



Reflections on legal education and radical intellectual equality

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In this article I reflect, against the background of the recent special issue of this journal titled: “Law as humanities discipline: Transformative potential and political limits”, on the notion of radical intellectual equality within the context of South African legal education and culture. I suggest that this notion, postulated by Jacques Rancière’s reflections on pedagogy, can foster notions of criticalness and critical thinking and provide new ways of thinking about legal education in an effort to disrupt and actively question the continuous legacy of legal formalism and scientism. A different way of staging legal education, along the lines of invention and thought from within universal teaching, might be able to reveal transformative and emancipatory possibilities. I call for a radical redistribution of South African approaches to legal education.

1. Introduction

The special issue of this journal, “Law as humanities discipline: Transformative potential and political limits” published last year (2014:3), allowed me the occasion to reflect on legal education within the framework of transformative constitutionalism. Transformative constitutionalism refers to the long-term project of constitutional enactment, interpretation and enforcement committed to transforming the country’s political and social institutions and power relationships in a democratic, participatory and egalitarian direction (Klare 1998: 150). The authors in the special issue all in some way or another engage with the question of the extent to which current legal education and training express the transformative ideals of our constitutional order. In a famous article, US critical legal scholar Karl Klare called for nothing less than a critical examination of South African legal culture, which he described as highly structured, conservative, technicist and rule-bound (Klare 1998: 237). Klare suggested that only a critical and self-reflective legal culture and legal education would be able to answer the transformative call of the South African Constitution. I would like to further the reflection on legal education within the framework of transformative constitutionalism by considering the notion of “radical intellectual equality” put forward by French political theorist Jacques Rancière (1991) in his reflections on pedagogy.¹ My concern lies with approaches that can renegotiate and reconfigure legal culture and more specifically legal education. I am sensitive to Van Marle’s (2014: 196) description of how “legal scholarship and legal education, law and legal culture affirm, confirm and re-affirm the *status quo*, keep[ing] things in their place, continu[ing] ‘business as usual’”. I share her concern about the continuation of formalist, scientist and positivist notions of and approaches to law, rather than notions that adequately express transformative ideals and foster complexity and criticalness. I am also sensitive to Modiri’s (2014: 14) call for a critical legal education and his description of how

the formalist understanding of law as a science and as a self-generating and coherent body of rules, [result in] many legal academics approach[ing] their work as *descriptive*, that is, limited to teaching students where to find the law and then how

1 It should be mentioned that I do not explain Rancière’s broader political project, which is expansive and which has been described as one of the most important and original contributions to political thought of the late twentieth and early twenty-first centuries. (James 2012:110) My focus here is only on his reflections on pedagogy and I therefore run the risk of not capturing some of the nuances and important features of the equality that he puts forth. The aim is to describe the notion of “universal teaching” in order to reflect on legal education. For reading on Rancière’s politics or political project, see Rancière *J Disagreement* 1999.

to logically 'apply' the rules and principles of law in order to determine the 'correct' legal answer to any given problem.²

Against the continuing legacy of legal formalism, I consider the idea of "universal teaching" as one possible approach to legal education. I consider this notion as a way of reflecting on alternatives and new possibilities in an effort to create further questions with regards to our legal culture and education. Within the sections below, I explain Rancière's engagement with pedagogy, from where I conclude by contemplating the possibilities opened up by the notion of radical intellectual equality.

2. Universal teaching

In his book *The Ignorant Schoolmaster*, Jacques Rancière (1991) reflects through the historical figure of Joseph Jacotot on what it means to learn and teach. Rancière's conception of equality, formulated within the framework of his definition of politics, is derived from his analysis of the pedagogy of Jacotot. It has been noted with regards to Rancière's political project that the radical conception of equality that Rancière formulates in his book on Jacotot is one of the most important defining and original features of his work (Davis 2010a: 27). In his book he describes Jacotot (1770-1840), an artilleryman in the Republican armies and partisan from the French Revolution, forced into exile by the Bourbon Restoration. While in exile he obtained a teaching position at the University of Louvain in Flanders where he had to teach French to a group of Flemish students. This presented a problem, as Jacotot did not speak a word of Flemish and the students not a word of French. Nevertheless, he devised a plan so as not to be exposed as a fraud. He came upon a bilingual copy of *Télémaque*, Fenelon's (1699) portrayal of the adventures of Telemachus. Jacotot instructed his students to learn the French by comparing it to the Flemish. As Davis (Davis 2010a: 29) explains, his desperate plan yielded unexpected results. After some time, the students were not only able to read the French text, they could also compose essays on its meaning. Rancière (1991: 4-5):

He had given no explanation to his students on the first elements of language. He had not explained spelling or conjugations to them. They had looked for the French words that correspond to the words they knew and the reasons for their grammatical endings themselves.

The students were therefore learning without Jacotot's instruction. He soon applied this method of "non-teaching" to other subjects in which he was not proficient. For Rancière, Jacotot's experiment allowed him to come to the conclusion that one does not learn by internalising the knowledge of others, but through the exercise

2 Emphasis in original text.

of one's own faculties (Tanke 2011: 35). Jacocot believed that he had discovered a way of removing the obstacles to students' abilities so that they could make their own academic discoveries (Tanke 2011: 35). He draws the conclusion that *people are equally intelligent* and that people do not diverge in intellectual abilities. Rather, some just attend more closely to what they are doing than others (Swenson 2009: 111). For Jacocot it therefore became clear that there are no natural divisions that prevent people from achieving academic success. One only has to engage properly with the material. He later tested this thesis by teaching piano and painting as well as a course in law, with results similar to his first experience of non-teaching. Jacocot's experiences led him to formulate a theory of radical intellectual equality, affirming that all people are equal in their mental capacities. Ranciè (1995: 101) states:

Their duty of Joseph Jacocot's disciples is thus simple. They must announce to everyone in all places and all circumstances, the news, the practice: one can teach what one doesn't know.

Jacocot's experiences led him to a general scepticism about the role of explanation. Ranciè (1991: 6-7):

Explanation is not necessary to remedy an incapacity to understand. On the contrary, that very incapacity provides the structuring fiction of the explicative conception of the world. It is the explicator who needs the incapable and not the other way around; it is he who constitutes the incapable as such. To explain something to someone is first of all to show him he cannot understand it by himself. Before being the act of the pedagogue, explication is the myth of pedagogy, the parable of a world divided into knowing minds and ignorant ones, ripe minds and immature ones, the capable and the incapable, the intelligent and the stupid.

Jacocot worked from the premise that "all people are virtually capable of understanding what others have done and understood" (Hallward 2009: 144). The assumption is therefore that everyone has the same intelligence and that differences in knowledge are simply matters of opportunity and motivation. Superior knowledge ceases to be a necessary qualification of the teacher, just as the process of explanation ceases to be an important part of teaching. May (2009: 111) explains that education systems usually work from the premise that they should operate in such a way that it eventually furthers equality and social justice. Jacocot, on the other hand, begins with the assumption of intellectual equality and attempts to establish an emancipatory pedagogy on this assumption (Tanke 2011: 36-37). Over time, Jacocot gained a following and he defended his method and came to oppose traditional pedagogy on its grounds.

It should be mentioned that in his recounting of Jacocot, Rancière's voice mingles thoroughly with Jacocot's own. The book is committed to "denouncing explication as a form of stultification" (Tanke 2011: 35). The way in which it is written is a deliberate attempt to avoid the trappings of commentary and it also attempts to shy away from any devices that could separate the authors and their subjects and readers. Throughout the book, Rancière employs the present tense and he avoids phrases such as "Jacocot says", for example (Tanke 2011: 35). Rancière fully adopts Jacocot's vocabulary. The key terms such as *émancipation*, *explication*, *abrutissement* are all Jacocot's usages (Swenson 2009: 266). Rancière also gives the responses that Jacocot made to the objections he encountered; he avoids any anachronisms in his references, and his primary citations are largely drawn from the circle of Jacocot himself, his detractors and his defenders (Swenson 2009: 266). The small number of authors to whom Rancière refers in the book are all contemporaries that Jacocot liked to read. At no time does Rancière leave the circle (Swenson 2009: 266).

Further, in Rancière's seductive and enchanting account of Jacocot, much of his anti-method remains obscure. As Davis (2010a: 29) highlights, Rancière is not devising a new curriculum or pedagogical programme. The point is not that all French school children should be reciting *Télémaque*, Jacocot's first pedagogical tool, but rather that it is possible to glean from Jacocot's pedagogical experiment "the political potency of a new understanding of the nature of equality". The book offers an emancipatory reconfiguration of the idea of the lesson. Rancière questions the distance between teacher and taught subject and the objects between knowledge and non-knowledge, or between the knowing master and the ignorant masses (May 2009: 111). Jacocot's method requires accepting that inequality in intelligence is not the explanation for why some do better than others (Tanke 2011: 36-37). Intelligence must be separated from its material effects. It is obvious that some do better than others and that some are more successful and more quickly so in the challenges encountered in educational institutions. However, this cannot be ascribed to intelligence. Rancière highlights the important question of how we are to move from material facts to the immaterial nature of the mind. Tanke (2011: 36-37) elucidates that in this regard the junction between thought and expression must be affirmed: thought is prior to language and all communication is first and foremost the will to communicate sentiments and reasoning by means of arbitrary signs. Jacocot can contend that intellectual activity is equal even if communication is sometimes stilted. What is therefore suggested is a different reason for why some students learn faster than others. Different results are attributable to different intensities of will. The claim therefore is not that all academic works are equal in quality, but rather that they do not originate from two different natures (Tanke 36-37). Rancière (1991: 27):

There aren't two sorts of minds according to the greater or lesser energy communicated by the will for discovering and combining

new relations; but there is no hierarchy of intellectual capacity. Emancipation is becoming conscious of this equality of nature.

I will not say that one's faculties are inferior to others'. I will only suppose that the two faculties haven't been equally exercised (Rancière 1991: 50).

Jacocot named his method "universal teaching" and it approximates the natural method through which one learns by the comparison of two facts (Tanke 2011: 37). A student must identify a fact, relate it to something else and then recount the connection between the two. In order to do this no explanation is needed: "All that is required is the confidence to venture forward into a world of unconnected facts, the will to focus the intelligence and the courage to find the language to communicate one's adventure" (Tanke 2011: 37). In his pedagogical experiment, Jacocot's role as teacher was reduced to a relentless questioning of his students in order to ensure that they applied themselves to the tasks at hand (Davis 2010a: 27). In the event of uneven performances, the teacher's role is not to use this to rank students according to intelligence, but rather to see weakness as evidence of a lack of application to the task. When a student protests that he or she cannot do better or cannot perform the task at all, the teacher is enjoined to be an "intractable master", as stubborn as possible (Davis 2010a: 27). Jacocot took the protests of students as false modesty or expressions of pride. A typical response from Jacocot was:

You must begin to speak. Don't say that you can't. You know how to say 'I can't'. Say in its place 'Calypso could not', and you're off. You're off on a route that you already knew, and that you should follow always without giving up. Don't say: 'I can't'. Or then learn to say it in the manner of Calypso, in the manner of Telemachus, Narbal, of Idomeneus [...] you will never run out of ways to say 'I can't', and soon you will be able to say everything (Rancière 1991: 24).

The ignorant schoolmaster is someone who continuously validates the efforts of students, providing encouragement and also keeping students on track to their own intellectual emancipation. Tanke (2011: 38) elucidates that

[t]he master compels the student to make greater effort, to draw more connections, to recognise deeper patterns, and to communicate the results more elegantly. He does not for all that tell the student what to think about what he finds. He simply provides the occasion for the students to discover their own capacity.

Universal teaching refuses to use any form of explication, the process through which a teacher clarifies a text. Explication supplements a text with commentary designed to make apparent the meaning of the first (Tanke 2011: 37). The assumption

that exists in this process is that the text would not be legible without the teacher's intervention. The process continuously reveals what a student would not have known without the assistance of the teacher. For Rancière, explication establishes a relationship between intelligence and intelligence, convincing a student of the inferiority of her own. What is learned in this process is that one's intelligence is dependent upon another's and in Rancière's view the intelligence of the students is subordinated and the relationship is termed 'stultification' (Tanke 2011: 37). The process whereby the mind realises its own powers without relying on another's is known as emancipation. Stultification convinces the student that he or she is dependent on the intelligence of others while emancipation enables him or her to discover what he or she is capable of. What Rancière/Jacotot contests is the idea that nature has distributed the gifts of the mind unequally. The positions of educators, as well as the larger social order in general, is, according to the notion of radical intellectual equality, sustained by the notion that some are not capable of thinking as well as others. It should be mentioned that the presupposition of equality is a hypothesis in search of proof. The point is to shift the terms of the debate and while it might be difficult to establish the presupposition definitively, it is a position that is legitimate to hold (Tanke 2011: 36). Rancière: "[O]ur problem isn't proving that all intelligence is equal. *It is seeing what can be done under this presupposition*" (Rancière 1991: 46).

Davis (2010b: 183) explains that the method of radical intellectual equality may at times be viewed as a elaborate form of autodidacticism, the process through which a student grapples alone with the content of the text, while the teacher, at most, sustains the focus of the student with relentless questioning, for example. Rancière also views Jacotot's method as a radical critique of the Enlightenment model of progressive pedagogy. For Rancière (2000:122), Jacotot

derives the 'mad' notion that all intelligence is equal and that this equality is a presupposition that requires demonstration and not a goal to be attained [...] he derives the notion that the ideals of progress and the progressive moment are, in and of themselves, principles of inequality as social end and entrusting certain education 'experts' with the task of reducing the effects of the clash between an 'equality to come' with existing inequality means, in short to institute inequality as principle whose reproduction is infinite.

According to Davis (2010a: 30), Rancière's thought with regards to Jacotot can therefore also be seen as a challenge to the progressivism which took hold of the 19th Century and which still dominates thinking about education and social inequality today. Rancière (1991:134) states:

An enormous machine was revving up to promote equality through instruction. This equality was represented, socialised, made equal, good for being perfected – that is to say, deferred from commission to commission, from report to report, from reform to reform, until the end of time. Jacocot was alone in recognising the effacement of equality under progress, of emancipation under instruction.

It must be said that Rancière's assumption of equal intelligence amounts to much more than some kind of pious injunction to have faith in a student's abilities. It is argued that it implies a profoundly different understanding of the relationship between student and teacher (Davis 2010b: 184). The teacher must place the student in a position from which he or she can only escape by using their intellectual abilities. It involves, as said earlier, relentless questioning so as to expose non-sequiturs and obscurities. Davis (2010b:184) further notes that Jacocot's aversion to explanation is exaggerated to the limits of plausibility. He radically marks his stance from common-sense thinking about education. However, his suspicion of explanation is coherent. It should be seen in institutional and political terms. In his view, when students are taught in a "normal" way, by being led from imperfect explanations to less imperfect ones, this fosters intellectual dependency and authenticates the sense of intellectual inequality which is crucial to the survival of the institution and the perpetuation of the *status quo* (Davis 2010b: 134). Jacocot/Rancière think of intellectual inequality as produced by institutions in relation to other forms of social inequality. For Rancière, it rationalises the division of society into those who are born to think and govern and those who are their intellectual inferiors, who are fit only to follow instruction (Davis 2010b 134). It is argued that educational institutions function with the aim to limit or to negate a particular power, to instil not a sense of potential or capability, but rather one of intellectual and political inequality through regimes of marking and examinations as well as the subtexts of the daily interactions between student and teacher (Davis 2010b: 188). Ordinary pedagogy's aim is to bring about greater equality between student and teacher through a series of incrementally more sophisticated explanations. For Jacocot, this method is slow and is also a hierarchal approach, which misunderstands the essential character of learning and teaching and the reality of the human intellect (Davis 2010b: 188). One can obtain better results by assuming from the outset that students are the intellectual equals of their teachers and that the teacher who presumes that the student is equal in intelligence enables such a student to retranslate her expression of incapacity into the very knowledge which she thought herself incapable of (Davis 2010: 25 - 27). Badiou (2009: 42) has formulated the following two theses with regards to the method of intellectual equality:

- 1 Under the condition of a declared equality, ignorance is the point at which new knowledge can emerge.
- 2 Under the authority of an ignorant master, knowledge can be a space for equality.

The radical conception of equality derived from Jacocot is therefore that equality must be presupposed, from the outset, in the pedagogical encounter and it must be affirmed and verified within that encounter (Davis 2010a: 27). Rancière's political thinking revolves around and is derived from the notion of radical intellectual equality. For Rancière, politics is the practice whereby political subjects disrupt orders of hierarchy by assuming, declaring and verifying their equality in a specific situation or context. The equality that Rancière (1999: 29-30) advocates in his politics is the "equality of speaking beings" or the equality of anyone with everyone. Every social arrangement is open to disruption by egalitarian politics and subjects must assume this equality on their own account and demonstrate it through their actions. Equality, in this sense, cannot be given by governments, constitutions or social orders; it is claimed and verified through specific political staging. It is an activity that antagonistically breaks apart societal hierarchal configurations (Rancière 1995: 23-33):

The essence of equality is not so much to unify, but as to declassify, to undo the supposed naturalness of orders and replace it with controversial figures of division. Equality is the power of the inconsistent, disintegrative and ever-played division.

Rancière's most general effort with regard to his project on politics has always been "to explore the various resources of displacement, indistinction, de-differentiation or de-qualification that are available in any given field" (Hallward 2009: 141). The tool for this displacement or indistinction is equality declared.

It is further important to note that the method of intellectual equality is essentially anti-institutional. Jacocot was deeply suspicious of all attempts to translate universal teaching into social arrangement. He rejected the possibility of the insertion of universal teaching into any type of organised framework. Its institutionalisation will essentially be its betrayal (Tanke 2011: 40). Jacocot insists on the pedagogical being a site for the realisation of equality. Institutions inevitably function by establishing hierarchies. However, this does not imply some sort of complete disorder or anarchism. Jacocot's students were more than willing to play the game of social order and political argument, even though they realised that its rhetoric is more often an irrational competition for supremacy and that moments of reason are few and far between (Davis 2010a: 28-29). The view was that every institution was "an explication in social act, a dramatisation of inequality" (Rancière 1991: 105). Along these lines, intellectual equality dramatises the world in a different

way. Further, in Jacocot's first experiment, *Télémaque* was necessary. The text allowed Jacocot to distance himself from his intelligence, thereby freeing up his students to discover their own. As mentioned, according to the approach of radical intellectual equality, the teacher no longer dispenses knowledge to the student, but rather encourages the student to acquire knowledge for himself or herself through an encounter with a written text or some other example from that field of knowledge. *Télémaque* formed the bond between Jacocot and his students. Jacocot saw his role as repeatedly sending them back to the text: "the schoolmaster can be ignorant because the text is savant" (Davis 2010b: 183). It is therefore argued that when Jacocot radicalised his experiment by teaching more subjects that he didn't know anything about, the text or other example from that field is what saves the ignorant schoolmaster from absurdity (Davis 2010b: 183). *Télémaque* or its equivalent allows pedagogy to be simultaneously egalitarian and meaningful as "the teacher and the student are equal before the book" (Davis 2010b: 183).

According to Rancière's conception of things, there is no way to know what people may know, since what matters is less the knowledge itself than "the posture of mastery presumed in any claim to knowledge" (Hallward 2009: 156). The assumption is that knowledge is simply there for the taking, on the model of primary language learning. It is always a matter of learning a language, or using a familiar tool (Rancière 1991: 5-6 & 65). Tanke (2011: 39) explains that anything can serve as a starting point. The idea that thought is before language allows us to transmute knowledge into creativity: "[W]e speak as poets when we recount the mind's adventure with imperfect signs" (Tanke 2011: 39). According to Rancière/Jacocot, the most important virtue of intelligence is poetry, understood in a broad sense (Tanke 2011: 39). Knowledge consists in drawing connections and inventing language in which we can communicate these findings and "[i]n the act of speaking, man doesn't transmit his knowledge, he makes poetry; he translates and invites others to do the same. He communicates as artisan: as a person who handles words like tools" (Rancière 1991: 65). Communication is therefore about translating the signs of one's own experience of navigation as well as the process of translation, by means of which one attempts to understand the thoughts of another (Tanke 2011: 39).

Ultimately Rancière's work and exploration of Jacocot seek to demonstrate the power of declarations of equality, intellectually and politically. Ross (2009: 26) eloquently reiterates the role of equality in the context of Jacocot and I quote her at length:

At the heart of the pedagogical relation is the representation of inequality as evolutionary epistemology: the people who can never catch up with the enlightened elite, or who can never be completely modern. People who are trapped, without knowing it, at one stage along the trajectory of progressive time, and who are

destined to remain there, imprisoned in this other time, that of the child, or that of the primitive. But, inequality can't be gradually whittled away, just as equality is not a goal to be one day attained, nor arrived at by dint of a series of concessions made by the state. Short-circuiting the temporality of pedagogy makes equality a point of departure, the point of departure, an axiom anterior to the constitution of a particular staging of politics which makes such a staging possible. Rather than being the criteria that determines how long it will take for society as it is to become society as it might or should be, equality as an axiom enables thought, experiment, invention.

Politically, the idea that students learn on their own means that the hierarchal ordering of society is constantly undermined by the absolute equality that characterises the human intellect. There is always potential for true political intervention. What does it mean to presuppose that people are equally intelligent? May (2009: 111) states:

[s]urely there are things others can teach us. But we are capable of cobbling those teachings together into a meaningful whole, and far more capable of teaching ourselves many of those things than the hierarchal order in which we live would lead us to believe.

3. Legal education and concluding remarks

Klare (1998: 166) described legal culture in terms of “professional sensibilities, habits of mind, and intellectual reflexes”. In other words “what are the characteristic rhetorical strategies deployed by participants in a given legal setting?”, “what is their repertoire of recurring argumentative moves?”, “what counts as a persuasive legal argument?”, “what enduring political and ethical commitments influence professional discourse?” and “what inarticulate premises are culturally and historically ingrained in the professional discourse and outlook?” (Klare 1998: 166- 167). Legal culture, and legal education by implication, has an enormous effect on the substantive development of law. Klare purported that “un-self-conscious and unreflective reliance” on existing culturally available tools and instincts may exercise a drag on constitutional interpretation. It may weigh it down and limit its ambition and achievements for democratic and social transformation (Klare 1998: 168). Klare (1988: 168,170) also noted the disconnect between the constitution’s substantively progressive aspirations and the traditionalism of South African legal culture. He described South African legal culture as conservative because of the fact that it has strong faith in the precision, determinacy and self-revealingness of texts. More than 20 years after the establishment of South African constitutional democracy, and 17 years after Klare’s contribution, many

commentators within the field of post-apartheid jurisprudence still lament the fact that our broader legal culture has remained the same.³ Modiri (2014: 6) notes how legal education remains firmly in the grip of “restricted jurisprudence” that focuses on black-letter law with little or no reference to the wider historical and social context in which the law operates. He explains that the majority of law courses focus exclusively on law as an exercise in technical rule-application, structured around what legal principles currently are. Modiri (2014: 6) states:

In some rare instances when students are taught what the law or legal principle ought to be, the focus is less on the broader normative, philosophical questions of law as it should be and more on a doctrinal critique of a court judgment or a procedural flaw in a legislative scheme – all with the aim of reasserting and maintaining the coherence, determinacy and predictability of law and legal rules.

Therefore, the belief in law’s neutrality and stability is still maintained and there is a lack of acknowledgement of its violence and its role in the maintenance of “white colonial domination and hetero-patriarchal power and its facilitation of the economic injustices of capitalism” (Modiri 2014: 6). Further, it is argued that legal education primarily focuses on the way in which it serves the needs of the legal profession and judiciary, rather than contributing to a jurisprudence suited to the legal, social and political transformation of South Africa⁴ (Modiri 2014: 2).

3 See for example, Van Marle K & J Modiri (2012) “What does changing the world entail?” *Law, critique and legal education in the time of post-apartheid*. *South African Law Journal* 129: 2019. Modiri J (2013) Transformation, tension and transgression: reflections of the culture and ideology of South African legal education *Stellenbosch Law Review* 24(3): 422-79. Quinot G (2012) Transformative legal education *South African Law Journal* 129: 411-33.

4 I would further like to mention the following clarifying quote of Modiri (Modiri 2014:10) in this context. He describes the way in which legal education functions in the following manner: “In South Africa, the dominant jurisprudential guide for legal research and legal education is some or other brand of legal positivism and interpretive formalism strongly rooted in a liberal capitalist ideology. While socio-legal (law in context or law as policy), comparative and traditional legal-historical approaches have also begun to circulate in law schools, they are often used either to supplement and strengthen this doctrine-based formalist approach or they are used in only a few courses/electives (such as Street Law, International Private Law, HIV/AIDS and the Law). They remain marginal however, to the broader traditional, formalist culture and orientation of the law faculty. There is also a strong connection between the manner in which students are assessed and examined and this pervasive culture of legal formalism. The tests, assignments and examinations that students frequently have to complete not only correlate with the rote-learning to which they are exposed in the classroom, but also perform the ideological function of making students believe that only one of the many legal choices and interpretive possibilities available in any legal scenario takes undeniable precedence over the rest. As such, legal education in South Africa conforms to a black-letter model of teaching, focusing mainly on law as rules and law as procedure.”

In reflecting on legal education, the notion of radical intellectual equality may reveal an approach to legal education that does not only resist but actively disrupts the institution and the perpetuation of the *status quo*. Rancière's/Jacocot's radical intellectual equality has, as mentioned, implications far beyond the field of pedagogy. It relates to other forms of social inequality. The political potency of equal intellectual capacities can open up or create occasion for invention and other lines of thought necessary to express the transformative ideal as Klare envisions it. In the context of teaching it is a call to act counter-intuitively as legal educators and to embrace what Rancière would call "the incapable". My contention is not in any way to establish a new programme or curriculum or to put forward universal teaching as the only way in which law should be taught. It is rather to illustrate one of many possible notions or ways in which to approach and to think about legal education in the context of legal culture and transformative constitutionalism. Ideas around radical intellectual equality, rather than affirming, confirming and re-affirming the way things are, can reconfigure and re-imagine the way things are. The experiment of intellectual equality, politically declared, from the beginning, might be able to provide occasions or spaces from where new knowledges and thinking can emerge and from where the framework of what is given, and has been taught over and over and over again, can be contested and questioned. Further, some "non-teaching" may actually foster notions of critical thinking, criticalness and the scepticism necessary to produce students who can contribute to the transformation of South Africa's social and political landscape. Considering such an approach in some of our teaching might allow us to at least resist being legal educators who constantly yield to "the demands of the [private legal profession], the state and the market" (Modiri 2014: 18). Along the lines of Rancière's thinking, the consideration of new "distributions of the sensible" becomes crucial (Rancière 2010: 37). The idea of the distribution of the sensible refers to the implicit lines of sight, forms of speech and assumptions about people's capacities in specific contexts. It is the framework of what is given and of what can be done, said and thought in a specific situation. The distribution of the sensible is the structure that determines what is thinkable, sayable and possible (Tanke 2011: 2-3). The notion of radical intellectual equality is a call for a redistribution of the senses. It is a way of expanding perception, of reframing and restaging what is thinkable in our context as legal educators. A renegotiation and reconfiguring of our approaches to and thinking about teaching can possibly allow for the type of re-imagining that Van Marle (2014: 196) postulates. Ultimately, independent learning that fosters independent thought and teaches students that making their own discoveries is not only possible but also crucial, can contribute to a legal education that redistributes the sensible of a legal culture. The pedagogical site, when resisting incessant legal clarification and explanation, along the lines of fixed and positivist ways of thinking and doing, might create

occasions under which ignorance can produce new knowledges and knowledge-gathering can occasion equality. Further, the idea of seeing what can be done under the presupposition of intellectual equality does not point to an approach or programme that promises an equality to come or equality infinitely deferred. It is an approach that can be practiced and verified daily, an experiment that can be immediately explored and employed. It also does not suppose a lesser type of “quality” of education. On the contrary, rather than only teaching rules, principles or legal concepts and how they should be understood, universal teaching might allow students to come up with broader or more urgent questions. It might further suggest that the language of the law is also invention and that there is nothing natural about the habits and reflexes of legal minds and legal culture. If we can radically imagine working from the presupposition of intellectual equality we invite play, negotiated meaning, invention and thought.

My reflections here are tentative. However, the idea of seriously considering the tenets and characteristics of universal teaching, as well as staging the notion of the lesson in a different way, is to suggest that nothing less than a radical reconfiguration and active disruption of the rigidly distributed roles, places, assumptions and habits of mind that characterises a conservative, and continuously conservative legal culture, affirmed and confirmed by our restricted approaches to legal education, is necessary in order to enact the type of constitutional change and innovation that Klare envisioned. The suggestion is that universal teaching can contribute to the type of reimagining that Van Marle postulates and the type of critical legal education that Modiri argues for. The crucial question cannot be how we are to justify new approaches to legal education by measuring them against the background of our consensual and accepted legal culture. Rather, it should be to what extent our approaches hold emancipatory possibilities. Rancière’s radical and creative push against the structuring fictions of education is an effort to clear the ground for the implementation of intellectual emancipation. This is indeed what universal teaching is about. Rancière (1991:39) states:

Essentially what an emancipated person can do is to be an emancipator: to give, not the key to knowledge, but the consciousness of what an intelligence can do when it considers itself equal to any other and any other equal to itself.

Proposing the notion of radical intellectual equality as an approach to legal instruction signifies a rejection of the devotion to conservative legal education and legal culture. Jacocot and Rancière contend that the artist can probably more readily discover the language of emancipation than university professors, because “[t]hey renounce the tyranny of the fixed message, creating instead spaces for

play, reciprocal engagement and negotiated meaning” (Tanke 2011: 39). It is only under conditions of emancipation that constant legitimization can be disrupted and equality and transformation enacted.

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