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Source: *Theory and Society*, Vol. 23, No. 3 (Jun., 1994), pp. 327-366

Published by: [Springer](#)

Stable URL: <http://www.jstor.org/stable/657947>

Accessed: 06/08/2014 16:34

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Possibility of social critique in an indeterminate world

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To treat social and political questions normatively is to treat them in terms of “rightness” or “justice” or other notions of normative *correctness*. The claim to correctness is a claim to moral authority. Yet normative correctness can only be a matter of interpretation, of judgment; to judge is to interpret (unless we suppose the existence of objective and necessary criteria of correctness – a supposition I discuss below). The application of norms is itself a judgment, one ever problematic because ever contested by a variety of mutually incompatible answers to the question: what is the source and validity of the norms that an individual or group actually employs, of the norms that a community or society should employ?

Social systems in most liberal democratic states display great stability over time and a basically unchallenged validity at any given time. In such pluralist societies the great majority of citizens displays an uncomplicated allegiance to their society with only minor differences in the levels of that allegiance. But this stability cannot be located in what might be taken to be the determinate quality of social norms. Although few people today contend that social norms constitute a body of immutable principles, some might argue that normative principles are determinate in the sense of being more or less comprehensive, more or less consistent, more or less unproblematic.¹ On this understanding, determinate normative principles are objective, and determinacy is the condition providing for the possibility of normative principles being more or less transparent, consistent, and rational. Against this view, I argue that in fact *no* social norm is determinate in the strong sense of requiring someone following that norm to act in a particular way.

I proceed in eight steps. First, I offer examples of normative and epistemic indeterminacy. I then articulate a notion of critique as something

Theory and Society 23: 327–366, 1994.

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more than localism and less than universalism. Third, I develop my notion of social criticism as critique from a decentered standpoint. Fourth, I discuss the relativism of critique and, fifth, critique as persuasion not proceduralism. I then propose critique as a form of pragmatism and, seventh, examine the situatedness of critique. I conclude with several examples of substantive questions, briefly exploring various considerations relevant to the application of my position.

Examples of normative and epistemic indeterminacy

The ways in which social norms are indeterminate are many. For reasons of space I limit my discussion to eight examples. First, norms and normative systems function only partially. In part because of the piecemeal historical process by which normative systems are constructed, leading to an assembly of component norms, some of which are inconsistent (and some consistent), and in part because social life is characterized by many sources of social control, systems of norms function in an incomplete manner. They operate in some social contexts but not in others. A normative system provides a context or boundaries within which social actors make choices. It structures those choices in a broad sense without determining them in any specific sense. Correspondingly, the ends to which action is directed broadly structure the choice of norms. In this way, a normative system is always intertwined with the social order, shifting as the social order changes.

Second, norms can contain inconsistent premises. Any normative system is apt to be characterized by a large number of mutually inconsistent major premises: for every norm and resulting conclusion, one can probably find a counter-norm justifying a contrary conclusion.

Third, any one normative decision is subsumable under some competing norms. Indeed, any moral decision can be subsumed under an indefinite number of different general norms, much as an indefinite number of different curves may be traced through any single point. To make a normative decision is to choose among competing norms, all of which can fit many past moral decisions but each of which might urge different actions in the instant case. Put differently: no norm compels (or precludes) a particular action since any particular action can be incorporated into that norm, once re-interpreted.

Fourth, proceduralism does not lead to impartial normative decisions.

Proceduralism is not guaranteed by the correctness of whatever decisions come about in a procedural manner, because no particular method of justification yields a determinate procedure. No immanent moral rationality exists, within which moral thought and decision can be grounded. Procedural adjudication of normative questions is not inherently normative; proceduralism provides no means of distinguishing moral reasoning from, say, the narrowly interested instrumental rhetoric of everyday politics.

Fifth, the purely formal application of norms is impossible. Moral formalism is the notion that, in a purely *formal* process, the moral arbiter derives and applies norms whose content is completely independent of the process of their application: the arbiter applies or enforces a norm without contributing to or modifying the norm's content. But because norms do not provide guides for their "proper" application, the moral arbiter unavoidably makes a substantive interpretation in his or her application of a particular norm, thereby going beyond any formal application of the norm. Since none of the alternatives the arbiter has at his or her disposal is necessary, the choice of a particular alternative is likely to be guided by extra-normative influences. To apply a norm, the arbiter must make a substantive, not a merely formal, judgment.

Sixth, the meaning and application of norms are contingent. We have no a priori grounds to assume that any particular norm, normative system, or set of moral principles, is transcendent. We have no reason to assume that any norm refers back to something beyond the reach of time and change, to something based on some essential human nature or human purpose that might be disclosed once and for all by the right theory. Normative values are contingent, given by historical chance, embedded in culture and institutions that change only over generations. If the values that guide norms are contingent, then the meaning of a moral principle, like its application, can only be contingent, indeed ad hoc.

Seventh, the meaning of norms is always uncertain. The meaning of a moral principle is not stable but rather contextual because norms are not self-interpreting, and because no possible meaning of a norm can claim exclusive validity. Canons of normative interpretation cannot eliminate interpretative uncertainties. Canons are themselves general rules for the use of language. They use general terms that themselves require interpretation, and they cannot, any more than other rules, provide for their own interpretation. Definitions and interpretations of norms tend to be constructed in individual situations rather than

carried over from the past. Definitions and interpretations of moral principles are ongoing constructions. Just as the situation may be consulted to construct the meaning of a norm, so the moral principle may be used to define the meaning of a situation.

Individuals and groups also use norms to construct the meaningful character of behavior, to make sense of the behavior of others, and to make their own behavior understandable to others. In part we recognize and portray the patterned character of the social world by using moral principles as schemes of interpretation. Some actions of another individual (or of groups) are explained by their conformity to norms that are elaborated in an ad hoc manner, just as situations may be reconstructed in an ad hoc way to correspond to the meaning of the elaborated norm. Individuals and groups render moral principles usable by means of such interpretive procedures, for example, omitting some relevant information and assuming other information unquestioningly. Further, moral principles are insufficient as either explanations of, or directives to, action. Particular situations do not await us already marked off from each other, labelled as instances of the general norm, the application of which is in question; nor can the norm itself step forward to claim its own instances. The gap between norms and their context of application limits the normative order's determinative power. No possible meaning of a norm can claim *exclusive* validity, hence no norm implies one and only one kind of behavior.²

Eighth, norms are inherently incomplete. The specific application of a norm (from a range of possible applications) is context-dependent. Whenever a norm is applied, it must be applied within a specific social situation because no social situation is independent of the actors within it. The very invocation of a norm alters the situation because actors, norms, and situations ceaselessly inform and mutually elaborate one another. Norms, like actors and situations, do not appear except in a web of practical circumstances. Intertwined, the actor, norms, and the present definition of the situation constitute that situation, and no one of these elements can be abstracted out and treated as either cause or effect. Every norm is used and usable only within this web of practical circumstances. Because of actors' ever-shifting corpus of social knowledge and practical interests, actors never judge a situation once and for all; every judgment is only situationally absolute, based on the realization that some later determinations may change the certainty of the here and now.

The specific application of a norm is also inconsistent over time. The ways in which norms are used are neither automatic nor consistent. Following a norm is not a process of logical deduction yielding unambiguous conclusions; relevant norms do not merely emerge once a social situation is determined. If no norm can itself step forward to claim its own instances but always awaits contingent application, then norms *per se* cannot determine the specifics of actual conduct no matter how deeply internalized they are.

Now, to someone who sees social norms as something determinate, determinate epistemically and normatively, the thesis that they are in fact highly indeterminate will imply the impossibility of a non-immanent critique of any given society or community. For if social norms are normatively indeterminate, then by what norm can any specific society justifiably be judged or evaluated other than by a norm immanent to that society? For the application of any non-immanent norm would seem unavoidably arbitrary because unrelated to the specific society to which it is being applied. If the normative indeterminacy of norms derives from the fact that they are contingent in meaning and application, that they are inherently incomplete, that they contain inconsistent premises, that they operate in some social contexts but not others, that they do not admit of formal or purely procedural or otherwise impartial application, then solely the norms *internal* to a specific society or community would seem capable of validity. Under the circumstances of normative indeterminacy, internal norms would seem to be the only norms that might find acceptance within a community or society, since the norms of a particular community or society would probably be unpersuasive to any standpoint outside or beyond that community's contingency, incompleteness, and inconsistency. And if a society can be considered solely with regard to its own (contingent, incomplete, inconsistent) criteria, then solely a local critique of any given society would seem possible. Critique would then seem possible solely from a standpoint "centered" in the object of critique itself; the indeterminacy of all norms would seem to preclude the possibility of any non-local or "decentered" standpoint. Yet I argue that the indeterminacy thesis (in whatever version) does not imply that social critique can only be normatively idiosyncratic, subjective, or individualistic. I argue that a non-local, *decentered* critique of a society or community is possible to the extent that critique employs intersubjectively generated standpoints that are both decentered epistemically, and potentially universalist in their normative claims. I mark off a middle ground between localism and universalism, one that might be called either "enlightened localism" or "almost universalism."

Critique: More than localism, less than universalism

We cannot defend social arrangements by analyzing their individual and social consequences solely in light of local traditions, values, and practices. If local community values are the sole values to which one may appeal, then parochialism itself becomes a necessary predicate of “good.” Different values within the society or community will tend to be homogenized, or at least locally sanctioned values will appear as monolithic, even though in modern mass societies communities are heterogeneous in a variety of ways. If community values are not available for criticism by non-community values, then they cannot be available to anyone inside the community who wants to change them. If solely an immanent perspective is valid, then any dissenting member of the community holds a standpoint unacceptable to the rest of the community, for all minority norms and viewpoints within the community are immediately intolerable by the very definition of their minority status.

Nor can particular forms of life be justified by appealing to the values, norms, and ideals embodied in the cultural conventions and practices of the very society that is the focus of moral contestation. And from the moment moral rules, boundaries, and hierarchies *are* contested, the contestants exceed merely local critique inasmuch as the act of (discursive) contestation itself minimally implies a shared belief in procedures of argumentation and standards of adjudication that are potentially universalist.³ If particular social norms and ideals can be justified only ethnocentrically, simply because they promote the kind of society “*we*” happen to value and want to perpetuate, simply because it is “*our*” society, then, for example, no outsider could justifiably oppose slavery in the American South when slavery was still legal (except, of course, the slaves themselves, but qua slaves they are immediately excluded from the “*we*” anyway), nor could any insider oppose a repressive regime, current examples of which can be chosen from almost any part of the globe. If we cannot provide compelling reasons for the kind of society we want, beyond saying that it is *our* society from whose conventions and history we take *our* identity, then the status quo is “good” by definition – “good” simply because it exists, since localism can only point out different perspectives, but not judge among them. Localism is morally and politically problematic for other reasons as well. If all differences were recognized by law, then all established hierarchies, desirable or undesirable (by whatever criteria) would be beyond normative critique. Again, from the standpoint of

localism, all political justification can only be one form of manipulation or another, yet no one (no member of the local community and certainly no outsider) would have any reason to object to that manipulation.

Nor can “the view from nowhere”⁴ serve as a foundation for norms, since claims and counterclaims can be evaluated only if we assume the existence of a reality beyond all discourse about reality (as the empirical referent of discourse) and only if we assume the possibility of a decentered access to reality. Nor can “the view from nowhere” serve as the normative basis of ethics, politics, or law, because communal norms that privilege the conditions and perspectives of some members of a community may be inequitable and oppressive to other of its members.⁵ If no community or society is completely homogeneous, then no difference among its members can be completely negligible. If a community or society appears to be homogeneous, the conditions leading to that apparent homogeneity probably are neither fixed forever nor totally stable now. If a community or individual considers its own social, political, or moral judgments and actions to proceed from contingent conditions and perspectives, that community or individual can avoid assigning dominant status to what may be the merely particular conditions and perspectives of its judgments and actions, and can avoid blending out the claims of other conditions and perspectives.

If norms are a form of cultural practice, and cultural practices are historically specific, contingent, and ungrounded except in terms of other, prior, contingent, historically specific behavior, then each cultural practice does *not* have its own criteria for truth and falsity, its own institutional sanctions (*pace* Foucault).⁶ Otherwise the notion of contingent, historically changing, and culturally variable norms simply licenses the cynical thought that “who will do what to whom under the new pluralism is depressingly predictable.”⁷ Legitimation cannot be plural, each instance of legitimation warranting its own constitutive norms, with practitioners legitimizing their own practice. After all, if one appeals to local standards as the final moral arbiter, to whose locality is one appealing? The constitution of *local* standards is as problematic and subject to contestation as the constitution of *universal* standards. Moreover, how likely is it that every local member of a community or group helps determine local standards? How likely is it that every local member even agrees with all other members as to what those standards are? If disagreement occurs and adjudication is only local, then no adjudication is possible, since, from the localist point of view, every claim would be equally valid.⁸

Critique from a decentered standpoint

The alternative to a local standpoint is a decentered one, and a decentered standpoint is possible within a pragmatic approach. A pragmatic approach seeks an explanation that will satisfy some particular need or desire or interest. This need or interest is itself the internal standard by which to evaluate the approach. But all other standards, including external ones, are not therefore irrelevant. Conflicts among competing approaches can be adjudicated if non-internal criteria exist with which to adjudicate – even if those criteria are ad hoc (indeed, given the indeterminacy thesis, those criteria can only be ad hoc). Only then is adjudication possible not merely *within any one* approach, but *among different* approaches. Otherwise there would be as many “truths” as approaches, for each approach would have its own truth irrelevant to, and not criticizable by, all others. “Truth” and normative standards would be plural.⁹ By this approach, universal standards or justificatory strategies would be theoretically unconvincing, and politically or morally unconvincing.¹⁰

If the criteria by which we evaluate the truthfulness, accuracy, and ethical standards of a statement, theory, or social criticism are nothing but the consequences of that statement’s social and political aims, we regress to the prior question: By what criteria can we evaluate those consequences? If these criteria can only be local – for example, the interests of a particular social group or the critic’s own community – then pragmatism can only be ethnocentric. But if criteria can be extra-local criteria, then pragmatism can be decentered. Pragmatism appeals to consequences for criteria of evaluation. Insofar as consequences also need to be interpreted in a process that is ad hoc, pragmatism would seem to be an inherently ethnocentric approach. In fact, pragmatism is neither inherently ethnocentric nor inherently decentered; it can be either. But solely a decentered pragmatism can conceive of a society or community tolerant of diversity, disagreement, and minoritarian views. It offers us a means of preventing private concerns from blinding us to public concerns, of preventing narrow concerns from blinding us to broad ones, of preventing parochial concerns from blinding us to cosmopolitan ones.

The decentered alternative to localism is a standpoint somewhere between the individual’s idiosyncratic perspective and the world entirely outside, a perspective more extensive and more general than the former, less absolute and transcendent than the latter. Socially con-

structured knowledge is not the only alternative to transcendental knowledge, just as the autonomous subject freely choosing is not the only alternative to universalism. An analysis not transcendental might be historical; justification not universal and unconditioned might be restricted and partial, yet without being subjective or individualistic.

Language for example is used subjectively (because it can only be used and understood by subjects), yet is itself objectifying, universalizing, generalizing. (When we say “green,” we assume the listener will understand the same “green” even though no two patches of the color are exactly the same.) The activities of describing, analyzing, and criticizing are always homogenizing; human language cannot describe, analyze, and criticize without totalizing. Whether one describes behavior in a particular culture, such as a specific business or religious practice, or “world-historical” processes such as the development and spread of capitalism or secularization, one homogenizes or totalizes. Human language can grasp a group or culture or community only as something more than an indeterminate ensemble of narratives too complex, heterogeneous, and fleeting to be portrayed as a whole. Language can grasp the individual only as something not so complex, heterogeneous, or discontinuous to be capable of coherent representation in terms of identity, selfhood, and subjectivity.¹¹

The localist standpoint cannot distinguish statements that seek to realize self-interest from statements that seek to describe a state of affairs or a point of view (where these two categories of statements differ; in some cases they may coincide). Yet in everyday life, competent social actors claim to understand this difference and to evaluate the particular circumstances when one or the other would be more appropriate. The fact that the two types of statements are sometimes confused or conflated, or that statements of self-interest and statements oriented to describing a state of affairs sometimes coincide or stand in ambiguous relation, does not detract from the validity of the distinction. Only if the distinction is valid can we identify confusion, overlap, ambiguity, and manipulation in the first place.

The very process of mutual understanding that produces a decentered standpoint creates a normative or interpretive context distinct from the particular perspectives and self-seeking urges of concrete, socially and historically embedded human beings. An extrapersonal standpoint may arise from, yet be free of, deep interpersonal experiences. A decentered standpoint can evoke generalized or extra-particular

standards. Only by invoking such standards can one make one's argument available (and sometimes even persuasive) to others who stand outside one's own social group. Only intersubjective norms of inquiry can identify socially significant problems, clarify different understandings and misunderstandings, and identify and address disconfirming findings.

Objectivity is possible in both relatively unstable and in relatively stable communities. Of course, a community in which assumptions are widely shared and firmly in place will be more stable than a community in which assumptions differ, where agreement must be negotiated repeatedly. Yet even in the former, community stability is no less a contingent matter, one that can always be upset. For the objectivity of social critique is not a function of the critique's relation to the external world (in the manner of natural science). The objectivity of social critique is *cultural* objectivity.¹² Objectivity in a cultural sense refers to homogeneity: the more uniform a culture, the more "objective" its standards – but solely from a perspective internal to that culture. No matter how unified a culture is internally, its standards are not thereby "objective" for other cultures. And if negotiation is necessary within a non-uniform culture, it is all the more necessary among different cultures. The expression "different cultures" can also refer to the distinctions among communities and other sub-groups within any one society.

For reasons epistemological as well as normative, social actors continually need to engage in dialogue with one another. Only a self that can sometimes look beyond its sovereign subjectivity will be able to recognize the already existing relations of reciprocity. The decentered subject is not antithetical to relations of reciprocity, but rather is the *very condition* of such relations. The decentered subject is the very condition of intersubjectively generated and always revisable standpoints that are both decentered epistemically and potentially universalist in their normative claims. To the extent that these standpoints are possible, the normative indeterminacy of the social world does not preclude the possibility of its critique.

The relativism of critique

Such standpoints are relative. According to the relativist position, the world is continuously changing, various, and may be understood in a variety of plausible ways (though, of course, one cannot adopt all

understandings at the same time and still be self-consistent). Like every other position, the relativist one is contingent.¹³ But a contingent position does not deny the existence of an external reality, for the possibility of knowledge presupposes an external reality that can be known to some extent, if not absolutely. Of course, this presupposition does not provide any non-contingent access to that external reality. If the process of knowing is contingent, but presupposes an external reality, then one knows only contingently. At best, relativism can ground itself only contingently, not absolutely. Like any other position, it sees self-stabilizing confirmation and seeks to avoid self-destabilizing contradiction. But it does so without ever being able to achieve a final or ultimate or non-contingent confirmation. The standpoint of relativism is itself relative; knowledge of the contingent is itself contingent.¹⁴ Yet a relative standpoint can nonetheless possess explanatory power, and contingent knowledge of reality is nonetheless viable knowledge. We can ask of any narrative, scientific or otherwise: “Is it true?” and “How do we decide if it is true?” Although we cannot answer these questions definitively, we can put forth and criticize answers we find plausible, and explain why we adopt the narratives we in fact adopt and why we change those we change, and our answers need not be conclusive in order *not* to be pure fiction or false consciousness. Pragmatic epistemology evaluates conflicting perspectives by asking about their social and political consequences (which have to be interpreted in an ad hoc manner). A perspective may be evaluated according to such criteria as precision or conceptual economy, or the enhancement of empirical predictability, or the advocacy of social values or forms of life, or the generation of relevant policy-related information. This epistemology cannot itself adjudicate among these various ways of evaluation except pragmatically, hence contingently.

Human societies as a whole, and groups and individuals within them, regularly judge or prioritize epistemic standards that include empirical adequacy, explanatory comprehensiveness, quantitative precision, empirical predictability, logical coherence, conceptual economy, aesthetic appeal, practical efficacy, and moral acceptability. Individuals, groups, even whole societies judge epistemic standards nonconsensually, and revisions and qualifications are part of the “normal activity” of judging such standards. Although no such judging will ever be conclusive, uncontested, or satisfactory to everyone concerned, in a cultural sense such judging is necessary to human life, and is both useful and meaningful to enough people over long-enough periods to sustain both the belief, and the desire to believe, in the possibility of “correctly”

judging normative and epistemic standards. The apparent impossibility of ever achieving that kind of “correctness” (which may not exist) does not vitiate the strength or coherence of the belief in the possibility of correct judgment. In fact, the belief may have a regulative function without which the practical, ever-present necessity of making judgments could not be discharged.

But a world without absolutes need not be one where norms can be nothing other than force. If knowledge is simply equated with power, then communication and understanding are doubtful or unlikely, for if power and desire are the sole basis for knowledge, then knowledge is impossible. If the subjective and objective dimensions of knowing are sundered, neither is possible; if impersonal understanding and personal knowledge cannot be bridged, then decentered knowledge is unlikely. If all knowledge and discourse is merely an ethnocentric projection, then no knowledge or discourse can be a tool of social critique (*pace* Rorty).¹⁵ Epistemologically, there would be no possibility of offering anything like a cogent critical standpoint toward social realities. To claim that all knowledge and discourse is an ethnocentric projection is to conflate knowledge and power, thereby enthroning the reign of self-interest. Advocacy of change or reform could not have any but a self-interested basis. Self-interest alone would provide the rationale for making discriminations about the world and its consequences for our lives, for debating our various understandings and theories about that world. Self-indulgent and grossly partisan points of view would be the only viewpoints possible; knowledge and action would be possible only as manipulation.

For these reasons a viable normative system must be able to entertain criteria of truth distinct from its own.¹⁶ To entertain alternative criteria of truth is to reject reductionism, to employ a form of relativism. The claim to relativism is in part a claim that no single normative system exhaustively grasps an object domain, and that no social criticism can sustain a claim to encompass totally, to explain wholly, any phenomenon.¹⁷

Critique as (post-empiricist) persuasion not proceduralism

To endorse particularist interest as the primary criterion for evaluation is to rule out the possibility of understanding (and therefore cooperation) among individuals and among groups. If particularist interest is

the sole criterion for evaluation, then relations among individuals and among groups can rest solely on force, never on reason. Social science would be impossible, and human interaction doubtful, if a person of the X race (or religion, nationality, age, sex, or political persuasion) could not apply non-local standards to persons of the Y race (or religion, nationality, age, sex, or political persuasion).

To abandon the search for epistemological access to reality in a direct, mirroring sense is not to renounce the search for impersonal criteria of evaluation. To abandon the goal of a single ahistorical standard of truth is not to deny the very possibility of truth; a proposition can be true even if no procedure exists for demonstrating its truth in such a way that any rational person must concede that truth. Alternatively, truth might be defined as negotiated, consensual *agreements*, in principle revisable at any time. Then the sole test for our theories and interpretations cannot be “facts,” but at best something like their coherence with the rest of our beliefs.¹⁸ The activity of interpretation is then one not of demonstration but of *persuasion*. The persuasion of discursive arguments, as well as the rational criteria they imply, can only be *subjectively* compelling. They flow inside of schools and traditions, with more the movement of a conversation than the progress of a rational proof or an empirical test.¹⁹

Persuasion (like so many other means of reasoning) comes in different forms. One distinction among others is that between an empiricist and postempiricist foundation for persuasion. Three features of Mary Hesse’s account of natural science are relevant here when reformulated as social theory.²⁰ First, data (“facts”) are not detachable from social critique, for what count as data are determined in the light of some interpretation, and the “facts” themselves must be reconstructed in the light of interpretation. Social critiques are not models externally compared to society in some hypothetico-deductive schema, but are the way “facts” themselves are seen. For the social critic, social meanings are determined by the critique itself; meanings are constituted by theoretical coherence, not correspondence with “facts.”

Second, the validity the social critic asserts of his or her theory is *internal* (or ultimately circular), because what counts as “facts” are constituted by what the critic’s theory says about the interrelations of “facts.” Different critics’ accounts of the same event are highly variable and context dependent.²¹ Hence, we cannot use what critics say as evidence for what society is “really like” but need instead to consider the meth-

odologically prior question: how are critics' accounts of action and belief *socially* generated?²² After all, normative critique is underdetermined by evidence. More than one critique can fit the same "facts" or, put differently, empirical evidence does not provide firm grounds for accepting or rejecting any one critique. If critiques cannot be rejected or accepted on the grounds of the evidence brought to bear on them, then critics have great leeway in their choice of norms. If a variety of nonlogical and possibly social influences affect the choices critics make,²³ then we must put social explanations of critiques prior to logic and evidence and seek to explain the content of critiques as far as possible in social terms.²⁴

Third, normative judgments in social criticism are not more arbitrary than in scientific theories; they are subject to empirical appraisal yet are underdetermined by "facts." Because theories are underdetermined empirically, and empirical accounts are theory-laden, theories may be justified on value-related grounds.²⁵ Scholars of the natural world then invoke the pragmatic criteria of successful prediction and control; by contrast, scholars of the social world must look to ethical values and political goals.²⁶ After all, increased knowledge about social life does not usually translate into increased control over the social world. Greater understanding of society might generate greater technical control over institutions, increasing the "rationality" of behavior with regard to specific needs. This hardly redeems, however, the Enlightenment promise of generating ever-greater autonomy by spreading reason to all corners of society. Anthony Giddens notes how modern social life is characterized by its self-reflexivity;²⁷ but self-reflexivity cannot reduce the numberless unintended consequences of social (and private) life. We should not conclude that no stable, knowable social world exists, but rather than knowledge of the world itself contributes to its unstable or mutable character: knowledge is not certitude.

Quine asserts that any proposition can be held true if we make drastic enough adjustments elsewhere in the related system, and, conversely, that no proposition is immune to revision.²⁸ Epistemologically, the "myths" of physical objects and of gods are on the same logical footing. In neither case can justificatory procedures be anything other than conventions (hence contingent); we choose among procedures according to our various interests and purposes.

Were it proceduralist, my notion of "enlightened localism" or "almost universalism" would itself be epistemically indeterminate. Now, like

Hampshire, I acknowledge the problem of epistemic indeterminacy, the problem that every individual and every social group to some extent is “blind to many of the injustices of its time, because its own culture and education, supporting a particular way of life, represents embedded and distinctive features of a way of life as unavoidable features of human life in general.”²⁹ But, unlike Hampshire, I would not resolve this problem by positing universal aspects of morality leading to a notion of proceduralism as a universal constant, as “a necessary support of any morality.”³⁰ Nor do I agree with him that, because differences between ways of life within a single society or community do *not* contribute to a common good (but rather are buttressed by contrary and irreconcilable beliefs),³¹ a prerequisite for social peace and societal coherence is a minimum concept of justice underlying all the specific and substantial conceptions, independent of specific (and therefore divisive) conceptions of the good.³² My objections are three.

First, Hampshire’s notion of a transcendental proceduralism³³ arbitrarily identifies rationality with fairness, and fairness with procedure: “canons of rationality are ... the canons of fairness. [If] full procedure of discussion, and ... weighing of arguments, has not been followed, the final judgment is tainted with bias and unfairness.”³⁴ But if fairness means that “the reasoning that supports [a decision] has been adequate,” and the “relevant considerations have ... been impartially weighed,” then Hampshire’s approach cannot tell us what we most need to know: what “adequate,” “main,” “relevant,” and “impartial” mean. To say, with Hampshire, that a “decision [is] fair and reasonable only if the supporting procedure and process [are] fair and reasonable”³⁵ fails to explain the meaning of “fair” and “reasonable” – the very terms on which Hampshire’s conception turns.

Second, Hampshire’s notion of proceduralism claims to be universalist yet is, despite itself, based on such non-universal values of liberalism as the autonomy of the individual. Hampshire’s own model cannot sustain the claim that the “moral requirement to negotiate, to argue, to submit to adjudication under open and known procedures, whenever there is a conflict of ends,”³⁶ is not of itself a liberal requirement, but a universal moral requirement, equally acceptable to someone (for example, the Pope) who makes inflexible supernatural claims, or to racists and xenophobes hostile to other races or to foreign ways of life. Jeffrey Stout more persuasively claims that justice entails more than liberal fairness, which eschews merit for procedural protections of individual liberty. But one can imagine, for example, “institutional settings where

imposing reasonable limits on competition among conflicting conceptions of the good serves widely shared and justifiable ends. Yet fairness must leave room for other considerations, including desert, where the ends sought within a particular social practice matter more.³⁷ In other words, any viable proceduralism contains a substantive component; pure proceduralism is not a viable form of social critique.

Third, Hampshire cannot reconcile his notion of transcendental proceduralism with his conviction that we cannot know whether a practice, abstracted from its social and historical context, is just or unjust.³⁸ Even if one accepts the notion of a minimum concept of justice (which I do not), it could not be discovered by entirely abstract arguments. By themselves universalist, abstract arguments cannot render “a determinate conclusion about the justice of a particular social practice unless ... the argument can refer to prevailing conceptions of justice ... as the starting-point of the argument.”³⁹ After all, says Hampshire, abstract principles of justice underdetermine what counts as equal and fair in any concrete context of negotiation: “But the parties who enter any negotiation are not inventing the practices for the first time and their expectations of just procedures are based on precedents that fit the present context.”⁴⁰ In short, Hampshire’s notion of proceduralism is irreconcilable with his acknowledgment of situated critique: “custom and historical circumstances dictate a host of specific conditions of fairness governing any particular negotiation.”⁴¹ He asserts that different moralities “recognize that their conceptions of the good are in some respects incompatible and mutually hostile, and that this must be so, if their conceptions have any specific content.”⁴²

For these reasons, my notion of “enlightened localism” or “almost universalism” is not proceduralist. Nor is it empiricist: I would argue that “facts” are theory laden; what we take to be evidence is shaped by our theories and their constituent concepts, other related conceptual schemes, and our normative presuppositions. Knowledge is not a matter of representations that stand in privileged relations to reality. Quine and Sellars⁴³ make clear why an account of the nature of knowledge can be, at most, a description of human behavior. Following Quine and Sellars, Rorty argues that epistemic authority is to be explained by reference to “what society lets us say” rather than to inner, privileged representations or discourses, whether of the natural or social sciences. “[N]othing counts as justification unless by reference to what we already accept ... there is no way to get outside our beliefs and our language so as to find some test other than coherence.”⁴⁴ We can-

not justify claims to knowledge or truth other than by appealing to specific social practices developed over long periods of time. We cannot arrive at ahistorical standards of rationality and objectivity because no permanent criteria or procedures exist to which all disputants could univocally appeal for adjudicating arguments.

The respective ideas of Hesse, Quine, Sellars, and Rorty are anti-empiricist or post-empirical in tenor. Post-empiricism also includes the notion that theory-neutral observations are impossible; that systems of deductively linked laws cannot be the highest ideal of scholarly explanation; that science itself is an interpretive endeavor to which problems of meaning, communications, and translation are immediately relevant.⁴⁵ Post-empiricism rejects the Cartesian duality of objectivism and relativism. The proposition that no neutral algorithm exists for choice among theories⁴⁶ does not imply the irrationality of science; scientists make discursive arguments to support their approach and conclusions over competing ones. These reasoned arguments are based on extended communities of inquiry developed over extended periods of time. Appeal to scientific criteria is no less a matter of persuasion than appeals to non-scientific criteria.⁴⁷

On the other hand, the post-empiricist approach cannot, by itself, address such crucial questions as: to which social practices are we to appeal? How do we discriminate the better from the worse? Which ones need to be discarded, criticized, and reconstructed? Granted the absence of any transhistorical criteria, are there nevertheless some criteria for criticizing, evaluating, and improving or abandoning our practices? In short, while post-empiricism properly stresses the ethical and political factors that inform social science, it provides no means of assessing competing values. To overcome this take-it-or-leave-it quality of post-empiricist thought I offer a pragmatic account of how competing values may be assessed (and, indeed, probably are assessed in many concrete instances).

Critique as a form of pragmatism

To some extent, critical reasoning is always bound to authority in the sense of ascertaining the lines of authority in previous critiques, in normative rules, in analogies, as well as in normatively “accredited” sources that may have issued citable pronouncements – and then cobbling and rationalizing these “authoritative” materials to the critic’s

purposes, intuitions, and beliefs. Yet if authority were hopelessly politicized, then the *ultima ratio* of norms could only be force.⁴⁸ Disputes between “groups that want to make inconsistent kinds of world” would be resolvable by rational rather than forceful means only if epistemological contents, as well as normative ones, can be provided apart from the self-interests of any particular group or individual. If such contents cannot be evaluated in a relatively impersonal and rational way, then social criticism is possible on the basis of force alone.⁴⁹

But the reduction of norms (as well as morality and rationality) to force makes norms impossible. On the contrary, in a world of epistemic indeterminacy, rationality and morality *are* possible, if only in the thin sense allowed by pragmatic theory. The thesis that the social world is epistemically and otherwise indeterminate does not lead, ineluctably, to solipsism. If no rule is determinate, “true” propositions about the world are still possible, since “reality” can be determinate even if our knowledge of it cannot. Although we will never know in any ultimate sense whether a particular proposition is “true,” the less-than-ultimate ways in which we can postulate truthfulness are very often adequate to serve us pragmatically in coping with the world on a daily basis. Even if most of our shared beliefs are not “true” in some final sense, at any given moment we cannot know otherwise.⁵⁰ And if most of our beliefs are “true” in this sense, we often have no compelling reason to entertain alternative worldviews that cast doubt on our current beliefs, especially those held on a community-wide basis. (The social critic, of course, may be the exception to the rule; he or she is typically dissatisfied with current beliefs, and may be suspicious of any number of beliefs held on a community-wide basis.)

To use such community-wide paradigms, we do *not* need to know everything about them, as suggested by an example from the more formalized and rigorous field of natural science: “Scientists work from models acquired through education and through subsequent exposure to the literature often without quite knowing or needing to know what characteristics have given these models the status of community paradigms. And because they do so, they need no full set of rules. The coherence displayed by the research tradition in which they participate may not imply even the existence of an underlying body of rules and assumptions that additional historical or philosophical investigation might uncover.”⁵¹ From a pragmatic stance, the social world is rational not because it has some ultimate foundation (it hasn’t), but rather to the extent that it can place any of its rules in question (though of course not *all* of its rules at the same time).⁵²

This pragmatic notion of “truth” challenges Rorty’s (differently pragmatic?) concept of “objectivity” as nothing more than conformity to current norms: “the historicist sense that this century’s ‘superstition’ was the last century’s triumph of reason, as well as the relativist sense that the latest vocabulary, borrowed from the latest scientific achievement, may not express privileged representations of essences, but be just another of the potential infinity of vocabularies in which the world can be described.”⁵³ Rorty posits a more or less homogeneous, unified, consensual set of norms, but no such homogeneity, unity, or consensus can be shown to exist. It is the case, however, that insofar as individuals, groups, or a community share a language (or at least one translatable language) and some aspects of a way of life, those individuals, groups, or community are likely to share some standards of meaning and value. To agree (at least partially and sporadically) on standards of meaning and value is to possess (at least partially and sporadically) preconditions for the possibility of agreement on some normative questions.

Moreover, perhaps some forms of moral and practical reasoning are shared, especially if such forms are not specialized or do not require specific training. Hampshire, for example, maintains that “methods of adjudication and arbitration and negotiation are the outward equivalents of the methods of thought that everyone employs to some extent, and in proportion to his or her rationality, in inner debates.”⁵⁴ Similarly Posner argues that “there is no such thing as ‘legal reasoning.’ Lawyers and judges answer legal questions through the use of simple logic and the various methods of practical reason that everyday thinkers use. Because of the law’s emphasis on stability, the scientific attitude is not at home in law.”⁵⁵

A pragmatic theory can explain the social world’s empirically observable disorder, internal contradiction, and indeterminacy without having to conclude that a society or community is normatively illegitimate, indeed incapable of legitimacy or any other notion of normative coherence. Normative indeterminacy need not threaten the possibility or legitimacy of a society or community. Perhaps it even provides (and explains) the desirable flexibility that a social system needs to function in the first place. Yet normative indeterminacy does not preclude the very possibility of social critique, nor does it preclude the possibility of a social or otherwise non-immanent critique of any particular community or society. Even though they are non-foundational, the pragmatic notions of truth, objectivity, and validity do not imply normative nihilism. On the other hand, Posner⁵⁶ and Rorty⁵⁷ rightly conclude

that pragmatism has no inherent political valence.⁵⁸ But this conclusion does not mean that if pragmatism is normatively neutral, then all fallibilistic, pragmatic critique of the social world is impossible. Critique presupposes a standard against which something is criticized; yet to be normatively neutral does not mean *not* to have a standard, or at least to suspend the standard the critic would otherwise employ. It means that the particular standard employed in any given instance is contextually given, according to consequentialist considerations. A pragmatic critique has no *transcendent* standards, but rather situational, “local” ones.⁵⁹

The situatedness of critique

Pragmatism can reject both a metadiscourse articulating the criteria of validity for every first-order discourse, and a naturalized epistemology that merely describes the status quo and surrenders all normative claims, for a notion of a situated social criticism that can account for its own possibility. On the one hand, the view of the social critic is never “the view from nowhere in particular,” but always the view of an individual or group situated somewhere, in some culture and society and in some historical context.⁶⁰ On the other hand, no single set of constitutive criteria exists in terms of which complex social practices may be understood.⁶¹ Situated criticism must not assume that the norms of a culture are so univocal and noncontroversial that the critic can appeal to them unproblematically, without first having to evaluate them critically. Even if situated criticism is sensitive to the essential contestedness of culture and the need to examine critically cultural norms, that examination is itself culturally and historically situated. Criticism and its self-clarification are situated and do not require foundationalist thought claiming to articulate the ahistorical and transcendental criteria of their validity. Situated criticism does not preclude general norms, but rather emphasizes that these, too, are situated.

To be sure, “situatedness” is a problematic concept. On the one hand, it cannot mean “parochial,” that is, merely the individual’s or group’s or community’s standpoint. On the other hand, it offers itself as a critique of universalism: a standpoint disconnected from local understandings can be unattractive because potentially manipulative of the local community, its culture and understandings. Situated critique must be more than parochial, and it can only be less than universal. Yet how can standards be both internal to a society yet also properly critical of that

society? A critic who is connected to local understandings, a critic who lacks an external standard, may not have sufficient critical distance to his or her society. Yet a universal (or almost universal) normative standpoint recommends itself as distanced and potentially critical, but is probably impossible to derive. It cannot be derived even from what appear to be almost universal prohibitions against certain types of behavior (deceit, betrayal, brutality, and murder, for example). Systems of norms are both more than, and different from, such prohibitions.

Just as normative systems are partly shaped by such prohibitions, so the social critique of normative systems is partly shaped by the existing morality. But if critique of the status quo can begin from principles internal to the status quo, it must also go beyond those principles if it is to be properly critical. Social critique of a local morality can begin with standards immanent in that morality, but it must exceed them as well. In exceeding them, critique neither ceases being situated, nor starts being universal. It does not cease being situated because it cannot escape the conditions of collective life, including those (like parochialism) that discourage critical perception. And it does not begin being universal for the same reason.⁶² Critical distance, yes – but not absolute distance in the sense of “outside,” “independent”; detachment, perhaps, but radical detachment is no prerequisite for social criticism. The unanswerable question is: how much distance is critical distance? But at least we know that the calibration of critical distance is fine, not rough; that it occurs in “inches,” not “feet.”⁶³

Now, it may be that the thesis of epistemic and normative indeterminacy is not “economic” for everyday purposes because it suggests that the world is much more complicated, and that we humans are much less in control of it, than we probably imagine on an everyday, commonsense level. Indeed, it may be that, in many instances, individuals and groups and even whole societies function more efficiently (or at least less stressfully) in situations of perceived clarity and control. But while a social theory must take into account the self-understandings and beliefs of participants, its validity need not depend on agreement with those self-understandings and beliefs. My notion of pragmatic critique seeks to explain how, if the indeterminacy thesis is valid and yet few participants accept it, social criticism is nonetheless possible.

But the question remains: how can we know that a decentered, relativist, pragmatic, and detached approach to social critique is not just another form of localism? Facets of Walzer’s work provide a foil (in

many ways sympathetic) against which I can formulate a response. Walzer's concern that critical distance not become radical detachment leads him to a social criticism that is contextualist and experience-near. Such critique wants a critic so involved as to be a virtual participant (for example, in debates internal to the criticized social practices, or contested community norms, or legal texts calling for interpretation). But for Walzer, engaged criticism is nonetheless criticism from a certain distance: "Criticism does not require us to step back away from society as a whole, but only to step away from certain sorts of power relationships within a society."⁶⁴ Walzer counsels both proximity and distance, as in his notion of justice as a search for principles internal to each distributive sphere (here we have proximity), yet allowing no one's standing in a given social practice to be undercut by one's standing in some other practice or in some institution's power structure of an institution (here we have distance).⁶⁵ But Walzer does not seem to realize that the line between distance and detachment is indefinable, hence that forms of criticism cannot be distinguished from each other (as Walzer suggests)⁶⁶ in terms of their practical effectiveness in bringing about social change: "Success in criticism has more to do with the place or standing of the critic than with his theory of society or political ideology." Walzer cannot support his notion of critical internalism by appeal to competent participancy – a critic's "place or standing." After all, how does a critic determine which effects are the results of power and which are not? A critic concerned with consequences need not require that he or she already share something in common with the participants in the practices or institutions under examination; rather, the critic may attempt to *create* shared points of moral or cognitive concern. Engaged criticism need not approximate participation in existing societal practices or institutions. For example, loosening oneself from those facets of social practices, institutions, or traditions inflected with power requires judgments about competing claims about one practice or another, and some of those claims may well be external to the participants' standpoint.⁶⁷

Nor does social criticism depend on the findings of social-scientific research, theoretical or empirical. (If normative critique or research in social science could not proceed without first achieving epistemological accord, neither critique nor research would take place.) We need no secure epistemology or normative theory from which to sally forth and analyze the world. Nor does social criticism consist – as Walzer contends – entirely in "elaborating existing moralities." Internalism becomes self-defeating when critique leads critic into an infinite regress

of ever smaller circumscriptions of culture and identity, with ever slighter capacities for critical self-scrutiny. Internalism fails by Walzer's own lights if it merely legitimizes the "easy comforts of being ourselves."⁶⁸ Internalism threatens to trap the critic within the resources of his or her own cultural particularity, whereas social critique in an indeterminate world is possible only as a self-reflexive, hence self-distanced and not radically internalist exercise. Self-distance and self-reflection provide a hedge against the possibility that a decentered, relativist, pragmatic approach to social critique might be simply one more form of localism.

Examples of considerations relevant in application

I conclude with a number of substantive examples of how my position provides ways of moving beyond relativism – ways neither foundational nor dogmatic but rather pragmatic and decentered, intermediate rather than absolute or relative. In providing examples, I emphasize that my position is self-limiting in holding that there is no one "right" approach, no one single answer to questions of social criticism. Moreover, my position is applicable only by participants, and not from the putative God's-eye view of the theorist (no such view is possible); "enlightened localism" is still localism. Hence the following examples can only be suggestive, not prescriptive, of how the theory might be deployed: the examples offer possible considerations relevant to my perspective when confronted by substantive questions. My approach seeks direction through questions such as: What need or interest is to be satisfied? How might a critic generate a decentered standpoint distinct from particular perspectives or self-seeking urges? What relations of reciprocity already exist, and might they suggest a critical stance located *beyond* localism, yet *this side* of universalism?

1. *Immigration and the right of residence*: Should a community or country allow unrestricted immigration? One might argue that freedom of contract, without political restraint, implies an international society as a world of neighborhoods in which individuals move about freely in pursuit of private advancement. The sole business of state officials would then be "to maintain order over [a] particular territory ... but not in any way to determine who is to inhabit this territory, or to restrict the enjoyment of its natural advantages to any particular portion of the human race."⁶⁹ The critic needs to ask: What is "the local" here, who constitutes the "community"? Can the critic simply distinguish the

competing goals of those already resident in a particular place, and those who seek residency there? Perhaps the former define their needs as including the preservation of a particular way of life, of maintaining employment opportunities, or perhaps of containing local population density. The latter might identify their needs as the pursuit of a better life, of cultural or economic alternatives, or perhaps as refuge from political or religious oppression at home. In addition to competing goals, the critic might identify reciprocity (not only *economic* reciprocity) between residents and non-residents, for example, in relations of mutual dependence; relations of reciprocity might offer a decentered standpoint for critique. But does the fact of mutual dependence in any way imply a mutual right to satisfy that dependence (through trade, for example)? Who decides the acceptability of forms of satisfaction? Can the critic move from this consideration to a vantage point of an “almost-universalism,” for example, economic (and other) interdependency, and perhaps the consequent desirability of mutual rights to the satisfaction of such inter-linked needs? Clearly the residents are justified in participating in answering these questions – but not solely residents (otherwise we institute parochial localism). The critic must also ask: Should would-be residents also participate in relevant deliberations, and if so, which of those individuals or groups, and participation to what extent?

Alternatively, the critic would first consider how literally the term “local” should be understood. Might the notion of unrestricted immigration (in the sense of the passage quoted) derive from a dogmatic understanding of “local,” a deduction from utilitarianism? A non-literal understanding of “local” might focus not on residents and potential residents but rather on communities with no interest in a particular locale. Such a community might be defined in terms of its understanding of “fair” and “just” treatment of groups or individuals in a particular situation. For example, residents of North America may favor or disfavor the current immigration policy of re-united Germany, just as residents in one part of the United States may support or oppose granting entry to potential “economic refugees” from Haiti seeking residence in some other part of the United States. In short, the critic might begin by considering if the notion of “localism” need be understood spatially or temporally. Is the concept of “cosmopolitan localism” oxymoronic – or might it be ascribed to a group delimited in non-geographic terms, and whose ideas compete or conflict with those of other, similarly delimited groups?

2. *Welfare*: “Government is a contrivance of human wisdom to provide for human wants. Men have a right that these wants should be provided for by this wisdom.”⁷⁰ With respect to questions of political participation, the critic might ask: Is the wisdom in question that of a political elite or that of the community as a whole? The relevant need here is that of the whole people, not that of the elite. The critic might ask: Can an elite best serve the latter’s need – or can the whole citizenry best provide for itself? “Human wants” are presumably the wants of everyone; but the provision for such wants may generate various privileges – for example, those of decision-making, say, of apportioning burdens and benefits. To possess privileges is to be some kind of elite. For practical reasons of efficiency, on the other hand, a specialized group (a bureaucracy, for example) with real power might be in the best interests of approximately everyone, of the massive non-elite. But the critic may be unable to establish some local standpoint (unless it be that of already existing elites – a potentially suspect vantage, given the likelihood that any elite may always seek to preserve its privileges). A decentered standpoint, on the other hand, might be located in considerations of the satisfaction of needs. The non-elite probably has a *self-directed* interest in satisfying needs (its own needs). To what extent does the elite in question have *other-directed* interests (namely in the satisfaction of the needs of others)? Of course, satisfying other-directed interests may generate its own rewards, such as power, recognition, wealth, if not altruistic satisfaction. But for the whole people, identifying the best means toward satisfying self-directed interests might be the guiding question. And the answer to this question might well be: by means of an *elite*. The critic may expect greater difficulty in identifying a decentered standpoint for the elite itself, given experience-based suspicions about any claims to purely altruistic motivation. Can all other possible claims only be self-seeking (hence centered rather than decentered)?

3. *Consumption and personal identity*: How should we evaluate the fact that in many contemporary communities the normal activities enabling individuals to see themselves (and to be seen by others) as full members of the community are becoming activities of consumption, where money is necessary for vastly more than such items as food, clothing, housing, appliances, and transportation? “The purchase of all these commodities in turn allows the achievement and day-to-day living out of an identity as an at least ‘average American [or West European or Japanese].’ ... When people are not protected from this inexorable dynamic of money economies by some local cultural enclave, they can-

not fail to define themselves most basically in terms of their access to all that money can buy.”⁷¹ The critic might ask: On what grounds (and in whose name, and for which community) might someone argue that the “commodification” of personal identity represents a problem, an undesirable development? The critic might postulate a need for personal identity, something along the lines of: Humans need a sphere of life free of economic imperatives (because people are not things to be treated instrumentally or strategically, unlike commodities). But the critic must then address such questions as: Whence this definition of human beings? And does the individual have defensive rights vis-à-vis the economy providing him or her with a personal sphere in which to take responsibility for the structuring of his or her own life? Can the critic identify a general standpoint from which to criticize excessive encroachments by economic imperatives upon this sphere of freedom? Criticism could be directed at preserving the citizen from having to behave in a certain way, or from being subjected to restrictions on identity or social recognition. The critic might also consider whether sanctions or restrictions of economic activity permissibly encroach upon the economic sphere. The critic might identify competing “needs” of the market, of the economic freedom that (one hopes) might benefit most members of the community, as well as the less generalizable interests associated with the livelihood of those more directly interested in relatively unrestricted economic activity (the business sector, for example).

4. *Office and performance*: If conventional performances fail to serve the purpose of a particular office, might the performer be bent to his or her proper task? Should, for example, fee-for-service physicians be replaced by “functional health teams” whose members would be prepared to “adapt their skills to consumer needs rather than to shift the consumer to another health worker as a professional expediency”? Here the physician “would be prepared and willing to assume ‘nursing’ roles when warranted and conversely the nurse to provide treatment if appropriate.”⁷² The critic might consider that requirements of an office pose demands on the performer, while the performer has his or her own needs, and that conflict is always possible between the competing needs of provider and consumer of services. Ideally, the relationship would be mutually beneficial, for example, employment for the provider of services, the satisfaction of needs for the consumer. Perhaps the critic could win a decentered standpoint from considering the existing reciprocity between providers and consumers of services. Of course, ideally, the two would dovetail, but if they don’t (as is likely), the

critic might even analyze the situation from a standpoint oriented toward *creating* conditions for the improved coordination of the provision and consumption of services. The critic might construct a quasi-universal standpoint in the notion of the mutual satisfaction of needs.

5. *Distribution of public burdens*: Should citizens be allowed to serve their country or community with their money in lieu of their persons? “When it is necessary to march out to war, they pay troops and stay at home: when it is necessary to meet in council, they name deputies and stay at home.... In a country that is truly free, the citizens do everything with their own arms and nothing by means of money...”⁷³ A critic might think of a proper distribution of public burdens in terms of a balance of benefits and burdens: those individuals who benefit from public services usually depend on other individuals who bear the burden of providing those services. A proper balance might be one that sought to preclude unfairness in this “exchange,” from which notion the critic might win a decentered standpoint: benefits and burdens imply each other; both are necessary (needs want to be satisfied, while their satisfaction inevitably imposes costs of some kind). From this standpoint, the critic could criticize individuals or groups enjoying special status (such as that granted by wealth, power, or connections) and who avoid assuming their “fair” share of public burdens. And the critic might now be able to do so from a standpoint that the criticized individuals themselves could understand and perhaps even accept.

6. *Compulsory education*: If a child’s mind displays no desire for high cultivation, should the minimally educated child (however defined) be released from any further obligation to attend school on the ground that *its* mind alone knows what is best for it? “When a child has learnt its social creed and catechism and can read, write, reckon, and use its hands: in short, when it is qualified to make its way about in modern cities and do ordinary useful work, it had better be left to find out for itself what is good for it in the direction of higher cultivation. If it is a Newton or a Shakespeare, it will learn the calculus or the art of the theater without having them shoved down its throat: all that is necessary is that it should have access to books, teachers, and theaters.”⁷⁴ The critic can probably elaborate on a need (societal as well as individual) of providing for those not (yet) competent to decide for themselves. The critic must account for the highly problematic or contestable definition of “incompetence” and of the incompetent individual’s “best interests.” The critic might explore the sense in which the interest in providing for the good of the incompetent must be balanced against

the rights of those being helped: the right *not* to be helped, or not to be helped too much (when help becomes harm). Further, the critic might locate a decentered standpoint in some notion of an “appropriate” measure of help. The difficulty in defining “appropriate” does not by itself imply that any “almost universal” standpoint is impossible where one group (the incompetent) is incapable of participating fully in relevant deliberations or negotiations. Such a standpoint would be unrealistic if it required an approximately equal distribution of competence to participate in deliberating on relevant questions. The critic’s interest must be in a realistic, analytically or critically useful perspective.

7. *Economic power and powerlessness*: Does the man or woman who *employs*, thereby *govern* the men or women he or she employs? “He has jurisdiction over them. He occupies what is really a public office. He has power, not of pit and gallows ... but of overtime and short time, full bellies and empty bellies, health and sickness. The question *who* has this power, how is he qualified to use it, how does the state control his liberties ... is the question which really matters to the plain man today.”⁷⁵ The critic might first assess the validity of this passage. Is there some basic (and basically unproblematic) dynamic of quotidian economics: if an employer fails to pay a decent wage, an employee is likely to seek work elsewhere? If such a dynamic obtains, does the author of the passage recognize it? However the critic answers these questions, and with whatever qualifications (e.g., does market economics have a political tilt?), he or she could identify a need or interest for self-determination on the part of the individual, and for freedom in decisions of hiring and firing on the employer’s part. The critic will then have suggested a decentered standpoint for critique: economic self-determination is a need of both parties, hence may offer a potential standard by which to judge competing claims of legitimacy. Such a standard implies mutual recognition of the potential legitimacy of the *other’s* claims. Might employer and employee find a further decentered standpoint in some notion of “reasonable” standards (how defined?) of employment, employment that does not enslave or otherwise degrade the employee (the desirability of which the employer could freely acknowledge), yet employment subject to certain standards (such as competence) enforceable by the employer (and which the employee could freely acknowledge)? Such a vantage point is suggested by existing relations of reciprocity, namely the economic interdependence of employer and employee – another avenue for the critic’s deliberations. Indeed, from arguments about the necessity of both labor *and* human dignity, the critic might elaborate a standpoint potentially universalist in its normative claims.

8. *Equality in Japan*:⁷⁶ In 1950 the Japanese Criminal Code imposed more severe punishment for murder (or injury resulting in death) of a lineal ascendant than for the murder of anyone else. It claimed to attribute “special importance to the moral duties of the child toward his parents” and to be “based on the requirements of morality.”⁷⁷ Indeed, this law’s main object was not the protection of the victimized lineal ascendant, but rather “a special consideration of the antimoral character of the descendant who [was] the assailant.”⁷⁸ In this example, the critic might identify competing interests of “equality” and “morality” (as here defined, namely as in competition with each other). The critic might generate a decentered standpoint in the notion that normatively oriented behavior should be principled (even if no principled way exists to choose among competing principles). But, unless the critic can identify universal aspects of morality, he or she cannot draw upon some form of proceduralism because proceduralism is itself universalist. And the critic may be disappointed by a search for potential “reciprocity” between these competing normative visions: equality might be considered as a type of morality, although morality (as defined here) is hardly a form of equality. Perhaps a potentially universalist standpoint might be identified in the notion of human dignity. Both competing normative claims appeal to some notion of human dignity; might the difference be bridged? The critic might also address a further question of localism, namely that of Japanese tradition, its distinctiveness vis-à-vis other cultural traditions. Notions of the morality of children toward parents (direct ascendants) might be distinguished, on the one hand, in terms of the “democratic morality” (based on the dignity of human beings) of the 1947 constitution, and, on the other hand, in terms of voluntary obedience and service of children to parents “based on natural affection and ... duty ... as return for the *on* [the benefits for which the individual is indebted to a superior] which they receive from their parents.”⁷⁹ The critic might assess the majority opinion’s conviction that the latter form of morality should be subject to rights and duties under law (on the grounds that filial piety is repayment for *on*). Are law and morality strongly distinguishable in any cultural tradition, and if not, is the present example simply a particular variation on a “universal” theme? If so, is criticism (by Western authors) of the law-morality nexus valid for or even relevant to the non-Western case? Further, the critic might identify and elaborate a critical standpoint beyond the localism of a particular cultural tradition. Specifically, the critic could analyze the principle of vassalage (from Japan’s feudal past: a return through service by warriors for a fief, stipend, or allowance bestowed by the lord) recreated in one form of filial piety as a relationship

between persons unequal in status. Must any notion of equality (or inequality) be culturally specific? If so, might the normative traditions of different cultures nonetheless offer points of similarity, if not agreement – and potentially a standpoint for decentered critique?

9. *Personhood in Germany*:⁸⁰ In 1975 the German Constitutional Court held that, wherever human life exists, it merits human dignity, regardless of whether the subject of that dignity is conscious of it and knows how to safeguard it. “The potential capabilities inherent in human existence from its inception are adequate to establish human dignity. ... the right of a woman freely to develop her personality, [which] embraces the woman’s responsible decision against parenthood and its attendant duties, ... can never confer a priori the authority to intrude upon the protected legal sphere of another without a justifiable reason, much less the authority to destroy [this sphere] as well as a life.”⁸¹ The court, balancing competing claims, came down in favor of the preeminence of protecting the fetus’s life over the pregnant woman’s right of self-determination: impairing (through pregnancy, birth, and child-rearing) a woman’s right to self-determination (with regard, for example, to many opportunities for personal development or self-fulfillment) is more acceptable socially, because far less severe, than the destruction of prenatal life.⁸² The critic will estimate the competing interests of fetus and mother: the latter’s interest in self-determination versus the fetus’s presumed interest in continued life. (The critic may also consider if this presumption on behalf of those unable to participate in the debate implies the welfare function of the community or state, and perhaps also some form of “special protection” for those unable to represent their own interests.) The critic might locate a decentered standpoint in the value of freedom. But, if so, the critic must ask: *Whose* freedom (given mutually exclusive freedoms)? Inasmuch as the fetus is absolutely dependent on its mother, whereas the mother does not depend on the fetus, the critic may be unable to identify any reciprocal relationship as a basis for critique. Indeed, this example challenges the critic to find a potentially universalist standpoint where what is possessed by one being (freedom qua self-determination) *thereby* cannot be possessed by the other being (freedom qua continued life, freedom from unnatural death). The critic might specify a further “localism” in the peculiarities of recent German history (and the proper reaction of contemporary Germans to that history). Unlike the Weimar Constitution, the 1949 constitution includes a categorical right to life in “reaction to the ‘destruction of life unworthy to live,’ the ‘final solution,’ and ‘liquidations’ that the National Socialist regime

carried out as governmental measures.” The current constitution affirms the fundamental value of human life in reaction to a “political regime for which the individual life had little significance and therefore which practiced unlimited abuse in the name of the arrogated right over life and death of the citizen.”⁸³ The critic must inquire if some kinds of localisms – moral responsibility for historical behavior, for example – should, for normative reasons, be embraced rather than rejected. The critic must inquire if perhaps precisely the acceptance of such a localism establishes points of agreement with other communities (including those victimized). Could such points of agreement offer a decentered standpoint for critique of behavior past, current, and contemplated?

Acknowledgment

I thank *Theory and Society's* Editors for critical comments on the previous draft.

Notes

1. Five recent works exemplify the range of perspectives positing determinate normative principles; they also illustrate some of the problems inherent to such enterprises. (1) Stuart Hampshire believes that moral judgments are no less determinate and “objective,” no less susceptible of being true or false, no less founded on evidence and reasons, than empirical judgments involving “ought” and “must” and similar modal notions (*Innocence and Experience*, Cambridge: Harvard University Press, 1989, 91). One may claim, unproblematically, that the truth or falsity of empirical questions (such as, “Does the Earth revolve around the sun, or the sun the Earth?”) are universal for all human beings, all cultures, at all times. But how can Hampshire sustain the same claim about normative questions such as those concerning abortion, affirmative action, physician-assisted euthanasia, medical research using fetal tissue, or legal marriage between homosexuals? (2) Moral critique can be grounded neither procedurally nor with reference to ultimate substantive foundations. Nonetheless, says Anthony Giddens, moral critique can be more than purely subjective, arbitrary opinion (“A reply to my critics,” in David Held and John B. Thompson, editors, *Social Theory of Modern Societies: Anthony Giddens and His Critics*, Cambridge, England: Cambridge University Press, 1989, 291). He endorses normative counterfactuals (e.g., a counterfactual theory of exploitation emphasizes the ever-present potential for advancement) (*A Contemporary Critique of Historical Materialism*, vol. 1: *Power, Property and the State*, London: Macmillan, 1981, 247). As possible bases for social critique, he commends Rawls’s theory of justice and Habermas’s notion of an ideal speech situation. Yet these considerations hardly warrant his own critical judgments. (3) Jeffrey Stout claims that his notion of a “modest pragmatism” resists the temptation to define truth. Accordingly, “true moral propositions correspond to the moral facts

in the same ... sense that true scientific propositions correspond to scientific facts” (*Ethics After Babel: The Language of Morals and Their Discontents*, Boston: Beacon Press, 1988, 250); “justification is relative in ways truth is not” (*ibid.*, 251); and “one conception of reason and morality is right and another wrong” (*ibid.*, 256). In this way Stout defines truth despite himself: if the notion of “modest pragmatism” does not release us from the “need to judge moral propositions true or false, justified or unjustified and to act accordingly” (*ibid.*, 265), then it necessarily presupposes knowledge of standards and thereby makes a claim to truth. (4) Geoffrey Galt Harpham observes a division *within* the ethical, between the “autonomy” of the law and the “autonomy” of the other. For example, a child-beater or wife-rapist might claim that his actions were “internal” to a domestic or institutional dynamic to which all uninvolved persons can only be strangers and whose “otherness” should be accorded respect. For Harpham, solely the autonomy of a law can protect against such an autonomy of the other. Such an autonomy could only be “compelled by Reason rather than reasons, the Good rather than the Good for Me” (*Getting It Right: Language, Literature, and Ethics*, Chicago: University of Chicago Press, 1992, 30–31). When “cultural values are unworthy, uncertain, or disputed, only an appeal to some imperative that convincingly transcends culture and privatized conceptions of interest can legitimate action” (*ibid.*, 53). But what is the normative foundation, and whence Harpham’s special knowledge, of “the Good” *simpliciter*? (5) Augustine claimed that our experience of moral indeterminacy reflects the inherently flawed character of humankind: an essence incompatible with “the good” qua sacred state (the “City of God”). Augustine’s mundane alternative – the state with a limited role – is for Graham Walker a principled argument against a politics of principle (*Moral Foundations of Constitutional Thought: Current Problems, Augustinian Prospects*, Princeton: Princeton University Press, 1990). Walker develops from Augustine the notion that humans (given their “depraved essence”) can be moral only if they are morally neutral. But if moral neutrality is indeed neutral, it is no longer moral; likewise, if it is truly moral, it cannot be *morally* neutral. And if the ideal judge defers to the law as a prudential check on his or her ambitions and consults the law as a guide to “true” morality, when does the immorality of a law outweigh a judge’s deference to convention? On the other hand, do past legal decisions carry moral weight or are they mere guideposts for higher moral insights?

2. Even the norm arguably implied in the second sentence of the American *Declaration of Independence* (“all men are created equal” might be interpreted as: “treat all people equally”) for many years included for many European-Americans the interpretation: “randomly discriminate against African-Americans.” Today this interpretation is clearly excluded by the legal system (although not excluded by the actions and beliefs of many Americans and in the practices of various American institutions). No interpretation of the norm “treat all people equally” can claim exclusive validity over competing interpretations, including such extreme ones as “randomly discriminate against (this or that group of) people.” I develop a theory of the indeterminacy of legal equality in the United States over time in “The parameters of possible constitutional interpretation,” in Robert Wuthnow, editor, *Vocabularies of Public Life: Empirical Essays in Symbolic Structure* (London: Routledge, 1992), 207–233.
3. Jürgen Habermas identifies several of these universalist procedures and standards: “the meaning of an utterance consists in the reasons that can be offered for it. To understand the meaning of an utterance is to know the conditions of its validity”

- (*The Theory of Communicative Action*, vol. 1: *Reason and the Rationalization of Society*, Boston: Beacon Press, 1983, 115). Epistemic or normative “truth” is identified not through intuition or tests of consistency but solely through discussion, specifically through discussion oriented toward reaching understanding among individuals or groups. A normative discussion of this type presupposes an impartial point of view. The very act of engaging in dialogue assumes a belief in the possibility of consensus: the possibility of consensus in turn assumes that people engage in discussion under conditions that neutralize all motives except that of cooperatively seeking truth. Habermas seems not to realize that these universalist presuppositions can lead to “bad” morals as well as to “good.”
4. Thomas Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986).
 5. Of course, not all conventional norms are based on arbitrarily privileged conditions and perspectives. Norms such as standardized units of measurement, industrial-safety standards, or certification standards for health-care workers potentially benefit everyone in the community (see Barbara Herrnstein Smith, *Contingencies of Value: Alternative Perspectives for Critical Theory*, Cambridge: Harvard University Press, 1988, 181).
 6. Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (New York: Pantheon Books), 112–113, 131, 133.
 7. Sabina Lovibond, “Feminism and postmodernism,” *New Left Review* 178 (1989): 22.
 8. Some localist propositions make good sense. Debates between rival ethical principles, says Alisdair MacIntyre, can only be settled where they arise: in history (*After Virtue*, Notre Dame: University of Notre Dame Press, 1981, 273). And ethical confidence, says Bernard Williams, is “basically a social phenomenon” and requires confirmation by others and depends in various ways on institutions and public discourse (*Ethics and the Limits of Philosophy*, Cambridge: Harvard University Press, 1985, 170). Other localist propositions are questionable. If the good for human beings can be elaborated and possessed only within an ongoing social tradition, as Harpham asserts, then the critic could hardly extricate himself or herself from those aspects of social practices contaminated by power, because the critic could not draw upon any standpoint external to that of the participants (*Getting*, 50). Hampshire rightly claims that we cannot evaluate a statement if we remove it from any presupposed type of discourse and suspend all presuppositions of the background knowledge appropriate to this type (*Innocence*, 91). But we need no presupposed background of known constancies, because of what Hampshire calls the “infinite complexity of features which could be quoted, however unreasonably, as possibly relevant to the truth of the judgment, which is always an abstraction from all these complicating possibilities” (*ibid.*). A “background of known constancies” probably does not exist for everyone, but at most only for some groups and only some of the time, hence it could ill serve as the broad, normative foundation for truth-claims Hampshire has in mind.
 9. Contrary to what advocates of plurality might think, plurality of social narratives implies neither an expansion of the number of participants in any given dispute or disagreement (but merely an increased number of disputes), nor equality among participants.
 10. Universal standards or justificatory procedures may be unconvincing for other reasons as well. Adjudication in difficult legal cases, for example, is often a form of policy analysis rather than the product of some kind of distinctive legal reasoning.

In 1954 the Supreme Court decided *Bolling v. Sharpe* (347 U.S. 497) the same day as *Brown v. Board of Education* (347 U.S. 483). *Bolling* concerned the constitutionality of racial segregation of the District of Columbia's public schools. The Supreme Court held that it was unconstitutional, finding a guaranty of equal protection in the due process clause of the Fifth Amendment. Richard Posner finds this a strained interpretation. "The Fourteenth Amendment contains an equal protection clause as well as a due process clause but is inapplicable to the federal government. The Fifth Amendment, which is applicable to (and only to) the federal government, has no equal protection clause; it has only a due process clause, nothing in the language of which hints at any prohibition of racial discrimination" (*The Problems of Jurisprudence*, Cambridge: Harvard University Press, 1990, 144). Was the Supreme Court guided by a desire to avoid the political (if not legal) peculiarity of schools in the capital remaining segregated when segregation in state public schools had been outlawed? According to Posner, at some point the outcome that lacks political sense, that represents bad policy, that has distinctly undesirable anticipated consequences, *for that very reason* may not be the outcome required, or even permitted, by law (*ibid.*, 145).

11. Harpham notes the similarly objectifying, universalizing, generalizing nature of law (*Getting*, 31). Law tends to decide like and unlike cases by a univocal standard. But legal equity means a systematic failure to adjust for the full play of social or individual circumstances, thereby generating unequal effects on individuals differently situated. For Harpham respect for difference is a desiderata of any ethically viable legal system.
12. Similarly, legal professionals (few of whom are also social critics) who share similar educational backgrounds, religious beliefs, political orientations, and professional experience will tend to interpret legal texts convergently (whereas those with different backgrounds will tend to interpret texts divergently), and to agree on the premises for judicial decision. Under such circumstances, says Posner, the law would appear (and, in a sense, even *is*) objective and impersonal (*Problems*, 202–203). (In fact, political and cultural divisions within the contemporary American legal community preclude such objectivity.)
13. Relativists do not contradict themselves by claiming that their position is a function of particular circumstances that may not always hold. Surely the relativist embraces his or her position because he or she holds it to be superior to alternative positions. But the claim of superiority is compatible with a position predicated on particular circumstances that may not always hold. When those particular circumstances no longer hold, the position is no longer superior.
14. Also contingent, then, is Hampshire's remark that any particular morality depends for its survival on contingent historical circumstances (*Innocence*, 75–76).
15. Richard Rorty advocates "frank ethnocentrism" as an alternative to relativism, for example placing the dead in their "benighted times" and understanding their "outdated language" so as "to know how people talked who did not know as much as we do" ("The historiography of philosophy: Four genres," in Richard Rorty, J. B. Schneewind, Quentin Skinner, editors, *Philosophy in History*, Cambridge: Cambridge University Press, 1984, 50). Critique in this case may condescend to what is different (to the past, for example, or to other cultures). But one can also use difference to overcome "the comforts of merely being ourselves" (Clifford Geertz, "The uses of diversity," *Michigan Quarterly Review* 23 (1986)), to see things from many perspectives and to break down habitual or otherwise restricted ways of thinking, perhaps even to develop more enlightened forms of living together. Understanding

alternatives is a prerequisite for mutual understanding, maybe even for moral responsibility (insofar as dialogue with others may promote critical self-reflection), and certainly for the epistemic goal of correctness. Hampshire even deduces a “universal necessity of respect for ... fairness” from the empirically observable “diversity of conceptions of the good”: fairness in negotiations and concessions form the sine qua non of a shared morality “independent of specific conceptions of the good” (*Innocence*, 118–119).

16. To be sure, at least some norms must be shared by two different standpoints if some aspects of one standpoint are to be “translatable” into the terms of another. A disagreement between cultures or speakers is intelligible as a disagreement only against a background of considerable agreement and commonly held beliefs. Yet while successful interpretation presupposes some fund of agreement between any two language-users, it requires no invariant set of beliefs and principles (see Donald Davidson, “On the very idea of a conceptual scheme,” in Davidson, *Inquiries into Truth and Interpretation*, Oxford: Oxford University Press, 1984). Likewise, the differences between social critiques, as normative viewpoints presupposing models of reality and rationality, are possible solely against a background of *non*-difference, against a background of some degree of agreement and shared convictions. A “translation” of one normative standpoint into the scope and patterns of another requires that the two not be entirely distinct. By itself, “translatability” does not imply that the standpoints’ definitions, concepts, models, or “facts” will have a clear, indisputable reference. From the most specific factual statements up to the most abstract generalizations, all standpoints are contestable. This is easily seen in the relationship between religious and scientific beliefs. Every empirical conclusion may be placed into question by supra-empirical considerations, just as every general statement is contestable by reference to unexplained “empirical facts.” Hence, truth claims need not be limited to the criterion of one and only one type of validity. Indeed, each critical standpoint will have embedded within it distinctive criteria of truth; different standpoints probably have different criteria. When “translating” between different standpoints we necessarily entertain alternative standards of justification.
17. Universalism, by contrast, claims that a single normative system can sustain a claim to explain wholly any phenomenon. But because he cannot specify them, Hampshire can ill sustain his assertion that moral relativism underestimates “universal human needs” (*Innocence*, 90).
18. See Paul K. Feyerabend, *Against Method*, revised edition (London: Verso, 1988).
19. See Jeffrey Alexander, “The new theoretical movement,” in Neil J. Smelser, editor, *Handbook of Sociology* (Newbury Park, California: Sage, 1988).
20. Mary Hesse, *Revolution and Reconstructions in the Philosophy of Science* (Bloomington: Indiana University Press, 1980), 172–173.
21. As are those of natural scientists; see Harriet Zuckerman, “The sociology of science,” in Neil J. Smelser, editor, *Handbook of Sociology* (Newbury Park, California: Sage, 1988), 547.
22. A question for natural scientists as well; see G. Nigel Gilbert and Michael Mulkay, *Opening Pandora’s Box: A Sociological Analysis of Scientists’ Discourse* (Cambridge, England: Cambridge University Press, 1984), 13–14. Both science (making causal judgments and singular counterfactual conditional judgments) and social critique (making moral judgments) presume background knowledge of (at least temporarily) unquestioned constancies.
23. As in the case of natural scientists; see Zuckerman (“Sociology of science,” 548).

24. As must natural scientists; see Harry M. Collins, "The sociology of scientific knowledge: Studies of contemporary science," *Annual Review of Sociology* 9 (1983): 272.
25. See Hesse, *Revolution*.
26. Whereas a direct extension to social theory of Hesse's account of natural science would imply that scholars and critics may look *solely* to ethics and politics, I am arguing that scholars and critics may draw as well on a pragmatic account of social action (where the pragmatic is distinct from the normatively practical). In any given instance the criteria guiding such an account *could* be ethical or political, but need not be. Criteria might, for example, be pragmatic.
27. Anthony Giddens, *The Consequences of Modernity* (Cambridge, England: Polity, 1990), 45.
28. W. V. O. Quine, "Two dogmas of empiricism," in Quine, *From a Logical Point of View* (New York: Harper Torchbooks, 1963), 42, 44.
29. *Innocence*, 59. Yet I cannot agree with Hampshire's conclusion that not consensus but conflicts are "the normal condition" (*ibid.*, 189). This essay's explanatory efforts begin in the astonishment that, despite epistemic and normative indeterminacy, social systems in most contemporary liberal states are as stable and unchallenged (in their validity) as they are.
30. *Ibid.*, 72.
31. The moral consequences of diversity are also at issue in the selection of judges. One might think that the best judicial team is one of great diversity, since diversity promises intellectual inquiry more robust than the inquiry possible in a uniform judiciary (or perhaps because justice in a heterogeneous society is more likely with a correspondingly heterogeneous judiciary). But a more diverse judiciary would probably generate less agreement among different courts; the epistemic value of judicial conflict would have to be balanced against the loss in legal certainty from the absence of a method for resolving disagreements among different courts. Other difficulties are posed by the selection of particular means to achieving judicial diversity. Any answer would seem to involve proxies, since judges selected for reasons of creating diversity would, in a sense, occupy the place or somehow "represent" at least some of the many different groups within society. But if diversity is to be achieved through proxies, how can we decide which proxies are acceptable or necessary to achieve diversity? Are race and gender "good" proxies for achieving greater diversity within institutions in a society of racial heterogeneity and with a history of sexism? But why race and gender in particular – rather than, for example, religion or profession – given that a society may also have a history of religious divisions or of social stratification based on profession? Or why not choose characteristics irrelevant to social problems but which might conduce to enlightened adjudication (bracketing for the moment how this term might be defined), for example, temperament?
32. *Ibid.*, 72–73.
33. Hampshire (*ibid.*, 55) proposes the pure formality of proceduralism with his conviction that the procedure of weighing and adjudicating between competing claims implies no substantial principles of justice. But if, as Hampshire (*ibid.*, 188) asserts, the shared basis that makes negotiation possible is "not a set of shared first-order moral beliefs [but] ... a set of common practices," then why must these practices be exclusively formal? A *substantive* shared basis may be no less shared and no less a basis than a purely formal one.
34. *Ibid.*, 53.

35. *Ibid.*, 54.
36. *Ibid.*, 142–143.
37. *Ethics*, 273.
38. *Innocence*, 55.
39. *Ibid.*, 61.
40. *Ibid.*, 75.
41. *Ibid.*, 74.
42. *Ibid.*, 77. Hampshire claims that a transcendental, elementary procedural concept of justice – “a constant in human affairs” – interacts with varying particular conceptions of justice (*ibid.*, 55). Procedural or quasi-procedural arguments about fairness may play a part in allocating rewards and penalties even in a hierarchical society, where such arguments might undermine traditionally accepted notions of social difference. Hampshire believes that the process of arbitration between competing social interests might itself modify widely held conceptions of fairness and justice. This notion of a quasi-guaranteed “corrective” to actual social institutions and practices is tantamount to a philosophy of history, like Hegel’s belief in the “march of reason through history.” But if the ameliorative effects of a transcendental proceduralism begin at time 0, why is so much of history for so many people such an agonizingly unbroken record of injustice, suffering, and violence? When in this teleology does the transcendental finally kick-in?
43. For Quine’s view, see “Two dogmas.” Consciousness is fundamentally linguistic, according to Wilfred Sellars (“Empiricism and the philosophy of mind,” in *Minnesota Studies in the Philosophy of Science*, vol. 1, ed. Herbert Feigl and Michael Scriven, Minneapolis: University of Minnesota Press, 1956). Most knowledge begins with the capacity to use words; knowledge of particulars or of concepts is an abstraction from knowledge of propositions, not something temporally prior to it. If knowledge is a relation to propositions rather than a privileged relation to the objects propositions are supposed to be about, then justification of belief is a *public and intersubjective* matter, neither a private nor an objective matter.
44. Richard Rorty, *Philosophy and the Mirror of Nature* (Princeton: Princeton University Press, 1979), 186.
45. See Anthony Giddens and Jonathan H. Turner, editors, *Social Theory Today* (Cambridge, England: Polity, 1987).
46. E.g., Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1970), 199–200.
47. The ultimate role of the Supreme Court, says Cass Sunstein, is to “produce good consequences for real human beings” (“How independent is the Court?” *New York Review of Books* 39 (1992): 50). Justices seek to avoid decisions that would produce no consequences, or bad ones. For example, a decision vindicating a right to subsistence (food or housing) might be justified in principle yet in practice damage that very cause (even if beneficial to the litigants before the court). Posner contends that significant changes in the legal system are based often on judges’ considerations not of the “correctness” of a legal decision but of its anticipated political or social consequences; consequences sufficiently grave will sway decision, whatever the balance of conventional legal arguments (*Problems*, 148–149). This consequentialist perspective does not imply law as some kind of master instrument for social or moral engineering. Law can shape preferences, affecting behavior *indirectly* by altering attitudes and, through them, behavior; it can equally affect behavior *directly* by creating rewards and sanctions. It can contribute to shaping the normative order in a pluralist society; it can shape habits (which influences attitudes) and it

- can encourage the individual (via cognitive dissonance) to interpret legally forbidden action as “wrong” or morally bad. Nor does the consequentialist perspective imply litigation as a promising approach to social reform (compare Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press, 1992).
48. For Oliver Wendell Holmes, “force, mitigated so far as may be by good manners, is the *ultima ratio*, and between two groups that want to make inconsistent kinds of world I see no remedy except force,” *Holmes-Pollock Letters*, ed. Mark D. Howe (Cambridge: Harvard University Press, 1961), 36.
 49. Stanley Fish maintains just this, that a legal dispute can be settled by political means alone, that law is a matter solely of force: “the settling of dispute ... can only be accomplished by political means, by the invoking of some ... first principle of the enterprise ... or by the pronouncement of someone in a position to make his or her pronouncements stick, or by the taking of a vote as the result of which the dispute has been officially or administratively settled ... or by the intervention of an armed force” (“Almost pragmatism: Richard Posner’s jurisprudence,” *University of Chicago Law Review* 57 (1990): 1453). To Fish, all of these actions represent force, and they are distinguished from each other solely in that some are softer than others. Law then provides no alternative to force, but at most a means to distinguish between legitimate and illegitimate force. Even this distinction can only be self-interested and never decentered, because “legitimate” force is merely force used in support or defense of the standpoint held by the definer, while “illegitimate” force is force used in opposition to that standpoint.
 50. Compare Davidson, “Conceptual scheme.”
 51. Kuhn, *Structure*, 46.
 52. I paraphrase Sellars’s claim that “empirical knowledge, like its sophisticated extension, science, is rational, not because it has a foundation but because it is a self-correcting enterprise which can put any claim in jeopardy, though not *all* at once” (“Empiricism,” 300).
 53. *Philosophy and the Mirror of Nature*, 367.
 54. *Innocence*, 54.
 55. *Problems*, 459.
 56. Richard Posner, “What has pragmatism to offer law?” *Southern California Law Review* 63 (1990).
 57. Richard Rorty, *Consequences of Pragmatism* (Minneapolis: University of Minnesota Press, 1982).
 58. By contrast, Cornel West maintains that pragmatism entails political consequences, although he nowhere articulates them (*The American Evasion of Philosophy*, Madison: University of Wisconsin Press, 1989, 5). (Note that each of these very different authors considers himself a “pragmatist.”) Pragmatism cannot specify a priori the types of consequences and human needs to be assessed or even how the assessment is to be made and by whom. It cannot tell us which politically contestable theory of adjudication or which set of moral values a judge should adopt or allow to influence his or her decisions. But pragmatism *can* change our understanding of what grounding legal theories may claim or require. In a given instance, a pragmatic approach may be liberal or conservative depending on the judge’s personal political judgment and on the decision’s social-historical context. But it always rejects a formalist for a consequentialist grounding of legal theories, and consequentialism has no inherent political valence.
 59. My notion of critique provides an alternative to both the time-honored device of

epistemological foundationalism (for example, Jürgen Habermas), and the more recent device of conflating knowledge with power (notably Michel Foucault). The normative presupposition guiding Habermas explicitly, and Foucault implicitly, is that of political autonomy and individual sovereignty: a society as a whole, as well as the groups and individuals composing it, *ought* to be self-determined. Foucault rejects a priori any possibility of realizing this norm, whereas Habermas grounds it anthropologically and traces the vicissitudes of its viable if endangered existence in the modern world. Both men invoke determinate norms in social life as the normative foundation of their respective critiques. In his Frankfurt inaugural address (1964) and again in *Knowledge and Human Interests* (1968), Habermas locates the source of “emancipation” not in the social context of communication but in communication per se. In *Theory of Communicative Action* (1981) he claims that the lifeworld no longer influences the economy and state, which organize material reproduction via *de-linguistified* communication media and are therefore *norm-free* spheres of action, no longer depending on communicative understanding. In the *Archaeology of Knowledge* (1966) Foucault argues that discourse is both an act and a product of domination: statements are independent of all intentional meanings, yet discourse is generated by society’s control over natural and social processes. *Discourse on Language* (1971) analyzes knowledge as power: power itself (embedded in institutions like the school, prison, and factory) actually generates social integration without recourse to human action. *Discipline and Punish* (1975) denies all viable influence of social groups: social processes are nothing but the systemic increase of power, and all human behavior is but the raw material for peculiarly subjectless power strategies. Whereas Habermas’s norm of power-free spheres of social life is sociologically unrealistic, Foucault’s norm of a type of knowledge independent of power relations is useful solely as a foil, as a counterfactual impossibility, since Foucault so thoroughly identifies knowledge with power.

60. Compare Michael Walzer, *Interpretation and Social Criticism* (Cambridge: Harvard University Press, 1987), 8–18.
61. See Seyla Benhabib, “Feminism and postmodernism: An uneasy alliance,” *Praxis International* 11 (1991).
62. My argument against universalism is an argument against any ultimate philosophical foundation, in epistemology or in ethics. Similar arguments are currently made by postmodernists in France (see Kenneth Baynes, James Bohman, and Thomas McCarthy, editors, *After Philosophy: End or Transformation?* Cambridge: MIT Press, 1987), and the neo-pragmatists in America, particularly Richard Rorty, *Consequences of Pragmatism*; and *Contingency, Irony and Solidarity*, Cambridge: Cambridge University Press, 1989). One might regard Habermas as Germany’s leading exponent of non-foundational philosophy. But his explicit disclaimers to the contrary, he seeks an ultimate normative foundation for both ethics and a critical theory of social science. (compare Karl-Otto Apel, “Normative Begründung der ‘Kritischen Theorie’ durch Rekurs auf lebensweltliche Sittlichkeit? Ein transzendentalpragmatisch orientierter Versuch, mit Habermas gegen Habermas zu denken,” in Axel Honneth et al., *Zwischenbetrachtungen: Im Prozeß der Aufklärung*, Frankfurt a.M.: Suhrkamp, 1989). The distinction between Habermas’s position and mine is precisely that between foundationalism and anti-foundationalism.
63. Harpham makes a similar point: “Ethical discourse ... operates through a calculation of ‘distance’: too great a distance between a principle and interest produces stilted maxims: too little produces apologies, bad faith, and false consciousness” (*Getting*, 45).

64. *Interpretation*, 60.
65. *Spheres of Justice* (New York: Basic Books, 1983), 19.
66. *The Company of Critics: Social Criticism and Political Commitment in the Twentieth Century* (New York: Basic Books, 1988), x.
67. Compare James Bohman, *New Philosophy of Social Science: Problems of Indeterminacy* (Cambridge: MIT Press, 1991), 222.
68. "The uses of diversity."
69. Henry Sidgwick, *Elements of Politics* (London: Macmillan, 1919), 295–296.
70. E. Burke, *Reflections on the French Revolution* (London: Macmillan, 1913), 57.
71. Lee Rainwater, *What Money Buys: Inequality and the Social Meaning of Income* (New York: Basic Books, 1974), xi.
72. Tom Levin, *American Health: Professional Privilege vs. Public Need* (New York: Praeger, 1974), 41.
73. Jean-Jacques Rousseau, *The Social Contract*, in Rousseau, *Social Contract and Discourses*, trans. G. D. H. Cole (London: Dent, 1973), 93.
74. George Bernard Shaw, *The Intelligent Woman's Guide to Socialism, Capitalism, Sovietism, and Fascism* (Harmondsworth, England: Penguin, 1965), 436–437.
75. *R. H. Tawney's Commonplace Book*, ed. J. M. Winter and D. M. Joslin (Cambridge: Cambridge University Press, 1972), 34–35.
76. Drawn from the majority judicial opinion in the so-called "Fukuoka Patricide Case" (1950), *Hanreishu*, IV, No. 10,2037 (Criminal), Grand Bench, translated and reprinted in John M. Maki, editor, *Court and Constitution in Japan: Selected Supreme Court Decisions, 1948–60* (Seattle: University of Washington Press, 1964). In 1949, the accused severely beat his father about the head in the course of a family quarrel. The father died the following day, and the accused was brought to trial on the charge of inflicting on his father bodily injury resulting in death. The court of first instance found the accused guilty and sentenced him to three years at forced labor, but with a three-year stay of execution. The court held unconstitutional (because it violated the principle of equality under the law) that section of the Criminal Code imposing a more severe penalty on someone guilty of inflicting bodily injury resulting in death on a lineal ascendant than on someone guilty in the death of any other kind of person. The public prosecutor then appealed the case directly to the Supreme Court.
77. Maki, *Court*, 131.
78. *Ibid.*, 132–133.
79. *Ibid.*, 136.
80. Drawn from majority judicial opinion in the so-called "Abortion Reform Law Case" (1975), 39, *Bundesverfassungsgericht* [Federal Constitutional Court] 1, translated and excerpted in Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany* (Durham: Duke University Press, 1989). This case was an "abstract judicial-review" proceeding, allowing members of parliament or a state government to challenge the constitutionality of a statute immediately after its passage into law. In this instance, some members of the Bundestag as well as five state governments petitioned the Constitutional Court to review the relevant section of the Abortion Reform Act on the ground that it violated several provisions of the Basic Law, including its human dignity and right-to-life clauses.
81. *Ibid.*, 350–351.
82. But the court did not expect a woman to continue a pregnancy if the termination proved necessary to "avert a danger to [her] life" or health, where her "right to life and physical inviolability" were at stake, nor where "the general social situation of the pregnant woman and her family may produce [grave] conflicts" (*ibid.*, 354).
83. *Ibid.*, 349.