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Terror: the danger of legal theatre

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Abstract

When Ferdinand von Schirach wrote Terror, a perfect example of the legal theatre was created. It is a trial or tribunal play that deals both with current legal issues and a profound legal-philosophical dilemma of sacrificing human lives for the lives of others. Moreover, this play provides a space for the audience to express their legal opinion in a very theatrical way. In a sense, this play refers to the roots of ancient Greek theatre (see eg Gaakeer 2019) and its fundamentally political meaning.

Thus, it may seem that this play is an answer to every law and theatre scholar's prayer for a practical example of a widely know trial play. Unfortunately, it is more complicated than that.

In a way, any theatre about law – legal theatre – is political theatre. Through its influence, legal theatre can pose consequences for the rule of law and democracy.

In this text, I will focus on the specifics of legal theatre and its possible consequences. My research takes the form of a case-study of Ferdinand von Schirach's play Terror. For comparison, another legal theatre play will be used: Milada. Milada is a documentary theatre play based on a real political trial concerning Milada Horáková in the 1950s in Czechoslovakia.

Through the analysis of both plays, I will determine and explain the most problematic issues. This issues are, of course, too broad to deal with in one paper, so I will focus on the question of 'reality' in the presentation of law in both plays and its possibly dangerous consequences, especially in the geographical area of Central Europe.

Terror: the danger of legal theatre

Markéta Štěpáníková[1]

1 Introduction

When Ferdinand von Schirach wrote *Terror*, a perfect example of legal theatre was created. It is a trial or tribunal play that deals both with current legal issues and a profound legal-philosophical dilemma of sacrificing human lives for the lives of others. Moreover, this play provides a space for the audience to express their legal opinion in a very theatrical way. In a sense, this play refers to the roots of ancient Greek theatre (see eg Gaakeer 2019) and its fundamentally political meaning. One could presume that such cooperation with the audience was one of the author's most important aims, based on his keeping track of results of audience opinions.[2]

The play was a practical response – although probably unintentional – to theories about law and theatre and hopes of using this connection for improving legal awareness, which is one of the main aims of theatre about law (see eg Derbyshire and Hodson 2008). It gained international success on stages worldwide, and a television movie was made that aired internationally (see eg Reinhardt 2017). Thus, it may seem that this play is an answer to every law and theatre scholar's prayer for a practical example of a widely know trial play. Unfortunately, it is more complicated than that.

In a way, any theatre about law – legal theatre – is political theatre. Through its influence, legal theatre can pose consequences for the rule

of law and democracy.

In this text, I will focus on the specifics of legal theatre and its possible consequences. My research takes the form of a case-study of Ferdinand von Schirach's play *Terror*. For comparison, another legal theatre play will be used: *Milada*. *Milada* is a documentary theatre play based on a real political trial concerning Milada Horáková in the 1950s in Czechoslovakia. Through the analysis of both plays, I will determine and explain the most problematic issues. This issues are, of course, too broad to deal with in one paper, so I will focus on the question of 'reality' in the presentation of law in both plays and its possibly dangerous consequences, especially in the geographical area of Central Europe.

2 What is legal theatre?

There are many connections between law and theatre, not necessarily just in a sense of dramatic text, and many have been thoroughly examined within the area of Law and Literature (see eg Read 2016, Stone Peters 2008). At the beginning of the Law and Literature movement, theatre plays were not included in the canon (Wigmore 1907). However, what would Law and Literature scholars do without Shylock or Portia? Theatre or drama became a natural part of Law and Literature quite early on in the United States (Weisberg 2009). Still, even before that, there was a different part of the world – or, more correctly, legal system – where literature, including theatre, was understood as a natural part of legal thought. It was Germany and its *dichterjuristen* (or 'poet lawyer') (Stefanopoulou 2011). However, this particular branch of Law and Literature is in many ways different from the more well-known common law one. Both plays analysed in this paper belong culturally, theatrically and legally to the Germanic tradition.

A Drama as literature? Theatre as performance?

Usually, in the Law and Literature academia, playtexts are analysed (eg Jordan and Cunningham 2006). The written version of a play, a script is used for research for quite understandable reasons: it can be

read and interpreted as any other text, and lawyers are taught to excel particularly in that area of interpretation. We can examine different versions of the playtext, we can find out the circumstances of writing or even publishing it. We can discuss our theoretical perspectives. We can try to be the most objective interpreters possible.

In some cases, it is the best possible way to deal with such plays, because some were intended to be read and not performed. But in all the others, researching drama via the text of a play is necessarily methodologically flawed. Most of the plays were written with staging in mind. A text of a play is whole only if staged.

The argument about the character of the play was one of the central issues of the Prague linguistic circle, or Prague school, an influential semiotics group of the interwar period. Jiří Veltruský, one of the most prominent members of the group, perceived a play as a literary text with all its typical characteristics and therefore as an autonomous literary text (Veltruský 1981). On the other hand, Otakar Zich stated in his pivotal text, *The Aesthetics of Dramatic Art*, that a playtext is just one part of the dramatic act (Zich 1977, Fischer-Lichte 1984). In this paper, I adhere to Zich´s point of view and, while using the texts of both plays, I focus more on two particular productions as examples.

B The role of theatre in civil law systems

While there is a strong tradition of legal rhetoric in common law countries and argumentation in front of an audience is a normal part of legal practice (see eg Frost 2017, Fish 1989), in most civil law countries the situation is very different (see eg Kühn et all 2006). Most of the argumentation is realised in a written form and the performativity of legal argument in general, and at the trials in particular, is not taken into account. Theatricality is viewed as a negative trait in any argumentation (Kühn 2011). The lack of a jury may be seen as a reason for this character of civil law trials. Not even judges have a role strong enough to create a space for theatricality similar to that in common law trials. The famous statement of the Canadian judge who said 'This is a trial, not a performance!' (Hartigan 2018: 70) could be used in every court in Central Europe and it would resonate probably even

more than originally.

Given such circumstances, one would expect very little connection between law and theatre in the Central Europe. However, there is a strong one, but very different from the one usual in common law systems.

Historically, the theatre played a crucial role in constituting the identity of various nations in continental Europe. While non-democratic regimes controlled any signs of political resistance, art and theatre became a forum for critical thinking. Theatre became a space – both literally and figuratively – for political discussions which couldn't be held in parliaments (Cherlin, Filipowicz and Rudolph 2003).

Theatre became a forum for fighting against Nazism (see eg Burian 2002) and later against Communism (Chtiguel 1990). Theatre conveyed a message about what should and what should not be legal, what is and what is not legitimate. It is not a coincidence that the first President of Czechoslovakia after the Velvet Revolution, Václav Havel, was a playwright. So, a connection between law and theatre is undeniable. For centuries, theatre has provided voice to critical thought.

In a democratic society, one would presume there should not be a necessity to use theatre in such a manner, but the possibility remains. One can use it even for presenting complex legal issues, for raising legal awareness. However, the presentation of law on stage in civil law countries has to be aware of the limits of the theatricality of law, limits which are much stricter than in common law countries. According to the prevailing jurisprudence, the judge is not supposed to create law, just to interpret it (Kühn 2004). So any speech given by lawyers, even the judge herself, cannot be crucial for deciding the case. On the surface, it is simple as that. The dramatic conflict of legal theatre in the civil law system can presumably be found only in the law itself, not in the deeds and speeches made and given by the characters. If it could, it would deny the nature of a trial in the civil law system because it would give too much power to those who, theoretically, should not hold it.

In Central Europe, this non-theatrical view of law is even more strict because of the still strong influence of leading jurists Kelsen and

Weyr who claimed it necessary to refuse any external influence on law (see eg Jabloner 1998) and also because of the heritage of Soviet jurisprudence with its technocracy veiled as positivism (Kühn 2011).

Both plays analysed in this paper were created in and deal with the civil law system while, theoretically, there should not be any space for theatricality there. One has to have this in mind while interpreting them.

C Types of connections between law and theatre

There are several kinds of connections between law and theatre in theatrical practice, and they are the same both in common law and civil law systems.

The most frequent example of legal theatre is a play, usually mostly fictional, in which some legal situation is portrayed. Usually, the author of the play uses the legal issue as a tool for her storytelling because of the dramatic potential of situations regulated by law. The legal issue may not be crucial to the story; it may not be the main focus of the play. There may be no other reason for including the legal issue than making the play more dramatic, so the accuracy of portrayed legal issues is not important. Moreover, sometimes it is even better for the sake of the dramatic effect of the play not to bother with accuracy. *The Merchant of Venice* is a good example of that because it is not really a play about the validity of a contract, and so it is not concerned with the correctness of the portrayal of criminal rules in its trial scene (see eg Cohen 1982, Carpi 2004). In such plays, the author, the production team and the actors usually do not want or need to say anything about law (see eg Edelman 2002). If there is an impression about justice on the audience in the end, it is not straightforward but more philosophical or moral. Also a director can choose how to interpret it in her production or even if to include it at all. However, the audience is left only with an opinion about fictional world, the theatrical world on stage.

On the other hand, some plays need to be accurate because they are intended to somehow influence societal reality, even if just in raising legal awareness. They claim to portray reality and thus they need to be as accurate as possible, including regarding legal issues.

However, given that they show a theatrical portrayal of reality, so as to be as authentic as possible, they need to show the limits of this accuracy. Documentary trial plays, such as *Milada*, are an example of this (O'Connor 2013). Possible misconceptions about law based on such productions are problematic or even dangerous, because for the members of the audience, the legal issues are real.

Then there are plays using legal aspects as a form of a story that is not connected to the law. A structure of a trial can be used as an outline in a way similar to any other set of procedural rules. Pavel Kohout´s play, *Such a Love*, is an example of this (Stankiewicz 1977). There is no need for accuracy because there is not any substantial link to the law, so any substantial statement about law is impossible.

Finally, some plays portray situations connected to real law and which are not real but could be real in our lives, now and here. They do not portray reality but possible reality, so while the portrayed story is not a portrayal of reality, the conclusions made as a result of an interpretation of that story are real in their influence on our attitudes and thought in real life. *Terror* is an example of such a play.

Each type presented above has its uses, strengths, and weaknesses. Fortunately, or unfortunately, every single one of them is real in the sense that what is presented onstage is, to some degree, a reflection on or of reality (Schmid 2008). Theatre is always a piece of art, there is always the creative input of a director, actors, and others. The standard member of the audience is aware of that. What she may not be aware of is, what level of accuracy may be expected of different types of plays portraying legal issues. And as a result, this may confuse an audience about if and how any conclusions based on the theatrical experience can be applied in real life outside of the theatre.

Theatrical communication is in many ways similar to dialectical reasoning. Properly done, it opens ideas for critical thinking and further discussion (Stern 2013). However, like in any discussion, fallacies are used. The barrier between reality and illusion is blurred in theatre and this creates an especially great danger of misunderstanding.

3 Analysis

Let's find out how the abovementioned specifics of legal theatre work in practice. We will analyse two productions based on two different plays focused on a legal topic. The first one is *Terror* by Ferdinand von Schirach, in particular, the production of *Terror* by the National Theatre in Brno, which premiered on 13 October 2017.[3] The second one is *Milada* by the theatre group of the Law Faculty of Masaryk University in Brno in the Czech Republic, which premiered on 3 December 2018.[4]

A Terror

Terror is a very unique example of legal theatre. It is an internationally successful contemporary trial play written by a practising lawyer. The author of the play is German lawyer, Ferdinand von Schirach who is is both a successful contemporary writer and a practicing lawyer (Baur 2016). In his artistic texts, he deals mostly with legal topics and legal philosophy.

One can hardly write widely popular artistic texts about legal technicalities, but this fact itself shows how special the play is. The author is educated and experienced in both fields included in this interdisciplinary work, so this prevents a usual failing of theatre about law, namely that it is either good theatre with legal mistakes or it is correct from legal point of view but bad theatre. Moreover, the play was written in and about the civil law system. And that makes it – due to the abovementioned restrictions of civil law trials theatricality – quite exceptional. One has to ask how it is even possible: an internationally successful play about a civil law trial.

Terror has been the topic of prior research, but unfortunately mostly in German-speaking countries or at least in countries under the civil law system (Schild 2019). It still lacks proper attention internationally (cf Olson 2016, Künzel 2016). Even though the story is based on German law, the play relays a message that is relevant globally. Therefore, it is worth knowing even without any real legal connection to German law.

i Storyline

Lars Koch, an army pilot, is accused of murdering 164 passengers on the civilian plane he shot down. The plane was hijacked and headed for a football stadium full of people. Koch has always been a model pilot with excellent study and work results. He was not ordered to shoot down the plane, but he decided to do it at the last possible moment. He is on trial for this action during the play.

The play generally adheres to the procedural rules of the classic trial, even if somewhat simplified. The hearing is opened, an indictment is brought. The defendant testifies. Witnesses are questioned and further evidence is presented. Both the attorney and the public prosecutor keep asking questions mediated by the judge who is in charge of the hearing. Closing arguments and the last word are delivered. And then comes the moment of making the decision and the audience is asked to vote: convict or acquit?

ii Conflict and legal background

The conflict in the play is a moral conflict of choice: whether it is possible to sacrifice a life to save another life. It is not different from the traditional trolley problem (Keatinge 2017). It is even explicitly mentioned in the closing statement of the state prosecutor. This conflict is the main conflict of the play and it is a conflict experienced by the defendant but by the audience also: the audience has to decide if the defendant should be convicted.

There is also a conflict created by the fear of terrorists, which has become an important topic in Law and Literature in the last two decades (see eg Ward 2009). While the most infamous terrorist attacks happened in the United States, there have been several in Europe in the last years and people fear them now, given the impact of the immigration crisis, maybe even moreso than in 2001 (Nader 2017). The internal conflict and debate between solidarity and security is another conflict present in the play.

There is a real-life decision made by the German Federal Constitutional Court of February 2006 regarding the *Luftsicherheitsgesetz* (*'Aviation Safety Act'*) (Schild 2016), which stated that 'the shooting

down of an airplane with passengers and crew on board who were not involved in the terrorist activity in order to save the lives of many other people is in contravention of the Basic Law and with human dignity' (Jahn 2020). Both the Act and the court decision are explicitly mentioned in the play and this judicial remark is so crucial for the story that it must be included in every production of the play. It represents a link to reality, because it connects an imaginative story of the play to the legal reality and as a results it blurs a difference between them.

The third conflict is a conflict based on gender. In the list of characters, the defence counsel is marked as male and the state prosecutor as female. They serve as gender prototypes including all the general misconceptions and prejudices. Their messages are in no way connected to the legal issues presented in the play but, in some way, they appear to be. One can have an impression that there is a male legal opinion and female legal opinion.

At least the first and the second conflict are necessarily present in each production of the play because they are intrinsically connected to the text of the play. While the first and the second one are necessary for the story, the third is just an addition with even a comical potential but, for the story, it is useless and even damaging because of its almost insulting nature. The gender conflict is not at all relevant for the main topic of the play and is not dealt in a play with any depth, only on the surface via prejudices. It does not add anything useful to nor to the plot or a philosophical topic, it can only lighten an atmosphere though questionable misogynic remarks. Therefore, it is not surprising that some productions have decided to change the genders of characters in the play (Gaakeer 2019: 496).

iii Form

Terror is a very traditional play. Everything happens during one court hearing in real-time; there are no flashbacks, no jumps in time. There is a small set of characters, who are based real people, not metaphors or impersonations of something else. The space in which the story is situated is a realistic-looking courtroom. In almost every sense, *Terror* is an old-fashioned play like those well-made plays written in the 19th

century (Taylor 2013). Legal (in)correctness aside (see Gaakeer 2019), the only controversial trait of *Terror* comes at end of the play when the audience is asked to decide the verdict.

B Milada

In contrast to *Terror*, and as the most obvious antithesis to it, I have decided to use a play that was written during my Law and Theatre course at the Law Faculty of Masaryk University. There are several reasons for this decision. The first and most important one is that there is no verbatim theatre trial play internationally known which would be certainly the best for our purposes. Such a play would be generally known and as such would serve as the most accessible example. The second one is that this play was created on purpose as legal theatre and, to my knowledge, there is no other one with a similar history of a civil law play created for a purpose of storytelling about law by lawyers. The third one is that there is a recording that can be used to demonstrate my findings. However, any such trial play could be used for the comparison and the choice does not imply that *Milada* is a perfect play or that its production is better than the professional ones of *Terror*. It only aims to provide an example of a different approach to legal theatre necessary for the arguments presented in this paper and possibly as an inspiration for future legal theatre productions both professional and educational.

i Form

Milada is a play written in the style of verbatim theatre: 'verbatim theatre, as the name suggests, involves the re-creation on stage of the recorded speech of real individuals' (Derbyshire and Hodson 2008: 198). The nature of verbatim theatre demands that (at least mostly) real words or records of real events are used as part of the script (Wilkenson et al 2007). Then they are 'edited, arranged or recontextualised to form a dramatic presentation, in which actors take on the characters of the real individuals whose words are being used' (Hammond and Stewards 2012: 6). This form can be very restrictive but provides an opportunity for authenticity that traditional theatre can be lacking, because the

'claim to veracity on the part of the theatre maker, however hazy or implicit, changes everything. Immediately, we approach the play not just as a play but also as an accurate source of information. We trust and expect that we are not being lied to' (Hammond and Stewards 2012: 6). Therefore, one could assume that verbatim theatre is descriptive and objective. However, at the same time 'verbatim theatre has a political agenda, drawing on the speech of individuals involved in particular situations in order to give a public platform to their experience of matters of concern to society in general' (Derbyshire and Hodson 2008: 199). That alone makes verbatim theatre a useful method for legal theatre. Moreover, there is a general consensus that it is 'an effective means of addressing political situations in general and human rights issues in particular because it offers a specific kind of theatrical experience' (Derbyshire and Hodson 2008:199) and because 'we feel that it is somehow better suited to the task of dealing with serious subject matter' (Hammond and Stewards 2012: 7-8). The stronger claim on authenticity and through it to reality in general is what makes verbatim theatre a perfect choice for serious topics such as human rights in particular and law in general.

There are other possibilities of how to write a script about Milada Horáková's story, as can be seen in a movie *Milada* (Mrnka 2017), but to strengthen the play's possible impact, Milada was written and staged also as a trial or tribunal play. Tribunal plays provide 'an opportunity for non-experts to grapple with the detail of important public enquiries for themselves, and in the process, if they're lucky, to spur a powerful person into positive action' (Hammond and Stewards 2012: 8) and 'are lauded for being a tool for democracy, their purpose being to provide more people with greater access to important information' (Hammond and Stewards 2012: 8). Because the play is intended to serve all those abovementioned purposes, the form of a verbatim trial play was chosen.

ii Storyline

The storyline consists of a real-life story of a staged political trial against Milada Horáková and her so-called group (Thompson 2014, Owens 2006). Milada and her 'collaborators' were convicted following

a nine day trial in 1950. Their alleged crimes were espionage for the West and treason. The trial was staged by Moscow to strengthen the Soviet hold on Czechoslovakia. For that, they needed scapegoats. Democratic politicians were perfect for that purpose because the trial rid the Soviets of their last political opponents (Kuklík 2015). Add in an owner of a small factory with a Jewish wife and a Communist journalist who criticised the ruling Communist party, and the perfect 'enemy' was found.

Formally, the trial was normal, and procedural rules were followed. However, unusually for the time, the trial was broadcasted via radio like a reality show, every day of trial, in the evenings. The trial was also recorded for television, with future use for propaganda in mind. In the end, all of the defendants were convicted, and four people were hanged, including Milada (Blažek 2009).

iii Legal background

A large part of Czechoslovak law was adopted from the former Austrian law at its creation in 1918. Though amended in the interwar period, there was no conceptual change. So Milada and her associates were convicted based on the Criminal Code from the 19th century (Kuklík 2015). However, the legal background of the case was unimportant because the actual rules were not followed in the final decision of the court and almost all statements were fabricated because of the will of the Communist leaders in Moscow.

C Comparison

In *Terror*, the performance starts with the judge entering the courtroom. At first, during the prologue, he speaks to the audience directly and holds his robe instead of wearing it:

> Before we begin, I must ask you to forget everything that you have read or heard about this case. Yes, everything. It is you alone who have been called upon to judge this matter, you are the lay judges, the members of the public who today will sit in judgment on the defendant, Lars Koch. The law grants you the power to determine the fate of a human being (von Schirach: 11).

By doing this, the judge creates a strong link between the story and the audience. He highlights the role of the audience so much that one can see it as a sort of emotional blackmail. One can also read in the symbol of not wearing the robe, that he is showing that he is the same as the audience, so they can trust him. Wearing the gown is an act of accepting the social role of a judge; so, while not wearing it, his role can be seen as different at this point in time: a concerned citizen perhaps? Another way of interpreting the absence of the gown is that his theatrical role at this moment is different: he is not a judge, he acts as a narrator, or maybe he uses a Brechtian alientation effect.

Only then he starts the court hearing. First, with affirming personal details of the defendant. Then, when asking the defendant for his testimony, the counsel stands up to make a statement, and starts a monologue including allusions to the terrorist attacks on 11 September 2001 and an attempted terrorist attack in Germany 18 months later. He introduces the *Aviation Security Act* passed in 2005 which allows the Minister of Defence to use armed force against terrorists. He highlights that almost all members of the parliament voted for this Act. And he explains that the Federal Constitutional Court revoked the most important provisions of this Act one year later because 'one life should never be weighed against another' (von Schirach: 18). There is no direct criticism of the Federal Constitutional Court or the decision itself. No arguments are provided. The Act and the decision are mentioned and then the counsel continues with an explanation of his client's heroism.

The checking of personal information in detail is, in the play, repetitive and could be avoided but it works as a constant reminder of the highly formalistic nature of a trial. It persuades the audience that the trial focuses on minor details instead of dealing with substantial issues. This alienation of the trial and court proceedings in general can be seen often in the play. It is beneficial because it fuels the main conflict of the play: the audience needs to do something because the rigid court proceeding focuses on trivialities and cannot be trusted with deciding the issue.

The alienation of the trial is even more visible with the silent

criticism of the Federal Constitutional Court. It is explicitly said that members of parliament voted for the legislation and that the court revoked it. It alludes to the lack of democratic legitimation for the court deciding political matters. However, it does not elaborate on how constitutional courts work or why they exist. It is understandable in the format of the play, but this strategy of eliding this detail is an evident slippery slope towards populism. This alienation of judicial power in general, and the Constitutional Court in particular, may be very dangerous for the rule of law. Recent developments in Hungary or Poland (Šipulová and Smékal 2021) may serve as an unfortunate example of such alienation, whereby public distrist in courts and the judiciary fuels autocratic impulses.

In *Milada*, the performance has a prologue: a short explanation provided by the director of the play. She explains directly to the audience what verbatim theatre is and the aims of the production, highlighting the importance of this part of Czech(oslovak) history and the necessity of its knowledge. This prologue is partly an improvisation to retain its authenticity. It clearly explains to the audience the tools necessary for the interpretation of the performance.

The performance itself starts with all characters, including the judge, prosecutors, and defendants, pronouncing the charges as a choir. They stand in line, one beside another, all in their outfits, the judge in the middle, prosecutors on his right side, defendants on his left side. There are no defence counsels in the play because they were so unimportant in the trial that their characters were intentionally excluded from the play.

This part of the performance alludes to the tradition of the chorus in ancient Greek theatre and is intentionally unrealistic to show the difference between reality and theatre and between a real trial and a staged political trial.

In *Terror*, the first interrogation is that of duty controller, Christian G. Lauterbach. He describes his duties and then explains, in response to the judge's questions, the course of events preceding the shooting down of the aircraft. He points out that, usually, the North Atlantic

Treaty Organisation (NATO) controls the airspace above Germany, and explains that the German army decided in this case because the kidnappings did not fall within NATO's jurisdiction. He describes his communication with the most senior general in the Air Force, General Radtke. Radtke called the Minister of Defence and received orders from him, which he continued to give to Lauterbach and the pilots. He explains that the Minister of Defence was asked to decide about shooting the aircraft down and he refused to.

> Judge: Had you expected that to be the Minister's decision?
>
> Lauterbach: Yes. We all know the views of the Federal Constitutional Court (von Schirach 2017: 18).

Then, the state prosecutor asks who decided to evacuate the stadium. When the witness doesn't know, the state prosecutor reveals that such an order was not given.

> State prosecutor: Now the question I have is a very simple one: Why not? Why was that order not given? Mr. Lauterbach?
>
> Lauterbach: Yes …
>
> State prosecutor: We are waiting …
>
> Lauterbach: I …we …we didn't have time for that.
>
> State prosecutor: Really?
>
> Lauterbach: Yes.
>
> State prosecutor: So there was no time. If I look here at the timings which you have given us, then from the first radio signal – at 19:32 – to the estimated impact of the aircraft – at 20:24 – there was time (von Schirach 2017: 39).

The state prosecutor continues by pointing out that the entire stadium could be evacuated in 15 minutes (von Schirach 2017: 39).

This part of the play is crucial its main conflict and has a great dramatic potential too. We have a witness who was not responsible in

any way for deciding about shooting down the aircraft or evacuating the stadium. He does not need to defend himself, but the state prosecutor creates a situation where he is pushed to do so, and the resulting scene is highly emotional. One can understand that the defence counsel would try to point out that the defendant's hands were bound because of the inaction of others. We do not know what others did exactly. And we do not know why it is the state prosecutor who asks these questions. What we know is that the state prosecutor behaves like a common law lawyer, both in their intimidating manner of asking questions and in their theatrical rhetoric. And it is presented as absolutely normal and acceptable.

In *Milada*, only the defendants are interrogated. There are four state prosecutors, three men, and one woman. All of them very notorious for their propagandistic potential and cruel rhetoric. Their aim was clear: to push the defendants toward admissions of their guilt. So they ridiculed, used sarcasm and irony, and exploited any weakness of the defendants on their quest to persuade the public that the defendants were guilty of the alleged crimes. An example of this strategy is as follows:

> State prosecutor Urválek: Please, Defendant, how do you think they would accept, with what enthusiasm, the workers of a factory that was nationalised because it had 500 employees, with what enthusiasm would they accept their former factory owner back to the director's post at their factory? Knowing that he would continue to exploit their work! Tell me if they'd accept it with enthusiasm or not! What do you think?
>
> Milada: I have a divergent position on this matter. That's why I got into this activity. If I were to answer my opinions, I would say that in some factories, not always and not in all, but in some factories, initiative and creative abilities of the owner ...
>
> State prosecutor Urválek: Mrs. Defendant, if you and your associates thought that the workers were unwilling to voluntarily hand over their factories to the capitalists, tell me again, under what conditions did you imagine this could even happen?
>
> Milada: Naturally, under the condition of reversal, regime change.

While the text used in the play is a verbatim transcription from the trial recordings and scenography and the production of the play uses a traditional courtroom space, choreography of the prosecutors is intentionally unrealistic: they move and behave like dictators, pathetic actors, showmen – even more than in the real trial, which was also staged for propaganda purposes. This strategy is used to show how much the trial betrayed the rule of law. The behavior of state prosecutors is theatrical and intimidating too, but it is obvious that it is an abomination and not an acceptable occurrence.

In the second act of *Terror*, closing statements are presented. This scene is, even in reality, very similar to the theatre. All arguments have been presented before. Now there is enough space to give one last – and lasting – impression. It is a perfect opportunity for a playwright and actors. If some part of a trial is the most theatrical, it is the presentation of closing statements and the final word.

First, the state prosecutor makes a summary of facts and explains that while the defendant is a hero and probably saved many lives, one cannot be allowed to kill people to save others. Legal philosophy arguments are made, as well as references to great moral authorities. But in the end, she concludes that one person cannot decide to disrespect the law, including the protection of human dignity. She says: 'If you find Lars Koch not guilty, you will declare human dignity and you will declare our constitution worthless' (von Schirach 2017: 81).

The response of the defence counsel is:

> Ladies and gentlemen, did you hear the state prosecutor? Did you understand what she was saying? She wants you to find Lars Koch guilty because of a principle. Really, that's what she said – you should lock him up because of the principle. Because of a principle 70 000 people should have died. I don't care what this principle is called – whether you call it "the constitution" or human "dignity" or anything else. All I can say is: thank God Lars Koch did not act on principle, instead he did what was right (von Schirach 2017: 81).

This statement continues with a detailed criticism of each argument the state prosecutor made. Still, the beginning of the final statement

crystalises everything problematic in the play. Gaakeer finds this part of the play 'deeply disturbing' (2019: 485) and one needs to agree. It is obvious that this statement is dramatic. It is a great opportunity for an actor playing the defence counsel. But it is also the final nail in the coffin of the audience's faith in the law and the judiciary.

In *Milada*, each prosecutor gives a final statement. All of them are very theatrical and conclude the trial in the same manner it was lead: as a tool of propaganda and a mere simulacrum of a real trial. The most bizarre final statement was given by the only female state prosecutor:

> Court! People, I love you! Be on your toes! This is an urgent message from our national hero Julius Fučík, who knew very well that there are people who cannot say like him: "People, I love you." Because they only like their factories! Their erred political career! Just profit! Just money! Money that they don't want to earn honestly themselves, but work their way up to others! And we are wary of such enemies of the people! We can find them! And so we found these here and put them in the dock! They can't make excuses for their criminal activities! They've been warned! In February 1948, our working people made it clear to all the subversives and traitors that they did not! We're not going to let the Republic be subverted! And our republic, this is the country where the people truly rule! And where what the people say is true! […] War! That was the joint program of these criminals! And war, that means demolished cities, burned villages! War, these are people killed and mutilated! These are mothers weeping over the loss of their children! And why did the defendants want to impose these horrors on our country? To sell our republic to the Western imperialists! And our good wives and moms are asking! Where did you put your heart, defendant Horáková?! When you betrayed our heir and the struggle of millions and millions of women for peace! Our world, the world of socialism, the progress, and the happiness of mankind, condemns the offensive war of these defendants! Citizens, judges! Judge the traitor on behalf of the people! Protect the peace!

It is more emotional in style than the one given by the defence counsel in *Terror*, but at least it is obvious to the audience that it is a deformation of a real trial and rule of law.

In *Terror*, the audience is asked to vote about the decision. Each performance creates its own way of organising this voting. In Brno, each member of the audience gets a glass ball on arrival. After closing speeches, he hands it over to bags held by the theatre staff. Scales are placed on the stage, balls are teed on one side for the guilty, on the other side for not guilty. It's lengthy, but there's usually suspense in the air. Then, depending on the verdict, one of two prepared endings is performed.

4 More real than reality? Rule of law and dangers of legal theatre

As shown above, while *Terror* is an imaginative theatre production, a not-verbatim one, and *Milada* is almost a pure verbatim theatre production, they are not so different for a spectator without deeper legal knowledge: they are both trial plays, the scenography planned by the author is quite similar, there are even similar types of characters. Both plays demand that the audience form their opinion about the best decision the court should made. What differs is the form of engaging the audience in professing that opinion. So, even in legal theatre, there is not as much difference between verbatim theatre and non-verbatim theatre as one might first assume:

> How is [a verbatim play] any different from a well-written and well-constructed imagined play? The answer is: it isn't. The categorisation is irksome. Verbatim plays are far more like conventional plays than is generally acknowledged – and, in fact, I think conventional plays are far more like verbatim than most people realise (Soans cited in Hammond and Steward 2012: 13).

However, one difference still remains:

> One of the main differences between 'created' and 'verbatim' plays lies in the expectations of the audience. The audience for a verbatim play will expect the play to be political; they will be willing to accept an unconventional format; they will probably expect the material to be contentious and to challenge their opinions (Soans cited in Hammond and Steward 2012: 13).

The reason for that expactions may lay in the fact that verbatim theatre audiences 'focus on the discovery of the real, and on the procedures that facilitate that discovery' (Frieze 2011: 152). But in that aspect, *Terror* is similar to verbatim theatre too, probably due to the use of real legal factual scenario in the script.

Another similarity is that both plays intended to make a statement about the law and to influence legal awareness. One can conclude that legal theatre in general is problematic or dangerous because of its possible impact on legal awareness. Of course, legal awareness – even partly based on theatrical experience – is connected to and *pro futuro* influences the state of knowing and understanding law in society. Awareness influences our reality through what we perceive as real – even about law – as a self-fulfilling prophecy (Merton 1995). If we believe that something shown onstage works that way also in real life, we react in real life accordingly and consequently it becomes real through our reactions. Of course, while thinking about reality on stage, we deal with the legacy of 'Plato's ultimate banishment of mimesis from the ideal Republic, on the grounds that mimesis degrades the real' which formed 'the anti-theatrical prejudice that has shaped western philosophy, theology, and law' (Pellegrini and Shimakawa 2018: 103-104). The distinction between real and non-real is in many ways problematic for contemporary theatre or at least concerning (see eg Fischer-Lichte 2008). The line between theatrical performance and legal performance – if such a line exists – is blurred.

Another complication is that in a sense, both analysed plays are simulations: *Milada* is a reenactment of a historical trial and *Terror* is a simulation of a future hypothetical situation. And it stands, that 'the danger – and allure – of the simulation is that it may overpower and even replace the real, by seducing audiences to identify with the false' (Pellegrini and Shimakawa 2018: 103-104). While *Milada* as a verbatim theatre play may laim a bigger claim on authenticity, one must understand that even 'verbatim theatre's always going to be simplified because it is only a number of views – it can never be the whole picture. It's political theatre and it's engaging with contemporary

society, and dealing with incredibly complex issues' (Kent cited in Hammond and Steward 2012: 122). Both verbatim theatre about law and non-verbatim legal theatre can make a statement about the law and both can make a claim for realness of such statements. Both of these forms are dangerous due to their possible impact on reality in the same way artwork is dangerous because of its influence on our worldview. However, such danger may be also seen as a necessary trait of great art including great theatre. What sets legal theatre apart, however, is its connection to legal awareness in society. Even if inconsequential or impractical, if theatre holds a status of a place of critical thinking, it should not risk creating a misconceptions about law which can harm rule of law consequentely. Each artist contributing in creating a legal theatre show should be aware of that.

Such carefulness may seem paranoid or even been seen as a version of (self-)censure. It may appear as a totalitarian breach of freedom of artistic expression. However, in the context of the rise of authoritarian leaders in Central Europe, information wars with Russia, democratic crisis in Poland and Hungary and elsewhere, and anti-European Union atmosphere (see eg Mudde and Kaltwasser 2013), I feel entitled to demand more caution with any theatre telling its audience that legal systems do not work because constituonal judges value principles more than people's lives. That provocation demands a strong emotional reaction when voting – at least in *Terror*. However, the results of voting cannot be considered a sound indication of considered decision-making on this issue because we do not know what reason for their votes each spectator has. The possible danger of disrupting legal awareness and, consequently, rule of law remains.

Even with that in mind, one cannot say that *Terror* is a bad play or that it cannot be staged as great theatre. However, the director at least needs to be aware that, in a sense, it is a verbatim theatre tribunal play. Good advice for staging tribunal plays is such:

> The intention of a tribunal play is always, always to try to arrive at the truth without exaggeration, and I think that that informs the rest of my work [as a director]. I'm always asking, "Why? Why does the character do this? Why say that? Why?" That's a director's job. With a

> tribunal play, whenever you do anything for dramatic effect it's wrong, you know it's wrong. (Kent cited in Hammond and Steward 2012: 125).

> While performance based on specifically legal or para-legal/political events is not as mainstream in professional theatre in Central Europe as it is in the United Kingdom or the United States (Pellegrini and Shimakawa 2018: 101), both in Central Europe and in Germany 'theatre is a major cultural form, knowledge of theatre is considered an important part of any cultured person's experience, and the stage is regarded as a significant contributor to the public discussion of social and cultural concerns' (Fischer-Lichte 1984: 5). So it really matters what theatre says about law both for lawyers and the lay public. It matters for the lay audience maybe even more because 'the pleasure (and labor) of these staged (quasi)legal proceedings offers us ways of scrutinizing closely the inner workings (procedural and psychic) of the law in ways that the "actual" enactment (i.e., congressional hearings, small claims court proceedings, etc.) apparently cannot' (Pellegrini and Shimakawa 2018: 102).

What might this mean for the staging of trial or tribunal theatre? When producing *Milada*, one must therefore make sure that she gives the audience enough information to see that, even in reality, it was a staged trial. By contrasting the authentic verbatim text of the play with an unrealistic staging, the director and actors ensure that the audience can see and feel what was wrong with the trial. When producing *Terror*, one has to decide what is more important: dramatic effect or legal – and moral or political – accuracy. Normally, for the sake of the theatre, the first option is better. After all, theatre does not present a real world. It does not need to be accurate. But in the case of *Terror*, which creates an impression that the rules and system presented on stage are true in reality, one should care about possible consequences in the real world too: political alienation, mistrust of judiciary including the Constitutional Court, and even general wariness of human rights. As such, both the playwright and the director should be very careful in their choices. Directorial choices in trial or tribunal theatre can have real effects on audiences' awareness and appreciation of the law.

Endnotes

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2 See https://terror.theater.

3 See https://fb.watch/9kXPvnWG4O/.

4 See https://youtu.be/fWKVkd2L4AA.

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