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Historical and Philosophical Stances: Max Harold Fisch, A Paradigm for Intellectual Historians

Abstract. This article explores the intellectual life of Max Harold Fisch, the twentieth-century American scholar of Giambattista Vico and Charles S. Peirce. Fisch was a thinker with fundamental commitments to both history and philosophy. The claim here is that his life exemplifies a constitutive tension in the work of intellectual historians, who operate in the interstice between these two disciplines. What we learn is that intellectual historians may have a double investment both in the filigree of particular historical contexts and in the principles that emerge in and then detach from those contexts. The article explores this double investment by following it through five decades of Fisch's intellectual labor between 1930 and 1980.

1. Introduction

On 28 July 1985, well into his retirement, Max Fisch – student of Roman law, translator of the Italian rhetorician, Giambattista Vico, and scholar of the American philosopher, Charles Sanders Peirce – was asked whether he thought Vico had been right about some things and wrong about others. Fisch's response was hesitant. “There's something a bit personal about this,” he confessed, “and I am having a little difficulty detaching myself from what led me to Vico and trying to think in entirely impersonal terms about Vico.”¹ What Fisch meant was that, for him, there was no clear or easily narratable distinction between the work that he did to make Vico available to an Anglophone public and the way in which, in the 1930s, he had encountered this eighteenth-century Neapolitan thinker as someone who (in effect) had said to him “every piece of serious scholarly work that you have done to this point is wrong.” Fisch had defended a dissertation in 1930 on the influence of Stoicism on Roman law, and he had come across Vico while conducting research he hoped would lead to the publication of the dissertation as a book. Thus, Fisch encountered Vico as a fellow scholar and not as a historical artefact. Far from being a moment of merely biographical significance, I think that Fisch's hesitant response to this question – posed by Fisch's former student, Don Roberts – is in fact a sign of something unavoidable, perilous, and absolutely essential about intellectual historical inquiry. Fisch was *both* philosopher *and* historian. His life's work is, I submit, a study in the ways in which – for some purposes – one cannot be the one without also being the other.

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1. Max Harold Fisch *et al.*, “Interview with Max Fisch,” 24-5, Fisch Papers. The Papers of Max Harold Fisch (always cited as “Fisch Papers,” see References) are held by the Peirce Edition Project at Indiana University–Purdue University Indianapolis. The papers have not been formally archived, and references to them here follow the system of organization used by Fisch himself with folder name and page number given (where Fisch gave them). I am especially grateful to the scholars and staff at IUPUI who welcomed me into their circle for a few weeks in the summer of 2003 – Nathan Houser, Martha Rujuwa, André De Tienne, Cornelis de Waal, and Martin Coleman, in particular. I am also very grateful to David E. Pfeifer for an invitation to present a preliminary version of this piece in Indianapolis in 2011, where I was honored to meet and converse with Fisch's son, William B. Fisch.

The question of whether intellectual historians, these hybrid creatures working in the interstice between the disciplines of philosophy and history, may legitimately be interested in asserting in their own voices the assertions they find in the historical record is one that has been posed in a number of forms – and answered in a variety of ways. To a degree, Fisch was conscious of this. Indeed, when Roberts continued his interview with Fisch in October of 1985 by asking about Fisch's 1961 paper on "The History of Philosophy Delusion," Fisch responded immediately by saying that one might think his paper had been superseded by a book bearing the title, *Philosophy in History*, published the previous year, edited by Richard Rorty, Jerry Schneewind, and "an Englishman" (Quentin Skinner).² In their introduction, the editors had argued that some *via media* ought to be found between those historians of philosophy who thought intellectual historians were grubbing antiquarians and those intellectual historians who regarded historians of philosophy as nothing more than partisans of some presently ascendant philosophical school.³

Yet the Rorty *et al.* volume itself embodied a tension on whether intellectual historians might take up – as their own – questions that motivated thinkers in the histories they were writing. On the one hand, Quentin Skinner accepted that it was difficult to write the intellectual history of something one regarded as nonsense (religion was his example), but he also argued that, because there were no "perennial problems" in the history of thought, much of a historian's work would consist of attempts to situate texts in argumentative contexts in order to highlight the difference between conventional and non-conventional answers to questions that were not the historian's questions.⁴ A line of inquiry went back from the Rorty *et al.* volume to what has become one of the most cited essays in the history of intellectual history (namely, the 1969 piece on "Meaning and Understanding in the History of Ideas"), and that essay was itself a continuation of an earlier initiative articulated by R. G. Collingwood following his translation of Benedetto Croce's *La Filosofia di Giambattista Vico*.⁵ On the other hand, the Rorty *et al.* volume was also a pivotal text in the development of a pragmatist line of interpretation taken up by Rorty in his own contribution to that volume – namely, "The Historiography of Philosophy: Four Genres." Rorty certainly permitted historians to be intellectually fired up by the questions posed by the historical figures they studied, and we should note that aspects of Rorty's thinking are still presently evolving in the work of Robert Brandom, whose distinctions in *Tales of the Mighty Dead* between *de re*, *de dicto*, and *de traditione* historiographies are intimately connected with the issues under discussion here.⁶

Now, to my knowledge, Fisch did not follow up on his allusion to *Philosophy in History* (although after the exchange with Roberts, Fisch seems to have headed off to find the volume – "I'll see if I have the book here").⁷ Nevertheless, the remarks

2. Rorty, Schneewind, & Skinner (1984).

3. Rorty, Schneewind, & Skinner (1984: 7).

4. Bejan.

5. Skinner (1969: 7, 37-8, 50-1); Collingwood (1939: 29-43); Croce 1911, translated as Collingwood 1913.

6. Rorty 1984; Brandom 2002; Marshall 2013.

7. Fisch *et al.*, "Interview with Max Fisch," 17-8, Fisch Papers.

we do possess link Fisch to broader debates about the relationship between history and philosophy, and we do see comparable tensions in Fisch's own articulation of that relationship. On the one hand, in his "History of Philosophy Delusion," Fisch had denied that there were any "eternal problems" in philosophy and had argued that, therefore, one should not ask whether one was persuaded or unpersuaded by, for example, Descartes's argument for the existence of God. Instead, Fisch had claimed, one should inquire into the relationship between the method articulated in the *Discours* and the method utilized in the *Dioptrique*. Was Descartes right? Wrong question. How should we speak of these theories and practices as moments in a sequence of inquiry? That was the issue.⁸ On the other hand, in 1985, Fisch wanted to clarify that such assertions did not mean that one could not agree with Rorty, Schneewind, and Skinner that history and philosophy might be deeply imbricated. It was as if the history of thought might suggest problems and solutions, even as one ought not to place oneself in judgment over it.

Here is my claim: Fisch may not have pursued the questions raised by *Philosophy in History* about the tension between historical and philosophical pursuits, but intellectually he led a vivid life at the intersection of these two commitments, and so, for anyone interested in this tension, his life takes on the quality of exemplarity. Born in 1900, Fisch graduated first from James Russell Lowell High School in San Francisco, then from Butler University in Indianapolis with a degree in philosophy (where he studied with Elijah Jordan), and finally from Cornell University with a doctorate focused on the history of philosophy in the ancient world. He worked in departments of philosophy at Case Western Reserve University, the University of Illinois at Urbana-Champaign, and Indiana University-Purdue University Indianapolis. His core intellectual achievements were two: translating (with Thomas Goddard Bergin) Vico's 1744 *Scienza nuova* and founding the chronological edition of the works of Peirce (a project that is ongoing). These bare, even unimpressive, facts do little to convey the significance of the life of this mind. In fact, the claim I want to make about this life is quite ambitious: the case of Max Fisch articulates one of the most basic tensions experienced by intellectual historians.⁹

The procedure here is broadly chronological. Fisch's experience of the distance between history and philosophy can be explored under five headings: law, translation, institution, style, and semiosis. These headings are not, strictly speaking, phases that follow one upon another in a discrete fashion, but they do identify preoccupations that are most intense in, respectively, each of the five decades between 1930 and 1980. In what follows, this "distance" between history and philosophy will appear alternatively as an irreconcilable tension, a fertile ambiguity, and a problematic gap. My purpose is neither to praise nor to blame Fisch per se but rather to take him as an extremely

8. Fisch, "History of Philosophy Delusion, The (1961)," Fisch Papers.

9. Fisch's vision of a chronological edition of the writings of Charles S. Peirce is being carried forward in the work of the Peirce Edition Project in Indianapolis, but we may ask whether his attempt to be both philosopher and historian found an institutional home beyond that particular venue. If we look at the collection of essays in the Fisch festschrift (many of them fine contributions), we see no representation of the Vico side of his intellectual identity and only a few contributions that would count as genuinely historical by his standards. See Tursman 1970.

instructive example of a difficulty that intellectual historians must learn how to face. Readers of fiction practice a “suspension of disbelief,” and one of the core questions for intellectual historians is whether they must practice an analogous “suspension of belief.” In the process of showing how Fisch responded to this challenge, I hope to make manifest and communicable what was really distinctive about his work – to give some value to the as yet unused and undetermined adjective “Fischian.” The aim is to explore these five headings in such a way that each provides a distinctive vocabulary for expressing the difficulty. Fisch did not “solve” the writing of intellectual history, nor did he resolve history and philosophy into each other. What he can do is show us what writing intellectual history is like and reveal its contours under a variety of configurations.¹⁰

2. Law

We do not have many sources attesting to the origins of Fisch’s experience of the distance between philosophy and history in the field of law. To be sure, we have the typescript of Fisch’s 1930 dissertation on “The Influence of Stoicism on Roman Law” (kept in the special collections of Cornell University Library) as well as the heavily annotated personal copy that Fisch revised in the course of the 1930s (now held by the Peirce Edition Project at IUPUI). But it is necessary to turn to later sources in order to understand why Fisch decided to proceed with research on this topic when he arrived at Cornell in 1924 and found his prospective doctoral advisor (James Edwin Creighton) already on his deathbed. Particularly revealing is a manuscript dated 16 February 1940 in which Fisch was preparing himself for a piece on the “Social Ideals of American Jurists.” In a spirit of self-criticism that may have been modeled to him by the *Vita di Giambattista Vico scritta da se medesimo* (with which he was already familiar and that he would publish in an English translation four years later), Fisch sketched out some “Biographical Data with a Possible Bearing on the Choice of Subject.” He presented montage: school-boy obsession with the Gregg shorthand used by court reporters, a seventeen-year-old self orating at the unveiling of General Frederick Funston’s statue at City Hall in San Francisco being told that he had the makings of a lawyer (and later realizing the remark may not have been a compliment), an undergraduate at Butler University “captured for philosophy” by Elijah Jordan, whose *Forms of Individuality* and *Theory of Legislation* he declared the “toughest, most original and most important work by an American on the philosophy of law,” and marriage into a family of lawyers when he wed Ruth Bales in 1927.¹¹

Hindsight, however, is never quite to be trusted. In that same manuscript, at a distance of only ten years, Fisch miscited the title of his Cornell dissertation, referring to it as “Stoicism and Roman Law,” thereby eliding a crucial term in the original title,

10. The secondary literature on Max Fisch is quite small. Consider the following points: Fisch’s method develops that of Peirce and is “à la fois historique et synthétique” (Deledalle 1991: 355); Fisch, fastidious and yet brilliantly ingenious, “combines [...] cautious judgment and insightful synthesis” (Madden 1986: 393); and “Max’s slight preference for Plato over Aristotle is based, in part, on his preference for philosophical dialogue over philosophical treatise” (Roberts 1986: 413).

11. Max Harold Fisch, “Fisch, Max H: Philosophy of Law,” Fisch Papers.

which had been “*The Influence of Stoicism on Roman Law.*”¹² The slip or revision may have been significant. The chief argument of Fisch’s dissertation had been that Stoic philosophy was such a dominant cultural milieu in imperial Rome that the legal system, Rome’s chief intellectual achievement, was shot through with indirectly received and often unconscious Stoicism.¹³ “Influence” was a category that Fisch employed as a kind of a tactical retrenchment against the notions of cause that he was resisting, particularly those predicated on an economic determinism that allowed no independent role for ideas in the promulgation of a legal culture.¹⁴ Remarkably, even as this was the central concept in the work, Fisch noted within the dissertation itself that “the commonsense and quasi-scientific category of ‘influence,’ with which we have been working throughout, breaks down in proportion as our canvas becomes crowded with detail and approaches lifelikeness.”¹⁵ Fisch may at first have meant this as an assertion of his historical ambition. He thought that the *indirectness* of influence was precisely one of its conceptual advantages over the Newton’s cradle or base/superstructure imaginary of historians searching for causes and effects.

I conjecture that the conception of “influence” was the core weakness of the dissertation and that Fisch never published it because with increasing acuity he saw the impracticality of the concept. Even as he was annotating the finished dissertation in the years after 1930, Fisch – nailing his colors to the mast – claimed that “the Stoicism of those who professed it is less significant for our purpose than that of those who did not.”¹⁶ In this way, the desire to prove that Stoicism had achieved its effect more by cultural saturation and conceptual osmosis than by, for instance, quotation functioned as a constant frustration because, necessarily, no direct evidence could be presented for the indirectness of the influence. For our current purposes, the key point is this: Fisch designed his dissertation in such a way that philosophy could have no direct philological antistrophe. That is, Fisch committed himself to the pursuit of ideas that were minimally manifest in particular places and times.

Precisely when Fisch encountered Vico for the first time is unclear. Later, he would relay that he could not recall Jordan, his undergraduate mentor, ever referring to Vico.¹⁷ Glenn R. Morrow, a fellow graduate student from Cornell, who had been slightly ahead of Fisch and had studied with Creighton, wrote to Fisch upon the publication of the *Autobiography* translation in 1944 to say that he was taken back to the days in Ithaca when Creighton had him reading “Flint, and Hume, and Voltaire, and Montesquieu, and Croce’s Vico” in preparation for a volume on historical method in philosophy. But Fisch had not studied with Creighton, and it is not clear that Morrow and Fisch discussed Vico when they were graduate students.¹⁸ Vico may have come up when Fisch and a number of other professors at Western Reserve University

12. Fisch would later recount his alarm at discovering that this error had become a habit in the 1985 interview with Don Roberts. Fisch *et al.*, “Interview with Max Fisch,” 24-5, Fisch Papers.

13. Fisch (1930: 2-3).

14. Fisch (1930: 168).

15. Fisch (1930: 169).

16. Max Harold Fisch, “The Influence of Stoicism on Roman Law,” 27r, Fisch Papers.

17. Fisch *et al.*, “Interview with Max Fisch,” 23-4, Fisch Papers.

18. Glenn R. Morrow to Max Harold Fisch, 24 May 1944, in “[Untitled Folder],” Fisch Papers.

in Cleveland gathered with Thomas Goddard Bergin (who would become Fisch's collaborator on the Vico translations) to read Dante in the 1930s.¹⁹ What we do know is that, as Fisch would come to recount the story on several occasions after the fact, Vico was encountered as the living force of a scholar who said, "Your dissertation is fundamentally misconceived and beyond repair."²⁰ Where Fisch had said that Greece influenced Rome, Vico responded that theories of cultural diffusion were superficial and that the real historical task was to account for origins as autochthonous. Where Fisch had said that philosophy informed law, Vico responded that philosophy was itself an outgrowth of political discord that registered itself in the law first. And where Fisch had said that influence lost its conceptual integrity the closer it got to the specificity of the actual, Vico responded that the law could only be understood as a kind of tension between the extreme particularity of cases and the philosophic universality of principle.

Fisch himself registered the first two of these Vichian responses more clearly than the third, but I would argue that it is in fact the third that is the most crucial here.²¹ Vico's sense of the tension between (and potential cooperation of) philology and philosophy would become an increasingly important point of reference for Fisch in the 1940s. In the context of law, Vico's key terms of art were *certum* (the particular, the determinate, the certain) and *verum* (the true, the intelligible, the principled). What Vico sought to identify here was the way in which law as an institution was compelled to take seriously two essentially different and perhaps ultimately irreconcilable modes of being. The historicity of Roman law, as Vico put it, derived from the way in which the utter specificity of judgments in particular cases – instances of what one might term pure and violent exception – came in time to be interrogated for their value as precedents. As Vico conceived it in his *Diritto universale* (1720-22), the first "sentence" of the law had in fact been a public execution, and, in effect, he explained that the "life" of the law was an ongoing articulation of what precisely the crime was that warranted this punishment. That is, the principle of *verum* had to play catch-up with the fait-accompli of *certum*. Precedent, in turn, raised issues of equity and a kind of principle that might even be expressed abstractly as a rule that could be applied to cases but that was not itself a case. In this way, Fisch learned from Vico that the history of concepts could be narrated as a series of increments in which parties discovered the meaning of the letter of the law by construing its particular verdicts as nascent principles.

In truth, analogues of this tension – or dialectic – between *certum* and *verum* had been present, but subordinate, in the dissertation of 1930. In particular, Fisch's attention to the role of the praetor in the development of Roman law allowed him to focus on tensions between the *ius civile* of the Twelve Tables and the *ius honorarium* that grew out of Praetorian judgments regarding aliens, which mirrored – in his mind – the tensions of which Stoicism was extremely mindful between the laws of

19. Fisch (1988: 189).

20. This paraphrase of what Fisch took Vico to be saying to him is cast in my words, but the rhetorical device is his. See Fisch (1976: 402).

21. Fisch (1976: 401-2).

particular places, whether customary or positive, and the *ius gentium* that reached out beyond the bounds of Roman citizenship to propose a simulacrum of universal law.²² Likewise, Fisch was struck by Selden's early modern English notion that "equity is a roguish thing" and could, effectively, function as a form of prerogative, because the sovereigns would make rules out of their whim in granting it.²³ Similarly, he thought his account of Greek influence at Rome could be furthered by tracing conceptions of ἐπιείκεια, "reasonableness" (developed by Aristotle in his *Rhetoric*).²⁴ Moreover, according to Fisch, Stoicism distinguished itself – particularly from Platonic and Aristotelian accounts of form – by developing a rich theory of individuation (which, he contended, had legal implications).²⁵ And he was very interested in the Stoic conception of καθήκον (meeting, meeting halfway, being appropriate) together with the kind of casuistry that it sponsored. As Fisch pointed out, "there is nothing more characteristic of Stoicism than its preoccupation with the definition of [καθήκων] and its casuistic application to the most varied concrete situations."²⁶ The principle of acting in a way that was appropriate to the situation had infinite variations.

As Fisch's interest in law was beginning to inform his subsequent intellectual initiatives in the fields of Vico studies and the history of pragmatism in the 1940s, we see developments in his sense of the ways in which case-based casuistic systems such as the law might have to accept that the meanings of decisions would only become visible over time. Vico was there in the footnotes to Fisch's seminal essay on "Justice Holmes, the Prediction Theory of Law, and Pragmatism" of 1942, telling the author, "First popular government; then law; then philosophy," thereby licensing the hypothesis that pragmatism grew out of the prediction theory of law and not vice versa – case to rule not rule to case.²⁷ And Vico's contribution to legal studies was then addressed directly in "Vico on Roman Law" of 1948.²⁸ But what was really crucial in the "Prediction Theory of Law" essay was Fisch's understanding of the significance of Holmes's notion that the true – and only – criterion for evaluating lawyers was their ability to predict what judges would decide in particular cases. What was crucial was the lawyer's ability to *predict* what a judge would take a particular statute or precedent to mean in the circumstances of a case.²⁹ What this implied was that the meaning of any legal utterance was to be evaluated in terms of the future decisions that might be said to follow from it.

What Vico had understood as a historical category, Holmes transposed into the future, but the effect was essentially the same for someone like Fisch who was learning to ask how the particularities of the historical record might be said to interact with the philosophical abstractions of principle. This was the effect: meaning was virtual, in the sense that the implications of the letter of the law could only be understood in

22. Fisch (1930: 86-91).

23. Cited in Fisch (1930: 106).

24. Fisch (1930: 163-4).

25. Fisch (1930: 133-4).

26. Fisch (1930: 147-8).

27. Fisch (1942: n22).

28. Fisch 1948.

29. Fisch (1942: 86ff).

terms of proclivities to act in the future. Those actions might be predicted or narrated historically; the difference seemed negligible – at least until 1969, as we shall see. For Fisch, the law was such a decisive institution (not simply socially or politically but for the process of thinking as such), because it forced individuals and communities to confront very basic issues concerning the relationship between time and idea. Try as they might sometimes, legal institutions were often very bad at forgetting themselves. A multiplicity of answers would accrue to a problem that could not be ignored (because the institution was charged with providing very practical remedies), and in order to deal with that multiplicity a host of distinctions and specifications to rules needed to be elucidated. The history of law was thus a model for the history of concepts: acts became examples becoming rules producing exceptions brokering thereby the piecemeal removal of *ceteris paribus* riders. In this way, the institution of the law provided Fisch with a basic template for understanding how the historian of thought and the thinker might be the same person.

3. Translation

Having encountered Vico as the destroyer of his dissertation in the 1930s, Fisch travelled to Naples in 1939 in order to explore the possibility of translating his masterwork, the *Scienza nuova*, into English. Benedetto Croce and Fausto Nicolini told him they knew of no one who was attempting such a translation, and so Fisch invited Bergin to join him in Naples to make an exploratory start on the work. Around this time, it seems, Fisch composed a list of questions for Croce and Nicolini, the second of which went as follows: “utmost possible literalness, or such a degree of paraphrase as would make the translation really a commentary on the text, or something in between?” The answer next to “utmost possible literalness,” written in pencil, was “yes.”³⁰ This was a significant decision, with implications for the reception of Vico in the Anglophone world. The effect was to repeatedly force the translators back to the Italian original to find ways of replicating its particularities as much as possible without producing a kind of stenography that would be unintelligible to the Anglophone reader.

The tension between the love of words that is philology and the love of wisdom that is philosophy is perhaps nowhere quite so *minutely* palpable as in the work of translation. Certainly, Fisch and Bergin narrated their collaboration as a kind of dialectic between philology and philosophy. In their representations of the process, Bergin – an Italianist – would generate a very literal translation that Fisch would remold into a smoother and more conceptually structured form. They would continue to exchange the draft translation – by letter after an initial week or two together on Capri in 1939 – until, as they put it, neither of them could see a way of going any further.³¹ This was the method they used both for the translation of Vico’s autobiography (which they published first, in 1944, having learned later in 1939 that Elio Gianturco was working

30. Fisch, “[Untitled Folder],” Fisch Papers.

31. Max Harold Fisch to Giorgio Tagliacozzo, 5 January 1981, in Max Harold Fisch, “Tagliacozzo, Giorgio,” Fisch Papers.

on an English translation of the *Scienza nuova*) and for the translation of the magnum opus, which they eventually published in 1948 (reasoning that Gianturco had had nine years to finish his translation and had therefore lost his right of first attempt).³²

The effort was heroic. Even Italians speak of a need to get fit while preparing to read the *Scienza nuova*. And the method employed was successful. The anti-Fascist politician and historian, Gaetano Salvemini, confessed that he preferred Bergin and Fisch's English to Vico's Italian.³³ But it is not clear that Bergin and Fisch's tidy representation of their collaboration was always accurate. The manuscript sources attesting to the translation process are fragmentary and incomplete, but they cast a different light on the division of labor between Bergin and Fisch. At times, in his letters to Fisch, Bergin would simply throw up his hands ostentatiously and confess that he has no idea what Vico was on about. Thus, "literalness" may sometimes have been evidence of incomprehension, a sticking to the letter because the spirit could not be divined. Once, an exasperated Bergin – described lovingly by Fisch as the "poet and humorist of my life" after his death in 1987 – declared that Vichian prose gave "every indication of having been written in a nursing home or while undergoing the Neapolitan equivalent of the Keeley Cure."³⁴ On another occasion, Fisch called attention to the silent omission of several pages in Bergin's "transliteration" of the autobiography, asking politely but firmly, "Could you have been following Michelet [who had produced an abbreviated paraphrase in French] a bit too closely?" Thus, although Fisch would later describe himself as philosopher to Bergin's philologist, we should not conclude that verbal scrupulosity was not one of his concerns or one of his talents. Indeed, whatever the division of labor between the translators, we must say that Fisch was both philosopher *and* philologist.

Recall that Vico himself cast the *Scienza nuova* as an attempt to synthesize philosophical and philological modes of inquiry. He defined *filosofia* as that which *contempla la ragione, onde viene la scienza del vero* (that which "contemplates reason, whence comes knowledge of the true"). And he defined *filologia* as an observing of *l'autorità dell'umano arbitrio, onde viene la coscienza del certo* ("the authority of human choice [that is, human choice considered in terms of what it authors], whence comes consciousness of the certain").³⁵ Manifestly, therefore, these disciplines were modifications of the tension between *verum* and *certum* that Vico had thought central to the historicity of Roman law. The implication was that there could be no possibility of separating the content of the *Scienza nuova* from the form of its expression. Every translator of the work has labored in the shadow of this intimidating proposition. In general, the vast majority of readers have marveled at the ingenuity of the Bergin and Fisch translation. Erich Auerbach, who had himself published a German translation of

32. Max Harold Fisch to Giorgio Tagliacozzo, 27 March 1987, in Fisch, "Tagliacozzo, Giorgio," Fisch Papers.

33. Gaetano Salvemini to Max Harold Fisch, 1 August 1944, cited in Tagliacozzo (1983: 1). The comment is also something of a topos, however. Note Michelet's boast that the Italians preferred his French translation to Vico's Italian original. See Viallaneix (1959: 230).

34. Thomas Goddard Bergin to Max Harold Fisch, 27 August [no year], in Max Harold Fisch, "Vico Notes," Fisch Papers. The comment almost certainly refers to translating the *Scienza nuova*.

35. Vico (1990: §138).

the *Scienza nuova* in 1924, judged it “the most complete and accurate” translation in any language.³⁶ Perceptively, Auerbach thought the translation “very conservative” in matters of terminology, less so with regard to syntax. Bergin and Fisch had indeed made the conscious choice to break up many of Vico’s sentences, but (although Auerbach would perhaps have disagreed) I would argue that forcing readers to grapple with the strangeness and simultaneously poetic and technical quality of Vico’s vocabulary – witness *autorità* above – enables those readers to work at reenacting the overall vision that the Neapolitan thought so distinguished his work and that he had worked to convey by means of an extremely intricate or “networked” syntax.³⁷ Vico spoke explicitly about the pleasure readers were to experience in reproducing the science in their own minds.³⁸ The Bergin and Fisch translation permits that. Miraculously compact and austere, it rewards close attention.³⁹

Fisch’s terminological punctiliousness in matters of translation was perhaps most expansively attested to in a later essay, published in 1974, called “The Poliscraft.”⁴⁰ Staged as a dialogue between a political scientist, a philosopher, and a classicist (who teach the history of political thought from Plato to Rousseau, ethics from Aristotle to Mill, and ancient history, respectively), the piece argued that modern disciplinarity has divided what was united in Aristotelian inquiry. In the Greek originals, Fisch contended, there were no clearly distinct terms for what moderns refer to as “politics” and “ethics”: ή πολιτική ought to be defamiliarized as “poliscraft” (the capacity to, and knowledge of how to, act in the polis), and one should not speak of Aristotelian “ethics” at all. Aristotle never used the term, ή ἡθική. Philologically, what Aristotle had done, Fisch pointed out, was coin the adjective ἡθικός from the nouns ἔθος (“a custom or habit”) and ἔθος (“a total character composed of such customs or habits”), such that he could speak of ἀρεταί ἡθικά – excellences in habitual character.⁴¹ Decisions in translation here had implications for whether a reader might suppose that Aristotle was proposing a universally applicable science of morals or was observing excellences in the Greek polis, and Fisch concluded that there was ultimately no alternative to facing-page translations in which the tensions between source and target language could be made publically manifest.⁴²

Martha Nussbaum, then a graduate student working on her critical edition of Aristotle’s *De motu animalium*, agreed with Fisch about facing-page translations in a letter dated 10 July 1975, but she was pessimistic about the future of editions like the Loeb that Fisch was recommending. (Given the recent extension of the Loeb principle into the I Tatti Renaissance Library, perhaps she was too pessimistic.) After reading

36. Auerbach (1949: 196).

37. Fisch, “[Untitled Folder],” Fisch Papers. The first of the questions that Fisch wanted to ask Croce and Nicolini was “Break up into small sentences?” And the answer recorded there was “yes.”

38. Vico (1990: §§345, 349).

39. The translation did not please all readers. Gianturco (1950: 141) went so far as to declare it “subprofessional,” although one should add that he did not alert his own readers to a potential conflict of interest (given that, at one time, he himself had been engaged in preparing a translation of the *Scienza nuova*).

40. Fisch 1974b.

41. Fisch (1974b: 26, 30-1).

42. Fisch (1974b: 33, 48).

“The Poliscraft,” though, she referred Fisch to an essay on “The Penguinification of Plato” by Trevor J. Saunders, which she thought might well be relevant.⁴³ In Fisch’s annotated copy of that piece, the following assertion is underlined: “a translation should not lift the reader out of the ancient world, but immerse him in it; and the reader must be prepared to think himself imaginatively into that world.”⁴⁴ Fisch, it would seem, believed that reading the *New Science* should be an exercise in controlled alienation, even as Vico could be an author who spoke in the manner of a living interlocutor. In his negative review of David Marsh’s 1999 Penguin translation of the 1744 *Scienza nuova*, Donald Phillip Verene, a leader in Anglophone Vico studies, agreed. Marsh had done too much, he argued, to render Vico contemporary.⁴⁵ And the success of that edition (which, it seems, continues to outsell the Bergin and Fisch version) may well be a failure.

The most brilliant example of Fisch’s extreme acuity in sensing nuances at the border between syntax and semantics came slightly earlier in the 1969 essay, “Vico and Pragmatism.” There, Fisch established connections between Vico and the other great preoccupation of his mature intellectual life, Charles S. Peirce. At the very end of an essay replete with provocative perceptions, Fisch added a “last suggestion.” Engaging in a form of conjectural history, he asked himself what Peirce would have said about Vico’s famous *verum-factum* principle if he had encountered it, late in life. After all, Vico’s notion that the true or the intelligible (*verum*) was synonymous with the made or the done (*factum*) might well seem to be a crucial anticipation of pragmatism. Exercising at this moment an almost peerless capacity to *think* by means of the categories brought into being by grammar, Fisch proposed that Peirce would have said that if Vico had thought in Greek instead of in Latin, he might well have arrived at pragmatism, because, whereas the Latin term *factum* was a past participle doing duty as an adjectival noun, the Greek term τὸ πρᾶγμα privileged no temporal span, neither past nor future – and, indeed, it could countenance the most abstract hypotheticals too. A synonymy between the intelligible and that which *might* be done would have gotten Vico to pragmatism, Fisch thought (impersonating Peirce). There are no words for the exquisiteness of this observation. Even if, at some point, we were to discover that it had been wrong (after, say, finding some manuscript in which Peirce relayed his reaction to Vico’s principle), the suggestion is justified because its sheer acuity brings into being so many other possibilities for thought.⁴⁶

A translation is an interpretation. Many would accept that. What Fisch wanted to achieve, I believe, was a kind of doubleness in the translated text that would attest to the fact that it was, indeed, just such an interpretation. In the case of facing-page translations, such doubling may be indicated very literally. In the case of single-language

43. Martha Nussbaum to Max Harold Fisch, 10 July 1975, in Max Harold Fisch, “Poliscraft, The, Finished March 9, 1972,” Fisch Papers.

44. Max Harold Fisch, marked copy of Trevor Saunders, “The Penguinification of Plato,” 26 in “Poliscraft, The,” Fisch Papers.

45. Verene (1999: 106) – “philosophers such as Vico force the reader of any age to come to grips with what is unfamiliar and the unfamiliarity that often lies hidden in the familiar. The modern reader must come to grips with Vico’s own terminology or risk never reaching what Vico says.”

46. Fisch (1969: 424).

translations like the *Autobiography* and the *New Science*, however, this doubling had to be achieved by other means. It is my contention that the conservativeness of the Bergin and Fisch translation, especially in matters of terminology, is a means to this end. The linguistic alterity of the text, which does not leave its target language unchanged (just as the original *Scienza nuova* did not leave Italian unchanged), requires Anglophone readers to work at reconstructing the text's meaning. Because of the skill and precision of the translation, however, this work is rewarded. The reader gains a capacity to generate Vichian thought processes because the basic structure of the original – its conceptual grammar, one might say – is left intact. What this means is that the *New Science* makes it possible for future readers to engage directly in the production, reproduction, and renovation of Vico's new science.

4. Institution

In 1961, Bergin and Fisch issued a revised and abridged edition of their translation of the *Scienza nuova*. Fisch wrote a new and more substantial introduction to replace the short preface that had accompanied the 1948 version. True to his sense of the inventive power of philological scruple, Fisch organized this introduction as a primer on the key Vichian terms that appeared in the titles of the various editions of the *Scienza nuova*. In particular, Fisch drew the reader's attention to the ways in which Latin etymologies of Italian words lurked behind Vico's usages and modulated them in subtle and crucial ways. Occasionally, Vico himself would point this out. More often, the usage was tacit.⁴⁷ Fisch closed the introduction by offering remarks on a number of other key terms, one of which was *cosa*. In the original translation of 1948, Bergin and Fisch had rendered the term as "thing" (the most obvious and uncontroversial option), but in the 1961 revision they chose the more technical "institution" instead. Thus, instead of "The Recurrence of Human Things," *Del ricorso delle cose umane* (the title of Book V) was rendered as "The Recourse of Human Institutions." Some readers have been critical of the substitution; others have been puzzled.⁴⁸ In fact, Fisch's insertion of "institution" was the product of almost a decade's worth of thinking about that term and its significance both for philosophers and for historians.

Five years earlier, Fisch had addressed the Western Division of the American Philosophical Association as its president and had posed this question: "we who sit here tonight as members of a philosophical association – what have we in common besides the association?"⁴⁹ By way of answer, Fisch rejected the definition of the philosopher as a critic of abstractions, as proffered by Alfred North Whitehead, and argued for a variant: "the critic of institutions."⁵⁰ Fisch thought that Whitehead's account focused the role of philosophy too narrowly on the concept use of scientists. Fisch preferred "institutions" to "abstractions" because it allowed one to focus on a much wider array of phenomena, which he described simply as the class of things that

47. Fisch (1961: xx).

48. See, for example, Lilla (1993: xi).

49. Fisch (1956: 42).

50. Fisch (1956: 44).

had been brought into being by action, that persisted (insofar as they persisted) in the manner of habitual action, but that could be otherwise.⁵¹ In a move that surely derived in part from his philosophical inheritance from Elijah Jordan and that was continued (although rather unhappily, I would argue) in Lawrence Haworth's *The Good City*, Fisch emphasized that institutions were to be understood in terms of practices, practices most particularly that participated in the constitution of communities.⁵²

In fact, there were multiple ways in which Fisch had been practically and theoretically focused on the role played by institutions in creating community in the course of the 1950s. Beginning now to work more intensively on the history of pragmatism, Fisch emphasized Peirce's insistence that a university was *not* "an institution for instruction" but rather "an institution for study" – a term that for both of them connoted not simply research but inquiry as such.⁵³ A year after that, Fisch published the results of his 1950-51 Fulbright year in Naples where he had worked on the seventeenth-century Neapolitan *Accademia degli Investiganti*, which, he thought, had influenced Vico's sense of what a science might be and what a community of inquiry might look like.⁵⁴ Between 1950 and 1955, Fisch had served on the board of the newly inaugurated International Association of Universities, arguing for the importance of a scientific internationalism that was genuinely opposed to the increasing subordination of research to the nationalist requirements of what Eisenhower would soon dub "the military-industrial complex."⁵⁵ Having been a Fulbright Professor at Keio University in Japan during 1958-9, Fisch noted that Japanese had no terms to differentiate a college from a university, and he proceeded to set out a vision of what "the university ideal" implied for the practice of research.⁵⁶ Fisch's earlier work at the Army Medical Library in Cleveland during World War II and his subsequent dedication to the production of bibliographies and research aids, not to mention, obviously, the bringing into being of conditions of possibility for scholarship by translating Vico into English and establishing a chronological edition of the writings of Peirce, or even his ceaseless provision of questions, hypotheses, and points of departure for students and other scholars – all of this is to be understood in terms of Fisch's theoretical

51. Fisch (1956: 45).

52. In an undated manuscript that must derive from the late 1980s, Fisch noted that he had Jordan and Dewey most in mind as he was writing "The Critic of Institutions." He went on to say that "the philosopher who has done the most original work in the philosophy of institutions since then is Lawrence Haworth, in his three books *The Good City* (1963), *Decadence and Objectivity* (1977), *Autonomy: An Essay in Philosophical Psychology* (1986)." See Max Harold Fisch, "Critic of Institutions, The," Fisch Papers. In 1985, when asked whether Jordan had a similar notion of "institution," Fisch had said "I think so; I was not conscious of using Jordan's language, and I don't remember looking things up in Jordan during the time I was working on Vico. But it's quite conceivable to me that if I hadn't been a student of Jordan's, the chances of my having done this would have been very slim." Fisch *et al.*, "Interview with Max Fisch," 23-4, Fisch Papers. Compare their respective definitions: in Jordan (1956: 81), an "institution [...] is essentially ordered or legalized property"; in Fisch (1956: 44), an institution is "any provision or arrangement of means or conditions for subsequent activity, additional to or in modification of the means or conditions that are already present prior to the institution, whether present in nature prior to all institution or present in nature only as modified by previous institutions."

53. Fisch & Cope (1952: 278).

54. Fisch (1953: 1.521-63).

55. Fisch (1954b: 158-9).

56. Fisch (1959: 125-7).

investment in the concept of institution and in terms of his practical commitment to the particular kind of institution that is a research community.

While in Japan, Fisch had attended the IXth International Congress for the History of Religions held in Tokyo and Kyoto. He had delivered two papers – one on “The Creation of Universal Institutions” and another on “The Idea of Institution in the Major Religions.” In the first of these, Fisch announced that “the problem of our time is the creation of a world community,” which he deemed physically possible and spiritually dubious. Such a community, were it constituted at a governmental level and were it to become totalitarian in nature, might prove less tolerable even than its alternative – which Fisch identified as nuclear warfare and the renewed “barbarism of irradiation” that it would bring.⁵⁷ Fisch’s preference was for a proliferation of transnational non-governmental organizations, and the question that he posed to his audience was what role religion might play in such a proliferation, “to what extent the major religions of the world conduce to, or merely tolerate, or aggressively oppose, such an experimental attitude toward institutions of all kinds.”⁵⁸

In his second paper, Fisch made the connection to Vico, who, after all, had argued that religion – alongside marriage and burial – was one of the three most basic and most universal human institutions. Fisch contrasted two accounts of institutions, one rationalistic (in which institutions were brought about by design), the other naturalistic (where unconscious habits over time coalesced into accepted ways of doing things). He noted that there were many who saw the eighteenth century as a period in which these two accounts came into increasingly overt conflict, with the conservative reaction to the millennial institutionalism of the French Revolution taking center stage.⁵⁹ In this context, he argued, Vico stood for sophistication, because he saw that the law of unintended consequences meant that institutions were a complex amalgam of initiatives undertaken at particular times for particular consciously recognized reasons that over time became habits the rationale for which changed beyond recognition or was forgotten altogether.⁶⁰

I would add that, in making this argument, Fisch was in essence claiming that Vico was not to be understood as a partisan in any debate between Enlightenment and Counter-Enlightenment. If anything, Vico was an antidote to that debate. In this way, Fisch was seceding from a line of inquiry that runs from Elio Gianturco, through Isaiah Berlin and Mark Lilla, down to Zeev Sternhell.⁶¹ It is in this context that we are able to understand Lilla’s rejection of Fisch’s rendering of *cosa* as “institution.” To Lilla, this editorial choice may well have implied the presupposition that religion was merely optional for Vico (as distinct from a necessary substrate of any viable society). And, to be sure, Fisch had argued in his 1961 introduction that “Vico shares with the Marxists and existentialists the negative view that there is no human essence

57. Fisch (1960a: 723-4).

58. Fisch (1960a: 725).

59. Fisch (1960b: 514).

60. Fisch (1960b: 515-6).

61. Gianturco 1937; Berlin 1976; Lilla 1993; Sternhell 2010. For treatment (and criticism) of this Counter-Enlightenment reading of Vico, see Marshall (forthcoming).

to be found in individuals as such, and with the Marxists the positive view that the essence of humanity is the ensemble of social relations, or the developing system of institutions.”⁶²

Even such a sympathetic interpreter as Don Roberts would take exception to this assertion, when, in 1985, he asked Fisch whether Vico’s providentialism did not in fact imply that for him Man was created in God’s image in such a way that no truck could be had with Sartrean claims that existence precedes essence. Fisch simply replied that what he meant was that, to Vico’s way of thinking, the question of what a human being would be like in the absence of any human institutions or community was essentially unanswerable. This was a question, Vico said, that had destroyed seventeenth-century investigations into the state of nature.⁶³ What might be more interesting for Lilla, though, would be the admission in the same interview that, although he had been an ordained minister of the Disciples of Christ in his youth (and had preached intermittently for a year or so), Fisch – if pressed – would have to answer the question, “Are you an atheist,” in the affirmative. If religious institutions had had positive effects qua institutions, he continued, then the key thing was to ask what other institutions could achieve the same ends without “the superstitions.”⁶⁴

Even more striking for our present purposes, however, was another essay that Fisch published in Japan in 1959, entitled “The Philosophy of History, A Dialogue.” There, he appeared to argue that not just the philosopher but even the historian was to be understood as a critic of institutions.⁶⁵ This was an essay staged as a debate between a philosopher and a historian over the status of covering laws in history. Are we to understand the articulation of cause and effect relationships between two events in history as invocations of general laws that would be expressed in a multitude of cases? The historian resists the philosopher’s attempts to foist necessitarianism onto his discipline and responds by arguing that the historian is involved in the narration of the coming into being of institutions that could be otherwise. Rule-following is itself a historical phenomenon: rules develop and decay; they do not simply “hold.” Criticism of institutions is therefore always a possibility for historians, because the story of the genesis of those institutions is simultaneously an accounting of their contingency. The historian persona in the “Dialogue” is entirely explicit: “objectivity” in the discipline of history does not entail an “absence of criticism, but [rather] unreserved submission to further criticism, complete openness, withholding nothing from judgment.”⁶⁶ That is, the objective historian is not someone who refrains from praising or blaming the institutions the history of which he or she is examining. It is simply that no such evaluation may prevent that historian from considering new evidence illuminating that institution’s value. In the dialogue, the philosopher responds by saying that this all sounds rather familiar, given that he himself had recently given a talk in which he defined the *philosopher* as the critic of institutions. The historian is unperturbed

62. Fisch (1961: xxxix).

63. Fisch *et al.*, “Interview with Max Fisch,” 18-9.

64. Fisch *et al.*, “Interview with Max Fisch,” 6-7.

65. Fisch (1960c).

66. Fisch (1960c: 204).

and sees no problem with this: there is, he says, “a continuum of inquiry connecting the shortest-tethered grubbing of the historian with the most abstract and universal critiques and speculations of the philosopher.”⁶⁷

What surprises me in these various definitions and discussions is Fisch’s lack of attention to the word “critic.” “Institution” was such a crucial word for him, perhaps, that the other part of his respective definitions of the philosopher and the historian became as inconspicuous as a habit. Vichian that he was, though, this term ought to have caught his eye. If we were to channel the spirit of Max Fisch for a minute to gloss the letter of Max Fisch, we would say that “critic” connoted its antistrophe, “topic,” and that the term “critic” ought not to be understood as a person – whether philosopher or historian – but rather as a mode of inquiry. Within the rhetorical frame of reference, the *ars topica* had been a series of tactics for finding arguments; the *ars critica*, a discipline focused on adjudicating goodness and badness in inference. We can suppose therefore that, for Fisch, the critic of institutions was the person who considered whether the arguments made and implied by institutions were or were not good ones or (more deflationary) consistent ones.

When we find Fisch saying in one of his Japanese papers that “with regard to any institution it is wise to inquire what purpose it was designed to serve [and] whether that purpose is still *our* purpose,” we see the historian and the philosopher working closely in tandem to interrogate our *reasons* for continuing to practice in the future what we have practiced in the past.⁶⁸ But this is a relatively unremarkable thought. The more interesting line pushes towards what we might term the “topic of institutions.” It is the sheer variety and historical vicissitude of practices in any given institution that points out not only their contingency but also the hitherto unarticulated possibilities lying between, among, and at odds with these practices. The point is not simply to decide whether a principle of sufficient reason rules over our institutional practices. The point is rather to find ways of forever finding *new* ways of achieving our goals and of achieving a clearer sense of what *new* goals we might pursue. Fisch’s most basic article of faith, it seems to me, was an ever-open future – the irrepressible creativity of inquiry. As such, his more basic allegiance was to topic and not critic.

5. Style

Using Max Fisch to think about Max Fisch is, in point of fact, precisely the kind of doubling of – or, better, extrapolation from – the historical record that Fisch himself began to use with greater frequency in his later work. Based on the published and unpublished sources that we have, it would seem that this was an unconscious development more than a conscious one. As such, one can only offer a theoretical account of this practice by making explicit several assertions that, if adopted and implemented, would lead to the kind of practices that we see in a number of essays dating from the 1960s and 1970s. One might describe the focus of this section as a close analysis of style. “Style” though must not be understood as something optional

67. Fisch (1960c: 205).

68. Fisch (1960b: 516).

that is added to a thought once its content has been determined. Genre, mode, and device are just as constitutive of thinking in the context of historiography as they are in thought more generally. Thought events come into being through and because of such frames and presentations. As Fisch would say, himself channeling Vico and Peirce, “language is not merely *a* medium for the communication of thought but is *the* medium of thought itself.”⁶⁹

Fisch’s “A Chronicle of Pragmatism, 1865–1879,” which appeared in 1964, was indicative of one recurrent mode of Fischian analysis. The article, published in *The Monist* as a supplement, took an almost notational form. Broken down into a year-by-year and month-by-month accounting of events in Peirce’s mental life, the essay was almost positivistic in its desire to set out every piece of possible evidence before proceeding further. Only at the very end did the reader receive seven discrete conclusions. Indeed, although the adjective “positivistic” has become more of an insult than a descriptor, one ought really to say that positivism was *precisely* what Fisch was after: like a sequence of promulgations in positive law, a firm chronology (which he described as “the prerequisite of history”) was what Fisch wanted.⁷⁰ Indeed, on the odd occasions that Fisch managed to specify points in Peirce’s mental life on a day-by-day basis, one detects in him a frustration that the process of decomposition could not be carried further – hour-by-hour, minute-by-minute, sentence-by-sentence would seem to have been the desideratum. We see therefore that the atomization implied by the chronicle format was but a stage in an ironic process, for it was the connections between and among these points that were crucial, connections that drove these points towards a continuum of perceptions and the implied inferences that selected them.

Following Peirce (and a long tradition in the history of thought), Fisch understood thinking as itself a kind of internalized dialogue. To him, this constituted an alternative to the more common way of understanding speech as a kind of externalized thinking. For this reason, we ought to understand his experiments with the dialogue form itself as attempts to capture and analyze the sequence, the strophe and antistrophe, of thinking itself. Thus, dialogue and chronicle were two literary modes that only *appeared* to be diametrically opposed. In fact, they were extremely similar in their aims. In “The Poliscraft” of 1974, Fisch was much more identifiable with the figure of the classicist than he was with the other two interlocutors, a political scientist and a philosopher. Therefore, we may think of this essay as an attempt to anticipate (or perhaps report) the kind of argument that members of these three disciplines might find themselves involved in, were they to examine seriously the question of how all three could examine the same texts within entirely disparate disciplinary frameworks.⁷¹ “The Philosophy of History,” from 1959, was a little different. As Fisch clarified in 1985, his person is to be identified neither with the philosopher nor with the historian but with both equally.⁷² Fisch, thus, was deliberately doubling himself in order to interrogate the nature of his own statements. But his process was not simply a critical

69. Fisch (1976: 403).

70. Fisch (1964: 441).

71. Fisch (1974b).

72. Fisch *et al.*, “Interview with Max Fisch,” 6, Fisch Papers.

one. It was properly topical in the sense that dialogue opened up a distance between the interlocutors, a discursive *topos* that – perhaps in the manner of a vacuum – called into being new positions, new considerations, new questions.

It is in the context of this line of thinking that we should interpret another of the seemingly innocuous devices that Fisch used to represent his historical and philosophical investigations. Take his 1973 essay on “Hegel and Peirce,” for instance. There, we find Fisch engaged in an enumeration of what he argued were the twenty-one discrete steps that Peirce worked through when he was using Hegel to revise the categories of Kant.⁷³ Enumeration is almost an anti-style, a philosophical procedure feigning utter sobriety. Within a Vichian frame of reference, such enumeration might appear to be something akin to Cartesian soritic, because it gives the impression of reveling in the utmost conceptual explicitness, leaving nothing for the reader to infer. The appearance is misleading. Cartesian soritic is an inferential form that begins with intuitions held to be indubitable and proceeds by way of deductions that follow necessarily from the previous assertions. In contrast, Fischian enumeration begins not in indubitability but rather in a sliding from authority into doubt. Witness his account of the origin of Peirce’s thinking on categories, which becomes ostentatious with just a little emphasis: Peirce “at first accepted Kant’s list, *as if from Sinai*.⁷⁴ But inquiry begins in doubt. Just so, a forty-year inquiry sequence was, in Fisch’s opinion, precipitated by Peirce’s use of Kant against Kant: “he began finding among the categories in Kant’s list relations other than those that Kant himself pointed out.”⁷⁵ And the key term in that sentence is “finding.” What we have here is an unannounced hypothesis: that for Peirce and Fisch alike the history of philosophy was an *ars topica* and not an *ars critica*.

We see that, from a stylistic point of view, one of the fundamental facts about intellectual historiography is disquotation. In turn, disquotation is an iteration of the kind of topical inquiry we have just seen Fisch engaged in during “Hegel and Peirce.” Absolutely crucial here is the movement from what, for instance, Kant *actually said* to what he *might well have said* (but did not). When, as Fisch supposed, Peirce was “finding among the categories in Kant’s list relations other than those that Kant himself pointed out” what he was doing was impersonating Kant in order to go further into Kantian thinking than Kant himself had done. Kantian potential was being derived from Kantian act. Expressed in the terms of intellectual historiographic style, the potentialities of paraphrase emerge from the actualities of quotation. Every intellectual historian struggles, consciously or not, with the complexity of the shift from *oratio recta* to *oratio obliqua* and vice versa. The reasons for this are not just that there can be no paraphrase that is not always already an interpretation but also that indirect speech has an impetus and a creativity of its own. For the simple reason that intellectual historians do not wish always to be interjecting with markers such as “said Peirce,” attributed indirect discourse very often slips – in ways that are impalpable to writer and reader alike – into a kind of free and indirect roving.

73. Fisch (1974a: 174-8).

74. Fisch (1974a: 174, emphasis added).

75. Fisch (1974a: 174).

Although Fisch resisted such elision of attribution to an extent that distinguished him (his commitment to philology was as strong as his commitment to philosophy), we do find a good deal of this paraphrastic mode in that Fischian gem, “Vico and Pragmatism.” Thus, we find in the text the following assertions: “the logic of deduction is not the logic of science; experiment is central to the logic of physics, not just an adjunct; it is heuristic and inductive; it belongs to topic, not critic; and that is why the new critic of the Cartesians, who neglect topic as the Stoics did, cannot be the logic of science.”⁷⁶ Who is the author of these assertions? Vico, Peirce, Fisch? Read in context, it is clear that this is paraphrase, with the attributor “said Vico” elided, but there is no easy way to return this abbreviated *oratio obliqua* to its original form, as quotation. Too much confection has taken place in the meantime, and the true author here cannot be understood as Vico or Peirce or Fisch but as a curious and creative synthesis of the three. In this way, Fisch’s extraordinary apostrophe at the end of the essay, in which he impersonated what Peirce would have said if he had read Vico, was simply the stylistic counterpart of a mode already well established in the body of the essay itself. The invention of counter-factual quotation was disquotation reversed.

One final example will suffice to confirm, for the moment, the suspicion raised here that the stylistics of Fischian historiography have real significance. In the 1977 piece, “American Pragmatism Before and After 1898,” we find ourselves in an entirely different stylistic universe. Counter-factuality has metastasized from the “last suggestion” of 1969 into a thought experiment that organizes the entire essay. The essay pivoted on the first usage of the term “pragmatism” in a public address, by William James in 1898. Fisch bade author and reader to “imagine ourselves as members of the Philosophical Union [...] attending James’s address, reading it soon afterwards, [and] being moved by it.”⁷⁷ Behind us, lay the reading we had done to prepare ourselves for the event – namely, James’s *The Will to Believe and Other Essays in Popular Philosophy* – and the history of pragmatism from 1865 to 1898 that we would be moved by James’s talk to investigate. Ahead of us from 1898 onward, lay the future history of pragmatism as we were continuing it in our present intellectual labor and by others as yet unknown to us. This temporal manifold of past and future, pluperfects, future perfects, and hypotheticals all perceived from the vantage point of a very particular present was the frame within which Fisch wanted to situate all of the minds that were or would be party to his essay. It was a frame, constructed out of a historic present tense, that asserted the indivisibility of historical and philosophical inquiry. Just so, it culminated in the tasks that Fisch himself took to be simultaneously his own and those of the communities of investigation in which he was immersed.

6. Semiosis

As Fisch was narrating this culmination of “American Pragmatism Before and After 1898” for the communities of inquiry that existed in 1977, he mentioned – almost, but not quite, as an aside – that “work has begun on a new and much more

76. Fisch (1969: 410).

77. Fisch (1977: 79).

comprehensive edition of [Peirce's] writings, in chronological order, including a large portion of still unpublished work.”⁷⁸ He was, of course, referring to *The Writings of Charles S. Peirce: A Chronological Edition*, which was to supersede the thematically organized *Collected Papers* edition of Hartshorne and Weiss. By now it should be clear why Fisch believed with such conviction that a chronological edition of the writings was so essential. It was not simply that no one could *understand* Peirce who did not know how the myriad iterations of his philosophy constituted lines of inquiry pursued – if not continuously then at least serially – from the 1860s until his death in 1914. It was also that no one could hope to *continue* those lines of inquiry who did not have access to such a temporally indexed archive. After all, a trajectory can only be projected if the data points one possesses are ordered chronologically, and the seedbed of inference is the topical motley of assertions or proto-assertions than spans particular moments of inquiry.

In truth, this was another point at which Fisch was adopting the assertions of the historical figures he studied and transforming them into assertions made in his own voice and put into practice by his own person. After all, it was Peirce who had told him that “all thought is in signs.” And, from Peirce’s various explications of this point, Fisch drew the paraphrases that “every thought continues another and is continued by still another,” that “there are no uninferred premisses and no inference-terminating conclusions,” and that “inferring is the sole act of the mind.”⁷⁹ If semiosis was at work (and in dyadic as distinct from triadic action it would not be), then there was no object that was not a sign and no sign that did not bring into being an interpretant.⁸⁰ One task that the historian and the philosopher shared was to be forever and creatively aware of the possibilities implicit in this semiosis without end. Equally, this work consisted either in seeing whether some of these potentialities had in fact been carried into actuality in the past or in asking whether one might wish to do so in the future.

Fisch was himself a vehicle for precisely this kind of semiosis – simultaneously historical and philosophical – when on 23 January 1980 he wrote to Bernhard Kandler at Cornell University Press in reference to a manuscript titled “Giambattista Vico’s Science of Imagination” by Donald Verene.⁸¹ Fisch indicated that he was unable to provide “a detailed and formal evaluation” of the manuscript, but he thought it ought to be published. What he did want to say was that the book brought into focus a new and interesting line of inquiry. Verene, he related, was the editor of the journal, *Philosophy and Rhetoric*; Vico had been professor of Latin Eloquence at the University of Naples; and Peirce, he estimated, “was perhaps the greatest of those philosophers who have not only devoted themselves to retaining rhetoric along with grammar and logic, and to developing it further, but have made it preeminent in the trivium.” Peirce’s achievement in this regard, he argued, was to see the error of those who took rhetoric to be nothing more than “a bag of tricks for persuading an audience

78. Fisch (1977: 105).

79. Fisch (1978: 36).

80. Fisch (1978: 41).

81. The book was published soon thereafter as Verene (1981), and it went on to become one of the key texts consolidating the status of Vico in the Anglophone world.

or a readership of something that is in the persuader's interest, regardless of its truth or falsity." Fisch went on to say that people failed to recognize this because, in his later work, Peirce used the term "methodeutic" in place of "rhetoric."⁸² Nevertheless, rhetoric was not to be understood as an art of persuasion. It was "the art of discovery." Indeed, it was the art of semiosis.

Fisch's realization here was something like an epiphany. Like a Peircean investigator becoming aware of the reasons for his guessing only *after the fact*, Fisch was becoming conscious of the previously hidden inferential connections among the various projects of his life. To be sure, Fisch had already established connections between Vico and Peirce in the 1969 article that asserted an essential parallel between Vico's path from nominalism to realism and Peirce's and that also identified Vico's *verum-factum* theory as a kind of proto-pragmatism. And before that he was aware of the explicit connections that took him from Roman law to Vico to American jurisprudence and the prediction theory of Holmes. But the rhetorical connection was new; or rather, Fisch's attention to that connection was new. And reading Peirce into this rhetorical lineage was his confection, not Verene's. Indeed, if we look back at Fisch's work with this issue in mind, we are struck by his former ignorance and disattention. In a letter to Bergin (written before the winter of 1942/3 and in connection to their translation of the *Vita*), Fisch confessed that of all the words in the Vichian lexicon the two giving him the most trouble were *ingegno* and *acutezza* – the key terms of Vico's Baroque-inflected reception of classical rhetorical theory. He was struggling to find satisfactory uniform translations and supposed that a literary historian would know more about this kind of thing.⁸³ Likewise, in his 1971 essay, "Peirce's Arisbe," Fisch noted that Peirce, having found a life's vocation reading Whately's *Logic* in 1851, moved next to a work on rhetoric that "set [him] thinking for [himself]."⁸⁴ But the significance of the connection was not expanded upon. Indeed, in a footnote, Fisch went on to say that this thinking for himself had led Peirce to compose a treatise on "The Dynamics of Persuasion," only to add that he had lost the reference to the manuscript in which Peirce gave this title.⁸⁵

To this list of missed opportunities, one might add Fisch's introduction of Isaiah Berlin in 1974, which focused on the notion of zetetics as a "general science of research" without connecting Vico and Peirce.⁸⁶ Moreover, when Fisch did go further into Peirce's rhetorical inheritance (as in the 1978 essay on "Peirce's General Theory of Signs"), the connection to Vico was not a factor.⁸⁷ Again, in 1954 Fisch had done significant work in tracing the influence of Alexander Bain's conception of belief (as that on the basis of which a man was prepared to act) on Peirce's development of pragmatism, but he did not in turn explore the rhetorical origins of Bain's conception.⁸⁸

82. Max Harold Fisch to Bernhard Kendler, 23 January 1980, in Max Harold Fisch, "Verene, Donald Phillip," Fisch Papers.

83. Max Harold Fisch to Thomas Goddard Bergin, undated, in Fisch, "Vico Notes," Fisch Papers.

84. Fisch (1971: 189), citing Peirce, ms. 958.

85. Fisch (1971: 208n9).

86. Max Harold Fisch, "Introduction of Sir Isaiah Berlin," Fisch Papers.

87. Fisch (1978: 34-5, 61-2).

88. Fisch 1954a.

But perhaps the most persuasive evidence for the hypothesis that around 1980 a matrix of connections was becoming explicit that had to that point remained implicit in Fisch's work came in the two installments of "The Range of Peirce's Relevance" – published in 1980 and 1982, respectively. In 1980, "the logic of discovery" connoted a tradition running through Peirce, Dewey, and Popper – with Vico and rhetorical *inventio* nowhere to be seen. In 1982, Fisch was demonstrating an awareness of "the new rhetoric" of Charles Perelman and Lucie Olbrechts-Tyteca.⁸⁹

The point here is not to fault Fisch for not being even more ingenious than he already was. The point is simply to identify as many lines of inquiry as we can into the connections among Vico, Peirce, and Fisch, rhetoric, semiosis, and the logic of discovery. Moreover, we should understand that Fisch's own eventual perception of the continuity running through Vico and Peirce on the issue of discovery was one that made sense of his double identity as historian and philosopher. What was "scientific discovery" in the context of twentieth-century philosophy had been *inventio* to Vico and all those from antiquity to early modernity who had been invested in the rhetorical tradition. Fisch intuited that this continuity (not identity) allowed one to think of intellectual historians as persons who became immersed in the thought of past thinkers to the point that they could begin to bring the languages of those thinkers back to life – to, as it were, learn the grammar of those dead languages and begin to speak them again with a mastery permitting them to bring new configurations into existence, to fashion sentences that were grammatically correct according to the parameters of a dead conceptual language but that had not been uttered before. Qua historians, such individuals would be wanting constantly to compare their inventions to the historical record, to see if there were ways in which their innovations had, in fact, been anticipated. In that event, the innovation would become something like a verified prediction. Insofar as such historians of thought could also be thinkers in their own right, however, they would experience a falsified prediction – that is, an innovation that turned out *not* to have been anticipated in the historical record – as a discovery that they themselves might assert in their own name. As such, the history of thought would remain there, always, a reservoir of potential thoughts never yet brought into actuality, waiting for the moment at which some chance connection would transform them from mute philological objects into signs replete once more with their own interpretants.

7. Conclusion

In the extremely famous and still influential 1969 article alluded to in the introduction to this paper, Quentin Skinner argued that historians of ideas ought not to be in the business of looking to the past for their beliefs: "we must learn to do our own thinking for ourselves," he said.⁹⁰ History was not a series of responses to problems that were eternal and unchanging. Not simply the answers but even the questions themselves – they evolved over time. As a result, the best that history could

89. Fisch (1980: 272-4); and Fisch (1982: 133).

90. Skinner (1969: 52).

offer, over and above antique erudition, was exorcism. That is, the ephemerality of questions in the history of thought ought to demonstrate to us that the answers themselves had a highly contingent relevance. Only under certain conditions were particular intellectual formations decisive, or even useful. Where the historian could dredge up possibilities from the past that had been foregone and covered over, the upshot ought not to be the reinvigoration of a past research agenda but rather an instant of defamiliarization. The strangeness of the past could reveal the strangeness of the present, for each was but a contingent way station. In response to accusations that he turned historical inquiry into a form of mere antiquarianism, Skinner invoked Foucaultian archaeology (rendering the present strange) and Nietzschean genealogy (occluded possibilities from the past gave one pause, made one ruminative).⁹¹ But these were oddly unsustained gestures. The divisions of labor stood: historians of political thought on one side, for instance, political theorists on the other.

Max Fisch constitutes an alternative to any intellectual historical method insisting that practitioners remain agnostics about the value of the ideas they study. It is the chief contention of this essay that he is a paradigm for intellectual historians, a paradigm both in the original Greek sense of an example and in the derived contemporary sense of a framework within which the community of research can proceed. Indeed, it is precisely such doubling of the philological object qua example into a carapace for ongoing action and thought that Fisch explored in a variety of ways during his half-century of creative intellectual work. Law was a zone of interpretation where the virtual qualities of meaning became manifest. There, the letter of a decision ought to be understood in reference to the future. Some might think of that future as predictable, but the history of legal languages and institutions demonstrated that it was not. As such, the particular judicial acts of particular courts were transformed into precedents with unintended consequences, and example became framework. Translation was a training in the extraordinarily subtle syntactic and semantic rigors of entering into an alien language. The point was not simply to achieve competence in, say, Italian. The goal was an ability to enter into the structure of another thinker's modes of invention, to the point that one could construct thoughts – some reconstructed, some new – in the style of that thinker. This, moreover, was a goal that a translator could achieve only by leaving a good deal of the interpretative work to the translation's readers. A translation should be strange and resolute – a philological fact of some inexplicability – in precisely the degree that would provoke such readers to begin to learn that writer's terminology and lines of inquiry for themselves. In this way, a translation should become something like an institution – that is, a framework for action that is not so tightly ordered that it cannot, by means of the variety of its injunctions and practices, stimulate the generation of new practices or improvisations on the themes it established. And, even as Fisch was literal-minded enough to understand such institutionality in some very concrete, almost bureaucratic ways, he was also enough of a poet to see that the task of discovering and exploiting the spaces *between* assertions made by figures become crucial in the history of thought was, in large part,

91. Skinner (1998: 112, 118).

a stylistic task that required experimentation and variety. Finally, although he was tactful in this regard, Fisch did not hesitate to practice the beliefs he appropriated from the past intellectual initiatives that he thought important. He did his thinking for himself precisely by adopting, adapting, and cobbling together the thought sequences of those he valued most. This was, in fact, an appropriation of Peirce's account of semiosis. The meaning of any given sentence was to be understood not only in terms of the prior sentences to which that sentence was reacting but also in terms of the subsequent sentences that such sequences brought into being. If some of those sentences were Vico's, some Peirce's, and some Fisch's, that did not matter.

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