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Book Review

Mónica López Lerma & Julen Etxabe (eds):
Rancière and Law, Routledge, London 2018

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Rancière and Law brings together legal scholars, theorists and philosophers that have found in the French philosopher Jacques Rancière (born 1940) conceptual openings towards a rethinking of law. As such the volume is unique for previous writings that tackle the place of law in Rancière mostly pay primary attention to the nature of agonistic politics (see, for example, Schaap 2009).

Although Rancière does not work out an explicit conception of law, there are sufficient indications in his conception of politics to trigger an interest in law. In *Disagreement* Rancière renames the political order of a society a police order (Rancière 1999, 28), thereby also indicating a place for law as part of this policing order. Rancière, like Foucault before him (Foucault 1988 and 2000), rehabilitates 17th- and 18th-century usages of the notion of police to indicate the wider sense of a general ordering of society, including for example meanings and norms connected with health, education, justice and security, and legislation. Police order is made real through a hegemonic distribution of the sensible that distributes meanings and norms in terms of their being relevant-irrelevant, good-bad, just-unjust, etc. In sections of *Hatred of Democracy* (2006), *Dissensus* (2010) and *Moments politiques* (2014)

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Rancière links this basic theoretical framework with legal issues, such as human rights, education and the position of immigrants.

Initially, law belongs to the policing order. But the contributors to Rancière and Law all point out that other, more active, political and democratizing dimensions of law can be sifted out from Rancière's framework, and they especially seek aspects of law that function to destabilize the policing order and thus add a more dynamic dimension to law (López Lerma & Etxabe 2018, 1). Judges, citizens and other human beings also act in relation to the law, and these acts form an integral part concerning the intelligibility of law as part of society.

In this volume, two particular aspects open the route to what several authors call a Rancièrian dramaturgy of law. First, the distribution of the sensible implies a hierarchical distribution of meanings, for example concerning the norms that frame our thinking, reasoning and acting in society. Legislation contributes to creating and upholding this distribution. This means that legislation, through its policing effects, inhabits a political dimension. Second, Rancière's conception of politics is agonistic, which in his case means that politics is mainly a disruptive, interruptive and dissenting force in constant conflict with the police order. In addition, Rancière specifies and limits politics to acts that raise demands of equality in relation to the given hierarchy of the police order.

Rancière thus defines politics as the acts of dissensus that interrupt the smooth reign of the police order (Rancière 1999, 13; 2010, 27). This implies that our acts in relation to law and court procedures may either simply succumb to the given order or disrupt and dissent against it. The latter possibility aligns acts of law with politics.

In the opening article Julen Etxabe attempts to develop such a dramaturgy of law (2018, 19-21). Etxabe construes a tripartite account of the intelligibility of law that utilizes Rancière's framework. Dramaturgy in this context means that the given is viewed as a kind of stage on which different acts can be performed. The acts take up standpoints both in relation to the stage itself and creates routes in relation to the more specific issue tackled. In action we may either just reproduce the given setting, for example through the decision of the judge to follow standard procedures and the routines of law courts, or alternatively invent new forms of action that in part may dissent against certain given settings, perhaps even attempting to restructure the settings and change the set-up of the rule of law.

Etxabe distinguishes between a dramaturgy *in* law and a dramaturgy *of* law. While a dramaturgy in law stays within the realms of the juridical sphere, a dramaturgy of law transgresses the pre-staged borderlines between jurisdiction and politics. Etxabe names *legalism* the law as police order or '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' (Etxabe 2018, 23). Law as legalism is also a political staging by prescribing specific places for legal

subjects, defining meanings and distributing power positions, such as those between judges, citizens and non-citizens.

Etxabe invites us to consider what he calls a *jurisgenerative* level of action. Jurisgenerative action interrupts the smooth running of legalism, for example by questioning pre-given meanings and roles and bringing into view the policing aspects of the legal system. Jurisgenerative acts may emerge from many different sources. Etxabe gives the example of a judge in Spain during a crisis in mortgage payments. The housing market collapsed in 2014 and many homeowners were unable to make their payments. The judge in question, assessing that the legislation put absurd demands on people, refused to enforce the law and appealed to the current situation in society as justification for his dissent. The basic claim is thus that a judge is faced with two possibilities and that the choice between them is an act that generates a position towards the law: the easy route of succumbing to legalism or including issues that reveal the political aspects of law.

Etxabe's explication of the intelligibility of law adds a third dimension. Both legalism and jurisgenerative action refer to the existence of a common frame of intelligibility that stages the situation (Etxabe 2018, 36). Etxabe calls this the legal scene. It forms a necessary context for both legalism and jurisgenerative action and makes it possible for anyone anywhere to appeal to and dissent against the political staging that is intertwined with law. Through these new discourses on meaning, justice may be made part of the situation. The final result may in the end be the same, but also in each case the result will be sensed differently: 'a critical dramaturgy makes "the stakes and powers of the scene felt"' (Etxabe 2018, 36).

In Rancière's terminology jurisgenerative action may be seen as an example of political subjectivity. By political subjectivity Rancière means an act of turning oneself, individually or in a group, into a political subject, that is to say a subject that carries out disruptive and dissenting acts (Rancière 2010, 29-39). Rancière emphasizes that it is we ourselves that must voluntarily engage in such action and thus that political subjectivity is not something given. From Rancière's writings two particular accounts of such political subjectivity emerge: the more straightforwardly political form of raising claims against the status quo (doing politics) and more subtle interventions in the distribution of the sensible internally connected with this order (aesthetic intervention).

The articles by Susanna Lindroos-Hovinheimo, Ari Hirvonen, Petr Agha and Mónica López Lerma all engage in issues of political subjectivity. Whereas Lindroos-Hovinheimo and Hirvonen mainly discuss legal-political subjects, Agha and López Lerma reflect on street art and film as examples of intervention in the distribution of the sensible.

According to Lindroos-Hovinheimo, the possibility of becoming a legal subject should be conceptualized as active and as not being pre-

determined by legislation. Anyone anywhere, whether a full-blown citizen or not, can make themselves into a legal subject, for example by acting as if a specific legislation on equality concerns them and by raising claims of equality in relation to a specific legal situation. In this part of the dramaturgy the construction of a subject is simultaneously legal and political. The act invents a scene, and this invention will force the legalistic system to react in some way. It may of course react with ignorance, thus not recognizing the subject as a legal subject. Ignorance, however, will surely be experienced as an act by the legal system, and thus recognized as at least an act of political dissensus. It is in fact enough to invent a new scene to become a legal subject: 'When disagreements arise about who counts as a legal subject, politics necessarily steps in [...] To become a subject whose equality is recognized, one needs to demonstrate dissensus to somebody by inventing a scene' (Lindroos-Hovinheimo 2018, 84).

Hirvonen discusses the status of refugees in the recent refugee crisis in Europe. The crisis re-actualizes Arendt's claims concerning human rights (Hirvonen 2018, 55). In line with Arendt's arguments, refugees lack rights since they no longer belong to any specific political community, although they are the ones most in need of human rights. Arendt's well-known solution would be to demand the right of refugees to become members of some political community. As Hirvonen observes, a particular problem with this solution is that refugees and immigrants are in an in-between state, having left one political community and on the move towards hopefully joining another. In this in-between state of existence how should human rights be understood?

The Rancièrian answer discussed by Hirvonen is the possibility for refugees to turn themselves into political subjects, wherever they happen to be and in relation to whichever legal system they happen to encounter. Anyone anywhere and anytime may decide to create themselves into a political and legal subject, for example by raising claims to be treated as equals and as beings having rights that the law must take into account. Hirvonen supports this with actual cases of refugee groups going to court to defend their rights for proper treatment as human rights bearers.

Hirvonen's claim is that such acts simultaneously dissent against the existing law and the given consensus of the political community. He emphasizes the importance of refugees organizing themselves and turning themselves into political agents and of the possibilities of other agents emerging onto the scene: 'in refugee protests where rights claims are made, the refugee acts neither as legal subject nor as bare human being but as political subject ... Human rights are the rights of those who make something out of these inscriptions' (Hirvonen 2018, 60). This Rancièrian emphasis on our own responsibility to turn ourselves into subjects puts pressure on the refugees' own activity and this of course raises questions: What is the responsibility of the legal system to act in

advance to defuse such situations of crisis, for example through proactive human rights policies?

Petr Agha focuses on the second mode of political subjectivity: intervening in the distribution of the sensible that structures the police order. Agha discusses street art. Although 'street art is not capable of producing direct political effects' in the sense of 'solutions, normative frameworks, and new legal regulations' (Agha 2018, 161), it may disrupt the space of intelligibility that stages the police order, including law. Agha discusses the example of the Lennon Wall in Prague. By painting an image of John Lennon on a wall in Prague in the 1980's a public message conveying a longing for freedom became part of community life. Although the wall was quickly painted over by the authorities, in the public eye the wall became associated with the message of freedom. In this sense, even a short-lived act manages to make real a challenge to the distribution of the sensible of the current regime.

Street art, and art in general, may thus succeed in being dynamic in a different sense than in a direct construction of a subject. It may open up spaces and communicate a dissensus: 'Thanks to the dynamic nature of the space opened by street art, the community it creates is a 'community structured by disconnection' (Agha 2018, 160). In due time such a dissenting political success may be turned into a monument that is representative of a new regime. This happened with the Lennon Wall after the Velvet Revolution. In 2016 it led artists in Prague once again to paint over the wall with white paint, adding the text 'The Wall is Over', thus once more creating a disruption in the public imaginary.

López Lerma's focus is on the sensory configuration of security and justice after 9/11. She approaches the issue through a study of a film dealing with the terror attacks in Europe 2004: Enrique Urbizu's *No Peace for the Wicked* (2011). The film is fictional but 'evokes the places, methods and strategies behind the 2004 Madrid bombings' (López Lerma 2018, 188).

López Lerma claims that while the narrative of the film seems to abide to the more standard view on security and justice in relation to terrorism, 'at the level of aesthetics the film disturbs and reconfigures the frames within which [the ideological] discourses are to be understood' (López Lerma 2018, 188). Thus, while superficially it may appear that the film portrays our ordinary scheme of understanding terrorism, it adds disturbances and disruption to this picture. For example, the cowboy hero narrative of the lone policeman killing the terrorists is disturbed by aesthetic references to this particular individual as acting in retaliation and as an attempt to save his own skin. In this sense the aesthetics of a film may intervene in our distribution of the sensible.

Especially persons with a similar allegiance to democratic political action as Rancière with probably associate the notion of police order with repression. Rancière, however, adds that there is nothing in itself

bad about a police order and that some police orders are better than others (Rancière 1999, 31; 2006, 72). But how are we actually to understand this relationship and on what basis can some police orders be deemed better than others?

The contributions of Tom Frost, Eric Heinze, Panu Minkkinen and Wayne Morrison all in their own way pose this issue. Frost wonders whether it is at all possible to distinguish between good and bad political actors in Rancière's scheme. If politics is defined as dissensus with the police order, then all such action may appear good, including the racist or totalitarian actions that, for example, dissent against the strong position of equality in law. Without any form of pre-judgement concerning what forms of actions and actors qualify as good forms of dissensus, for example only egalitarian and pro-democracy ones, totalitarian movements would also fulfil the criteria of being dissent and raise new claims of equality (the equality of totalitarian views): 'in this political community, the excluded is a conflictual actor, an actor who includes himself as a supplementary political subject, carrying a right not yet recognized or witnessing an injustice in the existing state of right' (Frost 2018, 97). But as Rancière himself indicates, this conflictual actor may be anyone and can stand for any aim imaginable.

Frost is right that Rancière leaves this highly important question without a satisfactory answer. By defining the only 'genuine' form of politics as being democratic politics, the possibility and reality of anti-democratic politics is brushed away as the obvious enemy of politics. Rancière in fact defines politics in several different ways, and these definitions are not always connected. For example, when claiming that politics is defined as 'conflict over the existence of a common stage and over the existence and status of those present on it' (Rancière 1999, 26–27), this opens up space for forms of politics that are non-democratic in their aims. Frost thus claims that what is lacking in Rancière is a conception of political judgement that would allow us to differentiate between mere inclusion and the normativity of being in favour of equality and against inequality.

Heinze also reflects upon the place of encounter between the police order and politics. In a Habermasian vein he suggests that the meeting point between action and police order should be conceptualized as public discourse. We should understand public discourse in a broad manner as including all those actions that enter the public sphere of meaning, and not reduce public discourse to speech acts. Leaning on both Plato and Habermas, Heinze claims that the sphere of public discourse forms the foundational constitution, the *Urverfassung*, of democratic public life: 'Ironically, it is precisely that element before and beyond government, identified here as public discourse, which itself constitutes government as legitimate. In other words, public discourse supplies democracy's *Urverfassung*' (Heinze 2018, 124).

Heinze claims that the police order and its law is what makes possible the existence of a public arena where conflictual claims may meet: 'it is precisely there, on the outside, yet within a sphere of public discourse necessarily safeguarded by the state, that the only ultimately legitimate foundation for any democratic constitution is to be found' (Heinze 2018, 124). This sphere of law may also provide safeguards against the emergence of more deeply divisive antagonisms: 'It is through a sphere of public discourse necessarily preserved by government that the disjunction between citizens and government can never be total' (Heinze 2018, 112)

Heinze admits that this is not in line with what Rancière actually claims, thus his contribution forms a critique of Rancière that brings back a more positive emphasis on the role of the police order and legislation. A better police order is one that enables public discourse and thereby also democratic acts of dissensus. Rancière could surely here respond by claiming that political subjectivity by inventing new scenes constantly moulds this constitutional aspect and thus sets the staging of the public sphere of discourse in motion.

Minkkinen likewise focuses on the antagonistic features of the meeting point, mainly through a comparison of Carl Schmitt and Rancière. In his critique of Schmitt, Rancière emphasizes the centrality of the normative thematic of equality in contrast with Schmitt's neutral focus on political antagonism as that between friend and enemy (Minkkinen 2018, 129).

Translated into Rancièrian terms, political antagonism as defined by Schmitt is a feature of the police order that sets up the boundaries of that order. The police order, in order to maintain its unity and identity is always threatened by the outside, either by another police order or by an internal political enemy. Schmitt's conception thus forms a political ontology: the being of the political police order is antagonistic in nature. Rancière does not, however, follow Schmitt into such ontological claims. The police order indeed constructs and upholds itself through an internal consensus with its own specific exclusions. But politics consists in the dissenting actions that disturb this order, otherwise politics lacks ontological status.

Minkkinen criticizes Rancière for thereby neglecting to study more closely the qualitative differences between police orders. The police order remains enemy-like and political action should never be content only with improving the police order. This makes Rancière a partisan of the revolutionary form of politics, in contrast to Schmitt's political conservatism, whose main focus is on understanding and defending the police order.

Morrison, for his part, investigates how the Nuremberg trial came to form part of the setting up of a new police order: modern international criminal law. Besides creating a system for the punishment of war criminals, the Nuremberg trial functioned to deal with a problem with

law that had emerged through Nazism and aimed to solve this problem through an invention in law. Nazism revealed a lacuna in the modern state system that triggered a need for change. Nazism was lawful, through its own legislation, but it was a rule of law that rendered possible a human disaster. Thus, the classical belief in our distribution of the sensible that law is educative and strengthens society was torn asunder. Nazism revealed, even to ordinary citizens, and even in a modern state, that law itself might be potentially disastrous. Thus, a function of the Nuremberg trial was to invent a new dimension to criminal law and thus to the police order: crimes against humanity and international law. Through this new dimension a new step might be achieved in motivating citizens to abide by the law and put their trust even in laws one does not necessarily understand: 'its real function was to render the modern state system immune from disaster and to reinforce our belief in the civilizing function of law' (Morrison 2018, 170)

All in all, the collection *Rancière and Law* poses many of the most central issues concerning law that are opened up from within Rancière's framework. Rancière's lack of interest in analysing in more detail the political police order is here turned into an interest in dwelling on the multidimensionality of law. Law both forms part of the police order, thus creating a distribution of the sensible that we all relate to and that forms how we think. It also opens up possibilities to act in dissensus with the law while employing means made available for action by the law itself, the inclusion of symbolic values such as human rights and equality within the law being clear examples.

Bibliography

Agha, Petr: 'Undoing law: Public art as contest over meanings'. In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 150–164.

Etxabe, Julen: 'Jacques Rancière and the dramaturgy of law'. In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 16–41.

Foucault, Michel: 'The Political Technology of Individuals'. In Martin, Luther H., Huck Gutman, & Patrick H. Hutton, (eds): *Technologies of the Self: A Seminar with Michel Foucault*. Tavistock Publications, London, 1988.

Foucault, Michel: 'Omnes et Singulatim: Toward a Critique of Political Reason' in *Power*. The New Press, New York, 2000.

Frost, Tom: 'Rancière, Human Rights and the Limits of a Politics of Process'. In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*, Routledge. London 2018, 90–107.

Heinze, Eric: 'The Constitution of the Constitution: Democratic Legitimacy and Public Discourse'. In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 110–127.

Hirvonen, Ari: 'Fight for Your Rights: Refugees, Resistance and Disagreement'. In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 44–69.

Lindroos-Hovinheimo, Susanna: 'Rancière and the Legal Subject: Coming to Terms with Non-existence'. In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 71–88.

López Lerma, Mónica: 'Justice between Terror and Law' In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 187–201.

López Lerma, Mónica & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018.

López Lerma, Mónica & Julen Etxabe: 'Rancière and the Possibility of Law'. In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 1-11.

Minkkinen, Panu: 'Rancière and Schmitt: Sons of Ares?' In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 129–147.

Morrison, Wayne: 'Representing Law 'in' the Holocaust or Seeking the Unrepresented: Undoing the legacy of Nuremberg' In Mónica López Lerma & Julen Etxabe (eds): *Rancière and Law*. Routledge, London 2018, 166–127–185.

Rancière, Jacques: *Disagreement: Politics and Philosophy*. Translated by Julie Rose. University of Minnesota Press, Minneapolis, 1999.

Rancière, Jacques: *Dissensus: On Politics and Aesthetics*. Translated by Steven Corcoran. Continuum, London, 2010.

Rancière, Jacques: *Moments Politiques: Interventions 1977-2009*. Translated by Mary Foster. Seven Stories Press, New York, 2014.

Schaap, Andrew (ed): *Law and Agonistic Politics*. Ashgate, Farnham, 2009.