Performing Institutions:

Trials as Part of the Canon of Theatrical Traditions

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In this article, I confront distinctions between fiction and reality in the Ixil Trial in Guatemala (2013), considering the relationship between theater, justice, and law. To this end, I argue that there is a parasitic relationship between theater and the law. Although theater has influenced the mechanisms of the judicial or accusatorial system in the twentieth century, trials, in themselves, constitute theatrical forms. Transitional justice, which limits my approach to a broad spectrum of judicial rituals, has shaped its very own canon. I argue that it is through an analysis of the theatrical elements of these trials that it is possible to unpack the distinctions between law and justice.

Keywords: theater, law, justice, actor, Ixil Trial.

This article challenges the dichotomy between reality and fiction that shapes discussions of transitional justice (hereinafter 'TJ') (Teitel, "Transitional Justice Globalized" 1). I focus my analysis on the genocide trial in Guatemala (hereinafter referred to as the 'Ixil Trial') a historic milestone, as this was the first trial to bring charges against a former head of state for committing crimes of genocide in a domestic court (Burt 144). Between March 23 and May 10, 2013, the *Sala de Vistas* (Courtroom) in Guatemala's Palace of Justice became the stage for the prosecution of former Dictator José Efraín Ríos Montt and his Intelligence Director, Mauricio Rodríguez Sánchez. The charges brought against them included crimes against humanity and genocide against the Ixil people.

On March 23, 1982, Ríos Montt seized power through a coup d'état, becoming a pivotal figure in the most violent period of the counter-insurgency war in Guatemala. Despite his relatively short rule, which ended on August 8, 1984, his actions left a lasting and devastating impact. While the Ixil region was not the sole area in Guatemala affected by genocidal policies, the trial specifically examined the events that occurred in this region, situated in El Quiché, north of the Guatemalan capital.

Ríos Montt's dictatorship is situated within the broader context of war in Guatemala. From the early 1960s until the signing of the Central American Peace Accords in 1996, the country was the scene of counterinsurgency warfare, inspired by the military actions carried out in the wars of Indochina and Algeria (Robin). These policies were modified and replicated through the National Security Doctrines in Latin America during the seventies and eighties (Drouin). In the case of Guatemala, the *scorched earth policies* were central for the execution of genocidal programs, proximate to other cases in the broader history of colonialism in the region.

After three decades of national and international efforts by various organizations, such as the Association for Justice and Reconciliation (AJR) and other plaintiffs in 2012, Ríos Montt lost his parliamentary immunity and the Judge Miguel Ángel Gálvez successfully opened the trial, a remarkable achievement in the prosecution of crimes against humanity. On May 10, Ríos Montt was convicted of both crimes, while his Intelligence Director was released. Ten days later, due to a ruling by the Constitutional Court – mediated by political

pressure from the economic elites – the conviction became *legally* ineffective. The economic elite (CACIF)[1] made their position clear in the press on May 13, 2013, stating that they were demanding the Constitutional Court to 'amend the judgment.' This public announcement showcased their opposition and desire to challenge the verdict through legal means.[2]

During the hearings and in the months leading up to and following the trial, the media played a critical role visibilizing the confrontation between different sectors of society for the public. Through the coverage of the trial and of the events leading up to it, journalists and media outlets provided a window into the complex dynamics of TJ and the challenges of pursuing accountability in post-conflict societies. The trial presents a unique opportunity to revisit and reconstruct events in recent history, as it involved the testimony of over a hundred witnesses and expert reports, shedding light on a devastating chapter of Guatemala's recent past. The lens through which this history was examined was the categorization of the crimes as genocide, adding a profound dimension to the understanding of the events. The statements made under the cross-examinations of witnesses and experts in this type of TJ trials, show the repressive patterns and systems of torture developed in many Latin American contexts: e.g., forced disappearances, massacres, forced displacements, executions, and the systematic rape of women and girls (FIDH 4).

The Ixil Trial as a lens of confronting the persistent dichotomy between reality and fiction

To confront the persistent dichotomy between reality and fiction throughout the theatricality of the Ixil Trial, I address the issue of anti-theatrical prejudice (Barish) in the first section of this paper. In the second portion, I shift my focus to the figure of the actor and the concept of 'action', drawing upon Derridean critique of Austin's exclusion of the actor's words from the realm of 'happy performative utterances.' I explore various aspects of the specificity of the TJ trials as a new technology, which can be understood as a distinct theatricality of law. Finally, I reconstruct key aspects of the Ixil Trial, focusing on the arguments presented in the media regarding the theatricality of the event. In this final section, I

draw on documentation from two Guatemalan print media sources, *ElPeriódico* and *Prensa Libre*, focusing on articles that covered the court proceedings (March-May 2013).[3] By analyzing the portrayal of the trial I demonstrate how the anti-theatrical prejudice against the theatricality of legal proceedings can be exploited by detractors of justice to delegitimize TJ processes, such as the Ixil Trial.

The concept of 'theatricality' is based on Diana Taylor's definition, which states that theatricality "sustains a scenario, a paradigmatic set-up that relies on supposedly live participants, structured around a schematic plot, with an intended (though adaptable) end" (13). This definition has the merit of being able to encompass a wide range of social practices that have traditionally not been considered within the canon of theater. It is precisely within this context that I situate the existence of a visible tradition of TJ processes. This topic holds significant political relevance today in Central America where repressive governments in Guatemala and Nicaragua have staged a series of judicial farces. They employ the outward form of judicial rituals but do not ensure the rights and guarantees of the accused. As I will argue, paying attention to the construction of these processes in relation to regimes of power allows us to discern the distinction between a judicial farce and a trial conducted with respect for the rule of law.

Taking these aspects into consideration, it is evident that the Ixil Trial is part of a series of processes of transition, democratization, and reparation. Farcical trials, as Christian Delage and Peter Goodrich have argued, show how the dictatorship handles the cases considered by the regime as political crimes. "Organized by dictatorships, show trials are political trials whose primary purpose is to advertise and publicize what the dictatorship views as political crimes" (3). They display what is considered as 'subversive' or 'traitorous'. In these trials, there is a lack of respect for the guarantees of both parties, like what occurred during the staging of the *Tribunales de fuero especial* (Special Jurisdiction Courts) during Ríos Montt's dictatorship, where the accused were executed without the right to a defense, under similar mechanisms of judicial farce.

The theatrical nature of a trial can be double-edged. While it can capture public attention and increase awareness of important legal issues, it can also be exploited by those seeking to delegitimize the

proceedings, as was the case in the Ixil Trial where the defense of the accused, along with supporters and detractors of the trial, utilized the media to portray the trial as a theatrical spectacle. By doing so, they undermined the legitimacy of the proceedings and cast doubt on the fairness of the outcome. It is crucial to identify and understand such dramatic strategies and to recognize the potential they have to impede the pursuit of justice.

This is why I explain the importance of understanding these trials from a theatrical perspective to account for the politics involved in the process of enforcing the law and to show how thinking about the law as theater enables us to understand how judicial institutions are performative at their core. They embed a politics through their practices and rituals. It is essential to acknowledge that avoiding the discussion of theatricality within the courtroom opens the possibility of discrediting legal processes that, although not farcical, unfold within the inherent theatricality of the justice system.

The anti-theatrical prejudice: Taking the theaters of the law seriously

In the past few decades, numerous theorists have explored the relationships between theater and law, creating rifts in the metaphysical philosophical tradition of the anti-theatrical prejudice. As Jonas Barish explains, the anti-theatrical prejudice is one of the central axes of Western metaphysics since Plato. It is based on the separation between being and appearance, nature and technique, reality, and mimesis, or between the world of forms and the sensible world. Richard Schechner (238) also agreed that this prejudice defines theatrical spaces as fictions, and 'fiction' as what is not real or not true. However, is a judicial process not also a form of fiction, a rehearsed technique that shapes behavior within legal spaces?

Even if we start from a critical perspective that emphasizes the produced character of reality, there is a reluctance to use theatrical language in the analysis of judicial trials. The reason for this can be attributed to several factors. One reason lies in the philosophical disregard for the world of appearances and spectacle. Another aspect resides in the significant tradition of farcical trials. This is exacerbated when the language of theater, normally associated

with fiction or falsehoods, is employed to discuss heinous crimes against humanity and genocide. In such instances, the utilization of theatrical and fictional language may appear as a relativistic and perilous approach to addressing the gravity of the subject matter.

However, it is important to note that trials are technically produced within the processes of the accusatory legal system: procedural codes that locally codify the behaviors of the bodies of the actors on the stage (e.g., rising when the court enters, the face-to-face posture between the witness and the court), the spatial separation into two distinct zones, the public and the legal stage, and the utterances that repetitively structure and legitimize the form of the ritual. These aspects are written and determine the structure of the ritual, although in these enactments, the outcome is linked to the ongoing process, without a pre-written resolution as in a traditional theatrical play. This difference gives a specificity to judicial theatricality compared to other theatrical forms within the arts tradition. However, the history of theater has also incorporated such open-ended, long-duration performances, as was the case in 2017 at a theater in Reinickendorf (Berlin). Vegard Vinge and Ida Müller presented an endlessly unfolding scene, which lasted around twelve hours. These aspects serve as examples of how the very practices themselves can transform the conceptual hierarchies of what is or is not considered theater.

My argument is situated within the growing body of research leading to the emergence of divergences within the metaphysical philosophical tradition concerning the anti-theatrical prejudice (Carneletti; Cole; Ertür; Felman; Roberts; Rogers) and the importance of media and technology in the performance of justice (Vismann, *Files*; "Tele-tribunals"; *Medien*). Amidst these perspectives, Marett Leiboff (1-2) argues that the notion of 'antitheatrical legality' in law and jurisprudence arises from the neglect of the body's significance in the process of legal enactment. Her approach builds upon Hans-Thies Lehmann's concept of the post-dramatic and his critique of the antitheatrical prejudice. The consideration of bodies within the legal realm significantly impacts the phonological and ethnocentric perspectives of the philosophical tradition (Derrida, *De la grammatologie* 50-51). Critical perspectives about the oppositional relationship of law and theater emphasize the central role of the bodies that both write and perform the law in local contexts

(Roberts 125). The attention to the bodies accentuates the importance of participation, that is clearly central in TJ processes. In this vein, it is also important to consider the extra-legal and extra-theatrical aspects of the institutional experiences of the individuals involved, particularly to comprehend the types of processes unfolding within a courtroom. This implies that the narratives of individuals or groups in positions of power can provide insights into whether we are dealing with judicial farces or processes that ensure the rights of the parties involved.

The attention given to bodies underscores the importance of participation, which is especially crucial in TJ processes. Perspectives such as the actor-oriented analytical framework argue for a more rigorous conceptualization of the notion of victim participation itself (Evrard 429). According to this, the Sepur Zarco trial (2015) for sexual violence, sexual slavery and domestic slavery in Guatemala, challenges the instrumental view on the participation of victims in these types of trials. It provides a broader view of what can enter and participate in the hearings. This is crucial to understanding the interference of other phases or forms of participation they call *ecosystems* and *trajectories*. This helps to understand the temporal and social boundaries taking place in the physical space of the trial, exploring the limitations of speech acts, as described within Derrida's critique of Austin's theory.

The question of spatial and temporal boundaries and acting in a trial is essential to the pursuit of more general philosophical quandaries, about such things as the notion of representation. Questions about space and time suggest that anything in the trial is just in real time and happening only in one place. Trials are a complex process of representation and reconstruction that involve a variety of types of evidence, including witness testimonies and written or audio-visual documents or materials; physical evidence such as bodies and bones, as well as non-verbal evidence, like gestures and other displayed behaviors. This leads us to the question about the limits of speech acts in relation to individuals, places and times; recognizing that everything that takes place there, is part of processes of memory and recollection. In addition, the intention and adequacy of the reference, of the act to the actor, for example, are central in any legal form or analysis in modern time, which necessarily involves putting these relationships into action, without questioning their practical reality.

However, this process must acknowledge that some elements are overlooked, such as a person's identity or the presupposition of cultural frameworks that would operate universally (García 314-316).

The complex multidimensionality of TJ processes challenges the ideological burden of the anti-theatrical prejudice, namely, that art belongs to the world of the technical and the mimetic, that it must be understood as artificial or false. This perspective is extended to the domain of law as a mere mechanical application of rules, without addressing the practices and sources that interpret them. The latter ideas raise questions that remain under focus: Is law not also the sphere of reproduction? Is this not precisely its problem, its connection with ethics and politics? Is the problem of the actor in the judicial scene not intricately linked to the matter of reproduction and the expectations surrounding the subject's transparency? What would be the significance for the law if it genuinely acknowledged the idea of character creation as a fundamental element of judicial theater?

In this view, the problem of law is its interpretation and application according to specific cases that are not contained in the universality of the rule – as established by Jacques Derrida in *Force of Law.* Making a judgment implies making a calculation between heterogeneous orders, that is, between the *universal* character of the law and the *specificity* of the case. What communicates these orders, is an *interpretive force* that is not reducible. This means that *enforcing* the law is a political gesture that is not contained in the rule nor in the case, but comes from an external calculation between the two. It supposes a *force of interpretation* which, although based on the rule, must also adapt to the case. In its inadequacy, the law opens a space for the responsibility of the interpreter and of the institutions that formulate its codes of interpretation.

Austin's Derridean reading of the hypothesis of idealization

In *How to Do Things with Words* (1975), Austin introduces the doctrine of Infelicities and etiolations (22), which excludes the utterances used by an actor on stage from being categorized as successful or *happy* utterances. He presents six 'necessary conditions' that determine the success or failure of a performative utterance (14-15).[4] If any of

these conditions are not met, the act falls into the realm of infelicities. For instance, if a promise is made without a genuine intention to fulfill it, it is considered an unhappy utterance. In this view, the promise made by an actor on stage is considered an infelicity because the actor is *merely acting* and will exit the performance to resume their *real* life without any obligation to fulfill the promise he made on stage. Austin sees this as a parasitic use of serious language in a non-serious context, where the actor's utterance lacks the genuine intention and commitment associated with a real promise.

Derrida quotes a passage from Austin's text ("Second Lecture"),[5] highlighting the idea that performative utterances delivered by actors or in certain contexts are hollow or void for Austin, existing in a separate ontological sphere that distinguishes them from everyday promises. Austin reduces the character of the play to the *real* actor's intentions, not the character's, and therefore argues that this act would be empty, apart from parasitizing *serious* language into a *non-serious* use. His peculiar emptiness or lack of meaning applies to any type of utterance in *special circumstances.* In such cases, language is used in ways that are not meant to be taken seriously but instead rely on its normal use, thereby parasitically borrowing from language. Considering Austin's perspective and the fact that every trial requires individuals to take on roles such as judges or witnesses, might this suggest that all speech acts within the trial are rendered void or *non-serious*?

Derrida critiques Austin's separation by asserting that the character's promise and origin lay within the context of the scene. The order of this construction would, likewise, be applicable to judicial theater. In Derrida's terms,

> Moreover, I want to stress that according to the logic of this hypothesis, it would not be the actor who should be held responsible but rather the speaker committed by the promise in the scene, that is, the character. And indeed, he is held responsible in the play and in the ideal – i.e., in a certain way fictional – analysis of a promise, the choice between the two being a matter of indifference here. (*Limited Inc* 89)

In this passage, Derrida identifies the use of a *fiction*. It is a 'theoretical fiction' (88), by means of which eventual aspects are excluded

under the argument of the purity of the analysis. This permits Austin to postulate ideal conditions (the *necessary conditions* of speech) to determine how things are done with words, although indicating that words could only do one thing. This leads to the question of the enforcement and interpretation of the law: e.g., Is there only one possibility? How can this be? What if the cases were different?

This attention to the world of forms presupposes, for Derrida, a mechanism defined by a "hypothesis of idealization" (*Limited Inc* 61), which consists of "an entire system of theoretical-methodological idealizations and exclusions" (69). These terms indicate that the method that Austin is formulating in his lectures would lead him in a first moment to look at the world of phenomena and then, in a second moment, to return to the form of utterances, excluding any parasitic relation. Parasitism would indicate a *non-normal* or a *literal* and *serious* use of language, as if there were a use of literal communication between speakers. In other words, instead of wanting to understand what words do, Austin returns to the form of utterances and what would be expected from them a priori.

Now, what is problematic is not to produce theoretical fictions, but to take as *real* what is being historically produced and to deny the complexity that language opens. According to this, the distinction between reality and fiction through the notions of ordinary/non-serious language are based on a process of theoretical fictionalization that does not recognize its own presuppositions of analytical production. Something similar happens when we refuse to talk about theater out of fear of trivializing the importance of trials, as if theater could not be a tool to produce serious scenarios of law – as Milo Rau has made clear in the *Congo Tribunal* (Congo and Berlin, 2015) and *The Moscow Trials* (Moscow Sakharov Center, 2013) hearings.

Examples from the Ixil Trial can help us grasp the problematic nature of Austin's exclusion. According to María Luz García, the investigation into one's personal identification details, such as name, date of birth, and occupation, reveals the cultural clash between the Justice system's framework and State Institutions' practices, juxtaposed with the customs and traditions of Maya communities (315-317). In this sense, it is not about universal forms, but rather cultural ones. Individuals must adapt and express themselves in accordance with the cultural norms and practices within the context where *justice*

is meant to be served. The same can be said about the structure of narrative testimony, which is linked to memory processes with diverse temporalities.

In 2018, I conducted an interview in Nebaj (Guatemala) with one of the mental health professionals[6] who accompanied the witnesses throughout the pre-trial, trial and post-trial process. She recounted that many people struggled to articulate what had happened. The pursuit of justice requires a chronological organization of events, which may not necessarily align with the ways in which memories are formed in situations of trauma. This means that those who testify must also be able to navigate a process that accommodates the needs of the judicial ritual. They come to testify in terms of their life, but they do so from the language of the judicial institution, not theirs. Learning to tell a story in these terms implies a process of reconstruction, which is not spontaneous. This undoubtedly multiplies the ways in which memories emerge and are organized within other spaces, times, and technologies. Memories parasitize the present without a clear explanation. Elena Raymundo Cobo recounts that many individuals are hesitant to discuss their recollections due to the immense pain they evoke, but as they hear the same narrative coming from others, they experience a profound sense of identification in the stories of fellow survivors. This collective healing, as observed during the trial, underscores the transformative power of connecting through shared experiences. Other studies have documented the healing power of shared narratives in cases in Rwanda (Norridge), Kosovo (Deperchin), South Africa (Cole), and the complexities surrounding the construction of witness images in Kurdistan-Iraq (Hardi).

The constructed nature of testimony and the process of healing is not related to the production of falsehoods, but rather to the shaping of memories in accordance with the demands of the law. However, as Felman states, during the cross-examination, this process is also subject to the specificity of the moment. They "dramatized or triggered an emblematic crisis in the law [...] a crisis of legitimacy and a crisis of truth" (4-5). This crisis is related to the paradigms in which truth or testimony are encapsulated.

What happens is that we are faced with different ways of operating that cannot be reduced to a single point of view. For this reason,

Derrida points out that the actor who promises something on stage, does so in terms of the character they play and not from the relations they have outside the theatrical scene. Thus, a theory of judicial performance would have to operate by contemplating the acts and not the ideal forms, since they never do, in fact, take place. When performing a trial, cultural, technical, and institutional practices come into play and impact interpretations. Norms and codes are conditions, but they are not mechanically performed. It is in this space and under these conditions that judicial politics and ethics emerge.

This idea is essential to understand the transfers in a judicial trial, because the specific issue of this form of theatricality lies in the relationship with the lifeworld, the real life of those who present themselves as witnesses or experts. The discussion around Austin's text locates a way to think about the theatricality of trials without seeking to collate a formal deontology about how things should be, to understand how they happen, and how we could interpret them. In other words, gestures, positions, words and ways of interpreting the penal codes produce the judicial institution. This locates the interest of analyzing the *social spaces* (Lefebvre) of the Courts of Justice through the lens of theatricality as a specific form of theater. This understanding emerges through an examination of the history of justice rituals, as evidenced by the works of Cornelia Vismann (*Medien*) or Shoshana Felman.

Marvin Carlson's concept of *ghosting* in the field of theater helps us comprehend the idea of a theatrical tradition within TJ settings. It refers to the revival of theatrical memory that reappears and haunts theatrical spaces, generating a montage of time(s) and space(s) that hinder the purity of the event(s) and reducing theater to its mere presence and identity. In this sense, in the field of law, Shoshana Felman (59) also speaks of *interjuridical nature*, identifying how certain characteristics of paradigmatic oral and public trials of the past continue to be inscribed in contemporary trials. Both concepts indicate that there are theatrical features that are repeated or quoted from one piece of theater to another and, in the same way, between trials from different context and periods of history.

Although both fields have developed independently, the way space is organized in the accusatorial system shows similarities to theatrical space. The same is true when considering the repetitive character

of the scenes and the distinction between theater and life that emerges in modernity. The theatrical tradition that has its origins in Greek antiquity, functioned as a useful model in the production of legal events. This leads to the existence of a *parasitic relationship* between law and theater. Namely, a relationship whereby the law produces theatrical events and the theater develops in these events.

Cornelia Vismann extensively reconstructs the problems that arose once the courts were moved indoors, as well as the role of publicity in the European tradition. Other contemporary considerations show that there is no sharp distinction between the reflections of theater, politics, and the production of the spectacles of law. According to Carlson, Felman and Vismann, and in terms of my interpretation, these are the forms of temporal and spatial parasitism that make it possible to understand or identify a canon of behaviors historically produced in judicial trials, which enable talk about a certain type of theater. This means that it is not only a matter of saying that the law is inspired by theater, but that the law constitutes a theatrical form that can/should be included within the theatrical canon. In this context, transitional justice trials also have a specificity in that they address situations that have a profound impact on national histories. I will now elaborate on this further.

Theatricality of the accusatorial system in TJ trials: The emergence of a new technology

Ruti Teitel ("Genealogía de La Justicia Transicional") defines TJ as a type of justice that responds to the crimes committed by repressive regimes in recent history (145). It is a technology in the Foucauldian sense, insofar as it involves the creation of knowledge and regimes of truth materialized in institutions which can be reproduced and inform law practices and conceptions. Teitel points out that this is a type of justice that became globalized in the second part of the 20th century.

While the national procedural codes localize the rituals in line with the norms of each country, the model of the accusatorial judicial ritual also functions according to forms and means of theatricalization that are not local. The Criminal Procedural Reform in Latin America began its implementation in 1992 in Guatemala (Fuchs et

al.), transforming the written practices of the inquisitorial system into the oral and public model of the adversarial or accusatorial system (de Mata Vela 10). This model is defined by five principles: orality, publicity, concentration, immediacy and contradiction. The first two principles facilitate the performance of the others: thanks to the gathering of the parties (civil parties – *querellantes* – and defense) involved in the case speaking in front of the tribunal and to the video and audio recordings, the decisions of the judges can be immediately notified and recorded. At the same time, it is thanks to the *continuity* of the confrontation between the parties that the *concentration* of all the evidence can be exposed. This happens within the structure of the ritual procedures that conditions the theatricality of a trial.

In this vein, Linda Mulcahy (1) asserts that trials are defined "as ritualized events performed according to a social and legal script". In the case of the Guatemalan Code of Criminal Procedure, Article 3 on Imperativity states that "The courts and the parties to the proceedings may not vary the forms of the process, nor those of its proceedings or incidences". The legal script of TJ processes is then pre-determined, but what happens there, cannot be completely co-opted beforehand. This can be understood by looking at the history of the emergence of international justice, starting with the staging of the Nuremberg Tribunals. These tribunals were presided over by the Allied powers, Great Britain, France, the United States and the Soviet Union, in response to the crimes outside German borders. The media was also crucial to this show of force performed by the allies and in the dissemination of this type of legal model for dealing with state crimes of recent history.

In this sense, the events of World War II placed new demands on the existing justice systems, e.g., the creation of an international tribunal and the consideration of the new media in the diffusion of these trials. The incorporation of visual documentation, such as film archives, was also central to the expansion of the spatial and technical boundaries of the means of trial production. This was also recognized as a central element in the Adolf Eichmann trial in Israel, which was recorded and broadcast by technical means, raising new problems for the question of the publicity of justice. In all these trials, the birth of a new technology began to take shape, consisting of an institutional transformation of the discursive, me-

dia and infrastructure networks that led to a different positioning of the characters in the judicial space. With this, the principles of publicity and orality became problematic issues linked to the question of theatricality and mediality. These aspects are referred to in the Memorial of the Nuremberg Trials, where the motives for certain theatrical decisions are explained. The Memorial clarifies the decision over the need to over-expose the defendants, raising questions related to clothing, e.g., exposing the defendants in civilian clothes would have a different impact than if they appeared in prison uniforms. The spaces of law in this type of TJ trials are intended to dictate a verdict where not only the crimes are legally condemned, but also constitute pedagogical spaces with an important component of moral denunciation. For this, it was not only important to expose to the public the bodies of the indicted in certain clothing, but also those of the survivors and witnesses and the amount of documentary evidence that was available. The *spectacle* reveals its utility of being a *visual* (Lat. *spectare*) *mechanism* (Lat. -*culum*) that creates knowledge through the judicial ritual procedures. This notion of spectacle also translates a relationship with memory since it implies a relationship with the *spectral.* Namely, with what reappears in the theatrical space without being able to indicate it as *that, now*, *there*. Individual memories and expert explanations in the cross-examinations evoke stories, people, spaces that are not *really* there and must be imagined, reconstructed.

Another important aspect for the emergence of this TJ technology involves the use of reproduction media and the emergence of mass culture. This facilitated a wider dissemination of the personal memories exposed during the hearings, creating in turn what Annette Wieviorka calls *the era of the witness*. This took place in the second part of the 20th century alongside the collection of testimonies that made up the televised *feuilletons* in the United States and France (128).[7]

In the case of the genocide trial in Guatemala, this tradition haunted the courtroom, and the specters of genocide and the TJ technology were informing the staging of this trial. All these elements contribute to the characteristics of the theatricality of TJ trials as a specific form of theatricality linked to the history of oral and public legal rituals. This benefits the theatricalization of social conflicts, as was the case in the important Truth Commission in South Africa, where

radio was essential and where different theatrical reenactments took place (Cole). The Truth Commissions in Guatemala have also revealed a new way of approaching the truth, from what Brigittine M. French calls *technologies of telling*. These technologies have undoubtedly foregrounded certain types of narrative construction and their forms of theatricalization that go hand in hand with the history of globalization processes of TJ, in which truth commissions are essential (Hayner 59). TJ must respond to the crimes of recent history and, in this sense, trials produce, as in the Ixil Trial, *memory battles* (Laplante 623), that expose and perform the uses of memory and history by law. This has been raised in the case of important trials in France (Rousso).

In Latin America, the crimes committed during the Cold War led to the production of an extended field of judicial processes, a *justice cascade* in the terms of Ellen Lutz and Kathryn Sikkink. The *Trial of the Juntas* that took place in Argentina in 1985 was an exemplary space to judge the atrocious crimes committed by the Argentine military dictatorship during 1976 and 1983. The presence of cameras and audio recordings in this trial gave it key exposure in Argentine society (Feld), as well as in other Latin American contexts where National Security Dictatorships were still in operation. None of these contextual aspects are alien to the theatricality of the trial, but are rather conditions of possibility that shape behaviors within the space and the TJ spectacle mechanisms. This determines the theatrical form of the trials according to Diana Taylor's definition. According to her definition, there are several essential elements: a scenario involving live participants, a structured plot and a flexible intended outcome. Taylor's definition is useful because it does not imply an assessment of the truth or falsehood of the theater, which makes it possible to understand that even farcical trials operate according to the mechanisms of judicial theater. The difference lies in the types of institutions that decide whether or not the rights of the indicted are guaranteed, and in more widespread mechanisms of state repression.

Theatrical mechanisms in the Ixil Trial

In one of the press articles published during the hearings of the Ixil Trial, Lucía Escobar affirmed: "I am so entertained with the Trial [...] that I started to watch the Nuremberg Trials on the Internet. Incredible parallels! Same excuses of the victimizers: 'we didn't know anything,' 'it is a political trial,' 'the court is impartial,' 'the sentence is written'". The author of the text does not seem to deride the trial, but rather, connects this trial to a broader history of TJ processes. On the other hand, the notion of entertainment in Escobar's text could be understood in the Latin sense, namely, *intertenere*, to have between or to establish a bond that produces a chiasm difficult to let go of. The entertainment leads her to look beyond this trial and relate it with other cases. Certainly, there are forms of entertainment that do not provoke this kind of interest and research, but are linked to a broad sphere of ephemeral consumption and banality. But this use should not eradicate the complexity of the Latin sense of the word. The theatrical characteristics also enable the audience, both present and through the media, to engage in identification (anagnorisis) and catharsis with the subject matter being discussed in the legal scene, particularly in TJ processes. It is through this connection that individuals can resonate with intimate and collective experiences.

The importance of attracting the attention of spectators inside and outside the courtroom through the media is crucial in these TJ trials, contributing important characteristics to the staging and development of the trial. Certainly, written texts and audiovisual records of testimonies exist, the oral and public exposure of these accounts in domestic court brings them into a different realm of truth: that of law and justice. The significance of publicly listening to these accounts from Guatemala's Palace of Justice, where they were sworn in, and their subsequent repetition in the media, transforms these forums into spaces that transcend mere judicial functions. Through the staging of TJ trials, the documentation of the crimes committed is brought to light. This exposure allows for a demonstration of the various social, military, and political sectors' involvement in the human rights violations that occurred in recent Guatemalan history. This led the court to be able to reason an official version of what happened there. In this sense, orality and publicity were crucial for these trials and for their role in the post-conflict society.

It is also important to structure this within the explanations of experts who, while framed by the spatial and temporal platform of the crimes in question, linked what happened to a *longue durée* period. This legitimates the legal typification of genocide to function as a category for thinking about a broader history from the perspective of legal procedures, which changes the content of historical research. The same happens when we listen to the testimonies of the survivors when they say, "it seemed that we were not human", "they treated us like animals". To be recognized or not as a human being make us go back to a wider history of colonialism. The situations described there make it also possible to link this case with testimonies in other cases of genocide in a transnational history or a *multidirectional memory* (Rothberg 3). This also contributes to the construction of a border history of TJ theaters.

Having been performed in a domestic court, the Ixil Trial also made it possible to produce a reenactment of the national and historical conflicts presided over by the same national institutions that enforced genocidal policies. This also facilitated the congregation in the same space of different sectors involved in the historical conflict, who came to occupy the chairs in the bleachers. For instance, other genocide trials staged in International Courts – such as The International Criminal Tribunal for Rwanda (Arusha, Tanzania) or The International Criminal Tribunal for the former Yugoslavia (The Hague) – could not have this type of spatial congregation of the society. This also points out that within the form of judicial theater, it is essential to consider the locations as a differential aspect that enables to distinguish the forms of the judicial and theatrical technology.

In Guatemala, not only those directly involved in the legal proceedings participated, but also other important sectors present in the public seating arena: e.g., representatives of other Mayan communities that lived through the genocide, political activists, members of NGOs and international organizations, academics, writers, filmmakers, photographers, in other words, any member of civil society. The other Mayan communities' representatives in the room that spoke neither Ixil nor Spanish (more than thirty Mayan languages are currently spoken in Guatemala) were also able to listen to the debate because organizations such as HIJOS or the Center for Independent Media facilitate simultaneous translation into other Mayan languages. This trial represented for many a space for political exercise and, for this

reason, the media's reproduction of the public's protagonism in this trial was so important.

This led to the implementation of a series of measures that were strategic for the evaluation of the active role of the public in the courtroom. From the press images, it was possible to appreciate the composition of the courtroom: it was crowded with different people, and the tribunal had this multilingual and multicultural portrait in front of them. The media also occupied a large part of the different areas of the Courtroom, to the point of locating in the legal scene as well. When Ríos Montt decided to testify after the closing arguments, the press was in the space between the tribunal and the dock. This is reasonable when considering the number of obstructions that the defense presented to stop this process, including death threats to Judge Yassmin Barrios, president of the tribunal. This is crucial when we consider the spatial and historical complexity of the performative character of language within the judicial ritual.

Besides, the press played a dual role in this trial. On the one hand, it allowed for the dissemination of the significant discussions taking place during the interrogations and cross-examinations to many platforms. The media also provided a platform to showcase the individuals who opposed the pursuit of justice, effectively serving as a witness to the multiple instances where the defense attempted to obstruct the trial by alleging procedural irregularities. However, the extensive coverage of this trial in various media outlets, along with the fear of a *domino effect* on other individuals associated with the war (military sectors, economic and political elites), also prompted the economic and military elite to take a stance against the conviction. These issues go beyond the trial itself and are deeply rooted in systemic challenges, including a history of impunity and a weak rule of law framework in Guatemalan tradition.

This is why the Ixil Trial had a strong impact on the mobilization of different sectors in the public space. For example, the demonstrations in the external space of the Palace of Justice divided between supporters of both sides, mobilized with slogans saying '*Yes* There Was Genocide' and '*No* There Was no Genocide'. All these actions tell us how these types of trials inscribed in an official court of law, represented by the State, manage to mobilize and expose different sectors of society. It is also the power over history, over the repre-

sentations of the past, over the exercise of authority that is at stake in this type of social rituals.

The media were also important in showing that this was not a farcical trial, as the defense lawyers and their supporters claimed, but a trial in which the parties enjoyed their legal guarantees. The newspaper articles revealed how certain figures positioned themselves thanks to the perception they bequeathed of the trial. From the first day of the hearings, CALDH attorney Héctor Reyes acknowledged that the type of defense litigation was a *show* (Ortiz). Other supporters of the defense indicated in their 2013 press articles that this trial was a *decadent circus* (Méndez Vides), a *political circus* (Ligorría Carballido) and a *judicial circus* (de La Torre). Within these utterances, the detractors of the trial sought to haunt the judicial space with the ghosts of the farcical trial. This brought an important historical and temporal complexity to the heart of a singular case.

What the videos evidence, is that those who used irreverent and destabilizing gestures and behavior were the defense lawyers themselves, as when the court removed Ríos Montt's lawyer on the first day of the hearings. In the documentary directed by Izabel Acevedo (*El buen Cristiano*), Ríos Montt's lawyer, García Gudiel, explains that this was a strategy of obstruction and that he knew this strategy would provoke the judge into a specific reaction.

From this perspective, the type of national and international recognition of this kind of domestic trials provides an opportunity for different sectors to mobilize and publicly show how the law apparatus works. This is palpable if we consider the annulment of the conviction on May 20, 2013, when three magistrates of the Constitutional Court follow the elites' mandate. Two magistrates reasoned against the vote of the three magistrates, however, the three magistrates in allegiance with the elites managed to impose their will. The authorship of the outcome of this process showed the alliance between the sector of the court and the economic elite. Everything happened thanks to the staging of the show of force between social sectors, which contributes to the complexity and the specificity of the theatricality of TJ scenarios. However, it is important to note that the annulment followed the conviction of Ríos Montt for both crimes, which many people in Guatemalan society and worldwide still consider valid. The subsequent annulment of the

verdict is viewed as an illegal action. It is crucial to recognize that the annulment does not diminish the seriousness of the Ixil Trial or the tribunal's effective handling of the proceedings.

Conclusion

Based on the insights presented, we have the elements to understand the specificity of judicial theatricality not as an analogy or metaphor, but as a distinct theatrical form with its own history and recurring practices. It is important to emphasize the authorship of trials, highlighting the institutional sources that give rise to them. Furthermore, there exists a theatrical tradition surrounding farcical trials and their interpretation of judicial rituals, which necessitates analysis based on their own practices, contexts and histories. I only mentioned it here to establish the limit and the distinction of the Ixil Trial. The last reference to farcical trials illustrates a key distinction in the political and social framework established by the authorship behind them, where practices of repression and pedagogies of terror come into play. It also emphasizes the importance of taking the idea of the actor, the rehearsal shaping the judicial process seriously, mapping the process as a production.

It is crucial to acknowledge that transitional justice trials entail substantial external participation, including media coverage and public engagement. This dynamic disrupts and complicates the spatial, medial and temporal definition and unity of the justice scene, as well as the actions and actors involved in the judicial proceedings. Regarding the ethical and political aspects, TJ trials play a crucial role in evidencing the fundamental principles and values of a just society. Through these trials and the documentation of their proceedings, scholars and societies can engage in deep reflection on the values that form the foundation of their legal systems. The audiovisual documentation of these trials further contributes to any future understanding and dissemination of their significance, ideally fostering broader awareness and promoting accountability for past atrocities. In other words, in every judicial process there is an exposition of the moral and political values of a society. Enforced rules (e.g., applied *by* a performative force that relates the general of the rule and the particular of the case) will not necessarily guarantee a priori the separation between farcical trials and processes

according to a notion of law associated with justice. The difference lies in the relations that this process establishes with other contexts that come to be performed within the spaces of the law. However, it is important to remember that the performativity of speech in these trials is articulated with other dimensions of the history and social life of local contexts and of the accusatorial tradition.

In conclusion, and key to my reflection, thinking of trials as part of the theatrical tradition, and of the actors in the judicial ritual as performers, makes it easier to abandon the paradigms that reproduce the anti-theatrical prejudice. As stated before in light of the Derridean interpretation of Austin's quote, all participants in a judicial trial occupy positions where they are representing their communities or political sectors. This happens because of the iterability of the form taken by the international and national practice of the law, as well as because of the trajectory of local histories. It enables the space of the court to open up to a complexity of determinations that is far from being explained by the intentions of either of the parties nor by the *form* of their codes.

In this regard, to understand how the canon of judicial processes works as a theatrical form, it is necessary to stop mechanizing the spaces of law and, rather, to analyze them according to the ways they *are* produced: e.g., taking stock of who the characters are, how they behave, what sector they represent, how the cross-examination structures their memories and explanations in ways that exceeds the courtroom. It is necessary to move away from conceptions that support a hypothesis and idealize legal procedures, memory and/or the general functioning of what we call justice. Justice is never guaranteed by the processes of law, but an analysis of the performances and the theatrical histories it impacts can help us differentiate between law and justice, and through a deconstruction of the law, we can begin to produce more just social processes.

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Notes

1 Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations.

2 Among the numerous sources about this trial, see the publication edited by Elizabeth A. Oglesby and Diane M. Nelson, *Guatemala, the Question of Genocide*.

3 The basis of these observations can be found in previous analyses of my doctoral research completed at the Institute for Latin American Studies of the Free University of Berlin (2021). In this work, I focused on three audiovisual records (the records of the Guatemalan Court of Justice, the extensive documentation of the film *El buen cristiano* and the series *El dictator en el banquillo*), press articles and interviews. I thank Fabiola Carranza for the English final proofreading of this text.

4 In 1976, Jacques Derrida received a manuscript from the American philosopher John Searle named *Reiterating the Differences: A Reply to Derrida*. Searle claimed Derrida's misunderstanding of his reading of Austin's text in *Signature événement contexte* [sic]. Derrida responds to this text some years later in the book *Limited Inc a b c*.

5 *Second Lecture*: "(ii) Secondly, as *utterances* our performances are *also* heir to certain other kinds of ill, which infect *all* utterances. And these likewise, though again they might be brought into a more general account, we are deliberately at present excluding. I mean, for example, the following: a performative utterance will, for example, be *in a peculiar way* hollow or void if said by an actor on the stage, or if introduced in a poem, or spoken in soliloquy. This applies in a similar manner to any and every utterance – a sea-change in special circumstances. Language in such circumstances is in special ways-intelligibly-used not *seriously* [my emphasis, J.D.] but in many ways *parasitic* upon its normal use-ways which fall under the doctrine of the *etiolations* of language." (Austin in *Limited Inc* 16).

6 Personal documentation: Interview with Elena Raymundo Coto from ECAP (*Equipo de Estudios Comunitarios y Acción Psicosocial, [Team of Community Studies and Psychosocial Action]*).

7 Other authors have spoken of the *era of testimony* (Felman & Laub), about the location of trauma and victimhood within a new institutionalized form of foregrounding the need for psychology professionals (Fassin & Rechtman).