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## Postemotional Law

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## Postemotional Law

### Abstract

How can one begin to make sense of the state of law in the present fin de millennium? Is law still on the trajectory of the so-called Enlightenment project? Is it a social institution which, in tandem with others, promotes progress, justice, and the triumph of reason over tradition and ignorance (see Gellner 1992)? Or, at the other extreme, has law also become postmodern? Such that, as truth becomes subjective, law becomes an empty gesture, reduced to a rootless, circulating fiction, along with other such fictions that are consumed by the nihilistic masses (see Rosenau 1992)? In this paper, I will argue for a middle characterization; one based on my book, *Postemotional Society* (1997), and that I call postemotional law.

## Law & The Sacred: Postemotional Law

Stjepan G. Mestrovic

How can one begin to make sense of the state of law in the present *fin de millennium*? Is law still on the trajectory of the so-called Enlightenment project? Is it a social institution which, in tandem with others, promotes progress, justice, and the triumph of reason over tradition and ignorance (see Gellner 1992)? Or, at the other extreme, has law also become postmodern? Such that, as truth becomes subjective, law becomes an empty gesture, reduced to a rootless, circulating fiction, along with other such fictions that are consumed by the nihilistic masses (see Rosenau 1992)? In this paper, I will argue for a middle characterization; one based on my book, *Postemotional Society* (1997), and that I call postemotional law.

Postemotional law begins to take hold in societies where (1) the collective consciousness and notions of the sacred, as depicted by Emile Durkheim ([1893] 1933) slowly disappear and where (2) 'other-directed' forms of social character, depicted by David Riesman in *The Lonely Crowd* ([1950] 1961) have almost completely pushed out inner-directed forms. The 'other-directed' character was perceived in the 1950s by Riesman as the ideal-type of a shallow, 'nice', tolerant person -- usually professional and middle-class -- whose desire to please others was the chief motivator of his or her life. I treat the postemotional as a 1990s extension of the other-directed character, such that he or she may come from virtually any of the social classes and any of the professions, including law. The postemotional is also much more international now that American culture has taken over so much of the world with its films, McDonald's restaurants, Disney icons, and so on. Contemporary 'niceness' is much more choreographed and ubiquitous than it was in the 1950s.

The term postemotional is deliberately ironic because it implies that contemporary, Western societies enjoy a surfeit of emotions; so many luxurious emotions, in fact, that the human person resorts to the blasé attitude (from Georg Simmel) as a mode of defence. Because of the internet, improved communications technology, and other phenomena that promote globalization and an interconnected world, the citizens of Australia, the USA and Japan can experience the horrors of Bosnia, the Impeachment trial of President Clinton, the plight of the Kosovars, and other emotionally-laden events from around the world as if they were occurring in their living room. But these emotions are near and far at the same time: precisely because they are so accessible and so close, the human person develops 'compassion fatigue' as a way of dealing with too much emotion. Other defensive strategies begin to take shape as well: because 'real' traditions were often racist, sexist and otherwise oppressive, westerners (in the cultural, not geographical sense) revel in 'synthetic traditions' that can be controlled. These range from the artificially created holiday for African-Americans called *Kwansa* to President Clinton's televised town-hall meetings, which are supposed to bring back the nostalgia of the days of Alexis de Tocqueville, but are actually carefully crafted and controlled events. Many other postemotional coping strategies exist, and I shall not discuss them all here. The important point is that postemotionalism is an alternative to both modernism and postmodernism. The postemotional character no longer really trusts in modern institutions (this is why so many people today are driven by fear and anxiety concerning retirement, warning labels on products they consume, being sued for mishaps they cannot control, and many other risks), but is not prepared to be comfortable in a nihilistic world in which nothing is true anymore and everything changes all too rapidly. Postemotionalism is a way of coping in a world that others characterize as 'high modernity' (eg Anthony Giddens (1990)) or as postmodernity (eg Jean Baudrillard (1986)), by controlling one's emotional reactions and commitments. Postemotional law is no exception to this general trend.

### The Disappearance of the Sacred

According to Emile Durkheim, author of *The Elementary Forms of the Religious Life* ([1912] 1961), the sacred is fundamentally emotional. More precisely, for Durkheim, an object is sacred because it inspires "a collective sentiment of respect which removes it from the profane or the pedestrian" (Durkheim 1961: 301). Durkheim's point seems to be that the sacred is the site of society's emotional effervescence so that the profane is the mundane, the dreary and unemotional. Furthermore, the sacred is somewhat arbitrary in that just about any 'object' (including persons) can be linked synthetically to the category of the sacred. Hence, the great variations among the world's religions as to what is sacred, from sacred

cows in India to taking off one's shoes to step into the sacred mosque for Muslims, the sacred host for Christians, and so on. But in the present *fin de millennium*, movie stars, rock and roll musicians and other celebrities seem to be 'sacred' according to Durkheim's definition. In these and other cases, the sites of the sacred involve what Durkheim calls "collective enthusiasms", "collective passions", "collective sentiments", "sensations", "respect", "passionate energies", "effervescence", "transports of enthusiasm" and "social life" (1961: 220-52). The sacred involves the "enthusiastic", the "emotional", "the concentrated", and "ceremonies", whilst the profane involves the "uniform", the "languishing", and the "dull" (1961: 246).

Durkheim felt that the institution of law evolved out of religion such that for a long time it participated in the sacred symbolism essential to religions. This helps to explain, from his perspective, the legal profession's ongoing concerns with the sacred oath, the black robe of the judge, the ceremonial nature of the trial, the notions of respect expressed in a ritualistic manner, and other elements that fit very well with Durkheim's overall depiction of religion and emotions. In summary, when one enters the courtroom, one is supposed to leave the profane world outside and enter a sacred realm.

But in *The Division of Labor in Society* ([1893] 1933) Durkheim also wrote that as societies modernize, the collective consciousness and collective efferevescence weaken. This means that societies become less capable than they used to be in traditional times of sustaining the kind of emotional enthusiasm characteristic of collective efferevesnce. Putting together Durkheim's scattered discussions of law, modernization, and religion, one arrives at the following conclusions: if the collective consciousness is disappearing, then, (1) the emotional life associated with traditional social life is also disappearing, (2) modern social life is characterized by splintered, fractured group mini-consciousnesses which promote divisiveness, not unity, (3) more of what used to be deemed sacred becomes profane or ordinary and pedestrian and (4) the law itself becomes more profane and therefore, postemotional.

What is sacred anymore in Western societies? It is practically impossible for the old-fashioned to teach their children that saying 'God damn it!' is naughty when they are exposed to such profanations daily on television. There are no 'days of rest' for most Westerners: Middle-class suburbanites routinely mow their lawns on what used to be called the Sabbath. Holidays in the USA are spent mainly on shopping, not reflecting collectively on the emotional meaning of the holiday. In general, traditional interdictions of contact (the profane should never touch the sacred), eating (for example, fish on Fridays), sight, word (certain words and sounds were sacred), breath, clothing, space (temples, sanctuaries) and time (holy days) are routinely profaned in contemporary Western societies. The television camera alone has profaned the sanctity and mystery of just about any phenomenon known or imagined by humanity. Postemotional characters can peer into the recesses of the vagina, the workings of the courtroom, travel with a 'smart bomb' as it explodes into a target, watch open-heart surgery on cable television, or 'visit' exotic tourist sites without leaving their living rooms. Instead of feeling bound together in social integration by collective meanings regarding holidays, Americans are torn apart by disputes over the various meanings of Thanksgiving (perceived as oppressive by minorities), Christmas, Easter, even the 4th of July. As the new millennium approaches, a definite 'Balkanization of the West' seems to be occurring (Mestrovic 1995).

The institution of law follows this general trend associated with the disappearance of the sacred. Thus, cameras intrude into courtroom trials and rob the courtroom of its sanctity. Especially following President Clinton's acquittal at his Impeachment trial, the 'sacred oath' is no longer seen as inviolable. However, even before this watershed event, competent lawyers in the west tended to assume that most witnesses lied on the witness stand. Staff bring coffee and soft drinks into the courtroom despite written interdictions against such behavior. More and more clients and observers wear clothing to the courtroom that would have been considered inappropriate in previous years, but this merely follows a tendency found in church attendance as well. In general, the courtroom has become a more casual, friendly, and 'democratic' place where agents still go through the motions of certain rituals and ceremonies (saying 'Your Honor', taking the oath, etc.) but without the sense of commitment, or of awe and respect, that such behavior entailed in the past.

Of course, many would hail these developments as healthy and democratic because they give more ordinary people access -- physically and symbolically -- to what was once deemed privileged and superior. This is true, but it is also true that with the disappearance of the sacred in general, and in law specifically, the law is being transformed rapidly into something quite different from what it was before.

## Beyond Other-Directedness

David Riesman is a lawyer by training and profession who turned to teaching sociology at Harvard University, albeit, without a degree in the social sciences. His book, *The Lonely Crowd*, became the best-selling book in the social sciences of all times, selling over 1.5 million copies sold world-wide. What I am calling the postemotional, post-sacred character can be read as an extension of Riesman's other-directed 'type', found in *The Lonely Crowd*. The other-directed type develops out of the inner- and tradition-directed types of yesteryear, and is different from them in relying upon the 'jury of one's peers' in matters of taste, knowledge, and action. If the sacred is disappearing or has already disappeared, then other-directedness becomes the typical way to behave in Western societies. This is because the other-directed type feels basically equal to everyone else, wants to be tolerant and to 'fit in', desires to come across as 'nice', is superbly adept at the use of language as a screen with which to manipulate self and others, and uses a metaphorical 'radar' to constantly assess the moods and opinions of others. It is easy to see that from President Clinton down to the most average American, other-directed types smile, want to be liked, and feel more equal to each other than previous generations of Americans.

Let me clarify some of the assumptions in my argument, with the realization that each of these assumptions is open to debate. First, the postemotional type, like Riesman's types, is an ideal-type composite and does not correspond exactly to 'reality'. Second, I am assuming, along with Giddens, Baudrillard, Riesman, and many other contemporary social theorists, that American culture is imperialistic and is slowly but surely taking over the rest of the world. Every Barbie doll sold in Iran, every McDonald's restaurant that opens in Croatia, and every Disney film sold in Africa, among other such developments, assists this new form of cultural imperialism. Third, the terms American and Western refer to cultural, not geographical or other factors used for analysis. Thus, I am assuming that Australia and Israel, for example, are highly Westernized even though they lie in the East geographically and next to cultures that are not yet very Westernized. But I am assuming also that this Westernization is fundamentally more of an Americanization -- the values of the USA, not North and South America -- of the world and less the influence of Britain, France, Germany, and the rest of Western Europe. These are among the premises for the argument being presented here, and many readers will take issue with them. Nevertheless, these premises help to explain in what ways I extend and modify David Riesman's argument.

In my book, *Postemotional Society*, I refer to President Clinton as the postemotional President who is well-suited to contemporary other-directed society found in the West and especially in the USA. The postemotional President Clinton is a lawyer in an Administration that boasts more lawyers than any other in US history. He has become the model for Tony Blair of Great Britain and for up-and-coming political leaders as well as lawyers of the future. His use of language and demeanor betray the postemotional lawyer's, charming, 'nice', and manipulative style. Thus, the President claimed that according to some definitions of sex and relationship, he did not lie when he denied having either with Monica Lewinsky. He was simply withholding information. He admitted to "misleading" others, but not to asking them to lie. Contemporary lawyers routinely work with the most emotionally charged events of life -- death, divorce, injury, crime -- but always in the least emotional manner possible. Each of these events used to be a site of tremendous emotional energy and collective effervescence, yet contemporary funerals are quick, divorces are practically routine, injury lawyers have McDonaldized (Ritzer 1995) the personal anguish by advertising on tv, and even the treatment of criminals has been routinized. And so it is with President Clinton's performance, in general and with regard to the Monica Lewinsky scandal: it is flawless, legally and professionally, but it lacks the real emotional fire of both love and contrition. But note that he and his Administration do something similar when it comes to foreign policy: They did not lie when they called Belgrade-sponsored genocide a 'civil war' although they 'mised' the world. They did not lie when they imposed "peace" in Bosnia, even though this "peace" has led to the *de facto* ethnic partition of Bosnia. They seemed determined when they wanted to impose peace in Kosovo, albeit right before NATO was set to celebrate its 50th anniversary in April of 1999, and they did not want their party marred by finger-pointing at massacres in Kosovo. And so on for Chechnya, Sierra Leone and other problem areas in the postemotional world.

I use President Clinton as illustration for this discussion for purely academic and sociological reasons: leaders generally represent the social character of their constituencies, so that President Clinton's postemotional style reflects the postemotionalism of the majority of Americans. The fact that he is a lawyer helps to illustrate further the direction in which postemotional law is heading as well as the

impact of a surplus of other-directed lawyers in Western societies upon the world. Finally, his Impeachment trial, as I mentioned before, is a watershed event in the history of law. Despite what commentators, pundits, and opinion-makers say for or against him, the fact remains that no American who ever has to take an oath on a Bible in the future will fail to think of how President Clinton 'got away' with not telling the whole truth.

In general, the postemotional lawyer is suited to a postemotional society every bit as much as dictators are suited to authoritarian societies. I see the postemotional lawyer as the harbinger of the socio-legal future with implications for the postemotional citizen and postemotional politics. In other words, everyone will soon have to learn how to deal with and navigate a new legal style that is suitable to the contemporary world and that is neither modernist nor postmodernist, but is something new.

In the remainder of this essay, I intend to sketch the broad parameters of what postemotional law and postemotional lawyers might be like in the future. These characteristics are intended to serve as possible hypotheses for future empirical research as well as for discussing how contemporary societal trends tend to impact law.

1. Postemotional law is "nice" and is no longer perceived as oppressive. Only a generation ago, most of the world's political leaders as well as lawyers scowled. Smiling, "nice" leaders and lawyers would have been considered weak or not serious in inner-directed or tradition-directed societies. In pre-postemotional societies, people used to like the authoritarian, serious appearance of politicians and lawyers. These old-fashioned types either ignored or defied public opinion polls. Transparently racist and sexist remarks were expressed openly in the street, courtroom, and the media. In the current *fin de siècle*, at least in postemotional, Western societies, much of that has changed. While many politicians and lawyers in non-Western nations still scowl and do not smile, successful ones such as Bill Clinton -- who is, let me repeat, both a politician and a lawyer -- smile and are regarded as 'nice' by their constituents. Tony Blair is a clone of Bill Clinton in this cultural regard and is the vanguard of the postemotionalization of European politics and law. It was possible to get really mad at a scowling President Nixon, but nearly impossible to feel rage at the nice President Clinton. This is why Americans continue to support President Clinton despite all the faults, even crimes, the Republicans allege that he committed. Postemotional society is a society without real opposition. If the opposition is perceived as 'not-nice' -- as is the case now in the USA with Newt Gingrich, the non-smiling Bob Dole and the scowling Republicans in general -- it will evoke fear, not support. Similarly, in the O.J. Simpson trial, the charming, other-directed, and effusive Johnnie Cochran was not only successful in defending his client but was well-liked by the crowds and the media. By contrast, Cochran's nemesis, the inner-directed prosecutor Marcia Clark, was too serious and hardly ever smiled. She lost that most analysts thought was 'an open and shut case'.

But it is not just the personalities of lawyers that are changing into other-directed niceness. The social character of law itself is moving in this same direction. Foreshadowing this momentous shift, Emile Durkheim argued that in moving from mechanical to organic solidarity, law moves from being repressive to being more tolerant in character. Michel Foucault also argued for a movement in law such that modern law attempts to control an individual's soul rather than punish his her or her body. For example, traditional persons were, and in many non-Western countries still are, stoned to death for profaning God's name by swearing, and they were and still are punished physically and severely for breaking oaths made in the name of God. But modern persons do not fear such sanctions. Using God's name in vain has become the staple of modern cinematic style and circumvents the law by being approved by quasi-legal agencies for certain adult age groups, or by excluding small children. And President Clinton has set a precedent for the hermenutic interpretation of perjury that will last into the next century: Most Americans indicate that they understand why he or anyone else would lie under oath when asked about personal matters. Oaths, vows, and other 'sacred' promises are broken more routinely in contemporary Western societies than they used to be in the past. These include marriage vows, commitments between employers and employees, and contracts. It is a short step from society's tolerance of divorce as the breaking of vows once treated as sacrosanct to society's tolerance of what used to be called perjury.

Finally, but still in the spirit of niceness and tolerance, new crimes are being created in order to preserve the social character of other-directed societies. Thus, the present *fin de siècle* has witnessed the proliferation of laws against the expression of hate, sexual harrassment, hurtful speech, and other

forms of meanness. This development is in tandem with a general movement in contemporary Western societies to 'stamp out hate', promote diversity, and foster tolerance.

2. The postemotional lawyer must be capable of holding one's emotional fire in postemotional society. Old-timers and rare inner-directed types who manage to hold postemotional society at a distance today exhibit behaviors that most Westerners find objectionable, namely: when presenting their views in settings that range from private relationships to courtrooms and television appearances, they shout, use their hands wildly to gesture, and sometimes turn red in the face or exhibit other physical symptoms as signs of emotional commitment to what they are saying. A generation ago, showing one's emotional fire was a sign of sincerity, even distinction. Who will ever forget images of inner-directed Khrushchev banging his shoe on the table at the United Nations? Or Hitler shouting madly at the Nazi rallies? In the current *fin de siècle* in the West -- and it is important to note that emotional fire is still exhibited in Eastern Europe, Islamic countries, Russia, and other areas outside the West -- the inability to hold one's emotional fire in check is the kiss of death when it comes to respectability. Everyone knows, and expects, that TV commentators, professors, politicians, ministers, doctors, lawyers and almost everyone in postemotional society must present the most emotional messages (death, catastrophe, joy, indignation) in the blandest terms possible. Postemotional society demands tightly scripted and controlled presentations of emotions in its courtrooms as well as other public places. This includes anger at dictators such as Saddam Hussein or Slobodan Milosevic who are said to break universal standards or even laws concerning human rights: the anger must be a carefully-managed anger that cannot be misconstrued as blood lust.

Woe to the contemporary prosecutor who holds up the head of the accused in the courtroom and asserts that he or she looks guilty! Such emotional and intrusive behavior was fairly typical even a generation ago, but is coming under increasing pressure and scrutiny from postemotional judges, as well as juries and journalists.

3. The postemotional lawyer is manipulative and is in turn manipulated by postemotional society. Lawyers have manipulated their clients, colleagues, and the law itself for many hundreds of years, of course. Yet pre-postemotional societies, and some non-Western societies today, had or still have rigid caste, class, and other hierarchical systems that demanded or still demand instant stereotypical and predictable responses to certain crimes. Inner-directed lawyers of by-gone days seem to have been guided by principles of what used to be called 'honour'. In *Democracy in America* ([1845] 1945), Alexis de Tocqueville regarded lawyers as a stabilizing factor in the democratic tumult of America because of the legal profession's conservatism and aristocratic temperament. Special Prosecutor Kenneth Starr seems to have been guided by this old-fashioned notion of honor, but his commitment to and self-professed love of the law fell flat on the American public who simply disliked him. His inner-directed zeal was interpreted as being a personal vendetta to torment the nice President Clinton. In the by-gone days of inner-directedness, a President might have denied an extramarital sexual affair -- had anyone dared to make it public -- and the 'sanctity' of his or her office would have been enough to deter further probing. But in postemotional society, where most people are other-directed and consider themselves to be everyone else's equals, and where few things are considered sacred anymore, manipulation becomes normative and authoritarianism is gauche. Thus, President Clinton's early denials of sex became the starting-point for further disclosure to the 'jury of his peers', namely, the public, which feels almost equal to 'Bill' in a democratic society.

But it is not just the President whose authority has been leveled this way in postemotional society. Western children now manipulate their parents for privileges that simply would have been unheard of a generation ago. For example, since corporal punishment is on the decline or nearly extinct in the USA, most parents and authorities use the 'time out' as punishment. In a 'time out', the child is sent to one's room or a room in a school. But increasingly, children today demand to watch their favorite videos on *their* television sets in their bedrooms during the time out. Or children negotiate their compliance with rules by extorting other concessions out of their parents, such as extending bedtime. In general, all authority -- from the President through lawyers and judges down to parents -- is perceived to be less sacrosanct than it used to be. Social relationships, from the most private to the most public, involve the explicit and implicit negotiation of 'deals' based on implicit or explicit 'agendas'. In the field of law, this constitutes more than the proliferation of plea-bargaining. It means, instead, that when faced with an unfavorable verdict from the court, Westerners tend to think automatically that they could win or "beat the system" on appeal or with a different lawyer. The law is not seen as sacrosanct, but as a tool to be manipulated in order to obtain what one desires.

4. The postemotional lawyer must possess superb social skills in order to succeed. I anticipate the rejoinder that the postemotional lawyer must have *different* social skills from those that were required in tradition-directed or inner-directed eras. Of course, this is true to some extent: all lawyers must possess some degree of social skills suitable to the eras in which they live. Here I am claiming something else, namely, that public relations have become an absolutely essential ingredient of all Western social life. Hence, the President of the United States as well as the government agencies that he controls all hire veritable armies of public relations experts whose job is to filter raw reality into something palatable for the masses -- to put a 'spin' on truth. But something similar is true for celebrities, CEOs, corporations, schools, hospitals, churches, stores, and most other social institutions in the West. It is understood that one 'slip-up', one 'misstep', one politically incorrect statement caught by the media can result in lawsuits, loss of public support, and eventual demise for one's public life.

As illustration, consider the reaction to Monica Lewinsky's first attorney, Mr. William Ginsburg, when he published an open letter to Special Prosecutor Kenneth Starr. The letter was emotional and combative, and was published in leading newspapers throughout the United States. In television talk-shows, other lawyers and legal experts disclosed that they felt Mr. Ginsburg was hurting his client with such honesty. A few days after the letter was published, Ms. Lewinsky hired new lawyers whose first public act was a 'photo opportunity' in which they remained mute in response to all questions, but smiled nicely. Journalists commented on their expensive suits and their good records in public relations.

Similarly, President Clinton's impeachment trial in the United States Senate illustrates this distinction between old-fashioned, inner-directed House Managers, who presented their case in a most combative and non-friendly way, versus postemotional, other-directed attorneys for the President, who presented their case in a much more gentle and tolerant way. The President's lawyers won. In general, when one considers President Clinton's impeachment trial along with other high-profile public trials such as the trial of O.J. Simpson, it seems to be the case that other-directed, public relations skills are an essential ingredient of being a lawyer in postemotional society. And this may apply to judges as well: Neither Judge Ito (from the Simpson trial) nor Chief Supreme Court Justice William Rhenquist (from President Clinton's trial) scored well with the public, and both displayed the manner of old-fashioned, inner-directed types.

5. Postemotional law is progressively losing its moral authority. This point is closely related to the previous observation about the tendency toward increased public relations. In President Clinton's impeachment trial, the Republicans tried to make a moral argument about the President's behavior as a terrible example for teaching children the value of honesty and other virtues. Their arguments seemed almost quaint, but in any event, they lost the case as well as the interest of the American public. Postemotional society indulges its members and tends to ignore bygone notions of sin and immorality: There are pilgrimage sites devoted to childhood such as Disneyland, Six Flags and others; most restaurants have playgrounds on the premises, from McDonald's to Mr. Gatti's pizza and many others; cable television offers the 24-hour 'Cartoon Network' and so many other channels devoted to children that previous generations--the last one raised on 'Saturday morning cartoons' -- could not have imagined today's variety; there exist department stores for toys such as Toys R Us; the internet has children's sites; there are computer CDs for children devoted to games as well as learning reading and other skills -- and so on. Yet today's Disney movies display cleavage; the internet is deemed by many as dangerous to children because it exposes them to perverts; and the Cartoon Network has an awful lot of advertisements aimed at adults even though it is purportedly a children's channel. Even Las Vegas -- referred to by Jean Baudrillard (1986) as "the great whore in the desert" -- has been refurbished to be oriented toward children and families. The notorious 42nd Street in New York City has also been Disneyfied. The prostitutes in Amsterdam are a tourist attraction in the present fin de siecle, with nuclear families -- including children -- filing past the glass booths to look at women whose profession was once deemed immoral. History will record that no society prior to postemotional society was as committed to the fun of childhood, nor as tolerant toward what used to be called sin and immorality.

In general, other-directed society is too tolerant to be able to muster inner-directed rage and indignation vis-a-vis actions that were once considered dangerous to the moral climate of children, families, and communities.

6. Postemotional law is backward-looking. On both the collective and individual levels of analysis,



postemotional society's energy is focused on the past, not the future. The postmodernists have uncovered some of this tendency in their writings on nostalgia and the recycling of music, fashion, films, and icons from the 1950s and 1960s. But this tendency extends far beyond popular culture. For example, some of the most significant political movements in the past few decades have been oriented toward the past: Following their education in France, the Ayatollah Khomeini tried to force Iran into the 12th century while Pol Pot attempted a similar, ancient, mythical 'utopia' in Cambodia, respectively. The Serbs slaughtered and continue to slaughter Muslims in the 1990s in the name of a battle that occurred in 1389! Greece opposed Macedonia's independence from Yugoslavia on the basis of a dispute over Macedonia's supposed role as the birthplace of Alexander the Great. The United States continues to suffer from its Vietnam Syndrome by avoiding all conflicts that can result in body bags, and engaging in short, winnable, 100% safe (for its warriors) wars. From Scotland and Quebec to Kurdistan and long-forgotten peoples in Mongolia and Siberia, old cultural referents are being revived at a scale that most modernists could not have envisioned a generation ago.

Postemotional law is a continuation of this general trend. For example, President Clinton's Impeachment trial offered the spectacle of nostalgia on both the political Right and Left. The Right tried to bring back the supposed days of law and order of a century or several centuries ago (the Puritan era), and Ken Starr evoked images of the cruel inspector in Victor Hugo's *Les Misérables* who pursued Jean Valjean relentlessly. The Republicans tried to make the point that this was a case about the sanctity of the law, not sex. On the other extreme, the Left tried to evoke the nostalgic image of the 1960s as a time of hassle-free sex between consenting adults. Their central point was that this was a case about sex, not law. But apart from these emotional throwbacks to history, little if any legal precedent or understanding was achieved that might be useful in the future.

7. Postemotional law is post-therapeutic and caters to a post-anxious society. David Riesman argued that social norms in tradition-directed societies were enforced through the mechanism of shame, in inner-directed societies through the mechanism of guilt, and in other-directed societies, through the anxiety of wanting to conform to the expectations of others. Until recently, it used to be chic to refer to ours as the 'age of anxiety'. But anxiety has left the therapeutic couch and entered the courtrooms and prisons.

In general, convicted criminals are no longer treated as 'guilty' in the full, psychological sense of that term. Being found 'guilty' is merely a postemotional throwback to a time in which the social group did try to make the criminal feel guilt for his or her crimes. Instead, contemporary criminals are treated as 'clients' who must be processed through the 'system'. Everyone involved in the system feels anxiety: The attorneys are anxious that they do not miss something that might result in a new trial or an appeal; the public is anxious about the criminal being released early and repeating the crime in their neighborhood; the accused is anxious that his or her self-image is not marred by the accusations levelled at him or her.

8. Postemotional law is one aspect among many of the striving to create fake communities. One of the most telling signs of postemotional society is the manner in which President Clinton's televised 'town hall meetings' are staged. The very fact that a town hall meeting of yesteryear has to be staged bespeaks the nostalgia and focus on the past discussed earlier. But it also bespeaks a need to fake a feeling of community even though everyone knows that communities are pretty much extinct. Additionally, the simulation of community is driven by the *anxiety* that someone or a group will disrupt the idealized and televised sense of community at the same time that one has to come across as an enabled, free agent. Hence, the participants in these town hall meetings are carefully screened; their questions are rehearsed ahead of time; President Clinton's answers are rehearsed ahead of time; and he gets feedback from small groups that rate him prior to the telecast. The result is a flawless depiction of community and harmony in America. It should go without saying that is a far cry from the spontaneous and unpredictable town hall meetings that used to occur in historical reality.

Similarly, political conventions are scripted and carefully controlled, as are most events that invite people to participate in a civic sense. The Presidential race between Bill Clinton and Bob Dole was scripted to an extreme degree. Synthetic 'town hall meetings' were *staged* for the television camera; party conventions were *scripted* for the television medium; the candidates' rhetoric was compressed into *sound bytes* suitable for contemporary television. Bob Dole was coached to smile and eschew old-fashioned, inner-directed expressions of passion while Bill Clinton seems perfectly at ease in the other-directed ethos of managed niceness that looks constantly to the electorate as a jury of his peers.

Everyone knows that these events are staged, but they go along with the deceit for reasons already covered: nostalgia, anxiety that something unpleasant might happen, the need for niceness, infantile regression, and so on.

Postemotional law is no exception to this general rule. One could argue that trials have always been scripted and choreographed to some degree, given the conservative and traditional origins of the law. While this is true to some extent, it is also true that all traditional gatherings, including trials of yesteryear, allowed for considerable spontaneous "collective effervescence" to occur in a social setting. A moving oration, a fiery defense, a passionate prosecution -- such events would leave nearly-permanent effects on towns and communities. But increasingly, in the present fin de millennium, the legal actors know that they are playing to a television camera or to an audience used to television. Television removes the participant from the personal, emotional participation in an event that used to be taken for granted. And with or without the television camera, the postemotional audience beyond the courtroom knows it has become the jury beyond the jury in the courtroom.

9. The postemotional lawyer must be master of the empty gesture. At a certain point in the impeachment trial of President Clinton, it was clear to everyone that there were not enough votes in the Senate to convict the President. But instead of voting to adjourn, the Senate went on with the videotaped deposition of witnesses and other aspects of the trial. Public opinion makers could barely suppress their boredom and sarcasm in covering the trial, because they knew that the US Senate was going through the motions of a trial with the outcome pre-determined. To what extent are most trials, and most politico-legal spectacles in postemotional society, also empty gestures? This is an important question to pursue.

For example, as part of its feigned indignation at human rights abuses committed by Serbs against Kosovars, NATO jets flew high over Albania -- so high that nobody could hear or see them -- yet one read that these flights were meant to be construed as 'signals' and warnings to Slobodan Milosevic of Serbia to stop persecuting ethnic Albanians in Kosovo. Clearly, Milosevic has not been getting that alleged message for a decade now. Was this silent, invisible threat by NATO jets a real threat or an empty gesture? Could it be that the message was really this: Slobodan Milosevic is our ally in this war against Muslims, Croats, Slovenes and others who seek secession? After all, if NATO and the Americans really wanted to threaten Milosevic, they could have used the tactics of the huge military build-up against Saddam Hussein -- specifically, a Tomahawk missile aimed at Mr. Milosevic's palace would have delivered a 'message'. But even in the Iraqi case, the American 'message' is ambiguous, given that the goals of military strikes do not include removing Hussein from power. Why? The most probable reason is that the West prefers Hussein to the leaders or groups who might replace him, and who might be more 'fundamentalist' or 'terrorist' in their orientation. Because the West cannot admit publicly that it behaves toward some dictators almost as if they were allies of sorts, it has to resort to various empty gestures, such as the NATO flight over Albania, to send false messages to be consumed by its Western constituents.

But could it be otherwise? Could postemotional society take tough stands regarding violators of laws domestically or human rights internationally, such as in Iraq, Serbia, China, and so on? No, because committing the US to more than empty gestures in the world would force Americans to make sacrifices they are not prepared to make: to take jury duty seriously instead of trying to evade it by not registering to vote; to lose sons and daughters in battles; to open Americans to the charge of committing war crimes by killing huge numbers of civilians; to pay higher prices for goods if China were punished economically, and so on. The postemotional response of the empty gesture is the only one that really 'works' in today's international politics, because it requires minimal commitment.

10. The postemotional lawyer must smile and have nice teeth. Consider Senator Bob Dole's sour image in the last Presidential campaign versus the sunny, other-directed, nicest President ever, Bill Clinton. No matter what Dole said or did, he could not shake the grumpy image he created in the American consciousness. Dole's advisers tried to get him to *smile*, but he couldn't get it right. This would be a fascinating research project, to determine precisely what goes into the smile in postemotional society that is just right. Bill Clinton has the just right smile. No matter how many scandals dog Bill Clinton, his ratings in the polls stay high because he is so "nice" and his smiling demeanor is somehow perfect. Take careful note of where and how the postemotional President smiles: with Nelson Mandela in Mandela's prison cell (is this a happy occasion by inner-directed standards?), with his wife at the very spot where African slaves were shoved into waiting ships (is this something to smile about?), at a

"roast" where he poked fun at his problems with women who accuse him of sexual advances, and so on. By all accounts, including the kiss-and-tell book by his former advisor, Clinton's was a studied, carefully crafted niceness that signifies something about him as well as the American society that he leads. It is simply to glibly dismiss the meaning of the smile as empty, as the postmodernists do, or to ignore it, as the modernists do. The smile in postemotional society should be taken very seriously. It is a central component of appearing 'nice'.

Having a nice smile goes with having nice teeth in postemotional society. History will no doubt record that no generation prior to this one had ever been as obsessed with clean, straight, pearly white teeth as this one. The nice smile is commensurate with the demand that the postemotional self must live in a 'nice' neighborhood, have a 'nice' family, go to a 'nice' doctor, have a 'nice' lawyer, and have a 'nice' life (not just a nice day). I contend that postemotional types seek out the nice smile and nice lifestyle because these signify that the Other is like 'us' -- anxious, tormented ways that are understandable, able to be manipulated in predictable ways, and ultimately safe or safer than the truly Other. The truly Other is the inner-directed type, the traditionalist, the fanatic, the fundamentalist, the terrorist, the symbol of chaos and rage that cannot be tamed, manipulated, or controlled. This is why Bill Clinton's ratings go up every time it is disclosed that he is 'like us' in America. This is why Newt Gingrich and the Republicans will never sway the postemotional type -- Republicans are terrifying in their non-smiling demeanor. This is why the friendly Slobodan Milosevic will never be stopped from brutalizing serious-looking non-Serbs who have serious-looking leaders.

And so on.

## Conclusion

The final lesson for lawyers is that they must not become the terrifying Other within the postemotional West. Examples of the terrifying Other include the Balkans, the Republicans, all terrorists and all the not-nice people, places, and events in the world. According to opinion polls, Americans simply cannot find many nice things to say about most of the people in the former Yugoslavia, the Republicans, and lawyers who still come across as inner-directed, among other groups who come across as not-nice.

Lawyers will have to convince postemotional types that they are 'like them'. But this involves a double hermeneutic, and some tricky maneuvering: One has to discern the simulated self-image of what the postemotional type yearns for nostalgically (namely, law and order, human rights, freedom, democracy, and so on) and the reality of what really motivates him or her, namely, a postemotional and postmodern heap of contradictory tendencies, including consumerism, hedonism, and a desire for the easy way out of everything. If the legal profession aims at delivering the simulated image of the West, it may lose in the long run because the West no longer *really* supports many Western ideals derived from the Enlightenment. On the other hand, if the legal profession aims at the cynical reality of the postemotional West by adopting public relations firms, training lawyers to be 'nice', becoming more manipulative, and in general, following the footsteps of Bill Clinton and Johnnie Cochran -- they *will* be liked by postemotional society and business will be brisk. But the cost will be great. The legal profession will have lost its soul.

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