
Comment on Presidential Address

Resistance, Reconstruction, and Romance in Legal Scholarship

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It has become obligatory for leaders of professional associations to exhort colleagues to practice their craft in a socially responsible manner. But Joel Handler has issued a more controversial challenge in his 1992 presidential address to the Law and Society Association. He marries the idea of responsible legal scholarship to a recovery of faith in structuralist political analysis and transformative political vision.

Many in the association no doubt will find this proposed marriage undesirable for a variety of intellectual and political reasons.¹ By contrast, I join those many who have found Handler's bold jeremiad provocative and important. Moreover, I share some of his particular concerns about the limitations of much contemporary legal study and political movement activity. At the same time, however, my research on legal mobilization by social movements has led me to draw differently the conceptual lines of both connection and division among the various trends that he identifies. The following comments aim to outline briefly some alternative, although often complementary, readings of these trends and their implications for scholarship. The discussion evolves from my most critical to my most supportive points.

I am very grateful for comments on earlier drafts of this essay by Stuart Scheingold, Helena Silverstein, and Christine Di Stefano. Conversations with Nancy Hartsock and others in the political culture group at the University of Washington during the past several years have greatly influenced the development of many ideas advanced in this essay.

¹ Among those most likely to react negatively or indifferently are those who do not identify with Left political causes and debates.

The Elusive Postmodern Culprit

Handler states at the outset that his central question concerns “the value of postmodernism for transformative politics.” He advances several related criticisms in his dense discussion. Recent postmodernists (1) shrink from the task of developing broad “meta-narratives” that both challenge present injustices and point to future alternatives; (2) lack hope about even the possibility of developing collective identity among oppressed citizens and large-scale progressive change in existing society; (3) are stridently anti-institutional, antibureaucracy, and antistatist in their commitments; and (4) thus privilege individual acts of local resistance that leave the status quo unchanged over attention to large-scale struggles for systemic “transformation” by solidaristic “groups, communities, and movements” (p. 715).

On the ensuing pages I will assess the merits and deficiencies of these charges, but my initial remarks concern the problematic treatment of postmodernism in Handler’s discussion. What is most striking is that Handler focuses on the political implications of postmodern theory without really directly assessing the challenge to epistemology at the core of postmodern philosophy. He describes in marvelously concise terms the postmodern decentering of the subject, reconceptualization of hegemony, preference for pragmatism, and defense against relativism. Yet he offers little direct evaluation of these conceptual developments themselves; moreover, he barely touches at all on the fundamental reorientation toward power that has influenced so much contemporary political analysis. Especially notable is that Handler offers very little critical assessment of the reinterpretation of law as discursive practices that has become prominent in much recent legal scholarship. Nor, finally, does he address the limitations and problems of those older critical frameworks that the new theoretical posture has challenged. For legal scholars, these traditional frameworks include especially Legal Realism, which recent studies charge with radically underestimating the constitutive power of law in social practice (see Brigham & Harrington 1989); and structuralism, which overdetermines law’s ideological capacity to straitjacket citizen consciousness (see Hunt 1985).

These philosophical evasions render his discussion of postmodern trends unsatisfying. To begin with, some of his brief characterizations of postmodern theory are misleading. Most postmodern advocates, for example, do not focus on discursive power *rather than* on institutions, as he suggests. Rather, postmodern theorists generally tend to view institutions in a new light, as complex webs of relational practices rather than as top-down, state-centered command structures. Moreover,

Handler's broadly cast discussion overstates the differences between postmodern theorists and many critical modernist theorists (especially Marx, Nietzsche, Gramsci, and Wittgenstein) as well as between older structuralist scholars of protest and recent scholars (see Cocks 1989).² At the same time, his summary characterization obscures important differences in orientation among postmodern theorists themselves—say, between Foucault and Rorty—as well as among their scholarly adherents.³ As a result, it often is rather unclear just whose ideas Handler is challenging. His emphasis on a “postmodern politics” in particular obscures crucial distinctions among theorists. There again are marked differences between Rorty's “postmodern bourgeois liberalism,” Foucault's restricted resistance, and the idiosyncratic celebrations of recent social activism by Laclau, Mouffe, Aronowitz, and others (see Ross 1988). And at least some versions of postmodern theory have been joined to political visions with broadly transformative potential.⁴

The problem is not simply that too many different ideas and authors are thrown together into a single conceptual net, however. Conversely, the political tendencies against which Handler rails are apparent among many decidedly non-postmodern thinkers and activists as well. Indeed, Handler's general critique echoes those long applied by Left critics to “liberal” intellectuals and reform advocates in the United States (Lasch 1968; Lowi 1979; McConnell 1966; see Morone 1990). After all, the predilection toward locally oriented, voluntaristic, pluralistic, pragmatic, issue-oriented reform politics lacking in radical visionary design, lacking in class (or other broad group) orientation, and lacking faith in a centralized state—all of which are the target of Handler's rebuke—has long been a staple of American political culture. These tendencies may represent significant departures in Europe, where postmodern theory first evolved to challenge Marxist structuralism and statism generally, but they are very old and familiar in North America. One thus wonders how recent philosophical

² This is not a trivial point. Many recent bottom-up studies of everyday resistance draw on the contributions of Antonio Gramsci, Raymond Williams, E. P. Thompson, and other critical modernists as much as on postmodern theorists. Moreover, the fact that the very minority legal scholars and feminists whom Handler extols incorporate many postmodern elements into their accounts renders his critique of postmodernism all the more confusing and problematic.

³ James Scott (1985, 1990) arguably does not belong in the postmodern category. His attributions of considerable tactical agency to the oppressed (against deterministic theories) and focus on personal forms of domination do not seem part of the postmodern project; rather, they place him closer to certain critical modernists such as E. P. Thompson.

⁴ Handler himself cites Fraser and Nicholson (1988) approvingly, even though they are influenced by postmodernism in many regards. Eisenstein (1988) and Cocks (1989) are two other examples of feminists who draw on postmodern ideas and yet advocate broadly transformative visions.

trends differ from what radicals used to label as liberal progressive reform, pragmatic liberalism, or interest group liberalism. It may be that the postmodern intellectual challenge has been assimilated into an unwitting complicity with longstanding political propensities in the United States. Handler does not, however, advance that interesting thesis.⁵

Finally, and most important, one could agree—as I do in large part—with Handler’s lamentations about the daunting political implications of much postmodern theory and yet still find in the latter important conceptual advances over older critical frameworks. Just because postmodern theorists have undermined old faiths in simplistic structuralist models and radical dreams of collective liberation hardly makes them wrong or misleading, after all. Yet Handler’s almost exclusive critical focus on these unsettling implications gives few clear clues to what he thinks about the reorientations to knowledge, power, and subjectivity at the core of the postmodern intellectual project itself. As a result, he leaves readers in the dark about just where postmodern theory goes astray and what we are to retain, reject, or revise in the critical structuralist tradition regarding social identity. Should we return to reducing concrete persons to stable, mutually exclusive class or race or gender identities? How is the decentered view of fragmented, contingent social identities conceptually flawed? Has it not provided a more realistic understanding of hegemony and a richer empirical portrait of power in practice? And what about how we conceptualize law? Does Handler counsel that we view law as a mere epiphenomenal reflection of, or legitimating rationalization for, more basic class relations, as structuralists once did?⁶

This is not to deny that there are vexing problems in most postmodern formulations of key issues. Quite the contrary. My point instead is that Handler’s evasion of the basic philosophical debates surrounding these issues leaves us uncertain about his critical position. The desire to recover old faiths in general structuralist categories and visions of change alone simply is not very convincing without a defense of their underlying assumptions about power, knowledge, subjectivity, and identity against recent postmodern philosophical challenges.⁷ This omission both undercuts Handler’s criticism of recent scholarly trends and fails to elucidate how old structural categories might be reformulated in more compelling analytical terms. My

⁵ I often confound graduate students by challenging them to distinguish postmodernism from the pluralism of 1950s social science, or Dewey’s older liberal pragmatism. Differences exist, but the similarities are also striking.

⁶ Again, those authors whom Handler cites both favorably and unfavorably tend to mix elements of postmodern and modern (structural) arguments, thus rendering his position on what he favors and dislikes as rather unclear.

⁷ This and other related deficiencies can be found in the argument of Rosenau (1992), whom Handler cites approvingly.

remaining comments thus will limit further attention to postmodernism *per se* and focus directly instead on Handler's more specific charges about recent movements and empirical scholarship.

New Movements in Historical Focus

Handler's treatment of new social movements mirrors some of the problems in his overly generalized treatment of postmodern theory. His contention that contemporary movements lack the transformative potential of earlier movements is important and potentially defensible, but the specific terms of his reasoning again are questionable.

For one thing, he does not distinguish among new movements. The women's movement, for example, itself has comprised many diverse trends and elements, including a dramatic increase of activism around workplace class and race issues in the 1980s. As such, it surely differs in character from (and arguably is much more potentially transformative than) environmental and peace groups; gay and lesbian political advocacy groups are unlike both in key ways.⁸ Overall, these movements vary in their core constituencies, the range of issues and institutional relations those constituencies share in common, the connection of those relations to axes of class power, and the logic of their evolving theoretical and policy challenges. To lump them together distorts as much as it illuminates their character and potential impacts.⁹

Moreover, in many ways these movements do not fit Handler's specific (postmodern) characterization.¹⁰ In particular, his argument that these movements' lack of comprehensive substantive vision has rendered them especially vulnerable to cooptation into mainstream institutions and "traditional politics" is unconvincing. After all, most of these movements—especially the feminist and environmental movements—have overtly aimed to advance a fundamental transvaluation of val-

⁸ My candidate for the most postmodern of recent movements would be the animal rights movement, which Handler does not mention at all (see Silverstein 1992). But even here engagement with the state and development of broad ethical meta-narratives have been evident.

⁹ The Santa Monica populist experiment—which, as Handler contends, did lack a coherent social constituency, conception of common interest, and transformative vision—bears few similarities to the other movements addressed here and hence is ignored in my comments. But its inclusion in Handler's argument underscores the confusion in his charges.

¹⁰ Handler's opening list of the characteristics—"grass-roots, protest from below, solidarity, collective identity, affective processes—all in the struggle against the established order outside the 'normal' channels" (p. 719)—is quite vague and does not match the discussion elsewhere. He may be correct that some marginal elements and supporters of these movements fit his characterization, but he does not seem accurate about the movements in general.

ues in modern society. Left critics may (and, like right-wing critics, do) challenge just how compelling and inclusive these alternative visions might be, and especially how well they address class related issues. This entails, however, a more focused analysis than Handler's. And while he is correct that none of these visions has won allegiance from all parties, this arguably reflects more a lack of achievement than lack of effort.

Handler's assessment that most recent movements are limited to, or at least primarily focused on, local resistance that eschews institutional politics and grand designs for change is equally unconvincing. All these movements have engaged in myriad struggles in both diverse local state arenas and national government institutions as well as relied on various modes of sophisticated organizational coordination for communication and solidarity. Both the women's and the environmental movements in particular have been locked for decades into constant fights over regulatory state policymaking and administration.¹¹ Advocates in these struggles have often expressed a marked *ambivalence* about centralized state institutions, it is true. Yet this ambivalence has generated demands primarily for restructuring state institutions to render them more responsive rather than for dismantling or avoiding them. In fact, environmentalists made considerable advances in rendering federal regulatory institutions more public, participatory, and pluralistic prior to the 1980s, when the Reagan administration launched a far less equivocal attack on the regulatory state (see McCann 1986). Feminists likewise have expressed high hopes about the transformative potential of the new voices, interests, and relational propensities that increased women's participation will bring to dominant state institutions.

Handler is, of course, correct that many new movements have been repeatedly rebuffed or coopted by dominant institutions and "traditional politics." Yet this is hardly a new development, and surely owes more to these groups' unequal positions in the power structure than to a lack of radical vision per se. Indeed, it is worth noting again in this regard that the fragmented, reformist character of recent movements bears far more similarity to earlier movements in the United States than Handler suggests. For example, while radical socialist visions have thrived among some segments of workers at various points in our history, labor politics has been dominated by internal disunity, a narrow issue-oriented agenda, muted class consciousness, a locally oriented voluntaristic political strategy, and ambivalence toward centralized government (Dubofsky 1975; Forbath 1991). Arguably, the structuralist visions of uni-

¹¹ For overviews of battles in legislative, administrative, and judicial arenas, see Gelb & Palley 1987, O'Connor 1980, McCann 1986, and Melnick 1983.

fied class politics that Handler champions have generated somewhat more faith among scholars than among workers in our nation's past. Similarly, postmodern interpretations of recent U.S. social movements are far more common among intellectuals—especially among European scholars, who can cite real changes of political practice in their countries, and supportive American scholars largely removed from practical movement struggles—than among movement activists themselves (see Klandermans 1991). My interviews with activists in several of these movements have revealed a far greater identity with older movements, especially with labor and civil rights activism, than fidelity to new postmodern values.

The reasons for these continuities in aspiration and organizational logic are hardly mysterious. In short, both old and new movements have been shaped by many of the same dominant institutional relations from which their respective struggles have evolved. For example, the development of a narrowly local, "voluntarist" strategy by organized labor early in this century resulted from a legacy of overt oppression, exclusion, and disempowerment by government, especially by the courts (Forbath 1991; Tomlins 1985; Fink 1987). Contemporary Left movements remain ambivalent about the state and committed to independent organizing and struggle for similar reasons—that government has been at best an unreliable ally and, in recent years, a formidable opponent, for advocates of progressive change (see McCann 1986).¹² Moreover, a long history of scholarship has confirmed that the routine fragmentation of social movements and groups is largely a product of our fragmented and fragmenting liberal state institutional structures and relations (McConnell 1966; Lowi 1979; Cohen & Rogers 1983). In this regard, Handler's analysis of movements tends to overstate the power of abstract ideas and, ironically, to understate the institutional constraints that shape their actual political practices.¹³

Conversely, the key differences between new and old movements arguably stem from their practical social situation as much as from "new" ideas. One notable difference is that the new movements represent interests, concerns, and voices (consider the status of women and blacks in earlier labor unions) largely muted or ignored by older class-based movements. At the same time, perhaps the most distinctive feature of the new movements (identified by Handler) is their primarily white mid-

¹² Contemporary class-based, solidaristic struggles are just as prone to cooptation and diffusion. See Fantasia 1988.

¹³ Handler's discussion here seems to view ideas abstractly, somewhat apart from material conditions. This differs from the "constitutive" view of ideological practices advanced in many contemporary "bottom-up" studies, and which I find more compelling. See Harrington & Yngvesson 1990; McCann (in press).

dle-class constituency, which has both given rise to new substantive concerns about social maladies and created new forms of constituent organizing among often broadly dispersed supporters lacking communal bonds.¹⁴ And it is these key differences in social location, rather than abstract postmodern values, that render many recent activists indifferent to older hopes of developing a comprehensive working class-based movement for progressive change.

Finally, this last point highlights Handler's avoidance of specifying why he thinks these movements—old and new—could unify around some common transformative cause and what that substantive vision might be. Here his charges regarding recent movements again are incomplete. He talks a lot about the need for affirmative faith in new meta-narratives, but this argument is not joined to support for a particular alternative political vision itself. Having sidestepped direct refutation of new challenges to older class-based visions and top-down statist strategies, Handler's invocation of old traditions thus is neither clear nor convincing. Should racial, gender, and sexual domination again take a back seat to class concerns? Are environmental concerns superficial? Or reducible to class analysis? Do state-centered reforms ever work as intended? If so, when and how? Is the Rainbow Coalition what he has in mind? If so, why has it not fared better? Handler's longing for the old days of common faith in progressive alternatives is attractive in some ways, but just precisely what it is from those old days that should inform us—beyond their optimism—remains vague in his address.¹⁵ His appeals to old "dreams" of radical solidarity remain steeped in romance.

Local Resistance and Political Reconstruction

One of Handler's most insistent indictments is that recent scholarship on protest from below is less edifying than older structuralist studies. I will argue in a few pages that there is merit in this particular charge. However, it is important to show first how Handler's specific framing of the issues at stake is flawed. The key problem is his conceptual dichotomy between two types of political struggle. He defines on one side a desirable structuralist model of struggle that is guided by a visionary meta-narrative, grounded in class (and other systemic) divisions, and propelled through solidaristic group action aiming

¹⁴ See McCann 1986. The exception here is the women's movement, which has expanded far more in recent years to include women of color and working women. This is one major reason why its transformative potential is arguably greater.

¹⁵ My own response to Handler's challenge would begin with advocacy of macro-institutional changes in election and political organizing laws that would make collective action by disadvantaged groups easier. See Cohen & Rogers 1983.

to transform basic state institutions. On the other side is the postmodern focus on forms of local subversion by individuals that are contingent in character, narrowly issue or value based, antistatist, and lacking in large-scale transformative potential. This dichotomy seems to be the basis for his clarion call: The goal should not be to resist established institutions but to change them.¹⁶

This formulation is too simple. After all, one must resist the terms of the status quo before one can challenge them; small-scale opposition is often the first step in the direction of developing more open rebellion and ambitious demands for change. This is a key point of James Scott's work that Handler's criticism obscures. Scott's research (1985, 1990) has labored to demonstrate diverse forms of everyday citizen resistance to hierarchical domination. Scott directly advances this project to challenge old assumptions of mechanical structuralists that mass passivity and "false consciousness" are key elements in the maintenance of systemic hegemony. Moreover, he compellingly illustrates that such forms of resistance for practical reasons usually remain local, covert, and indirect. Simply put, direct rebellion in most contexts not only would fail but would generate harsh recriminations or increase hardships among the oppressed in other ways.

Scott wants to validate these local subversive practices as important—both in themselves as expressions of creative human capacity and, more relevant for us here, as a first step necessary for later large-scale collective actions. On the latter point, Scott argues that longstanding covert resistance can nurture oppositional resolve, fuel hopes for change, build solidarity among the oppressed, and cultivate the tactical skills needed for struggle among oppressed peoples. Ongoing rituals of resistance thus are not simply a resigned alternative to transformative politics. Rather, they often provide rehearsals of opposition that prepare the way for bolder challenges—what he calls "political breakthroughs"—in more propitious moments. At such times, "hidden transcripts" developed quietly and privately over long periods are unveiled as potentially unifying visions of collective action.¹⁷ Hence, resistance is important to expose the concrete multiplicity of variously situated subjects, from which an affirmative quest for transformation, if it is to develop at all, might be constructed. Scott cites examples from Poland's Solidarity movement, among others, to illustrate the point.

Scott's argument is hardly a novel creation of postmodern

¹⁶ This is a new version of the old liberal incremental reform vs. visionary radicalism debate, which becomes increasingly clear as the essay develops.

¹⁷ Scott 1990:203–23. My favorable use of Scott here ignores the many problems with his framework.

theory. Marx suggested much the same thing. He did not expect workers to begin their struggles as a collective movement united by grand visions of class oppression and socialist utopia. Rather, he envisioned class conflicts as originating among small groups at local workplaces around fairly mundane issues. From such practical small-scale acts of resistance among diversely situated workers might emerge the broader critical visions, solidaristic bonds, and images of a more egalitarian society for which Marx longed. As E. P. Thompson has summarized, “class and class consciousness are always the last, not the first, stage in the real historical process” (cited in Scott 1985:297). In fact, this same continuity between local resistance and larger social movements is well recognized by many of the so-called structuralist analysts—Piven and Cloward, Fantasia, Genovese—that Handler favorably invokes as well as by the feminist and minority legal scholars whom he favorably cites (Crenshaw 1987; Williams 1987; see also Schneider 1986). These basic insights have been further enhanced by recent sociological scholarship regarding the genesis of social movements. In particular, what social movement scholars have provided is a more complex, systematic framework for understanding the contextual factors—including internal and external organizational resources among the oppressed as well as increased vulnerabilities of dominant institutional interests and arrangements—influencing the likelihood that everyday struggles might expand into more transformative campaigns.¹⁸

Recent empirical studies addressing the constitutive role of law in everyday life contribute in important ways to our understanding of these dynamics. Such ethnographic scholarship demonstrates that ordinary citizens are not passive and homogeneously conformist, but rather struggle with domination on a daily basis in a wide variety of creative ways.¹⁹ Studies illustrating how legal norms are mobilized during these everyday struggles in particular have significantly expanded our understanding both generally about power and specifically about those untold subjects ignored by traditional social protest studies. And many of such works do recognize possibilities for escalation into bigger struggles. Handler admits, for example, that Ewick and Silbey find in individual acts of resistance transformative potential, which “may prefigure more formidable and

¹⁸ McAdam (1982) offers an excellent summary and framework. In a forthcoming book I specifically apply such insights to an interpretation of how women’s small-scale, local struggles in workplaces developed into an increasingly radical movement for rights to more equitable wages in the 1980s. I try to specify how political resistance escalated into radical politics, why it subsided, and the key factors that might encourage a reescalation. See McCann (in press).

¹⁹ I consider this a major advance over those critical studies—including much early Critical Legal Studies scholarship—that focus primarily on official legal texts and their alleged “legitimation” functions in society.

strategic challenges to power” (1992:749). Finally, many such studies affirm the basic insight that collective identities are not inevitable or stable but instead must be constructed and reconstructed repeatedly from concrete multiplicities through practical action. As such, recent micro-studies of resistance hold the potential of contributing new insights regarding how, when, and where progressive politics might flourish in contemporary society.

Legal Scholarship and Political Struggle

Despite my substantial disagreements on various points, however, I find compelling Handler’s general charge that much of the recent “bottom-up” scholarship on local resistance stops short in its analysis. Regardless of whether postmodernism is the culprit, many recent studies build from “conceptions of social criticism (that) tend to be anemic” (Fraser & Nicholson 1988:84). Especially notable in this regard is that much of the new research on resistance does not go far beyond simply reporting the experiences of the oppressed or “ordinary” subjects. This deference to the experiences of others has undeniably enriched our understandings regarding the complex workings of power and sensitized us to the many ways that we scholars often have been complicitous in processes of domination. Yet it also signals a narrowing of traditional endeavors by critical social analysts that is lamentable in both intellectual and political terms.

The primary *intellectual* deficiency of many interpretive studies—including some micro-studies of “law in society”—is that they provide an inadequate mapping of the broader relational environment in which resistance is embedded. Somewhat ironically, the emphasis on the context specificity of experience has tended in many cases to encourage less, rather than more, thorough and systematic attention to the specific features of social context. Many excavations of local legal consciousness give short shrift in particular to those extralegal factors that interact with and shape law’s constitutive power.²⁰ To recognize this fact is not necessarily to endorse acceptance of traditional positivist epistemologies or specific methodologies that still dominate social science. Quite the contrary, I see the new emphasis on ethnographic methods and narrative forms as an advance over studies conducted almost exclusively from university offices. My point instead is that studies lacking in clearly defined, systematic frameworks of social analysis tend to be both less

²⁰ It may be fairly argued that many recent studies presented in journal articles lack space for such contextual concerns. These constraints are important, but my sense is that they are not the primary reason for the narrowness I identify here. The problem can be found in long articles and book-length studies as well.

illuminating and more (rather than less) likely to veil their inherent biases than those informed by more structured modes of critical social theory (see Mascia-Lees et al. 1989:22). At least three dimensions of conventional social analysis strike me as underdeveloped in much recent scholarship.

The first involves a systematic attempt to distinguish the different social positions of various individuals and groups in the particular institutional sites under study. In this enterprise, the increasingly rich and complex traditions of class, race, gender, and other “structural” analyses remain highly useful, even mandatory, resources for critical analysis. One need not accept that common locations in hierarchical relations automatically generate shared identities, after all, to make good use of these analytical frameworks (see Fraser & Nicholson 1989; Mascia-Lees et al. 1989). Recent work by minority legal scholars, feminists, and new labor historians all can be helpful in this regard.

Second, compelling contextual study likewise should include some degree of systematic, multilevel institutional analysis (Klandermans 1991). Here, trends toward micro-level focus on resistance by individuals and groups would benefit from greater attention to both “macro” and “meso” level organizational factors as well. For example, studies regarding the legal consciousness of welfare recipients would be enriched by at least brief analysis regarding the evolving status of public welfare in our culture, changing official policies, and regional or agency-specific variations in practices, attitudes, and struggles in welfare administration. This would not only enhance the analysis of individual struggles, but it would facilitate efforts to generalize more broadly about variations as well as parallels in trends across multiple institutional contexts. As such, local micro-studies would be treated less as random and insular, which too often is the case, and instead as a basis for developing more comprehensive understandings about the cumulative workings of hegemony throughout modern society.

Adequate contextual analysis also should include, finally, attention to the extended temporal dynamics of conflicts. Again, micro-studies often provide a frustratingly truncated perspective on the historical development of particular practices and struggles. We not only often get scant systematic attention to the evolution of relations preceding particular acts of resistance, but little recognition is accorded to the continually changing dynamics of the specific struggles themselves over time. It is useful to know, for example, how discrete acts of resistance build on or depart from past practices, and how those acts change the terms of relevant power relations in ways that might shape future interactions. In particular, analysts should study, or at least speculate about, whether specific episodes of resistance have been (or might be) *contained* or *magni-*

fied into more defiant actions involving greater numbers of fellow citizens. Even though acts of resistance only sometimes evolve directly into empowering transformation, attention to that possibility should be an ongoing concern of scholars. Such efforts could both draw on and contribute to the rich tradition of scholarly inquiry regarding the conditions of escalating defiance (or resignation) noted above.

Handler's related argument that contemporary scholarship has been plagued by an absence of alternative political vision making and faith regarding large-scale social change also strikes me as a valid *political* critique. Eschewing both quasi-structural analysis of context and philosophical inquiries into the "justice" of particular relations, much of the new micro-empirical scholarship has limited its theoretical engagement mostly to scholarly concerns with epistemology and method. This is not to deny that the recent focus on epistemology expresses a significant political challenge to conventional scholarship. Recent reconceptualizations of law in terms of practical consciousness have been especially important in this regard. However, the new interpretive studies often evade the task of contributing to struggles waged by the subjects of research themselves rather than merely to the esoteric debates that pre-occupy scholars.²¹

Indeed, much recent study shies away from the task of contributing our contemplative skills and learning to popular philosophy, from helping to make what Gramsci called "good" political sense from everyday "spontaneous" common sense.²² Such an endeavor involves critical analysis about the utility of various tactics in specific institutional contexts as well as about larger strategic questions of long-term goals, reorientations in values, and potential linkages to other groups and struggles. On the latter task of identifying points of potential connection and constructing new linkages among different groups in particular, it seems to me that our intellectual distance in time and space from many localized struggles can be helpful. This does not mean that we scholars have a clearer angle on Truth, of course. Rather, my basic assumption is that our differently informed perspectives might sometimes make useful contributions to other citizens seeking to develop a better sense of what

²¹ Sandra Harding's observation (1987:8) is relevant here: "The questions an oppressed group wants answered are rarely requests for so-called pure truth. Instead, they are queries about how to change its conditions; how its world is shaped by forces beyond it; how to win over, defeat or neutralize those forces arrayed against its emancipation, growth or development; and so forth."

²² As Joan Cocks (1989:90–91) has argued, "If critical philosophy is to struggle to make common sense ideologically coherent, to renovate it, to develop the healthy nucleus in it into a form of thought that is superior to it, it is in the interest of raising the way in which the subaltern population reflects on its world to the level of the most advanced thought in the world."

is possible and of which actions might be most productive in particular situations. One need not be an ethical foundationalist or philosophical essentialist to take historically informed stands against existing injustices and for specific efforts to challenge them. By contrast, our reluctance to contribute on these levels signals not only narrow scholarship but also a failure to fulfill our often professed social responsibility to those subjects who share their experiences with us.

Handler is no doubt correct in pointing to changes in existing political alignments—especially the decline of welfare state socialism in Europe and liberal progressivism in the United States—as a contributing cause of this atrophy in intellectual commitments. He makes a good point also about the intellectual impasse of radical doubt. From my view, the increasing recognition that scholarship, like legal practice, is inherently political in character seems to have proved as paralyzing as it is liberating for many intellectuals.²³ The price of increasing sensitivity to our elite biases and complicity in dominance over others has been a loss of confidence that we might be able to contribute to their empowerment through our work as well. Fearful of imposing our designs on others, many have shrunk from the very active engagement—which requires contributing our understandings, judgments, overt support—with various oppressed or marginalized citizens that advocates of interpretive studies often celebrate. On top of this, Handler may be right that the almost exclusive focus on localized resistance betrays a growing resignation about whether collective action and grand changes are even possible or desirable at all. The impulse to deconstruction and a loss of faith in potential social reconstruction thus may be related for many scholars. As Fredric Jameson has noted, too many contemporary analysts have “no sense of the future” (cited in Ross 1988:29). And this trend is ominous in light of Handler’s additional incisive point—that dominant groups in society show little loss of faith in their own meta-narratives and foundational justifications for power.

These tendencies may well be temporary, though. For one thing, changes in the larger context of politics—as the marginalized escalate their demands and prevailing arrangements become more vulnerable—may embolden many more of us to speak out. Moreover, viable philosophical approaches that might avoid the impasse described above are available. I have found the counsel of feminist “standpoint” theory most valuable in this regard.²⁴ This perspective is rooted in the com-

²³ Paralysis does not seem to me a necessary implication of a postmodern sensibility. The recognition that power is everywhere can, for some, encourage temerity as well.

²⁴ Feminist standpoint theory builds variously on both traditional Marxism and

mitment that “the task facing all theorists committed to social change is that of working to construct some bases for political solidarity” (Hartsock 1991:23; 1983). A basic tenet of standpoint theory is that the social situation of oppressed groups nurtures a double consciousness—one that participates in mainstream conventions and one that sees differently existing logics of domination as well as alternatives to them. Consciousness in this sense refers less to abstract attitudes than to evolving practical understandings that emerge from ongoing struggles with power. Such critical forms of praxis are historically grounded but not “essentialist,” in that they are inherently dynamic and vary among differently situated citizens. As such, standpoint theory recognizes that substantive vision and solidarity are neither impossible nor predetermined; rather, they are the outgrowth of continuous theorizing rooted in the practical activity of historical subjects. This emphasis on specific historical locations does not deny that large-scale movements are possible, moreover. It instead envisions such movements in terms of potential alliances constructed through interaction among differently situated citizens rather than through the acceptance of an overriding meta-narrative and singular identity. The increasing inclusiveness and sensitivity toward ethnic, racial, class, and sexual differences evident in the U.S. women’s movement over the past decade is but one example of how such evolutionary changes can and do occur.

Standpoint theory does not resolve the dilemma, of course, especially for intellectual elites. Yet it does illuminate a central challenge: that our intellectual praxis must be informed by our own practical experience as well as by the experiences of subjugated others who are subjects in our research. And here I think new scholarship about everyday struggles is on the right path. By uncovering new worlds of meaning-making activity in diverse social locations, such scholarship helps recover those critical and aspirational visions born of lived history. The often unmet challenge is to make this a basis of our scholarly inquiries about the nature of existing injustices and how they might be effectively challenged. From such a focus new forms of empowering knowledge can emerge to inform and direct scholarly judgment. And drawing on that knowledge, we as intellectuals must recover a sense of efficacy that we too can contribute to struggles for change.

theorizing by people of color as well as women (see Hartsock 1983, 1991). It demonstrates, I think, the ways in which recent postmodern trends build on older critical modernist inquiries.

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