Law and Eschatology in Wittgenstein's Early Thought

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The paper investigates the role played by ethical deliberation and ethical judgment in Wittgenstein's early thought in the light of twentieth-century German legal philosophy. In particular the theories of the phenomenologists Adolf Reinach, Wilhelm Schapp, and Gerhart Husserl are singled out, as resting on ontologies which are structurally similar to that of the *Tractatus*: in each case it is actual and possible *Sachverhalte* which constitute the prime ontological category. The study of the relationship between the states of affairs depicted, e.g., in the sentences of a legal trial and prior fact-complexes to which these may correspond suggests one possible connecting link between the logical and ontological sections of the *Tractatus* and the ethical reflections appearing at the end. It is argued that the latter can best be understood in terms of the idea of a 'last judgment' (with its associated ethical rewards and punishments) which would relate to the world as a whole as a penal trial relates to individual complexes of facts.

> Man versteht nichts von diesem Manne, so-
> lange man nicht erkennt, dass mit Notwendig-
> keit alles, Sprache und Sache, für ihn sich in
> der Sphäre des Rechts abspielt.[1]

As candidates for works which had some influence on the numerical style of the *Tractatus* one points normally to Hertz's *Mechanics* and to *Principia Mathematica*. But the *Tractatus* 'is not a textbook' (Preface, p. 3), and neither is it an axiomatic reformulation of a single discipline. Its wide-ranging nature, incorporating logic, metaphysics, religion, ethics, and social criticism, points much more to a comparison with the Bible. As we shall see, however, the fact that the *Tractatus* is set out in this manner suggests also that we should conceive Wittgenstein's aim of 'establishing a limit to thought' (loc. cit.) as involving him in an attempt to impose a certain kind of order upon the world in a way which gives his work certain affinities with a *code of law*.

This suggestion will make little sense so long as we approach the *Tractatus* with a concept of legal order derived from the common or case law of the Anglo-Saxon world. But I hope to show that against the background of the Central European civil law tradition a consideration of

certain properties of legal, ethical and religious codes may throw interesting light upon Wittgenstein's work.

The English common law rests on unwritten working rules, learned in application and applied within institutions which form an integral part of the society which they serve. Germanic law on the other hand rests on a quite peculiar type of *codification* of laws which are expressed through legal institutions conceived as standing 'above' society. Thus where the Anglo-Saxon framework contains loci of indeterminacy (in the sense that it has a large amount of slack to be taken up in each successive case by the discretion of the judge), the legal order associated with a civil law code is characterized – at least ideally – by logical completeness. Such a code determines a logically definite legal space, a space which is such that (again, ideally) the legal consequences of any action which falls within it are (as a matter of logic and without any appeal to 'justice' or 'fairness') uniquely determined.[2] This is ensured (again ideally – and this must be repeatedly stressed) by the logical closure of the code and by the determinateness of the concepts employed within it, both conditions which are quite alien to the Anglo-Saxon tradition which is characterized by a readiness to employ reasoning by analogy from case to case and to sacrifice system and consistency for the sake of 'local' or 'ethical' adequacy.

Logical definiteness is ensured also, especially in regard to facility of *application* of the code, by the *form* which it takes: the principles expressed within the code are arranged in logical order in numbered sections and sub-sections having varying degrees of logical weight. Further these principles are not 'laws' in any simple sense. They are, for example, principles setting forth the means by which, for a given purported fact-complex, its position in the relevant legal space should be decided and its legal consequences should be derived. They are principles which serve to delineate the limits of the legal space (i.e. which determine what is to be counted as falling within the orbit of the law); and then also they are 'ontological' principles which express, for example, the nature of 'property' or of a 'legal person'.[3] Propositions of this kind must clearly rest upon some underlying theory of the nature of man and society (of innocence, guilt, reward and punishment), and in European civil law this underlying theory has been derived largely from theological notions. This is especially so in Austria, where the temporal order has been conceived, in effect, as a reflection within the world of an eternal order established by God; and the Austrian legal code has been constructed in the belief that its most fundamental principles have been, as it were, 'read off' from this divine order.[4]

This conception has indeed played a large part in determining the institutional fabric of Austrian society generally, and is reflected further in much of the philosophy and literature produced in Austria over the last two centuries.[5]

The opposition between the continental and Anglo-Saxon legal frameworks arose largely as a result of differences in political structure: England had always maintained a central administration with a single set of centralized courts, staffed by highly-trained craftsman-practitioners. Germany, on the other hand, was divided into small principalities each having its own separate legal establishment, staffed by civil servants. This had the consequence that a minimum of uniformity and innovation, as well as the training of each successive generation of officials, had to be provided by the universities. Law thus came to be regarded as something to be learned not through practice but through instruction.

The fact that so many German philosophers have for so long enjoyed an initial training in law has had an effect not only upon the style but also upon the content of German philosophical thinking and writing.[6] This is reflected, first of all, in a conceptual, terminological, and stylistic overlap between logic and ontology, on the one hand, and law (or *Staatswissenschaften* in general, including economics) on the other. The terminological overlap has indeed existed ever since the time of Aristotle. It became entrenched in imperial Roman and scholastic writings on law and logic, and was subsequently preserved as terms from either sphere were translated from Latin into individual vernaculars, including English. Consider, for example, our use of terms such as 'proof', 'validity', 'justification', 'judgment', 'fact', 'form', 'formal', 'sentence', 'property', 'foundation', 'constitution', 'intention',[7] and 'state of affairs' (a term which has its roots in medieval political theory in the notion of a 'state' [or divine government] of things [*status rerum*]). It is in Germany, however, that the associated conceptual parallelism has made itself felt. It underlies the whole critical philosophy of Kant, expresses itself in Husserl's conception of philosophy as a *Rechtsprechung* (e.g. in the *Ideen),* and even in Frege's comparison of logic with a *Schiedsrichterin* (arbitrating judge) in his discussion of different kinds of 'law' in the Introduction to the *Grundgesetze.*

What is interesting is that in the *Tractatus* the overlap is extended even further. Thus there is a constant emphasis on *der Fall sein* (being the case); and of course the German term '*Verhalten*' signifies conduct or behaviour ('*Wissen Sie, wie die Sachen sich verhalten?*' = 'do you know the facts of

the case?'). In this light I want to consider in more detail the concept *Sachverhalt*, a concept which has played an especially important role in twentieth-century Austro-German legal theory. For if we ask what is the direct object of a judicial process, that to which predicates are attached in the course of, say, a penal trial, this is not, e.g., an *event* (of human behaviour), nor is it a *fact* (for of course a penal trial may be initiated on the basis of mere allegations, unfounded in fact). The court is rather concerned with *purported* interrelationships of conduct amongst specific human beings, and thus it is subsistent and non-subsistent (actual and non-actual) *states of affairs* which form this object. It is entities of this kind which constitute the 'legal space' determined by the institutions of civil law in 'civilized' society.[8]

Subsistent and non-subsistent states of affairs are the focus also of ethical deliberation (e.g. in the premeditation of a potential act of murder or of suicide).[9] And this will help to explain – in part – the prominent role which is played by *Sachverhalte,* as entities with opposite subsistence and non-subsistence poles, in the structure of the *Tractatus*. Moreover we find evidence within Wittgenstein's *Notebooks (1914–16)* that the paradigm *Sachverhalte* were then provided precisely by the kind of intermeshings which we find depicted in models of traffic accidents or – in frozen form – in Wittgenstein's drawings (p. 7) of swordsmen *en face*. Of course there is a large difference between *Sachverhalte* as thus conceived and Tractarian *Sachverhalte*: the former are ontological correlates of systems of materially articulated sentences, the latter of single 'elementary sentences' conceived as logically independent. Material states of affairs of the former type form the basis of the ontological theory developed by the legal phenomenologist Wilhelm Schapp,[10] generating independent wholes which we might call *'Gesamtsachverhalte'*. Schapp's theory has in fact been compared to Wittgenstein's *later* philosophy, Schapp's reaction against the single-*Sachverhalt* contextualism put forward by Husserl in the *Logische Untersuchungen* paralleling Wittgenstein's reaction against his own earlier ontological views.[11]

From the Schappian perspective it is systems of *Sachverhalte* which are constitutive of the objects located within them, systems corresponding not to individual sentences (nor, indeed, to anything of an exclusively linguistic nature) but rather, e.g., to legal, political, or economic frameworks. And the core of this approach is to be found already in the Stumpf-Husserl theory of dependent and independent parts.[12] Here I wish to claim that Wittgenstein's position even at the time of the *Notebooks* is related to

ideas of this kind, a claim which finds support in the fact that we can exploit such ideas to give a close approximation to Wittgenstein's social and ethical views at this time.

To see this we must note, first of all, that when individuals come together in *Sachverhalte* of this type, when, e.g., two swordsmen are fencing *with each other,* and not merely waving their sword-arms in a manner which, quite by chance, gives the impression of a sword-fight, then the individuals involved – the swordsmen as such – do in fact *interlock,* their ontological orbits *overlap* (cf. 2.03). Similarly for the subjects caught up in legal *Sachverhalte*: their respective domains (including their rights, obligations, property and welfare) *intermesh* – e.g. when one or other has been infringed.[13] Let us now consider individuals who are elements of the *Sachverhalte* which constitute a complete society. Such individuals are dependent parts of a larger social and political whole, and they are thereby subject 'without question' – such at least seems to have been Wittgenstein's view – to the laws which bind together that whole. These laws are, as it were, built into those subjects from the very start.[14] Thus Wittgnstein considered it his duty to serve in the war as an obligation overriding all others. And Engelmann refers to his

> loyalty towards all legitimate authority, whether religious or social. This attitude towards all *genuine* authority was so much second nature with him that revolutionary convictions of whatever kind appeared to him throughout his life simply as 'immoral'. (Op. cit., p. 121)

Here we wish to investigate how far it might be possible to use the phenomenological theories of dependent and independent wholes, and of legal *Sachverhalte,* as tools in the understanding of the *Tractatus* itself. The first to apply the ideas of Husserl on *Sachverhalte* and of Meinong on *Objektive* to legal problems were, besides Schapp, Adolf Reinach and Gerhart (son of Edmund) Husserl, both of whom developed detailed accounts of the relation of linguistic forms of representation to the judicial process.[15] (We might recall at this point that Wittgenstein may have arrived at his own 'picture' theory of meaning in reflecting upon the use of language (and its surrogates) in the court room, and interestingly the essay 'Recht und Prozess' (1955) by Gerhart Husserl contains an account of the nature of the penal trial which rests exclusively on a theory of linguistic and non-linguistic *Bilder* (pictures, models, *tableaux vivants*) as encountered both inside and outside the context of a court).[16]

The legal order (like our ethical deliberations) clearly wishes to come

into contact with actual fact-complexes. This meets no difficulty where the norms in question (thou shalt not kill, thou shalt honour thy contractual obligations . . .) function between human beings without any mediation of a legal process (or of an ethical deliberation). But with the intervention of such a process the matter is quite different. Problems arise, first of all, because the relevant fact-complexes are entities the locus of whose existence is in times different from the time of the process in question: a penal trial normally concerns itself with issues arising from events in the past, ethical deliberation relates to (as yet unknown) events of the future. In both cases, as we have seen, surrogates for factual complexes have to be introduced.

It is of course language which is typically employed for this purpose. But note that (in the legal case) it is not as if certain relations between particular fact-complexes (crime and consequences) were first of all established, and then the legal order searched around for a means by which such complexes could be joined together. Rather the selection of means (language) itself determined, at least in part, the nature of the entities to which the law thereby became related. The form of fact-complexes, states, and state-complexes, was defined by the form of language itself.[17]

Thus the judge, for example, is confined to actually uttered sentences introduced into the locus of the court by the successive witnesses – or rather to the states of affairs which these represent and towards which, from the point of view of the court, their testimony is directed. And since he cannot reach through the reports in which these states of affairs are represented, through and onto independent events, it follows that legal space, the domain of depicted states of affairs, can never be transcended. The judge in passing judgment does not attach the legal consequences to entities existing independently of the forms of representation with which he operates.

Even should we suppose further that the decisions of one court are called into question in a second court, a court of appeal, clearly here too it will be impossible to transcend the realm of depicted states of affairs. Indeed no matter how many times the issue is taken to appeal, along a whole succession of higher and higher courts, there can never be any access to the facts themselves. And nor could we somehow independently test the validity of a legal system as a whole. For just as we can never measure the correctness of a clock by comparing it in some way with the passage of time itself (6.3611), so we cannot measure the adequacy of a legal system except by measuring it against another, actually presented

system – never by appeal to 'the law' itself. In a certain sense, therefore, there is, in the world, *no intrinsically higher court of appeal,* and the impossibility of establishing any kind of intrinsic legal order in the world is, I believe, a special case of our inability – in the context of the *Tractatus* – to establish *any* value: for Wittgenstein there is, in the world, *nothing* which is intrinsically higher (6.41).

We are now in a position where we can ask more precise questions about the 'order' which Wittgenstein sought, in the *Tractatus,* to impose upon the world. Since it is impossible to choose, ethically, between fact-complexes (e.g. between social institutions, or between societies as a whole) or, correlatively, between the different forms imposed by society upon the world, it follows that ethics is, in a certain sense, exclusively inwardly directed. Hence as a first approximation we can say that the Tractarian code differs from any actual code of law in being referred not to a complete society but to the isolated individual.[18] This aspect is hinted at in the following remarks by Engelmann:

> In me Wittgenstein unexpectedly met a person who, like many members of the younger generation, suffered acutely under the discrepancy between the world as it is and as it ought to be according to his lights, but who tended also to seek the source of that discrepancy within, rather than outside, himself. (Op. cit., p. 74)

> . . . the person who consistently believes that the discrepancy lies in himself alone must reject the belief that changes in the external facts may be necessary and called for. (p. 79)

Thus for Wittgenstein, of course, political activity was absolutely out of the question – a fact which has led many to assume that his early thought has no relevance to social and political theory.

Wittgenstein believed, rather, that one must strive to change certain aspects of one's self. Certainly one (Socratean) way of resolving the discrepancy would be to abandon completely the struggle to fit oneself into society (and during this period Wittgenstein was indeed convinced that his death was imminent, that if he did not die in the trenches he would commit suicide).[19] Another (orthodox religious) way in which the discrepancy might be resolved lies in a once-for-all conversion to a completely different manner of conceiving the world. But neither of these ways is the way which is demanded by the Tractarian code. Wittgenstein would not

have regarded as legitimate any resolution which did not involve a *continuous* struggle with the world. This is because he saw that which is forbidden by the code, the running up against the limits of the legitimately thinkable, as something to be taken very seriously indeed as a *continuous* temptation, a temptation which is, given the discrepancy, not at all trivially resolvable.

When is it that we run up against these limits? Not only when we produce philosophical pseudo-sentences: it is difficult to see why this should be regarded even as an important species of such temptation. 'Our problems are not abstract', Wittgenstein reminds us (5.5563), 'but perhaps the most concrete that there are.' It is not, therefore, exclusively philosophical deliberation which is outlawed by the Tractarian code: it is, rather, *all* attempts to adjudicate between our thoughts and the world which they depict, all reflection upon the connection between forms of representation and that which is represented in them, as if this connection could be somehow independently secured. Attempts to make such adjudications, or to live as though they had been made, are a persistent feature of our everyday experience.[20] They express themselves, for example, in certain kinds of religious beliefs, in flashiness and pomposity, in optimism and pessimism, in bad conscience or pride (living as though judgment had been passed upon one's own actions), and in intolerance or sycophancy (living as though judgment had been passed upon the actions of others). And they express themselves more generally in the belief in the efficacy of acts of will. They are an all-pervading feature, too, of political life, and it is important to realize the extent to which the Tractarian code embodies an alternative to nineteenth-century 'superstitions' of the type held by naturalists, positivists, progressivists, radicals, humanists, Austro-Marxists, according to whom one could effect changes in the social or political order by causal or quasi-causal means which would somehow be recognizable as changes 'for the better'.

What, now, are the *consequences* of attempting to resolve the discrepancy in any of these delusory ways? 'It is clear', wrote Wittgenstein, 'that ethics has nothing to do with punishment and reward in the usual sense of the terms' (6.422), – that is that the ethical consequences of our actions cannot be events (they cannot be a matter of fact-complexes in the world, complexes to which our propositions would relate). Yet he insisted also that there are such consequences:

There must indeed be some kind of ethical reward and ethical punishment, but they must reside in the action itself.

(And it is also clear that the reward must be something pleasant and the punishment something unpleasant.) (Ibid.)

The difficulty is to reconcile this claim with the rejection of any attempts to produce an intrinsically well-founded judgment (i.e. a judgment which would be backed up by an ethical deliberation): one complex of facts cannot 'pass judgment upon' another such complex, any more than one complex of facts can be the 'cause' of another (5.135f). Punishment and reward seem, however, to presuppose a judgment in some sense of this term.

Consider, now, what it would be like to pass judgment upon the totality of *all* facts, upon the world *as a whole*.[21] Can we not conceive of a 'last judgment', as something which would take place, somehow, at the limit of the world, such that all complexes of facts would fall within its orbit? This suggests a way in which the existence of ethical punishment and reward can be reconciled with the denial of any value in the world: judgment, for Wittgenstein, is judgment in a quite special, non-linguistic, world-encompassing sense; it is the product of a *Weltgericht*.

The notion of a last judgment was, I shall claim, crucial to Wittgenstein's early thought. Engelmann reports for example that

the image of God as the creator of the world hardly ever engaged Wittgenstein's attention . . . but the notion of a last judgment [of *ein jüngstes Gericht*] was of profound concern to him. 'When we meet again at the last judgment' was a recurrent phrase to him, which he used in many a conversation at a particularly momentous point. He would pronounce the words with an indescribably inward-gazing look in his eyes, his head bowed, the picture of a man stirred to his depths. (Op. cit., pp. 77 f.)

An obsession with death in general and with the idea of a last judgment in particular was indeed a characteristic of Austrian intellectuals in Wittgenstein's day.[22] Karl Kraus, in his *Die letzten Tage der Menschheit* [The Last Days of the Human Race, Vienna, 1922], presents a picture of the declining Austria-Hungary as being itself, in effect, the embodiment of an eschatological process.[23] A posthumously edited collection of fragments by Otto Weininger (whose *Geschlecht und Charakter* [1903] had

been greatly admired by Wittgenstein) was published under the title *Über die letzten Dinge* [On the Last Things, Vienna, 1904], and the whole of Weininger's (short) life was pervaded by the Schopenhauerian notion of *die Welt als Weltgericht* (with he himself as *Richter*).

What more can now be said about the judgment-process as Wittgenstein conceived it? This process (with its consequences) must, first of all, be somehow in contact with individual facts: ethical punishment and reward 'must reside in the actions themselves'. What this means can, I think, be expressed as follows. All concern with forms of representation, with that which gives order to the world, is, for Wittgenstein, illegitimate. Whether it be expressed, for example, in the rationalization of one's own actions or, at the other extreme, in political arguments carried out on the assumption that it is both necessary and possible (through the exercise of reason) to project improvements in the framework of society, such concern always resists formulation in canonical notation as Wittgenstein conceived it. The claim is, now, that those actions which give rise to or which are carried out on the basis of such deliberations are subject to ethical punishment – but that this punishment is nothing other than the process of deliberation itself,[24] that he who lives in the midst of representational nonsense cannot possibly be happy. Happiness, on the other hand, (ethical reward) is simply the absence of such deliberation, it is the unreflected having of (canonical) thoughts and the unreflected doing of (canonical) actions. Thus ethical reward involves seeing the world clearly, not seeing forms of representation (which get in the way), and this is why 'the world of the happy man is a different one from that of the unhappy man' (6.43).

If we now ask what this could be, which could serve at one and the same time to provide a patina to our actions and a limit to our world, Wittgenstein's answer is that the role of limit-process is played by the metaphysical subject: the 'self' (in the philosophical sense) is to take the place of God in the traditional conception of the *Weltgericht*. For Wittgenstein the last judgment is therefore not a single event falling at the end of a sequence of prior events. It is a longitudinal axis coordinated with the whole of reality (with the totality of our experience). The metaphysical subject thereby comes to be conceived as a kind of continuous running tribunal whose object is, at one and the same time, the life of the subject in question and the world as a whole (5.621).

The conception of the *Tractatus* which is here advanced is, then, a conception of the work as an 'eschatological' code of law. But eschatology has acquired a peculiar 'subjectivized' sense in Wittgenstein's thought.[25]

The account which it implies of the nature of the eschatological process, of that which is at issue in this process, of the 'judgments' which are produced, and of the rewards and punishments meted out, refers neither to complexes of facts within the world (complexes of the type associated with an ordinary penal trial), nor to quasi-fact-complexes which would lie beyond the world (of the type depicted in the Bible). It refers, rather, to the subjective limit of the world itself.

Thus where it is the subsistence and non-subsistence of specific legal *Sachverhalte* which is at issue in the penal trial, and the presence or absence of some inexpressible quality in our lives ('grace', 'good conscience', 'wholeness of heart') in the eschatological process, the focus of a Wittgensteinian *Weltgericht* is, crudely put, the 'purity' of our thoughts, purity which could be measured (if it *could* be measured) by the degree to which those thoughts are expressible within canonical notation. Similarly, if we say that for Wittgenstein ethical reward and punishment are identified with entry into heaven and hell (into the world of the happy man, and of the unhappy man, respectively), then heaven and hell are not to be conceived as lying outside the world. They are, rather, the world itself, limited or shaped in a certain way. And death is not the preliminary to some future eschatological process. At death the world does not alter (6.431). Death signifies rather that the tribunal has been wound up, that the world has come to an end.

APPENDIX: *Der Satz*

In describing the *Tractatus* to his colleagues during his time as a schoolteacher in Lower Austria Wittgenstein referred to the work under the title '*Der Satz*', a title which we are of course tempted to translate simply as 'The Proposition'.[26] But there are considerations which may warrant a certain caution in this regard. Recall, first of all, the manner in which the work was written or composed. Almost every day Wittgenstein would set down his thoughts – both personal and philosophical – in notebooks. These thoughts he would then sift and order, transferring those with which he was satisfied to further notebooks, deleting others as philosophically irrelevant, sometimes removing whole sequences of thoughts which he had come to regard as resting on dubious insights. Wittgenstein's conception of those propositions which remained, and which are set together in the *Tractatus,* was not, however, the conception of one who is satisfied with that which is left over after a process of sifting and extracting. We might rather compare Wittgenstein's attitude to the totality of his thoughts

to that of a fishmonger to a barrel of fish. The fishmonger extracts from the barrel the whole fish, and damaged fish which can be easily removed. But there is an irreducible residue of oil and scales silted at the bottom of the barrel, and the name for sediment (leavings, waste) of this kind in German is *der Satz*.

In sifting his thoughts Wittgenstein was also, of course, putting them into order. But not into any linear order: thanks to the numbering system of the propositions we have to deal rather with a complex interleaved ordering system, subsidiary sections fitting successively inside each other, these sections in turn being bounded by the whole book as container: '*Satz*' in German, is the name for a *nest* of Chinese boxes, and has the connotation of any closely fitting ordering system. What is, perhaps, of quite specific philosophical importance, is that this more general meaning of '*Satz*', as a set of objects which belong together, is especially common in language relating to machinery (to engineering). Thus a *Satz* is a set of tools, of drills, of bolts, of lamps, of furniture; and it is on the analogy of machine parts fitting into each other that we might best understand the *Ineinanderhängen* of objects in *Elementarsätze* and *Sachverhalte* in the official ontology of the *Tractatus* (e.g. at 2.03). This also draws our attention, tangentially, to the inadvisability of the philosopher's identification of 'set' in English with '*Menge*' in German, a reflection of a mathematical convention which is sometimes misleading even in mathematical contexts, especially in relation to our understanding of nineteenth-century set theory. '*Menge*' has the primary meaning of mass, crowd, quantity, and a secondary meaning of class or extension, but it lacks any connotation of the English 'set' (in 'tea set', 'game, set, and match', etc.).

There is a parallelism of language and music in Wittgenstein's works. Indeed in the *Notebooks* Wittgenstein tells us that musical themes are in a certain sense *Sätze*.[27] A *Satz* is of course a self-contained section in a piece of music (especially a complete movement), as it is a self-contained segment of a game. But there is something more. *Der Satz* in logical and grammatical contexts has for long denoted the *end-result* of the activity of *Setzen*, i.e. some particular proposition or sentence. Originally however it denoted this activity itself, the positing, asserting, ordering, or setting-together, which gives rise to articulated wholes of the corresponding types. As Shwayder has cogently argued in his commentary on the *Tractatus,* the novelty and importance of the Tractarian account of language rests precisely on the recognition of the fact that it is this activity of stating which

must form the starting-point of a theory of meaning, and not the existence of any atemporal relation – either between a name and a thing named, or between an eternal thought and a fact to which it would correspond:

> Wittgenstein made a great advance when he saw that the 'content' *(Sinn, Inhalt, Gedanke . . .)* cannot stand like a disembodied spirit, miraculously separated from the sign. Nor is the use something apart from but coordinated with the sign. Rather, the sign is used, and that is why it interests us.[28]

In Shwayder's view, then, the *Satz* is the making of an assertion, it is a putting together of a state of affairs for the sake of experiment (4.031), it is a picturing or modelling, not a picture or model of a fact. What is interesting is that in musical contexts the corresponding meaning of *Satz,* as denoting the activity of composing sections of music (something which involves the setting-together of a number of tones), survived for a much longer period. Thus Wieland, describing a particularly fine passage, hailed the

> Künstlichkeit des Satzes, Freiheiten im Satze, strenger Satz   . da ist doch reiner Satz! flieszende Melodie![29]

– and this connotation is indeed retained as the surface meaning of '*Satz*' in the composing room of a printing factory.

Perhaps, therefore – in full awareness of the fact that it is unlikely that all of these meanings contributed to Wittgenstein's choice of '*Der Satz*' as his title – we may attempt a 'translation' along the following lines:

> The Dregs (for what they're worth):[30] a tightly stacked nest of boxes relating to the activity of composing or articulating sentences and thoughts, to the fitting together of their parts. On the one hand it is a great leap forward;[31] on the other hand it may merely be linguistic waste, attained by rather dubious scrapings of the bottom of the barrel of language, after everything that is sayable has been removed.

NOTES

1 [One understands nothing of this man so long as one does not see that for him of necessity everything without exception, both language and its object, unfolds itself within the sphere of the law.] – Walter Benjamin on Karl Kraus, 1955, p. 389.

2 An important model in this respect was the French civil code produced under Napoleon, which was devised in such a way as to leave the least possible freedom of interpretation for judges who were suspected of conservative inclinations.

3 Cf. for example, § 1 BGB: 'Die Rechtsfähigkeit des Menschen beginnt mit der Vollendung der Geburt' [A person's status as a legal subject commences with the termination of his birth]. For a criticism of the philosophical foundations of the BGB see J. Schapp, 1968, pp. 75–93.

4 This meant, in effect, that appeal was made to the picture of the divine order which is to be found in the works of certain scholastic philosophers; see Marcic, 1968.

5 See Johnston, 1972, Ch. 4 and Ch. 19.

6 This may in part explain why the crucial moves beyond the classical (*Begriff-* and *Vorstellung*-centred) theory of judgment to a modern propositional or statal approach to logic were made independently by so many German philosophers (particularly Brentano and Frege). It may also explain the peculiar importance of the term '*Sachverhalt*' in German philosophy: see my 1978 and 1980, and also the study of early *Sachverhalt*-ontologies by I. Habbel, 1960.

7 These terms clearly derive from the 'fundatio', 'constitutio', 'intentio' of Roman law.

8 Cf., e.g., G. Husserl, 1969, K. Engisch, 1943, and K. Larenz, 1968.

9 Even the phrase 'what shall I do *now?*' refers to potential acts of the future and not to anything already existing. On premeditation see Reinach, 1912.

10 See especially his 1953 and 1959, together with J. Schapp, 1968, Lübbe, 1954 and 1960/61, and Schmidt, 1967.

11 See Lübbe, 1960/61. On Wittgenstein and phenomenology in general see my 1978a.

12 The theory of dependent and independent parts is presented by Husserl in his 3rd *Logical Investigation*, 1900/01. An investigation of the logical properties of contextual frameworks such as Schapp's *Geschichten* and Wittgenstein's language games is to be found already in Hazay, 1915.

13 In the court of law these interrelationships between plaintiff and defendant are mirrored in a parallel intermeshing of the utterances of their respective lawyers (their 'representatives'). The legal drama in which the lawyers are engaged thereby constitutes a picture of the underlying substantive issue (cf. 2.131). Further, this picture may be either 'correct' (when the accused is guilty), or 'incorrect' (when he is innocent) (2.173).

14 Cf. 2.012: Wenn das Ding im Sachverhalt vorkommen *kann*, so muss die Möglichkeit des Sachverhaltes im Ding bereits präjudiziert sein. [If a thing *can* occur in a state of affairs, the possibility of the state of affairs must be written into the thing itself.]

15 Reinach, indeed, went further in constructing around the *Sachverhalt* concept a very powerful general philosophical method which he applied not only to problems in the philosophy of law but also in logic, in the philosophy of science, in ethics, and in the philosophy of religion. In his 1913 Reinach seems to have been the first to consider the philosophical problems raised by such quasi-legal linguistic acts as acts of promising, and it can be said that with this work, together with the writings of other now almost forgotten Munich-Göttingen phenomenologists, the ontological investigation of social configurations acquired its credentials as an independent discipline of philosophy. For discussions of Reinach's works see Gardies, 1965, J. Schapp, 1968, and my *A*. For an anthology of more recent work on legal ontology, including an extensive bibliography, see A. Kaufmann (Ed.), 1968.

16 Some idea of how close Husserl comes to the *Tractatus* can be gained from the following remarks taken from his 1955 paper:
It is not essential to a *Bild* that it be a model or picture of something which exists or which once existed, 'it is enough that something is represented which has the *sense* of something actual. For only that can be depicted [*abgebildet*] which could be real – whether or not it *is*

or *was* real' (p. 147). Thus when on the stage in the theatre the hero falls to the ground after having been 'stabbed' by a dagger, we can draw no conclusions as to whether any real murder has been committed at some time in the past. A murder is *represented*, and what we experience is not a real murder but rather 'a state of affairs represented in a picture' – *ein im Bilde dargestellten Sachverhalt* (G. Husserl, loc. cit.) – which exhibits certain characteristics of a murder. The state of affairs depicted upon the stage has in common with the original murder what Husserl calls an identical '*Sinneskern*' (kernel of sense, op. cit., p. 148, cf. 2.16 f.).
Note that despite the relativeness lateness of this essay it would almost certainly be false to suppose that there was any influence upon Husserl (and other German philosophers of law such as Engisch or Larenz) by Wittgenstein.

17 I use the terms 'state' and 'state-complex' as translations of Wittgenstein's '*Sachverhalt*' and '*Sachlage*', respectively. 'Fact-complex' is used to denote existent state-complexes. In order to convince oneself of the extent to which a particular legal order may determine the structure of the world toward which it is itself directed it is useful to consider frameworks of law wholly alien to those of 'civilized' society. In medieval witch-trials, for example, the property of being a witch was *defined*, in effect, by the inability to survive the ducking or coal-walking process selected by the court.

18 Thus it is strictly speaking incorrect to speak of the *Tractatus* as an attempt to 'impose' any kind of order; as Wittgenstein himself writes, 'this book will perhaps be understood only by someone who has himself *already* had the thoughts that are expressed in it – or at least similar thoughts' (Preface, p. 3, my emphasis).

19 In spite of this fact, however, Wittgenstein became convinced that he should divest himself of his property, and even concerned himself with the problem of what would become of his estate after his death. He would therefore almost certainly have been familiar with the term '*Abhandlung*', which in Austrian (though not in German) law designates a trial for the settlement of a deceased person's estate (§ 797 ABGB). And Waismann, for example, in reference to the pains endured by Wittgenstein in bringing to fruition the 'Logisch-philosophische Abhandlung', pointed out to Shwayder that the term has the general connotation of 'ordeal by trial'. See Shwayder, 1954, p. 2.

20 I owe this point to Kevin Mulligan of the University of Hamburg.

21 Cf. Nyiri, 1972, p. 591. This and other works by Nyiri have been an indispensable stimulus to the present paper.

22 See Ch. 11 of Johnston, 1972.

23 Engelmann was actively involved in the composition of this work and almost certainly discussed it with Wittgenstein. Cf. Engelmann, op. cit., p. 71.

24 Here process and result are equivalent.

25 'Subjectivized' should be understood as being contrasted not with 'objectivized' but rather (perhaps) with 'socialized'. It lay as far as possible from Wittgenstein's intentions to question the existence of objectivity in the world.
Note the definition of 'eschatology' as 'that department of theological science concerned with the four last things: death, judgment, heaven and hell' (OED).

26 See Bartley, 1974, p. 72.

27 See the entry for 7.2.15 (p. 40) where Wittgenstein also writes:
Knowledge of the essence of logic will therefore lead to knowledge of the essence of music.

28 See Shwayder, 1954, p. 124.

29 [What artistry, what freedom, what strength of composition . . . this is pure composition! the melody simply flows!]

30 *Der Satz* in German is what things will fetch, the market price.

31 *Der Satz* is a leap ('*einen grossen, mächtigen, kühnen, eleganten Satz über einen Gra-*

ben'). Thus Wittgenstein believed himself 'to have found, on all essential points, the final solution of the problems' (Preface, p. 5). And indeed he conceived the *Tractatus* as his 'Lebenswerk' (*Briefe an Ficker*, p. 32), as the sole fruit of his life (*der Satz* is an issue or litter).

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