

Four easy pieces and a coda: Rhetoremes of justice

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To reflect on justice and rhetoric is a minefield, or a field littered with commonplaces. However, rhetoric, as hermeneutic, accompanies justice, right from its very first steps into this minefield: as I have described it elsewhere through a close reading of the opening sentences of Aristotle's *Rhetoric*, in Kantian terms rhetoric is condition of possibility of justice.¹ To do rhetoric is to pay attention to attitudinal situations shaped by social situations of exigency, and words as mental institutions in the sense lent them by.²

Post-societies entertain a special relation to justice via dissent. If dissent, refusing to make the same sense of the State as the State requires for a sense of justice, is a common feature of totalitarian or police or falsely liberal regimes, democracy, as post-society, requires nonetheless consensus. It performs this exigency through those new, soft, acceptable forms of coercion called conflict resolution or consensus building or simply "the popular view". In post-societies, democratic ones, dissent is thus framed by rhetorical stratagems whereby a sense of justice is considered better served by enforcing a democratic common sense. Dissent, private dissent, vociferous dissent, against the grain dissent, a-narchic dissent from democratically enforced common sense are negatively perceived as "perverse" (literally a "path" that cuts across the common path of meaning) or "not constructive", or self-indulgent, unless they are already formed through an assent to communitarian views, commodity values, legitimated opposition. In short, real dissent challenges justice.

In post-, democratic, societies, a rarefied field, dissent from a perceived, received, conceived sense of justice is a game with exigency, that is with that which, in rhetoric, is called a "the rhetorical situation" whereby more than communication is set in motion: that is acts, performatives acts, of solution-scenarios that side-step dogmatic or accepted consensus.

To re-use Lévi-Strauss's notion of "*mythème*" that is stories and actions that express a unit of signification which, in turn, sheds light on behaviours and beliefs, to do rhetoric is to pay attention to rhetorical catagoremes (not Kantian, of course), or "rhetoremes".

Rhetoremes may help us go to the foundation and, within language as presence to the world, and rhetoric as presence to the *polis*, to trace, for what concerns here today, the site of dissent. In brief, to follow the path given

¹ Philippe-Joseph Salazar, "Rhetoric χ Rhetoric, or Rhetoric's Chiasm (being a unscrupulous meditation upon Deleuze, Miró and Rhetoric 1354a 1-11)", in *Chiasmus in the drama of life*, Boris Wiseman *et al.* (New York: Berghahn, 2011 forthcoming).

² Émile Benveniste, *Vocabulaire des institutions indo-européennes* II (Paris: Minuit, 1969).

by Heidegger: “The original meaning of “rhetoric” has long vanished. As long as we forget to ask the question of the concrete function of Aristotelian rhetoric, we lose the fundamental possibility of its interpretation and to perceive through it <the *Rhetoric*> that rhetoric is nothing else but a discipline whereby the *Dasein* interprets and expresses itself by itself” (my translation).³ My take on the subject is therefore different from that of Nancy Fraser when she tries to deal with the mapping of “abnormal justice”.⁴

§1. My first remark is by reference to a discussion some of the contributors to this issue of AYOR had among themselves regarding l' *État de droit* in South Africa and Romania. It flowed from the premises that the sense of justice and injustice is worth questioning after the advent of the rule of law, the *Rechtstaat*, l'*État de droit*. Apartheid, as far as I am aware, was not a *Rechtstaat* but rather a *Polizeistaat* where the law was an instrument in the hands and at the service of a parliamentary oligarchy, and whose domination knew only limitations they accepted, now and again, are arguable (separately from the fact that argument would lead, or did not lead to a policy change — such as the South African First Republic's prohibition of multi-racial marriages, or ownership of land). The South African First Republic pre-democratic was, in terms of natural justice, an unjust state of affairs and, in terms even of sovereignty, a state that constantly bordered on illegality, notably in foreign affairs and internal emergency regulations. However, with the advent of democracy and the Second Republic a sense of injustice has developed, which has no longer the same roots since South Africa is a legitimate state by current international standards, and a legitimate democracy by the same standards. Yet, there is dissent, and a sense that hopes in a just society, what ever it may mean, has not been fulfilled.

What is the rhetorical propinquity between “State” and “dissent”? Both words share a same origin: the *State* is that which makes a society *stand*, gives it a political *status* with regard to other states. For a nation to assume statehood is, literally, *to stand up* and be counted, in the belief, of course, that statehood provides the sort of benefits sovereignty is supposed to afford. Dissent is not different: from *stasis*, in Ancient Greek, dissent is both what we know, a belief for which we can, or should, depending upon the moral imperative or peer coercion, stand up; and a *status causae* as the Latin says, the act of stating rhetorically one's case and to do it in such a way that

³ Martin Heidegger, “Grundbegriffe der aristotelischen Philosophie: Marburger Vorlesung Sommersemester 1924”, in *Gesamtausgabe 18*, Mark Michalski, ed. (Frankfurt am Main: Klostermann, 2002): 110.

⁴ Nancy Fraser, “Who Counts”, http://www.transeuropeennes.eu/en/articles/201/Who_counts, [accessed April 2011]. Also in *Rue Descartes* 67 (2010): 50-59 (special issue Rada Ivekovic, ed.).

the statement of the stance can withstand verbal criticism or material violence — secured, under the rule of law, by freedom of speech and physical protection (*stasis 1*). However, one's stance challenges indeed the *status quo*. Dissent, in essence, challenges state. In its extreme form, when the cause made by a stand cannot be negotiated through argument, *stasis 1* leads to *stasis 2*, that is revolt and revolution, partly or wholly upsetting the State.

In short, dissent and State are on the same rhetorical vector, yet at two opposite points. In other words, behind dissent there is always the State, the desire of the State, the *dasein* of the State, to recall Heidegger. As a rhetorician, I cannot look at dissent without questioning the stories that feed a stance, the moment of the "surrection", the site of the challenge, and I cannot not perceive through a position of dissent a call that goes to the heart of the State.

My job, as it were, is to trace where the stance falters, how and why it does not achieve its form, and how it consumes its energy in derivative activities, and what shapes this faltering adopts. This is the first rhetoreme.

§2. My second remark concerns justice and dissent. Again, I pay attention to the words and I cannot not observe an analogy. To dissent is to judge. One cannot discard this node.

In an act of dissent, especially when "hope" regarding a "sense of justice" is concerned, a judgment is passed on justice. We, as taking a stance, pass judgment. Naturally, the forensic nature of acts of dissent is often obscured by deliberative (policy-making) or demonstrative actions. Nonetheless below the froth there is the fluid reality that, because our sense of justice has been hurt, we make a stand and we dissent in order to restore at least the "sense of" if not justice itself.

This is why, I suggest, stances of dissent often develop into aesthetic events, events of pure perceptions and shared aesthesis, to use a Kantian terminology. If to judge is relevant to the Kantian faculty of subsuming according to rules, we have to ask ourselves, what rules come into play in political or social dissent. This is the second rhetoreme.

§3. My third remark concerns the intention of dissent, when *stasis 1* glides along the vector toward *stasis 2*, that is, toward a critique of the State which may be regarded as a direct challenge, perhaps even an upset. With regard to justice, it is clear that judgment passed by an act of dissent is a censoring judgment: in one clean swoop the censorial function of the State has been taken up by a dissenting group or individual.

Benveniste explains how the lexicon for "to speak" and "to have authority or power" is originally so compact that these words are

interchangeable.⁵ “To speak”, “to speak up”, is “to exert authority” or power. It is essentially performative. The interest here, again, is not philological or historical but in what we learn from it.

A striking example is the noun *ensor*. It denotes the outcome of a process by which “to speak” has acquired a narrow specific meaning, referring to a specialized action of *auctoritas*. The verb *censeo* has moved, as it were, from meaning “to speak/to have power or authority” (like all verbs related to its paradigm) to what we attribute today to “to censure”. In other words, if dissent borders on censoring, the question that arises for a rhetorician, is that of the will to authority that animates it, and the will to power.

As Benveniste notes although in early in Roman history the verb *censeo* qualified highly specialised actions (formal census that set the tax rate in order to maintain the State and avoid corruption, in short: fiscal justice), it did retain a general meaning, “to give advice”.

However this general meaning carries some heavy baggage, which, I believe, is not without interest for our purpose. Livy, in a much quoted passage, makes it clear that *censeo* entertains a special relationship with declaring war (Livy I, 32, 11-12). It forms part of a verbal ritual, a rhetorical chain that produces the evidence that war must be declared — think of the censorial show of “evidence” by General C. Powell at the UN to legitimate the invasion of Iraq.

As recorded by Livy, the *censeo* process is as follows: the *rex*, “king”, asks each “conscript father”, each senator (they are not *censores* by function), *Dic quid censes*, “Tell what you think of it/ Give your advice/Speak your mind”. If each father of the republic answers *Puro pioque duello quaerendas [res] censeo*, “I believe/I am of the opinion that our due must be sought through a just and pious war”, war is declared. In sum, we are dealing here with the deepest, I believe, intent of any dissent, that is to declare war or to declare that a prevailing injustice is a war already declared on us - an act of political piety.

Indeed, the question of war as an act of censure is not military but has to do with ethics, and justice. To propose “to declare war” is to affirm that for war to be, the utterance must refer to what is “owed” (*res quaerendas*), and, in the same breath, to the nature of the claim/utterance/advice: *purum piumque*, in other words, “spotless” and “respectful of godly/familial duties”. It is not “war” that is declared in *censeo* but the affirmation that what is owed, the *res* due to the *respublica*, must be sought. *Censeo* possesses a strong denotative meaning: to help perform, with others of the same quality as us by virtue of a grouping, the just and correct act of preserving through war/revolt,

⁵ Benveniste, *Vocabulaire des institutions indo-européennes* II, 143-151.

what is owed the wider community, whether the wider community wishes it or not, or has the means to take shape as a wider community.

This is usually what underpins most popular revolts: we must reclaim what is owed us, and restore the just order of things political on behalf of the wider majority. It delivers a judgement about the *respublica*, an affirmation of its projected integrity. Such is the third rhetoreme.

§4. My final remark concerns actors of dissent who make a stand in the name of a sense of justice. In rhetoric, to make a stand is to apportion blame and perhaps praise, in any event to perform values. An act of public dissent says as much about the content of the claim as it does about the ethics of those who perform the claim. To a large extent the validity of a dissent is judged by onlookers through the public conduct of dissenters. In short: an act of dissent performs the inner ethics, the Kantian rules as it were, under which judgment has been passed on the Law, leading to the act of dissent (“if you behave badly during a *stasis*, this is indicative of your “real” values”).

Indeed, beneath *censeo* there is a verbal theme, **kens*, “to proclaim solemnly”, “to praise” — praise, as in the public proclamation of values, material or moral. They bring argumentative sustenance to the reality of material well-being. Declaring war, as we call it, brings forth a *censeo* action, both an affirmation of a necessity to recover what is owed and of its justice. In our case is a *rebel* s/he who is qualified as the one who can also “proclaim”, and distribute praise or blame, because s/he wages a counter-war (*rebellare*), a dissent.

In that sense, “to proclaim” dissent is an act of authority, perhaps of power. The stress is not placed on the object (to proclaim *something*) but on the verb and on its action: proclaiming. S/He who proclaims, in the absolute sense of the verb, acts authoritatively. And, by implication, “to proclaim” is “to censure” by dissent. To disentangle, in an act of dissent, the authoritative intent and effect (a “mandate”) from the will to power, is a task set to rhetoric.

That is the fourth rhetoreme.

To round off these Four Easy Pieces with a coda. I turn to Mary Douglas as rendered by Romain Laufer in his recent study of dogmatism in legal and social theory, with specific reference to what he terms “sophism”:⁶

“Mary Douglas...approaches the question of the role played by dogmatic ideas in the life of democratic societies. In an article entitled “Dealing with uncertainty,” she writes: ‘Certainty is not a mood, or a feeling, it is an institution: this is my thesis. Certainty is only possible because doubt is

⁶ Romain Laufer, “New rhetoric’s empire: Pragmatism, dogmatism, and Sophism”, *Philosophy & Rhetoric* 42, 4 (2009): 333-334.

blocked institutionally: most individual decisions about risk are taken under pressure of institutions. If we recognize more uncertainty now, it will be because of things that have happened to the institutional underpinning of our beliefs. And that is what we ought to be studying. . . . We need certainty as a basis for settling disputes. It is not for intellectual satisfaction, nor for accuracy of prediction for its own sake, but for political and forensic reasons. . . . The problem is not knowledge but agreement. . . . A liberal democracy . . . needs authority to back interpretation and control dissent. . . . The most fundamental idea which upholds the possibility of society, more fundamental even than the idea of God, is the idea that there can be certain knowledge. And this turns out to be extraordinarily robust, passionately defended by law and taboo in ancient and modern civilization".⁷

Laufer glosses Douglas by breaking down her text into six propositions:

1. There is an intimate relationship between the notions of certainty and the notion of institution.
2. In a democracy, certainty relies on some dogmatic proposition backed by some authority.
3. The authority that is allowed to 'control dissent' in a democracy can be described as relying on law and science. One is able to recognize in it a form of Max Weber's legal-rational type of legitimate authority (as opposed to the charismatic or the traditional types of legitimate authority).
4. There is a dynamic mechanism that allows the historical process of institutional transformations to be explained, and that mechanism leads to a situation in which uncertainty has to be recognised explicitly.
5. The fact that certainty is 'passionately defended by law and taboo' may explain the ambivalent attitudes developed toward sophism in times of uncertainty.
6. It is possible to study these processes by following 'institutional underpinning of our beliefs'."

Combining the four rhetoremes I have outlined with Laufer's rendering of the power of certainty is, in my view, a challenge set to rhetoric in coming to terms with the justice of dissent in post-societies.

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⁷ Mary Douglas, "Dealing with uncertainty", *Ethical Perspectives* 8, 3 (2001): 145-147.