
CRITICAL RACE THEORY, TRANSFORMATION AND PRAXIS

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INTRODUCTION

I suggest that through Critical Race Theory (CRT), race can or should become the preamble to all the social justice work we do. This can be achieved by engaging in what I call “oppositional cultural practice” (the process of inward and outward criticism and critique that brings about a spiritual transformation that then provides space to create and innovate new realities for communities seeking social justice),¹ and by activating the “courage to be” at the core of our engagement strategies. The process of engaging in the critical race theory movement through written scholarship

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1. *See generally* ANTHONY E. COOK, *THE LEAST OF THESE: RACE, LAW, AND RELIGION IN AMERICAN CULTURE* (1997) (discussing Dr. Martin Luther King, Jr. and the civil rights movement he led that was transformative in that it appealed to the homoversial deep yearning for spiritual affirmation and just community. African-Americans often successfully turned oppressive political and religious ideologies around, and used them as instruments for survival and liberation. The most successful example of this is the civil rights movement itself with the enactment of national laws that affirmed the legal rights of African-Americans (voting, housing, education, et al.)). This is to be distinguished from the idea of oppositional culture and cultural inversion discussed in Catherine Rothon, *An Assessment of the “Oppositional Culture” Explanation for Ethnic Differences in Educational Attainment in Britain*, *UNIVERSITY OF OXFORD* 2, 5 (2005) wherein certain behaviors determined as those that characterize white Americans is deemed inappropriate for African-Americans, and thus African Americans adopt opposite behaviors that can be just as oppressive and void of personal transformation as those they seek to reject. “Cultural oppositional practice” established by this paper is a practice by spiritually transformed people who hold deep ethical commitments to individual liberation, and personal and social transformation.

can bring about both personal spiritual transformation and social transformation.

Taking a closer look at the “Rules of Racial Standing” proffered by Derrick Bell, interviews with social justice change leaders, and the writings about spirituality, the author traces how speaking from the vantage point of social inequality, the interaction of subordinate status and outsider speech is personally liberating and opens space for transformative, creative, and innovative solutions to social justice conflicts.²

CRITICAL LEGAL STUDIES, CRITICAL RACE THEORY AND SPIRITUALITY

A. *Critical Legal Studies*

To fully understand the transformative power of CRT, I think it best to begin at the beginning. The story of Critical Legal Studies (CLS), CRT and Spirituality opens with a quote from CLS founder Peter Gabel:

So let me start by saying that while appeals to a Higher Law certainly can be used to rationalize unjust power relations, I do not at all believe that they must do so;. . . I believe CLS was always fundamentally a spiritual enterprise that sought to liberate law and legal interpretation from its self-referential, circular, and ideological shackles.³

CLS emerged in the broader social movement of the 1960s.⁴ It attempted to join forces with all the movements of the times: civil rights movement, anti-war movement, workers movement, and women’s movement. CLS did so with moral intensity:

[T]o challenge the status quo on behalf of a higher moral vision of what human relations could be like—a vision of a world in which people treated each other with true equality and respect and affection and kindness, and in which people saw each other as fully human and beautiful, rather than as cogs in a machine or as self-interested monads out for their own gain or as any of the other ways of characterizing human beings that seemed to be commonplace within the system as it was.⁵

To this day, Gabel is pushing CLS to move away from what he identified as CLS’s refusal to embrace the spiritual impulse behind the work and the politics of that work. According to Gabel, CLS’s failed to “embrace this

2. DERRICK A. BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERFORMANCE OF RACISM* 109 (1992).

3. PETER GABEL, *ANOTHER WAY OF SEEING* 43 (2013).

4. Legal Information Institute, *Critical Legal Theory*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/critical_legal_theory (last visited Aug. 16, 2016).

5. See GABEL, *supra* note 3, at 43.

transcendent spiritual impulse, to stand behind it, or to speak about it.”⁶ In his opinion, the movement was infected by the “fear of the other” and it is this fear that underlies the injustices that CLS criticized in the wider society.⁷ This fear, along with the unwillingness to explicitly say that the motivation to do this work, that the ground on which the work stood was a powerful moral transcendent impulse that was an expression of some sense of a Higher Power, caused a division within CLS. Many legal scholars, including Gabel, believe the wrong side carried the day.⁸ CLS became known as the “indeterminacy critique—the idea that legal principles are so abstract and indefinite that they can be used to rationalize virtually any outcome.”⁹

Gabel’s critique of CLS and its inability to be transformative is well thought through and I can not, nor do I intend to, attempt here to provide a full account of his analysis. I do want to emphasize, however, that Gabel notes one major problem with the indeterminacy critique of CLS, and then notes in his discussion, three distinct problems that result.¹⁰ The indeterminacy critique’s one major problem is that it relies exclusively on logic. Morality has no role in analyzing the claims. Thus, the practitioner has no moral compass that provides direction in analyzing, framing, arguing, and mandating changes that would bring about social justice. Gabel writes, “[CLS] satisfies itself with the assertion that a claim purporting to be logically valid is actually not so.”¹¹

If humans are moral beings, that is to say, they seek meaning and purpose in life, then the indeterminacy critique of CLS does not, can not, provide leadership in pronouncing any moral vision for society, with any urgency, called for in its laws. This opportunity to transform the law is a missed opportunity. Legal analysis, in my opinion, has always and should strongly return to highlighting what is morally compelling about a particular legal argument. And this analysis should do so by drawing into the discussion existing historical record and how it is anchored in real, past and present, social relations. And certainly, there are rebukes to this way of thinking. One being that the use of abstract universals such as “moral vision of community” and “equality” could easily result in unwanted opposite outcomes and determinations such as “religious fundamentalism.” Gabel’s, and others, response is to provide clarity about knowledge. To correct this

6. See GABEL, *supra* note 3, at 44.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

epistemological confusion, it is suggested that one understand the nature of social reality. To quote Gabel,

For the world as it really is suffused with moral longing that pulls upon the conscience of humanity to elevate ourselves from the limitation of what is toward the realization of what ought to be, and the evocation of precisely that longing has been the decisive force behind every social movement that has advanced the development of humanity toward a loving and humane common existence since the beginning of time.¹²

And, yes, it is true that historically this moral longing in humans has been abused and misused to bring about gross atrocities and injustices. Bringing forward a legal analysis that includes a recognition of this deep desire in humans, and the role of law to reflect the positive nature of mankind in directly addressing the moral struggle anchored in the capacity of society to know and seek ways of being that can attain social stability while at the same time preserves human health and well-being, is transformative law.

B. *Critical Race Theory*

CRT, which sprang up out of this division within CLS, has tentatively grabbed hold of the transformative power of legal analysis that takes seriously the moral struggle that is at the center of law. As the Editors write in the *Introduction to the Book Critical Race Theory, the Key Writings That Formed the Movement*,¹³ CRT's "engagement with the discourse of civil rights reform stemmed directly from our lived experience as students and teachers in the nation's law schools."¹⁴ CRT, however, is not a hybrid of the critical legal studies movement that had come before it. Instead, the Editors see critical legal studies as predecessors that gave rise to CRT's possibility.

Two key institutional events, the student actions at Harvard Law School in 1981 that contrast Derrick Bell and CLS and its oppositional posture vis-à-vis the liberal mainstream,¹⁵ and the 1987 CLS National Conference, which marked the differences between CLS and CRT in its critical account of race as set forth by race-conscious scholars of color.¹⁶ At Harvard Law School, Derrick Bell, both scholar and teacher, took a viewpoint towards legal scholarship from a race-conscious viewpoint. He rejected out loud the color-blindness of law, and he used racial politics to organize scholarly study. Bell

12. *Id.* at 48.

13. See generally CRITICAL RACE THEORY, THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995).

14. *Id.* at xix.

15. Paras D. Bhayani, *Law Review Debates Affirmative Action Policy*, HARVARD CRIMSON, June 5, 2006.

16. *Id.*

opposed the liberal approach to racism;¹⁷ a traditional approach that placed emphasis on intentionality of the individual as opposed to the larger group, culture, politics and the workings of institutional structures.¹⁸ Bell, by positioning CRT within the legal academy (that defined itself as neutral as to race) as an intellectual inquiry that placed racial identity at the center of this inquiry was oppositional to the liberal approach to racism as well as to that of the legal academy.¹⁹

CRT then, according to the Editors, indicates how and why the contemporary “jurisprudence of color-blindness” is not only the expression of a particular color-consciousness, but the product of a deeply politicized choice.²⁰ Legal theories of color-blindness are more plausibly the result of political tactics. “The appeal to color-blindness,” writes the Editors, “can thus be said to serve as part of an ideological strategy by which the current Court obscures its active role in sustaining hierarchies of racial power.”²¹ Race stands at the center of other national discourse as well. In the discourse about globalization, for example, a CRT-grounded response would intersect domestic social and economic destabilizations caused by globalization with critical theories of race and power to better understand and tell the story of the racial impact. CRT would examine the way racial politics, its systems and structures, including the legal system, has been enlisted to aid the massive upward distribution of resources and opportunity in America while at the same time stripping the middle-class of its access to traditional wealth-building mechanisms, and increasing the numbers of poor people and limiting their opportunities for economic advancement, practically guaranteeing their inability (and the inability of their children) to ever attain the American dream.²²

Lastly, the Editors address the hope that CRT might aid communities of color as they struggle with the future direction of anti-racist politics.²³ An example the Editors use is the political support Clarence Thomas received from representatives of the African-American political organizations even though it was clear that Thomas was eager to dismantle gains secured during the civil rights era.²⁴ The Editors also note an additional dimension of the

17. See Derrick Bell, *The Supreme Court, 1984 Term Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1985).

18. *Id.* at 67, 73-75, 82.

19. CRITICAL RACE THEORY, *supra* note 13, at xxviii.

20. *Id.*

21. *Id.* at xxxi.

22. *Id.* at xxviii-xxix.

23. *Id.*

24. *Id.*

racialism that led Black Americans to support Thomas: the deep, albeit misguided, conception that there is racial advancement if any African-American was able to secure a United States Supreme Court appointment.²⁵ They attribute this to the concept known as “essentialism” wherein in order to present a stable group identity and shared interests, “representational politics” results.²⁶ Black American identity becomes “flat, fixed image of racial identity, experience and interest, which fails to capture the complex, constantly changing realities of racial domination in the contemporary United States.”²⁷ CRT has hoped to offer an alternative to racialism. Racialism acknowledges the persistence of race but often is essentialist and exclusionary in its practice.²⁸ CRT seeks to remind its readers of how issues of power and racial ideology continue to persist in the United States;²⁹ to develop new tools for scholarly inquiry about race that avoids racial thinking;³⁰ to understand that racial power is experienced and created across societal lines;³¹ and to understand that any intervention politically amongst people of color must take into consideration the myriad of ways they are situated within society as individuals, as sub communities and larger communities.³² CRT recognizes that effective political mobilization for effective resistance to today’s newly reconstituted powerful elites, systems and structures is to pay attention to the intersectionality of race with gender,

25. *Id.*

26. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585-587 (1990) (arguing that “gender essentialism” is an idea of a monolithic “women’s experience” that can be described independently from other experiences such as race, class, sexual orientation. The effect is to create a white woman’s experience and Black women are marginalized, ignored, or extolled as “just like us, only more so.” Feminist essentialism represents and insults Black women, and a broken promise).

27. See CRITICAL RACE THEORY, *supra* note 13, at xxxi.

28. See, e.g., Ian HANEY-LÓPEZ, *RACISM ON TRIAL THE CHICANO FIGHT FOR JUSTICE* 236 (2003) (arguing that typical movement weaknesses were present in the Chicano movement including an emphasis on identity issues over material concerns, cultural purity over coalition building, masculinity over gender equality, group autonomy over structural reform).

29. GABEL, *supra* note 3, at 1.

30. *Id.* at xxii.

31. *Id.*

32. *Id.* at xx-xxii.

age, sexual orientation, and class.³³ For some legal scholars, CRT “is the only way to directly challenge and remake racial knowledge.”³⁴

CRT comes from scholars of color, primarily, who are first generation of legal scholars of color.³⁵ Their approach to the law is to consider race first, and then ask about law: how it oppresses, dehumanizes, creates and maintains hierarchy and dehumanizing structures, systems, customs, “the State,” and other broad social institutions.³⁶ CRT examines how law helps to structure, organize and legitimize racial ideology.³⁷ An example is the “intent doctrine.” When racism is “intent” and one cannot find evidence for that “intention,” there will be a judgment that the intent does not exist, suggesting that a plaintiff is looking to trade on white guilt for the harms she or he is pleading to the court for redress.³⁸

CRT and its predecessor critical legal studies share similarities in that they both “reject[s] the prevailing orthodoxy that scholarship should be or could be ‘neutral’ and ‘objective . . .’ We believe that legal scholarship about race in America can never be written from a distance of detachment or with an attitude of objectivity.”³⁹ However, for me and many others who have joined the CRT movement, its pulsing, vibrant, life affirming central thought is that of self-affirmation for people of color to fully bring their lived experiences to their scholarly work of race-conscious criticism of the collective political systems and structures for whom law is their justification and legitimizer. CRT creates spaces for “being” for those scholars and practitioners who seek to bring “absolute faith” to their work. I am interested in putting Paul Tillich in dialogue with CRT, especially around questions of how one “is.” In his book, *The Courage to Be*, Tillich examines, with creative imagination, the crisis of spirit and mind.⁴⁰ In his writings that address how modern society struggles with an understanding of death and

33. See, e.g., Kimberlé Williams 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 (arguing that courts fail to recognize race-sex claims and that this failure marginalizes the experiences of non-white women); see generally Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988) (critiquing the conservative right’s and the liberal left’s approaches to antidiscrimination law and examining the role of racism in legitimizing oppression).

34. See HANEY-LÓPEZ, *supra* note 28, at 250.

35. RICHARD DELGADO AND JEAN STEFANCIC, *CRITICAL RACE THEORY AN INTRODUCTION* 3 (2nd ed. 2012).

36. *Id.* at 3-4, 7.

37. *Id.* at 7.

38. *Id.* at 3, 7-10.

39. See *CRITICAL RACE THEORY*, *supra* note 13, at xiii.

40. PAUL TILLICH, *THE COURAGE TO BE* 179 (1952).

meaninglessness, he (perhaps inadvertently) opened to me an access route to understanding the moral struggle humans confront when trying to have for themselves, for their culture, for their ultimate understanding of life, some sense of meaning and purpose.⁴¹

This commitment to CRT as a methodology for examining race in America serves as the wellspring from which a vivifying life well lived can be secured. Not only can an individual find purpose and meaning that is life sustaining in the work, but also the CRT movement is committed to bringing attention to this “boundary” of where self-affirmation meets collective participation with a heightened awareness of the tension of nonbeing and being, of fear, of anxiety and doubt. CRT, when approached as oppositional cultural practice, offers a pathway to courage “in spite of” and affirms the positive to overcome the “doubt.” It is my belief that the CRT movement is an example of deep human spiritual practice that is ancient and yet still strongly resonate in the modern world because it is the self-affirmation that overcomes the reduction or removal of “being” itself. The CRT movement allows for and provides its practitioners with a space and place to embody the *courage to be*. Later in this paper, I will explain how CRT and Tillich’s questions of being might be related. But for now, I turn to this inward looking self-criticism of one’s lived experience is then linked to the outward looking social-criticism centered on race that I call oppositional cultural practice.

C. *Spirituality*

Through my studies at the Pacific School of Religion and the Graduate Theological Union,⁴² I’ve come to understand that there is a difference between being religious and being spiritual. It is a matter of agency. Today, people do not want to feel that they are the object. With the phrase generally comes the presumption that religion has to do with doctrines, dogmas, and ritual practices, whereas spirituality has to do with the heart, feeling, and experience. The spiritual person has an immediate and spontaneous experience of the divine or of some higher power. At the heart of the distinction between religion and spirituality, then, lies the presumption that to think and act within an existing tradition—to practice religion—risks making one less spiritual.

41. *Id.*

42. The author is a 2014-2015 Change Maker Fellow at Pacific School of Religion, Graduate Theological Union, Berkeley, California.

One can read the article written by Amy Hollywood in the Harvard Divinity School Harvard Divinity Bulletin⁴³ wherein she rather deftly discusses the centuries-old struggle by Christians over the interplay between authority and tradition, on the one hand, and feeling, enthusiasm, and experience on the other. I cannot do justice to her analysis here, but what struck me about her work was the acknowledgement that what is at stake is an attempt to identify an independent realm of experience that is irreducible to other forms of experience.⁴⁴ This can serve either as a protectionist strategy, whereby the religious person is able to safeguard her religious experience from naturalistic explanations, or as an academic strategy, whereby a realm is posited over which only specialists in religious studies can claim authority. I would add as a critique to her paper, that the courts of law also have struggled with understanding religion and spirituality, perhaps even with a bias in favor of “mainline” churches.⁴⁵ An area ripe for religious and legal study.

Ms. Hollywood suggests that,

Perhaps we can read the contemporary spiritual seeker less as one who makes seemingly holding that the self can know nothing but its own modifications and that the self is the only existent thing solipsistic demands for an experience particular to himself than as one concerned with handing himself over to another.⁴⁶

She asks, “Must we hand ourselves completely over to God—and to the texts, institutions, and practices through which God putatively speaks—in order to experience God?”⁴⁷ If, as many contemporary philosophers and theorists argue, we are always born into sets of practices, beliefs, and affective relationships that are essential to who we are and who we become, can we ever claim the kind of radical freedom that some contemporary spiritual seekers seem to demand?⁴⁸ Following Cassian, Benedict, and Bernard, I would suggest that it is only when we understand the way in which we are constituted as subjects through practice—all of us, spiritual, religious, and those who make claims to be neither—that we can begin to understand the real nature of our differences.⁴⁹

43. Amy Hollywood, *Spiritual But Not Religious, The vital interplay between submission and freedom*, 38 HARVARD DIVINITY BULLETIN, Nos. 1 & 2 (Winter/Spring 2010).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

MY INTERVIEWS WITH TRANSFORMATIVE LEADERS – “OPPOSITIONAL CULTURAL PRACTICE”

A. *Analytical Approach*

In this paper, I will take a tool from the how-to-manual proposed by Ian Haney-López in his paper “Introduction: On the Necessity and Challenges of Race Scholarship.”⁵⁰ This paper uses two of the suggested templates: continued salience of race, convincingly showing that race continues to play a prominent role in socially subordinating whole groups of persons,⁵¹ and perhaps in a novel fashion, racism as practice and as an ideology in the outward criticism and self-conscious regard CRT scholars bring to conceptualizing and speaking to racism.⁵² This process of being self-aware, as a scholar or lawyer implies the study of self, including the study of cultural norms and institutional routines that are taken for granted. In addition, the politics of race must also be included in the outward criticism. Areas for concern include an increased scrutiny of professional concerns, and the courage to engage in broad political debate with consciousness toward caution, lest one cause inadvertent harm.

This analysis of interviews with three transformative leaders is more anthropological than sociological, and used as a means of illustrating the idea of oppositional cultural practice as a response to the subordination of whole groups of persons. When I use the phrase oppositional cultural practice, I am using the astronomical understanding of the word “opposition.”⁵³ Not to be confused with the general usage applied by Professor Bell: the action of opposing, resisting, or combating.⁵⁴ Positional astronomy uses the term “in opposition” to relate the concept of when a planet is at its closest approach to the Earth, and the planet’s face will be fully illuminated by the sun (often causing the planet to shine ten times brighter than a first magnitude star).⁵⁵ When this occurs, the planet is said to be “in opposition.”⁵⁶ Oppositional cultural practice is like that for me: I am at my closest approach to a conflict, and its resolution will be fully illuminated by the desire to be courageous and creative in finding solutions that bring about human flourishing and

50. IAN HANEY-LÓPEZ, *Introduction: On the Necessity and Challenges of Race Scholarship*, in RACE, LAW AND SOCIETY (2007).

51. *Id.* at xiv-xv.

52. *Id.* at xvii-xix.

53. John Brady, *Planet Oppositions*, ASTRONOMY CENTRAL (Sept. 14, 2012), <http://astronomycentral.co.uk/planet-oppositions>.

54. *Id.*

55. *Id.*

56. *Id.*

wellbeing—creating a world that works for everyone. Oppositional cultural practice allows me to get up close to critically examine my personal and societies' moral issues (both the emotions and cultural beliefs which constitute morality), and fully illuminate both my beliefs and those cultural beliefs held by society, all the while working with scholars across disciplines such as theology, sociology, anthropology, economics, and law. From this “ground of being” I can think, talk and act authentically about the challenges I am looking at in the conflicts around race.

I selected these leaders because their work and indeed their whole way of moving in the world embodies, for me, a way of “being” that elegantly illustrates how African-American intellectuals can be change makers when they embrace oppositional cultural practice.⁵⁷ I purposely choose them by gender (two men and one woman); race (all three African-American); class (all three are what one might designate as either working-class, upper middle-class, or upper-class, depending on what measure is used);⁵⁸ all consider themselves dedicated to racial social justice; and all three, when faced with harsh and sometimes brutal personal consequences for devotion to these moral ideals, remained steadfast to and understood that “[t]he arch of the moral universe is long, but it bends toward justice.”⁵⁹ These interviewees, as evidenced by their narratives, implicitly address how they subvert the oppression that being among the “talented tenth”⁶⁰ exerts upon them in academic and legal structures and institutions. The act of this outward and inward self-criticism brings about a spiritual transformation that provides space to create and innovate new realities for communities seeking social justice. Oppositional cultural practice both frees the African-American intellectual and frees the communities they serve.⁶¹ It is “a means of reassuring ourselves of our sanity as creatures, a part of the geography of hope.”⁶²

I have the great fortune to know over a number of years both personally and through their works three great African-American transformational

57. HENRY LOUIS GATES & CORNEL WEST, *THE FUTURE OF THE RACE* 159-61 (1997)

58. *Id.*

59. Martin Luther King, Jr., Address Delivered at the Fiftieth Annual NAACP Convention (July 17, 1959), in *THE PAPERS OF MARTIN LUTHER KING, JR.* 245, 249 (2005).

60. W.E.B. DU BOISE, *The Talented Tenth Memorial Address*, in *THE FUTURE OF THE RACE* 159-61 (Henry Louis Gates, Jr. & Cornel West eds., 1996).

61. Letter from Wallace Stegner to Outdoor Recreation Resource Review Commission, *Wilderness Letter* (December 1980), <http://www.colorado.edu/AmStudies/lewis/west/wilderletter.pdf>.

62. *See id.*

leaders:⁶³ one, a United States District Judge;⁶⁴ one, an imminent sociologist and critical race theorist;⁶⁵ and the other, an attorney-at-law who founded a non-profit organization with national impact in equal rights advocacy.⁶⁶ Based on my personal knowledge of them over these many years, and in-person interviews conducted over the past few months, I have come to understand that they have much in common with one of the United States of America's most revered transformative leader and change maker: Abraham Lincoln. One might be curious why, among the many great African-American social justice leaders, I would choose Lincoln. I do this for one major reason—namely that oppositional cultural practice is not limited to African-Americans. It appears that anyone who places racial identity at the center of their critical legal thought is subject to social subordination and oppositional cultural practice can be successfully deployed. Lincoln is included to illustrate this point. I first encountered what I later came to coin as oppositional cultural practice when I examined Lincoln's spiritual practices for a paper I was writing for a course in "Spiritual Transformation for Leadership." What struck me at the time was testimony from people in his life, (including his wife) who all held with adamant belief that Lincoln was deeply spiritual but not religious.⁶⁷ They all stated that early on, Lincoln believed that he was destined to do something significant in his life suggestive of a "higher calling."⁶⁸ And yet Lincoln, certainly as a politician, but I believe most significantly as a *lawyer*, embodied what I now understand as oppositional cultural practice.

Three possible things result from oppositional cultural practice. First, a willingness of the practitioners to go within themselves and to struggle with the moral question: "What does it mean to 'be'?" Put another way, "What is the meaning of life?" Those who undertake this inquiry, with serious study of religion, philosophy, history, culture and society, and come through the process willing to be transformed into someone who has the courage to

63. For the purpose of this study, the terms "transformation leaders," "social entrepreneurs," and "change makers" refer to those persons for whom religion plays a role in their social justice work.

64. In-person interview with the Honorable Thelton E. Henderson, Judge, United States District Court (9th District San Francisco, CA) (Nov. 12, 2014, 12:10 PM) (on file with author).

65. In-person interview with Troy Duster, Chancellor's Professor at the Warren Institute on Law and Social Policy at University of California, Berkeley and Emeritus Silver Professor of Sociology at New York University (Berkeley, CA) (Dec. 16, 2014) (on file with author).

66. On-going conversations with Eva Jefferson Patterson, Executive Director and Founder, Equal Justice Society (Oakland, CA).

67. Gordon Leidner, *Lincoln's Faith in God*, GREAT AMERICA HISTORY <http://www.greatamericanhistory.net/lincolnsfaith.htm> (last visited May 10, 2016).

68. *Id.*

commit to a life-long struggle with morality, society and politics with the intention of increasing well-being and reducing suffering for humankind. This “inward criticism” can function as a means for understanding relationship with self, community and the universe.

Second, oppositional cultural practice as practiced especially by lawyers, can be the source for spiritual practices that give source to long-sustaining courage, energy and vitality to stay the course, accepting “in spite of”—the self-affirmation of being “in spite of non-being.” This concept will be developed further in this paper as we look at CRT, spirituality, and Tillich.

The third and final function of oppositional cultural practice illuminates the need for spiritual praxis and community. Lawyers are uniquely positioned to engage in oppositional cultural practice because the practice of law itself requires certain practices that have historical roots to religious and spiritual rituals and repetitions.⁶⁹ The existence of these practices (such as deep listening, prose writing, devotional use of text, contemplation, et cetera) that inure to the practice of law is inescapable. Certainly, I am not suggesting everyone who practices law is spiritual or religious. Many CRT scholars would strongly profess no religious nor spiritual impetus. Anger, for some, is the source for energy to identify a topic for CRT analysis.⁷⁰ “What makes you angry?” is the question for these lawyers. Yet what I am saying is that for those lawyers who desire to do the work of oppositional cultural practice (the process of inward and outward criticism that brings about a spiritual transformation that then provides space to create and innovate new realities for communities seeking social justice), CRT provides a place in legal scholarship and practice for *ground of being* space to be created within legal analysis. Here, practitioners can experience meaning, purpose and community in a way that can fulfill one of humans’ deepest longings.

69. Hilary Fraser, *The Victorian Novel and Religion*, in A COMPANION TO THE VICTORIAN NOVEL 101, 103 (Patrick Brantlinger & William B. Thesing eds., 2002). See e.g., Carrie Menkel-Meadow, *And Now A Word About Secular Humanism, Spirituality, And The Practice Of Justice And Conflict Resolution*, 28 FORDHAM URB. L.J. 1073, 1083 (2001) (in this Dialogue, Professor Bush traces the recognition of compromise in the Talmud, as a “preference for ADR” over rabbinical judgment); Robert A. Baruch Bush, *Dialogue and the Practice of Law and Spiritual Practice: Mediation and ADR: Insights From the Jewish Tradition*, 28 FORDHAM URB. L.J. 1007, 1008 (2001); Charles Senger, *Spirituality in Law School*, MICHIGAN BAR J., December 2002, at 44; Maria Harris & Gabriel Moran, *Educating Persons*, in MAPPING CHRISTIAN EDUCATION: APPROACHES TO CONGREGATIONAL LEARNING 58, 63-66 (Jack L. Seymour ed., 1997) (discussing “three deep springs that serve as fountainheads for education and formation of persons toward ‘the inner life’: silence, listening, and Sabbath. Although these three do not comprise an exhaustive list, they are nevertheless critical to spiritual formation and transformation.” The silence provides a space for which insight can be gained, insight that informs how one listens while engaging with the world.)

70. I later reached out to the person who said this and we had a rich conversation on these themes. He was comfortable with my sharing our exchange here.

B. Analysis of the Interviews

All these interviewees and Lincoln never call themselves religious, although all share in common having had as children an experience that shaped their understanding of justice, values, morals and ethics that closely track those held by religions.⁷¹ I came to the interviews, expecting to hear that a strong religious upbringing, perhaps a fall away from the church, and then a return to the beliefs, the traditions, the faith is what was at the core of my interviewees' experience. It was my expectation that this personal journey with religion would be that which shaped and informed them into the leaders they had become. Much to my surprise, they all anchored their view on social justice, their "vitality," their "dynamism" on a trajectory life story that seemed to lead to a transformation and the courage to be creative in finding the spaces where actions could be taken that would confront unjust and illegitimate power. The problem was, my intention was to question my assumptions, and I was confounded by what I was learning. Here I was in seminary (an unplanned stop along the way of being a lawyer) and after a semester of religious training, I just knew the source of these change makers' fire: it surely was the Lord. But now, after having enrolled concurrently in a course at the school of law, researched critical race theory, and reflected on all that I had read, heard and experienced, I had come to realize that that which sustains, indeed, transforms an individual who has dedicated her/his life to social justice is the engagement with inward self-criticism and outward social-criticism, along with an existential courage to creatively and innovatively dare to speak of ways in which to realistically resist power that would seek to oppress individuals and communities. This dynamic is what I call oppositional cultural practice. What is possible is heretical, subversive, and clear framing of the social justice issues along with possible solutions.

71. My task here is not to engage in an extended account of religion but to define for the sake of this paper its perimeters. Thus, I use the three basis points stated in Fraser, *supra* note 69, at 103 and Hanan Alexander & Terence H. McLaughlin, *Education in Religion and Spirituality*, in BLACKWELL GUIDE TO THE PHILOSOPHY OF EDUCATION 356, 357 (Nigel Blake et al. eds., 2003): 1) given the diversity of faiths, it is appropriate to speak in terms of religions in the plural; 2) one can sketch the contours of what might count as a religious tradition, faith, community, or category by adumbrating four overlapping concerns with which religious communities grapple in varied ways: the theological, the epistemological, the ethical, and the collective; and 3) it is useful to draw attention to differing reactions to religions to the two great European revolutions: the seventeenth century Enlightenment (placed individual experiences and perceptions, rather than axiomatic or authoritative assumptions, at the heart of reasoning) and the eighteenth and nineteenth century Emancipation (produced the modern nation-state that enfranchised citizens on the basis of individual rather than collective identity, and replaced sovereigns whose authority derived from tradition, wealth, or God with governments who claimed legitimacy drawn from the people).

C. Oppositional Cultural Practice

My interviewees personal, specific occurrences early in life was very much akin to that which, as Paulo Freire has so wonderfully written about in his essay *The Importance of the Act of Reading*,⁷² seemed to define for them a way of knowing the word “justice” before they could even read and write the word. In the re-telling of these stories to me was a distinct effort of recapturing distant childhood. They seemed to be trying to communicate to me their “act of reading the particular world” in which they move that they had somehow glimpsed early in life. Re-created, re-lived in the words they were speaking was the experience they lived at a time when they did not yet read words. Much like Freire, they were telling me that “[p]art of the context of my immediate world was also the language universe of my elders, expressing their beliefs, tastes, fears, values, and which linked my world to wider contexts whose existence I could not even suspect.”⁷³ As Freire says, this re-reading of fundamental moments of one’s life can reveal moments in which critical understanding of the act of reading can take shape in an individual.⁷⁴ The process of inward self-criticism through examining memories of childhood, helps to uncover emotion, values, notions of fairness and justice associated with experiences, texts, words, and letters. One now reads the world with a persistent awareness that one brings one’s own personal experiences and social norms into the world, and that these experiences and norms may not be bias free, nor shared by others. This state of mind is transformative. One no longer considers only the self, one considers both the self and the other. It is as if they are experiencing a world opened to the transcendent that informs it, and at the same time forms themselves within it. This experience, according to Joseph Campbell, “is what people want. That is what the soul asks for.”⁷⁵

These change makers were sharing with me the importance of “considering the ways in which experience itself is read through the interaction of the self and the world.”⁷⁶ This awareness, for each of these change makers, had a profound impact on them such that they dedicated their lives to caring for others. I was confounded because of their seeming determination not to link a religious impetus to their work. Yet every word they spoke, every action they took, every spoken desire for the vision of good for all humans on this planet spoke loudly of some sort of spirituality.

72. Paulo Freire, *The Importance of the Act of Reading*, J. EDUC. 5-11 (Winter 1983).

73. *Id.* at 7.

74. *Id.* at 8.

75. JOSEPH CAMPBELL & BILL MOYERS, *THE POWER OF MYTH* 41-42 (1988).

76. *Id.* at 7.

Although I cannot speak to President Lincoln, I can say of the other three change makers that they did not protest at the idea of possessing some form of spirituality.⁷⁷

I began to understand that they were speaking of spirituality more in the sense of how professor of law and philosophy Ronald Dworkin defines religion: “Religion is a deep, distinct, and comprehensive worldview: it holds that inherent, objective value permeates everything, that the universe and its creatures are awe-inspiring, that human life has purpose and the universe order. A belief in a god is only one possible manifestation or consequence of that deeper worldview.”⁷⁸ Ahh . . . I was beginning to understand what some intellectuals (especially those of color or those seeking to have their professional stature in academia unquestioned) were doing: they were openly speaking about their deep commitment to caring and community in a way that was acceptable to their peers in the academy, yet still meaningful to themselves. Perhaps this is a result of the process of inward self-criticism. In order for an intellectual and scholar to maintain her power in elite spaces, she needs to respond to the outward criticism that holding and espousing scholarship motivated by one’s sense of values anchored in religions is to have your work be devalued. And so, by professing no religious leanings, one can resist the oppression of one’s voice on issues of great importance that are worthy of consideration in the world. They subvert the imposition of subordination to their voices by speaking in broad moral terms. They speak from a *ground of being* that is unafraid to speak what is. This is where, I believe, the expression, “spiritual but not religious” comes into play.

D. Spirituality and Oppositional Cultural Practice

In *Education in Religion and Spirituality*, Hanan Alexander and Terence H. McLaughlin’s definition of spirituality also fits nicely here: It is useful (but to be handled with considerable caution) to distinguish between religiously “tethered” and “untethered” conceptions of spirituality based on whether or not they are linked to, or housed within, the tradition of a religious faith.⁷⁹ The notion of spirituality is complex, does not correspond to any rigid distinctions of the sort that has been drawn, nevertheless the distinction may serve a useful purpose for the present discussion. Alexander and McLaughlin illustrate the contrast between religiously “tethered” and “untethered” conceptions of spirituality by reference to five interrelated stands that often

77. Interviews, *supra* notes 64-66.

78. RONALD DWORIN, RELIGION WITHOUT GOD 1 (2013).

79. Alexander & McLaughlin, *supra* note 71, at 357.

characterize the spiritual domain,⁸⁰ although they are not necessary conditions for a phenomenon or a person being described as “spiritual.” The chart below illustrates the five stands contrasting the religiously “tethered” and the “untethered” conceptions of spirituality.⁸¹

“Untethered” Spirituality	“Tethered” Spirituality
<p><i>The Search for Meaning and Significance of Life</i></p> <p>The search can proceed from little more than an apprehension that there is something more to life than is apparent on its surface, and can be radically unstructured and open-ended.</p>	<p><i>The Search for Meaning and Significance of Life</i></p> <p>The quest is conducted from a particular framework of belief, practice, and value and search for “truth” is conceived in a specific way (as in the search for what is “sacred”).</p>
<p><i>The Cultivation of “Inner Space” (i.e., notions of awareness, centeredness, and stillness)</i></p> <p>This cultivation may be seen in much less specific and more diffuse ways, including under a merely therapeutic aspect.</p>	<p><i>The Cultivation of “Inner Space” (i.e., notions of awareness, centeredness, and stillness)</i></p> <p>This cultivation is conducted in the light of specific beliefs and ideals expressed, for example, in forms of prayer, meditation, and ritual as part of an ordered pursuit of an articulated notion of “spiritual development.”</p>
<p><i>Manifestations of Spirituality in Life</i>⁸²</p> <p>Such manifestations may be seen in a more piecemeal way, and may</p>	<p><i>Manifestations of Spirituality in Life</i></p> <p>Such manifestations are related to, and articulated in terms of, the</p>

80. *Id.*

81. Manifestations of spirituality in life relate to the basic orientations, motivations, and dispositions of individuals with respect to themselves, others, the world, and to life. They include widely recognized personal qualities such as self-possession, self-control, self-knowledge, humility, calmness, serenity, openness, trust, hope, gratitude, love, generosity, self-transcendence, and wisdom. Often such “manifestations” may be accompanied by, or involve, “vitality” and “dynamism,” which are particularly related to the notion of “spirit.” See Fraser, *supra* note 69, at 103; Alexander & McLaughlin, *supra* note 71, at 357.

82. Manifestations of spirituality in life relate to the basic orientations, motivations, and dispositions of individuals with respect to themselves, others, the world, and to life. They include widely recognized personal qualities such as self-possession, self-control, self-knowledge, humility, calmness, serenity, openness, trust, hope, gratitude, love, generosity, self-transcendence, and wisdom. Often such “manifestations” may be accompanied by, or involve, “vitality” and “dynamism,” which are particularly related to the notion of “spirit.” See Fraser, *supra* note 69, at 103; Alexander & McLaughlin, *supra* note 71, at 357.

<p>be disconnected from a wider, determinate, view of their meaning, significance, and structural relationship to each other.</p>	<p>vision of the person, the “good life,” and “spiritual development” that the religion in question embodies. This vision will typically include an account of how the various personal qualities should be properly balanced and prioritized in relation to each other to create the over “shape” of a human life.</p>
<p><i>Distinctive Responses to Aspects of the Natural and Human World (prominent among such wide-ranging responses are awe, wonder, and reverence)</i> These phenomena evoke responses of this kind are more open.</p>	<p><i>Distinctive Responses to Aspects of the Natural and Human World (prominent among such wide-ranging responses are awe, wonder, and reverence)</i> These phenomena are informed by religious faith.</p>
<p><i>Collective or Communal</i> Whether “religiously untethered or “religiously tethered,” forms of spirituality often have a collective or communal dimension relating to the significance of shared memory and meaning, a sense of belonging, and a commitment to common behaviors. These communities of whatever form vary in many respects (for example, the extent to which they are open to outsiders).</p>	<p><i>Collective or Communal</i> Whether “religiously untethered or “religiously tethered,” forms of spirituality often have a collective or communal dimension relating to the significance of shared memory and meaning, a sense of belonging, and a commitment to common behaviors. These communities of whatever form vary in many respects (for example, the extent to which they are open to outsiders).⁸³</p>

For some of my interviewees, they could identify spiritual practices they consciously engage in for the purpose of cultivation of “inner space.” These included mindfulness meditation, journaling, and breathing exercises. When I asked them how they approach their work, all of them reported habits similar to Lincoln’s: habits of contemplation (including contemplative walking, and contemplative reading), devotional uses of text, and writing

83. Alexander & McLaughlin, *supra* note 71, at 357.

prose.⁸⁴ Lincoln professed a deep understanding of the bible and a spiritual transformation evidenced in his commitment to social justice in America.⁸⁵ From those who knew him best, one can be assured of his deep faith and an enduring dependence on that faith.⁸⁶ For all my interviewees, it seems they practiced untethered spirituality. They seemed to be cultivating inner space in ways that align and are embedded within aspects of the methodologies existent within their scholarly practice. Although the interviewees are similar to Lincoln in their spiritual practices, they do not make public reference to God or use biblical references in their public speeches, as did Lincoln.⁸⁷ It seems that there is a “safe harbor” for politicians to make reference to God in their public discourse, although not many in the twenty-first century make the robust and vivid references in the manner that Lincoln did.

Based on my readings, analysis of these transformational leaders interviews, and personal experience of hearing these change makers speak to audiences of their peers, students, and industry leaders (and in the case of Lincoln, reading his speeches), it is clear they embody inward self-criticism and outward social-criticism along with a deep sense of untethered spirituality to advance their fields with new and innovative solutions to prevailing social problems. Further, they manage to overcome the racial subordination found in the practice of racial standing.⁸⁸

CRT, SPIRITUALITY AND TILLICH

So this is where, as the old folks say, “The rubber meets the road.” It is in the “being” that life unfolds. Let’s consider *the courage to be* as the key to being itself. I have to admit that Paul Tillich is an existentialist par excellence. His idea is that *the courage to be* shows the nature of “being” itself: it is the self-affirmation of being that overcomes the reduction or removal of being itself. In other words, we all know our current capacity to be in a material body with its conscious mind will not last forever. Yet, we do not let this ‘knowing’ prevent us from living fully and deeply, each day, each moment, each breath. This, as I understand it from Tillich, is *the courage to be*. As Tillich states it, “Nonbeing belongs to being, it cannot be separated from it.”⁸⁹ So here we are, stuck with knowing that, each day, each breath we take, will eventually bring a time when we will no longer be

84. Fraser, *supra* note 69, at 103; Alexander & McLaughlin, *supra* note 71, at 357.

85. FRANCIS F. BROWNE, THE EVERY-DAY LIFE OF ABRAHAM LINCOLN 466 (1913).

86. *Id.*; COLLECTED WORKS OF ABRAHAM LINCOLN (Roy P. Basler et al. eds., 1953).

87. *Id.*

88. See Bell, *supra* note 17, at 111-26.

89. See TILlich, *supra* note 40, at 179.

breathing. What do we do with this wild and crazy life? Ah, now, we begin to live; to take what we have learned (from books, articles, scholarly life) and put it to use.

In the words of Tillich, “This is why we describe *being* best by the metaphor ‘power of being.’ Power is the possibility a being has to actualize itself against the resistance of other beings . . . [Non]-being drives *being* out of its seclusion, it forces it to affirm itself dynamically.”⁹⁰ Tillich goes on to describe how, in theology, this resistance to outward social forces and inward self-critique of how to self-actualize leads to the revelation (the revealing) of *the ground of being*.⁹¹ God has within himself nonbeing, and the presence of this nonbeing (just like the presence of nonbeing in ourselves) opens up the *divine* self-seclusion and reveals God as power and love, making his self-affirmation dynamic. It means those finite physical conscious beings affectionately called humans can consciously move beyond the physical to the *space* where physical and nonphysical meet (a place that twenty-first century sometimes refers to as consciousness), and in doing so, can come to a *place* (i.e., a physical place) where power and love meet.

Stated another way, let’s begin with an understanding that symbols must be used to express the relationship of man to the ground of his being. The symbols used are taken from the structure of being: the polarity of participation and individualization. This polarity determines the special character of this relationship as it also determines the special character of the *courage to be*. If participation is dominant, the relationship to being-itself has a mystical character. If individualization prevails as the dominant relationship to man’s ground of being, being-itself has a personal character. If both poles are accepted and transcended (that is to say, the existence of both with its attended tensions is acknowledged, and one rises or moves beyond this tension) the relationship of being-itself has the character of faith. According to Tillich, the pole of individualization is expressed as a personal encounter with God.⁹² It is basically this courage of confidence derived from a personal reality found in the religious experience. One gets one’s power of self-affirmation from one’s unshakable confidence in God from one’s personal experience of God. One is alone but not lonely. “In his solitude he participates in the power which gives him the courage to affirm himself in spite of the presence of the negativities of existence.”⁹³ Basically, it is a break from the church and religion that blocks this personal encounter with God and a break from a system “in which anxiety of death and guilt never was

90. *Id.* at 179.

91. *Id.* at 180.

92. *Id.* at 160.

93. *Id.* at 161.

completely conquered.”⁹⁴ This opens up a way to have direct access to God; one takes one’s anxiety upon one’s self and thus opens up of a direct, total, and personal approach to God creating the possibility for a new nonmystical courage to be. Yet where Tillich encourages us to be is at the intersection of both mystical participation and personal confidence.⁹⁵ Faith embraces both. Courage of confidence alone is inadequate because it is only one element of faith. Tillich has a rich and involved discussion of his understanding of faith.⁹⁶ For Tillich, faith “is the existential acceptance of something transcending ordinary experience.”⁹⁷ Faith is a state of being. Faith is not an opinion. Faith is being seized by a conscious understanding that the power of just being alive transcends everything that exists and in which everything that exists participates. In the words of Joseph Campbell,

We’re so engaged in doing things to achieve purposes of outer value that we forget that the inner value, the rapture that is associated with being alive, is what it’s all about. That’s what it’s all finally about, and that’s what these clues help us to find within ourselves. Myths are clues to the spiritual potentialities of the human life.⁹⁸

Life has no meaning. It means only what one brings to it. The power is to be consciously aware of being alive. And for Tillich, “He who is grasped by this power [consciousness] is able to affirm himself because he knows that he is affirmed by the power of being-itself.”⁹⁹ It is here that one finds the faith that becomes the basis for the *courage to be*. It is here one can find the courage to conquer anxiety of meaninglessness and doubt and to accept despair (as long as the despair is an act of life affirmation, it is positive in its negativity). This faith gives one courage and is possible because it is the acceptance of the power of being, of being alive, even in the grip of possible nonbeing. Now, I’ll admit this is deep and heavy stuff of philosophy and theology. The point worth struggling through this analysis to reach is the point of understanding “absolute faith.” For Tillich, this is where personal inward criticism leads to transformation of the self.¹⁰⁰ It is getting to a space of consciousness that when one resists despair one stands at an abyss of meaninglessness, yet at that very moment one is aware of a hidden meaning within this destruction of meaning. One senses the dependence of the experience of nonbeing upon the experience of being, and the dependence of

94. *Id.* 162.

95. *Id.*

96. *Id.* at 160.

97. *Id.* at 173.

98. CAMPBELL, *supra* note 75, at 5.

99. *Id.*

100. *Id.* at 178.

the experience of meaning upon the experience of meaninglessness. All this, along with acceptance constitutes absolute faith. Absolute faith includes an element of skepticism, which one cannot find in the mystical experience alone. What results is a faith that consciously accepts the power that comes from accepting things as they are: without concrete content. This is an act of faith and it is “the source of the most paradoxical manifestation of the *courage to be*.”¹⁰¹ It takes courage to consciously accept that there may be no content to this expression of being human, that its only meaning may be “to be.” And, if we allow this consciousness, this “heart/mind” engagement to become the source of our courage to “keep on keeping on” *in spite of* doubt, anxiety, fear, meaninglessness and the possibility of nonbeing, then our relationship to self, community, and “Higher Power” can become a source for courage to resist racism, to speak truth to power, to seek justice in an unjust world. In other words, the idea that I may just be a brain in a vat, or a three dimensional projection from the center of a black hole, does not keep me from being consciously engaged and courageous in my encounters with what is. To fully understand the importance of this inward self-criticism, its possibilities for personal transformation through absolute faith, and the role this transformation plays in creating space for a consciousness that is the basis for the *ground of being* perhaps can only be understood through taking a journey through Tillich’s work. This engagement with consciousness and ‘being’ opens the mind and the heart to infinite possibilities of interaction and relation to self, community and “Higher Power.”

The *courage to be*, to take meaninglessness into itself and to overcome the reduction or removal of meaning itself, requires a relation to the *ground of being* which Tillich calls “absolute faith.”¹⁰² His concept of “absolute faith” is a concept that is open to everyone. It is what he calls “God above God.” It is the *ground of being* where one’s “absolute faith” is the “courage that takes radical doubt, doubt about God, into itself, and transcends the theistic idea of God.”¹⁰³ Tillich’s “absolute faith” is where all theism is transcended. Absolute faith is “the accepting of the acceptance *without somebody or something that accepts*.”¹⁰⁴ In this way, the anxiety of doubt and meaninglessness can be taken into the *courage to be*.

101. *Id.* at 177.

102. *See id.* at 170-78 (explaining relationship between absolute faith and the courage to be).

103. *See id.* at 182-185 for Tillich’s discussion of theism and its role/ relation with atheism.

104. *Id.* at 185.

An example of this absolute faith perhaps can be seen in the current Black Lives Matter movement.¹⁰⁵ The vitality and dynamism of the movement is reflected in the determination and courage of the individuals engaged collectively to speak truth to power and to demand institutional and systemic changes to the way policing is currently done in America. This *courage to be*, as part of a community, engaged in acts of civil disobedience, subjects individuals who knowingly walk into encounters with power that might end in their “nonbeing” (or other consequences that are perhaps less dire yet still significant). They are conscious that their actions may result in no positive changes, but they act in absolute certainty that something must be done now. This is a self-affirming act. It is a courageous act. It is an act of absolute faith. “God above God” is a critical concept. It is critical because it “relativizes” the human. To those who embrace the concept, “God can no longer be a person/king/father/mother in the sky. Rather, God is like energy, air, and spirit. Not a ‘being’ like us but ‘beyond’ any understanding of being that we have.”¹⁰⁶

We can now have a concept of “absolute faith” (the state of being grasped by the God above God). This “absolute faith” is not a state along with other states of mind. Tillich wants us to understand it as a “situation on the boundary of man’s possibilities.”¹⁰⁷ It is to be understood as a *boundary*. It is the courage above every other: doubt, death, and so on. “One can become aware of it *in the anxiety* of (fate and death) when the *traditional symbols*, (which enable women and men to stand the vicissitudes of fate and the horror of death) *have lost their power*.”¹⁰⁸ I read Tillich as saying, “It is the God you meet when all else has failed and yet you know that calling, reaching out, to something (the God above God) will save or at least comfort you.”¹⁰⁹ CRT scholars confront racism as practice and ideology in the outward criticism from a *space* of self-conscious regard when conceptualizing and speaking to racism. This process of being self-aware allows them freedom to be creative and to innovate approaches, pedagogy,

105. Black Lives Matter is an international civil rights movement that uses social media, internet technology, and community activism to call attention to acts of violence against African-Americans, to protest that violence, and to formulate strategies to end racial violence. See Elizabeth Day, *#BlackLivesMatter: The Birth of a New Civil Rights Movement*, GUARDIAN, <http://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement> (describing the movement’s history and goals).

106. E-mail from Inese Radzins, Assistant Professor of Theology and Dorothea Harvey Professor of Swedenborgian Studies, Pacific School of Religion, Berkeley, CA, to author (Apr. 30, 2015, 2:38 P.M. PST) (on file with author).

107. TILLICH, *supra* note 40, at 188-89.

108. See *id.* at 189.

109. See *id.* at 190.

epistemology and other framings of what is. CRT scholars tell us that law not only constructs race, but race constructs law: racial conflicts distort the drafting and implementation of laws; skew the development, character and mission of legal bureaucracies; alter how various communities, including whites, understand and interact with legal institutions; and twist the self-conception of legal actors, from law-makers to lawyers, cops to judges.¹¹⁰ Their scholarship comes from a place of dynamic self-affirmation.¹¹¹ CRT can be viewed as a form of racial standing not considered by Derrick Bell that is highly subversive in that it moves the discussion of race away from what we know is a social construction to the spiritual discussion of justice, the justice that pledges allegiance to “the least of these my brethren”¹¹² and “the faces at the bottom of the well.”¹¹³ This *ground of being* can show up in physical places as well through our *courage to be*. This brings us to the question: How do I practice the *courage to be*?

A MEANINGFUL AND PURPOSEFUL LIFE IN COMMUNITY

A. *A Meaningful Life*

I found a meaningful life to be a desire among many social justice advocates. Yet, I’ve come to believe that life is without meaning. You bring the meaning to it. The meaning of life is whatever you ascribe it to be. I think that what is being sought is an experience of being alive, so that our life experiences on this purely physical plane have resonance within our own innermost being and reality, so that we actually feel the rapture of being alive. This is a longing to express of spiritual feelings and encounter spirituality in places where such expression is understood and welcomed. CRT and other critical legal studies movements provide this place and space. Legal scholars in these movements are open to and support scholarship that explicitly calls upon “decolonizing” spirituality¹¹⁴ and many others call upon lawyers to, in the words of Angela Davis, “counter law’s injunction against imagination so that we can glimpse the camouflaged memories of slavery and freedom struggles that have become the foundational dream world of the law.

110. See HANEY-LÓPEZ, *supra* note 50, at xviii.

111. CAMPBELL, *supra* note 75, at 65-66 (discussing participation in life with affirmation, courage and decency).

112. *Matthew* 25:40.

113. See BELL, *supra* note 2.

114. Andrea Smith, Assoc. Professor, Univ. of Cal. Riverside, Address at the Center for Spirituality and Social Transformation, Pacific School of Religion: Decolonizing Spirituality (Dec. 11, 2014). Andrea Lee Smith is a co-founder of INCITE! Women of Color Against Violence.

Herein . . . resides our hope to transform law and the manifold social hierarchies it protects and reproduces.”¹¹⁵

The desire is to *experience* what social justice is. CRT does this. Science doesn’t have all the answers. Science can tell us how a thing works, but not what it is. For example, the human desire is to experience social justice in such a way that the mystery comes through. De-mythicizing economics and power reveals what a wonder the universe is, and what a wonder you are. It allows the experience of awe before this mystery. The mystery, according to Joseph Campbell, is trans-theological indefinable, and inconceivable; it is a power that is the source and end and supporting ground of all life and being.¹¹⁶

B. A Purposeful Life in Community

Praxis and practicum take on new meaning when we choose to embrace oppositional cultural practices in our practice of CRT. We can engage these activities with renewed energy and vitality and purpose and meaning. We can now know that our efforts, whether meaningful or meaningless, are grounded in “absolute faith”: a space and place in time where we are doing our best to bring about the *courage to be* as a part¹¹⁷ and the courage to be as oneself, thus avoiding the loss of oneself by participation and the loss of one’s world by individualism. We bring our whole selves to our work as lawyers. Our nonbeing and being. Our goal is “affirmation of oneself as participant in the creative development of mankind.”¹¹⁸

PRAXIS

Spiritual practices are those activities in which one engages to bring to one’s consciousness this space of being in “absolute faith.” As noted above, absolute faith can be considered a “situation on the boundary of man’s

115. SORA Y. HAN, *LETTERS OF THE LAW: RACE AND THE FANTASY OF COLORBLINDNESS IN AMERICAN LAW*, back cover (2015) (review written by Angela Davis).

116. See CAMPBELL, *supra* note 75, at 41-42.

117. See TILlich, *supra* note 40, at 62 (discusses “the anxiety which, in its different forms, is potentially present in every individual becomes general if the accustomed structures of meaning, power, belief, and of order disintegrate. The structures, as long as they are in force, keep anxiety bound within a protective system of courage by participation.”); *id.* at 90-91 (“Man as the completely centered being or as a person can participate in everything, but he participates through that section of the world which makes him a person. Only in the continuous encounter with other persons does the person become and remain a person. The place of this encounter is the community.”)

118. See *id.* at 107.

possibilities.”¹¹⁹ It is to be understood as a *boundary—the ground of being*. It is the courage above every other fear, anxiety, and anguish, in this temporal perception that is to be faced and overcome by consciously bringing it in and then courageously letting the opposite, positive thought push through in creativity as one both engages life as one (the individual) and as part of a whole (in community).

Since the dawn of time, humans have engaged in activities that represent this *boundary* way of being (to create *ground of being*) through their rituals, traditions, myths, song, dance, art and other human endeavors. There is a rich history of contemplatives as seen in the practice of contemplation in many religious and spiritual traditions (most often among the mystics). Contemplation is allowing oneself to quiet the mind and focus on what one is doing—reading, eating, walking—an awakening of one’s senses in the outer world of our relationships with our surroundings. It is also being quiet and making a conscious mental effort to analyze, to question, to inquire about a text, an action, our thoughts and feelings about a person, place, time or thing, and perhaps to feel desires, fears, and doubts.¹²⁰

From my experience, education, research, and study of spiritual practices, among the important things I have learned is that one must, in teaching a spiritual practice, include in the instruction a history of the practice. It must not be torn from its roots. The practice itself may be adapted for Western consumption, but its lineage, its basis, its energy and vibrancy must be told as a backdrop to the practice so that students have an understanding of the “reverence” of the practice in its intention to help one get to that space of the *boundary*. In this way, if the individual finds that particular spiritual practice “does not work” for them, they will not feel constrained by the pressures to conform, but can with lightness and ease, explore other spiritual practices that do bring them to that space. The integrity of spiritual practices is retained and the individual’s “absolute faith” is also retained as students authentically search for and find practices that bring them to wholeness. One practice does not fit all.

Fortunately, there are many practices one can adopt that will deepen awareness of the now—to be fully present in the moment, to create the

119. TILLICH, *supra* note 40, at 188-93.

120. Angela Harris, Margaretta Lin & Jeff Selbin, *From the Art of War to Being Peace: Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CAL. L. REV. 2073, 2077 (2007). The authors argue that in addition to stress relief, mindful lawyering can connect the individual practice of law to the collective work of peacemaking. The authors suggest that mindful lawyering helps lawyers take on very different roles with respect to the people they work alongside and helps them address a central tension in their work: how best to advocate on behalf of subordinated and disenfranchised communities within the existing political economy while holding fast to a clear vision of a more diverse, democratic, egalitarian, transparent, and participatory civic life.

ground of being. And in those moments, act with courage in the face of nonbeing. For some folks, it is as accessible as moments when they are grooming their horse, walking the family dog, hand washing the dinner dishes in the evening, preparing a meal. Praxes are varied and ancient. There are some, however, that seem to be reflective of the life of a lawyer in that they are activities central to the very act of being a lawyer. Here are some spiritual practices and their historical context that lawyers can consider as options for them to get to the *boundary* of “absolute faith.”

Contemplation and Devotional Uses of Text

The spiritual practice of contemplation and devotional uses of text, a habit that can bring about an “experience of conscious involvement in the project of life-integration through self-transcendence toward the horizon of ultimate value one perceives,”¹²¹ appears to be evident in a lawyer’s practice from early on in his or her career. As Joseph D. Driskill has noted, “[d]evotional uses of a text usually involve applying the insights of a passage to one’s life or in some instances memorizing familiar passages.”¹²² The legal profession by its nature focuses on text, whether it be a statute, a Supreme Court decision, or a deposition, and think deeply about the text and sometimes ruminate on particular passages or statements. These acts can, when consciously approached as a spiritual practice, provide a space for the experience of what Tillich, Driskill, and other spiritual practitioners identify, for example, as integrating one’s critiqued life experience with the higher value one perceives through one’s active engagement with reducing or eliminating human suffering. Again, the spiritual practice seeks to create a space where individuals can express their “being” and also participate in collective structures and institutions without feeling a loss of self-affirmation. This holding of space is sometimes what people are referring to when they “center themselves.” It is a way to bring conscious awareness to the moment of this *boundary*.

121. Sandra Schneiders, *Approaches to the Study of Christian Spirituality*, in THE BLACKWELL COMPANION TO CHRISTIAN SPIRITUALITY 15-16 (Arthur Holder ed., 2011).

122. JOSEPH D. DRISKILL, PROTESTANT SPIRITUAL EXERCISES THEOLOGY HISTORY AND PRACTICE 94 (1999).

Prose Writing

Spiritual journaling in Christianity, according to James Lawrence,¹²³ goes back to late antiquity, has been a mainstay of Christian spirituality throughout the centuries, and in the past thirty or forty years has joined forces with a number of psychological techniques to give new energy and methodologies to journaling as an effective way of achieving spiritual growth. Lawrence's view is that spiritual journals are both a place to engage and a place to record.¹²⁴ They can serve as a longstanding dialog partner that keeps personal history and records powerful insights that remain available later (oftentimes decades later). This is so with personal journals and can be so with the foundations of law, in that writing is the central communication method to convey legal precedent in the codification of law. The profession's core concept of *stare decisis* along with its canonical works can be said to be records of personal reflection on the history of law. It is a form of spiritual journaling. I would even venture to say that the writing of briefs and pleadings can be a spiritual practice. For example, one could consciously engage legal work with an intention to enhance one's reflection on social justice, awareness of human suffering, and appreciation of the ability to address these conditions through this prose writing.

I could share more spiritual practices that are inherent in the practice of law, but this paper is not devoted to deep exploration of praxis. But I do want to say something about practicum as community building.

PRACTICUM

In legal education, an opportunity for clinical education is often available, though it is not typically a mandatory course. Practicum opportunities are also available through (and most students take advantage of) summer internships at law firms. In either circumstance, a component of spiritual praxis would provide guidance on how the practice of law presents ample opportunities to bring one's spiritual life into the work in ways that are innate or embedded in the work itself. Attention to these opportunities for spiritual practices and creating a place for this within the work environment allows for greater acceptance and practice of "absolute faith" for developing the *courage to be* and engaging in oppositional cultural practice such as CRT. Furthermore, and perhaps most importantly, practicums designed with an

123. James Lawrence, Lectures, "Spiritual Formation for Leadership," (Fall 2014) Assistant Professor of Spirituality and Historical Studies and Dean, Swedenborgian House of Studies at Pacific School of Religion (2014).

124. *Id.*

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intentional focus on spirituality and its function in the practice of oppositional cultural practice are a step toward building beloved communities of the kind Dr. King dreamed.¹²⁵

125. See William J. Barber II & Jonathan Wilson-Hartgrove, *The Power of "We": Martin Luther King, the March on Washington, and the Birth of Moral Mondays*, SALON (Jan. 18, 2016) (discussing Dr. King's work to build communities dedicated to achieving justice).