

## Chapter 1

### Jacques Rancière and the Dramaturgy of Law

Julen Etxabe\*

*When it comes to the appreciation of a thinker, there are two levels of investigation. One can examine his/her ideas, test their consistency, compare them with other thinkers' ideas and judge the good or bad effects that they can produce when going from 'theory' to 'practice'. But, at another level, one examines the way these 'ideas' are produced, the issues they address, the materials they select, the givens they consider significant, the phrasing of their connection, the landscape they map, their way of inventing solutions (or aporias), in short their method.*

*Jacques Rancière*

#### 1. The Method of Jacques Rancière: Setting the Scene

In the remarkable essay 'A few remarks on the Method of Jacques Rancière', the reader and critic Jacques Rancière writes about the well-known philosopher and author Jacques Rancière in the third person, trying to elucidate what might be distinctive about the latter's method. Contrary to grammatical expectations, the third person is used here to create not a separation between author and critic, but rather the opposite, confusion between these two roles. Confusion between speakers is actually an important stylistic trait of much of Rancière's writing, where without markers he introduces the words of speakers—the radical pedagogue Joseph Jacotot in *The Ignorant Schoolmaster*, the romantic historian Jules Michelet in *The Names of History*, the nineteenth century joiner Louis Gabriel Gauny in *The Proletarian Nights*—with whom his own voice merges almost to the point of indistinctiveness (Ross 1991: xxii). The strategy serves not only to disavow a position of authority from which a method is being 'explained' to the reader, but fundamentally also to flesh out an important Rancèrian presupposition: the

equality of intelligence between the one who creates sentences and the one who understands them.<sup>1</sup>

What Rancière means by ‘method’ is not an investigation into an author’s propositions—what an author says, the internal consistency of what the author says, and the consequences that follow—but rather the kind of issues it addresses, the materials and givens it considers, the phrasings it articulates, the landscapes it portrays, and the solutions or aporias it generates. This sense of a method does not proceed by Cartesian simplification into clear and distinct ideas, for it entails selecting, discriminating, valuing, intervening, and indeed inventing. Rancière (2009a: 114) writes:

A method means a path: not the path that a thinker follows but the path that he/she constructs, that you have to construct to know where you are, to figure out the characteristics of the territory you are going through, the places it allows you to go, the way it obliges you to move, the markers that can help you, the obstacles that get in the way. [...] This idea of what ‘method’ means should never be forgotten when it comes to Jacques Rancière.

Note first here the shift from the third to the second person, where ‘you’ can refer either to the critic trying to make sense of the author’s writings, to the author trying to explain his own method to the critic, or to both. Additionally, ‘you’ also alludes to the reader—say you or me—trying to make sense both of what Rancière the author does generally in his writing and of what Rancière the critic says about it in this particular essay.

As a path that the author constructs rather than follows, a method does not exist in the past in a way that prefigures, and guides, the author’s activity. Rather, the path is

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<sup>1</sup> The equality of intelligence, borrowed from Jacotot, ‘does not mean that every manifestation of intelligence is equal to any other. Above all, it means that the same intelligence makes and understands sentences in general’ (Rancière 2011b: 114). Jacotot’s simple premise is that ‘all people are virtually capable of understanding what others have done and understood’ (Hallward 2009: 144).

constituted towards the future, as an invitation to see things one way rather than another; a suggestion to consider certain issues, perspectives, connections, ways of looking—or others. A method thus enables us who wish to trace it to move within the apperceptive sensorium of another human being and inhabit their ways of seeing and judging reality.

Rancière speaks of method in terms of spatial categories of place, territory, and landscape, delimited by markers and prevented by obstacles, which is why a method often has a normative component that ‘allows,’ ‘obliges,’ ‘helps,’ or ‘gets in the way’. But a method also features a *temporal* dimension, for it allows you to ‘move’ and ‘go through’, while neither the path nor its stepping stones remain unchanged from beginning to end.<sup>2</sup> Rancière defines a method as a form of travel that ‘continuously discovers new landscapes, paths or obstacles which oblige to reframe the conceptual net used to think where we are’ (Rancière 2009a: 120). Accordingly, ‘[w]hat he does himself is to construct a moving map of a moving landscape, a map that is ceaselessly modified by the movement itself’ (Ibid). To ascertain the characteristics of this landscape requires more than the tools of the prospector trying to extract minerals from the soil. To grasp this ‘moving landscape’ requires developing a sense of orientation to figure out where you are, where you are going, and where you can go with it, all of which cannot be represented as a still image. To ‘map’ it is neither to produce a flat cartography, nor to freeze it in time, but to get in on with its movement, in order to recreate a method’s ‘topography of the thinkable,’ which ‘is always the topography of a theater of operations’ (Rancière 2009b: 19).

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<sup>2</sup> ‘This is why, indeed, his “concepts” are unstable: police and politics, distribution of the sensible, aesthetics, literature, etc. don’t mean the same thing from the beginning of the travel to the end’ (Rancière 2009a: 120).

My purpose in this essay is to re-create such a Rancierian topography in order to elaborate a theatrical or dramaturgic model of law out of it. Indeed, Rancière has been said to espouse a theatrical model of politics based on scenes staged by actors who, acting out on the presupposition of equality, undergo processes of subjectivation that reconfigure the ‘sense’ of the common (e.g., Hallward 2009). Disavowing a purified or ontological concept of the political, Rancière instead proposes a *dramaturgy* conceived out of limit-scenes that stage its appearance and disappearance (Rancière 2009a: 119). Consistently, ‘Rancière is only interested in ideas at work: not “democracy” for instance, but “democracy” voiced in sentences that stage its possibility or impossibility, not “politics” in general but discourses and practices which set the stage of its birth or of its fading away...’ (Rancière 2009a: 116). In a similar manner, I, too, venture to offer neither an explanation of his ideas nor an application of his thoughts to a predetermined concept of law but a re-enactment of the legal landscape he invites us to traverse.

The analysis focuses on jurisgenerative<sup>3</sup> moments of dissensus, where those in principle without a place in the order of legalism are nevertheless able to stage a disagreement that reconfigures the sensible texture of law. Beyond teasing out the implications of the argument, I inquire how a claim perceived to be legally irrelevant could nonetheless be *heard* and registered as a novel legal inscription. This will lead us to consider a (non-Aristotelian) poetics of expression and of reception, including the role of judges as audiences of improper legal claims, and to test the practical implications of a Rancierian dramaturgy of law in the case of the post-2008 mortgage crisis in Spain. In the final analysis, a consistently Rancierian position leads to a radical relativization where law, just as democracy itself, has no proper foundations. My aim is

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<sup>3</sup> This term is loosely borrowed from Robert Cover (1983); see also Etxabe 2010.

not so much to persuade the reader about this position as about the usefulness of entertaining it, as a possibility for critical intervention.

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Before moving on to the rest of the argument, it is necessary to consider the role that scenes play in Rancière's overall project, for they take center-stage in legal dramaturgy as well. This role is fourfold: first, scenes provide the *texture* of the argument, for 'Rancière always constructs his argumentation as a re-staging of a limited number of such scenes...' (Rancière 2009a: 117). Scenes may include the narrative of the Plebs on the Aventine Hill, the aphorism of Aristotle about the political animal, a manifesto of tailors on strike demanding relationships of equality, or the comments of an ordinary joiner about the work of a bricklayer. 'This is an unusual texture for a theoretical discourse' (Rancière 2009a: 117), and departs equally from syllogistic forms of reasoning and from systematic theory-building. Rancière purports to construct not a theory of politics, or democracy, or aesthetics, but a *dramaturgy*.<sup>4</sup> Contrary to conceptual, universalizing discourses where time is suspended, a dramaturgy is necessarily situated. The same is true about Rancière's well-known categories of analysis: police and politics, distribution of the sensible, aesthetics, etc. are neither ontological determinations, nor ahistorical essences, but ways of disentangling inherited classifications.<sup>5</sup>

Secondly, a scene is a 'general mode of intelligibility' that helps to frame significant turning points in history, politics, aesthetics, democracy, and so forth,

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<sup>4</sup> Rancière 2009a: 117 and 119. See also Rancière 2011a: 14, where he explains the status of his discourse as a 'poetics' that undoes the boundaries within which all disciplines predicate their authority.

<sup>5</sup> Rancière 2009d: 287. He explains: 'I put forward these distinctions as replacements of other distinctions, and against them. They effectuate less another type of classification than a type of declassification' (Rancière 2010: 205).

without the need of a universal vantage point (Rancière 2015). A scene creates a certain configuration of sense, namely, a form of linkage between perceptions, decisions, and meanings.<sup>6</sup> ‘The main point is not what they explain or express, it is the way in which ... they create a commonsense: things that the speaker and those who hear it are invited to share—as a spectacle, a feeling, a phrasing, a mode of intelligibility’ (Rancière 2009a: 117).<sup>7</sup> Rancière does not enclose scenes in a historicist box, but nor does he hypostasize a unified ‘time out of joint’ (Rancière 2011a: 13) either. Instead, the analysis ‘must implement, at the same time, a principle of historicization and a principle of untimelessness, a principle of contextualization and a principle of de-contextualization’ (Rancière 2009d: 282). That is, ‘you must make words resound in their concrete place and time of enunciation ... [b]ut you must also draw the line of escape’ where the poor bricklayer meets the aristocratic philosopher of antiquity (Ibid.).

Third, scenes are exemplary ‘limit-moments’ where the appearance and disappearance of subjects, phrases, modes of being, roles, and powers are made visible or invisible (Rancière 2009a: 117–8). They are exemplary not by virtue of models of conduct worthy of imitation but insofar as they are able to disclose their objects to their fullest force and intensity (e.g., equality, politics, democracy, aesthetics, or emancipation). For example, Rancière suggests that the ‘power of the people’ can be best understood from moments where that power appears in its utmost effectiveness, namely, from moments of disruption of the hierarchical order (Ibid.: 118). Likewise ‘what politics means can best be understood from the moments when the power of anybody emerges most significantly’ (Ibid.: 120). In doing so, Rancière draws

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<sup>6</sup> Scenes are *sites of circulation* which tie together ‘perceptions, interpretations, orientations, and movements’ (Rancière 2009a: 120).

<sup>7</sup> For Rancière a common sense ‘does not mean a consensus but, on the contrary, a polemical place, a confrontation between opposite common senses or opposite ways of framing what is common’ (Rancière 2009d: 277).

inspiration from the ‘panecastic method’ of Joseph Jacotot, which is based on the assumption that ‘you can see the whole in a very small fragment’ (Rancière 2015).<sup>8</sup> This does not mean that everything is in the scene, but that what appears most forcefully in it (e.g., the demonstration of equality, the power of anybody, the aesthetic reconfiguration of the sensible) can exemplify similar processes everywhere and at any time. As a result, the exemplarity of the scene lies not at the level of mimetic representation (what the scene is shown to portray), but of poetic enactment (what it sets in motion to produce).

Finally, for scenes to deploy their full effects they must be read in a certain way, that is, their effects can be felt only on condition that one pulls different threads together (Rancière 2009a: 119). Scenes thus require the critic ‘to follow these fluctuations of perception and speech and to try to *let their power and their stakes be felt*’ (Rancière 2011b: 240–1 emphasis added). The critic becomes not a passive onlooker but, rather, a(n) (emancipated) spectator, with the responsibility to perceive, and not overwrite, their potential happening. A poetics of critical reception consists in detecting and highlighting the operations (of equality) that shatter supposedly incontrovertible situations (of inequality) by presenting alternative ‘as ifs’ that overturn the logic of those situations.<sup>9</sup> This alternative ‘as if’ is no illusion opposed to the real, but, rather, a redistribution of the ‘regime of the sensible’ that opens up what can be seen, felt, and thought (Rancière 2009b: 8). The discourse of the critic is effective neither as description (is), nor as prescription (ought), but as potentiality (might be). Accordingly,

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<sup>8</sup> Rancière defines Jacotot’s panecastic method as ‘a method for finding in every (*ekaston*) peculiar manifestation of intelligence the whole (*pan*) of its power’ (Rancière 2009d: 281). Also Rancière 1991: 39.

<sup>9</sup> This entails a first, anti-foundational move ‘to disentangle in every case the as if which is involved in the ‘that’s the way it is’ (Rancière 2009d: 280) and a second, constructive move ‘specifically aimed at detecting and highlighting the operations of equality that may occur everywhere at every time’ (Ibid.: 280–281).

“It might be” is a formulation consistent with Rancière’s peculiar practice of “theory” (Rancière 2009: 119).

To sum up, scenes offer a texture for ‘theoretical’ argument; a frame of interpretation for intersecting configurations of sense; an occasion for an exemplary appearance of objects in question; and a counterforce to inegalitarian expressions of ‘what is’. A theatrical or dramaturgical conception of law finds its correlative in the legal scene, where no external position exists for the legal theorist to describe law in its totality, or as a totality. In order to gain a synoptic vision one has to go through the scene of law as an experience, rather than as an external object, field, or social subsystem. A dramaturgy of law also connects scenes from diverse origins, making them resound in their particular context of enunciation without refusing to draw lines of relevance beyond it. Scenes are chosen for their salience and ability to signify, just as ‘hard cases’ illuminate not only themselves but the entire legal landscape. To be sure, scenes may have blind spots and some events may not be seen on the stage. And yet absences, omissions, gaps, and silences often leave traces of their absence that are to be interpreted, and can even be sensed, like a chill in the air, an ominous silence, or violence in Greek tragedy, which is not shown on stage, but must be re-enacted. Lastly, a dramaturgy of law critically engages ‘not only the “is” and the “ought”, but the “is”, the “ought”, and the “what might be”’ (Cover 1983: 10).

## **2. Politics and Jurisgenesis:**

*Politics is not primarily a matter of laws and constitutions. Rather it is a matter of configuring the sensible texture of the community for which those laws and constitutions make sense (Jacques Rancière).<sup>10</sup>*

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<sup>10</sup> Rancière 2009b: 8.



While on a first reading law and politics appear not to be ‘a matter of’ each other, the above quotation actually keeps law and politics *connected* through the sensible texture of the community for which they make sense. This calls for a reformulation of both terms. To begin with politics, Rancière develops a particular understanding of politics not as ‘the set of procedures whereby the aggregation and consent of collectivities is achieved, the organization of powers, the distribution of places and roles, and the systems for legitimating this distribution’—which he renames *police* (Rancière 1999: 28). Politics, by contrast, is a process whereby a given regime of visibility—an order that regulates what is ‘common-sensical’ within a society—is interrupted by an egalitarian and dissensual logic that disrupts its naturalness. As an activity, then, politics ‘undoes the perceptible divisions’ (Rancière 1999: 30) and ‘makes visible what had no business being seen, and makes heard a discourse where once there was only place for noise’ (Rancière 1999: 30).<sup>11</sup>

Rancière offers multiple examples: Olympe de Gouges’ famous declaration during the French Revolution that if women were entitled to go to the scaffold they were also entitled to go to the Assembly; Jeanne Deroin when in 1849 she tried to present herself as a candidate to an election where women were not legally allowed to do so; or Rosa Parks when she refused to give up her seat to a white passenger in Montgomery, Alabama. Rancière also draws on little vignettes: during the trial of Auguste Blanqui in 1832, when asked by the magistrate to name his profession, Blanqui defiantly responded ‘proletarian’. The magistrate replied that to be a proletarian is not a profession, to which Blanqui retorted: ‘But it is the profession of thirty million

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<sup>11</sup> Central to this understanding of politics are concepts such as *wrong*, *dissensus*, *subjectivation*, *equality*, and *demos*, which is the supplementary name of those who find no place (are ‘uncounted’) in the given ‘distribution of the sensible’ [*partage du sensible*]. See Davide Panagia 2010 and the rest of the essays in Deranty (ed.) 2010.

Frenchmen who live off their labor and who are deprived of political rights!’ After this unexpected rejoinder, the judge instructed the clerk to list proletarian as a new profession.

A favourite is the scene of the Plebs of the Aventine Hill in 494BC, their retreat from the city as a result of the harsh rule of Appius Claudius, their failed negotiation with the patricians who denied them their status as proper interlocutors, and their eventual reintegration into the city with creation of the office of tribune of the plebs. Rather than follow Livy’s account, however, Rancière goes for the nineteenth-century retelling by Pierre-Simon Ballanche, who objected to Livy’s inability to think of the event as anything other than as an uprising devoid of all political meaning. In contrast, Ballanche restages the conflict as one in which ‘the entire issue at stake involves finding out whether there exists a common stage where plebeians and patricians can debate anything’ (Rancière 1999: 23). The plebeians claim a symbolic place in the city in which they as yet have no representation, while the patricians are compelled to acknowledge them despite their harsh rejection.

Contrary to what some commentators suppose, Rancière’s examples are not always heroic. Sometimes they are small, almost imperceptible events, and range from a modest meeting of nine persons in a London tavern to create a ‘Corresponding Society’, to a slight modification of the timetable of a worker’s evening. Each action seems to require some measure of courage—not least the conviction and determination to follow it through—but not a martyrology of self-sacrifice. Nor does politics consist in moments of hysterical upheaval after which everything becomes calm again. In fact, politics may begin with a ‘tiny modification in the posture of the body’ (Rancière 2009d: 275), even though major consequences can follow. What these examples have in common is that

the political actor<sup>12</sup> must do something ‘unimaginable’ from the perspective of the given order; something to which they are not in principle entitled, but which ends up rearranging the community’s configuration of sense.

Politics acts on the police. By police Rancière means not the petty police or the state apparatus, but a more general ‘order of the visible and the sayable’ that arranges the tangible distribution of society. As reformulated by Rancière, the police is a nonpejorative term which defines, often implicitly, ‘that a particular activity is visible and another is not, that this speech is understood as discourse and another as noise’. (Rancière 1999: 29). Thus, ‘[p]olicing is not so much the ‘disciplining’ of bodies as a rule governing their appearing’ (Ibid.). Additionally, however, the police order designates a specific type of saturated community that rules out any supplement or empty spaces, with the motto: ‘a place for everything and everything in its place’ (Davis 2010: 78). In this restricted sense, police and policing are specific ways of partitioning the sensible [*partage du sensible*] which are antagonistic to politics. Surely, then, the negative overtones of police/ing do not entirely disappear, nor are they erased under the new terminology.

To weave a dramaturgy of law out of Rancierian threads is not simply to apply the analysis to an already constituted realm of law but to reformulate that realm of law

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<sup>12</sup> Rancière understands political action not in terms of impersonal multitudes, but of actors who undergo processes of *subjectivation*, which is ‘the production through a series of actions of a body and a capacity for enunciation not previously identifiable within a given field of experience’ (Rancière 1999: 35; cf. Rancière 2012). A subject has no concrete faculties or properties, nor is defined in terms of an ‘identity’; it is not a group that ‘becomes aware’ of itself, finds its voice, imposes its weight on society. Instead, it is an ‘operator that connects and disconnects different areas, regions, identities, functions, and capacities’ (Ibid.: 40, emphasis added). A political subject is a ‘surplus name’ that sets out a dispute about who is included in their count (Rancière 2004: 303). For example, in the claim ‘we, the people’ what is staged is a *gap* between the ‘we’ that is speaking and ‘the people’ in whose name this ‘we’ purport to speak (Rancière, 2009b: 11). Thus, the subject is a kind of ‘theatrical instance’ (Rancière 2004b).

as well. Some potential avenues are to be resisted: the first is simply to identify law with the police order, for dissensual logic is often expressed in the language of law. On the other hand, the task cannot be a simple reversal either, turning law into politics (e.g., law-as-resistance), for the idea of institutional arrangement cannot be realistically extricated from law altogether. Yet a third red herring would be to posit a differentiated sphere for ‘the juridical’, separated from the economy, society, and so on.<sup>13</sup> Law cannot be sealed off from the rest of social life, nor does a determinate set of issues exist that are by nature legal.

If law is conceived neither as a form of police, nor as politics, nor as a separate juridical sphere, I want to suggest a fourth possibility in the notion of law as the encounter between two heterogeneous processes. Just as Rancière argues that nothing is political in itself, but anything may become political if it gives rise to a meeting of logics never set up in advance (Rancière 1999: 32), I maintain that nothing is legal in itself, but anything can *become* legal if it gives rise to such an encounter.

I would propose for law a doubling similar to that which Rancière articulates for police/politics: In lieu of the police we would have the order of *legalism*, namely, a set of procedures for the aggregation of consent, the organization of powers, the distribution of places and roles, and the system of legitimizing that distribution. Judith Shklar defines legalism as an ethical attitude of rule-following, coupled with an ideology of agreement that evacuates dissent from ‘the right and true view’ of the law (Shklar 1964: 1, 10). Legalism is associated with a culture of formalism that establishes a sharp distinction between law and non-law, values consistency, predictability, and procedural correctness, and where the (moral) evaluation of law is irrelevant for its

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<sup>13</sup> This would be the Arendtian way: For the contrast between Rancière and Arendt, see Schaap 2012 and Schaap 2011.

application. Both as a set of practices that constitute (the dominant image of) the rule of law and a particular ideology that pushes out manifestations of law other than the state's, legalism can be identified with the state as 'an institution whose operation tends to transform the political scene into purely a matter of police management' (Rancière 2011b: 249).

In the opposite direction, we could set a process that interrupts legalism which, borrowing a term from Robert Cover (1983), we may call *jurisgenesis*. The jurisgenetic (or jurisgenerative) impulse would come to interrupt the logic of legalism and challenge its distribution of roles, places, subjects, and doctrines. Despite legalism's attempt to saturate the normative space, its completion can never be fully accomplished: '... the juridical inscription that should set things in order ... constantly lend[s itself] to the construction of unforeseen trajectories of looking and speaking' (Rancière 2011b: 243). This means that *jurisgenesis* is always a possibility.<sup>14</sup> *Jurisgenesis* points to the existence of a *wrong* in the legalistic order and challenges the very boundary between law and non-law.

Jurisgenerative capacity is not the privilege of those who hold institutional office or who are otherwise vested with legal authority to act. In the wake of normative pluralism, this power is acknowledged of anyone whomsoever who, undergoing a process of subjectivation, instantiates a wrong in the fabric of legalism and reconfigures the legally sayable, thinkable, and doable.<sup>15</sup> The corollary of this theatrical conception of law is a rejection of legal positivism as an order consisting of a posited, gapless system; but it is equally separated from any idea of natural law as pre-existing, for the

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<sup>14</sup> I paraphrase from Davis 2010: 79.

<sup>15</sup> In the legal setting, this raises broad issues of capability, privilege, and access (e.g., Galanter 1974). Rancière's starting point is the opposite in that he wishes to demonstrate that the 'incapable' are in fact capable. This lies at the heart of Rancière's controversy with Bourdieu in Rancière 2003b: ch 9.

law is to be created together with the stage where it is to be understood. The resulting image is not a purified jurisgenetic law, for jurisgenesis is always mixed with legalism.

How norm-generative moments might emerge in specific legal settings calls for elaboration. Taking the cue from Rancière's article 'Who is the Subject of Human Rights?,' a promising avenue may be found in the double existence of rights (and arguably of written law in general), which are first inscriptions in the regime of the visible, but then require to be activated in their potential by those who can make something out of that inscription (Rancière 2004a: 302). The staging calls for a poetics of expression and 'the legal imagination' (White 1973), which never develops in a vacuum: it 'draws on forms of juridical inscription or forms of labour [sic] relation, on religious narratives, on models taken from school books, on ways of being alone or of meeting others that are put into circulation by literature, on definitions of bodily health and corruption circulated by life sciences, on ways of seeing and hearing formed by metropolitan cultures ...' (Rancière 2011b: 242-243), an 'excess of words' that turns humans into 'literary animals' (Ibid.: 248).<sup>16</sup> And yet the jurisgenerative impulse is not just world-creating, for it must take into account the material conditions and the limitations upon which it must act. In other words, the creation of litigious worlds is an aesthetic event, not a mere invention of languages, for an argument must always be won on pre-existing and constantly re-enacted distribution of languages (Rancière 1999: 45) and take into account the expected behaviour of those who might likely oppose it.

### **3. The Law of Disagreement: Putting Two Worlds in One**

*A dissensus puts two worlds—two heterogeneous logics—on the same stage, in the same world. It is a commensurability of incommensurables (Rancière 2009b: 11).*

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<sup>16</sup> For what this 'literarity' may entail, see S. Chambers 2013, chapter 3.

A dramaturgic conception of law builds on scenes of disagreement between heterogeneous normative worlds. In Rancière's terminology, a disagreement [*mésentente*] is not a simple case of misunderstanding when one of the parties does not understand the meaning of terms, or of misconstruction, when one of the parties does not know what she is saying through dissimulation, ignorance, or delusion. Nor is it a case of someone who says white and another who says black. Rather, 'it is the conflict between one who says white and another who also says white but does not understand the same thing by it or does not understand that the other is saying the same thing in the name of whiteness' (Rancière 199: x). A parallel term for it is *dissensus*, which is a division in the *sense*—sensory experience and meaning—of the common (Rancière 2010: 38). A dissensus cracks open a situation from within and reconfigures it in a different regime of perception and signification (Rancière 2009c: 48); it does so by inscribing one perceptual world into another—for example, the world in which proletarians and women can participate in the other world in which they are either uncounted as a collective or relegated to domesticity (Rancière 2003b: 226). Disagreement and dissensus are not Schmittian confrontations between friends and enemies, or the opposition of interests or opinions, but fractures over constitutive questions such as 'where are we?', 'who are we?', 'what makes us a we?', 'what do we see and what can we say about it that makes us a we, having a world in common?' (Rancière 2009a: 116).

Rancière situates his argument between Habermas and Lyotard (and thus between two opposing ideas of modernity and the role of reason/unreason in it). Arguing explicitly against the Habermasian model of communicative action, which presupposes equal partners in a horizon of shared understandings, the specifics of disagreement are that its partners are no more constituted than the object or the stage itself

(Rancière 2010: 38). Indeed, '[p]arties do not exist prior to the conflict they name and in which they are named as parties' (Rancière 1999: 27). According to Rancière, before any confrontation of interests and values, 'the place, the object, and the subjects of the discussion are themselves in dispute and must in the first instance be tested' (Rancière 1999: 27). Therefore, 'it is necessary to simultaneously produce both the argument and the situation in which it is to be understood, the object of the discussion and the world in which it figures as object' (Rancière 1999: 57). This represents a most peculiar platform, for 'the speaker has to behave *as though* such a stage existed, as though there were a common world of argument—which is eminently reasonable *and* eminently unreasonable, eminently wise and resolutely subversive, since such a world does not exist' (Rancière 1999: 52).

On the other hand, the stage(ing) of disagreement cannot be said to be unbridgeable as a *differend*, which is Lyotard's (1988) neologism to describe a kind of conflict that cannot be resolved for lack of a rule of judgment applicable to both parties, and/or where applying a single rule of judgment would wrong one of them.<sup>17</sup> In such cases, the wrong 'consists not only in the fact that a party is harmed but that the injured party is divested of the means to make visible this injury as an injustice' (Schaap 2009: 210). Amidst the inevitable heterogeneity of language games, and the impossibility of subsuming them all under a single, neutral genre of discourse,<sup>18</sup> Lyotard's *differend* is marked by absences: of a common language between the parties; of a common

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<sup>17</sup> For Lyotard, 'a wrong results from the fact that the rules of the genre of discourse by which one judges are not those of the judged genre or genres of discourse' (Lyotard 1988: xi).

<sup>18</sup> Lyotard argues that each time that heterogeneous phrase regimens are 'linked together,' other possible linkages remain neglected, forgotten or repressed (1988: 136 fn 184). In his view, this is inevitable because no single, universal genre exists to subsume all genres (1988: 128 fn 178; 138 fn 189; also fns 179 and 231).



procedure to channel their conflict; of an equitable rule of judgment; of an appropriate remedy to redress the harm.

Rancière's main objection to Habermas and Lyotard alike, as Fiona Jenkins explains, is that 'they presume a situation of separation and then raise the question whether it can be justly constructed', whereas Rancière 'denies the primacy of separation by placing both contesting claims in a common situation structured by disagreement' (Jenkins 2009: 191). This is what Rancière examines under the heading 'rationality of disagreement', which does not mean that the conflict itself is bound to rules of rational discourse (in the procedural or deliberative sense) or that the participants themselves argue 'rationally' (as opposed to emotionally). What Rancière means is that the disagreement can be placed in a mutual space of encounter or common stage, which is why 'a disagreement may not be settled, *but it can be processed*' (1999: 39 emphasis added).

If a disagreement puts 'two worlds in one and the same world' (Rancière 2004a: 304),<sup>19</sup> how can we conceive this space of encounter—and where does it 'take place'? Samuel Chambers rightly argues that no need arises to posit a logically prior space of encounter (Chambers 2013: 59; cf. Deranty 2003: para 6).<sup>20</sup> In his view, the disagreement happens within the established order (of the police) itself (Ibid.: 62). While partially correct, this does not quite capture the novelty that a political or jurisgenerative act introduces in the place in question, which it reconfigures in a different regime of perception and signification. Therefore, even though '[p]olitics

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<sup>19</sup> As Rancière writes, 'the incommensurability on which politics is based is not identifiable with any 'irrationality'. It is, rather, the very measure of the relationship between a *logos* and the *alogia* it defines' (1999: 43). In other words, the stage(ing) of disagreement is the 'commensurability of the incommensurability' (2009b: 11).

<sup>20</sup> Deranty deems this third place of encounter 'the political' [le politique]. To be fair, Rancière himself did 'tentatively' conceptualize it like that, in 'Does Democracy Mean Something?', first published in Douzinas (ed.) 2007 and reprinted in Rancière 2010: 53.

‘takes place’ in the space of the police’ (Rancière 2011a: 8), for Rancière this ‘means reshaping those places’ (id). There appears to be a double sense of ‘place’ at work here, at once material and theatrical.<sup>21</sup> While in the first sense ‘there is no place outside of the police’ (Rancière 2011a: 6), in the latter, the stage is transformed accordingly. We might say that the encounter ‘takes place’ not so much within, but *upon* an order (of police/legalism) that the dissensual-jurisgenerative logic simultaneously reconfigures.

Having suggested that the stage of disagreement also reconfigures the place of encounter, several questions remain: first, do limits exist to the kind of disagreements susceptible to being thus staged? Second, what would it mean to bring a Rancierian disagreement to the legal arena? Jean-Louis Déotte reflects on the first question by setting up Rancière against Lyotard (Déotte 2004). He argues that the blind spot in Rancière’s dis-agreement is that this genre of political discourse (which he equates with ‘the deliberative’) remains insensitive to cases of intercultural *differend*, for which no common scene of interlocution would be available. He cites the example of a Malian mother responsible for the genital excision of her daughter, who is condemned by a French tribunal of child abuse or sexual mutilation. Déotte argues that the conflict is not political in the modern sense of the term, for she has no pretension to inscribe her law into the virtual community of deliberation and furthermore she will never be able to justify herself according to such norms. At the very most, Déotte writes, ‘an enlightened judge will attempt to render intelligible the words of the mother accused of excision; he will invoke her ethnographic baggage, but only in order to reproach her for her archaic submission to the norms of a traditional group’ (Ibid.: 88). Thus, the legal system requires her to accept a norm of discourse that is not that of the community that formed

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<sup>21</sup> In *On the Shores of Politics*, Rancière defines this space as *virtual*, but *not illusory* (Rancière 2007: 50).

her identity, and hence to abandon her own relationship to the law. For Déotte, this example ‘demonstrates how insurmountable is the différend between those whose life on earth is predestined by stories and ‘us,’ who ... know that we must deliberate over everything.’ (Ibid.: 87). In other words, disagreement presupposes that the cultural-legal différend has been dealt with, for ‘[t]here can only be political disagreement between those ... who share the same sense of history’ (Ibid.: 88).

This passage contains much to unpack, but the argument rests on an initial mischaracterization. Déotte subsumes Rancière’s disagreement into a genre of discourse, the deliberative, which is ill-suited to capturing the ruptural logic that the Rancierian disagreement is meant to introduce.<sup>22</sup> On the one hand, disagreement employs forms of demonstration that include bodily gestures, role-playing, mimicking, ironic tossing back, poetic world-openers, and dramatizations, none of which fit easily with abstract models of deliberation. On the other hand, the genre of the deliberative does not exhaust Rancierian disagreement, which is not a conflict of values and interest, but of making visible what had no business being seen.

Mischaracterizations aside, Déotte’s analysis has the further consequence of essentializing some kind of conflicts (ethnic, cultural, religious...). Rancière rejects the implicit fatalism of a claim that plunges these conflicts into a sense of archaic destination, excluding them from history. Déotte contrasts the case of the Malian mother with the Roman plebeians, nineteenth-century women, and the proletariat. True, the Malian mother may have no intention of inscribing her custom as law, but living in a

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<sup>22</sup> The mischaracterization is part of a larger effort to link Rancière with the Western tradition of Aristotle, Descartes and Kant, bypassing the radical critique introduced at the heart of these three authors—the political animal endowed with logos, the autonomous subject, and transcendental Reason. Déotte turns Rancière into a Hegelian proponent of historical progress, a characterization he has explicitly denied (e.g., Rancière 2003a).

society where genital excision is generally seen as aberrant, she will be confronted with the disjunctive of either retracting or defending her position when challenged. She could then decide to withdraw and give up the practice, or else defend it, in which case she would be asking for a reconsideration of the societal norms according to which her action is judged to be aberrant. Herein would lie the potential *jurisgenerative* aspect of her claim, which has nothing to do with her eventual success or failure in doing either.<sup>23</sup>

Conversely, in a context where plebeians were not considered ‘creatures of speech’, women could not participate in the electoral process, and workers were not thought to constitute a collective subject, can it really be said that they all *already* shared a sense of history with the patricians, the enfranchised men, or the factory owners who denied them? The ability to dramatize a conflict, to place a conflict on a common stage, has nothing to do with the supposedly lesser severity of the conflict, nor does it justify postulating a category of cases (cultural, ethnic, etc.) naturally excluded from being thus staged. At any rate, to stage a dis-agreement does not automatically neutralize or coopt one’s claims, or require accepting the terms of debate, norms, and language of the state as neutral.<sup>24</sup> In fact a dissensus opens up a fracture in the common sense for previously unsayable demands, for which a novel language is required that ‘sets the conditions for its own proper reception’ (Frank 2009: 89).<sup>25</sup>

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<sup>23</sup> In a similar situation to the Malian mother is Antigone, who arguably wanted solely to bury her brother in peace following time-honored burial rites, but in the process was able to reconfigure the law for the entire community. I have argued at length elsewhere that it is a mistake to suppose she betrays her commitment by the mere fact of arguing her case in a language the citizens too can understand (see generally Etxabe 2013; more specifically, and shortly, Etxabe 2009).

<sup>24</sup> For an argument, see Woodford 2015: 824-5.

<sup>25</sup> Frank refers to Frederick Douglass’ transformative aspiration ‘not to bring African-American life into conformity with the constitutive norms of the polity, but to radically re-imagine those norms’ (2009: 101).

This leads to our second general question: What would it take to stage a Rancierian disagreement in law? The ideology of legalism presents itself as providing a neutral forum and a language in which all claims can be made without loss. However, contemporary life is fraught with examples where the legal system imposes a language that silences some claims and precludes others from even being raised. For example, Andrew Schaap relates how the claim of aboriginal sovereignty in Australia was dismissed out of hand as an ‘absurd proposition.’<sup>26</sup> The state responded to nascent aboriginal claims in a manner that exemplifies both the silencing and the impossibility of articulating the injustice being committed.<sup>27</sup> Likewise, Emiliós Christodoulidis alludes to so-called ‘political trials’, where the arguments of dissenters (or ‘subversives’) are shut down and not even registered (Christodoulidis 2004). Paradoxically, some forms of inclusion are complicit in the silencing. For example, James Tully refers to practices of assimilation where subjects are permitted and often encouraged to participate and yet they are constrained to deliberate in a particular way, in particular places, or over a particular range of issues (but not others), so that their discussion serves to reinforce rather than challenge the status quo (Tully 2002: 223).

The central issue from a Rancierian perspective is therefore not simply to denounce the law of state-legalism as partial, but to make legalism a party to the disagreement—also transforming the stage where such conflict can happen. That is, to turn a disagreement *in* law into as a disagreement *of* law, where not even the space of

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<sup>26</sup> Schaap (2009) argues that the idea that a nation [Australia] should make a treaty with some of its citizens [aboriginals] was deemed to be an ‘absurd proposition’ by the Prime Minister as late as 1988.

<sup>27</sup> As Schaap (2009) explains, the state did so by denying that courts and municipal law were competent to deal with such claims (negation of addressee); that dispossession ever took place (negation of referent); that Aboriginal sovereignty was a legally cognizable or meaningful concept (negation of sense); and that such a thing as an aboriginal nation existed to begin with (negation of addressor).

the encounter can be taken for granted, or foreclosed in advance. The practical difficulty is how to challenge an order of legalism that does not want to hear, frames the discussion to the disadvantage of one party, denies a party the status of interlocutor, or more simply, that there is anything to discuss.

#### **4. The Poetics of Expression and the Legal Hearing**

*To happen, events must be perceived and acknowledged as such* (Kristin Ross 2009: 29).

If the gist of dis-agreement is to stage unreasonable and previously unthinkable demands, the established order will presumably not budge, countering that the claims are irrelevant, lack standing, are out of bounds, or unreasonable. Certainly the mere enunciation of a wrong, its appearance in the realm of visibility, does not guarantee that it will produce the desired outcome, as it cannot be assumed that the order of legalism will bend accordingly (Rancière 1999: 44).

How to assess whether the act (demonstration, verification, or claim) succeeds properly as an act? Rancière does not wish to make its success depend upon what the given order does or does not do. As Todd May reminds us, it is important not to confuse the existence of the act with its effects (May 2009: 116). At the same time, Rancière acknowledges that the verification of equality ‘becomes social’, that is, it is imbued with ‘a real social effect, only when it mobilizes an *obligation* to hear’ (Rancière 2007: 86, emphasis in original). While Rancière is not explicit about this, there appears to be a gap between the enunciation of a wrong and the hearing it compels, between its expression and the response it elicits: on the one hand, something has effectively to change in the realm of the addressees for the act to come to fruition. On the other hand, its success cannot be made entirely dependent upon those at whose door it lays the question, for then it would suffice to ignore the claim altogether to derail it. So what exactly must happen for an act to succeed as an act? Can it succeed even if the effects

are not exactly those intended? And if (some form of) hearing appears necessary, how can it be mobilized as an ‘obligation’ when the interlocutor ‘refuses to hear’? In the context of law: what does it take to for a jurisgenetic act to make a dent and reconfigure the order of legalism?

We might begin to disentangle these questions, first, by focusing on an example of failure. Indeed, that a political demonstration *can* fail gives us important clues as to what stands in the way of its success. Rancière offers the example of a Scythian slave-revolt (Rancière 1999: 12–13). As narrated by Herodotus (iv.3), the Scythians customarily put out the eyes of those they reduced to slavery, the better to restrict them to their task as slaves, which was to milk the livestock. However, this order of things was disturbed after the Scythian army left for a long war-expedition. After nearly three decades battling away against the Medes, the Scythian army returned home to discover a new generation of sons fathered by their own slaves, and raised with their eyes open. Looking around the world, the slaves had reached the conclusion that there was no particular reason why they should be slaves. Accordingly, they built trenches and armed themselves, determined to prove they were equals to the warriors. Initial skirmishes to reconquer them by force failed, but then one of the warriors addressed his brothers thus: ‘So long as they see us with arms in our hands, they imagine themselves our equals in birth and bravery; but let them behold us with no other weapon but the whip, and they will feel that they are our slaves, and flee before us’ (Herodotus iv.3). And so it was done with immediate success, Herodotus tells us, and the slaves took to their heels without a fight.

The slaves’ initial egalitarian demonstration at first unsettles the masters, but when the masters once more show signs of superiority the slaves have no comeback: they are ‘unable to transform equality in war into political freedom’ (Rancière 1999:

13). This would suggest that, to come to fruition, an act could require a further constellation of accompanying events to fully disclose itself, particularly in the face of likely opposition of the hierarchical order. Some commentators are led to distinguish between moments of disruption and moments of reconfiguration, so that the slaves could be said to have interrupted, but not reconfigured, the established order. There is no need for such a distinction: To count, an act must achieve the reconfiguration of the social order it seeks to interrupt, and vice versa. In other words, an act (a demonstration, a claim, a disagreement) ‘stops the current’ only if, and insofar as, it simultaneously transforms the hierarchical distribution of the sensible. The Scythian slaves failed, first, because they did not articulate another distribution of the sensible, a new distribution that would translate their newly acquired equality of arms (based on force) into a different equality, based on nothing other than the equality of anyone with anyone else and the sheer contingency of the hierarchical order.

How does the ingenious response of the masters figure in the failure? The warriors asserted their claim to superiority by showing their whips, which made the slaves feel that they were indeed slaves and not the warriors’ equals. If the slaves had at any point uttered a claim of equality, surely they were not successful in compelling the obligation to hear. Note, however, that the case was not properly a failure of hearing. The masters heard the claim and heard it exactly as it was initially intended, but acted *as if* they had not heard it, pretending to demonstrate with their demeaning behaviour that the slaves’ assertion was null and void. The warriors tested whether the slaves were earnest in asserting a common space of representation with the warriors, and the slaves’ return to their former roles without a fight demonstrated they were not. We could say the masters enacted a lie that closely parallels Plato’s myth of the three metals (Rancière 2003b: 17-21), and which is equally designed to justify (and perpetuate) a system of



social inequality. Here, too, the slaves had their say when believing the master's lie, for 'struck by the spectacle' (Rancière 1999: 12) they failed to stage an alternative 'as if' that would dismantle the master's performative ruse.

That hearing is presupposed in the act can be seen, *a sensu contrario*, in Rancière's favourite story of success. In Ballanche's restaging of the scene of the Aventine, the acknowledgment of the plebs comes almost naturally. The wise men of the senate realise that when a cycle is over it is over, whether you like it or not, and so they are led to conclude that 'since the plebs have become creatures of speech, there is nothing left to do but to talk to them' (Rancière 1999: 25–26).<sup>28</sup> Rancière remarks on Ballanche's sense of historical inevitability, derived from Vico, of cycles that can be progressively recognized by their own signs. We know, however, that for Rancière the recognition of speech as meaningful is never unproblematic, but itself the beginning of politics. Signs, Rancière argues, are not immediately recognizable by all as signifying, but raise a dispute over their status as either signifying (*logos*) or simple noise (*phônê*). Therefore, there is nothing automatic in hearing: it is not that someone utters speech and it is automatically acknowledged. This 'suffices to show that some type of activity, whatever it may be, is involved in the process [of hearing]' (Citton 2009: 122) and opens up the interesting problematic of reception.

In sum, what Rancière calls politics (and we are analysing as jurisgenesis) is a complex social act that requires both uttering and hearing to come fully to fruition. As Marianne Constable has recently elaborated with the help of Adolf Reinach, social acts require being heard or apprehended, but necessitate no particular response in order to be

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<sup>28</sup> Aletta Norval writes: 'This little gesture covers precisely the question of responsiveness and the need, for the plebeian speech act to become effective, for it to be inscribed in the extant order' (Norval 2012: 824).

completed (Constable 2014).<sup>29</sup> Thus social acts initiate new states of affairs and can instigate responses, but the speaker can never completely determine how a social act, or the state of affairs it initiates, will be taken up—or for how long it will endure (Constable 2014: 91). This creates a potential mismatch between the act and its dissemination, in the echoes, resonances, reverberations, or amplifications by which any act projects itself towards the future.

At the level of enunciation, these acts share features of the performative utterances famously elaborated by John Austin (1986). Still, they are not subject to the ‘felicity conditions’ Austin imagined.<sup>30</sup> Rancierian claims are spoken by those who are not ‘entitled’ to speak and hence spoken inappropriately, at the wrong time or in the wrong place, and with no regard for conventions or procedures. Moreover, they encroach upon the listener’s sensorium in a way that remained outside of Austin’s purview. In this sense they more closely resemble Stanley Cavell’s ‘passionate utterances’ (Cavell 2005), designed to produce effects upon the feelings, thoughts, or actions of the audience without conventional procedures to accomplish the desired effects.<sup>31</sup> In these ‘the emphasis is explicitly upon the constitution of a *relation* [with you]’ (Norval 2009: 171), for I must declare myself to have standing with you and single you out for a response, thereby making myself vulnerable to your rebuke (Cavell 2005: 185). Building on Cavell, Aletta Norval suggests further that passionate utterances open up a space for novel claims to be heard, even in conventional legal settings, due to the transformative force they carry (Norval 2009: 164, 169). As developed by Cavell/Norval, passionate utterances go a long way towards explaining

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<sup>29</sup> Reviewed in Etxabe 2015.

<sup>30</sup> Austin linked the particular success to certain conventional conditions and procedures (e.g. that the procedures are followed, that they are performed by the appropriate persons, that they are done in earnest, with particular intentions).

<sup>31</sup> Cavell’s list of conditions (2005: 180–2) parallels that of Austin’s.

the transformative effects that a jurisgenerative claim can have on the hearers. However, in Rancière a political demonstration has force even *in spite of or against* you, forcing us to consider the very different relation established with the interlocutor who rejects you as a proper interlocutor.<sup>32</sup>

For Rancière, this relation is polemic in the sense that the participants need not share the same goals, intentions, or understanding of the situation. This is a central and original point of Rancière that I want to illustrate with the example of Blanqui's magistrate, which conventional accounts of law-as-neutral(ising)-forum inevitably miss. Readers of Rancière naturally focus on the trenchant rejoinder of Blanqui. Much less noted, though no less important, is the reaction of the magistrate, who instructed the court clerk to register proletarian as a new profession. The magistrate is not simply taking stock of Blanqui's rejoinder and recognizing its validity, because the legal order to which he is committed does not include it in the list of proper legal names.

The significance of the gesture can be noticed when we realise that the magistrate was perfectly within his rights to deny the inscription; he could have refused to add proletarian as a new name, for instance leaving a blank space, or he could have ordered the clerk to translate it into one of the known professions. But he did none of

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<sup>32</sup> The issue of relation is central to what James Boyd White has coined with the term *constitutive rhetoric* (White 1984), which is none of the senses in which rhetoric has been understood in the Western tradition—as the ignoble art of persuading others of the sophists; as the Aristotelian science of finding the right *topoi* rescued by modern theorists of argumentations; or as the Ciceronian and medieval art of speaking well. In White's sense constitutive rhetoric is not a mere linguistic endeavour, but the holistic art of creating improbable communities between different worlds, which always entails the need for translation, and hence the possibility of mistranslation. In every rhetorical engagement, I must set the tone, the context, and my own authority to speak, thus creating a character for myself, my listener, and our relationship, which calls into being a community that can be accepted, declined, misinterpreted, or actively resisted. At any rate, the emphasis lies on the *betweenness*, the relation between the interlocutors and the audience, both immediate and future, constituted by who we are to one another and how we understand our being together.

these. Instead he ordered the term ‘proletarian’ to be written down, thereby inscribing a new name in the list of professions. The point is not to make Blanqui’s action dependent upon the magistrate, but rather to realise that the latter’s simple gesture is already a form of division in the order of legalism he represents.

The response of the presiding magistrate is decidedly different from that of the public prosecutor (*procureur* Mr. M. Delapalme), who protests energetically because for him proletarian does not signify a profession. The prosecutor, who belongs to the same judicial order as the presiding magistrate, and in principle shares his presuppositions, refuses to hear what the magistrate consents to inscribe. The magistrate’s different hearing crystallizes the encounter of heterogeneous logics demanded by legal disagreement.

Note that this does not require the magistrate to be aware of what he is doing, or of the implications as Blanqui means them. The magistrate is unlikely to have shared Blanqui’s assertion of proletarian as the profession of thirty million French citizens! Perhaps the magistrate wanted to proceed with the trial, or simply to end Blanqui’s charade. At any rate his intent is irrelevant: he need not share the ideals and goals of Blanqui for their encounter to ‘take place’ on a common stage: to be placed under a common scene of intelligibility does not mean there is agreement of wills and intentions, or a shared horizon of understanding—they may in fact have remained dramatically different. Despite being put in one and the same world, their perspectives have not merged into a unified language or single (deliberative) genre of discourse.

## **5. The Emancipated Judge**

‘We are not debt collectors’ (Juan Luis Ibarra, President of the Superior Court of Justice of the Basque Country).

In this chapter I have presented a Rancierian legal dramaturgy open to jurisgenerative moments of dissensus that disturb the consensual practices of legalism. That law should thus be open is anathema for those who believe in the purity of law and wish to shield it from external influence. My view also differs, though for different reasons, from critical approaches that situate the potential for openness exclusively outside of law, thereby withdrawing from the challenge of thinking law differently. I have argued that this task demands attention to the legal scene, which is not a return to any primordial or archetypal scene—the killing of the father, the dethronement of a King, grand moments of revolution, or of mythical founding. Rather, a legal dramaturgy is based on contingent scenes of becoming and passing away that enact significant junctures and turning points that constitute the ‘sensible community’ of [legal] perceptions, affects, names, and ideas (Rancière 2013: xi). Consistent with this ‘method’ I want to conclude with a scene where judges, the quintessential representatives of legalism, are invited to dissociate themselves from legalism and become emancipated, as third parties to disagreement. Indeed, ‘the play of the third person is essential to the logic of political discussion, which is never a simple dialogue’ (Rancière 1999: 48). This example will also help us to show how law, despite its strong institutional mechanisms and incentives to close itself down, can be open to *jurisgenesis* from within.

The scene takes place in the context of the deep mortgage crisis and foreclosures in Spain, one of the countries where the crisis was felt most acutely, after the bursting of the housing bubble in 2008. The liberalization of land in Spain in 1998 had generated a speculative market, supported by aggressive banking practices which marketed mortgages of 100 percent or more of a property’s value (Roca Cladera and Burns 2000; Gentier 2012). Ease of lending, questionable business practices and a culture of home ownership with the highest rates in the EU meant that, by 2008, household debt for

home mortgages had reached 65 percent of the national GDP.<sup>33</sup> To put it in perspective, Spain built more houses in the decade between 1997 and 2007 than France, Germany and the United Kingdom combined.<sup>34</sup>

When the housing market collapsed, Spain entered a deep economic depression, with harsh austerity measures, and alarming unemployment rates (26 percent by February 2014, with 50 percent youth-unemployment in 2012-2015). As a result, many new home-owners were unable to make repayments and defaulted *en masse*, leading to hundreds of thousands of foreclosures (440,000 by the end of 2012).<sup>35</sup> What made matters worse was that in Spain, unlike in countries such as the United States, Germany or France, no mechanism existed for ‘clearing’ the debt after foreclosure (e.g. personal insolvency laws, debt restructuring). Article 1911 of the Civil Code declares the unlimited liability of debtors, whereby home-owners not only lose their home but are still liable for the outstanding debt plus interest and legal costs.

When the price obtained at auction is insufficient to cover the debt, the enforcement procedure continues according to article 579 of the Law of Civil Procedure (LEC); a procedure of ‘limited cognition’, where debtors could not raise allegations of substance—in fact, as will be explained later, inability to challenge unfair mortgage clauses would subsequently be declared contrary to European Union law.<sup>36</sup> Therefore, it

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<sup>33</sup> European Mortgage Federation, *Hypostat 2013: A Review of Europe’s Mortgage and Housing Market* (November, 2013), p. 89. Available at:

[http://www.hypo.org/portalde/objects/6/files/hypostat\\_2013.pdf](http://www.hypo.org/portalde/objects/6/files/hypostat_2013.pdf)

<sup>34</sup> For an extensive report on the causes and effects of the housing crisis, see the report of the Spanish ombudsman (*Defensor del Pueblo*), available at <https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2012-01-Crisis-econ%C3%B3mica-y-deudores-hipotecarios-actuaciones-y-propuestas-del-Defensor-del-Pueblo.pdf>

<sup>35</sup> Editorial of *El Notario del Siglo XXI* (March-April, 2013), p. 5.

<sup>36</sup> Case C-415/11, *Mohamed Aziz v. Caixa d’Estalvis de Catalunya, Tarragona i Manresa*, March 14, 2013 (declaring the inability to raise objections based on unfair

is fair to say that the structure of legalism was heavily tilted in favor of creditors and banks, which not only could auction off a house by paying 50 % of the appraisal but also could seize other properties in the ensuing procedure. In addition, if the bank were to sell the repossessed property at a later date at a profit, the amount was not computed towards payment of the principal debt. This led to painful situations of aged parents who had given their homes as collateral for their offspring's mortgages and now risked eviction, even after the mortgaged house had been repossessed by the bank.<sup>37</sup>

Against this dramatic backdrop—including cases of suicide by evicted homeowners—the scene begins in quite an ordinary fashion: a home loan secured by a mortgage; default on repayment; the Bank repossesses the house, auctions it off for somewhat more than 50% of the appraisal, and then applies to continue the enforcement procedure for the outstanding debt. In principle, the case appears simple, almost a formality: the judge must ascertain that the conditions are met (enforceable title, non-payment, amount of debt) and the debtor has very limited means of opposition (mainly based on factual errors). The scene is so common in fact that it has been repeated many times over throughout Spain, always with the same result: the judge rules against the debtor with interest and costs. This time, however, the judge refuses to resume the enforcement procedure, with the argument that once the bank has

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contractual terms and to halt mortgage enforcement action contrary to the 1993 Directive on consumer protection).

<sup>37</sup> On the effects of the mortgage crisis on vulnerable populations, see the report by Human Rights Watch, 'Shattered Dreams: Impact of Spain's Housing Crisis on Vulnerable Groups' (report of May 2014), available at <http://www.housingrightswatch.org/sites/default/files/2014-06-01%20Human%20Rights%20Watch%20-%20Spain.pdf>

repossessed the house securing the mortgage, continuing the procedure would be an ‘abuse of process’ [*abuso de derecho*].<sup>38</sup>

The outcome is unexpected, all the more so because the judge admits that ‘the literal reading of the article [579 of LEC] does not seem to leave any interpretive doubts’. Notwithstanding, she assures that ‘this does not mean that it should always and in every case be applied’. The judge notes a disparity between the ‘nominal’ and the ‘real’ values of the house, by which she means the gap between the price obtained at auction and the valuation agreed upon at creation of the mortgage, enough to cover the full debt. Moreover, the house is not sold to a third party, but the bank enters it in the balance sheet at the appraised value, not the price paid at auction. Therefore, to continue with the enforcement in these circumstances would be a ‘manifest abuse of process’.<sup>39</sup>

The decision is as surprising as the reasoning itself, for the judge challenges the conventional wisdom that when the rule leaves no interpretive doubts there is no room for judicial discretion.<sup>40</sup> According to the standard positivist account, when the rule is clear there is nothing for the judge to do but to follow it.

One can begin to appreciate how remarkable this is when contrasted with the very different language by the Provincial Court of Navarra (third section), upholding the appeal against an identical decision by the same judge just a month later.<sup>41</sup> The third section begins by affirming that the role of judges is to perform their task

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<sup>38</sup> Auto 574/2009, of Judge of First Instance and Instruction of Estella/Lizarra 2, November 13, 2009 [Judge Esther Fernández Arjonilla].

<sup>39</sup> Ibid.

<sup>40</sup> Article 3 of the Civil Code provides different interpretive criteria (including the so-called ‘spirit of the law’). However, these criteria are meant to clarify the sense of the norms in question; once the meaning is clear, it does not allow discretion not to apply the interpreted rules.

<sup>41</sup> Provincial Court of Navarra, Third Section, of January 28, 2011, upholding an appeal against the order of the Judge of First Instance and Instruction of Estella/Lizarra of December 9, 2009 (Auto 831/2008).



independently, but ‘subject to the law’ [*sujeción a la ley*]. After recalling the content of articles 1911 CC and 579 LEC (unlimited liability of debtors and possibility to seize for the remainder), the court does not hide its bewilderment: ‘the normative content of the said legal precepts is so evident that it is hardly possible to comprehend the reasons why the judge eluded applying them in the case at hand’. Given that the facts fit perfectly with the rules, ‘it is not for the judge to assume the legislative function, but to apply the law to the case at hand, [p]articularly when the decision affects the principle of legal certainty...’.<sup>42</sup> On the issue of valuation, the court faults the judge for mistaking the value of appraisal with the real value, which is none other than ‘the amount of money someone is willing to pay for it’.<sup>43</sup>

Surely these words come closer to what the legal profession would have understood *ex ante* as representing ‘legal common sense’. Therefore, when the second section of the same Provincial Court—the court actually deciding the appeal at hand—sided with the judge and rejected the enforcement procedure, a scene which had begun as an isolated incident in a small village in Navarre made major headlines.<sup>44</sup>

How could the second section of the Provincial Court justify its decision? Admittedly, ‘from the perspective of a formal and strict application of the law’, it cannot be said that the bank has ‘abused the process’.<sup>45</sup> However, rules must be interpreted according to the social context in which they are applied (article 3 of the Civil Code) and, in circumstances of crisis, it is ‘morally objectionable’ that the bank grounds its claim on the loss of value of the property. The bank agreed to secure the

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Provincial Court of Navarre, Second Section, Judgment 111/2010 of December 17, 2010 (on appeal of Auto 574/2009, of November 13, 2009, of the Judge of First Instance and Instruction of Estella/Lizarra).

<sup>45</sup> *Ibid.*

property for a value it had itself appraised, and the mortgage would not have been granted had it not been sufficient to cover the mortgage debt in full. In conclusion, the court adds a personal reflection: the loss of value of properties is due to an economic crisis without parallel since the great depression of 1929 and in which ‘it cannot be ignored’ that financial institutions played a major part. While the bank may not have technically abused its right, it is ‘painful’ that their claim is ‘grounded on circumstances that have stirred such social sensitivity’.<sup>46</sup>

Once again, these are remarkable statements in a court of law, but the question now facing us is: how can two provincial courts be(come) such different spectators of the same legal scene? One way to read their divergence is through the traditional discrepancy between literal and teleological interpretation (Atienza 2013). Yet the issue is not merely one of different methods of interpretation (cf. Bengoetxea 2014). This is not a mere dispute about the meaning of rules within a common framework (a disagreement in law), but a dispute over the construction of the stage and the status of the claims that the logic of legalism *does not want to hear* (a disagreement of law). The disagreement extends to the very frame of discussion, which legalism wishes to relegate to the realm of non-law.

The judge of first instance opens up a tear that the third section seeks to close off, by appealing to ‘self-evident’ rules and facts. In contrast, the second section perceives a fracture in the regime of the sensible, where the judgment cannot be divorced from the underlying conditions where the dispute takes place. Whereas the third section follows the (neoliberal) logic of the market as a proxy for the real value, the second section takes up the value agreed upon at appraisal. The latter has been criticized as a fiction (Atienza 2013: 14). Let us not forget, however, that market value

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<sup>46</sup> Ibid.

is also a fiction that assumes what the economic crisis has completely shattered, namely a perfect correspondence between supply and demand in conditions of free competition. What the second section actually does is to shed light on the inequality at the heart of this fiction and to replace it with a different, alternative *as if* that ties the valuation to the mortgage it served to secure, and in default of which it would not have been granted. Whether this valuation is less or more ‘real’ depends on considerations that the third section is unwilling to entertain. By contrast, the second section enquires into the conditions of enforcement. For this it is not irrelevant that the bank itself made the appraisal, later obtained the house at auction by paying only 50% of the appraised amount, and can still sell it when conditions improve—as banks did subsequently in many instances.<sup>47</sup> In bringing these circumstances to bear, the court offers a new configuration of the sensible which rearranges the equality of arms that the procedural laws slanted in favor of creditors and against debtors.

Finally, the third section’s conventional submission to legalism (where the role of the judge is simply to follow the law regardless of its merits) displays a further feature of legalism: identifying the third section’s opinion with the ‘right and true view’ of the law (Shklar 1964: 10). The court cannot fathom that a real difference of opinion can exist and seeks to evacuate dissent from the law. By contrast, the second section turns the role of the judge into an open question. Dissenting from the distribution of places and roles assigned by legalism, the judges of the second section turn the term ‘judge’ into a litigious name.

This process of subjectivation was most clearly articulated by the President of the Superior Court of the Basque Country, Juan Luis Ibarra, after the Court of Justice of

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<sup>47</sup> This increase is recognized explicitly by the third section as part of ordinary economic dealings.

the European Union declared the Spanish enforcement procedure contrary to European Law in 2013. According to Ibarra, the European Court corrected an anomaly in Spanish law that turned judges into debt collectors and made judging impossible, for ‘judging is not enforcing, but adjudicating contentious issues’. As he put it vividly: ‘We are [judges] not debt collectors’.<sup>48</sup> Similarly, turning judgment into an issue, the judges in our scene resisted identification with legalism and their putative role as passive enforcers. Instead, they enacted the logic of emancipation, which enabled them to recognize a wrong in the distribution of the sensible; that is, a fundamental inequality between creditors (banks) and debtors (home-owners).

Contrary to the anxieties of legalism, emancipation in this context does not mean that the judge is let loose to impose his or her will on society: the logic of the emancipated judge actually demands the existence of a ‘third thing’ to be verified in each and every performance.<sup>49</sup> This third thing is the legal scene that both the parties and the judge share; a common frame of intelligibility under which their conflict is staged and plays out. Against the unfounded worry of ‘judicial activism’ and the correlative claim of judges blindly following the law—a ‘noble lie’ for the general public, I am afraid, rarely believed by practitioners—the judge in legal dramaturgy is not unmoored from the legal scene before him. To be responsive to the legal scene, and to the demands it poses, also entails responsibility for the ‘inscriptions’ judges make, the way they talk about issues, the people before them, and the societal impact of their decisions, cognizant of the material constraints they face and aided by the intelligence they possess.

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<sup>48</sup> <http://www.elmundo.es/elmundo/2013/03/14/paisvasco/1363274390.html>

<sup>49</sup> In the logic of emancipation ‘there is always a third thing—a book or some piece of writing—alien to both and to which they can refer to verify in common what the pupil has seen, what she says about it and what she thinks of it (Rancière 2009c: 15).

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The decision of the Provincial Court was short-lived: subsequent legislative changes and a decision of the Spanish Constitutional Court compelled the court to reverse course and submit to the hierarchical principle—while concluding on a note pointing out legal alternatives still open to debtors.<sup>50</sup> Some may be tempted to conclude from this that legalism shuts down the jurisgenerative capacity of judges, as nothing seemed really to change. A critical dramaturgy, however, makes ‘the stakes and power of the scene felt’, for this was *not nothing*. The scene was not an isolated incident and other judges, too, resisted legalism.<sup>51</sup> More importantly, though the pressures of legalism are obviously strong, they can crack again. When a judge in Barcelona decided to bring to task the Spanish enforcement procedure before the Court of Justice of the European Union, the entire order of legalism had to reckon with the fact that it failed adequately to protect homeowners, and was forced to change.<sup>52</sup> Therefore, while on its own a scene proves nothing, we can make it count as part of a larger sequence of reverberations, echoes, and amplifications that reconfigure the thick armor of legalism.

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<sup>50</sup> Provincial Court of Navarre, Auto 24/2012, of May 4, 2012.

<sup>51</sup> In Elche (Alicante), a judge conditioned repossession on the use that the bank would give to it (relying on equity) (Providencia of Judge of First Instance Number Five, July 28, 2011). In Girona, the court applied the doctrine of unjust enrichment after the bank obtained a benefit from selling the house and still proceeded against the debtor (Provincial Court of Girona, First Section, Auto 113/2009, of April 7, 2011).

<sup>52</sup> The request for a preliminary ruling in the Aziz case was raised by Juzgado de lo Mercantil (Commercial Court) Number 3 of Barcelona. For the implications of the CJEU ruling for the Spanish system, see Bengoetxea 2014 (arguing for the benefits of inter-legality to shift our national prism and pierce through hermetic interpretations).

## Bibliography

Atienza, M. (2013) 'Los desahucios, los jueces y la idea del Derecho', *El Cronista*, vol. 37, pp. 14–19.

Austin, J. (1986) *How to Do Things with Words*, 2nd edition, Oxford: Oxford University Press.

Bengoetxea, J. (2014) 'Sobre-endeudamiento, desahucio, abuso del derecho y cultura judicial formalista', *El Cronista*, vol. 48 (2014) 50–55.

Bowman, P and Stamp, R. (eds.) (2011) *Reading Rancière*, London and New York: Continuum.

Cavell, S. (2005) *Philosophy the Day After Tomorrow*, Cambridge and London: The Belknap Press of Harvard University Press.

Chambers, S. (2013). *The Lessons of Rancière*, New York: Oxford University Press.

Christodoulidis, E. (2004). 'The Objection that Cannot be Heard: Communication and Legitimacy in the Courtroom', in Duff, R. A. et al. (eds.) *The Trial on Trial*, vol. 1, Oxford and Portland: Hart Publishing.

Citton, Y. (2009) 'Political Agency and the Ambivalence of the Sensible', in Rockhill G. and Watts, P. (eds.) *Jacques Rancière: History, Politics, Aesthetics*, Durham and London: Duke University Press.

Constable, M. (2014) *Our Word is Our Bond: How Legal Speech Acts*, Stanford: Stanford University Press.

Cover, R. (1983) 'The Supreme Court, 1982 Term—Foreword: Nomos and Narrative', *Harvard Law Review*, vol. 97, pp. 4–68.

Davis, O. (2010). *Jacques Rancière*, Cambridge, UK: Polity.

Déotte, J-L. (2004) 'The differences between Rancière's Mesentente (Political Disagreement) and Lyotard's Differend', *SubStance*, vol. 33, no. 1, pp. 77–90.

Deranty, J-P. (2003) 'Rancière and Contemporary Political Ontology', *Theory and Event*, vol. 6, no. 4.

Deranty, J-P. (ed.) (2010) *Jacques Rancière: Key Concepts*, Durham: Acumen.

Douzinas, C. (ed.) (2007) *Adieu Derrida*, New York: Palgrave MacMillan.

*El Notario del Siglo XXI* (2013), vol. 48, March-April, Editorial: 'La sentencia del Tribunal de Justicia de la Unión Europea y el futuro de la hipoteca en España'  
Available at <http://www.elnotario.es/index.php/hemeroteca/revista-48/145-la-sentencia-del-tribunal-de-justicia-de-la-union-europea-y-el-futuro-de-la-hipoteca-en-espana-0-6296839738541133>

- Etxabe, J. (2009) 'Antigone's Nomos', *Animus: The Canadian Journal of Philosophy and Humanities*, vol. 13, pp. 60–73.
- Etxabe, J. (2010). 'The Legal Universe After Robert Cover', *Law & Humanities*, vol. 4, no. 1, pp. 115–47.
- Etxabe, J. (2013) *The Experience of Tragic Judgement*, Abingdon: Routledge.
- Etxabe, J. (2015) 'Book Review: Marianne Constable's *Our Word is Our Bond: How Legal Speech Acts*', *No Foundations: An Interdisciplinary Journal of Law and Justice* vol. 12, pp. 136–145.
- European Mortgage Federation, 2013. 'Hypostat 2013: A Review of Europe's Mortgage and Housing Market'. Available at: [http://www.hypo.org/portalev/objects/6/files/hypostat\\_2013.pdf](http://www.hypo.org/portalev/objects/6/files/hypostat_2013.pdf)
- Frank, J. (2009) 'Staging Dissensus: Frederick Douglass and "We, the People"', in Schaap (ed.) *Law and Agonistic Politics*, Farnham: Ashgate.
- Galanter, M. (1974) 'Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change', *Law & Society Review*, vol. 9, no. 1, pp. 95–160.
- Gentier, A. (2012) 'Spanish Banks and the Housing Crisis: Worse than the Subprime Crisis?', *International Journal of Business*, vol. 17, no. 4, pp. 342–351.
- Hallward, P. (2009) 'Staging Equality: Rancière's Theatrocracy and the Limits of Anarchic Equality', in Rockhill, G. and Watts, P. (eds.) *Jacques Rancière: History, Politics, Aesthetics*, Durham and London: Duke University Press.
- Human Rights Watch, 2014. 'Shattered Dreams: Impact of Spain's Housing Crisis on Vulnerable Groups', [Online], Available at <http://www.housingrightswatch.org/sites/default/files/2014-06-01%20Human%20Rights%20Watch%20-%20Spain.pdf>
- Jenkins, F. (2009) 'On the Rationality of Disagreement and Feeling', in Schaap, A. (ed.) *Law and Agonistic Politics*. Farnham: Ashgate.
- Lyotard, J-F. (1988) *The Differend: Phrases in Dispute*, translated by Van Den Abbeele, G., Minneapolis: University of Minnesota Press.
- May, T. (2009) 'Rancière in South Carolina', in Rockhill, G. and Watts P. (eds.) *Jacques Rancière: History, Politics, Aesthetics*, Durham and London: Duke University Press.
- Norval, A. (2009) 'Passionate Subjectivity, Contestation and Acknowledgement: Rereading Austin and Cavell', in Schaap, A. (ed.) *Law and Agonistic Politics*, Farnham: Ashgate.

- Norval, A. (2012) ‘“Writing a Name in the Sky”: Rancière, Cavell, and the Possibility of Egalitarian Inscription’, *American Political Science Review*, vol. 106, no. 4, pp. 810–826.
- Panagia, D. (2010) ‘Partage du Sensible: The Distribution of the Sensible’, in Deranty, J.-P. (ed.) *Jacques Rancière: Key Concepts*, Durham: Acumen.
- Rancière, J. (1991) *The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation*, translated with an introduction by K. Ross, Stanford: Stanford University Press.
- Rancière, J. (1999) *Disagreement: Politics and Philosophy*, translated by J. Rose, Minneapolis and London: University of Minnesota Press.
- Rancière, J. (2003a) ‘Comments and Responses’, *Theory and Event*, vol. 6, no 4.
- Rancière, J. (2003b) *The Philosopher and His Poor*, edited and with an introduction by A. Parker, Durham and London: Duke University.
- Rancière, J. (2004a) ‘Who is the Subject of the Rights of Man?’, *The South Atlantic Quarterly*, vol. 103, no. 2-3, pp. 297–310.
- Rancière, J. (2004b) ‘Entretien avec Jacques Rancière’, *Dissonance*, vol. 1, [Online], Available at <http://www.multitudes.net/Entretien-avec-Jacques-Ranciere/>.
- Rancière, J. (2007) *On the Shores of Politics*, translated by L. Heron, London and New York: Verso.
- Rancière, J. (2009a) ‘A Few Remarks on the Method of Jacques Rancière’, *Parallax*, vol. 15, no. 3, pp. 114–123.
- Rancière, J. (2009b) ‘The Aesthetic Dimension: Aesthetics, Politics, Knowledge’, *Critical Inquiry*, vol. 36, pp. 1–19.
- Rancière, J. (2009c) *The Emancipated Spectator*, London: Verso.
- Rancière, J. (2009d) ‘Afterword. The Method of Equality: An Answer to Some Questions’, in Rockhill, G. and Watts, P. (eds.) *Jacques Rancière: History, Politics, Aesthetics*, Durham and London: Duke University Press.
- Rancière, J. (2010) *Dissensus: On Politics and Aesthetics*, edited and translated by S. Corcoran, London and New York.
- Rancière, J. (2011a) ‘The Thinking of Dissensus’, in Bowman, P. and Stamp, R. (eds.), *Reading Rancière*, London and New York: Continuum.
- Rancière, J. (2011b) ‘Against an Ebbing Tide: An Interview with Jacques Rancière’, in Bowman P. and Stamp S. (eds.) *Reading Rancière*, London and New York: Continuum.



- Rancière, J. (2012) 'Work, Identity, Subject', in Deranty, J-P. and Ross, K. (eds.) *Jacques Rancière and the Contemporary Scene: The Philosopher of Radical Equality*, London and New York: Continuum.
- Rancière, J. (2013) *Aisthesis: Scenes from the Aesthetic Regime of Art*, translated by P. Zakir, London and New York: Verso.
- Rancière, J. (2015) 'The Politics of Art: An Interview with Jacques Rancière', [Online], Available at: <http://www.versobooks.com/blogs/2320-the-politics-of-art-an-interview-with-jacques-ranciere>
- Roca Cladera, J. and Burns, M. (2000) 'The Liberalization of the Land Market in Spain in 1998', *European Planning Studies*, vol. 8, no. 5, pp 547–564.
- Rockhill, G. and Watts, P. (eds.) (2009) *Jacques Rancière: History, Politics, Aesthetics*, Durham and London: Duke University Press.
- Ross, K. (1991) 'Translator's Introduction,' in Rancière, J. *The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation*, Stanford: Stanford University Press.
- Ross, K. (2009) 'Historicizing Untimeliness,' in Rockhill, G. and Watts, P. (eds.) *Jacques Rancière: History, Politics, Aesthetics*, Durham and London: Duke University Press.
- Schaap, A. (2009) 'The Absurd Proposition of Aboriginal Sovereignty', in Schaap, A. (ed.) *Law and Agonistic Politics*, Farnham: Ashgate.
- Schaap, A. (2011) 'Enacting the Right to Have Rights: Jacques Rancière's Critique of Hannah Arendt', *European Journal of Political Theory*, vol. 10, no. 1, pp. 22–45.
- Schaap, A. (2012) 'Hannah Arendt and the Philosophical Repression of Politics', in Deranty, J-P. and Ross, A. (eds.) *Jacques Rancière and the Contemporary Scene: The Philosopher of Radical Equality*, London and New York: Continuum.
- Shklar, J. (1964) *Legalism*, Cambridge: Harvard University Press.
- Spanish Ombudsman (*Defensor del Pueblo*), 'Crisis económica y deudores hipotecarios: actuaciones y propuestas del Defensor del Pueblo', [Online] Available at <https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2012-01-Crisis-econ%C3%B3mica-y-deudores-hipotecarios-actuaciones-y-propuestas-del-Defensor-del-Pueblo.pdf>
- Tully, J. (2002) 'The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy', *Modern Law Review*, vol. 65, pp. 204–228.
- White, J. B. (1973) *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*, Boston: Little Brown.

White, J. B. (1984) *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community*, Chicago and London: The University of Chicago Press.

Woodford, C. (2015) “Reinventing Modes of Dreaming” and Doing: Jacques Rancière and Strategies for the New Left’, *Philosophy and Social Criticism*, vol. 41, no. 8, pp. 811–836.

### **Court Decisions**

Auto 574/2009 November 13, 2009, of Judge of First Instance and Instruction of Estella/Lizarra N° 2.

Auto 111/2010 of December 17, 2010 , Provincial Court of Navarre, Second Section.

Auto 4/2011 of January 28, 2011, Provincial Court of Navarre, Third Section.

Auto 24/2012 of May 4, 2012, Provincial Court of Navarra, Second Section.

Providencia of July 28, 2011, Judge of First Instance Number Five, of Elche (Alicante).

Auto 113/2009 of April 7, 2011 Provincial Court of Girona, First Section.

Case C-415/11, *Mohamed Aziz v. Caixa d’Estalvis de Catalunya, Tarragona i Manresa*, March 14, 2013, Court of Justice of the European Union, First Chamber.