

Werner Gephart

(Hrsg.)

Rechtsanalyse als Kulturforschung

Sonderdruck



VITTORIO KLOSTERMANN
Frankfurt am Main · 2012

recht als kultur

käte hamburger kolleg
law as culture
centre for advanced study

Inhalt

Grußwort vor Jürgen Fohrmann	11
Grußwort vor Jacques Commaille	13
Grußwort vor Dieter Engels	15

WERNER GEPHART

Für eine geisteswissenschaftliche Erforschung von Recht im Globalisierungsprozess: das Projekt	19
---	----

HANS-GEORG SOEFFNER

Das Recht der Kultur. Recht als symbolische Formung kultureller Ordnungen	55
--	----

Erster Teil Ein kulturwissenschaftlicher Zugang zum Recht?

WERNER MENSKI

Plural Worlds of Law and the Search for Living Law	71
--	----

ULRICH HALTERN

Recht und soziale Imagination	89
-------------------------------------	----

WERNER GEPHART / RAJA SAKRANI

»Recht« und »Geltungskultur«. Zur Präsenz islamischen Rechts in Deutschland und Frankreich	103
---	-----

Zweiter Teil Recht und Religion

URIEL PROCACCIA

A Russian Tale: A Primer on Russian Icons and Economic Prosperity	141
--	-----

CHRISTIAN WALDHOFF

Recht als Religion – ein Forschungsprogramm	161
---	-----

Dritter Teil Recht und Globalisierung

MATTHIAS HERDEGEN

Legal Cultures between Self-Assertion and Universal Standards 181

DANIELA BERTI / GILLES TARABOUT

Criminal Proceedings in India and the Question of Culture:
An Anthropological Perspective 193

Vierter Teil Differenz, Verflechtung und Konflikt der Rechtskulturen

GERHARD ANDERS

Denial and Recognition of Difference:
Representations of African Culture in International War Crimes Trials .. 209

RAJA SAKRANI

Des ordres normatifs fragmentés à l'hybridité juridique :
le cas du Maghreb colonial 231

CINDY DAASE

The United Nations and the Secretary-General as Mediators and
Norm-Promoters. Global Norms and Standards in the Mediation of
Intra-State Conflicts 267

Fünfter Teil Kulturformen des Rechts

LIOR BARSHACK

Catharsis and the Invisible *Corps de ballet* 295

EVA GEULEN

Law and Literature: Who Owns It? 309

CORNELIA VISMANN

In judicio stare. Kulturtechniken des Rechts 323

Schluss

LIZ WILLIAMS

Law, Culture and Conscience: A Principled Approach to Research 337

Die Autorinnen und Autoren 341

Bildnachweis 345

Lior Barshack

Catharsis and the Invisible *Corps de ballet*¹

Nietzsche's account of the origin of Greek tragedy in the Dionysian cult articulated a powerful intuition on the nature of art, which came to dominate anthropological thinking on art in the twentieth century. Among many other theorists who followed Nietzsche, Victor Turner argued that in the theater the violent enactment of myth by cult members was transformed into representation, collective participation into collective contemplation.² Turner's theory of performance integrated Van Gennep's theory of rites of passage as well as different accounts of the ritual origin of art into an all-embracing model. The arts, Turner argued, evolved from the ritual response to violations of the normative order. Such violations precipitate a *social crisis* followed by a *redressive stage* during which ritual is employed to regenerate order. The ritual restoration of law and order proceeds through reversal of social hierarchies, violation of interdictions and suspension of normative categories. Turner postulates a sequence of four stages – breach, crisis, redress, and reintegration – which he groups into a single continuous process entitled »social drama.« Art, according to Turner, originated in the third, redressive stage of social dramas. Art inherits the functions of occasioning social self-doubt and regenerating the normative order. It wields the transformative, regenerative power of ritual without bringing about actual social upheaval.

I propose to understand the passage from ritual to theater as a shift between two different ways of experiencing the collective body of the group. In ritual, the collective body is enacted by the group and made immediately present. In theater the collective body is *represented* and contemplated from afar by individual group members. By the term »communal body« I refer to the collective body when enacted by the group. I use the term »corporate body« to designate the collective body when it is projected outside the group and contemplated through its legal, mythical and artistic representations.

¹ The text is based on a lecture delivered at the opening symposium of the Recht als Kultur research center in Bonn on July 16, 2010.

² Turner: *From Ritual to Theatre*; Turner: *On the Edge of the Bush*. For other theoretical elaborations of the same basic idea, see Schechner: *From Ritual to Theatre and Back*; Murray: *Excursus on Ritual Forms*; Frye: *Myth, Fiction and Displacement*; Marin: *The Utopic Stage*; Burkert: *Greek Tragedy and Sacrificial Ritual*. In *Totem and Taboo* Freud presented the tragic hero as a civilized transformation of totemic sacrifice.

The enactment of the collective body in ritual propels the dissolution of interpersonal boundaries and the destruction of social space. Like other consequences of communal presence, the destruction of space can be observed in totalitarian regimes. As Arendt described the totalitarian mass in *The Origins of Totalitarianism*, »by pressing men against each other, total terror destroys the space between them.«³ Since the collective body comprises not only living members of the group but also past and future generations, its enactment brings about the simultaneous presence of all generations.⁴ The communion of the generations accounts for the experience of the arrest of time in ritual. Thus, not only social space but also social time breaks down in ritual, a point that might prove significant for the theory of dance, characterized by various authors in terms of release from the temporal organisation of everyday life.⁵

The destruction of space implies that the individual is no longer protected from the collective body. In a psychoanalytic vein, it can be said that the individual is exposed to the violence that inheres in symbiotic social (or object) relations. The communion of the dead and the living implies that participants in ritual are neither alive nor dead, but situated between life and death. The affirmation of life gives way to negativity or ambivalence toward life. Ritual is a moment of normative void in which the violation of prohibition over violence and sexuality is licensed. Boundaries between different spheres of interaction and between the sacred and the profane collapse in a way that engulfs the totality of the individual's experience in the communal body's bliss of its own presence. The union of the individual and the communal body in ritual is a sexual relation, perhaps the most total and uninhibited. It leaves no room for competing interpersonal commitments and attachments. The communal body drains interpersonal attachments of the libido which sustains them and which now fuels a boundless, ecstatic communal bond.

In everyday social life, the communal body is projected outside society and transformed into a corporate body. The projection of the collective body re-establishes social space as a network of boundaries between individuals, segments of society and spheres of interaction. It allows for interpersonal separation, individual autonomy and pluralism. It refounds the rule of law which, unlike the formal rules of ritual, encourages social diversity. Differentiated individual identities, which in ritual give way to *liminal* anonymity and equality, are reinstated. Since all the generations are united in the collective body, the projection of that body outside the social also refounds social time: it circumscribes a social/temporal realm for exclusive habitation by the living, setting the living apart from the

³ Arendt: *The Origins of Totalitarianism*, p. 466.

⁴ On the membership of past and future generations in the collective body, see Barshack: *Time and the Constitution*, p. 553.

⁵ See, for example, Valéry: *Philosophy of Dance*, p. 197; Kracauer: *Travel and Dance*, p. 65.

dead and the still unborn in a way that opens up the horizons of past and future and launches the flow of time.

The projection of the collective body gives rise to social practices of creation, contemplation and criticism of art. While in ritual the collective body is immediately present, in theater and other arts society contemplates its absent unity, its projected corporate body. Works of art represent the corporate body by presenting the public with a juxtaposition of disparate elements, an enclosed whole whose unity is hidden and elusive. The unity of a work of art can stand for the corporate unity of society because in both cases unity is hidden, projected beyond the visible realm of diversity and conflict. According to an old and well-known theory in aesthetics, form consists in the latent ties between the different visible parts of a work of art. A related claim is that the aesthetic value of a work of art corresponds to the degree of the work's wholeness and unity.⁶ Certain formulations of the theory of unity place greater value than others on the experience of diversity and discord as the medium through which unity has to manifest itself. Francis Hutcheson, for example, in his *Inquiry into the Original of our Ideas of Beauty and Virtue* [1725], famously defined beauty as unity in variety, and argued that aesthetic failures derive from the predominance of either principle at the expense of the other.

Paraphrased in anthropological terms, Hegel's view of art as a spectre of the absolute seems to amount to the claim that an artwork's hidden unity designates the corporate unity of the group. Corporate structures coordinate disparate individual wills by means of abstract unifying principles. Aesthetic form mirrors the corporate structure of society: in art and social structure a greater distinctness of individual parts, and greater tensions between them, render unity ever more abstract and distant from the realm of appearances. By representing the unity hidden behind singular and antagonistic elements, art seeks to regenerate the corporate order. Since regeneration is originally and essentially the function of ritual, art must introduce a moment of ritual presence, negativity and formlessness in order to exercise transformative power. Diversity of detail, together with the power of an artwork's hidden unity to engage the spectators, allow for the triumph of form over communal presence, the bare materiality which looms through every art object and threatens to undermine form and meaning.

In the history of dance, one of the most eloquent advocates of representation was the eighteenth-century choreographer Jean-Georges Noverre. Noverre's views were in many respects characteristic of Enlightenment aesthetics. A champion of the *ballet d'action*, Noverre thought that dance should imitate nature, which he identified with the everyday life of ordinary people. Nature was perceived as gov-

⁶ Monroe Beardsley has famously argued that aesthetic value corresponds to the unity, intensity and heterogeneity of interrelated elements; Beardsley: *Aesthetics*, pp. 527–28.

erned by the principles of simplicity, diversity and harmony.⁷ Noverre objected to displays of technical virtuosity and uniform movement which he regarded as artificial. Each dancer should embody a distinct individual character and delineate it in a natural fashion. Since uniformity collapses representation by precipitating the presence of the communal body, Noverre's insistence on diversity of character and gesture is inseparable from his commitment to representation.

In the history of thinking on dance, Noverre's theories gave way to a more radical and literally flamboyant approach that sets dance and theater in stark contrast to each other, defining dance as an ecstatic, immediate presence. Dance was elevated not only above theatre but above the entire spatio-temporal order in which everyday life, and dramatic action, unfold. Nietzsche's influence entrenched this view of dance, which at the beginning of the twentieth century received further inspiration and support from Bergson's highly fashionable philosophy. In his »Philosophy of Dance,« Valéry characterizes dance as an entranced departure from ordinary temporal experience:

This person who is dancing encloses herself as it were in a time that she engenders, a time consisting entirely of immediate energy, of nothing that can last. She is the unstable element, she squanders instability, she goes beyond the impossible and overdoes the improbable: and by denying the ordinary state of things, she creates in men's minds the idea of another, exceptional state.⁸

The great dance critic André Levinson, an admirer of both Noverre and Valéry, reversed Noverre's aesthetic hierarchies by placing the artificial above the natural, the »pure« above the imitative, the virtuosic above the simple. And T. S. Eliot in *Four Quartets* situated dance outside space and time, »at the still point, »neither from nor towards«, »where past and future are gathered«. The difficulty with such reduction of dance to the immediate and the delirious is that it cannot account for the transformative, cathartic power of *artistic* dance. Immediate presence cannot wield transformative power in the theater hall. The regenerative effect of artistic dance, in the social and physical settings in which it is staged and viewed, depends on the display of an aesthetic form to be contemplated by the spectators. It requires a kind and level of complexity which is the antithesis of immediate presence. An enactment of the collective body outside a choreographic structure that exhibits such complexity will fail to produce a cathartic effect and to regenerate the corporate order.

⁷ On dance as imitation of nature, see Noverre: *Letters on Dancing and Ballets*, pp. 16, 28, 52–3; on diversity in dance, see p. 18. The same view of diversity as a governing principle of nature can be attributed to Mozart, who was for a while Noverre's friend. See, Barshack: *The Sovereignty of Pleasure. On the enlightened preference for »natural« as opposed to »artificial« movement*, see Baxmann: *The French Revolution and its spectacles*, pp. 98, 101.

⁸ Valéry: *Philosophy of Dance*, p. 203.

At the same time, the fact that a dance performance, as a work of art, cannot be regarded as an instance of ritual presence does not entail that dance is thoroughly representational. An application of Benjamin's »Critique of Violence« to art would imply that works of art contain pockets of presence, in the same way that the immediacy of founding violence infiltrates and punctuates any regime of conserving violence. The notion that in art representation is interspersed with something other than representation is familiar in aesthetics. This residue of ritual presence has been variously referred to as the sublime, the grotesque, the uncanny. In Nietzsche's account, tragedy retains elements of the Dionysian cult. The chorus, according to Nietzsche, embodies the experience of participation in ritual. After the passage to representation, the chorus remains an incarnation of the collective body of the worshippers. Whether or not Nietzsche's account of the role of the chorus in tragedy is convincing, when it appears in dance the chorus can be more easily identified as a pristine sacred presence.

While condemnations of the arts by medieval and early modern theologians were sometimes grounded in the most curious reasons, the legal and theological denunciations of dance as demonic capture the persistent presence of the collective body in dance. Such presence is sometimes fairly evident. Social theorists have repeatedly observed that dancers form a single body when dancing in unison. In his early study, *The Andaman Islanders* (1922), Radcliffe-Brown noted in a Durkheimian vein that dancing attaches individuals to the group.⁹ In *Crowds and Power*, Elias Canetti offered a reading of tribal dancing, which I shall quote at length:

The equivalence of the dancers becomes, and ramifies as, the equivalence of their limbs. Every part of a man which can move gains a life of its own and acts as if independent, but the movements are all parallel, the limbs appearing superimposed on each other. They are close together, one often resting on another, and thus density is added to their state of equivalence. Density and equality become one and the same. In the end, there appears to be a single creature dancing, a creature with fifty heads and a hundred legs and arms, all performing in exactly the same way and with the same purpose. When their excitement is at its height, these people really feel as one, and nothing but physical exhaustion can stop them [...]. The crowd here knows neither age, sex nor rank; all act as equals. But what distinguishes this dance from others of a similar purpose is the exceptionally extreme *ramification* of equality. It is as though each body was taken to pieces, not only the arms and legs, but also the fingers, toes, tongues and eyes; and then all the tongues got together and did exactly the same thing at the same moment; all the toes and all the eyes became equal in one and the same enterprise. Each part of each dancer is seized by this feeling of equality; and it is always represented in action of increasing violence. The sight of 350 human beings, who together leap from the ground, together thrust out their tongues and together roll their eyes, must make an impression of invincible unity. Density here is not

⁹ Radcliffe Brown: *The Andaman Islanders*, p. 252. Evans Pritchard endorsed Radcliffe Brown's analysis in his essay »The Dance.« See Evans Pritchard: *The Dance*, p. 446.

only a density of people, but also, and equally, one of their several limbs. One could imagine fingers and tongues coming together on their own to fight.¹⁰

Canetti observes parallel, interrelated processes in tribal dancing: individual bodies are at the same time compounded into a larger collective body and fragmented into separate limbs or, in psychoanalytic terms, part-objects. The disintegration of the individual body is simultaneously manifested in the advent of the collective body and in the salience of part-objects. Psychoanalytic theory suggests that it is indeed the collective body that dismembers the individual body into part-objects.¹¹ The simultaneous amalgamation and fragmentation of individual bodies is not restricted to tribal dancing.¹² As a commentator on cultural trends in the Weimar era, Sigfried Kracauer made similar observations. In his essay »The Mass Ornament« (1927), Kracauer discussed the popular fascination with the alignment of the masses in perfect geometrical shapes in movies, spectacles and mass gatherings. Kracauer notes: »Only as parts of a mass, not as individuals who believe themselves to be formed from within, do people become fractions of a figure. The ornament is an *end in itself*«¹³ In describing the mass ornament as an end in itself, Kracauer sees that the collective body in these geometrical arrangements has no goal apart from its own sheer presence. Moreover, like Canetti, Kracauer perceives that the individual body is fragmented in the mass alignments into dissociated parts: »Their mass gymnastics are never performed by the fully preserved bodies, whose contortions defy rational understanding. Arms, thighs, and other segments are the smallest component parts of the composition.«¹⁴

In Western artistic dance, the collective body described by Kracauer and Canetti is known as the *corps de ballet*. In earlier work, I have proposed that the collective body is incarnated in dance even when it is not visualized on stage by the *corps de ballet*.¹⁵ The claim is based on the view that the humanisation of the individual body through its separation from the collective body is the elementary theme of ritual and art. The perpetual reenactment of the conquest of humanness in dance

¹⁰ Canetti: *Crowds and Power*, pp. 35–37.

¹¹ In his essay »The Uncanny« Freud explains the anxiety evoked by the image of feet dancing by themselves as a repressed castration anxiety brought to life by this image. While Freud ascribed the threat of castration primarily to the father, it can be attributed also to a collective body envious of the individual's sexual powers. The collective body can be understood, in the light of Melanie Klein's account of the violence of early, symbiotic object relations, as a sadistic, envious and retaliatory object that threatens to dismember the individual body. Bion remarked that »the group approximates too closely, in the minds of the individuals composing it, to very primitive phantasies about the contents of the mother's body.« See Bion: *Experiences in Groups*, p. 162.

¹² In her analysis of the dances of the French Revolution, Inge Baxmann argues that the organizers of the revolutionary festivities and spectacles aimed to transform an unruly mass into a tame collective body. See Baxmann: *The French Revolution and its spectacles*, p. 98.

¹³ Kracauer: *The Mass Ornament*, pp. 75–76. On the mass ornament in Leni Riefenstahl's *Triumph of the Will*, see Kracauer: *From Caligari to Hitler*, p. 302.

¹⁴ Kracauer: *The Mass Ornament*, pp. 75, 78.

¹⁵ Barshack: *The Body Politic in Dance*, p. 47.

does not require the actual visualisation of the collective body. The *corps de ballet* looms large behind the individual dancer, even if it is not summoned on stage. Moreover, among the different choreographic means for realizing communal presence, the deployment of the *corps de ballet* on stage is rarely the most effective one. Any grouping of dancers, which does not address the spectators with a narrative or a mood that competent spectators will recognize, can transform dancers from desiring subjects into instances of communal presence. Agamben's notion of bare life, once construed – as I believe it should be – in terms of communal presence, beautifully captures such choreographic situations.

The tension between the individual and the group constitutes the most elementary choreographic theme. Accordingly, the most elementary choreographic arrangement consists in the spatial confrontation between the individual and the communal body. Aristotle reports that Aeschylus increased the number of actors in the tragedy from one to two. In its ›purest‹ form, before Aeschylus, tragedy consisted in the interaction between a chorus and a single actor. Other choreographic configurations play out the same drama of separation of the individual from the communal body, whether the large group is assembled on stage or not. The *pas de deux*, for example, evokes the individual's hope to find in the couple a refuge from the large group. It also stages the threat of the dissolution of individuality within the couple, a threat akin to the danger of dissolution in the large group. Freud's analysis of the relations between the individual, the couple and the group in the postscript to *Group Psychology and the Analysis of the Ego* suggests the significance of the duo as shelter from the group. Édith Piaf's song »La Foule« captures the relations between the individual, the couple and the group in dance. The dancing collective body is depicted in the song as forming couples and then tearing them apart by immersing each individual in its frenzy. The repetitive pattern of the song conveys the power of the collective body to overwhelm and maneuver the individuals that compose it.

The affective responses to dance can be linked to the choreographically induced presence of the collective body. An experience that has always been associated with dance is that of dissolution of the boundaries of the self and disappearance in an ultimate, all-encompassing entity. For Nietzsche, the Dionysian element in dance, as he describes it in the opening section of *The Birth of Tragedy*, consists precisely in the dancer's total unification with the community and with nature. This oft-reported experience which, contrary to Nietzsche's view, humbles rather than empowers the individual has been formulated throughout history in different terms. For Renaissance theorists, for example, the geometrical forms of court ballet coincided with the structure of the universe.¹⁶ While the mirroring of the cosmic order in Renaissance ballet has often been understood as an expression of

¹⁶ On the early modern theory of dance as mirroring and perpetuating the harmony of the

social harmony and stability, the totalitarian choreographies of the masses in the previous century reveal the mystical, violent and profoundly unruly nature of such geometrical alignments, as enactments of the collective body.

The experience of merging with some higher reality is also reflected in the romantic theory of dance as ecstatic deliverance of body and soul. We find the idea, for example, in Valéry, who observes that the body in dance is »unable to contain itself in extension« and »goes out of itself incessantly.« In his dialogue *Dance and the Soul*, Valéry puts in the mouth of Socrates the following description of the dancing body: »This *One* wishes to play at being *All*. It wishes to play at the universality of the soul! It wishes to atone for its identity by the number of its acts! Being a thing, it bursts into events! It is transported!«¹⁷ The expansion, dispersal and multiplication of the dancing body observed by Valéry betray the presence of the collective body, in which the individual body becomes diffused and, as it were, scattered. Elsewhere in the dialogue and in his other writings on dance,¹⁸ Valéry describes dance as an eruption of energy in which duration is condensed into immediacy. The compression of temporal continuity is another indication for the enactment of the collective body, whose presence arrests the flow of time.

The ideas of convergence with the geometrical order of the universe and of bodily expansion and transportation articulate and concretize the experience of merging with the absolute.¹⁹ Other responses to the presence of the collective body in dance are the recurrent experience of the uncanny and the de-eroticisation of the dancing body. The divorce between body and speech in dance generates an experience of an elusive uncanny presence. In his essay on the uncanny Freud famously argued that the uncanny is produced by reminders of an early experience that has been repressed. It is the recurrence of the repressed. If Freud's account of the uncanny is convincing in its general outline, it would be plausible to trace the repeated occurrence of the uncanny in dance to the presence of a collective body, since such presence is likely to recall early, repressed experiences of merging.

Like the experience of the uncanny, the de-eroticisation of the dancing body attests to the presence of the collective body. Norbert Servos observed that in fascist rallies, »the body becomes a stylized idol and is simultaneously robbed of its sensuality.«²⁰ While Servos' note captures the simultaneous idolisation and debasement of the body under fascism, the de-eroticisation of the body is by no means unique to the body culture of fascism. It always takes place in dance. The

universe, see McGowan: *Ideal Forms in the Age of Ronsard*, pp. 230–33; Tillyard: *The Elizabethan World Picture*, p. 94. The view of dance as reflection of the cosmic order goes back to Plato.

¹⁷ Valéry: *Dialogues*, p. 57.

¹⁸ See, for example, Valéry, note 7.

¹⁹ On the quest for the absolute in dance, see also Kracauer: *Travel and Dance*, p. 65.

²⁰ Servos: *Pathos and Propaganda?*, pp. 63–64. On the banishment of sensuality from the fascist cult of the body, see also Mosse: *Nazi Aesthetics*, pp. 183, 192.

presence of the collective body desexualizes beauty, since any libidinal attachment will detract from the investment of the individual in the communal body. The communal body can tolerate only cold and sterile beauty. De-eroticisation is ultimately inseparable from a certain surrender to death that pervades dance, a latent, perennial repetition of the dance macabre dictated by the destructive and self-destructive tendencies of the communal body.

The cathartic power of dance stems from the struggle that it orchestrates between presence and representation, between enactment and dispersion of the collective body. A successful choreography intimates the danger of disintegration while eventually integrating and taming presence within a complex aesthetic structure. Choreographers employ a large variety of means to create an effective complexity, one that comprises instances of communal presence that threaten to break aesthetic unity apart and to undermine representation. In order to precipitate communal presence various styles of dance dismantle the individuated body by emptying it of its sovereign interiority and disrupting its hierarchical functional organisation. The fragmentation of the body into part-objects in the mass ornament and in the procedures of contemporary dance allows the collective body to prevail over the disintegrated individual bodies. More generally, the defamiliarization of bodily presence and movement, the elimination of identifiable situations and moods, turns individual bodies into instances of communal presence and bare life.

In his discussion of the burlesque ballet of the early seventeenth century, Mark Franko unraveled the ways representation is subverted in this genre of court ballet through the deployment of carnivalesque themes and motifs, such as transvestism, madness, the figure of the androgyne, and buffoonery in general.²¹ These carnivalesque themes, Franko shows, found their way into modern and contemporary dance, where they are recognizable in new guises and new gestural vocabularies. It seems that each of the motifs of the burlesque ballet mentioned by Franko brings about a moment of communal presence by perturbing the inner order and stability of the individuated, disciplined body. Buffoonery subjects the individual body to the grip of the collective body by unleashing the spirit of carnival. Madness is another manifestation of the collective body's presence, this time of its ferocious and unrelenting hold over the individual body. Obscenity signals the presence of a communal body that dissolves the boundary between the private and the public spheres, engulfing each individual in a blatant, rapturous erotic relation with the collective body itself. The transvestite and the androgyne incarnate the voracious, boundless desire of the communal body, as extensions of that body.

However, contrary to what I have implied so far, the indispensable moment of negativity, formlessness and presence in dance cannot be identified principally

²¹ Franko: *Dance as Text*, pp. 63-108.

with the choreographic employment of anarchy and ambivalence, of grotesque bodies and convulsive movement. The basic procedure for generating communal presence is dance technique itself, the formal rules of movement that constitute a style of dance. The implicit model behind any formal system of dance is the marionette, the automaton that can abide perfectly by rules of movement. At first sight, formal technique can appear as a means for rescuing the individual body from the communal body. Codes of movement seem to aim at transforming corporal presence, the utter thingness sought by the communal body, into form. However, formal rules as such do not provide a choreographic work with form. Formalism is not a response to the presence of collective substance in dance, but a basic strategy for occasioning communal presence and for the dehumanisation of the individual body.

Formalism cannot redeem the individual from the lifeless materiality of the communal body and give it a human shape and a human soul. As Kracauer and Canetti noted, the effect of formalized movement is fragmentation of the individual body. When we observe dancers abiding by the rules of a certain code, we find ourselves in the presence of the communal body. Technique defamiliarizes the individual body, resigning it to the control of an alien, inhuman power. Codes of technique do not render the body lawful but rather implicate it in transgression. In a genuine legal order rules of technique give way to more abstract laws that encourage the diversity of character and gesture championed by Noverre. The enjoyment of blind submission may be indispensable for the individuation and humanisation of the body, but only as a preliminary stage that must be overcome and replaced by a constitutional order that allows for pluralism and autonomy.

This view of technique departs from the more traditional theory according to which the mastery of technique is an avenue to the humanisation of the body and to moral edification. The traditional theory, which goes back to Plato, was widespread among early modern writers on dance and has been elaborated by Pierre Legendre in his book on law and dance. According to Legendre, the dancing body comes into being a »second time.« Legendre characterizes the second, humanized body as one that masters technique, presumably in contrast to an imaginary raw, untutored animal body. By equating dance with military marches and processions, Legendre characterizes the choreographically produced »second« body as a body that moves in unison with other trained bodies.²² Contrary to Legendre's assumption, the humanized body is one that has overcome technique. The mastery

²² *«L'alignement est dans la nature de toute théorie du mouvement conforme : politiquement, la danse et les autres techniques d'emprise pour faire parler le corps humain sont une seule et même chose, un travail de référence au pouvoir omniscient, au même titre que les variantes du cortège religieux ou les modes d'expression de l'automate militaire.»* (Legendre: *La passion d'être un autre*, p. 124). Legendre characterizes the second body as *corps policé* (93). Later he writes: *«Nous sommes au pied du mur, à l'entrée de la cité mystique, là où nous apprenons que nous avons un corps physique dénué*

of technique is a faculty of the first, undomesticated body. According to Legendre, the function of technique is to temper the orgiastic enjoyment of the first body. Contrary to this view, the orgiastic enjoyment of the first body is the enjoyment of blind submission. It cannot be moderated by a technical code because it is the enjoyment of such code.

E. T. A. Hoffmann's account of the marionette Olympia in »The Sandman« is, among many other things, a fable about the insufficiency of technique and formal rules. Perhaps the fact that Olympia's creator Dr. Coppélius is a lawyer should incline us to interpret Olympia as a metaphor for excessive regimentation and bad law in general. In his essay on *The Uncanny*, Freud identified Coppélius as a personification of the bad father-*imago*, an aspect of paternal authority that can be associated with law in its harsh, sadistic manifestations.²⁵ When Olympia dances or plays the piano her rhythmic regularity is impeccable, yet she cannot dance or make music with human beings. Humans cannot »keep time« with her. For all her technical perfection Olympia remains stiff, lifeless and dull in expression.

The ballet *Coppélia*, an adaptation of »The Sandman« choreographed by Saint-Léon to a libretto by Nuitter, completes the meta-choreographic commentary contained in Hoffmann's novella. *Coppélia* can be read as a ballet that thematizes the very nature of dance. The figure of the marionette as such prompts reflection on the significance and limits of rules. It is hardly surprising that choreographers have always been fascinated by the marionette. Yet Nuitter and Saint-Léon went beyond Hoffmann in their meta-choreographic reflection by adding folk dances to their seemingly superficial ballet. *Coppélia* is set in a village where the villagers appear to be particularly fond of dancing: folk dances take place throughout the first and final acts. The individual contours of the protagonists fade away in these traditional dances that channel communal substance onto the stage. Frantz and his fiancée Swanilda, the ballet's main protagonists, take part in traditional dances in which men and women often dance separately. Frantz falls in love with the beautiful and gracious Coppélia, whom he fails at first to identify as an automaton. The unveiling of Coppélia's real nature secures the happy reunion of Frantz and Swanilda. *Coppélia* represents two threats to the individuation of the body, two distractions that Frantz had to overcome in order to acquire humaneness: the traditional folk dances and the technical perfection of the marionette, each inciting communal presence in a different way. By following Frantz's progress toward individuality and humanity, the ballet exposes the »ritual process« – to use Turner's term – of enactment and dispersal of the collective body that always unfolds in dance, taking the viewers to the roots of the cathartic power of dance.

de sens et quelque chose d'autre, un corps complet, celui qui recèle un sens, le sens même de la beauté. Autrement dit, les Occidentaux ont un corps et une âme; ils voient l'humanité comme ça» (162).

²⁵ See Freud: *The Uncanny*, p. 227 et seqq.

References

- Arendt, Hannah (1948): *The Origins of Totalitarianism*, New York: Harcourt.
- Barshack, Lior (2006): *The Body Politic in Dance*, in: Peter Goodrich/Lior Barshack/Anton Schütz (eds.), *Law, Text, Terror*, London: Glasshouse, pp. 33–54.
- Barshack, Lior (2008): *The Sovereignty of Pleasure: Sexual and Political Freedom in the Operas of Mozart and Da Ponte*, in: *Law and Literature* 47 20(1), pp. 47–67.
- Barshack, Lior (2009): *Time and the Constitution*, in: *The International Journal of Constitutional Law* 7(4), pp. 553–576.
- Baxmann, Inge (2007): *The French Revolution and its spectacles*, in: Marion Kant (ed.), *The Cambridge Companion to Ballet*, Cambridge, Cambridge University Press, pp. 98–110.
- Beardsley, Monroe (1958): *Aesthetics: Problems in the Philosophy of Criticism*, New York: Harcourt.
- Bion, Wilfred R. (1961): *Experiences in Groups*, London, Tavistock.
- Burkert, Walter (2001): *Greek Tragedy and Sacrificial Ritual*, in: Burkert, *Savage Energies: Lessons of Myth and Ritual in Ancient Greece*, Chicago: University of Chicago Press, pp. 1–37.
- Canetti, Elias (1992): *Crowds and Power*, Penguin, Harmondsworth.
- Evans-Pritchard, Edward E. (1928): *The Dance*, in: *Africa* 1, pp. 446–462.
- Freud, Sigmund (1919): *The 'Uncanny'*, in: *The Standard Edition of the Complete Psychological Works of Sigmund Freud, Vol. XVII (1917–1919): An Infantile Neurosis and Other Works*, The Hogarth Press and the Institute of Psychoanalysis, London, pp. 217–256.
- Franko, Mark (1993): *Dance as Text: Ideologies of the Baroque Body*, Cambridge, Cambridge University Press.
- Frye, N. (1961): *Myth, Fiction and Displacement*, in: *Daedalus* (90), pp. 587–605.
- Kracauer, Siegfried (1995a): *Travel and Dance*, in: Kracauer, *The Mass Ornament: Weimar Essays*, trans. Thomas Y. Levin, Cambridge, Mass., Harvard University Press, pp. 65–73.
- Kracauer, Siegfried (1995b): *The Mass Ornament*, in: Kracauer, *The Mass Ornament: Weimar Essays*, trans. Thomas Y. Levin, Cambridge, Mass., Harvard University Press, pp. 75–86.
- Kracauer, Siegfried (2004): *From Caligari to Hitler*, expanded 2004 edition, Princeton, Princeton University Press.
- Legendre, Pierre (1978): *La passion d'être un autre: Étude pour la danse*, Paris, Seuil.
- Marin, Louis (1997): *The Utopic Stage*, in: Murray (ed.), *Mimesis, Masochism & Mime: The Politics of Theatricality in Contemporary French Thought*, Ann Arbor: University of Michigan Press, pp. 115–135.

- McGowan, Margaret M. (1985): *Ideal Forms in the Age of Ronsard*, Berkeley: University of California Press.
- Mosse, George L. (1999): *Nazi Aesthetics: Beauty without Sensuality*, in: *Mosse, The Fascist Revolution*, New York: Fertig, pp. 183-199.
- Murray, Gilbert (1912): *Excursus on the Ritual Forms Preserved in Greek Tragedy*, in: *Jane Harrison, Themis*, Cambridge: Cambridge University Press, pp. 341-363.
- Noverre, Jean-Georges (1930): *Letters on Dancing and Ballets [1803]*, trans. Cyril W. Beaumont, Alton, Dance Books.
- Radcliffe-Brown, Alfred R. (1964): *The Andaman Islanders [1922]*, Free Press, New York.
- Schechner, Richard (1976): *From Ritual to Theatre and Back*, in: *Richard Schechner/Mady Schuman (eds.), Ritual, Play and Performance*, Seabury, New York, pp. 196-222.
- Servos, Norbert (1990): *Pathos and Propaganda?*, in: *Ballet International* 13(1), pp. 62-66.
- Tillyard, Eustace M. W. (1943): *The Elizabethan World Picture*, London: Chatto and Windus.
- Turner, Victor (1982): *From Ritual to Theatre*, in: *Performing Arts Journal Publications*, New York.
- Turner, Victor (1985): *On the Edge of the Bush*, Tucson, The University of Arizona Press.
- Valéry, Paul (1956): *Dialogues*, Princeton University Press, Princeton.
- Valéry, Paul (1964): *Philosophy of Dance*, in: *Aesthetics: The Collected Works of Paul Valéry: Volume 13*, Princeton, Princeton University Press and Bollingen Foundation, pp. 197-211.