AGAINST FORMALISM: THE AUTONOMOUS TEXT IN LEGAL AND LITERARY INTERPRETATION

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It may seem odd and even a little perverse to entitle an essay "Against Formalism" when we are supposed years ago to have gone beyond formalism at a time when what we were against was interpretation. But, as we may recall, Geoffrey Hartman's conclusions in that famous essay were sceptical: "to go beyond formalism is as yet too hard for us," he wrote, "and may even be [...] against the nature of understanding" (1966: 42). And, of course, Susan Sontag was far from arguing against formalist criticism; her only complaint was that it wasn't formalist enough. What we needed, she thought, was criticism of the "sort that dissolves considerations of content into those of form" (1964: 12). It must have seemed to some readers even then that we had already had quite a lot of that — in any event, we have had a great deal of it since. But it is not really my purpose in this essay to take up lines of argument suggested by either Sontag or Hartman; that is, I don't mean to argue either for or against that kind of criticism we usually call formalist. What I want to question is not so much a kind of criticism as an account of meaning, an account of meaning which is held, I think, not only by avowedly formalist critics but by many critics who are far from thinking of themselves as formalists and indeed by many who are not critics at all but who are nevertheless concerned with the nature of language and of texts.

There is, however, a real connection between formalist criticism and what I am calling the formalist account of meaning. This connection has surfaced most obviously in the debate over intention that has for so long been prominent among the theoretical issues of modern American literary criticism. The central text in this debate, the text which began it and for some readers ended it, is, of course, Wimsatt & Beardsley's "The Intentional Fallacy." The central thesis of this essay was that "the intention of a literary artist qua intention is neither a valid ground for arguing the presence of a quality or meaning in a given instance of his

literary work nor a valid criterion for judging the value of that work" (1968: 12). And the debate which followed this assertion has usually (and quite naturally) taken the form of arguments for or against the proposition that knowledge of the author's intention is relevant to the determination of what his poem or novel means. And yet, this way of putting the question is somewhat misleading, for as constant as Wimsatt & Beardsley were in denying the relevance of authorial intention to interpretation, they were at least equally constant in denying one aspect of their denial. As "Mr. Beardsley and I were careful to point out [...]," Wimsatt wrote in 1968, "interpretation apparently based upon an author's 'intention' often in fact refers to an intention as it is found in, or inferred from, the work itself. Obviously the argument about intention [...] is not directed against such instances" (1968: 26).

Charges that Wimsatt wished to ignore the author's intention or that he misunderstood the "intentional" nature of the poetic object thus seem a little beside the point. The central thrust of his position was not completely to deny the relevance of authorial intention but rather to limit what would be allowed to count as evidence of that intention to the work itself. As such, the polemic against intention was part of the more broadly formalist polemic against discussion of the aesthetic object in what were perceived as fundamentally non-aesthetic terms (historical, biographical, psychological, etc.). The poem was to be regarded as an autonomous object and to be studied, in the famous phrase, "as a poem and not another thing." Seen in this light, it is, of course, very tempting to equate American formalism with a kind of (high-minded) aestheticism, but it is at the same time worth noting that the modern insistence on the determinate and autonomous status of the text itself has been by no means confined to aesthetics. In fact, some thirty years before the publication of "The Intentional Fallacy," Judge Learned Hand was writing, in language remarkably similar to Wimsatt's, that

> A contract has, strictly speaking, nothing to do with the personal or individual intent of the parties. A contract is an obligation attached by the mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent. If, however, it were proved by twenty bishops that either party, when he used the words, intended something else than the usual meanings which the law imposes upon them, he would still be held, unless there were some mutual mistake, or something else of the sort (Hotchkiss v. National City Bank. 200 F287, 293 [S.D.N.Y. 1911]).

The point in law has, of course, nothing to do with the aesthetic status of contracts. It was rather an attempt to guarantee the objectivity of the contract by ensuring that both parties would be bound to what the words themselves said and not to anyone's "subjective" or "private"

interpretation of what the words meant. Thus we find the primary tenet of literary formalism – that study be confined to the *text itself* – anticipated in a context utterly removed from any aesthetic concerns and associated not with a New Critical retreat to the Ivory Tower but with the interpretive demands of the market-place.

In contract law, one of the primary ways in which the integrity of the text is protected is by something called the parol evidence rule, which in the *Restatement of Contracts* reads as follows: "the integration of an agreement makes inoperative to add to or to vary the agreement all contemporaneous oral agreements relating to the same subject matter; and also [...] all prior written or oral agreement relating thereto" (section 237). The force of this rule is clear enough; it is designed to ensure objectivity by providing a public standard of accountability. Since, in Justice Holmes's words, "the making of a contract depends [...] not on the parties having *meant* the same thing but on their having *said* the same thing" (1897: 178), the parol evidence rule ensures that evidence of one party's subjective intent will not be introduced in order to alter the objective meaning of the contract itself, what the contract says. There are, however, exceptions to this rule. Extrinsic evidence is not admissible "if the written words are themselves plain and clear and unambiguous," but if the contract is itself vague or ambiguous, then extrinsic evidence will often be admitted to clear up the vagueness or resolve the ambiguity. The evidence serves not to vary the contract but to help the judge in interpreting it.

This interpretive scenario sounds reasonable enough, but, in fact, as the late Arthur L. Corbin argued, it is highly misleading, depending as it does on the implicit and in Corbin's view mistaken assumption that qualities like ambiguity and clarity are intrinsic properties of texts. A judge's decision as to whether or not a contract is ambiguous must inevitably be itself based on extrinsic evidence. Corbin argued, because

> no man can determine the meaning of written words by merely gluing his eyes within the four corners of a square paper [...] when a judge refuses to consider relevant extrinsic evidence on the ground that the meaning of the words is to him plain and clear, his decision is formed by and wholly based upon the completely extrinsic evidence of his own personal education and experience (1965: 164).

In support of this view, Corbin cited the example of Frigaliment Importing Co. v. B.N.S. International Sales Corp. (190 F. Supp. 116 [S.D.N.Y. 1960]).

The question in this case was the meaning of a contract in which a New York company called B.N.S. (the defendant) undertook to sell to a Swiss company called Frigaliment (the plaintiff), among other things, 75,000 lbs. of US Fresh Frozen Chicken at a price of $33 per 100 lbs. When the chickens arrived in Switzerland, the plaintiff was dismayed

and outraged to discover that they were not the young "fryers" and "roasters" he had anticipated but were instead old "stewing chickens" or "fowl." According to the plaintiff and to witnesses on his behalf, the word "chicken" had a particular trade usage; it could mean a "broiler, a fryer or a roaster" but not a stewing chicken. Hence, the plaintiff claimed, he had every right to expect, according to the terms of the contract, that he would be sent fryers and/or roasters, not stewing chickens. The defendant maintained, however, that being new to the chicken business he was not familiar with such usage and that, furthermore, such usage was by no means universal even in the trade. Among the witnesses called on behalf of the defendant was a Mr. Weininger, the operator of a chicken eviscerating plant in New Jersey, who testified, "Chicken is everything except a goose, a duck, and a turkey. Everything is a chicken but then you have to say, you have to specify which category you want or that you are talking about." The defendant thus maintained that it had every right to understand "chicken" to mean, among other things, stewing chicken and so contended that it had complied with the terms of the contract.

The question was thus, as the judge put it, "what is chicken?" And, he wrote, "since the word 'chicken' standing alone is ambiguous," it was clearly relevant to admit extrinsic evidence as an aid to interpretation. From the theoretical standpoint, then, this case is a clear illustration of the parol evidence rule. The written word ("chicken") is not "plain and clear and unambiguous," hence extrinsic evidence is appropriate. But what is it about the word "chicken" that is ambiguous? "Chicken" is not, after all, an example of lexical ambiguity; in fact, from the standpoint of the dictionary, "chicken" seems a more than usually precise word. If, to take a common example, someone tells you that he has spent the morning at the bank, you might reasonably (from a lexical standpoint) wonder whether he means the river or the First National. But if he tells you that he likes or doesn't like chicken you are likely to feel, and with reason, that you have some fairly concrete information about his dietary habits. If, then, the word "chicken" "standing alone" is ambiguous, it is not because "chicken" is a particularly ambiguous word.

In fact, and this is Corbin's central point, the judge's sense that "chicken" is ambiguous derives not from the word as it stands alone but from the extrinsic evidence of conflicting meanings. There is a problem with "chicken" not because it is itself ambiguous or, as some commentators have written, "vague," but because it is in dispute. The word "chicken," standing alone, in itself, is neither ambiguous nor vague (nor clear nor precise) and the contract isn't either. To see this clearly, we have only to imagine some alternative sets of circumstances: suppose the defendant had been an old hand at the chicken business and had like the plaintiff regularly employed the trade usage in

question. Or suppose the plaintiff had been a newcomer also and like the defendant ignorant of trade usage, understanding by chicken just a kind of fowl. In both cases, the meaning of the contract would have been plain and clear, with its clarity deriving not from less ambiguous or more explicit language (since the language in both cases is identical) but from shared understandings or what Corbin calls "undisputed contexts." And, of course, the meaning of the contract made by the neophytes would have been plainly and clearly different from the meaning of the contract made by the old chicken hands, although again the words would have been the same.

The moral Corbin draws from this story is essentially that the parol evidence rule must be liberally understood. "All rules of interpretation [...]" he writes, "are mere aids to the court [...] in ascertaining and enforcing the intention of the parties" (1965: 171). Evidence of these intentions can, therefore, never be irrelevant. But this does not mean that extrinsic evidence is always admissible. For "the courts are always correct when they say that they must not by interpretation alter or pervert the meaning and intention of the parties" (1965: 121), hence,

> When two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing (1960: 357).

Thus, where the *Restatement* admits extrinsic evidence only in the case of an ambiguity in the contract itself, Corbin would have required no such prima facie ambiguity. He insisted rather that ambiguity is itself a product of extrinsic evidence, and so would have allowed extrinsic evidence at all times so long as it was for the purpose of interpretation and not contradiction. "Contradiction, deletion, substitution: these are not interpretation" (1965: 171).

As a revision of the *Restatement*, this formulation seems once again reasonable enough but in fact it founders on almost exactly the same terms. For it is reasonable to insist that we allow extrinsic evidence for the purpose of interpreting but not for the purpose of contradicting or varying a contract only if we can make some neutral distinction between "interpreting" and "varying," some distinction which does not already involve a commitment to a particular interpretation. But this, as Corbin himself had shown, is what we can never do. We can only decide whether or not extrinsic evidence will *vary* the writing after we have decided what the writing means, and our decision about what the writing means is itself dependent on some form of extrinsic evidence, if only that of our own experience. We cannot, therefore, refuse to admit extrinsic evidence on the grounds that it will tend to vary the meaning of the contract without having already admitted extrinsic evidence in deciding what that meaning is. The distinction between

interpretation and variation cannot be understood as the neutral and principled distinction Corbin wanted it to be. Interpreting and varying both involve extrinsic categories — the only difference between them is that evidence which according to the judge tends to serve "the purpose of varying or contradicting the writing" will be evidence for an interpretation the judge does not share — which is why it seems to him to vary or contradict the writing. Corbin's insistence that judges refuse to admit evidence that will vary the text then becomes an exhortation to interpret correctly instead of incorrectly and, as such, has no methodological significance whatsoever.

That Corbin could have been unaware of this contradiction may seem implausible, but actually this kind of blindness on this particular issue is by no means uncommon. In another celebrated case, Pacific Gas and Electric Co. v. G.W. Thoms Drayage and R. oco. (442P. 2d641 [1968]), an opinion by Chief Justice Traynor of the California Supreme Court reversed a lower court decision on the grounds that it illegitimately excluded relevant extrinsic evidence. "Although," Traynor wrote, "extrinsic evidence is not admissible to add to, detract from, or vary the terms of a written contract, these terms must first be determined before it can be decided whether or not extrinsic evidence is being offered for a prohibited purpose." This sentence sits squarely on both sides of Corbin's fence. On the one hand, it asserts that the terms of a contract must not be altered by evidence which is extrinsic to the contract; on the other hand, it asserts that what the terms of a contract are can only be discovered by the use of evidence extrinsic to the contract. The implication is that while we must recognize the importance of extrinsic evidence (since to interpret a text is always to invoke some form of extrinsic evidence), we must still insist on a principled way of distinguishing between relevant extrinsic evidence (which will help us toward a correct interpretation) and irrelevant extrinsic evidence (which will serve to vary the contract). But, on Traynor's own terms, there can in principle be no such principle. Relevant evidence will be evidence that supports the interpretation we hold. Irrelevant evidence will be evidence that supports an interpretation with which we disagree.

Traynor's criticism of the trial court is thus double-edged. "Having determined that the contract had a plain meaning," he writes, "the court refused to admit any extrinsic evidence that would contradict its interpretation." As a criticism of the implicit claims made by the trial court for its own interpretation, this is perfectly valid, because the trial court maintained that the meaning of the contract was intrinsically clear, independent of any extrinsic evidence and so refused to allow any extrinsic evidence. Traynor's criticism is thus directed against the trial court's account of what a "plain meaning" is. But if we replace the trial court's account of plain meaning with Corbin's and Traynor's,

Traynor's criticism ceases to be a criticism at all and becomes instead an account of what every judge must always do. Whenever a court refuses to allow extrinsic evidence on the grounds sanctioned by Corbin and Traynor (that the evidence serves not to interpret but to vary the contract), the court will of necessity have already decided what the contract means. And having decided what the contract means, the evidence the court refuses to admit will of course be evidence that contradicts its interpretation. Corbin and Traynor both see that a text can have no meaning, plain or otherwise, independent of extrinsic evidence, but then they both imagine that a court can distinguish between evidence which will be a legitimate aid to interpretation and evidence which won't without having already reached an interpretation. But it can't and because it can't the parol evidence rule, no matter how liberally we construe it, is doomed to circularity. It can never provide a neutral procedure for deciding what extrinsic evidence should be admitted and what shouldn't; it can only provide an after-the-fact justification for excluding the evidence that seems to contradict the court's interpretation.

Literary criticism, needless to say, has no parol evidence rule to guarantee the text's autonomy, but the text has managed quite nicely on its own. The major thrust of "The Intentional Fallacy" was, as we have seen, to establish the priority of the text, insisting simultaneously on the intrinsic and objective character of meaning. The formal study of "the text itself," wrote Wimsatt & Beardsley, "is the true and objective way of criticism" (1946: 18). And, in fact, even some of the strongest arguments against Wimsatt & Beardsley have turned out to share some of their most important assumptions. A neat example of this phenomenon is E.D. Hirsch's seminal "Objective Interpretation," an argument against what Hirsch saw (in 1960) as the inevitable relativism of formalist criticism and in support of the proposition that meaning is "permanent" and "self-identical" and that "This permanent meaning is, and can be, nothing other than the author's meaning" (1960: 216). One of Hirsch's more persuasive examples of the relevance of authorial intention and of the necessity to go outside the text in the effort to discover that intention is the critical controversy over Wordsworth's "A Slumber Did My Spirit Seal." The poem reads as follows:

A slumber did my spirit seal;
I had no human fears:
She seemed a thing that could not feel
The touch of earthly years.

No motion has she now, no force;
She neither hears nor sees;
Rolled round in earth's diurnal course,
With rocks, and stones, and trees.

Hirsch cites two conflicting interpretations. One emphasizes the poet's " 'agonized shock' " at Lucy's death, his horrified " 'sense of the girl's falling back into the clutter of things . . . chained like a tree to one particular spot, or . . . completely inanimate like rocks and stones.' " The other suggests that the poem climaxes not in horror but in two lines of " 'pantheistic magnificence.' " Lucy's fate is consoling not shocking because she " 'is actually more alive now that she is dead . . . she is now a part of the life of nature.' " These two critics, Cleanth Brooks and F.W. Bateson, agree that Lucy is one with the rocks and stones but they disagree on what exactly is implied by oneness with rocks. The issue, as the judge in Frigaliment v. B.N.S. might have said, is "what is a rock?" To a pantheist, of course, rocks are living things, participants, as Bateson says, in "the sublime processes of nature," and if Lucy is rolling around with them she is fairly well off. To almost everyone else, however, rocks are, in Brooks's words, "completely inanimate," and Lucy's kinship with them is indeed unfortunate. The question "what is a rock?" can thus only be answered convincingly once we know whether or not Wordsworth was a pantheist. It cannot be answered by the text itself because the text, as Hirsch notes, permits both interpretations. The available historical evidence, however, seems to indicate that in 1799 (when the poem was written) Wordsworth probably regarded rocks not, according to Hirsch, as "inert objects," but as "deeply alive, as part of the immortal life of nature." Thus, he concludes, until and unless we uncover "some presently unknown data," we are entitled to conclude that Bateson's optimistic reading of the poem is more correct than Brooks's pessimistic one (1960: 239-240).

This interpretive procedure is clearly similar to the legal procedure in cases which are understood to fall within the province of the parol evidence rule. The text itself is ambiguous (Hirsch prefers the term "indeterminate," pointing out quite rightly that in literary criticism ambiguity tends to signify not the reader's inability to decide what the text means but the author's intention to have it mean more than one thing) — no matter how carefully we read, we cannot decide whether chicken means fryers or stewing chicken or both, whether rocks are alive or dead. Thus we turn to extrinsic evidence to make explicit which of the text's implicit meanings is correct. But to formulate the problem and its solution in these terms is also, I think, to point toward what is wrong with this account. For one thing, as we have already seen, the decision that a text is ambiguous cannot be made prior to the introduction of extrinsic evidence. And for another thing while seeming to recognize and take into account the difficulty of interpreting a text on its own terms, Hirsch in fact demonstrates exactly the same kind of confidence with regard to intrinsically meaningful extrinsic evidence that the formalist has with regard to the text.

This sounds more paradoxical than it is. Imagine, for example, that

rummaging through Dove Cottage, some diligent researcher were to come up with a letter dated February 1799 from Wordsworth to Coleridge, ending with the customary salutations, wish-you-were-here, etc., and then a P.S. — "I have definitely become a pantheist." Such a discovery of "new data" would seem on the face of it to end the matter. Bateson would be proven right; Brooks, if he were in a generous mood, might send him a congratulatory telegram. But it requires little more than a glancing familiarity with the academic (or any other) world to recognize the Utopian character of this scenario. Rather we can imagine supporters of the "dead rocks" thesis maintaining that the postscript was not evidence of Wordsworth's pantheism but was in fact ironic, and hence was evidence of his scepticism in regard to the fundamental sentimentality of the pantheistic view of nature. The whole Lucy cycle, they might claim, insists on the inevitability of loss, on an "asceticism" which is the very denial of pantheistic "mysticism." How then could any critic take seriously such a disingenuously naive declaration of faith? In short, not only would the argument over the poem be simply reproduced in an argument over the postscript, but now the poem would be cited as extrinsic evidence to clear up the ambiguity of the text itself, the postscript.

The point of this example is not to suggest that, even in the face of incontrovertible evidence, people will stubbornly maintain their own positions but rather to call into question the notion of incontrovertible evidence. Or, in the terms we have been using, to suggest that explicitness is a function not of language but of agreement. The problem with "rock," like the problem with "chicken," is not that it is vague or ambiguous but that it is in dispute. Such a problem cannot be resolved by an appeal to words which are in themselves less vague or ambiguous (there are no such words); it can only be resolved by an appeal to words which are not in dispute. If we agree that "I am a pantheist" meant that Wordsworth was indeed a pantheist, then our dispute over the meaning he attached to the word "rock" will be at an end. If we don't, it won't. The process of adjudication thus depends not on words which have plain meaning and can be used as touchstones against which to measure words whose meanings are not so plain. It depends instead on what Corbin calls "undisputed contexts," agreement on the meaning of one piece of language which can then compel agreement on the meaning of another. No text by itself can enforce such an agreement, because a "text by itself" is no text at all.

To claim, then, as I do, that the phrase "the text itself" is oxymoronic is to argue not that formalism is undesirable and that we should stop being formalists but that formalism is impossible and that no one ever has been a formalist. To read is always already to have invoked the category of the extrinsic, an invocation that is denied, as I

suggested earlier, not only by avowedly formalist critics but by all those who think of textual meaning as in any sense intrinsic. Many contemporary legal and literary theorists, for example, are accustomed to thinking of language as inherently "vague" or "ambiguous," a position that at least appears to be more responsive to the complexities of contracts and poems than any doctrine of plain meanings and that may also appear not incompatible with the account of interpretation I have sketched above. Thus, according to the legal scholar E. Allan Farnsworth, "all language is infected with ambiguity and vagueness" (1967: 965), and, according to the literary critic Paul de Man, "literary [...] language is essentially ambivalent" (1971: 111). But does it really make sense to say that "chicken" is inherently ambiguous and "rock" inherently ambivalent? We can easily imagine contexts (in fact, we have already done so) in which the meanings of "chicken" and "rock" would be as clear and precise as anyone could wish — in an agreement between two experienced chicken merchants, for example, or in a conversation between pantheists. And of course we have also already imagined the contexts in which "chickens" and "rocks" become ambiguous again. The mistake is to conclude with Farnsworth and de Man that ambiguity is somehow more a property of language than clarity is. In fact, although some texts are ambiguous, no texts are inherently ambiguous, and although some texts are precise, no texts are inherently precise either. That is the point of chickens and rocks — no text is inherently anything — the properties we attribute to texts are functions, instead of situations, of the contexts in which texts are read.

But, it might be objected at this point, poems are not contracts. Isn't our response to poetic language quite different from our response to legal language, and doesn't this difference manifest itself very clearly in cases like the ones we have been talking about? In Frigaliment v. B.N.S., after all, people stand to win or lose thousands of dollars whereas the values of "A Slumber Did My Spirit Seal" must be calculated quite differently. Aren't chickens and rocks, like apples and oranges, incomparable? Isn't it a fundamental mistake to treat the two texts as if they were the same when they so clearly aren't?

The response to this objection is that while there are indeed differences between poems and contracts, they are institutional not formal differences. We can, for example, easily imagine a certain brand of literary critic maintaining that the whole point of "A Slumber Did My Spirit Seal" was the ambiguity of "rocks and stones," emblemizing the poet's and the reader's uncertainty as to what exactly Lucy's absence means — to insist on either reading at the expense of the other, such a critic might maintain, would be to attribute to the poem a sense of resolution that the poet is precisely concerned to deny, etc. If, on the other hand, the judge in Frigaliment v. B.N.S. were to begin his decision by praising the art of the contract-makers, their subtle refusal

to simplify experience by specifying fryers or stewing chickens, their recognition of the ultimately problematic character of the chicken itself, etc., we would know that something has gone radically wrong. Judges cannot decide that contracts are ambiguous in the same way and for the same reasons that literary critics can. But this is not because legal *language* is less tolerant of ambiguity than poetic language is; it is because the institution of the law is less tolerant of ambiguity than the institution of literary criticism is. Judges don't read the same way literary critics do.

These differences should not, however, be allowed to obscure some basic similarities. Legal and literary theorists both have been concerned with objectivity, they have attempted to guarantee that objectivity by a theoretical insistence on the primacy of the text, and their theoretical model has broken down when faced with what should, on its own terms, be easy questions — "what are chickens?" "what are rocks?" They should be easy because the formalist model assumes that texts have some intrinsic, plain, or literal meaning (even if that meaning is ambiguous), a lexical function of the language itself, not of the situations in which the language is being used. And we may have trouble defining "good" or "beautiful," but we know what "chicken" means and we know what "rock" means. They are hard because our lexicon won't tell us if chickens are fryers or if rocks are dead. Which doesn't mean that "chicken" and "rock" have no plain meanings but that plain meanings are functions not of texts but of the situations in which we read them. And which remind us that the lexicon itself ("chicken: a common domestic fowl," "rock: a concreted mass of stony material") has meaning itself only against a background of assumptions and information which it too can never contain.

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