

## Darn That Dream: The Communitarian Vision of Critical Legal Studies

But the wise know that foolish legislation is a rope of sand which perishes in the twisting; that the State must follow and not lead the character and progress of the citizen; the strongest usurper is quickly got rid of; and they only who build on Ideas, build for eternity; and that the form of government which prevails is the expression of what cultivation exists in the population which permits it. The law is only a memorandum.

Ralph Waldo Emerson, 'Politics'

This penultimate chapter is about two paradoxes found in the radical critique of legal institutions and legal learning. The first, the paradox of engagement, takes the form of critical legal authors calling for an appreciation of law as deeply political while refusing on principle to disclose in detail their substantive political views. The second paradox, the paradox of postponement, arises from the view that, although law is entirely a matter of political choice, the critic has no business commending the values that ought to shape a legal regime. Critical legal writers have been committed to what has been called, in another context, the 'perpetuity of contest.'<sup>1</sup> Legal values and institutions must be selected through a process that operates at a grassroots level. The regular presence of these two paradoxes, if only in the background, in the critical legal literature, might account for the perceived degree of threat the critique has posed to teachers and practitioners of the law. A cryptic political agenda, by the very fact of its concealment, inevitably invites suspicion.

Ultimately, while the radical critics have claimed to expose the hidden ideological content of contemporary law, they have adopted a strategy which justifies providing only the barest outline of a progressive legal