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Nicholas F. Stump

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COVID, CLIMATE CHANGE, AND TRANSFORMATIVE SOCIAL JUSTICE: A CRITICAL LEGAL RESEARCH EXPLORATION

NICHOLAS F. STUMP*

This Article explores intertwined contemporary crises via the Critical Legal Research framework (“CLR”), as initially developed by the critical legal scholars Richard Delgado and Jean Stefancic. CLR as conceived of in this Article entails a truly radical approach to the legal research and analysis regime. While the traditional research regime—as taught in law schools and utilized in practice—functions to homogenize research outcomes towards hegemonic ends, a critically “reconstructed” approach to legal and broader socio-legal research permits more transformative futures. Specifically, CLR as deployed within such modes as radical cause lawyering can help engender genuine systemic “re-formations” of the ecological political economy beyond mere law “reform.”

Next, this Article applies the CLR framework to three intertwined crises: climate change and the broader ecological crisis (i.e., termed the “Capitalocene” by critical commentators); the COVID-19 global pandemic and accompanying social catastrophe; and the racial state violence and intersecting oppressions along lines of class, gender, LGBTQ+ status, immigrant status, etc. that catalyzed the mass Black Lives Matter uprising. This illustrative CLR application demonstrates that such crises ultimately emanate from the unjust and ecologically unsustainable white patriarchal capitalist paradigm—and that, correspondingly, CLR-influenced radical cause lawyering modes could help drive transformative futures beyond this paradigm in its entirety.

* Faculty Member at George R. Farmer, Jr. Law Library, West Virginia University College of Law. Note that the author participated in the 2020 Black Lives Matter uprising through street protest and other dimensions. Much gratitude for comments, feedback, and support from Professors Priya Baskaran, Nicholas Mignanelli, Yasmin Sokkar Harker, Anne Marie Lofaso, Will Rhee, Matt Titolo, Julie Krishnaswami, Grace Lo, Evan Johns, Beth Toren, Kathy Fletcher, and Taryn Marks. Sincere thanks also for comments received at the Law and Society Association Conference and ClassCrits and for workshoping at the AALL Research Crits Caucus CLR Summit.

INTRODUCTION	148
I. CRITICAL LEGAL RESEARCH: OVERVIEW OF FRAMEWORK	150
A. <i>Deconstruction of Legal Research Regime</i>	152
1. Mediums of Legal Research	153
2. Hegemonic Knowledge Base	155
B. <i>Reliance on Critically Informed Resources</i>	156
C. <i>Adoption of Non-Hegemonic Alliances</i>	158
1. Radical Cause Lawyering.	159
2. Collectivist Approach to CLR.	162
D. <i>Systemic Re-Formations Beyond Law Reform</i>	166
1. Marxist Analysis of Law and Capitalism	166
2. Contemporary Critical Legal Theory.	168
3. Ecological Marxism, Ecosocialism, and Ecofeminism	169
II. CONTEMPORARY CRISES: A TRANSFORMATIVE APPROACH VIA CLR.	172
A. <i>Climate Change and Broader Ecological Crisis</i>	172
B. <i>COVID-19</i>	179
C. <i>The Mass Black Lives Matter Uprising</i>	187
CONCLUSION	195

INTRODUCTION

The United States and world currently are beset by profound crises encompassing epidemiological, social, political, economic, and environmental dimensions. Contemporary, incremental approaches to law and social change are wholly insufficient to combat these crises. Consequently, to achieve a future that are both ecologically viable and critically just, this Article proffers a truly radical approach steeped not in traditional law “reform,” but rather in true systemic “re-formations” that necessarily entail transcending white patriarchal capitalism.¹ This Article deploys the Critical Legal Research (“CLR”) framework to explore such transformative change. CLR initially was developed by such leading critical

¹ See Michael M’Gonigle & Louise Takeda, *The Liberal Limits of Environmental Law: A Green Legal Critique*, 30 PACE ENV’T L. REV. 1005, 1027 (2013) (differentiating between legal reform and “systemic re-formations”); Nicholas F. Stump & Anne Marie Lofaso, *De-Essentializing Appalachia: Transformative Socio-Legal Change Requires Unmasking Regional Myths*, 120 W. VA. L. REV. 823, 844–47 (2018) (exploring post-neoliberal capitalist systemic re-formations steeped in a bottom-up, grassroots approach, critical intersectionality along lines of class, race, gender, etc., and local-to-global connections).

legal commentators as Richard Delgado and Jean Stefancic² and has seen a resurgence in recent years.³ CLR, in the first place, unveils how traditional legal research and analysis modes homogenize research outcomes towards hegemonic ends. The radical approach to CLR adopted in this

² See generally Richard Delgado & Jean Stefancic, *Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited*, 99 L. LIBR. J. 307 (2007) [hereinafter *Revisited*]; Jean Stefancic & Richard Delgado, *Outsider Jurisprudence and the Electronic Revolution: Will Technology Help or Hinder the Cause of Law Reform?*, 52 OHIO ST. L.J. 847 (1991); 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) [hereinafter *Triple Helix Dilemma*]. Steven Barkan and Jill Anne Farmer also authored foundational critical work that informs the CLR approach adopted in this Article. See generally Steven M. Barkan, *Deconstructing Legal Research: A Law Librarian's Commentary on Critical Legal Studies*, 79 L. LIBR. J. 617 (1987); Jill Anne Farmer, *A Poststructuralist Analysis of the Legal Research Process*, 85 L. LIBR. J. 391 (1993); Virginia Wise, *Of Lizards, Inter-subjective Zap and Trashing: Critical Legal Studies and the Librarian*, 8 LEGAL REFERENCE SERVS. Q. 7, 7–10 (1988) (proffering additional early critical work informing the contemporary CLR approach).

³ Nicholas Mignanelli has authored the most recent and authoritative work in the explicit CLR discourse. See generally Nicholas Mignanelli, *Legal Research and Its Discontents: A Bibliographic Essay on Critical Approaches to Legal Research*, 113 L. LIBR. J. 101 (2021); Nicholas Mignanelli, *Critical Legal Research: Who Needs It?*, 112 L. LIBR. J. 327 (2020) [hereinafter *Critical Legal Research*]. The author's recent CLR work includes: Nicholas F. Stump, "Non-Reformist Reforms" in *Radical Social Change: A Critical Legal Research Exploration*, 101 B.U. L. REV. ONLINE 6 (2021) [hereinafter "Non-Reformist Reforms"]; Nicholas F. Stump, *Mountain Resistance: Appalachian Civil Disobedience in Critical Legal Research Modeled Law Reform*, 41 ENVIRONS: ENV'T L. & POL'Y J. 69 (2017) [hereinafter *Mountain Resistance*]; 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 (2015) [hereinafter *Following New Lights*]. Similar, recent critically informed work on legal research, legal research resources, or legal information theory include the following. See generally Priya Baskaran, *Service, Scholarship, and Radical Citation Practice*, 73 RUTGERS U.L. REV. 891 (2021); Grace Lo, "Aliens" vs. Catalogers: *Bias in the Library of Congress Subject Headings*, 38 LEGAL REFERENCE SERVS. Q. 170 (2019); 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 (2019); Yasmin Sokkar Harker, *Legal Information for Social Justice: The New ACRL Framework for Critical Information Literacy*, 2 LEGAL INFO. REV. 19 (2016–2017) [hereinafter *Legal Information for Social Justice*]; Julie Graves Krishnaswami, *Critical Information Theory: A New Foundation for Teaching Regulatory Research*, in BOULDER STATEMENTS ON LEGAL RESEARCH EDUCATION (Susan Nevelow Mart ed., 2013); Yasmin Sokkar Harker, *Critical Legal Information Literacy: Legal Information as a Social Construct*, in INFORMATION LITERACY AND SOCIAL JUSTICE: RADICAL PROFESSIONAL PRAXIS (Lua Gregory & Shana Higgins eds., 2013); YASMIN SOKKAR HARKER, "IT COSTS HOWMUCH?": DEVELOPING STUDENT CRITICAL PERSPECTIVES THROUGH A DISCUSSION OF LEGAL INFORMATION (2015), https://capalibrarians.org/wp/wp-content/uploads/2015/07/3A_Sokkar-Harker_paper.pdf [<https://perma.cc/GM9H-2RYA>].

Article also engages in the “reconstructive” project of re-envisioning legal and broader socio-legal research and analysis as a form of supportive praxis. More specifically, such praxis entails CLR-influenced “radical cause lawyers” fundamentally supporting those bottom-up grassroots movements actually driving the social change process.⁴

This Article will proceed in two Parts. Part I unpacks the CLR framework as conceived of vis-à-vis four constituent dimensions. These include deconstructing the traditional legal research regime, a reliance on critical legal theory-informed resources, the adoption of non-hegemonic reform alliances (i.e., as implicating CLR-influenced radical cause lawyering), and an ultimate aim of systemic re-formations beyond mere law reform. Part II applies this CLR framework to three intersecting crises: climate change and the broader ecological crisis, COVID-19, and the racial state violence and intersecting oppressions along lines of gender, class, LGBTQ+ status, immigrant status, etc. that catalyzed the historic Black Lives Matter uprising. This Article posits that these intertwined crises ultimately emanate from the unjust and ecologically unsustainable white patriarchal capitalist paradigm. Consequently, genuine responses to such crises require wholly transcending the liberal, capitalist paradigm in its entirety—i.e., which CLR could help achieve vis-à-vis a radical and essentially supportive form of theory, practice, and praxis.

I. CRITICAL LEGAL RESEARCH: OVERVIEW OF FRAMEWORK

The CLR project involves an application of critical legal theory principles to legal research and analysis modes. Contemporary critical legal theory is derived from such foundational schools as legal realism and the 1980s critical legal studies movement.⁵ Moreover, critical legal theory can be defined broadly to encompass such discourses as critical race theory, critical legal feminism, queer critical theory, critical legal environmentalism, critical Latinx work, critical Indigenous and settler colonialism studies, and postcolonial thought (i.e., as including work on the Global South and North divide).⁶ Poststructuralism and postmodernism also

⁴ *Mountain Resistance*, *supra* note 3, at 88–89.

⁵ *Following New Lights*, *supra* note 3, at 600–01. Barkan’s key work is grounded in the critical legal studies movement per se. See Barkan, *supra* note 2, at 618.

⁶ *Following New Lights*, *supra* note 3, at 600–01. Beyond foundational work on the intersection of critical legal theory and legal research and analysis, Delgado and Stefancic are, of course, leading, contemporary commentators on critical race theory and related discourses. See generally, e.g., CRITICAL RACE THEORY: AN INTRODUCTION (Richard Delgado & Jean Stefancic eds., 3d ed., 2017); Richard Delgado & Jean Stefancic, *Critical Perspectives on*

inform crucial dimensions of critical legal theory.⁷ Furthermore, this Article particularly draws on law and political economy precepts in addition to class-critical work in the explicitly materialist, Marxist tradition. Such an approach foregrounds, among other things, class conflict and modes of systemic re-formations beyond mere law reform—or genuinely emancipatory transformations of the ecological political economy.⁸

CLR's core aim, then, as informed by such diverse critical strains, is to transform traditional modes of legal research and analysis—as taught in law schools and conceptualized in practice—towards truly radical ends. Praxis is therefore crucial to CLR, which involves explorations of theory-applications in real-world practices.⁹ In this Article, praxis entails CLR-influenced radical cause lawyers occupying an essentially supportive role for those social movements actually driving the social change process. The Sections that follow provide a more specific overview of CLR, which is conceptualized in this Article vis-à-vis four constituent dimensions.

Police, Policing, and Mass Incarceration, 104 GEO. L.J. 1531 (2016). For critically informed work investigating environmental human rights regimes and the Global South see, for example, Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 SANTA CLARA J. INT'L L. 151, 175 (2015). Gonzalez notes that “it is important to identify and challenge certain grand narratives that maintain Northern hegemony,” and that a “critical approach to environmental human rights law must lay bare the contemporary and historic causes of environmental human rights abuses.” *Id.* at 174–75. This critical approach also must “ensure that the discourse and the practice of human rights address the deeper structural inequities that produce environmental injustice.” *Id.* at 175. Such critical environmental justice principles are explored in the context of ecosocialist ecofeminism. See *infra* Section II.A; see also Nicholas F. Stump, *Critical Explorations of Human Rights: Recent and Selected Works*, 38 LEGAL REFERENCE SERVS. Q., 115, 121 (2019) (exploring an ecofeminist approach to radically conceived environmental human rights). For recent work on law and settler colonialism, see, e.g., NATSU TAYLOR SAITO, *SETTLER COLONIALISM, RACE, AND THE LAW: WHY STRUCTURAL RACISM PERSISTS* 1–8 (2020). Much work on critical legal feminism is discussed in this Article including the coverage in *infra* Section I.D on systemic re-formations vis-à-vis a materialist ecosocialist ecofeminism.

⁷ *Following New Lights*, *supra* note 3, at 600. Farmer's work in particular draws on such critical strains. See Farmer, *supra* note 2, at 393. Farmer notes that within “the legal field, the broad incursion of poststructuralist thought into both public and private law reflects a ‘deep and persistent crisis’ in the practice of legal interpretation and a loss of faith concerning the availability of objective criteria,” which ultimately serves to permit “the ascription of distinct and transparent meanings to legal texts.” *Id.* (quoting Michel Rosenfeld, *Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptations of the New Legal Formalism*, 11 CARDOZO L. REV. 1211, 1211 (1990)).

⁸ Farmer, *supra* note 2, at 393. See *infra* Section I.D for an extended discussion on this subject. Few other commentators to date in the CLR and related discourses draw extensively and explicitly on the Marxist tradition.

⁹ M'Gonigle & Takeda, *supra* note 1, at 1113.

A. *Deconstruction of Legal Research Regime*

The first dimension of CLR is deconstructing the legal research regime. Central to this practice is the recognition that legal research tools are not normatively neutral, but instead insidiously reflect dominant societal interests along lines of class, race, gender, Indigenous status, and so forth—i.e., the fundamental values of white patriarchal capitalism.¹⁰ Consequently, legal research tools channel research results to reflect hegemonic values—in effect, largely “predetermining research outcomes”—and therefore inhibit progressive law reform in addition to potentially more radical economic and socio-legal transformations.¹¹

The 1980s critical legal studies movement proffered foundational CLR work. As Steven Barkan argues in *Deconstructing Legal Research*, critical legal studies implicated the concepts of doctrinal indeterminacy, the myth of legal reasoning, and the subjective nature of legal categories.¹² Doctrinal indeterminacy rejects legal formalism—or the notion that law constitutes an exact science or “seamless web” wherein an examination of prior precedent mechanistically determines novel case outcomes.¹³ Per legal formalism, judges discover the *ratio decidendi*, or the rule of the case, to “correctly” adjudicate issues of first impression.¹⁴ In contrast, the critical perspective reveals that doctrine is open to innumerable interpretations—i.e., is indeterminate—and thus the notion of “objective” legal reasoning producing the “correct” *ratio decidendi* is a myth.¹⁵ Judges’ decision-making instead largely reflects white patriarchal capitalist values as merely cloaked in the veil of objective legal formalism; indeterminacy also exists in the legislative and administrative contexts.¹⁶

Significant for CLR, early critical legal studies commentators argued that legal categorization schemes, in particular, undergird legal formalism: But such schemes similarly are mere social constructs that serve the exploitative status quo. As Barkan argues, “categorical schemes are used to mask the incoherence and indeterminacy of legal doctrine,”

¹⁰ *Following New Lights*, *supra* note 3, at 604.

¹¹ *Id.* at 574; *Mountain Resistance*, *supra* note 3, at 127–28.

¹² Barkan, *supra* note 2, at 618.

¹³ Lauren B. Edelman & Mark C. Suchman, *Legal Rational Myths: The New Institutionalism and the Law and Society Tradition*, 21 L. & SOC. INQUIRY 903, 907 n.9 (1996).

¹⁴ Barkan, *supra* note 2, at 630.

¹⁵ *Id.*

¹⁶ *Id.* at 626.

but “in reality they are created and perpetuated by society’s dominant interests.”¹⁷ Grace Lo likewise contends that “hegemonic biases can calcify into a system” and that such structures “can make change difficult.”¹⁸ As Duncan Kennedy adds more succinctly: “all such schemes are lies.”¹⁹

1. Mediums of Legal Research

CLR commentators explicitly apply critical insights to legal research and analysis modes. One such dimension pertains to legal research mediums (i.e., the online and print tools of legal research). The West categorization scheme is a core critical target—which is over a century old and is vastly influential.²⁰ The West system currently classifies U.S. law into over four hundred topics and a hundred thousand subtopics.²¹ As numerous CLR and related critical commentators have argued, this West system is not normatively neutral: Rather, the West system merely reifies hegemonic white patriarchal capitalist values (i.e., as embodied in the liberal legal regime at large).²² A classic exemplar of the problematic West system emanated, in the work law context, from the prior West categories of “Master and Servant.”²³ More recently, another exemplar was the West legal category of “Husband and Wife” utilized to classify same-sex marriage points of law.²⁴ While these are overtly problematic categorization examples, the West system’s overarching influence is, of course, much more insidious—i.e., in *comprehensively* reifying hegemonic white liberal capitalist values throughout the entirety of the vast categorization system.²⁵

¹⁷ *Id.* at 631–32.

¹⁸ Lo, *supra* note 3, at 195.

¹⁹ Barkan, *supra* note 2, at 631 (quoting Duncan Kennedy, *The Structure of Blackstone’s Commentaries*, 28 BUFF. L. REV. 209, 215 (1979)).

²⁰ *Following New Lights*, *supra* note 3, at 583–84.

²¹ *Id.* at 590.

²² *Id.* at 601–02.

²³ *Id.* at 605.

²⁴ *Id.* The category of “Husband and Wife” later was eliminated. The West headnote consequently now includes text stating “Formerly 205k209(1) Husband and Wife.” *See, e.g.*, Charron v. Amaral, 889 N.E.2d 946, 946 (Mass. 2008).

²⁵ The central critical insight is that the law itself merely supports white patriarchal capitalism; the West system then reflects and further reifies unjust U.S. law. For foundational critical work on law supporting hegemonic economic interests, *see infra* Section I.D.1 on the vastly influential Marxist concept of the political and legal “superstructure” supporting the economic “base.”

Prior to online legal research's emergence, the West system directly homogenized research outcomes through the print West digest system utilized for case law research.²⁶ With the advent of online research, however, the West categories continued to constrain research outcomes—albeit more insidiously. That is, the West categorization system channels research outcomes through the online case law headnote system—but also, more comprehensively, channels *all* searches on Westlaw vis-à-vis the West classification system's embeddedness in the Westlaw algorithm.²⁷

The West categorization system constitutes merely one leading example among many proffered by CLR; the rapid emergence of artificial intelligence within online legal research tools is another. As Nicholas Mignanelli observes in *Critical Legal Research*, artificial intelligence is problematic “on two counts,” due to both “its tendency to conceal the legal research process” and also “its propensity for further entrenching the biases of society's dominant interests,” which may include “the perpetuation of racial and ethnic, gender, and class biases” thus constituting “a matter of grave concern in the use of AI technologies.”²⁸

Legal research tools, then, function to channel legal research towards hegemonic ends—in effect, essentially predetermining legal research outcomes to support white patriarchal capitalist values. As Barkan aptly concludes, “legal resources can reinforce and reify dominant ideologies, can narrow perspectives, and can make contingent results seem inevitable.”²⁹

²⁶ *Following New Lights*, *supra* note 3, at 590–91.

²⁷ Ronald E. Wheeler, *Does WestlawNext Really Change Everything? The Implications of WestlawNext on Legal Research*, 103 L. LIBR. J. 359, 372 (2011). Wheeler also critiques Westlaw's reliance on crowdsourcing—i.e., drawing directly on user activity to enhance the algorithm vis-à-vis the “wisdom of its users.” *Id.* at 365. Wheeler notes that for “legal scholars and creative thinkers” that “frequently write about changing the law or the effects of proposed changes,” the “desired results for these sorts of research inquiries may not fall within the collection of results considered useful by the masses.” *Id.* at 366. Consequently, the “phenomenon of less popular results getting buried or potentially not appearing at all is worthy of examination.” *Id.*

²⁸ *Critical Legal Research*, *supra* note 3, at 336, 340. Artificial intelligence and machine learning increasingly are incorporated within legal research platforms including WestSearch Plus on Westlaw, Lexis Answers, and the much-touted ROSS Intelligence (“ROSS”) system. *See, e.g.*, Nicole Black, *Lawyers Have a Bevy of Advanced and AI-Enhanced Legal Research Tools at Their Fingertips*, ABA J. (Nov. 22, 2019, 8:30 AM), <https://www.abajournal.com/web/article/lawyers-have-a-bevy-of-advanced-and-ai-enhanced-legal-research-tools-at-their-fingertips> [<https://perma.cc/B4ZN-7JYL>]. These are dire developments from the critical perspective.

²⁹ Barkan, *supra* note 2, at 632.

2. Hegemonic Knowledge Base

A second related critique pertains to the shared knowledge base undergirding legal research—i.e., that necessarily transcends any specific research medium as it exists in the minds of legal researchers. As will be demonstrated, this shared knowledge base also insidiously homogenizes legal research outcomes towards hegemonic ends. CLR critiques regarding a shared knowledge base center on legal-institutional indoctrination, training, and norms. Such phenomena are fundamentally embedded in the law school system in addition to the practicing bench and bar and broader legal-professional institutions (e.g., administrative agency norms).

The U.S. law school curriculum's genesis typically is traced to Christopher Langdell, who developed the so-called Langdellian model at late nineteenth-century Harvard.³⁰ Less recognized, however, is that Langdell's model directly dovetailed with the West system's emergence.³¹ That is, both first-year courses (e.g., contracts and torts) and upper-level courses reflected major West categories: This system continues to form the structural underpinnings of the contemporary legal education system.³² Consequently, the West classification scheme quite literally shapes how U.S. law students come to “know” and “understand” the law.³³ As Robert Berring asserts, “[a]s the digest system became universally accepted, and as all law schools adopted the Harvard method, these categorizations became internalized in American law to the point where they now seem only natural.”³⁴ Of course, the West system's influence thereafter permeated all legal professional-institutional sites, including CLEs, bar exams, secondary legal sources, and so forth.³⁵

The CLR critique thus unmask the central fact that West categories homogenize research outcomes regardless of the research medium

³⁰ *Following New Lights*, *supra* note 3, at 615.

³¹ *Id.*

³² Carol M. Bast & Ransford C. Pyle, *Legal Research in the Computer Age: A Paradigm Shift?*, 93 L. LIBR. J. 285, 287 (2001).

³³ More generally speaking, note that critical commenters have rightly assailed the U.S. law school system for multifaceted ills—i.e., as embedded in liberal-hegemonic classist, sexist, racist, and settler colonialist etc. values. *See generally* POWER, LEGAL EDUCATION, AND LAW SCHOOL CULTURES (Meera E. Deo, Mindie Lazarus-Black & Elizabeth Mertz eds., 2019) (critiquing unjust power structures within U.S. and international law school systems). The West system therefore helps reify such unjust structures via niche dimensions.

³⁴ Robert C. Berring, *Collapse of the Structure of the Legal Research Universe: The Imperative of Digital Information*, 69 WASH. L. REV. 9, 22 (1994).

³⁵ *Triple Helix Dilemma*, *supra* note 2, at 225.

utilized. For instance, Delgado and Stefancic argue in *The Triple Helix Dilemma Revisited* that “[t]he very categorical structure that limited paper-and-pencil searching, building in a bias for the status quo, appears in a new form” as such hegemonic conceptual terms as “inscribed in our minds” necessarily “limit the questions a researcher can ask.”³⁶ Thus, the West system and other core framing devices (e.g., the categories inherent in *Blackstone’s Commentaries*) indeed undergird our shared legal knowledge base—which concretely homogenize legal research outcomes towards hegemonic liberal capitalist ends.³⁷

B. Reliance on Critically Informed Resources

“Significantly, CLR also advocates for critical ‘econstructions’ of the legal research and analysis regime.”³⁸ A leading CLR reconstruction method entails expanding sites of traditional legal research—i.e., in the law practice context, as most broadly conceived—to include explicitly drawing on critical legal theory and other diverse discourses.³⁹ Recall that legal indeterminacy dictates that law is open to innumerable interpretations; a direct consequence of this insight is that a whole universe of alternative resources becomes available beyond so-called “controlling” primary legal sources (or primary mandatory authority).⁴⁰ Of course, critical legal theory—steeped resources are often particularly useful for

³⁶ *Revisited*, *supra* note 2, at 318. Hegemonic West categories, then, insidiously inform research conducted on any medium, including Lexis, Bloomberg Law, HeinOnline, Wikipedia, Google, and so forth. *Id.*

³⁷ *Id.* at 310; Duncan Kennedy, *The Structure of Blackstone’s Commentaries*, 28 BUFF. L. REV. 209, 215 (1979). Berring has characterized the prior influence of West categories and other hegemonic framing devices, such as *Blackstone’s Commentaries*, as “creat[ing] a conceptual universe of thinkable thoughts that has enormous power,” and that “indicative of its real strength is the fact that those using it do not perceive it; the classification of legal concepts appears inevitable.” Robert C. Berring, *Legal Research and the World of Thinkable Thoughts*, 2 J. APP. PRAC. & PROCESS 305, 311 (2000). However, Berring asserts in this article that advancing research resources and search techniques (e.g., Internet searching) and researchers from newer generations are eroding the hegemonic influence of this system: “They are not slowly progressing through the old system of learning how to navigate in the literature of the law,” as “[t]hese new members of the legal community think in terms of search engines and algorithms that are part of the greater information universe.” *Id.* at 313. The critical perspective generally rejects Berring’s line of thought in this instance, as illustrated by the work put forth by Delgado and Stefancic in this Section.

³⁸ *Following New Lights*, *supra* note 3, at 575–76.

³⁹ *Id.* at 622–23.

⁴⁰ Barkan, *supra* note 2, at 626.

those seeking transformative change vis-à-vis reimagined sites of legal research and analysis, but the CLR critique is not normatively limited to critical theory resources alone.

Jill Anne Farmer provides foundational “reconstruction” work in *A Poststructuralist Analysis of the Legal Research Process*.⁴¹ Farmer notes that “legal practitioners are often insulated from external questions,” but lawyers should re-examine “the practices of their own legal culture” and also “the ‘point’ and values of that culture’s interpretive practices in relation to societal values and epistemological questions.”⁴² Farmer adds that while “it may be true that organizations are not really interested in systemic change,” lawyers nevertheless should “look outside of the system box in which we are conceptually housed,” which can include utilization of “nonlegal material that reflects on social, political, and cultural theory.”⁴³

Intersectional theory, as initially developed by Kimberlé Crenshaw, constitutes a notable example of how critical legal theory applications can transform research outcomes.⁴⁴ Delgado and Stefancic chronicle how intersectional theory—which examines how subordination along lines of race, gender, etc. “intersect” and engender compound forms of oppression—can inform employment discrimination claims.⁴⁵ Specifically, intersectionality-informed claims are required when employers discriminate against Black women—i.e., “on account of [their] [B]lack womanhood”—but not, for instance, against Black men or white women.⁴⁶ Delgado and Stefancic note that because pre-existing causes of action favor sole race-based or sex-based claims only, as a consequence, critical legal theory–steeped doctrinal-innovations are required to account for such doctrinal and research category biases.⁴⁷

⁴¹ Farmer, *supra* note 2, at 391–92.

⁴² *Id.* at 403.

⁴³ *Id.* at 403–04. Note that Farmer predominantly focuses on law libraries acquiring such resources and the role of legal information professionals generally. *Id.* Contemporary CLR work, in contrast, typically focuses more on a reconstructed legal research process per se. See, e.g., *Critical Legal Research*, *supra* note 3, at 342–43.

⁴⁴ *Revisited*, *supra* note 2, at 319–20; see generally 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 (1989).

⁴⁵ *Revisited*, *supra* note 2, at 319–20.

⁴⁶ *Id.*

⁴⁷ *Id.* at 320. For a more recent overview of this persistent issue, see, e.g., Yvette N. A. Pappoe, *The Shortcomings of Title VII for the Black Female Plaintiff*, 22 U. PA. J.L. & SOC. CHANGE 1, 2 (2019) (“Crenshaw and other intersectionality scholars argued that courts have been particularly reluctant to recognize intersectional discrimination against

To be sure, the transformative potential of critical legal theory applications is not a novel concept in-and-of-itself. Legal academics, activist-theoreticians, and legal clinicians long have explored such contours through theory and praxis.⁴⁸ CLR can be distinguished, however, in explicitly focusing on radically transforming, traditional sites of legal research and analysis modes.⁴⁹ For instance, CLR discourses and methods can be integrated early and often in the education of would-be attorneys through diverse curricular and institutional mechanisms. These could include CLR research courses, seminars, legal clinics, and so forth; and significantly, such CLR curricular-infusions should merely be part and parcel of the broader process of transforming U.S. legal education along genuinely emancipatory and radical-democratic lines.⁵⁰ However, as is discussed in the following Section, beyond legal education sites, CLR's ultimate role implicates a fundamentally collaborative deployment of CLR within grassroots alliances geared towards radical economic and socio-legal change.

C. *Adoption of Non-Hegemonic Alliances*

A second critical “reconstruction” dimension involves adoption of non-hegemonic reform alliances (i.e., entailing cross-discipline work and broader grassroots alliance- and solidarity-building).⁵¹ This approach is

Black female plaintiffs for a number of reasons,” and that, thus, “[a]s a result, Black female plaintiffs have been required to bisect their identity in order to take advantage of the protection Title VII affords against employment discrimination.”).

⁴⁸ M’Gonigle & Takeda, *supra* note 1, at 1113.

⁴⁹ *Following New Lights*, *supra* note 3, at 576.

⁵⁰ The author, for instance, has incorporated CLR methods as modules within advanced legal research courses and upper-level seminar courses, and numerous other commentators working in this tradition have explored related critical pedagogies. *See generally, e.g., Legal Information for Social Justice*, *supra* note 3; Krishnaswami, *supra* note 3. Mignanelli also recently has developed an upper-level elective course on CLR, “(Re)Searching for Justice.” A selection from the course description is as follows:

This is a short research course designed for aspiring movement lawyers and students interested in social justice issues. Topics covered include the legal research process and its limitations, critical approaches to conducting legal research, critical legal scholarship and how to find it, and emerging legal research technologies and their shortcomings.

Law 756 as (Re)Searching for Justice, U. MIAMI SCH. L., https://lawapps2.law.miami.edu/clink/course.aspx?cof_id=4388 [<https://perma.cc/C6CB-BWYP>] (last visited Nov. 13, 2022).

⁵¹ Law students could engage in such CLR-infused grassroots activities through clinics, public interest externships, and the like. For instance, progressive and radical law school clinicians long have approached clinical work as a prime site for introducing social change-steeped pedagogy and praxis. The author has tentatively explored such future-projected collaborative critical pedagogies with clinical law professor Priya Baskaran. For

derived from the core critical insight that even social justice-oriented attorneys and other legal professionals, as relative institutional elites, ought not—from a grassroots-democratic procedural viewpoint—drive the social change process.⁵² Nor are legal-institutional elites generally best positioned to determine the substance of social change modes.⁵³ Rather, through a materialist-steeped approach, lawyers act as mere *supporters* of the social change process as primarily driven, from the bottom up, via grassroots social movements and the community at large.⁵⁴ As discussed below, the CLR influence on such grassroots modes implicates a collectivist approach to legal research and analysis (i.e., including broader socio-legal analysis) that emphasizes an inherently supportive form of praxis.

1. Radical Cause Lawyering

This Article situates grassroots alliance-type CLR thought within the discourse, practice, and praxis of “radical cause lawyering.”⁵⁵ The roots of radical cause lawyering can be traced to 1960s movement lawyering. As Stuart Scheingold and Anne Bloom note in *Transgressive Cause Lawyering*, “radical cause lawyering is all about making major changes in the basic structures of society, on the one hand,” but also “about joining forces with social movements, which have transformative interests and values.”⁵⁶

related work by Baskaran, see, e.g., Priya Baskaran, *The Economic Justice Imperative for Lawyers in Trump Country*, 7 TENN. J. RACE GENDER & SOC. JUST. 161, 175 (2018); Priya Baskaran & Michael Haber, *Transactional Clinics as Change Agents in the Trump Era: Lessons from Two Contexts*, 26 J. AFFORDABLE HOUS. & CMTY. DEV. L. 335, 348 (2017).

⁵² *Following New Lights*, *supra* note 3, at 622–23.

⁵³ *Mountain Resistance*, *supra* note 3, at 125.

⁵⁴ Note that while this Article emphasizes that true transformative change must ultimately be driven from the grassroots, this is not inconsistent with intertwined re-formations at the broader regional, national, and international scales—i.e., particularly those involving democratic economic planning. See the discussion *infra* Section I.D on modes of re-formations involving ecosocialist-steeped economic planning. An explicitly radical approach to “scaling up” grassroots efforts also is implicated in such discussions. See, e.g., Barbara Ellen Smith & Stephen L. Fisher, *Conclusion: Transformations in Place*, in TRANSFORMING PLACES: LESSONS FROM APPALACHIA 282–83 (Stephen L. Fisher & Barbara Ellen Smith eds., 2012) (noting that “place-based organizing” implicates “‘scaling up’ in ways that include but are not limited to strategies directed toward attaining a wider geographic reach,” and that this also includes “‘scaling across’ social and geographic space, intentionally creating strategic lateral relationships among peoples, places, and ideas that transcend social, spatial, and ideological barricades”).

⁵⁵ Stuart Scheingold & Anne Bloom, *Transgressive Cause Lawyering: Practice Sites and the Politicization of the Professional*, 5 INT’L J. LEGAL PROF. 209, 215 (1998).

⁵⁶ *Id.*

Scheingold and Bloom add that “the prototypes for radical lawyering are the Marxist, socialist, and self-styled movement lawyers of the US in the 1960s” in addition to “the similarly inclined UK radicals of the 1980s.”⁵⁷ In a similar vein, radical cause lawyering has been characterized as implicating “wider political and economic injustices” with the specific aim to “mobilize collectively to effect redistribution of resources, and to align legal weapons alongside a battery of extralegal means to realize their ends.”⁵⁸

Related forms of transgressive lawyering offer similar critiques. For instance, “critical cause lawyering” entails transforming more targeted dimensions rather than social structures per se, such as disrupting lawyer domination within traditionally conceived lawyer-client relationships.⁵⁹ More radical approaches to “community lawyering” also overlap with radical cause lawyering: Community lawyering involves challenging law practice hierarchies but also internalizing the key insight that litigation alone—along with other traditional lawyering approaches—are inadequate as genuinely emancipatory vehicles for social change.⁶⁰ Instead, community lawyers “engage collaboratively with client groups in non-traditional legal fora to advance the clients’ objectives, such as organizing for political action,” which fundamentally involves a supportive role in “building community resources and mobilizing community action.”⁶¹ While

⁵⁷ *Id.*

⁵⁸ Terence C. Halliday, *Lawyers as Institution Builders: Constructing Markets, States, Civil Society, and Community*, in *CROSSING BOUNDARIES: TRADITIONS AND TRANSFORMATIONS IN LAW AND SOCIETY RESEARCH* 272 (Austin Sarat, Marianne Constable, David Engel, Valerie Hans & Susan Lawrence eds., 1998).

⁵⁹ Scheingold & Bloom, *supra* note 55, at 216.

⁶⁰ Caroline Bettinger-Lopez, Davida Finger, Meetal Jain, JoNel Newman, Sarah Paoletti & Deborah M. Weissman, *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 *GEO. J. ON POVERTY L. & POL'Y* 337, 356 (2011); Priya Baskaran, *Introduction to Worker Cooperatives and Their Role in the Changing Economy*, 24 *J. AFFORDABLE HOUS. & CMTY. DEV. L.* 355, 378 (2015) (providing a concrete example of progressive community lawyering).

⁶¹ Bettinger-Lopez et al., *supra* note 60, at 353 (quoting Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 *HASTINGS L.J.* 947, 953–56 (1992); Anthony V. Alfieri, *Faith in Community: Representing “Colored Town”*, 95 *CAL. L. REV.* 1829, 1877 (2007). Some commentators helpfully situate different “cause lawyering” approaches on a spectrum, with addressing “unmet legal needs” through public interest lawyering on one end of the spectrum and with more radical approaches on the other. *See, e.g.*, Avi Brisman, *The Criminalization of Peacemaking, Corporate Free Speech, and the Violence of Interpretation: New Challenges to Cause Lawyering*, 14 *CUNY L. REV.* 289, 297 (2011) [hereinafter *The Criminalization of Peacemaking*]. As Brisman explains, “even the term ‘cause lawyering,’ is not uniformly applied,” because “cause lawyering” has also been referred to at various junctures as “lawyering for the good,” “social justice lawyering,” “public interest

community lawyering is particularly prominent in the contemporary literature and among many practitioners, clinicians, and so forth, rhetoric implicating radical cause lawyering is adopted in this Article due to its unambiguously transformative approach. That is, as radical cause lawyering explicitly draws on socialist and Marxist traditions, this discourse is situated squarely on the Left.

Accordingly, radical cause lawyering also may be usefully explored vis-à-vis deeply influential notions of the Gramscian “organic intellectual” as conceived of in Marxist thought.⁶² Per Gramsci’s work, “while the traditional intellectual is free-floating, and perhaps, construed as remote,” in contrast, “the organic intellectual responds to specific conditions in a role akin to political activism.”⁶³ Gramsci’s work on organic intellectuals is only useful, however, insofar as the radical cause lawyers are actually *from* the communities at issue—and more specifically, share genuine solidarity with those community members from a materialist perspective along such pertinent and intersecting lines as class, race, Indigenous status, gender and sex, LGBTQ+ status, immigrant status, and so forth.⁶⁴

lawyering,” “rebellious lawyering,” “activist lawyering,” “progressive lawyering,” “transformative lawyering,” “equal justice lawyering,” “radical lawyering,” “lawyering for social change,” “critical lawyering,” “socially conscious lawyering,” “lawyering for the underrepresented,” “lawyering for the subordinated,” “alternative lawyering,” “political lawyering,” and “visionary lawyering,” among others.

Avi Brisman, *Reframing the Portrait of Lynne F. Stewart*, 12 J. L. SOC’Y 1, 4 n.13 (2011) (quoting Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 33 (Austin Sarat & Stuart Scheingold eds., 1998).

⁶² Paul Piccone, *Gramsci’s Hegelian Marxism*, in ANTONIO GRAMSCI: MARXISM, PHILOSOPHY AND POLITICS 43–45 (James Martin ed., 2002).

⁶³ Jane Poyner, *Introduction*, in J.M. COETZEE AND THE IDEA OF THE PUBLIC INTELLECTUAL 6 (Jane Poyner & John Poyner eds., 2006). As Gramsci writes in *The Prison Notebooks*, “[o]ne can note, in the case of the United States, the absence to a considerable degree of traditional intellectuals, and consequently a different equilibrium among the intellectuals in general. There has been a massive development, on top of an industrial base, of the whole range of modern superstructures.” ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 157 (Quentin Hoare & Geoffrey Nowell Smith eds. & trans., 1999). Gramsci adds that the “necessity of an equilibrium is determined, not by the need to fuse together the organic intellectuals with the traditional, but by the need to fuse together in a single national crucible with a unitary culture the different forms of culture imported by immigrants of different national origins.” *Id.*

⁶⁴ GRAMSCI, *supra* note 63, at 131–32. For instance, even well-intentioned privileged lawyers relocating to a subordinated community to “serve” that community through public interest lawyering certainly would not fit the Gramscian paradigm articulated

As is discussed in more detail below, this Article envisages CLR as a method to help achieve true systemic re-formations beyond law reform—i.e., as constituting merely one dimension among many in non-hegemonic grassroots alliances and accompanying solidarity-building. Thus, such a radical approach to CLR dovetails directly—and indeed can be embedded within—radical cause lawyering as situated on the Left. Praxis is therefore a crucial concept for CLR-influenced radical cause lawyering: praxis involves “a practice that is theoretically-informed and committed to manifesting where that theory leads.”⁶⁵ CLR-influenced radical cause lawyering, then, can facilitate social movements in creating “new imaginaries of possible futures and, above all, new strategies for getting there.”⁶⁶ In short, social movements actually drive the social change process, but CLR-influenced radical cause lawyers can collaboratively provide legal and socio-legal expertise as a form of fundamentally supportive praxis.

2. Collectivist Approach to CLR

The CLR influence on radical cause lawyering emphasizes a collectivist approach to legal research and analysis—including broader modes of socio-legal analysis. Rather than the liberal-steeped atomized individual, collectivist CLR modes involve maximally incorporating diverse parties within the often difficult project of reimagining law and society along emancipatory lines.⁶⁷ Significantly, in the explicit practice context, such a collectivist approach can be adopted even within the overburdensome strictures of the current rules of professional conduct (i.e., collaborations as permitted by the rules).⁶⁸ And direct citizen input is, of course, already

here. Rather, the focus should be on mobilizing interested law students *actually from* the communities at issue via their home state institutions and the like. And as noted in Section I.B, legal education itself—like all U.S. higher education—should be transformed along genuinely democratic-emancipatory lines (e.g., wholly state-supported attendance), which would, among other things, open up law schools to people from those subordinated communities. Of course, such transformations would be merely part and parcel of broader ecofeminist- and ecosocialist-steeped systemic re-formations articulated in Section I.D.

⁶⁵ M'Gonigle & Takeda, *supra* note 1, at 1113.

⁶⁶ *Id.*

⁶⁷ ANNA WILSON, PERSUASIVE FICTION: FEMINIST NARRATIVE AND CRITICAL MYTH 20 (2001) (discussing “collective form[s] of opposition” beyond “the atomized individual” which are “capable of producing alternative self-definitions, values, and cultural products that reflect those values”).

⁶⁸ *Mountain Resistance*, *supra* note 3, at 105. For examples of pre-existing professional collaborations as permitted by the rules in the context of progressive lawyering, see generally, for example, JANE E. BARDEN, QUALITATIVE CASE STUDY RESEARCH IN ORGANIZATIONS: INTERPROFESSIONAL COLLABORATION IN LEGAL AID SETTINGS (2019); Andrew C.

a structural component to many legislative and administrative processes, such as notice-and-comment agency rule-making.⁶⁹ Thus, carefully conceived collectivist approaches could be deployed even within the pre-existing structures of the liberal law practice regime.

More specifically, collectivist modes can be adopted in the context of practitioners drawing on critically informed resources—i.e., as introduced above in Section I.B. That is, rather than attorneys drawing on critical legal theory-informed literature in a general sense, the core idea is that actual collaborations should occur among such diverse constituents as lawyers, legal theorist-activists, academics from other disciplines (e.g., sociologists), and so forth. Delgado and Stefancic, for instance, emphasize the importance of unplugging and engaging in creative brainstorming sessions—and also have suggested that socially and institutionally marginalized parties (or outsiders) often produce particularly innovative thought.⁷⁰ A collectivist approach to CLR therefore would entail the cultivation of synergistic collaborations among many diverse parties as contending with critical legal theory and other interdisciplinary resources.

CLR as envisioned in this Article, however, involves a truly transformative approach: Ultimately, the overburdensome rules of professional conduct must be transformed to maximally permit non-hegemonic collaborations within sites of legal research and analysis and broader socio-legal analysis.⁷¹ Such rules transformations would permit cultivation of a

Schoeneman, *Blurring Professional Borders in Service of Anti-Poverty Collaboration: Combining Social Work Skills and an Anti-Oppressive Feminist Lens with Legal Aid*, 44 J. SOCIO. & SOC. WELFARE 119 (2017); Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459 (1993). Anne Marie Lofaso also has discussed the importance of including diverse interdisciplinary parties in legal and socio-legal reform efforts. See, e.g., Anne Marie Lofaso, *Approaching Coal Mine Safety from a Comparative Law and Interdisciplinary Perspective*, 111 W. VA. L. REV. 1, 11 (2008).

⁶⁹ Notice and comment agency rule-making, however, has long been assailed as a superficial mechanism for public participation. See Dorit Rubinstein Reiss, *Tailored Participation: Modernizing the APA Rulemaking Procedures*, 12 N.Y.U. J. LEGIS. & PUB. POL'Y 321, 336 (2009) (arguing that “Notice and Comment can be also criticized for its format, which, according to some, does not offer sufficient opportunity for participation,” as “[f]or several decades, scholars who advocated deliberative democracy also supported strong citizen input, beyond just receiving public comment”). Critical commentators also assert that highly capitalized corporate interests explicitly co-opt and pervert such supposedly democratic agency processes. See MARY WOOD, *NATURE'S TRUST: ENVIRONMENTAL LAW FOR A NEW ECOLOGICAL AGE* 113–14 (2014) (noting that industry will “pay lobbyists, consultants, and lawyers to game the process at every turn”).

⁷⁰ *Revisited*, *supra* note 2, at 328; *Triple Helix Dilemma*, *supra* note 2, at 222–23.

⁷¹ These could include, among other rules, the overburdensome restrictions on the

“grassroots approach to legal research and analysis,” which would implicate and, in many instances, even centralize, more marginalized parties, including the community at large in a general sense—but also, more specifically, such key actors as grassroots activists and civil disobedients.⁷²

Critical commentators identify civil disobedience, in particular, as crucial for radical social change, which can be tapped into in CLR-informed grassroots alliances.⁷³ As Robin Celikates argues in *Rethinking Civil Disobedience as a Practice of Contestation*, a “critical theory of civil disobedience” ultimately “exposes the tension between institutionalized, constituted, and constituting power, between ‘constitutional politics’ and ‘insurrectional politics.’”⁷⁴ Celikates adds that “[t]his tension, however, is at the basis of democracy—and it keeps open the dialectic between these two poles against the claim that it has been successfully resolved and that no further struggles are necessary.”⁷⁵ Hannah Arendt also has argued that “civilly disobedient citizens should be given access to the very heart of law-making” in order to “once again recapture some of the political energy that is manifest in the annals of the revolutionary tradition.”⁷⁶ A

permitted scope of the lawyer and client relationship and on the unauthorized practice of law. See generally MODEL RULES PRO. CONDUCT r. 1.2 (AM. BAR ASS'N 1983); MODEL RULES PRO. CONDUCT r. 5.5 (AM. BAR ASS'N 1983).

⁷² *Mountain Resistance*, *supra* note 3, at 89. See also Louis Fisher, *Civil Disobedience as Legal Ethics: The Cause-Lawyer and the Tension Between Morality and “Lawyering Law”*, 51 HARV. C.R.-C.L. L. REV. 481, 508 (2016) (exploring a “moral framework through which to justify [cause lawyers’] contravention of ‘lawyering law,’ despite the connotation of moral authority inherent in the ‘code of professional ethics’”).

⁷³ Robin Celikates, *Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm*, 23 CONSTELLATIONS 37, 43 (2016). In contrast, the liberal approach in the Rawlsian tradition instead views civil disobedience as a mere form of *communication* of injustices to the social majority—a plea for change. The liberal Rawlsian approach is therefore generally termed the so-called “communication thesis.” See TONY MILLIGAN, CIVIL DISOBEDIENCE: PROTEST, JUSTIFICATION, AND THE LAW 18 (2013). For Rawls’s foundational liberal work on civil disobedience, see JOHN RAWLS, A THEORY OF JUSTICE 363–68 (1971). The critical approach largely rejects the Rawlsian liberal model and was indeed formulated directly in response to it. See Celikates, *supra* note 73, at 43.

⁷⁴ Celikates, *supra* note 73, at 43.

⁷⁵ *Id.*

⁷⁶ William Smith, *A Constitutional Niche for Civil Disobedience? Reflections on Arendt*, in HANNAH ARENDT AND THE LAW 134, 148 (Marco Goldoni & Christopher McCorkindale eds., 2012) (summarizing Arendt’s position). For Arendt’s specific assertions, see HANNAH ARENDT, CRISES OF THE REPUBLIC: LYING IN POLITICS, CIVIL DISOBEDIENCE ON VIOLENCE, THOUGHTS ON POLITICS, AND REVOLUTION 83–84 (1972) (arguing that “[i]t would be an event of great significance to find a constitutional niche for civil disobedience—of no less significance, perhaps, than the event of the founding of the *constitutio libertatis*, nearly two hundred years ago”).

collectivist CLR-influenced radical cause lawyering approach, then, would explicitly involve incorporating and even centralizing disobedients, other activists, and so forth within re-envisioned grassroots legal research and analysis modes.

Such a critical approach to civil disobedience is grounded in “radical democracy” precepts. Radical democracy involves the proposition that when official, legal institutional channels are “not only limited” for citizens but indeed “prove to be so in ways that make it impossible or at least difficult for citizens to address these limits,” consequently, “[i]n these cases these institutions and channels themselves become obstacles to democratic action.”⁷⁷ Civil disobedience thus becomes a “form of struggle in which the vertical form of state authority is confronted with the horizontal power of the association of citizens or the governed”⁷⁸ Conditions in the United States surpass such limits due to profound, intersecting systemic injustice concerns along lines of race, class, and so forth.⁷⁹ Consequently, as is discussed below in Section II.C, the recent and historic racial justice–based mass uprising embodies core radical democracy precepts as are required for truly revolutionary social transformations.

Adopting a transformative, grassroots approach to legal research and analysis raises significant questions as to the role of legal expertise. Indeed, the appropriate role of “experts” in social movements, including legal experts, rightly remains a contested issue on the Left—i.e., questions persist as to the relative prominence that experts should be afforded.⁸⁰ As broached above, radical cause lawyering and related modes investigate, problematize, and in some instances outright reject notions of privileged legal expertise. For instance, per such lawyering approaches, “high among the priorities” includes the “rejection of hierarchy and of the primacy of technical expertise.”⁸¹ Nevertheless, even a truly

⁷⁷ Celikates, *supra* note 73, at 41.

⁷⁸ *Id.*

⁷⁹ This includes, among other things, the specific circumstances of oligarchic rather than democratic governance constituting our hegemonic status quo in the United States. See Martin Gilens & Benjamin L. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSPS. ON POL. 564, 576–77 (2014).

⁸⁰ Andrew Feenberg, *Realizing Philosophy: Marx, Lukács, and the Frankfurt School*, in CRITICAL THEORY AND THE CHALLENGE OF PRACTICE: BEYOND REIFICATION 129 (Stefano Giacchetti Ludovisi ed., 2015).

⁸¹ Scheingold & Bloom, *supra* note 55, at 216. See also *The Criminalization of Peacemaking*, *supra* note 61, at 318 n.106 (asserting that “[c]lients, however, are disempowered from the onset of the battle when deferring to the expertise of their mouthpieces, lawyers,” and that ultimately through trials “it is the state’s version of truth or understanding that

radical CLR approach—such as one that, among other things, implicates disobedients, grassroots activists, etc. in collectivist legal research and analysis modes—acknowledges that legal and socio-legal experts can occupy a highly beneficial role within social movements. That is, legal experts can collaboratively lend such expertise vis-à-vis a fundamentally supportive form of praxis.

D. Systemic Re-Formations Beyond Law Reform

As discussed above, this Article adopts a truly transformative approach in envisioning CLR as one component within Marxist and socialist-steeped radical cause lawyering modes; this Section now will provide additional theoretical context on the broader implications of this radical critique. Specifically, this Section details why critical commentators advocate for true “systemic re-formations” over mere law reform, as largely emanating from Marx’s foundational work.⁸² This Section also provides concrete examples of what such radical transformations would entail, as steeped in contemporary ecological Marxism, ecosocialism, and ecofeminism. Significantly, however, the ultimate emphasis is on how radical social movements in the United States and beyond already embody such precepts both implicitly and explicitly—i.e., with radical cause lawyers, again, merely supporting such movements vis-à-vis praxis-steeped legal and socio-legal expertise.

1. Marxist Analysis of Law and Capitalism

The notion that “law reform” in-and-of-itself is insufficient is grounded in Marx’s foundational work on capitalism and the role of law under capitalism. Most basically, Marx, together with his frequent collaborator Friedrich Engels, argues that the mode of production generally produces supportive legal and political structures.⁸³ Furthermore, class conflict is the core feature of the organization of production for all modes of production.⁸⁴ Under capitalism, class conflict arises between private

ultimately prevails, and hence the symbolic field is repeatedly created anew”) (quoting Dragan Milovanovic, *Law, Ideology, and Subjectivity: A Semiotic Perspective on Crime and Justice*, in *VARIETIES OF CRIMINOLOGY: READINGS FROM A DYNAMIC DISCIPLINE* 233 (Gregg Barak ed., 1994).

⁸² See KARL MARX & FRIEDRICH ENGELS, *THE COMMUNIST MANIFESTO* 14–16 (Andy Blunden ed., Samuel Moore trans., 2004).

⁸³ See *id.* at 24.

⁸⁴ *Id.* at 8.

owners of the means of production (or the bourgeoisie) and the working class (or the proletariat).⁸⁵ The working class is compelled to sell their labor to capitalists due to basic subsistence needs: capitalists then exploitatively appropriate workers' surplus value in pursuing capital accumulation.⁸⁶

Crucial to Marxist-steeped critiques of law and capitalism is the concept of economic "base" versus the political and legal "superstructure."⁸⁷ As Marx writes in the introduction to *A Contribution to the Critique of Political Economy*, "[i]n the social production which men carry on they enter into definite relations that are indispensable and independent of their will" and that such "relations of production correspond to a definite stage of development of their material powers of production."⁸⁸ Significantly, the "sum total of these relations of production constitute the *economic structure of society—the real foundation, on which rise legal and political superstructures* and to which correspond definite forms of social consciousness."⁸⁹ The economic base, then, generally constitutes a foundation on which supportive political and legal superstructures (e.g., law) are produced to support that base.⁹⁰ As Michael Tigar and Madeleine Levy chronicle in *Law and the Rise of Capitalism*, in the case of the historical rise of the capitalist mode of production, bourgeois actors therefore sought creation of supportive liberal legal structures (e.g., liberal contract and property law) in support of "freer commence" as ultimately achieved vis-à-vis a long class struggle.⁹¹

⁸⁵ *Id.* at 14, 42. Under prior modes of production, class conflict arose, for instance, between patricians and slaves in the case of Rome and in the case feudalism, among peasants, merchants, and lords. *Id.* Capitalism, though, is unique in that the capitalist mode of production wholly displaced workers from control over the means of production; prior modes of production, such as under feudalism, implicated at least partial communal ownership modes for peasants. *Id.*; Tor Krever, *The Rule of Law and the Rise of Capitalism*, in *HANDBOOK ON THE RULE OF LAW* 193–94 (Christopher May & Adam Winchester eds., 2018).

⁸⁶ PETER CUSTERS, *CAPITAL ACCUMULATION AND WOMEN'S LABOR IN ASIAN ECONOMIES* 162 (2d ed. 2012).

⁸⁷ *Id.*

⁸⁸ KARL MARX, *A CONTRIBUTION TO THE CRITIQUE OF POLITICAL ECONOMY* 11 (N.I. Stone trans., Charles H. Kerr & Co., 2d German ed. 1911) (1904).

⁸⁹ *Id.* (emphasis added).

⁹⁰ Krever, *supra* note 85, at 193–95.

⁹¹ MICHAEL E. TIGAR & MADELEINE R. LEVY, *LAW AND THE RISE OF CAPITALISM* 21 (2d ed. 2000). More specifically, Tigar and Levy discuss how class conflict arose between merchants and feudal lords—over the course of eight centuries in Europe—which resulted in the merchant class gradually securing political and legal power. *Id.* The ascendant bourgeoisie then effectuated "lawmaking [resulting in] the creation and application of specific rules about contracts, property and procedure," thus securing "legal rules consistent with freer commerce." *Id.*

2. Contemporary Critical Legal Theory

Such foundational Marxist insights continue to both implicitly and explicitly inform contemporary critical legal theory. Such critical analyses, however, are situated in our current era of late capitalism, typically characterized as globalized neoliberal capitalism, with a materialist approach emphasizing that such late capitalist conditions are operationalized uniquely by exploitative actors in differing nations, regions, localities, and so forth.⁹² Michael M'Gonigle and Louise Takeda proffer one such critique drawing on contemporary critical legal theory.⁹³ Specifically, they put forth a critical “premise of ‘legal laws’ as not the true (or at least not the most important) sources of social regulation because they are themselves products of ‘higher’ level systems, the needs and dynamics of which provide the truly authoritative momentum and direction of social evolution.”⁹⁴

Based on this premise, M'Gonigle and Takeda therefore advocate for a “new, critical, and theoretically-informed landscape beyond intra-systemic ‘reform’ and toward larger ‘re-forms.’”⁹⁵ And such a radical “‘re-formation’ demands a diverse set of new understandings about, and approaches to, the dynamics of constitutive material and cultural forces—from the internal needs of capital, to the spatial compulsions of the state, to the hegemonic effects of dominant discourses.”⁹⁶ The contemporary critical legal theory approach therefore demands true “systemic re-formations” over mere intra-systemic law reform.⁹⁷ Such re-formations necessarily entail radical changes to those forces operating above or behind the law: namely, a revolutionary transformation of the neoliberal ecological political economy.⁹⁸

The Left does not proffer merely one homogenous path forward on the overarching substance and methods of such re-formations. Numerous intersecting discourses and radical visions are required as emanating from maximally diverse parties, and as should be driven, again, primarily by bottom-up social movements globally. However, this Article discusses—as

⁹² See, e.g., M'Gonigle & Takeda, *supra* note 1, at 1065.

⁹³ See *id.* at 1109.

⁹⁴ *Id.*

⁹⁵ *Id.* at 1113.

⁹⁶ *Id.* at 1109.

⁹⁷ *Id.* at 1005–06; see also Will Rhee, *Using the Master's Tool To Dismantle His House: Derrick Bell, Herbert Wechsler, and Critical Legal Process*, 12 CONCORDIA L. REV. 1, 12 (2018) (noting that influential critical race theorist Derrick Bell famously “finds transformative reconstruction of legal doctrine to be impossible”).

⁹⁸ M'Gonigle & Takeda, *supra* note 1, at 1013–14.

leading illustrative examples—the intertwined schools of ecological Marxism, ecosocialism, and ecofeminism, which also inform the CLR discussion on contemporary crises below in Part II—i.e., in addition to other diverse discourses such as those in the intersecting environmental justice (“EJ”) discourse and in the Black Radical Tradition. Furthermore, such schools dovetail directly with the CLR-influenced radical cause lawyering approaches introduced above in Section I.B, in that numerous social movements in the United States and beyond embody such radical precepts and often explicitly draw on core elements of their critiques.⁹⁹

3. Ecological Marxism, Ecosocialism, and Ecofeminism

Contemporary ecological Marxism challenges capitalism’s logic of ceaseless commodification of everything via exploitation of labor and nature (i.e., in pursuit of capital accumulation) and argues for class conflict-steeped revolutionary, rather than reformative, post-capitalist transformations along strongly egalitarian and democratic lines.¹⁰⁰ Ecosocialism proffers a similar radical critique and calls for diverse, collective ownership of the means of production and democratic economic planning from local to global levels.¹⁰¹ Ecosocialism importantly explores both public ownership *and* commons-based expansions, because, as Tero Toivanen argues in *Commons Against Capitalism*, the “public and the commons are seen as two complementary sites of active political struggle.”¹⁰² Toivanen adds that,

⁹⁹ See, e.g., *id.*

¹⁰⁰ HANS A. BAER, DEMOCRATIC ECO-SOCIALISM AS A REAL UTOPIA: TRANSITIONING TO AN ALTERNATIVE WORLD SYSTEM 137 (2018) (noting that “[a] growing number of neo-Marxist scholars as well as other radical scholars have been attempting to integrate ecological considerations into their analyses of various types of social formations and societies,” and that “[s]uch endeavors have been referred to as the ‘political economy of ecology’” among numerous other terms) (quoting James O’Connor, *Political Economy of Ecology of Socialism and Capitalism*, 1 CAPITALISM NATURE SOCIALISM, 93, 93 (1989)); MICHAEL LÖWY, ECOSOCIALISM: A RADICAL ALTERNATIVE TO CAPITALIST CATASTROPHE 3–4 (2015) (providing an overview of ecological Marxist, eco-Marxist, and related radical schools currently integrating both tradition Marxist and environmental concerns). Note that a commodity is a product produced for sale in the market (i.e., for “exchange value” in the market) and not for direct use by the producer. See STEFANO B. LONGO, REBECCA CLAUSEN & BRETT CLARK, THE TRAGEDY OF THE COMMODITY: OCEANS, FISHERIES, AND AQUACULTURE 32 (2015).

¹⁰¹ LÖWY, *supra* note 100, at 26–27.

¹⁰² Tero Toivanen, *Commons Against Capitalism*, in THE POLITICS OF ECOSOCIALISM: TRANSFORMING WELFARE 124–25 (Kajsa Borgnäs, Teppo Eskelinen, Johanna Perkiö & Rikard Warlenius eds., 2015). M’Gonigle and Takeda also discuss the socio-legal dimensions of related transformations: “advocacy for new forms of the ‘commons’ or for ‘co-operative’ new forms of economic organization should be appreciated not just as another

like public ownership dimensions, the “commons need to be collectively protected, planned and regulated.”¹⁰³

Both ecological Marxism and ecosocialism also challenge capitalism’s perpetual economic growth paradigm as unjust and ecologically unsustainable.¹⁰⁴ Such schools draw, for instance, on Marx’s theory of a “metabolic rift” developing “as the social metabolism determined by capitalist relations operat[ing] in conflict with the universal metabolism of nature.”¹⁰⁵ As Stefano Longo and collected authors argue in *The Tragedy of the Commodity*, numerous modes of production have proven ecologically destructive, but capitalism is unique due to the scope and scale of destruction produced by capitalism’s logic of ceaseless capital accumulation and its functional need for perpetual growth.¹⁰⁶ Democratically effectuated “degrowth” is therefore often discussed as an important dimension of post-capitalist transformations, involving, for instance, production for “use value” and not “exchange value” in the market.¹⁰⁷

Ecofeminism draws on related radical critiques and is often discussed as intertwined directly with ecosocialism.¹⁰⁸ Materialist, anti-essentialist ecofeminism holds that all forms of oppression are fundamentally interlinked under liberal capitalism (although are not homogenized or interchangeable)—i.e., along lines of sex, gender, race, Indigenous status, class, caste, environment, speciesism, and so forth.¹⁰⁹ For instance,

set of ‘legal reforms’ for social justice, but as potentially foundational ‘constitutive reformations’ because they address the underlying logics of dominating systems, the underlying system dynamics.” M’Gonigle & Takeda, *supra* note 1, at 1064 n.243.

¹⁰³ Toivanen, *supra* note 102, at 129.

¹⁰⁴ See, e.g., LONGO ET AL., *supra* note 100, at 19.

¹⁰⁵ *Id.* at 26.

¹⁰⁶ *Id.* at 15. As a consequence of such insights, critical commentators often classify the current global ecological crisis, discussed in Section II.A, as being part and parcel of the “Capitalocene,” as compared to the more widely used term “Anthropocene.” See Jason W. Moore, ANTHROPOCENE OR CAPITALOCENE?: NATURE, HISTORY, AND THE CRISIS OF CAPITALISM 5–8 (2016). Per the critical view, “Capitalocene” is the more apt characterization of the current geological age because the capitalist mode of production is most directly responsible for the current global ecological crisis—i.e., and not humans as an essentialized species as implicated vis-à-vis the “Anthropocene” discourse. *Id.* The notion of the Capitalocene, then, “signifies capitalism as a way of organizing nature—as a multispecies, situated, capitalist world-ecology.” *Id.* at 6.

¹⁰⁷ See, e.g., NICHOLAS F. STUMP, REMAKING APPALACHIA: ECOSOCIALISM, ECOFEMINISM, AND LAW 7–8 (2021); MARIA MIES & VANDANA SHIVA, ECOFEMINISM 319 (1993).

¹⁰⁸ See, e.g., Ariel Salleh, *How the Ecological Footprint Is Sex-Gendered*, in ECO-SOCIALISM AS POLITICS: REBUILDING THE BASIS OF OUR MODERN CIVILISATION 146 (Qingzhi Huan ed., 2010).

¹⁰⁹ Greta Gaard, *Ecofeminism Revisited: Rejecting Essentialism and Re-Placing Species*

maximum capital accumulation within the formal economy is dependent upon exploitation along intersecting dimensions, such as largely women-performed unpaid reproductive work (e.g., caregiving and cleaning), communities of color and Indigenous communities (i.e., with women of color beset by compound oppressions), the “free” ecological commons, and profound Global South–based exploitation as intersecting with neocolonialist and neoimperialist structures.¹¹⁰

Ecofeminism thus argues that all forms of oppression must be combatted holistically in pursuing post-capitalist transformations.¹¹¹ Such ecofeminist transformations typically include an intensive focus on notions of care and interconnectivity, production for use value, common and collective co-ownership precepts, strong democratic codetermination at local and regional levels (i.e., per a materialist approach), and local-to-global connections, which often implicate analyses vis-à-vis Global South subsistence modes.¹¹² Ariel Salleh expands on the explicit intersection of ecological feminism and ecosocialism in *How the Ecological Footprint Is Sex-Gendered*: “[A]s housewives, peasants, or indigenes, women are well qualified to design eco-socialist theory and well qualified for practical leadership in the alter-globalisation movement” in both the Global South and North, and women thus “know best how to achieve social justice and cultural autonomy with ecological sustainability.”¹¹³ Salleh’s illustration

in a Material Feminist Environmentalism, 23 FEMINIST FORMATIONS 26, 28 (2011); Christine Bauhardt, *Solutions to the Crisis? The Green New Deal, Degrowth, and the Solidarity Economy: Alternatives to the Capitalist Growth Economy from an Ecofeminist Economics Perspective*, 102 ECOLOGICAL ECON. 60, 61 (2014).

¹¹⁰ Salleh, *supra* note 108, at 142; Gaard, *supra* note 109, at 29. This argument also implicates, of course, the accompanying compound forms of oppression along lines of gender, class, caste, ethnic minority status, and so forth. *Id.* See also Dorceta E. Taylor, *Women of Color, Environmental Justice, and Ecofeminism*, in ECOFEMINISM: WOMEN, CULTURE, NATURE 63 (Karen J. Warren & Nisvan Erkal eds., 1997) (detailing the importance of accounting for intersectional harms and compound forms of oppression via the ecofeminist discourse).

¹¹¹ Salleh, *supra* note 108, at 144–46.

¹¹² Mary Phillips & Nick Rumens, *Introducing Contemporary Ecofeminism*, in CONTEMPORARY PERSPECTIVES ON ECOFEMINISM 1–3 (Mary Phillips & Nick Rumens eds., 2016); MIES & SHIVA, *supra* note 107, at 319–21.

¹¹³ Salleh, *supra* note 108, at 146 (citation omitted). Salleh and other commentators, such as Bina Agarwal, emphasize the importance of anti-essentialism; Agarwal, for instance, argues that women cannot be categorized “as a unitary category, even within a country, let alone across the Third World or globally.” Bina Agarwal, *The Gender and Environment Debate: Lessons from India*, 18 FEMINIST STUD., 119, 150 (1992). The materialist ecological feminist approach also emphasizes that particular power structures as concretely

consequently emphasizes how communities and social movements can drive the radical social change process from the bottom up globally—as introduced above as a crucial critical concept.¹¹⁴ Materialist, anti-essentialist ecofeminism, then, constitutes a potent form of theory, practice, and praxis that, along with ecological Marxism, ecosocialism, and numerous other intersecting discourses such as the Black Radical Tradition discussed below in Section II.C can concretely inform transformative re-formations beyond white patriarchal capitalism.

II. CONTEMPORARY CRISES: A TRANSFORMATIVE APPROACH VIA CLR

This Article will now demonstrate the transformative potential of a radically conceived CLR framework through an illustrative application to three intertwined contemporary crises: climate change and the broader ecological crisis, COVID-19, and the racial state violence that catalyzed the historic Black Lives Matter uprising. For each crisis, a “deconstruction” example will be provided of how legal research mediums channel research outcomes towards hegemonic ends: specifically, through pertinent case law classified within the West categorization system. Thereafter, illustrative “reconstruction” dimensions are outlined for each crisis, as involves (1) collectively drawing on critically informed literature and (2) exploring the core role that CLR-influenced radical cause lawyers can occupy in supporting social movements. However, the CLR treatment provided for each crisis is exploratory only, as the overarching aim of this Article is to demonstrate CLR’s transformative potential—i.e., as then ultimately can be adopted in broader, genuinely collaborative grassroots settings.

A. *Climate Change and Broader Ecological Crisis*

Climate change produced by anthropogenic global warming constitutes an extraordinarily dire threat to humans and all other species on the planet.¹¹⁵ Current global aims as reflected in the Paris Climate

operationalized in specific locations (e.g., along lines of class and caste) can result in “some elite women” constituting “oppressors of other women and the natural world alike.” Gaard, *supra* note 109, at 36.

¹¹⁴ Salleh, *supra* note 108, at 146.

¹¹⁵ See, e.g., *Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C Approved by Governments*, IPCC (Oct. 8, 2018) [hereinafter IPCC], <https://www.ipcc.ch>

Agreement are to limit warming to two degrees Celsius above pre-industrial levels and to strive for a 1.5 degree limit if possible; however, current United Nations (“U.N.”) projections estimate a catastrophic three to five degrees Celsius rise by the end of this century.¹¹⁶ Consequently, the U.N. Intergovernmental Panel on Climate Change (“IPCC”) released a 2018 report which has since been popularized as the “Doomsday report.”¹¹⁷ To avert total global catastrophe, the report advocates for “rapid, far-reaching and unprecedented changes in all aspects of society”¹¹⁸ and notes that the “geographical and economic scales at which the required rates of change in the energy, land, urban, infrastructure and industrial systems would need to take place” do not have a “documented historic precedent.”¹¹⁹ As Mary Wood thus concludes, “increasingly, the science makes clear that this moment can be revolutionary, or it can be suicidal.”¹²⁰ Revolutionary efforts to combat climate change through radical transformations of law and society have not yet occurred—and appear nowhere on the horizon.¹²¹

Environmental legal advocates long have sought elimination of coal-fired energy production as one crucial dimension in halting climate change.¹²² Legal efforts to combat mountaintop removal mining (“MTR”) have constituted one important manifestation of this struggle (i.e., as includes the direct negative impacts of coal extraction in addition to coal-fired

/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/ [https://perma.cc/4JU9-SYQT].

¹¹⁶ *Global Temperatures on Track for 3–5 Degree Rise by 2100: U.N.*, REUTERS (Nov. 29, 2018, 5:40 AM), <https://www.reuters.com/article/us-climate-change-un/global-temperatures-on-track-for-3-5-degree-rise-by-2100-u-n-idUSKCN1NY186> [https://perma.cc/SV42-8H9F].

¹¹⁷ IPCC, *supra* note 115; David Wallace-Wells, *Time To Panic*, N.Y. TIMES (Feb. 16, 2019), <https://www.nytimes.com/2019/02/16/opinion/sunday/fear-panic-climate-change-warming.html> [https://perma.cc/4UJN-JQX5].

¹¹⁸ IPCC, *supra* note 115.

¹¹⁹ Heleen de Coninck, Mustafa Babiker, Paolo Bertoldi, Marcos Buckeridge, Anton Cartwright, Wenjie Dong, James Ford, Sabine Fuss, Jean-Charles Hourcade, Debora Ley, Reinhard Mechler, Peter Newman, Anastasia Revokatova, Seth Schultz, Linda Steg & Taishi Sugiyama, *Strengthening and Implementing the Global Response*, in IPCC SPECIAL REPORT: GLOBAL WARMING OF 1.5°C, at 313, 317 (Amjad Abdulla, Rizaldi Boer, Mark Howden & Diana Ürge-Vorsatz eds., 2018).

¹²⁰ WOOD, *supra* note 69, at 336.

¹²¹ Henry Fountain, *Climate Change Is Accelerating, Bringing World ‘Dangerously Close’ to Irreversible Change*, N.Y. TIMES (Nov. 30, 2021), <https://www.nytimes.com/2019/12/04/climate/climate-change-acceleration.html> [https://perma.cc/XJ5B-JWVY].

¹²² See Matthew Clark, *Banning Coal: Analyzing the Eradication of Coal in North America*, 49 TEX. ENV’T L.J. 101, 112 (2019).

power plants' profound climate change contributions).¹²³ A researcher exploring such precedent via legal research mediums—such as Westlaw, per the illustration below—would discover a Fourth Circuit litigation pattern ruling in favor of MTR operators.¹²⁴ One such decision is *Ohio Valley Environmental Coalition v. Aracoma Coal Co.*¹²⁵ In this case, a West Virginia district court agreed with environmental plaintiffs that alleged the U.S. Army Corps of Engineers had failed to adequately assess ecological impacts in issuing MTR operator permits.¹²⁶ The Fourth Circuit, however, reversed on appeal in holding that the lower court could not “substitute its judgement” for that of the U.S. Army Corps of Engineers.¹²⁷

As introduced above in Section I.A.1 on CLR methods for deconstructing legal research mediums, the West *Federal Supplement* version of this case extracts points of law as headnotes and classifies each vis-à-vis the West categorization scheme.¹²⁸ More specifically, one West headnote from *Ohio Valley Environmental Coalition* reads as follows: “Because National Environmental Policy Act (NEPA) is a procedural and not a results-driven statute, even agency action with adverse environmental effects can be NEPA-compliant so long as the agency has considered those effects and determined that competing policy values outweigh those costs.”¹²⁹ The accompanying West classification categories to this headnote read as follows: “National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq. 149E Environmental Law; 149EXII Assessments and Impact Statements; 149Ek577 Duty of government bodies to consider environment in general.”¹³⁰

Recall that the West categorization system functions to reflect and reify hegemonic values; or in this case's headnote, fundamentally unjust liberal environmental law. Generally speaking, the critical perspective reveals that U.S. environmental law does not halt ecological destruction.

¹²³ *Mountain Resistance*, *supra* note 3, at 119.

¹²⁴ See *Kentuckians for Commonwealth, Inc. v. Rivenburgh*, 317 F.3d 425, 431–33, 452 (4th Cir. 2003).

¹²⁵ *Ohio Valley Env't Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 217 (4th Cir. 2009).

¹²⁶ *Id.* at 185–86.

¹²⁷ *Id.* at 198 (quoting *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971), *abrogated by Califano v. Sanders*, 430 U.S. 99 (1977)).

¹²⁸ *Westlaw Headnote 3, Environmental Law* [hereinafter *Westlaw Headnote 3*], <https://1.next.westlaw.com> [<https://perma.cc/BT4P-U95A>] (search for “Ohio Valley Environmental Coalition v. Aracoma Coal Co.”; click from dropdown first federal case with date of “2/13/2009”; then click “West Headnotes” in the table of contents) (last visited Nov. 13, 2022).

¹²⁹ *Id.*

¹³⁰ *Id.*

Rather, as a form of supportive liberal legal structure, environmental law largely *organizes* such destruction vis-à-vis such prime mechanisms as permit-to-pollute regimes—which are administered by agencies wholly “captured” by pertinent industry.¹³¹ Environmental law, then, in no way challenges the ecologically unsustainable liberal capitalist paradigm—as it merely supports, in this instance, maximum capital accumulation on the part of fossil fuel interests via fundamentally supportive permitting regimes.¹³²

In reflecting this fundamental reality, the *Ohio Valley Environmental Coalition* headnote states that “even agency action with adverse environmental effects” is acceptable so long as baseline agency procedures are followed (which typically agencies are accorded great deference by the judiciary even when patently flawed).¹³³ A legal researcher exploring this headnote therefore would internalize such liberal environmental legal dictates per the reification process. As further reification, the West classification category of “149Ek577 Duty of government bodies to consider environment in general” provides, to the legal researcher, the appearance of legal-categorization expertise and authority.¹³⁴ That is, the headnote language of a “duty of government bodies” and the finely calibrated numerical system designator of “149Ek577” suggests that the state *must* be subject to reasonable accountability measures, as denoted by such authoritative-seeming categorizations.¹³⁵ As discussed above, however, such a state “duty” to “consider environment in general” is tantamount to no duty at all—in constituting a mere rubberstamp for, in this instance,

¹³¹ WOOD, *supra* note 69, at 57–58, 114.

¹³² See STUMP, *supra* note 107, at 5.

¹³³ *Westlaw Headnote 3*, *supra* note 128. As is noted in the dissent in part and concurrence in part: “Today’s decision will have far-reaching consequences for the environment of Appalachia,” as “[i]t is not disputed that the impact of filling valleys and headwater streams is irreversible or that headwater streams provide crucial ecosystem functions,” and “[f]urther, the cumulative effects of the permitted fill activities on local streams and watersheds are considerable.” *Ohio Valley Env’t Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 226 (4th Cir. 2009) (Michael, J., dissenting in part, concurring in part). Moreover, in failing to require the Corps to undertake a meaningful assessment of the functions of the aquatic resources being destroyed and by allowing the Corps to proceed instead with a one-to-one mitigation that takes no account of lost stream function, this court risks significant harm to the affected watersheds and water resources.

Id. As a consequence, “[w]e should rescind the four permits at issue in this case until the Corps complies with the clear mandates of the regulations.” *Id.*

¹³⁴ *Westlaw Headnote 3*, *supra* note 128.

¹³⁵ *Id.*

MTR-produced ecological destruction via extraction (and thereafter through coal-fired power plant-produced climate change).¹³⁶

In transcending such hegemonic liberal values embodied in West categories and beyond, recall that CLR advocates for adoption of “reconstruction” methods, such as first drawing on critical legal theory-informed resources, as introduced in Section I.B. More specifically, such a critical legal environmental approach entails abandonment of liberal environmental law “reform” in favor of true systemic re-formations beyond white patriarchal capitalism (as discussed in Section I.D). Environmental justice—as embedded in ecosocialist and especially ecofeminist discourses—is a crucial dimension of this approach.¹³⁷ Environmental Justice emphasizes from a distributive justice standpoint that environmental harms disproportionately oppress marginalized communities along lines of race, class, gender, Indigenous status, the Global South divide, and so forth—as is certainly the case with the current and future-projected impacts of both coal extraction and climate change.¹³⁸

The explicit ecofeminist EJ standpoint explores the intersectional and compounding effects of such oppressions while situating this analysis within the logic of capitalism and in the context of post-liberal capitalist explorations.¹³⁹ Ecofeminist-steeped EJ also recognizes that global environment activist and activist-leaders typically are women of color, Indigenous women, and poor and working-class women and again emphasizes that bottom-up social movements driven by such core actors are imperative for transformative change, which, as discussed below, CLR-influenced radical cause lawyers could support through praxis.¹⁴⁰

Furthermore, to genuinely combat the climate crisis, ecosocialism dictates that post-capitalist systemic re-formations involving collective ownership modes and multi-scale democratic economic planning are required.¹⁴¹ That is, to avert catastrophe, immediate action is required to halt carbon emissions, which only can be effectuated nationally and globally through radical state action: In this instance, the state rapidly nationalizing and then eliminating the coal industry and broader fossil fuel sector

¹³⁶ *Id.*

¹³⁷ Eric K. Yamamoto & Jen-L W. Lyman, *Racializing Environmental Justice*, 72 U. COL. L. REV. 311, 359 (2001).

¹³⁸ Jedediah Purdy, *The Long Environmental Justice Movement*, 44 ECOLOGY L.Q. 809, 810–11 (2018).

¹³⁹ Taylor, *supra* note 110, at 63–64.

¹⁴⁰ JOYCE M. BARRY, *STANDING OUR GROUND: WOMEN, ENVIRONMENTAL JUSTICE, AND THE FIGHT TO END MOUNTAINTOP REMOVAL* 41 (2012).

¹⁴¹ “*Non-Reformist Reforms*”, *supra* note 3, at 15.

(i.e., the natural gas industry).¹⁴² Such transformations stand in stark contrast to the fundamentally flawed “reform” approaches attempted incrementally within the liberal environmental law regime.

Radical economic and socio-legal actions along such lines only could be effectuated following mass, bottom-up actions on the part of the citizenry. Indeed, historic grassroots movements demanding structural re-formations against climate change began emerging globally in 2019—as associated with youth leaders such as Isra Hirsi, Bertine Lakjohn, Autumn Peltier, and Greta Thunberg—but which have been generally in abeyance following COVID-19’s multitudinous effects on society.¹⁴³

Ecosocialism and ecofeminism also explore how, beyond climate change singularly, a broader global ecological crisis involves both ecosystem destruction worldwide (e.g., fishery depletion and deforestation) and other pollution issues (e.g., nitrogen excess in oceans).¹⁴⁴ Even if halting climate change somehow was effectuated from within the liberal capitalist paradigm—which almost certainly is impossible due to flawed market-based climate change approaches, the structural momentum of “fixed” capital in fossil fuel resources (e.g., pre-existing coal-fired power plants),

¹⁴² LÖWY, *supra* note 100, at 23–24; HANS A. BAER, GLOBAL CAPITALISM AND CLIMATE CHANGE: THE NEED FOR AN ALTERNATIVE WORLD SYSTEM 220–21 (2012).

¹⁴³ Safire R. Sostre, *7 Teen Activists of Color You Need to Know Who Are Leading the Fight Against Climate Change*, BUST, <https://bust.com/feminism/196496-7-teen-female-climate-activists-of-color.html> [<https://perma.cc/7AK4-FRNF>] (last visited Nov. 13, 2022).

¹⁴⁴ JAMES GUSTAVE SPETH, THE BRIDGE AT THE END OF THE WORLD: CAPITALISM, THE ENVIRONMENT, AND CROSSING FROM CRISIS TO SUSTAINABILITY 20, 38 (2008). Johan Rockström and collected authors also put forth highly influential work on exceeding “planetary boundaries.” See Johan Rockström, Will Steffen, Kevin Noone, Åsa Persson, F. Stuart Chapin III, Eric Lambin, Timothy M. Lenton, Marten Scheffer, Carl Folke, Hans Joachim Schellnhuber, Björn Nykvist, Cynthia A. de Wit, Terry Hughes, Sander van der Leeuw, Henning Rodhe, Sverker Sörlin, Peter K. Snyder, Robert Costanza, Uno Svedin, Malin Falkenmark, Louise Karlberg, Robert W. Correll, Victoria J. Fabry, James Hansen, Brian Walker, Diana Liverman, Katherine Richardson, Paul Crutzen & Jonathan Foley, *Planetary Boundaries: Exploring the Safe Operating Space for Humanity*, 14 *ECOLOGY & SOC’Y*, no. 2, 2009, <https://www.ecologyandsociety.org/vol14/iss2/art32/> [<https://perma.cc/86JL-D76G>]. As they write: “[a]nthropogenic pressures on the Earth System have reached a scale where abrupt global environmental change can no longer be excluded,” and so they “propose a new approach to global sustainability in which we define planetary boundaries within which we expect that humanity can operate safely.” *Id.* They add that “transgressing one or more planetary boundaries may be deleterious or even catastrophic due to the risk of crossing thresholds that will trigger non-linear, abrupt environmental change within continental- to planetary-scale systems.” *Id.* What is more, they estimate that, at that time of writing, “humanity has already transgressed three planetary boundaries: for climate change, rate of biodiversity loss, and changes to the global nitrogen cycle.” *Id.*

and so forth—capitalism would remain an ecologically unsustainable paradigm.¹⁴⁵ That is, capitalism's logic of ceaseless capital accumulation through subordination of nature and labor—and its functional perpetual growth mandate—would continue unabated, which is inconsistent with our material world of bounded resources.¹⁴⁶ This concept is illustrated, for instance, by Marx's observations on a “metabolic rift” and the more contemporary notions of the “tragedy of the commodity” and “Capitalocene” discussed in this Article.¹⁴⁷ Consequently, even if climate change was somehow “solved” from within the system, liberal capitalism nevertheless would inevitably produce further catastrophic ecological and social breakdowns.¹⁴⁸

Accordingly, Section I.C's core emphasis on CLR-influenced radical cause lawyers occupying a fundamentally supportive role within intersectional-steeped grassroots alliances is directly applicable in such ecosocialist and ecofeminist efforts to combat climate change and the broader ecological crisis. Intra-systemic environmental law reform attempted from within the white patriarchal capitalist paradigm is a futile approach. Only bottom-up, radical mass movements can achieve the required transformative change, which CLR-influenced radical cause lawyers could support through praxis, as drawing on critical environmental legal theory, socio-legal EJ theory, and related forms of environmental legal expertise.¹⁴⁹

There is, furthermore, no shortage of intersectional-steeped grassroots environmental social movements for CLR-influenced radical cause lawyers to support.¹⁵⁰ While COVID-19 has stalled the historic climate change protests that emerged in 2019, innumerable grassroots organizations remain active from local to global scales.¹⁵¹ CLR-influenced

¹⁴⁵ ANDREAS MALM, *FOSSIL CAPITAL: THE RISE OF STEAM POWER AND THE ROOTS OF GLOBAL WARMING* 359 (2016).

¹⁴⁶ See STUMP, *supra* note 107, at 50.

¹⁴⁷ See *supra* notes 105–06 and accompanying text.

¹⁴⁸ See STUMP, *supra* note 107, at 41, 49.

¹⁴⁹ As is noted in Section II.C, CLR-influenced radical cause lawyers also belong in the streets with other environmental protestors or else in comparable direct-supportive roles beyond legal expertise singularly (e.g., organizing donations).

¹⁵⁰ See Purdy, *supra* note 138, at 811, 816, 833.

¹⁵¹ See, e.g., Lindley Mease, *Coronavirus Pandemic Shows We Need New Ways To Look After the Earth and Each Other*, CLIMATECHANGENEWS.COM (Mar. 24, 2020), <https://www.climatechangenews.com/2020/03/24/coronavirus-pandemic-shows-need-new-ways-look-earth/> [<https://perma.cc/6VFP-DSLH>] (arguing that the “coronavirus is the best case for universal healthcare worldwide and climate justice solutions that promote community cohesion,” and that “[g]rassroots climate justice movements are building the political

radical cause lawyers must simply further organize themselves, dig in, and begin.

B. COVID-19

The novel coronavirus SARS-CoV-2 and its disease spectrum (COVID-19) emerged in December 2019 and has since wrought a historic and profound array of epidemiological, social, political, and economic crises (due largely to ruling class “failures” in the United States and beyond).¹⁵² The World Health Organization (“WHO”) reports that “[c]oronaviruses are a large family of viruses which may cause illness in animals or humans” and that the “WHO Director-General declared that the outbreak constitutes a Public Health Emergency of International Concern (PHEIC) on 30 January 2020 and a Pandemic on 11 March 2020.”¹⁵³ The WHO adds that “[p]eople aged 60 years and over, and those with underlying medical problems like high blood pressure, heart and lung problems, diabetes, obesity or cancer, are at higher risk of developing serious illness.”¹⁵⁴ As of July 2022, 573 million COVID-19 cases had been confirmed globally, with over ninety million confirmed U.S. cases.¹⁵⁵ Current COVID-19 deaths total over six million globally and over one million in the United States.¹⁵⁶

Hegemonic structural forms of oppression also have resulted in disproportionate infections and deaths along such intersecting lines as race, class, and age.¹⁵⁷ Moreover, the differing economic ills engendered

power and self-determination of communities worldwide, which makes them better equipped to handle these kinds of crises”).

¹⁵² *Coronavirus Disease (COVID-19) Q&A*, WHO (May 13, 2021), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> [<https://perma.cc/K36X-D8VZ>] (click “What is COVID-19?”).

¹⁵³ *Coronavirus Disease (COVID-19)*, WHO, [https://www.who.int/teams/health-product-policy-and-standards/standards-and-specifications/vaccine-standardization/coronavirus-disease-\(covid-19\)](https://www.who.int/teams/health-product-policy-and-standards/standards-and-specifications/vaccine-standardization/coronavirus-disease-(covid-19)) [<https://perma.cc/UB53-34SF>] (last visited Nov. 13, 2022).

¹⁵⁴ *Coronavirus Disease (COVID-19) Q&A*, *supra* note 152 (click “Who is most at risk of severe illness from COVID-19?”).

¹⁵⁵ *COVID-19 Dashboard (Global Map)*, CTR. SYS. SCI. & ENG’G, JOHN HOPKINS UNIV. & MED. CORONAVIRUS RES. CTR. [hereinafter *COVID-19 Dashboard (Global Map)*], <https://coronavirus.jhu.edu/map.html> [<https://perma.cc/5FG9-ZEWU>] (last visited Nov. 13, 2022) (numbers obtained July 2022); *COVID-19 Dashboard (U.S. Map)*, CTR. SYS. SCI. & ENG’G, JOHN HOPKINS UNIV. & MED. CORONAVIRUS RES. CTR. [hereinafter *COVID-19 Dashboard (U.S. Map)*], <https://coronavirus.jhu.edu/us-map> [<https://perma.cc/SB7V-GZBZ>] (last visited Nov. 13, 2022) (numbers obtained July 2022).

¹⁵⁶ *COVID-19 Dashboard (Global Map)*, *supra* note 155; *COVID-19 Dashboard (U.S. Map)*, *supra* note 155.

¹⁵⁷ See, e.g., Whitney Laster Pirtle, *Racial Capitalism: A Fundamental Cause of Novel*

by COVID-19 have similarly, of course, produced disproportionate impacts along intersecting lines of structural oppression.¹⁵⁸ In this way, the ruling classes' "failure" to contend with COVID-19 should not be construed as inadvertent—but rather as largely *purposeful* in protecting pre-existing white patriarchal capitalist power structures at the explicit expense of marginalized communities. More specifically, COVID-19 has ravaged the United States due to a racist for-profit healthcare paradigm designed for maximum capital accumulation among elites (as discussed in more detail below via critically informed notions of a "medical industrial complex")—and, correspondingly, only limited state healthcare provisioning marked by related structural oppressions and as further degraded in recent decades by neoliberal austerity measures.¹⁵⁹

Legal reformers have long sought to protect and expand the limited state healthcare provisioning that does exist in the United States, which includes Medicare, Medicaid, the Children's Health Insurance Program, the Indian Health Service program, and the Veteran Health Administration program.¹⁶⁰ Neoliberal state and private actors, however, have of course vigorously contested such efforts.¹⁶¹ A legal researcher exploring this pattern likely would discover the New Jersey Superior Court decision *Guaman v. Velez*.¹⁶² In this decision, the court held that New Jersey could eliminate state Medicaid benefits for adults who had not yet reached five years of legal permanent residency—i.e., without violating

Coronavirus (COVID-19) Pandemic Inequities in the United States, 47 HEALTH EDUC. BEHAV. 504, 504–06 (2020). Pirtle argues that

racism and capitalism mutually construct harmful social conditions that fundamentally shape COVID-19 disease inequities because they (a) shape multiple diseases that interact with COVID-19 to influence poor health outcomes; (b) affect disease outcomes through increasing multiple risk factors for poor, people of color, including racial residential segregation, homelessness, and medical bias

¹⁵⁸ Connor Maxwell, *Coronavirus Compounds Inequality and Endangers Communities of Color*, CTR. FOR AM. PROGRESS (Mar. 27, 2020), <https://www.americanprogress.org/issues/race/news/2020/03/27/482337/coronavirus-compounds-inequality-endangers-communities-color/> [<https://perma.cc/7PZX-5QQX>].

¹⁵⁹ HOWARD WAITZKIN, HEALTH CARE UNDER THE KNIFE: MOVING BEYOND CAPITALISM FOR OUR HEALTH 13 (2018).

¹⁶⁰ See Ani B. Satz, *Overcoming Fragmentation in Disability and Health Law*, 60 EMORY L.J. 277, 301–02 (2010).

¹⁶¹ For recent such efforts, see, e.g., Alan Rappeport & Maggie Haberman, *Trump Opens Door to Cuts to Medicare and Other Entitlement Programs*, N.Y. TIMES (Feb. 10, 2020), <https://www.nytimes.com/2020/01/22/us/politics/medicare-trump.html> [<https://perma.cc/K638-KFKD>].

¹⁶² See 74 A.3d 931 (N.J. App. Div. 2013), *aff'd*, 110 A.3d 927 (N.J. 2015).

constitutional equal protection rights—as such elimination “operate[s] harmoniously’ within the federal program.”¹⁶³

In again drawing on CLR deconstruction methods from Section I.A, the *West Atlantic Reporter* extracts points of law from this case as headnotes and categorizes each vis-à-vis the West classification system.¹⁶⁴ One headnote from *Guaman* reads as follows:

State’s reinstatement of five-year residency requirement for adult legal permanent resident aliens to obtain state-funded Medicaid benefits did not violate equal protection rights of aliens; the [U.S.] Congress imposed a five-year residency requirement under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) for resident aliens to be eligible for federal Medicaid benefits, and the State could limit eligibility for Medicaid-related programs to only those persons whose participation was supported by federal funding.¹⁶⁵

The corresponding West classification categories read as follows: “198H; Health 198HIII Government Assistance; 198HIII(B) Medical Assistance in General; Medicaid; 198Hk466 Eligibility for Benefits; 198Hk470 Aliens.”¹⁶⁶

The West system in *Guaman* therefore reflects and reifies, in this instance, the patently unjust U.S. liberal healthcare system. The exploitative U.S. health system is designed largely for maximum capital accumulation among large corporate healthcare interests such as the insurance, pharmaceutical, and hospital sectors—and *not* to ensure all residents’ health and well-being (which is an impossibility with such hyper-commodification of healthcare).¹⁶⁷ Critical commentators have characterized such collected exploitative actors, for instance, as the “medical industrial complex.”¹⁶⁸ Furthermore, the critical perspective reveals that the liberal U.S. healthcare system is embedded with intertwined classist, racist, sexist, anti-LGBTQ+,

¹⁶³ *Id.* at 944.

¹⁶⁴ *Id.* at 931.

¹⁶⁵ *Westlaw Headnote 1, Constitutional Law, Health* [hereinafter *Westlaw Headnote 1, Constitutional Law*], <https://1.next.westlaw.com> [<https://perma.cc/L2ZJ-ZA6V>] (search for “Guaman v. Velez”; click from dropdown case with date of “8/13/2013”; then click “West Headnotes” in the table of contents) (last visited Nov. 13, 2022).

¹⁶⁶ *Id.*

¹⁶⁷ WAITZKIN, *supra* note 159, at 195.

¹⁶⁸ *Id.* at 13.

and xenophobic-nationalist values, characteristic of liberal capitalism.¹⁶⁹ For instance, critical race theory explorations illustrate “the historical and sociopolitical roots of present-day health inequalities” and also “elucidate the link between power imbalances inherent in racism and health experiences and outcomes” in addition to healthcare access.¹⁷⁰ An intersectionality lens also demonstrates that an analysis based on such “overlapping circles” as race, gender, immigrant status, etc. “allow for a more nuanced, sequentially interactive, iterative, and multidimensional understanding of health inequalities.”¹⁷¹

Limited state healthcare provisioning provided by Medicaid—as at issue in *Guaman*—also embodies related forms of structural oppression. Critical commentators have argued that Medicaid “was built on the foundation of earlier public assistance programs, with all their existing racist, distorted, and discriminatory aspects,” as it “imposed means and asset testing and allowed states to determine income eligibility for coverage.”¹⁷² The contemporary Medicaid paradigm persists in embodying “racism baked into Medicaid’s founding” such as through adding work requirements disproportionately harming groups along race and gender lines: These include racist hiring policies inhibiting work obtainment and women’s disproportionate performance of reproductive labor not constituting “work” under pertinent policies.¹⁷³ So, too, does immigrant status intersect with such race, gender, and class critiques of Medicaid—such as through the general exclusion of nondocumented immigrants and the discriminatory five-year residency requirement for legal permanent residents.¹⁷⁴

¹⁶⁹ Yusra Ribhi Shawar & Jennifer Prah Ruger, *The Politics of Global Health Inequalities: Approaches to Studying the Role of Power*, in THE OXFORD HANDBOOK OF GLOBAL HEALTH PROBLEMS 69–70 (Colin McInnes, Jeremy Youde & Kelley Lee eds., 2020).

¹⁷⁰ *Id.* at 67.

¹⁷¹ *Id.* at 67, 70; see also Osagie K. Obasogie, Irene Headen & Mahasin S. Mujahid, *Race, Law, and Health Disparities: Toward a Critical Race Intervention*, 13 ANN. REV. L. & SOC. SCI. 313, 313 (2017) (articulating “a brief overview of the literature documenting black/white differences in health across the life course”).

¹⁷² Cindy Pearson, *Protecting and Expanding Medicaid Means Confronting Racism Baked into the Program*, NAT’L WOMEN’S HEALTH NETWORK (Apr. 3, 2019), <https://www.nwhn.org/protecting-and-expanding-medicaid-means-confronting-racism-baked-into-the-program/> [<https://perma.cc/AXD4-5UJE>].

¹⁷³ *Id.*; see also *Taking Away Medicaid for Not Meeting Work Requirements Harms Women*, CTR. ON BUDGET & POL’Y PRIORITIES (Mar. 10, 2020), <https://www.cbpp.org/research/health/taking-away-medicaid-for-not-meeting-work-requirements-harms-women> [<https://perma.cc/WT46-KCPE>].

¹⁷⁴ See Priscilla Huang, *Anchor Babies, Over-Breeders, and the Population Bomb: The Reemergence of Nativism and Population Control in Anti-Immigration Policies*, 2 HARV.

Consequently, the West headnote from *Guaman* reflects this fundamental reality in stating that New Jersey’s reinstitution of a half-decade “residency requirement for adult legal permanent resident aliens to obtain state-funded Medicaid benefits” was acceptable merely because it works “harmoniously” with federal legislation.¹⁷⁵ The West categories of “198Hk466 Eligibility for Benefits” and “198Hk470 Aliens” also provide seemingly expert and finely calibrated classifications for this point of law, providing a veneer of authoritativeness.¹⁷⁶ A legal researcher exploring this headnote thus internalizes such liberal health law dictates per the reification process. However, as the court itself notes, plaintiffs and amici curiae assert that this policy is “fiscally short-sided, inhumane, and unfairly singles out a group—legal resident aliens . . .”¹⁷⁷ The critical perspective further reveals that denying previously eligible legal residents Medicaid benefits is merely a neoliberal-right austerity measure ultimately undergirded by anti-immigrant biases—i.e., as implicating intertwined racism, sexism, classism, and xenophobic-nationalism that inform all contemporary U.S. immigration-related policies.¹⁷⁸

Pivoting to CLR “reconstruction” methods from Sections I.B–C, in order to transcend the hegemonic liberal healthcare paradigm embodied in the West system and beyond, a researcher can instead draw on critical legal theory-informed resources. Compared to liberal health law “reform,” true “systemic re-formations” of healthcare provisioning in the United States would entail overcoming white patriarchal liberal capitalism in its entirety. In the first place, innumerable commentators have called for universal healthcare modes in the United States—such transformations undoubtedly are required.¹⁷⁹ However, such measures are in-and-of-themselves insufficient without being part and parcel of broader radical transformations (such as the ecosocialist- and ecofeminist-steeped transformations discussed below). That is, universal healthcare modes embedded

L. & POLYREV. 385, 386, 390 (2008). Emergency Medicaid can constitute a limited exception. *Id.* at 391. As Huang correctly argues, although “coded otherwise, there is little question that the current immigration debate is really about race,” but “[t]he underlying nativism of the anti-immigration movement remains largely unrecognized and is being played out through the bodies of immigrant women in subtle and seemingly neutral ways.” *Id.* at 398.

¹⁷⁵ *Westlaw Headnote 1, Constitutional Law, supra* note 165.

¹⁷⁶ *Id.*

¹⁷⁷ *Guaman v. Velez*, 74 A.3d 931, 942 (N.J. App. Div. 2013).

¹⁷⁸ *See, e.g.,* Huang, *supra* note 174, at 399.

¹⁷⁹ *See* Peter S. Arno & Philip Caper, *Medicare For All: The Social Transformation of US Health Care*, HEALTH AFFS. (Mar. 25, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200319.920962/full/> [<https://perma.cc/PW4B-VNT3>].

in liberal capitalism would constitute a mere partial “back end” fix only, as the broader capitalist ecological political economy would continue to engender intersecting structural forms of oppression.¹⁸⁰ Consequently, even with universal healthcare, liberal capitalism would necessarily continue to degrade health and well-being—particularly among the most marginalized populations—as capitalism, again, functionally requires subordination of labor and nature in addition to ecologically unsustainable perpetual growth.¹⁸¹

More specifically, owners of capital extract maximum surplus value from workers through, for instance, paying as-close-as-possible subsistence wages, by leveraging largely female-performed unpaid reproductive labor (further contributing to poverty), and by otherwise adopting “long working hours” and “unhealthy conditions of work,” which all lead to “misery, illness, and premature death.”¹⁸² Furthermore, neoliberal capitalism’s fixation on austerity measures, deregulation, and privatization, which are ultimately effectuated by and to the benefit of large capital interests seeking to restore class power lost during the liberal welfare state era,¹⁸³ also has vastly degraded human health and welfare. Prime examples include crumbling infrastructure (e.g., the Flint, Michigan, and Central Appalachian potable water crises) and environmental and public safety law rollbacks and nonenforcement, which, as the EJ discussion above demonstrates, target marginalized communities in particular.¹⁸⁴

As discussed above in Section II.A, global neoliberal capitalism’s perpetual growth paradigm as entwined with climate change also poses a truly existential threat to societies worldwide—that universal healthcare alone simply cannot redress on the “back end.”¹⁸⁵ Critical commenters have, in fact, explicitly discussed COVID-19’s emergence in the broader

¹⁸⁰ WAITZKIN, *supra* note 159, at 238.

¹⁸¹ *Id.*

¹⁸² ROHINI HENSMAN, WORKERS, UNIONS, AND GLOBAL CAPITALISM: LESSONS FROM INDIA 12 (2011).

¹⁸³ DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 19 (2007). As critical commentators assert, bottom-up class struggles *directly* produced the liberal welfare state era in the first place—not the supposed benevolence of national policymakers. See RHONDA F. LEVINE, CLASS STRUGGLE AND THE NEW DEAL: INDUSTRIAL LABOR, INDUSTRIAL CAPITAL, AND THE STATE 15–16 (1988).

¹⁸⁴ See, e.g., Priya Baskaran, *Thirsty Places*, 2021 UTAH L. REV. 501, 511–29 (2021) (providing a comparative analysis of the Flint, Michigan, and Appalachian water crises from an infrastructure-EJ perspective and a broader analysis vis-à-vis neoliberal capitalist austerity measures).

¹⁸⁵ WAITZKIN, *supra* note 159, at 238.

context of the global ecological crisis wrought primarily by capitalism.¹⁸⁶ Andreas Malm has argued that there exist numerous such broad causal links, as, for instance, the “rise in the rate of infectious diseases jumping from wild animals to human populations” has been caused in large part through capitalist-driven deforestation via logging, agriculture, and so forth (with deforestation also constituting a major climate change contributor).¹⁸⁷ Rising global temperatures produced by climate change additionally cause some species “to migrate in search of climates that match those to which they are adapted,” thus also placing such animals in contact with human populations, thereby increasing the risk and prevalence of global pandemics such as COVID-19.¹⁸⁸

Ultimately, then, as “collapses of municipal water quality, and epidemics produced by multinational agribusiness show, social and environmental determinants impact health outcomes for billions of people, which even the very best health care systems can treat only on the back end.”¹⁸⁹ Universal healthcare modes must therefore be merely part and parcel of broader post-capitalist transformations such as those put forth by eco-socialism and ecofeminism (e.g., entailing multi-scale democratic planning for healthcare as intersecting with other structural issues); such transformations would seek to eliminate, among other things, existential “front end” concerns produced by or otherwise causally linked to capitalism (e.g., climate change and COVID-19).¹⁹⁰

Per ecosocialist thought, universal healthcare modes need not be homogenized as they instead should reflect material demands locally, regionally, and so forth. Correspondingly, such diverse healthcare modes could entail combinations of both public services and commons-based expansions broached above in Section I.D. For instance, on the core ecosocialist- and ecofeminist-steeped notion of commons expansions and the use of a radically transformed state to effectuate “commonification” (rather than commodification), “a truly socialized medicine” could indeed “integrate public health as a shared commons across populations.”¹⁹¹ Such an ecosocialist-steeped commonification of healthcare could “reproduce,

¹⁸⁶ Dominic Mealy, “*To Halt Climate Change, We Need an Ecological Leninism*”: An Interview with Andreas Malm, JACOBIN (June 15, 2020), <https://jacobin.com/2020/06/andreas-malm-coronavirus-COVID-climate-change> [<https://perma.cc/ZYF3-MF5L>].

¹⁸⁷ *Id.* Malm notes that “animal pathogens are able to mutate and leap into human populations through a process called zoonotic spillover.” *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ WAITZKIN, *supra* note 159, at 237–38.

¹⁹⁰ *See, e.g.*, Toivanen, *supra* note 102, at 126.

¹⁹¹ WAITZKIN, *supra* note 159, at 237–38.

protect and expand social and environmental justice which private (or public) services are not able to maintain.”¹⁹² But so, too, could public services function as part of diversely conceived universal healthcare modes.

Section I.C's core emphasis on CLR-influenced radical cause lawyers occupying a supportive role within intersectional-steeped grassroots alliances through praxis also is directly applicable in such ecosocialist and ecofeminist efforts to achieve universal healthcare modes. There exists no shortage of radical social movements in the United States and beyond seeking to achieve, protect, or expand universal healthcare—many of which simultaneously are seeking intertwined justice along lines of race, gender, LGBTQ+ status, Indigenous status, immigrant status, and the global ecological crisis all as part and parcel of comprehensive post-capitalist transformations.¹⁹³ CLR-influenced radical cause lawyers, then, could further support such social movements with niche health-related legal and socio-legal expertise vis-à-vis praxis.¹⁹⁴

It must be reemphasized that, in the case of the United States, to combat the entrenched, highly capitalized power structure—or again, the medical industrial complex—such transformations could only be effectuated via mass social movements (as potentially CLR-supported).¹⁹⁵ Eco-socialist- and ecofeminist-steeped universal health care modes certainly would constitute a profound redistribution of wealth and power away from such elite capital interests and towards the people (and again, particularly the most marginalized communities), which indeed could only be achieved through mass bottom-up struggles.¹⁹⁶ As discussed next in

¹⁹² See Toivanen, *supra* note 102, at 126.

¹⁹³ See, e.g., *The Preamble*, MOVEMENT FOR BLACK LIVES (M4BL), <https://m4bl.org/policy-platforms/the-preamble/> [<https://perma.cc/L6P3-4NUS>] (noting that “[w]hile this platform is focused on domestic policies, we know that cisheteropatriarchy, ableism, exploitative racial capitalism, imperialism, militarism, and white supremacy and nationalism are global structures,” and “[w]e move in solidarity with our international family against the ravages of global racial capitalism and anti-Black racism, human-made climate change, Islamophobia, war, and exploitation”) (last visited Nov. 13, 2022); *Invest-Divest*, MOVEMENT FOR BLACK LIVES (M4BL), <https://m4bl.org/policy-platforms/invest-divest/> [<https://perma.cc/NK3S-LM3W>] (advocating for “[r]eal, meaningful, and equitable universal health care that guarantees: proximity to nearby comprehensive health centers, culturally competent services for all people, specific services for queer, gender nonconforming, and trans people, full bodily autonomy, full reproductive services, mental health services, paid parental leave, and comprehensive quality child and elder care”) (last visited Nov. 13, 2022).

¹⁹⁴ See, STUMP, *supra* note 107, at 182 (as well as through, again, participating directly in protest actions, donating to pertinent organizations, and the like).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

Section II.C, the historic racial justice–based mass uprising could be characterized as such bottom-up struggles—because in addition to the immediate causes involving fatal, racial state violence, the uprising was catalyzed in the broader social context of COVID-19’s health and economic crises disproportionately ravaging minority communities.¹⁹⁷

C. *The Mass Black Lives Matter Uprising*

Historic racial justice–based mass protests arose in 2020, in support of Black Lives Matter, other minority rights (e.g., Indigenous rights), and such intersectional issues as gender, LGBTQ+ status, immigrant status, and class.¹⁹⁸ Immediate causes for the uprising were acts of fatal, racial state violence.¹⁹⁹ Such catalyzing incidents included the May 26th Minneapolis police killing of George Floyd, the March 13th Louisville police killing of Breonna Taylor, and the February 23rd killing of Ahmaud Arbery by a retired police officer near Brunswick, Georgia—among innumerable other racial violence acts both recent and historic.²⁰⁰ Commentators recognized the multiracial character of the mass uprising, that protests occurred in every U.S. state and in dozens of nations internationally and that the protests geography spanned from urban to rural spaces.²⁰¹ Estimated global protestor numbers ranged in the millions, and the uprising occurred in thousands of towns and cities worldwide.²⁰²

¹⁹⁷ Kevin B. Anderson, *Notes on the Black Lives Matter Uprising in Historical and Global Context*, NEWPOL. (June 12, 2020), <https://kevin-anderson.com/article/notes-on-the-black-lives-matter-uprising-in-historical-and-global-context/> [<https://perma.cc/69AJ-AGR8>].

¹⁹⁸ See, e.g., James Neal, *LGBTQ Activists See Their Hopes, and Struggle, Reflected in Black Lives Matter*, ENID NEWS & EAGLE (June 14, 2020), https://www.enidnews.com/news/local_news/lgbtq-activists-see-their-hopes-and-struggle-reflected-in-black-lives-matter/article_1a179588-b142-5144-9622-c7c206e64ed5.html [<https://perma.cc/PHR6-C6J3>].

¹⁹⁹ Morgan Radford & Ethan Sacks, *One Month After George Floyd’s Killing, Activists See Beginnings of Major Progress*, MSNBC (June 25, 2020, 5:36 PM), <https://www.msnbc.com/news/one-month-after-george-floyd-s-killing-activists-see-beginnings-n1232109> [<https://perma.cc/2FV2-BPVT>].

²⁰⁰ Michael Harriot, *A Timeline of Events That Led to the 2020 ‘Fed Up’-Rising*, ROOT (May 30, 2020, 1:52 PM), <https://www.theroot.com/a-timeline-of-events-that-led-to-the-2020-fed-up-rising-1843780800> [<https://perma.cc/GT4X-DFGW>]; *End the War on Black Communities*, MOVEMENT FOR BLACK LIVES (M4BL), <https://m4bl.org/policy-platforms/end-the-war-on-black-communities/> [<https://perma.cc/AK5L-UMAL>] (last visited Nov. 13, 2022).

²⁰¹ Campbell Robertson, *What Black Lives Matter Has Revealed About Small-Town America*, N.Y. TIMES (June 10, 2021), <https://www.nytimes.com/2020/07/15/us/black-lives-matter-protests-small-towns.html> [<https://perma.cc/JT32-SB3P>].

²⁰² See Radford & Sacks, *supra* note 199; Maggie Astor, *Why Protest Movements Are ‘Civil’*

Critical commentators emphasize that the mass uprising constituted a significant historical event.²⁰³ Angela Davis, for instance, notes “that the Black Lives Matter movement of 2020 is not a new movement entirely, but a historical continuum from the uprisings of the 1960s.”²⁰⁴ However, Davis asserts that “[w]hat we are seeing now are new demands” such as those “to demilitarize the police, demands to defund the police, demands to dismantle the police and envision different modes of public safety,” and that moreover “[Davis does not] know if we have ever experienced this kind of global challenge to racism and to the consequences of slavery.”²⁰⁵ For many activists and broader social movements steeped in the Black Radical Tradition, such demands also are merely part and parcel of broader efforts to transcend white patriarchal capitalism (as discussed in more detail below, including in the context of compound forms of oppression operationalized globally).²⁰⁶

Legal reformers long have sought to enhance police accountability for their direct role in effectuating racial state violence against minority populations.²⁰⁷ A legal researcher exploring such precedent patterns likely would discover the U.S. Supreme Court case *Pearson v. Callahan*.²⁰⁸ In this decision, the court held that application of a two-part judicial test for analyzing issues regarding “qualified immunity” for police (as discussed in more detail below) was no longer mandatory but rather discretionary for lower courts.²⁰⁹ Under this test, lower courts “must decide [(1)] whether the facts that a plaintiff has alleged or shown make out a violation of a constitutional right,” and (2) if so, “whether the right . . . was ‘clearly

Only in Retrospect, N.Y. TIMES (June 16, 2020), <https://www.nytimes.com/2020/06/16/us/politics/us-protests-history-george-floyd.html> [<https://perma.cc/7HM7-MWX8>].

²⁰³ Eliza Pelto, “*This Is a Moment of Possibility: Angela Davis Appears on UK News Channel to Speak on Black Lives Matter Movement*,” BUST, <https://bust.com/feminism/197295-angela-davis-speaks-on-black-lives-matter-> [<https://perma.cc/8KHZ-Y35Y>] (last visited Nov. 13, 2022).

²⁰⁴ *Id.* (paraphrasing Davis’s perspective).

²⁰⁵ *Id.*

²⁰⁶ Alex Lubin, Angela Y. Davis & Gaye Theresa Johnson, *Angela Davis: An Interview on the Futures of Black Radicalism*, INT’L VIEWPOINT (June 28, 2020), <http://internationalviewpoint.org/spip.php?article6697> [<https://perma.cc/9HKN-QHZL>]; Peniel Joseph, *The Radical Democracy of the Movement for Black Lives*, BLACK PERSPS. (June 9, 2020), <https://www.aaihs.org/the-radical-democracy-of-the-movement-for-black-lives/> [<https://perma.cc/UJ9Z-EEZM>].

²⁰⁷ Karen J. Pita Loor, *Tear Gas + Water Hoses + Dispersal Orders: The Fourth Amendment Endorses Brutality in Protest Policing*, 100 B.U. L. REV. 817, 829 (2020).

²⁰⁸ See 555 U.S. 223 (2009).

²⁰⁹ *Id.* at 235.

established' at the time of the defendant's alleged misconduct. Qualified immunity [applies] unless the official's conduct violated [such a right]."²¹⁰

As the court argues, however, "judges of the district courts and the courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand."²¹¹ *Pearson* had the ultimate effect of not just furthering the patently unjust qualified immunity doctrine, but the decision also "raised the bar even higher for plaintiffs to overcome qualified immunity" in providing "judges the option to simply ignore the question of whether a cop used excessive force and instead focus solely on whether the conduct was clearly established as unlawful."²¹²

In again drawing on Section I.A's CLR deconstruction methods, the West *Supreme Court Reporter* extracts points of law from this case as headnotes and categorizes each vis-à-vis the West classification system. One headnote from *Pearson* reads as follows: "Doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known."²¹³ The accompanying West classification categories state: "78 Civil Rights; 78III Federal Remedies in General; 78k1372 Privilege or Immunity; Good Faith and Probable Cause; 78k1376 Government Agencies and Officers; 78k1376(2) Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general."²¹⁴

The West system in *Pearson* thus reflects and reifies the broad legal regimes comprising and intersecting with the fundamentally unjust

²¹⁰ *Id.* at 232 (internal citations omitted).

²¹¹ *Id.* at 236.

²¹² See Andrew Chung, Lawrence Hurley, Jackie Botts, Andrea Januta & Guillermo Gomez, *For Cops Who Kill, Special Supreme Court Protection*, REUTERS INVESTIGATES (May 8, 2020, 12:00 PM), <https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/> [<https://perma.cc/VP4Z-YXSK>]; see also Colin Rolfs, *Qualified Immunity After Pearson v. Callahan*, 59 UCLA L. REV. 468, 502 (2011) (arguing that one "possible consequence [of *Pearson*] is reminiscent of the fears that, without mandatory sequencing, there would be insufficient constitutional articulation," and that thus "[w]ithout sufficient articulation, law can never become clearly established, and officials can repeatedly violate rights and claim qualified immunity").

²¹³ *Westlaw Headnote 1, Civil Rights* [hereinafter *Westlaw Headnote 1, Civil Rights*], <https://1.next.westlaw.com> [<https://perma.cc/R86J-GH6G>] (search for "*Pearson v. Callahan*"; click from dropdown case with date of "1/21/2009"; then click "West Headnotes" in the table of contents) (last visited Nov. 13, 2022).

²¹⁴ *Id.*

U.S. criminal justice system—in this instance, those protecting police forces. Hegemonic neoliberal public and private actors—those in continuous pursuit of structural self-preservation—comprehensively quash any police “reform” efforts.²¹⁵ The critical perspective reveals that U.S. elites indeed *require* police and prisons due to their core, fundamentally white-supremacist-steeped function in safeguarding large capitalist interests and the capital accumulation process through acts of racial violence, terror, and control. More specifically, numerous critical commentators observe that “policing evolved as a method of control to enforce and protect a key economic foundation in the development of American (and global) capitalism: slavery.”²¹⁶

Contemporary police forces, then, “continued to evolve after chattel slavery to maintain the racialized division of labor and social divisions that slavery created, but which now (in a post-Emancipation society) had to be reproduced by other forms.”²¹⁷ For instance, contemporary police produce pools of forced labor within prisons and also ensure that workers must sell their labor to capitalists within the formal economy by policing “illegal” economies, criminalizing unwaged subsistence modes and so forth.²¹⁸ That legal efforts to enhance police accountability have proven fruitless is thus entirely unsurprising, given police’s and prisons’ violent labor control and social discipline functions under white patriarchal capitalism.²¹⁹

²¹⁵ Carmin Maffea, *The Fight To Abolish the Police Is the Fight To Abolish Capitalism*, LEFT VOICE (June 10, 2020), <https://www.leftvoice.org/the-fight-to-abolish-the-police-is-the-fight-to-abolish-capitalism> [<https://perma.cc/NSH8-TTNC>].

²¹⁶ Neal Shirley & Saralee Stafford, *Where Do the Police Come From?*, SCALAWAG (Sept. 7, 2016), <https://www.scalawagmagazine.org/2016/09/where-do-police-come-from/> [<https://perma.cc/T5DW-KK9N>].

²¹⁷ *Id.* In the case of the North, Maffea notes that “the Northern bourgeoisie needed the police to repress strikers and send them back to work, to quash any challenge to the capitalist order, and to defend the private property of the means of production,” and that “[a]s industrialization increased capitalist profit, police also became necessary to repress the immigrant and native-born working class.” Maffea, *supra* note 215.

²¹⁸ See Shirley & Stafford, *supra* note 216. They add that “White supremacy in America remained both literally and figuratively business as usual into the 20th century, during the periods defined by convict leasing, Jim Crow segregation, and the country’s massive prison boom—the ‘afterlife of slavery’ as author Saidiya Hartman has put it.” *Id.* They also “would ask those who desire an ‘accountable’ or ‘just’ police force: At what point in this history, in what period, do they believe that police became an institution that intended anything other than the reproduction of capital and the enforced social death of Black people?” *Id.*

²¹⁹ *Id.*

The West headnote from *Pearson* reflects this reality in stating that qualified immunity shields government officials, such as police, from civil liability so long as “their conduct does not violate clearly established statutory or constitutional rights of which [a] reasonable person would have known.”²²⁰ The West categories of “78k1376 Government Agencies and Officers” and “78k1376(2) Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general” again provide seemingly authoritative classifications for this point of law.²²¹ A legal researcher, then, again would internalize such liberal criminal justice dictates via reification. That is, the already high bar for qualified immunity involving clear violations of established rights and so-called “reasonableness,” a bar raised yet higher by *Pearson*’s degradation of the two-part test, demonstrates aptly that the criminal justice and related regimes, in fact, require the police and prisons to sow violence and terror in ultimate service of white patriarchal capitalism.²²² While superficially appearing to weigh whether qualified immunity applies, such doctrine is therefore, in reality, a mere perverse rubberstamp for the very police-effectuated state violence that the status quo requires for structural self-preservation.

Turning again to Section I.B–C’s CLR “reconstruction” methods, to transcend the hegemonic liberal criminal justice and related regimes embodied and reified via the West system, a researcher can draw on critical legal theory–informed resources to achieve true “systemic re-formations” beyond white patriarchal capitalism. Abolishing police and prisons unquestionably is a cornerstone of such efforts, but such measures, again, must be part and parcel of broader transformative change.²²³ For instance, without such holistic systemic re-formations beyond capitalism, neoliberal actors could insidiously move to re-establish the status quo—such as through mobilizing other violent state actors (e.g., the military), privatizing police forces, or the like.²²⁴ Carmin Maffea has thus argued that “police will always exist within a capitalist system” as “one of the repressive forces that maintains this order and the stark inequalities that it inevitably gives rise to,” and that, as a consequence, “[t]here can be no abolition of police under capitalism.”²²⁵

²²⁰ *Westlaw Headnote 1, Civil Rights, supra* note 213.

²²¹ *Id.*

²²² Shirley & Stafford, *supra* note 216.

²²³ Maffea, *supra* note 215.

²²⁴ *Id.*

²²⁵ *Id.*

Cedric Robinson proffered foundational work along such radical lines in *Black Marxism: The Making of a Black Radical Tradition*.²²⁶ Robinson prominently wrote on “racial capitalism,” which involves the proposition that “[t]he development, organization, and expansion of capitalist society pursued essentially racial directions, so too did social ideology,” and that “[a]s a material force, then, it could be expected that racialism would inevitably permeate the social structures emergent from capitalism.”²²⁷ Robinson also critiques the Eurocentrism of Marx and Engels in noting that the “European proletariat and its social allies did not constitute *the* revolutionary subject of history,” in that “other revolutionary forces emerged as well” including the “persistent and continuously evolving resistance of African peoples to oppression.”²²⁸

Angela Davis, too, is a leading contemporary radical commentator who has authored such highly influential works as *Are Prisons Obsolete?*²²⁹

²²⁶ See generally CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* (2000).

²²⁷ *Id.* at 2. Numerous critical commentators continue to provide vital and nuanced treatments on notions of racial capitalism. As an example, see Charisse Burden-Stelly’s argument that, “I theorize *modern U.S. racial capitalism* as a racially hierarchical political economy constituting war and militarism, imperialist accumulation, expropriation by domination, and labor superexploitation.” Charisse Burden-Stelly, *Modern U.S. Racial Capitalism: Some Theoretical Insights*, MONTHLY REV. (July 1, 2020), <https://monthlyreview.org/2020/07/01/modern-u-s-racial-capitalism/> [<https://perma.cc/MD8P-LNR4>] (emphasis in original). Burden-Stelly adds that “[t]he *racial* here specifically refers to Blackness, defined as African descendants’ relationship to the capitalist mode of production—their structural location—and the condition, status, and material realities emanating therefrom.” *Id.* (emphasis in original). See also RUTH WILSON GILMORE, *CHANGE EVERYTHING: RACIAL CAPITALISM AND THE CASE FOR ABOLITION* (Naomi Murakawa ed., forthcoming Mar. 2023).

²²⁸ ROBINSON, *supra* note 226, at 4–5 (emphasis in original). Robinson then explores the “history of this Black radical tradition in the African diaspora and to some extent in the African continent itself” and in part notes that the “[r]esistances were formed through the meanings that Africans brought to the New World as their cultural possessions; meanings sufficiently distinct from the foundations of Western ideas to be remarked upon over and over,” and which were “enduring and powerful enough to survive slavery to become the basis of an opposition to it.” *Id.* at 5.

²²⁹ See ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 1 (2003). Davis, among other arguments, chronicles the rise of the modern neoliberal prison regime in noting that “it was not until the 1980s and the increasing globalization of capitalism that the massive surge of capital into the punishment economy began,” which dovetailed with neoliberal actors degrading the welfare state, reducing workforces via deindustrialization trends, and so forth. *Id.* at 90. Consequently, under the conditions of “an economy that was driven by an unprecedented pursuit of profit, no matter what the human cost,” a “massive prison-building project that began in the 1980s created the means of concentrating and managing what the capitalist system had implicitly declared to be a human surplus.” *Id.* at 91. Davis also notes on the disproportionate “incarceration of [B]lack prisoners” and the rise of contemporary private prisons exploiting labor—along with other forms of corporate profits accrued via the

Davis, in articulating a nuanced vision as influenced in part by Robinson, recently has noted that, “Marxism, from my perspective, has always been both a method and an object of criticism,” and that “[c]onsequently, I don’t necessarily see the terms ‘Marxism’ and ‘Black Marxism’ as oppositional.”²³⁰ Davis also speculates on creation of a new, radical political party as “anchored in the idea of racial capitalism—it would be antiracist, anti-capitalist, feminist, and abolitionist,” and “most important of all, it would have to acknowledge the priority of movements on the ground, movements that acknowledge the intersectionality of current issues,” but which simultaneously remains continuously open to new radical ideas and social movements.²³¹

Contemporary ecosocialism and ecofeminism—as grounded in emancipatory post-capitalist approaches both in the Global South and North in addition to a corresponding emphasis on intersectionality and compound forms of oppression—thus in many ways intersect (or are not mutually exclusive with) such work steeped in the Black Radical Tradition.²³² Anne Stephens, for instance, has noted that “[t]he ecofeminist concept of dual-oppression is sympathetic to the concept of Black feminist intersectionality and much may be learned from readings of both feminisms.”²³³ And of course, there otherwise exists a long and robust tradition of Black socialist, feminist, and ecological thought, which therefore has potentially potent intersections with ecosocialist and ecofeminist discourses.²³⁴ Dorceta

sprawling “prison industrial complex”—that it “is clear that [B]lack bodies are considered dispensable within the ‘free world’ but as a major source of profit in the prison world.” *Id.* at 94–95. Davis more recently has noted that “critical prison studies and its explicitly abolitionist framework” generally “situates itself within the Black Radical Tradition, both through its acknowledged genealogical relation to the period in US history we refer to as Radical Reconstruction and, of course, through its relation both to the work of W.E.B. Du Bois and to historical Black feminism.” Angela Y. Davis, *Angela Davis: An Interview on the Futures of Black Radicalism*, VERSO BOOKS (June 23, 2020) [hereinafter *An Interview*], <https://www.versobooks.com/blogs/3421-angela-davis-an-interview-on-the-futures-of-black-radicalism> [<https://perma.cc/CA3A-Z446>].

²³⁰ *An Interview*, *supra* note 229. Davis does add, however, that “I take Cedric Robinson’s arguments in *Black Marxism: The Making of the Black Radical Tradition* very seriously,” in that “[i]f we assume the unquestioned centrality of the West and its economic, philosophical, and cultural development, then the economic modes, intellectual histories, religions, and cultures associated with Africa, Asia, and [I]ndigenous peoples will not be acknowledged as significant dimensions of humanity.” *Id.*

²³¹ *Id.*

²³² *See, e.g.*, ANNE STEPHENS, *ECOFEMINISM AND SYSTEMS THINKING* 18 (2013).

²³³ *Id.*

²³⁴ As Davis notes in her interview, W.E.B. Du Bois constitutes an early foundational commentator in the Black Radical Tradition. *An Interview*, *supra* note 229; *see generally* W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA, 1860–1880* (1998); Keeanga-Yamahtta

Taylor is one such prominent commentator on environmental racism and EJ and, in fact, has explicitly explored ecofeminist intersections in *Women of Color, Environmental Justice, and Ecofeminism*.²³⁵ Taylor argues that “women of color will agree that they are fighting gender issues,” however, “they will also argue that they are fighting much more than that,” as “[t]heir fight is also about racial and sexual discrimination, inequality, civil rights, and labor rights.”²³⁶ Taylor thus critiques ecofeminist frameworks that fail “to capture this complexity or the uniqueness of women-of-color environmental justice activism.”²³⁷ Such critiques by Taylor and others are vital in both further developing an ecosocialist ecofeminism and in demonstrating the need for a multiplicity of radical discourses and approaches to social movement praxis.

Section I.C’s focus on how CLR-influenced radical cause lawyers occupying a supportive role within intersectional-steeped grassroots alliances through praxis is implicated by such diverse Black Radical Tradition-steeped movements—as exemplified by the 2020 uprising. Indeed, the mass Black Lives Matter uprising is perhaps the best embodiment in modern U.S. history of the critical legal theory approach to civil disobedience (i.e., as also grounded in radical democracy)—which, recall, is a “form of struggle in which the vertical form of state authority is confronted with the horizontal power of the association of citizens or the

Taylor, *Black Reconstruction in America, 1860–1880*, 57 INT’L SOCIALIST REV. (2008) (reviewing W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA, 1860–1880 (1998)), <https://isreview.org/issues/57/feat-reconstruction/> [<https://perma.cc/S7S6-RJNA>] (articulating that “Black and white workers’ common condition as free wage laborers in the U.S. created objective common interests—not only in fighting for equality, but also in fighting for socialism and Black liberation,” and that Du Bois’s “Black Reconstruction places Black workers at the center of that fight”). Ecosocialist and ecofeminist strains also emphasize a need for a *multiplicity* of radical approaches based on the material realities of regions, localities, and so forth—again, as actually led by grassroots movements internationally. Salleh, *supra* note 108, at 146. For instance, much ecofeminist thought centers on the Global South. *Id.* Recall that Salleh argues that “as housewives, peasants, or indigenes, women are well qualified to design eco-socialist theory and well qualified for practical leadership in the alter-globalisation movement” both in the Global South and North. *Id.* Likewise, Mies and Shiva, in focusing largely on subsistence modes in the Global South (but including in their analysis Global North modes), argue that the conditions through which ecofeminist “praxis and theory are respected and preserved can be found only in the survival struggles of grassroots movements” that “radically reject the industrialized countries’ prevailing model of capitalist-patriarchal development” and which often seek to “preserve their subsistence base intact, under their own control.” MIES & SHIVA, *supra* note 107, at 297.

²³⁵ See Taylor, *supra* note 110, at 63.

²³⁶ *Id.*

²³⁷ *Id.*

governed . . . ”²³⁸ CLR-influenced radical cause lawyers, then, in the first place, belong in the streets or in comparable direct-supportive roles to future uprisings and mass movements.²³⁹ However, so too can CLR-influenced radical cause lawyers proffer unique legal and socio-legal expertise to such movements vis-à-vis praxis.

CONCLUSION

This Article has demonstrated the transformative potential of CLR. Specifically, a truly radical CLR approach was explored in the context of three intersecting contemporary crises: climate change, COVID-19, and the racial state violence and intersecting oppressions along lines of class, gender, LGBTQ+ status, immigrant status, etc., that engendered the mass Black Lives Matter uprising. For each crisis, the “deconstruction” CLR tenet first demonstrated how traditional legal research and analysis modes homogenize research outcomes towards hegemonic ends. Thereafter, the “reconstruction” CLR tenets of drawing on critical legal theory and adoption of CLR-influenced radical cause lawyering demonstrated how a re-envisioned, essentially grassroots approach to legal and socio-legal research can help achieve true systemic re-formations beyond mere law reform. Such radical transformations beyond white patriarchal capitalism—e.g., as potentially supported by robust CLR theory, practice, and praxis—ultimately are required to combat our current, truly existential crises.

²³⁸ Celikates, *supra* note 73, at 41.

²³⁹ See, e.g., *The Movement for Black Lives Needs You Now*, MOVEMENT FOR BLACK LIVES, <https://secure.actblue.com/donate/movement-4-black-lives-1> [<https://perma.cc/W77U-RWM9>] (last visited Nov. 13, 2022).