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Nomoscopic Analysis

Since the late 1980s, a growing anxiety has been evident within American (and much of European) literary studies and in the humanities more generally. This anxiety is quite different from the turmoil these fields experienced in the early 1970s with the emergence of post-structuralist theory. Even though poststructuralism often had a divisive effect, forcing scholars to side with either traditional humanism or its philosophical and ideological critique, several academic disciplines were swept by enthusiasm for the new venture—the availability of alternative methods, the possibility of interdisciplinary work, the (re)discovery of long-neglected material, the revision of the canon, and the promise of reflexivity offered by Continental thought.

The present situation is characterized less by excitement than by ennui, more a sense of boredom and exhaustion with current professional practices and scholarly ideals than a view of Theory as resting too comfortably on the laurels of its unquestionable success or as having been reduced to a spiritless exercise of interpretative virtuosity. Neither should we blame this situation on a lack of intellectual leadership,

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although several of the figures who pioneered the turn to Theory have since withdrawn into different, mostly private, pursuits (often of an autobiographical nature), while their successors have been unable to sustain the intensity of their inquiry or the breadth of their analysis. The ever-increasing number of articles, books, journals, conferences, and centers in literary, cultural, and other humanistic studies does not suggest a dearth of productivity, movement, exchange, or debate. It is rather the uniform and predictable results of this extensive, polyphonic enterprise which seem to bother or bore growing numbers of scholars—the sense that more and more people are saying (albeit with increasing sophistication) fewer and fewer things of broad relevance or lasting significance.

Is this a correct assessment of large areas which are still undergoing so much reevaluation, continuing to create space for forgotten works, exploited groups, marginalized approaches, outlawed experiences? Yes, if we take into account the sprawling fragmentation to which the growth of canons and interests has led. Despite the tremendous demands made on them for retraining in a variety of fields far beyond their graduate education, many people found the first wave of theoretical expansion, the move toward multi-methodological and cross-disciplinary work, challenging and exhilarating. They felt that new avenues of inquiry had burst wide open. The fragmentation came in on the second wave, however, with Theory's ethnographic turn to the study of particular cultures, habitats, and identities. Having cleared an inhospitable terrain of brazenly antagonistic margins, borders, and peripheries, its explorers were expected to make pledges of allegiance to specific positions and places.

This recent phenomenon has become known as identity politics on the Left and as victim politics on the Right. Both sides agree that it is the outcome of the politicization of Theory in the mid-1980s. Both labels have some validity, one articulating the essentialist thrust of the trend, the other its preference for narratives of collective suffering. But if we want to grasp its ideological bent, we need to examine closely the historical moment when Theory began to thematize political activism, namely, the transformation of Theory into cultural politics.



The idea in Continental philosophy that American literary theory found most congenial to its concerns was that of negativity, especially in its ar-

ticulations as otherness and difference. In many respects, this problematic was an unlikely source of illumination and incentive since its philosophical trajectory (through Nietzsche, Bergson, Heidegger, Adorno, and Deleuze) was quite alien to the influence of Hegelian and Marxist thought—not to mention analytic philosophy per se—in American intellectual circles and universities. But with the populist mediation of thinkers like Reich, Marcuse, Paul Goodman, and Norman O. Brown in the 1960s, notions of negation began to appear as countercultural principles of resistance—as criteria for a negative politics the revolutionary agenda of which stemmed from an ecstatic defiance of all authority.

In the heyday of structuralism and stylistics, the exemplary locus of this resistance had been the radical modernist text (Khlebnikov for Jakobson, Faulkner for Brooks, Proust for Genette, Lawrence for Lodge, Joyce for Eco); its self-sufficient, unyielding complexity withstood all exegetical invasion and institutional appropriation. This reconceptualization of engagement on the basis of absolute aesthetic autonomy gave the disciplines of interpretation a triumphant eminence, elevating literary criticism to model status among the human and social sciences. If the integrity of self-reflexive style could successfully repel the marketing devices of bourgeois ideology, then the comparable task for the guardians of writing and its culture was to mobilize their interpretative resistance against the forces of managerial and monological capitalism.

Following the post-1970s demise of revolutionary politics, however, the exploration of the distinct, writerly features that made the text such a vigilant voice of doubt and defiance veered off in an existential direction, which neither Marxism, psychoanalysis, phenomenology, nor critical theory had predicted—launching an effort to include in the work's intrinsic qualities the group identity (preferably racial and/or sexual) of its author, who became less important as a creator than as a representative of a particular collective orientation and tradition. Authorial intention returned with a vengeance not as personal story (of a biography) but as shared style (of a life). Furthermore, several critics (Sontag, Barthes, Harold Bloom, Lentricchia, Fish, West, Paglia) could not resist turning themselves into art by adopting the traits of a literary character. Thus revolution as self-expression was succeeded by self-expression as revolution.

Although modernist philosophers like Bloch, Wittgenstein, Ingarden, or Sartre, who fervently believed in the moral superiority of literature to

the products of the media and mass culture, often saw the creator as a martyr to his vocation, they never thought that there might be any inherent heroism in the way that literature reflected the struggles of a particular group to find its identity and true voice. Even Lukács, despite his devotion to realism, would have denounced such a view as crudely mimetic. But after negativity had been literalized as aesthetic resistance, otherness was hypostatized by concrete groups of oppressed others—namely, those who had been marginalized because they were or appeared to be different. In their study of Kafka, for example, Deleuze and Guattari capitalized on the heroic aura of avant-gardism and perverted the old slogan “every writer is a Jew” to say that every minority person is a writer. Negativity was not a mere mode of aesthetic integrity, of artistic defense against alienation and assimilation; rather, it articulated the history of an oppressed collectivity as a minority’s cultural experience of difference. Thus the countercultural principles of resistance were fused with both the intellectual archetype of the Jew as outcast and certain tactical lessons of the civil rights movement to produce a new, postrevolutionary paradigm of otherness—minority discourse—and its respective social technology—multiculturalism—or the managing of lifestyle diversity.

As a result, the grand philosophical narrative of identity and difference collapsed into innumerable tales of brutal discrimination and local resilience. The ensuing atmosphere of openness created an invigorating sense of liberation where the silence of exclusion was broken by cries of long suffering, demands for equality, and hopes of restitution. Testimonies of prejudice and inequity began pouring in from all corners of private and public life as individuals and groups kept coming out of confinement, exclusion, or isolation, seeking new definitions of legitimacy and practices of tolerance. But after several minorities won recognition and support, an uneasy feeling of sectarianism and balkanization settled in and is still very much with us today, since, as has been bitterly acknowledged, no public declaration or even recognition could ever turn the personal into the political. One reason is that too many stories of nativism sound the same and too many minority identities look alike for people to notice them individually, let alone be moved by each instance. After all, whether grand or small, these narratives still observe the same generic rules of suffering and redemption. Another reason is that the reigning spirit of separatism often prevails when groups fight over dwindling resources, with collec-

tivities tending to emphasize what makes them completely distinct and unlike any other—in other words, not their need for solidarity but their superiority. In addition, acrimonious tribal antagonisms have contributed to a loss of credibility on the part of the humanities within the university as the broader intellectual community and the public at large have reacted with suspicion, if not hostility, to a situation resembling civil strife. Most importantly, it appears that the protesting minorities have learned how to denounce their opponents, but have given little thought to the kind of regime with which they would replace the present one.

Thorough and eloquent critiques of domination still offer remarkably few concrete suggestions regarding the society they implicitly envision. As a result, even though many adjustments have been made to accommodate minority demands, especially through the distribution of reparative privileges, the fundamental structures of production, administration, and management have not changed even within the university. The reason is simple: the politics of resistance may be well versed in issues of “hegemony,” but it shows no understanding of authority—for example, of Gramsci’s own meditations on governance. After all, without its minority status resistance would be obsolete.



Literary criticism and cultural studies have in general insisted on treating questions of power in a Manichean way that precludes any consideration of authority whatsoever. In effect, their practitioners have resigned themselves to the self-absolving idea that their fate is sealed by the overwhelming socioeconomic forces of our time—that they will always belong to the opposition and therefore need not concern themselves with governance, the effective exercise of public power. There is obviously a certain age-old allure to this moralist minimalism—the belief that the hands of the intelligentsia will never be dirtied by the concessions and compromises of government, but will remain clean as they wield the holy sword of the pen and cut a swath through the corruption of the age. It is worth remembering that this was a cardinal point of agreement between F. R. Leavis and Raymond Williams.

Take the idea of representation, with its pervasive popularity. Exegetical skills of great subtlety have been employed to posit the manipulative ways in which various groups, Western and non-Western, have been por-

trayed in “high” or “low” culture. The uniform goal of such approaches is to show how the very act of talking about others, let alone speaking out on their behalf, is one of violence and exclusion which colludes in silencing those who cannot participate in hegemonic games. Thus representation is denounced as exploitation, sometimes even as extermination, while this kind of study stakes its own claim to the higher moral ground of authenticity and inclusion. Ultimately, though, the issue that is elided in such an otherwise worthy unmasking of re/presentation is not presentation (i.e., how the group could faithfully present itself to others) but presence (i.e., how the group should be present to itself). If a collectivity wants to resist appropriation, then it certainly must find ways of presenting itself to those who would exploit it for their own purposes. But the means of effective resistance cannot be devised before the collectivity engages in becoming fully present, manifest, and real to itself—before establishing, instituting, and practicing its distinct character in ways that can lead to a comprehensive, meaningful, strong, and, yes, representational self-understanding. This first step requires, indeed mandates, systematic engagement in the practices of collective self-governance.

Discussions of outward representation and resistance to the imperial or panoptic gaze obscure the primary ideal of autonomy, which is not authenticity but independent, internal rule. As recent history reminds us, a day always comes when Somalis, say, or South Africans or Palestinians or Bosnians, are called upon (never without foreign intervention, of course) to run their own affairs. While years of endurance and resolve certainly prepare people for this glorious day, nothing can compare with the ultimate responsibility of internally handling and equitably distributing authority. Critiques of representation have little, if anything, to contribute to this task since the study of texts and other aspects of culture has abdicated its position to exercise political power. The same can be said about postcolonial studies, which concerns itself with the competing loyalties of the displaced intellectual and extols the advantages of hybridity and border-crossing, but has no patience with questions of state sovereignty. Intellectuals who thrive on the rites-of-passage of exile find it hard to understand why people might want a home, an identity, and a collective sense of shared space, history, and rule.

It is this self-defeating narcissism of resistance that has led the politicization of Theory to its present dead end of intensifying friction and fatigue.

As scholars and other intellectuals become aware of the growing fragmentation and isolation of innumerable research projects, each of which is focused on the invention and violation of still another (ethnic, national, linguistic, religious, sexual) identity, how can they help but despair of ever seeing such studies either combine forces in broader explorations or transcend the discursive and generic limitations of politicized Theory, specifically, the ethnography of discrimination? Furthermore, they are witnessing a disturbing parallel fragmentation of partnerships and coalitions among their own ranks as ceremonies of experience effectively turn alliances into subcultures of martyrdom while meticulously screening their membership. Personal politics promised to support small cultures of style in order to reconstitute civil society, thus enabling the anonymous shopper at the postmodern mall to safeguard an intractably idiosyncratic taste which could not be reduced to a demographic feature. The hope was that a new public sphere of shared sentiments and beliefs, of criticism and conversation, could emerge to replace the salon of the early Romantics with the support group, thus encouraging alternative modes of grassroots cooperation in community affairs. This noble hope did not take into account a major historical change since the second half of the eighteenth century — the fact that in our time culture does not constitute a separate domain, with its own independence and energy, and therefore cannot play a compensatory role. Instead, culture is now everywhere, permeating all aspects and corners of social life, and has therefore lost its distinct critical potential. Ironically, this makes cultural politics less of a bold diagnostic tool than a dominant marketing approach (“niche” culture). To admit this is not to discredit culture entirely as a major autonomous sphere of modernity but simply to place it in its present socioeconomic context.

The failure of personal politics to help bring about a new civil society, centered on the canons and institutions of culture, and its present collapse into identity politics should be attributed not only to the complete aestheticization of the public sphere in postmodernity but also to the essentialist dilemmas in which so many intellectuals are now entangled. While post-structuralism once vigorously proclaimed the provisional and positional character of its critique, it gradually began seeking some ideological indemnity for its lost philosophical legitimacy — a casualty of the deconstructivist and historicist attacks on metaphysics. Thus the face of the subject, which the high tides of Foucauldian archaeology had erased from the sands

of existentialism, reappeared on the holy shroud of agency, and the enticing voices of ontology were heard again in debates on essentialism. The idea of “strategic essentialism” offered a historical compromise between skepticism and universalism for a while, giving positional understanding the advantage of a rhetoric of transcendence. But this compromise could not withstand the pressure from demands for categorical articulations of agency that would enable people to get jobs, contracts, and fellowships. (No one would settle for a provisional *academic* position.) As a result, agency and essentialism converged into a new naturalism and *professional* activism—the cultural politics of unitary group identity. In the mid-1980s, theory discussion groups were rapidly succeeded by proliferating communities of gender, race, and lifestyle whose clashing claims for givenness (nature), priority (origin), superiority (moral worth), power (entitlement), and compensation (suffering) have developed histories of collective difference and discrimination into the most valuable form of transnational cultural capital.

If we use identity politics to define the thematization of resistance in Theory, we can see that the poststructuralist concern with otherness was self-avowedly limited to a dialectical understanding of difference, an aesthetic view of negativity. To the extent that difference could never be radically disassociated from the one and the same, from its idealist heritage of antithetical thinking and conciliation, otherness remained within the synthetic horizon of identity—an interest in the spiritual ordeal of assimilation rather than in the legal trials of, say, the immigrant, the refugee, the foreigner, or the alien, let alone the disenfranchised citizen. To put it crudely, in this view the “other” was always the new resident in the suburbs, not the inhabitant of the inner city.

Ultimately, though, references to identity, useful as they often are, obscure the most important dimension of the ethnography of discrimination and the communities of culture whose special interests it promotes: a strong attachment to group rights. The goal of those who seek representation and reparation through the recognition of a unique collective identity is not merely to win acknowledgment of their distinctiveness or to preserve a tradition. Their goal is to obtain and safeguard rights on the legal basis afforded by civil society and the liberal state (which is by definition the state of right). If remarks on entitlement stress privileges, they should be balanced by an appropriate recognition of the major juridical dimen-

sion of this entire campaign. Identity politics is the strategy of “weak” (to use Vattimo’s term) autonomy in an era marked by the decline of engaged citizenship and the rise of individual rights.



What is sometimes referred to as the rights revolution began after World War II, but probably found its most eloquent and influential American expression in the 1960s with the civil rights movement. At one crucial point in the next decade, however, and especially following the expiration of the revolutionary project, other social groups which took this movement as a model decided that the courts, rather than the backrooms or the streets, provided the best means to empowerment. Equality was to be advanced by gaining rights through legal decisions—not through legislation via administrative arrangements—with tactics shifting accordingly from regulation to litigation. As a formalist view of liberty reduced legitimacy to legality, mass politics yielded to the local politics of the critical social movements.

As I have shown in *The Rise of Eurocentrism*, the modern rule of autonomy is the regime of immanence, the formalist rule of immanent law which derives its legitimacy from its own rationality. The precondition of this autonomy was the civil liberation of (biblical) interpretation from the heteronomous law (of church/theology, tradition, and court) by the Protestant reformers and its promotion to the new supreme law, the immanent (secular) rule of the textual revelation of full, divine meaning. Thus religious autonomy, with its inherent emancipatory promise, advanced the independence of reading and its transformation into the model technology of freely chosen self-regulation. But the covenant of modern autonomy eventually led to the aesthetic nomocracy of interpretation—the absolute faith in the validity intrinsic to the form of the text or work—which culminated in the explicit aestheticization of autonomy by Kant, in his effort to reconcile freedom/morality and necessity/law, and to the further aestheticization of politics by Schiller. Critical philosophy could conceive of only the form of freedom.

Driven by the rule of autonomy, modern societies are not stratified but polycentric, not governed by an all-encompassing system but differentiated into several functional systems, into separate sub-regimes of immanence. In a society differentiated by function, systems are controlled and directed internally on the basis of their own rationality (according to the circularity

of modern theoretical reasoning). Functional systems (e.g., morality, politics, law, religion, or education) operate on the assumption that they are self-organizing, self-regulating, self-producing, closed autopoietic structures. Therefore, they are endowed with the self-referential qualities of the organic artwork, drawing their justification exclusively from their own resources. Autopoiesis and validity are identical. Each separate system validates its own operations, so its validity is by definition beyond the reach of any outside normativity. Within each specialized system, everything is meaningful, purposeful, and valid. This conception eliminates questions of authority, renders the morality of social criticism impossible, and makes legitimacy a formal (i.e., interpretative and aesthetic) issue.

The values of functional systems are not moral ones. In fact, moral values are superfluous (what Luhmann, from his nihilist perspective, has called the "higher amorality of the functional code"). Morality has given up all control over the coding of systems in exchange for its own functionalization. By relinquishing its interventionist responsibilities, it has effectively withdrawn from public relevance into the security of a closed system, where it concentrates on judging only itself in moral terms. In a functionally differentiated society, the scope of ethics is limited to the justification of moral judgments. Kant's moral autonomy is formal.

The same formalism can be observed in the operationally closed legal system: on the one hand, there is no law outside it; on the other, the evaluation of its operations is possible only from within and is therefore just another of its functions. The only reality the system accepts (and for which it may thus feel responsible) is the one that it constructs. Legal formalism isolates the law from the continuum of politics, ethics, and history, endowing it with its own values. The political question of justice, the question of establishing institutions of authority which are compatible with the rule of law, lost its basic ethical dimension when politics and morals were integrated into different spheres in the eighteenth century. The separation of law from politics renders the latter inferior because, as critical legal studies has argued, legalism despises negotiation and arbitration, considering all purposive social action expedient bargaining that serves vulgar interests. In this view, all politics must be modeled on the impartial judicial process which, untainted by any ideology, serves the objective requirements of pure justice. The complementary separation of law from morals strengthens formalism in the name of reasoned agreement

and social cohesion. Questions of character, virtue, or responsibility are considered too arbitrary to be incorporated into the due-process system.

Western liberal theory has programmatically ignored the ethical dimension of the political question of justice by arguing that legitimacy and legality are identical. The legitimacy of modern political systems is based upon a belief in the legality of their exercise of power—in other words, it is secured by faith in the rationality intrinsic to the form of law. As a result, the bourgeois liberal state simply consists of its laws and bureaucratic regulations. The legal code is a closed system with its own distinct normativity, independent of all other spheres of thought, activity, and study. The legal system is a configuration of valid legal norms, excluding, as Kelsen demanded, propositions of law and their ethico-political value. These norms are an intrinsically valid and mutually compatible set of *legal* propositions. Modern law legitimates, makes legal, the exercise of power through its own formal properties and dispenses with the external support of morality. As Weber argued, the intrinsic justification of modern “domination” is the formal independent rationality of the law, which is able to resist ethical demands for “substantive” justice because it is morally neutral. Thus law provides positive legitimation for domination through established legal procedure. The rationality of law is exclusively a matter of law, a matter of its procedural-rational characteristics. Legal operations determine everything that pertains to law. The generality and autonomy of law supports this formal concept of justice which neutralizes the political through the general legalization of social relations: everything is juridically formalized, rationalized into a matter of law. The same constructivist (as opposed to transcendent) a priori that turns law into a fully normative closed system also makes justice immanent to the system and identifies it with positive law.

The study of law was reduced to legalism and reconstructed from a civil science to a self-conscious science of social control in the nineteenth century. The basic differentiation of the social from the political (on which the de-moralization of jurisprudence was later predicated) put legalism in charge of the former and political economy in charge of the latter. When the ethical concept of justice was transformed into a social one, the political question of justice was relegated to a new area of inquiry, the positivistic study of society. This kind of study was interested in the best possible social world, conceived as one of (individual) freedom and (public) order.

The concept of social justice was understood in terms of ideal conditions of control that enabled everyone to determine, and to exercise without outside interference, personal moral, political, or other choices. These conditions, these basic freedoms, were considered human rights. Thus the quest for the best social world shunned ethical issues and focused on problems of just procedure. The procedural view of justice sought the legitimacy of processes and the impartiality of legislative and judicial procedures.

But today we are witnessing the dissolution of the immanent rule of law because legality no longer offers an adequate basis for legitimacy. Instead it has been succeeded by the instrumentalization of basic human rights—their strategic use to achieve favorable treatment. The understanding of rights as universal, inalienable, and inviolable has been a cornerstone of modernity. But a legalistic view, extending their importance by making them natural, intrinsic, and absolute, endows them not with content but with depth—enabling them also to function as (counter-)claims before the court of a law now conceived of as a discrete entity. Indeed, because legalism holds moral conduct to be a matter of rule-following, it normalizes human relations as a matter of clashing claims adjudicated under established rules. Taking the court of law as its social paradigm, legalism concentrates on specific cases and regulations, thereby becoming a social policy for the classification of identities and the adjudication of complaints. The result is a judicialization of public life—the resolving of conflicts by judicial means and courtlike procedures.

Individual rights, which were first promoted negatively as limitations on aristocratic, court, and church authority, have become positive, processual claims on the liberal state. Now rights are no longer seen as part of the law, but rather as its very essence. These individual or group rights are all dedicated to the pursuit of private happiness, as circumscribed by experiences of cultural identity. The identity politics of the new cultural communities has entailed countering social engineering by pushing legalism to its formalist limits: since culture is now everywhere, the aesthetic presuppositions of legalism can be exploited by making interpretative (i.e., “deep”) claims based on cultural identity and organic affiliation. Dreams of great social hope have been superseded by exhibitions of personal preference and group performance in the museum of racial and cultural genocide. Furthermore, this view quantifies rights and demands their detailed enumeration. In addition to traditional civil and political rights, the list

of human rights now appears to include social, economic, and cultural ones. Thus it has turned into a list of birthrights and titles that individuals and groups *possess*, connoting acquisitions and advantages. These rights license behavior and authorize compensatory benefits: they are something to claim more than to practice; instead of enabling one to act, they qualify one to receive.

According to the formalist view, individual rights, whether personal or collective, are self-sufficient and therefore separate. They are something people own and bear rather than share and exercise. Rights-bearers enjoy liberty as separation, freedom as privacy. It is this legalistic discourse of rights that encourages the formation of identity as self-expression, of history as purgatorial experience. If an appeal to rights requires reference to organic and self-regulating characteristics, then a set of unique aesthetic qualities must be constructed to isolate a person or group from all others and to endow them with the formal entitlements of difference. Our political predicament today is caused not by the politics of cultural identity but by the formalism of legal rights. Cultural identity has become the post-modern expression of global citizenship, but this egalitarianism of authenticity is grounded on a segregationist essentialism. The emphasis on difference has led to nativism (territorialization of identity), while demands for recognition have produced reparationist claims for distributive justice and invocations of diversity have resulted in celebrations of autochthony. It is fair to conclude that identity politics, with its commercialization of pluralism as commodified difference, signals the end of culture as we have known it in modernity (including its critical and emancipatory potential) under disorganized corporatism. Paradoxically, we have come full circle, in a reversal of Schiller's assurances, having witnessed the politicization of aesthetics in the name of interpretative resistance.

Steering clear of identity politics, Habermas's "theory of communicative action" is based on a formal principle of right as the consensual regulation of social interaction. He believes that, given the axiological pluralism of modern societies, the ethical must be excluded from the sphere of justice. Therefore, normative rightness must reside not in shared ethical values but only in the rational structure of communication. He calls his model of practical argumentation and validity claims "discourse ethics" since it emphasizes the just normative requirements of a procedure rather than any "value ethics" (i.e., substantive ethical principles of justice). This emphasis man-

dates in turn a sharp differentiation (on the basis of the legality/legitimacy distinction) between universal justification (the realm of the social/moral) and situated application (the realm of the political/evaluative), thus splitting the overarching question of validity in a political society between two separate domains of inquiry. In seeking to provide a universal foundation of morality in the Kantian tradition, this theory limits itself to a formalist understanding of morality and justice; it is unable to accept ethics as the ethos of a citizens' state and as therefore embodied in specific actualizations of the political. Habermas appears to have sensed this severe limitation recently when he called for a renewal of the sentiments and values of social solidarity, warning against an exclusive emphasis on rights and visions of emancipation. However, the formal priority he continues to attribute to the defense of rational autonomy does not allow him to transcend his proceduralist paradigm. Interestingly enough, if we see the current battles among cultural minorities over group rights as a diversion from administrative and mass power to judicial and social entitlement, we can perceive in the history of rights their close connection with ideas of correctness. What is "right" is what is decreed as straight, the direct line of the ruler and the regime from above, the regal control, the reign of the supreme *directorate*. Rights constitute a protest against tyranny, setting limits to what hierarchical authority can do to people but not stipulating what people can do once they have gained access to authority. The language of rights applies to subjects, to people who are subject to rule and seek power in terms of entitlements or concessions. The search for rights and remedies, for the rectitude of judgment, is the search for valid reasons, for grounds of subjection. Thus rights are by etymology politically correct in that they are correctively political. One corollary is the increased policy-making role played by the judiciary over the course of this decade in a variety of U.S., French, Italian, and Greek cases (to limit ourselves to Western countries). Today, individual rights do not so much right a wrong as generate more rights, more specifically enumerated minor rights, more strictly defined identities based on narrower differences, more minorities vying over remedial powers and competing for accreditation.

This situation has driven federalism into a centrifugal spin of separatism while reducing citizenship to a single sanction, the right to have (multiply-) rights, with no consideration given to citizenship as a set of franchises:

the right to assume responsibilities. This consideration is political rather than moral. It has nothing to do with commandments and duties, rules of conduct and belief; it refers to the ideal of a political society consisting of free and equal citizens who can all respond, who are together responsible for the welfare of their state—for how their institutions and governance stand. The right to practice one's citizenship—to be able to meet one's responsibilities by presenting oneself publicly, in an open assembly, to be accountable (i.e., to give a public account of one's actions)—is the political enfranchisement that gives the collectivity its presence, making it fully present to itself, hence making participatory governance possible.

Since the interest in individual rights has eclipsed any consideration of authority or engagement in responsibility (i.e., any interest in the practices of democratic governance), the poststructuralist thematization of political activism has led to the hypostatization of otherness and the cultural politics of minority privilege, namely, to the pursuit of warrants for group identity. The pervasive sense of ennui and exhaustion affecting the present decade has been caused by the fragmentation of alliances and the proliferation of identities demanding an ever-extending list of rights for all sorts of entities—texts, canons, voices, diets, bodies, faiths, languages, communities, or cultures. With monotonous predictability each new set of disagreements is sanctioned as a domain of difference, which then gels into another negative essentialism and, using the dominant rhetoric of resistance, indignantly announces its own list of claims. Since this strategy often meets with institutional success, it remains an attractive proposition for many who do not notice how quickly this success dissolves the victorious group into several factions. It is therefore hardly surprising that the recent extensive critiques of rights mounted from outside literary and cultural studies (such as those of critical legal studies, feminism, and communitarianism) have not affected the political aspirations of Theory. Meanwhile, the importance of literature has diminished, the centrality of the humanities has been questioned, and scholars have had to look for counter-hegemonic protests in trivial areas of popular culture. At the same time, the first denunciations (including those by minority intellectuals who until recently advocated large-scale multicultural policies without any reservations) of cultural politics as anomie have been heard. For all these reasons, this is the most opportune moment to search for a way out of the present im-

passee. The fundamental question of autonomy is once again wide open. What justifies its auto-claim? How do we ground its nomos?



One way might be to abandon the discourse of rights altogether and to engineer a new social contract based on mutually agreed moral duties. Communitarians, for example, seeking an alternative to the principle of legality, find it in the ideal of a community bound together by a shared tradition and committed to its just self-institution. The insurmountable problem with this model is how to secure Rawls's "original position," which would enable the citizens of a society to negotiate such a contract of peaceful cooperation. Another way might be to return to the universal principles of the enlightened civil society, which addresses citizens as rational people with needs rather than interests.

It seems, however, that the most productive advance toward a new paradigm would not reject the ethnographic turn of Theory as another fraud of modernity, but would attempt to combine its best interests (in equality, power, resistance, distribution, and social movements) in a different configuration. The principle that cuts across these interests and gives them their ethical force is the latent idea of political justice. If we disassociate identity and the narratives of victimization from their engagement with discrimination and rights, we see that the ultimate commitment of Theory belongs to an ideal of justice for all. The aggressive rhetoric of grievance and indictment is inspired by an indignant sense of injustice over the oppression and exploitation that so many groups of people have endured at the hands of victors and colonizers, the rich and the powerful. The moral urgency of this indignation should not be underestimated. On the contrary, it could be the starting point for an alternative project, a constructive involvement with public values—an ethical politics.

Furthermore, the Herodotean analysis present in much of today's inquiry could serve as another enabling condition for such a project. It has gone unnoticed that Theory's ethnographic turn has brought it into a surprising alignment with Herodotus: his interest in the plurality of indigenous "histories" (the very title of his work), in local custom as knowledge, in storytelling, in the experience of otherness, in a radical understanding of representation, in cultural geography, and in the ways that traditions are constructed. Several writers today (Vidal-Naquet, Todorov, Said, Jameson,

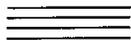
Clifford, Spivak, Pratt, Franco, Appiah, Chatterjee, Chow) seem to be using the “mirror of Herodotus” to examine both their subject matter and their own social positions.

Contemporary Herodotean analysis is, of course, much more related to broad developments in the geopolitical world than to any explicit reapplication of the ancient historian. However, a comparison with Herodotus’s project also reveals that a major dimension of ethnography is lacking in contemporary explorations, which have focused so far on custom and culture. The word used for both of these (by Herodotus and many other authors) is *nomos*. This same word, however, also has a third important meaning, “law as solemn usage,” which brings it very close to “type of government” and “constitution.” Political law (as opposed to cultural custom) is a matter not merely of local tradition but of conscious design, founded on agoric scrutiny and agonistic debate. Although it often studies *nomos* as *allotment* (the setting of lots), especially an unfair and discriminatory one, ethnographic Theory lacks any interest in *nomos* as *constitution*, as the political conduct of authority—in short, politics—the realm of *governance*. The course of ethnography today does not lead into the polis because the exploration of habitats stops with the study of *nomos* as cultural life alone. Humanist thought currently identifies itself with cultural studies because it is still committed to the view of culture advocated by critical thought, that is, culture as critique, as emancipatory practice, and therefore as counter-politics. Considerations of governance are thus inadmissible, and justice is invariably reduced to a question of rights.

A nomoscopic analysis that included the dimension of law/constitution along with those of culture and custom would direct the Herodotean thrust of Theory toward ethical politics by placing governance among the central topics of ethnography. We know how this nomological integration operates in the *Histories*. Herodotus is not telling stories. He is giving public, edifying accounts/*logoi* about different peoples and their traditions, which include substantive consideration of the ways in which people institute explicit power and exercise authority. In his work, *logos* still retains its pre-Platonic meaning, local knowledge. Furthermore, for our purposes, it can make its modern borrowing, “law,” resonate with the meaning of their common root **leg-*, to gather, to set in order. Law is *logos*/account laid down.

In order to benefit from the lessons of constructivism (with its emphases

on contingency, production, analysis, and institution), but also to avoid the traps of deontology and conventionalism, this project ought to abandon the dialectical quest for aesthetic transcendence, interpretative emancipation, and utopian politics to find the code and the courage to propose new principles and criteria for a just shared life. At the moment this may seem impossible, if not downright ridiculous: self-respecting intellectuals today are sufficiently schooled in the subversive techniques of unmasking to be able, on short notice, to prove their fellow travelers hopelessly metaphysical, idealistic, xenophobic, Eurocentric, sexist, and in general blinded by essentialist assumptions. Who would risk discrediting their de Manian awareness of Teiresian insight by articulating some positive values that can be collectively debated and embraced? Even those few who feel challenged to take up this task can propose only emaciated (“thin,” “weak,” or “minimal”) descriptions and values. Still, it is a step forward that needs to be taken, and the humanities is probably the most appropriate site for it. Specifically, literary and cultural studies, which have felt the poststructuralist impasse most acutely, could again play a leading role in charting future directions. Philosophically, this would entail complementary moves from individual to civic rights and from identity to ethical politics. The two paths would converge in a new composition of citizenship based not on membership and entitlement but on responsibility and engagement. Epistemologically, this reorientation would require a different approach to the products of communal life, one focusing not on culture but on governance.



I have proposed such a reorientation of the humanities under the name of “nomoscopy” (from the noun *nomos*, customary practice, and the verb *scopein*, to examine closely). Nomoscopy is the scrutiny of governance, an ethical inquiry into political organization. This kind of analysis retains the moral urgency of politicized Theory, with its desire to redress long-neglected inequities; but it also goes one step further by shedding the resentful tone of Theory to address questions of law and sovereignty directly. Thus authority is restored as a cardinal interest of the humanities, and justice is understood in a positive manner that makes it relevant to the conduct of rule and the distribution of order.

Nomoscopy adopts an ethical standpoint to adjudicate among competing principles of discourses and institutions regarding legitimacy, power,

freedom, and authority. Acknowledging the agonistic contention of forces in the polis (i.e., the inherently polemical nature of politics), it defends the ethical as what is common, or collectively deliberated, distributed, and instituted. It examines politics from the standpoint of the citizens' state, of the self-instituted, self-governed, historically situated equitable society. Since its true scope is polity, this approach operates as a kind of constitutional thought comparable to the Herodotean study of societies. Above all, it constitutes not an antilogic critique but an elenctic yet interested analysis. Its topic is the distribution of justice and the administration of equality—the tentative and incomplete harmonizing of freedom and authority, of *polemos* and *polis*.

The specific focus of nomoscopy is the antinomies of governance, the tragic conflict between law and authority over the apportioning of justice. What makes this conflict tragic is that, in a political society, there can be no higher level of appeal, no outside point of reference, beyond what is internally discussed and determined among the citizens. When law and authority clash over the meaning of the constitution, and they have no supreme divine, monarchic, or bureaucratic ruler to resolve their differences or to arbitrate their claims, then these must be adjudicated and ordered (which does not mean resolved or reconciled) according to principles and procedures intrinsic to the particular political organization of that constitutional government. This is the lesson of all tragic drama, from ancient times to the present. It is worth emphasizing that this lesson does not apply to every society but only to those which are consciously political ones, that is, societies with an explicit awareness of the historical, constructive, and eristic character of self-rule.

What could be a viable and flexible criterion for this kind of adjudication and ordering? Tragedy itself points to justice as the answer—justice understood not as a moral imperative or metaphysical principle but as a cosmic view of what is right in a particular polemical situation. This is not a value-neutral conception of justice by which the same rule would be legalistically applied to every occasion. It is a conception that takes such ideas as measure, limit, responsibility, and proportionality into serious consideration, and, without accepting the cultural-relativist view that, in some way, all positions are right, it grants that they can indeed all be meaningful. Justice is defined not as an eternal truth to be revealed but as a valid account to be rendered. It is associated with notions of requital

and return, of restoring a balanced order. It is a constitutional rendition of a conflict and therefore must show respect for the complexity of that conflict, as well as sensitivity to what is due to whom. Justice is the re-institution of proportional (as opposed to Hegel's symmetrical) reciprocity where an inequitable and unrepresentative apportioning has occurred.

It follows that nomoscopic judgment can ensure that the conduct of government and the administration of the law observe the principle of right/order, of proportional reciprocity, by adjudicating the tragic confrontation between the two major forces in political society, law and authority, by rendering a just account of constitutional rule, by defining the common measure of ethical citizenship, and by guarding against the excesses of hubris. The humanities, in taking a nomoscopic turn, would consolidate the shared concerns of various approaches about politics, power, and justice, and would reorient them toward the pressing issues of sovereignty by treating justice as the limit of autonomy, the *aporia* of immanence. At the same time, it would restore to humanistic research, and in an appropriately ethical context, the interconnected questions of law and authority which were abandoned to the legal and political sciences about a century ago. As a result, issues such as righteousness, goodness, excellence, and happiness would no longer be banished from considerations of power and justice. Thus nomoscopy would enable Theory to move on from cultural to ethical politics and to join forces with political philosophy at large—to become not political theory but political ethics. It would also enable Theory to accommodate the political thought of Arendt, Castoriadis, Habermas, Laclau, or Unger, and the philosophical work of Heller, MacIntyre, Rawls, Williams, Nussbaum, Taylor, Benhabib, Walzer, or Fraser.

We can get a better sense of the concrete tasks of nomoscopy by exploring what it could do for literary study in particular. Our starting point should be an extraordinary silence that has gone unnoticed even by those immersed in interdisciplinary work: the total absence of theater from the major theoretical (including philosophical) considerations of literature and of aesthetics in general. Since the time of Russian Formalism, if not earlier, all major twentieth-century theories of the text have drawn their inspiration from and applied their methods to poetry and fiction, but they have never learned from drama. If we take a look in any anthology of modern criticism, we shall find no major theoretical statement about drama of any period that has had a significant influence. (Even Bakhtin, with his inter-

est in carnival and the dialogical approach, drew all his examples from novels. Similarly, Lyotard's early idea of a "theatrics," which he soon abandoned, was itself predicated on a denunciation of all theater. As for theories inspired by Oedipus, Hamlet, or Faust, they always de-dramatize these figures, ignoring not only the play's performance but its entire theatrical condition. Unfortunately, Kenneth Burke's "dramatism" has had no impact on criticism.) A parallel observation can be made about playwrights. In sharp contrast to the continuing popularity of criticism generated by poets and novelists, and with the possible exceptions of Artaud and Brecht (whose seminal contribution has been buried under Adorno's successful canonization of Benjamin), no dramatist since Schiller has produced any influential statement that reached beyond his own craft to touch on the meaning of literature in general. Not since Nietzsche's shattering explorations of tragedy has theater been an important locus for critical reflection, philosophical or methodological.

While this may not be the place to explain that broad phenomenon, it is certainly time to call for a renewed interest in the genre that enabled philosophers from Plato to Kierkegaard to raise crucial issues of ethics and politics as well as aesthetics. It is also time to challenge literary criticism to change its model text from the novel to the play. This is not to say that it should study drama exclusively, but that the conflict of drama rather than the friction of the novel should be its focus. The novel—Hegel's "bourgeois epic"—dissects manners and accommodates the postmodern interest in representation, or the requisite cultural conditions for modernity. Drama, by enacting strife on a public stage, brings civics center stage and so encourages reflection on the political organization of society. Indeed, it is hardly a historical accident that theater has flourished only in political societies. For our purposes, its decisive feature is the release of the open space, the unfolding of the agora, the gathering of the assembly, the display of public deliberation, which exposes governance to the common light of day. In this sense, drama is an eminent example of nomoscopic inquiry in its own right, for it stages the complex operations of power and justice and holds them up to the scrutiny of citizens.

Taking its cue from drama, nomoscopy should cultivate ethical politics by rehearsing public debates over the legitimacy of authority and adjudicating the validity of contending claims. The goal here would be a drama criticism that could stage and judge civic conflicts within and outside its

texts, particularly conflicts pertaining to the constitution of rule and the distribution of justice in society. Thus might literary studies maintain its current heartfelt commitment to politics by engaging directly with civic problems while playing an explicitly didactic role. In contrast to an interpretative project (explicating aesthetic works) or a pedagogical mission (disciplining atomized individualities), the didactic role is oriented more toward message than toward beauty or training, and its addressees are not an audience of disinterested spectators but a public responsive enough to reconsider values in terms of the sociopolitical contingencies of strategic position and common interest.



A didactic literary criticism that took a nomoscopic approach to texts would dramatize—bring into the light of the open space—civic conflicts which also inhere in its own practice (hence its interested standpoint). The goal would be a public education in the art and science of responsible citizenship. Instruction in the pleasures of identity, the tactics of resistance, and the evils of representation is no longer enough; it is often not even interesting. We have spent too much time admiring Antigone's spirit of resistance, forgetting that, with her single-minded devotion to bloodline and birthright, Antigone faces no dilemma. Her determination to follow the aristocratic tradition by symbolically burying her brother never wavers, and nothing can shake her rigid refusal to see the other side, much less to change her mind. The tragic option is decidedly Creon's, the king who is caught between the tasks of sovereignty and the mandates of law, and who suffers while groping for (and erring on) the criterion of political justice. His agonized reflections on the meaning of the constitution are what take center stage and win our attention.

It is therefore time to address ourselves again to the oldest philosophical inquiry, the questions intrinsic to the openly self-governed community: How should we run our society? What values should we share, and what laws should we make? Consequently, it is also time to acknowledge again that some values, criteria, and achievements are more important than others. Literary studies lost its direction and credibility when it elevated identity and experience over their creations—membership over excellence, validation over value. Its future depends on its willingness to provide viable answers to ethical questions by defending such values as worth and

strength over expression and advantage. In addition to nomoscopic readings of drama, nomoscopy could be applied to the organization of political authority in such fiction as *Gulliver's Travels*, *A Sentimental Education*, or *War and Peace*; the rule of law in *Billy Budd*, *The Red and the Black*, or *The Trial*; and the constitution of public space in *A Tale of Two Cities*, *Buddenbrooks*, or *Invisible Cities*. It could also pursue similar issues in feminist science fiction, slave narratives, prison memoirs, post-Independence writing, or the literature of emergent nations. The ultimate goal would be to draw lessons, as well as practical suggestions about the ways in which a political society could better govern itself, from such literature.

Of course, the study of governance would not be limited to the operations of government, any more than the scopsis of law is limited to bills before the Senate or Parliament. Governance encompasses the complex and open network of authorities by which the life of society—its institutions, bodies, souls, money, canons, knowledge, news—is monitored and managed. Laws are the rules, regulations, measures, and procedures, the decrees, charters, and orders, which organize, direct, and coordinate human interaction. What makes nomoscopy different from and richer than prevailing modes of inquiry is not just its lack of aversion toward such mechanisms and operations (because of their presumed oppressive character) but its voluntary, active, and constructive engagement with them, especially to ensure that the exercise of authority conforms substantively to the values of self-rule and the principles of justice. The goals of nomoscopic reading would be interventionist and affirmative, above all: to dramatize the conflict of opinions about the compatibility of law and governance, to support the cause of justice as agonistic reciprocity, to draw useful lessons regarding the constitution of political society, and to educate in the rights and responsibilities of citizenship. Nomoscopy scrutinizes diverse principles, stakes out consistent ethical positions, and endorses a systematic view, based on historical perspectivism, of how a free society should be put together—how its values, laws, institutions, procedures, spaces, and alliances should be constituted.

Nomoscopy does not, however, advocate a utilitarian view of literature, but rather an instrumentalist one based on the model of drama—an idea that may sound hopelessly humanistic and terribly old-fashioned. Have we come to just that—to literature as Burke's "equipment for living"? Not quite. This would probably apply if nomoscopy were invoking liberal

principles of tolerance, pluralism, diversity, individual freedom, and equal rights. The idea of justice as agonistic reciprocity, however, does not assume any rationality or require consensus, but aims to desegregate and re-integrate ethics and governance by applying austere, rigorous, exacting criteria of goodness, purpose, and merit. The instrumentalist view conceives of literature as one among many experimental public sites for rehearsing a good society. The drama model shifts moral determinations from the courts and back to the domain of governance. It also balances the law's prohibitive function (protecting natural rights) with its affirmative one (enabling the exercise of human capabilities). The ultimate goal is not to establish formally, judicially, or procedurally whose individual rights (to do with life, death, preference, health, privacy, work, or faith) have been violated, but to suggest how a political society could be structured to assure a good and dignified life for all its citizens—and ideally to dissolve that most fateful differentiation of modernity, the separation of the just and the good.

Regardless of their specific positions, interventionist legal scholars like Catharine MacKinnon and Lani Guinier offer a good, if too obvious, example of nomoscopic activism when they put their ideas into practice by proposing and working for legislative reform. In contrast, literary scholars today would consider such a direct intervention on their part presumptuous, arrogant, and of course futile—but not primarily because they lack the expertise to write legislation or lobby for it. Instead, they fear the impression of pretentiousness and smugness that an ethical stance and an engaged interest in authority might convey within their profession. Everybody these days is adept at taking superstructures apart, deconstructing millennia of logocentric tyranny, explaining how a particular community has been “imagined,” “invented,” or “orientalized.” At the same time, with the exception of separatists, no one can muster the determination and fortitude to advocate a vision of how such a community should be democratically assembled, organized, and run—here and now. Ever since intellectuals acknowledged that they could be neither “legislators” nor “interpreters,” they have been trying to give legislative force to their own interpretations exclusively. Their current thematization of politics in Theory is but the latest phase in this endeavor. The project of nomoscopy would challenge them to cease their moralistic denunciations of all forms of power and to become constructive legislators again (following the example of Leibniz, Vico, Montaigne, Rousseau, Humboldt, Paine, Bentham, Gramsci, Dewey, or Schmitt); to participate voluntarily in governance by contributing an

upright and proper perspective on justice; to identify those ethical principles, rules, and structures, those strategic formations of authority and positions of effective administration, that are appropriate for their society at this particular historical moment.

What may seem like a very old memory now has actually been an important concern for poets from Dante to Pound, from Milton to Heaney. For example, the poetry of Cavafy is variously populated by rulers, politicians, orators, sophists, and laymen who, in the midst of intensely dramatic situations, raise questions regarding the nature of authority, the administration of public affairs, lawmaking, the structure of the polity, the definition of citizenship, the requirements of virtue, and the like. By working in a similar direction, analysis can leave behind the negative dialectic of master-slave narratives and the decadent thematization of activism (in which engagement yields to the politics of not-yet, of whatever is always already beyond politics) and can turn to that most basic dimension of collective life and creativity—the ever-unfolding agoric space of daylight, appearance, presence, voice, argument, and action, the theater of the gathered assembly, the secular civic association of contentious solidarities—to the political itself.

This change of direction could have a number of beneficial effects on the study of literature and culture, on the reflective production of intellectual life, and even on the rest of society. It could give positive content to rights, based not on erecting boundaries but on confederating responsibilities. It could reorient the drive for justice from utopianism and protest toward an affirmative engagement with law, power, greatness, virtue, and self-rule. It could bring this kind of research into the contested areas of public service and political duty. It could reinforce the ethical character of analysis and, emphasizing its didactic role in the training of responsible citizenship, endow the study of texts with recognition and honor. It could finally lend literature a new importance within the university by setting a trend toward constructive involvement not only with questions of method but primarily with issues of ethics and governance, with the creation of a more just democratic society and a richer, better life.

Note

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