

FICTIONS OF EMANCIPATION: COLLABORATIONS WITH AND AGAINST THE LAW

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The topic of emancipation has garnered a great deal of attention recently, from Jacques Ranciere's work, now widely read by scholars, artists, and activists, to new edited collections in my field of Latin American thought, published in Spanish and English.¹ As present and necessary as this concept is, in what follows I propose that it is so because it contains within it some of the most difficult double binds faced by the intersection of art and politics. The bind of emancipation becomes evident in contrast to its supposed synonym (according to most thesauruses) of "enfranchisement." The latter consistently signifies the liberation of the subject: his/her freedom from confinement and admission into the rights of citizenship. Emancipation, in contrast, is a fraught process, which ultimately does not guarantee the rights of all, and at times imperils the rights of very specific subjects. Nonetheless, I will argue that it is worth delving deeper into emancipation's perils, as they reveal compelling forms of fiction that connect performance to court, and art to law.

If some of what follows appeals to the so-called canon of Western (European) thought regarding emancipation, I find that the real promise of emancipation emerges from interpretations and interventions into this intellectual history from the other side of the modern/colonial system. Colonized sites and colonial subjects make visible the contradictions implicit in emancipation, and those paradoxes reveal the political potency of fiction, particularly fictive performance. Specifically, I find that by imagining emancipation, these fictions produce legal outcomes not imagined by laws. To be clear, these are, for the space I have here, not fictions that break laws, but rather ones that produce forms of freedom within the law that the law did not imagine. After tracing the long history of such fictions in the concept of emancipation, I follow two contemporary enactments of emancipation of its fraught and yet promising nature in the field of contemporary Latin American art. It is crucial to state from the outset, though, that even this rather hopeful understanding of emancipation remains haunted by the very contradictions that expand its horizon of possible freedoms.

So what is emancipation? Perhaps like all political rhetoric, emancipation is simultaneously itself and its opposite. In the *Oxford English Dictionary*, "emancipate" enjoys two seemingly contradictory definitions: it means both to set free, and to enslave. The first definition is the most familiar: emancipation liberates the child from the father's law—"To release or

set free (a child or wife) from the *patria potestas*, the power of the *pater familias*, thus making the person so set free *sui juris*." The second, now obsolete, is less so: "To deliver into servitude or subjection; to enslave . . . *Obs.*" It is this paradox that ultimately makes for the centrality of fiction in political emancipation.²

I must begin, however, with a perhaps better-known story about the contradictory definition of emancipation as both freedom and captivity, one that I nevertheless feel the responsibility to re-tell here. Not coincidentally, the *O.E.D.* dates the now obsolete use of the word "emancipation" to mean enslavement to the years 1629–1752. This is the century that saw the emergence of what the Stanford Encyclopedia of Philosophy still nicely (naively? perversely?) calls "the Enlightenment ideals of freedom and equality for all."³ And indeed, during this period that the word emancipation was used to refer to freedom and its opposite, and that Enlightenment philosophy reigned, records of the trans-Atlantic slave trade show that the number of people subjected annually to the Middle Passage surged from 15,117 (in 1629) to 72,410 (in 1752).⁴ This part of the story of emancipation has been brilliantly told by scholars including Walter D. Mignolo and Paul Gilroy. In Gilroy's theoretical map of an expansive Black Atlantic, he argues that, "the universality and rationality of enlightened Europe and America were used to sustain and relocate rather than eradicate an order of racial difference inherited from the premodern era . . . [such that ultimately] the history of slavery is somehow assigned to blacks. It becomes our special property rather than a part of the ethical and intellectual heritage of the West as a whole."⁵ We might understand this as a demand that both definitions of emancipation return to common parlance, that our imagination of an emancipated subject always includes the freed Euro-American master and the enslaved African or Indian.

Mignolo makes us even more suspicious of the emancipation, linking it to the emergence of a European bourgeois class and to the ongoing domination by Europeans (the people, their economic and political systems, and their epistemologies) of the Americas. He warns: "What remains still unsaid and un-theorized is the fact that the concept of 'emancipation'—in the discourses of the European enlightenment—proposes and presupposes changes within the system that doesn't question the logic of coloniality—the emerging nation-states in Europe were, simultaneously, new imperial configurations (in relation to previous monarchic empires, like Spain and Portugal)."⁶ For Mignolo, the best option is to pursue liberation rather than emancipation, in a process of what he and his fellow theorists of de-colonial thought term "de-linking from the colonial matrix of power." Liberation, with its genealogy in Enrique Düssel's initial *Liberation Theology* and later *Philosophy of Liberation*, "subsumes 'emancipation'" in its de-colonizing effort.⁷ For Mignolo and the other decolonial theorists, liberation is a movement of national liberation, a freeing from colonial rule that leads to the enfranchisement with which I initially contrasted emancipation. As he rightly points out, national liberation movements in colonized sites in some if not all cases enfranchised some of the very people that "emancipation" enslaved.⁸ What is more, he argues, liberation also signifies a de-colonizing of knowledge, and so signifies an attack on the En-

lightenment philosophical tradition that continues to value only European articulations of knowledge.

I propose, however, that there is still something to be done with emancipation, a potential energy of political and artistic contradiction that remains to be converted into action. When we look further back into the history of emancipation *as* slavery, we learn that the apparently irresolvable tension that frames the definition of emancipation includes a turn in another direction. The *O.E.D.* offers a tempting nibble, briefly explaining that this contradictory meaning of emancipation exists “because emancipation in Roman Law was effected by fictitious sale.”

What’s the story here? Briefly, because it was legally impossible to simply set a slave free under Roman law, manumission was granted through a kind of fictional performance. Descriptions of these performances vary. Orlando Patterson writes about it in his landmark, *Slavery and Social Death: A Comparative Study* (1982), repeating the common language that describes the process of *manumissio vindicta* as a “legal fiction, a form of collusive litigation . . . [that] took the form of a simulated trial in which the slave was tried for abandoning his master, and thereby his status as slave, with a predetermined verdict of acquittal.”⁹ Patterson describes the trial in ancient Rome, in which: “the master held the slave by one of his limbs, slapped his cheek, then turned him around.” Here the fictive case was not just performative in its act of legal collusion, but also in the actions of the bodies on the legal stage. So that you don’t think it is only historians of African America that reflect on this strange theater, Joseph R. Long’s *On Roman Law: Law Of Persons, Law Of Contracts*, published by Washington and Lee University in Lexington, Virginia, back in 1912, also calls it “a fictitious or collusive suit.”¹⁰ He goes on: “The master, the slave, and a third person appeared before a magistrate (consul, prosecutor, proconsul, or president of a province), and the third person laid his rod (*vindicta*) on the slave and declared him to be free; the master also touching the slave with his rod admitted the claim and turned the slave around three times and let him go (whence, manumission).”¹¹ In both versions, the court colluded with the master and the slave to stage a performance that made an end run around the impossibility of simply declaring a slave to be free.

It took some time to figure out what I found so compelling about this history in the context of contemporary art practice. Over and over again, discussions about fiction and politics lead to interventions in the sphere of media: artist-activists such as the Yes Men, whose performances have crafted such brilliant interventions into the media that they forced major political institutions (the U.S. Department of Housing and Urban Development [HUD]) and corporations (Dow Chemical/Union Carbide) to publicize their own denials of responsibility for past actions.¹² While these forms of fictive intervention remain fascinating and effective, the particular tension of *emancipation as enslavement as freedom* must take place *within the law*. Its greatest promise, I suspect, lies in the capacity for finding spaces within the law that can be occupied by fiction, and thereby make the law perform in ways other than its original intent. This intuition leads to crucial questions. How do artists, activists, and cultur-

al producers manage to occupy legal spaces with fictions that in turn produce new laws? What proposals and warnings do these legal operations present about the possibilities of art, politics, and fiction? To imagine how this works, I'd like to consider just one example of contemporary fictional performances that collude with the law.

Ricardo Domínguez, as part of the artist collaborative Critical Art Ensemble, as an individual artist, and as the founder and member of b.a.n.g. lab, has been involved in electronic disturbances of different kinds since the early 1990s. As part of Electronic Disturbance Theater (EDT), he helped design participatory virtual sit-ins on etoys, the Mexican Government, and the U.S. Department of Justice among others. Virtual sit-ins basically bombard a server with too many requests, and force it to give the Internet equivalent of a busy signal, so that commercial transactions cannot take place and information cannot be shared. Joining forces with the Ejército Zapatista de Liberación Nacional (EZLN), the guerrilla, grassroots movement in Chiapas, México, EDT used virtual sit-in software or FloodNet attacks to demand that the rights granted to all citizens be guaranteed also for the indigenous communities in southern Mexico.

Fiction plays a key role in these demands. Subcomandante Marcos and many of the comandantes of the movement use storytelling as a central part of their discursive practice, representing the current political situation through stories that weave together traditional and new stories. In January 2000, the EZLN added the Zapatista Air Force their media and military arsenal. As Domínguez explains with co-author Jill Lane: "The Zapatista Air Force attacked the Federal soldiers with paper airplanes, which flew through and over the barbed wire of the military encampment, each carrying a discursive missile: messages and poems for the soldiers themselves."¹³ They go on to report that one year later, EDT and Domínguez wrote code for the "Zapatista Tribal Port Scan," with which anyone could send similar "air" messages electronically; the code integrated bilingual poems into the targeted systems.

Two elements of this series of works are central to the kind of emancipatory fiction at stake here: 1. the fictions are written seamlessly into the already existing political language at work and 2. transparency is at the core of these actions, which suggests that these actors have nothing to hide. There were no ski masks on these bank robbers, or better put, the man behind the ski mask—the now globally recognized image of Subcomandante Marcos and his fellow Zapatista Comandantes—was the just and legal actor, not the criminal. The Transborder Immigrant Tool, Domínguez's most recent project in collaboration with EDT and b.a.n.g. lab, similarly works just within the law.¹⁴ Converting rudimentary cell phones into guides for migrants crossing the border, it leads them not across the border (the illegal act), but toward water stations. At best this work verges on "aiding and abetting," but since the artists of EDT and b.a.n.g. lab were investigated by three Republican Congressmen, the FBI Office of Cybercrimes, and the University of California, San Diego (UCSD) in and around 2010, and all of those investigations were eventually dropped, it appears that they have managed to write themselves into the law.

Like Thoreau's civil disobedience, a key intellectual tradition for Domínguez, the premise here is that law and justice should not exist not as separate domains.¹⁵ In a recent interview with Laila Nadir, he explains that:

Often power, as command and control, will respond to activists by targeting them as law breakers or potential law breakers and shut them down under the empirical weight of the "Law." The question of aesthetics, at least for us, creates a disturbance in the "Law" to the degree that it cannot easily contain the "break" and it is forced to enter into another conversation—a conversation that power-as-enforcement may not want to have.¹⁶

Unlike Thoreau, then, who argued to break laws that were unjust, the fictions generated by these groups of artists push the law into a conversational, even collaborative exchange with some of the very subjects who are excluded from its benefits. Domínguez goes on to refer to the 1998 statement by a spokesman for the Department of Defense that: "If it [the Electronic Disturbance Theater's FloodNet action] wasn't illegal it was certainly immoral . . ." So here we have it—the ultimate reversal—the law finds that it must resort to ethical questions of justice in order to condemn the still legal fictive interventions by a handful of performance artists. Domínguez describes the strategy as something that "echoes, to some degree, Jacques Rancière's statement that, "The real must be fictionalized in order to be thought."¹⁷

I find, though, that the fictional we come to through "emancipation" is more substantial than Rancière's thoughts on the emancipation of the spectator. To explain how, I must first say a few words about fiction before returning to the contradictory form of freedom provided by emancipation. As much as the word "fiction" often stands as a short cut for "narrative fiction," I have been working for some time to pry apart those terms.¹⁸ That is, I am composing a theory of fiction that takes into account forms other than narrative prose and heavily time-based media such as film and video. Fiction is more than storytelling, and to imagine its broadest contours it is necessary to free it from the limited temporal structures associated with prose fiction and narrative film.

Emancipation's performative fictions contribute to a broader view of the possible times created by what I call non-narrative (or non-literary) fiction. In the introduction to a collection of essays dedicated to "saberes de la emancipación y de la dominación" (knowledges of emancipation and of domination), Ana Esther Ceceña describes the temporality of emancipation as both the spontaneity of insurrection and a time that "gestates and is recreated in the friction of the everyday."¹⁹ She goes on to link that temporality of emancipation with a key characteristic of fiction: "The space of the spontaneity [of insurrection] is that of learning *through invention*."²⁰ This invention is not cast as newness, as it often reproduces tradition or customs through "a critical recuperation."²¹ The temporality of emancipation's fictions is interrupted, repetitive, and innovative; it is as contradictory as its definition as liberation and enslavement. Domínguez's collaborative work with the Zapatistas is just one example of a kind of performance that enacts the fiction of emancipation, including its var-

ied temporalities. Their stories and poetic missives—their air forces—depend upon traditional Tsotsil narratives for emancipatory fictions.²² They are invented, impossible, and have a concrete impact on political institutions and ideologies. They are insurrectional and iconoclastic, and still composed of and compose the material of daily life.

In contemporary art circles these days there is a lot of talk about collaboration, mostly referring to group work—like Domínguez's in EDT and b.a.n.g. lab—that avoids liberal stereotypes of and market demands for the individual genius of the artist. The other meaning of collaboration is nonetheless present, that of collaborators with the state, with the law. This offers another productive tension to the contradictions of emancipation, a signal that these fictions are perhaps not only a reformulation of Thoreau's civil disobedience. It is something a bit messier, haunted by the specter of re-enslaving, even if fictively in the interest of freedom. It is a risky form of collusion or collaboration *with* the law.

The messiness of these fictions is what I suspect makes them the site of a political intervention in art and theory that is not critique as it has long been deployed in the generations since the Frankfurt School. While the space here does not allow a full elaboration of this proposal, a few words are necessary to sketch out what this might mean. First, these fictions of emancipation do something in the world at the intersection of aesthetics and politics through collusion with the law. They do not imagine a space of critique that enjoys a clear distance from the law. Second, these blurred boundaries between the space of radical political intervention and the law cloud the clarity of vision granted to the autonomous, modernist subject that is so often painted as the one capable of critique. The uncomfortable operation of emancipatory collaboration seems to me, at this early stage, to warrant a vocabulary of art and politics that breaks with the language of "critique."

In the search for an alternative to critique, we can return to Ceceña's collection of essays on "saberes de la emancipación y la dominación." The translation of the title from Spanish to colloquial English will never be quite right: "knowledge" is never made plural in English, and "de" would most likely be translated into "about" rather than "of" in common parlance. "What do you know *of* domination" sounds antiquated, and an editor would likely suggest instead: "what do you know *about* domination." This trouble with translation underlines the central preoccupation of the essay by Carlos Walter Porto-Gonçalves, which figures heavily in Ceceña's introductory text. Porto-Gonçalves characterizes the difference between European and Indigenous epistemologies, citing Maya, Quechua, and Aymara intellectual histories, as that between discursive and material formulations of knowledge. The knowledges of emancipation and domination—terms that are always linked—are epistemologies based in act, touch, and sense:

There is a tradition that privileges discourse, the saying, and not the doing. All saying, as a representation of the world, tries to construct/invent/control worlds. But there is always a doing that cannot know how to speak, but the not knowing how to speak does not mean that one doesn't know. There is always a knowing inscribed in the doing . . . Material knowing is the knowledge of

touch [*tacto*], of contact [*contacto*], of tastes [*sabores*] and knowledges [*saberes*], a knowing *with* (the knowing of domination is a knowing *about*).²³

What Domínguez and other artists and collaborators add further to this epistemological proposal is a form of invention that does not necessarily reproduce the trio of “construct/invent/control,” but rather performs doing/tasting/touching in fictions they enact *with* other imaginative actors. Participating in the fiction of emancipation may well risk enslavement, but at least in these performances we are all in it together.

Even as they make emancipatory fictions, and imagine sites within the law that the law could not predict, these acts are haunted by the dangers of collusion. In the first place, the insertion of these fictions within the law is, as Ceceña’s comments on the temporality of emancipation warned, temporary. Since the initial Floodnet actions, the law has been busy catching up with the fiction lodged within it: in 2006, the United Kingdom enacted a new law banning Denial of Service Attacks; Andreas-Thomas Vogel, who led an EDT-inspired virtual sit-in against Lufthansa’s participation in deportations of immigrants from Germany, was tried (ultimately unsuccessfully) in a court usually reserved for terrorism in 2005; and Domínguez’s 2010 virtual sit-in on the website of the chancellor of the University of California system almost (but didn’t quite) cost him his tenured position at San Diego. Secondly, as Gilroy reminds, “the intellectual and cultural achievements of the Black Atlantic populations exist partly inside and not always against the grand narrative of Enlightenment and its operational principles” (48). And lastly, Orlando Patterson makes clear that the performance of emancipation in Roman Law delivered the former slave not into citizenship—it is not the enfranchisement of the slave—but instead confers upon him the status of “metic,” a kind of resident alien, neither slave nor citizen. Rather than freedom, the fiction of emancipation even in its most generous of terms gives us a kind of green card holder, with the luxury of papers but not the full rights of citizens. These border subjects, as we know from the broad impact of the work of Chicana theorist and poet Gloria Anzaldúa, offer tremendous potential: alternative epistemologies, powerful aesthetics, and radical politics.²⁴ However, they are also especially vulnerable to the whims of a state that is not wholly theirs.

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NOTES

¹ See Rancière’s *The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation* (1981) and *The Emancipated Spectator* (2010), trans. Gregory Elliott (New York: Verso, 2011); Ana Esther Ceceña’s edited collection *De los saberes de la emancipación y de la dominación*, and Michael Hardt and Alvaro Reyes’s edited number of *The South Atlantic Quarterly* 111:1, Winter 2012. My reflections that follow are the result of an invitation to speak at the first graduate student Convergence of the Hemispheric Institute for Performance and Politics, held at Duke University, November 9–11, 2012, in a panel titled “Knowledge/Knowledgeable Emancipation: Academia, Activism, Artivism.” I thank the organizers for the oppor-

tunity to think with them about emancipation and knowledge as they engage performance and politics. I also thank Ricardo Domínguez for his generosity in our ongoing conversations on these questions over the years.

² Classic theories of fiction have discussed it as, by definition, a logical paradox. See for instance, John R. Searle, "The Logical Status of Fiction," in *Expression and Meaning* (Cambridge, 1979), 58–75; and Richard van Oort, "Three Models of Fiction: The Logical, the Phenomenological, and the Anthropological (Searle, Ingarden, Gans)" in *New Literary History* 29.3 (1998) 439–65.

³ <http://plato.stanford.edu/entries/enlightenment/> accessed September 21, 2012.

⁴ These numbers are thanks to the remarkable work made available on the website, "Voyages: The Trans-Atlantic Slave Trade Database," <http://www.slavevoyages.org>.

⁵ Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge, MA: Harvard University Press, 1993), 49.

⁶ Walter D. Mignolo, "Delinking," *Cultural Studies*, 21:2 (2007): 455, 449–514.

⁷ Mignolo, "Delinking," 455.

⁸ Ana Esther Ceceña makes the limited nature of national liberation quite clear: "The combination of colonization and capitalism, societies that are formed in racial mixture and racism, nations that before being constituted are already pillaged, generate a form of thought that is at the same time independentist and colonizing, which battles constantly not to reproduce that from which it wishes to liberate itself." Ana Esther Ceceña, "Presentación 12," coord. *De los saberes de la emancipación y de la dominación* (Buenos Aires: Consejo Latinoamericano de Ciencias Sociales, 2008).

⁹ Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 1982), 236.

¹⁰ Joseph R. Long, *On Roman Law: Law Of Persons, Law Of Contracts*, (Lexington, VA: Washington and Lee University, 1912), 7.

¹¹ Long, *On Roman Law*, 7–8.

¹² See the film documenting the Yes Men's actions, *The Yes Men Fix the World*, by Andy Bichlbaum and Mike Bonanno (2009). In the HUD performance, Bichlbaum and Bonanno (*noms de guerre* for the two artists), posed as representatives of the government agency in New Orleans months after Hurricane Katrina, and announced that one of the public housing communities closed since the devastating storm would be reopened. In the case of Dow Chemical/Union Carbide, they posed as representatives of the company and announced a major settlement for the victims of the chemical disaster in Bhopal, India. In both cases, public relations representatives were forced to declare publically their refusal to respond to the ethical demands of those harmed by their actions. Or as they explain on their website, "The Yes Men again helped Dow be clearer about their feelings" (<http://theyesmen.org/hijinks/dow>).

¹³ Jill Lane and Ricardo Domínguez, "Digital Zapatistas," *TDR* 47. 2 (2003): 130, 129–44.

¹⁴ b.a.n.g. lab, directed by Domínguez, includes members Micha Cardenas, Christopher Head, Elle Mehrmand, Amy Sara Carroll, and Brett Stalbaum. It is "an On/Off line space for artists in the Visual Arts Department at UCSD to explore and present works at the edge of invisibility, at the edge of the digital and biological, at the edge of micro-robotics and nano-art, from in-virtu to in-vivo works and back"

¹⁵ See Domínguez's discussion of EDT's place in the tradition of civil disobedience in "Electronic Civil Disobedience: Inventing the Future of Online Agitprop Theater," *PMLA* 124.5 (2009) 1806–11.

¹⁶ Laila Nadir, "Poetry, Immigration and the FBI: The Transborder Immigrant Tool," *Hyperallergic: Sensitive to Art & Its Discontents* (July 23, 2012). <http://hyperallergic.com/54678/poetry-immigration-and-the-fbi-the-transborder-immigrant-tool/> Accessed on February 11, 2013.

¹⁷ In cited interview with Nadir.

¹⁸ This forms part of a book manuscript in progress titled “Non-Literary Fiction: Invention and Intervention in Contemporary American Visual Culture.”

¹⁹ Ceceña, 19.

²⁰ Ibid., 19, emphasis added.

²¹ Ibid., 20.

²² Subcomandante Marcos authored, for instance, *La historia de los colores* (1996), which was published in a bilingual edition (*The Story of Colors*) in 1999. The initial funding granted by the National Endowment for the Arts for Cinco Puntos Press’s translation was cancelled abruptly by then chairman William J. Ivey.

²³ Porto-Gonçalves, Carlos Walter. “De saberes e de territórios: diversidade e emancipação a partir da experiência latino-americana” in Ceceña, *De los saberes de la emancipación y de la dominación*, 48, 37–52., emphasis original.

²⁴ Mignolo also takes up Anzaldúa’s border subject in his thinking about decolonial epistemologies. See his *Local Histories/Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking* (Princeton: Princeton University Press, 2000).