

2010

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Recommended Citation

Schmidt, Theron, 'We Say Sorry': Apology, the Law and Theatricality, *Law Text Culture*, 14, 2010, 55-78.

Available at: <https://ro.uow.edu.au/ltc/vol14/iss1/5>

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Abstract

When ideas about theatre are used to describe political events, the theatrical is usually made to stand for that which is undesirable, inauthentic and empty about political life: we might describe a particular speech or gesture as 'only theatre', or use language such as 'playing politics' or 'political drama' to denounce the way self-referential questions about character or personal intrigue have obscured the 'real' issues of politics. In contrast to this dismissive usage, I would like to explore the ways that theatricality's apparent failures or shortcomings might be themselves generative of political potential. My approach here is to consider certain problems of speech and gesture in the political realm as essentially theatrical problems – problems for theatre, but also ideas that theatricality makes problems of – such as problems of representation, authenticity and spectatorship. I will explore the theatricality at work in three examples of publicly performed discourse: Kevin Rudd's official apology in 2008 to the Indigenous peoples of Australia; a gallery artwork by Carey Young which, in its entirety, is a legal disclaimer of its status as art; and a text and video work by Lebanese-born artist, Rabih Mroué, in which the artist offers an apology for the Lebanese civil war.

‘We Say Sorry’: Apology, the Law and Theatricality

Theron Schmidt¹

When ideas about theatre are used to describe political events, the theatrical is usually made to stand for that which is undesirable, inauthentic and empty about political life: we might describe a particular speech or gesture as ‘only theatre’, or use language such as ‘playing politics’ or ‘political drama’ to denounce the way self-referential questions about character or personal intrigue have obscured the ‘real’ issues of politics. In contrast to this dismissive usage, I would like to explore the ways that theatricality’s apparent failures or shortcomings might be themselves generative of political potential. My approach here is to consider certain problems of speech and gesture in the political realm as essentially theatrical problems — problems *for* theatre, but also ideas that theatricality makes problems *of* — such as problems of representation, authenticity and spectatorship. I will explore the theatricality at work in three examples of publicly performed discourse: Kevin Rudd’s official apology in 2008 to the Indigenous peoples of Australia; a gallery artwork by Carey Young which, in its entirety, is a legal disclaimer of its status as art; and a text and video work by Lebanese-born artist, Rabih Mroué, in which the artist offers an apology for the Lebanese civil war.

Each of these examples is a variation on apology: Rudd’s is an official gesture of the state, and also the fulfilment of an election campaign promise; Young’s is a pre-emptive disavowal for any potential

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misunderstanding; and Mroué's is an apparently personal confession, but one which complicates its authenticity through its presentation as a work of art. All three consist entirely of spoken or printed text, and all invoke a legal framework that appears to elevate the potency of the words from that of everyday speech. This ability of certain words spoken in certain contexts to have a special kind of effectiveness was analysed by the philosopher of language, J L Austin, who described these kinds of speech-acts as 'performative'. In such contexts, Austin noted, utterances are capable not only of referring to actions in the world but also of performing actions in and through the utterance itself, such as marrying two people, pronouncing a verdict, or issuing an order or prohibition. In contrast to ordinary statements, which have the capability to be true or false, Austin argued that performatives are distinguished by their susceptibility to 'infelicities': 'things that can be and go wrong on the occasion of such utterances' (Austin 1965: 14). For Austin, an infelicitous utterance, rather than being false, would be 'unhappy'. Because of this concern with infelicity, Austin excluded from the category of performatives any deliberately infelicitous or ambiguous speech acts, such as speaking on stage or in works of literature, calling these 'parasitic uses of language' and therefore 'not serious' (22, 104).

I will use Austin's categories as a starting place for the comparison of my three examples, as each seems to fit Austin's description of doing something by nothing more than the pronouncement of certain words: an apology is made, a legal agreement is undertaken, a confession is declared. However, whereas Austin would say that something different is going on in the official apology, compared with the two examples that are 'not serious' (the two artworks), I will argue that all three share a theatrical quality that complicates the apparently self-fulfilling autonomy of Austin's performative. Underpinning the happy performance of law, I will argue, is a mutually supportive relationship between authority and authenticity. I will suggest that by placing ourselves in the same position toward Rudd's apology as we do toward these seemingly 'not serious' apologies, this relationship is exposed. In this way, what I offer is not so much a critique of whether Rudd's apology is a 'good' or 'happy' performance, but instead a way

of thinking about the theatrical politics of the event itself and our relationship toward it.

The Apology

As leader of the Australian Labor Party, Kevin Rudd promised to issue an official apology to Australia's Indigenous peoples as part of his campaign during the 2007 federal election. The voting into power of the Labor Party brought an end to eleven years of Government under the Liberal Party's John Howard, who had stubbornly resisted growing public pressure to issue such an apology. A year after taking power, Rudd honoured his commitment. Issued as an act of Parliament, the Prime Minister's apology was televised live throughout the country and was a national (and international) event; 'parliamentary business became spectacle, spilled into the community to become compelling social performance', wrote theatre scholar Gay McAuley (2009: 48). Here is an excerpt from the official transcript of Rudd's apology:

Apology to Australia's Indigenous Peoples

House of Representatives

Parliament House, Canberra

13 February 2008

— I move:

That today we honour the Indigenous peoples of this land, the oldest continuing cultures in human history.

We reflect on their past mistreatment.

We reflect in particular on the mistreatment of those who were Stolen Generations — this blemished chapter in our nation's history.

The time has now come for the nation to turn a new page in Australia's history by righting the wrongs of the past and so moving forward with confidence to the future.

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We apologise for the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians.

We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country.

For the pain, suffering and hurt of these Stolen Generations, their descendants and for their families left behind, we say sorry.

To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry.

And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry.

We the Parliament of Australia respectfully request that this apology be received in the spirit in which it is offered as part of the healing of the nation.

For the future we take heart; resolving that this new page in the history of our great continent can now be written. ...

A future where all Australians, whatever their origins, are truly equal partners, with equal opportunities and with an equal stake in shaping the next chapter in the history of this great country, Australia.

In purely technical terms, this apology is exemplary. It demonstrates none of the typical pitfalls of public apologies, such as those outlined by philosopher Nick Smith (2008) in his wide-ranging treatise on apology, *I Was Wrong: The Meaning of Apologies*. Smith's book is designed to help understand the usefulness of apologies at a time when every month seems to bring another news report of some bungled apology, or failure to 'properly' apologise, by a Western political leader or celebrity. Often these fail to satisfy because they are offered conditionally, as in 'I apologise *if* I caused offence' or, even worse, because they shift responsibility onto the offended party, as in 'I apologise if *you* took offence'. Smith gives the example of Pope Benedict's disastrous

attempts in 2006 to remedy the offence caused by the inclusion in one of his speeches of a passage that criticised Muhammad. Subsequent statements by the Vatican and the Pope were consistently rejected as being not properly apologetic, which is hardly surprising given that these statements included phrases such as: 'I am deeply sorry for *the reactions* in some countries to a few passages of my address ...' (Smith 2008: 5-6, my emphasis). Rudd's apology makes no such blunders, and instead seems to satisfy all twelve of Smith's conditions for 'the categorical apology', including such dimensions as 'acceptance of blame', 'shared commitment to moral principles underlying each harm', 'categorical regret', and 'an appropriate degree ... of empathy and sympathy for the victim' (140-5). It is certainly a more satisfying declaration than the Howard Government's 1999 'Motion of Reconciliation', which used the word 'regret' but pointedly refused to include the word 'sorry'.

Despite its technical proficiency, the political value of Rudd's apology has been widely criticised. Many reactions to the apology argue that without changes in policy, the apology itself is meaningless — an example of what I alluded to in my introduction as 'only theatre'. Political commentator Tara McCormack, for example, noted that the new Rudd Government's policies toward Indigenous peoples in the Northern Territory were essentially the same as those of the Howard Government, continuing to adopt a paternalistic, interventionist tone. McCormack writes, 'Rhetoric costs nothing; Rudd's apology can be seen as an attempt to appease people's consciences on the cheap' (McCormack 2008). Writing from a legal theory perspective, Alex Reilly (2008) argues that Rudd's apology effectively historicises any wrongdoing, leaving unchallenged the concept of absolute state sovereignty that led to the wrongdoings in the first place. And Gay McAuley regrets that the convergence of Aboriginal and Islander representatives, who assembled at Parliament to protest ongoing Government policies, has been largely ignored (McAuley 2009: 60-2).

I agree with these criticisms, and the failure of the Rudd Government to change its course of action in keeping with its apology would, in Austin's terms, render the apology 'infelicitous': the speech-

act properly considered must include what Austin calls ‘the total speech situation’ (Austin 1965: 147, also 52), including the context and conventions for the utterance as well as the future actions of all parties. However, as I will argue, Rudd’s speech seeks to frame itself as an autonomous, self-completing performative, one that exhaustively fulfils the requirement of apology in order to draw a line under the action of past Governments and, in Rudd’s words, to turn over a ‘new page’ for the future. For this reason, I want to look more closely at the performative elements of the apology itself, rather than cataloguing the failure of action to accompany the apology. If the act is ‘only theatre’, then what might this act of apology reveal about the state’s ability to perform itself, to make itself present? What contradictions might be exposed between the authoritative autonomy of the performative and its more theatrical appeal to emotional sympathy?

Looking again at the text of Rudd’s speech, we find that it is full of uses of language that Austin would identify as performative, in such expressions as ‘we honour’, ‘we reflect’, ‘we request’ and, of course, the three repetitions of ‘we say sorry’. These can be further categorised according to sub-categories proposed by Austin. For example, the repeated central apologetic utterance — ‘we apologise’ — represents instances of what Austin describes as the *behabitivie* type, ‘a kind of performance concerned roughly with reactions to behaviour and with behaviour towards others and designed to exhibit attitudes and feelings’ (83). But these instances are framed within an ever-expanding bracket of other speech-acts. The speech is suspended within the clause, ‘I move’, which is uttered by Rudd in his role as Prime Minister and Government leader and would be classified by Austin as *exercitive* — ‘the exercising of powers, rights, or influence’ (150). The event also begins with additional procedural performatives not recorded in the published text, but seen in the officially archived video: the Speaker of the House recognises the Clerk, who announces the motion, and then the Speaker recognises the Prime Minister. These acts of recognition are fundamental to the proceedings: if the words are not spoken and the people who speak them are not present, then the event does not count. Expanding the frame further, the execution of the apology is the

fulfilment of Rudd's campaign promise, so the whole event is further bracketed within the class of *commissives*, the name Austin gives to promises, contracts and oaths (156-7). And indeed, the fact that it is Rudd rather than the leader of the opposition who is Prime Minister is the consequence of millions of individual speech-acts, each with their own requirements for felicity and authentication, consisting of individuals declaring 'I cast my vote for [candidate X]'.

In Austin's analysis, not all of these performative types have the same degree of obvious performativity and he proposes a valiative spectrum along which different kinds of speech-acts would fall. At one end, Austin identifies the verdictive or exercitive types, in which an authority's pronouncement is judged to be successful (that is, felicitous) based on seemingly obvious and verifiable criteria such as whether the person is authorised to make such a judgment or pronouncement. However, the behabitive category, to which apologies belong, falls within the more problematic end of the spectrum; Austin calls these 'troublesome' because they have 'special scope for insincerity' (151, 159). The criteria for judging these as successful — again, in Austin's sense of whether one could definitively conclude that the act was happily performed — are less obvious and verifiable. The person must mean what they say, but how can we know this? And the listener must believe what they hear — but again, which listener, and how do we know what they believe?

Throughout his search to define the performative, Austin gives ontological priority to those utterances that most exemplify a kind of purity and self-sufficiency, in which the actual action takes place at precisely the same time as the words are spoken. So, for example, he makes a distinction between the utterance 'I apologise', which is a pure performative, and 'I am sorry', which is 'not pure but half descriptive' (79). 'I am sorry' is less pure for Austin because it might more accurately be understood as a statement about the speaker rather than the performance of apologising (134). He gradually abandons his initial distinction between performatives and descriptive statements (149), but maintains a distinction between three different

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kinds of performative forces that may be involved in every utterance: its locutionary dimension, the extent to which it performs an act *of* saying something; its illocutionary dimension, the extent to which it performs an act *in* saying something; and its perlocutionary dimension, the extent to which it performs an act *by* saying something — with this last component including all the intended and unintended consequences, interpretations, and inferences of a speech-act (91, 99). In this expanded consideration of performative discourse, however, the illocutionary retains a special privilege for Austin: all utterances are locutionary, and any utterance may manifest perlocutionary effects, but only certain utterances have an illocutionary dimension. Whereas Austin would demarcate the illocutionary effects of a speech-act from its perlocutionary ones, the example of Rudd's apology reveals how the two are intermingled and mutually dependent; indeed, I would like to propose that the way in which it *appears* to be illocutionary — to have achieved the act of apology through the saying of the words in the carefully controlled circumstances — might be understood as itself a perlocutionary effect.

Returning to Austin's valuative spectrum of performatives, I would note that the critical attribute at the exercitive end of the spectrum is *authority*: is the person authorised to perform the speech-act? At the other end of the spectrum is *authenticity*: does the person mean what they say, or might they be 'not serious'? At first glance, the exercitive type would seem to possess the self-sufficiency, the autonomous authority, that would exemplify the apparent immediacy of the purely illocutionary: the law is what the legal authority says.² But in Rudd's apology, I would argue that the two kinds of performatives are intermingled and mutually dependent upon each other. For the state to apologise, the rules for exercitives would stipulate only that the words 'The State apologises' be passed by Parliament. But such an apology would clearly be insufficient, and its failure to demonstrate authenticity would undermine the authority of the state. As Austin acknowledges, an apology cannot be felicitous without knowing whether its sentiment is meant by the speaker; but the only way to demonstrate conviction is through acts which are more and more prone to infelicity — which

are, for example, statements about the speaker. For the illocutionary dimension of Rudd's apology to be successful — that is, felicitous — that success must be based on his perlocutionary proficiency, on his performance of sincerity. In this way the closure of the act never exists; it has a kind of deferral away from itself, a prolongation away from the purely illocutionary 'We say sorry'.

In fact, the core apology — the motion tabled in Parliament and excerpted above — was presented within the context of a longer event, and Rudd's speech carried on for another thirty minutes. In the remainder of his speech, Rudd addressed the question of why an apology is necessary and deployed a range of rhetorical techniques to answer this question. These include recounting the story of one woman from the Stolen Generation who was taken from her parents in the 1930s by Government agents; quotations from egregiously racist Government policies of the past; and finally, an argument about reconciliation, which is articulated in terms of promoting a core Australian value, what Rudd calls 'a fair go for all'. Rudd makes the following appeal:

I ask those non-Indigenous Australians to imagine for a moment if this had happened to you. I say to honourable members here present: imagine if this had happened to us. Imagine the crippling effect. Imagine how hard it would be to forgive. But my proposal is this: if the apology we extend today is accepted in the spirit of reconciliation, in which it is offered, we can today resolve together that there be a new beginning for Australia. And it is to such a new beginning that I believe the nation is now calling us.

The purely illocutionary moment of apology is supplemented with rhetorical extension, becoming less a single performed act and more an extended sequence that might suitably be described as 'theatrical'. Paradoxically, this perlocutionary supplementation is both necessary for the success of the performative, and at the same time detrimental to the purity of that illocutionary autonomy. The version of the state that is presented here is no longer composed of self-contained and self-determining actions but instead consists of statements about other people. Rudd's speech becomes crowded with voices and characters,

including the dramatic narrative of a particular Indigenous woman, the invoked presence of his non-Indigenous listeners, and claims on behalf of, and appeals for sympathy from, Australia's non-Indigenous citizenry. That is to say, the state is rhetorical.

This is the kind of conclusion drawn by two of the more prominent re-interpreters of speech-act theory, Jacques Derrida and Stanley Fish. For Derrida, Austin's attempt to distinguish between performatives that are more prone to infelicity and those that are less prone (and more autonomous) prevents Austin from recognising his own most crucial insight. Rather than excluding the risk of infelicity as 'accidental' or 'exterior', Derrida declares such possibility to be the 'law' of utterance, the law of communication itself; infelicity 'is *always* possible, and is in some sense a necessary possibility' (Derrida 1988a: 15, original emphasis). For Derrida, there is no possibility of an Austinian 'pure' performative: 'a successful performative is necessarily an "impure" performative' (17). In a related argument, Derrida considers the illocutionary act that is the US Declaration of Independence — which, like Rudd's apology, is an act of state attempting to articulate itself. Derrida asks, 'who signs, and with what so-called proper name, the declarative act that founds an institution?' (Derrida 2002a: 47). The signer is authorised to sign, Derrida claims, only by virtue of the signature that he or she has not yet made; Derrida describes this as 'a sort of fabulous retroactivity', deliberately suggesting connotations of 'fabricated' and 'fable-like' (50; see also Derrida 1992). For Derrida, such a speech-act functions as *both* a constative and a performative, and the confusion between the two functions is not accidental but necessary: 'This obscurity, this undecidability between, let us say, a performative structure and a constative structure, is *required* to produce the sought-after effect' (49, original emphasis).

Stanley Fish expands Derrida's arguments, emphasising that it is not only Austin's distinction between performative and constative that is unsustainable, but also the distinction between 'serious' and 'not serious' utterances. Fish revisits Austin's declaration that 'not serious' utterances lack the autonomy of true performatives and are somehow

'parasitic' upon their capacity. Fish remarks:

The reasoning behind this declaration is clear enough: a speaker in a poem or an actor on a stage does not produce his utterance with a full and present intention but with the intention of someone behind him, a poet or a playwright; his is a *stage utterance*, and [the argument would be that] in order to get at its true meaning we have to go behind the stage to its originating source in the consciousness of the author (Fish 1989: 49, original emphasis).

However, Fish continues, we are always and already at such a remove: 'If by "stage utterances" one understands utterances whose illocutionary force must be inferred or constructed, then all utterances are stage utterances, and one cannot mark them off from utterances that are "serious"' (49). It is, of course, vital to the functioning of 'serious' discourse that it designate itself as having a special access to the real, but, for Fish, these are characteristics of genre rather than ontological distinctions (Fish 1980: 231-44).

The connection to which I want to draw particular attention is that between sincerity and authenticity, on the one hand, and authority, on the other. In Austin's illocutionary examples, authority is something that is objectively known, and the authenticity of a speech-act is then a function of the authorising circumstances. But in the case of Rudd's apology, the fact of having authority of office is not enough: a display of authenticity is required to legitimate the apology, and Rudd must 'play the part' of the remorseful representative of the state. Looking more broadly, we might see this interdependence between authority and authenticity to be frequently at play, each appearing to be self-constitutive but ultimately depending upon the other.

Authenticity presents itself as self-sameness, the quality of a thing or person or action to be what it purports to be, but precisely when this self-identity is most critical, we often find that it must be guaranteed by reference to some external authority: an oath on the Bible, the veracity of a signature, the testimony of an expert. Conversely, authority is seen to be dependent on authenticity: one must behave as an authority is expected to behave. In Rudd's case, this co-dependence is manifested

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in the way that the framework of democratic ritual and the rhetorical signifiers of sincerity are mutually supportive, each deriving legitimacy from the other. These gestures work to cover over and conceal other measures of legitimacy, such as changes in actual policy, or the Aboriginal and Islander representatives gathered outside. But, I have argued, the performance of apology has a structural ambiguity that cannot but be revealed, even as (and perhaps especially as) it works to obscure. I want to turn now to two other examples of performative speech acts, each of which deliberately exposes this ambiguity — not by obstructing, perverting or subverting the act of apology, but by revealing the logic that is already at work within the act.

Theatricality

Carey Young's *Disclaimer* series (2004) is a set of three works of art consisting only of printed text that borrows the discursive authority of legal disclaimers. On the surface, these declarations appear to have all the necessary characteristics of an Austinian performative. For example, the element titled *Ontology* reads as follows:

This piece is provided 'as is'. The artist does not represent this to be a work of art. S/he hereby disclaims any liability for considering this piece as a work of art and excludes any guarantee or warranty, both expressed or implied, as to the fact that this may be exhibited or marketed as a work of art (Young 2004).

Like many of Young's works, *Disclaimer* interrogates the status of the work of art within legal and economic frameworks and was created in close consultation with legal experts. In its exploration of context, her work recalls the Conceptual art of the 1960s that began to treat the encounter with the spectator as part of the domain of the work. At that time, art critic Michael Fried famously dismissed this tendency as 'basically a theatrical effect or quality — a kind of *stage* presence' (Fried 1998: 155, original emphasis). Fried describes this theatrical effect as a result of 'the special complicity that the work extorts from the beholder':

Something is said to have presence when it demands that the beholder take it into account, that he take it seriously — and when the fulfilment of that demand consists simply in being aware of the work and, so to speak, in acting accordingly (155).

This sounds like an accurate description of what is going on in Young's *Disclaimer*, and no doubt Fried would hate it. Fried condemned the tendency toward theatricality, declaring that modernist art must 'defeat or suspend theater' (160) in order to make it possible for art to be a space in which we can escape the literalism of everyday life and achieve a kind of 'grace' (168).

Even amongst those who defended the work that Fried attacked, 'theatre' remained a disdainful category — so, for example, much of the scholarship within the emerging discipline of performance studies worked from a basic opposition of 'theatre' and 'performance' (see, for example, Féral 1982). As theatre scholar Shannon Jackson notes, an apparently intractable prejudice within discourses on art and politics seems always to 'place the theatrical on the opposite side of whatever lines in the sand they are drawing' (Jackson 2008: 19). More recently, however, Jackson has been one of many theatre scholars to begin to reconsider the idea of 'theatricality', and to do so precisely in terms of its relationship to categories of the political. In the face of what philosopher Jacques Rancière has called 'the disappearance of politics' (Rancière 1999: 102), Nicholas Ridout writes that the challenge for political theatre is 'how to make politics appear' — a challenge that is appropriate to the theatre's primary function of manifesting appearance (Ridout 2008: 19). Sophie Nield uses theatricality as a way to understand issues of national borders and migration, describing her approach as 'expanding the idea of the "theatrical" to imply the production of a space in which "appearance" of a certain kind becomes possible' (Nield 2006: 64). And Tracy Davis draws on eighteenth and nineteenth century conceptions of civil society in order to propose an expanded definition of theatricality:

A spectator's *dédoublement* resulting from a sympathetic breach (active dissociation, alienation, self-reflexivity) effecting a critical stance

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toward an episode in the public sphere, including but not limited to the theatre (Davis 2003: 145).

How might Young's *Disclaimer* be political in its very theatricality? In my analysis of Rudd's apology, I described the way that the felicitous cooperation of authenticity and authority was underpinned by a distinction between 'serious' and 'not serious'. With *Disclaimer*, this distinction is compromised. It certainly appears as 'not serious', a joke, both a work of art and a legal declaration. Fried's criticism of Conceptual art would apply here: 'Certain modes of seriousness are closed to the beholder by the work itself, i.e., those established by the finest painting and sculpture of the recent past' (Fried 1998: 155). This is not a complex, autonomous aesthetic realm within which the viewer can be 'absorbed', as Fried would want to be, and one cannot take it as seriously as Fried would, for example, a sculpture by Anthony Caro. Instead, its seriousness is mock seriousness, pretend seriousness, unfaithful seriousness.

In Austin's distinctions, this would be a work that is as 'hollow and void' as a stage utterance. It might have appropriated legal discourse, but it is only 'parasitic' upon such discourse, falling under the category of stunted 'etiolations' of language (Austin 1965: 22). And yet, its parasitism is so precise that it is indistinguishable from its host. Were a court of law to be forced to make a determination about its status as a work of art — as has occurred in other cases, particularly in situations where status as art is linked to tax liability (see Leiboff 2009) — how seriously, or not seriously, could this 'disclaimer' be taken? Young's *Mutual Release* (2008), in which the artist and the gallery both sign 'as a deed' an agreement 'to each other's complete mutual release', poses a similar complication. If the guise of seriousness helps to obscure the performative speech-act's foundational capacity for infelicity, then that capacity is foregrounded in *Disclaimer*. In its theatricality it reveals that the 'serious' discourse of law and the 'not serious' discourse of art are both, in the end, only forms of discourse.

My final example of apology reflects more directly on Rudd's official act. This is an artwork by Lebanese-born artist Rabih Mroué titled

I, the Undersigned (2007), which has been exhibited internationally, including at the highly commercialised Frieze Art Fair in London (where I first encountered it). The work consists of two parts. The first of these is a signed statement by Mroué in which he declares, 'I, the undersigned, Rabih Mroué, present a public and sincere apology to all of you, and to all the Lebanese people.' In this statement, he explains that, in the absence of any official apology for the Lebanese civil war, he has decided to present his own apology. In this half of the work, then, Mroué adopts the guise of seriousness. It is notable that the piece is titled after the act of signature, and that this signed declaration is always visible alongside the second part of the piece, for the signature is the double carrier of both authenticity and authority. It authenticates the work under its own authority — its 'fabulous' authority, as Derrida would say.

If the signed statement works through seriousness, then the second part of the piece is quite different. A video monitor next to the signed statement displays Mroué's apology, which consists of a sequence of concise mini-apologies. Some of the elements are as follows:

1. I apologise to all those who were my victims, whether they knew it or not, whether I knew them or not, whether I had hurt them directly or through mediators.
2. I apologise for what I have done during the Lebanese war, whether in the name of Lebanon or Arabness or the Cause, etc.
3. I apologise for my ignorance of the meaning of many words and my total ignorance of concepts I was fighting for. ...
5. I apologise because I considered the Lebanese war a war of social-classes only.

In these first few elements, the apology is marked by its personal scrutiny and by the sense of sincerity and reflection. As the apology continues, these reflections become more personal and specific, as Smith (2008), the author of *I Was Wrong*, might prescribe that an apology 'should'; but, in this instance, the increasing specificity has

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the paradoxical effect of making the whole performance more dubious.

7. I apologise because I fired bullets towards the sky in glee over Brazil's victory over Germany. ...

9. I apologise for accepting to be a bodyguard for a Soviet diplomatic delegation and for staying with them at the 'Beau Rivage' hotel for almost one week. ...

12. I apologise because at one point I considered myself to be a policeman with the right to give orders in the name of keeping order.

13. I apologise for being proud of my 'Lebaneseness' while at the same time aspiring to get another nationality.

14. I apologise that during the war I incurred no physical wounds, that I wasn't kidnapped, that no one attempted to assassinate me, and that I received no personal threat.

Rather than supporting the authentic performance of apology, the increased sincerity and detail of these comments creates fault lines within the performance and, in the final elements of the apology, these fissures are accentuated by critical self-reflection about the genre itself:

15. I apologise because I sometimes steal other people's writings and pretend they are my own.

16. I apologise because I enjoy playing with other people's feelings.

17. I apologise for working in a medium that I dislike.

18. I apologise for presenting this apology in a medium that I almost ignore.

19. I apologise for insisting that this is not a confession, and this is not an apology.

20. I apologise because these are only words, words, words ...

In contrast to Young's perfect mimicry, here is another version of the theatrical. This apology is too knowing: it knows itself as representation, knows itself as genre, knows itself as rhetoric. It would fail the tests

for felicity specified by Austin as a 'misfire' because 'the particular persons and circumstances in a given case' are not 'appropriate for the invocation of the particular procedure invoked'; and also as an 'abuse' because it is not clear that the 'person participating in and so invoking the procedure' does 'in fact have those [designated] thoughts or feelings' (Austin 1965: 15-16). Mroué may, he admits, be using someone else's words, recounting someone else's experiences.

And yet this piece apologises for these infidelities as well; its insincerity is a product of over-sincerity. Not exaggerated sincerity or ironic sincerity, but sincere commitment to the performance of apology. It is not a theatricalisation of apology — that is, a transformation of an apology into something that is staged — but instead an articulation of the theatrical that is inherent in the structure of apology all along. An apology must *perform* sorrow but, if it is to be felicitous, it must also *demonstrate* sorrow. For this reason, apology must always be a double performance, both an apology and a representation of what it is to be apologetic, and it is this overlapping of 'real' and 'representation' that is the characteristic feature of the theatrical. This doubling is foregrounded in Mroué's performance, which is contextualised as 'art' and is therefore already understood as representational. We might also apply this idea of theatrical doubling to Rudd's performance: in order to be a 'real' apology, it would be insufficient for Rudd's apology *not* to demonstrate 'sorrow', but the demonstration of sorrow is exactly that which undermines its authoritative autonomy and makes it dependent on representation, narrative and sympathy.

We might understand the relationship between the two apologies in terms of what Judith Butler has called 'resignification'. In her early work, Butler drew on Austin's theory of performative speech-acts as well as psychoanalytic theory in order to develop an understanding of gender as discursively produced through 'a stylized repetition of acts' (Butler 1988: 519), a process of Derridean citation that she labelled 'resignification'. However, she later moved to counteract readings of her theories that, in her view, over-emphasised the possibility of individual agency in relation to these performative repetitions. Butler makes a

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distinction between ‘performance’ and ‘performativity’: ‘the former presumes a subject, but the latter contests the very notion of the subject’ (Butler et al 1993). This distinction is emphasised in Butler’s reading of drag. Although Butler recognises drag as a conscious deployment of gender’s performative subjectivation, she insists that this process of resignifying gender does not necessarily enable political agency or subversion:

Although many readers understood *Gender Trouble* [Butler 1990] to be arguing for the proliferation of drag performances as a way of subverting dominant gender norms, I want to underscore that there is no necessary relation between drag and subversion, and that drag may well be used in the service of both the denaturalization and reidealization of hyperbolic heterosexual gender norms. At best, it seems, drag is a site of a certain ambivalence ... (Butler 1993: 125).

In this way, Butler rejects the idea that the drag artist’s intentional deployment of gender codes represents an escape or subversion of gender, or that an exercise of ‘will’ or ‘choice’ somehow enables one to move outside the performative framework of gender (Butler 1993: 234).

In keeping with Butler’s analysis, we might think of Young and Mroué’s speech-acts as ‘apologies in drag’ in the way they resignify and redeploy the discourses of authority and authenticity. As with Butler’s description of drag, my point about these performances is not that they transform or disable the discursive modes that they adopt, nor that they reveal anything about them that was not already at play. The theatricality I assert to be present in these instances is inherent to the discursive form itself. Furthermore, when I wrote above that Young’s work reveals that both its own ‘not serious’ proclamation and other ‘serious’ proclamations are ‘only forms of discourse’, this does not mean that the power of discourse has been somehow diminished or arrested. As with Butler’s assertion that ‘all gender is like drag, or is drag’, the implication is not that one is free to choose *not* to play a gender, nor that the deployment of drag permits some special agency with regard to gender (Butler 1993: 125). Where Butler does identify the possibility of politically transformative practice, it does not have to

do with 'the fantasy of transcending power altogether', but is instead expressed in terms of 'replaying power', of 'restaging it again and again in new and productive ways' (Butler et al 2004: 335).

My emphasis on theatricality (rather than performativity), however, is intended to add another possible perspective to the kind of analysis offered by Butler. Her differentiation between performance and performativity is designed to constrain any assumption of agency on the part of the *performer* in the speech-act, but I am interested here in the possibilities for the *spectator* that are opened up by such performances. I have argued that the structure of apology, requiring a demonstration of both authenticity and authority, produces a coupling of the autonomous/performative/'real' and the staged/infelicitous/'representation'. But in Tracy Davis's (2003) re-definition (quoted above), 'theatricality' is not something that inheres in the discursive performance but in the relationship one has to it: she describes theatricality as 'a spectator's *dédoublément*' (145). These two doublings — the structural ambiguity of the event and the self-division of the spectator that Davis describes — are coupled: self-reflection within the event might alert us to our own spectatorship, but we also might make an independent choice to actively dissociate ourselves from the event that is making its appeal to us. Davis suggests there is potency in the choice to withhold sympathy, and argues for the 'enabling effects of active dissociation, or alienation, or self-reflexivity in standing aside from the suffering of the righteous to name and thus bring into being the self-possession of a critical stance' (Davis 2003: 153). If politics is 'only' theatre, then this does not mean that our position as 'spectators' must necessarily be a powerless one.

I acknowledge that there are limitations to this kind of argument: the political efficacy it enables is personal, rather than collective, and in the specific case I have raised here does little to help the immediate situation of Indigenous Australians and their descendants. But it's also worth pointing out that collective identity is itself one of the problems raised by those critics of Rudd's performance who contest his attempt to name what it is to be 'Australia'. For example, McAuley writes that the 'we' that is articulated in Rudd's apology is fraught and contested:

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‘it serves to reinforce the fact that in Australia there is, as yet, no comfortable speaking position from which to say “we”’ (McAuley 2009: 58). A spectator might refuse the apology’s problematic collectivisation by reading ‘Australia’ as essentially a stage-name, a performed identity, a fable (in Derrida’s sense), rather than the ‘serious’ legal entity that it claims to be. Being a spectator to Mroué’s apology might be understood as a kind of rehearsal for an event like Rudd’s apology, such that we are prepared to ask the same questions of the state performance that we do of the artwork: Who is it that is speaking? To whom? And for whom? With what voice? Where am I in relation to this event? Is this person apologising to me? Or on my behalf? Or in spite of me? Or instead of someone else? These are theatrical questions, and they are also political questions.

These questions begin to suggest how it might be productive to read ‘real’ political performance as theatre — that is, to look for the theatrical in the political. I want to conclude by returning to the two artworks I have discussed and asking the reverse question: what is the political in the theatrical? Adopting the question that Ridout borrows from Rancière — ‘how to make politics appear’ — we might ask what it is that appears in *Disclaimer* and *I, the Undersigned*. I have argued that these two works, in their own way, trouble the distinction between the ‘serious’ and the ‘not serious’. This distinction is of the sort that Rancière would describe as ‘partitions of the sensible’, distributions of power that underwrite what is possible, and that differentiate between what is art and what is politics (Rancière 2004). In their book on cultural activism, the research collective BAVO draws on Rancière’s thinking to argue that ‘politics ... precisely takes place when somebody makes a claim that s/he is unauthorized or unqualified to do’ (BAVO 2007: 19). Young and Mroué could be seen as two examples of what BAVO calls ‘stepping out of line’ (19), and, in these terms, the politics that appears in these works has to do with the policing of appearance itself: what counts as real and what is only a semblance, what is politics and what is only rhetoric. From this perspective, the political is not a category of action, or a certain kind of content, but instead the very distinction that labels some actions as political and some as not.

The allure of the Austinian performative, with its fabled autonomy, is easy to understand: here, at last, would be an authentic act of politics, a declaration that was not posturing or rhetoric but meant (and did) what it said. But I have argued that what passes for autonomy is a double-act of authority and authenticity, each dependent on the other. Indeed, the idea that there could be an autonomous, authentically political gesture is already based on a political distinction, one that excludes the 'not serious', the inauthentic, the unauthorised. By perfectly mimicking the voice of the law, *Disclaimer* doesn't step out of line in order to join the ranks of the authorised. Instead it presents an encounter in which authority is fully present, and yet completely insufficient, at the same time. And in *I, the Undersigned*, Mroué's apology does not so much set the inauthentic against the authentic as show how the two are working side-by-side, inseparable, indistinguishable. It is structurally ambiguous claims such as these that might constitute the politics of the infelicitous, the politics of the 'not serious', the politics of theatricality.

Notes

- 1 This article began as a conference paper at Performance Studies International and the author is grateful to the participants at that presentation for their comments and suggestions, as well as to Sophie Nield and Marett Leiboff for their ongoing support. The author also gratefully acknowledges the Arts and Humanities Research Council (UK) for its financial support of his research.
- 2 This interpretation of the performativity of law has an interesting correlation with the ideas of the 19th century legal scholar, also named John Austin — which might have been the source of some initial confusion for some readers of this journal. The earlier Austin proposed an understanding of law based on the premise that 'Laws proper, or properly so called, are commands' (Austin 1873: Vol I 81), a model that has become known as the 'command theory' of law. There isn't room here for an extended comparison of the two Austins, but I will note in passing that both theorists made similar distinctions within their respective fields: much as the later Austin shifted the emphasis away from the capacity of statements to be 'true' or false', the earlier Austin transformed jurisprudence by moving it

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away from discussion of the potential of laws to be 'good' or 'bad' on some kind of absolute moral scale.

References

- Austin J 1873 *Lectures on Jurisprudence* John Murray London
- Austin J L 1965 *How to Do Things with Words* Oxford University Press New York
- BAVO ed 2007 *Cultural Activism Today: The Art of Over-Identification* Episode Publishers Rotherdam
- Butler J 1988 'Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory' *Theatre Journal* 40/4: 519-31
- 1993 *Bodies That Matter: On the Discursive Limits of 'Sex'* Routledge London
- 1990 *Gender Trouble: Feminism and the Subversion of Identity* Routledge London
- Butler J, Olson G A and Worsham L 2004 'Changing the Subject: Judith Butler's Politics of Radical Resignification' in Salih 2004: 325-56 (first published 2000)
- Butler J, Osborne P and Segal L 1993 'Extracts from "Gender as Performance: An Interview with Judith Butler"' <http://www.theory.org.uk/but-int1.htm> Accessed 30 November 2010
- Cornell D, Rosenfeld M and Carlson D G eds 1992 *Deconstruction and the Possibility of Justice* Routledge London
- Davis T C 2003 'Theatricality and Civil Society' in Davis and Postlewait 2003: 90-126
- ed 2008 *The Cambridge Companion to Performance Studies* Cambridge University Press Cambridge
- Davis T C and Postlewait T eds 2003 *Theatricality* Cambridge University Press Cambridge
- Derrida J 1988a 'Signature Event Context' Trans S Weber and J Mehlman in Derrida 1988b: 1-23 (first published 1972)
- 1988b *Limited Inc* Ed G Graff Northwestern University Press Evanston IL
- 1992 'Force of Law: The "Mystical Foundation of Authority"' Trans M Quaintance in Cornell et al 1992: 3-67 (first published 1989)

- 2002a 'Declarations of Independence' Trans T Keenan and T Pepper in Derrida 2002b: 46-54 (first published 1976)
- 2002b *Negotiations: Interventions and Interviews, 1971-2001* Trans E Rottenberg Stanford University Press Stanford
- Féral J 1982 'Performance and Theatricality: The Subject Demystified' Trans T Lyons *Modern Drama* 25/1: 170-81
- Fish S 1980 *Is There a Text in This Class? The Authority of Interpretive Communities* Harvard University Press London
- 1989 *Doing What Comes Naturally: Change, Rhetoric and the Practice of Theory in Literary and Legal Studies* Clarendon Oxford
- Fried M 1998 'Art and Objecthood' in Fried 1998: 148-72 (first published 1967)
- 1998 *Art and Objecthood: Essays and Reviews* University of Chicago Press Chicago
- Jackson S 2008 'Theatre ... Again' *Art Lies* 60: 18-21
- Kelleher J and Ridout N eds 2006 *Contemporary Theatres in Europe: A Critical Companion* Routledge London
- Leiboff M 2009 'Art, Actually! The Courts and the Imposition of Taste' *Public Space: The Journal of Law and Social Justice* 3: 1-23
- McAuley G 2009 'Unsettled Country: Coming to Terms with the Past' *About Performance* 9: 45-65
- McCormack T 2008 'Aboriginal Apology: A Sorry Spectacle' *Spiked* 19 February 2008 <http://www.spiked-online.com/index.php?/site/article/4560/> Accessed 24 September 2010
- Mroué R 2007 *I, the Undersigned* printed statement and video
- Nield S 2006 'On the Border as Theatrical Space: Appearance, Dis-location and the Production of the Refugee' in Kelleher and Ridout 2006: 61-72
- Rancière J 1999 *Disagreement: Politics and Philosophy* Trans J Rose University of Minnesota Press Minneapolis
- 2004 *The Politics of Aesthetics: The Distribution of the Sensible* Trans G Rockhill Continuum London
- Reilly A 2008 'The Inherent Limits of the Apology to the Stolen Generation' *U of Adelaide Law Research Paper* No. 2009-002
- Ridout N 2008 'Performance and Democracy' in Davis 2008: 11-22

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- Rudd K 2008 'Apology to Australia's Indigenous Peoples' <http://p.mrudd.archive.dpmc.gov.au/node/5952> accessed 30 November 2010
- Salih S ed 2004 *The Judith Butler Reader* Blackwell Oxford
- Smith N 2008 *I Was Wrong: The Meanings of Apologies* Cambridge University Press Cambridge
- Young C 2004 *Disclaimer series* three inkjet prints on board <http://www.careyyoung.com/past/disclaimerseries.html> accessed 30 November 2010
- 2008 *Mutual Release* inkjet print on paper <http://www.careyyoung.com/past/mutualrelease.html> accessed 30 November 2010