The Making of Trials and Plays in the Context of Show Trials†

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1. Introduction

In his 1966 article 'The Trial as One of the Performing Arts' American attorney – and future Associate Justice of the Minnesota Supreme Court - John E. Simonett strikingly affirmed that '[l]ike a play, a trial must be produced'.[1] This comparison draws a sharp parallel between the making of a trial and a play, and highlights their respective sets of theatrical elements, use of rhetorical techniques and purposes as the measure of their correspondence.

The best way to analyse this relationship is by looking at so-called 'show trials', thanks to their hybrid nature that encompass elements of exhibition and legal proceeding alike.[2] Accordingly, this paradigm permits us to observe the interchange of features in the making of both trials and plays, and to evaluate the ensuing reflections.

Understanding this relationship is important, as it will allow us to scrutinise the trial and show that focusing on extralegal goals interefers with strict compliance to the rule of law. Therefore, this essay aims to demonstrate the validity of the considered statement – according to which '[l]ike a play, a trial must be produced' –, and to highlight its even greater defensibility using the case of show trials.

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† This original work, revised and updated, was prepared and submitted for assessment by the Author whilst an Associate Student at Queen Mary University of London (during the academic year 2016/2017), for the module LAW6060 Performing the Law B (module convenor Prof. J. Hohmann). I express my gratitude to her teachings. All errors are my own. The Author would also like to thank the Editorial Board and the anonymous peer reviewer for their helpful comments on this paper.

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[1] John E. Simonett, 'The Trial as One of the Performing Arts' (1966) 52 American Bar Association Journal 1145, 1145-1147.

[2] Jeremy Peterson, 'Unpacking Show Trials: Situating the Trial of Saddam Hussein', (2007) 48 Harvard International Law Journal 257, 260-270.

2. Preliminary Clarification

An inquiry about the relationship between play and lawsuit requires a preliminary clarification of the concept of a show trial. Many scholars have provided different definitions and analysed the issue from distinct perspectives.[3] Otto Kirchheimer classifies it as an absolute form of lawsuit, which reaches over the limits of the political trial.[4] In the same realm, Ron Christenson advocates the existence of 'partisan trials'[5] and approximates this type to the idea of show trials.[6] Lawrence Douglas defines it as a criminal case that entails a predetermined guilty verdict and an inexistent possibility of acquittal, applied by authoritarian states and characterised by public exposure.[7] This explanation roughly complies with the analogue definition given by Jeremy Peterson, who nonetheless submits that a show trial must not be determined by extremes. [8] In fact, a show trial does not necessarily require certainty of conviction and attention directed only towards the public outside the courtroom, for the term encompasses different degrees in respect to both of these elements.[9] In accordance with these premises, Peterson submits a comprehensive definition, arguing that

> [A] show trial can be defined by the presence of two elements. The first element is increased probability of the defendant's conviction resulting from the planning and control of the trial. The second element is a focus on the audience outside of the courtroom rather than on the accused – the extent to which the trial is designed or managed for the benefit of external observers rather than for securing justice for the defendant. The first element could be termed the reduction of the "element of risk to the authorities" that the defendant will be acquitted. When there is no risk to the authorities, the content of the trial is predetermined, and the verdict is a foregone conclusion. The second element could be termed the "show."[10]

[3] ibid.
[4] Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton University Press 1961) 46.
[5] Ron Christenson, *Political Trials: Gordian Knots in the Law* (Transaction Books 1986) 10.
[6] ibid.
[7] Lawrence Douglas, 'show trials', *The New Oxford Companion to Law* (Oxford University Press 2008) <www.oxfordreference.com/view/10.1093/acref/9780199290543.001.0001/acref-9780199290543-e-2012> accessed 6 April 2019.
[8] Peterson (n 2) 264.
[9] ibid.
[10] ibid 260.

An extensive survey on the different conceptualisations of the considered topic would prove excessively far-reaching in this essay, given that, according to Allo, 'there cannot be a definition that is at once broad, elastic, or narrow enough as to encapsulate the numerous juridical, political, motivational or epistemological considerations that render a given trial a "show trial"'.[11]

Therefore, for the scope of the current inquiry, I will focus on those characteristics of show trials that are commonly deemed part of the model: namely, the scarcity of chances of acquittal and the aspect of show itself.[12]

3. Theatrical elements

John Simonett in his article recognises that the format fulfils a pivotal role in the analysis of the parallelism between the making of trials and plays.[13] In fact, they both traditionally present protagonists and antagonists, recount competing stories revolving around a narration, and they both generally identify a problem that must be resolved.[14] This shared hero's journey[15] is conjoined by mythology and folklore with underlying archetypical themes (e.g. struggle and growth) and with a vast array of persuasive techniques,[16] which may be displayed on trial as well as in other 'ritualistic aspects of life'.[17]

Ball highlights the same outline in his assessment of judicial theatre, and further pinpoints how the trial encompasses two distinct plays:[18] a narrower one, the lawyer production of their client's case, played principally to the judge or the jury, and a broader play, which is the

[11] Awol K. Allo, 'The 'Show' in the 'Show Trial', Contextualizing the Politicization of the Courtroom' (2010) 15 Barry Law Review 41, 63.
[12] Peterson (n 2) 260.
[13] Simonett (n 1) 1145.
[14] ibid.
[15] The reference is to the classic story structure known as the Hero's Journey or Monomyth proposed by mythologist Joseph Campbell. For a detailed account, see Joseph Campbell, *The Hero with a Thousand Faces* (3rd edn, New World Library 2008).
[16] Ruth Anne Robbins, 'Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey' (2006) 29 Seattle University Law Review 767, 768-777.
[17] ibid 774.
[18] Milner S. Ball, 'The Play's the Thing: An Unscientific Reflection on Courts Under the Rubric of Theatre' (1975) 28 Stanford Law Review 81, 88-89.

representation of the entire trial in front of the public.[19] Consequently, the various participants can switch and perform different roles in distinct contexts; for example, while the judge generally poses as the director of the action in the proceeding, overseeing its pace and evolution, yet on certain occasions he may also participate as an actor (i.e. when calls and questions witnesses *ex officio*, when comments upon the evidence). The same holds true for the jury, when renders the verdict, and for the lawyer, who switches from the role of director in the production of their cases' presentation to that of actor in courtroom.[20] The law takes place through action, and the judicial performance is the common ground that holds together fiction and reality.[21]

However, the courtroom is not a sanitised laboratory in which the law is experimented with, since the result of the case is often influenced by multiple non-evidentiary factual details, such as the defendant's demeanour or the quality of the advocate's presentation.[22] Simonett recognises this, and highlights the substantive dissimilarity between the format of play and trial: playwright invents their story and characters whereas the lawyer is given a situation which they are unable to edit.[23] As such, the former can depart from reality, while the latter must adhere to it, in compliance with its objective.[24]

This is where the comparison partly clashes, due to the intrinsic artificial features included in a show trial.[25] In fact, this kind of lawsuit intrinsically encompasses surreptitious elements, like 'a story to tell, a theatre to show, an image to create, and an agenda to perform, with consequences that go far beyond the courtroom (…)', which render it particularly prone to political exploitation.[26] As Peterson recognises, the show trial serves as a means to an end,

[19] ibid 88-90. There is an intrinsic degree of artificiality within the presentation of the case, taking into consideration not only the need for a lawyer to resort to an accurate individuation of facts and law favourable to his client, but the imperative necessity of delivering a convincing presentation in court. Such a presentation, according to the author, must be developed taking into consideration 'the rules of evidence, the case of the opposing side, the dynamics of the proceeding (including surprise and improvisation), the quality of evidence and witnesses, and the compellingness of the law'.
[20] ibid.
[21] Alan Read, *Theatre and Law* (Palgrave 2015) 12.
[22] Laurie L. Levenson, 'Courtroom Demeanor: The Theatre of the Courtroom' (2008) 92 Minnesota Law Review 573, 574-576.
[23] Simonett (n 1) 1146.
[24] ibid.
[25] Peterson (n 2) 269.
[26] Allo (n 11) 65.

which is to convey a message to those outside the court of law.[27] This type of lawsuit necessarily requires conviction and public awareness in order to be effective.[28] Accordingly, it is usual to use devices such as curtailing the defendant's right to recount his own version of the events, exploitation of the rules of evidence, and management of the entire proceeding by means of the prosecution.[29] In contrast with an ordinary trial, reality counts only as a 'small peg, at best'[30], insofar as it helps to impart a specific lesson.[31] The entire format of a show trial is set up consistent with this view.[32]

This sort of arrangement is clearly underscored by the example of agitation trials (*agitsudy*) in early Soviet Union.[33] These were indeed mock trials, plays specifically produced to teach a working class audience about the correct, law-abiding behaviour required under the new communist regime, and to spur vigilance towards perceived internal and external enemies.[34] The genre presented a fixed format, with standard positive and negative characters,[35] calculated narration, and unvarying performance practices.[36] In these fictional and indoctrinating prosecutions, almost everyone and everything could be summoned as defendant and be indicted: prostitutes, thieves, murderers, lazy workers and fascists were all suitable for condemnation, but even pigs, cows, mosquitos, Henry Ford, the Old Russian Empire and God Himself had been tried.[37] Authors and directors of such plays strived to loyally mirror the real functioning of a Soviet courtroom, in order to have fictional trials mistaken for real ones by the audience.[38] As quoted by Cassiday, 'The performance turns into a trial. The trial turns into life.'[39]

[27] Peterson (n 2) 269.
[28] ibid.
[29] ibid.
[30] Kirchheimer (n 4) 46.
[31] ibid.
[32] Peterson (n 2) 277-278..
[33] Julie A. Cassiday, *The Enemy On Trial: Early Soviet Courts on Stage and Screen* (Northern Illinois University Press 2000) 51-54.
[34] ibid.
[35] ibid 57.
[36] ibid 59.
[37] ibid 64.
[38] ibid 69-70.
[39] Vsevolod Vishnevskii 'Dvadtsatiletie sovetskoi dramaturgii' in *Sovetskie dramaturgi o svoem tvorchestve. Sbornik statei* (Iskusstvo, 1967) 150 (as cited in Cassiday (n 33) 58).

Otherwise, Michael Bachmann proposes a different level of analysis of the common format of trial and play, and of the possible departure of the former from reality, in his evaluation of Hannah Arendt's *Eichmann in Jerusalem* theatrical aspects.[40] He underlines a distinction between good theatricality, equated with drama, and bad theatricality, assimilated with artificiality.[41] Within this framework, Bachmann argues, Arendt perceives the trial of Adolf Eichmann[42] as an example of the former, since it exceeded, both legally and philosophically, the boundary of the good type, which she considers the rule of law in the adversary system.[43] A trial can resemble a play, inasmuch as it follows a dramatic outline, but it should not overlap into it.[44] Where this happens, the process decays into a 'bloody show'.[45]

The same point is vividly highlighted by Shoshana Felman who, analysing Arendt's perspective on the Eichmann trial, draws out the existence of 'two competing masters' dramatically confronting each other throughout the proceeding: justice and political power.

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[40] Michael Bachmann, 'Theatre and Drama of Law: A "Theatrical History" of the Eichmann Trial (2010) 14 Law Text Culture 94, 95-96.

[41] ibid 97.

[42] *Attorney-General of the Government of Israel v Adolf Eichmann (Judgement)* District Court of Jerusalem (12 December 1961) 36 ILR 18.

In May 1960 Karl Adolf Eichmann, former head of the 'Jewish Affairs and Emigration' Section of the Reich Central Security Office during most of World War II, was abducted from Argentina by Israeli secret agents and brought to Jerusalem. Before the District Court, he faced prosecution for his role in the Nazi regime, as he was considered the main responsible for the implementation of the 'Final Solution' policy in Germany and occupied territories.

Charged on 15 counts, including crimes against humanity and crimes against the Jewish people, he was found guilty on all of them and sentenced to death. The sentence was carried out on 1 June 1962, after the Supreme Court of Israel and the Israeli President both rejected the appeals presented by the defendant.

For an overview of the case and its legal issues (abduction, jurisdiction and merit), Santiago M Villalpando, 'Eichmann Case', *Max Planck Encyclopedia of Public International Law* (Oxford University Press February 2007)<opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e783?rskey=i9xtfm&result=1&prd=MPIL> accessed 19 August 2020. See also Zad Leavy, 'The Eichmann Trial and the Role of Law' (1962) 48 American Bar Association Journal 820, 820-825; Hans Wolfgang Baade, 'The Eichmann Trial: Some Legal Aspects' (1961) 3 Duke Law Journal 400, 400-420.

On the legacy of the trial in the field of International Law, William Schabas, 'The Contribution of the Eichmann Trial to International Law' (2013) 26 Leiden Journal of International Law 667, 667-699. See also Matthew Lippman, 'The Trial of Adolf Eichmann and the Protection of Universal Human Rights under International Law' (1982) 5 Houston Journal of International Law 1, 1-34; Leora Bilsky, 'The Eichmann Trial; Towards a Jurisprudence of Eyewitness Testimony of Atrocities' (2014) 12 Journal of International Criminal Justice 27, 27-57.

[43] Bachmann (n 40) 98-99. According to the author, '[i]f Arendt is not entirely opposed to a 'theatre of justice' this legal theatricality is only 'good' as long as it follows a dramatic structure, that is, as long as the performance has no value in itself and is true to the rules allegedly inscribed in the presumed drama.'

[44] ibid 99-100. For Arendt, Bachmann argues, ''bad' theatricality in a trial begins when theatrical elements (eg the witnesses' testimonies) detach themselves from the presumed dramatic structure and function of legal proceedings, and become a value in themselves.' This ultimately happened, in her opinion, during the Eichmann trial.

[45] Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin Books 2006) 9.

Where this happens, and the courtroom becomes the stage for theatrical exposure of lurking extralegal intents (viz., demonstrative purposes), thus the regular criminal lawsuit originates a two-faceted 'courtroom drama', where not only the accused, but also the very idea of justice is summoned as defendant before the state.[46]

Therefore, the show trial's format, taken to extremes by the aforementioned Soviet travesties, underlines the distinction between trial and play as a murky concept, since the production of such kind of trial can encompass not only the preparation and presentation of story and characters, as in a regular lawsuit, but even their whole creation.[47] These considerations highlight, in accordance with Simonett and Ball's view, the common format that both realms draw on, and the thin line that divides stage and courtroom.[48]

The same conclusions hold true for other theatrical elements considered by Simonett[49] and Ball[50] – namely space and audience. Regarding the former, the kinship between courtroom and stage seems close, as they are bound by the common necessity to obtain dramatic effects.[51] The joint efforts of props, robes and rite create the appropriate ambience for administering justice, as well as for staging a play.[52] However, Ball notices, the setting must be in accordance with different necessities, for both trial and drama.[53] As for the legal proceeding, a lack in court-like characteristics can undermine the perception of the representation as the location where justice is delivered.[54]

Gidlay analyses the issue in the context of the Extraordinary Chambers in the Courts of Cambodia (ECCC), where the UN Secretariat's concerns of procedural fairness prompted the refusal to hold the trial in the locally-renown Chaktomuk Theatre - where a government-

[46] Shoshana Felman, 'Theaters of Justice: Arendt in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning in the Wake of the Holocaust' (2001) 27 Critical Inquiry 201, 207-208.
[47] See nn 35, 36, 38, 41.
[48] ibid.
[49] Simonett (n 1) 1145-1146.
[50] Ball (n 18) 83-88.
[51] ibid 83-84.
[52] ibid.
[53] ibid.
[54] ibid.

sponsored process for genocide had been previously held in 1979.[55] However, the problem of appropriate spaces for judicial enterprise emerged even more clearly in this case, since the final choice of the ECCC's setting fell on the outskirts of the capital Phnom Penh, in a cordoned off compound of the Royal Cambodian Armed Forces (RCAF) Headquarters.[56] The author suggests that this location saw the international tribunal 'practically and symbolically sidelined',[57] since it exposed the judicial space to the ambiguous influence of the ruling Cambodian People's Party and hindered the potentially edifying effects that would have been fostered if a new, unprecedented Palais de Justice had been selected instead.[58]

This kind of uncertainty - or craftiness - in the setting of a judicial space is particularly emphasised in the phenomenon of show trials. However, this feature appears particularly singled out in the province of Soviet political persecutions, since the regime endeavoured to perfect strategies for the individuation of appropriate trial locations, spectators, and advertising stratagems, meticulously created in order to excite 'feelings of disgust, outrage and shock'.[59]

Elizabeth Wood presents, as an example, the prosecution of the heads of the Orthodox Church, charged with deficiency in donations during the famine of 1921-1922.[60] In fact, its setting could have presumably misled more than one spectator, since it was held in the Polytechnic Museum of Moscow – a large lecture hall, which had previously been the place of many mock trials.[61] The author suggests that this aroused the doubt whether or not that was a real trial for real persons, or instead a political and religious controversy.[62]

In contrast, the Shakhty Affair, the first show trial with mass media coverage, both Soviet and Western, was hosted in the luxurious House of Soviets, formerly the Moscow Nobles club, where the decorated marble hall neatly contrasted with the red drapes placed throughout the

[55] Rebecca Gidlay, 'Trading a Theatre for Military Headquarters: Locating the Khmer Rouge Tribunal' (2018) 40 Contemporary Southeast Asia 279, 286.
[56] ibid 290.
[57] ibid 293.
[58] ibid 294.
[59] Allo (n 11) 57; Ernest Clark, 'Revolutionary Ritual: A Comparative Anlysis of Thought Reform and the Show Trial' (1976) 9:3 Studies in Comparative Communism 226, 233.
[60] Elizabeth A. Wood, *Performing Justice: Agitation Trials in Early Soviet Russia* (Cornell University Press 2005) 82.
[61] ibid.
[62] ibid.

room, and where a scenic platform for judges, witnesses and accused had been built.[63] Foreign journalists described it as 'a courtroom modeled on the theatrical stage but ready for the movie camera'.[64] In the same vein, Hannah Arendt heavily criticises the auditorium in which Adolf Eichmann had been tried, for she considers it like a real theatre, with its stage, orchestra, gallery, side entrances and usher's announcements – everything functional for the production of a show trial.[65]

Therefore, the choice of appropriate spaces for the delivery of justice, courtroom or theatre, is anything but an innocent task, for it involves the compelling necessity to keep trial and play on separated realms.[66] The risk, Ball argues, is the misinterpretation of the judicial theatre with another, inappropriate venue – thus permitting the staging of a show trial.[67]

Accordingly, even the audience appears to be a vital part in the production of a trial or a stage play.[68] A performance in a play must take place in front of an audience in order to fulfil its live-ness.[69] In a trial, the same holds in order to vouch its fairness.[70] Under the frame of legal proceedings, judges, jurors and spectators represent the three possible audiences.[71] Read furthers the issue, and pinpoints how the necessity of law as a live representation is tantamount to that of a play.[72] In fact, the author remembers that 'law has to be *seen* to be done'[73] and, consistent with this view, he highlights a subsequent meeting point between law and theatre – the perception of the functioning of justice.[74] These statements add a new perspective for the assessment of the audience, which Simonett confirms.[75] The same spectators of a trial, he recalls, citing critic Stanley Kaufmann, wish both to see justice served and, metaphorically, blood shed.[76] In the production, hence the preparation, of a case, this aspect must not be

[63] Cassiday (n 33) 113-114.
[64] ibid.
[65] Arendt, *Eichmann in Jerusalem* (n 45) 4.
[66] Ball (n 18) 85.
[67] ibid.
[68] Simonett (n 1) 1145.
[69] Ball (n 18) 86.
[70] ibid.
[71] ibid.
[72] Read (n 21) 14.
[73] ibid 8.
[74] ibid 13.
[75] Simonett (n 1) 1146.
[76] ibid.

overlooked, since spectators tend to be, duly or unduly, influenced by a theatrical, purposefully crafted courtroom demeanour, and by its opposite as well.[77]

These mentioned concepts seem to overlap and to be further refined in the context of show trials. In contrast with Ball's reflection, the production of this type of trial focuses more on a fourth kind of audience, which is the public outside the courtroom, the true intended audience of the message embedded in the proceeding itself.[78] This is why Arendt notices how the audience at the trial of Adolf Eichmann in Jerusalem did not maintain the authorities' expectations.[79] In fact, after the media frenzy at the beginning, the ranks of the spectators were later mostly composed of survivors of the Holocaust, thus not the audience filled with international journalists and ready-to-be-instructed young Jews that the organisers wished for in order to convey their lessons.[80]

Even more strikingly, the role of the audience seems intensely exploited and subverted in the *Trial of the Industrial Party* (1930), a documentary film of the Soviet show trial.[81] In that context, far from being mere spectators or safeguard of a due process, the audience sides unanimously with the prosecution against the treacherous crime allegedly committed by the defendants – counter-revolutionary collusion with foreign countries.[82] This partiality is clearly highlighted by the careful use of different camera angles in order to counterpose, even cinematographically, audience and accused – numerous and ordered the former, few and isolated the latter.[83] Accordingly, the film deliberately indulges on scenes depicting the zealous participation of citizens in the process, expressed through demonstrations, military parades and extensive use of red banners.[84] A wider movie audience, Cassiday observes, appeared to be the target for which this type of show trial was being staged.[85]

[77] Levenson (n 22) 581-588.
[78] Peterson (n 2) 264-265.
[79] Arendt, *Eichmann in Jerusalem* (n 45) 8.
[80] ibid.
[81] Cassiday (n 33) 169.
[82] ibid 169-170.
[83] ibid 170-171.
[84] ibid 173.
[85] ibid 169.

Hence, the switching role of the audience needs to be in accordance with the purpose of the different representations, trial and play, so as not to become a mere, useful tool within the production of a show trial.[86]

4. Rhetorical Techniques

In conformity with the previous inquiry, the entire judicial performance cannot remain truly insulated in this environment. *The Trial as One of the Performing Arts* underlines the reliance of lawyers on dramatic devices, such as exposition, conflict and climax, whose aim is to obtain the interest of the audience and to reinforce the counsel's own legal arguments.[87]

From this perspective, it is no wonder that Skinner notices the use of forensic rhetoric in Shakespearian plays, which reveals the Poet's conceivable knowledge of classical techniques such as the Ciceronian *inventio*, *dispositio* and *elocutio*.[88] The author suggests even the label of 'forensic plays'[89] for some of the pieces considered, and especially for *Hamlet*, *Othello* and others among Shakespeare's Jacobean plays, where the story seems largely intermingled with legal rhetoric.[90] As Skinner notices, these are plays 'in which accusations are put forward, in which they are met with counter-arguments and debated *in utramque partem*, and in which there is often no final agreement as to how the questions at issue should be assessed.'[91] These considerations further remark the existence of a common share in the knowledge and use of techniques between trial and play, since oral arguments are as pivotal in courtroom as performance is on stage.[92]

However, as classical authors such as Quintilian or the anonymous author of the *Rhetorica Ad Herennium* advise, rhetorical devices are two-faced means, viable for either better or worse

[86] See nn 78, 79, 81.
[87] Simonett (n 1) 1145.
[88] Quentin Skinner, *Forensic Shakespeare* (Oxford University Press 2014) 1-6. Invention (*inventio*), arrangement (*dispositio*) and style (*elocutio*) are three of the individual activities of the orator, according to Cicero. See Marcus Tullius Cicero, *On the Ideal Orator* (James M. May and Jacob Wisse trs, Oxford University Press 2001) 32-38.
[89] Skinner (n 88) 1.
[90] ibid 7.
[91] ibid.
[92] Ball (n 18) 82.

aims alike.[93] The context of show trials emphasises this issue and the aforementioned point of convergence at the same time.

A prominent case of this hybrid format is the Shakhty Affair, the very first to earn the moniker of 'show trial',[94] in which fifty-three engineers were accused of sabotage and wrecking in the Donbass industry.[95] The prosecution followed almost to the letter the structure of an *agitsudy*, since it focused entirely on stigmatising the defendants as the embodiment of menaces for the state, depicting them as villains, thus contrasting the heroic protagonists that were the Soviet nation and its citizens, who oppose their treason.[96] The finding of real evidence was completely overlooked by the prosecution, whereas fictional proofs were instead admitted to comply, in the words of prosecutor Nikolai Krylenko, with the 'lesson of the case'.[97] Moreover, there was no possibility to recount their own versions for the accused, who were required to rehearse and recite prewritten scripts of their parts[98] or to improvise in the same tone.[99] This completely undermined the subsistence of an adversarial narration in the process - exactly like in the type of play known as an agitation trial.[100]

Accordingly, Cassiday analyses how during the Shakhty Affair the characters, prosecutor and defendants, strived to present themselves in diametrically opposite ways, thus pursuing the building of their own *ethos* for the audience.[101] The accused, although high ranking engineers, wore common workers' clothing in order to inspire sympathy in the people's judges, while Krylenko almost shocked the Western correspondents with his hunting outfit, used for the entire trial, and purposefully prepared to have him identified as the hunter of proletariat's enemies.[102] The process held in Jerusalem relied on the same rhetorical framework, with its imbalanced face-off between the two characters' presentations.

[93] Skinner (n 88) 14-16.
[94] Wood (n 60) 193.
[95] ibid.
[96] ibid 194.
[97] ibid 193.
[98] Cassiday (n 33) 115.
[99] Wood (n 60) 195.
[100] ibid.
[101] Cassiday (n 33) 114.
[102] ibid.

The opening address of Attorney General Gideon Hausner, prosecutor in the Eichmann trial, operated in this fashion when he claimed to speak alongside six million dead Jews. This not only broadened the scope of the trial itself, but also attempted to arouse strong feelings in the audience and judges (*pathos*) through the figure of speech known as *prosopopoeia*.[103] This poses a sheer contrast with the treatment of the defendant in the same case, Adolf Eichmann, who had been represented, according to Arendt, as if he were a Shakespearian foe, like Iago or Macbeth.[104] However, the use of such techniques may largely serve the construction of the accused's *ethos*, up to the point to erode the layer of legality that legitimises and justifies a rigged trial.

Such a result is crystal-clear in the case of the Rivonia trial, where 'Accused No. 1', Nelson Mandela, famously commenced his opening statement by building up his *persona* as nuanced, recalling his heritage as an educated man of law, as an unrepentant political prisoner, and as a proud African partisan.[105] His 'transformative intervention' thus resulted in a complete re-signification of himself and his beliefs in front of the court. Mandela rebutted the portrayal of him as a brutal communist agitator, craftily designed by the authorities, and undermined from the very outset by the misleading façade of law and order intentionally staged to vindicate Apartheid and its abuses.[106]

These are inexhaustive but still significant examples of how rhetorical means are equally employable in the making of both a trial and a play, as Simonett recognises.[107]

However, among the rhetorical structures present in a trial, the narration occupies a pivotal position.[108] It is the gist of the adversarial system, the medium through which different parts

[103] Gideon Hausner, *Justice in Jerusalem* (4th edn, Herzl Press 1977) 323.
[104] Arendt, *Eichmann in Jerusalem* (n 45) 287. In Arendt's opinion, the trial should have been centred on the acts that Eichmann committed. In contrast, she argues, the defendant was treated as a scapegoat, either made to stand in the dock for the whole of Nazism or depicted as an unrestrained criminal. Therefore, she considers that the trial ultimately failed to comprehend the man and his actions, up to the point that the material circumstances of the defendant's deeds never fully emerged throughout the entire proceeding.
[105] Awol K. Allo, 'The Courtroom as a Site of Epistemic Resistance: Mandela at Rivonia' (2016) Law, Culture and the Humanities 1, 3, 6-7
[106] ibid 6 ff.
[107] Simonett (n 1) 1145-1146.
[108] Peterson (n 2) 270-271.

can put forth their own account of the story.[109] If the process seeks to 'ascertain the truth',[110] as quoted by Simonett,[111] then the confrontation between contrasting narratives is an essential element to manipulate and to reinterpret – that is to say, to produce – a trial.[112] Narration's disruptive and hijacking force relies on the possibility of introducing a different truth, and challenging the counterpart even on the ground of what is otherwise acknowledged.[113]

This becomes all the more important in the context of processes concerning military conflicts or massive human rights violations, where this rhetorical device stands on the border between impunity and show trial.[114] In the latter, the state endeavours to seize control of the narration in the proceeding in order to impart its message.[115] As Arendt confirms, a show trial requires a plainly circumscribed outline of what happened and how, even more than a traditional legal proceeding does.[116] Thus, the doer must occupy the heart of the trial itself and, in this perspective, he represents the hero of the play.[117] This arrangement is vividly underlined by what Martti Koskenniemi, citing J.F. Lyotard, calls *Différend*, a situation in which acceptance of the framework automatically means acceptance of the adversary's narration.[118] This technique can severely undermine the history told in the process, thus revealing itself even more pernicious for the outcome of a show trial, since justice has to be perceived first in order to be served.[119]

[109] ibid.
[110] Erwin N. Griswold, 'The Standards of the Legal Profession: Canon 35 Should Not Be Surrendered' (1962) 48 American Bar Association Journal 615, 616.
[111] Simonett (n 1) 1147.
[112] ibid 1145.
[113] Martti Koskenniemi, 'Between Impunity and Show Trials' (2002) 6 Max Planck Yearbook of United Nations Law 1, 33-34. As the author pinpoints, '[a] Court cannot avoid taking judicial notice of a certain number of background facts. But the moment it does this, it will seem to be conducting a political trial to the extent that what those facts are, and how they should be understood, is part of the conflict that is being adjudged.'
[114] ibid 1, 19.
[115] Peterson (n 2) 270.
[116] Arendt, *Eichmann in Jerusalem* (n 45) 9.
[117] ibid.
[118] Jean-François Lyotard, *The Differend: Phrases in Dispute* (Georges Van Den Abbeele tr, Minnesota University Press 1988) 9 (as cited in Koskenniemi (n 113) 17).
[119] Read (n 21) 13-14.

This is the principle applied in the aggressive defence device known as trial of rupture, theorised by the French lawyer Jacques Vergès, which entails a demolition of the opponent's narration and interpretation of facts and context.[120]

Indeed, this is the same scheme that was deployed by Marwan Barghouti, Palestinian Parliament Member and former right-hand man of Yasser Arafat, to oppose the show trial that Israel built against him after his arrest during the Second Intifada in 2002.[121] In the first day of pre-trial motions, he opposed the indictment of terrorism, arraying more than fifty charges against Israel for multiple violations of human rights and overtly appointing himself as plaintiff for the Palestinian people against the Israeli State.[122] This way he aimed to impair the political reprimand represented by his trial, which the government wanted in order to delegitimise the Palestinian Authority and to warrant the occupation of Gaza and the West Bank,[123] through a counter-prosecution that overturns the narration and derecognises the legal framework of the process.[124] In this regard, he made wise use of the rhetorical technique colourfully named by Heinrichs 'definition judo'.[125] In fact, Barghouti reversed the Israeli dialectic of peace, security and freedom through their re-signification in a narrative chain - 'No peace, no security, with occupation'[126] – that contrasted the very same concepts used to justify the military invasion and the trial itself.[127] Moreover, to uphold this frame and to further undermine the counterpart's account and legitimation of the proceeding, Shammai Leibowitz, the defendant's Jewish lawyer, startled judges and audience when he dared to draw a parallelism between Barghouti

[120] Jacques M. Vergès, *Strategia del processo politico* (Clara Lusignoli tr, Einaudi 1969) 49-50. Koskenniemi (n 113) 26.
[121] Awol Allo, 'Marwan Barghouti in Tel Aviv: Occupation, Terrorism and Resistance in the Courtroom' (2016) 26 Social & Legal Studies 47, 47-48.
[122] Lisa Hajjar, 'The Making of a Political Trial: The Marwan Barghouti Case' (2002) 225 Middle East Report 30, 31.
[123] ibid.
[124] Allo (n 121) 57. This peculiar use of the rupture defence seems particularly effective when deployed by insurgents - such as independence movements or terrorist groups - to bolster their causes, as in the cases of the Algerian FLN, the Irish Sinn Féin or the Colombian FARC. For an overview of the utilisation of 'disruptive litigation' as a mean of 'lawfare', see Frank Ledwidge, *Rebel Law: Insurgents, Courts and Justice in Modern Conflict* (C. Hurst & Co.. Publishers 2017) 85-105. For an account of the deployment of rupture before Italian courts and International Tribunals, see, e.g., Teresa Bene, 'La verità giudiziaria e i suoi rapporti con il potere', in Luca Lupària and Luca Marafioti (eds.) *Confessione, liturgie della verità e macchine sanzionatorie Scritti raccolti in occasione del Seminario di studio sulle «Lezioni di Lovanio» di Michel Foucault* 41-45 (Giappichelli 2015); Michela Miraglia, *Diritto di difesa e giustizia penale internazionale* (Giappichelli 2011) 94-117.
[125] Jay Heinrichs, *Thank You for Arguing* (Three Rivers Press 2007) 113. He describes this technique as the use of terms contrasting with your opponent's, in order to create a juxtaposition that makes them 'look bad'.
[126] Allo (n 121) 58.
[127] ibid.

and Moses; hence between the Israeli government and the Pharaoh; thus unsettling the narrative that endorsed the entire prosecution.[128] This marshalling of rhetorical devices did not increase the chances of acquittal of the defendant, but this was not his principal intention.[129] By contrast, he 'performatively reinverted'[130] the already staged show trial, introducing his own counter-story in the courtroom, and boycotting the juridical and political significance of the case brought against him.[131]

Another crystalline example of rupture is highlighted by the trial held in Moscow against three members of the feminist art collective known as Pussy Riot, namely Maria Alekhina, Ekaterina Samutsevich and Nadezhda Tolokonnikova, for hooliganism driven by religious hatred, in the aftermath of the performance of their 'Punk Prayer for Freedom' in the Cathedral of Christ the Saviour in 2012.[132] Their exhibition consisted of dancing and singing their piece around one of the altars, while wearing bright dresses and using evocative gestures.[133] Meanwhile, a video of the action was being filmed in order to be released online afterwards, alongside the full song 'Mother of God, Put Putin Away.'[134] For most of the ensuing trial, the three defendants did not strive to respond to their indictments, but to use the trial as a stage to shed light on the deeper meaning of their performance,[135] which had been otherwise blatantly stigmatised by the Russian authorities and unduly flattened by the Western media.[136] Through their political art, they certainly criticised Putin and the government, but also Putin's supportive, mundane establishment, as well as the Russian Orthodox Church, and reclaimed a space for unrestrained self-expression and genuine creativity, in contrast, in the defendants' view, with the oppressive ambience of Russia.[137] Particularly during their closing arguments, the group managed to re-frame the sanctioned narrative of the prosecution to unmask the real message behind it – the repression of dissent against the regime - and establish their own characters as prisoners of

[128] ibid 61-63.
[129] Hajjar (n 122) 36.
[130] Allo (n 121) 64
[131] ibid.
[132] Ekaterina V. Haskins, 'Places of Protest in Putin's Russia: Pussy Riot's Punk Prayer and Show Trial' (2015) 18 Advances in the History of Rhetoric 227, 227-228.
[133] ibid.
[134] ibid.
[135] ibid 242.
[136] Desmond Manderson, 'Making a Point and Making a Noise: A Punk Prayer' (2013) 12 Law Culture and the Humanities 17, 23.
[137] ibid 23-27.

conscience.[138] As Maria Alekhina pointed out months after her release in a conversation with Judith Butler, 'in Russia we lack a space – stage – for making political statements. Because of this, (…) the court became such an unexpected site'.[139]

These cases of rupture, Marwan Barghouti and Pussy Riot, illustrate how rhetorical techniques can be fruitfully employed in order to disrupt their counterparts' argumentation and narration.[140] Thus, the defendant can score the production of their opponent's trial while underpinning the making of their own.

5. Purposes

Simonett[141] and Ball[142] concord on affirming that, regardless of multiple and remarkable similarities in format and use of dramatic devices, trials and plays diverge on one fundamental point, which is the purpose. Whereas theatre intends to entertain, the trial aims to discern the truth, and hence deliver justice.[143] The former reaches the heart, while the latter points first at the head.[144]

These notions, although apparently simple, are worth questioning in the framework of the production of both trials and plays, and the context of show trials provides a useful critical medium. In fact, Arendt underlines part of Simonett's concept, when she remarks that 'The purpose of a trial is to render justice and nothing else'.[145] Further considerations, she argues, can only lead justice astray from its goal, that is, to inflict a rightful punishment pursuant a correct judgement.[146]

[138] Haskins (n 132) 242-244.
[139] The First Supper Symposium, 'Pussy Riot Meets Judith Butler and Rosi Braidotti' (21 May 2014) <www.youtube.com/watch?v=BXbx_P7UVtE> accessed 18 April 2017 (as cited in Haskins (n 132) 238).
[140] See nn 130, 131, 135.
[141] Simonett (n 1) 1146-1147.
[142] Ball (n 18) 99.
[143] Simonett (n 1) 1146-1147.
[144] ibid.
[145] Arendt, *Eichmann in Jerusalem* (n 45) 253.
[146] ibid.

However, it is established that most criminal trials, especially at the international level, may pursue both political and legal ends; the controversy is which goal takes precedence when a conflict between the two arises.[147]

In fact, on the other end, multiple legal theorists disagree with Arendt, as evidenced by Daphne Eviatar in her survey of show trials on the *New York Times*.[148] She highlights how Lawrence Douglas, in his book *The Memory of Judgment: Making Law and History in the Trials of the Holocaust*, submits Arendt's opinion regarding a trial's goal is faulty.[149] In fact, he argues that the process, in the context of post-genocide prosecutions, should not aim only at the strict application of the law to the defendant, but also at the formation of a stage for survivors, where facts and narration can be registered and preserved for future memory.[150] Douglas recognises that this way, truth and accused's rights are likely to be endangered; however, he claims, 'A trial can be staged with didactic purposes without degenerating into a political farce, (…) so long as the judge-director makes good use of legal procedure.'[151] This arrangement endeavours to originate a national drama for the widest audience possible.[152] Mark Osiel agrees with this view, for he remarks how, in order to uphold their educational goal, these trials must be produced like great exhibitions,[153] although the author still safeguards the value of procedural fairness.[154] By contrast, the position of Arendt is defended by Martha Minnow, who admits that the process intrinsically encompasses storytelling, but adds that crossing the threshold of fiction compromises its judicial role.[155]

However, the picture appears even murkier because, while these statements suggest the existence of a possibility for trials to pursue other goals apart from justice, the reverse holds for theatre.[156] In fact, William Acree Jr analyses the so-called trial of theatre, and assesses it as

[147] Jenia Iontcheva Turner, 'Defense Perspectives on Law and Politics in International Criminal Trials' (2008) 48 Virginia Journal of International Law, 529, 534.
[148] Daphne Eviatar, 'The Show Trial: A Larger Justice?' *The New York Times* (New York, 20 July 2002) <http://www.nytimes.com/2002/07/20/books/the-show-trial-a-larger-justice.html> accessed 6 April 2019.
[149] ibid.
[150] ibid.
[151] ibid.
[152] ibid.
[153] Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (Transaction 1997) 3.
[154] ibid 69.
[155] Eviatar (n 148).
[156] William G. Acree Jr, 'The Trial of Theatre: Fiat Iustitia et Pereat Mundus' (2006) 40 Latin America Theatre Review 39, 42.

a helpful medium through which supply justice in Latin American societies, where experiences of past tortures and present public concealment can be coped with by way of theatrical performance.[157] Plays such as *La muerte y la doncella* and *Información para extranjeros* both perform and narrate straightforwardly those heinous memories, thus delving into the truth and highlighting the stage as a place where crimes committed by torture regimes can be factually tried.[158] The author, quoting Arendt, remarks that the discovery of truth is a paramount step in order to grant pardon,[159] since 'men are unable to forgive what they cannot punish'.[160] However, Acree Jr ultimately recognises how this quest for justice is intrinsically limited, since it cannot replace the role of legal proceedings.[161] Felman furthers this point, highlighting the eventual irreplaceability of 'trial and trial reports' as sole means employable in order to render justice and to put human sufferings (viz., those caused by the war and the Holocaust) to an end.[162] According with this view, she ultimately remarks how only the law, through its limits and procedures, may circumscribe atrocities in a determined time, etch the borders of its magnitude, and legitimately 'close the case and enclose it in the past.'[163]

Therefore, these contrasting opinions do not truly resolve the conundrum; however, this is not within the scope of this essay. For the purpose of the current inquiry, it is relevant the fact that the ends sought by trials and plays may have more common points than conceded by Simonett, although not to the point to impair his distinction.[164] Thus, as highlighted by the aforementioned scholars, the function of the lawsuit might diverge from the sheer pursuit of justice and the application of the legal rule in actual cases, especially when broader concerns about memory, history or upbringing become part of the scheme, and the production of the process should be modelled accordingly.[165]

This overview of different perspectives on the objectives of judicial context, through the example of show trials, proves useful for the scope of the present inquiry, inasmuch as it

[157] ibid.
[158] ibid 45-50.
[159] ibid 51.
[160] Hannah Arendt, *The Human Condition* (2nd edn, University of Chicago Press 1998) 241.
[161] Acree Jr (n 156) 55-56.
[162] Felman (n 46) 202.
[163] ibid.
[164] Simonett (n 1) 1146-1147.
[165] See nn 150, 153, 154, 155.

permits to establish a comparison in terms of genres between the forensic and the theatrical realms.

In fact, Ball evaluates different kinds of theatre in order to see which one better conforms to the judicial representation; [166] he points out the theatre of fact as the most pertinent form.[167] He excludes the appropriateness of other kinds, namely theatre of absurd and morality play, because of the presence of disruption in the former, and for the predetermined routine and upshot in the latter.[168]

However, the presence of these characteristics in a show trial does not appear preposterous. In fact, the disruptive element is likely to be found in such a context, as Peterson affirms when listing the curtailment of the defendant's right to tell his side of the story as one defining mark of a show trial.[169] He accordingly notices the presence of defence walkouts, the ousting of the accused, outbursts and refusal of court-appointed lawyers as featured elements during the trial of Saddam Hussein before the Iraqi Special Tribunal (IST) in 2005-2006,[170] which he eventually labels as a show trial.[171] Moreover, the utilisation of rupture as a rhetorical device further stresses the applicability of the category of theatre of the absurd in such a context.[172]

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[166] Ball (n 18) 97-100.

[167] ibid. The Theatre of fact represents a form of documentary drama that recounts real stories drawing on existing documents (e.g. court records, newspapers, journals, etc.), often without altering the transcript in performance. See Derek Paget, 'documentary drama and theatre', The Companion to Theatre and Performance (Oxford UniversityPress2010) <www-oxfordreference-com.ezproxy.unibo.it/view/10.1093/acref/9780199574193.001.0001/acref-9780199574193-e-1101?rskey=Onwxna&result=2> accessed 23 August 2020.

[168] ibid. Regarding the former, see Ian Buchanan, 'Theatre of the Absurd', A Dictionary of Critical Theory (Oxford University 2010)<www.oxfordreferencecom.ezproxy.unibo.it/view/10.1093/acref/9780199532919.001.0001/acref-9780199532919-e-704?rskey=U1OKyk&result=1> accessed 20 August 2020. According to Buchanan, the Theatre of the Absurd is '[a]n anti-political form of theatre […]' that '[i]t is typified by clever language play, which pushes language to the point of non-meaning and nonsense, thereby exposing language's capacity to betray its users […].'
Concerning the morality play, see John Wesley Harris, 'morality play', The Companion to Theatre and Performance (Oxford University Press 2010) <www-oxfordreference-com.ezproxy.unibo.it/view/10.1093/acref/9780199574193.001.0001/acref-9780199574193-e2713?rskey=fy8b6X&result=7> accessed 20 August 2020. The author reminds that'the distinguishing mark of most morality plays was the use of allegorical characters to represent the interplay of various positive and negative forces in human life. Characters representing the soul, sins, and virtues came to be treated as forces acting within the human mind, thus making possible a simple form of psychological analysis. […].'

[169] Peterson (n 2) 270-271.

[170] ibid 278-281.

[171] ibid 286-288.

[172] See nn 118, 120.

Subsequently, Ball rejects the morality play's appropriateness for judicial theatre by discarding its pre-programmed result as '*immorality* plays'[173] and by warning that 'Insofar as it is made a platform for moralizing or a forum for educating, a trial is not a trial.'[174]

In contrast, these are widely accepted features of show trials, as confirmed by Peterson[175] and Christenson, with the second author talking of expediency as a fundamental point in partisan trials.[176] In the same vein, even if she does not discuss sheer drama, Felman identifies the considered show trial (namely, the Eichmann case) as the 'text of a modern folktale of justice', inasmuch as it involves the unique intermingling of memoirs and allegory in the legal account, expressed through a forensic narration of both public and intimate sorrow.[177]

Therefore, these evaluations explain how, unlike an ordinary lawsuit, its show counterpart allows a comparison with a wider spectrum of theatrical genres.[178] The parallelism between play and lawsuit is conceivably reinforced by these findings, since the production of show trial seems to exceed Simonett's boundaries, for it seeks to gain control even of the case's outcome and embedded significance.[179]

6. Final clarification

In the light of the above, the connection between theatre and law appears everything but accidental. However, one last issue must be addressed before setting forth some conclusions: it is the distinction between 'real' and 'show' trials on the ground of theatricality.

In Paragraph 1 I touched the topic, briefly claiming that 'show' trials seem particularly adapt for the comparison with the theatrical structure, insofar as the formers rely on predetermined (or very likely) outcomes - combined with a focus on the trials' appearance to an external public audience, outwith the trial parties, and resorts to dramatic techniques. However, artificiality in these features seems not exclusively limited to the area of 'show trials'.

[173] Ball (n 18) 98.
[174] ibid 99.
[175] Peterson (n 2) 265-269.
[176] Christenson (n 5) 11.
[177] Felman (n 46) 238.
[178] See nn 169, 175, 176.
[179] ibid.

As I tried to recount in the previous paragraphs, a certain amount of fiction appears intrinsic in legal proceedings per se, up to the point that 'regular' trials cannot be truly insulated from artificial elements. In the legal scenery every 'character', consciously or not, plays a part, striving to build up his own pathway through the case, which must be at the same time 'credible and probable', in order to achieve his competing goal - be it (i.e. in criminal justice) acquittal, conviction or a fair decision.[180] At the same time, the parties may purposefully employ the procedural norms, such as rules of evidence, defendant's rights or *ex officio* powers, in order to counter the opponents' play, to exploit their errors, and to sustain a different interpretation of facts and law. If some degree of theatricality appears physiological, it operates as a twofold mean in regular trials, since the judicial process may be exposed to undue external influences, which may reveal a pathological aspect of artificiality. In a non-exhaustive account, it is worth noticing that even in the most forward legal systems society and politics appeal the administration of justice, especially in the criminal branch, with their exigencies and anxieties.[181] Fuelled either by political authorities or by the public opinion, the demand of rapid sentencing and severe penalties risks hampering the very foundations of the rule of law (for example, the presumption of innocence).[182] The result of such an approach is brilliantly expressed in the words of the late Professor Filippo Sgubbi, when he warned against the 'legal monstrosities' created by populism, demagogy and vindictive justice.[183]

For the purpose of the present paper, it follows that even a regular trial, like its 'show' counterpart, somehow 'smacks of manipulation'.[184] Nevertheless, my stance here is that the distinction between 'show' and 'regular' trials' theatricality needs to be maintained. In fact, whereas both deal with fictional elements in their structure and devices, only the former appears to be controlled by them, whereas the rule of law, in the latter, safeguards its procedure and scope, which is to deliver justice.[185] This line of reasoning approximately echoes what an observer of the relationship between theatre and law, Nicole Rogers, argued citing Huizinga –

[180] Christian Biet, 'Law, Literature, Theatre: the Fiction of Common Judgement' (2011) 5 Law & Humanities 281, 287.
[181] Filippo Sgubbi, 'Monsters and Criminal Law' in Daniela Carpi (ed.), *Monsters and Monstrosity: From the Canon to the Anti-Canon: Literary and Juridical Subversions* (De Gruyter 2019) 289-292.
[182] ibid.
[183] ibid.
[184] Simonett (n 1) 1145.
[185] See nn 178, 179.

in particular, when she stated that '[l]aw, as a form of play, is a highly serious form of play which is subject to 'the rules of the game''.[186] The law, in fact, strives to order, predict, and bind by rule, regulates what is an otherwise extravagant 'form of play'[187] driven by other means to other ends. In accordance, the same distinction can be drawn between trials and plays as such.

7. Conclusion

In conclusion, theatre and legal proceedings share strong resemblances in the vein of reliance on a qualified format, utilisation of a pre-prepared space and attention given to their respective audiences.[188] Moreover, they both marshal dramatic devices drawn from a common pool of techniques and theatrical expertise.[189]

However, the utilisation of these common features in both might also blur the distinctions between trials and plays. In fact, the former ultimately aim to render justice by means of procedural fairness, whereas the latter recount a story, without being constrained by the legal rule.[190] Thus, the common elements are not inherent characteristics, but means to an end, which must be accurately selected and employed in order to achieve an objective – that is to say, to produce it.

Therefore, the assessed statement of Simonett proves valid, and even more so in the context of show trials, since they share the same traits of ordinary lawsuits but border on – often encroaching – the limits of the rule of law.

[186] Nicole Rogers, 'The Play of Law: Comparing Performances in Law and Theatre' (2008) 8 Queensland University of Technology Law and Justice Journal 429, 430.
[187] ibid, 430.
[188] See nn 48, 66, 86.
[189] See nn 107, 130.
[190] See nn 164, 165.