Justice as ›performance‹? The historiography of legal procedure and political criminal justice in Weimar Germany

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In his *Arbeitsjournal* (6 December 1940), Brecht mused that »following on from the explorations conducted in the *Street Scene*,« one should »seek out all those moments where theatre is part of everyday life, in the world of erotica, business, politics, law [*Rechtspflege*], religion, and so on« (Brecht 1973: 204; all translations H.G. unless noted otherwise). Not by coincidence, Brecht's exhortation to explore the rituals and performativity of everyday life on stage explicitly names the administration of justice. As Yasco Horsman has shown, the idea of mirroring the forms, props and psychological mechanisms of judicial inquiry on stage played an important role in Brecht's earliest conceptualizations of epic theatre, especially in the so-called *Lehrstücke* or instructional plays (Horsman 2011: 92–8). The most controversial and celebrated of these, *The Measures Taken* (also translated as *The Decision*) is not only a performance of a trial, but also features a trial-within-a-trial.

Of course, one need not recur to Brecht to make a point about the theatricality of law. Metaphors of forensic theatre and courtroom drama abound, even in Germany, where the prevalence of inquisitorial elements in penal procedure deemphasizes courtroom confrontation and spectacle. And yet, despite—or perhaps partly because of—manifest structural similarities between theatre and courtroom, between stage and tribunal, scholars of politics, law and culture have been slow to take seriously the performativity of law (Korobkin 2003: 2127). Why?

In this essay, I want to give an overview of recent attempts to apply concepts developed in performance studies to law and legal procedure. Among the methodological conundrums and challenges a cultural history of the legal process as performance poses, jargon and an overemphasis on theory largely unsullied by empirical grounding loom large. In the second half of my essay, I therefore attempt to link some of the theoretical insights surveyed at the outset to the politicization and aestheticization of trials in the Weimar Republic. Thanks to the polarization of the public sphere, the appetite of the general public and the media for trials, and the efforts of extremist parties to turn judicial persecution from a legal liability into a propagandistic asset, the period lends itself especially well to such an interpretation of the interconnection of justice and political culture. In particular, I argue that viewing trials as performances of ideology unlocks two crucial but routinely overlooked aspects of Weimar political justice: the constitution and affirmation of community and the assertion of fundamental opposition authenticated by the defendants' sacrifice in court.

This essay has three parts. The first surveys concepts of performance and performativity and their historiographical reception. It also lays out my own synthesis which, while laying no claim to originality, informs the rest of the piece. Part two develops a tripartite matrix for categorizing interpretations of the nexus between performance and the legal process: surface/structural similarities; the performance of impartiality (and by extension the state's legitimacy); and, brushing these against the grain, counter-performances of fundamental dissent. It then illustrates each category with examples from Weimar trials. Part three focuses on two features of performance—audience interaction and the creation/affirmation of community through sacrifice—to argue that taking seriously the performativity of justice in the substantive sense can help us better understand how the administration of justice impacts political culture.

I.

While the facility with which the theatre metaphor is at times applied to trials smacks of the »all the world's a stage« wisdom of undergraduate writing there can be little doubt that there is something particularly *performative* about trials—but what? And how should this performativity of law impact historical scholarship drawing on legal procedure?

Taking their cue from Judith Butler, philosophers, cultural theorists and lawyers (mostly of a law and literature or law and society persuasion) have recently turned their attention to performance as a cultural template and matrix for the analysis of legal procedure.[1] Martha Merrill Umphrey gives an overview in her essay *Law in drag: Trials and Legal Performativity*, and argues that »trials are law-making (not just law-applying or law-interpreting) events because of their performativity.« Most schools of legal philosophy, she points out, place very little weight on the performativity of law, or none at all. »[C]hampions of the common law come closest« to a performative view of the administration of justice as »essentially trial-based.« Yet even here, »classic theorists downplay that aspect, rather emphasizing the ways in which (common law) is tethered to the past« (Umphrey 2012: 522–3). However,

> conceiving of law as ›performative‹ suggests that we can forward an expansive understanding of law not just as the application of formal legal rules or past precedent, but as a set of contingent enunciations made across a number of legal locations: the street corner, the interrogation room, the district attorney's office, a lynching scene and, of course, the trial.

Further, such an understanding foregrounds that not just the content of the law is in play and in contention, but the way in which the legal subject is constituted: »How is law discursively constituted such that it pro-

1 Apart from the authors discussed in the text see also Shklar 1986: 142–46 on the ostentatious qualities of legal procedure, and her argument that liberal Western justice systems are not intended to deal with fundamental political dissent, ibid: 216–17; further Burns 1999: 124–219; Allo 2010: 46–51; De Ycaza 2010.

duces particular renderings of both law itself and legal subjectivity?« (Umphrey 2012: 524).

In probing this *how*, scholars disagree, even about the very definitions of basic concepts like *performance* and *performative*, and the relationship between them. Thus Julie Peters points out that *performance* in Performance Studies is »reiterative, deriving its meaning from its repetition of the same; the linguistic performative is by definition nonreiterative, deriving its meaning from its creation of the new« (Peters 2008: 184). Most performance scholars would invert this relation, and stress the reiterative, referential nature of *performativity* vis-à-vis the event character and immediacy of *performance*. This conceptual cloudiness has important implications for understanding trials as performative: are we to read them primarily as one-of-a-kind performances, or as tradition-steeped rituals? Both, says Umphrey: »paradoxically, though they are discrete and singular events,« trials also function »reiteratively, drawing upon and repeating particular discursive formations and invoking conceptions of cultural and legal subjectivity whose sedimented meanings have no final, noncontingent ground or origin« (Umphrey 2012: 522). Andrew Munro traces the ambivalence back to Judith Butler, who, combating »overly voluntaristic readings of performativity in relation to gender and sex identities« argues that »performance ›presumes a subject,‹ whereas performativity ›contests the very notion‹« of this last. »[T]here is no power, construed as a subject, that acts,« Munro quotes Butler, »but only a reiterated acting that is power in its persistence and instability.« Performativity is thus best understood as »a renewable action without origin or end« (Munro 2012: 84).

These theoretical findings have made their way into historiography, in more or less faithful adaptations. Thus Jürgen Martschukat stresses that »a history inspired by performance theory does not search for individual human intentions behind historical events or processes.« Though he equivocates to an extent—»the influence of human agency on history are not denied at all«—the »different« quality of such historiography stems from eschewing the »search for individual intentions behind the actions of supposedly autonomous human subjects.«

Instead, it

> strives to describe historically specific cultural configurations that make certain thoughts, intentions, and actions possible and appear logical, positive, self-evident—and others illogical and false. To put it differently, these configurations form the conditions of possibility for human actions and intentions. (Martschukat 2005: 50f.)

Ariela Gross has demonstrated how fruitful this approach can be in her account of the way in which race-determination litigation modulated ascriptions of racial identity (Gross 1998). According to Donald Korobkin, Gross's approach to performativity exemplifies

> the broader category of cultural criticism of law that, in the words of Binder & Weisberg, ›[v]iews law as an arena for the performance and contestation of representations of self and as an influence on the roles and identities available to groups and individuals in portraying themselves.‹ (Korobkin 2003: 2128; Binder/Weisberg 2000)

Although Martschukat's position is persuasive, he takes the insights derived from Butler et al. quite far. Arguably he is being more Catholic than the Pope in appropriating concepts contested even within performance studies. Andrew Munro, for example, argues that Butler's somewhat ambiguous notion of performance and performativity implicitly presupposes a »Peircean,« i.e. strongly contextualized, situational and genre-savvy reading: »to attend to interpretants in relation to interpreters, and to situate these last in respect of rhetorical situations and genres« (Munro 2012: 84). In other words, to pay careful attention to context, intentions and sources—hallmarks of empirical historical practice. Stripped of the jargon, a historian as unsuspicious of faddishness as E.P. Thompson could have endorsed this statement, at least according to Suzanne Desan's reading (Desan 1989: 53–4).

While the nexus of law and performance has thus come into greater focus in recent years, the field is clearly still in its infancy. »Despite the persistence of the trope likening law to theatre,« Julie Peters notes, and despite the »vast body« of writing on ›law and literature‹ and the »general

proliferation of the term ›performance‹ in critical studies« there is »no sustained theoretical articulation of the nature of legal performance or the meaning of legal theatricality in the critical literature« (Peters 2008: 181). Naturally, remedying this state of affairs goes well beyond the scope of this essay. Nevertheless, drawing on my empirical work on the dramatization and politicization of legal procedure in Weimar Germany, I want to contribute to a better understanding of the possibilities scholar have in studying the performativity of justice. Hopefully, doing so will further the case for taking seriously the concept's usefulness in the historical analysis of law and legal procedure. First, however, allow me to present a short exposé of the notion of *performance* with which this essay operates.

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What is performance? The term's currency in the humanities followed in the wake of J.L. Austin's work on speech acts and John Searle's subsequent philosophy of language (for an accessible introduction to the »performative turn« see Fischer-Lichte 2010). Ever since, a growing number of scholars have asked whether it is not imperative in the study of social orders and social action to scrutinize the acts and modalities of representation itself. In different ways, the work of Erving Goffmann, Victor Turner, Richard Schechner and Erika Fischer-Lichte has made the notion of *performance* operational as a heuristic tool and a framework for analysis (Goffman 1959: 18–27; Turner 1969: 94–101; Geertz 1983: 25–31; Fischer-Lichte 1992: 1–17, 129–31, 139–41). Phenomena as varied as *flaneurs* in Parisian streets and North Korean mass choreographies, medieval carnivals and modern sports, gender identity and early modern practical jokes in Parisian printing houses have been studied as »performances« (Butler 1999: 177–9; Gumbrecht 2007; Darnton 1984: 75–106; Fitzpatrick 1993).

The basic formula describing performance is »S observing A embodying X,« wherein A is the actor, S the spectator and X the object of representation—an emotion, a relationship, an ideology, a specific person, an attitude. Performance involves the bodily co-presence of a spectator and a performer (which can be one and the same, as in our daily routines in

front of the mirror, or in moments when we become, often acutely, aware of our appearance to others, see Butler 1999: 179; Gumbrecht 2007: 271).

By definition, a performance is transitory, unique, and immediate: the performance of Hofmannsthal's *Elektra* on Friday 30 October 1903 as opposed to that on the following day, Communist renegade Max Hölz's closing speech in the Moabit courtroom on 22 June 1921 rather than a newspaper's evocation of the same. This is not to say that the effect of performances is limited to those physically present. As large as sports arenas, theatres, and houses of worship are, media can serve to significantly extend the reach of performances. Some impact is lost in translation, but witnessing a performance second hand is still different from merely being informed of actions and outcomes, as anyone will testify who has watched a football game with the volume switched off and the roar of the crowd subdued. For the same reason, newscasts feature live dispatches from on-site correspondents, and court reporters report from the courtroom, incorporating dialogues, atmospheric descriptions of the locality, portraits of the principal actors and so forth (Siemens 2007: 43–9).

Performativity refers to the inherent and ongoing potential of specific cultural, discursive or political configurations to generate social, aesthetic or transcendental realities. Unlike performance, performativity is not unique and transient. In fact, its force derives partly from repetition and custom. To a higher degree even than performance, performativity depends on framing and presupposes the existence of a symbolic order in which the social and political context is represented. Anyone can utter the words »I pronounce thee man and wife« or »in the name of the people.« For these words to make something happen, however—to constitute or alter reality—the setting, the participants, and a host of other conditions must accord. As Jacques Derrida puts it, for performative speech-acts to succeed they must »repeat a ›coded‹ or iterable utterance« (Derrida 1988: 18). Performativity therefore draws on and reaffirms, but—potentially and over time—also challenges and modifies shared perceptions and orders of representation.

It is a misconception (entertained mostly by its critics and detractors) that the broad movement of this performative turn has led to a consensus. Scholars disagree on subjects and periods to study, but also on methodology, i.e. precisely how social phenomena should be studied as performances. My own notion of performativity, for example, is obviously indebted to Judith Butler, who occasionally describes the performativity of gender in legal metaphors. For example she describes the incommensurability of bodies and the discourses governing their emergence as »instabilities« marking »one domain in which the force of the regulatory law can be turned against itself to spawn rearticulations that call into question the hegemonic force of that very regulatory law.« As Andrew Munro puts it,

> both Butler's earlier work and *Excitable Speech* locate contestatory possibilities for nonsovereign subjects in the very structures of normative citation by means of which these subjects are partially formed.

Nevertheless, Butler's philosophical take on performativity deals with language and subjectivization, whereas mine is concerned with collective identity and political representation. Butler even explicitly distinguishes performativity (as iterative and citational) from theatricality (Butler 1993: x, 2–3, 13–15; Munro 2012: 85). It is thus safe to say that we disagree on the performativity of the legal process, even though we (hopefully) agree on the legitimacy of analyzing performance and performativity in the humanities.

II.

In this section, I explore the practical applications a perspective on trials as performances might have. Under this general heading, I will distinguish between three levels of the performativity of justice—surface/structural similarities; the performance of impartiality (and the state's legitimacy); and, brushing these against the grain, counter-performances of fundamental dissent—bearing in mind that all three are in most practical instances inextricably connected.

To characterize judicial procedure as ›theatrical‹ is a staple of historical writing, routinely rolled out to describe trials that either aroused exceptional contemporary interest or are perceived as politically influenced, or both. Bernd Steger opens his classic account of the 1924 Hitler-Ludendorff trial, for example, by likening the proceedings to a play: »Outwardly, the action in front of and inside the School of Infantry (where the trial was held) resembled a sensational theatrical production.« »Long queues,« entry »by ticket only,« »people bearing bouquets of flowers,« the ornate uniforms of some defendants, and the »tumultuous scenes« during the reading of the verdict are the tokens that vouch for the occasion's theatricality. They underpin a reading of the trial as thoroughly irregular, politically determined, and rigged. In short, by dint of its theatricality the trial reveals itself as the very opposite of »normal,« regular legal process. »Thus ended proceedings« Steger caps his opening vignette, »which had only the name in common with a trial in a court of law, and in which law (*das Recht*) had been squashed by political speechmaking« (Steger 1977: 442).

In contrasting the theatricality of the sham trial with the implied open-endedness and adherence to legal guarantees of evidence, due process, fair hearing and equitable judgment of a ›real‹ or ›authentic‹ trial, Steger's argument fits into a long continuum of what John Barish has called the »antitheatrical prejudice« (Barish 1981; Kos 1996). According to Julie Peters, this continuum stretches across time and disciplines from Plato's scorn for actors to modern-day art criticism. Michael Fried, for example, chose »theatricality« as the antithesis of the »absorption« he extolled in modern art. Against the foil of the self-awareness and ostentation of *theatricality*, the inwardness and self-contained quality of *successful* art stands out all the more clearly.

As we have seen, since the early 1980s scholarship in a number of disciplines has gone beyond the observation of structural similarities between stage and tribunal. In the wake of Judith Butler's appropriation and reinvention of Austin's theory of performative speech acts in the constitution of gender and—more generally—of the modern subject, broader and more substantive claims about the kinship and resonance of justice

and theatre have been posited. Scholars disagree fundamentally over the implications—are, for example, the spectators truly merged into a community (Fischer-Lichte), or does each spectator remain isolated (Rancière)—but would likely agree on a conception of the performativity of judicial procedure that goes beyond the observation that trials and theatre share certain surface traits. True, both involve something like a script (procedural law plus the legal argument of the case). Officers of the courts, judges, defendants lawyers etc. can be likened to »actors« taking on certain »roles.« There are »props,« a »stage,« an audience and—notionally at least—a dramatic conflict and a suspenseful narrative arc towards a nail-biting, cathartic finale.

However, the resonances between performance and the judicial process go beyond such surface similarities in two substantive ways. Firstly, trials embody and perform claims about the authority of the state and its role in upholding justice. Secondly, trials constitute community. They do so either through the identification and excision of scapegoat-like Others, or, in more particular circumstances, through the affirmation of a counter-community that challenges the hegemonic order. In the latter case, the sacrifice of the defendants/convicts constitutes and affirms the counter-community. In the following, this essay treats each of the three levels—firstly, the superficial or surface likeness of stage and tribunal, secondly, the performance of the trial's (and by extension the state's) impartiality, authority and legitimacy, and thirdly, the possibilities for subverting that performance of impartiality. I examine these levels consecutively, though in practice each is intimately connected to the others.

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I have already given an illustration, in Steger's characterization of the Hitler-Ludendorff trial, of the theatre metaphor used as a brush to tar trials viewed as »un-legal.« This was, as the work of Julie Peters and Martha Umphrey suggests, very much the norm until the advent of performance studies. Scholarly, ex-post commentators are neither the only nor the first people to home in on the theatricality of justice. Contemporary observers of the justice system also pointed out »histrionics,« usually pejoratively. Barristers are often subject to particular criticism. The law-

yer and journalist Rudolf Olden, for example, remarked on the prevalence of »a type of defender who attempted to compensate for deficiencies of his case, and sometimes of his person, through agitation as well as by exerting his voice« (Olden 1985: 6).

The rejection of (overt) theatricality was mediated through the apolitical and traditionalist mien of the German legal profession, broadly conceived. Below we will turn to the question of the extent to which this staid and legalistic, deliberately dry demeanour can in itself be understood as a performance, for now it should be pointed out that not all Olden's contemporaries rejected theatrics in the courtroom. In *Die Kunst der Verteidigung* (The Art of Defense, 1915), Barrister Fritz Friedmann explains the mounting acridity of judicial proceedings after the turn of the 20th century as a conflict between judges and barristers. An enormously successful (and boisterous) Berlin lawyer, he had been disbarred in 1895 due to his gambling and his relationship to a 17 year old girl and was forced to flee from his creditors (and the state prosecutor). The bitterness which sometimes informs his account is more than balanced by the insouciant frankness which his fall from grace made possible and which makes this such a valuable source.

To Friedmann, the culpability was clear: judges were to blame »for the secret bitterness, the ›electrically charged air‹ in the courtroom which is so often talked about.« He diagnosed a multi-layered resentment towards lawyers. Judges envied the lawyers' superior income and greater social freedom. More importantly, they resented the procedural rights of the defense, the lawyer's privileged access to the accused and his ability to name witnesses independently of the court's approval (§219 StPO). Deep down, judges thought the defense lawyer superfluous, if not positively counterproductive, a quasi-accomplice (Friedmann 1927: 41). The judges' own »objectivity« was all the protection defendants required. Friedmann was sharply critical of this view. He promoted a view of trials as the modulation of openly acknowledged conflicting interests. Friedmann believed that this conception was embodied in the British justice system, while German judges regarded free advocacy only as an

annoying concession to the British and French revolutions (Friedmann 1927: 48, 51; see also Knapp 1974: 31–6).

Metaphors of struggle and theatre colour Friedmann's description of courtroom action (in the following paragraphs, quotations from Friedmann 1927: 39–62 unless otherwise specified). Locked in a »guerrilla war,« the »true battle zone« between judge and lawyer was the presentation of evidence, including cross-examinations:

> The struggle in the courtroom, between the accused and the witnesses and among the witnesses themselves is similar to play-acting on stage, whether one likes it or not. Thrust for thrust, word against word, thus the image is created; where the interruptions begin, dramatic life comes to an end. (Friedmann 1927: 58)

But even while suppressing the defence's theatrical flourishes, the judges used similar techniques themselves. During the barrister's final plea, for example, they fidgeted in all conceivable manners »by which equanimity, disregard, dissent, impatience and the emphasis on a pointless waste of time may be expressed.« Working themselves into a huff about the lawyers' »playing to the crowds,« the judges were not just philistines, but hypocritical. They themselves were engaged in a performance, albeit one more aligned with the dominant paradigm of the courts' role in bolstering the state's authority as the protector of law and order in a particular cultural key, for which the rhetoric of the »organ of the administration of justice« is emblematic.

Subtleties aside, judges even resorted to the overtly theatrical means they purportedly spurned. Unlike a judge, a lawyer »cannot thunder, he cannot interrupt, he cannot declare an episode closed, he cannot issue an on-the-spot fine.« All in all, it was »the most unequal combat imaginable,« in which the lawyer almost inevitably lost out. Friedmann recognized that political and cultural enmity informed this antagonism. As barristers began to explore the possibilities offered by public proceedings, the »public at large, represented by the court press« preferred the figure of the defense lawyer over the judge and listened to him »with a

merrier heart.« If the barrister »hit upon adroit figures of speech, if he was courageous, cutting, witty« he earned the audience's applause, much to the judges' chagrin:

> [F]requently the ›Bravo‹ which the presiding judge hates with such venom will cross the listeners' lips, who are, as a matter of principle (although it virtually never comes to pass in fact), threatened with an ousting from the temple of the blind goddess. Who among us humans, however, rejoices at praise lavished upon the *opponent*? (Friedmann 1927: 44; emphasis in the original)

»Political and race questions« exacerbated the enmity engendered by the public's preferences:

> Very often, the barrister is Jewish, almost always a liberal, these days often even a Social Democrat; an ambitious judge is mostly conservative, never a Jew—sometimes perhaps a baptized one, in that case of course an ultra-anti-Semite, in order to blot out his origins. (Friedmann 1927: 45)

In contrast to practicing the theatricality of justice, recognizing it—to say nothing of endorsing it à la Friedmann—was beyond most conservative lawyers. But not beyond all; for example the nationalist Rüdiger von der Goltz, Joseph Goebbels' favorite barrister in the Weimar years, applauded colleagues who endeavored to »create a ›splash‹« in »the great Moabit trials which were plastered all over the papers under the bold headline ›defense clashes with court‹.« Goltz thought that it was perfectly admissible for a lawyer, »noticing a faulty attitude, or even a certain one-sidedness of the judge« to »alert the assessors, especially those without legal training, to this state of affairs by means of such histrionics (*Auftritte)*«[2].

While the condescension and the choice of words may smack of what Barish has termed »antitheatrical prejudice,« there can be little doubt that Goltz himself took great pride in his own theatrical flourishes.[3] During

2 Bundesarchiv Koblenz (BA(K)) KLE 653 von der Goltz Band 2, [35].

3 BA(K) KLE 653 von der Goltz Band 1, [103].

the anti-Young Plan agitation, Goebbels strove against not only the Social Democrat Otto Braun—whose good name the courts protected with lukewarm enthusiasm—but also against President Hindenburg, whose honor they guarded with greater zeal. Goebbels and his lawyer travelled to Hannover in August 1930 for the appeal proceedings in one such case. A »gigantic crowd« greeted them, and, anticipating triumph, their motorcade made its way to the nearby courthouse. Here is Goebbels' account of what transpired:

> Yesterday: Hannover with Goltz. Thousands in front of the courthouse […] the state prosecutor demands nine months. I yell at him, it's true theatre. Goltz leaves the building in protest. For a moment a fistfight threatens to break out.

Goebbels was cleared of all charges: »Outside the masses heave. Flowers, chants of *Hail*. The SA carries me down the street. *Up the banners*! Goltz has pleaded brilliantly.« That Goebbels' appreciation of his lawyer and of the effect of trials-as-propaganda did not depend on a favourable verdict is demonstrated by his account of a similar case he and Goltz lost in Berlin two months previously:

> At nine in the morning the fun begins. We demand that two Jewish judges be ruled unfit. After half an hour, the motion is rejected. Then I speak. ½ hour. I am on absolutely fabulous form. The whole court is deeply impressed. […] Goltz speaks. Very effective. A short, juicy final word from me […] flowers and great ovations.

While not sentenced as harshly as the prosecutor demanded, Goebbels was found guilty and fined a considerable amount of money, an outcome that had him seething. Nonetheless, his evaluation of the case is unambiguously positive:

> for Hindenburg this was a first class burial. Outside, ovations as never before. People are absolutely crazy. The press is bursting with news of the trial. Pictures and caricatures en masse. Well

> done. Wonderful propaganda for us. Unending jubilation […] an all-out victory.[4]

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Goebbels' trials form a useful bridge between the first and the second and third levels of the performativity of justice as discussed here. While the commotion, the raised voices, and von der Goltz's demonstrative renunciation of his mandate (in protest of the court's »bias«) are all ›theatrical,‹ these actions resonate politically because they brush against the grain of a more subtle and implicit performance that characterizes all trials: the legal process's performance of its own impartiality and open-endedness. Putting the fairness and objectivity of the judicial process and the state authority that underpins it on display in trials is a universal feature of justice systems. The judge's robes and hats, the British barrister's wig, or the more modest white tie German advocates wear all serve to de-emphasize the individuality of the participant in the legal process and instead underline the person's function. Images symbolizing impartiality (e.g. the scale or the blindfolded Justitia) and the emphasis on formality and protocol likewise signal neutrality and incorruptibility. At the same time, the presence of the state's power in the courtroom and invocations such as »in the name of the people« link the administration of justice to the state. Certainly, in Weimar not all judges identified with the new democratic state, as the wave of Berlin verdicts »mistakenly« pronounced »in the name of the king« in 1919/1920 illustrate.[5] However, this only serves to underline the general point—otherwise Berlin judges' passive-aggressive show of defiance would have made no sense. Put another way, to the extent that *this* performativity of justice is intrinsic to the process, it is also open to challenges. Precisely because of the state's role in the judicial process, and precisely because of its ostensible impartiality and fairness, subversive performances of defiance can cut it to the quick.

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4 BA(K) KLE 653 von der Goltz Band 2, [157f.]; Goebbels 1987: 588–90.

5 I am obliged to one of the anonymous reviewers of this article for pointing this out.

In Weimar, contesting the legitimacy of the process and ridiculing the very foundations upon which »fairness« was offered made trials rousing vehicles of dissent. Their attraction resulted partly from brushing this crucial, yet scarcely acknowledged aspect of creating acceptance for legal decision-making against the grain. Underscored by the willingness of their protagonists to sacrifice themselves in the unmasking of the »charade,« trials as performances of ideology laid a powerful charge against the legitimacy not just of Weimar justice, but of the hated »system« as a whole.

Not least because career paths in the administration and the judiciary were de-facto barred to them, many Jewish law graduates practiced as barristers. In the late Empire, this gave anti-Semites a pretext to blame Jews for the increasingly confrontational and publicity-conscious manner, so deplored by conservatives, in which trials were conducted (Hett 2004). In his famous 1912 pamphlet *Wenn ich der Kaiser wär'*, nationalist barrister and president of the *Alldeutscher Verband* Heinrich Claß set the tone: »The Jew,« he wrote,

> remains a Jew in all that he undertakes [...] If he becomes a barrister, he has a corrosive effect, because his inborn conception of law stand in opposition to those inherent in the written German law, and the result are those Talmudic practices which twist lawfulness into lawlessness and vice versa. (Krach 1991: 28–9)

In the Weimar Republic, Nazi propaganda took up this cue and attacked »Jewish judicial comedies« or complained of Jewish barristers turning the courtroom into a »fairground of playacting and class struggle« (Krohn 1991: 242, 266, 284).

Levelling this charge was ironic given the highly excitable and legally vapid style of leading Nazi barristers. The Magdeburg *Volksstimme* memorably lampooned Hans Frank's pleading, for example, as »pamphlet gymnastics following the system Frank II.« Frank, whose habit of attaching the Roman numeral to his surname drew ridicule within as well as outside the Nazi movement (»Dr.II«), later became governor of occupied Poland. As head of the Association of NS German Lawyers, he liked to

style himself »Adolf Hitler's lawyer« and placed the »correct« representation of National Socialist ideology high above the acquittal of his client. In spring 1930, for example, Hans Frank defended stormtroopers accused of grievous bodily harm in Schweidnitz, Upper Silesia. Breslau *SPD* barrister Foerder represented the victims, who had joined the criminal action as joint plaintiffs. Frank heckled Foerder in open court and encouraged his charges to do the same, despite the risk of ensuing fines and alienating the judges.[6] Frank even contemplated provoking Munich barrister Nußbaum into a libel suit (the ›*Judeneid*‹ trial, as he referred to it) solely in order to create a platform for his anti-Semitic legal claptrap. »Expert witnesses« would offer an exegesis of »the famous Talmudic passage about the Jew's oath towards an *acum*.«[7] Nußbaum was one of Frank's favorite targets (on one occasion he even managed to get the Jewish lawyer arrested), but his death in early 1929 cut Frank's *Judeneid* trial plan short.[8] In view of such trial strategies and courtroom tactics, however, it should be clear that the charge of »turning the courtroom into a theatre« was a self-serving rationalization.

The politicization and escalation of courtroom rhetoric in Weimar was driven above all by the kind of lawyers Rudolf Olden labelled *Krawallanwälte* (riot lawyers), as I have argued in greater detail elsewhere (Grunwald 2012). Using the courtroom to attack opponents, denigrate the Republic and exalt their own ideological community was predicated on a willingness on the part of lawyers to »turn the courtroom into a revolutionary stage« (as one prominent Communist lawyer put it).[9] This willing-

6 Barrister Foerder to Vorstand der Anwaltskammer München, Breslau, 5 Jul. 1930; Philipp Loewenfeld to Vorstand der Anwaltskammer München, Munich, 24 Apr. 1930, BA(K) NL 1110 Frank Band 36I.

7 Frank to Hermann Esser, Munich, 18 Jan. 1929, BA(K) NL 1110 Hans Frank Band 40–14.

8 Frank to Hitler, Munich, 21 Jun. 1928, BA(K) NL 1110 Frank Band 28–1.

9 Barrister Ernst Hegewisch to *KPD* central office, Celle, 8 May 1922, Bundesarchiv Berlin (BA(B)) RY1/I2/711 Juristische Zentralstelle (JZ), Band 8, [110]–[165], [141].

ness transcended ideological boundaries and united party lawyers from the left and the right. Despite this fact, and despite the highly disproportionate incidence of the legal profession's own disciplinary measures against party lawyers, the courts were slow to move against them. Indeed, exclusions of political lawyers from proceedings were so rare that each occasion was a well-known and much debated cause célèbre. It is striking, though, that both times a left-wing (and in Hans Litten's case also Jewish) lawyer was the target.

The 1932 Felseneck trial takes its moniker from a Berlin *Laubenkolonie* (allotment gardens), the site of a pitched battle between the SA and the predominantly proletarian residents that left two dead. Journalist Jochen von Lang likened the trial to a »catch as catch can« wrestling match:

> Time and again, judges and lawyers, lawyers and prosecutors scrapped noisily; time and again, the defendants cried in protest and the police hauled obstinate men from the room on the presiding judge's say-so; time and again, the accused, the lawyers and the spectators saluted with a loud ›Red Front!‹ fists raised; and from time to time, the Internationale was intoned as well. (Brauns 2003: 271)

It is not difficult to read these stylized affirmations of identity as performances of ideological community. As such, they mirror the original violent confrontation, but infuse it with additional symbolic meaning. On the one hand, the brawl—arguably fuelled by personal animosities and drunken aggression just as much as political passions—was reduced to its political dimension and exalted as an idealistic struggle. At the same time, the clash of the radical enemies of the status quo with the state authority (judges, police) highlighted the fact that Nazis and Communists not only fought one another, but rejected efforts at arbitration as both inappropriate and biased, as vestiges of the old.

Controversially, barrister Litten was excluded from proceedings for influencing witnesses and »fomenting unrestrained party-political propaganda in court.« The lawyer, the judges ruled, had »made the courtroom a fairground (*Tummelplatz*) of political passions.« A storm of protest

greeted the decision, widely held to be unlawful. Initially, even one of the Nazi lawyers opposing Litten, a certain Plettenberg, attacked the court's ruling to exclude him, though he was swiftly whistled back by the NS leadership. In any case the Court of Appeal rescinded the decision, whereupon the Felseneck judges recused themselves (as one of my anonymous reviewers put it, in an act of passive aggressive protest against the superior court's ruling). The trial had to start over, and this time Litten was barred from the trial for influencing an important witness suspect of aiding and abetting several defendants. Litten's appeal was rejected by the Berlin *Kammergericht* in November 1932, shortly before the December 1932 amnesty, which closed the case (König 1987: 18–21; Brauns 2003: 271).

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As these examples have shown, not one but two performances were in play, and in contest, in Weimar courtrooms. On the one hand, the performance of the reliability, impartiality and authority of the judicial process (and by extension of the political order) was ingrained in every trial—spectacular or mundane, big or small, political or not. On the other hand, in the trials of self-consciously political defendants bent on using the courtroom as a platform (or a »revolutionary stage,« as Communist Party barrister Ernst Hegewisch put it emphatically), an aggressive counter-performance asserted the very opposite.

We can trace this counter-performance in Rudiger von der Goltz's exit from the Hannover courtroom and in myriad other occasions, subtle and overt. Perhaps the most succinct statement of the principle, however, was made by Max Hölz. The self-styled »Communist Robin Hood,« arrested in the wake of the March insurrections in the Vogtland, was tried in Berlin between 13 and 22 June, 1921.

> I do not see myself as a defendant but as the prosecutor of bourgeois society represented by you, the judges. And if you have been able to drag me here, then for a single reason: you have the power, and thereby also the law on your side,

Hölz declared in his opening statement (Gebhardt 1989: 164).

Assisted by no fewer than three Communist lawyers—Ernst Hegewisch and Victor Fränkl from the Communist Party of Germany and James Broh from the Communist Workers' Party—Hölz tried to turn the trial on its head. As the journalist Max Hermann Neiße put it:

> Not since Liebknecht has anyone in all of Germany faced the class court with such inner victoriousness as Max Hölz. From the very first, he has refused to cede the merest inch of ground, and be it in the most insignificant of formalities, towards recognizing its authority. On the attack from the get-go, turning the tables, transformed from the accused into the most relentless prosecutor. (Gebhardt 1989: 166)

On the second day of the trial, the transcript recorded merriment amongst the spectators. Hölz had just described the rule of his »Red Army« militia as one of peace and quiet, »it was only when Hörsing showed up […] that the commotion and the bloodletting began.« Derision greeted this claim, prompting Barrister Hegewisch to

> enter on the record that the entire audience opposes Hölz. That is the proof that only members of the propertied classes are allowed to enter here. If it were workers filling those benches, Hölz's words would have been met with the liveliest acclaim.

»Do you as a lawyer count on the acclamation of the audience?,« the judge asked, to which Hölz replied that the judges only dared sit in his presence under the protection of arms, and feared nothing more than the revolution (Gebhardt 1989: 165–6).

On 22 June, Hölz was sentenced to life for high treason, but crucially also for killing the landowner Hess. Hölz denied manslaughter, but was more than happy to accept the court's verdict of high treason. As he pointed out in his closing speech, the higher the sentence, the better his »grades« as a revolutionary:

> When you pass judgement on me today, I will look upon it as an exam in school. If you sentence me to ten years in prison, that will be a ›D‹ life would be a grade ›A,‹ and the death penalty, a starred

> ›A.‹ For me, the bourgeois honour you wish to strip me of does not exist. Were you to award it to me I would be ashamed. The only honour I know is proletarian honour. That is the honour of unconditional solidarity with the proletariat, and that honour you cannot take away from me.

After disregarding (for the umpteenth time) the presiding judge's exhortation to silence, Hölz was dragged from the courtroom, crying »long live the world revolution« (Halle 1921, cited in Hannover and Hannover-Drück 1966: 217).

Hölz was the most celebrated and notorious of Communist defendants, but perhaps even more salient are the prescriptions of Felix Halle's best-selling legal advice manual, *How does the Proletarian Defend Himself from Police, State Prosecutor and the Courts.* Published in 1924, in it the head of the Communist Party's central legal office reminds defendants that

> a proletarian who has joined a revolutionary movement […] must under certain circumstances fight out the struggle with the bourgeois courts with all acridity, without paying heed to the consequences for his personal fate.

Regardless

> whether it is a trial of great or small importance, his trial represents a part of the great revolutionary struggle in its entirety [...] and as a fighter he owes an obligation to the great community of his class with each of his words and acts.

Above all, Halle admonished his comrades, implicating others was absolutely off-limits, as was showing any kind of remorse:

> [T]he accused revolutionary ought to say as little as possible about his personal actions and nothing at all about the actions of other comrades. He ought to say as much as possible about the distress of his class and of its will to put an end to capitalist exploitation.

To »beg for the court's benevolence through lamentations of remorse or similar miserable weaknesses« was »unworthy« of revolutionary fighters. On the contrary it was required »in all proceedings of import« to »issue

in the main court session a *pledge of allegiance to the revolutionary Communist movement*« (Halle 1924: 32, 35, emphasis F.H.).[10] This is a relatively blunt demand for self-sacrifice, given the likely consequences of such a statement for the court's determination of subjective consciousness of wrong-doing.

At the same time as »the system« and »its« courts were rejected—as in Goebbels' motion against »Jewish« judges or his lawyers' exit from the courtroom—the ideological community of the future was performed and validated in court. Roland Freisler, for example, while defending a group of stormtroopers, literally rallied his troupes and led the defendants outside the court to partake in a fistfight on the courthouse steps. While putting himself and his charges beyond the pale of legal norms and at risk of harsher punishment—we know of the case thanks in part to Freisler's disciplinary proceedings, in which he was found guilty, fined and reprimanded—the courtroom amplified the message of uncompromising defiance and implacable enmity (Grunwald 2012: 71–2).

Recognizing this, the Communist Felix Halle demanded that »even more than hitherto, the attention of the fighting proletariat must turn to matters of justice.« In the coming years

> a significant part of the class struggle will take place in the courtrooms. [...] At a time where the military authorities suppress political gatherings, every political trial offers proletarians […] the opportunity to enhance their knowledge on the field of class struggle.

Desirable as attending trials in person was (which Halle recommended for »our unemployed,« but also for »women and youths«), this placed a special onus on the press. »Above all,« Halle admonished, it was »necessary that, insofar as a class-conscious proletarian press exists, it reports on arrests, political trials and convictions in greater detail and length than hitherto« (Halle 1924: xii).

10 The title of Halle's book recalls August Bebel's series of articles *Wie verhalten wir uns vor Polizei und Gericht?* in *Der Sozialdemokrat*, Zürich, Nos. 45–7, 2, 9 and 16 Nov. 1882.

III.

Using the examples provided thus far, I would now like to ask in what sense the concepts developed within performance studies can help clarify the historical significance of legal procedure. In particular, I will focus on interactivity and audience participation as well as the creation or affirmation of community through sacrifice. Both constitute the performativity of the legal process independently of more localized, context-specific factors. In Weimar, such factors further embellished the theatricality of justice. The dramatic innovations of Brecht and Piscator, e.g., or the enthusiastic reception of Soviet agitprop in Germany helped erode the boundaries between art and life—and between aesthetics and politics. While the dramatization and politicization of the administration of justice was particularly visible in the case of Weimar, many of the following observations, *mutatis mutandis*, stem from other times and places. That is why *performance*, *performative*, *mis-en-scène* and so forth deserve our attention; they unlock particularly salient ways in which judicial and political culture interact. That these concepts are far more complex and contested than I have allowed for in my initial sketch of what performance *is*, or than I will be able to elucidate in the following, goes without saying. In the conclusion, I will return to the relationship between historical inquiry and performance studies.

Let us first turn to the interaction between audience and performers. Performance theorists have many bones of contention, but they agree that the performance is a transient phenomenon that happens *between* performers and audience. Those doing and those observing (and the two may overlap in any number of real life instances) are connected through a network of subtle bodily and imagined signs. If that sounds esoteric, consider a football match played in an empty stadium, or recall that cringe-inducing feeling of watching a play flop. A feedback loop connects audience and performers, who bring forth the performance together. Their bodily co-presence also accounts for the particular transformative and community-generating potential of performance (Fischer-Lichte 2010: 33, 37–39). When Nazi barrister Hans Frank celebrates his stormtrooper clients' refusal to answer the questions of the »Jewish ca-

det« on the opposing lawyer's bench; when defendants, lawyers, and audience members at the Felseneck trial jointly intone the Internationale; when fifty peasants accused of breach of the peace for resisting the requisition of cattle to be sold in debt auctions stomp their feet in time to the Prussian military march of the local regiment's band (whose passage the defence lawyer has carefully arranged to coincide with the final pleas), meaning is generated and transmitted in a manner that goes far beyond the sermonizing of the party press. Whereas the umpteenth exhortation to revolutionary action fell on increasingly deaf ears (even party officers hardly read the op-eds in the party press, editors complained), the comrades in the dock actually seemed to live it. Hence Felix Halle's insistence that party members attend (and the party press cover) courtroom confrontations. Trials were not just an exhortation to class struggle or nationalist liberation, in a sense they *were* that struggle, if only for the time being in the grit-your-teeth, clench-your-fist mode of the theatrical as if.

In the wake of Marcel Mauss and René Girard, scholars have assigned sacrifice a key role in the constitution of political community. In Sir James Frazer's memorable phrase, in sacrifice divinities »take themselves apart to put a world together« (Frazer 1890: 69). It is a universal human ritual »whose social and institutional form can be displaced but which can be eliminated only at the risk of dissolving the social« (Borneman 2002: 5). And in fact, the German word *Opfer* means both *sacrifice* and *victim*. As Marcus Funck, Greg Eghigian and Matthew Berg have pointed out, this linguistic conflation indicates the notion's special potency in German political discourse. Moreover, defeat lent the rhetoric of sacrifice a special poignancy after the First World War. Its impact can be traced on a number of levels, from the »stab-in-the-back« myth of an army supposedly »undefeated in the field« that falls to betrayal by revolution on the home front to the iconization of »fallen heroes« such as Leo Schlageter and Horst Wessel. *Ex ossibus ultor*—from the bones, an avenger—was a popular motto encapsulating militarist aspirations to reverse defeat in the First World War (Reichardt 2002: 555–8). It found lively expression in popular culture, for example in Richard Euringer's

Deutsche Passion 1933 (1932). The radio play, adapted into hugely popular mass pageant under National Socialism, features a fallen soldier rising up from the grave to heal Germany's bitter internal divisions and ensure that the wartime sacrifices were not in vain (Fischer-Lichte 2005: 8, 122–7).

»The social« which sacrifice in Weimar political trials constituted so defiantly was the idealized community of the future. It was imagined as a fighting élite and germ cell for society's regeneration and renewal. Nothing illustrates this better than the exaltation of *the* political prisoners of left and right, Max Hölz and Paul Schulz. Under the heading »Stop the chicanery! Stop judicial crime! Free Max Hölz!,« deputy *KPD* leader Ernst Schneller wrote that »the proletarian political prisoners are tormented and tortured with all chicanes [...] the conviction of comrade Hölz is an object lesson.« Police exhibitions pandered to the »arrogant sated curiosity« of the bourgeoisie:

> they all pass by these images [of the imprisoned Hölz], exhibited to mock the proletariat: the bankers, speculators, lords of the business conglomerates, the class judges, the high and mighty of the army and the police, the royalty and the *Feme* murderers. (*Rote Fahne,* 2 Oct. 1926)

Ex negativo, Schneller thus evokes the proletarian community by juxtaposing the gawking bourgeois mob with the martyred Hölz. Under the heading »Dedicated to Max Hölz, the first Soldier,« Wilhelm Stolzenburg rhymed:

> O body amidst bodies, hand amongst hands / O shimmer in these nightly lands / O wave, of light born / O breath, to life sworn / Lift us up into a day / Which dark clouds cannot sway / Call awake, o voice, the hearts/ So that long night take flight at last.

Given the religious overtones of such eulogies, it is small wonder that an enthused admirer wrote:

> Hölz, o you our brother, our blood, I kiss your hands, your wounds, which they inflict upon you for all our sakes [...]. Poets

> and bards will rise up for you, brother, because you are life and the future. (Gebhardt 1989: 60)

In practice as well as theory, sacrifice was at the heart of performing the ideological community on trial. Ernst von Salomon, having served five years for his part in the Rathenau assassination, voiced the expectation that in political trials »the verdict could not be a source of fear for anyone, as it should really be a pleasure to become a martyr for the good cause« (Von Salomon 1961: 279). It is only logical that defendants willing (or even eager) to sacrifice themselves accepted that the party determined every aspect of their defence. From July 1924 onwards, the Communist Party encouraged fugitive party members to give themselves up to the state authorities: »Better go to prison for a year or two then live illegally for years on end, and in this way become completely demoralized, be lost to the party and in the end still get caught and made to do time« (Brauns 2003: 206). Many followed the party's call. In 1928, for example, a group of fugitive *KPD* members, accused of high treason *in absentia* since 1924, declared their willingness to surrender themselves. Their self-sacrifice, they wrote, would give party propaganda »a revolutionary note« with »repercussions far beyond the [1928] elections.« »Naturally,« they added, »we are prepared to conduct the trial according to the directives of the Communist International and the KPD.«[11]

Andreas Wirsching, Emilio Gentile and other scholars have recently placed renewed emphasis on the study of the early stages of totalitarian movements (Wirsching 1999; Gentile 2006). In these quasi-embryonic phases, they argue, attitudes and practices of community are rehearsed which subsequently shape and inform the movement's regime in power. As Daniel Schönpflug summarizes:

> The movement offers its members a collective way of life, a place in society, an experiential space and an aesthetic. The promise of the future characteristic of totalitarianism is translated into language, visual images, and symbols. On a small scale, the ideologi-

11 Anon, typed manuscript, place unknown, 9 May 1928, BA(B) RY1/ I2/ 711, Juristische Zentralstelle, Band 3, [124].

> cally constructed group prefigures what is in store for the state, society and economy once the totalitarian movement, with its claims to fundamental renewal and a complete domination of all aspects of life, takes power [...]. (Schönpflug 2007: 267)

Conceptualizing legal procedure as performative reveals the judicial as a particularly salient and powerful context in which gestures, language, images and symbols can create and affirm such a community of ideologues. To speak of performance is not to suggest that the trials were in some sense *just* theatre, or that the values and ideas informing them were insincere or merely pretended. Much less is it to distract from the fate of the many thousands of victims of judicial bias, overwhelmingly from the left, or to render harmless the suffering of prisoners, regardless of culpability and political stripe. Instead, labelling trials as performances of ideology is to suggest that they offered extremist parties a means of creating meaning and identity that was intuitive, emotive, interactive and powerful.

The heroic community of defendants, lawyers, and the party forged in political trials offered just the kind of aesthetic and experiential place Schönpflug evokes. It was a vital component in sustaining the—often highly unrealistic—pathos and self-view of extremist parties as genuinely revolutionary forces. For the extremist parties during the stability phase, judicial procedure therefore provided a crucial counterpoint to the relatively conciliatory practice of parliamentarism (Mergel 2002: 135–6). Political trials as spectacles of ideological conviction and defiance helped keep alive the aura of revolutionary potency even while the Communist and far-right parties immersed themselves in the practice of Weimar politics, economic life and at times even government.

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In this essay, I have argued that we can distinguish three levels through scholarly engagement with the performativity of justice: firstly, surface similarities in physical arrangement, sequence of events, props, costumes, ritualization etc; secondly, the performance of the neutrality and impartiality of legal procedure, and, implicitly, the authority and legitimacy of

the state as its guarantor; thirdly, the possibility of brushing this second level against the grain though the production of counter-performances. Another important level that I have largely bracketed from this account involves more complex epistemological and ontological claims about the constitution of subjects and subjectivity. Jürgen Martschukat hints and Andrew Munro, Judith Butler and others argue in more detail that this process finds a (some seem to suggest *the*) privileged arena in legal procedure. Subjects are constituted and performed in and through legal interpellations.

The three levels discussed here are of course linked. The first, »surface« level we may term the *theatricality* of justice, it posits that courtroom action resembles a play. It is usually, though not always, invoked to discredit particular trials or sets of trials as somehow fake, inauthentic and improper—not *real* law. We should note that in so doing it assumes both that there is such a thing as real, and presumably largely or totally unperformative law, and, more generally, that authenticity and performance are opposites.[12] Both, I would suggest, are deeply flawed notions. The first ignores that all legal procedure is, and always has been, performative. Quintilian's *Institutes of Oratory*, which one could qualify, tongue in cheek, as the first law school textbook, counsels defendants to arrange for their infant children to attend court unfed so that they will wail with hunger (or, in the ears of the jury, in anguish at their father's plight). Quintilian was anything but frivolous about the ethics of advocacy, and representing a just cause was the *sine qua non* of his forensic schooling—but he saw no contradiction between the wailing child and the purity of the law.

12 See e.g. the strong distinction Awol Allo makes between what he terms the first (»legalistic«) and second (»normative and performative«) level »orderings« of trials; legal success can only be achieved by foregoing objectives regarding the social and political impact of proceedings, and vice versa (Allo 2010: 46–51).

The second notion, that performance and authenticity are opposites, is even more problematic. It ignores that *authenticity* is in itself a construction that relies on much the same methods of dissemination and reception as *deceit* (Peters 2008: 184). Puzzlingly, even well-informed commentators fall back into an essentialist notion of authenticity. A recent (and in its imaginative empirical scope brilliant) attempt to apply the insights of the performative turn to the cross-legitimization of National Socialist and Communist self-stylization is Tim Brown's *Weimar Radicals. Nazis and Communists between Authenticity and Performance*. Taking his cue from Conan Fisher, Brown argues that locating Communists and National Socialists on opposite ends of a political »spectrum« is misleading. The dynamic between the two unfolded in an in-between zone, he claims, and *performance* is a key to unlocking it. This approach has much to commend it, but—as juxtaposition of *performance* and *authenticity* in the subtitle of the book signals—risks misapprehending the basic relationship between these two concepts. Performance in its substantive sense (i.e. apart from the »all the world's a stage« generalities) has little to do with make-believe, and nothing at all with »fakeness« (Brown 2009: 1–13, esp. 11–2).. Authenticity *is* a performance. In the case of Weimar, it was precisely the fusion of stylized, deliberate, calculated behaviour and the supreme authenticity of (real) sacrifice that made political trials so compelling as performances of ideology.

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