Comment on Presidential Address

For What It's Worth

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I. Don't Trust Anyone Not Over the Sixties

Usually, one thinks of nostalgia as the characteristic vice of the conservative. When Republicans bandy slogans like "family values," progressives are quick to recognize the dangerous sentimentality that yearns for a status quo ante in which men were men and women were women and minorities were seldom seen and never heard—the age, as Ronald Reagan so callously put it, "back before we knew we had a race problem." In contrast, one thinks of utopian romanticism as the characteristic weakness of the progressive. The radical's longing for revolutionary change is seen by conservatives as the dangerously naive and quixotic yearning for human perfection in a flawed and tragic world.

But time is a corrosive. Transfigured by history and circumstance, even the most noble ideals may degenerate into a repetition compulsion that is painful to watch. It is, thus, a quintessentially postmodern irony when distinguished voices on the Left issue an intellectual call to arms that amounts to little more than nostalgia for the ideological clarity of the good old days. Joel Handler fears that postmodern scholarship and the "new" social movements lack the optimism and the comprehensive theoretical base characteristic of the best work of the sixties and, in his view, necessary for successful political struggle (Handler 1992a). Similarly, Mark Tushnet bemoans what he describes as the "thin" leftist commitments of the new generation of scholars who, although associated with the Left, have launched a critique of the conventional normative practices

that animate most legal academic writing (Tushnet 1992). "Back in the sixties," we can almost hear Handler and Tushnet say, "we didn't have these problems. We just knew to *'Do it!'*"

More than nostalgia unites these two polemics. Both presuppose a deep attachment to rationalism and to the foundational status of their own normative commitments. But the world is hardly as simple as projected by our hopes and desires. The challenge of postmodernity is to come to grips with a thoroughly disenchanted world. Nothing guarantees that what postmodernism has to say about this predicament is correct; as I suggest below, developments in cognitive theory cast doubt on some prevailing postmodern precepts. But postmodernism will nevertheless have to be addressed and evaluated on the merits—*for what it's worth.* Some of its insights may prove persuasive; some will be rejected as wrong or overstated. But postmodernism will not go away just because some prominent Lefties are discomfited by its implications.

Still, the mechanisms of denial are strong. It is easier to look back with longing than to face the contingency of our most cherished moral and social ideals. Thus, Joel Handler argues that, even if it hinges on a meta-narrative they know to be false, postmodernists "must come up with an alternative vision" and "act *as if* the walls will come tumbling down" (Handler 1992a:727). Apparently, as with Tinker Bell, we only have to *believe* to make it so. Even more astonishing, Mark Tushnet (of all people!) castigates those whom he misreads to suggest that "[c]ritique is all there is" (Tushnet 1988:317–18) and recommends that legal academics should "remain committed to the project of comprehensive normative rationality" (Tushnet 1992: 2347), which he even characterizes as "a promising solution" (p. 2341).

Maybe we should not be surprised. Anxiety in the face of the unfamiliar but inescapable future is as much a human truism as a postmodern irony. Retreat is the frequent if maladaptive response: "It is the fear of the new which galvanizes and reaffirms precisely the very ideas that historical experience has worn out" (Merleau-Ponty 1964:241).

II. There's Something Happening Here, What It Is Ain't Exactly Clear

In a poignant presidential address to the Law and Society Association, Joel Handler contends that postmodernism is inadequate to the tasks of a transformative politics. Later I shall suggest that this is the wrong question altogether. At the start, however, we must clarify what we mean by "postmodernism."

Handler's survey of postmodernist ideas and their relevance to transformative politics emphasizes the theme of sub-

version of dominant discourses. This suggests a natural affinity between postmodernism and transformative politics, one that Handler does not question. Rather, he argues that postmodernism's rejection of meta-narratives and its commitment to multiple discourses and local, "mini" rationalities threatens practical and political paralysis. He illustrates this point by comparing the hopeful, inspiring work of progressive scholars of the sixties with the darker, more pessimistic scholarship of contemporary postmoderns.[1]

But this is just a surface beneath which lies a welter of contradictions. Handler says that radical indeterminacy is a synonym for the subversion theme, but then he tells us: "Postmodernists . . . deny that contingency is the equivalent of indeterminacy" (p. 704). He explains that, to the postmodernist, "[l]anguage is an act of power, a form of social action" (p. 731). But then he criticizes postmodernism on the grounds that its "conception of language sets up the opposition between discourse and action" (p. 723). He maintains that the decentered subject is a "key idea" of postmodernism and that "the postmodern subject is a plurality of contingent social, political and epistemic relations . . . constantly subject to rearticulation" (p. 700). But then he tells us that the goal of a postmodern politics is a radical democracy constituted through "the proliferation of public spaces where social agents become increasingly capable of *self-management*" (p. 701; emphasis added). Apparently, if these decentered subjects can get together to rearticulate one another often enough, they will overcome their postmodern predicament, regain their equilibrium, and recover their capacity for self-direction.

What are we to make of this? It would be unfair to blame Handler for the conflicts among the views of the many different—perhaps incompatible—scholars whose writings he surveys under the rubric of "postmodernism." That fault is not his, except to the extent that he reports what they write with a meticulous fidelity that borders on the uncritical. So too, it would be unfair to charge Handler with the contradictions or ambiguities that inhere in postmodernism itself. After all, he comes to bury postmodernism, not to praise it. But it is nevertheless appropriate to hold Handler to a standard of intelligibility. How can we assess the pertinence of postmodernism for transformative politics unless and until we have some sense of what postmodernism is?

Admittedly, the issue is clouded because "postmodernism"

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[1] Handler writes (p. 715): "The authors of the 1960s and 1970s speak of solidarity and struggle with an optimism reflecting the dreams of that era. In contrast, [Linda] Gordon says, 'Most of this book is sad. Most of the individual stories had bad endings.' . . . [Austin] Sarat is pessimistic about the welfare poor; it is an 'uphill struggle to make their voices heard'; they have 'little hope of success.' "

is a contested concept. How could it not be? What's at stake is the definition of an era—our era—and, along with it, the relevance and meaningfulness of *our* political, intellectual, and aesthetic practices. As any actual postmodernist would readily point out, each and every rhetoric of "postmodernist-[ ]" masks a complex dynamic of political contestation (buy my version of postmodernism because it validates my position (Cornell 1992:11)) and denial (whatever postmodernism is, it doesn't affect my practice (Schlag 1989a)).

"Postmodernism," moreover, is an elusive concept. After all, its identity is constituted negatively in its differentiation from its predecessor. To Lyotard, postmodernism "is undoubtedly a part of the modern. All that has been received, if only yesterday . . . must be suspected" (Lyotard 1984:79). "Postmodernism" is identified by what it is not—not foundational, not epistemological, not essentialist, not rationalist. Indeed, "postmodernism" is nothing if not the intellectual practice of the *aporia*[2]—a concept notably absent from Handler's discussion. Correspondingly, "postmodernism" is an open-ended concept.[3] This is unavoidable given that the meaning and trajectory of our era and our practices will only appear in the future after our successors have interpreted what we have wrought willy-nilly with the materials of our present.

Small wonder, then, that Handler misapprehends postmodernism. Nothing is more difficult to pin down than a disputed, inaccessible, indeterminate concept. Consequently, Handler invokes a strategy that is as flattening as it is familiar: He assimilates the insights of postmodernism to some more conventional conceptual framework—in this case pragmatism, feminism, and critical race theory. But this means that he is incapable of appreciating what *postmodernism* has to say on the subject of contemporary politics. Still, he is not alone. A surprising number of those who proclaim themselves "postmodernists" have grasped postmodernism in decidedly rationalist and modernist ways that allow them to pose in its voguish mantle while missing the point of postmodernism completely.

So here it is, short and sweet: What postmodernism has to say on the subject of contemporary politics is that there is no subject. Yes, that's it. No subject whatsoever. Nobody home; flew the coop. Gone. Hi ho Silver, away. Just a masked man riding around on a studio prop of a horse into a phony back-

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[2] Thus, Drucilla Cornell (1992:2) explains: "For Derrida, the excess to the system cannot be known positively; hence, there is no beyond to that he would call the undecidable." It is in this sense of the obscure, the paradoxical, and the unpresentable that we can understand Lyotard's (1984:81) further explanation: "*Post modern* would have to be understood according to the paradox of the future (*post*) anterior (*modo*)."

[3] Compare Lyotard's (1984:79) suggestion: "A work can become modern only if it is first postmodern. Postmodernism thus understood is not modernism at its end but in the nascent state, and this state is constant."

drop of a sunset.[4] (So, what did you expect? Despite all that uplifting scholarship, the sixties ended with Richard Nixon, the Christmas bombing, Watergate, and the "Me" generation. Want to know what happened to all those hippies and antiwar demonstrators? They went to law school with us. More to the point, they *are* us.) To put it more precisely, what postmodernism has to say on contemporary politics is that the subject—which is to say, the forces that shape us and constitute us as subjects—is *the* issue (Foucault 1980:97; see also Schlag 1991a; Winter 1990a).

Let me explain.

Notwithstanding the inherent difficulties, there is a sense in which we recognize as postmodernist a set of ideas or attitudes that bear much more than a family resemblance to one another. At the level of discourse and ideation, postmodernism signals the complete textuality of human experience—the degree to which everything is an interpreted "thing" and not a "thing" itself. This mediation serves to disconnect the signifier from the signified, and this disconnection in turn sets the sign adrift (hence the concept of "play" (Derrida 1978))[5] to appear in different contexts (hence "iterability" (Derrida 1988))[6] appearing to bear different meanings (or the same meaning, only different, no longer the same). Signs no longer signify, they proliferate. This substitution in which the paucity of reference is filled in by the proliferation of signs is what postmodernists emphasize as *intertexuality*—the reflexive, self-referential process in which signs refer not to the world but rather to other signs.

At the level of social practices, postmodernism signals post-industrial processes of commodification, bureaucratization, consumerization, and saturation. Nowhere is this more apparent than with respect to signs that, notwithstanding their polit-

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[4] Postmodernism's much vaunted proclamation of the death of the subject is a hyperbole and must be understood as such. But some exaggeration is obviously necessary given the ubiquity and durability of the conventional assumptions that authorize even self-identified postmodernists to bracket the self in order to insulate it (along with its most cherished projects) from destabilization by postmodernism.

[5] As Derrida (1978:289) writes:

This field is in effect that of *play*, that is to say, a field of infinite substitutions only because it is finite, that is to say, because instead of being an inexhaustible field, as in the classical hypothesis, instead of being too large, there is something missing from it: a center which arrests and grounds the play of substitutions. . . . One cannot determine the center and exhaust totalization because the sign which replaces the center . . . is added, occurs as a surplus, as a *supplement*. The movement of signification adds something, which results in the fact that there is always something more, but this addition is a floating one because it comes to perform a vicarious function, to supplement a lack on the part of the signified.

[6] "[T]his unity of the signifying form only constitutes itself by virtue of its iterability, by the possibility of its being repeated in the absence not only of its 'referent,' which is self evident, but in the absence of a determinate signified or of the intention of actual signification, as well as of all intention of present signification" (p. 10).

ical or artistic origins, have been appropriated and redeployed for corporate commercial ends. John Lennon's "Revolution" and Jerry Rubin's "Do it!" have both been appropriated by Nike to shill for its running shoes. Signs, moreover, have become the primary products of bureaucracies which design, market, and disseminate images and other symbolic forms through media that are literally everywhere. As Russell Baker (1991) writes: "Nowadays Whitman would not hear America singing. . . . He would write, 'I see America listening to nearly perfect Japanese technological reproduction of singing.'"

Postmodernity, moreover, permits no escape. Wherever we turn, we are imprisoned, bombarded, connected, inspected, and (potentially) dissected by electronic media: the TV, the VCR, the phone, the fax, and the computer. Indeed, as I write these paragraphs, I am Juror No. 821 sitting in the jury waiting room at the Metro-Dade Criminal Justice Building. My presence has been generated by a computerized data base (the jury list) taken from another computerized data base (the voter registration list). My present (although, as I rewrite this, it is already my past) is dominated by eight television monitors blaring their purified, PG-pablum ceaselessly in a large, open room. (So far, they've run through *Beaches, Uncle Buck,* and now *Field of Dreams.* Later it will be the afternoon soaps.) Like the prisoners whose cases I may be summoned to decide, I am confined to noise and endless television—looking forward only to lunch and ultimate release. (But, realistically, only parole; this is already my second time, and I remain susceptible to recall.) Even the jury snack bar is redolent with the drab institutional scent I have encountered in every one of the many prisons and jails whose conditions I've challenged in constitutional litigation.

At the level of the self and the social community, postmodernism signals dissolution and fragmentation. The self is no longer a unity or even an entity but a field of social action and contestation.[7] Lacking its own special space, the self lacks freedom or intentionality—at least, as traditionally conceived (Winter 1990b:655–56). The self is no longer seen as having originary causal efficacy but is itself an effect of power/knowledge. It no longer uses discourse to express itself but is an effect of discourse.[8] So, too, the unity of a community can be seen to

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[7] "In the extreme version of postmodernism, the determinants of class and race and age and group and religion and sexual orientation and role and mood and context constitute us in a changing pattern from moment to moment. . . . 'I' am merely the place where these things happen" (Boyle 1991:521).

[8] Although I return to it below in Part V, there is a problem with these now conventional formulations of postmodernism that the reader should be alerted to at this point. To understand these claims in two-dimensional terms—so that either the subject is in control of the discourse or the discourse totally determines the subject—is to flatten and falsely constrict a more complex and sophisticated conception. Accordingly,

sliver and fragment into a thousand components and compet-
ing perspectives. In postmodernity, all is diversity and hetero-
geneity; any discourse of "community" is suspect as a discourse
of oppression. The byword is resistance, the refrain: "Watcha
mean 'we'?"

At the level of intellectual method, postmodernism signals
aestheticism, detachment, irony, pastiche, kitsch, irreverence,
provocation, and arch self-referentiality. (It winks, therefore it
is.) Rational argument is exposed as just a privileging of a per-
spective, a move in a power game. The antidote is not refuta-
tion but redescription. Here, we can see in action one of the
characteristic postmodern maneuvers: the gestalt switch or re-
versal.

> It is obvious that the content mostly conceals from us the real
> function of the medium. It presents itself as message, whereas
> its real message (compared to which the manifest discourse is
> perhaps only a connotation) is the profound structural
> change brought about in human relations in terms of scale,
> models, and habits. (Baudrillard 1990:89)

The message lies not in the substance, but in the form. Words
are not containers of meaning but material substances—the
forces and elements of palpable practices. This reversal in
which the manifest message of the content is supplanted and
superseded by the contextual meaning of its performance is
what postmodernists mean by *performativity*.[9]

This dissection of postmodernism into analytic components
of ideation, social practices, social entities, and intellectual
methods may make postmodernism more intelligible. But it is
deeply problematic. For these distinctions employ the terms of
another conceptual system—a rationalist system. Postmodern-
ism, however, seeks to displace this predecessor system and de-
center it through redescription. To understand postmodern-
ism, these different dimensions must be appreciated as an
ensemble.

Consider the move that puts in question the stability and
tractability of the sign. Once the system of signification is un-
derstood as unanchored and adrift, it is no longer subject to
the control of a knowing, thinking agent. Just the opposite is
true: The subject is at the mercy of a system of signification that
always already precedes her and that, at any moment, may go
off on a "frolic" of its own. Thus, the subject is not the master

these postmodernist claims are frequently misunderstood to declare the complete dis-
solution of the self (see, e.g., Post 1991). On my view, those who read them in that
totalizing way seriously misstate the insights of postmodernists like Foucault (Winter
1991a:1603–4).

[9] This concept should be quite congenial to law and society scholars. We might
analogize it to an approach to meaning that focuses on language-in-action, rather than
language-in-books.

of its own speech acts because their iteration in other contexts may confer new and unintended meanings.

Much the same follows from the escalating processes of commodification and consumerization characteristic of post-modernity. It is common to think of the conspicuous consumption that typifies consumer culture as a matter of individual consumers acting out their materialistic values. But the post-modernist notion of performativity suggests that the meaning of consumer goods should be read in the social practices in which they participate. Thus, Baudrillard (1991:76) points out that consumer goods serve "a *sociological* function" by means of "their power of distinction." "At any moment, and for any condition of the social structure, this function makes it possible for a given social group to distinguish itself and to designate its status through a particular category of objects or signs" (ibid.). We are familiar with this phenomenon of consumer-item-as-status-marker: viz., successive fads for designer labels, Rolex watches, and now car phones and faxes. In a society characterized by upward mobility, the process takes on something of the character of a perpetual motion machine: "large sectors of the population move up the social ladder, attaining a higher status at the same time as complying with a cultural demand, which is nothing but the necessity of demonstrating this status through signs" (ibid., p. 75).

No area of life is immune from this process. "At all levels of society, generations of 'parvenus' need their displays" (ibid.). Once the signifiers of intellectual discourse are understood as detached from their referents, significance becomes a matter of performative value. The ideational content of intellectual discourse becomes less important than its social consequences. Meaning becomes a function of the practices or forms of life in which those ideas participate.

> Language becomes an object of consumption or a fetish from the moment that, instead of being a vehicle for meaning, it takes on the connotations, vocabulary, and inflections of membership in a group, class, or caste (the intellectual jargon of the "smart" set, or the political jargon of the parties and cliques); from the moment that language, instead of being *the means of exchange*, becomes the *material of exchange* for the private use of a group or class (its real function being, behind the alibi of a message, one of collusion and recognition); and from the moment that, instead of bringing meaning into circulation, it circulates itself as a password or token of passage in a tautological group process (the group is what it speaks). (Ibid., p. 96 n.16)

We are familiar with the phenomenon in which certain books, theories, or citation patterns become indicators of one's affiliation with the "in" group. (In some legal academic circles, cita-

tions to Wittgenstein, Kuhn, and Rorty serve this function; in others, the icons are Dworkin, Rawls, and Raz; in yet others, canonical references are Coase, Arrow, or Director.)[10] This phenomenon accounts, moreover, for the spectacle adverted to earlier in which self-proclaimed "postmodernists" trade in transparently rationalist and modernist accounts of postmodernism.

Where a rationalist or modernist might understand this as an allegation of insincerity or bad faith, the postmodernist has a more charitable and compelling explanation. To the postmodernist, these phenomena are not the ill-motived choices of autonomous individuals but rather the socially constructed products of the processes of professionalization—that is, the training and socialization that fashion professionals out of neophytes reinforced, as they are, by the practices and reward structure of the academy.

But note that the upshot of this reconceptualization is, once again, that the affected subjects are exposed as contingent incidents of ongoing practices rather than the self-directing, originary authors of those practices. This is perhaps clearest in the case of intellectual discourse, where the participants may passionately believe (and, from a certain perspective, rightly so) that it is the substance and importance of the ideas that matter most. Step back from those practices, however, and one can begin to see how much the performative dimension dominates academic life. The social processes of professional advancement—tenure, promotion, invitations to conferences, citations in casebooks and footnotes, recognition by the leading scholars and opinionmakers—define not only the structure and content of the discourse but also the identity and content of the social actors themselves. In short, where the subject thought it was in control of its discourse, it turns out instead to be an effect of that discourse understood as the social system of signification in which that subject participates.

Finally, consider the aspect of postmodernism that garners the most attention (as well as the greatest ire): the methodological penchant for kitsch, pastiche, irony, irreverence, provocation, and arch self-referentiality. To a rationalist sensibility, this proclivity seems puerile, irrational, or (at best) a case of bad intellectual manners (Schlag 1989b). But, as Handler correctly notes, these discursive moves seek to call attention to the contingent, artifactual nature of a discourse (where "discourse" is understood broadly—just as "text" is understood broadly—to encompass all human activities because all human activities are subject to iteration and, therefore, require interpretation). The

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10 Compare Thomas Kuhn's (1970:177–78) observation that a scientific paradigm actually consists of about a hundred scientists who attend the same conferences, read the same papers, and cite each other's work.

point is not the *destruction* of the dominant discourse but its *deconstruction*. In other words, the aim is not to render impossible all intersubjective communication but rather to reveal the constructed character of all discourse and meticulously to expose the nature of that construction.[11]

Thus, kitsch and pastiche are used to decanonize the idea of "fine art" (Handler 1992a:699). "Ironic juxtaposition" in postmodern architecture is employed "to clarify simultaneously both the meaning and the suppressed meaning of the modernist form" (ibid., p. 700; Boyle 1991). So, too, postmodernist irony highlights and discloses the free play of the sign, postmodernist self-referentiality emphasizes the historically situated and intertextual nature of human discourse, and postmodernist provocation seeks to prod the well-defended subject into recognizing its own constructed and contingent character.

In sum, what appeared as separate aspects of postmodernism are actually parts of an ensemble of complex relations that—*pace* Handler—does not have a "foundation concept" (p. 699). Viewed in this more holistic way, the different postmodern insights converge on an important, even momentous consequence: the subversion of the identity and self-presence of the self.

> [I]t is sufficient merely to introduce, into the manger of speech acts, a few wolves of the type "indecidability" . . . or of the type "unconscious" (an unconscious pleasure may be experienced as pain, according to *Beyond the Pleasure Principle*), of the type "primary masochism," etc., for the shepherd to lose track of this flock: one is no longer certain where to find the identity of the "speaker" or the "hearer" (visibly identified with the conscious ego), where to find the identity of an intention (desire or non-desire, love or hate, pleasure or suffering) or of an effect (pleasure or non-pleasure, advantage or disadvantage, etc.). This is only another reason why, at the "origin" of every speech act, there can be only Societies which are (more or less) anonymous, with limited responsibility or liability . . . a multiple of instances, if not of "subjects," of meanings highly vulnerable to parasitism—all phenomena that the "conscious ego" of the speaker and the hearer . . . is incapable of incorporating as such and which, to tell the truth, it does everything to exclude. (Derrida 1988:75–76)

The misapprehension of postmodernism is a result of the apprehension it inevitably causes: The perturbations of postmodernism are uniquely destabilizing to the self and its most cherished aspirations, which include all forms of normative coherence with no special exemption for transformative politics.

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11   As Stanley Fish (1989:57) remarks: "Rather than a subverter of common sense, this Derrida is very much a philosopher of common sense, that is, of the underlying assumptions and conventions within which the shape of common sense is specified and acquires its powerful force."

And that prospect is too dangerous to the project and selves of politically inspired legal academics as they are currently constituted. Thus, postmodernism *must* be misunderstood—and summarily rejected.

III. When the Solution Is Part of the Problem

To apprehend postmodernism by focusing on any one element or dimension as definitive or essential—whether the nature of systems of signification, the technobureaucratic processes of commodification, the decentering of the subject, or the aestheticist methods of intellectual discourse—is to risk at least two separate forms of distortion. The first is the kind of flattening always attendant upon reductive, essentialist analyses of complex questions. The second, however, is more particular to postmodernism. Because it fails to respect the postmodern insight that form is substance, to start in traditional, rationalist form by analyzing postmodernism into its component parts— the subject, the medium, the method, and the social context— is already to have reinscribed rationalism. This process of "prefiguration" (Ricoeur 1984:53–57)—in which the very act of perception already entails a transfiguration and assimilation of the idea or event in terms of an existing conceptual framework—explains why the misapprehension of postmodernism is so persistent and pervasive (see Schlag 1990b; Winter 1991a). Indeed, we see this process at work in both Handler's and Tushnet's renderings of postmodernism. It is the first sense in which the solution (here, trying to make sense of postmodernism) is part of the problem.

Handler discusses two postmodern themes: the commitment to undermine dominant discourses and the concept of the decentered subject. He treats these as two separate aspects of postmodernism—one about discourse and the other about subjects—and never considers whether there is any relation between the two. But, of course, they are intimately related. The dominant discourse is the conventional system of signification upon which the subject depends in order to express itself (indeed, to *be* a "self"). To subvert that discourse and reveal it as contingent, historically situated, and anterior to the subject is also to undermine the subject's pretense to transparent self-knowledge. It is to reveal that the origin of the subject's own intentions is not first and foremost a matter of individual self-conscious thought but lies instead in "Societies which are (more or less) anonymous" (Derrida 1988:76). In the Western tradition, the dominant discourse is also the discourse that affirms the subject as an originary, self-directing agent (Taylor 1989). To undermine *that* discourse is to decenter the subject.

In treating the interdependent terms of a complex system

as discrete, elemental units, Handler unwittingly essentializes their meaning such that they are no longer identifiable as postmodernism. Thus, Handler reduces the postmodernist emphasis on discourse to an exclusive concern for language: "Postmodern intellectuals and academics focus on language. They believe in the inherent power of language—'to name the world is to control it'—they say. . . . Yet, the postmodernist's conception of language sets up the opposition between discourse and action" (p. 734). But this is not postmodernism at all. The philosophical understanding which believes that "to name the world is to control it" is idealism, not postmodernism. Similarly, it is analytic philosophy—not postmodernism—that insists upon an opposition between discourse and action. If anything, the postmodern emphasis on performativity *denies* the meaningfulness of any such distinction (Fish 1989:57–67). To the postmodernist, action is just another text to be interpreted; conversely, the postmodernist understands the meaning of discourse as something to be read in its performance rather than its content. Although Handler complains that postmodernism elides politics and power in its emphasis on discourse, postmodernism in fact maintains that politics, power, and discourse are *inseparable*.[12]

Just as Handler reinscribes in postmodernism a rationalist distinction between discourse and action, he also mistakenly isolates discourse from institutional frameworks and practices. This further essentialization of the concept of discourse—successively segregating it from each of the other dimensions that, for a postmodernist, are indispensable participants in the concept of discourse—has the additional distorting effect of uncoupling the subject from its constitutive contexts and reestablishing its authority and autonomy. Thus, from the observation that "[p]ostmodern politics is the politics of discourse," Handler erroneously and immediately extracts the conclusion that, for postmodernism, "[t]he actors are detached from institutional constraints" (p. 724).

There is a less obvious but no less significant way in which Handler distorts postmodernism by assimilating its insights to a more familiar conceptual framework. In discussing postmodernism's commitment to subvert the dominant discourse, Handler notes rather unobtrusively: "Subversion from 'within' usually means subversion from 'below' " (p. 701). The observation seems unremarkable because it rests on a highly conventional conception of power as a hierarchical relation or top-

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[12] Compare Derrida's statement (1988:145): "I do not believe . . . that it is opportune to dissociate questions of 'power relations' or of 'rhetorical coercion' from questions of the determinacy or indeterminacy of 'meaning.' Without play in and among these questions, there would be no space for conflicts of force."

down phenomenon. It follows from this that subversion must come from below: What else could postmodernism mean?

To anyone familiar with postmodernism, however, this apparently offhand transposition is absolutely staggering.[13] For the postmodernist, the recognition of the social construction of the subject and of its dependence on the conventional systems of signification means that "[t]here is no place outside the forms, no art that could break free from the restraint in which it is, for the moment, embedded" (Boyle 1991:503; see also Fish 1989:394, 441). Because prefiguration is a prerequisite to perception, constraints are not something that can be refused, rejected, or disposed of: "these 'constraints' provide the enabling conditions of possibility" (Winter 1990b:655–56). As Foucault (1980:131) says: "Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power." Thus, although subversion remains very much the issue, it can only come from within because—quite simply—there is no other place one could be.

The problem with Handler and others of his ilk is that they invariably situate themselves outside (if not, indeed, above) the social field that postmodernism seeks to interrogate. Thus, they never once pause to consider that what postmodernism has to say about prefiguration, the decentering of the subject, or the privileging of one's normative commitments might conceivably apply to them. Not surprisingly, this makes meaningful dialogue virtually impossible. Instead, we are repeatedly treated to ever more impressive displays of shadowboxing.[14]

Handler starts with an unshakable faith in his own normative vision and, from that standpoint, purports to adjudicate the value of postmodernism. But suppose for a moment that postmodernism is right. In that event, Handler might be forced to concede that—his earnest professions of political faith notwithstanding—his normative vision is not only quixotic but dangerously counterproductive. He might be forced to acknowledge that *his* solution is part of the problem.

How might this be true? Consider the critique of normativ-

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[13]   In his response, Handler (1992b:820 n.3) disclaims authorship of this expression and attributes it to two of the theorists whose work he reviews. The transposition remains staggering nevertheless. It is an example of the phenomenon described earlier in which self-proclaimed postmodernists continue to invoke rationalist conceptions that preserve the status of the self and its conventional political projects. Handler's repetition of the mistake is an illustration of what I meant when I suggested that his analysis of postmodernism "borders on the uncritical." Here, the reader has only to read the cited works of the principal postmoderns like Derrida, Lyotard, and Foucault and make her own decision.

[14]   Although Handler is far from the worst offender, consider the self-congratulatory way in which he deploys my statement that the destablilizations of postmodernism offer no special exemption for transformative politics (Handler 1992b:820 n.4). For him, this merely proves what he knew all along: that postmodern politics is not useful to his transformative project. But he never explains exactly why it is *postmodernism*—and not his own version of progressivism—that must be jettisoned.

ity that so disturbs Mark Tushnet. In a series of thoughtful articles (Schlag 1990a, 1990b, 1991b), Pierre Schlag has engaged in a painstaking examination of the significance of legal scholarship's exclusively normative orientation. The inquiry is organized around the postmodern concept of performativity. Its central theme is that the conventional practice in which legal academics engage in ethical, moral, and doctrinal advocacy—that is, making highly commendable proposals for achieving justice or greater tolerance—must be understood in light of the social context in which those recommendations issue. Although the proposals themselves are well intended, Schlag points out that this conventional academic practice routinely takes on a different, antithetical meaning in the current social context.

One aspect of that context is the accelerating bureaucratization, commodification, and commercialization of legal practice and the legal system. This sets up a classic discrepancy between legal-theory-in-action and legal-theory-in-books-and-classrooms. We may imbue our students with the ideals of justice and due process, but large numbers of them will go into vast bureaucratic firms where they are destined to deploy those ideas in purely strategic arguments on behalf of clients who themselves are immense, bureaucratically organized entities governed exclusively by the demands of instrumental rationality. In that context, the noble content of arguments about justice and due process may conceal from all concerned the performative meaning and real function of this highly normative medium (Schlag 1990a; cf. Baudrillard 1990).

Schlag's thesis, moreover, extends beyond the narrow confines of the legal profession to encompass the far-reaching changes in the larger social situation. It specifically puts in question the foundational assumption of any normative proposal: that it is addressing competent, self-directing subjects capable of acting on those normative recommendations (Schlag 1991a; 1991b). The fundamental point is that the reproduction, expansion, and entrenchment of bureaucratic practices increasingly trivialize our pretensions to autonomy and self-determination. In the end, the glorification of the individual helps produce a self that is uniquely vulnerable to precisely the market-bureaucratic practices that shape and drive postmodern culture (Schlag 1991b). Thus, Schlag's critique of normativity emphasizes the profound structural changes that characterize life in the late 20th century and illuminates how those changes have transformed both our subjectivities and the meaning of our normative ideals.

Handler offers neither analysis of nor remedy for this predicament, ignoring the critique of normativity altogether. But Mark Tushnet does address it, and—while we cannot attribute his position to Handler—the parallels are nevertheless instruc-

tive. In assessing the critique of normativity, Tushnet makes all the mistakes of reduction, essentialization, prefiguration, and assimilation that we encountered above—only in a more conspicuous fashion. In high rationalist form, Tushnet first mistakes the critique of normativity for a transcendental argument—"a 'critique of normativity' *as such*" (Tushnet 1992: 2326; emphasis added). He then reduces the entire argument to a rejection of what he calls "comprehensive normative rationality" (ibid.). Having discounted everything that is interesting, important, and new in this postmodern critique, Tushnet proceeds to parallel Handler's rejection of postmodernism. Where Handler (1992a:715) decries the focus on individuals over collectivities that he sees in postmodernist work, Tushnet (1992:2334–35) argues that any thoroughgoing anti-essentialism risks the inevitable descent into radical particularism. Where Handler (1992a:723–24) condemns the postmodern rejection of meta-narratives because he thinks this threatens practical and political paralysis, Tushnet (1992:2347) concludes that a "stance of unremitting critique" is politically and personally unsustainable.

Handler and Tushnet have more in common than a failure to engage their putative interlocutors.[15] Both unself-consciously rely on rationalist prefigurations in their attempt to understand and evaluate postmodernism and, consequently, both misapprehend it in similar systematic ways.[16] Consider, first, Tushnet's suggestion that the critique of normativity might intend what he calls "a stance of unremitting critique." Precisely because he misunderstands the critique as a transcendental argument, he concludes that it entails an attack on normativity in all forms and contexts. But, as we have seen, the critique is of a particular historically and culturally situated practice. Indeed, my own contribution argued that all forms of normative practice can take place only within the context of community, where

[15] Lest this sound gratuitous or severe, it should be pointed out that much of what I say above is an elaboration of points previously made in the exchange with Radin and Michelman that appears in the "Critique of Normativity" symposium (Winter 1991b). Tushnet neither considers nor acknowledges that response (nor Schlag's, for that matter).

[16] True, Tushnet's discussion is distinctive in its very postmodern self-referentiality (see Tushnet 1992:2347 n.92). There is no one in the legal academy—at least not in the area of constitutional law—who is more identified with the rejection of comprehensive normative rationality than Mark Tushnet (1988:chs. 1–5). So too, there is no one who has pressed the radical indeterminacy critique with more vigor and consistency than he (see, e.g., Tushnet 1983:825). And, of course, Tushnet (1988:317–18) is the person who has explicitly proclaimed: "Critique is all there is." Thus, his reduction and essentialization of the critique of normativity is the unusual case in which the assimilation of postmodernism to a more familiar conceptual framework is the assimilation to Tushnet's own. And, in a further *renvoi* of postmodern irony that (forgive me) refuses to go unnoted, Tushnet's specific arguments against this self-referential, self-assimilated version of the postmodernist critique of normativity conform to—and confirm—my earlier criticisms of his work (Winter 1989:1110–12, 1122–27; 1990a: 1466–67).

"community" is understood as a function of shared ways of understanding and living is a social world (Winter 1991c).[17] I argued that, when examined, this insight ultimately undermines the distinction between persuasion and prescription—that "[p]ersuasive normativity cannot be understood apart from its prescriptive dimensions; in an important sense, every act of persuasion has its origin and end in prescription" (p. 970). I contended, moreover, that all social learning and cultural reproduction is characterized by slippage, so that "[i]f we conceptualize a community as a group of people who share common ways of understanding and living in a physical and social world, then the existence of slippage will mean that community is necessarily . . . characterized by degrees of plurality and divergence" (p. 996). Finally, I urged that we must foster conditions of community that will enable a more meaningful normative practice if our society is to survive as a democratic one (p. 1002).

Tushnet's version of my position epitomizes the distortion that attends the systematic assimilation of postmodernist arguments to more conventional conceptual frameworks. Tushnet (1992:2329) suggests that my "interest in conditions of community might demonstrate [a] commitment to . . . part of the [Enlightenment] project; those conditions that might identify 'purified' communities." But, he observes, that objective "rests on the assumption that there are detached and neutral ways of examining normative questions" (ibid.).

Were so egregious a mistake made by a scholar of lesser repute, we would write it off as a case of careless scholarship. That it is Mark Tushnet perhaps suggests that the alternative postmodernist explanation of prefiguration and assimilation is correct. This hypothesis is bolstered by Tushnet's reference to the Enlightenment. Tushnet's basic conception of reason is unremittingly rationalist; indeed, it is this insistence on a strong objectivist standard of rationality that best explains his earlier championship of the radical indeterminacy claim (Winter 1990a: 1448–50; 1989:1127–29).[18] Accordingly, when he encounters an argument about the preconditions for normative practices within a community, he automatically misreads it in the terms of this more traditional, rationalist understanding. How else could he possibly misapprehend an argument that denies the integrity of the distinction between prescription and

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17 In previous work, I have argued that the content and meaning of all normative frameworks are grounded in and contingent on cultural practice or, in the more fashionable Wittgensteinian idiom, "forms of life" (Winter 1990a).

18 As Handler (1992a:704) astutely notes, the conventional fear that postmodernism leads to irrationalism and nihilism is also premised on a contrast with a strong objectivist commitment: "Postmodernism, by tolerating alternative contingent rationalities, only appears irrationalist by comparison to a universal rationality that purports to legitimize 'truths.' "

persuasion and explicitly contends that all communities are necessarily characterized by diversity as an endorsement of "purified" communities capable of achieving a rational consensus on normative questions?

We can see the same rationalist prefiguration and the same consequent distortions in Handler's reaction. He points out that postmodernists adhere to the humanist side of the Enlightenment, even if without the transcendental part (Handler 1992a:700). He then takes them to task for not admitting that this commits them to a meta-narrative (pp. 727–28). But Handler believes that a commitment to the humane values of the Enlightenment is a commitment to a meta-narrative only because he understands the Enlightenment as premised on "a construction of human nature that transcends context" (ibid.). If, however, postmodernists affirm those same values, we do so because we understand those values as priceless human constructions that are made real only by our ability to live by them. This commitment may yet be overwhelmed by contemporary social circumstances, but it is a commitment that—Handler and Tushnet, notwithstanding—is anything but "thin."

These claims just do not register with Handler's rationalist prefigurations[19] For all his supposed pragmatism, Handler clearly believes that our humanist values must derive from some theory or transcendental truth or they are necessarily illusory or ephemeral. Thus, for Handler, the burning question is: "Is postmodern politics a *reliable guide* for transformative politics?" (1992a:723; emphasis added) For Handler, the idea that values are humanly constructed bespeaks a lack of sure foundations that threatens the war-of-all-against-all. Thus, he opines that "Hobbes wins if we vote for context" and concludes, therefore, that: "Postmoderns are deeply humanistic" (Handler 1992b:823).

There is a profound contradiction here, but not one that a rationalist like Handler is likely to notice. Handler is right when he says that postmoderns are deeply humanistic, but it is not because they reject a Hobbesian ontology of human nature in favor of a more uplifting meta-narrative.[20]

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[19] Characteristically, Handler responds (1992b:823) by asking where these values come from. But this question should seem more than a little strange. Didn't I just say that "all forms of normative practice can take place only within the context of community" and that "the content and meaning of all normative frameworks are grounded in and contingent on cultural practice"? Did Handler miss these claims? (Both statements appeared in the original draft of this comment to which Handler is responding.) In the curious sense illuminated by the concept of prefiguration, the answer is "yes."

[20] For the record, my intellectual sympathies lie with Freud rather than Jefferson or Hobbes. And, for the record, I never said "not to worry" as Handler claims (Handler 1992b:823). To the contrary. I see plenty of reasons to worry, none of which are allayed after reading Handler.

> Most people have lost the nostalgia for the lost narrative. It in no way follows that they are reduced to barbarity. What saves them from it is their knowledge that legitimation can only spring from their own linguistic practice and communicational interaction. (Lyotard 1984:41).

The deep humanism of postmodernism inheres in its affirmation that our values need not be underwritten by anything more than our own actions (and, as I shall argue in a moment, by nothing *less*). In contrast, the rationalist anxiety for some foundation more secure and more real than our own actions is antihumanist; it is what Nietzsche identifies as a form of self-hatred, a "fatality" that he aptly describes as *nihilism*.[21]

Old-style Lefties like Handler and Tushnet continue to think that political commitment is a matter of affirming the right ideologically "pure" beliefs—backed up, of course, by the right theory of human nature (Handler 1992a:727–28; Tushnet 1992:2341–42). Viewed from this idealist perspective, the political commitments of postmoderns must indeed appear "thin." What people like Handler and Tushnet seem not to understand is that *beliefs* are only *commitments* if they have some performative value.[22] "Because the *nomos* is but the process of human action stretched between vision and reality, a legal interpretation cannot be valid if no one is prepared to live by it" (Cover 1983:44). The truly thin commitment is that of self-proclaimed Left law professors who think it sufficient to profess values such as community and solidarity without the least inclination or capacity to act on them. The heart-rending price of this empty idealism is vividly recounted in Jennifer Jaff's (1991) powerful *cri du coeur*:

> Feminists and crits have deconstructed and rejected [the public/private] dichotomy to death. But if there is no place in our professional interactions for displays of emotion, then, in fact, the dichotomy is real. If I cannot cry at a critical legal studies conference because it is unprofessional, or because it is too great an imposition on the people who then feel lousy about their impotence, then we are wrong: the personal is *not* political. If the only aspect of the exclusion of feminists and

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[21]   This is the reading that Taylor (1989:453) offers of the following passage from Nietzsche:

> Here precisely is what has become a fatality for Europe—together with the fear of man we have also lost our love of him, our reverence for him, our hopes for him, even the will to him. The sight of man now makes us weary—what is nihilism if it is not *that*?—We are weary of *man*. (Nietzsche 1967, Essay I, § 12)

We might note that, here, Handler makes the very mistake with respect to normativity that he so astutely avoided with respect to rationality (cf. note 18 *supra*).

[22]   Once again, the point is that meaning (here, of one's political commitments) is not a matter of substance but of context. In times of persecution, professions of belief are acts of courage precisely because they have real consequences (Cover 1983:44–49). When professions of belief entail no consequences, however, they amount to little more than self-indulgence.

crits and minorities from law teaching that matters is the in-
stitutional dimension, then the public/private split is alive
and well. . . .

Unless and until the people who make up critical legal studies
and, I am pained to say, feminism . . . make the commitment
to do as MacKinnon suggests—recognize the hurt; care; and
act—their rhetoric should be dismissed as just that. (Pp.
136–38)

There is no better foundation for our values than our own ac-
tions. Without that ground, there are no foundations and no
values worth speaking of.

A famous axiom of the sixties had it that if you're not part
of the solution, you're part of the problem. One of the
problems with the sixties was that we were still sufficiently
modernist and romanticist to believe in solutions. We were still
enthralled by inspiring illusions such as the progressive ratchet
of social progress or the promise of even more utopian resolu-
tions. When I was a high school senior, a friend of mine bet one
of his teachers that the Revolution would take place within ten
years. The wager almost foundered when he realized that, after
the Revolution, there would of course be no money. So they
made the bet for a day's worth of service: cooking the other's
meals, doing chores, etc. It didn't occur to him that, after the
Revolution, there would be no domination and subordination
either. Postmodernism is the realization that, all too often, the
solution and the problem are one and the same.

IV. Try to Make It Real Compared to What?

Handler fears that postmodernists make a mistake in es-
chewing grand narratives. He argues that postmodernists
should embrace some meta-narrative for purely pragmatic rea-
sons, even though he acknowledges that they deny the truth
and reality of all grand narratives. "[T]he opposition," he
points out, "is not playing that game. They have belief systems,
meta-narratives that allow theories of power, of action" (p.
734). Accordingly, he urges postmodernists to come up with an
alternative vision and a theory of political economy that can get
them back in the game (pp. 727–28).

The problem with this suggestion is that it is persuasive
only if postmodernism is wrong. Although Handler purports to
restrict himself to pragmatic criteria and thus finesse the ques-
tion of theoretical validity, his admonition necessarily resolves
the issue against postmodernism. For Handler, the fulcrum of
effective political action lies in the subjective mental states of
the relevant political actors. But it is precisely those subjects
whose causal efficacy postmodernism puts in question. To the
postmodernist, these subjects are themselves the contingent

products of ongoing practices whose impact will not wither just because they believe and are inspired by the right meta-narrative.

To the contrary. When a recalcitrant social world does not conform to one's theories, to act *as if* one's meta-narrative were nevertheless true would seem like a formula for certain failure. (The demise of communism comes to mind here.) And this problem of adversity is no less applicable to conservatives. Despite the early euphoria on the Right, it is beginning to appear that—no matter how good the theory—institutions like democracy and competition-based markets cannot be simply transported and successfully implanted in the rather foreign cultural and social contexts of the former communist countries of Eastern Europe. Indeed, one can go further: If postmodernism is right, perhaps progressives ought to be *glad* that the opposition is still playing the game as if it were governed by a meta-narrative; it may just be the best prescription for failure. And, while that failure does not guarantee the success of progressive forces, it can at least open political opportunities. After all, it is the bankruptcy of Reaganomics that helped make it possible for the Democrats to break what was beginning to look like a Republican stranglehold on the White House.[23]

Postmodernists understand meaning as located in, and a function of, social practices or "forms of life." One of the characteristics of postmodernity, however, is the increasing fragmentation and dissolution of the social community. As traditions and communities splinter, as practices and consensus on values fracture, the meanings they support can increasingly be seen to dissolve. The incommensurability that characterizes the abortion debate is the most obvious example (MacIntyre 1984:74–77). But the phenomenon extends to less obviously value-laden meanings rooted in material practices.[24] Even if the opposition does act as if there were meta-narratives, as Handler

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[23] Here, Handler's intemperate rhetoric gets the better of him. He derides my references to Eastern Europe and the recent presidential election, pointing to the resurgence of the apparatchiks and the zeal with which Clinton pursued the Bush Democrats (Handler 1992b:824). With regard to Eastern Europe, I can only say that Handler has merely seconded *my* point about how unreliable normative political theory can be in practice. But I must profess disbelief in the face of his dismissive verdict on the presidential election. After all his self-righteous posturing, does Handler really mean to suggest that if Bush had won it would have made no difference to the people affected by such issues as civil rights, gender equality including choice, access to abortion counseling, access to affordable health care, discrimination against gays and lesbians, federal support for AIDS research? Give *them* a break.

[24] Attempts to protect U.S. jobs by requiring specified percentages of "domestic content" in consumer goods assume the meaningfulness of categories "foreign" and "domestic." But Japanese corporations now have manufacturing plants in the United States that employ U.S. workers. U.S. corporations have plants in Mexico, Taiwan, and other developing countries that provide cheaper labor. Which is the domestic product, which the import? A lot rides on the characterization, and the Japanese have not been shy about raising this incongruity.

says, they cannot escape the effects of the dissolution of the social contexts that give those narratives meaning.

We can see those effects at work in the joint opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992). It begins with the noble pronouncement: "Liberty finds no refuge in a jurisprudence of doubt" (ibid., p. 2803), immediately alerting us to the impending arrival of a meta-narrative. As one might expect, it is the grand narrative "of a Nation dedicated to the rule of law" (ibid., p. 2814). But this grand narrative is obviously not what it used to be, because it takes the opinion more than a dozen pages to explain why the Court is *not* going to overrule a 20-year-old precedent.

The denouement, moreover, is striking. The substance of the Court's legitimacy, we are told, lies in its decision according to the Constitution and legal principle. But the controversy and notoriety surrounding the abortion issue troubles that objective. Even the Court recognizes that principle is no longer the self-authenticating *objective* ground that it once appeared to be:

> Because not every conscientious claim of principled justification will be accepted as such, the justification claimed must be *beyond dispute*. The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, *as grounded truly in principle*, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently *plausible* to be accepted by the Nation. (Ibid.; emphasis added)

The degradation of Reason is here in evidence. In place of decisions that are "beyond dispute" because "grounded truly in principle," the Court settles for a confidence game in which its decisions—or, what is much the same, their principled character—need only be "sufficiently plausible to be accepted by the Nation" (ibid.). From a grand narrative about the rule of law, we have descended to a platitude worthy of P. T. Barnum. From a grandiose declaration banning doubt from the jurisprudential scene, we have arrived at the concealment of doubt in self-conscious illusion: "The Court," we are told, "must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them" (ibid.). It might even be amusing were it not so tragic, and if it had not been predicted with precision almost 25 years ago (Deutsch 1968).[25]

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[25] Critiquing Wechsler's concept of neutral principles, Deutsch observed that a principle will be understood as "neutral" only if it is sufficiently general, but then pointed out that "the historical context may well determine the proper classification of a given principle" (ibid., p. 195). But this means that

> a neutral principle becomes one that is perceived as adequately general in

Like the Court, Handler encourages us to accept some grand narrative as long as it is "sufficiently plausible." But it is exactly that plausibility that postmodernism has already put in question. Once the cat is out of the bag, no amount of pretending will get it back in. In the end, we will be left bereft of faith—a band of disappointed Lefties left holding the bag.

V. Not a Simple Desultory Philippic

In a perceptive analogy, Handler (1992a:733) notes the powerful affinity between deconstruction and the Talmudic tradition of Rabbinic interpretation of the text of the Torah. He suggests that, just as the tradition of Rabbinic interpretation achieved primacy with the demise of the Jewish state and the destruction of the Second Temple, the postmodern turn to the text and to deconstruction politics has become attractive because of the collapse of the Left both here and abroad (pp. 724–25; cf. Tushnet 1992:2341–42).

For anyone who has both read Derrida and studied the Talmud, as I have, the resemblance is indeed striking. No deconstructionist could worry a text more than a Talmudist engaged in the traditional art of *pilpul*. The elaborate, obsessive quality of Derrida's writing and the sophistication of his word play resonate with the intricate, often convoluted rhythms of the Talmudic text whose style of reasoning and organization borders sometimes on free association. So, too, the intertextuality and the self-referentiality characteristic of postmodernism have resonance in the Talmudic modality: The Talmud is a text (the Gemarah) commenting on another text (the Mishnah) that is a distillation of a two-thousand year oral tradition of commentary on another text (the Torah). The Talmud, moreover, is both interspersed with cross-references and exchanges with other portions of its own text and encrusted by subsequent generations of commentary. In the standard edition of the Talmud, its text is literally surrounded by commentaries: on the inside margin that of *Rashi*, the great French rabbi of the 11th century, on the outside margin that of his successors the *Tosefot*, with the annotations of later scholars further adorning the peripheries of the page. More than once, Derrida has conspicuously mimicked this typographic arrangement with texts of his own that look like nothing so much as a *blot gemarah* (Derrida 1986, 1982, 1981:175).

Handler is careful not to push the analogy too far. He notes that, in contrast to postmodernism, Rabbinic Judaism has "a

terms of the historical context in which it is applied. The question that such a reformulation raises, however, is this: perceived as adequately general by whom? . . . [P]erceived as adequate by the very society that imposes the requirement of adequate generality to begin with. (Ibid.)

coherent vision" (1992a:725). This reservation notwithstanding, the analogy underscores the limitations of any attempt to reduce postmodernism to its approach toward the interpretation of texts. Rabbinic Judaism is more than an approach to texts and a coherent vision; it is a comprehensive form of life that gives texts and vision meaning. So, too, postmodernism cannot be appreciated apart from its social and historical context. Just as Derrida draws obliquely from the Jewish tradition, postmodernism emerges from social conditions that include the tremendous expansion of the technobureaucratic practices of commodification and consumerism characteristic of our era (Post 1992; Balkin 1992). To treat postmodernism as primarily a matter of the indeterminacy of texts is, thus, to indulge the mistake that Dreyfus and Rabinow (1983:xii) identify as "the illusion of autonomous discourse."

In an important sense, however, this mistake and the resulting misapprehension of postmodernism stem from the social and historical context of deconstruction's reception in the United States. Deconstruction first gained acceptance not in philosophy departments but in departments of literature and literary theory—where texts are prized for their richness and the multiplicity of the interpretations they can support. Similarly, deconstruction found its first adherents in the legal academy among members of the critical legal studies movement who were already committed to the radical indeterminacy critique. Not surprisingly, then, Derrida's notion of "the play of relative indetermination" (Derrida 1988:144) was (mis)taken for radical indeterminacy.

This interpretation of deconstruction, however, is one that Derrida (ibid., p. 148) has explicitly disavowed:

> I do not believe I have ever spoken of "indeterminacy," whether in regard to "meaning" or anything else. Undecidability is something else again. . . . [U]ndecidability is always a *determinate* oscillation between possibilities (for example, of meaning, but also of acts). These possibilities are themselves highly *determined* in strictly *defined* situations (for example, discursive—syntactical or rhetorical—but also political, ethical, etc.). They are *pragmatically* determined. The analyses that I have devoted to undecidability concern just these determinations and these definitions, not at all some vague "indeterminacy."

In stark contrast to the conventional picture of deconstruction, Derrida's own description emphasizes the pragmatic limitations on interpretation produced by institutional constraints such as grammar, politics, and ethics. Derrida maintains that the "relative stability of the dominant interpretation" (ibid., p. 143) is "the momentary result of a whole history of relations of force (intra- and extrasemantic, intra- and extradiscursive, intra- and

extraliterary or -philosophical, intra- and extraacademic, etc.)"
(ibid., p. 145). Similarly, Michel Foucault has repudiated the
notion that the social construction of the subject is simply a
function of systems of signification: "It is not just in the play of
symbols that the subject is constituted. It is constituted in real
practices—historically analysable practices" (Foucault 1983b:
250).

These statements by two of the leading postmoderns stand
in sharp contrast to the stereotypical image of postmodernism
as irrational or nihilistic. Rather, consonant with postmodern-
ism's stress on performativity, these statements emphasize the
importance of the historical and sociological dimensions of
meaning and of subjectivity.

It is this aspect of postmodernism that, I think, has the most
to say to those committed to transformative politics. It suggests
that the conventional emphasis on political theories, ideolo-
gies, and grand narratives that focus on the reform or replace-
ment of political institutions is simultaneously too broad and
too narrow. It is too broad because it overlooks the problem of
the unreconstructed subjects who are going to inhabit and ad-
minister those institutions. It is too narrow because it ignores
the larger social matrices—the historical and institutional prac-
tices, the roles and routines of behavior, the habits of mind,
and the resulting conceptual frameworks—that constitute those
subjects and their institutions. It is as if they were suddenly to
find themselves—the same old selves—on a familiar political
stage set for a new political scene. But it is as if the playwright
changed *only* the scene and the script, leaving intact the self,
the stage, the audience, and the entire set of conventions gov-
erning their relations. This might still make for good drama;
but it could hardly bring about a revolution in the theater.

No wonder the "new" political movements find themselves
subject to cooptation and assimilation, as Handler recounts
(1992a:719–22). What ultimately proves disabling is not the
lack of grand narratives and global strategies, as Handler
claims, but rather the inadequacy of an outdated conception of
politics that brackets the problem of the subject. Transforma-
tive politics cannot possibly be effective if the agents upon
whom it depends continue to be governed and defined by the
very social contexts they are trying to transform (Winter
1990a). Indeed, all they could possibly encounter is the kind of
adversity recounted by Handler.

Handler worries about what postmodernism has to say
about the tragedy of the underclass (1992a:726) because he
mistakes a rejection of outdated categories like "bourgeoisie"
and "working class" for callousness about the problem of sub-
ordination. What he fails to grasp is that postmodernism has a
view of subordination more profound than his. The postmod-

ernist understands the roots of domination as already deep in the individual, inhering in the way in which "our culture attempts to normalize individuals through increasingly rationalized means, by turning them into meaningful subjects and docile objects" (Dreyfus & Rabinow 1983:xxvii). These processes of domestication include the underclass and the working class, who are no less driven by consumer culture than the rest of us. Thus, as Foucault (1980:97) points out, the important political question is

> how things work at the level of on-going subjugation, at the level of those continuous and uninterrupted processes which subject our bodies, govern our gestures, dictate our behaviours etc. In other words, . . . we should try to discover how it is that subjects are gradually, progressively, really and materially constituted through a multiplicity of organisms, forces, energies, materials, desires, thoughts etc. We should try to grasp subjection in its material instance as a constitution of subjects.

Foucault's formulation of the issue suggests an uncompromising *political* agenda for scholarship; his genealogical method "provides a technical knowledge of the practices through which power in a particular time or place is exercised" (Simon 1992: 55). It would be a shame, therefore, if his work were misapprehended and rejected as yet another terrifying proclamation of the death of the subject. His is no simple desultory philippic. Rather, what Foucault has to say has significance to social activists and law and society scholars alike.

Foucault is explaining the constitution of subjectivity, not its elimination. In his quite sophisticated conception (1980:98), individuals

> are always in the position of simultaneously undergoing and exercising . . . power. They are not only its inert or consenting target; they are always also the elements of its articulation. In other words, individuals are the vehicles of power, not its points of application. . . . The individual is an effect of power, and at the same time, or precisely to the extent to which it is that effect, it is the element of its articulation.

To understand this apparent paradox, consider any cultural construct like language or a role. Systems of signification necessarily transcend the individual subject, but they cannot be completely autonomous since they can be actuated only by speaking subjects. So, too, a role is always acquired through interaction with others in a social context in which those actions and roles are already endowed with meaning. But because a role is a pattern of conduct and not a unitary, static or invariable "thing," its existence depends on its enactment by actual subjects.

Consider, for example, how you and I first learned what it is

to be a professor. Although we were exposed through litera-
ture and the media to general cultural stereotypes of the pro-
fessor, most of our detailed and more intimate knowledge came
as students observing and interacting with our teachers. Once
we have become professors, our enactment of that role is sub-
ject to feedback (and discipline) from our students and col-
leagues. As that role comes to organize larger and larger por-
tions of our lives, it begins to constitute an ever greater
measure of our identities. At the same time, there is no such
"thing" as a professor separate from people like us who enact
that role. We are not the authors or creators of the role, of
course; its general shape and dynamic long preexisted its as-
sumption by us. But because the role is something that we per-
sonify, we can (within the limits allowed us by others) perform
it differently and so change its shape or complexion. Thus,
each of us could say with Foucault: "I am an effect of the role,
and at the same time, or precisely to the extent to which I am
that effect, I am also the element of its articulation."

Notwithstanding the sometimes strident rhetoric, postmod-
ernism's decentering of the subject is not the same as its oblit-
eration. Hyperbolic proclamations of the "death of the sub-
ject" are attempts to kill off an overstated, taken-for-granted
conception of subjectivity that blocks inquiry precisely because it
is difficult to address (let alone evaluate) that which is taken as
a given. The deconstruction of the concept of the subject as an
originary, autonomous agent identical with self-consciousness
may focus on discourse as a particularly revealing locus for ex-
amination; but it is not a reduction of the subject to discourse.
It is, rather, an invitation to a more meticulous psychological
and sociological account of the subject as a social phenome-
non.

Postmodernism thus poses a challenging agenda for schol-
arship, but one that is consistent with the basic commitments of
law and society scholars. What is new is that, just as postmod-
ernism perturbs and replaces the ordinary political categories,
it disturbs and displaces the previous sociological categories
with conceptions—such as Foucault's "technologies of
power"—that traverse the more conventional taxonomies of in-
stitutional structures (Dreyfus & Rabinow 1983:113). As
Jonathan Simon (1992:54) explains, "Foucault's quest for an
account of strategies without strategists invites us to a kind of
'postmodern' . . . version of the 'middle range'" that focuses
on institutions such as social insurance, the prison system, psy-
choanalysis, and other more informal confessional practices.

My own work has approached such questions by bringing to
bear the very powerful set of conceptual tools being developed
in the emerging field of cognitive theory (see, e.g., Winter
1989, 1991c). Given cognitive theory's strong empirical com-

mitments, any alliance with postmodernism is bound to seem unnatural.[26] But the affinity is greater than might be supposed. Virtually all versions of cognitive theory agree that only a very small part of reasoning and knowledge take place in consciousness. The strong consensus of the field is that most cognitive operations depend on substrates of knowledge variously described as frames, scripts, schemas, scenarios, or idealized cognitive models (Lakoff 1987; Shank & Abelson 1977; Rumelhart 1975). Pressed to its logical conclusion, this conception also has the effect of decentering the subject. For there is no homunculus inside the brain that picks and chooses among various cognitive schemas: Those unconscious schemas *are* us.[27]

With respect to language, cognitive theory and postmodernism coincide only up to a point. The idea of a cognitive schema is premised on the insight, consistent with the notion of iterability, that meaning is relative to context. Meaningfulness, therefore, is a function of stabilized and standardized mental frameworks that enable conventionalized interpretations under most circumstances. Because these frameworks must be highly generalizable to encompass widely varying particulars, there is an irreducibly imaginative dimension to cognitive processes (Lakoff 1987). Extensions from paradigm cases are never predictable by algorithm or rule but are the products of chaining, metaphors, metonymies, and cultural conventions (ibid.). It follows that cognitive theory (at least in this experientialist version) affirms that some play is inherent in language and that formalization and totalization are never possible. The key point on which cognitive theory disagrees with standard postmodernist commitments is that it recognizes human embodiment as a center that grounds—but, as we have just seen, does not arrest—the play of significations (Lakoff 1987; Johnson 1987).[28]

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[26] As Handler notes (1992a:723), postmodernists tend to reject modern science. For them, science has no privileged status; it is just another language game (Lyotard 1984). And there can be no doubt that there is a discrepancy between the claims of science to objective knowledge and the highly conventional (that is, constructed) nature of science as an enterprise (Fish 1989:381–82).

> Scientific insitutions are devised by communities of scientists and they are concerned with what are taken to be brute facts. The problem is that those so-called brute facts are dependent in many ways on those institutions—on agreements about measuring instruments, theories of measurement, acceptable uses of statistics, and broad scientific theories—all of which are in significant part the products of the minds of scientists. (Lakoff 1987:170)

But, of course, postmodernism too is just another language game. What else could it be? If everything is socially constructed, then—standing alone—the claim that an enterprise is socially constructed has no particular critical bite.

[27] Recent applications of cognitive theory by leading psychiatric reseachers have not only identified the role of prefiguration in perpetuating maladaptive behavior but also support the postmodern concept of the decentered self (Horowitz 1991).

[28] For a thoughtful presentation of the implications of embodiment and its potential relations to Foucault's thought, see Dreyfus & Rabinow (1983:110–12). As they

This difference will seem unbridgeable if the point about grounding is misunderstood as an affirmation of "foundations" in the objectivist sense. But this would be yet another misapprehension precipitated by a rationalist prefiguration and assimilation of a different, more complex conception. One ramification of the experientialist cognitive theory's emphasis on the role of imagination, however, is that the grounding of meaning in embodiment cannot accomplish precisely what "foundations" are normally presumed to do—that is, to yield determinate functions that link experiential input to linguistic output in a fixed or linear manner.

Cognitive theory's disagreement with prevailing postmodernist conceptions inheres chiefly in the appreciation that language cannot be uncoupled from the embodied experiences of the actual humans who speak it. To understand meaning as grounded is to challenge conventional postmodern assumptions about the arbitrariness of meaning. But rather than invalidating postmodernism, this insight confirms it at two of its most important points. First, to understand human rationality as grounded in experience is to undermine the view that meaning is a matter of the conscious intention of self-directing actors. Because that experience takes place in socially constructed contexts that are always anterior to any of us as individuals, we are inescapably situated in preexisting social practices and conditions that form both the grounds of intelligibility for and the horizons of our world. Second, to recognize that the subject is constituted by these cognitive, culturally grounded schemas is to realize that no political theory can be meaningful if it continues to focus on overt institutions and fails to understand the subject as the critical locus of articulation of any political, sociocultural system (Winter 1990a).

My purpose in making this highly unorthodox comparison between postmodernism and cognitive theory, like my discussion of Foucault, is twofold. First, I want to underscore that postmodernism is not an irrational rejection of all claims to reason, sense, or knowledge. Beyond that, I want to suggest that postmodernism provides significantly new ways to theorize and conceptualize the basic questions about law, politics, and society. What postmodernism offers is a set of new challenges. It offers a more sophisticated understanding of our practices and situation that calls in question many of the truths that have shaped and absorbed both mainstream and critical scholars.

point out, Merleau-Ponty's important phenomenological conception of the role of embodiment—*le corps propre* or the "lived body" (Merleau-Ponty 1962)—is too general and does not say anything about the historical elaborations of those embodied structures (Dreyfus & Rabinow, pp. 111–12). The recent cognitive accounts of embodiment not only provide much greater specificity, but are quite good about the different cultural and historical elaborations of meanings from those embodied structures.

Like all new knowledges, it is just a little frightening. But it is a challenge that we cannot afford to neglect.

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