

(P(Re))Forming Justice: Milo Rau's Trials and Tribunals

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Since the founding of the International Institute of Political Murder in 2008, Swiss German theater-maker Milo Rau has gained international attention for his political theater projects. '(P(Re))Forming Justice: Milo Rau's Trials and Tribunals' looks specifically at Rau's trial and tribunal projects: *The Moscow Trials* (2013), *The Zurich Trials* (2013), and *The Congo Tribunal* (2015). It engages with the intersection of the political and the affective in Rau's re-temporalization of necessary but ultimately non-existent institutions to create utopian, affective institutions that serve as demonstrative *alternatives* to those of the present. In uncovering the connection between the aesthetic references of affect and politic, this article connects three performance elements within Rau's projects: (1) the political impulses of these constructed, temporary institutions, (2) their affective power, and (3) the concept and question of justice. Bringing the anarchist concept of *prefiguration*, Frans-Willem Korsten's *apathy*, Olivia Landry's *Theater of Anger*, and Robert Walter-Jochum's *Theater of Outrage* into contact with affect, this article uncovers how Rau's tribunal theatre, in its creation of a jurisdiction located in the future – a prefiguration for what these spaces should look like – serves as a call to justice that breaks with the apathy of the present.

Keywords: Milo Rau, IIPM, NTGent, theater of anger, theater of outrage, preformation

Since founding the International Institute of Political Murder (IIPM) production company in 2008, Swiss-German theater-maker Milo Rau has gained international attention, acclaim, and even incredulity. As a political artist, Rau – alongside his work in the repertoire theater – has facilitated petitions, founded political parties, authored political declarations, staged public marches, and formed assemblies, think tanks, and talk shows that temporarily bring activists, artists, and politicians together in dialogue. The political action projects that have won Rau the most international attention are (arguably) his performative trials and tribunals: *The Moscow Trials* (2013), *The Zurich Trials* (2013), and *The Congo Tribunal* (2015/2017/2020/2021).

Rau's trials and tribunals are 'prefigurative,' which Mathijs van de Sande defines as a "political action, practice, movement, moment, or development. A space where political ideals are experimentally actualised in the 'here and now', rather than hoped to be realised in some distant future. Thus, in prefigurative practices, the means applied are deemed to embody or 'mirror' the ends one strives to realise" (230). Rau's prefigurative tribunals function by constructing of *alternatives*, as Rau explains:

[T]rials and tribunals offer a chance to deconstruct things that seem too complex to understand, such as the globalised economy. By bringing the different 'actors' together in one constellation [...]. It also gives you the opportunity to rethink what kind of institutions we actually need to be able to address the challenges facing us today, such as global inequality or the climate crisis. ("Why Art" 111)

Looking at both the political and the affective, this article connects three elements of the performances: (1) the political impulses of Rau's constructed, temporary institutions, (2) their affective power, and (3) the concept and question of justice as it impregnates these aspects of the projects.

As the title '(P(Re))Forming Justice' identifies, Rau's trial and tribunal projects are more than *just* a performance, these projects – particularly *The Congo Tribunal* – are about forming institutions that better serve the needs of the present by (re)distributing justice evenly (or, at the very least, more evenly). The theatrical tribunal

acts as a *preenactment* of an institution that does *not yet* exist – a future-oriented alternative – that provides a socio-political critique of existing judicial institutions and legal structures such as the International Criminal Court, the trials act as a *reaction* to specific examples of past failures of existing judicial systems in Russia and Switzerland. What we see in these institutions' one-time performances – which Rau calls *symbolic institutions for the future* – is a liminal alternative institution that integrates the reforms Rau and his team identify as necessary to transnational judicial institutions alongside a prefigurative alternative.

'(P(Re))Forming Justice' explores Rau's trials and tribunal, which I refer to as *reactments* because of how they react against the injustices and failures of existing institutions, in two parts: first, 'A Symbolic Institution for the Future,' explores the theory behind these projects and what it means to construct an alternative in a performative and inherently (one could even say inescapably) fictive space, while clarifying the distinction between *reenactive* trials like *Moscow Trials* and *preenactive* tribunals like *Congo Tribunal*. This section draws on existing theories and analyses of politically engaged art alongside Rau's own reflections about his reactments and anarchist theory. The second section, 'Apathy – Anger – Outrage,' examines how Rau and his team construct affective institutions that respond to the failures of existing judicial institution by filling in their absences and reinvigorating actors, spectators, and a wider public, producing anger and outrage to counter the overwhelming force of apathy. This section draws on Frans-Willem Korsten's concept of apathy as a disruptive force denoting a lack of care. Considering the numbing power of apathy, this section then reflects on the tribunal's awareness-producing power, building on political artists Stephen Duncombe and Steve Lambert's artistic equations "YOU + AWARENESS = CHANGE" and its pluralizing inverse, "CHANGE = PEOPLE + AWARENESS" (26). With these equations, Duncombe and Lambert centralize awareness – namely the artist's ability to raise awareness through politically engaged art – in the production of change (26-28). This final section of the article goes on to explore awareness as an important aspect of affective energy, engaging with Oliva Landry's Theater of Anger and Robert Walter-Jochum's Theater of Outrage in respect to Rau's work.

A Symbolic Institution for the Future

In *Art as an Interface of Law and Justice: Affirmation, Disturbance, Disruption* (2021), Frans-Willem Korsten identifies art as a space – what he calls an interface – that brings “unresolved issues of justice” together and makes them “into something of the present and the future” (4). Art, as a meeting space – which is also how Rau views his art – inherently creates an affirmative, disturbing, or disruptive force. By uniting conflicting and often polarizing perspectives in the performance space (pro-Putin, ultra-Orthodox Russian talk show hosts with religion- and regime-critical artists in *Moscow Trials*; mothers whose children have been massacred with the militia leaders and the minister in charge of police who failed to intervene in *Congo Tribunal*), Rau’s politically engaged theater provides the opportunity to tear a small hole in the fabric of the law, creating a crack in the habitus of law and justice dictated by a neoliberal economic system. Performative trials and tribunals offer a space to highlight the failures of the existing legal system, because, as Korsten puts it, “art is considered as the medium that makes this palpable” (18-19).

The crucial difference between art and on-the-ground politics is marked by liminality: activism and real-world politics are long-term, ongoing processes, while activist art is temporary and project-based. Rau is aware of the freedom offered to him and his projects through the status of *just art*:

Kunst wird aber nie Machtpolitik sein. Die Frage ‘Was muss man tun, damit die Dinge sich ändern’ ist eine machtpolitische. Diese Frage kann die Kunst realpolitisch nicht beantworten, nur symbolisch. Der Künstler ist ein Vor-Augen-Führer, ein Vorbereiter, aber kein Politiker. Kunst und Macht lassen sich nicht vereinen, das ist die spießige Wahrheit. (“Zukunft (1)” 240)¹

According to Rau, the artist and artistic intervention fulfill a revelatory, emergent function that can show what a change (i.e., the alternative) could look like. For Rau, this means constructing performative institutions based on real-world necessity such as a trial in Moscow for left-wing visual and performance artists divorced

from the political influence of the ultra-Orthodox religion, or a tribunal in the DRC that holds multinational corporations responsible for benefitting from and attributing to the instability in the region (240). Rau is acutely aware that the symbolic and, therefore, unreal space of these performative projects is one of the reasons why they are allowed – particularly in conflict zones like the DRC – to take place. He is a theater-maker, not a law-maker, and it is precisely this distinction that gives Rau, IIPM, and NTGent the freedom to stage their performative institutions (Rau, “The Congo Tribunal”). These trials and tribunals transpose potential futures (or, in *Moscow* and *Zurich Trials*, idealized versions of the past) into the present of the live performance. It is an active attempt to create (or perhaps more accurately inspire) change with the hope that the symbolic, performative act will be picked up and carried forward into reality by those outside the theater.

These institutions do not *yet* exist but are necessary: “ein *richtigerer* als die *richtigen*” [“a trial more real than the *real* one”] (“Affirmation” 16; “In My Projects” 202). Performances construct fictive spaces using symbolic means, seeking pragmatic results: “Es wurden Realitäten in einem artifiziellen Rahmen geschaffen, den es vorher als Institution noch nicht gab” [Realities were created within an artificial framework, which didn’t exist previously as an institution] (“Man muss” 16-17). For Rau, the symbolic act takes place in the meeting of the spectator (on various levels and positionalities) and performance, which serves as a light for the future (“Das Symbolische” 24-25). However, Rau’s *symbolic* should not be interpreted as ethereal and intangible, but as concrete and specific (living and breathing): symbolic acts performed seriously and unironically, treated *as if* they were real, legally legitimate institutions. For both *Congo Tribunal* and *Moscow Trials*, this meant finding real cases, real crimes, even pre-existing trials to serve as precedence for the fictional institution. For *Congo Tribunal*, the three precedence cases (one for each day of the tribunal) are (1) the BANRO case (“Has the Canadian mining company BANRO benefited from political instability during the war?”), (2) the Bisie case (“Are multinational corporations not being held legally accountable for human rights violations because their commitment in Africa is essential for Europe’s raw material and energy policy?”), and (3) the Mutarule case (“Does uncertainty and violence continue in Eastern Congo because too many local and international players benefit from the conflicts?”) (“Hearings/The Banro Case”; “Hearings/

The Bisie Case”; “Hearings/The Mutarule Case”). *Moscow Trials* uses a three-day, three case structure: The first sitting examined the case of *Caution! Religion* (2003), an art exhibition denounced by the Orthodox Church for its use of religious imagery, vandalized by local hooligans, and eventually condemned by the Russian Parliament for inciting interreligious hatred. The second sitting looked at another Sakharov Center exhibition, *Forbidden Art 2006*, which used religious imagery to discuss the question of institutional censorship and was similarly received by the Church. The third and final day of the trial was dedicated to the most internationally notorious of the artist trials: the trial of the punk-rock protest group Pussy Riot for their short political action performance *Punk Rock Prayer* in Moscow’s Cathedral of Christ the Saviour on February 21, 2012. Although Rau asserts his projects are not based in a conditional tense, an as-if – “Es gibt in meinen Projekten kein Als-ob, keine Reserve” [“In my projects there is no as-if, no reserve”] – by removing the central obstacles in the way of such trials, tribunals, and institutions, there is an inherent as-if (*als-ob*) (“Affirmation” 16; “In My Projects” 202).

Reactments construct *alternatives* untethered from divisive politics and ideological differences, marking the utopian element of the projects. Rau’s as-if sits in how the alternative is freed from ideological and political blockades present in national and international power structures. These alternatives are simultaneously fictional and factual: the people involved are real, their testimonies are real, the conflict is real, but the institution is not legally sanctioned and has no real power. While *The Congo Tribunal* concludes with a guilty verdict to each of its accusations, these verdicts are not carried on a judicial, legislative level into the real world – they remain firmly implanted in the unsatisfactory world of art. And when *Moscow Trials* narrowly overturns the original trial’s verdict, this, too remains isolated and separate from the real world; the two imprisoned members of Pussy Riot, Nadezhda Tolokonnikova and Maria Alyokhina, continue their sentences after the trial closes. Actual political, social, economic, even cultural change does not occur the institution itself, rather the institution holds the potential to carry forward real change through its participants. This potential lies not in what could be considered the weak verdicts of these events, rather in how they bring people (both locally and internationally) together with knowledge in an expansive, albeit not unproblematic, way – again, CHANGE = PEOPLE + AWARENESS.

When Rau was named artistic director of the Belgian cultural institution Nederlands Toneel Gent (NTGent), he opened his five-year term (2018-2023) with the publication of *The Ghent Manifesto*. The first of these ten rules acts as a credo for Rau's vision for the future of NTGent: "It's not just about portraying the world anymore. It's about changing it. The aim is not to depict the real, but to make the representation itself real" (NTGent Team 280). Rau is not the first (nor will he be the last) artist to suggest theater's potential to facilitate real world change. Bertolt Brecht famously called for a theater that extended beyond the physical performance space, exploding into the street. We can parallel the first rule of *The Ghent Manifesto* with the educational and world-shifting goals of Brecht's didactic theater, which theater scholar Marc Silberman explains as follows: "Brecht's point of departure assumes that any representation of reality is always a construction of reality, and the goal of constructing a particular reality is to gain knowledge about it in order to undertake actions effectively that change it" (173). Like Brecht and many current political theater artists, Rau subscribes to the idea that theater, by engaging with the immediate present, can attack and perhaps even alter the established order. The performance space offers artists the freedom of a space for radical imagination – temporarily emancipated from the confines of neoliberal governance and (il)legality – allowed to exist under the guise of art and theater. Disruptive – but mostly within the limits of the given order – and thus perceived by (particularly Western) power structures as more annoying than potentially dangerous (Korsten 13-14; 20-23).² Rau's theater thus fits within a long, established tradition of a transformative political art – variously called activism, (socially) engaged art, emergent art, community-based art, dialogic art, interventionist art, participatory art, collaborative art, social practice, and many more (Malzacher 17). Rau's reactments undertake a process Malzacher describes within engaged art practice as moving beyond "relational reflection or aesthetics. It takes a stand, or provokes others to take a stand. It does not only want change; it wants to be an active part of this change, or even to initiate it" (13).

However, this form of politically engaged theater is not unproblematic in its aspirations. In 'Protest Performance: Theatre and Activism' (2019), English theater critic Lyn Gardner identifies a central issue with what could be called *mainstage political theater* (i.e., repertoire-based political theater produced by state-subsidized



Figure 1. Milo Rau during an investigative film shoot with Congolese soldiers
© 2015 Fruitmarket, Langfilm & IIPM _ Eva-Maria Bertschy

cultural institutions like NTGent).⁵ She highlights that this form of theater largely takes place within a closed, homogeneous place: “political theatre seldom really changes anything, because unlike performances out on the street, it can easily be ignored. It takes place behind closed doors, plays to a limited audience made up of these who can afford a ticket and to an often liberal-leaning crowd who agree with the message of the play in the first place” (2). Gardner goes on to define what she calls *activist theater*, which – inspired by Augusto Boal’s Forum Theater, which itself builds the base of Brecht’s didactic theater – has the potential to “inspire change” through audience empowerment that uses a (temporary) community to uncover alternatives (2). In *Legislative Theatre* (1998), Boal identifies the theater as a space where actors and spectators alike can “improvise solutions or alternatives to the problems put forwards by the show” and where “potentialities can be ‘act-

ualised' or developed: the potential becomes actual. The person can re-dimension himself, investigate himself, find himself, recognise himself" (67-68).³ Likewise, political artists Duncombe and Lambert identify the radical imagination and transformative potential of an interventionist political art:

Art allows us to imagine things that are otherwise imaginable [...] [it] allows us to say things that can't be said [...] Art, if we let it, allows us to take the mundane, imperfect world we live in and combine with radical, idealistic visions of the future. Through creative thinking we use these contrasting visions to form tangible, complex plans that inspire and re-enliven our work and others to join us. It enables us to map our goals against reality, envisioning pathways to a better world that was previously uncharted. (32-33)

Through Duncombe and Lambert, Gardner, Malzacher, and even Silberman's reading of the theory behind Brecht's didactic theater, two central (and interconnected) observations about politically engaged art: outward mobility and assembly.

In a brief digression from the central argument of this article, it must be mentioned that within much of Rau's work, there is a problematic relationship with the issue of authorship. Although it is Rau's name attached to these productions, we cannot ignore the frequently overlooked labour of participants in moving these projects forward. In reactments, Rau and his team provide participants with a dramaturgical frame rather than a scripted encounter. Therefore, what happens within this frame cannot be predicted and can only be simultaneously responded to through processes such as editing of documentary films or editorial features on the event. It is also difficult to discuss these institutions as democratic in a non-symbolic sense, because – as the director/instigator – Rau himself selects and extends invitations to participants, who, in turn, decide whether to participate – there are, after all, no representatives of Banro in *Congo Tribunal* or of Putin's government in *Moscow Trials*.

Returning to mobility and assembly, assembly within Rau's work – specifically, the idea of mobilizing and bringing together people of vastly different backgrounds in a single space (although this, as previously

mentioned, is neither so simple nor transparent as it could be) – is clearly visible in Rau’s description of his trial and tribunal projects as quoted at the beginning of this article. This outward mobility is marked by the hope that Rau’s enactment will eventually serve as a frame for a real, legitimated trial or tribunal and will be carried forward into the real by the participants in these projects. This is also why Rau describes these performances as a *Möglichkeitsrealismus*, a realism of possibilities (“Das Symbolische” 24). In other words, (at least according to Rau) reactments make the unimaginable imaginable: “Was nicht darstellbar ist, ist nicht denkbar, und das *Kongo Tribunal* hat etwas real gemacht, was vorher nicht einmal in den verrücktesten Träumen vorstellbar war” [“That what cannot be represented is not conceivable, and the *Congo Tribunal* made something real, which was not imaginable in anyone’s wildest dreams”] (“Man muss” 16-17). One cannot help but be reminded of Alan Read’s suggestion in *Theatre & Law* (2016) that the law not simply echo the real and the community in which it exists, but should provide visions of these, offering a mode for how society should and can be (Read 36-37).

It is important to distinguish between Rau’s alternatives. Projects like *Moscow* and *Zurich Trials* construct alternative judicial institutions, however, these institutions are marked not so much by the *als ob* (*as if*) as a *was wäre wenn* (*what if*). There is a significant difference in the temporality of these institutions. A difference that can be partially explained using Rebecca Schneider’s writings on reenactment and preenactment. In the introduction to her seminal text *Performing Remains: Art and War in Times of Theatrical Reenactment* (2011), Schneider explains reenactment as “[t]he practice of re-play or re-doing a precedent event, artwork, or act that has exploded in performance-based art” (2). In a 2019 article, Schneider extended this discussion of reenactment into the realm of the pre-enactment, which she connects and distances from the temporality of the reenactment as such:

Preenactment, too, presumes future repetition – and thus is always itself a form of reenactment in the making, preenacting reenactment. [...] Preenactment seems to say: What’s happening in the present isn’t really happening now, but it is what will be happening in the future when this preenactment is the past. Much like rehearsal, pre-enactment scripts itself not only toward a future event (which is

our common way of thinking about it), but anticipates its own *raison d'être* as a matter of the past – the past that it, preenacting toward a coming (re)enactment, will have become. It is thus playing the present as the future's past. (121-122)

Congo Tribunal enacts a tribunal that has not yet happened. It *anticipates* a future (political) event, rather than extrapolating from the tendencies of the past (Marchart 130). Rau and his team imagine, organize, and stage a tribunal for the DRC that considers the role of multinational corporations in the conflict alongside the actions of local groups and individuals, because there is no tribunal for the conflict and never has been. While the production is referential of transnational tribunals and organizations like the International Criminal Court, it does not reference a specific, existing trial or tribunal. In contrast, Rau's earlier tribunal works – *Moscow* and *Zurich Trials* – are more *reenactive*. These productions look backwards instead of forwards in time (although they do contain a gesture of reform for the future). The central thesis of these productions centres around the question: *What would have happened if* (1) the Russian judicial proceedings that found Pussy Riot members guilty (as well as the curators of the two other cases examined by the performance) was a jury trial that followed the Western model, or (2) Switzerland's constitution had space in its provisions about freedom of speech to hold the Swiss right-wing newspaper *Die Weltwoche* liable for its printed attacks against marginalized communities (Switzerland's Muslim and Roma communities).⁴

Rau is also aware of this reenactive impulse in *Moscow Trials*. In a reflection written shortly after his return from Moscow, Rau stated: “‘The Moscow Trials’ retraced the steps of this story of a state- and church-driven campaign against inconvenient artists. [...] [It is] a retake (*Wiederaufnahme*’), not a repetition. It concerns not the simulation of a juridical process, but its opposite: the enabling of a process, which was not possible when it was originally conducted” (“Pussy Riot’s Moscow Trials” 280-281). Words like “retrace” and “retake/*Wiederaufnahme*” indicate the centrality of the original in its re-run. The tense of the central question of these projects are the key distinguisher between projects like *Congo Tribunal* (the preenactive) and *Moscow Trials* (the reenactive): ‘Why isn’t’ versus ‘why wasn’t’. Yet, the line that draws these two models together is

much stronger than that which divides them. At their core, both the pre- and reenactive reactment are rooted in a rejection – an emphatic declaration of “No!” – that founds the utopian performative, asserting this is how it should have been or how it should be.

What we see in Rau’s reactments is a utopian alternative offered by a space of rejection as well as how the director interprets the concept of protest: “protest means saying ‘no’, but without knowing how it will turn out” (“Art of Resistance” 47-48). This idea of rejection as the foundation for action falls along the lines of what Irish Marxist philosopher John Holloway describes in *Crack Capitalism* (2010):

Imagine a sheet of ice covering a dark lake of possibility. We scream ‘NO’ so loud the ice begins to crack. What is it that is uncovered? [...] the No is backed by an other-doing. [...] The original No is then not a closure, but an opening to a different activity, the threshold of a counter-world with a different logic and different language. [...] These are times and spaces in which we take control of our own lives, assume the responsibility of our own humanity. [...] We start from being angry and lost and trying to create something else, because that is where we live, that is where we are. (17; 19-20)

The crack is a rejection of the conditions of the present, which is itself an act of resistance. It is based in a perpetual desire (that is simultaneously naively simple and impossibly difficult) to break from the horrors and injustices of the present and create a different (and inherently non-Capitalist) world in the immediate present (3-7).

Cracks are created through acts of refusal, but these refusals must be accompanied by acts of creation to counter the system in which they find themselves. The plurality of these acts (refusal and creation) is significant. Cracks, according to Holloway, cannot sustain themselves in isolation, only in solidarity: “All around the lake there are people doing the same thing as we are, screaming ‘NO’ as loud as they can, creating cracks that move just as cracks in ice do, unpredictably, spreading, racing to join up with other cracks, some being frozen over again. The stronger the flow of dignity within them, the greater the force of the cracks” (17). Rau’s political actions – as summarized in the director’s own words at the beginning of this article – are based in a concept of solidarity. This solidarity is based

in the act of creating otherwise impossible collectives, “bringing the different ‘actors’ together in one constellation” (“Mitleid (1)” 111; “Why Art” 111). However, in the tribunal and trial format, this idea of solidarity – particularly in the performance of these institutions – is not so simple, because such real-world institutions are based not in solidarity but in productive conflict, where different sides present their, at times, incompatible perspectives and objectives. Both *Congo Tribunal* and *Moscow Trials* result in 100-minute documentaries edited for wider distribution that tidily wrap up Rau’s involvement (very specifically the Swiss/European and outsider Milo Rau, who is a visitor to these spaces) with the issue as he departs. We must therefore approach these productions with a certain critical distance, because what we see is seldom the entire story of the potentially messy or uncomfortable encounters.

Increasingly, Rau’s tribunals and political projects are about the formation of *networks of solidarity* – to borrow a term from Boal – that will outlast the performance. Rau is certainly not the only political artist to highlight the importance of relationships and networks left behind by artists working in spaces of conflicts that are meant to be picked up and carried forward by participants after the performance. Conflict zone theater scholar James Thompson identifies such traces as the groundwork for future interactions (62), Tim Prentki connects the collective act of creation with the experience of solidarity (60), and Jan Cohen-Cruz highlights the centrality of kinship in the exchange between the artist and community (1-3).

What we see across these, is a call for what Boal describes as reciprocal knowledge (Boal 52). For Rau – and for much of engaged art – knowledge and the expansion of knowledge is a necessary condition for the activist change desired. Here, we return to Duncombe and Lambert’s formulas “YOU + AWARENESS = CHANGE [and] CHANGE = PEOPLE + AWARENESS” (26). We find what simultaneously splits and unites these unscripted, highly ritualized, but dramaturgically plotted and staged trials and tribunals with existing judicial institutions. The judicial system is based in the acknowledged. As Korsten explains, “Law requires officially acknowledged courts as the places where laws, the only valid ones, can be enacted and the decisions are based on which law is operate as the rule” (31). Rau’s judicial performatives are about knowledge, specifically the revelation of the unacknowledged. “Knowledge,” Duncombe and Lambert explain in

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Figure 2. Stage-set during preparations for the theatre project "The Congo Tribunal" in the theatre hall at Collège Alfajiri in Bukavu © 2015 Fruitmarket

‘The Art of Activism,’ “is what determines the horizons of our imagination” (32). This is why the expansion of knowledge – marked by an outward-facing dissemination through the performance and its materials (e.g., pamphlets, interviews, mass media), i.e., the act of “trying to change what people know” – is so central to constructing a political theater that can overcome the apathy of neoliberalism through affective practice (32).

Apathy – Anger – Outrage

The Moscow Trials, *The Zürich Trials*, and especially *The Congo Tribunal* exist in a temporality formerly occupied by apathy. *Congo Tribunal* offers the most striking example of this apathy because of the extremes of the situation it represents. Apathy is defined by Korsten in his analysis of *Congo Tribunal* as the absence of care:

apathy can be traced in an absence, not of this sense of fairness itself, but of any kind of agency around or in relation to it. Apathy denotes a missing form of care, but also missing forms of desire or indignation. The absence of these [...] is captured by the phrase ‘I don’t care’, which can easily become the phrase ‘could not care less,’ and this in turn can easily become numb silence. In the context of law and justice apathy is measurable in terms of an inability to care, then, an inability that can destroy a feel for law and a sense of justice. Additionally, it is measurable in terms of a lack of desire and indignation. The latter two can be assessed in how intensely people relate to things. Apathy indicates a lack of being related; it implies the inability to respond. (34-35)

Apathy exists very differently in the DRC than in either Moscow or Zurich, a fact that is related to the reenactive-preenactive divide. In *Congo Tribunal*, Rau and his team deal with the Global North’s economic apathy – which can be explained in the context of Western consumer society, where the actualities of the means of production are out of sight and therefore out of mind – and with local apathy. Korsten locates this local apathy in a form of survival-based hopelessness, symptomatic of what Achille Mbembé calls necropolises, or death-worlds: “One of the horrors palpable in the situation in the

Eastern Congo, and in almost all cases of unregulated and relentless warfare, is that people have been so hurt and damaged that they no longer can care about anything except bare survival” (Korsten 36). Mbembé identifies necropolises as symptomatic of neoliberal world, where certain lives are deemed worth protecting and others disposable – made objects as they are unmade as subjects – in the name of the vitality, security, and wealth of a specific group (i.e., Europeans or those in the Global North) (Montenegro et al. 142-144). Mbembé describes this process as “the *generalized instrumentalization of human existence and the material destruction of human bodies and populations*” (Mbembé 14; italics in original quote). One could argue that the international contribution of *Congo Tribunal* is the awareness highlighted in Duncombe and Lambert’s equations: i.e., making Western audiences in Germany, Switzerland, and beyond aware of the situation in the DRC and the role multinational corporations like BANRO, Glencore, and MPC continue to play in the proliferation of this conflict. Locally, *Congo Tribunal* projects the possibility of hope – something Rau’s Congolese audience is eager to embrace, as indicated by the packed auditorium in Bukavu and its subsequent iterations produced independent of Rau in Kolwezi (Korsten 41).

The apathy that *Congo Tribunal* resists and rejects is best summed up as a resistance to how things are (i.e., things do not need remain as they are). In comparison, the apathy *Moscow* and *Zurich Trials* resists is based in the past: We cannot simply accept what happened. The obvious future gesture of this clause is: because if we do accept it, will happen again. In short: “Why isn’t?” (*Congo Tribunal*) versus “Why wasn’t?” (*Moscow Trials*). *Moscow* and *Zurich Trials* refuse to let sleeping dogs lie, allowing neither the Russian artists’ trials nor the inflammatory speech printed in *Die Weltwoche* to settle into the fog of history. These projects do the inverse of the phenomenon Frederik Le Roy identifies in Rau’s early reenactments – which are marked by an investigation into why the reenacted events “haven’t become *settled history*” (Le Roy 2017; italics in original). Instead, these projects refuse to let incidents that would prefer to be forgotten *settle*, forcing them back into the spotlight.

So much of what Rau does with staged trials and tribunals is tied up with how the temporary spaces are created and brought into being. These performative spaces fall under the purview of what





Figure 3.
Setting "The
Kongo Tribunal"
at Sophiensaele
Berlin © 2015
Fruitmarket,
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Daniel Seiffert

German-Jewish political philosopher Hannah Arendt calls the *space of appearance*. Arendt connects *being* with an *urge to appear*, “to fit itself into the world of appearances by displaying and showing, not its ‘inner self’ but itself as an individual” (*Life of the Mind* 29). Closely connected to this prerequisite of being, the space of appearance – which Arendt closely associates with the Greek polis – is a liminal space where political actors are both seen and heard. For Arendt, this visibility and audibility is the prerequisite for existing and being viewed as a part of the world (Brennan and Malpas 43; *Portable Hannah Arendt* 447). Just as Arendt understands appearance as “a public self-disclosure through speech in a community,” for Rau’s projects, delegates’ physical presence – particularly non-European ones – is key (Barbour and Zolkos 6). This physical (visible) presence is connected to representation through self-representation, democratic representation, and theatrical/performative representation. The seemingly simple act of bringing people together through five-to ten-minute presentations on a stage has a disclosive function, because appearance correlates with reality and the right to appear (Dean 337).

As Arendt states in *The Human Condition* (1998): “[whatever is denied appearance] comes and passes away like a dream, intimately and exclusively our own but without reality” (199). For Arendt, the space of appearance comes into being “wherever men are together in a manner of speech and action” (Arendt quoted in Knauer 727). In other words, the space of appearance occurs through interaction with others. For Rau, this space – or spaces – of appearance is about visibility, presenting alternative voices: those people directly affected by economic policies and political repressions of the present. Projects like *Moscow Trials* and *Congo Tribunal* construct spaces of active political engagement that recognize differences in experience and different political opinions.

Projects engage with what Maike Gunsilius in “Perform, Citizen! On the Resource of Visibility in Performative Practice Between Invitation and Imperative” (2019) describes as the unevenly distributed resource of visibility: i.e., visibility is a neoliberal commodity (264). Rau’s tribunals focus on those events excluded from the neoliberal sphere of visibility in an intersubjective act centered around the visibility and audibility of the witness-turned-subject. For Judith Butler, building on Arendt’s groundwork, connects appearance and

public articulation with *intelligibility*, or recognition. Both visibility and intelligibility are intertwined with social, political, economic, and cultural norms and, therefore, inherently connected to power relations (Gunsilius 264-265). This means the questions of “Who is not made visible?”, “Who is not made intelligible?”, and “Who is not made recognizable?” are just as, if not more, important than the question of “Who is?”, because the issue of visibility, intelligibility and recognition is intrinsically political.

All of Rau’s trials and tribunals are about the issue of presence, particularly *Congo Tribunal*, because of the severity of situation in DRC and the fact that the first three days of the tribunal took place in the DRC (Korsten 40). There is an awareness in this project that the judiciary is a closed, often exclusionary, space. The presence evoked by reactments engage with theater theorist Diana Taylor’s concept of *presente!*: “Coming into presence, into *presente!*, means becoming a ‘who’ to one another in spaces that withhold recognition, and forging spaces of appearance out of spaces of disappearance” (47). This coming into presence in the reactment are another act of rejection. A rejection of the ways things are or the ways things were. For example, *Congo Tribunal* – as a preenactive event – identifies and rejects the necropolitics applied by the Global North to the Global South that expels the Congolese populace “from humanity” for the sake of Coltan, gold, and other natural resources (121). What emerges through this (albeit temporary) extended space of visibility and recognition is what Rau calls “an act of civil self-empowerment” (“The Truth of Circumstances” 60-61). What Rau creates in Moscow, Zurich, Bukavu, and beyond is an affirmative space, where the anger, sorrow, and experience of the witness are taken seriously and at face value.

Theater and German studies scholar Olivia Landry, in *Theatre of Anger: Radical Transnational Performance in Contemporary Berlin* (2021), identifies a current trend in German theater that she refers to as Theater of Anger. Theater of Anger gives minoritized subjects a space in which to perform anger and perform in anger, in order to speak out against social injustice (4). While Rau’s theater undeniably occupies a different space than the post-migrant, Berlin-based anger described in *Theatre of Anger*, Landry’s analysis offers a productive frame to engage with the internal mechanisms of the tribunal performance as a re-galvanizing and interruptive force:

Bringing anger to bear on theatre regalvanizes theatre's capacity as a medium of confrontation, protest, and resistance. For, to paraphrase Fischer-Lichte, the very possibility of theatrical performance emerges from an encounter, a confrontation, an interaction. Theatre interrupts, just as an encounter interrupts. The theatre of anger returns politics to the stage in a direct way as it pioneers new modes of theatre. (18)

Landry, using the affective lens of feminist theorist Audre Lorde, reads anger as "loaded with energy and information" (17). The trials staged in Moscow, Zurich, and Bukavu similarly engage the anger of their participants. Like in the scripted plays of Theater of Anger, rather than pathologizing the anger of Rau's participants as the problem of the individual, projects affirm both the experience of the individual and the situation they react against (25-26). Affirmative anger shows something is wrong with the system that the individual is trapped within: for example, the neoliberal economic system that exports natural resources from the DRC to the Global North without regard for the local populace, or a judicial system so corrupted by government and church influence that political artists have no chance of receiving a fair share within it.

Landry identifies anger as an active emotion: a catalyst for movement that "pursues transformation and change" (32-34). In anger's movement-building potential, we recognize that anger is also a collectivizing and uniting force. For Aristotle, anger is rooted in its capacity to inspire a person to defend others: "The idea that the passions are incited by what occurs within a world of care and concern – parents, children, friends, those loved or close to us – as well as what happens directly to us" (Aristotle qtd. Landry 28). Let us return to the apathy mentioned at the top of this section: namely, apathy as the absence of care. Rau's trials and tribunals react against this apathy and the connected existence of the inhabitants at only subsistence level in the necropolises of the Global South. In the space created, we find what could be called the life-giving (or, in the context of Mbembé's *death-worlds*, life- or subject-returning) power of anger.

Landry explains that "self-worth and care for others are the two conjunctive forces at work in the scene of anger" (28). In the chapter

“Irritation” in *Ugly Feeling* (2005), Sianne Ngai – also drawing on Lorde’s wisdom – connects the activating power of anger to the act of justice, stating:

“The observation that justice conversely requires anger, and cannot be imposed solely by reason, underscores the passion’s centrality to political struggles throughout political history” (182).

Korsten similarly notes that the realm of justice is “propelled by desires and fears, feelings of understandable revenge and unresolvable pain, of longing and hope,” and identifies the effectiveness of *Congo Tribunal* in how it counters “the missing form of care, but also missing forms of desire of indignation” (9; 35-36). Apathy, in the context of law and justice, can be measured by the inability to care, come together (i.e., “a lack of being related”), and respond (34-35). *Congo Tribunal* created a space where those people impacted on all levels of the crisis in the Eastern Congo came together in a space that made a space of indignation and collective anger possible. A space where “the creation of law that does not stem from a strong norm-world, a *nomos*, but from a strongly felt necessity or desire for a space of speech where the execution of law can take place” (36). The collective anger of the participants (and the hope this collectivity contains) is the affective glue that holds the performance together and creates what Robert Walter-Jochum calls an activist collective, paving the way for post-performance action (161-162; 167).

Walter-Jochum highlights the role of what he calls *Empörung*, outrage, in Rau’s political actions: “in Raus Arbeiten übernimmt Empörung die Funktion, denjenigen eine Stimme zu verleihen, die unter den Bedingungen bestehender politischer Institutionen und öffentlicher Diskurse kein Gehör finden” [“in Rau’s work, outrage takes on the function of giving voice to those who cannot be heard under the conditions of existing political institutions and public discourses”] (167-168; my translation). Once again, intertwined with issues of anger and outrage, we find questions about the limits of visibility, audibility, and assembly in the public sphere’s current constellations. Walter-Jochum identifies three communicative levels of outrage in Rau’s theater: (1) the internal, i.e., among participants; (2) the external, i.e., via mass and social media; (3) what can be described





Figure 4. Audience member in the open-mic discussion following the Bisie mine case ("Bukavu Hearings") © 2015 Fruitmarket, Langfilm & IIPM Daniel Seiffer

as the foyer, i.e., the ingroup of Western intellectuals and theater folks who watch these performances (the proverbial choir to whom Rau is preaching) (170-173).

Walter-Jochum's internal Outrage (inter-participant outrage) closely relates to Landry's Anger as an artist driven mechanism that creates the conditions for a theater that responds and speaks out against social injustice. Anger, as Landry uses it, is not bi-directional (between actor and spectator) or multi-directional (among actor, spectator, and those outside the theater), but internal, among creators and actors. This inward directionality calls back to Gardner's critique of political theater as taking place behind closed doors with a limited audience (2). Instead, Anger concerns itself with the embodied subject, "chiefly preoccupied with putting hitherto absent bodies onto the stage" (15). If we use Anger as the internal, binding agent of tribunals and the force that leads the push for post-performance justice in the preenactive tribunal (e.g., the act that cracks the window of possibility for a real tribunal for the Congo) and reform in reenactive ones (e.g., what would happen to Russian artists if we removed the oppressive hand of Putin's government and religion from the courtroom), then Outrage is the hand they extend to their audience and beyond. Namely, a catalyzing affect that is itself indicative of the desired outcome of Duncombe and Lambert's equation: change.

Conclusion: The Performance of Care as the 'Performance' of Justice

The meeting of internal anger with external outrage produced by these trials and tribunals counters the lack of care that characterizes the apathy of the original/ongoing event. What occurs is a space in which injustice can be unearthed by means of hope – and hope is one of the key features that propels the realm of justice (Korsten 8-9). The anger and outrage cumulate in an outward moving engagement, jointly producing what Marc Léger in *Vanguardia: Socially Engaged Art and Theory* (2019) calls "socially *enraged* art." This art is marked by creators' and participants' refusal to channel their anger and outrage into existing institutions, instead demanding the creation of new, better ones (166). The affective quality Rau taps into is entrenched in a politics of care.

The balance of local performances – featuring local and international participants – and international outreach, extends the spotlight of visibility to Mbembé’s necropolises. For Korsten, the hopelessness of the necropolis of the DRC is directly connected with apathy, and apathy with silence (i.e., the lack of a voice). Caring – shocked back to life by the parallel forces of anger and outrage (of which care is also an integral part) – is an antidote to apathy. Taylor, in her analysis of presence and presence!, highlights that caring acknowledges “the interconnectedness between ourselves and others” as well as the absolutely political positionality of caring: “Who cares about the ‘over there’ when there’s so much to care about here?” (122). By bringing those who occupy these death-worlds to the witness stand, into the public sphere, and back to the realm of interconnectedness (a process Taylor calls subjectification), Rau and his team reinvigorate care and transform it into a radical act.

This discussion of Rau’s trials and tribunals engages in a theory of alternatives that is rooted in a rhetoric of negation. Rau’s reactment is embedded in concepts that surround the insufficiency of past and present institutions to deal with the horrors and injustices of the present and the failures of justice which Augusto Boal lay the groundwork for in *Legislative Theatre*. It is rooted in the Marxist philosophy of the crack and Holloway’s ‘No’. It engages the apathy produced by the neoliberalism that produces necropolises, transforming the Global South into death-worlds to be pushed out of sight and out of mind by the Global North. Even the affective power of Rau’s performances is rooted in what could be described as the negative emotions of anger and outrage. These alternatives act as annoyances or irritations to the present – a liminal deviation from the established order that acts like an irritating grain of sand in the system. However, it is rooted in the immense (perhaps naïve) optimism of hope that fuels all calls for justice:

[H]istorically and practically speaking, almost all calls for justice have been experienced by many as annoying, at first. The reasons are simple. Calls for justice imply the change of an existing order, they imply accusations, they demand the uncovering of what had been disguised, they seek the people and other legal subjects or persons, are held accountable – they will not let by-gones be by-gones. In a sense, these calls connote a principle, stubborn, relentless ‘no’. The annoyance

concerns all parties, moreover, from those who do not want to be bothered with things that happened in the past to those seeking justice by returning to that past. [...] their ultimate goal is to find a confirmation that things can be put in order, be restored, that the pain that has been inflicted and the damage that has been done may at least be acknowledged, perhaps compensated, or sufficiently repaired. Eventually, those who seek justice seek a 'yes'. (Korsten 1)

It is this confirmation and desire for a 'yes' that is at the heart of the prefigurative quality of *Congo Tribunal* and the reforming impulse of *Moscow* and *Zurich Trials*. What we see in these projects, is an affective engagement with existing judicial systems. Not just the performance of justice, but the formation of a caring, engaged (but liminal) jurisdiction that considers the needs of the immediate future and reimagines institutions of the present: *A pre-formation*.

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Notes

1. But art will never be power politics. The question 'What do you have to do to change things' is a question for the power political. Art cannot answer this question pragmatically, only symbolically. The artist is a visual guide, a preparer, but not a politician. Art and power cannot be united, that is the cruel truth.] (my translation.
2. When we talk about the power structures quick to dismiss art as just art, we are frequently referring to democratic and non-authoritarian states, because, in authoritarian states, art is frequently both a powerful tool of resistance for artists and heavily censored by the state. Ironically, this state-controlled censorship is exactly the logic behind *Moscow Trials* and the multiple in-performance disruptions at Sakharov Center by the Russian government.
3. There is a more nuanced discussion to be had – à la Audre Lorde's famous essay "The Master's Tools Will Never Dismantle the Master's House" – about government-funded cultural institutions that profit from colonial and neocolonial inequalities producing transnational political actions. For a more detailed discussion of this within Rau's NTGent conflict zone productions and its more problematic assertions, see: Lily Climenhaga, "Reclassifying Neoliberalism: A Critical Look at Milo Rau's Postcolonial Reclassifications," *Theater Symposium*. Vol. 30, 2022, pp. 14-28.
4. Following along the line of Boal's spect-actors, Frederik Le Roy notes that the audience members of Rau's staged tribunals "are no longer passive spectators: they are interrogated as active witnesses of conflict between incommensurable perspectives on reality. The theatrical framework does not relieve them of their real responsibility to actively judge what is in front of them" (Le Roy). So instead of taking the actively intervening role described by Boal, Rau's spectators instead take on an active judgmental role in the staged tribunal.
5. Admittedly, *The Zurich Trials* sits somewhat uncomfortably within this reactive and preenactive distinction. It must also be said that these distinctions should be understood as more fluid than concrete; both *Congo Tribunal* and *Moscow Trials* (the two clearest examples of these respective forms of theatre) contain elements of the pre- and re- in their performance. While *Moscow* stays more focused on the failures of the past, *Congo* reaches towards the potential promise of the future. I situate *Zurich* more within the reenactive category because it is not engaging with a systemic problem within all of Switzerland (like the ongoing conflict in the DRC), but with a single media outlet.