

Critical Legal Studies

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Critical Legal Studies (CLS) is deeply controversial, as Robert Gordon explains. In this essay Gordon describes the CLS perspective on legal "discourses," legal education, trashing, deconstruction, and history. He concludes by comparing how CLS and traditional lawyers might approach a free-speech case involving pickets in a shopping mall.

In April 1987 Assistant Professor Clare Dalton was up for tenure at Harvard Law School. Uninformed outsiders would have rated her chances high. She had written a book on nineteenth-century tort law, accepted by Oxford Press and praised by all but one of the thirteen eminent outside reviewers asked to read it. Colleagues with weaker files than hers had received tenure earlier in the year. Her case, however, provoked passionate and bitter debate. After several meetings, she fell short of the two-thirds faculty vote she needed for tenure.

... While the episode has attracted a lot of press coverage, little is remarkable about it except that it happened at Harvard and so involved Lifestyles of the Rich and Famous. The story is depressingly familiar, although unpublicized elsewhere. Job troubles for C. L. S.-affiliated teachers are common. One was denied tenure at Rutgers-Camden last year, for instance, four others were fired from New England Law School last fall, and refusals to hire Crits, however qualified, may now be more the custom than the exception. The dean of the Duke University Law School published a speech asserting that C. L. S. adherents were "nihilists" who had no place in professional schools. The retiring dean of Case Western Law School suggested they were a menace comparable in gravity only to declining applications. As the president of the law teachers' association observed last fall, "[F]aculty members at self-proclaimed prestigious schools and more modest ones alike express determination that no Critical Legal Studies adherent will find a place on their faculty." (Susan Westerberg Prager, "President's Message: Collegial Diversity,"

Association of American Law Schools *Newsletter*, September 1986.)

But again, this is an old story. People with identified left-wing associations have always had trouble finding and holding on to jobs. In universities these days leftists can count on some protection from liberals who remember or have heard about the appalling costs of cowardice and silence in the 1950s and know that next time the bell may toll for them. . . . But the number of professors with impeccable liberal credentials who will vote against leftists because they are "ideologues" or "disruptive" or "bad colleagues" remains large, and the number who regularly finds that work outside the mainstream fails to meet scholarly "standards" is legion.

Still there's something fascinating about the C. L. S. phenomenon. C. L. S. has made headway in some law schools, despite many setbacks. And it has provoked enormous controversy—in the newspapers, the *New Yorker* and the *New Republic*, the lawyers' press and bar journals, in law school alumni meetings, and in academic law reviews. It has reduced its opponents to spluttering rates, generally incoherent ones. (Very few discussions of C. L. S. outside its circle of members and sympathizers are aimed at understanding, much less engaging with, the substance of its ideas.) So it's worth asking: What are Critical Legal Studies and why do they make people so angry?

Critical Legal Studies began as a meeting in Madison, Wisconsin in 1977—a ragtag collection of friends and friends of friends in their thirties, who had been active in radical or left-liberal (civil rights and antiwar) politics in the 1960s and had gone on to law school and later into law teaching. This

group wrote a number of books and law review articles that together made up an initial set of critiques of mainstream legal ideas—what they thought was wrong with their own legal education. They also organized a series of annual conferences and summer camps. Over the next ten years the movement spread well beyond the originating group. It has outposts of at least two or three adherents or sympathizers at several law schools—apart from Harvard. . . .

If the original C. L. S. membership was hard to generalize about, the expanded new one is so exotically varied and internally divided as to defy characterization almost entirely. Some aspects of C. L. S. work, however, generally distinguish it from the more traditional left-wing critiques of the legal system, such as those of the National Lawyers Guild, with whom the Critics have formed occasional if rather contentious alliances. Marxist lawyers usually take law to be an infernal machine for the projects of the ruling class, albeit one full of tricks and devices that can sometimes be turned back upon its makers. More liberal lawyers think law contains many good rules and expresses noble purposes, but that its rules and procedures are constantly bent out of shape by the powerful. Oppositional lawyers can bend it back and use it to advance progressive causes or to soften oppression of the weak and dissident.

For the Critics, law is inherently neither a ruling-class game plan nor a repository of noble if perverted principles. It is a plastic medium of discourse that subtly conditions how we experience social life. Critics therefore tend to take the rhetoric of law very seriously and to examine its content carefully.

To get a picture of the way Critics think, consider all the habitual daily invocations of law in official and unofficial life—from the rhetoric of judicial opinions through advice lawyers give to clients, down to all the assertions and arguments about legal rights and wrongs in ordinary interactions between police and suspects, employers and workers, creditors and debtors, husbands, wives, and neighbors, or television characters portray-

ing such people. Sometimes these ways of speaking about law (*legal discourses*, let's call them) appear as fancy technical arguments, sometimes as simple common sense. ("An employer has the right to control what happens on his own property, doesn't he?") In whatever form, they are among the discourses that help us to make sense of the world, that fabricate what we interpret as its reality. They construct roles for us like "Owner" and "Employee," and tell us how to behave in the roles. (The person cast as "Employee" is subordinate. Why? It just is that way, part of the role.) They wall us off from one another by constituting us as separate individuals given rights to protect our isolation, but then prescribe formal channels (such as contracts, partnerships, corporations) through which we can reconnect. They split up the world into categories that filter our experience—sorting out the harms we must accept as the hand of fate, or as our own fault, from the outrageous injustices we may resist as wrongfully forced upon us. Until recently, for instance, an employer's sexual advances didn't occupy any legal category. They were a kind of indignity that a woman had to interpret as something her own dress and manner had invited, or as an inevitable occupational risk, given natural male aggression (and the statistical frequency of creeps), one that could get her fired unless she gave in or had incredible tact. Now such advances have the legal name of "sexual harassment." This doesn't always improve the practical situation of the victims—since vindicating legal rights costs money, emotion, smooth working relations, the chance of promotion, and maybe even one's career—but for many men and women the feminist politics that forced the change in legal categories has completely changed how they interpret and feel about the behavior.

Some of the basic points the Critics want to make about legal discourses are as follows:

These are discourses of power. Law is not, of course, uniquely the tool of the powerful. Everyone invokes the authority of law in ev-

eryday interactions, and the content of laws registers many concessions to groups struggling for change from below, as well as to the wishes of the politically and economically dominant. But to be able to wield legal discourses with facility and authority or to pay others (lawyers, legislators, lobbyists, etc.) to wield them on your behalf is a large part of what it means to possess power in society. Legal discourses therefore tend to reflect the interests and the perspectives of the powerful people who make most use of them.

Whether actually being used by the powerful or the powerless, legal discourses are saturated with categories and images that for the most part rationalize and justify in myriad subtle ways the existing social order as natural, necessary, and just. A complaint about a legal wrong—let's say the claim that one is a "victim of discrimination"—must be framed as a complaint that there has been a momentary disturbance in a basically sound world, for which a quick fix is available within the conventional working of existing institutions. A black applicant to professional school, whose test scores are lower than those of a competing white applicant, asks for admission on grounds of "affirmative action." Everybody in that interaction (including the applicant) momentarily submits to the spell of the worldview promoted in that discourse, that the scores measure an "objective" merit (though nobody really has the foggiest idea *what* they measure besides standardized test-taking ability) that would have to be set aside to let him in. A middle-aged widow buys a cheap promotional package of lessons at a dance studio. The studio hooks her on flattery and attention, then gets her to sign a contract for 4,000 hours of dance instruction. To break her contract, she will have to struggle to make a case that her situation is grotesquely exceptional—the result of serious fraud, and, even if she wins, she and her lawyers will have participated in and reinforced the law's endorsement of "normal" marketplace relations as unproblematically voluntary, informed, noncoercive, and efficient.

Thus legal discourses—in conjunction with dozens of other nonlegal discourses—routinely help to create and maintain the ordinary inequities of everyday social life: the coercions, dominations, and dependencies of daily relations in the marketplace, the workplace, and the family; the ordering of access to privilege, authority, wealth, and power by hierarchies of class, race, gender, and "merit."

Yet legal discourses have the legitimating power they do because they sketch pictures of widely shared, wistful, inchoate visions of an ideal—a society of dealings between genuinely free and independent equals, one so ordered that we could cooperate with others without having to worry that they would hurt or enslave us, so structured as continually to open to question the legitimacy of its hierarchies. Thus law is always a source of images and ideals that challenge and urge us to revise current arrangements as well as justifying them. The problem is that, in the ordinary uses of law, the revisionary images are realized in scattered fragments and otherwise muted and repressed.

So the big premise of the C. L. S. method, the *raison d'être* of its scholarship and local political tactics, is that the deployment of ordinary legal discourse is a form of political practice, and one with *unnecessarily* conservative consequences. If we experience a sense of stasis and paralysis about the possibilities for social change, we owe our passivity in part to the character of these pervasive discourses. C. L. S. people believe that when you take legal discourse apart and see how it works, you can start to reinterpret it and to gain the energy and motivation to engage in local political action that in turn can help to change the social context that the discourse has hardened. Since most of the Crits were academics in law schools, they first picked on the targets that were closest to them, the standard ways that other law teachers wrote, taught, and talked about, the first-year legal subjects, such as Torts, Contracts, and Property.

Their first problem was to figure out how

legal training produces its mind-numbing paralysis—how even left-liberal students trained by left-liberal teachers end up drained of energy and hope for social change. One big reason, of course, is that graduates of the elite schools are lavishly rewarded in money and social status for going into large-firm corporate law practice and tend over time to adjust their ideals to their situations. Graduates of less elite schools think themselves lucky to get any legal job on any terms that are offered. But both types of lawyers tend to excuse their passivity with the gloomy thought that nothing can change anyway, and that conclusion—so the Crits speculate—they owe in part to the conservatizing elements in academic-legal discourse.

Those elements take a number of different forms. There is a traditional kind of law teaching, perfected around the 1950s and still probably the dominant one, that is very elusive because it never makes any of its premises or assumptions explicit. The teacher creates confusion by slashing up the reasoning of the judges who decide the cases assigned for classroom reading and also the reasoning of the students, but ends up suggesting that there's a delicate, complex balance-point, a moderate centrist position, that a smart, sensible, *professional* lawyer can settle on. Such a teacher presents a centrist politics as if it were a craft. There is now a fresh set of discourses urging the natural necessity of conservative or mildly reformed social arrangements; this is the economic analysis of law by scholars such as Guido Calabresi of Yale and Richard Posner of Chicago—far more intellectually formidable than the old style of legal theory and increasingly influential among policymakers and scholars. Legal economists assert that disputes about particular legal arrangements (e.g., decisions about whether polluters should have to pay homeowners to pollute the air, or homeowners pay polluters not to pollute) may be resolved through value-neutral comparisons of alternative solutions as more or less "efficient."

Fighting, as they saw it, fire with fire, the

Crits responded to long articles in elite law journals with longer articles in elite law journals. Streetwise radical lawyers have always mocked the Crits for "footnote activism," using up political energy in pedantic swiping at mandarin doctrines, but from the C. L. S. point of view, the strategy made sense: they were matching a local discourse of power and constraint—one that had some discernible impact on their own and their students' lives—with a discourse of resistance. It is a modest form of political action simply to try to reduce the authority of those people who control the local situation and thus to create a little extra space for your own projects, your counterinterpretations of the same discourses. Through this work, the Crits hoped to develop a set of critical insights and demolition rhetorics that they and others could pick up and use on all sorts of legal discourses, not just those of other scholars. (The success of the project has been mixed. Some of their students picked up and improved on this early work, and went on to teach it to others. Most radical or left-liberal lawyers probably found it too arcane, abstract, and not obviously enough connected to the goals of practice to be of immediate use. Some teaching has been done through conferences, summer camps, and more popular books, but not yet enough to make the ideas widely accessible.)

Here are some of the methods the Crits have deployed against mainstream legal discourses:

Trashing

This sixties-evoking phrase covers a big miscellaneous grab bag of techniques designed to dent the complacent message embedded in legal discourse, that the system has figured out the arrangements that are going to make social life about as free, just, and efficient as it ever can be. The trasher tries to show how discourse has turned contingency into necessity and to reveal the repressed alternative interpretations that are perfectly consistent with the discourse's stated prem-

ises. Trashing techniques are used sometimes simply to attack the discourses on their own terms—to show their premises to be contradictory or incoherent and their conclusions to be arbitrary or based on dubious assumptions or hidden rhetorical tricks. The C. L. S. critiques of legal economics, for instance, have borrowed from and added to the multidisciplinary critiques of the neo-classical economic model of human beings as rational self-interested maximizers of their satisfactions: critiques that the model is vacuous (it tells you that people “want” *everything* they get); that when the model is given concrete content, it is obviously wrong (people are often irrational or altruistic) and too narrow (people want self-worth and the esteem of others as well); that there are fatal ambiguities in the notion of choosing selves (personalities are divided in their desires, desires change over time, short-term desires are often destructive to long-term selves); that the individualism of the model is a culturally and historically specific image of human conduct (a product of certain modern market cultures) that the model falsely claims is universal; and so forth. Crits by no means reject economic analysis as valueless: they teach it and make regular use of it in their work (although the economists do not reciprocate). But by showing that the agile interpreter can justify as economically efficient virtually any imaginable scheme of social arrangements, the critique helps to deprive technocracy of its mystery; its pretense that science, magically substituting for agonizing political and ethical choices, dictates that if we want to remain prosperous we must endure all the miscellaneous injustices now in place and even invent new ones. The Critics’ message is that the economic-efficiency analysis of legal practices isn’t a science, it’s just a very manipulable rhetoric, often a useful rhetoric which highlights problems and possible consequences that one wouldn’t otherwise notice, but a myopic rhetoric, too, which systematically obscures from view—has no way even to *talk* about—the violence, coercion, irrationality, cultural

variety, solidarity, and self-sacrifice of lived experience.

Deconstruction

The Crits do not believe, however, that their trashing reveals a random chaos or that what lies behind the seeming order of legal decisions is just pure power (or personal whim). There is a *patterned* chaos, and the aim of Critical scholarship is in part to uncover the patterns. Some of their best work is a familiar kind of left-wing scholarship, unmasking the often unconscious ideological bias behind legal structures and procedures, which regularly makes it easy for business groups to organize collectively to pursue their economic and political interests but which makes it much more difficult for labor, poor people, or civil rights groups to pursue theirs. Other work aims at laying bare “structures of contradiction” that underlie fields of law. Contract law in the Critics’ view, for example, draws regularly for its inspiring assumptions upon two diametrically opposed visions of social life. One is a stark neo-Hobbesian world of lonely individuals, predatory and paranoid, who don’t dare associate with each other except through formal contracts that strictly limit their obligations. The other is a world in which trustful cooperation is the norm and people assume indefinite open-ended responsibilities to others with whom they deal regularly and who have come to rely on them. Both sets of images, and the regimes of legal obligation they recommend, are potentially available in every legal decision about a contract. Yet the legal system persistently gives one of the regimes (the rule-bound, formal, individualistic one in this case) an arbitrarily privileged position and partially suppresses the other or reserves it for the deviant or exceptional case.

Genealogy

Still another way to heighten awareness of the transitory, problematic, and manipulable ways legal discourses divide the world is to write their history. The Crits have turned

out a lot of history of legal categories. They have focused their attention, for instance, on the mid-nineteenth century moment, when the business corporation, once an entity created only to serve the "public" ends of the commonwealth, was reclassified as "private" and thus free as any individual to do what its managers pleased in the market, while the city corporation was reclassified as the "public" agent of the legislature and its managers' legal powers from then on were strictly confined. Critics also write social history revealing that even the most basic legal concepts, such as "private property," have never had any definite, agreed-upon content but have, on the contrary, always been fiercely struggled over, so that any conventional stability the concepts may now seem to possess represents nothing more than a temporary truce that could be unsettled at any moment.

Such techniques owe much to standard liberal and radical analyses. But in the hands of Critics they add up to a style and method of critique that is quite distinctive. Consider the case of picketers who want to demonstrate in a shopping mall and are kicked off the mall by the owner. Lawyers usually approach this situation as one involving a conflict between two opposing "rights," the property right of the owner to exclude unwanted visitors or behavior and the demonstrators' right to free speech. Judicial decisions suggest that the way to resolve the conflict is to ask whether the mall is "public" or "private" in character (the more "private" it is, the greater the right to exclude). The Crit begins by asking why labeling the mall as "property" should give the right to exclude picketers in the first place and goes through the standard justifications for property rights. The efficiency rationale says that owner control will yield the highest valued uses of the property. But it is not at all clear that the shoppers do not value diverse viewpoints at the mall, that they are only there to buy and not to converse and socialize, or that their decisions to shop at this mall or go elsewhere are likely to any important extent to depend on being free from picketers.

Anyway, the "taste" of owner and shoppers, if real, to be free from exposure to political speech may be one (like the "taste" for not serving or sitting next to blacks at lunch counters) that should not be entitled to recognition, rendering the whole "efficiency" calculus irrelevant. The privacy rationale for exclusion has much less appeal when the owner is a bodiless corporation that lets hordes of strangers swarm over "its" property daily. Critics examine the private versus public distinction, what it means, and why any of those meanings should be dispositive. How "private," for instance, is the owner's decision to exclude picketers, once he asks the cops and courts for injunctions, fines, and jails to back it up? History lends a hand here, pointing out that common law traditionally prescribed social obligations to property-holders (such as public access to inns and common carriers) in return for the protections of public force and the privileges of corporate status. Some argue that the picketers' right of access ought to turn on how "public" the property is in the sense of how many links it has to state agencies—zoning privileges, tax exemptions, police services—a bundle of attributes only arbitrarily related to the crucial issue of the appropriate sites of political debate.

This brief sketch of one Critical approach certainly does not demand the conclusion that the correct legal solution is to allow pickets, although all Critics probably would favor that result. One can examine just as skeptically the scope of "free speech" rights, which as currently interpreted would allow demonstrators no access at all even to platforms *intended* for public political discussion, such as newspapers, unless they first purchase a controlling shareholders' interest. All the approach is meant to do is to show that when legal discourse identifies the shopping mall as "private property," it sets up a powerful mystifying charm that sends the pickets scrambling to find a stronger countercharm—"free speech." When you pick the discourse apart, you may find that calling the mall "private property"—even if you completely accept all the standard justi-

fications for private property—tells you virtually nothing about whether owners should be able to exclude pickets.

Trashing, deconstruction, and history have the very real utility of exposing the vulnerability of the routine justifications of power, of enabling people to spot the structural defects and to challenge many of the rationales they hear advanced for especially ugly legal practices. But nobody can be content just to trash, and in the second phase of C. L. S. many Critics find themselves trying to do the intellectual spadework, and often some of the political organizing as well, for various concrete projects of reconstruction. Some of these, notably that of the Harvard theorist Roberto Mangabeira Unger, are on the grand scale—a thousand-page reimagining of democracy, with detailed architectural sketches of political, economic, and social life as it might become. Most are much less ambitious and take the form of activism regarding low-income housing policy, legal regulation of pornography and rape, immigration reform, welfare and social security policy, delivery of legal services, labor law and specifically university labor practices, and always, naturally, law school politics.

If one of the effects of law is to constrict our ability to imagine alternative social arrangements, then it should be possible to liberate social imagination by dredging up and then working to flesh out some of the alternatives that are already present but have been suppressed in legal discourse. Historians have recently been revising the “republican” view of the purpose of politics as that of facilitating self-development through participation in community self-governance—a periodic rival to the dominant liberal view that the end of politics is only to facilitate the individual pursuit of self-interest. Several Critics have begun to ask how republican ideology might influence the redesign of legal institutions—cities, corporations, workplaces, local administrative agencies. Others have followed what Unger calls the method of “doctrinal deviation,” taking a set of practices that have been routinely applied in one social field and imaginatively transferring

them to another. Economic democracy is one example. Another is William Simon’s program of “downward professionalization.” In detailed studies of welfare administration, Simon makes the case (backed up by the historical example of the New Deal-era social workers) for entrusting the kind of broad discretionary decision making habitually given by judges and corporate managers to street-level welfare workers, arguing that such a regime could be superior in terms of both efficiency and humanity than the current regime of mechanized administration. Still other Critics are making use of feminist theory and phenomenology to try to evoke richer and fuller descriptions of intersubjective experience than can be found in the abstract and impoverished categories of law and legal economics, to try to recapture the selves from which they claim legal discourses have alienated us, as well as exposing the techniques of alienation.

To return now to where I began: What is it about C. L. S. that makes people so angry? As American critical movements in law go, it has stung the sharpest of any since the Legal Realism of the 1920s and 1930s, which C. L. S. much resembles in its evident delight in showing up the manipulability, vacuity, and arbitrarily conservative conclusions of legal discourses. The other main challenge to mainstream legal thought has been the movement to study law in its social context, which has repeatedly shown how power politics and cultural variation prevent formal legal rules from being enforced and applied in real life the way legal theories and doctrines predict they will be. But lawyers who make their livings expounding formal legal doctrine have been mostly impervious to demonstrations of its limited relevance. It has taken rowdies invading the heart of their own citadel to make them sit up. Still, why such fury?

For one thing, for all the use it makes of conventional academic argument, C. L. S. is a radical movement and of the left, and that’s enough in itself to make some fellow lawyers see Red. The public attacks on C. L. S. make up a fascinating collage of what Amer-

icans tend to think a left-wing movement must be about, with bits and pieces pulled from the French Revolution (Burke-Carlyle-Dickens version), vulgar Marxism, Soviet Stalinism, sixties anarchism. In these bizarre fantasies, Crits are Bolshevik saboteurs who will take over if you allow any in your faculty or firm, dangerous (in the Age of Reagan, yet), "nihilist" subverters of the "rule of law," infantile but basically harmless hippie/yuppies—or all of these at once. The attackers automatically suppose—obviously without bothering to read any of their work—that Crits must believe law to be nothing more than the result of ruling-class domination or the personal and political whims of judges, and that the Crit program must be, after a violent seizure of the state, to "socialize the means of production."

But there are more sophisticated opponents, too. After all, the Crits really are out to reduce the legitimacy and authority of their elders in the intellectual legal establishment; and those elders, no fools, realize that and despise them for it, the more so because the Crits are not always kind or polite. Along with the academic trashing techniques I've described go ruder ones—satire, savage mockery, even sometimes scatology and a sort of juvenile thumb-nosing irreverence. Such trashing has a function. As the Norwegian philosopher Jon Elster puts it, in a society where authority is typically legitimized through control of the rational discourses, sometimes the most effective challenges to authority are those of "irony, eloquence, and propaganda," refusing to talk authority's language and aping its forms. Law in particular has lent a lot of its persuasive power by its manners: the pompous gravity of its hierophants, their arrogant certainty that the "smartness" certified by their success carries with it command over social truth. (At the same time, such rudeness, while helping to preserve the movement's edge and to save it from becoming normalized into just another academic school, has undoubtedly alienated a lot of potential supporters.)

Harder to forgive than rudeness is rejection—not only of the elders themselves but

of their whole elaborate structure of deference to their own seniors, their system for picking successors, their canon of heroes and respected texts. Much of the Harvard bitterness derives from the Crits' insulting refusal to accept the long-approved criteria of "smartness" and "competence" for choosing colleagues—criteria, the Crits unkindly pointed out, that (besides yielding a faculty of look-alikes—people who wrote mostly the same kind of doctrinal scholarship, had views varying from the center-right to the center-left of the political spectrum, and included almost no women or minorities), were plainly deficient on their own terms, as evidenced by the fact that many teachers who met them burned out early and produced very little. Some C. L. S. work is disrespectful not only of their elders' scholarship, but of the political achievements these men personally struggled for and are proudest of, such as the labor-relations policies of the New Deal and after. And C. L. S. perversely sets up its own intellectual counterheroes, who include the disreputable Legal Realists, as well as weird foreign imports, such as Hegel, Sartre, and Foucault. (I have heard one eminent legal scholar denounce C. L. S. as "un-American" and another disparage it as infected with "French and German" influences. Ah, the Continent—that dark breeding ground of dirty postcards and pestilential philosophic vapors!)

Among younger C. L. S. opponents—not caught up in the generational struggle and often as critical in their own way of their elders' work and politics—are the true technocrats, committed to a positivist model of science that seeks, even from social knowledge, law-like regularities that can be used for prediction and control. The technocrats are naturally revolted by C. L. S.'s aggressive antiscientific stance and furious at the reduction of social sciences to rhetorics. Their real quarrel, of course, isn't exclusively with C. L. S. but with the entire "interpretive" strain of philosophy and social science that denies the possibility of objective knowledge. . . .

Some opponents see C. L. S. as a threat

to liberal freedoms, those maintained by the "rule of law." If every "right" is seen as contingent, up for grabs, capable of being flipped inside out through reinterpretation in the twinkling of an eye, what will we rely on to save us from the "fascists" or the "mob"? These are hard questions, too hard for this sort of space, but a brief Critical answer might run like this: Legal "rights" are shorthand symbols for social practices that we collectively maintain. We value the symbols because of the latent utopian promises they hold out to us—promises of a world where we could freely and safely choose our associations with others without fear of domination by arbitrary authority. Yet, in any actual version of the legal code and its application, such promises will be realized only partially, occasionally, in fragments. The pretense that legal rules have an objective fixed set of meanings, above and beyond political choice, may sometimes help to keep monsters fenced in: If you live in Chile or Poland, or belong to a habitually trampled group in this country, you want to appeal as often as you can to rights and legal principles transcending those recognized by the dominant political forces. But the pretense of the objectivity of law also harmfully mystifies social life, encouraging people to think that the practices codified in law have fixed and frozen what they can hope to achieve, that so long as their rights are protected they can't complain, and discouraging them from political action aimed at transforming the content of rights so as to realize the emancipatory potential of law. A commitment to legalism can never substitute for a commitment to the ideals law distortedly symbol-

izes. As the Czech dissident Vaclav Havel writes in *The Power of the Powerless* (1985), after insisting at length on the importance of a politics of legalism aimed at embarrassing state authorities into giving some real content to the legal rituals that sustain their legitimacy:

[E]ven in the most ideal of cases, the law is only one of several imperfect and more or less external ways of defending what is better in life against what is worse. . . . Establishing respect for the law does not automatically ensure a better life, for that, after all, is a job for people and not for laws and institutions. It is possible to imagine a society with good laws that are fully respected but in which it is impossible to live. Conversely one can imagine life being quite bearable even where the laws are imperfect and imperfectly applied. . . . Without keeping one's eyes open to the real dimensions of life's beauty and misery, and without a moral relationship to life, this struggle [for legality] will sooner or later come to grief on some self-justifying system of scholastics.

Possibly the most violent of all reactions to C. L. S. have come from people who are (like most lawyers) neither technocratic prophets of a scientifically managed social order nor committed to a view of law as determinate neutral principles. After all, if what you're looking for is a picture of law as irrational, chaotic, arbitrary, idiotically administered, loaded in favor of the rich and well-connected, you don't go to C. L. S., but to a veteran practitioner. *Nobody* is more cynical about law than lawyers. The fiercest reactions seem to come from people who have made their own complex peace with the way things are, have labeled that compact maturity and realism, and, for the sake of their own peace, wish that others would as well. For them, C. L. S. is a form of class treachery.

REVIEW AND DISCUSSION QUESTIONS

1. Explain the role of law in legitimizing power, according to CLS.
2. Explain "trashing."
3. Explain what Gordon means by "deconstruction" of law, using the example of contract law.
4. Compare and contrast CLS with legal realism.
5. What political program does CLS advocate?
6. Describe the similarities and differences between CLS and the views defended by Ronald Dworkin.