

The notion of critical legal studies is based in questioning the foundation of our legal system. It is in line with American and Legal Realism because it is a departure from Formalism and seeks to 'nurture' the individual away from the strict rationality of the black-letter law. It evolved out of the social movements in the 1970's that challenged the established social order of politics and law.

Critical Legal Studies argues that laws benefit those that are powerful in society, or that laws are set up to maintain the status quo. This concept goes to the base structure of any society; power struggles almost always involve blood and violence. The idea that radical shifts in power can be achieved at the ballot box is foolish. A dominant power structure is not going to pass laws that benefit the minority; if they did, then what would be the point of being in the majority?

I am not justifying the powerful running the legal system in any country. However, it is a cold fact of life that should be accepted. Once accepted, plans of action can be born to use the existing structure against itself to enact the desired social change. This is what has been successful historically. Dr. Martin Luther King comes to mind; non-violent protest angered the existing structure into violence. This, in turn, violated the 'powerful' structures laws under the First and Fourth Amendment (and many others). Therefore, the 'powerful' w

Critical legal studies finds a structural problem with statutes. Statutes, by the very definition of being laws, bind judges in decision-making. However, the statute is likely not specific enough to determine an outcome. Once again, this comports with Realism because judges are provided leeway to consider a multitude of social and individual factors when ruling. Realism sees this as a benefit, yet critical legal studies views this as constraining (and not judicially liberating).

Critical legal studies views law and politics working together in a continuum. Law and politics cannot be separated. If laws are morals with precision, then there necessarily has to be a social majority to codify and enforce the moral into law (which is politics). I think that viewing politics and law separately is akin to an ostrich burying his head in the sand and believing that nothing can see him.

I am unsure if critical legal studies is a 'breath of fresh air'. I believe it provides good approach and discussion to the established legal order in the marketplace of ideas. I do believe that critical legal studies is a more realistic approach because it adjusts as society moves forward. Formalism and conservative thought is set on maintaining the status quo; this is not how society, capitalism, and democracy grow.

Never forget that bamboo survives the worst of storms because it is flexible (concept in the Tao Te Ching).