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Performance Before the Law: The Life and Death of Homo Juridicus[1]

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On the 5th February 2014 I found myself in Court 5 in the Royal Courts of Justice on Strand in London. I say 'found myself' not because I was not a regular visitor there, I knew my way around the Gothic Revival labyrinth quite well, but the proceedings on that morning brought home to me how this book about theatre and law might relate more widely to one part of its readership than I had initially imagined. In the High Court of Justice, Queen's Bench Division Administrative Court, The Honourable Mrs Justice Thirlwall DBE was 'handing down' a judgment in the case of The Queen (On the Application of Mr Steven Earl), the Appellant, and Winchester Crown Court, the Respondent. Unlike some of the very 'dramatic' cases I had witnessed in this place over the last decade, the appeal against extradition of the radical cleric Abu Hamza Al-Masri, the inquest over the death of Diana, Princess of Wales, the Dale Farm Travellers' appeal against eviction, the notorious Mark Duggan shooting enquiry, this judgment was, to all appearances, relatively modest in its effects, though, as we shall soon see, costly for the appellant who lost his case. The judgment also offered a strict definition in law as to who may, or may not be considered, a 'student'.

[1] This paper was first presented in 2014, in a somewhat different form at the Tenth Annual C.E.T.U.P. conference curated by Cristina Marinho in Porto, Portugal. I am grateful to Cristina for her curation of that event which informed my subsequent writing of *Theatre & Law*, Houndmills: Palgrave (2015) of which this essay now forms a part.

The court hearing had already taken place on 21st and 22nd January and I had not seen anything of it. The judgment had been 'handed down' by Justice Thirlwall to the court clerk below, who in turn handed it to me. It summed up the facts of the case with precision:

> In September 2010 the appellant enrolled on a 2 year full time course leading to a Diploma in Higher Education in Contemporary Performance and Drama studies at the University of Winchester [...] He failed a double module at the end of his first year. He was permitted to retake that module over the course of the academic year 2011 to 2012. The retake required his attendance at university for three hours of lectures per week together with recommended private study of 10 hours per week. Successful completion of that module would mean he would be permitted to continue on that diploma course, taking the second year in his third year of attendance at the university. In the event he completed the module successfully and went on to complete the second year of the diploma in his third year of study. He is now undertaking a degree course [...] In September 2011 the appellant enrolled at the university. During the early part of the academic year the Council informed him that he was being treated as a part time student and was liable to council tax. In a well argued e mail sent on 15th December 2011 the appellant explained why this was an error and he should be considered a full time student. (Thirlwall, 2014, pp. 4-5)

The crux of the case lay here. A part time student in the UK would not be considered for local authority tax relief, while a full time student would. The financial difference such relief might make to a student without resources would be significant, and indeed in the case of the appellant made *all* the difference to their continuation in Higher Education study. The subsequent eight pages of the judgment laid out

Justice Thirlwall's reasons for dismissing the appeal and upholding the Council's right to charge Council Tax in the circumstances. While broadly sympathetic to the appellant (the student) the judgment is critical of the university (at one point describing the institution as 'inconsistent', about as damning a judgment as one might imagine from the forensically logical purview of a judge), and in summary appears to count out any contribution they have made to the arguments with the quietly crushing rider:

> Both parties agreed that the position of the university is not determinative of whether the student was a student within the meaning of the legislation at the material time. I agree. In the circumstances I propose to ignore the contradictory evidence from the university. (p.6)

Contrary to one's expectation that it would be a university in 21st century Britain that might have a defining role in determining the status and identity of a university student, here Justice Thirlwall would appear to be counting out any such presumption. By implication the rest of the judgment appears to suggest it might be other conditions that should be taken into account when considering what defines a student. And here we are discussing the definition of a theatre student. In a final section, confidently sub-titled by the judge 'The Correct approach' (this is how it is capitalized in the judgment as though to emphasise the Correctness of what we are about to read, as distinct to its 'approach-ness') it is concluded that, whatever other arguments have been proposed, what the appellant has been involved in is indeed 'not a full time course of

education' and that 'notwithstanding the careful and detailed argument presented by both counsel that is where the case begins and ends'. (p.9). The judgment concludes: 'At the material time the appellant was not enrolled to undertake a full time course of education. He was not therefore a student within the meaning of the Regulation 4 and paragraph 4 of Schedule 1 to the Local Government and Finance Act 1992. He was therefore liable to pay council tax'. (p.10)

The convoluted tale of Mr Steven Earl, the disappointment of his theatre module failures, his subsequent renaissance following successful retakes, his entry to a degree programme, his loss of financial relief from the local council, is a narrative that would be well known to students studying across the UK, and perhaps other countries, where educational support systems include significant and much needed secondary benefits such as subsidised accommodation. What lifts Mr Earl's case out from the common run of others, is his tenacity to take this case, and the cause it represents, to appeal in the second highest court in the land. It is in a way the quintessential 'small' yet practical politics of the 21st century student. It is now, no longer a question of attendance at court for 'criminal' damage perpetrated in the resistance to Apartheid, no longer the civil disobedience case following the tagging of nuclear missiles at Greenham Common, no longer 'illegal' trespass on the property of an environment despoiling multi-corporation. Rather, in Mr Earl's case, it is the important principle that one gets one's just recognition as a 'student' in the Local Government and Finance Act of 1992. And that is what Mr Earl failed to achieve. This apparent modesty is what attracted me to this

case as an exemplar of the common conduct of the law, as perhaps distinct to its more obviously 'theatrical' character when the names (and liberties) of OJ Simpson, Amanda Knox and Oscar Pistorius, are in the dock. And, of course, it has the benefit of an act (albeit a legal one) I have experienced *directly,* which is how I like to keep it when it comes to commentating on theatrical experience.

I say I 'found myself' through this judgment partly because it alerted me to the continuous and complex way the law, an intangible phenomena after all, determines the very pre-conditions for the definition and indeed perhaps, as in Mr Earl's case, existence of any 'student'. For any student who might read this, your very precariousness or security presumably rests on such cases. And, on the other hand, this experience drew my attention to the way that it is precisely the 'theatre', albeit in this legal narrative in the form of an education course claiming to know what theatre 'is' and therefore legitimately qualified to engage people who become students in its study, that hovers throughout the action as a second, indeterminate point of reference, that never quite gets defined but shapes everything that takes place.

And I say I found myself on that morning in 2014 because the *affects* of this case, as became apparent in discussing its merits in the corridor afterwards with the representative official attending on behalf of Winchester Council, manifested themselves as feelings of disappointment (for the student), laughter (at the University's incoherent paper work), admiration (for the prose style and broad humanity of the judgment despite its harsh conclusions) and unease and

anxiety (as to what it might mean for others, those who followed Mr Earl with their disappointing 'module outcomes'). This was an occasion, despite its melancholic banality, full of affects, in other words emotions and feelings, one might associate more commonly with a heightened theatre event, while the effects of the legal case were all too obvious for the losing party and seemed to take second place to these more immediate, human responses. And it was an occasion whose consequences, despite their legitimacy and rightness in law, seemed, to me at least, wholly 'wrong' in the world.

The Valley to the Waterers

In the case of performance I might have thought before that morning's judgment that *affects* (or feelings) were all, while in the case of law, *effects* (or consequences) were all. Surely, in the end, whatever I might have to say about theatre and law in this book, it is law that has to make a difference, while performance, despite any higher aspirations I might have for it, has no responsibility whatsoever to change anything. Of course, any familiarity with theatre history of the 20th Century in general, and the work of numerous theatre makers from Bertolt Brecht to Augusto Boal, would bring any such supposition of a simple bifurcation between theatre and law on these grounds into question, a complication I am happy to entertain as I proceed through the coming pages.

Indeed my own experiences as a student in the mid 1970s should have reminded me of this more complicated relation between theatre

and law, and were not that far removed from Mr Earl's and his engagement with the presiding judge Justice Thirlwall. I too was busy failing modules (at school, having started to fail earlier than Mr Earl) when I found myself caught up in the public staging of the representation of a legal process whose form was meant to propagate political effects, when in fact it was affects that saturated my memory of the experience.

I had been cast, by an enduringly optimistic mathematics teacher who had firsthand experience of my innumeracy, in the role of Azdak the Judge in Bertolt Brecht's play *Der Kaukasische Kreidekreis* (1942), translated by Eric Bentley as: *The Caucasian Chalk Circle* (1975). The drunken, lecherous layman, Azdak, has a remarkable, and not wholly deleterious, impact on his community for someone who has essentially donned the robes of law out of expediency. This 'village scrivener' turned magistrate sums up the relations between ceremony and legal identity: '[…] it would be easier for a judge's robe and a judge's hat to pass judgment than for a man with no robe and no hat. If you don't treat it with respect, the law just disappears on you.' (Brecht, p.180)

Azdak appears in the latter half of the play, which has been framed at the outset from the perspective of a pair of competing Russian communes where the retreating Nazi forces in the late days of World War II have left a landscape of disputation over the rights to farm. Through a series of mock trials and counter-intuitive, if common-sensical judgements, Azdak gains the preferment of the Grand Duke, who, at the cusp of his hanging, pardons Azdak and invests him with judicial power. But Azdak has for some time, inadvertently but effectively, been the

'judge at large' in this war torn place. This subsequent, second order of investiture, is met with a paradoxical retort by the Iron shirt whose office requires him to officiate over such matters of appointment: 'I beg to report that His Honour Azdak was already His Honour Azdak'. Thus essentially, by the end of the play from whence he slips away unnoticed, with no apparent identity having lost a double identity, Azdak has *become himself* through the processes of law.

I too had somehow lost an identity while apparently gaining one. While I appeared to have played the part of Azdak in the long final act, 'The Chalk Circle', according to the cast list in the lavishly (and painstakingly) Gestetnered programme at least, the role had been played in the longer, and dramatically more significant penultimate act, 'The Story of the Judge', by someone else entirely, with a similar but typographically inept name, Alan Reid, with an 'i' not an 'a'. You can check how it is meant to be on the cover of this book. I remember quite forcefully the retrospective anxiety this modest secretarial mishap caused me at the time, and on reflection it has an acute legal dimension that I could not have been aware of.

This administrative detail, this paperwork, is wholly in keeping with Brecht's own dramaturgy in this particular play. Despite the way Azdak is often played as a complete legal outsider, he is nothing of the sort. In the very introduction of the character Brecht described him in the following way: 'The Village Scrivener Azdak found a fugitive in the woods and hid him in his hut'. While he might be simple of means he is not without his own expertise, and that is a legal expertise. A scrivener

(or scribe) was a person who could read and write, copied legal documents, or wrote letters to court.

What I understood about law then, I learnt through playing that part of a scrivener, turned law-maker, not really by any other familiarity with law's systems. I learnt that because, in playing that part of a judge, I began to recognise that assuming this role really did not mark quite the difference I might have expected to have been obvious between my legal identity, my theatrical 'legal' role and my extra legal identity that the stage offered. In other words in the same order, I noticed a contamination between my status as a student threatened with exclusion, my conduct in the role of Azdak the renegade judge and the temporary immunity, a theatrical *cordon sanitaire*, from imminent school discipline and sanction that this accident of casting offered me.

Entering the law via the theatrical logic of the stage, costumed in this way, it occurred to me it was as if *this* law, the one I, as Azdak, was busy dispensing, was already peculiarly familiar to me as a performer. I did not need to know the famous line by the ethnographer Clifford Geertz, that law 'is part of a distinct manner of imagining the real,' (1983, p. 173) to recognize the fundamental link between a legal sensibility and a performance sensibility that is also dedicated to representing that same 'reality'. If law imagines a 'real' then performance is certainly another 'show business' that trades on such 'reals'. I was, you could say, born to, and made for such a legal role, and would here, with the confidence of the work of anthropologists behind me, contend that we all are. It is as though law in this form had somehow always been present in

my life and that without knowing anything about law or legal process, I was already deeply familiar with what it should, or might, be. You could say I was already born to, and bound by the law. As such, from infancy on, I am less Homer Faber, the human who works, or Homo Ludens, the human who plays, rather Homo Juridicus, the human who is lawful. A figure 'full' of law, from the inside as well as out.

To explore these relations between legal identity and human 'being', as I want to do here, will require a brief detour via some quite large questions that other, longer essays, would dwell at length upon and yet probably still feel had been summarily dispatched. There is a serious thread in the anthropology of law that suggests that it is legal concepts '[...] within a jural community that define community structure. They allow the establishment of relationships.' (Pirie, p.53) In other words, it is from precisely such a symbolic grammar as that of law that an idea of reality might be constructed. Definitions of property and ownership through law would be the most obvious example of such definitions, ones which indeed impact very directly on those questions of land ownership at the heart of Brecht's play. As Geertz has said, law provides 'visions of a community, not echoes of it'. (1983, p. 218) But beyond ownership, questions of contract, trust, responsibility, guilt and personality are also at stake though law, as the sociologist Roger Cotterrell has suggested, and in this sense 'Law provides a model for how society can be.' (Pirie, p. 53)

Alain Supiot, the French ethnographer of law, goes one further and offers a particularly detailed reading of this anthropological thread

that binds us to law, that would seem to connect most directly to my own theatrical example (2007). He reminds us that human beings are not born rational, they *become* so by gaining access to meaning shared with others. If we are to enjoy thinking and expressing ourselves freely in language, we must first submit to the limits that give words meaning. This would seem to be the most obvious lesson one might learn from reading a court judgment such as that of Earl vs Winchester City Council considered earlier.

But, before I arrived at my own awareness of my being through speech, I had already been named, and situated within a lineage, a lineage that went by the name of 'Read', as in 'to read the riot act', not Reid (as printed in that programme), or indeed any other name. A place was assigned to me within a succession of generations by this naming, not just within the hierarchy of a theatrical cast list. This was complicated by the fact that, like, but not quite like Bill Clinton, the sometime President of the United States in the 1990s, my father had died three months before I was born in 1956. So I was a 'posthumous' child coming after the event that others, perhaps misguidedly for me, thought should define my life. The projected naming by my parents was to be subverted by my mother who changed my planned name, John, to that of my father, Alan. But she had never condoned that in place of that A, in the name READ, there should have been an 'I', that would just not have been us.

I take it from this post-natal anecdote, that before we can dispose of ourselves freely and say 'I', we are already a subject of law, bound,

subjectus, thrown under, by words, names, and language, which tie us to others. It is through such processes, Supiot suggests, that the bonds of law and the bonds of speech converge, enabling every new-born child to become a member of humanity, to have their life endowed with recognised meaning. If the opening insurrection-torn scenes of *The Caucasian Chalk Circle* are about anything they put into play this dilemma. A child, Michael, born of the governing class, the Abashwilli's, is abandoned by his mother, the Governor's wife (preoccupied with saving her wardrobe) and is saved from the marauding Iron-shirts by a serving farm-girl, Grusha, with the peasant name, Vashnadze. Almost unwittingly but with the instinct of care that escapes the Governor's wife, Grusha picks up the abandoned child and flees in protection of his young life.

Wherever people are cut off from their fellow creatures by absence of any such shared language or symbolic structures of shared meaning, Supiot contends at least, they are condemned to idiocy, in the etymological sense of that term, from the Greek, *idios,* 'confined to oneself'. You could say the privilege of the Governor's wife has isolated her in just this way, her conduct is in the circumstances, literally, idiotic. The aspiration to justice on the other hand, and Grusha's actions in protection of this innocent child might be read in this way, is a fundamental anthropological fact, and not a hangover from pre-scientific modes of thought. Contra the Darwinian, 'competitive' cause of Konrad Lorenz and Richard Dawkins that humans are inherently 'red of tooth and claw', one might here pose the instinct of care and support explored and championed by Ashley Montagu in his ethological work and latterly,

developed by Edward Bond in affirmatively 'optimistic' dramatic works, such as *Saved* (1965).

Law is a rule, but it is also a command that is granted by an authority that is empowered to enact it. But in the state of exception that characterizes the opening of *The Caucasian Chalk Circle* the norms associated with this higher power, the authority of the law, have collapsed into a chaos of local determinations wrought through violence. Those who are weak within such a chaos, and Grusha the farm girl is weak because she has no power within this regime not because she lacks strength (that much is evident from her courageous peripatetic journey through the first half of the play and its threatening landscapes), are prey to the vicissitudes of the sovereign power which in the scene that follows the opening insurrection of the play is conceived between an unholy alliance of aristocracy and banditry. *The Caucasian Chalk Circle* is a play that by its closure reconstitutes the law at its most primal, as 'an expression of general will', where 'right' means 'just'. Here a form of natural law that Azdak conducts is staged and made sufficiently public for those who hear it and become subject to it, to take on its obligations. In a Christian context these rights would commonly be secured with reference to a higher order of God, but in this post war Marxist state, a simpler expedient prevails in which those who will care for things (waterers in the instance of the valley in question), will take responsibility for their protection and growth.

Supiot suggests, it is by transforming each of us into a *Homo Juridicus* through such processes that the biological and symbolic

dimensions that make up our being have been linked together. That is, in the West at least. For Supiot is diligent in his separation of juridical process in those cultures that do not subscribe to the Western legal canon and sees some hope for the reformation of law and the future of humankind precisely in those other traditions. It is precisely the *law*, Supiot suggests, that connects our infinite mental universe, all life's possibilities in the radical heteronomy of all possible actions, with our finite, limited, actual physical existence, and in so doing fulfills the anthropological function of instituting us as rational beings. In this sense we are recognizable *as* human beings, precisely because we are legal beings first. It is this 'first', apriori claim law makes on us that marks us as Homini Juridici.

This affirmative narrative brings forcefully to mind one of the lessons that Hannah Arendt draws from the experience of totalitarianism, published just before the first production of *The Caucasian Chalk Circle* in Germany in the early 1950s, where she says: 'The first essential step on the road to total domination is to kill the *juridical person*.'(1967, p. 477, my emphasis) So, while, for Supiot, it is homo juridicus that secures personhood in 'a life', it is the extermination of homo juridicus that turns that person into a superfluous being, or 'extraneous person' as I will demonstrate in the final section of this book.

To *deny* the anthropological function of the law in the name of a supposed 'realism' grounded in biology, politics or economics, is something that all totalitarian projects have in common. This lesson, Supiot believes, seems to have been forgotten by the jurists who today

argue, in the interests of 'human rights' even, that the legal person is a 'pure construct' bearing no relation to the concrete human being. The legal person in this world-view, commonly characterized as the 'postmodern condition', is just that, a construct. But in the symbolic universe that we inhabit according to the postmodernists, that is our lot, everything is, of course, a construct. We are all performers now. In other words, legal personality in this world-view is, contra my argument so far, certainly *not* a fact of nature, but rather a certain *representation* of the human being. And *if* it is a representation, and not a fact of nature, then while legal identity might constitute part of our anthropological make up as human beings, it is an identity, from the outset, that operates through investitures that might well be theatrical, as in my casing as Azdak, but are also, and everywhere, performative. Our legal being is thus constructed in ways that could, for instance, be structurally related to our gendered being, precisely performatively, as suggested by Judith Butler in her formative work, *Gender Trouble* (1990).

But such playfulness, with gender and legal identity, does not for Brecht at least, begin in the relative freedoms of the North American university campus, it starts unevenly in material historical conditions of inequality and dissensus as to the right to even claim such a freedom *to* self identity. As the writer and theatre practitioner Rustom Bharucha once said to me, in a personal conversation, when he heard me spout the platitude that 'we' must 'reclaim the right to performance': 'Who is in a position, political, legal, economic or social, to do such reclaiming?' and 'How precisely might such reclaiming occur for those historically

excluded from any such 'right'?' It is precisely in the wake of the totalitarian history of the 20th century, the totalitarian history that provides the very starting point for Brecht's play in which the Kolkhoz villagers are debating the distribution of lands following the retreat of the Nazis from their war ravaged landscape, that it was deemed necessary to extend legal personality and the prohibition it contains to every 'person' wherever they may be. It is this prohibition that is really being challenged, Supiot makes clear, when people today seek to disqualify the subject of law and treat the human being as a mere accounting unit, like a commodity, or, more or less the same thing, as an abstraction.

While Supiot helpfully emphasizes linguistic aspects of shared symbolic meanings he underestimates visual signs and representations critical to the relations between theatre and law. All systems of law are according to Peter Goodrich 'lived and presenced' through codified clusters of icons, images and symbols. Hence the need for an ontology of the law as I have been proposing, but also a recognition of those discursive practices that give humans access to the meaning of such signs. This is quite obvious to Paul Raffield who emphasises the ways in which the English Common Law tradition precisely operates without any 'textual codification' to secure it. (2007)

The *Homo Juridicus* that is 'us', I am suggesting, then operates within a law that is made up of a complex of human conditions that might be described as anthropological in character, but importantly also through a repertoire of visually inscribed performative operations that

deserve more attention than are commonly given to them. These performative operations might appear not just in the form of costuming as in Azdak's case, but in ceremonial processes of investiture and acclamation, ritual conduct and belief. I take it that bringing these narratives together, ethnographic and performative/representation and iconographic, and exploring the consequence of their meeting is part of my task in writing this essay.

In that Brecht play that so disorientated me, the chalk circle drawn upon the ground in which the final trial of strength for the child takes place was, after all, *an image*, born of myth, the judgment of Solomon in the bible where two women claim the same child. The chalk circle and its magical arena of justice does not survive the transition back at the end of the play into the world of work, where the valley must 'go to the waterers, that it yield fruit'. The rogue judge after all does not so much take leave of this community, as *waste away* at the moment of its coerced coming together, like the chalk on the ground. As Azdak takes off his robe for the last time he 'invites' those present, whose tribulations he has solved with a sequence of improvised judgments, to 'a little dance in the meadow outside'. As he signs the final divorce papers for the wrong couple the dance music is heard. Azdak cannot withdraw his final clerical error, an error of office, because as he says: 'If I did how could we keep order in the land?' Azdak 'stands lost in thought. The dancers soon hide him from view. Occasionally he is seen, but less and less as more couples join the dance.' The Singer who has narrated the story of the chalk circle wraps up the occasion: 'And after that evening Azdak

vanished and was never seen again. / The people of Grusinia did not forget him but long remembered / The period of his judging as a brief golden age. / Almost an age of justice.' The best law has to offer, in keeping with what has gone before, is still, not 'quite' justice. As the couples dance, Brecht's stage directions are enigmatic, but decisive, Azdak has 'disappeared'. The director's note to me, before the opening night of that school production was, I recall, something like: 'Find a way to disappear from view without attracting attention to yourself.' This was not how it was, nor how it could be, theatrically at least. I recall attracting more, not less attention to myself as I tried unsuccessfully to dissimulate. The recalcitrance of my body 'in law' as well as 'in performance', its resistance to being summarily disappeared by a stage direction, might offer us a way into the legal body of Franz Kafka's work.

In The Penal Colony

I am at the Young Vic, a theatre in South London, it is 2011 and Palestinian company ShiberHur are presenting their theatrical version of Kafka's short story: *In The Penal Colony* (1914, 2005). A prisoner, about to be executed, has been laid out on an apparatus by an officer who is answerable to an offstage commandant who has superseded the superior who perfected this legal machine. An explorer has come across this world of summary justice in a parched valley on an island with only the sun above and no other witnesses to the action. There were once, we discover later, huge audiences for such public events of correction, but in recent times viewers for this legal spectacle have collapsed and we are in

the dog days of recrimination and justification. The officer seeks a supporter for the effectiveness of his procedures and the explorer is drawn into witnessing a demonstration of the machine's continued relevance and worth.

The officer draws a chair to the lip of a pit within which the machine sits. He gestures to the explorer to take his place. The 'remarkable apparatus' as the officer introduces it to the explorer (its only, rather ominous drawback is that it 'gets so messy') has three parts, clearly visible to us in the auditorium that makes up the Young Vic. The Bed, the Designer and the Harrow. The condemned man is laid out on the Bed covered in absorbent cotton wool, face down and gagged, while the Harrow a ribbon of steel, shuttles between the Designer, the frame that hangs above the prisoner's body. Battery powered, the bed begins to quiver in concert with the Harrow, which is described by the officer as the instrument for the actual execution of the sentence: "Whatever commandment the prisoner has disobeyed is written upon his body by the Harrow. This prisoner, for instance" – the officer indicated the man – "will have written on his body: HONOR THY SUPERIORS." (2005, p. 144)

Kafka hovers authorially somewhere beyond this narrative as it is being dramatically rendered, and spectrally appears in the form of his text, translated, in the form of sur-titles in English above the action. I obviously cannot presume that the humans in this scene follow Alain Supiot's foundational, ontological rules, of shared and symbolic meanings, for here the language of the officer is not understood by the prisoner (who cannot know the nature or duration of his sentence), nor

does he know a sentence has even been passed upon him. The officer emphasizes: 'There would be no point in telling him. He'll learn it on his body.' (p. 145) And, of course, given that he knows neither his sentence nor that he has *been* sentenced, he cannot offer any defence as to his innocence. In this world where executioner is also judge, 'guilt is never to be doubted'. (p.146) It does not take a theologian to offer religious interpretations of these lines.

But this, as the explorer is aware, is a 'penal colony'. We also know this because we might know the title of Kafka's story or indeed we have booked tickets for a show with just this name. And as Kafka says a penal colony is where 'extraordinary measures were needed and that military discipline must be enforced to the last.' (p. 146) You might say after Carl Schmitt and Giorgio Agamben that this is a 'state of exception' (*Ausnahmezustand*) in which a government has extended its juridicial powers in a time of supposed crisis. Here individual rights are surrendered in the wake of extensions of state power. And it is these extraordinary measures, in this place, that require performance to do their work for them: '[…] the Harrow is lowered onto the body. It regulates itself automatically so that the needles barely touch the skin […] And then the performance begins. An ignorant onlooker would see no difference between one punishment and another […] And now anyone can look through the glass and watch the inscription taking form on the body.' (2005, p. 147)

The flowing blood from the inscription is channeled away down a wastepipe into the pit as the explorer looks on. The cotton wool is

staunching the bleeding for now and allows for the 'deepening of the script' over time (we are told 6 to 12 hours on average). Once 'enlightenment', or perhaps more accurately from Kafka's German, 'understanding', has been achieved, the body is pitched from the saturated bed. Here the writing machine of the law has to be prepared in such a way as to calibrate the death of the subject in only those stages that allow for the completion of the law's message. But this method of execution has lost its adherents in the colony and the officer is seeking a way to protect his professional purpose. He has found himself, perhaps ironically, in the place of the Kafkaesque outsider in a world in which he once acted as judge, juror and justice. In his paranoia he suspects the new commandant has invited the explorer to witness the event to reveal its redundancy: 'you will see that the execution has no support from the public, a shabby ceremony – carried out with a machine already somewhat old and worn … '. (p. 155).

The officer suspects that the explorer has been invited to compare his own culture's more enlightened machineries of justice with those of this barbaric state. But the explorer insists that he has no view to offer given he is an outsider and has no intention of entering into a debate as to the merits, or not, of this foreign justice system. The officer, devastated by the loss of the last witness to his life's cause, releases the condemned man, clambers onto the Bed, and subjects himself to the machinery while the condemned man witnesses the procedure with fascinated awe. The apparatus runs amok, haywire, jabbing irrationally and spasmodically at the officer in torrents of blood. If the prisoner has

just been subjected to the language of the law, then the officer is in turn subjected to the pure violence of the law. Subsequently the explorer, the officer and the condemned man reconvene in a morgue-like teahouse where the commandant's tomb marks his earlier demise, and theirs. But the explorer is able to leave across a river, something like the Styx, in which he repels the reaching hands of those he leaves behind on the far side. There is no clemency here despite his apparent compassion.

The final scene is from Kafka not from ShiberHur's performance at the Young Vic. But the 'flesh and bones' of the occasion are there in the balance of the summary I have offered. What is not there in this rather literary rendering is the *theatrical* sense and impact that this peculiar legal scene makes on any spectator who might be remotely sensitive to the politics of the state from which ShiberHur have come to present their work to a cosmopolitan London audience. It is important to reiterate given the significance of language to law as I have laid out so far, that this production is one that I am witnessing in London, but am listening to in Arabic, a language I do not understand, with the benefit of sur-titles in English, when I wish to look at them.

ShiberHur were founded in 2009 in Haifa by Amir Nizar Zuabi, Amer Hlehel, Ali Sliman, Ashraf Hanna and Ruba Billal. It is Zuabi who directs Hlehel in *In The Penal Colony* with Makram J Khoury and Taher Najib in the other roles. When one considers that Shiber Hur means something like 'an inch of freedom', from an Ottoman measuring unit equivalent to an open palm, that this company's work has toured previously to Palestinian refugee camps in the West Bank and Galilee,

and that it has involved work directly relating through domestic means to the events of partition in 1948 in *I am Yusuf and This is My Brother* (Young Vic, 2010), one cannot watch the foregoing apparatus of legal inscription as anything but a commentary upon the current conditions of the company operating from within the tensions of the Middle East conflict. In their previous work at this venue, *I am Yusuf* it is the daily routines of life that are the centre of the theatrical experience and from which the wider sense of the Arab-Israeli war (*al Nakba*, 'the Catastrophe' as Palestinians consider the events of 1948) is construed through a personal relationship of prohibition. If that was a 'small play' in political terms as Zuabi describes it in his programme note, then *In The Penal Colony* is a big play, politically revealing the machineries of terror and the state, of legislation and persecution, of state control and violence.

The performance operates as an extended meditation on the violence of the law as Walter Benjamin construed it in his seminal work 'Critique of Violence'. (2002) And, importantly for the purposes of this book, it does this through specifically theatrical means. This is not to say for a moment that Kafka's narrative has not solicited as many readings as there are readers, from analyses that perceive the two commandants as exemplars of the 'God of Orthodox Judaism' and 'Reform Judaism' (Steinberg, 1976) to the mobilization of the figure of the penal colony as the exemplar for capital punishment in its relation to the philosophy of the law (Sitze, 1999). But I would contend here it is only because this is a performance, in public, that the work operates at the level it does, by

which I mean combining striking effects as well as profound affects. I say this not because I consider theatre to be an unusually persuasive social or political medium, I have made clear elsewhere where any such presumption might be questioned quite critically in this age of multiple social platforms and media screens, (Read, 2007). I say this rather because of the inherent relations between theatre and law established in my first two examples in this book, you might call them anthropological or ontological connections, and some principles of performativity that law depends upon to operate as it does that will form the later part of this book once we have left the Young Vic Theatre.

If Carlo Galli in his work *Political Spaces and Global War* (2010) is right and all political thought has an 'implicit spatiality', then the penal colony as it is represented by ShiberHur theatrically, that is through design and construction, becomes the scene for that spatial engagement. The political space of *this* setting, the one before me on the stage of the Young Vic, stands for another setting as though by proxy or surrogate, which the audience are not asked to imagine but which nevertheless appears as the production proceeds, and that is a spatial setting which has been striated and severed by history. This space is not the passive container of the politics and law that take their place there, it is the *active,* contested space that generates these very conditions of participation and exclusion from political process in the Palestinian/Israeli conflict.

But recall that the final scene of the officer's engagement with his beloved machine is one of *suicide*. He places *himself* in the contraception

and initiates his own end as well as that of his beloved machine, which unravels spectacularly around him. In a gloss on Galli's work, Adam Sitze persuasively argues that in so doing it is the death penalty itself that is being put to death. (Sitze, p. 241) Until this point, remember, the officer is not an executioner but a murderer. It is only with his *own* death that his role as executioner becomes appropriate - he is the first party who is guilty of the crime that might, on any logical legal grounds founded in a rational legal system, necessitate this death machine. Here, a form of justice has been seen to prevail in a manifestly unjust universe. It is only on reading and understanding the inscription on the Commandant's tomb, in the tea room, the first inscription and text that the explorer has understood in this place, that the explorer realises that it is not just the apparatus he has been witnessing that is at stake here, but the state as a whole that is the installation, the apparatus or indeed the machine.

One is left in no doubt in this production that while the Penal Colony is 'not' a metaphor for the Palestine/Israeli conflict, it does demark something of the spatiality of the legalization of death that has been so fiendishly omnipresent within that conflict. Sitze points out that it is neither in visiting the colony, nor in escaping it that the demonic machine of legal violence can be deactivated, but rather 'abiding in it', with what he calls 'probity and persistence'. (p. 248). In a sense this is what the durational aspect of the theatrical immersion in this law machine offers. It offers the opportunity in time to abide in something one might not have expected, nor perhaps have particularly wanted. In such 'abiding' no one in ShiberHur nor the Young Vic is implying that

there is a commensurate engagement, or equivalence of experience with those who are occupied and tyranized elsewhere. But both do suggest by invitation to participate that *some* form of affinity with the subjects of this action, Arabic speaking Palestinians after all, is enacted in any such engagement within theatrical time and space.

We nevertheless *do* leave the island in the end, under the green EXIT sign that indicates to us the appropriately named street outside the Young Vic, The Cut. And we exit via a ceramic-tiled butchers' shop, cum foyer, that remains the only surviving structure in this part of the street of a massive war time bomb that marks this location out as its own site of historical conflict. Nevertheless one would have to presume, if one's theatrical imagination is at all alive, that we leave behind us somewhere in the auditorium, between the world of the play and the offstage world to which it signals, the condemned man, who is innocent. He has been abandoned already, at least theatrically, by the explorer, and now we cosmopolitan believers in 'justice for all', abandon him *in the theatre*, for real. Of course one is always asked to 'leave behind' those who retreat to the dressing room. But we are not always quite so conscious that the home of those 'retreated' is under such threat. The security of this 'offstage' to the side of a killing machine is not doubled by any such security to the side of another. It is an exit, from the stage for the subjected, and the auditorium for witnesses, that is troubling at just about every level theatre and law might mutually offer, a mutuality that *is* the point.

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