

Stanley Fish and the Uses of Baseball: The Return of the Natural

Brook Thomas

A professor of law and literature at Duke University, Stanley Fish has entered into debates about the interpretation of legal texts with the same iconoclastic energy that he once devoted to analyzing *Paradise Lost*. For some thinkers, his work represents that aspect of the law and literature movement intent on applying insights from literary theory to the law. In fact, Fish disputes what he takes to be strong claims for the consequences of theory. For Fish, those consequences are quite circumscribed. To a large extent I agree, but Fish's alternative account generates problems of its own. For instance, late in "Dennis Martinez and the Uses of Theory" we come across the following footnote.

47. Here then is a "consequence" of theory, not however as a blueprint or script for practice, but of theory as an institutional phenomenon that has become so widespread that everyone feels obligated to lard his discourse with theory talk, just as in other contexts practitioners might feel obligated to lard their discourses with sports talk or computer talk, or bio-feedback talk, or war talk, etc. In short, the consequences of theory are real, but they are political.¹

The "consequences of theory are real, *but* they are political." Why contrast the real and the political? I was taught that politics is concerned precisely with the messiness of reality, with Aristotle's "art of the possible," whereas a practice like literature points toward the realm of the imaginary. Fish's assertion that real consequences are, nonetheless, political can be better understood if we consider carefully the argument made about the consequences of theory.

According to Fish, proponents of theory associate it with an activity of unmasking, an attempt to show that what we take to be the real or natural is in actuality a construct. For them, this unmasking is emancipatory, since it can free us from restricting conventions. But, Fish counters, it can be emancipatory only if it is possible for a situation to be totally free from convention. For historically and culturally produced beings, however, such a state is impossible. Theory may be an activity of unmasking, but an

1. Stanley Fish, "Dennis Martinez and the Uses of Theory," *Yale Law Journal* 96 (1987): 1791.

ultimate unmasking that reveals an unmediated reality or natural state cannot exist. This does not mean that we can do without notions like the real or natural. We could not even contest someone else's sense of the real if we did not assume one ourselves. Indeed, "assume" is the wrong word, as it might imply that we willfully adopt a sense of reality. But we don't assume a sense of reality as we might assume a role in a play. We always already have a sense of reality. That sense of reality, Fish argues, might change (and is always in a process of alteration), but such change is not the result of self-conscious, theoretical reflection, because stepping outside of our beliefs to scrutinize them is an impossibility.

Some literary critics have argued that these reasons make the practice of theory itself impossible.² But Fish notes that there is persuasive empirical evidence pointing to the existence of a practice known as theory. He merely adds that the particular practice of theory has no special status. Theory is not a practice that governs other practices, it is one practice among many. Theory, like other practices, has consequences, but one consequence that it does not have is to free us from convention, history, or what Fish in a general sense refers to as politics. Those practicing theory, like all practitioners, operate with a sense of the real. That sense is always contestable, i.e., political. The fact that the real consequences of theory are always political means, paradoxically, that there is no inevitable *politics* to the practice of theory. Theory's unmasking of various conventions does not leave us in touch with a conventionless reality but with other constructions of reality that may be put to a variety of political uses. Those uses depend on particular situations that, given the contingency of history, can never be predicted beforehand.

Given Fish's argument, it should come as no surprise that he frequently draws on examples from sports. Dennis Martinez, for instance, is not a figure from law or literature, but a major league pitcher. Those who know that Martinez hails from Nicaragua might initially believe that Fish's reference to political consequences involves a discussion of "real," political issues, involving, perhaps, the United States's foreign policy in Latin America. But that sort of concrete, historical political analysis is not what interests Fish. Instead, he repeats over and over again a general argument about the political uses of theory. Sports examples seem quite appropriate for his argument.

Take, for example, Fish's loose equation early on in the "Dennis Martinez" essay between an announcer's explanation of baseball with theoretical statements about it. "My claim, in short, is that in this imagined scenario there are two distinct activities—playing baseball and explaining baseball—and that, in a strict sense (which I will soon elaborate), there is

2. Steven Knapp and Walter Benn Michaels, "Against Theory," *Critical Inquiry* 8 (1982): 723-42.

no relationship between them whatsoever.”³ What better example than sports to prove that there is no necessary relationship between theorizing about a practice and the practice itself? After all, the best analysts of a game are not necessarily the best players, while one only has to listen to interviews with sports stars to realize how few can explain the secret to their performance. Indeed, coaches often complain to players, “You’re thinking too much.” Thus sports provides Fish with numerous examples to buttress his point. We may be capable of adopting a position to reflect upon a particular practice, but the practice of reflecting does not stand in a superior relationship to the practice. Instead, both practices proceed by following internal logics of their own. To practice a practice, including the practice of reflecting, is to proceed in a way always open to exposure from the outside as conventional behavior. From the practitioner’s perspective, though, that practice merely involves doing what comes naturally.⁴

In this essay I’ll spend considerable time examining the consequences of Fish “larding” his discourse with examples from sports, especially from baseball. That metaphor itself is revealing. In his early work on effective stylistics Fish argued against seeing rhetoric as something that we simply add to discourse, as mere ornament. Instead, he maintained, rhetoric should be viewed as constitutive of discourse. Theory talk and sports talk, however, seem to be different, as we can “lard” our discourse with them. To examine Fish larding his discussions of theory with sports talk is to suggest a relationship between theory and practice that he doesn’t seem capable of imagining. As appropriate as his examples from sports seem for his argument, they actually help to unwind its tightly woven logic. The alternative relationship between theory and practice that Fish’s sports examples suggest makes for a description of legal practice different from the one Fish offers, a description with consequences, if not inevitable ones, for those interested in specific uses of the law. So, after examining Fish’s uses of baseball, I will turn to such a description by focusing on the NAACP’s legal strategy to combat legal sanction of segregation. The fact that insights learned from the practice of one discipline (baseball) can be applied to another (law) has implications for the law and literature movement that are also at odds with Fish’s account of how two disciplines relate to one another. I’ll end with a few speculations about these implications. But before getting started, I first need to spend some time examin-

3. Fish, “Dennis Martinez,” 1775.

4. The title Fish gives to his most recent collection of essays is *Doing What Comes Naturally* (Durham: Duke Univ. Press, 1989). The collection appeared in between my first version of this essay and the present one, which drastically alters the original tongue-in-cheek tone and structure in response to wise editorial suggestions. I feared that the publication of Fish’s book would force further revisions. But I saw nothing new worth responding to, just the methodical extension of existing practices. As a result, I have retained my references to essays as they originally appeared. For a successful tongue-in-cheek essay that touches, as mine also does, on baseball, theory, law, and segregation see Aviam Soifer, “Confronting Deep Strictures: Robinson, Rickey, and Racism,” *Cardozo Law Review* 6 (1985): 865-69.

ing the practice of Stanley Fish, one that he has repeated with undeniable professional success, but one that is limited precisely because it conforms so nicely to his limited description of how practices are extended. That examination can start by asking what Fish means when he says that in a "strict" sense there is no relationship whatsoever between explaining and playing baseball.

STRENGTHS AND WEAKNESSES

Fish's "strict" sense is similar to what elsewhere he calls a "strong" sense. A relationship between two practices exists in a strong sense only when one generates another in strict linear causality. For example, in the most reductive version of marxism a change in economic practices inevitably leads to particular changes in practices in the superstructure. Now there may well be a few scholars around today naïve enough to argue for such mechanical causality, but certainly they are not the critics worthy of attention. As a result, my initial response to Fish's argument was to wonder what all the fuss was about. And yet the assertion of a strong version of an argument seems to be an intricate part of Fish's own rhetorical strategy. As Gerald Graff has pointed out, a typical Fish essay begins with the strong version of an argument, which is then qualified in so many ways that we are left with what Graff calls the argument's weak version.⁵ More often than not, the strong version seems outrageous, whereas the weak one is reasonable, but contains little worth debating.

This pattern of grabbing the reader's attention by advertising what seems to be a strong claim only to qualify it so often as to deprive it of any consequences is illustrated in Fish's argument about the relationship between playing and explaining baseball. At first we may be struck by Fish's powerful claim that there is "no relationship between them whatsoever." But that claim only applies in a "strict sense," a qualification that turns his strong claim into a trivial one. Indeed, as we have already seen, Fish is soon to admit that there are real consequences even to theory. He merely wants to remind us that they are not *inevitable* ones.

Confronted time after time by this same strategy we might conclude that the subtitle of Fish's numerous essays on theory should be "Much Ado About Nothing" and decry the way in which his professional success is a symptom of the depraved state of at least two professions. But to take that high-handed moral stance would be to miss the major significance of Fish's practice. As Fish's brilliant early work in literature once demonstrated, the overt assertions of such "self-consuming artifacts" are often less important than what they do.⁶ What a typical Fish essay does is enact

5. Gerald Graff, "Interpretation in Tlön: A Response to Stanley Fish," *New Literary History* 17 (1985): 110-17.

6. Stanley Fish, *Self-Consuming Artifacts* (Berkeley: Univ. of California Press, 1972).

his argument about the consequences of theory. The fact that time and again Fish can imitate, in altered circumstances, the once powerful practice of Stanley Fish is one of the best illustrations of his description of how practices are successfully extended. But what do I mean?

Fish can expose as conventional what is taken to be real or natural as well as any theorist. Indeed, such "unmasking" is a component part of any Fish essay. But rather than liberating us from existing practices, Fish's unmasking leads us to different masks. He starts by exposing the constructed nature of existing practices only to end up rehabilitating those practices, thus confirming his point that there are no emancipatory consequences to theoretical unmasking. For instance, in a defense of professionalism Fish begins by exposing how anti-professionalism depends upon an appeal to real as opposed to institutional or constructed values. He ends, however, by asserting not only the inevitability of professionalism but anti-professionalism as well. As he proclaims in the last sentence of that essay, "In my efforts to rehabilitate professionalism, I have come full circle and have ended up by rehabilitating anti-professionalism too."⁷ The consequences of theory are not to liberate us from existing practices but to perpetuate business as usual.

Fish's self-consuming artifacts come "full circle" because, like so many literary critics today, he operates within a closed, chiasmatic world bounded by accepted binary oppositions. Fish, for instance, begins by exposing the natural as convention and ends by naturalizing convention. Convention in Fish's world takes on the force of nature.⁸ Thus whereas others appeal to the historical constructedness of beliefs to argue that there is no essential human nature, Fish, starting from the same premise, can refer to the symbiotic relationship between professionalism and anti-professionalism as "emblematic of a necessary condition of human life."⁹ In Fish's closed world of naturalized convention, theoretical self-consciousness has (in a strict sense) no consequences, because rather than allowing us to escape from convention it merely leaves us to act according to a convention that seems to come to us even more naturally.

Let me quote from one of Fish's many (strong) statements of his case against self-consciousness.

The one thing a historically conditioned consciousness cannot do is scrutinize its own beliefs, conduct a rational examination of its own

7. Stanley Fish, "Anti-Professionalism," *Cardozo Law Review* 7 (1986): 677.

8. It is possible that Fish's naturalizing of convention is related to his dependence on neo-pragmatic ideas. The two most important pragmatists for Fish—C.S. Peirce and William James—had a tendency to do the same. Peirce stubbornly clung to neo-Lamarckian thought throughout his life, thought that linked hereditary and cultural transmission of traits. James's early work on psychology sought to establish a physiological basis to behavior. Even John Dewey characterized his system as naturalistic metaphysics.

9. Fish, "Anti-Professionalism," 676.

convictions; for in order to begin such a scrutiny, it would first have to escape the grounds of its own possibility and it could only do that if it were not historically conditioned and were instead an acontextual or unsituated entity of the kind that is rendered unavailable by the first principle of the interpretivist or conventionalist view.¹⁰

As we might expect, Fish elsewhere qualifies this powerful claim. "Although we can never get an absolute perspective on our beliefs," he does admit that, "we can get a perspective on *some* of our beliefs in relation to others; and if this happens, it may be that from within the enclosure of our beliefs we will spy contradictions of which we had been unaware and, thereby, be provoked to ask and answer some fundamental questions. In short, and in familiar language, theory—or the foregrounding of assumptions—promotes critical self-consciousness."¹¹ But, Fish continues, to grant the possibility that we can use some beliefs to scrutinize others is "to have granted nothing at all."¹² This is because such scrutiny can be provoked by events or activities not related to theory, events such as "turning forty," "a dramatic alteration in one's economic situation," "marriage," "divorce," etc.¹³ In addition, whereas theoretical reflection can help people to scrutinize their beliefs, it does not necessarily change their beliefs. Thus, he concludes, there is nothing special about theory.

But it is precisely what Fish calls this "weak" version of an argument for theory, an argument that forces him to grant "nothing at all," that challenges his closed world of naturalized convention, for it moves us to the uncertain ground between two untenable absolutist or strong claims. On the one hand, there is the claim that theoretical reflection inevitably has emancipatory consequences. On the other, there is Fish's counterclaim that theory has no consequences whatsoever (in a strict sense).

Fish quite rightly refutes the claim that theory has inevitable consequences by appealing to the contingency of a historical world. To live in a historical world (both Fish and I agree) is to live in a world of chance in which future consequences can never be predicted with certainty. Furthermore, in this world, no effect can be traced to a single cause. Instead, any effect is produced by a complicated network of practices. Thus no one practice, including the practice of theory, can be said to be a sufficient cause for a particular event. Events are not determined, but overdetermined. For Fish, theory in its strong version attempts to escape this contingency by occupying a position outside of history that transcends the political. In its weak version, it is so immersed in contingency that it can be no different from other practices. But the "weak" argument that Fish

10. Ibid.

11. Stanley Fish, "Consequences," *Critical Inquiry* 11 (1985): 447-48.

12. Ibid., 447.

13. Ibid., 448.

grants, only to dismiss, suggests an alternative to Fish's rigid either/or thinking, a way of thinking that violates the very sense of contingency Fish claims to respect. To respond to the two strikes that Fish has against this weak (that is, persuasive) argument we don't need to escape the contingent world of history. On the contrary, affirming our existence in a world of chance, we can proceed by arguing for increased *probability*, not inevitability.

The scrutiny of particular beliefs does not guarantee that we will change them, but insofar as we come to believe that certain beliefs are opposed to our interests we might well decide that we should change them. Granted, the practice of theory is not the only thing that can cause us to scrutinize various beliefs. But there is an important difference between an intentional activity designed to provoke a scrutiny of beliefs and activities and events that provoke such scrutiny merely by chance. By denying the importance of this distinction, Fish discounts the difficult work in the past leading to the construction of cultural tools that both recognize and try to cope with a contingent world.

To understand the relationship between theory and practice we need to escape the boundaries of Fish's simplistic, binary oppositions. It is such binary thinking that allows Fish to oppose nature to convention only to collapse the two by conventionalizing nature, or to oppose theory to practice, only to collapse those two by turning theory into a practice like all others. But theory, as an activity (not as a body of ideas or texts) is neither completely divorced from practice nor simply a practice like all others. Instead, it occurs in the messy middle ground between the certainties of either/or that Fish, for all of his appeals to historical contingency, refuses to enter. A close scrutiny of Fish's uses of baseball can open us to that world.

SWINGING AWAY

To his claim in the "Dennis Martinez" essay that there is no relationship whatsoever between playing and explaining baseball, Fish appends the following footnote.

3. At this point, someone might raise what I call the "Charlie Lau Objection." Lau, now deceased, was a renowned batting coach who regularly turned 260 hitters into 300 hitters and whose "theories" were widely quoted and praised. How does one explain this success if not by reference to the theory with which he apparently taught so many? Of course, I was not privy to the Lau experience, but I am sure that part of that experience involved Lau regularly repeating pieces of his theory to his students. I would contend, however, that such repetition served less as instructions one was to follow than as reminders that something wasn't being done "just right." I would also contend that knowledge of that something was not *produced* by

Lau's theory; nor could it be recovered by invoking the theory. Rather the theory operates as a verbal place-marker for a knowledge that develops in the context of a trial-and-error attempt to match an example (e.g., Ted Williams's swing). In other words, the articulation of the theory refers to knowledge acquired independently of it, and it serves as a mnemonic and exhortative device. Listening to theory talk may be part of the experience of becoming a practitioner but not because theory talk would in any strong sense be generating the practice.¹⁴

According to Fish's description, Lau was successful because he exhorted players to extend a practice by matching an "example (e.g., Ted Williams's swing)." Whereas I find it bizarre for someone concerned with empirical observation to speak with such certainty about an experience that he never had, from what I know of Lau's approach to batting I find Fish's description convincing. But although Lau's approach, so described, is clearly based on the extension of a practice through empirical generalizations, I would not call it theoretical. It is, instead, methodological. The distinction is a familiar and important one, and I can elaborate upon it thanks to the example that Fish gives us to match—Ted Williams's swing.

Despite Fish's clear love of sports, he has picked about the worst example imaginable. In *The Art of Hitting .300*, Lau does use Williams as one example among many.¹⁵ But Williams detests the Lau Method. Few knowledgeable baseball fans could read Williams's revised *The Science of Hitting* without recognizing an unnamed Charlie Lau as a cause of Williams's impatience with existing practices. His differences with Lau can clarify the differences between a theoretical and a methodological approach to batting and how those differences are related to what I have called Fish's closed world of naturalized convention.

Early in his book Williams criticizes batting coaches for not being theoretical enough. Comparing golf to baseball, Williams notes that "there are as many theories [of how to hit a golf ball] as there are tee markers."¹⁶ Unfortunately, "hitting a baseball has had no such barrage of scholarly treatment, and probably that is why there are so many people—even at the big-league level—teaching it incorrectly, or not teaching it at all."¹⁷

Williams is never explicit about what he means by a theory of hitting, but we can start to understand what it entails by contrasting it to the Lau Method. A comparison of Williams's and Lau's titles would seem to indi-

14. Fish, "Dennis Martinez," 1775 n. 3.

15. Charles Lau, *The Art of Hitting .300*, with Alfred Glossbrenner (New York: Hawthorne Books, 1980).

16. Ted Williams and John Underwood, *The Science of Hitting*, rev. ed. (New York: Simon and Schuster, 1986), 9.

17. *Ibid.*

cate that Williams wants to stress hitting as a science, not an art. But whereas hitting may be a science, it is not an “exact science. Much of it has been poorly defined, or not defined at all, and some things have been told wrong for years.”¹⁸ The problem with a methodological approach is rather that it operates as if an activity as full of contingency as hitting were an exact science.

Competent members of the Lau batting community have been trained, as Fish puts it, to “match an example.” Their swings can be recognized by certain formal characteristics, such as foot position or follow-through. Without a doubt Lau’s method has had success. To have players imitate certain fundamentals of hitting derived from careful empirical observation is a useful coaching principle. Williams, however, criticizes it because of its limitations. For him it is not merely a question of finding an approach that works, but of finding one that works better.

The problem with method is that it ignores the individual differences that all batters have and thus denies them the possibility of reaching their maximum potential. There are, he argues, “all kinds of hitting styles. The style must fit the player, not the other way around. It is not a Williams or a DiMaggio or a Ruth method. It is a matter of applying certain truths of hitting to a player’s natural makeup.”¹⁹ Williams’s theoretical approach is more difficult to describe than Lau’s methodological one because it does not prescribe a recognizable style—an unalterable blueprint to be followed—but instead works to account for the contingency of individual differences as well as that of the various situations batters must face. Unlike a methodological approach, a theoretical approach cannot proceed merely by matching an example because the example it needs to match does not yet exist. The distinction between theory and method complicates Fish’s case against theory.

In a typical move, Fish describes two prevalent attitudes toward theory. There are “those who fear theory and those who identify it with salvation.” Both “make the mistake of conceiving it as a special kind of activity, one that stands apart from the practices it would ground and direct. If there were a theory so special, it would have nothing to say to practice at all; and, on the other hand, a theory that does speak meaningfully to practice is simply an item in the landscape of practices.”²⁰ Since Fish’s anti-foundationalist assumptions rule out the possibility of achieving a position outside of a practice one is engaged in, the theoretical project of grounding and directing practice is for Fish *a priori* impossible. Nonetheless, there can be the practice of theory itself.

But what if we define theory differently? For instance, Adena Ros-

18. *Ibid.*, 12.

19. *Ibid.*, 20.

20. Stanley Fish, “Fish v. Fiss,” *Stanford Law Review* 36 (1984): 1347 n. 44.

marin asks, why “exclude from the category of ‘theory’ much that has always been regarded as theory—works like W. J. Harvey’s *Character in the Novel*, or Barbara Herrnstein Smith’s *Poetic Closure*, or William Empson’s *Seven Types of Ambiguity*—works whose claims are general and extend beyond the interpretation of specific texts to the uncovering of regularities that are common to a great many texts”?²¹ Fish’s response to this criticism is to resist calling these works theory because they result from “empirical generalizations rather than a general hermeneutics.” It is worth quoting at length his reasons for maintaining that distinction.

Still, one might ask, Why not call such generalizations “theory”? Of course, there is nothing to prevent us from doing so, but the effect of such a liberal definition would be to blur the distinction between theory and everything that is not theory, so that, for example, essays on the functions of prefaces in Renaissance drama would be theory, and books on the pastoral would be theory, and studies of Renaissance self-fashioning or self-consuming artifacts would be theory. One is tempted to call such efforts theory in part because they often serve as models for subsequent work: one could study self-fashioning in the eighteenth century or self-consuming artifacts as a feature of modernism. Such activities, though, would be instances not of following a theory but of extending a practice, of employing a set of heuristic questions, or thematics, or a trenchant distinction in such a way as to produce a new or at least novel description of familiar material. Much of what is done in literary studies and elsewhere conforms to this pattern. If we like, we can always call such imitations of a powerful practice “theory,” but nothing whatsoever will have been gained, and we will have lost any sense that theory is special. After all, it is only if theory is special that the question of its consequences is in any way urgent. In other words, the consequentiality of theory goes without saying and is, therefore, totally uninteresting if *everything* is theory.²²

Concerned to preserve a distinction between theory and what is not theory, Fish rules out the possibility of a more subtle one. He does so through what should by now be a recognizable practice: the creation of binary oppositions. Either theory is completely outside of practice or there is no distinction between theory and practice. This choice of extremes is misleading, because the relation between theory and practice is more complicated. Theory is never divorced from practice and any practice can potentially have a theoretical dimension to it. Nonetheless, theory and practice are not the same activities. Theory, like method, involves the extension of practice, but not all extensions of practice are theoretical. The extension of practice can involve habit, chance, method, or theoretical self-

21. Cited in Fish, “Consequences,” 442.

22. *Ibid.*, 442-43.

reflection. Fish, however, considers only one way to extend practice: imitation.

For instance, the practice of literary studies is extended through the “imitation” of existing “models for subsequent work,” such as when “a set of heuristic questions, or a thematics, or a trenchant distinction” is employed “in such a way as to produce a new or at least novel description of familiar material.”²³ Without a doubt, Fish is correct when he observes that “much of what is done in literary studies and elsewhere conforms to this pattern.”²⁴ Furthermore, such imitation often produces more interesting work than that which relies on a poorly worked out set of heuristic questions or nontrenchant distinctions. But it is limited for the same reason that Williams faults the Lau Method. It doesn’t account for individual differences and the historical situatedness of specific material. To take one example that Fish lists, anyone attuned to historical difference should be extremely cautious when employing empirical generalizations derived from a study of Renaissance self-fashioning for a study of Japanese Noh drama. The strategy might work, but more likely it will produce mechanical analysis. Such mechanical extensions of practice are as prevalent in literary studies as in hitting. Williams’s theoretical alternative to them suggests one of the most glaring limitations of Fish’s description of how practices are extended.

In limiting himself to method, Fish risks violating his anti-foundationalist claims by clinging to a correspondence-like notion of truth. Granted, Fish adopts the pragmatic notion that truth is what works and abandons the attempt to match essences. Nonetheless, what works for Fish is the matching of existing practices. Thus he confines himself to a closed world in which learning can take place only through mimicry. To become a good hitter you match an example. To produce criticism you imitate existing models. To become a competent member of a profession you imitate its practices. This methodological approach can produce results, but it is not the only approach that does. Indeed, for Williams its results are not good enough, especially on a big-league level. Thus Williams advocates a theoretical approach.

To do Fish justice, I must grant that, lurking within his simplistic argument that calling “imitations of a powerful practice ‘theory’”²⁵ turns everything into theory, he does, unwittingly, point to what I am calling a theoretical, as opposed to methodological, extension of practice. For what, after all, are these “powerful” practices that others in turn imitate? Fish makes no effort to answer that question. And for good reason. They are powerful precisely because they have a component that defies imitation.

23. *Ibid.*

24. *Ibid.*, 443.

25. *Ibid.*, 442-43.

Indeed, once a practice becomes so widely imitated that it has become second nature for “everyone” to practice it, it loses its status as a powerful practice. In sports and the law this is often the case because opponents adjust and learn to use the practice in their own interests or work to contain it. Why this is so in literary studies is harder to explain. Certainly, to describe something that defies imitation is no easy task. But it is for this reason that a theoretical, as opposed to methodological, extension of practice has a greater chance of bringing about powerful practices. Williams can help us see why.

Williams makes no claim that his approach governs or generates practice in Fish’s strong sense, for it too is an extension of practice. Nonetheless, he does claim that it is a *better* way to extend practice than a methodological one, which simply imposes a blueprint onto practice. Williams’s theoretical approach differs from a methodological one, not only because it denies the existence of only one model to match (for instance, he explicitly warns batters against *matching* the example of his own swing), but because it implicitly denies a correspondence model. Imitation of existing practices is not enough because it does not take into account the fact that a batter will inevitably face situations that have never existed before and operate with a physical makeup that is never exactly the same as someone else’s. A theoretical approach does not ignore empirical observation, but it is not merely mimetic. Instead of imitating an already existing model, it helps bring a new swing into existence, one tailored to a “player’s natural makeup.”

Many critics today are justifiably suspicious of the use of the term “natural.” In using it, Williams might even seem to fit Fish’s description of someone appealing to the real or natural to escape contingency. But, as Fish reminds us, contemporary critics need to be wary of simplistic rejections of terms such as “natural,” and Fish himself ends by rehabilitating its use. But whereas Fish eventually uses it to close us off from a world of contingency, Williams uses it to emphasize contingency. Indeed, what could be more contingent than the randomness of genetic selection that contributes to one player having a different natural makeup than another? Since each one of us has slightly (often vastly) different strengths, hand-to-eye coordinations, etc., the swings that best suit our bodies will be different. Thus Williams’s call for naturalness comes hand in hand with a recognition of such contingency. “Feet and hand position vary more than anything else from player to player because, unlike golf, the baseball swing is not a grooved swing. It is more tailored to the individual, more natural. ‘Be natural,’ Tris Speaker used to say, ‘it’s the most important thing.’”²⁶

Batters need to be natural because to imitate a swing that does not suit

26. Williams and Underwood, *Science of Hitting*, 33.

their particular makeups is counterproductive. "Natural" here is not used in a naïve sense of something that exists outside of history. After all, the very activity of swinging a baseball bat is historically determined. But it is not a predetermined act. Players determined to be their best must coordinate particular physical skills with demands imposed by the particular activity of hitting. As many athletes acknowledge, being natural is one of the most difficult things they have to learn. To ignore the contingent history and randomness of genetic selection that contributes to differences in individuals is to ignore one factor that makes the study of human history so complicated. Just as Williams's appeal to the natural stresses contingency, so does his evocation of "certain truths of hitting."

Williams's "Three Rules to Hit By" would seem to confirm many of Fish's most important points even better than the Charlie Lau Method that Fish evokes. For instance, Williams refuses to offer foundational truths. As opposed to Lau, who stresses the fundamentals of proper arm or leg position, Williams rarely "talks fundamentals." To be sure, Williams likes "to demonstrate the necessary ingredients of a good swing, because there is a logic in using them the optimum way, but there are a dozen deviations from the norm."²⁷ Thus Williams's three rules are all situational rules: "(1) Get a good ball to hit, (2) Proper thinking, (3) Be quick with the bat."²⁸ What constitutes a good ball or proper thinking can, as Fish argues, be understood only by someone who knows the game of baseball. To be quick with the bat seems a more fundamental rule, but, even here, how to be quick varies from player to player.

These rules seem to confirm Fish's position, but not quite. They don't because they are intricately related to what, in a chapter entitled "Hitter, Know Thyself," Williams calls "self-education—thinking it out, learning the situations, knowing your opponent, and most important, knowing yourself."²⁹ Self-knowledge is more important in Williams's theoretical approach than Lau's methodological one because, as Fish makes clear, method merely involves matching an existing model to achieve, say, proper arm or leg position. In contrast, Williams's approach involves a much more complicated process of continual adjustment that incorporates knowledge gained from observing existing models and knowledge of one's individual makeup. To show why Williams's first rule cannot work as well without self-knowledge as with it is to show the limits of Fish's description of how we learn many (if not all) practices.

In "Fish v. Fiss" Fish offers an example that invites comparison with Williams's rule, "Get a good ball to hit." To demonstrate why a set of rules cannot govern a field of practice, Fish asks us to suppose that:

27. *Ibid.*, 20.

28. *Ibid.*, 24.

29. *Ibid.*, 14.

You were a basketball coach and had taught someone how to shoot baskets and how to dribble the ball, but had imparted these skills without reference to the playing of an actual basketball game. Now you decide to insert your student into a game, and you equip him with some rules. You say to him, for instance, "Take only good shots." "What," he asks reasonably enough, "is a good shot?" "Well," you reply, "a good shot is an 'open shot', a shot taken when you are close to the basket (so that the chances of success are good) and when your view is not obstructed by the harassing efforts of opposing players." Everything goes well until the last few seconds of the game; your team is behind by a single point; the novice player gets the ball in heavy traffic and holds it as the final buzzer rings. You run up to him and say, "Why didn't you shoot?" and he answers, "It wasn't a good shot."³⁰

Fish goes on to show how a game can always produce situations in which the rule must be amended. Eventually, however, the player will need no more explanations "not because the rules have finally been made sufficiently explicit to cover all cases, but because explicitness will have been rendered unnecessary by a kind of knowledge that informs rules rather than follows from them."³¹

Fish's point is well taken and covers the first part of what Williams calls self-education. To know what constitutes a good ball to hit, a player needs to learn "the situations" and know "the opponents." It is noteworthy, however, that Fish does not give an example of how the notion of a good shot would need to be adjusted to individual strengths and weaknesses. But clearly what constitutes a good shot (or a good ball to hit) for one player in a particular situation is not a good one for another. Thus an important part of knowing what constitutes a good ball to hit involves the last part of Williams's program of self-education: "knowing yourself." With such knowledge a player has a better chance of success than without it.

Knowing one's self improves a batter's chances for success, but it by no means guarantees it, for a player might learn that he is a lousy hitter. Indeed, Williams starts "Hitter, Know Thyself" by admitting that it would be impossible to lay down "hard rules that would eliminate all weaknesses for a batter,"³² impossible because every batter has some. These inevitable weaknesses, however, make self-knowledge more, not less, urgent. A batter needs to know himself because unless he is aware of the weaknesses that constrain his batting, he will not be able to work on them. Although he may never be able to correct some weaknesses, knowledge of them can help him make adjustments to minimize their control

30. Fish, "Fish v. Fiss," 1329.

31. *Ibid.*, 1330.

32. Williams and Underwood, *Science of Hitting*, 14.

over him, thereby giving him a chance to raise both his batting average and his salary.

Whereas Fish claims that proponents of theory try to escape to a position free from the pressures of interests (that is, politics), I advocate theory precisely because it often serves our interests. In many cases our interests are best served through disinterested inquiry enabled by what Robert Gordon has termed the "ordinary rational tools of intellectual inquiry."³³ Far from signalling an escape from history, this appeal to disinterested inquiry draws on culturally constructed tools that increase our probability of recognizing forces, both cultural and natural, that limit our potentials, just as a batter wants to know as clearly as possible his particular weaknesses. Even though it is in our interest to maintain culturally constructed tools aiding the pursuit of disinterested inquiry, they cannot guarantee a foolproof method to follow. Indeed, theory is useful precisely because it provokes self-conscious doubt about particular practices, methods, and beliefs that have become so habitual that we take them for granted.

Without a doubt, it is not in our interest to remain in a perpetual state of doubt, even about particular beliefs and practices. For instance, it is not in a batter's interest to induce doubt about his swing in the middle of a game, as the ball is nearing the plate. Such reflection is best left to the practice field, where it is a "natural" part of the preparation for a game. Nonetheless, even there it cannot be part of a process that is merely imitated because it always takes place in new situations and involves the unique capabilities of particular players. Furthermore, the distinction implied between the practice of playing a game and the practice of practicing undercuts the strong claim that Fish makes about various practices having no relationship whatsoever.

For Fish, a notoriously devoted player of pick-up games, the practice of a sport often seems to be identified with a game situation. But for professional players, the game situation takes up a minor time of their practice of a sport, most of which is devoted to practice, i.e., workouts. Granted, the ratio of game time to practice time varies from sport to sport. For a world-class 100 meter sprinter, the total time of competition in a season can be less than one day's practice. In baseball the ratio is higher, one of the highest in sports. Nonetheless, even in baseball it is during practice sessions, and particularly those during spring training, that a player tries to develop his skills (quite self-consciously) to such an extent that in a game situation he no longer has to think about what he is doing. As far as Williams is concerned, the practice necessary for a player to lack self-consciousness in a game is not divorced from his theoretical approach to hitting but intricately related to it. Indeed, he titles the final chapter of *The Science of Hitting* "Practice, Practice, Practice."

33. Cited in Fish, "Anti-Professionalism," 658.

One of the most important consequences of Williams's theory for a batter is that it recommends different things to practice than the Lau Method. Granted, Fish could always argue that there is a difference between the practice of practice and the practice of the game situation. And he would be right. But if he would go on to argue that there is no relationship between the practice of practice and the practice of a game situation, he would, I'm afraid, hurt his chances of success.

At this point Fish might respond that the tools developed to become aware of strengths and weaknesses in a hitter's swing and those developed to become aware of beliefs are quite different, and he would be right again. Video replays help batters in ways that they could never help people trying to become aware of what they believe. But to raise such an objection is also to question Fish's uses of examples from sports to make points about the uses of theory in law and literature. If various practices are as autonomous as Fish's *strong* argument implies, Fish's uses of baseball would be illegitimate. Indeed, in generalizing from one practice to another, Fish could be accused of producing precisely what he wants to argue against: a general or universal account of the relationship between theory and practice. But practices are never totally autonomous, as Fish's *weak* version recognizes. There is overlap and penetration of boundaries between them. Indeed, boundaries can be quite fuzzily rather than rigidly and absolutely drawn. Thus Fish is not wrong to apply examples from baseball to discussions of theory in law and literature; nonetheless, doing so demands self-conscious attention to the differences between practices. One advantage of theory over method in the extension of one practice to another is that it respects such differences, as Williams does when he contrasts a swing in golf and in baseball. The way in which various disciplinary practices relate to one another has implications for the law and literature movement. But before offering some speculations upon such implications, I want to apply what we have learned from Williams to various ways of extending legal practice.

A POWERFUL PRACTICE

Almost all of Fish's writings about the uses of theory in the law involve the interpretive activity of judges. If we extend our baseball analogy, however, the practice of the judge is closer to the practice of the umpire and commissioner than that of the hitter. Williams's *The Science of Hitting* might have more to tell us about legal process than legal hermeneutics (which is not to say that the two can be strictly separated).

Fish's claim for literary studies—that most work is done by imitating existing models—is even more appropriate for the law. The case method teaches students to “think like a lawyer.” At its mechanical extreme, legal apprenticeship emphasizes learning where, when, and how to fill out the

appropriate legal forms of the sort that one can now buy at many copy shops around the nation. The reliance on precedent in our legal system makes a certain amount of methodological extension of practice inevitable, and most lawyers, at least successful ones, learn the methods so well that they become "second nature" to them. Nonetheless, the agonistic nature of the legal system in this country makes it possible to extend Williams's discussion of batting to legal practice. When we do, we find that there is still room for a theoretical as opposed to methodological extension of practice.

Just as a batter faces a pitcher, so a lawyer often faces an opponent, an opponent whose strengths, weaknesses, and developing strategy he needs to read as carefully as a batter needs to read a pitcher's. Furthermore, like the batter, the lawyer needs to be cognizant of his own resources and skills. If his case is weak, he needs to adjust his strategy accordingly. Relevant considerations might include the amount of funds available, research possibilities, and constraints of time. Finally, just as the batter needs to adjust to different game situations, so the lawyer needs to adjust to new sets of facts, different situations in court, etc.

Such similarities between the law and baseball do not rule out the usefulness of a competent, methodological lawyer, just as I have not denied the usefulness of the Lau Method. For instance, a lawyer who methodically researches existing cases and imitates existing models of practice will usually do much better than one who doesn't, whether his failure to do so results from a lack of money, time, or competence. Such professionally competent and methodical lawyers, though, are rarely those who produce the powerful practices that others eventually imitate. Indeed, we can imagine two lawyers pitted against one another, both professionally competent and aware of existing models, both of whom have methodically researched all needed material, including existing cases. One, however, extends previous practices by the book, while the other proceeds by bringing a new practice into existence, one that wasn't previously available for imitation.

In everyday legal practice such innovation rarely constitutes a major alteration of existing practices. It often merely involves a novel twist or emphasis that the innovative lawyer tries to use to his advantage, partly because he has been able to read his methodical opponent's way of proceeding with relative certainty. Furthermore, such innovation does not guarantee success. The lawyer risks hurting his case as well as helping it, although a good lawyer will make a calculated guess of his chances after having also read the presiding judge and/or jury. Furthermore, it is not inevitable that such innovation occurs because of theoretical self-reflection, adjustment, and correction. It might occur by mere chance. Still, it is more likely that change results from theoretical extension of practice than from chance or method. When we move into the big leagues of the law, some of

the most powerful practices, ones that in turn become models for imitation, have involved theoretical as opposed to merely mechanical extensions of practice. For an example we can turn to the NAACP's strategy to overturn legal sanction of segregation.

When it was formed in 1910, the NAACP could have accepted an account of change similar to Fish's. Fish points out that imitation of existing practices does not rule out change, if for no other reason than—as post-structuralists insist—the spatial and temporal gap in any attempt to represent makes the production of identical copies impossible. For instance, we all exist in a historically changing world. Thus to imitate an existing practice is to re-produce it in different historical circumstances. Such a practice might appear identical to a previous one, but it is never precisely the same. Even more important, its effects are potentially different, because the conditions in which it has been reproduced are different. Rather than rule out change, Fish's argument about extending practices implies that change is inevitable: in the nature of things, we might say.³⁴

It is doubtful, however, that the NAACP would have found this account of change satisfactory. Its major goal was self-consciously to produce new laws regarding the relationship between races rather than to wait for an imitation of legal remedies to lead to Fish's sort of inevitable change. At stake is what we mean by change. Fish argues that a theory of change is unnecessary because mechanisms of social stabilization have transformative possibilities built into them. Change occurs by letting people do what comes naturally, which is what they will do anyway. But once we assume a sense of temporality in which no event can duplicate itself, Fish's account of change is trivial. Change of some sort *is* inevitable. What Fish offers, in other words, is an account of change in which nothing changes. For instance, commenting on the efforts to develop a "new historicism" in literary studies, Fish asserts that the only possible newness is to assert a "new truth about something in opposition to, or correction of, or modification of a truth previously asserted by someone else." What is not possible, it seems, is a new way of doing history. Instead, assertions of new truths will be "merely another move in the practice of history as it has always been done."³⁵

I could spend a long time drawing out the implications of that "always," but in the interests of time I'll draw on an example from sports. Fish's assertion implies that there could be nothing in historical studies comparable to the Fosbury Flop in high jumping. Instead, jumpers would still be practicing not just the straddle that first got them over seven feet, but the scissors, which the straddle displaced.³⁶ Indeed, Fish does not con-

34. Stanley Fish, "Change," *South Atlantic Quarterly* 86 (1987): 423-44.

35. Stanley Fish, "Commentary: The Young and the Restless," in *The New Historicism*, ed. H. Aram Veesser (New York: Routledge, 1989), 313.

36. Named after Dick Fosbury, the Fosbury Flop involves going over the crossbar backwards, as

fine himself to the practice of history. He claims that his account of change holds for practices in general. My example from high jumping proves the fallacy of that universal claim, and with time I could demonstrate the error of even his specific claim about historical studies. But my general point is to demonstrate that Fish provides an account of change in which nothing really changes. As a result, his efforts to clear himself of charges of legitimating the status quo fall flat before he even approaches the bar. For he fails to recognize that at least in Western democracies the reigning sense of reality is one that assumes the inevitability of change. As Walter Benjamin quipped, this account of change describes the "eternal return of the new."³⁷

The NAACP, however, did not want some general sense of change that produces endless novelty. It wanted a specific change in the Supreme Court's legitimation of the separate but equal doctrine pronounced in *Plessy v. Ferguson* (1896). The beauty of Fish's account for those, like the NAACP, who disagree with it is that he offers no compelling reason for why they should agree with him. As Fish himself admits, his account has no consequences. It does not do, as William James would put it, work in the world. If change occurs automatically, it will take place whether people believe his account or not. Thus it makes perfect sense for those who want, not only change as novelty, but purposeful change of particular practices, to believe that devising a self-conscious strategy can help bring about those changes. Fish might respond that empirical evidence will prove their belief unfounded. But since, to them, belief in the randomness of change is unsatisfactory, they have nothing to lose by believing otherwise. In fact, even if past empirical evidence proves them wrong, there is, as Fish's appeal to historical contingency emphasizes, no way to predict the future. Thus there is always the possibility that, although all past efforts have failed, this one might succeed. Thus in a new version of Pascal's wager, belief in change does matter. We can see how by looking at the various accounts of legal change available to the NAACP.

One explanation of legal change available was a version of formalism. In this version the law is an autonomous realm that follows a logic of its own controlled by certain general principles. Any change within the law involves the growth or evolution of these guiding principles. As such, the law is a realm separate from political and social pressures, and its authority to govern society stems from its autonomy, which guarantees non-partisan rule. But whereas its autonomy grants law a governing role, it also

opposed to the once-powerful practice of straddling sideways. As a straddler Fosbury was a mediocre college jumper. As a flopper he was the 1968 Olympic gold-medalist, even though his coach at Oregon State University, Bernie Wagner, worried that he might be a flop, had insisted that he imitate existing practices.

37. Walter Benjamin, *Gesammelte Schriften*, 5 vols., ed. Rolf Tiedemann and Herman Schwegelhauser (Frankfurt a.M.: Suhrkamp, 1972), 1:677.

limits the effects that it can have. Although it is not an example of pure formalism, the *Plessy* decision does illustrate one aspect of formalist doctrine when the Court declared that the law cannot be responsible for or alter social prejudice. Another formalist move was its attempt to establish clear-cut boundaries between political, social, and civil rights. The NAACP could reject the available formalist account for the same reasons that it would have rejected Fish's notion of change. Even if the formalist position eventually proved correct, it could not, at the time, serve the NAACP's goal to undermine legally sanctioned segregation. If formalist doctrine was right, there was nothing to be lost in testing it, just to make sure.

The reverse image of formalism is instrumentalism. It confronted the NAACP with a real choice. If formalists argue that the law's autonomy means that the law cannot be responsible for or alter social prejudice, instrumentalism argues that social prejudice generates the law. In a classical marxist version, the law is an instrument of the ruling class, used to protect its interests. The legal system is part of the ideological superstructure that is determined by the economic base. This account of the law leads to the attempted uses of theory as Fish defines it. Subordinating historical contingency to a philosophy (or theory) of history, it assumes that true legal change cannot occur without a prior change in the controlling economic base. Thus efforts at change must concentrate on altering the economic situation. Once such change is accomplished, the legal system will change of itself. Until it has been accomplished, efforts at legal reform are distracting side shows, perhaps tactically useful ones, but not determinate.

Marxists, however, are not the only instrumentalists. Herbert Hovenkamp characterizes the Supreme Court's move from *Plessy* to *Brown* as an example of liberal instrumentalism. Arguing against the notion of legal autonomy, Hovenkamp establishes the Court's dependence on scientific accounts of race. *Plessy*, he points out, is perfectly reasonable given prevailing theories of what today we call late nineteenth-century scientific racism. As the scientific community's theories on race changed, so did the Court's opinions.³⁸ Indeed, *Brown*'s famous footnote eleven citing sociological and psychological testimony on the damage done to black children attending segregated schools supports Hovenkamp's thesis.

But the NAACP did not embrace a totally instrumental view of legal change, even in one of its many liberal forms. Its difference from the marxist account is made clear through its disputes with the Communist Party in the 1930s. Considering the repression of blacks a perfect example of class domination, the Communists disagreed with the NAACP's legal

38. Herbert Hovenkamp, "Social Science and Segregation Before *Brown*," *Duke Law Journal* 85 (1985): 624-72.

strategy and insisted on battles on the economic front. Thurgood Marshall's response pinpoints the limits of the Communist Party's strict instrumentalism. Defending the NAACP's strategy to bring suits to equalize salaries of black and white teachers, he noted that they would result in a "material benefit to Negroes in general," as the extra money would circulate within the black community to "physicians, dentists, lawyers and other professional and business men."³⁹ Furthermore, the cases would help create a sense of the solidarity in the black community. (Class or racial consciousness is, after all, not a given; it must be constructed.)

The NAACP's differences with sociological instrumentalism are more subtle. A key part of its strategy was to attack "separate but equal" on sociological grounds, an attack that was eventually successful. Nonetheless, it did not completely embrace Hovenkamp's account of legal change. A problem with his account is that it passes the buck by relocating the site of change. The NAACP certainly recognized that social science evidence helped to determine legal decisions. But their desire to change existing practices also demanded some explanation of how they could transform accepted evidence. To pose that question is to recognize one reason (there were many others) why cases involving the admission of blacks to professional and graduate programs were so important. It is precisely such professionally trained communities of the competent that help to construct scientific evidence. Thus it is not only the case that evidence from the social sciences determines legal decisions. Legal decisions can also alter the make up of the communities constructing the evidence upon which courts rely. This is one reason why affirmative action programs remain so important for the NAACP's continuing strategy.

The reciprocal relationship between the law and other social practices leads us to the highly complex web of interconnection assumed not only by the NAACP, but also by revisionist marxists and by Fish himself.⁴⁰ Within marxism, the notion of relative autonomy challenged the belief that the economic base rigidly determines changes in the superstructure.⁴¹ Individual social practices or disciplines, like the law, do have a certain autonomy, but it is only a relative autonomy, as they are also influenced by other practices and influence them in turn. Because this interaction of various practices is so complex, no one practice can be said strictly to govern any other. For marxists this means that the economic loses its absolute determining status—although Althusser continues to insist that in

39. Mark Tushnet, *The NAACP's Legal Strategy Against Segregated Education, 1925-1950* (Chapel Hill: Univ. of North Carolina Press, 1987), 37.

40. There may be a reciprocal relationship between the law and other social practices, but the reciprocity need not be balanced. It still might be the case that in most instances economic practices are more determinant of legal practices than vice versa.

41. The notion of relative autonomy is usually attributed to Louis Althusser, but see Jean Paul Sartre, *Search for a Method*, trans. Hazel E. Barnes (New York: Random House [Vintage Books], 1968), 48, 66, 111.

the “last instance” the economic is determinant. For Fish, the interconnected web means that theory loses its privileged status. It’s not a practice governing other practices; it is merely one practice among many. Furthermore, the interconnected web is so complex, that it becomes impossible to offer an accurate account of causality. After the fact we can always point to various causes, but the contingent nature of how various practices relate to one another makes any control of the direction of future action impossible. It is such contingency that undercuts any strong claims for the consequences of theory.

My point, however, is that it is precisely the existence of a historically contingent world that (in most cases) makes a theoretical extension of practice desirable. For instance, the NAACP could have proceeded by relying on chance, formalism, or instrumentalism. Instead, it devised a strategy that operated on various fronts, one that was not methodologically extended, but one that was continually revised and adjusted to changing circumstances. The result was a powerful new practice that is now a model for others to imitate.

In devising a legal strategy against segregation, the NAACP clearly wanted to shape the direction of future change, but it was by no means blind to historical contingency. Instead, as Mark Tushnet notes, its strategists should be understood as “attempting rationally to pursue their goals under circumstances of uncertainty and limited resources.” To understand how that worked “requires attention to the role of chance—unexpected events or decisions by individuals outside of the movement—and choice—decisions by insiders to pursue one path rather than another that in retrospect seems almost equally sensible.”⁴² Choices had to be made about how and where to attack “separate but equal” laws. Since legislative remedy in the South seemed impossible, the courts became a logical site of challenge. But what courts? State or federal? Both could lead to Supreme Court challenges. In which state should challenges be launched? Border states or the deep South? Did it make a difference that the federal appellate court that heard cases from Arkansas covered Iowa, Minnesota, Nebraska, and North and South Dakota? Furthermore, what sort of cases should be brought? Should all segregation laws be attacked or particular ones? Given the separate but equal doctrine, should the concentration be on guaranteeing equalization or on a frontal assault against separation itself? What sorts of remedies should be requested?

As the NAACP knew, chances for success would be better if those questions were answered in light of empirical observation rather than some abstract “theory” or wishful thinking. Thus it commissioned studies and reports that its limited resources would allow. Such appeal to empirical evidence is not, however, in conflict with a theoretical extension of

42. Tushnet, xii.

practice but a vital part of it. As the etymological root of theory indicates, it involves an act of seeing. It involves reflection upon empirical observations. But it also recognizes that basing a future strategy solely on existing evidence has limits. Indeed, the evidence can be interpreted differently. The NAACP had to deal with this problem, as there were disputes within the organization about what the evidence meant. Thus part of its reflection involved which interpretation to accept and how long to trust it. These decisions were even more difficult because immediate failures connected with following one strategy would not necessarily mean that the strategy was misguided in the long term. The existence of a long-term goal indicates another limitation connected with the appeal to empirical evidence. There is no empirical evidence of the future. As a result, the NAACP faced an acute dilemma.

Existing models wouldn't do because they were precisely what it wanted to transform. Even the stirring defense in *Plessy*, as exemplary as it might seem, couldn't really serve as a model because it had already been rejected by the Court.⁴³ At the time that the NAACP was founded the Supreme Court had never explicitly overturned itself. By 1938 it had overruled the 1842 decision in *Swift v. Tyson*. But the chances of an explicit rejection of *Plessy* were not good. In fact, what the model of *Plessy* taught was that the NAACP needed, not only to create new models of a practice powerful enough to combat widespread public and legal support of segregation, but also to avoid bringing into existence new precedents that would hinder the campaign. Furthermore, legal setbacks would waste limited financial resources and erode the NAACP's credibility with the black community.

How the NAACP coped with these difficult problems makes for a fascinating story, told most dramatically by Richard Kluger and in a more focused and analytical manner by Tushnet.⁴⁴ Its successes most often resulted from moves similar to the ones I attributed to a Williams-like lawyer. The NAACP did its homework as thoroughly as a limited staff allowed. Furthermore, it continually adjusted its strategy in response to readings and rereadings of the opposition, the courts, and its own resources. Each act of reading was complicated. The opposition, like a good pitcher, also adjusted to changed conditions. Courts and judges were probably more varied in their behavior than umpires or commissioners. And the staff's resources were continually shifting, more so than a batter's whose skills change mostly because of injury and age. One reason for such variability was that their resources included individual plaintiffs, some of

43. The defense was conducted by the novelist/lawyer Albion Winegar Tourgée. For efforts to link the case and Tourgée's role with literary history see Eric Sundquist, "Mark Twain and Homer Plessy," *Representations* 24 (1988): 102-27 and my "Tragedies of Race, Training, Birth, and Communities of Competent Pudd'nheads," *American Literary History* 1 (1989).

44. Richard Kluger, *Simple Justice* (New York: Alfred A. Knopf, 1975).

whom were more reliable than others, and local black communities, whose support was usually crucial. Employing the latter resource involved more than a reading of an existing situation, as usually it meant mobilizing the resource itself, bringing into existence a necessary resource that previously did not exist.

To be sure, some successes seemed to result from mere luck, whereas some failures occurred after careful planning and attention to detail. But on the whole, the NAACP legal staff worked to minimize the influence of chance through a self-conscious awareness of its inevitable presence. Chance, after all, was neutral, whereas its campaign was partisan, even though conducted by extending practice in a way that conceivably any political persuasion could use. Indeed, it brought into existence such a powerful practice that its campaign has become a model for what is known as "institutional reform litigation."

That the practice it generated has in turn become a model for imitation might seem to prove Fish's point about the naturalization of existing practices. What once was an innovative practice is now one available for what some would call co-optation and others appropriation, depending on one's point of view. Without a doubt, Fish is correct to argue that in general (I almost said in "theory") there is no inevitable politics to a practice. That insight holds for a theoretical extension of practice as well as a methodological one. But Fish is also correct when he reminds us that we are never in a general situation, but always within particular ones. In particular situations practices have particular political valences. These may not be predicted with certainty in advance, but for those unhappy with existing practices the risk that a challenge to them will make conditions worse often seems worth taking. In fact, it is not merely accidental that the NAACP's legal strategy has become a model for those dissatisfied with business as usual and in search of institutional reform. If I am correct in my analysis, however, what cannot be imitated is precisely what helped to turn it into a powerful practice; that is, self-conscious responses and adjustments to particular sets of circumstances. Fish might well respond that all extensions of practice involve such adjustments and reflections. He might claim that they simply occur so automatically that they seem to transpire naturally. But if this is the case, he needs to adjust his own description of how most practices are extended.

To extend means to stretch or draw out. Spatially it means to elongate; temporally to prolong. In both cases it can imply a substantialist continuity from one point to another. This sense of unbroken continuity places Fish at odds with poststructuralists, with whom he is often compared. In contrast to Fish, poststructuralists work to uncover gaps and breaks in such appearances of continuity, absences that disrupt pure presence. Without such moments of discontinuity no space would open for powerful new practices to come into existence. As a result, Fish's sense of

temporal continuity rules out the possibility of such change. And yet one reason that change is inevitable is because of gaps in any act of representation.

I, like Fish, use the metaphor of extending existing practices. That metaphor is useful because it combats the naïve notion that we can have a complete break with the past. Nonetheless, rather than use it to imply an inevitable continuity, I have emphasized that extensions contain tensions within them. These tensions are potentially present in any attempt to extend existing practices to new circumstances. It is such tensions that, as Fish argues, create transformative possibilities within the very mechanisms of social stabilization. But the mere existence of transformative possibilities does not guarantee that they will be actualized.

For example, in 1950 the NAACP won three Supreme Court cases that, while not overruling “separate but equal,” nonetheless insisted on equality in fact. Some writers for the black press criticized the Court for failing to overturn “separate but equal.” By contrast, the *Virginia Law Review* praised the Court for being “most politic in leaving the ‘separate but equal’ doctrine existent but the door open for gradual change.” Thurgood Marshall, however, had a different interpretation. “All three of the decisions . . . are replete with road markings telling us where to go next.”⁴⁵ The transformative potential was there, but it wouldn’t have been activated unless Marshall had read it as he did and acted upon that reading. According to his reading the time had come for a direct attack on segregation. It is doubtful that Marshall would have read the evidence and acted the way that he did, if he shared Fish’s account of change.

To make this claim is *not* to make the foolish assertion that Marshall’s way of reading and acting was the sole cause of change, or that without it no change would have occurred. As I have readily admitted, change, defined in Fish’s trivial sense, is indeed inevitable. Furthermore, the NAACP strategy was not the only way in which substantial legal change could have been brought about. Because of the relative autonomy of the law, those persisting in formalist assumptions could have conceivably helped to alter existing legal practices. Because the law is *only* relatively autonomous, those persisting in instrumental assumptions also could have helped to alter them by concentrating efforts solely on the economic base. And in no case would respective theories of change be solely responsible for it or provide us with the ability to predict all future consequences.

My argument is not that the Lau Method or alternative ways to bring about changes in legal practice are totally wrong. It is that those hoping to bring into existence a powerful practice have a better chance of doing so through a theoretical extension of practice. One could argue that, in fact, it is better to follow the Lau Method or marxist instrumentation. But that

45. Quoted in Tushnet, 134, 135.

argument serves to underscore that a *choice* of the Lau Method or the Williams approach does have consequences. Fish might respond (I'm not sure) that my notion of choice is deluded. But, as I have tried to show, he offers no compelling reason for us not to persist in a belief in choice. Indeed, the superiority of a theoretical extension of practice grows out of Fish's recognition that all mechanisms of social stabilization have transformative possibilities built into them. All I am arguing is that the chances for turning those always-already existing possibilities into new powerful practices are increased by a self-conscious reading of the tensions generated when we extend an existing practice into a new area. Indeed, the existence of such tensions has potential consequences for the attempt to bring together different disciplines such as law and literature. So before heading to the showers, I want to end with a few speculations about those efforts. It should come as no surprise that they conflict with Fish's account of interdisciplinary work.

(EX)TENSIONS BETWEEN LAW AND LITERATURE

Fish's argument about the possibilities of interdisciplinary work is an extension of his argument against the inevitable consequences of theory. As we have seen, theory for Fish is a practice that has no special relation to other practices. It does not govern other practices, nor does the injection of theory into the field of another practice lead to a new way of conducting that practice. Indeed, for Fish a Fosbury Flop-like change of practices is inconceivable. All that we can do is mimetically extend existing practices. What holds for the application of theory to another practice, holds in general for any practice. As a result, hope that interdisciplinary work will radically alter existing practices is misguided. For instance, the effort to bring into existence powerful new legal practices by turning to the discipline of literature is doomed to failure.

As is often the case, Fish's arguments are helpful correctives to various simplistic assumptions. Many who claim to be doing interdisciplinary work are actually doing precisely what Fish describes. For example, some literary critics merely extend the ways they have been taught to read literary texts to legal documents. In contrast, various legal scholars have extended their understanding of legal documents by introducing "literary theory" into the study of the law. Neither, Fish would argue, are doing interdisciplinary work. They are doing literary or legal work by absorbing new material.

Of course, there are those cases, like Fish himself, in which literary scholars move into the field of law and actually teach at a law school. Or there may be legal scholars who read the Constitution as if it were literature. What are they doing? In the first case there are two possibilities; either they are teaching a literature course that happens to be situated in

a law school, or, as Fish does, they teach a course on law. In the second case, the moment one reads the Constitution as literature, even in a legal class, one is no longer doing law but literature. This is because a literary text is not defined by intrinsic formal properties but by how we consider it.⁴⁶ Thus not only legal texts but any text can conceivably be read as literature. The moment we read the Constitution as literature, however, it stops being a legal document. The Constitution as a work of literature would have no more authority as the law of the land than a legal document that appears in the midst of *Billy Budd*. To become a legal document again the Constitution must be restored to a legal context, a context defined by various institutional practices. Momentarily taking the Constitution out of the context that constitutes *it* as a legal document may be a useful exercise. It may even alter our understanding of legal practices. But it does not radically alter the practices that define the discipline in the first place.

There is, of course, a third option. Perhaps such people are doing neither law nor literature, but law *and* literature. Shouldn't such practices be called interdisciplinary? Not necessarily. As Fish might respond, many people are indeed doing law and literature. Their work is not, however, *interdisciplinary* but work within a new discipline, one that is well on its way toward following a disciplinary logic that most academics know without having to articulate. The field of law and literature now has its own journals, professional organizations, and conferences, as well as various experts and intradisciplinary debates. Rather than radically altering the practices of law or literature, it is busy extending its own practices.

As a general description of existing practices, this account may be relatively accurate, just as Fish's description of how much work in literary studies proceeds is accurate. But it is as limited as is his argument that a historically conditioned consciousness cannot scrutinize its own beliefs, although for slightly different reasons.

For Fish, practices are like beliefs in that we are always inside them. But if the strong claim for theory hopes to find a position outside of all beliefs in order to scrutinize them, the strong claim for interdisciplinarity is that we can conduct two practices simultaneously. Both demand that we occupy an impossible-to-achieve position. Strong advocates of theory demand that we occupy a state of suspended animation above all beliefs. Strong advocates of interdisciplinarity demand that we operate in a suspended state between two disciplines. The latter seems to have a better chance of being realized, but what is actually achieved is not a space between practices but a space for a new practice altogether.

46. See Stanley Fish, *Is There A Text in This Class?* (Cambridge: Harvard Univ. Press, 1980), 108-9 and my "The New Historicism and the Privileging of Literature," *Annals of Scholarship* 4 (1987): 23-48.

The answer to Fish's argument against theory is to adopt the weak but persuasive claim that, whereas we cannot achieve a position to scrutinize all beliefs, we can use some to scrutinize others. But to use a similar argument in terms of interdisciplinarity would seem to confirm Fish's point that we cannot do two practices at a time. We can, for instance, use a position from within the law to scrutinize literary practices or vice versa. But we cannot do both simultaneously. As a result, the perspective that literature can provide on the law will not radically alter its practices because for that perspective to have any effect it first needs to be absorbed into the space occupied by legal practices. That space may, and indeed is, continually changing, but only through a process of extending existing practices. Although Fish insists on a complex interconnected network of various practices, the practical effect of his description is to return us to a non-absolutist version of formalism. Even though material from outside may penetrate disciplinary boundaries, its practices are generated by an internal logic that absorbs all foreign material.

The response to this argument is to scrutinize Fish's dependence on spatial metaphors, just as he did in his early work in literature that combatted New Critical formalism by stressing the temporal nature of reading. The reading process, Fish once argued, does not tie a work together into a finely balanced organic form. Instead, as a temporal process it disrupts any effort to achieve a harmonious balance. The "point" of a work is not what it is but what the experience of reading it does. Similarly, the point of interdisciplinary analysis is not a thing but a process that does something. What it does *not* do is situate itself within the space of two practices simultaneously (an impossibility). Instead, it moves back and forth between two different spaces, just as with the famous gestalt figure we can move back and forth between seeing first rabbit, then duck.⁴⁷ To be sure, we cannot see rabbit and duck simultaneously. Nonetheless, whereas Fish seems to imply that we can only have the experience of seeing rabbit or duck, I am arguing that we can have the experience of moving back and forth between those experiences. Conceived as such a process, interdisciplinary work does not absorb one discipline into another or unite two existing ones so as to create a new discipline. As Fish would argue, neither of those two alternatives is really interdisciplinary. Instead, it works by a process of continual cross-examination, using the perspective of one discipline to interrogate the practices of the other and vice versa, creating a space not of harmonious extension but restless tension.

There are, I would argue, consequences to such work. For my purposes, the most important is its potential to disrupt the process of naturali-

47. See E.H. Gombrich, *Art and Illusion* (London: Phaidon Press, 1972), 4. For a summary of debates over experiencing the rabbit/duck see James Kincaid, "Coherent Readers, Incoherent Texts," *Critical Inquiry* 3 (1977): 781-802.

zation described by Fish. As we have seen, Fish admits the existence of tensions whenever a practice is extended into a new territory. It is such tensions that help build into every mechanism of social stabilization transformative possibilities. But just as Fish starts by exposing the constructedness of what is taken to be natural only to end by naturalizing convention, so he grants these tensions only to work to reduce them. The tendency to reduce tension may be a natural one, for tension can create doubt, and, as Fish's pragmatic predecessor C.S. Peirce insisted, doubt is an irritable state that we try to replace with the comfortable one of belief. Indeed, we could describe doubt as a sort of tension headache, and who wants to be bothered by a headache?⁴⁸

Nonetheless, Peirce admits, the process of inquiry is dependent upon doubt; and for the pleasure of inquiry we may well attempt to induce doubt. Fish might respond that the practice of inducing doubt doesn't escape belief because it grows out of a belief that it is in our interests to do so. I would agree and merely add that what I have called a theoretical extension of practice is a culturally constructed activity aimed at creating the condition of doubt. Similarly, interdisciplinary work, as I have described it, helps to induce doubt by highlighting the tensions involved in the extension of one practice into another. Such self-conscious attention to tension has no inevitable consequences in and of itself. Nonetheless, it can spark the struggle that Peirce finds so important in helping to ensure that our beliefs "may truly guide our actions so as to satisfy our desires."⁴⁹ Although it cannot strictly control the direction that such inquiry will take, the types of tensions attended to can make a difference. Thus it matters that disciplines are brought into contact with one another. For instance, the doubts raised about practices within the law by coupling it with literature are likely to be different from those raised by coupling it with baseball. To examine the significance of the particular doubts raised about the law through current couplings of it with literature would require detailed and concrete analysis of the historical relationship between those disciplines as well as a comparison of that relationship with attempts to couple the law with other disciplines, such as economics or sociology. It might also help us to understand why for those interested in institutional reform the once powerful sociological model employed by the NAACP and others is starting to lose some of its power. But that is the

48. Charles S. Peirce, "The Fixation of Belief," in *Selected Writings*, ed. Philip P. Wiener (New York: Dover Publications, Inc., 1966), 92-112. "Doubt," Peirce writes, "is an uneasy and dissatisfied state from which we struggle to free ourselves and pass into a state of belief; while the latter is a calm and satisfactory state which we do not wish to avoid, or to change to a belief in anything else" (*ibid.*, 99). Fish's desire to eliminate potential tension headaches involved in extending existing practices is nicely summarized in his advice to literary historians questioning existing practices. Stop worrying, he says, and keep on doing what you've always been doing. "In the words of the old Alka-Seltzer commercial, 'try it, you'll like it'" (Fish, "Commentary," 315).

49. Peirce, 100.

topic for another essay. I can end this one with a final note of agreement with Fish that should clarify our differences.

Interdisciplinary work may be a culturally constructed activity helping to induce doubts about particular disciplinary practices. But, as Fish insisted in a recent talk, "Being Interdisciplinary Is So Very Hard to Do."⁵⁰ Indeed, it's not a practice that comes naturally. In drawing attention to the tensions within the extension of existing disciplinary practice it, like theory, can alert us to a space full of irritating curve balls, sliders, and off-speed pitches. Trying to make a comeback within that space, the natural has been known to strike out.

50. Delivered at MLA conference, New Orleans, December 27, 1988.