Creating Spaces in Law as a Practice of Theatrical Jurisprudence

–– Marett Leiboff

(UNIVERSITY OF WOLLONGONG AUSTRALIA)

Theatrical Jurisprudence tends to be thought of as a practice of law in its most visible setting – law displayed in the courtroom and rendered live and lively. Theatrical Jurisprudence, however, operates in a different register, a practice that animates the practice of law as something more than bare interpretation, making live and lively the unconscious interventions deployed by lawyers or judges to animate the bare and abstract forms of legal method found in legal doctrine, principle, or rule. Yet most lawyers and judges would vehemently deny that they do anything other than assess, analyse, or apply the law using those rigid reasoning techniques. In this essay, I suggest that law has to theatricalize in order to open up new spaces for justice and uncover some examples of the subtleties of that theatricalization – both good and bad.

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Come with me.

My overly abstract, nay, unlovely abstract – using words like jurisprudence, rigid reasoning, doctrine, principle, or rule – reveals the starkest of lawyerly language and thinking. As exciting as witnesses giving evidence in court can be, and the drama and tension of the courtroom scene, these words and concepts are far more in tune with the nuts and bolts of lawyering, which has very little in common with popular ideas of law. What Theatrical Jurisprudence does is stretch and trouble key assumptions bound up in legal thinking – that instead of this thinking being perfectible and based entirely in logic and reason, it is bound up in the people behind the law, their formation, their presumptions, and the unconscious images they deploy to animate and make sense of abstract rules. In shaping it, I turned to the approaches of post-dramatic theater and their challenge to the strictures of Aristotelean dramatic forms, most particularly the early work of Jerzy Grotowski (Leiboff, *Theatrical Jurisprudence*; "Theatricalizing Law"). Law operates as if it were playtext, especially so for case law (central to common law practice), due to the intricate account of facts, narratives and legal reasoning it holds. Intended to guide future cases and to be interrogated for gaps and lacunae, case law and the complex of interpretative methods appear to work as a *deus ex machina*. Yet, like the emperor's new clothes, law says it is doing one thing, but it is really doing something else entirely. And that is what this article will do as it unfolds. In a nutshell, Theatrical Jurisprudence confronts, as a practice that shows and does, in order to reveal the fallacy of assumed practice and to prod and challenge just what we, as lawyers, bring to that bare interpretation. The piece is a practice that confronts expectations, like a piece of post-dramatic theater, to challenge both bodily and intellectually. It finds ways to trouble and disrupt the apparently smooth practice of reasoning and interpretation of law, whose interpretative gaps and lacunae are left wide open, leaving unruly spaces that are filled in by lawyers and judges, particularly in new and different situations. Most of them turn to their own lifeworlds, imaginations and assumptions to generate meaning (Leiboff, "Ditto"; "Stir Up the Australian Youth"), operating like a bodily memory in the Grotowskian sense, but without the training and rigour of theater practice. As an aporetic space that simply is assumed not to exist, the end result can deny justice.

What this means, is that the pictures, images, and worldviews already held by lawyers and judges have a real effect on law and justice ("Ditto"). So Theatrical Jurisprudence sounds nothing like the standard images of law in a courtroom, because it uses theater practices, broadly conceived, to find ways to get lawyers and judges to *notice* something about themselves – what they assume, what they know, how they think, and most challengingly of all, how they deploy their assumptions, both good and bad, in the shaping of argument (by lawyers), and challenges to those arguments and the shaping of judgment and precedent (by judges) (Leiboff, *Theatrical Jurisprudence*). It operates prior, not a literal theater *per se*, but through the shaping and framing of an entire legal argument, ranging from choices about which areas of law and precedents are most relevant, whether cases go to court or not, to the claims that might help produce new precedents, and – for judges – the carving out of legal meaning and new precedents. Law assumes this all happens at a high level of intellectual rigour. Theatrical Jurisprudence instead says that these practices are far more attenuated than law thinks – that lawyers are beholden to their bodies, through the triggers and fall-back positions already held in them. Suzie Miller's play *Prima Facie* (2019), about a woman barrister who is changed utterly through her sexual assault, is a case in point, but even more so through the changes in bodily responses of lawyers who have seen the play, to notice what hadn't been apparent before. The play has had a practical effect, leading to changes in directions to jurors by judges and providing ideas for working parties of lawyers seeking to create change more broadly. Theatrical Jurisprudence is much broader than the written word of the play though, traversing dramaturgy, the interplay of spectator and actor, the breadths and depths of training beyond law, and the depths to which reading of judgment as precedent should be carried out (Janusiene). Its *deus ex machina*, that ghostly presence, is inevitably the self who forms it, contrary to the assumptions of law.

Though it is also a practice, Theatrical Jurisprudence is jurisprudence as legal theory or philosophy. All jurisprudential traditions, from the most conventional to the most critical, are largely grounded in the assumption that the mind and intellect are operative, even in those fields that seek to bring different lives and experiences to the forefront of law and legal thinking, like the law and literature movement. Theatrical Jurisprudence assumes that we proceed before thought, capturing what comes next; there is no possibility

of recapturing that moment, a hugely challenging idea in a field that far prefers the existence of something preformed, able to be pored over, precisely because a training in the mind does nothing to generate an active response in a field like law, which valorises and applauds abstraction and rationality over anything else. That is why lawyers who encounter Theatrical Jurisprudence are as likely to reframe it through the medium of dramatic or playtext, because the immediacy of the theatrical is overwhelming.

Let me use another small example before I go further, a dumb show if you like, to capture the challenge to conventional ideas of law that Theatrical Jurisprudence offers, because the main game is some way ahead. A few years ago in Australia, a scandal blew up involving the mistreatment of elderly people in aged care homes by carers, supported by vision captured through hidden cameras set up by family members concerned about their relative's treatment. In some cases, criminal proceedings were brought against staff members involved. In one case, the staffers were acquitted, and one was found guilty. Heard and decided in the lower courts in different states with different laws, in the case where the carers were acquitted, the magistrate said the carers were dealing with a violent person so were found not guilty. The woman they were caring was in her 90s and had dementia along with a broken leg, which the carers picked up and dropped onto the bed, the woman screaming in pain. She lashed out. It isn't clear if the magistrate saw the vision, but it is horrible viewing. He seemed to have created an image of the elderly woman as some kind of inmate in a prison, and not a paying client of an aged care facility.

I used this story in a law class, showing part of the documentary. Some simply said the magistrate was right because that was what he decided, that he had found the woman violent, even choosing not to watch the footage. Those with elderly relatives in care recoiled, horrified by what they saw, while those who had broken bones in the past winced, knowing how painful this was. Simple but revealing, and not the purpose of the class at all, it underscored in the starkest way what is at stake here, particularly in those who agreed with the magistrate. On a simple level, it would seem that those who expressed sympathy for the elderly woman were beholden to their bodies, but it is the other way around. It is those who responded by simply being beholden to an image - captured through the word

'violent'. Whatever the lady looked like, whatever the circumstances, nothing would shift that image. I haven't named the program or circumstances, which might seem strange, but I need to keep the story vague as it doesn't have ethics approval, but it shows just what the space of Theatrical Jurisprudence can reveal and open up. And in an utterly devastating follow up, in May and June 2023, the world was gripped by the horrendous situation of a New South Wales police officer tasering a 96-year-old lady – the image of 'violence' denying the reality of her 46kg weight and her walking frame. Her violence? That she had a knife, a steak knife. Her skull fractured, she died a week later, and the police officer was charged with criminal offences. The awful truth? That there was a precedent, of a kind, in the magistrates' decision that suggested that force could be applied to old, violent people.

What this underscores, is that lawyers and judges are only human, and whether they are aware of it or not, move into positions based on their own experiences, however limited or expansive they might be. It has become apparent that when gaps and lacunae exist, abstraction and rationality are left without tools to work out what to do next, as Dutch jurist and legal theorist Jeanne Gaakeer so brilliantly discerns in *Judging from Experience: Law, Praxis, Humanities* (2021). Her remedy to that denial of human awareness is literary, through the field of law and literature, a jurisprudence that turns to the humanising role that literature can play on the harshness of law and its rules, as a practice of narrativity. My position is that something more has to happen to enable our minds to respond and notice. *Noticing* is central to Theatrical Jurisprudence, but we can only notice through training, producing something in the body that enables lawyers to prick up their ears, that causes them to lean forward in recognition, that generates a smile or frown (Leiboff, *Theatrical Jurisprudence*), as experienced by the lawyers who were changed by Suzie Miller's play. Without the ability to notice, lawyers and judges inevitably fall back on their own lifeworlds, affecting interpretation and, by extension, justice to make sense of abstraction. Abstraction, law's preferred method, is too porous, too open, too beholden to do this work. For Danish Sheikh, this extends to an act of repair through theater ("Staging Repair") - but repair itself requires that we notice before anything more can happen.

This matters, because law is assumed to be a closed and perfectible text, as playtexts were once imagined: holding a complete and closed

meaning merely waiting to be revealed through study alone. As we know, this is no way to bring a playtext into being; rather, through practices of doing, theater challenges complacency, writing something new into our bodies and enabling us to notice, a 'something' beyond our own worlds and experiences rendered bodily. Law's texts are very different from the ideas most of us have about law played out in courtrooms. In common law systems, the decisions of the courts and the reasons they express hold the law they have found through interpretation. They are thought to be rational documents, but look carefully enough and we can find dramaturgical clues to the thinking of the courts. The cases tease out the realities and effects of doctrine and principle – from high ideals like justice, to broad concepts like freedom of speech and expression (in the pages to come), to bare words like violence, or TV programs, poems, films, sporting events. These traces act as a dramaturgical clue to the thinking of judges and lawyers but can only be decoded if legal readers know what they're referring to. In the common law tradition, legal readers are actively trained to sieve out these irruptions as irrelevancies (Leiboff, "Ditto"; "Stir up the Australian Youth").

What comes next is a form of writing that brings these irruptions to the fore, bodily, intentionally unfolding without apparent markers of logic or reason, as Theatrical Jurisprudence. I try not to explain as I go, as if we were brought into a theater space where we are challenged by the very lack of signposting, the markers and hooks that we expect in writing. This is Theatrical Jurisprudence in practice. Bear with me as I bring my bare abstract into being. It will all come together in the end, its seeming randomness creating precisely the kind of demands that gaps and lacunae place on, our expectations challenged, as an instance of Theatrical Jurisprudence.

Brisbane

Come with me to my place, to Brisbane in the State of Queensland in Australia. You will get to know Brisbane soon, because the Olympics and Paralympics will be held here in mid-2032. If you have children, you will know Brisbane as Bluey's home, though if you're not in an English-speaking country (and even if you are, because Australian accents are still routinely dubbed into American English) you might not hear us as we hear ourselves. If you've ever been to my

place, you might have been surprised that kangaroos are nowhere to be seen in its sprawling, mega-urban cities; that this continent that is both island and country, is so enormous its distances are unimaginable, taking four or five hours to fly across east to west and much the same, give or take, north to south. Images conform to expectations, like words: my French cousin's partner saw a small map, thinking the distance between Brisbane and Sydney was: "cent (kilomètres)?" No, 1000 kilometres. "Oh la!!!," he exclaimed. Images, like maps, can be deceiving, as can voices. We speak English in a range of accents, much more like Cate Blanchett, less so Paul Hogan (Crocodile Dundee). We come from everywhere, except for First Nations people, whose land the rest of us have taken, here for more than 60,000 years. Largely because of its so-called tyranny of distance, Australia looks outwards, once because of obeisance and inferiority, known as the 'cultural cringe', but since the 1960s and 1970s, it is because that is what we do, as the Men at Work song *Down Under* from 1980 told the world. Our law was still beholden to the UK until 1986, only after which the legal fiction and violence of the unforgivable doctrine of *terra nullius* was undone in 1992, but barely any of the damage of a violent colonial settler past. This means that most land has never been returned to First Nations people, all the while imaging a totally Anglo-Celtic ancestry across a bare period of 250 years of an Australian national identity.

I give you this impossibly potted history that tells nowhere near enough as it should to presage where I go next, to bring you to Brisbane and its place in the world. My Polish born French great-aunt, long dead, imagined us as *les sauvages*; her sophisticated sister, my grandmother, had seen Josephine Baker in Paris in the 1920s *en route* to Australia, having to endure an unlovely place without sophistication or toilet paper. In the early 1990s, I had brought her a tourist booklet of Brisbane, showing its high-rise buildings, and she was mollified. We weren't savages after all, but in a sense she was right, because Brisbane started its European existence as a penal colony for the worst of the convicts transported to Australia from Britain in the early nineteenth century. Its heat, humidity, sandflies, and mosquitos were punishment in and of themselves.

These kinds of details matter in this theatricalization. So, another image. Brisbane is located about 600 km south of the Tropic of Capricorn, becoming the capital city of the colony of Queensland in 1859. In 1901,

it became the state capital of newly federated Australia, but we need to know something more. Brisbane is tucked into the southernmost corner of an enormous, decentralised state, a part of Australia, but larger in size than all but 15 sovereign countries. And to confound: Brisbane is graced with some extraordinary architecture in stone, but so much of what had been here has been destroyed in the name of progress, hence its tall towers. And a nod to elsewhere, something much more familiar to European eyes: its Parliament House is a copy of parts of Le Louvre, but less so its first housing style called the Queenslander, built of corrugated iron and timber; some houses grand, others very modest, like Bluey's house, are now rarities.

So far from Europe in so many respects, this part of Australia remained beholden to it and its cultural norms and genres, at least until the 1970s, a time central to where I go next. This decade began to celebrate Australian cultural products and identity, with new plays and films and music that could only have come from Australia, and for the generation of adolescents (and, secretly, 20 somethings), a pop program called Countdown on the national broadcaster spread new Australian music far and wide. Yet we still looked outside for a core, from language learning (French and German), to the literatures studied, the histories taught in what seemed to be an extraordinary longing for somewhere else, all mixed together in the lives lived in the place that was Brisbane, a place of striped sunlight, a gorgeous phrase coined by the Brisbane band The Go-Betweens in 1978 to describe their music as *that striped sunlight sound* (Zuel; Regan 90-99).

A place of striped sunlight

Let me take you to a near windowless lower ground floor corridor of a building at the University of Queensland in Brisbane. It is high summer in February 1976, and I am leaning against a wall, about to enter my first ever lecture at university. It is the one I'm most looking forward to, the subject Drama 1A. It is closing on 3 pm, and in sub-tropical Brisbane at this time of year this means it is now the heat of the afternoon, with darkness closing in early, as it does in the tropics, around six or seven at night. Grant McLennan, a second year and soon to found The Go-Betweens with Robert Forster, leans against a nearby wall, stolidly plastered as any building conceived in the 1930s, and throws a shy grin my way through the stifling

unairconditioned torpor. The wafting floor and wood polish steams up through the intense humidity amplified by Brisbane's searing bleaching afternoon sunlight, slashing through the small, high windows nearby. It lands as striped sunlight in the soon to be crowded corridor filled with sticky bodies, for in Brisbane in summer you sweat from the humidity and are drenched in summer storms and cyclones, the rain smelling hot and loaded as it hits the ground. In the Brisbane of the 1970s, these storms would cool the air for just a little while before steaming back up again. It was like living in a pressure cooker, as we will see, in more ways than one.

Nearly fifty years on, that encounter, and parts of the first lecture is seared in my consciousness. The cramped and crowded lecture room, with its massive windows, glared bright in the afternoon sun, until the blinds were closed for a screening of *Un Chien Andalou* (Buñuel and Dali, 1929). Most of us gasped. It was boiling hot, and I remember next to nothing else, except for some Molière, mixing it up with the only other subjects that formed the Drama major I took as part of my Arts degree. In the circulating friendships of university at the time, I knew who Grant was but not Robert, but they met doing this subject, and the rest, as they say, is history. And oddly, I don't think I ever knew that they formed their band the next year, in 1977, or knew of the phrase *that striped sunlight sound* that graced The Go-Betweens' first recording, 'Lee Remick', of 1978, which both men would explain and re-explain over the years. Grant coined it, but none of these explanations referred to that corridor, so redolent of exactly what they thought the striped sunlight sound was (Cover reproduced in Regan [91]). They were to name a CD called *That Striped Sunlight Sound*, released in 2005. The next year, Grant died at the age of 47 (Boyd).

In the name of that first recording, 'Lee Remick', we also get a sense of their affections for an actor we all adored at the time, because our diet of films was nearly largely European art house cinema, mostly through seasons at the university theater, The Schonell, where Grant worked. This odd mix, a hefty dose of Brisbane streets, humidity and sunlight, and art house cinema spawned a world away, and a new recognition of place, the light and darkness that forms striped sunlight, underpins not only their work but all of Brisbane at the time. It suffuses their most significant song, one of Australia's 30 best songs ever, 'Cattle and Cane', an autobiographical piece written by Grant. I had the TV on, now in Sydney, with Countdown in the

background when it came out in 1983, absolutely captivated by this incredible sound of Brisbane. But what threw me more was seeing Grant, barely recognizing him from the shy boy who smiled years before. Memories are funny, but the smile, the smell, the sense of place evokes exactly what is meant, a place now long past, and only captured in words, pictures, some vision, even for those of us who still live here. Smell, sound, the sensation on that body – that does. It was written into the bodies of the denizens of then, because something matters here.

On its own, this is a story that goes nowhere, but what I haven't told you yet is that Brisbane was far from a safe and comfortable place in the 1970s. The suburban St. Lucia campus of the University of Queensland was a rare place of sanctuary in an impossible political climate at the time. The state was more or less governed as an autocracy, a police state, where, through a practice called gerrymandering, voting favoured people in the vast outback areas where one Brisbane vote was worth only ¼ - ½ of those held by voters in Queensland's vast regions, and its towns and cities. What this meant was that the ruling party, then known as the Country Party and later the National Party, held power with only 29% of the vote, and had established an extraordinary support mechanism – the police force, and in particular its own spying arm, a special branch. Law was more or less in the hands of the police, and the courts supported them. Years later, by the end of the 1980s and early 1990s, everything changed and legal norms and good governance were restored. Lots of us who had left a decade earlier slowly returned; me too, to finally do a law degree.

What none of us really knew at the time, though, was that political and police corruption on a massive scale was rife in the 1970s, exposed through a series of newspaper articles and a documentary called *The Moonlight State* in the 1980s. Eventually, the state Premier who had held sway for years was put on trial for corruption. His own party, through the good graces of a small cadre of men of good faith, reallocated electoral boundaries, all the while knowing that they would be defeated. That party did eventually regain power, but those in Queensland who had been there or had learnt from the experience, were alerted to the abuse of power decades later (Leiboff, "Challenging the Legal Self").

That was still years away. The year Grant and Robert created The Go-Betweens, 1977, things came to a head at Queensland University and in Brisbane, which was unimaginable to students who were there just a few years after. What mattered to students of the 1980s was police raiding the campus to remove condom vending machines; what happened in 1977 was a matter of times past. In the few short years, those students had changed too, as had the focussed, classically inflected schooling, now rightly bringing Australian and First Nations concerns to the fore. But what had also changed, was an inevitable smoothing out of our complexities and histories that had been taken for granted by those of us in the 1970s, including our cultural and historical touchstones.

I intimated earlier that the Brisbane of the 1970s and earlier is largely gone, with so many of its glorious timber houses replaced by concrete and glass apartment buildings, its grand old buildings demolished in midnight raids to avoid the strictures of law. Striped sunlight and all of its paraphernalia are so much harder to find now, that lecture theater repurposed, the library I knew replaced with something else. The Go-Betweens' - poet-musicians - were of Brisbane, and Robert Forster saw Brisbane turning to concrete, barely recognizable; the band is immortalised in an unlovely toll bridge, the Go-Between Bridge, made possible by stripping apart old areas of Brisbane (quoted in Zuel). As places reshape, what made them is also buried under concrete. Once gone, what mattered in shaping a place is gone, like law abstracted and stripped of everything that made it. Because along the way, the detail is lost, and what is thought to be important is re-cast in a few words on a page. This is what lawyers do: the past will be reordered and co-opted for an entirely new set of circumstances. Let me take you back to 1977 now.

Bjelke Bitter – A Premier Beer

In an essay like this, it can be hard to hold onto all the details. My sub-heading will be entirely meaningless without a little more explanation – quite intentionally. The state Premier whose power and corruption overwhelmed law in the state from 1968 until his removal in 1987, was a man called Johannes – Joh – Bjelke-Petersen. Of Danish heritage and born in New Zealand, he was of a staunchly Lutheran family of farmers and land clearers from a small town

called Kingaroy, inland and a few hours north of Brisbane. With only a modicum of formal education not unusual in Queensland at the time, Bjelke-Petersen somehow managed to exercise power absent law, aided by the gerrymander. His unlikely countenance and demeanour – barely comprehensible and prone to dismissing anything that challenged him, he nonetheless managed to produce a legal environment, in part through his appointments to the judiciary, that would sustain his political power.

Legal challenges were largely unsuccessful until a challenge to *The Moonlight State* of 1987, supported by areas like defamation law, allowed publication of information that once would have been suppressed. This was an intervention ultimately of the highest court in Australia, not Queensland, creating new principles that meant more information could be available to the public about the actions of the government, Premier and police. It was supported by a Queensland based commission of inquiry, The Fitzgerald Inquiry, which uncovered the most extraordinary detail of corruption and political harm, especially for anyone considered suspect by the government. It revealed that the so-called Special Branch had thousands of files on individuals, holding untold amounts of information on a range of people. I suspect, but don't know, that I had a file too, because the files, which were all to be preserved following the inquiry, were unlawfully destroyed. Those files held information that would mean that anyone who was considered suspect would not be employed in state institutions, such as state based public administration, teaching or health services. Since so many people who had these files were university educated, a rarity at the time, the files mattered to the polity at large. Striped sunlight hid a darkness whose effects were chilling.

Street March Ban 1977

In 2018, I googled 'Street March Ban 1977'. Google helpfully corrected me and told me I was actually looking for a 'Street March *band* 1977'. I know that's not what I'm looking for, for one simple reason – I know there was a Street March Ban in 1977, my second year of university. This matters, because I know that for recent generations of lawyers, unless something is identifiably recognizable through Google, events simply don't exist. By this, I also mean that the textures, complexities and more are stripped away, leaving very little behind.

I could have been more specific in my search, like adding in 'Brisbane' or 'the University of Queensland', but Google wasn't giving me much of what I really wanted to find. This search was piqued by the remarks of an activist Queensland trained lawyer, Aidan Ricketts, who had alluded to these protest bans when speaking of problematic New South Wales Environmental Protest Restrictions of 2018, that would limit environmental protest. That state, south of Queensland, has Sydney as its capital. Ricketts remarked that "the new regulations were bigger and broader than those imposed under the Bjelke-Petersen era in Queensland in the 1970s" (White & MacKenzie). His colleague Sue Higginson remarked:

> I see time and time again, the courts — generally speaking — have a real concern about having to penalise people who have found that they are in a position of having to break laws to stand up for an issue or to protect the environment or to protect a civil right.

While his purpose was to make a point – if that was bad, then this was even worse – I was wriggling with irritation about the call to the Bjelke-Petersen era. Because it wasn't simply a limitation on demonstration, including an infamous banning of street marches in 1977, but its entire apparatus of surveillance, control, secret files, and secret police – Special Branch – in the hands of a corrupt apparatus, largely unimaginable to anyone a few short years later. For the government, among the worst of all were university academics and students at a time when the University of Queensland, founded in 1909, was a rare institution of academic and political freedom. I did eventually find what I wanted, what I knew must have existed. I wanted images and visuals, because I knew what happened. And I also found things I never knew existed, which I will come to very soon. I wanted to be able to show other people, like the footage of the actions taken towards the elderly women, to show what really happened. But even then, footage like this is entirely dependent on so much more than its raw state permits. Just law without more. And here's what happened.

In September 1977, Joh Bjelke-Petersen announced: "The day of political street march is over. Anybody who holds a street march, spontaneous or otherwise, will know they're acting Illegally... Don't bother applying for a march permit. You won't get one. That's Government policy now" (Brennan 1). Street march protests had been

part of the political landscape, but now the police were given free rein. It might seem that this wasn't such a bad thing. The law itself wasn't named 'Street March Ban'. By and large these marches are held on public streets and disrupt traffic. Policing of streets and public order was entirely within the remit of policing. But this wasn't a regular policing environment: now, police with a political remit were controlling political speech in the form of protest marches, a concept that was still years away from protection by Australia's High Court, found implied in The Constitution for the whole of the nation. But there was something more. This new proclamation removed the chance of appeals to the courts; now, it was the police commissioner who decided appeals. In the hands of corrupt, political appointees, it would be apparent that there would be no chance of decisions being reconsidered. Father Frank Brennan SJ, a lawyer who wrote a detailed account of the bans and their legal implications, observed that this was police policy until April 1978, with prohibitions remaining in place until August 1979 (Brennan 2).

The rules worked like this. If three people stepped off the footpath at the same time, they were deemed to be engaging in an unlawful street march and could be arrested by police. It would seem reasonable enough – don't march and you won't be arrested. But in this political climate, protest was the only possibility: a protest about protest, as it were. So let me take you back to late 1977, nearing the end of the academic year (in line with the calendar year used in Australia). Student leaders challenged the ban, organizing a protest march from the St. Lucia campus, seven kilometres away, with a rally to be held in Brisbane's central King George Square. Thousands participated. I didn't march, not wanting to miss my art history class, catching a bus to meet the marchers at the rally at King George Square. I watched the marchers process on my way in, and so I had time, with others, to sit and wait, my eighteen-year old self swathed in Laura Ashley, big bag of library books by my side, sitting in the sun, a nice time of year in Brisbane, chatting to a friend. Hardly a picture of revolutionary fervour, I look up and a tall, burly man is standing over me and photographs me. He is police. This, along with petitions I sign, makes me think I had a special branch file. I stay for the speeches, then go as the crowd swells. I miss what happens next to friends and friends of friends, lecturers, and people I saw around campus. Hundreds were arrested as they moved down the steps of the Square, as they stepped off the footpath, more than three at a

time, into what became known as the Valley of Death. I would have loved to include images and some of the rare vision of the protests, but I can't. If you can, track down 4PR Voice of the People Street Marchs 1967-1977 of 15 February 2022, where you will be able to see some of what happened.

The minutiae of particular events are so easily lost. But look what happens when some of the minutiae is restored, as an act of theatricalization. Uniformed police who had removed their identifying numbers arrested the protestors, men and women alike, the children of Brisbane's elite including law students as well as my drama and English literature lecturers in their mix, into waiting paddy wagons. The law students risked admission to the profession. Law students had tried and failed to get the bans overturned as a matter of principle. The stories of their arrests were violent and bloody, captured by volunteer lawyers who took the role of observers on the streets and, as will be seen, written deep in their bodies. For newer generations of lawyers, it is inevitable that the bare legal accounts become a prime source of knowledge about the events, maybe supplemented by a description of the laws, some newspaper reports, and some recollections. The vision and photographs less so, and in any case without explanation, they are largely meaningless. In his account of these laws, Aidan Ricketts appears to have turned to Father Brennan's careful, cautious, lawyerly account of what happened. Without more, those words are like my intentionally stripped and meaningless abstract. Without being able to theatricalise the law, we fill the words in to make meanings. But the way that the words and experiences were filled in in 1977 were a world away from our readings now.

For lawyers of the time, radical connections and actions were a rarity, but it was a small group of lawyers associated with civil liberties that took the role of observers of events and legal advisors for those arrested. Many were associated with a community legal center established when earlier protests were subject to police brutality: Caxton Street Legal Centre. They assisted also by acting as witnesses, remembering that without the ability to film with ease, there would have been no one to corroborate or describe what happened, as film footage by TV crews did not necessarily offer a picture of what happened. There were no mobile phones to easily record events. Remnant footage is barely legible and mixed with

other events. One of those lawyers, Terry O'Gorman, well known as a defender of civil liberties and incidentally the brother of a police officer, knew just how important this kind of memory was – and is. Years after these events, he was to remark, in 2019 at the time of a new crackdown on protesters, that the radicals and civil libertarians of the 1970s, who became the leaders of a generation, had moved on, their institutional memories having gone with them. He remarked: "Those that were alive and politically active, among the 400 ordinary people who were arrested in one afternoon, many of them are dead or so old they no longer take part in the political process," saying: "When you forget history or conveniently airbrush it out, then you're destined to repeat history," (Smee).

His remarks, though, take us back to Theatrical Jurisprudence, not as a bare activity of history, but as a cue to ask how to generate responsiveness and awareness into new legal bodies, for new times. But what of those lawyers who knew that something mattered and was amiss in the 1970s? Without knowing it, they theatricalised as lawyers, and curiously, performers, using history to respond to what was happening around them. Just a little older than their younger peers who were still university students in 1977, they shared the same intellectual upbringing. They knew that what was happening in Brisbane in the 1970s held within it the traces of a far more violent regime in Europe 40 years earlier. The place might look different, the times themselves a world away, but theatricalization can show just what's at stake when law goes wrong or – perhaps more correctly – when there isn't any law operating properly in the first place.

Bjelke Bitter unravelled

At the University of Queensland Revue of 1977, a short film segment must have produced gales of laughter and an awful, frank awareness of what was happening in Brisbane around the time of the new Street March Ban. I don't know exactly when the revue was on, but it didn't need to refer to the street march bans to make its point. The short film, which I'd never seen before this research, was entitled *Bjelke Bitter – A Premier Beer* (1977). The beer coasters were well known, left all over campus, and one is even held now in the Queensland State Library. A mocked up bottle graced the short film, its name capturing just enough of a reference to the Queensland Premier's

Germanic sounding surname. Again, I can't show you the footage but it is readily available (Radical Times). As revues are wont, it was hardly subtle or – more to the point – it was obvious. Set in a beer garden of one of Brisbane's university pubs, it riffs off one extraordinary scene from Bob Fosse's 1972 filmed version of *Cabaret*, released just a few years before: the biergarten scene from the song 'Tomorrow Belongs to Me', John Kander and Fred Ebb's confection of popular lieder belying the vile agenda at hand.

Bjelke Bitter was shot on Super 8 and inevitably missing much of the filmic grammars of the film, where the central figure of the beautiful young boy whose singing and angelic appearance is slowly revealed through the full awfulness of a child of Nazism as his face hardens, before panning over the biergarten, the audience made up of the abject, the uninterested and the highly committed, before nearly everyone joins in. In the revue version, a flax-haired third year drama student, Malcolm Cork, takes the role, not in any kind of costume, but as an adult singing some of the song, beer stein in hand. A group of other students, lawyers and future lawyers and activists are his audience watching him, some in front, some behind, some seated, nearly all with beer steins in their hands and singing along. I recognize some of them, especially Cork whose classes I was in, and others whose identities I don't know for certain, and others who I think I recognize. The *Radical Times* says that among their number is a man called Wayne Goss, who 13 years down the track will become the first Labor Party premier to win the first free elections in Queensland in 1990, and a founder of 'Caxton Street', the volunteer lawyers whose work mattered so much in the street march arrests.

Apart from Malcolm, there is next to nothing in terms of acting or performance. It's just a group of people who look like they have been told to look at him, perhaps sing along and wave their beer steins along in time. Their ordinariness matters, of course, because the ordinariness of the people in the biergarten was what mattered too. They were there to admire, and to smile, to remind us that there is very little different about sitting around a beer garden in the casual garb of Brisbane in 1977, from a biergarten in Germany 40 years earlier. But without anything to explain this, it simply looks like a bunch of people who made a pretty ordinary, unimaginative film. What new audiences would make of it, without explanation, is

a practice of meaninglessness, of parody or pastiche perhaps or – problematically – of admiration. Time and place matter enormously.

And this is where things become complex. There is so much in *Cabaret* that these students knew that spoke of what was happening in Queensland in front of their very eyes. All that distance away from Europe, and there it was, in plain sight, happening right before our eyes, in the striped sunlight, which hid a disturbing undercurrent not visible on its face. For those lawyers knew that this mattered. And like Terry O'Gorman remarked, these people are now largely gone, dead, like Wayne Goss, taken by a brain tumour when he was still young, or retired. What was obvious to them of Brisbane and Queensland in the thrall of something dangerous and violent, is now largely gone. It is now about 40 years since the Street March Ban and the short film, between the events in Brisbane all those years ago and now. The smells, sound, and what lay beneath the striped sunlight stripped bare tells us absolutely nothing of what really happened. Here, on one side of the world and in Europe, in the US and everywhere else.

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