

Renovating through Counterpoint: Critical Contract Law

Perhaps the most deeply hidden motive of the person who collects can be described this way: he takes up the struggle against dispersion. Right from the start, the great collector is struck by the confusion, by the scatter, in which the things of the world are found. It is the same spectacle that so preoccupied the men of the Baroque; in particular, the world image of the allegorist cannot be explained apart from the passionate, distraught concern with this spectacle. The allegorist is, as it were, the opposite of the collector. He has given up the attempt to elucidate things through research into their properties and relations. He dislodges things from their context and, from the outset, relies on his profundity to illuminate their meaning.

Walter Benjamin, *The Arcades Project*

The great preponderance of critical legal writing published since the mid-1970s has not been unduly occupied with attacking legal liberalism on the elevated plane of political or philosophical abstractions. Critical legal authors have tended to concentrate on a task of a different order, which has seen them sift through the mass of governing principles to be found in specific branches of the law. Roughly, the pattern of analysis is that established doctrine is identified, its content is isolated and examined for implicit political or economic assumptions, and finally the doctrine is revealed as ideologically tilted in favour of what Mark Kelman calls its 'core privileged liberal values.'¹ The critical legal goal is – to use an inelegant metaphor – to 'trash' the existing legal literature that supports the principles at the foundations of a legal regime.² This chapter presents and assesses examples of the critical procedure as applied to contract doctrine.