

## essay

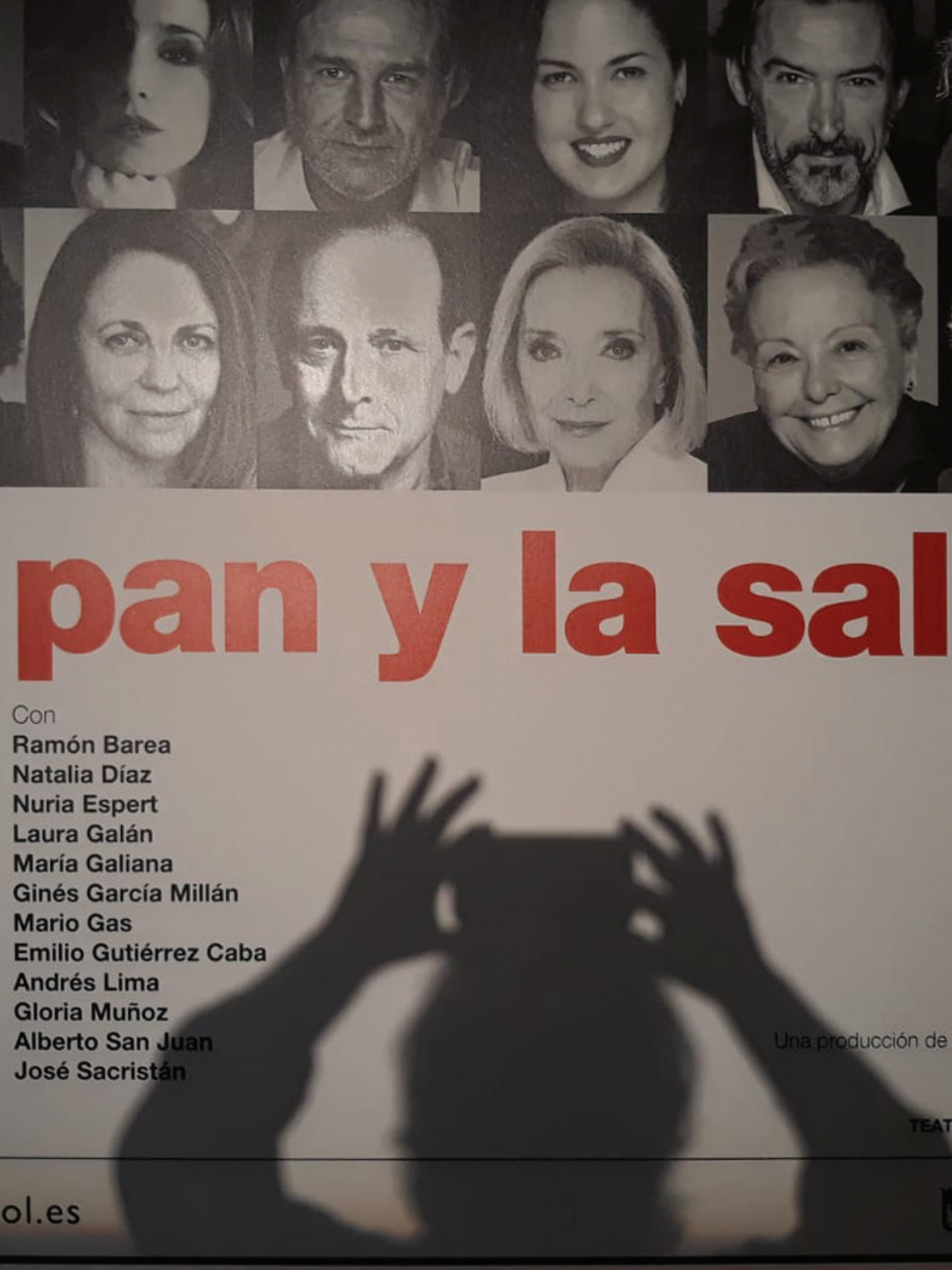
TONY FISHER

### The Law of the Theatre



The poster for *El pan y la sal* at Teatro Español, Madrid.  
Photo Laura Ortega,  
courtesy of Andrés Lima

That the scene of the law resembles a theatre is a well-rehearsed trope in popular culture. So hoary has it become that one might suspect those who utter the truism have become inured to the fact that the metaphor conceals more than it reveals, and that to rely on a commonplace simply in virtue of its being a commonplace by no means provides sufficient cover to disguise its dwindling descriptive power. When the philosopher Simon Critchley, for example, in his otherwise astute book on Greek tragedy, suggested an 'affinity between the theatre and the law' (2020: 45; see also Critchley 2020: 26), the self-evidence of the claim merited not even so much as a passing comment. What it provided instead was the basis for the blithe assertion that 'the law court is also a theatre'. To be fair, such



Con  
 Ramón Barea  
 Natalia Díaz  
 Nuria Espert  
 Laura Galán  
 María Galiana  
 Ginés García Millán  
 Mario Gas  
 Emilio Gutiérrez Caba  
 Andrés Lima  
 Gloria Muñoz  
 Alberto San Juan  
 José Sacristán

Una producción de T

TEATR

unthinking assertions may well be forgivable when one considers how the facts seem to lend credence to the idea: that theatre recognized itself in the law and that it happily incorporated the 'scene of the law', the trial setting, which was played out in innumerable courtroom dramas throughout theatre's history – in countless plays and productions – demonstrates that such an affinity stretches from the dawn of theatre in antiquity to its dusk in the present day. All the same, it is precisely this alleged 'affinity' that is contradicted by the lurking suspicion that a courtroom really ought not to be conflated with a 'theatre'. The reasons for this were conveyed by Hannah Arendt in her eloquent, although ironic, description of the 'house of justice' in her report on the trial of Nazi war criminal Adolf Eichmann, which began in Jerusalem in April 1961. 'There is,' she remarked,

no doubt from the very beginning that it is Judge Landau who sets the tone, and that he is doing his best, his very best, to prevent this trial from becoming a show trial under the influence of the prosecutor's love of showmanship. Among the reasons he cannot always succeed is the simple fact that the proceedings happen on a stage before an audience, with the usher's marvelous shout at the beginning of each session producing the effect of the rising curtain. Whoever planned this auditorium ... had a theatre in mind, complete with orchestra and gallery, with proscenium and stage, and with side doors for the actors' entrance. (Arendt 1992: 2)

The essential dilemma is indicated by Arendt's reference to the genre of the 'show trial', which revolves around the idea that although theatre has recognized itself in the law, it is by no means clear whether the law should recognize itself in the theatre. Or more to the point: insofar as there are times when a court most certainly does borrow the garbs and trappings of the theatre, the troublesome question that sits guiltily awaiting an alibi in the anteroom of the juridical imaginary concerns whether the law ought not be troubled by such a recognition. For Arendt, the tendentiousness of the 'law as theatre' metaphor is exposed when the seriousness of what is at stake in law not only contradicts but completely overwhelms the triviality of its staging: it is the very 'show' of the show trial that casts considerable 'shade' on the metaphor that the law court should be conceived as a theatre. 'It was precisely the play aspect of the trial,' Arendt was to write, 'that collapsed under the weight of the hair-raising atrocities' (1992: 7).

What parameters, therefore, if any, can be said to properly define the relation of the law to the theatre? This is the first question that this essay seeks to answer. Its form of problematization speaks critically to the risk that theatre poses to the law – the risk, in short, of its becoming 'theatrical'. That this risk is by no means an extraneous one but is integral to the problem of law has been elegantly exposed in the work of legal humanities historian Julie Stone Peters. Stone Peters has shown that not only is the idea of law, grasped as a space of performance akin to theatre, by no means a recent problem – it appears in both Greek and Roman juridical thought

(and practice) and extends through the early modern period up to the present day – but owing to the degree of its interdependence must also therefore be seen as a 'constitutive idea in Western jurisprudence' (Stone Peters 2022: 9). The conditions for the exercise of law seem to implicate it in the dimension of performance, whose basis is the theatre. The historical circumstances concerning the permeable boundary that separates theatre from the apparatus of law emerge as two horns of a theoretical dilemma, then: theatre appears to be both constitutive for Western legal practices at the same time as it constitutes a 'problem' of law. As Peters observes, 'legal performance ... confronts its own status as performance, understood as power or problem, figured as inherently antithetical to law or inherently inseparable from it, embraced or reviled' (5). It is at this point that I would like to sharpen the terms of this dilemma and, for the sake of the argument, reconfigure it in the form of a principle that will be tested in what follows: namely, that the possibility of justice is diminished in direct proportion to the theatricalization of the law. The more the law court approaches the condition of theatre, I will argue, the less likely it will result in a 'fair' outcome.

In the second part of this essay, I will consider a variant of this principle by posing the question of its inverse. As the two plays published in this volume make clear, the theatre is by no means diminished in virtue of constituting itself as a sphere in which the question of justice is thematized. Thus, the closer the theatre approaches the condition of the law, if it can genuinely be said that the locus of that condition is a concern for justice, the greater its capacity for accomplishing the Schillerian dream in which the 'stage exercises [upon the public] a more profound and lasting influence than morality and law' (Schiller 1985 [1784]: 26). Indeed, the two plays at the centre of this volume not only suggest a quite different way of conceiving the relation of theatre and law to the one described above, but in doing so they show that the law's entrance into the 'space' of theatre offers a plausible means for making visible the problem of justice that lies at the heart of the legal process and in a way that law courts at times take for granted – often at considerable cost to those who enter the legal system. That they each testify in their own ways to hair-raising atrocities is by no means an incidental factor in the relationship but rather accentuates the critical possibilities of theatre's 'relation' to law, and it is this critical relation that theatre can make available to an interested public that is discernible in both plays.

The first, *The Bread and the Salt*, deals with the case of Baltasar Garzón, a Spanish judge who was indicted for opening an investigation into historical crimes committed during the Franco era in Spain, seemingly in open defiance of the Amnesty Law passed in 1977 that prohibited retrospective prosecution of individuals for political crimes – a case he was not, in other words, 'authorized to open' (p. 47). Garzón's (ultimately successful) defence was that the 'disappearances, illegal detention, assassinations, and extrajudicial killings' that took place during and following

the Spanish Civil War by the Franco regime against its enemies could not be classified as simply 'political crimes'. On the contrary, they were 'crimes against humanity' and therefore were not covered by the law of amnesty (p. 60). The second play, *Jauría* or 'Pack', based on transcripts of the so-called 'wolf pack' trial, centres on the harrowing circumstances of a gang rape committed against an 18-year-old woman in 2015 by five men. The trial concluded with the acquittal of the five men for the charge of rape, although they were found guilty of the lesser crime of sexual assault. The public outcry and intense outrage that followed the verdict, compounded by the mistreatment of the young woman during cross-examination by the defence attorney, prompted, among other things,<sup>2</sup> the Spanish government into announcing an expert commission that led eventually to the reclassification of sexual crimes in the Spanish criminal code. As Maria M. Delgado observes in her introduction, although both plays deal with quite distinct cases (and setting to one side the obvious fact that both are derived from trial transcripts), they nonetheless each share a profound commonality that lies at the heart of this book: what both plays reveal is that in each case it is 'the law itself that is on trial' (p. 3).

Exactly how the theatre is able to establish such a critical relation to law is by no means self-evident, however, and this is the second problematic that I wish to address in this essay. An indication of how it might be resolved is given through Delgado's frequent appeal to the term 'space' in describing the effects produced by these plays. Theatre, she writes, is a 'space to ask difficult questions' (p. 16); a 'space to counter the instant judgements of social media' (p. 22); it is a 'site for public education, a place where judgements can be revisited... where space can be found for those on the losing side of the Civil War...' (p. 23); theatre 'cultivates' 'spaces' of 'disquiet' – 'spaces where careful listening is encouraged' (p. 23); and finally, both plays, she observes, invite their respective audiences to 'actively engage with the legal materials embodied in the theatrical space' (p. 24). How might this appeal to theatrical space be grasped in such a way as to demonstrate theatre's capacity for disclosing what might be termed as (a) the deficit of the law, and (b) the aporia of justice, insofar as the first benights and the second is elided by the courtroom, the publicity of legal process, and the scene of the trial?

I would like to suggest a preliminary response to this question by appealing once again to Arendt and, in particular, to her concept of the 'space of appearance', elaborated in her book, *The Human Condition* (1998 [1958]), as a way of understanding the 'space' of the theatre and the correlative problem of 'theatricalized space'. The correspondence of theatre with the space of appearance seems at first glance to be an obvious one since Arendt (1998 [1958]: 199) states that the space of appearance 'comes into being whenever men [*sic*] are together in the manner of speech and action'. This is the very stuff of theatre, of course: speech and action; language and deed. What such an obviousness does not account for, however, is the effect theatre has

on the space in which speech and action are supposed to produce consequences in the world. Speech act theorists, such as John Austin, have long since identified the speech act in theatre as an 'infelicity' of speech: where a judge in a criminal court produces 'verdictives' – literally, the issuance of legal judgements bearing the full force of law – in theatre, such verdicts enter the dimension of what can only be described as 'mock speech'; it is the kind of speech that an actor mouths, and whose deeds are empty of any actual costs or penalties in life (Austin 1976: 22). The space of appearance, all the same, is by no means illegitimately applied to theatre, since the theatre is indeed a 'space of appearance', even if theatre's singular character *qua* the 'space of appearance' remains, for now, as inscrutable as the meaning of its unstable appearance relative to, yet outside of, the law. That said, the concept contains a resource that provides a deeper clue as to the capability of theatre space as a space for intervening in law. As a space of appearance, theatre belongs to a 'power dynamic' that Arendt counterposes to mere 'force' (1998 [1958]: 200). The 'power' Arendt has in mind is that of the public realm, which represents a democratic space for expressions of solidarity, displays of social and political pluralism, and the exercise of free public discourse. And while force can be 'monopolised' through the acquisition of 'the means of violence', as happens in times of overbearing executive control such as occurred during Franco's dictatorship in Spain, and thus can certainly be used to suppress the 'power' of democratic assembly, it cannot thereby become a 'substitute for it' (202). Where force (of law) becomes repressive, (democratic) power stands in abeyance. But equally, when democratic power is freely exercised, as it sometimes is in a theatre, then 'force' is subject to a limitation, and can only be exerted under conditions of democratic assent. In light of this dialectic of force and power, as described by Arendt, my proposition concerning the solution to the antinomy of theatre and law will be to argue that whereas the court's authority resides in the 'force of law', always at its disposal, and that derives from the monopoly the state has – as Max Weber once expressed it – on 'legitimate violence',<sup>3</sup> the power that resides in the theatre stems from its peculiar ability to suspend, even if it is only for the duration of the show, the *force* of law in order to make it available to a form of democratic scrutiny.

But first: What exactly lies at the root of the antinomy of theatre and law? What is the nature of the risk, mentioned earlier, that theatre allegedly presents to law? And how might that risk help articulate the principle that the likelihood of justice is diminished the closer the law approaches the condition of the 'theatre'? Of course, any answer to these questions will depend on how the term 'theatre' is understood, and how its 'condition' is formulated. One clue to such a formulation is offered by Alan Read in his book on theatre and law. Read argues that the 'cursed ground' on which theatre stands 'breaks' the relation of words to things: 'The very act of theatricality sunders any necessary causal relation between words and things. That is the *a priori* of all performance'

(2022: 25). Read's appeal to the 'a priori' of performance, grasped in the sense of the theatrical 'act,' already identifies the precondition that uniquely distinguishes the kinds of acts, deeds and spoken words occurring in the theatre from the self-same words and acts issued in the real-life circumstances of, for instance, a courtroom. Where the latter is defined as an 'effective domain,' in which what is said is of significant import, potentially determining the fate of the speaker, the theatre encompasses only a 'virtual' realm. This is why there is all the difference in the world between the 'primary performances of law' that comprise an actual trial and what Read describes as their 'secondary rendering through theatre,' as is the case in the plays published here (17). The condition of the theatre is that it represents the world in a 'virtual' form. It is not 'real' so much as 'irreal.' On this basis, the condition of the theatre can also be formulated as a 'law,' which I will call, for want of a better term, the 'law of the theatre.'<sup>4</sup> The law of the theatre, at least insofar as it espouses the 'secondary rendering' of reality, is essentially a law of mimetic substitution. To say that something is theatrical is to indicate that in some way or other, according to its mode of presentation, that thing is no more than a mimetic substitute for something else, something 'real'; the condition of theatre is thus the condition for the displacement of reality by a simulacrum or imitation.

The law of the theatre, reproved as the sheer impertinence of mimetic substitution, finds its earliest treatment in Plato's influential critique of mimesis. It is here that the condition of theatre is cast in terms that present it in diametrical opposition to the proper condition of the law and to the authority of the legislator. It is not simply that theatre offers empty imitations, or that the skill of the mimetician or poet lies in an art of deception that convinces an audience to treat an illusion as though it were reality – imitation as a form of conjuring, trickery or magic, which I shall come to shortly. Nor is it simply the fact that an imitation lacks seriousness, that it is produced 'for the sake of games' (Plato 1997: 602b).<sup>5</sup> It is rather that the effect of imitation, of mere resemblance, copying and seeming, makes its appeal not to reason but to the 'inferior' part of the psyche (603a), and it is this that touches on the profoundest aspect of law in its relation to the subject: theatre debilitates that which is 'best in us' (604d) – that part of the soul that is 'ready to obey the law wherever it leads him' (604b). The juridical subject, the subject governed by a rational constitution based on law, is thereby counterposed in the Platonic critique of the condition of theatre to a corrupted, ill-governed and inferior type of person: an 'imitative poet puts a bad constitution in the soul of each individual' (605b). The reason for this goes to the very heart of the Platonic project, and the fears that haunt it. Law and lawfulness are opposed fundamentally by the phenomenon of *stasis*: the 'civil war' in the soul that rages in the heart of the theatre spectator, tearing them apart by stirring up unwanted emotions, feelings and affects. Plato's anti-theatricalism gives expression to this fear: that discord within the subject will lead to discord in

the *polis* itself. Herein lies the object lesson contained in the Socratic warning against the theatre, and the reason why the just legislator who is wise will not tolerate its existence in the city: 'If you admit the pleasure-giving Muse, whether in lyric or epic poetry, pleasure and pain will be kings in your city instead of law or the thing that everyone has always believed to be best, namely reason' (607a).

If the primary risk that the condition of theatre poses to law, according to Plato, is that it incites its audience to indulge in delinquent behaviours, that its effects work through emotional manipulation rather than rational deliberation, the second threat to the law is that its theatricalization undermines its foundation in truth. This fear that theatre might influence forms of legal performance, and that its corrosive effects might deprive law of its veridical basis, such that it too will trade in deception, lies at the heart of the famous story, reported by Plutarch, of the confrontation between Thespis and the legislator Solon following one of Thespis's theatrical performances:

After the performance, he [Solon] addressed Thespis and asked if he was not ashamed to tell so many lies in front of so many people. When Thespis answered that to speak and to do such things in play was not terrible, Solon struck the ground with his staff and said, 'Soon, however, if we praise this play and honour it in this way, we will find it in our contracts.' (cited in Irwin 2005: 274)

What Solon fears above all is that in approaching the condition of theatre the law will be corrupted by falsified claims to truth. Theatre, when it enters law, encourages lying, which encourages fraud.

Thus: on the side of law, the necessity to preserve legal processes from deception; on the side of theatre, the art, and techniques of substituting truth for the counterfeit, for the forgery, for the fake. Through theatrical means, the lie enters the space of law. To understand what is meant by this, however, it is essential to take the precaution of avoiding the conflation of two forms of performance, to see that the mode of performance that belongs to the law is *different in kind* to the mode of performance that occurs in a theatre. Unfortunately, the distinction is easily blurred, and one is effortlessly mistaken for the other, as is demonstrated by Read's subtle equivocation when describing the *act* of oath-taking in a court as an 'overtly theatrical act, the combination of a gesture with a phrase, purport[ing] to secure the words used in some form of truth event...' (2022: 17). If an oath is *only* a theatrical act, then it is, by his own admission, without consequence or effect; an oath would be no more than an empty performative, and so not an 'oath.' However, if taking an oath is not merely theatrical but is subject to the force of law, then it cannot be said to be theatrical in this sense: the act of swearing an oath is not a mere performance in a court of law but a binding performance that bears the possible penalty of perjury in cases where the 'truth' spoken is later discovered to be a deliberate lie or founded on a deception. The oath –

literally, the giving of one's word – constitutes the legal means for preventing deception from polluting the legal record, despite itself being susceptible to the very thing it seeks to avert.

This is also what it means to say that the condition of possibility for lying in either a court or in public life more generally has something to do with 'theatre'. It does so not because the performance is 'theatrical' but because the *condition of theatre* is understood to depend on the mimetic substitution of 'being' for 'seeming'. The infamous example of Richard Nixon, the US President at the centre of the Watergate scandal, will illustrate my point: Watergate made headline news when an attempted cover-up of the President's involvement in a burglary that took place on 17 June 1972 at the Democratic National Committee headquarters in Washington, D.C. was reported in *The Washington Post*. It led not only to Nixon's political downfall, but also to the prosecution (and jailing) of several campaign aides also implicated in the scandal. Now to lie is to assert something in such a way that in the lie something gets distorted, that is, the truth. But a lie is not 'nothing'; it is something. To say, for example, that there has been a 'cover up', is to say that not only have the public been deceived but that the deception took the phenomenal form of an assertion that deliberately misled. When Nixon made his infamous televised broadcast, in which he declared to the American public: 'I had no prior knowledge of the Watergate break-in', the blatant lie sealed his fate. The point here, however, is not that he was caught out but the structure of the phenomenon itself. In fact, four things are necessary for the success of false testimony, enumerated in what follows as four performative principles of deception: (a) the *principle of plausible deniability*: that the lie is given plausibility simply in virtue of the fact that it could be true – Nixon may well have had no knowledge of the break-in; (b) the *principle of referential ambiguity*: that the deceptive statement must be capable of referring to something that could well exist (that Nixon was not involved in authorizing covert and improper campaign tactics) while casting doubt on an actual state of affairs (that he did do so); (c) the *principle of intended deception*: that the statement is motivated by a deliberate intent to hide what really did occur – the actual state of affairs to be hidden, that is, that Nixon did encourage his subordinates to engage in such activity; and (d) the *principle of self-concealment*: that an assertion that seeks to deceive is itself by nature self-disguising – to pass itself off as true, it must successfully cover its tracks. What is at stake in these four principles is the thought that falsity is a mode of concealing something but in such a way that it nevertheless insinuates itself as an interloper into the domain of 'true' appearances. Nixon's lie was, precisely put, a convincing piece of 'theatre'. By all accounts, then, Solon was not wrong to fear the conflation of law with the theatre.

But there is a graver reason yet to fear the law once it has been subsumed under the condition of the theatre. Consider the following deictic possibility: Read writes that the 'theatrical logic of the stage' provides it with a 'theatrical cordon sanitaire' that protects it from reality

(2022: 35). In other words, the 'here and now' of a theatre performance permits no possibility of its slippage with or into the 'here and now' of reality, and so what occurs on stage has little to no direct bearing on what happens beyond it. But no such cordon sanitaire exists to protect reality from the law's perversion by theatre. The consequent risk to law is that it loses sight of its very nature (that its procedures are designed to ensure justice for victims and punishment for wrongdoers). Contaminated by the venality of 'theatre', the law becomes venal itself, and an instrument for the corruption of public life. The dangerous effect of the law's theatricalization is nowhere more intensely felt than when the scene of law converges with the scene of political intrigue. This final reason to be concerned about the theatricalization of the law recurs to the issue identified in Arendt's assessment of the Eichmann trial: that in making theatre and law homologous, the law becomes a 'show', as exemplified above all by the 'show trial'. Jens Meierhenrich and Devin O. Pendas have observed that '[a]ll trials ... may be political in the generic sense that they uphold the state's right to adjudicate and resolve social conflicts' (2016: 10). However, as they also note,

The specific characteristic of show trials, as a distinct sub-set of political trials, is that they seek – not always successfully – to stage manage the proceedings in such a way as to minimize [the] risk [of public dissent]. They carefully frame the narrative in such a way as to constitute a highly determinant trial audience. (Meierhenrich and Pendas 2016: 42)

Although innumerable examples of show trials exist in history (one of the earliest recorded is the trial of Socrates), perhaps the most important are the Moscow Trials insofar as they exemplify the manipulation of the legal system for the purposes of staging a piece of political theatre. The Moscow Trials took place at Stalin's behest from August 1936 to January 1937. The primary motivation for them was to give legalistic cover for what was in reality a purge of political enemies within the upper echelons of the regime. The central accusation of conspiracy against the Soviet State, which included trumped up charges of terrorism and supposed collusion with the Gestapo, were targeted at Leon Trotsky and his son, Leon Sedov (both of whom were then living in exile – both eventually convicted *in absentia*). By the end of the trials, of the thirty-three co-defendants, twenty-nine were sentenced to death and summarily executed, and four others sentenced to life imprisonment. International condemnation of the trials quickly followed; it led to the formation in the United States of the Dewey Commission (Commission of Inquiry into the Charges Made against Leon Trotsky in the Moscow Trials) (chaired by the American philosopher John Dewey). The avowed aim of the Commission was not to defend Trotsky but to alert the world to the use of the courtroom for explicitly political ends – a phenomenon that the Commission's final report proclaimed 'imperils countless human lives and compromises those standards of justice which mankind has painfully established to safeguard the individual against

government oppression' (Dewey *et al.* 1938: 4–5). While much could be said about the Moscow proceedings, I will here concentrate on the general findings of the Commission, as published in its report, insofar as they help articulate the central problem of the show trial: 'that the trials have served not juridical but political ends' (394). In the first instance, the report draws attention to an ambiguity that can be said to define what is essentially at stake. The show trial is not in fact a travesty of law, since the legal process, as Dewey and his colleagues were meticulous in pointing out, was scrupulously followed. It was, however, most certainly a travesty of justice. As the report states:

In the opinion of the Commission, adherence to a given legal procedure is not the basic criterion in judging any trial. The basic criterion is fairness and honesty in the attempt to ascertain the truth. It is quite possible, as history has proved, for accused persons to be falsely convicted without departure from the letter of the law governing criminal trials. (Dewey *et al.* 1938: 21)

Although the 'letter of the law' was followed, there was no doubt in the minds of the report's authors that the Moscow Trials were 'frame-ups' (Dewey *et al.* 1938: xv, 187); indeed, that the proceedings were 'political persecution in juridical form' (4). In the show trial, procedure trumps principle, and the trial discredits itself, not because its procedures are corrupted (although they are), but because it is a sham from top to bottom: the outcome is a foregone conclusion and the accused are already condemned as guilty, regardless of what they say in their own defence. For the defendant in the show trial, every utterance, every speech, every statement offered is determined a priori to be an act of self-incrimination: the accused 'inculpate' themselves through their very testimony (24). Beneath the affidavits, the depositions, the statement of experts, the mountains of evidentiary documents that purport to comprise indubitable 'corroboration', the eye witness reports (always apocryphal), the denunciations and the counter-arguments of the counsel (if it exists), the 'appearance' of due process gives the lie to the dictum that 'justice must be seen to be done'.<sup>6</sup> What pervades the whole trial is its untruth, law as sleight of hand based on extorted confessions, a deception perpetrated with the connivance of the court officers in a 'politically motivated' (Dewey *et al.* 1938: 387) vendetta. The show trial is thus convened entirely in the 'realm of the imaginary' (46).

The paradox of the show trial, by which I mean the trial that employs the law not to ascertain the truth or for the purposes of reaching a just outcome but instead to eliminate political enemies, was also the subject of a probing essay written by the political philosopher Judith N. Shklar in 1964. Reflecting on the criminal proceedings initiated by the victors at the end of the Second World War, including the Nuremberg and Tokyo Trials as well as the later prosecution of Eichmann in Jerusalem, Shklar elaborated what she termed the 'principle of legality', which 'aims at protecting individuals against arbitrary government actions' (Shklar 1986 [1964]: 152).

The principle of legality states that for there to be an unprejudiced prosecution there must first be a clearly established law that defines the scope of its application to any act made criminal by its existence on the statute books. The problem of the show trial, which is essentially no different from that of any political trial, whether held in public or in a secret 'Kangaroo' court, is how it is able to meet the standard set by the 'principle of legality'. On this point, Shklar argued,

Political trials ... simply tend to circumvent the demands of legality. What the principle of legality demands is a law and also an act made criminal by law. In political cases either one or the other or both may be lacking, as often as not ... [E]ither criminal acts will be falsely charged, or legally innocent acts will be misinterpreted so as to seem criminal. (Shklar 1986 [1964]: 152)

Shklar's terms in this passage are noteworthy: the *falsity* of the accusations, combined with the deliberate use of *misinterpretation* to make something *seem* criminal, indicate the profound deficit of law in cases where a political motive is involved – that is, in cases where the political trial blatantly approaches the condition of the theatre. Such trials tend to violate the principle of legality (Shklar 1986 [1964]: 170) almost by definition – even as they adhere to legal processes, the purpose of this procedural 'show', with its predetermined ending, where no-one is really listening, is the eradication of political enemies: they are 'trial[s] of elimination' (220).<sup>7</sup>

It is precisely this 'risk' of injustice, which occurs wherever politics and theatre merge with law, corrupting the possibility for due process, that permeates the Garzón trial. Consequently, it is the use of law, theatricalized for the purposes of political repression, that lends *The Bread and the Salt* its profound sense of historical poignancy, and that appears within the play in two closely related ways. The first concerns the nature of the accusation levelled against Garzón by the prosecution: essentially, that he had sought to pursue a Causa General in reverse ('Is it not true that you were carrying out a "causa general"', p. 45). This meant that instead of investigating crimes of genocide perpetrated under Franco's regime, as he had claimed, Garzón was in actual fact motivated by political ends. The accusation itself, however, strays perilously close to conceding the legitimacy of Garzón's investigation on this point. The reason for this lies in the circumstances of the Causa General and what it enabled. The decree took aim at what its title described as 'red domination in Spain', making explicit its political intent. Issued by Esteban de Bilbao Eguia, the Francoist Minister of Justice, on 26 April 1940, it initiated a process of investigating 'the meaning, scope and most blatant demonstrations of the criminal activity of the subversive forces that in 1936 openly attacked the existence and essential values of the Homeland'.<sup>8</sup> Its purpose was twofold: to serve as a tool of propaganda that made use of the courts to lend to the Francoist regime an air of legitimacy that it did not possess since it had come into existence by wholly illegitimate means – through an uprising against the democratically elected government of the Spanish Second Republic (1931–9). And second: to

pursue the persecution of those on the losing side of the Civil War. Under the guise of the Causa General, Franco continued, on a staggering scale, the work his military tribunals had begun in 1936, and that, as Peter Anderson has written, 'dragged opponents before summary military tribunals and charged them with military rebellion for supporting the elected government' (2010: 2–3) – thus did Franco's courts wilfully misinterpret the 'legally innocent act' of defending the Republic as an indefensible crime. Under Franco, the justice system lost all semblance of truth as the 'trial system became enmeshed in a web of repression' (151). What Garzón sought to prove, and what *The Bread and the Salt* makes clear, is that there is a thin line between a 'political crime' and genocide – a line that Franco's courts trampled into the dust of the Spanish countryside, beneath which lay the remains of their victims, interred in innumerable mass graves.

I would like now to redeem the second question, raised earlier, yet still unanswered, concerning the ability of theatre to establish a critical relation to law, and how in doing so the principle governing the problem of law's theatricalization comes to be inverted. My preliminary proposition, stated earlier, was: the closer theatre approaches the condition of the law, the more it thematizes the law, and the closer it inhabits the law (quite literally inhabiting its 'habits': its forms of speech, its modes of performance, its way of being, etc.), the more it is able to make manifest the problem of justice vis-à-vis the problem of legality. Recall how it was also said that theatre possessed a peculiar power that enabled it to 'suspend' the force of law – the task at this point is to now determine the exact meaning and extent of this power. If the law constitutes a procedure to test the consistency or inconsistency of a witness's discourse, the plaintiff's account, the nature of the evidence, the guilt or innocence of the defendant, the argument and rebuttal of the counsel and so on, then theatre, in representing this procedure, does so in a space of performance whose distinguishing feature is that it is deprived of the force of law. This occurs as a direct consequence of translating the idiom of the court into the idiom of the theatre – the idiom of mere 'play'; and insofar as the theatre 'lends its ear' in play to that which remains unsaid in the court, makes manifest that which cannot appear there, and speaks to that which is silenced within the language of the law, then theatre can be said to give utterance to the law's 'unutterance'.<sup>9</sup> To comprehend theatre's critical intervention within the warp and weft of the law's rhetoric, textuality and discursivity, is to above all understand the peculiarity of theatre's construction of space (as a critical 'space of appearance'); it is to show how the space of theatrical performance is able to produce an effect that is utterly distinct to the effect of legal performance. To establish this, it is necessary therefore to revisit the 'law of the theatre' to reformulate that law, as it were, in another 'style'; above all, it is to treat it apart from the scepticism with which it was necessarily approached in the previous discussion.

Now, according to the Platonic prescription, the law of the theatre is simply the law of

mimesis, and that fact alone is enough to condemn it. All the same, how might such a law be formulated so that it becomes possible to approach theatre *as* theatre, rather than as the series of pathological effects that are produced when something in the 'real' world approaches the *condition* of the theatre? To begin with, it is not simply enough to state that the law of theatre is a law of representation per se, since there are many ways in which the same thing can be represented other than through theatre. The law of mimesis must be formulated in a way that strictly relates it to theatrical practice. If the theorem is thus that the law of the theatre brings the object of representation into the specific space of representations that belongs to the theatre, then theatre's peculiar spatiality determines *how* what is seen, viewed and heard within it will be represented. The law of the theatre states that in the theatre objects will not be grasped in their natural milieu, but in the milieu of the stage; they will be represented 'theatrically'. Simon Critchley offers a useful starting point for understanding the nature of theatrical representation, when he writes:

The ancient Greek word for 'spectator' was *theoros*, from which we get the word *theoria*, theory. *Theoria* is linked to the verb 'to see', *theorin*, which takes place in a theatre, a *theatron*, to name the act of spectating. If tragedy is the imitation of action, of *praxis*, although the nature of action remains deeply enigmatic, then *praxis* is something seen from a theoretical perspective. Or, better said perhaps, the question of theory and practice, or the gap between theory and practice, first opens in theatre and as theatre. (Critchley 2020: 5)

Tragedy – and theatre more generally – stages a 'theoretical' game by employing a 'fictionalized' action or a 'mimesis praxeous' in which truth nonetheless makes an appearance. In other words, the power of the theatre resides in the kind of *mimesis praxeous* that, in subjecting action (*praxis*) to the space of mimesis, deprives that action (speech and deed) of its immediate and consequential relation to events and persons in the world. The theatre stands as a kind of 'clearing' for the manifestation of a truth that theatre alone determines, an opening up of a veridical 'gap' between theory and practice – and a way of 'lighting up' the murky phenomenal realm of human deeds, such that they are made available to a theoretical and contemplative form of critical scrutiny. I have elsewhere described this translational operation as one in which theatre 'clones' the *space* of human action (see Fisher 2023: 210–11). This does not mean that the theatre necessarily represents the space of action in the form of a carbon copy, although it need not preclude such a possibility. For example, Milo Rau's *Hate Radio* (2012) reproduced the radio station Radio Télévision Libre des Mille Collines (RTL), partly responsible for inciting the Rwandan genocide of 1994, as an exact facsimile. Many documentary plays, including those published here, by contrast, do no such thing (often the presentational aspect is marked by the presence of *podia* from which actors speak). In these plays and performances, the theatre constitutes a presentational space in which things that otherwise produce real effects

in the world can be viewed at a distance, and without risk of inducing the *self-same* effects. This is why when Richard Schechner counsels that performance should be defined as 'twice-behaved behavior' (1985: 36–7), it is necessary to add that the *effect* in theatre of repeating 'twice' behaviour, occurring in the real world, by no means entails that it is experienced twice in the same way. In cloning the space of human action, theatre converts space into any-space-whatsoever, but above all into a presentational space for the recitation of speech and deed, understanding 'recitation' here literally to mean the 'second rendering' of what was once said and done, or could be said and done in such a space.<sup>10</sup> In producing itself as a 're-citational' space, theatre *renders* (extracts and distils) actions and deeds that properly belong to the milieu of reality – to given space (for example, the speech and deeds that belong to a courtroom) – thus making those actions observable to a public in a way that is unavailable to someone who is immersed in those situations. And it is this ability to make speech, action and deed available to a theoretical/theatrical view that accounts for the critical power that characterizes theatre as a 'space of appearance'. It is a power that was evidently known to Aristotle, who, unlike his teacher, Plato, understood the value of theatrical representation: that it provided a space within the *polis* for 'enunciating a general truth' (Aristotle 1995: 1450a 7)<sup>11</sup> concerning the nature of human action (1450a 1–7). For Aristotle, the aim of theatre was not simply a matter of describing what has previously occurred, which would make it a 'species of history'; on the contrary, the purpose of theatre was seen by him to be rather more 'philosophic' (1451b 6). What the *mimesis praxeous* revealed was the probable basis of the actions it represented – not a 'universal' truth, as it is often translated, which would hold little meaning for Aristotle, so much as the truth of a situation given *x* or *y* circumstances – that is, according to the factors of what can be known and said about them. The 'probabilistic' basis of theatre's representation, for Aristotle, thus lay in its critical approach to the world of human deeds, interrogated according to their background conditionalities, their underpinning tendencies, the involvement of other effectivities or precipitations that thwarted or hastened them – in short, according to the 'antecedents' of the event (1451a 20–1, 1453b 13–14, 1453a 37–8). In this undertaking, theatre became a space for the demonstration of an argument, with the audience 'seeing everything with the vividness of an eye-witness' (1455a 24–5).

What this means is that although *mimesis praxeous* bears the imprimatur of the 'copy' relative to an 'original' act, this does not mean it is 'merely' a copy. It means that what is intuitable within theatre is the *imprint* of the real, its shape and form, not the absence of all reality. In becoming the analogue of the real, what occurs in the theatre cannot therefore be said to be 'less real' than the original; rather, the space of theatre produces that original in a reflexive form that seeks to restore to the superficially apparent the conditions of its real intelligibility. Thus, dull, and prosaic

reality – the idle speech and banal chitchat of killers in *Hate Radio*, for example – assumes a new meaning when it is reproduced, word for word, in theatre: located beyond the pragmatic sense that lends speech, words and deeds a natural authority, the represented 'act' is compelled to specify a different referent to its conventional meaning. Indolent words are made to account for their blood-thirsty intentions, and if the illocutionary force of speech is suspended in theatre, it is only so as to reveal all the more forcefully how the spoken utterance betrays the deadliest or most sordid of motives. If theatre deprives deeds (and rhetorical speech) of their power to induce consequences, it is not because theatre lacks consequence but to ensnare the consequential character of those deeds in a form that is elucidatory. Theatre answers reality in the accusatory voice: it pinpoints its intrinsic culpability. This is why in the copy, strictly speaking, it is only the *effect* of the real that is curtailed; theatre's fabled 'as if... means: *as if...* the mundane destiny of words and deeds were suspended by the law of the theatre. Through the 'as if', the 'law of the theatre' – the law of *mimesis praxeous* – entails that in theatre being is framed as though it were only 'play'. The actor is not really acting; they are playing-at-being, play-acting. The concept of 'play' does not signify a space subtracted from reality, however, an eccentric space that would simply be self-effacing or timorous, such that a fiction might be permitted to exist in its place. Theatre is always 'present' in its presentation of other spaces (without which it would not be 'theatre'). Rather, what theatrical space signifies is a fictionalization of the real, so that a space of play can be constructed that is subtracted from the *reality of the actualizable*, and from the *effects of being*. Play – being-at-play/playing-at-being – constitutes the 'ontological' ground where the law of the theatre is autochthonous. Arendt, in her explication of the meaning of mimesis, could not be clearer on this point:

The specific revelatory quality of action and speech, the implicit manifestation of the agent and speaker, is so indissolubly tied to the living flux of acting and speaking that it can be represented and 'reified' only through a kind of repetition, the imitation or mimesis, which according to Aristotle prevails in all arts but is actually appropriate only to the drama, whose very name (from the Greek verb *dran*, 'to act') indicates that play-acting actually is an imitation of acting. (Arendt 1998 [1958]: 187)

Two salient aspects strike me about Arendt's keen observation: the first is that what Arendt meant by the 'reification' of action is nothing other than its *transformation* via the translation of the sphere of *praxis* into the *space* of performance (*theatron-mimeisthai*) by 'acting people' – *drōntes* (Aristotle 1995: 1448a 28); while the second restores to 'drama' its proper locus in action and corporeal meaning, rediscovered in the space where it is embodied by theatrical performance, thus, according to the actor's living presentation of an action (drama is not primarily a literary object). It is for these reasons, also, she observes, that the theatre is 'the political art par excellence' – before adding to this a critical elucidation: 'only there is the political sphere of

human life transposed into art. By the same token, it is the only art whose sole subject is man in his relationship with others' (Arendt 1998 [1958]: 188).

If one can say, as Arendt does, that, of all the arts, the theatre is the most political, it is because it directly transposes actual contexts of speech, action and deed into its space of appearance; and, once there, it tries to determine the phenomenon of action, its meaning and its means of justification, by turning it into an object to be examined by an auditor. This is why theatre is not political in the same way that politics is 'political' – because, unlike politics, the objectivating space of the theatre is not one of action (*praxis*) but of the representation of action (*mimesis praxeous*). It is in this specifically indirect and reflexive sense that the concern of both plays in this volume can be said to be political: each offers a 'second rendering' of a legal case, and in doing so each trains theatre's probing gaze onto a specific deficit of law; each thus offers an interrogation of what is of political interest in the juridical space and how, as spaces of performance in their own right, they determine the actual exercise of law.

I began this essay with a question concerning the 'relation' or the possible relatability of theatre to the law. I suggested that this relation could not in fact be established by simply affirming the homology of theatre and law, although some have made that assumption, but rather that it takes the form of a mutual problematization, beginning first with the risk that theatre poses to law, according to the Platonic treatment of the law of the theatre. I will end by showing how, in the inversion of that 'relation' through the cloning of the space of law in theatre's *mimesis praxeous*, a different problematization emerges in which theatre is able to highlight the intrinsic risk of injustice that belongs to the performance of law.

What theatre's 'second rendering' of the speech, actions and deeds occurring in the court room discloses was earlier described as an *aporia* of law; but what does this mean? First and foremost, the *aporia* of law indicates how, despite constituting a system of 'justice', founded on the jurisprudential theory and practice of 'torts' – the specification of wrongful acts and the rational legal basis for their adjudication and redress – nonetheless justice proves elusive for it; even in cases where the principle of legality is scrupulously applied, justice does not come to pass. Jacques Derrida, in his essay 'Force of law' (1992), offered the following account of this *aporia*, which he described as a 'non-road', where justice is encountered as an impossibility that is nonetheless a necessity for law: 'justice would be the experience that we are not able to experience' (16). One might say: the law is too bound by its tricks, by its voluminous texts, by its procedures and protocols, by its case law, its precedents and its rulings, by its own inherent ideological biases – in other words, by its need, as Derrida says, to 'calculate'; justice, which is 'incalculable', is too elusive a quarry for it...

[Justice] requires us to calculate with the incalculable; and aporetic experiences are the experiences as improbable as they are necessary, of justice, that is to say of moments in which the decision between just and unjust is never insured by a rule. (Derrida 1992: 16)

Is this not precisely the situation of *Jauría*, in which, despite the scrupulous performance of law, acting entirely in conformity with(in) the framework of rules established by legal principle and the norms governing practice, there is no guarantee that the trial outcome will be just?

The play makes clear this difficult paradox of law: that in compelling the plaintiff to speak in the court, in obligating her to speak, as she does under oath, and in subjecting the truth of what she has experienced to the ordeal of cross-examination, the court understands the plaintiff's speech not as her own, but in its own idiom, in abstraction – according to its own codifications, and, as Derrida says, in its own language. In addressing the court, the plaintiff's speech becomes other to itself, as if her speech no longer belongs to her, and indeed that a condition for its entrance into the space of legal admissibility seems to be that it must be somehow 'denatured'.

On the one hand, then, the plaintiff's speech is always subjected to a procedure of paraphrasing in being addressed to a court – 'It is the allegation of the plaintiff that...' tacitly precedes every statement she makes. In fact, this is precisely how law codifies speech: it is already clear that whatever she says, her speech has entered the peculiar phraseology of citational, legal discourse. Speech is issued in the first person, but it is already understood in advance in a schematized form; it is already reported speech – the 'script' of the plaintiff – intended for a third party, an indirect addressee (the judge, the juror, the stenographer, the court reporter and so forth) – an utterance destined to be entered into the 'record'. It is her speech, then, yet every word becomes alienated just as soon as it falls from her lips to take on strange and threatening denotations... – because words uttered in a court possess a power over their speaker that challenges the very basis of their speech: the credibility of the speaker as a testifier to their own experience. On the other hand, one sees that precisely because the plaintiff does not understand the status of her speech within the language of the law that she is constantly disarmed by the formality of its context and by the demand its specific validity conditions place on her – that consequently she struggles to make herself understood, but equally that the law seems to be quite unwilling or incapable of hearing her as she wishes to be heard. It is this discrepancy between two idiomatic and heterogenous forms of discourse, which are made to coincide in the law court, that unfolds in the play in the form of an injustice whose very fabric is central to the experience of the law.

In fact, it is just this discrepancy that the theatre makes visible: one sees the plaintiff is confused, one senses her unease – that she is puzzled by the cross-examination, that she does not fully understand why the defence is posing *these* questions in *this* way, or why these details

matter to it (after all, what does it matter that she went to the beach for two weeks rather than seek counselling support following the rape?). She may not fully comprehend the questions, but she does understand the nature of her interrogator's intent: that the game is one of proving her collusion in what happened, that it proceeds by loosening the bond between words and their referents and that, in doing so, it brings into question – I want to say 'violently' because violence is exactly how the defence interposes itself into her speech – the reality of this or that aspect of what she claims happened to her. What is in question is nothing less than the veracity of what she thinks she has experienced – 'How can she be sure?' is a constant motif. She knows the defence seeks to entrap her by using her own words against her. She understands full well that this is their game, of course she does – who doesn't understand that the law court stages a confrontation between an accuser and an accused; and that this confrontation necessarily takes place through the mediation of representatives of the court? She understands full well that the objective is to establish the 'facts' of the case such that a judgement, free from reasonable doubt, can be arrived at, and that it will end in either exculpation or conviction; she never doubts the seriousness of the proceedings or the severity of her obligation to speak truthfully or the nature of the force of law, as it applies to her case. That is why her testimony, once it enters the space of theatre, appears (especially when compared to the garrulous self-assurance of the defendants) at first as almost too credulous – that she is being too honest, that one would not want her to say what she says because one knows already how the defence will contort her words to make them say the opposite of what she means. But it is also precisely this apparent credulity that signals her honesty, and that in some way, through its 'second rendering' of the court transcript, the theatre permits something else to enter her speech, something that was denied to her in the courtroom: something of its singularity, its incalculability, in short, its own intrinsic force of truth.

'At no point,' the defence counsel assert, at a crucial juncture in their cross-examination, 'did you express any complaint about the situation in which you found yourself. The plaintiff's response to this is disconcerting: '... I didn't talk, no, no, I didn't shout, I didn't do anything' (p. 121). However, what to the court must have sounded at best equivocal, casting doubt on the plaintiff's allegation, in the theatre conveyed the implicit sense that what remained unspoken in her utterance *could not be spoken* – and if it could, *could not be heard there*. Where the court expects speech to access memory, as though the latter possessed all the clarity of a documented fact, and the former were merely a means of communicating it, the reality is the plaintiff does not want to remember – at least struggles to remember – the details of what for her remains unspeakable. This is not a failure of memory, but an acknowledgement that the event defies easy expression. In this way, *Jauría* restores to the word of the plaintiff its original sense. A plaintiff is not simply someone who has brought forward a legal complaint about another; it is someone who, in the

act of repeating her story, gives expression to what is plaintive about it: deriving from the Latin *plangere*, plaintiff refers to a lamentation, to the anguish of the one who has been wounded by an injustice. Here, again, the discrepancy of the plaintiff's speech and the language of law reasserts itself: 'An address,' wrote Derrida, 'is always singular, idiomatic, and justice, as law (*droit*), seems always to suppose the generality of a rule, a norm or a universal imperative' (Derrida 1992: 17).

Does this incommensurability mean that injustice constitutes an indelible stain on the law; that not only is justice never actually seen to be done, but that the reason for this is that it cannot surpass its aporetic condition of impossibility? By no means – in fact, on the contrary, justice is the name given to the genuine attempt to meet the incalculable demand of an injustice that obliges those who hear it into a fundamental reconsideration of the law: to 'reconsider,' as Derrida writes, 'and so to reinterpret the very foundations of law such as they had previously been calculated or delimited' (1992: 28).

The case that *Jauría* is based on, which led to the revision of the criminal code in Spain, offers one example, at least, of the law's capacity for self-correction when confronted with a judgement that despite applying the principle of legality was found to be *in delicto* – guilty of committing a transgression.<sup>12</sup> But the play also exemplifies, as does *The Bread and the Salt*, how theatre can constitute itself as a site, a place – and, above all, as a *political* space – in which the gap between legal theory and practice can be staged in the form of an interrogation of the law and its problematization by the incalculable demand of justice.

The poster for  
*Jauría's* 2019 run.  
Photo courtesy of El  
Pavón Teatro Kamikaze



## Notes

<sup>1</sup> Stone Peters also states: 'Theatricality is itself one of the subjects of legal performance' (2022: 5).

<sup>2</sup> The defendants were eventually convicted of the more serious charge of rape and consequently sentenced to longer prison terms. The extent of the protests across Spain that prompted a re-evaluation of the original judgement and sentencing brought significant international publicity to bear on the case, coinciding as it did with the #MeToo movement – they focalized the trial both as an 'inflection point' in virulently polarized debates on sexual violence in Spanish society while resonating with wider concerns over misogynistic violence beyond Spain's borders. Indeed, not only was the case staged as verbatim theatre in Spain, but it was also the subject of a Netflix documentary, *No estás sola: la lucha contra La Manada/ You Are Not Alone: Fighting the Wolf Pack* (Netflix 2024), written, produced and directed by Almudena Carracedo and Robert Bahar. The film also draws on verbatim techniques, employing audio testimonies voiced by actors and, like *Jauría*, alludes to a paradox of law: that while victims are obliged to tell the truth, no matter how painful it may be for them to do so, under the principle of the 'right to lie', defendants are not.

<sup>3</sup> On the concept of state monopoly of violence, see Weber (1991: 79).

<sup>4</sup> Hans-Thies Lehmann also uses this term, albeit in a rather elliptical manner, when discussing tragedy. Although it is not exactly clear what Lehmann thinks defines the law of the theatre (presumably it is not mimetic in the sense I am employing the term here), nonetheless broadly I agree with Lehmann's suggestion: 'Perhaps the law of the theatre is to be a *theatre of the law*: to stage the law in order to see what it "really" means' Lehmann (2016: 113).

<sup>5</sup> I use the Stephanus numbering system, standard for referencing Plato's works.

<sup>6</sup> This much remarked upon phrase, often used to demonstrate that theatre and law possess a formal homology, is in fact quite deceptive. It originates from a trial adjudicated by Lord Hewart in 1924, when Hewart was then Lord Chief Justice of England (*Rex v. Sussex*). The actual quote is: 'Justice must not only be done, but should manifestly and undoubtedly be seen to be done'. See Datar (2020). The point Hewart was making concerned the necessity for transparency to ensure public trust in the trial findings. Anne Richardson Oakes and Haydn Davies refer to this as an 'appearance standard': 'an ethical requirement that judges and decision makers more widely cannot hear a case if, from the perspective of a reasonable and informed observer, their impartiality might reasonably appear to be compromised' (2016: 461). Oakes and Davies, however, argue that such a requirement abstracts the observer into a 'juridical replicant' (477). Transparency may not be enough, in other words, if the 'appearance standard' assumes an abstracted onlooker, while reinforcing the real '[a]bsence of diversity at [a juridical level]' (see 483–4).

<sup>7</sup> For Shklar this also holds in cases where the political basis of

the trial is entirely justified, such as the prosecution of leading Nazis at Nuremberg: because they have a political motive, however, such trials are never entirely free from the suspicion that their motives might be extra-judicial. Indeed, Meierhenrich and Pendas understand the primary benefits of such trials to be precisely extrajudicial: they can serve a useful 'pedagogical' purpose – for instance, Nuremberg was justified, they argue, not only because of the nature of the crimes that required the invention of new categories of law, such as crimes against humanity, but also because of the need to educate the German population about the atrocities perpetrated by the Nazi regime (2016: 13). Publicity, of course, as they also point out, belongs to the communicative logics of the trial. As Jeremy Bentham was to remark: 'By publicity, the temple of justice is converted into a school of the first order, where the most important branches of morality are enforced, by the most impressive means: into a theatre, where the sports of the imagination give place to the more interesting exhibitions of real life' (cited in Meierhenrich and Pendas 2016: 43).

<sup>8</sup> The full statement, issued in the Nota Explicativa de la Causa General, reads: 'The General Cause, created by Decree of April 26, 1940, ratified by that of June 19, 1943, attributes to the Public Prosecutor's Office, subordinate to the Ministry of Justice, the honorable and delicate mission of establishing, through a faithful and truthful information process, both for the public awareness and in the interest of History, the meaning, scope and most blatant demonstrations of the criminal activity of the subversive forces that in 1936 openly attacked the existence and essential values of the Homeland, ultimately saved, with good fortune, by the Liberation Movement' (my translation) (*The Red Domination in Spain. General Cause* 1953: 8). ('La Causa General, creada por Decreto de 26 de abril de 1940, ratificado por el de 19 de junio de 1943, atribuye al Ministerio Fiscal, subordinado al Ministerio de Justicia, la honrosa y delicada misión de fijar, mediante un proceso informativo fiel y veraz para conocimiento de los Poderes públicos y en interés de la Historia, el sentido, alcance y manifestaciones más destacadas de la actividad criminal de las fuerzas subversivas que en 1936 atentaron abiertamente contra la existencia y los valores esenciales de la Patria, salvada en último extremo, y providencialmente, por el Movimiento Liberador.')

<sup>9</sup> The term 'unutterance' has been developed in the legal theory of Andreas Philippopoulos-Mihalopoulos to describe the 'unutterable paradox' in law of its 'continuity with an exteriority that is not accepted in the system except in the noiseless shape of contingency formula' (2007: 108). It is the paradox of an '[o]utside [exteriority that] cannot be heard and an [i]nside [in which the exterior of law] becomes domesticated' (109).

<sup>10</sup> One should take care on this point: a clone is not itself a representation in any classical sense of the word, meaning, a mere act of mirroring; it possesses its own existence, a singular form of becoming – it is not a duplicate lacking life. To speak of the cloning of space as a preeminent 'theatrical' gesture, is to restore to theatre the power it possesses as a productive space

of encounter in its own right, that it produces itself as an 'Other space' – Foucault (2000: 178) would say as 'heterotopic' space – capable of destabilizing the ontological privilege of the 'original' space (for example, a space of legal representation): it produces itself as a form of experimental spatiality, to borrow from Doreen Massey – see Massey (2008: 28–9).

<sup>11</sup> I use the Bekker numbering system, standard for referencing Aristotle's texts.

<sup>12</sup> We cannot assume the law 'in itself' to be simply either 'good' or 'bad'; but we must assume, in its instantiations,

that it concentrates or condenses actual social relations and antagonisms within itself. Law comprises a space for political intervention because it is used to (re-)inforce particular interests and relations of oppression through which those interests are sustained (in *Jauría* patriarchal privilege in Spain – for example), and that this fact alone entails that any *critical* relation established by theatre to law is never a 'legalistic' relation, but rather precisely put a 'political' one: through critical theatre, the law is essentially encountered as a site of social struggle. The same cannot be said, of course, for theatre that is uncritical.

## References

- Anderson, Peter (2010) *The Francoist Military Trials: Terror and complicity, 1939-1945*, New York, NY: Routledge.
- Arendt, Hannah (1992) *Eichmann in Jerusalem: A report on the banality of evil*, London: Penguin Books.
- Arendt, Hannah (1998 [1958]) *The Human Condition*, 2nd edn, Chicago, IL: University of Chicago Press.
- Aristotle (1995) 'Poetics', in Jonathan Barnes (ed.), *The Complete Works of Aristotle*, vol. 2, trans. R. Kassel, New Jersey: Princeton University Press, pp. 2,316–40.
- Austin, John L. (1976) *How to do Things with Words*, 2nd edn, Oxford: Oxford University Press.
- Critchley, Simon (2020) *Tragedy, The Greeks and Us*, London: Profile Books.
- Datar, Arvind (2020) 'The origin of "Justice must be seen to be done"', *Bar and Bench*, <https://barandbench.com/columns>, 18 April, accessed 20 December 2023.
- Derrida, Jacques (1992) 'Force of law: The "mystical foundation of authority"', in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds) *Deconstruction and the Possibility of Justice*, trans. Mary Quaintance, New York, NY: Routledge, pp. 2–67.
- Dewey, John, Chamberlain, John, Rosmer, Alfred, Ross, Edward Alsworth, Ruehle, Otto, Stolberg, Benjamin, Thomas, Wendelin, Tresca, Carlo, Zamara, Francisco, La Follette, Susanne and Finerty, John F. (1938) *Not Guilty. Report of the Commission of Inquiry into the Charges Made Against Leon Trotsky in the Moscow Trials*, New York, NY: Harpers.
- Fisher, Tony (2023) *The Aesthetic Exception: Essays on art, theatre, and politics*, Manchester: Manchester University Press.
- Foucault, Michel (2000) 'Different spaces' in James D. Fashion (ed.) *Aesthetics: Essential works of Foucault, 1954-1984*, trans. Robert Hurley, London: Penguin Books, pp. 175–85.
- Irwin, Elizabeth (2005) *Solon and Early Greek Poetry: The politics of exhortation*, Cambridge: Cambridge University Press.
- Lehmann, Hans-Thies (2016) *Tragedy and Dramatic Theatre*, trans. Erik Butler, London: Routledge.

Massey, Doreen (2008) *For Space*, London: Sage.

Meierhenrich, Jens and Pendas, Devin O. (2016) "'The justice of my claim is clear, but there's politics to fear'": Political trials in theory and history', in Jens Meierhenrich and Devin O. Pendas (eds) *Political Trials in Theory and History*, Cambridge: Cambridge University Press, pp. 1–64.

Philippopoulos-Mihalopoulos, Andreas (2007) *Theorising Environmental Law and the City*, Oxon: Routledge.

Plato (1997) 'The Republic', in John M. Cooper (ed.) *Complete Works*, trans G. M. A. Grube and rev. C. D. C. Reeve, Indianapolis, IN: Hackett Publishing Company, pp. 971–1,123.

Public Prosecutor's Office, an instruction, *The Red Domination in Spain. General cause* (1953), 3rd edn, General Information Directorate, Spanish Publications.

Read, Alan (2022) *Theatre & Law*, London: Bloomsbury.

Richardson Oakes, Anne and Davies, Haydn (2016) 'Justice must be seen to be done: A contextual reappraisal', *Adelaide Law Review* 37: 461–94.

Schechner, Richard (1985) *Between Theatre and Anthropology*, Pennsylvania, PA: Philadelphia University Press.

Schiller, Friedrich (1985 [1784]) 'The stage considered as a moral institution', trans. Jane Bannard Greene, in Margaret Herzfeld-Sander (ed.) *Essays on German Theatre*, New York, NY: Continuum, pp. 24–33.

Shklar, Judith N. (1986 [1964]) *Legalism: Law, morals, and political trials*, Cambridge, MA: Harvard University Press.

Stone Peters, Julie (2022) *Law as Performance: Theatricality, spectatorship, and the making of law in ancient, medieval, and early modern Europe*, Oxford: Oxford University Press.

Weber, Max (1991) 'Politics as a vocation', in Hans H. Gerth and C. Wright Mills (eds and trans) *From Max Weber, Essays in Sociology*, London: Routledge, pp. 77–128.