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# CRITIQUE, IDEOLOGY, AND AESTHETICS

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Perhaps it is appropriate that critical legal theory—a genre of thought fascinated with contradictions and dedicated to unsettling orthodoxies—is itself in a contradictory and unsettled state today. Some of the most radical and challenging ideas advanced by critical legal theorists have become mainstream, almost mundane. For instance, the claim that legal reasoning is unavoidably ideological, that to a great extent law is politics by other means, was once a heresy so reviled it ended careers.<sup>1</sup> Now, in the wake of Amy Coney Barrett’s confirmation to the U.S. Supreme Court, that claim would be considered too obvious to get published as an opinion piece in a major newspaper. Critical Race Theory—once the hip Black sidekick to the Critical Legal Studies movement—is now taught not only in most elite law schools but also in schools of education and architecture, and in sociology, literature, and philosophy departments (and even, we now know, in administrative agencies of the federal government, in reaction to which Donald Trump issued an executive order banning it).<sup>2</sup> But Critical Legal Studies remains associated exclusively with the radical Left intelligentsia and has suffered something of a loss of cache. Even as some of its central tenets are absorbed into conventional wisdom, the school of thought itself is spoken of largely in the past tense;<sup>3</sup> it has taken its place alongside intellectual movements that belong to a specific historical era, like New Criticism, Russian Formalism, the Law and Process School, Legal Realism, psychoanalysis, and existentialism.

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1. Emily M. Bernstein, *Bok Rejects Dalton Tenure Appeal*, HARV. CRIMSON (Feb. 9, 2003), <https://www.thecrimson.com/article/2003/2/9/bok-rejects-dalton-tenure-appeal-ppresident/> [<https://perma.cc/QW2C-WGJS>].

2. Caroline Kelly, *Trump Bars ‘Propaganda’ Training Sessions on Race in Latest Overture to His Base*, CNN (Sept. 5, 2020, 1:35 PM), <https://www.cnn.com/2020/09/04/politics/trump-administration-memo-race-training-ban/index.html> [<https://perma.cc/4Z54-V8G6>].

3. Michael Fischl, *The Question That Killed Critical Legal Studies*, 17 LAW & SOC. INQUIRY 779 (1992).

How is “critical” a mainstream trademark in scholarship even though many of its most defining iterations remain an esoteric intellectual niche? The term has at least two quite distinct meanings. For many, the “critical” in Critical Legal Theory denotes an ideological commitment. Critical suggests an imprecise but sincere and consistent oppositional stance historically associated with the Left. As a consequence, a large and disparate group of leftist and progressive thinkers—from Marxists to progressive reformers—have adopted the mantle, and, over time, “critical” has become synonymous with all manner of left-of-center thought. Because much of today’s academic left is organized around identity politics, Critical Theory includes an ever-expanding list of identity-based movements that are critical of some aspect of the status quo (only?) insofar as it affects a specific community: Critical Disability Theory, Critical Queer Theory, Critical Feminist Theory, Critical Race Feminism, Critical Intersectionality, and the like. Some writers associated with these movements are indeed radical, but many are liberal reformers whose ideas would fit comfortably in the election-year platform of the Democratic Party.

But “critical” also denotes a *method* or theoretical orientation with some historical relationship to Marxian, postmodern, or post-liberal philosophy: Derrida, Lacan, Agamben, the Frankfurt School, Weber, perhaps existentialism, ambivalently a few disreputable Germans such as Nietzsche and Heidegger and their wayward disciples, like Hannah Arendt and Michel Foucault. Some of the most important theorists in the critical tradition have been inconsistent, ambiguous, or heterodox in their ideological commitments (Nietzsche and most obviously Heidegger but also Arendt and Agamben, as he demonstrated dramatically during the pandemic).<sup>4</sup> Here, a critical stance is inspired by a set of intellectual and analytical methods, ideas, and, perhaps, aesthetic predispositions more than by ideology in the left/right sense. Because the critical methodology bears only a historically contingent relationship to ideology, it is as readily deployed by the Right as by the Left: anyone unhappy with the courts, for instance, can advance the critique that law is politics by other means; anyone suspicious of government can deploy a

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4. Christopher Caldwell, *Meet the Philosopher Who Is Trying to Explain the Pandemic*, N.Y. TIMES (Aug. 21, 2020), <https://www.nytimes.com/2020/08/21/opinion/sunday/giorgio-agamben-philosophy-coronavirus.html> [https://perma.cc/G4RC-CWEB].

critique of “techno-medical despotism” as Giorgio Agamben did in attacking COVID-19-related shutdowns and social distancing orders. Because both the Left and the Right deploy such methods—albeit using very different jargon—some of the conclusions derived from them have also become mainstream.

Arguably, what joins these disparate “critical” thinkers is a kind of contrarian or skeptical orientation toward orthodoxies and settled beliefs. Whether this orientation is a matter of ideological conviction, aesthetic disposition, or historical accident is a question that will animate this short Article.

### CRITIQUE AND IDEOLOGY

Complicating the relationship between critique and ideology, the nature of “the Left” is in internal conflict: it includes Marxian and socialist thought associated with the “Old Left” and the now-familiar identarian focus of the “New Left.” How much the two share is the subject of long-standing debate. Today’s attacks on “neoliberalism” are the latest effort to join these two lefts in a comprehensive and even totalizing account that insists that neoliberalism is responsible for everything from racism, sexism, homophobia, anti-trans attitudes, environmental decay, ableism, etc. Here, neoliberalism constitutes a system that promotes all of these injustices simultaneously. But the attempt to bind a Marxian critique of classical liberalism, or even a Keynesian critique of Hayekian neoliberalism,<sup>5</sup> to the various identarian critiques of prejudice is tortured and often unconvincing. In too many accounts, neoliberalism seems synonymous with all of the ills of advanced capitalist societies in the present moment; the critique (if one can call it that), while useful as a rallying cry and organizing rhetoric, lacks precision and is of limited analytical value.

A radical or Marxian ideology would lead to a profound critique of many commitments of the contemporary big-tent Left—in particular, “bourgeois” rights, identarian claims that supersede or undercut class solidarity, and a multiculturalism that treats cultural autonomy as an independent value rather than an effect of class struggle. In most—arguably in *all*—of its

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5. Stephan Metcalf, *Neoliberalism: The Idea That Swallowed the World*, GUARDIAN (Aug. 18, 2017, 1:00 PM), <https://www.theguardian.com/news/2017/aug/18/neoliberalism-the-idea-that-changed-the-world> [<https://perma.cc/ZBZ7-NQG7>].

iterations, left identity politics is liberal to its core: its claims are grounded in the moral priority of human dignity and expressive individualism. So, even for those firmly committed to a left ideology, critique can easily be turned against some commitments associated with the Left—sometimes in order to reveal their antagonism to other left commitments, and sometimes to reveal the internal tensions or contradictions inherent in the commitments themselves. There are, for example, feminist critiques of feminist anti-sex moralism<sup>6</sup> and of “carceral feminism,”<sup>7</sup> queer theory critiques of same-sex marriage,<sup>8</sup> and, in the spirit of full disclosure, my own race-conscious critiques of racial grievance<sup>9</sup> and of the diversity rationale for affirmative action.<sup>10</sup>

For its targets, this kind of internal critique can seem hard to distinguish from an attack from the Right. Both radicals and conservatives have well-established critiques of classical liberal thought, and both intellectual traditions occasionally borrow from each other. For example, Christopher Lasch—a Marxian critic of liberal capitalism—became a darling of social conservatives after writing *The Culture of Narcissism*, which they read as a critique of liberal moral permissiveness; the radical critique of rights echoes Edmund Burke’s acerbic reaction to the French Declaration of the Rights of Man as much as Marx’s critique of bourgeois rights. Like Marxism, conservative thought in the Burkean mode contains a critique of liberal individualism, the soul-deadening alienation of modern amoral capitalism, and a deep skepticism of technocratic politics and rights. To the extent the Left and some conservatives share a critique of liberalism, it might seem that some form of provisional alliance could be as tenable as the tense and episodic alliances between the Left and mainstream liberals. Leftist critics engaged in this kind of internal critique must decide whether or how much to cite or avow similar conservative arguments. Most not only disavow them but seek to poison their arguments against conservative co-

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6. *E.g.*, Laura Kipnis, *Love in the 21st Century; Against Love*, N.Y. TIMES (Oct. 14, 2001), <https://www.nytimes.com/2001/10/14/magazine/love-in-the-21st-century-against-love.html> [<https://perma.cc/8ZUW-F69M>].

7. *See, e.g.*, FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992).

8. *See, e.g.*, MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (2000).

9. *See, e.g.*, RICHARD THOMPSON FORD, *THE RACE CARD: HOW BLUFFING ABOUT BIAS MAKES RACE RELATIONS WORSE* (2008) [hereinafter *THE RACE CARD*].

10. *See, e.g.*, RICHARD THOMPSON FORD, *RACIAL CULTURE: A CRITIQUE* (2006) [hereinafter *RACIAL CULTURE*].

optation. To take myself as an example: I'm careful to surround my critique of the diversity rationale in affirmative action with full-throated support for affirmative action itself<sup>11</sup> and to situate my critiques of racial grievance with an unequivocal insistence on the prevalence and depth of American racism.<sup>12</sup> Of course, none of this satisfies the doctrinaire Progressives who prize ideological loyalty over intellectual intrepidity.

To some extent, ideologically heterodox leftisms may simply reflect long-standing schisms within the Left: between theorists and activists, doctrinaire Marxists and culturally oriented New Leftists, second- and third-wave feminists, Black separatists and racial integrationists, revolutionaries and reformers. However, I suspect ideological heterodoxy is also a consequence of something larger—a disintegration of the ideological poles, disrupting the very meaning of “left” and “right” as ideas that could organize serious political thought. This claim may seem perverse at a time when ideological polarization seems to be at a new peak. But suppose today's hyperventilated commitment to ideology is a symptom, not of a serious, principled disagreement about public policy or normative worldview that defines two opposed poles, but instead of a propaganda strategy that's taken on a life of its own. Consider that an astonishing \$14 billion was spent on the 2020 contests for the U.S. Presidency and Senate.<sup>13</sup> There is now an industrial complex dedicated to the continual solicitation of donations in support of a perpetual ideological war.<sup>14</sup> This industry of advertising agencies, lobbyists, social media consultants, pollsters, campaign organizers, and news media desks *requires* ideological polarization to sustain engagement and keep donations flowing and readers clicking on hyperlinks.

The ideological industrial complex must not only squelch nuance and moderation; it must also deny complexity in favor of clear-cut battle lines that will inspire intense engagement. The right-wing media's caricatures of Bernie Sanders and the notorious Alexandria Ocasio-Cortez supply the necessary spectacles

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11. *Id.*

12. THE RACE CARD, *supra* note 9.

13. Shane Goldmacher, *The 2020 Campaign Is the Most Expensive Ever (by a Lot)*, N.Y. TIMES (Oct. 28, 2020), <https://www.nytimes.com/2020/10/28/us/politics/2020-race-money.html> [<https://perma.cc/42VE-XBRU>].

14. Richard Thompson Ford, *The Outrage-Industrial Complex*, AM. INT. (Dec. 17, 2019), <https://www.the-american-interest.com/2019/12/17/the-outrage-industrial-complex/> [<https://perma.cc/4G2R-GKEP>].

for this industry; meanwhile Donald Trump performs a self-caricature that even the most talented propagandist could never equal—in retrospect, his rise to power seems not only unsurprising but inevitable. But behind this polarization there is no real ideological coherence.<sup>15</sup>

Pop ideology reflects a powerful tendency to sort into teams or tribes and to justify moral and ethical reflexes in terms of a cosmology, but pop ideologies can never stand on their own feet; they must be propped up in opposition to something else, e.g., liberal *versus* conservative. There is no normative worldview that joins, for example, support for generous social programs with environmentalism or opposition to immigration and abortion with support for small government. Most politicians just point fingers and shout names—they don't even really try to articulate a coherent ideology. For instance, socialism is just a bogeyman for the Right<sup>16</sup> and the world's worst marketing strategy for the Left. In terms of ideas, Sanders and A.O.C. are squarely in the tradition of pragmatic F.D.R. style New Dealers and Great Society liberals;<sup>17</sup> meanwhile "conservatives," especially under Trump, are less the intellectual descendants of Edmund Burke, William F. Buckley, or even Ayn Rand than of Alfred E. Newman,<sup>18</sup> Archie Bunker, and Ed Bundy. Ideological polarization is a polarization of style and affect, not of ideas, which play a pathetically minor role in mainstream American political life.

To be clear, none of this is to suggest that *partisan* political struggle does not have real, often dire, stakes. Of course it does, but the stakes are not *ideological* stakes—they are stakes defined according to the coalition of rent-seeking interest groups that make up each party. This is easiest to see in one's opponents, so let's consider the Republican Party. GOP opposition to environmental regulation, abortion, and gun control not only have nothing to do with each other as a matter of ideology; they

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15. *Id.*

16. Paul Krugman, *Trump Versus the Socialist Menace*, N.Y. TIMES (Feb. 7, 2019), <https://www.nytimes.com/2019/02/07/opinion/trump-socialism-state-of-the-union.html> [<https://perma.cc/G463-GQGF>].

17. Richard Thompson Ford, *Neo-Socialism and the Rise of the Machines*, AM. INT. (July 18, 2019), <https://www.the-american-interest.com/2019/07/18/neo-socialism-and-the-rise-of-the-machines/> [<https://perma.cc/MD73-VMZ9>].

18. Michelle Goldberg, *The Post-Presidency of a Con Man*, N.Y. TIMES (Nov. 13, 2020), <https://www.nytimes.com/2020/11/13/opinion/sunday/trump-prosecution-lawsuits.html> [<https://perma.cc/JE6F-J44X>].

have nothing to do with ideological conviction even independently of each other. They simply reflect the financial interests or irrational obsessions of a faction with influence in the Republican Party. Ideology is just a way of marketing the bundle of disparate policy positions, which are unified only by historical accident. It would be self-flattery to imagine the Democratic Party is much different in this respect simply because I prefer most of its positions. The Democratic bundle of policy positions is superior not because it is shaped by a superior ideology but instead because the Democratic coalition is more rational, future-oriented, and cosmopolitan than the Republican coalition. It matters tremendously who wins these fights because there are real stakes involved and objectively superior positions on one side (environmentalism is the obvious example here, with gun control a close second). But the stakes are not ideological; they're practical and distributive. Ideology isn't helping anyone see the stakes more clearly—it is obscuring the stakes.

To some degree, partisan “ideology”—not a coherent normative worldview but in the popular left/right sense—is just the practical consequence of the need for political efficacy. No one can win an election alone—we all need allies joined by more than just agreement on a single issue. Sincere agreement on some issues and strategic agreement on the others defines ideological conviction. Yet over time, strategic agreement can become sincere, like a marriage of convenience that blossoms into true love. The resulting affinities are no less profound than those that might result from the rigorous application of an ideological dogma—indeed, they may be more profound. They are certainly more frequent, just as religious conviction based on emotional and aesthetic experience is more common than that based on the study of scripture.

Critique as a method and as a sensibility will tend to pull at the loose threads of such ideological alliances, unraveling older ideological affinities and generating new ones (pro-sex feminist, race-conscious anti-essentialist, etc.). To the extent ideology is one of the defining features of the “critical” as we now understand it, this tendency threatens the status of critique itself. Hence the rise of post-critique, meta-critique, and anti-critique: the turning of the critical method against critique itself, sometimes in defense of a treasured conviction that has come under critical scrutiny (second-wave feminism, human rights,

romantic racial essentialism) and sometimes as a consequence of following the logic of critique to its natural conclusion.

This has opened the possibility of a surprising and fluid critical heterodoxy that may be in the process of solidifying into a new, as yet undetermined, coherent ideological stance. Or critical heterodoxy may stay in motion, changing shape to respond to new social conditions, a “post-ideology”—not in Francis Fukuyama’s sense of a triumphant liberal order<sup>19</sup> but in the sense of a permanent destabilization of ideological positions—where ideological conviction and normative worldview is less a platform or program and more a bundle of contingent and context specific stances, ideological affinity reflecting aesthetic sensibility amid a constant reshuffling of opportunistic coalitions. It may even open the possibility of a meta-ideological stance *against* popular ideology itself. If ideology has become a popular secular religion, a new opiate of the masses, then perhaps the time has come for a detox.

#### POST-IDEOLOGY

Consider the relationship between leftism and liberalism. Today, a characteristic stance of the Left is opposition to neoliberalism. At first blush this seems a coherent Marxian stance, but most of the critics of neoliberalism embrace and defend significant aspects of the liberal political order. Critiques of neoliberalism are regularly accompanied by denunciations of racism, sexism, homophobia, ableism, and an ever-growing list of other objectionable “isms” and often explicitly include demands for stronger and more capacious legal rights against discrimination. The critiques gesture at a link between neoliberalism and a growing list of unacceptable prejudices, but the connection is less plausible as the list grows. There are compelling Marxian critiques that tie colonialism, the slave trade, and a patriarchal domestic economy to capitalism, but the case is harder to make that neoliberalism is responsible for, say, anti-gay prejudice or ableism (although some heroically try).<sup>20</sup> Quite the opposite: the most familiar—and most compelling—basis for a sweeping critique of social prejudice and demand for tolerance lies in liberal ideals of human dignity and flourishing based on the primary of

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19. FUKUYAMA, *supra* note 7.

20. See, e.g., JASBIR PUAR, *THE RIGHT TO MAIM* (2017).

individual conscience and experience. One suspects that the commitment to eliminating bias, prejudice, and discrimination—indeed the very way of thinking that conceives of society in such terms—is a product of liberalism.

It's rare that critics of neoliberalism explain why liberal thought promotes prejudice rather than providing the basis for attacking it or why a post-liberal (illiberal?) society would be more likely than a liberal one to eliminate such biases and hierarchies (as opposed to eliminating class stratification or income inequality, where the familiar Marxian argument is convincing). Nor is it clear whether eliminating prejudice simply constitutes an independent goal separate from that of eliminating the evils more obviously linked to neoliberal capitalism. Part of the problem is that—as is typical of critique—there is little more than a thumbnail sketch of the alternative to neoliberalism (classical statist socialism? syndicalism? a reformed, more egalitarian liberalism?)—a deficit that would be less troubling if the critique were limited and targeted, but which is glaring when the target is as broad and vague as (neo)liberalism given that the actual historical and present-day alternatives to liberal societies are, without exception, as or more racist, sexist, homophobic, ableist, etc., than the liberal ones.

There would seem to be two viable, ideologically coherent alternatives. One could critique only those prejudices that can be convincingly tied to capitalist exploitation or alienation as part of an attack on neoliberalism and admit that the broader critique of social hierarchy is an unrelated project. Alternatively, one might drop the thoroughgoing critique of neoliberalism and retreat to reformism, advocating a more egalitarian liberalism and embracing liberal commitments to individual flourishing and autonomy to argue for a less callous and exploitative economic system: here, the target might be neoliberalism in the limited Hayekian sense but would simply not extend to liberalism more generally.

There is a third alternative that is not ideologically coherent: one might acknowledge ambivalence as between a thorough critique of liberal capitalism and a reformist egalitarian liberalism and just sort of grope one's way along by dead reckoning, issue by issue. All available evidence suggests that this is in fact what almost everyone on the Left really does, whether or not they're willing to admit it. This means that what we experience as a coherent ideological conviction grounded in theoretical and

analytical rigor is really a contingent phenomenon determined by analogical reasoning from case to case and justified through post hoc rationalization.

If the foregoing sounds a tiny bit like the Critical Legal Studies account of legal adjudication, that's not coincidental. My suggestion is that critiques of internal coherence and determinism are, in theory, as easy to deploy against ideological conviction as they are to deploy against legalism. It was a matter of historical contingency that Critical Legal Studies kept left ideology as the fixed constant that guided critique. Indeed, the privileged place of ideology is susceptible to the same critiques Critical Legal Studies directed at law and philosophy and law and economics, both of which tried to ground legal decision-making in an extra-legal discipline that would not be vulnerable to internal critique. The problem, the critics pointed out, was that as soon as philosophy or economics was used in legal argument, it ceased to be a distinctive epistemology that could ground legal reasoning and became a *legal argument* no less vulnerable to critique than any other legal rule or doctrine. Worse yet, the critique threatened to feed back to undermine the status of the "outside" discipline more generally. Once you see that Kant's Categorical Imperative doesn't really help you to decide whether *Roe v. Wade* or *Bush v. Gore* were correctly decided, you might conclude that it can't really help you decide *anything* with practical stakes; once you discover that economic efficiency arguments always tacitly assume distributive priors in the context of legal disputes over contract or property entitlements, you might grow suspicious of them in the context of *all* social policy questions that involve distributive stakes.

The same logic can apply to ideology once we suspend familiar assumptions and popular associations. Whenever social and cultural conditions allow for a change in ideological associations, the coherence of the categories is in flux. Is it really any coherent ideology that *explains* support for environmental protection, racial equity, sexual liberation, and more open immigration policy? Does anyone reason *from* an ideology *to* all of these commitments? Or do we begin with a visceral conviction about a few issues and gravitate toward the political coalition that supports our convictions about those few and embrace the others as a matter of solidarity? If the latter, then it's inevitable that ideology—when we take it seriously—will cut against pop ideological solidarity some of the time. Moreover, it's likely that the individual

visceral convictions that led us to an ideological coalition will cut against other visceral convictions: a committed racial justice advocate might be pro-life; a feminist could be deeply anxious about the effect of cultural pluralism on social solidarity. It's this kind of ideological internal incoherence that allows for—indeed guarantees—ideas like queer critiques of same-sex marriage,<sup>21</sup> left critiques of carceral feminism,<sup>22</sup> Black-empowerment critiques of affirmative action doctrine,<sup>23</sup> feminist critiques of sexual harassment and sexual assault laws,<sup>24</sup> and other such heresies.

If “the Left” was united by a systemic critique of late capitalism along the lines of classic Marxism, one might argue that these ambiguities and conflicts are peripheral. From a Marxist perspective, all of these are symptoms of the misguided cultural obsessions of the New Left, mere squabbling over epiphenomena, trivial struggles over the distractions of the superstructure. But today's Left isn't Marxist or even neo-Marxist by and large—not even the “socialists”—and shares no such thoroughgoing critique of capitalism. Instead, most of the Left supports some version of capitalism with a conscience: stronger labor unions, an expanded safety net, some version of European-style social democracy, or New Dealism without the racial exclusion. This is pragmatic in just the reasoning-by-dead-reckoning sense I alluded to above; it doesn't amount to a coherent ideology or conceptually consistent critique of the status quo. That's why it is hard to distinguish so-called socialists—from Cornel West to Bernie Sanders to Alexandria Ocasio-Cortez—from the pragmatic progressive wonkishness of Elizabeth Warren or even the gentle libertarian futurism of Andrew Yang.

The critical Left lacks conviction with respect to any comprehensive alternative to liberal capitalism because critique undermines not only the status quo but also imagined alternatives to it. It is one thing to point out the inequality, alienation, and oppression of neoliberalism; it is quite another to propose to eliminate it (rather than simply reform it at the margins). “Socialists” today do not seriously propose a command-and-control economy or the dictatorship of the proletariat, not only because

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21. WARNER, *supra* note 8.

22. See, e.g., AYA GRUBER, *THE FEMINIST WAR ON CRIME* (2019).

23. RACIAL CULTURE, *supra* note 10.

24. JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2006).

the historical examples of these ideas in practice are, to put it mildly, unattractive but also because the very habit of critique naturally undermines the alternatives. No one can even imagine, much less believe, that a command-and-control economy would serve the general good—we all already *know* it would become captured by factions and corrupted to cronyism, as it has everywhere it has been tried. Syndicalist alternatives have the virtue of never having been tried and seen to fail on a large scale, but the realistic versions are not really alternatives to liberal capitalism but the products of it: worker cooperatives, B-Corps, limited equity property arrangements. Again, we arrive at these from groping along by dead reckoning—not from following a coherent ideology. This suggests that what we call ideology is less a comprehensive worldview or “cognitive map” that guides our specific commitments and more a cultural sensibility, an aesthetic predisposition.

#### INSTITUTIONS AND LEGITIMACY

If the Left were joined by a shared ideology that suggested a comprehensive positive program for social organization, critique might serve the goal of undermining the legitimacy of current neoliberal institutions, such as the courts, capitalist enterprise, and representative democracy, leaving a vacuum that could be filled by revolutionary alternatives. But more often, critique seems to assume the resiliency of existing political institutions. The problem in the late twentieth century, for instance, when Critical Legal Studies came into its own, was that mainstream institutions seemed invulnerable and inevitable. Facing down the End of History, the urgent goal was simply to open up any room to maneuver, any space to think outside the triumphant, technocratic liberal box. But today, liberal institutions seem all too vulnerable, perhaps to radical change from the Left but more likely to radical change from right-wing ethno-nationalism or simple collapse into mob-bossism and kleptocracy.

The anxiety that whatever follows neoliberalism could be worse is another inspiration for post-critical and anti-critical thought. For example, some of Elizabeth Anker's work seeks to rescue rights from critique by turning critical methods against critique itself. The “post-critical” turn shares an aesthetic with critique—post-critics like Anker cite authorities and write in a cadence and with terminology familiar to anyone steeped in the

critical tradition (and unfamiliar to most anyone else). But in substance (if it's fair to separate it from form), some of the arguments are hard to distinguish from conventional liberalism. Most critics of liberalism are, in the end, disappointed liberals themselves; there seems to be no viable humane modern alternative to liberalism because liberalism is more than one of several competing ideologies—it is a cultural dominant. Our every substantive moral commitment and emotional inclination is rooted in a modern sensibility that is inseparable from liberal ideals of individual liberty, human flourishing, the priority of modernity over tradition, rights, progress, the avant-garde, etc. On this view, critique is a ritual of uncovering, confronting, and embracing the internal contradictions (Anker might say “paradoxes”) in *our own* commitments and beliefs.

There is an aesthetic virtue in this practice, as Duncan Kennedy notes in the final pages of *A Critique of Adjudication*. Indeed, an aesthetic sensibility may well be what truly distinguishes all species of critique. I perceive a kindred spirit rather than an intellectual or ideological adversary in Anker's post-critical reaction to the critique of rights—a critique that I have adopted and contributed to in my own work—because we share this sensibility. If there is something more, it is a deep moral commitment to indeterminacy, open-endedness, and the limitless horizon of human possibility, virtues which dogmas, notions of timeless truths, and imprescriptible rights ideological certainty of all kinds would foreclose. Michel Foucault once insisted that “my point is not that everything is bad, but that everything is dangerous—nothing is innocent.” This expresses the critical stance as well as anything can. For the critic, there can be no “right answer”—only an infinite number of wrong ones, which must be deployed against others in a continual vigil against dogmatic complacency and the tyranny of moral confidence, lest one good custom should corrupt the world.

