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Some Reflections on Canadian Legal Education

Harry J. Glasbeek
Osgoode Hall Law School of York University

Reuben A. Hasson
Osgoode Hall Law School of York University

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Comment on Presidential Address

Doing the Right Thing? Toward a Postmodern Politics

Allan C. Hutchinson

> "We have learned the answers, all the answers: It is the question that we do not know."
> -Archibald MacLeish (1928)

Joel Handler would have had big problems with Spike Lee's *Do the Right Thing*. It is an auteurial tour-de-force by way of a postmodern fable for the ages that is self-consciously perplexing and inconclusive. While focusing on the competing imperatives of the pacificism of Martin Luther King's assimilationist politics and the violence of Malcolm X's cultural nationalism, Lee poses the more general and debilitating dilemma that faces those committed to decisive action in an opaque world. In a pivotal scene, the flip and up-and-coming Mookie is harangued by a local and elderly busybody. In hushed and conspiratorial tones, he advises Mookie to "Always do the right thing." The exasperated Mookie complains, 'That's it? Do the right thing? 0.K., I got it. I'm gone . . ."[1] As the film advances to its climactic and chaotic denouement, Mookie is forced to confront the

excruciating accuracy and infuriating elusiveness of this absolutely trite piece of sage advice. Determined to "do the right thing," he acts in a way that both he and almost everyone else will forever question and second-guess. In this appropriately cryptic manner, Lee suggests the fecundity and fragility of political action in a postmodern world.

Ifhis presidential address is anything to go by, Joel Handler (1992) would be unimpressed by this cinematic portrayal of the political activist's existential predicament. Whereas Lee accepts that the success of political action can never be underwritten, Handler craves the galvanizing security of a tried-and-true program for progressive revitalization. Indeed, Lee seems to go further and contend that there is no way of knowing whether the attempt to "do the right thing" might turn out to be another way to "do the wrong thing." All strategies are hazardous and all consequences are unpredictable : Much will depend on the informing context and precise timing of any particular intervention. In a postmodern way of thinking and acting, there are no self-evidently correct actions or easy answers, but only difficult choices and questions. Those, like Handler, who want some theoretical assurances of progressive salvation before they embark on practical action are likely to be hamstrung by the fear of reactionary failure from taking the chance of transformative success. Because all options for action are fraught with risk, the noble dream of radical deliverance can too

easily drift into the shameful sleep of comfortable quiescence.

In this essay, I want to suggest the error of Handler's ways by defending postmodernism as an effective and viable theoretical resource in a radical project of transformative politics. Contrary to Handler's assertions that postmodern thinking sabotages any possibility of achieving a reliable program of progressive politics, I intend to argue that there is no necessary contradiction between a continuing loyalty to a postmodern perspective and the practical implementation of a radical political agenda (Hunt 1990; Binder 1991). Indeed, I maintain that postmodernism is the only critical resource that a progressive activist can have or want. Handler's concerns about the indefinite intimations of a postmodern strategy are understandable but misplaced . While it does not provide the ground for a progressive politics, postmodernism does constitute a complementary strategy for one. The progressive postmodernist is neither the oxymoronic character nor the inadequate inspiration that Handler implies .

Accordingly, I will engage and respond to Handler's critique at both the theoretical and practical level.[2] In the first half of the essay, my purpose is to demonstrate that his plea for a "grandiose plan for a better society" (p. 719) cannot be sustained or answered; the postmodern critique has Handler's theoretical and political number . In the second half of the essay, I adumbrate the practical consequences of adopting a postmodern perspective in the activist

lives of progressive lawyers. In particular, I want to utilize Handler's own earlier writings to contradict his claim that "it is not enough merely to challenge bourgeois hegemony: the Left must create a counter or alternative hegemony" (p. 722) and to sketch the possible direction of a non-hegemonic democratic politics. As such, my essay offers a preliminary meditation on what it might mean "to do the right thing" in a world in which notions of right and wrong are always contested and contestable.

I. The Beginning of History?

Francis Fukuyama's *The End of History and the Last Man* (1991) has stirred up a hornets' nest of ideological controversy and scholarly criticism. With its vast historical sweep and philosophical erudition, it is political theorizing in the grand tradition. In a weighty volume that is not short on theoretical ambition or practical prediction, the former Reagonite policy analyst contends that there is a implicit directionality to Western history and that its inexorable end point is an eminently good place to arrive. Continuing where Immanuel Kant and G. W. F. Hegel left off and enlisting the interpretive ingenuity of Alexandre Kojeve and the practical vision of Vaclav Havel, he tries to document and defend a coherent and universal History of Humankind that inexorably and inevitably leads to liberal democracy. While it is incompletely implemented

and capable of further refinement, the ideal of liberal democracy marks the final end of History: "the modern liberal democratic world . . . is free of contradictions" (p. 139) and "at the end of history, there are no serious ideological competitors left to liberal democracy" (p. 211). For Fukuyama, liberal democracy is best able to satisfy the basic human needs of reason, desire, and self-esteem. Moreover, contemporary events have reinforced such a teleological historiography and warranted the conclusion that "there is a fundamental process at work that dictates a common evolutionary pattern for *all* human societies-in short, something like a universal History of mankind in the direction of liberal democracy" (p. 48).

Joel Handler would have little truck with Fukuyama's brand of scholarly proselytizing. He would probably and rightly condemn its philosophical pretension, suspect history, and ideological transparency. Handler is an implacable foe of what he terms "the ideological hegemony of liberal capitalism" (p. 727) and its racist and patriarchical bonds: the motive concern of his work is the need to provide an effective challenge to such a degrading way of living and a bankrupt mode of theorizing. More important, in marked contrast to Fukuyama, Handler would argue that liberal democracy is part of the problem, not a mainstay of the solution. Although liberal democracy has played a beneficial role in wresting people from the grip of medieval dogmatism, material deprivation, and the hierarchy of tradition, Handler would maintain that it has done so at the

considerable cost of ubiquitous commodification and collective anomie. In ignoring the tarnished image of liberal democracy, Fukuyama fails to heed his own advice that "we should be careful to distinguish transitional conditions from permanent ones" (1991:118). Liberal democracy is a way station in history, not History's Final Destination. Accordingly, instead of working to justify the legitimacy of liberal democracy, Handler calls for a "global revolutionary critique" and "comprehensive political and economic plan" that might invigorate and inform the radical alternative to liberal democracy and its theoretical apologists (pp. 720-21, 722).

To break the grip that liberal democracy has on the contemporary political imagination, Handler demands that there must be some strong and full-blown vision of an egalitarian community and non-exploitive economy. He is steadfast in his insistence that such a positive and "grandiose plan for a better society" is essential to subvert and transform the institutions of modern power (p. 719). Without such a wide-ranging and detailed blueprint, the left will concede the field to the Fukuyamas of the world and the future to the forces of conservative ideology. For Handler, the only way to meet and dislodge one vision is with another, better and more encompassing vision of the terms and conditions of social life. The blurred vision of liberal democracy must be replaced by the limpid clarity of an egalitarian community that can illuminate the path of a progressive politics: "it is not enough merely to challenge

bourgeois hegemony: the Left must create a counteror alternative hegemony" (p. 722).

Yet, as uncompromising as Handler's opposition would be to the substance of Fukuyama's work, he contrives to share the same apocalyptic style and methodological motivations. Rather than junking entirely this discredited tradition of grand theorizing and cast it onto the scrapheap of failed scholarship, Handler holds onto its broad epistemic framework and historiographic aspirations-the siting and substantiating of a Telos that can guide and judge History in its Progress. In place of Fukuyama's version of *The End of History and the Last Man*, Handler comes close to offering his own rendition of "The Beginning of History and the First Person." The main difference is that, whereas Fukuyama wants to sit back and let History run its course, Handler wants to give a tweak to History's tail and point this mythical beast in a more promising direction. Complain as each might, Handler and Fukuyama are members of the same philosophical family: Handler is the progressive sibling to Fukuyama's reactionary self.

As a matter of historical record, both Fukuyama and Handler are on shaky ground. As much as Fukuyama would be hard-put to demonstrate that recent global events are necessarily attributable to any particular logic or pattern, Handler would be equally flummoxed by the task of showing that such a grand, detailed, and universalizable vision was a necessary precondition of revolutionary change. When

people take to the streets of Johannesburg, Prague, Beijing, Moscow, Timisoara, Frankfurt, or Los Angeles, they are rarely motivated by any particular or perfected plans for social renovation. Such uprisings are more often sparked by some local and relatively minor act of official injustice or bureaucratic crassness; they tend to be instinctive, spontaneous, and unpredictable in their timing and intensity. Moreover, if the rebels are committed to act in the name of anything, it is the vague but noble desire for human dignity or a stark belief that "enough is enough." People do not give their lives for academic musings, nor do revolutions await the final theoretical word from the ivory tower. Like Lee's Mookie, they listen to the promptings of their instincts and try to "do the right thing."

As a matter of intellectual endeavor, both Fukuyama and Handler want to rescript History by providing a grand narrative of historical justification and social emancipation. Where they part company is on the design and details of this Universal Script. In sharp contrast to Fukuyama's liberal democracy, Handler is dedicated to crafting a blueprint for an egalitarian society that can bring History to an end by force of its own intrinsic appeal and providential rightness. Inspired by such a scholarly vision, Handler imagines that progressive activists can enlighten a dull citizenry who will compliantly follow the intelligentsia into an egalitarian future. It is a seductive, but flawed, ambition whose elite means betray its democratic end. Moreover, such a hegemonic vision cannot

transcend the contingent dictates of historical living. As a project of transformative politics, Handler's enterprise must, like Fukuyama's, remain unfulfilled in its theoretical aspirations and practical realization.

Both Fukuyama and Handler are engaged, as Fukuyama puts it (1991:131), in "a Marxist interpretation of History that leads to a completely non-Marxist conclusion." Of course, this is the very admission of ideological complicity-it is the Marxist interpretation of history, as much as its completely non-Marxist (or Marxist) conclusions, that is the problem. As the epitome of scientistic historiography, the Marxist interpretation of history must be abandoned in its entirety: it does not warrant or deserve a second chance. The challenge is to replace this mendacious method as well as its dubious and self-serving outcomes with a theoretical approach that engenders a more democratic interpretation of history and its redemptive possibilities. And, contrary to Handler's jeremiad, this is exactly what postmodernism does.

II. A Postmodern Vision

As Handler seems unable to accept, the only available option is to abandon entirely the elusive search for grand narratives or grandiose critiques. A non-foundationalist or postmodern rendering of history and its political opportunities is the way to go. There is no one optimistic or pessimistic account of historical destiny. Most

important, there is no History or Destiny. History might not be Shakespeare's "tale told by an idiot, full of sound and fury, signifying nothing" *(Macbeth,* act 5, sc. 5), but it is also not what Fukuyama thinks it is or what Handler wants it to be. History cannot be completely got out of or into: its presence is never entirely self-present to itself so that it can be temporarily embraced or summarily evaded. Post-modemism does not denigrate or dismiss the value and truth of historical experience or human suffering-that would be nonsensical and unpardonable. Instead, it avoids essentializing its value or truth by insisting on a multiplicity of values and truths. From a postmodern perspective, [h]istory is both the context for and subject of social study and political interpretation. Historical experience is given relevance by interrogating it and resisting the temptation to reduce it to a new authoritative source of epistemological knowledge or ideological insight.' Pos-tmodemism is pluralistic, not monistic, in its operation and ambition.

Handler's catalog of postmodern characteristics-anti-essentialism, social plasticity, ironic juxtapositioning, discursive subversion, small-scale insurgency, grass-roots organizing, strategic intervention, and the like-is faithful and fair. It is his anxiety and concern that, while understandable, is unnecessary. Influenced by Claus Offe and Carl Boggs, Handler laments that a postmodern perspective cannot deliver the political goods: it will not be able to confront and confound fully the oppressive workings of elite

institutions. His fear is that the postmodern tum will result in left politics being steered down a political blind alley in which transformative energies will be exhausted in obsessive and paralyzing odysseys in self-discovery: liberal capitalism will have reasserted itself, courtesy of its postmodern antagonist, and bourgeois hegemony will persist. He is particularly troubled that, "without a positive theory of institutions, post-modemism cannot come to grips with institutionally based power" (p. 724). He holds that post-modemism will only engender a politics of quietism and irresponsibility that will be long on personal angst and short on social solidarity.

Contrary to Handler's pessimism, post-modemism offers all the political firepower that he can have or want: it can galvanize individual agency and generate collective engagement. If any theorizing is likely to lead to political paralysis, it is Handler's. He makes the common and unnecessary mistake of concluding that postmodernism's eschewal of any universal, essential, or ahistorical ground on which to build or anchor any claim of epistemic justification signals the end of the theoretical enterprise entirely. This is a profound error. It is not that the theoretical enterprise must be abandoned or, in particular, that political critique must be forsaken: it is the nature and status of such work that must be reappraised. While postmodernism rejects the metaphysical privileging of grand theory, it most certainly does not deny the

worth of social, historical or political theorizing. Provided that it is suitably provisional, revisable, and contextual, such theorizing is at the heart of a transformative political praxis. In rejecting History, it does not ignore the lessons of history, and in rejecting Telos, it does not eschew the value of criticism. As all claims are located within a dynamic set of social practices, postmodernism insists that all theorizing pay attention to the structural circumstances of that social milieu and, in particular, to theorizing its own embeddedness in such historical contexts. Critical insight is a prelude to transformative action.

Accordingly, any theoretically sophisticated or satisfactory account of politics must grapple with the extant protocols of power and, in making any proposal for transformative change, must recognize its own revisable and experimental character. Exemplified in the radical work of Cornel West, a postmodern politics of radical democracy "promotes a critical temper and democratic faith without making criticism a fetish or democracy an idol" (West 1991:124-25; see also West 1988, 1989). By moving beyond the debilitating politics of abstraction and ahistoricality, postmodernism looks to create personal meaning and social knowledge in the situated particulars of embedded experience. The ambition is not to fix an all-encompassing Truth or Justice in a distant metaphysical realm, but to pay constant attention to the multiple truths and contextual details of engaged living (Harris 1990; Radin 1990). Of course,

being political, that process will always be open and fluid; meaning will always be provisional and revisable. Moreover, by using rich accounts and critical readings of historical experience to promote political knowledge and action, that politics will always be contestable: politics itself can never be a privileged ground for anything.

Understood in this way, postmodernism does not provide an integrated or finished program for political action. In the face of the problematized agent, postmodernism does not capitulate or retreat from the task of struggling toward an enhanced social solidarity and experience of justice. Instead, it points to a renewed engagement and sustained challenge to existing historical conditions. By abandoning the search to recover or fix a unified and pristine self, the hope is to empower subjects by making them individually aware of their capacity for self-(re)creation and their collective responsibility for establishing a mode of social life that multiplies the opportunities for transformative action. Postmodernism problematizes truth, individuals, agency, and collective action not to discard them from the radical vocabulary of progressive politics but to render them more immediately transformable and more politically useful. The tendency of Handler's critique is to reduce people to walk-on parts in an unfolding drama rather than expect them to be active citizens in their own struggle to define and achieve emancipation.

Handler is right in thinking that postmodernism cannot guarantee a politics that will be uniformly progressive or whose practice will be consistently effective. But to think otherwise is to believe that the establishment of foundational truths is possible and could ground a radical political praxis. The felt need that people have for such solid ground under their metaphysical feet is an effect of traditional metaphysics's mistaken insistence that, once fixed, Truth or History will guide and insulate action from error. It is a mistake that Handler repeats and further entrenches. Disabused of such foundationalist yearnings, people will begin to understand that politics is inside, not outside, History's suzerainty. A program of progressive politics must constantly be negotiated and renegotiated. Consequently, while postmodernism implies a progressive politics, it does not necessarily lead to one. What is progressive can never be determined in advance or in the abstract; such assessment can only be made with an attention to the local conditions and the prevailing exigencies of the situation. Postmodernism can open spaces for action and increase opportunities for transformation, but it cannot fill these spaces. Whether these openings become holes to fall down or climb out of is left to those minded to act. Citizenship in a postmodern polity is not a received status but is a continuing responsibility to make the best of the situation for oneself and others.

All that a postmodern mentality can do is to show that power is never apart from reason: Logic and ambiguity, authority and

arbitrariness, and universality and contingency are implicated in each other. Leaving the risks and responsibility of reconstruction with real people in real situations, what is democratic or good politics will always remain contestable. There is no guarantee against *tyranny-nothing* can deliver us from that. Postmodernists remind us (and themselves must not forget) that while there must be talk of a dawn of egalitarianism, there are many who still live in the dusk of oppression (see Gates 1990:1289). No theoretical standpoint alone can ensure that the long night's journey into light can be accomplished without struggle, mistakes, and further pain. The challenge and trick for postmodernists is to nurture and develop those talents and sensibilities that will attune them better to the nuances and vulnerabilities of structural settings and local contexts. Ironically, it is to this very task that Handler makes his most telling and enduring contributions.

III. Handler Revealed

This means that, notwithstanding his reservations and concerns, Handler will have lost nothing and gained much by ditching his foundationalist suppositions and shifting to a thoroughly postmodern style of critical enquiry. He will no longer have to toil in the same methodological fields as Fukuyama and his cronies. He will be free to pursue new pastures and feed his political imagination on fresh

historical shoots. At the cost of abandoning the false lure of universal panaceas, he will have acquired the substantial merit of political relevance. He can continue to reap the fruits of socialist thinking, but he must cultivate a more diverse crop. As Laclau and Mouffe (1985:178) put it, "every project for radical democracy implies a socialist dimension, . . . but socialism is but *one* of the components of a project of radical democracy, not vice versa." Socialism neither exhausts democracy by becoming its total platform nor is it to be expunged from the radical agenda entirely. In short, Handler can have my postmodernism and his socialism too. Relieved of the anxiety to craft solutions that are somehow apt for all times and places, he can concentrate on the pressing problems of contemporary American society and experiment with interventions that can best address the prevailing institutional structures of power. So informed, Handler can rest assured that "postmodernism politics [can be] a reliable guide for transformative politics" (p. 723).

For all Handler's championing of the social movements of the 1960s and 1970s, based on "solidarity and struggle with an optimism reflecting the dreams of that era" (p. 715), these initiatives flattered to deceive. Such struggle achieved only modest success and, like the optimism of their informing dreams, tended to flounder in the face of the waking reality of a recalcitrant social life. As regards the use of rights litigation, there is very little empirical support for the extravagant and imperialistic claims that are often made about the

efficacy of courts as fora for social change. In the most comprehensive and exhaustive survey of the field, Gerald Rosenberg is firmly of the opinion that "courts can almost never be effective producers of significant social change" (1991:338). Indeed, in his earlier work, Handler himself came to the assessment that the best that can be expected from judicial institutions is that their effects on social behavior and attitudes will be "incremental, gradualist, and moderate" (1978:238).[4] The upshot is that there is little choice but to engage in the postmodern struggles of local skirmishes. To do less is to lapse into a torpid acquiescence in the status quo; to do more is to ferment the violent disruption of full-scale revolution.

Almost the best example of a scholarly endeavor in practical criticism that resonates with a postmodern accent is an earlier effort by Handler himself. His widely and justly acclaimed *The Conditions of Discretion* (1986) is devoted to examining and transforming the frustrating interaction between ordinary people and large-scale bureaucracy. Focusing on programs for the special educational needs of differently abled children, Handler not surprisingly rejects the traditional resort to indeterminate systems of rights and adversarial procedural remedies. Seeing them as legalistic trappings of liberal democracy, he contests their historical success and ideological merit. Rights talk has not only failed as a matter of history to deliver the progressive goods, but its individualistic vision of the good life is deeply flawed and ignores the socially pervasive and institutionally

systemic nature of oppression. The resort to rights litigation as a schematic process for substantial social renovation is a fundamental error and a tactical mistake. For Handler, the very reasons that gave rise to liberalism's original appeal have become the source of its contemporary failing as a program for progressive change-its universalistic pretensions, unyielding individualism, and pervasive ahistoricality.

The whole force and ambition of Handler's project is to replace the formal and abstract logic of rights litigation with situation-specific solutions that are discretionary, local, contingent, experimental, and flexible. In a richly textured and compelling narrative, he articulates the need to nurture a nuanced and revisable power-sharing engagement between parents and administrators that mediates and responds to the interaction of larger structural forces and more local openings for transformative action. Handler's analytical critique and reconstructive proposals are the very pith and substance of a postmodern perspective and politics:

> The Madison [Wisconsin] system grew out of its own traditions and particular circumstances. This is not to say that it was impervious to the world . . . . Nevertheless, within [various legal, political, social and structural] constraints and influences, there is room to maneuver, to develop and modify styles and patterns of operation, to create and emphasize certain programs . . . . Thus, in considering the possibilities of organizational response, one must be aware of both contingency and change. Today's solutions will

> not necessarily be recognizable tomorrow. . . . If we are to take the idea of discretion seriously, then each community must work toward the conditions of discretion in its own way according to its own particular circumstances. Policy, agencies, social groups, and individuals are fluid and subject to constant change. If we are to take individualism seriously, then we must live with uncertainty. (Handler 1986:10, 12, 15)

As such, Handler's performance strikes all the right chords in the postmodern register. Abandoning the overweening rhetoric of rights, he concedes that "there are no fixed principles that chart a clear path; [t]here are no laws of nature that will regulate our lives as we wish to lead them; [t]here are no simple truths that will explain the disorders and complexities of life" (ibid., pp. 303-4). Instead, he stresses the inevitable struggle with a fluid context of social indeterminacy and extols the virtues of a revisable politics that mediates the micro and macro functionings of power. By so doing, he is able to generate a malleable framework of understanding and empowerment that can be reworked for other and different settings. All in all, Handler's work is thoroughly postmodern in style and effect. Little did he know that, like Moliere's Monsieur Jourdain, he has long been a postmodernist without recognizing it (Moliere, *Le Bourgeois Gentilhomme,* act 2, sc. 4).

For instance, even though Handler's presidential address is dismissive of Lucie White's (1990) work on welfare recipients, her work tracks and develops many of the themes that are sketched in Handler's *Conditions of Discretion.* While expressed in a more self-

consciously postmodern accent, White utilizes the same analytical tools and activist tactics as Handler-local resistance, contextual contestation and contingent change (Handler, pp. 712-13). It is true that White's selected engagement between a welfare recipient and the state bureaucracy did not, as an inspired Handler might wish, "smash this sorry state of things entire and rebuild it closer to the heart's desire." However, the outcome was not, as Handler said of other postmodern initiatives, "trivial and without political significance" (Handler, p. 714). It affected a few individual lives for the better in a tangible and immediate way that ought not to be underestimated. Of course, such parochial activism can fuel the centrifugal tendencies to fragmentation, isolation, and ephemerality. But while such engagement can detract from the nurturing of organizational solidarity and social alliances, they can also instill a hopeful sense of transformative potential for broader social renovation. Like charity, the best and only effective place to begin to change things is in the homely locations of where we live, work, and play.

As Handler implicitly accepted in *Conditions of Discretion,* but seems to reject explicitly now, the postmodern challenge is to move beyond the political stereotyping of traditional ideologies, the false lure of grand theorizing and one-dimensional narratives for transformative action. For instance, the choice is not between a wholesale adoption or outright rejection of rights talk as a vehicle for progressive change: the categoric denial of rights talk is almost as bad as its categoric

embrace. The fragmented and diverse terrain of modern society cannot be effectively mapped by traditional leftist or liberal interpretations, nor can such theoretical projections provide a viable or effective plan of transformative action. In the same way that it is no longer possible to invoke "material interests" or "class analysis" as a decisive ploy in political argument, foreswearing engagement in any rights litigation at all is not a realistic or responsible tactic (see Hall & Jacques 1989). Moreover, the answer is not, as some scholars seem to think, to rejig liberal rights talk in line with a more postmodern and progressive approach. They maintain that by junking the notion of rights as a set of fixed and abstract claims, this approach will revalorize the notion as a conversational discourse through which to establish a progressive community in the struggle for meaning (see Minow 1990; Trakman 1991). The problem with such efforts is that they are cosmetic in character and remain foundationalist in orientation. They graft the insights of postmodernism onto a traditional version of rights talk but fail to change or disturb its basic workings and strategies. As such, they merely give the villain of the piece a fresh change of rhetorical threads and make too good a job of a democratic bad lot (see Hutchinson 1989:563, 1991, 1992).

Like the abstract instincts of liberalism and rights talk, the politics of class struggle can fail to respect sufficiently differences of race and gender in its totalizing march to social justice. Of

course, there is no need to abandon efforts to understand the ways in which power and truth remain centralized and congealed with structures of material interests. While it is naive to suggest that relations of domination are not inscribed within material practices, it is equally troubling to insist that all forms of domination are entirely reducible to class conflict. Totalizing politics are unrealistic and unrealizable . Grass-roots engagement is better able to grasp and transform the complex and diverse intersecting forms of oppression. Sexism and racism might be global in existence and sweep, but their dynamism is local in operation and effect. Oppression is universal, but its modalities are particular.

Postmodern lawyers and their clients must studiously ensure that they do not become only actors in others' stultifying scripts of social enlightenment and political empowerment. There is no one true story to tell or enact, all claims to knowledge must be tentative and provisional, and the sites for transformative advocacy must remain multiple and dynamic. Under a postmodern attachment, the details and priorities of an activist program must be the continuing subject of healthy debate, respectful disagreement, and continual reappraisal. To "do the right thing" is a fluctuating and unfinished duty that is always fraught with risk: it is not a blanket willingness (or refusal) to "do the rights thing." Rejecting comprehensive programs and universal positions, the postmodern lawyer must attend to the local circumstances of disputes, to the

situated places in which people exist, and the contingent possibilities for action. At the heart of their professional existence is the acute responsibility to tum the unavoidable occasions of resistance into meaningful moments of transformation, not invidious instances of subtle complicity or lost opportunities of misjudged insurrection. It is exactly this challenge that the best of Handler's work is devoted to meeting.

IV. Dancing at the Edge

A few years ago, I published a collection of essays. Although it was not intended or presented as a postmodern perspective on law and politics, hindsight obliges me to recognize that its contents and style did represent some faltering and ingenuous steps toward such a theoretical platform. My recent work has been more openly and self-consciously postmodern in origin and ambition. The title of my collection was *Dwelling on the Threshold* (1989), and a central motif of the work was the need to stake out a narrow and precarious ledge of criticism that ran "the considerable risk of succumbing to the secure comforts of traditional jurisprudence or straying too far into the wilderness of political irrelevance" (p. viii). It was this theoretical mind set and political location that gave-and obviously continues to give-Joel Handler serious concern. Indeed, he is adamant that such an approach to legal theorizing and political

advocacy is intellectually mistaken and ideologically disastrous:

> It seems to me that if postmodernism is to seriously challenge the ideological hegemony of liberal capitalism, it must come with an alternative vision, a vision of the economy and of the polity that will complement its vision of community. Allan Hutchinson calls his postmodern book, *Dwelling on the Threshold.* That concedes the field. (Handler, p. 727)

In this essay, I have tried to show that, far from conceding the field, this is the best way that those committed to progressive change can occupy the field and begin to challenge "the ideological hegemony of liberal capitalism." If more vision is what Handler wants and thinks is needed, he can rest assured that there is nothing in postmodemism that prevents the exercise of visionary faculties. Indeed, it allows such reconstructive insights to take flight; it is traditional theorizing that clips the wings of the political imagination in the service of a hegemonic projection. Nevertheless, the pursuit of *one* "alternative vision of economy and community" is resisted by postmodernism. In line with its democratic and pluralistic instincts, it rejects a belief in any single or accurate vision of community or social justice; a deconstructive critique must not be allowed to become the last refuge of an foundationalist scoundrel. There is no place for an enforced orthodoxy or rigid conformity, for "ajust society is not a society that has adopted just laws, once and for all, rather it is a society where the question of justice remains constantly open" (Castoriadis 1980:104). Rejecting comprehensive programs and

universal positions, the postmodern critic must attend to local and contingent circumstances of claims to knowledge and to the situated places from which people speak and act.

Those, like Handler, who are committed to progressive action in a postmodern world must resist the temptation to seek theoretical closure and enforce practical dogma. They must decline the familiar litany of easy answers in favor of a more challenging slate of better and different questions. Closure is always contrived, often arbitrary, and usually conducive to established power relations. Obsessed with elucidating right and final answers, progressive scholars often forget that the agenda of questions to be answered is constantly changing. Within the traditional and non-postmodern mode of political theorizing, justice becomes a matter of revelation and progress comprises a slow march to a promised land that is always and elusively around the next historical bend. In a postmodern world, living is more immediate and engaged. It is a dangerous dance in which there is never one right thing to do but only fleeting occasions to try to "do the right thing."

> To make a new world you have to start with an old one, certainly. To find a world, maybe you have to have lost one. Maybe you have to be lost. The dance of renewal, the dance that made the world, was always danced here at the edge of things, on the brink, on the foggy coast. (Le Guin 1989:48)

Notes

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1 Lee 1989. Like all Lee's films, *Do The Right Thing* is controversial in society at large and within the African-American community. In particular, it has been strongly criticized for its depiction of black sexuality. See Wallace 1990:100-110; hooks 1992:75 & 102.

2 I have already addressed some of these issues at length in earlier pieces . See Hutchinson 1991, 1992.

3 See Matsuda 1987:325 & 324. In her more recent work (1990), Matsuda seems to have put any essentialism behind her.

4 On new social movements-women, gays, etc.-see Epstein 1990.

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