The Court Case: The Theatrical Moment of the Political

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The Theatrical Moment

Theater does not only happen on stage. Ceremonies and rituals across cultures have always been choreographed and staged as a spectacle in the manner of theatre, leading to the well-known metaphor, at least in the European cultural sphere, of the world as a theatre – *theatrum mundi*, also comprising the Renaissance idea of the universal memory as a space that displayed all things in the world in their proper place in a spatial layout that ideally made the entire world available for human memory and contemplation – *theatrum memoriae*.

Today, micro-sociologists like Erving Goffman have likened human behavior in public space with dramatic events focusing more on theater as performance than as space. However, most prominently among social events and across time and space, the court case shares essential features with a dramatic performance: it is a rhetorically staged verbal interaction, based on bodily presence, with a behavioral and verbal institutionalization in an ordered and finite time sequence like scenes or acts in a drama. In contrast to rituals, the court case is not just a repetition of the rules of a spectacle. It is also a unique performance each time it happens, containing improvisations, surprises and unforeseeable outcomes.

In multiple examples of popular crime fiction where the court case with the smart lawyer as a modern protagonist take center stage, as it were, the court case has, across media and genres since the Greek tragedy, marked the political within a culture as what I will call a *theatrical moment*. This moment brings the political to the surface almost with necessity when we are confronted with cases where the application of the law is not a smooth process or where there is no precedence. In such instances the limits of the law are laid bare and the entire social and maybe cosmic order is at stake. The building of the *theatrum mundi* is shattered together with the order of things we encounter in the *theatrum memoriae*.

However, the appearance of the political does not take the form of propaganda or a political program, but as a delimited situation which, *in nuce*, exposes and challenges the basic values of a cultural universe which underpin its use of social power and its social

interaction in general. In such situations what is institutionalized and formalized as right and wrong has to be reinvented to satisfy a shared sense of justice. The court case is the place where the necessary attempts to do so unfolds in order to reunite law and sense of justice, but with the risk of failing if the enormity of the iniquity brought to court or the contradictory nature of the case transcend human imagination. Then the imaginary workings of literature, drama and film are necessary to discuss and understand the dead end of the discourses of both law and justice and what transgresses the values we live by.

One may say that the court case lends a cultural perspective to literature and drama, and that literature at the same time points to the limits of what the law as codified normality and justice can effectively do. This interdependence in a liminal normative space opens a political space for a discussion of these limits of law and justice precisely as matters of human responsibility and thus of politics. This interdependence is what I call the theatrical moment of the political.

The Merchant of Venice

I will discuss this intricate issue, mainly by focusing on the 4th act of William Shakespeare's *The Merchant of Venice* (1597-98). In all of his works, Shakespeare placed himself within the framework of the cosmic image of the world as *theatrum mundi*, but in a historical juncture where this image began to crack with its claim to a collective homogenous universality.

Just a short recap of the plot with regard to the problems of law and justice. Shylock, a Jewish money lender, has a contract that gives him the right to have one pound of flesh cut out of the rich merchant Antonio if the money is not returned in due time. Antonio has borrowed the money to help his friend Bassanio to court the rich Portia and marry her. Which happens. But it also happens that Antonio could not meet the deadline. Now Shylock is legally entitled to have his pound of flesh cut out of a white and generous Christian. Inadmissible and unjustifiable in the Venetian context.

But in the same context, it is equally inadmissible and unjustifiable not to follow the law. This predicament produces the central irony: on such conditions the law can only be upheld by its own force, but only if the paradox can be circumvented in a way that hides that this has been necessary. In other words by a very unlawful trick, by deceit, a situation which

basically shows the limits of the law and the partial nature of the justice that emerges from its application. This is exactly what happens in the court scene in Act IV[1].

In Act IV we watch a court case where a clever woman, Portia, disguised as a fake lawyer or judge outsmarts the legal procedure in order to uphold a sense of justice, also when the law is incapable of doing so. But everything comes at a price: the law can only work by cheating, and the prevailing justice only embraces the power elite who remains completely blind to the bluff. Thus the legal practice, which on the surface appears as business as usual, is actually turned into unrecognized politics.

This double standard of a cornered judicial system and the culture it supports, cannot be expressed by the discourses within the same system, except by literature. With its strategies of multilayered discourses focusing at the same time and in the same tirade on the shortcomings of the law and the limited human perspective, literature grasps the entire complexity of the situation and thereby generates its political effect. This is the theatrical moment produced by the play. Being a comedy, the particular theatrical moment works through a subtle *irony* more than by way of parody or coarse laughter. In *The Merchant*, the irony is aesthetically produced through a set of *symmetries* of characters, terms and lines and events and their *reversals*.

Before I demonstrate the important reversals of symmetries, we first have to note that there is no reason be surprised that Bassanio, and nobody else for that matter, doesn't recognize his wife Portia behind the gown and the fine moustache making up her lawyer's attire. In a comedy we are transferred to a universe where nothing, the law included, is what it pretends to be. Hence, what happens is entirely within the logic of this genre. In a tragedy, the impenetrability of reality is charged with fate, while in a comedy it is a sign of the shortcomings of intellectual and moral capacities of man which make the comedy the relevant choice of genre.

Second, we have to remember that the law is based on retribution and retaliation, that is on the principle of the exchange of measurable quantities, an eye for an eye, a tooth for a tooth. A verdict exacts precisely what you are entitled to; no more, no less. This principle is immediately understood and accepted by both Shylock and the Venetians. They are all merchants. But thereby, the law is turned into a general formal system, a machinery of equal quantities, excluding establishment of a general sense of justice if a shared definition of the

[1] Cf. Michael Radford's adaptation of the *Merchant of Venice* (from 1:23:46 until 1:49:58): https://www.youtube.com/watch?v=-bZWZEwY21Q [visited on 21.04.2015].

scale of measurement to underpin the law as the working of retributive justice is absent as it is in this comedy. Here, the consequences of this absence are done away with behind a smoke screen of legalistic duplicity. Nobody therefore notices the challenges to law and justice this void produces. This is the hidden political dimension. At least for the characters, but not for the audience. As we shall soon see, the ironically reversed symmetries open our eyes. Law and justice becomes partial and is replaced by the power of, first, the interpretation of the law and then of its application, and the single perspective of the law is irrevocably replaced by an irreconcilable reduplication of the conception of justice and morals – the view of Shylock and the view of the Venetians.

As the court scene makes it clear, for the Venetians Shylock is shown mercy in accordance with Portia grandiloquent soliloquy on mercy and later confirmed by the Duke. Although the representative of the law, the Duke acts like a puppet who does not understand anything but has to be told by the fake judge and the exhausted Antonio what to think and what to do. The scale of measurement that secures the lawfulness of the law is reinstituted according to the Venetian standards.

From Shylock's perspective, however, mercy has nothing do with it. He is forced to commit an unforgivable sin beyond any measurable standards, namely to convert to Christianity against his oath made in heaven. He then disappears from our sight after the verdict, while the camera forces the spectators to see his disappearance with the eyes of the Venetians, as one of them, while we recognize at the same time the partiality of this view and its foundation on deceit. In contrast to Antonio in the moments before his death, only prevented by Portia's deceitful intervention, Shylock disappears into nothingness beyond law and justice and beyond his own comprehension and without any empathy from the Venetians. Antonio fully recognized that his downfall was of his own making and in accordance with the law, a recognition that helps him later to turn the tables in Act V.

Ironically Reserved Symmetries

In Act IV there is a reverse symmetry at play which reaches out also to the final Act V. Before the scene where things are turned against Shylock, Portia, still disguised as the young judge, has elaborated on the consecrating effects of showing mercy. She then invites the Jew

to give up his claim of the pound of flesh and simply receive the money, offered to him by a donor. Shylock refuses.

> *Portia:* [Mercy] is mightiest in the mightiest; it becomes
> The throned monarch better than his crown.
> His scepter shows the force of temporal power,
> The attribute to awe and majesty,
> Wherein doth sit the dread and fear of kings.
> But mercy is above this sceptered sway,
> It is enthroned in the hearts of kings [etc.]
> (IV, i, 184-190)

Often this soliloquy on mercy is presented as a non-ironic message to both the court room and the audience. But it is not, first of all because the point Portia insistently repeats is that mercy is shown by kings and nobles accordingly to the tradition going back to the Greek notion of *syggnome* (magnanimity, forbearance, generosity). But Shylock is an underdog, despised and rejected, both before and after he stands in court, shouted at and spitted upon. How can he be seen by anybody in a position to show mercy? The suggested symmetry between Shylock and the Venetians, both equally capable of showing mercy is fundamentally skewed. Portia's sermon is as fake as she is herself when dressed up as a judge, only serving to glorify the mighty Venetians and bring them in a self-sufficient feel-good mood: yes, magnanimity is what *we* would show in his situation.

What we instead get in Portia's exaltation on mercy is a preparation of a reversal of the proposed symmetry that later strikes back on the Venetians and herself. We have already seen the Duke claiming to show mercy to Shylock by not taking his life, but without understanding the scale of misery the court decision, deservedly or undeservedly, produces on Shylock. This makes it appear as straightforward revenge, but neither as mercy nor as generosity. This is the reversal of values which is produced in the court room, in the public space: mercy pronounced by a fake subject is revealed into revenge and merciless confirmation of superiority.

In the final act we move to the private space and here the irony of mercy hits home on Portia herself as a result of her own doing, precisely of her cleverness and of the disguise she used to teach us about mercy. We are in Portia's palace, right after her return from the court. Bassanio has also returned, minutes before her, and has told everybody about the triumph, the miracle produced by the unknown young judge, and he has brought the saved

Antonio with him. The two of them are bound in a friendship with vaguely homoerotic overtones and as profoundly as Bassanio is bound to Portia in marriage.

Now, after the trial and before she comes back to her castle, Bassanio's faithfulness is tested by the still disguised Portia when he leaves the court room and she lures him to give his wedding ring as a reward to the successful young judge for the rescue of his friend Antonio, although he has solemnly sworn never to depart with it.

Another symmetry is then made clear: like Shylock who has broken an oath of faith when forced to convert and like Antonio who cannot meet the requirements of a legal contract, now Bassanio has broken his oath to and his contract with Portia. So, that brings Portia in a position where *she* should show the mercy she herself has preached is the precious and ennobling capacity of the powerful. But if she does, she will have to reveal that she actually cheated him in the first place to give away the ring. She refuses to show mercy and forgive, salting Bassanio's wound by repeating the very word 'ring' and mocking him as a turncoat, a 'double self':

> *Portia:* If you had known the virtue of the ring,
> Or half her worthiness that gave the ring,
> Or your own honour to contain the ring,
> You would not then have parted with the ring. […]
> *Bassanio:* […] Portia, forgive me this enforced wrong,
> And in the hearing of these many friends
> I swear to thee, even by thine own fair eyes
> Wherein I see myself -
> *Portia:* Mark you but that!
> In both my eyes he doubly sees himself,
> In each eye one. Swear by your double self,
> And there's an oath of credit!
> (V, i, 199-246)

This is not a court case. We are outside the realm of the formal law, but in the same shady zone of morality and justice as in the court room. It is Antonio, the reason for the whole court case, for their marriage as well as for the present quarrel, who now cuts the Gordian knot:

> *Antonio:* I once did lend my body for his wealth,
> Which, but for him that had your husband's ring,
> Had quite miscarried. I dare be bound again. […]
> (V, i, 249-251)

Antonio is thus confirming their friendship from before marriage of Portia and Bassanio in the same way as Bassanio has confirmed it by giving the ring away as a prize to the fake judge for saving his friend. It takes Portia only a flash of a second to reconsider her intransigence and forgive her husband, thus being exposed as the preacher of a mercy she is not able to show herself unless cornered by Antonio's competitive *gestus*. She is no longer the sovereign agent of the actions and, only at that point, by producing the ring herself she has received as the disguised 'doctor' she confesses she has played a trick on everybody, though a bit mockingly by pretending she is handing over a new ring :

> *Portia:* Then you shall be his surety. Give him this
> [*giving Bassanio the ring*]
> And bid him keep it better than the other.
> *Antonio:* Here, Lord Bassanio, swear to keep this ring.
> *Bassanio:* By heaven, it is the same I gave the doctor!
> *Portia:* I had it of him. Pardon me, Bassanio, […]
> (V, i, 254-258)

One may say that her nobility and magnanimity now is not worth more than the miserable and destitute position where she herself has placed Shylock, presenting him with a notion of princely mercy which, she tells him at the same time, is outside his reach. Hence, the final reconciliation between everybody on stage in Act V leaves a bitter taste on the tongue. The universal laws of Venice have been compromised by being upheld by deceitful intrigues and thus have become biased, and the general sense of justice it should produce is shown as only partial, belonging to those who master the deceit but do not necessarily respect the law. An irreducible double perspective is created, which produces human choice of position as inevitable in every definition and implementation of the law. This is the theatrical moment of the court case that opens the political domain of human choice and responsibility on every step of the way. Thus, the issue of law and justice becomes a comedy just like the one performed in front of us – not comedy as innocent laughter but as the genre of human relations and shortcomings. And in Act V the fractured normativity of human life also hits the powerful agents of intrigue.

The Political

When law and justice depart and go in each their own direction, we are left in a political space where all norms are based on human negotiation where both norms and the mutual trust that sustains them are at stake. The comedy is a skeptical and cynical genre, fundamentally ironical. It does not point to a neutral permanent platform of mutually acceptable normativity but posits norms and trust as a task to be continuously performed, not a safe haven to be found somewhere. The authority of the law is forever relativized and therefore a matter of power – not the power of the law itself, but of those using it.

This situation also points to the historicity and cultural specificity of the relation or, alternatively, the discrepancy between law and sense of justice. The mercy shown by the Duke is as incomprehensible to Shylock as the unforgivable nature of his conversion is to the Venetians. If the deceit carried out by Portia pointed to the limits of the law and sense of justice, this unbridgeable mutual misunderstanding indicates the limits of the political – how can negotiations take place where there is no mutual understanding of the problem to be negotiated?

Isak Dinesen illustrates the point in a small story from her *Out of Africa* (1937) called "Farah and the Merchant of Venice". She tells her trusted Somali housekeeper Farah about *The Merchant* and his reaction focuses precisely on the power play, the isolation of the underdog and the mutual misunderstanding, leaving the white colonial narrator almost dumbfounded as shown by her vague rejoinders:

> "What?" said he. "Did the Jew give up his claim? He should not have done that. […] - "But what else could he do," I asked, "when he must not take one drop of blood?" - "Memsahib," said Farah, "he could have used a red-hot knife. That brings out no blood." – "But," I said, "he was not allowed to take either more or less than one pound of flesh." – "And who," said Farah, "would have been frightened by that, exactly a Jew? He might have taken little bits at a time, with a small scale at hand to weight it on, till he had got just one pound. Had the Jew no friends to give him advice?" […] I said: "But in the story the Jew gave it up." – "Yes, that was a great pity, Memsahib," said Farah. (Dinesen 2013: 140)

This is an example of the role of law and sense of justice in a multicultural world where different norm systems co-exist and many crimes have a trans-local dimension without a recognized legal framework to deal with them and without a shared political culture to

establish a relevant framework. The comedy is a good reminder of our responsibilities imbued with an irony that will not let us off the hook.

To remain in the colonial context of Farah not unlike that of Shylock, I will end by quoting Chinua Achebe. In his essay from 1986 "What has literature got to do with it?" he points to the fact that this question calls for two answers. One is to respond to 'it' as a fate-like anonymous entity as the 'it' in 'it rains' or as the unquestioned law as in Venice? As for Shakespeare, Achebe points to the hidden content of unspecified human complexity and complicity behind the surface that call for the second answer involving literary imagination:

> The matter is really quite simple. Literature, whether handed down by word of the mouth or in print, gives us a second handle on reality, enabling us to encounter in the safe, manageable dimensions of make-believe the very same threats to integrity that may assail the psyche in real life; and at the same time providing through the self-discovery which it imparts a veritable weapon for coping with these threats whether they are found within problematic and incoherent selves or in the world around us. (Achebe 1990: 170).

This is what I have called the theatrical moment where the theatrical performance and the political coincide and which in Shakespeare's case is produced by way of irony and symmetrical reversals.

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