The Rights of Playwrights: Performance Theory and American Law

Robert Hapgood

How much authority should playwrights have over the ways in which their plays are performed? In recent years Edward Albee has several times intervened to close all-male productions of *Who's Afraid of Virginia Woolf?* in which the play's heterosexual couples were portrayed as homosexual. Legally, there is no doubt about his authority to do so. "All of the copies of my plays," Albee has explained, "have a number of clauses which say they must be performed without any changes or deletions or additions and must be performed by actors of the sex as written" ("Albee"). But aesthetically is it justifiable for Albee to exercise his legal rights over the presentation of his play? Isn't he thereby infringing on the interpretive freedoms of his performers and violating the collaborative spirit upon which dramatic performance depends? Albee concedes that there is a place for "directorial creativity" while maintaining that "it doesn't give permission to distort." Yet what precisely is the fine line between creativity and distortion and who is to draw it? Was Tennessee Williams justified in intervening against a 1974 Berlin production of *A Streetcar Named Desire* in which, among other alterations, Stanley Kowalski was to be played as a black? (Shaland 19). In these instances both playwrights seem clearly in the right: one of Albee's couples (who married because of a hysterical pregnancy) must at first believe the other couple to be parents; Williams' treatment of Kowalski involves issues of class rather than race. In general this essay will argue that the interpretive controls granted the playwright under American contractual and copyright law--while subject to improvement--are basically desirable and that contemporary playwrights have by and large exercised their legal rights wisely in this respect. Together, I believe, the legal framework and the way playwrights have operated within it comprise a sound working aesthetic for the playwright's role

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in putting on a play, one that can provide a timely corrective to current tendencies in performance theory that unduly favor performers yet without reverting to the older idea that they are no more than subservient "interpreters" of the playwright's words.

The place of the playwright in the performance process has been largely neglected by such exponents of performance theory as Schechner (who coined the term), Chaikin, and Michael Goldman. It is true that for centuries the contributions of performers have been virtually disregarded by dramatic theorists, who have concentrated on dramatists and dramas. The recent concern with the importance of performance thus fills a genuine gap. Yet since performance theory has been written mostly by performers, it in turn has tended to disregard or minimize the playwright's involvement. Robert Brustein, for example, has held that close adherence to a playwright's text "not only robs collaborative artists of their respective freedoms, but threatens to turn the theater into waxworks" (Garbus 2). Indeed, following Artaud's declaration of independence from the "tyranny" of playwrights, theorists of his persuasion have often aggressively resisted "author centered" views. The most extreme challenge to "logocentrism" in the theater has been set forth recently in these pages by Stratos E. Constantinidis. Following Derrida he presents the case for deconstructing all "the structures of domination/subordination which regulate western theatrical production," whether the lines of authority proceed from the dramatists, the director, the designer, the actors, or God. Yet such theorizing is far removed from common practice. Since playwrights and their plays continue to be integral to most dramatic productions, a timely next step for performance theory is to take playwrights fully into account, not as they may figure in hypothetical situations but as they have participated in preparing actual productions.[1]

Unfortunately, no individual contemporary playwrights have addressed these matters in an extended way, although many have commented briefly to newspaper reporters and in interviews and symposiums. As it happens, these comments and the attitudes and practices they reflect are remarkably consistent: as diverse as the playwrights are, they share many common views on the subject. One of the purposes of this article is to piece together these scattered comments into a composite picture of the way playwrights today are seeing their contributions to the production of their own plays.

From the legal point of view, too, relatively little attention has been paid to these questions. This is the more surprising because the parallels between literary and legal interpretation have received unprecedented comment in the past decade, prompting the growing "literature and the law" movement in law schools. It must be admitted with Richard Posner that intriguing as such parallels may be, they can often prove facile, as when comparing the interpretation of a Shakespearian sonnet with that of the United States

Constitution (Fried). Such is not the case, however, where dramatic production is concerned. Since a playwright is legally entitled to a performance that he or she judges to be satisfactorily in accord with its script, interpretive disputes could potentially end up in court. There is thus special point in pursuing points of overlap between theater aesthetics and the law. Yet to date only a few articles have done so.[2]

When a new play is being performed under "first-class" (Broadway) auspices, authorial rights are well protected by the standard Dramatists League "Approved Production Contract for Plays". Its provisions have set the pattern for first productions in the United States whatever the venue. Explicitly recognizing that "the Play is the artistic creation of Author," it assures the right of the playwright to attend rehearsals; it provides that the producer and the playwright must agree on the director, designers, and casting; and it guarantees that no changes in the script may be made by either without the other's approval. When the playwright resists a proposed change, the producer may invoke intermediaries provided by the League to try to resolve the dispute; but the playwright can still say "no" decisively.

It might be objected that in certain respects the playwright's interpretive rights are too well protected in the standard contract, to the detriment of the director, designers, and actors (whom I will henceforth refer to collectively as "performers"). In particular the standard contract provides that "any change of any kind whatsoever in the manuscript, title, stage business or performance of the play made by Producer or any third party and which is acceptable to Author shall be the property of Author." Unless there is written agreement to the contrary, the contributions of the performers are understood to be "for hire" and compensated by their salaries. From a financial point of view, this arrangement may be fair enough where the immediate production is concerned (since the performers benefit from its success), but it leaves uncompensated their contributions to subsequent productions. And where aesthetic values are concerned, the law here certainly does less than justice to the author's associates. Tennessee Williams is not alone among playwrights in paying tribute to the gifts of an actor like Laurette Taylor and a director like Eli Kazan, finding them decisive in the initial success of his plays (93).

In general, though, the standard contract seems to me justified in the support it gives the playwright. To begin with, it should be remembered that this support is by no means unqualified: the producer has equal rights with the author. Furthermore, the author has special vulnerabilities that deserve protection. Faithful performance is of the first importance for a playwright because, apart from closet-dramas, plays are not fully themselves except when they are performed. A play may be published, it is true; but its publication does not provide the same direct access to the playwright's work as does the publication of a work by a poet or novelist. However the latter may be

misrepresented by a reviewer or interpreting critic, readers can simply read the original and judge for themselves. A play is crucially different. It is one thing to read a play privately, quite another to see and hear it acted publicly. Theatrical mediation is of the essence.

In addition, the playwright's function is of particular concern because he or she is the "silent partner" in the encounter that produces a theater event. At a performance it is the players and playgoers for whom the encounter is face-to-face, and the contribution of the playwright to the event may very well be slighted. A playwright's work is especially vulnerable at its first major production. Most members of the audience, including many reviewers, cannot distinguish between the author's contributions and those of the director, actors, and designers. And indeed such distinctions are sometimes hard to make, since the performers bring their special creativities to the realization of the playwright's conceptions to such a degree that "interpretation" is sometimes not strong enough a word to indicate their contributions. At times, as just mentioned, these contributions may enhance the play beyond its intrinsic merits; at other times, however, they may detract. Since initial failure may well foreclose possibilities for future productions and publication, there seems to be general agreement that the author should have every opportunity to insure that the first production fulfill his or her intentions.

There is also a pragmatic argument in favor of the standard contract: it has functioned remarkably well, although its institution in 1926 was hard-won and its provisions still must at times be defended.[3] A key factor in its success has been the cooperative spirit that most recent playwrights have brought to the performance process. Some playwrights, it is true, have wished for the kind of total control over the performed play that a poet exercises over a poem. In the throes of trying-out *Two for the Seesaw*, for example, William Gibson looked back longingly to the time when, as a young poet, he would sacrifice publication rather than allow an editor to change a word. His *Seesaw Log* remains the fullest account of the backstage tensions between the playwright, the producer, the director, and the actors as they interacted within the framework of the standard contract.[4] It rewards some special attention.

With admirable candor, Gibson details in the *Log* the painful process by which *Two for the Seesaw*, a two-character play, was shaped into a Broadway hit. The *Log*'s chief antagonists are Gibson and Henry Fonda. Fonda felt that his role was "underwritten"; Gibson felt that Fonda was miscast. There was truth on both sides. Contractually, Gibson could have stood his ground, probably lost his star, and very likely had a flop. Instead he chose, reluctantly, to be his own "play doctor," adapting Fonda's part (though never to his complete satisfaction) and adjusting the whole script to the no less implacable demands of try-out audiences, as tactfully diagnosed by the director and producer. The upshot, he was obliged to admit, was an improved play; yet one

that he no longer felt to be his own. In the end, however, even Gibson was converted to a more receptive attitude. The version of the play he chose to publish with the *Log* included many of the changes from the original that he had earlier felt to be compromises forced on him by others.

Other playwrights have entered more readily into the teamwork of theater. Seeing theater as "an art which reposes upon the work of many collaborators," Thornton Wilder observes: "The dramatist through working in the theatre gradually learns not merely to take account of the presence of the collaborators, but to derive advantage from them" (117). Tennessee Williams has traced this learning process in his own career. Like many inexperienced playwrights, he was at first excessively deferential toward famous performers; after his early successes he then went through a period of arrogant self-assertion; eventually he achieved a more mature attitude: while never forgetting that "Nobody knows a play better than the man who wrote it" (97), he learned to participate in a working partnership with the performers. This last is an attitude that John Guare shares. He welcomes the rehearsal of one of his plays: "everything should go through the director, but I don't want to hand my play over to a director and say, 'Do what you want, this is a libretto for your intentions.' I work with the director and the lighting designer, the set designer, the costume designer, to focus in so that everybody's telling the same story. That to me is what the theatrical experience is--the audience watching a group of people all trying to produce the same effect. It's truly democratic." (Savran, *In Their Own Words* 88). All the same, the "story" to be told is clearly Guare's.

Gibson makes a useful distinction between the creativity of playwrights and that of performers. That of a playwright is "primary": "where nothing was, he ordains a world" (113); that of performers is "secondary." The two are mutually dependent, but it is the solitary act of the playwright that is originating, that necessarily comes first. At the end of his career Tennessee Williams felt keenly the difficulty of keeping these priorities in order. While welcoming advice, he maintained: "I have the longest acquaintance with the play and I must not place anyone else's counsel regarding the script above my own." When at rehearsals he felt himself "an outsider to my own play" because "everyone else seems to be working but me," he reminded himself:

> for two or three years I was the solitary worker: all those working mornings--the bad ones when I wondered if a good working day would ever come again. With all these pressures upon me, I must try to remember that bittersweet time when my life was the play and the play was my life. (Smith 116)

Within the provisions of the standard contract, playwrights have found various ways of exercising the special authority that comes with primary creativity. As confirmed by Savran's interviews in *In Their Own Words*, American playwrights today have felt free to adapt their involvement in a production to their own predilections and those of their producers. At one extreme, Maria Irene Fornes insists on directing her own plays; at the other, Marsha Norman thinks "it would be ideal to have the first production done by people you really trusted but who were far away. You'd simply get on a plane and go see it" (187). In the real world, however, she reluctantly goes to rehearsals "out of self protection." Wallace Shawn agrees that an author should attend rehearsals to avoid being "totally shocked at what has been made of his play" since otherwise the audience members "will go to their grave believing that that was the way the author intended it" (213). But for the most part he advises authors to intervene only when "the director is doing something that violates your most profound beliefs about the play." David Mamet's involvement has varied from play to play. He worked closely with the production of *American Buffalo* whereas with *Edmond* he only "went to the first rehearsal and said hello to the cast and showed up at the opening" (138). Exercising their contractual prerogative, many of the playwrights have repeatedly chosen favorite directors, as Michael Weller did with Alan Schneider and Lanford Wilson has done with Marshall Mason, August Wilson with Lloyd Richards, Tina Howe with Carole Rathman, David Mamet with Gregory Mosher. Most rewrite readily during rehearsals; Shawn is not so inclined, however, explaining that his lines typically have not just one purpose but five and are so interwoven that any attempt to provide single-purpose lines on demand seems "so crude and bad and superficial it stands out." The contract has thus provided a firm yet flexible structure within which all concerned have usually been able to find a comfortable fit and get on with their work.

Problems, of course, do arise. David Rabe is frank to admit that his "intentions" in *Hurlyburly* were not at first clear to himself; it was only in the process of rehearsal that he realized that he and the director, Mike Nichols, were working at cross purposes: "the end result was something that was neither his nor mine and thus, I think, it didn't make a lot of sense at certain points" (200). With the first New York production of Sam Shepard's *True West*, produced by Joe Papp at the Public Theater, the difficulties occurred because true agreement was not reached between the producer and the playwright concerning the director and casting. Reservations were harbored on both sides that led to disagreements so acute that the resulting production was publicly disavowed both by its director and Shepard (Ferretti). In neither of these instances, however, was the problem with the prevailing system but with individual failures to clarify and resolve differences.

In general, thus, the Dramatists Guild contract supplies a sound framework for striking a working balance among priorities. By requiring agreement on essentials between Producer and Author, it recognizes the collaborative nature of the dramatic enterprise while insuring that the playwright may play a major and integral role in the performance process, decisive yet not all-dominating.

After the first, major production of a play, what should be the playwright's role? For revivals, the playwright is usually not physically present during rehearsals and try-outs or previews. As years pass, the play's relevance may need updating. What degree of control should the playwright exercise in these circumstances?

Legally, the matter is largely one of copyright (Nimmer). Article I, Section 8 of the United States Constitution vests Congress with the power: "to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." The right of "public performance in dramatic compositions" has specifically been so regulated since 1856. Current law, under the Copyright Act of 1976, guarantees playwrights absolute control over whether, where, or when their works are performed. Under this Act, the period of protection is the author's lifetime plus fifty years.

In the United States, these rights are financial. Many other countries, especially France and other Continental nations, also give distinct protection to various categories of "moral rights" to personal expression. Of these, the most pertinent is the "right of integrity," by which authors are protected from distortions of their works that would harm their "fame and reputation" (Stewart 59-61). Although the United States does not have an equivalent as such, playwrights have been able to resist such distortions through stipulations in granting permission for performance like those Edward Albee has made for *Who's Afraid of Virginia Woolf?* When objectionable plans are known in advance, a playwright (or heir or agent) may simply deny permission to perform, as when Samuel Beckett refused to allow an all-woman production of *Waiting for Godot*, on the grounds that such casting "made it something other than what he had written" (Bair 632). Once permission is granted, if the terms for permission have been violated, the playwright may take legal action against this infringement of copyright. This right has also been bolstered by the Lanham Act, which is designed to protect consumers from deception as to the source or origin of goods or services.[5]

In practice, the general rule for revivals has been for the play's dialogue to be carefully respected but for much more latitude to be allowed with staging and sets. In the words of Mel Gussow, a *New York Times* theater-critic, the script's stage-directions "are usually treated as suggestions rather than as

commands from the author."[6] Although many take this common practice to be definitive, there is reason to question whether this should necessarily be so.

This issue was at the heart of the dispute concerning the 1984 production of Beckett's *Endgame* at Harvard by the American Repertory Theatre (ART), directed by JoAnne Akalaitis. Much discussed in newspapers at the time, the dispute very nearly came to trial. As reported by Martin Garbus, Beckett's lawyer, ART had duly obtained permission to perform the play, on the express condition that "no changes shall be made in the manuscript or the book of the play for the purpose of your production"; the license agreement further stated that "failure to meet any of the conditions will result in the immediate and automatic withdrawal of this release" (Garbus 2). Incited by reports from his American agent and publisher Barney Rosset that these conditions had not been met, Beckett (who never saw the production) decided to take legal action against it. The ART, in turn, was prepared to go to court. An out of court settlement was reached only after around-the-clock negotiations.[7]

The main point of contention was the ART stage-design by Douglas Stein. Beckett's opening stage-directions are stark:

> Bare interior. Grey light. Left and right back, high up, two small windows, curtains drawn. Front right, a door. Hanging near door, its face to wall, a picture. Front left, touching each other, covered with an old sheet, two ashbins. Center, in an armchair on castors, covered with an old sheet, Hamm. Motionless by the door, his eyes fixed on Hamm, Clov. Very red face. Brief tableau.

Stein's striking set was elaborate. Kalb describes it as:

> a burned-out subway tunnel with implied windows high up, but no picture . . . Broken steel girders outline the top of the back wall, which is about twenty feet high and made of metal plates. Thus, each time Clov needs to look out of a window, he must climb all the way up this wall on two tall structural ladders. To the left and right are partial life-size subway cars, situated diagonally, no track in sight, as if strewn there by a tremendous explosion. Their windows have no glass and are charred at the top edges, indicating a fire. The electric lights on the cars are unaccountably illuminated, as are a line of theater striplights offhandedly lying in a rubbish pile in front of Nagg and Nell's ashbins. Centered in the floor of black mud is a large puddle that reflects the various stage lights, and beside the puddle is a charred human body. (88-89)

Part of the compromise, out-of-court settlement allowed Beckett to include the following statement in the playbill:

> Any production of *Endgame* which ignores my stage directions is completely unacceptable to me. My play requires an empty room and two small windows. The American Repertory Theater production which dismisses my directions is a complete parody of the play as conceived by me. Anybody who cares for the work couldn't fail to be disgusted by this.

In the playbill also was a statement by Robert Brustein, ART's artistic director, in which he maintained that "like all works of theatre, productions of *Endgame* depend upon the collective contributions of directors, actors, designers to realize them effectively, and normal rights of interpretation are essential in order to free the full energy and meaning of the play." And so the issue was explicitly joined: the subway set, which the ART lawyer James Sharaf later insisted "fell within a designer's legitimate right to interpret from the script" (Freedman, "Playwrights Debate") was found by the script's author to be "completely unacceptable." Whose rights should prevail? Legally, no resolution was reached, although both sides claimed some satisfaction; Brustein felt that "the solution is perfectly in keeping with our feeling that people have the right to express themselves freely and creatively"; Garbus felt that the "settlement would dissuade other theaters from veering from Mr. Beckett's text and stage directions for *Endgame*" (Freedman, "Endgame").

Aesthetically, the dispute calls in question the extent to which liberties should be taken with authorial stage directions, some of which may be as integral to the author's intention as the spoken words. As Gussow observes, while some plays have wildly fantastic directions that are very much open to interpretation, "a realistic play sets more stringent guidelines"; with Beckett, as with Pinter and Ionesco, the plays "are rooted in particular environments" organic to their meaning. Furthermore, stage directions often help the playwright to create a distinctive kind of theater experience for the audience. Garbus well describes the kind of experience indicated by Beckett:

> Everything is set in place for total concentration. There are no extraneous props, costumes or sounds. The drama has a crystal purity, providing its own insights, posing its own questions. It allows the audience to create their own personal vision of what is happening to the actors and to themselves. (2)

Convincingly, he argues that these values were diminished when ART "based its production on a contemporary milieu and experience." Even so sympathetic

an observer as Kalb, whose account of the production is the most detailed and appreciative available, acknowledges that: "Akalaitis makes it too easy for spectators to take intellectual possession of what they see as familiar and direct it toward ordinary or banal meanings. . . . The specificity of the new metaphor, the subway, does undercut some of the play's deeper resonances. Productions that occur in the bare room apart from any identifiable history or time convey a certain proud recalcitrance, a durability of symbol, that this production lacks" (90-1).

In statements to the press apart from those in the playbill, Brustein went further than claiming "normal rights of interpretation," to assert that the production brought "new values to an extraordinary play" (Freedman, "Associates") and later to look back on the dispute as part of "a growing conflict between playwrights who insist on a very pure rendering of their work, years after it was written, and theater companies that are inspired by visionary artists to bring something new to the play" (Freedman, "Who's To Say"). In Garbus' view, a playwright has the legal right under the Lanham Act to repudiate a distorted production as "a false representation and a deception upon the public." Simple truth in advertising would seem to point to labelling the ART *Endgame* an "adaptation," which would have satisfied Beckett, but which ART refused to do. Instead an elaborate--and from the public's point of view unsatisfactory--compromise was reached whereby Beckett's name was not used in advertising unless the playbill statements were also published. Unsuspecting playgoers who knew only that *Endgame* was to be performed may have felt that it was late in the day to be told, as they opened their playbills, that they had paid their money to see what the author regarded as a "parody" of his play.

Although the result was compromised, the support that the law provided the playwright seems again to have been aesthetically justified. It is of course conceivable that a performer might hit upon a production idea that would constitute a genuine improvement on the original yet that the playwright would not recognize as such. Where this was plausible, one would hope that playwrights would follow Beckett's example and be willing to modify their right to prohibit production, as long as the production was clearly labelled an "adaptation."

In New York, another back-stage drama was under way at about the same time as the one in Cambridge, in which another famous playwright felt that his work was being parodied. At issue was the experimental Wooster Group's use of Arthur Miller's *The Crucible* in *L.S.D. (. . . Just the High Points . . .)*, directed by Elizabeth LeCompte. At stake were the rights of a playwright when his or her work is in the hands of performers whose intentions are not interpretive but frankly adaptive, to the point of being deconstructive.

The Wooster Group never received permission to perform *The Crucible*. Initially, in 1983, they presented work-in-progress rehearsals open to the public, in which they performed a 45 minute version of Miller's play, using the final sections of its four acts, preceded by the playing of 20 minutes of excerpts from Timothy Leary's record album *L. S. D.* In the face of resistance by Miller, they then reduced the Miller excerpts to 25 minutes (hence "Just the High Points" in the title) as part of an enlargement and reworking of the whole piece completed in 1984; it included a later segment designed to "disintegrate" Miller's play by reenacting a drugged rehearsal they had videotaped: "Duplicating exactly their actions on the videotape, the performers drink, smoke and party while fragments from Act III of *The Crucible* surface in a fitful rhythm" (Savran, *The Wooster Group* 200). When Miller threatened legal action against this revised version, LeCompte, having offered to perform the 20 minute portion in pantomime, then reduced the dialogue of the portion to gibberish. Finally, she substituted parts of a play written for this purpose by Michael Kirby, *The Hearing*, which updated the witch-hunt to the 1950s. Parallel passages in *The Crucible* were announced by act and scene so that spectators might follow the Miller text in the copies of the play that were placed behind chairs in the audience; "accidental" slips by the actors into Miller's language were silenced by a buzzer (Aronson 70). In January, 1985, when Miller's lawyers still demanded that the Group cease and desist performance, threatening a suit "based upon all past, present and future performances," *L.S.D. (. . . Just the High Points . . .)* was closed.

Such reworkings of classics is a feature of the Wooster Group. Parts of *The Cocktail Party* and *Long Day's Journey into Night* were similarly incorporated into other works; *Our Town* was controversially juxtaposed with black-face routines and pornography. Like other features of the Wooster Group's work, there is a deliberately transgressive aspect to these appropriations. Savran aptly subtitles his book on the Group: "Breaking the Rules."[8] LeCompte's attitude toward the classic plays she has appropriated appears not to be simply challenging; she has expressed affection and admiration for them as well. But her ambivalence results in treatments that are at the least disturbingly interrogatory of the plays as cultural icons, and the contexts the Wooster Group invents characteristically undercut the affirmations of the originals.[9]

What legal defense does a playwright have against unwelcome appropriation? Miller is the only living playwright whose work the Group has thus far used. His stated objections were at first mainly economic. According to members of the Group, Miller seemed "bemused" after seeing the 45 minute version. Through his agent, he a few days later refused performance rights on the grounds that "extensive use of language, characters and scenes amounts to an unacknowledged 'complete' rendering of the play" which "might tend to

inhibit first-class productions" of it. To a reporter he referred to it as a "blatant parody" (Massa). Later, he is reported to have said that his real reasons were artistic: "I'm not interested in the money. The esthetics are involved. I don't want the play mangled that way. Period" (Shewey).

Regarded simply as an "abbreviation" (Miller's word) of *The Crucible*, the Wooster Group's 45 and 25 minute abstracts obviously infringe upon Miller's copyright since they were performed without his permission. Savran does not challenge the legality of Miller's prohibition, but he does attack its aesthetic justice:

> Miller's own reading of the play is distinguished from all others not because it is more correct but because it is empowered with the force of law. By insisting on his own interpretation, Miller has, ironically, aligned himself with the very forces that *The Crucible* condemns, those authorities who exercise their power arrogantly and arbitrarily to ensure their own continued political and cultural dominion. (*Wooster Group* 219)

Harsh words! But a production is not equivalent to a "reading." The sorts of interpretive freedom enjoyed by a reader or spectator cannot be simply extended to performers because in a performance there is an element of *presenting* a playwright's work as well as interpreting it, and the two are not readily distinguishable. Furthermore, Miller has not indicated that there is only one "correct" way of presenting his play; he has denied that view: "I am not saying that every production has to be the same. That would be boring. But if the playwright or his representatives say the spirit of the play is violated, that's got to be honored. When the playwright's alive he's got to know best" (Freedman, "Who's to Say"). And since a work is identified with its author, doesn't he--like John Proctor in the play--have the right to protect his "name"? Miller's summary seems to me sound: "Maybe at some point in the future the play will become a kind of public classic. But I'm still around and I should have a say about how the play is done as long as I am" (Freedman, "Play Closed").

There is more of a legal question, however, concerning the final versions, which were undertaken in consultation with a copyright lawyer, especially the version employing Kirby's "The Trial," since the law protects "derivative" works such as parodies as long as the derived work is not too close to the original and displays a considerable degree of independent creativity.[10] If the Wooster Group had begun with its final version, it might well have been legally defensible and thus allowed Le Compte to fulfill her aim of using "irony and distancing techniques to cut through to the intellectual and political heart of *The Crucible*" (Savran, "The Wooster Group" 102). However offensive this

dissection may have been to Miller, it seems to me aesthetically justifiable as well since no work should be exempt from appraisal, even if the appraisal is to a degree in its own identifiable terms, whether by way of criticism or homage.

In both the Beckett and Miller disputes, the problems arose from the performers taking the same sorts of liberties that, without legal challenge, they may take with classic plays in the public domain. Why should contemporary "classics" be treated any differently? What finally justifies a living playwright's acting as arbiter of stage interpretations of his work? In the *Endgame* dispute, the celebrated constitutional lawyer, Lawrence H. Tribe, charged that Beckett, in violation of the first amendment rights to free expression of the ART performers, was trying to act as a "censor." But is it "censorship" for Beckett to oppose what he regards as the misrepresentation of his own work? And what of Beckett's own rights? Do not performers who alter his explicit directions deny or vitiate his freedom of expression? I would argue that in cases of conflict it is to the benefit of society to give precedence to the playwright. For as the history of the theater shows, it is the great playwrights who have led the way in redefining what is "dramatic" for their times and in enlarging the range of dramatic possibility for times to come. The innovations of great performers have been less freshly original and enduring, tending to "date" rapidly. Even great dramatists, however, eventually lose their currency. Miller seems to me right in repeatedly referring to his lifetime as the limit of his artistic control. Legally extending copyright fifty years beyond the owner's lifetime properly protects the financial interest of heirs. But where aesthetic control is concerned, I would propose that a play in effect enter the public domain when its playwright dies, whether by law or common understanding.[11] It seems unwise to try to retain interpretive control after that, as did Tennessee Williams in his will:

> no play which I shall have written shall for the purpose of presenting it as a first-class attraction on the English-speaking stage, be changed in any manner whether such change shall be by way of completing it, or adding to it, or deleting from it, or in any other way revising it, except for the customary type of stage directions. (Garbus 2)

Should an heir or agent exercise such total control? Who but the playwright can truly say whether changes are or are not true to the spirit of the work? As times and styles change, there is more and more need for renovative mediation between the play and its audience. In turn, performers might refrain from attempting to update plays whose authors are still alive, without explicit approval in advance, devoting more of their efforts instead to plays

already in the public domain and labeling their freer versions with phrases like "adapted from" and "based upon."

There is a final way in which American law and the views of playwrights can enlighten theory about the performance process. The law's large-minded concern for both the general good and individual incentives to create raises a question not often asked in current theory: why should an author labor to make from nothing works that are no more than raw materials for others to do with as they will?[12]

Here the testimony of film scriptwriters is a help. It should give pause to those inclined to erode the rights of playwrights. Traditionally, reversing the theater's pattern, it is the screenwriters' work that has been done "for hire." As F. Scott Fitzgerald's hack screenwriter Pat Hobby put it, with unconscious irony, in films "They don't want an author. They want writers--like me" (Fitzgerald 149). Playwrights who have worked as screenwriters often celebrate the job-satisfactions of artistic control that the Dramatists Guild contract insures while lamenting the (highly paid) frustrations of Hollywood, when that control is lost. Peter Stone points out that since someone else owns the copyright, "You have sold away your right of approval. They can do anything, and will, without consultation" (Kanin, 31). The novelist William Goldman, who wrote the film *Butch Cassidy and the Sundance Kid,* has expressed the sense of "mourning" he feels at parting with a screenplay, over which he will have no say whatsoever at any future stage of its career (399-403).

Certain screenwriters have countered these frustrations by becoming directors as well (Robert J. Thompson has recently shown that the same is true of certain writers for television). Lately, the auctioning of screenplays written on speculation has come into practice (Harmetz). The author runs the risk of writing for nothing; but when successfully carried out, this method can yield not only millions of dollars but the satisfactions of artistic creation through informal rights of approval. Joe Eszterhas, who wrote *Jagged Edge*, and John Patrick Shanley, who wrote *Moonstruck,* are two screenwriters who have in this way succeeded in defending their scripts against changes proposed by stars and directors. To be sure, they do not have the independent authority stipulated in the Dramatists Guild contract; they are dependent on the moral support of their producers. But they are by no means in so abjectly subservient a position as William Goldman has depicted: "I'm always nice to Dustin Hoffman--he can fire me" (*Hype* 101). The disincentive to productive work of such subservience has been expressed by Shanley: "It means from the day you start to write, somebody else owns what you write. They can take it away from you anytime they want, they can tell you how it should be changed. But, even more basic--in the soul of a human being--if you know that every word you write belongs to somebody else, it doesn't make you feel very good

and I don't think it makes you do your best work" (Dent 16). Eszterhas emphasizes the positive side of the same coin. With the elation of fresh discovery, he finds that the independent screenwriter has as impetus: "Your belief in what *you* are saying. Not what the studio is saying. Not what the producer is saying. Not what the director is saying. Not what the actors are saying. You. Alone" (H12). The co-writer of *Rainman*, Ron Bass, enters more readily into collaborative partnerships, taking it as a challenge when dealing with someone's else alternative notion "to go beyond what I thought was good and make something that's brand new, that's better for him and better for me." Even Bass, though, cherishes writing his first draft: "Just for me, I write it just my way, it's heaven. That's the thing I would really do for nothing" (Dorff 31). Deploring the usual, assembly-line system, Goldman discerns that what is at stake is nothing less than the writer's creative urge: "if you are the kind of weird person who has a *need* to bring something into being, and all you do with your life is turn out screenplays, I may covet your bank account, but I wouldn't give two bits for your soul" (*Adventures* 78).

A decisive role for playwrights in the production process thus not only derives from their primary creativity but fosters it. This may be the deepest guidance that the law's wisdom and the views of playwrights can give performance criticism.

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Notes

1. In *Shakespeare the Theatre-Poet* I make this suggestion, surveying a range of performance theorists (7-12) and categorizing the various roles that Shakespeare and other playwrights through the centuries have played in the performance process (49-60).

2. Rabkin helpfully ventilates many of the issues discussed here, especially emphasizing analogies with literary theory. Himself a lawyer, Garon emphasizes legal aspects, particularly the rights of performers; he has not found a single case litigated in which a playwright alleged improper interpretation of his script (286).

3. Middleton gives a first-hand account of the institution of the contract (299-373); its terms are periodically renegotiated with the League of New York Theaters and Producers, with royalties a particular issue (Kanin 27-28).

4. See also Gray's accounts of the first productions of *The Common Pursuit*, Odets' diary of his failure, *Night Music*, and the interviews with contemporary women playwrights by Betsko and Koenig.

5. Eysner reports the 1976 suit in which the Monte Python scriptwriters won an injunction from the United States Court of Appeals, based on Section 43(a) of the Lanham Act, against broadcast of their work from which unauthorized cuts had been made.

6. Notice, however, that the standard contract in the clause quoted above gives the playwright control over "stage directions" among other features that may have been altered during rehearsals.

7. There were a number of points of difference, including introductory and incidental music by Philip Glass (the use of which was made clear in the request for permission) and ART's usual "color-blind" casting of white and African-American actors. The latter prompted a denunciation of Rosset by Actors Equity to which Rosset responded that "taking all the factors together--that the father and son were black and the mother was white--added a dimension to the play Beckett had not put there" (Freedman, "Actors Equity"). Complicating factors in the background were a series of freewheeling productions of Beckett done by Akalaitis and her associates in the Mabou Mines company, plus other recent productions of *Endgame* that were much more freely interpretive than ART's. Hitherto, Beckett had taken no legal action against such productions but contented himself with wry criticisms and indirect (but effective) resistance to performances in France of Andre Gregory's 1973 environmental production in which spectators were caged by chicken wire. Beckett's general position was summed up by Bair in her 1978 biography: "whenever possible, he tries to maintain absolute control over all productions; when not possible, he ignores them" (634). He had accordingly instructed his zealous agent Rossett that "he would not interfere with productions of his plays on aesthetic grounds even if he had the right to do so, because, once started, there would be no end." For instance, Beckett is said to have known and done nothing about Marcel Delval's 1984 *Endgame* in Brussels, which was staged in waist-deep water (Kalb 92). Productions of *Endgame* with which Beckett himself had been associated had not been strictly in accord with the printed directions. According to Ruby Cohn the set for the production Beckett directed was "spare rather than bare" (239); he accepted the ornate design of the George Devine production in London as being in keeping with his English translation as contrasted with the harsher French original (Bair 499-500). It's not clear why Beckett took particular exception to the ART version.

8. For example, in *Rumstick Road* LeCompte and the actor Spalding Gray deliberately violated confidences. After telling the audience that his grandmother asked him not to play a tape of her reading Mary Baker Eddy, Gray proceeded to do so. Later he played a tape he had made of a telephone conversation with his mother's psychiatrist about her electric shock therapy; the tape was made without the doctor's knowledge, and its public presentation, needless to say, did not have his approval.

9. Savran, *The Wooster Group*, Part III. See also Auslander and Erickson.

10. The relative rights due the original and the derivative works is a favorite current issue among lawyers; volume after volume of the annual *Copyright Law Symposium* includes an article on the subject. Bernstein's is of particular interest because it includes not only parodies but "serious and substantial" secondary uses, such as Woody Allen's tribute to Fellini's *8 1/2* in *Stardust Memories*.

11. French law, for example, keeps moral rights distinct from financial ones; in France, "droit moral" is perpetual.

12. Compare the 1986 opinion of the Seventh Circuit Court of Appeals in the case of Baltimore Orioles v. Major League Baseball Players, *Federal Reporter, Second Series*, vol. 805. St. Paul, Minn.: West, 1987. 678 (cited in Garon 283):

> The purpose of federal copyright protection is to benefit the public by encouraging works in which it is interested. To induce individuals to undertake the personal sacrifices necessary to create such works, federal copyright law extends to the authors of such works a limited monopoly to reap the rewards of their endeavors.

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