

Nietzsche: "Facts are precisely what there is not, only interpretations".

We may call this a philosophy of Competitionism people need names that encode thinking, so this name might serve as well to fill the need in this case. We could also use other names, such as Scientific Pragmatism, Philosophy of Infinite Variances, or why not Interpretationism, and even Expressionism. • The notion competition is like the long lost missing key that fits into the lock of scientific mysteries; we now turn the key and open the valve and we are faced with the truth: a whirlpool of feelings. Competition is what causes the idea of stability and yet it is also what brings the change. Each human act (even the infinitesimal) is an act of competition. • We are dealing with perceptions in competition; the perceptions stem from feelings, and to the external they come in form of expressions. • A human being is constantly engaged in interpretation; through the senses we interpret the outside world; the body in manifold processes constantly interpret what is going on in the organism (the homeostatic regulation system; hereby we can see that there is no such sharp distinction between a man's external and internal world). In social connection we interpret the language (language in broad sense), but most importantly we interpret *with the language*. • Notwithstanding some feeble attempts, the distinction between natural sciences and social sciences has never been properly made. The ideas expressed in this book are the result of coming to the insight that a radical and sharp demarcation between these types of sciences will have to be made. - This book introduces a new distinction with 'things' on the one hand, and 'expressions and interpretations' on the other. Expressions and Interpretations expels all vestiges of the thingly worldview from philosophy and social sciences, and instead it is shown how language and social practices stem from feelings. Language as such is the tool for expressing interpretations (and fundamentally not the object of interpretations). • The organizing idea of competition familiar to us from economics - especially from the correct understanding of market economy as Adam Smith taught us - becomes the new paradigm of philosophy and all social sciences. • The author talks with the words of Wittgenstein, who without any doubt represents the philosophical ideal. The book defends David Hume and the empiricists and uncovers the Copernican contra-revolution that Kant so successfully launched. The scientific part of Nietzsche's work is shown to be extremely valuable, while his conceptual psychologism, such as the misconceived attack on the Christian religion, is rejected. John Searle's ideas serve here to illustrate the contemporary philosophical errors. - Law is in the role of a paradigm case-study especially with emphasis on Russian law emerging from underneath the Marxist ordeal. Building on Richard Posner's argumentation the author shows that law is in fact best defined as a *competition of arguments* and that it is all about producing justice; justice which is best defined as *competitive justice* which should replace the old political slogan 'social justice'. • This book is born out of a frustration with the degeneration of liberal values in modern day Europe (as it turned out America seems to compete with Europe in the normative hysteria that has become a threat to life), and a need to voice a total rejection of all collectivist explanations of mind, anchoring all reality in the individual human being.



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EXPRESSIONS AND INTERPRETATIONS  
Our perceptions in competition - A Russian case

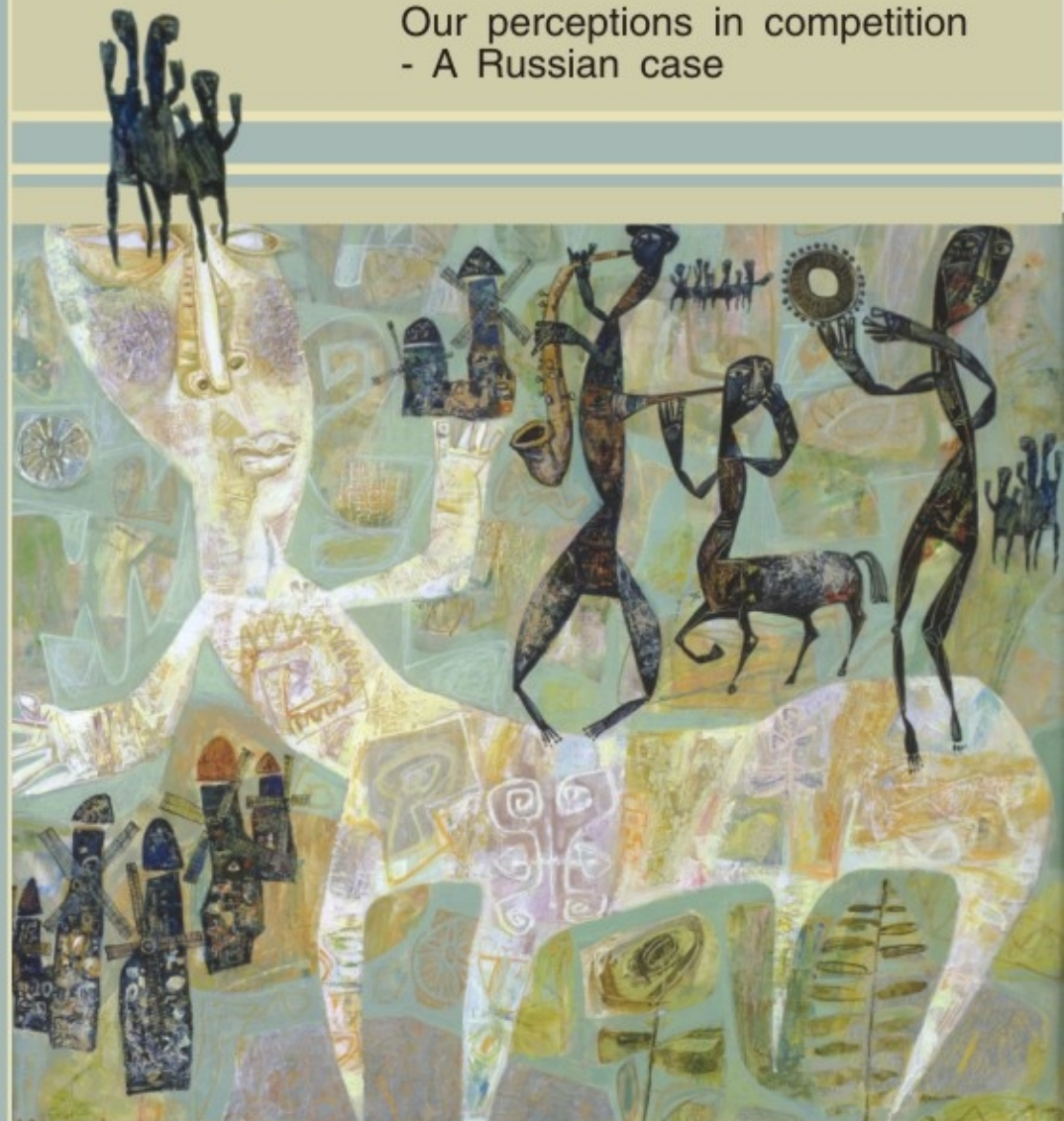
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Jon Hellevig

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## EXPRESSIONS AND INTERPRETATIONS

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- A Russian case



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**JON HELLEVIG**

**Expressions  
and Interpretations**  
**Our perceptions in competition**  
**- A Russian Case**

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"Expressions and Interpretations is a book on philosophy, law, moral, democracy, economy and other perceptions in competition. The book deals with issues of social science fiction and gives the reader the long lost missing key that fits into the lock of scientific mysteries. The 'truth' is shown to be a whirlpool of feelings, which are subject to our expressions and interpretations. - Through this insight law is defined as a 'competition of arguments' and justice as 'competitive justice'. — The book is intended for all people that want to gain an insight in to the scientific reality".

"Expressions and Interpretations" ("Выражение и Толкование") — это книга о философии, праве, морали, демократии, экономике и других наших восприятиях в состязаниях. В ней обсуждаются вопросы фантастики социальных наук и читателю вручается ключ к научным загадкам. Истина, которая преломляется в сознании нашими выражениями и толкованиями через такое проникновение в суть. Право определяется как "состязание аргументов" и правосудие как "состязательное правосудие". Книга предназначена для лиц, которые желают добиться понимания научной реальности.

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## FOREWORD AND ACKNOWLEDGEMENTS

This book has not come about following any of the traditions we would take for granted in dealing with the scientific, philosophical and political themes exposed in such books. Although this work was originally meant as a study on the Russian tax laws I chose to work on the themes of this book in the liberty outside the constraints of the academy.

My thanks will go to the people that have given me the freedom to work. These are my family, wife Tiina, and daughters Helenika (taking part in the research) and Pauline. I have received intellectual support from my brother Gert (especially in dealing with the foundations of mathematics). The work itself was enabled by my colleague's and friend's Artem Usov's extraordinary capacity to stretch and take up a greater part of the client work in our firm during my research period, not only by increased physical effort and more hours, but also by his great genius in dealing with our day to day philosophical and labor needs. Artem has more than anybody provided lucid support and an understanding of the main concepts of my work.

The very special thanks and what really enabled the fulfillment of this work and my understanding of the most fundamentally refined parts of it goes to my colleague, friend and the president of our law firm, to Eugene Isaev.

Most of all I am indebted to Ludwig Wittgenstein. I cannot speak with him, but as the reader sees I speak with his words. I hope I have the grace of doing it with great respect, in earnest and frankness. - In this connection I have to give a special thank to Ray Monk who with the Duty of Genius gives an extraordinary human extension to Wittgensteins' work, and brought me to understand what Ludwig Wittgenstein meant with his last words: 'Tell them I've had a wonderful life.' — That achievement must be the greatest to follow.

This book is about the world, but it is especially about Russia. I wish the story came out as I planned, but that is for the reader to deem.

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## INTRODUCTION

### BRIEF

We may call this a philosophy of Competitionism — people need names that encode thinking, so this name might serve as well to fill the need in this case. We could also use other names, such as Scientific Pragmatism, Philosophy of Infinite Variances, or why not Interpretationism, and even Expressionism (for we are really dealing with subjective feelings that are raised to the level of explanation of the objective observations). — Competitionism, although not a beautiful word, points most adequately on the very forming feature of the ideas I present; 'competition' more than anything is the decisive new insight to philosophy (something we have naturally known all the time, while rejected from the beau monde of philosophy and la science pour la science). The notion competition is like the long lost missing key that fits into the lock of scientific mysteries; we now turn the key and open the valve and we are faced with the truth: a whirlpool of feelings. We automatically police feelings by taking them into the 'mind' in form of more or less orderly perceptions of things and thinking; the perceptions are constantly affected and arranged by an endless social competition on each level of life (this human life cannot be but social life). Competition is what causes the idea of stability and yet it is also what brings the change. Each human act (even the infinitesimal) is an act of competition.

We are dealing with perceptions in competition; the perceptions stem from feelings, and to the external they come in form of expressions. Expressions are a result of interpretations of feelings, but we cannot separate expressions and interpretations into two, they are essentially aspects of the same, and have to be seen as the one forming the other. A human being is constantly engaged in interpretation; through the senses we interpret the outside world; the body in manifold processes constantly interpret what is going on in the organism (the homeostatic regulation

system; hereby we can see that there is no such sharp distinction between a man's external and internal world). — Most of the interpreting goes on unconsciously (we cannot draw a line between conscious and unconscious interpreting). — In social connection we interpret the language (language in broad sense), but most importantly we interpret *with the language*. I hope it is clear that there is not 'a single atom' which is not the object of our interpretations — all that we perceive with the senses becomes the object of interpreting. — The essence of interpretation is substituting one expression with another. And now it becomes evident that this interpretation must *be* the *truth*. - The truth is that all what we deal with are interpretations; there is never anything more fundamental to be found — in anything. — Now, we have unfolded the riddle of truth. — I can sense a deep disappointment among all the absolutists. They all wanted to privatize the truth — but now, how can one privatize an interpretation!

Notwithstanding some feeble attempts, the distinction between natural sciences and social sciences has never been properly made. The ideas expressed in this book are the result of coming to the insight that a radical and sharp demarcation between these types of sciences will have to be made. This is because the objects of study in these are totally different. Social sciences do not deal with things; words are not things. - This book introduces a new distinction with 'things' on the one hand, and 'expressions and interpretations' on the other hand. Language and social practices (among them philosophy and science, which are but aspects of the same) have up till now been conceived on an analogy to things and their movements (both by a conscious effort and just as an evident background assumption). Expressions and Interpretations expels all vestiges of the thingly worldview from philosophy and social sciences, and instead it is shown how language and social practices stem from feelings. Language is the expression of our interpretations of feelings — with this we see that there is no certainty, no philosophical and scientific truths nor facts — when all we start with is an interpretation, then we, naturally, cannot move further than to the next interpretation.

We are constantly interpreting language; sometimes interpretation is done as a concentrated effort, but most of all we just interpret by being — being consists of interpreting. — But, the fundamental philosophical question should not be about interpreting language, but the feelings that are behind language. Language as such is the tool for expressing interpretations (and fundamentally not the object of interpretations).

With the demolishing of the 'mental thing', and the thingly philosophy (and the thingly social sciences) enter perceptions and competition. It is shown that social life is about expressions and interpretations, of perceptions, in constant competition. The organizing idea of competition familiar to us from economics (especially from the correct understanding of [market] economy as Adam Smith taught us) becomes the new paradigm of philosophy and all social sciences.

The author talks with the words of Wittgenstein, who without any doubt represents the philosophical ideal. The book defends David Hume and the empiricists and uncovers the Copernican contra-revolution that Kant so successfully launched. The scientific part of Nietzsche's work is shown to be extremely valuable, while his conceptual psychologism, such as the misconceived attack on the Christian religion is rejected. John Searle's ideas serve here to illustrate the contemporary philosophical errors. - Law is in the role of a paradigm case-study especially with emphasis on Russian law emerging from underneath the Marxist ordeal. Building on Richard Posner's argumentation the author shows that law is in fact best defined as a *competition of arguments* and that it is all about producing justice; justice which is best defined as *competitive justice* — which should replace the old political slogan 'social justice.'

This book is born out of a frustration with the degeneration of liberal values in modern day Europe (as it turned out America seems to compete with Europe in the *normative hysteria* that has become a threat to life), and a need to voice a total rejection of all collectivist explanations of mind, anchoring all reality in the individual human being.

## MOTTOS AND QUOTES

I want to put some mottos and quotes in the beginning of this book in order to guide the reader to some of the key philosophical insight I try to expose. (The expressions were originally mine when other authors are not indicated.)

"The doctrine that we can discover facts, detect the hidden processes of nature, by an artful manipulation of language, is so contrary to common sense, that a person must have made some advances in philosophy to believe it." *John Stuart Mill*

"The results of philosophy are the uncovering of one or another piece of plain nonsense and bumps that the understanding has got by running its head against the limits of language.

*Wittgenstein*

"Philosophical problems are caused by posing the wrong questions and the problems disappear with turning the investigation around"

*My resume of Wittgenstein's philosophy*

It is philosophically correct to say that "In the beginning was the word." — With the word entered humanity, and with the word came the misunderstanding.

Wittgenstein: "At death the world does not alter, but comes to an end" (Tractatus 6.431).

Russians are fond of repeating after Gogol with a certain self-irony that in Russia there are only two problems: The roads and the fools. - But, we shall remember that in Europe they have merely dealt with the roads.

The only a priori mode of thinking is forgetting.

Game Theory — Conjectures seem so much more exact in mathematical form!

Analyzing the brain to understand the mind is like analyzing the paper and the ink to understand a text.

The feeling 'I cannot find the words' is due to the fact that there are no words to be found.

Wisdom is the capability of a person to recognize and discern one's own moral modes.

New improved double-bladed Occam's razor cuts superstitious belief even deeper.

The discovery that gives philosophy peace is the understanding of the essence of language and competition as the organizing idea of what ties all the parts together.

The truth admits but the everlasting interplay between expressions and interpretations.

Infinite interpretations of expressions, and expressions of interpretations wrapped in a moral mode exclude all ideas about truths.

Wisdom is to be able to recognize and to move between various levels of perceptions.

Words acquire a meaning not only in the context of a narrative, in the web of beliefs — the meaning is also inflicted by the moral sentiment, the way we relate to words and the feelings they arouse.

When all we start with is an interpretation, then we, naturally, cannot move further than to the next interpretation

Initial position (Rawls): the only initial position that there has been is the conception of a human being, and that is not a rational one, but a passionate.

It is egoistic to think that somebody else's suffering or death is meant as a punishment of yourself

Democracy is a function of the conditions for competition.

Moral is the mode of relating to norms and not a special set of norms.

The scoreboard of truth is a function of the competitive process. — This revelation effectively removes the hat from the riddle of law.

Any meaningful use of the concept 'true' means that it depicts a relation — and since it is a relation then it is never absolute.

The myth of the enlightenment is caused by not seeing the competitive method in action.

Feelings are more complex than the language that expresses them.

Science is the perception of what is ranked highest (it is a kind of a market quotation of arguments).

The true holistic view is that all is a dimension of a word.

When people do not recognize that all knowledge is only perceptions, people, in fact, become hostages to the perceptions.

We continue searching for the hard core of expressions (and that must be the culmination of alchemy: looking where nothing can be found).

But what can be true about an interpretation (for all expressions are interpretations).

Feelings maybe true, there maybe true feelings, but the interpretations are not.

For truth, if anything is a state of being honest to oneself (expressions are interpretations of feelings, there is no deeper meaning or truth to be found, and this is the deep truth).

In law at the end of the day one of competing views is pronounced true.

The extreme left and extreme right are neighbors at noon, when you just do not present them on a line, but on a circle.

Law is an activity where ritual masks reality.

The dilemma in life is that truth lies in the future, but love, hope and trust are in the past and we are in a continuous quest to reconnect with that feeling in the future.



Harmony is disrupted with the concept of two.

Language is used for expressing feelings — but as language is very under-developed for the task, the expressions are in fact only interpretations of the feelings: Feelings are more complex than the language that expresses them (even language in the broad sense). — This is what makes the task of interpretation of feelings an infinite endeavor.

The conservatives (and all our teachers are conservatives) do not understand that the official style of today is the deep-frozen radicalism of the past.

Maybe aspect-blindness partly is a protective device — helping us to endure this uncertainty — like sunglasses protecting against clarity.

Marxism has been incorrectly implemented in the West; there Marx's teachings were perverted by market economy, democracy, justice and other elements of competition.

“Materialism marks the bankruptcy of the mind which cannot take in the multiform phenomena of life and wants to devaluate them to the paltry integer, one; to explain everything with one simple explanation. ..The need to simplify is an infantile malady; such a need demonstrates that our helpless reason has not yet developed the power to comprehend the whole, to harmonize the chaos of phenomena.”  
- *Maxim Gorky* in *My Universities*

“Materialism is becoming the fashion. Its simplicity makes it tempting. Its pull is particularly strong on those who do not want to take the trouble to think for themselves... Life is made up of innumerable intersecting circles; it defies all attempts to enclose it in the square of a logical system. It defies all attempts to bring these circles into even order – these intersecting lines of human actions and relationships”  
- *Maxim Gorky* citing *Korolenko* in *My Universities*

“I do remember his words...the best and truest advice, I think, I have ever gotten: Hold always to what I know you feel now; that freedom of thought is man’s only and most precious freedom. And it belongs only to him who takes nothing on faith, who looks into everything himself; only to him who comprehends the continuity of life, its flow, and the infinite fluctuations of reality.”  
- *Maxim Gorky* in *My Universities*

“Man becomes man through resistance to his environment.”  
- *Maxim Gorky* in *My Universities*

Nietzsche: Facts are precisely what there are not, only interpretations

### **Look out for nonsense...**

The state is the actuality of the ethical Idea. It is the ethical mind qua the substantial will manifest and revealed to itself, knowing and thinking itself, accomplishing what it knows and in so far as it knows it. The state exists immediately in custom, mediately in individual self-consciousness, knowledge, and activity, while self-consciousness in virtue of its sentiment towards the state, finds in the state, as its essence and the end-product of its activity, its substantive freedom....  
- *Hegel*

The state is absolutely rational inasmuch as it is the actuality of the substantial will which it possesses in the particular self-consciousness once that consciousness has been raised to consciousness of its universality. This substantial unity is an absolute unmoved end in itself, in which freedom comes into its supreme right. On the other hand this final end has supreme right against the individual, whose supreme duty is to be a member of the state.  
- *Hegel*

From the understanding arise concepts.  
- *Kant*

Emile Durkheim's first rule of sociological method: to consider social facts as things.

Popper on Marx: " His mistaken theories are a proof of his invincible humanitarianism and sense of justice."

Chomsky: “A universal grammar for a lunatic age of space cadets.” - And this brings us back to the relation Hume identified regarding the mutual complaisance between philosophers and their disciples: “while the former furnish such plenty of strange and unaccountable opinions, and the latter so readily believe them”. – And this turns a lot of science to an activity to find the psychological explanation for these disturbances.

## 1. EXPRESSIONS AND INTERPRETATIONS

"Perhaps what is inexpressible (what I find mysterious and am not able to express) is the background against which whatever I could express has its meaning", Wittgenstein (Culture, p. 16).

'The world is the totality of facts, not of things' - this was the point of departure of Wittgenstein when he entered his philosophical investigations. It marked a gradual liberation of his thought from the influence of the linguistic alchemy called logic.

In the Tractatus Logico-Philosophicus Wittgenstein said:

1. The world is all that is the case.

1.1 The world is the totality of facts, not of things.

1.11 The world is determined by the facts, and by these being *all* the facts.

1.12 For the totality of facts determines what is the case, and also whatever is not the case.

In this Wittgenstein partly correctly rejected the thingly world-view that philosophy and science are impeded with, but in his philosophy he never as such directly emphasized the philosophical problems created by the 'thing'. But he does hammer and grind on a conclusive aspect of the 'thing', which is the 'fact', i.e. the belief in mental certainty. From

his later work we learn that there are no facts — no facts that merit being in the role of the material from which the world is made up of. The 'thingness' of words disappears with the *facts*. But he had said that *the facts determine what is the case*. — *And all of a sudden there are no facts!*

— There are no things without facts — ('facts' convene the idea of there being some special kind of mental 'things').

After the Tractatus Wittgenstein abandoned the idea of stating absolute truths and did not want to formulate any theorems and did not as such reformulate his conceptual stance. Instead Wittgenstein's concern was to show people how to think — to analyze a thought to its logical end — to see that there is an end to it only at the point where we abandon the quest for final truth. The longest journey ever in honesty brought Wittgenstein to formulate his knowledge as an alphabet for conscious thinking. This is the very key to the notion of truth — for truth, if anything, is a state of being honest to oneself (expressions are interpretations of feelings, there is no more deeper meaning or truth to be found, and this is the deep truth). This way he provided us with the tools for distinguishing between sense and nonsense — and philosophy has no other function.

The totality of Wittgenstein's work gives me the confidence to adjust his initial statement. I claim that: *'The world is the totality of things. Life and understanding of the world and the things are determined by expressions and interpretations. The totality of expressions and interpretations determines whatever seems to be the case'*.

There are things and they are physical. We can know about them and their movements and we know a lot of them and people seem to increase that knowledge.

Language, the expressions we use, is merely interpretations of our feelings (or thoughts if you wish, although one could say that feelings precede thoughts — even here there is interaction). — The words, the concepts, appear as expressions — but behind them are interpretations of feelings. - At no stage was there a form and on no stage did a form develop. — As soon as one part of the expression appeared it also disappeared (and I use the word appear only because we have to borrow from the lexicon that was developed for dealing with things). — Wittgenstein: "It somehow worries us that the thought in a sentence is not wholly present at any moment. We regard it as an object which we are making and have never got all there, for no sooner does one part appear than another vanishes" (Zettel, p. 27).

But, the expressions we use are not things and do not exist — and this is the fundamental notion of philosophy, yes of life. Language is not a thing and the words are not things and the concepts are not things — language does not consist of any things — no atoms, no molecules and not even gaseous steam (they do not exist in this world, nor in another world).

An expression is not a thing (it is a formulation of a thought, an opinion, of feelings — and the formulations themselves are but interpretations ; think about the formulations as being activities); it does not have substance nor form - one could say that it is gone by the wind as soon as it came (but hereby we are evoking the false picture that there was something that came and left — it did not come and go — it was only expressed).

Sometimes the making of an expression and a possible physical vestige is taken to be the form of the expression (some even confuse that with the content): the opening of the mouth, the ink on a paper, the dot on a screen, the paintings drawn, the gestures articulated, the plastic bags we carry — But, the form is only the messenger, it seems like the wrapper, the package, but no thing is in there (inside the bag there may be whatever, but nothing in the expressions that the design of the bag convenes) — the wrapper does not contain the content of the expression.— They merely serve as material for interpretations i.e. the development of new feelings.

The sound waves produced when words are uttered are not expressions, they are things, but the words are not. Sometimes words leave traces, faint suggestions of an intended meaning — if any: On rare occasions an expression has 'visited' (*this word from the language of things*) a paper or a screen and left an impression there, something that could hint at a meaning. Expressions have been instrumental in erecting a building, or forming a thing — but they are not things in themselves. - The words as such (or the content of gestures) do not exist and have never had an existence. They never represent a completed thought; they are never completed even as expressions of thoughts. — (Wittgenstein: "What looks as if it *had* to exist is part of the language" PI 50).

*Substantiv är namn på ting till exempel boll och ring.*      *Nouns are names for things: for example balls and rings.*

*Verb - det är vad vi kan göra: leka, läsa, se och höra*      *Verbs that's what can be done: play, read, see and run.*

*Adjektiven sen oss lär hurudana tingen är!*      *Adjectives bring to light properties of things aright!*

This is the drill we as children were indoctrinated with in school — if not a confession, then at least a prayer, which reads like the foundation of science — this is the artful foundation of thinking.

Expressions are only the outward actions for expressing one's thoughts — pain and pleasure if you wish (add 'desires' for clarity). The expressions are the sole basis for social life — language and communication forms the reality. We have the physical natural surroundings and resources for sustaining life — but only through expressions i.e. language and communication does a human being have a place in nature. The interplay of expressions and interpretations (communication) makes the human life.

In speaking and writing a person continuously makes choices concerning what expressions to use — how to say things. The choice is difficult because the thoughts are infinite, but language is restricted (comprehensive language is restricted) — no matter which words and their combinations you chose you will only have a meager compromise between the possible forms of expression and the ones you would require for correctly expressing the thoughts.

Using language is a constant compromise with oneself. But the situation is even worse when writing is the result of group action, such as making a law. A law text is a compromise between immense amounts of considerations; each expressed originally using the incomplete tool, language — "Language disguises thought" (Tractatus 4.002). These expressions are variously interpreted by the other participants. Then at the final stage, as if the objective conditions for dilution of thought would not be enough, enters the direct effect of conscious compromises between parties and compromises that the individual actors make in choosing between language conventions (and now we are dealing only within the realm of the conscious). — But even if the process of writing would be perfect, then even so, the document would still be only one interpretation of the expressions involved (not to speak about the underlying feelings) — and this document in turn is bound for endless interpretations — where the interpretation is always done in accordance with the life experience of the one doing the interpretation. Finding the original meaning or original intention of a text is at best a futile quest — a so-called official (authoritative) interpretation is not an interpretation, but a new normative expression (it is closer to deceit than a search for truth) - and so it be, because an interpretation is nothing more than exchanging one expression for another one. Through interpretation nothing is to be found, because when there is no thing to start with another cannot be produced - ex nihilo nihil fit (from nothing nothing is produced).

It is natural that any good text can only be an artistic expression, where the author is not bound to the restrictions of conventions, but dares to create the language he uses. - There is a magical spell about writing — signs appear on paper and by interpreting the signs using a correct technique sounds can be uttered and these sounds form words. It is no wonder that ever since this remarkable manner of encoding and decoding of words was first invented it has been so easy to fool those less familiar with the technique to believe that the codes had been given by a god and that the texts they formed were somehow holy. This spell of written texts sits deep in and it is the modern fundament for law and other systems of subjugation.

The mystery of writing induces people to believe against their will that texts and books can talk — that they are like humans. That is why people repeat after lawyers, politicians, and philosophers propositions like 'the Law says', 'the Capital exploits', 'Society thinks', 'Science corrects'... The law has been assigned a human-like quality to think, to speak and even (but rarely) to make mistakes. But the Law does not only speak. The Law consists of Rules and Norms; together 'they command', 'they are followed' (*wherever they lead*). And the animate capacities of Law are not even restricted to speaking to these people (and then we wonder why Aunt Sally says that that flowers and plants speak to her! — which is certainly much more plausible), the Law even rules over them as evidenced by their creed in various rule-following beliefs. - Somebody will say: 'But, this is just the way we speak — it is wrong to draw such conclusions from it. Look at the essence' — No, we cannot be content with that excuse - this is the very problem, this way of speaking and way of thinking leads to the very fact that the Law is conceived as an animate thing ruling over people (This is also the fundamental issue that calls for a total revision of the basic premises of contemporary law. — No immanent criticism of law will do).

Some of the words used to describe social relations have been grouped to form concepts. These concepts, which are merely the symbols for cumulated experience have created a lot of confusion in philosophy due to the fallacy to think that the concepts represent something independent (and that 'independent' being a 'thing'). - And where the idea emerges that concepts represent cumulated experience, there they think that experience is faultless and clear; the possibility that the concept has captured a lot of faulty belief, superstition and nonsense is totally disregarded -

and in fact concepts are the carriers of bad as well as good, they serve to corrupt and create, degenerate where they generate (concepts will serve any master, and many, simultaneously). - This confusion and erroneous philosophy was brought to new heights by Kant. - Kant reads as a collection of the superstitious belief on which Western scientific perception on social life is based. — Kant (p. 47):

"perhaps the greatest part of the business of our reason consists in analysis of the concepts which we already have of objects. This analysis supplies us with a considerable body of knowledge, which, while nothing but explanation or elucidation of what has already been thought in our concepts... But so far as the matter or content is concerned, there has been no extension of our previously possessed concepts, but only an analysis of them... this procedure yields real knowledge a priori, which progresses in an assured and useful fashion". —

The problem, according to Kant, is that reason has hitherto been clandestinely misled "without *itself* being aware of so doing" "to introduce assertions of an entirely different order" and "remake concepts by attaching new concepts to old ones in an a priori fashion". Kant wonders how *reason* "can be in position to do this" and he therefore decides to take *him* under tutorship and explore *his* secrets of success. Kant sets out to teach this pet reason to be more independent and free himself from clandestine influence. — A great part of the scientific community has ever since hailed Kant for his effort. — (What Pavlov made with the dogs, Kant made with reason — they think). — The very fundamental misconceptions are evidenced by Kant's claim that "from the understanding arise concepts" (p. 65) — He fatally missed the other side of the coin, that from misunderstanding arise concepts (and that from concepts arises misunderstanding). — Concepts are just words treated with a certain perception (he does not recognize that all words are concepts-in-themselves). - A correct philosophy should be based on the opposite notion: an understanding that the only way to gain new knowledge and to improve it is to, as far as possible, free one's thinking from the particular concepts, and move beyond them. — Wittgenstein: "We pay attention to the expressions we use concerning these things; we do not understand them, however, but misinterpret them. When we do philosophy we are like savages, primitive people, who hear the expressions of civilized men, put a false interpretation on them, and then draw

queer conclusions from it" (Remarks Mathematics, p. 87). - Wittgenstein: "We need to realize that what presents itself to us as the first expression of a difficulty, or its solution, may as yet not be correctly expressed at all (Certainty, pp. 36 and 37)".

Wittgenstein: "The philosopher is the man who has to cure himself of many sicknesses of the understanding before he can arrive at the notions of the sound human understanding "(Remarks Mathematics, p. 302).

But, not only are the words thought to be objects, some animated as we have seen — they are also thought physically to behave like things. This is manifested in the beliefs that the words depicting human relations and especially the concepts of social sciences stand in relation to one and another like things to other things, and all of the things to the known earth; like the components of a machine, or like the parts of a living organism. Words and their compositions are believed to follow rules and laws. The crown jewel of all modern superstition, logic, dates to the time of the ancient Greek culture, to the witchcraft of Plato and Aristotle. Logic is a purported science, the practitioners of which proceed from the idea that expressions are things and thinking is a machine-like process where these 'things' i.e. 'the expressions' fulfill some predetermined functions — functions which those endowed with a better than average brain can like oracles know (i.e. the logicians), but yet remaining unable to share their insight with us. - For who will seriously claim that one future feeling can be in any correlation in a set pattern to another future feeling — and that either one should occur ever again. - Wittgenstein tried to capture this moment of the evasive feeling — that is he showed how unique it was and how impossible it is to ever to catch that fleeing, evaporating expression:

"At that moment I hated him." —What happened here? Didn't it consist in thoughts, feelings, and actions? And if I were to rehearse that moment to myself I should assume a particular expression, think of certain happenings, breathe in a particular way, arouse certain feelings in myself. I might think up a conversation, a whole scene in which that hatred flared up. And I might play this scene through with feelings approximating to those of a real occasion. That I have actually experienced something of the sort will naturally help me to do so" (PI 139).

Alchemy can be seen as the direct counterpart of logic in natural sciences. Alchemy was made to blush with the emergence of the 'scientific method' — that is the competitive method; the competition offered by narratives based on transparently argued empirical proofs. It is precisely the combination of dramatically increased scientific transparency as a product of increased competition (see further on 'competitive method') and empirical proof that caused the tremendous leap forward in the natural sciences (and economics), in these there is an object of study: the thing and its movements. — But in social sciences there is no object, there is no thing, there are only the feelings and their interpretations; thence the empiric connection is not so clear, and thus anything goes.

But as expressions are not things, and do not have any existence, and did not have any to start with, then they, obviously, cannot stand in any causal (or any other kind of intelligible connection) with other expressions (from nothing comes nothing). There is no logical pattern between one and another expression and there cannot be. Expressions relate to other expressions through interpretations and yet more expressions and they are always new, unique, and without any form of existence.

There is experience, there are customs, there are habits, there is psychology, there are physical needs — there are a whole lot of ingredients that give the appearance now of this now of that. Sometimes there is compelling reason to predict a certain outcome, a certain future state, sometimes not. Sometimes something similar to past experience could happen, sometimes somebody (the unique person) may predict a completely new type of outcome, maybe yet only for once — but there is no pattern, ever.

It will be a central theme in this book to dispel the myth of logic and to hasten its swan song. — Logic belongs to history and leisure (perhaps future weekend sections of newspapers dispel logic formulae next to the other crosswords). — Although I am a logician myself, the way Wittgenstein was, we just push the question marks deeper down, and we push the questions to the limits of the obvious. — And, I am also a physician. My thinking is very much affected by the fundamentals of the physical sciences: I explore things, I study the physical environment, and thereby I realize that words do not exist like things do. — Now, this real-life logic coupled with the exploration of the physical world brings us to the mega-logical conclusions that as words are not things, then the

essence of words is something different; and I notice that words stem from the human body. — Now these premises even enable us to draw up a syllogism: these thingless names that stem from the body must be the expressions of body states i.e. feelings.

Let's take one more look at Wittgenstein's point of departure:

Stern follows up on Wittgenstein's statement that 'the world is the totality of facts, not of things' and concludes that Wittgenstein "is not denying that there are things" in the natural world, but rather claiming that our comprehension of the world, cannot be but consisting of facts, which "are arrangements of things" (I would take them to be about perceptions on how things relate one to another). His idea in the *Tractatus* was that "if we analyze complex facts into their constituents we must eventually arrive at atomic facts". Atomic facts, which are not further decomposable into component facts, are linked together in a series or a chain of simple objects. These objects are a little bit like subatomic particles: the everyday facts about the world around us are the product of the way the objects are combined. Thus Wittgenstein presumed that the structure of the world is mirrored, or pictured, by the structure of language: all meaningful language is analyzable into "elementary propositions," logical atoms (Stern 1996 p. 53).

Stern tells that Wittgenstein considered an elementary proposition to be true if the objects that it refers to are arranged in the same way as the names in the proposition; otherwise it is false. Each such proposition is logically independent of all other elementary propositions — the truth or falsity of each atomic proposition is independent of the truth or falsity of any other atomic proposition. An atomic proposition is composed of names, and each such name refers to one of the simple objects of which the world is composed' (Stern 1996 pp. 53 and 54). — This is of course the logico-thingly error that caused the confusion which he was fighting against when working on the *Tractatus*, and the liberation from this was the essence of his later work (What would logically [in the real world meaning of the word logic] follow from that is a claim that when the world started all the people would have gathered together and made a list of all 'things' that could be named and having been utterly scrupulous all would have been in fact named — this, naturally, if we exclude the a priori idea. The original people would also have known all the future needs for words and concepts, and thus people could go on discovering [searching

in the mental records] for the facts that correspond to the things. — There is, however, nothing extraordinary in this line of thinking for this is the contemporary fundament for the philosophy of law). - However already in the same *Tractatus* Wittgenstein rejected this absurd conclusion, and so opened the window to the sound thinking that was to mark his heritage. Stern tells (Stern 1996 p. 57) that in the *Tractatus* Wittgenstein "asks us to imagine that there is no final level of analysis, that any analysis of a proposition into simpler components will be provisional, always capable of being supplanted by yet more exhaustive analysis" — and if "there is no final level of analysis, then we are assuming that the process of analysis can go on indefinitely". — Stern summarizes his description of this idea: "if there is no final level of analysis, then each new level of analysis will modify the sense, and possibly even the truth-value, of the proposition to be analyzed, and so it will not have a determinate sense" (Stern 1996 pp. 57 and 58) — It was with this real-life logical conclusion that Wittgenstein eventually brought the philosophical problems to an end (and yet the reception of the idea is still to come). — When all we have are expressions of feelings and their interpretations, and when we realize that an interpretation is the substitution of one expression with another one, then, naturally, we will have to understand that there cannot be a final level of analysis — there is always a new feeling, and people are the carriers of the feelings.

### **Impressions- Thought —Expressions — Interpretations**

Human mind (that is the process of thinking and producing expressions) is involved in a continuous dance with four kinds of movements: the reception of impressions; the production of thoughts; the expressions of thoughts, where the expressions are more like incomplete interpretations of the thoughts; and interpretations, the process of contemplating over the expressions and even the previous impressions. — All the words I used hereby represent only close approximations using the language we have — the language of things — to give an idea of what goes on. — And it is meaningless to ask what comes first the impression or the thought, the expression or the impression, for they are all interwoven one in all. — Wittgenstein "The other experience is one of seeing his brain work. Both these phenomena could correctly be called "expressions of thought"; and the question "where is the thought itself?" had better, in order to prevent confusion, be rejected as nonsensical" (Blue and Brown Books,

p. 8). — I add: And mightn't it be equally nonsensical to look for the expression, anymore than for the thought." Wittgenstein:

"Thinking is not an incorporeal process which lends life and sense to speaking, and which it would be possible to detach from speaking, rather as the Devil took the shadow of Schlemiehl from the ground. -But how "not an incorporeal process"? Am I acquainted with incorporeal processes, then only thinking is not one of them? No; I called the expression "an incorporeal process" to my aid in my embarrassment when I was trying to explain the meaning of the word "thinking" in a primitive way. One might say "Thinking is an incorporeal process", however; if one were using this to distinguish the grammar of the word "think" from that of, say, the word "eat". Only that makes the difference between the meanings look too slight. (It is like saying: numerals are actual, and numbers non-actual, objects.). An unsuitable type of expression is a sure means of remaining in a state of confusion. It as it were bars the way out." (PI 339).

The limits of thinking are in language; and the limits of language are in thinking; and the reception of impressions is limited by thinking; and interpretations are limited by all the other elements. - The feeling 'I cannot find the words' is due to the fact that there are no words to be found.

But thinking and the whole dance is only partially (and do not ask how much) a conscious process - most of the interactions are unconscious. Nietzsche said: "Man, like every living being, thinks continually without knowing it; the thinking that rises to consciousness is only the smallest part of all this — the most superficial and worst part — *for only this conscious thinking takes the form of words, which is to say signs of communication*, and this fact uncovers the origin of consciousness" (Gay Science pp. 298 and 297). — "Consciousness is the last and latest development of the organic and hence also what is most unfinished and unstrong. Consciousness gives rise to countless errors...If the conserving association of the instincts were not so much more powerful, and if it did not serve on the whole as a regulator, humanity would have to perish of its misjudgments and its fantasies with open eyes, of its lack of thoroughness and its credulity — in short of its consciousness"... "Believing that they possess consciousness, men have not exerted themselves very much

to acquire it..so far we have incorporated only our errors [in the instinctive] and ...all our consciousness relates to errors" (Nietzsche, Gay Science pp. 84 and 85).

In philosophy (and hence in all aspects of life) it is important to realize that some of our most complex thinking is tacit, unconscious (Posner in reference to Michel Polanyi and Gilbert Ryle 1993, p.108). - Understanding of the meaning of conscious vs. unconscious thinking is relevant in philosophy in order to break the myth of thinking being a logical process, or that there would be a kind of an orderly functioning thinking machine called mind (Posner: "So much 'thinking' is unconscious that the very concept of 'mind' becomes problematic", 1993, p. 109). — The distinction helps us to dispel the philosophical problem regarding 'free will' — we will just have to understand that people always act more or less freely from internal and external constraints, and that the 'will' is always more or less free — all is relative in the human mind and behaviour (Posner: "'free will' is not a thing but a description of behavior not wholly constrained by forces external to the motives and drives of the actor", 1993, p. 173). — The traditional mistaken use of the concept 'reason' has to do with not understanding what consciousness means. Instead of thinking of 'reason' as a source of superior data we should think of 'reason', or better yet 'reasoning' as an effort to consciously concentrate on considering all relevant data and life experience to form an idea or state of affairs regarding a particular issue (but, then we should also realize that even conscious thinking is always affected by unconscious elements).

In philosophy we shall only be concerned with understanding that there is this problem with consciousness vs. unconsciousness. It is totally futile and foreign to philosophical investigations to try to establish the biological nature of consciousness or to try to invent various sorts of consciousness. — Unfortunately Searle affirms the contrary, for him it seems that "we need to investigate questions about the detailed structure of consciousness" (p. 4). — Why? Building on Freud's ideas he adds to Freud's 'preconscious' and 'dynamic unconscious' his own 'deep unconscious' and 'nonconscious' (pp. 167 and 168).— Searle wants to introduce a distinction between "consciousness and mental phenomena" (p. 20); "what facts about brain events could make them both mental and at the same time unconscious?" (p. 21). The point is that 'mental phenomena' and 'consciousness' are not alternatives. Human life consists

of managing the organism through an activity we may call mental. This mental activity goes on all the time (until death). It is worthwhile to assert that there is a difference between various levels of consciousness e.g. 'I am consciously writing this', 'When I am asleep I am not consciously controlling my thoughts'. Consciousness is best thought of on a scale of gradation, on one end we are very much conscious and another where we are less, while understanding that each state of being are constantly interwoven. The level of consciousness is an aspect of mental activity. Different states of consciousness operate simultaneously. I think we could recall an image from broadcasting a major sports event. Great many cameras are constantly filming different activities and they appear on all the screens in the studio. The director decides to transmit to the public what one of the cameras film, but all the while the other ones keep filming, and the director controls all the screens (to some extent) in the studio. I think consciousness is a little bit similar — there is a lot going on, but the 'director of the mind' decides to show on the level of consciousness only one event. — Do not think of consciousness in terms of on/off.

Searle leads us totally astray with the ideas of 'qualia'. He writes: "Conscious feelings have a qualitative aspect". "Each conscious state is quale, because there is a certain qualitative feel to each state". — "Qualia really exists, so any theory like functionalism that denies their existence, either explicitly or implicitly, is false" (p. 59). — Obviously I reject the idea that there would exist any qualia — this is just pushing further down the old ideas, long refuted, that taste, smell etc would be properties of the object [while we now understand that they are but feelings people experience]. Rather the idea of a 'qualitative aspect' of consciousness must be seen as a statement that 'consciousness' is about the human relating to internal and external impulses, and really this boils down to the eternal feel of pain and pleasure. — I also think it is worth refuting the idea of this 'existence' of qualia by pointing that while it can be correct to say there are qualitative aspects, but certainly not so that *one* aspect pertains to *one* aspect of consciousness, there must be a lot of aspects involved simultaneously (Infinite Variances). And let us not forget that the 'unconscious feelings' equally have qualitative aspects. — Searle's confused discussion regarding the conscious/unconscious culminates in him stating: "Do unconscious mental states really exist? How can there be a state that is literally mental and at the same time

totally unconscious? Such states would lack qualitiveness and subjectivity and would not be part of the unified fields of consciousness... So in what sense if any would they be mental states?" (p. 165). - The part of progress Searle has made here is that he declares that the 'unconscious' is not part of 'conscious' (and this distinction is what counts). But, a part from that this is just a manifestation of the error of not seeing that: our mental states vary between conscious and unconscious mental states — a lot of thinking (mental phenomena) goes on without us being in control of that. — (Searle gives an example justifying his idea of consciousness "Now do exactly the same thing only unconsciously", [p. 166]. This is a contradiction in terms — no imperative applies to the unconscious; one cannot make oneself do anything unconsciously, it is the part that is beyond control and when it is in the realm of control, then it is not unconscious anymore). — (There is a lovely example of misguided idea of rule-following as well: "I am not unconsciously following the rule 'Keep breathing' (p. 168). — If anybody needs to consider what is wrong with the idea of rule-following, then I can only advice to chew on that.)

It is positively surprising that after the highly confused discussion Searle reaches a very correct conclusion: "The key point for the discussion of the unconscious is this. There are some forms of human behavior that make sense only if we postulate a reason for action of which the agent himself is unconscious" (p. 177; Although immediately next Searle again goes over to 'rule-following').

Searle says that "Conscious states are entirely caused by lower level neurobiological processes in the brain" (p.79). — While this is certainly true, we still need to object to such a statement for two reasons: Firstly, while it is true that they are connected with neurobiological processes, the question is: 'what in the life of a human would not be connected with neurobiological processes?' — Why do we have to state that life is connected with the biological body? Secondly, I would raise the question whether conscious states are 'caused' or rather 'performed by' neurobiological processes. — Do we know what the cause is and what the effect? — (Searle says, "Conscious states are thus causally reducible to neurobiological processes" [p. 79]. — But so are unconscious states).

Dreaming is a state where the unconscious has almost fully taken over. This is why dreams are so much like art. In dreams we are producing an



artistic interpretation of our feelings, where the conscious control is removed. — I think that sometimes when people experience a 'calling' or that somebody is approaching them in dreams the question really is about interpreting some fundamental aspirations (but in no way should this be understood as a penetration to something more right or good or laudable — it could be so, but equally it might not be so). In dreams the human is seeking a more artistic interpretation for events in life; in art the language and imagery is not bound by the same rigid rules as in conscious social intercourse — but therefore the expressions of dreams are yet further subject to interpretations — we do not even understand that language ourselves, and if we remember something of the theme of the dreams, then we engage in a conscious interpretation of it (and this is where we go wrong again).

(We shall note that it is a fundamental underlying misconception in the positivist philosophy of law to think that law is about conscious action as Tuori writes: "...the fact that modern law as a historical type of law is based on conscious human action", Tuori, p. xi).

This dance of impressions- thought— expressions— interpretations when excluding 'expressions' is sometimes referred to as 'understanding' — (and this is a legitimate approximation) — but we should even be on our guards for calling it a process, not even a 'mental process', Wittgenstein:

"But don't think of understanding as a 'mental' process' at all. — For that is the ways of speaking that is confusing you. Rather ask yourself: in what kind of case, under what circumstances do we say "Now I can go on," if the formula has occurred to us. That is how it can come about that the means of representation produces something imaginary. So let us not think we must find a specific mental process, because the verb "to understand" is there and because one says: Understanding is an activity of mind" (Zettel p.446).

Wittgenstein:

"All this, however, can only appear in the right light when one has attained greater clarity about the concepts of understanding, meaning and thinking. For it will then also become clear what may lead us (and did lead me) to think that if anyone utters

a sentence and *means* or *understands* it he is operating a calculus according to definite rules" (PI 81).

With the aid of Wittgenstein's work we (i.e. some of us) have gained clarity of these concepts — we have seen that there is nothing that we can attribute to correspond to understanding, meaning and thinking — when somebody wants to give a definition or a process description, then we can immediately point to a new side, a new aspect. — We can also see that there are no rules at all, there are none that we can grab by the hand and that lead us to a certain action, activity, meaning, or result (there is no rule-following).

I want to build on Wittgenstein's insight and show that because we are dealing with feelings, then all we have are interpretations, and interpretations do not lend themselves to rules or certainty. This removes the hard core fundament from philosophy. — I also want to show that the consequences of this for social sciences are that there is no science, only art, and that in the absence of any fundament the organizing idea of social science is competition.

## 2. PHILOSOPHICAL INTRODUCTION

When we understand that expressions are not things, and that expressions are only interpretations of feelings (which are subject to further interpretations), then we have all the knowledge needed to make all further philosophical conclusions. A no-thing is not converted into a thing, even if it would seem like a thing in language or in the mind. — And thus there is no form, there are no laws, there is no causality, and there are no truths (apart from the true feelings).

Wittgenstein explained that an interpretation means replacing one expression with another. — This is as far as we get — we can replace one with another as long as we wish but nothing more firm will come out of it.

What there is are feelings and perceptions. — All we see and feel are based on our perceptions. People constantly, based on sensory experience map the environment, the surrounding world (including one's own organism). The sensory data is constantly processed whereby signals are produced for regulating the body functions. The sensory data also produce ideas of the outside world whereby a person forms perceptions of the world. — Language (in the broadest sense) serves to produce and encode the perceptions, which develop in pace with the languages in general and a person's capacity to see through the established perceptions (for a glimpse of light). — When people do not recognize that all knowledge is only perceptions, people in fact become hostages to the perceptions (People use the word 'knowledge' in the meaning 'correct knowledge' and it gets modified with the adjective 'incomplete' only when there is a recognized reason for doubting the correctness or sufficiency of knowledge - But all other knowledge is treated as absolute, while we would do better to reserve the word 'knowledge' to note people's perceptions of knowledge, and thereby keeping in mind that it is incomplete). Knowledge and the language that transmits it are taken to be a part of an absolute and static reality. — The perceptions fail cardinality and deceive people to think that one aspect excludes another, as if two things could

not occupy the same space at the same time (from here are derived the funny notions of Law of Excluded Middle and the other Aristotelian 'laws of thought'). — But in fact we can stuff as many feelings and perceptions we want in one mental space (because they do not occupy a physical one). Language is like a set of spectacles, some for night view; the green lenses for depicting certain objects; the red lenses for others; a microscope for certain details; a telescope for looking far; a zooming glass... With language we see expressions constantly from different angles while the object, the processes (we cannot get away from these words) do not change. - (This is why even love and hate may occupy the same spot).

We have two fundamental notions: The expressions are no things and the expressions are arranged in accordance with perceptions. — There is one more notion that I want to add: the organizing idea of competition. — While expressions are so to say blowing in the air — and perceptions are like vessels drift-anchored in the mind — there is something that ties life (i.e. communication - i.e. social life) together and this is the eternal process of competition. Social life is like the market place of feelings, where the stakes are expressions. — All that happens in conscious human life is competition where one's feelings (those are also opinions) fight for recognition. — This is equally hidden in the most timid and honest smile as well as in the grand notions of law, democracy and the economy.

The expressions and interpretations cannot be given a form; the perceptions cannot be fixed; and the competition cannot be called off. And yet this has been the program of most academic philosophy. Some 2,000 years set part the two most lunatic attempts (but yet so popular) to claim all that is contrary to this basic conception of truth (there is no other truth than a truthful description of how life functions): Plato, the acclaimed philosopher promoted one set of absolute nonsense based on all that possibly could be wrong and 2,000 years later nothing was learned and Marx emerged and successfully manipulated the thingly world-view, and claimed that his perceptions on life were the only correct ones, and that these perceptions formed a scientific 'is'(naturally he did not believe in that himself either). Following Plato he orated to abandon competition (As if that could be abandoned; with the same kind of mind one could promote an idea that life would be better if people stopped breathing — and as we can see the outcome was the same. The Soviet system empirically showed how the arrest of competition first suffocated the people and finally the whole system).

Understanding the essence of expressions and interpretations; that perceptions govern our understanding; and that competition is the driving force (or organizing idea) amounts to a totally new fundamental understanding of social life and everything which is connected with the social sciences — for now the perception of social sciences will have to take a huge leap forward. 'Social sciences' simply cannot be taken as science anymore — what would a science of feelings be like? — For now all social sciences will mean a historic study of a subject from a chosen perspective and argumentation for an ideal. — The time of attempting to perform an autopsy on concepts, on words, is over — now a critical examination and evaluation will be directed to social practices, and individual deeds. — All social science will be understood as philosophy, philosophy as an activity to look after language and a philosopher as a gardener of language — and in fact this is all but art.

I pointed at the sharp distinction between 'expressions' and 'things' — we have to follow this distinction up to the level of science: Philosophy, as the study of language use, has to be freed from the constraints imposed by 'the language of things' and the thinking it infects. We have to disregard the notions and proofs on how language works by looking at the analogies from nature (from natural sciences, i.e. the study of things and their movements). - (When we use words abstractly we kind of acknowledge that we have dragged them out of their natural environment, but still the very word 'abstract' belongs to the things — because that is drawing properties out of the things for treatment in language). — Wittgenstein: "Philosophy is not one of the natural sciences. / (The word 'philosophy' must mean something whose place is above or below natural sciences, not beside them)" (Tractatus 4.111); "The analysis oscillates between natural science and grammar" (PI 392). On some of the last pages of Philosophical Investigations Wittgenstein's thought on the same topic appear, as if to round up one of the most important aspects of philosophy, Wittgenstein says: "If formation of concepts can be explained by facts of nature, should we not be interested, not in grammar, but rather in that in nature which is the basis of grammar? — Our interest certainly includes the correspondence between concepts and very general facts of nature.... But our interest does not fall back upon these possible causes of the formation of concepts; we are not doing natural science; nor yet natural history — since we can also invent fictitious natural history for our purposes." (PI p. 195). It is as if Wittgenstein would explicitly return to the idea of 'the world being the totality of facts, not of things' and the

facts being dependent on arrangement of things. It seems that he was still plying with the idea, still looking for something which would open the riddle. — By stating that 'we can also invent fictitious natural history for our purposes' he shows that he is very close to the final analysis of expressions being interpretations of feelings — see: feelings can well (and do all the time) give rise to fictitious ideas i.e. ideas that do not have any connection with the real world (the world of things). Here Wittgenstein forcefully renounces natural science and the nature as the basis for philosophical investigations (which he partially also did in Tractatus, but not forcibly enough) — Wittgenstein's dilemma is that he does not find the words for expressing the final truth.

(Naturally, philosophy is the first science, as all the other sciences are merely sublanguages that deal with particular subject matters, particular perceptions on life).

### Where I come from

What brought me here — why am I concerned with philosophy? — Well, until recently I was not. I bumped in to philosophical investigations quite accidentally. As literally as one can take it I entered philosophy as the result of having to uncover one and another piece of plain nonsense that my research in law had led me to see. I was shocked and amused by 'the bumps that the understanding had got by running its head against the limits of language' (PI 119) — (these bumps are called jurisprudence, and the essence of contemporary legal science seemed to be an artful manipulation of words). — I arrived to Russia in the beginning of the 1990 's after the liberation and have been practicing as a lawyer in Russia since that, specializing in tax law. In support of my commercial practice I had written a few handbooks on Russian tax and labor law when I decided to make an effort to work on a doctorate thesis in Russian tax law. Building on the work I had put in the non-academic handbooks and the experience I had acquired I imagined my task seemed quite attainable. I supposed that I would back up my work with a piece of legal philosophy as is the tradition in any doctorate thesis. — I started with the new recognized Russian philosophers of law (or scholars of jurisprudence). Although I found the general tone of their work positive and forward looking I was bewildered by the argumentations. I was especially amazed by the works of S.S. Alekseev who advocates a more or less Kantian inspired conceptual jurisprudence. — It was here that I came across

propositions such as: 'the mission of law in the life of people' (Alekseev, 2002, p. v.); 'From the moment of its emergence the positive law..' (Alekseev 2002 p. 129); 'the mission of private law' (Alekseev 2002 p. 130); 'The unique functions of law' (Alekseev 2002 p. 230); 'Law exerts influence on social relations' (Alekseev 2002 p. 281); and 'major points in the life of law'(Alekseev 2002 p. 311). — I came to see that, in fact, this kind of anthropomorphic treatment of law is internationally the standard; one may open any book anywhere in the world and there it is. This is what Tuori says: "the specific impact that the law has had in the birth and reconstruction of modern society"; "modern law constitutes a specific type of law" (p. 3) - (One is left wondering what would have happened if this thingly law would not have been around to give a helping hand to society). — It is understandable that journalists and politicians speak like that, but that this would be the language of professors of law was astonishing. — Legal theory seemed so underdeveloped. - I had to venture deeper into philosophy proper — and by a lucky chance I was directed towards Wittgenstein and I found myself slightly shivering and trembling reading two of David Stern's books on Wittgenstein's philosophy. — I found in them such a relief. I understood the torments that Wittgenstein had gone through and came to appreciate the magnitude of the problems he had had to wrestle with. — I began to understand that I was right in the doubts regarding the accuracy of traditional theories on philosophy of law that I had tentatively raised for myself. — Wittgenstein's philosophy kind of lifted me above the bumps and gave me a bird's-eye view over the problems in legal philosophy. I now realized the bumps, and understood that my approach indeed was better suited for this philosophical terrain. ("I felt as a new dawn shone upon me, my heart was overflowed with gratitude, amazement, premonitions, expectation. At long last the horizon appeared free again, at long last the ships could venture out again — I could breathe fresh ..."). Wittgenstein's notion of language-games finally made it click: that was the key to understanding the nature of the problem, as well as the solution. Then I understood that legal theory is but language-games (I think I would even have to distinguish them as 'artificial language-games'; artificial language-games, where practice does not match the theory). — I had found myself in the peculiar situation where I would have to advocate the obvious: that there was nothing 'scientific' about the law, that law was but human practices governed by our perceptions, and now all of a sudden I discovered that this is what Wittgenstein had said. - It would be more correct to say that there is nothing scientific about the *content* of law i.e. the moral

convictions and perceptions of justice; the perceptions which are but continuously fluctuating views on expressions and arguments. But we can well say that the underlying understanding of how law functions is a scientific notion; it is pragmatism turned 'scientific pragmatism.' — I had my second unexpected positive bang when I reached over the Amazon to America — there I came across a healthier tradition of law, and in the work of Richard Posner, like in Wittgenstein, I found the same kind of rare outburst of healthy mind, in the midst of a sea of philosophical madness. — I was staggered to see that Posner confirmed my view that there was something seriously wrong in regarding the law as being a 'thing.' — The pragmatic philosophy of Posner seemed to me the only right kind of philosophy of law. As such it is sufficient for understanding what law is about and what we should do about it. Posner's work is the kind of philosophy of law which will be relevant from here to eternity; this philosophy will replace the prevailing Platonic-Kantian traditions. —But, I, without taking anything away, can add something to the notions Posner advocates. I think I can turn the pragmatism that Posner speaks about into 'scientific pragmatism': This is a description of law, where all the philosophical problems have disappeared just as Wittgenstein told. — I find it remarkable that by applying Wittgenstein's philosophy in this very practical endeavor called law, the philosophical problems indeed disappear, and in this case make room for justice. Wittgenstein:

"Getting hold of the difficulty deep down is what is hard. / Because if it is grasped near the surface it simply remains the difficulty it was. It has to be pulled out by the roots; and that involves our beginning to think about these things in a new way. The change is as decisive as, for example, that from the alchemical to the chemical way of thinking. The new way of thinking is what is so hard to establish./ Once the new way of thinking has been established, the old problems vanish; indeed they become hard to recapture. For they go with our way of expressing ourselves and, if we clothe ourselves in a new form of expression, the old problems are discarded along with the old garment" (Culture, p. 48).

In science 'pragmatism' has been delegated to the role of 'just pragmatism' as it has not fit in the moulds of creative imagination of philosophers. Everyone kind of sees that pragmatism is the right approach to all issues — common sense and healthy mind tells that ' it works and we have

to use it', but 'that is too vulgar for science and the Academy we have to dress up for'; nobody is impressed by being told what we have always known. — I claim that when we strip philosophy and social sciences of the layers of illegitimate questions, and the masks of concepts, then there is nothing left but pragmatism, a scientific pragmatism, which really is the new paradigm. — Yet, if pragmatism would mean that all that is in accordance with 'common sense' is correct, then we would be on thin ice again. For 'common sense' sounds as if it would be a brand of sense — and it is not. 'Common sense' is a tool of argumentation, a better one than the imaginary systems enforced by the philosophers — but nothing more - (It is scientific pragmatism, because I have scientifically proven that expressions are not things, but interpretations of feelings, and these are arranged in the mind by perceptions in competition — which is a very practical matter).

### Spiritual Philosophy and Narratives on Life

From commentaries on Wittgenstein and his work we get the impression that Wittgenstein did not recognize much influence from the British pragmatic philosophers such as Hume and Mill — rather we get a picture that if anything he rather distanced himself from that tradition. And this is rather peculiar, for basically Wittgenstein was saying, in another way, what they had been saying. — Although the great difference is that Wittgenstein brought each thought to precision, unlike Hume he did not only say what was correct, he only said what was correct. We could say that the British empiricists formed the isle of healthy thinking on a sea of madness. Roughly one could say that there have been two main philosophical traditions: one that has held language as a metaphysical reality (hence this talk about ontology, epistemology and all those words they use) and the other that has correctly understood language as an incomplete tool of expressing oneself (the pragmatic tradition). The ones adhering to the pragmatic tradition have always been in minority in comparison to the metaphysicians. — The main reason for this rather strange situation is that it is so much easier to convince with the language of things that words (the concepts) have a same kind of being as things proper. — It is much more difficult to convince that there are no such things (The proof is beyond the grammar). — And it is much easier to distribute a teaching of something purported to be, than refuting the being — it seems so natural that something has to be - The burden of proof has been transferred to the healthy mind. — And then there is the

spiritual trap (which even Wittgenstein was tied into), i.e. the yearning to combine philosophy with spirituality (which is a positive desire as such) and with psychology (We should rather separate psychological and philosophical argumentation — Nietzsche would have greatly gained from untangling the psychological perception from the philosophical). — The British empiricists seemed dull to the majority involved in the spiritual tradition. The words of the language of things bend more beautifully for a description of things and anything put in the same role. — The language of pragmatic philosophy - the tools of common sense — inevitably loses in art appeal. For a person coming from a certain background and living in a certain time Hegel's linguistic acrobatics will score more points than Hume's mundane rebuttal of metaphysical nonsense.

Wittgenstein was first influenced by the traditions of spiritual metaphysics and dreary logic. He first attempted to combine these two in some kind of spiritual logic — which really was a move forward under those circumstances. He had soon realized that logic made use of very coarse entities in the systems of proof — and that logic tended to give quite one-sided analyses without any consideration to the multiple layers of reality behind words. This led to the most correct idea possible within the world of things i.e. the idea of logical atomism: If there were constituent particles in life (beyond material proper) then these particles were bound to be infinitesimally small, like atoms. And Wittgenstein realized that if they were so infinitesimally small, and thus so many, then it was useless and indeed impossible to try to force them into any system. — The rest of his life he worked on showing how impossible it was to create any system of certainty or absolute notions when reality did not consist of the particles that were claimed — his philosophy was the first that completely realized that in every aspect - without any exception - we were dealing with the difficulties of language. — Wittgenstein was and remained a logician (the last logician — who gave logic peace). He had not been content with the surface logic proposed in his early philosophical years by Russell and Frege. He wanted to dig deeper and deeper, he applied the principles of logic to smaller and smaller constituent parts of the logical system — and finally this led inevitably to the disappearance of logic itself: He was removing one mask after another from the masquerade clown of logic and at the end all there was left was a human face — with all the aspirations and problems of life proper. — Thus through tedious work on logic Wittgenstein arrived to the same basic notions that Hume had come to by an initial upfront rejection of logic and other metaphysical notions.

The weakness with a narrative, descriptive philosophy which is the usual tool of pragmatism is that the language quickly loses its *shelf-life* (*how will this look in a couple of decades or so ?*) — the words and the style of non-fiction narratives quickly become outdated which eventually renders the message unintelligible, comic, or otherwise awkward to read. — Look at Hume and at Plato. — Hume provided a wealth of essential notions thereto unseen (a *completely new method*) for a correct understanding — today Hume's writings are losing surface meaning. — And Plato fed people with total nonsense as far opposed to all that is the case, but his writings are still quite appealing and vivid (i.e. the arrangement of the words). — Wittgenstein was very concerned with this aspect and knew that in order to have a lasting effect he had to be sparse with written words and publications. And he was very successful in that: he managed to write pragmatic philosophy with words that will stay fresh for times to come.

### Redirected by Wittgenstein

These philosophical investigations caused me to redirect my work. Now my initial aim to study the Russian tax law had to be abandoned. Next I abandoned the follow-up idea to write on the philosophy of law, and I found myself engaged in writing philosophy. As a result I present a new philosophical insight and I think my method is novel (not one that I have chosen, but one that language pushed me into). What happens is that I am advancing new fundamental philosophical notions and use the social sciences and in particular 'law' as a case study — not a study of cases of law, but using the notion of law; the philosophy or science of law as a case where philosophy is applied wholesale. — It feels that this is the right way for here the philosophical ideas are tested. I see many uses or results of this work: one is that this book could be seen as a formal proof of Wittgenstein's claim that there are no philosophical problems and that there are only problems of language, and when we understand this, then the philosophical problems will evaporate and disappear. — Now in law this view leads to a wholly new view on law and justice. In fact after millennial slumber justice would return to law and with a correct understanding justice should become the focal point, the aim for any normative activity.

### Adam Smith — Competition in all Aspects of Life

From the revelation of three fundamental notions of language: expressions are not things; perceptions; competition as an organizing idea - I was led

to understand that everything in life (in social life i.e. the life that humans lead) is based on this. — Internally I proceeded to the same result first through Hume's empiricist pragmatism (as I later came to realize), and subsequently through a Wittgensteinian logical realism. — For me the fundamental principles of how a market economy functions had always been the guiding idea on how everything in life functions; a system, where there are no natural or scientific laws that would compel a certain outcome, nor a casual relation or anything like that; there are just great many individual people each with his own life and aspirations — and where there is freedom there people's aspirations combine to a better result — a system where nothing necessarily leads to something else, but where anything may affect anything else. — This is basically what Adam Smith wrote about in what must be one of the most remarkable philosophical tracts of all times — for *The Wealth of Nations* was the first and most comprehensive ever description on how social life functions — where no metaphysical laws act and react, and where the role of competition and individuals was recognized to form a holistic whole. It is impossible to estimate the immense effect that this work has had.

What we call economy is one perception on life. — What characterizes the economy is that this is a perception on life where we in general have a developed understanding that the economy is a system which is not, and cannot be, controlled and fundamentally directed by any person or group of persons; a critical mass of economic scientists admit that it is a system based on the eternal competition; where competition is the driving force and the fundamental base. — Some seem to understand that it is similarly the case with politics (or democracy as I prefer to call it). — But that this is the case, and that this is all that is the case, in law and in life at large has not been understood. By this book I promote this understanding. — Law is also a competitive system (*we would do better not to call it a system but rather an activity*). Law can only be defined as a language within competitive justice — for justice being an ideal appears only as the competitive balance — and this is not a statement of whether we like it or not. — In philosophy, and science, the question should not be about our preferences but about reality - about what in fact is the case - and it is the case, that in law those in power (on all levels: state, church, ideology, media, clan, neighbor, family, etc) make the rules. — But, they make the rules, only in so far as we accept their power, power is power as long as it is recognized as power; The strongest weapon against power is knowl-

edge: knowledge about the fundamental workings of life, and justice is the idea where organization of social life culminates: When we understand that law and justice is just a result of the competition between normative arguments, then we will appreciate that we can turn the game around with better arguments; freed from the normative pressure; freed from subjugation to the posited norms of those in power. - I am not saying that it is nice that the world functions as a competitive system: I am saying that it does. — (I am not particularly fond of winter but I affirm that it periodically occurs in large parts of the world. —The trade of philosophy is traditionally understood as the provision of guidelines for reality to follow; Wittgenstein did not take part in that activity and therefore he has been accused by the ideological philosophers of having an 'extremely conservative worldview').

The fundamental norms, the moral judgments, are purely competitive — but historically and today functioning in a very monopolistic and deformed market. — (Equally the perceptions on art are based on competitive considerations).

Science is a subsystem of arts (sometimes just an especially dull form of waste art merely reclassified as science) - this system of art is itself a perception of knowledge. — All we have is a competition of arguments — and a bunch of doorkeepers exercising a face-control on arguments. The so-called scientific method is but a competitive method.

Language itself is the purest competitive system of all — in fact all forms of life are but mere perceptions on the practice of language from a certain point of view. (The unity of manifold, is not a physical unity, it is rather the holistic web of perceptions that reduce all aspects of human life to language, to words, to aspects of feelings, to the binary mode of pain and pleasure).

### Russia as the Case

In this work I use the 'case-method'. It is a new kind of applied philosophy: Law is my macro case study; and Russia is my micro case. Russia is the perfect laboratory for a social study of language and its perceptions; there are so much of all the elements we need for a study. The level of social distortion caused by the Marxist regime motivates seeing Russia in the role of a big case-study. We may list some fundamental defects on social life that came with Marxism:

- Under the Soviet regime Russia was reduced to a laboratory of Marxism (the most primitive and one-sided social theory ever).
- A serious attempt on total repulsion of all elements of competition in social life.
- The promotion of a single and distorted perception on life: the monopoly of a flawed economic perception tainted all other aspects of life.
- In law, and the normative system at large, the fundament of meaning: traditions and history was erased — And this was replaced with a system of arbitrary commands to a degree never experienced before.
- People were made to believe that concepts — not only in law, but in all aspects of life — were endowed with a life of their own.
- Human freedom was reduced to a historical minimum.
- Utilitarian policies replaced any respect for human happiness.
- Mathematics was raised to the level of a religion (with a very lasting effect). — Mathematical models were promoted as a basis for thinking and communication (with the result that in the country famous for its authors, nobody can write any more).
- The fundament of all social practices — language was crippled and left seriously invalid to cope with reality.

Soviet Russia was the laboratory of damage and Russia is the laboratory of repair. — We could say that in Russia they started to build a normal society from scratch — but in fact Russia started deeper down with a serious handicap: the Soviet heritage did not offer a green-field for constructions, but a row of edifices swaggering on a minefield contaminated by hazardous waste that could only be torn down. — The art was building the new at the same time when the old was being demolished.

Looking is also comparing — and therefore when we look at Russia we have to compare with some traits of Europe. — The comparison is not all

together flattering — for Europe. Russians are fond of repeating after Gogol with a certain self-irony that in Russia there are only two problems: The roads and the fools. — But, we shall remember that in Europe they have merely dealt with the roads.

The Western spectators totally miss the depth of the transformations in Russia; — they do not understand where the country is coming from and which the issues to tackle are. — Correctly understanding the fundamental notions law, justice, democracy and economy, and their interaction (and even more correctly: them being different perceptions of one) helps to understand how fortunate Russia and the whole world were with having had Boris Yeltsin manage the transformation of Russia back into life, and having Vladimir Putin steering Russian society in life. — Their leadership has been a gradual creation of the framework for equal competition: the fundament of a functioning society; Creating the economic conditions for more people to participate in social life on equal basis; Reducing the influence of criminal inference in politics (often happening under the thin cover of ballot-box procedures); Creating conditions for freedom of speech to develop (by removing the monopolies of the impudent).

It is the prevailing opinion in Europe to think that the European culture would have achieved something in particular, some unprecedented heights of thinking, philosophical and religious supremacy. Yet, looking back at history we see that there is not much to praise in those aspects of life. — Any success there has been has been entirely owing to competition. Relative decentralization of power and simultaneous advances in communications (trade and press) gave a tremendous impulse to the competitive conditions affecting all areas of life. — All the worst sides of European life have always been connected with monopolies: like the horrors of the wars of religions at the break of the monopoly of the Catholic Church (fighting for its market position), and when the German people tried for a while to extend a monopoly on the brand of 'pure reason' they called national-socialism. — The European Union is the antipode of competition in all functions of life: accelerating reduction of democracy; dominance of monopolistic press; conscious abolition of competition in all forms of economy: single currency; normative squeeze, directives (commands), standards, standardization (standardization is the official European religion everybody in power believes in); reduction of scientific competition; non-competitive justice; unification of values — They even consciously want to unify values! The tragicomic draft

constitution calls for unification of values with a constitutional obligation for things called 'states' to enforce them with the obligation for all political parties to comply ("You have to understand that the constitution draft was the result of difficult negotiations to get all the 'Member States' to agree." — But, why would there have to be an agreement, and wouldn't it be more proper that the people agree rather than the 'states'? — For what do we need the unified values? Why do all have to support the same ideas? — " See, when we go to war we cannot afford dissident"). — This cannot end well. — I wish I could bring a contribution to persuade Russia to stave off from the road of imitating the European Union. (I recently was present at an event discussing the prospects of trade between Russian and its neighboring countries. A man from the audience asked the economist when he thought that the standard of living in Russia would equal the Finnish. The question presupposed obviously that Russia is behind Finland and that it will take some time to catch up to reach that level of progress - but I was thinking that the question had to be turned around - it will sure take a long time — maybe Finland will never reach the level of Russia).

### **Description alone must take Place**

What emerges from my book is a very holistic picture where everything (all that is the case) can be seen as a dimension of a word. — And as this is so, then it follows that the usage of words, language is what makes world go around — and then there cannot be anything more fundamental than looking after how language is used: This means that what we have to do is to identify and demonstrate the misuse of language; show when it is abused — when people claim by an artful manipulation of language to turn nonsense in to a purported truth. - Wittgenstein: "What we are destroying is nothing but houses of cards and we are clearing up the ground of language on which they stood" (PI 118).

Philosophy is the first order activity which - when correctly practiced — looks after language. This is the philosophy of Wittgenstein; Already in the Tractatus Wittgenstein had clear for him what is the correct method in philosophy, which would be the following: «to say nothing except what can be said, i.e. propositions of natural science ... and then whenever someone else wanted to say something metaphysical, to demonstrate to him that he had failed to give a meaning to certain signs in his propositions» (Tractatus 6.53).



Wittgenstein: "We must do away with all *explanation*, and description alone must take place"... "The problems are solved not by reporting new experience, but by arranging what we have always known. Philosophy is a battle against the bewitchment of our intelligence by means of our language" (PI 109).

In my work on jurisprudence I make use of these postulates: I am clearing up the ground on which language stands on [the misuse of legal language]; I am not saying anything else than propositions of natural sciences [words are not things; in law we can prove only the biological fact that the world ends at death]; I criticize all those philosophers, politicians and journalists that say something metaphysical [this is an endless task; we need a Foundation for criticism of everyday metaphysics]; I demonstrate how they fail to give a meaning to their propositions; Clarity is my method [I remove the metaphysical drapery of expressions and deal with what is left]; I am describing how language and hence social life functions [I am not promoting a view; I am not explaining how we came to this point — as Nietzsche does — because we simply do not know; we do not know how all evolved, but we now know the basics of how social life functions]; I promote the understanding that language is both the problem and the solution and philosophy should be the battleground [indeed battleground, not the forum for the bored book-learned self-proclaimed intelligentsia poking each other with sticks in between the eloquent praises for each other].

The old brand of philosophy and science, the one that has not adopted Wittgenstein's insight to life is best called primitivism for the philosophers preoccupation with a primitive usage of language; philosophies that are based on the beliefs that a rearrangement of expressions (words, concepts etc) would serve to prove something about life. — The primitivists see orderly progress around them — but they do not understand that such a perception can only be held by those who survived.

Wittgenstein said:

"Nothing seems to me less likely than that a scientist or mathematician who reads me should be seriously influenced in the way he works. (In that respect my reflections are like the notices on the ticket offices at English railway stations [during and immediately after the second world war]" Is your journey

really necessary? " As though someone who read this would think "On second thoughts no".) What is needed here is artillery of a completely different kind from anything I am in a position to muster. The most I might expect to achieve by way of effect is that I should first stimulate the writing of a *whole lot of garbage* and then this *perhaps* might provoke somebody to write something good. I ought never to hope for more than that indirect influence" (Culture, p. 62).

He was completely right: even those philosophers working closest together with him were at the end of the day not seriously influenced by him. It was precisely only a few of the second generation of researchers that became stimulated to write something of value; Equally I cannot expect that after 2,000 years of primitivism anybody by reading this book would come to see that words are not things (because they are not able to see what there is not); and could we expect that now all of the sudden everybody would realize that it is about competition after all! — And that law should be about producing justice; and that there is nothing else than a competition of arguments.

### 3. PHILOSOPHY AND LANGUAGE

What I am doing is applying the teachings of Wittgenstein to a study of one of the most fundamental notions of life — to law. I am applying it wholesale on law — by this I mean that I do not restrict myself to the mandatory quotes to one or another philosopher (what academic jurisprudence is commonly decorated with). - I apply Wittgenstein's teachings on the concept of law and hereby we can see how the old language-games of laws get dissolved and the earlier riddles became meaningless. What remains is quite a mundane human activity — a very human activity. — I want to stress that hereby law became a case-study, a study of applied philosophy. We can see how directly practical Wittgenstein's philosophy is in this key area of social practices. — And this is not just so to say nice to know: this makes all the difference, for when we remove the artificial philosophical problems we make room for justice — for the study of the problem of how to reach justice: The goal is to provide for justice for the individual.

I do not claim to refer to Wittgenstein's opinions on this or that philosophical problem (and in fact it is not what Wittgenstein aimed at either). Instead I use Wittgenstein's method of doing philosophy to show what law is all about. I do not explain what he said, but do as he said, and this is a forceful tool.

Throughout his writings Wittgenstein maintained that philosophical problems are due to our thinking running up against the limits of language (Stern 1996, p. 19). — It is really a question of applying this insight to all social sciences (It says something about the 'scientific method' that in reality there has been no earlier application of Wittgenstein to law, or any other field of social sciences).

Wittgenstein came to realize that the problems that torment mankind lie in language. This fundamental issue was one which he recognized already in his first work, the *Tractatus*: «The book will ... draw a limit to

thinking, or rather - not to thinking, but to the expression of thoughts .... The limit can ... only be drawn in language and what lies on the other side of the limit will be simply nonsense» (From the preface to *Tractatus*). - Although, it is claimed that there was a fundamental difference between Wittgenstein's earlier and later work, I would rather see all his work as developing this theme — indeed Wittgenstein himself was engaged in a fight of expressing his own thoughts within the limits of language.

Philosophy and language are two aspects of the same issue, — I wanted to devote this chapter to language, but writing on language I noticed that I am writing on philosophy and vice versa, — and so it be. Philosophy should look after language and language is the basis for philosophy, while at the same time being the endless source for new philosophical problems (in this sense we indeed have philosophical problems: the endless practical problems caused by the weak thingly language).

There are no philosophical questions as such, and no philosophical problems per se, similarly there are also no fundamental truths to be penetrated. All philosophical problems are caused by linguistic confusion. There is nothing to be explained by means of philosophical theories: «Philosophy simply puts everything before us, and neither explains nor deduces anything. - Since everything lies open to view there is nothing to explain» (PI 126). — What lies open to view are life and the language that is used, and there is nothing theoretical about either one. Hence the task in philosophy is to criticize the way language is used. A correct kind of philosophy has to be engaged in analyzing the usage of language — to highlight the way healthy understanding is distorted by improper language. Language in the service of the good is weaker than we can imagine, but in purposeful seductive use it is a strong tool in service of the evil. The philosopher's job is to expose the seductive use as practiced both by the fool and the cruel: “Philosophy is a battle against the bewitchment of our intelligence by means of our language” (PI 109).

Philosophy is the name for the activity, the purpose of which is to find the basis of knowledge or the 'truth' as it is often said. Ever since the beginning of this search people have been driven into a dead-end by the languages of things. People have not been able to separate the tool of the investigation, namely language, from the object of the investigation i.e. the base of our knowledge. Our thoughts are expressed by the means of

language; in language we use our experience to connect previous expressions and to create new ones — the new expressions are however always based on the old ones. Now, the mistake people have committed from time immemorial is to analyze the language instead of the reality language is supposed to describe.

It is useful to define language as comprising all the expressions used in communication, hence it includes not only spoken and written language but also gestures such as shrugging of shoulders, head-shakes, nods. In a philosophical treatment 'expressions' should be defined even wider than this to include all forms of communication and conveyance of feelings such as all forms of art — art should further be defined broader to include art in a narrow sense i.e. art that is consciously produced or conceived as art, but also all human artifacts that include an element of design. I would even say that in all human products there is an element of art and hence an expression - an element of communicating feelings (and at the end of the day all is art). — In this book when I refer to language it may depending on the context include expressions in the broadest form (and this is why we indeed may whistle something that might not be said) or expressions in a narrow sense i.e. speech language. — (It should be noted that silence may also be considered as an expression). - All the previous would combine to be language in the broad sense.

### The Role of Expressions

The notions 'expressions' and 'thoughts' are frequently confused and used synonymously. In order to understand the essence of language it is therefore helpful to think of a process where impressions, thoughts, expressions and interpretations interact. I note that there is a long, and wrong, philosophical tradition where philosophers have claimed that there is this or another 'category' or 'faculty' (*of something*) that have a specific role in the mind. I explicitly want to reject the idea that these notions I present would have such properties. They are introduced here purely for helping to form a perception of the role of expressions and interpretations. — Hereby it is interesting to note (the reference again to the preface of Tractatus) that Wittgenstein said that he is dealing with 'not the limits of thinking, but the expression of thoughts'. — Hereby we should think that there would be a circular interaction between these so that an expression gives rise to an interpretation and the interpretation brings about an impression in the person (the dance of impressions —

thoughts — expressions — interpretations). Thoughts make use of impressions and come out in form of expressions. But the expressions are in fact only interpretations of the thoughts, because language is underdeveloped to cope with the needs of the thoughts. — At the same time thoughts are dependent on language; thoughts can only flourish and develop freely in pace with development of language. - The challenge is all the time to find ways of expressing what we have known all the long (Stern says, 1996 p. 100, in referring to Wittgenstein: "it is not a matter of discovering new facts, but of finding a way of expressing what we have known all along"). — But without doubt we are able to think more than we can say — we simply do not find words for all our thoughts — "A proposition must use old expressions to communicate a new sense" (Tractatus 4.03.).

It emerges from Wittgenstein that philosophy is correctly not to be viewed as a collection of theories and their explanation, but rather an activity. The activity consists in the clarification of how language is used, what a certain combination of expressions amounts to, and what are the deficiencies of language - (Does language correctly and fully explain thoughts — whose thoughts?). - This approach can be seen as a complete opposite to Kant's critique of the thing he called 'pure reason' — like Don Quijote he chose a windmill image of a 'thing' and criticized it — But as this 'thing' does not exist, and cannot exist, we have to criticize the activity, the activity is the usage of language in life - (And Kant's usage of language provides ample room for criticism).

### Language the Basis of all Social Practices

Instead of the bewilderment with the mysteries that language presents us with, we should try to understand what creates these mysteries in language. The root of the problem is in the misunderstanding of what language really is about. Our philosophers and scientists do not understand the role of language, how it functions, and where it comes from.

Philosophical problems arise when language *goes on holiday* (Wittgenstein, PI 38) - (Hegel caused philosophical problems when language went on premature permanent retirement, still full of energy, but yet so liberated from reality). That is when language is used in an arrangement of words in an appealing way, and purporting that the outcome makes sense, without really bothering to consider what was actu-

ally said. This is true for so much of the teaching that goes on in the world - and often language is quite purposefully bent and twisted to suit particular theories. The difference between art and science, if any, can possibly be found only in the correlation between the arrangement of words and the purported meaning; in science the arrangement of words have to be open to a serious scrutiny; while in other forms of art words are used to express feelings without restricting oneself to the direct meaning: this is why art is a form of leisure activity: it is party time for language. — But in fact, most of social sciences reduce to a particularly dull form or art, where words without meaning are arranged quite mechanically in an idle fashion— amounting to no more than an especially boring form of art. — It seems that anything can be said and anything is accepted as long as the words are arranged in accordance with the mechanical rules of the base grammar.

It became clear for me that the essence of language (not only origin, but also present) is an expression of feelings, or even the expression of the interpretation of one's feelings. (Wittgenstein: "For how can I go so far as to try to use language to get between pain and its expression?" PI 245). Hence language is an activity of expressing feelings — (in a more advanced stage these feelings may also be called opinions). With language we try to describe our feelings - this notion may be broadened to mean that with language we describe the world — life (for the world is my world).

Hence language involves a constant struggle to find better expressions and better ways of expressing oneself. Thence language is merely the present day view of a certain activity — language is never ready, language does not have any rules - and it is harmful to try to impose such - language is and should be a competition of saying better. Language will take care of itself, and we only have to allow it to develop freely.

Some people seem to hold a view whereby it would be possible to find the 'true workings of language' and that by discovering them 'the philosophical problems would disappear.' But they are looking in the wrong direction: Language is merely the interpretation of the expressions of the feelings — the study of this interpretation can only bring us to the next interpretation. - They are looking for the wrong kind of clarity. — One has to move beyond language to see that the philosophical problems disappear — and beyond language we have feelings. Feelings are connected

with psychological, and biological problems, or whatever we want to call them, but not philosophical ones. — Language only delivers the expressions of feelings and their interpretations. Now we can realize that the 'true workings of language' consists of this interpretation of feelings, whereby there are no intrinsic rules, only an endless competition between all these different perceptions on the feelings — and, indeed, the philosophical problems disappeared. — "Everyday language is a part of the human organism and is no less complicated than it" (Tractatus 4.002).

We can at best only survey how language has been used at a certain time (kind of a balance sheet date view on grammar). — But while we are at the study language has moved on, hence, there is nothing 'beyond language' as such — language is within life and life is within language. — (This notion of 'beyond language' is connected with the danger of using words of the world for purporting to prove what lies beyond the world).

The expressions of language are developed from people's experience. Language depicts first and foremost what people have seen. The most basic words and expressions stem from the most elementary forms of life, the life connected with the physical nature, the thingly nature. Languages have not developed much past a description of the elementary experiences of life. We are trying to express, and we have a need to express, complex, delicate feelings with a language that merely fits for describing the world of things. The usage of the thingly concepts for describing feelings is what sets up traps in language.

Wittgenstein uses the notion 'grammar'; by grammar he does not mean the generally accepted narrow sense of the academically imposed rules of correct syntactic and semantic usage. By grammar he means the arrangement of words and expressions in ways that render them understandable to an audience. The point is that hereby the expressions may well be understandable in a primary sense, but because of the conventions of grammar they may at the same time rest meaningless or nonsensical. This notion of 'grammar' also renders meaningless any attempt to discover any intrinsic rules in language. Wittgenstein abandoned the quest for the search for the rules in grammar, language, and philosophy at large, and instead he introduced the notion of language-games. This notion intends to capture our perceptions of language as being something given from the outside and governed by rules, but simultaneously to transfer the perception to realize that language is a habit,

a game, whereof we cannot trace the start, and which does not have an arbiter, and where 'the rules' are rather patterns of behaviour. In language (as in law) the rules are made as we play. There is nothing fixed in a language-game — all is in constant flux, but with varying speeds. In language all is interwoven, but nothing can be reduced back to its constituent parts, because of the constant flux ('you cannot step in to the same river twice' — before the 'laws of thought' were invented this much was known). - Wittgenstein: «Here the term 'language-game' is meant to bring into prominence the fact that the *speaking* of language is part of an activity, or of a life-form» (PI 23). - In language there are no boundaries, it is like an outdoor game without a carved out playing field.

This kind of concept of language-games is very helpful for understanding all other social practices, such as law, morals (that is the other perception of norms), economy, science, politics, aesthetics, mathematics, sociology, psychology etc. All the social practices are about language, all differing only in the chosen perspectives and the perceptions created - hence all the boundaries between the various social practices are only artificial, and imposed by social conventions for the convenience of the spectator. — And if this is only for the convenience of analysis, then it is all right, but when one starts to believe in the boundaries as really existing, then that is where trouble starts. — Language is simply the most general and fundamental of social practices — whereas the others deal with a special usage of language or language looked upon from a certain perspective.

With a proper understanding of the function and essence of language we reach clarity; we are left with only practical problems; Wittgenstein:

"It is not our aim to refine or complete the system of rules for the use of our words in unheard-of ways. /For the clarity that we are aiming at is indeed *complete* clarity. But this simply means that the philosophical problems should *completely* disappear./ The real discovery is the one that makes me capable of stopping doing philosophy when I want to. - The one that gives philosophy peace, so that is no longer tormented by questions which bring *itself in question*" (PI 133).

This discovery that gives philosophy peace is the understanding of the essence of language and the competition as the organizing idea of what ties all the parts together.

One could even think about all kind of social problems as philosophical problems, or equally practical problems — we could rank them on a continuum from everyday personal, micro level problems to the problems on a macro level, affecting equally and simultaneously all humanity. A study of the macro level problems would be the new philosophy.

### "Intentionality" — Philosophy out of Touch with Reality

A queer example of a totally linguistic problem and one where the wrong question is so evident is the philosophically invented problem called 'intentionality'. Searle makes a lot out of this one. He tells (p. 19): " 'Intentionality' is a term used by philosophers to refer to the capacity of the mind by which mental states refer to, or are about, or are objects and states of affairs in the world other than themselves "... So for example if I have a belief it must be the belief that something is the case". " Suppose I believe that George W. Bush is in Washington. The question arises, How can my thoughts, which are entirely inside my mind, reach out all the way to Washington, D.C.?" — (The problem is that he after all sees 'the thoughts' as something physical, he thinks that they 'are' inside a place called mind, and that there hence is the bewilderment of how they can *reach* all the way to Washington. One wonders if it is in anyway more plausible that the thoughts reach to the next room, or just to the person sitting opposite. Why does the example have to be so nonsensical as making the poor thought travel all the way to Washington?). - He tells that the problem of intentionality is 'The problem of how mental states can refer to or be about something beyond itself' (pp. 19 and 20). — Before stating the solution to this problem we first have to note that the *mental states are not things* — *they* (the mental states) *do not act; they do not refer* to anything. *People think and refer to;* particular individual people refer to (and there are no collective brains doing the referring either). The *mental state is not the actor*, but the appearance of the acting. - Now the solution to this 'problem' is to understand that what they call intentionality is just one way (a misconceived one) to define (or talk about) 'thinking.' When people think, they think about something — and if you do not think about something, then you do not think. So therefore instead of bemusing over 'intentionality' we should bring the idea back to ordinary life and talk about thinking, and now instead of asking 'why is there intentionality' the question should be 'How is it that we can think?' — And we shall certainly notice that this is not a philosophical question, it is a biological or religious one. — They say that a striking

feature of 'intentionality' is 'aboutness' that thinking always is about something 'beyond itself'. Now I think about 'thinking', but that is about itself, isn't it? [This is like the Russell's paradox — only I really do not want anybody to take it seriously.]

Intentionality is the confusion caused by the fact that the biological body always reacts to something — and they perceive something remarkable in that — but think about the opposite: imagine if the body would not react to anything, then what kind of body would that be? It would be no body. - Searle says about intentionality "This feature, whereby many of my experiences seem to refer to things beyond themselves" (p. 97). — The question is can we really attach any meaning to this statement (even out of politeness?).

With 'intentionality' comes the confusion regarding 'mental phenomena', this notion being mixed up with the 'mental apparatus', i.e. the body parts which react to produce thinking. These parts of the body are physical, but it does not mean that thinking i.e. the 'mental phenomena' is physical. — Noting this distinction is very much connected with the need to make the distinction between things and expressions.

What mental phenomena is (or is not) can be exemplified with considering 'cold' — what is cold, where is it? I do not think we can locate it; it is just a feeling in the body.

We are clear with the body/mind dilemma, but now we have the thing/expression dilemma.

Searle asks (p. 21): "How then could mental states, which are not physical and thus not part of the physical world, act casually on the physical world?" Being 'part of nature' (i.e. 'physical world') does not mean that all in nature are 'things'. It only causes confusion to characterize mental phenomena as being part of nature — because it does not tell anything about what mental phenomena are all about, but wrongfully convenes the idea that they are things-in-themselves. Searle says (p. 136): "Surely the real physical world is 'causally closed' in the sense that nothing from the outside the physical world can ever have any casual effects inside the physical world." — This is one of the cardinal fallacies of philosophy, the one where the role of things, on the one hand,

and expressions, on the other, are confused. Searle forcefully misses the point, which is that expressions of our feelings (which are not physical at all) cause (causal) effects upon the physical world — this is the dilemma that causes so much of the philosophical problems.

The dichotomy physical phenomena and mental phenomena is wrong to start with. Physical phenomena must be about how things interact, and therefore by analogy they take 'mental phenomena' i.e. the interaction of expressions and interpretations to function similarly. But this very analogy is wrong, there is nothing to compare — there are no mental phenomena; there is the physical world and mental interpretations.

Searle regards philosophy of mind as more fundamental than philosophy of language (p.7), this because "our use of language is an expression of our more fundamental mental capacities, and we will not fully understand the functioning of language until we see how it is grounded in our mental abilities." The latter part of the statement is true, but again that is a biological question — there is no room for philosophical bewilderment there. Searle stresses that: "The psychological is just the neurobiological described at a higher level" (p. 159). — But this leads to the problem we could state as 'asserting that an article in a newspaper, or a book, is just the computer technology described at a higher level', i.e. we are here dealing with the fundamental misconceptions of philosophy and science. Neurobiology may well give an insight to some of the aspects of how the organism functions; through this study we receive knowledge about the human as well as the animal organisms. And the insight is that we are dealing with interpretations of feelings; that we have feelings and that they are expressed in manifold of ways; and that these can be seen as having a purpose for the overall functioning of the body. — But that is it! This is as far as they can take us with biology. It is at this point that the connection between biology and philosophy is interrupted. — Another feature of the philosophy of mind is according to Searle supposed to be that philosophy of mind can answer to questions such as (p.7): "What does it mean to be human?" — But, as usual, only the question was posed, no answer followed. — Why?

Things get worse when Searle talks about 'derivative intentionality' "that the marks on paper have when I write my thoughts down". He says that "The words on paper really do mean and refer, and thus we have

intentionality, but their intentionality is derived from mine when I intentionally wrote them down" (pp. 19 and 20). "If I write down the sentence, 'I am thirsty' that sentence has derived intentionality" (p. 20). — The logic behind the statement is so queer that we can only say that this is how Searle wants to define intentionality, and he needs the term in his language-game.

And we are into a total disaster with any ideas on 'collective intentionality'. All I say in this book demonstrates why there is no and cannot be anything of the sort. 'Collective intentionality' should go with this final clearance sale of old metaphysical philosophy.

Wittgenstein: "It is difficult for us to shake off this comparison: a man makes his appearance — an event makes its appearance. As if an event now stood in readiness before the door of reality and were to make its appearance in reality — like coming into a room" (Zettel, p.59).

### The Role of Philosophical Investigations

The role of philosophical investigations is to take care of language — (in the same way as mathematical science takes care of the special purpose language called mathematics). — The purpose of philosophy should essentially be to distinguish between sense and nonsense as Wittgenstein pointed out, but through history from the times of Aristotle the opposite has been the case; by philosophy they have traditionally attempted a metaphysical autopsy of words — 'to find the fundamental essences of things' (as Pihlström & Koskinen report, p.6.). — As if there would be something hidden in the words we use, as *if something real* would emerge when one penetrates deeper in to an analysis of words. It has not occurred that language is just the paintbrush for feelings — the faulty tool for interpreting feelings; interpreting feelings with the language of things.

(Hume said: "Each new experiment is a new stroke of the pencil, which bestows an additional vivacity on the colours", p. 92).

Wittgenstein came to see that old philosophy was a senseless endeavor, and then through his new practical logic philosophy was reduced to a study of forms of life. Wittgenstein said that the essence of our philosophical investigation is that we do not seek to learn anything new

by it. We want to understand something that is already in plain view (compare PI 89). - All that needs to be known and can be known is on plain view for everybody to feel.

With language we can only roll from one interpretation to another, and there are no truths to be reached on the road; instead it is better to see language as a method. It is basically a market method or a competitive method, an open system where all language usage affects all other usage. In proper philosophy we can merely point out when words are arranged so that nonsense follows and confusion reigns: The mission of philosophy is «to shew the fly the way out of the fly-bottle» (Wittgenstein, PI 309). — But this is not an easy task, because the burden of proof is placed on the healthy mind. We are faced with the heavy argument that 'millions of flies cannot be wrong — excrement is good.'

Philosophy is the science of language. - And this is the key to comprehension, meaning and truth: The truth admits but the everlasting interplay between expressions and interpretations. If we accept that philosophy is the mastership of telling apart meaning and nonsense, then we see that philosophy integrates in life, as a cutter weeding the foul arguments in both macro and micro use. In essence social life is but communication with language, the device that connects people times and spaces apart.

All social sciences are nothing but an analysis of the social relations as imitated in language (and what else could they be about!) — and so philosophy, to be sure, is the first science or a meta-science. — But need we call them 'sciences'? Science or not the same conclusion is reached in practice: language is a practical activity, and thus science represent but certain mega-perceptions of social practices. Wittgenstein. "Here it is difficult as it were to keep our heads up, - to see that we must stick to the subjects of our every-day thinking, and not go astray and imagine that we have to describe extreme subtleties, which in turn we are after all quite unable to describe with the means at our disposal. We feel as if we had to repair a torn spider's web with our fingers" (PI 106).

(I stress again and again that there is a fundamental difference between so-called natural sciences and social sciences: in natural sciences we study things and their movements, and in social sciences we, instead of things, study expressions and interpretations).

Any social practice (and the study of the practice is what is called science) could be seen as communication (the use of language), e.g. business is a special perception on communication (we have chosen a certain perception for studying inter-personal communication, and its results, and all within that perception we call 'business.' - In business schools they should understand that they teach communication from point of view of business; and in law schools communication from a point of view of using normative statements; and in political studies from point of view of democracy).

Doing philosophy we should be like the gardeners of language, engaged in directing language to a healthy practice and sometimes pulling out the weed by the roots. But, in practice the philosophers are the ones that, like Hegel, are sowing the weed that take over reality and infect the healthy mind. - "Philosophers use a language that is already deformed as though by shoes that are too tight" (Wittgenstein, Culture p. 41).

Just how deep the problem sits can be exemplified by looking at how even Quine remained in the spell of this confusion. According to Pihlström and Koskinen (p.3., in reference to Roger. F. Gibson) Quine rejects the traditional quest for a first philosophy, i.e. the quest for a ground somehow outside of science upon which science can be justified, and Quine accepts science as the final arbiter concerning questions of what there is. But, this very 'rejection of a first philosophy' is just the same as not coming to see the difference between social sciences and natural sciences and the consequences thereof. — 'Accepting science as the final arbiter' in turn is the very nonsense that the right kind of notion of philosophy is set out to guard against. Surely 'science' can be no arbiter of anything; science is the perception of what has been accepted by the arbitrators (i.e. the scientific community - and this is already a simplification for presentation purposes) as science (the result of an activity) cannot be the animated thing ('Science') that considers its own results.

Wittgenstein: "One can examine an animal to see if it is a cat. But at any rate the concept cat cannot be examined in this way" (Remarks Mathematics, p. 402).

Science is the present day understanding — empiric, historic. Experience shows that most understanding we have is later to be proven wrong

(sometimes the earlier 'correct' is replaced with a new 'wrong', though). So clearly science cannot be the measure for what shall be right. It is the measure of what is considered as the latest achievements and this measure exists independently of all considerations — it just is - whether one accepts it or not, or whether it is correct or not (and the very 'measure' and 'acceptance' are but perceptions). But, we need to stress, that most probably most of the science we have today will be proven wrong tomorrow, and this should be the real measure.

Wittgensteinian philosophy provides us with a philosophical language which pulls down scientific misconceptions and inadequacies down to life on earth from the metaphysical speculative heights. This is the first philosophy. It is e.g. present in the understanding of the economy as a competitive market system with Infinite Variances — or as justice as a competition between arguments — or as democracy as a quest for an equal say on equal terms.

### How Language Functions

Wittgenstein rejected the notion that individual words in language name objects and that, sentences are combinations of names. - The idea behind that notion is that words would correlate to a thing in the world, and hence just stand instead of the object. And partially this is true, people and things have names and names represent things (or specimen of things). But, this is as far as we can go with this idea (we should note that even 'the representing' is but a feeling of a perception). Expressions (those that do not represent things) do not correspond to an object, but are merely interpretations of feelings. Humans make subjective interpretations of things (subject to change due to a multitude of factors) and no definitive statements can ever be done. Usage of language is an attempt to describe objects and correlate feelings to the world of objects - and all that can come out of this is a feeble interpretation of something, a diffuse picture of a distant echo — and this is all we have.

There is an assumption that it somehow belongs to the nature of language that it has a basis. One sees the material basis of the world and concludes that language also must have one. Stern (1996, p. 55) refers to Wittgenstein's remark in PI 46 in his rejection of that theory: Wittgenstein asks himself "What lies behind the idea that names really signify simples?", and replies by quoting Socrates in "Theaetetus" (PI 46):



Socrates says "If I make no mistake, I have heard some people say this: there is no definition of the primary elements — so to speak—out of which we and everything else are composed; for everything that exists in its own right can only be *named*, no other determination is possible, neither that it *is* nor that it is *not*... But what exists in and for itself has to be... named without any other determination, In consequence it is impossible to give an account of any primary element; for it, nothing is possible but the bare name; its name is all it has. But just as what consists of these primary elements is itself complex, so the names of the elements become descriptive language by being compounded together. For the essence of speech is the composition of names".

Wittgenstein concludes that: "Both Russell's 'individuals' and my 'objects' (Tractatus Logico-Philosophicus) were such primary elements."

Wittgenstein rejects the notion that 'words function in a sentence' "As if the sentence were a mechanism in which the word had a particular function" (PI 559).

With this it is clear that there cannot possibly exist anything more fundamental or 'true' outside language, or that one could find anything beneath the surface of language, or that we could capture language by giving it more rigid rules, or finding the parts of what it is composed of. - I think this is what Wittgenstein meant by saying that 'our language is in order as such' (PI 98). The fact of the matter is that language is interpretation and as Wittgenstein said all we can achieve by an interpretation is the substitution of one expression with another one (PI 201).

Understanding that language does not have a basis (and that words do not stand instead of something; and that a sentence is not a mechanism or a formula) is enough to disperse the 2,500 year old philosophical problem called logic. - For the people engaged in that activity wanted to change millions, yes, an infinite number of combinations of expression into a few, with the false analogy of the special purpose language called mathematics.

Philosophers have been arguing whether language is or can be perfect - in fact the misconceived endeavor of producing some kind of theory on

formal logic proceeds from the underlying notion that language can be made perfect. Toulmin (p.67) says that the divisive question about language is: "Are natural languages in general adapted to human tasks, or are they essentially defective media for presenting experience or communicating exact thoughts?" — The latter part of the question is almost the answer. - A striking example of not understanding the nature of language is Leibniz's wish to create a new exact language; Toulmin (p. 70) reports that "Leibniz wanted to create a new language consisting of a universal system of characters to express all our thoughts - it would 'let us express thoughts as definitely and exactly as arithmetic expresses numbers or geometrical analysis expresses lines' ... such a language would 'not only have perspicuous meanings, so that people from different cultures can talk together with shared understandings; it would also embody and codify all the valid modes of argument, so that different people can reason together without fear of communication or error.' (Legal positivism is related to this idea, and this is the direction where European and US societies are moving; imposition of such a system where all would seem to be predetermined. —The risk is that people's perceptions of reality will change, and then also perceptions on right and wrong, good and bad — and this is what we are experiencing).

Wittgenstein said that philosophy cannot directly interfere with the actual use of language; it can in the end only describe it, for it cannot give it any foundations either; "It leaves everything as it is" (PI 124). This is in marked contrast to Frege's and Russell's (Toulmin, p. 68) "attack on natural languages", they saw "natural languages as a fancy dress that veiled from onlookers the true 'logical forms' of statements". The important thing to realize is that whatever the theoretical philosophical answer to this argument it remains a fact that language is not only theoretically, but also practically flawed. Language does not only cause philosophical problems at the macro level, but everyday philosophical problems, which may well be called synonymously philological. People simply cannot - even in the best endeavors of the best specialists - use language in a satisfactory and uniform way. — This should be especially noted by lawyers, who are so fixated with the idea that something written is something real- or can be something real — something exact. Wittgenstein: "And instead we are left with a lot of separate personal experiences of different individuals. These personal experiences again seem vague and seem to be in constant flux. Our language seems not to have been made to describe them" (Blue and Brown Books, p.45).

It emerges that language is decisive for all knowledge, progress and truth (the movement towards truth) — but language is underdeveloped, and not capable of expressing the feelings we have. And yet, it is a fundamental misconception to think that we could create a better and more exact language as Leibniz desired. — There clearly is a vicious circle and it is the role of proper philosophy (i.e. Wittgensteinian philosophy) to react. And this reaction is done by analyzing how language is used and learning to discern sense from nonsense and meaning from senselessness.

### The Language of Things

Language has first developed to deal with the immediate needs —basic ones: you, me, he, she, we, they. Eat, food, beast, apple. Fire, heat, sleep, guard, stars, sky, land and water. These depict things and what things can do. - The food is good — I love you — the wolf is danger: good, love and danger — all those are words for feelings which depict the surroundings. — But the proximity between the subject's feelings and the object of the feelings induce people to think they are properties of the object. This way, feelings are considered like part of things. - With development of cultures languages have grown more abstract and the social relations and explanations they require ever more complex. The language of things has been assigned a new role of describing social relations. Wittgenstein (Blue and Brown Books, p. 5): "We are looking for the use of a sign, but we look for it as though it were an object co-existing with the sign". One of the reasons for this mistake is again that we are looking for a 'thing corresponding to a substantive.'"

In communication this fallacy has resulted in a disastrous failure - Meaning has been turned upside down: Protection has been converted to hatred; love to possession; faith to repression, knowledge to superstition; personality to exclusion; you to many; I to we; care to distance...

Whoever conceived the story of Adam and Eve eating from the tree of wisdom and being expelled from the paradise captured a very relevant notion. This is the insight on how language —for the fruit of knowledge is the language - when misused, out of context, becomes a corrupting force, the archreason for misery — the tool for intrigues; conceits; superstition; deception; fraud, mass-hatred; war. By combining words in a cunning way the bad have captured power from the innocent; privatized natural

needs for explanations of eternity, the world and the skies under own private label religions.

Sure language has also worked in the service of the good, all the good we have and all the bad we have are equally a product of the use of our language — the expressions and their interpretations. But, nothing compels us to say that there did not exist the good, before the bad. We know from biology (especially the recent studies of neurobiology) that the human organism has acquired from earlier organisms in infinite regression some automated mechanisms for reacting to hunger, thirst, cold, fear, light and dark. The physical mode of sleeping must have been adapted in this sequence of development. It is most probable that the human beings slept at nights an average of 6-8 hours in a row a night one thousand years ago, and two thousand years ago, and 4,000 years ago and so on in regression backwards. But 18,000, and 180,000 years ago people did not have the beds in their own rooms in a protected house heated by imported fuel. From all we know, they were almost naked and their bodies unprotected. Then where did we get this mode of sleeping like innocent children, why are we not half sleep half wake like cats on the watch for all the constant dangers. Maybe this is because we have been accustomed to protection and security by the ones next to us? Maybe the natural state was not so wild after all? Maybe people have emerged from a state of being that was not so bad, and only later been plunged into the horrors.

As a result of the retardment of language it has become the main source of all superstition. The peculiarity with superstition-seeing is that people are very good at it when studying the neighbor or past generations, but the superstition of the spectator proper is always veiled in the language he uses. Ample room for reciprocal condemnation and laughter on superstitions is provided by the possibility to look at the practices of the living neighbor. It works in all directions and all magnitudes of neighbors: the person next door; low to high; high to low; progressive to "conservative"; conservative to "progressive"; from one village to another; between ethnic groups; religions; cultures and countries... One kind of habit, one kind of thought is always sillier than the other one, one cannot go wrong.

This quite natural tendency — when equipped with the languages we have — is anyway especially striking and perverse, when the cultures

considering themselves more advanced look at the "less " advanced ones - Like for example Central Europe of 1930's looking at the rest of the world: The people in these countries equipped with the heaviest arsenal of primitive superstitious beliefs ever invented (not even superseded to date) thought ample reason to deride the more sane cultures in their neighborhood and within themselves (the racist condemnation and extinction of the Jews and Jewish culture, which in fact was the upholder of sanity within madness).

We hear stories of shamans or Indians dancing around a totem. A piece of wood, a stone, or a doll stuck with needles is supposed to have magic powers. We brush off such silliness — (not all, though, some of 'the broad-minded' cultural relativists find these practices compelling and regard them superior to ours). But, the point is not what is better (changing one form of nonsense to another) — the point is that we, the Europeans (including the Anglo-Americans) can smile at the totem ritual, but have no problem with the domestic forms of nonsense. Our nonsense is institutionalized in the abstractions of words - think of the coronation of a king and the masquerade costumes of judges and doctors at promotions, or the promulgation of a law. - But we do not need kings and priests for the animations, we have the words. Words have started to live a life of their own. In peoples minds words are not only things, they are even animated things such as: the Moral, who prescribes; the Law who requires, rules, and punishes; the Market which is volatile, always right and unpredictable; Rules and norms are the small animated things (like elves) doing most of the work for Messrs. Law and Moral. - In language we name objects and thoughts, concepts and then these names i.e. the words become something real, with their own lives (Wittgenstein: "And here we may indeed fancy naming to be some remarkable act of mind, as it were baptism of an object", PI 38). This is at the same time both natural and inevitable, but also the root cause for all philosophical problems (i.e. most human problems — all social is an aspect of language; philosophy deals with language on a macro level).

In language (at least in all the Indo-European languages - and the Finno-Ugrian ones for that matter) there happens a so-called reification (from Latin 're' for thing) i.e. a process whereby any substantive words are in language given the role of a thing. In this way expressions (as I call them) become thingly in language. And this is inevitable; the languages just do not function without such a use at the present stage of development of

human cultures. Herein lies also the fallacy which causes language to play tricks with us. In ordinary language we are stuck with this, because there is no other language to be used — and science and philosophy is done within the same ordinary language. But, we have to try to do something about it in scientific usage (would that be the trace separating science from other language uses, from other forms of art?). In science we have to be careful when expressing our main statements. Hence a lawyer should not any further tell "What great role law plays in society" — and an economist should not claim that "Economics is as old as life itself and like other aspect of life, it has an evolutionary history" (Try: 'life is as old as economics'). — But, nevertheless, in general we cannot avoid the use of the language of things, but we have to be on our guards all the time and consider where we can be more precise. — (Metaphors are all right — as long as they are in the distinguished role of metaphors).

We may summarize the problem and its solution with the words of Wittgenstein:

"Language sets everyone the same traps; it is an immense network of easily accessible wrong turnings. And so we watch one man after another walking down the same paths and we know in advance where he will branch off, where walk straight on without noticing the side turning, etc. etc. What I have to do then is to erect signposts at all the junctions where there are wrong turnings so to help people past the danger points" (Culture, p. 18).

In communication the role of the exact arrangement of words (or 'grammar' in Wittgenstein's usage) is much lesser than we think. Most communication (i.e. arrangement of expressions) is interpreted based on the artistic impression it produces on the recipient. The words and their arrangement usually only insignificantly address the intended subject matter — the words may be arranged in an appealing way, but still lack any meaningful sense. — Communication serves a broader social function than the conveyance of a directly analyzable meaning. — A good narrator or communicator strikes us as strong specifically, because it is so rare a quality to be good at communication. We shall just wonder how much misery actually is the result of the quasi-communication the world is engaged in.

## Freedom of Language

"A new word is like a fresh seed sown on the ground of the discussion" (Wittgenstein in Culture, p. 2). A language has a lot of catching up to do, to catch up with life and thought — the needs of communication. — Fully to the contrary of what the logicians wanted to do, and what the whole Western education system is engaged in, language has to be allowed to develop freely. It is too early to teach the infant to the pot — rigid rules, definitions and concepts are only to the detriment of language. — After all the rigidity we have to offer is of a very poor quality: Today's language is inferior to tomorrows.

The conservatives (and all our teachers are conservatives) do not understand that the official style of today is the deep-frozen radicalism of the past. Fighting modern usage; clothing; ways of speaking; foreign words; and expressions is a manifestation of utmost ignorance — for all we have today in all the cultures of the world are something that has been imported from others and was new at a time. — And those cultures that are more open to foreign influence are the ones that have a chance to develop life.

The mechanical grammar of a language is based on arbitrary rules — identified by some people at some time and then conserved — the action must be compared with deep-freezing of the brain (And our cultures do not have a lot of thinking worth the effort of conservation — especially not in the countries most enthusiastically on it).

Past experience gets compounded and transmitted in language — and art — all our surroundings being part of art. In a word a certain meaning is condensed or encoded — this is not a static meaning — but a small narrative from the past. The story changes each time the word is pronounced, but herein is the opportunity to build knowledge. In a free exchange of information, I believe, the words and expressions, would encode the best possible status of knowledge available — a historic baggage of experience. Colors; forms; designs; clothes; life-styles; containers.all transmit a message and a meaning. A meaning that one tries to open with one's own interpretation — in peace and free competition the endeavor is most successful.

Words contain both the key to the solution and the prison of the past. Language is both the historic problem and the future solution.

Conservation of the past is a most dangerous activity. This happens with adapting set concepts and giving definitions. A definition should be given only as part of a narrative as an example or metaphor and should always be accompanied with a warning tab like on cigarette boxes: 'Warning: Definitions should be treated by care and reluctance. Too much faith in definitions is dangerous for the health'. — Wittgenstein: "Frege compares a concept to an area and says that an area with vague boundaries cannot be called an area at all" (PI 71).

## Sense and Nonsense

A key aim of Wittgenstein's work was to teach to distinguish between sense and nonsense. Macro philosophy is often nonsense in camouflage and Wittgenstein wanted to expose that: " My aim is: to teach you to pass from a piece of disguised nonsense to something that is patent nonsense" (PI 466).

It is said that Wittgenstein wanted to draw attention to a distinction between nonsense - i.e. statements that may seem to be meaningful (in a given culture) - and senseless statements, which are more blatantly void of sense. — I do not think this distinction as such (as indeed most distinctions in degree) is important. What is important is that the mission of philosophy is defined as distinguishing sense from nonsense for «most of the propositions and questions to be found in philosophical works are not false but nonsensical» (Tractatus 4.003).

Requalification of famous and revered work or authoritative statements (as I do) is - it will be seen - the archecrime, one that stirs so much emotions (and emotions stir the world). And yet, in order to progress we have to expose nonsense and make room for sense and hope. Popper performed the service of exposing the nonsense of Plato (with Plato the tradition of Western nonsense started) — Wittgenstein exposed the nonsense of all of them en masse and we will have a lot of work to deal with them one by one, until the tide turns.

#### 4. TRUTH AND FACTS

Truth is what they are looking for — that is the essence of science, religion, philosophy, law, and even personal relations. — Truth is the hard core of the 'thing', which is the object of their life-long endeavor. — But, when the thing is gone, then where is the hard core? — Feelings do not have hard cores! All we deal with are expressions and interpretations which are based on feelings — and now in the search of truth we can only emerge from one interpretation to another — 'truth' never gets further than to the next interpretation.

Yet 'truth' is one of the notions that cause most confusion — philosophy is even called a search for truth. — And this is all right if you want to settle for knowing how life functions - a plausible description of how it functions. — And I claim that life functions as an interplay between expressions and interpretations of feelings — that is all the truth there is to it — and you will not get any further. - But wouldn't we better to stick with the search for wisdom - and the wisdom is to be found in feelings.

Two of the properties that people want to search in words and their use (both philosophers and non-philosophers alike regard words as things, and hence having certain properties) are that of 'being true' and 'being factual'. A 'thing' proper is not described as being true or false or being or not being a fact, instead these ideas are present in the notion of 'existence' — 'things' exist (and those that do not, are no things). And since expressions do not exist, people have the need to create the existence, and this is done by declaring expressions 'true' or 'false', 'factual or not'. — We see that these notions are creations of the imagination in finding a need to keep together the language originally developed for dealing with 'things'. - There are claims that the etymology of the word 'true' would derive from notions signifying 'steadfast as an oak' ([www.etymonline.com](http://www.etymonline.com)) or 'the hard core' ([www.meriam-webster.com](http://www.meriam-webster.com)). — These words really enforce the comparison with things, and not just any things, but the noblest ones. We continue searching for

the hard core of expressions (and that must be the culmination of alchemy: looking where nothing can be found). - " So you are saying that human agreement decides what is true and what is false?"—It is what human beings say that is true and false; and they agree in the *language* they use. That is not agreement in opinions but in form of life" (Wittgenstein in PI 241). But what can be true about an interpretation (for all expressions are interpretations)? What can be true about an interpretation of the feelings one wants to express? An intention may be true, a state of mind may be true but how do we transfer that truth into language? We don't. — 'Nietzsche: Facts are precisely what there are not, only interpretations', Bernard Williams (p. 10).

Often absolutists try to prove something to be true by referring to the existence of natural things — but this is a misuse of the concept 'true'. — It is meaningless to say that 'a cat is true' — you may claim that it is true that a particular cat exists, but then what does this existence prove? — We could see it with our own eyes (if present) and then it is only a description of seeing — and if we were not present then it is a question of probability of the commentator having seen properly, and now we are already in the realm of relativity. - So, is a cat true? No, 'a cat' is not true. It might be true that a particular cat had a certain property (that is if the definition of the particular property agrees with generally accepted definitions — but now we are again in the field of interpretations). Then, it might be true to say that a particular cat is in a particular house at a particular time. Yes, but what have we achieved, by this, except for giving a description of a picture of the arrangement of things.

Then what do we mean by a search of truth? I think this means a state of the mind, a quest for an internal harmony, which is called truth. But certainly it can not be about finding some 'thing' at the end of the endeavor. Maybe truth is about coming to understand the basic notions of what social life depends on — in that sense there is a lot of truth in this book. But 'truth' can in no case seriously be meant to mean anything universal or general — even the day-to-day notion of 'truth' should be reserved to the individual, particular, instances.

Hence 'truth' is a simile, one of the strongest of them all. And we need it, and it is all right — but we should not start believing in a simile, not take a metaphor as a real being.

A time-honored trick of the absolutists has been to prove that concepts are true — hence they claim that triangles are true — although all that is true is that a triangle has been defined as such. So, for a triangle not to be true, means that the object is not a triangle. - Kant presented 'space' and 'time' as evidence of truth (of absolute knowledge, which all humans have without having learnt that through experience) — truth that we all could agree with — and many did. But 'space' and 'time' are equally true as 'water', 'green' and '123 meters' — these notions do not have anything to do with being or not being 'true'; they are only words describing something of a surrounding, or even less, stating that there is a surrounding. - Any meaningful use of the concept 'true' means that it depicts a relation — and since it is a relation then it is never absolute. - A 'truth' is never absolutely true under all conditions. - Maybe we can rest with this notion of truth. — But, even so there is not much we can do with it, because next enters all the human qualities that distort the picture: memory; taste, intentions etc. - Hume: "Truth is of two kinds, consisting either in the discovery of the proportions of ideas, considered as such, or in the conformity of our ideas of objects to their existence" (p. 287).

The words truth and true have appeared in various sections of this book, and therefore I thought it would be interesting to copy here within some of the propositions from other sections (to see how I approach the truth from various perspectives):

Philosophy is the science of language. - And this is the key to comprehension, meaning and truth; the truth admits but the everlasting interplay between expressions and interpretations.

There is no other truth than a truthful description of the how conscious life functions.

And there are no truths (apart from the true feelings).

Feelings maybe true, there maybe true feelings, but the interpretations are not.

For truth, if anything, is a state of being honest to oneself (expressions are interpretations of feelings, there is no deeper meaning or truth to be found, and this is the deep truth).

Now we can realize that the 'true workings of language' consists of the interpretations of feelings.

With language we can only roll from one interpretation to another, and there are no truths to be reached on the road; instead it is better to see language as a method.

With this it is clear that there cannot possibly exist anything more fundamental or 'true' outside language, or that one could find anything beneath the surface of language, or that we could capture language by giving it more rigid rules, or finding the parts of what it is composed of.

The dilemma in life is that truth lies in the future, but love, hope and trust are in the past and we are in a continuous quest to reconnect with that feeling in the future. - Harmony is disrupted with the concept of two — then what follows is an eternal quest for harmony, which is the combination of meeting one's own desires and being a part of society.

Infinite interpretations of expressions, and expressions of interpretations wrapped in a moral mode exclude all ideas about truths; from nothing nothing will come out.

Wittgenstein is saying that we can help the mind to gain a better grasp of the relative truth, by thinking correctly — and knowing the limits of our thinking. - In a way this means we have gone a full circle from absolute truth to no truth, i.e. relative truth.

And now if we say that interpretation means that we exchange one expression for another — then this must be the truth - The truth is that all what we deal with are interpretations, there is never anything more fundamental to be found — in anything. — Now, we have unfolded the riddle of truth. — I can sense a deep disappointment among all the absolutists. They all wanted to privatize the truth — but now how can one privatize an interpretation!

It is true, that the language needs a notion 'truth', but we just have to be on our guard and try not to project that to a scientific or philosophical use. — Contemporary law is very dependent on this unfortunate notion — the efforts of lawyers and lawmakers on all levels center on proving

expressions and states of affairs to be true — and at the end of the day one of competing views is pronounced true. — "What is to be tested by what? (Who decides what stands fast?)" (Wittgenstein, Certainty, p. 19)

Aarnio (p. 135) refers to MacCormich and Weinberg, who claim: "[This] kind of proposition is true in virtue of an interpretation of what happens in the world, an interpretation of events in light of human practices and normative rules." — This is a very good approximation of truth, but still a modification is needed: The proposition did not become true even under those assumptions — it remains (scientifically speaking) relatively true (an interpretation can never become more than an interpretation, no matter how hard we interpret). - Interpretation does not make anything true - it can make something acceptable for the interpreter and if he is successful in arguing his point also acceptable to a general public. The presentation of the interpretation may even become decisive for reaching the aim for which the person engaged in the process of interpreting — i.e. it can serve as a decisive argument.

'Fact' is a concept that goes hand in hand with 'truth' — they kind of need each other like the spouses in a happy marriage. The etymology is derived from a grammatical form of the Latin for 'to do' or 'to make'; literary it would mean 'thing done', the modern sense of the use being «thing known to be true» (www.etymonline.com). — Hence 'facts' are the circumstances that have with authority been pronounced to be true. — And today people go about regarding 'facts' as something more than other variables. — But maybe we should use the word 'variable' instead of 'fact' — would we lose something in certainty?

Popper (1971, p.64) gives an illustrative example of a fact: "the making of a decision, the adoption of a norm or of a standard is a fact. But the norm or the standard which has been adopted is not a fact". — This difference is in line with the etymological origin: a fact was a thing done — and even so it is dependent on something actually having been done (and what is to be considered to be 'be done')

Popper (1971, p.57) touches on a similar issue and illustrates both concepts from a different angle: "difference between natural laws and normative laws... a normative law cannot be called true or false, since it does not describe a fact". — Here 'true' is related to the world of things and states of affairs ('things done').

Nietzsche was critical of the notion of truth in science and claimed that science "places unquestioned faith in the value of truth, and that that unquestioned faith makes truth a stand-in divinity for God" (Welshon, p. 131).

The role of the concepts true, false, mistake, correct etc would have to be reconsidered in our usage of language, instead of their contemporary bombastic use we should just delegate them to describe nuances (that is remove the absolute sense from the words)? — "Can one say: "Where there is no doubt there is no knowledge either"? (Certainty, p. 18) - "The *truth* of certain empirical propositions belongs to our frame of reference" (Certainty, p. 12). — "It may be for example that all enquiry on our part is set so as to exempt certain propositions from doubt, if they are ever formulated. They lie apart from the route traveled by enquiry". (Certainty, p.13)

" It is the inherited background against which I distinguish between true and false" (Certainty, p. 15)

" It is not single axioms that strike me as obvious, it is a system in which consequences and premises give another *mutual* support" (Certainty, p.21).

"The difficulty is to realize the groundlessness of our believing" (Certainty, p. 24).

" Really: "The proposition is either true or false" only means that it must be possible to decide for or against it. But this does not say what the ground for such a decision is like" (Certainty, p. 27).

"If the true is what is grounded, then the ground is not yet *true*, nor yet not false" (Certainty, p. 205).

"For mightn't I be crazy and not doubting what I absolutely ought to doubt?" (Certainty, p.30).

"What I hold fast is not one proposition but a nest of propositions" (Certainty, p. 30).

"Therefore strictly speaking what we consider impossible is only improbable" (Certainty, p.43).

Truth and justice are future oriented, there is always a better truth and justice to be reached; we have to make the best of what is available now.

"Consensus is the only *operational* concept of truth we have. .. To equate truth to consensus would imply that the earth once was flat, and now is round" (Posner, 1993, p.113).

Posner: " Since the process of inquiry never ends, this implies that truth always lies beyond our horizon: it is there, but we aren't. The pragmatic concept is forward-looking; truth is the destination we have not yet arrived at, but under right conditions we can hope to arrive there eventually." -Although as we travel so does truth, it will always be ahead of us. — Posner: "The test of time is backward-looking, some of our beliefs are true, and they are probably the ones that, having survived the longest, command the most robust consensus" (1993, p. 114).

Posner: "Thus far I have assumed that the court is seeking truth and only truth, but this is an unrealistic assumption, especially in the American legal system"(1993, p.205). This is so because "the goal of truth is in competition with other goals" (Posner 1993, p. 206).

"Truth, as a property of propositions or sentences, is not the sort of thing that can have a value" Bernard Williams (p. 6).

Nietzsche: "Truth has had to be fought for every step of the way, almost everything else dear to our hearts, on which our love and trust in life depend, has had to be sacrificed to it. Greatness of soul is needed for it, the service of truth is the hardest service. — For what does it mean to be honest in intellectual things? That one is stern towards one's heart, that one despises "fine feelings", that one makes every Yes and No a question of conscience" (Williams p. 13).

"For it is not true that a mistake gets more and more improbable as we pass from the planet to my own hand. NO: at some point it has ceased to be conceivable". — Wittgenstein (Certainty, p. 9).



## 5. MEANING AND CONCEPTS

There is no absolute meaning and there cannot be one (because an interpretation cannot be more absolute than another interpretation). Wittgenstein defined meaning of a word as its usage in language: «For a *large* class of cases — though not for all — in which we employ the word 'meaning' it can be defined thus: the meaning of a word is its use in the language» (PI 43).

According to Stern (1996, p. 105) Wittgenstein noted that there was a 'false analogy' "that was responsible for the errors he was continually inclined to make before identifying it as lying 'in the notion that the meaning of the word is an idea... which accompanies the word', or as 'thoughts which accompany the sentence'. Certainly these are the widely held beliefs, continuously 'expressions' are reported as 'our thoughts' — and this, of course, convenes an idea of something exact, for certainly the thoughts are exact (forgetting that the expressions are only interpretations of the thoughts). — Therefore, I would add a new level to discern this 'false analogy' and the confusion: We need to inject the notion 'expression' between 'thoughts' and 'sentence', while expressions are the external appearance of thoughts (the expressions as such merely being an incomplete interpretation of the thoughts) — the 'expression; and 'the sentence' also identify different issues: the 'sentence' should be seen as the thingly symbols in turn interpreting the expression (while the expression itself was gone). — Stern introduced this topic in presenting Wittgenstein's "conviction that only a thought or some other mental process can have a determinate sense, for any combination of signs, taken by itself, is always, in principle, open to any number of interpretations". — I am convinced that Wittgenstein would accept the idea that this is so, and cannot be otherwise, due to the fact that expressions are but interpretations of feelings: This way the regression always leads back to a new interpretation. - Wittgenstein stresses again and again the importance of identifying this confusion: "We don't get free of the idea that the sense of a sentence accompanies the sentence: it is there alongside

of it" (Zettel, p.139). — And it is indeed worth repeating as herein lies perhaps the most fundamental philosophical insight. For when we understand that the meaning is neither in the word nor the sentences, then we may understand that the sentence - the whole texts — all of communication (and laws) - are only interpretations of that what is not there.

A meaning of a word is a kind of employment of it. "For it is what we learn when the word is incorporated into our language" (Wittgenstein in *Certainty*, p. 61). Our talk gets its meaning from the rest of our proceedings (*Certainty*, p. 229). — (We have to be on our guard for such statements, they convene the idea of something definitive as evidenced by below references). - Although being on right track Aarnio (p. 110) makes a mistake when paraphrasing Wittgenstein with: "A word receives its meaning in the use of language". For the word does not receive a meaning even in the usage — it plays a role in a given situation and that role gives and receives reciprocally a meaning in a given context — but then the expression (word) leaves the sentence, and like an actor changes the stage costume to his familiar jeans and snickers and lumps away — the meaning was left behind on the stage.

I think that I bring a whole new aspect into the discussion of the essence of meaning by stressing the moral mode of relating to expressions as decisive for meaning. Words acquire a meaning not only in the context of a narrative, in the web of beliefs — the meaning is also inflicted by the moral sentiment, the way we relate to words and the feelings they arouse (I refer to further discussion in the chapter "Moral").

Language is hence all there is to philosophy. Elements that have earlier produced a lot of philosophical nutcracking simply disappear. We will see that metaphysics and logic turn out to be antiquated activities similar to alchemy - save the part of metaphysics which deals with the beginning of life, which is better left to the realm of religion - (Religion in turn could benefit from being disengaged from issues concerning political ideology and social organization, which is what churches all over the world have converted religion into). - Philosophical code words ontology and epistemology - i.e. the philosophy of nothing - simply wither away, because they belong to a perception that the object of the study is a thing and their commotions — and as this is not the case, then there cannot be any study of them either. Most of the issues perceived as phi-

osophy of mind is psychology, biology or whatever the natural sciences in question are called.

Philosophy is only an activity, or a method, for distinguishing between sense and nonsense. And whatever is behind nonsense can be shown to be a false use of the grammar, — but what lies beyond language and our senses, the eternal questions, that is not a part of philosophy at all. For in philosophy 'whereof we cannot speak, thereof we would better keep silent' (compare *Tractatus* 7).

Humans use language in such a way that we constantly form concepts — concepts are like codes or pictures of an experience — we seem to store impressions in memory in a form reminiscent of concepts — i.e. the information we retrieve from memory also come in form of concepts. Words as such are concepts — ('concepts', 'words'; like in so much else we have a separate word for a stronger or cruder form of similar issues that are different only in degrees; compare continuous moral feelings and moral concepts, or macro morals, where only the latter is recognized as moral). — Language functions through concepts, and probably a lot of thinking, too. But, herein lies also a danger, because we start to perceive the concepts as something real ('because if one thinks about something, then one must be thinking of something real'). The role of macro philosophy, or any of the specialized philosophical disciplines, such as law, have to be engaged foremost in looking after the concepts and how we use them; from time to time we have to withdraw an expression from language and send it for cleaning, - Then it can be put back into circulation (Wittgenstein, *Culture* p. 39). That is we have to expose the real role of a concept, or its usage, and strip it off its fancy dress — i.e. the reverence the concept has received — and show that all there is left is an interpretation — or so to say reveal that the Emperor had no clothes.

Rather than by ostensive definition (i.e. naming things) language seems to be acquired more in form of concepts. People learn words and combination of words as conceptions, which come ready with the whole surrounding they originated in (although in a perverted way). — (I would think that the hold-up which is sometimes evidenced in the development of speech with children that later turn out to be considered exceptionally talented has to do with the fact that they are particularly sensitive to searching for a meaning of expressions instead of being content to mechanically play with individual words — they would so to say want to

know and master the whole picture before they speak. They do not want to operate with signs and symbols, but with entities of meaning). — (Marketing, advertisement, propaganda, is based on the idea of inventing and promoting concepts which are taken to sink well into the recipient — but this is again a macro usage of a word).

No word, no concept has an independent meaning, all expressions are interwoven, and all is interwoven. Understanding this weave of life is in line with seeing similarities and dissimilarities and family resemblances instead of differences in kind —and this is key to a sound cognition of life, language and all the practices language gives rise to. — Wittgenstein: " Seeing life as a weave, this pattern (pretence, say) is not always complete and is varied in a multiplicity of ways. But we, in our conceptual world, keep on seeing the same, recurring with variations. That is how our concepts take it. For concepts are not for us on a single occasion" (*Zettel* p. 99).

Stern (1996, p. 99) tells that Wittgenstein earlier held the view that "A proposition is laid against reality like a measuring rod", and that he changed this view to the idea that "that a system of propositions is laid against reality like a measuring rod". — The earlier view is the one that comes from formal logic, and remind me of the anecdotes of the Bembolians (villagers depicted in Swedish folklore in Finland, who are given the role of representing a lot of common foolishness, kind of a whole village of village fools). In one of the stories the Bembolians go fishing, they throw the net in the sea, and in order to find the net in the morning they have to mark the place where the net was dropped. And the Bembolians make a carving on the boat's edge on the spot to mark the exact place where the fishing net was left. Then they rowed on with the sign corresponding to the meaning firmly in their boat, and the net, the meaning, was lost in the sea of life. This is the same what happens when we encode meaning in concepts; we carry the concepts with us, but lose sight of their place in life. - "The stream of life, or the stream of the world, flows on and our propositions are so to speak verified only at instants. Our propositions are only verified by present" (Wittgenstein in *Philosophical Remarks*).

The problem with philosophy - from macro philosophy down to teaching in elementary schools - is that the concepts are taken, as it were, as properties of things. - Wittgenstein (discussing the conjectures of Russell

and Frege): "Russell and Frege take concepts as, as it were, as properties of things. But it is very unnatural to take the words man, tree, treaties, circle, as properties of a substrate" (Zettel p. 122).

Concepts are significant only for shortening the process of thinking and communicating, but if they are understood incorrectly, then the concepts instead of serving as short-cuts turn into labyrinths or deadends. In analyzing the concepts we should therefore always go beyond the name and look at the underlying phenomena that the concepts describe. Wittgenstein compares this with the notions 'thought' and 'thinking': "We are not analyzing a phenomenon (e.g. thought) but a concept (e.g. that of thinking), and therefore the use of the word. So it may look as if what we were doing were Nominalism. Nominalists make the mistake of interpreting all words as *names*, and so of not really describing their use, but only, so to speak giving, a paper draft on such a description" (PI 383).

Concepts never capture life in a satisfactory way; therefore these errand-boys of language should not be allowed to become the masters. A concept or a definition never captures the whole picture: Consider this example of Wittgenstein "Is being struck looking plus thinking? No. Many of our concepts cross here." — We have the concept 'being struck' and how do we define it? We don't" (PI p. 180).

In scientific use - such as in law - concepts are particularly dangerous. — I refer here also to my remarks on the horrible and horror causing traditions of turning law into a game of concepts — which really is a habit that could be introduced only by philosophers — (those with common sense stand by looking with mouths wide open!). The concepts have yielded a little of their former glory, especially in Anglo-American and Scandinavian law, and even somewhat in Continental Europe, but they are still going strong and continue to torment thinking (and providing handy tools for the evil).

In law the concepts are especially dangerous also for the reason that due to the religious-like reverence, they are treated with. In the legal concepts the form becomes decisive and any kind of content is from time to time invented to fit in. - Hayek has shown how concepts are manipulated in politics by using the old words but changing the meaning whereby "words become empty shells" (Hayek 1994, pp.173 and 174).

## 6. THE THING

Some of the most renowned philosophers have made the confused notion of the 'thing' as the center-piece of their philosophy. No doubt a time will come when this fixation with things will be a looked up with amusement and wonder. - The hall of fame of thingly philosophers will be occupied by Kant and Durkheim:

Kant (83): "our entire sensibility is nothing but a confused representation of things, containing only what belongs to them in themselves" — Kant's entire philosophy was produced by the illusion of regarding feelings (opinions; language) as things — and in all words he was looking for the thing-in-itself. — This would be funny if he had not convinced so many for so long in the madness. - Emile Durkheim's (Winch, p. 109) first rule of sociological method: 'to consider social facts as things'. (These kind of claims are endless though: Leibniz [Stern 1996, p. 56]: "The monad ...is a simple substance that enters into composites — simple, that is, without parts. And there must be simple substances, since there are composites.")

"People say again and again that philosophy doesn't really progress, that we are still occupied with the same philosophical problems as were the Greeks. But the people who say this don't understand why it has to be so. It is because our language has remained the same and keeps seducing us into asking the same questions. As long as there continues to be a verb 'to be' that looks as if it functions in the same way as 'to eat' and 'to drink', as long as we still have the adjectives 'identical', 'true', 'false', 'possible', as long as we continue to talk of a river of time, of an expanse of space, etc. etc., people will keep stumbling over the same puzzling difficulties and find the starting at something which no explanation seems capable of clearing up. And what's more, this satisfies a longing for the transcendent, because in so far as people think they can see the "limits of

human understanding ", they believe of course that they can see beyond the rules" (Wittgenstein, Culture, p. 15).

Posner: Holmes said that 'there are no conceptual entities; the meaning of an idea lies not in its definition, its form, its relation to other ideas, but rather in its consequences in the world of fact' (1993, p. 16).

Although there are a lot of references to the anthropomorphic fallacy in philosophy there has however, hitherto not been a clear revelation that the division between things and expressions is fundamental for sciences and philosophy — in fact the philosophical problems disappear with this revelation. - "For philosophical problems arise when language goes on holiday", Wittgenstein (PI 3 8). — Wittgenstein, means that philosophical problems arise when we use language inertially, without paying attention to what the words and their combination in reality amounts to — it is a kind of passivity of mind; a state of *sans-soucis* (a 'bon voyage feeling'). And here, in this state of mind we accept all the combinations of words that the mind produces. - But, it is odd that some of the greatest minds of history, as they are recognized, have allowed language such an extended leave so that their work is but words without meaning. - "And *here* we may indeed fancy naming to be some remarkable act of mind, as it were baptism of an object" (PI 38). — It is this habit of naming expressions, kind of putting them to wear the dress of things, which causes the philosophical problems, as well as the not-so-philosophical problems of premature death. These philosophers create invisible objects, things, which then start to live lives on their own in people's minds.

The analogy to things and their properties has always been used for justifying philosophical speculation. The examples philosophers refer to always concern physical objects in one or another form ranging from Moore's hands to tables and chairs (e.g. Orenstein 174 "As formulated historically by empiricists like Berkley and Hume this problem concerns the justification of our knowledge of objects such as tables, chairs and so on.") — But this is all wrong, totally wrong! - We can say something about things, they do exist, and they have properties — the doubt is futile. Philosophers should not doubt the existence of tables and cats.

The doubts in regards to things are due to the fact that our senses and language are not such that we can form an exact or final description of things. - (And this cannot be otherwise, because things do not have any final objective properties; they have properties, but the spectator pro-

cesses the image of the thing only in accordance with his own sensory and mind capacities; therefore there cannot exist but one or another interpretation of the things in the world, including the world in the proper body). We can know of the existence of certain things — the problem is that we do not know and cannot know whether we have the right perception of these things. Our perceptions of things are also formulated by impression — thoughts — expressions and interpretations, — but 'things' have a real existence in themselves (and this is the correct use of thing-in-itself; the physical entities in themselves) — real is what is thingly.

"When you and I look at an external object, we form comparable images in our respective brains, and we can describe the object in very similar ways. That does not mean however, that the image we see is a replica of the object. The image we see is based on changes that occurred in our organisms, in the body and in the brain, as the physical structure of that particular object interacts with the body" (Damasio p. 199).

I would think that this philosophical problem of doubting the existence of tables has in fact centered around no-things, i.e. unconsciously the philosopher has thought about expressions, or perhaps consciously but hampered by the language of things; this thingly language has played a trick here, and only 'things' have emerged for analysis: Wittgenstein: "The soul is said to leave the body. Then, in order to exclude any similarity to the body, any sort of idea that some gaseous thing is meant, the soul is said to be incorporeal, non-spatial; but with the word "leave" one has already said it all. Shew me how you use the word "Spiritual" and I shall see whether the soul is non-corporeal and what you understand by "spirit" (Zettel, p.23).

There is a mixing of what 'is' and what 'is called' as Wittgenstein remarks — "In our failure to understand the use of a word we take it as the expression of a queer *process*. (As we think of time as a queer medium, of the mind as a queer kind of being.) - The difficulty arises in all these cases through mixing up "is" and "is called" (Remarks Mathematics p. 88).

Wittgenstein's philosophy centered very much around the problem caused by such misleading analogies, thus according to Stern (1996, p.26) Wittgenstein speaks about correcting a philosophical error as a matter of "pointing out an analogy along which one has been thinking but which one has not recognized as an analogy"

## No-Thing

Welshon on the correspondence of expressions to things: "Statements are taken to correspond to something else in the world. Various candidates for what these things in the world might be have been put forward, among them substances, things, states of affairs, facts and events" (Welshon, p. 98). And there has indeed been 'various candidates' for representing these things. It is amusing, that even when the problem is recognized (for it has been recognized, but not to the extent needed) — it is like tickling dismissed by a little scratching — (and then it tickles again).

Expressions (e.g. words) are not things; they cannot be classified with the distinction corporeal and incorporeal — they are neither. Nor are expressions phenomena (although they may depict phenomena — which really is the problem with 'phenomenology') — they are just interpretations of feelings; something expressed without anything of a form. The division between abstract and concrete will not do either. What does not exist at any particular place and time is said to be abstract — but then it is already not a thing: There are only concrete 'things' and abstract 'expressions' — 'things' are not abstract. - There are claims that abstract concepts or relations have a 'different kind of being' e.g. "If we say that properties of abstract concepts / relations 'are', or 'have being', clearly we mean they have a different sort of being from that which physical objects, like rocks and trees, have". — But they do not; they do not have any kind of being! And this shows how persistent the problem is. - I read in an article that somebody claimed that 'abstract things are sometimes defined as those things that do not exist in reality or exist only as sensory experience, like red'. — This is the very typically fallacy and it represents the claim that 'abstract things' are different kind of 'things'. — It is wrong to say 'exist only as sensory experience': these sensory experiences are the feelings that expressions strive to interpret and naturally do not exist at all.

The particular and general lead to same problems: there can be a particular horse or many particular horses, but when speaking about horses in general we are already in the realm of expressions.

The reification of philosophy reached its peak with Kant, who put the 'thing-in-itself' in the center stage of all philosophy. Kant did not make

any difference between expressions, processes and things — for him they were all the same 'things' and they all had a material core 'things-in-themselves'. " Kant and other philosophers argue that there must be something logically anterior to, and metaphysically more basic than sensory things. There would then be an entire realm of these metaphysical more basic entities (Kant's thing-in-itself)" (Welshon, p. 78). And Kant set to prove, with the acrobatics of language, that there indeed were these hidden, or transcendental properties in all we say. — We can say that the primitivist anthropomorphic world-view culminated with his imaginary system.

The fallacy is that there is never anything definite — all we can achieve is to replace one interpretation with another (or more correctly one or more of dominant competing interpretations replace each other). Hereby there is nothing that backs up the idea that the new interpretation is better or more correct than the old one. We have a lot of reasons to think that in medicine certain aspects are now better known than earlier, but the opposite is also true - and so it is in every discipline of knowledge (thinking). "But, we live better now?" — "Do we?" "Who are "we"? Do the dead ones count? "

How much confusion these things-in-themselves bring about is evident from the terminology philosophers use: Now the term 'realist' is used for the people, whose imagination knows no boundaries and 'accepts also general concepts to the existing world ', and the ones that are actually realists i.e. look at the real world are called 'nominalists', because they do not accept the fantasy products of concepts as really existing (compare e.g. Aarnio, p. 127). Creative fantasy where both views are combined is defined as a 'multi-layered ontology' - ("The Popperian ontology is a multi-layered one", Aarnio p. 127).

Another act of philosophical topsy-turvy is the phenomenologist denial that physical objects exist and claim that only appearances exist — all healthy people know that it is completely the other way around (See Orenstein, p.23).

Searle defends the idea that 'there is a reality that is totally independent of us' (whatever that means) and that brute facts belong to the reality (Aarnio, p. 127). 'Brute facts' are said to require the institution of language ' in order that we can state facts, but the brute facts themselves exist quite

independent of language or of any institution'. — It emerges, that Searle's claims represent yet another attempt at a thingly philosophy, an attempt to convince us that the expressions and interpretations of feelings are things. — What Searle adds to primitivism is the claim that there is some kind of collective brain that produces (or discovers) 'social facts' by the act of 'collective intentionality' - ('A special subclass of social facts are institutional facts, facts involving human institutions', etc, etc... there are supposed to be in total 9 classes...').

Popper, who was an interesting historian, ventured into philosophy on the wings of the success of his historical *The Open Society and Its Enemies*. Success in one activity does not prove skill in another — though fame may follow. Popper was successful in having his views on the philosophy of sciences considered to the extent that he is among the most quoted in the field. - I will refer to Popper's theory of falsifiability of science in a later chapter on the philosophy of science. — In this connection I want to bring up his theory on World 3 (I refer in this discussion to on Popper's World 1, 2 and 3 to Percival).

Metaphors are essential ingredients in language — all language is more or less a combination of metaphors, and this is the essence of language and communication. But when I considered whether it was appropriate for Popper to promote his 'World 3' metaphor I came to the conclusion that it was not — not in science. If anything is to be called science in contrast to art or everyday communication, then at least in science we have to reject the use of products of imagination and metaphors to the extent we are formulating the most important scientific statements (or those claimed as such). It is dangerous to promote superstition as the basis of science. This habit in fact amounts to promoting competing religions, this time without a man-like god, but one where concepts are being idolized, — expressions are taken to be things and hence in some way absolute ('The Absolute').

Popper claimed that 'knowledge such as scientific theories had unfathomable information content, is universally applicable, and infinitely copyable.' — Here the problem is that in Popper's view 'knowledge' means something laudable and correct (which is funny considering his falsifiability theory!). He proceeds from the viewpoint that 'knowledge' is always correct and this 'whatever' can be multiplied,

at any time we can come together and invent new issues we consider correct, but then all of a sudden, he says, it is proven false. — He does not consider that in fact there is an infinite capacity of accumulating superstitions, misconceptions, possibilities for catastrophe etc. What is copyable are expressions, i.e. interpretations — but what good will it do to have infinite interpretations — (in right kind of circumstances the interpretations may improve, but the amount of interpretations must not bring any consolation).

' Popper divides all that exists into three domains: World 1 (the world of physics, chemistry and biology); World 2 (the world of psychological states, dispositions and process); and World 3 (the sum of the total of the objective and abstract products of the human mind — theories, numbers, and even tools and institutions considered abstractions). Logical relationships, numbers, symphonies they are our products but once created they have autonomous existence, properties and relations that go beyond any psychological states'. — 'World 2' and 'World 3', and all this theory represent precisely the nonsense that Wittgenstein wanted to expose and have dispersed (it is an irony of history that he personally told this to the very Karl Popper, but in vain). Popper says they 'are our products but once created they have autonomous existence'. — (If they were to be concerned as 'products' then I would certainly object to their right to 'autonomous existence' — there would have to be some consumer protection against such inferior quality of products: no shape, no form, and so hazardous to the health). — Real philosophy, the kind Wittgenstein taught, will have to become the dominant trend in thinking until these imaginary products and theories are finally rejected and philosophy would be given peace.

Popper argues that "objective knowledge, the kind we find represented in books, tapes, computer memory, has an autonomous existence from the psychological or physical states that produced it and in which it may be represented". — The only autonomous existence there is the existence of the paper and ink or computer chips where the signs and symbols used in the interpretation are stored.

Popper asks: 'But does there exist such objects, which have not yet taken any form in World 1 or World 2?' Popper answers 'Yes'. He believes that there are objects in World 3, which have not yet been realized by people, but which still exist. They can be e.g. logical consequences of

the mentally recognized theories, or unknown relationships between World 3, objects. He claims that still this "shade world" is real, because it already has influence on World 1 by World 2. — And so on.

It seems that Quine was scarcer in his metaphysical diet and settled to choose a very limited range of entities existing along side 'things'. Orenstein (p. 52): 'For Quine only two kinds of things exist: physical objects and sets/classes'. " Certain things we want to say in science compel us to admit into the range of values of the variables of quantification not only physical objects but also classes and relations of them; also numbers, functions and other objects of pure mathematics." — We have to note (and gape) that the reason for him to introduce these metaphysical entities is that he needs them to complete his language-game ('things we want to say in science compel us...').— What other motivation could he have for defining the speculative part of his work?

Orenstein provides this eloquent attempt to dilute the apparent nonsense in Quine's metaphysical speculation: "Quine's physical objects are not, however, simply those of the naïve realist. His physical objects are theoretical posits, posited by common sense as well as Einsteinian science... the physical objects which serve as values of variables are: "thing-events, four-dimensional; denizens of space-time, and we can attribute dates and durations to them as we can attribute locations and lengths and breadths to them..." (Orenstein, p. 54).

It seems that the professional philosophers are like artist that do have an urge to invent one or another system for the bewilderment of the public. The problem is that they have to invent some 'thing' to exist — because if philosophy would be generally admitted to be an exercise in common sense, as Wittgenstein defined it, then there will be room for considerably fewer philosophers of the old brand (how many paid alchemists do we have around?). — And without these 'things' how would they then demonstrate their wit? — Without the 'things' all they can pretend to be are historians of philosophy, and they do not like that prospect.

Orenstein (p. 72) refers to Sober, who argues that "unobservable posits such as genes and quarks differ from unobservable posits such as numbers". — I would like to pose the question how these gentlemen regard that unobservable posits such as words differ from one another, do they differ equally or less?

### Animated Thingly Law

Above I dwelt on the problem of reification, the inevitable problem caused by the structure of language (at the present stage of development) to assign a thingly role to expressions (i.e. no-things) in language. - This is one of the central problems in social sciences. The problem has been recognized earlier, but its significance has not been understood. Reification is connected with anthropomorphism i.e. the tendency to attribute humanly qualities to expressions — concepts are treated as if they were talking and thinking human beings (Hayek: 'an attitude which personifies such entities as e.g. society by ascribing to them possession of a mind' [1983, p. 27]). In the anthropomorphic thinking society is conceived as: 'acting' or 'willing' this or that. ("According to the collectivist 'society acts' or 'treats' 'rewards'....' law functions," Hayek, 1983, p. 28).

Until I read Posner's *The Problems of Jurisprudence* I remained quite perplexed with the philosophy of law that I came across. In all I read I noticed that the author was writing about law and rules in a manner as if law would be a thing and not a name for an activity. — I felt that I am very lone with the insight that this was all wrong. With my notion of law I felt light-years apart from the prevailing conceptions. — I felt that I would never be able to advance a healthy concept of law against the prevailing background. It was then with tremendous satisfaction that I read in Posner's book that he was disturbed with this very tendency to regard law as a thing. Posner dwelt in detail with this fallacy, which helped to convince myself that I was on right track.

Posner tells that (Posner, 1993, p. 167):

"Ancient and primitive peoples often impute minds to "inanimate" objects, such as the sea. This is notable in Homer; and it is unlikely that he or his audience regarded Poseidon as merely a fictional construct. Ignorance about nature made the imputation of mind to inanimate objects plausible. The sea behaves in a tempestuous and unpredictable fashion, a little like a person; maybe it is a person, and therefore can be placated the way a wrathful, powerful person sometimes can be... If we understood the stock market better, we would cease personifying it. Aristotle's physics treats objects in nature much as if they

were animate beings, with goals; today we are more likely to treat animate beings on the model of objects."

By ridiculing the question on what law is Posner hit the very bull's-eye (Posner, 1993, p.220): Asking what is law? "Seems to assume — what is most debatable — that "law" is some kind of a thing (or collection of things) like "New York" or "Dom Perignon."

Posner develops the exposition of the common ideas about the thingly nature of law: "the law" seems to 'command and empower'; 'to channel and forbid' — this way of speaking "makes it intuitive to suppose that it is indeed a thing of some sort or perhaps a set of things, specifically rules — for rules command, forbid, empower — or, if not rules (or not just rules), norms and principles" (Posner, 1993, p.221).

And Posner reaches the main and the final conclusion regarding the thing-fallacy, which is the very fundamental insight to law: "The law is not a thing they [judges and other lawyers] discover; it is the name of their activity. They do not act in accordance with something called law — they just act as best they can." — He stresses that: "law is something that licensed persons, mainly judges, lawyers, and legislators, do..." (Posner, 1993, p. 225). — I would not restrict the notion to what 'licensed people do', which is evident from my discussion on legal practices. — In fact Posner also talks about practices; Posner concludes: "In denying the laws "thingness", I am not saying it is nothing. It is a practice, easily recognizable in most of its manifestations. But a practice or activity is different from a set of concepts" (Posner, 1993, p.226). — The aim of this book is to develop this theme and also to show what the said practice, the activity is all about.

Axel Hägerström had hinted at the difference between things and expressions, but did not develop that line of thought to a final conclusion: "The existing entities consist either of physical objects or mental states of affairs" (Aarnio, p. 131). — However Hägerström drew conclusions that were sufficiently right for the redirection of the philosophy of law. In the opinion of Aarnio Hägerström and Alf Ross would not have accepted the institutional facts as proper entities in their ontologies (Aarnio, p. 136). Aarnio prefers to speak about "the validity of legal norms, not about their existence" (Aarnio, p. 167). Unfortunately, however, Aarnio



does not follow through with the analysis he emerges upon proceeding from Hägerström's concepts, but rather runs into Popper's labyrinth: "One could count the institutional facts primarily to the World 3 described by Herr Karl Popper, because the World consists of entities created by the human mind as, for example, of symphonies, poems, values, general concepts, propositions — and of norms (Karl Popper, *Objective Knowledge: An Evolutionary Approach*. 1972)".

### **Why Things**

I find it helpful to consider the contemporary biological explanations of how humans form perceptions about things and impressions. I refer to the work of Antonio Damasio (pp. 199 and 200) — In general I find Damasio's account compelling, although I cannot agree with all the conclusions he draws (*See Appendix 1 — Damasio Social Homeostasis*). —Damasio says: "The images we have in our minds, then, are the result of interactions between each of us and objects that engaged our organisms, as mapped in neural patterns constructed in according to the organism's design". — I would like to note that this description can also be seen as a biological description of some of the physical (biological) conditions for interpretations. - Damasio tells why the interpretations of things and their properties such as colors are so similar although all is about subjective interpretations: "We are so biologically similar among ourselves, however, that we construct similar neural patterns of the same thing ". He tells that mental images and neural patterns are closely related and the mental images stem from the neural patterns. — It should be noted that the similarity of the patterns we form are indeed more similar concerning the images we form of things — and that is why there is no use to have philosophical arguments regarding them (Moore's hands, tables, cats). But regarding expressions there is no underlying object (no thing) and therefore there is no similarity to be found (for nothing is similar to no thing), and this explains why expressions and interpretation are subject to so much mental confusion.

Damasio is ready to conclude (p. 183) that "the mind is a process, not a thing" — And this is not a far step from concluding that all the images formed in the process are no things either, but merely appearances of

things and other impressions shaped in the mind on the analogy to things.

Wittgenstein did not explicitly state the blunt fact that expressions are not things, but he led "us by the hand, and hints at how we can follow a series of steps that take us ever closer to the nameless things we cannot refer to directly, without actually reaching them (the beetle in the private box)" (Toulmin, p. 177). — What Toulmin calls the 'nameless things' are in fact the thingless names.

## The State

'State' is the archeconcept in law, the thing that has created the most harm; the refined example of how words pile up to create philosophical problems, and quite human suffering. — It is the bin basket of all superstitious belief in law and the thread by which the contemporary perception of law is knit together.

Kelsen equated the state and law and so did many more. Continental European and Russian legal traditions exclusively proceed from this notion — this although the state is just a legal artifact, within the very law that it is supposed to equate. - (Hayek: There is an especially strong tendency in countries with Continental traditions to confuse state and society ... In a free society the state is one of many organizations, Hayek 1979, p. 140).

These people think and claim that there is a thing, an animate thing — which is called the state. The state is supposed to have its own brain and body (for how would it otherwise have the will they claim it to have?), although nobody has yet seen this brain of the state nor any other parts of this thinking organism, — but the fable lives strong. This reminds about Astrid Lindgren's children's story about Karlsson-on-the-Roof, where the little boy, Eric, develops an image of a fantasy friend Karlsson, a little shabby man living in a shed on top of Eric's apartment building. For Eric this fantasy friend is real. — For most adults through history as we know it the State has been a similar fantasy friend (but rarely has it been seen as a foe). — The stories on the nature and virtues of the state are as old as philosophy itself and one of the central philosophical problems since the time of Plato, and especially because of Plato (e.g. in Popper 1971, p. 75). For Aristotle, the state has moral tasks; to take care of virtue is the business of a state which truly deserves this name (Popper

According to one of the fables the conception of the State happened by a public act where all the living and future generations took part, and this extraordinary act was called a social contract. — The idea with the fable was (and is) to powder the thinking of people to make believe that there really was a legitimate power base for the kind of government the authors of the fables propagated. "As political scientist Carl Friedrich observed in 1939: In a slow process that lasted several generations, the modern

concept of the State was ... forged by political theorists as a tool of propaganda for absolute monarchs. They wished to give the king's government a corporate halo roughly equivalent to that of the Church" (Bovard).

I am willing to accept that people, based on the common usage of language have difficulties in uncovering all the metaphysical speculation that is advanced as science, but the metaphysical character of the notion of the 'the social contract' is on plain view for everybody to penetrate. They even call it 'a theory', if there would be a contract it would not be called a 'theory', instead it would be claimed that such and such contract was concluded at such and such time ('to the contract adhered these and these people, the rest decided to leave the state...'; Popper [ 1977, p. 114] quotes Barker's quite elusive arguments against the idea of the social contract).

Wittgenstein: "At the foundation of well-founded beliefs lies beliefs that are not founded" (Certainty, p. 253).

Instead of the fable on the social contract it would be better to compare the state with an extended family of people somehow awkwardly living together, but really without a choice. — As a social organizational form a state has been a necessary tool, and still is so to a varying degree. — At a certain stage of development of society this kind of organizational form serves its purposes and is needed, the question is just why people have to create so much metaphysical hoopla around it.

The idea of language-games serves perfectly for gaining a real understanding of what a state is.

The new theory about the state is that there is no theory — the philosophical problem disappeared. Now there are just practical matters of taking care of the interest of people forced to be engaged in common efforts to organize some of the basic life sustaining conditions — usually due to the fact of sharing a common territory and interrelated cultural backgrounds.

When we recognize social activities through a perceptionist view, then we will recognize also that many of the sciences after losing the metaphysical spell, will disappoint us and turn out to be activities in analyzing

the history of argumentation — this happens to the so-called political sciences, too (exactly the same way as with law).

Through history states have come and gone, borders have been erected and swept away and the decisive force has always been force. One state has broken up to become many, many and two have become one, and so on in various combinations — there is no pattern to be found in that — all has been dependent on who have happened to be the heroes in power.

A state is a perception of the highest forms of normative expressions that people recognize (consciously voluntarily or just simply voluntarily, or against ones will) as governing the life of people living on a territory with certain physical borders. In this way a state can be seen as a legal construction — but not all legal constructions arise by voluntary agreements, or by agreement at all (although a lawyer may naturally define what he pleases as an agreement — a concept has an endless power over minds, if it has credibility). There are various legal relations, and when people perceive the legal relations to fit a certain conception of typical legal relations (a template), then they declare to recognize a state in that perception (obviously not understanding that it is just a perception).

States are legal constructions, some kind of associations (but not voluntarily by no means), and all these associations are different — although we may perceive many similar traits (which is caused among other things through imitation).

There is a very persistent misconception that the state is a precondition for laws, and this is so as far as the laws are defined as those issued by the state. Equating state and law is a form of aspect-blindness — a condition when a person is not able to perceive similarities and dissimilarities, family resemblance and non-resemblance due to the imaginary boundaries language creates. And yet there is nothing really fundamentally different in the social organizations called states, when compared with other kind of social organizational forms: As long as there have been people there have been norms (even animal communities have norms) that regulate social relations — statehood is just a perception of certain kind of norms — or even aspects of the same norms that govern life at large. The nature of the norms, or normative expressions, even the sanctions, do not tend to differ greatly from one kind of a normative system to another — within and without the state people are punished with expul-

sion, death — indirect or direct, loss of livelihood and property, name and fame. — Moses gave a law, a quite mundane one, and his people were even on the road.

## Hegel's State

The metaphysical ideas regarding the state outgrew the innocent origins and as a result of a cancerous growth ended up in murderous propaganda in the service of the evil — like the horrors of Nazism, a social disease which was the culmination of the Absolute Idea of the State. — This really was the bewitchment of our language, and by means of that of the mind. And there were some really concrete men at work doing the bewitchment: the verbal acrobatics of Kant and the ardent oration of Rousseau culminating in the verbal jongleur Hegel.

Arthur Schopenhauer, a contemporary of Hegel was one of the few in the times that saw right through Hegel's nonsense, and actively exposed it. — This is how he once described Hegel's 'philosophy':

"Intellectual contemplation" and "absolute thinking" [and other similar ideas] have replaced distinct concepts and honest searching in German philosophy. Bluffing, confounding, mystification, scattering sand in the reader's eyes by all sorts of tricks — have become the method. Instead of insight, selfish purpose everywhere guides the discourse. Thanks to all this, philosophy, if one still wants to call it that, has had to sink lower and lower, until it finally reached the lowest level of abasement in the ministerial creature of Hegel, This man, in order to smother again the freedom of thought... made of philosophy — [what should be] the daughter of reason and the future mother of truth — a tool of state aims, obscurantism, and Protestant Jesuitism. But in order to cover up the disgrace and at the same time to bring about the greatest possible stupefaction of minds, he drew over it a cloak of the emptiest word rubbish and silliest gollimathias that have ever been heard outside the insane asylum." Schopenhauer (p. 85)

In our times more people, especially on the sounder side of the channel and beyond, have recognized Hegel as the nonsensical, but detrimental, verbal jongleur that he is, but in other parts of Europe he is still considered 'one of the greatest.' There are a lot of them who still want to find something of value in Hegel's work. All he did was to arrange and rearrange words; not only did he write nonsense, but also his style was ugly and awkward, but he was successful in convincing people to think that he possessed deep philosophical insights — and the measure was incomprehensibility, the more incomprehensible the better philosophy they thought. — There is endless secondary literature on Hegel's work, still produced in our times, one after another admirer analyzes his writings; they claim various explanations for what he said and wanted to say (and his style provides a quote of reference for whatever one wants to show). Hegel is made to fit any current of thinking his admirers wish to. This is, however, not a coincidence, because this was his craft, his acrobatics of words was such, to really fit nothing and anything; surely some of his words support certain view points, because that is the way he worked; he kind of scanned through all the philosophical concepts historically used and in use at his times, then he presented them in all the combinations imaginable. Now, if one is to go about Hegel's work word by word, or concept by concept, one can certainly find whatever of interest in there — but, then one could also study a dictionary and conclude that all wisdom are in the words of the book. — Hegel delegated it to the recipient to detect sense, if any, in his writings. - (" Conflicting and contradictory interpretations of Hegel are not restricted to his concepts of God, Christianity, and religion, however. They extend to every aspect of his philosophy " [Bernstein 47]; " Hegel is the most systematically ambiguous philosopher in the history of philosophy", [Bernstein 46]). - Some consider it as a paradox that 'both the extreme right and left follow him more or less consciously' (Popper 2003, p. 33). — This in fact is not a paradox, but the very consequence of his promotion of the idea of the state and teaching how much dishonesty can be dispersed through out with the application of the method of pure nonsense (The more it is not a paradox as the extreme left and extreme right are neighbors at noon, when you just do not present them on a line but on a circle).

"The absurdities to which it [a priori reasoning] may lead are amply illustrated in Hegel's amateur pseudo-scientific speculations" (Winch, p. 7).

In his essay entitled "On Public Happiness," Rousseau declared in 1767, " Give man entirely to the State or leave him entirely to himself."

- And Rousseau opted for the former (Bovard). - In *The Social Contract*, he declared: The citizen is no longer the judge of the dangers to which the law desires him to expose himself; and when the prince says to him: "It is expedient for the State that you should die," he ought to die, because it is only on that condition that he has been living in security up to the present, and because his life is no longer a mere bounty of nature, but a gift made conditionally by the State. - Rousseau implied that people should be grateful that the government had not yet killed them (Bovard). Rousseau's consecration of government power had vast influence on subsequent philosophers, and especially in Germany (Bovard). - Fichte declared in 1809: 'The State is the superior power, ultimate and beyond appeal, absolutely independent.' Fichte advocated a strengthening of the state and government as means for reaching political goals and 'purifying' the German people — obviously this German metaphysical 'reason' was to be involved in the venture - Fichte wrote: "The end of the State is none other than that of the human species itself: namely that all its [humanity's] relations should be ordered according to the laws of Reason" (Bovard). - Fichte said that it was the necessary tendency of every civilized state to expand in every direction. He claimed that 'Always, without exception, the most civilized State is the most aggressive. Thus, the fact that a state successfully attacked its neighbors proved its moral superiority over its victims.'— And such truths the Germans of his times thought and were taught to know a priori, 'by pure reason alone'. Hegel touted the same idea of just wars (Popper 2003, p. 41). - According to Hegel, "The State is the Divine Idea as it exists on earth." He praised the state as the "realization of the ethical idea" and asserted that "all the worth which the human being possesses — all spiritual reality, he possesses only through the State." He revealed that the state is "the shape which the perfect embodiment of Spirit assumes." He opposed any limits on government power: "The State is the self-certain absolute mind which recognizes no authority but its own, which acknowledges no abstract rules of good and bad, shameful and mean, cunning and deceit" (Bovard). Hegel declared that "the State is ... the ultimate end which has the highest right against the individual, whose highest duty is to be a member of the State." He stressed that "sacrificing oneself for the individuality of the State is ... a general duty." In fact Hegel claimed that the idea of the State was 'this actual God, by itself' (Bovard).

The flame lit by Hegel's fraud and veritable bewitchment of language led eventually to the quite thingly horrors of the extreme ideologies of

hatred (Nazism and Marxism). First he engaged the philosophers, then their students, and in the end he was followed by the entire German people.

In Hegel's work everything really is in plain view — nothing is hidden, it is just a matter of wanting to verify for oneself, hereby one can open any works of Hegel to conclude that all he writes are but tricking with words, words without a meaning, nonsense in the service of evil. — Fitting to this theme I quote as an example what he has to say on the state (From Hegel's last full-length work, *The Philosophy of Right*).

§ 257 The state is the actuality of the ethical Idea. It is the ethical mind qua the substantial will manifest and revealed to itself, knowing and thinking itself, accomplishing what it knows and in so far as it knows it. The state exists immediately in custom, mediately in individual self-consciousness, knowledge, and activity, while self-consciousness in virtue of its sentiment towards the state, finds in the state, as its essence and the end-product of its activity, its substantive freedom....

§ 205 The state is absolutely rational inasmuch as it is the actuality of the substantial will which it possesses in the particular self-consciousness once that consciousness has been raised to consciousness of its universality. This substantial unity is an absolute unmoved end in itself, in which freedom comes into its supreme right. On the other hand this final end has supreme right against the individual, whose supreme duty is to be a member of the state.

Just read what he says! — This kind of arrangement of words is called philosophy. — If we need a definition on what nonsense is, then just quote the above paragraphs. — The healthy mind does not need any more guidance. — (Wittgenstein: "It is perfectly possible that we should be inclined to call people who behaved like this insane. And yet we don't call everyone insane who acts similarly within the forms of our culture, who uses words 'without purposes,'" *Remarks Mathematics*, p. 153).

Schopenhauer had issued the health warning: Hegelian dialectics are 'destructive to all intelligence' (Popper 2003, p. 90) — but it was not adhered to. — The destruction on intelligence was followed by destruc-

tion of life orchestrated by Marx and the Nazis. — But in the tradition of academic philosophy ('the scientific method') philosophers are judged by their fame only (and they do not recognize any mad scientist in their game). — Svendsen, a historian of philosophy, complains that in a number of the more progressive (analytical as they are called) institutions of philosophy there is no instruction in the philosophies of such men like Hegel, Heidegger, Foucault and Derrida (p. 118). — We may conclude that there is some progress after all!

## 7. PERCEPTIONS AND PERSPECTIVES

The realization of the difference between expressions and things has a further decisive meaning in philosophy (or so to say social sciences). Expressions are not 'things' on any level of perception, not even on the highest level of categorization: the economy is not a thing; the law is not a thing; politics (or democracy) is not a thing; the moral is not a thing; science is not a thing, and so on. — That seems like the most common truth and quite unnecessary to set forth. But, this clarity is constantly lost when these words are used in philosophy; sciences; the press; and even in everyday speech: The words are in fact used in such away that they are assigned thingly qualities, and far too often they are even assigned qualities of animate things (the anthropomorphic fallacy). - There is no scientific justification for distinguishing aspects of life under such classifications as 'law', 'economy', 'politics' etc. All these categories are but perceptions of life; perceptions people have given labels to; and under these labels aspects of life have historically been piled and compiled in accordance with the traits perceived in various issues. - Everything can affect anything and everything is but a perception of anything. When we regard issues like law, economy or politics what we see is solely governed by the mode of looking, the perspectives we choose, our point of view — the mind will work with the chosen perceptions (and language really is the 'operational language'). Economics, law, aesthetics, political sciences, theology, they do not exist as such. They are just descriptions to indicate from which point of view we are treating the subject matter. - Winch points to these connections: "Different aspects of social life do not merely overlap... they are frequently internally related in such a way that one cannot even be intelligibly conceived as existing in isolation from others" (Winch, p. xv).

We can say that understanding social life is a question of awareness, being aware of the manifold of aspects interpreted in the light of experience. - Looking at one issue we have to become able to grasp and comprehend what is obscured by our perspectives. - Our capacity for

comprehension is put on test in dealing with complex issues and seeing their manifold appearances.

It is helpful to assign the word 'perceptions' (closely related to 'aspects') to the way we see and 'perspectives' to the point of view from which we look (Although, at best the differences are but subtle nuances). - Wittgenstein: " If on the other hand you wish to give a definition of wishing, i.e. to draw a sharp boundary, then you are free to draw it as you like; and this boundary will never entirely coincide with the actual usage, as this usage has no sharp boundary" (Blue and Brown Books, p. 19).

When dealing with any of these three subject matters the first level of realization is that we have to recognize that none of these are stand-alone systems: there is nothing to deal with in the economy if you do not consider law and politics and so on. — Unfortunately even this much is rarely understood: Economists, lawyers and political spectators deal with the economy, the law and politics as if they would be related to each other like three boxes in a row.

Theories of law are almost exclusively based on the fallacy of not seeing that the whole endeavor is but based on a chosen perspective and the confused perceptions. The underlying human activity is in every case simultaneously law; economics; politics; moral — whatever — the spectator chooses based on his perceptions his perspectives and his vocabulary. This is also why the theories of law are so useless and why Posner's writings are so groundbreaking.

Economic theory is somewhat healthier — and this is mainly owing to economics being the most empirical (i.e. correct) science of them all (life puts economic theories on immediate test, and therefore nonsense has shorter life in economics).

If we allow classifying democracy, law, and economics as separate for presentation purposes we still have to bring all these three aspects of the same into a discussion of any of them: The level of democratic development affects the quality of justice; the economy is actually a function of how democracy and law functions. It is, for that matter, impossible to say, which norms would not affects the economy; the economy affects democracy in so far that in a more competitive economy there is a chance for more competitive (active) participation in the democratic process;

and the democratic process 'produces' all the norms. — (The above is not but a few examples of the interaction). — (And do not think that this means that the wealthiest countries would have the best democracy and law; even wealth is something seen from certain perspectives, which may well be illusory). — (The fascination with recognizing how law and trade have developed hand-in-hand is due to the fact that they are indeed but different aspects of the same activity). - This fundamental notion (interconnection between issues under perceptions) is rarely recognized in legal theory and therefore it is worth mentioning that Rabel has paid attention to it (Zweigert & Kötz, p. 36): "Everything in the social, economic and legal fields interact. The law of every developed people is in constant motion, and the whole kaleidoscopic is one which no one has ever clearly seen."

Posner did not only identify the problem in law, but equally in economic thinking (although it should be stressed that economic thinking works in general fine even without this dilemma, because the healthy parts of economic thinking based on Adam Smith's insights are so strong — yes, and because it is the most empiric science there is). — Posner: "economics" like "law" (or "philosophy," or "democracy," or "religion"), has neither a fixed intension nor a fixed extension, that is it cannot be defined or the net of things to which it applies enumerated", (1993, p. 368).

There is this misconceived idea in science (and philosophy) that we would have to define general terms and list all the common elements that are present in the application of a given idea. — This is how concepts based on particular perspectives, perceptions and circumstances start a metaphysical life on their own. — Wittgenstein has a philosophical metaphor for this (PI 63) "But here we must be on our guard against thinking that there is some totality of conditions corresponding to the nature of each case (e.g. for a person's walking) so that, as it were, he could *not but* walk if they were all fulfilled."

Wisdom is to be able to recognize and to move between various levels of perceptions.

It seems that a central part of Wittgenstein's work was to open our eyes for aspect-seeing, for understanding our perspectives and the fallacy of perceptions.

Problems with perspectives, perceptions and aspects also cause such problems as classifying problems in categories of scales. Stern (1996, p. 18) writes that Wittgenstein "rejects the distinction between the "essential" problems and the rest, maintaining that there are no such "great essential problems in the scientific sense." — This supports my (Wittgensteinian view) that there are no philosophical problems as such - there are just a wide range of everyday problems; problems that may or may not simultaneously affect many people or even humanity at large.

Wittgenstein: "the aspects of things that are most important for us are hidden because of their simplicity and familiarity., we fail to be struck by what, once seen, is most striking and powerful" (PI 129).

All our perceptions are better recognized being on a continuum, or better yet on an infinite number of such and arranged in endless combinations, sometimes occupying the same spot (In mathematics they did not yet recognize this concept — a line is never supposed to be within another one; one cubic meter always contains only one. — And why could not several be within one?)

In Genealogy of Morals (Book III 12, or p. 119; Welshon, p. 129) Nietzsche demonstrates a masterly understanding of the role of perspectives in forming thoughts:

"But precisely because we seek knowledge, let us not be ungrateful to such resolute reversals of accustomed perspectives and valuation...to see differently in this way for once, to *want to* see differently, is no small discipline and preparation of the intellect for its future "objectivity" — the latter understood not as 'contemplation without interest' (which is a nonsensical absurdity), but as the ability to *control* one's Pro and Con and to dispose of them, so that one knows how to employ a variety of perspectives and affective interpretations in the service of knowledge. There is *only* a perspective seeing, only a perspective 'knowing'; and the *more* affects we allow to speak about one thing, the *more* eyes, we can use to observe one thing, the more complete will our 'concept' of this thing, our 'objectivity, be."

Welshon correctly reports on Nietzsche's understanding of perspectivism (Welshon, p. 94) but himself goes on to demonstrate the



difficulty to correctly understand it; he remains a hostage of the language of things and under the spell of language-games on logic. He says:

"If perspectivism is itself a perspective, then there are perspectives in which perspectivism is false; if on the other hand perspectivism is not a perspective, then not every statement is true in some perspectives and false in others. In short every perspectivism applies to itself, in which case it is not universally true, or it does not apply to itself, in which case it is not universally true. Either way it is false" (Welshon p. 105).

This idea Welshon draws from the semantic puzzles in Russellian crosswords, the so-called Russell's paradox. — But 'perspectives' are not things. The very point is that 'perspectivism' is not 'a perspective', but a way of defining a more correct mode of thinking. — This is an instance of being hostage of the language of things. When the fallacy of the language of things will be finally recognized then people will be able to more correctly and consciously operate simultaneously with multiple-layers of perceptions, and thus a healthier understanding.

'Market economy' and 'Socialist economy' do not exist as separate 'things', they are just names for certain perceptions on the economy. There is only one 'kind' of economy; the classification only describes the level of competition in the economic practices: A more competitive economy is on the continuum of perceptions on the side we could call 'market economy', and a 'socialist economy' is on the other side of the continuum, where the competition is more distorted (the greater the number of aspects of life that have been made uncompetitive the more socialist the system can be described to be).

Searle talks a lot about perceptions, but the problem with his discussion is that it is not connected with philosophy; it is a discussion about elementary biology. We learn that 'tables, houses and trees' exist apart from experiences (p. 2). — The problem starts when he introduces a misconceived philosophical distinction between 'observer-independent phenomena' and 'observer dependent phenomena' (p. 4). Observer-independent phenomena he defines as such which natural sciences deal with; such as force, mass, gravitational attraction, planetary system, photosynthesis, and hydrogen atoms. Observer dependent phenomena are supposed to be such that the social sciences deal with e.g. "money,

property, government, football games, and cocktail parties". — I propose to remove this distinction, because all impressions are observer dependent. The difference is that in the nature (the world of things) there are physical objects, and they and their movements can be observed (at least potentially). But what he calls observer dependent do not exist at all, they are just expressions and interpretations; here we do not have anything else than the perceptions to start with. — Sure, at cocktail parties there are things, like the glasses, the drinks, the people, the floors and tables etc, but the things do not sum up to a cocktail party. It is just a certain perception of all that and the way people behave before, at, and after the event that causes Western people in year 2006 to regard the event as a cocktail party (*note that I am even not talking about how we name the event*). — And 'money': money, like the 'state', is the perception of a bundle of standardized agreements. Fifty years ago it would have been more difficult to convince against the hard evidence of coins and notes that money is not a physical concept at all — now I hope with credit cards and e-banking that task is made easier.

But perceptions sure are observer dependent — all perceptions are. The philosophical importance lies in this: we should note that all expressions of social life are but perceptions (I think this is what they aim at with words like mental phenomena or social phenomena; and in language all is about social life, all words are 'products of social life'). And in philosophy, science, and in all our dealings with each other we are constantly engaged in interpreting perceptions and competing for asserting the primacy of our own perceptions.

Nevertheless, the physical problem with perceptions is similar to the mental one. The physical examples help to demonstrate how all is about competing perceptions. — I think that a simile with sunglasses and black and white films could be illustrative: Now without reflecting we consider that all things fundamentally are as they appear to us. If one sees a navy blue shirt in bright sunshine, then the person usually does not doubt that the color of the shirt is exactly as he thinks it to be and that the sky is as clear as he sees it. — But through a camera using black and white film the shirt will not look navy blue at all, not even blue. Now, I would propose to consider the possibility that the human mind is so equipped that the 'film' it makes captures all the aspects only in a certain way dependent on the make of the receiving equipment, i.e. the mind; we would e.g. be equipped with an equipment which make only black and white film. -

Think what difference it makes when you switch to color film. And next think about all the various quality improvements that can be reached. — Similarly our biological 'mind equipment' is just capturing all sensory impressions in the only way it can do so, but certainly it cannot be excluded that there could exist another kind of 'mind equipment' or a better one, and using that all would look different. — Consider looking at the world through sun-glasses, all the colors and shades look different from the usual. Why could we not consider the possibility that our eyes and mind function like the sun-glasses, that the appearances changes with the equipment, similarly dependent on the mental equipment, and the more we are biologically different the more the colors and shades we perceive alter. — Obviously similar reflections apply to all other senses.

Searle illustrates his confusion with the idea of perceptions by his criticism of Hume. Searle writes (p. 142): "Hume's chief negative result about necessary connection can be stated in one sentence: there is no impression of necessary connection; that is, there is no experience of force, efficacy or power, or causal relation...I think that we perceive necessary connections pretty much throughout our waking life..." — Here the point is, as Searle says, '*that we perceive* necessary connections'; yes we do perceive, we really perceive, but these are only our perceptions, they do not become necessary for that. - Hume criticized the idea of a 'scientific cause' — and Searle with his examples only proves what Hume wanted to say; what Hume wanted to say is that there are things and expressions that in life can be understood as causes, but even so these perceived causes do not prove anything scientifically and do not prove anything about future causes and effects. — Searle says "...I actually experience my involuntary movement as caused by the loud noise I heard". — But this is an entirely different use of the word 'cause' — it is already not the purported scientific use, it is a very practical use with an underlying empiric idea that 'a loud noise may be related to subsequent events.' Naturally one would have to consider other 'causes' as well, such as the experience that an unexpected loud noise is often connected with a danger, and that such danger has often preceded physical damage.

Searle writes (p. 179): "...relations between perceptions and the world that exists apart from our perceptions." — We should note that this contradiction is wrong: Everything that exists, exists apart from our perceptions, and what does not exist is just an interpretation of past expressions, and i.e. totally based on our perceptions.

Searle writes: "In last century philosophers usually said that 'We do not perceive material objects, we perceive only sense data'" (p. 180), and: "We never see material objects, but only sense data" (p. 181). — Here he gets the facts wrong. The claims were not that we would not see the material objects; we even see the *same* material objects; but it was claimed (quite correctly) that *we process* our sensations differently (i.e. 'take in the sense data').

Searle uses the method of contradiction, i.e. ad absurdum argument and states: "Only I can experience my sense data. Only you can experience your sense data. But how, then can we ever talk about the same object in a public language? How, in short, can we ever succeed in communicating with each other about public objects?" (p. 190). — This is a very relevant point, only again he fails to draw the right conclusion: The big human problem is this very failure in communication; there is never any satisfactory level of communication at any level of social interaction. At large communication is a failure. Instead of clarity and mental certainty all we have is competition that condenses perceptions and meaning, but also keeps them in constant flux.

There seems to be a pattern that the most fine-tuned philosophical mistakes become evident when the philosophers address their criticism towards Hume, so also with Searle, who writes (p. 205):

Hume "thought that experience always came to us in discrete units that he called 'impressions' and 'ideas'. But we know that that is wrong. We know, as I have tried to emphasize, that we have a total, unified, conscious field and that in this conscious field our experiences are organized both at any given point and across time into quite orderly and complex structures."

Yes, 'our experiences are organized', David and I do not doubt that a bit, but what we are saying is that this very organization is totally dependent on the subjective factors on how we form the perceptions; there is nothing fixed and certain about them (they are often organized falsely).

## 8. INTERPRETATION

Wittgenstein's insight that an interpretation is the substitution of one expression for another is a fundamental insight in philosophy — perhaps this is the key to philosophical 'truth' and the understanding of social life in general. In language at large, and in special language usages, such as philosophy, science and law, we can never reach further than an interpretation — there was nothing else than an interpretation to start with. — Wittgenstein formulated this insight most strikingly in paragraph 201 of *Philosophical Investigation* with the line "But we ought to restrict the term 'interpreting' to the substitution of one expression of the rule for another." — While this line kind of summarizes a very important part of Wittgenstein's work, it also provides a clue to what prevented Wittgenstein from reaching the final clarity (or maybe finally finding the words for expressing the clarity he was looking for). By this I refer to the secondary importance that he attached to the notion, for he in fact gives this characterization of 'interpretation' as a qualification of his discussion on 'rule-following'. Before this major, final, insight to interpretation he writes: "There is an inclination to say: any action according to the rule is an interpretation". He wants to somehow qualify the role of interpretation— to somehow restrict the usage of this idea. — But it is not clear against what this restriction is intended — what is the more general case that we should keep 'interpretation' away from. From what he says it seems like the more general case would be 'the rule' — the rule would be more fundamental than its interpretation ('the substitution of one expression of the rule for another'). Hereby it seems that he never quit himself fully from the mathematico-logical ideas of rules, he kind of remained partially under their spell; he was all the time working with the ideas of formal mathematical logic in the background — these were the ideas he was fighting, the ideas that had bewitched his language and thinking, the ideas that he wanted to free himself from. I think he did free himself from them, but he did not manage to express that in a final clear form. The important is that he managed to provide us with all the insight and methods for formulating the deep insight. — (Wittgenstein:

"Why do we in philosophizing constantly compare our use of words with one following exact rules? The answer is that the puzzles which we try to remove always spring from just this attitude to language", *Blue and Brown Books*, p. 25).

PI 201 refers to PI 200 where he describes a situation where two people belonging to a tribe that is totally unacquainted with our cultures watch a game of chess, and then go over to playing the game in away that is totally different from how we understand it. Instead of the normal moves in chess they would 'yell and stamp' but in such away that 'their procedure is translatable by suitable rules into a game of chess'. — Wittgenstein asks if that compartment should still be characterized as 'playing a game.' In PI 201 he then refers to that discussion and more precisely to the questions he posed - which he characterizes as 'our paradox: no course of action could be determined by a rule, because any course of action could be made to accord with the rule'. — In his conceptual framework he wants to see this as a question of rule-following, and he discusses whether it is so or not. — I think he should have stepped beyond this discussion i.e. dropped the idea of 'rule' at this point (and maybe he did?). — PI 201 continues with 'if any action could be made to accord with the rule, then it can also be made to conflict with it.' — This is certainly true. — Wittgenstein correctly continues the discussion and states 'we give one interpretation after another; as if each one contended us at least for a moment, until we thought yet of another'. We cannot but agree with that statement, but Wittgenstein had denoted that as pointing to "a misunderstanding", he said that it showed 'that there is a way of grasping a rule which is not interpretation, but which is exhibited in what we call 'obeying the rule' and 'going against it in actual cases'. And this discussion leads to the proposition that introduces the main insight; the introductory part of the proposition goes as follows: "Hence there is an inclination to say: any action according to the rule is an interpretation" - (in fact we could see this very proposition as *the* insight). But, he immediately refuted this idea by saying "But we ought to restrict the term 'interpreting' to the substitution of one expression of the rule for another". — What Wittgenstein called the 'misunderstanding' was in fact not the misunderstanding, but it was the very conclusive point. — Of course 'any action according to a rule is an interpretation'; this because we simply do not have anything else to go by. A 'rule' is not a thing; there do not *exist* any rules, all we deal with are expressions and interpretations.

When we discuss interpretations we usually proceed from the idea, that there is something fixed which we then go on to interpret. The candidates for this 'fixed' are e.g. other words, and when such cannot be identified, then there emerges a metaphysically posited 'rule' — this is what has led to all the speculation around 'rule-following'. Usually the question would be about interpreting language. — And we are indeed constantly interpreting language; sometimes interpretation is done as a concentrated effort. — But, the fundamental philosophical question should not be about interpreting language, but the feelings that are behind language (most of all we just interpret by being — being consists of interpreting). Language as such is the tool for expressing interpretations. — The restriction of the notion 'interpretation' to interpretation of language (e.g. in paragraphs 200 and 201 in PI) is an illustrative instance showing that the solution of a philosophical problem is left hanging, because one keeps forgetting to go right down to the foundations, when one doesn't put the question marks *deep* enough down (Wittgenstein, Culture, p. 62). - On page 148 Stern (1996) discusses the essence of language. Stern points out that "Language, considered as a system of signs, always needs to be interpreted, supplemented by 'primary language,' intrinsically meaningful processes ". — This is certainly true, correct, and an important insight. — However, this use of 'interpreting' helped me to reach the next level of thought. - I felt that I found what needed to be stated — that the object of our interpretations was not primarily language, but the underlying feelings. — By way of this remark we should be able to appreciate the depth of what means interpretation, and why it is such a fundamental notion: the fundamental, what happens deep down, are the feelings and they have to be clarified internally in thoughts and externally in expressions - and as these expressions are nothing but feeble means of interpretation, then it means that they are but interpretations themselves. — All the lack of certainty, the difficulties with meaning etc. simply follows from this very thesis: When all we have to start with is an interpretation, then obviously we cannot move any further than another interpretation (it does not become firm on the road). — (Stern says [1996, p. 119]: "We try to give our explanations so that they will not be misunderstood, but we never reach a self-evident stopping point: every explanation, even a simple color chart, can be given a deviant interpretation." — Stern is very much on right track here, but it is rather disappointing that he did not find time to further develop this fundamental idea).

We should carry the notion of interpretation yet further beyond the paradigm expression — interpretation, to understanding that the paradigm

also translates into the *exchange of one interpretation with another interpretation*. All expressions are originally interpretations — the most genuine expressions of one's own feelings are interpretations of the feelings.

In PI 198 Wittgenstein addresses the same problem from a different angle:

"But how can a rule shew me what I have to do at this point? Whatever I do is, on some interpretation, in accordance with the rule," - That is not what we ought to say, but rather: any interpretation still hangs in the air along with what it interprets, and cannot give it any support. Interpretations by themselves do not determine meaning."

Here the discussion is about the interrelation between 'interpretation' and 'meaning'. It is correct to say that interpretation does not determine meaning. This, because, nothing as such 'determines' meaning; meaning is the result of all the circumstances (i.e. 'all that is the case'), and we interpret these circumstances. Interpretation does not determine meaning, but interpretations are first internally (in the 'mind') expressions of the meaning, and then subsequently we give to the external expressions of these personal internal interpretations (and these expressions are open for further interpretations). — At no point do we reach a final meaning — i.e. interpretations *de facto* do not determine meaning, but that does not mean that anything else would do it either. — It is remarkable that in this same paragraph PI 19 8 Wittgenstein characterizes 'rules' (or even better 'expressions of rules') as 'sign-posts' and even uses them synonymously in saying that 'a person goes by a sign-post only in so far as there exists a regular use of sign-posts' — i.e. he tells that 'rules' are but customs (And I would want to anchor this in the insight that customs in turn are the results of interpretation of past expressions). — In PI 199 he confirms that 'obeying a rule' is a custom (in PI 202: 'obeying a rule is a practice').

I find it helpful to analyze the above issues in light of Stern's discussion of Wittgenstein's notion on interpretation. Stern (1996, p.118 footnote 97) correlates PI 201 with Philosophical Grammar paragraph 99, which in turn is identical with paragraph 234 of Zettel (Zettel, p. 43): "What happens is not that this symbol cannot be further interpreted, but: I do no interpreting. I do not interpret, because I feel at home in the present

picture. When I interpret, I step from one level of thought to another". — This provides a lot of material to understanding the confusion. It shows what Wittgenstein meant by 'interpretation'. In this context we see that he means an activity when a person engages in interpretation after he feels a need for it. — [I had an inclination to point to a distinction between conscious and unconscious activity, but on second thoughts I rejected the idea]. — But I think that interpretation is the continuous activity that a human is engaged in all his life. Thence we do not step from one level to another, but we slide on a continuum through various intensities of 'interpretation' (shades, grades of intensity).

Wittgenstein is said to discuss an issue that philosophical researchers call the 'private language issue'. I think this philosophical classification as such is misleading; it does not convey the idea of what Wittgenstein was aiming at (Stern, 1996, p. 175). I rather attach to the relevant sections of the *Philosophical Investigations* importance from point of view of understanding the meaning of interpretations, and even specifically interpretations of feelings i.e. the very fundamental base of philosophy and language — (Isn't the whole idea to discuss 'private language' at least a contradiction of terms, and nonsensical as a philosophical issue? Whatever is language is social). Hereby special relevance should be attached to PI 256 and 243.

In PI 256 Wittgenstein says: "Now, what about the language which describes my inner experiences and which only I myself can understand? How do I use words to stand for my sensations?" — Here Wittgenstein's connects language with sensations, i.e. feelings, very directly. He dwells on the fundamental nature of language as giving expression for experience (which should be understood as external and internal, and in this case internal). — He goes on to state that there are words that people commonly accept as expressions for feelings: "Then are my words for sensations tied up with my natural expressions of sensation? In that case my language is not a 'private' one. Someone else might understand it as well as I." — This idea must be the one that is connected with the 'private language argument', but I would rather connect this to the search for 'meaning' i.e. to the idea that words that relate to common experience have a common meaning. — Further the paragraph continues: "But suppose I didn't have any natural expression for the sensation, but only had the sensation? And now I simply associate names with sensations and use these names in descriptions." — Here Wittgenstein deals with a situation where one has to come up with new words for sensations that

have not been described earlier. What he is really saying is that he is interpreting (*note that interpreting and giving expressions to interpretations really are the same, or different aspects of the same*) the feelings by attaching 'names' (words from the selection we use) to them. — And this is really very close to the idea of us doing the same kind of interpretation all the time, because each feeling is unique, each situation is unique, and we always but 'associate names to our feelings'.

In the second paragraph of PI 243 Wittgenstein is very directly in on the same theme:

" But could we also imagine a language in which a person could write down or give vocal expression to his inner experiences — his feelings, moods, and the rest — for his private use? — Well, can't we do so in our ordinary language? — But that is not what I mean. The individual words of this language are to refer to what can only be known to the person speaking; to his immediate private sensation. So another person cannot understand this language."

I think that this is a statement in favor of two ideas: one, that Wittgenstein in fact is dealing with the issue of interpretation of feelings, and second, that he confirms that any meaningful language is fundamentally public, while the public character of language is at the same time the restriction that prevents us to reach deep down to the inner source of thinking, feelings.

In PI 244 Wittgenstein really says it all: " How do words refer to sensations? — There doesn't seem to be any problem here; don't we talk about sensations every day, and give them names? But how is the connexion between the name and the thing named set up? This question is the same as: how does a human being learn the meaning of the names of sensations? — of the word "pain" for example. Here is one possibility: words are connected with the primitive, the natural, expressions of the sensations and used in their place... the verbal expression of pain replaces crying and does not describe it." — I stress that he says "Here is one possibility: **words are connected with the primitive, the natural, expressions of the sensations and used in their place.**"

The problem is " For how can I go so far as to try to use language to get between pain and its expression?" (PI 245).

For a human being is constantly engaged in interpretation; through the senses we interpret the outside world; the body in manifold processes constantly interpret what is going on in the organism (the homeostatic regulation system; hereby we can see that there is no such sharp distinction between a man's external and internal world). — Most of the interpreting goes on unconsciously (we cannot draw a line between conscious and unconscious interpreting). — In the social connection we interpret the language (language in the broad sense): I hope it is clear that there is not 'a single atom' which is not the object of our interpretations — all that we perceive with the senses becomes the object of interpreting. — And now if we say that interpretation means that we exchange one expression for another — then this must be the truth. - The truth is that all what we deal with are interpretations, there is never anything more fundamental to be found — in anything. — Now, we have unfolded the riddle of truth — I can sense a deep disappointment among the absolutists. They all wanted to privatize the truth — but now, how can one privatize an interpretation! (Be calm it is all privately yours). — (And this just shows how little has been achieved by this insight.)

Goethe said: 'all that is factual is already theory', (Ebenstein, p. 13). In light of my conception of interpretations one can understand that what Goethe apparently meant was that we are constantly interpreting the input that the senses capture. What is factual is what we have experienced, but this factual is also a theory, because interpretation is a part of perceiving, and interpretation is a theory. Ebenstein draws hereby the correct conclusion that there are no atomistic facts in this perspective, because all experience is an interpretation of experience.

Language is used for expressing feelings — but as language is very underdeveloped for the task, the expressions are in fact only interpretations of the feelings: Feelings are more complex than the language that expresses them (even language in the broad sense). — This is what makes the task of interpretation of feelings an infinite endeavor. - Wittgenstein: " There really are cases where someone has the sense of what he wants to say much more clearly in his mind than he can express in words " (Culture, p.79). - "I never more than half succeed in expressing what I want to express. Actually not as much as that, but by no more than a tenth. That is still worth something" (Culture, p. 18).

Wittgenstein pointed out that various issues affect expressions (and if they affect expressions, then they also affect interpretations): "What he really

'wanted to say', 'what he 'meant' was already *present somewhere* in his mind even before he gave it expression. Various kinds of thing may persuade us to give up one expression and to adopt another in its place" (PI 334).

"But the expression of our thoughts can always lie, for we may say one thing and mean another" (Blue and Brown Books, p. 42).

"There is always the danger of wanting to find an expression's meaning by contemplating the expression itself, and the frame of mind in which one uses it, instead of always thinking of the practice. That is why one repeats the expression to oneself so often, because it is as if one must see what one is looking for in the expression and in the feeling it gives one" (Certainty, p. 601).

Wittgenstein:

"What happens when we make an effort — say in writing a letter — to find the right expression for our thoughts? - This phrase compares the process to one of translating or describing: the thoughts are already there (perhaps were there in advance) and we merely look for their expression. This picture is more or less appropriate in different cases. — But mayn't all sorts of things happen here? - I surrender to a mood and the expression comes.... "What did the thought consist in, as it existed before its expression?" (PI 335).

### Interpretation and Law

Notwithstanding the underlying dogmatic beliefs in the exactness of law, interpretation has always fascinated legal scholars — this is because behind all the imaginary theories reality always kicks in — and in all human communication interpretation is all there is to it: Want it or not at the end of the day it is about interpretation.

The realization that there are only expressions and interpretations ultimately leads to the revelation that there is no correct interpretation. What seems like the legal truths are the perceptions created by the competition-like activity. The scoreboard of truth is a function of the competitive process. — This revelation effectively removes the hat from the riddle of law.

Theory of interpretation (i.e. interpretative arguments) has always been a very important part of any study on law. Nevertheless, philosophy of law does not admit of interpretation as the fundamental activity, rather in it interpretation is treated as a means to fill the gaps between theory and practice (and there sure is a lot to fill). In those theories interpretation is always something additional, something secondary. — There is, though, a marked movement forward towards a healthier notion of law especially in the American pragmatic traditions. — But the absolutist are also on the march: now there is a search for general theories of interpretations as well — they have kind of sensed that it is all about interpretations, so now they think, in the traditional way, that all there is to do is to capture the 'rules of interpretation' in some kind of theory — a futile endeavor! — (Similarly Sunstein says [p. 167]: "We are unlikely to find a good general theory of interpretation. Interpretative practices are highly dependent on context and on role, and by abstracting from context and role; any theory is likely to prove uninformatively broad or to go badly wrong in particular cases. For similar reasons, there is no such thing as a good general theory of legal interpretation, though some general claims about interpretation in law can clarify matters and guide inquiry").

In his philosophy of law Aarnio establishes that meanings do not exist as such and that they are merely given in interpretation (Aarnio, p. 143, in reference to Wittgenstein). — (Although the idea is in the right direction I would anyway caution against language such as 'meanings are given' since that could lead to the impression, that 'once given they exist.')

Legal interpretation theories (and practice) proceed from the notion that there is a true meaning, a true expression, which can be grasped by sharp minds engaged in a proper and meticulous interpretation activity. As if one would be able to reach the final, real, meaning like Dworkin believes e.g. "judges in Dworkin's view interpret principles to discover the law applicable to the case at hand" (Posner 1993, p. 21). In European (very notably in Russian) legal theories 'correct interpretation' is guided by the promotion of the ideas of 'sources of law', i.e. claims that it would be possible and advisable to list the priority orders of 'acceptable' legal arguments (some kind of scholarly rankings of arguments), and that in reality judges would in their administration of law be bound by these rankings (While in reality all that can be achieved hereby is to try to convince people that some arguments are more important than others,

and many are convinced *in theory*). - All the items in the 'source of law' lists are in further need of interpretation anyway, so the regress continues (The same is true for the theories on interpretation — whatever theories one gives, they are all always in needed of interpretation - it still would be a market activity where all issues may affect anything). — Stern says: "We try to give our explanations so that they will not be misunderstood, but we never reach a self-evident stopping point: every explanation, even a simple colour chart, can be given a deviant interpretation" (1996, p. 119). Wittgenstein notes that we use judgments as principles for judgments. — "Our rules leave loopholes open, and the practice has to speak for itself (Certainty, p. 139).

When we understand that in law we are exclusively dealing with expressions and interpretations we will see that there is hardly any more fundamentally flawed concept of legal dogmatics than Dworkin's idea that 'every legal question has a right answer'. — There can never be a right answer, only more or less bad answers. Only real justice would be a right answer.

Having 'discovered' interpretation the American theories of law depict a fascination with classifications of normative expressions in notions such as 'policy' and 'principle'; scholars, such as Dworkin go to lengths in trying to prove that there would be a fundamental difference between these (Posner 1993, p. 22). Whereas in fact any 'principle' can be made to fit a 'policy' and vice versa — the naming of the types of arguments will not attach any scientific value to them. Law can be seen as a drill, where "we are taught judgments and their connexion with other judgments. A totality of judgments is made plausible to us", Wittgenstein (Certainty 140). — "Dworkin has created a rich vocabulary for masking discretionary political decision making by judges", (Posner 1993, p. 23). — "The judge is not making a new rule, but interpreting a legal tradition" (Posner 1993, p. 23).

In interpretations there is an infinite regress — "And one pattern in the weave is interwoven with many others", Wittgenstein (Zettel, p. 100)" — When we grasp one aspect of meaning we have to consider ten more — and this is not a philosophical notion: an honest interpretation never ends. In practice people have to make a compromise between expediency and honesty. — By admitting this we could disperse the spell, the aura of glory surrounding the concept of interpretation. - Posner speaks

about the same notions with a specifically legal lexicon: "The decisions that judges are required to make in fitting rules to facts can be described either as interpretation or as making of ad hoc exceptions and adjustments , in effect the continual remaking of the rules. Practically these are the same but judges prefer the first formulation, the interpretive, because it casts them in the less creative and, therefore less usurpative-seeming role" (Posner 1993, p. 46).

When we understand this fundamental role that the activity of interpretations has in law, we can also better appreciate the futility of the positiv-ist credo: Now we can see that what the positivist call 'laws' could equally well be called 'interpretations', i. e. when they are busy promulgating laws they are in fact issuing interpretations (or even 'normative proposals', I later call them 'strong arguments'). — And what makes people think that there is something so absolute and venerable about it? — Tuori says (p. 6): "In 'mature' modern law there is no place for natural law; all law is human law". He continues "not only natural law but also traditional law has lost most of its significance under the expansion of positive, i.e. expressly posited law." — But, later he says (Tuori, p. 159) that the expression of law is mainly linguistic and therefore "the law must be constantly reinterpreted". The contents of law "cannot be deciphered without interpretations ". — And this deciphering with interpretations in essence brings us back to the quest for justice: and this again is where natural law theories (i.e. argumentation for justice) come back to the picture. — (I feel a need to comment on the idea opposing 'natural law' and 'human law' by stressing that 'natural law' should in no case be taken to mean a claim that there would be some laws inherent in the nature — like mathematicians think about numbers — 'natural law' is just the slogan for the arguments that law, in fact, is a quest for justice).



## 9. ARGUMENTS

Law can be said to be the perception on life whereby we analyze the continuous interchange of arguments, arguments aimed at influencing the behaviour of people in relation to others. This interchange of arguments is the competition of arguments, i.e. the activity we call law. — But contemporary theories of law completely fail to see law as a competition of arguments, and rather law is depicted as a discovery and application on people of rules, which essentially are conceived as 'things'. — Law is an activity where ritual masks reality: In law people have goals that they want to achieve, and in order to achieve the goals a set of arguments are put forward: and these arguments are presented in the language, the grammar of law. — The grammar of law is the language of legal rituals — this language tries to make it seem as if the desired consequences, the targeted results, would follow from the law, from a set of objective prescriptions (the concepts). - But fundamentally all activities cannot be but real ('if you do something, mustn't you be doing something real') — and what is real about law is that is a competition of arguments, and nothing else (this is the truth, all truth, and nothing but the truth).

The pills we are asked to swallow in the practice of law are rules (in essence normative expressions), that come in the form of laws enacted by a 'lawmaker' (a parliament and similar gatherings of people) or a court (the written laws of the courts are often called 'unwritten law' as opposed to the written laws of the lawmaker). - The practical role, the real role, of the 'laws' is that they serve as strong arguments in the legal practices - (Posner: "Positive law and natural law materials are inputs into the activity we call law", 1993, p. 239). The 'strong arguments' are not strong as such, but as long as enough people have faith in a particular law (and especially those in power) then the normative expressions depicted in a particular text (i.e. a text called 'law') serve as strong arguments. — A day later the strong argument could have run out of oxygen and shrunken to nothing, for example as the result of the emergence

of other strong arguments — such as e.g. when a group of generals successfully send out tanks and soldiers to the streets in the making of a coup. — Pulling a gun has served as a very strong argument in the history of law providing serious competition to efforts to produce other kind of written and unwritten law.

This is how law is a competition of arguments, where some arguments are stronger than other ones, not because they would have a property of being strong, but such effects. — All efforts to provide rankings on what kind of arguments ('sources of law') should be considered more respected than others — are themselves arguments among arguments (even if they would be enacted in a statute; only within a language-game e.g. the purported positive law of a country can they have a meaning — but not in the scientific reality). - Posner on many occasions seems to argue in favor of the idea of competition of arguments: 'The inquiry into whether and to what degree law is objective, impersonal, determinate; whether, in other words, it is an external constraint on judges' cannot be answered by methods of legal reasoning" (1993, p. 37). — Posner: "Too many of our judicial opinions contain unexamined assumptions, conventional and perhaps shallow pieties and confident assertions bottomed on prejudice and folklore" (Posner 1993, p. 97). — Posner: "A person should not surrender deeply held beliefs on the basis of a weak argument just because he cannot at the moment find a stronger one in defense of those beliefs" (Posner 1993, p. 124). — "What is political consensus, but a name for the will of the stronger?" (Posner 1993, p. 126). - Posner: James Boyle said, "that for every reason one might offer in support of a particular outcome an equally powerful reason against could... be found" (Posner 1993, p.255). - Sunstein' s ideas about incompletely theorized judgments equally points to the idea of law as a competition of arguments (p. 5).

Law cannot even be about anything else than a competition of arguments, because there is nothing to prove in law: Opinions cannot be proven; feelings cannot be proven — they can just be promoted and defended — and this is what happens in law. There is one issue, though, that can both be proven and equally does not need to be proven (it goes without saying): This is the unquestionable right to life — but this is not an argument as such, it is a biological fact: life ends at death. From this follows the foundation of justice, which is the respect of life. Life belongs to the individual, when the individual dies life ends; Wittgenstein: "At death the world does not alter, but comes to an end" (Tractatus 6.431). — With the individual life dies all that counts — and no social justice will remedy that.

Argumentation is not a feature specific to law; argumentation is all that social relations are about. — Again: There are no separate activities that could be categorized as 'law', 'philosophy', 'science', 'leadership', 'business'...there are only different aspects of life — and you deal with these aspects by way of looking at life from certain points of view or wearing certain spectacles (we constantly look at life through various lenses and our view is determined by the platform where we stand on — both the lenses and the platform are produced by our language and hereby we are all under the influence of our environment). - ("All testing, all confirmation and disconfirmation of a hypothesis takes place already within a system... This system "belongs to the essence of what we call an argument" Wittgenstein in *Certainty*, p. 105). — Winch was on right track when he suggested that 'social interaction can more profitably be compared to the exchange of ideas in a conversation than to the interaction of forces in a physical system' (Winch, p. xviii). — For it is a competition of arguments, and arguments are communication.

Wittgenstein: "At the end or reason comes *persuasion*" (*Certainty*, p. 81). — "Whether I *know* something depends on whether the evidence backs me up or contradicts me" (*Certainty*, p. 504). - "Sufficient evidence passes over into insufficient without a definite borderline" (Zettel, p.78).

## Precedents

Precedents are special kind of arguments, one of many 'types'. - "Cases citations often are used ...to make an opinion look more solid than it really is" (Posner, p. 93).

The doctrines on precedents provide a perspicuous insight to the role of arguments. Precedents are referred to with the aim to promote the arguments that particular individual judges rank higher than other arguments in the normative competition called law (and nobody should think that they represent anything else than the opinions of the judges). Often precedents tell about success stories, when previously inferior arguments have risen in the hit parade of arguments.

A legal rule is a condensed perception on how various arguments relate to each other in situations which resemble each other. These condensed perceptions create ideas of what law should be (this is what often is taken

to be the 'identification of laws'). It is in this line that the Roman lawyer Paul claimed (Nersesyantz, p. 51) that rules do not make law, but from it existing legal rules can be drawn. When Emperor Justinian codified Roman law, he in fact codified the condensed perceptions prevailing at the time, the historic life experience that had come to seem like an objective reality. - Codification is a means, an attempt, to deep-freeze the competition of arguments to the status as per a certain balance date, the date of codification (and this is always done on the expense of justice). — Sunstein (p. 121) is against an orthodox reverence of rules precisely on this account: "Rules are obtuse; ideal justice is flexible and based on the situation at hand. — "A reason given in one case may generate a bad outcome in another case" -(In line with the American modern tradition he wants to make the distinction between 'reasons' and 'rules' but correctly concludes that both are insufficient notions.)

The increasing (not fully conscious) realization that law is about argumentation, and the fact that European courts are also taking some tentative steps towards justice, is in Europe often referred to as 'the Anglo-Americanization of law,'(which is 'manifested by increasing arguments for principles', Tuori, p. 164). — I would characterize this trend rather as an opening towards common sense and a gradual liberation from the positivist yoke (one would hope).

Holmes was working on some kind of a formulation of an idea of competition of arguments. He put it, as Posner reports (Posner 1993, p. 221), like a 'metaphor for freedom of speech: the marketplace of ideas': "The best test of truth is the power of the thought to get itself accepted in the competition of the market". This notion, Posner notes, rests on the skepticism about the possibility of settling intellectual disputes by reason, which could then be embodied in law.

The doctrine of binding precedents is a perverse concept. By this doctrine earlier rulings are taken to decide what is to be counted as the law (Until recently the highest courts of England, the Courts of Appeal and House of Lords, were bound to treat their own previous decisions as absolutely binding, Zweigert & Kötz, p. 259). — But if all what is anterior is binding, then there would never be any 'precedents', because they would never be able to emerge from the yet anterior (endless regression to the yet older; "All but one decision in a chain of precedents may have relied uncritically on the first decision", Posner 1993, p. 118). — We see

that by 'precedents' people in fact mean something new, the latest form of a normative expression — And what produced that expression? — It was the outcome of a competition of arguments. - Hart (pp. 153 and 154) demonstrated how the English courts manipulate the rules concerning the binding force of precedent in the cover up for the actual functioning of the legal system; Zweigert & Kötz: "In Continental law systems there are no rules that compel a judge to follow the decisions of higher courts, but the reality is different" (p. 262); "Llewellyn showed that the judge had at his disposal dozens of techniques by which he could cull exactly what he wanted out of previous decisions" (Zweigert & Kötz, p. 248). - Of course this is how the competition of arguments functions, all the notions on binding force of precedents oscillate between wishful thinking, propaganda and ignorance. — Posner notes that the doctrine of precedents is built on the idea of "treating cases decided in different eras as if all had been decided yesterday" (Posner 1993, p. 3). — (Posner: "A common symptom of formalist discourse is to treat a decision as a *reason* for, rather than as a source of, the holding for which the decision is cited" [Posner 1993, p. 81]; "All analogies are from the user's standpoint, precedents, that is things that go before" [Posner 1993, p. 89]; "Distinguish between precedents as authority and precedents as information", Posner 1993, p. 95).

Contrary to the idea of 'sources of law' we can never make an exhaustive list of factors which affect the argumentation in a court (not to mention ranking arguments in an absolute order of priority); Similarly Sunstein (p. 29) tells that "In most contexts, no predetermined list of factors can be exhaustive. Life may turn up other factors that are hard to point out in advance."

## 10. COMPETITION

Expressions are no things. - Natural sciences study the movements and properties of things — they may or may not follow the laws they are claimed to follow — new information will reveal new connections, new depths of nature, the search goes on — there are things to know about 'things'. But expressions are only interpretations; an interpretation is the substitution of one expression for another — it does not get any better than that — nothing will reveal any more fundamental truths of social life. This is where explanation comes to an end. - "But, then this is all blowing in the wind, and nothing is steadily anchored on the ground" — Yes, that is how it is: nothing is steadfast; nothing is rule-governed; nothing necessarily follows from something else. — "But, then how does life function — surely there must be something". — And sure there is: there is competition.

Wittgenstein rejects the scientific crave for explanation and generalization (people think that "something must be taught us as a foundation," Certainty, p. 449). — When we speak about an organizing idea (like my idea about competition, then we are giving something as a foundation. But, this is a very different kind of notion 'foundation' — not the kind of hard foundation from which all stems, but rather a simile on how one could understand social life - it could even be seen as the explanation for the absence of an explanation; competition densifies perceptions and thus creates a seemingly solid base for life). For me competition can be seen as the basis, as an organizing idea on how the loose ends of expressions and interpretations and perceptions are tied together in life. — In this sense competition is the foundation.

"The difficulty here is not, to dig down to the ground; no, it is to recognize the ground that lies before us as the ground" (Remarks Mathematics, p. 333). - All social communication - (yes, indeed all social is communication) - is bound together as a function of an endless human competition. The results of this competition are the perceptions

of life we have — the endlessly varying perceptions, which sometimes, from the wrong perspective, seem so constant. This is why the morals seem so incontestably true for some. — This is why the morals change - because the game never stops, not for a second. It is a competition of arguments, endless arguments — all expressions are arguments.

Competition binds the expressions together and the reality we see is a balance sheet date perception on how arguments stand. " Here we come up against a remarkable and characteristic phenomenon in philosophical investigation: the difficulty — I might say — is not that of finding the solution but rather that of recognizing as the solution something that looks as if it were only preliminary to it. "We have already said everything. — Not anything that follows from this, no, this itself is the solution! ", Wittgenstein (Zettel p. 314).

Competition is a notion philosophers are hostile to — when competition emerges as an explanation it is denied to the last. It is very rare that somebody has given any significance to competition outside the realm of economy like Hayek did (With the analogy from the economy Hayek recognized the successful use of competition as the principle of social organization, Hayek, 1994, p.42).

There has always been a wish to arrest competition — it is so much easier to control others when there is no competition: Totalitarian thinkers from Plato to Marx have designed their systems on the arrest of competition — competition and freedom go hand in hand like totalitarianism goes with monopoly. — Arrest of competition is the chief aim of all despots, both macro and micro despots — everybody that wants to control anybody and anything moves about to arrest competition.

But, this one is not a thing either — there is nothing to arrest, there is nothing to stop, there is no choice — there is only disaster in store for trying to arrest competition (and a lot of victims on the road) . — In the economy, in law, in democracy — all over competition is the enemy of the rulers. (Jealousy is the restriction of competition on the level of the individual — and it seems it does not work there either).

I must stress that I do not want to glorify the notion of competition — it would be like glorifying air (although we all get a satisfaction from fresh air) — we need air for breathing whether we want it or not. And since

there is nothing fixed in social life it naturally follows that there is competition for only that is the function which makes a sum of the individual actions (starting from the infinitesimally small actions). — Competition is not to be blamed for anything, although imperfect competition and abuse of market position (in all aspects of life, including religion) is always to be blamed — all problems in life stem from attempts to prevent competition.

NB! My competition explanation is not like Darwin's (or as Darwin has been understood — so-called Darwinism) 'the survival of the fittest'. Far from this — competition is just the binding factor of reality or being — what is 'is', and it 'is' because the notion that I call competition feeds us with such a perception. — There is nothing to glorify in competition - if anything is correct in 'Darwinism' (especially the social one) we can read it as an explanation of survival of the cruelest, the luckiest, the most ignorant, the most-selfish etc. — And this is because of incomplete competition — the first victim is language and the rest follows from that.

NB! This is an open-ended competition; the participants are many (an unlimited number); and there is not a winner only a leader, i.e. front-runner, and leader only in certain sub-fields — competition is just the best available word to describe it — concurrence, running together. — Individual cases may or may not be perceived to have a certain outcome, but in social life (in life) there is never a result, there is only a balance sheet date view (at best) how arguments stand — nothing is fixed and nobody, no arguments are the absolute winners.

(One consequence of competition is that you can never convince people of 'the right' — at best you can only receive adherents to some of the aspects of your ideas).

Competition has been widely enough recognized as the driving force of economy (the invisible hand) — and this is really the model that helps us to understand that it works the same way in all social spheres. — The performance of the economy can be perceived through tangibles produced and the level of material welfare — therefore there is this empirical perception between competition and the results. In other spheres of life we do not have these measures to help us see the direct connections (sorrow cannot be measured). So, people do not notice the competitive mode in the other fields of life — there are no results that can directly

enough for the general audience of professors be traced back to competition or a lack of it (the tangibles are missing, and bodies do not count).

We cannot measure (and should not try to measure) moral values; justice; or democracy — although, they all are the outcome of competition — the outcome of a law suit is the outcome of competition; the law adopted by a parliament is the result of competition; the various interpretations of the laws are based on competition; the perception of good and bad (in each individual case) is the outcome of competition of arguments, or values argued for.

Competition cannot be arrested, but competition can be hampered: like building a dam — but that will not stop the water from flowing, the dam will change the movement, but if the dam is wrong and not strong enough the water will burst it. When one kind of behaviour is artificially prohibited, then another kind of behavior will ensue — but natural behaviour cannot be stopped.

In a similar way all economy is a market economy — there is never a choice between a market economy and a planned economy. One can create an illusion of planning, and, indeed, something can be planned (we all plan something more or less) — but the whole economy cannot become a planned one (there is no such 'thing'). What a planned economy means is that a serious disturbance has been introduced to the economy (like an illness imported from outside to a healthy body) — surely one can do so, but life goes on anyway, the competition goes on, the competition is forged in different forms (good or bad) but it never stops: the language, the expressions change but competition continues. — The effects of artificial intrusions are always bad. And the intended results can never be reached in the long run.

But even a political system is always a democracy - (this is why I prefer to use the word 'democracy' instead of 'political system') - Democracy exists on a continuum from good to bad. The extreme case of bad democracy is where a ruthless dictator is in charge — but even here she is in charge only as long as she can — until she is stopped by the people at whose mercy she is. Some of them, like Stalin, use the time-tested arguments of killing to cling to power. But, he too needed to fight the people for his power, and with an extreme form of abuse of power he was successful (in keeping power) — this was an extreme form of monopoly

of power. We sometimes hear it said 'that democracy is the worst form of Government except all those others that have been tried from time to time'. But, this is a gross misunderstanding - all political systems are about democracy, there are no alternatives — it is only a question of the quality of the democracy — democracy is a competitive system, which has to be made ever more competitive. What should be said is: 'indeed, the more competition there is in the democratic system the better we can see what failures non-competitive systems bring about'. - The quality of democracy is a result of competition — the better the competitive framework the better the chances for the democratic system to work.

Sometimes people are forced by the arguments of violence to put up with a lot, but the tyrant is all the time on the look out and whatever she does is in relation to the real power base: the people. - Sometimes the ruler has to bribe a group of influential people to guard her against power — this is also just a means to hinder competition.

Sometimes the ruler even tries to bribe the whole people — and often with quite a lot of success.

The quality of democracy is a function of free competition. One measure of the freedom of competition is the freedom of going to the ballots: are there ballots, can you go and cast your vote and are the votes fairly counted. — This is the primitive base notion on democracy. It certainly is an important feature of democracy — but as such, without consideration to all other conditions of democratic competition it is meaningless. — (Many forget that already in the Soviet Union they had the ritual of confirming the monopolist at the ballot boxes).

Like in the economy so also in democracy the essence is free competition — if there are no conditions for competition, then there are no conditions for democracy either, and if there are no conditions for democracy the conditions have to be created. (And this is what the two democratic presidents of Russia have devoted their rule to: create the conditions for democratic competition. - For without competition the power belongs to those who can buy or steal it - often there is no real difference - to the monopolists and the bandits).

At the macro level one has to see the aspects of law, economy and democracy as different angles of the same issue. To have a good democracy the economy has to meet a certain basic level of sufficiency. To have

a functioning system of law there needs to be a decent democracy (among other conditions) — to have a good economy, in the long run, a good system of law and democracy is needed. And these all move hand in hand. One cannot create a functioning democracy on a vacuum and the same with law and economy. — There is nothing new or surprising with this - democracy is a function of the conditions for competition.

Information is the fuel for democracy (you build it and you spoil it with it). The quality of mass media, the press, is decisive for democracy. This is the real Achilles' heal of democracy. But this fourth power, as the media is called, is increasingly becoming the first, because only the media is above criticism. The media is increasingly taking the role that formerly belonged to the churches on deciding what is the moral, the ethical good, by becoming the highest arbitrator of democracy; of what is correct; the highest judge, even the hangman and the butcher — all in one. Hereby the idea of freedom of speech has received an odd twist. One would think that freedom of speech means that all are free to speak — and to be free to speak, there would have to be an opportunity to speak. But in fact freedom to speak seems to be reserved to them those that control the press — there are a few dominant sources of media and the vast public does not really have a chance to speak freely. Increasingly the individual becomes a victim of abuse from the media. The media sets the terms on which one speaks. If you engage with the media, then be prepared to lose your integrity, you become theirs on their terms. Increasingly we have instances where the media acts like a gang of rapists, where the journalists chose their victims — the rapes were motivated and excused with reference to the woman's appearance: " She was dressed in an appealing way; she moved sensuously... she asked for it". — The journalists: "The person, our target, acted in the public, the person gave interviews, she even asked to be interviewed and referred to; she became ours — she asked for it. If you do not want to be free for our prey, stay out of public life, be timid and show respect to us, the new church."

Freedom of speech is certainly one of the most cherished notions civilizations have created — but shouldn't it then be free? And freedom exists there where there is free competition, and free competition exists there where there are no monopolies and abuse of dominant market position. — The media of our times does simply not meet these criteria. When the notion of freedom of speech developed there existed in Europe and America a lot of competing press, and market entry was easy. — Today

there is a dominant press in every region and no real chance for choice. The press has been institutionalized. — Even the sources of information have been institutionalized; increasingly the global press uses the same sources of e-mail evidence for spreading the official truth.

In defense of freedom of speech the media has to be made liable for the words; the media has to be made to honor and respect the life of the individual.

Measures to secure competition has to be made available for the media also: when necessary a trust has to be broken up and publicly financed and controlled media has to flourish on equal terms with the commercial one — but public financing should not mean something controlled by the parliamentary majority, but by competing views (any means of securing competition of views should be ensured — one could even conceive of making pages and air-time available for competing views in the monopolistic publications themselves under competing editorship.)

A Western politician who dares to challenge this new powerful church will soon find himself in the ranks of former politicians — such is the power of the controlled market.

Hayek understood the meaning of a competitive free press (1994, p. 43) "the functioning of a competition not only requires adequate organization of certain institutions like money, markets, and channels of information" — "Freedom of speech does of course not mean that we are free to slander, libel, deceive, incite to crime or cause panic by false alarm." (1979, p. 110); " [The US Constitution Ninth Amendment]: the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people " (1979, p. 111).

It is dangerous when this kind of media is the standard-bearer of the creed that there is a neutral view to all issues: The words of the terrorist leaders are juxtaposed to the elected leaders of the free world: "Osama bin Laden has this view — Mr. Blair this view and Mr. Bush this view' — and we are supposed to respect all views equally! A BBC news heading: " Osama Bin Laden"s lieutenant Ayman al-Zawahri has warned London will face more attacks because of Tony Blair's foreign policy decisions. - The al-Qaeda deputy said: «Blair has brought you destruction to the heart of London, and he will bring more destruction, God willing. — Mr.

Blair denies his policies provoked the 7 July bombs, which killed 56. - Al-Zawahri also warned the US that Iraq would be worse than Vietnam. - Downing Street refused to comment on the latest al-Qaeda tape. - Some critics, including MP George Galloway, said the war in Iraq had helped to spark the attacks on London." — And we are supposed to think they all have a point! — Mass-murderers that kill commuting passengers in the underground shall be called 'Messrs. Bombers' in the name of the neutrality of the media — and it is heroic to be stupid. — Terrorist further away from own home are always 'freedom fighters and rebels' and the ones killed by their attacks are said to 'deserve it' if not for other than at least for historic reasons. — The terrorists do not even have to pay the media for their publicity stunts — the more they kill the more coverage they have a right to — 'We have the right to know' the journalists say. And the more coverage the greater heroes the terrorist leaders become.

Svendsen (p. 149) considers it a philosophically legitimate perspective that a Mr. Stockhausen regards the terror attacks on the World Trade Center in New York as a grandiose art of work — As he says "we have an aesthetic and a moral attitude to violence". — This is the new astonishing neutrality!

### The Nature of Competition

This social phenomenon, this organizing idea, 'competition' is in fact not competition in the primary sense of the word — it is just the best notion available to explain this phenomena: the interaction of expressions and interpretation, a continuous flow of arguments, the perception of a temporarily result in a system where all may and may not depend on anything and everything. There are elements of concentrated competition, but most of all it is just a question of the flux of life. In his description of competition in the economy Milton Friedman correctly says (p. 119): "In ordinary discourse, competition means personal rivalry, with one individual seeking to outdo his competitor. In the economic world, competition means almost the opposite. There is no personal rivalry in the competitive market place.... The essence of a competitive market is its impersonal character. No one participant can determine the terms on which other participants shall have access to goods or jobs. All take prices as given by the market and no individual can by himself have more than a negligible influence on price though all participants together determine the price by the combined effect of their separate actions."

The mission of any correct politics or political leadership is to create conditions for the best possible competition. — This means the function to prevent all forms of monopolies and abuse of dominant market position in all aspects of life — again this has been best understood in the economic sphere with the anti-trust legislation — the US Sherman Act of 1890 is hereby a decisive milestone in development of humanity. — Now we only have to convince that monopolies and abuse of dominant market position are the cancers of all aspects of life: religion; media; democracy; morals; science...

Only a few liberal philosophers like Hayek have come close to understanding the role of competition in all aspects of life (1994, p. 41) "the liberal argument is in favor of making the best possible use of the forces of competition as a means of coordinating human efforts."

Competition is for many a dirty word — something that spoils their rosy plans to control the life of others. They want to fight competition by all means — (but it is the one game you cannot win — it never ends - "You can't build clouds. And that's why the future you dream of never comes true" Culture, p.41).

### The Competitive Method — Not the Scientific Method

Science, and especially social sciences, is much less 'science' than people tend to think — in fact 'scientifically' science is better seen as art — a special form of competitive art (the notion on language-games could serve here as well). — Science is the perception of what is ranked highest (kind of a market quotation of arguments). - Posner says: Many sciences " have been proved false after having been universally accepted; examples are Euclidean geometry as a theory of spatial relations, the geometric universe, Newton's laws of motion, and the luminiferous ether. Many scientific theories — some philosophers of science think all — are temporary or ad hoc constructs to explain phenomena that might be explained in other ways" (Posner, 1993, p. 64). — This view is in marked contrast to the more traditional notion that 'science' has some kind of a 'demonstrated ability to correct opinions originating elsewhere' (Pihlström & Koskinen, p. 17). — First, this evidence the anthropomorphic fallacy: 'Science' is not a thing, and it is not an animated thing; therefore 'science' is not doing anything; it is the perception of the results; and the results are the product of people bringing their ideas and opinions to the

marketplace of arguments. — And then in a free society (note the contrast to a Marxist society) nobody can force scientific knowledge to come about — only the market kind of competition is decisive (although there is of course plenty — far too much — abuse of dominant market position, which causes distortion in scientific perceptions). — I am also left wondering what it is that has been so 'successfully demonstrated in science' ; which opinions were corrected' — weren't there a lot of successful implantation of the weirdest ideas — along some of the good ones? — Think about the numerous misconceptions that science has caused; e.g. just those that affect everyday life — the diet? - Pihlström & Koskinen claim that hereby "it becomes clear why one might elevate scientific rationality above other form..." — Talk about "scientific rationality" brings us to the 'scientific method'; it convenes the idea that there is a 'method', the correct application of which produces science. - Pihlström & Koskinen present their view on Fine's argumentation (p.22): "It may be the case that all the knowledge we can legitimately hope to obtain is scientific knowledge and that our knowledge about science, insofar as it can be called knowledge at all, is scientific, too — not philosophical." — My argumentation shows that 'scientific' is but a particular perception on knowledge and this perception is exclusively brought about by competition - therefore I claim that it is more correct to talk about 'the competitive method'. It would be far more correct to claim that *all knowledge we have is a form of art, and that our knowledge about science is artistic perceptions determined by competition — and philosophy is the tool to deal with this artistic knowledge.* - The *philosophical* is the correct understanding of the essence of expressions and interpretations (how they interact; the weaknesses, the defects, of language) — i.e. the essence of language — and how our thinking is governed by perceptions, which are organized in competition. — This way really philosophy is above science, and science itself merely a perception of art.

Naturally this belief in the scientific method is closely related with the worldview of things and aspect-blindness (the lack of seeing perspectives). Because, they see science as a thing they also think that there must be a thingly method involved in it.

But, however strong the belief in the method, there is no method even to talk about. It is one more of these beliefs that are held true if enough people share the belief. But, if science shall be science, then it at least has to prove the things that scientist speak about: So show us the method; show us the secret formula for producing science!



It looks as by 'the method' they mean the result of the work of all the scientists, yes indeed all of mankind as a whole — by the scientific method they mean the perception of matters especially pertaining to science. — But that is no method.

A typical presentation of 'the scientific method' is as below follows (Wikipedia).

We are advised to proceed by these steps:

1. Observe some aspect of the universe.
2. Invent a tentative description, called a hypothesis that is consistent with what you have observed.
3. Use the hypothesis to make predictions.
4. Test those predictions by experiments or further observations and modify the hypothesis in the light of your results.
5. Repeat steps 3 and 4 until there are no discrepancies between theory and experiment and/or observation.

I should like to point out that nothing of the above can qualify as a method. It is only a simplistic description of some of the steps usually taken in natural sciences for the structuring and presentation of the final stage of formal proof (in the same way the Aristotelian syllogism is a simplistic way of dealing with the structure of an argument).

(Searle: "The fact that hydrogen atoms have one electron, for example, was discovered by something called the 'scientific method", p. 208).

In reality what those steps of scientific method imply is that a presentation of something that is put forward as scientific has to involve those kinds of elements. This is something that happens post fact; first there is the idea (often confused with 'observations'), and then the tests with more or less preconceived test results and then the work is presented in a scientific form (i.e. 'the method'). The tests are of higher objective validity in some of the natural sciences, but in the social sciences the importance of the tests results are secondary to the 'conclusions' i.e. the

message that the author wants to convey; the tests serve at the end of the day only to prop up the arguments to show that since the person has done so much work then he must know (The work of Karl Marx is a case in point here, where the role of tests being assigned to the elaborate quotes of other people's work and statistics, but de facto lacking any factual connection to the proposition claimed to be proven).

But what kind of 'scientific method' is there in law? Even the 'steps of the scientific method' are absent. Law theory is about personal opinions through and through; it is about a mastery of argumentation and the merits are only visual — artistic so to say. - Contemporary theories of law proceed mainly in lines with the Aristotelian traditions of speculation. It is completely unimaginable that something fundamental in law could ever be tested. — A scientific statement requires proofs; the scientific statement about law is that it is a competitive system, and there is ample proof to support this position — but this is all that can be proven scientifically in law, all the rest are just opinions, feelings (except for the biological fact). Look at how laws are enacted — look at the debate preceding the enactment and look at how certain opinions are declared 'law'; look at how new 'laws' replace old ones; look at how disputes are judged in courts; look at how they are judged in various courts in the same country — and in various countries — and over time; look at the public debate on laws and morality. — What is this but a competition of arguments — an endless competition on a continuum from macro to micro level! In law all we have is a competition of arguments; this is so in each individual case, it is so in the theory of law — and it is the same in science in general: Only a competition of arguments decide what is to be regarded as science.

In this connection a note on 'the enlightenment' (which is indeed very closely linked to the idea of 'scientific method') is required. Instead of some 'remarkable development' of philosophy or science the enlightenment coincided with a period of an astonishing acceleration of competition in all aspects of life. The development of the printing press revolutionized the spread of information — (I say 'information' not 'knowledge' as anything may qualify as 'information', and 'knowledge' is a term by which so-called 'correct information' is qualified). - With the movable print of Gutenberg the technology of printing took off in Germany in mid 15th century — and this led to an explosion in the spread of information. - It was in the 16th century that printing press really started to pour information around. Further innovations led to more

efficiency and still faster spreading of information; information became accessible, and hence competitive. — And this led to more efficient competition (the competitive method); more information; more rapid spread of information at the market place of ideas; more 'jurors' (i.e. people taking part in assessing the scientific arguments); more testing; more test results (i.e. empiric use — the purely scientific tests pale in importance to the empiric testing in life) — that is empiricism. — And this way the technical knowledge and applications of that leaped forward. — But, only things could be tested — opinions (that is social sciences) could not be tested, only alleged. — Today with the Internet more information than ever is available; and today a period has emerged where it is possible to make use of this information without it being apportioned by the establishment. — (Will we finally be able to breathe fresh?).

Hence instead of a 'scientific method' the natural sciences benefited from competition. It was the growth of competition and freedom of competition which fueled scientific progress. Every scientific theory would have to prove itself in the market place of ideas. To prove his theory the scientist had to be well prepared (study as much as possible of the recent work relevant to his field) and transparently argue his opinions.

(With a rejection of the belief in the fictitious scientific method, we would also benefit from changing our attitude on education starting from elementary schools. We should be less concerned with teaching data that has been elevated to the rang of scientific knowledge and the teaching of work skills for a possible future, and rather give children a chance to submerge in language, art, sports and just enjoying themselves. — The competitive method will take care of the progress they dream of and the education system should be oriented to coping with the information — to teach people to discern sense from nonsense — to use the information, not to be used by the information.)

Feyerabend is said to have been advocating a so-called scientific anarchism (Wikipedia) which points to certain decisive misconceptions. He was said to have "objected to any single prescriptive scientific method on the grounds that any such method would limit the activities of scientists, and hence restrict scientific progress. In his view, science would benefit most from an attitude of theoretical anarchism". Feyerabend was very well on track on understanding the competitive method. His

background and the philosophical traditions of his times hindered him from turning the idea of 'scientific anarchism' towards the idea of competition, but I believe that his insight is nevertheless on this point is close to recognizing the competitive method.

One cannot but agree with Feyerabend's thought that society "should be protected from being influenced too much by science, just as it is protected from other ideologies. "He correctly claimed that "science does not deserve its privileged status in western society."

Feyerabend had a clear underlying comprehension that science is not a 'thing' — he described activities and perceptions. This is in marked contrast to Popper that promoted a so-called falsifiability theory of science. He argued that any scientific theory should be subject to a test of being proven false, and that any theory could in principle be replaced by a newer, better theory. - Popper's claim is wrong; it is erroneous to think that science would consist of a set of 'scientific theories' (not even natural sciences do). We are dealing with life, a web of beliefs; life where all is interwoven. — All that happens is that one argument can receive a higher competitive ranking than another one (and hereby nobody is the judge and there is no absolute jury. No matter how one or a few try they cannot declare anything as true or even as *science* — science is what is accepted on the marketplace).

Popper's falsifiability theory is like replacing one 'thing' with a new one; it could be compared with changing the coulisses in a theater for a new setting; as if something completely new and different would replace the old. But what is there in life or science that would work like that? Hardly anything; new knowledge, a new theory is just one of the arguments in the endless debate, the play with expressions and interpretations. Scientific consciousness (not to talk about the unconsciousness) does not consist of a set of 'provisional belief', which would from time to time be 'swept away'. — The beliefs separately and collectively change only gradually with life and its evolving social practices; the changes have to be integrated in language — in language new ideas are received, accepted and utilized (and at work are Infinite Variances).

Science is best seen as a constant competition where one kind of argument takes precedence over another — and even the strongest new arguments seem to have only a marginal impact. Hereby it is important

to note, that this is by no means a question of continuous improvement — the new arguments are not necessarily better than the old ones: perhaps they are just better marketed or supported by other strong means. — Posner: "Many positive economists are followers of Karl Popper and therefore believe that falsifiability is the defining characteristics of a scientific theory, empirical economists in practice place far greater emphasis on confirmation than on falsification (Posner, 1993, p. 363).

Popper is again wrong in saying that "Our scientific theories must always remain hypotheses... we can find out whether a new hypotheses is superior to an old... we can say that in our search for truth, we have replaced scientific certainty by scientific progress.. science does not progress by a gradual encyclopedic method, but by a much more revolutionary method; it progresses by bold ideas, by achievement of new and very strange theories and by the overthrow of the old ones" (2003, p. 15). — In reality these 'bold new theories' are but arguments in the endless competition, quite feeble arguments; at best we can only expect gradual change, usually over generations.

It should be noted that even while a scientific theory may well be true as such, the meaning, the purported explanation, may still be misunderstood e.g. so that too long-reaching conclusions may have been drawn from it. Nuances of new information, new use of language, change the previous impression.

Wittgenstein says that that we should not advance any kind of theory and instead of trying to explain we should strive to describe; "The problems are solved, not by reporting new experience, but by arranging what we have always known. Philosophy is a struggle against the bewitchment of our understanding by means of language" (PI 109).

### **Economics — the Ugly Duck Turned the Beautiful Swan of Sciences**

The distinction in social and natural sciences is obviously based on a tentative insight in the difference of the object of the study. Nevertheless in practice in the social sciences the basic notions have been borrowed from the natural sciences — and the fundamental creed is that the scientific activity has to discover properties of things; their movements; causes and effects; and the 'laws' they follow — this in order to somehow definitely

pronounce how the things are. But, in social sciences there are no 'things' and so all the other considerations that follow (movements, laws, final descriptions) become meaningless. Lacking an understanding of this is the reason why the social sciences are some kind of quasi-sciences with one great exception: the science of economics. For economics is the social science least plagued by a search for metaphysical entities. — In economics there is much less of the quasi-scientific discussion about ontology and all the rest that goes with it.

What is great about economics is that the theories produced in it are relatively easy (compared with other social sciences) to put on test on the market — there is a kind of a huge laboratory consisting of the entire world and all the people that test every day the various hypotheses (and in fact the tangible products serve as empiric proofs). Economics is the paramount social science and it is the empiric science par excellence. Economics has over the years by the primitivist been depicted as the 'dismal science'. But in the test of time economics is like the ugly duck turned the beautiful swan of sciences.

But, now, I am not defending 'economics', but the kind of work that is going on in the study of economy, and especially by comparing it to all the other social sciences.

We can cure some diseases; we can find alleviation to some, but we are nowhere close to know how the body functions and the different parts interact. There is knowledge that a certain pill taken under certain circumstances may have a desired positive effect on one sort of a problem, but at the same time we know that the pill may also cause certain kind of side effects (such as death) — and there is increasing knowledge that we do not know all the effects a certain medicine or food has or may have. Each day new data emerges pro and contra certain practices or aliments and medicines. — And this is in fact very much the same way the economy functions and how modern economic theory proceeds. There are no economic laws (there are no biological laws either), there are just short stories, narratives telling that "under these and these conditions these kinds of effects have been noticed in the economy." Modern economics is hence very similar to the practice of medicine: economics is like a series of medical histories on the patient and compounded with medical research dealing with particular issues, there is no uniform medical explanation or panacea, a cure-all universal remedy. We cannot make any

final conclusions about anything in medicine (we should think that the health conditions can improve infinitely) and so in economics, we can only learn by looking at the short narratives, learning from the past experience: kind of 'learning a lesson'. — Wittgenstein: «there is not a philosophical method, though there are indeed methods, like different therapies» (PI 133).

Alan Greenspan, The United States Federal Reserve Bank's former chief, seems to adhere to this same kind of view on economics, or at least, about its applicability on life (and the applicability is the only thing that can be of any value in science). Greenspan ("Financial Times") has the insight that economics is only about practical reason, interpretation of a situation and judgments when he talks about the financial policies he has been in charge of; he says: maintaining flexibility was the best way to deal with 'financial crises or their avoidance'. - Dealing with financial crisis is actually the same kind of activity as dealing with health, e.g. the attempt to try to avoid flu or a contamination: you look at the past experience in similar cases and try to apply the methods reasonably available. The more practical experience is gained (the secret is to learn from the experience and not draw any final conclusions) the better the chances to reach the desired result. (This also shows that there is nothing inevitable in financial cycles; they do not even exist as such, but are mere perceptions of collective failure; and certainly they do not exist as some thingly processes reoccurring from time to time, like snow in a Northern winter).

Greenspan gave the following advice on coping with economic necessities: Be flexible; Act with skepticism to overly precise academic models and economic forecasts; Apply a discretionary approach to policymaking; Keep your key options open; Don't be caught in an intellectual straitjacket, forecasts, though necessary, are unreliable; There is no scientific way to compute an optimal path for monetary policy. — And this is the fundamental insight to macroeconomics. Together with Adam Smith's teaching about how an economy functions as a competitive market nothing more is needed for understanding the basics of economy. The economic research provides then with valuable condensed experience to show the way around. — This is also what Ebenstein identifies as Hayek's decisive teaching, that economics provide 'pattern predictions of social sciences... actually only best-guess probabilities' (Ebenstein, p. 133).

Common sense understanding (and even the scientific understanding to a certain degree) admits that the economy functions as a competitive (market) system. By this I understand basically a system where everything is dependent on everything; anything may or may not affect anything and everything, where an infinite multitude of variances (nuances) of aspects are involved in a manifold of phenomena: a system which nobody can direct and where nothing follows necessarily from anything particular.

There is a well meant but erroneous notion that the economy would function as a system based on division of knowledge, Ebenstein says: "Hayek's greatest impact is in the area of division of knowledge" (pp. xi and xii). I would rather say that there are but infinite number of drives and variables; and the present day view of life renders the perception that a common effort would be at work in combining knowledge. — It is not by compiling knowledge, but by spontaneous actions that economic results come about — ('knowledge' is the view post fact).

While I regard economics as the most advanced field of social science I reject the idea that anything in economics except the very fundament of economics, the market idea (competition is the market) would be useful for law and justice. Any attempt to give a monetary value to justice is basically wrong. The economy produces welfare through consumables, goods and services, which well deserve to be measured in money (i.e. the goods measured, not the welfare); but law produces justice (in most cases of very poor quality) and justice cannot be measured in money. — Law and the whole enterprise of justice is so underdeveloped all over the world that any study of the output of the system would be misleading — the system is so imperfect that there is nothing that really renders itself to that kind of scientific cross-analysis: the injustice that the system produces should not be taken to be the real justice.

What then is the measurement for justice? There is no measurement — and we should certainly forget the battlefield image of the Goddess of Justice who on the threshold of enlightenment was blindfolded and then administered justice on the principle eye for eye, in a state of obscurity weighing incommensurable entities and trying to make a balancing act with justice (somebody is always tampering with the scales). — Instead the modern notion of justice shall be justice for one, which is not related to the justice for another and not aimed at satisfying the desire for revenge. — Justice cannot be measured nor weighed. Instead of measurement we

have to strive for maximum happiness and minimum suffering — and this is not a utilitarian measurement, because this is about the happiness and sufferings of one individual person. — We cannot measure the output, but we have to ensure that the system strives for perfection.

In broad terms I can agree with Posner's view on the relation between law and economics (and law as science) as evidenced in:

" Some progress towards recasting the law in a genuinely rather than merely analogically scientific-technological mold is visible. This progress is due largely to the efforts of economists and economically minded lawyers. Economics, including the branch known as economic analysis of law, or 'law and economics', really is science, though an immature one. The practitioners of law and economics are trying with some success to use the methods and results of economics to improve our understanding of law and assist in its reform. Further progress on this field can be expected. But in part because the scientific fields, such as economics and psychology, upon which a science of law would have to build are immature, and in part because of the institutional factors (noted above), the day is far distant when law can take its place among sciences...." (Posner 1993, p. 63).

In Posner's vision a 'science of law' would have to be built on economics and psychology. I think the notion is close, but in need to be slightly redirected. — Economics is a model; but it is not what the economics produces that is the model: the model is the way the economy functions as a competitive system based on infinite uncontrollable variances — it is a question of digging down to the fundamentals. A fundamental understanding of this notion also calls for a well-developed sense of aspects: all we are dealing with are perceptions and in these perceptions the notions economy, justice (formerly called law) and democracy are all interwoven. - This kind of notion of law is what can be "subsumed under a broader theory — perhaps, although, not necessarily, an economic theory — of the social behavior we call law", (Posner 1993, p. 374).

One of the fundamental elements of economic theory (especially recognized in capital markets theory) is the idea that in a perfect market all the market participants have free and equal access to all the relevant

information needed for concluding economic transactions. — This idea of the perfect market is equally important for all social behaviour, — the perfect market is one where all participants possess in-depth knowledge of the grammar of language and can participate as free individuals on equal terms in a non-monopolistic competition of arguments. - A perfect market does not exist, and by definition will never exist, but were freedom to reign humanity would make considerable advances towards it. - It is ironic to read Searle and Habermas (Aarnio, p. 209) speaking about the 'ideal speech situation'; they actually have in mind the market economy ideal of the perfect market, but they cannot bring themselves around to say it.

## 11. INFINITE VARIANCES

Science is best understood as a subform of art; a particularly rigid and dull form of art, but still art — competition, perceptions, expressions, interpretations, feelings, all interact, intervene, create impressions, move life. The competitive method is the scientific method (if we want to call the *result a method*) — and the Infinite Variances is the scientific paradigm, the eternal theoretical framework within which theories, laws, and generalizations will find their test and support, if any. — After Tractatus Wittgenstein moved consciously away from the old quasi-paradigms of philosophy. His style broke out from the fetters of formal logic and disintegrated, dissolved into pieces, to drops that captured the flux of life; captured reality and integrated into life. — He dealt with infinite variances in form of fragmentarily voices, and aphorisms, language-games, forms of life, catching a glimpse of life here and there, being on the move, and moving with feel. A lasting effect and a penetration to the essentials could only be achieved with this variation in style, this freedom of style, dropping a hint here and there.

In an age where the language of things will start to lose its hold on social thinking we need a scientific theory that depicts a "comprehensive unity in the plurality of events" (Nietzsche, *Will to Power*); Wittgenstein (PI p. 170) "There are here hugely many interrelated phenomena and possible concepts" and Posner: "Science is not only an exact observation but also the search for unity in multiplicity." (1993, p. 69). — Infinite Variances is a recognition that everything may depend on anything; that we can not trace the dependence to any specific source; and that the degrees of dependence and interdependence vary. — As we can never know what exactly is dependent on what and to which degree, we can only give narratives, views, small lessons. - We could call it a science of Infinite Variances. — Wittgenstein:

"Life's infinite variations are essential to our life. And so too even to the habitual character of life. What we regard as expres-

sion *consists* in incalculability. If I knew exactly how he would grimace, move, there would be no facial expression, no gesture. — Is that true though? - I can after all listen again and again to a piece of music that I know (completely) by heart; and it might even be played on a musical box. Its gestures would still be gestures for me, even though I knew all the time what was going to come next. Indeed, I might even keep being surprised. (In a certain sense)" (Culture p. 73).

Why could not science be about these most essentials, the Infinite Variances?

The main healthy thread in the history of philosophy is the movement towards a more analytical, more subtle, more refined philosophical understanding; breaking thinking (or rather expressions) into the constituent parts; breaking the primitive coarse notions of philosophy into finer and finer categories. Wittgenstein finally made philosophy subtle, fine, and real. - He disintegrated it down to the smallest elements; he showed that there were no deeper philosophical truths to be found, nothing deeper than life itself; he gave philosophy peace. — From logical atomism he reached logical nihilism: as the atomically small mental particles disappeared, so did all that was believed to be composed of them, and instead we were left with life, and the multitude of expressions, the Infinite Variances. If the particles do not exist, then they cannot be true, there are no building blocks for truth — and now we have to be content with living with our feelings, for feelings alone are true. — But I think Wittgenstein is saying that we can help the mind to gain a better grasp of the relative truth, by thinking correctly — and knowing the limits of our thinking. - In a way this means we have gone a full circle from absolute truth to no truth, i.e. relative truth. Relative truth is in the Infinite Variances and that is the fundament of all science.

Posner gives an interesting characterization of his view of the correct kind of pragmatic philosophy (Posner 1993, p. 28). - For me these are aspects that could well be included in the notion of Infinite Variances. — Posner's pragmatic philosophy stresses: scientific virtues of open-mind and no-nonsense inquiry; the process of inquiry is elevated over the results; is future oriented ('prefers ferment to stasis'); dislikes metaphysics; is doubtful of objective truth; likes experimentation; likes to kick sacred cows; is forward looking — Posner adds that a pragmatic philosophy "is uninterested in creating a philosophical foundation for

its thought and action." - I found myself doing just that (by drawing the conclusion that expressions are not things and all we have are interpretations of feelings and their derivatives which amount to perceptions in competition), but I believe we can agree that this is an entirely new form of 'foundation' ('In pretending, therefore, to explain the principles of human nature, we in effect propose a complete system of the sciences, built on a foundation almost entirely new, and the only one upon which they can stand with any security' as Hume had said). — What I am doing is proposing that pragmatism in its new scientific form ascend the throne of science (from humble origins did pragmatism rise to rule the minds of future generations...).

In this connection it is also noteworthy to quote Posner (1993, p. 115) on the virtues of competition, which is a decisive feature of understanding the philosophy of Infinite Variances, or scientific pragmatism, or competitionism: "We think a competitive economy more likely to meet consumer needs than a centrally managed one, a decentralized scientific community in a society committed to freedom of speech and expression more conducive to accurate scientific judgements than a scientific community that is subject to censorship or that operates under tight governmental control"

Most of all we have to understand how completely wrong it is to say that "Every event has a cause" (Searle, p. 139). — On the contrary, every event has and may have many causes, and the causes work in so manifold of ways, that we can never really say what was a final cause — i.e. in life — on paper it is easy to declare a cause.

It is interesting to note that Hayek (Ebenstein, p. 93) had a vision of economics being a prototype of a new kind of science of complex phenomena which could not employ the simple model of mechanics or physics. — This science of complex phenomena is the same science of Infinite Variances.

## 12. SOCIAL SCIENCES vs. NATURAL SCIENCES

The division of branches of science into natural sciences and social sciences is in broad lines quite appropriate. This is because the basic objects of the study are different in these two activities. Natural sciences study things and their movements, and social sciences study expressions, interpretations and their effect on life. - Wittgenstein: " Misleading parallel: psychology treats of processes in the psychical sphere, as does physics in the physical./ Seeing, hearing, thinking, feeling, willing, are not the subjects of psychology in the same sense as that in which movements of bodies, the phenomena of electricity etc., are the subject of physics. You can see this from the fact that the physicist sees, hears, thinks about, and informs us of these phenomena, and the psychologists observe the *external reactions* (the behaviour) of the subject." (PI 571).

However this distinction has not been sufficiently understood with the unfortunate consequence that all the notions from nature and things have been imported to the study of communication. The social sciences and natural sciences connect only in language (the foundation of social sciences is language, but the language is hostage of the things). Perversely language, which really only pertains to social sciences, has developed its grammar and vocabulary from the nature: the language of feelings has been dressed in the harness of things. The language is invaded by all the notions for describing things and their movements, and we are incapable for expressing the feelings (opinions) as such. — The relation between social sciences and natural sciences will have to be reversed: In social sciences we should not hold the methods and results of natural sciences as something to imitate (things and their movements are no analogy for feelings) but instead the practice of natural sciences would gain a lot from understanding the kind of diversity that this new concept of social sciences has to offer.

Natural sciences have an object that we can touch and treat. But, the way the object is perceived has to do with our senses — human body

forms through its senses perceptions of things; different people may have different perceptions of things; and even the same person is bound to have in different times and different moods different perceptions of one and the same thing; an animal or insect have different perceptions. But, nevertheless there is a thing.

The fallacy of not making a distinction between the study of things and expressions is the root cause of all philosophical problems: anybody that understands this distinction would drop all talks about the 'theory of ideas', 'logic', 'the Absolute', etc. (i.e. the whole nonsensical tradition of pre-Wittgensteinian philosophy). The study of expressions as things (and using the language of things) has caused but great confusion in philosophy and social sciences. — The relativity of sense data regarding things has produced the impression that the same kind of relativity pertains to expressions (We may say that there is 'relativity' regarding expressions — but that is a totally different kind of relation). — That is there is an idea that we do not have sufficient enough grasp of things in themselves; things are real, but we grasp that reality only through our subjective feelings. — This has lead to think that 'expressions' are real (i.e. are things), and we do not just have sufficient enough knowledge of these 'things-in-themselves'. — And so people, unfortunately, do not question the perceptions they form, although this is precisely where they should doubt. In regards to expressions there is no thing, no object at all — the Emperor does not have any clothes; the pomp attached to the concepts prevents people from realizing this. — We are cited countless occasions when a philosopher doubts whether trees, tables, cats etc in reality exist. A pair of hands are raised to public admiration as proof of reality — from the existence of the hands we are supposed to draw the conclusion that words also exist (and I wonder why nobody has demanded to take the measurement and size of the words — is the word 'and' bigger or smaller than the hands?). Then from the 'proof' that words exist we are also supposed to draw the further conclusion that there ought to be a definite meaning i.e. *certainty* as a property of the words and their combinations. — Yes, the tree is there; the table is there; and the hands are perfect. — But surely the philosophers with these reality checks did indeed not aim at proving anything about the hands, but they must have targeted expressions. — Hence the doubts have not been formulated clearly: the test should be: When I close my eyes and open them again do I see the 'the good'; 'the kilometer'; 'laws of social relations'; 'the state.' (If the 'state' seems too big, then imagine a 'joint stock company'- just a tiny, tiny company: can you get a hold of it? Or an 'agreement' — Now, do not



confuse the agreement with the paper on which signs for words appear — like you do not confuse a person and a picture of him or a person and his name). Now I think attentively: " Do they come to me? " — " Can I try to get a hold of them, catch with my hand and put in a bag (bring to a museum? photocopy them?)" — No! They do not exist in any way — in no way; not before, not after, nor during. - They are just expressions — all I can do with them is to interpret them. Going in regression backwards infinitely nothing else will emerge than expressions and interpretations.

## The Exact Sciences

The natural sciences are often called the exact sciences (although more prudent people reserve that notion to mathematics — which in turn is misleading, as shall be discussed later). Even then when people do not talk about 'the exact sciences', they still muddle regarding the 'exactness' of natural sciences.

For the natural sciences to be 'exact', it would surely mean that the object of the study: the nature and natural life, would be exact, or that we would know something exact about them — but quite contrary to this belief nature is infinitely complex and people have not come nowhere near to master anything in nature (even the *destruction* of nature cannot be considered exact, it is rather a by-product of so-called progress). — What kind of exact knowledge do we have about a human organism? We have some knowledge, but certainly not anything exact. Look at the nature — what is it that we know so exactly? — Nothing. — Here the confusion is again caused by the language of the unit i.e. mathematics — which can be used to create an impression of exactness — but that is all there is to the exactness.

Nietzsche: "it is perhaps dawning on five or six minds that physics, too, is only an interpretation and exegesis of the world ...and not a world-explanation" (Beyond Good and Evil, reference in Welshon, p. 73)

Sein, Sollen and Gewesen -  
What is, What ought to Be, and What Has Been

One more of the fundamental misconceptions in all kind of philosophy, and social theories of all sorts, is the failure to correctly deal with the distinction between 'is' and 'ought' and especially the lack of the notion

'has been'. — Modeling on famous misconceived sophistry we can also call these with the German words 'Sein' (for 'is'); 'Sollen' for ('ought to be'), and the point they have all omitted: the 'Gewesen' (for 'has been'). The problem is that the Gewesen, what has been, is taken for the reality, and Sollen, the 'ought' which is pure personal speculation of an author has been taken to represent the 'is' — i.e. the 'is' that the speculative author is trying to convince us to exchange our present reality for (some with remarkable success). - The correct method of reading Kant, Kelsen and other such science fiction would be to replace the word Sollen ('ought') with the words 'my personal speculation' wherever it is met. — What they miss is that all past social experience is first of all appearances based on the perceptions of both historians and philosophers (although most philosophers are historians-in-themselves). - Wittgenstein: "One keeps forgetting to go right down to the foundations. One doesn't put the question marks *deep* enough down" (Culture, p. 62). - Due to imperfect life conditions (and mainly the incompleteness of language, its usage and the conditions for its use, the conditions for communication) what history tells us is, at best, only how people act in distorted life conditions (on an imperfect market).

Stern quotes Wittgenstein (Stern 1996, p. 150, in reference to the Wittgenstein manuscripts), where Wittgenstein crystallized this same idea: "The approach that leads us into an enchanted valley, as it were, from which there is no escape into the open countryside is taking the present as the only reality. This present constantly flowing or, rather, constantly changing, cannot be arrested or caught hold of. It disappears before we can think of grasping it. We stick in this valley, as though bewitched, in a whirl of thoughts."

The point is that we can never philosophical (scientifically, politically) establish a reality, no matter how hard we wish. — We cannot even describe it; we can only tell how it functions.

There is a tradition to trace the 'is — ought' distinction to David Hume. In A Treatise of Human Nature, p. 302 section 3.1.1.) Hume writes:

"I cannot forbear adding to these reasonings an observation which may, perhaps, be found of some importance. In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary

way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought* or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason."

Now, Hume, is not dealing with the Kantian metaphysical notion of 'is' and 'ought'. — Hume is merely using the words in the sense found in ordinary language (for such is the craving for metaphysics, that everything gets perverted). Hume matter-of-factly states that an observation of a present reality (a perception) is not a foundation for drawing any conclusions on how matters necessarily are or even worse how they should be. — He is pointing out that all such claims are speculation beyond foundations.

Kant, the Kantians, and among them most notably Kelsen had colossal problems (fatal ones) with this notion, and converted it to ridicule. Tuori presents (p. 7 and 8) Kelsen's view on this distinction: "separation between two sub-fields of reality, namely between the world of 'Is' and the world of 'Ought', between empirically observable social facts and normative orders. The enactment of law belongs to 'Is', whereas legal norms inhabit the world of 'Ought', a world independent of this social reality". — Tuori correctly points out the 'peculiar leap' in this line of thought between the 'enactment of a norm and its independent existence' Tuori (p. 25): "This assumption of the basic norm enables Kelsen to maintain the separation of 'Is' and 'Ought', as well as that of law and morals". We can see that Kelsen is promoting a purely speculative system based on his view on 'ought' and props up his speculation by assuming in his peculiar language-game a trump card called 'the basic

norm.' Now, what will happen to Kelsen's theory if we, like I do, refuse to assume this basic norm? — And what compels me to accept it? — Now, his language-game just became totally obsolete.

This confusion of the present perception and present practices with the fundamental reality is especially persistent in law: the positivist theories are exclusively dealing with the present perceptions (the 'has been' that they take to be the 'is'), and the natural law theories deal with the 'ought to', which they take to represent what the law fundamentally is, and of course they correspondingly think that a new ideology may serve to bring about a new reality. — Posner criticizes this kind of thinking: "We can sense here the notion, which has ruled philosophy since the time of the Greeks, that the office of knowledge is to uncover the antecedently real, rather than, as in the case, with our practical judgements, to gain the kind of understanding which is necessary to deal with every day problems as they rise" (Posner 1993, p. 250 in reference to John Dewey).

In this book I am promoting an understanding of the concept of law as being part of a competitive normative system (a system of competitive justice). This is a description of how the system of law fundamentally functions (and there is nothing anybody can do about it — the fundamentals of how it functions — It just moves!). — What people see as law is all the history of how law has been applied (or so to say the perception of how it has been applied) — the 'has been' of law. The fundamental functioning of the competitive system of law can not be changed — all that one may wish to change and even to some extent achieve is how certain aspects of law can be consciously applied. But this concerns only certain surface aspects — such is the trouble with the human system that nobody, even those that know themselves to be the best can not change the workings of the system — what we can change is the preconditions of people's participation as active and conscious members of society.

### 13. EMPIRICISM

In the *Novum Organum* Bacon tells that scientific theories (or axioms) should remain as close to the facts as possible: «The understanding must not therefore be supplied with wings, but rather hung with weights, to keep it from leaping and flying. Now this has never been done; when it is done, we may entertain better hopes for the sciences» (Wikipedia). — The idea to anchor social sciences to reality was developed by the British empiricists. This tradition has nevertheless remained feeble in comparison with the traditions of metaphysical speculation. — The comprehension that in social sciences we do not deal but with expressions and interpretations will serve as the thingless weight to keep science in the earthly reality. Through this notion we will understand that competition of perceptions in *Infinite Variances* is the only scientific reality there is.

After the disastrous Copernican contra-revolution against common sense that Kant initiated the traditions of metaphysical a priori speculation have remained strong at the expense of an attempt to understand the scientific reality consisting of knowledge acquired through experience (empiricism). The a priori ideas (knowledge that people are supposed to have been born with) have caused and continue to cause surprisingly much trouble to philosophers (and therefore life in general).

(A note on the Copernican revolution: Nicolaus Copernicus demonstrated that the motion of the heavens can be explained without the Earth [or anything else] being in the geometric center of the system, so the assumption that we are observing from a special position can be dispensed with [Wikipedia]. — Well, if we want to bring this simile into social sciences, then it surely supports the idea of interpretation of feelings and competition: now, with these we can explain how social life functions without having to place anybody or anything in the center, not even the thinking 'self'. — How anti-Copernican Kant was is shown by him placing in the center his tamagotchi reason and by the transcenden-

tal a priori ideas he brought back science to the time of purely superstitious speculation).

John Stuart Mill famously denied the existence of 'a priori knowledge' (Orenstein, p. 76): "It only seems so in virtue of the overwhelming evidence in their favor" — i.e. he means that the truths called a priori are so self-evident ('it goes without saying') that there is no room for special scientific kind of evidence.

How deep-rooted the problem is and how difficult it is to reach clarity in the empiric/a-priori dilemma is evidenced in Peter Winch's shadow polemic with Hume in Winch's *The Idea of a Social Science and its Relation to Philosophy* (although Winch had in general reached a very advanced level of philosophical thinking). In this polemic we are at a very fine-tuned (and therefore telling) level of analysis. Hume performed the service to mankind of exposing a whole lot of philosophical superstition. — With him philosophy started to emerge from primitivism (although the reception has been slow, and been met with fierce resistance).

Hume told that all knowledge is based on our experience and there is no other knowledge. Kant invented the imaginary transcendental philosophy of a priori thinking as a response to Hume's revelation. — Other thinkers have since proven Kant's bluff, but Kant is still quoted as 'one of the greatest' (this shows the power brands exercise on people). — Even Winch has not been able to free himself from the notion of a priori knowledge. Winch (pp. 8 and 9) thinks that "Science uses the experimental method", (*this must be like the 'scientific method'*), "while philosophy is purely a priori". Winch further claims that "whereas the scientist investigates the nature, causes and effects or particular real things and process, the philosopher is concerned with the nature of reality as such and in general" — Winch argues that this means that the questions that philosophy shall treat are "What is reality?" and whether "the mind of man can have any contact with reality at all, and, if it can, what difference this will make to his life?" — and now in the artful tradition Winch concludes that these questions certainly cannot be "settled by experimental methods" and hereby jumps to the contrary conclusion 'that they therefore have to be settled a priori'(note *the influence of the 'excluded middle'*). In the spell of the laws of thought he considers being faced with

a choice between the option 'not knowing at all' and 'knowing a priori'. Two other possibilities escaped him: the one, that the questions were illegitimate to start with; and the other one, the possibility that the questions could well be asked, but that these spiritual topics do not belong to the field of philosophical inquiry (aren't they purely matters of taste, or faith? — It is interesting to note that the questions remain rhetoric even for Winch himself, he does not even hint at a reply. One asks wherein the a priori helped). — The philosophy I promote provides the answer to what is reality: We have to remember the difference between the physical world and the social: in the physical we have things, and in the social we are dealing with expressions and interpretations. Thence the whole question of what reality is has to be seen from a new perspective, one where there does not exist those kinds of absolute truths philosophers are looking for: Reality is an individual perception (or a series of perceptions) on life governed by expressions and interpretations of feelings in a competitive environment. — Any understanding of the 'content' of this reality is but empirical; we can only experience life and there is no deeper explanation. - Any questions that Winch wants to have settled are settled within the competitive system. — For Winch reality was not an empirical question at all, but a conceptual one. For him it had "to do with the force of the concept of reality" — the analysis of which can only be provided by an artful manipulation of language. — Winch (p. 11) says that "To ask whether reality is intelligible is to ask about the relation between thought and reality" (we wonder what it is that he knows about this a priori), and "In considering the nature of thought one is led also to consider the nature of language" (and of what use is a priori here?). — We now know that language consists of expressions, which really are interpretations of feelings, we can say that thoughts are also interpretations of feelings and expressions are the incomplete means of bringing the thoughts to the external — the question is intelligible, but what kind of conclusion does this revelation allow about the nature of reality?

In his criticism of Hume Winch oddly enough confuses the notions 'experimental method' and 'by experience'. Winch quotes Hume (Enquiry, Section 4, Part 1.6., or p. 109). Here Hume speaks of knowing 'by experience', not 'by *experiment*' as Winch wrongly cites (Winch, pp. 7 — 9). Hume says in fact: "I shall venture to affirm, as a general proposition, which admits of no exception, that the knowledge of this relation is not, in any instance, attained by reasoning *a priori*; but arises entirely from experience". An experiment (using the 'experimental method') is

one kind of experience — I would say it is a rather rare instance of experience, something that occurs very seldom when e.g. a scientist under special circumstances studies things or phenomena under a certain perception. But, most of all experience consists of being alive. In being alive human beings continuously make observations and contemplate on them (unconsciously and more or less consciously). — By these observations a world-view, or several world-views, emerges: people form ideas of what is reasonably possible and what kind of connections there are between various aspects of life. 'Intuition' is one kind of use of such experience — it's a function of all historic experience a person possesses. - (There should also be a notion of 'soundness of intuition' — usually by 'intuition' people seem to mean 'sound intuition' i.e. the remarkable capability to draw the 'right conclusions' in new situations. — But one should note that the right and sound conclusions may only follow through sound experience, and a whole lot of intuition is unsound).

Winch (Winch, pp. 16 and 17) tells that philosophy is crippled by the underestimation of a priori, which Hume fought against. Winch quotes Hume (Enquiry, Section 4, Part 2.21, or p. 117) and claims that this passage of Hume himself would 'illustrate the misunderstanding'. Hume says:

"In vain do you pretend to have learned the nature of bodies from past experience. Their secret nature, and consequently all their effects and influence may change, without any change in their sensible qualities. This happens sometimes, and with regards to some objects: Why may it not happen always and with regard to all objects? What logic, what process of argument secures you against this supposition"?

According to Winch this was supposed to show that Hume contradicts himself regarding a priori. But this is again rather peculiar from the side of Winch. Here Hume is merely saying that we cannot know the future from past experience. — Why does Winch take it to mean as a positive statement about us being able to know something a priori (did the 'the excluded middle' intervene again?) — Winch seems to be thinking that 'if we cannot consciously discern all what we know, then we have to know that a priori' — But, that is an odd conclusion. Hume was merely saying that *we cannot at all* have the kind of certainty about the future that philosophers claim. This refutation covers both empiric knowledge and naturally also the purely imaginary a priori 'knowledge.'

Intuition is the making use of the Infinite Variances that we have stumbled upon in life. Many — any - past observations, expressions and interpretations come together to perform an insight (a view) on how to cope with a new unforeseen situation.

Intuition is merely the name for the phenomena for processing information; people accumulate data through their life experience; this data is most of the time processed unconsciously; all the time we draw conclusions from the 'atomistic' impulses, and from time to time one or another impulse emerges to the surface i.e. the consciousness; sometimes this upsurge of impulses strike as something special, as if we came to understand something we did not know earlier, gained a new interesting insight to something; yet we do not know where 'it' came from — and this is what we call intuition - processing our life experience and catching a rare glimpse of new insight. — But, now we should not think that this intuitive knowledge is necessary better (nor worse) than the conscious one (and in reality we cannot draw any line between consciousness and unconsciousness, only point to the directions). Often we act intuitively wrong (and this is probably also a social decease, especially of modern times).

Intuition is a process where Infinite Variances act, react and interact. — Due to the Infinite Variances we are just not able always to recognize the sources of knowing. - At the root of the 'a priori'-error is the confusion between direct conscious contemplation (which Nietzsche already pointed out represents an infinitesimally small part of all that falls under so called thinking) and the continuous processing of experience gained from the Infinite Variances of situations we meet in life. — The anti-empiricists are perplexed with knowing something while not recognizing the instance of having learned it. This loosing of sight they call 'a priori' — it is a notion to fill the gap between the certainty they have been taught to expect and the eternal flux of life. I propose they substitute this idea with 'intuition', which in fact is very similar while being a healthier notion; it is when a person seems to know something, but cannot trace the knowledge back to the origins of continuous life experience. — The a-priori people are bewildered with all the remarkable things they intuitively know and make the conclusion that they are a priori wise (as having been endowed with a better quality brain). This bewilderment of one's own personal wisdom leads them to think that the knowledge must sit a priori in-the-person-himself. - The a priori would better be called

'an intuitively known empirical fact', compare with (Remarks Mathematics, p. 247).

Now, because of this confusion the a-priori people misunderstand that to mean that anything may be claimed without bothering with the sources: their opinion is for them the source-in-itself. — For them it is a ticket to engage in any kind of public speculation: "Anyway we cannot trace the observation back to a laboratory experiment, so I might as well speculate freely." - (This is the philosophy of Kant — this is the philosophy of 'anything goes').

The defense of a priori leads Winch to a discussion of world-views (the 'conceptual apparatus') : "Because there may be minor, or even major, variations within such an order without our whole conceptual apparatus being upset, it does not follow that we can use our existing apparatus (and what other are we to use?) to describe a breakdown in the order of nature as a whole" (p. 17). — Now, we approach an issue which really stands at the center of the whole contemporary scientific misconception of the world (the world of things and the non-understanding of the notion of expressions and interpretations). Winch argues against opinions he takes to be Hume's. But Hume did not say that 'our conceptual apparatus would be upset' or that it would mean a 'brake-down in the order of nature as a whole'. That kind of reading (by Winch) is what really deserves the epithet 'illogical'. It is Hume that says that we cannot accurately predict the future and there will be changes we do not foresee. Obviously this does not point to a single one change in the future, but something that goes on all the time, what we did not foresee, or could not foresee yesterday happened today (the same with any pair of time concepts: a minute ago and now; a second ago and now). — This means that we actually do foresee the uncertainty of the future. It is an essential feature of life that people discount the uncertainties of the future to the present. — (This is why most adults, the older they are, are prepared for death. Life prepares for death — the unavoidable uncertainty). Hume knows that and he knows that life goes on, and nothing broke down even when living in this uncertainty. Hume is precisely saying that this is what the world is about: Infinite Variances which we cannot predict — and that this is our real world-view ('the conceptual apparatus') and that is how people live (this is purely a philosophical problem; this is not an issue in life). — In reality it is not any form of an orderly world-view that keeps life on tact, it is the competitive system and an inclination to perceive aspects of life

in certain ways that give some comfort and protection against the helplessness due to the uncertainty we are surrounded with (when there is nothing firm to cling on to). — (Maybe aspect-blindness partly is a protective device — helping us to endure this uncertainty — like sunglasses protecting against clarity). — I wonder how the adherents of the orderly world-view doctrine think that people that have not studied Winch, or the books he read, keep 'their conceptual apparatus' from falling apart; from where are they to know that they will not tramp in a bog of uncertainty, or fall off the ladder, or that the sky will not fall on their heads if they let go of an orderly world-view — which they never possessed in the first place? - Do people constantly experience a 'break-down in the order of nature as a whole'? — (Would Hume's world-view have broken-down if he had read Winch?)

The Wittgensteinian method of logical analysis of language is the empirical method of philosophy. He provided us with an empirical test for distinguishing between a priori nonsense and sense by looking at how language is used (or 'grammar' as Wittgenstein said). He calls us to break up the a priori postulates into the logical constituents and to analyze what is actually claimed and how this corresponds with reality. - This is Wittgenstein's method of discerning sense vs. nonsense.

The whole point is (similarly to what Adam Smith showed in the economy) that life is such that what goes on does not follow any kind of 'natural laws', or captured forms of logic, nor are there causes and effects following a set pattern. All in social life is merely governed by the constant interplay between expressions and interpretations in the competitive system, as in a dance with Infinite Variances — some which seem more regular to us, some less.

Sometimes empiricism is said to mean that 'reality is equated with what is given in experience'. But, I think the whole point is that the view on reality depends on what conclusions are drawn from the experience.

## 14. A CRITIQUE OF PURE NONSENSE

Kant is said to have caused a Copernican revolution in philosophy — I argue that at best we can call it a Copernican contra-revolution (one of the most successful of its kind), where Kant has sided with the primitivist speculative forces against honest contemplation and a search for truth.

Hayek correctly summarized Kant's philosophy as a result of a 'refusal to yield to forces which we neither understand nor can recognize as the conscious decisions of an intelligent being' and is the product of an incomplete and therefore erroneous rationalism (Hayek, 1994, p.224).

Kant is called one of the greatest philosophers of all times. The secret of his success was that he was the first copywriter in the history of philosophy (*copywriter — build your brand in every clever slogan*). Kant lived in a time when the search for truth had been abandoned and philosophy had been taken over by people for whom philosophy was a trade — success was guaranteed to the one with the wittiest system — and Kant was good at the game. He had good knowledge of the history of philosophy and the contemporary trends. He understood what were the widely held beliefs of the times; what were the merits of new thoughts and what could be made out of it — and he went on to make a philosophy appealing to his times. - Hume "From these dispositions in philosophers and their disciples arises that mutual complaisance betwixt them; while the former furnish such plenty of strange and unaccountable opinions, and the latter so readily believe them (p. 23).

A lot of the contradictions in Kant's writings (a little bit of empiricism, a big lot of a priori — but then dilution of the same a priori etc) can be explained against the background, that this was not an honest quest for truth, but one for fame and financial rewards. - "Kant kept to the sidelines in natural philosophy, as he did in epistemology and metaphysics, and took neither part" (Toulmin, p. 51). - "I argue that Kant is at war with himself...I explore why Kant seems to contradict himself"

(Bernstein, p. 4). — At one point Searle says (p. 189): "Kant's many senses of the term 'transcendental argument' — But if Kant has many 'senses' for it, then doesn't it show that the notion is meaningless, just empty use of words. And in this case, why refer to any of his uses of the 'transcendental'?"

This is how Kant postulates the a priori: 'We shall understand by a priori knowledge absolutely independent of all experience'. 'A priori' modes of knowledge are entitled pure when there is no admixture of anything empirical'. - A criterion for a priori is 'if a proposition which in being thought is thought as necessary, then it is an a priori judgment' (p. 43). — This can be compared with what Hume had said: "My intention then in displaying so carefully the arguments of that fantastic sect, is only to make the reader sensible of the truth of my hypothesis, that all our reasonings concerning causes and effects are derived from nothing but custom; and that belief is more properly an act of the sensitive, than of the cognitive part of our natures" (p. 72). - Hume: "Thus all probable reasoning is nothing but a species of sensation. It is not solely in poetry and music, we must follow our taste and sentiment, but likewise in philosophy" (p. 72). - Hume: "The past experience, on which all our judgments concerning cause and effect depend, may operate on our mind in such an insensible manner as never to be taken notice of, and may even in some measure be unknown to us" (p. 72).

Indeed Kant's separation of theoretical and practical reason can be explained by this: his theoretical (in itself already messy and contradictory) was not enough to support a lot of the day-to-day notions, so Kant introduced the 'practical reason' also (in marketing terms: "Practical reason gives you more flexibility, you can twist and bend it as you wish"). — But even this dualism between theoretical and practical reason is not a new invention of Kant's, but belongs to Aristotle (although Aristotle seems to be dealing with those notions with much more honesty). — Considering that Aristotle is one of the absolute cornerstones of the history of philosophy it is quite perplexing that this Aristotelian philosophy that Kant copied is called Kantian.

Kant had to find a philosophy that 'would suit the new scientific beliefs' (Svendson, p. 83). — We are told that Kant actually was engaged in the business of conceiving a philosophy *to suit the needs of some beliefs!* (A tailor-made philosophy!) — Surely it has to be the other way around:

Philosophy is the activity of trying to grasp the reality behind our beliefs (and then we could tailor, for once, the practice to suit reality).

Kant: " I have made completeness my chief aim, and I venture to assert that there is not a single metaphysical problem which has not been solved." (p. 10) — I rather claim that he was on the side of producing them, not solving. - Hume: "Nothing is more curiously inquired after by the mind of man, than the causes of every phenomenon; nor are we content with knowing immediate causes, but push on our inquiries, till we arrive at the original and ultimate principle.. And how must we be disappointed, when we learn, that this connexion, tie, or energy lies merely in ourselves, and is nothing but that determination of the mind, which is acquired by custom... Such a discovery not only cuts off all hope of ever attaining satisfaction, but even prevents our very wishes; since it appears, that when we desire to know the ultimate and operating principle, as something , which resides in the external object, we either contradict ourselves, or talk without a meaning" (p. 173).

That Kant's philosophy is so helpless can be explained with the method he used, here we may listen to how Kant describes that himself (Kant, p. 10): "The subject of the present enquiry is the ...question, how much we can hope to achieve by reason, when all ...experience are taken away". — The answer is null, *ex nihilo nihil fit*: from nothing nothing is produced — without considering experience nothing is left.

This is what he says about 'transcendental a priori': "I entitle transcendental all knowledge which is occupied not so much with objects as with the mode of our knowledge of objects in so far as this mode of knowledge is to be possible a priori." (p. 59) — "Knowledge" he claims, "which is independent of experience and even of all impressions of the senses is called a priori" (p. 42). — I.e. the definition of a priori is that it is a word as an empty symbol, and anybody may claim what is the content (and the more authority the person has the more solid is the claim). - Hume: "We may observe... that nothing is really present with the mind but its perceptions or impressions and ideas, and that external objects become known to us only by perceptions they occasion. To hate, to love, to think, to feel, to see; all this is nothing but to perceive" (p. 49).

Kant's claim (p. 85) that 'arriving at knowledge in a priori fashion is through mere concepts or intuitions' is in marked contrast to Mill's wisdom of declaring the futility of the doctrine that we can discover

facts, detect the hidden processes of nature, by an artful manipulation of language (it 'is so contrary to common sense, that a person must have made some advances in philosophy to believe it'). — But, Kant actively encourages people to engage in this artful manipulation of language i.e. to twist and bend concepts. — (I wonder how Kant thinks that we first arrived to the concepts — maybe he thinks that there was a big typescript drawn up when life first started, and that this typescript was implanted in the brains of people. - We shall remember that there were no flash-sticks for saving and implanting data at his times).

Kant does not understand that 'intuition' is the use of life experience without tracing the exact source of a particular knowledge, and therefore claims: " Intuition and concepts constitute, therefore, the elements of all our knowledge... Both may be either pure or empirical" (Kant, p.92). — I remind that in reality concepts are but mere 'elements' involved in interpretations; mere words, part of the defect language of things; words that we use for expressing and interpreting feelings, opinions — concepts, at best, do not but represent distorted aspects of social life.

Kant claimed that mathematics, space, and time were the perfect examples of a priori knowledge. He was famously fascinated by the mathematical formula  $5 + 7 = 12$ , bewildering about how much sense it seemed to make! - " Mathematics gives us a shining example of how far, independently of experience, we can progress in a priori knowledge" (pp. 46 and 47). - (In another section of this book I discuss the misconception of mathematical a priori and show that mathematics is just a special form of language usage — i.e. empiric through and through exactly as all other language usage as well). - Hume: "When two numbers are so combined, as that the one has always a unite answering to every of the other, we pronounce them equal" (p. 51).

Kant: "There are two pure forms of sensible intuition, serving as principles of a priori knowledge, namely, space and time" (p. 67). - Kant claims that 'space' and 'time' prove that we have a priori knowledge; while all they prove in reality is that there is such an environment that can be called space and that there is time (i.e. this aspect of life) — But that is not knowledge of space and time (Knowing that there is food does not mean that there is knowledge about how to cook). — Space and time do not have a meaning i.e. we can gain knowledge of them only in life, by experiencing, being, in relation to space and time. — (Psychologists have



shown that it takes time before children learn to correctly relate themselves to space and time — we know that even some adults have difficulty to understand time — or understand it similarly as others do.)

Kant even thinks that space is a 'thing' (p. 74): "space is such where the thing in itself cannot be known". — And he claims that *'because the thing-in-itself cannot be known then therefore he can know it a priori.* - Then are we to take that 'a priori knowledge' is the synonym of 'not knowing' ? - Well then what is the fuzz with all this a priori — couldn't he just have said that 'All knowledge is empirical — and what we do not have knowledge of that we cannot know. — I, Kant, will name that 'a priori'. - Kant: "Time is not an empirical concept that has been derived from any experience...Time is therefore given a priori" (pp. 74 and 75).- Kant: "Time and space are, therefore, two sources of knowledge, from which bodies of a priori synthetic knowledge can be derived." (p. 80). — No, Kant, they are no sources of knowledge: they are circumstances for life and objects to which we apply knowledge, relate knowledge. — In reality space is the environment within which life takes places and time is a function of being alive.

Kant confuses existence and knowledge: "Time is not something which exists on itself, or which inheres in things as an objective determination" (p. 76) — (I will here not take up the obvious arguments against the notion of 'existence of time'). — Kant (p. 77): "time is an a priori condition of all appearances whatsoever". — He says 'a priori condition' — but, condition is not knowledge. — With this Kantian notion we might as well say: "Oxygen is an a priori condition for all appearances " and so are water, land, wind, darkness, sunlight, sand, food etc. - Being 'a condition of' does not have anything to do with knowledge; life is a condition of knowledge — but this biological one is not our question.

Against this Kantian hula hoop on time and space representing a priori knowledge, it is so sparkingly refreshing to read Hume, who tells how time and space are perceptions and relations which we form by comparison (p. 15): " [After identity] the most universal and comprehensive relations are those of space and time, which are the sources of an infinite number of comparisons, such as distant, contiguous, above, below, before, after etc." — We shall remember that Hume is not a contemporary writer, but the one that Kant explicitly opposed.

(I am getting concerned that philosophers who refer to Kant actually do not read his books and merely refer to him based on the perception of Kant received from secondary sources — and there he appears as 'the greatest'. — For in the books he wrote nothing is hidden, all is in plain view).

Kant (p. 55) is so entirely in the spell of semantics that he really takes language as a whole to be the a priori reality (i.e. the language that he had empirically learnt). He criticizes Hume for having, according to Kant, occupied himself exclusively with the 'synthetic propositions' regarding the connection of an effect with its cause and he believed to have shown that such an a priori proposition is entirely impossible (He thought that this notion of his grammar 'synthetic' would serve to prove something whatsoever of reality). Kant: "If we accept [Hume's] conclusions, then all that we call metaphysics is a mere delusion whereby we fancy ourselves to have rational insight into what, in actual fact, is borrowed solely from experience, and under the influence of custom has taken the illusory semblance of necessity. If he had envisaged our problem in all its universality, he would never have been guilty of this statement, so destructive of all philosophy". — Kant uses a so-called argument ad absurdum (the circle argument of the primitivist, where the counterparty's argument is being ridiculed by showing that it goes fundamentally against some other even more deeply held primitivist beliefs) - with an artful manipulation of language he tries to show the absurdness of Hume's arguments. — The irony is that Kant is correct in the hypothesis that he tries to refute; he presents the issue and draws the diametrically wrong conclusion. Kant, awakes the (for him and his followers) horrifying prospect that if Hume would be right then 'all that we call metaphysics is a mere delusion'. — Now, what Hume said, and Kant and posteriority could have greatly benefited from, is the realization that all metaphysics is a delusion! He should have stopped for a moment, taken a deep breath, contemplated, and realized that this is the illusion. - Hume: " It is usual with mathematicians, to pretend, that those ideas, which are their objects, are so refined and spiritual a nature, that they fall not under the conception of the fancy, but must be comprehended by a pure and intellectual view, of which the superior faculties of the soul are alone capable. The same notion runs through most parts of philosophy and is principally made use of to explain our abstract ideas..It is easy to see, why philosophers are so fond of this notion of some spiritual and refined

perceptions; since by that means they cover many of their absurdities, and may refuse to submit to the decisions of clear ideas by appealing to such as are obscure and uncertain." — "If its weakness renders it obscure, it is our business to remedy that defect, as much as possible, by keeping the idea steady and precise; and till we have done so, it is in vain to pretend to reasoning and philosophy" (p. 52).

There are more ad absurdum arguments, Kant: "Unity of syntheses according to empirical concepts would be altogether accidental, if these latter were not based on a transcendental ground of unity. Otherwise it would be possible for appearances to crowd in upon the soul, and yet to be such as would never allow of experience. Since connection in accordance with universal and necessary laws would be lacking, all relation of knowledge to objects would fall away..." (p. 138). Yes, Kant, this is how it is: 'unity of syntheses' is merely accidental; appearances, perceptions, crowd the soul, the mind (or whatever you want to call it). — But, now it is quite naïve anyway to claim that these appearances would be such things that take up so much space in 'the soul' that no experience would fit in (expressions, interpretations, impressions, are not things, and do not occupy any space). — Another side to the issue is that all these purported a priori concepts do affect healthy thinking and in this way actually keep a person from perceiving reality properly (i.e. quite to the contrary of Kant's claim). — I note also that Kant claims that his system is kept together by some 'universal and necessary laws'. - These 'laws', however, remain hidden from us — Kant does not share with his readers the insight into what these laws are. — But again Kant calls to his aid the argument ad absurdum (p. 45): "For whence could experience derive its certainty, if all the rules, according to which it proceeds, were always themselves empirical, and therefore contingent? Such rules could hardly be regarded as first principles?" — That is he claims there are laws (or rules) that govern a priori reasoning with the claim that if it was not so, then there would be no certainty. — Again, I have to confirm that 'yes' that is the hard reality of life. There simply does not exist the kind of certainty Kant and the a-priori crew craves for — and none can be created, neither by hook, nor by crook. — (I.e. forget 'the first principles' and all the subsequent ones).

Wittgenstein: "It is only apparently possible 'to transcend any possible experience,' even these words only seem to make sense, because they are arranged on the analogy of significant expressions" (Zettel, p. 48).

As a good salesman Kant offers also this convincing argument for proving 'a priori' (p. 46): "Besides, once we are outside the circle of experience, we can be sure of nothing being contradicted by experience". — That is Kant tries to lure people over to believe in his 'a priori' product by offering them such a wonderful escape from reality! - But can you escape reality by denying it. No. The reality will always come back to haunt you.

There is more to Kant's sales pitch (p. 54): "Metaphysics...ought to contain a priori synthetic knowledge. For its business is not merely to analyze concepts...but to extend our a priori knowledge". — Now, science (for him metaphysics was science) needs a priori, because the function for this science is to produce and distribute a priori knowledge (talk about creating demand!).

Kant (p. 139): "All attempts to derive these pure concepts of understanding from experience, and so to ascribe to them a merely empirical origin, are entirely vain and useless. I need not insist upon the fact that, for instance, the concept of cause involves the character of necessity, which no experience can yield." — Certainly this word 'cause' does not involve the word 'necessity'. - Hume: "Should any one leave this instance, and pretend to define a cause, by saying it is something productive of another, it is evident he would say nothing. For what does he mean by *production*? Can he give any definition of it, that will not be the same with that causation? If he can; I desire it may be produced. If he cannot; he runs in circle, and gives a synonymous term instead of a definition" (p. 55). - Hume: "For what reason we pronounce it necessary, that every thing whose existence has a beginning, should also have a cause?" (p. 55).

Kant "The representation of a universal condition according to which a certain manifold can be posited in uniform fashion is called a rule, and, when it must be so posited, a law. Thus all appearances stand in thoroughgoing connection according to necessary laws, and therefore in a transcendental affinity, of which the empirical; is a mere consequence" (p. 140):. — There simply are no such rules and laws; they are exclusively the products of Kant's creative imagination. - Hume: "I may venture to affirm.. that they are nothing but a bundle or collection of different perceptions, which succeed each other with an inconceivable rapidity, and are in constant flux" (p. 165).

Kant: "Nature is not a thing in itself; it is an aggregate of all appearances; therefore we can discover it only in the radical faculty of all our knowledge, namely, in transcendental apperception; transcendental apperception is the unity on account of which alone it [i.e. transcendental apperception] can be entitled an object of all possible experience [i.e. nature]; Nor shall we be surprised that just for this very reason this unity can be known a priori, and therefore as necessary" (p.140) — Here Kant started out correctly with stating the obvious that 'the nature is not a thing in itself'; he is also correct in stating that 'it is the aggregate of all appearances' (i.e. that our understanding of it can be described so) — but then follows a peculiar conversion of thinking (an artful manipulation of words), instead of concluding that we can therefore not gain any final kind of knowledge about the nature he claims that the premises that he set supports the idea that we can have a priori knowledge about nature — he claims that when we can have no knowledge, because of objective premises, then we all of a sudden can have a priori knowledge.

Kant (p. 192): "If knowledge is to have objective reality, that is, to relate to an object, and is to acquire meaning and significance in respect to it, the object must be capable of being in some manner given. Otherwise the concepts are empty; through them we have indeed thought, but in this thinking we have really known nothing; we have merely played with representations". — There is no objective reality; there are no 'objects' (i.e. things) that are capable of this reality; there is nothing 'given'; indeed the concepts are empty and most misleading in-themselves; yes, we merely play with representations! - Hume:" Let men be once fully persuaded of these two principles, that there is nothing in any object, considered in itself, which can afford us a reason for drawing a conclusion beyond it, and that even after the observation of the frequent or constant conjunction of objects, we have no reason to draw any inference concerning any object beyond those of which we had experience" (p. 95).

Kant: "Whether things are identical or different, in agreement or in opposition, etc., cannot be established at once from the concepts themselves by mere comparison, but solely by means of transcendental consideration, through distinction of the cognitive faculty to which they belong" (p. 277). — Why, what proves this statement? — Wasn't 'transcendental' supposed to be that which is beyond our comprehension? — So how can we now travel over there for doing the consideration? — Kant: " elements of all modes of a priori knowledge... cannot be derived

from experience, since in that case they would not be knowledge a priori" (p. 130). — This must be the concept of concepts — experience is by definition excluded from the a priori language-game; a priori gets defined so that it is all that is not for real — and what is not for real should be considered more real, than the real... (That is, 'a priori' is whatever Kant wants to call so). — Bernstein (p. 52): We can, according to Kant, think more than we can know.

Wittgenstein: "We mind about the kind of expressions we use concerning these things; we do not understand them, however, but misinterpret them. When we do philosophy we are like savages, primitive people, who hear the expressions of civilized men, put a false interpretation on them, and then draw the queerest conclusions from it" (PI 194).

### **Kant's Pocket version of Reason**

Kant: Reason "finds itself compelled to resort to principles which overstep all possible empirical employment, and which yet seem so unobjectionable that even ordinary consciousness readily accepts them." (p. 7).

Kant criticizes the faculty of reason — as if ordering the brain to work better: " I do not mean by this a critique of books and systems, but of the faculty of reason in general, in respect of all knowledge after which it may strive independently of all experience." (p. 9); - "Once reason has learnt completely to understand its own power in respect of objects which can be presented to it in experience, it should be able to determine, with completeness and certainty, the extent and the limits of its attempted employment beyond the bounds of all experience" (p. 57). - He treats "the reason" as a tamagotchi, a Japanese 'virtual reality pet' (an electronic toy popular in Japan), that is fed with correct knowledge and so goes on to "determine with completeness and certainty, the extent and limits" of knowledge. — Kant: "In view of all these considerations, we arrive at the idea of a special science which can be entitled the Critique of Pure Reason. For reason is the faculty which supplies, that which contains the principles whereby we know anything absolutely a priori" (p. 58).

Kant: "the only use which the understanding can make of these concepts is to judge by means of them" (p. 105). — The 'understanding' is the same thingly tamagotchi-reason, which 'makes use of' the intellectual

feed that it receives in form of concepts. — Kant: "pure speculative reason ...can measure its powers according to the different ways in which it chooses the object of its thinking" (p. 25). — Kant: "Reason comes into conflict with itself" (p. 10). "Pure reason is, indeed, so perfect a unity that if its principles were insufficient for the solution of even a single one of all the questions to which it itself gives birth we should have no alternative but to reject the principle, since we should then no longer be able to place implicit reliance upon it in dealing with any one of the other questions." — In this proposition Kant-in-himself tells the reason for refuting the principle of a priori.

Kant: "Understanding and judgment find, therefore, in transcendental logic their canon of objectively valid and correct employment; they belong to its analytic portion. Reason, on the other hand, in its endeavours to determine something a priori in regards to objects and so to extend knowledge beyond the limits of possible experience, is altogether dialectical" (p. 177). — It is complete nonsense to claim that 'understanding and judgment' (as if they were some kind of brothers) are using 'transcendental logic', or whatever other kind of devices — and that 'reason' (is that their mate or what?) would be a different animated thing that chose not to use the 'transcendental logic', but instead opted for another facility!

Kant: "Let me call the place which we assign to a concept, either in sensibility or in pure understanding, its transcendental location. Thus the decision as to the place which belongs to every concept according to rules, is a transcendental topic" (p. 281). — This tamagotchi reason has within itself some kind of shelves or drawers where Kant locates the place for each sort of knowledge.

*Compare Kant's nonsense with Hume's discussion about reason "Reason is the discovery of truth or falsehood. Truth or falsehood consists in an agreement or disagreement either to the real relations of ideas, or to real existence of matter and fact. Whatever, therefore, is not susceptible of this agreement or disagreement, is incapable of being true or false, and can never be an object of our reason. Now it is evident that our passions, volitions, and actions, are not susceptible of any such agreement or disagreement; being original facts and realities, compleat in themselves, and implying no reference to other passions, volitions, and actions. It is impossible, therefore, they can be pronounced either true or false, and be either contrary of conformable to reason" (Hume, p. 295). — Thank you*

*Hume, what a relief — what a sanctuary from the madness we are surrounded with!*

Kant gives elaborate instruction on how to use the pet 'reason' (we read it as instructions for implementation or construction): "The table of categories is quite naturally our guide in the construction of the table of principles. For the latter are simply rules for the objective employment of the former: All principles of pure understanding are therefore: 1. Axioms of intuition: 2. Anticipations of perception 3. Analogies of experience, 4. Postulates of empirical thought in general" (p. 196). - Kant: "The transcendental employment of a concept in any principle is its application to things in general and in themselves; the empirical employment is its application merely to appearances" (p. 259).

**Instructions for use:** Kant: "We must first resort to transcendental reflection, in order to determine for which cognitive faculty they are to be objects, whether for pure understanding or sensibility" (p. 282). - (Push the transcendental button — not the sensory one!)

**Instructions for use:** Kant: "All our knowledge starts with the senses, proceeds from thence to understanding, and ends with reason, beyond which there is no higher faculty. Reason, like understanding can be employed in a merely formal, that is logical manner, wherein it abstracts from all content of knowledge" (p. 300).

**Instructions for use:** Kant: "We may expect that the logical concept will provide the key to the transcendental, and that the table of functions of the former will at once give us the genealogical tree of the concepts of reason" - "reason we shall here distinguish from understanding by entitling it the faculty of principles" - "thus every syllogism is a mode of deducing knowledge from a principle" (p. 301).

**The scope of application of Reason:** Kant: "Reason is impelled by a tendency .. to go out beyond the field of its empirical employment, and to venture in a pure employment, by means of ideas alone, to the utmost limits of all knowledge, and not to be satisfied save through the completion of its course in [the apprehension] of a self-subsistent systematic whole" (p. 630).

**Instructions for use:** Kant: "In accordance with reason's legislative prescriptions, our diverse modes of knowledge must not be permitted to be

a rhapsody, but must form a system. Only so can they further the essential ends of reason. By a system I understand the unity of the manifold modes of knowledge under one idea. This idea is the concept provided by reason — of the form of a whole — in so far as the concept determines a priori not only the scope of its manifold content, but also the positions which the parts occupy relatively to one another" (p. 653).

**Instructions for use:** Kant: "But if this manifold is to be known, the spontaneity of our thought requires that it be gone through in a certain way, taken up, and connected. This act I name synthesis" (p. 111).

As a resume of Kant's brand of 'philosophy' I would like to point out these issues which demonstrate his errors:

1. There is no a priori
2. There is no formal logic
3. Expressions are not things, not in-themselves and not in any other respect either
4. There are no laws of thought
5. There are no causes and effects (in social life, i.e. in language)
6. Whatever is claimed to be 'the transcendental' cannot be known (by Kant's very own definition of transcendental — therefore in philosophy we must remain silent thereof).

Kant set the foundations for the kind of philosophy that Hegel was doing: Kant had introduced that system of philosophy as a dishonest game with words, and Hegel turned it into acrobatics of words — where nothing else had a meaning than the quasi-aesthetic arrangement of words. Kant's system as such was the foundation, but he also preceded Hegel in direct linguistic acrobatics — see.e.g. Kant: "The unity of apperception in relation to the synthesis of imagination is the understanding" (p. 143). — Kant: "The supreme principle of the possibility of all intuition in its relation to sensibility is, according to the Transcendental Aesthetic, that all the manifold of intuition should be subject to the formal conditions of space and time" (p. 155).

*By initiating this irresponsible metaphysical a priori philosophy Kant paved way for the ideologies of murder, nazism and communism, that were directly based on an evil play with words — they were products of the creation of an artificial transcendental reality, that people were made to*

*believe in. — This transcendental reality reached beyond itself and hit back on life on earth with the full force of a thing-in-itself — the thing in itself was the gas and the bullet.*

### **Kant's Moral Philosophy**

In addition to his philosophy of mind Kant is also celebrated for his moral philosophy. The academic moral philosophers of today still hail Kant as the greatest of them all. His star has not vanished even by the fact that people of today find compulsive the ideas he promoted such as: misogyny (a hatred of women); enthusiasm for capital punishment; prudery; admiration of the Prussian totalitarian system under Fredrick the Great (Posner 2002, p. 49); killing of new born babies (Posner 1993, p. 339). - For such is the power of brands that the name will overshadow the content and quality. - Hume: "I have objected to the system, which establishes eternal rational measures of right and wrong" (p. 303).

We are told to admire Kant's formulation of the moral law (or moral duty) requiring one to act in such a way that 'you always treat people never simply as a means, but always at the same time as an end' — And this when the killing of the new born baby is an end for the mother to live better — and by the execution of a human they want to teach the living a lesson. — This is one version of the so-called categorical imperative: 'act only in such a way that you would want to become a universal law.' — And naturally this is applauded as a pearl of moral wisdom — by the people crammed in the language of things and simplicity; by the people who do not see the Infinite Variances of life; by the people that do not understand that action and meaning is merely tied to a unique situation involving a unique person with unique values, constraints, threats and opportunities. Every situation is unique and every situation requires its own situation analysis — hence the only moral law can be to act as wisely as one can considering all the Infinite Variances. - Hume: "Nature has implanted in the human mind a perception of good or evil, or in other words, of pain and pleasure, as the chief spring and moving principle of all its actions" (p. 81).

## 15. LOGIC AND REASONING

Wittgenstein: "What Russell's [logic] lacks above all is application, and hence meaning" (Remarks Mathematics, p. 367).

Formal logic is an activity where sense is converted to nonsense; where a basically correct expression is substituted for a simplified (incorrect) expression. The interpretation of a logical formula has the meaning that the inventor of the formula assigns to it.

Now, as expressions (e.g. words and concepts) are not things, and are in no way similar to things (in fact they even 'are' not), then of course, the expressions cannot stand in any relation to each other (the way things can). There is no causal connection between one word; one conception or another. We only have interpretations of words, concepts, life around us. Not only are expressions and interpretations no things, but they are also merely aspects of different kind of thoughts or different kind of dealings. — Thence there is not and cannot be any formal logic.

The variables in logical formulae are the symbols for our expressions and interpretations. But so are common words; but not only words are symbols, but whole propositions, the whole depiction of a situation, the whole narrative is a symbol. They are symbols in the meaning that they 'stand in instead of something else' — they stand instead of our thoughts, i.e. they stand instead of our feelings. — They have the meaning only in an ever changing context — and that context can never be captured in a formula — life is the formula.

Wittgenstein: "Here one needs to remember that the propositions of logic are so constructed as to have no application as *information* in practice. So it could very well be said that they were not *propositions* at all; and one's writing them down at all stands in need for justification. Now if we append to these 'propositions' a further sentence-like structure of another kind, then we are all the more in the dark about what kind of

application this system of sign-combinations is supposed to have; for the mere *ring of a sentence* is not enough to give these connexions of signs any meaning" (Remarks Mathematics, p. 123).

Wittgenstein: "For testing is doing something with it" (Remarks Mathematics, p. 77).

" My fundamental thought is that the logical constants do not represent. That the *logic* of the facts cannot be represented" (Tractatus 4.0312).

Theories of formal logic strive to prove what correct reasoning is all about — but, nevertheless, we are never presented with a formula or pattern to show how incorrect (wrong) reasoning goes — if there is correct reasoning then there should certainly also be incorrect reasoning — if there is pure reason, there necessarily also have to be all forms of less pure reason — (I am tempted to say even 'dirty reasoning'). — Now, what is the value of proving a pure reason if there are so many other forms of reason as well? — And how many people are endowed with this purest reason? — 'Nobody, has the purest form — see, it is just an ideal' — If it is the ideal and nobody has it, then I presume that nobody can even possibly have it: and then what is all the fuzz about?

But then what is this 'reason' ? - It cannot possibly be anything else than the substantive name for the process of reasoning. Reasoning in turn means a conscious weighing of various arguments in order to reach a conclusion. But, if someone speaks of reason in terms of 'by reason alone vs. by experience' — then he seems to be claiming that there is a 'reason' which sits there somewhere on the shelves of the brain — ready for use (pret-a-porter). Then possibly they mean by reason a process resembling something like looking on the shelves to find the right one, maybe high up in the brain requiring to step on a ladder to reach it or searching all the shelves as if not remembering where the right one was left from previous use. — Maybe 'thinking in a specially orderly rational way' as opposed to 'just thinking' (or thinking in a lazy way, or being drunken, or just not paying attention, or lacking the capability to think that the logician considers himself to possess).

Merriam-Webster offers a surprisingly sensible (I would even say 'reasonable') definitions for the word reason: 'the power of comprehending, inferring, or thinking especially in *orderly* rational ways,

*proper exercise* of the mind; the sum of using the intellectual powers'. — If we remove the words for subjective assessment ('*orderly*', '*proper*') we have the purest definition of reason. - ('The etymology of reason: Middle English *resoun*, from Old French *raison*, from Latin *ration-*, *ratio* reason, computation, from *veri* to calculate, think; probably akin to Gothic *rathjo* account, explanation' — here like so often etymology offers a wide range of origins. - 'To take part in conversation, discussion, or argument; to talk with another so as to influence his actions or opinions "can't reason with her", to use the faculty of reason so as to arrive at conclusions.' - 'To justify or support with reasons; to persuade or influence by the use of reason; to discover, formulate, or conclude by the use of reason, a carefully *reasoned* analysis.')

Even these concise dictionary entries provide a much more correct account on what 'reason' and 'reasoning' is than the philosophical writings generally do.

A note: The words 'rational' and 'rationality' belong to the same family of thinking as 'logic', and 'reason' and are often used synonymously to each other. Often 'rationality' as a word has been reserved for defining the imaginary capacity of thinking that major metaphysical entities such as 'the economy', 'capitalism', 'society' and 'law' — are claimed to possess. - For Max Weber the law of Western societies was 'formal rational law'; Weber described various manifestations of 'peculiar western rationality' (Tuori, p. 34). - Ewald had an experience of 'a political rationality of the welfare state' (Tuori, p.59).

## Practical Logic

While we have to abandon formal logic, we can well use the notion 'logic' from the everyday language; in fact the concept logic has merely been hijacked by the rhymesters — logic started as a notion to make a distinction between sense and nonsense. — And after all it seems that we are heading back there, albeit slowly — all too slowly. — Toulmin tells (p. 25) that "In the streets of Athens (of Modern Greece), for instance, the words *logos* and *logikos* are by no means restricted to formal, demonstrative proofs: they cover the whole spectrum of reasoning and thought — and this was more or less the same in the Antique". - *Logos* is about gathering, choosing, suitable arguments — those from which to build the foundations of select knowledge: that is speech, words and reason.

Claiming something to be or not to be 'logical' or 'illogical' is actually stating something of the interrelation between propositions. Logic is the assessment whether we in the usage of language connect words in a fashion that corresponds with the ordinary usage of language and what the common experience would allow. Logic is therefore what confirms with life experience (and that is of course totally dependent on how we argue our views on life experience). Real logic is empirical logic (practical logic) i.e. it is about exploring whether our statements (propositions) correspond to the empirical experience and the grammar of language ('grammar' as Wittgenstein uses the word). - Posner says that 'practical reasoning is action oriented' (Posner, p. 71).

The word 'illogical' is used to illustrate when a chain of reasoning and the arrangement of words do not correspond with the possible in view of general life experience or when the propositions are in internal contradiction to each other. —The fundamental revelation about the notion of logic is that logic is the name for the activity to explore the relation between ideas rather than correspondence of facts (Posner 1993, p. 54).

## The Syllogism

Aristotle is honored with having 'founded logic' or even 'discovered it' — or 'formed a great original system of thinking.' The last claim is telling: it conveys the impression that Aristotle invented and patented a system of thinking and then somehow implanted that in to people's brain for use (once founded by Aristotle all future generations are born with Aristotelian logic). — And, yet all is just a misconception. There is, though, less mistake on the side of Aristotle than his readers. I am under the impression that what Aristotle wanted to say was that before people jump into conclusions they should consider the premises from which they draw the conclusions — 'look at life experience and previous knowledge and contemplate over it, consider if that is enough to merit the conclusions you want to draw'. The Aristotelian syllogism and the connected rules must have been merely didactic instruments, examples, sign posts.

The syllogism is intimate with the Aristotelian so-called primary laws of thought: **the law of identity**: A is A, or everything is identical with itself (an object is thought having an immutable nature); **the law of excluded middle**: A is either B or non-B, it either has that character, or property, or

does not have it; **the law of contradiction**: nothing can both be A and non-A, something cannot both have and not have a certain character; **the law of rational inference**: this is the syllogism itself, from what is known to what *is* unknown (*with their logic they would better say 'was'*). — Only in the language of things (and mind of things) can somebody perceive these 'laws' as valid. Only the analogy to things can call the mind to make such judgements: For one 'thing' cannot be another 'thing'; one 'thing' can occupy only one space at a time; an apple cannot be an orange. — But expressions are not 'things'; they are only interpretations of feelings; they do not occupy a space; they do not have properties (neither A nor B, nor non-A, or non-B and no other properties for that matter). — No matter how you twist the words nothing will come out of them; nothing to bend in no direction.

Posner says (p. 43): "We must distinguish between the validity of a syllogism and its soundness." — Soundness depends not only on the validity of the particular syllogism but also on the truth of the premises." - Validity is how premises fit to each other; establishing the minor premises i.e. finding the facts ("A syllogism can have a true conclusion even when both of its premises are false").

Tuori tells that Max Weber conceived of decision-making in courts in terms of logical syllogisms. He appreciates the criticism of that view, but nevertheless claims himself that "A minimum precondition for the justifiability of decisions is that they can be formulated as logical syllogisms" (Tuori p. 140). — But this is the very quality of a syllogism. Anything can be made to fit into the mask of a syllogism. So in fact what they are saying is that the minimum condition of justice is that the judge can read and write (the syllogism not being but a presentation style). - (Perhaps Weber arrived to the conclusion by a careful sociological study of court resolutions, whereupon he made the remarkable conclusion that all resolutions were written in form of a resolution).

The pronouncing of the verdict is dressed in the form of a syllogism. That is the verdict, the ruling, is pronounced as if all was given from the outside: There are certain facts (premises) and certain rules — and applying them 'we cannot but pronounce the one and only possible verdict, the one that is the natural outcome of the syllogism.'

Wittgenstein:

"Here it happens that our thinking plays us a queer trick. We want, that is, to quote the law of excluded middle and to say: "Either such an image is in his mind, or it is not; there is no third possibility!"—We encounter this queer argument also in other regions of philosophy. "In the decimal expansion of  $p$  either the group *Hill*' occurs, or it does not — there is no third possibility." That is to say: "God sees - but we don't know." But what does that mean? - We use a picture; the picture of a visible series which one person sees the whole of and another not. The law of excluded middle says here: It must either look like this, or like that. So it really — and this is a truism — says nothing at all, but gives us a picture. And the problem ought now to be: does reality accord with the picture or not? ... Here saying "There is no third possibility" or "But there can't be a third possibility!" — expresses our inability to turn our eyes away from this picture" (PI 352).



## 16. MATHEMATICS

### Mathematics - The Language of the Unit

Mathematics is true only in so far as the mathematical language deals with its own subject, namely the language of the unit. Mathematics deals with units; the basic notion of mathematics is a unit and the language is a technique to add and take units and their fractions (splitting, adding, and performing other kinds of tricks with units and their perceived parts). One and one always make two - but only in mathematics. In mathematics we do not concern ourselves with the definition of what is to be called a unit — whatever is presented as a unit is one: one apple is a unit; three apples in a bag is a unit ('a bag of apples'); one kilometer of road is a unit. The bag of apples and the kilometer of road make two units. — This issue is in mathematics left to total arbitrary discretion: any area; any size, any amount of constituent particles may form a unit. — If you say so, then it is a unit. — And if this is something that deserves the epithet 'exact', then that just shows what is the force of conventions.

Mathematics can be said to be a language, a special kind of language or a sub-language (one could even say that it is a language for a particular kind of game: the game of units). So the difference between ordinary language (language as a whole) and the mathematical sub-language is that ordinary language deals with all aspects of life and mathematical language has captured only the notion of unit, but all other aspects ('the infinite multiples of millions') are left out. - The mathematical language does not say if the thing is red, blue or green; whether it is round, fat, tired, fresh or gloom; not what it will be tomorrow, where it has come from where it is going. It only says 'one'. — The trust in the unit causes the illusions of mathematics. - Mathematics has shown that this degree of inexactness (in the fundamentals) is all right (it is anyway something in the right direction so to say). — Logic wants to perform the same trick that mathematics did, but there they want it to include the whole manifold

of Infinite Variances. — But we have to remember that the trick was the unit — the singular aspect!

In logic they change the infinitely inexact variables of ordinary language to the artificially exact variables of units. - Wittgenstein: " It is not logic — I should like to say — that compels me to accept a proposition of the form  $(\exists)(\exists) \supset (\exists)$ , when there are a million variables in the first two pairs of brackets and two million in the third. I want to say: logic would not compel me to accept any" (Remarks Mathematics, p. 155).

Wittgenstein: "' Mathematical logic' has completely deformed the thinking of mathematicians and of philosophers, by setting up a superficial interpretation of the forms of our everyday language as an analysis of the structures of facts. Of course in this is has only continued to build on the Aristotelian logic" (Remarks Mathematics, p. 300).

It is the measurement rod (the system of mathematics) which is exact, not the objects measured. Philosophers and scientists have a tendency of being baffled with the kind of exactness it seems to provide. The mathematical disciplines are even called the "exact sciences". Mathematics is used in natural science for measurement of things and their movements. This in turn has lead a many to consider the natural sciences themselves as exact - just because this sub-language, mathematics, is exact. - This bewilderment over the exactness of natural sciences led further to the idea that social sciences could be made even so 'exact'.

The relation between 50 and 100: Going up from 50 to 100 is 100% down from 100 to 50 is 50%?

Compare weight and mathematics: 7 apples = 900 grams. Which is a more accurate measure (or statement)?

Does one line fit in another?

How many cube meters fit within one and another?

Can an infinite line consist of an infinite range of seamlessly connected lines?

Mathematics is not a natural, but social science.

## Frege's Signposts

Frege with Russell most influenced Wittgenstein's philosophical thinking. It is therefore interesting to read Frege's *The Foundations of Arithmetic* (1980). That book serves as a concise introduction to his philosophy of mathematics and a clear overview on the history of mathematical philosophy. — The book is intriguing as Frege in building up the support for his own theory argues against the sounder theories, while presenting the opposing arguments in a rather appealing fashion. Similarly his presentation shows (contrary to his aims) what immense harm Kant caused by promoting the art of semantic manipulation — and this in conscious opposition to the philosophical narrative traditions of the British — Frege was a Kantian trying to achieve 'knowledge in its pure form'(p. vii). — Frege, under the spell of Kant, clinched to the semantic railing of concepts while simultaneously like a pathfinder erecting signposts directing the way to truth — to healthy understanding — a road that he declined to follow himself. Frege recognizes, discusses, but then rejects the healthy empirical explanations of the essence of mathematics (i.e. the mathematical language). — It is striking that Wittgenstein so long chose to cling on to Frege's and Russell's language-game having obviously read Frege's signposts. — He joined their game, but what is decisive is that Wittgenstein was better at the game; he actually played the game to the very end until he checkmated the king of the concepts. — It might well be so that we have this stubborn sticking with the game to thank for the capital deconstruction of the old exhausted philosophy; only by sticking with it to the end was he able to destroy it. — (A hint for reading Frege is to negate all he says, that way nonsense is logically converted to sense). Logical atomism was a good approach, because what it meant was that you were forced to consider each component of logic to its final conclusion — which meant reaching the questions of what is the finest, most subtle, meaning for each symbol and word. This activity showed that the meaning is not fixed or given, that the meaning is only out there in the forms of life and thus logic dissolved into life — the logical problems had disappeared and we were left with the problems of life. — And this is where traditional philosophy merged into the new philosophy, the pragmatic philosophy of sense. — What Wittgenstein did is that he provided a technique, an alphabet for thinking.

We learn from Frege that Mill told that all knowledge is empirical and that definitions not only fix the meaning of a term, but they also assert an

observed fact (p. 9) — (although I would say 'a purported fact'). Frege ridicules Mill's assertion and presents an argument *ad absurdum* as an example: "But what in the world can be the observed fact, or the physical fact..., which is asserted in the definition of the number 777864?" — Now, on behalf of Mill I would like to reply to this question. What is asserted is that people have developed a system of mathematics, a peculiar kind of a language, and in this system words (called numbers) have been arranged in such a fashion that 777864 has a meaning in the system. Its meaning can emerge e.g. as showing the order of a thing following immediately after the thing that was in the order 777863. There are many other meanings to be found for 777864 in the particular mathematical language-game.

In his misconceived criticism Frege goes on to argue against Mill for having correctly established that a collection of items can be called 'parcels' e.g. three of any item can form the 'parcel three'.

Frege tells that (p. 10) according to Mill "the calculations do not follow from the definition itself but from the observed matter of fact."

For Frege (p. 11) the 'number zero' is a puzzle — he thinks that the empirical fact would mean that the zero object should be experienced, instead of recognizing that we experience its absence.

Frege reports (p. 13) that for Mill the identity  $1=1$  could be false (obviously Frege ridicules the idea). And yet Mill hereby alerted to one of the most fundamental misconceptions in modern science and its application: Things do not become identical by declaring them identical. Mathematics is widely used today for declaring unlike entities like — this sick notion penetrates all levels of life starting from considering the life of humans as mathematical identities. — Conceptually this dilemma may be exposed by the following example: If you divide 10 by 10 you are supposed to get 1. But now divide 10 meters of cloth by 10 and you do not get one meter of cloth — for what would have happened with the other 9 meters? — Mathematics is a special kind of language use and here also only practice gives it a meaning.

Frege even quotes Mill in the most fundamental principle of scientific truth: "The doctrine that we can discover facts, detect the hidden processes of nature, by an artful manipulation of language, is so contrary to

common sense, that a person must have made some advances in philosophy to believe it." (Frege p.22, in reference to *The Principles of Science*, London 1879 p.156). - (Frege [p. 29] is so addicted to the semantic fallacy that he even refers to the position of the 'definite article' and 'the brackets' in his attempt to prove that upside down is black).

Frege tells that (p.27) M. Cantor calls mathematics an empirical science in so far as it begins with the consideration of things in the external world. On his view number originates only by abstraction from objects. - Frege (pp. 27 and 28): "For E. Schroeder number is modeled on actuality, derived from it by a process of copying the actual units with ones, which he calls the abstraction of numbers." - Frege tells (p.29) that according to Mill 'the name of a number connotes, of course, some property belonging to the agglomeration of things which we call by the name; and that property is the characteristic manner in which the agglomeration is made up of, and may be separated into, parts.' He even refers to Mill's fundamental revelation of the nature of mathematical truths (Frege p. 30): "Mill maintains that the truth that whatever is made of parts is made up of those parts holds good for natural phenomena of every sort, *since all admit of being numbered*". - Frege (p.31) reports that Locke says "Number applies itself to men, angels, actions, thoughts — everything that either doth exist or can be made imagined." — Berkley said (as Frege notes, p.33): "It ought to be considered that number..is nothing fixed and settled, really existing in things themselves. It is entirely the creature of the mind, considering, either an idea by itself, or any combination of ideas to which it gives one name, and so makes it pass for a unit. According as the mind variously combines its ideas, the unit varies: and as the unit, so the number, which is only a collection of units, doth also vary. We call a window one, a chimeney one, and yet a house in which there are many windows, and many chimneys, hath an equal right to be called one, and many houses go to the making of one city."

According to Schroeder (Frege p.39): " Each of the things to be counted is called a unit." — But Frege wonders why 'we first must bring the things under the concept of unity, instead of simply defining number right away as a set of things.' — Now Frege posed the right question, but he only directed it to the reader, while he should have contemplated on that himself. — He should have tried to understand the practice behind the notion Schroeder brought up — and this way Frege's philosophical problems could well have disappeared. — Frege is even more on right track —

but again failing to direct the question to himself — when he poses another rhetoric question (Frege, p. 41): "I ask once more: How can it make sense to ascribe the property "one" to any object whatever, when every object, according as to how we look at it, can be either one or not one? How can a science which bases its claim to fame precisely on being as definite and accurate as possible repose on a concept as hazy as this is? " — The correct conclusion Frege (and his readers) should have drawn is that 'this science which bases its claim to fame on being so definite and accurate' should be less arrogant and consider its humble roots in people's practices.

Notes are like numbers, both are special purpose languages: notes, when correctly applied, produce music and mathematics correctly applied produces measurement. - Compare the concepts of 'number' and 'thing' they both depict units. - Nietzsche said that things are collections of properties — no thing can change even one of its properties without a going out of existence (Welshon, p. 80). — The 'things' of mathematics are more stable, because they are carriers of only one property: the unit, and even so only on paper. And this poverty, the lack of aspects, is what has given the aura of success.

### Mathematics - Social Practices

Wittgenstein: "What is someone doing when he makes us realize that in counting out the result is already fixed?" (Remarks Mathematics, p. 113). - Kant bewilders over the curiosity that the sign '7' and the sign '+' and the sign '5' and the sign '=' yields a new sign '12'. This seems to be something quite extraordinary. - And it is so as long as one forgets that '5' is a symbol for expressing the combination of five units. But, if Kant would have used the famous reason he was so eager to promote, then he could have reflected over the fact that he was not born knowing that  $5 + 7 = 12$ . — Wittgenstein: "Experience teaches that we all find this calculation correct" (Remarks Mathematics 195). - Kant does not realize that he knows this, because he has been taught so. And he has been taught so, because over the preceding history people have developed a mathematical language: mathematical kinds of notions have been conceptualized and gradually received symbols and have then been standardized in the language. Mathematics really comes from people dealing with notions like: one apple; two apples; more; less; a lot; a little; me; you; etc. (In the time Kant lived the connection with the empirical evo-

lution of counting and numbers had been lost). There is compelling anthropological evidence that some of the basic notions of the system has also had to do with assigning fingers and even toes as symbols for the units. Practical needs like taxation, distribution of land and all kind of measurements have led to the development of mathematics. Mathematics is a perpetual social practice of trial and error. - Wittgenstein: "The mathematician is an inventor, not a discoverer" (Remarks Mathematics, p.99).

Mathematics uses the principle of repeated experience. Numbers are words of mathematics; they are used to form statements of relations between things operating in a closed system. People first formed notions of quantity and units; then they made a system of it; then they learnt to use this language abstractly and play with it — and that is 'the origins of mathematics' — the foundation is the language and social experience. - Wittgenstein: "Calculating is a phenomenon which we know from calculating. As language is a phenomenon which we know from our language" (Remarks Mathematics, p. 209).

It is said that in 1967 the second was defined as the time used for 9.192.631.770 vibrations of the radiation emitted by a cesium atom. — One wonders what part of that definition is derived from logic or a priori. — Could Kant have woken up just knowing that? - The only a priori mode of thinking is forgetting.

### Game Theory

Wittgenstein: "Certainty is as it were a tone of voice in which one declares how things are" (Certainty, p. 30).

Game theory is called applied mathematics — it is mathematics applied to measuring conjectures after the conjectures have first randomly been assigned mathematical values. Game theory is a modern form of nonsense — it is so to say the latest fad in nonsense. It is as if conjectures would have received new dresses and suits to wear — the royal dress of mathematics. — Wittgenstein: "The curse of the invasion of mathematics by mathematical logic is that now any proposition can be represented in a mathematical symbolism, and this makes us feel obliged to understand it. Although of course this method of writing is nothing but the translation of vague ordinary prose" (Remarks Mathematics, p.299).

The poetic notion of game theory goes like this: " The main purpose of game theory is to consider situations where instead of agents making decisions as reactions to exogenous prices ('dead variables'), their decisions are strategic reactions to other agents' actions ('live variables'). An agent is faced with a set of moves (*note: in reality there are infinite numbers of moves*) he can play and will form a strategy, a best response to his environment, which he will play by. Strategies can be either 'pure' (i.e. play a particular move) or 'mixed' (random play). A 'Nash Equilibrium' will be reached when each agent's actions begets a reaction by all the other agents which, in turn, begets the same initial action. In other words, the best responses of all players are in accordance with each other" (This quote is from the Wikipedia). — I get the impression that game theory would form a wonderful game in the purest sense of the word (a game-in-itself): something to be played in computers — but it was not the prize in literature that some famous game-makers received, but the prize in economic sciences!

"In other words, game theory studies choices of optimal behavior when costs and benefits of each option are not fixed, but depend upon the choices of other individuals." - "It has close links with economics in that it seeks to find rational strategies in situations where the outcome depends not only on one's own strategy and 'market conditions', but upon the strategies chosen by other players with possibly different or overlapping goals ". — That is, when there are so many different variables that we cannot anymore possibly manage them, then they will have to be exchanged into mathematical symbols, and now all feels so much homier.

This latest form of hocus-pocus is very popular in the academic world. This serves as a marvelous example on showing how little has changed in life over history: each time, each form of culture, has its own sort of superstition — but for the overwhelming majority the prevailing customs will always seem like the latest form of rationality (dancing around a totem; piercing dolls eyes; the coronation of a king, or marveling over a game theory).

" My aim is: to teach you to pass from a piece of disguised nonsense to something that is patent nonsense", Wittgenstein (PI 464).

In mathematical form conjectures seem so exact (and that is the essence of the mathematical spell). But we could also imagine another

kind of language for game theory conjectures: the language of colors. Imagine different shades of red being assigned as values; the darkest red being the most 'exact' value — the lightest red (pink) being the least 'exact'. Then instead of the language of mathematics we would replace the conjectures of ordinary life with the different shades of red: Instead of 30% we give a less than medium darkness of red for 9% we give an almost pink one and so on. Then we go on and mix all the colors in a bowl (today a computer would serve well for this) — the result would be a new red and its shade of darkness would have a special meaning — a new interpretation of our conjectures. Now, what would this language lose in exactness compared to mathematics and what would we be left missing in terms of applicability ("people would not understand this language" — 'because it is a new one').

Wittgenstein: "But now imagine a game of chess translated according to certain rules into a series of actions which we do not ordinarily associate with a *game* — say into yells and stamping of feet. And now suppose those two people yell and stamp instead of playing the form of chess that we are used to; and this is such a way that their procedures is translatable by suitable rules into a game of chess. Should we still be inclined to say they were playing a game? What right would one have to say so? " (PI 200).

**17. MORAL**

Few concepts of philosophy have been so misunderstood as moral. - The 'moral' that figures in philosophy, in law, in ethics, and 'morality' is a grossly flawed concept ('concept' indeed and nothing more).

It already goes without saying that also the notion 'moral' has been treated in philosophy as if it were a thing: Talk about 'keeping law and moral separate' or 'moral values' tell about treating moral as something existing. —Philosophers claim to be able to distinguish moral properties or values, their origins and present quarters. — Most claim that the properties exist, but refuse to tell what they actually are.

During the last hundred years there has been a huge improvement in the way people understand moral. More and more people have a sounder understanding of the nature of moral values as being specific to a given culture, to the environment. — But, even then the underlying notion is that moral is something existing in its own right; like separate things. — Moral diversity is understood to be a choice from a wider selection of moral values. — I do not propose to reject this kind of a perception of morality, but I note that hereby one does not reach deep enough. - This is neither the full story of moral, nor even a significant part of it. People do not understand that 'moral' is much more complex and subtle; it is not something separate to action or thinking, but an integral aspect of all human activity. — In reality moral is the mode of relating to things and expressions; moral is ever part of being alive; moral is present as an aspect of all thoughts and expressions. - It is the mode of emotion or feeling present in every action or activity, conscious or unconscious - it is the difference between life and death.

Always when we perceive something (see, listen, read, smell, touch...; perceiving includes the total process of interpreting the experience, thinking about it and forming an impression of it) we relate to that experience — we relate in a certain way to all experience. — This is what I call the

'mode of relating'. — This mode of relating is the moral. — Wittgenstein: "Every sign by itself seems dead. What gives it life? —In use it is alive. Is life breathed into it there? -Or is the use its life?" (PI 432). - "To each of these sentences a special tone of voice is appropriate, and a different context" (PI p. 160). "Fine shades of behaviour." —When my understanding of a theme is expressed by my whistling it with the correct expression, this is an example of such fine shades" (PI p. 176).

The moral is how we relate to feelings. — Our impressions are taken in by a moral mode and our expressions go out with a moral mode. — Now, you see there is no thing, there is nothing to be separate from anything — there is no single interpretation, impression or expression which is not wrapped in a moral mode (for that would only mean that it has not been perceived, entered in to the field of our sensory organs, and the process of mind).

I shall point out that this insight to the idea of moral being the mode of relating, and coupled with understanding that expressions are not things, but interpretations of feelings is all we need to know in order to dismiss the idea that there could be any artificial intelligence that could match the human mind.

Who knows maybe an analogy with music could help throw light on this? Compare musical notes, the notes on a sheet of paper; these signs are symbols serving as an instruction on how to play; but the notes come alive only by a person relating to them in a special way by playing and while playing. — We know that professional musicians play differently — nobody plays exactly in the same way; even of two virtuoso we can say that they sound different, very different; we see (not to mention the real experts) how differently it sounds in a manifold of ways: the difference in how it sounds is caused by the way of relating to the music, to the notes: the notes come alive when they are used. - Why do the performers sound different; both are good, technically faultless, both know what the notes mean, both can produce the sounds — but why is it different — because there is a feeling to the music, the feeling cannot be disseminated into and identified in a specific act, in a certain vocal point, the feeling is present in the whole playing, from start to end; there are no atomic parts of it, there is nothing that can be taken separately — all is on a continuum. — This feeling is the same kind of feeling as the moral sentiment ever present in all and all. — And now consider the listener and the spectator:

at what point in the music did the spectator show a special moral sentiment? — He was continuously relating to the performance (if at all — if he was not thinking about when the next break is coming up). — But, the continuous moral sentiment is probably here again forgotten and confused with the spectator's rounding up his impressions (when being asked, or just for himself, or maybe even unconsciously). Now the spectator is searching for the words to express his feelings — how to make a resume of 50 minutes of listening: "the musician was too bold and modern in his interpretation, he was not able to....".... "I like a more classical style". The 'classical style' is the macromoral sentiment, in fact the expression the spectator came across to describe the sentiment. Now, if he defines himself as an admirer of classical music, he will probably sit all through the act and have an underlying prejudice to the presentation from that point of view (but maybe he also likes a certain kind of looks of the performer and this will cause an other kind of sentiment to intervene). — Whether he is conscious about it or not, there is a moral mode (or several modes) ever present.

This understanding of the moral as the mode of relating finds support in the modern scientific study of neurobiology. The results of neurobiological research should serve to fully disintegrate the traditional philosophical notions of moral (and the accompanying nonsense of free will, consciousness etc). The neurobiological researcher Antonio Damasio says: "As far as I can fathom, few if any perceptions of any object or event, actually present or recalled from memory, are ever neutral in emotional terms. Through either innate design or by learning, we react to most, perhaps all, objects with emotions, however weak, and subsequent feelings, however feeble" (Damasio, p. 93) — This is the same as my claim that moral is the mode or our way of relating. - " Every experience in our lives is accompanied by some degree of emotion and this is especially obvious in relation to important social and personal problems" (Damasio, p. 146).

Words acquire a meaning not only in the context of a narrative, in the web of beliefs — the meaning is also inflicted by the moral sentiment, the way we relate to words and the feelings they arouse. - Imagine an SMS or a paper note with the words 'good morning'. You look at the words and understand them through your feelings — the meaning depends totally on who wrote it, and why. Was it sent by the one you love, or one of them; — what kind of love is in question — maybe 'just friends'? In what connection

was it sent? Maybe after a quarrel; or as a reminder of an old friend; or you parted with a minute ago; or maybe a black-mailer's subtle approach; somebody that wanted to take a revenge; maybe a note on your morning snack tray in the plane, or the heading of instructions in a prison camp. - So what means 'good morning' — a statement about space and time, a wish for the best, a reminder from somebody, maybe the tentative way of saying " I love you", or what.—The words have a meaning only through the feeling with which they were sent and with which we look at them at receipt (expressions and interpretations — sometimes very private for nobody to know — and here a dictionary will not be of any use).

The moral is all over the place — there is no human existence without a moral feeling — any feeling is a moral one.

Any content in the human mind is packed in a moral wrapper. It is only the package that gives it a meaning. The package is our moral sentiment — penetrating each most subtle aspect of living.

Ordinarily morals and morality are consciously perceived only in extremes. Macromorals are those issues that people in everyday life (and e.g. in the theory of law) conceive as being 'moral'. — Posner says that 'moral' in fact are the 'contested moral issues' — the issues that are not considered as 'moral' are the ones that everybody agrees with — which are considered 'right' by all (Posner 2002, footnote 3 on page ix). — (We can take this notion one step further into law to see that 'law' is all those issues that everybody agrees with, and therefore do not see them being 'moral.' — "Judges get into moral quandaries only when the law points to a result that violates their deeply held moral beliefs", Posner 2002, pp. 113 and 114).

But isn't ethics the same as macromorals? — No, ethics is different. Ethics is purported to be a study of what is good and bad. - But, of course there is no such 'thing', and cannot be; the good and the bad, and all between, and beyond, are issues that can be assessed only post fact (and that only in every specific situation separately). Maybe we could conceive of a scientific discipline 'ethics', in which they analyze how people have tended to act (from the perspective of the historian) in terms of good or bad in any given conditions. This would be a discipline of history (All social sciences are better thought of as 'history' — they are narratives of what has been said). — Wittgenstein correctly recognized ethics as the

study of "the question whether the good is more or less identical than the beautiful," (Stern 1996, p.162).

Hence, naturally, (in view of the physical reality) it is quite fantastic to claim that moral and law would be separated — there is nothing there to separate (separation is a word describing aspects of things — it belongs to the world of things). — Could air and breathing be separated — should we try to separate them? — Would the likelihood of this separation be higher if Kant, Karl Popper or a man called Aristotle had claimed so? (Did they contribute to the theme of separation of air and breathing? Are we lost if they did not?)

The measure of objectivity is the degree to which a person can identify that his thinking in each given situation is affected by his own narrow moral beliefs.

Everything in law is also moral of the kind I call macromoral — if something is not moral (consciously) for oneself it is that for another.

Moral is the measure of justice.

Moral is the way we relate to a norm (compare the nuances of relating to music).

The moral feelings are ever present in a binary-kind of system operating in the opposite modes of good or bad (pain and pleasure).

When we understand that the moral is the mode of relating then we are in possession of all we need to comprehend that there are no absolute moral truths, and there cannot be any. — Obviously not: infinite interpretations of expressions, and expressions of interpretations wrapped in a moral mode exclude all ideas about truths; from nothing nothing will come out. And we need to state this solely because the opposite has been the credo of all totalitarian morals from the micro-totalitarians at home to the macro-totalitarians that have ruled the world.

There are no moral truths - But, it does not mean that we do not have the right to moral convictions; we do have a right to them, as long as we understand that imposing one's moral belief is a very extraordinary thing that can be done only in connection with protection against immediate danger for life. - Only the moral convictions which are based on the total

respect of physical integrity of a person, of the individual person, and which is totally oriented for the best of an individual human being, have a right to be. Understanding the essence of moral does not mean the same as a duty to tolerate whatever and succumb to cultures that do not recognize the individual human being as the highest good.

### **Moral and Law**

There is a united front of primitivist legal scholars that claim: The moral is a thing! — And the Moral, they think, is not the same 'thing' as the Law — for them they are different 'things'. -

They are never tired of stressing this point. - "The idea that there is a moral order accessible to human intelligence and neither time-bound nor local, an order that furnishes objective criteria for praising or condemning the beliefs and behavior of individuals and the design and operation of legal institutions, echoes down the corridors of Western intellectual history. The outpouring of scholarly reflection from the time of Aristotle to the present that it has inspired has in turn inspired a host of theories in part derivative and in part parallel concerning the form and content of legal norms", Posner (Posner 2002, p. 3).

[Habermas emphasizes the distinction between law and morality (Posner 2002, p. 108). — 'The moral and law are two significant separate sovereign normative systems' says Alekseev (pp.163 and 165). - Tuori claims that "another strict line of demarcation is drawn...between the law and other normative orders, particularly morality" (Tuori, p. 8). - Tuori (under the influence of Dworkin): "Legal principles expose the legal order to the influence of morality and consequently the link to morality has often been conceived of as the defining feature of legal principles...With regard to legal practices not all moral principles are legally relevant and the moral justifiability of a principle is not enough to make it a legal principle" (Tuori, p. 181). - Kelsen the most Kantian of all manufacturers of law-games admitted that his game had competition in "other social normative orders, these norms may be called moral norms and the corresponding branch of science can be called ethics" (Kelsen, p. 65).]

The positivist moral fallacy is that they do not notice that they de facto equate the moral with the law, as Nersesyantz correctly points out:



"Kelsen criticizes the ethico-politically oriented natural law philosophies; he criticizes mixing law with moral, but for Kelsen justice is acting in accordance with the moral and the moral code [for him] is in the positive law" (Nersesyantz, p. 56).

After all the lofty and thingly words on separation of law and moral one can look at the history of law — there is no issue that at hindsight would not show as a moral issue. — It did not seem moral then — well it was at the time and we can see it now.

Moral and law cannot be separated, because moral applies to the way of thinking (the mode of thinking, relating to things and expressions). - It always applies, because we are not robots; robots process information without moral considerations. All human beings process information only with moral considerations. - The problem is rather in objectivity and neutrality and the degree of how consciously we perceive our moral feelings. - Wisdom is the capability of a person to recognize and discern one's own moral modes (We should limit us to say 'the relative capability') - to distance oneself from the moral wrapper in making judgments, as much as possible (which seldom is much — this is why there are no wise men, not even women - only varying degrees of successful and not so successful conduct). — I think we sometimes call this 'objectivity'.

### **The Moral of Social Science Fiction - Academic Moralism**

The seeing of moral as the mode of relating has not even entered philosophical thinking at all, therefore all the talk of moral that occur in philosophy, and, indeed, in everyday language is in fact talk about macromorals, i.e. about analyzing different types of generally held macromoral convictions. Macromorals are rooted in traditions, religion, politics, propaganda, brainwashing, stupidity, and sometimes even in wisdom.

It happens that discussion about moral is just a description of what kind of behaviour one can notice around (sociological and anthropological remarks). David Hume and Adam Smith distinguished themselves with a fairly honest attempt to describe what kind of moral convictions their contemporaries held in the country they lived in. This is in principle the right kind of moral writing — it is not concerned with assigning values, but describing what has been seen (Posner agrees: "The identification of

the moral sentiments, for example by David Hume and Adam Smith, illustrates the kind of moral philosophy that I do *not* criticize in this book", Posner 2002, p. 6). But, these kind of descriptions of human life (description of the conditions of life, and the basis for social interactions) is the kind of honesty that most other social scientists have bitterly opposed — because for them social science equals science fiction.

Morality can be seen as a person's constitution on fundamental beliefs — for a wise person they are open to continuous revision, but the overwhelming majority consciously attempt to fix them (although unconsciously they are in a flux anyway).

Asking 'what is good' and claiming a reply to it is the same as asking 'if 123 meters is good' and then proceed with a reply.

The Finnish philosopher Edward Westermarck made groundbreaking work in showing the origin and essence of moral ideas (I refer to an article by Juhani Pietarinen). Westermarck could not stand the German artificial and speculative metaphysical philosophy, which dominated academic philosophy at his times (19<sup>th</sup> century). In his *The History of Human Marriage and the Origin and Development of Moral Ideas* moral convictions were shown to be living in the traditions of a community as a result of a historical evolution (evolution of thinking and habits). The dominant driver for moral convictions, he claimed, where the belief in their function as a part of purposeful activity. The essential is Westermarck's conclusion that the better we are informed about people's traditions and motives, the better we can understand the moral convictions of others and the basis of our own prejudice.

Westermarck stressed that the moral conviction was not a property of the object, but a person's way of relating to the object: 'When a wolf inflicts fright in us, it is not the wolf that has the property of being frightful, but people that have a feeling of fright. This feeling in oneself is then taken to be a property of the wolf.'

Westermarck lived and worked in a time influenced by Darwin's evolutionary theories and therefore tended to see in moral convictions a kind of evolutionary process of the survival of the fittest. This is certainly not the case. The 'morals' do not develop or change properties — due to the very same reason he discovered himself: they are no properties (there is

nothing for them to be a property of) — they are expressions of feelings. — The mode of relating, expressions of feelings, and their interpretations i.e. the personal moral convictions, are always manifold and personal — there are no social moral convictions as such — they always are merely perceptions of observed behaviour (even the observations depend on the spectator's perspectives). What we can develop is an understanding of this and act in such a fashion that we promote moral diversity; oppose moral monopolies and understand that the moral fundament is the respect for life, the life of an individual person (each and every individual), animal and the ecological environment. — What does not physically hurt another person, an animal and the environment is morally good (and what comes to hurting of feelings: people just have to learn to take more).

The kind of ideas Westermarck promotes are called moral relativism, which in turn are attacked by moral absolutists. The moral absolutists, like Stuart Penn, claim that moral relativism would mean that 'everybody would be free to do whatever they want'. This 'this would mean' is illustrative of the way the absolutist reason (or at least present their reasoning). They perceive reality as language-game of sort, where all is in order as long as people have the same scientific convictions (worldview). — But, if they would let loose of them, then something awful would happen (the 'this would mean...'). But reality does not follow this language-game. In the competition of norms people do not change their behaviour based on authoritarian opinions of philosophers; the ever on-going relativism merely continues. — Penn claims that moral relativism is destructive and harmful to ethics. — Indeed truth is always harmful to any brand of artificial language-games — that is the very point! — Westermarck already replied to the critics saying that if we were able to convince people of the fact that there are no absolute moral truths then people would perhaps become a little more broad-minded and open to common sense. — One should note that at the end of the day all we have is moral relativism, but we also have a lot of monopolist brainwashing (at every level of social life) aiming at hijacking the values, and impose beliefs in moral values -it is exactly this process that is mortal, not moral.

Now, if somebody still wants to claim that there are moral truths, then this person really should produce the evidence (the burden of proof rests on him) for those claims by bringing forth a sample piece of objective morality that we could touch and feel, and physically analyze. But in the

art of academic moral philosophy they do not deal with the category proof — theirs is entirely in the sphere of speculation where authority and money rules; that is all the proof they need (it is like the Golden Rule: whoever has the gold makes the rules).

But, then with the next line of argument (the new improved double bladed Occam's razor) I want to cut off the superstition yet deeper: Lets assume that these imaginary 'moral things' would exist after all, - but then the questions is 'what are they?'; 'what do they claim to prove?', and 'who has the skill and power to spell them out — who possesses the truth?'. Posner stresses this point: "... even if I am wrong in thinking that there are no interesting moral universals, they would be unusable in moral arguments unless we could determine what they are, and so it would be as if they did not exist" (Posner 2002, p. 12). If we cannot know what they are, then there also cannot be anyone or any group of people to form the court of last resort in the question - and then indeed what do they achieve in academic moral discussion?

Rawls talks about (p. 221) the 'Kantian interpretation of justice as fairness' according to which 'the **moral principles** are the object of **rational choice**. They define the **moral law** that men can rationally will to govern their conduct in an **ethical commonwealth**'. — Here we are presented with a host of misconceptions:

Always when I read such propositions I am left waiting to hear which are these claimed '**moral principles**' — surely if someone stated that 'the principles' are the 'object or rational choice' then there is a fair expectation that the author would proceed with an enumeration of the principles or at least provide a reference or link to a catalogue where they are all listed (a dictionary type of a book, or one like those that lists all the medicines) — but there never is one — there is one famous list circulating around with 10 moral principles (a pretty good selection), but how about all the other ones? One would have to consider thousands or millions of moral principles in order to be in a position to speak at all intelligibly about such principles. Posner says (Posner 2002, p. 73): "Academic moralists pick from an a la carte menu the moral principles that coincide with the preferences of their social set". — But, the menu is not displayed to us — they pick and treat us with whatever is the chef's recommendation, and they themselves are the chefs and the waiters.

'The moral principles are the object of **rational choice**.' — This notion of rational choice is the product of irrational speculative mathematical dreams. An individual is not making rational choices — whatever seems as rational choices are perceptions brought forward by the market-kind of mechanism, the competitive system, which averages out the manifold of irrational behaviour present in individuals and feeds with impressions that make it seem that all in the system is rational - just think about the most important of all human drivers: love! — I think most people can agree that there is very little that resembles rationality in that. If the fundamental argument is not good enough, then let us consider another one which would slightly abstract from the fundamental (as if to operate in the opponent's playground). So, if we are to agree that there is rational choice, then would this mean that all have 'rational choice?' Would everyone have equally much 'rational choice' — would there be no-one that has less? ... Sure all would not be equally rational. So, if there are varying levels of 'rationality', then it would be unusable in moral arguments unless we could determine what rationality is the correct one, so it would be as if rationality did not exist.

Now these moral principles (which do not exist) and the rational choice (another empty cliché) are said to define '**the moral law**' i.e. Rawls claims that the moral law is a product of two non-existing entities — what kind of law is that? — A non-existent law. — But, where's the beef! Show us the moral law! But, the brilliance of Rawls' (and similar theories) is that the most interesting issue, the result is never shown. It is kind of the 'small detail' which will only be shown later in practice (by the very competitive system).

But, Rawls goes on to give a disclaimer for his theory: 'the moral law will only show in '**an ethical commonwealth**'. We shall presume, that Rawls will take it to mean, that ours is not an ethical one and therefore the law has not yet been prepared for this earth. Or maybe the 'ethical commonwealth' is only the commonwealth consisting of himself and whoever likes academic moralism — maybe they can agree? - One is left wondering how Rawls thinks that morality functions in all other places than this ethical peer group — how about in society at large — not by the competitive system by chance?

Rawls (p. xviii) says that in his theory he has attempted "to generalize and carry to a higher order of abstraction the traditional theory of the

social contract as represented by Locke, Rousseau, and Kant". — Considering that the social contract is pure social science fiction to start with, then it is natural that "the theory that results is highly Kantian by nature" as Rawls himself admits.

Rawls identifies two moral capacities: citizens' capacity for a sense of justice and their capacity for a conception of the good (Rawls, p. xii). This way of displaying 'two capacities' is grossly misleading. Talk about a 'capacity' inevitably is aimed at promoting a notion that there would be such thingy capacities, and, most dangerously, that somebody could be placed to discern those capacities, analyze them and judge, whose capacity is good and whose is not. — This is not long from the idea that some people will rush (and do rush) to prescribe a medicine or other kind of treatment to make healthy or improve 'those capacities' — things (because things can be improved by surgery). What is good is entirely a question of one's perception of the good under given concrete circumstances, and these are exclusively situation-bound. — The best way to work on the ability to perceive the good is to analyze real-life situations and the issues that affect them, and hereby appreciate the issue from different angles (perspectives) while at the same time trying to distance from one's own primarily notions of what is good and bad. — One should try to understand how judgements are made.

Rawls is consciously wrong. He shows that he arrived to his wrong conclusions with conscious premeditation. This is best evidenced in his discussion of the philosophies of Hume and Smith. I quote Rawls (Rawls, p. xvii): "the great utilitarians, Hume and Adam Smith, Bentham and Mill were social theorists and economists of first rank; ... But they failed, I believe, to construct a workable and systematic moral conception to oppose it. (I think that for various reasons we should not group all these philosophers in one category). Rawls is revealing in his claim that Hume and Smith failed to "construct a moral conception to oppose it" ('it' presumably referring to economic and social theories). Well, that is the very point — this is the teaching of Hume and Smith: there is no moral conception to discover (so much less 'to construct'). Hume and Smith (and especially Smith) showed that moral, too, is a market conception - now, 'market' does not mean 'for sale', but something that is the result, intermediary result, of people's constant on-going activities, their expressions and interpretations — this cannot be constructed: it has to be shown (described, told). - I claim that we can show that the best way to

understand moral is through the notion of competition. The same kind of competition, which like an invisible hand gives us the perception (appearance) that the market is directed...And for the moral good of mankind we need to allow a free competition in moral convictions: a free competition is: democratic, enlightened (the people are informed), free of monopolistic beliefs (from churches; newspapers; governments; weird philosophies etc); one where people are secure and protected to voice their opinions (we defend the competition against the ones that want to end the game all together).

The market determines which values are 'best', but this does not imply that the market is right and that there are not other values, historically the market is wrong.

### The Biological Feeling

Antonio Damasio is a contemporary researcher in the neurobiology of the mind, specifically, the understanding of the neural systems which subserve memory, language, emotion, and decision-making. He has been doing research on the biology of feelings and the related category, which he calls emotions. In his narrative he tells how feelings are expressions of the struggle for balance in the human organism (Damasio, p. 7). — I was not looking for a biological explanation for my philosophical notion of the relation between feelings, expressions, and interpretations rather I came across Damasio's ideas by chance. I became impressed with how well this biological research seems to support my view on the nature of expressions and interpretations: "Feelings are the expressions of human flourishing or human distress, as they occur in mind and body" (p. 6). - (I note on the terminology used: In my work, I would rather reserve the word 'expression' for an outward action, the making of the thoughts detectable to the outside world. For the internal processes I would consider the words 'function', 'impression', or 'symptom'). — Damasio tells that the automated reactions depicted as emotions and feelings 'certainly create conditions in the human organism that, once mapped in the nervous system, can be represented as pleasurable or painful and eventually known as feelings' (Damasio, p. 51).

Damasio: "The essential content of feelings is the mapping of a particular body state, the substrate of feelings is the set of neural patterns that map the body state and from which a mental image of the body state

can emerge... A feeling of emotion is an idea of the body when it is perturbed by the emoting process" (p. 88). — The emotions and feelings are produced through a process where the 'brain surveys the entire organism, locally and directly — via nerve endings — and globally and chemically — via the bloodstream' (Damasio p. 126). — 'Feelings are the mental manifestations of balance and harmony, of disharmony and discord', Damasio (p. 139).

I claim that the expressions of language (in broad sense) are the outwardly manifestations of these feelings — the last, the weakest and the least developed level of feature of the human organism.

The biological origin, the interconnections and functioning of emotions and feelings can actually be shown in biological tests. "Some components of the emotion process are not visible to the naked eye but can be made "visible" with current scientific probes such as hormonal assays and electrophysiological wave patters. Feelings, on the other hand, are always hidden, like all mental images (necessarily are)", Damasio (p. 28).

Damasio distinguishes between feelings and emotions. "Emotions and feelings are twins, but emotions were born first" (p. 30) — i.e. emotions are the more primary or rudimentary processes and feelings could be considered to be something of a higher level of refinement. In the evolutionary process, he depicts, emotions came up first and feelings then. Emotions serve a direct biological need of promoting survival. They are "are built from simple reactions that easily promote the survival of an organism and thus could easily prevail in evolution".

Damasio tells that the human organism has developed a so-called automatic homeostatic regulative mechanism, which provides pattern reactions to deal with internal and external impulses. Through historic evolution the reaction patterns are transmitted to future organisms. - "Some of the regulatory reactions... respond to an object or situation in the environment — a potentially dangerous situation; or an opportunity for feeding or mating. But some of the reactions respond to an object or situation *within* the organism" e.g. a drop in the amount of available nutrients causing hunger and search for food, (p. 38).

The emotions and feelings can be presented (Damasio, pp. 32 and 37) as forming an automated homeostatic regulation system ranging from

simple to complex, through *base level* immune response (basic reflexes, metabolic regulation); to *2<sup>nd</sup> level*: pain and pleasure behaviors; to *3<sup>rd</sup> level*: drives and motivations; and to the *4<sup>th</sup> level*: emotions proper. — On top of the system Damasio places feelings ("being a mental expression of all other levels of homeostatic regulation"). I claim that language (expressions) represents the next level after feelings; language is the expression (or the expression for the tentative interpretation of feelings and the communicating of them to the external). - "Everyday language is part of the human organism and is no less complicated than it" (Tractatus 4.002).

Damasio makes various classifications of emotions and their roles — I am not convinced that such classifications can serve other than narrative functions, but as such may be helpful. So-called background emotions "detect energy or enthusiasm in someone you have just met". These could be distinguished from 'mood', which refer to the sustaining of a given emotion over long periods of time. The background emotions are "composite expressions of those regulatory actions as they unfold and intersect moment by moment in our lives".

The primary (basic) emotions are listed as: fear, anger, disgust, sadness, and happiness. Another group of emotions are 'the social emotions': sympathy, embarrassment, shame, guilt, pride, jealousy, envy, gratitude, admiration, indignation, and contempt — hereby "the nested incorporation of components from lower tiers is apparent" (Damasio, pp. 43 and 45).

It is worth while to stress that the act of making expressions can take the most varied forms such as e.g. facial gestures: "Think of how the social emotion "contempt" borrows the facial expressions of "disgust", Damasio (pp. 43 and 45).

"Most objects that surround our brains become capable of triggering some form of emotion or another, weak or strong, good or bad, and can do so consciously or unconsciously", (Damasio, p. 55). The triggering functions of feelings are activated "whether we are aware of the presence of an emotionally competent stimulus" — the amygdale can detect emotionally competent stimuli non-consciously — normal people can learn, covertly, that a certain stimulus but not another is associated with an unpleasant event. "The covert representation of the face associated with the bad event prompts the activation of the *right* amygdale; but the covert representation of the other face does not" (Damasio, p. 60).

A notion that is related to the discussion of consciousness and unconsciousness is the notion of false signals. Damasio draws attention to this possibility, too (Damasio, p. 113: "false" body mapping). Often in philosophical work, in legal reasoning and, for sure in every day talk, we tend to ignore the possibility of false impressions. It is very plausible, and indeed it happens all the time that we rely on false impressions of reality and yet draw far-reaching conclusions from the impressions we have (the doubt is a capacity rarely in use — Kant constructed his thinking machine without that device). — Damasio says (p. 147): "The revival of the emotional signal accomplishes a number of important tasks. Covertly or overtly, it focuses attention on certain aspects of the problem and thus enhances the quality of reasoning over it". While he says 'it enhances reasoning' I think we need to point out that it is at least as feasible that it 'impairs reasoning.'

Damasio (p. 56) supports the idea that the emotional feeling (i.e. emotions and feelings which form the very same moral) is ever present. He says that an emotional distinction "among objects is a distinction of grades... Some objects evoke weak, barely perceptible emotional reactions, some objects evoke strong emotional reactions, and there is every other grade in between". "Some of the recipient structures, for example, the amygdale, will become active when they 'detect' a certain configuration — when the key fits the lock — and initiate signals towards other brain regions, thus giving rise to a cascade of events that will become an emotion." - Damasio (p. 58).

The body is engaged in a continuous process of mapping its internal states and the external environment. I think about a radar, maybe such that human-kind of robots have in films like Star Wars — in those films the robots seem to activate the sensory system for special purpose tasks — but we could consider the real human collecting sense data in a similar fashion, but in a continuous process — a process which then produces feelings, the moral feelings, which are functions of the sense data supplied by the constantly activated moral radar. - Damasio (p. 86): presents his hypothesis for a provisional definition saying that a feeling is the perception of a certain state of the body along with the perception of a certain mode of thinking and of thoughts with certain themes. "Feelings emerge when the sheer accumulation of mapped details reaches a certain stage". - These results are perceptions of a certain body state and the perceptions of certain accompanying mind states, which in turn gives

rise to "the changes in mode of thinking.. as part of the consequences of feeling" (Damasio, p. 89). This is the real nature of moral feelings.

To the old discussion about dualism of mind and body Damasio says (p. 206): "the mind exists because there is a body to furnish it with contents". — Unfortunately Damasio involves 'reason' in his story. We are firmly on the biological empirical ground when suddenly we are told that "Reason lets us see the way, while feeling is the enforcer of our determination to see" Damasio (p.277). — 'Reason' — or better say: reasoning (because it is an activity) — comes about the same way as other feelings and emotions — Reasoning is thinking — (It is the name assigned to the process of consciously trying to handle and utilize large amount of data for a specific goal). — In his article How the Brain Creates the Mind (Scientific America 1999) Damasio develops the idea that through a research of the living matter of brain the 'substance of mind' could be revealed ("How does the set of process we call mind emerge from the activity of the organ we call brain"). — In this article he claims that "the mind, though, is observable only to its owner". — Yet this is wrong: the mind (if any) is certainly not observable to anybody, including 'the self; and this is what Damasio's work actually shows. - Wittgenstein: "But mustn't I know what it would be like if I were in pain? "—We fail to get away from the idea that using a sentence involves imagining something for every word./ We do not realize that we calculate, operate, with words, and in the course of time translate them sometimes into one picture, sometimes into another" (PI 449). — Yet further in the article Damasio redefines what he means by mind (and mind processes vs. biological processes): "Therefore I contend that the biological processes now presumed to correspond to mind processes in fact are mind processes and will be seen to be so when understood in sufficient detail. I am not denying the existence of the mind or saying that once we know what we need to know about biology the mind ceases to exist. I simply believe that the private, personal mind, precious and unique, indeed is biological and will one day be described in terms biological and mental". — We could well settle for this last redefinition, which sufficiently well corresponds with the notion that what we call 'mind' (indeed, it is just a matter of what we want to call so as there is no mind as such; it is merely a perception). Damasio has demonstrated the biological part and my notion of expressions and interpretation of feelings is the mental description, the mental that stems from the biological. — I think that Damasio does not offer a sufficient account for the role and functioning of language. This is also evidenced by the following quote (Scientific

America 1999): "Language endowed the mind with the power to categorize and manipulate knowledge according to logical principles, and that helps us classify observations as true or false". — I would say that language is the expression for the information that is stored in the mind (i.e. in the neurobiological system) — it is also an aid for processing new information, but what is more important is that we should not think of language as being a well-functioning tool enabling 'us to classify observations as true or false' — the problem is that the language we have is very defect for that function (the mappings frequently lead to wrong signals, especially when one is dealing with input from speech) — and from this deficiency follows among other issues wars and killings (and naturally there are no logical principles at all) — Wittgenstein: "But the expression of our thoughts can always lie, for we may say one thing and mean another" (Blue and Brown Books, p. 42).

Damasio (p. 92): "You can look at Picasso's *Guernica* as intensely as you wish, for as long as you wish, and as emotionally as you wish, but nothing will happen to the painting itself." — The mind is the function of the interpretations. Damasio repeats the idea that there is no moral property in the object, but moral prejudice is in the mind of the spectator: "there is nothing in your brain's basic makeup prepared to respond with displeasure to houses of a certain kind. But your life experience has made your brain associate such houses with the displeasure you once had" Damasio (p.56).

Still we should not let us be carried away by the biological explanation — after all biological research can provide an insight into the environment where emotions and feelings appear and why, but the biological explanation cannot say anything about the content of the feelings. — I would even say that the biological explanation shows that there is no material content, but only a mechanism for dealing with sensory impressions and bodily needs (the 'operational system and the hardware', but no content). Analyzing the brain to understand the mind is a little bit like analyzing the paper and the ink to understand writings — this is certainly, though, an important pursuit. — And contrary to the wish of some the emergence of evolutionary psychology and sociobiology will not give any new hope to the hypothesis that the evolutionary explanation can extend into ethical values — I mean that no positive support for this false notion can possibly emerge, while the study, sure, serves to confirm that there are no, and cannot be any thingly ethical values. — Wittgenstein said:

"No supposition seems to me more natural than that there is no process in the brain correlated with associating or with thinking; so that it would be impossible to read off thought-process from brain-process. I mean this: if I talk or write there is, I assume, a system of impulses going out from my brain and correlated with my spoken or written thoughts. But why should the system continue further in the direction of the centre? Why should this order not proceed, so to speak, out of chaos?" (Zettel, p. 608). — "It is thus perfectly possible that certain psychological phenomena cannot be investigated physiologically, because physiologically nothing corresponds to them" (Zettel, p.609).

Wittgenstein argues similarly in the Blue and Brown Books (p. 41):

"I have been trying in all this to remove the temptation to think that there '*must be*' what is called a mental process of thinking, hoping, wishing, believing, etc., independent of the process of expressing a thought, a hope, a wish, etc. And I want to give you the following rule of thumb: If you are puzzled about the nature of thought, belief, knowledge, and the like, substitute for the thought the expression of the thought, etc. The difficulty which lies in this substitution, and at the same time the whole point of it, is this: the expression of belief, thought, etc., is just a sentence: — and the sentence has sense only as a member of a system of language; as one expression within a calculus"

Wittgenstein stresses the notion that the understanding is a mental process, which cannot be located anywhere, in no functions and no physical locations:

"We are trying to get hold of the mental process of understanding which seems to be hidden behind those coarser and therefore more readily visible accompaniments. But we do not succeed; or rather, it does not get as far as a real attempt. For even supposing I had found something that happened in all those cases of understanding, —why should it be the understanding? And how can the process of understanding have been hidden, when I said "Now I understand" because I understood?! And if I say it is hidden — then how do I know what I have to look for? I am in a muddle" (PI 153).

The ideas of dialectic struggle between Good and Bad grow out of the fact that there is always a choice between two options: conscious, unconscious (or a mixture of those states of being - it is all about degrees. — Our words and thinking do not capture the infinitesimal small changes in degrees on the endless continuum, this is why a change in degree, a nuance, seems like an antipode). - Wittgenstein: "Nothing would be more confusing here than to use the words "conscious" and "unconscious" for the contrast between states of consciousness and dispositions. For this pair of terms covers up a grammatical difference" (PI 149). - Thus there is a natural tendency to make a choice in a binary mode. What is chosen or desired is considered as good, what is rejected, even when just for the moment, is considered bad. From the outside we may perceive a choice between a good and a bad taking place. The choices are made on a 'microscopic molecular level' continuously and on a continuum. Certain issues we learn (*learn* in terms of acquiring a predisposition to think) to categorize 'in the mind' as good and bad (this is how prejudice comes about, and this is an omnipresent feature). — Feeling is the choice between good and bad in the infinitesimally small nuances.

Morality is the mode of relating to things, people, expressions — and this relating goes on like on a continuum, and refers to every thought, expression, interpretation and impression. — Morality can be understood only through the dichotomy conscious/unconscious — and obviously the discussions of 'willing' and 'free will' can be intelligible only after having dealt with the unconscious. — Wittgenstein: "Now we should of course like to say: What goes on in that practiced reader and in the beginner when they utter the word *can* t be the same. And if there is no difference in what they happen to be conscious of there must be one in the unconscious workings of their minds, or, again, in the brain. —So we should like to say: There are at all events two different mechanisms at work here. And what goes on in them must distinguish reading from not reading" (PI 156). - Wittgenstein:

"Willing " is not the name of any behavior; and so not the name of any voluntary action either. And my use of a wrong expression came from our wanting to think of willing as an immediate non-causal bringing-about" (PI 613).

Wittgenstein:

"Willing, if it is not to be a sort of wishing, must be the action itself. It cannot be allowed to stop anywhere short of the action." If it is the action, then it is so in the ordinary sense of the word; so it is speaking, writing, walking, lifting a thing, imagining something. But it is also trying, attempting, walking, lifting, making an effort, —to speak, to write, to lift a thing, to imagine something etc." (PI 615)

Wittgenstein:

"The intention with which one acts does not 'accompany' the action no more than the thought 'accompanies' speech. Thought and intention are neither 'articulated' nor 'non-articulated'; to be compared neither with a single note which sounds during the action or speaking, nor with a tune" (PI p. 185).



## 18. WHAT LAW IS

In dealing with the question 'what is law' I want to expose the mental boundaries that restrict the perceptions people form about normative expressions and types of arguments in the language-games called law. — By disclosing the boundaries I aim at opening the minds to see that law cannot be treated, as it is today, like a narrowly defined closed system, and this in turn, I would hope, will help to remove the mental restrictions that have prevented a correct approach to the normative interaction. Most importantly by opening up the visual field I hope to make room for justice; to help people to see which are the issues that affect justice, and what we can do about it.

I want to make people realize that law is not a 'thing', and that law is the activity of people advancing their competing claims on desired behaviour. Hence law is a competition of normative expressions, or a competition of arguments (where the latter term reminds more of the perception of people 'engaged in law' consciously trying to influence the outcome of a legal dispute, the issuance of new laws [strong arguments] or the interpretation of law).

Law is a competition of arguments, the result of which is justice (or rather the appearance of justice, i.e. we have to notice the difference between the ideal justice and the justice which can be reached in any given situation). The essence of law is to produce justice, and it happens in a competitive system — we can therefore call law a system of competitive justice. This system can be said to be managed by an invisible hand (This notion of the invisible hand is chosen as a metaphor in honor of Adam Smith's groundbreaking discovery of the competitive character of all social relations, which he applied in the economic theory making economics the paramount social science — something all other social sciences should model themselves on).

Competition takes place continuously in all human intercourse. — A

human continuously strives to advance his view, his will to power (or his will to succumb) in each and every human expression. There is a continuous flow of expressions and interpretations — some we can discern as arguments for or against. One of the fundamental flaws with traditional legal thinking is the total lack of understanding that what has been recognized as law is only the surface appearance of the competition, the tip of the iceberg.

On the surface we have courts; judges; lawmakers (what a funny name! — they make the 'things' called laws!) e.g. parliaments; laws proper (i.e. the law texts, statutes, enactments and narratives on earlier law cases); lawyers.

It is precisely the activities on this surface level that has been the object of legal scholarship: the appearance of the surface has provided the design and the actors for the game.

But instead of holding this system (i.e. its appearance) in reverence we should understand that all that happens is that in this particular power-game people advance different arguments in the quest for a desired outcome. All that is called jurisprudence therefore deserves better to be called 'the history of legal arguments'.

In my view law is:

1. Social Practices: In a specialized treatment in law we may delimit this under the concept 'legal practices'.
2. A Quest for Justice: An activity in the quest for justice (individual justice)
3. Arguments: The activity of law is advancing arguments to promote one or another view of desired behavior (a Competition of Arguments)
4. History of Law: The set of arguments that have a special function in law are those that have earlier been promoted as specific legal arguments: These are e.g. law texts as such (statutes, enactments); precedents and other court cases (reports on arguments earlier recognized in courts); scholarly work on law (research and opinions on how normative arguments have been

treated and how they should be treated in the future). In law these arguments are studied. We just need to broaden the scope of the study to include all normative expressions.

5. Competition: The continuous flow of arguments can best be described as a competition between normative expressions (arguments); but do not confuse this with 'fair competition', which is the aim, and which could someday emerge when the individual is the king.

[For clarity of presentation this list of characteristic topics amounting to 'law' was amended for the e-version published August 13, 2006. ]

(The arguments do by no means always have the innocent and noble form we would wish them to have. Rather often the arguments are just banal violence; not to mention the lighter forms such as propaganda, brainwashing, psychological blackmailing, etc. — I discuss the notion 'arguments' and their interaction in a separate section.)

Philosophers habitually divide the theory of law into two (two categories of classifications): the so-called natural law theories, and the so-called positive law theories. In my view there is very little value in arguing for either one of the theories. — In fact, I do not even see the value in calling them 'theories'; with the exception of a few, like Kelsen's and Hart's, we are not even presented with any that could merit to be called theories on the macro level. We can discern 'theories' concerning separate issues of law, and even these I would take more to be arguments (in the competition of arguments) usually aiming at promoting the authors view within a particular issue or set of issues. Hereby it is rare that the author would proclaim to be working within either of the two macro theories, although he might be predisposed more or less towards one of them, and even advocate such a view. — We can say that Kelsen's and Hart's systems are attempts to be positivist theories of law, but I do not know of any similarly all comprising natural law theories. It seems to be the very feature of 'natural law' arguments that they do not lend themselves to the construction of theories — they are more honestly and openly arguments in the competition. I may conclude that in positivist law we can discern certain ideas that can be called theories; it is one of my aims to show that these ideas are fundamentally flawed. In general jurisprudence and the

philosophy of law is in need of fundamental criticism; a criticism from the outside. - No 'immanent' criticism will do. Immanent criticism belongs to the idea of law as an artificial language-game, where the criticism is allowed only within the framework of the very rules of the game. — Wittgenstein's conception on language-games come handy as an instrument for showing what is fundamentally wrong with the philosophy of law. By applying this notion we can see how the prevailing theories of law proceed from an underlying way of thinking where law is regarded as an integrated geometrical system, where all elements and actors have their set place. Thus contemporary jurisprudence offers a more or less standard tool-kit of concepts and notions, which the authors tend to treat like given constants, and they seem to be utterly unable to broaden their mental horizons to encompass the living reality. Like in any game the most important concern is with 'validity'. The scholar seems to be concerned foremost with the question of when his game is validly played, he sets the stage for the play ('under these and these conditions we are playing this game Law; if these conditions are not met, then this is not the game Law. — " But then what game are we playing? " — 'Another game, not this one, because these rules do not apply to those kind of issues'). The treatment of the concept or ideas regarding validity is revealing, because it more than anything shows the impossibility to fit the normative competition within the preconceived frames and the urge to change the paradigm. If law is to be a scientific endeavor, then we have to involve the underlying reality in the issues we study.

The works of philosophy of law and jurisprudence are demonstrations of a serious Gewesen problem: the background assumption for these theories is always that the 'what-has-been' (i.e. the history of law: laws, precedents...) is taken to be the fundamental essence of law, the scientific 'is', while in reality they are but the distorted perceptions of what has been the arguments in normative competition. — What I want to do is to show that there is a scientific 'is' deep down, and that this scientific 'is' can be understood as a competition of arguments. I want to show how the normative system functions — and that this system functions so all the time, always, everywhere, whether we want it or not. — But, I also want to alert to the fact that this 'system' does not function properly i.e. the competition is flawed due to a distorted competitive environment and fundamental misconceptions regarding law and normative interaction.

— We can come to grasp the scientific 'is' by understanding that we are dealing not with thingly 'rules' and 'laws', but normative expressions as part of overall human communication, continuously in all reflections of life. From a special 'legal point of view' (legal perspectives) we may discern special types (typical usage) of normative expressions that we perceive as laws and rules. Studying the normative expressions we should comprehend that there is nothing fixed about them, the normative expressions are in continuous (endless) competition.

### Language-Games of Law

I use Wittgenstein's idea of language-games to illustrate how thinking and the perceptions we create of reality are confined to the mental need of creating self-explanatory and closed systems of knowledge. By comparing traditional jurisprudence to games we gain *two insights: the first insight*, the analogy to a game (e.g. a ball game), helps us to see what kind of an idea we have formed; *the second insight*, is the appreciation of the essence of a game itself, understanding that even the game-like conception (i.e. the contemporary view) would require opening the mind to a broader and flexible understanding of what law (the normative interaction) is all about; after all not even the concept of game is restricted; the concept of game offers us a very elastic world-view, we can discern 'complicated networks of similarities overlapping and criss-crossing; sometimes overall similarities, sometimes similarities of details' (PI 66).

Sometimes the similarities dominate our perceptions and we draw our conclusions from them, but equally sometimes we are under the impression of the dissimilarities: phenomena with so many perceived dissimilarities have to be regarded as different species, one thinks. — Wittgenstein exemplifies the idea of seeing similarities and dissimilarities by introducing the notion 'family resemblances' (PI 67) for the various features pointing to resemblances between members of a family: build, features, colour of eyes, gait, temperament, etc. etc. overlapping and criss-crossing. — He says: 'games' form a family. — Family resemblance describes the common features, but equally it may serve to show that there are many features that are not common, and yet the distinctions do not lead to an exclusion from the family.

Definitions in a normative game have been included in the concept 'law' when they have matched certain preconceived basic sets of features (most notably the concept 'state' is involved) and perceptions (we might also say that 'when they match the prejudice'). Perceptions which do not demonstrate the same set of features have then been excluded from the artificial law games. — This is how the moral and law; ethics and law, laws and punishments of a religious community, the verdicts of media, etc. have been separated and excluded from the law games (and this is why there has been no understanding of law as being an integrated 'part' of an eternal competition of normative expressions, arguments). - In fact all our perceptions are governed by language-games: from macro-perceptions to individual concepts i.e. separate words — each word is a language-game in itself, while at the same time serving as a building block for more complicated games. — This is how perceptions and language-games in fact are different aspects of the same. — 'I want to say: we misunderstand the role of the ideal in our language. That is to say: we should indeed call it a game, only we are dazzled by the ideal and therefore fail to see the actual use of the word "game" clearly' (Compare PI 100).

I need to quote fully Wittgenstein in Philosophical Investigations (paragraph 66) — In this section he most comprehensively illustrates the concept of games i.e. the basis for the notion of language-games:

Consider for example the proceedings that we call "games". I mean board-games, card-games, ball-games, Olympic games, and so on. What is common to them all?—Don't say: "There *must* be something common, or they would not be called 'games'"—but *look and see* whether there is anything common to all. —For if you look at them you will not see something that is common to *all*, but similarities, relationships, and a whole series of them at that. To repeat: don't think, but look!—Look for examples at board-games, with their multifarious relationships. Now pass to card-games; here you find many correspondences with the first group, but many common features drop out, and others appear. When we pass next to ball-games, much that is common is retained, but much is lost.—Are they all 'amusing'? Compare chess with noughts and crosses.

Or is there always winning and losing, or competition between players? Think of patience. In ball-games there is winning and losing; but when a child throws his ball at the wall and catches it again, this feature has disappeared. Look at the parts played by skill and luck; and at the difference between skill in chess and tennis. Think now of games like ring-a-ring-a-roses; here is the element of amusement, but how many other characteristic features have disappeared! And we can go through the many, many other groups of games in the same way; can see how similarities crop up and disappear.

And the result of this examination is: we see a complicated network of similarities overlapping and criss-crossing; sometimes overall similarities, sometimes similarities of detail."

In order to demonstrate how my view on the misconception on law is so well exposed by Wittgenstein's ideas about language-games I rewrite another paragraph in *Philosophical Investigations* (paragraph 68) by replacing the concept 'number' with 'law' (In fact here Wittgenstein himself had introduced the word 'number' in the role of 'game'). What is remarkable is that the substitution of the word did not alter the original idea ('law' fits very well in this dress):

"All right: The concept of law is defined for you as the logical sum of these individuals: norms, rules, laws and institutions etc.; and in the same way the concept of law as the logical sum of a corresponding set of rules.»- It need not be so. For I may give the concept 'law' rigid limits in this way, that is, use the word "law" for a rigidly limited concept, but I can also use it so that the extension of the concept is not closed by a frontier. And this is how we do use the word "law". For how is the concept of a law bounded? What still counts as a law and what longer does? Can you give the boundary? No. You can draw one; for none has so far been drawn. (But that never troubled you before when you used the word "law".)

«But then the use of the word is unregulated, the 'law' we take as fixed is unregulated.» - It is not everywhere circumscribed by rules; but no more are there any rules for how high one throws

the ball in tennis, or how hard; yet tennis is a game for all that and has rules too.

In legal theory Aarnio has referred to the idea of language-games (Aarnio, p. 117). He quotes Hintikka, who says: "The main function of language-games themselves is to establish such vertical connections." — From the presentation one gets the idea that Hintikka conceives a language-game as something real, existing in reality i.e. this kind of being out there instead of understanding that it is a simile to show what is wrong in that very way of thinking, this 'confined thinking' to which Hintikka yields to. — Now again it seems that they are making a rule; giving it a 'function', a *main* function. - (The signpost was there, but Hintikka chose the opposite direction). This is as if the language-game would have been put in place in order to perform this task — something, conceived, planned, produced. 'Function' points to something which exists, and as if the game would be for real. — But, that is not how we should understand the notion 'language-game', rather the notion serves to illustrate how in life, social practices, language interacts and how the impulses come about - (except for the 'artificial language-games' that should be considered as propaganda). — Wittgenstein: "Here the term 'language-game' is meant to bring into prominence the fact that the speaking of language is part of an activity, or of a life form (PI 10).

The yearning for rigid rules, frames, boundaries, is the positivist fallacy connected with collective aspect-blindness.

There has always been an exhaustive tradition to consider all the theories at face-value i.e. so to say as if there never existed a hidden agenda in the promotion of a certain ideology or program. In fact I am inclined to believe that in most cases the scholar has not so much promoted a view of what he believes to be the case, but rather what he wishes people to take for being the case or what he believes people would be ready to accept as the truth. Behind the hidden agenda there can be political reasons; personal reasons; reasons of style; reasons of language; reasons of allegiances; ethical; religious; sexual; psychological; yes any reason — there can be any reasons, and there are.

The positivist idea culminated in so-called conceptual jurisprudence: Jurist claimed that they by analyzing the concepts (i.e. the words used in

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normative argumentation in legal relations) could find the essence of law. — (Words are but the very incomplete ways of expressing ourselves i.e. give expression to the interpretations of feelings — this should serve to show how futile the endeavor was).

Zweigert & Kötz say that if there is a 'sick science' today, then it is the legal science and that comparative law shows the emptiness of legal dogmatism (p. 33). — This sorry state of legal science is something that made me look for an alternative to the prevailing ideas, and which eventually led me to realize that legal theory is the perfect playground for testing Wittgenstein's philosophy in practice — there is no other so well ring-fenced areas of social life — and no other such strong species of language-games. Wittgenstein did not write about law, but his ideas find direct use in tearing down the philosophical barriers holding justice as hostage of law. Wittgenstein: "From its seeming to me — or to everyone — to be so, it doesn't follow that it is so. What we can ask is whether it can make sense to doubt" (Certainty, p. 2).

In *Philosophical Investigations* (paragraph 108) Wittgenstein reminds that language does not have the 'formal unity' that is preconceived in logic — he then exclaims "But what becomes of logic now? Its rigour seems to be giving way here. — But in that case doesn't logic altogether disappear? — For how can it lose its rigour? " — He proposes to 'turn the whole examination around'. — I wanted to turn around the way we examine law (This approach to the study of law in fact led me back to general (meta) philosophy; I came to realize that even here we are dealing only with various perceived aspects of the same issues: In the 'scientific part' of social sciences we are dealing with philosophy and in philosophy with language).

Stern tells that for Wittgenstein philosophy is an activity which "reminds us of something we already know, but find hard to put into words: it brings us back to everyday" (1996, p.17). — I would like to propose this present work as a practical application of Wittgenstein's philosophy; in my view law is a practical enterprise, it is a competition of arguments, it goes on all over the world, each day, each moment, in all the dealings between people — and really we know that this is the everyday reality - (law is a study of the normative expressions we use) — the issue is only whether I was successful in putting this into words.

Wittgenstein's later work can be seen as a series of answers to what language is all about after the realization that it was not about formal logic. This is the work that "led him further and further away from the formal, systematic, and self-contained models of logic and mathematics and toward the model of a game, an activity embedded within a background of human practice". He came to realize that language is embedded in social practices, forms of life, which coupled with the facts of nature makes up the inherited background within which communication becomes intelligible. The "inherited background involves skills, habits, and customs" and therefore "it cannot be spelled out in a theory" (Stern 1996, p. 103). — What Stern tells here about Wittgenstein's approach to philosophy is equally relevant to law — we have to choose the same path. — And in fact on this path we encounter Posner is showing again and again that law is not a thing-like entity; law is nothing but an activity.

### **The Basic Norm and the Rule of Recognition**

Wittgenstein: "This is how it is, if this proposition is derived from these ones. That you have to admit." — What I admit is, this is what I call such a procedure" (Remarks Mathematics, p. 437). - Hans Kelsen (1881-1973) designed a total game-plan, for a language-game he called law: *The Pure Theory of Law*. - The originality of the game is that he introduced a new trump card, something nobody had earlier come to think about — 'the basic norm'. - The basic norm was supposed to be the only exception in his positivistic system. Kelsen invented the concept of basic norm in order to round up his closed game-like system.

I argue that any theory of law, in order to be meaningful, has to deal with the idea of justice (discuss the nature of justice, the shortcomings of justice, and how to develop justice). - But Kelsen was explicitly not concerned with justice, he even explicitly adverted that he is not dealing with it: 'justice' — we do not know what it is and will never know, it is the beautiful dream of mankind' (Nergelius, 104ff).

Kelsen makes ample misuse of Kant's misconception of the 'is-ought' dilemma. Kelsen twisted the notion of 'ought' (German 'Sollen'). He wanted to give "Sinn des Sollens" (Nergelius, p. 104) which means something like "the meaning of what ought to be". Kelsen says (p. 5): The norm is an empirical fact (an 'Is') which expresses an act of willing (an 'Ought') - (The norm is an 'ought-to', the act of volition, whereby the norm enacted is the 'is', Nergelius, p. 104). - He seems to be claiming that by introducing a norm the fundamental reality is changed - but what are we to think of a situation where conflicting norms (i.e.

competing norms) are promulgated, did we then create two realities? In reality a norm (normative expression) is nothing but its use in practice (i.e. nothing but the empirical 'is'). We can only analyze what kind of normative expressions provoke what kind of reaction in a given society, and how people perceive the norms and the normative system. — Kelsen failed more radically than most on understanding that jurisprudence is the study of the interaction of normative expressions; how they are perceived, promoted and how they affect people's life; what kind of normative expressions have been used; which have been the arguments; what causes compulsion; how the moral mode affects these normative expressions...?

The Pure Theory of Law also claims to 'free' the law from moral constraints and elements of natural science (Kelsen, p. 1). Kelsen wanted to 'guarantee the autonomy of law' (Nergelius, p. 104ff). — All that can be achieved by promoting such a childish wish is to make people more actively separate law and justice, i.e. body and life (quite literally). Kelsen thought that jurisprudence had illicitly become involved in issues pertaining to psychology, sociology, moral and political theory (He must have been perceiving them all as separate 'things' — different things which all have their own place). For Kelsen: " Law and Moral are separate social orders " (Kelsen, pp. 28 and 74). — Quite on the contrary we have to understand that there is nothing in the activity called 'law' that can be freed from any other normative expressions; we shall realize that 'law' cannot even be separated from other aspects of social reality: law is inherently a part of all the same activities we call economy, politics (or democracy), moral, communication etc.

Kelsen (p. 78): "The subject matter of jurisprudence are the legal norms (rules), but people's behaviour or actions are considered only as far as the behaviour is included in the norm as its content." — When we understand that expressions are not things, then we will understand that norms (rules) are no things either — and then we shall draw the conclusion that in norms, as such, there is nothing that can be studied: Only the exchange of normative expressions can be studied (i.e. behaviour). — This should serve to show that the so-called immanent criticism of law is a wasted endeavor (criticism where one operates within the given premises of the object of criticism). We cannot really criticize Kelsen's theory, we can only dismiss the theory altogether

In Kelsen's mechanistic world-view a legal transaction (both in written and oral form) expresses its legal meaning by itself (Kelsen, p. 3). These kinds of claims evidence how Kelsen was influenced by Kant's transcendental philosophy. "The legal transactions" — "speak for themselves". In fairy tales animals speak, sometimes even plants speak — but for Kelsen 'transactions speak'. As we are not evidencing a peculiar physical occurrence, then we just have to conclude that Kelsen is using his extraordinary vivid imagination. Transactions do not speak — people do — in law this is called argumentation.

Kelsen (p. 4): "All transactions are to be judged against the existence of a legal rule, which has been introduced in accordance with a rule of higher rank". - Kelsen wishes a closed normative system consisting of a given amount of set patterns each corresponding to a particular type of human activity, each of which has been assigned a corresponding remedy in case of its occurrence - the analogy being something like: "If you get a headache, take one of these pills twice a day, one in the morning one in the night". Kelsen's system cannot but suppose that human behavior is identified and classified in accordance with such patterns.

For Kelsen validity is a 'special kind of being in force' (p. 10). Naturally, it is special for him, when he has just made it up by applying his basic norm. Something is always of a 'special kind' when the philosopher has run out of real life arguments — these kind of notions merely provide the cover, the framework for the language-game. This is the

activity of describing a game — 'the game is valid if we have 52 cards, and they are all clean without any markings introduced by the players ". But in life there is more to the game than the cards. —'Validity' has a role among other arguments in legal argumentation, in the competition of arguments in a court of law. 'Validity' is a valid argument only in a 'valid' court, and whatever the competition is ready to accept as valid is valid — and this is how law functions — the trick is to convince others to take your view on validity. We are concerned with justice — and therefore the language-game notion of validity is not of particular interest for us; there is no point in consoling oneself after having been treated with injustice that the court was 'invalid', administering 'invalid norms' - (are the verdicts proclaimed by a newspaper issued by a valid or invalid court?) — sanctions matter — if a court is successful in imposing certain sanctions then life is affected notwithstanding any rules of a language-game. - All we have are various degrees of validity: at one end of the continuum we have crying shame of invalidity (usually accompanied with the same brand of injustice) and on the other end of the continuum we have perfect validity (again depending on the spectator) — and in between there is all the other varying degrees of validity.

Tuori says (p. 26) that "In its doctrine of validity, traditional legal positivism appears to be forced to recoil from its own premises. The concept of validity is necessary for sustaining the independent ontology of legal norms. Validity is a fundamental property of norms inhabiting the world of 'Ought': a property which delineates from the facts of the world of 'Is'. Specific legal criteria of validity, in turn, demarcate legal norms from other normative orders, such as morality." - The validity of the system is not a condition for its existence — you may wish it were, but then again that would launch you in a competition of wishes. — In the scientific world of 'is' there is no question of to be or not to be: whatever is that is, and what isn't, is not.

In Hart's law game the role of the basic norm was taken over by the so-called rule of recognition. Hart ridiculed the question 'what is law?', because for him the answer was clear, however, he does not throw much light on the subject himself either. - He pretends to let us 'find out what it is about law that has in fact puzzled those who have asked or attempted to answer the question', (Hart, p. 5) — But no answer emerges.

He recognizes the humor in some of the historical claims on the essence of law; he parodies Holmes's 'Law is the prediction of what judges will do' noting that it did not occur to anybody to define medicine as "a prediction of what doctors will do" or "what doctors do about illness" (Hart, p. 1).

In Hart's theories there are, however, some signs of an awakening to a realization. He recognizes three recurrent issues in defining the question of what law is (p. 13), these he lists as follows: A. How does law differ from and how is it related to other orders backed by threats?; B. How does a legal obligation differ from, and how is it related to moral obligation?; C. What are rules and to what extent is law an affair of rules? - He says: "The most prominent general feature of law at all times and places is that its existence means that certain kinds of human conduct are no longer optional, but in some sense obligatory" (p. 6). There is a lot to that statement. This is the point that Hart should have developed. Law in fact has such kind of features (although I would not call this feature 'the most prominent'). — Then we should dig further and see what it means. Why is certain kind of human conduct no longer optional? Who says that it is not optional anymore, when was it optional and wherein did the optionality consist? And the 'certain kind' - what kind of certainty is that — can we know it in advance or not? Can we be sure that only by complying with certain behavioral patterns (as if consulting a book of behavioral patterns) we would be on the safe side.

Unfortunately Hart, too, distinguishes law and moral, although bringing them and the understanding closer than what is usual (Hart, p. 7). He first states: "law is best understood as a branch of morality or justice." But, then he hesitates, he finds it hard to approximate law and moral and modifies his stance (Hart, p. 8): "Yet theories that make this close assimilation of law to morality seem, in the end, often to confuse one kind of obligatory conduct with another." - It is not a question of confusing moral (we must in this context understand this as a discussion In his language-game Hart introduced two new sets of cards: the primary rules and the secondary rules. The secondary rules are the rules of recognition, the function of which is 'to give validity to the legal system' (Hart, p. 94) ("whoever picks the card with rule of recognition is the winner").

Hart has a sounder apprehension of validity: basically he argues as follows: Whatever the powers that be consider as valid rules, they are the valid rules (Hart, p. 118). - (This is a version of the Golden Rule: Whoever has the gold makes the rules).

### **The Rise and Fall of the Law's Empire**

Ronald Dworkin is one of the most frequently quoted contemporary legal scholars, and therefore I feel compelled to briefly touch upon the theories he promotes.

Dworkin is a representative of the law-is-a-thing movement evidenced already in the preface of his *Law's Empire* (Dworkin, p. vii): "the law has decreed", "the law is in possession of an empire"; "How can the law command when the law books are silent or unclear or unambiguous? This book sets out in full-length form an answer..." — He, like Don Quijote, sets out to show how the 'law can command'. It follows he wants to prove the ability of the law to command — he even considers having proven it. One studies the whole book and looks for the proof — we cannot hold the breath waiting to come to the page where we would discover how Aladdin sets loose the law which has been concealed in the bottle. But the wait is long. The trick, how the law became a commanding person is not disclosed. - Perhaps the epilogue would provide a summary and it would be clear from there? But, no! His eminence, Sir Law, did not emerge. This is how Dworkin rounds up his theory (Dworkin, p. 410): "I urged the third conception, law as integrity, which unites jurisprudence and adjudication. It makes the content of law depend not on special conventions or independent crusades, but on more refined and concrete interpretations of the same legal practices it has begun to interpret." — I.e. 'the law' this animated thing is engaged in the interpretation of itself.

In fact the whole theory of Law's Empire is infected by the thingly-sting: the primitive concept of regarding the names we give for certain phenomena or activity as corporeal. According to Dworkin the law even has an attitude: "The Law's attitude is constructive: it aims.. to lay principle over practice" (Dworkin p. 413). In reality, however, we have to deal with the attitudes of the various actors in the normative game (the people whom we encounter) — even if we restrict us to the judges we should be ready to count them by tens of thousands, and the various



attitudes that emerge by the millions. Trying to prove, as Dworkin tries, a one right-answer when we move from his single attitude (which the Law personally possesses) to a competition among millions of attitudes is a hard game — and one doomed to failure. Now, I may anticipate in defense of Dworkin the argument: "But, this is just the way we speak — it is wrong (*perhaps nanve*) to attack the theory by playing around with words". Now, to these kind of arguments we have to put the questions: If statements like: law commands; law rules; law has an attitude; law is engaged in interpretations, are just the way we usually speak, then what would come out of the same statements, if we move over to a scientific language (i.e. if we decipher the meaning) — if we in the proposition 'law rules' replace 'law' with a human actor that in our physical reality has proven to possess the capability of ruling, acting, eating, seeing and hearing? — The exercise will show that instead of 'law' there will pop up people and with them all the range of human feelings, fallacies, aspirations, misgivings and creative imagination. One is for sure: there will be nothing left of Dworkin's artificial theories - law will turn out to be a human activity - human, all too human.

### **A Pragmatic Approach**

It is in American and Scandinavian law theory that the pragmatic reality has also found a scientific reflection. It is worth noting especially the Swedish philosopher Axel (1868 — 1939) who denied the existence of absolute moral truths. He disavowed the conceptualist doctrine. He correctly recognized law and the state, in the contemporary perception as metaphysical creations in people's fantasies. — Karl Olivecrona (1897- 1980) who was a student of Hägerström worked to popularize the realistic views in Scandinavian law teachings. Olivecrona accentuated that only a person, an individual can possess a will — helping to dispel the metaphysical clouds surrounding law as the understanding was emerging from the constraints of conceptual jurisprudence.

Olivecrona made a strong effort to go beyond the positivist tradition of defining what law is. He rightly saw (pp. 11-20) that the essence of the study of philosophy of law is to understand what law is. This while traditionally every author starts with a preconceived idea of what law is and law is needed in the first place: it would suffice to state the subject matter as the study of some of the aspects of social reality; aspects concerning rights, obligations, courts, legislation, governments etc.

He understood the perspectivist view on law. Even considering these fundamental and groundbreaking insights he was not able in his actual work to develop the underlying idea and move people's thinking in the direction of dealing with law as part of social reality. This might be the reason why his basically correct views have not received a sufficient following.

I try to be yet more pragmatic and practical in my criticism of the prevailing theories. Even risking leaving out some important discussion I below collect in the form of notes some of the issues that seem to cause the problems and shortcomings with traditional philosophy of law and jurisprudence, these are as follows:

#### 1. Law is seen as a stand-alone system

- Law is seen as a carved out system functioning as a separate thingly entity.
- Law is supposed to function as a system with given rules (norms) that are separate from other rules in life — there are supposed to be legal norms, moral norms, ethical norms, religious norms, social conventions, etiquette, and so on, - and all of them are supposed to operate within their own systems — within given and manageable borders (compare with language-games - But, I argue that there is no separate normative system that could be seen as 'law'; what we have are people communicating their infinite normative expressions; by perceptions and historical practices we divide normative expressions into categories).

- Only the surface image of the legal practices are considered as law.
  - What we understand as the law is merely a transitional phase in the evolution of social control (Posner 2002, p. 207).
2. The scope of law is purported to be set
- There is no possibility, no base (no support in reality) to the claim that certain kind of behaviour or social relations would fall under the notion of law and other kind of behaviour would not (e.g. the claim that there are separate legal norms and moral norms).
  - Law is not a system that would be separate from other appearances of normative systems.
  - Any kind of behaviour which yesterday seemed like a 'private moral matter' may today be seen as a legal matter (e.g. yesterday it was showing affection, today it is sexual harassment).
  - There is no border between legal norms and other norms — there is a border drawn in the language-games but not in reality.
  - The function performed in one system by law is performed in another system by extralegal phenomenon (Zweigert & Kötz, p. 38).
  - It is a philosophical mistake to declare in discourse that a social order or set of concepts must either be law or not be law, be legal or not legal (Finnis, p. 280).
3. Justice
- 'Law' is a meaningless notion, if thereby one does not mean the phenomena connected with bringing about justice.

The traditional language-game notions of law have as their object of study the social situations that have been defined to fall within the notion of law, but hereby they exclude all the other normative expressions or social situations that affect justice (Think about a negative article in a newspaper which ruins a person's business livelihood — and life. There is no reason whatsoever that such acts and their consequences should not be included in the notion of law).

- Hereby, it should be noticed that while law theories make the distinction between legal norms and other norms, legal practice (or social practice) does not.

#### 4. History

- Law is not a thing — and neither are the statues (directives, enactments); they are expressions and interpretations.
- Law cannot be studied as a natural science as an attempt to reach some final understanding of the norms; they do not have any truth value, any underlying scientific meaning, and no hard core.
- Law can therefore be studied only as history: to analyze what kind of normative expressions, and normative situations have earlier been emphasized, and what kind of treatment they have received.

#### 5. Argumentation, Competition, Competitive Justice

- Law has been seen as an arrangement of words in a thingly fashion; the thingly rules have been seen to give rise to causes and effects (thinking that one rule stumbles upon another and slightly pushes it forward with inevitable consequences).
- But in reality: all we have in law are normative expressions, normative arguments, some relatively stronger, some weaker.
- Justice (those that prefer not to speak about justice could call this 'the outcome of normative competition') is the result of a competition between arguments.

- Litigation in court is a perfect example of a competition of arguments; the side with the more appealing arguments wins.— It is not a question of what are 'better arguments' in an ideal world, but in the concrete situation. A 'better argument' might be one that sits better with the worldview of the judge. — Although in a system where the competition of arguments is widely understood to be the basis of the system, there are better chances to advance objectively better arguments for justice.
- As law is actually about a competition of arguments I prefer to call the justice produced in the competition of arguments as
- *competitive justice*.
- There is no other justice available than competitive justice: like it or not, that is what justice is all about.

#### 6. Interpretation

- The closest they have come to a healthy understanding in legal theory is the emphasis on interpretation.
- All the legal language-games seem to admit some kind of uncertainty and in order to remedy it they admit a role for interpretation.
- The traditional theories of law are such that in fact they cannot be about anything else than interpretation; they claim that law is what has been enacted by an authority or decided in earlier court cases; and if this would be the case, then of course all that can be reasonably done is to find out what happened, what was said, and who had the right to say.
- In law interpretation is not an auxiliary technique — it is all there is to it — compare interpretation and argumentation
- A text is not a thing (even the individual words used are no things), therefore all we can do with a text is to interpret it; and the interpretation i.e. the result of it, is in turn an argument (a series of arguments).
- 'The lawyer is likely to become impatient when he hears that social arrangements can be more or less legal, that legal sys-

tems and the rule of law exist as a matter of degree... and so on. For the lawyer systematically strives to use language in such a way that from its use he can read off a definite solution to definite problems'( Finnis, p. 279).

#### 7. Legal practices

- As law can be defined only as a competition of arguments on each level of life, we also have to understand that the activity involving law does not happen only in the court rooms or in the parliaments; law takes place in all human interactions.
  - Therefore we have to make use of the notion legal practices, and with the help of this insight study which are the typical situations where normative expressions combine to an activity which could be perceived to fall within a specialized notion of law (where law is understood broadly to involve the competition of normative expressions, arguments).
  - Most legal relations are not formulated with the language of law and remain outside any formal legal, or other specified normative system. Most agreements are never seen by lawyers or even perceived from point of view of formal law; only a microscopically insignificant part of all legal relations ever go to court. Most normative precedents are not legal precedents . Most normative disputes are not formally legal, but deal with the same issues; 'legal' is something one threatens with when communication fails.
  - The idea that legislation is the only possible source of law is an error from the Age of Enlightenment (Zweigert & Kötz, p. 28).
  - For Chicherin the philosophy of law could not base itself on the practice of life, its true task was to evaluate this practice and provide norms for it (Walicki, p. 144).
- #### 8. Moral
- Legal philosophy always deals with the distinction between law and morality (morals).

I claim that there is no distinction to be made in the first place. D

Moral is the mode of relating to norms and not a special set of norms.

Aspect-blindness and an underdeveloped sense of discerning between perceptions and reality causes this confusion.

## 9. Perceptions

- One of the fundamental notions to master in order to open up the eyes, the mind, to seeing what law actually is about, is the understanding that all social reality is dependent on how we look at life: the perceptions; aspects, perspectives — and that there is no hard core to reality.

Wittgenstein:

"If you imagine certain facts otherwise, describe them otherwise, than the way they are, then you can no longer imagine the application of certain concepts, because the rules for their application have no analogue in the new circumstances. — So what I am saying comes to this: A law is given for human beings, and a jurispudent may well be capable of drawing consequences for any case that ordinarily comes his way; thus the law evidently has its use, makes sense. Nevertheless its validity presupposes all sorts of things, and if the being that he is to judge is quite deviant from ordinary human beings, then e.g. the decision whether he has done a deed with evil intent will become not difficult but (simply) impossible" (Zettel, p. 64).

With this kind of understanding of law, there is, naturally, no value in doing 'immanent criticism of law'. — Immanent criticism is the most fundamental card (the joker) in any social science and especially in law; this is the idea, that you are allowed to criticize the game, but only after first accepting the rules of the games. - (Wittgenstein: "It is my task, not to attack Russell's logic from within, but from without" Remarks Mathematics, p. 383). — Law functions as it does, and there is nothing to criticize about that (similarly as one cannot criticize 'reason' one cannot

criticize 'law', because they both are merely the perceptions of the sum of one's and everyone's activities.— But I criticize the deplorable state of philosophical understanding of law. But this 'fundamental criticism' is not as Tuori thinks (Tuori, p. 29) a criticism "which is suspicious of the justifiability of all law and which tends to renounce every form of legal regulation of society". — We are not suspicious of the justifiability of law — we just live with it and try to do something about it — remove the justifiability of injustice and encourage the practicing of justice.

## Punishment without a Crime

A closer look at the notion 'nullum crimen sine lege' (there can be no crime without a law; an idea that serves to free certain kind of behavior from state imposed criminal sanctions) is very illustrative from point of view of showing the deficiencies of traditional legal theory. — Especially non-lawyer philosophers seem to have troubles in understanding this notion (e.g. von Wright). Contrary to the misconception it does not tell anything about the scientific (or philosophical) essence of law; it does not tell anything about the 'is' of law. It is just one argument among the others. According to this principle (in most European and Anglo-American legal cultures) nobody can be sentenced to punishment for a crime, if the particular kind of behavior has not in the official penal system of the jurisdiction been recognized as a crime. — It does not tell anything about a fundamental philosophical status of the norm (I think they would want to call it 'ontology') — today it was proclaimed a crime, yesterday it was not). — Suffice to rest within the concept of criminal law to see that the applicability of the principle is much more unclear than it might first seem. Even when criminal law systems strive to uphold this principle by issuing normative expressions aiming at strictly regulating the application of a certain penal norm, the application is at the end of the day dependent on interpretations — a manifold of elements interfere in the interpretation (e.g. the objectivity of the interpreter). — It is more interesting, though, to consider situations beyond the realm of applicability of the official penal law. It is naive to make a philosophical distinction between punishments sanctioned in accordance with a state penal system and all the other penal systems. Both 'official' and 'non-official' punishments produce death. - There are a lot of sanctions people are constantly subjected to with lethal consequences without these sanctions in any way belonging to the language-games of law.

Let's look at a few examples of punishment without a crime:

1. A newspaper publishes a false accusation against a person (perhaps a politician, director of a firm, a state official, a school master, a priest...). — As a consequence the person's reputation could be ruined for the rest of his life; he loses his job, his livelihood, his family and in the end all. — Isn't that a punishment?
2. Imagine the above situation, but such that the person has committed an officially recognized criminal offence — maybe one which would lead to a 10,000 euro fine. Now the newspaper publishes an account on that (in the usual evil fashion). According to all life experience in a Western society such a publication will certainly mean a much harsher punishment than the fine. — What has happened is that the media has taken over a large part of the judicial system — and sure there is punishment without crime.
3. A person falls in love with another person at work place and shows affection towards the other. — He is 'caught' in this. In accordance with the 'new moral standards' the person loses his job because of this. — No crime, but punishment yes.
4. A wife decides to divorce from her husband, because she does not like the way he behaves. — In court she demands, and is granted the custody of the children. — The father is granted a right to see his own children only under restricted conditions and on the mercy of the mother. — There is a punishment without crime.
5. Tort liability, especially the way it is applied in the United States courts. — The damages that are awarded in US courts may fatally ruin a person's finances. Why does anybody think that a punitive damage in the amount of 2-5 million dollars would be a lesser punishment than a fine of fifteen hundreds? — There is punishment without crime.
6. The process as such is a punishment (especially in the United States where nowadays any human behavior can be become

subject of ruinous suits). — There is punishment without crime — and then what would be the scientific meaning of "nullum crimen sine lege?"

Or did you mean that in your language-game 'punishment' is defined otherwise?

Certainly, the decisive criterion in punishments is the consequence and not the name of the sanction.

## 19. LEGAL PRACTICES

My aim is to show that law is not a thing, but social practices through and through. Nothing in social life, in life indeed, can be seen as being separate from law, and correspondingly law cannot be seen as being separate from anything else in life (what we recognize as 'law' is just a perception of certain aspects of life). This means that if 'law' is to function properly, then society (societal life) will have to function properly. From point of view of law, this means that people must have a certain understanding of how various normative expressions function in society at any given time (how the legal arguments are ranked and quoted) — and in order for anybody to be able to have an understanding of that there has to be some kind of certainty, predictability, in the system. In Western societies there is a comparatively high degree of certainty and predictability (which does not mean the same as the systems being just — here a different perception is involved). — This predictability, to a larger or smaller extent, is something that may be perceived in many features of life — when focusing on law we may identify aspects that create predictability within the notion legal practices.

The dominant theories of law convene a very restricted notion of law: The view that they advance is that law is about the issuance of statutes (laws) by a parliament (or other so-called lawmaker); lawyers advising people on how to use the law; and judges clarifying what the law is when people are in doubt - and while on that sometimes 'making new law.'

Traditional legal doctrine puts forward lists of so-called sources of law i.e. arguments on what kind of documents should be considered as valid normative expressions in law and the order of ranking the arguments. The idea with the 'sources of law' belong to the language-games of law. A game requires strict rules and hierarchy, like the grading of cards, certain movements are allowed, some prohibited - such are the rules of the game. 'Sources of law' tells us what belongs to the game. — But scientifically all these lists of sources of law are but wishful thinking (and I am

not saying that wishes never come true), or indeed arguments as such — and these arguments can even be effective to a certain extent — but never more than arguments among other arguments. — And if a needed argument is not to be found in the 'sources of law' then the argument will enter the process in the disguise of one of the official sources. — It is important to notice that there is nothing scientific about these rankings.

Certain types of conduct or activities have been lifted to a highlighted position in public life by addressing special normative expressions to regulate them. We call these normative expressions 'laws' — i.e. those of the expressions that are recognized as such. These 'laws' function (interact) against the background of all the other normative expressions and interpretations that are in circulation. The chance that a law functions as one would wish it to function depends on 'the background'. 'The background' consists of the social relations or life in general, or more precisely from point of view of law, one can talk about moral and other values (*are there other than moral values?*); customs; habits; traditions; development of competitiveness (in all spheres of life); material standard of living; spiritual standard of living etc.

The legal traditions, i.e. the history of how people have adapted their lives in society to a certain understanding of the prevailing normative expressions (and vice versa) are aspects of law. — What traditional legal writings highlight is only a kind of a tip of the iceberg of this notion; it examines the way how 'lawmakers', lawyers, and judges deal with perspectives called law. This approach fails to deal with the overwhelming majority of cases of interaction of normative expressions i.e. all that happens in social life. — But it even fails to deal with the majority of issues of law proper (i.e. the kind of law which is recognized as 'law'). Most of the issues affecting legal relationships escape the attention in legal theorizing and are undertaken without any participation of a lawyer. These issues come to be included in the theory of law, only in case there is an 'official' dispute; in fact only in case where there is such a dispute that both parties consider themselves to have a chance to win — for when one party considers that the other will be 'legally right', then he subjugates to the circumstances without anybody consciously recognizing that it would be a 'legal issue' (in another time or other place the same issue may well be in the centerpiece of legal disputes). — Posner has noticed this dilemma: "it is just another form of essentialism to assume that law is what is done by a person with a law degree and by no one else" (1993,

p. 369). : "When the case is clear the parties will usually settle the case before trial" (1993, p. 78). — I regard that Sunstein is also on the right track with stating that "As we shall see, the distinctive concerns and tools of the law are by no means limited to law" (Sunstein, p. ix), and " Much of what lawyers know is a set of practices, conventions, and outcomes that is hard to reduce to rules, that sometimes operates without being so reduced... [Any legal matter] could in the abstract, mean an infinitely wide range of things "(Sunstein, p. 13).

In the American theories of law there is a realization that law is about argumentation and interpretation (however without making the right and sufficient conclusions thereof). Nevertheless, American law theory is almost exclusively focused on analyzing the work of judges in the higher courts (' a prediction of what surgeons will do in the emergency room'). — (Posner: "The focus of Anglo-American legal theory has been on the individuals who resolve disputes" p. 6). — It is remarkable that even the jury has rarely made itself into American legal theory. What a pity, because with the jury we receive all these human and all-too-human notions of life into law. — Who could think that moral is separate from law, if one bothers to study the jury? — Even sign-language as snapping of the finger will emerge as a very relevant legal norm (see Michael Jackson case where the rule of law 'don't snap your fingers at me, lady' was discovered when juror disliked intensely claimant's way of addressing the jury while giving evidence. — Evidently we are supposed to believe that 'the Law' has established that a participant in the court is not to snap his finger in a certain way coupled with a certain expression facing in a certain direction, and it was just for the judges to discover this particular rule — in this case the jurors. Is there a scientific difference between 'judge' and 'juror'? — I would rather see the difference in the role that the language-game has assigned these chips. And tomorrow a juror could well have functions that today belong to a judge and vice versa. — How about seeing law as a 'prediction of how the jurors will feel?')

A metaphoric comparison of law and justice with medicine and health could be illustrative. Now, I argue that law should be about promoting justice, in the same way as medicine should be about promoting health. The prevalent theories of law can be compared with a notion whereby we would think that health is produced (exclusively) on the surgeons operation desk. The surgeon may have a very decisive role in many individual cases for sustaining life and promoting health, but certainly health is a

million times broader a notion. Health is a function of a great deal of conscious and unconscious habits and activities, sometimes undertaken specifically for the benefit of the health; the diet; the habits of life; the environment; sports and leisure; all the health practices; doctors exchanging opinions; consultation; medicine; vitamins; fresh mountain air; less stress; proximity to a pet; love.. .Doctors and surgeons intervene only in an extraordinary situation — (and so do lawyers and judges). — But, it is the same with justice; justice is a function of the same living conditions; like health justice comes about by social practices — (in the perception of law we speak about legal practices). — Infinite Variances affect justice — each day.

This is especially important to notice when we analyze and opine on the Russian reforms and the state of society. In the West it has taken more or less an uninterrupted historic evolution to reach the notions of law and justice we have today (I stress that I do not regard this as necessarily an evolution going to an ever higher level — but there could be this kind of trend in very broad terms). With the introduction of Marx's worldview to Russia by the Soviet dictatorship Russia entered a period which aimed at, and succeeded in, a total break with past traditions: throwing society into an abyss, where the patterns for interaction between people were interrupted by violent force; where all was turned upside down and inside up in whirlwinds. All elements that make for orderly social life were disrupted. - There could be no law and justice in such a setting, and there was none.

Very few understand the notion of legal practices, perceptions of law, the normative system, normative expressions etc. Therefore people (scholars, politicians and journalists especially) cannot grasp that you do not start a legal system just by having a longing for it, or being 'good-hearted', or maybe by 'having received a Western education'. Certainly laws are needed and a lot of good will is needed; and a lot of wishes for the best are needed; but at the end of the day what is needed is a legal culture — a legal culture, which is built on a functioning social order (there is a hermeneutic circle — call it the chicken or the egg dilemma if you will).

Black, Kraakman, and Hay in their analysis of the emerging Eastern European countries showed (p. 245) how law is always a product of social practices - I will illustrate this by quoting a few paragraphs which very aptly illustrate the issues at hand: "The corporate laws of developed countries de-

pend on highly evolved market, legal and governmental institutions, and upon cultural norms that often do not exist in emerging economies. And even if these laws could be exported to emerging markets without modification, there would be a case for not doing so before first taking a hard look, since these laws are likely to be as much the product of idiosyncratic historical developments in their countries of origin as of purely functional imperatives."

Black, Kraakman, and Hay (p. 246): "In an important sense no law can be designed completely from scratch. Emerging economies have some legal and market institutions, some norms of behavior, some distribution of share ownership, and some financial institutions. Corporate law must reflect existing institutions and encourage the development of missing weak institutions."

Black, Kraakman, and Hay (p. 247): "In developed countries, corporate law is only one of a number of legal institutional, and cultural constraints on the discretion of corporate managers and controlling shareholders... In emerging economies non-legal constraints are weak or absent. -Moreover, corporate law in developed countries has evolved together with legal institutions that make the law work."

Black, Kraakman, and Hay (p. 248): "In developed countries, corporate law often plays a minor, even "trivial" role in an overall system of corporate governance."

These quotes are about corporate law, the topic of the study of Black, Kraakman, and Hay, but naturally the same insight applies to a serious study of any field of social normative regulation. — It is a question of the researcher to learn to see issues in proper perspectives.

Fogelklou (p. 22) in his analysis on Russia and the Eastern European after Marxism stresses that: "The law appears... to be more a reflection of factors outside of the law." - Tuori confirms the same view regarding the development of law in post-socialist countries and stresses that this "is a time-consuming process, whose success decisively depends on extra-legal social and cultural conditions" (p.209).

Even Hart (p. 59) spoke about 'form of a social practice which constitutes the acceptance of a rule.'



## 21. NORMS AND RULES

Wittgenstein: How should we have to imagine a complete list of rules for the employment of a word? (Zettel, p. 78). - Posner says (p. 48) that rules mask the role of the subjective and the political in the formation of legal rights and duties. — "In law the rules may be up for grabs." (Posner, p. 50) — "The rules are really guides and maybe this is what rules of law are to judges" (Posner p. 51).

Wittgenstein: «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» (PI 201).

A rule is but a perception of a rule.

The theories of law up to date proceed with a conception that there exists at any given time a definite amount of rules (or norms) which the law deals with. Those theories consent to reality inasmuch they admit that new rules can be produced, and are produced by parliaments, courts (judges) but sometimes by more mysterious forces such as for example 'habit' or 'customs'. The essence of the conflict between the so-called natural law theories and the positivist theories is in the question 'who has the right to produce new rules?' — Whether a parliament (or other so-called lawmakers) have a monopoly on that or not. Natural law theories are also about a search for norms — according to these theories it is not a question about producing them, but about getting a hold of them, 'discovering' the rules — rules that have been out there all the time, but only now are to be discovered. The positivists do not search for norms; they invent them — (so they are kind of counterfeit rules).

What I am trying to do is to show that the debate is nonsensical and based on primitive anthropomorphic notions of seeing rules as thingly entities. This is a central point in redirecting legal philosophy towards a

search of truth and harmony — to an understanding how the activity we call law in reality functions in the competitive system: To come to an understanding that law is a competition between expressions and interpretations; a process of advancing normative arguments with unrestricted dimensions in time and space. - The law, this activity, is about argumentation (multidimensional argumentation). 'Rules' are, at best (i.e. closest one comes to the present day notion), standardized patterns of argumentation.

'Rules' are not 'things', hence they cannot 'be' and they cannot 'come out of existence' ('wither away' so to say). Like any expressions rules did not exist in the first place. — When one realizes this one will realize that then there is nothing fixed; then there is only the competition between expressions. — If one wants to speak about rules existing and so on, then it is all right in ordinary language use but in science (if the art of law is to be considered science) such poetic language has no place. The defenders of present day legal theories should bring forward to public view some samples of the 'rules' that they base their theories on — not the symbols for interpretations of them on a paper or something like that, but really 'the rule' complete with body and measurements (weight, height, breadth) and biological particularities. As we are not to expect to see any — I hope we are ready to make the conclusion that they do not exist — then we have to, once and for all, turn to a serious notion of law and justice.

### Rule-Following

Wittgenstein: "But aren't we guided by the rule? And how can it guide us, when its expression can after all be interpreted by us both thus and otherwise? I.e. when after all various regularities correspond to it. Well, we are inclined to use this metaphor" (Remarks Mathematics, p. 347).

The philosophical problem condensed under the notion 'rule-following' is one of those caused by the holiday-motion of mind — when we remove the semantic problem the philosophical problem will go away with it. For clearly there do not exist any 'rules' to follow — a 'rule' is a modal expression — expressing a wish accompanied with a varying degree of authority causing other people to comply with an interpretation of the wish ('rule-following' is an object for a psychological study). For example 'habits', 'customs', 'commands' are words describing various degrees (nuances) of predictions of future behaviour in correspondence

with such wishes. Under the notion of 'rule' also falls the mental organizing of past experience concerning similar issues. Regularity of behaviour adds to the perception of a law being involved. — The word law is also used for describing wishes proclaimed by an especially authoritative body (e.g. a parliament — I call them strong normative arguments).

Wittgenstein: "But how can a rule shew me what I have to do at this point? Whatever I do is, on some interpretation, in accordance with the rule,"- That is not what we ought to say, but rather: any interpretation still hangs in the air along with what it interprets, and cannot give it any support. Interpretations by themselves do not determine meaning" (PI 198).

Talk about rules and rule-following is all about perceptions, expressions, and interpretations. Von Wright states (p. 8) that "A group of norms which are in some respects like rules and in other respects like prescriptions are customs", and further argues that "Customs are not 'laid down' in the way rules (of a game) normally are; nor are they 'promulgated' as are laws and other prescriptions." - and he reaches the conclusion: "Thus, in the origination of customs language plays no prominent or typical role". — If language does not play any role in the origination of customs, then what does? — *What on earth* if not language? — The claim that customs do not originate by language rests on the assumption that the origin is indeed not to be found *on earth*, and hence they seek for metaphysical philosophical or religious explanations.

Winch claims (p. 51) that "the analysis of meaningful behaviour must allot a central role to the notion of a rule; that all behaviour which is meaningful (therefore all specifically human behaviour) is ipso facto rule-governed." — His reference to the notion of 'meaningful behaviour' deserves attention — 'meaningful behaviour' must be 'rule-governed' he claims. — This makes me ask: Why must it be so? And: Why should we proceed from the idea that all human behaviour is *meaningful* (or that we should agree on what is to be considered meaningful) ? - If 'meaningful behaviour' is a part of the definition of human behaviour, then I oppose this definition; presumably for Winch it is, because it is 'rule-governed', which really is nonsensical circular reasoning.

Wittgenstein came to see that there are really no rules in the follow-a-rule meaning (compare with PI 82) He demonstrated that rule-follow-

ing is a linguistic fallacy: "To obey a rule, to make a report, to give an order, to play a game of chess, are *customs* (uses, institutions)" (PI 199). - "And hence also 'obeying a rule' is a practice. And to *think* one is obeying a rule is not to obey a rule. Hence it is not possible to obey a rule 'privately': otherwise thinking one was obeying a rule would be the same thing as obeying it" (PI 202; see also PI 198).

At the end of the day what is considered as 'a rule' is based on a perception and hence anything could be considered a rule — the question is what difference does it make what you decide to call a certain kind of expression.

In reality 'existence' of a legal norm means the extent to which people interpret themselves to be compelled to a certain activity in accordance with their interpretation of the message contained in the norm - i.e. an interpretation of somebody else's (singular or plural) norm statements (expressions), or perceived norm statements. The 'existence' could then be a question of to what extent the expression and interpretation match, and to which extent various people agree on the content of the norm expression.

It is wrong to think, like von Wright does (p. 7), in line with traditional legal theory, that norms would move in a vertical structure from a higher authority down to subordinates. He thinks that norms are issued by a state authority and that they come to existence 'by their promulgation' (like being conceived and baptized). — In reality there are normative expressions stemming from various sources in all historical temporal and spatial dimensions and going criss-cross, and hence nobody can claim authorship to a norm (i.e. the feeling of compulsion). — (In his treatment of norms von Wright is a hostage of legal theory, and this is when philosophers should be the ones that broaden the horizons in the sub-practices such as law).

Even without having in mind juridical law as such Wittgenstein was able to give a definition of 'rule-following' in law: "And is there not also the case where we play and — make up the rules as we go along? And there is even one where we alter them - as we go along" (PI 83). — Yes, there is this game, and the game is called "Law".

The distinction between norms and rules is irrelevant, because anyone can define words as one wants; with the definitions the reality does not

change. - If there is a realization that rules (norms) do not exist in the first place, and all is only about a competition of expressions, then the endeavor becomes even more futile. — But Aarnio (p. 155) wants to introduce a distinction between norms and rules. He motivates that with pointing to a purported difference in sanctions that follow for breaking norms and rules: "The distinction between norms and rules is necessary...rules may certainly be sanctionless, for example the rules of chess or grammar". But this is certainly not the case — there are a lot of other sanctions in life than those that are defined within a law game (Think about the punishments without a crime or failing an exam — or being disqualified from a game). He also claims that "norms differ, for instance, from values" (Aarnio, p. 155). — Identifying norms with such a distinction is similar to saying that norms differ from holiday greetings — and that is certainly true. — (American legal theory makes a lot out of the discussion of the differences between the words for distinguishing types of normative arguments as e.g. rules, principles, policies, standards, presumptions, guidelines, and analogies [See e.g. Sunstein 1996]). In practice this may be all right, but we have to caution people against starting to believe in reality in those baptized differences.

From purely didactic reason I would, though, like to propose to make a difference in the treatment of 'norm' and 'rule'. It could be helpful to distinguish between them so that by 'norm' one could mean an 'atomistic' norm statement (here the word 'atomistic' is introduced as a simile also for presentation purposes only) and by 'rule' one could mean a combination of norms to form a description of a (desired) behavioral pattern. - This kind of distinction may aid in making the point that a legal rule (normative expression) is always complex and that life is governed by endlessly many normative expressions (and even more interpretations) that deal with finer and finer details.

Thinking in lines of there being finer and finer normative statements would bring to the notion of atomic norms. Legal philosophy has not reached this point of sophistication, though. Legal philosophy deals with complex normative statements of the kind of 'rules'. In *Tractatus* Wittgenstein reached the notion of logical atomism, which really is very similar. This notion brought him to realize that if the logical entities are so small and fine and manifold, then certainly there can be no logical system to cope with all the variations (in legal theory this problem has not even come up). Hence the notion of logical atomism led Wittgenstein

to realize that it meant the same as if there would be no entities and no system at all. — If we submerge in the idea of logical atomism, and reach the comprehension that it is as if the constituent particles did not exist (which in fact is the case) — then what comes instead is the endless interplay between interpretations and expressions. - The only system there is, and can be, to cope with the infinitesimally small norm particles is the ordinary language - (This contradiction was the object of Wittgenstein's later work).

### **Atomistic Norms and Brownian Motion**

Applying the technique of the new improved double-bladed Occam's razor it is helpful to stop at the notion of atomistic norms a little longer. For those people that need in their thinking something concrete, some corporeal entities, for them I recommend to think of norms as atomic norms. Next imagine what you could do to control the atomic norms — what kind of law writing and teaching techniques would be needed for anybody to master the interconnections with all those millions and millions of atomic norms. Would it be possible at all? — I think we admit it impossible. — Then what emerges is a competition of various arguments promoting in each individual situation competing views of their combinations i.e. competing normative expressions (competition of arguments).

Yet to really grasp the picture of atomic norms one more hint is useful: Add to your imagination the picture of Brownian motion — imagine that the movement of the atomic norms would be that of Brownian motion (and this is also a hint for the crosswords logicians). - In at least Russia and Poland, so I have been told, it has long been common to compare human relations in society to the Brownian motion. The Brownian motion is an incessant, irregular swarming movement of microscopic particles suspended in liquids or gases resulting from the impact of molecules of the fluid surrounding the particles (This discussion of Brownian motion is compiled from various sources found on the Internet). For a microscopic particle the random difference between the pressure of molecular bombardment on two opposite sides causes it constantly to wobble back and forth. The trajectories are confused and complicated so often and so rapidly that it is impossible to follow them. The Brownian motion varies in the wildest way in magnitude and direction. The movement is but irregular and the particles are undergoing small constant

random fluctuations varying in strength and direction. — So if we would be dealing with atomically small norms (for if anything at least they are not bigger), then certainly these atomic norms would be behaving in the same random irregular fashion as the molecules in Brownian motion. And if norms function like that, then we understand that there is no orderly pattern whereby they are arranged, and only an endless competition that arranges the perceptions.

In 1827 the English botanist Robert Brown had noticed that pollen grains suspended in water jiggled about under the lens of the microscope, following a zigzag path. Brown was studying pollen particles floating in water under the microscope. He then observed minute particles within vacuoles in the pollen grains executing this jittery motion, a rapid oscillatory motion of the pollen grains suspended in water under the microscope. By doing the same with particles of dust, he was able to rule out that the motion was due to pollen being alive, but it remained to explain the origin of the motion. - In one of the five important papers Einstein published in 1905, there was one on the Brownian Motion. In this paper it was shown that, according to the molecular-kinetic theory of heat, bodies of a microscopically visible size suspended in liquids must, as a result of thermal molecular motions, perform motions of such magnitudes that they can be easily observed with a microscope. Einstein wrote later that his major aim was to find facts that would guarantee as much as possible the existence of atoms of definite size. In the midst of this work, he discovered that, according to atomistic theory, there would have to be an observable movement of suspended microscopic particles. Later the physical theory of Brownian motion was scientifically established and ended the skepticism about the existence of atoms and molecules as actual physical entities. — How long will it take until people will generally realize that that these physical entities are physical only and that expressions of feelings and their interpretations do not consist of the same?

### Norms and Rules Defined in Ordinary Language

The dictionary definitions (Merriam-Webster) of 'norm' and 'rule' are more adequate than the philosophical claims (because in philosophy language is too often on extended sick-leave): 'Norm' and 'rule' entered the legal language through the Latin *norma*, literally, carpenter's square; and respectively from Latin *regula* straightedge (from *regere* to direct).

These words point to their origin as authoritarian statements by the one in power: he told what is 'straight and correct'.

**Norm:** an authoritative standard ; a principle of right action binding upon the members of a group and serving to guide, control, or regulate proper and acceptable behavior as a set standard of development or achievement usually derived from the average or median achievement of a large group; a pattern or trait taken to be typical in the behavior of a social group; a widespread practice, procedure, or custom

**Rule:** a prescribed guide for conduct or action; the laws or regulations prescribed by the founder of a religious order for observance by its members; an accepted procedure, custom, or habit; a usually written order or direction made by a court regulating court practice or the action of parties; a legal precept or doctrine; a regulation or bylaw governing procedure or controlling conduct: a usually valid generalization; a generally prevailing quality, state, or mode; a standard of judgment; a regulating principle; a determinate method for performing a mathematical operation and obtaining a certain result.

These definitions convey the manifold use of 'norm' and 'rule' showing the similarities and dissimilarities in the usages. We can see that they describe perceptions and activities and not anthropomorphic entities as the legal and moral philosophies do.

We may contrast these ordinary language descriptions of rules with some of the philosophical statements describing the essence of norms:

Von Wright: "When the norm is a prescription formulating it in language is sometimes called the promulgating of the norm" (p. 93).

Von Wright: "The existence of a norm is a fact" (p. 106).

Von Wright: "The ontological problem of norms is essentially the question what it means to say that there is (exists) a norm to such and such effect. . . Are there norms which have necessary existence? The question is complicated by the fact that the very notion of necessary existence is problematic" (p. 107).

## 21. COMPETITIVE JUSTICE

"The discrepancy between law and justice is an old story" (Posner 2002, p. 109) — and herein lies the fundamental error that has caused the sorry state of law (philosophically, theoretically and in practice). Any discussion about law is meaningless if law is not seen as a part of the eternal quest for justice. — It is like doing medicine without being concerned with health (or like deciding to break into a separate discipline the study of muscles and blood). — Whatever is called law deals with the normative expressions and interpretations which interact in producing justice.

Justice does not have an origin, only a future - justice is a claim for a better future. — The law is just a concept within the system of producing justice. - The fact that we did not achieve justice yesterday does not that mean we will not fight for it today and tomorrow. We are not bound by the chains of past injustice. — Perceptions on justice and the achievements of justice are in a continuous flux. Imagine what was treated as justice a decade ago, 30 years ago, one hundred years ago, 200 hundred years ago, 2000 years ago — slavery was justice and became injustice; 'legally' sanctioned executions was justice, but is now in secular states seen as injustice; child labor; equality between sexes etc. If law, as it is claimed, is about past decisions, precedents, finding the answer — then what brings about the constant changes in the perceptions on justice? — Legal philosophy and the prevailing theories of jurisprudence do not account for any change in the system; the doctrines portray a static system confined in the language-games and do not cope with the obvious and constantly occurring changes in perceptions on justice. This is because law is defined as a system of (hypothetical) rules; (hypothetically) promulgated by a sovereign; with (hypothetical) validity. — But all that counts i.e. justice is ignored. — All that can come out of such theories are nonsense and suffering. We have to reintroduce justice to the normative theories, because in practice it is there anyway: justice is the change for the better. — In reality the normative arguments are and have always been

in constant competition in the system of law. - "Justice is the fundamental basis of law and is above all positive law" (Nersesyantz, p. 31).

The theories that go under the name of natural law are in general (compared with positivist theories) more on track towards the correct notion of law as justice. The natural law arguments represent a movement in time to catch up with the ever moving notion of justice - (As I have argued in other sections of this book, I think that 'natural law' is basically a code word for all the arguments which raise the goal to achieve justice higher than the special forms of injustice called 'positive law'. — This, of course refers to the honest arguments for natural law, i.e. basically the liberal arguments in favor of natural law).

Justice, like health, is a movement towards the good. — There is no ideal form of justice that would hold true for all times and all places. "Justice is correcting historic injustice."

In law and justice we cannot prove anything (we can only argue for our view). - Wittgenstein: "Nothing we do can be defended absolutely and finally. But only be reference to something else that is not questioned. I.e. no reason can be given why you should act (or should have acted) *like this*, except that by doing so you bring about such and such a situation, which again has to be an aim you accept" (Culture, p. 16). - But there is one solid foundation on which justice stands, what can be proven, and does not need to be proven, this is the respect of life as the highest good of justice (and life is the property of an individual). Life is something that cannot be offered (or taken away) in exchange for anything. — Apart from the life of an individual there is only one utilitarian good that can be recognized as a criterion for justice and this is the protection of the environment, the preservation of nature: the conditions for life.

"The procedure in a court rests on the fact that circumstances give statements a certain probability", Wittgenstein (Certainty, p. 42).

Compare law with medicine; both treat problems, but medicine admits that the methods will be better in the future.

Every day, everywhere people have an obligation to fight for individual justice - (this is the 'duty' — the new categorical imperative). Life is beyond law, the highest value of justice, and can never be expropriated. —

Apart from the biological arguments we do not need any proof for this. — But life to be life has to be a good life. The notion of good life launches us to the normative competition. We do not know, and cannot know, and should not try to know, what good life is for all people individually, in all times and all places. Only a free, non-monopolistic democratic competition can get that right. In the continuous normative competition people based on their own realities argue for the best of each one. The competition results in the perception of justice — but this perception should not be taken as the standard for justice. History is not to be taken as the measurement of justice — justice is beyond us. — Posner (p. 29): "Law is forward-looking. This is implicit in an instrumental concept of law — which is the pragmatic concept of law, law as the servant of human needs. Not the origin but the goal is the main thing" - (Posner [p.108]: 'lawyers tend to be backward-looking').

Justice is an individual property. - Justice is a property that belongs to an individual person. — Only individual human beings can lay a claim on justice (naturally animals have to be guaranteed a just treatment). - Hayek's most important contribution lies in his tireless fight for the recognition of the individual as the sole subject of justice (Tuori, p. 17: Hayek recognized that the notion 'justice' can only be attached to individuals, not to the state or society). — It is through the making of individual justice, justice for the individual that justice is spread over society.

The main lesson we shall draw from the history of law is that "Lex injusta non est lex" (St. Augustine) — an unjust law is not law. For we should not confuse justice with the commands of those with power.

The positivist fanatics, or the formalist as Posner says, have a battle cry that goes like: *ruat coelum ut fiat justitia*: 'let the heavens fall if necessary in order to do justice' (Posner, p. 445). - But in reality they got it all wrong (they identify justice with whatever is defined as such by those in power): justice is not the old law but the new one. An idea today is justice of tomorrow. Rawls (like Plato) argues that "a group of persons must decide once and for all what is to count among them as just and unjust" (Rawls, p. 11). —Rawls manages to concentrate in a few words all that is wrong with prevailing legal theory and the official practice. He promotes the idea of there being a moral elite who in a static world can decide the moral values in advance for all times and all situations. — He seems to lack the understanding that moral values are not things and that

there is not a certain number of them, and a certain set of standard applications (This is ignorance about law, justice, society and humanity in a nutshell). — In reality there is only a constant competition between individual needs.

Justice is something for people to correct. If something has always been in a certain way, or was so in prehistoric times — then it still does not settle anything: justice looks to the future. Notions on what justice is and what should count as justice can be found only in a complex network of issues that appear in Infinite Variances. It is important to understand that these decisions on justice can never be derived from facts...and "conversely even if men were born in chains we still might demand the removal of these chains" (Popper 1971, p. 62).

Moralists like Kant and Rawls propagandize the idea of moral duties (e.g. Rawls's list of natural duties, p.98). — What I want to do is to free people from these duties and promote the moral rights: the right to receive a fair treatment from every compatriot in the world. — In the sphere of law the emphasis should shift from the duties of the individual to the duties of the normative apparatus to guarantee the rights of every individual to fair treatment by others (The human is born with rights, not duties). — Wittgenstein: "No cry of torment can be greater than the cry of one man. / Or again, no torment can be greater than what a single human being may suffer. / A man is capable of infinite torment therefore, and so too he can stand of infinite help" (Culture, p. 45).

The justice available in society is competitive justice. Competitive justice is the justice that is available for the individual in society in any given situation at any given time. We can call competitive justice the outcome, but it is also the process for achieving justice. When a society is not sufficiently competitively democratic and free, and when all the other competitive constituents in society are not functioning properly then the outcome of justice is unsatisfactory (which is the situation more or less all over the world — any perception of superior justice in the West is only owing to comparisons with places where it is worse).

Competitive justice is a continuous process going on in all aspects of life all the time between all people. In law proper the two most important constituents of competitive justice are the competition between normative arguments in a court and between normative arguments in politics; the

latter resulting in strong normative arguments called statutes (or laws). Both these particular competitive processes function far from perfectly. The basic problem is that there is so little knowledge of the nature of law, or the normative competition — the prevailing primitive anthropomorphic conception of law (which I criticize in this book) constitutes an obstacle for freeing the normative competition. — Understanding the real nature of law is a constituent part of honesty; honesty in turn is the fundament for making anything right.

The competitive character of law is emphasized by pointing out that all law is about interpretation of expressions. In the competition we advance various arguments more or less openly and honestly. Some think the European judges would more closely follow the so-called written law than their Anglo-American counterparts — but what happens in reality is that Anglo-American judges have a more honest understanding of law and work in general more transparently honestly; they are more open to argue their positions from point of view of justice and be candid about the arguments, whereas European lawyers tend to hide their real motives behind Aristotelian style syllogisms supposedly derived from an application of the law book. Zweigert & Kötz (pp. 263 and 264) dispel this myth, they tell that the continental judges pretend to be following only the texts of the positive law, but "in fact everyone knows that in really difficult cases the statutory text, if there is one, is too vague to provide a solution, and that the case can only be solved by engaging with the rules, principles, and maxims developed by judges in previous decisions." They tell that "evidence for this is the grudging manner in which the facts of a case are treated by Continental judges."

"Anglo-American lawyers have a much more careful and precise way of delving into the distinctive facts of a case, of distinguishing these from apparently similar cases, and of delicately drawing out general rules and principles, as abstract as may be necessary but as concrete as is possible, while keeping close to the problem in hand and to its factual setting: furthermore they discuss these matters more frankly and openly than Continental lawyers who often still feel drawn to a forced 'categorization' of the facts of the case, even a rather crude and simplistic one, in order to bring the case as quickly as possible within the ambit of the closest 'leading principle'" Zweigert & Kötz (p. 269).

The competitive character is shown by the constant changes that occur in the normative balance. If the law book would give all the answers to any particular case, then certainly there would be no new interesting court practice to refer to, there would be no 'sensational new rulings' etc — the law practice would never change without a law changing. But, we all know that this is not the case. There are different kinds of rulings, different sanctions, and different outcomes in each case each day — because what happens is that the competition of legal arguments goes on each day in each court — and the arguments presented and their treatment in each specific case is what is decisive. A typical situation is such that one lawyer argues how a particular legal rule expressed in a statute should be applied 'against the facts in the case', and another one provides contra-arguments for how it is to be interpreted (or dismissed as irrelevant). The judge also has his arguments and, if he is a good judge, he is influenced by the arguments presented. — A manifold of considerations influences this competition; the characteristic traits of the process are Infinite Variances. — Justice begins from acknowledging that justice is the manifestation of the result of normative competition on each level of life (going on in Infinite Variances), and better justice is reached by promoting the supremacy of the individual in the competition. - This is the process, and humanity has a lot to gain by admitting this.

The courts and the 'lawmaker' (parliaments and other 'sovereigns') are in a constant competition about the right to issue strong normative arguments (or 'make laws' as they say). In the United States this is admitted in legal theory and in practice, while in Europe they want to pretend that this is not the case. This very competition between courts and 'lawmakers' is the basis for a well-functioning society and this is the state of affairs any society should aim for. — Now I am not saying that the US system of law provides for more justice than the European (i.e. various European jurisdictions, where there is a wide diapason of varying practice). In the US the problem is not with the system as such (that is the fundamentals) but with the contents, i.e. the quality of arguments advanced. I am saying that in general the organization of the competitive framework in the US is more suited for justice. But there are manifold of problems in the American system that stand to be improved. The capital problem is the normative hysteria which has become kind of a national religion; anybody can be sued for anything and nobody has the guts to stand up against that madness (in real justice individuals are protected against having to devote their lives to proving the obvious in what amounts to a great lottery of arguments). — There are other great impediments to

justice: the fact that the process blatantly favors the rich 'litigation is costly and cumbersome and as a result much of the law on the books is a dead letter' (Posner, 1993, p. 8); 'the legal system becomes immensely costly, intrusive, and politically controversial'; 'accidental growth of the class action [has developed] into an engine for coercing the settlement of cases that have no merit yet expose defendants to astronomical potential liabilities'; 'the flood of statutes that over-encourage litigation'; 'there has been since 1960 an astonishing rise in the amount of litigation'(Posner, 1993, p. 430); 'Runaway expansion of tort liability'(Posner, p. 429).

The only chance to counteract the normative press that the European people are increasingly subjected to is to be found within the idea of competition. The European 'lawmakers', both the democratic 'lawmakers' of the individual states and the undemocratic 'lawmaker' of the European Union have subjected all aspects of life to a suffocative normative control — and there is no counterbalance to it. The separation of powers which political theory so much talks about does not exist in reality in Europe (in the United States this is much better provided for).

Montesquieu was dealing with the separation of powers basically between two sovereigns: the king and the ruling elite. His work eventually led to the theory of three branches of power: the legislative, the executive and the judicial. Whatever the merits of such a system in historical times, it does not have any relevance in Europe of today: Within the EU in the democratic national states there is only one sovereign i.e. the people. In these states the people are, as a rule, only represented by a parliament; thus the parliament has assumed totalitarian powers. - Hayek said: "The classical theory of representative government assumed that its aim could be achieved by allowing the division between the legislature and the administration to coincide with the division between an elected representative assembly and an executive body appointed by it [the elected assembly] and thus came to combine the powers of legislation with those of government; resulting in an absolute power not restricted by any rules." (1979, p. 35). Hayek saw the need to limit parliamentarism, the unrestricted majority rule, and ridicules: the 'modern conception of government in which no restriction is placed on the governing body' (Hayek 1979, p.3).

In some countries, where the parliament consists of two separately elected chambers there is a rudimentary form of separation of powers; when there is a directly elected president with real executive powers and

accountability before the people there can be talk of separation of powers (like it used to be e.g. in Finland under a more democratic period). — Parliamentarism does not meet the standards of competitive democracy, and cannot be the foundation for a competitive society. — Parliamentarism is the system of totalitarianism of the majority: the artificial majority (the majority of political players).

The problem with the system consisting of one sovereign (European parliamentarism) is that it creates a monopoly of power — Now, one should hope that people do not seriously think that there is any political separation between the legislative and the executive branch (this is the same kind of separation of powers as that between a managing director and a secretary). It is more conceivable (but not quite correct in a European positivist parliamentarism) that somebody perceives that there is a separation between the judicial and legislative - to some extent there is, but not at all to a satisfactory level — separation does not come about by calling it by the name 'separation'. - In Europe the legislative and executive branches are in fact one and the same: when the government acts based on the mandate of the parliament then the government is the executive branch of the legislative — and as the government sets the agenda for legislation then it is equally part of the legislative. In the United States, on the contrary, these branches are separated: The President is elected by the people and the government is appointed by the President. European parliamentarism leads to a situation which could be called if not monopoly then at least 'abuse of dominant market position', and hence it is a distortion of justice - and a challenge to the fundamental conditions of life, a challenge to life itself. These problems are caused by the very misconception of what democracy is all about — it is not just about voting (they had this ritual in the Soviet Union as well). The essence of democracy consists in equal rights and equal competitive rights to participate in democratic decision making. For a democracy to be well functioning it has to be competitive in all aspects. But the European parliamentary democracies, although being in a historic perspective advanced forms of democracy, may in no way be viewed as the ideals of democracy. They represent a product of a democratic struggle, but are in the present day becoming more part of the problem than the solution, a danger to life. - Only open and actively encouraged competition can bring democracy and fundamental progress.

There are many dangers inherent in this monopolization, not least the strive (and the increasing success) to unifications of values under a



monopolistic collectivist ideology. Under the ideological press parliaments are ruled by majorities or majority coalitions all being in the business of issuing more and more rules for restricting freedom, and life. There is an illusion that the majorities in the parliament would represent the majority of people. Aarnio reports (p. 42), in reference to Tuori, that the decision-making in parliament is not based on a consensus reached by rational discretion, but on behind-the-scene wheeling and dealing and power games. It is not the public plenary sessions, but the secret consultations between the parties that are the real fora of the actual decision-making. Public plenary sessions are mere facades for giving a form to the actual decision-making. — What happens in reality is that people vote in elections for parties or candidates that claim to represent a certain program — but between the voter and the elected deputy there is no contract where the deputy would commit to fulfill the program. - Instead he receives a mandate to act, a *carte blanche*. Once in parliament he participates in the work within the framework of the system. Issues are agreed upon more or less wholesale — it is a question of building coalitions for one or another issue. As in many aspects of life there is a minority consisting of maybe 5 % the deputies who draw up the agenda — these people are continuously, as part of political marketing, pressing for new and new sets of rules and restrictions for one or another issue, and sooner or later the political wheeling-and-dealing will give them success (in the behind-the-scene game). - The voters really do not have a choice, for all the parties function more or less in the same way and it is just a question of which set of restrictions will be accepted. Political parties used to be means for advancing a program, now they are ends to themselves; they function like corporations, with the sole aim to gain market share and power (The party leaders are like executives of business corporations). — This is the nature of parliamentary politics — and I do not think it can be much differently. — Only a true competitive separation of powers can be the solution.

### **An Independent Judiciary**

More important than the division between the executive and the legislative is the separation of powers between the legislative and the judiciary. The normative squeeze caused by the non-competitiveness of parliamentary democracy can be broken only by guaranteeing a truly independent judiciary. The judiciary should be independent to challenge any strong normative arguments issued by the parliament — the fact of

the matter is that in many countries even the positive law recognizes this right on the level of constitutions (but the judges are not brave enough to oppose the parliament and render themselves into the service of justice). In the United States the judiciary and the legislator are placed in an open competition.

Hayek conceived the solution to the problem of the monopoly parliamentarism in separating the functions between two representative bodies with distinctive functions (Hayek 1979, p. 111): one for setting the general 'rules of just conduct' (This being a purely legislative body with the aim of "laying down rules for an unknown number of future instances", Hayek, 1978, p. 126), and one tasked with governing.

Hayek did, however, not come to recognize that the same kind of competition as in the economy was needed in the normative sphere as well; he did not realize that the normative activity was like the economic activity: an endless competition on each level of life. — Therefore he did not realize that the solution would not be in having two legislative bodies (issuing some kind of static rules) but in having a truly independent judiciary engaged in a competition of arguments. — A further problem with Hayek's idea is that one can never in advance assign a role for certain kind of rules: something may seem like execution of policy for someone, or at some point, and fundamental rules of conduct for another one or in another situation. There is no way to scientifically distinguish one kind of expression from another, so much less would there be any possibility to give instructions (rules) on what would be considered as what kind of norms (and how they would be applied, and how the disputes would be settled). Like in the economy so also in the normative sphere it is all about social practices (individual input and competition). 'The rules of just conduct' cannot be such that they are fixed once and forever but are market based and constantly reinterpreted (compare Hayek 1978, p. 70). These formal macro rules should not be confused with the notion of justice (compare Hayek 1994, p. 80ff) — the normative competition is like the economy forward-looking and situation based.

But Hayek is certainly on right track in his drive to limit the parliamentary abuse and in pleading for a more competitive system: "We shall never prevent the abuse of power if we are not prepared to limit power in a way which occasionally may also prevent its use for desirable purposes" (Hayek 1994, p.258). - (Tuori, p. 16: "The positivisation of law

is entailed by an at least implicit danger of totalitarianism. It is to the credit of Hayek... to have drawn our attention to this danger"). — In this connection it is worth quoting Dicey (Friedman p. 201) on his caution against over zealous legislation. Dicey said that 'The beneficial effect of State intervention, especially in the form of legislation, is direct, immediate, and, so to speak, visible, whilst its evil effects are gradual and indirect, and lie out of sight. This natural bias (towards government regulations) can be counteracted only by the existence, in a given society.. of a presumption or prejudice in favor of individual liberty, that is, of *laissez-faire*'. This could be regarded as the constitution of political competitive freedom.

Talk about increasing the role of the independent judiciary is frequently met with worries about a threat to democracy - the misconceived fear is that the judges, who are not elected, would resume power over the elected bodies (*which, as has been noted, are not so ideally democratic either*). — This fear is connected with the fundamental misconception regarding the nature of democracy (and especially confusing the practice of last 40 years with the fundamental essence of democracy — perceptions!). — This is how they reason, as Posner notes: 'If judges are legislators, then why are they not subject to the same political (democratic) control as legislators?' (Posner, p. 21). Tuori correctly exposes the same arguments (p. 252 and 253): "The judicial state: a threat to democracy? In Western countries; some critical observers have warned of a development towards what they call a judicial state. The courts, so the criticism goes, have acquired, at the expense of the legislator, powers for which they have no democratic mandate. The enhanced position of the courts in the legal and political system is considered a threat to the very maintenance of democracy". — Tuori characterizes this criticism as a "vulgar conception of the relationship between the courts and democracy" that "equates democracy with the absolute primacy of the legislator". He says that hereby the role of courts is seen as being confined merely to an implementation of "the will of the legislator". — It is interesting to note that although people in Europe live under the increasing burden of majority rule and positivist press the complaints counter the solution and not the problem.

Some claim that as the judges are not elected, then they do 'not have a right' to issue strong normative arguments and challenge the arguments expressed in statutes. This is a valid concern (although it is scientifically impossible to stop the competition of arguments, it goes notwithstanding anything; but surely the competition can be seriously impaired). In

the United States the problem has been addressed (but not resolved) by means of election of judges and appointment of judges by elected officials, and other checks and balances (e.g. the process of confirmation nominations to the US Supreme Court judges). - Even today in a clear majority of American states judges are chosen directly by the people in public elections in which the candidates mostly appear even quite openly on a party ticket (Zweigert & Kötz, p. 241). - But for justice the majority rule is the very problem — justice is precisely tested where the majority is challenged. So it is not a good idea to make judges undergo elections, and pledge their allegiance to the majority. The true solution is to make the judiciary in reality independent and receiving its mandate from the people, but without any direct elections of the individual judges. I think this could be achieved using Hayek's idea, but modifying it to accord with a more proper view of the nature of law and justice (i.e. the normative competition). - There can be only one governing body, which issues official rules (which scientifically are but 'proposals' i.e. strong normative arguments) and that is the parliament (one would hope they would issue very few rules — and one type of rules could be more frequently issued: the ones abolishing the earlier, without anything coming instead). It is the business of the judiciary to challenge these rules — e.g. more or less as it is done in the US or by various constitutional courts, but more actively and widely and at each level of the judiciary. To resolve this dilemma between the democratic control and the independency of the judiciary this control could be accomplished by instituting an elected public judiciary chamber which would not be subordinated to any other authority than the people. This body should be as much as possible shielded from day-to-day politics, e.g. so that the political parties participating in parliamentary elections would have no right to put forward any candidates for the judiciary chamber. The political parties should also be denied a right to participate in any way in the campaigning for the candidates to this judiciary chamber. The role of the chamber would be to appoint the high court judges, effectuate other key appointments, and approve the guidelines for the organization of the judiciary. Justice is not a business for lawyers, or something that the lawyers should have a monopoly for — it would therefore be important to shield the judicial chamber from too much control by lawyers. This could be done e.g. by imposing a limit on the amount of lawyers that could qualify as delegates in the chamber. The chamber could be elected for a longer term than the executive parliaments, e.g. for 8 years, with a certain part of the delegates standing for re-election periodically.

### Competitive Justice vs. Social Justice

It is most telling that legal literature rarely deals with the very topic of justice itself, the content of which is decisive for life, and that justice as such has not been clearly and overwhelmingly recognized as an individual property. Justice has not been recognized as the ideal of fairest outcome in a particular case. Instead 'justice' has been subjugated to the role of political slogans, like 'social justice'. The real meanings of this 'social justice' are: 'ignorance for the plight of the individual'; 'the program of our party'; 'aggression between various social interest groups'; 'putting the interests of flight controllers before railway workers' etc. In short 'social justice' is the code word for various political parties redistributive agenda aimed at acquiring votes in an election. - Hayek: " Social justice was originally a measure to help the most unfortunate, but today the device of all interest groups" (1978, p.141).

'Distributive justice' is the name for another kind of utilitarian collectivist political program, which deals with the allocation of benefits in society. Rawls counts among the most prominent contemporary theorists of social and distributive justice. Rawls ideas on justice amount to justice as a language-game. He uses a lot of lofty terms, but void of content; lacking a connection with life; and no application. His game starts from 'the original position' — this is when the board game is opened and the playing cards are distributed ("I used a more general and abstracting idea of the social contract by means of the idea of the original position as a way to do that", Rawls, p. xii). — (Even if we would accept the metaphor of the initial position, then we still would have to recognize that what counts is what happens in life. Think about a movie where an expedition is 'in the initial position' getting ready to board for the adventure. Remember the difficulties they experience on the road, note how the human facades gradually fall a part and how they through different ordeals drift further and further away from the 'initial position' — they eventually show all their human qualities, and some times the not-so-human ones. There is a long road from conception to manhood.)

Among the rules of Rawls' game we are presented with this one: "An injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are not uncompromising" (Rawls p. 4). — I claim that there is no way of measuring what is a 'tolerable' or 'greater injustice' — these notions can

simply not be compared in the abstract — and if anybody tries then the result is always greater injustice. Such an idea is at best nonsense, but they have a tendency to lead to quite concrete injustice (as we know from history). The fundament of Rawls's theory is based on the classic definition of utilitarian ideals: "The main idea is that a society is rightly ordered and just when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals" (Rawls, p. 20). — (Rawls is interesting in that his work provides in a condensed form all the stereotypes that pollute social theory. — Rawls kind of zooms us in on what really is wrongheaded, up-side-down, thinking.)

For Rawls the principles of social justice (Rawls, p. 4) exist in a society, which 'is well-ordered' i.e. "when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice." He claims that this is a society in which (1.) 'everyone accepts and knows that the others accept the same principles of justice'; and (2.) 'the basic social institutions generally satisfy and are generally known to satisfy these principles'. — ("They nevertheless acknowledge a common point of view from which their claims may be adjudicated"). - It is not clear if Rawls imagines such a society to exist somewhere or if it is an ideal which he promotes. — But we know: Such a society does not exist and has never existed (and, siding with Nietzsche, I genuinely wish that it would never exist). — Naturally, it cannot exist, but there is a big danger that a surface appearance of such a society is in the emergence in Europe and even in America (America which still was the 'land of the free and the brave' just a few decades ago has been overwhelmed by a mania to restrict and regulate all aspects of life; where the normative mode of thinking has become the prevalent; it seems that the squeeze is nearing a bursting point; this cannot continue for long. — They do not need Big Government, because the suffocating control over the individual has been outsourced to the neighbor). — Rawls is promoting the idea of common values (i.e. accepting his values as common). — But 'values' are very much like atoms ('atoms' in this metaphorical discussion to expose the primitivist thought); the ones engaged in a random dance as in Brownian motion; there is never a chance that everyone would accept the exact same values (or principles of justice). - There are no principles of justice; there are only surface notions, perceptions of justice. All the 'values' and 'principles' are continuous functions of the Infinite Variances of combinations — there is nothing to agree about. — There has never been a society which has been genuinely just; there has

been varying degrees of injustice, some more and some less unjust — never will there emerge any 'social institutions' that would 'generally satisfy' any Rawlsian principles. — Even the academic moralists engaged in these artificial language-games cannot agree between themselves about the values— and after all they are the pros.

Rawls also defines "social justice" as the way in which 'the major social institutions distribute fundamental rights and duties and determinate the social benefits' (Rawls, p. 6). We can see how exactly well Rawls here confuses justice with politics; politics are the activities which determine the rights and duties, and division of benefits — justice is quite a different story

Rawls (p. 10): "Social justice, they are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of association. ...Those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits" — Here 'social justice' is in the role of 'the principles'. What happens is that the expression 'social justice' has been exchanged for the expression 'the principles that...' What are we to make from reading that Rawls regards 'social justice' to be a more suitable combination of words? Where are the principles? Which are they? — They are the ones that 'would be accepted in an initial position'. Now, we were provided with a further hint, a location where 'the principles' would be (or have been) produced. But we cannot go there to find out, because this location does not exist. There is no initial position! — (That is no such position that Rawls *seems* to have in mind. I can come to think only about one kind of initial position: the conception of a human being, but we cannot read the principles from that act, the more as people in that position are not rational but passionate). — (Wittgenstein: "You cannot lead people to what is good; you can only lead them to some place or other. The good is outside the space of facts" (Culture, p. 3). - We are told that the principles are determined by 'the free and rational persons who are concerned to further their own interest'. This definition excludes the majority of mankind (i.e. those who are not 'free' and 'rational'), and effectively brings us full circle back to Rawls and his colleagues, the academic moral philosophers and the inventors and the spectators of the game — for only they can possibly be the *rational* ones.

The Western quasi-theories of justice date back to Plato and his 'know-your-place justice'. Plato charmingly described the essence of justice in 'any changing or intermingling within the three classes must be injustice and the opposite therefore is justice...'; Popper tells that: "Plato claimed justice meant inequality. and he fully succeeded in persuading his readers down to our own day that inequality was justice" (1971, p. 92). - "Plato considers justice not as a relationship between individuals, but as a property of the whole state, based upon a relationship between its classes" (1971, p. 90). - What Plato basically did is hijack the word justice from the normal individualistic use it had in Greek society and converted it to his brand of 'social justice'. (Popper, 1971, p. 91).

While Plato's star after all is falling, that of Aristotle is on the rise (which should not be seen as a development forward). There is nothing that speaks for Aristotle to be seen as an authority on the issue of justice (The 'scientific method', however, *requires* that Aristotle is quoted in this context). — Although Aristotle's concepts sound lofty, there is no content that could help to guide us on the quest for justice. The fundamental problem with the substance of these concepts is that they deal with comparisons of one with another. And a comparison is always a boundary. Justice should not be about comparisons, but about the empire of the individual just in his own right. — Posner gives an interesting snapshot on Aristotle's conception of justice and its possible relevance to present day life: "To all this carping it may be replied that if modern scholars depart from Aristotle's concept of corrective justice, so much worse for Aristotle. This riposte would be crushing — since it would be absurd to suppose that Aristotle had said the last word on legal justice or on any other subject — if these scholars had articulated and defended a new concept of corrective justice. But most of them think that they are using Aristotle's concept, and they are not. They are arguing from authority, and they have got the authority wrong. Their error is to disregard the narrow, formal character of Aristotle's concept. It is a useful concept; it has significant content; but it is too limited to underwrite legal-doctrinal analysis" (Posner, p. 318).

Competitive justice provides the only correct description on what justice is all about. — Only by grasping this insight can we do something about future justice. Nobody can define what justice means for another one; there cannot be this one person (however 'wise and good') - because there are no truths to be known, there is only the ideal of the kingdom of

the individual, of each and every one, and at once. To provide for justice is an activity, a process, for all of us to take part of.

### Rule-by-Justice

Once the true nature of law is understood, then one will be ready to replace the archaic and backward looking notion of rule-of-law by the forward looking notion of rule-by-justice. Nersesyantz says that it is not enough in a righteous state (Rechtsstat or rule-of-law state as it is sometimes called) that there is rule-of-law, but what is needed is a rule of just laws and justice (Nersesyantz, p. 103) — I call it rule-by-justice. No injustice can be motivated by the fact that a ruler or a ruling body has posited something as law (which in fact is the claim of rule-of-law). — Some of the considerations brought under the notion rule-of-law can be transferred into rule-by-justice, which is a notion of higher order. I basically share Finnis ideas on the essence of rule-of-law and related notions which he condensed in: "Constitutional government is the holding of the rulers to their side of a relationship of reciprocity, in which the claims of authority are respected on condition that authority respects the claims of common good" (p. 272).

The dangers with the admiration of the traditional surface notion of rule-of-law beyond the concept rule-by-justice is best exemplified by reference to Kelsen's claim that in Nazi Germany there prevailed rule-of-law (Hayek 1994, p. xxiv). - Legal rules have been implemented by those in power (past and present) — even habits; customs; and moral values are in essence products of power. — There is nothing that would compel us to hold them in reverence.

In a peaceful society with uninterrupted traditions the traces of power are covered under perceptions of a balance between normative expressions (the current balance in the competitive game on a macro level). But even then the norms are in constant motion, they change all the time (the very same constant flux), each day has a past and each day becomes the past, each norm is expressed, and interpreted; each has a past and present, and each day there is a new balance. Then what is rule-of-law? - It can mean a lot, but one meaning it has is the wish that the future should be governed by the yesterday. — A healthier part of the rule-of-law notion is that there should not be any drastic changes in the fundamental application of norms from day to day and that all people should receive

an equal treatment under the law. - The latter meaning (equal treatment) inherently already demands that the judge steps out from the past and reaches towards justice — i.e. rule-of-law in the healthy meaning always means rule-by-justice, a legal principle whereby justice for the individual is the decisive issue.

Rawls (p. 308) considers that people have to comply with any laws, also unjust law. This basically means that Rawls says that we have to subdue to anybody that has been able to assert himself as an authority. — But this shall not pass! We do not accept a moral obligation to be governed by unjust laws. It is a different issue that in an advanced society there is a normative balance which tells what kind of norms it makes sense to follow even when one does not internally agree with them. In a free competition between normative expressions we would be able to participate in the competition of arguments and assert our claim not to recognize unjust laws. If anything we have a 'moral duty' to fight for justice. An honest fight for justice for the individual is the highest moral value — and the only duty.

The rule-of-law cannot be as Hayek conceived it 'governance by clear rules, known to all in advance and not subject to change through judicial interpretation, which operate proactively' (see Posner, p. 57). This idea is not compatible with Hayek's correct criticism of socialist planning which according to him would require a complete set of values for the whole society known in advance. But these 'values' and the 'rules' are just different aspects of the same. - A confusion regarding the notion of rule-of-law is further exemplified by looking at Hayek's conception that 'legal and moral institutions store, embed, and convey tacit knowledge' and that 'the most important of these institutions is the rule of law' (Ebenstein, p. xv). He considered that 'spontaneous order rests on law'. But it is in fact the other way around: law is the perception created by spontaneous order — spontaneous order in turn is the very competition of arguments.

Justice precedes and follows the rule-of-law notion. Rule-of-law cannot be wished about. It is not a rule of certain people or a regime, it is a description of a system, or a perception of how it functions, how developed the normative competition is. - In post-Marxist Russia the regimes under presidents Yeltsin and Putin are engaged in building a rule-by-justice society — this is a state of affairs that does not exist — did not exist,

but is coming about. Once a system of justice is developed then the perception of rule-of-law will emerge to the extent needed. — Finnis (p. 270) lists the following characteristics of a system that could be qualified as a rule-of-law system:

1. Its rules are prospective, not retroactive
2. The rules are not in any other way impossible to comply with
3. Its rules are promulgated
4. Its rules are clear
5. Its rules are coherent one with another
6. Its rules are sufficiently stable
7. The making of decrees and orders is guided by rules that are promulgated, clear, stable, and relatively general
8. Those who have authority to make administer, and apply the rules in an official capacity are accountable, for their compliance with rules applicable to their performance
9. They do actually administer the law consistently and in accordance with tenor

Sunstein (p. 104) identifies similar characteristics of a rule-of-law system:

1. Clear, general, publicly accessible rules laid down in advance
2. Prospectivity; no retroactivity
3. Conformity between law on the books and law in the world
4. Hearing rights and availability of review by independent adjudicative officials
5. Separation between lawmaking and law-implementation
6. No rapid changes in the content of law; no contradictions or inconsistency in the law

Finnis stresses (p. 271) that "promulgation in turn does not only mean that it has been printed, but that there is a class of lawyers who can explain the law" (This is a pressing problem in Russia of today — one of those issues that a president cannot wish about. A president can speak about the problem and come with initiatives, but there simply is not much more that he can do about it. It is clearly a task for the universities and the legal professionals to do something about it).

It becomes clear from Finnis discussion that rule-of-law is really a description of an orderly system, where all the elements interact and

therefore actually is the description of an established legal culture. It is also evident that the rule-of-law is not a 'thing' that can be implemented by an act of wishing. This is something that the superficial critics of Russian reforms should keep in mind. They look at Russia through their distorted perspectives (with varying degrees of neutrality), and can grasp only the thinnest surface nuances of social life, and these only projected against the background and conditions of their own upbringing. - And they are not capable of bringing themselves to honestly and neutrally understanding life in a society with different traditions and a different reality. — In this connection it is worth noting that Finnis (p. 270) fairly adequately characterizes 'rule-of-law' as 'a state of affairs in which a legal system is in good shape'. — Being in 'good shape' i.e. healthy, is not something one declares to be, but something one may endeavor towards. — Ignoring this is the cardinal fallacy foreign and domestic critics of Russian leadership commit — ignorance of what the very notion rule-of-law means and what a normative system is all about (i.e. the perception of a system). This ignorance has led them to blame the healer for deceases acquired under old medicine. In a state like Russia, which started without any real fundamentals for law — actually from a state of deep-rooted institutionalized lawlessness and injustice - it has only been with a lot of courage and vision of the leaders that change has come about. The balancing act of the Russian leaders is to make rule-by-justice in a state where there does not even exist the conditions for rule-of-law. In many aspects the difficulties that have been tackled fall under what Finnis describes (Finnis, p. 275) as the task of a leader of a democratic revolution: "Sometimes, moreover, the values to be secured by the genuine Rule of Law and authentic constitutional government are best served by temporarily but perhaps drastically departing, from the law and the constitution. Since such occasions call for that awesome responsibility and most measured practical reasonableness which we call statesmanship, one should say nothing that might appear to be a key to identifying the occasion or a guide to acting in it...A written constitution is not a suicide pact..."

Rule-by-justice is bringing about the balance that society at any given stage of development is ready for. The political leadership can work only with such building blocks that are of the caliber that the society is ready for. At the same time a good political leadership takes measures to promote the refinement of the building blocks, the arguments, the expressions and their interactions. And this way there will emerge hope for a system that could be called rule-by-justice system.

## 22. MARX

The technological advances of the 18<sup>th</sup> and 19<sup>th</sup> century threw European societies in disarray; all previous forms of life were uprooted quicker than ever before. There was technical and economical progress, but at the same time there emerged a new kind of massive suffering when traditional ways of life became obsolete and vast masses had to seek a meager (and often short) living in the new industries. The economic conditions of many became unbearable in a totally new sense, while at the same time some profited from it and collected huge wealth in the new situation. While the economy grew an unprecedented amount of people were thrown into a devilish existence. — The normative balance of these societies was disrupted and previously unheard of, unseen, injustice emerged. The living conditions, the technical surroundings, had rapidly developed while the normative system was lagging behind. Normative expressions and interpretations were not adapted to the new kind of reality — interactions between people were not accustomed to the new form of life. — The perceptions of justice governing earlier generations, earlier forms of life, could not even seemingly cope with the new situation.

Instead of understanding the real essence of this social problem and fighting the root of the problem Marx built his ideas on a sense of revenge and developed a nonsensical 'economic theory' purporting to prove something about life and social interaction. — For the problem was not 'the capital' but a deficit of justice (which in fact was nothing new as such), a lack of free competition, and insufficient conditions for democracy. — Marx did not endeavor to improve justice (on the contrary he wanted it to be abolished altogether); he detested democracy; he did not do anything that would have helped any of the workers in his living time. Instead he converted their suffering to his ideological capital — his personal will to power. - As Hayek noted Marxist thinking proceeds from the false premises that by identifying unjust circumstances follows a necessary conclusion "that somebody is responsible and to be blamed for this" (1978, p. 83). The reception Marx has received is well described by a

confusion that Wittgenstein noted: "It would be possible to imagine someone groaning out: "Someone is in pain—I don't know who! — and our then hurrying to help him, the one who groaned" (PI 407).

There was a huge deficit in justice in the countries affected, and there were over time a lot of efforts, and eventually successful efforts, to bring about a change. But, the problem with justice is that you cannot wish it to appear; it develops when the underlying issues are correctly addressed, and even so only over time. There is never a quick fix. The actual social problems that were the purported objects of Marx's writings were in no way connected with the kind of social problems and "economic theories" Marx presented. The problems in society asked for different kind of remedy: how to make democracy work; how to create justice and how to free people's thinking from the monopoly of authority. But, Marx despised democracy and called for *its* abolition; Marx despised law and called for *its* abolition. Marx did not address the deficit of justice and instead propagated revolution which he eventually backed up with his mistaken economic theories, lacking 'a single atom' of scientific value. - He claimed that all economic value stems exclusively from one and only one factor i.e. non-paid (exploited) physical labor of hired workers (explicitly excluding the self-employed). — (see e.g. Marx, p. 728: in capital "there is not one single atom of its value that does not owe its existence to unpaid labour", and Marx, p. 131: "Now we know the substance of value. It is labour. We know the measure of its magnitude. It is labour-time"). - The theories promoted in *The Capital* are entirely based on this one basic premise. The entire work is an effort to prove this notion. — But economic value certainly depends on a lot more — and Marx knew that very well. What is fundamentally wrong can never be proven right — but people can well be convinced of the purported truth (which is the case with Marxism). This is the contradiction we have to keep in mind — ("but what convinces is not necessarily true — it is merely convincing..." Nietzsche, *Will to Power*, p. 15).

John Maynard Keynes characterized Marx work as follows: "Marxian socialism [is] ...a doctrine so illogical and dull" that it "must always remain a potent to the historians of Opinion... that it can have exercised so powerful and enduring an influence over the minds of men, and, through them, the events of history" (Ebenstein, p. 84). — It seems that those that admire Marx simply admire him, and nothing can convince of the opposite. The cause of the admiration seems to be such a deep held

religious belief that no arguments can prove the contrary. The emotional confusion that surrounds Marx is best illustrated by Popper's claim that: "And although Marx, in my opinionion, failed to understand the future he so keenly wished to foresee, it seems to me that even his mistaken theories are proof of his keen sosociological insight into to the conditions of his own time, and of his invincible humanitarianism and sense of justice" (Popper, 2003, p. 131). — (This quote must have the capacity to compete for the top positions of famous nonsense with stiff competition from 'World 2' and 'World 3.') - Now when all else has been proven wrong, then the 'mistaken theories' are in themselves the proof of him being right! And how could these particular mistaken theories be a proof of 'invincible humanitarianism and sense of justice' while these characteristics were the very targets for his attacks?

In Marx's system social life is reduced to economics and the economy is reduced to cover only very superficial aspects of it: the owner; the paid management (possessing only a minor role in the 'practical arrangements of the exploitation'); raw material; commodities; and manual laborers. Marx omits all the Infinite Variances that in reality affects human life and the economy. There cannot be any theory on economy without simultaneously considering all the aspects that are involved. He omits e.g. these factors: risk; entrepreneurship; competition; innovation; the role of private property (for him it is a religious belief to oppose it); the manifold aspects of human resources and management; the economic role of 'profit'; accounting; skills; marketing; logistics; material's supply; financing; negotiations; the legal framework, social practices, psychology, technical improvements, the democratic framework. — (I do not purport to give an exhaustive list of which factors affect business, I am merely drawing attention to the fact that there is much more to an economy than the role of the manual labor that he claimed with lethal consequences was the sole factor to consider).

In his series of other-worldly theories Popper purports that Marx's theory cannot be considered scientific on the claim that it cannot be scientifically tested (Mandel in the preface to Marx, p. 24). But quite on the contrary the greatness of economics is in the very fact that economic theories can be tested better than theories of any other social sciences. Marx's theories have been tested all over the world in human experiments involving millions and millions of people and millions of lost lives, generations of suffering. We have all seen the results of these theories — these social theories that have been more rigorously implemented

than any other social theories ever. Marxist apologists wrongly claim that the Soviet regime did not correctly apply Marx's teaching on society. But even here quite the opposite is the case. They have been implemented wrongly in the Western European countries, where these theories have been 'corrupted' by the influence of market economy and a free society, and therefore yield the illusion that there could be a beneficial form of Marxism. Marx economic theory consisted in simplifying the economy to the role of manual laborers coupled with the doctrine of central planning, abolishing of private property, liquidation of the experienced business people and their family and supporters, abolishing free exchange, and free choice — the replacement of democracy by a dictatorial regime together with replacement of all other forms of competition. And this was implemented, and the devastating results have been on plain view for everybody to take part of.

Now, economics is the soundest of the social sciences, precisely because of the immediate connection with the empirical facts of life. While Marxist theoreticians can continue promoting their views in all other fields of life, such as law, art, morals etc there are no direct harm, perceivable to average human mind. The connection with the terrible advice and the result is lost — and may well be blamed back to the healthy mind.

Marx puffed up his works with statistical and other data that was supposed to give an air of empirical studies. But, nothing about the data and the way it was presented did anything to prove the particular economic theories. The three volumes of *The Capital* contained about 2500 pages, and the three volume appendix, *The Theory of Surplus Value* adds yet another 2000 pages. The impression to be convened is that a person that has read so much and done a work with so many pages *must know*. - *The Capital* abound references to statistics, to parliamentary and press reports, to works of economists and historians — all the odd facts he presents (e.g. a description of new types of machines) have been assigned the role of empirical proof. But the connection with his theories is never demonstrated. — It seems that the only purpose of the *Capital* is to be long — it took a long time to collect all that information — but the result was the desired one: a long book. A long book with a lot of terminology relating to economics must be convincing.

This is how Marx (Marx-Engels, p. 67) himself summed up his theories: "The theory of the Communists may be summed up in the single



sentence: Abolition of private property." — And how are Lenin and Stalin supposed to have failed this piece of advice? Nobody has done it more effectively!

This was the advice for implementation (Marx-Engels, p. 91): "[The Communists] openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a communist revolution."

The Communist Manifesto (Marx-Engels, p. 75) contains a detailed list of measures for managing a socialist economy and communist society after the revolution (and all communist governments have dutifully applied this advice).

Soviet Union was socialism in theory and in practice (Nersesyantz, p.114).

## 23. RUSSIAN LAW

### The Law Withering Away

A study of Russia; Russian society - the social correlations: law, democracy, economy, moral, etc. — tell much about - the world. — A study of Russia provides ample material for how society functions governed by expressions and interpretations (ideas and communication), perceptions in competition.

When Russia started to emerge from Marxism law was totally devastated (law here understood as a normative system with a critical degree of stability and predictability). Law had in the Soviet Union been converted into its antipode, an anti-law system, which we may call no-law — a system which was opposed to justice and exclusively in the service of the utilitarian goals of power.

There is no possibility to understand Russia and Russian social life today without understanding the destruction brought about by the Marxist ideology and its application in Russia. — With Yeltsin's revolution Russia did not start social life in 1990 from scratch— but with a heavy burden from the past; the more remarkable the achievement.

After the Bolshevik revolution in 1917 the new regime set off to change the Russian society armed with the Marxist ideology. In Marx's mind society was just a product of economic factors. In fact he saw 'democracy' and 'law' as things disturbing the economy — so, he concluded, it would be better to remove those disturbing things. - Nersesyantz (p. 113) tells that according to Marx 'economic relations influenced by private property give rise and form to legal relations, and law as such, and these economic relations constitute the conditions for the law to exist and determine the content of law, therefore the communist ideology was not hostile only to private property but all forms of legal phenomena. Therefore as the Marxists wanted to abolish private property, they draw the

conclusion that then law would have to go as well (Nersesyantz, p. 114). Marx and Engels claimed that there would not and could not be any law in a communist society: the law would wither away (Nersesyantz, p. 125). — We often hear the claim that 'Marxism as such was a good idea, but it was implemented wrongly in the Soviet Union' (another version being: 'but it cannot be implemented in practice'). This is a dangerous myth which we would do well to dispel altogether and finally. As long as this belief lives on, there are always those that are ready to strike again. — And in fact the contrary is true: Marxism was a failure in Russia, precisely for the reason that the Soviet leaders implemented it so meticulously exactly. In the Soviet Union the Marxist teachings were brought to every aspect of life with an extraordinary monopolistic force. Thus the effects of the Infinite Variances were segregated from social life as efficiently as one can possibly imagine it. In the Soviet Union the Marxist ideas void of any competition where realized in the purest form — and it is this very purity that created the total failure. According to Nersesyantz Marx and Engels had in the Communist Manifesto instructed the revolutionaries to take power by means of violent force and do away with the old social relations. Nersesyantz says that 'not only did they instruct a violent seizure of power, but violence was also the method for implementing Marx's teachings' (Nersesyantz, p. 115). Nersesyantz confirms that the early revolutionary program, the so-called 'war communism law', and the teachings of Marx and Lenin were fundamentally in accordance with each other (Nersesyantz, p.242). — Nersesyantz (p. 161) contends that it should be understood that the Marxist theory and its implementation in the Soviet Union correlated in all essential features the central theme of Marxism, the destruction of private property and its replacement with social property, being possible only by violent concentration of all capital in the hands of the state.

One of the main architects of Soviet no-law, Stuchka, proclaimed that the goal of the socialist revolution is to abolish law and to substitute it with the new socialist order (Nersesyantz, p. 174). The Marxist law doctrines focused on the promotion of a no-law system and from it gradually emerged a 'new law' based on the anti-law doctrines of the communist dictatorship (Nersesyantz, p. 163).

By decree of the Bolshevik Government in November 1917 ('Decree on Courts') the entire existing judicial system was declared terminated! - (Thousands of years of normative expressions were silenced by a strong

argument — the argument of terror). — The Marxists announced the creation of new kinds of local courts and revolutionary tribunals (the kind of instruments of justice that Foucault so much admired). - According to the decree the courts were to judge in the name of the Russian Republic and be guided by laws of the old regime only insofar as such laws had not been cancelled by the revolution and did not conflict with the revolutionary conscience and revolutionary sense of justice (essentially giving a *carte blanche* for any crimes to be committed by the Marxist junta). — Any references in court verdicts and resolutions to old laws were forbidden (Nersesyantz, p. 164). (Alekseev [p. 400] holds a very similar view on this stating that according to the Court Decree number 1 all adjudication would have to correspond to the program of the communist party, by which the Bolsheviks quite meticulously implemented the Marxist ideology).

One of the Marxist leaders, D. M. Kurski declared that the revolutionary courts 'in their main function - criminal repression — are totally free to make judgements and shall orient themselves only by the legal consciousness.' For Kurski 'the new revolutionary law' was 'proletarian communist law'. — Nersesyantz says that the early Marxists were not shy about their ideology, and thus the implementation of the communist rules was entirely and directly based on violent force (Nersesyantz, p.165).

The revolutionary junta asserted that in criminal law sentences should be passed by reference to analogy were there not to be any directly suitable criminal *corpus delicti* to be found in the laws. This way, according to Kurski, 'the judge was given more freedom for applying his own sense of justice'. Nersesyantz points out that this was the formulation putting the courts totally under the arbitrary rule of the Party — the becoming of the rubber stamp (Nersesyantz, p. 169). Not only criminal law, but all law was subjugated to the arbitrary discretion of the revolutionary junta (Nersesyantz, p. 169). According to Stuchka the Soviet courts would "be class courts", but only for "the class of the workers" (Nersesyantz, p. 173). — In early (December 1919) Marxist-Russia this was also how law was defined: 'Law is the scheme of social relations, which is compatible to the interests of the ruling class and are safeguarded by organized force of this class' (Nersesyantz, p. 179). This notion was repeated in the so-called 'Instructive Fundamentals to the Criminal Law of RSFSR' (1919): 'Proletarian Law is the orderly systematization of rules and methods of

class suppression and violence' (Nersesyantz, p. 180). — These spiritual formulations of the basics of Marxist law were also taken as direct rules for action (and who says that there was no rule-of-law in the Soviet Union!): The formal laws were formulated in accordance with the 'principles of subjugating the law to class interests' (for example the Soviet Civil Code articles 33, 406, 411, 415; Nersesyantz, p.185).

Walicki reports similarly describing the essence of the early Soviet legal system (Walicki, p. 101): "Lenin's seizure of power was followed by the Decree of 7 December 1917, which abolished 'all existing general legal institutions' and instituted popular courts with elected judges. These new courts were to act in accordance with the dictates of 'revolutionary consciousness', or the 'class consciousness of the working people', which meant, among other things, taking into account the class background of the offender and the class character of the offence ('was it or was it not committed with a view to restoring the oppressor to the power'). This led to the predictable outcome that "popular courts gave way to a highly repressive centralized system of the administration of justice" i.e. "a directly politicized system subordinated to the commands of the party leadership."

Born by tyranny and terror (Alekseev, p. 183, Atamanchuk, p. 383) Soviet law was even more positivist than Kelsen could dream of — for even the official doctrine was dictated by the powers that be. Not only by terror, but also through written law was the Communist Party placed over and beyond the law as the guiding authority (terror was the basic norm). - During the early years of Marxist terror the constitutions did not formally contain a provision recognizing the supremacy of the Communist Party over state and law (The constitutions of the Russian Socialist Federative Soviet Republic RSFSR of 1918, 1924, 1937). - There was no need for this formal recognition in the texts of the constitution as the basic norm, the terror, clearly enough formed the rule of recognition — (Party directives, open and secret were the actual law, Alekseev, p. 409). However, the constitution of the USSR (of 1977) and the Russian Federation (of 1978) officially recognized the communist party as 'the leading and directing force of society' and these constitutions promulgated the rule that all the laws would have to conform with socialism (Chamaneva, pp. 30 and 33; Baglai, p 54; Alekseev, p 403). Baglai says that the individual and political rights that the Soviet era constitutions granted existed on paper only, but *de facto* the arbitrary rule of the party elite was total (Baglai, p. 47).

The elaboration of the Soviet law doctrine reached its culmination and was proclaimed at an infamous conference on Soviet law 16 to 19 July 1938 at the Institute of Law AN USSR (Nersesyantz, pp.283 - 290). Six hundred of the most prominent lawyers of Soviet Russia were called to get their instructions on how to better serve in Stalin's command system. Among the conclusions drawn at the conference was the declaration of many Soviet lawyers, among them Pashukanis, 'enemies of the people'. According to Nersesyantz Pashukanis and the other 'enemies' fell offer to the changing ideological needs: the early revolution needed a certain script and Stalin's new brand of totalitarianism another, he says.

Alekseev contends that the communist ideology aimed at negating the notion of law all together (Alekseev, p. 2). He says that in the Soviet Union law was declared a bourgeois phenomenon and therefore dying out in communism (Alekseev, p. 34). The legal sciences were dominated by Stalinist ideology (Alekseev, p. 40). — Alekseev also supports the view of Soviet law being seen as no-law (See e.g. Alekseev, p. 74: The official Marxist-Leninist law had an anti-law orientation).

From mid 1950s with the post-Stalinist governments a slack thaw got under way in the normative repression (Nersesyantz, p. 311). In the 1970's and 1980's a libertarian movement gradually emerged in law doctrine (Nersesyantz, p. 319). However, no real changes were made in the laws until the collapse of the Soviet system with the perestroika in the mid 1980's (Nersesyantz, p. 367). During Chruchev and Brezhnev the fundamental elements of the societal system remained basically the same (Baglai, p. 53).

### **Soviet Law — A No-Law System**

As the Soviet normative system lacked all the essential elements that merit the name 'law'; I prefer to call it a no-law system (I note that among prominent Russian scholars Nersesyantz [p. 34] clearly advocates this view, e.g. "The legislation under socialism was a no-law legislation and correspondingly the so-called socialist law lacked the essential minimum to be qualified as law"; "The Soviet law lacked the capacity of being law"). — Certainly Soviet law was a normative system; certainly it was about the competition of normative expressions; this is the very point: the normative competition is ever ongoing. When the

normative system has reached a certain balance; when within the system there emerges a level of predictability on how certain types of underlying social relations are to be governed then only the system can possibly be perceived as a system of law. — I would even regard a system of law as the basis, the foundation for a system for producing justice; law precedes justice; justice representing a higher degree of normative development. In a system of justice apart from predictability there has to be strong indications that the life of an individual person is the highest of ideals and that this ideal in reality is defended by the society at large and especially those in power. Eventually in a fully developed competitive democracy and competitive system 'law' and justice would be one.

I want to attract attention to some of the fundamental conditions meriting the Soviet system to be characterized as no-law. I refer to these conditions as 'no-law actual premises' (i.e. such features that objectively were lacking in the Soviet Union), and 'no-law formal premises' (i.e. such policies, and formal circumstances that made up the normative framework, and hence restrained the activity of law).

#### **No-law actual premises:**

In the Soviet Union there was:

- No democracy
- No market economy
- No free exchange of goods
- No independent judiciary
- No free individuals
- No legal persons (in reality)
- No private property
- No currency as a measure of value

Without these conditions, there is nothing left that would provide for that kind of normative interaction that could properly be called law

#### **No-law formal premises:**

- The Soviet revolutionary goal was to grab power and keep it by means of exorbitant violence (and this was done) D The official doctrine of violent revolution and 'class struggle'

- The law was officially to wither away, and in the transition the regime would use an adapted form of 'bourgeois law'
- The party leadership and its ideology was placed above the law (being the highest source for rules, interpretation and judgment)
- The laws were merely commands of the regime to its dependents
- These orders were arbitrarily enforced and interpreted
- The courts were mere rubber stamps for party orders

Compared with other European countries that underwent the Marxist ordeal Russia was at the start of the new era worse off in view of the much longer and cardinal impact of the Marxist yoke. Russia was under the no-law system from 1917 to 1991, which spans the lifetime of three to five generations. The Eastern European countries, however, fell under Marxist regime some thirty years later and where subject to intensive Marxist deformation of society only approximately thirty years. These Eastern European societies did not identify internally in the same way with the communist program, which more clearly was perceived as an external influence. The liberalization of the economic life had begun in Poland and Hungary as far back as the 1970s (Fogelklou, p. 15). - (Fogelklou: The length and strength of communist power also play an important role in the development of the law in post-communist states [p. 26:]; Fogelklou: the Polish system differed clearly from the Russian during communism [p. 13]; Fogelklou: It is "decisive for peace and success of reform to consider the structural factors that point to the time and character of communist power" [p. 24]).

In the Eastern European countries the former ruling elite was forced out from government positions having been identified as representing the hostile past and the forces that imposed the Marxist government (In e.g. Poland and Estonia judges were forced out or naturally departed after the fall of the communist regimes [Fogelklou, p. 22]). Russia did not have such a choice to 'clear out the former ruling elite'. In Russia the Marxist system had been so integrated that it was not possible to identify a separate category of 'ruling elite' that could be disposed of. — The Marxist regime had actually been so successful that the Russian revolution of the 1990's was in fact not a revolution where people wanted to replace the ruling elite, but the rulers wanting to introduce a new common sense

ideology against the wishes of the overwhelming majority of people. People were weary and tired and wanted to go along with breaking the monopoly of the communist party, but there was scarce understanding of what should come instead. It was the mastery of Yeltsin as the manager of the bankruptcy estate to tear down the old and build the new knowing that while on that for many the life conditions, like in a treatment of a serious disease, would get worse before they get better, and equally knowing that this choice was juxtaposed with the choice of life conditions getting much worse if rapid reforms were abandoned (see on Yeltsin's challenge Shleifer, pp. 1 — 4). — The society had to hang on during the reforms and the foremost considerations were to guarantee peace while carrying through the transformation of society.

In this connection I would like to caution against the idea of classifying laws of different countries into 'families of law' as it is done in the studies on comparative law. These ideas rather belong to the perceptions which cause the legal theories to be formulated as language-games. It is the delusive need to classify social practices under rigid explanatory systems with rigid boundaries that has given rise to the ideas of legal families. I suggest that a better scientific measure for comparison is how democratically competitive the legal systems of various countries are. There is a certain point when the democratic competition has been so suppressed that there is no point in speaking about law anymore, and the Soviet system surpassed that point. After all if jurisprudence is to be a science, it is certainly not politico-emotional subjective aspects that can be decisive in qualifying a system of law; just any normative system cannot be called law. - It is telling that the section on the 'socialist legal family' was removed in the third edition of Zweigert & Kötz (p. v; see also David & Jauffret-Spinozi, pp.203 — 219, where Soviet law is listed among the 'great systems of law'). It follows that after the fall of the Marxist regimes 'Soviet law' ceased to be law even for these scholars! The perception was removed when the vision became clear.— (Butler [p. 3]: "Some perceived the Soviet legal system as merely a species of the European Romano-Germanic civil law embellished with ideological encrustations... Professor Albert Ehrenzweig was not able to abandon the philosophical pattern of two and one-half millennia and the comparative concern of a thousand years." He perceived, according to Butler only minor differences with the established European patterns e.g. in some features of the criminal law).

## **Destruction of all Legal Practices**

When one ventures to understand the legal culture of today's Russia, then it is especially important to comprehend that law texts (statutes and cases) are merely strong arguments in the practice of law (which come in form of symbols for interpretation), and that law is essentially about social practices (or depending on the perspective 'legal practices'). The legal practices are the legal culture and the legal culture is the totality of all the perceptions that add up to what we call law. — Legal culture from the narrow perspective can be said to include the traditional surface notions of law: statutes (normative documents), court resolutions, legal theory, and administrative practice— It is sufficient to look at legal practices in Soviet Russia merely from this narrow sense to understand how totally distorted the practice of law was. - (For a more detailed discussion about the essence of legal practices I refer to the chapter Legal Practices in this book).

Marchenko stresses the significance of understanding legal practices i.e. the interaction between theory and practice and the role of a legal culture (p. 25). In emerging Russian legal theory Atamanchuk emphasizes the need to understand the essence of legal practices and promotes a pragmatic approach to law and a need to penetrate the sociological aspects of the practice of law. He stresses that 'the legal order includes the complex of sociological, normative and practical aspects ... i.e. what people in their awareness start to regard as something indispensable, due, necessary, relevant, and something extremely important for life'(p. 286). Atamanchuk stresses the destructive character of Soviet law practices: 'law was replaced by revolutionary necessities'; 'the state became a mechanism for violent implementation of the orders of the party leadership' (Atamanchuk, p. 24). - Atamanchuk also reveals the historic failings of Russian legal culture. He tells that law cannot function without lawfulness, a mechanism that guarantees the functioning of the system. Atamanchuk notes that traditionally in Russia the laws were left to live a life of their own, while human life took another path (p. 307). — The really important issue that Atamanchuk stresses is that in a democratic state rule-of-law has to be upheld by society itself, all the actors of a civil society have to take the initiative on themselves to protect lawfulness (p. 315). In Russia so far 'civil society' i.e. the citizen have not assumed this responsibility and taken up the initiative; the reasons for this are manifold, but it is a historic fact. Atamanchuk calls for a

recognition of the present backwardness of the civil society as a prerequisite for positive change (p. 402). This in order to one day have a society where individuals separately and jointly watch after their own rights. Atamanchuk correctly says that rule-of-law ('zakonnost') at the end of the day depends on the individual himself (p. 316).

The dilemma is that a legal culture cannot be imposed (because it is not a thing), it can only emerge in an evolutionary way — hereby what political leaders (and opinion leaders) can do is to be instrumental in developing a healthy legal culture (and this is exactly what has been and is being done by the Russian presidents Yeltsin and Putin).

When Russia emerged from the Marxist captivity there was no orderly social life to be reformed - the task was to build a free society from scratch. The path to recovery has been successful and quick thanks to some extraordinary qualities of the Russians and their insight to chose the right leaders for the task. While society withered away in the Marxist system, the historic values of Russians managed to be passed on to the living generations. Thus the great majority of Russians, where able to contribute to the staggering recovery.

While there are some extraordinary talented lawyers, and scholars, I regret to say that Russian legal theory and teaching remain generally at a poor level. The root of the problem lies in the very Soviet law doctrines. Inasmuch doctrines propagating the Marxist ideology were the only ones allowed in social sciences, all legal scholars could do was to practice a game with concepts: a form of conceptual jurisprudence void of content, and therefore not socially dangerous to the regime. How one-sided the teachings were is evidenced by the fact that, as Moiseev reports (p. 5), philosophy of law was not even taught in the Soviet Union on ideological grounds. Marchenko also points out that the crisis of Russian theory of law is a product of the failed Marxist theory and that nothing has taken its place (Marchenko, p. 21 referring to Polyakov). In my view this led to the the fascination in Russia with Roman law and 19<sup>th</sup> century conceptual jurisprudence which were politically neutral areas of enquiry. Hence the study of law became an activity totally detached from the practices of life. I stress the role of these wronged traditions of jurisprudence as a very key impediment on the road to restoring real life legal practices in post-Marxist Russia. Modern day Russian jurisprudence has not yet been freed from the fallacy of conceptual jurisprudence that the Soviet tradi-

tions led to. Hereby it is ironical that Alekseev draws the totally opposite conclusion from these circumstances. He thinks that the Soviet conceptual law traditions represent something that Russia has 'luckily been endowed with' (Alekseev, pp. 34 — 38: "Soviet jurisprudence remained scientific" — i.e. continued in the 19<sup>th</sup> century traditions of an artful manipulation of words). - The fact of the matter is that there is nothing specifically scientific about law, and there cannot be. Law may be studied and taught by scientifically diligent scholars — but law as such does not become scientific by that.

With conceptual jurisprudence necessarily follows the admiration of mathematical models and formal logic. The detrimental influence of this kind of thinking on Russian law and society cannot be stressed enough. Alekseev's writings are very illustrative in this respect. He is a staunch believer in logic in law and all that follows from it. He says e.g. 'law is a logical system very closely linked to formal logic or even to mathematics'(Alekseev, p. 14); 'The basic initial cell of law is a logical syllogism'; 'analytical jurisprudence is kind of mathematics in law'(Alekseev, p. 15); 'There are two logics, the formal and the special legal logic' (Alekseev, p. 81); 'Law texts should be modeled on the formulas of logic' (Alekseev, p. 98); Logic of law is a special kind of logic, which makes law into a unique social phenomenon' (Alekseev, p. 297). — (The last statement is also an illustrative example of how wrong it is to regard perceptions on past activity as 'phenomena', because here they really give 'phenomena' a thingly role. A 'phenomenon' is taken to be something; something with its own properties. I would even say that they take it to be a thing-in-itself. But, there are no such phenomena, there is just a lot of human activity going on, and 'law' is a certain type of perception — a way of looking at what happened with the yellow spectacles, the spectacles of law). — If law is a "unique social phenomenon" as Alekseev says, then what would life be like if we were deprived of this unique phenomenon (another professor bewildered about the greatness of the economy and thought that 'it would be difficult to imagine life without the economy. 'Now imagine if we lost both the economy and the law!) - Could we be deprived of it; can we be deprived of our perceptions? - Would there be no normative activity, then? I think there would, and there is, and there are always those that are willing to capture the 'phenomenon', work with it, make generalizations, make rules, make claims regarding substantial features etc. — and then maybe there would be another word for this perception. — What I want to say is, that law is

neither unique nor a phenomenon, it is just people's activity. The misfortune is that today in the new democratic Russia there are no legal theories in place to provide guidance in a real life system. The doctrines are about concepts and rarely do they venture into studying the underlying legal relations and legal practices. In law schools students are still taught to regard law as a collection of concepts; their classification; the issuance of statutes; and their subsequent diligent application. This goes hand in hand with the striking feature of Russian legal and administrative practice of form taking precedence over substance. That there is a general perverse fixation with form is evidenced in all aspects of social normative interaction: in dealings with state organs, governmental officials, judges, but also between commercial entities (all these ideas seem to be deeply anchored in people's minds). This is a fundamental problem, which also shows why it is so difficult to expect that a new democratic leadership quickly remedies the situation.

The Soviet tradition of fixation with concepts is indeed a terrible stress on the Russian society and the efforts to make the new legal system work. Lawyers (scholars, practitioners and judges) and the public at large do not trust the underlying message of the lawmakers, and perceive in laws only the thingly aspect of concepts. At the same time notions such as 'freedom of agreement' and 'economic justifiability', 'true and fair picture' are not understood to be for real, rather these are seen merely as concepts among concepts.

The problem is compounded by the poor level of teaching of law in Russian universities. Students are mostly fed with conceptual law doctrine with a very schematic division of law to 'fields of law' such as civil law, customs law, tax law, administrative law (these divisions are not understood to be for the sake of presentation and pedagogic purposes only, but as material giving content to law). Each field has its own special vocabulary (even words from the ordinary language are taken to be legal concepts in-themselves). Judges and lawyers assign legal consequences with an artful manipulation of concepts, claiming that words have an inner meaning specific to a certain field of law; same words from ordinary language means for them one thing in one of the fields and another thing in another field. The fields of laws are veritable artificial sub-language-games.— The biggest obstacle on the road to improve Russian legal practices lies in the sad fact that in this country world-renown for its writers the lawyers do not know how to write; written presentation skills are

almost totally ignored in teaching. In a legal culture where statues are taken to be animated things that speak for themselves, there does not seem to be any need to teach anybody to write. Writing, written presentation skills, is a cornerstone of Western education of law, most eloquently developed in the United States. Lawyers think with their pen (or word processor), a trained writer detects the strengths and weaknesses in his proper arguments through writing; this is how the lawyer discovers the opportunities and threats, assumptions and options in legal reasoning. In Russia there are hardly any written examinations or case studies in law schools and lawyers graduate without having been taught to properly write legal opinions — (instead teachers call students periodically to so-called oral exams, more properly called chats). And yet only by writing can one develop a legal argumentation and a proper sense of justice. — Why should anybody write, opine, argue, when all is there, in the concepts, that speak for themselves?

It is by no means a well established notion to consider law to be about legal practices, or the more to understand that the legal practices are just social practices seen from a certain, legal, perspective. Few come to think that all social practices in turn are anchored in language. Against this background it is quite remarkable that the problem with the legal language has been recognized by Russian President Putin as being at the root of the difficulties to advance healthy legal practices and the quality of law, the legal culture, which again is a part of the idea of a functioning civil society. On December 22nd, 2005 Putin addressed the founding congress of the Association of Russian lawyers with a few concluding words ("Kremlin"). Against the failure of the legal profession, scholarly and practical (Russian domestic and foreign) to understand the essence of the problems with Russian law (the failings of jurisprudence, legal practices and the life-estranged bureaucratic language) it was refreshing to note, that President Putin, actively and correctly addressed these problems in his statement. — As it may be clear from this book, I hold the view that the Russian leadership under Yeltsin and Putin has made tremendous efforts and achieved great results in the endeavors to create a positive normative balance and a democratically competitive society. — What strikes is the sharp penetration and active promotion of the insight to the very philosophical essence of the problem. Putin invites the legal community to take an active part in the forming of a modern civil society. He notes that the level of legal practices in state administration is of quite low quality. He calls for attention to the need to strengthen the

professional qualities of the lawyers at all levels. He stresses that what the government can primarily do is to bring legal education to an appropriate level. But he also points out that the legal community itself has to raise its own requirements, the demands it puts on professional legal activities. — Putin recognized the fallacy of Russian lawyers to remain to a great extent within the constraints imposed by the legal grammar. He emphasizes that too many lawyers merely demonstrate 'encyclopedical kind of knowledge' of law and notes that it "is only at first glance that jurisprudence is such a superficial science". He mocks the idea of becoming a lawyer by 'listing over and glancing through' legal texts. For Putin 'a real lawyer is a person who is philosophically inclined and at the same time endowed with a vast amount of practical knowledge in a relevant field of specialization,' and such a real lawyer would never resort to legal gibberish in order to conceal lack of real insight. — This is an absolutely correct and precise analysis of this most pressing Russian legal problem (It would be hard to imagine that a person that so much against the tide comes with such exceptional insight would not be motivated by the same in his own activities).

Whether the myth of positivism lives on in the universities or not the actual activity of law in Russia is competitive. The importance of adjudication, setting precedents, and court practice as forming legal practices is growing (Alekseev, p. 238 and 239). In actuality in Russia (similarly as it was as in the first Rome) the role of adjudication is at least as important as 'lawmaking' when legal practices are taking root. It is evident that only through court practice and the broader legal practices does the flood of enactments receive a meaning in life. — The normative competition is gaining pace and becoming more competitive notwithstanding the very short period of democratic freedom. - In this book I do not have a possibility to bring the detailed arguments for this opinion. I therefore refer to a recent book by Alexander Vereshchagin (2004) on adjudication in Russia. Vereshchagin convincingly lends support to the idea that the development of Russian law is very much formed by the courts, and thus effectively refutes the positivist dream that the 'lawmaker' could alone by means of issuing statutes establish what the law is to be.

### **Creating a Normative Balance in Russia**

Gorbachev undertook the impossible task to reform the Soviet Union and as he did not understand that it indeed was impossible he was bound



to fail. — It was only under the leadership of Yeltsin that Russia was quickly pulled out from the enormous social chaos. The historical importance of Yeltsin is in fact a combination of his visionary leadership, a superior practical reason and intelligence, a well developed sense for intuitive knowledge, and a willingness to sacrifice all - including himself — for the cause of a better future.

President Yeltsin's role was that of taking care of the bankruptcy estate left over from the Marxists — but at the same time he was the engineer for a new society and the protector of peace. He had to ensure peace in Russia and peace in the world while building the fundamentals of a free Russia. —Simplistic minds take all that for granted — (They think, indeed, that this has been proven by the results — as if the results would have followed in every case — this is a demonstration of what it means to think like a crab - backwards). Whatever has been has naturally been, they think. — But, the transition happened peacefully exclusively owing to the superior efforts of Yeltsin, and not by chance. — Under other circumstances there could have been a complete disaster. Ensuring peace in the transition under those conditions was a superhuman undertaking. History knows many conquerors by force and blood; many conquerors imprisoning people and peoples; and history knows many prisons; - But, before Yeltsin history knows no conqueror whose conquest was peace and freedom to this unheard of extent. - By sweat and tears — with words only. No single person, no political leader nor regime, has ever in history freed so many, so many people, so many peoples, so many countries. Nobody has fought such a huge enemy of evil employing only his words, not swords and bombs. — And yet Yeltsin had at his reach the most powerful weapons and the machinery that in the hands of the leaders we know from history were employed quite differently — and rarely in the service of freedom and justice. — No human has ever achieved more than Yeltsin.

With words Yeltsin created the strategic weapon called the oligarchs. — This is because Yeltsin understood that in social life all is about competition and arguments — too often the usual arguments have been killing and destruction. — Yeltsin's arguments were those of reason. Yeltsin created a contra-force to the communist power, the oligarchs — it was the blitzkrieg of peace: as soon as possible there had to be a counterweight to the communist interests and wealth. — The creation of the oligarchs is

not something Yeltsin should be blamed for, but praised for: Never has so much peace and future been brought with so little sacrifice. What a small price for liberation! — The Marxist regime came into being through terror and repression with countless lives lost and taken.

Having won the peace, with great personal sacrifices, Yeltsin was able to secure the transfer of power to Vladimir Putin. - Putin had a chance to bring the society to the next stage from the platform Yeltsin had secured. — And Putin used this chance with remarkable precision and success. He managed an unprecedented transformation of Russia further to equality, and prosperity, setting the foundations for law and justice.

The Russian president Putin defends his leadership in reference to the countries history and traditions. He knows that conditions for a functioning society have to be created; they do not exist just like that. Conditions have to be created for a free non-monopolistic competition at all levels of social life. Today Russia is much closer to a competitive democratic society than ever.

If one wants to gain a true and open insight to Russian reforms and the workings of the society one has to continuously keep in mind that 'democracy', 'law', 'rule-of-law', 'economy' are not things — they are social practices. It becomes meaningful to talk about a legal culture only after a certain balance has been achieved in society (normative balance) and the balance comes about only by time. A concentrated leadership effort can accelerate this development for good or worse. Russian social practices started with the brave revolution of Yeltsin in 1990 — this is when the activities of undoing 70 years of European Marxist ideology commenced (still so admired in academic circles). — Law is never positive law: Laws (statutes, enactments, decrees) are only strong arguments in the normative competition: A president can to a certain extent affect the issuance of strong arguments; a president can do a lot to teach people to understand those arguments: but democracy — conversely to Marxism — cannot be enforced: only conditions for democracy can be created. If no proper legal practices are in place then all that can be done is to contribute to their development — but contrary to the superstitious belief of Western press these conditions are not things that a president creates in his mastery or imports from abroad. — Here one has to understand perceptions and competition; expressions and interpretation.

**Russians — the Individualists**

Through a difficult balancing act between modernization and security Russia was at the beginning of the 20<sup>th</sup> century at the threshold of becoming a truly democratic and prosperous country "with very promising prospects" (Walicki, p. 318). At the end of the nineteenth and the beginning of the twentieth century Russia was a law-abiding state (Walicki, pp. 102 and 103).

Russian philosophy always meant a struggle against the European primitive traditions from Kant to Hegel and the anti-democratic and anti-individual Rousseauan traditions (Walicki, p. 327). Russia itself developed during the 19th and 20th centuries strong pragmatic oriented philosophies. According to Walicki "the liberal intellectual tradition in pre-revolutionary Russia was in fact much stronger than is usually believed." - Ignorant historians of the West have portrayed Russian liberalism as intellectually weak, amorphous, almost non-existent while failing even to mention philosophers like Petrazycki (*Note: an absolute forerunner in pragmatic philosophy of law*), Novorodtsev and Kistiakovsky (Walicki, pp. 234 and 235).

Novgorodtsev recognized that "the enslavement of one by all was as unjust as the enslavement of all by one." He argued in line with Tocqueville and J. S. Mill, who put the notion of human rights above all positive law, and pointed to the dangers inherent in unlimited power of the 'democratic majority'. For him 'it was necessary to subordinate the collective will to a higher unconditional norm, which could serve as the moral foundation of society and the ultimate sanction of its legal order. Such a norm, Novgorodtsev concluded, could be found only in the principle of personality, the cornerstone of liberal individualism' (Walicki, p. 324).

Novgorodtsev is one of those few European philosophers who did not need to see the results of Marxism to know what it is all about; he was able to penetrate through the ideas when it still would not have been too late. Novgorodtsev said: In Marx eyes individual freedom protected by the rule-of-law state was nothing more than the unworthy egoism of atomic individuals. This might have been true, or partly true, at an early stage in the development of the rule-of-law state, but it was foolish to mistake an early stage for the last stage, to confuse the birth-pangs of a

new social order with its agony. Marx's withering away of law is the same as withering away of autonomous personality (Walicki, p. 334ff).

The history of Russian legal thinking in the 19th century was dominated by "enmity towards, or at least a deep suspicion of rational law" as Andrzej Walicki argues in *Legal Philosophies of Russian Liberalism*; such an attitude is "to be found to a greater or lesser extent in all backward and peripheral societies, especially those which experience modernization and westernization and thus tend to see modern law as something alien to their native culture, peculiar to the West" (Walicki, p. 1). — I argue all through this book that this is a very healthy tendency and historically correct. There has not been much worth to copy in European thinking until 1950 (with the rare exceptions of a few, such as Hume and Smith).

The thinkers that took an active stance against Western superstition were called the Slavophiles — and are obviously portrayed in the West like some kind of 'hardliners' (This kind of thinking is captured in the Russian saying 'to shift from the healthy to the sick mind'). The Slavophiles rose in defense against the German orientation that dominated Russian intellectual life until the end of the 1830s and continued to play an important part in the 1840s (Walicki, p. 30). The Slavophiles saw right through the dominant teachings of Hegel "as representing the culmination of western rationalism" (Coplestone, p.25). According to Coplestone they wanted a philosophy free of 'western rationalism' (Coplestone, p. 2). The Slavophiles' protest against Westernization was in fact a protest against the attempts to rationalize social life and the claims that something like that could be done. - (Now I remind that 'rationalism' sounds like an intelligent word, but as I argue in this book, it is better seen as a word describing the primitive superstition that has dominated Western thinking since the 17<sup>th</sup> century).

The Slavophile Ivan Kireevsky, defended Russian values against the new Western primitivism. The Slavophiles had an early insight to the European conceptual jurisprudence and positivism as pure nonsense (their views of law "were determined by their opposition to juridical rationalism, which they saw peculiar to the West", Walicki, p. 35). According to Kireevsky "Ancient Russian law grew out of life and its evolution and had nothing to do with abstract logic" (Walicki, p. 37). Kireevsky noticed that the 'spirit of Aristotle reappeared in Hegel'

(Coplestone, p. 60). He ridiculed Western belief in syllogisms; blindness in regard to those living convictions which lie above the sphere of reason and logic; convictions at which the human being cannot arrive by way of syllogisms "by trying to ground them on syllogistic inference the human being only distorts them, when he does not destroy them completely" (Coplestone, p. 63).

Hegel and Hegelianism was a reoccurring theme in the sanitary work of Russian philosophers. Peter Chaadaev wanted to combat the ideas of Hegel — he realized that Hegel's thought "lends itself to all possible applications" (Coplestone, pp. 38), through Nazism and Marxism posterity was to gain the same insight. "One of the factors which turned Belinsky away from Hegel was his aversion to what he regarded as the philosopher's emphasis on the universal at the expense of the individual" (Coplestone, p. 86).

Peter Lavrov (1823 — 1900; Coplestone, p. 124ff) was a fully developed pragmatist. He criticized the naive faith in natural sciences. He saw materialism as essentially being metaphysics and advocated that knowledge is confined to phenomena. All value-judgments, he noticed, were subjective: Distinctions between the important and the unimportant; the beneficial and the harmful; the good and the bad are distinctions, which exist only for man; they are quite alien to nature and things themselves. He refuted the idea that there were historical laws. - Lavrov penetrated the fatal core belief of the collectivist revolutionaries: "intent on action they are only too apt to believe that they know what is best for everybody, irrespective of what other people may believe to be the best for" themselves (Coplestone, p. 138). — "Lavrov believed that rational reflection tends to produce agreement rather than disagreement, harmony rather than discord" (Coplestone, p. 141).

Dostoevsky work was a continuation against western rationalism (the alchemic variant of rationalism). He believed that "a triumphant socialism would inevitably destroy human freedom and would neglect the needs of actual men and women in the name of the needs and welfare of an abstraction." He knew Socialism would inevitably end in a new form of slavery (Coplestone, p. 165)

Leo Tolstoy, was one more of those Russian thinkers that saw the ridiculous in the dominant Western thinking (Coplestone, p. 169).

Boris Chicherin 1828 - 1904 (Walicki, p. 105ff) 'despised positivism as a testimony to philosophical ignorance' (Walicki, p. 106) and pursued a liberal philosophy. He saw the virtues of economic liberalism and emphasized human rights. A nation was according to him a collection of citizens rather than a super individual whole endowed with a collective soul; a political society composed of people who have come together in order to safeguard their own interests and security by their collective efforts. Chicherin foresaw the dangers of the positivist creed to put all aspects of human life under control of the moral opinions of the majority. He thought that the respect for law demands that the authority of the government should not be extended to the sphere of the non-political (private) inter-personal relations. He even anticipated the constitutional arrangements whereby human rights have been made inalienable parts of international and domestic laws (Walicki, p. 138 and 139).

Chicherin also provided an early warning on the true nature of socialism. According to Chicherin "legal positivism paved way for various attempts to use law for socialist purposes." He saw Bismarck's social legislation as first step to socialism and "socialism being a system combining greatest oppression with the greatest inefficiency" (Walicki, p. 145). - Chicherin defended individualism in Russia against the imported utilitarian ideas: "The idealist world-view was naturally bound up with the idea of lofty general purposes, which created the danger of absolutizing these purposes at the expense of the autonomy of the private spheres of human life" (Walicki, p. 142). A deep understanding of life, the individual and the danger of primitive ideologies led Chicherin to become a kind of a clairvoyant as he forebode the 'imminent victory of socialism' which would bring "an all-embracing despotism of the masses and a complete destruction of civilization" (Walicki, p. 148).

But Russia could not stave off the import of the European ideology in 1917 — let's hope Russia will be more successful in turning down the new brand of European wit. After the socialist experiment there is another creeping danger — the collectivist totalitarianism, the ever growing tramping of individual freedom and self-expression under the European positivist machinery. - Chicherin recognized as the greatest danger to economic freedom not only socialism but the general politicization of life; namely the inevitable consequences of the growing strengths of political democracy of the monopolist type (*the attribute 'monopolist' is to describe my view of what this criticism was aiming at*). According to Walicki

Chicherin in this respect anticipated the views of Schumpeter and Hayek (Walicki, p. 156).

Petrazycki, one of the most formidable philosophers of law of all times, was also one of the 19<sup>th</sup> century Russian philosophers who already saw the dangers of the positivist movement. — (He was born 1867 in Vitebsk — the same town where Chagall came from. - There is an interesting parallel to be found in Chagall's paintings and the kind of philosophy Petrazycki represents!) - Petrazycki was a "sworn enemy of legal positivism" (Walicki, p.201; Walicki, p.213ff). He wanted to study law as real phenomena by means of empirical methods. He was consciously opposed to metaphysical speculation about the abstract idea of law. He thought that legal positivism was the same as absolute legal idiotism (which certainly does not miss the point). He neglected the notion of so-called juridical logic. Unlike the historical school he emphasized, however, that studying the historical roots of existing laws should not be done with the aim of finding in the past the norms for the present; on the contrary, knowledge of the past should help the legislator to understand the historical conditions of the present and to move ahead, slowly but firmly, toward the expected desired future.

Petrazycki knew that a legal phenomenon is a state of mind and as such does not presuppose the existence of a state or indeed any other form of social organization for issuing commands and backing them by force (Walicki, p.238 and 239). The Russian philosophy of law of today equates the state with law, and even calls philosophy of law the study of 'state and law'. They have a lot to learn from Petrazycki and Trubetskoi, who claimed that law cannot be defined with reference to state because the state is in itself a construction of law (Walicki, p.240). Petrazycki explained that all theories equating law with officially recognized positive law involves a vicious circle: "they reduce law to external authority which, in turn, is interpreted as a kind of law." He saw that the official positive law is in fact only a peculiar form of law. He thought that legal philosophy should either give up all further attempts to define law, which would amount to surrendering its function as philosophy, or look for criteria of law outside and above positive law. - In Petrazycki's study of law and morality he strongly emphasized that the very great majority of human and animal actions 'are non-purposive in character and are based on other than purposive motivation' (Walicki, p.243). Contrary to the conspiracy theories of Foucault Petrazycki showed how the law has become more human

over time, and that torture and cruel punishments are gradually removed (Walicki, p. 250). Petrazycki noticed that the commonly accepted notion on law embrace but a small fraction of the vast sphere of legal phenomena - law was to be found everywhere. Walicki concludes that in Petrazycki's view law cannot be identified with the existing legal order, what is law cannot be decided by power. — Petrazycki's philosophy was in fact very Wittgensteinian, long before Wittgenstein himself.

Petrazycki even detected the fallacy of the anthropomorphic world-view of seeing expressions as animated things. Walicki writes: " He wanted to emphasize that 'the social' did not exist 'outside' or 'above' the individual, that socialization, in order to be genuine and effective, had to take place inside the individual psyche, to be internalized, and not merely imposed on men as an external force. Very probably he consciously opposed his 'psychologism' to Durkheim's 'sociologism'. Interpreting 'social facts' as something external and thing-like (to use Durkheim's expression) was in his eyes too close to a servile attitude toward 'projected ideological entities' and by the same token incompatible with individual freedom and dignity of man" (Walicki, p.255).

There were other pioneers of a real-life approach to the study of law such as Muromtsev (1850 - 1910) and Korkunov (1833-1902). - For Muromtsev (1850 — 1910) law is not merely the aggregate of legal norms, but rather the aggregate of legal relations, the legal order (Butler, p. 64).

## 24. THE EUROPEAN UNION

For the last 500 years Europe has been the primus motor in the world — technical progress and material welfare originated in Europe and the European inspired cultures in the world (the West). In terms of philosophy and humanities, however, the West has not had much to offer. European thinking is dominated by primitive beliefs in branded truths — ideas that have been successfully promoted become fashionable, and hence taken to be something real ('if you think about something, mustn't that be something real!'). In Europe rapid change of one set of superstition to another has given the impression of progress and discovery of truth. And yet, instead of supreme knowledge Europe has exclusively benefited from having a more competitive social framework.

The danger is that the Europe of today is moving further and further away from the competitive model. On the contrary in contemporary Europe the leading ideology is that of uniformity, it seems that the enthusiasm is in making all and everybody uniform; this is the idea that the European Union is built on. All aspects of social life backtrack on competitiveness hand in hand. Democracy is a point in case. The economy does not benefit from such a political superstate either. Under the European normative press individual freedom is also continuously cut back on. As democracy, the economy, the individual, and competition at large do not benefit from the EU, one asks what the superstate is needed for. And in reality the only goal is the goal in itself, to make Europe great again. — The EU is driven by the will to power.

In the EU they want to make up for the democracy deficit by promoting a form of democracy-light, they call it "democratic supervision". They wish to console with having "democratic supervision" as the real thing is not attainable. And they call it appropriately, because in fact in the EU "democratic supervision" has taken the place of democracy. The democracy deficit in the EU is so fatal and incurable that they have even stopped trying to convince us. As there is no democracy and because the

very nature of the Union is structurally undemocratic (all the Unions in Europe are similar in this) then they prefer to talk about democratic supervision. "Parliament exercises democratic supervision over the other European institutions", says none less than EURO PA the official information site of the European Union (<http://europa.eu.int>).

The only democratic kind of institution of the European Union is the Parliament. ("The European Parliament with directly elected deputies is *intended (my cursive)* to represent the peoples of the Community", Hartley 29). The function of the Parliament can be summarized with a quote from Hartley (p.36): "Although this procedure gives the Parliament no power to affect the content of legislation, its right to be consulted must be respected" (Hartley, p. 36). - This superpower; this role model for the world; this highest achievement of 'good people' through history has got bogged down in a morass, where its elected representatives have been guaranteed 'a right to voice opinions' — and these elected representatives are proud of this right that the Commission has granted them — after all that is more than in the previous Union. - "It will be clear from what has been said that the powers of the European Parliament fall short of those normally enjoyed by the legislature of a modern state. Nevertheless, they are gradually increasing and the days are long past when it could be dismissed as no more than a 'talking shop'" (Hartley, p. 39). - The great advance of democracy in the EU is that we are said to be approaching a situation where the European Parliament cannot be dismissed as *a mere talking shop* — it is more than a talking shop! The problem is not what kind of parlour one wants to describe the EU as, but the fact that in the EU there is only a minor role assigned for democracy.

The Commission (Hartley, p. 10ff) is the leading body of the EU. 'The Commission is intended to give expression to the Community interest. Its most important activities are formulating proposals for new Community policies, mediating between the Member States to secure the adoption of these proposals, coordinating national policies, and overseeing the execution of existing Community Policies.' The Commission with these powers consists of appointed unelected bureaucrats. The Commissioners used to be appointed by the governments of the Member States. Now the right to appoint the Commissioners has been allocated to the Council (*yet further away from democracy*).

The Council (Hartley, p. 19ff) is the body 'where the interests of the Member States find direct expression.' (It should be noted that in the

EU the 'unit' represented is not a person nor people, but 'states'). It takes the final decision on most EU legislation sometimes acting jointly with the Parliament. It consists of the delegates of the Member States, each being represented by a government minister. The Presidency of the Council rotates among the member states. The Council has its own General Secretariat staffed by permanent officials. A Committee of Permanent Representatives of the Member States has been set up to prepare the work of the Council; these representatives are the EU ambassadors of the Member States. — The EU information portal tells that "Each minister in the Council is empowered to commit his or her government", and claims that "Moreover, each minister in the Council is answerable to his or her national parliament and to the citizens that the parliament represents." According to the portal " *this ensures* the democratic legitimacy of the Council's decisions." In the EU the devaluation of democracy is so evident that the EU Commission tries to make us believe that *this* is what *ensures* democracy — as if the rotating ministers would be answerable to anybody for the faceless decisions in the Council! And this really is not far from Orwell's 'All animals are equal, but some animals are more equal than others', because if you say so, it is so, they claim convincingly. In a virtual world they are proud of virtual democracy, and most people are content with that; their perceptions on the EU do not bother with these notions (They are only offered the choice of being for or against 'European integration' — the contents are never put to question).

Now we can try to discern at which stage the EU becomes affected by a democratic process: The elected representatives in the Parliament form some kind of a parlour ('but not a mere talking shop'), the Commission consists of appointed, non-elected bureaucrats; the Council consists of *rotating* delegates of national governments. These delegates may or may not be elected representatives in a national parliament, but they are certainly not elected to represent the people in the Council. - But the national governments are elected? — Yes, the national governments are democratic institutions appointed by the national parliaments. But, the elections at the level of the national parliaments do not carry the democratic process further to the EU institutions. In the EU democracy is a grass-root phenomenon which is so diluted that by the time decision making is reached there is but a memory left of democratic elections. This seems to be sufficient for creating the democratic effect — from the elections at the level of national states a mere faint reverberation is transmitted up to

the Commission — this is the dilution and delusion of European democracy. The person representing the state in the EU Council is not anymore accountable to the people, rather his allegiance is to various interest groups and the EU bureaucracy itself. Here the democratic process has been taken over by the diplomatic process and peer control. In all respects this kind of representation is diplomacy and not democracy. *Comme-il-faut* is the official EU ideology — behaving well and working for the sake of the *common values*.

Can it happen in the United States that a president who opposes a prevailing conception of US Government comes to power? - Yes, and it happens regularly. It can happen so if candidates with such an agenda present themselves to the people. What are the chances of somebody opposing the EU being appointed Commissioner — e.g. a person with views similar to the present author? The answer is that there are no chances for that at all — or the same chances as for a protestant woman to be elected pope. The EU is built with an inherent anti-democratic structure put in the service of one single goal: that of a big European Union. - 'But we cannot have a traditional democracy in EU, because we would never get any elected Parliament to agree on all the difficult tasks we have ahead on European unification, nothing would come out of it'. - Correct, nothing would come out of it — the people would never vote for these kinds of structures. So what they did in the EU is that they learned from the old political anecdote: 'If the people vote incorrectly, then let's change the people' — this recipe works wonders — it is so much easier without the democratic hassle. Hartley (p. 46) says: "It is a truism that the Community is not really democratic. Rectifying this, however is not easy" (A democracy deficit is easily rectified and EU is good at missionary democracy — how about giving it a try at home?).

But do not all these kinds of undemocratic constructions have a tendency to bust? — What will burst first the people or the construction? — "You are exaggerating, the leaders of the EU are people with good democratic credentials — they are very good people — therefore we do not need democracy so much as less developed people." - "Political thought should face from the beginning the possibility of bad government; we should prepare for the worst leaders and hope for the best. Not who should rule, but how should we organize political institutions so that bad or incompetent rulers can be prevented from doing too much damage" (Karl Popper 1971, p. 121). - "Before 1933 (when Hitler came to

power) the socialist had created a system that was ripe for a dictator" Hayek (1994, p. 75). - "I am becoming more and more convinced that we are moving towards an impasse from which political leaders will offer to extricate us by desperate means" (Hayek 1979, p. xiii).

"Even if, at first, the peoples should come under some illusion about the meaning of such proposals to agree to transfer such powers to an international authority, they would soon find out that what they have delegated is not merely a technical task but the most comprehensive power over their very lives. What is evidently at the back of the minds of the not altogether unpractical realists who advocate these schemes is that, while the great powers will be unwilling to submit to any superior authority, they will be able to use those "international" authorities to impose their will on the smaller" (Hayek, 1994, p. 252).

Europe should be juxtaposed with the United States of America, which is a democratic superpower and therein lays its strength. The Congress consisting of the Senate and the House of Representatives is elected by the people of the respective states. The senators and congressman are in all their actions accountable directly to specific people with a real electorate. The President of the United States is elected by the people, there is direct competition between the states, and direct control of the representatives. The success of American democracy is not due to any extraordinary insight of the 'founding fathers', but a result of a natural democratic competition then and now. The only chance for a democracy to exist in a union of states is the American model, where the power in reality is delivered from the electorate all the way to the actual governing bodies.

### Normative Suffocation

The true function of a European union would be to create liberty and freedom and ensure competition by tearing down normative barriers and not creating them. - Hayek foresaw the creation of such monster constructions like the EU and voiced his concern on the normative suffocation and the challenge to life that would ensue: " The powers which such an [international] authority would need are mainly of a negative kind: it must above all be able to say "no" to all sorts of restrictive measures. - What we need and can hope to achieve is not more power in the hands of irresponsible international economic authorities but, on

the contrary a superior political power which can hold the economic interests in check" (Hayek, 1994, p. 254).

Nothing is more revealing than the mission of the European Court: The policies of the European Court according to Hartley (p. 80) are to: (1.) strengthen the Community; (2.) increase the scope and effectiveness of Community law; and (3.) enlarge the powers of Community institutions. — This is in blatant contrast to the United States, where the courts are put in the service of protecting individual freedom and liberty (*even these words sound so old-fashioned*) against the very state. - The courts in Europe are engaged to protect the Union against the people and the member states!

An analysis of the draft constitution, the adaptation of which was put off by a lucky outcome of ordinary political intrigues, is very telling about the actual character of the EU and where it is aiming. It reveals the collectivist and metaphysical superstition on which the EU is based: In the EU the actors are 'the Union' and 'the Member State'. States have political rights and duties in the EU, people do not.

The 'EU' (*this animated thing*) is supposed to be in the possession of certain 'values' and thus the draft Constitution (article I-1.2) says: "The Union shall be open to all European States that respect *its values* and are committed to promote them together." - This obligation is not laid on the people, but on the 'States.' - But in life the states are legal constructions representing people. Therefore it is unclear if the obligation placed on a state means that 100% of the people or perhaps that 50.01% of them have to promote these values, or would it be possible for just a minority in power to do so? - The EU also aims at 'respecting the identity of the 'States' (EUC Art. I— 5a). In the US they strive to respect the identity of humans. - How can the EU (*this animated thing*) have any values? Common sense tells that individual people have values and these values can be measured by the millions. Who identifies these values of the EU? It seems that it is the unelected Commission and the European Court (which itself has the mission to "strengthen the Community and enlarging the powers of Community institutions" - so how can there be any impartial justice if the court has a very political mission?). - And what if your values are like mine i.e. against the enlargement of the powers of the community? - How can 'States' have an obligation to promote a certain set of values? Isn't that the very definition of totalitarianism?

What if one part of the 'State' disagrees with these values; how if 100,000 people are against enlarging the powers of the community? Then these people would be involved in anti-constitutional subversion; and the State would be obliged towards the EU to rectify the situation. - In fact all the political institutions in the EU exist for the sole purpose of promoting the Union and its values: " The Union shall be served by an institutional framework which shall aim to promote its values" (EUC Art I-19). — In the US and Russia the institutions are placed in the service of the people — but in the EU it is the other way around. — Article I — 40 refers to the obligation to commonly export these values, and I-41 to more traditional activity of the EU in this promotion of these values.

We shall not forget that the Constitution is not intended as a common policy map, but as law of direct application. The draft proclaims that the Constitution and law adopted by the institutions of the Union shall have primacy over the laws of the Member States (EUC Art I-6). - Against this background it is remarkable how the Constitution is so well thought out in its totalitarian details — even the political parties are assigned a constitutional obligation to form a " European political awareness " (EUC Art I-46). - This is supposed to be a constitutional obligation, which means that those parties that do not do would be in breach of the constitution.

The 'values' themselves are most revealing in the field of the EU's common foreign and security policy: " Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area. They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness" (EUC Art I-16). - 'Member States' are assigned this obligation. — When the metaphysical veil called state is lifted it will emerge that the obligation is assigned to the people of the Member States — and this cannot mean that it is assigned to 'a part of the people' or 'the majority of people'. — It follows that the European Constitution would impose a constitutional obligation to all the people to 'unreservedly support' (not only support it, but *unconditionally* support — this definitely must be included in the definition of totalitarianism). I.e. if the EU declares a war, then each and every citizen has an obligation to support the war effort, and not only: they have to do it in a 'in a spirit of loyalty and mutual solidarity' (there is no wavering here! — Why not add 'and with a smile on their face

till the last breath?"). And the obligation of the State is of course to implement this duty (and we all know the methods available for that). But this categorical imperative does not only apply to extremes like war, each day, in all issues, the loyalty and support have to be unwavering. And by putting this obligation on the ' Member States' it means that the issue is withdrawn from the democratic process. - This ideological agit prop goes, of course, hand in hand with the hardware: "Member States shall undertake progressively to improve their military capabilities"; "the performance of these tasks shall be undertaken using capabilities provided by the Member States..." (EUC Art I-41).

The EU constitution is not only about lofty reverence to the metaphysical superstate — there are also more mundane goals, like e.g. the objectives of the common agriculture policy which are 'to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture' (Art III-227). —They want to have a constitutional obligation to increase the earnings of people engaged in agriculture! - Well that is social justice! — And they have even thought about the means for this end: 'provisions may be made within the framework of the common agricultural policy for joint measures to promote consumption of certain products' (EUC Art III-229). — There will be a constitutional obligation to promote the consumption of French cheese - these are the values! — And since all states unconditionally have to support the common values there will also be a constitutional obligation to eat it up. — What a constitution. What foresight of the founding fathers! (It seems they did not Discard anything). —If these things are in the constitution before it is accepted you may just imagine what they will come up with within the authority they are seizing — when the herd is completely discarded.



## 25. FINAL WORDS

"The difficulty — I might say — isn't one of finding the solution; it is one of recognizing something as the solution. We have already said everything, Not something that follows from this; no, just this is the solution!

This, I believe, hangs together with our wrongly expecting an explanation; whereas a description is the solution of the difficulty, if we give it the right place in our considerations. If we dwell upon it and do not try to get beyond it."

*Wittgenstein* (Remarks Mathematics, p. 102)

**APPENDIX - DAMASIO SOCIAL HOMEOSTASIS**

It is particularly sad to note that even such a deep penetration to the biological mechanism of human thinking that Damasio has achieved does not ward off from the metaphysical superstitious belief in the so-called collective mind. For all his insight into the human organism he remains blurred with the workings of human mind. Unfortunately Damasio talks about a misguided belief in a social homeostasis (I would like to believe that it is a written slip of the tongue), a view that there is a self-regulating organism made up of separate individuals interwoven into one; this although we see with bare eyes and experience in everyday life that each person is a separate biological organism. He writes that human biological organisms are engaged in a process of adapting the "best of 'moral sentiments to wider and wider circles of humanity'" (Damasio, p. 163). — His thinking seems to be affected by the material welfare presently experienced in Western societies; this material standard of living causes him to regard that the human species has advanced, that people would have become somehow better. And this must be founded on the idea, that there are 'model' societies — obviously the ones were the economic standard of living is better such as Western Europe and USA. — This is a belief in moral progress of the biological individual. The perception is wrong and based on the idea that we in today's societies would have reached a state of justice and moral ideal, we would kind of have such quality rules and legal practices that "Those conventions and rules and the institutions that enforce them — religion, justice, and sociopolitical organizations — become mechanisms for exerting homeostasis at the level of the social group" (Damasio, p. 166).— He claims that homeostasis is exerted by the 'social conventions expressed as rules of ethical behavior', but what are these conventions? — First of all they are different all over the world, and as I have noted, only imperfect perceptions of the average applications in any individual situation. Secondly, these conventions are not so much conventions (implying volun-

tarily and peaceful open discourse), but impositions of the powers that be. From our times and backwards we rarely can call any of these standard imposed by the rulers as 'ethical' and it can be no exaggeration to rather call them unethical — History has taught us that those in power are usually not the representatives of the best of our moral values, but quite often the opposite. — Against this comprehension, and if we believed in the hypothesis of social homeostasis humanity would be engaged in a process of encoding a lot of trash values in the life feeding processes. — The United Nations is one of the sociopolitical organizations that Damasio hails as a driving force in the genetic transformation of humanity!

Damasio says (p. 169): "The constitution that governs a democratic state, the laws that are consonant with that constitution, and application of those laws in a judicial system are homeostatic devices." — I wonder how the homeostatic device will be able to establish at which moment (on the continuum of perceptions) a state can be considered to be democratic and so to say switch on. Would this device consider the European Union as a state as it is today or only if the proposed constitution had been adopted in year 2005? — Does the device recognize EU as democratic or not (I shall note that even legal scholars, who support the development of the EU voice their doubts regarding its democracy at the present moment)? — And how can the device spot which laws are 'consonant with that constitution'? Laws have a meaning only in their application in a concrete individual case. — And what is a judicial system? — I have shown that any notion of a judicial system is only a perception of the applicability of certain normative expressions to any given system — a judicial system is only a language-game?

Damasio claims that " In turn activities such as science and technology assist these mechanisms of social homeostasis" (p. 166) — Science, the changing perception of superstition, is certainly not any model for a homeostasis — I would ask if this kind of 'science and technology' rather serve as causes for collective mental disorder. My view of science, and the meta-science, philosophy, is a fight to liberate the mind from the captivity of the defective language — a struggle to reach back to the original healthy mind. — Progress has piled layers and layers of trash on language — we might have reached a peak and we may have a chance to start digging our way out — or back to the initial state of mind.

Damasio's confusion becomes evident with his praise of Marx (Damasio, p 169) "One might say that the goals of Marxism, albeit narrow, were laudable in some respect since the stated intention was to create some kind of fair world". — I believe Damasio has not studied Marx, but subscribes to the academic myth, the academic religion of Marxism. I have showed that Marx's idea of a better world ('fair' if you wish) at best is nothing more than the eternal ideas of the world religions as we know them. — What else was laudable: Instigation to mass-murder? — A fraudulent economic theory driven by personal vainglory? — Complete errors in judgment of the human nature against overwhelming historic evidence? — And why would Marx be excused for causing all the suffering just because he had a supposed intention to create a better world? We could make an endless list of dictators and madmen with intentions they themselves considered laudable, but, frankly, that does not score them any points.

Damasio puts his notion of social homeostasis in the service of utilitarianism (Damasio, p. 169)

"Yet the ways and means of the societies that promoted Marxism were disastrous because, among other reasons, they were in frequent clash with well-established mechanism of automated life regulation" (*note: but sure they used automats in life regulation, didn't they*). "The good of the larger collective often required the pain and the suffering of many individuals"(note: *did it require the pain — and is dying a part of pain ?*).

**SUMMARY**

*In the "Brief" I provided a concentrated summary of the book. This present section is a digest in condensed form of the main ideas of the book produced by basically copying and rearranging sections from the main text, a kind of a collage. The summary should therefore be read, not as a narrative as such, but a brief on the main themes, although some themes are independently developed in this section.*

### Building on Wittgenstein and Arriving at Expressions and Interpretations

Wittgenstein first said that 'the world is the totality of facts, not of things' — his later work was a refutation of this idea, but he never reformulated his conceptual stance as such. In much drawing on his later arguments I would readjust that statement and claim that:

'The world is the totality of things. Life and understanding of the world and the things are determined by expressions and interpretations. The totality of expressions and interpretations determines whatever *seems* to be the case'.

The fundamental philosophical and scientific error is the failure to make a sharp demarcation between natural sciences and social sciences. Natural sciences study things and their movements, while social sciences (including philosophy) study expressions and interpretations. - Language is not a thing and the words are not things and the concepts are not things — language does not consist of any things — no atoms, no molecules and not even gaseous steam. — It is the delusion of the 'language of things' that converts words into things. And once the things and expressions both are assigned the same roles in language then all the other errant conclusions are drawn from that.

Some authors have hinted at this problem, there has been talk about reification and the anthropomorphic fallacy, but the analysis has never reached deep enough. Upon noticing that expressions (words, language) are not things we should inquire into what is their actual essence. But there has never been such a concentrated analysis, and most importantly, no positive result has been provided. In this book I provide a solution, I claim that expressions are interpretations of feelings (*note*: this expressly means that they are *not mirror* images of something more fundamental, because there is nothing more fundamental).

When we understand that expressions are only interpretations of feelings (which are subject to further interpretations), then we have all the knowledge needed to make the other philosophical conclusions. — And thus there is no form, there are no laws, there is no causality, and there are no truths (apart from the true feelings) — naturally formal logic will be relegated to the role of linguistic alchemy.

### Philosophy

From now on all social sciences should simply mean a historic study of a particular theme from a chosen perspective and argumentation for an ideal in regards to that. — The time of attempting to perform an autopsy on concepts, on words, is over — now a critical examination and evaluation will be directed to social practices, and individual deeds. — All social science will be understood as philosophy, philosophy as an activity to look after language, and a philosopher as a gardener of language — and it should be understood, that in fact this is all but art. (There is a nonsense book called Words and Things on hundreds of pages containing one sensible statement - and even that was meant as an irony - that the word and the deed is one).

Philosophy, as the study of language use, has to be freed from the constraints imposed by 'the language of things' and the thinking it infects.

What emerges from my book is a very holistic picture where everything (all that is the case) can be seen as a dimension of a word. — And as this is so, then it follows that the usage of words, language, is what makes the social world go around — and then there cannot be anything more fundamental than looking after how language is used.

Philosophy and language are two aspects of the same issue. Philosophy should look after language and language is the basis for philosophy, while at the same time being the endless source for new philosophical problems (in this sense we indeed have philosophical problems: the endless practical problems caused by the weak thingly language). — These problems will never cease to exist — but we fight them in same way as we strive for health, we can get healthier, but there is never a cure.

In my work on jurisprudence I make use of these postulates: I am clearing up the ground on which language stands on [the misuse of legal language]; I am not saying anything else than propositions of natural sciences [words are not things; in law we can prove only the biological fact that the world ends at death]; I criticize all those philosophers, politicians and journalists that say something metaphysical [this is an endless task; we need a Foundation for criticism of everyday metaphysics]; I demonstrate how they fail to give a meaning to their propositions; Clarity is my method [I remove the metaphysical drapery of expressions and deal with what is left]; I am describing how language and hence social life functions [I am not promoting a view; I am not explaining how we came to this point — as Nietzsche does — because we simply do not know; we do not know how all evolved, but we now know the basics of how social life functions] ; I promote the understanding that language is both the problem and the solution and philosophy should be the battleground [indeed *battleground*, not the forum for the bored book-learned self-proclaimed intelligentsia poking each other with sticks in between the eloquent praises for each other].

### Concepts and other Words seen as Things -even as Animated Things

Some of the words used to describe social relations have been grouped to form concepts. These concepts, which are merely the symbols for cumulated experience have created a lot of confusion in philosophy due to the fallacy to think that the concepts represent something independent (and to think that this 'independent' is a 'thing'). - And where the idea emerges that concepts represent cumulated experience, there they think that experience is faultless and clear; the possibility that the concept has captured faulty belief, superstition and nonsense is totally disregarded. - This confusion and erroneous philosophy was brought to new heights by Kant.

The analogy to things and their properties has always been used for justifying philosophical speculation. The examples philosophers refer to always concern physical objects in one or another form ranging from Moore's hands to tables and chairs. — I am saying that there is no philosophical value whatsoever on looking at a pair of hands, tables, and chairs, they do not bring any insight to expressions and interpretations.

There is e.g. talk about 'law being a unique social phenomenon'. — This statement is illustrative in showing how wrong it is to regard perceptions on past activity as 'phenomena', because thence they really give 'phenomena' a thingly role. — A 'phenomenon' is taken to be something, it is something with its own properties; I would even say that they take it to be a thing-in-itself. But, there are no such phenomena, there is just a lot of human activity going on, and 'law' is a certain type of perception on what happened.

### Perceptions

All we see and feel are based on our perceptions. — People constantly, based on sensory experience, map the environment, the surrounding world (including one's own organism). The sensory data is constantly processed whereby signals are produced for regulating the body functions. The sensory data also produce ideas of the outside world whereby a person forms perceptions of the world. What there is are feelings and perceptions. — All we see and feel are based on our perceptions. Language (in the broadest sense) serves to produce and encode the perceptions, which develop in pace with the languages in general and a person's capacity to see through the established perceptions (for a glimpse of light).

There is no scientific justification for distinguishing aspects of life under such classifications as 'law', 'economy', 'politics', 'democracy' etc. All these categories are but perceptions of life; perceptions people have given labels to; and under these labels aspects of life have historically been piled and compiled in accordance with the traits perceived in various issues. The underlying human activity is in every case simultaneously law; economics; politics; moral — whatever — the spectator just chooses based on his perceptions his perspectives and his vocabulary.

Everything can affect anything and everything is but a perception of anything. When we regard issues like law, economy or politics what we

see is solely governed by the mode of looking, the perspectives we choose, our point of view — the mind will work with the chosen perceptions (and language really is the 'operational language'). Economics, law, aesthetics, political sciences, theology, they do not exist as such. They are just descriptions to indicate from which point of view we are treating the subject matter.

Theories of law are almost exclusively based on the fallacy of not seeing that the whole endeavor is but based on a chosen perspective and the confused perceptions.

All our perceptions are better recognized being on a continuum or better yet on an infinite number of such and arranged in endless combinations, sometimes occupying the same spot.

### Competition

This book is about competition, all in social life is about competition: feelings are in competition; competing interpretations emerge as expressions ; the expressions compete with other expressions, and they are open to competing interpretations. — 'Moral' is one more aspect of competition of feelings; the norms (in all of the games) are in competition. — And as the perceptions compile to grosser and grosser perceptions we think about 'law', 'religion', 'morals', 'economy', 'politics' etc. — small perceptions pile up to big ones. — (It might be necessary to add that, naturally, individual, particular, people's activities in all being are in constant competition — the idea of will to power is not far fetched here.)

Let's consider some aspects of the big perceptions: 'law', 'economy' and 'politics.'

Law is a competition of arguments and the outcome is competitive justice.

There is only one 'kind' of economy; the classification only describes the level of competition in the economic practices: A more competitive economy is on the continuum of perceptions on the side we could call 'market economy', and a 'socialist economy' is on the other side of the continuum, where the competition is more distorted.

Democracy is a function of the conditions for competition. Democracy exists on a continuum from good to bad. The extreme case of bad democracy is where a ruthless dictator is in charge — but even there she is in charge only as long as she can — until she is stopped by the people at whose mercy she is. We sometimes hear it said 'that democracy is the worst form of Government, except all those others that have been tried from time to time'. But, this is a gross misunderstanding - all systems are about democracy, there are no alternatives — it is only a question of the quality of the democracy — democracy is a competitive system, which has to be made ever more competitive. What should be said is: 'indeed, the more competition there is in the democratic system the better it is, we can see what failures non-competitive systems bring about.' - Parliamentarism does not meet the standards of competitive democracy, and cannot be the foundation for a competitive society. — Parliamentarism is the system of totalitarianism of the majority: the artificial majority (the majority of political players).

The mission of any correct politics or political leadership is to create conditions for the best possible competition. — This means the function to prevent all forms of monopolies and abuse of dominant market position in all aspects of life — again this has been best understood in the economic sphere with the anti-trust legislation — the US Sherman Act of 1890 is hereby a decisive milestone in development of humanity. — Now we only have to convince that monopolies and abuse of dominant market position are the cancers of all aspects of life: religion; media; democracy; morals; science...

### Instead of the Scientific Method we have the Competitive Method

Science is a subsystem of arts (sometimes just an especially dull form of waste art merely reclassified as science) - this system of arts is itself a perception of knowledge (a lot of the social science we are treated with is best subsumed under the artistic movement La Science pour La Science) . — When in fact all we have is a competition of arguments — and a bunch of doorkeepers exercising a face-control on arguments.

The so-called scientific method is in fact but a competitive method. Instead of a 'scientific method' the natural sciences benefited from competition. It was the growth of competition and freedom of

competition which fueled scientific progress. Every scientific theory would have to prove itself in the market place of ideas. To prove his theory the scientist had to be well prepared: study as much as possible of the recent work relevant to his field and transparently argue his opinions.

In social sciences we should not hold the methods and results of natural sciences as something to imitate (things and their movements are no analogy for feelings); but instead the practice of natural sciences would gain a lot from understanding the kind of diversity that this new concept of social sciences has to offer.

The spread of information and the unfolding of communication was the enlightenment.

(Howard Caygill writes about 'the remarkable development in German philosophy that succeeded Kant, and the Enlightenment that preceded it.' — In fact approximately one and a half century of 'remarkable German philosophy' led to the horrors of the Second World War; Nazism and Communism, the mass-murder of people in the name of Ideas — the Absolute Ideas).

### Exact Sciences

The natural sciences are often called the exact sciences (although more prudent people reserve that notion for mathematics — which in turn is misleading, as shall be discussed later). Even then when people do not talk about 'the exact sciences', they still muddle regarding the 'exactness' of natural sciences. There have been interruptions in the natural world; there has been construction (and certainly destruction) in the natural world, but there is no planning of the natural world. Whatever notion of planning there is in the natural world there is equally in the social world. - We simply do not possess any knowledge that comes near to merit the epithet exact in sciences. — The idea of the exactness comes from the measuring system, mathematics, which they have *pronounced* exact.

### Sein, Sollen and Gewesen — What is, What Ought to Be, and What Has Been

One more of the fundamental misconceptions in all kind of philosophy, and social theories of all sorts, is the failure to correctly deal with the

distinction between 'is' and 'ought' and especially the lack of the notion 'has been'. — Modeling on famous misconceived sophistry we can also call these with the German words 'Sein' (for 'is'); 'Sollen' for ('ought to be'), and the point they have all omitted: the 'Gewesen' (for 'has been'). The problem is that the Gewesen, what has been, is taken for the reality, and Sollen, the 'ought to' which is pure personal speculation of an author has been taken to represent the 'is' — i.e. the 'is' that the speculative author is trying to convince us to exchange our present reality for (some with remarkable success).

In this book I am promoting an understanding of the concept of law as being part of a scientific 'is' — the everyday reality.

### Infinite Variances

The competitive method is the scientific method (if we want to call the result a 'method') — and the Infinite Variances is the scientific paradigm, the eternal theoretical framework within which theories, laws, and generalizations will find their test and support, if any. — It is the recognition that everything may depend on anything; that we cannot trace the dependence to any specific source; and that the degrees of dependence and interdependence vary. — As we can never know what exactly is dependent on what and to which degree, we can only give narratives, views, small lessons.

### Empiricism, Intuition and A Priori

Intuition is a process where Infinite Variances act, react and interact. — Due to the Infinite Variances we are just not able to recognize the sources of knowing. - At the root of the 'a priori' -error is the confusion between direct conscious contemplation and the continuous processing of experience gained from the Infinite Variances of situations we meet in life. — The anti-empiricists are perplexed with knowing something while not recognizing the instance of having learned it. This loosing of sight they call 'a priori' — it is a notion to fill the gap between the certainty they have been taught to expect and the eternal flux of life. I propose they substitute this idea with 'intuition', which in fact is very similar while being a healthier notion; it is when a person seems to know something, but cannot trace the knowledge back to the origins of continuous life experience.

The whole point is (similarly to what Adam Smith showed in the economy) that life is such that what goes on does not follow any kind of 'natural laws', or captured forms of logic, nor are there causes and effects following a set pattern. All in social life is merely governed by the constant interplay between expressions and interpretations in the competitive system, as in a dance with Infinite Variances — some which seem more regular to us, some less.

### Scientific Pragmatism

In science 'pragmatism' has been delegated to the role of 'just pragmatism' as it has not fit in the traditional moulds of creative imagination of philosophers. — I claim that when we strip philosophy and social sciences of the layers of illegitimate questions, and the masks of concepts, then there is nothing left but pragmatism, a scientific pragmatism, which really is the new paradigm. — Yet, if pragmatism would mean that all that is in accordance with 'common sense' is correct, then we would be on thin ice again. For 'common sense' sounds as if it would be a brand of sense — and it is not. 'Common sense' is a 'tool' of argumentation, a better one than the imaginary systems enforced by the philosophers — but nothing more. — It is *scientific* pragmatism, because I have scientifically proven that expressions are not things, but interpretations of feelings, and these are arranged in the mind by perceptions in competition — which is a very practical matter.

### Economics - the Ugly Duckling Turned the Beautiful Swan of Sciences

In social sciences there are no 'things' and so all the other considerations that follow (movements, laws, final descriptions) become meaningless. Lacking an understanding of this is the reason why the social sciences are some kind of quasi-sciences with one great exception: the science of economics. For economics is the social science least plagued by a search for metaphysical entities. — In economics there is much less of the quasi-scientific discussion about ontology and all the rest that goes with it.

What is great about economics is that the theories produced in it are relatively easy (compared with other social sciences) to put on test on the market — there is a kind of a huge laboratory consisting of the entire world and all the people that test every day the various hypotheses (and in

fact the tangible products serve as empiric proofs). Economics is the paramount social science and it is the empiric science par excellence. Economics has over the years by the primitivist been depicted as the 'dismal science'. But in the test of time economics is like the ugly duckling turned the beautiful swan of sciences.

Common sense understanding (and even the scientific understanding to a certain degree) admits that the economy functions as a competitive (market) system. By this I understand basically a system where everything is dependent on everything; anything may or may not affect anything and everything, where an infinite multitude of variances (nuances) of aspects are involved in a manifold of phenomena: a system, which nobody can direct and where nothing follows necessarily from anything particular.

For me the fundamental principles of how a market economy functions had always been the guiding idea on how everything in life functions; a system, where there are no natural or scientific laws that would compel a certain outcome, nor a casual relation or anything like that; there are just a huge amount of individual people each which his own life and aspirations — and where there is freedom there people's aspirations combine to a better result — a system where nothing necessarily leads to something else, but where anything may affect anything else. — This is basically what Adam Smith wrote about in what must be one of the most remarkable philosophical tracts of all times — for *The Wealth of Nations* was the first and most comprehensive ever description on how social life functions — where no metaphysical laws act and react, and where the role of competition and individuals was recognized to form a holistic whole. It is impossible to estimate the immense effect that this work has had.

### Language

Language itself is the purest competitive system of all — in fact all forms of life are but mere perceptions on the practice of language from a certain point of view. (The unity of manifold, is not a physical unity, it is rather the holistic web of perceptions that reduce all aspects of human life to language, to words, to aspects of feelings, to the binary mode of pain and pleasure.)

One has to move beyond language to see that the philosophical problems disappear — and beyond language we have feelings. Scientifically



feelings are connected with psychological, and biological problems, or whatever we want to call them, but certainly not philosophical ones.

Language only delivers the expressions of feelings and the interpretations. Now we can realize that the 'true workings of language' consist of the interpretations of feelings, whereby there are no intrinsic rules, only an endless competition between all these different perceptions of the feelings. With language we can only roll from one interpretation to another, and there are no truths to be reached on the road; instead it is better to see language as a method. It is basically a market method or a competitive method, an open system where all language use affects all other use. In proper philosophy we can merely point out when words are arranged so that nonsense follows and confusion reigns.

The expressions of language are developed from people's experience. Language depicts first and foremost what people have seen. The most basic words and expressions stem from the most elementary forms of life, the life connected with the physical nature, the thingly nature. Languages have not developed much past a description of the basic experiences of life. We are trying to express, and we have a need to express, complex, delicate, feelings with a language that merely fits for describing the world of things. The usage of the thingly concepts for describing feelings is what sets up traps in language. - In communication this fallacy has resulted in a disastrous failure - Meaning has been turned upside down: Protection has been converted to hatred; love to possession; faith to repression, knowledge to superstition; personality to exclusion; you to many; I to we; care to distance...

Whoever conceived the story of Adam and Eve eating from the tree of wisdom and being expelled from the paradise captured a very relevant notion. This is the insight on how language —for the fruit of knowledge is the language - when misused, out of context, becomes a corrupting force, the archreason for misery — the tool for intrigues; conceits; superstition; deception; fraud, mass-hatred; war. By combining words in a cunning way the bad have captured power from the innocent; privatized natural needs for explanations of eternity, the world and the skies under own private label religions.

Language is hence all there is to philosophy. Elements that have earlier produced a lot of philosophical nutcracking simply disappear. We will see that metaphysics and logic turn out to be antiquated activities similar

to alchemy - save the part of metaphysics which deals with the beginning of life, which is better to be left to the realm of religion

### Language-Games

The concept of language-games is very helpful for understanding all other social practices, such as law, morals (that is the other perception of norms), economy, science, politics, aesthetics, mathematics, sociology, psychology etc. All the social practices are about language, all differing only in the chosen perspectives and the perceptions created - hence all the boundaries between the various social practices are only artificial, and imposed by social conventions for the convenience of the spectator. — Language is simply the most general and fundamental of social practices — whereas the others deal with a special usage of language or language looked upon from a certain perspective.

The notion 'competition' fits very well with the idea of language-games — especially pointing out that there are no rigid rules and boundaries.

### Logic

Logic is branded as a science, where the idea is that words are not only thought to be physical objects (some animated as we have seen), but that they also behave like physical things. - I refute formal logic on the insight that as all we deal with are interpretations of feelings, then certainly one future feeling can in no way be in any correlation in a set pattern to another future feeling — every feeling is unique and will never occur again. There is no logical pattern between one and another expression and there cannot be. Expressions relate to other expressions through interpretations and yet more expressions and they are always new, unique, and without any form of existence. I claim that this form of superstition is best compared to alchemy, and therefore I find it very suitable to call it linguistic alchemy.

The variables in logical formulae are the symbols for our expressions and interpretations. But so are common words; but not only words are symbols, but whole propositions, the whole depiction of a situation, the whole narrative is a symbol — and we have the moral mode of relating, which cannot even be *captured* by the symbols (*sometimes we put a cursive or other effects to try to penetrate there*). They are symbols in the meaning

that they 'stand in instead of something else' — they stand instead of our thoughts, i.e. they stand instead of our feelings — but what we mean is that *we wish* them to stand instead of them, but we fail. — They have the meaning only in an ever changing context — and that context can never be captured in a special formula — life is the formula.

Stern tells that Wittgenstein earlier held the view that "A proposition is laid against reality like a measuring rod", and that he changed this view to the idea that "that a system of propositions is laid against reality like a measuring rod". — The earlier view is the one that comes from formal logic, and reminds me of the anecdotes of the Bembolians (villagers depicted in Swedish folklore in Finland, who are given the role of representing a lot of common foolishness, kind of a whole village of village fools). In one of the stories the Bembolians go fishing, they throw the net in the sea, and in order to find the net in the morning they have to mark the place where the net was dropped. And the Bembolians make a carving on the boat's edge on the spot to mark the exact place where the fishing net was left. Then they rowed on with the sign corresponding to the meaning firmly in their boat, and the net, the meaning, was lost in the sea of life. This is the same what happens when we encode meaning in concepts; we carry the concepts with us, but lose sight of their place in life. - "The stream of life, or the stream of the world, flows on and our propositions are so to speak verified only at instants. Our propositions are only verified by present" (Wittgenstein in Philosophical Remarks).

Instead of 'formal (symbolic) logic' there is a real-life logic. This is the assessment whether we in the usage of language connect words in a fashion that corresponds with the ordinary usage of language (the 'grammar' of language) and what the common experience would allow i.e. empirical or practical logic. Claiming something to be or not to be 'logical' or 'illogical' is actually stating something of the interrelation between propositions. - Logic is therefore what confirms with life experience (and that is of course totally dependent on how we argue our views on life experience).

## Reason

But then what is this 'reason'? - It cannot possibly be anything else than the substantive name for the process of reasoning. Reasoning in turn means a *conscious* weighing of various arguments in order to reach a

conclusion. But, if someone speaks of reason in terms of 'by reason alone vs. by experience' — then he seems to be claiming that there is a 'reason' which sits there somewhere on the shelves of the brain — ready for use (pret-a-porter). Then possibly they mean by reason a process resembling something like looking on the shelves to find the right one, maybe high up in the brain requiring to step on a ladder to reach it or searching all the shelves as if not remembering where the right one was left from previous use. — Maybe 'thinking in a specially orderly rational way' as opposed to 'just thinking' (or thinking in a lazy way, or being drunken, or just not paying attention, or lacking the capability to think that the logician considers himself to possess).

## Mathematics

Mathematics is 'true' only in so far as the mathematical language deals with its own subject, namely the language of units. Mathematics deals with units; the basic notion of mathematics is a unit and the language is a technique to add and take units and their fractions (splitting, adding, and performing other kind of tricks with units and their perceived parts). One and one always make two - but only in mathematics. In mathematics we do not concern ourselves with the definition of what is to be called a unit — whatever is presented as a unit is one: one apple is a unit; three apples in a bag is a unit ('a bag of apples'); one kilometer of road is a unit. The bag of apples and the kilometer of road make two units. — This issue is in mathematics left to total arbitrary discretion: any area; any size, any amount of constituent particles may form a unit. — If you say so, then it is a unit. — And if this is something that deserves the epithet 'exact', then that just shows what is the force of conventions

Mathematics can be said to be a language, a special kind of language or a sub-language (one could even say that it is a language for a particular kind of game: the game of units). So the difference between ordinary language (language as a whole) and the mathematical sub-language is that ordinary language deals with all aspects of life and mathematical language has captured the notion of unit, but all other aspects ('the infinite multiples of millions') are left out. — The trust in the unit causes the illusions of mathematics.

Game theory is called applied mathematics — it is mathematics applied to measuring conjectures after the conjectures have first randomly

been assigned mathematical values. Game theory is a modern form of nonsense — it is so to say the latest fad in nonsense. It is as if conjectures would have received new dresses and suits to wear — the royal dress of mathematics.

In mathematical form conjectures seem so exact (and that is the essence of the mathematical spell).

Now what is standing on one's head? It is using the grammar of mathematics to construct logic. In logic they change the infinitely inexact variables of ordinary language to the artificially exact variables of units. The formulas of the type depicting that the combination of five and seven apples yield twelve apples ( $5 + 7 = 12$ ) are called to serve to prove human knowledge while they cannot even say anything about roundness; goodness, execution, nor smell.

## Truth

Truth is what they are looking for — that is the essence of science, religion, philosophy, law, and even personal relations. — Truth is the hard core of the thing, which is the object of their life-long endeavor. — But, when the thing is gone, then where is the hard core? — Feelings do not have hard cores! All we deal with are expressions and interpretations which are based on feelings — and now in the search of truth we can only emerge from one interpretation to another — 'truth' never gets further than to the next interpretation.

Hence 'truth' is a simile, one of the strongest of them all. And we need it, and it is all right — but we should not start believing in a simile, not take a metaphor as a real being.

Any meaningful use of the concept 'true' means that it depicts a relation — and since it is a relation then it is never absolute. - A 'truth' is never absolutely true under all conditions. - Maybe we can rest with this notion of truth. — But, even so there is not much we can do with it, because next enters all the human qualities that distort the picture: memory; taste, intentions etc.

There is no other truth than a truthful description of the how conscious life functions.

'Fact' is a concept that goes hand in hand with 'truth' — they kind of need each other like the spouses in a happy marriage. The etymology is derived from a grammatical form of the Latin for 'to do' or 'to make'; literary it would mean 'thing done', the modern sense of the use being «thing known to be true» ([www.etymonline.com](http://www.etymonline.com)). — Hence 'facts' are the circumstances that have with authority been pronounced to be true. — And today people go about regarding 'facts' as something more than other variables. — But maybe we should use the word 'variable' instead of 'fact' — would we lose something in certainty?

And now if we say that interpretation means that we exchange one expression for another — then this must be the truth.

And since expressions do not exist, people have the need to create the existence, and this is done by declaring expressions 'true' or 'false', 'factual or not'. — We see that these notions are creations of the imagination in finding a need to keep together the language originally developed for dealing with 'things.'

## Law

Law is also a competitive system (*we would do better not to call it a system but rather an activity*); law is best defined as a competition of arguments. Law may also be described as a language within competitive justice — for justice being an ideal appears only as the competitive balance — and this is not a statement of whether we like it or not. — In philosophy, and science, the question should not be about our preferences but about reality - about what in fact is the case.

Notwithstanding the underlying dogmatic beliefs in the exactness of law, interpretation has always fascinated legal scholars — this is because behind all the imaginary theories reality always kicks in — and in all human communication interpretation is all there is to it: Want it or not at the end of the day it is about interpretation. The closest they have come to a healthy understanding in legal theory is the emphasis on interpretation. All the legal language-games seem to admit some kind of uncertainty and in order to remedy it they admit a role for interpretation. In law interpretation is not an auxiliary technique — it is all there is to it. A text is not a thing (even the individual words used are no things), therefore all we can do with a text is to interpret it; and the interpretation i.e. the result of it, is in turn an argument (a series of arguments).

The realization that there are only expressions and interpretations ultimately leads to the revelation that there is no correct interpretation. What seems like the legal truths are the perceptions created by the competition-like activity. The scoreboard of truth is a function of the competitive process. — This revelation effectively removes the hat from the riddle of law. - What the positivists call 'laws' could equally well be called 'interpretations', i.e. when they are busy promulgating laws they are in fact issuing interpretations, or even 'normative proposals'(I later call them 'strong arguments').

Law cannot even be about anything else than a competition of arguments, because there is nothing to prove in law: Opinions cannot be proven; feelings cannot be proven — they can just be promoted and defended — and this is what happens in law. There is one issue, though, that can both be proven and equally does not need to be proven (it goes without saying): This is right to life — but this is not an argument as such, it is a biological fact: life ends at death. From this follows the foundation of justice, which is the respect of life. Life belongs to the individual, when the individual dies life ends; Wittgenstein: "At death the world does not alter, but comes to an end" (Tractatus 6.431). — At death with the individual life all that counts dies — and no social justice will remedy that. — Apart from the life of an individual there is only one utilitarian good that can be recognized as a criterion for justice and this is the protection of the environment, the preservation of nature: the conditions for life.

In my view law is:

1. Social Practices: In a specialized treatment in law we may delimit this under the concept 'legal practices'.
2. A Quest for Justice: An activity in the quest for justice (individual justice)
3. Arguments: The activity of law is advancing arguments to promote one or another view of desired behavior (a Competition of Arguments)
4. History of Law: The set of arguments that have a special function in law are those that have earlier been promoted as specific legal arguments: These are e.g. law texts as such (statutes, enactments); precedents and other court cases (reports on arguments earlier recognized in courts); scholarly work on law

(research and opinions on how normative arguments have been

treated and how they should be treated in the future). In law these arguments are studied. We just need to broaden the scope of the study to include all normative expressions.

5. Competition: The continuous flow of arguments can best be described as a competition between normative expressions (arguments); but do not confuse this with 'fair competition', which is the aim, and which could someday emerge when the individual is the king.

Law cannot be studied as a natural science, as an attempt to reach some final understanding of the norms, all the norms are just expressions and interpretations, opinions; they do not have any truth value, any underlying scientific meaning or any hard core

### **Language-Games of Law**

I use Wittgenstein's idea of language-games to illustrate how thinking and the perceptions we create of reality are confined to the mental need of creating self-explanatory and closed systems of knowledge. By comparing traditional jurisprudence to games we gain *two insights*: *first insight*, the analogy to a game (e.g. a ball game) helps us to see what kind of an idea we have formed; *second insight*, we should come to appreciate the essence of a game itself, understanding that even the game-like conception (i.e. the contemporary view) would require opening the mind to a broader and flexible understanding of what law (the normative interaction) is all about; after all not even the concept of game is restricted; the concept of game offers us a very elastic world-view, we can discern 'complicated networks of similarities overlapping and criss-crossing; sometimes overall similarities, sometimes similarities of details' (PI 66).

We see that legal positivism provides the setting for language-games — the problem is that they are not only describing a language-game, but fabricating them (artificial language-games) and partially the fabricated game takes root in reality: this happens when lawyers (and the public) start to believe in the animated concepts.

There is no possibility, no base (no support in reality) to claim that certain kind of behaviour or social relations would fall under the notion of law and other kind of behaviour would not (e.g. the claim that there are separate legal norms and moral norms). Law is not a system that would be separate from other appearances of normative systems. Any kind of behaviour which yesterday seemed like a 'private moral matter' may today be seen as a legal matter (e.g. yesterday it was showing affection, today it is sexual harassment). There is no border between legal norms and other norms — there is a border drawn in the language-games but not in reality

It is naïve to make a philosophical distinction between punishments sanctioned in accordance with a state penal system and all the other penal systems: Both 'official' and 'non-official' punishments produce death.

Legal philosophy and the prevailing theories of jurisprudence do not account for any change in the system; the doctrines portray a static system confined in the language-games and do not cope with the obvious and constantly occurring changes in perceptions on justice. This is because law is defined as a system of (hypothetical) rules; (hypothetically) promulgated by a sovereign; with (hypothetical) validity — But all that counts i.e. justice is ignored. — All that can come out of such theories are nonsense and suffering. We have to reintroduce justice to the normative theories: because in practice it is there anyway: justice is the change for the better. — In reality the normative arguments are and have always been in constant competition in the system of law.

### Competitive Justice

I argue that any theory of law, in order to be meaningful, has to deal with the idea of justice (discuss the nature of justice, the shortcomings of justice, and how to develop justice).

When a society is not sufficiently competitively democratic and free, and when all the other competitive constituents in society are not functioning properly then the outcome of justice is unsatisfactory (which is the situation more or less all over the world — any perception of superior justice in the West is only owing to comparisons with places where it is

worse). Only individual human beings can lay a claim on justice (naturally animals have to be guaranteed a just treatment).

Whatever is called law deals with the normative expressions and interpretations which interact in producing justice. A comparison of law and justice with medicine and health could be illustrative. Now, I argue that law should be about promoting justice, in the same way as medicine should be about promoting health. The prevalent theories of law can be compared with a notion whereby we would think that health is produced (exclusively) on the surgeons operation desk (i.e. in courts).

Competitive justice is a continuous process going on in all aspects of life all the time between all people. In law proper the two most important constituents of competitive justice are the competition between normative arguments in a court and between normative arguments in politics; the latter resulting in strong normative arguments called statutes (or laws). Both these particular competitive processes function far from perfectly. The basic problem is that there is so little knowledge of the nature of law — the prevailing primitive anthropomorphic conception of law (which I criticize in this book) constitutes an obstacle for freeing the normative competition.

The courts and the 'lawmaker' (parliaments and other 'sovereigns') are in a constant competition about the right to issue strong normative arguments (or 'make laws' as they say). In the United States this is admitted in legal theory and in practice, while in Europe they want to pretend that this is not the case. This very competition between courts and 'lawmakers' is the basis for a well-functioning society and this is the state of affairs any society should aim for. — An honest recognition of this would advance the cause of justice

There is no real separation of powers in the systems of European parliamentarism. — In Europe the legislative and executive branch are in fact one and the same. In the United States, on the contrary, these branches are separated: The President is elected by the people and the government is appointed by the President. - The European brand of parliamentarism leads to a situation which could be called if not monopoly then at least 'abuse of dominant market position', and hence it is a distortion of justice - and a challenge to the fundamental conditions of life, a challenge to life itself. — What we have to do is break up this monopoly.

More important than the division between the executive and the legislative is the separation of powers between the legislative and the judiciary. The normative squeeze caused by the non-competitiveness of

parliamentary democracy can be broken only by guaranteeing a truly independent judiciary. The judiciary should be independent to challenge any strong normative arguments issued by the parliament — the fact of the matter is that in many countries even the positive law recognizes this

right on the level of constitutions (but the judges are not brave enough to oppose the parliament and render themselves into the service of justice). In the United States the judiciary and the legislator are placed in an open competition.

The true solution is to make the judiciary in reality independent and receiving its mandate from the people, but without any direct elections of the individual judges. A solution of the dilemma between the democratic control and the independency of the judiciary could be accomplished by instituting an elected public judiciary chamber which would not be subordinated to any other authority than the people.

### Legal Practices

Legal practices: As law can be defined only as competition between arguments on each level of life, we also have to understand that the activity involving law does not happen only in the court rooms or in the parliaments; law takes place in all human interactions. Therefore we have to make use of the notion legal practices, and with the help of this insight study which are the typical situations where normative expressions combine to an activity which could be perceived to fall within a specialized notion of law (where law is understood broadly to involve the competition of normative expressions, arguments).

My aim is to show that law is not a thing, but social practices through and through. In Western societies there is a comparatively high degree of certainty and predictability (which does not mean the same as the systems being just — here a different perception is involved). — This predictability, to a larger or smaller extent, is something that may be perceived in many features of life — when focusing on law we may identify the aspects that create predictability within the notion legal practices.

It should be noticed that while law theories make the distinction between legal norms and other norms, legal practices (or social practices) do not.

Understanding that law is about legal practices is especially important to notice when we analyze and opine on the Russian reforms and the state of society. In the West it has taken more or less an uninterrupted historic evolution to reach the notions of law and justice we have today (I stress that I do not regard this as necessarily an evolution going to an ever

higher level — but there could be this kind of trend in very broad terms). With the introduction of Marx's worldview to Russia by the Soviet dictatorship Russia entered a period which aimed at, and succeeded in, a total break with past traditions: throwing society into an abyss, where the patterns for interaction between people were interrupted by violent force; where all was turned upside down and inside up in whirlwinds. All elements that make for orderly social life were disrupted. - There could be no law and justice in such a setting, and there was none.

### Norms and Rules

A legal rule is a condensed perception on how various arguments relate to each other in situations which resemble each other. - In reality 'existence' of a legal norm means the extent to which people interpret themselves to be compelled to a certain activity in accordance with their interpretation of the message contained in the norm - i.e. an interpretation of somebody else's (singular or plural) norm statements (expressions), or perceived norm statements. The 'existence' could then be a question of to what extent the expression and interpretation match, and to which extent various people agree on the content of the norm expression.

Within traditional jurisprudence we could think in lines of there being finer and finer normative statements, and this would bring to the notion of atomic norms. Legal philosophy has not reached even this point of sophistication, though. Legal philosophy deals with complex normative statements of the kind of 'rules' (coarse entities). In *Tractatus Wittgenstein* reached the notion of logical atomism, which really is very similar to normative atomism. This notion brought him to realize that if the logical entities are so small and fine and manifold, then certainly there can be no logical system to cope with all the variations (in legal theory this problem has not even come up). Hence the notion of logical atomism led Wittgenstein to realize that it meant the same as if there would be no entities and no system at all. — If we submerge in the idea of logical atomism, and reach the comprehension that it is as if the constituent particles did not exist (which in fact is the case) — then what comes instead is the endless interplay between interpretations and expressions. - The only system there is, and can be, to cope with the infinitesimally small norm particles is the ordinary language. - (This contradiction was the object of Wittgenstein's later work).



Yet to really grasp the picture of atomic norms one more hint is useful: Add to your imagination the picture of Brownian motion — imagine that the movement of the atomic norms would be that of Brownian motion (and this is also a hint for the crosswords logicians). - In at least Russia and Poland, so I have been told, it has long been common to compare human relations in society to the Brownian motion. The Brownian motion is an incessant, irregular and random swarming movement of microscopic particles suspended in liquids or gases. — So if we would be dealing with atomically small norms (for if anything at least they are not bigger), then certainly these atomic norms would be behaving in the same random irregular fashion as the molecules in Brownian motion. And if norms function like that, then we understand that there is no orderly pattern whereby they are arranged, and only an endless competition that arranges the perceptions.

Of course 'any action according to a rule is an interpretation'; this because we simply do not have anything else to go by. A 'rule' is not a thing; there do not *exist* any rules, all we deal with are expressions and interpretations.

### Rule-by-Justice

Once the true nature of law is understood, then one will be ready to replace the archaic and backward looking notion of rule-of-law by the forward looking notion of *rule-by-justice*. It is not enough in a righteous state (or rule-of-law state as it is sometimes called) that there is rule-of-law, but what is needed is a rule of just laws and justice. I call it rule-by-justice. This because no injustice can be motivated by the fact that a ruler or a ruling body has posited something as law, which in fact is the claim of rule-of-law.

It becomes clear from Finnis discussion that rule-of-law is really a description of an orderly system, where all the elements interact and therefore actually is the description of an established legal culture. It is also evident that the rule-of-law is not a 'thing' that can be implemented by an act of wishing. This is something that the superficial critics of Russian reforms should keep in mind: they look at Russia through their distorted perspectives (with varying degrees of neutrality), and can grasp only the thinnest surface manifestations of social life, and these only projected against the background and conditions of their own upbringing-

ing. - Finnis gives a fairly adequate characterization of what 'rule-of-law' could mean. He calls it 'a state of affairs in which a legal system is in good shape'. — Being in 'good shape' i.e. healthy, is not something one declares to be, but something one can endeavor towards.

In a state like Russia, which started without any real fundamentals for law — actually from a state of deep-rooted institutionalized lawlessness and injustice - it has only been with a lot of courage and vision of the leaders that change has come about. - The balancing act of the Russian leaders is to make rule-by-justice in a state where there does not even exist the conditions for rule-of-law. Finnis describes adequately the task of a leader of a democratic revolution: " Sometimes, moreover, the values to be secured by the genuine Rule of Law and authentic constitutional government are best served by temporarily but perhaps drastically departing, from the law and the constitution. Since such occasions call for that awesome responsibility and most measured practical reasonableness which we call statesmanship, one should say nothing that might appear to be a key to identifying the occasion or a guide to acting in it.. Awritten constitution is not a suicide pact..."

Rule-by-justice is bringing about the balance that society at any given stage of development is ready for. The political leadership can work only with such building blocks that are of the caliber that the society is ready for. At the same time a good political leadership takes measures to promote the refinement of the building blocks, the arguments, the expressions and their interactions. And this way there will emerge hope for a system that could be called rule-by-justice.

### Moral

Few concepts of philosophy have been so misunderstood as moral. - The 'moral' that figures in philosophy, in law, in ethics, and 'morality' is a grossly flawed concept ('concept' indeed and nothing more). — In reality moral is the mode of relating to things and expressions; moral is ever part of being alive; moral is present as an aspect of all thoughts and expressions. - It is the mode of emotion or feeling present in every action or activity, conscious or unconscious - it is the difference between life and death.

The body is engaged in a continuous process of mapping its internal states and the external environment. I think about a radar, maybe such

that human-kind of robots have in films like Star Wars — in those films the robots seem to activate the sensory system for special purpose tasks — but we could consider the real human collecting sense data in a similar fashion, but in a continuous process — a process which then produces feelings, the moral feelings, which are functions of the sense data supplied by the constantly activated moral radar.

The moral is all over the place — there is no human existence without a moral feeling — any feeling is a moral one. - Any content in the human mind is packed in a moral wrapper. It is only the package that gives it a meaning. The package is our moral sentiment — penetrating each most subtle aspect of living.

Ordinarily morals and morality are consciously perceived only in extremes. Macromorals are those issues that people in everyday life (and e.g. in the theory of law) conceive as being 'moral'.

Legal philosophy always deals with the distinction between law and morality. I claim that there is no distinction to be made in the first place as the moral is only the mode of relating to norms and not a special set of norms.

Rawls macromoral theories are very much criticized in this book especially the misconceptions that come packed as: "the Kantian interpretation of justice as fairness" according to which "the moral principles are the object of rational choice" defining "the moral law that men can rationally will to govern their conduct in an ethical commonwealth."

Hume and Smith showed that moral, too, is a market conception - now, 'market' does not mean 'for sale', but something that is the result, intermediary result, of people's constant on-going activities, their expressions and interpretations — this cannot be constructed: it has to be shown (described; told).

I shall point out that this insight to the idea of moral being the mode of relating, and coupled with understanding that expressions are not things, but interpretations of feelings is all we need to know in order to dismiss the idea that there could be any artificial intelligence that could match the human mind.

## The Biological Feeling

This understanding of the moral as the mode of relating finds support in the modern scientific study of neurobiology. The neurobiological research should thus serve to fully disintegrate the traditional philosophical notions of moral (and the accompanying nonsense of free will, consciousness etc). The neurobiological researcher Antonio Damasio says: "As far as I can fathom, few if any perceptions of any object or event, actually present or recalled in memory, are ever neutral in emotional terms. Through either innate design or by learning, we react to most, perhaps all, objects with emotions, however weak, and subsequent feelings, however feeble" (Damasio, p. 93).

The emotions and feelings can be presented as forming an automated homeostatic regulation system ranging from simple to complex, through *base level* immune response (basic reflexes, metabolic regulation); *2<sup>nd</sup> level*: pain and pleasure behaviors; *3<sup>rd</sup> level*: drives and motivations; *4<sup>th</sup> level*: emotions-proper. — On top of the system Damasio places feelings ('being a mental expression of all other levels of homeostatic regulation'). I claim that language (expressions) represents the next level after feelings; language is the expression (or the expression for the tentative interpretation of feelings and the communicating of them to the external). - "Everyday language is part of the human organism and is no less complicated than it" (Wittgenstein, Tractatus 4.002). - Wittgenstein was looking for the same philosophical insight without finding the final way of saying it. - Wittgenstein was digging in to the biological explanation and at one point comes as close as saying: "Here is one possibility: words are connected with the primitive, the natural, expressions of the sensations and used in their place" (In Philosophical Investigations 244).

## Mind Processes

Human mind (that is the process of thinking and producing expressions) is involved in a continuous dance with four kinds of movements: the reception of impressions; the production of thoughts; the expressions of thoughts, where the expressions are more like incomplete interpretations of the thoughts; and interpretations, the process of contemplating over the expressions and even the previous impressions.

The limits of thinking are in language; and the limits of language are in thinking; and the reception of impressions is limited by thinking; and interpretations are limited by all the other elements.

### Consciousness

Thinking and the whole dance is only partially (and do not ask how much) a conscious process - most of the interactions are unconscious.

In philosophy we shall only be concerned with understanding that there is this problem with consciousness vs. unconsciousness. It is totally futile and foreign to philosophical investigations to try to establish the biological nature of consciousness or to try to invent various sorts of consciousness (as Searle does).

Dreaming is a state where the unconscious has almost fully taken over. This is why dreams are so much like art. In dreams we are producing an artistic interpretation of our feelings, where the conscious control is totally removed.

### Searle, Intentionality, Mental Phenomena

Nothing serves better than 'intentionality' (as Searle puts it 'the astonishment that we can think about Bush, although he is far away in Washington') to demonstrate the philosophical problems caused by asking the wrong questions. Searle connects the discussion of 'intentionality' with 'mental states' — and we can see that both relate to the same trouble of imagining that mental states are thingly entities having an existence or a being (like thinking that the face we see in the mirror would exist). — Searle kind of proceeds from the idea that 'the thoughts' are something physical and that they 'are' located inside a place called mind. The *mental state is not the actor*, but the appearance of the acting. *Mental states are not things — they* (the mental states) *do not act; they do not refer to anything; people think and refer*; particular individual people refer (and there are no collective brains doing the referring either). - Now the solution to this 'problem' is to understand that what they call intentionality is just one way (a misconceived one) to define (or talk about) 'thinking'. - So therefore instead of bemusing over 'intentionality' we should bring the idea back to ordinary life and talk about think-

ing, and now instead of asking 'why is there intentionality' the question should be 'How is it that we can think?' — And that is subject for a biological or religious inquiry — and not a philosophical question!

The dichotomy physical phenomena and mental phenomena is wrong to start with. Physical phenomena must be about how things interact, and therefore by analogy they take 'mental phenomena' i.e. the interaction of expressions and interpretations to function similarly. But this very analogy is wrong, there is nothing to compare — there are no mental phenomena; there is the physical world and mental interpretations.

Searle promotes a so-called philosophy of mind, and claims that in this activity they will find the answer to the question: "What does it mean to be human?" — Although this is the supposed advantage of 'philosophy of mind,' no reply followed! — (We ask if this thing 'philosophy of mind' is broken or why does it not spit out the answer?)

Searle regards philosophy of mind as more fundamental than philosophy of language (p. 7), this because "our use of language is an expression of our more fundamental mental capacities, and we will not fully understand the functioning of language until we see how it is grounded in our mental abilities." The latter part of the statement is true, but again that is a biological question — there is no room for philosophical bewilderment there. - Searle had correctly identified "The psychological" as "just the neurobiological described at a higher level" (Searle, p. 159). But this leads to the problem we could state as 'asserting that an article in a newspaper, or a book, is just the computer technology described at a higher level', i.e. we are here dealing with the fundamental misconceptions of philosophy and science. Neurobiology may well give an insight to some of the aspects of how the organism functions; through this study we receive knowledge about the human as well as the animal organisms. And the insight is that we are dealing with interpretations of feelings; that we have feelings and that they are expressed in manifold of ways; and that these can be seen as having a purpose for the overall functioning of the body. — But that is it! This is as far as they can take us with biology. It is at this point that the connection between biology and philosophy is interrupted.

We are clear with the body/mind dilemma, but now we have the thing/expression dilemma

Being 'part of nature' does not mean that all in nature are 'things' — it is wrong to characterize mental phenomena as being part of nature — because it does not tell anything about what mental phenomena are all about, but wrongfully conveys the idea that they are things-in-themselves.

## Hume and Empiricism

I note that I am very much in agreement with Hume's philosophy. I think that the most important postulates of Hume's philosophy are correct and coincide with those of Wittgenstein. However Hume was not in the position to perfect his style and arguments — he was so much in the vanguard of pragmatic philosophy that he did not have the luxury to build on a tradition of healthy arguments — it is so much easier to perfect good arguments, than first come up with them (although it is a mystery why the good arguments are picked up so slowly and by so few). — Hume was still not completely free from the mental restraints imposed by the language of things and the conceptual philosophy — although his main postulates de facto repudiated those ideas.

Hume and the ones adhering to the pragmatic tradition have always been in minority in comparison to the metaphysicians. — The main reason for this rather strange situation is that it is so much easier to convince with the language of things that words (the concepts) have a same kind of being as things proper. — It is much more difficult to convince that there are no such things (the proof is beyond the grammar). — And it is much easier to distribute a teaching of something purported to be, than refuting the being — it seems so natural that something has to be — (The burden of proof has been transferred to the healthy mind). — The British empiricists seemed dull to the majority involved in the spiritual tradition. The words of the language of things bends more beautifully for a description of things and anything put in the same role. — The language of pragmatic philosophy - the tools of common sense — inevitably loses in art appeal. For a person coming from a certain background and living in a certain time Hegel's linguistic acrobatics will score more points than Hume's mundane rebuttal of metaphysical nonsense.

## A Critique of Pure Nonsense

Kant is said to have caused a Copernican revolution in philosophy — I argue that at best we can call it a Copernican contra-revolution (one of

the most successful of its kind), where Kant has sided with the primitivist speculative forces against honest contemplation and a search for truth.

As a resume of Kant's brand of 'philosophy' I would like to point out these issues which demonstrate his errors:

1. There is no a priori
2. There is no formal logic
3. Expressions are not things, not in-themselves and not in any other respect either
4. There are no laws of thought
5. There are no causes and effects (in social life, i.e. in language)
6. Whatever is claimed to be 'the transcendental' cannot be known (by Kant's very own definition of transcendental — therefore in philosophy we must remain silent thereof).

Kant's philosophy is in essence a conceptual philosophy. A correct philosophy should be based on the opposite notion: an understanding that the only way to gain new knowledge and to improve it is to, as far as possible, free one's thinking from the particular concepts, and move beyond them

## Nietzsche

I wanted to write more about Nietzsche, but due to my constraints to finish this work I will just confine myself to a few general comments. Nietzsche was the first scientific philosopher and rightly understood the mind as a dimension of the organic bodily needs. Nietzsche correctly wrote about consciousness; perceptions; logic; things; Kant; the life-aversive and corruptive force of the philosophy of antics, Socrates, Plato and all those warriors against the true world, the unveiling of this philosophy and subversion of the idols from the pedestals...But, it is an irony that the discoverer of the dimension of unconsciousness left his most valuable teachings in *The Will to Power*, i.e. in the writings he did not have published himself, - i.e. the scientific insight he knew but did not consciously stress in his published works — (apart from scattered remarks in the published works only in parts of the *Twilight of Idols* did he persuasively demonstrate his scientific insight). - Unfortunately he is on the contrary most famous for his angry masspsychologism and his misconceived attack on the Christian religion. The spiritual trap kept

Nietzsche from standing out as a great teacher of humanity. Indirectly he has, of course, done it and he will certainly rise to take his place among the biggest philosophers.

Nietzsche was very good at hammering on the concept of 'thing'. — But he was too hammer-happy and went so far as to to crush the thing we call the human self. — For me that is where the philosophers shall draw the line of defense; the biologist may work on the molecular details of the body, but the philosophers may only stay as the defenders of the human one, in his right to live in peace and justice with the human many.

## Russia

In this work the development of law in post-Marxist Russia is in the role of a big case-study. - The Western spectators, critics, totally miss the depth of the social distortion caused by the implementation of the Marxist ideology and hence the challenge of the transformations in Russia (I hope that I may hereby with a new philosophical and scientific approach advance a deeper understanding of the issues at hand).

Understanding the fundamental notions of law, justice, democracy and economy, and their interaction (and even more correctly: them being different perceptions of one) helps to understand how fortunate Russia and the whole world were with having had Boris Yeltsin manage the transformation of Russia back into life, and having Vladimir Putin steering Russian society in life. - Their leadership has been a gradual creation of the framework for equal competition: the fundament of a functioning society; creating the economic conditions for more people to participate in social life on equal basis; reducing the influence of criminal inference in politics (often happening under the thin cover of ballot-box procedures); Creating conditions for free press to develop (by removing the monopolies of the impudent).

When one ventures to understand the legal culture of today's Russia, then it is especially important to comprehend that law texts (statutes and cases) are merely strong arguments in the practice of law, and that law is essentially about social practices (or depending on the perspective 'legal practices'). The legal practices are the legal culture and the legal culture is the totality of all the perceptions that add up to what we call law. The dilemma is that a legal culture cannot be imposed (because it is not a

thing), it can only emerge in an evolutionary way — hereby what political leaders (and opinion leaders) can do is to be instrumental in developing a healthy legal culture (and this is exactly what has been and is being done by the Russian presidents Yeltsin and Putin).

The Marxist law philosophy led to a total destruction of all legal practices — the meaning of 'law' lost all the distinctive characters that this notion had had from the beginning of history. 'Law' ceased to be law. - In the Soviet Union, in meticulous implementation of the Marxist program, any socially organized activity properly called law was prohibited. Nevertheless, soon after the early revolutionary years there developed a Soviet legal theory and jurisprudence was studied in universities. Inasmuch doctrines propagating the Marxist view were the only ones allowed in social sciences all legal scholars could do was to practice a game with concepts: a form of conceptual jurisprudence void of any content, and therefore not socially dangerous to the regime.

The study of law became an activity totally detached from the practices of life. — I stress the role of these wronged traditions of jurisprudence as a very key impediment on the road to restoring real life legal practices in post-Marxist Russia; the Marxist way of thinking — the distorted thinking - lives on in the concepts and in the ideas that concepts arranged in a certain fashion yield knowledge and solutions for life. - The problem is compounded by the poor level of teaching of law in Russian universities.

As the Soviet normative system lacked all the essential elements that merit the name 'law'; I prefer to call it a no-law system. I want to attract attention to some of the fundamental conditions meriting the Soviet system to be characterized as no-law. I refer to these conditions as 'no-law actual premises' (i.e. such features that objectively were lacking in the Soviet Union), and 'no-law formal premises' (i.e. such policies, and formal circumstances that made up the normative framework, and hence restrained the activity of law).

## Behind the Superficial Perceptions is another Russia

There is a persistent perception that the Russians are collectivist and submissive, while in reality it is totally the other way around. Russians are probably the most individualistic people in Europe, which makes it so much more difficult to implant any collectivist ideologies by mere

authority, instead Russian people need to be convinced by practical arguments. Only a pragmatic and competitive social environment sustained by long social and legal practices creates a suitable form of government in Russia. This also explains the relative difficulties in the transition.

Another perception is that Russians have not wanted to adopt the 'rational' Western philosophical traditions. In principle this is true, as long as one keeps in mind that they have been correct in opposing those metaphysical primitive traditions from Kant to Hegel and the anti-democratic and anti-individual Rousseauan traditions (Walicki, p. 327). -Instead pre-revolutionary Russia demonstrates some very healthy philosophical traditions (among them the formidable work of the philosopher of law Petrazycki). — There was nothing inevitable with the Marxist seizure of power; if this had not happened Russia could as well have developed as an orderly democratically competitive country, but instead with the Marxist ideology Russia entered a long-period of social and economic decline.

The distortion of legal practices has a lot to do with the fact that in the Soviet Union all official life was overtaken by rituals that mask reality. Hence all that was real had to be dressed in forms that met the requirements of the surreal planned society. In contemporary Russia this distortion lives on firmly anchored in the social practices of highest order i.e. in the language. — (The business of a Russian lawyer is to dress up documents for a stage show). - The legal-administrative language is not only life-estranged it is the creator of hocus-pocus concepts that people accept as rulers over their lives.

I note that President Putin, actively and correctly addresses these problems (Reference is made to Putin's address December 22nd, 2005 on the founding congress of the Association of Russian lawyers). He stresses the need to enforce civil society and the role of the legal community in this against the background of a state administration, which is in dire need of improvement. He calls for an emphasis on improving the legal education. Against the failure of the legal profession, scholarly and practical (Russian domestic and foreign), to understand the essence of the problems with Russian law (i.e. the failings of jurisprudence, legal practices and the life-estranged bureaucratic language) what really strikes is how Putin penetrates the very philosophical essence of the problem by urging lawyers to open to life and broaden their horizons beyond the narrow-minded mechanical twisting of the legal lexicon. Putin defines a "real lawyer" as "a person who is

philosophically inclined and at the same time endowed with a vast amount of practical knowledge in the field of his specialization." — This is really hitting the mark, and a thorough demonstration of the essence of the problem connected with the prevailing superficial notion of law and the awkward legal-bureaucratic language.

Putin's leadership is driven by the insight that conditions for a functioning society have to be created - they do not exist just like that. Conditions have to be created for free non-monopolistic competition at all levels of social life. Today Russia is much closer to a competitive democratic society than ever. - Democracy — conversely to Marxism — cannot be enforced: only conditions for democracy can be created

It is futile to try to understand today's reality in Russia without considering the Marxist heritage. But, the aspect-blind critics do not understand how totally opposite to democracy, market economy and a free society the Soviet Union was and that it could not be reformed; an altogether new social path had to be chosen. - Gorbachev undertook the impossible task to reform the Soviet Union and as he did not understand that it indeed was impossible he was bound to fail. — It was only under the leadership of Yeltsin that Russia was quickly pulled out from the enormous social chaos. - We can see that element by element all the fundamentals for a functioning system of law were missing in Russia when Boris Yeltsin began to breathe fresh life into Russia. It was against the background of the Soviet no-law system that Yeltsin in year 1990 commenced to provide for a normative stability anchored in freedom and democratic competition. The historical importance of Yeltsin is in fact a combination of his visionary leadership, a superior practical reason and intelligence, a well developed sense for intuitive knowledge, and a willingness to sacrifice all - including himself — for the cause of a better future.

President Yeltsin's role was that of taking care of the bankruptcy estate left over from the Marxists — but at the same time he was the engineer for a new society and the protector of peace. He had to ensure peace in Russia and peace in the world while building the fundamentals of a free Russia. - History knows many conquerors by force and blood; many conquerors imprisoning people and peoples; and history knows many prisons; - But, before Yeltsin history knows no conqueror whose conquest

was peace and freedom to this unheard of extent. - By sweat and tears-with words only. No single person, no political leader or regime, has ever in history freed so many, so many people, so many peoples, so many countries. Nobody has fought such a huge enemy of evil employing only his words, not swords and bombs.

With words Yeltsin created the strategic weapon called the oligarchs. — Never has so much peace and future been brought with so little sacrifice. What a small price for liberation! — The Marxist regime came into being through terror and repression with countless lives lost and taken.

Having won the peace, with great personal sacrifices, Yeltsin was able to secure the transfer of power to Vladimir Putin. - Putin had a chance to bring the society to the next stage from the platform Yeltsin had secured. — And Putin used this chance with remarkable precision and success. He managed an unprecedented transformation of Russia further to equality, and prosperity, setting the foundations for law and justice.

## Europe

It is the prevailing opinion in Europe to think that the European cultures would have achieved something in particular, some unprecedented heights of thinking, philosophical and religious supremacy. Yet, looking back at history we see that there is not much to praise in those aspects of life. — Any success there has been has been entirely owing to competition (not 'thinking', not philosophies, not 'ideas').

Europe's success in the past can be explained by one notion, competition. But, distorted perceptions on life, history, philosophy and science, have always caused other (superstitious) explanations to emerge. — And therefore Europeans of today are building society on the wrong building blocks, a construction where the fundament, i.e. competition, is ignored.

Today the European Union is the antipode of competition in all functions of life: accelerating reduction of democracy; dominance of monopolistic press; conscious abolition of competition in all forms of economy: single currency; normative squeeze, directives (commands), standards, standardization (standardization is the official European religion everybody in power believes in); reduction of scientific

competition; non-competitive justice; unification of values. — Europe should be juxtaposed with the United States of America, which is a democratic superpower and therein lays its strength. The Congress consisting of the Senate and the House of representatives is elected by the people of the respective states. The senators and congressman are in all their actions accountable directly to specific people with a real electorate. The President of the United States is elected by the people; there is direct competition between the states; and direct control of the representatives. The success of American democracy is not due to any extraordinary insight of the 'founding fathers', but a result of natural democratic competition then and now. — Nothing is more revealing than the 'mission' of the European Court: The policies of the European Court according to Hartley (p. 80) are to (1.) strengthen the Community; (2.) increase the scope and effectiveness of Community law; (3.) and enlarge the powers of Community institutions. — This is in blatant contrast to the United States, where the courts are put in the service of protecting individual freedom and liberty (*even these words sound so old-fashioned*) against the very state.

In the EU democracy is a grass-root phenomenon only. By the Byzantine system of undemocratic appointments and representation in the Commission and Council there is but a memory left of European democracy by the time spheres of decision making are reached, but this seems to be sufficient for creating the effect. — From the elections at the level of national states a mere faint reverberation is transmitted up to the Commission — this is the dilution and delusion of European democracy. — The European Commission soberly prefers to call this diluted democracy "Democratic Supervision."

The elected representatives in the European Parliament have very limited power, the Commission consists of appointed, non-elected bureaucrats; the Council consists of *rotating* delegates of national governments. These delegates may or may not be elected representatives in a national parliament, but they are certainly not elected to represent the people in the Council. -

But the national governments are elected? — It is fair to say that the national governments are democratic institutions appointed by the national parliaments, but the reverberations of the democratic elections do not carry to the EU decision making.



### Normative Suffocation

An analysis of the draft constitution, the adaptation of which was put off by a lucky outcome of ordinary political intrigues, is very telling about the actual character of the EU and where it is aiming. It reveals the collectivist and metaphysical superstition on which the EU is based: In the EU the actors are 'the Union' and 'the Member States'. States have political rights and duties in the EU, but people do not. The 'EU' (*this animated thing*) is even supposed to have 'values', thus the draft Constitution (article I-1.2) says: "The Union shall be open to all European States that respect *its values* and are committed to promote them together". - This obligation is not laid on the people, but on the 'States.' The EU also aims at 'respecting the identity of the 'States' (EUC Art. I — 5a). - In the US they strive to respect the identity of humans. - Common sense tells that individual people have values and that these values can be measured by the millions. - Who identifies these values of the EU? It seems that it is the unelected Commission and the European Court, which itself has the mission to "strengthen the Community and enlarging the powers of Community institutions" (so how can there be any impartial justice if the courts have a very political mission?). - In fact all the political institutions in the EU exist for the sole purpose of promoting the Union and its values: "The Union shall be served by an institutional framework which shall aim to promote its values" (EUC Art I-19). — In the US and Russia the institutions are placed in the service of the people — but in the EU it is the other way around.

These 'values' themselves are most revealing in the field of the EU's common foreign and security policy: " Member States shall actively and *unreservedly* support the Union's common foreign and security policy in a *spirit of loyalty and mutual solidarity* and shall comply with the Union's action in this area. They shall refrain from action contrary to *the Union's interests* or likely to impair its effectiveness" (EUC Art I-16). — When the metaphysical veil called state is lifted it will emerge that the obligation is assigned to the *people* of these States — and this cannot mean that it is assigned to 'a part of the people' or 'the majority of people'. It follows that the European Constitution would impose a constitutional obligation to all the people to 'unreservedly support' EU's military policy. — I.e. if the EU declares a war each and every citizen has an obligation to support the war effort, and not only: they have to do it ' in a spirit of loyalty and mutual solidarity' (there is no wavering here! —

Why not add 'and with a smile on their face till the last breath?'). - By putting this obligation on the ' Member States' it means that the issue is withdrawn from the democratic process. - This ideological agit prop goes, of course, hand in hand with the hardware: " Member States shall undertake progressively to improve their military capabilities"; "the performance of these tasks shall be undertaken using capabilities provided by the Member States..." (EUC Art I-41).

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