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Wittgenstein and the Conversation of Justice

Richard Eldridge

Political thinking has appeared in many different circumstances, displayed many different styles, and argued for many different substantive commitments. Despite these differences, however, it is possible to isolate three broad traditions of style and substance within this thinking.

Political Theory, Political Science, and Political Judgment

Classical political theory, as in Plato's effort to describe the ideal state, seeks to sketch the form of social life to which we rationally ought aspire, as offering us the necessary and perhaps even sufficient condition for the full realization of our rational humanity. The city of words that Socrates and his interlocutors found is "a model laid up in heaven, for him who wishes to look upon, and as he looks, set up the government of his soul. It makes no difference whether it exists anywhere or will exist."¹ One who gazes on this model of political life and who then sets up the government of his soul accordingly will "follow the wisdom-loving part" of the soul, with the result that "there is no internal dissension . . . and each part [of the soul] will be able to fulfill its own task and be just in other respects, and also each will reap its own pleasures, the best and the truest as far as possible."² This picture of political theory and its relation to ethical life has significant appeal and plausibility in broad outline. It seems hard to believe that we altogether lack the capacities to imagine and to assess alternative futures and courses of life for ourselves, and if we possess these capacities even in part, then why not exercise them as best we can? The details of political theory and ethical theory then arise out of the exercise of these capacities, as we seek in reflection to take responsibility for who we are and what we do, both socially and individually.

Political science would have it otherwise. It is hopeless to try to determine the conditions of the acquisition of the best and truest pleasures, because we are not creatures who are made to be content in doing whatever reflective reasoning most fully recommends. Rather, we move on from desire to desire and from action to action, seeking security and the effective power to fulfill our ever-arising desires within a framework of competition. As Hobbes puts it,

the Felicity of this life, consisteth not in the repose of a mind satisfied. For there is no such *Finis ultimis* (ultimate ayme,) nor *Summum Bonum*, (greatest Good,) as is spoken of in the Books of the old Morall Philosophers. Nor can a man any more live, whose Desires are at an end, than he, whose Senses and Imagination are at a stand. Felicity is a continuall progresse of the desire, from one object to another; the attaining of the former, being still but the way to the later. The cause whereof is, That the object of mans desire, is not to enjoy once onely, and for one instant of time; but to assure for ever, the way of his future desire.³

Since there is no ultimate aim and hence no perfect felicity in fulfilling it, the best anyone can do is to secure the effective power to satisfy ever-changing desires. We are dominated by “a perpetuall and restlesse desire of Power after power, that ceaseth only in Death.” Given the further “diversity of passions, in divers men,” given the need for “Riches, Honour, Command or other power” in order to satisfy these passions, and given the scarcity of these powers, it follows that human beings “enclineth to Contention, Enmity, and War: Because the way of one Competitor, to the attaining of his desire, is to kill, subdue, supplant, or repell the other.” If this is the way things are, then there is little point to imagining reflectively the conditions of ideal felicity, for there are none. The best we can do is, first, to trace the patterns and sources of persistent conflict and, second, to describe the merely comparative advantages of obeying “a common Power” that might afford human beings “protection from some other Power than their own.”⁴ What the sources and patterns of conflict are, and how and why human beings as they stand might best manage their conflicts, independently of empty reflections on any ultimate aim, are matters for empirical investigation. Generalizations about what people are likely or liable to do in certain circumstances are ready enough to hand to support a descriptive science of political life, that is, of the shape of the competition to satisfy desires under given social conditions. It seems hard to believe that such generalizations are either altogether unavailable or irrelevant. A descriptive science of what people naturally tend to do seems to erase the possibility and importance of deep normative reflection and to substitute pragmatic assessments of what happens when certain natural tendencies are acted on under various conditions. Political science leaves no room for classical political theory.

Interpretivism: Yet it also seems that not all political reasoning either is or should be so immediately consequential. Sometimes, it seems, judges do and ought to reason more imaginatively and less consequentially. Even if they do not appeal deductively to comprehensive political or ethical norms, they must sometimes issue verdicts about how the present conditions of political compromise *ought* to be understood or might best be understood. There is, as Ronald Dworkin notes, sometimes “theoretical disagreement in law.” That is, even where there is agreement “about what the statute books and past judicial decisions have to say” about a certain class of problems,⁵ there can nonetheless be disagreement about whether or how a new case falls within the relevant class. There may have been unambiguous good reasons provided by statute and precedent for deciding a set of past cases in a certain way, but in the face of this new case the situation is unclear. Do the past reasons for decision apply here, in a situation not explicitly addressed by statute or precedent? In such cases, Dworkin argues, a judge will have to determine what the law is, doing so interpretively and judgmentally. Judges should neither merely “enforce special legal conventions” nor act “as independent architects of the best future, free from the inhibiting demand that they must act consistently in principle with one another.” Rather their determinations of law should flow from “more refined and concrete interpretations of the same legal practice [the law] has already begun to interpret.”⁶ On Dworkin’s model of the interpretive determination of the law, “propositions of law are true if they figure in or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community’s legal practice.” In arriving at the best constructive interpretation of legal practice, the judge is to be neither a passive, deferential historicist, insensitive to what the law implies but does not explicitly state, nor a buccaneer activist substituting personal judgment on questions of policy for that of the legislature. Judgment—flowing from the interpretation of legal practice, and expressing how we are in that practice “united in community though divided in project, interest, and conviction”—is crucial.⁷ Here the exercise of judgment involves something like Aristotelian *phronesis* updated in Hegelian fashion by including a commitment to democratic community. Neither ideal models of the political good nor consequential assessments of the effects of various regimes, but rather interpretive judgment, expressive of and on behalf of the ways of a democratic political community, is to determine what the law is.

Dworkin’s model of the interpretive determination of the law is subtle, and it seems to offer a way between the sometimes heavy-handed and potentially tyrannical appeals to ideal models of social and personal life that are distinctive of the classical tradition in political theory and the consequential assessments that express no aspiration to common rational citizenship and social reciprocity that are distinctive of the post-Hobbesian tradition of political science. But is this model coherent and tenable? Just what

do Dworkin's judges do, and how do they do it? For all his talk of the ideal judge as an interpreter "sensitive to the great complexity of political virtues" and embracing "popular conviction and national tradition whenever these are pertinent,"⁸ it remains at least unclear what room there is between appeal to ideal models and consequential assessment of effects. Suppose judges try to express the value commitments of their community to justice, fairness, and procedural due process in a genuinely new case that is not unambiguously settled by statute or precedent. What do they do? Do they say what these values in fact require in a present case, that is, what people really ought to believe about how best to fulfill these values? Or do they consult the actual preferences that people have about how to go on? Either, it seems, the judge must act from claims about values themselves, where these claims may to an outsider appear as the whims of tyranny, or the judge must act from the verdicts of empirical research into the felt consequences of political and legal arrangements. The judge must be either an active thinker, guided by political theory or whim (depending on one's own view of the judge's values), or a passive respector of the empirical results (of, say, market behavior theory) about how conflict might be minimized and decent chances at satisfaction maintained. How is it possible at the same time to be both an active thinker, drawing on ideals, and a passive deferrer to strict precedents and empirical results? Is the interpretivist picture of an ideal judge coherent?

There is quite likely no straightforward answer to these questions independently of close critical readings of what judges and other political actors have done and might do in furthering the ways of a democratic political community. Dworkin himself discusses in detail both the complex values that have informed democratic political practice and how judges either have addressed or might address in hard cases the question of how best to further those values in a particular present. The chief point of Dworkin's emphases on interpretation and judgment is that there is no "algorithm for the courtroom" or for the legislative assembly:⁹ to see what might best be done in any particular case will require a reflective survey of what has been done in past cases coupled with intimate normative assessments of how best to go on now. Still, how does one know how to go on?

Wittgenstein on Judgment

"A philosophical problem," Wittgenstein writes in *Philosophical Investigations*, "has the form: 'I don't know my way about' " (PI § 123). Throughout *Philosophical Investigations*, the condition of the human subject in attempting to come to judgment, both as a self-responsible agent and in relation to ongoing linguistic practice, is continually reenacted.¹⁰ The protagonist of

Philosophical Investigations carries on an internal dialogue with himself, in which he seeks to make judgments in accordance with *both* rationally well-founded standards for correctness *and* the more flexible ways of common practice. This internal dialogue is broken off, rather than concluded in a final discovery of how we are to judge, so that, insofar as we identify with the voices of this internal dialogue, we are cast as subjects for whom judgment is always a problem, involving the claiming of responsibility, and never something properly determined by a method. Hence this internal dialogue in *Philosophical Investigations* offers us—to the extent that we might identify with its voices—a chance to recognize in a new way what we do and might do in judging, in politics as in other domains.

One prominent thought in this internal dialogue is that in attempting to apply our words, we should attend patiently to ordinary uses of language, rather than trying to discover philosophical superfacts (for example, about forms or essences) that are properly legislative for ordinary practice. For example, “What does it mean to know what a game is? . . . Isn’t my knowledge, my concept of a game, completely expressed in the explanations that I could give? That is, in my describing examples of various kinds of game; shewing how all sorts of other games can be constructed on the analogy of these; saying that I should scarcely include this or this among games; and so on” (PI § 75).

Here knowing what a game is does not imply knowing an explicitly formulated definition, vouchsafed by philosophical investigation into essences, but rather simply being able to apply the word “game” to various sorts of ordinary cases. “One gives examples and intends them to be taken in a particular way.—I do not, however, mean by this that he is supposed to see in those examples that common thing which I—for some reason—was unable to express; but that he is now to *employ* those examples in a particular way. Here giving examples is not an *indirect* means of explaining—in default of a better” (PI § 71).

One’s knowledge of a concept or of the application of a word is *expressed* in ordinary practice, in doing *what is done*: “there is a way of grasping a rule which is *not* an *interpretation*, but which is exhibited in what we call ‘obeying the rule’ and ‘going against it’ in actual cases” (PI § 201). If this is so, then the best we can do is to stop hunting about for justifications of linguistic and conceptual practice, ordinary or otherwise, and instead clear up “misunderstandings concerning the use of words, caused, among other things, by certain analogies between the forms of expression in different regions of language” (PI § 90). It is in ongoing ordinary practice alone that criteria of correctness are laid down; there is no point or possibility of assessing, explaining, or justifying that practice. “Philosophy may in no way interfere with the actual use of language; it can in the end only describe it” (PI § 124).

This line of thinking may well appear to be of little help when we are actually faced with hard cases of judgment. In politics, it looks like an endorsement of conservatism or traditionalism, and the impression that Wittgenstein is somehow conservative or traditionalist, especially in politics, is not uncommon. But this line of thinking about judgment in *Philosophical Investigations* is *not* the end of the story. There is a second line of thinking according to which it is not so easy always to rest in doing what is ordinarily done. "You will find it difficult," we are reminded, or Wittgenstein reminds himself, "to hit upon . . . a convention [for the exact use of a word]; at least any that satisfies you" (PI § 88). While this remark reminds us to attend to varieties of actual use rather than to seek any explicit definition of at least some concept words, it also suggests that the convention to *do whatever is done in using a word* is not satisfying either. One can "adduce only exterior facts about language" (PI § 120), rather than explaining or justifying ordinary usages. This in turn means that those usages seem to hover in the air. They come from us, or from our engagements with the world. Surely there are questions to be asked about how they arise and about how they might best be continued, especially in relation to hard cases. If these questions turn out to be unanswerable, then that leaves us disappointed with ordinary usage as it stands, leaves us wanting either a normative theory of what we ought to say or an empirical account of how many people are naturally caused to say what they say. This want or wish goes unappeased by the simple recommendation to attend to what we say. This difficulty is insisted on in *Philosophical Investigations* itself. "We are therefore as it were entangled in our own rules. This entanglement in our rules is what we want to understand (i.e. get a clear view of)" (PI § 125). Our wanting to understand does not lapse in the face of the varieties of ordinary practice that we encounter, but is rather nourished by them. Hence, despite the fact that it is fruitless, we *do* "predicate of the thing what lies in the method of representing it" (PI § 104). We seek to find *in* the thing some *essence* that *requires* us to judge it to be what it is, rather than resting content with the thought that criteria for judgment are only laid down in ongoing practices. We seek either a normative theory of what we ought to do or a causal explanation of what we in fact do in using language. It is not so easy—as the continuing self-interrogations, the continuing swerves by the protagonist into and back out of philosophy show—to stop doing philosophy. There is nothing, these swerves suggest, deeper than ordinary practice that is available to guide it, and yet that practice does not run smoothly for us on its own: we want more.

No one has been more continuously and closely attentive to these opposed lines of thinking about ordinary practice in the text of *Philosophical Investigations* than Stanley Cavell. One way of characterizing Wittgenstein's efforts that Cavell has offered is that Wittgenstein "undertook to trace . . . the ways in which, in investigating ourselves, we *are led* to speak 'outside

language games,' consider expressions apart from, and in opposition to, the natural forms of life which give those expressions the force they have."¹¹ What Cavell has in mind here—in speaking of how, according to Wittgenstein, we *are led* to speak outside the ordinary—is the philosophical search, in thinking about our prospects (political and otherwise), for standing terms or principles that are decisively authoritative in setting norms for our practice. People ordinarily do all sorts of different things. In philosophy one is tempted to try to discern what they all rationally ought to do, no matter what. Perhaps one's succumbing to this temptation is motivated by a fear of the unruliness and unintelligibility of the muddle of ordinary practice as it stands; perhaps it is motivated by a wish that one should oneself possess perfect authority; perhaps it is motivated by a sense of the pains and difficulties of bearing responsibility within ordinary practice, where the normative principles of correctness are unarticulated or unclear and hence where challenges to what one does are always possible. In any case, succumbing to this temptation and thinking philosophically about what all rational creatures ought to do is natural enough, even human, all too human. We *are led* to speak "outside language games."

What then in turn mostly happens, however, is that this effort misfires. Seeking to think, judge, and speak with perfect authority, somehow in touch with absolute norms, "we lose . . . a full realization of what we are saying; we no longer know what *we* mean."¹² That is, rather than speaking within the terms of ordinary practice—conversationally or dialectically, one might say—where challenges are always possible, we instead seek to speak as more than a finite and situated subject. Hence we come to speak inhumanly, as we refuse the role of an ordinary speaker in relation to an ordinary interlocutor. Nothing, again, is more natural than to be tempted to do this. But when we do it, we lose a sense of ourselves as finite subjects in conversational and other practical relations to other finite subjects. The only cure for this loss is to return to ways of ordinary thought and interlocution, with all their unclarities, imperfections, and pains. But to do this is to return to the very scene in which the temptations and wishes to speak otherwise, to speak absolutely, arose.

Hence there is in us, in Cavell's reading, something that is expressed and exemplified within the continuing drama of *Philosophical Investigations*: "[an] irreconcilability . . . between our dissatisfaction with the ordinary and our satisfaction in it, between speaking outside and inside language games, which is to say, the irreconcilability of the two voices (at least two) in the *Investigations*, the writer with his other, the interlocutor, the fact that poses a great task, the continuous task of Wittgenstein's prose, oscillating between vanity and humility."¹³

Read in the light of this sense of the irreconcilability for us of our dissatisfaction with the ordinary and our satisfaction in it, both intellectualist ide-

alism and empiricist naturalism appear as misbegotten efforts—albeit inevitable ones—to close or foreclose this irreconcilability. Intellectualist idealism, of which classical political theory is an instance, offers us the form of the good, the essence of the just state, *the* aim of human life, intellectually grasped and thence to be realized in practice guided by that grasp; all that remains is administration. “The Form of the Good . . . must be reckoned to be for all the cause of all that is right and beautiful, . . . and he who is to act intelligently in public or in private must see it.”¹⁴ The trouble with this proposal is that it removes us from our role as finite human speakers always working out with others critically the terms of going on with our lives, and in doing so it makes us (all too humanly) inhuman. Empiricist naturalism, maintaining contact with what is ordinarily done, offers us results about how most effectively to satisfy preferences as they stand—about how to manage conflict or distribute scarce resources efficiently, blocking no trades. The trouble with this proposal is that it scants our powers for reflecting and for desiring otherwise, more deeply and humanly than one once did, say, as a child.

The advice of *Philosophical Investigations*, as Cavell reads it, is then to “see how philosophical explanations [intellectualist and empiricist alike] will seek to distract you from your interests (ordinary, scientific, aesthetic); how they counterfeit necessity. That this advice is all but impossible to take is Wittgenstein’s subject.”¹⁵ In an odd way, the truth of this situation—that we remain caught up in that irreconcilability, both able to reflect and act beyond the ordinary or departing from it, but never to do so perfectly and alone—is expressed better by the skeptic than by either the intellectualist idealist or the empiricist naturalist. The skeptic at least sees that there is something wrong, that we live in a condition in which we continue to wish for something that continually does not come true. “The threat or truth of skepticism [is] that it names our wish (and the possibility of our wishing) to strip ourselves of the responsibility we have in meaning (or in failing to mean) one thing, or one way, rather than another.”¹⁶

How are we then, humanly, to live with this wish, no longer entranced by counterfeit necessities? Cavell’s suggestion is that we do live with it, both as individuals and as communities of interrelated subjects, by swerving back and forth between moments of acceptance of the ordinary and moments of criticism of it. Cavell’s own name for this ongoing process of swerving is *the argument of the ordinary*: the argument of the ordinary with itself over its possible perfection, carried on in and through us. “The human capacity—and the drive—both to affirm and to deny our criteria constitute the argument of the ordinary.”¹⁷

Living out this capacity and drive involves a double movement. Sometimes there are times “to be the one who goes first.”¹⁸ The present conditions—that is, present practices and the criteria in use there—have grown

repressive, stultifying, or conformist. It is time to mark out a new path, to think and thence to propose new criteria. The risks of such a path are isolation and madness, failing to speak as a genuinely human subject at all. Hence there are also times to wait, to find one's voice only in its engagement with what is ordinarily said and thought and done. To go on in thought alone and against the sways of the ordinary is to risk unintelligibility; to remain within those sways is to risk human nonexistence by falling into thoughtless conformity.

To move between and within these risks is to participate in the argument of the ordinary. This participation involves seeking further intelligibility both of oneself to oneself and of the community to itself. Cultivation or perfection is the ongoing aim of this participation, as one seeks both *actively and independently* to think and judge and also to think and judge cooperatively, in reciprocity and acknowledgment with others who actively think and judge likewise. To do all this is further to take part in *the conversation of justice*:

Perfectionism's emphasis on culture or cultivation . . . is to be understood in connection with this search for intelligibility [to oneself], or say this search for direction in what seems a scene of moral chaos, the scene of the dark place in which one has lost one's way. Here also the importance to perfectionism of the friend, the figure, let us say, whose conviction in one's moral intelligibility draws one to discover it, to find words and deeds in which to express it, in which to enter the conversation of justice.¹⁹

Where, at last, does this picture of our plight as subjects leave political theory, political science, and political judgment? In one way, interpretivist political judgment seems to be the best form of thinking about politics, the form most faithful to our ongoing engagements in the argument of the ordinary and the conversation of justice. The best we can do, it seems, is to demonstrate interpretively and narratively how our practices have expressed our most important political commitments in the past and how they might be continued or recast so as best to further their expression at present, just as Dworkin suggests.

Yet this result faces two related difficulties. It has, first of all, too much the air of a triumphant metaperspective. "At last," it proclaims, "we know what we're doing when we're thinking well politically; we're thinking narratively and interpretively." As perhaps with most metaperspectives, this one seems not to offer us much help in coping with any particular present problem of political practice. Instead of engaging *in* the conversation of justice (as he does elsewhere), Dworkin as a theorist offers us more an illusion of method (and its securities) than anything that actually generates a result.

Here the interpretivist metaperspective seems to encourage distance from both the practices to be attended to and from full engagement in any

practice of close interpretation. It's all just another interpretation, another story, whatever one does. This thought forecloses the *agon* of seeking intelligibility to oneself in and through one's conversations with others about how one's culture might best be perfected toward becoming a fit home for human agency. It is not so easy to escape this *agon* into the thought that anything one says will be an interpretation, and if one does so escape then one is no longer quite in the conversation. In contrast to any stance of detachment, Wittgenstein in *Philosophical Investigations* presents himself not as a master of either interpretations or interpretive strategies, but rather as caught up in the contending claims that are made *on him* by various accounts of judgment. Likewise, Cavell engages densely with specific literary and philosophical texts, in doing so bearing a sense that he is letting himself be read by them. Not only must we generate interpretations and claim to have reasons, we must also be open to the claims made on us by texts and *their* reasons.

What is "consideration" in the theory of contract in this hard case, or what is "the best interest of the child" in contemporary family law? These are substantive, arguable questions. Disagreements about answers to them arise out of, and are woven into, disagreements in ways of life. To say, in response to these questions, "Construct the best interpretation you can of the meanings of these phrases that are latent in our practice," is to step aside from the substantive debate, not to enter it. Entering the debate is inseparable from living argumentatively within its terms, in one contending way rather than another. As Pierre Bourdieu notes, "the art of applying knowledge, and applying it aptly in practice . . . is inseparable from an overall manner of acting, or living, inseparable from a *habitus*."²⁰ Dworkin's methodology seeks to rise above the entanglements that come with living within contending habituses, and it fails.

Second, the interpretivist metaperspective and the injunction always to tell the best story one can about past and prospective practice misses the fact that both theoretical idealizations and empirical results will figure within any good story. This is the obverse of the first difficulty: urged alone, interpretivism is too empty and abstractly distancing; actually done closely—it now appears—it is continuous with both ideal theory and empirical inquiry. In attempting interpretively to develop and exercise political judgment it will sometimes be important to articulate intellectually a new ideal (or a new version of an ideal) of how we might best arrange our common life; it will sometimes be important to be the one who goes first to denounce present injustice and to point the way forward. Religiously motivated abolitionists, say, in the grip of an ideal of comprehensive human reciprocity, are examples of figures who, by forcing imaginative confrontation with the facts of slavery, went first. Sometimes it will be important to change past practice radically.

But it will also sometimes be important to carry out and take seriously straightforward empirical investigations into what human beings actually do care about most deeply; it will sometimes be important to take seriously the ways of the ordinary. Empirical inquirers who have reminded us that most people care to have a modicum of private life to pursue happiness as they see fit, or that people typically seek advantages for their children about whom they care deeply, are good examples of those who have rightly chastened utopian would-be engineers of human souls who have supposed we might follow an ideal of universal comradeship, say. Sometimes it will be important to remind ourselves of what we mostly just do prefer in our social arrangements.

Judging in accordance with the reminder that we are always to construct the best interpretation we can of what we have been and might be seems to miss the force of the more committed political insights that stem from both ideal political theory and empirical political science. Each of the three styles of political thinking—political theory, political science, and political judgment—depends on the others for appropriate correction of its own partialities of insight. Each of them figures rightly in certain moments of the argument of the ordinary and of the conversation of justice. Cavell remarks that he thinks of “philosophy as the achievement of the unpolemical, of the refusal to take sides in metaphysical positions.”²¹ That this is an achievement—the refusing of counterfeit necessities in favor of the acceptance of thinking and listening as a human subject in relation to human subjects—albeit one that it is almost impossible for us to manage, is something we might learn from Wittgenstein’s voices.

What follows, then, from the condition of the human person that is enacted in *Philosophical Investigations* is, I think, a kind of substantive or weak perfectionist liberalism in the style of Joseph Raz,²² as opposed to the neutralist, proceduralist, rights-oriented liberalism of Dworkin. Political proceduralism in general faces the following dilemma. Either the procedures urged for resolving disputes and establishing sociopolitical arrangements are sharply specified: in that case they will reasonably appear to some to be tyrannical in forwarding an uncongenial way of life; or the procedures urged will be fully neutral among contending ways of life, but empty, both incapable of yielding resolutions and incapable of commanding allegiance from within a way of life.²³ Here the fate of putatively necessary political procedures parallels the fates of the necessary explanations of thought and language that are traced in *Philosophical Investigations*; such necessary explanations haunt and tempt us but never quite coherently engage wholly with the ordinary.

The way out of proceduralism and toward substantive liberalism is then to see different ways of life as reasonably contending ways of embodying the good. These ways of life are in genuine contention with one another. It is

not easy for the Amish fully to see the value of the life of those living within consumer society and vice versa. Affirmative tolerance and talking will often be in order;²⁴ including feeling in oneself measures of both resistance and attraction to what is other. So will waiting: sometimes there will be nothing to say, though nonetheless the hope of reciprocity and social perfection does not lapse. So will a political framework of mutual respect: hence the liberalism. But this framework will express a commitment to a substantive good—personal autonomy;²⁵ it will not of itself neutrally settle conflicts about the scope and value of this good. No political decision procedure will. But then human life is complicated and interesting, in its entanglement in the conversation of justice.²⁶

6. WITTGENSTEIN AND THE CONVERSATION OF JUSTICE

1. Plato, *Republic*, trans. G.M.A. Grube (Indianapolis: Hackett, 1974), IX, 592b, 238.
2. Plato, *Republic*, IX, 586e, 233.
3. Thomas Hobbes, *Leviathan*, ed. C.B. Macpherson (London: Penguin Books, 1981), bk. I, chap. XI, 160–61.
4. *Ibid.*, 161, 162.
5. Ronald Dworkin, *Law's Empire* (Cambridge: Harvard University Press, 1986), 5.
6. *Ibid.*, 410.
7. *Ibid.*, 225, 397–98, 413.
8. *Ibid.*, 398.
9. *Ibid.*, 412.
10. This reading of *Philosophical Investigations* as the ongoing reenactment of a condition—rather than as the conclusive establishment via (deductive or quasi-deductive) argumentation of theses about the nature of meaning or understanding—is the main theme of Richard Eldridge, *Leading a Human Life: Wittgenstein, Intentionality, and Romanticism* (Chicago: University of Chicago Press, 1997).
11. Stanley Cavell, *The Claim of Reason: Wittgenstein, Skepticism, Morality, and Tragedy* (Oxford: Oxford University Press, 1979), 207, emphasis added.
12. *Ibid.*

13. Stanley Cavell, *Conditions Handsome and Unhandsome: The Constitution of Emersonian Perfectionism* (Chicago: University of Chicago Press, 1990), 83.
14. Plato, *Republic*, VII, 517c, 170.
15. Cavell, *Conditions Handsome and Unhandsome*, 86.
16. Stanley Cavell, "Being Odd, Getting Even," in *In Quest of the Ordinary: Lines of Skepticism and Romanticism* (Chicago: University of Chicago Press, 1988), 135.
17. Cavell, *Conditions Handsome and Unhandsome*, 92.
18. Cavell, "Being Odd, Getting Even," 119.
19. Cavell, *Conditions Handsome and Unhandsome*, xxxii.
20. Pierre Bourdieu, *Homo Academicus*, trans. Peter Collier (Cambridge: Cambridge University Press, 1988), 57.
21. Stanley Cavell, *A Pitch of Philosophy: Autobiographical Exercises* (Cambridge: Harvard University Press, 1994), 22.
22. See Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).
23. See Richard Eldridge, *On Moral Personhood: Philosophy, Literature, Criticism, and Self-Understanding* (Chicago: University of Chicago Press, 1989), 7–9, for a development of this (Hegelian) criticism in reference to Rawls.
24. Here I am alluding to and drawing on Hans Oberiek's account of tolerance as a virtue of character to be developed and practiced affirmatively. See Oberiek, *Tolerance: Between Forbearance and Acceptance* (Lanham, Md.: Rowman and Littlefield, 2001).
25. See Hans Oberiek's discussion of personal autonomy in *Tolerance*, 117–29, drawing on the work of Raz. See also Charles Larmore, "The Moral Basis of Political Liberalism," *Journal of Philosophy* 96, no. 12 (December 1999), 608–9: "the idea of respect is what directs us to seek the principles of our political life in the area of reasonable agreement. . . . [The principle of respect] must instead be understood as having more than just political authority. We must consider respect for persons as a norm binding on us independent of our will as citizens, enjoying a moral authority that we have not fashioned ourselves. For only so can we make sense of why we are moved to give our political life the consensual shape it has." Whence, then, our commitment to the principle of respect? Perhaps it is like our commitment to the integers: at a certain point in historical life—for example, when interest developed in keeping track of profits and losses during a production cycle—it became evident that the operation of subtraction could be extended to yield an answer to the question, What is seven minus nine? Presumably human beings always could have extended this operation in this way, and once it is thus extended the usefulness of the integers is apparent to nearly everyone. Yet this extension of *our* operation emerged at a historical moment.
26. Conversation with Suzanna Sherry helped me to formulate the problems of Dworkin's interpretivism as a method. Cressida Heyes commented helpfully on an earlier draft of this chapter. Discussion at Northwestern University prompted some final revisions. I am grateful to all these interlocutors.