

Paradoxes and Inconsistencies in the Law

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Between Ritual and Theatre: Judicial Performance as Paradox

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Final revelation is not logical nonsense; it is a concrete event which on the level of rationality must be expressed in contradictory terms, P Tillich, *Systematic Theology* (Chicago, University of Chicago Press, 1967, book I, 151)¹

THAT LITIGATION CAN be viewed as a ritual process is an accepted idea which raises as many difficulties as it offers insights. One of these difficulties stems from the tension between the court's image as epitome of the rule of law and the characterisation of rituals—perhaps their most common characterisation—as interludes of lawless violence and normative void. Several schools of legal thought, including systems theory, have claimed that the determination and demarcation of legality in court are implicated in illegality.² Court proceedings suspend the rule of law and simultaneously stage its supreme realisation. The modest aim of this chapter is to look at the paradoxes which haunt authoritative statements of the law from the perspective of performance theory.

A central line of thought in performance theory evolved out of the anthropology of Victor Turner. The first section departs from Turner's theory of *social structure* and *communitas*, developing an account of structure and *communitas* as *corporate* and *communal* bodies respectively. According to the proposed account, during *communitas* the group forms a *communal body*: an immanent sacred fusion of all individual group members. The presence of the communal body generates the normative void that

¹ See also book III, 165. Tillich's text captures the structure of paradox which unfolds in institutional rituals such as court proceedings.

² See, eg, G Teubner, 'Economics of Gift—Positivity of Justice: The Mutual Paranoia of Jacques Derrida and Niklas Luhmann' (2001) 18(1) *Theory, Culture and Society* 29 at 31; N Luhmann, 'The Third Question: The Creative Use of Paradoxes in Law and Legal History' (1988) 15(2) *Journal of Law and Society* 153.

is often associated with *communitas* and which implicates court proceedings and other rituals in lawlessness. In the course of *social structure*, the communal body is projected outside of the group and transformed into an absent collective body, the corporate body. The presence of the sacred communal body gives way to the worship of an absent authority, communal fusion to individual autonomy. A discussion of the main features of social structures (corporate bodies), such as their dependence on the rule of law, is followed in the second section by an account of ritual (*communitas*) as a lawless moment in which the rule of law and the entire corporate order dissolve. In ritual, the group enacts its communal body in order to appease and exhaust anarchic communal forces which threaten to undermine its corporate structure. Developed social structures manage to appease anti-structural, communal forces with little resort to ritual, by employing instead the milder means of theatre. Advocates and adversaries of the 'bourgeois theatre' have considered it an outgrowth of ritual which tempered ritual lawlessness. Like ritual, theatre challenges the normative categories of social structure but without radically suspending them. It is a process of questioning and reaffirmation that is integrated into everyday life rather than interrupting routine.

In the third section, the ritual structure of court proceedings is outlined. The account of ritual in terms of presence of the communal body which suspends the rule of law sheds light on the tensions inherent in adjudication. The solemn enactment of the sacred in court threatens to suspend the law it seeks to uphold. For a court's decision to be valid and ritually efficacious, it has to involve at least a partial incarnation of founding sovereignty—of the collective body of the group, or 'constituent power'—which suspends the established definition of the court's own authority. The court at the same time occasions a moment of ritual immediacy and pretends merely to perform a repeated act of representation, to stage once more the same legal script. This tension between ritual and theatre, between presence and representation, seems to be particularly acute in the case of modern courts, since their sanctity—their solemnity and pomp—has been enhanced by the secularisation of political authority. Modern court proceedings repress their antinomic undercurrent by increasingly employing theatrical, as opposed to ritual, techniques, such as the sealed script, the distant stage and a growing number of professional, disinterested representatives. The horizontal, ritual enactment of conflict becomes ever more concealed by its staged representation.

I. SOCIAL STRUCTURE AS CORPORATION

Before considering the ritual process which unfolds in court, a few words on the concepts of social structure and ritual in general. One of the characteristic

features of ritual is a relatively immediate experience of the sacred.³ Whereas in ritual the sacred pervades the group, in social structure sacredness is projected outside the group, and transformed into an absent, transcendent authority. Stable social structures are premised on the relegation and confinement of sacredness to the group's absent, *corporate* body.⁴ While social structures are organised as corporate bodies, during ritual the corporate structure of the group dissolves and the group is invaded and permeated by sanctity. A rough account of the idea of the corporate body would be instrumental for the elucidation of the concepts of social structure and ritual.

According to a theory of the corporation which we can consider today as classical—the theory of Maine, Maitland and Kantorowicz—the two defining features of the corporate personality are immortality and sovereignty. The family and the Crown served Maine and Maitland as the two paradigmatic, and intimately related, instances of immortal corporations. Families can preserve their identity across generations. Similarly, the Crown, or in Kantorowicz's terms, the public body of the king, is indifferent to the death of individual kings and retains its identity across generations. Kantorowicz's analysis of medieval kingship implies that sovereignty resides not in the private body of the king but in his corporate, public body. The king is obliged to defend and augment the inalienable possessions of the realm—they are not his own—an obligation that receives its clearest expression in the coronation oath. Maine makes this point in his discussion of the Roman family: The *pater familias* embodies the abstract legal personality of the family and is in charge of its affairs. He can only act in the name of its immortal interests, not out of his own passing interests and desires.

I would like to supplement the classical account of the corporate body with a few general suggestions, partly inspired by psycho-analytic theories of the group.

The separate corporate personality of the family and the state is associated with the mythical person of their founding ancestors. The examples of the family and state suggest that the corporation is identified with the person of the founding ancestor of the corporate group, such as the mythical, heroic founder of a Roman family, the founder of a royal dynasty or the founding fathers of modern nation states. The names and symbols of corporate descent groups refer, directly or indirectly, to their founding ancestors.

The corporate-ancestral personality of the group is an absent, transcendent object of worship. Through its corporate personality—its mythical ancestors and their multiple totemic representations—the group articulates itself for itself. According to Hegel and Durkheim, notwithstanding the differences between their theories of religion, society's self-representation is its

³ See L. Barshack, 'The Clerical Body of the Law' (2003) 24(3) *Cardozo Law Review*, 1151.

⁴ *Ibid.*

object of worship. If the corporation is associated with ancestral figures, and ancestral law, and constitutes the self-representation of the group, it cannot fail to be sacred. Like the gods, corporations are transcendent; they are absent, invisible, external and superior to the group, and act through representatives. The religious dimension of political systems and families resides in their corporate structure. Civil and domestic religions worship the corporate bodies of states and families respectively, designated by national and domestic totemic symbols.

The corporate body originates in the projection of sacredness outside of the group. Corporations come into being through the projection of sacredness from the group onto a transcendent realm. Corporate formation secularises the social: once sacredness is projected outside the group, a temporal realm of pragmatic interaction can be established. In transitional and lawless states of *communitas*, the sacred is immanent to the social, and authority is often considered divine. The passage from divine kingship to rule-bound authority should be conceived in terms of projection: the private body of the king is deconsecrated and its sacredness projected onto the transcendent domain of the ancestral-corporate body. From this moment onwards, sovereignty vests in the corporate body of the King—in ancestral authority, the dynasty or the realm as a whole—not in his private body. Kingship becomes hereditary: the king is seen as an ordinary mortal, an organ of a sovereign corporate order, and his rights as grounded in categories of kinship rather than personal charisma.

It is the sacred communal body that is projected outside the group and transformed into its corporate body. By the concept of the *communal body*, I refer to the group as a simple, inarticulate, immanent unity that results from the dissolution of interpersonal boundaries. The communal body is the sacred fusion generated during rites of passage, carnivals, natural disasters, fascist regimes, wars, revolutions, referenda, elections, and many other instances of *communitas*. The projection of sacred communal fusion outside the social and its transformation into a transcendent corporate body allow for a heightened degree of interpersonal separation and individual autonomy within the social and for the emergence of secular spheres of interaction. It amounts to a social acceptance of division, absence and transcendence. Once projected and transformed into a corporate body, the group's collective body continues, in its new guise as ancestral authority and myth, to prescribe individual and social goals. It remains the ultimate source of law, will and motivation.

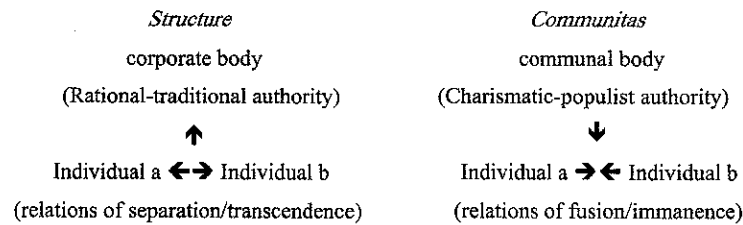
The corporate body and the communal body correspond to social structure and communitas respectively. In earlier work, I have proposed to read into Turner's distinction between structure and *communitas* two distinctions which Turner himself did not consider. The first is the psycho-analytic distinction between relations of mutual recognition among autonomous individuals

and relations of violent fusion.⁵ The second is the theological distinction between absence and presence. The combination of these two distinctions entails the characterisation of social structure as the absence of fusion and of *communitas* as presence of violent fusion. In light of the foregoing exposition of the corporate and communal bodies, Turner's concept of social structure seems to refer to a mode of social existence in which the collective body is external to the group, while his notion of *communitas* refers to a group invaded by its collective body. Thus, the proposed distinction between the corporate and communal bodies corresponds to Turner's distinction between social structure and *communitas*. During *communitas*, the group enacts its communal body by dissolving interpersonal boundaries, whereas in the course of social structure, the group's collective body is projected, transformed into a corporate body, and worshiped from afar by separate and autonomous individuals.

In *communitas*, the absence and promise which shape the human condition are replaced by presence, excess and immediacy. Every individual partakes of the communal body and is consecrated. No boundaries are recognised between self and other, life and death, sacred and profane, or between different spheres of interaction such as society and state. Social stratification and conflicts of status and interest, which in social structure enhance individual autonomy, are no more. The alienation of the subject from his own and other selves, which accompanies structural individuation and legally regulated interaction, is no longer tolerated. The personal self expands and coincides with the collective self. *Communitas* is an essentially lawless form of interaction: the normative system which structures everyday life is, in the course of *communitas*, suspended, challenged, and sometimes reformed. Fundamental interdictions are violated and traditional authority replaced by a charismatic leadership devoid of a genuine legal sanction.

In both structure and *communitas*, horizontal relations between individuals reproduce the vertical relations between individual and group or between group and leader. The horizontal and vertical axes mirror each other. In structure, there is a firm separation among individuals as well as between the group and its authorities. In *communitas*, by contrast, non-separation between the group as a whole and its charismatic-populist leader infects all interpersonal relations, (see figure 7.1).

⁵ For Erich Fromm's account of authoritarianism as a state of violent communal fusion, see *Escape from Freedom* (New York, Farrar and Rinehart, 1941) 141; *Man for Himself* (New York, Holt, Rinehart and Winston, 1947) 151.

Figure 7.1 Structure and *Communitas*

The corporate order is thoroughly legal In the passage from *communitas* to social structure, from an immanent communal body to a transcendent corporate body, the law comes into being. The law is always seen as prescribed by the ancestral-corporate authority of the group, and hence cannot be found in the course of *communitas* when the corporate body dissolves into a communal body. Law-giving is the predominant function of corporate ancestral authority: the more an authority is transcendent, the more its function is reduced to that of law-giving. Through the ideal of the rule of law, modern society articulates for itself the principle that the law is superimposed by a transcendent authority and is non-manipulable by human will, that the sacred omnipotence of the group's collective body is confined to the invisible realm of law. In the passage from *communitas* to structure, the magic of divine kingship is transformed into the magic of legal validity and ritual. Whereas the sacredness of the divine king is established through flagrant transgressions in which he is implicated, within the corporate order all individual organs are deconsecrated subjects of a sacred law. The savagery of presence under divine kingship and other forms of *communitas* may assume a contrived legal appearance, for example, in the spectacular rites and Kafkaesque formalism of fascist legal systems. Such extravagant legalism is essentially lawless, since a true rule of law is premised on the transcendence of the group's law-giving body.

The law keeps the corporate order intact by dividing society into alienated groups and individuals, to the effect that society can no longer contain its own unity, which finds refuge in the corporate realm. As the anchor of interpersonal separation and individual autonomy, the law allows for cooperation as well as competition among its alienated subjects. It equips its subjects with the power to advance legal claims in defence of their structural entitlements. It is of the essence of the rule of law that at least some of the rival bodies which law divides and empowers are able to address the law with complaints. In this way, the law sows the seeds of its inherent contestability, which simultaneously weakens and consolidates the rule of law, and which is played out in the legal ritual.

II. FROM STRUCTURE TO RITUAL

Normative Regeneration as the Purpose of Ritual

The corporate model of social structure entails an account of ritual as the collective enactment of the communal body. The dissolution of a corporate into a communal body in the course of ritual amounts to a return of the sacred into the group which suspends the law. This account is consistent with anthropological theory, which has often depicted ritual as a sequence of stages leading from the relaxation of social structure to its restoration. According to Van Gennep's theory, rites of passage proceed from the separation of initiands from an existing system of statuses, through the bestowal of new statuses, to an eventual reincorporation into structure. Similarly, Hubert and Mauss have identified three stages in sacrificial rites leading from the solemn interruption of routine affairs and purification of the participants, to the sacred moment of ritual killing, and finally to deconsecration and return to everyday life. Turner's version of the ritual sequence is unique in its attempt to encompass broad social processes rather than isolated events. According to Turner, ritual was originally devised to cope with social crises that resulted from breach of norms. Turner's theory of performance postulates a sequence of four stages: 'breach,' 'crisis,' 'redress,' and 'reintegration' or 'reaggregation' of structure.⁶ Rituals occur in the third stage—they are society's means of redress—and consist of questioning and subversion of structural categories and hierarchies, which allow the reinstallation of order. Turner examines a variety of redressive rituals through which order is restored and consolidated, such as 'political processes (from deliberation to revolution and war),' 'legal-judicial process (from informal arbitration to formal courts)' and 'ritual processes (divination, affliction rituals, prophylactic rituals, embedded or independent sacrifice, etc).'⁷

Theorists of ritual have frequently pointed to a legal void through which normative structures revitalise and consolidate themselves.⁸ During ritual, the rule of law is relaxed and replaced by an intense, immediate religious experience and moral licence. Since the sacred is not subject to society's norms, its presence suspends the law. Different accounts of ritual have

⁶ V Turner, 'Are There Universals of Performance in Myth, Ritual and Drama?' in V Turner, *On the Edge of the Bush* (Tucson, Ariz, University of Arizona Press, 1985) 291–93.

⁷ *Ibid.*, at 293.

⁸ See eg, EE Evans-Pritchard, 'Some Collective Expressions of Obscenity in Africa' in his *The Position of Women in Primitive Societies and Other Essays in Social Anthropology* (London, Faber and Faber, 1965) 76–101. G Balandier illustrated the dialectics of structure and transgression through elaborate examples taken from African societies. Balandier, *Le désordre: éloge du mouvement* (Paris, Fayard, 1988). Bakhtin described parallel phenomena in his account of the medieval and early-modern carnival. See M Bakhtin, *Rabelais and his World*, (1965 Iswolsky (trans), Bloomington, Ind, Indiana University Press, 1984). Already Freud's account of the totemic meal as re-enactment of a founding murder focused on the transgressive nature of ritual.

identified its essential mechanism with the controlled release and appeasement of anti-structural aspirations. Ritual introduces a contrived dynamism in order to exhaust dynamic forces and perpetuate existing structures. Several theorists of sacrifice, such as Frazer, Burkert and Heesterman, have specified that it is the call of death which is trumpeted in sacrifice in order to be eventually appeased and overcome by social structure as a life-asserting order.⁹ Their claim can be applied to ritual in general: rituals accomplish a victory over death which proceeds through its temporary affirmation.

The checked ritual release and exhaustion of anarchic violence can be construed in terms of incarnation and projection of the communal body. However we break down the ritual sequence, it proceeds from incorporation of the communal body, through its collective enactment, to its eventual expulsion, ie, from the dissolution to the reconstruction of a corporate body. Society can overcome communal fusion and assume a normative structure only at the cost of occasional ritual surrender to the claims of the communal body. While unqualified presence is unattainable and near-complete presence is shunned by any life-affirming society, the central phase of all practised rituals is that of utmost presence of the communal body. Typical ritual phenomena described in anthropological literature—normative void, suspension of social roles, identities and statuses, eruption of violence and sexual license—can be explained in terms of dissolution of the corporate structure and enactment of the communal body.

Through ritual, the group can largely control the consequences of presence and guarantee an orderly reinstallation of a corporate structure. Society enacts its communal body periodically or in certain crucial moments in order to prevent its sudden, unbridled advent and to revitalise normative structures. However, rituals are devised not only to protect existing institutions, challenged by time and social change, from communal overthrow—to rejuvenate existing structures—but also to inaugurate new norms and statuses in private and collective rites of passage. The presence of the communal body relaxes law and structure, but is also their origin and source of vitality. The transformative power of ritual is employed both in founding new institutions and refounding existing ones.

Protective, as opposed to inaugural, rituals are either periodical or provoked by moments of crisis which threaten to unleash anarchic forces, such as orderly transformations of power, civil wars, deaths and natural disasters. These and similar moments tend to precipitate a descent of the communal body into the group, and are thus attended by a variety of rituals, adapted throughout history to the task of taming presence. The dangers of presence

⁹ On the assertion of life through sacrifice, see W Burkert, *Homo Necans: The Anthropology of Ancient Greek Sacrificial Ritual and Myth* (Bing (trans), Berkeley, University of California Press, 1983) 38, 40, 45; JE Heesterman, 'Vedic Sacrifice and Transcendence' in Heesterman, *The Inner Conflict of Tradition* (Chicago, University of Chicago Press, 1985) 81.

cannot be fully averted by devising rituals in response to particular social crises. The group is inhabited by a longing for *communitas* that is permanent, rather than confined to critical moments which unveil the fragility of structure. Periodical rituals, such as seasonal festivals and athletic contests, are instituted in order to release in a regular manner the group's longing for presence. Ritual does not necessarily respond to a particular 'breach of norm' (Turner) but also to a founding—mythical or forgotten—conflict, indeed to the permanent threat of eruption of violence. Mythical representations of founding chaos and violence refer not only to historical events, but to the persistent threat of anarchic violence, which calls for a regular ritual appeasement. The cyclical alternation of structure and *communitas* is, as Turner suggested, the essential pattern of social life rather than the result of an accidental succession of crises.

Aspects of Presence

As spectres of the group's absent corporate authority, law and myth are stripped during *communitas* of their supreme and binding status, and resigned to the group to be ritually challenged, renegotiated and rejuvenated. When social structure is intact, ancestral law and myth are intertwined, validating each other as facets of a single normative order. Together, they construct individual and collective identities and provide the corporate group with its unity while dwelling outside of it as absent reservoirs of sacredness.¹⁰ Descending from the skies, laws and mythical narratives and images are never treated as the products of a human legislator or artist. While in themselves sacred, law and myth command secularity and division and subject the human body to a regime of absence and representation: a regime of fiction and narrative. With the disintegration of law and mythology in *communitas* narrative gives way to action that is not grounded in reason and representation.

Engulfed in the communal body, participants in ritual no longer inhabit an ordered, domesticated space and time. As Canetti has pointed out in *Crowds and Power*, spatial boundaries amongst individuals, groups and spheres of life dissolve. The group is pervaded by the symbiotic violence that is ordinarily projected onto the corporate realm. The historical horizons of past and future blend and finally fuse in the permanent immediacy of *mythical time*, the time of primordial chaos and ultimate salvation. With the eventual return to linear history, some narrative account of the

¹⁰ The law not only divides social structure into alienated groups and individuals but also gives it its unity. Ancestral law can divide and secularise society by becoming the repository of its sacred unity. Since corporate authority is manifested primarily through its laws, the unity of a corporate group is expressed through the unity of the ancestral law that defines and regulates it. Law constitutes the principal symbol of corporate identity and power. It performs the totemic function of denoting the unity of society and the transcendence of this unity to the group.

transitional moment will be projected onto the transcendent realm and will assume an exemplary mythical status. The suspension of ordinary temporality provides one among many indications that, through the incarnation of the communal body, death is made present within the group: temporality stands still because the march toward death has seemingly reached its goal.

Two Transformative Mechanisms: Theatre and Ritual

Utter presence of the communal body—a complete dissolution of law and representation—does not occur even in the most ecstatic rituals. Such presence, had it been conceivable, would have entailed death's final victory and the group's complete self-annihilation. The purpose of ritual, as already suggested, is to generate presence, and at the same time restrain and exhaust it, in order to re-establish transcendence and representation and make life emerge triumphant from the transitional celebration of death. The regeneration of social structure through the ritual mitigation of violence is often described as ritual's transformative power. In the following passage, Richard Schechner distinguishes between two transformative mechanisms or, in Turner's terms, two processes of redress, to which Schechner refers as mechanisms of 'theatrical transformation':

transformation is the heart of theater, and there appear to be only two fundamental kinds of theatrical transformation: (1) the displacement of anti-social, injurious, disruptive behaviour by ritualized gesture and display, and (2) the invention of characters who act out fictional events or real events fictionalized by virtue of their being acted out (as in documentary theater or Roman gladiatorial games). These two kinds of transformation occur together, but in the mix usually one is dominant. Western theater emphasizes characterization and the enactment of fictions; Melanesian, African, and Australian (aborigine) theatre emphasizes the displacement of hostile behaviour. Forms which balance the two tendencies—No, Kathakali, the Balinese Ketchak, medieval moralities, some contemporary avant-garde performances—offer, I think, the best models for the future of the theater.¹¹

The first mechanism of 'theatrical transformation' Schechner describes—the enactment of violence—is hardly theatrical. It is a ritual process which takes place in *communitas*. Schechner's second type of 'theatrical transformation'—the staging of characters—is consistent with conventional notions of theatre. Compared to ritual, theatre is a process of redress which seems to be firmly integrated into social structure and which apparently does not

¹¹ See R Schechner, 'From Ritual to Theater and Back' in R Schechner and M Schuman (eds), *Ritual, Play and Performance* (New York, Continuum, 1976) 196–222 at 199.

require its temporary relaxation. By referring to both theatre and ritual as mechanisms of 'theatrical transformation,' Schechner rightly loosens the distinction between the two. However, the distinction between ritual and theatre remains helpful, schematic as it may be. In ritual, the enactment of conflict exhausts destabilising forces; in theatre, by contrast, structural categories and classifications are questioned—and then validated and reinstated—through their reflexive, dramatic articulation. To begin with ritual, liminal freedom is generated and violence acted out, tempered by means of magical channelling and substitution. The mitigation of utter presence leaves ritual violent enough: even war can often be seen as a contrived ritual release of violence designed to avert total destruction. During ritual, the divisions which underlie representation melt away to allow for an incarnation of the communal body. Participants not only passively contemplate the categories of social structure, but partake in a real process of destruction and reproduction of their social world. As Schechner noted, 'As in all rites of passage something has happened during the performance; *the performance both symbolizes and actualizes the change in status ...* This convergence of symbolic and actual event is missing from aesthetic theater.'¹²

In theatre, the separation between sacred and profane—the transcendence of the sacred—is observed. The horizontal and vertical divisions—between the self and the world, the self and other selves, the self and the other (the collective body)—that condition representation are accentuated. Every theatrical spectacle is an extension of the political spectacle of power through which society chains itself to the structural system of divisions and subdivisions. In the political and bourgeois spectacles, society beholds from a distance its own body and subjects itself to a regime of absence, and fiction. Every spectacle, whatever may be its particular subject, refers first and foremost to an ultimate and absent authority in whose name it separates itself from the group of spectators, that is, separates the group from itself.¹³ The principal message of the political spectacle is encoded in the very distinction between spectators and stage, between the group and its body. The

¹² *Ibid*, at 205. Avant-garde performance art aims to transcend the limits of theatrical representation and revive ritual traditions with their enhanced transformative power. Avant-garde performances employ 'techniques of authentication' (Schechner) devised to collapse representation: to eliminate stage, fiction and narrative.

¹³ 'The stage is theological for as long as it is dominated by speech, by a will to speech, by the layout of a primary logos which does not belong to the theatrical site and governs it from a distance. The stage is theological for as long as its structure, following the entirety of tradition, comports the following elements: an author-creator who, absent and from afar, is armed with a *text* and keeps watch over, assembles, regulates the time or the meaning of representation, letting this latter *represent* him as concerns what is called the content of his thoughts, his intentions, his ideas' (emphasis mine), J Derrida, 'The Theater of Cruelty and the Closure of Representation' in J Derrida, *Writing and Difference* (Bass (trans), Chicago, University of Chicago Press, 1978) 235. For Derrida, theatre is theological because it is premised on the fiction of an ultimate, transcendent script and author. Derrida's considerations are exclusively semiotic, failing to integrate anthropological arguments according to which theatre is theological because the ultimate object of any *mise-en-scène* is the group's own transcendent unity.

bare stage is not merely the setting but the final meaning of spectacle. The same message is repeated in every theatrical representation: The group contemplates itself—its corporate body—from a distance and affirms the human fate of living in alienation from God.

The bourgeois theatre does not subvert, then, the political order of representation, but reproduces and consolidates social structure. When hegemonic self-images are criticised on stage, the principle of separation between audience and stage as well as other axioms of representation are affirmed. Theatre replaces the enactment of anarchic violence by a questioning of the meaning of all that, addressed to the group's own body. In comparison with ritual, theatre hardly frees the group from the normative categories of social structure: it allows its spectators a brief reflective detachment from everyday existence and cannot radically challenge the norms of representation themselves.

Since Nietzsche's *Birth of Tragedy* and under the influence of Frazer's work, various theorists have suggested that theatre developed out of ritual, turning enactment into representation, collective participation in violence into collective contemplation of normative conflicts. Murray, Fergusson, Turner, Marin and Burkert, among others, have argued that theatre originated in the relegation of social friction and sacrificial violence to a distant stage, rendering harmless the indispensable repetition of the founding bloodshed.¹⁴ According to Schechner, the passage from ritual to theatre is a passage from *efficacy* to *entertainment*, but every performance remains to a certain extent both efficacious and entertaining: 'there is a dialectical-dyadic continuum linking efficacy to entertainment—both are present in all performances, but in each performance one or the other is dominant.'¹⁵ As Schechner rightly suggests, every social drama is placed somewhere along a continuum which stretches between pure ritual (efficacy) and pure theatre (entertainment), exhibiting a different amalgam of enactment and staging, presence and representation, immediate participation and contemplative distance. Pure ritual and pure theatre, the conceptual poles of that continuum, cannot be encountered in reality. As much as ritual cannot entirely dispose of representation, theatre enjoys ritual efficacy. The transformative effect of theatre, its capacity to rejuvenate structure by challenging it, is not produced exclusively by means of narrative. The setting of theatre, rule-bound as it may be, calls for a suspension of everyday identity

¹⁴ G Murray, 'Excursus on the Ritual Forms Preserved in Greek Tragedy' in J Harrison, *Themis* (Cambridge, Cambridge University Press, 1912) 341–463; F Fergusson, *The Idea of a Theater* (Princeton, Princeton University Press, 1949); W Burkert, 'Greek Tragedy and Sacrificial Ritual' in Burkert, *Savage Energies: Lessons of Myth and Ritual in Ancient Greece* (Chicago, University of Chicago Press, 2001) 1–37; L Marin, 'The Utopic Stage' in Murray (ed), *Mimesis, Masochism and Mime: The Politics of Theatricality in Contemporary French Thought* (Ann Arbor, University of Michigan Press, 1997) 115–35. See, generally, V Turner, *From Ritual to Theatre* (New York, Performing Arts Journal Publications, 1982).

¹⁵ R Schechner, 'From Ritual to Theater and Back' in R Schechner and M Schuman (eds), *Ritual, Play and Performance* (New York, Continuum, 1976) 196–222 at 210.

and a selfless examination of the normative categories of social structure. The self-forgetfulness demanded by theatre may signify an imaginary destruction of the existing structure on the way to its refounding. Even spectacles which approximate most to the conceptual pole of pure theatre/'entertainment' wield a tame ritual efficacy and produce a transformative effect. Paradox afflicts all forms of redress, whether predominantly ritual or theatrical, because their underlying, elementary mechanism consists in the simultaneous announcement of structure's death and immortality.

An Aside on Ritual, Death and Psychoanalytic Theory

While Freud places at the heart of ritual the Oedipal rebellion against the law of the father, ritual can be conceived as re-enactment of pre-Oedipal conflicts of separation from the maternal body. The proposed concept of the communal body is partly based on Klein's account of the maternal body at the beginning of life as an intensely violent fusion of mother and child. Like the maternal body with which it is identified by members of the group, the communal body is experienced during *communitas* as simultaneously nourishing and devouring, as the source of life and death. It threatens to dissolve individual autonomy, but at the same time it is the source of individual and collective vitality. Through its relegation to the transcendent corporate realm, the collective body continues to nourish the group from afar while the destructiveness provoked by its immediate presence is tamed.

Funerals provide a clear illustration of the simultaneous removal of the communal body and that body's preservation in the form of a distant benign power. In funerals, the corpse is separated from the community to avoid fusion with death. The deceased is distanced for fear that death/the communal body will pervade the group, and is elevated to an ancestral, transcendent position. Funerals assume the form of procession in order to accomplish the gradual transformation of the deceased into a distant ancestor, after death has for a time had the upper hand. The deceased is preserved by being transformed and represented in a new guise: as a transcendent, benign ancestor, a conqueror of death who secures from afar the vitality of the group.

Sacrifice provides another illustration of the ritual projection of death, or the communal body, onto a transcendent realm. According to a classic strain of anthropological interpretation, the sacrificial victim represents the group's own sacred collective body.¹⁶ Through ritual killing, the group acts

¹⁶ The ambivalence toward the communal body as simultaneously nourishing and devouring recalls the ambivalence of participants in sacrifice toward the sacrificial victim. According to Freud, the totemic animal is at once admired, loved and hated, as are parental figures in the Oedipal conflict. This ambivalence, ordinarily latent and concealed, surfaces in ritual. According to Burkert, the sacrificial victim is seen as the source of life because the victim was originally meant to be eaten. However, the victim also comes to embody violence and death for the group, once intrasocial aggression is channelled into it.

out and releases its own self-destructiveness: 'an important feature of sacrifice is that the people for whom it is made enact the death of a victim which in important respects represents themselves, in order to survive that death.'¹⁷ Embodied by the sacrificial victim, death is first embraced and acted out by the group and then removed, deified and worshiped from afar. The disposal of the sacrifice symbolises the group's separation from its own sanctity and self-destructiveness, its renewed purity and return to life and structure. The sacrifice—the group's collective body—now resides in the corporate realm. Through the sacrificial process, the group incorporates and then projects sacred violence and refounds the secular corporate order. Thus, sacrifice has often been used to bring into existence various corporate associations and to re-establish existing ones.¹⁸ Insofar as every ritual involves an exercise of (ultimately self-directed) violence, sacrifice can be, and often has been, seen as the elementary form of ritual.

III. THE COURT RITUAL

Transgression and Liminality in Court

The foregoing discussion suggests that in the courtroom, insofar as it is the site of a ritual, the law is suspended. The rule of law is undermined by the ritual acts which seek to uphold it, such as public allegations that a law has been violated and the subsequent, redressive interventions of the legal system. The meaningfulness of law persists as long as the gatekeeper hides it from view, as long as it can hover above the group in unchallenged passivity. When the law steps forward to speak, to dispel ambiguities and uncertainties, its meaning becomes increasingly vague. The heightened visibility of legal authority in court, indeed its presence, threatens to dissolve structure. Similarly, legal systems that are obsessed with the visualisation of legal authority do not in general excel in observing the rule of law.

Whether or not application involves an arbitrary leap from the general to the particular, it is tainted by lawlessness because the re-enactment of founding violence lies at the core of the ritual process. Hay has suggested that the

¹⁷ G Lienhardt, 'The Control of Experience: Symbolic Action' in G Lienhardt, *Divinity and Experience: The Religion of the Dinka* (Oxford, Clarendon Press, 1961) 282–97. Various authors noted the equation of participation in sacrifice with communal membership. As M Fortes writes, 'Lineages and clans that celebrate the same festival are assumed to be kin of one another, in a broad sense, by virtue of the rule that people who sacrifice together must be kin.' M Fortes, *Religion, Morality and the Person: Essays on Tallensi Religion* (Cambridge, Cambridge University Press, 1987) 45. According to Burkert, 'Families and guilds organize themselves into sacrificial communities; so too cities at a festival, as well as gatherings of larger political groups.' W Burkert, above n 9, at 35.

¹⁸ 'Whenever a new step is taken consciously and irrevocably, it is inevitably connected with sacrifice.' W Burkert, above n 9, at 40.

judge can choose between two postures: he can either enact a benign or enraged god, or serve as the passive, oracular medium of the deity's will.¹⁹ In either case, adjudication involves a magical invocation of ultimate law-giving authority, namely, of constituent power. The exercise of legal authority undermines its own validity because pronouncing the law intimates the presence of the communal body.²⁰ For legal validity to be generated, the distinction between the legal and the illegal and the unity of the legal system have to be refounded in every proceeding out of the void of *communitas*.²¹ In this, court proceedings resemble other social dramas, which always alternate between foundation and repetition/application. The magical, forbidden presence of the sacred turns the court into a site of transgression where sovereignty is appropriated. In procedures such as trial by battle and ordeal, this ritual aspect of court proceedings is predominant. The appeal for a direct intervention of the sacred, invisible, prelegal authority and source of the law is explicit. The enactment of conflict leaves little room for the theatrical staging of legal personae and of the normative categories of social structure.

The ease with which the court ritual lends itself to abuse by criminal associations and regimes, such as totalitarian states, mafias and sects, attests to the lawless, magical moment in court proceedings and to its capacity to overshadow other moments. In the fascist version of the cult of law, judicial magic and liturgy are no longer employed in the service of the rule of law, as mechanisms that celebrate and reproduce the absence of omnipotence. Instead, fascist systems aspire to enact sovereignty and actualise the bliss of union with God, which other systems reserve for an ever-postponed future.

¹⁹ 'The judge might ... emulate the priest in his role of human agent, helpless but submissive before the demands of his deity. But the judge could play the role of deity as well, both the god of wrath and the merciful arbiter of men's fates. For the righteous accents of the death sentence were made even more impressive by the contrast with the treatment of the accused up to the moment of conviction. The judges' paternal concern for their prisoners was remarked upon by foreign visitors, and deepened the analogy with the Christian God of justice and mercy.' Hay, 'Property, Authority and the Criminal Law' in D Hay *et al*, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Harmondsworth, Penguin, 1977) 17–65 at 30. Similar postures are assumed by other sacred figures including divine kings and their modern descendants, such as fascist and populist leaders.

²⁰ The suspension of the law and the experience of presence are far more intense in constitutional moments such as declarations of independence and constitutional crises than in ordinary legal proceedings.

²¹ As J Clam writes, 'The system brings its boundaries forth in each of its own operations and only when it operates.' J Clam, 'The Specific Autopoiesis of Law: Between Derivative Autonomy and Generalised Paradox' in D Nelken and J Priban (eds) *Law's New Boundaries: The Consequences of Legal Autopoiesis* (Aldershot, Ashgate, 2001) 45 at 64. In N Luhmann's words, 'one has to apply [the distinction between legal and illegal] even though one can neither ask nor answer the question (because it would lead to a paradox) as to whether the distinction between legal and illegal itself is legal or illegal. The paradox itself turns unwittingly into a creative principle because one has to try so hard to avoid and to conceal it.' N Luhmann, *Law as a Social System* (trans Klaus A Ziegert (trans), Oxford University Press 2004, published in German 1993) 177. According to Luhmann (at 291), the paradox of the self-constitution of the legal system unfolds in court.

Sovereignty is appropriated and flaunted by a legal system wielding the unfettered blind powers which, according to fascist theology, dominate human lives.²² The arbitrary, reified legal formality becomes, under fascism, the epitome of legality. It is divorced from procedural and substantial principles and revered as the embodiment of holy inevitability. Totalitarianism revels in form, turning it into black magic in the service of deep-seated lawlessness.²³ The ostensible invocation of law allows fascism to conceal its violence and disregard of boundaries. The fanciful resort to legal detail, which often decorates the most bellicose political oratory, is part of a political cult of unreason and arbitrary power and functions as a perverted aesthetisation of violence.²⁴

The uncanny presence of the sacred in court places the parties to a legal case in a state of liminal bareness. Stripped of their social status while facing the social gaze and the instance of the law, their position resembles that of initiands in numerous rites of passage. The other's power over individual fates is dramatised in court as it is in other rituals. The parties are subjected to a decision which is experienced as the product of an unpredictable sovereign will. They are extracted from their position in social structure and placed in a liminal normative void, thrown into the centre of the public arena without the shield of their private sphere, a precarious refuge in moments of *communitas*. The procedural rights of the parties and the embrace of their family and friends do not alter the liminal, lawless nature of the event and the loneliness of the encounter with the law.

Scripture and its Modern Clerical Interpreters

The modern *Rechtsstaat* is premised on a strict transcendence of the law in relation to all branches of state and society. All state powers are more or less equally bound by a specified law which descends from the skies. This requires that the *theatrical* structure of the court proceeding be perfected: that the ritual moment of sovereign decision be concealed behind formalism, and the repugnant exercise of founding violence behind ostensible judicial impotence. Ritual enactment of conflict must be replaced by its staged representation,²⁵ the collective incarnation of sacredness by its judicial embodiment. A variety

²² On authoritarian religion, see E Fromm, *Psychoanalysis and Religion* (New Haven, Yale University Press, 1950) 35.

²³ On the collapse of the autonomy of the legal system under totalitarian regimes, see J Clam, above n 23, at 62.

²⁴ On Hitler's affected innocence and dutifulness, see E Fromm, *The Anatomy of Human Destructiveness* (New York, Holt, 1973) 449. Begin shared with his mentor Jabotinsky a penchant for legal sophism. For a perceptive account of Begin's style of leadership, see J Shapiro, *The Road to Power* (Albany, NY, State University of New York Press, 1991).

²⁵ In 'Vedic Sacrifice and Transcendence', Heesterman traces a similar development in the history of sacrifice, transformed from a bilateral, horizontal re-enactment of conflict into an individual act strictly regulated by divinely ordained ritual imperatives. On the passage from ritual to theatre in general, see V Turner, *From Ritual to Theatre* (New York, Performing Arts Journal Publications, 1982).

of modern procedural developments reflect a single logic of deritualisation of court proceedings.

While prescribing the evacuation of sanctity from the courtroom, the ideal of the strict transcendence of the law inadvertently enhances the ritual sanctity of the modern court by depriving other branches of government of their religious aura. The court becomes the most sanctified branch of government because it enjoys a privileged access to the true meaning of the law and partakes in law's sovereignty. The legal system assumes functions which were traditionally performed by the clergy: the interpretation and enforcement of divine law. The clericalisation of the modern judiciary provides the keys to the understanding of the modern judicial spectacle. It suggests both the enhanced ritual sanctity of the modern court and the means by which sacred presence is tamed: the confinement of sanctity to an ostracised staged body.

Through the consecration of the judicial body, the sacred is prevented from infiltrating and polluting the entire group. Transgression is confined to an isolated clerical body which partakes in the lawlessness of the communal body—and to the lawbooks, treated in Kafka's *Trial* as interchangeable with obscene literature.²⁶ By means of the confinement of sanctity to the judicial body, the rule of law can largely remain intact in court. Clerical communities such as the judiciary play a crucial role in the social manipulation of the sacred. They facilitate the expulsion of the sacred outside of the group and the construction of a corporate, normative structure by absorbing and enacting the sacred on behalf of the group. The clerical body is placed in a permanent liminal position within structure and functions as a permanent, institutionalised container of sacredness.

Through the clerical body, the commands of the group's corporate, transcendent authority are revealed to the group. The clericalised judge utters an ancestral law which is impressed in legal scripture and in his body. Unlike King Solomon and other lay judges, the clericalised judge is not distinguished by practical wisdom or a sense of justice, but by omniscience of the law. As priest of the law,²⁷ the judge barely exercises the human capacities for thought and speech. In contrast to temporal authority, the judge does not function as a model of lawful, worldly existence. While embodying the law, the clerical body is implicated in permanent transgression. Through the privileges, interdictions and ritual observances which bind it, the clerical body is placed in a position of forbidden fusion with the communal body.²⁸

²⁶ See the opening paragraphs of the third chapter of the novel.

²⁷ As Gaines Post noted, medieval lawyers viewed themselves as priests of the law. See G Post, X Giocarnis, and R Kay, 'The Medieval Heritage of a Humanistic Idea: "Scientia Donum Dei Est, Unde Vendi non Potest"' (1955 XI) *Traditio* 195 at 206.

²⁸ The judicial embodiment of sacred law and corporate sovereignty is produced through the subjection of the judge's body to violence and interdiction. It is through the sacrifice of its humanity out of a love for law that the clerical body can concentrate the sacred in itself and purify the group. According to Nietzsche, '[A] priest is and remains a human sacrifice,' *The Gay Science* (W Kaufmann (trans), New York, Random House Press, 1974) 294.

By facing temporal power, clerical authority at once precludes the dangers of an unfettered and irrational power—the dangers of divine kingship—and becomes the exclusive official container of the sacred and the non-human for human society.

There are several indications that during and around the eighteenth century, the clerical function was gradually transferred from the Church to the judiciary.²⁹ One clue comes from the increasing solemnisation of courtroom proceedings and ritualisation of judicial speech and conduct, which, according to several historians, took place during this era. Other aspects of clericalisation included the development of judicial independence and judicial review.³⁰ The judiciary came to embody a superimposed law and the legal limits of temporal power which under the old regime were represented by the Church. Traditional clerical privileges, such as legal immunity, fiscal independence and freedom from political intervention in appointment and decision-making, were bestowed on the judiciary in order to establish the modern cult of law and allow for the eventual rise of judicial review.

Court proceedings did not always possess the thick aura of sanctity that they have in modern civil religion. Douglas Hay has convincingly argued that only with the erosion of the legitimising power of royal and religious rituals were courts invested with heightened solemnity in order to command respect and obedience.³¹ The court seems to have inherited the splendour of

²⁹ L. Barshack, 'Notes on the Clerical Body of the Law' (2003) 24(3) *Cardozo Law Review* 1151 at 1164.

³⁰ On the development of judicial independence in eighteenth century England, see JM Baker, 'The Independence of the Judiciary' (1978) 94 *Selden Society* 137; S Shetreet, 'Historical Development of the Concept of Judicial Independence: Comparative Perspectives' in *Justice in Israel: A Study of the Israeli Judiciary* (Dordrecht, M Nijhoff, 1994) 19; A Lebigre, *La justice du roi: La vie judiciaire dans l'ancienne France* (Paris, Albin Michel, 1988) 98–115. On the history of judicial immunity, see EJM Schrage, 'The Judge's Liability for Professional Mistakes' (1996) 17(2) *Legal History* 101. Judicial privilege goes hand in hand with imposition of restrictions on the judiciary designed to minimise the worldly entanglements of the judicial body. On the rise in modernity of the image of the blindfolded judge, see DE Curtis and J Resnik, 'Images of Justice' (1987) 96 *Yale Law Journal* 1727 at 1757.

³¹ 'The assizes were a formidable spectacle in a country town, the most visible and elaborate manifestation of state power to be seen in the countryside, apart from the presence of a regiment ... In the court room the judges' every action was governed by the importance of spectacle ... The powers of light and darkness were summoned into the court with the black cap which was donned to pronounce sentence of death, and the spotless white gloves worn at the end of a "maiden assize" when no prisoners were to be left for execution ... There was an acute consciousness that the courts were platforms for addressing the "multitude." From D Hay, 'Property, Authority and the Criminal Law' in Hay *et al.*, above n 21, at 27–28. While accepting some of the criticisms levelled at Hay's Marxist account, Lemmings affirms that 'there are reasons to believe that the administration of criminal law and its theatre became more significant in the overall context of governing eighteenth-century society' (at 48), and offers his own depiction of the new forms of judicial pomp, D Lemmings, 'Ritual, Majesty and Mystery: Collective Life and Culture Among English Barristers, Serjeants and Judges, c. 1500–c. 1830' in WW Pue and D Sugarman (eds), *Lawyers and Vampires: Cultural Histories of Legal Professions* (Oxford, Hart, 2003) 25–63. Hay's analysis suggests that the authority and rituals of law increasingly replaced traditional religion. 'In its ritual, its judgments and its channelling of emotion the criminal law echoed many of the most powerful psychic components of religion ... there

both royal and church rituals with their gradual decline. Judicial pomp, Hay argued, was devised by the propertied elite in order to defend their hegemony and material interests. As Hay writes:

The English ruling class entered the eighteenth century with some of its strongest ideological weapons greatly weakened. The Divine Right of Kings had been jettisoned in the interest of gentry power, but the monarchy lost as a consequence much of its potency as a source of authority, and so too did religion. At the same time control had flowed away from the executive in the extreme decentralization of government which characterized the century. With Stuarts plotting in Europe, Jacobitism suspected everywhere at home, and a lumpily unattractive German prince on the throne, English justice became a more important focus of beliefs about the nation and the social order. Perhaps some of the tension abated after the last Jacobite attempt in 1745, which may help to account for Blackstone's relatively favourable attitude to reform in mid-century. But within a few decades renewed assaults on the structure of authority—the riots of 1766 and 1780, Wilkes and the French Revolution—determined the English ruling class to repel any attacks on the mystery and the majesty of the law.³²

Whether or not one is convinced by Hay's Marxist logic, judicial pomp and the clericalisation of the judiciary seem to form an integral part of the institutional configuration of the modern nation state. The symbolic and organising functions previously performed by the monarchy and the Church have been appropriated by the legal system, securing its standing within modern social structures. However, the infusion of the legal system with sanctity does not, as such, enhance reason and the rule of law in the courtroom. It elevates the status of justice but threatens to disrupt its administration. Sanctity has to be tamed by being set apart from society, confined to a clerical body and scripture.³³ The codification of law plays a central role in the

is some reason to believe that the secular sermons of the criminal law had become more important than those of the Church by the eighteenth century. Too many Englishmen had forgotten the smell of Brimstone, and the clergy—lazy, absentee and dominated by material ambition—were not the men to remind them ... Religion still had a place within the ritual of the law: a clergyman gave the assize sermon, and others attended the condemned men on the scaffold. But we suspect that the men of God derived more prestige from the occasion than they conferred upon it ... The secular mysteries of the courts had burned deep into the popular consciousness, and perhaps the labouring poor knew more of the terrors of the law than those of religion,' D Hay, 'Property, Authority and the Criminal Law' in D Hay *et al.*, above n 21, at 29–30.

³² D Hay, 'Property, Authority and the Criminal Law' in D Hay *et al.*, above n 21, at 58–59.

³³ N Luhmann argues convincingly that the familiar conventions of judicial pomp are devised to conceal paradox. However, the inherent sanctity of legal proceedings is in the first place the source of paradox. The ritual embodiment of sovereignty releases lawless sanctity that the judicial theatre is designed to tame and contain. According to Luhmann, 'a decision is a paradox, which cannot make itself its own subject and which, at best, can only mystify itself. Authority, decorum, limitation of access to the mystery of law, texts to which one can refer, the pomp of entries and exits of judges—all this is a substitution at the moment at which one must prevent the paradox of decision-making from appearing as a paradox, so as not to disclose that the assumption that one could *decide legally about what is legal and what is*

processes of clericalisation and consolidation of the transcendence of sovereignty. Notwithstanding differences between the role of the text in the civil law and common law traditions, both traditions endeavoured to compile an exhaustive legal scripture. Legal formalism is a rhetorical strategy of institutional self-grounding which prescribes that every detail derive directly or indirectly from legal scripture rather than from custom or decision. The lawbook reifies and authenticates the law and secures its facticity. It replaces the magic of decision by a 'magic of the book'. As the magical, tangible focal point of the court ritual, the lawbook concentrates in itself the sacredness ritual releases, and affirms the transcendence of the law-giver, its author.³⁴ Scripture transforms a text and the clerical voice which pronounces it into the exclusive media of revelation, excluding any possibility of immediate, popular embodiment of sovereignty.

Another aspect of the deritualisation of court proceedings alongside formalism and the confinement of sacredness to the judicial body, consists in the growing role of lawyers.³⁵ Access to the clerical, judicial body became over the last two centuries increasingly mediated by lawyers, which took the place of the parties, subsuming the concreteness of the event under general legal categories. Conflict is no longer enacted or illustrated by the parties, but staged in the form of an impersonal argumentation conducted by representatives. The judge himself is not one of the legal, human personae played on the courtroom's stage. He rather sets the stage on which human dramas unfold. All stages are premised on the fiction of a third, omniscient author/spectator who guarantees meaning, law and separation.³⁶ This fiction is verified by the body of the judge in a way which makes possible the ongoing spectacle in (and outside) the court. In the terms used by Rappaport, the taming of the court ritual proceeds by way of 'canonisation', namely, the substitution of self-referential personal gestures and utterances of real parties by a liturgy which announces an official, normative

illegal, is a paradox as well, and that *the unity of the system* can be observed only as a paradox,' *Law as a Social System* (KA Ziegert (trans), Oxford, Oxford University Press, 2004, published in German, 1993) 283–84.

³⁴ The structural correlation between the consolidation of textuality and transcendence can be illustrated through the example of the twelfth century as a period which saw the parallel development of corporate structures—and hence of transcendence—and expansion of literacy. On literacy in the twelfth century generally, see B Stock, *The Implications of Literacy* (Princeton, NJ Princeton University Press, 1983).

³⁵ On the increasing importance of lawyers in the eighteenth century, see JH Langbein, 'The Criminal Trial before the Lawyers' (1977) 45 *University of Chicago Law Review* 263 at 307; JH Langbein, 'Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources' (1983) 50 *University of Chicago Law Review* 1 at 123; JH Langbein, *The Origins of Adversary Criminal Trial* (Oxford, Oxford University Press, 2003).

³⁶ On the place of a transcendent author in theatre, see Derrida's essay on Artaud's theatre of cruelty (above).

view of the cosmos, a theatre which stages the existing order.³⁷ However, all social dramas, including the most contemplative ones, simultaneously employ representational and transformative means. As canonical as the court ritual may become, it repeats a prelegal, magical manoeuvre of normative re-founding. The dramatisation of legal rights, duties and statuses in court, the staging of legally defined personae, is accompanied by a relaxation of law and identity and a repetition of a founding, lawless violence that is levelled at the parties as well as the judge.

³⁷ 'Whereas self-referential messages are concerned with the immediate, particular, and vital aspects of the current event ... invariant messages are concerned with the universal and enduring or even eternal aspects of the universe ... I refer to this class of messages as "canonical," or, in aggregate as the ritual's "canon," or "canonical order."' RA Rappaport, 'Veracity, Verity and Verum' (1993) 23(1) *Studia Liturgica* 35 at 36. Courts overcome the dangers of presence and decision through the application of procedural canons: 'the formality, invariance, and solemnity of the courtroom ritual are placed in the service of getting the unique facts of the case out in systematic and orderly manner,' *ibid*, at 37.