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Articles

If I Had a Rocket Launcher: Critical Legal Studies as Moral Terrorism

by David Fraser*

Prologue

There is a story, perhaps apocryphal, about an organizing meeting that took place in San Francisco during the heyday of protests against the war in Vietnam. The meeting started early in the morning and continued without a break into the wee hours of the next day. During the discussion, every option for future tactics and strategies was raised, from passive resistance to the possibility of more aggressive, perhaps more blatantly illegal, activities. As the encounter was winding down, the secretary gave the following summary of the conclusions and plans to be drawn from the day's debates:

If we do an action, that's right on; if we don't do an action, that's right on too.

For anyone who has attended a Critical Legal Studies (CLS) annual meeting or summer camp, this is an accurate reflection of those events as well, although perhaps CLS lunch breaks are longer. Indeed, one of my fondest memories is of the scene at the CLS Summer Camp of 1987, where Duncan wandered around Alan and Betty's cabin asking everyone present, "What's the plan? Do we have a plan?" This paper argues that those of us who may somehow be identified as Crits must opt to "do an action"; that is our plan.1

* David Fraser teaches law at the University of Sydney. This is for Julie, moral terrorist par excellence and cause of much tribulation.

1. Duncan is Duncan Kennedy, Harvard Law School Professor; Alan and Betty are Alan Freeman and Betty Mensch of the State University of New York, Faculty of Law. Each in his or her own way is a CLS "heavy." For an account of the importance of venue to the inside life of CLS, see Keller, The Phenomenology of Critical Legal Drinking and the Reification of Alan and Betty's Room, Newsletter of the Conference on Critical Legal Studies, May 1987, at 12.
Introduction

Send lawyers, guns and money. The shit has hit the fan.

—Warren Zevon

A few years ago, I wrote an article in which I called for members of CLS to commit acts of moral terrorism. While I would not pretend that this call to action has had any effect on CLS types, it has, at a very micro-level, proved its veracity. In other words, it really has bothered the liberals. Tenure and promotion committees and hiring panels have invoked it and interrogated me as to whether I “really meant it.”

That particular act of moral terrorism, calling upon others to commit acts of moral terrorism, points to the strengths and weaknesses of such a strategy. It has had little more effect than making my academic life slightly uncomfortable. Therefore, one might well question the military efficiency of such a strategy. On the other hand, it has bothered at least some of those people I see as my opponents in the struggle for intellectual hegemony in legal education. It is a law review article, a piece of writing that is, by its very appearance in such a forum, normalized, diffused. A law review article is hardly a car bomb, leaving violence and destruction in its wake, but it is one of the few forms of “armed propaganda” open to those of us who believe in a fundamentally different world and who live and work in the heart of the legal academy. In a very real sense, legal scholarship, as an act of “interpretation,” is an act of calculated and relentless violence. It is an imposition of meaning, a will to power in a world of the word. As Robert Cover says:

Legal interpretation takes place in a field of pain and death. This is true in several senses. Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his

2. Fraser, Truth and Hierarchy: Will the Circle Be Unbroken?, 33 BUFFALO L. REV. 729 (1984). I said:

Moral terrorism seeks to avoid reform at all costs. For example, in the academy, rather than encouraging our students and colleagues to engage in left-wing study groups, where they can escape from the mysteries of trespass on the case to the inherent clarity of Derrida’s Of Grammatology, we should encourage them to learn a socially useful trade—playing the piano, for example—and to abandon law school forever. We can disrupt faculty meetings with various acts of civil or, preferably, uncivil disobedience. We can engage in subversion by memorandum. The possibilities are limited only by the available concepts of the absurd.

Several objections could be raised against this version of moral terrorism; especially that it is juvenile. This is true. It is juvenile. The very point of moral terrorism is to permit us to recapture the halcyon days of our youth, when freedom was an unquestioned component of our daily existence. A perpetuation of childhood or adolescence can have a highly liberating effect. Besides, it really bothers the liberals.

Id. at 773 n.156.
property, his children, even his life. Interpretations in law also consti-
tute justifications for violence which has already occurred or which is
about to occur. When interpreters have finished their work, they fre-
quently leave behind victims whose lives have been torn apart by these
organized, social practices of violence. Neither legal interpretation nor
the violence it occasions may be properly understood apart from one
another. This much is obvious, though the growing literature that ar-
gues for the centrality of interpretive practices in law blithely ignores
it.3

I shall return to a discussion of the military and political efficacy of
such acts of armed propaganda by Crits, but first I shall address some of
the critiques of moral terrorism and some of the reasons I believe such
acts are the only politically justifiable mode of existence for the self-pro-
fessed left in the legal academy.

The primary objection to moral terrorism is that raised by Duncan
Kennedy. Duncan argues, in his typically persuasive manner, that what
I might call moral terrorism and seek to legitimize with political theory,
is really nothing more than “macho self-immolation.”4 There are, I
think, two prongs to Duncan’s attack. The first is a question of strategic
feasibility, to which I shall return below. The second is a more personal,
psychological point: that my theory and practice of moral terrorism5 are
indicative of a complex penchant for self-destruction. I do not deny the
accuracy of Duncan’s evaluation of my own psychoses and neuroses.
Yet I do dispute the accuracy of his assessment of moral terrorism as a
form of political praxis.

It is quite common in today’s discussions of terrorism to revert to
psychoanalytic critiques of the “terrorist mentality.” Thus, terrorists

4. Personal communication with Duncan Kennedy; Buffalo, New York, March, 1987,
Seminar on Legal Education, State University of New York, Faculty of Law and Jurispru-
dence lecture. This appears to be a more personalized version of Duncan’s gradualist ap-
proach expounded elsewhere. Thus, he states:

Let me hasten to affirm, O Reader, that not all resistance is equally heroic, or equally
successful, or equally well-conceived, or equally adapted to an overall strategy for
turning resistance into something more. I propose in the next chapter that law stu-
dents and teachers should take relatively minor professional risks.

D. KENNEDY, EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST

5. For other examples of my attempts at armed propaganda, see Fraser, The Day the
Music Died: The Civil Law Tradition from a Critical Legal Studies Perspective, 32 LOY.
L. REV. 861, 876, 888-92 (1987) [hereinafter The Day the Music Died] (calling for a “country and
western Critical Legal Studies” and arguing that judging is “a form of mental illness”); Fraser,
What’s Love Got To Do With It? Critical Legal Studies, Feminist Discourse, and The Ethic of
Solidarity, 11 HARV. WOMEN’S L.J. 53, 80 (1988) [hereinafter What’s Love Got to Do With It?]
(describing the castration fears of male law professors and the joys of sleeping with our female
students. Id. at 75-77).
may be isolated individuals who seek emotional strength and reinforcement through the group dynamic of the "collectivization of loneliness"; or German women join "terrorist" groups such as the Rote Armee Fraktion (Red Army Fraction—RAF) because conditions of "anomie" and patriarchal family and social structures in post-war Germany repress "normal" modes of political expression in their warped psyches; or Horst Mahler, co-founder of the RAF, became a terrorist, in part at least, because of a stern, autocratic father who symbolized all that was wrong with the German state; or failures of "primary socialization" may lead a deformed personality to seek "an identity" in a "terrorist" group; or simple frustration-aggression may cause terrorism.

Thus, any number of psychoanalytic theories and explanations have been trotted out to explain away terrorism as a form of individual deviance. Yet no one, even the proponents of these theories, believes that all "terrorists" and all acts of "terrorism" are simply examples of blocked libidos or unresolved Oedipal conflicts. Indeed, studies of some "terrorist" groups show their members to be unnervingly "normal."


7. Falk, Terror as Politics: The German Case, 20 INT'L. REV. HIST. & POL. SCI. 22 (1983). According to Falk, "Therefore it is not unreasonable for women to now seize the gun, or other 'equalizers' so as to provide them finally with that modicum of power which is always produced by the infliction of terror however fleeting, however temporary." Id. at 29 (footnote omitted).


11. See supra notes 8-10.

12. See Clark, Patterns in the Lives of ETA Members, in POLITICAL VIOLENCE, supra note 7, at 283. In his study of members of the Basque liberation movement Euzkadi ta Askatasuna (ETA), Clark found that etarras are well within the range of functioning and sane human beings; whereas terrorists in general may be seriously distressed, members of ETA suffer from no greater levels of stress than are observed across Basque society generally, and certainly their stress level does not exceed the bounds of what is manageable by normal, functioning men and women; and whereas insurgents in general may have difficulty in establishing and maintaining warm and nurtural interpersonal relationships, etarras have relationships with loved ones that are normal to the point of being mundane. Indeed, one of the sources of ETA's great durability over the past two decades has no doubt been the ability of etarras to seek refuge and solace (as well as material support) from among those whom they love and cherish. Etarras are not alienated persons; they are, on the contrary, deeply embedded in the culture whose rights they fight to defend.

Id. at 283-84.
While it may be true that psycho-existential weirdness pervades my life and the lives of other Crits, this cannot serve as a pre-emptory challenge to the theory and praxis of moral terrorism.

On the other hand, it must be noted, if further reference is required, that a “New McCarthyism” pervades many American law schools and their attitudes towards Critical Legal Studies. Crits are denied tenure, fired, not hired, and generally made miserable and forced to keep quiet, be respectable, or be screwed. A clear-cut and vicious anti-terrorist campaign is being raged at law schools against Crits. Whether Crits are or are not engaged in guerrilla warfare or acts of terrorism, they are being so labelled and tactics of repression are being used against them. The question of available responses to these actions is now clearly on the CLS table. Will we resort to the “rights talk” we so vehemently criticize and trash in the pages of law reviews or will we counter terror with terror? Is there a middle ground? In the next sections of this paper I will attempt to propose my own response to these now very practical questions.

I. On Critical Legal Studies as Guerrilla Warfare

This ain’t no party
This ain’t no disco
This ain’t no fooling around
—Talking Heads

The powerful tool of lawyers is language; it is what we are really good at. Opponents of CLS are very good at using language to create images, both conscious and unconscious, that will strike fear and loathing into the hearts of the consumers of legal writings and popular literature about law. One of the most powerful pieces of imagination invoked as part of these counter-terrorist tactics is the symbolic invocation (as

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13. See Fraser, What’s Love Got to Do With It?, supra note 5, at 70-77.
15. See Frug, McCarthyism and Critical Legal Studies, 22 HARV. C.R.-C.L. L. REV. 665 (1987); see also NEWSLETTER OF THE CONFERENCE ON CRITICAL LEGAL STUDIES, July 1988 (detailing the rise of oppression against Crits and other minorities in the academy). For the first salvo of repression see Carrington, Of Law and the River, 34 J. LEGAL EDUC. 222, 227 (1984). For other examples of “state terror” and “Crit-bashing” see Frug, supra, at 676.
16. For a clear exposition of the nature of so-called counter-terrorist strategies and the key role played by rule of law ideology therein, see Wilkinson, Terrorism versus Liberal Democracy: The Problems of Response, in THE NEW TERRORISM (Gutteridge ed. 1986).
reality) of the CLS adherent engaging in guerrilla warfare.18 Somehow, we are supposed to envisage Duncan in black pajamas stalking through the rice paddies of Cambridge or teachers in berets educating the peasants in the mountains of Palo Alto.

Recently, a proponent or sympathizer of CLS has attempted to regain the rhetorical terrain through the tactic of a lightning strike law review article.19 Unfortunately, both pro- and anti-CLS invocations of the "guerrilla" are largely misplaced and display a shockingly uncritical ignorance of the theory and practice of guerilla warfare in general, and more particularly of how CLS might (or more probably might not), be seen as embodying the "war of the flea."20

The misapprehensions under which those who invoke the language of the rice paddy labor are two-fold; the first is theoretical ambiguity, the second tactical and strategic fallacy. The theoretical ambiguity suffered by those who wish to characterize CLS as guerilla warfare is that they are missing a step in their rhetorical development. They have failed to fill in a huge piece of the canvas so that their beautiful imagery has a gaping hole. The analogy they wish their readers to make is this: guerilla warfare = evil. This equation, however, ignores the weight of the countervailing heroic imagery of the underdog, a dominant theme in the popular imagination of the United States.21 More importantly, it ignores the facts of historical reality. As Pomeroy states: "[A]ll classes in society at one time or another have organized, participated in or supported gue- rilla struggles."22

Despite efforts to the contrary, the notion of the "guerrilla" is still capable of calling up images of American heroes like the Green Moun-

18. For a list of the sources of these instances of linguistic terror from the right, see Frug, supra note 15, at 679 n.15.
Analogically, the guerrilla fights the war of the flea, and his military enemy suffers the dog's disadvantages: too much to defend; too small, ubiquitous, and agile an enemy to come to grips with. If the war continues long enough—this is the theory— the dog succumbs to exhaustion and anemia without even having found anything on which to close his jaws or to rake with his claws.
Id. at 29.
21. Such counterimagery does not yet exist as far as "terrorism" is concerned. Therefore to accuse one's opponents of being "terrorists" invokes images of dark-skinned men, with heavy stubble, committing acts intended to dismember innocent women and children. The rhetorical effectiveness, the semiotic weight of the "terrorist" label, is a result of provoking a desire to protect the weak (women, children) against the evil (the racist image of the "Arab" terrorist), thereby relying on many of the dominant patriarchal mythologies of white America.
tain Boys, Davey Crockett, Buffalo Bill, the Rangers, the Green Berets or even the revolting images of Contras as Freedom Fighters. The semiotic equation that guerrilla warfare = evil is not as firmly rooted in the popular imagination as Crit-bashers would hope.

But it is the second fallacy, the tactical and strategic fallacy, that is more troubling for those of us who believe that Critical Legal Studies should play a role in the transformation of our society. A brief expose of the theories and practices of guerrilla warfare will indicate why the use of guerrilla warfare imagery to describe the CLS project is problematic.

The first difficulty that arises when one speaks of CLS as guerrilla warfare (putting aside questions of which CLS) is which guerrilla warfare are we discussing? Here the CLS contingency critique of law can be turned into a contingency critique of guerrilla struggle. Thus as Regis Debray clearly recognized, each form and forum of struggle must be carefully analyzed according to its own peculiar and particular circumstances. Each national liberation struggle must both learn the lessons of histories and adapt the lessons to the specific conditions of its own, independent battle.

But once again in Latin America, militants are reading Fidel’s speeches and Che Guevara’s writings with eyes that have already read Mao on the anti-Japanese war, Giap, and certain texts of Lenin—and they think they recognize the latter in the former. Classical visual superimposition, but dangerous, since the Latin American revolutionary war possesses highly special and profoundly distinct conditions of development, which can only be discovered through a particular experience. In that sense, all the theoretical works on people’s war do as much harm as good.23

Even those who would invoke Guevarist24 images of armed struggle in support of the CLS project must, therefore, be read with the critical eye of the warrior who knows that strategic and tactical fallacies in a struggle against a well-armed and knowledgeable enemy will lead to dire consequences. The intellectual who approaches guerrilla combat as an intellectual

will try to grasp the present through preconceived ideological constructs and live it through books. He will be less able than others to invent, improvise, make do with available resources, decide instantly on bold moves when he is in a tight spot.25

Let us, then, with a critically armed consciousness, examine briefly some key writings on the theory and practice of guerrilla warfare and then see where, or if, CLS fits into such a scheme.

24. See, e.g., Binder, supra note 19.
A. Mao Tse Tung

The defeat of the Japanese Army by the people of China during World War II must rank as one of the prime examples of the strength and courage of a nation in the face of an armed occupier. It is doubtful, however, that Chinese conditions can be translated effectively into the situation facing Crips in North America.

China is a geographically large country with an equally large population base. During the war it was occupied by invading Japanese forces and, as is well known, the Red Army engaged in a strategic withdrawal known as the Long March. At the same time, a bitter internal struggle was being waged between Mao's Communists and Chiang Kai-Chek's Kuomintang. Only by keeping in mind each of these important factors can we evaluate Mao's relevancy to current campaigns.

While there are many practical, historically particular factors that make the Chinese struggle unique, the most important for present purposes is the question of the relationship between small-scale guerrilla bands engaged in hit and run warfare against the occupier and full-scale, regular army units engaged in more traditional warfare. In contrast with Guevarist theory, Maoist theory of guerrilla struggle developed under circumstances in which a large-scale regular army (the PLA) existed and was seen as the primary source of revolutionary struggle from the beginning. Therefore, in Maoist theory and practice, the roving, numerically small, guerrilla band, was always seen as an appendage to the struggle of the regular forces of the PLA. The primary purposes of guerrilla struggle were two: 1) to aid in the establishment of base areas from which the army could operate, and 2) to operate from those established base areas to harass the enemy and subsequently expand the base area itself. At all times, small-scale guerrilla bands were seen as secondary to the primary struggle, which was to build a mass-based popular army. Mao offered the following sharp criticism of those who sought to promote small-scale, mobile bands as the primary source of armed struggle:

Some people want to increase our political influence only by means of roving guerrilla actions, but are unwilling to increase it by undertaking the arduous task of building up base areas and establishing the people's political power. . . .

The methods of correction are as follows:

26. See infra text accompanying notes 33-54.


1. Intensify education, criticise incorrect ideas, and eradicate the ideology of roving rebel bands.
2. Intensify education among the basic sections of the Red Army and among recently recruited captives to counter the vagabond outlook.
3. Draw active workers and peasants experienced in struggle into the ranks of the Red Army so as to change its composition.
4. Create new units of the Red Army from among the masses of militant workers and peasants. 29

Even this cursory treatment of Mao's guerrilla theory makes it clear that it cannot be applied effectively to the CLS struggle. CLS does not face a foreign invader, it cannot rely on the nationalist feelings of the people 30 to sustain its struggle. CLS is engaged in the anti-imperialist struggle in the belly of the beast itself. Moreover, CLS does not have a firmly established base area from which guerrilla bands can operate. Recent events at the Harvard Law School show that CLS hegemony does not exist in a defined geographical area, so that thoughts of expansion through a war of the flea are unrealistic. 31

Finally, Binder 32 seems to idealize the whole of CLS as a guerrilla band. Thus, the idea of a guerrilla band as an appendage to a popular army is foreign to internal perspectives on the nature of the CLS guerrilla struggle. Rather, Binder seemingly prefers a Guevarist approach, one that is, unfortunately for the self-styled freedom fighters, as far from reality as the Maoist vision.

B. Che Guevara on Guerrilla Warfare

While Binder seems more than willing to invoke the thoughts and imagery of Che's battle for the purposes of enhancing his vision of the CLS struggle, he is unwilling to learn the primary lesson of Che's life, the historic specificity of all sites of guerrilla warfare. 33

The fundamental principles of Guevarist armed struggle are found in Che's own manual of guerrilla warfare 34 and Debray's elaboration of

31. Despite overwhelmingly favorable outside references, Clare Dalton failed to receive the required two-thirds vote for tenure largely, it is believed, because her right wing opponents did not want another Feminist/Crit. David Trubeck, visiting from Wisconsin, received the required majority for an offer of a permanent position. After direct lobbying by opponents, Harvard President Bok intervened directly to "avoid further conflict," overruled the faculty and withdrew the offer.
32. *See Binder, supra* note 19, at 1-14.
33. *Id.*
"The guerrilla band is an armed nucleus, the fighting vanguard of the people."36 The key to guerrilla warfare is found in the nature and size of the guerrilla band. It is small, mobile,37 its tactics and movements are flexible;38 it operates and moves by night, it has an intimate knowledge of the local terrain. After its initial successes, it sets about to educate the masses, to engage in acts of organization and armed propaganda.39 In its first phase, its primary function is to survive. In subsequent phases, its functions are to fight and to grow,40 and finally to serve as the nucleus around which a popular army can form.41 At this stage, the guerrilla base begins to take on a marked resemblance to the Maoist concept of the base area.42 Yet fundamental conceptual and practical issues clearly differentiate Guevarism from Maoism in its outlook on guerrilla warfare.

The primary distinction between the two views is organizational. Maoist theory sees the guerrilla band as dependent upon the popular or people's army, it is a secondary form of struggle that arises out of a mass movement. Guevarist theory, on the other hand, is clearly hierarchical, elitist, and vanguardist. In other words, the mass movement that will signal the final victory of the revolution arises out of the guerrilla struggle that precedes it. While in the Maoist vision, the guerrilla war is a symptom of mass struggle, in Guevarist theory, guerrilla war creates mass struggle. Rather than wait for objective, historical, dialectical conditions to warrant guerrilla activity, Che states: "It is not necessary to wait until all conditions for making the revolution exist; the insurrection can create them."43

This Leninist view of armed struggle has certain necessary consequences. Whereas in China the Party played the vanguardist role and was intimately linked with the armed struggle, under Che the Party played a secondary and largely insignificant role. This was so for three

35. R. Debray, supra note 23, at 59-65. A foco is that area that can be "controlled" by the guerrilla band in the sense that it can enjoy relative freedom of movement and action. Because mobility is a primary asset of the guerrilla band, a foco is not a military base in the traditional sense. Because the guerrilla band is not a regular or popular army, a foco is also not a base area as elaborated by Chinese practice.
36. C. Guevara, supra note 34, at 4.
37. Id. at 9; see also R. Debray, supra note 23, at 32-45. "Constant vigilance, constant mistrust, constant mobility." Id. at 42.
38. C. Guevara, supra note 34, at 12.
40. "As soon as the survival of the guerrilla band has been assured, it should fight." C. Guevara, supra note 34, at 19.
41. Id. at 32.
42. See R. Debray, supra note 23, at 59.
43. C. Guevara, supra note 34, at 1.
reasons: First, the Guevarist guerrilla lives in rural areas, his vision is linked to the historical memory of the Cuban Revolution’s base in the mountains of the Sierra Maestra. Because the primary center for Communist Party activity in Latin America was among the urban working class, the guerrilla band acted on a stage removed from the physical presence of the Party.

This leads to the second reason for the separation of the guerrilla and the Party. The Party is made up of urbanized leaders, leaders who are, in the Guevarist vision, softened by the comforts of city life. The real revolutionary, the one who is at the forefront of the struggle, who risks her life every day, is the guerrilla. Thus, the real struggle takes place in the countryside, where the authentic leaders must be found.

Finally, the relationship between the Party (city) and the guerrilla (country) is fraught with strategic and tactical dangers and difficulties. The guerrilla may be dependent on the city for financial resources, leading to resentment and inefficiency. Moreover, efforts to coordinate require descent into the city by the guerrilla, increasing the danger of capture and betrayal. For all these reasons, the guerrilla, the person engaged in armed struggle, must be given primacy in the leadership of the revolution.

To envisage CLS as a form of guerrilla warfare on the Guevarist model is to court many dangers. The most obvious is the danger of vanguardist elitism, often denounced in key CLS texts. This may be somewhat tempered by the fact that CLS is by its very nature elitist in that we work and operate within an elite institution, the law school. Yet it remains obviously inimical to the self-professed CLS project of “democratization” of law and legal education to see ourselves as the vanguard of the revolution, from whose struggles the masses of the Americas will rise up and overthrow oppression.

Such a conception is also inimical to the internal structures of CLS. While problems of hierarchy persist within the organization, it is a very loosely-based, voluntarist, almost anarchic body. To argue that CLS could, as a body, be seen as a highly mobile, flexible, well-organized band of fighters engaged in a fight for a victory in which “to conquer is to accept as a matter of principle that life, for the revolutionary, is not the supreme good” is ludicrous.

44. Id. at 2.
46. See, e.g., D. Kennedy, supra note 4, at 98.
47. See Kennedy, supra note 14, at 1023-28.
From another perspective, internal to Guevarist conceptions of the ultimate goal of guerrilla warfare, one in which "the absolute cooperation of the people" is necessary, the isolated nature of the CLS enterprise becomes problematic. If CLS is guerrilla warfare, then it must have as its aim the democratization of society as a whole, not just the law school, and it must seek to mobilize the people, not just law students and teachers. At both the level of an internal and external Guevarist critique and of a critique of Guevarism, CLS is not guerrilla warfare.

At the same time, however, certain analogies can be drawn and some symbolic references made. CLS or some of its members may well wish to see itself or themselves as a revolutionary vanguard. While the absence of a regular army may deprive CLS of Maoist pretensions, it is possible to conceive of Cambridge or Palo Alto or Buffalo as focos from which guerrilla operations can be launched. Memos, speeches, and law review articles may all be seen as examples of using arms captured from the enemy for a revolutionary purpose. Control of appointments can be seen as the implementation of a key guerrilla strategy. "A close watch over the points of access is, however, an axiom never to be forgotten by the guerrilla fighter."

But such symbolic invocation of the rhetoric of guerrilla warfare falls victim to its own logic, for it ignores the key and fundamental points of Che's theory—clandestinity and its link to survival. "At the outset, the essential task of the guerrilla fighter is to keep himself from being destroyed." The very public nature of the struggle of CLS, its members, and their weapons make it inimical to the theory and practice of guerrilla warfare as expounded by Guevara. Yet there is perhaps a grain of truth that can be extracted from the image of CLS as guerrilla warfare and that might help in constructing a vision of the moral terrorist project that I see as the only hope for CLS as a truly revolutionary endeavour. That grain of truth finds its roots neither in the rural guerrilla practices of Mao or Che, but in the experiences of the later phenomenon of the "urban guerrilla."

49. C. GUEVARA, supra note 34, at 10.
50. Id. at 9. "On unfavourable ground, the guerrilla weapon is the personal weapon of rapid fire." Id. at 27.
51. Although this remains a highly contentious issue within CLS itself. See, e.g., Frug, supra note 15, at 687 n.113.
52. C. GUEVARA, supra note 34, at 20.
53. "The revolutionary, guerrilla force is clandestine. It is born and develops secretly. The fighters themselves are pseudonyms." R. DEBRAY, supra note 23, at 41.
54. C. GUEVARA, supra note 34, at 9.
II. On CLS as Urban Guerrilla Warfare

*I ain't gonna work on Maggie's farm no more.*

—Bob Dylan

Unlike Guevarist theories of rural guerrilla warfare, which were applied in "underdeveloped" areas of Latin America (Cuba and Bolivia), urban guerrilla warfare arose in metropolitan, industrialized centers such as Montevideo (the Tupamaros) and Sao Paulo (Accion libertadora). The key theorist of urban guerrilla warfare, Carlos Marighela\(^{55}\) made it clear from the beginning that he had learned the lessons of contingency ignored by the others. He rejected the theory and practice of the foco\(^{56}\) and adopted a plan of attack based on Brazil's peculiar conditions. He saw the armed struggle as encompassing three aspects: urban guerrilla warfare, psychological warfare, and rural guerrilla warfare, and, because of the immensity of Brazil, conceived of guerrilla warfare as a war of movement in all its aspects.\(^{57}\)

Like Guevarists, however, urban guerrillas see themselves as the revolutionary vanguard of the people, not the armed branch of a political party.\(^{58}\) Moreover, like the Guevarists, they seek to make a revolution from the top down—"to transform the political crisis into an armed struggle by the people against the military powers."\(^{59}\)

Instead of being organized around the idea of the foco, the urban guerrilla is organized into "fire groups" (*grupos delfuego*). Each small group then seeks to commit various acts of politically correct urban guerrilla warfare. Their tactics are aggressive and types of actions include: assaults, occupations, ambushes, traffic disruptions, capturing arms and explosives, sabotage, kidnappings, armed propaganda, and terrorism.\(^{60}\)

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55. See generally CARLOS MARIGHELA, ACCION LIBERTADORA (1970).

56. "Nuestro combate contra el imperialismo se lleva cabo con conceptos nuevos y características propias y por eso no nos preocupamos por abrir en Brasil un foco guerrillero cualquiera." *El papel De La Accion Revolucionaria En La Organizacion,* id. at 18.

57. "Partiendo del hecho de que Brasil es un pais continental la inmensidad de su area, enfocamas la guerrilla como guerra de movimiento y no como foco." Id.

58. "La guerrilla no es el brazo armado de un partido o de una organizacion politica sea cual sea. La guerrilla es ella misma el mando politico y militar de la revolucion." Id. at 41.

59. Id. at 26. ("nuestro principio estrategico es transformar la crisis politica en lucha armada del pueblo contra el poder militar").

60. Id. at 91, 117 Terrorism is also now seen as a very effective and integral part of guerrilla struggle in Peru. The Sendero Luminoso (Shining Path) group has developed from its rural roots to an organization that commits acts of terror and sabotage in both rural and urban areas. See Berg, Sendero Luminoso and the Peasantry of Andahuaylas, 28 J. INTERAMERICAN STUD. & WORLD AFF. 165 (1986-87); Granados, El Partito Comunista Del Peru Sendero Luminoso—Approximaciones a Su Ideologia, 37 SOCIALISMO Y PARTICIPACION 15 (1987); Palmer, Rebellion in Rural Peru—The Origins and Evolution of Sendero Luminoso, in COMPARATIVE POLITICS 127 (1986).
Unlike the rural guerrilla who is required to live much of his life separate and apart from the people, the urban guerrilla must adapt to the conditions of his environment by being able to live, unnoticed, in the midst of the ordinary citizens. He must be technically proficient in order to carry out actions and most importantly, he must know how to shoot. The raison d'etre and key to survival of the urban guerrilla is his ability with a gun: "La razon de ser del guerrillo urbano, la condicion fundamental de su actuacion y supervivencia es el tiro." 62

The primary difficulties again, in drawing upon the practice and imagery of urban guerrilla warfare to define CLS, are those of vanguardism and clandestinity. The urban guerrilla seeks to bring about the revolution by example, by leading rather than by building a mass movement up to a moment when armed struggle is deemed necessary and inevitable. He must remain hidden, or at least his function as a guerrilla requires him to pass himself off in public as someone and something he is not. Again, CLS sees itself as public and as nonelitist. To invoke the image of guerrilla warfare is to falsify both armed struggle and CLS.

Yet there is a point at which the theory and practice of urban guerrilla warfare bring us a step closer to a politically correct view of the functions of moral terrorism. Unlike rural guerrilla theory, which sees terrorism and sabotage as secondary because of the urban nature of its targets, the practice of the urban guerrilla is more closely related to acts that can be perceived as "terrorist"—revolutionary expropriations (bank robberies), kidnappings, bombing, and sabotage, are all clearly identified as "terrorist" acts. Moreover, they are more integrally a part of urban guerrilla practice. It is an essential part of the practice of the urban guerrilla, requiring great technical skill, and it is a form of practical armed struggle that must form a part of the guerrilla's armory. "El terrorismo es un arma a la que jamas el revolucionario puede renunciar." 65

Thus, terrorism is seen as an essential, not a secondary, part of the urban struggle. In keeping with Marighela's view of the conjunction of urban and rural strategies and their union in the psychological war, terrorism plays an essential role in the creation of armed propaganda. The guerrilla inspires the masses to join him in the struggle against oppression through the example of the deed, the revolutionary act, followed by

61. "El guerrillero urbano debe saber vivir en medio del pueblo y tener cuidado para no parecer extrano y divorciado de la vida del cuidando comun." C. MARIGHELA, supra note 55, at 94.

62. Id. at 100.

63. See C. GUEVARA, supra note 34, at 15-16; R. DEBRAY, supra note 23, at 80.

64. C. MARIGHELA, supra note 55, at 131.

65. Id. at 132.
more traditional written forms of information. The combination of all guerilla actions, including armed struggle, is the best way to perform armed propaganda. At this stage of the struggle, intellectuals, as "the most advanced urban guerrilla weapon," play a key role. An examination of the nature and practice of "terrorism" through a look at the actual practice of the two most notorious urban guerrilla groups in Europe—the German Rote Armee Fraktion (Red Army Fraction—RAF) and the Italian Brigate Rosse (Red Brigades—BR) will offer the next step in the development of a theory and practice of CLS as moral terrorism.

III. The Practice of Terror—The BR and the RAF

_Honest to the point of recklessness._

—The Grateful Dead

Before I enter into a study of the BR and the RAF, a brief diversion into the semantic horrors of "terrorism" is appropriate. While even anti-terrorists admit that sophisticated analysis is required to understand terrorism properly, the most commonly accepted vision of the terrorist phenomenon can be found in Wilkinson's statement:

_Terrorists do not recognize any rules of conventions of war for combatants, non-combatants or the treatment of prisoners. They use particularly ruthless weapons and methods to attack civilians, including foreigners who are not remotely involved. Their typical weapons are bombings, assassinations, massacres and bargaining with lives of hostages. Political terrorism is therefore unpredictable and arbitrary, and can be seen as an attempt to exercise a peculiar kind of tyranny over its victims._

Leaving aside the question of state terrorism (Dresden, Hiroshima, Belfast, Soweto, Harlem—but keeping it always in mind), terrorism as defined by its opponents has two primary facets: it is politically motivated violence and it is indiscriminate violence. While the question of political motivation is an interesting one, it is not at all, for present purposes, unacceptable. The issue of the indiscriminate nature of terrorism, however, is more problematic. It is certainly true, for example, that terrorist acts can be, and are, aimed at civilian populations, so-called

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66. "El conjunto de las acciones realizadas por el guerrillero urbano, e incluso cada una de sus acciones armadas, constituye la principal manera de hacer la propaganda armada." _Id._ at 146.
67. "El guerrillero urbano intelectual o artista es la mas moderna adquisicion de la guerra revolucionaria brasileña." _Id._ at 146.
nonmilitary targets. Yet within the logic of the politico-military aims of some organizations, this is the most efficacious means of struggle. In the Algerian War of Independence against French colonialism, civilian populations were targeted for bomb attacks by both the Left and the Right. The population of France was indeed effectively terrorized and Algeria gained its independence. But in a national war of liberation can it truly be said that the metropole is innocent and immune from attack?

On the other hand, terrorist attacks against unarmed civilian populations may be counterproductive. In a national liberation struggle, the goal may well be to terrorize the civilian population of the colonizer in order to weaken domestic political will. In other forms of struggle such as those entered into by the BR or the RAF, terror aimed at the general population almost certainly will not lead to mass mobilization in favor of the armed vanguard.\footnote{See Friedland, The Psychological Impact of Terrorism: A Double-Edged Sword, 6 POL. PSYCHOLOGY 591, 598 (1985).} For the terrorist, however, who sees herself as engaging in the only available means to open up a better world, these questions are not ones of the moral worth of individual lives\footnote{Young, Revolutionary Terrorism, Crime and Morality, 4 SOC. THEORY & PRAC. 287 (1977).} lost "innocently," but of the inevitable logic of armed struggle. They are in other words, tactical and strategical issues, not fundamentally moral ones. The condemnation of terrorism as indiscriminate, then, if accurate, is based on a moral premise that is incommensurable with the practice and practitioners of terrorism.

In reality, however, most "terrorist" acts committed by groups like the BR and RAF are not, in that sense, indiscriminate. As Young points out,\footnote{Young, supra note 72, at 288-95.} militarily speaking, effective terrorism requires discreet targets. Spokespersons for "terrorist" groups often issue public apologies for and condemnations of attacks on innocent civilians. Finally, surprise is not the same as a lack of discrimination in target choice. A detailed study of one of the most active "terrorist" groups in Europe, the Basque liberation movement \textit{Euzkadi ta Askatasuna} (ETA),\footnote{Clark, Patterns of ETA Violence: 1968-1980 in POLITICAL VIOLENCE, supra note 6, at 123.} shows quite clearly that indiscriminate violence is not a part of armed "terrorist" struggle. Clark states and demonstrates that we see in ETA's attacks not random, senseless killing and wounding, but rather acts carefully chosen with great attention to their potential impact on their surrounding political environment. Ever since ETA's Fourth Assembly adopted the action-repression-action spiral theory in
1965, the organization has demonstrated a very great concern for the instrumental role that violence plays in its overall strategy. Despite a fairly small number of unfortunate and tragic mistakes, there is considerable evidence that ETA plans its attacks with great care to maximize the symbolic and communicative aspects of the violence while minimizing its adverse impact on bystanders and other noncombatants. Clark here hits upon the two keys to gaining an understanding of the realities and potentialities of terrorism. It is not indiscriminate, rather it is a calculated violence. More importantly, terrorist acts of violence are acts of meaning, symbolic acts, they are a form of revolutionary writing. If as Cover says the word is violence, terrorism seeks to demonstrate the corollary, that violence is the word. Bombing, kidnapping, bank robbery, each has a significance that goes beyond the mere act, a symbolic trace that writes the bomb under erasure. In constructing themselves as a community of resistance to the dominant forms of oppression in society, an urban guerilla band or firing group, offers up the Armalite as post-modern hermeneutic. The urban guerilla, convinced of the breakdown of society, of the monopolization and exploitation of means of expression, and the creation of social meaning, seeks to escape by

75. Id. See also P. GUELL, LA EVOLUCION ESTRATEGICA DE ETA: DE LA “GUERRA REVOLUCIONARIA” (1963); P. GUELL, A LA NEGOCIACION (1987) (a complete military, political and ideological history of the ETA and the struggle for Basque Freedom).
76. Cover, supra note 3, at 1601.
78. Robert Cover writes:
In interpreting a text of resistance, any community must come to grips with violence. It must think through the implications of living as a victim or perpetrator of violence in the contexts in which violence is likely to arise. Violence — as a technique either to achieve or to suppress interpretations or the living of them — may be said to put a high price on those interpretations. But an “economic” approach here is misleading. For the understanding of law is the projection not only of what we would in fact do under different circumstances, but also of what we ought to do. And we commonly believe situations of violent interaction to be dominated by special principles and values. The invocation of these special principles, values, and even myths is a part of the hermeneutic of the texts of resistance.
79. Greisman, Social Meanings of Terrorism: Relification, Violence, and Social Control, 1 CONTEMP. CRISIS 303 (1977) states:
The variable modalities of meaning that attend terrorism are the products of socially constructed realities. Some groups have greater ability to construct reality for less influential groups, and the former tend to control the process by which social meanings are assigned. As this reality is constructed, the “spectators” of terrorist acts are encouraged to identify with perpetrators or victims as the situation warrants. This identification with the perpetrator effectively removes the terrorist meaning. Frequently, this process is carried a step further, and the spectators, victims, and terrorists themselves become encapsulated in a reified consciousness. When reification occurs, the fundamentally social nature of an act is masked by an artificial objectivity.
performing significant and signifying acts to an audience that is stunned into hermeneutic attention by “the one quality that gives terrorism its unique place in the catalogue of organized violence. Terrorist acts require an audience, the target is of secondary importance, i.e. those that see the target attacked will become terrorized and this is the real goal of terrorism.”

Thus the primary goal of terrorism is to terrorize, and people are terrorized when their base of meaning, their hermeneutic vision of the world, is upset, deconstructed, and put into question. When “normal” means of dissent are no longer open, when access to usual means of knowledge creation is blocked, the violence of the word is replaced with the word of violence.

Both the BR and the RAF can be seen as arising in a circumstance where the hermeneutic of Italian and German society was in turmoil and where the only available mechanism for creating a competing truth was terror.

A. The Red Brigades

_The streets of Rome are filled with rubble._

—Bob Dylan

The Brigate Rosse grew out of the events in Italy during the seminal year of 1968. Norberto Bobbio offers the following summary of the socio-psycho hermeneutic of that time in Italian politics:

1968 should be considered as the starting point of this so-called institutional crisis: it was the culminating point of challenges by the younger generation. One of the most characteristic aspects of these challenges, and likewise the most deleterious in terms of the political miseducation of youth, was a contempt for the democratic rules of the game: the exaltation of violence—even if initially this was simply ideological—as a means of political action; the refusal to converse with those who thought differently; the holding of meetings where one applauded but did not debate; the brutal and systematic invasion by minorities of arenas where free debate was taking place.

80. *Id.* at 305.


_In particolare i nuovi movimenti che si sono manifestati negli ultimi vent’anni in tutte le società di capitalismo maturo sono gli embrioni di una trasformazione radicale nei contenuti, nei luoghi, negli attori delle lotte di classe. . . . Non bisogna tuttavia dimenticare che la linea di tendenza del sistema nel suo complesso indica la trasformazione della classe operaia in un insieme di gruppi di interesse organizzati._
In effect, the events of 1968 gave rise to terrorism from both the Right and the Left because the fundamental nature of historically significant sources of social knowledge and understanding was put radically into question and was found wanting. All dominant social signifiers were deconstructed and the absence of the word became a socio-political void filled through the presence of the deed.

The demands of students in 1968 echoed those of their French and German colleagues—the democratization of the university—the democratization of knowledge construction. At the same time, the “hot autumn” of 1968 evidenced a breakdown in traditional hermeneutic practices at work between bosses and employees. The dominance of both the “patron” and the “union” were challenged as the very composition of the “working class” as a homogenous body was put into question. At the level of production of knowledge and power on a quotidian basis (the factories and the universities) a direct challenge to dominant politico-discursive practices was being made.

At the same time as this challenge to the dominant social construction of being and meaning was being launched from below, the top was operating on a basis of closure. As the Italian capitalist system became more integrated into the demands of an international market economy, the necessity for domestic political “stability” became more evident. This need coincided with an “increasing institutionalization of left wing political parties and unions,”83 which, of course, led to the Italian Communist Party’s (PCI) “historic compromise” with the Christian Democrats. Not only did the dominant social forces offer a hermeneutic closure in the events following 1968, but the dominant counter-hermeneutic meaning-machine, the PCI, closed itself off to the demands for radical change from the base of its natural supporters and opted instead to pursue a path of parliamentary power-brokering. In effect, then, both traditional and oppositional forms of creating “legitimate” political discourse were closed to demands from below. In an attempt to dislodge the dominant social signifiers that repressed these alternate truth and validity claims,84 the only option “open” was to struggle through the hermeneutic of terror:

\[\ldots \text{i nuovi contenuti antagonisti si trovano progressivamente deviati verso la necessita di resistere alla repressione, di lottare per l'apertura}\]

83. “L'istituzionalizzazione crescente delle forze della sinistra, partiti e sindicati.” Melucci, supra note 82, at 259. For a critique of the BR from a PCI perspective see generally TERRORISM TODAY IN ITALY AND WESTERN EUROPE (Bruno Di Biase ed. 1978).

delle istituzioni, di difendersi dalla violenza di destra e dall’ oscur dis-
egno delle trame nere.\textsuperscript{85}

The BR’s hermeneutic of terror was not, as its critics would have us believe, mindless or indiscriminate. Rather it was a carefully planned, well-scripted scenario, meant to inscribe the graphe of terror into the heart of Italian political discourse.\textsuperscript{86} Their organizational plan clearly was based on traditional urban guerilla models (Marighela), small groups operating independently. Their strategy was clearly Leninist, in that they intended to bring about the revolution from above\textsuperscript{87} rather than through the slower process of grass-roots, mass-based politics. A brief survey of the historical development of their “actions” shows both the discriminate and symbolic nature of Italian “terrorism.”\textsuperscript{88} The first “actions” took place against local “symbols” of oppression, for example, burning the cars of factory managers with a reputation for bad dealings with workers. Next, kidnappings of executives, followed by revolutionary interrogations, took place. At this early stage, the actions and symbolism of BR activities resonated with traditional Marxist iconography and focused on members of the industrial bourgeoisie. Acts of violence against their persons and property were meant to write under erasure, to indicate a dialectical reversal of order and meaning in Italian industrial society. But, as subsequent events would show, the subversion obtained through their acts of production-based terror was the subversion of a minor sub-text, a subversion of dominant discourse. Turning from a purely industrial hermeneutic, the BR began, in the middle 1970s, to focus on the \textit{Stato Imperialista Multinazionale} (the Multi-National Imperialist State or SIM). The integration of state and capital became the primary signifier that the BR sought to disintegrate. Representatives of the state were now targeted as the main discursive opponent. Mario Sossi, state prosecutor in Genoa, was kidnapped and later released. In 1976, Genovese Judge Francesco Coco was shot to death, the first delib-
erate BR execution. In the meantime, magistrates, journalists, industrialists, and police officers were “kneecapped.”

It is perhaps “kneecapping” that is the most well-remembered BR tactic. This public memory of kneecapping is evidence of its strong terrorizing and symbolic effect. The targets are representatives of SIM and the inscription of semiotic meaning is graphically physical, but not deadly. Rather SIM is literally and symbolically crippled, constantly and forever symbolizing a limping, aging corporate capitalism.

In 1978, the BR carried out its most infamous and symbolically powerful single action. Aldo Moro, a former Prime Minister, was kidnapped and killed after fifty-five days of captivity. The BR then “symbolically left the body in Via Caetani between the party headquarters of the DC and the PCI.” Thus, the kidnapping and execution of Moro filled the world of political meaning with a powerful new hermeneutic. The body of SIM was no longer immune from extinction; rather than writing under erasure, it was erased. At the very heart of the historic compromise in Via Caetani, the rotting corpse of Left and Right traditional political dialogue was on public view.

At the same time as BR reached its height of dramatic hermeneutic openness, the dialectic of violence and repression took its hold. BR activists were killed or captured, some engaging in the public ritual of recanting, thereby reinforcing the semiotic superiority of the Italian state through a rejection of BR hermeneutics from a position that is simultaneously inside and outside the hermeneutic circle of “terror.” Moreover, and perhaps much more significantly, “Perhaps worst of all for the BR, however, people got used to terrorism: it lost its shock value and became business as usual. The absence of terrorism, ironically, achieved greater media coverage than the isolated attacks themselves.” Terror became the victim of that which it sought to undermine. Rather than deconstruct socio-political discourse in Italian culture, it became an integral part of the culture. The deconstructive incision became, perhaps inevitably, involved and implicated, complacent in that which it sought to undermine. The outlaw becomes the in-law, a married accomplice of the evil it seeks to avoid. Terror is submerged in the larger terror of civilization.

89. “Kneecapping” is a strategy whereby shots are fired into the patella (kneecap) of the victim. This results in extreme pain and permanent crippling, but not death.
90. Salvioni & Stephanson, supra note 86, at 500.
91. Id. at 506.
B. Rote Armee Fraktion—RAF

Test me, test me
Why don't you arrest me?
Throw me in the jailhouse
—The Grateful Dead

Like its Italian BR counterpart, Germany's RAF grew out of the events and semiotic fluxes of 1968. Like its Italian BR counterpart, the RAF arose in a country with a Fascist past where the hegemonic politics of compromise, epitomized by social democracy and the outlaw stature of the Communist Party, closed off the mainstream political discursive practice from radical "internal" questioning.

And like the BR, the RAF's first symbolic act took place against a symbol of modern capital, a department store. On April 2, 1968, a fire-bombing of a Frankfurt department store was carried out by Gudrun Ensslin, Andreas Baader, Thorwald Proll, and Horst Sohnlein. Horst Mahler, later a dominant RAF theorist, acted as Baader's lawyer. Like the BR, the German RAF turned from violence against property, to violence against persons, such as kidnapping. The RAF advanced from attacks on representative symbols of capital to representative symbols of the state and international capital, in many instances against NATO installations.

From the very beginning of its struggle, the RAF recognized that it was engaged in a struggle for the social construction of meaning. One of its earliest and most persistent targets was the Springer Publishing Enterprise. The RAF counterattacked the violence of the word of the Springer press with the word of violence. In one of its early communiques, issued after a bomb attack on Springer, the RAF made its interpretive position clear:

Yesterday, Friday May 19th, at 3:55, two bombs exploded in the Springer skyscraper in Hamburg. Since, in spite of prompt and urgent

93. See generally Billig, supra note 8, at 29; Wasmund, supra note 9; Chaldek, Le terrorisme en Allemagne Federale, 51 POLITIQUE ETRANGERE 937 (1986); Ruschetta, Le due "anime" della Rote Armee Fraktion, 308 IL MULINO 995 (1986); Horchem, West Germany's Red Army Anarchists, in THE NEW TERRORISM, supra note 16, at 199; TERRORISM IN WEST GERMANY, CONFLICT STUDIES JOURNAL 1 (1986).

94. The RAF were perhaps the first to recognize and attack what Fredric Jameson has described as the cultural logic of post-modernism. By beginning their campaign of terror by destroying consumerism, by engulfing consumption in flames, the RAF started out its hermeneutic practice against the alienation of capitalist society. See Jameson, Postmodernism, Or the Cultural Logic of Late Capitalism, 146 NEW LEFT REV. 53, 64 (1984).

95. See STOKE NEWSTON 8 DEFENSE GROUP, Chronology, in ARMED RESISTANCE IN WEST GERMANY: DOCUMENTS OF THE RED ARMY FRACTION 11-17 (1972).

96. Id. at 60-61.
warnings, the building wasn't cleared, 17 people were injured. The first warning was phoned through at 3:29 with the request that the building be cleared within 15 minutes because of a bomb. The reply was: stop this nonsense. The call was cut off.

The second call was made at 3:31. It said: if you don't clear the building immediately something terrible will happen. But the telephonists clearly had instructions to ignore such calls. The third call, at 3:36, went to the pigs: look out, for Christ's sake make sure that the building is cleared.

Because the Springer concern cannot suppress the fact that warnings were given, they distort the message: they say there was only one warning and that came too late. Two telephonists and the pigs can confirm that the Springer press is lying once again.

Springer would rather take the risk of his workers and employees being injured by bombs than the risk of losing a couple of hours working time. He would have lost profit through a false alarm. For capitalists profit is everything and the people who produce it for them are no better than shit. We are deeply shocked that workers and employees have been wounded.

We demand of Springer that his papers stop their hysterical attacks on the New Left, on working-class solidarity actions such as strikes, on Communists here and in other countries, on liberation movements in the third world, particularly the Arab people who are fighting for the liberation of Palestine; that he stop his propaganda in support of Zionism, the imperialist politics of the Israeli ruling class; that he stop printing lying racist reports about foreign workers here.

We demand that the Springer press print these communique.

We demand nothing impossible. We will only stop our actions against the enemy of the people when our demands are met.

Expropriate Springer!

Expropriate the enemy of the people!

The similarities with the Italian BR extend to organizational and theatrical practices. Most importantly, like all urban guerilla groups, the RAF is fundamentally vanguardist and seeks to create revolution from above by provoking and heightening acts of state violence and repression. In its major theoretical presentation on the subject, The Concept of the Urban Guerilla, the RAF makes its vanguardist, actionist vision quite clear:

We state that without revolutionary initiative, without practical revolutionary intervention of the avant-guard, the socialist workers and the intellectuals, and without concrete anti-imperialist struggle, there will be no unifying process. . . . Here, the role of the urban guerilla can only be the method of revolutionary intervention of generally weak revolutionary forces.

97. Id. at 33.
1. Urban guerilla warfare is based on the analysis that there will be no Prussian order of march in which the many so-called revolutionaries will lead the people into revolutionary struggle.

2. It's based on the analysis that when the conditions are right for armed struggle it will be too late to prepare for it.

Therefore, like the Italian BR, the German RAF saw itself as engaging in a battle wherein the dominant, signifying forces would be immolated in a constructive, semiotic fire-bombing. The RAF, however, from its earliest days, made a signifying turn that would ultimately undermine and deconstruct its own (de) constructive strategy.

The semiotic flux of terrorism aims at challenging the dominant forms of meaning in developed Western capitalist societies. Thus, attacks are based on symbols—factories, managers, judges, banks—that are thereby denatured and shown to be subvertible through the imposition of a hermeneutic of counter-violence. People are terrified because their anchors to the world are sent floating free as meaning is put up for grabs. The mistake, the semiotic fallacy, committed by the RAF was to turn the terrorist him- or her- self into the dominant signifier, by taking the struggle away from de-territorializing dominant signifiers and focusing instead on re-territorializing "terrorists." 98

Thus, after Baader was imprisoned for the Frankfurt fire bombings, Mahler, his lawyer, and Ensslin broke him out “in a hail of gunfire.” While Wasmund claims that “[a] crucial point with regard to the beginnings of the RAF is that with the liberation of Baader, the people involved in this action irrevocably severed their connections with society,” 99 it is more significant and signifying for the entire construction of meaning within RAF discourse. As Wasmund himself notes.

With the liberation of Baader, the basic pattern and the central motive for all future actions of the RAF and its subsequent organizations were established. That is, if one or more members of the organization were in custody the others were to concentrate all their energy on the liberation of their comrades in prison. 100

Thereafter, RAF sought its meaning on what became a purely internal and introspective level. Its public actions, like kidnapping, became not means to the end of constructing a terror-ridden deconstruction of German socio-psycho political discourse, but rather means to the end of free-

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98. See Deleuze & Guattari, Anti-Oedipus and Discourse; Salvioni & Stephanson, supra note 86, at 498 n.25 (reference omitted). ("[L]anguage must be eradicated from the fetishism of normality, from the prison of no sense spoken, to recompose itself as delight, as a desiring machine against power.").

99. Wasmund, supra note 9, at 226.

100. Id.
ing its members from prison. The hermeneutic practice turned inevitably inward as the RAF, instead of creating a public discourse of terror, embarked on a private construction of idiolect. In essence, they ended up talking to themselves, forgetting in the process the hermeneutic purpose of terror.

IV. On Critical Legal Studies as Moral Terrorism

_The thoughts are broken_
_Perhaps they're better left unsung_
_I don’t know, I don’t care_
_Let there be songs to fill the air_

—The Grateful Dead

What, then, are the lessons to be drawn from the preceding discussion? What does moral terrorism have to do with Critical Legal Studies? It should be quite clear that the guerrilla warfare model, adopted by opponents and proponents of CLS, is grossly inappropriate. Guerrilla warfare is a means of achieving military victory over an opponent by stirring the masses to revolutionary fervor. It is conducted from base areas or focos in its rural version, from safe houses in its urban manifestation. It is elitist and has no real connection with mass movements or parties on the Left. Finally, by its very nature, it must be clandestine.

Critical Legal Studies is not a military movement, it is an intellectual movement. Indeed, it is one within which even military or propaganda moves that might involve “the masses” in law schools are questioned by many members. CLS is not, formally at least, an elitist, Leninist, tight-knit politico-military operation, it is quite the opposite.

101. There was some attempt to construct a counter-narrative. Horst Mahler denounced the demand from the RAF kidnappers of the Chairman of the Berlin Christian Democratic Union that he and other RAF prisoners be released in exchange for the hostage, accusing his former comrades of betraying the socialist revolution. See Billig, _supra_ note 8, at 36. In a similar fashion he refused to participate in hunger strikes and other actions within the prison in protest of the German Government’s policy of separating RAF prisoners from each other by placing them in different institutions. While the campaign against “isolation” became a key point for the RAF, Mahler denounced it as elitist and preferred to live and agitate among the “normals.” This, in the end, meant that Mahler had to distance himself from the vanguardist premise at the base of RAF theory and practice. On the contradiction and conflict within RAF, see Ruschetta, _supra_ note 93, at 997-98.

102. Although I have personally elaborated a schematic approach in my written work, _see supra_ notes 2 and 5, and I have attempted to practice moral terrorism in my teaching life, moral terrorism, under this and other rubrics, has a certain intellectual pedigree, both inside and outside CLS. Examples from within CLS can be found in the issues of Lizard, which appeared at the San Francisco AALS meeting in 1984. My personal favorite is entitled _Cultural Terrorism and the Faculty Cocktail Party, Lizard 3_.

103. _See Frug, _supra_ note 15, at 697, in which Duncan’s ideas of anarcho-syndicalist actions in the law schools involving students are questioned._
Nor does it really seek connection with "the masses" outside law schools. Crits are intellectuals and scholars and CLS is not clandestine, nor do its "operations" and "actions" depend on secrecy. On the contrary, the effectiveness of CLS relies on publicity, on Duncan's picture in *Time*, on law review articles, seminars, speeches at the AALS annual meetings, etc. Crits are not "guerrillas," operating like "fish in the sea of the masses." They are public intellectuals working at the very heart of the capitalist machine, the center of knowledge production, the law school.

For those who find the CLS critique of law and its various programmatic efforts attractive, for those who seek to adhere to its principles and practices, two roads remain open. The first is the "Parliamentary Option," that is, CLS proponents can opt to work for a change in the system from within the system, they can write law review articles, get tenure, and indoctrinate students and their fellow teachers in a relatively civilized manner. The problem with this choice is the problem of capture. Crits who adopt the Parliamentary Option become accomplices in the reproduction of the very system they claim to oppose. Like the urbanized Party functionaries condemned by Che and Debray, they become soft and comfortable, they get tenure, they are acceptable, and to be acceptable is to be accepted, and to be accepted is to be no longer dangerous.

The second path available is the path of moral terrorism. Like the urban guerrilla we must recognize that our struggle is a struggle over the monopolization of signifying events and structures. Unlike the urban guerrilla, however, we cannot rely on secrecy, our "actions" must be public (memos, articles, speeches, etc.). We must realize that our project is dangerous, we must heed the advice of Marx and Engels: "Firstly, never play with insurrection unless you are fully prepared to face the consequences of your play."

The dangers are not just personal. While it is certain that moral terrorism, acts of intellectual kneecapping, will have dire consequences for our employment prospects, this is hardly of vital interest in a world where...

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105. See Fraser, *The Day the Music Died*, supra note 5, at 890.


107. I think here we should all heed Lichterman's credo: "Maybe the eighties motto for those still working within conventional institutions should be 'stay in, take risks, get thrown out.' " Lichterman, supra note 104, at 1067.
that lives in the shadow of the mushroom cloud and where people are starving to death on the streets of America's most wealthy cities. A few tenure denials, in the grand scheme of things, are not really too important.\textsuperscript{108}

The real danger is that encountered by the RAF, that the "terrorist" will surpass and replace the "terror" as the primary signifier. In such cases, the signifier/signified surplus,\textsuperscript{109} is lost, the cult of personality takes over, and terror loses its hermeneutic force. This does not mean that martyrdom is to be avoided because of this danger of the collapse of significance. It is impossible to deny the graphic terror, etched and written in our memory, of the Vietnamese monks, or the Czech student, who engaged in real acts of "self-immolation." Martyrdom is an effective act of terror and a significant hermeneutic event, but only so long as the event, not the individual, is the focus of the construction of meaning.

Peter Sloterdijk, in his brilliant \textit{Critique of Cynical Reason},\textsuperscript{110} offers a vision of the possible modes of action we might choose to adopt. Tracing the rise of our modern cynicism in much the same way as Adorno and Horkheimer trace the death of Enlightenment,\textsuperscript{111} he finds a counter-current, that he calls Kynicism, and which I would prefer to describe as anarcho-cynicism or moral terrorism. Kynicism reacts to hegemonic thought through laughter, humorous disruption, ribaldry, and other forms of action meant to outrage decent citizens everywhere. The classic heroic act of kynicism, of moral terrorism, is Diogenes offending the good citizens of the Athenian polis by publicly consorting with prostitutes and joyfully masturbating in the market place. Sloterdijk offers the following description of the moral terrorist's semiotic praxis.

\begin{quote}
Ancient kynicism begins the process of "naked arguments." From the opposition, carried by the power that comes from below. The kynic farts, shits, pisses, masturbates on the street, before the eyes of the Athenian market. He shows contempt for fame, ridicules the architecture, refuses respect, parodies the stories of gods and heroes, eats raw meat and vegetables, lies in the sun, fools around with whores . . . .\textsuperscript{112}
\end{quote}

The kynic, as a dialectical materialist, has to challenge the public sphere because it is the only space in which the overcoming of idealist
arrogance can be meaningfully demonstrated. Spirited materialism is not satisfied with words but proceeds to a material argumentation that rehabilitates the body. Certainly, ideas are enthroned in the academy and urine drips discreetly into the latrine. But urine in the academy! That would be the total dialectical tension, the art of pissing against the idealist wind.\footnote{Id. at 105.}

This, then is our challenge. To put ourselves on the line, to engage in acts of “macho self-immolation,” to become moral terrorists, to “whack-off”\footnote{In our culture, the dominant mode of discourse in masturbation, is the phallocentric commodification of women. See Fraser, What’s Love Got to Do With It? supra note 5, at 80 n.76. The art/struggle of moral terrorism is to recapture the body-experience, to recode and reterritorialize our existence. To achieve this goal (praxis) we must overturn the public significance of phallogocentric discourse. Alan Freeman offers a brilliant deconstruction of this dominant discourse in Freeman & Schlegel, Sex, Power and Silliness, 6 Cardozo L. Rev. 847, 858 (1985). Our practice of masturbation as moral terrorism must seek not to commodify women, but to demonstrate the dialectical potentialities inherent in the practice of orgasmic delight for its own value, a value which blatantly ignores and openly denies phallocentric economies of sexuality.} in faculty meetings, to construct a praxis which is meaningful, public, and dangerous. For those who may be troubled by such a vision of kneecapped deans and car-bombed curriculum committees, I close with the words that must become our credo:

\textit{Fuck ‘em if they can’t take a joke!}

—Anon.