

# Michigan Law Review

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Volume 87 | Issue 7

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1989

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### Recommended Citation

Jeffrey L. Harrison & Amy R. Mashburn, *Jean-Luc Godard and Critical Legal Studies (Because We Need the Eggs)*, 87 MICH. L. REV. 1924 (1989).

Available at: <https://repository.law.umich.edu/mlr/vol87/iss7/5>

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## ESSAY

# JEAN-LUC GODARD AND CRITICAL LEGAL STUDIES (BECAUSE WE NEED THE EGGS)

Jeffrey L. Harrison\*  
and Amy R. Mashburn\*\*

. . . and nobody, nobody knows what's going to happen to anyone besides the forlorn rags of growing old . . . .

Jack Kerouac, *On the Road*<sup>1</sup>

Film directors, although faced with an endless number of decisions about lighting, camera placement, and editing, must nonetheless make these choices seem inevitable and necessary.<sup>2</sup> A director who chooses to make style itself the focus of a film will pay severe commercial penalties. The resulting "invisible style," according to film scholar Robert Ray, is both the consequence and ratification of a capitalistic worldview that promotes the avoidance of critical thinking.<sup>3</sup> Like "positivism" in law, the dominant cinematic paradigm consists of concealing choices and implying certainty.<sup>4</sup>

The French New Wave, a film movement born in the late 1950s, represents an effort to defy and expose this artistic positivism. The particular insight that precipitated the New Wave was the oppressiveness of the cinematic tradition in which the objectives of producers always took precedence over those of directors or screenwriters.<sup>5</sup> The work of the New Wave directors — many of whom, appropriately enough, began as film critics — was and is characterized by a willingness to violate filmmaking conventions and to promote the notion of the *politique des auteurs*.<sup>6</sup> The *auteur* theory is that the *director* is an

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1. J. KEROUAC, *ON THE ROAD* 310 (1955).

2. See R. RAY, *A CERTAIN TENDENCY OF THE HOLLYWOOD CINEMA, 1930-1980*, at 20 (1985).

3. *Id.* at 16, 17; see also L. GIANNETTI, *GODARD AND OTHERS* 132 (1975).

4. By legal positivism, we mean the view that legal outcomes are driven by adherence to objective principles and pre-existing legal rules. See, e.g., J. AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* (1832).

5. GODARD ON GODARD 146, 182-83 (J. Narboni & T. Milne eds. 1968).

6. See J. MONACO, *THE NEW WAVE* 7 (1976).

artist involved in a personal communication with the audience.

Foremost among the New Wave filmmakers is Jean-Luc Godard. His films, more than any others in the New Wave style, often completely subordinate thematic content to the goal of exposing the fact of personal artistic choice. His message, in brief, is that cinematic choices are essentially arbitrary and indeterminate. Order can be an illusion.

This mode of thought may sound familiar even to the reader who is not a film buff: in law, today's counterparts of Godard and the French New Wave are the proponents of Critical Legal Studies (the so-called "crits"). Using the same methods as the cinematic "crits," and driven by many of the same motivations, they want us to face the fact that there are few if any guiding principles that we can depend on. Legal "rules" are tools used to further the "themes" of the powerful — the "producers" of law.

The New Wave in filmmaking is now thirty years old. Critical Legal Studies (CLS) has been around in one form or another for approximately a third of that time. We believe that by examining the *avant-garde* movement in film we may be able to anticipate what is in store for the *avant-garde* movement in law. Our conclusion is that just as New Wave film methodology has had only a limited impact on the film industry generally, CLS is likely to have a limited — perhaps only stylistic — effect on jurisprudential development.

The reason for the shortfall is that Godard and the crits, in their respective ways, present a version of reality that we are unable — in a literal sense — to incorporate into our lives. Their message is, simply, that precious little in our existence is truly ordered or governed by identifiable principles. At a fundamental level, however, our psychological well-being may depend on our ability to avoid their version of reality by *assuming* (or imposing) an ordered reality.<sup>7</sup>

In the pages that follow, we more fully discuss the methods and aims of both Godard and the CLS movement. The similarities between Godard and his jurisprudential counterparts will be obvious but we devote a short section to highlighting the overlap. We elaborate on the need for order — even if contrived — and the failure of the modern film world to assimilate fully the contributions of Godard. We conclude by speculating about what that failure may tell us about the eventual impact of CLS.

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7. See generally M. PECKHAM, *MAN'S RAGE FOR CHAOS* 25-40 (1965).

## I. JEAN-LUC GODARD

In his attack on film "positivism," Godard stresses that form and substance are as inseparable as the outside and inside of the human body.<sup>8</sup> This unity, which is rarely captured eloquently on paper, is conveyed instantaneously on film. Due to this inseparability, imposing a particular form on a film constrains the film's context. Thus, by contravening conventional cinematic style and technique, Godard sought to deliver a substantive message radically different from the one conveyed in more familiar films.

This is not to suggest, however, that Godard himself did not rely upon the audience's ability to perceive the interrelatedness and totality of form and theme. With this cautionary note in mind, we can better discern the message of Godard's method.

A. *Return to Zero: Form and the Necessity of Choice*

The necessity of choice obsessed Godard.<sup>9</sup> Why include one shot and omit another? More importantly, why exclude the audience from perceiving the necessity for choice by making shot selection seem inevitable and necessary?<sup>10</sup> To Godard, cinematic choices are fundamentally arbitrary — a function of the artist's personal taste.<sup>11</sup> By making the spectator aware of the process of shot selection, the director's creative status is brought to the fore and the seeming inevitability of the invisible style's point of view is undermined.

Accordingly, in making his first full-length film, *Breathless*, Godard said that his stylistic objective was to reinvent the technical language of cinema.<sup>12</sup> Before this new cinema could be created, how-

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8. L. GIANNETTI, *supra* note 3. Godard himself has stated: "To me, style is just the outside of content, and content the inside of style, like the outside and inside of the human body — both go together, they can't be separated." *Id.* at 13. Godard has also said that "[c]ontent, in other words, precedes form and conditions it. If the former is false, the latter will logically be false too: it will be awkward." GODARD ON GODARD, *supra* note 5, at 146.

9. See generally J. MONACO, *supra* note 6, at 187-212.

10. In *Two or Three Things I Know About Her* (1966), for example, Godard expressed this concern as part of the film in the form of a voiceover. R. RAY, *supra* note 2, at 286. See also GODARD ON GODARD, *supra* note 5, at 223 (Godard stating that "the problem . . . has long preoccupied me[:] . . . why do one shot rather than another?").

11. GODARD ON GODARD, *supra* note 5, at 213-15. One example of a critical omission by Godard is the death of a main character in *Masculine-Feminine* (1965). The death is mentioned by another character, but is not shown. The impact on the viewer is quite different from that which could be expected if the death (a fall from a window) had been shown. Similarly, in *Breathless* (1959), Godard eschews shots that would establish the physical proximity of a killer to his victim. When the victim is then shown, the effect is to surprise the viewer. See generally R. RAY, *supra* note 2, at 273-87.

12. See GODARD ON GODARD, *supra* note 5, at 173 (Godard stating that he wanted "to give the feeling that the techniques of film-making had just been discovered or experienced for the first time"); see also L. GIANNETTI, *supra* note 3, at 41, (Godard, as "one of the world's most

ever, the medium had to be “returned to zero,” a state of pre-convention freedom and purity.<sup>13</sup> The stifling conventions of the popular style had to be exposed, demystified, and dethroned.<sup>14</sup> The filmmaker would draw attention to these domineering conventions by violating them so the audience could perceive their artificiality.<sup>15</sup>

Godard's first victim was the “invisibleness” of the dominant style which denied the director his authorship. He intruded himself physically into his films, appearing in a number of them in narratively pivotal cameo roles.<sup>16</sup> Scenes important to plot advancement were either not shown at all or lasted only a few seconds, whereas non-action, stream-of-consciousness conversations were often filmed in long, fixed shots.<sup>17</sup>

Godard also challenged the assumption that films must be edited to achieve a seamless narrative tapestry. He refused to connect scenes with smooth transitions and instead permitted abrupt, awkward breaks.<sup>18</sup> He wanted his audience to understand that film was nothing more than an assemblage of pieces which could be arranged around other — even non-narrative — orders.<sup>19</sup> In his 1965 film *Masculine-Feminine*, Godard used black frames to indicate cuts from one scene to the next<sup>20</sup> and blasted these fragments apart with a soundtrack of gunshots, punctuating their disparateness with mismatched subtitles.<sup>21</sup> On a thematic level, Godard intended the fragmentation and haphaz-

dazzling film technicians, . . . has expanded and exploded the language of film . . .”); Butler, *Breathless*, in 1 MAGILL'S SURVEY OF CINEMA 406 (F. Magill ed. 1985). As Godard wrote in another context, “I don't write to you from a far country. Yet even so, everything separates us.” GODARD ON GODARD, *supra* note 5, at 108.

Technical innovations that can be attributed to all the *avante-garde* filmmakers include superimpositions, reflections in water, back lighting, special effects, mannered compositions, bizarre angles, shots of clouds, and explorations of the psychology of characters and attempts to portray their thoughts. GODARD ON GODARD, *supra* note 5, at 84-85.

13. GODARD ON GODARD, *supra* note 5, at 27; *see also* Cameron, *Introduction to THE FILMS OF JEAN-LUC GODARD* 6, 6-9 (I. Cameron ed. 1970).

14. GODARD ON GODARD, *supra* note 5, at 228.

15. R. RAY, *supra* note 2, at 285; Butler, *supra* note 12, at 408.

16. Barr, *A Bout de Souffle*, in *THE FILMS OF JEAN-LUC GODARD*, *supra* note 13, at 12 (Godard physically intervened in his stories, wandering around in them like a director on a set. In *Breathless*, for example, Godard was the one who spotted Michel from his picture in the paper — the director quite literally making himself known through his story.).

17. *See* L. GIANNETTI, *supra* note 3, at 53.

18. *Id.* Godard wanted his audience to sense that editing was only an option and not an essential part of the language of film. Cameron, *supra* note 13, at 7.

19. L. GIANNETTI, *supra* note 3, at 19; Cameron, *supra* note 13, at 7; Hillier, *Masculin-Féminin*, in *THE FILMS OF JEAN-LUC GODARD*, *supra* note 13, at 123.

20. This technique may be familiar to those who have seen Jim Jarmusch's film *Stranger Than Paradise* (1984).

21. This effect is reminiscent of Godard's earlier film *The Soldiers* (1963), in which the titles were handwritten and sometimes advanced the narrative, but often did not. *See* Cameron, *Les Carabiniers*, in *THE FILMS OF JEAN-LUC GODARD*, *supra* note 13, at 42.

ardness to remind viewers of their dependence on conventions of spatial and temporal continuity.<sup>22</sup>

Godard also shocked audiences in 1959 by destroying the "fourth wall" separating viewers from the screen.<sup>23</sup> His actors accomplish this by stepping completely out of character. They look at and speak directly to their audiences. Passers-by, some of whom only happened upon Godard's filmmaking accidentally, stare into (or at) the camera.<sup>24</sup> Occasionally, a character peers around the frame of the shot itself after another actor who has gone off frame.<sup>25</sup> By poking holes in this "fourth wall," Godard jolts the audience from its tendency to suspend awareness that "it's only a movie."

Godard allows the camera to cross the sacred 180° axis, resulting in, for example, a gun pointed first to the left of the screen and, an instant later, to the right.<sup>26</sup> He stops music when his characters speak, and starts it again when they stop.<sup>27</sup> Godard's natural soundtracks resulted in what one critic described as a "cacophonous din" that drowns his characters' words in street noises.<sup>28</sup>

Amidst this array of stylistic excesses, Godard repeatedly employed yet another one: the jump cut. By using fast-moving, hand-held cameras and omitting intervening frames, this technique makes it seem as if the action "jumps" disjointedly from one moment to a different moment several minutes hence.<sup>29</sup> This creates an effect of time being startlingly altered and elliptically represented.<sup>30</sup> With the jump cut, Godard destroyed the invisible style's conception of time passing unbroken in a smooth continuum. In addition to noticing Godard's editing, viewers of his films sense an immediacy and urgency by which Godard conveys, on a substantive level, the rhythm of modern life.<sup>31</sup>

22. R. RAY, *supra* note 2, at 282-85.

23. Butler, *supra* note 12, at 408.

24. R. RAY, *supra* note 2, at 281.

25. Cameron, *supra* note 21, at 52.

26. R. RAY, *supra* note 2, at 274-75 (description of the scene in *Breathless* depicting the cop-killing).

27. Godard used the technique extensively in his recent film *Hail Mary* (1985).

28. L. GIANNETTI, *supra* note 3, at 42-43.

29. J. MONACO, *supra* note 6, at 113; *see also* L. GIANNETTI, *supra* note 3, at 60 (quoting Godard as saying that "[t]he dolly shot is a moral statement"); *id.* at 75 (Godard wanted to use dolly shots more often but could not afford them; to achieve the same effect, he strapped his cameraman into a wheelchair and pushed him through the streets of Paris during the filming of *Breathless*).

30. W. PECHTER, *TWENTY-FOUR TIMES A SECOND* 33-34 (1971) (With Godard we cannot depend on the fulfillment of old expectations; instead we get disjointedness, angularity, and time as moving space.).

31. *FOCUS ON GODARD* 11 (R. Brown ed. 1972); W. PECHTER, *supra* note 30, at 25 (Godard's movies are caught up in the "urgency of now"); Butler, *supra* note 12, at 408 (the

Godard's nervous, jarring pace is one which, paradoxically, emerges from an editing device, yet somehow manages to create a sense that one is experiencing an event while it occurs — reality — better than the seamless flow of the invisible style.<sup>32</sup>

### B. *The Subordination of Narrative*

The main target of Godard's rebellion against conventional filmmaking was the supremacy of narrative. Tight narratives suggest inevitability.<sup>33</sup> They force the filmmaker to obey the rigid logic of a dominant narrative, even though this "logic" amounts to nothing more than a system of illusions made to seem real by the invisible style.<sup>34</sup> A flawless narrative, when combined with a representational style, suggests an inexorable cause-and-effect coherency to life which, according to Godard, does not exist.

Godard responded in a variety of ways. He eschewed conventional plots in most of his films,<sup>35</sup> and what little plot exists in others is buried and utterly unpredictable. As a result, absence of a story, bizarre twists of events, or failure to resolve a weak plot became Godard's signatures.

Godard's approach to screenwriting also reflected his antipathy toward narrative. He summarized his plots in a sentence or two and the rest of what we see he improvised.<sup>36</sup> He pursued false leads and perversely included thematically irrelevant characters in scenes.<sup>37</sup> When

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jump cut serves two functions: to convey the jagged lifestyles of the characters and to draw one's attention to the editing).

32. W. PECHTER, *supra* note 30, at 17; Whyte, *Introduction to J. GODARD, GODARD: THREE FILMS 7* (1975); see also Guarner, *Pierrot le Fou*, in *THE FILMS OF JEAN-LUC GODARD*, *supra* note 13, at 102 ("Through this deliberate confusion, Godard tries to achieve in his work some of the spontaneity of life . . ."); Walker, *Pierrot le Fou*, in *THE FILMS OF JEAN-LUC GODARD*, *supra* note 13, at 110-11 (describing Godard's 1965 film *Crazy Pete*).

33. L. GIANNETTI, *supra* note 3, at 23 (even when there are irregularities in commercial films, they must be made to seem logical in retrospect after the story has unfolded); Hillier, *supra* note 19, at 123-24.

34. Guarner, *supra* note 32, at 96; S. KAUFFMANN, *Waiting for Godard*, in *STANLEY KAUFFMANN ON FILMS 25* (1980).

35. L. GIANNETTI, *supra* note 3, at 158; C. MACCABE, *GODARD: IMAGES, SOUNDS, POLITICS 113* (1980). Godard's rejection of plot was a political and artistic decision. He believed that a sequential narrative was an inappropriate vehicle for his political themes because it suggested a coherency lacking in modern capitalistic societies. After the mid-1960s, Godard became militantly plotless and stated that narrative continuity was "reactionary." L. GIANNETTI, *supra* note 3, at 158.

36. FOCUS ON GODARD, *supra* note 31, at 7-8; GODARD ON GODARD, *supra* note 5, at 172 ("I improvise, certainly, but with material which goes a long way back."); W. PECHTER, *supra* note 30, at 29 n.4 (the actors do not improvise, only Godard does).

37. L. GIANNETTI, *supra* note 3, at 50, 159 (By including irrelevant characters, Godard preserved the possibility of choice — he could let the story follow these characters or he could ignore them entirely.).

he did present a semblance of a story, he would systematically dislocate the chronology of events.<sup>38</sup> Even so, his audiences rarely see narratively important scenes acted out. The result is not a traditional film, but an attempt at or exploration of film, lacking any substantive narrative resolution.

Godard applied Bertolt Brecht's theories of distancing or estrangement<sup>39</sup> to counter the audience's tendency to identify with the film as reality and the corresponding tendency to suspend their instinctive disbelief.<sup>40</sup> In order to upset the viewer's equanimity, Godard toyed with the viewer's expectations. For example, in *A Woman Is a Woman*, he has a woman flip an egg in the air, leave to answer the telephone, and then return to catch it several minutes later.<sup>41</sup>

Additionally, Godard strove to prevent his audience from identifying emotionally with his characters by draining drama and sentiment from his films.<sup>42</sup> The events most typically charged with emotion — sex and death — are either presented in a highly stylized manner or are not visually depicted at all. The interpersonal contacts between characters are notable for their disproportionate length and sheer monotony; boredom assures detachment. Because Godard offers no reasons for his characters' behavior and robs their stories of emotional content, the viewer of his films does not experience catharsis, but rather encounters intellectually a filmmaker and his attempt at a film.<sup>43</sup>

To force the audience's detachment from the film, Godard had to overcome an additional obstacle: the actors who portray Godard's characters have faces and personalities that threatened to elicit in-

38. GODARD ON GODARD, *supra* note 5, at 69 (Godard observed that disturbing the chronology of events can maintain one's interest in an otherwise mundane plot); Guarner, *supra* note 32, at 102 (describing Godard's *Crazy Pete*). In response to Clouzot's question whether a movie should have a beginning, middle, and end, Godard replied: "Yes, but not necessarily in that order." In a relatively recent Godard film, *Every Man For Himself* (1980), a character is seen finishing a telephone conversation that begins later in the film.

39. See Cameron, *supra* note 13, at 6-9; J. MONACO, *supra* note 6, at 129 (*verfremdungseffekt* — estrangement effect). Brecht sought to keep his audiences from suspending their disbelief and empathizing with the characters in his plays, under the theory that only if they did not empathize could they objectively assess the issues presented. See Eddershaw, *Acting Methods: Brecht and Stanislavsky*, in BRECHT IN PERSPECTIVE 128, 134 (G. Bartram & A. Waite eds. 1982).

40. See Cameron, *supra* note 21, at 42.

41. J. GODARD, *supra* note 32, at 9; R. RAY, *supra* note 2, at 285.

42. See Cameron, *supra* note 21, at 42 (Godard successfully denied the emotional effects of war in *The Soldiers* and was despised by nearly everyone for doing so); L. GIANNETTI, *supra* note 3, at 28; J. MONACO, *supra* note 6, at 122, 136 (the novel upon which Godard's film *Contempt* (1963) was based is a melodrama, but Godard stripped it of its aspects of psychological drama).

43. See, e.g., Barr, *supra* note 16, at 15; Cameron, *supra* note 21, at 43. In *Breathless*, for example, Michel shoots the policeman and commits other crimes casually. His impulses apparently lack an objective correlation to the main action. Godard uses this gap to convey a politically and socially turbulent world with oppressed characters acting outside the law.



dependent emotional identification. To neutralize this possibility, Godard had his actors merely state emotions or reactions rather than portraying them.<sup>44</sup> The audience is aware at all times that it is observing shallow characterizations and not real people. Godard was effective in this regard even when he used famous actors because he capitalized on the audience's tendency to see the stars as themselves rather than the characters they portrayed.<sup>45</sup>

For ignoring the demands of narrative logic and the audience's emotional expectations, Godard has been charged with treating his viewers with contempt. More likely, he was trying to shock them from their complacency by inviting their participation in a dialogue or dialectic exchange.<sup>46</sup> The audience's detachment allows Godard to evoke responses that do not depend on or flow from sentimentality. Producers of popular films reduce their audiences to purely commercial entities who possess money the producers want. These filmmakers do whatever will motivate the most people to part with their money. Godard's aims are different. Rather than exploiting the passive emotions of paying customers, Godard asks his audience to shed their preconceptions and participate in the experience of the film.

### C. *Recurring Themes*

Godard treated film as an inherently dialectic experience comprised of juxtapositions between conflicting images, images and sounds, the film and its audience, and, finally, the film and reality.<sup>47</sup> Godard mixes contradictory images and invites us to view his films at several levels and from several perspectives.<sup>48</sup> He offers no answers, solutions, or correct points of view; he merely holds the resulting paradoxes up for examination.<sup>49</sup>

Two thematic dichotomies stand out as crucial to an understanding of Godard's message. First, a recurrent theme is the existential

44. Cameron, *supra* note 13, at 8.

45. See L. GIANNETTI, *supra* note 3, at 29 (Madeleine in *Masculine-Feminine* was portrayed by a real pop singer, Chantal Goya); J. GODARD, *supra* note 35, at 11; Guarner, *Le Mépris*, in *THE FILMS OF JEAN-LUC GODARD*, *supra* note 13, at 57 (we are always aware that Camille is Brigitte Bardot).

46. See Cameron, *supra* note 13, at 42; J. MONACO, *supra* note 6, at 101, 102 (the audience participates, if only by struggling to understand).

47. C. MACCABE, *supra* note 35, at 44 (images escaping unification); J. MONACO, *supra* note 6, at 179 (from "the clash of . . . elements [in Godard's work] a sense of the truth[ ] . . . emerge[s]"); W. PECHTER, *MOVIES PLUS ONE* 12 (1982) (the art of radical juxtaposition).

48. C. MACCABE, *supra* note 35, at 43; Barr, *supra* note 16, at 14 (noting tensions and ambivalence in Godard's work between the real and ideal, contemplation and action).

49. FOCUS ON GODARD, *supra* note 31, at 5-6.

dilemma between objectivity and subjectivity.<sup>50</sup> The arbitrariness of subjective ideology is indefensible and invalid, but complete objectivity results in alienation.<sup>51</sup>

The tension between subjectivity and objectivity gives rise to the second Godardian dichotomy: free will and determinism.<sup>52</sup> From the subjective perspective of the agent, choice seems always to be a possibility; from the objective perspective, however, whatever the agent does seems inevitable, determined by pregiven external and internal factors. Godard's characters are always in situations in which they must choose — yet at the same time these choices reflect inevitability. In *Breathless*, for instance, the genre form itself suggests that the protagonist's fate is unfolding toward death. Yet, his death actually flows from his choice — picking up the gun.<sup>53</sup> The character exercises his free will and chooses death.

Other Godardian characters seem to make no choices at all. Nonetheless, Godard seems to reject determinism, yet at the same time he is not at ease with free will. Perhaps in the end he is most uncomfortable with the general concept of control, be it by destiny or by the agent himself. The arbitrary, unsettling flow of existence absent destiny is symbolized by the fatal accident, a common occurrence in Godard's films.<sup>54</sup>

Emphasizing the dichotomies of subjectivity and objectivity, and of free will and determinism, Godard maintained thematic dialectics. Godard also presented the traditional Marxist economic dialectic in his films, using it to criticize modern capitalistic societies. The influence of money on filmmaking and films preoccupied Godard. He realized this influence was twofold: money affects both the production and the content of film.<sup>55</sup> According to Godard, the difficulty of financing films independently and the alternative of being coopted by the large-scale commercial producers had an undeniably negative in-

50. J. GODARD, *supra* note 32, at 12.

51. In *Masculine-Feminine*, the protagonist's older brother, Ferdinand, was a photographer who stepped back too far to get the "right" angle on a shot and was killed. Similarly, at the end of the movie, the protagonist steps back too far and falls to his death from a building top. L. GIANNETTI, *supra* note 3, at 39 (the dangers of ideology (subjectivity) are obvious, but complete objectivity ("stepping back too far") is also dangerous); J. MONACO, *supra* note 6, at 172 ("The desire for objectivity kills . . .").

52. See GODARD ON GODARD, *supra* note 5, at 21 (Godard's view that death and destiny are the cinema's pet themes); J. MONACO, *supra* note 6, at 164, 179.

53. Barr, *supra* note 16, at 12.

54. See, e.g., Hillier, *supra* note 19, at 126.

55. C. MACCABE, *supra* note 35, at 27; Goldberg, *Eleven Things He Knows About Godard*, Wall St. J., Jan. 21, 1987, at 18, col. 1 (quoting Godard as saying that "cash flow is a screenplay").

fluence upon popular films.<sup>56</sup> Filmmakers, like all modern people, are captives of a consumer society, and, as Godard said through a character in one of his films, independence is impossible for anyone except maybe banks, and they are "killers."<sup>57</sup>

Several cinematic metaphors represent Godard's view of capitalistic society. The gratuitous violence in many of his films suggests that capitalism has turned our cities into nightmares of repression and violence.<sup>58</sup> People set themselves on fire or shoot one another, and onlookers respond casually and without emotion.<sup>59</sup> Prostitution is another of Godard's metaphors for capitalism. He rarely depicts romantic lovemaking and the scenes of procured sex are cold and mechanical.<sup>60</sup> Men are not interested in physical pleasure, but seek gratification through humiliating women whom a capitalistic society has turned into consumer products. Prostitution represents the exploitation and hatred of women resulting from money, power, and uncontrolled self-interest.<sup>61</sup> Godard indicts capitalistic culture by revealing its stratification of society into groups of powerful, exploitative men at the top, and women who are objects for their consumption on the bottom. Weaker men are portrayed as fearful, paralyzed dreamers (despite their protests that they are "not machines") who are in love with inaction and, ultimately, are the victims of meaningless deaths. They cannot survive within the constraints of a capitalistic society bifurcated into a dominant class and a submissive one.

The New Wave as a whole, and Godard's career in particular, can be summarized as an attempt to redefine the relationship between film and reality.<sup>62</sup> The filmmakers who preceded the New Wave aspired to the representation goal of freezing celluloid images of reality. Godard, on the other hand, saw film as mediating reality and concluded that attempting to be "true to life" is an ideological trap for filmmakers and their audiences. Reality is not revealed by merely recording the

56. C. MACCABE, *supra* note 35, at 18 (noting Godard's recognition of the linkage between the financing of films, the methods of producing and distributing them, and the sounds and images that compose the finished product).

57. S. KAUFFMANN, *supra* note 34, at 24 (quoting unidentified man in *Every Man for Himself* (1980)).

58. Particularly good examples are *Masculine-Feminine* (1965), *Two or Three Things I Know About Her* (1966), *Weekend* (1968), and *Every Man for Himself* (1980). See L. GIANNETTI, *supra* note 3, at 31-35, 156.

59. Björkman, *Masculin-Féminin*, in *THE FILMS OF JEAN-LUC GODARD*, *supra* note 13, at 119-20; L. GIANNETTI, *supra* note 3, at 34.

60. S. KAUFFMANN, *supra* note 34, at 24-25; C. MACCABE, *supra* note 35, at 102.

61. S. KAUFFMANN, *supra* note 34, at 25; J. MONACO, *supra* note 6, at 252.

62. GODARD ON GODARD, *supra* note 5, at 192 ("The Nouvelle Vague, in fact, may be defined . . . by this new relationship between fiction and reality."); J. MONACO, *supra* note 6, at 103; Guarner, *supra* note 45, at 54.

appearances of events, people, or places.<sup>63</sup> Godard wanted to avoid lulling his audience into complacency with false meanings: "Realism isn't about how things are real but about how things really are."<sup>64</sup>

## II. CRITICAL LEGAL STUDIES: A JURISPRUDENCE OF CRITICISM

In many respects, the Critical Legal Studies movement (CLS) is attempting to accomplish in law precisely what Godard attempts in film. Before pursuing this comparison, however, CLS must be understood on its own terms.

Any overview of CLS is bound to understate drastically the complexity and volume of its scholarly offerings. There are, however, some basic themes. First and foremost among these is an attack on legal positivism and formalism. "Crits" reject the idea that law is preexisting, clear, predictable, and discernible through legal reasoning, and that judges arrive at normatively correct results.<sup>65</sup> They deny that a distinctly legal mode of reasoning exists and stress that the law is not neutral or value-free, but at every level involves policy choices.<sup>66</sup> Rules of law are, thus, myths and the law is fundamentally indeterminate: we can never achieve a state of legal nirvana with a rule to be consistently applied for every situation.<sup>67</sup> Law is politics even if we give it the appearance of certainty by allowing doctrine to control and

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63. J. MONACO, *supra* note 6, at 206; Guarner, *supra* note 45, at 58 (the deception of appearances is that by simply recording them we do not reveal their meaning).

64. J. MONACO, *supra* note 6, at 191.

65. Russell, *The Critical Legal Studies Challenge to Contemporary Mainstream Legal Philosophy*, 18 OTTAWA L. REV. 1 (1986); Tushnet, *Perspectives on Critical Legal Studies — Introduction*, 52 GEO. WASH. L. REV. 239 (1984) (CLS as an attack on formalism).

66. THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (D. Kairys ed. 1982) [hereinafter THE POLITICS OF LAW] (the law oppresses with myths of objectivity and neutrality); *id.* at 1-2 (fallacies of liberal legal thought: law on a particular issue is preexisting, clear, predictable, and available to anyone with reasonable legal skill; the facts relevant to disposition are ascertainable by procedures that will get at the truth; results in particular cases are products of routine application of the law; judges, except for bad ones, reach correct results); Gabel & Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1, 52 (1984); Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 93-95 (1984) (Law as ideology, summarizing CLS general tenets as follows:

1. "All law is pig law dressed up in judges' robes";
2. "The ruling class induces consent and demobilizes opposition by masking its rule in widely shared utopian norms and fair procedures, which it then distorts to its own purposes";
3. The ruling class makes good on just enough of its promises to convince us that the system is fair and capable of improvement;
4. The ruling class believes its ideology;
5. Law is an instrument of class domination;
6. Discourse of law reproduces social reality).

For other general statements about the tendencies of CLS, see Russell, *supra* note 65.

67. See Belliotti, *The Rule of Law and the Critical Legal Studies Movement*, 24 U. W. ONT. L. REV. 67 (1986).

guide our decisions.<sup>68</sup>

Even though many have accused the crits of making much ado about nothing that is jurisprudentially new, the crits are adamant that they are not just reinventing legal realism.<sup>69</sup> CLS does carry the implications of legal realism much further than the original advocates of these views.<sup>70</sup> Moreover, the crits summarily dismiss the legal realists' faith that sociological studies and empirical analysis would replace positive law as the guide for judges.<sup>71</sup> Most importantly, while the crits and legal realists agree that no viable distinction exists between legal reasoning and vulgar political debate, CLS repudiates the legal realist and liberal belief that the law can carefully maneuver a middle path between these two alternatives.<sup>72</sup>

The CLS movement recognizes the fundamentally contingent nature of the law and the social arrangements which have sprung up around it. According to the crits, legal decisions are not the results of some inexorable positive or natural law. Rather, any given legal decision could have turned out differently and remains subject to change.<sup>73</sup> The positivist/formalist paradigm conceals choices and has resulted in a wrong-headed consciousness of false necessity which pervades our legal institutions and social arrangements.<sup>74</sup> This collective false consciousness denies the availability of, and, indeed, necessity for, choice. CLS, on the other hand, asserts that "things could be otherwise, and that choice is always essential."<sup>75</sup>

By making what is false seem necessary and unchangeable, and what is necessary seem irrelevant, the law not only reflects but legitimizes and reinforces the pattern of existing social and legal arrangements. In the United States, these relationships are rigidly hierarchial,

68. See Fischl, *Some Realism About Critical Legal Studies*, 41 U. MIAMI L. REV. 505 (1987); Boyle, *A Symposium of Critical Legal Studies*, 34 AM. U. L. REV. 929 (1985).

69. See Klare, *Lost Opportunity: Concluding Thoughts on the Finkin Critique*, 44 MD. L. REV. 1111 (1985) (discussing the charge that CLS is just reexamining legal realism); White, *From Realism to Critical Legal Studies: A Truncated Intellectual History*, 40 SW. L.J. 819 (1986) (CLS is not just a reincarnation of legal realism).

70. See Boyle, *The Politics of Reason: Critical Legal Theory and Local Social Thought*, 133 U. PA. L. REV. 685, 691-97 (1985); Fischl, *supra* note 68; Note, *Radical Pluralism: A Proposed Theoretical Framework for the Conference on Critical Legal Studies*, 72 GEO. L.J. 1143, 1144 (1984) (CLS is legal realism with a "tilt"); Note, *'Round and 'Round the Bramble Bush: From Legal Realism to Critical Legal Scholarship*, 95 HARV. L. REV. 1669 (1982).

71. Boyle, *supra* note 70 (differences between CLS and legal realism); Fischl, *supra* note 68; Russell, *supra* note 65.

72. Hutchison & Monahan, *Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought*, 36 STAN. L. REV. 199, 207 (1984).

73. See Boyle, *supra* note 68, at 935.

74. *Id.* at 930; see also Boyle, *supra* note 70, at 691; Fischl, *supra* note 68; Russell, *supra* note 65.

75. Boyle, *supra* note 70, at 689-90.

with power, money, and class as rank determinants.<sup>76</sup> These illegitimate hierarchies are frozen into paralyzing structures: law/judge; judge/lawyer; law teacher/law student; private property/police power; management/labor; etc.<sup>77</sup>

The crits propose a different view of the values reflected in these illegitimate hierarchies. Rather than regarding these values as part of a vertical structure, CLS conceives of them as existing on the same plane, in opposition to one another.<sup>78</sup> Crits view conflict as fundamental to human existence. Hence, they recognize and develop disharmonies, or fundamental contradictions, within the law.<sup>79</sup> The crits argue that confrontation generates resolution or synthesis — which will, in turn, generate further conflict.

This dialectical approach is an application of Marxist concepts of thesis/antithesis/synthesis. Even though most crits do not ascribe openly to Marxism or neo-Marxism, the CLS movement has generally adopted a Marxist critique of society.<sup>80</sup> The concept of hierarchy is largely a restatement of Marxist instrumentalism, which views the law of the bourgeoisie as the law of the ruling class, and the ideas of the ruling class as ruling ideas.<sup>81</sup>

The nature of the movement's basic themes ensures that these tenets are broadly applicable. Crits have brought their analysis to bear not only in a purely jurisprudential forum, but also in many substantive areas of the law as well. In addition to those members who are admittedly Marxists or neo-Marxists, other crits employ different structures of analysis, including linguistic theory, literary criticism, philosophy, psychology, and feminism.<sup>82</sup> Some of the areas that have received the most attention from crits include legal education, consti-

76. See generally Russell, *supra* note 65.

77. See Gabel & Kennedy, *supra* note 66, at 25 (bemoaning "dead, utterly paralyzing, horrid structures").

78. See Brosnan, *Serious But Not Critical*, 60 S. CAL. L. REV. 259, 270-71 (1987).

79. See Diamond, *Not So Critical Legal Studies*, 6 CARDOZO L. REV. 693, 700-06 (1985); Gabel & Kennedy, *supra* note 66, at 15; Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561, 578 (1983).

80. See Brosnan, *supra* note 78, at 270-71; Miller, *A Critical Analysis of the Theories of Professor Unger*, 12 W. ST. U. L. REV. 563, 566 (1985).

81. Gordon, *New Developments in Legal Theory*, in *THE POLITICS OF LAW*, *supra* note 66, at 284-85.

82. See, e.g., Boyle, *supra* note 70 (linguistics); Polan, *Toward a Theory of Law and Patriarchy*, in *THE POLITICS OF LAW*, *supra* note 66, at 294 (discussion of the Marxist and feminist strands of CLS and their interpretation of how current hierarchies work to perpetuate patriarchy); Presser, *Some Realism About Orphism*, 79 NW. U. L. REV. 869 (1985) (signs and language); Schneider, *Deconstructing Principles Foundational to the Paradox of Freedom — A Comparative Study of U.S. and German Subversive Party Decisions*, 34 DEPAUL L. REV. 621 (1985).

tutional law, labor law, women's issues, criminal law, contract law, and tort law.<sup>83</sup>

CLS relies on a method called "deconstruction." The objective in deconstructing or demystifying an area of law is to make its conceptual structures visible and bare to scrutiny.<sup>84</sup> Typically, crits begin by taking a fundamental, asserted truth and then exposing its contingent nature and indeterminate underpinnings by utilizing the ordinary tools of legal reasoning.

Deconstruction is also known by the less genteel, but perhaps more descriptive term, trashing. The oft-quoted definition of trashing is:

Take specific arguments very *seriously* in their own terms; discover they are actually *foolish* ([tragi]-*comic*); and then look for some (external observer's) *order* (*not* the germ of truth) in the internally contradictory, incoherent chaos we've exposed.<sup>85</sup>

If the language seems bizarre, it is purposeful strangeness. Language itself, according to the crits, is a conceptual structure of false necessities.<sup>86</sup> Crits have attempted to invent a new language to expand our vocabulary and to facilitate their critique.<sup>87</sup>

### III. GODARD AND THE CRITS

The similarities between the CLS movement and New Wave filmmaking are both stylistic and substantive, methodological and thematic. Godard proposed to return filmmaking to zero by stripping the conventions of the invisible style "bare[ ] under a light which shatters our indifference."<sup>88</sup> When crits deconstruct an assertion about the law, they are trying to do precisely the same thing. Both movements struggle to perform this function in an environment which to each of them is impoverished due to the sparsity of the available language.<sup>89</sup> Thus, they are forced first to reinvent the languages of cinema and of law.

In both cases, the result is an attempt to communicate directly and informally. Godard's characters chat with the audience; the crits "tell

83. See, e.g., THE POLITICS OF LAW, *supra* note 66 (a general listing of areas to which CLS reasoning has been applied); Nelson, *History and Neutrality in Constitutional Adjudication*, 72 VA. L. REV. 1237 (1986) (CLS and constitutional interpretation).

84. See Boyle, *supra* note 68, at 936; Johnson, *Do You Sincerely Want To Be Radical?*, 36 STAN. L. REV. 247, 256-57 (1984).

85. Kelman, *Trashing*, 36 STAN. L. REV. 293, 293 (1984).

86. See Boyle, *supra* note 68, at 936; Gordon, *supra* note 81, at 287-89.

87. See generally Husson, *Expanding the Legal Vocabulary: The Challenge Posed by the Deconstruction and Defense of Law*, 95 YALE L.J. 969 (1986).

88. J. MONACO, *supra* note 6, at 154; see also *id.* at 100, 252; C. MACCABE, *supra* note 35, at 21.

89. See GODARD ON GODARD, *supra* note 5, at 229.

it like it is" in non-scholarly prose. Godard challenges us with stylistic techniques that are the direct converses of formal conventions; the crits bombard us with jargon that parodies more usual technical vocabulary. They use terms like "praxis," "reification," "loopification," "deabsolutization," intersubjective "zap," and "podness."<sup>90</sup> They deploy this argot to create a strident, irreverential tone aimed at goading us into reactionary responses. At the same time, the abandonment of law-review style is supposed to make CLS works more accessible and dismantle yet another paralyzing structure — just as Godard's stylistic techniques and plot treatments were meant to challenge the traditional structure imposed upon film.

Godard's films and CLS literature resemble one another in the use of similar local tactics. Godard and the crits both use explicit sexual language and images to convey a sense of freedom and loosened inhibitions.<sup>91</sup> Godard's films are replete with references to his other films;<sup>92</sup> likewise, most of the CLS literature is impossible to understand absent familiarity with other CLS works. Deconstruction surfaces explicitly in the crits' "trashing"; Godard's films, in essence, deconstruct all others by making us acutely aware of how contrived they are.

Most significantly, Godard and the crits share a common enemy: positivism, with its tyranny of false necessities, implication of certainty, and obscuring of choice. The crits replace positivism with politics; they introduce politics into legal academic discourse. Godard introduces politics to film, building politics into the foundations of both the production and content of his films. Both movements reveal that the decisions in their respective fields are driven by political and commercial ends and not by any set of independent or neutral principles.

Godard's dialectic approach of juxtaposing images in the hope that

90. See Diamond, *supra* note 79, at 694 (intersubjective "zap"); Gabel & Kennedy, *supra* note 66, at 1-3 ("unalienated relatedness"); Husson, *supra* note 87, at 969 (buzz words generally); Shapiro, *The Death of the Up-Down Distinction*, 36 STAN. L. REV. 465, 465 (1984) ("deabsolutization"); Shupack, *Rules and Standards in Kennedy's Form and Substance*, 6 CARDOZO L. REV. 947, 951 n.22 (1985) ("loopification"); Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509, 512 (1984) (explaining "praxis"). On style generally, including vocabulary, see Schwartz, *With Gun and Camera Through Darkest CLS-Land*, 36 STAN. L. REV. 413, 439-53 (1984).

91. Freeman & Schlegel, *Sex, Power and Silliness: An Essay on Ackerman's Reconstructing American Law*, 6 CARDOZO L. REV. 847, 858-61 (1985) (sexual analysis of another author's work). Godard's films are full of sexual acts and references, some of them taboo. *E.g.*, *Every Man For Himself* (1980) (a father expressing physical desire for his daughter) and *Hail Mary* (1985) (portraying Joseph's physical desires for Mary prior to the birth of the child she immaculately conceived).

92. L. GIANNETTI, *supra* note 3, at 44 (noting Godard's in-jokes and frequent references to other films).



truth will emerge has a direct corollary in CLS's flirtation with Marxist methodology and its recognition of conflicting dichotomies. Both Godard and CLS prefer Marxist jargon.<sup>93</sup> Although Godard is perhaps more wholeheartedly convinced of a Marxist remedy, both he and the crits agree with that ideology's assessment of modern society — capitalism is to blame for our oppressive, violent, and alienated culture.<sup>94</sup>

Despite these common insights, neither Godard nor the crits picks up the pieces in the aftermath of their respective deconstructions. The dilemmas and paradoxes of Godard's films either remain utterly unresolved or, more often, are resolved by untimely, accidental deaths facilitated by Godard's own version of a *deus ex machina*, the car.<sup>95</sup> Crits also hope that divine intervention will rescue them from the aftermath of their trashing by providing a positive program for the movement. Roberto Unger, like Godard, identifies the only foreseeable source of a CLS solution to society's problems when he prays: "Speak, God."<sup>96</sup>

Although there are compelling similarities between CLS and New Wave cinema, it would be misleading not to pinpoint some dissimilarities. One seems to lie in the personalities of the respective movements. For example, the crits exhibit an enlarged sense of importance as reflected in the beliefs that "when they find out what we're doing, they're going to come after us with guns,"<sup>97</sup> and that they are "Dwellers on the Threshold" of a new age.<sup>98</sup> Godard does not take himself so seriously. He was surprised by his success and strove to demystify himself along with his art.<sup>99</sup> He confessed that a particularly radical phase "was . . . an adolescent time [when he] was only 18 in movie years" and that "the intention was good, even if the result was terrible."<sup>100</sup>

Another, possibly more fundamental difference lies in their willingness to take risks. The crits sound radical but do not seem to know

93. See, e.g., Johnson, *supra* note 84, at 257.

94. *Id.* at 262 (to Marxism, capitalism is responsible for everything evil).

95. See J. MONACO, *supra* note 6, at 139 (in *Contempt*, the red sports car is seen as a *deus ex machina*); *id.* at 177 (noting Godard's *ex "macchina"* endings).

96. R. UNGER, KNOWLEDGE AND POLITICS 295 (1975); see also Johnson, *supra* note 84, at 285 (Unger characterized as calling for a new "metaphysics").

97. Schlegel, *Note Toward an Intimate, Opinionated, and Affectionate History of the Conference on Critical Legal Studies*, 36 STAN. L. REV. 391, 403 (1984) (quoting Tushnet).

98. Hutchison & Monahan, *supra* note 72, at 245 (quoting Van Morrison); see also Schwartz, *supra* note 90, at 420 (quoting Tushnet).

99. See generally GODARD ON GODARD, *supra* note 5.

100. Goldberg, *supra* note 55 (quoting Godard).

how to be radical.<sup>101</sup> Essentially they are members of an elite class which they show little inclination of sincerely wishing to undermine. Most seek tenure at established law schools, publishing in the most conventionally prestigious legal journals they can. Godard, on the other hand, claimed that "the only way to be a revolutionary intellectual is to cease being an intellectual."<sup>102</sup> He tried to use his filmmaking to fashion a substantively radical anti-cinema and produced experimental Brechtian videos, *lehstücke*, which were intended as teaching pieces.<sup>103</sup>

#### IV. PARADIGMS LOST?

Godard's films elicit four types of responses. One is to simply stop watching, which the vast majority of American filmgoers have done. As a commercial matter, Godard can claim little success.<sup>104</sup> Another is to try to attribute order to disorder and, therefore, return the illusion of the absence of choice. In other words, we rebuild the wall Godard has pushed down. This also amounts to a fundamental rejection of what he has offered. Third is cooptation. Godard's stylistic breakthroughs are often used to serve the traditional, choice-concealing narrative. Finally, there is trivialization — to some, his work is no more than a cinematic curiosity.

The effect of CLS is more difficult to assess because success in the marketplace of ideas is hardly measured in terms of box office receipts. Nevertheless, the methods and message of the crits is so similar to that of Godard (and our thoughts so much more precious than our dollars) that the generalized reaction is likely ultimately to be the same. Most probably, although stylistic cooptation is likely, the basic tenets of CLS will be rejected outright or eventually viewed as jurisprudential curiosities.

The central problem for both Godard and the crits is that they force us to confront two troubling themes in existential thought. The first is the frightening notion that the only thing that preserves us from disorder is our ability to choose. But we prefer to believe that one or

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101. See, e.g., Johnson, *supra* note 84, at 249.

102. See J. MONACO, *supra* note 6, at 214 (quoting one of Godard's characters, Eve Democracy, in *One Plus One* (1968)). Godard once urged viewers of one of his films to demand their money back and send it to the Eldridge Cleaver Defense Fund. See W. PECHTER, *supra* note 30, at 251. Later, Godard's views may have softened as he reportedly stated, "the only way to be a revolutionary intellectual is to be a revolutionary intellectual." J. MONACO, *supra* note 6, at 214.

103. Godard's goal was to incite discussion and force his audience into "productive analysis." *Id.* at 101-03, 191; see also C. MACCABE, *supra* note 35, at 49-77; Goldberg, *supra* note 55.

104. Nor, in fairness, did Godard strive for commercial success. See R. RAY, *supra* note 2, at 20. On the other hand, some commercial success can be seen as a necessary result of intriguing a substantial number of viewers, which Godard surely desired.

more guiding principles predetermines our choices — *i.e.*, that our choices are hardly choices at all. Without this vision of ordered constraint we are left with the overwhelming responsibility of constantly determining how events will unfold. The second theme is the unfathomability of our existence: our inability to explain our own presence and purpose in the world. This is a thought that we let creep into our consciousness only once in a while; most of the time we avoid it.

Our reaction to these problems results in what Morse Peckham calls our “rage for order.”<sup>105</sup> As he puts it, “we praise order because it is an adaptational necessity for us that we experience order.”<sup>106</sup> Our need to escape the possibility of disorder and to compensate for the overwhelming anxiety it can create is so profound that we constantly hypostatize — attribute “order” and principle to the various facets of our lives.<sup>107</sup> By doing so, we discover “order” everywhere: in the supermarket we line up and observe certain conventions in the expectation that others will as well;<sup>108</sup> at work we want to know which type of activity is rewarded and which is unacceptable; when raising our children we search for the reasons that explain good or bad behavior; in law we presuppose some guiding principles. For the most part, any order — even one of which we may at some level disapprove — is better than no order at all. It is difficult to assess how much of this order is self-imposed rather than pre-given, but surely a great deal of it is imagined.

The single area in which we appear to be willing to suspend our need for order is in the “arts.” There, we claim to appreciate the unconventional. We regard the artist who challenges us and makes us “think” as creative. Yet, ironically, as the Godardian experience illustrates, our actual capacity for accepting disorder is very limited. An abstract painting or a film by Godard immediately elicits the same sorts of questions: What does he mean by that? What does the color red symbolize? Confronted by disorder, we try to force it into some already existing sense of order.<sup>109</sup>

Although the French New Wave and Godard in particular have

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105. M. PECKHAM, *supra* note 7, at 3.

106. *Id.* at 39. In fairness, it should be noted that Peckham’s general thesis is that “serious wrongness lies exactly in the ancient effort to find order in a situation which offers us the opportunity to experience disorder.” *Id.* at 40.

107. *See generally id.* at 27-28.

108. *See generally* Reisman, *Lining Up: The Microlegal System of Queues*, 54 U. CIN. L. REV. 417 (1985).

109. *See* M. PECKHAM, *supra* note 7, at 27.

influenced American filmmaking,<sup>110</sup> our “rage for order” dictates that the impact remain primarily stylistic. Not surprisingly, the real theme of Godard’s work has been rejected by the public. The invisible style and the denial of choice continue to dominate modern filmmaking.<sup>111</sup> Even when filmmakers challenge these sacred limitations, more often than not their intent is comic.<sup>112</sup> The reasons for this seem fairly clear. Unlike nearly all other filmmakers, Godard rarely makes an effort to transport the viewer elsewhere, literally or figuratively. Through devices like slow motion, freeze-frames,<sup>113</sup> jump cuts, and speaking directly to the audience as himself or through his actors, Godard makes it impossible to escape the fact that we remain viewers before a screen, at the mercy of the director’s choices. But, for the vast majority of movie theater-goers, escape is the *raison d’être* for film. Godard’s “truth” impedes our flight. And when film does not seek to provide pure escape, it often aims to communicate as smoothly as possible: to serve as a means of communication *about* something, not *with* someone — a source of information without static.

If as a society we reject Godard’s efforts to impede our escape from reality in the relatively nonthreatening medium of film, it is not difficult to understand the resistance to CLS. What the critics undermine is far more profound. To understand why, it is important to face reality about one, if not *the*, primary function of law.

In a 1978 article, which is a surprisingly infrequently cited forerunner to much of CLS, Walter Weyrauch discusses the function of masks and rituals in law.<sup>114</sup> He concludes that “law as mask is an ancient device to invoke a higher authority in a dramatic ceremony, and to channel emotions and events into fixed styles of reasoning that are, *regardless of their intrinsic truth, aesthetically appealing and persuasive to the participants and the community.*”<sup>115</sup> Similarly, another scholar discusses the “religion of law.”<sup>116</sup> From this perspective, “law [is]

110. The use of slow-motion, freeze frames, and jump cuts, for example, is so common now as to be part of many television commercials.

111. R. RAY, *supra* note 2, at 287.

112. This seems to be especially true of the device of having an actor step out of character to speak to the audience. For example, Groucho Marx spoke to the audience in some of his films, see R. RAY, *supra* note 2, at 81, and Woody Allen did so in *Bananas* (1971) and *Annie Hall* (1976).

113. The freeze-frame stops the image on the screen. Its most famous use was as the final shot of Francois Truffaut’s *The 400 Blows* (1959). The technique was used very effectively by Godard in *Every Man For Himself* (1980).

114. Weyrauch, *Law as Mask — Legal Ritual and Relevance*, 66 CALIF. L. REV. 699 (1978).

115. *Id.* at 725-26 (emphasis added).

116. Ingber, *The Interface of Myth and Practice in Law*, 34 VAND. L. REV. 309, 310 (1981).

preexistent to and untainted by man.”<sup>117</sup> Consequently, “the practitioner assumes the role of the clergy in learning, discovering, and applying rules that emanate from some source superior to that of mankind.”<sup>118</sup>

These scholars suggest that law serves to create the image of order even if this image masks the truth. Accordingly, this function minimizes the significance of whether law actually achieves just outcomes. Instead, the greatest value of law lies purely in its existence. We value the *image* of a system of consistent rules that have as their nominal purpose the pursuit of “rightness.” By accepting this image practically on faith, we endow it with a religious quality. This is not to say that the mask or illusion is something forced upon us by some sinister force. Instead, we ourselves create the device of legal determinacy because without this sense of order and principle we simply could not function.

Just as Godard undermines the invisible style of conventional film, the crits want to unmask law and explode its invisible style. In short, they want to reveal the disorder that lurks when decisions are made by human beings of either good- or ill-will. In the face of this disorder, even the distribution of basic entitlements — the bedrock of an ordered system — is up for grabs.<sup>119</sup> Even more worrisome than the revelation of disorder is the fact that, having brought us to the abyss, the crits supply nothing to reassure us. Like Godard, the message is that reality is uncertain, sometimes random, and that there are no “principles” other than those that are man-made and serve man-made ends.

Because they are so like Godard (and because they deal with a far more precious illusion), the crits have encountered a similar response. Their style may be coopted; law review articles may become less formal, the language a bit looser and the structure less rigid. Yet their real message — their effort to undermine our illusions — is likely to be ignored, forced into a conventional view of law, or forced out of the discipline altogether. (That’s not “law,” as in that’s not “art.”) Like Godard, the crits may have greatly underestimated the need for the illusion of order. To invoke the Weyrauch metaphor once again, the crits do not realize how important it is to us to avoid seeing what is behind the mask.

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117. *Id.* at 310.

118. *Id.* at 311.

119. For an illustrative hypothetical, see Fischl, *supra* note 68, at 577 & n.73.

Does the name Alvy Singer ring a bell? He was the Woody Allen character in *Annie Hall*. The final dialogue of the film is his voice-over:

I-I thought of that old joke, you know, this-this-this guy goes to a psychiatrist and says, "Doc, uh, my brother's crazy. He thinks he's a chicken." And, uh, the doctor says. "Well, why don't you turn him in?" And the guy says, "I would but I need the eggs." Well, I guess that's pretty much how I feel about relationships. You know they're totally irrational and crazy and absurd and . . . but, uh, I guess we keep goin' through it because, uh, most of us need the eggs.<sup>120</sup>

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120. Allen & Brickman, *Annie Hall*, in *FOUR FILMS OF WOODY ALLEN* 105 (1982).