CULTURAL SOFTWARE

A THEORY OF IDEOLOGY

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Yale University Press New Haven & London

Published with assistance from the Louis Stern Memorial Fund.

Set in Janson Roman by Rainsford Type, Danbury, Connecticut.
Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Balkin, J. M.
Cultural software : a theory of ideology / J.M. Balkin.
p. cm.
Includes bibliographical references (p.) and index.
ISBN 0-300-07288-0 (cloth : alk. paper)
ISBN 0-300-08450-1 (pbk. : alk. paper)
1. Ideology. 2. Culture. 3. Social values. 4. Justice.
I. Title.
B823.3.B25 1998
140—dc21 97-37011

A catalogue record for this book is available from the British Library.

The paper in this book meets the guidelines for permanence and durability of the Committee on Production Guidelines for Book Longevity of the Council on Library Resources.

10 9 8 7 6 5 4 3 2

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Online version

NOTES

1. Tools of Understanding

1. *Ethics of the Fathers*, Philip Birnbaum, ed. and trans. (New York: Hebrew Publishing, 1949), 5:8, 40.

2. Indeed, from its inception the concept of ideology has always been contested, and hence the theory has generated many variations. Compare the variety of definitions offered in Terry Eagleton, *Ideology: An Introduction* (London: Verso, 1991), 1–2.

3. Here I am gathering together what proponents of a discourse model deliberately wish to distinguish among. They focus on acts of speaking, writing, and meaning rather than on beliefs. I have no quarrel with the claim that thought, meaning, language, and action are inextricably related. My point is that a pejorative conception of ideology has a particular interpretive attitude toward the object of its critique, whether that object is belief or discourse.

4. Compare P. N. Johnson-Laird, *The Computer and the Mind* (Cambridge: Harvard University Press, 1988); Hilary Putnam, *Representation and Reality* (Cambridge: MIT Press, 1988); and John R. Searle, *Minds, Brains, and Science* (Cambridge: Harvard University Press, 1984).

5. I should note that the very attempt to divorce these issues is itself controversial. See Gerald M. Edelman, *Bright Air, Brilliant Fire: On the Matter of the Mind* (New York: Basic, 1992).

6. Howard Gardner, *The Mind's New Science* (New York: Basic, 1979), 41. The same, I am afraid, must be said of much of the most important and valuable work in the philosophy of mind. John Searle is the most notable exception, but of course he has also been highly critical of the computational metaphor. See Searle, *Minds, Brains, and Science*, 28–41. In fact, there is an important connection between his critique of the computer metaphor and his views about the study of culture. Searle has argued that what differentiates the study of the social sciences from the study of the natural sciences is that the products of culture are the products of intentionality, something he claims existing computers do not possess (82–83). Thus, at least from Searle's perspective, it

would not be at all surprising that work employing the computer metaphor tends to bracket away questions of cultural understanding.

7. Jerome Bruner, *Acts of Meaning* (Cambridge: Harvard University Press, 1990), 11.

8. For an accessible discussion of brain physiology explaining why such a simplistic hardware/software model must be wrong, see Edelman, *Bright Air, Brilliant Fire*. Moreover, the fact that human beings exist in bodies is an important feature of how their cognitive tools emerge and develop. See Francisco J. Varela, Evan Thompson, and Eleanor Rosch, *The Embodied Mind: Cognitive Science and Human Experience* (Cambridge: MIT Press, 1991); Hubert L. Dreyfus, *What Computers Can't Do: The Limits of Artificial Intelligence* (New York: Harper and Row, rev. ed., 1979), 235–55. The metaphoric and metonymic models described in Chapter 11 are premised on the importance of embodied experience to human cognition.

9. See William H. Durham, *Coevolution: Genes, Culture, and Human Diversity* (Stanford: Stanford University Press, 1991).

10. If the theory of ideology is properly part of the philosophy of culture, the philosophy of culture is also the philosophy of history, for it asks how people exist as members of a culture in history.

11. I distinguish the ability to speak a particular language from linguistic ability in general. There continues to be considerable debate among linguistic theorists concerning the scope and the parameters of innate linguistic ability.

12. Hans-Georg Gadamer, *Truth and Method*, Garrett Barden and John Cumming, eds. (New York: Crossroad, 1975), 245–53.

13. Hans-Georg Gadamer, "The Problem of Historical Consciousness," in *Interpretive Social Science*, Paul Rabinow and William M. Sullivan, eds. (Berkeley: University of California Press, 1979), 103–59.

14. Jürgen Habermas, "A Review of Gadamer's *Truth and Method*," rpt. in *Understanding and Social Inquiry*, Fred R. Dallmayr and Thomas A. McCarthy, eds. (Notre Dame: Notre Dame University Press, 1977), 335–63; Hans-Georg Gadamer, "Rhetoric, Hermeneutics, and the Critique of Ideology: Metacritical Comments on *Truth and Method*," and Jürgen Habermas, "On Hermeneutics' Claim to Universality," rpt. in *The Hermeneutics Reader*, Kurt Mueller-Vollner, ed. (New York: Continuum, 1992), 274–92, 294–319, respectively.

15. Stephen Turner, *The Social Theory of Practices* (Chicago: University of Chicago Press, 1994), 49.

16. Gadamer, *Truth and Method*, 245–53, 261–62.

17. Ibid., 351.

18. Turner, *The Social Theory of Practices*, 44.

19. Cf. Gadamer, *Truth and Method*, 263–64 ("It is enough to say that we understand in a different way, if we understand at all").

20. David Lewis, *Convention: A Philosophical Study* (Cambridge: Harvard University Press, 1969), 56, 78, 118.

21. As examples, think of racist attitudes, or the cultural meanings of miniskirts. These examples of shared meanings are a far cry from the classic examples of coordi-

nating conventions like deciding whether to drive on the left-hand side or the right-hand side of the road. Ibid., 5–8. Moreover, describing conventions as solving "problems of coordination" puts altogether too rosy a glow on social conventions like slavery, or cultural associations of femininity with submissiveness. As described more fully in Chapter 3, we must try to understand how self-replicating conventions and institutions can be parasitic on the human capacity for sociability and harmful to human interests.

22. See Immanuel Kant, *Critique of Pure Reason*, unabridged ed., Norman Kemp Smith, trans. (New York: St. Martin's, 1929), A 346–47, B 404–5.

23. See, e.g., Edmund Husserl, *Ideas: General Introduction to Pure Phenomenology*, W. R. Boyce Gibson, trans. (New York: Collier, 1931); Claude Lévi-Strauss, *The Raw and the Cooked: Introduction to a Science of Mythology*, vol. 1, John Weightman and Doreen Weightman, trans. (New York: Octagon, 1970); Noam Chomsky, *Reflections on Language* (New York: Pantheon, 1975).

24. The idea of cultural software differs from the Gadamerian notion of a tradition in yet another way: Cultural software encompasses more than linguistic ability. It includes bodily skills that, although teachable through language, are not the same thing as linguistic ability. These include the ability to cook a soufflé, play a musical instrument, or hit a baseball. Although Gadamer insists on the importance of language as the medium of tradition, his formulation fails to encompass all of the many different types of skills and bodily movements that can be transmitted and reproduced in individuals, that constitute them as individuals, and that affect their understanding of themselves and of the world.

25. A hardware/software combination of this type is sometimes called a virtual machine, because it uses the software to imitate another machine that has a different hardware configuration or is dedicated to a different set of tasks. For example, with the right kind of software, a Macintosh computer can become a "virtual" IBM-compatible computer and run some kinds of DOS-based programs.

26. For an evolutionary argument describing how the capacity to employ software might have developed in humans, see Daniel C. Dennett, *Consciousness Explained* (Boston: Little, Brown, 1991), 182–91. Dennett contends that "software" transforms the hardware of the brain into virtual machines that perform various tasks (211). He then argues that human consciousness is the product of these hardware/software interactions (218).

2. Bricolage and the Construction of Cultural Software

1. The claim that cultural software is constitutive of the person is also true, in a somewhat different way, about technology and institutions. Our subjectivity may also depend on our participation in social institutions, and it may even depend, as Hegel argued in his theory of property, on the material objects that we own.

2. The most well-known philosophical critique of the *homo faber* model is Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958).

3. Donald A. Norman, *Things That Make Us Smart: Defending Human Attributes in the Age of the Machine* (Reading, Mass.: Addison-Wesley, 1993); R. L. Gregory, *Mind in Science: A History of Explanations in Psychology and Physics* (Cambridge: Cambridge Uni-

versity Press, 1981); Daniel C. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* (New York: Simon and Schuster, 1995), 377–78.

4. See Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment*, John Cumming, trans. (New York: Continuum, 1994; orig. pub. 1944).

5. Conversely, one can critique forms of violence or war to the extent that they objectify individuals and deny them recognition as human beings.

6. Michel Foucault, *The History of Sexuality*, vol. 1, *An Introduction* (New York: Vintage, 1980), 26.

7. We find an analogous result in cross-cultural classifications. The concept of machismo that was articulated in Hispanic and Latino culture is quite different from the virtue of being a mensch among Eastern European Jews.

8. Here I follow the excellent discussion in T. K. Seung, *Intuition and Construction: The Foundation of Normative Theory* (New Haven: Yale University Press, 1993).

9. Claude Lévi-Strauss, *The Savage Mind* (Chicago: University of Chicago Press, 1966), 16–36.

10. See, e.g., Jean-François Lyotard and Jean-Loup Thébaud, *Just Gaming* (Minneapolis: University of Minnesota Press, 1985).

11. The development of the ancestral word for arm into the Latin *articulus* would be an example of metaphorical or analogical extension—from a thing to things similar to it in some respect. The development from *arm* to the homonym *arms* is an example of metonymic extension—from a thing to things associated with it. As I shall explain in more detail in Chapter 11, metaphoric and metonymic extension are important features in the construction of ideological thought.

12. Pierre Bourdieu, *The Logic of Practice* (Cambridge: Polity, 1990), 86–97; Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977), 109–58.

13. See Bourdieu, *The Logic of Practice*, 250–70; Bourdieu, *Outline of a Theory of Practice*, 87–95.

14. Thus, long before Darwin, Immanuel Kant argued that mankind develops through a process of cultural evolution. Kant, "Idea for a Universal History from a Cosmopolitan Point of View," in *Kant on History*, Lewis White Beck, ed. (New York: Macmillan, 1963). However, Kant's vision of evolution, like those of his contemporaries, and unlike Darwin's, was based on a notion of gradual progress toward enlightenment.

15. See Stephen Jay Gould, *The Panda's Thumb: More Reflections in Natural History* (New York: Norton, 1980), 77–84. Darwin actually recognized several mechanisms of evolution, of which natural selection was the most important. See Charles Darwin, *On the Origin of Species by Means of Natural Selection*, in *The Portable Darwin*, Duncan M. Porter and Peter W. Graham, eds. (New York: Penguin, 1993), 111.

16. Although natural selection is the central mechanism in Darwinian evolution, it is not the only one. For example, random variations in the genes transmitted from parents to offspring in a population may eventually lead to the dominance of some genes over others, a phenomenon called genetic drift. See John Beatty, "Random Drift," in *Keywords in Evolutionary Biology*, Evelyn Fox Keller and Elisabeth A. Lloyd, eds. (Cam-

bridge: Harvard University Press, 1992), 273–81. Similarly, if a natural catastrophe accidentally wipes out more striped animals than nonstriped animals in a population, the nonstriped survivors will dominate the surviving population, even if the gene for nonstripedness is not otherwise adaptive.

17. Gould, *The Panda's Thumb*, 83–84.

18. Ibid., 84.

19. For attempts at such an argument, see Charles J. Lumsden and Edward O. Wilson, *Genes, Mind, and Culture: The Coevolutionary Process* (Cambridge: Harvard University Press, 1981); William H. Durham, *Coevolution: Genes, Culture, and Diversity* (Stanford: Stanford University Press, 1991); Robert Boyd and Peter J. Richerson, "Why Does Culture Increase Human Adaptability?" *Ethology and Sociobiology* 16 (1995): 125–43.

20. Stephen Jay Gould and Richard C. Lewontin, "The Spandrels of San Marco and the Panglossian Paradigm: A Critique of the Adaptationist Programme," *Proceedings of the Royal Society, London* (1979) B. 205: 581–98.

21. I believe that this distinction originates with the zoologist Richard Dawkins, but I have not been able to trace the exact source.

22. A Lamarckian theory of evolution would also predict the existence of designoid features of organisms, because organisms might adapt favorably to their environments even if they did not do so through conscious plan or intention.

23. Gould, *The Panda's Thumb*, 20–21, 27–29.

24. Ibid., 22–26, 29.

25. Stephen Jay Gould, *Hen's Teeth and Horse's Toes: Further Reflections in Natural History* (New York: Norton, 1983), 156–57; Gould and Lewontin, "The Spandrels of San Marco," 594–97.

26. Gould, *The Panda's Thumb*, 27–29.

27. Stephen Jay Gould and Elizabeth S. Verba, "Extapation: A Missing Term in the Science of Form," *Paleobiology* 8, no. 1 (1982): 4–15.

28. Gould, *Hen's Teeth and Horse's Toes*, 170. In his paper with Lewontin, Gould uses an example drawn from the cultural world—the spandrels in the Basilica of San Marco—to make this point. Spandrels are triangular spaces that occur when a square of four rounded archways is topped by a cathedral dome. It was customary for artists to decorate these spaces with elaborate paintings and mosaics. Nevertheless, Gould and Lewontin note, one should not infer that basilicas were specifically designed to create spandrels for artists to decorate. Instead, the custom of decorating spandrels came later; it resulted from previous decisions about the design and construction of basilicas. Gould and Lewontin, "The Spandrels of San Marco," 582–83.

29. Stephen Jay Gould, *Ever Since Darwin: Reflections in Natural History* (New York: Norton, 1977), 107–10; Gould and Verba, "Extapation," 11–12.

30. This is true for technology as well as for cultural software. For a description of technological bricolage see Henry Petroski, *The Evolution of Useful Things* (New York: Vintage, 1992).

31. On this point see Petroski, *The Evolution of Useful Things;* David Pye, *The Nature and Aesthetics of Design* (London: Barrie and Jenkins, 1978).

3. Memetic Evolution

1. Richard Dawkins, *The Selfish Gene* (Oxford: Oxford University Press, new ed., 1989), 192.

2. See Daniel C. Dennett, *Consciousness Explained* (Boston: Little, Brown, 1991), 200; Dawkins, *The Selfish Gene*, 322.

3. Graham Cairns-Smith, *Genetic Takeover and the Mineral Origins of Life* (Cambridge: Cambridge University Press, 1982); Graham Cairns-Smith, *Seven Clues to the Origin of Life: A Scientific Detective Story* (Cambridge: Cambridge University Press, 1985).

4. Dawkins, *The Selfish Gene*, 192.

5. Robert Boyd and Peter J. Richerson, "The Evolution of Norms: An Anthropological View," *Journal of Institutional and Theoretical Economics* 150, no. 1 (1994): 72–87, at 74; Robert Boyd and Peter J. Richerson, *Culture and the Evolutionary Process* (Chicago: University of Chicago Press, 1985).

6. See, e.g., Daniel C. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* (New York: Simon and Schuster, 1995), 344; Henry C. Plotkin, *Darwin Machines and the Nature of Knowledge* (Cambridge: Harvard University Press, 1994), 215; Richard Brodie, *Virus of the Mind: The New Science of the Meme* (Seattle: Integral, 1996); Aaron Lynch, *Thought Contagion: How Belief Spreads Through Society* (New York: Basic, 1996). By contrast, I argue that the most basic forms of memes and meme complexes are skills.

7. Thus the different uses of cultural tools offered in Chapter 2 can all be redescribed as different aspects of cultural know-how. Knowing how to get about in the world, how to deal with others, and how to articulate one's values all can be and are transmitted in the form of memes.

8. In terms of our computer metaphor, the primacy of knowing how over knowing that tends to blur the distinction between information (data) and code (instructions). Yet this distinction is already blurred when we define memes as units of cultural transmission. If memes are to be transmitted to others, and thus become cultural, they must have some observable effects on human behavior—at the very least enough so that they are in fact transmitted. See John A. Ball, "Memes as Replicators," *Ethology and Sociobiology* 5 (1984): 145–61, at 154.

9. Dan Sperber, *Explaining Culture: A Naturalistic Approach* (Oxford: Blackwell 1996), 24.

10. Dennett, *Darwin's Dangerous Idea*, 353.

11. Ibid., 354.

12. Dan Sperber and Deirdre Wilson, *Relevance: Communication and Cognition* (Oxford: Blackwell, 1986).

13. Human beings communicate meanings to others by many devices, including signs, words, dress, and behavior. Human action is always freighted with meaning and as a result it often communicates in addition to whatever else it does. Hence we cannot restrict the notion of memetic transmission to action that is intended by the agent to communicate a message. Conversely, there is no guarantee that individuals will receive what others have deliberately sent them. Students do not always learn exactly what a teacher hopes that they will learn. They may misunderstand the teacher's lesson, learn

only parts of it, or learn nothing at all. Their ability to assimilate new information, or new ways of thinking, depends upon the cultural software they already possess. Thus it is not surprising that two persons who attend the same lesson will carry different things away from it. Their cultural software affects how each will assimilate or reject, understand or miss the point of what is being said; the cultural software of each affects how that software will change in response to what each experiences.

Our tools of understanding are also affected by interactions that are not intended to teach us anything at all. An elementary school teacher may be attempting to demonstrate how to multiply fractions, but what her pupils may be learning from her is how to dress, how to speak, and how to behave in public. If she calls on boys to solve math problems more frequently than girls, or interrupts girls more frequently than boys, they may be learning cultural lessons that the teacher may not intend for them to learn at all. The process of communicative interaction is complex and unpredictable. We therefore cannot predict how people's cultural software will be affected simply by examining what an agent intended to convey or the content of what she said. There is always a possible divergence between intended communication and effects on cultural software. Indeed, there is always the possibility that communication will have no significant effects at all.

14. Dennett, *Consciousness Explained*, 201; see Dawkins, *The Selfish Gene*, 195.

15. Dennett, *Darwin's Dangerous Idea*, 344.

16. In the key of D, the notes are f♯'-e'-d'-b-a-f♯-a-d'-b-a.

17. This is because, as a practical matter, these three notes do not invoke the larger melody Tchaikovsky wrote, or the symphony as a whole, unlike, for example, the first four notes of Beethoven's Fifth Symphony. Because reproducibility and memorizability depend on environmental factors, however, there is no reason in theory why Tchaikovsky's notes could not someday be a meme.

To return to Dennett's original example, the notes D-F♯-A are the notes of a major triad, one of the building blocks of Western music. (More precisely, they are the notes of the D-major triad. This raises the interesting question of whether transpositions of melodies in different keys constitute the same meme or different memes.) These notes are reproduced continuously and reliably precisely because they are an enjoyable and satisfying combination of elements to Western ears. They are, in Dennett's words, "distinct memorable units" that music students are taught to memorize and employ in compositions. Ibid., 344. Thus they are both memes in their own right and the building blocks of other memes.

18. The U.S. Copyright Office Regulations specifically state that short phrases cannot be copyrighted. See 37 C.F.R. sec. 202.1(a) (1994) (excluding from copyright protection "words and short phrases such as names, titles, and slogans" and "familiar symbols and designs"). One reason often given for the rule is that ordinarily, short phrases do not display the creativity sufficient to justify enforcement of what is in effect a property right in their use. See, e.g., *Magic Marketing, Inc. v. Mailing Services of Pittsburgh, Inc.*, 634 F. Supp. 769, 771 (W.D. Pa. 1986); Jessica Litman, "The Public Domain," *Emory Law Journal* 39 (1990): 965–1023, at 1013–14.

The details of intellectual property law are beyond the scope of this book. Suffice it to say that many different kinds of units, from phrases to font shapes, from techniques

to trade names, can and have been given intellectual property status under copyright, patent, or trademark laws. The layperson will likely be amazed both at the insignificance of many things that have been given intellectual property status and at the significance of many things that have been denied this status. Thus, although the statement made in the text is broadly true, it is subject to many qualifications and complications, due in part to the idiosyncracies of legislative drafting, litigation strategy, and judicial enforcement.

19. Ernst Mayr, *The Growth of Biological Thought* (Cambridge: Harvard University Press, 1982), 46–47.

20. Dan Sperber, "Anthropology and Psychology: Towards an Epidemiology of Representations," *Man* n.s. 20 (1985): 73–89, at 74.

21. Sanford Levinson and J. M. Balkin, "Law, Music, and Other Performing Arts," *University of Pennsylvania Law Review* 139 (1991): 1597–1658, at 1623.

22. Juan Delius, "The Nature of Culture," in *The Timbergen Legacy*, M. S. Dawkins, T. R. Halliday, and R. Dawkins, eds. (London: Chapman and Hall, 1991), 71–99, at 81. As Delius points out, "Culture as a persistent phenomenon is heavily dependent on long-term memories."

23. Dennett, *Darwin's Dangerous Idea*, 348–49.

24. See Dawkins, *The Selfish Gene*, 199.

25. This feature of cultural transmission underlies the deconstructive theory of the sign. The public nature of communication requires that signs be able to signify repeatedly to new users and in new contexts regardless of the intentions that originally created them. This ability of signs to be detached from the author's private intentions, and to mean something other than what the author meant, makes iterability, and hence intersubjective meaning, possible. See J. M. Balkin, "Deconstructive Practice and Legal Theory," *Yale Law Journal* 96 (1987): 743–86, at 779–81. As a sign is repeatedly understood, it takes on a life of its own in a relation of partial similarity and partial difference from the person who meant it. Repetition of a sign in a new context is simultaneously a relation of identity and difference; the repeated sign is syntactically identical, yet semantically different. Hence the deconstructive aphorism that "iterability alters." Jacques Derrida, "Limited Inc abc . . . ," *Glyph* 2 (1977): 162–254, at 200.

26. Dennett, *Darwin's Dangerous Idea*, 353–56.

27. See Jon Elster, *Sour Grapes: Studies in the Subversion of Rationality* (Cambridge: Cambridge University Press, 1983), 152–53.

28. See the discussion of cognitive dissonance theory in Chapter 8.

29. Charles Darwin, *On the Origin of Species by Means of Natural Selection*, in *The Portable Darwin*, Duncan M. Porter and Peter W. Graham, eds. (New York: Penguin, 1993), 185; Niles Eldredge, *Reinventing Darwin: The Great Debate at the High Table of Evolutionary Theory* (New York: Wiley, 1995), 50.

30. James Burke, *Connections* (Boston: Little, Brown, 1978), 108–13. This book, based on the television series of the 1970s, contains many wonderful examples of technological borrowing.

31. See Stephen Jay Gould, "The Panda's Thumb of Technology," in *Bully for Brontosaurus* (New York: Norton, 1991), 59–75, at 65. The ability of memes to combine

in human minds means that cladistics—the study of lineages—is extremely difficult in the case of memes. Yet it is an important element in the study of biological evolution. Eldredge, *Reinventing Darwin*, 53–55. One might think of intellectual history as a sort of cladistics of memes. Intellectual historians often try to study ideas as they change through history, but the theory of memes suggests why this enterprise presents so many complications.

32. Dan Sperber calls this an "attraction model" of cultural evolution because the transformation of cultural software (or cultural representations, as he calls them) tends to converge toward the most popular versions, or "attractors." The term *attractor* is borrowed from chaos theory. An attractor attracts nothing; it is simply the standard set of features toward which successive transformations tend, on the average, to move. Once near an attractor, subsequent transformations tend to stay in the general vicinity. Sperber notes that the reasons why transformations converge on attractor points may depend on universal features of human psychology or the vicissitudes of the local cultural environment. Changes in the cultural environment may shift cultural attractor points and lead to large-scale shifts in belief and practice. Sperber, *Explaining Culture*, 105–18.

Sperber contrasts his attraction model to the evolutionary theories of Dawkins and Dennett, which focus on the survival of memes in individual minds rather than on their successive transformation. He also rejects the use of the word *meme* because he assumes that memetic evolution necessarily presupposes virtually exact copying of cultural information, employing human beings as mere "agents of replication . . . with little or no individual contribution to the process" (105–6). This strikes me as a bit of a caricature. A Darwinian theory of cultural evolution is in no sense committed to this position. Sperber is engaged in a play on words, identifying the word *meme* with its French cognate (*même*, meaning same or identical) rather than focusing on its connection with memory. Memories of events surely change as they are transmitted from person to person; memory is rarely, if ever, *la même chose*.

There is no reason why the use of the term *meme* has to be tied to the fallacious assumption that cultural transmission is a matter of perfect copying. Theories of cultural evolution should be based on the recognition that although sometimes replication of cultural information is fairly exact, more often it is not. Scribes may carefully copy manuscripts, but musical performers improvise. Xerox machines duplicate, but cooks change proportions and add new ingredients. Indeed, symbolic forms that exist outside human minds are much more likely to be exact copies of each other than the cultural software in human minds. That is because human technology can create exact copies, while the processes of human memorization and understanding rarely do.

Whatever we call the units of cultural transmission, whether memes, representations, or something else, a theory of cultural evolution must reckon with both differential rates of attractiveness to other minds and distinctive forms of transformation by the minds who possess them. This is Sperber's deeper point. Cultural evolution must be shaped not only by those factors that ensure the survival of descendants but by those factors that ensure that the descendants remain roughly similar to each other.

33. See Dennett, *Consciousness Explained*, 204: Donald Campbell, "Comments on the Sociobiology of Ethics and Moralizing," *Behavioral Science* 24 (1979): 37–45.

34. Dennett, *Darwin's Dangerous Idea*, 348. As Dennett points out, "Plato's ideas survive not because of the survival of individual papyrus manuscripts, but because they were continuously copied."

35. See Donald R. Griffin, *Animal Minds* (Chicago: University of Chicago Press, 1992); John Tyler Bonner, *The Evolution of Culture in Animals* (Princeton: Princeton University Press, 1980); Merlin Donald, *Origins of the Modern Mind: Three Stages in the Evolution of Culture and Cognition* (Cambridge: Harvard University Press, 1991).

36. Thus birdsongs are a kind of meme that can survive in the environment that bird's minds and bodies provide. See Dawkins, *The Selfish Gene*, 189–90.

37. Dennett, *Consciousness Explained*, 202.

38. Ibid., 202, 206.

39. See Dennett, *Consciousness Explained*, 218.

40. Ibid., 220.

41. Ibid.

42. Dennett, *Darwin's Dangerous Idea*, 350.

43. Richard Nisbett and Lee Ross, *Human Inference: Strategies and Shortcomings of Social Judgment* (Englewood Cliffs, N.J.: Prentice-Hall, 1980), 169–88.

44. See the discussion in Chapter 8.

45. Dennett, *Darwin's Dangerous Idea*, 351.

46. Ibid.

47. Sperber, "Anthropology and Psychology," 74. Cavalli-Sforza and Feldman have explicitly attempted to model cultural transmission on the transmission of disease. L. L. Cavalli-Sforza and M. W. Feldman, "Models for Cultural Inheritance," 1, "Group Mean and Within Group Variation," *Theoretical Population Biology* 4 (1973): 42–45; L. L. Cavalli-Sforza and M. W. Feldman, *Cultural Transmission and Evolution: A Quantitative Approach* (Princeton: Princeton University Press, 1981); L. L. Cavalli-Sforza and M. W. Feldman, "Cultural Versus Genetic Adaptation," *Proceedings of the National Academy of Sciences, USA* 80 (1983): 4993–96. Their models also use the idea of genetic drift as an evolutionary mechanism.

Similar models have been proposed for the spread of technological innovation. Everett M. Rogers, *Diffusion of Innovations* (New York: Free Press, 3d ed., 1983). The cumulative adoption of an innovation usually seems to follow an S-shaped curve which resembles the spread of communicable diseases.

48. Sperber, "Anthropology and Psychology," 74. Brodie, *Virus of the Mind*, and Lynch, *Thought Contagion*, are two recent accounts of memetics that are organized around the communicable-disease analogy. Each offers abundant historical and cultural examples.

49. Dennett, *Darwin's Dangerous Idea*, 352.

50. Sperber, "Anthropology and Psychology," 74.

51. Delius, "The Nature of Culture," 84.

52. Ibid., 84–85.

53. Ibid., 86–87.

54. Ibid., 87.

55. Charles J. Lumsden and Edward O. Wilson, *Genes, Mind, and Culture: The Coevolutionary Process* (Cambridge: Harvard University Press, 1981).

56. Dennett, *Consciousness Explained*, 203; Richard Dawkins, *The Extended Phenotype* (San Francisco: Freeman, 1982), 110–11.

57. Conspiracy theories and beliefs that are linked to prohibitions against exposing one's self to contrary beliefs are also good examples of self-reinforcing beliefs. See Dennett, *Consciousness Explained*, 206; Dawkins, *The Selfish Gene*, 198–99.

58. Stephen Jay Gould, *Hen's Teeth and Horse's Toes* (New York: Norton, 1983), 174–75.

59. Ibid., 167.

60. Ibid., 175.

61. Ibid., 173.

62. Lumsden and Wilson, *Genes, Mind, and Culture*, 13.

63. The fact that so many members of the Catholic clergy have been able to suppress their reproductive urges over so many years is perhaps the best evidence of the power of memes over genes. Even though Catholic clergy occasionally (and predictably) have gone astray, the degree of celibacy that they have been able to practice over the centuries is certainly remarkable.

64. An example is the development of strains of bacteria that are resistant to antibiotics—although this is a response not to human biological evolution but to changes in human technology.

65. George C. Williams and Randolph M. Neese, "The Dawn of Darwinian Medicine, *Quarterly Review of Biology* 66, no. 1 (March 1991): 1–22, at 7.

66. Delius, "The Nature of Culture," 86, 91.

67. Ibid., 85.

68. Ibid., 89.

69. Ibid., 93.

70. Ibid., 89–90.

71. See Alexander Rosenberg, "Altruism: Theoretical Contexts," in *Keywords in Evolutionary Biology*, Evelyn Fox Keller and Elisabeth A. Lloyd, eds. (Cambridge: Harvard University Press, 1992), 19–28.

72. Delius, "The Nature of Culture," 93–94.

73. Ibid., 94.

74. Because memetic kinship can differ from genetic kinship, sometimes cultural and biological altruism will be reinforcing and sometimes they will be at odds. The bond between parents and children is no doubt strengthened by the cultural transmission that usually accompanies parenting. On the other hand, there are many stories of families split asunder by civil wars and religious disputes.

75. Ball, "Memes as Replicators," 156.

76. Sperber, "Anthropology and Psychology," 86.

77. For a helpful discussion see Roger C. Schank, *The Connoisseur's Guide to the Mind: How We Think, How We Learn, and What It Means to Be Intelligent* (New York: Summit, 1991), 35–41.

78. See, e.g., Ken Binmore, *Game Theory and the Social Contract: Playing Fair*, vol. 1 (Cambridge: MIT Press, 1994); Robert Axelrod, *The Evolution of Cooperation* (New York: Basic, 1984); Edna Ullmann-Margalit, *The Emergence of Norms* (Oxford: Clarendon, 1977).

79. Stephen Jay Gould and Richard C. Lewontin, "The Spandrels of San Marco and the Panglossian Paradigm: A Critique of the Adaptationist Programme," *Proceedings of the Royal Society, London* (1979) B.205: 581–98.

80. Eldredge, *Reinventing Darwin*, p. 46.

81. For examples of this point in the evolution of accident law, see J. M. Balkin: "Too Good to Be True: The Positive Economic Theory of Law," *Columbia Law Review* 87 (1987): 1447–89.

82. Gould and Lewontin, "The Spandrels of San Marco," 582–83.

4. The Spread of Cultural Software

1. See John A. Ball, "Memes as Replicators," *Ethology and Sociobiology* 5 (1984): 145–61.

2. Daniel C. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* (New York: Simon and Schuster, 1995), 349; see also Richard Dawkins, "Viruses of the Mind," in *Dennett and His Critics*, Bo Dahlbom, ed. (Oxford: Blackwell, 1993), 13–27.

3. Richard Dawkins, *The Selfish Gene* (Oxford: Oxford University Press, new ed., 1989), 212.

4. Dennett, *Darwin's Dangerous Idea*, 349.

5. Ibid.

6. Dan Sperber, "The Epidemiology of Beliefs," in *The Social Psychological Study of Widespread Beliefs*, Colin Fraser and George Gaskell, eds. (Oxford: Clarendon, 1990), 25–44.

7. Dennett, *Darwin's Dangerous Idea*, 349.

8. See Dan Sperber, "Anthropology and Psychology: Towards an Epidemiology of Representations," *Man* n.s. 20 (1985): 73–89, at 82.

9. Ibid., 80–83.

10. Eric A. Havelock, *Preface to Plato* (Cambridge: Harvard University Press, 1963); Albert B. Lord, *The Singer of Tales* (Cambridge: Harvard University Press, 1960).

11. Sperber, "Anthropology and Psychology," 86. Sperber calls this the "Law of the Epidemiology of Representations" for oral cultures.

12. Neil Postman, *Amusing Ourselves to Death: Public Discourse in the Age of Show Business* (New York: Penguin, 1985); Marshall McLuhan, *Understanding Media: The Extensions of Man* (New York: McGraw-Hill, 1964); Marshall McLuhan, *The Gutenberg Galaxy: The Making of Typographic Man* (Toronto: University of Toronto Press, 1962).

13. Walter J. Ong, *Orality and Literacy: The Technologizing of the Word* (London: Methuen, 1982).

14. Postman, *Amusing Ourselves to Death;* McLuhan, *The Gutenberg Galaxy;* Ong, *Orality and Literacy*, 135–38.

15. To vary McLuhan's famous aphorism, the medium is the meme as well as the message.

16. Postman, *Amusing Ourselves to Death;* Ronald Collins and David Skover, *The Death of Discourse* (New York: HarperCollins, 1996), J. M. Balkin, "What Is a Postmodern Constitutionalism?" *Michigan Law Review* 92 (1992): 1966–90.

17. Over time the average length of uninterrupted statements of presidential candidates in the United States has been shrinking, and so has the length of campaign advertisements. Cass Sunstein, *Democracy and the Problem of Free Speech* (New York: Free Press, 1993), 61; Kathleen Hall Jamieson, *Dirty Politics* (New York: Oxford University Press, 1992), 205–8.

18. For a particularly pessimistic version of this thesis, see Postman, *Amusing Ourselves to Death*.

19. Sperber, "Anthropology and Psychology," 80–81.

20. In historical linguistics, for example, Grimm's Law predicts the direction in which pronunciation of consonants will mutate over time. See Theodora Binyon, *Historical Linguistics* (Cambridge: Cambridge University Press, 1977), 83–85.

21. Sperber, "Anthropology and Psychology," 75.

22. Sperber, "Epidemiology of Beliefs," 29–30. This is consistent with experiments which show that narratives tend to be pared down and simplified as they are transmitted from person to person.

23. Ibid.

24. "Then Midianite traders passed by; and they drew Joseph up and lifted him out of the pit, and sold him to the Ishmaelites for twenty shekels of silver; and they took Joseph to Egypt." Gen. 37:28, Revised Standard Version. Interestingly, Joseph himself later accuses his brothers of having sold him into slavery. See Gen. 45:4 ("I am your brother, Joseph, whom you sold into Egypt"). The potential ambiguity in the biblical description of the sale stems from the use of the Hebrew word *vayimk'ru* ("and they sold") appearing after the reference to the Midianites; however, most English versions of the Bible—including the King James, the New American Standard, the Jewish Publication Society, and the New English Bible—translate the passage similarly to the Revised Standard. It is possible that the biblical text is a conflation of two versions of the story—yet another example of the phenomenon of mutations in storytelling.

Joseph's sale into slavery has posed an interpretive problem for biblical commentators. Rashi's commentary on the Torah argues that Jacob's sons sold Joseph to the Ishmaelites, who sold him to the Midianites, who sold him to the Egyptians, who brought Joseph into Egypt. Thus the phrasing of the Hebrew in Gen. 37:28 is meant to suggest not that Joseph was not sold by his brothers, but that Joseph was sold many times before he arrived in Egypt. *The Pentateuch and Rashi's Commentary*, Rabbi Abraham Ben Isaiah and Rabbi Benjamin Sharfman, trans., vol 1 (Brooklyn: S.S. and R., 1949), 379. Interestingly, the New International Version simply avoids the textual conflict altogether by reading the expression "and they sold" to refer to the brothers. Gen. 37:28 New International Version.

25. For a collection of such transformed quotations, see Paul F. Boller Jr. and John

George, *They Never Said It: A Book of Fake Quotes, Misquotes, and Misleading Attributions* (New York: Barnes and Noble, 1989).

26. Claude Lévi-Strauss, *The Raw and the Cooked: Introduction to a Science of Mythology*, vol. 1, John Weightman and Doreen Weightman, trans. (New York: Octagon, 1970).

27. Ball, "Memes as Replicators," 155.

28. Sperber, "Epidemiology of Beliefs," 33–34.

29. Ball, "Memes as Replicators," 155.

30. Sperber, "Anthropology and Psychology," 84.

31. Human knowledge often uses coherence as an organizational principle; beliefs are often rejected if they do not square fully with beliefs already held. However, because human beings can hold beliefs that they do not completely understand, they may avoid rejecting these beliefs until more information arrives that might make their beliefs coherent or produce a better understanding of them. They may hold some beliefs because, only half-understanding them, or lacking knowledge as to whether they are true, they simply take the beliefs on authority. See Sperber, "Epidemiology of Beliefs," 33–34. Thus a person may take on authority both the half-understood belief that space curves near a heavy mass and the half-understood belief that a communion wafer is transubstantiated into the body of Jesus, even though the sources of authority and the institutionally recognized justifications for the two half-understood beliefs differ. As a result, people may be able to hold a number of beliefs that are seemingly in tension with each other, because the grounds of belief for each are of a different status.

32. Sperber, "Epidemiology of Beliefs," 36–37; Sperber, "Anthropology and Psychology," 84–85.

33. Juan Delius, "The Nature of Culture," in *The Timbergen Legacy*, M. S. Dawkins, T. R. Halliday, and R. Dawkins, eds. (London: Chapman and Hall, 1991), 71–99, at 95.

34. Helena Cronin, "Sexual Selection: Historical Perspectives," in Evelyn Fox Keller and Elisabeth A. Lloyd, eds., *Keywords in Evolutionary Biology* (Cambridge: Harvard University Press, 1992), 286–93. Indeed, the preferred trait may actually be a handicap; the standard example is the male peacock's tail, which is a greater burden the longer and more gaudy it becomes. Amotz Zahavi has argued that these self-imposed handicaps may actually serve as a positive signal for mate selection: If a male peacock can successfully drag around a ridiculously long tail, he must be very fit indeed. Thus females will gravitate to the most handicapped males as long as they are able to survive and mate. Amotz Zahavi, "The Theory of Signal Selection and Some of Its Implications," in V. P. Delfino, ed., *International Symposium on Biological Evolution, Bari, 9–14 April 1985* (Bari, Italy: Adriatici Editrici), 305–27; Amotz Zahavi, "Mate Selection: A Selection for a Handicap," *Journal of Theoretical Biology* 53 (1975): 205–14.

35. Ball, "Memes as Replicators," 151. See also Robert Boyd and Peter J. Richerson, *Culture and the Evolutionary Process* (Chicago: University of Chicago Press, 1985), 259–79.

36. Delius, "The Nature of Culture, 95–96.

37. Dennett, *Darwin's Dangerous Idea*, 352.

38. Sperber, "Epidemiology of Beliefs," 37.

39. Robert Boyd and Peter J. Richerson, "The Evolution of Norms: An Anthropological View," *Journal of Institutional and Theoretical Economics* 150, no. 1 (1994): 72–

87; Peter J. Richerson and Robert Boyd, "Darwinian Models of Culture: Toward Replacing the Nature/Nurture Dichotomy," *World Futures* 34 (1991): 43–57, at 50–52.

40. Sperber, "Epidemiology of Beliefs," 41.

41. 1163 U.S. 537 (1896).

42. Martin Luther King, Jr., *A Testament of Hope: The Essential Writings of Martin Luther King, Jr.*, James Melvin Washington, ed. (San Francisco: Harper and Row, 1986), 219.

43. See J. M. Balkin, "Some Realism About Pluralism: Legal Realist Approaches to the First Amendment," *Duke Law Journal* 1990: 375–430.

44. Ibid.; J. M. Balkin, "Ideological Drift and the Struggle over Meaning," *Connecticut Law Review* 25 (1993): 875–91; J. M. Balkin, "Ideological Drift," in Roberta Kevelson, ed., *Action and Agency: Fourth Round Table on Law and Semiotics* (New York: Peter Lang, 1991).

45. In this way we can offer an evolutionary account of Bourdieu's "economy of logic" discussed in Chapter 2.

46. Robert C. Ellickson, "Property in Land," *Yale Law Journal* 102 (1993): 1315–1400.

47. Dennett, *Darwin's Dangerous Idea*, 486.

48. Thus it was not accidental that Louis Althusser identified them as examples of "ideological state apparatuses." Louis Althusser, "Ideology and Ideological State Apparatuses (Notes Towards an Investigation)," in *Lenin and Philosophy and Other Essays* (New York: Monthly Review Press, 1971), 127–86.

49. See Ernst Mayr, *Toward a New Philosophy of Biology: Observations of an Evolutionist* (Cambridge: Harvard University Press, 1988), 318–19; Ernst Mayr, *The Growth of Biological Thought* (Cambridge: Harvard University Press, 1982), 270–75.

50. Roger C. Schank, *The Connoisseur's Guide to the Mind: How We Think, How We Learn, and What It Means to Be Intelligent* (New York: Summit, 1991), 41. Schank argues that the most distinctive cooking styles are often those of communities where isolation has led to rigidification of expectations about how food should be prepared.

51. Emile Durkheim, *The Division of Labor in Society* (New York: Free Press, 1964), 167–73.

52. See Sanford Levinson and J. M. Balkin, "Law, Music, and Other Performing Arts," *University of Pennsylvania Law Review* 139 (1991): 1597–1658, for an account of the authentic performance movement along these lines.

5. Conceptions of Ideology

1. Jon Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1985), 462–64.

2. John Thompson, *Ideology and Modern Culture* (Stanford: Stanford University Press, 1991), 59 ("By 'symbolic forms' I understand a broad range of actions and utterances, images and texts, which are produced by subjects and recognized by them and others as meaningful constructs"); Clifford Geertz, *The Interpretation of Cultures* (New

York: Basic, 1973), 212–15. The locus classicus of the term is Ernst Cassirer, *The Philosophy of Symbolic Forms*, vol. 1, *Language* (New Haven: Yale University Press, 1955).

3. In contrast, Thompson does not seem concerned with a distinction between mental processes and symbolic forms existing in the social world. His approach is sociological rather than philosophical, and hence these questions do not concern him. On the other hand, in his essay "Ideology as a Cultural System," Geertz seems specifically interested in externalizing the study of ideology from internal mental operations to symbols. Geertz, *The Interpretation of Cultures*, 215.

It is interesting to note that Cassirer's original use of this concept was strongly Kantian in spirit. Cassirer argued that symbolic forms in science, language, myth, art, and religion constructed the world for us and enabled us to understand it; at the same time he viewed these forms as functions of mind that allowed people to conceive both the world and themselves and created a bridge between the two. Cassirer, *The Philosophy of Symbolic Forms*, 1: 91.

4. See, e.g., Catharine MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), 36, 42–43, 71.

5. Michéle Barrett, *The Politics of Truth: From Marx to Foucault* (Cambridge: Polity, 1991), 4.

6. See Jon Elster, *Sour Grapes: Studies in the Subversion of Rationality* (Cambridge: Cambridge University Press, 1983), 163.

7. Elster, *Making Sense of Marx*, 4, 27–29.

8. Ibid., 18–27, 465–93.

9. Thompson, *Ideology and Modern Culture*, 56.

10. See Ben-Ami Shillony, *The Jews and The Japanese: The Successful Outsiders* (Rutland, Vt.: Tuttle, 1991), 216–22.

11. Sheila K. Johnson, "Japanese and Jews: Intersection of Myths," *Los Angeles Times*, November 30, 1992. A good example of this mixture of admiration and negative stereotyping is a 1972 book by Fujita Den, the president of McDonald's of Japan. Entitled *Jewish Trade Practices*, it advises the Japanese to be more shrewd and unscrupulous like Jews in order to achieve business success. Shillony, *The Jews and The Japanese*, 217.

12. Leslie Helm, "Japan Newspaper Ad Revives Fears of Anti-Semitism," *Los Angeles Times*, July 29, 1993.

13. Elster, *Sour Grapes*, 157.

14. Thompson, *Ideology and Modern Culture*, 56, 59.

15. Ibid., 68, 73.

16. For example, the psychological mechanisms that reduce cognitive dissonance may operate to produce self-serving justifications by members of subordinate groups toward each other and forms of wishful thinking that work to the advantage of members of relatively dominant groups, as discussed in Chapter 8.

17. Catharine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), 116.

18. Thompson's model of ideology does not specifically consider the competing ideologies of subordinated groups. He is concerned only with the counterideology of

subordinate groups that he calls "incipient forms of the critique of ideology." See Thompson, *Ideology and Modern Culture*, 68.

19. See, e.g., Elizabeth V. Spellman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (London: Women's Press, 1988); Martha R. Mahoney, "Whiteness and Women, in Practice and Theory: A Reply to Catharine MacKinnon," *Yale Journal of Law and Feminism* 5 (1993): 217–51.

6. Ambivalence and Self-Reference

1. See Michéle Barrett, *The Politics of Truth: From Marx to Foucault* (Cambridge: Polity, 1991), 19; Jorge Larrain, *The Concept of Ideology* (London: Hutchison, 1979).

2. See, e.g., Barrett, *The Politics of Truth*, 18–26.

3. Lukacs also sometimes speaks of bourgeois consciousness as "false." See, e.g., Georg Lukacs, *History and Class Consciousness: Studies in Marxist Dialectics* (Cambridge: MIT Press, 1971), 53–54. Jorge Larrain has insisted that despite these remarks, Lukacs's basic conception of ideology is neutral because it does "not pass judgment on the validity or adequacy of ideas." Jorge Larrain, *Marxism and Ideology* (London: Macmillan, 1983), 73, 239 n. 73.

4. Raymond Geuss, *The Idea of a Critical Theory: Habermas and the Frankfurt School* (Cambridge: Cambridge University Press, 1981), 22–26.

5. V. I. Lenin, "What Is to Be Done?" in *The Lenin Anthology*, Robert C. Tucker, ed. (New York: Norton, 1975), 50.

6. John Thompson, *Ideology and Modern Culture* (Stanford: Stanford University Press, 1991), 95; Clifford Geertz, "Ideology as a Cultural System," in *The Interpretation of Cultures* (New York: Basic, 1973), 193–233.

7. Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge* (New York: Harcourt Brace Jovanovitch, 1936), 120–24, 149–51.

8. Ibid., 88–89, 93–94.

9. The expression "Mannheim's paradox" comes from Geertz, *The Interpretation of Cultures*, 194. I borrow this particular formulation of the paradox from Paul Ricoeur, *Lectures on Ideology and Utopia*, George H. Taylor, ed. (New York: Columbia University Press, 1986), 157.

10. Terry Eagleton, *Ideology: An Introduction* (London: Verso, 1991), 2.

11. Mannheim, *Ideology and Utopia*, 76–77. The recognition of this symmetry produces what Mannheim calls the general conception of ideology; Mannheim argues that this development transforms the simple theory of ideology into the sociology of knowledge (77–78).

12. See, e.g., his discussion of fascism, ibid., 134–46.

13. This is in accord with Gadamer's argument about the necessity of prejudgments and foreunderstandings as preconditions for understanding an Other, whether this Other is a text or a person. Hans-Georg Gadamer, *Truth and Method* (New York: Crossroad, 1975), 245–67.

14. The obligations imposed by the ambivalent conception are similar to those imposed by the hermeneutic circle as recast in Gadamer's ontological hermeneutics. Gad-

amer argues that we must assume that a text has some truth to convey to us; otherwise we cannot be certain whether our conclusions that the text is false or incoherent are due to the text or to our misunderstanding of it. See Gadamer, *Truth and Method*, 261–63. For a helpful discussion, see Georgia Warnke, *Gadamer: Hermeneutics, Tradition, and Reason* (Stanford: Stanford University Press, 1987), 86–91. Like Gadamer's hermeneutics, the ambivalent conception of ideology recognizes that human beings are fallible and finite creatures produced by circumstance and existing in a historical moment. This recognition produces the duty of understanding imposed by the hermeneutic circle.

Although there are important similarities, it is important not to confuse this argument for hermeneutic charity with Donald Davidson's arguments for radical interpretation according to the Principle of Charity. To begin with, Davidson is attempting a very different sort of project. He is trying to construct a theory of meaning: he wants to give an account of what goes on when a person means something in a natural language like English. Davidson argues that the idea of meaning is inextricably tied to concepts of belief, rationality, and truth. Because Davidson argues that truth is a primitive concept, he explains meaning, belief, and rationality in terms of it.

Davidson argues that when we try to understand another person, our sense of what she believes, the truth of what she is saying, and the meaning of what she is saying are interdependent. If we vary the meaning of the words, our ascriptions of belief to the speaker and the truth of those beliefs will also vary. Hence his Principle of Charity holds the truth of other people's beliefs constant and then interprets their meaning in light of this assumption. "This is accomplished by assigning truth conditions to alien sentences that make native speakers right when plausibly possible, according, of course, to our own view of what is right." Donald Davidson, *Inquiries into Truth and Interpretation* (Oxford: Clarendon, 1984), 137.

The task of ideological analysis is quite different. In ideological analysis, we assume (1) that others have beliefs quite different from ours, (2) that much of what we regard as obvious they do not, and (3) that part of our task is to learn something new from them in the task of critiquing them. The goal of Davidson's radical interpretation is not to have his ethics or political morality enlightened by an encounter with the natives; it is rather to provide a translation manual for their language. Radical interpretation does not seek substantive knowledge about what is good or true but rather semantic knowledge about what the terms of another person's language mean.

Although Davidsonian interpretation seems charitable in that it tries to make the statements of other persons true, it is really a charity that begins at home. It assumes that our own beliefs are true and then tries to vary the meanings of what others are saying so that their statements conform to our beliefs. The hermeneutic charity required by ideological analysis assumes that the truth lies somewhere between ourselves and the analysand and that it is our job to discover it. Davidsonian charity does not put our own beliefs into question to interpret the beliefs of others; hermeneutic charity requires that we do so.

Finally, Davidson's theory of meaning and his paradigmatic examples are primarily directed to questions of fact rather than questions of value. If a native reports that the statuette on my desk is "ugly" and I believe it is beautiful, Davidson does not apply the

Principle of Charity to conclude that the word *ugly* means "beautiful" to the native. Rather, Davidson suggests that we would accommodate this evidence in other ways; we would call this a "difference of opinion" (197). Such "differences of opinion" are often conflicts of values and value judgments. They are the primary concern of the hermeneutic charity involved in ideological analysis.

15. Hence an important difference between a critical approach and Gadamer's hermeneutics is that we do not engage in this approach with the goal of reaching an agreement with the analysand. Rather, we are interested in discovering both what we can learn from the analysand and what we ultimately cannot agree with because of the ideological effects we perceive in the analysand's thought.

16. The analogous point in the hermeneutical tradition is Gadamer's claim that understanding requires hermeneutic openness to the truth contained within a text. Gadamer, *Truth and Method*, 262; Warnke, *Gadamer: Hermeneutics, Tradition, and Reason*, 89.

17. These phenomena are discussed more fully, and in the context of legal judgments, in J. M. Balkin, "Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence," *Yale Law Journal* 103 (1993): 105–76.

18. Hermeneutic co-optation is an obvious danger in Gadamer's theory of understanding because he insists that understanding seeks not only openness to but also agreement with the Other; see, e.g., Warnke, *Gadamer: Hermeneutics, Tradition, and Reason*, 90–91. It would be more correct to say that Gadamer's account of understanding permits the phenomena of hermeneutic conformation and co-optation as well as more benign forms of understanding. In short, Gadamer gives us an account of understanding that, while designed to show how understanding is possible, also shows how various ideological effects in our understanding can occur. For further discussion see Balkin, "Understanding Legal Understanding," 159–66.

19. Mannheim, *Ideology and Utopia*, 77.

20. Thompson, *Ideology and Modern Culture*, 49.

21. Mannheim, *Ideology and Utopia*, 153–64.

22. Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Durham, N.C.: Duke University Press, 1989), 436–67.

23. For the most succinct statement of this ubiquitous trope in Fish's work, see Stanley Fish, *There's No Such Thing as Free Speech (and It's a Good Thing Too)* (Oxford: Oxford University Press, 1994), 295–96.

24. Ernest Gellner, *Reason and Culture* (Cambridge: Cambridge University Press, 1992), 132.

7. Transcendence

1. The most obvious candidate for a transcendent value other than truth and justice would be beauty, although it is unclear to what extent aesthetic order and normative order are fully separate in many different cultures, including our own.

My colleague Owen Fiss has suggested to me that human solidarity is also a transcendent value. Solidarity, however, is only a special case of a more fundamental value,

which is love. The ancient Greeks divided the concept of love into affection and sexual attraction *(eros)*, friendship *(philia)*, and concern for the well-being of others *(agapē)*.

There is much to recommend the notion that love is a transcendent value. Socrates' famous speech in Plato's *Symposium* views love as an unfulfilled (and unfulfillable) longing. I would argue that in this speech Plato offers us an *erotics* of human values. This erotic theory models human values on the example of love; it argues that human values are an inchoate and always unfulfilled longing and searching for the Good. This erotic conception of human values is as profound as anything Plato offers us in his middle dialogues.

2. Here again we should note the potential distinction between subjects of justice, who can be treated unjustly, and agents of justice, who can act unjustly.

3. This is one reason, I think, why theorists like Bruce Ackerman and Jürgen Habermas have turned to idealized forms of dialogue as means of explicating concepts of justice and truth. See Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980); Bruce Ackerman, "Why Dialogue?" *Journal of Philosophy* 86 (1989): 5–22; Jürgen Habermas, *Knowledge and Human Interests*, Jeremy J. Shapiro, trans. (Boston: Beacon, 1971); Jürgen Habermas, *Legitimation Crisis*, Thomas McCarthy, trans. (Boston: Beacon, 1975); Jürgen Habermas, *The Theory of Communicative Action*, Thomas A. McCarthy, trans. (Boston: Beacon, vol. 1, 1984; vol. 2, 1987). Like other philosophical theories, dialogic theories of justice and truth are articulations of our transcendent ideals. As articulations, they presuppose the existence of transcendent ideals rather than produce them.

4. Habermas has argued that certain ideal criteria are presupposed in communicative encounters; he has tried to capture them in his notion of an "ideal speech situation." Jürgen Habermas, "Discourse Ethics: Notes on Philosophical Justification," in *The Communicative Ethics Controversy*, Seyla Benhabib and Fred Dallmayr, eds. (Cambridge: MIT Press, 1990), 60–110, at 85; Jürgen Habermas, "Warheitstheorien," in H. Fahrenbach, ed., *Festschrift für W. Schultz* (Pfullingen: Neske, 1973), 211–65; Habermas, *Legitimation Crisis*, 110. Thus Habermas argues that "participants in communication cannot avoid the presupposition that the structure of their communication . . . rules out all external or internal coercion other than the force of the better argument, and thereby also neutralizes all motives other than that of the cooperative search for truth." Habermas, "Discourse Ethics," 86.

My argument differs from Habermas's in two important respects. First, Habermas relies on procedural and substantive criteria of an ideal speech situation instead of transcendent ideals of truth and justice. Indeed, he tries to derive ideals of factual and moral truth from the results of an ideal rational consensus. Later in this chapter I shall argue that a theory of ideal consensus presupposes these transcendent ideals and that an ideal speech situation is at best a heuristic for articulating them.

Second, I do not believe that when people engage in discourse they must presume that their discourse either does or can approximate the criteria of an ideal speech situation. I seriously doubt whether the notion of an ideal speech situation involving finite human beings with limited perspectives and historically generated cultural software is a coherent one. If the idea is incoherent, there is no reason to think that it is presumed in people's speech acts.

5. Sometimes we and the analysand will agree totally about what is right in a particular situation. Even so, we must still acknowledge that our views of what is just are revisable, incomplete, and imperfect. From a larger perspective what we think to be unambiguously just may be much more complicated and problematic. To acknowledge this we must still postulate a regulative ideal of justice against which our current judgments might be found wanting.

6. Many philosophers have advanced various versions of moral relativism. See Gilbert Harman and Judith Jarvis Thompson, *Moral Relativism and Moral Objectivity* (Oxford: Blackwell, 1996); David B. Wong, *Moral Relativity* (Berkeley: University of California Press, 1984). But these theories often make some accommodation for principles of tolerance and for possibilities of moral dialogue between peoples of different cultures. For example, Wong argues that certain moral principles of tolerance apply to all agents even if they are not "universally justifiable to all agents" (189). So his theory is not strongly relativist in the sense that I discuss in the text.

Harman comes closer to that position. He argues that people can evaluate the actions of a person either relative to their own values or relative to the values of the other person. Similarly, we can either offer reasons for action that make sense from our perspective or offer reasons that would carry weight with the other person. But there is no transcultural notion of morality. It is true that many people believe in tolerating the views of others, but if a principle of tolerance is widespread, it is because from different perspectives many people have good reasons to abide by it; it is not because a principle of tolerance applies to all people generally.

Harman recognizes only one way of criticizing the views of others if what they did was right from their perspective: Harman argues that although we cannot say that it was wrong of a person to do an act that is consistent with that person's values but not our own, we can properly say that it was wrong *that* the person did the act. We can say that what a person did was wrong in the same way that we can say that it was bad that a tiger mauled children, or that it was bad that an enemy took steps that worked against our interests. Thus, although it makes no sense to say that it was wrong of Hitler to exterminate Jews (assuming that Hilter had good reasons from within his own value system), we can say that it was wrong that Hitler exterminated Jews (49, 59–61). It is by no means clear how much work Harman thinks this distinction can do in dealing with problems of justice between cultures.

7. Jean-François Lyotard and Jean-Loup Thébaud, *Just Gaming* (Minneapolis: University of Minnesota Press, 1985), 100.

8. Ibid.

9. This argument is taken from J. M. Balkin, "Transcendental Deconstruction, Transcendent Justice," *Michigan Law Review* 92 (1994): 1131–86, at 1175.

10. The most famous ideal process theory is John Rawls's theory of the original position. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

11. The best examples are Jürgen Habermas's and Bruce Ackerman's work.

12. Charles Sanders Peirce's view of truth as the eventual consensus of a community of investigators can also be understood as an ideal process theory because the consensus is never the actual consensus of any given time but is always deferred. See Charles

Sanders Peirce, "How to Make Our Ideas Clear," in *Philosophical Writings of Peirce*, Justus Buchler, ed. (New York: Dover, 1955), 23–41, at 38.

13. John Rawls's theory of the original position is probably not an ideal dialogic theory in the sense I have described. Rawls imagines his participants in mutual discussion, but the principles of justice that emerge are not contingent upon the actual results of any sustained dialogue between people in the original position. Rawls claims that he can already show us the results that the participants will necessarily arrive at. His ideal procedure grounds justice not on dialogue but on rational decision.

Moreover, Rawls's veil of ignorance produces agreement by stripping away so much information from the participants that they are for all practical purposes identical. They agree on the principle of maximin—maximizing benefits to the least advantaged—because they have insufficient information about themselves to gain a strategic advantage by refusing to agree. Thus only one rational person is really necessary in the original position, because all rational agents under the veil of ignorance will decide to do the same thing. As a result, not only can we not call the decision a result of dialogue, we cannot even call it an agreement. It is indistinguishable from a single individual's decision of instrumental rationality. This is the ultimate consequence of Rawls's attempt to convert questions of justice into questions of rational decisionmaking. See T. K. Seung, *Intuition and Construction: The Foundation of Normative Theory* (New Haven: Yale University Press, 1993), 17.

14. Thus there is an analogy to the earlier criticism of Rawls. A truly ideal consensus under ideal conditions would require only one ideal participant, because each person in an ideal consensus would know everything (including the perspectives of all of the other parties) and would presumably have the same moral reactions to this knowledge. If the participants did not have the same moral reaction to the same information, it is not clear why they would agree.

15. This argument is taken from Balkin, "Transcendental Deconstruction, Transcendent Justice," 1139–40.

16. Ibid.

8. Cultural Heuristics

1. I am indebted to Bruce Ackerman for the insight as well as the term.

2. Jon Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1985), 466; Leon Festinger, *A Theory of Cognitive Dissonance* (Stanford: Stanford University Press, 1957); Daniel Kahneman, Paul Slovic, and Amos Tversky, eds., *Judgment Under Uncertainty: Heuristics and Biases* (Cambridge: Cambridge University Press, 1982).

3. Elster, *Making Sense of Marx*, 460–61; Jon Elster, *Sour Grapes: Studies in the Subversion of Rationality* (Cambridge: Cambridge University Press, 1983), 142.

4. Elster, *Sour Grapes*, 142.

5. Ibid., 141. Elster traces this distinction back to R. P. Abelson, "Computer Simulation of Hot Cognition," in S. Tomkins and S. Messick, eds., *Computer Simulation of Personality* (New York: Wiley, 1963), 277–98.

6. Elster, *Making Sense of Marx*, 466–67; Elster, *Sour Grapes*, 141.

7. See, e.g., Anthony Greenwald and David L. Ronis, "Twenty Years of Cognitive Dissonance: Case Study of the Evolution of a Theory," *Psychological Review* 85 (1978): 53–57.

8. See, e.g., Elliot Aronson, "The Theory of Cognitive Dissonance: A Current Perspective," *Advances in Experimental Social Psychology* 4 (1969): 1–34, at 16–17; J. Richard Eiser, *Social Psychology: Attitudes, Cognition, and Social Behavior* (Cambridge: Cambridge University Press, 1986), 93.

9. Daniel Kahneman and Amos Tversky, "Judgment Under Uncertainty: Heuristics and Biases," rpt. in *Judgment Under Uncertainty*, 1–20, at 1; R. Nisbett and L. Ross, *Human Inference: Strategies and Shortcomings of Social Judgment* (Englewood Cliffs, N.J.: Prentice-Hall, 1980), 6–7.

10. Elster, *Sour Grapes*, 164–65; Elster, *Making Sense of Marx*, 505.

11. Claude M. Steele and Thomas J. Liu, "Dissonance Processes as Self Affirmation," *Journal of Personality and Social Psychology* 45 (1983): 5–19; Ruth Thibodeau and Elliot Aronson, "Taking a Closer Look: Reasserting the Role of the Self-Concept in Dissonance Theory," *Personality and Social Psychology Bulletin* 18 (1992): 591–601; Greenwald and Ronis, "Twenty Years of Cognitive Dissonance," 55; Aronson, "The Theory of Cognitive Dissonance," 27.

12. Elster, *Sour Grapes*, 148.

13. Ibid., 156.

14. Elster, *Making Sense of Marx*, 510; the quotation is from Karl Marx, "Contribution to the Critique of Hegel's Philosophy of Right: Introduction," in *The Marx-Engels Reader*, Robert C. Tucker, ed. (New York: Norton, 1972), 11–23, at 12.

15. Elster, *Making Sense of Marx*, 482.

16. Ibid.

17. Ibid., 466.

18. On sample bias and availability heuristics, see Nisbett and Ross, *Human Inference*, 77–89; Kahneman, Slovic, and Tversky, *Judgment Under Uncertainty*, 163–208.

19. See Amos Tversky and Daniel Kahneman, "The Framing of Decisions and the Rationality of Choice," *Science* 211 (1981): 543–58; Elster, *Making Sense of Marx*, 466.

20. Elster, *Sour Grapes*, 144.

21. Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge* (New York: Harcourt Brace Jovanovitch, 1936), 118–46.

22. Elster, *Making Sense of Marx*, 490.

23. Ibid., 487. Nevertheless, Elster also notes that "the exploiting classes can be victims of similar illusions. Cognitively based ideologies do not always operate to the benefit of the ruling classes."

24. Ibid., 488. Elster draws here on Paul Veyne's work. The basic argument is that "since I would be worse off without a master, it follows on this logic that a society without masters would be intolerable, for who would then provide employment and protection?"

25. See ibid., 322.

26. See, e.g., ibid., 464–65, 468–72. Although his discussion focuses almost exclusively on effects of class interests and class positions, it is interesting to note that his actual definition of ideology does not specifically refer to economic class.

27. Paul Ricoeur, *Lectures on Ideology and Utopia*, George H. Taylor, ed. (New York: Columbia University Press, 1986), 8–10, 156–58. Thus, according to Ricoeur, ideology distorts "praxis as something symbolically mediated" (157). This argument provides yet another reason to abandon the familiar base-superstructure model of ideology inherited from Marxism. What that metaphor places in the so-called superstructure (culture) is actually basic to human existence and meaningful human action. Moreover, the superstructure does not exist purely for the purpose of distortion; it is not exhausted by its distorting effects. For example, Ricoeur argues that capitalist understandings of wage labor involve a distortion of praxis because the juridical concept of contract is applied to a situation of domination. But this does not mean that the idea of a contract is merely a fantasy or wholly an element of distortion. Rather, this tool of understanding is more than its distorting effects; it has independent uses, functions, and consequences. Nevertheless, it has been applied to a situation to which it is not fully appropriate; hence it gives a social situation an air of legitimacy that it does not deserve (155–56).

28. Clifford Geertz, "Ideology as a Cultural System," in *The Interpretation of Cultures* (New York: Basic, 1973), 209–13. In Chapter 11 we will consider metaphor once again through the work of George Lakoff and Mark Johnson, who argue that these rhetorical devices arise through a process of evolutionary development originating in the movements of the human body.

29. Ibid., 211.

30. Ibid., 212.

31. See George Lakoff and Mark Turner, *More Than Cool Reason: A Field Guide to Poetic Metaphor* (Chicago: University of Chicago Press, 1989).

32. Elster, *Making Sense of Marx*, 492–93. See Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, in *The Marx-Engels Reader*, 436–525.

33. Marx, *The Eighteenth Brumaire*, 437.

34. Aristotle, *On Rhetoric: A Theory of Civic Discourse*, George A. Kennedy, trans. (Oxford: Oxford University Press, 1991).

35. George Herbert Mead, *Mind, Self, and Society*, Charles W. Morris, ed. (Chicago: University of Chicago Press, 1962), 154–56, 178–226.

36. Jerome A. Bruner, *Acts of Meaning* (Cambridge: Harvard University Press, 1990), 138.

9. Narrative Expectations

1. Jerome A. Bruner, *Acts of Meaning* (Cambridge: Harvard University Press, 1990), 47.

2. Erving Goffman, *Frame Analysis: An Essay on the Organization of Experience* (New York: Harper and Row, 1974).

3. Roger C. Schank and Robert Abelson, *Scripts, Plans, Goals, and Understanding* (Hillsdale, N.J.: Erlbaum, 1977).

4. Paul Grice, *Studies in the Way of Words* (Cambridge: Harvard University Press, 1989), 26–27.

5. Bruner, *Acts of Meaning*, 49–50.

6. Roger C. Schank, *The Connoisseur's Guide to the Mind: How We Think, How We Learn, and What It Means to Be Intelligent* (New York: Summit, 1991), 187–99.

7. Roger C. Schank, *Tell Me a Story: A New Look at Real and Artificial Memory* (New York: Scribner's, 1990), 114–15.

8. See Jean Matter Mandler, *Stories, Scripts, and Scenes: Aspects of Schema Theory* (Hillsdale, N.J.: Erlbaum, 1984).

9. F. C. Bartlett, *Remembering: A Study in Experimental and Social Psychology* (Cambridge: Cambridge University Press, 1932), 63–94.

10. Schank, *Tell Me a Story*, 46; Elizabeth Stone, *Black Sheep and Kissing Cousins: How Our Family Stories Shape Us* (New York: Times Books, 1988), 96–108, 165–95.

11. Donald Polkinghorne, *Narrative Knowing and the Human Sciences* (Albany: SUNY Press, 1988), 150.

12. Bruner, *Acts of Meaning*, 121.

13. Ibid., 121–22.

14. Donald Spence, *Narrative Truth and Historical Truth: Meaning and Interpretation in Psychoanalysis* (New York: Norton, 1984); Roy Schafer, "Narration in the Psychoanalytic Dialogue," in *On Narrative*, W. J. T. Mitchell, ed. (Chicago: University of Chicago Press, 1981).

15. Mark J. Osiel, "Ever Again: Legal Remembrance of Administrative Massacre," *University of Pennsylvania Law Review* 144 (1995): 463–704, at 475–77.

16. Ibid., 476.

17. Richard Slotkin, *Gunfighter Nation: The Myth of the Frontier in Twentieth-Century America* (New York: Atheneum, 1992).

18. Ibid., 10–12.

19. Ibid., 14.

20. Ibid., 16–18.

21. Ibid., 10–21.

22. Ibid., 13.

23. Indeed, the story of Exodus contains a cycle within a cycle: The Jews are almost within sight of Canaan and are about to receive the Law when they stray from God's teachings and worship the Golden Calf. As a result, God punishes them by condemning them to wander forty years in the desert before permitting them to enter the Promised Land.

24. As Holmes pointed out, even a dog understands the difference between these two states of affairs. Oliver Wendell Holmes, Jr., *The Common Law* (1888), Mark DeWolfe Howe ed. (Boston: Little, Brown, 1963), 7.

25. See Osiel, "Ever Again," 470 n. 23.

26. See Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca, N.Y.: Cornell University Press, 1990).

27. Ibid.

10. Homologies and Associations

1. See, e.g., Kimberlé Williams Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101 (1988): 1331–87, at 1370–74.

2. See Office of Applied Studies, U.S. Department of Health and Human Services, *Preliminary Estimates from the 1994 National Household Survey on Druge Abuse* (Advance Report Number 10, 1995), 76 (estimating that 76 percent of illicit drug users are white, compared with 13.67 percent who are black); Martina Shea, U.S. Department of Commerce, *Dynamics of Economic Well-Being: Program Participation, 1990–1992* (1995), 13 (reporting that 64.5 percent of recipients in major means-tested aid programs are white, while 31.3 percent of such recipients are black); Kathleen Maguire and Ann L. Pastore, eds., *Bureau of Justice Statistics, U.S. Department of Justice, Sourcebook of Criminal Justice Statistics* (1995), 408 (reporting that 66.6 percent of all criminal arrestees in 1994 were white, while only 31.3 percent of arrestees were black). Although it is true that the percentages of blacks in these groups is higher than their representation in the U.S. population, these statistics nevertheless undercut the all too prevalent assumption that blacks are responsible for the vast majority of these social problems.

3. See Patricia A. Williams, *The Alchemy of Race and Rights: The Diary of a Law Professor* (Cambridge: Harvard University Press, 1991).

4. Roland Barthes, *Mythologies* (New York: Hill and Wang, 1972).

5. See, e.g., Robert Hodge and Gunther Kress, *Social Semiotics* (Ithaca, N.Y.: Cornell University Press, 1988).

6. Gerald Torres and Donald Brewster, "Judges and Juries: Separate Moments in the Same Phenomenon," *Law and Inequality* 4 (1986): 171–88.

7. Thus, although structuralism often claims to look for the underlying "grammar" of culture, the analogy is partly misleading. Structuralist and semiotic analyses do not so much reveal a set of articulable rules consciously used by subjects as the results of practical cognitive work that employs networks of association. Semiotic analysis studies what individuals produce using generative tools of understanding rather than articulable "instructions" of cultural software itself.

This distinction is central to Pierre Bourdieu's critique of structuralism. See Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977); Pierre Bourdieu, *The Logic of Practice* (Cambridge: Polity, 1990). In Bourdieu's words, we must not confuse the opus operandum with the modus operandi; that is, we must not confuse the structural features of the cultural artifacts produced with the cognitive capacities that produced them. Our conceptual tools create cultural artifacts with a particular conceptual structure. The thing produced is evidence of the generative capacities that produced it; it is not, however, identical with those capacities. Rather than the compiler of a social grammar or a social etiquette book, the semiotician should think of herself as a forensic scientist who, presented with the victim's body, tries to imagine the murder weapon and the means and opportunity for the crime; or as a geologist who, presented with the sedimentary layers of culture, tries to discern the processes that led to that sedimentation.

8. J. M. Balkin, "Nested Oppositions," *Yale Law Journal* 99 (1990): 1669–1705.

9. The standard of appellate review of a jury's verdict also reflects the opposition between law and fact. Questions of law are reviewed de novo; that is, the higher court judge may substitute her own view of the law for that of the lower court judge. On the other hand, an appellate court is loath to reverse factual findings by a jury unless they are completely unreasonable, or, in the case of a trial by a lower court judge, clearly erroneous. This suggests a further homology between appellate court and trial court judges, on the one hand, and judges and juries on the other. Appellate courts are usually called "higher" courts, trial courts are usually called "lower" courts. One appeals to a higher court from a lower court. The work of the higher courts is concerned almost exclusively with matters of law.

10. Torres and Brewster, "Judges and Juries," 181.

11. The study of conceptual oppositions does not exhaust the nature of patriarchal thought. As noted in Chapter 5, patriarchy is the result of a jumble of variegated and heterogenous mechanisms. Here I focus on only one of the many different ideological mechanisms of patriarchy.

12. See, e.g., Catharine MacKinnon, "Difference and Dominance," in *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), 32–45.

13. Jeanne L. Schroeder, "Abduction from the Seraglio: Feminist Methodologies and the Logic of Imagination," *Texas Law Review* 70 (1991): 109–210.

14. Stephen L. Carter, *Reflections of an Affirmative Action Baby* (New York: Basic, 1991), 47–69.

15. Ibid., 50–52.

16. Andrew Koppelman, *Antidiscrimination Law and Social Equality* (New Haven: Yale University Press, 1996), 146–76; Silvia A. Law, "Homosexuality and the Social Meaning of Gender," *Wisconsin Law Review* 1988: 187–235; Marc A. Fajer, "Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men," *University of Miami Law Review* 46 (1992): 511–651.

17. J. M. Balkin, "The Constitution of Status," *Yale Law Journal* 106 (1997): 2313–74, at 2361–62.

18. Fajer, "Can Two Real Men Eat Quiche Together?" 607–29.

19. Balkin, "Nested Oppositions."

20. Ibid., 1676.

21. On the Western tradition, see G. E. R. Lloyd, *Polarity and Analogy: Two Types of Argumentation in Early Greek Thought* (Cambridge: Cambridge University Press, 1966); on the Eastern tradition, see Lao-Tzu, *Tao Te Ching*, Thomas Cleary, trans. (London: Shambala, 1983).

22. See Jacques Derrida, "Différance," in *Margins of Philosophy* (Chicago: University of Chicago Press, 1987), 1–27. Derrida describes his argument in terms of presence and absence of concepts. He argues that "the signified concept is never present in and of itself, in a sufficient presence that would refer only to itself" (11). A concept's lack of full self-presence is its conceptual dependence upon other concepts. Derrida's "différance" also adds a temporal dimension to the notion of conceptual dependence, for he argues that concepts depend on their predecessors and their successors.

23. These claims are defended at greater length in J. M. Balkin, "Transcendental Deconstruction, Transcendent Justice," *Michigan Law Review* 92 (1994): 1131–86.

24. Akhil Amar, "The Bill of Rights as a Constitution," *Yale Law Journal* 100 (1991): 1131–1210, at 1195.

25. Amar points out that the constitutional role of juries as populist protectors of human rights was not simply to nullify in sympathetic factual cases, but to apply the higher law of the constitution to control the ordinary positive law. Ibid., 1191. This suggests the homology reason : passion :: jury : judge :: higher law : positive law :: controlling : needing to be controlled. Indeed, Amar notes, "If we seek a paradigmatic image underlying the Bill of Rights, we cannot go far wrong in picking the jury" (1190). This role, he argues, has been suppressed over time, as judges have assumed for themselves the mantle of protectors of constitutional rights, regarding the jury as unlearned and thus as a threat to constitutional values. See 1192–95.

26. As argued by former Supreme Court Justice William Brennan in William Brennan, "Reason, Passion, and 'The Progress of the Law,' " *Cardozo Law Review* 10 (1988): 3–24.

27. Oliver Wendell Holmes, Jr., "The Path of the Law," *Harvard Law Review* 10 (1897): 457–78.

28. For two quite different versions of this point see Andrew Ortony, Gerald L. Clare, and Allan Collins, *The Cognitive Structure of Emotions* (Cambridge: Cambridge University Press, 1988); and Robert H. Frank, *Passions Within Reason: The Strategic Role of the Emotions* (New York: Norton, 1988).

29. An example would be the medical profession's opinions on proper medical procedures for women.

11. Metaphor, Metonymy, and Cognitive Models

1. See Raymond W. Gibbs, Jr., "Process and Products in Making Sense of Tropes," in *Metaphor and Thought*, Andrew Ortony, ed. (Cambridge: Cambridge University Press, 2d ed., 1994), 252–76.

2. George Lakoff, *Women, Fire, and Dangerous Things: What Categories Reveal About the Mind* (Chicago: Chicago University Press, 1987); Mark Johnson, *The Body in the Mind: The Bodily Basis of Reason and Imagination* (Chicago: University of Chicago Press, 1987).

3. Lakoff, *Women, Fire, and Dangerous Things*, 271–78.

4. For an attempt to trace these ideas through many different fields and traditions, including Eastern religious thought, see Francisco J. Varela, Evan Thompson, and Eleanor Rosch, *The Embodied Mind: Cognitive Science and Human Experience* (Cambridge: MIT Press, 1991). For a discussion in the European phenomenological tradition see Hubert L. Dreyfus, *What Computers Can't Do: The Limits of Artificial Intelligence* (New York: Harper and Row, rev. ed., 1979), 235–55.

5. Pierre Bourdieu, *The Logic of Practice* (Cambridge: Polity, 1990), 68–79.

6. Giambattista Vico, *The New Science*, Book I [237], Thomas Goddard Bergin and Max Harold Fisch, trans. (Ithaca, N.Y.: Cornell University Press, 1968), 78.

7. George Lakoff, "The Contemporary Theory of Metaphor," in *Metaphor and Thought*, 202–51.

8. George Lakoff and Mark Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 1980), 90, 98.

9. Ibid., 98–99.

10. Ibid., 87–96.

11. Michael J. Reddy, "The Conduit Metaphor: A Case of Frame Conflict in Our Language About Language," in *Metaphor and Thought*, 164–201.

12. See Eve Sweetser, *From Etymology to Pragmatics: Metaphorical and Cultural Aspects of Semantic Structure* (Cambridge: Cambridge University Press, 1990).

13. Steven Winter, for example, has shown how metaphorical models of understanding have shaped the growth and development of legal doctrine. Steven L. Winter, "The Meaning of 'Under Color of' Law," *Michigan Law Review* 91 (1992): 323–418; Steven L. Winter, "Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law," *University of Pennsylvania Law Review* 137 (1989): 1105–1237; Steven L. Winter, "The Metaphor of Standing and the Problem of Self-Governance," *Stanford Law Review* 40 (1988): 1371–1515.

14. See Lakoff and Johnson, *Metaphors We Live By*, 4–5, 77–87.

15. The locus classicus of this metaphor in American free speech law is Justice Holmes's dissent in *Abrams v. United States*, 250 U.S. 616 (1919).

16. Lakoff and Johnson, *Metaphors We Live By*, 157.

17. Ibid., 5.

18. Ibid., 4.

19. Donald A. Schon, "Generative Metaphor: A Perspective on Problem-Setting in Social Policy," in *Metaphor and Thought*, 137–63.

20. Lakoff and Johnson, *Metaphors We Live By*, 35–40; Gibbs, "Process and Products in Making Sense of Tropes," in *Metaphor and Thought*, 252–76, at 258–62.

21. Lakoff, *Women, Fire, and Dangerous Things*, 78.

22. Ibid., 16, 161. Douglas Medin, "Concepts and Conceptual Structure," *American Psychologist* 44 (1989): 1469–81, at 1470.

23. Ludwig Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell, 1953), 66–71.

24. Eleanor Rosch, "Cognitive Reference Points," *Cognitive Psychology* 7 (1975): 532–47; Eleanor Rosch, "Cognitive Representations of Semantic Categories, *Journal of Experimental Psychology: General* 104 (1975): 192–233; Eleanor Rosch and C. B. Mervis, "Family Resemblances: Studies in the Internal Structure of Categories," *Cognitive Psychology* 16 (1975): 371–416; Eleanor Rosch and B. B. Lloyd, eds., *Cognition and Categorization* (Hillsdale, N.J.: Erlbaum, 1978).

25. Lance J. Ripps, "Inductive Judgments About Natural Categories," *Journal of Verbal Learning and Verbal Behavior* 14 (1975): 665–81; Rosch, "Cognitive Reference Points"; Amos Tversky and I. Gati, "Studies of Similarity," in Rosch and Lloyd, *Cognition and Categorization*, 79–88; Lakoff, *Women, Fire, and Dangerous Things*, 41.

26. Lakoff, *Women, Fire, and Dangerous Things*, 91.

27. Ibid., 43–44, 68.

28. For a survey of the literature and the relevant debates, see Medin, "Concepts and Category Formation." A different account is offered in Lakoff, *Women, Fire, and Dangerous Things*.

29. Lakoff, *Women, Fire, and Dangerous Things*, 85.

30. Amos Tversky and Daniel Kahneman, "Probability, Representativeness, and the Conjunction Fallacy," *Psychological Review* 90 (1983): 293–315.

31. Lakoff, *Women, Fire, and Dangerous Things*, 85–86.

32. Ibid., 80–84.

33. Ibid.

34. Cf. ibid., 81.

35. Ibid.

12. The Power of Understanding

1. Michel Foucault, "Truth and Power," in *Power/Knowledge: Selected Interviews and Writings, 1972–1977*, Colin Gordon, ed. (New York: Pantheon, 1980), 118.

2. Ibid.

3. See, e.g., Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1979), 170.

4. Foucault, "Truth and Power," 118.

5. See Foucault, "Truth and Power," 131.

6. Charles Taylor, "Foucault on Freedom and Truth," in *Foucault: A Critical Reader*, David Couzens Hoy, ed. (Oxford: Blackwell, 1986), 69–102. Ironically, although the goal of genealogy is to deny that a deeper hidden meaning lurks beneath the surface of social events, this truth itself must be revealed through a process of unmasking the fraud of deep meaning. The deeper meaning of social life is that there is no deeper meaning. Dreyfus and Rabinow demonstrate this paradox in their very formulation of Foucault's project: "The genealogist recognizes that the deep hidden meanings, the unreachable heights of truth, the murky interiors of consciousness are all shams . . . Genealogy's . . . banner [is]: Mistrust identities in history: they are only masks." Hubert L. Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 2d ed., 1983), 107. Yet mistrust implies a truer state of affairs that lies behind what is mistrusted.

7. See Nicos Poulantzas, *State, Power, and Socialism*, trans. Patrick Camiller (London: New Left, 1978), 149.

8. Michel Foucault, *The History of Sexuality*, vol. 1, *An Introduction* (New York: Vintage, 1980), 95–96.

9. Ibid., 94.

10. Thomas Seung has suggested to me that Foucault's theory of resistance is Hegelian, because the antithesis (resistance) grows magically out of the thesis (the system of power).

11. See Foucault, *Power/Knowledge*, 82–83.

12. Ibid., 81.

13. See, e.g., Foucault, *The History of Sexuality*, 1: 95.

14. See Michel Foucault, "Nietzsche, Genealogy, History," in *Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault* (Ithaca, N.Y.: Cornell University Press, 1977), 148–51.

15. See, e.g., Foucault, "Nietzsche, Genealogy, History," 147–48; *Discipline and Punish*, 25–30.

16. Foucault, *The History of Sexuality*, 1: 94.

17. Michel Foucault, *The History of Sexuality*, vol. 2, *The Use of Pleasure* (New York: Vintage, 1985), 6–7.

18. Ibid., 7.

19. Ibid., 6.

20. Foucault, "Nietzsche, Genealogy, History," 142.

21. Stanley Fish, *Doing What Comes Naturally: Rhetoric and Change in Law and Literary Studies* (Durham, N.C.: Duke University Press, 1990), 520 (italics omitted).

22. See Charles Taylor, "Foucault on Freedom and Truth."

23. See Stephen Jay Gould, *Hen's Teeth and Horse's Toes* (New York: Norton, 1983), 158–65.

24. Hans-Georg Gadamer, *Truth and Method* (New York: Crossroad, 1975), 238–40.

25. Stanley Fish, *There's No Such Thing as Free Speech (and It's a Good Thing Too)* (Oxford: Oxford University Press, 1994), 117.

26. Foucault, *The History of Sexuality*, 1: 94–95.

27. Gadamer, *Truth and Method*, 266–67, 324–25.

28. See Michel Foucault, "An Aesthetics of Existence," in *Foucault Live: Interviews, 1966–84* (New York: Semiotext(e), 1989), 313.

29. Like all articulation, this process involves construction as well as refinement; thus Foucault is partly correct that articulation does not involve the rediscovery of a deeper sexual nature that was always present. That is because sexual desire, like all human desires and values, is inchoate and indeterminate. It must be articulated through the development of culture. Although sexual desire is articulated through culture, sexual desire is not wholly a creation of culture; even before culture existed, human beings had sexual desires. Foucault is ambiguous on this point. He doubts that "sex is an anchorage point that supports the manifestations of sexuality"; rather, he thinks it is "a complex idea that was formed inside the deployment of sexuality." Foucault, *The History of Sexuality*, 1: 152. Sex is a concept that we use to describe the ways in which we have understood our bodies through culture. Thus, Foucault insists, "sex is not an autonomous agency which secondarily produces manifold effects of sexuality over the entire length of its surface of contact with power." Instead, "sex is the most speculative, most ideal, and most internal element in a deployment of sexuality organized by power in its grip on bodies and their materiality, their forces, energies, sensations, and pleasures" (155).

The difficulty with this formulation lies in the last phrase. How can power have a grip on the "energies, sensations, and pleasures" of bodies if bodies have energies, sensations, and pleasures only as a result of culture? Here Foucault's Parmenideanism reasserts itself: sex must always have been internal to sexuality; everything must already be

fully contained within the system of cultural power. Yet without human values to be shaped through culture, cultural articulation cannot even get off the ground.

30. Immanuel Kant, "Conjectural Beginning of Human History," in *Kant on History*, Lewis White Beck, ed. (New York: Macmillan, 1963), 57.

13. Knowledge Made Flesh

1. Jerome H. Barkow, Leda Cosmides, and John Tooby, *The Adapted Mind: Evolutionary Psychology and the Generation of Culture* (Oxford: Oxford University Press, 1992).