

volume twenty-five

**Performing theatrical jurisprudence**

edited by

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This issue may be cited as  
(2021) 25 LTC

It should be catalogued as Law Text Culture with no punctuation.

ISSN 1332-9060

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Front cover image: Danish Sheikh, 'Contempt' by CutShots Photography.

**Law Text Culture** is an interdisciplinary peer reviewed journal published by the Legal Intersections Research Centre at the University of Wollongong in Australia.

**Law Text Culture** aims to produce fresh insights and knowledges along three axes of inquiry:

Politics: engaging the relationship of force and resistance;

Aesthetics: eliciting the relationship of judgment and expression;

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In Australia and Europe, subscription enquiries should be directed to major distributors or to Law Text Culture through the website given above.

In North America, subscription enquiries should be directed to:

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All back issues of **Law Text Culture** from volume 1 (1994) to date are now available in pdf online at <http://ro.uow.edu.au/ltc>



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# Performing theatrical jurisprudence: an introduction

Sean Mulcahy and Marett Leiboff<sup>1</sup>

## 1 Prologue

This special issue of *Law Text Culture*, 'Performing Theatrical Jurisprudence', seeks to generate new accounts and explanations of law and legal thinking through the new field of theatrical jurisprudence. It invites a reflection on what theatrical jurisprudence can do for law and what law can do for performance.

Theatrical jurisprudence takes its cues from Marett Leiboff's *Towards a Theatrical Jurisprudence* (2019), the first book to pose the possibilities of theatrical practice to the law as jurisprudence; and is inflected by theatre scholar Alan Read's (2015) associations between theatre, performance and law and the work of legally-oriented performance artists and theatre-makers and their demands on law as a praxis. It is characterised by its insistence on creating modes of engagement, encounter and response in those who come to law, do law, and respond to law. It is primarily a jurisprudence that challenges through a range of genres, techniques and practices influenced by theatre and performance. Theatrical jurisprudence is, as Leiboff describes it, not a bare philosophy or theory, but a practice: 'a jurisprudence that is meant to be done and acted upon, as a practice and a form of conduct that shapes through the formation of the self as aware and noticing, and imbricated through practice, into the consciousness and hence the body of the lawyer' (2019: xi).

## Sean Mulcahy and Marett Leiboff

The potential of the theatrical as a site of jurisprudence has been a long time coming. Its contemporary antecedents can be found in Jack Balkin and Sanford Levinson's call 'to replace the study of law and literature with the more general study of law as a performing art' (1999: 729); in Julie Stone Peters' critique of law and literature as an 'interdisciplinary illusion' that 'is beginning to shed its second term and meld into "law, cultural and the humanities"' (2005: 451); and in Leiboff's early dabbling with 'cultural legal form' (2005: 34).

A theatrical approach to law was posed as a possibility in another special issue of *Law Text Culture* ('Law's Theatrical Presence', volume 14, 2010), co-edited by Leiboff and Sophie Nield. In their opening introduction, Leiboff and Nield invited the reader 'to think beyond the "theatrical" as simply words or playtexts, drama or literature, and beyond the "performative" as a universal referent to any form of enacted public practice', and instead consider 'law through the lens of theatrical theory' (2010: 1). However, only Leiboff's (2010) short essay scratched at the possibility of a theatrically inspired jurisprudence. In 'Law's Theatrical Presence', the pull of the performative marked the field, through Peters' highly influential article, 'Legal Performance Good and Bad' (2008), alongside other influential work by Nicole Rogers (2005; 2008), Cheryl Lubin (2008) and Kate Leader (2007), and political practices of theatre and law that revealed law's theatrical presence; however, theatrical jurisprudence was still some way off.

Now that it has taken its name and the semblance of a shape, form and manifesto, the path is now set for new forms of legal thinking to emerge out of *performing theatrical jurisprudence*, the subject of this special issue. As shaped through the work of scholars and artists over the past decade, theatrical jurisprudence is pregnant with possibilities and potentials for application. In this special issue contributors consider what is meant by a theatrical jurisprudence of law; how it translates into performance or practice-led methods of legal research; and what this means for law as it plays out in different settings and contexts. In *performing* theatrical jurisprudence, the special issue interrogates law's texts, histories, assumptions and methods, opening up new ways of

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doing law, especially in times of crisis, as a jurisprudence that practices modes of being, presence and encounter. This is particularly relevant given that, at the time of writing, legal proceedings are increasingly being carried out via camera and screen, and through the digital performance of law.

This mode of practice-led jurisprudence therefore takes this special issue into a completely new turn for law and humanities scholarship. As a new contribution to the theatrical turn in law, and the praxis turn in the broader humanities, this issue draws from theatrical jurisprudence and recent path-breaking work in the field of law and theatre to consider how law is performed and of the practice of performing jurisprudence. Theatrical jurisprudence and law in/and/as performance are still emerging fields, and this special issue showcases the burgeoning new work of scholars and practitioners in the field, and considers how law is performed in a range of different genres and modes and as both a jurisprudence and a form of practice. In so doing, this special issue marks out new research and practice in the field, charts a path for the next moves and directions for further research and practice, and aspires to generate new insights into this emerging interdiscipline between theatre and law.

### **2 Theatre, bodies, performance**

The articles in this special issue cover territory that is incredibly diverse and broad in scope, but three common issues emerge. The first is the dependence of law on the theatrical, and the possibilities of theatre and theatrical jurisprudence to rethink legal practices and performances with an attention to the staging of law and the audience response. The second is around the bodies of law, and the complicated relationship that law has with the human body, whereby the law is simultaneously utterly dependent on the body but constantly abjuring it. This is where our contributors suggest that theatre and theatrical jurisprudence can possibly intervene: to bring law back to the human body. The third is the transformative potential of performance and performative practices, and the possibilities performance poses for the law.

## **A On the theatrical**

A common misconception promoted in discussions about theatre and law is that law and theatre are diametric opposites: the theatre uses tools such as physicality, emotion and feeling to reach an understanding whereas the law is strictly confined within the confines of the intellectual realm; the theatre is reserved for the fantastical world of the stage whereas the law takes place in real life. This is an outdated premise – as Leiboff (2019: xvii) states, theatre only requires bodies and space; it can – and does – take place in the legal sphere. As Gary Watt further expounds, law, like theatre, is patently performed and concerned with representation. Ryan Roberts goes further to suggest that law is dependent on theatrical devices for its power. It is thus not a coincidence that many powerful legal actors have a background in theatre; as Markéta Štěpáníková points out, Václav Havel, the first President of Czechoslovakia after the Velvet Revolution was a playwright. It would seem, as Julie Lassonde puts it, that theatre and performance has always been part of law, but within boundaries that have been reaffirmed over time.

In her study on re-working law through theatre, Dorota Gozdecka argues that theatre exposes law: it strips law of its aura of secrecy and its cloak of mysticism and arcane knowledge accessible only to lawyers. Therefore, theatricalising law displays law in its bare form to wider audience beyond lawyers and the like. In its nude form, law is open to interrogation, but is also able to be connected with by a wider audience.

Watt takes an alternative approach. In his study of the theatrical practice of masking, he argues instead that theatre is concerned with the act of covering up: it recognises that make-up and masks are every bit as expressive as the physical face of the actor who presents them. Therefore, theatrical jurisprudence demands an appreciation of the art(ifice) of law and legal performance. In all its artificiality, law demands attention to surface, superifice, and signs.

How might we reconcile these two divergent approaches to theatrical jurisprudence? Watt concludes that the challenge of theatrical jurisprudence is to notice when and how law performs and

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is performed, and to appreciate where and how legal performance antagonises other performances including its own. We see this in the way that Aiste Janusiene uses theatrical jurisprudence to rethink practices and performances of judging, particularly in the circumstances of a post-Soviet Lithuania. Theatrical makes demands; Danish Sheikh argues that there is something at stake within the practice of staging law as text and performance, bringing to the fore a key facet of theatrical jurisprudence, as an act of noticing ‘what’s at stake when law is brought into the realities of being’ (Leiboff 2019: 138). Taking this further still, Robyn Gill-Leslie argues that framing law inside a concept of the theatrical becomes powerful when considering what a theatrical response asks of bodies engaged in legal spaces.

### **B On bodies of law**

Theatrical jurisprudence makes a demand that law will shy away from, that the bodies of its practitioner and interpreters are far from being absent in law’s interpretative practices. Gill-Leslie brings this front and centre, arguing that the bodies of law are papered over and made subservient to documents. Further, legal procedure’s preferred method of interaction through writing keeps the body compliant and constrained by doctrine and dogma – a set of principles developed by rational thinking. This method is in contradistinction to the theatrical, which Leiboff says ‘turns to the body as the first point of call over the rational mind’ (2019: 25). Whilst law might be grounded in notions of rationality and impartiality (Leiboff 2019: x), Janusiene argues that impartiality does not require bodily negation. Indeed, peel back the paper and we can see that ‘law is deeply concerned and embedded in the body as an embodied practice’ (Mulcahy 2021: 19). As Roberts argues, the law is dependent – as theatre is – upon physicality, emotion and feeling. He takes us along as he comes face to face, literally, with the challenges that the theatrical brings to a conventional legal reading of that core document of law – the case or judgment. Embracing this idea of an embodied law, Gill-Leslie finds that the issue of travel to the legal space is one of the clearest instances of bodily experience, and that



the pattern of travel to and from the space develops a cyclical rhythm to the legal proceeding – a finding that resonates with other cultural legal scholarship exploring the approach to legal spaces (Barr 2016). Similarly, Janusiene discovers moments of bodily response in judges that challenge the notion of a disembodied ideal jurist, heightened by the effects of geo-politics, contexts and circumstances that bear down on the bodies of her subjects, Lithuanian jurists seeking to negotiate a post Soviet legality now inscribed through European civil law norms, along with fundamentally changed social expectations.

This work operationalises the challenge to the imagined ideal of law that Leiboff has remarked on – that ‘law is predisposed against the body’ and instead ‘insists on and valorises the *disembodied* mind’ (2015: 83-84), while its practitioners are all the while deploying their bodies unwittingly. Responding to this idea, Gill-Leslie further argues that law that denies the body denies justice and absolves itself of responsibility for its impact and actions. She points to how the notion of a lawyer *acting for* a litigant means that the litigant’s body is mediated through the lawyer and cannot be seen in its raw form. This can be disrupted by shrewd use of bodily performance as performative self-advocacy. Watt also draws attention to the body of lawyers, and argues that the imagined and sometimes physically present scrutiny of ‘the other side’ casts a shadow over the lawyer representing their client. Even in the process of legal drafting or negotiation – in the moments of legal performance preparation – where the other side may not be physically present, it still casts its shadow. Our diverse contributors constantly draw attention back to the bodies of law that are often dismissed, papered over and over-shadowed.

As we flagged in our introduction, legal proceedings are now increasingly being carried out via camera and screen, through a digital performance of law. Gill-Leslie points out that for those giving testimony through video link, their voice gives testimony without their corporeal body; the sounds and pixelated images coming from video-linked television screens displayed around the court. This process of mediation, whilst ostensibly giving a platform for testifiers to discuss

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what happened to them, does not allow the voice and body to be seen and heard in its raw form. The rise in virtual courts and digital communication technologies (McKay 2018) poses a challenge for the physical courthouse, for a court is only a court when a member of the judiciary has opened session; at other times, it is simply a room in a building (Valverde 2015: 9). Law's traditional places of performance are rapidly shifting.

Watt points to a fearful possibility that the law's ultimate project is to performance itself – detached from the humans that animate its performance – and acquire and inhabit a body of its own. A body of law that will not need us and, as Leiboff puts it, becomes 'so dissociated from humanity that it's unaware of its consequences, and inevitably produces the loss of humanity in those who operationalise it' (2019: 99). That is where theatre can intervene, and we see this intervention most vividly in Sheikh's discussion of *Queen Size*, a choreographic response to a section of Indian law that criminalised sexual acts 'against the order of nature' and, more broadly, in the body of work in the nascent field of law and dance (Mulcahy 2021). This work is fundamentally about bringing law back to the human body. We can also see this in Gozdecka's production of *Trumpsformation*, wherein she represents a physically violent struggle between legal officers and dissidents as a conflict between the legal and the ethical; the law is embodied as an oppressive force to silence dissent through force. Similarly, in Štěpáníková's production of *Milada*, based on the real-life trial of dissident Czech politician Milada Horáková, the staging and movement of actors was intentionally unrealistic to demonstrate how this was a show trial; the choreography becomes a commentary on how the trial betrayed the rule of law.

Sheikh calls attention to the bodily effect of legal performance on its audience, exploring the relation between the one who touches and the one who is touched, the one who watches touch and the one who is watched – and the constant reciprocity between these positions. As Mulcahy has argued, 'the atmosphere of performance is felt in terms of the haptic potentiality between actor and audience, that is, the potential of touch between the two' (2020: 77). But it is not only in the actor-

audience relationship through which this haptic potentiality is felt; the watching audience are also watching one another. To which Sheikh poses the questions: how can we reverse a gaze and touch back, touch and feel through looking, in a way that is ‘imbricated through practice, into the consciousness and hence the body’ (Leiboff 2019: xi); how can we watch in a way that generates ‘response, responsiveness through the physicality of the encounter’ (Leiboff 2019: 90)? This interaction between actor and audience permeates Sheikh’s work, and has been picked up by other cultural legal scholars (Crawley 2010; Crawley and Tranter 2019). Thus an additional question may be posed: how can an audience as a body of people have an effect on law?

Roberts suggests a way forward: paying attention to the way that the body instinctually reacts to different situations. Understanding the body within the legal context, he argues, allows us to re-imagine and re-apply ingrained values that appear to be rigid and immovable. He concludes that it is the instinctual reaction of the body that provides jurists with fresh perspectives to re-assess their understandings of the law because its response exists prior to rational thought; it is ‘that “step before” that helps us to notice’ (Leiboff 2019: 138). Leiboff argues that ‘we simply can’t notice what it is that we have never lived, either literally or by analogy’, so cultivating ‘something of that imagination and experience needed to notice when law goes wrong’ is needed (2019: 105).

This is most vividly seen in Lassonde’s performance art series *Counterbalance*, where she invites her audience to play on a seesaw to reflect on the concept of balance in justice, and the need to take their own and others’ bodies into account. What she found resonates with Leiboff: different people, with different bodies and lived experiences, react differently to this invitation. To engage the legal body in performance fundamentally changes it.

### **C On the potential of performance**

Leiboff conceives of performance as ‘a critical practice in law and the humanities... bound up with and through obligations of responsibility,

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where we are primed to notice something of law that is otherwise unimaginable, that might be registrable through lived experience or obtained through the effects of performance' (2020: 317). Lassonde argues that cultivating qualities related to performativity, such as presence, listening, improvisation and flexibility, are necessary to navigate the law. By rejecting reliance on law as predictable written rules, fixed images or codes, we can instead discover the mechanics and emotional effects of legal performativity and how to effectively engage with this. Lassonde advances the idea of performance art as a way to help connect us with the performative aspects of law and everyday life. She argues that, whether at the offering or receiving end of performances, it is important to exercise care, but also to sit with discomfort for our experience of discomfort can bring additional knowledge and the potential of positive change to the law.

We see this in Sheikh's attention to dramaturgy as his 'jurisprudence of repair.' Sheikh is himself a playwright, which he conceives of in dual terms: as one who engages in 'play' or playfulness and the proliferation of possibility; and as a 'wright' or craftsperson who builds and repairs. As he writes elsewhere, 'to wrought something is to hammer and melt and forge and craft' (Sheikh 2021: xiv), and his work is a careful re-crafting of law. We also see this in Roberts' process of physically embodying esoteric legal concepts through theatrical techniques of bodywork. Roberts describes his process as grounding ideas in physical reality and, through this, understanding through feeling these ideas, and compelling a re-view, re-vision and re-consideration of these concepts. Legal concepts are necessarily constructed and here they are re-constructed through the body and made human. Roberts suggests that the challenges of embodying legal principles may indicate that there is a challenge in explaining and applying the principles in practice.

We also see the transformative potential of performance in Gill-Leslie's invocation of strategic bodily performance to break the dangerous cyclicity of law; in certain of the judging practices that Janusiene examines; in Gozdecka's playwriting as a method to explore conflicts between ethics and law, just and unjust laws, and compliance

and dissent; in the trial plays of central Europe that Štěpáníková examines, which interrogate and occasionally challenge the inner workings of the law; and finally in Watt's warning that, through the practice of legal masking, the performance of power may become uncoupled from responsibility and accountability.

### **3 Ways of reading**

What remains for us is to introduce the articles in this special issue. Usually this is done by means of a chronological structure where we step through each article in the order in which they appear. We do that, but we also suggest that the chronological structure is but one way to navigate this special issue. You might be a traveller that wants to take a journey through the different places explored in this special issue. In which case, we suggest a geographic journey. You might be interested in scholar-practitioners at different stages in their careers – and in different careers. In which case, we suggest a progress journey.

We invite you to let your curiosity guide you on your reading journey, and to take a pace that suits you. As you will see, there are many sites along the way that point to the rich connections between theatre and law.

### **A A chronological journey**

The articles in this special issue traverse the ethical, aesthetical and political dimensions of legal performance. In this overview, we will journey through the articles in this special issue in the chronological fashion in which they appear.

In the opening article, 'Passing resemblance: the burden of the mask in legal and theatrical tradition', Watt relates the passing on of theatrical masks to the law through a careful study of three theatrical masks: the German dancer Rudolf Laban's masks, the Italian commedia dell'arte mask of Pulcinella, and the Japanese Noh theatre's hanya mask. The law, Watt argues, is a mask – it represents human motivations but is always in danger of becoming too thick in its layers of representation

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and too hard for the wearer to bear. And yet, a significant aspect of the power of law is its success in making its mask invisible. Indeed, as Watt has written elsewhere, law denies its own creative construct (2016: 2). Instead, Watt invites us to pause and consider the mask as law. As we look at the mask, we are asked to appreciate what it brings to us – the protections, security and performative possibilities that it affords us. But we must also resist its stifling effects – as much as humanity that we put on masks, we must also not be afraid to take them off and pass them on. It builds on Watt's (2013) path-breaking work on law and dress, and reminds us of the value law places in its external appearance.

In "Do you understand how much I have transgressed here?": interrogating dynamics and consequences of noticing in the post-colonial legal self', Janusiene explores real-life judges responses to television judge shows. Whilst literature on judging is largely focused on common law or western European experiences, Janusiene focuses instead on Lithuania, a Baltic nation state formerly subject to Soviet rule and now moving to a different legality grounded on Western ethos. Her work explores how judges react and respond to the challenges of law in this state of flux, drawing from theatrical jurisprudence to explore the conditions of noticing and the shift towards the practice of performance amongst the judiciary.

In 'Breaking cycles of subjugation through bodily performance: lived experience inside legal processes at the Marikana Commission of Inquiry', Gill-Leslie explores the bodily experience of participants in this inquiry into police killings at a South African mine, as framed through theatrical jurisprudence, alongside the aesthetics, corporeality and rhythm of this legal performance. Bringing bodily experience to the centre of analysis, Gill-Leslie argues, reveals an alternative appraisal of truth seeking at this inquiry, refiguring the commission as a space of danger, not truth and justice; in part attributable to bodily absence, both on the part of testifiers and the attending audience. Gill-Leslie uncovers an alternative cyclical rhythm present throughout the inquiry, otherwise dismissed by the commission with its focus on a linear trajectory.

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The three articles explore legal and theatrical performances in a variety of cultural contexts, including Germany, Italy, Japan, Lithuania and South Africa. In the next article, we return to look at anew at an Australian judgment.

In ‘Theatre and the law: a dramaturgical analysis of *Comcare v PYYW*’, Roberts reads a judge’s dissent in this workers’ compensation case – alongside the precedent it draws from – and offers a dramaturgical reappraisal. He argues that to comprehend this judgment – and the law more broadly – various techniques need to be adopted that go beyond the intellectual and into the body. What is needed are alternative dramaturgical and theatrical ways of thinking and doing law, including the practice of physical embodiment. Roberts experiments with such techniques in his embodied and very novel case analysis, and points to how performance-based methods of legal research can illuminate the object of study.

The next three articles all examine theatrical adaptations of law – both in the form of dance as well as more traditional documentary trial plays or theatre concerning law – in a variety of cultural contexts, including India, Germany, former Czechoslovakia, and Australia. In so doing, they contribute to the recent scholarly attention to law and dance (Mulcahy 2021) and verbatim trial or tribunal theatre (O’Connor 2013).

In ‘Staging repair’, Sheikh stages an encounter between an Indian legal judgment and a theatrical performance both concerning the criminalisation of sodomy, mediated through a legal-theoretical essay. In assembling and reassembling these objects of inquiry, he stages what he terms a jurisprudence of repair that is grounded in the practice of dissent. This jurisprudence of repair, he argues, is a practice that might allow queer people to form lawful relations or attachments in a joyful way. Sheikh’s reflexive and creative writing is a joyful read that invokes Leiboff’s call for ‘confrontation to bring you into something of the lifeworlds of those in whom terror and trauma is etched’ (2019: 139), in this case, queer Indians – such as Sheikh himself – who have lived under anti-sodomy laws and encounter and interact with the law as audience to these legal and theatrical performances. It also reminds

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us of Kim Scheppel's observation that 'to make sense of the law and to organise experience, people often tell stories. And these stories are telling' (1989: 2075).

In 'Terror: the danger of legal theatre', Markéta Štěpáníková examines two trial plays – Ferdinand von Schirach's *Terror*, based on a hypothetical German legal incident, and her own verbatim trial play *Milada*, based on the trial of Czechoslovakian politician Milada Horáková – focusing on the question of 'reality' in the presentation of law in both plays and its possibly dangerous consequences in central Europe. Questions of 'authenticity' and 'reality' have long dogged the trial play format (see e.g. O'Connor 2013), and this is particularly so because of the format's possible impact on legal awareness more broadly and the recollection of a specific legal event more specifically. Štěpáníková argues that trial plays should not risk creating misconceptions about law that can harm the rule of law, particularly given the rise of authoritarian leaders and anti-democratic sentiment in central Europe. In this climate, it really matters what theatre says about law, as directorial choices and legal critique in trial plays can have real effects on audiences' awareness and appreciation of the law.

In 'Antigones of contemporary theatre: capturing problems of today's civil disobedience in a theatre play', legal scholar, playwright and theatre practitioner Dorota Gozdecka examines her own law and theatre play, *Trumpsformation*, set in the Australian capital of Canberra and exploring the incommensurable relationship between law and justice/ethics through the figure of the dissident who faces legal consequences for their act of dissent – fighting for the rights of migrants, for environmental and social justice, or for workers' rights.

The final article is an example of what might be broadly described as performance-led legal research or an arts-based method of legal research.

In the closing article, 'Would you like to play on the seesaw?', performance artist and social justice lawyer Julie Lassonde examines her own performance art and installation series, *Counterbalance*, which involved a seesaw installed in a law school and then a courthouse.



Through this work, which invites a sense of play, she explores how the performance art piece reveals the potential for traditional legal institutions to open up to a wider range of performance and how the piece highlights the meaning and normative power of different legal spaces. Her work suggests strategies for deploying creative performative practices, such as presence, listening and physicality, within these legal spaces and how these practices can evoke both joy and discomfort. She concludes that it is necessary to sit with the discomfort that this site-specific performance can create and, in doing so, this discomfort may bring additional knowledge and the potential for positive change.

As you can see, the special issue includes a diverse variety of responses to the topic of ‘Performing Theatrical Jurisprudence’, but further research could attend to some of the themes less present, such as legislative theatre (Boal 1998), political performance (Rogers 2019), digital legal performance (McKay 2018), and the acoustic dimensions of legal performance (Parker 2015; Ramshaw 2013) – the latter is, however, well traversed in the immediately previous special issue of this journal. Nonetheless, the articles traverse law and theatre in a wide variety of cultural settings, which is one of the most rewarding aspects of this special issue.

## **B A geographic journey**

The articles in this special issue take us around the globe, from the location and relocations of its authors, its subjects, its places, its concerns. Australia looms large, from those of us who are from here, to those of us who reconsider the world from its vantage point. We move north and south, east and west. Roberts takes us to the small town of Sandy Hollow in the Upper Hunter Valley region of New South Wales, Australia, where he explores the upbringing of one of his subjects, High Court judge Stephen Gageler. We travel to the nation’s capital city, Canberra, where Gozdecka stages her production of *Trumpsformation*, set in some nearby government offices and featuring actors from the Australian National University’s College of Law. We fly across the Pacific, with a detour to Easter Island, where Watt notices a

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resemblance between one of the masks under his study and the Moai statues that dot the island.

We eventually land in New York and visit Trump University whose logo inspired the lion characters in Gozdecka's play, and the site of the 2001 September 11 terrorist attacks that led to sweeping new aviation regulations that form the basis of one of the plays studied by Štěpáníková, *Terror*. Driving north, we pass through the playground seesaws of the United States in the 1920s to 1970s that were the inspiration for Lassonde's work, *Counterbalance*. We then arrive in Montreal, in Québec, a French state in otherwise Anglophone Canada. Here, we visit the University of Montréal where Lassonde presents at a conference on women, arts and the law; McGill University, where she produces combinations of performances and texts as part of her law degree; and then the lobby of the Court of Appeal of Québec where she stages the second performance and installation in her *Counterbalance* series. We drive west, past the Supreme Court of Canada in Ottawa, which rejected a proposal to stage the work there, and arrive in Toronto at the Osgoode Hall Law School at York University, where Lassonde stages the first iteration of counterbalance.

We then fly to South Africa. Here, we visit the Constitutional Court of South Africa, where former judge Albie Sachs inspires Lassonde's work through his notion of judgment as a weighing exercise. We then drive north to the Lonmin mine in Marikana, which is the site of the killings that led to the Commission of Inquiry that Gill-Leslie examines. We visit the neighbouring countries of Lesotho, Eswatini (formerly Swaziland), Mozambique and Malawi, where Gill-Leslie notes that the family members of the deceased live and travel to the Commission from.

We then fly north to the United Kingdom. Our first stop is Guildford where we visit the Geraldine Stephenson Archive at the University of Surrey, where Watt uncovers a series of letters that give clues to the whereabouts of a missing mask. We then drive to London and visit The Old Vic theatre for a production of *Saturday, Sunday, Monday* in 1973, based on the Italian original by one of the

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masked actors under Watt's study. We then drive further north still to Manchester Metropolitan University, where we go looking for further clues to the missing mask's whereabouts – maybe it can be found here? We continue our northward journey to Newcastle University, to the Critical Legal Conference in 1989, where Sheikh discovers the beginnings of an aesthetic turn in critical legal studies.

We then catch the Eurostar to Paris, where Rudolf Laban – the original owner of this lost mask – escaped after persecution by the Nazis. Our journey continues onto Naples to the Teatro san Ferdinando where we witness the passing on of a mask of commedia dell'arte character Pulcinella to Eduardo de Filippo, the second mask under Watt's study. We then travel north to Karlsruhe, the site of the German Federal Constitutional Court whose ruling on the Aviation Safety Act inspired one of the plays studied by Štěpáníková, *Terror*. Still travelling north, we hit Frankfurt, the site of a thwarted terrorist attack – a plane hijacking – that Štěpáníková suggests led to the passage of that Act. We travel eastward to Bayreuth where Laban is held in a castle under house arrest until his escape, and then further north still to Berlin for the Olympics in 1936 where Laban's production is cut because it did not align with Nazi propaganda, an incident that Watt suggests may have led to his eventual falling out of favour with the Nazi government. We continue further north to Hamburg's Gansemarkt square, the former home of the Hamburg National Theatre, where 18<sup>th</sup> century dramaturg Gotthold Lessing was based, one of the examples of dramaturges that Sheikh draws from in his study of dramaturgy. We continue our eastward journey to Brno, in the Czech Republic, where we watch the two plays under Štěpáníková study: a production of *Terror* at the National Theatre, and a production of her own play, *Milada* based on the trial of Czechoslovakian politician Milada Horáková, at Masaryk University. We visit the neighbouring countries of Poland and Hungary, where Štěpáníková identifies a democratic crisis and looming collapse of the rule of law. Then we arrive in Lithuania, the site of Janusiene's study of court judges – both in real life and on television.

We then fly to what is now Pakistan. We visit the Sindh province

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and its High Court in Karachi that is the site of a sodomy judgment that weaves its way through Sheikh's work. We then cross the border – itself a less than century old product of partition – to India and take a journey through the streets of New Delhi. At 24 Jor Bagh Road we join Sheikh to watch a production of *Queen Size*, based on the colonial anti-sodomy law that remained in force at that moment. We then cross over Lodhi Road on our way to the Supreme Court of India, the site of two key decisions on this law, which Sheikh carefully studies. We travel south to a park in Bengaluru, where Sheikh explains that even despite the decriminalisation of homosexuality, gay men are still being reported for 'immoral' activities, in this case by a park walkers' association. We continue eastward to Japan, to the Dojo-ji Buddhist temple in Wakayama prefecture, the site of a performance of the hanya mask, the third mask under Watt's study.

We then make our way back to Australia. We land at the Mount Whaleback mine in Newman in remote Western Australia, the site of one of the two cases under Roberts' study. We then fly eastward to Melbourne. We visit the eighth floor of the Melbourne Law School, in the suburb of Carlton, where we find Sheikh watching a recording of *Queen Size*. We follow him to the Institute of Postcolonial Studies in neighbouring North Melbourne, where he watches it again. Then we follow him into his home in North Melbourne where he watches the performance again, in fits and starts, on the screen of his laptop.

We invite you to set sail and visit the diverse places explored in this special issue at your leisure.

### C A journey of progress

The articles in this special issue also represent a wide variety of approaches to the theme. In Roberts' piece, we see a student of the law experimenting with theatrical and dramaturgical techniques to achieve a deeper understanding of a legal judgment. In Gill-Leslie, Janusiene and Sheikh's pieces, we see doctoral and early career researchers utilising theatrical jurisprudence to examine legal hearings, judges and judgments. In Štěpáníková and Gozdecka's pieces, we see legal scholars

examining their own university theatre productions and creating legal theatre. In Watt's piece, we see the legal scholar exploring theatre archives and advancing a new and novel point of comparison between theatre and law based on the practice of masking. Finally, in Lassonde's piece, we see a performance artist and legal practitioner traversing both worlds through performance art installed in the foyers of a law school and a courthouse.

This special issue set out to generate new accounts and explanations of law and legal thinking through the new field of theatrical jurisprudence, and we have been rewarded with contributions from scholar-practitioners at different stages of their careers that all reflect on – whether explicitly or implicitly – what theatrical jurisprudence and theatrical performance can do for law. A decade after the publication of the special issue, 'Law's Theatrical Presence', in this same journal, the possibilities of a theatrically inspired jurisprudence abound in the diverse crop of scholar-practitioners whose contributions mark these pages.

Before you read on, we ask for your indulgence with a brief autobiographical digression. For Marett, 'theatre was put away in a box, literally and figuratively, when [she] began a law degree' (2019: 102). For Sean, it was much the same. When he started his law degree, the black box of the Performing Arts Centre at Monash University was left behind. But, for both of us, we were able to find something in our theatrical pasts that spoke to the law. For Marett, she found in that left-behind box a copy of Jerzy Grotowski's *Towards a Poor Theatre*; for Sean, he found two academic mentors that encouraged him to turn back to the theatre. Theatre studies courses are 'now gone' (Leiboff 2019: 103) or disappearing at an alarming pace, and the status of performing arts training in Australia is precarious. Like the Masters of Arts in Theatre Studies that Marett undertook, the Bachelor of Performing Arts that Sean studied is also now gone or, to use the word of a university spokesperson at the time, 'disestablished'. What this covers up in bureaucratic terminology is a loss of training of the body that practice-based theatre degrees offer. We fear the impacts that this

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may have on the emerging interdiscipline of law and theatre and call on our reader to stand up for performing arts education, but remain optimistic about the ongoing future of law and theatre in part due to the rich diversity of contributions offered in these pages.

Now, let the show begin.

### Endnotes

- 1 Sean Mulcahy is a Research Officer in the Australian Research Centre in Sex, Health and Society at La Trobe University, Australia. Marett Leiboff is an Honorary Professorial Fellow in the School of Law and the Legal Intersections Research Centre at University of Wollongong, Australia.

### References

- Balkin J and Levinson S 1999 'Law as Performance' in Freeman and Lewis 1999: 729-751
- Barr O 2016 *A Jurisprudence of Movement: Common Law, Walking, Unsettling Place* Routledge Abingdon
- Boal A 1989 *Legislative Theatre: Using Performance to Make Politics* (trans Adrian Jackson) Routledge London
- Crawley K 2010 'The Farce of Law: Performing and Policing *Norm and Ahmed* in 1969' *Law Text Culture* 14: 247-276
- and Tranter K 2019 'A Maelstrom of Bodies and Emotions and Things: Spectatorial Encounters with the Trial' *International Journal for the Semiotics of Law* 32: 621-640
- Finchett-Maddock L and Lekakis E 2020 *Art, Lower, Power: Perspectives on Legality and Resistance in Contemporary Aesthetics* Counterpress Oxford
- Freeman M and Lewis A eds *Law and Literature* Oxford University Press Oxford
- Leader K 2007 'Bound and Gagged: The Performance of Tradition in the Adversarial Criminal Jury Trial' *Philament* 11
- Leiboff M 2020 'Challenging the Legal Self Through Performance' in Stern, del Mar and Meyler 2020: 317-333

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- 2019 *Towards a Theatrical Jurisprudence* Routledge Abingdon
- 2015 'Towards a Jurisprudence of the Embodied Mind: Sarah Lund, *Forbrydelsen* and the Mindful Body' *Nordic Journal of Law and Social Research* 2/6: 77-92
- 2010 'Law, Muteness and the Theatrical' *Law Text Culture* 14: 384-391
- and Nield S 2010 'Introduction: Law's Theatrical Presence' *Law Text Culture* 14: 1-2.
- 2005 'Of the Monstrous Regiment and the Family Jewels' *Australian Feminist Law Journal* 23: 33-59
- Lubin C 2008 *Courting the Stage: Law, Drama and the Performance of Law* PhD thesis University of California Los Angeles
- McKay C 2018 *The Pixelated Prisoner: Prison Video Links, Court Appearance and the Justice Matrix* Routledge Abingdon
- Mulcahy S 2021 'Dances with Laws: From Metaphor to Methodology' *Law and Humanities* 15/1: 106-133
- 2020 'Performing Sexuality on the Legal Stage' in Finchett-Maddock and Lekakis 2020: 70-90
- O'Connor J 2013 *Documentary Trial Plays in Contemporary American Theatre* Southern Illinois University Press Carbondale
- Parker J 2015 *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* Oxford University Press Oxford
- Peters J 2008 'Legal Performance Good and Bad' *Law, Culture and the Humanities* 4/2: 179-200
- 2005 'Law, Literature and the Vanishing Real: On the Future of an Interdisciplinary Illusion' *PMLA* 120/2: 442-453
- Ramshaw S 2013 *Justice as Improvisation: The Law of the Extempore* Routledge Abingdon
- Read A 2015 *Theatre and Law* Red Globe Press London
- Rogers N 2008 'The Play of Law: Comparing Performances in Law and Theatre' *Queensland University of Technology Law and Justice Journal* 8/2: 429-443
- 2005 'The Playfulness of Constitutional Law' *Southern Cross University Law Review* 9: 183-203

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- Scheppele K 1989 'Foreword: Telling Stories' *Michigan Law Review* 87/8: 2073-2098
- Sheikh D 2021 *Love and Reparation: A Theatrical Response to the Section 377 Litigation* Seagull Books London
- Stern S, del Mar M and Meyler B eds 2020 *The Oxford Handbook of Law and Humanities* Oxford University Press New York
- Valverde M 2015 *Chronotopes of Law: Jurisdiction, Scale Governance* Routledge Abingdon
- Watt G 2016 *Shakespeare's Acts of Will: Law, Testament and Properties of Performance* Bloomsbury London
- 2013 *Dress, Law and Naked Truth: A Cultural Study of Fashion and Form* Bloomsbury London