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Embodied Law:
*Theatre of the Oppressed in the Law School Classroom*

Gillian Calder

**Theatre, Pedagogy, Embodiment and Law**

*Theatre of the Oppressed is about acting rather than talking, questioning rather than giving answers, analyzing rather than accepting. This is ... for all those who are interested in theatre as a force for change* (Jackson xxvii).

I’m a rock climber. When I was applying to take the course that would give me the certification to teach rock climbing in a Canadian indoor gym facility, I was required to write a paragraph about the kind of experience I have had which prepares me for this course. I froze. I am in my early 40s, I had only been climbing for four short years, and although I have a passion for the sport, as compared to most other people who were applying for the course, I have never worked at a climbing facility, done any mountaineering, sold gear or equipment, or been on any prolonged climbing trips. What kind of experience could I possibly bring to this course? And then I remembered, I teach law.
Teaching climbing and teaching law, in fact, have many similarities. Both require making complex and often dangerous ideas accessible to students. Both involve ensuring that those ideas can be actualized, used professionally and in relation to others. Both involve teaching about the obligations involved with having responsibility for the care of others. Both involve scaling mountains, literally on the one hand, and in terms of material on the other.

And yet, there are some incredible differences. For example, one of the first skills taught to students of climbing is how to attach the rope to their harnesses. This is what puts the climber into the system, connecting the climber to the rope and to the person on the end of their rope, who will belay\textsuperscript{1} them while they are climbing, and lower them to the ground when they are done. It may seem trite to say it, but if you do not learn how to tie the knot properly and it comes undone you could hurt yourself very seriously, or worse.

When I teach students how to tie the specific knot that attaches the rope to their harnesses, I don’t just tell them how to do it. I tell them, using mnemonic devices, I show them, demonstrating it visually, and I have them practice it, teaching them how to check themselves and each other. Only after using all of these teaching methods and checks, do I let my students tie themselves into the system and leave the ground.

\textsuperscript{1} Belaying is the work done by the climber who stays on the ground while his or her partner climbs. Using a device attached to the belayer’s harness and through that to the rope, the belayer manages the rope so that the climber can climb safely, secures the rope if the climber falls, and moves the rope through the belay device when the climber wishes to be lowered to the ground. Different belay techniques are used for different kinds of climbing with this being a general description of indoor, top-rope technique.
One of the things that strikes me about legal education is how rarely we do the same. Much of law involves embodied concepts, yet we rarely ask our students to put their bodies into the learning of law. That is, we teach our students primarily by talking to them. And then we evaluate them by asking them to put into action what they have learned, usually in a three-hour, sit-down exam, and we are surprised when many of them don’t do well, and some of them fail. I would never put a climbing student on the top of a cliff having only instructed her verbally how to tie her rope to her harness and tell her to step off. And yet, with notable exceptions, that is primarily what we do at law school.

The goal of this project is to offer another set of questions to ongoing discussions about the teaching of law in Canadian law schools. This project’s central aim is to rethink the way in which we approach legal teaching and learning as a predominantly intellectual pursuit where the teachers are the sole experts (Macfarlane 72). Drawing on the work of educational theorists, I explore Augusto Boal’s observation “that the whole body thinks – not just the brain” (Games 49) and through the use of theatrical games and techniques in the classroom, open up possibilities for law students and law teachers to reconceptualize their understandings of law and its power.

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2 For example, my primary research has been focused on law’s engagement with the pregnant body, primarily through the delivery of maternity and parental leave benefits in Canadian law (Calder, “Personal” 135-141). Traditional modes of communication can marginalize embodied forms in many ways (Adjin-Tettey et al. 8).

3 I am grateful to a workshop participant at my presentation at Keele who challenged this analogy. For her, comparing the methodology of teaching a physical exercise to the teaching of argumentation didn’t work. Although one of the goals of this project is to work that exact question through, my argument here is not that law needs to be taught solely through practical and practice-focused teaching. My argument is that in order to disrupt the otherwise monologic approach to teaching, more and different pedagogical techniques that bring students into critical conversations about law must be integrated into legal learning.
Research Questions

This paper sets out to provide the theoretical and practical context that informed a component designed and delivered in the first year orientation curriculum at the University of Victoria's Faculty of Law in September 2007 described in Part II below. The exercises are drawn from the work of Augusto Boal, as it has been taught to me by several practitioners of *Theatre of the Oppressed*, including Boal himself, and adapted particularly for the unique setting of the law school environment.  

This curricular component is a preliminary step in a larger project, one that aims to explore the transformative potential of engaged experiential learning, and in particular Theatre of the Oppressed in the law school classroom, as a means of understanding the power of law. By probing the theoretical integrity of this work I aim to explore

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4 I have been trained to be a facilitator of workshops employing the theatre techniques of *Theatre of the Oppressed*. This training primarily began in September 2006 when I was selected to be one of six facilitators trained by Puente Theatre, pursuant to a federal government grant, to deliver "Act Now Against Racism" workshops in their respective communities. It included the development and implementation of *Theatre of the Oppressed* techniques in two law schools courses (Family Law 322 and Civil Liberties 359), workshops in two law school courses (Equality Law 378 and Racism and the Law 358), workshops for two student groups (Dean’s Advisory Committee on Ethnicity and Culture and the UVic Association of Women and the Law), a workshop at the UVic Faculty Retreat 2007 in Cowichan Bay, BC, and presentations at four legal conferences: the Canadian Association of Law Teachers, Saskatoon, SK, May 2007, Gender Unbound, Keele England, July 2007; Law and Society Annual Meetings, Berlin Germany, July 2007 and the Canadian Initiative in Law, Culture and the Humanities, Ottawa, ON, October 2007. This training was augmented in June 2007 when I was chosen to train with Augusto Boal at an "Aesthetics of the Oppressed" workshop in New York, NY June 4-7, 2007; and in December 2007 and January 2008 when I trained with Sanjoy Ganguly and Jana Sanskriti, in Badu, India. Since then I have also presented this work at the University of Victoria (Feb. 2008), U.B.C. Law (May and June 2008), at the Law and Society meetings in Montreal, QC (June 2008) and at Carleton University (Oct. 2008).

5 I was first introduced to the work of Augusto Boal in a collaborative project with seven colleagues at the law school in the spring of 2005. This work led to presentations at five international conferences, employing a performance-based approach to law: “Reimagining Equality: Dancing with Dichotomies.” Law, Culture and the Humanities, Washington, D.C., March 21, 2007 (with Sharon Cowan); “Postcards from the Edge (of Empire),” Why and How? Theoretical and
solutions to the kinds of challenges first-year law students face entering legal education in early twenty-first century Canada. Of concern here is the continued marginalization in the study and practice of law experienced by students of colour, women, queer students, students with disabilities and Aboriginal students, despite increased numbers and attention to diversity in the curriculum.6 Ultimately, I aim to bring three underexplored aspects of the relationship between performance and law into the law school classroom. These three concepts are briefly discussed below as a means through which to situate the theory and the practice that informed the curricular component developed and delivered in the fall of 2007.

The first is the hierarchical way in which law is taught. Here, the focus will be on dialogic techniques drawn from *Theatre of the Oppressed* to see what they can offer communities who face exclusion and discrimination in the law, law school and the legal profession. During my first four years teaching law at two Canadian universities, I have been struck and surprised by experiences in the law school classroom impacting the dynamics of the law school environment as a place of engaged pedagogy and learning. Some are experiential, some are

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*Methodological Directions in Law, Feminism, Gender and Sexuality Workshop, U.B.C., August 2006 (with Elizabeth Adjin-Tettey, Hester Lessard, Angela Cameron, Margot Young and Maneesha Deckha); “Reimagining Equality: Dancing with Dichotomies,” Revisiting Equality Workshop, Onati, Spain, July 2006 (with Sharon Cowan); “Reimagining Equality: Dancing with Dichotomies,” Up Against the Nation-States of Feminist Legal Theory, Kent University, England, June 2006 (with Sharon Cowan); and “Roundtable: Postcards from the Edge (of Empire),” Canadian Law and Society Association Annual Meeting, Harrison Hot Springs, BC, June 2005 (with Elizabeth Adjin-Tettey, Angela Cameron, Maneesha Deckha, Rebecca Johnson, Hester Lessard, Maureen Maloney and Margot Young).*

6 I have also seen in my time at four different law schools in Canada that there is an overt hostility experienced by, amongst others, students of colour, female students, queer students, and Aboriginal students. Despite curricula that offer a diversity of choices, commitments to equity and diversity by faculties, cultural and academic supports in the law schools themselves, and admissions policies that respect life experience as a criteria for law school success, students often articulate that they feel silenced in the classroom (Bakht et al. 686-692).

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speculative, and some result from a recent survey I conducted as part of a larger research project investigating student course choices at seven law schools in Canada (Bakht et al.).

In particular, this part of the larger project will look at the use of embodied exercises as a means to explore dialogue as a solution to each of the following observations: the way in which the pressure to find work as a lawyer is imposed upon law students from the first semester of first year; the way in which laptops are a barrier between the student and the professor and between students and each other; the strongly articulated critique that the views of privileged students are not valued in the law school classroom; and finally difficulties experienced by students of colour, women, queer students, students with disabilities and Aboriginal students, despite increased numbers and attention to diversity in the curriculum.

Second is the way in which enacting law is performed. Here I argue that Augusto Boal’s *Legislative Theatre*, as a specific example of *Theatre of the Oppressed* techniques as they relate to the creation and

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7 My first reflection is on the way in which job searches have become something that first year students do from the moment that they arrive at law school. Before they even know what it is that they are embarking upon, they are inundated with student seminars, workshops and firm-based “wine and cheeses” focusing their attention on the work they will do when they leave law school as opposed to the work they will do while they are here. My experience is of a sense of anxiety and urgency that is generated, in some cases, before they even arrive. There is no question that law schools in Canada are becoming more expensive places to study. And, as tuition rises, so does student debt level, leaving students with more of an urgency to secure employment at the completion of their studies.

8 My second reflection is on the use of laptops in classrooms. As someone who now thinks with her fingers, I am not surprised by the rise in their use, a faster, more efficient way to take notes in class. However, what does surprise me is how an attempt to transcribe what the teacher says word for word replaces engaged dynamics in class, and how surfing the net, instant messaging and other forms of disengagement often characterize the classroom.

9 My third reflection is of a form of backlash in the classroom. This manifests itself in several ways, but includes a form of complaint by students of privilege that there is no place for their views at law school. It also manifests itself in active resistance and disengagement in classrooms in which alternative approaches to teaching law are employed.
implementation of law, should be considered as part of legal pedagogy. Boal writes:

*Legislative Theatre is the utilization of all forms of the Theatre of the Oppressed with the aim of transforming the citizens’ legitimate desires into Laws. After a normal Forum session, we create a space similar to a Chamber where laws are made, and we proceed to create a similar ritual of lawmaking, following the same official procedure of presenting projects based on the spect-actors interventions, defending or refusing them, voting, etc. At the end, we collect the approved suggestions and try to put pressure upon the lawmakers to have those laws approved* (Boal 2004).

Here the project will explore the relationship between teacher, student, and community, with attention to the democratization of legal drafting that is possible through this particular theatrical technique.

In particular, this part of the project will allow students to engage in projects that identify little examined spaces that law inhabits, particularly spaces where the relationship between government action, local participation and citizen engagement has been fractured.  

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10 A good example of an attempt to put this work into action in Canada is Headline Theatre’s 2004 project using Legislative Theatre to engage with social welfare cuts in the city of Vancouver, entitled “Practicing Democracy.” Information about the project can be found at:  
The third aspect of the larger project flows from the conceptualization of lawyers as actors. Here the dual meaning of the verb “to act” (acting is both performing and taking action) becomes relevant. I will highlight the way in which theatre techniques can be employed to train future lawyers for the work they will do acting on behalf of clients, and advocating for those clients in the theatrical venue of the courtroom and other spaces of power. In a concrete and experiential way, this aspect of the project uses theatrical games and exercises to strengthen student confidence, to work with issues of presence, and ultimately to bring more of a sense of joy into the way in which they learn to be legal advocates while being mindful of the incredible power of law.

With attention to each of these reflections, my goal is to query whether there is something about the primarily top-down way in which we teach and learn law in Canada that could withstand some scrutiny. My hope is that law school is not just a place in which the status quo of privilege is enhanced, but a place in which true dialogue exists and expands.11

The next part of the paper will do two things. The first is to begin to explore the theoretical underpinnings of an approach to teaching and learning law that centres dialogue in the relationship between the teachers and learners of law. The second is to explore different methodologies of teaching and learning that can put this approach to pedagogy in place. This exploration is preliminary and introductory, and is not meant as a panacea to the problems raised above. Instead, the goal here is to develop and implement different teaching exercises, drawing on a particular set of theatrical traditions, as one way to begin a rethinking of the role of the body in legal education.

11 The relationship between monologue and dialogue is key to this argument and to the work of Paulo Freire, Augusto Boal and those who applied and modified their techniques over the years.
Paulo Freire and Pedagogy of the Oppressed

In 1970 Paulo Freire published his influential text *Pedagogy of the Oppressed* in which he set out a revolutionary approach to education. He envisioned that the ontological vocation of human beings is to be subjects who act upon and transform their own worlds. For Freire, every human being, no matter where they are situated, is capable of looking critically at the world in a dialogical encounter with others (Schaul 14); exchanges in which both student and teacher learn, question, reflect and participate in meaning-making (Freire, *Oppressed* 60-62). Articulated primarily as a means to promote education through action for the illiterate of his own country, Brazil, Freire’s *Pedagogy of the Oppressed* has translated into an effective means of overcoming other “cultures of silence,”12 including those of advanced technological societies (hooks *Transgress* 45). The text and its arguments, although subject to some strong critical commentary over the years (Freire *Hope* 54-56), have been and continue to be employed in many educational contexts throughout the world.

Freire’s approach to pedagogy is probably best understood as a critique of what he called the “banking” concept of education. He writes:

> Narration (with the teacher as narrator) leads the students to memorize mechanically the narrated content. Worse yet, it turns them into ‘containers,’ into ‘receptacles’ to be ‘filled’ by the teacher. The more completely she fills the receptacles, the better a teacher she is. The more meekly the receptacles permit themselves to be filled, the better students they are.

> Education thus becomes an act of depositing, in which the students are the depositories and the teacher is the depositor. Instead of communicating, the teacher issues communiqués and makes deposits which the students patiently receive, memorize and repeat. This is the ‘banking’ concept of education, in which

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12 Freire’s pedagogy is in many ways centrally a response to his concern for citizens whose silence in the face of their own oppressions resulted from systemics of economic, social and political domination that often made critical awareness and political engagement impossible (Schaul 12).
Freire argued that formal education was an instrument of oppression rather than liberation and that banking education acted as a pillar in maintaining that social order. The more time that students spend with rote pedagogy, “the less they develop the critical consciousness which would result from their intervention in the world as transformers of the world” (54).

In Freire’s approach to pedagogy, learners do have opportunities that arise from being collectors and cataloguers of the things they store. However, knowledge only comes through invention and re-invention, “through the restless, impatient, continuing, hopeful inquiry human beings pursue in the world, with the world and with each other” (53). He thus calls on educators to reject the banking approach in favour of problem-posing, the posing of the problems of human beings in relation with the world. Although this approach to education might not seem particularly revolutionary, what makes it problem-solving and not problematization, is its dialogical construction. Through dialogue, “the teacher is no longer merely the-one-who-teaches, but one who is himself taught in dialogue with the students, who in turn while being taught also teach. ... The students, no longer docile listeners – are now critical investigators in dialogue with the teacher” (61-62).

In Freire’s theoretical approach to education, what matters most is that human beings have the capacity for creative thinking, and by engaging in dialogue, have the capacity to transform rather than merely to adapt to reality (Blackburn 5). A constant and dynamic process, Freire does not envisage a future just society, but sees the process of liberation and of humanization as an ongoing process. Central to this aspect of Freire’s theory is what he calls
“conscientization” that is, the process by which human beings become more aware of the sources of their oppression. But, this is not purely an intellectual process. This approach sees education as being constantly remade in a cycle of action-reflection-action. As compared to an approach to education that emphasizes permanence and reaction, problem-posing education “roots itself in the dynamic present and becomes revolutionary” (Freire 65). It is only through action and reflection as a dynamic and dialectical process that education can be truly achieved.

Freire’s method sees the role of the educator as catalyst, or animator, a facilitator who creates space for dialogue and for those facing oppression to become creative subjects of the learning process rather than passive objects (Blackburn 8-9). For Freire the challenge was illiteracy, and he put his practice into action in an effective way for peasants in rural communities near his own, as well as in many other similar contexts. For teachers and learners of law, the challenge seems entirely different. Thus, the next part of this paper looks at how this particular approach to pedagogy can be translated into a context, in this case a Canadian law school, in which the idea of oppression translates in different and complicated ways (Thornton 376).

**Augusto Boal and Theatre of the Oppressed**

*In the Theater of the Oppressed, oppression is defined, in part, as a power dynamic based on monologue rather than dialogue; a relation of domination and command that prohibits the oppressed from being who they are and from exercising their basic human rights.13*

In 1974 Augusto Boal wrote his influential text, *Theatre of the Oppressed*, based upon his work both as Artistic Director of the Arena

13 The Theatre of the Oppressed Laboratory in New York (TOPLAB) uses this quote as its primary means for defining Theatre of the Oppressed. See Marie-Claire Picher, “What is Theatre of the Oppressed” online at [http://www.toplab.org/whatis.htm](http://www.toplab.org/whatis.htm).
Theater in Sao Paulo from 1956-1971 and as a Workers’ Party activist over the same period of time. Inspired by fellow Brazilian, Paulo Freire, Theatre of the Oppressed’s techniques are based on Freirean principles of dialogue, interaction, problem-posing, reflection and conscientization and designed to activate spectators (or as Boal calls them, spect-actors) to take control of situations, rather than being passive subjects of action (Singhal 143-152). Theatre of the Oppressed, thus, is a means of putting Freire’s pedagogy of the oppressed into action, and particularly, seeing theatre as a political vehicle of liberation.

The main objective of Boal’s practice was “to change the people – ‘spectators,’ passive beings in the theatrical phenomenon – into subjects, into actors, transformers of the dramatic action” (Boal Oppressed 122) Through a series of exercises, games and techniques, Boal proposes a method that transforms the notion of theatre from one in which the spectator no longer delegates power to characters on stage to think or act in their place, but is freed to think and act for themselves. The theatrical act is thus experienced as conscious intervention, as a rehearsal for social action rooted in a collective analysis of shared problems (Picher 34). It is in this manner, theatre as a rehearsal for transformation, that the relationship between equity, law and performance begins to emerge.14

For Boal, theatre is a language that is capable of being utilized by any person, with or without artistic talent, and a language whose first word is the human body (Boal Oppressed 121, 125-126). To begin to

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14 Some important work has been done using the techniques of Theatre of the Oppressed in the Canadian context. One example is the work of David Diamond and Headlines Theatre out of Vancouver, BC. Diamond’s work draws on systems theory to reconceptualize the techniques of Theatre of the Oppressed away from the clear boundaries of oppressor and oppressed and more towards viewing the issues of contemporary Canadian society as a living organism. As Diamond writes, “in order to get to the root causes of a problem, Theatre for Living investigates the oppressed, but also makes space to investigate the fears, desires and motivations of the oppressor” (Diamond 38).
use this language, participants must therefore know their own bodies, and learn to express themselves using their bodies. Once this is experienced, spectators can move to becoming actors, changing from objects to subjects, from witnesses to protagonists in the exercise and then in their own lives (121, 125-126). The method has several stages, first "a series of exercises by which one gets to know one's own body"; second "a series of games by which one begins to express one's self through body, abandoning other, more common and habitual forms of expression"; third the practice of theatre as language through image theatre in which spectators speak through images made with actors' bodies and forum theatre where the "spectators intervene directly in the dramatic action and act"; and finally through "simple forms in which the spectator-actor creates 'spectacles' according to his [or her] need to discuss certain themes or rehearse certain actions” (125-155). The goal of the process is to free the audience for action.

Theatre of the Oppressed is thus one means of putting Freire’s pedagogical principles into action, with Image Theatre and Forum Theatre at the heart of the work (Boal Aesthetics 4-7). The goal of both is to provide a stimulant for participants to transform their own worlds. The theory is that overcoming the challenges presented in theatrical form makes participants better qualified to overcome the same challenges in reality when the situation arises (Boal Games 241-252). The translator’s introduction to the first edition of Games for Actors and Non-Actors, provides a good description of these two fundamental techniques:

Image Theatre is a series of exercises and games designed to uncover essential thoughts about societies and cultures without resort, in the first instance, to spoken language – through this

15 Many of the games and exercises are detailed in Games for Actors and Non-Actors. This is an invaluable text for the work of Theatre of the Oppressed in any educational setting. Many other texts also detail the kinds of games and exercises that ground this work, for example, Theatre for Living.
may be added in the various ‘dynamisations’ of the images. The participants in Image Theatre make still images of their lives, feeling and experiences, oppressions; groups suggest titles or themes, and then individuals ‘sculpt’ three-dimensional images under these titles, using their own and others’ bodies as the ‘clay.’ However, the image work never remains static – as with all of Theatre of the Oppressed, the frozen image is simply the starting point for or prelude to the action, which is revealed in the dynamisation process, the bringing to life of the images and the discovery of whatever direction or intention that is innate in them (Jackson xxii; Adjin-Tettey).

And:

*Forum Theatre is a theatrical game in which a problem is shown in an unsolved form, to which the audience, again spect-actors, is invited to suggest and enact solutions. The problem is always the symptom of oppression, and generally involves visible oppressors and a protagonist who is oppressed. In its purest form, both actors and spect-actors will be people who are victims of the oppression under consideration; that is why they are able to offer alternative solutions, because they themselves are personally acquainted with the oppression. After one showing of the scene, which is known as ‘the model’ (it can be a full-length play), it is shown again slightly speeded up, and follows exactly the same course until a member of the audience shouts ‘Stop!’, takes the place of the protagonist and tries to defeat the oppressors.*

The game is a form of contest between spect-actors trying to bring the play to a different end (in which the cycle of oppression is broken) and actors ostensibly making every possible effort to bring it to its original end (in which the oppressed is beaten and the oppressors are triumphant). The proceedings are presided over by a [facilitator], whose function it is to ensure the smooth running of the game and teach the audience the rules ... Many different solutions are enacted in the course of a single forum – the result is the pooling of knowledge, tactics and experience, and at the same time what Boal calls a ‘rehearsal for reality.’ (xxiv)

The techniques that ground his *Theatre of the Oppressed* have been applied and practiced throughout the world in a variety of contexts, educational, social, and theatrical, 16 but rarely in legal education.17

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16 See [www.theatreoftheoppressed.org](http://www.theatreoftheoppressed.org). Practitioners of Theatre of the Oppressed, however, often address legal issues. For example, Headlines Theatre
Boal himself drew the direct connection between his theatrical work and the power of law when elected as a Vereador (city councilor) for Rio de Janeiro in 1993. There he used his lifelong body of work to create "legislative theatre", a set of processes which mix his theatrical techniques with "the conventional rituals of a parliamentary chamber or assembly, with the objective of arriving at the formulation of coherent and viable bills of law" (Boal Aesthetics 6). Detailed in his 1998 text, Legislative Theatre, Boal shows the relationship between theatre, democracy, and law, and in the process demonstrates how at the heart of his work is the word “to act” in all of its various meanings.

To begin to explain how this work might enable a more critical reflective approach to legal education, I will now foreground the performative nature of the work undertaken at UVic by looking at how the concept of performativity is of importance to scholars and theorists of gender.

**Performativity, Gender and Law**

In the methodology of Theatre of the Oppressed, there is no being, only becoming. One isn’t restricted from writing a poem because one in Vancouver has undertaken several projects addressing legal issues facing, particularly, Canadians living in poverty (Diamond, 209-280). Similarly Jana Sanskriti, a theatre company practicing Theatre of the Oppressed in West Bengal, India, has been addressing issues of domestic violence, land expropriation, and food policies, amongst other issues through theatre since the mid-1980s (Ganguly 220-257).

There is little written in the academic literature on using Theatre of the Oppressed in teaching law. I am aware, however, of several colleagues who have drawn on this work in their teaching. I am grateful to Maureen Maloney whose work with Forum Theatre at UVic Law was the impetus for my own work. I am also aware of the work of Lani Guinier using Democratic Theater at Harvard Law School.

An interesting challenge of this work was how to present on it, particularly at legal conferences. It seemed problematic, or even ironic, to talk about an exercise that was about doing. As a result, my first presentations on this work at Kent University and in Berlin, were comprised of theatrical exercises with the audience as opposed to a formal presentation. I have not detailed that work in this piece, but have co-written elsewhere on the power of the performative in legal conference spaces (Adjin-Tettey; Calder and Cowan).
isn’t a poet, but in the process of writing a poem, one becomes a poet (6). This aspect of the work, one that requires some attention to the distinction between performance and performativity, is strongly evocative of Judith Butler’s work on gender, and on the idea of gender as performed. She writes:

*Gender is the repeated stylization of the body, as a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, a natural sort of being. A political genealogy of gender ontologies, if it is successful, will deconstruct the substantive appearance of gender into its constitutive acts and locate and account for those acts within the compulsory frames set by the various forces that police the social appearance of gender* (Butler 45).

It is in this sense, Butler’s understanding of gender not as a noun but always as a doing (34), that the potential of Theatre of the Oppressed as a methodology for students, teachers and others learning about law and its power is revealed. In being asked to put their bodies into the action of their learning, to respond to the polysemic (Boal *Games* 139 and 175) in the images that surround and confront them, those who study and practice law gain access to the means of constituting and transforming a basic rethinking of the power of law itself (Smart -25).

This also resonates with Butler’s later work, and in particular, with her re-engagement with performativity. Responding directly to criticism of the definition of performativity noted above, Butler argued that “performance is not about taking on the garb of a particular elected gender at whichever moment one chooses – in fact it is not really about choice at all, since the range of garments and the language and tools of gender available to us are already prescribed within society” (Cowan). On one level, the use of theatre in the learning of law offers a way of analyzing how identity is not at any given time, concrete, stable, and immutable. On another level, however, Theatre of the Oppressed is a means to illuminate the
systemic factors that place strictures of constraint on law’s engagement with these very notions of identity.

Probing further the relationship between performativity and law is in this way a means to rethink our own understandings of what constitutes law. Here the work of Julie Lassonde is particularly instructive, as she investigates the ways in which daily performances transform the law that we live in and that surrounds us. Through an analysis of disruptions of seemingly routine interactions, Lassonde develops an argument of how we can learn law by participating in it, “paying attention to how we act in daily life ... helps [us] understand how we create legal norms” (Lassonde 7). This sort of analysis, broadening the idea of law, also enables a challenge to law’s authority as something held only by the professional, as “people, legally trained or not, have embodied knowledge they can draw on to solve legal problems” (qtd. in Lassonde 10-11). Approaching the learning of law from this more destabilized place, offers an otherwise little examined view of legal norms.

With reference to Butler, Lassonde ultimately argues that “law is a way for us to develop a series of narratives that simultaneously create norms and give them meaning. Norms, like identities, are not fixed. They depend on the way we build and interpret them through our daily life gestures” (Lassonde 3). This kind of interpretation relies not just on the written word, but expands our understanding of law to the image, the corporeal, the embodied and the daily; and demonstrates how performing law in everyday life is an effective means of engaging with and transforming the legal world.

The transformative potential of performance, particularly for those who are marginalized through law, is a contentious issue (Alexander et al.; Cohen-Cruz and Schutzman; Schutzman and Cohen-Cruz, Diamond). Ann Elizabeth Armstrong takes up this argument and
returns the focus to gender. She argues that as a site where liberatory
time and practice intermingle, Theatre of the Oppressed has strong
resonance with feminist theory (qtd. in Cohen-Cruz and Schutzman
178). This is particularly so, she asserts, for feminists who are
simultaneously formulating theoretical positions that incorporate
multiple categories of difference and advocating positive strategies
for change and for understanding the often unstable, transitive, and
fluid relationship between oppressor and oppressed. Here Armstrong
asserts:

_{Feminist epistemology frequently challenges the distinction
between subject and object, revaluing the position of those that
frequently serve as embodied objects (gendered or racialized
‘Others’) to knowing subjects (‘universal’ white men). Similarly,
[Theatre of the Oppressed] values the particularity of embodied
experiences, activates the sensate body, and acknowledges the
mind-in-the-body ... Instead of denying the existence of cultural
boundaries, Theatre of the Oppressed focuses on displacing and
reconfiguring the boundaries between subject and object, mind
and body. ... The body is a critical site in both Theatre of the
Oppressed and feminism through which to explore identity
politics, locating experience within the particularities of
physical and social contradictions (Armstrong 178).}_

As one means of approaching issues of oppression, so central to the
perpetuation of law’s power, the value of these embodied techniques
includes their capacity to unearth the importance of positionality in
the very understanding of what constitutes oppression (Armstrong
179).

Using the role that performance offers law, particularly as a way to
understand the complicated interactions of identity, the body and
oppression, the next section details the development and
implementation of a new curricular component, based on Theatre of
the Oppressed, designed for and by the students of the University of
Victoria’s Faculty of Law.
Workshops in the Law School

*Theatre is a form of knowledge; it should and can also be a means of transforming society. Theatre can help us build our future, instead of just waiting for it* (Armstrong 48-49).

The methodology of this project included the development and implementation of a series of workshops to be delivered at the law school. The workshops were designed to involve law students in telling stories about their own experiences at law school, with an eye to transformative change both of the learning and of the practice of law through the presentation of Forum Theatre. The broad goal of the work was to involve the first year class in a larger scale version of what these smaller workshops had done. The following describes that process and its first incarnation in the fall of 2007.

The Design

The project began as a response to concerns, primarily articulated by equity seeking groups within the law school, but also by colleagues, of on-going and persistent issues of classroom climate, discrimination and voice; issues that remain prominent at most law schools across the country. The result was student interest in the design and delivery of a component of the Legal Process curriculum (Law 106) for incoming students; a session addressing equity norms and practice in the classroom.

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19 My on-going training in this respect is noted above.
20 This component of Legal Process will again be delivered in the 2008-2009 school year. The discussion in this paper, however, draws primarily on the experience of the first implementation.
21 A recent example of how these issues often manifest, is a newsletter circulated in the Fall of 2007 anonymously to students at the University of British Columbia’s Faculty of Law that contained racist, sexist and homophobic comments, cloaked in a satirical format. See a discussion of this particular incident in the local Vancouver media: http://www.canada.com/theprovince/news/story.html?id=21cdf83f-a11e-4303-8d9b-e778527510ee&k=7075 (Last accessed: October 18, 2008).

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Legal Process is a mandatory, three week introductory course at UVic, with all first-year students involved in small group exercises and large group lectures for the first two weeks in September, a series of seminars over the course of the fall, and then a full week mediation exercise in the January term engaging difficult questions of professional ethics and client contact. The incoming class is divided into five sections of 21 or 22 students, with three instructors assigned to each of the five groups. The goals of Legal Process are primarily to introduce basic concepts of law; to instill community values; and to provide a social forum to students to ease themselves into law school. Based on a series of workshops that had been designed and delivered in the law school over the course of the year, and in consultation with the student body and legal process instructors, it was decided that a workshop drawing on the theatrical traditions of Theatre of the Oppressed was the best format to pursue.

The Format
The work involved four stages. First, a series of workshops were designed and delivered at the law school in the summer of 2007, the goals of which were to enable students through image theatre and forum theatre to engage with personal challenges they have experienced inside and outside the law classroom. The end product of these workshops was a series of scripts written by the students, each portraying an actual moment of challenge at law school, constructed as an anti-model, in the tradition of Forum Theatre. The scripts were written to show a moment or intersecting moments of challenge or oppression, with no solution to the challenge explicit in

22 The materials introduce the objectives of the Legal Process course as being organized around two themes: first that the legal system is not static and must be viewed as a dynamic process; and second that the primary responsibility of legal education rests with the students (University of Victoria, Processes 1-1).

23 A sample agenda is supplied as Appendix “A.”
The second stage involved working with the scripts and ultimately selecting the ones that would form the basis of the exercises. This aspect of the process drew on the work and experience of senior practitioners of Theatre of the Oppressed in the community, primarily Lina de Guevara of Puente Theatre, River Chandler of TheatreWorks Consulting, as well as professors within the law school who were working on the redesign of the Legal Process curriculum.

The third stage was the production of the plays. For the success of this component it was necessary to recruit student from the upper years who would perform the scripts, and to give them some training with the requirements of acting a scene in Theatre of the Oppressed. The goal was to have the scripts enacted in each of the five legal process classrooms, necessitating the recruiting of at least 25 student actors. The vision was that the actors in each of the five Legal Process sections would be representative of the student body broadly, so that the work of performing the scripts did not fall solely onto the shoulders of the students who had written them. With the assistance of the law student’s society we were able to recruit a group of students who were a snapshot of the student body generally, including members of the student government, students of colour, Aboriginal students, students of diverse sexualities, ages, and from both second and third year.

The final stage was the delivery of the exercise. For this component to be successful it was key to have five trained theatre professionals

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24 One of the six scripts is supplied to give an example of the kinds of issues raised in the scripts, and attached as Appendix “B.” Used with permission of the student author.
who could facilitate the Theatre of the Oppressed exercise. This was accomplished through connection to Victoria’s Puente Theatre, the Act Now Against Racism workshop group, and Victoria’s TheatreWorks consulting. Similarly, it was key that the audience of the plays had some preparation. As such, prior to the exercise the first-year students had been given a preface to one of Augusto Boal’s books explaining image theatre and forum theatre (Jackson xii-xxvii), and two academic readings about classroom climate, one by Brenna Bhandar paying attention to the effects of systemic racism on the law school classroom and one by Patricia Monture-Angus focusing on law itself as a locus of harm, in the lived realities of Aboriginal peoples.

The Delivery
The day then unfolded like this: the facilitators spent about half an hour warming up the class, including some introduction to the theory and practice of political theatre; then each of the scripts were acted out by the upper year students, one at a time. At the end of each scene the facilitator engaged the audience in a process of identifying their concerns with the various sites of challenge and oppression in the play, asking the audience to think about what they wanted to change about what they have seen. The actors then began the scene again.

In Forum Theatre generally, the goal of the actors is to stay in character and to take the scene to its natural uncomfortable

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28 It is important to note that Forum Theatre has evolved in the various places in the world that it has been developed and implemented. For example, in Boal’s description of Forum Theatre, the audience can only replace the protagonist to the oppression (Boal, Games 242-245). In contrast, in the work of David Diamond’s Theatre for Living, he consciously adapts this part of Boal’s work to enable the replacement of other characters in the play (get Diamond’s language). Our version here is more closely related to Diamond’s adaptation, while retaining the significance of the use of the word oppression.
In each of the rooms between 4 and 6 of the scripts were performed, with time for a break. At the end of this period the student actors and the facilitator left, enabling the Legal Process instructors, who up to that point had been spectactors themselves, to engage in a debriefing session for the final half hour. This debrief focused primarily on conclusion, no matter what occurs. In contrast, the goal of the audience is to prevent the play from ending as scripted through active intervention. With the help of the facilitator, members of the audience – or spect-actors in Boal’s vernacular, yell “stop” when they want to try to change the oppression that characters in the scene are facing. They then go into the scene and either add a character or replace a character and try to shift the play’s outcome, with the actors instructed to stay in character and respond to each intervention. The facilitator allows the intervention and the response to it by the actors to carry on for a while, and then works with the actors and the audience to assess the intervention. This is usually done by asking the audience and the actors -- what can we learn about the central moments in the play from this intervention? -- what can we learn about the sexism, racism, homophobia, or other oppression in the scene by what intervention was attempted and what that intervention ultimately shifted or reinforced?

The actors then continue on, and the audience is given the chance to try again to keep the scene from arriving at its scripted conclusion. In our scenes, these interventions, and the facilitation around them enabled a conversation, for the most part, between the upper year student actors and the first year student audience about law school, UVic law in particular, and the kind of classrooms they collectively wanted to have. Although some students might have been skeptical about the exercise, we had other students talking about the real moments underlying the scripts, and the analogous moments of difficulty they may have experienced themselves.

In each of the rooms between 4 and 6 of the scripts were performed, with time for a break. At the end of this period the student actors and the facilitator left, enabling the Legal Process instructors, who up to that point had been spectactors themselves, to engage in a debriefing session for the final half hour. This debrief focused primarily on
asking the students to talk about what they had learned through the exercise. The time was also used to connect the students back through the time they had spent together in law school to this point, and ahead to what they could expect as they moved into their substantive courses the following week, and at some point down the road, into the legal profession.

The Results
The success of this project is difficult to quantify, but was evident to those of us involved on many levels. The facilitators and faculty participants were quite pleased by what they saw in the classrooms, from the work of the upper year students, in the quality and challenge of the scripts, and from the interventions attempted by the first year students. The feedback from the upper year students that were actors was overwhelmingly positive, with an expressed longing for the opportunity to experience something similar in their own years. And the feedback in the form of anonymous journal entries from the first year students also marked this exercise, risky as it was, as one of the most powerful experiences of their legal process course.

29 The anonymous feedback from all 108 students in the first year class was compiled and roughly tabulated, giving some subjective assessment of the kinds of feedback given. Students were asked to evaluate each of the components of Legal Process. The Forum Theatre component was “very highly rated” with 71 positive comments; 29 general comments; and 8 critical or not so positive comments. Of the 14 components of Legal Process only 5 were evaluated more positively. Summary of comments on file with the author.

30 One faculty member provided the following reflection following the workshop and circulated to the faculty as a whole, “I attended one of the groups this morning and am still processing what I witnessed today: courage and leadership from the upper-year actors (names omitted) and our facilitator (name omitted); care, intelligence, creativity, openness, and support from the first-years; guidance, wisdom, and understanding from faculty members (names omitted). This was an excellent opportunity for building the kind of community (and world) we aspire to and I look forward to seeing how we can continue this initiative.” Email on file with the author, used with permission.

31 For example, one student writes, “I believe that this theatre exercise was excellent. It was hard to see these hard situations, especially because they were real student’s experiences. This exercise, I think, forces people to be more empathetic towards everyone especially to people in disadvantage. It made it easier to imagine how the person discriminated against might have felt then,
will be interesting to monitor, as the students’ law school experience progresses, is the effect this early critical dialogic engagement with classroom climate will have on this class's engagement with the law and each other. At the end of the day it is clear that there are levels of discomfort experienced in the learning of law in Canada -- what this project aims to explore is whether a model of learning law utilizing theatre as one of its tools will reach differently situated students.

**Continued Presence at the Law School: Connecting Performance, Performativity and Law**

A project of this nature, however, cannot be a one-off attempt. Nor is it a panacea for some of what is very difficult about the learning and practice of law. Thus, the goal is to continue to develop and redevelop critical pedagogy for delivery at the law school to explore the various ways in which the relationship between performance and law offers opportunities for law students to further their skills as law students, future legal actors, and as engaged members of the legal profession working with diverse and equality-seeking communities. Along side this work, however, is the much needed work of integrating some of these performative exercises into substantive course work, and further the development of a curriculum for a new course on performance and law.

and how isolated they can be. It also illustrated how one ‘insensitive’ comment might terribly affect someone else’s feelings. It showed me how active against discrimination and racism one should be in order to help create a more positive environment.” Taken from anonymous comments compiled by the research assistant to the Director of Legal Process and held on file.

32 One important aspect of this project is scheduling an hour in which all of the students can come together, after the exercise to talk about the work. This can elicit the critical feedback that is necessary to ensure that the work’s goals are being met, and as well it can provide an opportunity for student participants and actors to learn from the work done in the other classrooms. In the fall of 2008, for example, the large group session enabled several students critical of the exercise to voice that criticism and for other participants to learn not only from the successes in their own rooms, but from the challenges in others.
It is envisioned that this kind of course work, either integrated or standing alone, will be grounded in a methodology that aims to disrupt the notion of learning law as banking education; an opportunity to use Legislative Theatre as a means of rethinking the relationship between lawyers, legislators and citizens; and a series of games and exercises that develop the performative skills of students who will in some capacity act on behalf of others in their legal careers. The introduction of this work in legal process is thus a first step in the larger project, described in Part I, of integrating the transformative potential of this theatrical form of engaged experiential learning into Canadian legal education.

The relationship between performance and law is a rarely theorized or studied area of legal education. The goal of this kind of pedagogy is to disrupt the law school classroom using as a model the way in which Augusto Boal and many others have disrupted the relationship between audience and actors in the theatre, and the way in which Paulo Freire and others, have disrupted our understanding of education for people living in poverty. The potential of this work is, however, yet to be uncovered. Learning law is a privilege. The more conscious and active law students are with that privilege and its potential, the more open the possibilities are for the active use of law as a transformative tool of social change.

Conclusions: More Beginnings

In truth, a session of Theatre of the Oppressed has no end, because everything which happens in it must extend into life. Theatre shall have no end! Theatre of the Oppressed is located precisely on the frontier between fiction and reality – and the border must be crossed. If the show starts in fiction, its objective is to become integrated into reality, into life (Boal, Games 276).

This project is in its infancy, although the infant has begun to take some wobbly steps. What this project aims to explore is whether a

33 Julie Lassonde’s work is a notable exception.
model of learning law that utilizes theatre as one of its tools will ensure that everyone has learned to tie their knot before they step backwards off their first legal cliff. At this preliminary place, the answer, it seems, rests in creating more space for dialogue. Oppression is used in Theatre of the Oppressed to denote a power dynamic based on monologue rather than dialogue. Using a theory of education based on a pedagogy of the oppressed, a methodology based on the theatre of the oppressed, and hope, this project sets out to inquire as to whether a more engaged legal education will lead to the wisdoms of both students and teachers of the law transforming each other.

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Works Cited


APPENDIX “A”

Sample Workshop Agenda  
June 2007

Objectives

- Develop self-expression in order to create images of individual and group situations of oppression;
- Analyze structures, systems and relations of power;
- Practice transforming images of oppression through non-verbal and verbal dialogue techniques;
- Develop cooperation, collaboration and trust-building skills;
- Learn movement exercises, group integration games and narrative techniques that can be used to democratize groups and organizations.

AGENDA

I. Introduction  
   (10:00 – 10:15)

   Goals: convey basic information about the project, my work in the project and Theatre of the Oppressed, set an enthusiastic tone for the workshop, and ensure that guidelines for the workshop are in place

   1. Introduction to “Theatre of the Oppressed”
   2. Agenda
   3. Guidelines

II. Warm-up Games  
   (10:15 – 11:00)

   Goals: I anticipate the room will be anxious; need good, fun, ice-breaking games to get us warmed up with each other, but also to get us thinking with our bodies; developing trust for the work that we need to do; infused with fun

   1. Warm-up
   2. Games
      a. The Knot
      b. Pulling and Pushing
      c. Columbian Hypnosis
      d. Driving the Car
      e. Reverse
f. Miming

In the poetics of Theatre of the Oppressed, Boal uses exercises and games to develop better awareness of the body and its mechanisms, and to deal with the expressivity of the body as emitter and receiver of messages. The games are dialogue, they require an interlocutor. They are extroversion. Like chess players who physically train before a match, the games are to reinforce that the whole body thinks, not just the brain.34

III. Image Theatre: Creating Images of Law School Challenges
(11:00 – 12:00)

Goals: introduce the notion of image creation, demonstrate the key techniques and enable participants to engage with the techniques; use one-on-one interviews to engage the questions of conflict in the classroom

1. Images and What those Images Provoke
   a. Walking in the Space
   b. Images in the Space
   c. Complete the Image

2. Introduction to Image Creation
3. Creation of Images in Pairs
4. Groups of Four Images
5. Interviews

IV. Lunch
(12:00 – 12:30)

V. Images and Activation
(12:30 – 1:30)

Goals: building on the discussions, goals are to enable image creation from those interviews; enable a discussion on the power of image work; use images as a means of creating and telling stories primarily without words

1. Building an Image
2. Activation and Dynamization
3. Debrief and Discussion

VI. Debrief and Next Steps (1:30 – 2:00)

Goals: conclude the workshop with positive energy and releasing energy; create a mechanism to give gifts; create space for debriefing and discussion of next steps

1. Debrief/Feedback
2. Giving Gifts

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APPENDIX “B”

**Equity Norms and Practices**
**Legal Process 2007-2008**
**Script #3**

**Setting:** A Law School party

**Characters:** Three female students (W1, W2 and W3) and one male student (M1)

A single table in a living room at a party. Two women are sitting at the table, drinking.

W1: I’m so exhausted. I think this is the first time I’ve been out of my house in a week.

W2: Wow, you’re working really hard.

W1: I’m so behind. I feel like everyone else is miles ahead of me. I’ve been going through a lot this year with my family.

W2: Oh, I’m sorry to hear that. Is there anything I can do to help?

W1: No. Thanks though. My band is in the middle of a title dispute right now over some land that my people have been using forever. My parents are really involved, and it’s been so hard on them.

W2: Oh, are you Native?

W1: Yeah. Yeah, I am. I know I don’t really look it.

W2: Oh no, I didn’t mean it that way. I just didn’t know. I’m sorry to hear about the dispute that must be hard.

W1: It’s okay. You get used to it, I guess.

W2: I’d like to talk about this more, but I really need a drink. Can I get you something while I’m up?

W1: Just some water would be great, thanks.

W2: Sure.

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35 This script is written as an “anti-model.” For a discussion of how this script was developed and implemented, see Part II of the paper above.

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http://www.masksjournal.com
W2 walks off. W1 sits alone, looking uncomfortable for a moment until M1 and W3 walk in and join her.

M1: Hey, how’s it going?

W1: I’m all right. School is getting me down. It’s nice to have a break.

W3: Tell me about it. Constitutional is kicking my ass.

W1: Really? It’s one of the only classes I like.

W2 re-enters with drinks, hands W1 glass and sits back down.

W3: Uh, I can’t stand it. We’ve been doing “Native rights” for the past week, and it is just so much bullshit.

M1: Why do you say that?

W3: Oh God, I am so sick and tired of hearing people complain about “Aboriginal rights.” Honestly, I think they’ve got more rights than I do. I mean, most people can’t just go up to a piece of land they think is valuable, start protesting and then be taken seriously at court by claiming they have some sort of ancient ancestral connection.

M1: Hey, Aboriginal people are the poorest people in the country.

W3: So that means they should get favourable treatment by the government? That’s racism. I mean, that goes against the Charter itself. It violates my s. 15 equality rights. There should be absolutely no benefits or rights based on race. It doesn’t make sense.

M1: But c’mon, think about what you’re saying. What about history?

W3: What about history? Exactly. Why can’t everyone just accept that they are a conquered people and get on with things?

M1: Would you be saying that if Michael was here? You know his parents were in the residential schools.

W3: Well, sometimes I fell like I should be politically correct, but that doesn’t mean it’s what I really think. I should be able to say what’s on my mind with just my friends around.
W1 stands up to leave.

M1: Hey, where are you going?

W1: Oh, just for a walk. I just need some air.
Staging the Virtual Courtroom: 
*An argument for standardizing camera angles in Canadian criminal courts*

Jeff Locke

**Introduction**

*All television is educational television. The question is: what is it teaching? (Johnson, Nicholas)*

It is important to recognize that the televised medium has an implicit visual language that subliminally affects the way that viewers interpret what they see and hear. Research continues to support what filmmakers have long known, that “skillful manipulation of the camera can have predictable effects on [an] audience” (Mandell 354). For example, an actor’s credibility, dominance, attractiveness, among many other attributes, can be subtly and imperceptibly manipulated simply through the use of “movie magic.” With the rising use of videoconferencing technology in the Canadian criminal courts, it is becoming increasingly necessary to gain a greater understanding of this visual language for the purpose of isolating its potential impacts on finders of fact. It is important to determine whether this technology is ultimately benefiting the Court as a whole or whether it
is it merely "sparing defendants the convenience of the guillotine" (Ashdown 66).

Although there are innumerable factors that can influence how video communication is perceived, some of the most obvious have to do with basic camera angles. Filmmakers have toyed with this simple variable since the invention of the medium, using it to conjure emotion and dramatic effect. Significantly, camera angle is also a factor that every camera operator must take into consideration, whether amateur or professional, as shot composition is an unavoidable component of the medium. In this paper, I draw on interdisciplinary sources in order to examine the effects of this variable in the criminal courtroom setting. More specifically, I explore how varying camera angle can impact the perception and judgment of finders of fact. Following this, I argue that the current state of affairs necessitates that videoconference camera angles be standardized in the criminal court context.

**Background and Contextualization of Research**

Contemporary scholars engaged in the relatively new discipline of law and film have examined interconnections between these influential socio-cultural institutions. Research in this area has been primarily informed by three frameworks that conceptualize film as paralleling law, film as jurisprudence, and film as judgment (Kamir qtd. in Johnson). While such literature has contributed important insight regarding how both law and film operate to “shape our perceptions” (Johnson et al. 88) and alter our understanding of “the real” (Johnson 1353), thus, “not simply [to engage] in the finding of truth, but also more fundamentally in the making of meaning” (Johnson et al. 87), in this paper I move in a slightly different direction and consider the mechanics of the recent integration of film into courtrooms via videoconference testimonies. More specifically, I
examine how camera angles influence the construction of the virtual courtroom and, following, how they can influence finders of fact.

**Videoconferencing and the Technological ‘Blind Spot’**

In addition to drawing attention to the need for further research on this subject, another aim of this paper is to draw attention to the possible existence of what might be referred to as a technological ‘blind spot,’ with regards to videoconferencing and video technology in general, that may exist for some legal practitioners. As noted by Silbey, who has extensively explored this topic, “[f]ilm is a particularly dangerous tool...because of its perceived veracity and its illusion of revelation” (“Videotaped” 804). Silbey warns that the trend of courtrooms towards the unqualified adoption of videoconferencing technology (and other types of video evidence) is indicative of a “fairly naïve view of film’s indexical relationship to the lived world (that film transparently represents reality)” (“Videotaped” 791), explaining that “[f]ilms never speak for themselves; they require interpretation...no film, not even live footage, is singular in its meaning or significance” (“Justices”).

More importantly, Silbey theorizes that “[m]ost attorneys and judges when considering film as evidence fail to consider how film is meaningful as advocacy, as a distinct form of communication, with a distinct language and a visual narrative” (“Videotaped” 792-793). This theory is supported by Lassiter’s research on the televised viewpoint (in a courtroom setting), wherein it was found that courtroom viewers were subjectively unaware that their judgments, regarding the televised party, were being affected by the variation of camera production factors (“Videotaped” 867). These findings are particularly interesting when considering the fact that, in almost all other contexts, film is widely understood to be a medium that depends “on its ability to fool an audience into believing what it sees on screen” (Silbey “Justices”). While viewers outside the courtroom...
retain the ability to interpret with a grain of salt films purporting to be “truth”, it seems as though this ability can be lost (or at least dulled) in the courtroom setting. As such, it may be useful to remind finders of fact that film’s persuasive (and potentially misleading) qualities are equally applicable in the courtroom setting as they are in the outside world. As long as videoconferencing technology is actively viewed through a critical lens, rather than being passively received as transparent representation of reality, it is likely that the “dangerousness” of this tool can be limited to a large degree.

The Current State of Research on Videoconferencing in the Criminal Court Context

While none would argue that videoconferencing technology, in its present state, is capable of serving as a perfect substitute for face-to-face interaction, there appears to be a general consensus in the legal and academic communities that its benefits in the criminal court context sufficiently outweigh any known negative factors (Lederer 28). In other words, videoconferencing has been widely accepted as an adequate substitute for actual physical presence. Somewhat surprisingly, however, this conclusion appears to be drawn from a relative dearth of research data on this specific subject. Johnson and Wiggins note that:

Despite the gravity of the rights involved and the strong opinions on both sides of the debate over the use of videoconferencing, little empirical information is available about the...effects of videoconferencing on the behavior of participants and thus, potentially, on defendants’ rights (212).

The vast majority of discussion on the topic of videoconferencing tends to be focused on the benefits of this technology, thus accepting

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36 Silbey offers a contrast to this approach to film in the courtroom in her discussion on documentaries, which regardless of a documentary’s claim to portray the truth, are widely understood to be created from a certain, myopic perspective. Silbey gives the example of Michael Moore’s work (Johnson et al. 88).
its implementation as a foregone conclusion (Oppal 565; Borkowski; Mathias). Much of the relevant literature addresses the money and time saving potential of this technology, often ignoring or downplaying the possibility of the existence of systemic flaws. While the reasons for this oversight are open to speculation, I suggest that further research on this topic is required.

Fortunately, while the effects of videoconferencing have not been studied extensively in the criminal courtroom context specifically, other disciplines have performed detailed examinations of the effects of this technology in a variety of other contexts. Theoretical discussions on these topics date all the way back to the birth of film. Scientific and psychological studies of the effects of camera production factors on viewer perception began as early as the 1970s and continue to this day (Tiemens 483). I argue that some of this analogous data can be applied to the criminal court context and can help the legal community gain a better understanding of the mechanics and effects of current videoconferencing procedures. Following this line of reasoning, this paper attempts to analogize findings regarding the perceptual and psychological effects of camera angle to the criminal court context.

**Why Focus on Camera Angle?**

Camera angle is one of the fundamental building blocks of film composition and it is a finite element that can be, and has been, studied in a controlled manner. While little research exists on the effects of camera angle in the criminal law context specifically, this area has been studied extensively in a variety of other contexts.\(^{37}\) Since camera angle is a relatively simple and limited variable, and is likely to be used in comparable ways regardless of circumstance, non-legal studies on this variable lend themselves particularly well to

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\(^{37}\) e.g. News (Mandell 354), advertising (Meyers-Levy 454), and distance learning (Jayasinghe 5).
transposition onto the legal context. Drawing from these interdisciplinary sources, it is likely that one can make reasonable inferences as to how this factor might affect finders of fact in the criminal trial process.

Another reason that camera angle was chosen as the topic of study in this paper was because it is a factor that is capable of manipulation and, consequently, regulation. Unlike certain aspects of videoconferencing, which might be difficult or impossible to change due to technological or practical constraints, camera angle is a factor that can cheaply, easily and consistently be varied. Therefore, a greater understanding of the impact that camera angle can have on finders of fact not only serves to further the scholarship in this area, but also has the potential to inform actual, beneficial change in current videoconferencing practices employed in the criminal court context.

**Why Focus on Criminal Courts?**
While many of the same issues and concerns surrounding videoconferencing technology likely apply to both criminal and civil trial contexts, the focus of this paper will be limited predominantly to the effects of videoconferencing in the context of Canadian criminal trials. There are a number of distinctions between the two contexts that have informed this decision.

Foremost among these differences is the fact that since criminal trials carry the threat of punishment and incarceration, criminal trials always engage defendants’ constitutional rights. Some critics of videoconferencing go as far as to claim “that defendants’ fundamental rights...are violated when a defendant or witness appears remotely during a criminal proceeding” (Johnson, M.T. 212). Regardless of whether this is true, it is important to acknowledge that “[w]hen the quality of actual and perceived justice is at stake, we should be wary
[even of] subtle effects” (Poulin 1092). As suggested by Raburn-Remfry, “something more than mere administrative convenience...must be demonstrated before the mass installation of video production equipment in the courts...will satisfy constitutional guarantees of due process” (827). Arguably, civil trials deal with constitutional issues less frequently, making the protection of fundamental rights a less pressing matter.

Criminal trials are also the context most likely to heavily utilize videoconferencing, largely due to the financial savings it has the potential to generate for the Canadian government. Over the last decade, the use of videoconferencing technology has rapidly expanded in the criminal court context. From its beginnings solely as a method of transmitting the testimony of vulnerable child witnesses, videoconferencing is now commonly used as a medium through which guilty pleas are entered and sentences are handed down. It is clearly a boon to the cash-strapped criminal courts, with a multitude of undeniable practical and financial benefits. As Oppal enumerates:

\[V\]ideoconferencing enables cases to conclude more quickly, with key witnesses more readily available for reasonable duration and cost...

...Videoconferencing has helped reduce or avoid some of the costs associated with the movement and housing of prisoners...

...Videoconferencing is increasing safety in courthouses and during prisoner escorts...

...Costs of proceedings can be reduced when witnesses, parties, counsel or judges avoid travel... (565-566).

While civil litigants also stand to benefit financially from the use of videoconferencing, it is unlikely that the Canadian government will have the same level of motivation to fund the implementation of technology that will reduce costs already borne by the litigants themselves. Since the financial incentives to implement videoconferencing in the criminal court context all but ensure its
continued and growing use, it is becoming increasingly urgent to identify and address some of the consequential implications surrounding the use of this technology. This same level of urgency does not yet exist in the civil context, where videoconferencing currently tends to be more of an optional convenience.

An additional reason to narrow in on videoconferencing in the criminal context is to draw attention to the plight of those disadvantaged parties that may be adversely affected by correctable problems with current practices in videoconferencing implementation. As Poulin notes:

*The Criminal Justice system is the wrong place to experiment with videoconferencing...[T]he brunt of the experiment falls on defendants who are incarcerated before trial. They are disproportionately indigent and often receive representation of dubious quality. If videoconferencing improves the ease of processing cases but diminishes the quality of justice, there may be nobody to complain (Poulin 1093).*

While it may not be possible to provide an ideal level of justice for every party who appears before the Court, this does not make it acceptable for the Court to turn a blind eye to potentially rectifiable flaws in its existing process. “[C]ourt procedures employed to insure that every criminal defendant receives a fair trial should not be sacrificed on the altar of expedience and convenience” (Ashdown 67). While it is not yet clear whether the current use of videoconferencing technology has an impact on trial fairness, this is certainly an important question that merits further exploration.

**The Effects of Varying Camera Angle**

**Vertical Angle**

Do not overlook camera angle. High shots produce pygmies. Low shots yield monoliths of the Citizen Kane type (Balabanian 27).
Varying the angle of a video-camera shot is a technique that has been used since the very beginning of motion picture and television production. In addition to altering the mere aesthetic properties of a video, filmmakers have long "consciously exploited" (Arnheim 38-9) the psychological reactions elicited by angled shots. At least in general terms, the film industry has been aware that:

The angle of a shot has a marked influence on the audience’s psychological reaction to the subject matter photographed…[A]ngles shooting upward cause the subject to appear stronger, more powerful, than the audience. Angles shooting downward give the audience a feeling of strength and make the subject appear weaker (Livingston 52).

While it appears to be intuitively clear that varying vertical camera angle will accordingly vary an audience’s perception of the subject on the screen, how exactly is the audience’s perception changed? It should be noted that the majority of videoconferencing setups in the criminal courts tend to utilize a “high” camera angle, or one that shoots down on the subject.38

**Direct Effects – Perceptions of Subject Dominance and Credibility**

Firstly, multiple studies have demonstrated that there is a strong correlation between vertical camera angle and perceptions of the dominance of an onscreen party. High camera angles (i.e. those looking down on the subject) consistently elicit lower ratings of subject dominance, while low camera angles (i.e. those looking up at the subject) tend to elicit higher ratings of subject dominance. High ratings of dominance have been connected to higher ratings of subject power, attractiveness and social status, while low ratings of

38 Ostensibly due to the small spaces in which most defendants film their appearance.
dominance have been connected to lower ratings on these factors (Huang; Tiemens 483).

Secondly, studies have shown that there appears to be a correlation between vertical camera angle and credibility. However, it should be noted that the results in this regard appear to be dependent on the onscreen subject’s baseline level of dominance. When dealing with politicians and media personalities, ostensibly parties with a relatively high level of baseline dominance, high camera angles have been associated with higher credibility, and low angles with lower credibility. Researchers have hypothesized that shooting an already dominant subject from a high camera angle increases that subject’s credibility because it brings that subject down to the audience’s level, whereas a low camera angle separates the subject from the audience even further. McCain et al. explain:

*Most effective communication has been found to occur between people who are similar or homophilus with one another. Perceived dominance is the antithesis of similarity. Audiences will be more apt to perceive televised sources as composed, sociable, competent and the like if they are viewed somewhat similar in terms of power relationships* (McCain 44).

On the other hand, when dealing with the imprisoned defendants that often appear onscreen by videoconference, it is likely that these parties are perceived by finders of fact as having a lower baseline level of dominance. According to the reasoning of McCain et al., the high angled shots that are typically employed in these situations are more likely to prejudice the subject by decreasing his or her credibility, since a high camera angle will serve to even further separate the subject from the finders of fact. The exact mechanism of this effect is not currently known, however, and further research is necessary to definitively determine how this would apply in the courtroom context.
Finally, it should be noted that these alterations in perception do not tend to occur when the camera angle does not deviate from the horizontal plane. A camera shooting straight at the subject generally seems to have a neutral effect on audience perception (Millerson).

**Indirect Effects – Subject Head Tilt**

Another factor that may come into play as a consequence of camera angle (and camera placement) is the resultant level of head tilt it may force the onscreen subject to engage in. As Drunen et al. explain:

> [H]ead tilt influences the perception of dominance of a person. A raised head was perceived as being more dominant and displayed superior emotions like pride and contempt while a head that is bowed was seen as submissive, sad and displaying inferior emotions like shame and respect (Drunen 1-11).

In the context of videoconferencing in the criminal courts, the typical high-angled cameras that are used would tend to elicit an upward head tilt from the onscreen subject. In such cases, it might be more difficult for a defendant to effectively express remorse for his/her crimes if the finder of fact subconsciously interprets the defendant’s upward head tilt as an expression of pride and contempt. Expressions of pride and contempt by an accused criminal are unlikely to create a favourable response, and may create an unjustified prejudice against them. On the other hand, if the defendant is forced to elicit a downward head-tilt, due to a low-angled camera angle, it may give impenitent defendants the undeserved benefit of appearing remorseful nonetheless. A downward gaze displayed by remote defendants has also been connected to lesser ratings of credibility (Helmsley 136).

It should be noted, however, that head tilt is not entirely dictated by camera angle. In many cases, the placement of the monitor through which defendants view the judge and other court parties will play a definitive role in this type of behaviour. Defendants may also be likely
to stare at the video-monitor containing images of the remote parties, rather than the camera, which may elicit a level of head tilt different than if they were staring at the camera. This may also cause finders of fact to perceive a loss of eye-contact with the remote defendant, which might serve to prejudice them against the defendant.

**Horizontal Angle**

Generally speaking, horizontal angle is less likely to be a factor that will be open to variation during videoconferencing. Unlike vertical angle, which may be varied inadvertently as a byproduct of the camera’s mount (i.e. whether it is ceiling mounted or floor mounted), defendants and witnesses are generally placed directly in front of the camera. In spite of this, it should be pointed out that a limited amount of research has demonstrated that subjects seen slightly to the left are perceived as more attractive than subjects seen slightly to the right (Westcott 260). Other research also indicates that:

A full face shot suggests less expertise than a profile shot since in popular broadcasting those who address the camera directly are typically reporters...who transmit the news rather than initiate it. The expert on the other hand is more often seen either in interview or in discussion, and thus in profile (Baggaley 28).

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39 Unfortunately, whenever the camera and the monitor are placed any distance apart, remotely simulating eye-contact effectively becomes impossible, since both parties cannot stare at the camera and the monitor simultaneously. This is another flaw with videoconferencing, since appropriate eye-contact behaviour is widely recognized as an important source of social and communication information: (Argyle 289).

40 Speakers who engage in greater levels of eye-contact tend to be viewed as more persuasive, truthful, immediate and credible: (Mehrabian “Some Referents” 213; Mehrabian “Nonverbal “37).
While these effects of horizontal angle variation are unlikely to play a role in standard videoconferences, there should still be some awareness of their existence.41

**To Standardize or Not to Standardize**

If one point is to be taken from the research discussed in the above section, it should be that the medium of videoconferencing has the capacity to affect the perception and judgment of finders of fact. While the exact degree and nature of impact that variations in camera angle have on these factors is yet to be determined, particularly in the largely untested criminal court context, it is difficult to deny that there is at least some impact. Camera angles are not a neutral variable. This being the case, it is necessary for criminal courts to decide how they will choose to deal with this variable. I argue that some form of standardization is necessary to ensure trial fairness.

The main reason for this need to create some form of standardization is the fact that current practices are necessarily dictated by the physical dimensions of the cell in which the videoconferencing equipment is set up. This would not be a problem if it led to a uniform effect, but likely due to the fact that most videoconferencing equipment was retrofitted to a variety of existing structures, this does not appear to be the case. Variations in cell size, combined with a lack of regulation of installation procedures,42 lead to noticeable differences in resultant camera angles.43 In effect, this creates a

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41 Lassiter’s work on camera viewpoint demonstrated the effect of varying horizontal camera angles in the context of videotaped interrogations. The results in this study were highly dependent on whether or not the interrogator was visible in the camera shot, an issue which is typically inapplicable in the videoconferencing context: (Lassiter “Videotaped” 867; Lassiter “Further Evidence” 265).  
42 Based on observations in courtroom, some cameras were clearly wall-mounted while others appeared to be mounted on tripods.  
43 It should be noted that this lack of regulation has the potential to affect a number of other non-neutral videoconferencing variables, such as level of
system wherein defendants who appear remotely run the risk of becoming victims of circumstance – merely by being assigned to videoconference from a cell that happens to have a camera pointed at an unfavourable angle. This sort of randomness and chance has the potential to affect trial fairness, or at the very least, has the potential to affect the perception of trial fairness. It hardly seems fair that finders of fact may perceive defendants differently based on a factor that is entirely out of their control.

**But Why Should Camera Angle Be Standardized and Not ‘X’...?**

This may raise the question of why camera angle should be regulated and not other factors, since camera angle is not the only factor beyond defendants’ control. Similarly, defendants are permitted (perhaps even encouraged) to manipulate variables within their control, often eliciting effects similar to those elicited by varying camera angle. So why should camera angle be singled out as a variable that needs to be controlled?

Firstly, because current videoconferencing equipment is already controlled by the criminal justice system, albeit without consistent deployment, camera angle should be regulated as a function of this control. Unlike factors that defendants can choose to control (body language, clothing, etc.) and factors beyond anyone’s control (the defendant’s height, gender, race, etc.), camera angle is a factor that falls under the exclusive ambit of the criminal justice system via prison officials. Installation, maintenance and use of this equipment all fall under the responsibility of the criminal justice system.

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camera zoom, which has also been found to affect viewer judgment and perception: (Zuckerman 215).

44 The British Columbia Provincial Judiciary and Federal Corrections state that the equipment involved in the court videoconferencing network is owned and operated by them. See [http://www.ag.gov.bc.ca/courts/general/vc_map.pdf](http://www.ag.gov.bc.ca/courts/general/vc_map.pdf)

Last accessed December 1, 2008.
Considering this, it would be remiss for the Court to allow videoconferencing equipment to be setup in an unregulated manner that could variably impact trial fairness.

Secondly, unlike many other variables, camera angle is a tool that plays a role in defining the landscape of the virtual courtroom. Where altering a defendant’s clothing, body language or style of speech can only alter perceptions of the actor/defendant themselves, altering camera angle could be considered a way of altering the virtual stage. As Ball notes, citing a decision of the Texas Supreme Court:

\[ \text{The physical alteration of [a] courtroom [can contribute] to a substantive alteration of the trial process which could divert it from a fair and reliable determination of guilt to entertainment, commercialization, or political education (85).} \]

Just as the Canadian criminal court has the power and responsibility to dictate the layout of the physical courtroom, it seems appropriate that it should also have the power and responsibility to dictate the layout of the virtual courtroom. Passively leaving the definition of the virtual courtroom to circumstance denigrates the idea that “the courtroom is more than a nakedly functional location” (Ball 85).

Finally, camera angle is a tangible and finite variable that can be simply and consistently manipulated, in a cost effective manner. While the time and energy it would take to standardize many other factors, such as clothing or body language, would be prohibitively onerous, I argue that this concern does not exist for the standardization of camera angles in videoconferencing. The maintenance of this standardization would also be minimal, unlike the active and constant vigilance the maintenance of many other standards would require.
Adversarial Freedom – A Counter-Argument to Standardization?

Another suggestion that has been popularized in American legal circles relates to allowing lawyers to vary camera angle setups as a function of the adversarial process. Just as a lawyer is permitted to coach his/her clients and witnesses prior to testimony, some parties argue that he/she should be able to control camera angles to his/her party’s advantage. As Wiggins suggests:

A guaranteed level playing field has never been guaranteed in a courtroom. An experience, able lawyer is likely to do a better job for the client than a recently minted law-school graduate who has never tried a case. A lawyer with an excellent command of language probably can explain things to a jury more effectively than can a lawyer with poor language skills. A lawyer who can afford extensive litigation support might “out-lawyer” another. The question is whether the increased use of technology can help ameliorate these effects, or whether it will further compound them (187).

While this approach may be a viable option in the future, in its current state, the criminal justice system is not suitably equipped to allow advocates to manipulate camera angle to their own ends. At the present time, much of the available videoconferencing equipment does not lend itself to remote re-positioning, which would be necessary since imprisoned defendants are unlikely to be given the freedom to manually reposition the equipment themselves.

It is important to note, however, that even if advocates were permitted to manipulate camera angle, a baseline level of standardization would still be necessary. In cases where there is no advocate or the advocate chooses (or lacks the knowledge) to vary

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45 Although this technology does exist, it does not appear to have been adopted by the BC criminal justice system as of April 2008.
camera angle, the default setting should not be left to chance (or to the setting that was last used by an advocate who did manipulate camera angle).

**Possible Methods of Standardization**

**Status Quo Maintaining**
The most obvious way to standardize camera angles in courtroom videoconferences is to endeavour to have them replicate the physical courtroom experience. This would entail utilizing high-angled shots on defendants in order to simulate the viewpoint of a judge looking down from the bench. This appears to be the current trend in British Columbia courtrooms, although it is unlikely that this was done intentionally. As has been discussed earlier, the confined space of a jail cell lends itself best to a high-mounted camera with a down-angled lens.

The major flaw with the application of this standard, however, is the presumption that a trial conducted by videoconference is fundamentally the same as a trial conducted in the courtroom. As Poulin points out, however, “technology is never neutral” (1106). It is fairly evident that the imposition of the televised medium into the trial process alters the courtroom dynamic, even if the nature of this alteration is not entirely clear. Simulating an upward gaze on camera will not necessarily elicit the reaction it would in person, and may even create some unwanted perceptual side-effects. Ultimately, however, this is a relatively acceptable solution, as long as it equally applied to all parties that appear remotely.

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46 Based on observations in the courtroom.
47 An upturned gaze when combined with a lack of eye-contact, which is an almost inevitable consequence of modern videoconferencing technology, may lead finders of fact unfairly to interpret the defendant as aloof and unrepentant: (Mignault 111).
**Subject Neutrality**

Another possibility for standardization is to attempt to neutralize the perception altering effects of camera angle as much as possible. This would involve using a simple head on shot, avoiding the use of any vertical camera angle. I suggest that this is currently the best possible solution available to the courts, since it strives to negate any effects induced by the interposed videoconferencing medium. While shooting a subject from a straight camera angle may not be faithful to how that party would appear in court, it is important to recognize that the technological limitations of videoconferencing already inherently compromise a televised subject (as opposed to a party that appears in person).

In addition to the vast multitude of psychological associations that the average viewer must deal with when watching a person on television, there is also the possibility that unregulated videoconferencing will lead to a degradation in the public’s perception of trial fairness. As Judge Goodwin of the District Court of West Virginia opines:

> Does the prisoner thrust into a cinder block chamber with his face stuck in a camera and told to speak to a man in a glass box feel he has been dealt with equitably? Can the public feel confident he has received a fair hearing? Do families, friends, neighbors, or the press feel they have witnessed the fair administration of justice? (Goodwin).

I argue that this form of standardization best helps to alleviate perceived inequity of procedure, by ostensibly leveling the playing field.

In the end, whatever method of standardization the Court might choose should be fair and workable providing that it is implemented completely and comprehensively. As long as no remote defendant is
disadvantaged by camera angle as a matter of chance, standardization will have done its job.

**Conclusion**

It must be remembered that videoconferencing is an imperfect tool for conducting trials. In its current form, it should be the second-choice alternative to a personal appearance in the courtroom, yet its undeniable cost-effectiveness has inspired Canadian criminal courtrooms to use it more and more. Imperfect technology combined with an imperfect understanding of that technology can result in an imperfect quality of justice. Fortunately, steps can be taken to make videoconferencing a just and workable practice. As discussed by Silbey, is merely retaining an awareness of the fact that videoconferencing is not a transparent representation of reality, and recognizing the specific limitations of current state of videoconferencing will go a long way towards counteracting the impact of those limitations.

Consideration of some of the relevant interdisciplinary literature reveals the need to more critically examine the role of videoconferencing in contemporary courtrooms. Throughout this paper I have argued that, while further research is needed on many other related variables, it is clear that standardizing camera angles is a worthwhile and necessary practice for videoconferencing in the Canadian criminal courts. The Court has the responsibility to attempt to construct the virtual criminal courtroom in a way that ensures that even remote defendants receive a fair trial and, in this case, a good start only requires a measuring tape and a protractor.

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48 There are a variety of directions for future research specifically in relation to the shot composition in videoconferencing utilized by the Canadian criminal courts – the most prominent of these are likely background and level of zoom. The placement of monitors used to view remote parties is another area that is in need of further research.
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**Revenge**

*The Theatre of Memory in Northern Ireland*

Eugene McNamee

**Introduction**

The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.

— Paragraph 2, Declaration of Support, Belfast Agreement

Who’d have all taken off them and not say a word? Who’d betray their dead and expect life in return? Everything you know, everyone you loved, you sold for a few years of peace. Well, you won’t have it. You’ll live your death together, in silence and shame. Every day they’ll get a message to you. Every day it’ll come in a different way, but the message will always be the same – we don’t know you. We don’t recognise you. We forget. We vow to forget.... Your dead know you only as traitors and tormentors.

— ‘Old Woman’ from *Revenge*, Michael Duke
The Belfast Agreement of April 1998 set in place a new political structure of devolved power within the United Kingdom for Northern Ireland, replacing direct rule from Westminster. The devolved power was to be managed by a power-sharing executive, where members of the major political parties would take ministerial jobs on the basis of the proportion of votes gained by their parties. Overall, the power structure recognised the grand tension between major political traditions of Unionism (with the UK) and Nationalism (within a united Ireland) by making certain decisions require ‘cross-community support’, ie; the majority consent of representatives from both these traditions.

The Agreement also recognised in particular two groups of people who had been principally involved in the conflict which the Agreement sought to finally bring to a close. Those were the victims of violence, and the prisoners in jail for having perpetrated the violence. The document looked forward to the setting up of a Victims Commission to explore ways to promote the interests of victims, and, much more concretely, to legislation for the accelerated release of prisoners convicted of ‘scheduled’ (ie; terrorist) offences.

The potential tension between the wishes and interests of these groups of victims and perpetrators is well reflected in the statement quoted above, taken from the preamble to the Agreement, pledging on one hand never to forget the victims of violence and, on the other, to make ‘a fresh start’. The Agreement is such a blatant example of the victory of politics over the rule of law (convicted murderers in some

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49 The devolved institutions began operating in 2000 only to be suspended in 2001 following disagreements about the bringing into operation of certain elements of the overall programme of government. Following protracted renegotiations of certain procedural issues and parallel political developments on the ground, the institutions recommenced in largely the same format (with some minor modifications as to voting procedures) in 2007.
cases being released after two years in prison) that it is difficult to see how this balance could be achieved, and indeed the political measures seeking to address issues surrounding victims and memorialising the past in some appropriate way have proved extremely difficult and remain largely unrealised.50 The political invocation of ‘a fresh start’ has not been enough to create a fresh start, and the implicit political tactic more and more comes to seem one of deferring and delaying until everyone forgets that a fresh start was ever on the agenda.51

The initial pulse of energy and enthusiasm which surrounded the Agreement has ground down into a pragmatic series of political compromises and interim solutions that aim at management and containment rather than transformation. Transformation arrives, if it does at all, in the shape of larger and better shopping malls, new boutiques, inflated property prices; in short, the same problems and

50 For example, the ‘Interim Victims Commissioner’, appointed in lieu of a Victims Commissioner pending resolution of political infighting, principally over the issue of who could legitimately be regarded as a ‘victim’, was, in a judicial review process, held to have been appointed ultra vires by the Secretary of State for Northern Ireland. The eventual nomination by the Office of the First and Deputy First Minister in 2008, following failure to agree on a Victims Commissioner, of four joint Victims Commissioners (in rough reflection of the four leading political parties) was immediately hamstrung by a) another judicial review declaring that they had no right to make such an adjustment to the enabling legislation and b) renewed political infighting on who should be the Chief Commissioner amongst these four. The implicit issue in this latter point is, once again, the sensitive one of who should be regarded as a victim – should, for example, a terrorist who is blown up by his own bomb be regarded as a victim, should his wife and children, etc. etc.

51 A parallel process to that of the Victims Commission has also been set up by the Secretary of State for Northern Ireland, namely the ‘Consultative Commission on the Past’. It has not yet come forward with a report or concrete suggestions, but has nonetheless been mired in controversy following reports that it was considering the issue of whether to refer to the past conflict as a ‘war’ or not. There have been numerous other non-governmental initiatives in remembering the past, which have been more successful in bringing forth something to show for their efforts. See for example the Lost Lives project, detailing those killed throughout the conflict, and the work of the Healing through Remembering project. There has also been the work of the Ombudsman and the police; more purely legal measures have a degree of success that escapes the political process.
opportunities that everyone else in a developed economy has. The
sense of Northern Ireland as somewhere distinctively different fades
from memory, and the political jolt to confront the current period as
an opportunity for grasping the differences of the past and creating
something from this gradually dissipates. The hanging political
question is whether this negative attitude to the past will be sufficient
to prevent the re-emergence of what is being repressed at some
future date, in some form as yet unknown but likely to be traumatic.

The issues of memory and forgetting are of course not just matters for
politics and law, but are basic matters of humanity and as such of
interest to everyone and in particular to those artists who try to
achieve a sense of heightened sensitivity to the human condition
through their work. Throughout the conflict period in Northern
Ireland there was created a large body of literary, in particular
theatrical work, reflecting on the conditions of the conflict and the
human cost of it.\textsuperscript{52}

Since the end of the conflict most new political theatrical work has
turned itself towards the idea of the ‘new start’ by analysing the
current political conditions and the adjustments being made to them
by various protagonists. A very limited amount of work has turned
explicitly to the more complex dynamic of remembering the past in
the same moment as making a new start, in other words to
addressing the vexed question of memorialising the past and
somehow using that process as an aid to a fresh start; in other words,
explicitly political theatre on the theme of memory that is supposedly

\textsuperscript{52} The most politically ambitious, large scale and enduring of such ventures was
undoubtedly the Field Day theatre company which premiered numerous
politically resonant plays and developed parallel ventures in political
pamphleteering to promote the idea of Northern as readable as a post-colonial
territory, and therefore understandable as having social, political and literary
relationships to a host of other territories enduring the post-colonial condition.
Founder members of Field Day included Stephen Rea, Seamus Heaney, Brian
Friel, Seamus Deane and Tom Paulin. Contributory essayists to their publications
included Edward Said, Terry Eagleton and Frederic Jameson.
at the core of constitutional politics but which is being let slide as too sensitive.

This paper is concerned with one such piece of theatre, *Revenge*, that I consider to have been particularly valuable in throwing up interesting ideas in this area, and also in generating a civic conversation on these issues through the formal way in which the play was produced and staged at a time when the political conversation had stalled. The analysis of this play is presaged by some remarks on the importance of artistic production in the ongoing construction of constitutional identity in Ireland, Britain and Northern Ireland. It should be borne in mind, and the Belfast Agreement is built on this conceit, that where basic national belonging is at stake, questions of constitutional and personal identity are very close to each other.

**Constituting Identity in Northern Ireland; either, both, neither...**

Constitutions have a necessary reference to the spirit of a community. They are the statements of the founding values by which such community wishes to judge and mould its own development. This is true even if the constitution in question is the result of the interaction of abstract paradigms or elite actors far removed from the hopes, fears and dreams of the general population, in that even the most abstract or remote ideas or actors must claim some purchase on the soul of the nation for the constitution to be recognisable as such. A constitution is of necessity a statement of common origin, and of common aim.

The political transition from conflict to post-conflict society in Northern Ireland was legally grounded in the Belfast (‘Good Friday’) Agreement of 1998, an agreement that instituted Northern Ireland as a constitutionally unique political territory founded on the
accommodation in new forms of shared government political claims that had hitherto found expression through violence (McNamee 427). This document is the closest thing that Northern Ireland has, within a political tradition shaped by that of the United Kingdom and therefore of unwritten constitutionality, to a singular document of constitution, of new beginning. The seemingly incommensurable visions of continued political union with the United Kingdom versus integration within a revised Irish Republic were re-formulated as ‘different but equally legitimate’ aspirations, and accommodated within a complicated political structure of multi-layered institutions that allowed for the question of national constitutional belonging to be, in the short and medium term, dissipated and deferred between these institutions, and, in the longer term, to be delegated to the majority of the population in some possible future referendum. Perhaps most vitally, through re-ordering the social symbolic space by the dilution of certain symbols of British nationalism, for example the renaming of the police force from the Royal Ulster Constabulary to the Police Service of Northern Ireland, in parallel with an increased symbolic recognition of an Irish identity, for example the institution of measures to promote the Irish language, a whole panoply of issues that pertain to a sense of communal or national identity were, at least to some extent, uncoupled from the issue of national territory, making, as the Irish Times had it ‘people rather than territory the touchstone of political identity’ (Ferriter 658). The aim was to create enough political space (reflected in multiple instances of legally instituted accommodations between divergent cultural and political traditions) for ‘all the people of Northern Ireland to identify themselves and be accepted as either Irish or British, or both, as they may so choose...’ (Belfast Agreement). A legal form had been found for the institutionalisation of an agreement to disagree on whether the people of Northern Ireland were properly British or Irish. In effect the citizen was being put in the place of imaginatively conjuring up the state, rather than recognising its a priori quality and authority.
The novelty and value of this Agreement should not blunt critical comment on the problems which are obviously latent within it. While the reference to an Irish or British identity has a distinct purchase on the standard political oppositions, it solidifies a version of Northern Irish constitutional identity as necessarily secondary to the primary versions which lie elsewhere. The divisions are locked into the political processes of the new government of Northern Ireland, in that the process of power-sharing which has been instituted recognises and accommodates two political traditions (‘Unionist’ and ‘Nationalist’) and asks for representatives to self-nominate in terms of these traditions so that there is some measure of the power of ‘each side’. There is room within the political process for representatives to nominate themselves as outside these dominant traditions, as ‘other’, but there is a penalty to be paid for such independence in terms of institutional power, since the system is geared towards supporting a Nationalist/Unionist power balance. The supposition is that the political dynamic will continue to be structured around the core question of whether the political parties, and the people they represent, wish to regard themselves, and ultimately wish to be politically identified, as British or Irish. Arguably it has the effect of solidifying and containing sectarian divisions (where ‘Catholic’ and ‘Protestant’ can be overlaid almost completely on ‘Irish’ and ‘British’) rather than getting rid of them, and if identity was moved onto an imaginative rather than territorial plane then the limits placed on the imagination are the notions of ‘Irish’ and ‘British’.

The references to ‘British’ and ‘Irish’, however, do more than simply re-direct the observer to another site where a more definitive answer to the question of Northern Irish constitutional identity may be found. They are directions to constitutional sites which are themselves contested and complex in terms of identity. The British state is currently going through somewhat of a crisis in self-definition,
reflected in moves to institute school education in ‘citizenship’, and to introduce specific education programmes and examinations for new immigrants on ‘Britishness’. The constitutional ‘modernisation’ programme begun by the Blair government in 1997 and carried through to the present by the current administration, which has included the writing into UK law of the European Convention on Human Rights, has not shifted the fundamental conceit of Britishness in politico-legal terms as being defined in a negative fashion; you are allowed to do and be whatever is not forbidden by law, and no law has any more fundamental quality than any other. The movement between cultural and political identity is thus extremely fluid, in that the vector from one to the other is everyday legal development, in a context where there is no established core constitutional provisions which would indicate the priority of certain laws to national identity. The British identity is something that looks immediately to culture rather than law, and in an era of multi-culturalism, where the most frequently consumed national dish is now chicken curry rather than fish and chips, the boundaries of this identity are increasingly recognised as extremely vague.

The Irish State can trace its statement of foundation to the Constitution of 1937, and thus has an available (and recent) statement of foundational values (Morgen). This document, however, was only narrowly approved by simple majority at its proposal, and reflects the narrow victory of a ‘romantic Ireland’ political faction over a more ‘republican socialist’ faction. It has been fiercely contested on various occasions since then, notably regarding

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53 It is somewhat of a running media joke that time after time polls demonstrate that non immigrants would in the huge majority abjectly fail such qualifying citizenship tests which focus on arcane areas of British history, law, politics and society.

54 The signing into law of the ‘British-Irish Agreement’ as an international treaty which recognised the validity of the ‘Belfast Agreement’ necessitated the amendment of the Irish constitution to rescind the territorial claim on the territory of the Northern Ireland, an amendment which was ratified in referendum by 95% of the voters in the Republic of Ireland.
the status that it accorded to women and to the Catholic Church. Rather than an expression of the soul of the nation, the constitution has proved to be the expression of an unresolved battle for the soul of the nation, a battle which has been read not only as a battle between factions for an expression of community, but a battle of a post-colonial political identity against the shadowy forms of political identity inherited from the colonial power (Hanafin).

Many studies on the issue of Irish identity take their cue from Declan Kiberd’s hugely influential *Inventing Ireland: The literature of the modern nation* (Cape). Kiberd in turn takes much of his theoretical inspiration from the works of Edward Said on the importance of culture in the shaping of imperial and colonial consciousness (Said). In effect, identifying identity as a fairly modern notion, these authors point to the role of literary production and dissemination in creating and cementing ideas of what people were, and how this in general involved the projection of a repressed unconscious onto the colonised people who emerge as a negative double to the colonial in a cycle of identity formation. Kiberd documents the role of authors such as Yeats, Synge, Joyce, Shaw, Wilde in the analysis and intervention into this structure of identity formation through their literary (in particular theatrical) production, with the premise that ‘the cultural revival preceded and in many ways enabled the political revolution that followed’ (Said 4). This idea of Irish identity as centrally decipherable through and indeed created by cultural production (as opposed, for example to economic development or political development) dominates academic disciplines such as Irish Studies and history (Jones; Watson, Ferriter).

Thus, for different reasons, the question of identity, of being British or Irish, is unquestionably closely tied to the development of culture in these places and this question of identity is in turn closely tied to legal developments in the form of re-readings of the constitution or
reformation of the constitution. The reference within the Belfast Agreement to the birthright of the people of Northern Ireland to choose to identify as either Irish or British or both is thus an implicit prompt towards an opening up of identification through reference to already contested sites, 'Irish' or 'British', in the guise of a prompt to closure. It is a prompt towards cultural matters in the double sense of the importance of culture in even the political self-identity in both the UK and Ireland, and in the sense of the overall suggestion within the Agreement that identity is a matter of imagination and choice, rather than something determined by accident of birth or genetic tie to a territory.

Revenge and the (absent) theatre of memory

It is perhaps surprising that there has been very little theatrical work exploring the idea of memorising the conflict - in somewhat stark contrast to the large volume of plays representing aspects of life and conflict written while the Troubles were going on, and despite the fact that there is currently a vibrant theatrical scene (particularly in Belfast) with many working theatre companies producing new work.\textsuperscript{55} There are various obviously plausible reasons for this. In some sense the lack of attention to the past by the theatrical community is probably broadly representative of the wider community, and of the sense that the best resolution to the problems of the past is likely to be to simply ignore the past and move on with a clean slate. There is still a definite sense of danger that exploring the past is likely to lead to dwelling on or even in the past, and that this could only lead to a return of the bad old days; in this the theatrical community echoes the political as described earlier. Furthermore, notwithstanding the fact that there was a lot of fine theatre produced

\textsuperscript{55} There is a veritable role call of playwrights writing new work on the current political and social climate of transition; Gary Mitchell, Tim Loane, Owen McCafferty, Damian Gorman, Daragh Carville to list some. However, the deliberate attempt to encounter the past is notably lacking.
during the conflict, a lot of this theatre was deliberately not about the conflict, as a statement (in some cases deliberate) of the reach of art beyond politics and local trauma. The 'new times' comes as a blessed release to many in the arts and theatrical community from the ongoing need to justify why they weren’t making art or theatre with a direct political engagement. Finally, the theatre is dependent on its writers, and while, for example, the novelists of Northern Ireland have seemingly found the re-examination of the past a wonderful topic for examination, the dramatists seem to have made some collective decision that the changing conditions of the present throw up more fruitful dynamics and tensions to explore (Park; Patterson, Mc Namee).

The notion of the unavoidability of confronting the past because of the role of the past in structuring the personal and social unconscious is however a familiar one. The idea that the repressed past will return whether or not it is invited lies at the root of a direct confrontation of the structuring frame of past events which live on in the present. The ghosts of the past will always return until the point where they are laid finally to rest, would be another way to put this, and it is to ghosts which Michael Duke turned in his play Revenge, first staged in 2004, in order to try to lay bare patterns of memory and loss in Northern Ireland.

The basic narrative in this play shows how a set of people deal with the aftermath of a terrible act of violence visited upon them. On the eve of their wedding day David and Mae were caught in a bomb blast. David was blinded, and lost a leg and the use of one arm. Mae was killed. Yet David, who loved fully and was fully loved, has fallen in love again and now is to be married to another woman – the nurse who attended him most closely while he was recovering in hospital. We meet them on the eve of their wedding, in the full flow of preparations. He acknowledges readily his love for his previous
bride-to-be, but is not paralysed by it. His terrible injuries he carries
with a sense of humour – he jokes that the wedding dress his first
bride would have worn cost him an arm and a leg so he wants his new
bride to wear a strip form it, to get some use of it. He carries the past
with him, but has found a way to accept all that it has wrought that
does not destroy him as his life goes on.

It is his parents who are in thrall to the ghost of his dead fiancee, and
to the ghost of what their son once was. It is his parents who lust after
revenge. His father emerges as a twisted Hamlet figure, ‘a worm cut in
two’, rendered immobile and pathetic by his inability to settle on
revenge or reconciliation as a proper course, haunted by a vision of
his perfect son even as his wounded son stands before him asking for
his blessing, torn between accepting his son’s love for another woman
and seeing this woman as someone stealing his son from him, and
with him his only chance of redemption. His mother is at once more
accepting of her son’s new bride, and more demanding that her
husband should do something to avenge the wrongs they have
suffered. She accepts change for the sake of her son, but cannot accept
change for herself. She lusts after revenge against the bomber who
has come back to live in their town after his release as part of the
political settlement. She is full of rage and anger against her husband
that he doesn’t take justice into his own hands against this man. We
find these central characters on Hallow’e’en, the day before David’s
wedding to his new bride, all of them in a state of high emotion,
trembling with the resonance of this day to the one which tore their
lives asunder.

This set up of the plot, staged in realist fashion, is suddenly thrown
into surreal confusion by the arrival of a mystical figure, the ‘Old
Woman’. This character, echoing perhaps an accepted historical
theatrical archetype of Ireland as an old woman, is a kind of mixture
between a witch, a fury and a banshee. She appears to the parents and offers them the chance to have things just as they were before the bomb, their son restored, his bride resurrected. The price is the killing of the man who planted the bomb, for she must have a life for a life. This is a price they readily accept, and all elements of realist staging fade completely now, as the companions of the Old Woman, a company of the dead, arise to play out the marriage party of the now restored son and the woman he should have married. The injured version of the son that we encountered earlier and his bride-to-be have disappeared. All appears, in some heightened version of reality where the boundaries between the living and the dead have been relaxed, to have been put back just as it was before the bombing.

As the party progresses the bomber arrives to ask for a redemptive dance with the bride, casually pointing out that ‘if she’s here, I done nothing wrong’. This is the point where the settling of accounts must be made, where the killing of this man must take place. But the Old Woman figure now spells out to the father and mother that it is not they who will carry out the deed, but their younger son, a child of about ten. Suddenly the stakes become much clearer; they can have their elder son and his bride back, but paying this debt to those who have died entails making a murderer of their younger son, making a hostage of the future to the past. This they cannot do, and so the dead retreat back below ground as the Witch figure castigates the parents for their betrayal of the dead ‘everyone you loved, you sold for a few years of peace...’. They are left to live on with their grief, but with the redemptive realisation that living with death is a more fortunate fate than living having made of your child a murderer.

The basic story then is one level a parable of movement, in Christian terms from the Old Testament to the New, from redemption through

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56 The archetype is to some extent doubled between mystical ancient Ireland figured as a young woman, and Ireland under the colonial yoke as old and broken.
Revenge

Revenge to redemption through Love, from ‘an eye for an eye’ to ‘turn the other cheek’. In this way the most important relationships are those of love and friendship, and what is refused is the power of acts of violence to become so fundamental that they define all conduct from that point forward, whether the conduct is oriented to condemning violence or continuing it. The son is redeemed by love of his new bride; he has been able to look death in the face, and therefore to understand what life is about. The parents are redeemed by their love of their children, by their realisation that they must sacrifice their own pain for the sake of their children’s future. On a very basic level then the moral is the rejection of revenge as a viable option for a society seeking to come to terms with the past, even where that past has been a violent one.

This bald summary of the events of the play doesn’t do justice to the subtlety and power with which this fairly familiar central idea is realised theatrically. The author, for example, refuses for himself the trap that he identifies of being drawn into regarding violence as the single most profoundly defining feature of an experience, and the most shocking yet satisfying aspects of the play are not the examples of violence and its effects, but rather the bad taste jokes that he throws in to leaven the dough of human anguish. Furthermore, the ostensible principle theme of revenge is balanced on all sides by suggestions of complicating elements of sub-text; the psycho-sexual tensions between various characters, the confused nature of the debt owed by the living to the dead, of parents to their children, the question of what redemption is and where it can come from. At the emotional core of the play there is also guilt of some involved that they should have done more, either before or after the death of a loved one, in order to protect or to avenge. There is shame at their own incapacity to do either one or the other. There is endless frustration at the inability to ‘move on’, to ‘find closure’. There is the endless search for meaning in the fine detail of what happened on the
terrible day in question. It is these complicating elements which turn what might have been a diatribe into a continually interesting, surprising and theatrically honest text.

Moving to a consideration of ancillary points surrounding the production, the company of the dead who accompanied the old woman were made up of non professional actors. The play was performed in various venues around Northern Ireland, and two of these non professional choruses were composed to take part in performances in either the east or west of the province. The non-professional chorus and the professional cast thus took on something of the flavour of a grander civic conversation that cut across the living and the dead, the present and the past, the specialist and the amateur. This was quite deliberate on the part of the production team involved in the play, and of course involved the tying in of not only those people involved in the choruses, but their families and friends as well. It was, in other words, a deliberate attempt to reach out into the broader community and to generate intervention and interaction around the core theme of what to remember and, just as importantly, how to remember. It yet other words, it was an attempt to generate a form of staging of a civic political discussion beyond the realms of the institutional politics was, despite all enthusiasm as to its value, has demonstrated its extreme vulnerability to lapsing back into rigid sectarian categories.

In this light the writing choice of the play that strikes the informed observer immediately on seeing it, that the characters are depoliticised to the extent that it is difficult to identify which ‘side’ of the ‘community’ the victims and perpetrator belong to, takes on the quality of a consistent choice rather than a failure of nerve. There is a deliberate staging of the play of violence into the dramatic form of a kind of family feud, where exactly what is at stake is the relationship to the next generations. This is not then a play entirely about
Northern Ireland at all, but a play about if not family violence then familiar violence, that plays upon the distinction that is opened up in grand theoretical terms by Edward Said in his formulation of the concepts of filiation and affiliation; what is passed on to us in terms of core structures of consciousness through a kind of family line, and what opens us to us as choice when we seek to decode and understand what exactly this consists of (Said 2; Said 3). The filiation and the affiliation are intimately related, one conditions the other, and yet even this conditioning will open up the realm of oppositions that the filiation relies on as well as perhaps a range of intermediate positions which fall to be occupied. The possibility of subject positions beyond the simple narratives of duty or inherited consciousness is precisely a matter of positioning, of spaces of activity opening up and closing down in different social spaces. This is a structure which is achieved much more obviously within the space of theatre, and is one of the core elements which theatre can pass on to politics as an insight; the form of staging, the elements of design, are not incidental but rather central to any manoeuvre which seeks to stage an encounter with the past which can gain the imaginative and emotional allegiance of those involved in the events being remembered.

The staging of Revenge is non naturalistic, the actors playing out their scenes on a set that looks inspired by linear abstractions, and in a slightly stylised form that makes them edge towards Commedia del’Arte figures playing out eternal themes in a local vernacular. This displaces the conceit that our own brand of violence is something that can only be viewed in our old familiar ways, and brings to Northern Irish drama a whole series of new forms while offering Northern Ireland to a wider theatrical public, and to itself, without the standard kitchen sink in tow. This stylisation is never allowed to cloud the complicating themes mentioned above, indeed it is difficult to know
at times whether the writer or the director should take more credit for bringing them to light.

To take an overview, without intending to compromise the value of a strong narrative that blends tragedy and comedy, and the occasional striking beauty of some scenes, it is this re-imagination of Northern Ireland as a theatrical space which constitutes the principal value of the play. It is not that there is offered some original formulation of a political idea, or of a necessary social process for reconciliation or for the future of this place. It is, more simply, that this play constitutes in itself a deconstruction and reconstruction of some standard cliches of our dramatic ways of looking at ourselves, in particular that a tendency towards sectarian violence is the most interesting, and the most natural, thing about us. The stripped down intellectual message of the play is to highlight the fact that when presented with the choice in stark terms people will and should chose their children over their dead, the future over the past. But the corollary is that this choice has be staged in some way, there has to be a process that allows this choice to be seen for what it is. In terms of production and staging of Revenge what is added are the elements of rejoinder to a civic conversation that must range beyond the political elite and the political institution, and must evoke the kind of dynamic engagement that theatre as a process of staging both mimics and tends to provoke.

Staging renewal

In an interview regarding his most recent novel, the Northern Irish writer David Park tried to illuminate to some degree his motivation for writing this work by referring to his teenage daughter and her attitude towards the past in Northern Ireland. For her the recent conflict was a distasteful period in history in which she could find no personal resonance. The very idea of sectarianism which had grounded the conflict was to her so foreign as to be practically
incomprehensible. Far from finding in this attitude something which demonstrated any lack of seriousness or due attention, Park wondered whether this an insight into how this recent period of history will come to be seen; an incident of late twentieth century madness on the edge of Europe, a black hole of incoherences and contradictions, a useless, senseless, shameful episode, best forgotten.

His novel is *The Truth Commissioner* and imagines the setting up of a Truth Commission in Northern Ireland along the lines of that often considered to have been so successful in South Africa. The novel sketches out the stories of four men, three of whom were involved in the paramilitary abduction, murder of a boy many years before, a murder always denied by the paramilitaries so that the boy’s body has never been found, and the fourth of which is the Commissioner who will preside over their testimony surrounding this event. The resolution of the novel is multiply ironic, in that we come to learn that the political powers which were engaged in violent struggle have lost none of their interest in establishing their version of the past, so that the event of testimony before the commission becomes pure theatre, scriptwriters from the paramilitaries and the security forces hiding in the shadows as the participants mouth the words they have been pressured into learning. Even the Truth Commissioner himself is being blackmailed to produce an appropriate version of what happened in this case. Not only this, but when one character breaks out of their role to give a true account, rather than the doctored version they were supposed to, they give an account which is factually wrong, despite their conviction as to its correctness. The personal relief that this character feels at having finally laid down their burden of guilty silence is balanced by the catastrophic consequences for the person that they have mistakenly identified as the killer, and for the political process generally since this person is by now a Government Minister. A further consequence of this unscripted testimony leaking out is that the entire archive of materials relating to all the cases to be
The core idea of *Revenge* is one of the rejection of revenge in favour of renewed affiliation to loved ones. Within the terms of the play this point is realised through the aid of the dramatic structure that presents the choice in such stark terms that the parents can see that they will make a murderer of their own child if they want to cling to the past. In society generally the choice is not necessarily set out in such clear terms, and this throws up the question of how society, the

Insofar as the novel can be read as having political meaning, the suggestion seems to be that there is just no chance to get at the truth through political processes because politics and truth seek different ends. Politics seeks the putting in place structures wherein people can live together in viable community; in a post-conflict society it must necessarily seek reconciliation. In discourses of transitional justice this is often phrased as the problem of the balance between reconciliation and justice (Campbell et al.). It might just as well be put as the balance between remembering and forgetting. Yet even in this most grim of assessments of the likelihood of access to truth regarding the past offered by Park in his novel, there is an implicit recognition of some value in the endeavour of staging the attempt to gain access to the past. The commission takes place, people have their say, the issues are aired, corruption happens, but the attempt is made, and perhaps there is a chance for what has been made to disappear to be recovered and at least given a proper burial. For people to take courage and enter into the areas that have been left blank as ‘not somewhere humans ever come.’

The novel closes with a team of investigators arriving to search a patch of isolated bog ‘not somewhere that humans ever come’, for the body of the disappeared boy. Experience tells the reader familiar with Northern Ireland that such searches have often yielded nothing.

examined is torched, by persons unknown who fear precisely that the Truth Commission might produce an uncontrolled version of truth. The novel closes with a team of investigators arriving to search a patch of isolated bog ‘not somewhere that humans ever come’, for the body of the disappeared boy. Experience tells the reader familiar with Northern Ireland that such searches have often yielded nothing.
political process, might provide opportunities for some large scale version of this idea to be played out, and here the play also has some oblique light to cast on what might come to pass in the political arena, or perhaps even might provide suggestions that might have to stand in for politics in the absence of political will, courage or imagination to confront the issues at point. The elements of staging that echo a wider vocabulary of European theatrical forms recall that Northern Ireland is not just a creature that must be defined in terms of Irish or British, but that such a vision denies all the elements of identity that arise and exist in relation to farther flung and more foreign shores. The elements of the production that involved deliberate reaching out to engage a civic iteration gives a prompt to a wider consideration of politics than simply the standard institutional ones. The elements of humour in the play, even in the face of the most atrocious of circumstances recall the need for humility and humanity in the face of the weight of past wrongs, and furthermore point to the capacity of the human spirit to renew itself. Neither should it be forgotten that humour can often unite the most unlikely of people whose standard ideological positions should see them enemies.57

The ‘fresh start’ approach common to the political fantasy embodied in the Belfast Agreement and to the play Revenge is based on the idea of letting bygones be bygones. Phrased in this way the message of the play is so absurdly reductive as to be trite to the point of meaninglessness, and, what is more, simply a reflection of a political position already achieved. This essay has attempted to argue, within a social and political context and tradition of recognising the

57 Here the most striking example in the Northern Irish context is surely the unlikely pairing of Ian Paisley, Unionist arch-demagogue and Martin McGuinness, former IRA commander, as First and Deputy First Minister between May 2007 and May 2008. The obvious personal chemistry between the two erstwhile villains on either side of Northern Irish political life led to them being dubbed ‘The Chuckle Brothers’ by the local press, in emulation of a popular comedy duo. Paisley and McGuinness were rarely seen together but that they seemed to be sharing some private joke, and resembled perhaps more father and son than brothers.
contribution of the arts to the formation of consciousness and identity, that the play had and still has – as the political will to confront the past vacillates to the point where even the idea that this is necessary seems to dissipate to a dangerously low level demonstrates – more to offer. As an illustration of the fact that the play was not simply this duplication of a political commonplace, and was recognised as something more, let me give an anecdote from an audience discussion that was held after the first performance of this play, chaired by a local radio broadcaster. The audience, since this play had been explicitly billed as a political encounter as had this discussion, was made up of many people interested in the political issues addressed here; victims of violence, ex-prisoners, politicians as well as artists, academics, political commentators. A range of questions for the playwright and comments were fielded and answered, many of which had the basic point that this play had really managed to reach into the detail of their emotional experience, that it had been absolutely true for them in, for example, the reactions of the characters in going over and over past events as if somehow something could be changed by doing so. What was surprising after several of such comments was the very easy acceptance of this audience of the presence of ghosts as simply an aspect of everyday reality for them in coming to terms with the past. The surreality of a cast of characters half composed of the dead was in fact more real than a representation of reality as a matter just for the living. In an environment where ghosts still walk the earth to such an extent that people can barely even recognise them when they arrive on stage with accompanying mood changes and appropriately deathly utterances, it behoves the political process to somehow come to terms with facing up to the continuing presence of the past, of the reality of the undead, in everyday life. The short term pragmatism of deferring and delaying positive moves to deal with the past in effect does constitute a kind of elaborate staging of refusing to stage, but this cannot in the long term lead to any satisfactory conclusion in
dramatic or existential terms, and the consequences will be both literary and real.

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“It’s Dramatic”:
*Metatheatre, legal performance, and broadcasting on Boston Legal*

Sarah Swan

**Introduction**

The critically acclaimed, Peabody award-winning ABC television series *Boston Legal* is, as its name suggests, a show about law. The show features roguish attorneys Denny Crane (William Shatner) and Alan Shore (James Spader) as they bond in friendship, and, along with the other members of the fictional Boston firm of Crane, Poole & Schmidt, litigate a medley of cases ranging from the preposterously absurd to the politically poignant. However, the series is also about law in a more sophisticated sense: *Boston Legal* is about what law is, how it is created, and who should witness its creation. The show’s exploration of the nature of law is deeply connected to its focus on performance. Performance is a significant theme on *Boston Legal*: costumes, dramatic speeches, and theatrical devices gleefully abound throughout the episodes. *Boston Legal* links this theme of performance with law, and situates law in the realm of the performing arts. The series creates this linkage through a specific...
theatrical device, metatheatre. Metatheatre, a device favored by playwrights like Shakespeare and Aristophanes, is defined at its most simplistic as the self-conscious reference within theatre to theatre itself. In this paper, I explore how Boston Legal uses metatheatre to illuminate the performative nature of law. I first consider the forms of metatheatre used on the series, and then reflect on the effect of these forms. Finally, I examine how the series uses metatheatre to enter into the ongoing debate over broadcasting trials and televising the performance of law.

Metatheater Defined

Metatheatre is “fundamentally an experience of performance” (Slater 2). Mark Ringer defines it more fully as follows:

Metatheater” or “metadrama” means drama within drama as well as drama about drama. Perhaps the classic example of metatheater is the trope of the play within the play. Shakespeare’s use of it in Hamlet and several other plays readily springs to mind [...]

[Metatheater] encompasses all forms of theatrical self-referentiality. These may include role playing, various forms of self-conscious reference to dramatic convention and other plays, and the many ways in which a playwright may toy with the perceived boundaries of his or her craft. Other elements of metatheatrical phenomena include ritual or ceremonial enactments within the play and the rupturing of dramatic illusion. Metatheater calls attention to the semiotic systems of dramatic performance. It reminds the audience of the duality of the theatre experience, the phenomenological fluctuations between illusion and the audience’s appreciation of the mechanics and conventions of illusion (7-8).

Forms of Metatheatre on Boston Legal

Boston Legal employs all of these forms of metatheatre, including the aforementioned role playing, self-conscious references to dramatic conventions, and ritual or ceremonial enactments. Each of these
forms plays a distinct role; each emphasizes a particular aspect of the performative nature of law. Through role-playing (often demonstrated through outlandish costuming), the show highlights the two ways in which the lawyers are “acting.” Through self-conscious references to dramatic conventions, the series reflects on how recognized forms of dramas create expectations within their audiences. Lastly, through ritual or ceremonial enactments, *Boston Legal* shows how legal performance conveys the message that justice is being done.

**Role Playing**

Role-playing is usually depicted through costuming. The characters appear in costume with startling frequency, slipping on outfits for office parties, Hallowe’en, and other occasions when they feel so inclined. Three episodes feature extensive scenes of all the attorneys in costume for office parties.\(^{58}\) Individually, many of the lawyers appear in costumes when others are not so dressed: Brad Chase (Mark Valley) appears as a Christmas elf as the result of a lost bet (1:08, “Loose Lips”), Jeffrey Coho (Craig Bierko) exits the series dressed in a Buzz Lightyear costume (3:15, “Fat Burner”), and Alan is arrested and appears as a defendant in court wearing a Batman suit (1:5, “An Eye for an Eye”). Shirley Schmidt (Candace Bergen) confesses to wearing a cheerleading costume to comfort herself when she finds Denny wears his fishing waders while sitting alone in his office (4:1, “Beauty and the Beast”). Additionally, some costumes serve as gender-benders. Clarence/Clarice Bell (Gary Anthony Williams), a transgendered person, uses a wig to move between Clarence and Clarice. The wig also transitions the character from attorney to non-attorney: Clarence is an attorney, while Clarice is not. Alan Shore is another participant in cross-dressing: he and Denny Crane appear as members of the Lennon Sisters in one episode (3:7, 58 The three episodes are Episode 2:6 (“Witches of Mass Destruction”), Episode 3:7 (“Trick or Treat”), and Episode 3:13 (“Dumping Bella”).
“Trick or Treat”), and he dresses as Shirley Schmidt (Candace Bergen) in another (3:13, “Dumping Bella”).

The rampant and outrageous costuming makes the viewer aware that the actors are playing roles. Each costume suggests a different role, or a different self, and the fluidity with which costumes are donned, removed, and exchanged highlights how easily one person can play a multiplicity of roles. At a base level, the actor is a real person acting as a character in a fictional television series. On another level, the character the actor portrays also plays many roles: each costume suggests another role-within-a-role. For example, James Spader plays Alan Shore on the series. Alan, in turn, plays a number of roles: Batman, a Lennon Sister, a Flamingo (Episode 2:6, “Witches of Mass Destruction”), and most importantly, that of an attorney. The characters frequent use of costuming primes the audience to be aware of the plethora of roles being played throughout the series, including the roles being played inside of the courtroom. Costuming conveys to the audience that even the business suits the characters typically wear are a costume, and in that costume the characters are performing the role of attorney.

**Self-Conscious References to Dramatic Conventions**

The self-conscious references to dramatic conventions usually consist of remarks regarding the series’ time slot or comments challenging the expectations arising from the genre of the television drama. An example of the former occurs in “Race Ipsa” (2:23). There, Alan Shore reunites with an associate who previously appeared in a number of episodes, Chelina Hall (Kerry Washington), and mentions that the last time he saw her, “I think it was a Sunday, then I was taken off the air, you went off to do movies, and I got switched to Tuesdays [...].” An amusing instance of the latter occurs in the second episode of season three, when associates Jeffrey Coho and Claire Simms (Constance Zimmer) introduce themselves as “the new guys.” Denny Crane
disbelieves that they can be recurring cast members because their second-episode timing conflicts with the usual television practice of introducing new characters in the first episode of a season. He scoffs, “Oh, please. If there were new guys, they would’ve shown up at the season premiere.”

These “meta-gags” (as television reviewer Dan Snierson calls them) also occur in relation to the series’ upbeat theme song. The theme song is the subject of metatheatre in episode 3:3, “Desperately Seeking Shirley”, when Jerry Espenson (Christian Clemenson) tries to explain to Shirley Schmidt how eager he is to work at Crane, Poole & Schmidt again. He informs her that when he thinks about working there, he hears a song in his head. In response to Shirley’s prompting him to hum that song, he begins to enthusiastically hum the theme song as it opens the show. Denny, too, gets a chance to play with the theme music. He acts as its conductor in episode 3:2, “New Kids on the Block”, when he commands “cue the music” and it begins. Of such moments, the executive producer of the series has quipped: “We’ve broken the fourth wall so many times that we have to go find the fourth wall in storage to even use it any more” (Snierson).

The riffs on the conventions associated with television dramas draw attention to the expectations created by specific performance genres. The viewers’ familiarity with the normal conventions of these genres informs their expectations and their understanding of what they are watching. The explicit references to these conventions are surprising, and funny, and they encourage the audience to consider the types of expectations surrounding other known forms of performance. In the same way as a television serial drama has conventions the viewer has come to expect, a trial performance also has formal conventions familiar to the viewer:

59 The “fourth wall” referred to is the invisible wall between audience and stage in the theatre. It separates the world of the play from the world outside of it.
Performers at trial are first greeted through role recognition. Each speaker stands where parallel speakers have stood before. [...] The immediately recognizable cast of characters includes the judge, the parties, counsel for the parties, and the jury. The courtrooms “set the scene of performance” (Ferguson 29-30).

Viewers expect these characters to play out the trial in specific ways, in the same manner and order as other trials. The humorous comments regarding the conventions of television dramas highlight how the conventions of other types of performances, like trials, effect the audience’s expectation and experience of that performance.

**Ritual or Ceremonial Enactments**

There are three main rituals or ceremonial enactments on *Boston Legal*: firm meetings; nightly drinks on the rooftop patio; and, most significantly, trials. Throughout the series, meetings frequently occur. The first staff meeting occurs at the beginning of the pilot episode, with the attorneys of Crane, Poole & Schmidt planning for upcoming cases, addressing pending legal issues, and discussing how to respond to judicial orders. They look like attorneys in their conservative business suits and polished shoes, and they speak like attorneys, using legal phrases and jargon. The attorneys and their actions symbolize that “law” is happening. They illustrate the idea that “throughout the legal domain, litigants, attorneys, witnesses, and judges participate in performances that are produced with firm conformance to legal poetics in order to transmit the message that here and now justice is being done” (Almog 205). The lawyers in the meeting symbolize to the audience through their activities and performances at the meeting that law is taking place there, and its corollary, justice, will soon occur as well.

Shortly after the meeting which opens the episode, the viewer learns that one of the first legal files for the series will involve performance: a mother, upset over a musical theater company’s discriminatory
refusal to hire her African-American daughter to play the little orphan Annie in the famed Broadway musical, seeks to sue the company. Following the meeting, the young musical-theatre actress occupies the space previously occupied by the attorneys, and begins performing a number from the Broadway musical while seated at the boardroom table. The parallelism between the scene of the lawyers busily conducting their staff meeting and organizing their future courtroom performances with the scene of the potential Broadway starlet rehearsing for her future performances underlines performance as an important theme for both the episode and the series, and creates a relationship between the performance of law and the performance of theatre.

The first episode, like virtually all episodes after it, concludes with Alan and Denny having a drink on the rooftop patio of Crane, Poole & Schmidt. As they sip Scotch, they discuss the happenings of the day and adopt the role of observers not just of the city, but of the performances of law that have been occurring throughout the episode. In these scenes, they recast themselves as audience rather than participants, and offer philosophical critiques on their earlier performances. For instance, Alan often analyses his notoriously long closing arguments, and Denny sometimes wonders if his “mad cow” disease (his term for Alzheimer's) has affected his performances. Interestingly, many of the self-conscious references to dramatic conventions happen on the rooftop, while the two trial attorneys are in this observational role.

The most important ceremonial or ritual enactments, though, are the trials. The pilot episode is again a helpful case study: the trial over the fate of the potential Annie, Sarah (Jadzia Pittman) contains many explicitly theatrical moments. First, the judge has little Sarah perform
“Tomorrow,” the classic song from the musical in the courtroom. Sarah concludes to enthusiastic applause from the courtroom audience. Later, the Reverend Al Sharpton makes a surprise appearance and gives another type of performance, a rousing rhetorical oration. He is also wildly applauded by those in the gallery, and his performance ultimately persuades the musical theatre company to make Alan an acceptable proposal to settle the case. Also notable in this episode is the advice that the famed Denny Crane provides to Alan. He tells Alan that the secret to successful trial law is all about performance, though this time, the performative art is magic. According to Denny, the secret to trial law is “rabbits” – attorneys must create the ultimate performative illusion and metaphorically pull rabbits from hats.

Even without these explicit examples of performance in the courtroom, the links between theatrical performances and trials seem obvious. The courtroom serves as a stage, and each of the actors has a specific role to play in the unfolding drama. The drama is carefully structured: each actor is given specific times when they may or may not speak, and the movements of these characters in the courtroom are carefully choreographed and formalized. As Ferguson notes, witnesses “can approach only when summoned,” and once summoned must remain in the witness box; juries also remain in a box. Only the lawyers, the main performers in this drama, have some freedom to move about the courtroom (70). Indeed, the very nature of a trial is dramatic: the protagonist and the antagonist confront each other and present conflicting versions of the same events, and the truth must be found between them (Ball 88).

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60 There are frequent musical performances in court, including in Episode 2:1 (“The Black Widow”), where a mute cellist gives testimony through her cello, and in Episode 2:2 (“Schadenfreude”), where a musician sings an alleged unpatriotic song for the court.
Despite these obvious parallels, the legal community has been reluctant to acknowledge the connections between law and theatre. As Hibbits writes:

*It almost seems that legal performance is a legal embarrassment. Not only have law’s elders felt compelled to deny its existence, but they’ve tried to hide it from the children. For example, law schools generally require law students to take legal writing courses, but de-emphasize actual advocacy. Together, denial and avoidance have largely succeeded in moving performance into the proverbial blind spot of our professional perceptions, to the point where legal performance is paradoxically better appreciated by the public - watching OJ or at least Perry Mason on TV - than by many lawyers and legal scholars.*

*Boston Legal* appreciates, even celebrates, legal performance. A trial, at its core, “represents the abstract notion of justice,” and aims to convince the audience “that the spectacle of the process is the spectacle of justice being made” (Almog 199). At the same time, the legal process is also a mechanism that produces justice (Almog 200). The trials on *Boston Legal* do look like justice being made, and the use of metatheatre highlights the significant role of performance in creating this justice. While legal performance is necessarily an element of all legal-themed television dramas, since they all inevitably involve dramatic trial scenes, *Boston Legal* differs from the usual fare in its exaggeration of and preoccupation with performance. Through metatheatre, the series forces the audience to consider and acknowledge the fundamental role of performance in the creation and outcome of justice.

**Television and Legal Performance**

In using metatheatre to explore how performances make law, *Boston Legal* wrestles with a related question: what is the significance of broadcasting that performance? *Boston Legal* is, after all, a television show, not a play. As such, it could be argued that metatelevision is a more appropriate term than metatheatre. The show does indeed
make explicit and implicit references to the constraints and conventions of television, the semiotic systems of television, and the role of television in society. However, I use the term “metatheatre” in the broad sense Lionel Abel meant when he classified Don Quixote as a figure of metatheatre: “Metatheatre is not simply something that occurs in the theatre, but also something that encompasses an understanding of the world as theatre, of ‘life seen as already theatricalized’” (Puchner 5). Boston Legal reflects this understanding: the series is deliberately theatrical in tone and effect. At the same time, though, the series is uniquely concerned with the impact of television on the performance of law.

The metatheatre used in Boston Legal not only highlights the significance of legal performance, it also forces its audience to consider the relationship between legal performance and television. Boston Legal, as a television series concerned with depicting legal performance, places itself squarely within a significant debate regarding the effect of television on law. As real courtroom proceedings become more often televised, numerous academics and legal commentators have offered opinions on the potential deleterious effects of televised law. Indeed, the legal profession has argued against the broadcasting of trials in any medium since technology first advanced to the stage where it became possible to bring trials to more members of the public. In 1932, the American Bar Association thought it improper to broadcast court proceedings, by 1946 a rule of federal criminal procedure excluded cameras from federal proceedings, and in 1952, the America Bar Association recommended banning television broadcasting of trials (Ferguson 314). The difference between the values of the courtroom and the values of television may be partly responsible: “proper legal

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procedure, the hallmark of fairness, eschews drama for other values – order, prudence, routine, predictability, even-handedness, regularity, restriction, and relevance. Surprise, excitement, and speed thrive in commercial television: certainty, sober inquiry, and patience are the province of the courtroom” (Ferguson 329). A former Dean of Harvard Law explicitly denied any connection between law and theatre when expressing his view that broadcasting trials would jeopardize the process:

A courtroom is not a stage: and witnesses and lawyers, and judges and juries and parties, are not players. A trial is not a drama, and it is not held for public delectation, or even public information. It is held for the solemn purpose of endeavoring to ascertain the truth - and very careful safeguards have been devised out of the experience of many years to facilitate that process. It can hardly be denied that if this process is broadcast or televised, it will be distorted. Some witnesses will be frightened, some will want to show off, or will show off, despite themselves. Some lawyers will 'ham it up'. Some judges will be unable to forget that a million eyes are upon them. How can we say that our primary concern is the equal administration of justice if we allow this to be done? (Griswold 616).62

Boston Legal obviously disagrees with this perspective on the theatrical. On the show, trials are most certainly dramas (or, sometimes, as the case may have it, comedies), the attorneys are actors, and the judges and juries are players. Alan Shore unabashedly “hams” it up, and many witness, most notably the ones who burst into song, also seem affected by the dramatic nature of the trial. However, while reveling in the theatrical, the show seems to agree that there are important issues arising from television and law. Many references throughout the series to the constraints and genre conventions of television suggest an awareness that those constraints and conventions could impact the performance of law, in the same way that the conventions of television fictional drama impact that form. The series constantly depicts the media’s involvement with cases: in

many of the trial scenes, television cameras are visible at the back of
the courtroom, and the characters often refer to the significant
number of media members who have come to watch the trial. Often,
throng of excited journalists keep camp at the courthouse and
demand statements from the lawyers as they make their way to trial.
As well, popular media figures connected to law and justice, like Larry
King and “Gracie Jane”, a barely-veiled iteration of CNN’s Nancy Grace,
often appear on the television sets of Crane, Poole & Schmidt when
the firm is involved in a high-profile case.63

Gracie Jane perhaps best illustrates the types of potential problems
that arise with televising trials. In Episode 4:1, she vehemently
declares:

I know none of the facts of this case. I haven’t even seen the
police report, but look [camera shows picture of the defendant]
is that a guilty man or what? I mean, what kind of society would
presume this animal innocent? Look at him! Put me on the jury,
I’ll vote to fry him before the trial even starts! […]

While it is obviously ridiculous for a television commentator to base
her opinion of a defendant’s guilt on nothing more than a picture of
his face, the potential influence of this type of “opinion reporting” is a
legitimate concern with broadcasting legal processes (Ferguson 300).
Her direct attack on the presumption of innocence, while funny
because it is taken to its extreme in the above speech, belies the more
serious concern that commentary like this does erode the
presumption of innocence, and insidiously affects trials and jurors.

Boston Legal puts television itself on trial in Episode 4:15. Tabloid
Nation. “Dr. Ray,” a television show, is sued for causing the murder of
a young woman when her estranged ex-boyfriend kills her following
her rejection of his ambush marriage proposal on live television.

63 Indeed, in an example of verisimilitude, Denny Crane appears on Larry King in
Episode 2:7 (“Truly, Madly, Deeply”).
During the trial, a television set is literally put in the courtroom, so that the judge and jury can have the benefit of viewing the impugned show. In his trial closing, Alan pontificates on the debasement of the medium:

*I remember the movie Network by Paddy Chayefsky. It depicted the extremes and perversities that television would resort to for the sake of ratings. It was a film way ahead of its time and yet now it seems dated given the depths to which television has sunk. I doubt even Chayefsky would ever have imagined putting contestants on a programme to eat worms or raw animal parts or women humiliating themselves to marry fake millionaires. One network made a deal for O.J. Simpson to do a prime time special on how he might have killed his ex-wife. Television is a noble beast, isn’t it. Well, the shame is it once was. To many, it still should be. Television took us to the moon. It let us cry together as a nation when a beloved president was assassinated. It’s unflinching and comprehensive coverage of Vietnam served to end that war. We had shows like The Defenders, All in the Family [*].

[N]ot so long ago broadcasters had a real sense of responsibility. They took their statutory obligation to operate in the public interest very seriously. Now, the networks look for our guilty pleasures and morbid curiosities and pander to those with the hope that they’ll get us addicted. Once you get people hooked, you’ve got ‘em.

This diatribe denigrating the state of television today is indeed interesting, considering its source is an actor portraying a lawyer on a prime-time television series. Alan’s disgust with the current form of television and his corresponding adulation of *The Defenders* is particularly significant when considered within this metatheatrical context. *The Defenders*, which debuted in the 1960’s, is often cited as the one of the best legal dramas ever created (Classen 14). As its title suggests, *The Defenders* was about righteous defense attorneys fighting for the innocence of their clients. The polarity Alan establishes between the type of television airing today and the type of television represented by *The Defenders* is striking, and demands that the audience place *Boston Legal* on the continuum he has created. His speech demands that the audience judge the quality of performance it
is viewing, both within the episodic context of the trial, and within the larger context of the series.

**Conclusion**

Metatheater can “be a device through which the playwright teaches his audience to think critically about the types of performance which take place in other contexts, like the courtroom or legislative assembly” (Slater 5). *Boston Legal* uses metatheatre in this way, to encourage its audience to think critically about legal performance. The metatheatre in the series highlights the fluctuations between illusion and “the mechanics and conventions of illusion” and it does so within the specific contextual frame of law and legal processes (Ringer 7-8). The specific forms of metatheatre, the role-playing, self-conscious references to dramatic conventions, and ritual or ceremonial enactments all enforce the idea that law is performative, and subject to the kinds of constraints and conventions that inform all performances. The character’s costumes; their humorous references to the show’s scheduling and casting; and the rituals of firm meetings, rooftop drinks, and trials demonstrate that playing the role of attorney involves acting, legal performances employ conventions in the same way that television serial dramas do, and the performance of a trial conveys the message that justice is being done. Further, the series also explores how television affects the performance of law. While unapologetically maintaining that law is performative, the series acknowledges that there are legitimate concerns with televising that performance. The show even goes so far as to examine its own role in legal television. *Boston Legal*, with its self-aware metatheatrical devices and unabated joy in the ridiculously theatrical, challenges the conventions that law is other than performed, and questions the impact of television on the portrayal of law in society. The series uses metatheatre to confront important issues of law, genre and medium, and, ultimately, to entertain.
Works Cited


