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REPLIES

STANCES*

PIERRE SCHLAG†

Early in their paper, Margaret Jane Radin and Frank Michelman take a stance: "We do not agree . . . that it is especially helpful as part of the effort to advance an understanding of legal thought's situation and prospects . . . to name 'normativity' as legal thought's crucially problematic characteristic."¹ Not only do they conceive of their own intellectual project as taking a stance, but "stance" is one of the major metaphors organizing their conceptualization of the jurisprudential field. Hence, they say: "Postmodernists, we think, are committed . . . to the view that at any moment some *stance* must be privileged"² In this sentence, the metaphorical logic of *stance* is already doing its rhetorical work even before we reach the word "stance." Both in the claims that postmodernists "are committed" and that they are committed to a "*view*," there is already a logic that constructs postmodernists as persons who take *stances*.

For pragmatists, this metaphorical prefiguration of the field of jurisprudence as a collection of stances is in some senses quite congenial. Implicit in—indeed, embodied in—the metaphor of *stance* are the notions of orientation and of attitude. By conceiving of the various jurisprudences as stances, we are able to take note of the character of their (jurisprudential) orientations or attitudes. The focus on orientation leads the pragmatist to evaluate each jurisprudence for its likely practical and wordly implications. The focus on attitude enables and activates the perspectivist moment in critical pragmatism—what Radin and Michelman call the commitment to "watchful receptiveness to redescription."³

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¹ Radin & Michelman, *Pragmatist and Poststructuralist Critical Legal Practice*, 139 U. PA. L. REV. 1019, 1020 (1991) (emphasis omitted).

² *Id.* at 1029-30 (emphasis altered).

³ *Id.* at 1051.

But the conventional metaphors of the logic of stance have another rhetorical entailment that tends to frustrate the critical perspectivism and the dialogic openness of pragmatism. It is *stance as position*. It is this metaphorical entailment that prompts the question that Radin and Michelman ask of the critique of normativity, of poststructuralism, and of themselves: Where do you stand to say all this?⁴ And it is the same metaphoric logic of *stance as position* that organizes each part of their response. Hence, Radin and Michelman worry whether they may already have sabotaged the inquiry by “(mis)locating poststructuralism . . . on a *plane* with the others.”⁵ The answer to this hypothetical objection is “already contained in the objection’s demand for . . . an *undislodgeable*, privileged privilege.”⁶ It is “that no privilege is stabilized against *dislodgement*.”⁷

What is interesting here is that the logic of stance has reduced a dialogue between poststructuralism and pragmatism to an encounter between two object-form positions in a highly spatialized and static discursive field.⁸ And it is precisely this spatialization of intellectual activity into object-form positions—that is, into *stances*—that creates for the pragmatist this problem of privilege:

[T]o insist on a privilege over privileges—would be to restore a *foundation*. Poststructuralism, rejecting *foundations*, here joins pragmatism: which stance *stands as critique* and which others *stand as targets* is always and strictly a matter of (i) occasion or *focus*, and (ii) *perspective* or interest; it is not a fixed or stable matter of conceptual structure or logical inference.⁹

What image of the field is prompted by this passage? The field is occupied by mobile jurisprudential attitudes taking up positions—sometimes targeting other positions, sometimes being targeted themselves.

This way of conceptualizing the field does not resolve the question of privilege, but rather prompts it: Who will decide whether the “occasion or focus,” the “perspective or interest,” warrants a poststructuralist or a pragmatic attitude?

⁴ See *id.* at 1021-22.

⁵ *Id.* at 1029 (emphasis added).

⁶ *Id.* (emphasis added).

⁷ *Id.* at 1030 (emphasis added).

⁸ See Winter, *Without Privilege*, 139 U. PA. L. REV. 1063 (1991).

⁹ Radin & Michelman, *supra* note 1, at 1030 (emphasis added and footnote omitted).

The problem I want to urge here is not the familiar problem of undecidability. Rather, I want to suggest that the logic of stance—the very same metaphorical logic that prompts the question of privilege—has already scripted the answer. The casting of the field of jurisprudence in the metaphor of stances, of positions, always and already requires an agent to select and take the stances. Indeed, implicit in the logic of stance—of standing up, of taking stances, of separating one's self from the scene ("occasion or focus") and standing apart from one's own social constructedness ("interest and perspective")—is the notion of an autonomous individual subject who chooses his or her own stances.

And so it is no surprise that, operating within what is for them the originary and organizational metaphor of stance, Radin and Michelman conclude on the last page of their commentary with the statement: "We cannot deny our own agency."¹⁰ Within the logic of stances, a stance-selecting agent is not only rhetorically indispensable; he is already presupposed.

And yet even if one agrees with the statement above, the identity and the status of *each* of its critical terms—"We," "cannot," "deny," "our," "own," "agency"—are up for further inquiry and specification. For instance, what is the status of this agent? Is this "agent," this "We," or this "I," an ontological given? An ideological construction? A social inscription? An indispensable epistemic necessity? There is a certain self-referential transitivity at work here: whatever meaning is invested in the "We," or the "I," becomes the meaning of the "agency" that we cannot deny. But which meaning is that? The sentence "We cannot deny our own agency," which at first seems to be such a strong response to the poststructuralist, does not resolve the problem. The interesting version of the problem of the subject is not whether there are subjects, but rather *how* there are subjects and what those subjects look like.

By short-circuiting these questions, the metaphorical prescribing of the field as a collection of stances frustrates the pragmatic project of dialogical openness. Even as it raises an intractable problem of privilege among competing positions, none of which can claim foundations, pragmatism hides from itself, its own pre-scripted, conventional answer. Quite conventionally, the metaphor of stance can quickly become a kind of closure device that works to exclude from view any intellectual activity that does not

¹⁰ *Id.* at 1058 (emphasis omitted).

consist in stance-taking. The ultimate risk, of course, is that in a field of jurisprudence cast as contentious stance-taking, there simply will not be room for those jurisprudences that operate differently. Thus, through its conventional construction of the field as stance-taking, pragmatism risks falling into the complacency that it decries in its more critical moments.

The metaphor of stance is congruent with and enables another conventional metaphor that also cuts against the dialogic openness championed by pragmatism. Indeed, much of the Radin-Michelman description of the jurisprudential field is cast in the conventional metaphor, *rational argument is war*.¹¹ Hence, not only do legal thinkers take stances, and positions, but we "contend[] against,"¹² we "sabotage[],"¹³ we "quarrel"¹⁴ and have "demobilizing self-suspicion,"¹⁵ we encounter "assaults"¹⁶ and "targets."¹⁷ But this way of conceiving discussion (albeit quite conventional)¹⁸ is not going to be conducive to the dialogic openness and "watchful receptiveness to redescription," that pragmatists favor.¹⁹ To the contrary, it is likely to lead everyone to take up stances and defend their positions.

If Radin and Michelman have missed the critique of normativity, it is because they were looking for it in all the wrong metaphorical *places*. They were looking for it on a jurisprudential *field* constructed as a collection of *stances*. To read the critique as a stance is to read out what it is striving to do—namely, to reveal how the scene of (normatively charged) stances is itself constructed. In order to do that, the critique has to *displace* the grammar of normative legal thought. As they say, "[S]ometimes it is the most taken-for-granted cultural landscape features that most cry out for redescription."²⁰

¹¹ See G. LAKOFF & M. JOHNSON, METAPHORS WE LIVE BY 4-6 (1980).

¹² Radin & Michelman, *supra* note 1, at 1019 (emphasis omitted).

¹³ *Id.* at 1029.

¹⁴ *Id.* at 1023.

¹⁵ *Id.*

¹⁶ *Id.* at 1045.

¹⁷ *Id.* at 1030.

¹⁸ The *rational argument is war* metaphor is conventionally embedded and powerful. See G. LAKOFF & M. JOHNSON, *supra* note 11, at 4-6.

¹⁹ See Radin & Michelman, *supra* note 1, at 1051.

²⁰ *Id.* at 1048.