AGAINST A THEORY OF MEANING

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A language is not something about which one can have a theory. Nor is a language itself a theory. Quantum mechanics and historical materialism are theories. Each is formulated in a language in terms of laws and explanatory principles. Thus, to construct a theory, one must already have mastered a language. *A fortiori*, it is implausible to speak—as Chomsky does[1]—of children learning their native language by constructing theories of grammar.[2]

This Symposium considers the question how the discipline of linguistics can be of use to lawyers in discerning the meaning of legal texts. The correct theory of language will, it is believed, provide insights into the meaning of legal language. Because legal texts are linguistic products, it is hoped that the science of language (linguistics) can lead to a science of meaning and, ultimately, a science of law (legal meaning).

Not only does linguistics fail to illuminate the meaning of legal texts, the approach to meaning taken by its practitioners is, philosophically speaking, nonsensical.[3] In the brief space of this article, I want to suggest why linguistics is a red herring on the trail to the meaning of legal texts.

Were linguistics to provide any insights into the law it would have to do so (minimally) at the level of rule-following. As the Symposium discussion illustrates, the central questions of legal interpretation concern issues of textual meaning, the role of courts as interpreters of legal texts, and the boundaries of or constraints on the judicial interpretation of legal texts.

My strategy is two-fold. First, I shall articulate what I take to be a correct account of rule-following. With that account on the table, I will then show why a theory of meaning of the type offered by linguists and

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1. *See* Noam Chomsky, *A Review of B.F. Skinner's Verbal Behaviour*, 35 LANGUAGE 26, 57 (1959) ("The child who learns a language has in some sense constructed the grammar for himself on the basis of his observation of sentences and non-sentences (i.e. corrections by the verbal community).").

2. The most complete and thoroughgoing rout of the philosophical excesses of linguistics is GORDON B. BAKER & PETER M. HACKER, LANGUAGE, SENSE AND NONSENSE (1984).

3. I discuss the role of linguistics in law in Dennis Patterson, *Wittgenstein and Constitutional Theory*, 72 TEX. L. REV. 1837 (1994).

linguistic philosophers cannot be right. I fear that my remarks will appear to be little more than assertions or, perhaps, worse. Where appropriate, I indicate places where I have written further about these topics.[4] I also indicate some of the non-legal literature germane to these issues.

Rules are not theories. Rather, rules are human creations—arti-facts—produced by humans in the course of, and for the regulation of, human activities. The central philosophical question about rules—one linguistics purports to answer—is what it means to say that one is following a rule. To know whether one is following a rule, one needs to know the method of projection for the rule. The method of projection tells us how the rule is to be applied. By themselves, rules are neither true nor false. If we know the method of projection for the rule, we know whether, in any given instance, one is following the rule.[5]

Take a simple example. Jones works in a lumber mill. Her job is to separate piles of boards into two groups, those above 5 inches and those below 5 inches. This task may be set forth as a rule: "Take all boards and separate them into two piles, those above 5 inches in one pile and those below 5 inches in another." We can say that Jones is correctly or incorrectly performing her task, that she is following the rule. How do we do this?

Using a tape measure is one practice. The method of projec-tion—measuring in inches—is made manifest or displayed in the use of the tape measure. The tape is laid alongside and not across the wood; there is no differentiation among types of wood; and the tape is held straight against and not wrapped around the wood as it is measured.

What is to be learned from this example? If we are concerned about the meaning of a rule and what counts as following that rule, then we need to turn our attention to the activity in which the rule is embedded. We want to know how participants in the practice judge claims of truth and falsity, correctness and incorrectness.[6]

Linguists and philosophers of language go off the rails when they suggest that a theory of language can improve our understanding of legal

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4. For a complete statement of my position, see DENNIS PATTERSON, LAW AND TRUTH (forthcoming 1996).

5. *See generally*, Dennis M. Patterson, *Law's Pragmatism: Law as Practice and Narrative*, 76 VA. L. REV. 937 (1990).

6. For an excellent account of how this is done in constitutional law, see PHILIP BOBBITT, CONSTITUTIONAL INTERPRETATION (1991). I review Bobbitt's book, and discuss the implications of his position, in Dennis Patterson, *Conscience and the Constitution*, 93 COLUM L. REV. 270 (1993) (book review).

meaning. The following is representative of the position:

> [I]t is clear that the language each person acquires is a rich and complex construction hopelessly underdetermined by the fragmentary evidence available . . . .
>
> Nevertheless, individuals in a speech community have developed essentially the same language. This fact can be explained only on the assumption that these individuals employ highly restrictive principles that guide the construction of grammar.[7]

This view of meaning sees natural languages as theories (e.g., Chomsky's "highly restrictive principles"), theories about linguistic reality. These theories can be rigorous or not, tested, verified, and so forth. I suggested earlier that a language cannot be a theory because a theory presupposes a language. Let me expand this point. Linguists believe that by breaking language down into units, and pairing those units with sounds, we will learn something about how words come to have meaning. There are at least three reasons which suggest this approach is implausible.

> A language cannot be said to consist of a pairing of sound and meaning over an infinite domain of sentences, a pairing that is determined by a grammatical theory consisting of rules and principles which generate the sentences of the language. For, first, meanings are not items that can be paired with sounds any more than minds can be paired with bodies. Secondly, if it did make sense to speak of a language as consisting of such pairings, the grammatical theory is formulated. And that is absurd. Thirdly, it would be a gross misconstrual of what it is to have learnt a language, what it is to understand and speak a language, to suggest that it is to have learnt to correlate in a systematic way sounds with meanings.[8]

Philosophers in sympathy with the scientific approach to language try to explain meaning as a function of interpretation. Donald Davidson, for example, says that

> [C]laims about what would constitute a satisfactory theory are not . . . claims about the propositional knowledge of an interpreter, nor are they claims about the details of the inner workings of some part of the brain. They are rather claims about what must be said to give a satisfactory description of the competence of the interpreter. We cannot describe what an interpreter can do

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7. NOAM CHOMSKY, REFLECTIONS ON LANGUAGE 10-11 (1975), *cited and quoted in* LAWRENCE M. SOLAN, THE LANGUAGE OF JUDGES 16-17 (1993).

8. Peter M. Hacker, *Language, Rules and Pseudo-Rules*, 8 LANG. & COMMUN. 159, 166 (1988).

except by appeal to a recursive theory of a certain sort.[9]

For Davidson, understanding another person is a matter of having a theory about the sounds that emanate from her mouth.[10] These sounds are interpreted by reference to a grid which is recursively mapped onto the audible output of the interlocutor. Davidson's account of interpretation has met with favor in jurisprudence. For example, Ronald Dworkin, whose account of law as an "interpretive practice" is grounded in a Davidsonian account of interpretation, states:

> The most familiar occasion of interpretation—so familiar that we hardly recognize it as such—is conversation. We interpret the sounds or marks another person makes in order to decide what he has said.[11]
> [L]egal reasoning is an exercise in constructive interpretation . . . .[12]
> Law is an interpretive concept . . . .[13];
> [C]onstructive interpretation is a matter of imposing purpose on an object or practice . . . .[14]

The interpretive approach to meaning,[15] so central to linguistic theory as well as recent jurisprudence,[16] cannot escape the infinite regress of justification.[17] If the meaning of every utterance cannot be discerned

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9. Donald Davidson, *A Nice Derangement of Epitaphs, in* TRUTH AND INTERPRETATION: PERSPECTIVES ON THE PHILOSOPHY OF DONALD DAVIDSON 433, 438 (Ernest LePore ed., 1986). For a thorough and convincing account of the shortcomings of Davidson's account of meaning, see STEPHEN MULHALL, ON BEING IN THE WORLD: WITTGENSTEIN AND HEIDEGGER ON SEEING ASPECTS 91-122 (1990).

10. *See* Donald Davidson, *Thought and Talk, in* INQUIRIES INTO TRUTH AND INTERPRETATION 157 (1984) ("[A] creature cannot have thoughts unless it is an interpreter of the speech of another.").

11. RONALD DWORKIN, LAW'S EMPIRE 50 (1986).

12. *Id.* at vii.

13. *Id.* at 87.

14. *Id.* at 52.

15. I critique the interpretive approach to legal meaning in Dennis Patterson, *The Poverty of Interpretive Universalism: Toward the Reconstruction of Legal Theory,* 72 TEX. L. REV. 1 (1993).

16. *See, e.g.,* FREDERICK SCHAUER, PLAYING BY THE RULES 207 (1991) ("[E]very application of a rule is also an interpretation.").

17. Wittgenstein addresses both rule-following and interpretation in the same section of PHILOSOPHICAL INVESTIGATIONS. He states:

> This was our paradox: no course of action could be determined by a rule, because every course of action can be made out to accord with the rule. The answer was: if everything can be made out to accord with the rule, then it can also be made out to conflict with it. And so there would be neither accord nor conflict here.
> • It can be seen that there is a misunderstanding here from the mere fact that in the course of our argument we give one interpretation after another; as if each one contented us at least for a moment, until we thought of yet another standing behind it. What this shews is that there is a way of grasping a rule which is *not* an *interpretation*, but which is exhibited in what we call "obeying the rule" and "going against it" in actual cases.

without interpretation, then what is to stop us from asking after the interpretation of the interpretation? The interpretation of a rule or an utterance is a second-order phenomenon. Interpretation clarifies the meaning of the rule or utterance—it cannot provide its meaning.[18]

CONCLUSION

As I said at the outset, this comment can only be summary in nature. Nevertheless, I have tried to indicate why I think the approach to meaning—particularly the meaning of legal texts—offered by linguists not only fails to illuminate the nature of meaning, it positively obscures it. In the law, ours is an age of anxiety. We seem to believe that an understanding of law is not possible without the tools of another discipline. It is not at all certain that we will soon be free from this condition. What is certain is that linguistics will only make the condition worse.

• Hence there is an inclination to say: every action according to the rule is an interpretation. But we ought to restrict the term "interpretation" to the substitution of one expression of the rule for another.

LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS § 201 (1953).

• This section contains three paragraphs. The first paragraph states a (seeming) paradox. If everything can be made to accord with a rule, then the rule exercises no constraint on action. Thus, neither following the rule nor violating it is possible. In his much-discussed reading of this passage, Saul Kripke argued that the paradox arises from a failure of our past intentions to constrain present dispositions.

See SAUL A. KRIPKE, WITTGENSTEIN ON RULES AND PRIVATE LANGUAGE 7 (1982).

As a possible solution to the paradox, the idea of "interpretation" is introduced. This occurs in the second paragraph. But the idea is immediately rejected because an interpretation of the rule itself would stand in need of interpretation. There being no way to stop this infinite regress, Wittgenstein suggests that there must be a way of grasping (Auffasung) the rule which is not an interpretation. Finally, in the third paragraph, Wittgenstein suggests that the use of the word "interpretation" ought to be restricted to those instances where understanding of the rule and what it requires breaks down.

18. An excellent account of the implications of this aspect of Wittgenstein's thought for political theory is James Tully, *Wittgenstein and Political Philosophy: Understanding Practices of Critical Reflection*, 17 POL. THEORY 172 (1989).