

## Law, Muteness and the Theatrical

**Marett Leiboff**

This short composition muses upon the possibilities that the theatrical may offer as jurisprudence or legal theory. Its scope is necessarily abbreviated, modest and confined, intended to inaugurate and not foreclose ...

In September 2002, the Brisbane-based Grin & Tonic Theatre Troupe presented a theatricalised version of the 'cult classic' iconic Japanese television series *Monkey*.<sup>1</sup> Held in a riverside park, the only thing keeping intruders out was a thin hessian wall that divided the circus performance space from the public park. So it was with absolute disquiet that these walls were breached, by a group of 'bogans' (an Australian term used to describe people more likely to be found at the pub or the football than the theatre). Moreover, they were yelling at each other and audience members, swilling beer and disrupting audience members by pushing them out of their seats. This unruliness and illegality caused consternation amongst the audience members who were the direct recipients of their attentions, some of whom remonstrated with the intruders as 'curtain up' came closer. For the rest of us, responses ranged from bemusement and irritation to amusement. When the bogans breached the imaginary fourth wall constituting the stage, the light came on (for some of us). But not everyone, as audience members yelled for them to get out, and tried, without success, to attract the attention of attendants and management.

But the last laugh was on the audience, as the intruders moved from transgressor in this space between audience and stage to proclaim their legitimacy as rightful possessors of the performance space. The light came on for all the audience, as well as those who had already cracked it. This theatrical rupture – the bogans were actors and the disruption part of the production – turned the unsanctioned regulatory gesture by audience members back onto themselves. It was they who acted without legitimacy. The fourth wall had been breached absolutely, the spectator now part of the production, as the audience shuffled into embarrassed laughter, applause, and mutterings, the illegality now thrown back onto them. The audience was now enmeshed into the theatrical presence, were part of the action.

But we (I include me as spectator and thus participant) had our commonsense overborne, to a greater or lesser degree. Homeless people lived in the park, but none of these bogans was homeless, which begged the question why they would suddenly appear under the hessian screen precisely at the moment they did. The pub would surely have been a far more comfortable place than a theatre. It simply didn't stack up. Our physical response to the danger, the threat, overwhelmed commonsense, and rationality and reason was replaced by a viscosity created through this theatrical presence.

This theatrical encounter didn't conform to the conventions of either the expected structure of the play, or the conventions attending a theatre outing. Instead, the bogans not only interfered with audience comfort, but it (audience) became spectacle rather than spectator. The disrupted narrative meant some audience members came close to losing the plot. And this is precisely the reason why disruptions of this sort are used, in order to destabilise the expectations of the audience, to comprehend theatre as life and life as theatre. This encounter was not scripted (though it was, of course, in one sense), and any account or description of what occurred could only ever be created *ex post facto*.

## Leiboff

This is my account of events; every other encounter would have differed either that evening or at another performance, created from the distinct vantage point, which was a physical and not intellectual response. The encounter provoked a dangerous and transgressive response borne out of the reading and misreading by the audience of the textual conventions of their role, and when provoked, individual spectators who would seemingly have prided themselves on their education, their reason and rationality could so easily turn to a fundamentally physical response. Theatre has always provoked the visceral, through sanctioned carnivalesque-style licentiousness, to riot.<sup>2</sup>

These encounters challenge lawful boundaries; the audience became lawless when they breached the conventions and boundaries of audience politeness. The shift from a code or convention into actual lawlessness threatened on this occasion. One of the audience members most angered by the bogans became aggressive, but before a confrontation could occur, the bogans/actors used this as a cue to avoid endangering themselves, by simply shifting into the demi-circus of the performance space and shifting into 'character'. In doing so, they saved the spectator from himself, but not before he had become spectacle.

This exchange from their location with the audience into the performance space served as a double gesture. First, it transformed the physical environment. By the mere movement of a couple of steps, the power relations between themselves and the spectator changed fundamentally. Second, it transformed them from illegitimate bogans to legitimate actors. Not only did their esteem rise, but it implicitly reproved the audience members, and in doing so, rendered them legally impotent. The audience could do nothing in the face of the challenge they had experienced, and the most aggressive of the spectators submitted to the new power arrangement. While they caused no physical harm, these audience members were now the transgressors, having breached the laws of the audience, and their role (at least as they would have understood it) as respectable members of an audience.

---

This encounter encapsulates what I mean by the theatrical, or as Sarrazac puts it: 'theatricality reestablished the art of theater as action' (Sarrazac 2002: 65-66). This conception of the theatrical makes it apparent that communication, encounter and interaction is not found in a script, or in a play or in a text. Indeed, it points to the thing we assume, in terms of a legal account of human conduct, that the narrative certainty and completeness with which we imagine human interaction is simply artifice. Yet law assumes through its tests and techniques that our actions and conduct, our behaviours and practices, exist as text, as a narrative that is created with a beginning a middle and an end. This account of human conduct presupposes and presumes that even the most visceral of encounters exists through the lens of a knowing, thinking subject. And while it is trite to recall that decades of critical legal literatures have countered this presumption, they do so from the starting point of the knowing person who may be captured by their physical traits and subjectivities. Instead, law takes extraordinary measures to impose narrative certainty, meaning, and clarity on the sheer randomness and meaningless of the events, actions and interactions that litter human existence, and as such assume the existence of a literary necessity in everything that occurs.

What I am posing here is an alternative reading of interactions that is premised on the theatrical in two dimensions. The first is the physical encounter that is, fundamentally, a response of the body and not of the mind, in order to challenge the legal imaginary of the knowing individual. The second concerns the narrative and interpretative practices that draw upon the existence of a literature that becomes all knowing, and which disregards or fails to recognise the function of the physical, visceral and corporeal in those interpretations. As I am using it, however, I avoid using performance or performative because each term implies a textuality beyond the body, a rationality or perfection (Peters 2008). Peter Goodrich reminds us that the common law is enigma, linguistic opacity, obscuring its substance or intention (Goodrich 2010: 80, 86):

[A]ll texts, all laws, are enigmatic in the sense that they say more

## Leiboff

than they show ... law cannot own all words, nor can law control all the images that words store and unleash. For this reason the literal is insufficient. The letter kills ...' (Goodrich 2010: 97).

The clash between *res* and *verba* (Leiboff 2007: 24-25, 28) creates half-meanings, words divorced from speech and act, or more precisely, speech and act regulated; as Foucault tells us, the body is always open to discipline, but never open to truth.

The theatrical, in this sense, provides a device that is the exemplar of a legal blind spot that insists on making sense of the un-sensible (though this may also be insensible), that creates imagined narrative certainties out of encounters that are suffused with the ineffability of the moment. In short, the theatrical provides us with a means by which we are forced to experience, are forced to acknowledge what is lived at any given moment.

In order to conceive of, and understand the theatrical, however, we must suspend any belief that we hold in the textual certainties of drama, performed literature, play texts and the like. The significance of the theatrical, as Sarrazac reminds us, is that it is not word dependent, and more particularly, it is action. The encounters in the prologue to *Monkey* show clearly the consequences that flow from action. Sure enough, the actors would have rehearsed this scenario, but their quarry never knew. In this sense, the artistic aspects of the theatrical stand in the stead of the everyday. It condenses and distils in a particular framed moment how each of us behaves, transacts and interacts in reality. We function without a script for most of the time, without a preformed narrative, and without a structure. This, I suggest, means we live on the edge, forever open to the possibility that our encounters will result in activities about which we will account afterwards, but which we cannot know about beforehand (of course, there are clear behaviours that do conform to a narrative, such as fraud, or instances where intention is clearly found).

In short, the theatrical militates against law's insistence that actions and events are rendered according to the narrative and chronological certainties of the Aristotelian well-made play; the idea that events occur

because they are planned and intended or were always meant to come to pass is the archetype of the legal account of events (and it must be noted that Aristotle's unities require dramatic action to exist in real time). If these events fail to meet up to this expectation, law, through its processes, will impose a dramatised narrative that conforms to chronological events. The registers in which these narratives are created cut across the sweep of legal endeavour from interview between solicitor and client, to the hermeneutics of the common law.

Our dependence on literary conventions in law has recently been explored in a developing literature on improvisation in law. Desmond Manderson points out, in the context of musical improvisation and law, that the 'tyranny of the text' that took hold in the 18th century has resulted in a recent phenomenon: 'Only in the past two hundred years do we find analyses which problematize the practice [of improvisation], distinguish improvised from non-improvised performance, and treat any departure from a written text as a practice requiring justification (Manderson: 2010). Yet even improvisation functions on the basis of an existing text of one sort or another.

The theatricality of the kind I am considering here, as conceived of by Meyerhold in the first part of the 20th century and Artaud in the mid-20th century does not depend on texts (literary or otherwise). Drawing, in the case of the former, on the traditions of carnival and fairground, and in the latter, on Balinese puppet theatre, these directors / theorists reconceptualised theatre from play and drama, and the internalisation of self (in the Stanislavskian mode, popularised through American style method acting). As Derrida noted, in his exploration of Artaud's theatre of cruelty, theatre 'is life itself, in the extent to which life is unrepresentable.' (Derrida 1978: 8). Thus, the theatrical is encounter, and a physical experiential encounter at that. The theatrical expects us, requires us, to accept and respond to the things that simply occur.

In the events that occurred in the encounters in the prologue in *Monkey*, there was nothing other than the moment as lived, encountered and created. But, of course, this is what was intended.

## Leiboff

The idea that an audience should, sitting comfortably, be entertained without more, is not theatre, is not the theatrical. Drawing upon Meyerhold and Artaud, among others, the mode of theatrical used in *Monkey* references a 'living theatre' and Happenings, of the kind created by Julian Beck and Richard Schechner (among others) in the US in the 1960s and 1970s: a radicalising of the theatrical conventions that rejected a conventional theatre of manners and well-made play, of an evening out, of theatre as amusement and not theatre of encounter and engagement (Brecht 1969).<sup>3</sup> As such, theatre is a living encounter between spectator and audience, where law in the form of word disintegrated in the face of bodily and visceral engagement. This model of encounter breached the proscenium, the imaginary theatrical fourth wall, both literally and figuratively.

The theatrical is dangerous, and its fleshly and visceral ruptures are too primitive, too raw, so that its presences in the everyday are reconfigured and above all uncontainable and untameable, kept under lock and key in case it bursts out. Its fleshy corporeality is the stuff of regulation and closure.

## Notes

- 1 *Monkey* (TV series) [http://en.wikipedia.org/wiki/Monkey\\_\(TV\\_series\)](http://en.wikipedia.org/wiki/Monkey_(TV_series)). The television series was based on Wu Cheng'en book: [http://en.wikipedia.org/wiki/Journey\\_to\\_the\\_West](http://en.wikipedia.org/wiki/Journey_to_the_West).
- 2 At the opening of JM Synge's *Playboy of the Western World* in 1907, a riot ensued, caused in part by concerns relate to its morality (the celebration of a murder) and the mode of its staging (women wearing underclothes on stage).
- 3 For instance, Stefan Brecht's account of the infamous 'Dionysus in 69' describes the author's response to Schechner's Performance Group's creation of Euripides *The Bacchae*

## References

- Brecht S 1969 'Review: Dionysus in 69, from Euripides' *The Bacchae: The Performance Group* *The Drama Review: TDR* 13/3: 156-168
- Derrida J 1978 'The *Theater of Cruelty* and the Closure of Representation' *Theater* 9/3: 6 - 19
- Grin & Tonic Theatre Troupe *The Tale of Monkey His Magic Journey to the West* [http://www.monkeyheaven.com/events\\_brisbanefestival.html](http://www.monkeyheaven.com/events_brisbanefestival.html) accessed 3 December 2010
- Goodrich P 2010 'Legal Enigmas – Antonio de Nebrija, The Da Vinci Code and the Emendation of Law' *Oxford Journal of Legal Studies* 30: 71 - 99
- Leiboff M 2007 'Law's empiricism of the object: how law recreates cultural objects in its own image' *Australian Feminist Law Journal* 27: 23-50
- Manderson D 2010 'Fission and Fusion: From improvisation to formalism in law and music' *Critical Studies in Improvisation / Études critiques en improvisation* <http://www.criticalimprov.com/index.php/csieci/article/view/1167/1717> accessed: 27 Nov. 2010
- Peters J S 2008 'Legal Performance Good and Bad' *Law, Culture and the Humanities* 4: 179–200
- Sarrazac J-P trans V Magnat 2002 'The Invention of "Theatricality": Rereading Bernard Dort and Roland Barthes' *SubStance* 31/98-99: 57-72