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In thinking about the legacy of Critical Legal Studies for contemporary American legal history, I want to begin by recalling some of the texts that I read during my graduate work in the history program here at Princeton. We read Robert Gordon's "Critical Legal Histories" article, Duncan Kennedy on Blackstone's *Commentaries* and Classical Legal Thought, and of course the books of Morton Horwitz. I had read some other CLS scholarship in law school, but when it comes to the CLS scholarship that aspiring legal historians read in history programs, I suspect that most are familiar with some of the work of Gordon, Kennedy, and Horwitz, and perhaps Unger, but not with much more. However, the more significant question for us in thinking about the legacies of CLS is: what do most professional legal historians (and historians generally) *do* with these readings?

I am going to generalize, but the answer is: not much. I suspect that, for most professional legal historians writing today, CLS stands for little more than the bland proposition that "law is politics." This is of course something they already "knew" before they encountered CLS scholarship. Furthermore, most professional legal historians probably draw little distinction between the proposition that "law is politics," on the one hand, and the proposition that "law is a social construct," on the other. Neither the "social" nor the "political" in these formulations is a particularly distinctive or meaningful concept. Both probably dovetail quite easily with legal historians' understandings of the "historical," which most typically stands for nothing more nor less than a temporal framework that reveals the objects placed in it—by virtue of such placement—to be contingent. In other words, I submit that, for most professional legal historians writing today, CLS confirms their framing of law in terms of the political, the social, the historical, by which they mean the idea that law might be contextualized such that its imagined power over us (to the extent that it is imagined to stand over and apart from the political, the social, the historical) can be somehow diminished.

I am not suggesting that professional legal historians operating today do not *understand* CLS scholarship or its many insights. What I am suggesting is that, because many legal historians writing today have effectively subsumed law within its social, historical, and political contexts, all of which are rather nonspecific and produce many of the same effects, they are content to make CLS stand for the uncontroversial idea that "law is politics" and then go about their archival business. To be sure, what professional legal historians have uncovered in the archives has been impressive and they have changed our understanding of the past, including the past of law, in multiple ways. However, it is fair to say that they do not seem particularly interested these days in recovering *the specificity of law as law*, the quiddity of legal thought, something that I see as critical to the CLS project (especially Kennedy's). I could be corrected, but I would be hard pressed to identify work by many prominent contemporary legal historians that attempts to extend the kind of thinking that made visible the structures of Blackstone's *Commentaries* or of "Classical Legal Thought" or of what followed it. Instead, what we have is study after study of legal phenomena of all kinds "in context" that, because they all presuppose a similar (and similarly thin) understanding of politics, the social, and the historical all look somewhat the same and are incapable of making visible the difference that law (in the hands of CLS scholars) is capable of revealing to us. It is this kind of historical scholarship that the legal scholar Justin Desautels-Stein labels "American Pragmatism," which, in an arresting turn of phrase, he says is "at once wildly historicist and militantly ahistorical."²

Desautels-Stein makes—albeit in a somewhat mannered way—the same one I have been making when I have been suggesting that many professional legal historians, while "knowing" CLS scholarship, have left out its lesson about law's specificity in history, its teaching that law is both in history and is history. Duncan Kennedy makes this point beautifully at the end of his "Three Globalizations" essay: "Even in

Clausewitz's famous formulation, war is politics by other means, not "just" politics. If law is politics, it is so, again, by other means, and there is much to be said, nonreductively, about those means."³ One could make the same point about law and history, and this is in fact what I take CLS scholarship to have done. In this regard, it is important to keep in mind that, long before CLS, historical context was not necessarily an acid-bath or solvent for law, something that has caused law to disappear when law was set in relationship to it. Before CLS scholars such as Kennedy starting arranging legal structures in orders of succession, showing the movement of history through the unfolding legal thought, generations of common lawyers had turned to history in order to make sense of law. In my own work on the relationship between the common law and historical thinking in the nineteenth century, I tried to show law and history were used to contextualize one another over and over again, even as neither dissolved into one another and as each (in a sense) acted as a foundation for the other.⁴

I want to end by raising questions about my own critique of contemporary legal history. What is at stake in recovering the specificity of law within professional legal history? Why should CLS, read "correctly," matter to contemporary legal historians? Because it tells us something we do not know about both law and history? What role must the conventional methods of historical contextualization play in engulfing law or in letting it tell its own story? In what sense are the lessons we learn from this questioning true for the way history is brought to bear on other objects such as art, religion, or science?

² Justin Desautels-Stein, *The Jurisprudence of Style: A Structuralist History of American Pragmatism and Liberal Legal Thought* (New York: Cambridge University Press, 2018), pp. 13 -14.

³ Duncan Kennedy, "Three Globalizations of Law and Legal Thought," in David M. Trubek & Alvaro Santos eds., *The New Law and Economic Development: A Critical Appraisal* (New York: Cambridge University Press, 2006), p. 72.

⁴ Kunal M. Parker, *Common Law, History, and Democracy in America, 1790 – 1900: Legal Thought Before Modernism* (New York: Cambridge University Press, 2011).