and "[t]he ultimate basis for a decision is a social and political judgment incorporating a variety of factors, including the context of the case, the parties, and the substance of the issues."[23] "Indeed, even the facts relevant to a particular controversy . . . are not capable of determination by any distantly legal or nonpolitical methodology."[24] Because law is politics, legal decisions are "not based on, or determined by, legal reasoning."[25]

¶7 Therefore, legal reasoning is a myth and a process of mystification, a mask for the actual bases of legal decisions. While "[d]ecisions are predicated upon a complex mixture of social, political, intuitional, experiential, and personal factors . . . they are expressed and justified, and largely perceived by judges themselves, in terms of 'facts' that have been objectively determined and 'law' that has been objectively and rationally 'found' and 'applied.'"[26] Therefore, *stare decisis* merely "provides and serves to disguise enormous discretion," and precedents "support rather than determine the principles and outcomes adopted by judges."[27] Put in practical terms, "[p]ublished opinions . . . record the language judges must use to legitimize their decisions, but the real reasons for decisions are not expressed."[28]

¶8 For crits, the empty language of legal reasoning leads to the reification of legal categories, the process through which "we draw an abstraction from a concrete milieu and then mistake the abstraction for the concrete."[29] Of course, "[i]t is impossible to think about the legal system without some categorical scheme," but "all such schemes

18. *Id.*
19. David Kairys, *Legal Reasoning*, *in* The Politics of Law, *supra* note 16, at 11, 13.
20. Girardeau A. Spann, *Deconstructing the Legislative Veto*, 68 Minn. L. Rev. 473, 543 (1984).
21. For an explanation of this method, see Mark Kelman, *Trashing*, 36 Stan. L. Rev. 293 (1984).
22. Kairys, *supra* note 19, at 17.
23. David Kairys, *Law and Politics*, 52 Geo. Wash. L. Rev. 243, 247 (1984). Kairys goes on to explain that
    > [t]his does not mean that all outcomes in a case are equally likely, that law is just a game, or that precedent or the enactment of a statute mandating or prohibiting something is meaningless. All outcomes are not equally likely, but it is *only* the social context in a particular situation that makes one outcome more likely than another. A legal sounding rationale can be made for almost every result. But in certain contexts one rationale will seem more reasonable or more "right" than others because the values in that particular context support that result. *Id.*
24. Kairys, *supra* note 19, at 17.
25. Kairys, *supra* note 23, at 247.
26. David Kairys, *Introduction* to The Politics of Law, *supra* note 16, at 3.
27. Kairys, *supra* note 19, at 15.
28. Barkan, *supra* note 4, at 630.
29. Peter Gabel, *Reification in Legal Reasoning*, 3 Rsch. L. & Socio. 25, 26 (1980).

are lies" and soon take on "a life of their own."[30] This happens when lawyers and judges "take both the existing structure and the myriad particular categorizations for granted" and "deploy their efforts at reasoning new situations into the category that will lead to the outcomes they desire."[31] Thus, "categories are perceived as being built by history, human nature, and economic law, when in reality they are created and perpetuated by society's dominant interests."[32]

¶9 By the middle of the 1980s, CLS began to face sharp criticism from the right and left alike. Conservative legal scholars pointed out that—even if the movement's critique of law and society were valid—CLS had failed to articulate a coherent alternative, rendering most CLS thought irrelevant.[33] It was criticism from the left, however, that brought about the next two waves of critical legal theory. While they agreed with much of the CLS critique of American law, feminist legal scholars and critical legal scholars of color sought to use CLS insights to address the unique problems facing women and racial minorities, respectively.[34] Previously, these problems had been neglected by a movement that was, heretofore, largely made up of "white male[s] with some interest in 60s style radical politics or radical sentiment of one kind or another."[35]

¶10 The next wave of critical legal theory, feminist legal theory, arose when feminist scholars within CLS came to believe that the movement was ultimately, in the words of Carrie Menkel-Meadow, "a male-constructed, privileged place in which domination and oppression can be described and imagined but not fully experienced."[36] These scholars united to give a voice to those who had experienced "being dominated, not just . . . thinking about domination."[37] Working to "pull feminism out of its marginal position," they organized their own conference and founded their own school of thought.[38] Feminist legal theory built on CLS themes, using CLS insights to tackle issues

30. Duncan Kennedy, *The Structure of* Blackstone's Commentaries, 28 Buff. L. Rev. 205, 215–16 (1979).

31. *Id.* at 216.

32. Barkan, *supra* note 4, at 632.

33. *See* Calvin R. Massey, Book Review, *Law's Inferno*, 39 Hastings L.J. 1269 (1988) (reviewing Mark Kelman, A Guide to Critical Legal Studies (1987)); *see also* Robert Clark, *In Critical Legal Studies, the West Is the Adversary*, Wall St. J., Feb. 23, 1989, at A18. This line of argument became known as "the question that killed Critical Legal Studies" and was the center of a heated exchange between Calvin R. Massey and Richard Michael Fischl. *See* Richard Michael Fischl, *The Question That Killed Critical Legal Studies*, 17 Law & Soc. Inquiry 779 (1992); Calvin R. Massey, Review Commentary, *The Faith Healers*, 17 Law & Soc. Inquiry 821 (1992); Richard Michael Fischl, Review Rejoinder, *Privileged Positions*, 17 Law & Soc. Inquiry 831 (1992).

34. *See* Duncan Kennedy, Legal Education and the Reproduction of Hierarchy: A Polemic Against the System 215–19 (New York University Press 2004) (1983).

35. Clark, *supra* note 13, at 56.

36. Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. Legal Educ. 61, 61 (1988).

37. *Id.*

38. *Id.* at 63.

such as child custody,[39] divorce,[40] employment,[41] the family,[42] pornography,[43] rape,[44] reproduction,[45] and sexual harassment.[46] Yet feminist legal theorists also broke new methodological ground, conceptualizing an array of models to explain how the legal system subordinates women[47] and pioneering new techniques—such as unmasking, contextual reasoning, and consciousness raising through narrative—to expose how sexism is embedded in law.[48] Somewhat later, gay and lesbian scholars used these methods to advocate for their own plight.[49]

¶11 Critical legal scholars of color, too, found themselves dissatisfied with CLS.[50] Writing in 1987, Richard Delgado asserted that, while the movement's "negative program contains much that is useful for minorities," several trends actually threatened to do harm to people of color.[51] These trends included the critique of legal rights and rules,[52] the rejection of incremental change,[53] idealism,[54] and false-consciousness analysis.[55] Furthermore, the underdeveloped positive program advanced by crits ("a

39. *See, e.g.*, Nancy Erickson, *The Feminist Dilemma Over Unwed Parents' Custody Rights: The Mother's Rights Must Take Priority*, 2 Law & Ineq. 447 (1984).

40. *See, e.g.*, Martha Fineman, *Implementing Equality: Ideology, Contradiction and Social Changes: A Study of Rhetoric and Results in the Regulation of the Consequences of Divorce*, 1983 Wis. L. Rev. 789.

41. *See, e.g.*, Mary Joe Frug, *Securing Job Equality for Women: Labor Market Hostility to Working Mothers*, 59 B.U. L. Rev. 55 (1979).

42. *See, e.g.*, Martha Minow, *The Properties of Family and the Families of Property*, 92 Yale L.J. 376 (1982) (reviewing Mary Ann Glendon, The New Family and the New Property (1981)); Frances Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 Harv. L. Rev. 1497 (1983).

43. *See, e.g.*, Catherine MacKinnon, *Not a Moral Issue*, 2 Yale L. & Pol'y Rev. 321 (1984); Catherine MacKinnon, *Pornography, Civil Rights, and Speech*, 20 Harv. C.R.-C.L. L. Rev. 1 (1985).

44. *See, e.g.*, Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 Tex. L. Rev. 207 (1981); Jennifer Wriggins, *Rape, Racism, and the Law*, 6 Harv. Women's L.J. 103 (1983).

45. *See, e.g.*, Catharine A. MacKinnon, *Complicity: An Introduction to Andrea Dworkin, Abortion, Chapter 3, Right Wing Women - New York: Perigee, 1983*, 1 Law & Ineq. 89 (1983); Catharine A. MacKinnon, *The Male Ideology of Privacy: A Feminist Perspective on the Right to Abortion*, Radical Am., Feb. 1984, at 23–35.

46. *See, e.g.*, Catherine MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination (1979).

47. For example, equal treatment feminism, cultural feminism, dominance theory, critical race feminism, lesbian feminism, ecofeminism, pragmatic feminism, and postmodern feminism. *See generally* Feminist Legal Theory: A Primer 11–39 (Nancy Levit & Robert R.M. Verchick eds., 2d ed. 2016).

48. *Id.* at 41–46.

49. *See, e.g.*, Marc A. Fajer, *Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. Mia. L. Rev. 511 (1992).

50. *See* Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 Harv. C.R.-C.L. L. Rev. 297 (1987).

51. Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 Harv. C.R.-C.L. L. Rev. 301, 302–03 (1987).

52. *Id.* at 303–07.

53. *Id.* at 307–08.

54. *Id.* at 308–09.

55. *Id.* at 309–12.

Utopia in which true community would prevail") did not incorporate a process for establishing social equality and ensuring the permanent elimination of racism.[56]

¶12 Coming to realize that "CLS [did] not provide what minorities seek,"[57] critical scholars of color soon founded a movement of their own: Critical Race Theory (CRT).[58] In 1989, critical race theorists held their first conference "at a convent outside Madison, Wisconsin."[59] Rooted in the writings of Harvard Law Professor Derrick Bell,[60] CRT holds that "racism is ordinary" and not an aberration; that racial minorities have only made gains when their interests have converged with the interests of the white elite ("dominant society"); that race is socially constructed; that dominant society "racializes different minority groups at different times"; that identity is intersectional and nonessential (i.e., each individual "has potentially conflicting, overlapping identities, loyalties, and allegiances"); and that people of color have "unique perspectives" that can be used to "assess law's master narratives" through "legal storytelling."[61]

¶13 Much like its predecessor CLS, CRT has had its share of passionate critics. These critics have charged, among other things, that CRT methods reinforce racial stereotypes,[62] that CRT precepts are largely untestable,[63] and that CRT-inspired speech policies harm the individuals they are intended to protect.[64] In spite of these claims, CRT has been profoundly influential, not only shaping the discourses of several other disciplines[65] but

56. *Id.* at 312–14.

57. *Id.* at 322.

58. Kimberlé Crenshaw coined the phrase "Critical Race Theory" in preparation for the 1989 Critical Race Theory Workshop. *See* Kimberlé Crenshaw, *The First Decade: Critical Reflections, or A Foot in the Closing Door*, 49 UCLA L. Rev. 1343, 1360–61 (2002).

59. Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction 4 (3d ed. 2017). As Richard Delgado has recounted elsewhere, "we gathered at that convent for two and a half days, around a table in an austere room with stained glass windows and crucifixes here and there—an odd place for a bunch of Marxists—and worked out a set of principles." Richard Delgado & Jean Stefancic, *Living History Interview with Richard Delgado & Jean Stefancic*, 19 Transnat'l L. & Contemp. Probs. 221, 225 (2011). For an account of the early CRT conferences, see Crenshaw, *supra* note 58, at 1359–64.

60. For a representative collection of Bell's scholarship, see The Derrick Bell Reader (Richard Delgado & Jean Stefancic eds., 2005).

61. Delgado & Stefancic, *supra* note 59, at 8–11.

62. *See, e.g.*, Richard Posner, *The Skin Trade*, New Republic, Oct. 13, 1997, at 40 (reviewing Daniel A. Farber & Suzanna Sherry, Beyond All Reason: The Radical Assault on Truth in American Law (1997)).

63. *See, e.g.*, Alex Kozinski, *Bending the Law*, N.Y. Times, Nov. 2, 1997, at 46 (reviewing Farber & Sherry, *supra* note 62).

64. *See* Henry Louis Gates, Jr., *Critical Race Theory and Freedom of Speech*, *in* The Future of Academic Freedom 119–59 (Louis Menand ed., 1996).

65. *See* Delgado & Stefancic, *supra* note 59, at xvii ("Critical race theory has exploded from a narrow subspecialty of jurisprudence chiefly of interest to academic lawyers into a literature read in departments of education, cultural studies, English, sociology, comparative literature, political science, history, and anthropology around the country.").

fostering several submovements (e.g., Critical Race Feminism,[66] LatCrit,[67] Tribal Crit,[68] Asian American Jurisprudence,[69] Queer Crit,[70] Critical White Studies,[71] and ClassCrit[72]).

¶14 Although CLS, feminist legal theory, and CRT differ in fundamental ways, they are united in their critical analyses of American law and their desire to aid the marginalized.[73] As we will discover in the following bibliography, CLR is ultimately the offspring of all three waves of critical legal theory. CLR came into existence when various proponents of critical legal theory turned their attention to legal information, contemplating new approaches to the legal research process that would permit advocates for the marginalized to challenge society's dominant interests and the structures that uphold them.

Annotated Bibliography

¶15 The following annotated bibliography is an attempt to curate the body of literature that comprises CLR. The bibliography is organized chronologically to show how important concepts and practices have developed over time. Like all bibliographies, this one is incomplete and imperfect, but the author has done his best to collect the key writings that have formed the movement.

---

66. For foundational texts, see Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581 (1990).

67. For foundational texts, see Francisco Valdes, *Foreword—Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 La Raza L.J. 1 (1996); Elizabeth M. Iglesias, *Foreword: International Law, Human Rights, and LatCrit Theory*, 28 U. Mia. Inter-Am. L. Rev. 177 (1996); Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 Harv. Latino L. Rev. 1 (1997).

68. For foundational texts, see Robert A. Williams, Jr., *Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law*, 31 Ariz. L. Rev. 237 (1989); Robert A. Williams, Jr., *Columbus's Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples' Rights of Self-Determination*, 8 Ariz. J. Int'l & Comp. L. 51 (1992); Robert Williams, *Vampires Anonymous and Critical Race Practice*, 95 Mich. L. Rev. 741 (1997).

69. For foundational texts, see Neil Gotanda, *"Other Non-Whites" in American Legal History: A Review of Justice at War*, 85 Colum. L. Rev. 1186 (1985); Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323 (1987); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 Calif. L. Rev. 1244 (1993).

70. For foundational texts, see Elvia R. Arriola, *Gendered Inequality*, 9 Berkeley Women's L.J. 103 (1994); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 Calif. L. Rev. 1 (1995).

71. For foundational texts, see Critical White Studies: Looking Behind the Mirror (Richard Delgado & Jean Stefancic eds., 1997); Ian Haney López, White By Law: The Legal Construction of Race (10th anniversary ed. 2006) (1996).

72. For a foundational text, see Athena D. Mutua, *Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 Buff. L. Rev. 859 (2008).

73. I hasten to add that adherents of CLS were divided over this second proposition. *See, e.g.*, Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 Stan. L. Rev. 1, 26–28 (1984).

Foundations

¶16 A bibliography that placed a broader construction on the heading "foundations" would surely include works by Michel Foucault, Jacques Derrida, and several neo-Marxist thinkers. However, the author has limited this section of the bibliography to works that directly precipitated the advent of CLR and made it possible to approach legal research with a critical eye.

Kennedy, Duncan. "The Structure of *Blackstone's Commentaries*." *Buffalo Law Review* 28, no. 2 (1979): 205–382.

In his deconstruction of Blackstone's *Commentaries on the Laws of England*, Kennedy contends that Blackstone's taxonomy of the English legal system is an attempt to "naturalize" and "legitimate the legal status quo of the England of [Blackstone's] day."[74] Kennedy seeks to expose the fundamental contradiction at the heart of the text ("that relations with others are both necessary to and incompatible with our freedom")[75] and how mechanisms of denial have served to obscure this contradiction—which now lies at the heart of Anglo-American law. Of particular interest to law librarians are Kennedy's comments about categorical schemes.[76]

Kennedy, Duncan. *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System*. Cambridge, Mass.: Afar, 1983.

Part critique and part utopian vision, Kennedy's polemical essay contains no mention of legal information, legal research, law libraries, or law librarians, yet his drive to criticize all aspects of legal education sets the stage for a critical analysis of the legal research process.

Frug, Mary Joe. "Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook." *American University Law Review* 34, no. 4 (1985): 1065–1140.

In what is perhaps the earliest example of a critical analysis of an arrangement of legal information, Frug uses reader-response criticism to expose how the fourth edition of *Contracts: Cases and Comments*[77] alienates female readers and emboldens chauvinist readers by furthering an ideology that privileges men and masculinity over women and femininity. Frug's description of how the authors have adopted a "contrived" and "authoritarian" neutrality by refusing to "admit that their casebook has a point of view" and "offer[ing] readers no information about what is left unsaid in their casebook"[78] remains highly relevant as we continue to assess how the choices made in the process of organizing legal information shape the perceptions of legal researchers.

---

74. Kennedy, *supra* note 30, at 211.

75. *Id.* at 213.

76. *Id.* at 214–16.

77. John Dawson, William Harvey & Stanley Henderson, Contracts: Cases and Comments (4th ed. 1982).

78. Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 Am. U. L. Rev. 1065, 1109 (1985).

Berring, Robert C. "Legal Research and Legal Concepts: Where Form Molds Substance." *California Law Review* 75, no. 1 (1987): 15–27.

Berring theorizes that the myth of the common law—initially threatened by the proliferation of comprehensive case reporting in the late 19th century—has been sustained by West's American Digest System. By classifying all cases into subjects using topics and key numbers, the West Digest System not only "lent . . . structural coherence" to American law but became "the skeleton upon which the rest of the system was built."[79] Accordingly, "practitioners and researchers [have] internalized the West structure."[80] Berring predicts that "the ability to search without an imposed structure [i.e., keyword searching] will nakedly expose the myth of the common law and the beauty of the seamless web to the general legal world."[81] Of course, Berring could not anticipate the remarkable resilience of this structure, nor the ways in which developers would embed the digest system in new legal research technologies.

The Canon

¶17 As CLS and feminist legal theory came to the forefront of scholarly discourse in American legal education, law librarians began to wonder how the ideas advanced by these movements might apply to their own field. The earliest attempt by law librarians to publicly engage with critical legal theory took place on July 8, 1986, at the 79th Annual Meeting of the American Association of Law Libraries (AALL) in Washington, DC.[82] There, Joyce Saltalamacchia (then the director of the law library at NYU School of Law) moderated a panel entitled "Critical Legal Studies: Out of Harvard and Into the Streets."[83] This panel featured Michael Davis (a law professor at Cleveland–Marshall College of Law), Patricia Williams (then a law professor at CUNY School of Law), and Steven M. Barkan (then associate law librarian at the University of Texas School of Law).[84]

¶18 Davis, whose role it was to give attendees an introduction to CLS, concluded his remarks by lamenting, "[W]hat [CLS] poses for librarians is almost frightening to think about, so I won't address that at all."[85] Ironically, Barkan, the final panelist to speak, ended the program with an elaborate discussion about the implications CLS has for legal research.[86] Speaking to the law librarians assembled in the room that day, Barkan ended his remarks with a call to action: "I'm calling on all of you to start looking

79. Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 Calif. L. Rev. 15, 25 (1987).

80. *Id.*

81. *Id.* at 26.

82. *See 86-AALL-F2 Critical Legal Studies: Out of Harvard and Into the Streets*, *in* AALL Annual Meetings: An Annotated Index of Recordings cxliv (Frank G. Houdek & Susan D. Goldner eds., AALL Publication Series No. 32, 1989).

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

at these issues."[87] The next year, Barkan's comments were published as a groundbreaking article in *Law Library Journal*.[88]

¶19 In 1988, Virginia Wise (then a reference librarian at the University of Michigan) published an article in *Legal Reference Services Quarterly* discussing how law librarians could better support CLS scholars.[89] In 1989, the preeminent critical race theorist Richard Delgado and Jean Stefancic, a librarian turned CRT scholar, published a critique of the self-replicating tendency of traditional legal research tools.[90] Stefancic and Delgado went on to publish several additional articles expounding upon their thesis and examining whether changes in technology had resolved or exacerbated the "triple helix dilemma" they identified.[91] In 1992, Jill Anne Farmer (then a librarian at Akin, Gump, Strauss, Hauer & Feld LLP) won the AALL/LexisNexis Call for Papers for her article "A Poststructuralist Analysis of the Legal Research Process."[92] In 2006, Spencer L. Simons (then director of the law library at the University of Houston) published an article in the *Journal of Legal Education* arguing that legal research and writing instructors should expose their students to the indeterminacy of law.[93] Taken together, these articles might be said to form a CLR canon: a body of literature that exemplifies CLR and serves as the basis for all subsequent critical analyses of the legal research process.

Barkan, Steven M. "Deconstructing Legal Research: A Law Librarian's Commentary on Critical Legal Studies." *Law Library Journal* 79, no. 4 (1987): 617–37.

In what Richard Danner calls "an example of the very best scholarship in our field,"[94] Barkan uses CLS insights to deconstruct the legal research process. He finds that "deconstruction conflicts with the notion that legal research is a search for preexisting, findable law";[95] that legal information is indeterminate "[i]f the meanings of legal texts are created as much by researchers as by the institutions that produce them";[96] that "[t]he search for the

87. *Id.*

88. Barkan, *supra* note 4.

89. Virginia Wise, *Of Lizards, Intersubjective Zap, and Trashing: Critical Legal Studies and the Librarian*, Legal Reference Servs. Q., nos. 1–2, 1988, at 7.

90. Richard Delgado & Jean Stefancic, *Why Do We Tell the Same Stories? Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 Stan. L. Rev. 207 (1989).

91. *See* Jean Stefancic & Richard Delgado, *Outsider Jurisprudence and the Electronic Revolution: Will Technology Help or Hinder the Cause of Law Reform?*, 52 Ohio State L.J. 847 (1991); Jean Stefancic, *Listen to the Voices: An Essay on Legal Scholarship, Women, and Minorities*, Legal Reference Servs. Q., nos. 3–4, 1992, at 141; Richard Delgado & Jean Stefancic, *Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited*, 99 Law Libr. J. 307, 2007 Law Libr. J. 18; Richard Delgado & Jean Stefancic, *Rodrigo's Reappraisal*, 101 B.U. L. Rev. Online 48 (2021).

92. Jill Anne Farmer, *A Poststructuralist Analysis of the Legal Research Process*, 85 Law Libr. J. 391 (1993).

93. Spencer L. Simons, *Navigating Through the Fog: Teaching Legal Research and Writing Students to Master Indeterminacy Through Structure and Process*, 56 J. Legal Educ. 356 (2006).

94. Frank G. Houdek, *The Essential Law Library Journal*, 100 Law Libr. J. 137, 141, 2008 Law Libr. J. 6, ¶ 6.

95. Barkan, *supra* note 4, at 628.

96. *Id.*

ratio decidendi, the rule of the case, leads nowhere";[97] and that legal research reifies "fact situations to fit them into predetermined and reified schemes."[98] This reification happens through a process of "bibliographic determinism" in which "legal resources can reinforce and reify dominant ideologies, can narrow perspectives, and can make contingent results seem inevitable."[99] "Key numbers, indexes, annotations, footnotes, and cross-references," Barkan writes, "set the limits of inquiry."[100] He concludes by setting out to domesticate CLS. Barkan admits that "[w]hen the CLS arguments against legal doctrine and legal reasoning are carried to their logical conclusions, there can be no legal research."[101] However, Barkan asserts that in forcing "us to analyze the ways research tools and practices can influence the application and development of the law,"[102] CLS insights can lead to the development of "[a]n enlightened understanding of legal research . . . that might help improve the way legal thinkers respond to social problems."[103] Barkan's article remains highly relevant. In one prescient passage, he wonders whether artificial intelligence will "reify categorical schemes even more, permitting us to find only what artificial intelligence will show us."[104]

Wise, Virginia. "Of Lizards, Intersubjective Zap, and Trashing: Critical Legal Studies and the Librarian." *Legal Reference Services Quarterly* 8, nos. 1–2 (1988): 7–27.

Wise recounts how, in the first several years of its existence, CLS posed special problems for law librarianship. Law librarians struggled not only to identify and collect CLS literature but also to assist crits with their scholarship (which often took an unconventional form and relied on obscure nonlegal materials). Wise provides "several constructive steps one can take to enhance one's ability to deal with this new trend in legal scholarship."[105] She concludes by encouraging her colleagues to "[w]elcome the opportunity to deal with a nontraditional style of scholarship . . . [and] shake off the shackles of [the] *Uniform System of Citation* [to] be part of a counter-hegemonic enclave."[106]

Delgado, Richard, and Jean Stefancic. "Why Do We Tell the Same Stories? Law Reform, Critical Librarianship, and the Triple Helix Dilemma." *Stanford Law Review* 42 (1989): 207–25.

In this widely cited and republished article, Delgado and Stefancic theorize that "the Library of Congress subject heading system, the Index to Legal Periodicals, and the West Digest System . . . function like DNA."[107] By this the authors mean that these "systems function rather like molecular biology's double helix: [t]hey replicate preexisting ideas,

97. *Id.* at 630.
98. *Id.* at 632.
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.* at 635.
103. *Id.* at 637.
104. *Id.* at 636.
105. Wise, *supra* note 89, at 17.
106. *Id.* at 18.
107. Delgado & Stefancic, *supra* note 90, at 208.

thoughts, and approaches."[108] To contend with this "triple helix dilemma," Delgado and Stefancic urge that "[r]eform now will require disaggregation of the current dichotomous classification scheme, creation of a more complex one, and reorganization of the relevant cases and statutes accordingly," but that "[w]ord-based computer searches solve only part of the problem" because "computerized research can 'freeze' law by limiting the search to cases containing particular words or expressions."[109] Instead, they suggest looking to "divergent individuals"[110] and closely examining legal categories for greater insight into "the very conceptual framework we have been wielding in scrutinizing and interpreting our societal order."[111] Delgado and Stefancic assert that the latter approach will allow researchers to "turn that system on its side and ask what is missing."[112]

Barkan, Steven M. "Response to Schanck: On the Need for Critical Law Librarianship, or Are We All Legal Realists Now?" *Law Library Journal* 82, no. 1 (Winter 1990): 23–35. Barkan's deconstruction of the legal research process was not uncontroversial. In, as Danner puts it, "an occasionally acerbic response to Barkan's article, Peter C. Schanck challenged the notions that the digest and other research tools play a role in lawyers' thinking about the law."[113] Responding to Schanck's contentions that "[m]ost lawyers suffer under no illusions about the law's 'seamless web' or perfect coherence" and that legal research tools "have had little or no impact on either the content of our law or our understanding of the legal system,"[114] Barkan argues that "most lawyers operate within the parameters set by others"[115] and that "[m]any legal decisions cannot be made apart from their economic, social, historical, and political contexts, and are often dependent upon business, scientific, medical, psychological, and technological information."[116] Accordingly, Barkan concludes by suggesting that "[l]aw libraries should make relevant secondary, interdisciplinary, and nonlegal resources readily accessible to the legal profession" because "[i]t is only when all types of relevant, and necessary, information are of acceptable quality and are equally accessible to all participants in the legal process that we will be able to consider our research systems satisfactory."[117]

---

108. *Id.* at 217.

109. *Id.* at 220–21.

110. *Id.* at 222–23 (Delgado and Stefancic define "divergent individuals" as "thinkers . . . whose life experiences have differed markedly from those of their contemporaries" and whose ideas "offer the possibility of legal transformation and growth.").

111. *Id.* at 224.

112. *Id.*

113. Richard A. Danner, *Legal Information and the Development of American Law: Writings on the Form and Structure of the Published Law*, 99 Law Libr. J. 193, 215, 2007 Law Libr. J. 13, ¶ 47.

114. Peter C. Schanck, *Taking Up Barkan's Challenge: Looking at the Judicial Process and Legal Research*, 82 Law Libr. J. 1, 17 (1990).

115. Steven M. Barkan, *Response to Schanck: On the Need for Critical Law Librarianship, or Are We All Legal Realists Now?*, 82 Law Libr. J. 23, 32 (1990).

116. *Id.* at 34.

117. *Id.* at 35.

Stefancic, Jean, and Richard Delgado. "Outsider Jurisprudence and the Electronic Revolution: Will Technology Help or Hinder the Cause of Law Reform?" *Ohio State Law Journal* 52, no. 3 (1991): 847–58.

Stefancic and Delgado assess two movements that were on the verge of transforming legal scholarship in the early 1990s: outsider jurisprudence (CLS, feminist legal theory, and CRT) and the electronic revolution (the digitization of legal information). After describing each in some detail, they speculate whether these movements will converge to accelerate law reform or cancel each other out. On one hand, they theorize that the shortcomings of keyword searching and the high cost of computer-assisted research might hinder law reform. On the other hand, they suggest that computerization might allow for the advent of "a 'cut and paste' approach to opinion writing" that would increase the influence of outsiders by making "arguments and lines of cases for opposing viewpoints . . . readily available."[118] Stefancic and Delgado conclude that "[t]he question is still open."[119] In retrospect, no convergence of the two movements ever took place, but nor did these movements necessarily cancel each other out.

Stefancic, Jean. "Listen to the Voices: An Essay on Legal Scholarship, Women, and Minorities." *Legal Reference Services Quarterly* 11, nos. 3–4 (1992): 141–49.

Stefancic reiterates many of the points made in her 1991 article with Delgado but tailors them to law librarianship. She encourages law librarians to support the acceleration of law reform by fostering the convergence of outsider scholarship and the electronic revolution. She suggests that law librarians can do this by "study[ing] the concepts and language of feminist and minority jurisprudence" in order to "provide better access through free-text searching of electronic databases"; "be[ing] aware when subject headings do not fit the materials they index, and then bring[ing] those discrepancies to the attention of catalogers, editors and indexers"; "becom[ing] informed about trends and writers of new critical scholarship" in order to "make intelligent decisions about collection development"; "construct[ing] bibliographies"; becom[ing] research liaisons to feminist and minority legal scholars"; and even "participat[ing] in the new scholarship [them]selves."[120]

Farmer, Jill Anne. "A Poststructuralist Analysis of the Legal Research Process." *Law Library Journal* 85, no. 2 (Spring 1993): 391–404.

Farmer uses poststructuralism to criticize the legal research process. She defines poststructuralism as an "analytical shift" from the "literary (or cultural) product" as "work" ("a closed entity with a definite meaning") to the "literary (or cultural) product" as "text" ("ongoing dialogue").[121] In applying poststructuralism to legal research, she agrees with previous scholars that classification systems have a self-replicating tendency but adds that "patterns of citation inclusion, omission, and emphasis create a canon of accepted thought

118. Stefancic & Delgado, *Outsider Jurisprudence*, *supra* note 91, at 856–57.
119. *Id.* at 858.
120. Stefancic, *supra* note 91, at 148.
121. Farmer, *supra* note 92, at 392.

that should be analyzed."[122] She concludes by suggesting that law librarians can "help alleviate some of the conceptual lock on legal information" by (1) helping patrons "understand that what they are able to find is not equivalent to a whole universe of information or even a random subset, but rather to that particular universe found economically, politically, and/or personally expedient or essential to publishers, editors, and librarians" and (2) "go[ing] beyond the usual collection policies to acquire nonlegal material that reflects on social, political, and cultural theory."[123]

Simons, Spencer L. "Navigating Through the Fog: Teaching Legal Research and Writing Students to Master Indeterminacy Through Structure and Process." *Journal of Legal Education* 56, no. 3 (2006): 356–73.

Although not necessarily written from a critical perspective—Simons is careful to note that his understanding of indeterminacy is less radical than the version put forward by crits—this article contains excellent advice about how to create course materials that incorporate indeterminacy so as "to disabuse law students of the notion that the syllogistic process, properly applied, necessarily yields the 'right answer.'"[124]

Delgado, Richard, and Jean Stefancic. "Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited." *Law Library Journal* 99, no. 2 (Spring 2007): 307–28.

Delgado and Stefancic reassess the triple helix dilemma for the computer age. They find that "[c]omputer-assisted legal research may in fact impede the search for new legal ideas, slow the pace of law reform, and make the legal system less, not more, just."[125] This is because "computer searching can mire the researcher in a sea of facts. It can suppress browsing and analogical reasoning, while giving the impression that one is freer, more creative than one really is."[126] To overcome "the straitjacket of conventional categories [that] now limits the questions one may ask the computer and the searches one may devise,"[127] Delgado and Stefancic propose what Stump later calls "unplugged brainstorming."[128] They describe the practice this way: "spend[ing] time with the computer shut down, mulling over what an ideal legal world would look like from the client's perspective . . . thinking 'outside the box,' reinventing, modifying, flipping, and radically transforming legal doctrines and theories imaginatively and in brainstorming sessions with other reformist lawyers."[129]

Recent Developments

¶20 In the last decade, CLR has experienced a renaissance. Several authors have attempted to revitalize the practices prescribed in the above articles, while others have

122. *Id.* at 401.
123. *Id.* at 403.
124. Simons, *supra* note 93, at 357.
125. Delgado & Stefancic, *Why Do We Ask the Same Questions?*, *supra* note 91, at 310, ¶ 8.
126. *Id.* at 318, ¶ 28.
127. *Id.*
128. Stump, *supra* note 5, at 576.
129. Delgado & Stefancic, *Why Do We Ask the Same Questions?*, *supra* note 91, at 328, ¶ 50.

engaged with critical legal theory, critical information theory, and critical librarianship to create a novel approach to legal information pedagogy: critical legal information literacy. Other authors—though not writing in the critical tradition per se—have contributed invaluable insights about the power structures that underlie emerging legal research technologies.

Wheeler, Ronald. "Does WestlawNext Really Change Everything? The Implications of WestlawNext on Legal Research." *Law Library Journal* 103, no. 3 (Summer 2011): 359–77.

In this assessment of WestlawNext (the version of Westlaw first introduced in 2010 and later succeeded by Westlaw Edge), Wheeler criticizes Thomson Reuters's use of crowdsourcing and its potential to conceal "unpopular or less used tidbits of legal information."[130] Wheeler speculates that this might "limit the possibilities of legal writing, [] limit the reach of creative thinking about the law, [] narrow the range of alternative legal perceptions, [] [and] close the door to the unknown."[131]

Sokkar Harker, Yasmin. "Critical Legal Information Literacy: Legal Information as a Social Construct." In *Information Literacy and Social Justice: Radical Professional Praxis*, edited by Lua Gregory and Shana Higgins, 205–18. Sacramento: Library Juice Press, 2013.

Sokkar Harker proposes using critical information literacy to forge a critical pedagogy for legal research instructors in which legal information is conceptualized as "a social construct produced and published by people,"[132] namely access providers, organizers, and creators. By using this framework as a basis for discussing the nature of legal information, legal research instructors can "encourage students to develop a critical consciousness about legal information and help them realize their potential to advocate for justice and change current legal systems."[133]

Krishnaswami, Julie. "Critical Information Theory: A New Foundation for Teaching Regulatory Research." In *The Boulder Statements on Legal Research Education: The Intersection of Intellectual and Practical Skills*, edited by Susan Nevelow Mart, 175–202. Buffalo: William S. Hein & Co., 2014.

In this contribution to Susan Nevelow Mart's anthology of perspectives on the Boulder Statements on Legal Research Education,[134] Krishnaswami proposes that legal research

130. Ronald Wheeler, *Does WestlawNext Really Change Everything? The Implications of WestlawNext on Legal Research*, 103 Law Libr. J. 359, 368, 2011 Law Libr. J. 23, ¶ 29.

131. *Id.* at 369, ¶ 29.

132. Yasmin Sokkar Harker, *Critical Legal Information Literacy: Legal Information as a Social Construct*, *in* Information Literacy and Social Justice: Radical Professional Praxis 205, 209 (Lua Gregory & Shana Higgins eds., 2013).

133. *Id.* at 216.

134. For more on the Boulder Statements, see *Boulder Conferences on Legal Information: Scholarship and Teaching*, William A. Wise Law Library at the University of Colorado Law

instructors should use critical information theory—a discipline that explores the relationship between culture and information—as a basis for teaching regulatory research. Specifically, she suggests that "[t]eaching students how to research regulations in the context of the complexities surrounding rulemaking, the behaviors of agency actors and stakeholders, and access to regulatory information, will push students to see stories, perspectives, actors, and relationships otherwise obscured, thereby helping them construct novel arguments."[135]

Stump, Nicholas F. "Following New Lights: Critical Legal Research Strategies as a Spark for Law Reform in Appalachia." *American University Journal of Gender, Social Policy & the Law* 23, no. 4 (2015): 573–657.

Stump unifies and synthesizes the methods and strategies found in previous articles, describing them as "a more targeted utilization of commercial and non-commercial legal resources, an increased practitioner reliance upon a wide range of theoretical materials (i.e., as potential touchstones for innovation), and the cultivation of synergistic brainstorming sessions involving grassroots activists and other diverse constituents."[136] Examining them in more detail, he renders these methods and strategies as "[i]nternaliz[ing] [c]ritical [i]nsights," "[c]oncept-[b]ased [r]esearch," [a]lternative [l]egal [r]esearch, [l]egal [s]cholarly and [m]ultidisciplinary [r]esearch, and [u]nplugging and [b]rainstorming [s]essions."[137] Having provided readers with a thorough introduction to CLR, he applies CLR methods and strategies to the dilemma of mountaintop removal mining and its devastating impact on Appalachia, finding that feminist and ecofeminist theories might provide a basis for meaningful law reform.

Baker, Jamie J. "Critical Librarianship or #Critlib." *Ginger (Law) Librarian*. December 17, 2015. http://www.gingerlawlibrarian.com/2015/12/critical-librarianship-or-critlib.html [https://perma.cc/Q74J-YE8M].

In this blog post, Baker reflects on the critical librarianship (#critlib) movement and its importance to academic librarians. She suggests that "[c]ritical librarianship is involved when discussing bias in machine learning."[138]

School, https://lawlibrary.colorado.edu/boulder-conferences-legal-information-scholarship-and-teaching [https://perma.cc/C8XR-ESL7].

135. Julie Krishnaswami, *Critical Information Theory: A New Foundation for Teaching Regulatory Research*, *in* The Boulder Statements on Legal Research Education: The Intersection of Intellectual and Practical Skills 175, 202 (Susan Nevelow Mart ed., 2014).

136. Stump, *supra* note 5, at 574–75.

137. *Id.* at 618–23.

138. Jamie J. Baker, *Critical Librarianship or #Critlib*, Ginger (L.) Librarian (Dec. 17, 2015), http://www.gingerlawlibrarian.com/2015/12/critical-librarianship-or-critlib.html [https://perma.cc/Q74J-YE8M].

Sokkar Harker, Yasmin. "Legal Information for Social Justice: The New ACRL Framework and Critical Information Literacy." *Legal Information Review* 2 (2016): 19–59.

Sokkar Harker reconsiders the relationship between critical information literacy and legal information in light of the ACRL Framework adopted in 2016. She writes that this framework "can be used as a tool for educators to promote critical information literacy in the legal research classroom."[139] To accomplish this, she suggests that legal research instructors use "two specific frames [from the ACRL Framework]: Frame 1, *Authority Is Constructed and Contextual*; and Frame 3, *Information Has Value*."[140] She concludes that "[a]lthough the ACRL Framework is not perfect, it is a good starting point for incorporating critical information literacy and social justice into legal education and the law library."[141]

Stump, Nicholas F. "Mountain Resistance: Appalachian Civil Disobedience in Critical Legal Research Modeled Law Reform." *Environs: Environmental Law & Policy Journal* 41, no. 1 (Fall 2017): 69–131.

Stump returns to the subject of CLR, defining it as "a proceduralist-based school that aims to effect change via radical approaches to legal research and analysis."[142] He summarizes the "[c]ore CLR practices" as "(1) the deconstruction of the commercial legal research regime, which facilitates the unpacking of unjust doctrine, (2) a newfound practitioner reliance upon critically based theoretical resources for doctrinal reconstruction, and (3) the incorporation of grassroots activists into progressive reform initiatives."[143] This article focuses on the third core practice, a modification of the "unplugged brainstorming" method first put forward by Delgado and Stefancic in their 2007 article and further developed by Stump in his 2015 article. In this regard, Stump proposes "the cultivation of non-hegemonic reform alliances," that is to say "the incorporation of more marginalized parties, such as grassroots activists, community organizers, and the portion of citizenry most affected by the legal scheme at issue."[144] Stump suggests that engaging with these individuals in "synergistic collaborations" would create "a collective, grassroots approach to legal research and analysis" that "might indeed assist in catalyzing novel socio-legal reform."[145]As an application of this method, he suggests incorporating Appalachian civil disobedients in the legal struggle to end mountaintop removal mining.

---

139. Yasmin Sokkar Harker, *Legal Information for Social Justice: The New ACRL Framework and Critical Information Literacy*, 2 Legal Info. Rev. 19, 19 (2016–2017).

140. *Id.* at 47.

141. *Id.* at 59.

142. Nicholas F. Stump, *Mountain Resistance: Appalachian Civil Disobedience in Critical Legal Research Modeled Law Reform*, 41 Environs: Env't L. & Pol'y J. 69, 69 (2017).

143. *Id.*

144. *Id.* at 88–89.

145. *Id.* at 90–91.

Nevelow Mart, Susan. "The Algorithm as a Human Artifact: Implications for Legal [Re] search." *Law Library Journal* 109, no. 3 (Summer 2017): 387–422.

Nevelow Mart compares search results across six legal databases and finds that "[t]here is hardly any overlap in the cases that appear in the top ten results returned by each database."[146] This "remarkable testament to the variability of human problem solving"[147] demonstrates that the human-made algorithm underlying any given database is shaped by subjective choices. These "choices become the biases and assumptions that are built into systems."[148] She emphasizes that because "every algorithm and database interface is a completely human construct, and every search is a completely human construct, the researcher must view the search process as a human interaction, moderated by technology, and not as a technological interaction."[149] Mart concludes by calling on readers "to request more accountability from database providers and for database providers to proactively think of algorithmic accountability as a way to improve research results for their users."[150]

Nevelow Mart, Susan. "Every Algorithm Has a POV." *AALL Spectrum* 22, no. 1 (September/October 2017): 40–44.

In this summation of her study, Nevelow Mart reiterates that "the human element in algorithms matters *a lot*" and that "every database has a point of view, offering unique responses to a legal problem that no other database provides."[151]

Lamdan, Sarah, and Yasmin Sokkar Harker. "LexisNexis's Role in ICE Surveillance and Librarian Ethics." *RIPS Law Librarian Blog*. December 5, 2017. https://web.archive.org/web/20200102033927/https://llb2.com/2017/12/11/ice/.

In this blog post, Lamdan and Sokkar Harker call attention to the participation of LexisNexis in U.S. Immigration and Customs Enforcement's extreme vetting surveillance system, an AI-powered system that would have "determine[d] and evaluate[d] an applicant's probability of becoming a positively contributing member of society, as well as their ability to contribute to national interests and . . . whether an applicant intends to commit criminal or terrorist acts after entering the United States."[152] Experts feared that such a program would perpetuate discrimination. The authors urge law librarians to "grappl[e] with how to

146. Susan Nevelow Mart, *Algorithm as a Human Artifact: Implications for Legal [Re]search*, 109 Law Libr. J. 387, 390, 2017 Law Libr. J. 20, ¶ 5.

147. *Id.*

148. *Id.* at 388, ¶ 2.

149. *Id.* at 398, ¶ 16.

150. *Id.* at 420, ¶ 58.

151. Susan Nevelow Mart, *Every Algorithm Has a POV*, AALL Spectrum, Sept./Oct. 2017, at 40, 41.

152. Sarah Lamdan & Yasmin Sokkar Harker, *LexisNexis's Role in ICE Surveillance and Librarian Ethics*, RIPS L. Librarian Blog (Dec. 5, 2017), https://ripslawlibrarian.wordpress.com/2017/12/05/lexisnexiss-role-in-ice-surveillance-librarian-ethics/ [https://perma.cc/E5VW-CWZ5] ("Post Removed"), *republished at* Law Librarian Blog (Dec. 11, 2017), https://llb2.com/2017/12/11/ice/. The second site of publication now returns a 404 error, but the post has been archived at *The Wayback Machine*: https://web.archive.org/web/20200102033927/https://llb2.com/2017/12/11/ice/.

react when our major database providers engage in massive surveillance projects with the government."[153] Lamdan and Sokkar Harker argue that critical information literacy obliges librarians to "investigate the source of LexisNexis data" and "to understand and build awareness about the products we provide to the public."[154] On the advice of AALL's general counsel, this post was removed from the *RIPS Law Librarian Blog*.[155] Shortly thereafter, Joe Hodnicki republished it on his *Law Librarian Blog*.[156]

Baker, Jamie J. "Law Librarian Status & Academic Freedom." *Ginger (Law) Librarian*. December 6, 2017. http://www.gingerlawlibrarian.com/2017/12/law-librarian-status-academic-freedom.html [https://perma.cc/YC4J-4324].

Baker reacts to the removal of Lamdan and Sokkar Harker's post from the *RIPS Law Librarian Blog*, lamenting that the law librarian's lack of status and academic freedom "precludes us from fully engaging in conversations surrounding controversial issues because we lack the institutional support to do so."[157]

"#critlib Twitter Chat: Vendor Relations." *Critlib.org*. March 19, 2018. http://critlib.org/wp-content/uploads/2018/03/critlib-2018-03-19.html [https://perma.cc/GC7R-T2A5].

In this law librarian–initiated #critlib Twitter chat, participants considered the ethical dimensions of library and librarian relationships with vendors. The above blog posts by Lamdan and Sokkar Harker and Baker, respectively, served as the suggested readings for this exchange.

Baker, Jamie J. "2018: A Legal Research Odyssey: Artificial Intelligence as Disruptor." *Law Library Journal* 110, no. 1 (Winter 2018): 5–30.

In this article, Baker discusses the use of AI in the context of legal research, expressing concern that premature disruption (a phenomenon in which "technologies replace human workers before the technology is truly ready to perform at the level of the replaced humans")[158] in legal research might interfere with legal creativity. She argues that librarians need to teach patrons about the limitations and ethical implications of AI-powered legal research tools.

153. *Wayback Machine*-Archived Post, *supra* note 152.

154. *Id.*

155. Original Post, *supra* note 152.

156. *But see supra* note 152.

157. Jamie J. Baker, *Law Librarian Status & Academic Freedom*, Ginger (L.) Librarian (Dec. 6, 2017), http://www.gingerlawlibrarian.com/2017/12/law-librarian-status-academic-freedom.html [https://perma.cc/QX8P-6F7T].

158. Jamie J. Baker, *2018: A Legal Research Odyssey: Artificial Intelligence as Disruptor*, 110 Law Libr. J. 5, 19, 2018 Law Libr. J. 1, ¶ 50.

Lamdan, Sarah. "When Westlaw Fuels ICE Surveillance: Legal Ethics in the Era of Big Data Policing." *New York University Review of Law & Social Change* 43, no. 2 (2019): 255–93.

Lamdan considers the ethical dimensions of buying and using legal research services from vendors that build and maintain government surveillance systems. She urges lawyers to consider several ABA Model Rules of Professional Responsibility and how they apply to this situation. She concludes that "[i]f legal research products are engaged in unethical practices, or in practices that fail to comply with professional responsibility rules, lawyers should condemn those practices."[159] Accordingly, Lamdan suggests that lawyers should consider divesting from vendors that engage in these practices and switch to alternative legal research services.

Allison, Jennifer. "Critical Legal Studies (Research Guide)." *Harvard Law School Library*. 2019 (updated April 14, 2021). https://guides.library.harvard.edu/critical-legal-studies [https://perma.cc/JY2K-YVEL].

Allison has composed an extensive guide to researching critical legal theory. Although designed for the Harvard Law community, it contains explanations of key concepts and movements—as well as countless citations to books and articles—that make it useful to all researchers in this area. Of particular interest is a section on "Bias, Neutrality, and 'Othering' in Libraries and Library Collections" in which Allison explains that "[i]t is a common misconception that libraries and library catalogs are neutral and unbiased. They are not."[160]

Lo, Grace. "'Aliens' vs. Catalogers: Bias in the Library of Congress Subject Headings." *Legal Reference Services Quarterly* 38, no. 4 (2019): 170–96.

Lo reassesses the dilemma of bias in the Library of Congress Subject Headings (LCSH) system. After explaining the inner workings of the system and the importance of indexing to the legal research process, she discusses the ways in which "the LCSH reifies the biases of [its] authors and catalogers."[161] She then uses the recent controversy surrounding the proposed discontinuation of the subject heading "Illegal Alien" as a case study of this phenomenon. She concludes by proposing several ways in which librarians can work to improve the LCSH. Suggestions include "transform[ing] reference interviews into an opportunity for engagement and critical thought about how classification and cataloging may ingrain biases,"[162] making changes to the headings found in the institutional catalogs of individual libraries, and "work[ing] together at a consortium level to create an alternate thesaurus to work in parallel with LCSH."[163]

---

159. Sarah Lamdan, *When Westlaw Fuels ICE Surveillance: Legal Ethics in the Era of Big Data Policing*, 43 N.Y.U. Rev. L. & Soc. Change 255, 291 (2019).

160. Jennifer Allison, Critical Legal Studies (Research Guide), Harv. L. Sch. Libr., https://guides.library.harvard.edu/critical-legal-studies [https://perma.cc/JY2K-YVEL].

161. Grace Lo, *"Aliens" vs. Catalogers: Bias in the Library of Congress Subject Headings*, Legal Reference Servs. Q., no. 4, 2019, at 170, 180.

162. *Id.* at 193.

163. *Id.* at 195.

Allison, Jennifer. "Equitable Information Access and Librarianship Praxis: Let's Get Critical." *Jennifer's Occasional Reads*. April 30, 2020. https://jennifersdailyread.com/2020/04/30/equitable-information-access-and-librarianship-praxis-lets-get-critical/ [https://perma.cc/8NAA-N98K].

Inspired by Lauren Smith and Michael Hanson's article "Communities of Praxis: Transforming Access to Information for Equity,"[164] Allison discusses how law librarians, specifically those who are involved in providing a research consultation, can critically assess their professional practices in order to better promote equitable information access.

Nayyer, Kim P., Marcelo Rodriguez, and Sarah Sutherland. "Artificial Intelligence & Implicit Bias: With Greater Power Comes Greater Responsibility." *AALL Spectrum* 24, no. 5 (May/June 2020): 14–16.

Nayyer, Rodriguez, and Sutherland discuss the problem of algorithmic bias, the responses of academics and the American Bar Association to it, and how it might manifest itself in the justice system due to the incomplete nature of legal data and the presence of undesirable underlying patterns in that data. They suggest that legal information professional organizations should add to preexisting duties of competence and supervision an "expectation to prevent, minimize, or qualify AI applications to enable libraries to maintain high standards of ethical responsibility."[165]

Allison, Jennifer. "Who Decides What's in 'the Canon'?" *Jennifer's Occasional Reads*. July 30, 2020. https://jennifersdailyread.com/2020/07/30/who-decides-whats-in-the-canon/ [https://perma.cc/2NNQ-Q8X8].

Reflecting on a German newspaper article by Alexandra Kemmerer of the Max Planck Institute for Comparative Law and International Law, Allison discusses the concept of a "canon" as a tool of power (including some scholars and excluding others, often arbitrarily or on the basis of race and sex). She calls on librarians to "commit [them]selves to thinking more about 'the canon,' for whom it works, and who might benefit from its dismantling."[166]

Stump, Nicholas F. "Critical Legal Research and Contemporary Crisis: Climate Change, COVID-19, and the Mass Black Lives Matter Uprising." SSRN. October 1, 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3689064 [https://perma.cc/QL5T-4VDK] (forthcoming in *Unbound: Harvard Journal of the Legal Left*).

Stump explores how the CLR framework might be employed by radical-cause lawyers to address the intertwined crises of climate change, the COVID-19 global pandemic, and

164. Lauren Smith & Michael Hanson, *Communities of Praxis: Transforming Access to Information for Equity*, 76 Serials Libr. 42 (2019).

165. Kim P. Nayyer, Marcelo Rodriguez & Sarah Sutherland, *Artificial Intelligence & Implicit Bias: With Greater Power Comes Greater Responsibility*, AALL Spectrum, May–June 2020, at 14, 16.

166. Jennifer Allison, *Who Decides What's in "the Canon"?*, Jennifer's Occasional Reads (July 30, 2020), https://jennifersdailyread.com/2020/07/30/who-decides-whats-in-the-canon/ [https://perma.cc/2NNQ-Q8X8].

racial state violence by helping to drive a paradigm shift away from the white patriarchal capitalism that he identifies as their ultimate cause.

Mignanelli, Nicholas. "Critical Legal Research: Who Needs It?" *Law Library Journal* 112, no. 3 (Summer 2020): 327–43.

Mignanelli explores the way certain tendencies in "AI-powered legal research," specifically concealment of the research process and entrenchment of the biases of society's dominant interests, threaten legal innovation. To mitigate this risk, he suggests reenvisioning Stump's CLR synthesis as a framework for "obstruct[ing] the ability of emerging technologies to close the legal imagination and transform the law into a monolith."[167] This framework includes deconstructing the algorithm through critical pedagogy and algorithmic activism, looking beyond to secondary legal and nonlegal sources through the creation of "new transgressive and archeological bibliographies," and unplugged brainstorming that makes "[t]hinking, not briefing software . . . the bridge from research to writing."[168]

"Critical Legal Research: The Next Wave (A Panel in Honor of Richard Delgado and Jean Stefancic)." *Boston University Law Review Online* 101, no. 1 (2021): 1–61.

In this symposium, several critical law librarians and critical legal information scholars—namely Wheeler, Stump, Sokkar Harker, Lo, Krishnaswami, and Mignanelli—reflect on the continuing relevance of Delgado and Stefancic's "triple helix dilemma." Delgado and Stefancic reply with a Rodrigo chronicle positing a "desire-based theory of legal categorization."[169]

Guide to Methods and Strategies

¶21 Having surveyed the literature, it seems appropriate to flesh out CLR methods and strategies in order to make them more accessible for practical and pedagogical purposes. Yet these methods and strategies are, in Stump's words, only "starting points" because "critical research, as an inherently creative process, by its very nature resists a formulaic application."[170] What follows, then, is an attempt to collect the existing techniques under the broad headings of "greater reliance on secondary sources," "contextualizing," "unplugged brainstorming," and "law library activism."

Greater Reliance on Secondary Sources

¶22 In his 1990 response to Schanck, Barkan recommends that "[l]aw libraries should make relevant secondary, interdisciplinary, and nonlegal resources readily accessible to the legal profession."[171] In their 1989 article, Delgado and Stefancic advise

167. Nicholas Mignanelli, *Critical Legal Research: Who Needs It?*, 112 Law Libr. J. 327, 340, 2020 Law Libr. J. 11, ¶ 36.

168. *Id.* at 342, ¶ 43; 343, ¶ 45.

169. Delgado & Stefancic, *Rodrigo's Reappraisal*, *supra* note 91, at 59.

170. Stump, *supra* note 5, at 618.

171. Barkan, *supra* note 115, at 35.

reform-minded lawyers to look to "divergent individuals": legal thinkers "whose life experiences have differed markedly from those of their contemporaries" (e.g., Derrick Bell).[172] In 1993, Farmer pushed Barkan's recommendation further, encouraging law librarians to "go beyond the usual collection policies to acquire nonlegal materials that reflect on social, political, and cultural theory."[173] Writing in 2015, Stump rendered this strategy as "mining legal scholarly and related cross- and multidisciplinary resources."[174] In his 2020 article, Mignanelli suggests that law librarians can "stir creativity in the researcher" by "creating, publishing, and disseminating new transgressive and archeological bibliographies that, approaching a particular legal issue, juxtapose a wide range of cases, statutes, regulations, and legislative history materials with secondary sources, related scholarship (both legal and non-legal), news articles (both historical and contemporary), literary and artistic works, editorials and opinion pieces, first-person narratives, and even social media posts."[175]

Contextualizing

¶23 In their 1989 article, Delgado and Stefancic write that examining legal categories for the "outline of the structure of traditional thought" will provide "a glimpse of the very conceptual framework we have been wielding in scrutinizing and interpreting our societal order."[176] This insight into the conceptual framework will then enable researchers to "turn that system on its side and ask what is missing."[177] Writing in her 1993 article, Farmer opines that law librarians should assist their patrons in understanding that "what they are able to find is not equivalent to a whole universe of information or even a random subset, but rather to the particular universe found economically, politically, and/or personally expedient or essential to publishers, editors, and librarians."[178] To this end, Farmer suggests that law librarians should "make every attempt to encourage 'concept' searching on online databases so that users can approach the material from other than conventional perspectives."[179]

¶24 In her 2013 article, Sokkar Harker uses the lens of critical information literacy to propose that legal research instructors teach legal information as "a social construct produced and published by people" (i.e., access providers, organizers, and creators).[180] In her article published the next year, Krishnaswami similarly uses critical information theory to reassess how regulatory research is taught.[181] She suggests that instructors should situate administrative law research "in the context of the complexities surrounding rulemaking, the behaviors of agency actors and stakeholders, and access to

172. Delgado & Stefancic, *supra* note 90, at 223.
173. Farmer, *supra* note 92, at 403.
174. Stump, *supra* note 5, at 620.
175. Mignanelli, *supra* note 167, at 343, ¶ 43.
176. Delgado & Stefancic, *supra* note 90, at 224.
177. *Id.*
178. Farmer, *supra* note 92, at 402.
179. *Id.* at 403.
180. Sokkar Harker, *supra* note 132, at 209.
181. *See* Krishnaswami, *supra* note 135.

regulatory information" in order to "push students to see stories, perspectives, actors, and relationships otherwise obscured, thereby helping them construct novel arguments."[182]

¶25 In his 2015 article, Stump comments that "[a] researcher ought to internalize the central, critical analysis of the research process" and "cultivate concept-based legal research methodologies, as opposed to purely fact-based methods, to locate such 'controlling' legal categories that will serve as starting points for the critical interrogation of the existing legal framework at issue."[183] In support of this vision, Lo proposes that law librarians should "transform reference interviews into an opportunity for engagement and critical thought about how classification and cataloging may ingrain biases."[184] Likewise, Mignanelli urges law librarians to teach their patrons that "all technologies are created by human beings with their own biases and that there is a power differential between the entities that create and shape these technologies and the individuals who use and/or rely on them."[185]

Unplugged Brainstorming

¶26 In their 2007 article, Delgado and Stefancic write that "[l]awyers interested in representing clients who (unlike corporations) do not find a ready-made body of developed law in their favor need to spend time with the computer shut down, mulling over what an ideal legal world would look like from the client's perspective."[186] They go on to prescribe "thinking 'outside the box,' reinventing, modifying, flipping, and radically transforming legal doctrines and theories imaginatively and in brainstorming sessions with other reformist lawyers."[187] Building on this proposal, Stump writes in his 2015 article that once "resource-gathering methods have been exhausted . . . the critical researcher should . . . consider unplugging" and engaging in "[b]rainstorming sessions with diverse perspectives."[188] In his 2017 article, Stump reformulates brainstorming as "the cultivation of non-hegemonic reform alliances" through "the incorporation of more marginalized parties, such as grassroots activists, community organizers, and the portion of citizenry most affected by the legal scheme at issue."[189] Stump suggests that holding "synergistic collaborations" with these stakeholders will create "a collective, grassroots approach to legal research and analysis" that "might indeed assist in catalyzing novel socio-legal reform."[190]

182. *Id.* at 202.
183. Stump, *supra* note 5, at 618–19.
184. Lo, *supra* note 161, at 193.
185. Mignanelli, *supra* note 167, at 342, ¶ 41.
186. Delgado & Stefancic, *Why Do We Ask the Same Questions?*, *supra* note 91, at 328, ¶ 50.
187. *Id.*
188. Stump, *supra* note 5, at 621–22.
189. Stump, *supra* note 142, at 89.
190. *Id.* at 90–91.

Law Library Activism

¶27 Although there is no coherent line of literature on activism, there are several instances in which critical law librarians use or propose using activism as a means of contending with the inequities created by vendor practices or categorical schemes. Perhaps the most notable example is Lamdan and Sokkar Harker publicly challenging LexisNexis's involvement in ICE's attempt to create an extreme vetting surveillance system,[191] as well as Lamdan's suggestion that attorneys should divest from vendors that assist with government surveillance.[192] Additional examples are Lo's proposals that individual libraries should unilaterally change the problematic headings found in their catalogs and "work together at a consortium level to create an alternate thesaurus to work in parallel with LCSH."[193] Emerging technologies, too, have prompted calls for action. For instance, Nevelow Mart has encouraged law librarians "to request more accountability from database providers" regarding algorithmic bias,[194] and Mignanelli has called on AALL to "make the demand for algorithmic transparency one of its major objectives moving forward."[195]

Conclusion: A Reflection on the Demise of (Law) Library Neutrality

> "Against that positivism which stops before phenomena, saying 'there are only facts,' I should say: no, it is precisely facts that do not exist, only interpretations. . . ."
> —Friedrich Nietzsche[196]

¶28 A certain cognitive dissonance underlies all that has been recounted, annotated, and analyzed in the pages above. That cognitive dissonance is this: research and librarianship—especially legal research and law librarianship—is grounded in positivism, while critical legal theory rejects positivism wholesale.[197] Whereas the positivist sees "a deterministic world that is discoverable, describable, and predictable" through the scientific method, adherents to the philosophies at the heart of critical legal theory "[reject] 'master narratives' and foundational claims that purport to be based on science, objectivity, neutrality, and scholarly disinterestedness."[198] For them, these narratives and claims are little more than "ideological expressions of particular discourses embodying normative interests and legitimating historically specific relations of power."[199]

---

191. *See* Lamdan & Sokkar Harker, *supra* note 152.
192. *See* Lamdan, *supra* note 159, at 291–92.
193. Lo, *supra* note 161, at 194–95.
194. Nevelow Mart, *supra* note 146, at 420, ¶ 58.
195. Mignanelli, *supra* note 167, at 341, ¶ 39.
196. The Portable Nietzsche 458 (Walter Kaufman ed., trans., 1954) (originally published as Aphorism 481 in Friedrich Nietzsche, Notes (1887)).
197. Barkan first identified this tension in his 1987 article. His solution was to attempt to "domesticate" CLS. *See* Barkan, *supra* note 4, at 634–37.
198. Farmer, *supra* note 92, at 392.
199. *Id.*

¶29 The tension between these perspectives can be disorienting for the law librarian, a figure whose role has long been defined by facilitating the methodological search for preexisting answers to legal problems. Indeed, there is a direct correlation between the development of law librarianship and the transformation of law into a "science." Christopher Columbus Langdell's comment that "[t]he Library is to us what a laboratory is to the chemist or the physicist"[200] was, after all, not merely metaphorical.[201]

¶30 Although law librarianship has a special relationship with positivism, all of modern librarianship is largely a positivist enterprise.[202] In our time, the most contentious feature of the library's positivist orientation has been its central commitment to neutrality.[203] In the last several years, library neutrality has been variously denounced as "polite oppression,"[204] "a kind of privilege,"[205] and a "form of moral relativism."[206] But the greatest flaw of library neutrality is actually its impossibility. Library neutrality is impossible because, as Foucault theorized, "all power involves knowledge, and all knowledge, power."[207] Therefore, "the knowledge that people acquire, produce, and share is fraught with or complicated by power, and power is not neutral, because it implies an imbalance and an interest."[208] Consequently, "no knowledge can be neutral" because "it is bound up with power."[209]

¶31 Critical law librarians will need to accept the impossibility of neutrality and, in doing so, seek a new professional mode of being. What might this look like? How might critical law librarians reconceptualize the process of legal research and their role in it? Not, this author hopes, by merely substituting the old myth of library neutrality for our own ideological preferences. Rather, it would be preferable to reframe the legal research universe as "a labyrinth of texts that contains the possibilities for new arrangements"

---

200. C.C. Langdell, *The Law Library*, 49 Ann. Rep. President & Treasurer Harv. Coll. 1873–74, at 63, 67 (1875).

201. *See* Richard A. Danner, *Law Libraries and Laboratories: The Legacy of Langdell and His Metaphor*, 107 Law Libr. J. 7, 2015 Law Libr. J. 1; *see also* Nancy Cook, *Law as Science: Revisiting Langdell's Paradigm in the 21st Century*, 88 N.D. L. Rev. 21, 25–32 (2012) (recounting Langdell's introduction of the scientific lens into the law school curriculum via the casebook and Socratic methods).

202. *See* Gary P. Radford, *Positivism, Foucault, and the Fantasia of the Library: Conceptions of Knowledge and the Modern Library Experience*, 62 Libr. Q. 408, 410 (1992).

203. *Id.* at 412 ("The ideal of neutrality represents another facet of the library that is structured by the positivist outlook.").

204. Jennifer A. Ferretti, Neutrality is Polite Oppression: How Critical Librarianship and Pedagogy Principles Counter Neutral Narratives and Benefit the Profession, Keynote Presentation at the Critical Librarianship and Pedagogy Symposium, University of Arizona (Nov. 28, 2018), https://repository.arizona.edu/handle/10150/631628?show=full [https://perma.cc/EHT7-2M7Q].

205. Amy Carlton, *Are Libraries Neutral?*, Am. Librs., Feb. 12, 2018, https://americanlibrariesmagazine.org/blogs/the-scoop/are-libraries-neutral/ [https://perma.cc/BJ3D-4MBU].

206. Joseph Good, *The Hottest Places in Hell: The Crisis of Neutrality in Contemporary Librarianship*, *in* Questioning Library Neutrality: Essays from Progressive Librarians 141, 143–45 (Alison Lewis ed., 2008).

207. *See* Heidi R. Johnson, *Foucault, the "Facts," and the Fiction of Neutrality: Neutrality in Librarianship and Peer Review*, 1 Canadian J. Acad. Libr. 24, 29 (2016) (discussing Michel Foucault, Discipline and Punish: The Birth of the Prison (Alan Sheridan trans., 1977) (1975)).

208. *Id.*

209. *Id.*

where the researcher can mine databases, peruse stacks, and examine categorical schemes "for connections and patterns, and ultimately, the creation of new patterns."[210] In this way, the objective of legal research will be for us "the creation of new knowledge possible at its most fundamental level."[211]

¶32 What, then, of the role of the CLR-aligned librarian? It seems we must become genealogists of the law.[212] This will entail a newfound focus on exposing our patrons to the power structures and processes that shape legal information, as well as the biases embedded in the artifacts of law. This role might seem dissatisfying for those who would prefer to chain law librarianship to a new master narrative. Yet the role of genealogist is more challenging and rewarding, for it requires us to be comfortable with the existential angst of uncertainty in order to guide our patrons toward inventing new visions and reenvisioning the socio-legal order of the world around us.[213]

210. Radford, *supra* note 202, at 419.

211. *Id.*

212. Here, I mean "genealogist" in the sense articulated by Foucault, who "intended the term 'genealogy' to evoke Nietzsche's genealogy of morals, particularly with its suggestion of complex, mundane, inglorious origins—in no way part of any grand scheme of progressive history." For Foucault, "[t]he point of a genealogical analysis is to show that a given system of thought . . . was the result of contingent turns of history, not the outcome of rationally inevitable trends." *Michel Foucault*, Stanford Encyclopedia of Philosophy, https://plato.stanford.edu/entries/foucault/#ArchGene [https://perma.cc/4NLB-FS2A].

213. This is, of course, the author's own Foucauldian approach to addressing the tension between critical legal theory and law librarianship. Other approaches—perhaps neo-Marxist or deconstructionist in outlook—are also possible.