Relativism in Legal Thinking: Stanley Fish and the Concept of an Interpretative Community

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1. Introduction

Relativistic theories and arguments are fairly common in legal thinking. A case in point is Stanley Fish’s theory of interpretation, which applies to statutes and constitutions as well as to novels and poems. Fish holds, inter alia, (i) that an interpretation of a statute, a poem, or some other text can be true or valid only in light of the interpretive strategies that define an interpretive community, and (ii) that no set of interpretive strategies (and therefore no interpretation) is truer or more valid than any other. In this article, I discuss these claims critically and argue that the very idea of an interpretive community is more or less unintelligible, and that in any case Fish’s theory is self-refuting.

I begin with a few words about the methods and techniques of statutory interpretation (Section 2). I proceed by introducing Fish’s theory of interpretation, giving special consideration to some difficulties in Fish’s account of the concept of an interpretive community (Sections 3–4). I then introduce two types of relativism, cognitive and moral (Section 5), and argue that

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Fish’s theory asserts cognitive relativism in the shape of conceptual relativism and relativism about truth (Section 6). Having done that, I consider Donald Davidson’s well-known objection to alternative conceptual schemes (Section 7) as well as the popular charge that relativism about truth is self-refuting (Section 8).

2. Statutory Interpretation

The primary task of judges is to decide cases, not to expound the law. The natural starting-point, in keeping with the separation of powers doctrine, is that the judge has, in virtue of his office, a general duty to judge in accordance with the law, that is, to apply existing law rather than to create new law. Accordingly, deciding a case involves (i) finding and clarifying the law, (ii) determining the facts, and (iii) applying the law to the facts. Assuming that law is a system of norms, we may view legal decision-making as a matter of applying legal norms to facts (see, e.g., MacCormick 1994, x). On this analysis, syllogistic reasoning plays an important role in legal reasoning—as is well known, a practical syllogism consists of a major, normative premise (a general legal norm, such as an interpreted statute), a minor descriptive premise (which states the facts), and a normative conclusion (the judgment).

The judge finds the legal raw material in the sources of law, such as legislation, precedent, and custom. Having found a pertinent statutory provision, he must determine whether the provision applies to the facts of the case. He begins by clarifying the meaning of the provision, which often involves dealing with problems of vagueness or ambiguity. Having done that, he decides whether to apply the provision in accordance with its meaning. However, a provision whose meaning is perfectly clear may yield an absurd or morally unacceptable result; or it may conflict with other provisions in the relevant area of the law, or with the intent of the legislature as expressed in the documented legislative history, or with the purpose of the statute; or there may be two or more applicable provisions yielding incompatible results, etc. If the judge is unable to find a pertinent provision, he might have to construct a legal norm in order to decide the case.

So the judge needs guidance, while at the same time being constrained. This is where the so-called legal method comes into the picture, for its function is precisely to guide and constrain the judge in his efforts to establish the major premise of the practical syllogism—if the judge were not constrained, he would be in a position to impose his own values and preferences on the parties, thus creating new law rather than applying existing law. The legal method, then, is the approach to legal problem-solving that law students are supposed to learn when studying law, that is, the familiar “bag of tricks” that includes the interpretive arguments (the principles of statutory interpretation), modalities of decision
(analogy, *e contrario* decision, liberal interpretation, etc.), conflict-solving maxims such as *lex superior, lex posterior* and *lex specialis*, the principle(s) of legality, the rule of lenity, and more. Ideally, adherence to the legal method on the part of the judiciary will ensure *predictability* and *equality before the law*.

I shall distinguish four main types of *interpretive argument*: (i) textual arguments, (ii) systemic arguments, (iii) intentionalist arguments, and (iv) teleological arguments. Each type of interpretive argument emphasizes one factor that is relevant to the interpretation of statutes: the plain meaning of the statutory text, consistency and coherence in the legal system, legislative intent, and statutory purpose, respectively.

The *textual* argument recommends that the judge decide the case in accordance with the plain meaning of the statutory provision. The judge is to read the provision carefully, give the words their normal, or, if necessary, a more technical meaning, and decide accordingly. The textual argument may be characterized as *acontextual*, for it does not take into account any other factor than the provision itself. As such, it proceeds on the assumption that words, phrases and sentences have a context-independent core meaning.

The *systemic* argument recommends that the judge decide the case in accordance with the understanding of the statutory provision that is most compatible with the surrounding body of law. On this approach, the judge attaches decisive importance to the *consistency* and *coherence* of the legal system, where a system of norms is consistent if, and only if, it is free from contradictions, and coherent if, and only if, the norms “make sense together” or “pull in the same direction” (MacCormick 1984). Since it requires that the judge make the provision fit the existing body of law, the systemic approach is inherently conservative.

The *intentionalist* argument recommends that the judge decide the case in accordance with the intent of the enacting legislature. If, for example, the judge is considering whether loud country and western music from Billy Bob’s Bar and Grill is a nuisance under the Nuisance Act, which provides that anyone causing a nuisance shall be fined $100, he should ask whether the legislature intended such music to fall under “nuisance.” If it did, he ought to apply the provision to that music; if it did not, he ought not so to apply it.

The *teleological* argument, finally, recommends that the judge decide the case so as to carry out the *purpose* of the statutory provision. The idea is to think of the interpretation, $P^*$, of a provision, $P$, as a *means* to an *end*, $E$. On this view, the *consequences* of the proposed interpretation determine whether the interpretation is a good one.

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1 Most writers accept these four types of interpretive argument. See, e.g., Summers and Taruffo 1991; Larenz and Canaris 1995, chap. 4.
Legal scholars also speak of interpretive presumptions. For example, French judges are said to presume, *inter alia*, that the statutes in force conform to the Constitution, that the parliament expresses the will of the people, that the legislature does not intend absurd results, and that the function of judicial power is “not only to do justice but also to create a rational and coherent body of law” (Troper, Grzegorczyk and Gardies 1991, 195–7). And American judges are said to presume, *inter alia*, that statutes should be construed favorably to Native Americans, that agency interpretations should be accepted unless obviously incorrect, and that the legislature does not intend to produce absurd results (Summers 1991, 417). Clearly, interpretive presumptions may play an important part in a court’s approach to statutory interpretation (Eskridge and Frickey 1992).

3. Fish’s Theory of Interpretation

Fish began as a reader-response theorist, arguing that *linguistic meaning* is not to be found in the text, but is created by the individual reader. But in response to criticism, Fish came to argue that meaning resides not in the individual reader, but rather in groups of readers. Fish’s position, then, is that meaning depends on *interpretive communities* (Fish 1980, 13–4, 322), that is, groups of people who share certain *interpretive strategies* (ibid., 171–2). Moreover, Fish maintains that not only linguistic meaning but also the *existence* of entities such as a poem or a novel or a statute depends on a person’s interpretive community. He states the following:

Interpretive communities are made up of those who share interpretive strategies not for reading (in the conventional sense) but for writing texts, for constituting their properties and assigning their intentions. In other words, these strategies exist prior to the act of reading and therefore determine the shape of what is read rather than, as is usually assumed, the other way around. If it is an article of faith in a particular community that there are a variety of texts, its members will boast a repertoire of strategies for making them. And if a community believes in the existence of only one text, then the single strategy its members will employ will be forever writing it. The first community will accuse the members of the second of being reductive, and they in turn will call their accusers superficial. The assumption in each community will be that the other is not correctly perceiving the “true text,” but the truth will be that each perceives the text (or texts) its interpretive strategies demand and call into being. (Ibid., 171)

We see, then, that Fish’s position is that a person will *find in a text what he is looking for*, that is, what his interpretive strategies will lead him to find. Fish considers as an example a situation in which his students were presented with a *list of names* said to be a *poem*, but really intended as an

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assignment. He asks why it was that the students took the bait and began suggesting interpretations of the assignment and his answer is that the students accepted that it was a poem because they were told that it was a poem and so were looking for qualities in the text that are characteristic of a poem. This is not surprising, he explains, because the differences between a poem and an assignment are interpretive (cf. ibid., 330–1).

Fish proceeds to argue that there is no bedrock level at which the assignment or poem is merely a list of names or, perhaps, black marks on white spaces. The reason is that lists of names and black marks on white spaces are themselves institutional—as distinguished from natural—objects. Says Fish:

> Of course, one might want to argue that there is a bedrock level at which these names constitute neither an assignment nor a poem but are merely a list. But that argument too fails because a list is no more a natural object—one which wears its meaning on its face and can be recognized by anyone—than an assignment or a poem. In order to see a list, one must already be equipped with the concepts of seriality, hierarchy, subordination, and so on, and while these are by no means esoteric concepts and seem available to almost everyone, they are nonetheless learned, and if there were someone who had not learned them, he or she would not be able to see a list. The next recourse is to descend still lower (in the direction of atoms) and to claim objectivity for letters, papers, graphite, black marks on white spaces, and so on; but these entities too have palpability and shape only because of the assumption of some or other system of intelligibility, and they are therefore just as available to a deconstructive dissolution as are poems, assignments, and lists. (Ibid., 331)

This understanding of Fish’s theory—that it applies only to institutional objects, actions, and events—also gains support from the example he proceeds to discuss, namely that of a student who is raising his hand in the classroom. How, asks Fish, do we know that the student is raising his hand and not, say, calling attention to an object that is about to fall from the ceiling? His answer is that we share “a structure of interests and understood goals, a structure whose categories so filled our individual consciousnesses that they were rendered as one, immediately investing phenomena with the significance they must have, given the already-in-place assumptions about what someone could possibly be intending [. . .] in a classroom” (ibid., 333). As I understand it, this structure is precisely what is shared by the members of the relevant interpretive community.

Now on Fish’s analysis, there is no way to establish what the meaning of a text is, or whether the text is a poem or a novel or something else, independently of every interpretive community. That is to say, Fish’s position is that there is no theory-independent reality against which we can measure the truth or validity of any given interpretation. As Fish puts it, “there is no single way of reading that is correct or natural, only ‘ways of
reading’ that are extensions of community perspectives” (ibid., 16). Whether we like it or not, he concludes, “interpretation is the only game in town” (Fish 1989, 141–2).

Fish considers the possibility that under his theory the practice of literary criticism lacks foundation and therefore becomes a cynical activity in which a person adopts a point of view or advances a claim only because it is likely to attract attention (Fish 1980, 358–9). But he rejects this objection on the ground that a person’s view about the status of his interpretive claims does not in any way affect his ability to put forward interpretive claims. This is so, he explains, because even though a person may be aware that his framework is just one among many frameworks, and even though he may have changed his mind many times on a particular issue, he cannot but believe that his present belief is true (ibid., 359–60). He is, however, careful to point out that it does not follow from this that a person is always a prisoner of his present perspective. To entertain other beliefs and opinions than one’s own, he explains, is perfectly possible, though such opinions and beliefs will necessarily appear as mistaken, even absurd—if they didn’t one would make them one’s own (ibid., 361–2).

What all this leads up to is a model of literary criticism as persuasion, not as demonstration or justification. Having repeated his claim that facts relevant to interpretation depend for their existence on interpretive strategies, Fish states the following:

In the more familiar model of critical activity (codified in the dogma and practices of New Criticism) the procedure is exactly the reverse: evidence available apart from any particular belief is brought in to judge between competing beliefs, or, as we call them in literary studies, interpretations. This is a model derived from an analogy to the procedures of logic and scientific inquiry, and basically it is a model of demonstration in which interpretations are either confirmed or disconfirmed by facts that are independently specified. The model I have been arguing for, on the other hand, is a model of persuasion in which the facts that one cites are available only because an interpretation (at least in its general and broad outlines) has already been assumed. In the first model critical activity is controlled by free-standing objects in relation to which its accounts are either adequate or inadequate; in the other model critical activity is constitutive of its object. In the one model the self must be purged of its prejudices and presuppositions so as to see clearly a text that is independent of them; in the other, prejudicial or perspectival perception is all there is, and the question is from which of a number of equally interested perspectives will the text be constituted. In one model change is (at least ideally) progressive, a movement toward a more accurate account of a fixed and stable entity; in the other, change occurs when one perspective dislodges another and brings with it entities that had not before been available. (Ibid., 365–6)

Anticipating readers’ worries about losing the standards of correctness that make the enterprises of adjudication and literary criticism worth pursuing, Fish assures us that we can still do all the things we have been doing, such as argue that our opponents are wrong, that this interpretation is superior to
that one, etc.—the only difference is that we now know that we are doing all these things within a framework that can itself be challenged (ibid., 367).

Fish concludes by pointing out that it does not follow from his theory that anyone should go about interpretation in one way rather than another, or that he should give up interpretation all together, or anything of the sort (ibid., 370). Fish is of course right in pointing out that it doesn’t follow from his theory that anyone should do anything, because his theory is descriptive and so cannot as such entail any normative conclusions whatsoever. But this is not what Fish has in mind—his point seems to be rather that it would not be possible to change one’s approach to interpretation or to give up interpretation completely. However, I fail to understand why a person can’t change his approach to interpretation as long as such a change does not presuppose that he operates outside of some “institutional or conventional structure.”

4. The Concept of an Interpretive Community: Some Difficulties

Given the important role played by the concept of an interpretive community in Fish’s theory, one would expect Fish to offer a full analysis of this concept. Unfortunately, he doesn’t. But what he does say gives rise to certain problems, as we shall see.

The first problem is that while the interpretive strategies that define an interpretive community are clearly meant to be logically prior to meaning, they also seem to presuppose that meaning is available—if it were not, how could we grasp the interpretive strategies, given that we ought to be able to formulate them? One may indeed wonder whether there could even be interpretive strategies if there were no meaning. As far as I can see, Fish does not have anything to say about this difficulty.

The second problem has to do with the fact that people whom we think of as being members of the same interpretive community, such as the supreme court justices in any given country, may disagree about interpretive strategies. They may, for example, disagree on the ranking of the relevant interpretive arguments generally or in the case at bar: whereas A may prefer a textual interpretation, B may prefer a teleological interpretation of the pertinent provision. But, one may wonder, if they belong to the same interpretive community by virtue of sharing a set of interpretive strategies, how can they disagree on matters of interpretive principle? If the answer is that they can to some extent accept conflicting interpretive strategies, one wonders whether the notion of an interpretive community has not been so watered down as to become uninteresting, and how they can communicate with one another (for more on this problem, see Patterson 1996, 123–6).

3 This has been noted by Pierre Schlag 1987–1988, 42–3.
The third problem has to do with Fish’s relativism, which surfaces in his claim that “there is no single way of reading that is correct or natural, only ‘ways of reading’ that are extensions of community perspectives” (Fish 1980, 16). Fish’s position, as we have seen, is (i) that an interpretation of a statute, a poem, or some other text can be true or valid only in light of the interpretive strategies that define an interpretive community, and (ii) that no set of interpretive strategies (and therefore no interpretation) is truer or more valid than any other. The problem, of course, is that such relativism seems to run counter to our views about legal reasoning, such as the common sense notion that one interpretation of a statute can be correct and another incorrect.

But what, exactly, is relativism, and what kind of a relativist is Fish? We need to take a look at these issues, and we will begin with the first.

5. Cognitive and Moral Relativism

Philosophers often distinguish between cognitive and moral relativism (see, e.g., O’Grady 2002, 4; Krausz and Meiland 1982, 1; Pojman 1999). Cognitive relativists maintain (i) that truth, or knowledge, or rationality, or even reality itself is relative to a certain starting point, such as a person’s or a group’s conceptual scheme, and (ii) that no such starting point is truer or more valid than any other. Thomas Kuhn, for example, maintains that science proceeds within a framework of paradigms, and that one can only say that one scientific theory is better than another within a given paradigm, that no one paradigm is truer or more correct than any other, and that therefore scientific change can only be explained by reference to psychological or sociological factors (Kuhn 1977, 290). Indeed, Kuhn is explicit that there is not and cannot be any theory-independent reality that can serve as an arbitrator between different paradigms (Kuhn 1970, 206).

Cognitive relativism is different from cognitive nihilism, understood as the denial that there is such a thing as truth, reality, etc. and from cognitive skepticism, understood as the denial that we can have knowledge of truth, reality, etc. Cognitive relativists maintain that there is indeed truth, reality, etc. and that we can have knowledge of it. Of course, they mean by “truth” or “knowledge” relative truth or knowledge, which means that they owe us an account of these notions (for an analysis of the idea of relative truth, see Swoyer 1982, 84). We see, then, that cognitive relativists differ from cognitive nihilists and skeptics in that they consider the notion of relative truth or relative knowledge to be worth having.

Moral relativism comes in at least three different shapes, namely descriptive, normative, and meta-ethical relativism (Brandt 2001; Frankena 1973, 109–10). Whereas descriptive relativism has it that different people often have different moral views in the sense that they are not due to factual disagreements (Brandt 2001, 25), normative relativism holds that a person
ought to act in accordance with his or his group’s views on some issue.\textsuperscript{4} Meta-ethical relativism, on the other hand, is the view that moral truth or validity is always relative to a moral framework, and that no such framework is truer or more valid than any other (Harman 1996, 3).\textsuperscript{5} Meta-ethical relativism thus conceived is different from moral skepticism understood as the denial that we can have knowledge of what is morally right and wrong.\textsuperscript{6} Meta-ethical relativists believe that we can have such knowledge, though they mean by “moral truth” or “moral validity” relative moral truth or validity.

Let us now turn to consider the second question: What kind of a relativist is Fish?

6. The Nature of Fish’s Relativism

It is tempting to assume that Fish’s theory asserts aesthetic relativism insofar as it applies to literary interpretation and meta-ethical relativism insofar as it applies to legal interpretation. For it is natural to assume that while the interpretive strategies are essentially aesthetic in the case of literary interpretation, they are essentially moral or political in the case of legal interpretation. For example, whereas the members of a literary interpretive community might share a belief in the value of complexity of composition or a close relation between literature and reality, the members of a legal interpretive community might share a belief in the value of individual liberty, predictability, and formal justice, and hold that the function of the judicial process is to solve conflicts rather than to guide behavior.

But one might argue instead that, properly understood, Fish’s theory asserts cognitive relativism, specifically conceptual relativism,\textsuperscript{7} and, as a result, relativism about truth.\textsuperscript{8} The idea would be that the interpretive strategies that define an interpretive community occur on (at least) two levels: one more fundamental and one closer to the surface. On this analysis, we would find the set of moral or political interpretive strategies mentioned above on the surface level; and we would find another

\textsuperscript{4} Richard Brandt explains that whereas individual normative relativism has it that an individual’s moral view is correct if he thinks it is correct, social group normative relativism maintains that an individual’s moral view is correct if it is in keeping with the moral views of the social group of which he is a member. See Brandt 2001, 25–8.

\textsuperscript{5} When I say that no moral framework is truer than any other, I mean that no moral framework contains more true norms or values than any other. The idea, then, is that a moral framework may be truer than another if and to the extent that it contains more true norms or values than the other moral framework. I would like to thank Lars Lindahl for suggesting this way of understanding the term “truer” in this context.

\textsuperscript{6} Moral skepticism comes in a number of different versions. See Sinnott-Armstrong 2002.

\textsuperscript{7} For more on this topic, see Dasenbrock 1991, 8–9.

\textsuperscript{8} Fish’s discussion of the terrorist attacks on New York and Washington on 11 September 2001 indicates that Fish is a relativist about truth. See Fish 2002, 28.
set of interpretive strategies on the more fundamental level, which come into play when, say, two people disagree whether certain marks on a paper are to be understood as letters (or words) at all, whether a certain text is a poem or a novel or something else, or whether the writer is being sarcastic or not. As I see it, the latter set of interpretive strategies would concern cognitive rather than moral matters. We should note, moreover, that the set of more fundamental interpretive strategies would likely apply to the theories of meta-ethical and aesthetic relativism, too, and that therefore meta-ethical relativism and aesthetic relativism would be true in some interpretive communities and false in others. Hence, on this analysis, Fish’s theory would not assert meta-ethical relativism and aesthetic relativism.

We should, however, note that Fish has considered and rejected the charge that he is a relativist without specifying what type of relativism he has in mind. According to Fish, relativism is a position one can entertain, but not a position one can occupy, and the reason is that one cannot achieve the necessary distance from one’s own values and convictions. As Fish sees it,

[... ] no one is indifferent to the norms and values that enable his consciousness. It is in the name of personally held (in fact they are doing the holding) norms and values that the individual acts and argues, and he does so with the full confidence that attends belief. When his beliefs change, the norms and values to which he once gave unthinking assent will have been demoted to the status of opinions and become the objects of an analytical and critical attention; but that attention will itself be enabled by a new set of norms and values that are, for the time being, as unexamined and undoubted as those they displace. The point is that there is never a moment when one believes nothing, when consciousness is innocent of any and all categories of thought, and whatever categories of thought are operative at a given moment will serve as an undoubted ground. (Fish 1980, 319)

Fish’s discussion of relativism is not very interesting for our purposes, however. While I am inclined to agree with Fish that a person cannot believe a theory that contradicts the theory he himself accepts, I cannot see that this undermines relativism. For the question is not whether a person can in some sense be a relativist, but whether relativism is a true or at least a defensible theory. Moreover, Fish seems to have in mind some version of subjectivism, according to which a person’s beliefs are true or valid for him. And this is an untenable form of relativism, since it implies that a person cannot be mistaken about any claim as long as he sincerely believes it (for criticism of subjectivism, see Kirk 2003, 37–8). The interesting question, as I have said, is whether Fish is right in claiming that no interpretive community is truer or more valid than any other.

I have argued that Fish’s theory asserts both conceptual relativism and relativism about truth, and I shall consider in the next two sections a
couple of well-known objections to these types of relativism—to the former that it is unintelligible and to the latter that it is self-refuting.

7. On the Very Idea of an Interpretive Community

Donald Davidson maintains that the very idea of a conceptual scheme is unintelligible on the grounds that we cannot conceive of a situation in which we have reason to believe in alternative conceptual schemes (Davidson 1983). His idea appears to be that the very idea of a conceptual scheme is empty and useless, unless we can conceive of such a situation (for a brief discussion of this topic, see Krausz and Meiland 1982, 62–3). He focuses on the possibility of translating the language of one conceptual scheme into the language of another, because he assumes that untranslatability is a necessary condition for schemehood—if we could translate the one language into the other, we would not be faced with two distinct conceptual schemes, but with two versions of one conceptual scheme. In doing so, he assumes that conceptual schemes are associated with languages, in the sense that a change of conceptual schemes entails a change of languages, whereas a change of languages does not entail a change of conceptual schemes, and he reasons that to study the criteria of translation is to focus on criteria of identity for conceptual schemes (ibid., 184).

He makes a distinction between complete and partial failures of translation and proceeds to treat these two possibilities in turn. In regard to complete failures of translation, he points out that those who speak of conceptual schemes assume a distinction between *scheme* and *content* and maintains that this distinction cannot be defended (ibid., 189). The reason, he explains, is that we express the distinction with the help of one of two distinct metaphors: we either say that conceptual schemes organize something, or that they fit it. But, he continues, neither metaphor works. The former presupposes an ontology that is common to the conceptual schemes in question and so presupposes successful translation. The latter adds nothing to the simple idea of a sentence being true, which means that a purported conceptual scheme can be an independent conceptual scheme if, and only if, it is “largely true but not translatable” (ibid., 194). But the notion “largely true but not translatable” is problematic: What could it mean to assert that a sentence or a class of sentences is true but not translatable? Davidson’s argument is that the best analysis of truth that we have, namely the one proposed by Alfred Tarski, involves translation (from the object-language into the meta-language), and concludes that we do not understand at all the notion of truth independently of the notion of translation (ibid., 195).

Davidson then turns to consider partial failures of translation. He reasons as follows. Either we can translate the language of a purported conceptual scheme, $A$, into the language of our own conceptual scheme, $B$, or we
cannot. If the translation succeeds, then A and B will turn out to be identical or at least equivalent conceptual schemes, and this means that there will be no room for conceptual relativism; if the translation does not succeed, we have reason to doubt that A is a distinct conceptual scheme at all. For all we know, the reason why we fail to translate the language of A into the language of B may be not that the creatures whose conceptual scheme A is make use of different concepts, but that their beliefs about the world differ from ours. And this, too, means that there will be no room for conceptual relativism (ibid., 197).

Davidson concludes that we are simply not in a position to determine whether others have concepts or beliefs that differ radically from our own. As he himself puts it, “we have found no intelligible basis on which it can be said that schemes are different” (ibid.).

If, then, we apply Davidson’s line of reasoning to Fish’s theory of interpretation, we may reason as follows. In the case of a complete failure of translation, we face the problem of explaining what it means to say that a sentence, S, of a purported interpretive community is true but not translatable. As we have seen, this is difficult. In the case of a partial failure of translation, we can either translate the language of a purported interpretive community, X, into the language of our own interpretive community, Y, or we cannot. If the translation succeeds, then X and Y will be identical or at least equivalent interpretive communities, and this means that there will be no room for conceptual relativism; if the translation does not succeed, we have reason to doubt that X is a distinct interpretive community at all. For all we know, the reason why we cannot translate the language of X into the language of Y may be not that the members of X make use of different concepts, but that their beliefs about the world differ from ours. And this, too, means that there will be no room for conceptual relativism.

It is well known that Davidson’s line of reasoning is not only difficult to follow, but also controversial among experts in the field (see, e.g., Blackburn 2005, 199–205; Soames 2003, 312–30). Since this is so, I want to proceed and consider the charge of self-refutation, too, even though that would be redundant if Davidson’s objection applied to Fish’s theory, as I believe it does.

8. The Charge of Self-Refutation

The most popular objection to relativism about truth is that it is self-refuting. As Hilary Putnam has said, “is it not obviously contradictory to hold a point of view while at the same time holding that no point of view is more justified or right than any other?” (Putnam 1981, 119). Applying this line of reasoning to Fish’s theory, the critic may reason as follows: If, as Fish maintains, every claim needs interpretation (“interpretation is the
only game in town”), and if any given interpretation can be true or valid only in light of a set of interpretive strategies that itself is no truer or more valid than any other set of interpretive strategies, then the claim itself—that every claim needs interpretation—needs interpretation and can only be true or valid in light of a set of interpretive strategies. That is to say, Fish’s own theory will be true or valid (or false or invalid) depending on which set of interpretive strategies is being used to interpret it.

This type of objection does not worry Fish, however. His position is that while the theory does apply to itself, it is not self-refuting:

I have been saying that all arguments are made within assumptions and presuppositions that are themselves subject to challenge and change. Well, isn’t that also an argument, and one therefore that is no more securely based than the arguments it seeks to dislodge? The answer, of course, is yes; but the answer is also “so what?” According to the position presented here, no one can claim privilege for the point of view he holds and therefore everyone is obliged to practice the art of persuasion. This includes me, and persuasion is the art that I have been trying to practice here. I have not merely presented my position; I have been arguing for it, and I have been arguing for it in a way that can serve as an example [. . .] of how one must proceed if one operates within a model of persuasion. (Fish 1980, 368)

Fish’s stance is confusing. If his theory applies to itself, then it can at most be relatively true. If, however, this is so, then we can at the most be relatively obliged to practice persuasion; but this means that we will also be relatively free not to practice persuasion. On a more generous interpretation, Fish’s position appears to be that the truth of his theory is irrelevant to the practice of interpretation, because a person who makes an interpretive claim necessarily believes that this claim is true or valid and therefore argues for it “with all the confidence that attends belief” (ibid., 369). But here Fish is simply changing the subject. The question is not what a person who makes an interpretive claim believes or is likely to do, but whether his interpretive claim is true or false, valid or invalid.

But matters get even worse. When considering the possibility that his theory is self-refuting, Fish renders the theory in a way that makes it more or less devoid of content. He explains that “all arguments are made within assumptions and presuppositions that are themselves subject to challenge and change” (ibid., 368), and he points out that this claim, too, is made within assumptions and presuppositions that are subject to challenge and change. But this is to say very little. Of course all assumptions and presuppositions are subject to challenge and change. Fish’s initial claim was that no interpretive claim is truer or more valid than any other, and it is this claim that we should be thinking about.

The question, as I see it, is whether the relativist—in this case Fish—can coherently answer the charge of self-refutation by saying that his theory is relatively, not absolutely, true and leave it at that. I am inclined
to answer this question in the negative, because I believe that a theory which is true from one standpoint but not from another is not a theory worth having (but see, e.g., Bennigson 1999, 216). I am inclined to agree, more specifically, with Thomas Nagel who maintains that a claim that a certain type of judgment is relative must itself be understood as being objectively (non-relatively) true, since it would otherwise be unable to rule out any objective claims, including the claim that it itself is objectively false:

Claims to the effect that a type of judgment expresses a local point of view are inherently objective in intent: They suggest a picture of the true sources of those judgments which places them in an unconditional context. The judgment of relativity or conditionality cannot be applied to the judgment of relativity itself. To put it schematically, the claim “Everything is subjective” must be nonsense, for it would itself have to be either subjective or objective. But it can’t be objective, since in that case it would be false if true. And it can’t be subjective, because then it would not rule out any objective claim, including the claim that it is objectively false. There may be some subjectivists, perhaps styling themselves as pragmatists, who present subjectivism as applying even to itself. But then it does not call for a reply, since it is just a report of what the subjectivist finds it agreeable to say. If he also invites us to join him, we need not offer any reason for declining, since he has offered us no reason to accept. (Nagel 1997, 14–5)

References

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