On Reflective Practices and 'Substituting for God'

Martin Stone

1.

Stanley Fish says an interpretation is required if anything is to mean anything:

> Communications of every kind are characterized by exactly the same conditions – the necessity of interpretive work...and the construction by acts of interpretation.[1]

This sounds alarming – of *every* kind? – but it is nothing worrisome, Fish says, once we realize that interpretation always take place in a *community*.[2] Meanings are as *plain* as anyone could want – even if not "plain in and of themselves"[3] – when the community moves in uniform step. Indeed, from this same idea, Fish suggests, we get all the resources we need (or have ever had) for talking of people getting things objectively *right* or *wrong*. Such talk comes to nothing more mysterious than this, that interpreting agents are everywhere subject to correction by that larger agent of meaning, their Community. Fish – not alone among theorists today – calls this "pragmatism."

In my essay "On Theory, Practice and Ubiquitous Interpretation,"[4] I said this doctrine is *strange* and not any down-to-earth kind of pragmatism: It is exactly *as* strange as the "foundationalist" or "formalist" accounts of meaning which Fish believes he is combatting. For, grasped at the right level of depth, what is wrong with *those* accounts is also what is wrong with Fish's doctrine: They are endeavors to imagine how the meaning of a "sign" gets fixed from among *all the possibilities* (as it were), *after* one dislodges, or abstracts away from, the very standpoint which is needed to identify a sign as meaning something at all– *viz*., the practical

standpoint of agents, those employing the sign or having concourse with it.

There is good news, however. Since Fish already has a lively feeling for what is wrong with the doctrines he is combatting, he has only a small step to take – a slight deepening of his best ideas – in order to abandon completely all the strange talk about ubiquitous interpretation for which he is known. He is close; and it even emerges, in a response written by Fish, that – in saying that interpretation is often superfluous – I was expressing *his* view:

> Better, says Stone, that we "return the word 'interpretation' to its ordinary use, whereby interpretation is sometimes needed and sometimes not – it is no longer a general requirement." Once again I find myself in agreement with an argument mounted against me and inclined to claim it as my own.[5]

By all means, claim it! I'm hardly surprised by Fish's recognition of his own view in what I said (even if it *reverses* the thesis for which he is known!) since expressing his exact view (expressing it exactly) was just my intent. When the critical point is already present in the form of a conflict someone is in (when the conflict is a philosophical one), all that is needed is a *perspicuous representation* of their own doctrine – one which manages to make apparent the connections among the different conflicting thoughts involved.

Fish makes only one small mistake: My argument wasn't "mounted against him." His courtroom style requires two parties. Mine was an argument against something I knew he didn't mean (something he will perhaps not ever have meant), hence an argument *in favor* of him, or his better half.

Scott Hershovitz wasn't convinced, however, and his objections to my argument now threaten to keep Fish's conflict alive – if not for Fish, at least for others holding (or not holding as the case may be) similar views.[6]

2.

The *main* issue is this. Hershovitz seeks to confront my argument with differences between Law and Literature on the hand, and other ("unreflective") activities of "using language" on the other. My argument, he feels, relies on a "Wittgensteinian picture" which concerns the later, but which "doesn't teach us anything" about Law and Literature, the "reflective" activities "Fish is most interested in." The upshot, for Hershovitz, is that my critique needs to be reigned-in: On the main topics, or his main topics, Fish's view "survives" it. Of course, this must mean, happily, that my critique survives in some down-sized way too. It doesn't dispose of Fish's interpretivism completely, but it does show, Hershovitz allows, that Fish "has overstepped his bounds."

My essay mentioned Wittgenstein only in a few footnotes because my aim was to give a perspicuous representation of Fish's doctrine, not to talk *about* one. If I mis-described something or drew a faulty inference, it should be possible to see this without bringing Wittgenstein into it. But now I feel I should say that I wasn't relying on any representation Wittgenstein makes about "language-use," because he *doesn't*, as I read him, make any.[7] Indeed, he harps on this point throughout his work. He has fewer positive characterizations of what he is up to, but one of them is this:

> A perspicuous representation produces just that understanding which consists in 'seeing connexions'....The concept...is of fundamental significance for us. It earmarks the form of account we give, the way we look at things.[8]

Remarks like this are central to the way I understand Wittgenstein: What does he mean in depicting his own originality so emphatically as a particular "form of account"?

He wishes to say, in part, that one would be missing his thought, or what is original in it, if one read him as making some representation about "language-use"

which is self-standing in the sense that it can be extracted from his work and "applied" to other topics. This is connected to the fact that the "form of account" in question is one which begins with the words of *another*. Or (better put) with the words of a *not*-me: with a "temptation to say something" (PI §254) which is not fully owned but rather presented as troubled – "in some sense," "in a queer way," "it were as if" – as expressing conflict. This has a number of implications which Wittgenstein stresses: that the sort of "representation" sought is one responsive to intellectual difficulties informing a certain dialogic context (PI §§133, 132); that (therefore) almost no remark of his stands-up by itself outside of these dialogues; that it is therefore pointless to make arguments in philosophy which depend on the authority of anything he says (the right way to use his work is rather "to have thoughts of one's own": PI p. viii); that the kind of instruction his work offers is only that of a "series of examples" which "demonstrate a method." (PI §133) A further implication might be mentioned here: That a "Wittgensteinian picture of language doesn't teach us anything about law" is exactly right– but only if one adds that it doesn't *fail* to teach us about it either. For it doesn't teach us about something *other* than law either. Its teaching us something in *that* way (about *anything*) isn't – if we've begun to understand it – even in *question*. I'll need to develop this a little (below).

Hershovitz's accommodation of my claim and Fish's claim has a classically judicious feel to it – survival is assured to each in his proper *sphere* – but I think it also has the Solomonic madness to it, which threatens to leave no one happy after the issue is cut in two. So I'm going to object: That "Fish has overstepped his bounds" is the *one* thing my criticism *cannot* have shown, since it belongs to the nature of Fish's view to be quite unbounded. Once it is broken up, or limited to special "reflective" cases, it has essentially been defeated, or it is no longer *Fish's* view. And Fish is everywhere on record as agreeing on just this point.[9] How is it supposed that Fish can be defended by drawing a distinction between different *kinds* of discourse when Fish's claim (and the very one I was criticizing) is that, as

far as “the necessity of interpretive work” (§1) goes, no such distinction can be drawn?

Hershovitz is making exactly the right point: Everyday communications are one thing, Literature another, and Law still another. And even *within* these domains – it might be added – there are going to be sub-domains, and within *those*, cases, not all of which will be the same. The only difference between this and my own (more long-winded) efforts is that this alone gives no clue as to how Fish could ever have got himself into position to deny such things. To succeed in recalling someone to their “own” view, you have to take the *longer way* of course and retrace how they got so *beside themself*; it won’t do merely to assert the thing they deny, however obvious it is. But these discursive differences are obvious enough. (So is “what following a rule is,” for that matter.) Or rather: If such things were hidden from Fish, this is *not* because they weren’t in plain view.[10]

But surely there must be more to it than this, for *this* is very puzzling! How has Heshovitz managed to think he was defending Fish? And did anything in my critique really suggest that people don’t reflect about law? There is an issue here, I think, on which such summary judgment isn’t available. I myself won’t have an answer, but it would be good to make the question perspicuous.

3.

A main source of Hershovitz’s sphere-dividing approach is something Colin McGinn says in explicating Wittgenstein:

> ...where the bringing to bear of reasons *is* appropriate the possibility of doubt is correspondingly real. For when reasons are appropriately brought to bear we are dealing with beliefs and actions which are *reflective*, with respect to which reasons may be weighed and evaluated; and where the question of the goodness of a reason is appropriately raised it will be appropriate to entertain doubts about

> the quality of the reasons one has. But when an activity is as undeliberative as using language is, it lies outside the sphere of the reason based and doubt ridden.[11]

Hershovitz sees me as drawing on "Wittgensteinian" ideas which pertain – Hershovitz says – to "using language." He takes McGinn, however, to be of help in explaining why Wittgenstein's ideas aren't going to be instructive about Law or Literature – these being "among our most reflective activities." This is hard to follow.

Wittgenstein's focus *is* on "using language." But it isn't *thereby* on "*an* activity" contrastable with activites involving doubts and giving reasons, for the later are uses of language too. By the same token, "using language" isn't, *as such*, unreflective *or* reflective. Certainly it can be called an "activity" since people usually speak or write *intentionally*; the exceptions – like talking in one's sleep or "automatic writing" – are presumably understood as "language-use" on the basis of their resemblance to the intentional forms, the "language *games*" as Wittgenstein calls them. But there are *many* activities which involve "using language" (PI §23); and considered as *"an* activity," using language must surely contrast not with Law or Literature but with, say, hunting and fishing[12] – or maybe drawing, if we define "language" narrowly.

Why does McGinn speak of "using language" as an activity "outside the sphere of the reason based and doubt ridden"? (Does an activity have to be "ridden with doubts" to be based on reason?) The "why" in the sentence starting this paragraph, let it be noted, seeks reasons and is, therefore, an *interpretive* "why." It comes to asking "How so?" or "What is he on to?" Perhaps by "outside the sphere of the reason based and doubt ridden" McGinn just means that this reason-seeking "why" doesn't come up every time anyone uses language. For sure: Not all language-use is as obscure this. But then "spheres" makes the wrong suggestion here. There are simply cases in which the interpretive questions don't come up, not

a sphere of “using language” in which they don’t. Draw a circle around “language use”: Outside it, I assume, are the *less* reflective activities, the ones we share with creatures who don’t use language; and inside will be found the activities based on reasons, so that doubts – requests for reasons -- *could* come anywhere here; why not?[13]

Whatever McGinn had in mind, the idea Hershovitz takes away (a doubt-free zone within language-use, reflection roaming outside) is, I think, the very *opposite* of what Wittgenstein was getting at. To make good on this idea, one would need to do some philosophical zoning; judicious *laws* would be needed concerning where or when doubts may arrise. But

> ...if there were, not a single sign–post, but a chain of adjacent ones or of chalk marks on the ground—is there only one way of interpreting them?—So I can say, the sign-post does after all leave no room for doubt. Or rather: it sometimes leaves room for doubt and sometimes not. And now this is no longer a philosophical proposition but an empirical one. (PI §85)

Putting a main point of Wittgenstein’s “rule-following” discussion at its briefest, we might say this, that with one exception it isn’t for *philosophy* to say where an explanation or an interpretation is going to be required. The exception is that an interpretation isn’t required everywhere. That *is* something we can remind ourselves of through philosophy, if something happens to make it loose its obviousness.[14] Wittgenstein aside, it is hard to see how Hershovitz’s thesis could be right, since it implies there are no “unreflective” uses of language in Law. What about when the judge orders the defendant to pay a $100 fine? Or if that still requires reflection to see what is required, what about when the defendant’s lawyer explains it thus: “You just write a check, Pete, and you’re done.” The thesis has an unnerving implication: People must reflect and resolve doubts just to comply with

the law. Reflecting on this, it seems fortunate that almost all cases of law are very easy ones and require no reflection at all. Or at least this is so in any sense of "case" suited for describing the practical reasoning of judges. (This primary sense will have to be distinguished from an "economic" sense, parasitic on it, meaning a situation of sufficient uncertainty to make it rational to incur the expense of litigation. Without the primary sense, there is no explaining why this is sometimes rational and sometimes isn't.) To keep to the idea of spheres, one would need to say either that the cases instanced here belong to the sphere of the doubtful and reflection-requiring, or else that they are not Law. Neither option is palatable.

This said, I think Hershovitz is making an important point, which can be put – without any activity losing touch with reason – like this: Our reasons for interpreting are different in different domains of discourse. Moreover, as people interpret for different reasons, *what* they are doing varies accordingly. When a judge interprets the law, for example, he is *deciding the issue of right raised by the parties*; and that is obviously not an apt description of what literary critics or performers do in interpreting. So "interpretation" isn't everywhere the same. It might turn out – unsurprisingly then – that in some kinds of discourse (literary criticism, for example), interpretation *is,* in some good sense, ubiquitous; whereas in others (the Law, one *hopes*), interpretations either aren't needed (as they generally aren't with, say, cooking recipes) or they come to an end when things are clear.

To say that these differences in the employment of interpretation are explained by the presence or absence of "reason" seems to get things the wrong way around: It is the reasons people have for understanding these kinds of texts (and hence for interpreting them) which makes them the *kind* they are. Roughly, a legal, literary or culinary text is one we have a certain use for; and the interest and attention we give it flows from this, from what it is good for.[15]

4.

Does Wittgenstein have anything "to teach us about law or literature"? His

work seems, recurrently, to contain many negative lessons for legal and literary *theory* – one of which begins to appear in the paragraph above. Hershovitz's different take seems partly due to his having a narrower notion of what it is for a philosophical text to "teach us" something– he is apparently looking for a doctrine to apply.[16] He presents his point through a juridical re-write of Wittgenstein's well-known remark – "Disputes do not break out (among mathematicians, say) over the question whether a rule has been obeyed or not" (PI §240):

> Disputes do not break out (among lawyers, say) over the questions whether a rule has been obeyed or not. People don't come to blows over it, for example. This is part of the framework on which the working of our law [for Wittgenstein's "language"] is based.

The absurdity of this illustrates "the limited applicability of Wittgenstein's picture of language to law." For Hershovitz wishes to affirm its negation: "Disputes [*do*] break out among lawyers...", and "these disputes are central to the working of law."

The re-write is absurd all right. But it might also be noted that its *negation* – "Disputes do sometimes break out among lawyers..." – isn't exactly any less absurd. Who would this be said to and when? The absurdity – either way – is a function of one already there in Wittgenstein's original. In case we fail to hear it, Wittgenstein is helping us out – drawing attention to it – by adding "come to blows." *Mathematicians do not dispute or come to blows....?* Was someone thinking they did? Where is this "reminder" (PI §127) a useful thing to have on record? Evidently "in philosophy" – in the context of some special intellectual problems. But treated as a self-standing observation about mathematics or language-use, Wittgenstein's remark is already as fully bizarre as the remark about law (or its negation) which Hershovitz constructs from it.

Missing this, it becomes easier to read PI §240 as if it were the sort of thing

which Wittgenstein everywhere says his work is *not*: a bit of doctrine, something endeavoring to inform us about how things are here and there– in mathematics, language-use, and so on;[17] as if PI §240 might really be “applicable” somewhere *else* besides the law, (to mathematics? linguistics?), or as if the (negated) juridical version of it might come up– where? In the remarks to the entering class? (“Now, Ladies and Gentlemen, I should mention – since your previous activities of “using language” will not have prepared you for this -- that lawyers sometimes *dispute....*”) What *is* going on here, since it clearly isn’t this?

To begin with, PI §240 is far from any doctrine of spheres. For it remembers not that there is an activity called "using language" which, unlike law, is free of dispute, but rather that such disputes as might occur *anywhere* among talkers take place against a background of agreement among them (cf. PI §241-2). “Disputes do not break out (among mathematicians, say) over the question whether a rule has been obeyed or not” – this says: “Mathematicians do not dispute about *that*; that is why they can dispute –and sometimes come to blows – about *other things*.”[18] So the parallel point is not that rule-following disputes *never* break out among lawyers, but that they do not *always* or *everywhere* break out. Does that even have to be said? Well, in philosophy it *does* carry a tune. It comes to saying that there are legally easy cases – something H.L.A Hart had occasion to remember too, when some theory-motivated lawyers seemed to have forgotten it.[19] How it comes about that we forget such things – the ones which stand plainly in view (PI §129) – is the interesting question here. The forms of thought and imagination responsible for it are the ones which find expression in an interpretivist doctrine like Fish’s; and that is the context in which Wittgenstein’s remarks have to be read, if they are to have any work to do.[20]

Reflecting a little further, however, on how good it is when the law does manage to make a few vital matters *easy*, to put them beyond the vicissitudes of immediate reflection and dispute, Hershovitz’s further assertion concerning the *centrality* of deputes among lawyers seems no longer quite trivial. Surely such

disputes are peripheral and rare occurrences in the law. This follows from two premises: (1) the purpose of legal rules isn't so lawyers can have disputes; (2) legal rules usually achieve their purpose. In this respect at least, legal rules *are* like those of a game like soccer: The disputes which arise tend to be breakdowns in the law's primary purpose, not what the law is furnished for. Of course, a professional Soccer Umpire might write a book on the casuistry of the "no hands" rule, asking what makes one or another applicative decision a true statement of what the Game requires. And this focus might understandably give someone the impression that disputes are "central to the workings" of Soccer. This is what tends to happen in legal theory, since it is written mainly by lawyers, and since adjudication (not everyday law-following) is the lawyer's professional concern.

Maybe disputes among lawyers are *always* breakdowns of the law's primary purpose. But there is no need to lay it down here that they can never be just what the law has in mind. The authors of Amendment VIII to the U.S. Constitution ("cruel and unusual punishments") may have felt that this formulation was an especially good one because it would oblige people, as circumstances arose, to come into disputes about what was meant.[21] In that case, furnishing occasions for disputes among lawyers will have to be counted as part of the law-giver's purpose – part of the "original intention" – and not just (from our knowledge of the "indeterminacy" of legal language) a generally foreseeable effect. The only point here is that the propositions "law is reflective," or "legal disputes are the central thing," are doubtful if they are supposed to mean that such a constitutional rule illustrates the whole of the law.[22]

This seems to be the trouble with "interpretivist" doctrines generally (even when limited to *just* the "doubtful" regions of Law and Literature!): They tend to make it hard to see the distinctions that are there. Literary interpretation, to take one further example, isn't a response to any sort of "doubt" about meaning– though there is a contemporary tendency to mis-describe it in terms of this essentially legal-hermeneutical construction. Terms like "doubt" or "indeterminacy" are at

home in the law, where they get *defined* in terms of the operation of applicative judgment; literary texts aren't doubtful or indeterminate, for the reason that there is no such thing as "applying" them, following their meaning through in a particular case.[23] Wittgenstein's remark that the philosophical task is just to *describe* things (cf. PI §124) sometimes rubs people the wrong way – as if it were too modest. But it is to be taken against the background of his showing how *hard* it is for us – when things get a little complicated – to do just that.

5.

Hershovitz is right to call attention to the special attitudes involved in law; it is only odd that he doesn't take this as one of the *morals* of my criticism of Fish. Fish gives a numbingly general application to the term "interpretation"; breaking this up, we can begin to see again as we look for interpretation under our feet rather than over our heads. Hershovitz says he finds my way locating Fish (roughly near Kripke's Wittgenstein) "deeply illuminating." But his sense that his complaint is with me rather than Fish stems, I think, from a failure to appreciate how strangely *general* Fish's question must be, if this way of locating him is correct. Law and Literature, says Hershovitz, are "the two areas Fish is most interested in." If only that were true!

Law and Literature are Fish's main examples, but it is easy to miss the fact that – in the strand of his work concerning "interpretation" – they are *only* examples. This is easy to miss, not just because Fish elsewhere *does* wear the critic's and the lawyer's hat, but because his questions – viz., "what makes this or that reading of a text correct" – are often ambiguous. They can sound like questions about norms of explanation which are *special* to a field, questions properly addressed to legal and literary experts. But Fish's own *answer* calls on no expert knowledge, and its operative idea – "interpretive community" – doesn't come out of the study of legal or literary texts.[24] His answer shows what the question is. The literary or legal text are merely occasions – important but not essential ones – for raising what Fish

conceives to be a quite general question about correctness in interpretation *tout court.*

More than law or literature, it is *philosophy* which Fish cannot get done with. When he discusses law or literature, he is almost always endeavoring to present a philosophical idea about meaning – by negating it, of course.[25]

To illustrate the difficulty which arises here, consider the question: "What makes this or that reading of the *Negligence Rule* / of *Hamlet* correct?" This formulation is fishy, because it can be used to make different inquiries. Lawyers and critics do have answers to *some* of them. But the irrelevance of their answers (to Fish's question) is assured by the fact those answers always refer to other meaning-bearing items– e.g., "the principle laid down in *Dreadlock v. Dreadlock*," or "Hamlet's impression that the ghost looked more sorrowful than angry," etc. These answers, in other words, refer to "a text," and, about any text, there is no mistaking Fish's signature line: It is "constructed by acts of interpretation" (§1) and does not constrain them.

Fish's critics don't always see clearly the implications of this. They take Fish to be saying that their professional judgments lack objectivity, or at least a certain kind of objectivity. *That* much is right.[26] But then they show their misunderstanding by endeavoring to meet this challenge to the status of their judgments by application of one or more standard candidate for establishing hermeneutical validity: intentions, ideal authors, purposes and principles, canons of interpretation, professional norms, "practices," and so on. None of this advances significantly beyond the original reference to "the text," however. For the salient fact about "texts," for Fish, is just that they are *bearers of meaning*, and all of these further entities (whatever they are) are also bearers of meaning.

What needs to be understood is this. The fact that Fish's critics go wrong *again and again* (in Fish's view)[27] isn't something that just *happens* here. It is structurally immanent to this discourse– it is the repetitive structure of an interpretive regress. Following out the regress which begins with Fish's response

to the well-informed or knowledgeable answer, one will eventually have to see that there is nothing left in the end for his question to be except: How is the meaning of a sign or text possible just *as such*? (Or: How is it so much as possible that some noises or marks have meaning?) That this is what the question comes to – indeed, what any general question heard today about the "determinacy of meaning" *must* come to – is apt not to be apparent at first. That is just the problem. Representing matters so that it becomes apparent is thus a step towards the solution.

This explains why it was appropriate for me to discuss Fish's view through the example of how to follow the sign-post– a most unpromising case from which to launch a teaching about law. Such signs generally give no occasion for reflection or dispute, but merely fulfil – even more reliably than the law – their purpose. They are the super-easy cases, deep background. Yet this is just what makes them ideal in the present context. Being easy and beyond all suspicion of needing expert handling, the danger is minimized, in such cases, of confusing the question Fish is asking with one it merely *sounds* like he is asking.

6.

A representation is needed, then, which makes apparent: (1) what the question is, (2) its relation to other questions Fish has been heard as asking, (3) how the project of constructively answering the question conflicts (whatever the answer is) with the strand of Fish's work which stresses the primacy of "practice," and (4) why the later strand is one we ought to endorse. Before turning to (3) and (4), I want to comment briefly on the way Hershovitz formulates the overall point here (he calls it my "big" criticism) because I think his formulation makes it seem unnecessarily threatening to the law's "reflectiveness": "If Fish understood the full implications of his own arguments," Hershovitz writes, he would *never ask the question* which leads him to the interpretive community view in the first place." This has a funny air of paradox to it, since it could be reversed: "If Fish hadn't asked those questions, he would never have understood the full implications of his

arguments." But I think I know what Hershovitz is getting at: Elsewhere, he hears me issuing an "invitation to *stop seeking philosophical accounts* of meaning." If that *was* the point, then Hershovitz was right to ask where it leaves us with the law, which has always invited philosophical inquiries, especially those which continue the reason-seeking activity of judges. Since I may unfortunately have suggested these formulations, I'll have to ask for leave to amend here. Hershovitz shows how misleading what I said can be if it isn't heard – its issue contained – within the present context.

First, about "philosophical accounts of meaning." No: What is at stake is more specific. It is a sought-for account of the very "possibility of meaning." That phrase refers to a problem which becomes urgent when signs or texts "in themselves" appear normatively inert: they can be understood or applied like *this* or like *that*. Not every "philosophical account of meaning" moves within this framework. Grice's explanation of "non-natural meaning," for example, relies on the notion of a communicative "intention," something with a normative aspect itself, which Grice isn't endeavoring to explain.[28] Yet I wouldn't hesitate to call this a "philosophical account," and I'd even suggest it has things to tell the law.

Second, I'm not against anyone asking philosophical questions. If I were, I too would be sawing off the branch on which I'm now sitting. I'm the *opposite* of against that, thanks in part to Wittgenstein, who has shown how valuable a philosophical investigation of meaning can be, even if it is perhaps also inevitable for us. It is just that, if Wittgenstein is right, what we stand to learn here is not what makes meaning possible, but something about the nature of our attraction to this question, something about ourselves. So part of the value of philosophy, for him, is that it can sometimes change our sense of philosophy's value or importance.[29]

This will explain why I want to put the point about Fish a little differently. Here's my version, spelled-out to make clear what the "two" criticisms (by Hershovitz's count) are:

- *Big Criticism:* Fish sometimes speaks in a doubtful way about "philosophy," which he associates with a drive toward "general theory." By this criterion, Fish's question has the unmistakable pitch of philosophy.
- *Small Criticism:* Here is why [§7 below] the conflict should be resolved, in this case, in favor of Fish's suspicion of general theory.

My essay's portrayal of an endeavor to win a friend over to his better self, I should add, doesn't imply a merely *therapeutic* stance toward another; for nowhere than in philosophical criticism is it more true, I think, that the friend is *another myself* (as Aristotle says). In other words, I could hardly have any interest in criticizing Fish's views if they didn't at least have some imaginative charge for me. Wittgenstein writes: "There is an inclination to say: Every application of a rule is an interpretation of it" (PI §201). And that is what Wittgenstein's "interlocutors" *do* say in various forms. But Wittgenstein couldn't know of such things – not in the right way – if his source wasn't himself.

Someone might feel I'm being fussy: This is just "Stop asking..." more artfully put. But I think there is a difference – relevant to Wittgenstein – between quasi-legislative pronouncements concerning what people should do or say and a responsive interest in the uneasy words of "another" – a *not*-me (§2). Moreover, it should be clear that my "big criticism" doesn't say anything, on its own, about what anyone should do. That comes only with the reasons offered for resolving the conflict one way rather than another; and those reasons stand open to discussion. So there aren't *two* criticisms here, unless just pointing out that someone is in conflict is a "criticism" of them. (Perhaps so, but it's not that big.)

7.

Now about those reasons which stand open to discussion.

Following some lines of criticism of Kripke's Wittgenstein,[30] I claimed that

the notion of “interpretive community” doesn’t do what it is needed to do: It doesn’t show how we can make use of notions like “accord” after the thesis that “to understand is to interpret” has brought this into doubt. If it doesn’t do this, and if we nonetheless have to be able to make use of such normative notions wherever there is meaning (that is the premise), it follows that we don’t have a picture of *meaning* here at all. So “interpretation” isn’t really in the picture either. That is: If everything can be interpreted, then nothing can be – the placement of interpretive activity within a *community* notwithstanding.

But why *doesn’t* Fish’s theoretical use of “community” make normative notions like “accord” or “correct understanding” available? Originally, I said that no propositions about meaning are left within this picture for members of the community to endorse as *their own view.* For whatever judgment they make, the theoretical orientation in question tells them that its claim to be considered true depends on the community’s *taking* it to be true. That puts everyone in an intolerable situation. But perhaps it would make things clearer to start at the other end:

Alternative formulation: Start with the fact that members of the community *do* have a view, and then ask whether the theorist of meaning could himself adopt it – the very view he *privileges* as determining the correctness of attributions of meaning. He couldn’t. For he is bound to regard it as involving an essentially illusory notion of the determinacy of meaning. He is obliged to think: “It is not true – what those agents with a view think – that the rule demands *this* and not *that*. That all depends on the interpretation that is put on it; tomorrow a different interpretation may prevail.” So the theorist is confined, by his philosophical scruples, to the role of a detached observer: He can issue reports about the way the community cooks-up its meaning, but he cannot, without abandoning his theoretical orientation, join in the feast.[31]

This shows how Fish can resolve his conflict: by *adopting,* without philosophical scruples, the practical or agent perspective which he emphatically

recommends in theory. When one accesses the truth about practical agents in this way – assesses it *practically* rather than speculatively – one is an agent oneself and joins in the everyday feast.[32]

Hershovitz sees the point here as turning "decisively" on the claim that "normativity disappears as soon as people learn that the test for correctness is conformance to the community's view,"[33] and he presents an argument against this claim. Imagine, he says,

> a group of people who believe that any rule requires whatever God regards it as requiring. On this picture, there is no normativity for God; God cannot be wrong about what a rule requires, because it requires whatever God believes that it does. But for individuals within the group, there can be normativity. they can be right or wrong about what a rule requires (the test of whether they are right or wrong is simply whether their belief about what the rule requires matches God's). Now we substitute "the community" for "God" in this story, we end up with Fish's picture of how interpretive communities provide normativity for their members.

I must admit that the possibility of defending Fish like this wouldn't have occurred to me had Hershovitz not suggested it. But isn't there a short answer? Surely it is significant that in order to imagine this possibility, Hershovitz wants to speak about God!

Ironically, this defense of "interpretive community" lays bare what is wrong with Fish's use of this idea. Whenever the minds of human agents are philosophically mis-represented so that it (eventually) becomes apparent that they aren't going to be up to the normative task at hand, another Agent tends to be sought for whose Ideas have a little more kick to them. While this chapter of philosophy evidently isn't over yet, the work has started to decline. For "interpretive

community" is an inferior "substitute" for "Ideas in God 's Mind" as an explanation of the normative aspect of meaning: It is apt to make us think that we really understand something here, whereas talk of "God" at least had the virtue of making clear that we don't.

Beyond this, I feel as if a game is being proposed without any very clear rules. How am I to draw inferences about what is possible for human beings, or communities of them, on the basis of what is (allowed to be) possible for God? A few of the better known differences might cause trouble when the time comes to replace *Him* with *us:*

(1) The community's beliefs *are* those of its members, its human agents (unless the community is itself some *mysterium*);

(2) In endorsing certain thoughts as those they "believe," human agents are trying to get something right (and only in special cases the community's own beliefs); whereas the distinction between "believing" and "decreeing" doesn't have any application to God– i.e., there isn't anything He *believes*.)

These points locate the problem with the "interpretive community" picture exactly. Insofar as a community "believes" something, its members make normative assessments. They choose some of their thoughts or responses as ones they *endorse*: this is *to be* (is *worthy* of being) believed. But the theoretical orientation challenges this assessment: "You *needn't* believe it; in truth, it is a matter of interpretation." An agent who continues to endorse her belief from within such an orientation would be putting herself, precisely, "in the place of" God: She now treats the irrelevant biographical fact of her own *believing* something (or her own inclination to act in a certain way) as a *ground* or a *reason* for the other's belief or action.[34]

Clearly the rule of secular replacements can't be: "If it makes sense to believe it is possible for God, you can believe it about a 'community' as well"– though this does seem to be Hershovitz's premise. I won't ask what the rules for identifying what is possible for God are in the first place– I assume that wouldn't be in the right spirit here. That is, when Hershovitz has people "believing" that "God cannot be wrong... etc.," I assume it would be irrelevant to object that people can only "believe" what it makes sense to believe. The rule here must be that you get to say whatever you like about God; challenges get to be heard only at the substitution phase– in the Kafkaesque form, "Sure it's possible – only not *for us*."

Such rules of play may have an important place in religious practice, but solving our recent intellectual problems is another matter. For one thing, there is no substitution phase – or at least not one in which *we* get to pipe in – in the religious context. If there were, some strict rules of inference would be needed to keep from going off the deep-end. It mustn't turn out, for example, that "He is present in the bread" is a possibility *for us*, just because it finds application in beliefs about God.[35] Liberal deployments of the method of divine analogy wouldn't get us far anyway, since the more "possibilities" it proved, the less creditable any would be. How tight should the substitution rules be? Just tight enough, it stands to reason, so we could skip the step about God and consider directly the question of what makes sense *for us* – that is, what makes sense.

8

Let me return then to the attempt to understand *diagnostically* why God is coming up here. It has to do with a kind of philosophical account apt to fancy itself a *down-to-earth* pragmatism, but which merely puts one term in place of another (replaces foundations, for example, with the "absence of foundations"), while keeping the structure of the *question* intact. Now, it stands to reason that any argument which depends on "substituting for God" can be turned around – anything you can put in place of God must be metaphysically on a par with Him. So, taken in

the context of the difficulties with the explanatory use of “interpretive community” (§7), what the argument suggests is not that a more down-to-earth explanation is possible after all, but that any entity which purports to function in such an explanation can *seem* to do so only insofar as we have managed to disguise from ourselves what we are really thinking of.

What *are* we thinking of when we speak of an “interpretive community,” of “taking people into our community” and the like? It is not the kind of community (a collection of agents) you can invite into the great hall for roll call, that’s clear – but is there another kind? Cutting through the irrelevant imaginative associations which can arise here (does Robinson Crusoe lack a “community”?),[36] we might simply give the answer which is determined by the structure of the problem and by the logical contribution which any term would *have* to be making to its solution. Structurally, what needs to be delivered into any picture of meaning which has inert “texts in themselves” (and therefore ubiquitous interpretation) among its elements is some further entity, however *named*, which possesses two related properties: first, it is fitted to be a *regress-stopper*, bringing to an end the reference from text to text;[37] second, it is (thereby) able to infuse life – the power to mean – into those inert bits of textual matter. God fits this bill, for these are His traditional powers. Replacing *Him* with *us* (but keeping the question in tact) doesn’t give you pragmatism. It turns “interpretive community” into something sublime: another name for Divinity, the terminus of all (“text-referring”) explanations of meaning, their ground of possibility.

As indicated, I would prefer the out-right God-mentioning option (among the present choices, including Platonism and its deconstruction) because this would put my audience on notice that I don’t know – or claim to know – what I’m talking about. But I think there is a better way to avoid misunderstanding here, and that is just to permit oneself to say, without philosophical scruples, what we say anyway, as agents, everyday: *viz*., that it is the rule *itself* which (sometimes) determines what one is to do.

The “rule itself” *here* just means “the rule” – as opposed to the rule with some further gloss on it. (Nothing occult: Lawyers draw applicative conclusions from “rules themselves” everyday; they even print them and send them through the mail.) So such a commonplace should not be confused with any “Platonism” about meaning. What is remembered in saying “The rule *itself* determines how it is to be applied” is merely what a rule is, for agents who have use for one. No explanation of how rule-informed judgments can be correct or true is offered here: There only *seems* to be question about this when words are considered in isolation from the applications agents have for them – considered (in this imaginary way) “in themselves.”[38] “The rule *itself* determines....” is what Wittgenstein calls a grammatical remark, one which tells “what kind of thing” something is.[39] No doubt, one could thank God that such a thing as a rule is possible, seeing how much good it does (in the law for example). But one’s attitude would no longer be that of someone thinking about some particular intellectual problem, but of someone being *thankful* – for rules or (it comes to the same) for being so much as able to thank.[40] Perhaps we could thank ourselves too.

A deeper sort of “pragmatism” comes into view here, one having the sound of an impeccable naivete. Wittgenstein puts it like this: “What *we* do is to bring words back from their metaphysical to their everyday use.” (PI §116)

Terms like “everyday use” are themselves notoriously subject to irrelevant associations. When Wittgenstein speaks of this (or speaks of “obeying a rule” as “a practice”: PI §202), it must above all not be supposed that he is proposing a constitutive account of “meaning” in terms of some items – ordinary uses, practices, etc. – which have to be observationally located. His thought is rather that from the *practical standpoint* (that of someone deciding what a rule requires, or what to say or do more generally), the sort of knowledge which *any* such account could supply – something essentially speculative – is neither needed or wanted.[41] A less misleading rendering of “back to their everyday use” – might thus be: “back to the applications that living beings make of them.”[42] Or – preserving

Wittgenstein's stress on the first-person -- "back into *our* lives": the "we" of "what *we* do" (or "what we call") being just *that* person's use of language which is known of, by each of us, without having to observe or gather it. While these formulations might no doubt give rise to other misunderstandings, they will at least help to dispel that socio-theoretical one which has today all but rendered "ordinary language" a useless term in philosophy.[43] No one should be tempted to ask, for example, *whose* use? *which* lives? (Answer: *that* of which the speaker knows – knows its sayings and doings -- without evidence, *which*-ever one that may be.) It is in this way that the words "rule itself" can be brought back into an activity of using language: We could give it a job to do, as reasons require; "interpretation," "community" and "reasons" too.

Of course, so conceived, our everyday naivete isn't *naive* at all, since it expresses what we *get to* through philosophical investigation, not merely the point at which we began. "The place I really have to get to is a place I must already be at now," Wittgenstein remarked.[44] It is the place he will have been, where he will recognize himself, when he isn't beside himself. The return to that place of practical self-knowledge need not be any repetition, if this is to exclude a turn to something new.[45] For it hardly needs saying that we often fail to know ourselves. Likewise, the place of return needn't be anything "ordinary," if this means not just quotidian in structure but humdrum or familiar. Do we know what it would be to show up for the everyday feast without those reluctances and denials which sometimes find their chance in the scrupulous gaze from side-ways on?[46] In the present instance, this would involve a different relation to a "question" asking for an "account," and not just another account which leaves the structure of that question unchanged.

9.

The judicious reader might ask – the question at the start (§2) – why Hershovitz would *want* Fish's view to "survive in a more limited form"? To leave

room for reflection and dispute of course; but some special motivation must have been required to read me as taking that away when my aim was only to get it into clearer view than is possible through the mind-numbing doctrine that everything is an interpretation. How is there a dispute here?

Perhaps like this. Hershovitz's point about some discursive regions being more doubt-ridden than others could be extended, I think, to various sub-regions, and from there to *types of cases*, and so on, down to the event of someone speaking about something, under the circumstances, somewhere or when; so that, in the end, there would be nothing of a philosophical (or *a priori*) nature to say about where doubts or reflections *must* come up. Some rough *generalizations* are all that could be meant by "doubt-ridden discourse." Uptake of the "text" tends to be more reliable in communications from the flight tower to the pilot, we may observe, than in legal theory. But that isn't to say that something couldn't be perfectly clear in law, or that the tower's landing instructions couldn't be doubtful.

Hershovitz might have a different view. His willingness to follow the line of discursive differences might stop at whole regions of discourse like "Law," so that another interpretivism is afoot here. There *are* interpretive conditions of discourse – he might be thinking – only their jurisdiction is more limited than Fish thinks: *some* kinds of talk, not all kinds. This view is in fact suggested by a word which appears in his title– *practice*. Much of the time, Hershovitz calls law a reflective *activity*. Would I be missing something if I agreed it was but put no special emphasis on law's being a reflective *practice* as well?

The answer for Ronald Dworkin, we know, is yes. The law is reflective in a rather special way, Dworkin wants to say, and the word "practice" helps capture this. It betokens an entity with some peculiar properties, not generally shared by "activities," or even "practices" as these might be mentioned in other contexts-- a traveller's report, for example. "Legal practice," in his special sense, seems to be only imperfectly present– as something *being practiced*, an activity underway but never fully unfolded. And related to this, "a practice" is essentially fit to be

understood through (what Dworkin calls) a "constructive interpretation": a mode of understanding which exhibits the unity of its parts or instances on the basis of both evaluative *and* source-based criteria.[47] My guess is that enthusiasm for a conception of law "as a practice," in this sense, affected the shape of Hershovitz's response. For it does seem to go with this conception that an interpretation – of that unfolding whole – is required in every case.

Suppose this is right. Then I wonder: Does Hershovitz think that defending such a conception of law *requires* defending Fish? Or is the idea merely that it would *be nice* if some support could be had from him? I myself would not have thought there was any *need,* from the point of view of Dworkinian legal theory, for Fish to be right. What needs explaining is merely why, notwithstanding the absurdity of Fish's general interpretivism, the law (and perhaps other qualifying "practices") are *special*.[48]

But maybe there is more to it. In allowing my critique of Fish to be partly right, Hershovitz is renouncing Fish's own idea that legal interpretivism might flow merely from the conditions of possible meaningful concourse with a text. But once one gives up full-Fish, an explanation is needed of why limited-Fish should be right, for Fish himself doesn't even purport to explain this. If there is something right in Fish's view when it comes to "reflective" activities like law, this would have to be, strangely enough, for reasons Fish has never contemplated. Why should interpretivism be specially fitted for Law? Perhaps Hershovitz' impossible suggestion – that *Fish's* interpretivism is true but only for "reflective" activities like law – is the result of a conflict: a felt need to support a practice conception of law out of the resources of general interpretivism, along with a recognition of the unavailability of such fishy resources.[49]

---

1. Stanley Fish, "With the Compliments of the Author: Reflections on Austin and Derrida," in Doing What Comes Naturally (Duke University Press, 1989), 43-44.

2. Fish, Doing What Comes Naturally, *ibid*., p. 83.

3. Fish, *Ibid*., p. 513.

4. In this volume; also in Gary Olson and Lynn Worsham (eds)., Postmodern Sophistry: Stanley Fish and the Critical Enterprise (State University of New York Press, 2004).

5. See Stanley Fish, "One More Time" in Olson and Worsham (eds.), Postmodern Sophistry, op cit., p. 280-81. Fish essentially retracts his view, it seems to me, by saying that the "interpretive community" idea was meant to be part of a "sociological" account, not a constitutive account meaning (p. 277). Two points about this: *First*, it is exactly the distinction I said needs to be drawn here: *viz*., one between (A) questions about what people *believe* or how they *take* things *(even whole communities of people*) on the one hand, and (B) questions concerning what is *so*. *Second,* one can find plenty of passages in Fish's previous work which appear to argue against both the *need* and even the *possibility* of drawing this very distinction.

6. Before diving in, a word of thanks: The length of this response to Hershovitz shows just how provocative (and clarifying) his comments were. As will be seen, he connects my criticism of Fish to questions about law which need to be considered on another occasion. You've got to be grateful to a commentator who gives you that can of help– I truly am.

7. See my "Wittgenstein on Deconstruction," in Alice Crary and Rupert Read (eds.), *The New Wittgenstein*, Routledge Press, 2000.

8. Ludwig Wittgenstein, Philosophical Investigations, G.E.M. Anscombe, trans. (Blackwell, 1958), §122 [hereafter "PI"].

9. Besides the quotation which begins this paper, see "Introduction: Going Down the Anti-Formalist Road," in Fish, *ibid.*, p. 4: "The implications [of the ubiquitous need for interpretation] are almost boundless, for they extend to the very underpinnings of the universe."

10. I am alluding here to Wittgenstein's remarks about the character of philosophical problems (or what he means by that) at PI §129.

11. Colin McGinn, Wittgenstein on Meaning (Blackwell, 1983), pp. 22, 23.

12. As long as you're not hunting for the truth or fishing for a compliment.

13. One reason to think they *could* flows from what was just said: Using language is generally done intentionally, and an intentional action just is – or so it might be thought – one to which the question "why," in roughly the sense

indicated, has application. This is G. E. M Anscombe's thesis, first stated in §5 of Intention, 2d ed. (Cambridge: Harvard University Press, 2000).

14. The question in the first sentence of PI §85 recognizes that (1) it belongs to the kind of thing which a sign bearing *meaning* is that it is fit for the interpretive question – a meaning-bearing sign operates in the space of reasons. At the same time, we know, from the famous regress which threatens, that (2) the uptake of meaning doesn't *always* require an interpretation, whether this be another meaning-bearing sign or some mental equivalent. The accommodation of these two points –first of (2) into a formulation which then gets revised to accommodate (1) – is the work of the rest the passage. The rule following considerations – and their conclusion without any sort of "philosophical proposition" – appear in miniature here.

15. I have developed this in my "On the Old Saw, 'Every reading of a text is an interpretation': some comments" in John Gibson and Wolfgang Heumer (eds.), *The Literary Wittgenstein* (Routledge Press, 2004).

16. This is also something one can learn about from Wittgenstein, as what sort of teaching is involved when we are not given doctrines is one of his themes, beginning with the first sentences of the Preface to his Tractatus Logico-Philosophicus (London: Routledge & Kegan Paul Ltd, 1961).

17. Cf. Wittgenstein, Tractatus, op. cit (Preface: not "*ein lehrbuch*"); cf. PI §§128, 599.

18. That is what happened, for example, in the 19th century battle over Cantor's transfinite set theory. But we needn't get stuck on particular spheres here, since "mathematicians" is clearly only an example. Disputes don't generally break out (among citizens of our noble republic, say) over whether the traffic or health codes have been obeyed– if they do, then those codes should be re-written immediately! And when the citizens do dispute, it often isn't over the *meaning* of the code, but – precisely *because* they agree on that -- over what happened in a particular case.

19. H. L. A Hart, The Concept of Law (Oxford University Press, 1961), ch. 7.

20. I suspect that Hershovitz was probably responding here to recent accounts of Wittgenstein in law journals, for there the idea is sometimes put forward that Wittgenstein has a "practice theory" of rules, according to which what a rule means just is, or is constituted by, the way people collectively follow

it. The strange result is that rampant disputes about what a rule requires tend to suggest that there isn't a rule at all; and this of course implies that there are never rampant disputes about what a rule requires. If this is what Wittgenstein is saying, then it becomes only natural to want to respond as Hershovitz does: That may be true in some regions of language use, but it isn't true in law. (A taste of the discussion can be found in the papers collected in Dennis Patterson (ed.), Wittgenstein and Law (Ashgate, 2004), which contains a paper of my own.) The mistake here lies in supposing that Wittgenstein is putting "practice" forward as part of a constitutive explanation of the possibility meaning; his point is rather that from the point of view of practice, no such explanation is wanted or needed (see §8 below). When moving between Wittgenstein and the law, it should also be born in mind that Wittgenstein has no special interest in "rules" as this term is used in law and legal theory. He is not interested, for example in their existence conditions, their relation to reasons, their role in practical reasoning, their availability for systematization, and so on. "Rules" come into his discussion of merely as an example of a type of normative relation– "accord"– which is present in any intentionality: in wishes, orders, expectations, beliefs, statements, etc. (PI §437-38).

21. Ronald Dworkin suggests something like this with his characteristic power in "Comment" in Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law, Amy Gutmann, ed. (Princeton University Press, 1989).

22. Amendment VIII presupposes rules defining punishable criminal offenses, for example, to which no dispute-engendering intention can be attributed.

23. I develop this in my "On the Old Saw: Every reading of a text is an interpretation" in The Literary Wittgenstein, *op. cit*.

24. The point is not that one can't encounter the "interpretive community" idea in law school or literature departments, only that it doesn't come up when one is asking what a literary or a legal text means.

25. This isn't to say that Fish *denies* that there is a more nuanced knowledge of "interpretation" to be had. He himself draws attention to different ways of "reading" which are instinct– as a sense of "professional correctness" – among lawyers and literary critics. See e.g., Fish, Doing What Comes Naturally, op. cit., pp. 54, 137. But Fish never allows these differences to get in the way of his general interpretivism; they merely illustrate and confirm his thesis that the way any text is read is a matter of "interpretive practice." Hence they merely illustrate his point that his question (about interpretive validity) isn't answered, but only deferred, by well-informed answers coming out of specialized fields.

26. If the theory of the interpretive conditions of all communications isn't at least purporting to say *this* much, it isn't saying anything.

27. See Fish, "Wrong Again" and "Still Wrong After All These Years," in Doing What Comes Naturally, *op. cit*.

28. See Paul Grice, "Meaning" in Studies in the Way of Words (Cambridge: Harvard University Press, 1989). Grice is endeavoring explain the concept of meaning, not the very possibility that one could mean or intend *this* rather than *that;* so he isn't about to about to be troubled by the signature Fishian objection mentioned in §5.

29. See Wittgenstein, Tractatus Logico-Philosophicus, *op. cit*. (Preface); PI §§118, 108.

30. See, especially, John McDowell, "Wittgenstein on Following a Rule," Synthese 58 (1984): 325-63.

31. David Wiggins formulates a structurally similar incoherence which arises in the region of value-theory, which I'm following here. See "Truth, Invention and the Meaning of Life," in Needs, Values, Truth, pp. 97-98 (and more generally, 98-108).

32. Fish's mistake is to try grasp or represent his point about the primacy of practice from the observer's position. For what needs to be grasped is not what an agent is qua *object* of knowledge (someone situated in a community and specifiable in many other particular ways) but qua *subject* or agent; and this everyone knows without observation or study just by *being* one.

33. Although I can recognize it as a version of my point, I wouldn't myself make this formulation "decisive" of anything. I'll have to leave the explanation of its defects for elsewhere.

34. After the apparent exhaustion of explanations, at the point he calls "reaching bedrock," Wittgenstein says: "Then I'm inclined to say: 'This is simply what I do.'" (PI §217) The "interpretive community" story must hear this, when it has the support – or "authority" as Fish says -- of the community behind it, as the secular equivalent of divine decree: *We* say, so it is *so*.

35. By the same token, it is pointless to object that what the Catholic believes is really *impossible*. The response will be: "You're right– it isn't possible for one of *us* to be present in a space like *that*." See G. E. M. Anscombe, "On Transubstantiation," in Ethics, Religion and Politics: Collected

Philosophical Papers, Volume III (Blackwell, 1981), pp. 108-09.

36. In the critical literature, one can find two approaches to the use of the word “community” in Kripke’s claim that we can “think of Crusoe as following rules” only by “taking him into our community” (Saul Kripke, Wittgenstein on Rules and Private Language (Harvard University Press, 1982), p. 110. One begins by assuming that we know what a “community” is – a collection of persons – and finds Kripke’s claim absurd; the other infers from the absurdity of the claim, so construed, that “community” is something mysterious here. Of course, these approaches aren’t exclusive. For an example of the first, see A.J. Ayer, Wittgenstein, (Random House, 1985), pp. 73-4; for the second, see Noam Chomsky, Knowledge of Language, (Praeger Paperback, 1986), p. 233.

37. See David Finkelstein, “On Rules and Platonism” in Alice Crary and Rupert Read, eds., The New Wittgenstein, op cit., and my essay “Wittgenstein on Deconstruction” in the same volume.

38. “The arrow points only in the application that a living being makes of it” (PI §454; cf §432); for development of this, see Finkelstein, *ibid*.

39. PI §373. The remark shows “what goes to make up what we call ‘obeying a rule’ in everyday life” (PI §235).

40. See Martin Heidegger, What is Called Thinking (Harper Perennial, 1976).

41. This seems to be among the most difficult points in Wittgenstein to keep in focus; doing so would put *both* the notion of “applying his rule-following considerations to law” *and* denying them application there out of the *question*.

42. PI §454; cf §432.

43. For an attempt to stem the tide, see Stanley Cavell, “Must We Mean What We Say” in Must We Mean What We Say (Cambridge University Press, 2002).

44. Ludwig Wittgenstein, Culture and Value (University of Chicago Press, 1984), p. 7. The rest of the remark is very suggestive: “Anything that I might reach by climbing a ladder does not interest me.”

45. The “turn” in Wittgenstein’s “return to the everyday” is one of Stanley Cavell’s themes. See e.g., Cavell, In Quest of the Ordinary: Lines of Skepticism and Romanticism (University of Chicago Press, 1994); The New Yet

Unapproachable America: Lectures after Emerson after Wittgenstein (Living Batch Books, 1994).

46. For a recent study of some of the problems which on-lookers of our kind get themselves into, see Richard Moran, Authority and Estrangement: An Essay on Self-Knowledge (Princeton University Press, 2001).

47. See Dworkin, Law's Empire (Belknap Press, 1988), ch. 2.

48. Mark Greenberg's paper (in this volume) seems to be in agreement on this point, since it attempts to distance its interpretivist view of law from any quite general (or "semantic," as Greenberg calls it) interpretivism. In this sense, it is an endeavor to explain why the law is *special*.

49. These last issues obviously call for consideration on another occasion. It is only possible to note them here.