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THE QUESTIONING ATTITUDE: QUESTIONS ABOUT DERRIDA

Martin Stone

I. AUSTIN'S NAIVETE

[D]oes the quality of risk admitted by Austin *surround* language like a kind of *ditch* or external place of perdition which speech . . . can escape by remaining 'at home' . . . in the shelter of its essence or *telos*? Or, on the contrary . . . [i]s that outside its inside, the very force and law of its emergence?

—Derrida¹

Readers of Derrida will know: Everything depends on the thought, or the right representation of the thought, that in reading a text, or in our concourse with meanings generally, mistakes or misunderstandings are “*always* possible”—that they are “in some sense a necessary possibility” [J.D.’s emphasis].² At least in Derrida’s essay on J. L. Austin, that appears to be the main issue. Austin is naive, according to Derrida—still unwittingly bound to a metaphysical tradition he wishes to escape—because, even while acknowledging this ubiquitous possibility of mishap (“infelicity,” Austin calls it), he doesn’t give it the right cast or expression. Austin doesn’t “ponder,” Derrida says, the fact that a “misunderstanding” which is *always* possible can’t, for that reason, be quite the simple “misunderstanding”—it can’t, in opposition to “correct understanding” have quite the substance—people are inclined to suppose. What *is* it then—this misunderstanding which is *always* possible? It must be considered not just a negative thing (like a rainy day, even if it rains everyday), something which afflicts our speech—acts like a bad patch (or like a storm around a shelter), but rather, as Derrida says, “its internal and *positive* condition of their possibility.”³

Derrida depicts Austin’s failure like this. Austin doesn’t

¹ JACQUES DERRIDA, *Signature Event Context*, in LIMITED INC, 17 (Samuel Webber & Jeffrey Mehlman trans., 1988).

² *Id.* at 15.

³ *Id.* at 17 (emphasis added).

“interrogate[] as an essential predicate or as a *law*”⁴ those risks of infelicity to which he has described speech as everywhere exposed. Instead he puts those risks on the *outside* of a “field whose organizing center remain[s] *intention*”⁵ That is what makes him philosophically exemplary:

Austin’s procedure is rather remarkable and typical of that philosophical tradition with which he would like to have so few ties. It consists in recognizing that the possibility of the negative (in this case, of infelicities) is in fact a structural possibility, that failure is an essential risk of the operations under consideration; then, in a move which is almost *immediately simultaneous*, in the name of a kind of ideal regulation, it excludes that risk as accidental, exterior, one which teaches us nothing about the linguistic phenomenon being considered.⁶

The “exclusion” or “ideal regulation” of the risks arising from the exposure of speech (and indeed any intentional action) to infelicity, to the world’s ever-changing scene of circumstances is, for Derrida, the constitutive feature of the “metaphysical” in human thought. Metaphysics *is*, for him, this failure to represent (or to “think,” he likes to say) the circumstantial—everything having to do with the world, the body, the sign, spatiality, the side-by-side, the situation of human being—as structurally integral to those mental or spiritual items (meanings, intentionality) to which they are classically opposed. This failure, he thinks, repeats itself over and over. Austin is only a further example. But Derrida finds Austin remarkable partly because this repetition of the tradition happens behind his back, against the grain of his philosophical talent and effort.

Despite the considerable attention already given to this exchange—it is fair to say that it helped bring Derrida and (Derrida’s) Austin into the curriculum of literature departments—I think it is worth re-hearing the issue. The charge is that Austin describes the standing vulnerability of speech to the risks of infelicity well enough, but then fails to take such risks “into account” in the right way, i.e., in a properly legislative, law-like, or necessity-exhibiting way. In work from which I shall break-off here merely a preliminary piece, I suggest that this charge depends on too narrow a notion of how the necessity in question may be grasped or exhibited: Austin has exhibited it, but in what some may call a *practical* way. The preliminary piece of this I will present here concerns the interrogative attitude which Derrida found missing in Austin: It concerns the nature and scope of Derrida’s own form of account. And to get clearer about

⁴ *Id.* at 15.

⁵ *Id.*

⁶ *Id.*

this, we might, I think, do well to start with a *possible misunderstanding* of Derrida's point, the one he is making when he says, emphatically, that misunderstanding is *always* possible.

II. THE HEARSAY VIEW

[O]ur investigation, however is directed not towards phenomena, but, as one might say, towards the "*possibilities*" of phenomena. We remind ourselves, that is to say, of the *kind of statement* that we make about phenomena.

—Wittgenstein⁷

We know that a misunderstanding is possible *here*. We know it, not just in the abstract way which Derrida speaks about—viz., "misunderstandings of anyone, anywhere, you know, are *always* possible" but because we see it happening. It happens often in fact, so it is not surprising that Derrida often endeavors to dispel or avert it, the better to be understood. The misunderstanding consists in thinking this, that what Derrida must be driving at here is that you can't ever really decide what a text means. Maybe this comes to the same thing as something else Derrida is supposed to think, namely that making some kind of "decision" about what a text means is all you can *ever* do—i.e., there isn't really any truth to be had in such judgments, just so many different interpretations.

Martha Nussbaum is an example of someone who reads Derrida in this fashion—as saying that texts have no decidable meanings (whatever that means). She worries, then, that Derrida is putting "free play" in place of reasoned ethical commitments.⁸ This is how Derrida

⁷ LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* §90 (G.E.M. Anscombe trans., 3d ed. 1972).

⁸ See Martha C. Nussbaum, *Skepticism About Practical Reason in Literature and the Law*, 107 HARV. L. REV. 714, 724-25. (1994). "Free play," it seems worth remarking, isn't the only alternative to "reasoned" ethical commitments. I have never *reasoned* my way, for example, into the wrongness of killing people for sport, and, in fact, I'm somewhat doubtful that the right way to teach this point, or to firm it up if it becomes doubtful, is to reason about it. But it is an ethical commitment nonetheless. Nussbaum, to be clear, has no special interest in Derrida. He is only a recent example of someone saying what was said in a more "fully worked-out" and "methodologically self-conscious" way by the Pyrrhonists. *Id.* at 716. Many others—e.g., Stanley Fish, Richard Posner and Robert Bork—are also, for Nussbaum, modern-day Pyrrhonists. And in Nussbaum's view, all such Pyrrhonisms are to be charged with threatening the grounds we have for respecting others or responding appropriately to their suffering. We need such grounds, Nussbaum thinks, if we are to be able to see our ethical responses as rational ones; and to have such grounds, she feels, is to have (or to apply) a theory of "good human functioning," something to which Pyrrhonism, ancient or modern, is inimical. *Id.* at 717. Something seems a little off here, because it isn't just "Pyrrhonists" who don't

or “deconstruction” gets represented, and adjudicated, in the *Times* and other places as well. Remember, the rules against hearsay testimony don’t apply outside the law.

There isn’t any *one* good explanation, I think, of how Derrida comes to be read this way, except to say generally—what Derrida has taught people to say—that the text here exceeds its context. But as that idea characterizes any text—“iterability” or “citationality” are what make language, not what make *commentary* possible—it is of course uninformative. Let’s be clear: The hearsay view isn’t an innovative interpretive “decision”; it is a view which arises when the context of Derrida’s writing goes missing completely.

Here’s an example which suggests the kind of thing which can happen when the context goes missing. It is probably too simple an example actually to have confused anyone, but that is its virtue—things will get complicated soon enough. “Misunderstandings are no accident, they don’t just *happen* now and then,” the deconstructivist says. Or if he doesn’t, let us imagine someone saying that. It is a natural thing to say, rather like

(1) “It doesn’t simply *happen* that democratic countries hold elections”; or

(2) “It is *no accident* that liberals support the right of free speech.”

These are ways of saying that these things have a little more categorical kick to them: If you understand what *kind* of thing they are, you understand that certain predicates apply. “Meaning” is such a *kind* too: Whenever it is present, responsive judgments are characterizable as either understanding—as properly informed by it—or not. (Meaning, as I shall put this later, has a “normative aspect”). As this is fairly obvious, it requires a rather special context before it becomes an interesting thing to say. But take away that context (whatever it is) and let someone say “misunderstandings don’t just happen now and then.” Then it might be felt: Whatever else could this mean but that “misunderstandings” happen literally all the time, that they *always* happen? That slides us toward the hearsay view—it is a *possible* misunderstanding.

Of course, the equivocation here is easy to hear. Someone who uses the “happens” expression in the way I’ve imagined—to remember what kind of thing something is—isn’t really asserting or denying anything. That is, in such a context, “happens” doesn’t

ground ethics in a theory of “good human functioning.” *Id.* Kant (and many other ethical rationalists—including, on some readings, Aristotle) doesn’t either. Nussbaum alludes to some recent discussions of ethics by Derrida, but ignores them commenting that Nikidion (the fictional truth-seeking student of her essay) “feels entitled to read [the] earlier texts without the hindsight supplied by the new work, which seems to represent a shift in position.” *Id.* at 725 n.52. But how is Nikidion suppose to know whether Derrida has “changed position” without considering what he says? And, even if he has, wasn’t Nikidion trying to find the truth?

function as it does in, e.g., “It doesn’t happen to rain much around here,” which means: it happens not to. In (1) above, it rather isn’t a *question* of any kind of happening, one way or another. This much is easy to see, but one of its implications is perhaps less so: Instead of saying that misunderstandings don’t just *happen*, someone wishing faithfully to express the same point could also say: “*True or correct* understandings don’t just happen; they are necessary possibilities, structurally speaking, wherever there is meaning.” Now that sounds like the very negation of the hearsay view! Yet the difference between this and “misunderstandings are always possible” is merely imaginary. For that is how it is with any “possibilities” that show what kind of thing something is. To take another example, it is of course no *accident* that the clerk may give you the wrong change; but neither is it any accident that he may get things just right. Why should it even be thought challenging to say that misunderstandings of a text are *always* possible? It would seem only to be a way of remembering this: that texts are the kind of thing which can be correctly understood.

III. THE PHILOSOPHICAL CONTEXT AND THE PRIORITY OF THE QUESTION

That the hearsay *is*—in truth—a misunderstanding can be explained (apart from the sheer absurdity of the resulting doctrine) like this: What always goes missing in such a view (but in ways harder to see than in Section II) is just the *philosophical* context in which things like “a misunderstanding is always *possible*” seem to be worthwhile things to say. (Say this to anyone doing any real work with texts—other than philosophizing—and they are apt to look at you blankly: “Sure, now can we get on with it—how much do I owe you?”) A rather special intellectual difficulty is needed to get things off the ground here. And to so much as get Derrida to *speak*, you’ve got to draw some distinctions, and say something like this. What is at stake here, or put at issue, is *not* whether there are correct or true uptakes of a text (and *not* whether they don’t in fact occur fairly reliably, the mis-takes being only now-and-then), but rather: how such things, when they do occur, are *possible*. What is at issue, then, lies in the nature of a sought-for *account* of meaning, and—as will emerge—in a claim about the necessity of giving such an account.

Derrida’s acolytes call this account a “quasi-transcendental” one—or at least many of those who have made it beyond the hearsay view do. (Not all of Derrida’s followers are—in the sense of what is always possible when there is meaning—*following*). The

“transcendental” in this formula refers of course to Kant, who decisively turned philosophy toward such a form of questioning, one which seeks to discover (what both Kant and Derrida call) *laws*. What the word “quasi” adds or subtracts here is much less clear. It suggests that Derrida offers such a law-like form of account only in some knowing or strategic way. He doesn’t *really* think there’s much salt in this traditional philosophical project (i.e., of describing the possibility and limits of language, its disobedience of notional conditions of “purity”), but he thinks that it is a good idea to play along as if there were, so as to complicate the project and perhaps twist free of it from inside.⁹

But quasi or not, wherever there are transcendental doctrines there is also a *question* which calls for this type of doctrine, and the question is really the primary thing, in two senses. First, it sounds out on its own, even apart from the particular answers given to it (but not—as just seen (Section II)—the other way around). Second, the question determines how the answer is to be taken, and even, as I will suggest, what the terms of the answer will *have* to mean.

Derrida writes out of an awareness of this second point. He discusses it,¹⁰ but he also applies it in his writing, for he constantly invents new terms—for example, *differance*, *arche-writing*. If we ask why that is—why the proliferation of technical terms is such a pervasive feature of his style—the answer would seem to be this: Such terms make perspicuous (in a way that words like, say, “interpretation” don’t) that there is no knowing what their author is about apart from the philosophical question which is their context and in which they have been called into service. The point of such terms is that they wear their uselessness outside of philosophy on their face. (*Differance*, as Derrida remarks, “is neither a *word* or a *concept*.”)¹¹ Of course, this is also the point which began to appear in Section II: address Derrida’s remarks about “always *possible*” to the wrong question and what you get is the gibberish about it being impossible to decide what a text means.

Now Derrida’s question, I will suggest, is this: How is it possible for a text to have meaning, just *as such*? The primacy of the question, in the first sense above, is seen in the fact that a number of *different* doctrines always come into play here. For example, besides the various “deconstructive” answers (“*differance*,” “*arche-writing*,” “active interpretation,” “iterability” and the like), there are also


⁹ See, e.g., Derrida, *supra* note 1, at 152, 21.

¹⁰ See Jacques Derrida, *Differance*, in *SPEECH AND PHENOMENA, AND OTHER ESSAYS ON HUSSERL’S THEORY OF SIGNS* 158-59 (David B. Allison trans., 1973).

¹¹ *Id.* at 130.

doctrines like the “Platonistic” one Derrida discovers in Husserl (Meanings—pure mental entities of a sort). Such metaphysical doctrines, we are given to understand, are being criticized or complicated—or in some other way messed-around with—by the deconstructive doctrine. And one could mention other doctrines here, like the so-called “pragmatic” teaching that it is an “interpretive community” or a “social practice” which makes it possible for a text to have meaning, or even the older teaching that it is Ideas in God’s Mind which is the ground of possibility of any sort of explanation of a text’s meaning. The *question* is primary (in the first sense above) because it is the common space of these different doctrines, the way they speak to or oppose—or otherwise operate on—each another.

IV. GENERALIZING THE QUESTION: INTENTIONALITY, NON-NATURALNESS

But how did I get to this—“the possibility of *meaning*”—when I began by talking about truth or correctness? The stress on a misunderstanding which is “*always possible*,” isn’t, I said, a point about whether anyone ever *correctly* or *truly* understands. Rather it is about the conditions under which it is possible to employ such terms—to assign these “values” Derrida says—in the everyday way we do, giving them application to some people’s uptake but not—e.g., Nussbaum’s or the *Times*—to others. Now the connection between these two matters—truth or correctness, on the one hand, and *meaning* on the other—lies in this, that meaning has a *normative* aspect. The point can be developed like this. Whenever there is anything which *means* something—let’s call any *bearer* of meaning a “text”—then there are always other, spacio-temporally separated things—let’s call them “responses” (explanations, exemplifications, glosses, followings, applications, observations, etc.)—which stand in the following relation to the text: The responses are either *in accord* with the text or not, either *correct* ways of responding (going on, taking things up) or not. This normative relation to further happenings or bits of linguistic behavior is just what distinguishes any sign which has meaning from random scribbles (noises or marks) which don’t: meanings *sort things out*. There is no such thing as a *correct* response to the mark “” at least until someone gives it a meaning or explains how it is to be used (which can be done fairly easily); whereas there *are* correct and incorrect ways of following the Health Code or following Derrida’s arguments, even if correct uptake happens with the Code rather more reliably—thank God, or thank “*differance*” or whatever makes this possible—than with Derrida.

Wherever we speak of “meaning,” we will have to be able to make use of normative notions like “correctness” or “accord.” And this is why the question of how correct uptake (or mis-take) is possible is part of the more general question: How is *meaning* possible? The latter is a more generic version of many more concrete questions we might ask: How is correct following, illustrating, applying, describing, etc. possible? Which of these more concrete questions we *do* ask depends on the context and the type of text involved. For example, a typical “response” to a legal text is to follow or apply it. That this is so—that the meaning of such texts is carried through into particular “cases”—is part of what makes them *legal* texts. (It is no accident that the law is followed, or not followed: this shows what kind of thing it is.) In the case of literary texts, the response to meaning obviously has a different form. (It doesn’t just happen that we don’t *apply* literary texts: this goes to the kind of thing a literary text is.)¹²

We can take this a step further. This most general question (i.e., about the possibility of signification or textual meaning) can itself be seen as a version of an even *more* general question. There doesn’t seem to be a natural term in English for posing this more general question, but it is easy to see roughly what the question should be when one considers—something Austin and Derrida (and Wittgenstein) were especially interested in—that speaking and writing (writing in what Derrida calls the classical or narrow sense)¹³ are generally *activities*, things people *do* for different reasons.¹⁴ Derrida sometimes uses the word “intentionality” to describe this more generic topic to which the question about the possibility of “meaning” would belong.¹⁵ He also speaks of “nonnaturalness” as the most general province of deconstructive questioning.¹⁶ That term is suggested, I think, by the following consideration. At the time we think of as roughly the start of the Modern in philosophy, “nature” had come to refer roughly to a realm of things which could be understood through “laws” arrived at through behavioral generalizations, but from which meaning (and normative relations generally) were excluded.¹⁷ The realm of “non-naturalness” is thus

¹² I develop further this idea of “type of text” in my Martin Stone, *On the Old Saw, “Every Reading of a Text is an Interpretation”*: Some Comments, in THE LITERARY WITTGENSTEIN (John Gibson & Wolfgang Huemer eds., 2004).

¹³ Derrida, *supra* 1, at 9.

¹⁴ See Wittgenstein, *supra* note 7, at §§ 23-25.

¹⁵ Jacques Derrida, *Force of Law: The “Mystical Foundation of Authority”*, 11 CARDOZO L. REV. 924, 931 (1990).

¹⁶ Derrida, *supra* note 1, at 136, 151.

¹⁷ See IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS, 412 (Mary Gregor trans. & ed., 1997).

the realm of judgment and action: of everything that works, as Kant put it, not according to law-like regularities, but according to our *idea* of laws:¹⁸ Everything involving the application of concepts or rules, everything (therefore) subject to a distinctively normative assessment. For wherever a concept is applied, we must be able to speak about a normative relation which is (at the start of the Modern) no longer conceived to exist between particulars or events found “in nature,” narrowly or scientifically conceived.

V. THE GENERAL QUESTION AS A QUESTION ABOUT THE TEXT

By making the generality of Derrida’s question more apparent, it becomes possible to see that some of the chestnut philosophical questions like “Do we ever have knowledge of the objects around us,” or (later) “How is it *possible* to have knowledge of an object”—questions which don’t, in their classical forms, mention any “texts”—are really, at least in part, versions of the same general problem: the normative aspect of meaning and intentionality. This is why “deconstructive” questioning in Derrida’s work, even when it begins with narrow and technical considerations about “speech acts” or “signs” eventually touches on all of these matters as well. Derrida himself gives an explanation of the generality of deconstructive questioning in various places:

What I call “text” implies all the structures called “real,” “economic,” “historical,” socio-institutional, in short: *all possible referents*. Another way of recalling once again that “there is nothing outside the text” [This] mean[s] that every referent, all reality has the structure of a differential trace, and that one cannot refer to this “real” except in an interpretive experience.¹⁹

Another bit of hearsay—another possible misunderstanding—is of course being corrected here: viz., that Derrida believes that everything is a big book which doesn’t refer to anything except itself (whatever that would mean). Here, as usual, avoiding gibberish depends on correctly locating the question. It is not: “Do speakers ever make objective reference to things outside of language? Everyone—or at least everyone who isn’t operating under the influence of hearsay-deconstruction—can see that they do. The question calls for a formulation like this: “How is such objective reference *possible*?”

Of course, it might be said that some of Derrida’s ways of

¹⁸ *Id.*

¹⁹ Derrida, *supra* note 1, at 148 (emphasis added).

answering this question—ones that have the form of, or are confusable with, an assertion that “there is nothing outside the text”—seem to be asking for rumor to spread. Perhaps Derrida isn’t entirely un-ambivalent in his wish to be understood.²⁰ For it is not just Derrida’s accusers, but also his followers—so he implies in this same passage—who have been “so naive” as to spread the “reference is suspended in the text” doctrine.²¹ Say what you like about misunderstanding or mishap being “always possible”: This doesn’t obviate—it is what makes necessary—the question of whether reasonable care has been taken to avoid it; was it taken here? Derrida’s excuse will have to be, of course, that the circumstances here are philosophy: you’re entitled to rely, aren’t you, on people having a certain preparation? But then why talk of “naivete?” What seems to be involved is a great number of people being imaginatively attracted to the sound of Derrida’s words and having all kinds of associations to them, but not having read, say, Kant, well enough to recognize the form of the question being asked. Supplying that critical context causes the pieces to drop into place. Talk of the “ubiquitous text” (with no outside) is a way of observing that our transactions with the world involve the same sort of normative assessments—the same questions concerning the correctness of responsive judgments—as are present with any bearer of meaning. In this sense, the question “how it is possible to make objective reference to the world” may be said to be a *version* of the question “how is a correct understanding of a text possible.” Since both are specifications of the same general question about the normative aspect of intentionality, the latter question (about “texts”) can stand in place of the former (about correctly wording the world).

VI. THE PLACE OF THE QUESTION.

The very form of this question concerning a question—namely “where?, in what place can a question take place?”—supposes that between the question and the place, between the question of the question and the question of the place, there be a sort of implicit contract, a supposed affinity, as if a question should always be first authorized by a place, legitimated in advance by a determined space that makes it both rightful and meaningful, thus making it

²⁰ But who is? It would mean having to understand oneself.

²¹ “That does not mean that all referents are suspended, denied, or enclosed in a book, as people have claimed, or have been naive enough to believe and to have accused me of believing.” *Id.* at 148.

possible

According to the French idiom . . . one would say that there are places where there are grounds for asking this question.

– Derrida²²

Now to draw a few points, three sets of remarks about what has been said so far:

(1) Derrida makes a point of saying that deconstructive questioning has no “proper place.” What he means can be approached, I think, like this.

I’ve said that Derrida’s words have, as their context, a certain question about how intentionality is possible: apart from this question, there is no understanding him, only the hearsay gibberish. But Derrida wishes to say that this question itself belongs to no special context; it is rather a kind of self-standing question, one which people are fated or obliged to confront once they begin to reflect. *It* has no conditions of possibility—no proper place, sphere, region or domain of operation. This sense of the autonomy or unconditionality of philosophical questioning will be crucial, I think, to understanding the difficulties which arise in trying to align “deconstruction” with the ways of continuing philosophy found in Austin and (even more self-consciously) in Wittgenstein. For it only against the background of a sense of the autonomy or self-standingness of metaphysical philosophy (as the interrogation of “grounds of possibility”) that it makes sense to think that it is necessary—or in some sense obligatory—to *deconstruct* it.

Austin’s form of philosophical elaboration is not deconstructive—it offers no statement of possibility and impossibility conditions—and that is just Derrida’s complaint: Austin does not interrogate those ever present risks he has described “as an essential predicate or *law*.” But why should this seem to be a complaint? Derrida is making an assumption here about what the intellectual options are: Everyone must, willy-nilly, be depending on some account of how meaning is possible, so if not a deconstructive (whereby everyday speech which fulfills its purpose is an “effect” of “general writing,” or “differance,” then a more traditional metaphysical one (in the sense of Section I); there don’t seem to be, in Derrida’s view, any other options. But why would one think so? The assumption is just that of the unconditional necessity of philosophical

²² Of the Humanities and the Philosophical Discipline: The Right to Philosophy from the Cosmopolitical Point of View. [PROFESSOR, DO YOU HAVE ANY SUGGESTIONS ON WHERE WE MIGHT FIND THIS SOURCE?]

questioning in this special form—the interrogation of grounds of possibility; it is a function of Derrida’s sense of the autonomy or self-standingness of such philosophical questioning. Everything in Derrida’s writing happens as if philosophy were intellectually and institutionally autonomous, invasive, insidious and unavoidable. So if you don’t “deconstruct” it, you are caught up in it unawares, *tertium non datur*.

It would be no exaggeration, I think, to say that for Wittgenstein anyway, philosophy in this sense doesn’t exist at all. The question, for example, of how a rule-informed judgment can be simply *true* or *correct* only *seems* to exist, Wittgenstein suggests, when one tries to consider the use of words apart from the applications living beings (people engaged in the activities of speaking) make of them—to consider them, then, “in themselves.” (The very notion of words having meaning only “on condition of ____” seems to depend on such a prior idea of words considered “in themselves”: It expresses a form of questioning from an essentially speculative standpoint, rather than the standpoint of agents giving their words application in the circumstances at hand.) So, for Wittgenstein, it is not the “effects” of everyday speech which are to be exposed as departures from a notional condition of purity; it is the philosophical question which is to be exposed as an “effect” of the everyday use of words, or of a misunderstanding of our own agency in using words to which we are prone.²³ The very notion of a constitutive philosophical “account” of meaning, for Wittgenstein, would be the expression of such a misunderstanding: an attempt to grasp our linguistic activities through an essentially speculative gaze, one which abstracts from the practical standpoint of the agent having concourse with texts and their meanings.

These sketchy remarks are meant to indicate: (a) that it should be harder to bring Derrida and Austin into alignment than is commonly supposed (by Derrida first of all); (b) for while it is certainly *possible* to read Austin in the way Derrida does (as someone failing to interrogate as a philosophical law the risks of mishap to which speech and action are prone), it perhaps isn’t *necessary* to read him this way (it is a possible misunderstanding); and (c) the lack of necessity in Derrida’s reading of Austin (as someone repeating the philosophical tradition by failing to deconstruct it) is just the lack of necessity of deconstruction—accounts of conformity to, and departures from, notional conditions of purity—as a way of continuing philosophy.

Has the question, which brings the emphatic “*always possible*”

²³ On this, see Stanley Cavell, *Counter-Philosophy and the Pawn of Voice*, in *A PITCH OF PHILOSOPHY: AUTOBIOGRAPHICAL EXERCISES* 53-128 (1996).

into Derrida's answer, and then interrogates it as a law, really *no place*? We know that it does not everywhere have the same felt urgency. Indeed, by locating the generality of the question, we get a feeling for just where it does break out: not of course essentially with post-*structuralism* or anything coming to the party as late as that, but roughly at the start of the Modern in philosophy. It is here—as Cartesian doubt, for example—that the question of whether one can know anything about the world arises. It is the “scandalous” question which Kant reframes as one concerning the conditions of possibility of such knowledge. Could we not interrogate the place of that question—*its* conditions of possibility—like this: What has happened to suggest that such “non-natural” episodes as “knowing” something—episodes of concept or rule-informed judgment—are, in fact, *impossible*? The non-natural phenomena in question are, after all, “the most common thing in the world,” as Derrida remarks.²⁴ Can the demand for a philosophical account here stand intelligibly or naturally on its own, apart from something happening in our thinking to suggest that such everyday phenomena—the effects of a successful signature, for example²⁵—must really, after all, *not* be possible?²⁶

(2) Notice how far we have come from the hearsay view. We begin by putting Derrida's remarks in the context of the right question—not *whether* there can be correct or true understandings of a text, but the conditions of the possibility of such “non-natural” phenomena. But has this really managed to clear anything up? Are we really now simply to say: “Oh, I see, what Derrida says is not what Nussbaum has him saying—that a text has no decidable meaning—but only that ‘it is *always possible* that it has no decidable meaning’; that’s a quasi-transcendental point, you know.” To leave it at that would be to treat this sort of questioning—in terms of conditions of possibility and impossibility—as if it had no place, as if it were self-standing, or as if such speculative demands did not themselves require explanation or critique. What emerges here, once we begin to get clear of the hearsay view, only begins to make apparent a difficulty we are bound to feel in reading Derrida – not Nussbaum's difficulty, to be sure, yet one capable of causing us no less intellectual discomfort.

This suggests a deeper account of why the hearsay view arises, at least among intelligent readers like Nussbaum. In failing to read Derrida as engaged in “quasi-transcendental discourse,” they are

²⁴ Derrida, *supra* note 1, at 20.

²⁵ *Id.*

²⁶ John McDowell has some illuminating things to suggest about the sources of this thought in *Mind and World*. JOHN MCDOWELL, *MIND AND WORLD* (1994).

choosing what to them seems like the lesser of two difficulties. Here's an illustration. Suppose we have overcome the hearsay by refocusing attention on such key, context-indicating terms as "conditions of possibility." This implies other contrasts. For, as was said, whenever someone says that correct understanding of a text is possible only under such-and-such conditions, it is implied that the *text itself* (the text apart from the relevant conditions) doesn't determine how it is to be understood or followed. And this gets said too.²⁷ But what is this entity, "the text itself"? Well, we talk about "texts themselves" all the time, don't we? In the law, for example, this expression means a text as opposed to some gloss which someone has put on it. But that is obviously *not* how the term is being used in quasi-transcendental discourse. (Have we forgotten once more the context given by the question?) For a "text itself," for the lawyer, is something which *means* something, hence which can be correctly understood—indeed, it is even sometimes said to be clearer than the glosses people put on it. In short, the everyday "text itself" is something which enters into normative relations with people's responses or uptake, but the philosophical or quasi-transcendental "text itself" is something normatively inert—the conditions aren't yet there for it to mean anything. So what is this "text itself"? Perhaps we were only imagining that we understood what this meant—on account of the resonance this expression carries with the use of the same words in everyday contexts with which we are already familiar.

One can repeat this sort of problem for all the other terms which arise in the quasi-transcendental context. When Derrida says, for example, that an "interpretation" is required in every case of legal rule-informed judgment (interpretation as condition of impossibility and possibility),²⁸ what do we understand this to mean? Derrida seems to be counting on our familiarity with this term. But when we remember the contexts in which we *do* speak of interpretation (the contexts in which we became familiar with the word), it appears that interpretations are explanations which involve the production of another meaning-bearing "text." Clearly, Derrida could not be saying that such explanation—a rider attached to the rule—is needed in every case; if it were, we should need an endless number of such explanations before an applicative judgment could be made. Were we merely imagining that we knew what an "interpretation" is in this quasi-transcendental context? (Had we forgotten the context, and associated Derrida's words with their use in contexts we are more familiar with?) To explain what an interpretation is—when it is

²⁷ "[T]he thing itself always escapes." DERRIDA, *supra* note 10 at 104.

²⁸ Derrida, *supra* note 15 at [PLEASE PROVIDE A PIN CITE]

pressed into philosophical service of this kind (as a “possibility condition” of rule-informed judgment)—we shall need other terms; and eventually, in Derrida, one gets to terms like *differance*—terms which insist on, and do not let us mistake the question, if only because, as I have remarked, they display their uselessness outside the “quasi-transcendental” context on their face. The hearsay view will always be cast in terms such as “interpretation” or “decidability”—just because we seem to be familiar with these. But we only *seem* to be: “differance” and the like are there to set us straight.

Derrida seems to have had this idea from the beginning: Deconstruction is necessary because the metaphysical question has no place; it stands on its own. Philosophy is a kind of self-standing context: here, apparently, it is significant to ask whether there is a “stability [in non-natural things] that is absolute eternal, intangible, natural”—to deny that “the ties between words concepts and things, truth and reference are *absolutely* and purely guaranteed,” or to query whether a context is ever “absolutely solid, or purely identical to itself.”²⁹ Shouldn’t the answer to these questions be, “Let’s look and see”? Derrida seems untroubled by the thought that our grasp of any of the words he uses here might be purely imaginary, a matter of associations to contexts—not engaging philosophy’s interrogative attitude—in which these words are doing a different kind of work. Would it be farfetched to suggest that it doesn’t just happen that Derrida isn’t troubled by this, that it rather belongs to his very signature: If he did question this attitude of speculative interrogation, or admitted forms of philosophical elaboration which didn’t preserve the structure of the “how possible” question, he wouldn’t be Derrida.

(3) Or would he? In a talk given by Derrida here (at Benjamin N. Cardozo School of Law), we find this:

[I]t was normal, foreseeable, desirable that studies of deconstructive style^[30] should culminate in the problematic of law (*droit*), of law and justice. . . . [A] deconstructive interrogation that starts, as this one did, by destabilizing, complicating, or bringing out the paradoxes of values like those of the proper and of property in all their registers, of the subject, and so of the responsible subject, of the subject of law (*droit*) and the subject of morality, of the juridical or moral person, of intentionality, etc., and of all that follows from these, such a deconstructive line of questioning is through and through a problematization of law and justice. A problematization of the foundations of law, morality and politics. This questioning of

²⁹ Derrida, *supra* note 1, at 151.

³⁰ I think the meaning of this is “studies conducted in the deconstructive style,” though the study of that style itself needn’t be excluded by this.

foundations . . . does [not] pass up opportunities to put into question or even to exceed the possibility or the ultimate necessity of questioning, of the questioning form of thought, interrogating without assurance or prejudice the very history of the question and of its philosophical authority. For there is an authority—and so a legitimate force in the questioning form of which one might ask oneself whence it derives such great force in our tradition.

If, hypothetically, it had a proper place, which is precisely what cannot be the case, such a deconstructive “questioning” . . . would be more at home in law schools . . . than in philosophy departments and much more than in the literature departments where it has often been thought to belong.³¹

This passage is remarkable in several ways. First, it seems to represent, as “the culmination” of a line of thought, a question which, given a slightly different philosophical training (one moving through Wittgenstein)³² would have been heard as there (i.e., as *missing*) from the *beginning*: What is the place of the interrogative attitude—the “pondering”—which Derrida finds missing in Austin? What exactly is supposed to make the sophistication which defines the deconstructive style compulsory? What sort of imperative is it? (Deconstruction is, in effect, a teaching about naivete and sophistication; the failure to interrogate things in terms of their conditions of possibility makes one naive, like Austin; a deconstructionist apparently can’t be too sophisticated—or can they now?)

Second, this passage raises the question of what a law school and what a literature department are, such that deconstructive questioning should be at home—have its “place”—much more in one rather than the other. I take this to mean: What kinds of things are law and literature, such that this interrogative attitude would be belong much more to the law? Surely the answer must have something to do with this, that with the law, there is a practical aspect, which consists in the endeavor always to carry meaning through into the particular case, a set of circumstances here and now. Not all legal interpretation is applicative, of course, but there wouldn’t be any such thing as interpreting the law if the law was not to be applied or followed. And because law is just this kind of thing—a text to be followed—it needs

³¹ Derrida, *supra* note 15, at 929, 931.

³² Readers of *Philosophical Investigations* will know that the necessity or authority of what Derrida thinks of as “the philosophical question” is under critical examination. See, e.g., WITTGENSTEIN, *supra* note 7, at §428: “Thought does not strike us as mysterious while we are thinking, but only when we say, as it were retrospectively: ‘How was that possible?’ How was it possible for thought to deal with the very object *itself*?” See Martin Stone, *Wittgenstein on Deconstruction*, in *THE NEW WITTGENSTEIN* (Alice Crary & Rupert Read eds., 2000) (discussing Wittgenstein in relation to “deconstruction”).

to be understood and explained in distinctive ways as well. While the chain of substitutions in “literary interpretation” is in principle endless (for there is nothing to be called “following a work of literature” in a parallel sense) the interpretation of the law is either sometimes superfluous (when judgment is clear under the circumstances), or it comes to an end when things are made clear, authoritatively “decided.” In short, the legal text sometimes fulfils its practical purpose. So that it is precisely not the case, one might say, from within such a practical orientation, that it is always possible for the legal text to mean something else. That this isn’t always possible — that it may not be possible even to make intelligible, here and now, how the law could mean anything else—shows what kind of thing the law is.

This will bring us back to Austin. For notwithstanding that it was to literature departments that the present strand of Derrida’s work succeeded in making Austin known, Austin everywhere displays a great intimacy with the law. Indeed, I would want to suggest that what Derrida hears as a failure of a sufficiently profound interrogative attitude in Austin might be heard quite differently: as a different sort of resistance to the metaphysics of presence, one which consists in a form of philosophical representation adhering to an essentially practical standpoint—which in Austin’s language is to say, the standpoint of what *we* (first personally, as agents) say *when* (under the circumstances which are the settings of any practical agency). But I mentioned that I would only discuss some preliminaries here. This remains for another place.